

Trade Exchange **tip**

THE BIENNIAL MAGAZINE
ALL ABOUT THE EBRD'S
TRADE FACILITATION PROGRAMME



TRADE FINANCE CLINIC
SPECIAL ISSUE 2016

SPECIAL ISSUE SPECIAL ISSUE SPECIAL ISSUE



The Thinker by
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Trade Exchange?

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SPECIAL EDITION
EDITOR’S LETTER

The Trade Finance Clinic in our magazine is one of our most popular features. It offers trade finance experts the opportunity to demonstrate outstanding knowledge and experience and gain recognition from their counterparts all over the world.

It is therefore with great pleasure that we present this special edition of all Trade Finance Clinics ever published!

The publication of this particular edition was triggered by the numerous debates on our social media as well as an overflow of requests eagerly asking for answers and explanations. Here we gather all past clinics, solutions, model answers and award-winners all in one place for you to enjoy!

We would like to take this opportunity to thank Vincent O’Brien from ICC, our brilliant expert without whom this clinic would not be possible and share some of his words: “This edition of Trade Exchange is very special, because it is a showcase of unique, talented people. People who are dedicated to their role as trade finance professionals. People who are hungry for knowledge and eager to share their expertise gained through their practical interactions, training and professional development. All the cases in the Clinic Collection are based on real life situations and challenges in day-to-day trade finance operations. For me it is quite amazing to see the quality of the responses and the ability of respondents to submit such high-level technically competent and concise solutions.

The professionalism and due diligence displayed by respondents is greatly appreciated.

Keep up the good work – let the adventure continue.”

We also would like to thank all our partner banks, students, readers and trade finance experts who, without fail, send us their expert opinions on the most challenging and tricky cases!

On behalf of the TFP team it is my pleasure to present this special issue of the Trade Exchange. I hope you enjoy it!



Kamola Makhmudova, Senior Banker
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TOUCH

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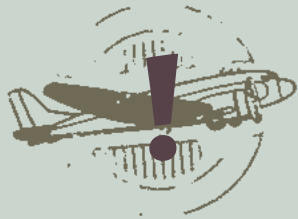
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PIT YOUR WITS AGAINST THE EXPERTS!

Every issue of Trade Exchange magazine will include a brain-teaser, drawn from the real-life trials of a trade finance expert. Here is your chance to demonstrate your ability to disentangle the most involved, contentious, or just plain weird combinations of documents and to solve a puzzle in the field of documentary collections.

Flying without a plane



We have recently received a presentation under a Letter of Credit which includes an Air Waybill as called for in the Credit. The Credit was available by sight payment with a nominated bank and the nominated bank has paid. Upon examination of the presentation we have also determined that the air transport document complies with the Credit and UCP 600 in all respects.

However, it has now come to our attention that it is physically impossible for a plane to fly out of the airport of departure stated in the Credit due to recent local developments in the country of export.

The Air Waybill also proves that the goods were transhipped en route to the airport of destination – but the Letter of Credit prohibits transhipment.*

The question...

Can we accept the Air Waybill as presented, even though we know for certain that the goods could not have been shipped on a plane from the airport of departure stated in the Credit?

**Note that the goods arrived safely with the importer so there is no concern regarding the possibility of fraud in the documents.*



SOLUTION “Flying without a plane”

(December 2011 issue)

First, the fact that the air transport document evidenced transhipment is irrelevant to this question, as according to UCP 600 Article 23(c)(i): “An air transport document indicating that transhipment will or may take place is acceptable, even if the credit prohibits transhipment”.

Second, if we review UCP 600 Article 23(a)(iv) we can see that the air transport document must “indicate the airport of departure and the airport of destination stated in the credit”.

The air waybill presented satisfies this and all other requirements. Therefore, the document complies.

UCP 600 does not contain any provision stating a need for an air transport document to evidence or name the mode of transport used, as is the case with a bill of lading, which needs to evidence shipment on board a “named vessel”.

Naturally, the document checker’s default expectation is that all parts of the carriage covered by an air waybill will be effected by aeroplane. However, it is not uncommon for an air carrier to carry the goods by means other than air for part of a journey. It may be useful to know that this practice is reflected in the IATA air waybill, which expressly states in the conditions of contract on the face of the document that “[a]ll goods may be carried by any other means, including road, or any other carrier unless specific contrary instructions are given hereon by the shipper”.

The document is acceptable as presented and your bank must honour – which not only reflects your obligations under the rules but makes perfect sense as the goods have been safely received by your importing customer.

WINNERS

The bankers and trade finance specialists who answered correctly are (in alphabetical order):

Innesa Amirbekyan, Ameriabank, Armenia

Lusine Balasanyan, Converse Bank

Suren Kocharyan, Ameriabank, Armenia

Mariia Minaeva, Locko-Bank, Russia

Irina Ryzhova, ICICI Bank Eurasia, Russia

Vitaliy Shvayuk, Raiffeisen Bank Aval, Ukraine



SOLUTION “Military action as force majeure”

(March 2012 issue)

First, once the confirming bank has added its confirmation as per UCP 600, Article 2, it gives a “definite undertaking” to honour “a complying presentation” of documents.

Second, as the confirming bank did not issue a notice of refusal by the close of the fifth banking day following the day of presentation, the confirming bank is now clearly precluded from claiming that the documents do not constitute a complying presentation – and must honour.

Third, the unfortunate events mentioned did not interrupt or affect the business of the confirming bank whose undertaking is additional and separate to that of the issuing bank.

Bluntly put, the confirming bank in this case is quoting Article 36 out of context and must honour, which means the confirming bank has an obligation to effect payment on the maturity date.

WINNERS

The bankers and trade finance specialists who answered correctly are (in alphabetical order):

Innesa Amirbekyan, Ameriabank, Armenia

Lusine Balasanyan, Converse Bank

Mohamed El-Naggar, National Bank of Egypt, Egypt

Mariia Minaeva, Locko-Bank, Russia

Vitaliy Shvayuk, Raiffeisen Bank Aval, Ukraine

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Military action as force majeure

As a beneficiary’s main bank under letters of credit we confirm most, but not all, of our exporting customers’ letters of credit.

About five months ago we forwarded a presentation as a second advising bank to a confirming bank under a credit available by deferred payment at 360 days from the bill of lading date with that confirming bank.

The confirming bank processed the documents without any communication to us or the beneficiary regarding discrepancies or otherwise.

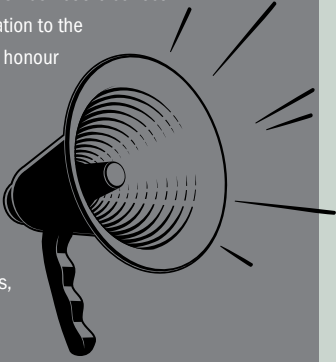
However, it has since transpired that, because of local unrest and subsequent military action in the country of import, it has been impossible to unload the goods at the port of discharge stated in the letter of credit. Furthermore, the issuing bank has been closed for some time.

We have been advised by the confirming bank that payment may be delayed due to a “force majeure event” at the port and country of destination.

We argued on behalf of the beneficiary that this was not the correct approach as they had earlier added their confirmation to the letter of credit, and that the confirming bank must honour on the forthcoming maturity date.

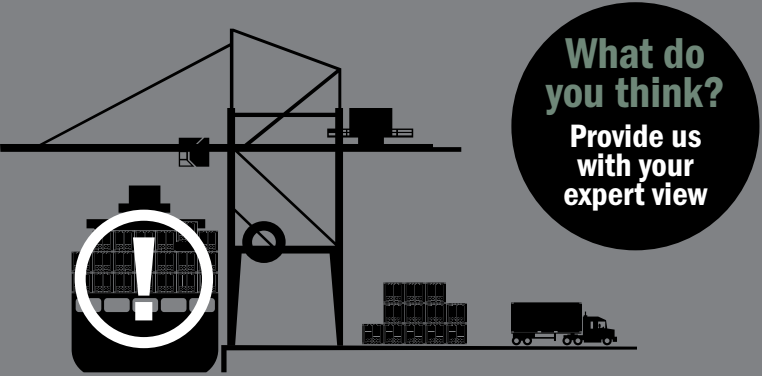
The confirming bank stated that they had no liability as this situation was a “force majeure event”, quoting UCP 600 Article 36: “A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control”.

What do you think?
Provide us with your expert view



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Confirmed or not confirmed

We apologise for asking what appears to be a rather basic question, but even within our bank there are different opinions as to the correct approach to take when upholding the international rules for letters of credit – that is, UCP 600.

We issued a letter of credit for a large sum which was available with a nominated bank by deferred payment. The L/C was issued as “irrevocable transferable” and requesting confirmation.

The nominated bank effected one transfer of the L/C to one second beneficiary (shipper of goods) at the request of the first beneficiary.

However, the nominated and now confirming

bank only added its confirmation to the credit as advised to the first beneficiary but did not add its confirmation to the portion transferred in favour of the second beneficiary, who was anxiously awaiting the arrival of a confirmed credit before it would actually ship the goods.

The problem is that the second beneficiary (shipper of the goods) refused to ship as it did not receive a confirmed letter of credit as agreed in its contract.

Can the bank that was requested to add its confirmation do so only to the credit as advised to the first beneficiary or must the confirmation also extend to the second beneficiary of the credit as transferred?

WINNERS

Having received an overwhelming number of responses to our brain-teaser in the June 2012 issue of *Trade Exchange*, there is not enough space to mention all 59 winners, who come from the following countries: Armenia, Belarus, Egypt, FYR Macedonia, Georgia, Jordan, Kazakhstan, Kosovo, Kyrgyz Republic, Latvia, Moldova, Mongolia, Russia, Serbia, Turkmenistan and Ukraine.

For full details of all 59 winners, please visit <http://ebrd.coastlinesolutions.com/winners>.



SOLUTION

(From June 2012 issue)

“Confirmed or not confirmed”

When your bank issued the irrevocable transferable letter of credit requesting confirmation and authorising transfer then it is clear that the confirmation is to be added for the full amount available under the credit as issued.

According to UCP 600, sub-article 8 (d) “If a bank is authorized or requested by the issuing bank to confirm a credit but is not prepared to do so, it must inform the issuing bank without delay and may advise the credit without confirmation”.

Consequently, if that bank has not advised the issuing banks that it is not prepared to add its confirmation as requested, then the letter of credit is confirmed for the full amount available as stated in the credit.

Then, once transferred, the confirmation also attaches to the transferred portion in favour of the second beneficiary which you have indicated is the actual shipper of the goods, which reflects typical practice.

Further guidance is found in UCP 600, sub-article 38 (g): “The transferred credit must accurately reflect the terms and conditions of the credit, including confirmation”.



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Reject the rejection

Our customer purchased equipment from a European supplier of heavy engineering equipment and an irrevocable confirmed letter of credit available by deferred payment at 360 days from date of shipment was issued by our bank to cover the payment obligation. Documents have been presented and we have advised the maturity date for our settlement to the confirming bank, which we believe has been discounted for the beneficiary.

As part of the arrangement our customer received a warranty guarantee from the seller’s bank issued subject to URDG 758 to cover the proper functioning of the underlying goods.

As it happened the machinery did not work properly or meet the expectations of our importing customer.

Consequently, our customer made a claim under the guarantee which we, acting in the capacity of advising bank, forwarded on to the guarantor bank.

The problem has arisen that the guarantor bank rejected the demand citing two discrepancies in the presentation.

We believe that the two claimed discrepancies were somewhat subjective and not valid. However, to avoid any delay the beneficiary made a representation with the two claimed discrepancies mended within the expiry date of the guarantee.

However, the guarantor once again rejected the presentation citing a “new discrepancy” which, on review of URDG 758, this time appears to be valid. The beneficiary has presented all specified documents by this time but the beneficiary has not provided a statement indicating in what respect the applicant is in breach of its obligations under the contract.

Furthermore, the guarantor has claimed that the presentation is not “legally effective” as we did not state that the signatures on the documents in the presentation were authenticated.

As payment is now outstanding for more than two months can you advise whether the guarantor is correct in its actions and in doing so clarify the obligations of the guarantor.

SOLUTION “Reject the rejection”

(September 2012 issue)

ANALYSIS

This problematic case provides a good opportunity to show the value of using the international URDG 758 demand guarantee rules.

First, it is important to clarify according to URDG 758, sub-article 19 (a) that the obligation of guarantor is “to determine, on the basis of a presentation alone, whether it appears on its face to be a complying presentation”.

Second, it is true that under URDG 758 sub-article 15 (a) the beneficiary must in any event provide a statement indicating in what respect

the applicant is in breach of its obligations under the underlying relationship.

Third, it is important to make it clear that as advising bank you have no obligation or duty to verify that the documents or signatures thereon are authenticated.

Fourth, it is clear that under URDG 758 sub-article 24 (d) “When the guarantor rejects a demand, it shall give a single notice to that effect to the presenter”. Single means one rejection notice.

CONCLUSION

The discrepancy in respect of not providing the

statement of breach is valid.

However, due to the fact that upon receipt of the re-presentation which had mended the claimed discrepancies stated in the notice of rejection the guarantor cannot now claim “new discrepancies” in this presentation.

Consequently, due to the strict provision included in sub-article 24 (f) the guarantor “shall be precluded from claiming that the demand and any related documents do not constitute a complying demand”.

The guarantor clearly has an obligation to pay.

WINNERS

The bankers and trade finance specialists who answered correctly are (in alphabetical order):

Innesa Amirbekyan, Converse Bank, Armenia; Irina Arafelova, Transcapitalbank, Russia; Ulan Asanakunov, Demir Kyrgyz International Bank, Kyrgyz Republic; Marianna Azaryan, Araratbank, Armenia; Lusine Balasanyan, Ameriabank, Armenia; Irina Chuvakhina, Priorbank, Belarus; Andrej Eftimov, NLB Tutunska Banka, FYR Macedonia; Alla Kharchenko, The State Export-Import Bank of Ukraine, Ukraine; Igor Kudinov, Megabank, Ukraine; Mariia Minaeva, Locko Bank, Russia; Vitaliy Shvayuk, Raiffeisen Bank Aval, Ukraine; Silvana Simic, NLB Tutunska Banka, FYR Macedonia; Oksana Sobko, Demir Kyrgyz International Bank, Kyrgyz Republic; Svetlana Pyatak*, Ukrsotsbank, Ukraine; Ahmed Zaki, National Bank of Egypt, Egypt. *Special mention by the panel of adjudicators

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To pay or not to pay? – that is the question

We have a query regarding a current case under URDG 758 and even within our bank there are differing opinions as to the correct treatment of the case. We have simplified the numbers involved but the essence of the case remains unchanged.

A guarantee was issued subject to URDG 758 with the following wording:

The guarantor received a demand for the full amount of the guarantee just before the expiry of the guarantee. The demand incorporated a statement of breach by the beneficiary, in respect of which

the applicant was in breach of its obligations under the

What do
you think?
Provide us
with your
expert view

THIS GUARANTEE NO: GUIM/349-12 IN THE AMOUNT OF €50,000.00 IS TO COVER ONGOING PAYMENT OBLIGATION OF COMPANY X IN FAVOUR OF COMPANY Y WITH AN EXPIRY DATE OF 30 NOVEMBER 2012.

THIS GUARANTEE COVERS PARTIAL DELIVERY OF GOODS AGREED IN THE UNDERLYING RELATIONSHIP CONTRACT TO BE PAID BY DIRECT TRANSFER FROM COMPANY X TO COMPANY Y WITHIN 90 DAYS OF INVOICE DATE.

ANY DEMAND MUST BE SUPPORTED BY A COPY OF THE UNPAID INVOICE IN RESPECT OF WHICH THE DEMAND IS MADE. SUBJECT TO URDG 758.

underlying relationship.

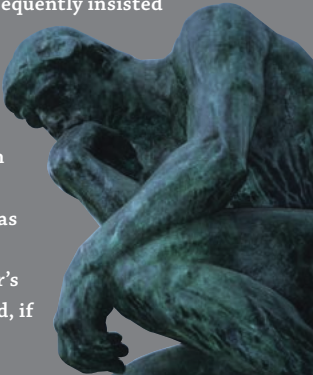
The demand was supported by five separate invoices, each for €10,000.00 in respect of five separate deliveries.

Upon examination of the presentation the guarantor determined that one of the five presented invoices was discrepant and issued a notice of rejection to that effect before the close of the second business day following the day of presentation.

The beneficiary did not have time to re-present before the expiry of the guarantee and subsequently insisted that the guarantor bank make payment in a lesser amount of €40,000.00 in respect of the four invoices deemed to be in compliance and presented within the validity.

To date the guarantor bank has refused to pay the €40,000.00.

Please clarify if the guarantor's bank has an obligation to pay and, if so, what amount.



SOLUTION “To pay or not to pay – that is the question”

(December 2012 issue)

ANALYSIS

To answer a question like this you must put yourself in the shoes of the guarantor.

First, by applying URDG 758 article 19 (a) which states “the guarantor shall determine, on the basis of a presentation alone, whether it appears on its face to be a complying presentation”.

Second, by following the presenters own instructions, the guarantor is now left with a demand in the amount of €50,000 and the four invoices required by the guarantee which come in total to €40,000. These were all presented before expiry of the guarantee.

CONCLUSION

It can be demonstrated by the guarantor that there is conflict between the data in the demand amount of €50,000 and the supporting invoices totaling €40,000.

The total amount of the supporting invoices indicates amounts which are, in total, less than the amount of the demand in the presentation.

If we apply URDG 758 article 17 (e) (ii) – “a demand is a non-complying demand if... any supporting statement or other documents required by the guarantee indicate amounts that in total are less than the amount demanded” – then this demand remains a non-complying demand and therefore the guarantor has no obligation to pay, in any amount.

WINNERS

The bankers and trade finance specialists who answered correctly are (in alphabetical order):

Wael Ali Abdel Aziz, Commercial International Bank, Egypt; **Innesa Amirbekyan**, Converse Bank, Armenia; **Ulan Asanakunov**, UniCredit Bank, Kyrgyz Republic; **Lusine Balasanyan**, Ameriabank, Armenia; **Irina Chuvakhina**, Priorbank, Belarus; **Emilija Georgijevska**, Komercijalna Banka Skopje, FYR Macedonia; **Igor Kudinov**, Megabank, Ukraine; **Amine Lahmamsi**, BMCE Bank, Morocco; **Oksana Makarevych**, Energobank, Ukraine; **Maria Minaeva***, Locko Bank, Russia; **Maria Muradyan**, Inecobank, Armenia; **Svetlana Pyatak**, Ukrsotsbank, Ukraine; **Irakli Shubitidze**, TBC Bank, Georgia; **Oksana Sobko**, Demir Kyrgyz International Bank, Kyrgyz Republic; **Alessandro Tini**, Iccrea Banca, Italy

*Special mention by the panel of adjudicators

TFP AWARDS

2012 winners of the trade finance clinic



GOLD

Innesa Amirbekyan, Converse Bank, Armenia

Lusine Balasanyan, Ameriabank, Armenia

Mariia Minaeva, Locko Bank, Russia

SILVER

Vitaliy Shvayuk, Raiffeisen Bank Aval, Ukraine

BRONZE

Ulan Asanakunov, Demir Kyrgyz International Bank, Kyrgyz Republic

Irina Chuvakhina, Priorbank, Belarus

Andrej Eftimov, NLB Tutunska Banka, FYR Macedonia

Alla Kharchenko, The State Export-Import Bank of Ukraine, Ukraine

Silvana Simic, NLB Tutunska Banka, FYR Macedonia

Oksana Sobko, Demir Kyrgyz International Bank, Kyrgyz Republic

Svetlana Pyatak, Ukrsotsbank, Ukraine

ACKNOWLEDGEMENT OF PARTICIPATION:

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Wael Ali Abdel Aziz, Commercial International Bank, Egypt

Anatolie Andronic, Eximbank, Moldova

Irina Arafelova, Transcapitalbank, Russia

Natalia Arion, Eximbank, Moldova

Zhiger Atchabarov, Temirbank, Kazakhstan

Marianna Azaryan, Araratbank, Armenia

Tsolmon B, Khan Bank, Mongolia

Yaroslav Bodenchuk, Raiffeisen Bank Aval, Ukraine

Maja Burić, Soci  t   G  n  rale Banka Srbija, Serbia

Boris   orovi  , Soci  t   G  n  rale Banka Srbija, Serbia

Edita Deci, Banka per Biznes, Kosovo

Vadim Drozdovich, VTB Bank, Ukraine

Lika Dzeladze, VTB Bank, Georgia

Mohamed El-Naggar, National Bank of Egypt, Egypt

Yasser El-Sayed El-Metwally Aly, Commercial International Bank, Egypt

Mohamed Fekry, National Soci  t   G  n  rale Bank, Egypt

Yuri Fomichev, Bank Vozrozhdenie, Russia

Arpi Gabrielyan, ACBA-Credit Agricole Bank, Armenia

Amr Karazoun, Cairo Amman Bank, Jordan

Suren Kocharyan, Ameriabank, Armenia

Sergey Kostogryz, Raiffeisen Bank Aval, Ukraine

Alexander Kovtun, Bank Saint-Petersburg, Russia

Igor Kudinov, Megabank, Ukraine

Vitaliy Kyslenko, UkrSibbank, Ukraine

Irina Lepeshko, Alfa-Bank, Belarus

Alexandra Lodygina, NBD-Bank, Russia

Marjana Majheni  , Banca Intesa, Serbia

Vlora Makolli, Banka per Biznes, Kosovo

Yauheniya Matskevich, Belaruskyy Narodny Bank, Belarus

Olga Melnik, Metcombank, Russia

Essa Mohamed Essa, National Bank of Egypt, Egypt

Maria Muradyan, Inecobank, Armenia

Svetlana Nikonorova, Absolut Bank, Russia

Sergey Nizkov, Minsk Transit Bank, Belarus

Orazgeldi Odekow, Central Bank of Turkmenistan, Turkmenistan

Jelena Pepelj  k, Banca Intesa, Serbia

Luiza Petrosyan, Armeconombank, Armenia

Lilia Rusu, Mobiasbanca, Moldova

Irina Ryzhova, ICICI Bank Eurasia, Russia

Haneen Saifi, Jordan Ahli Bank, Jordan

Mohamed Salah, National Bank of Egypt, Egypt

Ehab Siddik, Al Watany Bank of Egypt, Egypt

Elena Sidorova, Bank Center-Invest, Russia

Irakli Shubitidze, TBC Bank, Georgia

Kristina Soghomonyan, Araratbank, Armenia

Irina Solodkina, Sberbank of Russia, Ukraine

Mikhail Timofeev, Transcapitalbank, Russia

Valerija Torchinska, Citadele Bank, Latvia

Nino Tsintsadze, Basisbank, Georgia

Olga Ugolik, Belrosbank, Russia

Saida Uspanova, ATFBank, Kazakhstan

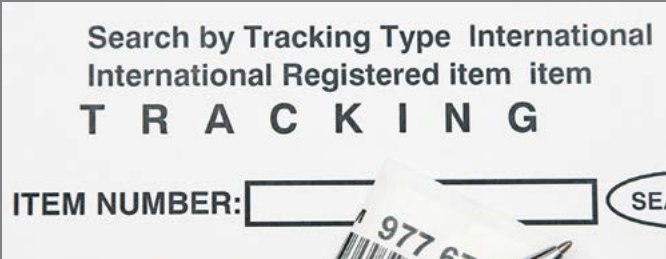
Ahmed Zaki, National Bank of Egypt, Egypt

Alexander Zantovich, Belgazprombank, Belarus

Konstantin Zhabko, Belrosbank, Belarus

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Lost – but who is the loser?

We have an urgent query and need your expert interpretation and practical advice.

Our bank issued a letter of credit available by sight payment with a nominated bank in early September 2012. The expiry date and place was with the nominated bank and specified in the credit as 30 November 2012.

To date we have not received any documents but our reconciliations department advised us that our account has been debited by the confirming bank abroad. Upon investigation with the confirming bank they advised us that the documents were presented in compliance at their counters and that they forwarded the documents to us as per our exact instructions in the letter of credit.

Somehow, it appears the documents have gone missing between the confirming bank and our bank.

We are of the opinion that we have no obligation to honour as we have not received any documents whatsoever and the credit has long expired.

Please give us your expert opinion as to whether we as the issuing bank have an obligation in respect of the value of the documents presented to the confirming bank but not received by us?

Furthermore, please give us some practical advice as to the possible next steps to resolve this problem as the foreign bank involved is one of our major correspondents.

SOLUTION (March 2013 issue)

“Lost – but who is the loser?”

ANALYSIS

Thankfully it is rare for documents to get lost between a nominated bank and the issuing bank but it does occasionally happen.

The answer to your question can be found in UCP 600 article 35 where it states “if a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when the documents have been lost in transit between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.”

CONCLUSION

Put simply, your bank as the issuing bank has an obligation to pay or reimburse the nominated bank.

However, as your query states your account has been debited, you must have provided the nominated bank with a reimbursement authorisation in the credit. It would now be a good idea to have the nominated bank send photocopies or scanned images of the actual documents presented. These copies should then be checked for compliance.

Remember, UCP 600 article 35 makes specific reference to a presentation that is complying and UCP 600 article 2 defines a letter of credit as a “definite undertaking of the issuing bank to honour a complying presentation”.

It is also recommended when issuing a credit and providing the nominated bank with a reimbursement authorisation that you include a specific instruction to the nominated bank in the credit to advise your bank by authenticated SWIFT when complying documents have been presented and forwarded as instructed in the credit, together with the amount and value date of any reimbursement amount claimed in respect of the documents.

Finally, one or two respondents mentioned that the courier company may be liable in respect of lost documents. While this is true to some extent it is worth remembering that the courier company, like all carriers, have their liability tightly capped at very low amounts so this should not be relied on.●

THE GOLD WINNERS

Trade Exchange talks to the three winners of the trade finance clinic for 2012



Innesa Amirbekyan

Innesa is an International Relations Manager in the Financial Markets Department at Converse Bank, Armenia.

What attracts you to trade finance and to solve trade finance clinic brain-teasers, even in your spare time?

Solving brain-teasers has been my favourite occupation since childhood so that is why the *Trade Exchange's* trade finance clinic brain-teasers immediately appealed to me.

How did you develop your trade finance knowledge?

I must say that, besides my experience in the field of trade finance in the Armenian banking sector, it was my participation in the EBRD e-Learning Programme that helped me develop my trade finance knowledge. I really enjoyed the tailor-made materials, friendly platform and even the challenging assessments. I am very grateful to the EBRD for the knowledge and professional growth gained through the e-Learning Programme, which indeed gave me not only awards and certificates but a lot of confidence and new creative ideas.

What do you enjoy most in your daily work?

At present I am responsible for International Relations at Converse Bank. In my daily work I mostly enjoy creative projects, optimising internal business processes and negotiations with correspondent banks. And, of course, I very much enjoy our fruitful cooperation with the TFP.



Lusine Balasanyan

Lusine is Acting Head of Payment Instruments and Escrow Accounts Division at Ameriabank, Armenia.

What attracts you to trade finance and to solve trade finance clinic brain-teasers, even in your spare time?

Trade finance is attractive to me because of its global approach, variety and massive volume. When I first saw the trade finance clinic brain-teasers they seemed to be a good opportunity to check my knowledge and gain new experience. After my first success and seeing my name in the winners list, it became a sort of game for me.

How did you develop your trade finance knowledge?

This field requires profound and qualified knowledge of international business practice and rules. It cannot be built on experience alone but by developing your knowledge all the time. For me, an important springboard in my career was the EBRD's e-Learning Programme. Thanks to this I've achieved a new level in my work.

What do you enjoy most in your daily work?

I work at Ameriabank, which is committed to the professional growth of its employees and really encourages them to strive. I would say that the most enjoyable thing is the possibility to create and structure the business your way, using your vision and experience. Trade finance covers transactions worldwide which gives me a chance to network with colleagues from all over the world, make new friends and see new cultures. This is a great perk of the working day!



Mariia Minaeva

Mariia is Head of Foreign Trade Operations Department in the Trade and Structured Finance Division of LockoBank, Russia.

What attracts you to trade finance and to solve trade finance clinic brain-teasers, even in your spare time?

I have a keen interest in complex trade finance problems and enjoy problem solving in non-typical situations – it comes very naturally to me.

How did you develop your trade finance knowledge?

The EBRD's e-Learning Programme was a good way to keep developing my trade finance knowledge and improve my skills in documentary credits and guarantees. The trade finance clinic is the perfect opportunity to learn something new and develop skills in trade finance products, not only from experience gained in our bank but from the ICC cases too.

What do you enjoy most in your daily work?

The most enjoyable thing is the positive results of my work. Trade finance is my keen interest and therefore I get involved in the whole development process and enjoy our successes even more. I also find it very satisfying to solve problems that might have seemed impossible at first but that reach a resolution through teamwork and team spirit. The business-friendly atmosphere and collective drive for results in my team is definitely the formula for success in my daily work.

WINNERS

The bankers and trade finance specialists who answered correctly are (in alphabetical order):

Wael Ali Abdel Aziz, Commercial International Bank, Egypt; **Nigar Allahverdiyeva**, Azerbaijan Industry Bank, Azerbaijan; **Innesa Amirbekyan***, Converse Bank, Armenia; **Ulan Asanakunov**, UniCredit Bank, Kyrgyz Republic; **Lusine Balasanyan**, Ameriabank, Armenia; **Irina Chuvakhina***, Priorbank, Belarus; **Domenico Del Sorbo**, Studio Del Sorbo, Italy; **Emilija Georgijevska**, Komercijalna Banka Skopje, FYR Macedonia; **Alla Kharchenko**, The State Export-Import Bank of Ukraine, Ukraine; **Igor Kudinov**, Megabank, Ukraine; **Mariia Minaeva**, Locko Bank, Russia; **Katerina Petrovska**, Komercijalna Banka Skopje, FYR Macedonia; **Svetlana Pyatak**, Ukrsotsbank, Ukraine; **Marco Raimondi**, Banca Popolare dell'Emilia Romagna, Italy; **Irakli Shubitidze**, Efes Georgia, Georgia.

*Special mention by the panel of adjudicators

PIT YOUR WITS AGAINST THE EXPERTS!

Every issue of *Trade Exchange* will include a brain-teaser, drawn from the real-life trials of a trade finance expert. Here is your chance to demonstrate your ability to disentangle the most involved, contentious or just plain weird combinations of documents and to solve a puzzle in the field of documentary collections.

Stamped and signed – double trouble?

Can we have your expert opinion as to whether or not the following situation represents a discrepancy under a documentary credit available with a confirming bank by sight payment?

The credit called for a “**handover certificate to be signed and stamped by both representative of beneficiary and representative of applicant**”.

Upon presentation, the confirming bank examined and then, determining compliance, paid at sight to the issuing bank under authenticated SWIFT advice.

Upon receipt of the documents, the issuing bank observed one discrepancy in respect of the handover certificate and rejected the presentation by SWIFT MT 734 stating the discrepancy:

“**Handover certificate is signed and stamped by representative of beneficiary but is only signed NOT STAMPED by representative of the applicant.**”

Upon examination of the handover certificate, there is no stamp attached at the signature of the representative of the applicant as specifically called for in the credit.

The applicant has since accepted the documents but

there remains an issue regarding discrepancy fees. Also, what would have been the outcome had the applicant not accepted?

Can you advise whether you consider this a valid discrepancy or not?

Can you also provide some guidance on how banks should issue letters of credit when customers require signatures of parties representing the beneficiary or the applicant to be verified?

What do you think?

Provide us with your expert view



SOLUTION “Stamped and signed – double trouble?”

(September 2013 issue)

ANALYSIS

We must remember that when the issuing bank issues a letter of credit it authorises the nominated confirming bank to honour or negotiate documents which comply on their face with the terms and conditions of the credit. So the nominated bank is authorised to make the decision on the documentary compliance but this decision must be supported by the rules and applicable guiding standards.

Therefore to find the correct answer in this case, the trade finance specialist must first look at the documents through the eyes of the document checker in the confirming bank.

From the many replies received it is pretty clear that all respondents would have observed the fact that the document had not been “stamped” by the representative of the applicant and so the document on its face is not identical to the requirements in the terms and conditions of the credit – there was 100 per cent agreement at this point.

Having made this observation the document checker in the confirming bank would no doubt have read the UCP 600 carefully and having not found the perfect answer in UCP 600 would have turned to the ISBP (International Standard Banking Practice for the Examination of Documents under UCP 600) of the International Chamber of Commerce. All replies were well drafted and supported by good logic.

CONCLUSION

However, it was interesting and reflects international practice that some people thought the document was discrepant but that the majority considered it compliant. Some respondents commented that refusing documents on such grounds damages the integrity of the letter of credit which was originally designed and actually defined in Article 2 of UCP 600 as “a definite undertaking of the issuing bank”.

The panel of adjudicators congratulate all respondents but have selected the response of Innesa Amirbekyan from Converse Bank, Armenia as the model answer. To see this answer, please visit ebrd.coastlinesolutions.com/answer.



WINNERS

The bankers and trade finance specialists who answered correctly are (in alphabetical order):

Wael Ali Abdel Aziz, Commercial International Bank, Egypt; **Nigar Allahverdiyeva**, Azerbaijan Industry Bank, Azerbaijan; **Innesa Amirbekyan***, Converse Bank, Armenia; **Ulanbek Asanakunov**, Optima Bank, Kyrgyz Republic; **Lusine Balasanyan**, Ameriabank, Armenia; **Irina Chuvakhina**, Priorbank, Belarus; **Domenico Del Sorbo**, Studio Del Sorbo, Italy; **Maja Velickovska**, Komercijalna Banka Skopje, FYR Macedonia.

*Special mention by the panel of adjudicators

'S ANSWER WINNER'S ANSWER WINNER'S

Dear friends,

Let us first analyse the “discrepancy” observed by the issuing bank:

“Handover certificate is signed and stamped by representative of beneficiary but is only signed NOT STAMPED by representative of the applicant.”

The credit called for a handover certificate to be signed and stamped by both a representative of the beneficiary and a representative of the applicant.

According to ISBP 745 (revision 2013) paragraph A35, (b): “A requirement for a document to be ‘signed and stamped’ or a similar requirement is satisfied by a signature in the form described in paragraph A35 (a) and the name of the signing entity typed, stamped, handwritten, pre-printed or scanned on the document, etc.”

The issuing bank acknowledged in its MT734 that the handover protocol had been signed by a representative of the applicant, so there is no argument on the point of the document having been signed.

Therefore the document bearing the name and signature of the representative of the applicant, while not identical to the requirement in the credit, would suffice in determining compliance as being “signed and stamped” based on the international standard ISBP A35, sub-paragraph A35, (b). The end result is that the absence of a stamp attached to the signature cannot be considered a discrepancy by the issuing bank.

Let me also note that a credit requiring presentation of a document countersigned by the applicant (or its representative) makes the beneficiary dependent on the applicant or buyer. As a result, the main function of the credit, being a definite and independent undertaking to pay, is undermined by the will of one of the parties to contract to which the credit relates.

The ICC cautions against this situation in the ISBP 745 Preliminary Considerations:

vii) “A credit or any amendment thereto should not require presentation of a document that is to be issued, signed or countersigned by the applicant. If, nevertheless, a credit or amendment is issued including such a requirement, the beneficiary should consider

the appropriateness of such a requirement and determine its ability to comply with it, or seek a suitable amendment.”

With this in mind, when issuing letters of credit banks should avoid using any clauses that may restrict the payment in favour of the beneficiary to the will of an action or inaction of the applicant. On the other hand, I would recommend a beneficiary receiving credit including such clauses to seek an amendment to avoid the risk of non-payment. While a handover certificate is not a clearly defined document it is usually used to evidence delivery or performance by the seller. Where such documentary evidence of performance is required, I recommend that the credit calls for a document to be issued by an independent third party acceptable to both parties, to verify the performance.

Finally, I wish to highlight that this circumstance is completely different to the case where the signatures of a beneficiary are required to be verified in respect of a demand under a guarantee.

With best regards,

Innesa Amirbekyan

International Relations Manager, Converse Bank

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TFP AWARDS

2013 winners of the
trade finance clinic



GOLD

Innesa Amirbekyan, Converse Bank, Armenia
Irina Chuvakhina, Priorbank, Belarus

SILVER

Lusine Balasanyan, Ameriabank, Armenia
Wael Ali Abdel Aziz, Commercial International Bank, Egypt
Ulan Asanakunov, Optima Bank, Kyrgyz Republic

BRONZE

Nigar Allahverdiyeva, Azerbaijan Industry Bank, Azerbaijan
Domenico Del Sorbo, Studio Del Sorbo, Italy
Emilija Georgijevska, Komercijalna Banka Skopje, FYR Macedonia
Igor Kudinov, Megabank, Ukraine
Mariia Minaeva, Deutsche Bank, Russia
Svetlana Pyatak, Ukrsotsbank, Ukraine
Irakli Shubitidze, Efes Georgia, Georgia

ACKNOWLEDGEMENT OF PARTICIPATION:

Alla Kharchenko, The State Export-Import Bank
of Ukraine, Ukraine
Amine Lahmamsi, BMCE Bank, Morocco
Oksana Makarevych, Energobank, Ukraine
Maria Muradyan, Inecobank, Armenia
Katerina Petrovska, Komercijalna Banka Skopje,
FYR Macedonia
Marco Raimondi, Banca popolare dell'Emilia
Romagna, Italy
Oksana Sobko, Demir Kyrgyz International Bank,
Kyrgyz Republic
Alessandro Tini, Iccrea Banca, Italy
Maja Velickovska, Komercijalna Banka Skopje,
FYR Macedonia



**Innesa
Amirbekyan**

**Innesa is International
Relations Manager at Converse
Bank, Armenia.**

The most exciting part of my day as a trade finance specialist is...
seeing the positive result of my efforts. I get great job satisfaction from
new learning opportunities, intellectual challenges, improving business
processes and passing on my trade finance knowledge and experience
to colleagues and clients.



**Irina
Chuvakhina**

**Irina is Head of the Documentary
Operations and Guarantees
Department at Priorbank, Belarus.**

The most exciting part of my day as a trade finance specialist is...
finding solutions to complex cases in accordance with both ICC rules and
our customers' needs.

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ICC GEORGIA TECHNICAL TRADE FINANCE FORUM MAY 2015

With the most active contributors of Trade Finance Clinic



Award Ceremony for the students of TFP
e-Learning Programme



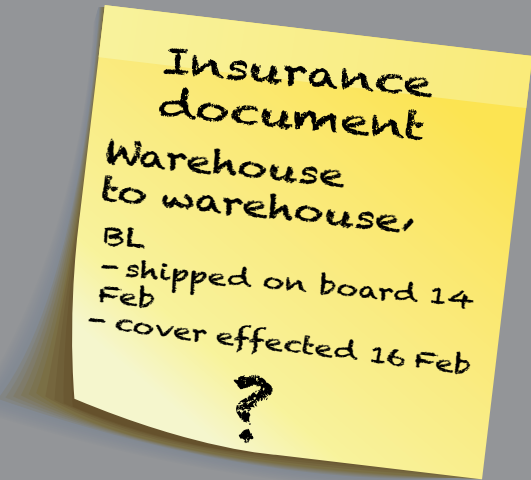
PIT YOUR WITS AGAINST THE EXPERTS!

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Warehouse to warehouse?

Could you please clarify if the following item is a valid discrepancy? It is the sole discrepancy on which we have received a notice of refusal from an issuing bank and the reimbursement remains outstanding.

Discrepancy in MT734
“Insurance cover effected after the shipment date on Bill of Lading
– Shipment date on Bill of Lading is 14 February 2014
– Insurance document evidences cover effective from 16 February 2014.”



We should point out that we have advised the issuing bank by SWIFT MT799 that we do not agree with the discrepancy as the insurance document has a “warehouse to warehouse” clause. It is our logic that if the insurance cover is warehouse to warehouse then the cover must have been effective from the seller’s warehouse before the goods were shipped on board as evidenced by the shipped on board date of 14 February 2014 on the Bill of Lading. So in our view there is no discrepancy. Please give us your expert technical interpretation as to whether the issuing bank can refuse the documents, based on the claimed discrepancy. This situation is further compounded as the goods have arrived at the port of discharge and are incurring demurrage fees. We await your urgent reply.

What do you think?
Provide us with your expert view



SOLUTION “Warehouse to warehouse”

(Spring-Summer 2014 issue)

DEAR TRADE FINANCE PROFESSIONALS,
This is one query where the correct technical answer can result in unintended negative consequences for an exporter that has shipped his goods in good faith. A lesson to be learnt from this real life query is that it is imperative to first determine the correct technical answer based on the rules and standards, and then as a bank active in supporting secure international trade make the correct, fair and just final decision regarding settlement.
From the many replies received it is clear that all respondents understood the importance of insurance cover being effective on or before the date of shipment evidenced on the transport document. This is an important and practical requirement where the rules clearly reflect the practice.
However, some respondents made the point that if the insurance cover was effective from “warehouse (of seller) to warehouse (of buyer)” then the logical conclusion is that cover would have been effective before the actual date of shipment on the transport document.
In determining the correct technical answer, respondents first referred directly to the applicable UCP 600 rules and then supported their final technical decision by referring to the ISPB (ICC Publication 745E).
The panel of experts congratulate all successful respondents but have selected the response of Irina Chuvakhina from Priorbank, Belarus, as the model answer. To view this answer please visit ebrd.coastlinesolutions.com/answer.



WINNERS The bankers and trade finance specialists who answered correctly are (in alphabetical order):

- Wael Ali Abdel Aziz, Commercial International Bank, Egypt
Nigar Allahverdiyeva, Azerbaijan Industry Bank, Azerbaijan
Innesa Amirbekyan, Converse Bank, Armenia
Ketevan Antidze, Commerzbank, Georgia
Anna Babayan, Araratbank, Armenia
Irina Chuvakhina, Priorbank, Belarus
Dominico Del Sorbo, Studio Del Sorbo, Italy
Andrej Eftimov, NLB Tutunska Banka, FYR Macedonia
Tamar Gugushvili/Nino Papashvili, TBC Bank, Georgia (joint answer)
Elena Jordanoska, Komercijalna Banka Skopje, FYR Macedonia
Ruzanna Kusikyan, Araratbank, Armenia
Jasmina Milovska, NLB Tutunska Banka, FYR Macedonia
Lamia Riabi, Attijari Bank, Tunisia
Ilaha Rizvanova, Azerbaijan Industry Bank, Azerbaijan
Kristina Soghomonyan, Araratbank, Armenia

'S ANSWER WINNER'S ANSWER WINNER'S

Dear colleagues,

The fundamental rule for this issue is that the date of the insurance cover must be no later than the date of shipment. It clearly states in UCP sub-article 28(e): “The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment.”

In this case we have to find a technical balance between these two issues:
1) the “warehouse-to-warehouse” notation, and
2) cover effectiveness from 16 February 2014 (later than the date of shipment of 14 February 2014).

At first glance, the practical document checker may consider this document as compliant because the “warehouse to warehouse” clause would appear to infer that the goods had been insured from when they left the seller’s warehouse to when they arrived at the destination warehouse. This is a logical conclusion because such analysis is described in ICC Official Banking Commission Opinion TA709rev.

The problem is that in the circumstance of a “warehouse to warehouse” clause the insurance industry has clarified that such a clause does not necessarily back-date the effective date of insurance cover.

The document checker cannot be expected to be an expert in the insurance industry but will instead look to the International Standard Banking Practice for the Examination of Documents under UCP 600 for guidance.

In the context of examining documents, the ISPB (ICC Publication 745E) at paragraph K10 (c), states: “An insurance document that indicates coverage has been effected from ‘warehouse-to-warehouse’ or words of similar effect, and is dated after the date of shipment, DOES NOT INDICATE that coverage was effective from the date not later than the date of shipment.”

The net end result is that technically the issuing bank is correct in deeming the document discrepant. The notice of refusal is valid.

While not a technical comment, in this type of situation my hope would always be that such a discrepancy would be waived by the applicant, the documents accepted and payment effected in a timely manner.

Irina Chuvakhina
Priorbank Belarus

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Unexpected consequences

Here is an urgent query for your expert attention.

Our bank added confirmation to a letter of credit issued by a bank covering the import of farmed fish. The letter of credit allowed for part shipments, for example:

- July 2014 - up to US\$ 50,000.00
- August 2014 - up to US\$ 50,000.00
- September 2014 - up to US\$ 50,000.00
- October 2014 - up to US\$ 50,000.00
- November 2014 - up to US\$ 50,000.00
- December 2014 - up to US\$ 50,000.00



Documents were presented in respect of the July, August and September shipments and paid in a timely manner. However, due to poor weather conditions a shipment was not made by the exporter for September 2014 but a subsequent shipment and presentation of documents was made for the month of October 2014. The issuing bank has returned the documents in respect of the October 2014 shipment without any payment and advised that “the credit is no longer available and has been removed from the issuing bank’s books”. We would appreciate your confirmation that the action of the issuing bank is contrary to the irrevocable undertaking of an issuing bank under UCP 600 and that the issuing bank must honour the complying presentation in respect of the October shipment, along with any subsequent complying presentations should they arise. We await your urgent reply.

What do you think?
Provide us with your expert view

SOLUTION “Unexpected consequences”

(Autumn-Winter 2014 issue)

DEAR TRADE FINANCE PROFESSIONALS,
This is another interesting case where the correct technical answer can result in unexpected negative consequences for an unaware exporter that has shipped its goods in good faith. Most of the responses received from our trade finance professionals across many countries were correct and showed a solid understanding of the applicable international rules. However, while the panel of experts found it difficult in this instance to determine the best submitted solution, the final answer was selected on the basis that it, in the first instance, sets out the irrevocable nature of documentary letters of credit, then highlights and explains the technical application of Article 32, which covers instalment drawings or shipments. Finally it provides practical guidance to banks and their customers to help avoid unexpected consequences. The panel of experts congratulates all successful respondents but has selected the response of Nigar Allahverdiyeva from Azerbaijan Industry Bank as the model answer. To view this answer please visit ebrd.coastlinesolutions.com.

WINNERS The bankers and trade finance specialists who answered correctly are (in alphabetical order):

- Nigar Allahverdiyeva, Azerbaijan Industry Bank, Azerbaijan
- Innesa Amirbekyan, Converse Bank, Armenia
- Irina Chuvakhina, Priorbank, Belarus
- Domenico Del Sorbo, Studio Del Sorbo, Italy
- Andrej Eftimov, NLB Tutunska Banka, FYR Macedonia
- Elena Jordanoska, Komercijalna Banka Skopje, FYR Macedonia
- Lamia Riabi, Attijari Bank, Tunisia
- Ilaha Rizvanova, Azerbaijan Industry Bank, Azerbaijan

ER'S ANSWER WINNER'S ANSWER WINNER'S ANS

Unexpected consequences

The UCP 600 rules operate under the general concept that all credits are irrevocable as set out in UCP 600, Article 2. The irrevocable nature of the issuing bank's undertaking to honour complying presentation is further supported by UCP 600, Article 7. Being guided by this principle a document checker may logically consider in the first instance that the irrevocability of the credit keeps the payment undertaking of involved banks in force despite the fact a certain scheduled part of shipments did not take place.

This logic could be extended to consider that if a shipment or instalment is missed and documents are not presented, then the beneficiary will not be paid for the missed instalment, but the remaining instalments expressly stated in the credit can be drawn down against complying presentations of documents.

However, the beneficiary needs to be aware that this is not the case.

There is a special clause in the rules to which our issue relates. UCP 600, Article

32 (Instalment Drawings or Shipments) states that “if a drawing or shipment by instalments within given periods is stipulated in the credit and any instalment is not drawn or shipped within the period allowed for that instalment, the credit ceases to be available for that and any subsequent instalment”.

Consequently, the action of the issuing bank is consistent with the application of the UCP 600 rules as drafted, the irrevocable undertaking ceases to be available for that instalment and also any subsequent instalment, even if otherwise complying presentations are made by the beneficiary.

As seen from the Commentary on UCP 600 (ICC publication No. 680), the described approach did not change as of the time of UCP 500. “During the drafting process of the latest UCP, several ICC national committees questioned whether this approach is right. Nevertheless, the view of the Drafting Group and the majority of ICC national committees was that by including a specific schedule in the credit there is a definite requirement for either a drawing to be made or goods to be shipped within a specific period. Failure on the part of the beneficiary to abide by the schedule could lead to financial or other risk to the applicant.”

This is clearly a situation where knowledge of the rules is important not only for the banks involved but also for banks' trading customers. By being aware of the rules it is possible to exclude or modify particular rules, such as Article 32 in this case, by using clear language and terms and conditions in the credit when issued.

Exclusions and modification are covered in Article 1 of UCP 600.

Nigar Allahverdiyeva
Azerbaijan Industry Bank
Baku, Azerbaijan

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What do you think?
Provide us with your expert view

“Extend or pay – the suspense of suspension”

Dear Experts, an urgent situation has transpired as follows.

Our bank issued a performance guarantee subject to URDG 758 and just 10 days before the expiry date of the guarantee we received an “extend or pay” demand.

The demand was a complying demand and, in accordance with article 23 of URDG 758, we suspended payment for 20 calendar days following our receipt of the demand.

However, within three business days of our informing the beneficiary of suspension, our bank received another complying demand. This time the demand was not an “extend or pay” demand but a “pay” demand.

During the time allowed for examination of the demand under URDG 758 rules, we received a stop payment court order addressed to our bank in respect of the guarantee.

We have some urgent questions.

- As the guarantee expired during the period of our advice of suspension, do we have an obligation to pay under the rules?
- Can the beneficiary immediately present a second demand in the form of a “pay” demand after we have notified them of the period of our suspension?
- Given that our bank received a court order stopping payment under the guarantee, will our bank have an obligation to pay if the guarantee expires during the validity of the court order?

By way of background information we have learned that the beneficiary is initiating proceedings to contest the validity of the stop payment court order addressed to our bank.

We anxiously await your response as the amount of money involved is quite substantial.



SOLUTION



“Extend or pay – the suspense of suspension”

(Spring-Summer 2015 issue)

DEAR TRADE FINANCE PROFESSIONALS,

It is a worrying trend for the trade finance industry that the ICC Global Trade Finance Survey 2015 reported that 16.1 per cent of approximately 500 respondents across the globe reported experiencing an increase in the incidence of court injunctions barring banks from honouring payments under independent bank obligations.

However, it is encouraging to see that our trade finance professionals understand exactly how to deal with the occurrence of such situations in day-to-day trade finance business.

Thank you for all of your responses, which were appreciated by the expert panel. Once again, the answer by Irina Chuvakhina from Priorbank has been selected as the model answer (available at ebrd.coastlinesolutions.com).

Answers from Nigar Allahverdiyeva and Domenico Del Sorbo were also commended for having very high technical merit. ●



WINNERS

The bankers and trade finance specialists who answered correctly are (in alphabetical order):

Nigar Allahverdiyeva, Azerbaijan Industry Bank, Azerbaijan; **Ivana Cepić**, Raiffeisen Zentralbank Austria; **Irina Chuvakhina**, Priorbank, Belarus; **Domenico Del Sorbo**, Studio Del Sorbo, Italy; **Slobodanka Djukanov**, Vojvodanska Banka Serbia; **Emilija Georgijevska**, Komercijalna Banka Skopje; **Igor Kudinov**, Megabank Ukraine; **Iskra Matlievska**, Komercijalna Banka Skopje; **Marina Mikheieva**, Ukrsotsbank, Ukraine; **Azhar Salikhova**, Bank CenterCredit, Kazakhstan.

NER'S ANSWER WINNER'S ANSWER WINNER'S ANSWER

Dear Sirs,

Please find below my view for the case ‘Extend or pay - the suspense of suspension’ published in Trade Exchange magazine, spring/summer 2015.

First of all I have to note that the guarantor's actions were not correct at the beginning. According to URDG article 16 and article 23(c), the guarantor shall inform the instructing party - not the beneficiary - of the demand received and period of suspension of payment under the guarantee in order to discuss with the instructing party further steps and make a decision (to either extend the expiry date of the guarantee or pay the demand). Notification to the beneficiary about the period of suspension provoked it to present the second demand without an ‘extend or pay’ clause to receive money without any delay.

This case throws up several questions, and my answers are set out below.

1. **fts the guarantee expired during the period of our advice of suspension, do we have an obligation to pay under this rule?**
Yes, the guarantor is obliged to pay under the guarantee if the guarantee was not extended and the total amount of the demands doesn't exceed the guarantee amount. Or, if the guarantee was extended for the period requested in the first demand. this demand is deemed to be withdrawn as per URDG article 23(d), and the guarantor is obliged to pay the second one only.
The fact that the guarantee expired earlier has no effect since both demands were presented before the guarantee expiry date and were considered as complying.
Argumentation is given directly in URDG in the definition of the expiry date (the date on or before which a presentation may be made; it is not a deadline for payment) and indirectly in article 20(a) (the period for examination of the demand is not shortened or otherwise affected by the expiry of the guarantee). Further, as per article 20(b) the guarantor shall pay when it determines that a demand is complying, irrespective of the validity period of the guarantee.

2. **can the beneficiary Immediately present a second demand In the form of a ‘pay’ demand after we have notified them of the period of our suspension?**
Yes they can, based on URDG 758 article 17(b) stating that more than one demand may be made. In practice. this means that the beneficiary can withdraw one demand and make another demand but of course only up to the expiry date of the guarantee, which under the URDG 758 rules is the date on or before which a presentation may be made.

3. **Given that our bank received a court order stopping payment under the guarantee, will our bank have an obligation to pay if the guarantee expires during the validity of the court order?**
The bank has no obligation to pay during the validity of the court order addressed to the bank. However, if the validity of the court order expires or is cancelled. then the bank must pay.

Best regards,

Irina Chuvakhina
Priorbank Belarus

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Conflict over conflict

Dear Experts, an urgent situation has transpired as follows.

Our bank forwarded a presentation on behalf of our customer, the beneficiary, to an issuing bank demanding payment under a standby letter of credit issued subject to UCP 600. Our bank has no obligation under the standby as we are only an advising bank but we are the main finance provider to the customer for export sales, plus we support our customer in an advisory capacity.

In our opinion the presentation demand was a complying demand. In fact, the standby letter of credit was quite simple, calling for only two documents:

- > A STATEMENT OF DEFAULT ISSUED BY THE BENEFICIARY STATING THAT PAYMENTS WERE OVERDUE AND UNPAID IN RESPECT OF THE CONTRACT COVERING DELIVERY OF AGRIGIRODRONE x72 FOR AN AMOUNT OF UP TO US\$ 700,000.
- > A COPY OF THE COMMERCIAL INVOICE ISSUED BY THE BENEFICIARY INDICATING THE SPECIFICATIONS OF THE PRODUCT DELIVERED AND ITS VALUE.

The documents were presented at the issuing bank on the business day before the standby letter of credit expired.

The issuing bank issued a notice of refusal by SWIFT MT 734 on the fourth banking day following the receipt of the presentation, which was after the expiry date.

The notice of refusal stated one discrepancy as follows:

“Conflict between data in documents; statement of default states ‘delivery of AgriGiroDrone x 72 demanding payment of USD700,000.00’ whereas copy commercial invoice issued by the beneficiary indicates ‘specifications of the product delivered GiroDrone model x 71 reconditioned to x 72 for value USD687,000”

As a matter of urgency could you please clarify if the discrepancies noted by the issuing bank are valid, and set out whether the issuing bank has an obligation to pay under the standby or not?

What do you think?
Provide us with your expert view

SOLUTION

“Extend or pay – the suspense of suspension”

(Spring-Summer 2015 issue)

DEAR TRADE FINANCE PROFESSIONALS,
It is a worrying trend for the trade finance industry that the ICC Global Trade Finance Survey 2015 reported that 16.1 per cent of approximately 500 respondents across the globe reported experiencing an increase in the incidence of court injunctions barring banks from honouring payments under independent bank obligations.

However, it is encouraging to see that our trade finance professionals understand exactly how to deal with the occurrence of such situations in day-to-day trade finance business.

Thank you for all of your responses, which were appreciated by the expert panel. Once again, the answer by Irina Chuvakhina from Priorbank has been selected as the model answer (available at ebrd.coastlinesolutions.com).

Answers from Nigar Allahverdiyeva and Domenico Del Sorbo were also commended for having very high technical merit. ●

WINNERS
The bankers and trade finance specialists who answered correctly are (in alphabetical order):

- Nigar Allahverdiyeva, Azerbaijan Industry Bank, Azerbaijan; Ivana Cepić, Raiffeisen Zentralbank Austria; Irina Chuvakhina, Priorbank, Belarus; Domenico Del Sorbo, Studio Del Sorbo, Italy; Slobodanka Djukanov, Vojvodanska Banka Serbia; Emilija Georgijevska, Komercijalna Banka Skopje; Igor Kudinov, Megabank Ukraine; Iskra Matilevska, Komercijalna Banka Skopje; Marina Mikheieva, Ukrsotsbank, Ukraine; Azhar Salikhova, Bank CenterCredit, Kazakhstan.

TRADE FINANCE CLINIC AWARD CEREMONY IN MINSK

“It was a great pleasure for me to participate in ICC/EBRD graduation ceremony as Trade Expert winner of Trade Finance Clinic of EBRD Magazine last week. It is important not only for me personally but also for our younger staff and all trade finance community as a part of education and professional challenge. Thank you for the idea of Trade Finance Clinic and possibility to demonstrate our ability. Thank you very much for high evaluation of my professional skills and for the prize awarded!”

Irina Chuvakhina

China Systems Corporation

“China Systems are delighted to present Irina Chuvakhina with the top prize for the TFP clinic. Her answers display great technical and practical expertise. We enjoy the TFP clinic so much that it is circulated to all our offices around the world.”

Stefan Tryggvason, China Systems Corporation

ICC GEORGIA

“This is the second year that ICC Georgia Banking Commission has presented awards for TFP clinic winners. The standard of replies is just amazing.”

Ilia Gogichaishvili, Chair, ICC Banking Commission Georgia



- 24 **BONUS CASES FROM ICC
AUSTRIA OCTOBER, 2015**

ICC Austria is one of the biggest National Committees of the International Chamber of Commerce and a very successful conference provider and regular consultant. They believe that trade finance is the key to local and international prosperity and stability, and therefore, education is essential.

When learning a new concept or improving your skills, it is generally appreciated that “knowing” differs from “doing”. When faced with a challenging situation or a difficult case, you may start to wonder how colleagues from other banks and/or countries would deal with it.

This is why ICC Austria jointly with the TFP team organised the Case Studies workshop, which was part of the Trade Finance Week in 2016 www.tradefinanceweek.org. A unique feature of the workshop was that leading international experts had the opportunity to examine and debate on complex and controversial cases that participants submitted prior to the event/s. Here are some examples of what our participants discussed:

Question:
How can a bank determine the issuing date of a guarantee?
If the issuing bank is able to control their risk, can this date be prior to the date that the guarantee will be sent to the beneficiary? According to our country’s law, a guarantee is not allowed to be valid prior to the issuing date.

Outcome of the plenary discussion/suggested solution:
URDG 758 art. 4 determines the issuance and effectiveness of a guarantee.

One may insert a special “issue date” in the document, which might differ from the date, when the guarantee is actually sent to the beneficiary. Normally however, the difference will be only 1 or 2 days, mostly caused by administrative issues such as missing signature.

A guarantee might allow to be claimed for events of default prior to the issuance of the guarantee but the experts have not seen a guarantee stating that it is valid before issuance.
Another topic discussed around guarantees had been questions about amendments of Bank Guarantees.

Question:
In case the bank guarantee is amended and the amendment asks for the beneficiary’s consent, but this is not received, can we regard the amendment as accepted?

Outcome of the plenary discussion/suggested solution:



If the guarantee is issued under URDG 758 and no response is received the answer is clearly no; the amendment cannot be considered accepted according to URDG 758 art. 11b. Without a beneficiary’s reaction, whether positive or negative, the guarantor remains uncertain.
Silence does not constitute acceptance of an amendment.
Regarding Letters of Credit the language of documents seems to be a continuous subject of debate:

Question:
The Letter of Credit stipulates that documents issued in Russian and/or English language are acceptable. The beneficiary presented an invoice partly in English and partly in Russian. Is this invoice issued in accordance with the LC terms?

Outcome of the plenary discussion/suggested solution:
Guidance is found in the ISBP 745, the International Standard Banking Practice, with its paragraphs A 21)a and A 21)c ii being applicable. So the answer is yes, it is acceptable.
Always a hot topic: transport documents.

Question:
A Letter of Credit requested a “Full set clean on board marine bill of lading made out to shippers order endorsed to the order of issuing bank...”

The Bill of Lading presented had been issued to the order of issuing bank without any endorsement.

Is the Bill of Lading acceptable under the Letter of Credit?



Outcome of the plenary discussion/suggested solution:
The outcome of the discussion had been that the Bill of Lading is compliant. It was reasoned as followed: The issuing bank obtains the same rights under a Marine Bill of Lading issued to the order of the issuing bank as it does under a Marine Bill of Lading made out to the shipper’s order and endorsed to the order of the issuing bank.
With respect to a CMR a popular question is: what is regarded as an original CMR?
Several examples had been provided namely:

- Question:**
1. CMR signed, scanned than printed out in color
 2. CMR scanned, printed out in color and than signed
 3. CMR printed out in color with typed data except carrier’s signature – signature looks like manually signed but not to identify if facsimile or original
 4. Scanned copy with signature looks hand-made but not to identify if it is only made with black pen
 5. Scanned copy with facsimile signature

Outcome of the plenary discussion/suggested solution:
Such a selection has to be considered carefully:
When banks receive documents presented by or on behalf of the beneficiary, banks do not know how this document was created. Banks are expected to follow UCP 600 rules and here in particular article 3 and 17 sub-sections b and c. Furthermore, ISBP 745 with the paragraphs A27 to A31 provide additional guidance on how the UCP 600 articles should be understood and interpreted.
As a golden rule: if a document appears to be an original it should be treated as such.

Another submitted case tackled the situation after the issuing bank refused documents. The documents were returned to the beneficiary who revised them and subsequently re-presented them.

Question:
Need the revised documents be presented in the period of presentation required in the Letter of Credit, therefore within 21 days after shipment date, or would a presentation within the LC validity be sufficient enough?

Outcome of the plenary discussion/suggested solution:
Given that the LC is subject to UCP 600 and the presentation includes original transport documents ,sub-article 14c applies. Therefore the documents must be re-presented within the presentation period foreseen in the Letter of Credit, normally within 21 days, unless that period has been amended by the Letter of Credit. A re-presentation has to be made within the stated validity in the Letter of Credit.



- from left to right:
1. Andrea Hauphmann, Raiffeisen Bank International
 2. Vincent O’Brian, external consultant of EBRD TFP
 3. Stephen Tricks, Consultant, Clyde & Co
 4. Gabriele Katz, Deutsche Bank



TFP AWARDS



GOLD

Nigar Allahverdiyeva, Azerbaijan Industry Bank, Azerbaijan;
Irina Chuvakhina, Priorbank, Belarus
Domenico Del Sobrio, Studio del Sobrio, Italy

SILVER

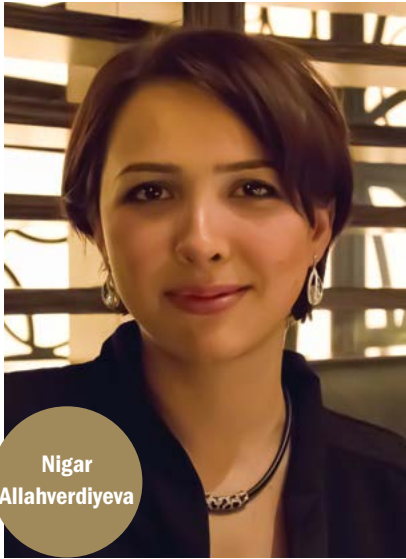
Innesa Amirbekyan, Converse Bank, Armenia

BRONZE

Andrej Eftimov, NLB Tutunska banka, FYR Macedonia
Ilaha Rizvanova, Azerbaijan Industry Bank, Azerbaijan;
Wael Ali Abdel Aziz, Commercial International Bank, Egypt



Domenico
Del Sobrio



Nigar
Allahverdiyeva



Irina
Chuvakhina

PANEL OF EXPERTS FOR 2016



Vin O'Brien
*Chair, ICC Banking
Commission Paris*



Ana Kavtaradze
*Head of Trade Finance
Department,
Bank of Georgia*



Stephen Tricks
*Consultant, Clyde
& Co LLP*



Hasan Apaydin
*Head Of Trade Finance -
International Payments &
Treasury and Investment
Banking Operations, Aktif
Investment Bank A.S.
TurkeyTurkey*



Serhii Kostohryz
*Head of Trade
Finance Department,
Raiffeisen Bank Aval
Ukraine*



Edith Babuscio
*Member of National ICC
Committee Germany,
Member of ICC Banking
Commission Paris*

Trade Facilitation Programme



May 2016

The EBRD's Trade Facilitation Programme (TFP) was developed to promote and facilitate international trade to, from and within central and Eastern Europe, the Commonwealth of Independent States (CIS) and the southern and eastern Mediterranean (SEMED) region. In 2015 the TFP was extended to Greece and Cyprus. Under the TFP, guarantees are provided to international commercial banks (confirming banks) thereby covering the political and commercial payment risk of transactions undertaken by issuing banks in the EBRD's countries of operations.

Transaction instruments

The TFP can be used to guarantee any genuine trade transaction to, from and within the countries of operations and the potential recipient countries of the SEMED region. The following instruments issued or guaranteed by participating banks may be secured by guarantees issued under the Programme:

- ▶ documentary letters of credit (LCs); trade-related standby LCs from issuing banks; deferred payment LCs; and LCs with post-financing advance payment bonds and payment guarantees
- ▶ bid and performance bonds and other contract guarantees
- ▶ trade-related promissory notes or bills of exchange.

Goods and services covered

EBRD guarantees cover a wide range of goods and services including consumer goods, commodities, textiles, equipment, machinery and power supply as well as construction and shipbuilding contracts, cross-border engineering projects and other services. Some environmentally sensitive activities may be considered subject to satisfactory completion of environmental review procedures and approvals.

Business development

The TFP is an outstanding business development tool, providing a range of facilities to participant banks. It offers:

- ▶ cover for a broad range of trade finance instruments
- ▶ unconditional guarantees payable on first written demand
- ▶ guarantees for up to 100 per cent of the face value of the underlying trade finance instruments
- ▶ uncommitted trade finance lines and transaction approval on a case-by-case basis
- ▶ attractive fee levels agreed separately for each transaction
- ▶ a fast and simple approval procedure to issue guarantees
- ▶ short-term loans to selected local banks for on-lending to local exporters and importers.

At present there are 100+ issuing banks in 28 countries participating in the TFP, working with over 800 confirming banks and their subsidiaries throughout the world. Issuing banks in the region participate in the TFP with total limits in excess of €1 billion.

At a glance

Issuing Banks

100+

Number of operating countries

28

Number of transaction

18,500+

Total transaction value since 1999

€12.8 billion

Confirming Banks

800+

Contacts

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Participating banks

Issuing banks

The TFP is open to issuing banks registered in all the EBRD's countries of operations and the potential recipient countries in the SEMED region, including banks with majority foreign ownership and subsidiaries of foreign banks. Applications from banks interested in participating in the Programme are reviewed by the EBRD on a case-by-case basis after detailed due diligence. The main criteria for selection are:

- ▶ an appropriate level of financial standing
- ▶ good corporate governance
- ▶ clear shareholder structure
- ▶ willingness to establish or already established international trade finance business

Confirming banks

All international commercial banks that have an established record of trade finance operations with banks in the EBRD region are eligible to join the TFP as confirming banks. Selected banks in the EBRD region with experience in

trade finance instruments can also act as confirming banks.

The selection of banks is subject to the EBRD's approval and the signing of appropriate legal documentation. There are no costs or charges to join the TFP.

Legal documentation

The issuance of EBRD guarantees is governed by standardised trade finance agreements, concluded by the issuing banks and the EBRD. Cash advances are governed by standard revolving credit facility agreements between client banks and the EBRD.

Revolving credit facility

In addition to providing trade finance guarantees, the EBRD also extends short-term loans to selected banks and factoring companies in its countries of operations to fund trade-related advances to local companies for pre-shipment finance, post-shipment finance and other financing necessary for the performance of foreign trade contracts and domestic and international factoring operations.

Credit agreements are signed between the EBRD and the selected banks and factoring companies and the selection criteria are similar to those used for issuing banks for the issuance of guarantees.

Applying for a guarantee

An EBRD guarantee may be requested either by the issuing bank or the confirming bank. The TFP can discuss details of the transaction, percentage of cover, tenor and pricing before a formal guarantee request is submitted.

Important donors

The governments of Austria, Germany, Italy, the Netherlands, Norway, Switzerland and Taipei China support the TFP financially through risk-sharing funds. These funds support the Programme's activities in south-eastern Europe, Armenia, Azerbaijan, Belarus, Georgia, Moldova, Kazakhstan, the Kyrgyz Republic, Russia, Tajikistan, Turkey, Turkmenistan and Ukraine and enable the EBRD to provide longer tenors and to take higher exposures in trade transactions.

Cypriot roadbuilding expertise in Egypt

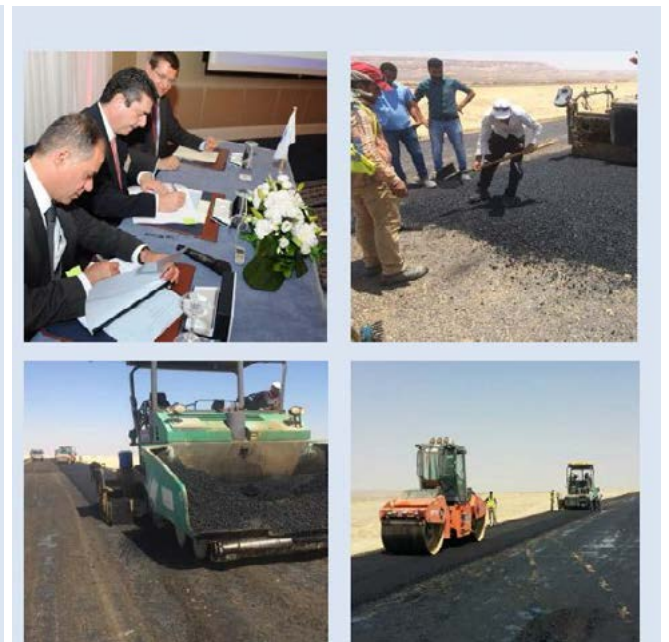
The construction of a new 90 km motorway under the name of "El Sheikh Fadel Ras Ghareb Motorway" in Egypt has been made possible thanks to the Trade Facilitation Programme (TFP).

The objective of this project is to construct a new three lane road (90 kilometres length and 11.7 meters wide) connecting El Sheikh Fadl Village to Ras Gharib City as well as an upgrade to the existing roads. The contract was awarded to a leading construction company in Cyprus, Nemesis Contracting PLC.

Under the TFP, EBRD supports the export of construction services, between two countries of operation, Cyprus and Egypt. In this transaction Eurobank Cyprus, issued a counter guarantee in favour of the Egyptian Confirming Bank, Piraeus Bank Egypt, who in turn issued a performance guarantee to the beneficiary, General Authority for Roads and Bridges Egypt, guaranteeing performance of the Cypriot exporter, Nemesis Contracting PLC.

The EBRD guaranteed 100 percent of the political and commercial payment risk of Eurobank Cyprus.

This transaction would have not been possible without the support of the EBRD.



EBRD Trade Finance e-Learning Programme



May 2016

The European Bank for Reconstruction and Development (EBRD) teamed up with the International Chamber of Commerce (ICC) and launched the Trade Finance e-Learning Programme in May 2010. The aim is to help issuing banks involved in the EBRD's Trade Facilitation Programme (TFP) to achieve best international practice in trade finance.

Since the launch almost 3,000 specialists from over 240 institutions across eastern Europe and Central Asia have taken part. In 2011 the programme was also launched in the southern and eastern Mediterranean (SEMED) region. In 2015 the programme was further extended to Cyprus and in 2016 – to Greece.

Further information on the EBRD's Trade Finance e-Learning Programme can be found at ebrd.coastlinesolutions.com

Programme contents

The Trade Finance e-Learning Programme covers all of the ICC traditional trade finance products and Incoterms® rules, which are a key feature of international commercial contracts involving the shipment of goods and provision of services.

The programme ensures that trade finance professionals in the EBRD's countries of operations have the requisite skills to issue, process and honour trade products in line with the provisions of the ICC trade rules, and includes nine online training modules:

- **Introduction to Trade Finance:** General overview of the main principles and products
- **Collections:** Comprehensive training in collections and URC 522
- **Mentor 600:** Comprehensive training in letters of credit, UCP 600 and ISBP
- **DC Master:** Advanced training in letters of credit
- **ISP Master:** Advanced training in standby letters of credit and ISP 98
- **URDG Master:** Advanced training in demand guarantees and URDG 758
- **Incoterms® 2010:** Comprehensive training in Incoterms® 2010
- **Environmental and Social Issues in Trade:** Comprehensive training in trade-related environmental and social issues
- **Introduction to Factoring:** comprehensive training in invoice finance



The programme is funded by the EBRD Shareholder Special Fund and the European Union. Selected students are awarded scholarships that cover up to 100 per cent of the programme's tuition fees.

David Bischof, Policy Manager of the ICC Banking Commission, says: "Promoting the correct application of ICC trade rules is a core objective of the ICC Banking Commission, so we are delighted that the EBRD's Trade Finance e-Learning Programme has proved such a successful addition to the Bank's Trade Facilitation Programme."



At a glance

Where our e-Learning Programme operates

Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Cyprus, Egypt, FYR Macedonia, Georgia, Greece, Jordan, Kazakhstan, Kosovo, Kyrgyz Republic, Moldova, Mongolia, Montenegro, Morocco, Romania, Russia, Serbia, Slovakia, Slovenia, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, Uzbekistan

Total number of graduates

443

Contact

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Trade Finance e-Learning Programme graduation ceremony in Minsk, March 2016

Modern teaching methods for maximum impact

The EBRD has complemented traditional teaching methods in favour of something a little more up to date. Through "the flip" – as it is known in Silicon Valley – students on the EBRD's Trade Finance e-Learning Programme can now "attend" their lectures online.

Studying online, on a smart phone or on a tablet, has distinct advantages. For example, students can review part or all of a lecture/module several times to understand a subject written in a language that is probably not their native tongue (all the subjects are taught in English). Students can relax and advance at their own pace, said Kamola Makhmudova, Head of the EBRD's Trade Finance e-Learning Programme.

The TFP then aggregates the information on all the banks participating in the programme and assesses where the knowledge gaps lie according to individual bank, country and region.

The TFP then arranges targeted face-to-face training workshops with well-known consultants who can address any areas that were perhaps not well understood during the online training.

Since the launch of the Trade Finance e-Learning Programme the TFP has seen better-targeted trade, better use of products and a better understanding of the risks involved in trade finance. The issuing banks are also better equipped to formulate more specific questions to the TFP and are able to apply the concepts they have learned in everyday operations.

Student view

Igor A.Kudinov, Head of Documentary Operations at Megabank, Ukraine, was among the best students of his intake.

"Participation in the Trade Finance e-Learning Programme was a brilliant chance for me to plunge into the depths of international expertise in documentary operations and trade finance, and to acquaint myself with both profound theoretical professional knowledge and hands-on examples based on real transactions.

Though I had several years of professional experience before I enrolled, the Trade Finance e-Learning Programme has not only improved my general understanding of documentary business, regulatory acts of the ICC and practical cases, but also significantly extended my knowledge in this field of banking, allowing me a better grasp of certain nuances of theory and practice of operations.

I would like to thank all the authors of and contributors to the Trade Finance e-Learning Programme, the ICC, Coastline Solutions and the EBRD for the opportunity to understand, work and live better."



Emilija Georgijevska, Senior Specialist Officer in the International Guarantees Department of Komercijalna Banka Skopje has been a guarantee specialist since 1990.

"The EBRD Trade Finance e-Learning Programme provides the opportunity to spread knowledge and understanding of trade finance rules among practitioners from all over the world. Having been a guarantee specialist in Komercijalna Bank Skopje since 1990, I can say that this is the first time an effort has been made to develop a global language to overcome the barriers to knowledge and best practice among different countries and cultures.

The modules are well-designed, interesting and practical, offering an innovative learning platform, and the flexible online method allows students to work at their own pace, any time and any place. The high quality of the study material, explanations and the challenging case studies keep you motivated throughout the course.

This remarkable e-learning project is helping to develop a global understanding of trade finance rules and practices like nothing else before. The awards and prizes keep all students highly motivated and the unique graduation ceremony helps you to further enhance your knowledge and expand your network of professional contacts."





EBRD TFP Trade Finance Forum

Frankfurt, Germany

SAVE
THE DATE

19-20
SEPTEMBER

2016

Participants of the TFP Forum are also invited on a complimentary basis to attend a factoring conference organized by Factors Chain International (FCI) in cooperation with EBRD on 21 September in Frankfurt.

EBRD Annual Meeting Cyprus 10-11 May 2017



CYPRUS 2017



European Bank
for Reconstruction and Development

*Thank you from
the TFP team*

CONTACT US

TFP website

www.ebrd.com/tfp

TFP e-Learning Programme

<http://ebrd.coastlinesolutions.com>