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EXIM Approach to Multilateral Agency Preferred Creditor Status

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Definition of Preferred Creditor Status



- Preferred Creditor Status (PCS) is the granting to a lender's loans of preferential access to foreign currency in the event of a country foreign exchange crisis (also called an inconvertibility event). PCS therefore mitigates transfer and convertibility risk for lenders who are granted it. In the case of multilateral agencies (MLAs) with A/B loan programs it benefits both the MLA and its "B Loan" participants.
- In the case of MLAs, PCS is not a legal status, but is embodied in practice, and is granted by the shareholders of the MLA (in the case of International Finance Corporation, for example, this means its over 180 member governments).
- While PCS does not provide for priority of repayment, it can have that effect to the extent that non-PCS lenders are unwilling to accept local currency during an inconvertibility event while PC lenders are paid in hard currency.

EXIM's Underlying Requirements



- › Policy Requirement for Senior Lenders *Pari Passu* Treatment
 - The underlying principals to EXIM's approach to origination in any common or parallel financing with a group of lenders are (a) that EXIM will always be a senior creditor and (b) all senior creditors will have equal *pari passu* status and share in collateral and rights on a *pro rata* basis.

- › EXIM Charter's Statutory Requirement
 - Section 2(j) of EXIM's Charter (The Export-Import Bank Act of 1945, as amended) provides a statutory mandate that, in order to reduce risk and enhance recoveries, whenever it enters into financing contracts EXIM must "seek a creditor status which is not subordinate to that of all other creditors".
 - This is not a requirement for absolute equality but to strive for a position that is not subordinate.



EXIM's "PCS Deal"



- EXIM has negotiated a "PCS Deal" of standard terms for treatment of PCS with MLAs including Inter-American Development Bank Group and African Development Bank Group. EXIM is either in the process of negotiating similar arrangements, or has finalized agreements subject to execution, with other global and regional MLAs. There have also been "one-off" financings that reflect the PCS Deal.
- As a general matter EXIM will not enter into a financing that permits another lender to enjoy PCS treatment unless the PCS Deal (or its equivalent) is in place.

PCS Deal General Principles



- › *General Principles:* There are three general principles under EXIM's PCS Deal:
 - General Application – the PCS Deal is intended to apply to all financings with the relevant MLA, incorporated on transaction-by-transaction basis
 - Application to Other PCS Lenders, and “Most Favored Nation” Treatment
 - Trade-off in Preferential Treatment – PCS lender preferential treatment during inconvertibility then non-PCS lender preferential rights to catch-up to the extent needed



PCS Deal Phases



- › The PCS Deal consists of the following phases:
 - Suspension (Escrow) Account (established to hold local currency amounts paid in lieu of hard currency payments to non-PCS lenders during any inconvertibility period)
 - Periodic Top-Up During Inconvertibility Period
 - Restoration of Parity via Account Distribution Payment
 - Immediate Catchup Payment
 - Priority Preferential Payments to Non-PCS Lenders (if needed)
 - Treatment on Insolvency



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