**A CRITICAL ANALYSIS OF THE LEGAL ASPECTS OF SYNDICATED LOANS IN FINANCIAL INSTITUTIONS IN UGANDA**

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UGANDA CHRISTIAN UNIVERSITY

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# DECLARATION

I, NIMUSIIMA LEENICY, do declare that this scholarly venture is an original invention of my own efforts. It has not been submitted to any University or Institution of Higher Learning for any academic award, prior to this release. I have acknowledged the sources from where I obtained the information for this research.

Name:

Signature:

Date:

## APPROVAL

This dissertation has been submitted with my approval in partial fulfillment of the requirement for the award of the Degree of Bachelor of Laws of Uganda Christian University, Mukono.

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Date: …………………………………………….

# DEDICATION

To my God the omnipotent and omnipresent, thank you for the gift of my parents Mr. Muhairwe Moses and Mrs. Muhairwe Agatha, who have selflessly supported me throughout this journey.

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All my life he has been so faithful, I shall forever sing his goodness. The Lord has shown me His unceasing love and favors and I shall forever be grateful.

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## Abstract

This study is on the legal aspects of syndicated loans in financial institutions in Uganda. Banks play a pivotal role in any economy by mobilising funds, allocating capital, and influencing the governance of other firms. Syndicated loans have emerged as a pivotal financial instrument in the global banking landscape, playing a crucial role in facilitating large-scale financing for various entities. This underscores the critical importance of effective syndicated loan legal regime in Uganda. This study analysed the syndicated loans regime in financial institutions in Uganda with a view of determining the adequacy and effectiveness of the current legal provisions in regulating syndicated loan transactions. It focused on the legal framework governing syndicated loans in Uganda and its efficacy in syndicated lending in Uganda. It examined the challenges associated with syndicated loan transactions in Uganda and suggested measures to better the corporate finance and the syndicated loan regime. The study found out that while the Financial Institution Act 2004 (as amended) provides a comprehensive regulatory framework for various aspects of financial institutions' operations, there is lack of legal certainty and enforceability in syndicated loan agreements. In the absence of standardised documentation and contractual provisions, parties may encounter difficulties in resolving disputes and enforcing their rights. The research suggested measures that may be adopted to better the syndicated loan legal regime in Uganda

# CHAPTER ONE

# GENERAL INTRODUCTION

## 1.0 Introduction

Syndicated loans have emerged as a pivotal financial instrument in the global banking landscape, playing a crucial role in facilitating large-scale financing for various entities. In the context of Uganda, where the banking sector is a vital component of the country's economic framework, understanding the legal intricacies surrounding syndicated loans becomes imperative. This research delves into the legal aspects of syndicated loans in Ugandan banking institutions, aiming to provide a comprehensive analysis that combines theoretical insights with practical considerations. This chapter will deal with the background of the study, statement of the problem, the objectives of the study, the research questions, the significance of the study, the justification, scope of the study, conceptual model, literature review, methodology and the chapter synopsis.

## 1.1 Background of the Study

The evolution of banking practices in Uganda has witnessed a significant increase in the utilization of syndicated loans, reflecting the growing complexity of financial transactions and the need for collaborative approaches to risk management. Uganda's external stock of debt outstanding and disbursed has continued to increase over time. Over the years, commitments of new external financing to Uganda have been volatile.[1] Syndicated loans involve multiple lenders jointly providing funds to a single borrower, often of substantial size, creating a web of legal relationships and responsibilities.[2]

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[1] Hulya Pasaogullari, "Principal Lenders to Uganda**,"** (2019) Helpdesk Reports Commissioned by the UK Department for International Development and Other Government Departments," 9.
[2] Michael Gruson, "Restructuring Syndicated Loans: The Effect of Restructuring Negotiations on the Rights of the Parties to the Loan Agreement," (2004) International Law: Revista Colombiana de Derecho Internacional, 322-342.

A syndicated loan is provided to a borrower by a group of commercial or investment banks. Its main features are: one set of documentation (multi-party facility agreement); the financing terms are identical for all lenders; equal ranking of all lenders; information flow and payments are channelled via one bank, the Facility Agent. The deal is arranged by a leading international loan market bank.[3] In spite of these joint features, lenders under syndicated loan agreements act independently in making the credit decisions, assuming the credit risk and advancing the funds. Each member of the lending syndicate is only responsible for its own loan commitment.

Syndicated loans have always been an important source of international financing for developing countries and indeed were in the limelight during the Mexican debt moratorium of August 1982, since most Latin American debt then consisted of syndicated credits. The international market for syndicated credits saw its first large wave of development in the 1970s with lending to developing country borrowers, followed by a dominance of bond markets over loans in the 1980s, until syndicated credits again became an indispensable source of finance in the 1990s, largely complementary to securities.[4]

Loan syndication has grown dramatically in the last 30 years. According to Bank for International settlements (BIS), in 2010 loan syndication in developed countries had a rapid growth. This rapid growth in syndicated loans market can be attributed to many factors.[5] The syndicated loan is advantageous to the lenders because it is typically negotiated by one or a few lead banks and the other lenders can take the passive role of source of funding.

[3] Alexey Tarasov, "Management Issues in Loan Syndications Banking," (2019) Review of Business and Economics Studies 37 (available at https://doi.org/10.26794/2308-944X-2019-7-3-37-44 accessed on 16th February 2024).
[4] Yener Altunbas and Blaise Gadanecz, "Developing Country Economic Structure and the Pricing of Syndicated Credits," (2003) Monetary and Economic Department, (available at https://dx.doi.org/10.2139/ssrn.901144 accessed on 17th February 2024).
[5] Mohammed Kalloub and Ahmed Musabeh, "Syndicated Loans and Economic growth: Empirical Evidence from G7 Countries," (2020) (9) International Research Journal of Finance and Economics, June 2020 Issue 179, available at https://www.researchgate.net/publication/342448830_Syndicated_Loans_and_Economic_growth_Empirical_Evidence_from_G7_countries accessed on 18th February 2024).

Government of Uganda continues to prefer contracting loans on concessional terms to support social sector development projects and infrastructure projects.

In the context of Uganda, a landlocked country in East Africa with a burgeoning economy, syndicated loans have gained traction as banks seek diversified means to support substantial development initiatives. In the decision of *Ham Enterprises Ltd & Ors v Diamond Trust Bank (U) Ltd & Anor*,[6] Uganda had a landmark decision on syndicated loan. Court noted that syndicated loan facility was a global trend which usually stems from the need to speed out, and thus reduce risk associated with lending large sums of money. Suffice to note was that syndicated credit facilities that are duly executed are lawful; and neither the Financial Institutions Act 2004 (as amended) nor the Financial Institutions (Agent Banking) Regulations apply to them.

In the contemporary financial landscape of Uganda, syndicated loans play a crucial role in fostering economic growth. They provide a mechanism for banks to participate in financing endeavours that exceed their individual lending capacities. This collaborative approach facilitates the realization of ambitious projects that contribute to the nation's development agenda.

This study is prompted by the need to address the existing knowledge gap regarding the legal dimensions of syndicated loans within the Ugandan banking sector. As businesses seek larger financing solutions to support their ventures, the legal frameworks governing syndicated loans become crucial in ensuring transparency, accountability, and mitigating potential risks. While there is a growing body of literature on syndicated loans globally, there is a noticeable gap in the specific context of Uganda. Existing studies often focus on developed economies, and there is a dearth of comprehensive research addressing the intricacies and challenges faced by Ugandan banking institutions engaging in syndicated lending. Bridging this gap is

[6] SCCA No. 13 of 2021

essential for policymakers, financial institutions, and investors seeking a nuanced understanding of the opportunities and pitfalls in syndicated lending within the Ugandan context. The participation of institutional investors in loan syndicates raises questions on whether and how the inclusion of this new class of lender affects loan pricing practices. Studies have investigated this question, but they typically have not distinguished between different types of institutional investors. A stronger tightening of global financial conditions would constrain the availability of syndicated loans and weigh on financial sector stability.[7]

### 1.3 Statement of the Problem

The banking sector in Uganda has seldom witnessed the utilization of syndicated loans. While syndicated loans offer diverse advantages, such as risk-sharing and enhanced lending capacity, their application in Ugandan banking institutions poses challenges and reveals gaps that require comprehensive exploration.

There is no any formal regulatory and legal frameworks governing syndicated loans in Uganda which is sufficiently robust or tailored to the specific needs of the banking sector**.** This creates gaps in banking system that hinders the efficient execution and oversight of syndicated loan transactions. Besides, the absence of well-defined market practices and standards for syndicated loans in Uganda may contribute to inconsistencies in deal structures, documentation, and negotiation processes. This lack of standardization can impede the effectiveness and transparency of syndicated loan operations.

From a creditor perspective, due to incentive misalignment, contractual incompleteness, the cost of debt must reflect the possibility of debtor opportunism. Thus, agency costs in the end

[7] International Monetary Fund, "Fourth Review Under the Extended Credit Facility Arrangement, Requests for A Waiver of Non-Observance of a Performance Criterion and Modification of a Performance Criterion—Press Release;" (June 2023) IMF Country Report No. 23/229 (available at https://www.imf.org/en/Publications/CR/Issues/2023/06/26/Uganda-Fourth-Review-under-the-Extended-Credit-Facility-Arrangement-Requests-for-a-Waiver-535319 accessed on February 19, 2024)

are paid by the equity holders. Further, large free cash flows and asset specificity make project assets particularly susceptible to agency problems. Syndicated loans inherently introduce complexities in risk management. The dynamics of multiple lenders, each with its own risk appetite, can create challenges in ensuring a cohesive risk management framework. This becomes particularly crucial in the context of Uganda, where the banking sector is striving for stability and resilience.

Addressing these problems and research gaps is imperative to enhance the understanding, efficiency, and sustainability of syndicated loans in Ugandan banking institutions. The research aims to contribute valuable insights and recommendations for stakeholders, regulators, and banking professionals seeking to navigate and optimize syndicated loan transactions in the Ugandan financial landscape.

## 1.3 Objectives of the Study

### 1.3.1 General Objective

This research aimed at providing a comprehensive analysis of the legal aspects syndicated loan in Uganda's banking institutions. By investigating the current practices, challenges, and potential solutions, the research contributed valuable insights to academia, policymakers, and industry practitioners. Through a well-reasoned exploration, the study aspires to inform strategies that enhance the effectiveness and sustainability of syndicated lending in Uganda's banking sector.

### 1.3.2 Specific Objectives

1. To identify the legal framework governing syndicated loans in Uganda.
2. To assess the effectiveness of current legal provisions in regulating syndicated loan transactions.

3. To find out the challenges associated with syndicated loan transactions in Uganda.

## 1.4 Research Questions

1. What is the legal framework governing syndicated loans in Uganda?
2. How effective are the current legal provisions in regulating syndicated loan transactions?
3. What are the challenges associated with syndicated loan transactions in Uganda?

## 1.5 Significance of the Study

Since the promulgation of the Financial Institutions Act 2004 (as amended), the focus of reforms in banking law has increasingly been on creating a stable banking environment. It is hoped that the study will yield data and information that will be useful for planning and decision making by the Government which will then form a framework for the management actions for change and development of an efficient framework. It will help form a basis for the syndicated loans framework to achieve an effective banking system which will foster economic development in Uganda. The study's significance lies in its potential to contribute to the improvement of legal frameworks governing syndicated loans, thereby fostering financial stability, legal compliance, investor confidence, and overall economic development in Uganda.

The study contributes to the academic literature on banking law, particularly in the Ugandan context. It adds valuable knowledge to the field and may inspire further research on related topics, creating a foundation for future academic exploration. This will lead to the generation of new ideas for a better and more efficient framework that will enhance economic growth in Uganda and the rest of the world. This study is also in partial fulfillment of the requirements for the award of the Degree of Bachelor of Laws of Uganda Christian University, Mukono.

## 1.6 Scope of the Study

This study analysed the legal aspects of syndicated loan in Uganda's banking institutions. The study analysed whether there are effective legal provisions regulating syndicated loan transactions, the challenges associated with syndicated loan transactions in Uganda and thereafter recommend measures to better the syndicated loans regime in banking institutions. The study put more emphasis on financial institutions rather than non-banks. The study is limited to the period between 2016 and 2024. The researcher chose this period because it stretches from the time the first amendment of the Financial Institutions Act to date.

## 1.7 Literature Review

The sustained availability of foreign credit to developing countries is viewed as one means for deepening capital markets in these countries and potentially reducing the severity of crises when they occur. Syndicated loans play a pivotal role in the banking sector, serving as a crucial financial instrument for businesses and institutions globally. In the context of Ugandan banking institutions, understanding the dynamics, advantages, disadvantages, and legal aspects of syndicated loans is essential for fostering financial stability and supporting economic growth. This literature review aims to provide a comprehensive overview of syndicated loans, shedding light on their definition, advantages, disadvantages, and legal considerations within the Ugandan banking landscape.

A syndicated loan is made to a single borrower by two or more direct lending institutions, on similar terms and conditions, using common documentation and administered by a common agent bank or separate agent banks. Common documentation and direct co-lending are the crucial elements that hold the syndicate of lending banks together. Syndicated loans by their nature represent direct lending with assignments, where the lead lender sells off and assigns pro rata interests in a loan to other lenders which directly enter into lending arrangements

with the borrower. Syndicate members, which are assigned an interest in the loan, have direct access to the borrower and are named in the loan documentation.

Still another type of financing that involves characteristics of both public and private debt is syndicated loans. Syndication involves the sale of a relatively large commercial loan in "parcels" to a group of institutional buyers, whereas a private placement typically is the sale of a "whole" debt contract to a single lender (although some private placements involve a relatively small group of lenders).[8] In principle, any loan could be syndicated by any financial institution that acts as a loan originator. In practice, only certain kinds of loans and certain types of institutions engage in syndications.

The primary benefit of syndicated loan arrangements to banks is that banks can diversify credit risk by limiting their exposure to any one borrower, industry, or geographical region. In other words, banks can develop a diversified portfolio of high-quality commercial or real estate loans of modest size through loan syndications and participations, rather than through a handful of large loans where the failure of only one loan could have profound consequences on the bank's credit risk position. Diversification has also been facilitated by US bank regulators and credit rating agencies, which have placed informal pressure on banks to diversify their loan portfolios to minimize the impact of large defaults so that the massive bank and savings and loan and bank failures of the 1980s are not repeated.[9]

A syndicated loan arrangement is an effective method for borrowers to raise large sums of financing in one operation and to establish and maintain diverse banking relationships. Private and sovereign borrowers, however, have many other uses for syndicated loan facilities. First, these facilities can be used in part to refinance outstanding bond issues. Second, these arrangements can often represent significant reductions in cost of funds to the

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[8] Steven A. Dennis & Donald J. Mullineaux, "Syndicated Loans," (1999) 2 (available at https://dx.doi.org/10.2139/ssrn.152689 accessed on February 19, 2024)

[9] Joseph J. Norton, "International Syndicated Lending: The Legal Context for Economic Development in Latin America," (1996) 2 LAW & BUS. REV. AM. 21, 22 (available at https://scholar.smu.edu/lbra/vol2/iss3/3 accessed on February 08, 2024)

borrower. Third, revolving credit facilities have inexpensive drawdown costs and give the borrower considerable flexibility in determining when, how much, and in what currency it can use the funds. Fourth, syndicated loans, particularly standby facilities, can be used as a hedge against future bond market volatility. Finally, even less creditworthiness corporate borrowers and sovereign borrowers that may be considered less creditworthy have successfully entered the syndication market.[10]

Syndicated loan facilities are normally priced on a floating-rate basis. The interest price of the loan is the margin above the interbank cost-of-funds charged to the borrower (usually expressed as a number of basis points above the interbank cost of funds).[11] In Most previous authors have used spreads over a benchmark interest rate to study syndicated loan pricing. However, this does not represent the true economic cost of loans, as additional pricing factors, such as fees, are typically charged in loan syndications. The research looked at the determinants of the full economic cost of loans, distinguishing between spreads and fees.

Contrary to the existing literature, which considers the effects of explicit guarantees, the research distinguished between the notion of explicit guarantees and implicit guarantees as determinants of loan pricing. Explicit guarantees are formal commitments by third parties while implicit ones can arise from ownership of the borrower by a parent company. We find different effects on loan pricing.

### 1.8 Methodology of the Study

This study employed both the quantitative and qualitative method of research. The quantitative approach was used to give specific, precise and more accurate data since it involved statistics and measurement while the qualitative approach helped to cater for some reactions, situations and contexts, which could not be quantified. It was practically

[10] Norton, "International Syndicated Lending: The Legal Context for Economic Development in Latin America," (n9) 22
[11] Ibid, 27

impossible for the researcher to study the target population. The researcher therefore, chose a sample and applied a purposive sampling having considered this representative as enough and adequate in carrying out this research.

The study is concerned with the analysis of the legal aspects of syndicated loans in financial institutions in Uganda. It specifically intended to investigate the relationship between syndicated loans and bank performance/stability. Such issues are best investigated through qualitative methods. Qualitative method of research was chosen because they seek a deeper understanding while studying the subject from its natural setting, attempting to make sense of, or interpret phenomena in terms of meanings people bring to them. This method is intended to establish the social reality from the point of view of the actors in a more reflective manner and to provide a detailed description and enable a deeper understanding of the challenges associated with syndicated loans in the financial sector.

The study involved extensive documentary analysis to provide theoretical and practical insights into syndicated loan practices. Documentary analysis was used as a data collection technique. This is an ongoing process that involves reviewing a wide range of sources from both the primary sources and secondary sources (which include textbooks, web materials, journals, newspapers and other documents). Documentary analysis is advantageous because is it allows research on subjects to which the researcher does not have physical access.[12] The desktop study or review was used to inform the proposal for reform of the banking law practices and transactions. In order to get reliable information from the respondents, the researcher also constructed appropriate questions, both open and close-ended which were presented in a questionnaire to the respondents. With regard to the oral interviews, the researcher asked people for their opinions on the topic under investigation. The researcher

[12] Kenneth D. Bailey, *Methods of Social Research*, London: Collier Macmillan Publishers, (1987)

used the option of zoom meetings and physical meetings in order to reach his target. The researcher used structured questions to get the necessary information.

This study is intended to be conducted country wide. It was the intention of the researcher to study all banking institutions and their credit products. There are so many banks in Uganda. It is envisaged that time and financial constraints dictated a smaller sample. Given the fact that the researcher is a full-time student, the researcher had limited time. It is foreseen that the time factor affected the collection data, compilation and submission of the report. Besides, the researcher met the full cost of the study. The researcher had limited search on the various portal to identify and study such banks. The data collected formed a smaller sample that could be generalized to the entire country, but it is useful for exemplification and developing a debate.

In order to ensure the validity and reliability of the research instruments employed, the validity of the interviews was assured by means of formulation of relevant questions on the questionnaire while its reliability depended on the check-out questions that were asked. The questions were moderated by the researcher's schoolmates and the supervisor.

In regard to reliability of the interviews, the aim of the research was openly explained to the respondents in order to clear doubtful tendencies of some respondents that might lead to concealing of relevant information.

Further, "researchers have an obligation to conform to the ethical values and standards of the society in which they conduct their work."[13] Furthermore, they are to be informed about the legal policy and framework in which their research has to be conducted. The major ethical problem to this study was be the privacy and confidentiality of the respondents. Obtaining a valid sample entailed gaining access to the specific lists and information which may itself be an infringement on the right to privacy and confidentiality of the respondents. However, the

[13] Bailey (n12) 50.

researcher chose the respondents to be anonymous, this was taken with utmost respect. Besides, the researcher took into account ownership of published material. The researcher therefore acknowledged all the sources where the researcher got the data from.

### 1.9 Chapter Synopsis

Chapter One of the dissertation provides a background to the study, the problem statement and sets out the objective, significance and justification of this study. It also provides the research questions and methodological approach adopted for this dissertation and the literature review related to syndicated loans in financial institutions.

Chapter two provides the non-legal aspect of this research.

Chapter three will examine the Uganda legal framework pertaining to syndicated loans and how it has evolved overtime.

Chapter four will summarize the discussion points of the research by suggesting recommendations for financial institutions in Uganda based on best practice and experience. A more strategic and focused intervention will be recommended because of the need to maintain financial stability, encourage competition in the market, and enhance the development of Uganda’s economy.

## CHAPTER TWO

## SYNDICATED LOAN IN FINANCIAL INSTITUTIONS

### 2.0 Introduction

Syndicated loans in Uganda have been distributed across various sectors, reflecting the diverse financing needs of the economy. The distribution of syndicated loans across sectors provides insights into the areas that have attracted significant financing and underscores the sectors that are driving economic activity and development. The international market accounts for about a third of all international financing, including bond, commercial paper and equity issues.[1] The relevance of studying the nature of syndicated lending is due to the high need for adequate legal support of financial transactions for the successful regulation of the syndicated lending process. Within the framework of this study, the essence of a syndicated loan is considered, in which the main issues in the syndicated loan processes are also highlighted.

### 2.2 Definition of Syndicated Loans

A syndicated loan is a loan made to a firm jointly by more than one financial institution.[2] A syndicated loan is granted by a group of financial institutions to a single borrower. The lending syndicate includes at least one lead institution (the "lead arranger(s)", sometimes called "underwriter(s)") as well as one or more participants. Lead arrangers negotiate preliminary loan terms and conditions and, upon agreement with the borrower, put together the group of participants to fund parts of the total loan amount. In return, lead arrangers

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[1] Todd Smith, "Markets for Corporate Debt Securities," IMF Working Paper, Volume 1995: Issue 067, (available at https://doi.org/10.5089/9781451848878.001 assessed on February 28, 2024)
[2] Amir Sufi, "Agency and Renegotiation in Corporate Finance: Evidence from Syndicated Loans," Job Market Paper, January 26, 2005, p.5

receive an arrangement fee.[3] These loans arise when a project requires a loan too large for a single lender or when a project needs a specialized lender with expertise in a specific asset class. The loan can involve a fixed amount of funds, a credit line, or a combination of the two. In the last three decades, corporations and governments were seeking a massive amount of funds either to conduct giant governmental projects or to secure enough funds for corporations and financial institutions. As demand became more significant for a mass amount of funds, the need for loan syndication just raised to match the accelerating finance demands. In Uganda, syndicated loans are common in financing large projects, corporate entities, or sovereign governments. These loans involve large sums, allowing the risk to be spread out among several financial institutions to mitigate the risk in case the borrower defaults. For instance, the Bujagali Hydro Power Project: The construction of the $800 million Bujagali Hydro Power Project was financed with the participation of international banks such as the World Bank, German Development Bank, African Development Bank, and the International Finance Corporation (IFC).[4] This project demonstrated the involvement of international financial institutions in providing syndicated loans for large-scale development projects in Uganda. This increase in the loan syndication market reflects the needs of both lenders and borrowers for a new method of debt financing.[5]

**23 The Syndicated Loans Process**

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[3] Iñaki Aldasoro et al, "Non-bank Lenders in the Syndicated Loan Market," BIS Quarterly Review, March 2022 (available at https://www.bis.org/publ/qtrpdf/r_qt2203c.pdf assessed on February 28, 2024)

[4] Jonathan E. Sanford, "World Bank: Bujagali Hydropower Project," CRS Report for Congress April 22, 2003, (available at https://www.everycrsreport.com/files/20030422_RS21501_30217e357329dbf36c7eab57df5fad8159f0f9bb.pdf )

[5] Mohammed Kalloub and Ahmed Musabeh, "Syndicated Loans and Economic growth: Empirical Evidence from G7 Countries," (2020) (9) International Research Journal of Finance and Economics, June 2020 Issue 179, available at https://www.researchgate.net/publication/342448830_Syndicated_Loans_and_Economic_growth_Empirical_Evidence_from_G7_countries accessed on 18th February 2024).

The process of raising capital for a firm starts with the selection of an investment banker to lead the issue. The chosen investment banker usually manages the eventual underwriting.[6] The syndicated loan process typically involves a lead bank or underwriter, also known as the arranger, agent, or lead lender. The lead bank plays a crucial role in organizing the loan, its terms, and other relevant information.[7] This institution may put up a proportionally bigger share of the loan and perform duties such as dispersing cash flows among the other syndicate members and administrative tasks. The banks in a loan syndicate share the risk and are only exposed to their portion of the loan.

It is commonplace for the lead underwriter to appoint its closest rivals in the selection process as comanagers or at least provide them with large share allocations. The lead manager along with the comanagers is responsible for performing the origination function which includes acting as an advisor in the early stages of formulating a financing plan, conducting a due-diligence assessment of business prospects, preparing and filing the registration statement with the Securities Exchange Commission, and negotiating the basic underwriting terms. The lead manager splits the management fee on a negotiated basis with the comanagers for their origination services. In addition to originating and distributing the issue, the lead manager also certifies the issue to investors.[8]

## 24 Characteristics of Syndicated Process

Loan syndication may be local (i.e. where it is locally financed) or foreign/cross border (i.e. where it involves foreign entities).[9] In the loan's life cycle, lead arrangers typically act as the agent bank and perform due diligence. They ensure screening and monitoring, govern the terms of the loans and enforce covenants. In line with their responsibility as monitors, lead

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[6] Rajesh P. Narayanan et al., The Role of Syndicate Structure in Bank Underwriting," Journal of Financial Economics 72 (2004) 555–580

[7] Hugh Thomas & Zhiqiang Wang, "The Integration of Bank Syndicated Loan and Junk Bond Markets," Journal of Banking & Finance 28 (2004) 299–329

[8] Narayanan (n6) 560

[9] Tram Vu et al., "Local Versus Foreign Banks: A Home Market Advantage in Loan Syndications," International Review of Financial Analysis 37 (2015) 29–39

arrangers retain a larger portion of the loan on their balance sheets, while participants often sell their tranches on the secondary market.[10]

Although syndicated loans are often viewed as a hybrid with characteristics of bank loans and public debt, they are closer to bank debt because of the role played by the lead arrangers.[11] The lead arranger drafts the loan terms, monitors compliance and typically holds the largest share of the loan. In the same vein, the fact that the loan is syndicated and that only a part of it is likely to remain on the balance sheet of the arranger creates pricing incentives that might be different than in other debt markets.

### 2.5 Factors Influencing the Syndicated Loan Market

This rapid growth in syndicated loans market can be attributed to many factors[12] including but not limited to risk diversification; cost reduction; competitive pricing, useful cooperation between financial institutions through providing critical information sharing and risk assessment between the lenders to achieve their mutual interests, which helps in creating effective communication channels between financial institutions and minimize information asymmetry and moral hazard; and good reputation (i.e. for both lenders and borrowers).

It suffices mention that the one of the reasons for the growth of syndicated loans is that it a means of providing efficient solutions as it enhances risk- sharing between lenders. It supports the bank's ability to create new markets abroad and form a reliable database sharing among lending parties. On the other hand, borrowers are much interested in loan syndication as they seek a high amount of funds from a trustable party who can provide enough funds with minimum probabilities for defaulting, lower interest rates as transaction costs are

[10] Inaki (n3) 17
[11] Rainer Haselmann & Paul Wachtel, "Foreign Banks in Syndicated Loan Markets," Journal of Banking & Finance 35 (2011) 2679–2689, p.2670
[12] Mohammed Kalloub and Ahmed Musabeh, "Syndicated Loans and Economic growth: Empirical Evidence from G7 Countries," (2020) (9) International Research Journal of Finance and Economics, June 2020 Issue 179, available at https://www.researchgate.net/publication/342448830_Syndicated_Loans_and_Economic_growth_Empirical_Evidence_from_G7_countries accessed on 18th February 2024).

minimized.[13] Financial institutions prefer loan syndication for risk diversification, at the same time, bearing a loan by the single bank will increase monitoring costs and make it much challenging to supervise borrower.

That said, one of the main aims of syndicated loans is to spread the risk over several entities, and to enable the debtors to obtain large sums of money. Banks are normally the entities providing these loans, and they are usually used of various. The main idea behind syndicated loan is the fact that money being given out is too much for an individual bank, or corporation, therefore they are willing to share the risk and the reward.[14] Multilateral Development Banks self-select into loans with higher risk that could not otherwise be financed by the private sector and later spreads.[15] In order to minimize credit risk and to ensure acceptable levels of diversification, lenders monitor and impose limits on their exposure with regard to a particular project as well as the amount of loans made to a particular sponsor.

Another reason to encourage borrowers to go for syndicated loans is that syndicating partners delegate a leader bank to monitor the credit or a specialized consultancy firm, which in turn can give signals for both borrowers and lenders about the borrower's performance.[16] A case in point is MTN Uganda, the largest telecommunication corporation in Uganda, that utilized syndicated loans for expansion and network improvement. In 2009 and in 2016, the company secured a syndicated loan for further expansion of its data network and infrastructure.[17] These

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[13] Kalloub & Musabeh, (n12) 9

[14] Dennis, Steven A. and Donald J.Mullineaux (2000). "Syndicated Loan Journal of Financial Intermediation" 9(4): 404-426.

[15] Daniel Gurara et al., "Borrowing Costs and the Role of Multilateral Development Banks: Evidence From Cross-Border Syndicated Bank Lending," IMF Working Paper Strategy, Policy and Review Department December 2018,

[16] Mohammed Kalloub and Ahmed Musabeh, "Syndicated Loans and Economic Growth: Empirical Evidence from G7 Countries," (2020) (9) International Research Journal of Finance and Economics, June 2020 Issue 179, available at https://www.researchgate.net/publication/342448830_Syndicated_Loans_and_Economic_growth_Empirical_Evidence_from_G7_countries accessed on 18th February 2024).

[17] Isaac Khisa, "MTN's Shs 380bn Investments," The Independent (available at https://www.independent.co.ug/mtns-shs-380-bn-investments/ accessed on February 14, 2024)

examples highlight the successful utilization of syndicated loans by large corporations and development projects in Uganda to accomplish substantial endeavors, demonstrating the importance and effectiveness of syndicated loans in the country.

As countries develop, an increasing number of firms access the cross-border syndicated loan market to support their expansion strategies. These loans are increasingly important as a source of finance for firms across the world. From a borrower's perspective, syndicated loans are generally less costly than bond issuance and a series of bilateral loan agreements; provide access to finance to borrowers that are unable to tap into the bond markets because of their low creditworthiness; and could also help to diversify the sources of external finance, promoting financial deepening and stability.[18] In Uganda, Roofings Uganda Ltd successfully obtained a $64 million syndicated loan from six financial institutions, enabling the firm to complete its expansion project.[19] The loan facilitated the company's plant development in Namanve industrial park, demonstrating the efficacy of syndicated loans in supporting large-scale corporate endeavors in Uganda.

By creating a syndication group and dividing the obligations to lend the entire loan amount among several lenders, participating lenders are more likely to be able to stay within their credit exposure limits. The participating lenders also have the opportunity to access the expertise, business relationships, and deal-flow of arranging lenders, allowing the participants to extend their customer base without investing large amounts for marketing costs and administrative capabilities.[20]

[18] Gurara et al. (n15) 4
[19] David Mugabe, "Banks Boost Construction Sector," New Vision December 20, 2010 (available at https://www.newvision.co.ug/new_vision/news/1276836/banks-boost-construction-sector accessed on February 14, 2024)
[20] Gary A. Goodman & Gregory Fennell, "Special Problems of Syndicated Loans and Multi-Tiered Financings," (available at https://www.dentons.com/en/insights/articles/2014/april/14/special-problems-of-syndicated-loans accessed on February 14, 2024)

## 26 Challenges Associated with Syndicated Loan Transactions

Despite their effectiveness, syndicated loans also come with challenges. One of the main drawbacks is that syndicated loans in Uganda include negotiations in debt restructurings are affected by the number of creditors, incentive for syndicating loans by banks has diversifying risk and handling borrower's financial distress is complicated in a syndicate setting. Loans are more difficult to restructure outside of bankruptcy than any other debt claim, including public debt.[21] For example, traditional bank loans may be relationship based loans and relationship lenders may be more willing to restructure their claims to preserve relationship rents.

However, today, multi-lender credits are composed of nontraditional lenders such as mutual funds, trust departments, corporate treasuries, and other institutional investors. This increased institutional investment in syndicated credits has brought about two risks to banks: that institutional investors will crowd out commercial banks and that institutional syndicate members will compete to supply the financial services required by the borrower.[22] Besides, there is more subtle structural risk faced by banks of increased involvement of institutional investors is increased competition for financial services. The syndicate members each have a direct relationship with the borrower.[23]

Further, there is a risk that commercial banks are exposed to when they use syndicated credits is the threat to the management of the loan syndicate due to the increased participation of institutional investors. There exist some unique challenges that must be responded by banks

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[21] Cem Demiroglu & Christopher James, "Bank loans and Troubled Debt Restructurings, Journal of Financial Economics," Volume 118, Issue 1, October 2015, Pages 192-210 available at https://doi.org/10.1016/j.jfineco.2015.01.005 accessed on March 3, 2024)

[22] Megan E. Jones, "Bankers Beware: The Risks of Syndicated Credits," 3 N.C. Banking Inst. 169 (1999) (p.180) (available at: http://scholarship.law.unc.edu/ncbi/vol3/iss1/10 accessed on March 3, 2024)

[23] Jones (n22) 173

from a managerial and strategic perspective to establish and maintain leadership in the important business due to the features, structures, and industrial organisation of the market.[24] Syndicated loans carry inherent complexities and uncertainties, necessitating robust risk management approaches. Several key strategies are crucial for effectively managing risk in syndicated loans in the Ugandan banking sector. To curb the vice institutional investors, it has been suggested that banks can overcome the problems created by institutional investment with the right management.

> First, a bank's risk management structure should anticipate future economic problems… The syndicated credit transactions that banks underwrite should be "consistent with its long-term strategic portfolio objectives and the level of risk the bank is willing to tolerate over the long run." Thus, when considering syndicated lending, a bank must weigh the inevitable influx of institutional investors and the concomitant challenges, increased competition and loss of control of the syndicate.[25]

Further, lenders participating in syndicated lending must conduct thorough due diligence on the borrower to assess their creditworthiness, financial stability and ability to repay the loan. This includes analysing financial statements, reviewing business plans and evaluating collateral (if any). Effective due diligence minimises the risk of default and protects lenders' interests.

Syndicated lending involves complex documentation, including the loan agreement, inter creditor agreement and security documents.[26] Lenders should carefully negotiate the terms and conditions of the loan, such as interest rates, repayment schedules, default

[24] Alexey Tarasov, "Management Issues in Loan Syndications Banking" Review of Business and Economics Studies, September 2019 7(3):37-44 available at https://www.researchgate.net/publication/339172803_Management_Issues_in_Loan_Syndications_Banking February 29, 2024)
[25] Jones (n15) 185
[26] Joseph J. Norton, International Syndicated Lending: The Legal Context for Economic Development in Latin America, 2 LAW & BUS. REV. AM. 21 (1996) https://scholar.smu.edu/lbra/vol2/iss3/3 accessed on March 01, 2024)

provisions and any specific covenants or restrictions. Experienced legal counsel can play a crucial role in ensuring lenders' interests are adequately protected.

In syndicated lending, inter creditor arrangements govern the relationship between lenders and establish the priority of repayment in the event of borrower default. Lenders need to carefully consider the ranking of their security interests, subordination agreements and the distribution of proceeds in various scenarios. Resolving potential conflicts and establishing clear guidelines in advance can mitigate future disputes among lenders.

In syndicated loan contracts, a borrower's failure to comply with a covenant restriction triggers a default, and as such the lender's right to terminate the loan (or foreclose on assets which are serving as collateral). The likelihood that such a covenant violation would occur depends on the loan covenant strictness, which measures how stringent covenant restrictions are on the borrower. Rationales for creditors to demand strict covenants include the pricing of default risk and the allocation of bargaining power in more frequently triggered renegotiations.[27] This new determinant dictates that the more debtor(creditor)-friendly the bankruptcy practice is, the more creditors will seek to increase (decrease) their level of loan monitoring outside of bankruptcy through an adjustment in covenant strictness. Borrowers would agree on stricter covenants in exchange for a lower loan spread, and vice-versa.

There still misses clear clauses on the creditor rights' enforcement mechanism in case of the borrower's bankruptcy. The fact surely becomes another challenging aspect of the above law. Such issues can be resolved by introducing amendments to the Bankruptcy Law, so that the specifics of syndicated lending would be taken into consideration. Law-makers may choose two options to regulate creditors' rights in case of the debtor's insolvency under a syndicated loan.[28]

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[27] Staraci, Garence and Pouraghdam, Meradj, "Chapter 11 Bankruptcy and Loan Covenant Strictness" (July 2, 2017). (Available at SSRN: https://ssrn.com/abstract=2996235 accessed on March 01, 2024)

[28] Belousov A.L. "Syndicated Lending: Law Enforcement and Legislative Refinements," Digest Finance, 2021, Vol. 26, Issue. 3, pp. 261–267. (Available at https://doi.org/10.24891/df.26.3.261 accessed on March 01, 2024)

The loan syndication process can be time-consuming, leading to delays in funding for critical projects. The best solution to this is streamlining approval processes by implementing streamlined approval processes to expedite the loan syndication process, reducing the time required for approval or denial.[29]

Further, syndicated loans are associated with exchange rate and investment risks.[30] A striking feature of emerging markets is the fact that foreign currency loans prevail in syndicated lending. The rebalancing of offshore investors' portfolios away from frontier exposures, potential security challenges, and health-related concerns also contribute to the risks associated with syndicated loans. Exchange rate volatility and the potential impact of security and health-related issues on investment projects represent significant challenges. The reliance on foreign currency-denominated credit, which accounts for around 30 percent of bank loans, poses risks to financial sector stability, especially in the event of a stronger tightening of global financial conditions.[31] This underscores the importance of managing currency risks and maintaining financial stability. Therefore, it is important to address broader economic and social challenges, such as the erosion of consumer purchasing power and potential security and health-related concerns, to create a more conducive environment for the successful implementation of syndicated loan arrangements.

## 27 Conclusion

Syndicated loans have provided crucial financial support across various sectors such as real estate, road construction, energy (including hydroelectric power and oil & gas), and

[29] African Development Bank Group "Evaluation of Loan Syndication at the AfDB (2008–2019) Summary Report," IDEV Thematic Evaluation, May 2021, (available at https://idev.afdb.org/sites/default/files/documents/files/Loans%20and%20syndication%20Evaluation%20%28En%29_Web%20Version_29.01.pdf accessed on March 03, 2024)

[30] Seung Jung Lee, et al., "Risk Taking and Interest Rates: Evidence from Decades in the Global Syndicated Loan Market," International Monetary Fund, Business & Economics, 27 January 2017

[31] Di Gong et al., "A Foreign Currency Effect in the Syndicated Loan Market of Emerging Economies," Journal of International Financial Markets, Institutions and Money Volume 52, January 2018, Pages 211-226 (available at https://doi.org/10.1016/j.intfin.2017.09.022 retrieved on March 03, 2024)

manufacturing. This financial support has been instrumental in driving growth and development within these sectors, contributing to the overall economic expansion. The impact of syndicated loans on the Ugandan economy has been characterized by both positive contributions to economic development and potential disruptions due to legal uncertainties. The availability of syndicated loans has supported critical sectors and large-scale projects, contributing to economic growth. However, the recent legal developments have introduced uncertainty and potential risks to the stability of financial flows, which may require clarity and resolution to mitigate adverse effects on the economy. The researcher will delve more into this in the next chapter. The overall impact of syndicated loans in Uganda has been instrumental in providing financial support for key sectors and large-scale projects, contributing to economic growth and development.

# CHAPTER THREE

# DATA ANALYSIS, PRESENTATION AND DISCUSSION OF FINDINGS

## 3.0 Introduction

In this chapter, the researcher has presented the findings from the respondents to whom questionnaires were administered and interviews conducted. Out of the thirty-five questionnaires that were distributed, only twenty-two were returned. The researcher was able to interview five banking law experts. This included those who are working in the financial institutions in Uganda and those retired for active banking and business practice. The data has been reduced by the researcher into manageable summaries so that the relevant features of this research are brought out clearly through an analysis process. Some information from questionnaires has been presented in tabular form by use of frequencies and percentages. The data is analysed according to the objectives of the study.

## 3.1 Objective One: To identify the legal framework governing syndicated loans in Uganda

In finding out the respondents' understanding of whether there is a legal framework governing syndicated loans, the researcher analysed the respondents' understanding of syndicated loans and later supplemented it with inquiry into whether there are any legislations that govern syndicated loans. Upon analysis of the data gathered from interviews and questionnaires regarding syndicated loans in banking institutions in Uganda, it is evident that there are mixed perceptions regarding there is any legal framework on syndicated loans in Uganda.

The respondents' understanding of syndicated loans was generally a type of loan that is provided by a group of lenders (or a syndicate) to a single borrower. In a syndicated loan

arrangement, one financial institution typically acts as the lead arranger or agent, coordinating the loan on behalf of the syndicate. The borrower, often a corporation, government entity, or large project, receives the loan proceeds from multiple lenders instead of just one. This showed that the respondents have a good grasp of what syndicated loans are. As regards to legal framework governing syndicated loans in Uganda, the respondents noted that syndicated loans have particularized statutes like the Financial Institutions Act that govern their implementation. Others noted that they are largely under the premise of contract law thus giving parties a substantial amount of freedom to pre-determine the terms of the facilities. Be that as it may, it is vital that the parties comply with the applicable laws in the jurisdictions within which said syndicated loans would be granted, registered, and operationalized. As such, the practice is that a panel of Legal Counsel from the jurisdictions in question is convened to ensure legal compliance.

**Table One: Showing the Whether Uganda has a Legal Framework on Syndicated Loans**

| **Description** | **Frequency** | **Percentages (%)** |
|---|---|---|
| Strongly Agree | 00 | 00 |
| Agree | 18 | 81.82 |
| Not sure | 03 | 13.64 |
| Disagree | 01 | 4.55 |
| Strongly disagree | 00 | 00 |
| **Total** | **22** | **100** |

**Source: Field Findings**

From table one above, out of the 22 respondents, eighteen (81.82%) said that most of the respondents agreed that there is a legal framework governing syndicated loans in financial institutions in Uganda. 03 (three) respondents (13.64%) held that were not sure of any legislation on syndicated loans while one (01) of the respondents (4.55%) reported that they

disagreed on the existence of the legal framework on syndicated loans. None of them said that they strongly agreed or strongly disagreed. According to the researcher, such responses are due to the fact that laws governing syndicated loans in Uganda are largely fragmented and Uganda lacks consolidated legislation or specific regulations on this topic.

### 3.2 Objective Two: To Access the Adequacy and Effectiveness of Current Legal Provisions in Regulating Syndicated Loan Transactions

The respondents gave their opinions pertaining to the adequacy and effectiveness of the current legal provisions relating to syndicated loan transactions. Upon analysis of the data gathered from interviews and questionnaires regarding syndicated loans in banking institutions in Uganda, it is evident that there are mixed perceptions regarding the adequacy of existing laws governing syndicated loans.

The participants generally agreed that while Uganda has laws in place regulating syndicated loans, there are gaps and inadequacies that need to be addressed. Some interviewees expressed concerns about the complexity and ambiguity of existing laws, which can lead to confusion and potential legal disputes. Additionally, there were mentions of outdated regulations that fail to address the evolving nature of syndicated lending practices. Another respondent based on the decision of Court to note that syndicated lending in Uganda is legally bringing an end to the cloud uncertainty that has hovered over syndicated loans transactions.

However, it is important to note that there were also participants who viewed the current legal framework as adequate. They highlighted the new for specific regulations that provide a foundation for syndicated lending activities and ensure a level of oversight and protection for all parties involved.

**Table 2: The adequacy and effectiveness of current legal provisions in regulating syndicated loan transactions**

| Description | Frequency | Percentages (%) |
|---|---|---|
| Strongly Agree | 00 | 00 |
| Agree | 12 | 54.55 |
| Not sure | 00 | 00 |
| Disagree | 10 | 45.45 |
| Strongly disagree | 00 | 00 |
| **Total** | **22** | **100** |

**Source: Field Findings**

From table two above, out of the 22 respondents, twelve (54.55%) agreed that the legal framework is adequate and effective in regulating the syndicated loan transactions in Uganda and the fundamental role they play. While ten (45.45%) respondents disagreed to this opinion. None of the respondents strongly agreed, was not sure and nor strongly disagreed.

According to the researcher, those who are agreed based on their opinion on the prevalence of syndicated loans in Uganda and the fact that they have been beneficial to the economy. For instance, many respondents noted that many entities have participated in syndicated loans and these loans have allow borrowers to access large amounts of capital that may not be available through traditional lending channels. This is particularly beneficial for large corporations, infrastructure projects, and governments that require significant funding for their operations or initiatives. Others vehemently argued that syndicated loans enable lenders to spread their risk by participating in loans with other financial institutions. This diversification helps mitigate the impact of potential defaults and economic downturns on individual lenders'

portfolios. Some noted that by pooling resources, lenders in a syndicate can offer competitive terms to borrowers, including lower interest rates and fees compared to other financing options. This can result in cost savings for the borrower over the life of the loan.

### 3.3 Objective Three: To find out the challenges associated with syndicated loan transactions in Uganda.

**Table 3: Challenges Associated with Syndicated Loan Transactions in Uganda.**

| Description | Frequency | Percentages (%) |
|---|---|---|
| Agree | 21 | 50 |
| Strongly agree | 21 | 50 |
| Not sure | 00 | 00 |
| Disagree | 00 | 00 |
| Strongly disagree | 00 | 00 |
| **Total** | **22** | **100** |

**Source: Field Findings**

According to the table above, out of the 22 respondents, the respondents equally agreed and strongly agreed that there are challenges associated with syndicated loans in Uganda (i.e. 50%:50%). Several challenges facing the legislation governing syndicated loans in Uganda emerged from the data analysis and the need to address the following challenges:

Complexity**:** Syndicated loans involve multiple parties, including the borrower, lead arranger, administrative agent, syndicate of lenders, and other agents. Managing the relationships and coordinating the activities of these parties can be complex and time-consuming. Participants highlighted the lack of clarity in existing laws, which can lead to ambiguity and interpretation issues, especially in complex syndicated loan transactions.

Some interviewees raised concerns about adaptability. The evolving nature of financial markets and syndicated lending practices presents a challenge for legislation to remain

relevant and adaptable. Outdated regulations may fail to address emerging risks and opportunities in the sector. In the same vein, there are concerns about the market conditions**:** Syndicated loans are subject to market conditions, including changes in interest rates, credit availability, and investor sentiment. During periods of economic uncertainty or financial market volatility, lenders may become more risk-averse, making it challenging for borrowers to secure favorable loan terms.

Besides that, other respondents noted that syndicated loans often incur higher fees and expenses compared to traditional loans. These costs can include arrangement fees, underwriting fees, legal fees, and administrative fees. Additionally, the interest rates on syndicated loans may be higher to compensate lenders for the increased risk and administrative burden.

One of the respondents was particular about data protection and information disclosure. The respondent observed that syndicated loans require borrowers to disclose detailed financial information and may involve more stringent covenants compared to traditional loans. This level of disclosure can limit the borrower's flexibility and require ongoing compliance with loan terms and conditions.

### 3.4 Objective Four: To recommend measures to better the syndicated loans regime in banking institutions to ensure efficient economic growth.

Based on the findings of the study, the following recommendations are proposed to address the challenges identified and enhance the effectiveness of laws governing syndicated loans in Uganda:

Review and Update Legislation:

The respondents noted the need to conduct a comprehensive review of existing laws and regulations governing syndicated loans to address gaps, ambiguities, and outdated provisions.

Ensure that the legal framework is clear, robust, and adaptable to changes in the financial landscape. In the same vein, there is a need to enhance enforcement mechanisms. Strengthen enforcement mechanisms to ensure compliance with syndicated lending regulations. This may involve providing adequate resources to regulatory agencies, improving monitoring and surveillance systems, and imposing appropriate penalties for non-compliance. Foreign financial institutions wishing to conduct financial institutions business in Uganda should adhere to the domestic legal framework to support ease of regulation by the Bank of Uganda and promote fiduciary transparency.

Capacity Building

Invest in capacity building initiatives for regulatory agencies, legal practitioners, and banking professionals involved in syndicated lending. This can include training programs, workshops, and seminars to enhance understanding of syndicated loan regulations and best practices.

Stakeholder Engagement: Foster collaboration and dialogue among key stakeholders, including regulators, banks, legal experts, and borrowers, to solicit feedback and input on proposed legislative reforms. This inclusive approach can help ensure that new regulations reflect the needs and realities of the syndicated lending market in Uganda. The Government should reinforce efforts aimed at capitalising Uganda Development Bank (UDB) to ensure that domestic borrowers can obtain investment loans are lower interests before resorting to syndicated loans provides by pooled resources from commercial banks. The Financial Intelligence Authority of Uganda (FIA-U), and the Uganda Revenue Authority (URA) must work hand in hand to establish the income position and source of all borrowers involved in syndicated loans.

By implementing these recommendations, Uganda can strengthen its legal framework for syndicated loans, mitigate risks, and promote a more conducive environment for financial intermediation and economic development.

### 3.5 Conclusion

This chapter has been concerned with the data analysis, presentation and discussion of the research findings. The researcher has obtainable the views of the respondents on the syndicated loans in financial institutions, and the roles they play in the economy, the legal framework of syndicated loans in financial institutions and the adequacy of such law. The research also found out the challenges associated with syndicated loans in Uganda and the ways to remedy these challenges. The researcher reduced this data into manageable summaries so that the salient features of the research are brought out. The data has been analysed according to the objectives of the study.

# CHAPTER FOUR

## LEGAL ASPECTS OF SYNDICATED LOANS IN FINANCIAL INSTITUTIONS IN UGANDA

### 4.0Introduction

Syndicated loans represent a vital component of the financial landscape in Uganda, facilitating access to capital for diverse economic activities. However, navigating the legal aspects of syndicated loans requires careful consideration of domestic laws, international standards, and potential challenges. By understanding the legal framework governing syndicated loans and adopting best practices, financial institutions can optimize the benefits of syndicated lending while minimizing legal risks and uncertainties. This chapter provides a fundamental overview of the legal aspects of syndicated loans in Uganda, highlighting key considerations for stakeholders involved in such transactions. Moving forward, continued vigilance, regulatory compliance, and legal expertise will be essential for fostering a robust and resilient syndicated lending market in Uganda.

### 4.1 International Standards and Best Practices

Given the global nature of syndicated lending, adherence to international standards and best practices is essential for promoting transparency, efficiency, and investor confidence. There are certain guidelines which have incorporated certain principles aligned with international standards, such as risk management and corporate governance, they expressly reference or incorporate established guidelines or protocols for syndicated loans issued by international bodies, for

example the Basel Committee, the International Swaps and Derivatives Association (hereinafter referred to as ISDA) or the Loan Market Association (hereinafter referred to as LMA).

To begin with, international banking standards, such as the Basel III framework, impose regulatory requirements on financial institutions engaged in lending activities. Basel Committee's reforms strengthen global capital and liquidity rules with the goal of promoting a more resilient banking sector. The objective of the reforms is to improve the banking sector's ability to absorb shocks arising from financial and economic stress, whatever the source, thus reducing the risk of spillover from the financial sector to the real economy. These standards aim to enhance transparency, risk management, and capital adequacy in the banking sector, thereby promoting stability and resilience in financial markets.[1]

Bank of Uganda has fully implemented Basel II principles and has selected aspects and features of Basel III as the banking sector evolves. The implementation of a systemic risk buffer for domestic systemically important banks, capital conservation buffer and leverage ratio, have been a regulatory requirement since January 1, 2022. Other aspects of Basel III, such as the liquidity coverage ratio and net stable funding ratio are expected to be gazetted as prudential requirements and came into effect by December 2022. The minimum paid-up capital for SFIs was increased and a statutory instrument to this effect was gazetted on 16th December 2022.[2]

Furthermore, LMA provides guidance on syndicated loan transactions and leveraged finance transactions, identifying, amongst other things, the types of facilities commonly seen in the loan

[1] Bank for International Settlement, Basel Committee on Banking Supervision, Basel III: A global regulatory framework for more resilient banks and banking systems, December 2010 (June 2011)
[2] International Monetary Fund, Uganda: Second and Third Reviews Under the Extended Credit Facility Arrangement, Requests for a Waiver of Nonobservance of Performance Criterion, and Rephasing of Access, IMF Country Report No. 23/40 January 2023, p.58 (available at https://www.imf.org/-/media/Files/Publications/CR/2023/English/1UGAEA2023001.ashx retrieved in March 18, 2024)

market, the parties to a typical loan agreement and common methods used by lenders to transfer loan participations.[3] They also provide a guide on factors to consider when closing off primary syndication. It seeks to explore some of the key challenges facing agents during the completion of a syndicated lending transaction and the primary syndication process.[4] They also make provision of a term sheet to prospective participants in a syndicated loan transaction is a well-established and key component of the primary syndication phase of any deal.[5]

The International Swaps and Derivatives Association (ISDA) provides standard documentation and protocols for syndicated loan transactions, ensuring consistency and efficiency in cross-border lending arrangements. ISDA's documentation includes several forms of a Master Agreement and various definitional booklets. The Master Agreement is a standard contract that can be used to govern over-the counter derivatives transactions entered into between parties. ISDA publishes the template, which is made available to parties who can choose to bilaterally enter into the Master Agreement to govern their transactions and set out provisions governing their relationship. Transactions across different asset classes and products are often documented using the same Master Agreement. While, the definitions provide the basic framework for the documentation of the privately-negotiated derivatives transactions.

Further, the Standard Terms Supplement and Confirmation for a Syndicated Secured Loan Contingent Credit Default Swap Transaction allow parties to hedge the credit risk associated with counterparty default in derivative transactions using syndicated secured loans as deliverable obligations. These documents incorporate the mechanics developed in the Contingent template into the North American Syndicated Secured Loan CDS documentation. The principal distinction

[3] Loan Market Association, "Guide to Syndicated Loans and Leveraged Finance Transactions," April 2020
[4] Loan Market Association, "Closing a Primary Syndication - Factors to consider," June 2019
[5] Loan Market Association, "Best Practice Guide for Term Sheet Completeness," December 2021

between these documents and the standard North American Syndicated Secured Loan CDS documentation relates to how the Floating Rate Payer Calculation Amount is determined upon a Credit Event.[6]

## 4.2Domestic Legislation

### Constitution of the Republic of Uganda, 1995 (As amended)

Article 161 of the Constitution of the Republic of Uganda 1995 (as amended) provides that the central Bank of Uganda shall be the Bank of Uganda. The function is to promote and maintain the stability of the value of the currency of Uganda, regulate the currency system and encourage and promote economic development and the efficient utilization of the resources of Uganda through effective and efficient operation of a banking and credit system.[7]

### Bank of Uganda Act Cap 51

The Bank of Uganda Act provides for the supervisory and regulatory powers conferred on the Central Bank which among others is to regulate the issuance of legal tender, maintain external reserves and to promote the stability of the currency and a sound financial structure conducive to a balanced and sustained rate of growth of the economy.[8] Under Section 4(1) of the Bank of Uganda Act, the function of Bank of Uganda, among others, is to formulate and implement monetary policy directed to economic objectives of achieving and maintaining economic stability. Furthermore, Bank of Uganda is enjoined, under Section 37 of the Bank of Uganda Act,

[6] International Swaps and Derivatives Association, "The Standard Terms Supplement and Confirmation for a Syndicated Secured Loan Contingent Credit Default Swap Transaction," (available at https://www.isda.org/book/standard-terms-supplement-and-confirmation-for-syndicated-secured-loan-contingent-credit-default-swap-transaction/ retrieved on March 13, 2024)
[7] Article 162(1) of the Constitution of the Republic of Uganda 1995 (as amended)
[8] Long title of the Bank of Uganda Act Cap 51

to execute its mandate in cooperation with all the financial institutions to promote and maintain adequate and reasonable banking services for the public.

**The Financial Institutions Act 2004 (as amended)**

The Financial Institutions Act (hereinafter referred to as FIA) grants regulatory oversight and supervision powers to the Bank of Uganda (hereinafter referred to as BOU) over financial institutions operating in Uganda. Under Section 3 of the Financial Institutions Act, a financial institution is defined to mean a company licensed to conduct financial institutions business in Uganda. Financial institution business includes lending or extending money held on deposit or any part of that money in any of the ways listed in the Act.[9] Further, Section 4 of the Financial Institutions Act 2004 (as amended) prohibits the carrying out of certain transactions unless one has a license to do so.

While the FIA provides a comprehensive regulatory framework for various aspects of financial institutions' operations, including licensing, supervision, and prudential requirements, its specific provisions regarding syndicated loans are relatively limited. The applicability of syndicated loans under the Financial Institutions Act was tested in the case of Ham Enterprises Limited and 2 Others v Diamond Trust Bank (U) Limited and Another.[10] In the case of Ham Enterprises Limited and 2 Others v Diamond Trust Bank (U) Limited and Another court noted that "...It is unmistakably clear from the amendment of the Act that key to the determination of financial institution business is the holding of money on deposit; from which money is extended or lent out to borrowers. For any person to transact financial institution business in Uganda, such a person must first obtain a license from the Bank of Uganda for that purpose, in accordance with

[9] Section 3 of the Financial Institutions Act 2004 (as amended)
[10] Civil Appeal 13 of 2021 [2023] UGSC 15 (6 June 2023)

the provisions of the Act." While the merits of the case are discussed later, the uncertainty that aided the court's decision needs to be addressed. The FIA needs to be amended to clarify what international, non-Ugandan lenders should be subjected to and what they should not.[11]

Further, BOU's supervisory approach may not adequately focus on syndicated lending activities due to the lack of explicit regulatory requirements. The FIA does not explicitly address syndicated loans or provide specific regulations governing their structure, documentation, or operation. Instead, syndicated loans are typically governed by contractual agreements between financial institutions and borrowers, guided by general principles of contract law and industry standards. Consequently, the absence of explicit provisions in the FIA may result in ambiguity and uncertainty regarding the legal framework applicable to syndicated loan transactions. Besides, enhancing BOU's supervisory capacity and expertise in assessing syndicated loan transactions may also strengthen regulatory oversight and promote financial stability in the banking sector.

In the same vein, while syndicated loans involve multiple lenders sharing credit exposure, unique risk management considerations may arise, including credit concentration risk, counterparty risk, and coordination among syndicate members. The FIA could benefit from incorporating specific guidelines or standards addressing these aspects to enhance the regulatory framework for syndicated loans.

**The Financial Institutions (Agent Banking) Regulations, 2017**

[11] Friends Consult Ltd, "Final Report Proposed Regulatory Reforms in the Banking Sector," p.73 (available at https://ugandabankers.org/Banking-Sector-Regulatory-Reform-Report%20(1).pdf accessed on March 22, 2024)

The Financial Institutions (Agent Banking) Regulations, 2017 provide a regulatory framework for agent banking services offered by financial institutions in Uganda. **Regulation 4** of the Financial Institutions (Agent Banking) Regulations, 2017 defines agent banking as the conduct by a person of financial institution business on behalf of a financial institution as may be approved by the Central Bank". **Regulation 5** thereof provides that "a financial institution shall not conduct agent banking in Uganda without the prior written approval from the Central Bank."

It suffices to mention that syndicated loans transactions involve the lead bank (arranger) and agents. In the case of Ham Enterprises Limited and 2 Others v Diamond Trust Bank (U) Limited and Another, court noted that the "agency relationship referred to in Regulation 4 of the Regulations is clearly between a principal, which is a financial institution registered and carrying out financial institution business in Uganda, and a human agent acting on behalf of the principal. While these regulations do not directly address syndicated loans, they were enacted to contribute to expanding financial access and promoting inclusive finance. Agent banking initiatives can facilitate different banking services in remote or underserved areas.

The Supreme Court noted that the rights and roles of the agent appointed in the agency relationship provided for under the Financial Institution Act, 2004, as amended, and the 2017 Regulations made thereunder, differ markedly from the ones conferred on the agent appointed under the syndicated relationship. The duties of the agent in the syndicated relationship are much wider than that conferred on the agents provided for under the Act and Regulations made thereunder.[12] Most notably, a financial institution in the syndicated credit facility arrangement which is appointed an agent of the other creditors in the syndicate remains at par with them; because it is, in its own right, also a creditor to the same borrower.

[12] Ham Enterprises Limited and 2 Others v Diamond Trust Bank (U) Limited and Another (*supra*)

**Financial Institutions (Limits on Credit Concentration and Large Exposures) Regulation, 2005.**

The Financial Institutions (Limits on Credit Concentration and Large Exposures) Regulation, 2005 imposes restrictions on financial institutions' credit concentration and exposure to large borrowers or groups. Regulation 3(d) provides that the purpose of the Regulation is "to enable the Central Bank to supervise risks that arise outside the financial institution itself such as financial risk on intra-group lending and reputational risk due to losses or other problems elsewhere in the group."

Under Regulation 9(1), the Central Bank may appoint a competent person to carry out an examination in order to satisfy itself that the operations and affairs of the affiliate, associate or holding or subsidiary company are not detrimental to the safety and soundness of the financial institution concerned.

Individual countries may enact laws that place limits on the amount of money a bank can lend to a single borrower; thus encouraging syndicated lending.[13] With these restrictions, large entities constantly look to foreign financial institutions, which may be banking or non-banking institutions, for syndicated credit facilities. While these regulations aim to mitigate credit risk and enhance financial stability, they may inadvertently impact syndicated lending activities by limiting the extent to which financial institutions can participate in syndicate arrangements. Therefore, careful consideration of credit concentration limits and large exposure thresholds is necessary to ensure that syndicated lending remains viable and adequately regulated within the existing framework.

[13] ibid

**4.3 An Analysis of the Case of Ham Enterprises Limited and 2 Others v Diamond Trust Bank (U) Limited and Another (Civil Appeal 13 of 2021)**

The case of Ham Enterprises & 2 Ors v DTB Bank (U) Ltd & Anor is a landmark legal dispute in Uganda that raised important issues regarding syndicated loans and the legal obligations of financial institutions. The case involved a syndicated loan agreement between a borrower, Ham Enterprises, and two banks, DTB Bank (U) Ltd and DTB Bank Kenya Ltd. One of the central issues in the case was whether the loan agreement between Ham Enterprises and the banks was valid and enforceable. Ham Enterprises argued that the loan agreement was void *ab initio* due to lack of proper authorization and disclosure by the banks. The court examined the terms of the loan agreement, including the authorization process and the parties' obligations, to determine whether there was any vitiating factor.

The case raised questions about the legality of syndicated loan arrangements under Ugandan law. In this case, the Supreme Court of Uganda noted that syndicated loan facility is a global lending phenomenon practiced by local and foreign banks or non-bank lenders. This practice usually stems from the need to spread out, and thus reduce, the enormous risk associated with lending large sums of money. Court noted that no law was brought to their attention that forbids foreign financial institutions from extending credit facilities to any financial institution or person in Uganda. If anything, in furtherance of international trade and investment, financial institutions the world over are known to engage in global financial business transactions by dealing with, or through, financial institutions based in other jurisdictions.

The outcome of the case may have significant implications for syndicated lending practices in Uganda. A ruling against the banks would undermine confidence in syndicated loan

arrangements and raise concerns among financial institutions about their legal risks and obligations. Conversely, a ruling in favor of the banks could affirm the validity of syndicated loans and provide clarity on the legal framework governing such transactions in Uganda. The case underscores the importance of clear legal rules and standards governing syndicated loan transactions. The case highlights the need for greater regulatory clarity and oversight in the banking sector to ensure transparency, fairness, and legal certainty in commercial lending practices.

In Uganda, like in all the other countries in the world, entities borrow both domestically and from foreign lenders. The case has brought to light the fact that FIA 2004 (amended) provisions are unclear and are subject to a wide range of interpretation by courts, including negating the legality of external borrowing by Ugandan businesses. There is need for legal clarity on the requirements for foreign lenders and the scope of the provisions on Agent Banking.

### 4.4 Challenges Associated with Syndicated Loans Transactions in Uganda

Currently, the legal regulation of syndicated lending in Uganda is practically missing. Unfortunately, the majority of the regulatory legal frameworks only indirectly affect syndicated loans. There is no special norm regulating the relations involving the execution of the syndicated lending agreement. The documents which regulate the syndicated lending fall below the standards which are applied by the foreign main underwriters. Besides, except the Ham Enterprises case, there are practically no elaborated legal precedents in the Ugandan market.

In Uganda, there was no standard documentation on the syndicated loan arrangements for a long while. Such a situation is considerably complicated, particularly for the purpose of financing innovations. One of the problems was the fact that the deal structuring happens according to the

rules set by a concrete bank. The only way to fill the said gaps in the legislative regulation is to stipulate a special norm devoted to the syndicated loan. Enshrining of the special norm devoted to the syndicated loan in terms of legislation will undoubtedly have a favorable impact on the banking practice and will allow the effective use of the syndicated loan process. There is a need for laws that provide for the classification of the syndicated loans; payments from the bankruptcy estate and distribution of the funds received in accordance with the contractual relations of the creditors.

It is the researcher's assertion that eliminating legal uncertainties may increase the availability of such loans while reducing risks for banks. The project introduces a number of new concepts, including "the credit agent" will make all calculations for the provision and repayment of the loan, and the "collateral manager" will manage the collateral for the loan. The document details the procedure for the implementation of collateral.

**Conclusion**

While the Financial Institutions Act 2004 of Uganda establishes a regulatory framework for the financial sector, its treatment of syndicated loans is limited. Syndicated lending transactions present unique legal and regulatory challenges that may not be fully addressed under the existing legal framework. To promote the development of syndicated lending markets and ensure financial stability, policymakers should consider reforms and amendments to the FIA that provide clarity, certainty, and appropriate regulatory oversight for syndicated loan activities.

# CHAPTER FIVE

## SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

### 5.0 Introduction

There has been significant advances in recent times to facilitate access to syndicated loans. An effective corporate finance regime is valued as a key component of a market economy. In this chapter, the researcher provides a summary of the findings of the study, conclusions and way forward in terms of recommendations to curb the negative implications of syndicated loans on financial institutions and other stakeholders in the entire economy in Uganda. This chapter synthesizes the key insights derived from the research process and offers valuable insights into the challenges, opportunities, and future directions in the realm of syndicated lending.

### 5.1 Summary of the Findings

This study analyzed the syndicated loans regime in financial institutions in Uganda with a view of determining the effectiveness of the current legal provisions in regulating syndicated loan transactions in Uganda. It particularly focused on the legal framework governing syndicated loans in Uganda and its efficacy in syndicated lending in Uganda. It examined the challenges associated with syndicated loan transactions in Uganda and suggested measures to better the corporate finance and the syndicated loan regime to ensure financial stability and efficient economic growth.

The findings of the study shed light on various aspects of syndicated lending in banking institutions in Uganda. Through a comprehensive qualitative analysis of data, several key

findings have emerged. These include the prevalence of syndicated lending practices among banks, the factors influencing the uptake of syndicated loans, the benefits and risks associated with syndicated lending.

The study found out that while the Financial Institution Act 2004 (as amended) provides a comprehensive regulatory framework for various aspects of financial institutions' operations, including licensing, supervision, and prudential requirements, its specific provisions regarding syndicated lending are relatively limited. Instead, syndicated loans are typically governed by contractual agreements between financial institutions and borrowers, guided by general principles of contract law and industry standards. Consequently, the absence of explicit provisions in the FIA may result in ambiguity and uncertainty regarding the legal framework applicable to syndicated loan transactions. It also suffices to mention that the existing laws do not directly address syndicated loans in banking institutions in Uganda. While the business of financial institutions and lending money in Uganda is regulated, the precise parameters of what constitutes 'doing such business' in the country thus imposing an obligation to register or incorporate, and license under the Financial Institutions Act, 2016, and the Tier 4 Microfinance Institutions and Money Lenders Act, 2016 remain contested.

That notwithstanding, the researcher found out that syndicated loans play a great role in ensuring that companies/organizations stay afloat. On the one hand, a syndicated loan arrangement is also an effective method for borrowers to raise large sums of financing in one operation and to establish and maintain diverse banking relationships. On the other hand, the syndicated loan arrangements have helped banks diversify credit risk by limiting their exposure to any one borrower, or industry. The growth of the syndicated loans market

can be attributed to many factors including but not limited to risk diversification, cost reduction, competitive pricing, useful cooperation and risk assessment. Therefore, regulating syndicated loan transactions may represent a key policy area with potential benefits for financial stability, for mitigating the impact of private sector deleveraging on growth, as well as for spurring entrepreneurship.

Despite their effectiveness, syndicated loans also come with challenges. One of the main drawbacks is that syndicated loans in Uganda include negotiations in debt restructurings. Besides, there is also a challenge of portfolio management and there still misses clear clauses on the creditor rights' enforcement mechanism in case of the borrower's bankruptcy. The loan syndication process may also be time-consuming, leading to delays in funding for critical projects. Further, syndicated loans are associated with exchange rate and investment risks. In Uganda, there was no standard explicit regulation or documentation on the syndicated loan arrangements for a long while, yet such a situation is considerably complicated, particularly for the purpose of financing innovations. These impede the seamless transaction of syndicated loans in banking institutions in Uganda.

A series of recent court cases in Uganda has brought to the forefront a critical issue concerning the legality of foreign lenders extending loans to borrowers within the country. While Uganda mandates registration or incorporation for businesses and requires licenses for financial institutions or money lending ventures, the exact interpretation of "carrying on business" remains a contentious subject. This ambiguity poses challenges, especially when determining if foreign entities meet the criteria for "carrying on business" in Uganda, particularly for foreign lenders. In various Ugandan court cases, including African Rivers Fund v Kare Distribution Limited and Others, Simba Properties Investment Company Ltd

v Robert Kirunda and Others/Vantage Mezzanine Fund v Simba Properties Investment Company Ltd and Others, Krone Uganda Limited v. Kerilee Investments Uganda, and notably, Ham Enterprises Limited and 2 Others v Diamond Trust Bank(U) Limited and Another, a recurring legal argument has emerged from local borrowers. They assert that foreign lenders extending credit to borrowers in Uganda without fulfilling the necessary registration and licensing requirements are, in fact, operating unlawfully.

Foreign entities eyeing transactions in regulated sectors in Uganda like financial services may lose confidence in the country's legal landscape. There is a need to determine whether the proposed lending transactions cross the threshold of "doing business" in Uganda, necessitating registration, incorporation, and obtaining requisite licenses before finalizing deals so that lenders, especially foreign ones, can navigate the regulatory framework with confidence and safeguard their interests in the Ugandan market.

## 52 Conclusions

This study raised and addressed a number of issues namely: whether the current legal provisions are effective in regulating syndicated loan transactions in Uganda; whether there are any challenges associated with syndicated loan transactions in financial institutions in Uganda; and whether there are any measures available to better the syndicated loan transactions regime to ensure financial stability and economic growth. Given the interdisciplinary nature of syndicated lending, the researcher employed qualitative and qualitative method of study. The researcher used desktop research, questionnaires and interview guide to obtain data for the research .

Based on the findings, several conclusions can be drawn regarding the status quo and implications of syndicated lending in financial institutions in Uganda. Firstly, syndicated loans play a significant role in meeting the financing needs of corporates, and infrastructure projects in Uganda. The study found out that, firstly, syndicated loans play a vital role in financing large-scale projects and stimulating economic growth. Secondly, effective risk management practices are essential for mitigating credit risks and safeguarding the stability of the banking sector. Thirdly, the regulatory framework plays a critical role in shaping syndicated lending activities, ensuring compliance with prudential standards and promoting market transparency. However, challenges such as portfolio monitoring, information asymmetry, credit risk, and regulatory constraints pose barriers to the optimal utilization of syndicated loans. Moreover, the study highlights the need for enhanced transparency, risk management practices, and regulatory oversight to mitigate the inherent risks associated with syndicated lending.

That said, one of the primary challenges identified in this study is the lack of legal certainty and enforceability in syndicated loan agreements. In the absence of standardized documentation and contractual provisions, parties may encounter difficulties in resolving disputes and enforcing their rights. Moreover, the absence of regulatory oversight leaves stakeholders vulnerable to exploitation and misconduct, undermining the integrity and stability of the financial system. Furthermore, the absence of regulatory oversight poses risks to financial stability and investor confidence. Without adequate safeguards and monitoring mechanisms, syndicated loan transactions may contribute to systemic risks and vulnerabilities in the banking sector. In the event of a financial crisis or economic

downturn, the lack of regulatory oversight could exacerbate the impact on borrowers and lenders, leading to widespread financial distress.

The complexity of syndicated lending requires specialized knowledge and skills, which may be lacking in the Ugandan banking sector. As a result, local banks may struggle to compete with international counterparts and attract investment for large-scale projects. The limited capacity and expertise among local banking institutions to structure and negotiate syndicated loan transactions effectively poses a challenge to such transactions.

## 5.3 Recommendation

There is a need for development of a legal framework on syndicated lending. Uganda should consider drafting and enacting dedicated legislation or regulations specifically addressing syndicated loan transactions. The Ugandan government should prioritize the development of a comprehensive legal framework specifically tailored to regulate syndicated loan transactions. This framework should establish clear guidelines, standards, and best practices to ensure transparency, fairness, and legal certainty in syndicated lending. Such laws that are effective will go a long way in enhancing financial stability. However, such enactments should not be so complicated or impossible to achieve the goal of financial stability and economic growth in the economy. Drawing inspiration from countries with robust legal frameworks, such as Russia or the United Kingdom's Syndicated Loans Market Association (LMA) documentation, Uganda may develop comprehensive laws to govern syndicated lending activities, providing clarity, certainty, and legal protections for all parties involved.

In the same vein, Uganda can benefit from adopting internationally recognized standards and practices for syndicated loan transactions, aligning its banking sector with global best practices. By adhering to standards established by organizations such as the International Swaps and Derivatives Association (ISDA) and the Loan Market Association (LMA), Uganda can enhance the credibility and attractiveness of its syndicated loan market to domestic and international investors.

In the absence of legislative reforms, stakeholders in Uganda's banking sector should collaborate to develop industry-specific guidelines or best practices for syndicated loan transactions. These guidelines can serve as a reference for borrowers, lenders, and legal advisors, outlining standard terms, procedures, and documentation requirements to streamline syndicated lending processes and mitigate legal risks. That will guide in documentation and negotiations. Syndicated lending involves complex documentation, including the loan agreement, inter creditor agreement and security documents. Lenders should carefully negotiate the terms and conditions of the loan, such as interest rates, repayment schedules, default provisions and any specific covenants or restrictions. Experienced legal counsel can play a crucial role in ensuring lenders' interests are adequately protected.

Besides, the need for regulatory oversight is also important. Regulatory authorities in Uganda, especially Bank of Uganda, should strengthen their oversight of syndicated lending activities to mitigate risks and safeguard the interests of stakeholders. This may include the establishment of a dedicated regulatory body or unit tasked with supervising syndicated loan transactions and enforcing compliance with regulatory requirements. Regulatory authorities should enhance supervisory oversight and enforcement mechanisms

to ensure compliance with regulatory requirements and promote market integrity. In turn, market participants should enhance transparency and disclosure practices to facilitate informed decision-making and risk assessment.

At the initiation of syndicated lending, financial institutions/lenders should conduct due diligence. One of the issues associated with syndicated lending is portfolio management or monitoring. Lenders participating in syndicated lending must conduct thorough due diligence on the borrower to assess their creditworthiness, financial stability and ability to repay the loan. This includes analyzing financial statements, reviewing business plans and evaluating collateral (if any). Effective due diligence minimizes the risk of default and protects lenders' interests. Lenders need to carefully consider the ranking of their security interests, subordination agreements and the distribution of proceeds in various scenarios. Resolving potential conflicts and establishing clear guidelines in advance can mitigate future disputes among lenders.

On the side of the borrower, there is a need for communication and coordination on the part of the borrower. Managing a syndicate of lenders requires effective coordination and communication. Borrowers must maintain transparency with lenders, providing timely and accurate financial information and fulfilling reporting obligations. Open and proactive communication helps build trust and facilitates a smoother borrowing experience.

It is the researcher's assertion that collaboration between banking institutions, government agencies, and other stakeholders is essential to promote responsible syndicated lending practices and foster a culture of transparency and accountability. This may involve the establishment of industry forums, working groups, or advisory committees to facilitate

dialogue and cooperation among stakeholders. Finally, Uganda may leverage partnerships with development organizations, multilateral institutions, and donor agencies to support the development of its syndicated loan market. Through technical assistance, capacity building, and policy dialogue, development partners can assist Uganda in strengthening its legal and regulatory frameworks, fostering an enabling environment for syndicated lending, and promoting sustainable economic development.

### 5.4 Further Research

The researcher suggests the following topics for further research to better the corporate finance and syndicated loan regime in financial institutions in Uganda:

An Analysis of The Legal Implication of the Competition/Anti-trust Laws on Syndicated Lending in Financial Institutions in Uganda.

A Critical Evaluation of the Legal Framework on Risk Management Practices in the Syndicated Loans Transactions in Uganda.

A Comparative Study of Corporate Finance Regime and Syndicated Lending in Enhancing Economic Development.

## APPENDIX 1: CONSENT FORM

Dear Participant,

This letter is a request for you to take part in a case study of the Critical Analysis of the Legal Aspects of Syndicated Loans in Financial Institutions In Uganda.

You have been selected as a participant because of your involvement and expertise in foreign policy and diplomacy at a regional level as an administrator, manager, or staff member. You will be one of about twenty four to be interviewed as part of the case study. This project is being conducted by Ms. Nimusiima Leenicy.

If you decide to participate, you will be asked to take part in an interview via Zoom video-conference (or face-to-face if researcher is permitted to travel) and to be available via email for possible fact-checking. Questions will focus on role of banks in syndicated loan schemes and knowledge of the syndicated loans law and policy. Your participation in this project will take approximately one hour. You must be 18 years of age or older to participate. The personal benefit to the study will include the opportunity to reflect broadly on the successes and challenges of syndicated loans in financial institutions in Uganda.

The societal benefit includes the public good resulting from a national approach to political crises and resolution of future political risks. Risks are limited to potential personal discomfort in responding to certain interview questions. Your involvement in this project will be kept confidential. The finished product of this study will be published as a dissertation. Thus, your stories, anecdotes, and direct quotes may appear in print. Before beginning the interview, I will ask permission to record the interview. The recording will be deleted from my computer after three years.

Your participation is completely voluntary. You may skip any question that you do not wish to answer and you may discontinue at any time. This project has been acknowledged by the

Research Ethics Committee of Uganda Christian University. I hope that you will participate in this research project, as it could help us better understand syndicated loans in financial institutions in the republic of Uganda.

In appreciation for your participation, I will enter your name into a drawing for a book of your choice which I will mail to you. If you have any questions about this research project, please feel free to contact me at 0763071398 or by e-mail at siimaleenicy@gmail.com If you would like to talk to someone other than the researcher about; (1) concerns regarding this study, (2) research participant rights, (3) research-related injuries, or (4) other human subjects' issues, please contact:

Mr Sekabanja Isaac,

The supervisor of this project

Uganda Christian University,

Telephone: +256- 782005319. E-mail: bivaisaac@gmail.com

**APPENDIX II: QUESTIONNAIRE**

**Section A: Biographic Background**

1. Age

18-25 ☐ 26-35 ☐ 36-45 ☐ 46-55 ☐ Above 55 ☐

2. Highest Level of Education

No formal education ☐ Primary education ☐

Secondary education ☐ Tertiary education ☐

3. Employment Status

Employed full-time ☐ Employed part-time ☐ Unemployed ☐

Student ☐ Homemaker ☐ Retired ☐

**Syndicated Loans**

For purposes of this research, a syndicated loan is a type of loan that is provided by a group of lenders (or a syndicate) to a single borrower. In a syndicated loan arrangement, one financial institution typically acts as the lead arranger or agent, coordinating the loan on behalf of the syndicate. The borrower, often a corporation, government entity, or large project, receives the loan proceeds from multiple lenders instead of just one.

**Section B**

For questions in Sections B, please use the Likert scale provided to indicate the extent to which you agree or disagree with each statement.

4. Syndicated loans play a crucial role in the global financial system.

Strongly Agree ☐ Agree ☐ Not Sure ☐ Disagree ☐ Strongly Disagree ☐

5. Uganda has a legal framework governing syndicated loans in financial institutions.

Strongly Agree ☐ Agree ☐ Not Sure ☐ Disagree ☐ Strongly Disagree ☐

6. The current legal framework is effective in regulating syndicated loan transactions in Uganda.

Strongly Agree ☐ Agree ☐ Not Sure ☐ Disagree ☐ Strongly Disagree ☐

7. Uganda has adequate legal documentation and jurisprudence on syndicated loan transactions in financial institutions.

Strongly Agree ☐ Agree ☐ Not Sure ☐ Disagree ☐ Strongly Disagree ☐

10. Uganda experiences some challenges in regulating syndicated loans in financial institutions.

Strongly Agree ☐ Agree ☐ Not Sure ☐ Disagree ☐ Strongly Disagree ☐

**Section C: Structure Questions**

For questions in Sections C, please answer the following questions in the space provided.

11. What is your understanding of the term syndicated loans?

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12. What is the legal framework governing syndicated loans in Uganda?

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13. What are the benefits of syndicated loans in the global financial system, for both borrowers and lenders?

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14. How effective are the current legal provisions in regulating syndicated loan transactions?

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15. What are the challenges associated with syndicated loan transactions in Uganda?

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16. What measures may be adopted to better the syndicated loans regime in banking institutions to ensure efficient economic growth?

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## APPENDIX III: INTERVIEW GUIDE

1. What is your understanding of the term syndicated loans?
2. What is the legal framework governing syndicated loans in Uganda?
3. What are the benefits of syndicated loans in the global financial system, for both borrowers and lenders?
4. How effective are the current legal provisions in regulating syndicated loan transactions?
5. What are the challenges associated with syndicated loan transactions in Uganda?

What measures may be adopted to better the syndicated loans regime in banking institutions to ensure efficient economic growth?

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