



# It's a Matter of Time

Pressure on the timeline is as much a part of the syndicated loan process as negotiation, documentation and execution. If anything it is time that drives the deal, as parties all work together to hit a specific completion date. Should the same apply for a sustainability-linked loan (SLL)? That is what we shall seek to explore in this article.

## It starts with a strategy

Where a SLL label is being discussed in relation to any finance transaction, the first question should be: “does the borrower have a robust sustainability strategy in place”? The answer to this question will determine how much additional time needs to be built in for due diligence as to the borrower’s strategy; as to whether the corresponding key performance indicators (KPIs) are relevant, material and core to its business; and as to whether associated sustainability performance targets (SPTs) are truly ambitious (*materiality* and *ambition* being two key topics we explored in our preceding articles, **KPI Selection: A Matter of Materiality** and **Fear of Failure Frustrating Ambition**). In any event, this due diligence takes time, and where appropriate, challenges to the existing sustainability strategy might need to be made, with KPIs and SPTs being adjusted accordingly.

That said, a lack of a robust sustainability strategy must not be a barrier to undertaking a SLL. Borrowers must be encouraged and supported on their sustainability journey, and depending on a borrower’s sophistication in relation to sustainability, its available resources, and the jurisdiction in which it operates, the level of support needed may be substantial and time-intensive. A sustainability strategy must be driven by the borrower’s quest for improvement, not an intention to acquire a “sustainable” label for its financing. KPIs material to the borrower, both at a macro (jurisdiction) and micro (sector and borrower level) must be determined with the corresponding SPTs set. This is not a simple exercise, especially if the borrower has no historical data points to support these targets. Therefore, time pressure is not a justification for compromise in this context. Indeed, in many instances, sustainability readiness must be considered prior to any transaction timeline being put in place, and in these cases it must be sustainability that drives the transaction timeline.

## “Sleeping” SLLs

The Sustainability-Linked Loan Principles (SLLP) clearly state that SPTs should be “*set before or concurrently with the origination of the loan*”. This inevitably requires that KPIs are already in place. If parties are not in a position to document SPTs prior to completion, the deal cannot be labelled a SLL and this should be clearly stated in the loan documentation.

That said, the absence of final SPTs does not preclude parties from building in the mechanics to switch the transaction to a SLL on an amendment; creating a “sleeping” SLL if you will. This switch can be used when parties, typically by way of Majority Lender consent, agree on a set of KPIs and SPTs for the transaction. Irrespective that the transaction is underway, time must again be built in for the finance parties to undertake a full due diligence of the proposed targets, as they would have had these KPIs and SPTs been proposed prior to origination of the loan. Similarly, the finance parties must be ready to challenge any KPIs and SPTs they do not believe are sufficiently ambitious, regardless of the fact that they are already party to the transaction. An unwillingness to do so will inevitably open the doors to potential greenwashing.

Until the KPIs and SPTs are approved by the lenders, the loan documentation might look to include a non-communicate clause for all parties with regards to the SLL labelling of the transaction.

So, to answer our initial question, is time the fundamental driver for a SLL? No, it cannot be. Sustainability, and the quest to improve a borrower’s sustainability, must be the fundamental driver for a SLL. If this is not the case, then serious consideration should be given as to whether a SLL label can, and should, be awarded – for an award is what it ultimately is.

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