

Singing in the rain of LIBOR transition

Ashley McDermott, Partner, Mayer Brown International LLP discusses the need, or otherwise, for umbrellas in the run up to June 2023 as the market transitions away from LIBOR.

We are in the final days of LIBOR as we know it. All sterling LIBOR settings will cease to be published in their current form immediately after 31 December 2021 and although the most commonly used dollar LIBOR settings will continue to be published until 30 June 2023, most banks in the export finance market are unable to commit to new dollar loans priced by reference to LIBOR from 1 January 2022.

Thankfully, the export finance community has been working hard on LIBOR transition since our last article for The BULLETIN in March 2021 (What's on the menu at the benchmark bistro?), including through the Berne Union. Recent developments include:

- On 29 July 2021, the Alternative Reference Rates Committee (**ARRC**) in the US formally recommended the use of forward-looking term rates based on the secured overnight financing rate published by CME Group (**'Term SOFR'**) for use in the syndicated loans market, including export finance.
- On 27 October 2021, the Loan Market Association (**LMA**) published an exposure draft single currency term and revolving facilities agreement incorporating Term SOFR for use in English law governed facilities agreements involving developing markets jurisdictions.
- The LMA hosted two LIBOR transition workshops for Berne Union members, and many ECAs have responded to a questionnaire prepared by the LMA to try to ascertain (among other things) the level of operational readiness for the use of risk free rates (RFRs) and what more can be done to help ECAs with the transition away from LIBOR.
- The IBOR Transition Sub-Committee of the ICC Export Finance Working Group (the **ICC ECA LIBOR Transition Sub-**



Ashley McDermott

Committee), which Mayer Brown is a member of, hosted a technical session with Berne Union members on 16 June 2021 to highlight again the impending deadlines and to walk the agencies through the various conventions

and methodologies available for the RFRs that will be used instead of LIBOR in detail.

- There have been several domestic discussions between ECAs and banks active in the export finance sector in their jurisdictions, for example between Bpifrance and the Fédération Bancaire Française (the French Banking Federation) and between SACE and the Italian banking community.

While it remains the case that some ECAs are further advanced than others, great strides have been made in 2021 across the export finance community. UK Export Finance has already transitioned many sterling loans from LIBOR to SONIA and has mentioned that the lessons learned from this exercise should stand them in good stead for the upcoming transition of dollar denominated loans.

Many other ECAs have clarified how they expect banks that benefit from their cover to approach LIBOR transition (more detail on which is set out below). This is all very positive, although there remains a concern that fixed rate providers are less well progressed when it comes to LIBOR transition. It is arguably a more complicated and commercially sensitive issue for fixed rate providers, who are often using the public balance sheet to provide borrowers with a

fixed rate of interest. Assessing the potential impact on the public purse of changing the floating rate leg of what are effectively interest rate hedging structures is a difficult task, but one that needs to be undertaken sooner rather than later, as only then can existing deals with interest make-up agreements or similar be amended and new deals be documented.

Umbrellas needed?

We previously mentioned the need for a menu of options for banks and borrowers, so that they could begin the transition process of legacy loans which reference US dollar LIBOR well in advance of the June 2023 deadline, confident that the necessary amendments would not vitiate their ECA cover. Indeed, many in our community are concerned that the process of transitioning the many US dollar denominated loans which need to be transitioned will not start early enough, resulting in a LIBOR transition rain storm for lawyers, banks and ECAs in the run up to June 2023.

This is one of the reasons why some in the banking community have pushed for ECAs to adopt an 'umbrella' approach to help shelter them from this storm. The idea would be that an ECA would publish general, umbrella guidance confirming that, so long as banks amend loan documentation to refer to one of the risk free rates and conventions and methodologies recommended by the regulators, they would not be required to seek the consent of that ECA to the particular amendments required on a deal by deal basis.

Although policies are still in the process of being finalised in some cases, it is clear that some ECAs are willing to adopt some form of an umbrella approach, whereas others prefer to accompany the banks and borrowers through the rain storm on a deal by deal basis.

What has become clear from the discussions within the export finance community, including via the ICC ECA LIBOR Transition Sub-Committee, is that there is no 'one size fits all' approach to LIBOR transition and that different ECAs prefer to approach the transition process in slightly different ways. However, the past six to nine months has seen a marked improvement in the LIBOR transition landscape for the export finance community, with the tools necessary for us to tackle the challenge now largely being available. Term SOFR is now available for use, there are many more RFR priced loans in the general loans market to refer to as precedents and the documentation for use in RFR priced loans is a lot more developed now than it was.

There will inevitably be some bumps in the road, and we urge everyone in the market to commence the transition process for US dollar loans as soon as possible, to avoid the inevitable rain storm that will hit us in the first half of 2023 turning into a typhoon, but we now have the equipment necessary (in some cases, including an umbrella!) to navigate the storm together. ■

Note

1 <https://www.berneunion.org/Articles/Details/545/Whats-on-the-menu-at-the-benchmark-bistro>

