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The ITFA Muse

Monday, 2 May 2016

CHAIRMAN'S MESSAGE - Sean Edwards, ITFA Chairman / Head of Legal at SMBC

Dear Members and Friends,

I trust that 2016 has been treating you well so far. I can hardly believe that a third of the year has already flown by and that our ITFA Annual Conference, our 43rd, is only a few months away. This year we will be greeting you at the Sheraton Warsaw Hotel in Poland. You can access the conference website, with all the necessary information, as well as register by clicking here. A topical and interesting program with involvement from leading practitioners has been prepared and we will be renewing our traditional reputation for first-class entertainment. Please bear in mind that an earlybird discount is available for all registrations until 6th June. The ITFA Conference is a wonderful networking opportunity, so don't miss out!

Planning for the conference has not kept us away from other events, including our Spring Cocktail in sunny Amsterdam which was attended by a record number of attendees. Thank you to Credit Europe Bank and Garanti for their sponsorship. Numbers are also growing for our Receivables Finance Masterclass in Paris, our first-ever event in the city.

Moving on to the macro part of things, since the start of the year, Emerging Markets have been pretty much in the limelight, for good and bad reasons. Markets had crucified emerging market assets following the first interest rate hike in the US in almost 10 years, leading to a marked sell off in EM assets, whilst the recovery witnessed in markets to date have made EM the best performing region to date so far, registering close to double digit returns. Improving global market conditions have switched focus on a number of opportunities such as Brazil and South Africa. Argentina too seems to be emerging out of the doldrums, with the central government managing to regain investor support during the month of April.

Despite witnessing a marked slowdown in Chinese growth, selective Asian economies such as Indonesia continue to post robust economic data releases. Risks still remain present, with the political ridden scandal in Brazil being a typical example, whilst the escalating geopolitical tension in Turkey could also derail the path to recovery within the asset class. The recovery in commodity prices has aided sentiment in EM of late but any sharp correction could result in a change in fortunes.

In this month's Newsletter, we find an interesting article on insurance titled - Focus on Insurance: top tips for managing a successful claim by Katie Fowler. As promised, ITFA has also introduced the Question & Answer Facility. In this Newsletter ITFA has issued the first Insurance Committee Opinion.

We look forward to hearing from you with any feedback you may want to share with us by sending an email to myself, any of the Board Members or to our general email, info@itfa.org.

Best wishes,
Sean Edwards

Posted by Alexia Vella at 12:59 No comments:

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The Newsletter of the International Trade & Forfaiting Association

May 2016

Contact us

For information about ITFA please visit www.itfa.org or send an email to info@itfa.org www.itfa.org

ITFA Upcoming Events

- MAY 25 - Trade Finance Masterclass, Paris
- AUG 24 - VEFI Summer Cocktail, Zurich
- SEP 7-9 - ITFA Annual Conference, Warsaw
- OCT 27 - VEFI Networking Lunch, Zurich
- NOV TBA - ITFA GRC Workshop, Germany
- DEC 1 - VEFI and ITFA Annual Christmas Cocktail, Zürich
- DEC 12 - ITFA Christmas Party and Educational Event, London

Issue Contents

FOCUS ON INSURANCE: TOP TIPS FOR MANAGING A SUCCESSFUL CLAIM by Katie Fowler and Carol Searle of Texel Finance Limited

The private insurance market, comprising both Lloyd's Syndicates and Companies, has been providing insurance cover for the payment risk of both public and private borrowers for many years. It is a reliable tried and tested insurance and risk distribution product.

There are three golden principles an insured should apply in managing a successful claims process (we focus here on English law and practice):

- understand and comply with the terms and conditions of the insurance contract (the "policy") and the duties owed under insurance law;
- understand market practice and procedure; and
- work in partnership with and maintain good communications with insurers.

The scope of cover for payment risk is usually straightforward so unless the loss falls outside the terms of the policy (for example the loss does not occur within the policy period) or the loss has been caused by an event excluded from cover, it is rare that a claim would not be covered. The reasons why claims may not be paid are more likely to be as a result of non compliance by an insured:

- with the duties owed under insurance law to disclose all information material to the risk before the risk is written by the insurer; or
- of key provisions of the policy; breach of which may prejudice cover.

So the first principle is of key importance right from the start, before the policy even incepts. When the insured discloses information about the risk to the insurer it should be mindful of the duties it owes to the insurer to give a fair presentation of the risk. An insured should also make sure it understands the consequences of breaching certain terms such as warranties and conditions precedent which could prejudice the cover. Once the policy is obtained it should not be forgotten and relegated to the bottom drawer only to be retrieved when there is a problem. An insured should make sure it understands what its obligations under the policy are and take care that it is able to comply with those obligations, especially those that must be exactly complied with. Throughout the life of the policy the insured should have systems in place to monitor ongoing compliance with the policy terms and conditions.

So the 'golden principles' apply when the policy is taken out and throughout its life, including the entire claims process starting with circumstances that may give rise to a loss; when there is an actual loss and the claims process; and finally following payment of a loss, subrogation and recovery. The broker plays a vital role in assisting the insured with regard to all these stages. All the insured's communications with the insurers referred to below would take place via its broker. The broker is the agent of the insured and will work with and for the insured throughout.

What happens if there is a potential problem?
The policy may contain terms that provide for notification of circumstances that may or are likely to give rise to a loss. It may also provide for the time period within which such notice should be given, for example an insured may be required to notify 'as soon as reasonably practicable' or within a number of specified days. It is also important to understand what the consequences of breaching the notification provisions would be – are the terms/conditions precedent or not? If they are, then there must be exact compliance.

The policy is also likely to contain provisions that require an insured to act with due diligence or use all reasonable measures to avoid and minimise loss. An insured ought not, because he is covered against a loss by the policy, refrain from taking precautions which he knows he ought to take. An obligation to take reasonable measures is to prevent an insured from acting recklessly. An insured should not deliberately increase the risk of loss or deliberately prejudice the interests of the insurers.

The policy may contain further provisions as to who is to have what degree of control over steps taken by way of avoidance of loss under the policy. The insured should always consult with its insurers and agree a course of action with them.

It is standard that insureds undertake usual loss mitigation procedures at their own expense. A policy may provide for a proportional sharing of costs should the insurers require any extraordinary costs to be incurred. In this scenario these would need to be communicated to and agreed with insurers. As mentioned below, costs incurred after a claim has been settled would be split pro-rata to the participation that the insured and insurers have in the loss.

Making a claim, how does it work?
If the risks insured against cause a loss, the insured should again notify the insurers in accordance with the provision of the policy that it has suffered a loss. The broker will assist the insured with presenting the claim to insurers. The insured must submit its claim, in a form commonly known as a Proof of Loss which form may have been pre-agreed at the time the policy was negotiated. The date of the loss and/or the notification of it (depending on the terms of the policy) will start the waiting period. This is the period which must pass before any claim is payable under the policy. A standard waiting period is 180 days.

During the waiting period, the insured will have an on-going obligation to take steps to mitigate loss and to preserve any recovery rights that it may have. The insured should continue to consult with insurers to agree any actions to be taken during this period. Insurers will wish to manage their posting of reserves during this period to avoid calling on funds only at the expiry of the waiting period.

Also during this period, in most cases insurers will appoint a loss adjuster. The loss adjuster will review the claim, ensure there has been compliance by the insured with the duties owed pre-placement and the terms of the policy and assess the loss. In many cases the loss adjuster will visit the insured as part of this process to collect information, often accompanied by the insured's broker who will provide guidance and assistance to the insured. The insurers or their loss adjuster may ask more questions concerning the loss. The loss adjuster will also consider and report on recovery options.

The loss adjuster is appointed by the insurers and will issue a report to the insurers. The insured and its broker are unlikely to receive a copy of that report.

On expiry of the waiting period, the insurers must make a claims determination and indemnify the insured for its loss. The policy may contain terms which make express provision for these matters.

Interest for payment delays during the waiting period is not ordinarily covered by the insurer unless it is recoverable from the borrower under the insured contract and has been included in the calculation of the exposure agreed by insurers.

Formalities for claim payment
An insurer may require the insured to sign a receipt and release agreement before the claim is paid; and/or the policy may provide specifically for this, including a pre-agreed format. This is to record how and when funds are to be paid and an acknowledgement by the insured that on receipt of the funds it releases the insurer from liability for that payment.

How does it work post claim?
Once a claim has been paid, the doctrine of subrogation entitles the insurer to step into the shoes of the insured to collect any amounts due from the borrower or any other third party up to the amount paid by them. The insurer can pursue the borrower in the insured's name and the insured must permit this. The alternative is that the insurer takes an assignment of the insured's rights in which case it can pursue the borrower in its own name. The policy terms are likely to specifically provide for this.

Most non payment policies require the insured to keep a minimum portion of the risk of at least 10% (the uninsured percentage) as an incentive to the insured to remain active in the claims and recovery process. Policies will provide for how any recoveries will be allocated between the parties, for example first towards reimbursing the parties for any costs that have been incurred in effecting recoveries and thereafter pro-rata to the participation each party has in the loss. Sometimes in complex situations the parties may agree in the receipt and release agreement how they will deal with and share any future recoveries.

Although subrogation and recovery are matters which feature at the end of a claims management process in reality strategies for recovery may often be considered with insurers at the time a claim arises to minimise loss and/or to ensure a recovery for the future.

Recoveries are of particular interest and relevance to the private political risk and credit insurance market. Not only are these an important aspect of pricing the cover (recoveries historically are said to be in the region of 30-40% although 50-70% is now expected); recoveries can positively influence long lasting relationships between insureds and insurers.

Concluding thoughts

Once the insured has established it has suffered a loss caused by an insured event during the policy period, it is for the insurer to prove grounds for not accepting the claim. Leaving aside the remedy of avoidance for breach of the placement duties owed by an insured[1]; the grounds on which insurers may do so are:

- disputing cover (unlikely in non-payment policies where the scope of cover is straightforward)
- proving that the loss has been caused by an exclusion
- breach of warranty or a pre-condition of cover
- breach of a general term which breach has caused financial consequences.

So we come back to the first golden principle: a successful claim requires insureds to understand and comply with the terms and conditions of the policy and the duties owed under insurance law.

Alongside that, the knowledge and experience of the broker in helping with understanding and compliance with market practice is key for managing not only placing policies but also the process for timely claims payment. The London private insurance market has historically worked on a subscription basis whereby all insurers agree to the same policy wording with leading insurers driving the policy wording negotiations and influencing claim determination discussions within the insurer group to arrive at a common decision. This core principle can be lost if policies are placed vertically; i.e. each insurer agreeing their own unique policy wording and negotiating their own claim. The importance of the insured/insurer relationship in terms of transparency and sharing information and consultation for decision making is vital.

The claims process is intensive, but the majority of claims have been successful (i.e., paid promptly in full without dispute).

Whilst it is difficult to find published claims statistics to evidence the performance of the product, Xchanging Claims Services maintains this for the Lloyd's market and has made its headline claims figures available to ITFA members. To access these statistics readers need to log onto the ITFA website[C1]. These statistics reflect claims paid by Lloyd's Syndicates per year since 1997 up to 30 June 2015. These statistics are recorded according to Lloyd's risk codes. The relevant codes for non payment insurance are CF (Contract Frustration, the risk code for payment risks of public borrowers) and CR (Trade Credit risk, the risk code for payment risks of private borrowers).

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[1] This is a complex area of law which is subject to reform in the Insurance Act 2015 which will apply to policies incepting, renewed or varied from 12 August 2016.

[C1] http://itfa.org/member-area/ifa-library-and-presentations/

Posted by Alexia Vella at 01:03 No comments:

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QUESTION & ANSWER FACILITY - FIRST INSURANCE COMMITTEE OPINION NOW AVAILABLE IN THE MEMBERS SECTION OF THE ITFA WEBSITE

The Insurance Committee is pleased to announce that a first opinion is now available for all ITFA members.

Many of our members are confronted on a daily basis with a variety of challenges and questions when trying to hedge risks acquired through their trade finance and transaction banking activities. The ITFA Insurance Committee is composed of a panel of specialists from banks, insurance and brokers. We would therefore like to offer to our members the possibility to obtain advice from these experts. Should your institution have questions related to a specific topic, just send an inquiry by email to any of the Insurance Committee members. If you prefer, the name of your institution will be kept confidential. The committee will then discuss your question and the opinion which emerges from the discussion will then be published in the members section of the ITFA website.

The first question which was submitted to the insurance committee is:

Which kinds of external ratings of insurance companies can be accepted by banks under the Standardised Approach in order to obtain RWA-relief for the covered transactions? Are these banks facing any restrictions regarding the use of insurance for capital relief?

Please click on the following link (which is only available to ITFA members) in order to view the opinion of the insurance committee.

Posted by Alexia Vella at 01:03 No comments:

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UPCOMING EVENTS - SAVE THE DATE

May we take the opportunity to remind our readers of ITFA's 43rd Annual International Trade and Forfaiting Conference, which this year will be held in Warsaw, Poland between 7-9 September, 2016. The ITFA Conference is a wonderful networking opportunity, so don't miss out! Moreover, should you wish to benefit from the Early Bird Discount, please register by Monday 6th June. We look forward to welcoming you in Warsaw!

Another well awaited event is the TXF Trade, FinTech and Treasury 2016 conference which is being held between 7-8 June in Glaziers Hall, London. This conference will provide first-rate learning and training opportunities, intimate networking and the interactive exchange of knowledge. To find out more, please visit the website or click here to view the full agenda.

We also wish to remind our readers about the 13th Annual Global Commodities Finance event which is being organised by Euromoney Seminars. Taking place in Geneva between 8-9 June 2016, the conference will highlight the key issues and implications of the changing commodities market, as well as provide insight into strategies to navigate business in these uncertain times and identify new prospects for growth. For more information please click here.

Posted by Alexia Vella at 01:02 No comments:

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UPDATE ON THE ITFA CEE REGIONAL COMMITTEE EDUCATION EVENT AND SPRING COCKTAIL, HELD ON 13 APRIL 2016

Following the success of the recently held CEE Regional Committee Education Event, we want to brief our readers with a summary of what was discussed, whilst also providing photos of the well attended event. Just under 50 individuals participated ranging from Austria, Slovakia, Czech Republic, Hungary, Germany and Vienna.

The Educational Event has held on Wednesday April 13, 2016 at the premises of UniCredit Bank Austria AG, in "Grosser Sitzungssaal" (1st floor) and the Cocktail Reception that followed was at the very traditional location “Meinl's Weinbar”.

The Educational Course started with an opening speech by Mr. Semih Özcan, Chairperson of the CEE Regional Committee. His speech also addressed updates regrading ITFA and other regional issues.

This was then followed by a session on the ''Economic Overview of the Region with an Update on Russia'' given by Mr. Gergely Tardos, Chief Economist - OTP Bank Plc. The final session concerned ''Structured and Debt Finance Department - IIB''. The two speakers were Mr. Csaba Pásztor Chief Specialist, Capital Markets – IIB, and Mr. Anton Aleksandrov Head of Financial Institutions.

Should you wish to view the presentations, these are available to ITFA members only in the Member area of the ITFA website as per link.

We hope you enjoy the photos of the event.


Posted by Alexia Vella at 01:01 No comments:

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