



Common Protocol for the Agreement of Deeds of Priority and Letters of Waiver

About UK Finance

UK Finance is a new trade association which was formed in July 2017 to represent the finance and banking industry operating in the UK. UK Finance brings together most of the activities previously carried out by the Asset Based Finance Association, the British Bankers' Association, the Council of Mortgage Lenders, Financial Fraud Action UK, Payments UK and the UK Cards Association.

Introduction

UK Finance and four main high street lenders (Barclays, HSBC, Lloyds Banking Group and Royal Bank of Scotland) have established a Common Protocol to help alternative finance¹ providers agree Deeds of Priority and Letters of Waiver with them in order to better support Small or Medium Sized Enterprise (SME) business clients.

This revised Common Protocol builds on the 2014 protocol developed by the BBA. This Common Protocol is separate to the Inter Member Transfer Process (IMTP) that was developed by the ABFA to specifically govern the transfer of client businesses between invoice finance providers.²

When a SME seeks additional finance from an alternative finance provider, the alternative provider may require security over certain specified assets owned by the SME. If the SME's existing bank already holds a debenture or other security over these assets, the alternative provider needs to agree a Deed of Priority or Letter of Waiver. These are legal agreements between the bank and the alternative finance provider.

This Common Protocol sets out:

1. The key roles and responsibilities for the alternative finance provider, SME and the bank
2. The commitments made by the bank
3. The four key stages in the process

The Common Protocol has been established to enable a better understanding of the process and should allow alternative finance providers and banks to agree and complete Deeds of Priority and Letters of Waivers efficiently and allow SME clients to access the funding they may require more quickly.

What is a Waiver arrangement or Deed of Priority (also known as a Ranking Agreement in Scotland)?

A business client can obtain finance from a variety of sources. When an SME has a business borrowing relationship with a bank, security may be taken over assets of the business to secure the facilities. This security could be over all of the assets of the business or limited to specific assets e.g. debtor books etc.

If the business wishes to obtain finance from another finance provider – for instance peer to peer provider; specialist invoice finance, asset based lending or asset finance provider, or an alternative product from another

¹ The term 'alternative provider' is used in this protocol to refer to any finance provider that is not a signatory to the Protocol. Similarly, 'alternative' or 'alternate' finance is used to refer to any credit or lending product other than those currently being provided to the SME by the bank.

² The IMTP remains in force for all UK Finance Members that are part of the Asset Based Finance Product and Service Board and is over seen by the Professional Standards Council for Asset Based Finance.

bank - the new provider is likely to require security over some or all of the assets of the business which are being used to secure the existing lending facility.

A Letter of Waiver or Deed of Priority (also known as a Ranking Agreement in Scotland) sets out the agreed terms between the bank and other finance providers covering how the assets of the business will be distributed between them in the event of realisation.

Requirements on the alternative finance provider and SME client

Whilst this Protocol is binding on the banks that are signatories to it, its effective operation also requires timely actions on the part of both the alternative finance provider and the SME seeking finance themselves. These roles are outlined below.

Alternative finance providers must liaise with the existing lender to manage the process of requesting adequate security to be available to support the finance being offered. To be able to effectively respond to such requests, the bank will need the SME client's consent which the alternative finance provider should obtain from the SME. The consent document will authorise disclosure of information and permission for the bank to discuss any matters relating to the Letter of Waiver/Deed of Priority request with the alternative provider.

The alternative finance provider must then contact the bank, providing the consent document together with information on the detail of the SME's finance request and proposed security arrangements.

The alternative provider should also encourage the SME to contact their bank independently to begin the process of considering the request for a Waiver/Deed of Priority. They should ensure that the client understands what is being requested and why, and that the prospective client understands the likely information that the bank will require in order to progress the request as quickly as possible. A factsheet is available for this purpose.

Both the consent and the further information are required for the bank to undertake its risk assessment (Step 3 below). See the factsheet for more details.

SMEs should notify their existing lender, through their relationship manager or usual contact point, of their intention to seek alternate finance and to request the bank's agreement to entering into a Deed of Priority or Letter of Waiver. The bank may require up to date financial information such as management accounts or cash flow projections to enable the bank to assess the request and to consider the implications on the overall borrowing and security position. The SME will also need to provide consent to the bank to enter into discussions with an alternative finance provider as soon as possible. See the factsheet on required information for more details on what may be required for the consent instruction and the information the bank may need from the SME on the request.

Bank commitments under the Common Protocol

Banks are committed to making sure the process of responding to the request for a Deed of Priority or Waiver is handled as quickly and efficiently as possible. Banks are also committed to lending responsibly which requires a credit assessment and affordability checks.

The bank will engage with their SME client when approached to enter into a Waiver or Deed of Priority arrangement and during this engagement will inform the SME of all the information the bank requires to assess the request.

On receipt of the requested information the bank will undertake a risk assessment and will notify the SME customer of their decision within 7 working days unless the proposal is considered "complex" in which case it has more time to fulfil its obligations.

Standard documentation: Each bank has put in place a set of example standard form documents onto their website for use by alternative finance providers and will continue to provide these. In addition, banks and alternative providers will seek to continue to agree bilateral documents as quickly as possible in cases where the bank standard documents are not suitable.

Process Improvements: Banks will continue to ensure all relevant members of staff are made aware of the protocol commitments and that adequate training is available. Banks must ensure members of staff and have access to generic information about Deeds of Priority and Letters of Waiver.

Banks will continue to appoint or specify a senior internal champion with responsibility for optimising the process and ensuring compliance with the Protocol. This senior individual will be the lead for any future updating of the Protocol and associated process improvements.

Banks will provide a contact point or a central co-ordination point(s) that alternative finance providers will use to engage with each bank on matters relating to Deeds of Priority and Letters of Waiver. These contact/co-ordination points will be listed on bank websites.

Banks have committed to continue to monitor process improvements and will provide updates to HM Treasury.

Complex Requests

Requests where the following applies are considered to be “complex”:

- The customer’s account conduct is not satisfactory and the increased level of total debt is not affordable;
- Where the bank holds tangible security, e.g. a charge over a property owned by the company and no up-to-date professional valuation is held;
- Where a Waiver is sought to support an invoice finance facility and an existing bank overdraft is in place;
- Where the documentation proposed by the alternative finance provider is non-standard or there is no bespoke agreement in place with the bank;
- Where the business is part of a group;
- Where the business or group has several facilities that need to be taken into consideration; and/or
- Where security is lodged by a third party

The Process - 4 Key Steps

The steps below outline the process of seeking agreement to a Deed of Priority or Letter of Waiver arrangement.

Step 1

- The SME applies to an alternative provider for finance.
- The alternative provider assesses and approves the application on the condition that a Deed of Priority or Letter of Waiver is obtained from the bank that holds the required security given by the SME.
- The alternative provider tells the SME to contact their bank to seek their agreement to entering into a Deed of Priority or Letter of Waiver with the alternative lender as soon as possible.
- The alternative provider provides the SME with the UK Finance Deeds of Priority/Letters of Waiver Factsheet and encourages the SME to provide this information to their bank.

Only the SME and the alternative provider are involved in Step 1 and the timeline is dictated by the SME and the alternative provider. Step 1 will take a shorter time to complete if the alternative provider follows this process and encourages the SME to contact their bank, providing them with factsheet. The factsheet provides information about the process and explains what the bank will require from the SME.

Step 2

- The SME contacts their bank to commence discussions about the Deed of Priority or Letter of Waiver request.
- The bank will advise the SME what information is required from them to enable the bank to assess the request. This is likely to include details of their new borrowing proposal, updated financial information/forecasts and up to date asset valuations.
- The SME provides the bank with all of the information requested to make a decision.

Only the SME and the bank are involved in Step 2. Timelines are dictated by the SME and main bank.

Step 3

- Once the bank has the information it needs, it undertakes a risk assessment and advises the customer whether or not the bank is willing to enter into the Deed of Priority or Letter of Waiver agreement.
- Under the terms of Common Protocol the bank has committed to communicating their decision to the SME in 7 days unless the proposal is considered “complex” in which case it has more time to fulfil its obligations. The 7 day period commences when the bank has the information required to perform its risk assessment.
- Examples of “complex” circumstances are provided above.

Only the bank is involved in Step 3 and banks are committed to providing a decision in 7 working days (unless “complex”).

Step 4

- The SME advises the alternative finance provider of the bank’s decision.
- If the bank has agreed in principle, the alternative lender contacts the bank to begin the process of putting the legal documentation in place.
- Alternative finance providers may use the standard forms that are available from bank websites or bespoke forms that have been previously agreed between the bank and the alternative provider.
- In cases where the standard forms are not acceptable to the alternative provider and no bespoke agreement is in place, the bank and alternative provider will need to agree the wording. This will likely require the involvement of lawyers.
- The legal agreement is signed.

All parties may be involved in Step 4. Step 4 will take a shorter time to complete if alternative providers use the bank standard forms or negotiate bespoke forms with banks, which they are strongly encouraged to do.