Trade & Export Finance Webinar

Some new ideas on how you might document your trade and trade finance transactions in 2025

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12:30 - 1:30 pm (GMT / London time)

Webinar presentation by:

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What this talk will cover

- Why worry about documentation?
  - some rationale
- What is going on in legal developments and practice to concern us more or improve things?
  - look at legal and even political development
- What documents might help and in what areas?
  - look across whole of trade finance
- Deeper dive into some possibilities
  - interesting developments?
- Some general points and are they applicable to all documents?
  - what is applicable to what?
- Summary
  - how and what will we document in 2025

Why Document?

- We could verbally agree all this!
- We trust them – nothing will go wrong!
  - light touch please
- If trade finance is so safe why all the fuss?
- Trade finance is risky – we need protection!
- Answer is somewhere in between
- Let's be serious
  - we need to document
  - what documents to use
- What is 2025 going to look like?
  - who knows!
  - keep this to documentation

What drives choice of documentation?

- Internal requirements
  - use my standard form
- The parties
  - strength of the various parties
  - counterparty pressure
  - pressure to "do the deal"!
- What is being offered?
  - type of facility
  - the parties and product involved
  - countries involved
- Spectre of law and regulation
  - ESG and sustainability
  - Sanctions (of course)

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Documentation Choice

- Growing number of templates around
- One size fits all?
  - not so
  - many variables
  - what are these
- Type of Facility
  - key driver
  - helpful term sheet
  - Extract at least key points
- Risk analysis
  - counterparty
  - other parties
  - countries
  - commodity

Regulations

- Due Diligence
  - remember the considerations
- Sanctions and more
  - how to cover in the documentation?
  - do you need more?
- Other aspects
  - ESG
  - sustainability
- The new US President
  - will this change things here?

The Deeper Dive

- The facilities and what is available?
- Structured Trade (Loan) Products
  - PXF etc
- Bank to Bank loan documentation
- Receivables and Payables
- Letter of Credit Issuance etc
- Inventory Finance
- What else could have been covered in this presentation?
  - export credit
  - digitalisation more widely

Lending Documentation

- Loan Market Association (LMA)
  - guidance or templates?
  - helpful updates
  - fit for purpose in trade?
  - depends on the purpose!
- Keeps us all “on our toes”
- What do you mean by LMA compliant?

LMA New Developments

- LMA Green Loan Documents
  - Green Loans documents were last revised January 2025 (Term Sheet) and November 2024 (Draft Provisions).
  - Green loan draft provisions are a proposed form of drafting for green loan provisions for inserting into an LMA style facility agreement
  - Green Loan Provisions are intended to provide a starting point for green loans based on market practice at the time of publication

- LMA Pre Export Finance Agreement
  - Document is based on the LMA's existing recommended form of facility agreement for use in pre-export finance agreements
  - Document differs from the Pre-Export Finance Agreement in terms of:
  - the currency, which is assumed to be US dollars; and
  - the interest rate related provisions which envisage the use of CME Term SOFR in place of US dollar LIBOR

LMA New Developments (cont'd)

- LMA Guidance on Untied ECA Financing
  - Guidance as to features of an untied financing and considerations when preparing loan documentation for such transactions
  - The guidance note sets out considerations for users preparing an untied export credit facility agreement
  - The export finance market has experienced a significant rise in the use of untied financings provided by ECAs, with it now representing approximately 30% of export finance market volume

LMA New Developments (cont'd)

- LMA updated buyer credit facility agreement and user guide
  - The LMA's buyer credit facility agreement was originally published in 2018
  - LMA has updated the agreement to reflect the OECD Consensus as well as the use of RFRs in the market.
  - Given the single currency nature of the buyer credit facility, there are now three variations of the agreement:
    - 1. Agreement for compounded RFR use upfront (which covers compounded SONIA and compounded SOFR)
    - 2. Agreement for term RFR use upfront (which covers term SOFR and term SONIA)
    - 3. Agreement for use of EURIBOR with fallbacks to compounded €STR. Term €STR wording will be included once the separate investment grade term €STR exposure draft (currently out for LMA member consultation) is in recommended form

LMA Fund Finance

- LMA Fund Finance Glossary of Terms just issued (January 2025)
- Glossary has definitions for terms “Fund”, “Fund Finance” and “Investment”
- LMA say the aim is to help promote efficiency in practice and increase understanding of the fund finance market
- Addresses different terms that are often used to describe the same thing as well as commonly confused terms to promote the above
- Sets out the different types of finance commonly raised by funds, including:
  - Subscription facilities (based on committed investments in the fund)
  - NAV facilities (security over shares and other investment of the fund/subsidiary)
  - Asset-Based Lending (involving security being created over the assets of the fund)
  - GP financing (financing raised by the General Partner of a fund)
- Provides some clarity in what is a growing and complex area of finance
- Does it cut across what others are doing?

Alternatives to using LMA forms

- Create shorter versions “based on” LMA structure
- Reflect term sheet (or equivalent)
- Shorten to cover what is necessary
- Cover type of facility <u>only</u>
- Add relevant security documents
- Consider English law v local law

What about the Security Documents

- Too much to consider for this discussion
- English law always a good starting point!
- When must you have local law versions?
  - enforcement
  - protection
- Alternatives to security
  - monitoring

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ITFA and BAFT – loans between FI’s

- ITFA SWIFT Loan
- ITFA Short Term SWIFT FI Trade Loan: a template for one-off inter-bank trade loans
- Still in development as of January 2025
- Short form to evidence a single drawing
- “Balanced” document
- Options and guidance
- Hope to make SWIFT loan lending easier

BAFT MTLA – Master Trade Loan Agreement

- Update on BAFT 2014 document
- Covers often (big) bank to (small) bank lending
- Unsecured, unguaranteed, uncommitted document
- More appropriate for current market?
- To be finalised in early 2025
- Operates as a Master Agreement but …
- Trade-loan request for each utilisation
  - contains commercial terms
- Greater flexibility

BAFT MRPAs

- Currently two main versions – 2018/2019
  - English law and New York law
  - Limited updates since then (Libor demise)
- Useful Master structure
  - Master party
  - works on covering seller or participant
  - Offer and Acceptance Framework
- Covers many products
  - receivables as separate clause
- Does it need fixing?
  - good base but many choose to amend
  - are amendments consistent to mean a new version?

BAFT MRPAs (cont'd)

- What other options should be considered
  - one way only
  - allow for non bank participants
  - and more ….

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ITFA MARA

- ITFA created the Master Account Receivables Assignment Agreement (Mara) template – a tool to help standardise the distribution of open account assets
- As of April 2024 it has been made available as an ITFA document
- Mara is a template for open account distribution on a funded basis under English law, specifically aimed at recurring flows under Supply Chain Finance and Receivables Finance programmes
- Mara is based on the Bankers' Association for Finance and Trade (BAFT) master participation agreement (MPA) of 2018

MARA may be used if:

- The proposed distribution(s) is of:
  - a RF Product, being a trade receivables financing or purchase agreement between the Seller and a supplier or group of suppliers pursuant to which the Seller may purchase certain of the suppliers' trade receivables outstanding from their account debtors (whether on a committed, uncommitted, disclosed or undisclosed basis); and/or
  - a SCF Product, being a standard supply chain finance programme between the Seller and a trade account debtor or a group of trade account debtors pursuant to which the Seller on behalf of and at the request of such an account debtor pays such trade accounts to the corresponding suppliers and may include the purchase of the related accounts receivable outstanding from any such trade account debtor(s) to corresponding suppliers (and where the Seller acts as paying agent in respect of those trade accounts)
- Distribution of assets under a RF Product of SCF Product:
  - The MARA is being entered into in anticipation of an actual or potential future distribution of the assets under a RF Product and/or SCF Product

MARA may be used if: (cont'd)

- Revolving distribution and on-going commitment:
  - a single group (or a proportionate share of a single group) of Accounts Receivable are to be distributed or there is to be a commitment to buy these Accounts Receivable (or a proportionate share) as they arise on a revolving basis
- No single asset distribution
  - if a single Account Receivable is to be distributed, distribution via a BAFT form document may be more appropriate

Receivables and Payables

- No standardisation
- Two main structures
- Receivables Purchase Agreement
  - financer buys payment obligation of buyer from supplier
  - buyer payment risk
  - true sale from supplier?
- Payments Structures
  - buyer led
  - variations with or without supplier involvement
- Lots of ideas on documentation
- Wait for digitalisation of payment obligations?

Letters of Credit

- Letters of Credit generally
  - a talk in itself!
- Facilities to issue or confirm them
  - issuance cover times outside UCP/ISP
  - what about confirmations?
  - open and silent
- How to deal with the Applicant
  - protection for issuing banks
- Structures and Structured letters of credit
  - Careful documentation required
- Remember much litigation involves letters of credit

Inventory Finance

- A growing product?
- No standard forms?
- The main parties
  - Inventory Purchaser
  - Ultimate Buyer
  - Designated Supplier?
  - Independent Storer?
- Documentation can be straightforward?
  - where are the complexities?
- Accounting and legal considerations
- More to come

What other documents?

- Variations on the theme of financing trade
- Digitalisation to encourage …
  - different structures
  - simple documents?
  - it is all about matching data!
- The emergence of ePN and eBoE
- Electronic documents of title
  - speed up trade
  - new risks to document
- Watch this space

General Considerations

- Assume we produce documentation
- What the "standards" dictate
- Do I need a governing law?
- Facilities v Letters of Credit
- They all have a governing law whether you agree it or not!
- How to handle disputes
  - you should consider this
  - you really need to

Litigation v Arbitration

- No brightline test indicating that one means of dispute resolution is preferable to another
- Pros and cons of each – requires an assessment of the factors a party considers most important.
- In favour of arbitration:
  - Private (for the most part) limited opportunity to appeal;
  - Significant greater ability to control the process and procedural flexibility (which reduces costs);
  - Much easier enforcement – arbitral awards can be enforced in over 170 jurisdictions under the New York Convention

Litigation v Arbitration (cont'd)

- In favour of the litigation before the English courts:
  - Much more suitable for multiparty disputes (because arbitration is only suitable if all parties consent
  - Better if legal precedent is required;
  - Open nature of British justice means procedure takes place in open court (concerns about adverse publicity can thus provide leverage);
  - Likely to be much more swift disposal of cases where one side refuses to engage with the process
- Exercise in weighing up the pros and cons and deciding which better suits your commercial aims.

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)

New Year – New Arbitration Act

- Bill reintroduced by the Labour government in July 2024
- Anticipate the Arbitration Act 2025 will receive Royal Assent early 2025
- 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

Jurisdiction - Hague Convention of 2 July 2019 – applicable to courts

- Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters coming into force on 1 July 2025 and will apply to judgments given in proceedings commenced after that date
- Pre-Brexit, many English-law governed finance documents involving EU parties included an asymmetric jurisdiction clause (under which the obligors submitted to the jurisdiction of the English court but the finance parties were free to bring proceedings elsewhere)
- Post-Brexit, the use of asymmetric clauses in English law-governed finance documents became less prevalent in favour of exclusive jurisdiction clauses, given that the Recast Brussels Regulation no longer applied between the UK and the EU
- With Hague 2019 coming into force, finance parties could start favouring asymmetric jurisdiction clauses again in English law contracts

Summary

- Be prepared to document whatever happens
- Exciting possibilities in trade finance in 2025
  - Do not lose sight of the basics
- Plenty of choice in how to document
  - templates have their place
  - not every transaction fits a template!
- Do we go fully digital?
  - no way!
  - it will be a mixture
  - documents must “flex” to allow digitalisation
  - many already do

- Have a good year!

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.

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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