



BULLETIN – 101115/15

ICMSA Recommendation with respect to Rating Agency Confirmations

Issued by the International Capital Market Services Association www.icmsa.org

Introduction

The ICMSA has noted the tendency, especially in the context of structured finance transactions, to include provisions stating that any amendments to the transaction documents are dependent on a confirmation being received from one or more of the major rating agencies (**Rating Agencies**) that such amendments will not result in a change (or withdrawal) of the existing rating of the debt (**RAC**).

To provide clarity to the market, ICMSA has sought to summarise the approach taken and the policy adopted by the Rating Agencies with respect to the provision of RACs.

Common position

All of the Rating Agencies have emphasised that whilst transaction parties often choose to include provisions requiring a RAC to be issued in certain circumstances, the relevant agency is under no obligation to issue a RAC. The Rating Agencies maintain that they are not a party to transaction documents and that the provision of a RAC remains entirely within their discretion.

The Rating Agencies also point out that any changes to rated transactions should be promptly communicated to the relevant rating agency and the public at large so that investors can draw their own conclusions on the credit implications of any given amendments.

The Rating Agencies are also keen to emphasise the limitations of RACs. Whilst a RAC confirms that the amendments (in and of themselves) will not result in the debt being downgraded at the time the RAC is issued, they do not speak as to whether the amendments will have any other adverse consequences.

Rating Agency approach

Whilst the general policy of each of the Rating Agencies (as outlined above) is broadly consistent, ICMSA notes that there are also (in practice) certain differences in the Rating Agencies' approach with respect to issuing RACs.

For example, one of the Rating Agencies has taken the step of advising against the inclusion of any provisions stating that amendments to the transaction are conditional upon receiving a RAC. Another Rating Agency has requested that transaction parties bear in mind their general position (that they are not legally obliged to provide RACs) before including any such provisions.



Recommendation

ICMSA understands that the decision as to whether or not a RAC can or will be issued will inevitably depend on a number of factors including, but not limited to:

- i) the views of the particular analyst assigned to the transaction at the relevant Rating Agency;
- ii) the nature of the amendments contingent upon receiving a RAC; and
- iii) general market conditions.

On this basis, ICMSA would advise transaction parties to be mindful of the general approach of each of the Rating Agencies before inserting any provisions making certain amendments or actions contingent upon the receipt of a RAC.