A Guide to Receivables Finance

GENERAL EDITOR: GEOFFREY WYNNE
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Executive summary

THE ESSENCE of trade finance can be said to be financing structures based on receivables that are generated in the day-to-day dealings of parties, particularly buyers and sellers, in relation to their commercial transactions. Indeed the financing of receivables is a necessary and useful product to assist both the parties who generate and the parties who have to pay receivables. This report looks at general aspects of receivable financings in Part 1, and then in Part 2 considers specific techniques that can be used in the financing of receivables.

Chapter 1 contains an overview of the trade finance spectrum and explores the tensions that exist between sellers and buyers in relation to the receivables generated from their dealings and the time required to effect payment through the concept of a ‘risk ladder’. It demonstrates the different levels of risks taken between those parties. It then looks at the use of various financial instruments in the trade finance spectrum and how those specific instruments can be used to produce a means of financing receivables.

Chapter 2 looks in more detail at receivables finance and in particular how receivables can be created in a way to make them attractive for financing. It considers the various aspects of performance risk of the seller who creates the receivable and the payment risk of the buyer who must pay it. It also examines why and how to finance receivables in their different forms.

Chapter 3 looks at the legal effect of various types of instruments that evidence receivables and how those instruments will be treated as payment obligations. It looks at negotiable instruments, book debts, payments under letters of credit, BPOs, and bank loans. In each case the enforceability and transferability of the payment obligation is considered. The possible credit enhancements and how these can be achieved are also dealt with. It looks at concepts such as the true sale of a receivable and the independence of a receivable from the underlying commercial transaction for financing purposes.
Chapter 4 looks at the difficult issue of Basel III requirements in relation to trade finance. It looks at the current position as well as exploring the potential for change. This includes analysis of the Leverage Ratio under the new directive and whether this could be helpful for trade finance.

Chapter 5 looks at credit insurance, particularly as a risk mitigant, and its availability in the context of receivables financing. It considers the potential benefit of off-balance sheet treatment of insured risks. It looks at the regulatory aspects of Basel II and Basel III that have to be dealt with to achieve better capital treatment.

Chapter 6 considers how banks in particular might distribute their risk in receivables financing transactions. It looks closely at the granting of sub-participations on both a risk and a funded basis and considers the implications of the various types of documentation that are available. It specifically considers the document prepared by BAFT both under English law and New York law and looks at the differences.

In Part 2 of the report, specific aspects of financing techniques are looked at.

Chapter 7 considers issues involved in supply chain finance. It explains how supply chain finance can monetise receivables for the benefit of sellers and buyers, and their working capital needs. It explains how to structure a financing based on confirmed payment obligations and how to calculate the value of a receivable by reference to its payment date.

Chapter 8 looks at the use of forfaiting in the context of financing future payment obligations. It considers the history of forfaiting and the payments which can be made subject to forfaiting. In particular, it looks at the potential for forfaiting under the new Uniform Rules for Forfaiting (URF800). It considers the sort of payment claim that would be available for forfaiting and how to achieve a forfaiting transaction. It also looks at the concept of ‘without recourse’ selling of payment claims and in what circumstances there might still be recourse to the seller. It helps analyse the ‘liability cascade’ contained within the forfaiting rules.

Chapter 9 looks at the definition and history of factoring. It proposes a definition of factoring, being the purchase on a continuing basis of accounts receivable on a with or without recourse basis. It explains when to use
factoring and how to do so. It examines the requirements for a successful factoring transaction. It also examines issues relevant to cross-border factoring and the use of the two factor system. It summarises the advantages of the factoring product in relation to certain receivables.

Chapter 10 looks at trade finance securitisations in relation to receivables including the historical development of securitisations. In particular, it examines the use of a special purpose entity in the structure and making that entity bankruptcy remote. It considers who might be issuers in, and who might be investors in, securitisations. It looks at capital market structures and explains the differences with other securitisation structures.

It examines risks in the structure and risk mitigants. It also explains the features of typical transactions and the market outlook for the product.
About the editor

GEOFFREY WYNNE is head of Sullivan & Worcester’s London office and also head of the Trade & Export Finance Group. He has extensive experience in banking and finance, specifically corporate and international finance, bank mergers, acquisitions, conversions and restructurings, trade and structured trade and commodity finance, structured finance, asset and project finance, syndicated lending, equipment leasing, workouts and financing restructuring, leveraged and management buy-outs, and general commercial matters.

Geoff is one of the leading trade finance lawyers and has advised extensively many of the major trade finance banks and companies around the world on trade and commodity transactions in virtually every emerging market including CIS, Far East, 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 was vice chairman of the drafting committee that produced the Uniform Rules for Forfaiting (URF800). He is also the editor of the Guide to Trade and Commodity Finance and a member of the editorial board of a number of trade finance publications.

SULLIVAN & WORCESTER is a leading corporate law firm advising clients ranging from Fortune 500 companies to emerging businesses, with offices in Boston, New York, Washington, and now London.
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Prior to joining BofAML, Coles worked at RBS as the trade asset management regional head for the NV business (part of the legacy ABN AMRO network). He has also held a variety of trade finance roles at London Forfaiting Company (a specialist trade finance provider) and subsequently in the trade credit distribution team at ABN AMRO.

Coles has a BSc in Management Studies from Royal Holloway, University of London and is a member of the IFA Technical Experts Committee (IFA ITEC).

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**Adrian Katz** has been the chief executive officer of Finacity Corporation since its inception in 2001. Finacity is focused on enhancing liquidity for trade receivables, with approximately US$75 billion of funding facilitated by his company in the past 12 months. He has been involved in the asset-backed finance industry for 29 years, working in both the investment banking and specialty financing industry. As an investment banker, Mr. Katz was a Managing Director at Smith Barney responsible for all issuance of new asset-backed and mortgage-backed securities. Prior to Smith Barney, Mr. Katz worked for Prudential Securities where he was a Managing Director and Co-Head of the Mortgage and Asset Capital Division. Mr. Katz was also the Chief Operating Officer, Chief Financial Officer, and Vice Chairman of AutoBond Acceptance Corporation, a consumer finance company. Mr. Katz graduated from Princeton University with a BSE in electrical engineering and computer science.

**Margrith Lütschg-Emmenegger** is the president of FIMBank Group. She has worked in Trade Finance with a special focus on Forfaiting and Factoring for most of her professional life, first with Barclays Bank, and then with Midland Bank Aval in London before joining West Merchant Bank (now WestLB AG), where she had Global responsibility for forfaiting and factoring within WestLB AG, which was a market leader in these products world-wide. Margrith joined FIMBank on 1 April 2003 as Executive Vice President, responsible for Business Development and was appointed to President on 1 September 2004.

Margrith was educated in Switzerland and was a member of the board of the Swiss Association of Forfaiters in 1983, and also founding Chairman of the Association of Forfaiters in the Americas in 1995. More recently in 1999, she co-founded the International Forfaiting Association (IFA) where she served as the Deputy Chairman until September 2003. In October 2013, Margrith was elected as Chairman of International Factors Group (IFG) where she had served as a Board Member since 2011.
She has written numerous articles on forfaiting including a book, published in 1998 by Euromoney, titled *A Guide to Forfaiting*. She has also been a regular speaker on the subject for many years travelling around the world teaching audiences the benefits of factoring and forfaiting.

**Paolo Provera** has held the role of general manager of the Milan Branch of ABC International Bank Plc. since January 2005. He has worked in the international finance market for almost 30 years through different banking experiences; he started with Banca Commerciale Italiana in London and then moved to the Milan Branch of Deutsche Bank AG where he concluded, in the early 80s, the first forfaiting transaction of the bank in Italy.

In 1988 he joined HVB in Milan as Operation Manager and then set up the Trade & Export Finance Desk with a focus on forfaiting and buyers credit transactions; during those years, he was member of the Board of Intrafin Ltd, Geneva. In 1993 he moved to Creditanstalt Bankverein AG Milan as General Manager and two years later he joined the Spanish Banco Sabadell S.A., where he was Managing Director of the Italian subsidiary and Regional Manager for Central & Eastern Europe. He is a Member of the Board of the Italian Association of Foreign Banks and a permanent Member of the Committee for Internationalization at ABI.

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Founded in 1829 and listed on the NYSE, Willis is one of the world’s largest insurance and reinsurance brokers with more than 17,000 associates located in over 400 offices in 130 countries. Through its subsidiaries, Willis develops and delivers professional insurance, reinsurance, risk management, financial and human resource consulting, and actuarial services to corporations, public entities, and institutions around the world. Willis Financial Solutions, a division of Willis Ltd, is the largest broker of political risk insurance with specialist hubs in London, Copenhagen, Singapore, Hong Kong, Buenos Aires, Sao Paolo, Los Angeles, Chicago, New York, and Paris.

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