

# Documentary Credits & Bank Guarantees in International Trade Finance Agenda

## Day One

Morning

### Legal Analysis of Documentary Credits

- Documentary Credits: Basic Structures
- Documentary Credits: Roles of the Parties
- Irrevocability, Autonomy and Limited Recourse

### The Uniform Customs & Practice for Documentary Credits

- Origins, scope & content
- Relationship with applicable law

### UCP600- The Main Changes in Outline

- Definitions
- Interpretations
- Availability, expiry & presentation
- Banks' undertakings
- Advising & amendments
- Reimbursement

### Legal Relationships under a Documentary Credit

- The Multiple Contracts
- The Applicant – Beneficiary Relationship
- The Applicant – Issuing Bank Relationship
- The Issuing Bank – Nominated Bank Relationship
- The Issuing Bank – Confirming Bank Relationship
- The Beneficiary – Issuing Bank Relationship
- The Beneficiary – Confirming Bank Relationship

Afternoon

### Workshop 1: Inter-bank Relationships - Silent Confirmations

Delegates consider and discuss the legal implications of current banking practice in the area of 'silent confirmations'.

### Payment Mechanisms under a Documentary Credit

- Credit settlement mechanisms
- Deferred payment and acceptance credits compared

### Workshop 2: Discounting Deferred Payment LCs - Case Study

- Delegates study the facts of a real-world dispute over the discounting of deferred payment LCs and consider the relevant provisions of UCP600 and the domestic law.

▪

*Coffee*

### Negotiation Credits

- Negotiation and negotiable instruments
- Negotiation and the nature of a Documentary Credit
- Negotiation in law and practice

### Workshop 3: Negotiation Case Studies

- Delegates study the facts of real-world disputes over the nature of negotiation under documentary credits and consider the relevant provisions of UCP600 and the domestic law.

## Day Two

Morning

### **Transferable Credits**

- Basic structure
- Amendments & transfers

### **Back-To-Back Credits**

- Comparison with Transferable Credits
- Clean' and 'Dirty' back-to-backs
- Essential safeguards

### **Workshop 4: Back-To-Back Credits in Action**

Delegates identify the risks in a proposed back-to-back transaction and consider risk avoidance and mitigation techniques. The distinction between 'clean' and 'dirty' back-to-backs is examined in legal and practical terms.

### **Documentation & Documentary Compliance**

- The Role of Incoterms – Defining Liability & Documentation
- Description of Goods in Various documents
- Stale Documents
- Originals & Copies
- Amount, Quantity & Price

### **Workshop 5: UCP600 & ISBP In-Tray Exercise Part 1**

- Delegates apply the provisions of UCP600 & ISBP to real-world problems arising in documents tendered under a variety of L/Cs

### **Standards of Conformity**

- The Rules for Checking and Rejecting Documents
- The Preclusionary Rule: Scope and Effect
- International Standard Banking Practice: ICC645

Afternoon

### **Workshop 6: UCP600 & ISBP In-Tray Exercise Part 2**

Delegates apply the provisions of UCP600 & ISBP to further real-world problems arising in documents tendered under a variety of L/Cs

### **Fraud and Documentary Credits**

The Problem of L/C Fraud

- The Types of Fraud
- Fraudulent Goods
- Fraudulent Documents
- Third Party Frauds: Case Study UCM v RBC
- Fraudulent Base Transactions

### **Workshop 7: Fraud & Documentary Conformity Problem**

Delegates presented with a real-world scenario involving a documentary dispute, evaluate the facts and identify the risks involved

## **Day Three**

Morning

### **Introduction: The Role of Guarantees In International Trade**

- The nature of risk in international trade
- Payment and performance obligations
- The role of guarantees in risk allocation

### **Workshop 1: The Nature of the Undertaking**

- Participants will be presented with various documents for analysis regarding the nature of the obligations created under them.

### **The Development of Guarantees**

- Guarantees proper
- Contracts of surety
- Indemnities
- Corporate guarantees and letters of comfort

### **Legal Analysis and Terminology**

- Primary and secondary obligations
- Formal requirements
- Consideration and cause

### **Workshop 2: Primary and Secondary Obligations**

- Participants consider the implications of the decisions in *Associated Japanese Bank v Credit du Nord*, *Gold Coast Limited v. Caja De Ahorros Del Mediterraneo* and *Marubeni Hong Kong and South China Ltd v Government of Mongolia*.

Afternoon

### **Legal Analysis and Terminology (2)**

- Banker's autonomous undertakings
- Autonomy and conditionality
- Irrevocability
- Indirect guarantees and counter-guarantees
- Mandate and the basis of the guarantor's obligation
- Common and civil law comparisons
- Consideration and cause in tripartite relationships
- The origin of 'bonds'

### **Case Study: International Construction Contracts**

- Bid and Tender Bonds
- Advance Payment Guarantees
- Retention Money Bonds
- Performance Bonds
- Maintenance and Warranty Bonds

### **The Uniform Rules for Demand Guarantees**

- Relationships and Terminology
- Fundamental Principles
- Irrevocability and Effectiveness
- Nature of Demand Required
- Treatment of Demand
- Extend or Pay Demands
- Expiry of Guarantee

### **Workshop 3: The URDG in Practice**

- Participants consider the application of the URDG provisions in an 'extend or pay' scenario

## Day Four

Morning

### **Standby Letters of Credit**

- The origins, nature and use of standby letters of credit
- Comparison of standby and non-standby letters of credit
- Comparison of standby letters of credit and demand guarantees
- Standby letters of credit as payment mechanisms
- **Case Study: Development of Standby LCs in Oil Trade**
- Standby letters of credit as counter-guarantees
- **Case Studies: Nature of Standbys : Wichita Eagle & Barclays v MNB**

### **Workshop 4: Assessing counter-guarantee risk**

- Participants investigate the risk posed to the issuer of a demand guarantee by the terms of the standby LC offered as a counter-guarantee

### **The International Standby Practices (ISP98)**

- Scope and Application
- Relationships and Terminology
- Fundamental Principles
- Irrevocability and Effectiveness
- Extend or Pay Demands
- Governing Law and Jurisdiction

### **Standby LCs under ISP98 compared to UCP600**

- Amendments
- Documentation
- Transfer
- Assignment of proceeds
- Expiry

Afternoon

### **Court Intervention in Bank Guarantees**

- Common Law Jurisdictions
  - Autonomy and the fraud exception
  - The letter of credit analogy
  - The standard of proof of fraud for an injunction
  - The 'balance of convenience' test
- Civil Law Jurisdictions
  - Absence or illegality of cause
  - Abuse of right and manifestly abusive calling
  - *Case Studies: The Russian Steel Case and Olex Focas*
  - Fraudulent and abusive calling

### **Applicable Law in Indirect Guarantees**

- Conflict of laws in international trade transactions
- The EC Convention on the Law Applicable to Contractual Obligations
- Issuer's Law – an unsafe assumption

### **Workshop 5: Applicable Law in Bank Guarantees**

- Participants consider the decision in *Marconi v Pan Indonesian Bank* regarding the law applicable to bank guarantees in the absence of party choice.