

Trade & Export Finance Webinar

An update on developments in the creation and financing of trade assets and how to get involved

Presented by

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12:30 – 1:30 pm (BST/London time)



What this talk will cover

- What is going on!
- What are trade assets?
- Who needs finance?
- Who can or wants to finance them?
- Who else could finance them?
- How to become involved in trade finance assets?
- Legal issues
- Documentation issues
- Where do we go from here?

What is going on?

- Various initiatives
- BCR/ITFA – Trade & Investment Forum
 - › Making trade finance an investible class
- ITFA's ITFIE Working Group
- Rules of the Game
 - › What are they?
- Attempts at Common Standards and Definitions
- The creation and distribution of Trade Assets.
 - › Understand what they are
 - › How to do it?

What are trade (finance) assets?

- Supply chain – very popular
 - › Receivables
 - › Payables
- Other payment obligations (funded?)
 - › Promissory notes
 - › Bills of exchange
 - › Loans
 - › Deferred payments under Letters of Credit.
- Other trade related obligations (unfunded)
 - › Guarantees
 - › Standby Letters of Credit
- All should have an underlying trade transaction

What is a trade finance transaction?

- Financing of trade
- An underlying trade transaction
- How closely related to the asset being financed?
- Structuring issues
 - › Consider later
- Achieving the IPU or better
- “Clean” non-payment risk

What is trade finance debt?

- Does it matter?
 - › To whom?
 - › Seller or participant?
- Trade debt v bank debt
 - › An example of an issue
 - › Is it more than balance sheet?
- Better treatment in insolvency/workouts?
- How to transfer the trade finance asset?
 - › Decide what is being transferred
 - › Risk or more

True sale as an issue

- Legal true sale
 - › Transfer of ownership of rights
 - › Direct recourse to claim payment
- Accounting true sale
 - › Is it more than legal true sale?
 - › Balance sheet question – derecognition
 - › Does seller still have residual obligations?
- Can you structure to achieve true sale?
 - › Of course!
 - › But who needs to be convinced?

Working with Trade Finance Assets

- Single asset
- Bundle of assets – single obligor
- Pooled assets – complications
 - › Diversified portfolio
 - › Concentration risk – defined
 - › Eligibility criteria – defined
- Use of credit insurance and third-party support
 - › Views on risk
- How to unpackage it all

Rules of the Game

- Overview for non-bank investors
- Explains ways to invest
- Issues to bear in mind
 - › Structures
 - › Documentation
- Achieve a common understanding
- Explain different structures
- Explain documentation

Glossary of Terms

- Achieving common terms is a challenge
- Trade Finance Assets
 - › Should be easy?
- Many different ways to describe a receivable
 - › One person's receivable is another's payable.
- So, what is the trade finance asset?
- Take a 'simple' trade transaction
 - › Supplier sells goods to a buyer
 - › Supplier and buyer
 - › Receivable and payable
 - › Supplier sells receivable so becomes "seller"!

Consider contractual relationships for receivables/payables

- Supplier sells uses an invoice
- Buyer uses a purchase order
- Goods are delivered – does buyer accept?
 - › Accepts the goods?
 - › Accepts the invoice?
- Supplier's rights v Buyer's obligations
- Approved Invoice
- Approved Payable
- IPU
- Promissory note
- ePN in a digital world!

Reflecting the same need for certainty elsewhere

- What is obligation being “sold”?
- What is the payment?
 - › Loan
 - › Payment undertaking
 - › Other
- What is the risk?
 - › Claim under guarantee, etc.?
- Certainty of payment
- Timing of payment

How to become involved

- This is a key question
- First the definitions explained
- Direct transfer/assignment
 - › Become lender/asset owner of record
 - › Use transfer or assignment
- Participation
 - › Funded
 - › Unfunded
 - › Seller remains “ fronting” entity
- Pooled structures

What is a pooled structure?

- Some form of securitisation is one
- Gives an investor access to a diversified portfolio of trade finance assets
- Remember definitions
 - › Eligibility criteria
 - › Concentration risk
- Eligibility criteria
 - › What type of trade finance asset?
 - › Credit risk, country, etc.
- Concentration risk
 - › Limit exposure to a type of trade finance asset
- Who will manage this?

A deeper dive into pooling

- Trade finance assets may be short term
- Will change over time
 - › Cash comes back
 - › Is it re-used?
- Rights of recovery are key
 - › Recourse limited to trade finance assets
- Different methods used to achieve this
- Often a form of SPV is used to hold assets
- SPV issues notes to the investor
- Recourse limited (no recourse to seller)

What is attractive to the investor in securitisation

- Quality of the notes – senior notes
- Protections if problems
 - › Stop funding
- Credit insurance, credit enhancement
- Reporting obligations of an independent management company
- True sale (again)
- SPV buys trade finance assets from seller/originator
- Seller will have acquired them from originator/seller
- Note use and misuse of terms
- SPV issues notes to make purchase
- Investor no direct rights to trade finance assets

How to document – trade finance asset

- Documentation depends on structure chosen
 - › First key point
 - › Also depends on trade finance asset
- Creating the trade finance asset
 - › Achieve certainty
 - › Standard documentation?
- Has originator acquired the asset?
 - › Whose risk?
- What has been acquired?
 - › The start of documentation risk

How to document to involve non bank investors

- Transfer or Assignment
 - › Depends on the asset
 - › Removes seller
 - › Direct recourse against obligor
 - › Direct relationship
 - › Need mechanisms in place to handle
 - › Take documentation risk
 - › Take all risks?
 - › To be avoided?
- Clearest way to access
- Operational drawbacks

Documenting participations

- Remember what a participation is
 - › Rights come through the seller
 - › What risk remains on the seller?
- Good standard documents available (as a starter)
- BAFT MRPA (Master Risk Participation Agreement)
 - › Flexible for different assets
 - › Works for funded and unfunded participations
- (New) ITFA MARA (Master Accounts Receivable Assignment)
 - › Use with Payables/Receivables when funded

The trouble with standard forms! – BAFT MRPA

- Two way – seller or participant
 - › Balanced
 - › Master party concept
 - › Too complex here?
- Assumes each party can assess the underlying trade transaction
- Means investor may take documentation risk
- What could we/should we change?
 - › A more tailored approach?

The trouble with standard forms – ITFA MARA

- Two way – again
- Use only for funded distribution of receivables, etc.
- Creates an assignment mechanism
- BUT without notice to the payer
- Still need to consider structure
 - › Committed v uncommitted
 - › One off or revolving
- What about documentation risk in underlying transaction?

Documenting the securitisation

- Documentation more complex
- Set up costs (for SPV)
- Legal costs
- Legal transfer issues
- Rights and recourse
- Another webinar perhaps?

So what am I buying

- Can it just be credit risk?
 - › Non-payment by obligor
 - › What about recourse to others?
- Can it be made simpler?
 - › Depends on a number of factors
- How do we get there?
- Education
- Explanations to whom?
- Documentation

Where do we go from here?

- Change nothing?
 - › Quality assets available
 - › Mechanisms to bring in other parties
 - › So what is missing?
- There could be more trade finance assets
- There could be more investors
- How?
 - › Follow the existing initiatives
 - › Where do we start?

Where do we go from here – cont'd

- Approach from different angles
 - › Increase trade finance assets
 - › Involve more non bank investors
 - › Refine structures and documents as necessary

How to increase trade finance assets

- Involve more suppliers and buyers
- Target SMEs and not just major buyers
- Have commercial parties document the payment obligation better
- Digitalisation of trade may help here
- Focus on certainty
 - › Revival of promissory notes in digital form
 - › Bills of exchange
 - › IPUS
- The better the buyer payment obligation, the better the trade finance asset

Attraction for non bank investors

- Quality and variety of trade finance assets
- Addition of credit support
 - › Credit insurance
- Increased understanding of how to become involved
- Better explanation of what is involved
- Changes of structures?
 - › May not be necessary
- Changes of documentation
 - › May help
- An area to be involved in!

Any questions?

Geoffrey Wynne

- Geoffrey 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 Forfeiting 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*, 2024 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*, 2024 and is recognised as a Leading Lawyer – Highly Regarded in the United Kingdom by the *IFLR1000*, for banking and finance.

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

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

Trade Finance Global “Best Trade Finance Law Firm” 2019

Sullivan named “Best Trade Finance Law Firm” 2019 by *Trade Finance Global* at its International Trade Finance Awards, 2019





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