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McKenzie.**

# Trade Finance Insight

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# Trade Finance Insight

Welcome to this edition of the Trade Finance Insight. In this edition we lead with an article that explores the efforts that are being made by development finance institutions to boost intra-African trade and how trade remains a key driver of Africa's social and economic development.

Secondly, following on from the article we included in our December edition examining digital trade transactions and whether trade finance is ready to swap its pen for a keyboard, we have a contribution from our Singapore office highlighting how it is at the forefront of a movement towards digitalised trade on both legal and technological fronts.

Our concluding article is a review of the recent High Court case of Lombard v Skyjets, which explored a number of interesting points that parties to a loan agreement should keep at the forefront of their minds when agreeing documentation.

Our regular Sanctions and Export Controls update page features some interesting reads on, amongst other things, the latest developments on economic sanctions against key sanctioned countries.

We also provide some insight into our sponsorship of the recent Loan Market Association Developing Markets Conference by sharing some of the key points from the snapshot interview provided by our partners Nick Tostivin and Luka Lightfoot.

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## Editor Highlights

- Over the last ten years, Africa's trade growth has been one of the worst amongst major global regions, mostly due to falling commodity prices, competition, inadequate foreign exchange liquidity, regulatory challenges and access to trade finance.
- Despite this persistently large trade finance gap, trade remains a key driver of Africa's social and economic development.
- As a result, development finance institutions, such as the African Development Bank and the African Export-Import Bank have sought to provide solutions to boost intra-Africa trade.

# 01 Africa: Trade finance and the efforts to boost intra-African trade

## In Depth

As stated by the President of the African Development Bank (AfDB), Akinwumi A. Adesina, "trade finance is an important instrument for influencing Africa's long-term economic development and structural transformation". According to a report by the AfDB and the African Export-Import Bank (Afrexim), *Trade Finance in Africa: Trends Over the Past Decade and Opportunities Ahead*, the region was one of the most integrated with the rest of the world in 2011. However, in the last decade, Africa's trade growth has been one of the worst among the major regions of the world. This is as a result of a number of factors including falling commodity prices, competition, inadequate foreign exchange liquidity, regulatory challenges and access to trade finance, as banks have gradually been scaling back activities from riskier markets.

The study showed that although trade finance remains a popular activity among banks in Africa, the participation rates continue to decrease, falling by 16% between 2013 and 2019. As a result, the trade finance gap in Africa averaged USD 91 billion for the period between 2011 to 2019. Furthermore, the trade uncertainty in Africa was exacerbated by the impact of the COVID-19 pandemic, which resulted in a twin supply-demand shock across the continent. Supply was affected by mass production shutdowns and supply chain blockages and demand for products from Africa decreased globally.

Despite the persistently large trade finance gap, trade remains a key driver of Africa's social and

economic development. As a result, banks such as the AfDB and Afrexim have sought to stay on top of market developments and provide solutions to boost intra-Africa trade.

On 1 January 2021, significant progress was made with the commencement of free trade under the African Continental Free Trade Area (AfCFTA) for African countries that had ratified the AfCFTA agreement and submitted their tariff offers, an initiative that had been in pipeline since 2012.

According to Baker McKenzie's research with Oxford Economics - *AfCFTA's USD3 Trillion Opportunity* - there are now unprecedented opportunities for Africa, and its trading partners, to reap economic benefits on the back of the possible improvements in transport infrastructure, reduction of red tape for cross-border dealings, renewed funding and improved liquidity. If successful, AfCFTA will provide the opportunity for African countries to diversify their economies, scale production capacity and widen the range of products made in Africa, in particular boosting the production of manufactured goods (and the potential for multinational companies to set up manufacturing plants in the continent). Closer integration of neighboring economies is a potential avenue for creating scale and competitiveness through domestic market enlargement, thereby promoting development, and boosting foreign investment through greater efficiency.

In addition to AfCFTA, the AfDB have been at the forefront of finding solutions to decrease the trade finance gap through its "High 5" strategic priorities to: (1) power and light up Africa, (2) feed Africa, (3) industrialize Africa, (4) integrate Africa, and (5) improve the quality of life of the people of Africa.

In July 2021, the AfDB, through its Financial Sector Development's Trade Finance operations, launched the transaction guarantee instrument as a means to increase trade finance on the continent. The AfDB recently noted that the new instrument would enable local financial institutions to build relationships with international banks, thereby increasing their network of global trade finance partners. It would also improve access to finance for African small and medium enterprises, for example.

According to the AfDB, the instrument will provide regional and international banks with up to 100% non-payment risk coverage, for trade transactions that are initiated by local banks in Africa. The guarantee will cover various trade finance instruments, including confirmed letters of credit, trade loans, irrevocable reimbursement undertakings, avalized bills and promissory notes.

In a recent a presentation given by the AfDB, it was noted that the transactional guarantee would assist in lowering the trade finance gap in Africa for the following reasons:

- It will help to attract correspondent banks to the region and increase headroom for African issuing banks

- It will support transactions for underserved groups and sub-regions with higher than usual rejection rates
- It will assist local issuing banks that are finding it challenging to compete due to lack of correspondent relationships, as well as provide opportunities for capacity building.

Further, efforts to increase intra-African trade received another boost on 9 February 2022 when AfCFTA and Afrexim signed an agreement relating to the management of the Base Fund of the AfCFTA Adjustment Fund. It is reported that the Fund will support African countries and the private sector to effectively participate in the new trading environment established under the AfCFTA.

#### The AfCFTA Adjustment Fund consists of the following:

- Base Fund - consisting of contributions from State Parties, grants and technical assistance funds to address tariff revenue losses as tariffs are progressively eliminated
- General Fund - to mobilize concessional funding
- Credit Fund - to mobilize commercial funding to support both the public and private sectors.
- The Base Fund has been launched to address the urgent needs of countries relating to tariff revenue losses and the transposition costs to enable them to implement the AfCFTA agreement. The General and Credit Funds will be launched in the coming months to address the needs of the private sector including small and medium enterprises, women and youth, according to Professor Benedict Oramah (President and Chairman of the Board of Directors of Afrexim). The Adjustment Fund follows the Pan African Payment

and Settlement System (PAPSS), which was launched on 13 January 2022 in Accra, Ghana. PAPSS is a centralized payment and settlement system for intra-African trade and commerce payments. Wamkele Mene, Secretary General of AfCFTA, stated that PAPSS was critical to the promotion of intra-African trade, as African countries would no longer need to use third party currencies during trade transactions among themselves.

- Since the establishment of AfCFTA, there have been significant developments for intra-African trade with the launch of Transaction Guarantee instrument, PAPSS and the Base Fund of the AfCFTA Adjustment Fund. As a result, Africa is slowly starting to show signs of revival. Increased investment, both within Africa and internationally, will ensure a continued decrease in the trade finance gap and a consistent boost to social and economic growth in Africa.



“Following the recent launch of a number of local supportive initiatives African trade finance is slowly starting to show signs of revival. Continued increased investment, both within Africa and internationally, will ensure a continued decrease in the trade finance gap.”

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## Editor Highlights

- Singapore is at the forefront of taking steps to digitalise trade on both legal and technological fronts.
- Legal reform, via amendments to the Electronic Transactions Act, aims to address legal barriers to the digitalisation of trade by adopting the UNCITRAL Model Law on Electronic Transferable Records.
- Complementing the legal reform is the launch of several digital trade initiatives, including a comprehensive electronic banker's guarantee and the development of a digital utility comprising of globally-accepted standards and frameworks that connects governments and businesses to a public blockchain, with further initiatives being piloted or set for launch.

# 02 Moving away from paper: Developments in the digitisation of trade in Singapore

International trade was worth around S\$1,160 billion to Singapore in 2021. <sup>1</sup>With a trade to GDP ratio of more than 300%, Singapore is one of the most market-oriented and open economies in the world, reflecting its position as a major transshipment hub. Several steps have been taken by Singapore in digitising trade on the legal and technological fronts, as Singapore seeks to deepen her position as a global trading hub. This article provides an overview of these recent developments and their implications on trade in Singapore.

### Problems from present trade practices and barriers to digitisation

The process of moving goods across borders remains a complex one, involving multiple participants such as logistics, insurance, finance, and customs. Despite the size and sophistication of this market, many of the processes and laws are based on trade practices hundreds of years old. Paper documents are still ubiquitous in trade, due to the special treatment and legal status of these physical documents ("Trade Documents"). Certain Trade Documents entitle the holder to claim performance of the obligation recorded in the document, and to transfer the right to claim performance of that obligation by transferring possession of the document. Examples include bills of exchange and bills of lading.

Present processes are costly and labour-intensive, with fees ranging from 0.75% to 1.5% of the transaction value. <sup>2</sup>These processes may also be vulnerable to fraud and double financing. Digitisation would bring substantial cost savings and the reduction of fraud but the industry faces two main problems in moving to a fully digital process.

1. On the legal front, the rules governing Trade Documents are primarily premised on the concept of possession, which is harder to establish with electronic records. There are also uncertainties as to when a digital Trade Document would be regarded in law as the equivalent of a paper Trade Document.
2. On the technological front, the adoption of new technology will be necessary to address the problems of electronic records being duplicated without authorisation.

As such, any jurisdiction which seeks to digitise trade will need to adopt a combination of legal and technological solutions to solve this problem.

The 2021 amendments to the Electronic Transactions Act 2010 ("ETA") aim to address the legal barriers to digitisation of trade, by adopting the UNCITRAL Model Law on Electronic

Transferable Records ("MLETR") in Singapore with certain modifications. The reforms enable the creation and use of electronic forms of transferable documents or instruments (for example, an electronic form of a bill of exchange or bill of lading), known as Electronic Transferable Records ("ETR").

The new sections 16F to 16I of the ETA set out specific requirements that an electronic record must meet, to be recognised as the electronic functional equivalent of a paper Trade Document. These functional equivalence rules apply to many aspects of traditional trade finance law such as writing, signature, transferable document or instrument, and possession.

Specifically, Section 16H of the ETA establishes the legal criterion for when an electronic record can be regarded at law as the functional equivalent of a paper transferable document or instrument:

1. The electronic record must contain the information required to be contained in the paper transferable document or instrument;
2. A reliable method is used to identify that electronic record as the authoritative electronic record constituting the ETR;

<sup>1</sup><https://www.singstat.gov.sg/modules/infographics/singapore-international-trade>

<sup>2</sup>Patrick Gleeson, 'What is the fee for a letter of credit?' (Zacks, 28 January 2019) <<https://finance.zacks.com/fee-letter-credit-10533.html>>

3. That reliable method renders the electronic record capable of being subject to control from the time it is created until it ceases to have any effect or validity; and
4. That reliable method must retain the integrity of the electronic record.

These requirements give effect to the singularity concept inherent in a paper Trade Document: in a paper-based world, an original paper Trade Document may be treated differently from its copies. Translated in the digital context, this requires reliable identification of the ETR that entitles the holder to request performance of the obligation indicated in it and avoids multiple claims.

As for Section 16I of the ETA, it establishes the legal criterion for when the possession of a Trade Document is met with respect to an ETR. Possession is established for an ETR if a reliable method is used to establish exclusive control of that ETR by a person, and to identify that person as the person in control. Where these requirements are met, the person in control of an ETR will be in the same legal position as one who is in possession of an equivalent paper Trade Document.

There are however some differences between the 2021 amendments to the ETA and the MLETR. The most significant divergence is how the ETA envisages an accreditation system for reliability, going beyond the MLETR. As with the MLETR, Section 16O(1) of the ETA sets out a general standard to assess the reliability of each of the methods referred to in the functional equivalence rules. In the event of a dispute, the Court will assess the reliability of the method in question, considering a non-exhaustive list of relevant circumstances. Going further however is section 16O(2) of the ETA which provides that, if an electronic transferable record is associated with an electronic transferrable record management system provided by an approved provider, the methods used by that management system will be presumed to be reliable.

The accreditation regime will be much welcomed in providing legal certainty for users of ETRs in trade. Finally, Singapore has pushed for the adoption of the MLETR by its key trading partners in the Digital Economy Agreements it has recently concluded, namely

- i. the Digital Economy Partnership Agreement (DEPA) with Chile and New Zealand<sup>3</sup>;
- ii. the Singapore-Australia Digital Economy Agreement (SADEA) (which entered into force on 8 December 2020)<sup>4</sup>
- iii. the United Kingdom-Singapore Digital Economy Agreement (UKSDEA)<sup>5</sup>; and
- iv. the Korea-Singapore Digital Partnership Agreement (KSDPA).

#### Digital trade initiatives in Singapore

Singapore has been paving the way for wider adoption of technology in trade, with the launch of several digital trade initiatives. These initiatives present businesses the opportunity to transform their existing processes for the digital future. In November 2020, Singapore Customs launched the first comprehensive electronic banker's guarantee ("eBG") on the Networked Trade Platform. The eBG programme allows the participating bank to issue and digitally send a banker's guarantee in electronic form directly to Singapore Customs on behalf of their clients, as soon as it is issued by the bank. It is also possible to extend the validity period of the eBG digitally via this programme, which the bank will similarly issue and digitally send the extension directly to Singapore Customs. The eBG programme streamlines the BG handling process, as clients will no longer have to physically collect the BG lodgment and extension from the issuing bank and send it to Singapore Customs. Participating banks of the eBG programme presently include BNP Paribas, DBS, HSBC, OCBC, SMBC and UOB.<sup>6</sup>

Riding on the reforms to the ETA, the Infocomm Media Development Authority ("IMDA") has also developed TradeTrust, a digital utility comprising of globally-accepted standards and frameworks that connects governments and businesses to a public blockchain. TradeTrust provides proof of authenticity, origin and ownership of digital documents used in trade finance. In November 2021, IMDA successfully concluded the world's first cross-border digital trade financing pilot which utilised TradeTrust, in collaboration with the Monetary Authority of Singapore, the Financial Services Regulatory Authority of Abu Dhabi Global Market, and commercial partners DBS Bank, Emirates NBD and Standard Chartered.<sup>7</sup> In the pilot, the commercial partners used TradeTrust to validate, review and transfer ownership of simulated electronic bills of lading between the United Arab Emirates and Singapore.<sup>8</sup>

Following the successes of earlier pilots across 14 countries and a global trial with more than 50 banks and corporates, Contour, a blockchain-based trade finance initiative, was established in Singapore in 2020. Contour is backed by: Bangkok Bank Public Company Limited, BNP Paribas SA, CTBC Venture Capital Co. Ltd, HSBC Investment Bank Holdings Limited, ING Bank N.V., Standard Chartered UK Holdings Limited, Skandinaviska Enskilda Banken AB (publ), Bain & Company, Inc., CryptoBLK Limited and R3 Limited.<sup>9</sup> Contour aims to create a decentralised global trade finance network that enables participants to collaborate seamlessly and securely in real time, on a common platform. Presently, Contour's network allows for the creation, exchange, approval and issuance of digital letters of credits. With Contour, the time required for presentation of documents for letters of credit can be reduced by up to 90%, from 10 days to under 24 hours.

<sup>10</sup> The Contour network spans over 50 countries and is interoperable with several leading trade networks and e-documentation providers, including Bolero, CargoX, essDOCS and WAVE BL.<sup>11</sup> Contour has recently opened an innovation hub in Singapore in 2021, where it will collaborate closely with its growing network of banks and

<sup>3</sup> Article 2.3.2 of the DEPA states that "Each Party shall endeavour to adopt the UNCITRAL Model Law on Electronic Transferable Records (2017)".

<sup>4</sup> Art 8.4 of the SADEA states "The Parties recognise the importance of developing mechanisms to facilitate the use of electronic transferrable records. To this end, in developing such mechanisms, the Parties shall endeavour to take into account, as appropriate, relevant model legislative texts developed and adopted by international bodies, such as the UNCITRAL Model Law on Electronic Transferable Records (2017).

partners, to develop new digital trade finance solutions.<sup>12</sup> With more digital trade initiatives being piloted and launched, market participants will have the opportunity to become more familiar with the new technologies and how they operate. We expect businesses to become more confident in the use of new technology and will increasingly incorporate them into their trade practices.

### Conclusion

Singapore has positioned itself to be amongst the first to ride the digital wave, by reforming existing laws to facilitate digital trade, as well as encouraging the development of novel technological solutions. As global trade becomes increasingly digital, there will be opportunities for businesses to digitally transform their processes and reap the benefits of an approach which is faster, more cost effective and which reduces the risk of fraud.



“Singapore has positioned itself to be amongst the first to ride the digital wave, by reforming existing laws to facilitate digital trade, as well as encouraging the development of novel technological solutions.”

**Kenneth Chuah, Principal**

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<sup>5</sup> Art 8.60.3 of the UKSDEA states “The Parties recognise the importance of facilitating the use of electronic transferable records. To this end, each Party shall endeavour to establish a legal framework governing electronic transferable records consistent with the UNCITRAL Model Law on Electronic Transferable Records 2017”.

<sup>6</sup> <https://www.customs.gov.sg/businesses/new-traders-and-registration-services/registration-services/security-lodgement/electronic-bankers-guarantee-programme>

<sup>7</sup> <https://www.imda.gov.sg/news-and-events/Media-Room/Media-Releases/2021/WorlDs-first-digital-trade-financing-pilot-between-MLETR-harmonised-jurisdictions>

<sup>8</sup> <https://www.imda.gov.sg/news-and-events/Media-Room/Media-Releases/2021/WorlDs-first-digital-trade-financing-pilot-between-MLETR-harmonised-jurisdictions>

<sup>9</sup> <https://contour.network/press-release/contour-launches-following-success-of-bank-backed-project-to-digitise-trade-finance/>

<sup>10</sup> <https://contour.network/trade-finance-solutions/#technology>

<sup>11</sup> <https://contour.network/>

<sup>12</sup> <https://fintechnews.sg/36229/blockchain/standard-chartered-invests-further-in-blockchain-trade-finance-platform-contour/>



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## Editor Highlights

- Remedying an event of default will not in itself remove a lender's right to terminate and accelerate a loan unless this is expressly legislated for in the drafting.
- When seeking to rely upon no waiver language and/or a reservation of rights statement ensure your conduct and actions are in line with those statements.
- Check and ensure that all stated requirements with respect to notices are strictly and accurately adhered to.
- Where seeking to rely upon a material adverse change provision or qualifier that includes reference to "in the opinion of the lender" it is important to be able to provide evidence and reasoning supporting that lender's opinion.

# 03 Case Review - Lombard North Central Plc v European Skyjets Ltd

## Why is this case of interest?

The case considered whether or not a lender had validly terminated a loan agreement, accelerated the loan provided thereunder and was entitled to enforce against the security provided in respect thereof. The English High Court ultimately decided in favour of the lender but in doing so explored a number of interesting points that all parties to loan agreements would be wise to keep in mind when drafting documentation, including:

- a lender's right to terminate a loan agreement following a payment default;
- whether the default must be 'continuing' at the date of purported termination;
- the impact of positive conduct by a lender upon its ability to rely upon 'no waiver on failure to act' and reservation of rights wording;
- the importance of strictly complying with any express notice conditions when seeking to exercise a right; and
- the significance of the drafting of a material adverse change event of default.

## Facts in brief

Lombard North Central Plc ("**Lombard**") made a loan to European Skyjets Limited ("**Skyjets**") for the purpose of purchasing an aircraft. In return Skyjets granted Lombard a first priority charge over the aircraft to secure the loan and agreed to repay the loan in regular monthly instalments. Skyjets defaulted on several repayment instalments and ultimately Lombard accelerated the loan and enforced its security against the aircraft but not before engaging in protracted communications and discussions with Skyjets to try to reach various arrangements that are discussed in more detail below as pertinent to the issues highlighted.

## Practical drafting considerations

*When does a lender's right to terminate a loan agreement following a payment default occur and must a default be 'continuing' at the date of purported termination*

The loan agreement in question allowed the lender to cancel and accelerate the loan "at any time after the occurrence of an Event of Default". There was no qualification wording on the non-payment event of default statement, e.g. there was no grace period

that needed to expire nor any requirement that the event of default be 'continuing' at the time that the lender chose to accelerate.

The borrower had repeatedly failed to make payments but had then at subsequent times paid its arrears, so the question arose whether it was necessary for the payment default to be continuing at the time the lender gave notice of termination and acceleration. The judge concluded that "as a matter of construction, [the relevant provision] does not require the default to be continuing at the date the notice...is served". The words "at any time" were considered to be sufficiently clear and there were other provisions within the loan agreement that were, comparably, expressly conditional upon the continuation of a particular event of default.

When drafting from a borrower perspective consideration should be giving to the inclusion of the types of qualifications mentioned above, "as unless expressly drafted for," remedying an event of default will not in itself remove the lender's right to terminate and accelerate the loan.

*Can positive actions mean that a lender waives its right to terminate, regardless of “no waiver of rights on failure to act wording” being included in the loan documentation?*

The loan agreement included fairly standard ‘non-waiver language’ stating “No failure and no delay in exercising on the part of the Lender..of any right, power or privilege hereunder shall operate as a waiver thereof”.

However, the judge found that a waiver by the lender of its right to terminate on the grounds of the non-payment event of default had arisen by its conduct in the form of certain positive statements and assertions it had made rather than there being simply a failure to or delay in exercising its rights. In particular the lender sent the borrower communications offering additional time to settle the arrears, set out the default interest that was payable and applied an additional late payment fee that was not otherwise provided for in the original loan agreement.

Each written communication documenting these terms was also accompanied by a statement of reservation rights. Such reservation of rights though was construed by the judge alongside the lender’s offer of additional time, subject to an additional late payment fee, with an understanding that the lender would not enforce its termination rights if the borrower accepted the offer and complied with the terms. However, In the circumstances the judge cited a principle he had set out in a previous recent case that it is “not invariably the case that acting under a reservation of rights would prevent an affirmatory act” and was “satisfied that this is also the case for waiver which is also a species of election”. Note that the judge did express the view (obiter) that the reservation of rights may have been considered effective if the offer had not been complied with by the borrower.

The note of warning to lenders wishing to rely upon no waiver wording and/or a reservation of rights statement is ensure that your conduct and actions are in line with those statements.

*The importance of strictly complying with any notice conditions when seeking to exercise a right*

The notice conditions to be fulfilled by the lender in this instance were fairly basic, i.e. the notice must be sent after the event of default had occurred and it must cancel the facility and require the borrower immediately to repay the loan; and the related security document also simply stated that any time after the occurrence of an event of default the lender may by written notice to the borrower declare the security enforceable.

Consequently, even though the lender cited the incorrect event of default on which it was cancelling and accelerating its loan, the judge concluded that this did not invalidate the notice as there were no express conditions requiring the lender to state the event of default(s) on which it relied.

This was a simple matter of construction though in this instance and the point to highlight for lenders is that when preparing a cancellation and acceleration notice it is important to carefully check the terms of the loan agreement to ensure that the notice strictly and accurately satisfies any stated requirements.

*The significance of the drafting of a material adverse change event of default*

Although the court concluded that the lender could not accelerate its loan on the grounds of the non-payment

event default (for reasons touched on above), it explored potential other events of default under the loan agreement, including the material adverse change (MAC) event of default.

This clause stated that “in the opinion of the Lender, a material adverse change occurs in the business, assets, condition, operations or prospects of any Group Company or any Credit Support Provider”. The judge was convinced that the lender at the time of serving the notice had formed the honest and rational belief that the financial position of the borrower had materially worsened since it entered into the loan agreement and this was sufficient, on the construction of the wording (absent any drafting to the contrary) of the MAC, to find that the event of default had occurred.

To highlight the point further, it was not necessary to prove that the financial position of the borrower had actually changed it was enough that the lender had formed that belief, although note that even though the wording of the agreement did not say in the ‘reasonable’ opinion of the lender the court still required the opinion to be honest and rational following the case of *Cukurova Finance v Alfa Telecom Turkey Ltd* [2016] AC 932.

In assessing this issue, the court reviewed the evidence of the lender’s decision making process in some detail. As such, where lenders are seeking to rely on such clauses, it will be important to be able to evidence the decision made as to whether the material adverse change standard has been met and the reasoning behind that decision, in order to be able to show that the opinion was honestly held and rational.

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# Baker McKenzie partners with the LMA

**Baker McKenzie was delighted to act again as the platinum sponsor for the Loan Market Association's (LMA) Developing Markets Conference that took place in April 'in-person' for the first time since 2019. Bringing together experts in their fields across the EMEA developing markets, this conference enabled participants to discuss and understand the impact of the Covid-19 pandemic, as well as, the underlying challenges and opportunities in these markets.**

Baker McKenzie showcased areas of our expertise by chairing panel sessions on 1). The developing markets loan syndication in a post Covid world and 2). ESG and sustainable finance.

Below are some of the key takeaways from our panel chairs from the first session.

## Insights and key takeaways

- The market has come back from a turbulent 2021 where loan volumes were down. There is a sense of cautious optimism and resilience for 2022.
- Challenges from panel and discussions - geopolitical challenges at the moment, in press. Developing markets - these geopolitical challenges translate into more pressure for the need for working capital to finance supply chains in Africa. That could be characterised as a challenge - the need for that financing coming through. Things cost more. There is tension where we have a need for funding / finance and more liquidity, but the cost of funds is increasing - it's becoming more expensive and lenders are unable to provide the capital resource required. This could turn out to be an opportunity for other market players.
- There is inherent tension between the need to finance the transaction pulling in one direction, and the cost of funds pulling in the other direction and how to reconcile - this is a hot topic of conversation.
- Specific opportunities we're seeing include a rise in the multilaterals providing funding and liquidity, also export agencies stepping up to the plate on account of cyclical economic climate. We're seeing what historically was a bond-like market with the sovereigns looking at loan products and debt products with multilaterals and export credit agencies where their products are effectively covering and supporting commercial lenders being able to step up to the plate as well. We're seeing the use of a lot of the ECA and multilateral platforms providing the need for finance. The number of instructions at Baker McKenzie on the ECA side has increased.
- Trends - Egypt has been a jurisdiction of focus, as well as francophone Africa countries.
- There has been a rise of green / social loans and sustainability linked loans. The difference is one of proceeds and use of proceeds, the other side is incentivisation for a more

# Baker McKenzie partners with the LMA

sustainable future around corporate governance piece of certain entities. This is going in the right direction - we need to address given climate change concerns and issues we're facing. Companies are demonstrating there is an inherent economic benefit in being more sustainable and having more green and social projects they are looking to fund.

- We are hearing industry sectors - interest in renewables, others include manufacturing and things that play into other industry sectors like transport and infrastructure. We see that in a lot of deals we do. Addressing the infrastructure gap in Africa which is a continuing trend we are seeing right now.

## ABOUT THE LMA:

The LMA's key objective is improving liquidity, efficiency and transparency in the primary and secondary syndicated loan markets in Europe, the Middle East and Africa (EMEA). By establishing sound, widely accepted market practice, they seek to promote the syndicated loan as one of the key debt products available to borrowers across the region.

As the authoritative voice of the syndicated loan market in EMEA, the LMA works with lenders, law firms, borrowers and regulators to educate the market about the benefits of the syndicated loan product, and to remove barriers to entry for new participants.

Since the establishment of the LMA in 1996, their membership has grown steadily and currently stands at over 760 organisations covering 67 banks, institutional investors, law firms, service providers and rating agencies.

They work in five main areas: documentation, market practice and guidance, loan operations, education, and dialogue with legislators and regulators.



"It's very interesting to see sovereigns and sub-sovereigns taking debt on balance sheet, moving away from more project finance type structures to export credit agency backed structures"

**Nick Tostivin, Partner**

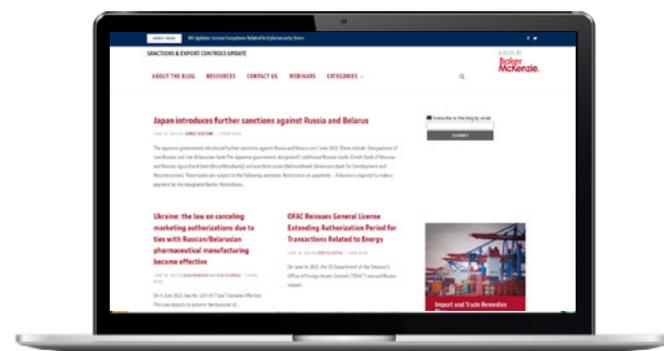


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# Sanctions & Export Controls Update



Baker McKenzie's Sanctions & Export Controls Update Blog aims to provide you with real time news and updates in respect of US and EU economic sanctions against key sanctioned countries, such as Russia and Iran. We will also keep you informed of developments in other countries, including Australia, Canada and Japan. Contributors to the blog are made up of comprise partners and associates from our market-leading International Trade Group. Here is a sample of our recent blog posts. Please [click here](#) for the full range.



[Ukraine: the law on canceling marketing authorizations due to ties with Russian/Belarusian pharmaceutical manufacturing became effective](#)



[OFAC Reissues General License Extending Authorization Period for Transactions Related to Energy](#)



[2022 Virtual Global Trade Conference – July 20-21](#)



[BIS Updates License Exceptions Related to Cybersecurity Items](#)



[UK: Important changes to OFSI's enforcement powers come into force from 15 June 2022](#)



[Biden Administration Relaxes Certain Limited Cuban Sanctions](#)

# Additional Insights



## [2022: International Trade Developments in a Challenging New World](#)

Join us for our 19th Annual Global Trade and Supply Chain Webinar Series which includes the latest international trade developments. This year, in a variety of sessions, our panels of experts will cover the key developments and latest trends on sanctions, export controls and Foreign Investment Review regimes. On the inbound side, there will be sessions on opportunities and compliance challenges arising out of FTAs, hot topics on Customs valuation, trends in customs audits and supply chain compliance challenges and logistics.

Please register for upcoming webinars [here](#).



## [Import and Trade Remedies Blog](#)

Baker McKenzie's Import and Trade Remedies blog (formerly the International Trade Compliance Update) provides an overview of the latest trends and developments across customs programs, policies and procedures, and trade remedies, including from the WTO and WCO. For other trade developments, please visit our other [international trade blogs](#).



## [Global Supply Chain](#)

We bring you supply chain compliance insights from practitioners around the globe to offer our analysis of emerging legal trends and hot topics in supply chain risk management. In addition to providing the latest updates on global and industry-specific supply chain risks, this blog has been created to flag pitfalls and navigate the complexities of supply chain legal regimes, as well as advise on opportunities, ethical considerations and best practices for organizations and in-house counsel.



## [Foreign Investment and National Security Blog](#)

A growing number of jurisdictions have now introduced national laws enabling the screening and review of incoming foreign investments, often with a focus on specific sectors perceived to be particularly sensitive. This blog aims to provide you with the latest news and updates in respect of foreign investment review and national security trends and developments, keeping you up-to-date and informed about the legal and business risks impacting your next transaction.

# Awards



## **Best Law Firm for Export Finance**

Global Trade Review for 2022



## **Deal of the Year – Aspen Group Transaction Best Deal – Tanzania Standard Gauge Railway**

Global Trade Review 2021



## **Africa Deal of the Year – Tanzania Standard Gauge Railway**

Asset Triple A Infrastructure Awards 2021



## **Banking & Finance Legal Advisor of the Year**

GFC's Bonds, Loans and Sukuk Awards 2021



## **Best Law Firm in Africa - EMEA Finance**

African Banking Awards 2021



## **Sub-Saharan African ECA-backed Deal of the Year - Tanzania Standard Gauge Railway**

TXF 2020



## **Deal of the Year - Municipality of Istanbul waste-to- energy plant Deal of the Year - Oman Ministry of Finance hospitals**

Global Trade Review Best Deals 2020



## **Deal of the year: Project finance, IFC / City of Belgrade waste management PPP**

IFLR Europe Awards 2020



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