TOLLEY'S COMMERCIAL LOAN AGREEMENTS. BY J.R. LINGARD. [London: Tolley Publishing Company Limited. 1990. x + 126 pp. (including index), Hardcover.]

THIS book touches on the issues of substance likely to arise in negotiating a commercial loan agreement. Written by J.R. Lingard who is more well-known for his book on *Bank Security Documents,* this short book of a hundred and twenty-seven pages is a summation of the negotiating techniques and skills of a senior banking lawyer who has been drafting and negotiating facility agreements for over fifteen years. Once again, Lingard displays his wealth of knowledge and experience best in an area where market practice rather than settled law governs the actions of the players. As such, the book concentrates more on banking practice than issues of law and is written for bankers, corporate borrowers and other players of the financial markets. Nevertheless, practitioners involved in financial services are likely to benefit from it as well.

One point to note about the book from the start is that it is not a book on precedents. It does not contain samples of commercial loan agreements nor does the author attempt to illustrate his points with relevant standard clauses (except for a sample of the financial covenants appearing in Appendix 1) of a loan agreement. Lingard admits his deliberate omission when he writes at the beginning of the book that

his purpose is "to cover ... the more interesting matters likely to arise in negotiations rather than exhaustively to review each and every standard clause in depth" and he advises his readers to look up examples of the clauses discussed from facility agreements used in past financings. Therefore, a reader who has no prior knowledge in the area of corporate financing may find it difficult to link the various chapters together. It may have been the author's aim too to present each chapter as a distinct write-up on the major concepts in a commercial loan agreement. Such an intention can be gleaned from the arrangement of the chapters of the book. Lingard does not exactly group topics of similar nature together. After an introductory chapter, the author devotes his second chapter to the discussion of the various roles of the banks in a facility agreement. This is followed by a chapter on the importance of and the problems faced in preparing an information memorandum. The rest of the book deals mainly with the problems and suggested solutions, both legal and practical, faced by the borrower and the bankers in their negotiation of certain specific terms and clauses in a facility agreement, *e.g.* Definitions (Chapter 4), Warranties (Chapter 10), Covenants (Chapter 11) and Events of Default (Chapter 16). Occasionally in between the chapters on clauses, the author digresses to discuss topics like Multiple Option Facilities (Chapter 5), Acceptance Credits (Chapter 8), Tender Panels (Chapter 18). Development and Project Financing (Chapter 21) and Rescue Facilities (Chapter 22).

The book is commendable for its effort in explaining in a concise and simplistic manner the rationale behind certain banking practices in corporate financing which may sometimes be puzzling to a newcomer to the game. For example, Lingard explains why small banks are usually reluctant to join a syndicate even if their commitments may not be large. This lies in the difference in cost of funds to various banks and it may be unprofitable for small banks to join if the margin is no more than a few basis points since their costs are higher than costs to major banks. The author also points out some anomalies in banking practice which may be contrary to settled law, such as the fact that the agent for the lending banks in practice is usually not required to disclose to the banks the amount of the agency fee it receives under the facility agreement (which is paid by the borrower) although legal theory would expect it to do so. In addition, Lingard has no qualms in showing that some standard clauses appearing in the facility agreement often provide little or no protection to the lenders or the borrower, as the case may be, contrary to what has been intended by the parties. One of such clauses which is "hardly worth stating", as the author puts it, is the usual *pari passu* covenant which merely reiterates the established position under English law that a company's property is to be applied in satisfaction of its liabilities *pari passu* on winding up subject to the rights of preferential creditors. Such a clause, explains Lingard, obscures the desire of lending banks to rank on an equal footing with other lenders as it does not prevent other lenders from taking guarantees from the subsidiaries or associates of the borrower. The better approach is to expressly prohibit the subsidiaries from giving guarantees.

A weakness about the book, however, stems from its strength of being terse. The author may be blamed for his cursory treatment of certain issues. The chapter on "Development and Project Financing" could have included some discussion on covenants (for example, insurance undertaking and undertaking to maintain value) and securities (for example, mortgage and assignment of leases) which are usually part-and-parcel of such financing. In addition, Lingard tries too hard to make the book readable to the extent of presenting legal terms in a casual manner without conscious effort to define them. Terms like "retention of title", "encumbrance" and "negative pledges" are referred to with the presumption that the reader is already familiar with them. Nonetheless, Lingard abides by his promise that the book is

intended more for the bankers and finance directors than the lawyers by keeping the usage of technical terms and the citing of cases to the minimum.

On the whole, the book is still a useful and informative reference for the players involved in the negotiation of commercial loan agreements. Practitioners and those in the financial services sector in Singapore will find the book handy despite the fact that it is written with English law in mind. Other than bearing in mind the differences that may be present between English and Singapore statutory law, local readers should be able to pick up valuable pointers on the practical considerations to be taken into account in similar transactions.

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