

Export credit agencies demystified

**Navigating their impact on
loan documentation**

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Introduction

Export credit agencies ("ECAs") already play a vital role in supporting international trade, but as markets become more focused on areas such as energy transition, defence and data centres, ECA activity across the loan market is increasing and market participants are capitalising on the benefits ECA-backed transactions provide (including their typically long-term nature and attractiveness to more diverse investment bases). In addition, expanding ECA mandates mean that a greater number of market participants are encountering ECAs and, for the purposes of market efficiency, it is important that all players understand the impact of ECA involvement on loan documentation and structures.

What is an ECA?

An ECA is a government agency, department or other entity acting on behalf of a sovereign. The primary goal of an ECA is to promote exports from its home country by helping to facilitate the purchase of goods and services from buyers located abroad. However, in recent years, many ECAs have expanded their mandates by offering more flexible products such as untied financing arrangements¹ enabling involvement in a wider range of deals.

ECAs vary in legal structure and product offerings, but most will guarantee or insure loan facilities made available by commercial lenders to a borrower in a different country to the ECA, where the loan proceeds are used to purchase goods or services from an exporter in the country of the ECA. Some ECAs can also lend directly, either alone or together with commercial lenders.

Each ECA has relatively standard form documents governing the terms of each guarantee or insurance policy issued by it, and these are usually governed by the laws of the jurisdiction of that ECA (for example, English law in the case of UK Export Finance and Italian law in the case of SACE, the Italian ECA). In this paper, we refer to an ECA guarantee or insurance as an "**ECA cover document**".



Increased focus on ECA financing

The increased focus on ECA-backed financings reflects, amongst other things, increasing capital expenditure in sectors such as energy, critical minerals, defence and digital infrastructure. Given the underlying assets in such transactions, financings within these areas create a demand for longer tenors with competitively priced and resilient debt that can withstand market cycles.



Benefits for borrowers:

ECA cover can unlock longer loan tenors for borrowers (e.g. by aligning tenors to the lifespan of the underlying asset), reduce margins and allow a leaner formulation of security packages due to the credit enhancement provided by the ECA cover and provide borrowers with access to a broader lender base thereby strengthening liquidity.



Benefits for lenders: For lenders, the improved risk weighting and capital efficiency associated with ECA-backed financings may enhance appetite and hold capacity.

¹For more detail, see the "LMA Guidance Note on Untied Export Credit Agency (ECA) financings: documentation considerations" which provides guidance in reviewing untied lending structures and explains the difference between tied and untied lending.

Loan agreements... with a difference

Export finance facilities differ from facilities not involving an ECA in numerous respects. The most obvious difference is the involvement of at least one additional party – an ECA. In many cases there will also be at least one exporter involved, although this may not apply to untied ECA covered financings, which have become more prevalent in recent years. Although the ECA and exporter are not typically party to the facility agreement, there are usually certain condition precedents and ongoing requirements in the facility agreement relating to them.

Whilst the existence of an ECA can introduce additional requirements for borrowers, and ECA covered facilities may take longer to draft, negotiate and complete than some pure corporate loan facilities due to the specific nuances associated with an ECA's involvement, the benefits of an ECA covered facility can be substantial for borrowers. In particular, ECA support may enable borrowers to access longer tenors than are typically available to it and a leaner security package may also be negotiated given the credit enhancement provided by the ECA. In some cases, the existence of an ECA guarantee or insurance can enable borrowers to access fixed-rate loan facilities that might otherwise be unavailable, as well as allowing borrowers to diversify their funding sources thereby enhancing liquidity. Indeed, export finance is sometimes described as a countercyclical product.

As ECA cover documents help mitigate a lender's risk profile, lenders are typically able to participate in ECA covered facilities with lower interest rates and longer tenors when compared to more conventional loan facilities. In addition, as financings benefiting from ECA involvement often qualify for more favourable risk

weighting under regulatory capital frameworks, lenders may also benefit from improved capital efficiency and reduced risk weighted assets. That said, where considerations such as intercreditor arrangements are in play (e.g. in project financings or other transactions with multiple creditor groups) they can add complexity and extend transaction timetables so parties will need to be alive to such issues early on in any deal to appropriately manage impact.²

Most ECAs will only guarantee or insure loans made available by banks or financial institutions they have long standing relationships with. However, institutional investors and other types of institutions are able to participate in ECA covered facilities with the consent of the relevant ECA.



Buyer credit deals

ECAs cover a range of different types of loans, including asset finance (aircraft and ships in particular), project finance and untied deals. This section focuses on buyer credit deals, for which there is the LMA recommended form of facility agreement for use in export finance.³



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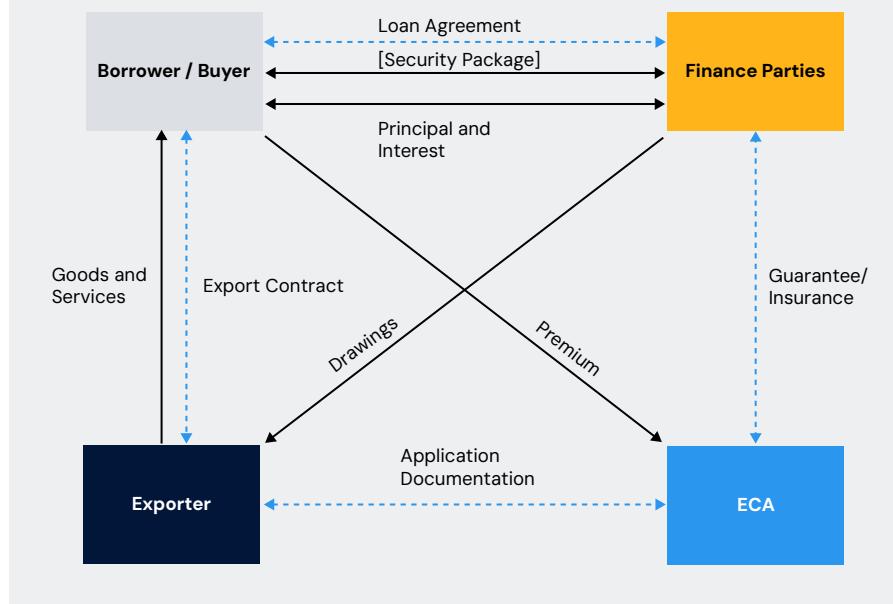
Under a buyer credit transaction, an exporter will typically enter into a contract for goods and/or services with an overseas buyer. This is often referred to as the export contract or commercial contract.⁴ Where this purchase of exports is to be financed by a facility agreement, a lender or syndicate of lenders provide finance to the buyer (which is also often the borrower under the facility agreement) by paying the exporter directly on behalf of the buyer, or by reimbursing the buyer for payments previously made to the exporter, in each case via a utilisation of the facility. The ECA in the exporting country would typically provide a guarantee or insurance to the lenders (or an agent on their behalf) under a separate cover document to mitigate all or part of the risk of non-payment by the borrower/buyer under the facility. Neither the borrower nor the exporter is a party to the ECA cover document, whether the financing is tied or untied, but may have to sign other documents (such as an exporter certificate) with the ECA.

² Detailed considerations regarding intercreditor arrangements are beyond the scope of this paper.

³ The LMA recommended form of export finance buyer credit agreement was first published in December 2018 and most recently updated in June 2024. It is intended to reflect common practices in the market and takes into consideration the interests of lenders, borrowers and ECAs involved in transactions, thereby providing a sensible starting point for negotiations.

⁴ This paper refers to "export contract" for simplicity, but almost all references to that term will apply equally to any form of contract, including EPC contracts, commercial contracts and supply contracts.

Typical buyer credit financing structure



Provisions specific to ECA covered facility agreements

ECA covered facility agreements usually contain specific provisions which can largely be divided into three distinct types:

- (1) provisions required by lenders given the crucial importance of the ECA cover to their ability to participate in the facility;
- (2) provisions required by the ECA given it will be holding all or most of the ultimate credit risk in the facility whether or not it is taking on "documentation risk" (i.e. ECAs expect the arranging banks and their legal counsel to ensure that the finance documents are legal, valid and binding); and
- (3) provisions required as a result of the OECD Arrangement (see Impact of OECD Arrangement section below).

finance parties are not prejudiced by matters related to the export contract or the exporter – they must repay amounts outstanding under the loan facility in all cases.

ECA override: This clause intends to ensure that the provisions of the finance documents – and the obligations placed on the finance parties thereunder – do not conflict with the ECA cover document or other requirements of the ECA. In the event of a conflict which might impair or damage the continuing validity of the ECA cover, lenders must ensure that the terms of the ECA cover document prevail.

Borrowers may query the clause given that they are not a party to the ECA cover document. However, the

Some of the main themes specific to export finance facility agreements include:

The Isabella clause: This provision typically requires the obligors to acknowledge that their obligations under the finance documents are independent and separate from the export contract being financed, and are not subject to, or dependent on, the delivery or performance by the exporter of its obligations. The intention is to ensure that the obligations the obligors owe to the finance parties are not prejudiced by matters related to the export contract or the exporter – they must repay amounts outstanding under the loan facility in all cases.

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Borrowers may query the clause given that they are not a party to the FCA cover document. However, the

clause is intended to facilitate the continuance of the ECA cover and avoid triggering early prepayment or events of default for the borrower. The loss of the ability to recover under the ECA cover document would fundamentally change the profile of the financing and increase the lenders' risk. In the event of a non-payment by the borrower, the ECA cover document provides for payment to be made by the ECA to the lenders. The loss of credit support would trigger a mandatory prepayment event and events of default. This clause is, therefore, intended to avoid that where possible by facilitating the continuance of the ECA cover. Accordingly, whilst it is rare for this clause to be relied upon by lenders over the life of a transaction, few will agree to remove it.

ECA mandatory prepayment events: Given the crucial importance of the ECA cover document to the lenders, if certain events occur which adversely impact the ability of lenders to make claims thereunder, they will require the borrower to mandatorily prepay all outstanding loans. Such events typically include (a) it becoming unlawful for the ECA to perform its obligations under the ECA cover document, (b) the obligations of the ECA ceasing to be legal, valid,

binding and enforceable and (c) the ECA avoiding, rescinding, cancelling or terminating the ECA cover. Other circumstances and events may be included based on the specific requirements of the lenders on a deal-by-deal basis.

This can be a difficult concept for borrowers unfamiliar with export finance to accept. It may seem unreasonable that a borrower would have to prepay all or part of the loans given that such events are largely outside of the borrower's control. However, it has historically been extremely rare for any borrower to be asked to prepay an ECA covered facility due to an ECA mandatory prepayment event. Lenders and ECAs do not expect them to happen but in the unlikely event they do, lenders need the ability to exit as the risk profile of the deal would be very different without the ECA cover. As such, the concept is almost always included in ECA covered facilities.

ECA specific requirements: As noted above, ECAs are government agencies, departments or other entities acting on behalf of a state. As such, they have to ensure that particular policy requirements are complied with by borrowers. These often include requirements relating to environmental and social matters, human rights, bribery and corruption and sanctions.⁵

ECAs may also require access and visitation rights and other information undertakings relating to the contracts and projects being financed and, in some cases, the borrower's general business. Sometimes, ECAs require the inclusion of "most favoured nation" (MFN) clauses, under which borrowers agree that if they offer more favourable terms in financings covered by other ECAs, those terms must also be extended to the lenders (and, indirectly, the ECA) under the relevant facility agreement. As a general principle, ECAs expect to be treated equally with other long term lenders.

ECA premium payment mechanics: ECA premiums are typically payable on or before the first utilisation (or, if assessed on a disbursement-by-

disbursement basis, on or before each drawdown), unless such premium is being financed. Where such premium is being financed, it is typically paid by the facility agent to the ECA out of the proceeds of the initial utilisation under the facility agreement. Facility agreements commonly include a condition precedent to utilisation requiring evidence of payment of the relevant premium (or evidence of arrangements for its financing).

Export contract: In "tied" (as opposed to untied) ECA covered financings, ECAs can only guarantee or insure loans used to pay amounts due (or to reimburse amounts paid) under an export contract, subject to being deemed eligible for payment or reimbursement by the ECAs. Given its importance to the structure, the export contract (and related documents) will be a condition precedent, there will be specific representations relating to it and there will be undertakings included to regulate the borrower's actions under it (including novation, amendments and variations to the terms of the export contract).



The lenders are likely to be particularly concerned in relation to any amendments or waivers that could result in adverse consequences under the ECA cover document (e.g. relating to the cost, quantity, origin or delivery dates of the goods and/or services supplied or to be supplied under the export contract and to any change to the identity of the exporter).

Transfer provisions and subrogation rights: As noted above, ECAs only typically issue guarantees and insurance for the benefit of institutions they are familiar with. As such, the consent of the ECA is often required for any transfer of a lender's rights and obligations under the finance documents. Wording is also often included to make clear that any transfer to the relevant ECA is permitted without any consent being required from the borrower.

If an ECA pays amounts under its ECA cover document to the lenders, it will be subrogated to the rights of the lenders under the facility agreement.

⁵ The Recommendation on Bribery and Officially Supported Export Credits encourages ECAs to implement and strengthen their anti-bribery and corruption policies and procedures to prevent bribery in international business transactions. In addition, ECAs may refer to the [2024 Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence \(Recommendation on Common Approaches\)](#) which encourages evaluation of the environmental and social impacts of certain ECA-supported projects and suggests that ECAs "employ stringent international standards and good international industry practices to promote sustainable development".

The existence and extent of any contractual or legal subrogation rights of the ECA will partly depend on the terms of the ECA cover document and its governing law. ECAs may require particular wording by which the borrower acknowledges such subrogation rights.

Alignment between export contract and financing: It is not uncommon for an ECA covered facility to be negotiated and finalised after the export contract has been finalised. The parties to the export contract (i.e. the buyer and the exporter / EPC contractor etc.) should ideally have regard to any possible future ECA covered financing when negotiating the content and payment terms of the export contract to avoid scenarios in which export contracts must be amended to raise ECA covered financing. Specific areas to consider include:

■ **Payment terms:** Payment terms must be aligned with the drawdown requirements of the ECA covered facility. It is not uncommon for export contracts to have to be amended at the time an ECA covered facility agreement is being drafted / negotiated so that the payment terms are consistent with what is possible under the OECD Arrangement and in practice.

■ **Drawdown requirements:** In addition – and more commonly in ECA covered facilities than any other type of loan financing – lenders will require that certain documents and supporting evidence be attached to a utilisation request. Differences may also apply between transactions given differing ECA policy requirements. The agent / ECA agent must also be given sufficient time to check such documents before the requested loan is advanced.

Such documents typically evidence that, for example, certain goods and/or services have been provided and invoiced by the exporter under the export contract. Confirmations from the exporter may be required as an initial condition precedent and, in some cases, for each drawdown. These are often made in exporter certificates (a form of which is typically appended to the facility

agreement). Market participants are advised to carefully consider how the list of documents and other evidence required for each utilisation are described in the facility agreement to avoid uncertainty at the time of each utilisation.

■ **Funding / pro rata contributions:** In project financings, where an ECA covered facility will often be one of several facilities (including non-ECA covered facilities), it is particularly important to ensure that the general funding requirements of the borrower / project company – such as those requiring *pro rata* contributions from all lenders – are adjusted to reflect that lenders under an ECA covered facility may only be able to fund once a certain amount of goods and/or services from exporters in the relevant ECA's jurisdiction have been delivered to the project. This can be a challenging exercise and misalignment in expectations regarding drawdown schedules can cause significant delays and complications.



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Impact of OECD Arrangement

The Arrangement on Officially Supported Export Credits (the "**OECD Arrangement**")⁶ came into existence in 1978. Since then, it has been regularly modified and updated to reflect market developments. The OECD Arrangement is published by the Organisation for Economic Cooperation and Development (the "**OECD**") and is important for participants in this sector. Member countries sign up to the OECD Arrangement and agree to the parameters set out within the OECD Arrangement for tied export financing. Member countries are listed on the [OECD website](#) and defined as participants in the OECD Arrangement.

⁶ This may also be referred to as the OECD Consensus.



The OECD Arrangement sets out, amongst other parameters, the minimum down payment, maximum local costs, minimum premium and timing for interest and principal payments. This is why certain terms must be included in ECA covered facilities and lenders and ECAs are unable to deviate from them.”

The main purpose of the OECD Arrangement is to “provide a framework for the orderly use of officially supported export credits”. It seeks to achieve this by establishing a level playing field for official support and promoting competition among exporters based on quality and price of goods and services exported rather than on the most favourable officially supported financial terms and conditions. The OECD Arrangement divides eligible countries into two categories: Category I (high income OECD countries) and Category II (all other countries), and it sets out terms of support including pricing according to those categories.

The OECD Arrangement sets out, amongst other parameters, the minimum down payment, maximum local costs, minimum premium and timing for interest and principal payments. This is why certain terms must be included in ECA covered facilities and lenders and ECAs are unable to deviate from them. Examples include:

Starting point of credit (SPOC):

This is a key concept throughout the OECD Arrangement. It is the date following which the borrower must start repaying an ECA covered facility and it is fixed according to the type of goods or services being supplied and the contractual responsibilities of the exporter, in each case in agreement with the ECA.

The SPOC (i.e. the point at which the borrower must start repaying the facilities) will be determined according to the nature of the project or goods and services being supported by the ECA. Broadly, where the exporter is supplying goods only, the SPOC will be after all the goods have been exported and accepted by the buyer or, if the goods are being supplied over a long period of time, a point in time during the period of supply. If the exporter has responsibilities for installing and commissioning the goods, the SPOC may be when this has been completed.

Down payment: A down payment of at least 15% of the export contract value must be paid by the buyer at or before the SPOC at the latest and is typically a condition precedent under the facility agreement.

Percentage of export contract value covered: Unless specific exceptions apply, an OECD ECA may not guarantee or insure a loan facility of an amount which is in excess of 85% of the export contract value, including third country supply but excluding local costs.

Repayments: Principal is required to be repaid no less frequently than annually and the first instalment of principal made no later than one year after the SPOC. There are limits as to the maximum repayment term / maturity date depending on the sector.

Interest: Interest is to be paid no less frequently than every six months and the first payment of interest made no later than six months after the SPOC. In respect of fixed-rate loan facilities, the OECD Arrangement stipulates

that minimum interest rates, known as the commercial interest reference rates (“CIRR”), shall apply to official financing support for export credits. CIRRs are fixed for each currency of the participants to the OECD Arrangement on a monthly basis on the 15th of each month. As at the date of this paper, the most recent CIRRs can be found [here](#).⁷

The latest amendments to the OECD Arrangement came into force on 15 July 2023. This was part of a modernisation package and the July 2023 version of the OECD Arrangement itself and further guidance can be found on the OECD [website](#).

The aim of this latest reform was to make the OECD Arrangement more “flexible and better equipped to work with economical and financial needs of projects as well as an increasingly competitive landscape”. These included changes to reflect increased maximum repayment terms, further repayment flexibilities (frequency, size and pattern of repayment of principal and interest) and reductions of the minimum premium rates for certain transactions. Specific changes were also made to create incentives for climate friendly and green transactions.⁸



⁷ The CIRR rules apply to all OECD Arrangement transactions, although we note that the Aircraft and Ship Sector Understandings have their own CIRR disciplines.

⁸ See the LMA podcast on ‘The modernisation of the OECD arrangement on export credits’ for more detail.

Untied lending deals

Untied ECA facilities may be misconceived as being analogous to conventional corporate loans given the facility is not tied to the procurement of goods or services from exporters. However, in practice they are more nuanced. For example, the absence of an export contract does not eliminate ECA policy, eligibility or monitoring considerations, and borrowers accustomed to more conventional terms should anticipate additional features in the suite of transaction documentation where ECAs are involved. In particular, lenders and ECAs will expect a clear rationale for supporting the transaction, visibility, and evidence that the financing advances the ECA's mandate, even where it is not linked to a single export contract. In addition, despite not being bound by the OECD Arrangement, some ECAs continue to apply certain features of the OECD Arrangement. Key points to flag include:



Eligibility and policy alignment:

Untied support must typically be relevant to the ECA's strategic objectives (e.g. future sourcing commitments, energy security or climate aligned investments) which may be expressed through soft commitments, undertakings or information covenants.

Information and reporting: ECAs often require additional disclosure regarding procurement plans, capex programmes and supply chain evolution over the life of the facility, with certain access rights baked into the documentation.

Terms aligned with policy: Borrower undertakings may reference procurement, sustainability or other policy markers.

Pricing and tenor: While credit enhancement can improve terms, margin, tenor and structure may still be sensitive to sector risk and any other jurisdictional considerations.

Conditions to utilisation: Even without an export contract, conditions to utilisation may include confirmations or evidence relating to, for example, roadmap milestones.

Final thoughts

The role and relevance of ECAs in the loan market is set to increase further as their mandates continue to expand. To increase efficiency and transparency in the market, it is important for market participants to fully understand the impact of ECA involvement in financing transactions and how ECA involvement can shape and impact the documentation.

We invite readers to engage with experts in export financing, as well as the LMA and the Berne Union and their respective Export Finance Working Parties to promote greater understanding and efficiency in the market.

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To learn more about the LMA's work to support efficiency, liquidity and transparency in the EMEA loan markets, please visit the LMA's website:

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