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5 Common Questions About Financing Receivables and Payables Through a Platform

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Who Are We?

- ***Global Receivables and Supply Chain Finance Team***
 - Over 50 professionals across the firm focused on receivables and supply chain finance
 - Coverage across Europe, Asia and the Americas, including the US, the UK, France, Germany, Hong Kong, Singapore, Brazil and Mexico
 - We are the go-to law firm for a number of the world's leading participants in the supply chain finance market.

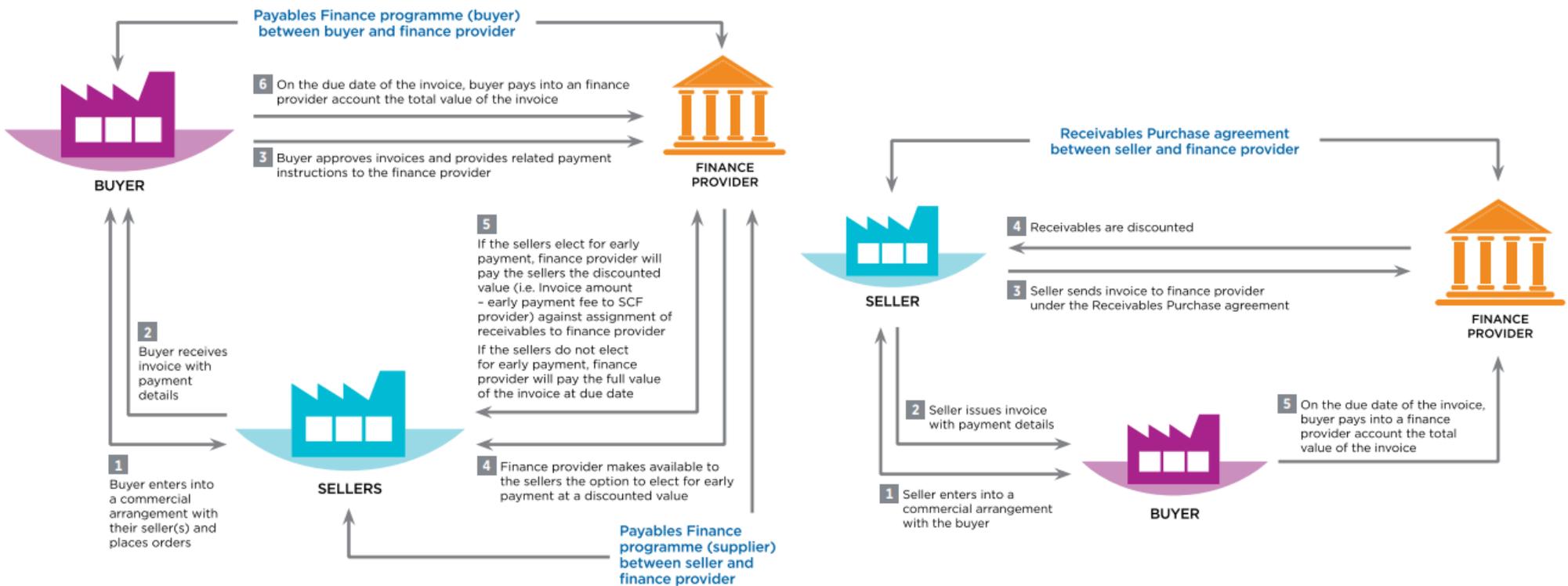


Welcome To Our Webinar Series!

- ***Supply Chain and Working Capital Finance Webinars***

- 9 webinars from July to November (repeated twice daily)
- Previous webinar: 5 August – Capital Markets/Alternative Investors; Investing in the Trade Receivable Asset Class
- Next webinars:
 - 2 September - 5 Most Common Questions About Financing Foreign Receivables; Issues Beyond Simple Perfection, Priority and Enforcement
 - Remaining program schedule available in Appendix to this presentation
- We will have our normal live programs in New York, London, Singapore and Hong Kong in 2021 – circumstances permitting, early in the year.

Context: Buyer-Led and Seller-Led Supply Chain Finance Structures



Source: Standard Definitions for Techniques of Supply Chain Finance 4

The background of the slide features a close-up, slightly blurred image of several Euro banknotes. The focus is on the intricate patterns and colors of the currency, including the portrait of a man on a note. A vertical orange bar is positioned on the left side of the slide, partially overlapping the banknotes.

What do we mean by Platforms?

- Online portals pursuant to which Payables Finance and Receivables Discounting Programmes can be operated.
- Can include:
 - platforms where Finance Providers can fund receivables of Sellers directly without the Platform Administrator being involved in the payment flow; and
 - platforms where the Platform Administrator, or a special purpose finance company controlled by the Platform Administrator, funds receivables directly for further distribution to various Finance Providers.



Q1: What is the Finance Provider acquiring? (1 of 3)

- **Answer: It depends on the structure of the Platform Administrator's offering**

- Is there a direct sale of receivables from the Seller to the Finance Provider?
 - For a Payables Finance Programme, are there any related rights under the buyer agreement also directly assigned to the Finance Provider?
- or
- Is there an initial sale of receivables from the Seller to the Platform Administrator, or to a Platform Administrator sponsored special purpose company?
 - Subsequent sale, transfer or assignment of receivables to the Finance Provider?
 - Transfer of beneficial and economic interests/rights via Participation Agreement?
 - Notes or other instruments?
 - Securities law implications?



Q1: What is the Finance Provider acquiring? (2 of 3)

- Is this a Negotiable Instrument based Platform?
 - Bills of exchange and Drafts in physical form, or electronic/digital format?
 - If so, join us for a detailed discussion on September 16th
- No receivable at all?
 - Extinguishment
 - Subrogation

A background image showing several Euro banknotes, including a 100 Euro note and a 20 Euro note, with a blue and yellow vertical bar on the left side.

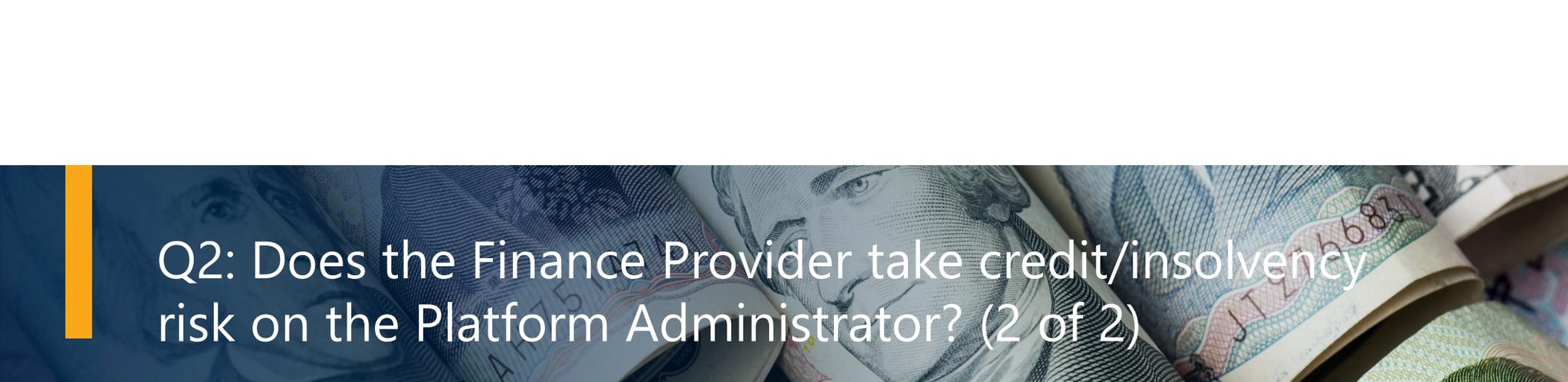
Q1: What is the Finance Provider acquiring? (3 of 3)

- Does the Finance Provider have 100% interest in specific receivables? Or does it share of a partial interest in specific receivables, or a share of a pool of receivables?
 - Cash is fungible
 - Waterfall of payments
- Enforcement against Buyer and Seller?
 - Privity of contract?
 - Elevation Rights?
 - Trigger Events?



Q2: Does the Finance Provider take credit/insolvency risk on the Platform Administrator? (1 of 2)

- **Answer: Possibly, depending on the structure of the offering**
- Does the Finance Provider have a direct ownership interest in the receivable?
- or
- Are payments made directly to/from the Finance Provider, or is the Platform Administrator an intermediary for payments?
 - Trust account vs. non-trust account.
 - Security interest?
 - Commingled account (including fees) vs. segregated account
 - Back-up servicer/oversight?
 - Frequency of sweeps



Q2: Does the Finance Provider take credit/insolvency risk on the Platform Administrator? (2 of 2)

- “Bankruptcy Remote SPE”
 - Extremely difficult to achieve in supply chain finance with aggregation entities.
 - In offerings, where possible, true sale/true participation is important.
- Worst Case Scenario:
 - Unsecured creditor of Platform Administrator or SPE



Q3: What level of diligence will the Platform Administrator perform on Sellers and Buyers?

- **Answer: It will vary greatly depending on the Platform**

- Financial status of Sellers?
- Corporate and lien searches?
- Registrations (UCC filings)?
- Commercial contract diligence?
- Risk based models?
- Opinions?
 - True sale?
 - Reliance?
- Cross-border issues
 - Diligence costs
 - Asset level diligence for pooled structures is difficult and expensive
 - Licensing/Regulation
 - Taxes



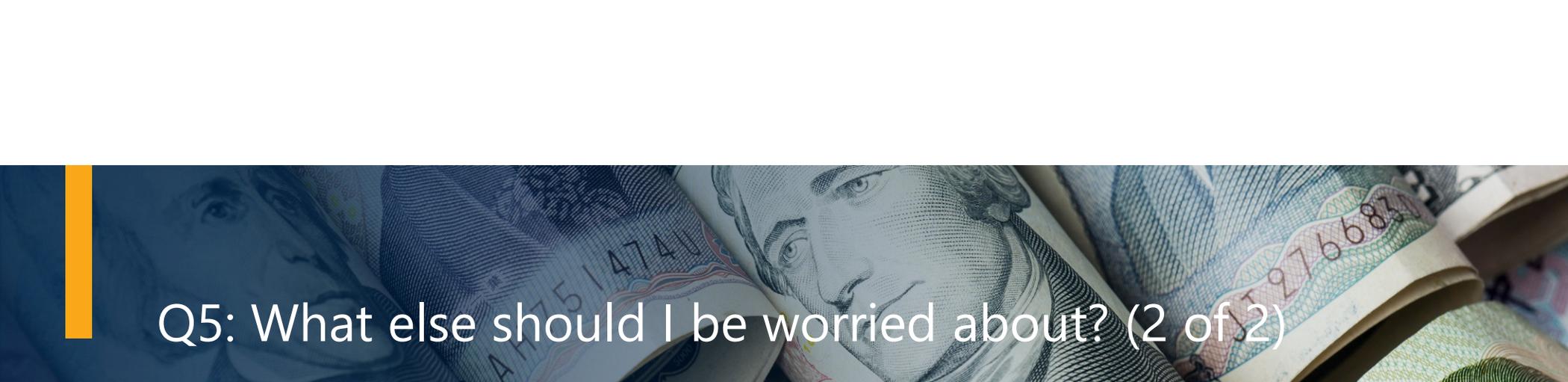
Q4: What if the Platform fails or is the subject of a cyber attack – is the Finance Provider protected?

- **Answer: The Finance Provider will typically take some IT risk**
 - Who holds the documents and records related to the receivables?
 - Business continuity policy?
 - Can the receivables be serviced manually in the interim?
 - Reporting, reconciliation, cash management
 - Does the Platform Administrator's terms of use limit its liability?
 - Insurance

A background image showing several Euro banknotes, including a 10 Euro note and a 20 Euro note, with the faces of the deceased monarchs visible. The notes are slightly out of focus and overlap each other.

Q5: What else should I be worried about? (1 of 2)

- Negotiation of Platform documents?
 - Typically limited flexibility
 - Platform Administrator limitation of liability?
 - Structural limitations to effective protection?
 - Can the Platform Administrator be replaced? Is that practical?
 - Does the Platform Administrator have extensive rights to act in the Finance Provider's name?



Q5: What else should I be worried about? (2 of 2)

- Experience, sophistication and wherewithal of Platform Administrator
- AML/ABC/Sanctions
- Outsourcing Regulations
- Concentration vs Diversification of Platform partnerships
- New technologies (Blockchain, etc.)
- Cross-Border issues
 - Data Privacy and Data Protection
 - Enforcement of electronic documents
 - E-Signatures

Questions



Presenter Bios



Ravi Amin | Senior Associate, London | RAmin@mayerbrown.com

Ravi Amin is a senior associate in the Banking & Finance practice of the London office. Ravi's work is primarily focused on asset based lending (ABL), receivables finance, supply chain/payables finance and real estate finance. Ravi has experience on a wide range of complex, cross-border and domestic financing transactions, representing banks, financial institutions, sponsors and corporates. Ravi has been listed as a Rising Star by Legal 500, 2020 edition for his advice on structuring and executing asset based lending transactions.



Massimo Capretta | Partner, Chicago and New York | MCapretta@mayerbrown.com

Massimo Capretta is a partner in Mayer Brown's Chicago and New York offices and a member of the Banking & Finance practice. Massimo's transactional practice focuses on representing both financial institutions and companies across a broad spectrum of domestic and international financing transactions. He has been involved in transactions spanning a number of key industries including automotive, heavy manufacturing, chemicals, metals and energy. Massimo has particular experience with domestic and cross-border trade receivables securitization, asset-based finance, factoring, supply chain/vendor finance, trade finance and other receivables monetization strategies. He regularly advises clients on the creation and management of bespoke receivables finance transactions.

Presenter Bios



Angelia Chia | Partner, Singapore | Angelia.Chia@mayerbrown.com

Angelia Chia is a partner in Mayer Brown's Singapore office and a member of Mayer Brown's Global Finance Practice Group. She has more than 20 years of experience in trade and trade finance spanning the globe. Angelia's unique advisory capability stem from her in-house experience in Cargill, JPMorgan and most recently Standard Chartered Bank where she was global head of legal for trade, ensuring she can provide comprehensive end-to-end advice covering the myriad of issues faced by clients as they manage the interplay of laws, regulations, industry rules, systems and policies in the confines of the organisation's operational requirements. Angelia is an active member of the ICC Legal, ITFA and BAFT Committees and is internationally recognised for her trade advisory experience.



Bianca Dias Soares | Counsel, New York | bsoares@mayerbrown.com

Bianca Dias Soares is a counsel at Mayer Brown's New York office and a member of the Banking & Finance practice. Bianca's transactional practice focuses on representing both financial institutions and companies in domestic and international financing transactions. Bianca has particular experience with domestic and cross-border finance, structured trade and traditional trade finance, trade receivables finance, factoring, supply chain finance, and other receivables monetization strategies.



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The background of the slide features a close-up, slightly blurred image of several Euro banknotes. The notes are in shades of blue, green, and yellow. The faces of historical figures are visible, and some serial numbers like '4740' and 'JT 27 6683' are partially legible. A vertical orange bar is positioned on the left side of the slide, partially overlapping the text.

Appendix - Upcoming webinars

- September 2: 5 Most Common Questions About Financing Foreign Receivables; Issues Beyond Simple Perfection, Priority and Enforcement
- September 16: Supply Chain Finance Using Drafts and Bills of Exchange
- October 7: Working Together for Mutual Benefit: Non-Recourse Receivables Purchase and Trade Receivables Securitization
- October 21: Credit Insurance – How Does It Actually Work in Supply Chain Finance?
- November 4: The UN Convention on the Assignment of Receivables – What Is It, and How Will It Change Trade Finance?

Registrations for the upcoming webinars will be sent approximately a week in advance.



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