TFA Monthly Newsletter

June 2014

Headline News:

5/5/14: Tribal Gaming Group Plugs Report Showing 30,000 Casino Jobs (bizjounrnals.com)

5/18/14: Bingo Hall Helps Connect Catawba, Lumbee Indian Nations (thestate.com)

5/22/14: Tulalip Progress Has Been Undeniable (indiancountrytoday.com)

5/22/14: Traditions Partners with Seneca Gaming Corporation (wbng.com)

5/27/14: U.S. Supreme Court: Michigan Can't Sue Bay Mills Tribe in Casino Case (freep.com)

5/28/14: Plans Released for Menominee's Hard Rock Casino (madison.com)

Credit Agreements 101 - Part 1 of 5 - "Definitions"

by David Howard

This article marks the first in a series of five articles in which we will focus on the key attributes and provisions of the primary document that governs a bank loan.

Typically, when a tribe borrows money from a bank, the bank's attorneys draft volumes of documents for the tribe and its staff, attorneys and advisors to review prior to the tribe signing. The most common documents are a promissory note, credit agreement and security agreement. The credit agreement is typically a 100-page plus document filled with all the business terms of the lending arrangement such as the loan amount, interest rate, fees, debt repayment terms and maturity date. In addition to these key terms, it also includes scores of details and requirements included in the representations and warranties (things the borrower establishes that are true and correct), affirmative covenants (things the borrower promises they will do), negative covenants (things the borrower promises they won't do) and events of default (what events may cause a default and what happens afterwards). While these credit agreement details are usually handled by a tribe's finance staff and its counsel and advisors, they obviously are very important for tribal leadership to fully understand well before being asked to sign anything. This five-part series covers these aspects of a typical credit agreement.

Let's start with the very first section of the credit agreement – definitions. In the beginning of negotiating a credit agreement, a significant amount of time is spent discussing and refining the definitions section as these definitions touch multiple parts of the credit agreement and the defined words or phrases are highly customized to fit the situation at hand. If a word is capitalized in the body of a credit agreement that means it's a defined term. Therefore, you need to go back to the definitions section and understand what the real meaning of that word or phrase is and how it can affect the provision you are reading.

Some of the more important definitions for tribal leadership to understand includ-

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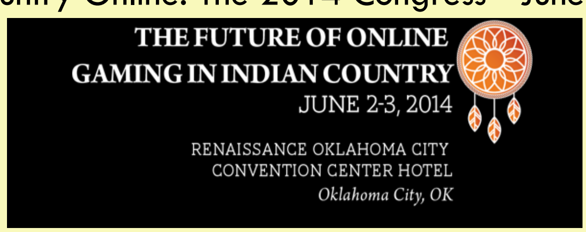
TFA will be attending Indian Country Online: The 2014 Congress - June 2-3



Please let us know if you will also be in attendance and would like to set up a meeting with TFA.

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ing the following:

Applicable Rate: this is how much you are paying. The applicable rate outlines the additional amount the bank is charging you over their cost of funds.

EBITDA: Earnings Before Interest, Taxes, Depreciation and Amortization. (Though tribes do not pay taxes, this term is convention incorporated into most credit agreements.) While it sounds straightforward, this is not a defined accounting term and can be highly customized with various adjustments. EBITDA, together with total outstanding debt, is usually a factor in determining the applicable rate from above as well as general covenant levels.

Fixed Charge Coverage Ratio: This measures how the borrower's cash flow covers all required payments and often controls tribal distributions. This definition can vary from deal to deal.

Material Adverse Effect: This is sometimes referred to as a "MAC" (material adverse change) and refers to significant events – usually out of a tribe's control – that the bank deems have a negative impact on the business operations and/or the tribe. This definition needs to be carefully reviewed with all of its implications fully understood as a MAC can have a major impact on a tribe.

Capital Expenditures: Often differentiating between regular on-going maintenance costs versus growth (or project-related) capital expenditures, changes to this definition can impact the Fixed Charge Coverage Ratio and ultimately, tribal distributions.

Recourse: Recourse is a very important term in that it defines what a lender can and, in the case of Excluded Assets, cannot go after in a defaulting loan scenario. Recourse is typically restricted to a sub-set of the assets and/or revenues of a Tribe – for example, to the casino if the loan is related to the gaming operations.

Required Lenders: In a multi-bank deal (or syndication), this defines the percentage of lenders needed to make certain changes to a credit agreement. Typically, the threshold is defined such that lenders representing at least 51% of the loan size are needed to approve a change.

Restricted Payment: This very important definition describes what the borrower can and cannot distribute out of the assets/revenues of the Recourse group.

Threshold Amount: This is usually a dollar amount and is often used throughout a credit agreement to measure maximum dollar limits before an event triggers a default. Examples are litigation claims, cross defaults with other creditors, etc.

It is complicated stuff – and definitely not fun reading at times. That said, we encourage tribal leadership to take the time to review these loan documents in detail with your counsel and advisors. Don't be afraid to ask questions, and ask for sections to be explained until it makes sense. The definitions section is where it all starts. Understanding the impact of these definitions on various provisions throughout the credit agreement will help you as you navigate your next deal.

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