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TRADE SERVICES UPDATE

Volume 11, Issue 6, November - December 2009

From the editor

So we have just stepped into another year. Looking back, 2009 has been very interesting in terms of Trade Services. Important discussions have been on the table: The URDG 758 was approved by the ICC, the revision of Incoterms came to a critical point, and an overhaul of the ISBP was initiated.

Further the financial crisis brought the traditional trade products into the spotlight once again.

And that is not all, IT initiatives focusing on making the trade processes more automated are clearly gathering attention at the large corporate customers and systems like @GlobalTrade are now used daily for live transactions.

In terms of this newsletter, 2009 has also been really interesting. It is now fully electronic and based on a growing board of country correspondents who are ready and able to provide up-to-date information from their home markets. No other trade service publication is able to do that.

So the prospects for 2010 are looking great; 2009 was a good year in terms of trade services – my prediction is that 2010 will be even better.

On behalf of the editorial board I thank you all for your contributions and support during 2009 and look forward to seeing you again in 2010.

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Exporta's 7th Annual Middle East Trade & Export Finance Conference will be held on February 16 – 17, 2010 at the Jumeirah Beach Hotel in Dubai UAE.

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New Country Correspondent Appointed

Xavier Fornt

It is my pleasure to announce that **Mr. Xavier Fornt** has been appointed country correspondent for Spain.

See his full bio at:
http://www.lcmonitor.com/editor_xavier

Kim Christensen
Editor in Chief

The URDG 758 Has Been Approved

End of November 2009: The ICC National Committees of both the Banking Commission and the Commercial Law and Practice Commission voted to adopt the revision of the Uniform Rules for Demand Guarantees (URDG). The new rules (URDG 758) will come into effect on 1 July 2010.

The URDG 758 consists of 35 articles, compared with 28 in the URDG 458. Language and structure are similar to that of the UCP 600; for example, there is an article defining terms and parties (article 2). There also, the term *'complying presentation'* has been added, which by contents is similar to the same in the UCP 600.

One attempt of the URDG drafting group has been to move to clear and precise rules. For example there is a rule that the guarantor has five business days to determine if a demand is complying (article 20(a)).

Similarly there is a provision to the effect that a guarantee without an expiry date will expire three years after the date of issue (article 25(c)).

The ICC has indicated that the rules will be available for sale around February 2010, and there will also be a commentary issued on the URDG 758.

Once the rules are published, the *LCM Newsletter Trade Services Update* will discuss all the relevant provisions in more detail.

Comment from Spain:

The best thing about the new rules is that the expressions used are very similar to the UCP and consequently easily understood by document checkers.

What is bad is a question of image for the banks. About 10 per cent of the articles (3 of 35) are disclaimers. Perhaps the drafting group missed the opportunity to unify articles 24, 25, and 26 into a single disclaimer.

In Spain, we are now translating the rules into Spanish in accordance with all National Committees from Spanish-speaking South American countries.

We hope that the new URDG will be more successful than the old 458.

Xavier Fornt

Comment from Ukraine

As for the changes to URDG I consider it very wise to introduce standards for the examination of the documents. In my experience most guarantees issued require some accompanying documents (more often from the third parties) together with the beneficiary's demand and I always feel a temptation to insert the condition that the documents will be examined in accordance with the UCP provisions.

Definition of 'reasonable time' will also eliminate many disputes as to the time needed by the guarantor.

Implementing this rule in our practice means that this period will be stipulated in the mandated agreement with the principal. At present we also include several days in this agreement (i.e., obligations of the principal towards us is longer by three to five days than our obligations towards the beneficiary) but this period depends on the guarantee conditions (for example the volume and complexity of the demand accompanying documents).

It will be interesting to at least see the draft in order to give more detailed comments.

Lyudmila Yeremenko

Comment from South Korea

1. What is good about the rules?

Although URDG is not as widely used as the UCP, the rules are quite good as are those of the UCP. With the recent revision, many points have been elaborated upon making the URDG better than ever. More than any other point, the provision on assignment of guarantee is most useful. It spells out the procedures to be used in such instances and makes clear many of the difficult points that are involved.

2. What is bad about the rules?

I can't find much that is bad about the rules. That's just my nature I guess. But the recent revision is in fact nicely done.

3. How will you implement them in your respective institutions?

When we advise a bank guarantee, the covering letter usually contains the 'subject to the URDG' phrase.

However, when we issue bank guarantees, unless the applicant and the beneficiary specifically agree to putting the URDG phrase into the text of the bank guarantee, we are not able to put them in on our own.

Just as the UCP is incorporated into all letters of credit, the URDG should also be incorporated into all bank guarantees.

There is no jurisdiction or applicable law clause in the letter of credit and likewise the bank guarantee should be the same.

However, because the bank guarantee is drafted by lawyers, there is often a jurisdiction and an applicable law clause. If possible, such clauses should be eliminated.

4. Will the rules in your view be more successful than the former URDG?

I think that the recent revision will be more successful than the previous version for the simple reason that with the passage of time, bankers, lawyers, and traders have become more familiar with the rules. With the recent revision providing more clear and precise procedures in the use of the bank guarantee, coupled with the learning curve of the practitioners over the years, I am confident that the new revision will be better received by all the parties involved in bank guarantees.

5. A suggestion if I may.

With the recent revision, bankers, lawyers, and traders have become more exposed to the rules governing bank guarantees.

At my bank, I review most of the guarantees that are issued by our bank. Due to the guarantees being drafted by lawyers, the text of guarantees can sometimes become very complicated. But for all its complications, the provisions relevant to the banker remain limited.

Like the MT 700 that we have for the letter of credit, I would like to suggest a formatted MT 760 for the bank guarantee, i.e., with various fields rather than simply narrative as at present.

Many of the complicated provisions in the bank guarantee are not really necessary for the banking operation involved in such a guarantee. Thus if we can formulate a formatted bank guarantee similar to the MT 700 for the letter of credit, the need for separate drafting of bank guarantees will be reduced.

Although the beneficiary can always decide to go with a more complicated bank guarantee that is separately drafted, it would not be more reliable than the formatted bank guarantee once the latter is introduced into the SWIFT system.

Chang-Soon Thomas Song

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Perhaps It Is Time for a URC 522 Revision

Xavier Fornt is an international experts within the area of trade services

See his full bio on: http://www.lcmonitor.com/editor_xavier

One of the most valuable activities of the Banking Commission is, without any doubt, the constant improvement of the rules.

In the last few years, the first has been the revision of the UCP for documentary credits, the new 600. After this, there was the revision of the URDG for first demand guarantees, the new 758.

Both have been finished very successfully.

Now Incoterms and the ISBP are in the process of revision, a very necessary one in both cases.

But what about the collections? We have the URC 522, rules adopted in 1995, over ten years ago. Fourteen years is a long time in today's world.

Things change very quickly, and in our collections business today we have a situation completely different from that in 1995.

Let me mention for example, the L.C.R. in France, RIBA in Italy, or similar systems in other countries, that is, electronic collections.

And what is coming soon? Direct debit services are operating as a form of clean collection.

For documentary collections perhaps the need is not too high, since we have some problems in the circulation of electronic documents, but for clean collections, perhaps it is time to review the old rules.

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When Is the Time for eUCP?

Danielle Austin calls for action!

Danielle Austin is an LC Consultant. She is a recognized export letter of credit (LC) professional providing informative articles, workshops, in-house training, advisory services, and webinars. Danielle is a national speaker and panelist at various trade conferences and international organizations, and writes ongoing articles for trade journals and trade industry publications. She teaches Export LC Workshops monthly and represents 'The Beneficiary's Point of View.' With a proven track record her training/consulting services covers the most effective methods/procedures to manage the process internally. Published throughout various international trade journals, her motto is 'Streamlining discrepancies into payments!' Danielle shares a unique, fresh, and insightful view of her experiences and approach to using letters of credit effectively. She has an extensive background and experience working with cross-border trade flows and managing all aspects of the letter of credit process. With more than 15 years of hands-on LC experience, she has managed all aspects from start to finish while working for numerous fortune 500 companies. As a Senior Vice President Global Banker, she has helped thousands of importers and exporters facilitate trade internationally. As a result of her vast experience and success with letters of credit, she represented U.S. Exporters for a UCP 600 revision meeting in Paris on the U.S. Banking Committee Team through the USCIB (United States Council for International Business). With a comprehensive understanding of the UCP (Uniform Customs Practice), ISBP (International Standard Banking Practice), and Incoterms 2000, she has made a difference for the exporters by establishing an in-house doc prep system, lessons learned, benefits, and pitfalls to avoid.

Export letter of credit services - workshops, advisory services, LC review;
employee in-house LC management training, ongoing customized services.
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upcoming workshops http://www.danielleaustin.com/workshopsresources.html
recent testimonials http://www.danielleaustin.com/testimonials.html

She is campaigning to ***'Educate the Exporters'***
Don't cringe at the thought of it…. master the art of it

Bio available on www.lcmonitor.com/editor_austin

Hello Kim!

Great to read your comments and receive the most recent issue of LCM! Thank you!

'So, on the one hand we are working with "old" payment instruments like the UCP and URDG, and on the other, we are moving more and more towards the electronic side of things. A good question is where do the two meet. We intend to find out!'

That solution has been out there…. since 2002 when the eUCP was introduced and the ICC printed it. The technology has been there, yet the issuing banks are not issuing LCs in this format. Right? U.S. exporters (along with many other countries) are ready for it, yet it's up to the issuing banks to issue them in this format. I teach hundreds of companies EVERY year on the ins-and-outs of LCs and how to master the art of the instrument and I continually plant a seed about the eUCP. Actually you may remember the article that Jacob Katsman wrote 'SEAHAWK LANDS IN LONDON' (Vol. 7, Issue 3, May/June 2005, page 5). There at the Innovations in Trade meeting organized by GTR is where I challenged the one hundred global bankers in the room 'You have a live beneficiary, who in the room will raise your hand and pilot the eUCP with me?' No hands were raised. That is why so many Doc Prep firms started up - the banks are not utilizing a system that exists, they have the technology, and we have the technology. Thinking back… if only SWIFT/BOLERO and the global banks had been on board together initially; Bolero had the platform/solution and presented it to all major global banks, but at that time the banks didn't want to invest, so each of these banks decided to start building their own web-based products.

However, but for the user it made it more difficult when dealing with various global banks to have to sign-in to each website and learn their nuances, and so it's not as efficient as it could have been initially. We could have been sending docs electronically more than ten years ago! Something to think about, and something that is still VERY viable! We are looking forward to the next innovations in trade and their efficiencies.

How many LCs have been issued per eUCP and paid successfully?

Let's increase this number and make this instrument more appealing to the users, one of the safest, and most efficient way to do business internationally!

Out here campaigning to *'Educating the Exporters*'

Don't cringe at the thought of it… master the art of it

Comment from Spain:

For SME the cost is very high. And if they must work with combined presentations (part on paper, part electronic), they don't see any advantage.

Xavier Fornt

Comment from Sweden:

Looking into the driver's mirror: Banks haven't seen much of it!

Considering the fact that it was drafted to be independent of specific technologies and developing electronic commerce systems and that it was launched during a period of time when all these issues were at stake – it's astonishing that it hasn't been taken advantage of as yet.

One commentator, Neil Chantry of HSBC bank in London and a member of the group that drafted the supplement said, 'After ten years there will be virtually no paper based trade.'

The eUCP was created to meet market demands and constantly clients ask for status reports on this. Upon the introduction of the rules, there was a strong belief that it implied the end of paper. The risks inherent in the management of paper would disappear, however, still other risks became apparent and the use of electronic documentation has brought risks that never existed in the paper world. As we know cybercrime and everything fuelling cybercrime has increased. The crucial issue is the interface and the protection of banks internal systems.

As you can see, I have more questions than answers, but reminders from traders hopefully will have an impact. The clouds of dust should be removed from the rules; the technology permitting their use should be taken onboard.

Marianne Wabnik

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News from the Banking Commission Meeting in Brussels, November 2009

More than 300 participants (speakers, guests and chairpersons included) from some 50 countries were attending this event, often called the world's premier trade finance event.

The various rules set by ICC, accepted by the entire world, are highly influential on trade.

The Banking Commission generally is seen as the most important of the assembly of commissions. Globalization will enable more transparent access to markets and the creation of better instruments, where the role of the ICC cannot be exaggerated.

As stated already in this volume, the current rules for demand guarantees, **URDG 458, have been revised** URDG 758 is the successful result of the Drafting and Task Force groups´ several years of hard work.

Having finalized this praiseworthy task, the commission is targeting important projects: for example, an ADB Trade Finance register, forfeiting rules, and FATF (Financial Action Task Force) guidelines for combating proliferation financing.

At the WTO Expert Group meeting on the 15th of September 2009, there was recognition that the rigidity of the **Basel II** rules does not reflect appropriate provisioning for trade finance and therefore places an unnecessary strain on the private sector's ability to provide trade finance, especially in the most challenging emerging markets.

Because trade finance has been recognized as having a lower risk profile than regular unsecured bank credits, the Basel II regulators should be convinced to lower capital requirements for trade finance to an appropriate level reflecting the risk profile. Basel II has been seen as a real challenge for banks. Further action needed would be a register organized by the International Secretariat of the ICC, Paris, which would provide data in order to continue work at the technical level with regulators on increasing the flexibility of the Basel II rules. Therefore it was proposed that ICC, Paris, in co-operation with Asian Development Bank (ADB), develops Terms of Reference to define the scope of requirements for the establishment of a **Trade Finance Default Register**. The register should be established with the aim of accumulating, sorting, and maintaining Trade Finance default data for concrete use and evaluation.

Forfeiting rules

A project with the purpose of establishing written rules for both the primary and secondary markets was initiated in 2004. A study of the forfeit market potential was carried out, which encouraged the ICC members to decide on the project. During the ICC Fall meeting an update was provided. A special Task Force Group with global representation is busy reviewing the existing IFA rules. Why are rules important? With the ultimate aim to increase business, rules bring certainty to markets and mitigate risks.

The Incoterms revision is in process and is expected to be released in September 2010. The work is going smoothly and will result in more user friendly terms than the previous version, thereby preventing misuse. The number of Incoterms is reduced by three. Four have been taken out: DAF, DES, DEQ, and DDP while a new term will be implemented, DAP, delivered at place.

During this session there were comments from the audience: 'Why couldn't letter of credit documents be aligned with Incoterms?'

Reply: 'The role of a letter of credit is to prescribe documents to be presented under it, and the purpose of Incoterms is different, but still these sets of rules should live side by side.'

A decision to revise ISBP (The International Standard Banking Practice for the examination of documents under documentary Credits) was taken.

Background: The International Standard Banking Practice for the examination of documents under documentary credits (ISBP) was first published in 2003. It was updated and aligned with the UCP revision in 2007. It fills the needed gap between the general principles announced in the rules and the daily work of the documentary credit practitioner. ISBP today covers drafts, invoices, transport documents, insurance documents, and certificates of origin whereas other documents such as packing lists and weight notes are not covered. Other areas not being covered are: installment drawings, transferable credits, assignment of proceeds, and revolving and reinstatement credits.

All forms of documents need to be covered in order to avoid unsubstantiated discrepancies. This should diminish when they can be contested, supported by ISBP as a global standardization of interpretational terms. However, standardization on a larger scale would be welcomed by banks and corporate.

Marianne Wabnik, Sweden

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Must an Invoice Show the Address and Country of the Applicant?

QUESTION:

A documentary credit is issued and as usual, shows the names, addresses, and country of the beneficiary and applicant.

One of the required documents is a commercial invoice, without other specifications.

At the time of presentation the beneficiary included an invoice showing only the name of applicant, but neither the address nor country.

When analyzing this case, different positions can be adopted:

Position 1
The invoice is discrepant, because as per European legislation, (CE Directive 2001/115/CE), an invoice must show the name and the address of the seller and buyer.

Position 2
This argument (position 1) is not based on the UCP 600 and consequently not applicable.

Position 3
UCP 600 sub-article 14(j) reads: 'the addresses need not to be the same…but be within the same country…' and it must at minimum show the country. Consequently the invoice is discrepant.

Position 4
This article (14(j)) is not applicable because it is only applicable in the case 'when the addresses appears' and in this case the addresses do not appear.

Position 5
The document is acceptable as per UCP 600 sub-article 18(a) (ii), because this article indicates only that the invoice 'must be made in the name of the applicant.'

Position 6
The document is not compliant because when UCP 600 sub-article 18(a) (ii) refers to 'the name' it means the name and address as shown in the swift field in regards to the applicant.

As you can see, these are really very different interpretations of the UCP.

In your point of view which would be the correct position?

Kim Christensen (Denmark)

That is a good question. At least I am sure that I know Gary's view on this: namely, a combination of your position 4 and 5; i.e., there is no requirement for an address or country, unless the LC calls for such and 14(j) only applies when they appear. If you have his FAQ Volume 1 then check the answer to question 14.10.

Personally I think it would be awkward to issue an invoice without showing the address of the applicant, but the LC should reflect that requirement.

The argument in Position 1 is wrong in any case.

Pavel Andrle (Czech Republic)

Interesting question indeed.

I believe that the UCP 600 position is that the address on an invoice is not necessary unless the LC expressly calls for it.

Lyudmila Yeremenko (Ukraine)

On this issue I would like to refer to the article of our colleague Mr.Chang-Soon Thomas Song, '*When discrepancies should and shouldn't matter*.'

When we apply sub-article 14(j) we understand that at least the country of the applicant must be stated. And to sleep well I'd ask the beneficiary to correct the invoice (the discrepancy can be corrected easily).

If the correction is impossible for any reason, I would consider it a minor discrepancy to be used as a reason for refusal. The LC is subject to UCP600 (not to local law), all other documents comply with the LC and the invoice, and ideally the invoice contains the LC no and/or reference to another complying document presented.

As for the SWIFT fields 50 and 59, they are named 'Applicant' / 'Beneficiary' respectively. This means any info about applicant and beneficiary, and the field specification explains what should be put there - i.e., the name and the address are different parts of the field.

MT700: (9) Field 50: Applicant
FORMAT
4*35x
(Name & Address)

Thank you for the question!

Shahriar Masum (Bangladesh)

Interesting question and I think the answer is already there :) The address is simply not required in UCP and I find no reason to call it a discrepancy. Besides there is no significant use of the address of the applicant on the invoice.

However, I wonder what would happen if a courier receipt did not have the address (?!) of the applicant when the LC calls for a courier receipt showing applicant as the consignee. Would you consider this a discrepancy?

Vincent Barboza (Canada)

I would treat this as a compliant presentation for the following reasons.

I understand that there is a local law in the issuing bank's country which mandates that invoices should bear the name and address of the buyer and seller. To comply with this requirement the issuing bank must include such a clause in the LC, which was not done.

The beneficiary presented invoices that conform to article 18 of UCP 600.

Soh Chee Seng (Singapore)

I fully agree with Vincent Barboza. It is the duty of the issuing bank to incorporate such a condition in the LC if it is so required by the local law.

T.O. Lee (Canada)

Solely based on the information provided by the enquirer, my comments are:

1. According to article 2 of UCP 600, which this LC is subject to, a compliant presentation need not be complying with the local legislations or SWIFT protocol. So as far as compliance is concerned, there is no need to add (a) full address or (b) the name of the country of the applicant in the invoice.

2. Having said that, if the dispute were to be on trial in a court, it would be another ball game, and the court's decision based on local law (as the applicable law) would override UCP 600. The situation is the same as the Santander case, and there might be some unpleasant surprises for the bankers.

3. Article 14 (j) is not applicable in this case because this sub-article only refers to the specific situation 'When the address of the applicant appears in the invoice.'

4. Article 18 (a) rules as it specifically governs the invoice. An invoice showing the name of applicant is good enough as far as UCP 600 is concerned.

5. In conclusion, outside the court, there is no discrepancy, but inside the court, no one can forecast.

6. What about the appeal? From my experience in resolving commodities trade disputes, if the beneficiary's counsel made good use of the 'due diligence' duty of the issuing bank (to comply with the local law in the LC contents), then the issuing bank, due to negligence (if established), would lose the case. This is the interesting part again.

The more you know, the more you don't know!

Glenn Ransier (USA)

Current Article 18 (a) of UCP 600 is very similar to Article 37 (a) of UCP 500. There was a similar question raised in 500 against which opinion 470 states in the first line of the conclusion: *'As you will note from the extract above, sub-Article 37(a) does not impose a specific requirement for the address of the applicant to appear.'* I see no reason to believe that this opinion would not carry forward under UCP 600.

The points raised about Article 14 (j) are valid in that it states: 'When the addresses of the beneficiary or applicant appear.' In this case there is no address so this should not be in effect for this situation.

I believe the document to be complying.

Nguyen Huu Duc (Vietnam)

If there is a concern that the invoice that does not show the applicant's address may not be acceptable as per European legislation, there should be an express requirement in the LC that the invoice must show full address of the applicant. In the absence of this requirement, an invoice that shows the applicant's name only is deemed to comply with sub-article 18 (a) (ii).

I agree with T.O. Lee that sub-article 14 (j) is not applicable in this case as it refers to a situation when the address of the applicant appears in the invoice.

Jakob Ingerslev (Denmark)

I agree with:

- Position 2, i.e., the European law requirement about address is not applicable.
- Position 4, i.e., article 14 (j) is only applicable when the address appears.
- Position 5, i.e., the invoice is acceptable as per article 18 (a)(ii).

Conclusion: In my view the presented invoice is not discrepant.

Bogdan Ilie (Romania)

In respect of UCP 600 articles 14(d) and 14(j), a commercial invoice showing only the applicant's name is not a discrepant document.

1. An invoice stating the applicant's name as buyer without indicating the address doesn't conflict with the credit or with any other document which might show the full name and address of the applicant.

2. Article 14(j) begins with word 'when.' So, if the invoice states a different applicant's address from the one stated under the LC, such an address must evidence as being within the same country. If the invoice shows only the applicant's name, art.14 (j) is useless and invoice is accepted as presented.

Daniel Devahive (Switzerland)

I am pretty sure an issuing bank (if needed) would raise the fact that the invoice should be made out in the name of the applicant as shown in the whole field 50, because that is what happens these days. Long discussions would follow where everybody is right and nobody is wrong.

These days some problems are sometimes difficult to solve because they go far beyond UCP, ISBP, etc ... Fortunately they can almost always be anticipated.

Sarah Younger (Israel)

I would also like to address the question regarding the address of the applicant :
In my opinion Position 4 is the correct one.

However, with regards to the current atmosphere relating to AML procedures, the address of the participants is very important (even in wire transfers).Therefore, the issuing bank should always note the name and the address of the applicant and the beneficiary in fields 50 and 59 of the MT700.

Chang-Soon Thomas Song (South Korea)

I think that this case arose because an issuing bank sent a discrepancy notice stating that the invoice does not show the address and country of the applicant.

I do not understand why a beneficiary would not show the address and country of the applicant in the invoice but be that as it may, if for some reason, it was done, would such a drafting of the invoice be compliant with the terms and conditions of the letter of credit and the UCP 600?

The UCP 600 states that even if the documents presented are not identical to the requirements of the credit, if the document fulfills the purpose and the function of the said document, it can be said to comply.

Even if there is no address or country specified with the applicant in the invoice, that does not make the invoice itself invalid. An invoice is a document issued by the beneficiary addressed to the applicant showing the details of the goods under the contract. The address and country of the applicant can be found in the other shipping documents if the information is needed and the absence of the address and the country of the applicant does not cause any confusion as to whom the invoice is addressed.

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LOI's in Oil Trade

A question from the readers:

Some oil trading companies are interested in IT solutions (like the GlobalTrade solution) for management of export and import letters of credit and use of SWIFT to communicate with banks. One of the recurring questions is how our solution can handle letters of indemnity (LOI's).

We are not quite sure how the LOIs are handled by an applicant, issuing bank, and advising bank. If you know the LOI process, could you clarify:

1. What is the role of an oil importer in the LOI process, i.e., how is the importer involved in it (drafting the LOI, sending it to an issuing bank to be forwarded to an advising bank and the beneficiary, etc.)?

2. What is the role of the issuing bank?

3. What is the role of the advising bank?

4. How does the issuing bank pass the LOI draft to beneficiary – SWIFT (additional conditions or a separate MT799), Telex, or email?

Answer from Chang-Soon Thomas Song (South Korea)

1. ***What is the role of an oil importer in the LOI process, i.e. how is the importer involved in it (drafting the LOI, sending it to an issuing bank to be forwarded to an advising bank and the beneficiary, etc.)?***

Oil is just another commodity that is handled though the letter of credit. But unlike other goods, oil transactions occur many times from the time of loading the oil on a tanker and the time that the tanker arrives at its final destination. Thus a bill of lading cannot keep up with the change of ownership of the oil in many transactions.

Thus the letter of indemnity is used instead of the original bill of lading in the letter of credit transaction. It is issued by the beneficiary addressed to the owner of the ship undertaking to deliver the original bills of lading later on.

The letter of indemnity is fairly standard and there is rarely individual drafting of the letter of indemnity each time that there is need for the said document. The letter of credit used to import the oil includes the wording of the letter of indemnity that the beneficiary has to prepare and present at time of negotiation.

2. ***What is the role of the issuing bank?***

He simply issues the letter of credit containing the usual letter of credit terms and condition and in addition the wording that is required on the letter of indemnity.

3. ***What is the role of the advising bank?***

The advising bank simply advises the letter of credit, with the letter of indemnity text within, to the beneficiary.

4. ***How does the issuing bank pass the LOI draft to the beneficiary – SWIFT (additional conditions or a separate MT 799), telex, or email?***

The wording of the letter of indemnity (LOI) in included in the letter of credit text.

Here is a form of the letter of indemnity used in the oil trade:

Typical letter of indemnity given in return for delivery of cargo without production of the original bills of lading

To: [name of owner]
The owners of the [insert name of ship]

Ship: [insert name of ship]
Voyage: [insert load/discharge port as stated in the Bill of Lading]
Cargo: [insert description of cargo]
Bills of Lading: [insert identification number, date, place of issue]

The above cargo was shipped on the above vessel by [insert name of shipper] and consigned to [insert name of consignee or to whose order the Bill of Lading is made out as appropriate] for delivery at the port of [insert name of discharge port stated in the Bill of Lading], but the Bills of Lading have not arrived and we, [insert name of the party requesting delivery] hereby request you to give delivery of the said cargo to [insert name of the party to whom delivery is to be made] without production of the original Bills of Lading.

In consideration of your complying with our above request, we hereby agree as follows:

1. To indemnify you, your servants, and agents and to hold all of you harmless in respect of any liability, loss, damage, or expenses of whatsoever nature which you may sustain by reason of delivering the cargo in accordance with our request.
2. In the event of proceedings being commenced against you or any of your servants or agents in connection with the delivery of the cargo as aforesaid, to provide you or them on demand with sufficient funds to defend the same.
3. If in connection with the delivery of the cargo as aforesaid, the ship or any other ship or property belonging to you should be arrested or detained or if the arrest or detention thereof should be threatened, to provide on demand such bail or other security as may be required to prevent such arrest or detention or to secure the release of such ship or property and to indemnify you in respect of any liability, for loss, damage, or expenses caused by such arrest or detention or threatened arrest or detention whether or not such arrest or detention or threatened arrest or detention may be justified.
4. As soon as all original Bills of Lading for the above cargo shall have come into our possession to deliver the same to you, whereupon our liability hereunder shall cease.
5. The liability of each and every person under this indemnity shall be joint

and several and shall not be conditional upon your proceeding first against any person, whether or not such person is a party to or liable under this indemnity.

6. The liability of each and every person under this indemnity shall in no circumstances exceed 200% of the CIF value of the above cargo.
7. The indemnity shall be governed by and construed in accordance with English law and each and every person liable under this indemnity shall at your request submit to the jurisdiction of the High Court of Justice of England.

Yours faithfully,

For and on behalf of [insert name of requestor]
.....[signature]
For and on behalf of [insert name of bank]
.....[signature]

UCP 600 – Article by Article (article 16)

Following the tradition of the newsletter Trade Services Update we provide article-by-article comments on the UCP 600. The next one up for discussion is article 16.

Article 16: Discrepant Documents, Waiver, and Notice

Article 16 of the UCP 600 is based on UCP 500 article 14.

Article 16 is crucial as it deals with the situation where the presentation is not complying and the bank (issuing / confirming) wants to refuse. It describes the process for doing so, and as was the case with UCP 500, failure to do this process correctly can have severe consequences; e.g., an issuing bank can be precluded from claiming that it was not a complying presentation, hence being obligated to honour.

In essence the article is similar to the UCP 500 equivalent in that a bank (nominated, confirming, or issuing) that determines that a presentation is not complying may refuse (article 16(a)). In the case where it is the issuing bank it may also contact the applicant for a waiver (article 16(b)).

For the notice of refusal there are the following requirements:

- The refusal must be in the form of a single notice to the presenter (article 16(c)).
  That is, there is only one chance; the bank cannot come back later stating additional discrepancies.

- The notice of refusal must state that the bank is refusing to honour or negotiate (article 16(c) (i)) as the case may be.
  * It is sufficient to state that the bank is refusing; the fact that it is refusing to honour or negotiate goes without saying.
  * If the notice of refusal is made by means of SWIFT using message type MT734 it is understood that the banks is refusing.

- The notice of refusal must state each discrepancy (article 16(c) (ii).
  * General statements such as *'various discrepancies'* is not sufficient,
  * Likewise the wording of each discrepancy must be precise. For example a wording like *'Invoice not as per LC'* is not sufficient, while *'Description of goods in the invoice does not correspond with goods description in the credit'* is.

- The notice of refusal must state the disposal of the documents (article 16(c) (iii)), i.e., what the bank is doing with the documents. There are four options (in the UCP 500 there were only 2); namely the following:

  a) holding the documents pending instructions.
  SWIFT Code: HOLD

  b) holding the documents until it receives a waiver from the applicant.
  SWIFT Code: NOTIFYAPP

  c) returning the documents.
  SWIFT Code: RETURN

d) acting in accordance with instructions previously received
SWIFT Code: PREVINST

- The notice of refusal must be must be given by telecommunication or, if that is not possible, by other expeditious means (article 16(d)).

- The notice of refusal must be given no later than the close of the fifth banking day following the day of presentation (article 16(d)).

New to the article is that the bank that has refused the documents may return then to the presenter at any time (article 16(e)). This provision does not apply of if option'd' above has been used.

The preclusion rule (as mentioned in the beginning of this article) is stated in article 16(f) and concerns only issuing and confirming banks that have refused. If these banks fail to act in accordance with the provisions of article 16 they are precluded from claiming that the documents do not constitute a complying presentation, meaning that the notice of refusal is considered null and void and the bank must honour or negotiate (as the case may be).

Comments from Ukraine:

- Following its provisions, any bank (issuing, confirming, nominated) can accept or refuse only upon receipt and examination of the documents themselves.
- Only the issuing bank can approach the applicant for a waiver.

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AVIS story told at Eurofinance Mumbai Conference highlights the reasons behind the financial crisis

Eurofinance held its 7th annual conference on Cash, Treasury and Risk Management in India at the Taj Lands End hotel in Mumbai, November 24-25, 2009. Dr. Ajit Ranade, Chief Economist for Aditya Birla Group opened the conference with a story about Avis Airlines Rent-a-Car history explaining the difference between business and finance. The story was first published in a New York Times article written by Michael Kinsley in 2007, but it is more relevant now than at the time of its original publication. Dr. Ranade told the story in his own words and I felt it was so good that it warranted reproduction for the enjoyment of TSU readers:

IN 1946, Warren E. Avis had an idea: rental cars should be available at airports. So he founded Avis Airlines Rent-a-Car. In 1954, he sold the company to another businessman, Richard Robie. Two years later, in 1956, Robie sold Avis to an investment group led by a company called Amoskeag. In 1962, the investment banking firm Lazard Frères bought Avis. In 1965, Lazard sold Avis to the giant conglomerate ITT Corporation.

Since 1946, Avis has been sold or reorganized 17 or 18 times, depending on how you count. Each time Avis changed hands or structure, there have been fees for bankers and fees for lawyers, bonuses for the top executives and theories about why this was exactly what the company needed.

In 1972, ITT spun off Avis as a publicly traded company. Then, in 1977, the company was bought by another giant conglomerate, Norton Simon. In 1983, a company called Esmark (formerly Swift & Co.) bought Norton Simon. In 1984, Esmark was bought by Beatrice Foods, and in 1986, Beatrice was bought by the leveraged buyout firm Kohlberg Kravis Roberts & Company.

Kohlberg Kravis Roberts immediately sold Avis to an investment group called Wesray. Wesray sold Avis's fleet leasing business to a company called PHH Group. Then it spun off Avis's foreign operations and took them public as a company called Avis Europe P.L.C. And then, in 1987, Wesray sold Avis to its employees under an employee stock ownership program. Wesray more than tripled its money in 14 months.

Two years after the stock ownership deal, the company sold General Motors a complicated security that effectively gave it a 26 percent stake in Avis. Apart from that, Avis's employee ownership experiment lasted nine years, until 1996, when Avis sold itself to a company called HFS. Employees got an average of $26,000 each. Eighty or 90 current and former Avis executives got an average of $1.75 million each.

A year later, in 1997, HFS took Avis public. (The initial public offering raised just over $330 million. The banker Bear Stearns charged $15 million for its services.) In 1999, Avis bought PHH. Remember PHH? That was the company Avis sold its fleet leasing operation to in 1987. PHH was owned by Cendant, a company that had been formed in 1997 by the merger of HFS — right, the company that had spun off Avis in 1997 — and another

company called CUC. HFS had retained 19 percent of the company's stock when it took Avis public. With the stock portion of Avis's purchase price for PHH, Cendant now owned 34 percent of Avis.

A couple of years later, Cendant bought the roughly two-thirds of Avis that it didn't already own and made Avis a wholly owned subsidiary.

In 2006, Cendant split itself into four independent companies, one of which was the Avis Budget Group. (Somewhere along the line, Cendant had also acquired Budget Rent a Car.) The Avis Budget Group became the parent company of Avis Budget Car Rental.

Modern capitalism has two parts: there's business, and there's finance. Business is renting you a car at the airport. Finance is something else. More and more of the news labeled "business" these days is actually about finance, and much of it is mystifying. Even if you can understand—just barely — how it works, you still wonder what the point is and why people who do it need to get paid so much. And you strongly suspect that the swirl of financial activity around Avis for the past six decades has had little or nothing to do with the business of renting cars.

In September 2006, a week after the Avis Budget Group began trading on the New York Stock Exchange, The Wall Street Journal reported that the new company was "ripe for the picking." Carl Icahn, another wily financier from the 1980s, had acquired a $100 million stake in the company and would not comment about his intentions.

The Journal warned, "If a buyout or acquisition deal doesn't materialize for Avis, stock and bond investors will have to focus on the fundamentals of its car-rental business." Goodness! Anything but that!

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Famous last quote:

Every wall is a door.

Ralph Waldo Emerson

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