

[Amendments, Consents, and Waivers Resource Kit](#)

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This resource kit provides an overview of amendments, consents, and other modifications for loan documents, along with an index of related content. The reasons that a borrower may seek a modification may vary widely. For example, a borrower facing financial distress may seek relief from unattainable maintenance covenants. Or a borrower in better shape may need to relax the restrictions in its credit agreement to pursue an acquisition. Another type of amendment provides streamlined approval mechanics to permit the borrower to extend the maturity date of loans or to expand existing facilities through an incremental facility (for example). You should be familiar with the requirements depending on the type of modification and the degree of lender approval that must be obtained. This resource kit includes Lexis Practice Advisor Guidance on these amendments, consents, and other modifications, including detailed practice notes, forms, and checklists.

For guidance on other processes related to loan agreement modifications, see:

- [Events of Default Resource Kit](#)
- [Acquisition Financing Resource Kit](#)
- [Credit Agreement Resource Kit](#)
- [Refinancing Resource Kit](#)
- [Intercreditor Agreements Resource Kit](#)

Amendments and Modifications

Borrowers frequently seek to amend their loan documents for covenant relief. This may be to avert a pending default—most typically if a borrower expects to fail a [maintenance covenant](#). Or a borrower may seek exceptions from existing negative covenants to permit a transaction. For example, a borrower may need specific clearance in the prohibition against investments to engage in a transaction. Finally, the parties may wish to amend a credit agreement to account for recent market activity (such as provisions for a LIBOR replacement or to update regulatory-related covenants). This could also include making a credit agreement more borrower-friendly in favorable markets (such as stripping or loosening incurrence tests), a [repricing](#), or tightening a credit agreement should the borrower nudge closer to insolvency. These more extensive amendments may be better served through an [amendment and restatement](#) of the entire loan document (or a refinancing).

As counsel, you would need to review the negative covenants to get a sense of these prohibitions, and then the amendments section to see what level of lender consent is necessary. For most amendments, [requisite lender](#) vote is a majority of outstanding loans (after making any adjustments for defaulting lenders or [affiliated lenders](#)). However, changing the applicable margin (for example) may require buy-in from all lenders. In addition, you should look in the “defaulting lender” section to see if your agreement has yank-a-bank provisions, which would allow the replacement of a lender that does not agree to certain types of amendments (replacing a lender would be yet another step in the process). Finally, check the intercreditor agreement (if applicable), as creditor groups are sometimes restricted from making certain amendments without the consent of other tranches (such as pricing beyond a certain threshold) (see [Intercreditor Agreements Resource Kit](#)).

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The drafting of these carve-outs is generally straightforward—lenders seek to make the exceptions and relief as narrowly tailored to the transaction as possible (both in scope and term). Borrowers meanwhile should be sure that the relief granted is satisfactory; as amendment fees are often involved, this can be an expensive process and it is not a good idea to continually go back to the lenders. A main point of negotiation will be the conditions precedent. This could include additional collateral; amendment fees; a bring-down of representations and warranties; an opinion letter (standard for adding security, obligations, or loan parties to the transaction); and a reaffirmation of guaranties.

| Lexis Practice Advisor Documents | Lexis Practice Advisor Content Type |
|--|--|
| Amendments and Lender Voting Right Issues in Credit Agreements | Practice Note |
| Amendments and Waivers to First Lien Documents and Second Lien Documents | Practice Note |
| Amendments, Voting Provisions, and Assignments | Practice Note |
| Negotiating Post-closing Deliverables and Other Post-closing Events | Practice Note |
| Loan Workouts and Exchange Offers | Practice Note |
| The Client Asks: Is This Acquisition Permitted? | Practice Note |
| The Client Asks: How Can We Finance This Transaction? | Practice Note |
| Market Trends 2018/19: Defaulting Lender and "Yank-a-Bank" Provisions | Practice Note |
| Disqualified Institutions in Credit Agreements | Practice Note |
| Loan Agreement Amendment (Bankruptcy, Loan, and other Debt Workouts) | Form |
| Reaffirmation Agreement | Form |
| Amendments and Waivers Clauses (Credit Agreement) | Form |
| Amendment, Modification, and Integration Clauses | Form |
| Amendments to Loan Documents Clause (First Lien/Second Lien Intercreditor Agreement) | Form |
| Amendments to Loan Documents Clause (Split Collateral Intercreditor Agreement) | Form |
| Miscellaneous Clauses (Credit Agreement) | Form |

Special-Case Amendments

Many credit agreements also include sections that provide for a streamlined amendment process for certain activities. These include amend-and-extend (which allows for an extension of the maturity date in lieu of a complete refinancing), incremental facility amendments (allowing for the addition of facilities to an existing financing), or a refinancing facility. These special cases generally require the approval only of the administrative agent, the letter-of-

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credit issuer (if applicable), the borrower, and only those lenders directly impacted by the amendment. The required contents of the related amendment are specified in the credit agreement and a form may be attached to the credit agreement as an amendment.

| Lexis Practice Advisor Documents | Lexis Practice Advisor Content Type |
|--|--|
| Amendments and Lender Voting Right Issues in Credit Agreements | Practice Note |
| Market Trends 2017/18: Refinancing Amendment Provisions | Practice Note |
| Market Trends 2017/18: Amend and Extend Provisions | Practice Note |
| The Client Asks: How Do We Exercise an Incremental Facility? | Practice Note |
| Market Trends 2017/18: Incremental Facilities | Practice Note |
| Recent Trends in Incremental Loan Facilities | Practice Note |
| Refinancing Transactions Documents | Practice Note |
| Incremental Term Loan Lender Agreement | Form |
| Refinancing Amendments Clauses (Credit Agreement) | Form |
| Incremental Facility Clauses (Credit Agreement) | Form |
| LIBOR Replacement Clause | Form |
| Amend and Extend Clause (Credit Agreement) | Form |

Consents and Waivers

In lieu of an amendment, lenders might agree to a consent or waiver. The underlying purpose of the consent or waiver is often the same as an amendment. For example, a distressed borrower may receive a limited waiver from compliance with a maintenance covenant rather than an amendment that suspends or adjusts the levels of that covenant. Similarly, lenders may simply consent to a specific transaction rather than loosening or increasing the negative covenant baskets. The level of lender approval may be the same here as for amendments, and the conditions may also be the same. However, certain consents may require only the approval of the administrative agent. For example, the extension of certain deadlines (such as post-closing covenants) may be at the discretion of the administrative agent only. Before looking to the amendment section, you should check the specific covenant in question to see if a lower level of consent is required.

| Lexis Practice Advisor Documents | Lexis Practice Advisor Content Type |
|--|--|
| Amendments and Lender Voting Right Issues in Credit Agreements | Practice Note |
| Waiver and Consent Requests | Practice Note |
| Amendments and Waivers to First Lien Documents and Second Lien Documents | Practice Note |
| Negotiating Post-closing Deliverables and Other Post-closing Events | Practice Note |

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| Borrower Default and Lender Next Steps | Practice Note |
| Reaffirmation Agreement | Form |
| Restructuring, Lockup, Plan Support and Forbearance Agreement | Form |
| Forbearance Agreement (Bankruptcy, Loan, and other Debt Workouts) | Form |
| Amendments and Waivers Clauses (Credit Agreement) | Form |

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