LMA Export Finance Buyer Credit Agreement

In 2018, the Loan Market Association (LMA) published its form of single currency term buyer credit facility agreement for export credit agency supported finance transactions (the Facility Agreement). The basis of the Facility Agreement is theLMA unsecured single currency term facility agreement for use in developing markets jurisdictions.

We set out below some points to note when using the Facility Agreement or when preparing a term sheet for a financing which will be documented using the Facility Agreement.

Capitalised terms used in this note have the same meanings given to them in the Facility Agreement. A reference to a Clause or a Schedule is a reference to that Clause or Schedule in the Facility Agreement.

Clause Reference	Point for consideration
5 (*Utilisations*)	**Direct Utilisations by the Exporter**. Certain Export Credit Agencies have a preference or requirement for Exporters to request drawings directly under the financing. Therefore, it may be appropriate to include provisions to permit the Exporter to directly submit Utilisation Requests in respect of amounts due but unpaid under the Export Contract. If so, the Facility Agreement will need to be amended and consideration should be given to ensure that the contractual relationship between the Lenders, the Borrower and the Exporter operates as intended.
7 (*Prepayment and cancellation*)	**Additional mandatory prepayment events**. Typically Lenders seek to include a number of additional mandatory prepayment or automatic cancellation events, such as: (a) events relating to the Export Contract (e.g., termination, invalidity, illegality or material litigation); or (b) automatic cancellation of a proportion of Available Commitment where the Export Contract Value is reduced. In relation to a prepayment event relating to the Export Contract, this should be discussed with the Export Credit Agency and, if included, should be exercised following consultation with the Export Credit Agency. The Facility Agreement provides some protection in this regard pursuant to the representations made in Clause 18 (*Representations*) and in the Exporter Certificate, in each case only being made at certain times.
7.3 (*ECA Mandatory Prepayment Event*)	**ECA Mandatory Prepayment Event timings**. The Facility Agreement includes optionality to provide for a specified time period following the occurrence of an ECA Mandatory Prepayment Event, during which a Lender must notify the Agent that it requires its Loans to be prepaid. Following the expiry of this period the Lender's right to require prepayment will lapse. Lenders should consider (i) whether such a single Lender prepayment mechanic is appropriate and (ii) the practical steps and timings required to be actioned within the given time period.

22 (*Events of Default*)	**ECA Cover Documents Event of Default**. Certain Export Credit Agencies require the inclusion of a specific Event of Default where the ECA Cover Document lapses, terminates or otherwise ceases to be in full force and effect, in addition to, or instead of, an ECA Mandatory Prepayment Event. Lenders should consider whether such an Event of Default should be included in the term sheet and Facility Agreement (taking into account the terms of the relevant Export Credit Agency offer letter or general terms and conditions).
26.11 and 27.10 (*Lenders' indemnity to the Agent and the ECA Agent*)	**Back-to-back indemnity from the Borrower**. Lenders to consider whether a back-to-back indemnity from the Borrower to the Lenders should be included in respect of any indemnity payments made by the Lenders to the Agent or ECA Agent.
Schedule 2 (*Conditions precedent*)	**Down Payment as a condition precedent to initial Utilisation**. The OECD arrangement for officially supported export credits requires 15 per cent. of the Export Contract Value to be paid to the Exporter on or before the Starting Point of Credit. Lenders should therefore consider, and discuss with the Export Credit Agency, whether the Down Payment of 15 per cent. of the Export Contract Value is required as a condition precedent to initial Utilisation or whether payment of a lower amount may be acceptable (e.g. five per cent. of the Export Contract Value, being a requirement for certain Export Credit Agencies). If the latter approach is taken, Lenders should require the inclusion of an express covenant in the Facility Agreement requiring the Borrower to provide evidence signed by the Exporter that 15 per cent. of the Export Contract Value has been paid on or before the Starting Point of Credit.
Defaulting Lender and Impaired Agent provisions	**Inclusion of Defaulting Lender and Impaired Agent**. In light of the financing structure, Lenders should consider whether it is appropriate for the credit agreement to include provisions allowing the Borrower to replace individual (defaulting) Lenders and/or an impaired agent. This may not be appropriate in a single Lender financing or club deal, where sell down is not anticipated. If so, the Defaulting Lender and Impaired Agent provisions in the Facility Agreement should be deleted and specifically carved out from any term sheet or facility agreement.
24 (*Changes to the Lenders*)	**Assignments and transfers to the Export Credit Agency**. The Facility Agreement envisages an unfettered right for a Lender to assign its rights or transfers its rights and obligations to the Export Credit Agency, provided that the usual LMA assignment or transfer procedures are followed. Lenders should consider, and discuss with the Export Credit Agency, whether these procedures are appropriate in the context of an assignment or transfer to the Export Credit Agency, and if necessary amend the Facility Agreement to provide for alternative procedures.

The above is not an exhaustive list of Lenders' considerations but a few initial points to consider that have been discussed frequently in export credit agent supported financings. We would be happy to discuss these and other points on the Facility Agreement with you in more detail. Please do not hesitate to get in touch.

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