

the CAC 40 Index, Bankers Trust was authorised, in February 1989, to act as book runner on the basis that the warrants represented a basket of 40 French shares. Another first for Bankers Trust was its issue of Eurofranc covered warrants on Michelin shares in November 1989. Again, because the underlying instruments were shares, the warrants were treated as equity and Bankers Trust ran the books.

As far as Eurofranc debt issues are concerned, a liberalisation measure has, since 1987, allowed French subsidiaries of foreign banks to lead manage such issues. The fact that to date no subsidiary of a foreign bank has acted as lead manager of a Eurofranc issue is, however, sufficient proof that the 1987 measure remains theoretical. The main condition officially attached to the authorisation is reciprocity, ie reciprocity for French banks in respect of issues in the currency of the country of the foreign bank in question. Although it is customary to point out that the Glass Steagall Act (or what is left of it) creates a specific problem for US or Japanese banks, it is evident that this is only part of the story, since one fails to see what difficulties are being experienced by banks of other nationalities.

Although this has been the position so far, it seems that the French authorities may well — in the not too distant future — give more substance to the authorisation received by foreign banks to lead manage

Eurofranc deals. Such a move would serve to further internationalise the Paris market, while at the same time improving the position of French banks abroad.

Although the Eurofranc market has opened up dramatically over the last three years, it seems clear that the intention of the French Treasury is to achieve a free market overseen by the vigilant Comité de l'Eurofranc which is chaired by an official of the Treasury. Although the authorities insist that there is no desire to exclude foreign banks, the Comité is comprised of only the first 10 French banks most active in the Eurofranc market. The Comité normally meets on a monthly basis to discuss forthcoming issues and any proposed development in the market. The Comité is truly a club whose members are obliged to keep its discussions confidential and whose rules have no force of law, although it is inconceivable that participants in the market could ignore them. The beauty of it is that until very recently all those rules remained strictly oral. They have now been written but still remain unpublished.

Whatever the form of these rules, no one could deny the almost regal right of the French authorities to insist upon the repatriation to Paris of Eurofranc issues. But what is perplexing is that the same authorities are moving in two different, if not opposite, directions: repatriation of the Eurofranc market on the one hand, and liberalisation on the other. □

Eximbank: Master Agreements set to exclude lawyers?

Steven E Hendrix of Salas Toro & Hendrix, Caracas, and formerly Counsel to Eximbank reviews the new initiatives in medium-term, fixed-rate financing, the Master Funding and Master Guarantee Agreements

Over the past year, the Export-Import Bank of the United States (Eximbank), the US Government's export credit agency, has taken a number of steps to enhance the ability of banks to fund medium-term exports. Under Eximbank's new programmes, any responsible lending institution can apply for a 'Master Funding Agreement' which establishes procedures for obtaining fixed-rate funding for US exports. Lenders can also apply for a 'Master Guarantee Agreement' which sets out procedures for Lenders to obtain the Eximbank guarantee on numerous individual deals. These agreements are designed to streamline the documentation process, increase documentation comprehension and cut costs, while continuing to address complaints associated with prior Eximbank agreements.

Any responsible financial lending institution can apply for a Master Funding Agreement with Eximbank. Under this documentation, Eximbank lends its funds at a fixed rate to the lender (intermediary lender), who on-lends the funds to a foreign purchaser to buy US goods or services. The Master Funding Agreement covers transactions world-wide, thus allowing lenders to become more familiar with Eximbank requirements while standardising the procedures.

Individual loans are structured as stand-by commitments under the framework Master Agreement. In other words, many individual credits are funded using the same procedures outlined in the Master Agreement. Generally speaking, individual deals placed under these new Master Agreements can be for amounts of up to US\$10m with a repayment term of seven years or less. Prior to any individual deal being placed under the Master Funding Agreement, the lender must first obtain an Eximbank 'Approval'. All parties, however, should understand that merely having a Master Funding Agreement does not oblige Eximbank to issue any Approvals (previously known as 'final commitments' under earlier Eximbank documentation).

The terms of the Master Funding Agreement are all set out in about 20 pages, plus annexes. Because the agreement requires individual approvals for each transaction under the agreement, it is not a line of credit in the pure sense. There is also a wide range of products and markets eligible for acceptance under the agreement.

Other features now included allow the lender to finance the exposure fee if it so desires. Pre-funding by Eximbank is also now possible for the first time,

allowing lenders to receive the funds from Eximbank before lending their own funds to the foreign entity. Further, the intermediary lender may cancel the agreement at any time. There is no obligation to use the Agreement. Finally, no lending 'cap' is included in the Master Funding Agreement (either in terms of the number of transactions approved, or in the aggregate amount of the transactions). The relevant rates of interest and the term for each transaction are specified in the individual approval. Thus, under the Master Agreement approach, the Eximbank Approval carries more importance than earlier Eximbank 'preliminary' and 'final' Commitments.

In certain instances, banks can now transfer approved individual credits to other financial institutions without any mandatory pre-payment. Previously, Eximbank had insisted that any time the lender 'came into funds', it in turn pre-pay Eximbank. Now, if certain formalities are closely followed, the lender is no longer held to a pre-payment in every case. In general, however, the usual mandatory pre-

payment provisions from the older Eximbank programmes have been carried forward.

Like the Master Funding Agreement, the Master Guarantee Agreement is a standard form which states the terms, conditions and procedures for handling each approved transaction. Thus, once a bank has signed a Master Guarantee Agreement and that agreement is in place, then that bank can process Eximbank guarantees with a minimum of documentation. Also like the Master Funding Agreement, the Master Guarantee Agreement can be cancelled at any time, carries no maximum guarantee 'cap' for transactions (either in number of transactions or in the aggregate amount of all the transactions), and involves no commitment by the lender to continue to use the framework agreement.

There are two ways to structure a guaranteed transaction under the Master Guarantee Agreement. The first method is known as a 'Supplier Credit'. The second method is known as a 'Buyer Credit'. Under both methods, a number of standard provisions apply.

Standard terms

Whether the exporter or the bank decides to structure a deal as a buyer or a supplier credit, there are a number of standard features the parties can expect.

Claim Payment: First, Eximbank promises to pay a claim within five days of receiving a filing for a claim. The guaranteed party can submit its claim as soon as 30 days after an event of default. A claim must be submitted within 150 days of default if the guaranteed party wishes to maintain Eximbank's guarantee. If a claim is not submitted within 150 days of a default, then the guaranteed party would forfeit its guarantee with respect to that instalment. Subsequent instalments, however, would still be covered.

Second, in the event that Eximbank has to pay a claim, Eximbank would cover the instalment in default plus interest at the guaranteed interest rate specified in the Guarantee Agreement. Eximbank would also then be obliged to pay each subsequent instalment as it became due. In exchange, the guaranteed party would assign Eximbank its underlying loan agreement with the foreign debtor.

Third, on the smaller transactions where the foreign purchaser is not a 'full faith and credit' entity (primarily sovereign governments), Eximbank requires that someone provide Eximbank with a two per cent reimbursement agreement, sometimes known as a counter guarantee. This reimbursement agreement covers all transactions in which there is commercial risk. Transactions involving full faith and credit entities are deemed to have no commercial risk. The purpose of the reimbursement agreement is to create some form of risk participation in the deal. Whenever Eximbank has to pay a claim for commercial (as opposed to politi-

cal) reasons, Eximbank requires that it be paid two per cent of the loss. No reimbursement is required when the loss is for political reasons.

The Reimbursement Guarantee: Under Eximbank guarantees, Eximbank provides for 100 per cent cover. Any party can provide Eximbank with any required reimbursement agreement, including the exporter or the bank. The guaranteed party does not have to be the same party that provides the reimbursement agreement. And Eximbank's payment of a claim will not be conditioned on receipt of the reimbursement amount, unless both the guaranteed party and the party providing the reimbursement are the same entity. In that case, Eximbank would simply pay the claim at the rate of 98 per cent full cover minus the reimbursement amount.

Eximbank can now place a guarantee legend on a note prior to disbursement so long as disbursement comes within five days of receipt of the guaranteed note. This may become a quite popular feature of this agreement since lenders can now be guaranteed prior to disbursement. Previously, the lender was non-guaranteed in between the time it disbursed and the time Eximbank placed its guarantee on the note. If transactions went wrong prior to Eximbank's endorsement, Eximbank would refuse to guarantee the obligation.

The list of eligible goods has remained the same as in Eximbank's other programmes. Again, this is an area where obtaining a preliminary or final commitment, or Eximbank Approval can become important, especially if any non-US content is involved, or there is any military purchaser involved, or if the goods could potentially have any military use.

Those familiar with Eximbank's old programmes (the term 'old programmes' at Eximbank refers to programmes in place prior to May 1, 1987) will recognise supplier credits as the old 'bank guarantee programme'. Another name for it is a 'note purchase' arrangement. Traditionally, supplier credits have been for amounts of less than US\$5m. Under the supplier credit structure, the foreign purchaser issues a promissory note to the exporter. The exporter in turn sells the note to the bank. The note carries Eximbank's guarantee on a guarantee legend.

Under supplier credits, the exporter must make several warranties. First, the exporter warrants that the promissory note is valid and enforceable. Second, the exporter warrants that the goods shipped were in conformity with the underlying contract. If the foreign purchaser alleges that there is a problem with the goods, Eximbank is held blameless. Thus, any subsequent failure to pay for the goods because of a problem with the goods would not be covered by Eximbank.

Supplier credits have one main advantage. The exporter has no documentation risk. The exporter gets the Eximbank guarantee and a promissory note. The exporter will get paid regardless so long as the goods shipped are conforming and its warranties remain valid.

The documentation of buyer credits will vary depending on the size of the transaction. Buyer credits are simply credits issued by a financial institution directly in favour of the foreign purchaser. The promissory notes run to the bank, not the exporter.

For transactions of more than US\$10m, Eximbank requires banks to use an Eximbank credit agreement. This agreement will be very similar to the documentation required for a direct credit loan from Eximbank. A copy of the standard form credit agreement can be obtained from Eximbank's Marketing Division, or by a Freedom of Information Request to the Office of the

General Counsel at Eximbank. It should be noted that Eximbank will examine and negotiate the credit agreement with the same scrutiny it would apply to one of its own direct credits.

For transactions of less than US\$10m, the commercial lender may or may not have a credit agreement. This decision is left to the lender. If a credit agreement is not used, the transaction will be evidenced by just a promissory note. If a bank prefers to have a credit agreement, then the bank may have one. However, it is very important to realise that if the bank does insist on a credit agreement, the bank will have to assume the documentation risk for the transaction. Eximbank will not review this documentation. Thus, this method of documentation may be much less satisfactory to the banks than a supplier credit.

Saving time and money

There are many reasons why commercial lenders should give serious consideration to the new Master Agreements from Eximbank. Banks need only review the documentation requirements once — not every time they have a transaction. This avoids further legal fees, and will in fact cut the lawyers out of most of the process after an initial review of the Master Agreement documentation that the lender must sign.

With the terms of Eximbank's financing now fixed, there is greater certainty for the bank better to market its own package, knowing what it can and cannot expect from Eximbank. The application and approval process becomes routine, rather than specialised, promoting greater efficiency in processing both at the bank and Eximbank. In addition, no time is spent waiting for Eximbank's lawyers to send the agreement after an individual approval — the bank already has the document and can avoid this delay. This in turn means there is a lot less paper floating around in a lot less time! □

For general information on any Eximbank programme, lenders, exporters, foreign purchasers, or any interested party, can contact the Marketing Department at Eximbank. To obtain specific information on setting up any Master Agreement, lenders should contact the appropriate geographical Area Division within Eximbank. Prior to issuing either a Master Funding or a Master Guarantee Agreement, Eximbank will request a number of financial reports from the lender, and Eximbank's Board of Directors must approve each new participant on an individual basis. However, individual loan officers within Eximbank should be able to help commercial lenders decide whether an application for these agreements would be appropriate in any given situation.

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