

December 2024

Commodities in Focus Weekly – issue 107

Yieldpoint Stable Value Fund, LP v Kimura Commodity Trade Finance Fund Limited [2024] EWCA Civ 639. – A timely reminder for users of the BAFT MPA and master agreements

Summary

In the case between Yieldpoint Stable Value Fund, LP ("**Yieldpoint**") and Kimura Commodity Trade Finance Fund Limited ("**Kimura**"), the English Court of Appeal reiterated the applicable principles of interpreting an agreement made pursuant to a template annexed to an umbrella agreement, in the context of trade participation transactions.

Background

The case relates to the standard form Master Participation Agreement for Trade Transactions (the "**MPA**") released by the Bankers Association for Finance and Trade ("**BAFT**"), which is a market standard document for parties to participate in the risk of trade transactions, such as letters of credit, guarantees, receivables purchase and trade loans. Such participations are either "funded", where the participant is required to provide funding to the seller of the participation upfront, or "unfunded", where the participant is only required to fund its participation after a default in the underlying transaction.

In this case, Yieldpoint agreed to pay USD5m to Kimura to participate in Kimura's 50% share of an existing USD45m loan facility granted to a Chilean mining company, Minera Tre Valles SPA (the "**Arrangement**").

The Arrangement was made on 19 February 2021 pursuant to and incorporating the terms of the standard form BAFT MPA, in the form of the template offer and acceptance appended to the MPA, which is subject to several amendments including, *inter alia*: (i) the addition of a "Maturity Date of the Participation" of 31 March 2022 and (ii) special

conditions providing for Yieldpoint to give 45 days' prior notice if it intends to renew its participation (the "**Amendments**").

It was clear that the terms of the standard form MPA anticipated participations in which Yieldpoint would not have any recourse to Kimura to the extent of its participation, thereby making Yieldpoint a conventional funded sub-participant. The issue was whether or not the Amendments had changed this position by making the Arrangement a fixed term loan of USD5m which is repayable by Kimura on the "maturity date".

The mining company had defaulted before 31 March 2022 and Yieldpoint subsequently commenced proceedings against Kimura arguing in the affirmative, claiming repayment of the principal sum of USD5m and other sums.

The High Court in its first instance sided with Yieldpoint on the basis that the Amendments were significant enough to the extent that the parties could have only intended for the Arrangement to be interpreted as a fixed term loan instead of a conventional sub-participation under the MPA, and held that Kimura had an unconditional obligation to repay the sum of USD5m to Yieldpoint on 31 March 2022. Kimura appealed.

Decision by the Court of Appeal

On 18 June 2024, the Court of Appeal allowed the appeal and laid out the proper approach in interpreting transactions made pursuant to and expressly governed by the terms of an umbrella agreement designed to save the parties from having to re-negotiate and re-state the detailed terms of the transactions on each and every occasion.

Lord Justice Phillips in his judgment determined that the starting point for interpreting these types of transactions was to seek to read all the contractual

provisions together (i.e. those under the umbrella agreement and the annexed template), in order to reach a coherent interpretation of the entire contract which conforms with commercial sense. Only if this is not possible should the court determine which provisions should be given priority and whether any provisions should be given a modified reading or otherwise overridden.

Turning to the Arrangement itself, Lord Justice Phillips considered that, *inter alia*, a single term of "maturity date of the participation", which itself contains the key term "participation", together with the special conditions as to the option to extend beyond the maturity date, cannot be read as indicating an intention to overturn the entire structure and effect of the umbrella agreement stated to govern the Arrangement. Ultimately, had the parties intended to enter into a fixed term loan, they would surely have abandoned the sub-participation structure and the MPA and executed a separate loan agreement accordingly.

In light of the above, the Court of Appeal unanimously held that the Arrangement was a conventional sub-participation, and Yieldpoint was not entitled to be repaid its USD5m investment as the mining company defaulted prior to the "maturity date".

Subsequent developments

Following the Court of Appeal's judgment, Yieldpoint applied for permission to appeal to the Supreme Court. Their application was recently refused on 6 November 2024 on the ground that the appeal did not raise an arguable point of law or a point of law of general public importance¹.

Observations

So far as the BAFT MPA is concerned, the Court of Appeal decision is particularly welcomed because it reaffirms the without recourse nature of a participation transaction.

This case is also a timely reminder for every user of master agreements and particularly those in the trade and commodity finance space that the insertion of any special conditions and modification to any terms in a master agreement catered to a specific transaction must be approached cautiously with the overall structure of the corresponding master agreement in mind.

If these amendments appear to be in conflict with the intended structure of the corresponding master agreement, parties should seek to include detailed provisions on the exact terms being agreed upon, or, better still, create a bespoke agreement to document that specific transaction so as to avoid any unintended interpretation of the transaction or uncertain outcome in future.

Authors



Anna Kwong

Partner, Hong Kong

T: +852 2533 2854

E: anna.kwong@shlegalworld.com



Anthony Wong

Associate, Hong Kong

T: +852 2533 2832

E: anthony.wong@shlegalworld.com

Contact us

We hope that you find this update both useful and interesting. If you have any comments or would like to learn more about this topic, please get in touch with either your usual SH contact or any member of our commodities team by clicking [here](#).

¹ <https://www.supremecourt.uk/pta/permission-to-appeal-2024-10.html>