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5 Most Common Questions About Financing Foreign Receivables; Issues Beyond Simple Perfection, Priority and Enforcement

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Who Are We?

- ***Global Receivables and Supply Chain Finance Team***

- Over 50 professionals across our platform focused on receivables and supply chain finance
- Coverage across our platform 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: August 19 - 5 Most Common Questions About Financing Receivables and Payables Through a Platform
- Next webinars: September 16 - Supply Chain Finance Using Drafts and Bills of Exchange
 - Full program available in Appendix
- We will have our normal live programs in New York, London, Singapore and Hong Kong in 2021 – circumstances permitting, early in the year.

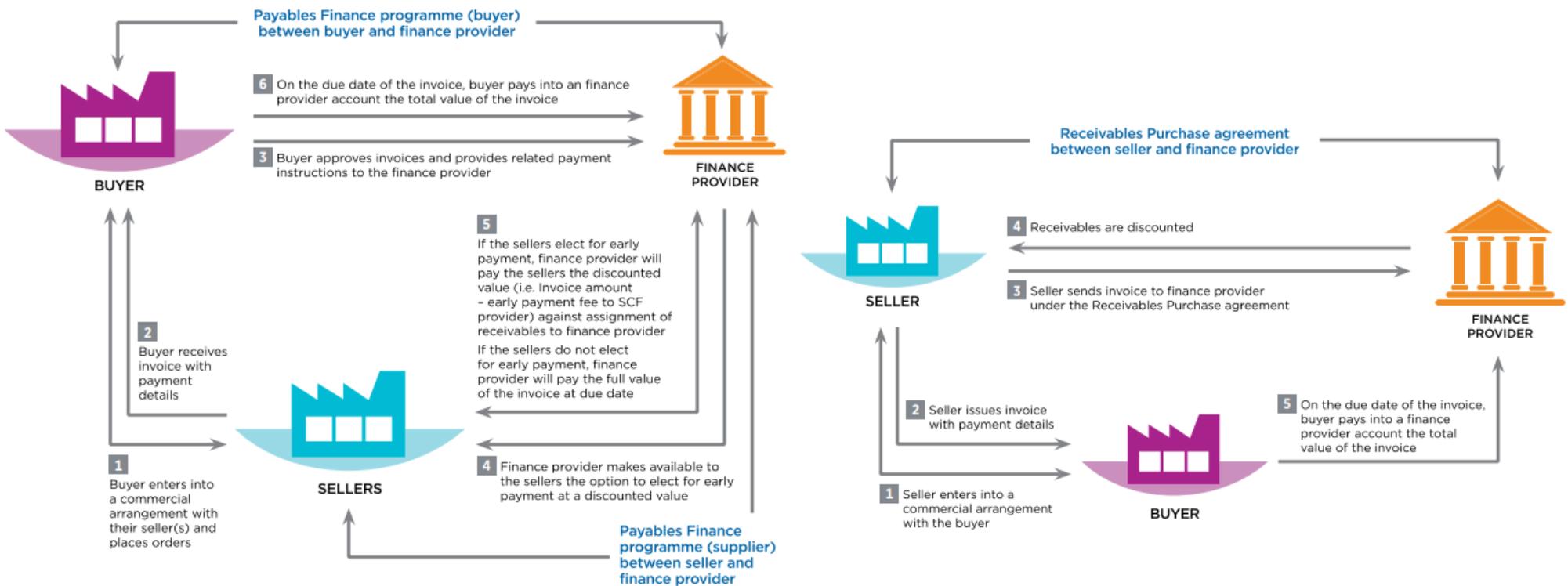


Related Events

- ***Global Supply Chain and Distribution***

- A series of webinars running from June until end of the year focusing on global supply chain issues and solutions to mitigate them
- Previous Webinar:
 - August 19: Contract Risk: Building Resilient Relationships with Suppliers and Distributors
- Next Webinars:
 - September 23: Geographic Risk: Re-shoring and Diversifying Your Supply Chain
 - October 7: Supplier Compliance and Reputational Risk

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



Source: Standard Definitions for Techniques of Supply Chain Finance



Context: Why issues beyond perfection, priority and enforcement?

- May not be the primary focus of the Finance Provider but just as important
 - Illegality
 - Regulatory sanctions
 - Tax liabilities
 - Restrictions on funding/moving currencies
 - Other impediments or considerations
- Don't assume what can be done in your country can be done in all countries
- Health warning



5 Most Common Questions About Financing Foreign Receivables:

1. Does the Finance Provider
need a licence?

A background image showing several Euro banknotes, including a 50 Euro note and a 10 Euro note, with a portrait of a man. The text is overlaid on this image.

Q1: Does the Finance Provider need a licence? (1 of 2)

- What do we mean by licence?
 - Licences, certificates, approvals, orders, authorisations, consents or registrations under the laws of a country (including rules, regulation, court orders and other legal requirements)
- Is a licence commonly required for these structures compared to, for example, lending structures?
- Specific licence?
- General banking licence?



Q1: Does the Finance Provider need a licence? (2 of 2)

- If a licence is required:
 - Does the answer change if the Finance Provider is located inside or outside of the Seller's or Buyer's jurisdiction?
 - Does that licence cover more than one jurisdiction?
 - Does it cover an affiliate of the Finance Provider?
 - What are the consequences if a licence is not obtained?



5 Most Common Questions About Financing Foreign Receivables:

2. Are there any foreign exchange restrictions?

A close-up photograph of several Euro banknotes, including a 100 Euro note, with a focus on the portrait of a man and the serial number 'JT 27 6683'.

Q2: Are there any foreign exchange restrictions?

- What are foreign exchange restrictions?
- Why are foreign exchange restrictions a concern for a Finance Provider on payables finance and receivables discounting structures?
- Regulatory approvals for foreign exchange transactions
- Structuring outside of foreign exchange restrictions?
 - Collections Accounts located abroad?
 - Currency Limitations?
 - Value of transactions?



5 Most Common Questions About Financing Foreign Receivables:

3. What tax issues are commonly encountered by Finance Providers?



Q3: What tax issues are commonly encountered by Finance Providers? (1 of 2)

- What taxes are of concern?
- Triggers for tax
 - Settlement of the receivable/payment of the invoice on maturity
 - Purchase and transfer of Receivable
 - Collection of Receivable
 - Payment of fees
- Deducted or withheld at source?
- Double taxation treaties

A background image showing several Euro banknotes, including a 100 Euro note and a 50 Euro note, with a blue and yellow vertical bar on the left side.

Q3: What tax issues are commonly encountered by Finance Providers? (2 of 2)

- Purchasing the sales tax element of a Receivable?
- Risk of secondary liabilities?
- Stamp duties
 - Can transactions be structured to avoid local stamp duties?
- Requirement to report to tax authorities?



5 Most Common Questions About Financing Foreign Receivables:

4. What about hidden liens / security interests and prior assignments?



Q4: What about hidden liens / security interests and prior assignments?

- Why are hidden liens/security interests and prior assignments a concern?
- How can I check?
 - Local registry
 - Liens/security interests
 - Prior assignments
 - Trusts
 - No registry
 - Reliance on representations



5 Most Common Questions About Financing Foreign Receivables:

5. What else should I be thinking about?

A background image showing several Euro banknotes, including a 100 Euro note and a 50 Euro note, with the faces of the deceased presidents of the European Central Bank. The notes are slightly overlapping and have a soft, semi-transparent appearance.

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

- Cross-border legal opinions
 - What should I be asking for?
- Terminology
 - True sale
 - Off-balance sheet / de-recognition
- Language requirements
- Restrictions on assignment

A background image showing several Euro banknotes, including a 100 Euro note and a 50 Euro note, with their serial numbers and portraits visible. A vertical orange bar is on the left side of the image.

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

- Notarisation/apostilling transaction documents
 - Corporate authorisations
- Can receivables be assigned electronically?
- Documentation

Questions



Presenter Bios



Ravi Amin | Senior Associate, London

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.



Rebecca O. Fruchtman | Counsel, Chicago

Rebecca Fruchtman is counsel in Mayer Brown's Chicago office and a member of the Banking & Finance practice. Her practice focuses on the global trade finance space, including supply chain finance, open account, letters of credit, structured letters of credit and risk distributed trade transactions, and on asset-based financing transactions—both domestic and cross-border. Rebecca also has a deep bench of experience in all facets of distressed situations, including extensive involvement in some of the largest bankruptcy cases filed in the United States. Her experience spans the airline, power/utility, alternative energy, automotive, chemical, steel, technology and distressed real estate sectors. Rebecca has spoken routinely on letter of credit topics at the annual International Banking Law & Practice conferences and actively participates in the global banking association BAFT IFSA and spoken at BAFT conferences.



Ben Sandstad | Partner, Hong Kong and Singapore

Benjamin Sandstad is a partner in Mayer Brown's Hong Kong and Singapore offices and a member of Mayer Brown's Global Finance Practice Group. Ben has over twenty years' legal experience, including as global head of legal for credit, lending and governance for a leading global bank, and specialises in on and off-balance sheet financing, structured finance, trade finance (particularly trade lending and open account finance) and governance of legal risk. Ben draws on his combination of senior in-house and private practice experience to holistically advise clients on the origination of, process and governance for, and distribution of risks in respect of, the full spectrum of credit and lending transactions, particularly where there is an underlying asset, trade transaction, recourse, tax or regulatory requirement.

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

Appendix - Upcoming webinars

- 22 July: 10 Most Common Insolvency Questions in Receivables and Payables Finance – A Focus on US
- 29 July: 10 Most Common Insolvency Questions in Receivables and Payables Finance – A Focus on Asia and Europe
- August 12: Capital Markets/Alternative Investors; Investing in the Trade Receivable Asset Class
- August 19: 5 Most Common Questions About Financing Receivables and Payables Through a Platform
- 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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