

Résumé

Philip J Johnston

16 years experience in undertaking fiduciary duties [Agent and Security Trustee] for Commonwealth Bank in first ranking and mezzanine syndicated debt loans, for infrastructure and large corporate loans, from as few as two debt providers up to 38 global banks for Sydney Airport privatisation. Two years experience in Social & Corporate Infrastructure.

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Personal Profile

Name : Philip James Johnston
Address : 5 Ronald Ave, Freshwater 2096
Mobile : 0434 715.861
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Date of birth : 24 October 1951
General Interests : Swimming –about 3 miles a week
Cycling – 75kms to 150kms most Sundays
Completed 2 IronMan triathlons in 1989/90
Previously played –

- 18 seasons of competition cricket
- 12 seasons of competition baseball

Professional Objectives

Attract interest in three preventative health programmes that I have meticulously written and costed:

1. Teenager Life Skills Early Intervention Programme
2. Youthful Exuberance Lifestyle Programme
3. Bohemian Teenagers Arts Assistance Programme

Professional Qualifications

- (a) 1977 graduated Bachelor of Arts with Major in Business & Finance at Macquarie University
- (b) 2001 graduated Master of Applied Finance at Macquarie University

Professional Experience

1988 – 2001

Executive - Institutional Banking, Commonwealth Bank

Over last 16 years I have undertaken Agent, Security Trustee and Bond Agent duties for over 60 different large corporate and semi-govt. borrowers. Syndicated loans have varied from \$40 million to \$4 billion.

My job entails interpreting the following legal agreements and carrying out respective agent roles listed therein:

- (a) Syndicate Facility Agreements
- (b) Intercreditor Agreements / Priority Deeds

- (c) Mezzanine Bond Deed Polls
- (d) Subscription Agreements
- (e) Security Trust Deeds
- (f) Debenture Trust Deeds

In addition, an understanding of project construction documents, tripartite deeds and the sponsor equity support agreements is often required.

Some primary duties include:

- ❖ Review drafts of loan agreements to ensure various agent duties are effectively/efficiently documented.
- ❖ Co-ordinate with syndicate's lawyers and borrowers where existing syndicated loan agreements require amendment, usually at the borrower's behest and cost.
- ❖ Undertake all responsibilities in respect of consents, waivers, amendments and approvals under facility agreements.
- ❖ Develop and maintain relationships with participants and borrowers.
- ❖ Convene and chair senior debt syndicate meetings between the syndicate and the borrower and provide a written record of all meetings.
- ❖ Monitor each borrower's gearing covenants.
- ❖ Monitor each borrower's general undertakings, primarily provision of various financial accounts and cashflow projections.

The most challenging transactions that I have acted as Agent have been –

◆ 1991/92

News Corporation Over-Ride Agreement which involved Rupert Murdoch re-financing \$13 billion of debt [with >110 banks world-wide] during the depths of the economic recession when News Corporation was heavily exposed to BSkyB satellite TV - a product which, in the early '90s, was well short of critical mass. I performed Agent duties on a AUD1 billion News Ltd bills facility in Sydney with 18 participant banks which, together with about 5 other large syndications, had to consent to the Over-Ride Agreement where in return for an up-front fee and increase in margin, participants would not be repaid for a further three years, notwithstanding that the AUD syndicated loan was due to mature in 10 months and the banks were uncomfortable about News Limited risk. Extensive negotiation by the lead bankers in Aust (CBA and Westpac) was required to influence all participants that remaining within the syndication was in the best interests of the participants. At the time News Corp was similarly re-negotiating all its maturing loan syndications in USA and Europe - approx 6. It was make or break time for News Corp world-wide, and one small participant in my syndicate, Pittsburg National Corp, almost brought News Corp down because it wanted out of the deal and only had a small participation, and didn't want to appreciate the gravity of News Corp's position of being long satellite delivery infrastructure during a deep depression.

◆ 1992/97

In Nov 1990 the NSW Supreme Court appointed replacement trustees to undertake a salvage operation for Estate Mortgage Trust after the previous trustees,

Burns Philp Trustee, had been sacked and subsequently charged/convicted for breaching the trust deed. The former trustees had previously negotiated bi-lateral loans with 7 banks totalling \$170 million. Following the collapse those banks, which included CBA, formed a loan syndication in pursuit of \$170 million. I represented those banks as Agent attending a plethora of meetings where the new trustees, Arthur Andersen, had to negotiate a settlement on behalf of the unitholders. Estate Mortgage is the largest collapse in Australian corporate history with over \$200 million in 3rd party damages subsequently awarded/settled. Damages have primarily been met by Lloyds of London, GIO and FAI which had provided professional indemnity insurance to Burns Philp, Freehills, auditors etc. Whilst the settlement outcome for the banks was ultimately very favourable, some meetings between the banking syndicate and the new trustees, which often also involved MSJ and Bakers respectively, became heated, particularly as the new trustees were accountable to the unitholders which contained a few dissidents. Working as Agent on a deal where so much costly litigation was occurring, highlighted the need for a fiduciary to always maintain clear audit trails.

◆ 1997/98

Splitting in two of the largest private company in Australia, Transfield, where I acted as Agent and Security Trustee to a \$700 million syndicate of 9 banks. With the syndicate being asked to release half of its security, heavy negotiation of covenants was involved. It was quite a demanding period for all involved.

◆ 2000

Property and Infrastructure are stimulating transactions as a working understanding of associated project documents [D & C or Turnkey contracts, Development Agreement, Agreement to Lease & Licence, Scope of Works etc.] is often required, as the Borrower's primary focus is generally construction and it relies on the Agent to anticipate potential problems.

On occasions, the Borrower's capacity to drawdown for future construction is a function of -

- ❖ residential pre-sales and settlements requiring complex, linked-spreadsheets to measure these, often updated daily; or
- ❖ acquiring a long term lease enabling sale to an Insto [super fund or insurance company] where puts and calls impact credit risk.

◆ 2002

10 months after Financial Close, Commonwealth Bank secured the 2 Mezzanine Note Agent roles for the highly structured Adelaide to Darwin \$1,276.7m project finance from ANZ. CBA was mandated these two roles as the Issuer, Asia Pacific Transport Finance, and its financial advisers, Macq Bank, were dissatisfied with ANZ Sydney's fiduciary capacity. Worked excessive hours for many weeks during 12 mths to 30 June '03 due to burgeoning client portfolio growth.

◆ 2003

Administered obtaining several complex consents from 38 banks funding \$3.95b to Sydney Airport. Administered Brisbane Airport Corp re-financing \$350m and paying out some lenders.

Represented Mezzanine Bond Holders during a re-financing of \$1.8b rail infrastructure project because forecast MDSCRs were slipping as sales orders to use the completed infrastructure were not coming as the traffic experts had forecast.

◆ 2005

Moved to relationship role in Social & Corporate Infrastructure, where Leighton Holdings was his largest infrastructure client. Developed a good relationship with Trevor Stewart and Scott McAlpine. Benefited to exposure to Long Bay Jail refurb, [Campus Living \(Griffith University\)](#) and [Campus Living \(Kelvin Grove\)](#) PPPs.

1970 - 1988

Commonwealth Bank Accounting Department - 9 years, Marketing Department - 4 years and Retail Banking H.O - 5 years.

Experience in fiduciary roles

The agent is the conduit/intermediary between the borrower and the participant banks. It has a fiduciary duty to its participants [to act in their best interests, acting as they would act given the particular matter] and a contractual obligation to the borrower. Whilst each law firm's syndicate facility agreements are set out differently, they all identify the same legal obligations that the borrower, participants and agent have to each other. Hence, experience at interpreting facility agreements enables substantial economies in resolving problems which might occur between a borrower and its participant banks. Such problems are often due to the dynamics and heavy competition within the various markets major corporates/semi-govts operate. "Greenfield" Infrastructure projects, which involve tunnelling, may also quite risky during the construction stage.

From time to time a borrower may require consent from its participant banks to amend its loan agreement [eg. the purpose clause, financial covenants etc.] or request a one-off waiver of a covenant obligation. Often time is of the essence with large debt exposures entailed.

In the last 12 years I have experienced a plethora of "pressure cooker" situations where successful resolution was contingent upon the Agent –

- (i) explaining all the legal issues associated with the borrower's request to its participants; and
- (ii) requesting, on behalf of the borrower, a timely consent.

Naturally this usually involves seeking legal council to opine.

Computer Skills

Reliant on Word, Excel, Access, Outlook, RTGS software, Intralinks website to deliver timely communications and payments.

Authentication of Résumé

I can nominate –

- various colleagues within Commonwealth Bank who work in project finance to validate this CV; or
- CFOs within a few large infrastructure projects to comment on my capacity to address problems in large transactions and fast-track a resolution between the associated parties.