



BULLETIN – 130614/22

ICMSA Bulletin – Recommendation with respect to the provision of original documentation to Trustees

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Introduction

The ICMSA has noted a tendency for the signatures of parties to agreements to be circulated in soft copy only. In some circumstances, particularly in the context of litigation, the existence of hard copy, executed documentation can prove crucial and there have been instances of parties being unable to enforce their rights as a result of the absence of original, executed documentation.

The ICMSA recommends that:

The Arranger ensures that:

- 1. For documentation governed by laws other than English law or New York law** the Trustee and any Agent is provided with (i) a hard copy of all agreements to which it is a party, executed by all parties, and (ii) a soft copy of all documentation.
- 2. For documentation governed by English law or New York law** the Trustee and any Agent is provided with a soft copy of all documentation and, if (i) the laws of any other relevant jurisdiction where any judgement may need to be enforced require hard copy documents to be produced for the purposes of any court or other proceedings in that jurisdiction or (ii) the Trustee or any Agent so requests prior to closing, a hard copy of all agreements to which it is a party, executed by all parties. For the avoidance of doubt, the term “Agent” shall include any Account Bank.

For the avoidance of doubt:

- Hard copy documents must always be produced where they are required (and within any applicable time period) for the purposes of any necessary filings or registrations or for purposes of being stamped, notarised, apostilled or any similar procedure or for any other purpose identified in any relevant legal opinions.
- This recommendation is also extended to transactions where a Trustee is not appointed and where a Fiscal Agent or Issuing and Paying Agent are normally appointed.

In the case of soft copies of documentation these should be provided within a week of signing and in the case of hard copies of documentation the circulation of hard copies for execution should commence within five days of signing in order to ensure that the Trustee receives copies in a timely manner and, in any event, within six weeks of signing.