



Update from the Market Practice Committee

The role of the Market Practice Committee (MPC) is to support ITFA members through:

- Understanding issues that may have a direct or indirect impact on our activity
- Navigating the regulatory landscape
- Staying up to date with developments in the industry
- Creating white papers or commissioning opinions on matters that are open to interpretation
- Developing FAQs
- Supporting the development of standardised documentation to facilitate our business
- Providing industry input into working groups led by other associations

This document outlines our current areas of work – *as of February 2021* – and in each case includes a brief description of the topic and a status update.

ITFA members are invited to [contact us](#) with any questions, or to offer input on any of the live topics below, as well as to raise any issues relating to market practice which we should add to our pipeline.

GUIDE TO STRUCTURED LETTERS OF CREDIT

An ITFA working group was established at the end of 2019 to work on the creation of a guide to Structured Letters of Credit. The objective is to provide a market-sourced resource for education on this class of products and to dispel some common misunderstandings which conflate the products themselves with the practice of some segments of the market who use it and which have been a source of debate within the community for several decades.

The primary drafting work has been carried out by Penningtons Law, on behalf of the working group.

Current Status:

- The final version will be published in the coming weeks, and will be followed up with work to promote the key messages

IBOR TRANSITION AND TRADE FINANCE PRODUCTS

There is still a huge amount of uncertainty around the transition away from IBOR benchmarks. It is widely recognised that at least some trade finance products require a forward-looking reference rate, but we are still quite far from having clarity on how the various candidate models will work for the most common currencies, or whether they satisfy the requirements to replace LIBOR and even further form a market consensus on what to use. UK Banks especially are under pressure to incorporate hard-wired switch wording to accommodate the transition, but this is challenging without sufficient clarity on the new reference benchmarks.

ITFA is not in a position to take a stance on any single rate model or interim solution, in part because of potential anti-competitive considerations. However, the MPC is continuing to monitor the developments among the various working groups and regulators and will aim to keep members informed of any changes to expected timelines



Our previous communication warned against making adjustments to the master agreement for BAFT MPAs in light of LIBOR transition. Reference to LIBOR in the MPA is only with regards to default wording, and fallback wording for alternative reference rates is already included in cases where LIBOR ceases to be available. This wording will be updated in due course, but does not pose any issue during the transition period

ITFA, jointly with BAFT, has published a second update on LIBOR transition and its potential impact on our business and the most commonly used documents, such as the BAFT MPAs. Together, we will continue to issue guidance to Members whenever possible.

Current Status:

- MPC is considering producing a podcast to keep members updated on this topic

INFLUENCING THE POST-BREXIT TRADE ENVIRONMENT

The MPC has been asked to look at a number of issues relating to cross-border difficulties for trade products resulting from various idiosyncratic regulations, rules and interpretations across European jurisdictions, and beyond, some of which have become highlighted or exasperated following Brexit.

This is a wider issue than just Brexit and encompasses a whole range of regulatory / compliance headaches for trade due to divergent systems, which ITFA may seek to influence on behalf of Members.

Current Status:

- The MPC is currently developing a more precise scope for this project
- To this end we will issue a survey inviting ITFA members to indicate which areas are most problematic and where they think we should focus our efforts
- We are open to looking at all angles where Members encounter issues for trade products due to issues with regulation / compliance and welcome input either through the survey, or otherwise

JURISDICTION CLAUSE IN EXISTING MPAS POST-BREXIT

Following Brexit there is uncertainty / political disagreement around application of 2005 Hague Convention on Choice of Court Agreements, for agreements signed prior to 1st Jan 2021. This could cause problems for existing MPAs. UK /EU Equivalence talks in March may change the situation so it is too early to consider commissioning an updated legal opinion, but this may be something we look at later

Current Status:

- MPC is looking into drafting an interim view on the matter to guide Members.
- This will be consulted and issued jointly with BAFT

ITFA MUTUAL NDA

This is a mutual NDA for use by ITFA members, framed as a master agreement for bank-to-bank trade transactions and risk sharing which can be applied by the main parties as well as their branches / affiliates as required.

Current Status:



- Draft text is currently undergoing final adjustments by Sullivan Law and review by the MPC
- The NDA will be made available to ITFA members, along with guidelines for use and an introduction via webinar

FAQs FOR 2018 BAFT MPA

In order to encourage the transition to the new 2018 form of the BAFT MPA, the MPC is working to prepare an FAQ which may help market participants to adapt to the new concepts and structure in this version. This document is intended to complement existing forms of guidance (guidance notes and comparison paper), by providing a business perspective on intended market practice in practical use scenarios. Input for questions and clarifications were sourced from ITFA and BAFT members last year. The intention is to maintain and update the FAQs as more questions are encountered and reported to the MPC.

Current Status:

- A draft document has been completed and is currently under final review by the MPC members
- Once published, ITFA Members will be invited to submit further questions arising, and the MPC will periodically address these and update the document online

SUSTAINABILITY / ESG PRINCIPLES

The incorporation of sustainability principles in trade finance is a pressing topic which will continue to demand attention over the coming year. The issues involved are broad and complex and there is not yet any single obvious focus for this work.

Nonetheless, since these issues will certainly touch upon market practice, standards and regulation, the MPC plans to begin establishing a discourse on sustainability among the trade community in order to begin scoping how sustainability can be incorporated into the wider work of ITFA. Ultimately, once scoped this work may be best served with the creation of a separate Committee or Working Group, the establishment of which will be one of the early considerations the MPC looks at.

Current Status:

- MPC is currently discussing the most suitable scope of work for its involvement in this