Trade & Export Finance Webinar

Looking back to look forward in trade finance

Tuesday, 17 December 2024
12:30 - 1:30 pm (GMT / London time)

Webinar presentation by:

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Sullivan & Worcester UK LLP

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Areas to be covered

- Was 2024 memorable?
  - for what reasons
- The bad and good news
- Solving your disputes
  - they do happen
- What about ECA and DFIs in all this
  - also adaptation finance
- A look forward to 2025
  - themes and ideas

Looking back

- Was 2024 memorable?
  - for good or bad reasons?
  - conflicts and politics not good for trade
  - what about trade finance?
- Trade gap widened – why?
  - too much focus on developed markets
- Many interesting transactions – but …
  - different structures or different methods
  - getting beyond proof of concept
- Did trade finance fail to deliver?
  - if so, why?
  - what holds us back?

Same old problems?

- Trade finance still too risky?
- Have the risks changed?
  - still performance, country risk, payment
  - more added?
- Has risk appetite changed?
  - for whom
  - finance only for some customers with different structures only?
- Where do we find new participants?
- What to tell them
  - same initiatives

Bad new and good news

- Continuing regulatory obstruction for banks and beyond
- Basel 3.1 – provides more uncertainty
  - continuing lack of understanding of trade finance
  - more costly capital
  - ever misunderstanding credit insurance
  - more problems than solutions
- Late payment Regulation (or Directive)
  - what is it all about – protect working capital
  - could it help?
  - flexibility to permit supply chain finance
- Accounting treatment and the rating agencies
  - working around IFRS
  - trade debt or bank debt

Basel 3.1 / CRR III

- UK and EU implementation of Basel 3.1 is on the way
- EU CRR (mostly) in force from 1 January 2025
- UK CRR in force from 1 January 2026
- Key highlights include:
  - Lower capital requirements for trade finance by maintaining 20% credit conversion factor (CCF) treatment
  - The UK plans to remove L/C tenor as a consideration in CCF treatment
- This followed a consultation period where trade finance institutions outlined the impact increasing CCF would have on banks' ability to finance trade

…. and more bad news

- Fraud on the increase?
  - not so but always there is a possibility of fraud
- Same old methods
  - non-existent goods
  - double invoicing
- Letters of credit a good tool for this?
  - deal in documents only
- Solutions are available
  - Due diligence
  - Systems
  - Fintech products – but could be solutions to non-existent problems!
  - LEI
- ESG and sustainability roll out
  - Does it cause a slow down?

Corporate failures do not help

- Whatever they are
  - old and recent examples
- Normally good reason for failure
- why should it affect trade finance more widely?

But some good news

- Products to assist trade finance
- Legislation to remove potential barriers
  - MLETR and beyond
- More potential players
  - originators
  - investors
  - good work by ICC, ITFA, BAFT and others
- More liquidity but from where?
- Look at some of this shortly
- The thoughts and idea of others first
  - we need to resolve disputes
  - some ideas from ECA and DFIs

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Arbitration Bill – Continuing to promote the UK as a leading destination for arbitrations

- Arbitration: means by which disputes are resolved privately by arbitrators appointed – rather than judge sitting in court
- Important part of the mutually supporting network of businesses that includes trade, banking, insurance and legal services
- London frequently ranked No. 1 as the world's most preferred seat for international arbitration
- Current legislation – Arbitration Act 1996 – over 25 years old
- MOJ asked Law Commission to review the Act in March 2021
- General consensus from consultation: Arbitration Act 1996 generally works well – no root and branch reform needed
- Recommendations for modest targeted reform to maintain and enhance London's reputation

Arbitration Bill – Six major changes

- New default rule to determine the law governing agreement to arbitrate
- Codification of an arbitrator's common law duty of disclosure
- Strengthening of arbitrator immunity around resignation and applications for removal
- New power for arbitrators to dispose summarily of issues which have no real prospect of success
- Clarification of court powers against third parties in support of arbitral proceedings, and in support of emergency arbitrators
- A revised framework for challenges under section 67 of the Arbitration Act 1996 (where the challenge alleges that the arbitral tribunal lacked jurisdiction)

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New Year – New Arbitration Act

- Bill reintroduced by the Labour government in July 2024
- Parliament’s Christmas recess begins on 20 December 2024 - anticipate the Arbitration Act 2025 will receive Royal Assent early in the New Year
- Welcome addition to the statutory framework designed to assist parties to obtain fair resolution of disputes, by an impartial tribunal of their choosing, without unnecessary delay or expense
- Enhancing attraction of London as a world-leading destination for arbitration of trade, banking and insurance disputes

What about ECA and DFIs in all this?

- What has happened in export finance in 2024 and what developments we can expect in 2025?
  - 2024 – stark climate backdrop - on track to be the warmest year on record - Jan-Sept 2024 global average temperature 1.54 °C above pre-industrial level - Antarctic sea ice second lowest on record and glacier loss accelerates - extreme weather and climate events lead to massive economic and human losses
  - OECD Arrangement changes - The end of the OECD downpayment reduction
  - closer collaboration between export credit and development finance?
  - greater innovation in financing the SDGs
  - *"Social Infrastructure and the OECD Arrangement on officially supported export credits - An analysis of current regulations, prevailing challenges and potential amendments - Independent Report, commissioned by UK Export Finance"*
  - COP29

The end of the OECD downpayment reduction (December 2024)?

- The OECD Arrangement on Officially Supported Export Credits (“Arrangement”) – a “gentlemen's agreement” to provide a framework for the orderly use of officially supported export credits
- Currently 11 Participants to the Arrangement (“Arrangement Participants”) - Australia, Canada, EU, Japan, Korea, New Zealand, Norway, Switzerland, Türkiye, UK, US
- The Arrangement had previously required that where goods and services were the subject of officially supported export credits purchasers are required to make down payments equating to at least 15% of the export contract value
- In 2021 in response to the COVID 19 pandemic the down payment requirement was lowered to 5% - increasing the maximum official support limit to 95 % of the export contract value for low and middle income countries (the “2021 Common Line”)

The end of the OECD downpayment reduction (December 2024) ?cont'd…

- The 2021 Common Line was originally effective until 4 November 2022
- It was extended for an additional year in 2022 - expiring on 4 November 2023
- 14 December 2023 it was extended for a further year – UK argued that there were continuing difficulties regarding access to finance for public/sovereign buyers in low and medium income countries - such as increased interest rates and continuing inflationary pressures
- The December 2023 extension expired on 13 December 2024
- What next?

Closer collaboration between export credit and development finance? (October 2024)

- The Berne Union and Finance in Common launch joint initiative to promote closer collaboration between export credit and development finance
- There exist significant financing gaps for sustainable development
- The goal of the joint initiative to close these gaps by promoting improved understanding, coordination and collaboration among all public and private institutions involved in cross-border finance for trade and economic development
- Given the enormous financing needs for the UN SDGs, it is broadly recognized that financial resources available within government budgets of EMDEs, combined with financial support available from the international development finance community, consisting of Multilateral Development Banks, Bilateral Development Banks and ODA Aid Agencies, are not sufficient to bridge the financing gap for the UN SDGs
- Mobilization of capital – both public and private, international and domestic, bilateral and multilateral –, is high on the agenda of the international community

Greater innovation in financing the SDGs in Emerging Markets and Developing Economies (EMDEs) (November 2024)

- UKEF-Commissioned report on officially supported export credits for Social Infrastructure published
- *"Social Infrastructure and the OECD Arrangement on officially supported export credits - An analysis of current regulations, prevailing challenges and potential amendments - Independent Report, commissioned by UK Export Finance"*

- *"… From interviews with various ECA-representatives that participate in meetings on the [OECD] Arrangement, it was in general confirmed that the UN SDGs and how ECAs could contribute to their achievement in 2030 have thus far never been extensively discussed by the {Arrangement] Participants. This is completely different for the international climate agenda, which among others led to the successful development of improved Arrangement terms and conditions for climate mitigation and adaptation projects and water projects …". [1]*

[1] https://hda-conseil.fr/wp-content/uploads/2024/11/social_infrastructure_oecd_arrangement_november_2024.pdf

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Greater innovation in financing the SDGs in Emerging Markets and Developing Economies (EMDEs) (November 2024) cont'd…

- *"**…** In all discussions about the development and implementation of mobilization measurement systems in the G20, G7, OECD DAC, MDB working groups on mobilization … official ECAs have not or hardly been involved. As a consequence, their contribution to the UN SDGs and their mobilisation of private capital for development are not visible but attributed to DFIs. …"*
  - What to expect?
  - Expect much more collaboration with ECAs and DFIs/MDBs?

COP 29 (November 2024)

- A new finance goal
- Finalised carbon market agreement
- Progress on mitigation was limited
- Limited progress on adaption
- Need for ‘balance’ between adaptation and mitigation recognised in the finance goal
- What to expect in 2025 – a greater focus on adaptation finance

The themes looking forward

- There are many positives
- The way ahead is digital?!
- New products to add to the list
  - Are they a revamp of the old?
- Making the market more accessible
  - still time for the regulators – just?
  - there are ideas and opportunities

Digitisation v Digitalisation

- What is the difference?
- Digitisation
  - digital alternatives
  - been possible for years
  - speed up some processes
  - resort to paper

- Digitalisation
  - end to end digital
  - say no to paper
- Many proof of concept
  - Where do we go from here?

Digitalisation of Trade

- ICC key issues
- Interoperability
- Ecosystem
  - e Customs
  - e Payments
  - e Finance
  - e Identities
- Data standards
  - put in place
- Trade Corridors
  - being set up
- Watch this space

Property (Digital Assets etc) Bill

- Seeking to clarify position on whether digital assets are “property”
- Traditionally, two categories of property existed:
  - Things in possession
  - Things in action
- The Bill proposes a third category, enabling digital assets to be considered property
- Courts will define what ‘things’ qualify for this third new category
- What does this mean for trade finance?

What about the digital products?

- Digital transactions should increase
  - MLETR and ETDA
- Remember two key areas
  - digital payments
  - digital assets
- Platforms and Players using e PN and e BoE
  - many varieties
  - will buyers embrace them?
- Growth of the e BL market
  - e BL have been around for years!
  - what about e Warehouse receipts etc!

Another “Innovative Product”

- Deep Tier Supply Chain Finance (DTSCF)
  - work of BAFT and ADB
- The basics of DTSCF
  - Anchor Buyer
  - Tier of suppliers
  - the use of the Buyer’s IPU
- How deep can you go?
- Cross border or not?
- Post shipment; even pre-shipment
- Do you know your supply chain?
- ITFA initiative

Other products

- Growth of inventory finance?
  - what is it?
  - how to do it
- Syndication of receivables and payables
  - portfolio approach?
  - create risk and financing opportunities
- More from the credit insurance market?
  - encourage the appetite
  - deal with the rating agencies
- Do DFIs hold the key?
  - The opportunities

FSB Liquidity Preparedness Final Report

- This month, the Financial Stability Board (FSB) published a final report setting out policy recommendations to enhance the liquidity preparedness of non-bank market participants for margin and collateral calls in centrally and non-centrally cleared derivatives and securities markets.
- The report forms part of the FSB's work programme on enhancing the resilience of the non-bank financial intermediation (NBFI) sector
- The report focuses on:
  - Liquidity risk management practices
  - Liquidity stress testing
  - Ensuring sufficient collateral is available

ESG, sustainability and the unlevel playing field

- What do we mean?
  - too much concentration on "E"?
- Is it the end of financing for carbon products?
- A "reset" needed for emerging markets
  - apply different standards
  - realise what is needed in those markets

Some key themes to look forward to

- Innovative solutions
- Unlocking of trade finance for emerging markets
  - Credit insurance
  - DFIs
- Bringing in non bank investors
- Consolidation of FinTech's
- Increased digitalisation of trade
- Optimism for 2025
- Trade Finance is a great product
  - wherever description
  - whoever it is used
  - remember to bring along suppliers or buyers
  - they are what trade is …

Any questions?

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Geoffrey Wynne is head of Sullivan's Trade & Export Finance Group and the firm's London office.

He has extensive experience in banking and finance, specifically in corporate and international finance, trade, structured trade and commodity finance, electronic banking and digitizing trade finance, structured finance, asset and project finance, syndicated lending, equipment leasing, workouts and financing restructuring and general commercial matters.

Recognised as one of the leading trade finance lawyers globally, Geoff advises many of the major trade finance banks and financial institutions around the world on trade and commodity transactions in virtually every emerging market including in the CIS, Asia, India, Africa and Latin America. He has worked on many structured trade transactions covering such diverse commodities as oil, nickel, steel, tobacco, cocoa and coffee.

Geoff also acts extensively for industry bodies including BAFT (the Bankers Association for Finance & Trade), ITFA (the International Trade and Forfaiting Association) and the ICC (the International Chamber of Commerce) on documentation and rules promulgated by them in trade finance.

He has recently been involved with issues including the ITFA White Paper on electronic Payment Undertakings (ePUs), the ICC Uniform Rules for Digital Trade Transactions (URDTT) and ITFA's Uniform Rules for Transferable Electronic Payment Obligations (URTEPO). He worked with the Law Commission on the Electronic Trade Documents Bill which will help with the move towards digitizing trade documents.

The team which Geoff leads has won numerous awards and recognition for its work in the Trade and Export Finance industry. In 2023, Sullivan was named Best Export Finance Law Firm at the GTR's Leaders in Trade Awards, 2023. This followed the award for 'Best trade or supply chain finance law firm' at the 2022 GTR Leaders in Trade Awards, and 'Best Trade Finance Law Firm' by Trade Finance Global (TFG) in its International Trade Awards, 2022.

Geoff is ranked in *Chambers UK, 2025* in Tier 1 as a Leading Individual for Commodities: Trade Finance, is included in the 'Hall of Fame' for Trade Finance by *The Legal 500 UK, 2025* and is recognised as a Leading Lawyer – Highly Regarded in the United Kingdom by the *IFLR1000*, for banking and finance.

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Mark's practice covers project and export credit finance, asset finance, structured trade and commodity finance, debt restructurings, acquisition finance and corporate advisory work.

He represents financial institutions, export credit agencies, corporates, boards, and national and supranational sovereign organizations in relation to finance transactions throughout Western, Central and Eastern Europe, Africa and the Middle East. Mark has extensive sector experience in infrastructure financing across Africa including off-grid power, healthcare and transportation. He also advises on ESG financings including hospitals, clean energy and transportation.

Advising on sustainability, governance and compliance matters, Mark has extensive experience counseling corporate boards in connection with bribery, corruption, modern slavery, criminal finance and sanctions issues. He also advises financial institutions on the UK's Capital Requirements Regulation and the EU's equivalent capital requirements regimes.

Recognised as a Leading Individual in *The Legal 500 UK*, 2024 for Trade Finance, he has been noted as 'excelling' in structured export credit transactions. He is also ranked by *Chambers UK, 2024* and included in *Best Lawyers UK, 2024* for his work in banking and finance law.

In May 2022, he was re-elected Deputy Chair of the British Exporters Association (BExA). He sits on BExA's Executive Committee as well as UK Finance's Export Finance and Trade Committee.

Mark is based in the UK but has lived and practiced law in the Czech Republic, England, Germany and Russia.

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Marian heads Sullivan's UK insurance and disputes practices, working closely with the firm's established and multi-disciplinary trade and export finance team, and the firm's U.S.-based disputes team, providing advice on commercial dispute resolution, insurance and risk management.

With over 30 years' experience, Marian's contentious experience includes advising clients in relation to disputes arising from trade finance, professional negligence, commercial insurance and breach of contract claims. These disputes are often international in nature and result in large-scale, highly complex multi-party litigation, arbitrations and mediations.

Marian advises banks, insurance brokers, investment funds, government agencies and corporates in relation to their commercial insurance arrangements which support structured trade, commodity and pre-export financings as well as corporate finance, energy, property, M&A and outsourcing transactions.

She advises on the management of insurance claims and subrogation actions and issues arising from the restructuring of insured loans. She also drafts and interprets insurance policies and advises on the use of insurance by credit institutions and investments firms as credit risk mitigation for capital adequacy purposes under the UK's Capital Requirements Regulation and the EU's equivalent capital requirements regimes. Marian's contentious experience informs her approach to policy drafting and eligibility of insurance for use as credit risk mitigation.

Marian was recognized in the 2023 and 2024 editions of *Best Lawyers, United Kingdom* for her work in Insurance Law.

Awards & Recognition

The Legal 500 UK, 2025
Sullivan ranked in Tier 1 for Trade Finance by *The Legal 500 UK, 2025* for the 11th year running
Partners Geoffrey Wynne and Simon Cook are recognised in the "Hall of Fame"
Partners Mark Norris and Sam Fowler-Holmes are recognised as Leading Individuals
Partner Marian Boyle, Counsel Daniela Barrdear, and Associate Luna Owen are recognised as key members of the practice

Chambers UK, 2025
Chambers UK, 2025 ranked Sullivan in Tier 1 for Commodities: Trade Finance (UK-wide)
Geoffrey Wynne and Simon Cook are both ranked in Tier 1
Mark Norris and Sam Fowler-Holmes are both ranked in Tier 3

Chambers Global, 2024
Chambers Global, 2024 ranked Sullivan as a Spotlight Firm in its inaugural 2024 Africa-wide Banking & Finance table
Simon Cook and Mark Norris are included as Leading Lawyers

The Best Lawyers in the United Kingdom®, 2025
Best Lawyers included five London partners — Marian Boyle, Simon Cook, Sam Fowler-Holmes, Mark Norris and Geoffrey Wynne — in the 2025 edition of *The Best Lawyers in the United Kingdom®*

IFLR1000, 2024
Sullivan recognised for Banking Lending - Lender Side in the United Kingdom by the *IFLR1000, 2024*
Partner Geoffrey Wynne is recognised as a Leading Lawyer – Highly Regarded in the United Kingdom

Receivables Finance International (RFIx) Annual Awards
Partner Geoffrey Wynne presented with the "Lifetime Achievement Award" at the Receivables Finance International (RFIx) Annual Awards, 2024
Geoffrey Wynne named "Industry Ambassador of the Year" at the RFIx Annual Awards, 2023

***Global Trade Review (GTR)* "Best Export Finance Law Firm", 2023**
GTR named Sullivan "Best Export Finance Law Firm" at the GTR Leaders in Trade Awards, 2023

***Trade Finance Global* "Legal Innovation in Trade" 2023**
Sullivan recognised for "Legal Innovation in Trade" 2023 by *Trade Finance Global* (in connection with BAFT) at its Trade, Treasury and Payment Awards 2023

***Trade Finance Global* "Best Trade Finance Law Firm" 2022**
Sullivan named "Best Trade Finance Law Firm" 2022 by *Trade Finance Global* (in connection with BAFT) at its International Trade Awards, 2022

In 2022, 2021, 2020 and 2019, GTR recognised Sullivan
The firm was named "Best Trade or Supply Chain Finance Law Firm" at the 2022 *GTR* Leaders in Trade Awards, "Law Firm of the Year" in the category "Leaders in Trade for Innovation" at the 2021 *GTR* Leaders in Trade Awards and "Best Trade Finance Law Firm" at the GTR Leaders in Trade Awards in 2020 and 2019

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