

ECA and DFI Update

Recent developments in ECA and DFI finance

Presentation by

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A look back at 2023

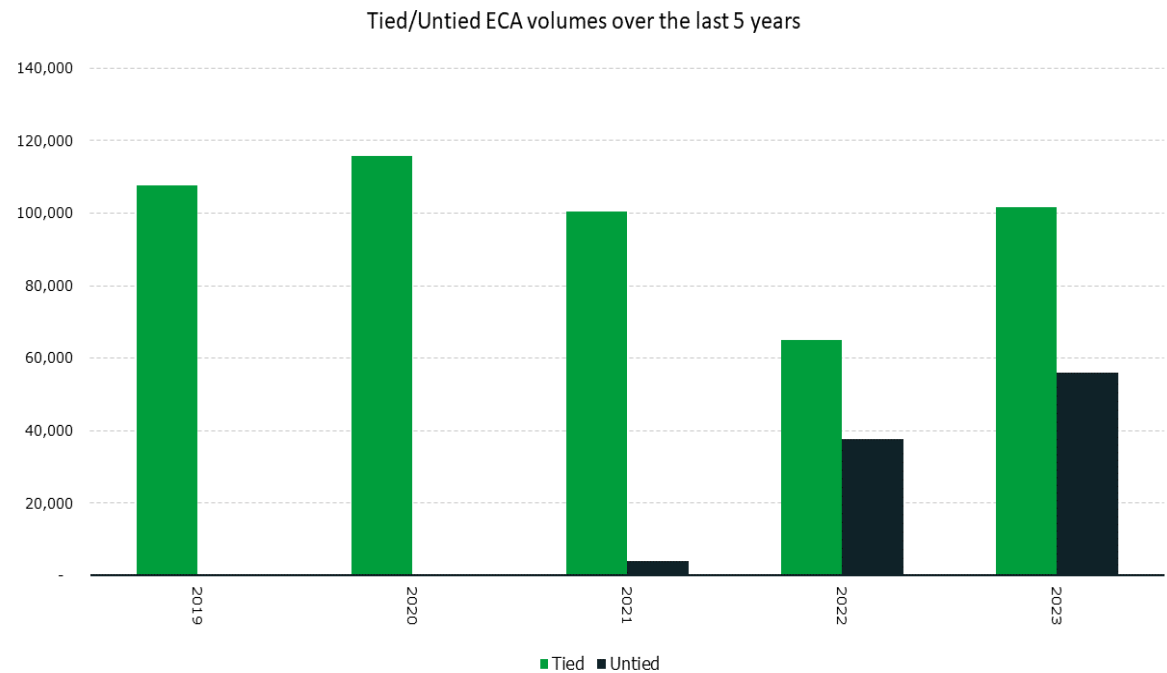
A bumper year for export finance

- 2023 by far the largest year ever - 100% more volume than 2022 from 20% more transactions.
- Transport:
 - › \$18.5bn from 81 transactions
 - › Cruise ship finance buoyant
- Renewables:
 - › \$17.4bn from 43 transactions
 - › Mainly offshore wind, but also green hydrogen, onshore wind and PV solar
- Oil & Gas:
 - › \$6bn from 10 transactions
 - › Historically top sector but has slipped down the rankings
- Defence:
 - › Increasing area of focus as ECAs play a geopolitical role in supporting national interests
- Developing markets infrastructure
 - › A neglected area?

Rise of untied facilities for large corporates

Major untied deals 2023:

- **Trafigura** – two US EXIM-backed RCFs totaling £400m to be used to purchase LNG cargoes from US exporters for export primarily to Europe as replacement for Russian gas.
- **Siemens Energy** - \$8bn of ECA guarantees to protect Siemens Energy's financial position. Seen as vital to Germany's energy transition.
- **Gunvor** – EUR400m SACE-guaranteed facility to secure natural gas and LNG supplies, bolstering European gas security.



Source: TXF

Market Trends

- ECAs adapting their support for buyers and exporters in a high interest rate environment:
 - › Revisiting older policies and becoming more adaptable
 - › Streamlining documentation requirements
 - › Greater flexibility and diversification of financing instruments
 - › More proactive support to SMEs and increased take-up among this group
- Proliferation of products to support energy transition.
- Helped by modernisation of OECD arrangement, pushing maturities longer and adjusting the premium rate curve for obligors with high credit ratings.
- Politics has given ECAs a prominent geopolitical role in supporting national interests:
 - › Energy security
 - › Defence
 - › Critical minerals

OECD - Modernisation

- Expansion of the scope of green/climate projects eligible for longer repayment terms under the Climate Change Sector Understanding or CCSU)
 - environmentally sustainable energy production
 - CO2 capture, storage, and transportation
 - transmission, distribution and storage of energy
 - clean hydrogen and ammonia
 - low emissions manufacturing
 - zero and low emissions transport
 - clean energy minerals and ores
- Maximum repayment term increased to up to 22 years for CCSU-eligible projects (from 18 years)
- Adjusting minimum premium rates for credit risk for longer repayment terms/borrowers with a higher credit risk rating

What's coming in 2024?

What will 2024 bring?

- Pipelines appear strong.
- There are no guarantees that interest rates will fall significantly or that borrowers will be able to rely on alternative funding sources (e.g. capital markets).
- Consequences of the OECD's modernisation efforts will continue to make themselves known
- We can expect the need for high volumes of ECA financing to continue, to support national interests, including in:
 - › Energy transition
 - › Energy security
 - › Defence
 - › Critical minerals

Africa – Looking ahead - ISS

- Sluggish economic growth - Debt levels remain a brake on growth
- Continued vulnerability to external influences - “As the elephants fight, the grass suffers”
- Legacy of debt defaults - Ethiopia, Ghana and Zambia all defaulted on debt repayments in 2023
- 9 African countries in debt distress; 15 at high risk of debt distress; 14 are at moderate risk
- Africa’s ‘belt of instability’ from Mali to Somalia looks set to get worse

Sustainability

Responses to Crises – climate resilient debt clause

- Number of institutions including UKEF, AfDB, EIB and the EBRD have announced Climate Resilient Debt Clauses
 - › *“... [a] short-term liquidity support tool [to] provide [sovereign] borrowers with a fiscal “breathing space” at the time of a severe climate-induced or natural disaster, allowing them to repurpose financial resources from debt servicing to immediate response and recovery needs ...”*
- Intended for lower-middle-income sovereign, sovereign-guaranteed and municipal borrowers to stop them spiralling into debt distress when faced with natural disasters
- A “hard wired” debt deferral mechanism
- Works in a similar way to the Debt Service Suspension Initiative but built into the facility itself

Climate Resilient Debt Clause - Triggers

UKEF's draft CRDC includes the following "Deferral Events"

- Climate incident
- Natural disaster
- Pandemic
- Epidemic

which in the opinion of the Lender has, or could reasonably be expected to have, an adverse impact on the Borrower's ability to repay the Loan

In light of the Ukraine conflict and concern about future conflicts should the triggers be widened?

Climate Resilient Debt Clause – “Eligibility Conditions”

UKEF’s draft CRDC includes the following “Eligibility Conditions”

- The Borrower is an eligible member country of the IMF
- The Borrower meets any one or more of the following conditions:
 - the Borrower is eligible for finance under the IMF’s Poverty Reduction and Growth Trust
 - the Borrower is eligible for finance under the World Bank International Development Association window
 - the Borrower is classified as a Least Developed Country by the UN
 - the Borrower is classified as a Small Island Developing State by the UN

Climate Resilient Debt Clause – Points to Note

- Both the trigger of CRDC and the submission of a Deferral Request Loan do not constitute a Default or a Potential Event of Default under the Facility itself
- However, the trigger of a CRDC will not necessarily save the Borrower from a Default or a Potential Event of Default under other facilities – so there may still need to be a wider debt restructuring
 - › *“... any Financial Indebtedness is not paid when due nor within any originally applicable grace period ...”*
- A Deferral Request and the associated Deferred Payment Provisions are not automatic
- What can get deferred and for how long?

Adaptation Finance and the Adaptation Gap

- How does it differ from other types of Green and Climate Finance?
- What types of Projects are Adaptation Projects?
- Coastal flood controls - Every US\$1 billion invested in adaptation against coastal flooding leads to a US\$14 billion reduction in economic damages
- Farm-scale water storage facilities; deep wells to provide drinking water for people and animals; grain storage facilities; improved food processing equipment - US\$16 billion per year invested in agriculture would prevent approximately 78 million people from starving or chronic hunger because of climate impacts
- Hospitals and health centres - Climate change triggers increases in the incidence of vector-borne diseases, water-borne diseases, heat and cold related deaths, injuries and deaths from flooding, and the prevalence of malnutrition

Adaptation Finance – The challenges

- Huge unmet need for Adaptation Finance
- Progress on climate adaptation is slowing when it should be accelerating to catch up with rising climate change impacts and risks
- Examples of Adaptation Finance

Adaptation Finance – Documenting Adaptation Finance Loans

- Adaptation Finance Loans can meet the green/social loan principles – they are “use of proceeds” financings
- Challenge (particularly for smaller adaptation projects) are reporting obligations/costs during construction and operations phase for small multi-site adaptation projects
- LMA Precedent ECA Facility Agreement

ESG Provisions in Private Credit

LMA as the starting point

- LMA-type obligations to comply with environmental and social laws, to notify lenders of environmental claims etc.

Purpose

Facility often tied to a specific purpose, which could be a specific project or could just be towards all or part of the business.

Additional reporting

- Detailed E&S monitoring and impact assessment reporting
- Reporting of material E&S incidents and remedial action

Prohibited activities

- Prohibitions on excluded activities, such as forced labour, trade in weapons, ozone depleting activities, trade in endangered species etc.

Mark Norris

Partner

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

He represents financial institutions, export credit agencies, corporates, boards, and national and supranational sovereign organizations in relation to finance transactions throughout growth and merging markets. Mark has extensive sector experience in infrastructure financing across Africa including off-grid power, healthcare 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.

Recognized as a Leading Individual in The Legal 500 UK for Trade finance, he is noted as 'excelling' in structured export credit transactions and is praised for his 'commercial and user-friendly approach.' He was also recognized in the 2023 Edition of Best Lawyers, United Kingdom for his work in banking and finance law. He is one of Chambers & Partners 2024 ten ranked lawyers for "Global Africa-wide - Banking & Finance"

In May 2023, 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 and has lived and practiced law in the Czech Republic, England, Germany and Russia.

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Ellis Lawson

Partner

Ellis has extensive experience across a wide range of finance products and geographies, having spent significant portions of his career based both in London and in the Middle East and having advised on transactions across Europe, the Middle East and Africa.

He has regularly acted for all commercial parties to financings, including arrangers, syndicate lenders, borrowers, sponsors and export credit agencies across finance categories including syndicated corporate lending (conventional and Shari'ah compliant), development finance, project finance and tied and untied ECA-covered finance. In addition Ellis has significant experience acting on debt restructurings and in connection with financial distress.

Ellis joined Sullivan & Worcester from a Magic Circle law firm in 2023 after spending 12 years working in their London, Dubai and Abu Dhabi offices.

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Awards & Recognition

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

The Legal 500 UK, 2024

Sullivan ranked in Tier 1 for Trade Finance by *The Legal 500 UK, 2024* for the tenth year running
Partner Geoffrey Wynne is included as a Leading Individual for Trade Finance in the “Hall of Fame”
Partners Simon Cook, Mark Norris and Sam Fowler-Holmes are recognised as Leading Individuals

Chambers UK, 2024

Chambers UK, 2024 ranked Sullivan 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 included Sullivan as a Spotlight firm in its inaugural 2024 Africa-wide Banking & Finance table

Partners Simon Cook and Mark Norris are included as leading lawyers in the guide’s new section

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

The Best Lawyers in the United Kingdom®, 2024

Best Lawyers included five London partners — Marian Boyle, Simon Cook, Sam Fowler-Holmes, Mark Norris and Geoffrey Wynne — in the 2024 edition of *The Best Lawyers in the United Kingdom®*

Receivables Finance International (RFI) Annual Awards, 2023

Geoffrey Wynne named “Industry Ambassador of the Year” 2023 at the Receivables Finance International (RFI) Annual Awards

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

2021 Lexology “Client Choice” award for Banking, United Kingdom

Geoffrey Wynne named a recipient of the *Lexology* “Client Choice” Award 2021 for Banking, United Kingdom





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Your
Next?**

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