



BULLETIN – 081122/07

ICMSA Recommendation with respect to Payment of Trustees' Legal Expenses

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The ICMSA's trustee sub-committee has considered the payment of the trustees' legal expenses and its own fees. The ICMSA trustee sub-committee consulted amongst its members and ICMA. It was found that it was sometimes the case that payment of these fees and expenses was not considered at the outset for a number of reasons including:

- the client was not fully apprised of the need for a trustee and that such trustee would need to be legally advised and remunerated;
- that some arrangers were reluctant to mention them when they had won the deal for relationship reasons;
- that there was a misunderstanding as to who was to bear these expenses and fees; or
- that legal counsel had quoted a 'global' fee (i.e. advice for both Managers and Trustee) but this information had not been circulated to all relevant parties.

In order to rectify the situation and to make clear where the payment responsibility resides the ICMSA trustee sub-committee recommends the following changes to the issue documents:

1. Signing and Closing Agenda

To the provision dealing with matters to be attend to before closing where it refers to fees and expenses a clause as follows:

Each of the Manager's and the Trustee's legal counsel to issue an invoice in respect of legal fees and disbursements (including VAT if applicable) incurred in connection with the issuance of the Notes and the related transaction documents

To the provision to be added to the section dealing with matters to be attend to on closing:

Payment by the Issuer of all amounts due under the invoices referred to in sub-paragraph [] above

2. Subscription Agreement

A further additional Issuer undertaking to be added as follows:

Payment of legal fee: the Issuer undertakes that it will on the Closing Date or otherwise as agreed with the Managers and the Trustee pay the Manager and the Trustee an amount equal to the amount of their respective invoiced legal fees and disbursements (including VAT if applicable) incurred in connection with the Notes up to and including the Closing Date. The Contracts (Right of Third Parties) Act 1999 applies to this Clause

Add to the Contracts (Rights of Third Parties) Act 1999 clause as follows:

except and to the extent (if any) that this Subscription Agreement provides for such Act to apply to any of its terms