APEC Seminar on Credit Management and Security Practices in International Business

PROCEEDINGS

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1st, Fuxingmengwai Stree, 100860 Beijing
PR China
Tel: (8610) 6804 1275
Fax: (8610) 6802 5737
Website: www.icc-china.org

For the APEC Secretariat
35 Heng Mui Keng Terrace
Singapore 119616
Tel: (65) 6775 6012
Fax: (65) 6775 6013
E-mail: info@apec.org
Website: www.apec.org

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APEC Seminar on Credit Management and Security Practices in International Business

May 19-20, 2004 Chengdu, China

Proceedings

ICC CHINA

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Preface

General Description of Implementation

APEC Seminar on Credit Management and Security Practices in International Business was a project initiated by China at the Working Group on Trade Promotion and approved by APEC in 2003. The project was implemented by ICC CHINA, under the oversight of China Council for the Promotion of International Trade, on May 19-20, 2004 in Chengdu, China.

By meeting the needs of participants from both public and private sectors of member economies, the project achieved the objectives and expected results. 66 delegates and 7 speakers from the following 8 APEC member economies attended the Seminar as speakers, chairs or participants: US, China, Hong Kong, Chinese Taipei, Korea, Malaysia, Singapore and Indonesia(some of them were from those economies' companies based in China). The delegates included representatives from trade promotion organizations, trade related governmental agencies, banks, manufactures and law firms. 7 speakers with professional backgrounds delivered speeches at the 7 plenary sessions.

Project Evaluation

The project satisfied the needs of the beneficiaries as follows:

I. Representatives from TPOs, law firms and chambers:

They gained knowledge of credit management and various guarantee products so that they could counsel their members or clients in international business. In such a way the benefits of the seminar will spread to a much wider cross-section of business community in APEC.

II. Bankers and other business practitioners

They gained such knowledge which is immediately necessary in their everyday practice of international business. The knowledge will help them mitigate risks, gain more customers, be more competitive, and expand business.

According to the results of the feedback, most delegates including both speakers and participants believed that this project had achieved its objectives. The rating by 34 delegates who responded among the 67 participants averages 4.60 on the scale of 0-5.

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Program

May 18(Tuesday)

Registration

May 19(Wednesday)

09:00-09:10 Opening Remarks

Speaker: Wang Jinzhen, Secretary General, ICC CHINA

09:10-10:40 Credit information systems in major countries

Where can exporters get reports on the credit standing of their possible business partners in a foreign country? What are the institutions for registering or collecting information related to the credit standing of companies in major countries? What data about a company are necessary in getting a full picture of its credit standing and why?

Speaker: K.F. Garrison Jr., President, FCIB, USA

10:40-11:00 Coffee Break

11:00-12:30 Credit Management: Why and How?

Why does a company with international operations need credit management facilities? How do the widely-used credit management techniques work? What institutions are there to help businesses better manage their credit facilities with customers and what services do they provide? What options, apart from litigation, are available to companies whose customers just default?

Speaker: Henry Chan, FCIB, USA

12:30-13:30 Lunch

13:30-15:00 Credit insurance systems in major countries

What credit insurance mechanisms exist in major countries which are available to exporters? What risks do they normally cover? What differences exist between the major mechanisms in the world? What are the pitfalls in the mechanisms that exporters should pay special attention to?

Speaker: Zhu Wengen, Vice President, China Eximbank Shanghai Branch, China

15:00-15:30 Coffee Break

15:30-16:00 Case Study on Disputes related to Guarantee

Speaker: Yue Feitao, Director, Beijing Xinxing Law Firm, China

May 20(Thursday)

09:00-10:30 Independent guarantees: detailed analysis

How do independent guarantees work in international trade of both goods and services? What are the different types of independent guarantees? What model forms are there? What international rules may apply to them? What are the major differences in legal principles and rules governing independent guarantees between some major jurisdictions in the world? Are there any jurisdictions where independent guarantees encounter legal barriers? How to choose applicable rules as the principal, beneficiary and guarantor? Particular analysis of URDG and ISP98 and case study of disputes will be conducted.

Speaker: Carlos Hoyos, General Manager, Mapfre Causion y Credito S.A., Spain

10:30-11:00 Coffee Break

11:00-12:30 Independent guarantees (continued)

Speaker: Carlos Hoyos, General Manager, Mapfre Causion y Credito S.A., Spain

12:30-13:30 Lunch

13:30-15:00 Conditional guarantees and others

How do conditional guarantees, such as contract bonds work in international trade of both goods and services? What are the different types of conditional guarantees? What model forms are there? What international rules may apply to them? What are the major differences in legal principles and rules governing conditional guarantees between some major jurisdictions in the world? How to choose applicable rules as the principal, beneficiary and guarantor? Particular analysis of URCB and case study of disputes will be conducted.

Speaker: Lynn Schubert, President, Surety Association of America, USA

15:00-15:30 Coffee Break

15:30-17:00 Conditional guarantees and others (continued)

Speaker: Carlos Hoyos, General Manager, Mapfre Causion y Credito S.A., Spain

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Session Summary

The outlines of the presentations and discussions

1) Opening Remarks

2) Credit information systems in major countries

Mr. Garrison from FCIB explained to the audience where exporters can get reports on the credit standing of their possible business partners in a foreign country, and introduced the institutions for registering or collecting information related to the credit standing of companies in major countries. He also emphasized the specific data about a company necessary in getting a full picture of its credit standing.

3) Credit Management: Why and How?

Mr. Henry Chan from FCIB explained the reason why a company with international operations needs credit management facilities and introduced the working process of the widely-used credit management techniques. He also briefly introduced the institutions which help businesses better manage their credit facilities with customers.

4) Credit insurance systems in major countries

Mr. Zhu Wengen, Vice president of China Eximbank Shanghai Branch introduced the credit insurance mechanisms exist in major countries and the risk each one covers. He also explain the differences exist between the major mechanisms, especially introducing China's mechanism.

5) Case Study on Disputes related to Guarantee

Ms. Yue Feitao, Director of Beijing Xinxing Law Firm introduced to the attendants the most recent cases on security practices which bring out many questions of the delegates.

6) Independent guarantees: detailed analysis

Mr. Carlos Hoyos, General Manager,of Mapfre Causion y Credito S.A. the world famous cooperation specializing on security practices introduced the practice of independent guarantees in international trade of both goods and services and the different types of independent guarantees. And he also explained the major differences in legal principles and rules governing independent guarantees between some major jurisdictions in the world. Particular analysis of URDG and ISP98 and case study of

disputes were also conducted in order to deepen the delegates' understanding.

7) Conditional guarantees and others

Ms. Lynn Schubert, President, Surety Association of America and Mr. Carlos Hoyos, General Manager of Mapfre Causion y Credito S.A co-chaired the session, introducing the different types of conditional guarantees, such as contract bonds work in international trade of both goods and services and their model forms. They also explained the major differences in legal principles and rules governing conditional guarantees between some major jurisdictions in the world. Particular analysis of URCB and case study of disputes were also conducted.

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Session 1. Opening Remarks

Speaker:

Mr. Wang Jinzhen
Assistant Chairman
China Council for the Promotion of International Trade
Secretary General
ICC CHINA

Wang Jinzhen was born in Shanghai in September 1957.

He graduated from Beijing Foreign Trade Institute the UN Training Program of Beijing University Foreign Studies.

He has worked for the China Council for the Promotion of International Trade (CCPIT) since January 1979 by serving different positions in various CCPIT departments. He is now Assistant Chairman, CCPIT. He is also Director General, PBEC China Member Committee, Secretary General, ICC China and Director, PECC China.

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Outline of Opening Remarks

1) Welcome to APEC Seminar on Credit Management and Security Practices in International Business. This seminar is sponsored by APEC and organized by ICC CHINA. Around 70 delegates from banks, exp & imp companies and institutions attend this seminar. And we especially welcome delegates from APEC member economies: Chinese Taipei and Hong Kong, China. Also pleased to have speakers from the USA, Spain and China.

2) ICC CHINA's background: ICC CHINA represents the interests of businesses operating in China and speaks on their behalf to the Chinese government and intergovernmental organizations, and facilitates members' participation in international business activities as well as discussions and formulation of business practices, usages, rules at international levels. Members include most Chinese banks and a lot of big enterprises, for example: Huaneng, COSCO. ICC CHINA serves its members by way of organizing conferences, seminars, publishing books and newsletters, organizing visiting delegations to other countries, providing expert opinions on business disputes, providing business information and etc..

3) As China becomes more and more involved in the globalization process, more and more Chinese enterprises become active in international trade of goods and services as well as investment. Market competition will force enterprises into providing customers with various forms of credit terms. But if they could not manage such credit arrangements skillfully, they might face great risks.

4) The speakers will introduce and discuss in details the issues, rules, practices in credit management and security arrangement. The speakers are all world-renowned experts in their respective fields. I am sure you will all benefit from their experiences and expertise.

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Session 2. Credit information systems in major countries

Where can exporters get reports on the credit standing of their possible business partners in a foreign country? What are the institutions for registering or collecting information related to the credit standing of companies in major countries? What data about a company are necessary in getting a full picture of its credit standing and why?

Speaker:

Mr. K.F. Garrison Jr.
President
FCIB
USA

PowerPoint Presentation by Mr. K.F. Garrison Jr. (click to open)

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Session 3 Credit Management: Why and How?

Why does a company with international operations need credit management facilities? How do the widely-used credit management techniques work? What institutions are there to help businesses better manage their credit facilities with customers and what services do they provide? What options, apart from litigation, are available to companies whose customers just default?

Speaker:

Mr. Henry Chan

FCIB

USA

Henry Lee Chan is an Honorary Life Member of FCIB, Honorary Director of the New Jersey World Trade Council, and Chairman of the Philippines Chinese Association of America (Northeast, USA). Mr. Chan is very experienced in international credit management and trade finance. He travels extensively to Asia, especially to China, and shares the significant information and experience that he gathers to interested groups and people in business as well as educational institutions. Previously, he held executive positions at Warner Lambert Company, Midland International Trade Services, Union Carbide Corporation and is Managing Director of HLC Group International, Inc. Mr. Chan was also a Board Member of FCIB and Morris County Chamber of Commerce, New Jersey.

PowerPoint Presentation by Mr. Henry Lee Chan(click to view)

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Speech paper by Mr. Henry Lee Chan

Introduction

A business organization may be regarded as a combination of functions, people, and materials aimed at procuring goods and services, converting them or changing their characteristics, and selling them to customers. Since the large majority of these transactions are conducted on credit, the department charged with the credit function naturally plays a very important role in business.

Whatever role credit plays in our modern world, its success or failure depends largely upon the skill with which it is managed in individual transaction. No credit is sounder than the promises, which underlie it. Yet, credit structure is vulnerable except through the weaknesses of its management for the concept of credit is logical and it is practical when well administrated. Not the credit itself, but the abuse of credit and incompetent administration of it causes credit ills such as unwarranted credit extensions, excessive losses on credit accounts, business failure, and perhaps unsettling cyclical conditions. Unwise credit management tends to harm both debtor and creditor and shakes confidence in business in general.

Most people think of bad debt as a sign that someone has made a mistake. Someone, they reason, blundered in granting credit, and whoever it was did not take the time and trouble or perhaps did not know how to check on the customer's ability and intention to pay before accepting the order. And now the company has to suffer the consequences.

According to this line of reasoning, the company with the fewest bad debts has the best credit management. The fact is, however that high profits not low credit losses are the real indication of superior credit management. A low bad debt loss record often only means that the company is overly conservative in its credit policy. It is sacrificing potential profits by turning down orders from all but sure-to-pay accounts. And since in today's competitive market profits only increases in sales volume, most companies realize that they must take credit risks and absorb some credit losses to build the volume they need for maximum income.

The real art of credit management therefore is not the ability to eliminate credit losses. It is the knack of determining exactly when to take how much risks realizing maximum income. That is why a credit executive must be every bit as alert and informed as people

in sales, purchasing, and production.

Management of credit takes place at two principal levels:

- General policy-making and control
- Day-by-day administration of department's operation.

Credit Policy:

- Policy must recognize inter-relationship and credit:
  Credit has a cost.
  Time money is tied up (terms).
- Cost of credit must be recognized:
  Money invested in receivables has a cost that either recovered or absorbed.
- Credit should specific maturity:
  Open ended receivables can be an invitation to trouble (no consignment).
- Corporate asset exposure should be protected:
  Unreasonable risks should not be taken.
  Adequate assurances of repayment must be evident.
- Utilization of negotiable instrument:
  Eliminate any question of obligation and obtain security to facilitate sale.

Whatever type of credit policy you devise, you must take great care to keep it flexible. Business conditions can change quickly, both in your company and in your market. Your credit policy that is just right today may be too liberal or too restrictive tomorrow.

Factors inclined toward a liberal policy:

- If the overhead costs are so high you must maintain high volume to prevent losses
- If the advertising and sales costs are very high.
- If the demand for your product is only temporary
- If you are primarily trying to establish new accounts.
- If you are trying to create a market for new products.
- If you are in an extremely competitive industry.
- If the market for your products is declining.
- If the inventory is abnormally heavy or becoming obsoletes.

- If you are approaching the end of your principal selling season and fear you are not financially strong enough to carry inventory over to next year.

Factors inclined toward a restrictive policy:

- If your financial condition is so extended you cannot assume an average credit risk.
- If demand for your product is higher than your ability to produce it.
- If your inventory is low and cannot be built-up right away.
- If general economic conditions are unfavorable.
- If business conditions among your customers are slumping badly.
- If you produce a product directly to your customer's specifications and cannot sell it to any other users.
- If an order requires expensive designing, preparation, cooling, or engineering changes before you can get it into active production.

Credit Manual:

If you run a one-person-credit operation, you probably can and do keep all of your policies and procedures in your head. But if you have even one assistant, a manual outlining these policies and procedures is a must. It will not only save you plenty of " explanation time" it could be a lifesaver if, for any reason you were unavailable for any length of time.

Your manual should give exact information and concise instructions on every aspect of your work. It should tell what sources of credit information are available, how this information is maintained, and where it can be found. It should spell out credit limits and under what circumstances you allow deviations from these limits. It should explain what leeway you allow on late payments, how your collection procedures are timed, and how your collection correspondence is handled. Also, it should describe what legal actions you take to collect delinquent or failing accounts and when you take them.

It is good idea to include whatever illustrations, diagrams, flow charts, and sample forms are necessary to make each subject graphic and easily understandable.

The manual should be in loose-leaf form to facilitate insertions and removals. And, needless to say, these insertions and removals should be made promptly whenever they are necessary. If you let the manual get out of date, it is worse than useless – it becomes a

dangerous source of miss-information.

Credit can be classified into Two Broad Classifications:

Public Credit which can also be called government credit, is credit extended to or used by government divisions, agencies or instrumentalities.

Private Credit is extended to or used by individuals or businesses to carry on the exchange of goods and services in the private sector. Private credit can be divided into five broad categories:

- Agricultural credit
- Bank credit
- Business credit
- Consumer credit
- Investment credit

Today we are here to talk about is "Business credit". This type of credit is granted by a supplier selling goods for manufacturing, processing, or resale for profit.

The important characteristics of business credit are:

- Selling terms are relatively short.
- Transactions are usually on open account (unsecured basis).
- Cash discounts may be offered for payment before the net due date.
- The terms include transactions to manufacturers, wholesalers, and retailers, but specifically exclude the consumer.
- Transactions may be on open account, partially secured, or secured in full.

The fact that business credit finances the intermediate and final stages of production and distribution distinguishes it from consumer credit. The fact that business credit sales yield a profit on goods sold rather than interest or investment income distinguishes it from bank and investment credit. Nevertheless, all forms of credit are interdependent and many of their attributes are shared in common.

Analysis of Credit:

Credit Analysis

- Company history:

  How long in business.

  Management experience

  Organization

- Type of business:

  Industry

  Products

- Operation:

  Personnel

  Physical facilities

  Sales/credit terms

Financial Analysis:

Ratio analysis:

- Current Ratio
- Working capital
- Liquid or quick ratio
- Inventory to working capital
- Debt to net worth
- Sales to receivables
- Sales to inventory
- Net profit to sales
- Net profit to net worth

Sources of Credit Data:

Information:

- Credit reports:

  Trade- mercantile agencies, credit references and credit/trade associations.

  Bank

- Personal visits
- Credit experience – how long as a customer, promptness, volume, high credit.
- Financial statements – Balance sheet and profit and loss statements.

Investigation:

- Credit references – experience of other sellers.
- Credit experience – how the account has been maintained.
- Trends – credit and sales.
- Customer's bankers – opinion and experience.
- Review and analyze financial statements.

Establishing Credit Limits and Terms of Payment.

Methods:

- Percentage of net worth (at starting point).
- Debt service capacity
- Sales requirements

Applicable financing and terms depend on:

- Products
- Price (per unit and cost of financing)
- Custom in the trade.
- Market
- Distance
- Customer capability.

Consumer and low value items normally sold on shorter terms.
Capital goods, consumer durables, and other high priced items generally sold on terms in longer terms. Determinants include product life and returns (ROI).

Collection Protection of Accounts Receivable:

Collection:

- Must keep records to show which accounts have outstanding balance, and when it is due for payment.
- Must be systematic and prudent follow-up; must be instituted promptly after maturity is missed.
- Do not threaten action unless you are prepared to act.
- Once action is begun, follow through.

Protection and receivables:

- Prudent credit judgment is primary protection.

- Regular and systematic analysis of the receivable collection
- Effective collection
- Guarantees or other collateral.

Perspective – Does it all make sense in a Risk and Reward Framework?

Rewards	Risks
Profit on sales	Probabilities of loss
Captive customer	Probabilities of being locked-in
Source of distribution	Probabilities of collection difficulty
Keeping plant at satisfactory capacity level	Probabilities of added collection expenses

Within this framework, keep in mind:

Business:

- The nature of the company's products and services.
- On what basis does the company compete (price, quality, and service)?
- Principal suppliers and customers, and concentration.
- Relationship of terms of purchase to terms of sale.
- Location, capacity, and efficiency of the plant.

  Trends in labor relations and raw materials prices.

  Extent of diversification and integration.

  Research and development.

  Are there affiliates which form an integral part of this operation?

Management and control:

- The background, experience, and age of the principals.
- The availability of management succession.
- Stockholder agreements concerning a principal's death or withdrawals.
- Insurance on principals.

Characteristics of Export Credit Sales

Companies selling internationally have a number of unique decisions to make before booking or shipping an order. The first of these will be based on an analysis regarding

the country in which a seller is planning to do business. Once the country risk is understood, a credit decision must be made on the customer placing the order. Finally, consideration should be given as to how the shipment will be billed and financed.

The simplest way of extending credit is on open account; however this method also comes with the greater risk. Other methods include selling by means of various Drafts, Letters of Credit or simply Cash prior to delivery. All of these methods are extensively used in International trade.

In United States, exports have growth from 10% of GDP in 1970 to 30% of GDP in 2000. The adoption of the Euro by 12 European countries, the opening of new markets such as China, Russia, and India, and International free-trade agreements such as NAFTA and the Uruguay Round of GATT suggest that growth in international trade will continue.

Credit managers play a vital role in managing the risk associated with the growth in international trade. Many of the basic responsibilities of credit managers in global marketplace are similar to those in domestic marketplace. However, there are several specific responsibilities that can be directly traced to operating in a global marketplace.

The range of payment methods in export trade is as wide as if not wider than, the range of payment methods for domestic transactions. In dealing with many foreign countries, a country risk, which could include political, economic and social problems, is added to the normal commercial risk of credit selling. However, the records of the National Association of Credit Management (NACM) indicate that the percentage of bad debt losses in foreign trade is actually lower than that experienced in domestic transactions.

To insure the continuance of such a favorable situation, we must understand the complex nature of foreign trade, it has caused the development of terms of sales that apply only to export credit sales and differ markedly from the terms used in domestic credit sales.

Export trade normally presents the following uncertainties;

Commercial Risk relates to the financial capacity and moral integrity of a customer, which becomes evident in his willingness and or ability to pay. In evaluating the degree of commercial risk involved in a sale, the credit analyst must weigh the possibility of loss due to a debtor's future ability or willingness to pay. Ordinarily, the degree of commercial risk becomes measurable by gathering data about the customer. Prudent credit investigation and analysis of available facts and figures will help insure that a

good credit decision is made.

Country Risk can be more difficult to appraise the problems essentially are governmental and can change very quickly as government political and even government change over night. Therefore, it's become a prerequisite for the export credit executives to be aware daily of what is happening in the countries your company's sells. This knowledge can be gained by reading a newspaper every day, weekly international reports that your company may subscribe to, talking with visiting international personnel, checking and attending international meetings.

Country risk include a country's monetary reserves and resultant foreign exchange restriction when reserves are low or dwindling import regulations; devaluation and revaluation; expropriation of foreign owned assets; wars and internal civil disturbances; relationship which exists between the country of export origin and the importing country.

Therefore, country risk is the probability that a loss could be incurred by events that are under the control of the government. Social, political, and economic focal points should be analyzed to assess country risk.

The Four Basic Ways Exporters Get Paid:

- Cash in advance
- Letter of Credit
- Collection basis
- Open Account

Cash in advance

Cash in advance terms may be made in the following ways:

- Cash with order
- Cash before delivery
- Cash on delivery
- Cash against shipping documents

Cash in advance terms is the most conservative terms and commonly used in international sales; especially the product or service is unique to the customer. Or when buyer has a poor credit records or financinial strength is unknown, and seller does not wish to extend any credit or to assume any risk. Under this situation seller will demand

prepayment terms.

Letter of Credit:

A commercial Letter of credit is defined as a letter written by a bank at the request of its customer to a third party (the beneficiary) specifying conditions under which a payment or payments may or will be made by the bank.

It is to be remembered that banks assume no liability or responsibility for the form, sufficiency, correctness, genuineness, falsification or legal effect of any document or papers in connection with the letter of credit or for the description, quantity, weight, condition, packing, delivery or value of goods presented in the documents under a letter of credit.

In simple terms, a documentary credit is a conditional bank undertaking of payment. Documentary credits therefore:

- Is an arrangement by banks for settling international commercial transaction.
- Provide a form of security for parties involved
- Ensure payment provided that terms and conditionals of the credit have been fulfilled.
- Means that payment by such means is based on documents only, and not on merchandise or services involved.

A letter of Credit may be " Revocable" or " Irrevocable".

- A revocable credit: can be amended or cancelled at any time without prior warning or notification to the seller.
- An Irrevocable credit: can be amended or cancelled only with the agreement of all parties thereto. As there are often two banks involved, the issuing bank and the advising bank, the buyer can ask for an irrevocable credit to be confirmed by the advising bank. If the advising bank agrees, the irrevocable become a confirmed irrevocable credit

Confirmed Irrevocable Letter of Credit is a definite undertaking on the part of the issuing bank. Therefore, it can not be modified or cancelled with out the consent of all parties concerned. A confirmed credit will bear words to this effect: "We confirm this credit and thereby undertake that all drafts drawn under and in compliance with the terms of this credit will be duly honored" . This irrevocable feature doe's give the seller credit security.

The Correspondent's Irrevocable Straight Credit or Unconfirmed Export Credits: An unconfirmed credit will bear words to the effect that: " This advice conveys no engagement on our part" .

- If a United States exporter received an unconfirmed credit, he received only the obligation of the foreign bank and can, therefore, only rely on the United States bank paying at the time of presentation of documents provided that the U.S. bank is in funds or otherwise satisfied to proceed with payment.
- If the U.S. bank is not content to pay, it has no obligation to do so. The exporter, consequently, has to look to the foreign bank for payment.

Deferred Payment Letter of Credit

A deferred payment letter of credit provides for: Presentation on the required documents by the beneficiary with in a specified date and payment to be made to the beneficiary a specified number of months or days after presentation of the documents, or after date of shipment or other specified date.

The main difference between this type of credit and a regular " Usance credit" is that in a deferred payment credit, the shipper extends credit to the buyer himself instead of a bank creating a banker's acceptance on behalf of the issuing bank or buyer. There is no limitation on deferred payment credits, whereas Banker's acceptances are for a maximum period of 180 days. Presentation of the documents does not constitute negotiation of the credit as in the case examined in the usual manner. Usually, no draft will be received. If the documents are in order, we acknowledge receipt of the beneficiary taking care not to commit the bank unless we have issued or confirmed the credit. At the time of negotiation, the bank collects their charges which are a special commission for confirmed deferred payments, usually 1&1/2% for the period of the commitment or more.

Special Credits:

Revolving Credit

A revolving credit is one where, under the terms and conditions thereof, the amount is renewed or reinstated without specific amendment to the credit being needed.

- It can be revocable or irrevocable.
- It can revolve in relation to time or value.

Red Clause Credit

A Red clause credit is a credit with a special clause incorporated into it that authorizes the advising or confirming bank to make advances to the beneficiary before presentation of the documents. The clause is incorporated at the specific request of the applicant, and the wording is dependent upon his requirements.

Transferable Credit

A transferable credit is one that can be transferred to the original (first) beneficiary to one or more second beneficiaries (Article 46, UCP). It is normally used when the first beneficiary does not supply the merchandise himself, but is a middleman and thus wishes to transfer part or all of his rights and obligations to the actual supplier(s) as second beneficiary (ies).

Back to Back Credit

It may happen that the credit in favor of the seller is not transferable, or, although transferable, cannot meet commercial requirements by transfer in accordance with Article 46 (UCP) conditions. The seller himself, however, is unable to supply the goods and needs to purchase them from, and make payment to another supplier. In this case, it may sometimes be possible to use either a " back-to-back credit" or " counter credit" . Both these concepts involve the issue of a second credit by the seller in favor of his supplier. Under the back-to-back credit concept, the seller, as beneficiary of the first credit, offers it as " security" to the advising bank for this second credit the seller credit.

Stand-by Letters of Credit

Stand-by letters of credit are issued for the purpose of issuing the beneficiary that in the event of non-performance or non-payment of an obligation, the beneficiary may request payment from the issuing bank.

International Collections

There are three types of international collections:

Clean Collections For example checks, traveler's checks, and money orders drawn on banks or agencies not accompanied by documents.

> **International Cash letter Service** – The bank provides this type of service to the customer with immediate credit for checks drawn outside the United States. This allows you to determine the exact exchange value of the deposit on the day it is processed by you. Items deposited are subject to final settlement. Therefore, return items will be debited to your account.
>
> **Clean Items presented as a collection** – The bank will forward your check along

with comprehensive instructions, to our correspondent for payment or for presentation to the drawee. The bank provides this service as your agent and you receive credit only after final payment.

Documentary Collections – Are those collections of financial documents which are accompanied by commercial documents. A financial document means bills of exchange, promissory notes, checks, payout receipts or other similar instruments used for obtaining the payment of money. A commercial document means invoices, shipping documents, documents of title or other similar documents.

Regular Documentary Collection Service –Upon receipt of a collection from you, the bank will transfer the given information to a special foreign collection form and forward it to one of our overseas correspondents for collection and payment.

Direct Documentary Collection Service – Your export department or freight forwarder completes a bank collection letter and mail it with the documents directly to the buyer's bank. A copy of the cover letter should be forwarded to your bank, to allow your bank to properly service the collection. By mailing the documents directly you have saved three to four days.

Export Letter of Credit Presentation Service – The bank offers its exporting customers a specialized system for tracking export letter of credit receivables through any of its international operations offices. The bank computerized Exporters in monitoring Letter of Credit activity and speeds up their letter of Credit collections. Large exporters will particularly find this service invaluable.

Open Accounts

Arrangement between the buyer and seller which provides for payment at some specific future date but without any negotiable instrument evidencing the obligation. The advantages are simplicity and reduction of banking charges. The disadvantages are, if non-payment, legal proceedings to enforce payment will be necessary. Mostly used when parties are well known to each other or where exchange controls are minimal or non-existent.

The Twelve Most Common Mistakes and Pitfalls made by New and Potential Exporters

1. **<u>Failure to obtain qualified export counseling and to develop a master international marketing plan before starting an export business.</u>**

   To be unsuccessful, a firm must first clearly define goals, objectives, and the problems encountered. Secondly, it must develop a definitive plan to accomplish an object despite the problem involved. Unless the firm is fortunate enough to possess a staff with considerable export expertise; it may not be able to take the crucial first step without qualified outsider guidance.

2. **<u>Insufficient commitment by top management to overcome the initial difficulties and financial requirements of exporting.</u>**

   It may take more time and effort to establish a firm in a foreign market than in domestic ones. Although the early delays and cost involved in exporting may seem difficult to justify when compared to established domestic trade, the exporter should take a long-range view of this process and carefully monitor international marketing efforts through these early difficulties. If a good foundation is laid for export business, the benefits derived should eventually outweigh the investment.

3. **<u>Insufficient care in selecting overseas distributors.</u>**

   The selection of each foreign distributor is crucial. The complications involved in overseas communications and transportation require international distributors to act with greater independence than their domestic counterparts. Also since a new export's history, trademarks, and reputation are usually unknown in the foreign markets, foreign customers may buy on the strength of a distributor's reputation. A firm should therefore conduct a personal evaluation of the personnel handling its account, the distributor's facilities, and the management methods employed.

4. **<u>Chasing orders from around the world instead of establishing a basis for profitable operations and orderly grown.</u>**

   If exporters expect distributors to actively promote their accounts, the distributors must be trained, assisted, and their performance must be continually monitored. This requires a company marketing executive permanently located in the distributor's geographical region. New exports should concentrate their efforts in one or two geographic area until there is sufficient business to support a company representative. Then, while this core area is expanded, the exporter can move into the next selected geographical area.

5. **<u>Neglecting export business when the local market booms.</u>**

   Too many companies turn to exporting when business falls off in the local markets.

When domestic business starts to boom again, they neglect their export trade or relegate it to a secondary place. Such neglect can seriously harm the business and motivation of their overseas representatives, strangle and local company's own export trade and leave the firm without recourse when domestic business falls off once more. Even if domestic business remains strong, the company may eventually realize that they have only succeeded in shutting off a valuable source of additional profits.

6. **Failure to treat international distributors on an equal basis with domestic counterparts.**

   Often, companies carry out institutional advertising campaigns, special discount offers, sales incentive programs, special credit term programs, warranty offers, etc., in the domestic market but fail to make similar assistance available to their international distributors. This is a mistake that can destroy the vitality of overseas marketing efforts.

7. **Assuming that a given market technique and product will automatically be successful in all countries.**

   What works in one market may not work in others. Each market has to be treated separately to insure maximum success.

8. **Unwillingness to modify products to meet regulations or cultural preferences of other countries.**

   Foreign distributors can not ignore local safety and security codes, as well as import restrictions. If necessary modifications are not made at the factory, the distributor must do them – usually at greater cost and, perhaps, not as well. It should also be noted that the resulting smaller profit margin makes the account less attractive.

9. **Failure to print service, sale and warranty messages in locally understood languages.**

   Although a distributor's top management may speak English, it is unlikely that all sales personnel (let alone service personnel) have this capability. Without a clear understanding of sale messages or service instructions, these persons may be less effective in performing their functions.

10. **Failure to consider use of an export management company.**

    If a firm decides it can not afford its own export department (or has tried one unsuccessfully), it should consider the possibility of appointing an appropriate

export management company.

11. Failure to consider licensing or joint-venture agreements.

Import restrictions in some countries, insufficient personnel/financial resources, or too limited product line, may cause many companies to dismiss international marketing as unfeasible. Yet, many products that can compete on a national basis in the local market can be successfully marketed in most markets of the world. A licensing or joint venture arrangement may be the simple, profitable answer to any reservations. In general, all that needed for success is flexibility in using the proper combination of marketing techniques.

12. Failure to provide readily available servicing for the products.

A product without the necessary service support can acquire a bad reputation in short period, potentially preventing further sales.

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Session 4 Credit insurance systems in major countries

What credit insurance mechanisms exist in major countries which are available to exporters? What risks do they normally cover? What differences exist between the major mechanisms in the world? What are the pitfalls in the mechanisms that exporters should pay special attention to?

Speaker:

Mr. Zhu Wengen
Vice President
China Eximbank Shanghai Branch
China

Mr. Zhu Wengen, born in Jiangsu Provice, China, on March 14, 1953.

He graduated from Shanghai Foreign Language University in 1978, received his diploma of Humanities from La Trobe University, Australia in 1982, and did his master degree at John F. Kennedy School of Government, Harvard University from 1990 to 1991.

He joined the Ministry of Foreign Economic Relation and Trade (now it is the Ministry of Commerce) in 1978, and worked in the ministry until 1993. During that period, he worked on UNDP financed projects in China, attended relevant international meetings and conferences, and worked at UNIDO Investment Promotion Service in Germany for more than two years.

He started working at the Export – Import Bank of China from the end of 1993. Since then, he has been the general manager of International Department, general manager of the Planning Department, chief representative of the bank's rep office in South Africa, and early this he took the position of vice president of Shanghai Branch of China Eximbank.

PowerPoint Presentation by Mr. Zhu Wengen(click to view)

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Outline of Mr. Zhu Wengen's presentation

OFFICIAL EXPORT FINANCING SYSTEM

1. INTERNATIONAL EXPORT FINANCING SYSTEM

1.1 Export Credit Agencies (ECAs)

Business range

- Providing financing guarantee and insurance
- Providing export credit
- Providing export credit, guarantee and insurance

Credit Terms

- CIRR
- CIRR and commercial rate

Ownership

- Wholly and directly owned by state
- Indirectly owned by state

Tax payment

- Tax exempted for the first few years
- Never pay tax

Source of funding

- From government
- From capital market
- From government and capital market

1.2 Arrangement on Guidelines for Officially Supported Export Credits

Purpose

Export Credits

1.3 Annual Meeting of ECAs in Asian Countries and Reconfirmation of L/C

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Introduction

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Introduction

Short –Term Export Credit Insurance

Medium and Long – term Export Credit Insurance

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Source of Funding

Service Network

3. ROLE AND FEATURE OF ECAs

- Part of the visible hand of market economy
- With strong government support

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Session 5. Case Study on Disputes related to Guarantee

Speaker:

Ms. Yue Feitao

Director

Beijing Xinxing Law Firm,

China

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Speech Paper by Ms. Yue Feitao

China is not a country of a case law system. Chinese courts hear cases and make judgments in accordance with statutory laws. While a country which has its own uniform law system, the judgments made by the Supreme People's Court of PRC usually have some directive influence on the whole nation's judicial judgment. It is absolutely necessary to make a careful study and discussion about the relevant judgments made by the Supreme People's Court if we want to know something about Chinese guarantee system, the application and practice of the Guarantee Law and to speed up the development of Chinese Guarantee Affairs.

Case 1: H Property Insurance Limited Company vs. S Automobile Limited Company and its Beijing sale service Branch Company (Appellant case concerning disputes of property insurance contracts)

The parties concerned:
H Insurance Company (plaintiff of the first instance and appellant of the second instance)
S Automobile Limited Company (defendant of the first instance and appellant of the second instance)
Beijing sales service Branch Company of S Automobile Limited Company (defendant of the first instance and appellee of the second instance)
Hearing courts
The first instance: Beijing Higher People's Court
The secondary instance: The Supreme People's Court of PRC

Details of the case

Part A, H Insurance Company and part B, S Automobile Limited Company entered into an insurance contract in Dec.1997, which provided that part B or its purchaser of automobiles buy insurance through payment by installment from part A, part B is the insurant and the insurance subject matter is the liability of payment by installment which is provided by the purchase contract between part B and the purchaser. If the purchaser fails to perform its obligation of installment payment in a successive 3 months, the insurer has to repay the due amount of payment for the current period to the insurant.
From April 1998 to November 1998, Beijing sale service Branch Company of S Automobile Limited Company insured payment by installment to the Beijing service department of the H Property Insurance Limited Company twenty four times. The

applicant and the insurant which were registered on the certificate of insurance are both S Automobile Limited Company. The certificate of insurance provided that the insurer is obligated to assume insurance obligations in accordance with the agreed items and conditions of the certificate of insurance and fully carry out the insurance contract. The certificate of insurance corresponds with the purchase contract. The Beijing service department of H Insurance Company signed 24 certificates of insurance accordingly.

The insurance clause of payment by installment attached to the back of the certificates of insurance provides that the insurant must not transfer the proprietorship of the car to the buyer of the car and should not deliberately violate relevant laws and regulations during the sale process. The insurant should abide by relevant laws and regulations and obligations prescribed by the purchase contract. If there are any changes made to the purchase contract, they must be agreed to in writing by the insurer. If the insurant fails to perform the above obligations, the insurer is entitled to terminate the insurance contract and may refuse to indemnify.

During the same period, S Automobile Limited Company entered into 10 purchase contracts which are respectively corresponding with the above 24 certificates of insurance with the buyer. The purchase contract respectively provides that: (1) S Automobile Limited Company is entitled to reserve the proprietorship of the car before the full payment by the buyer. (2) The buyer should mortgage the car to S Automobile Limited Company after he acquires the proprietorship of the car. S Automobile Limited Company is entitled to excise its hypothec over the car if the buyer doesn't pay within the agreed period.

During the performance of the purchase contract, S Automobile Limited Company neither took any measures to reserve the proprietorship of the car, nor signed a mortgage contract and registered the subject matter of the mortgage. Then, as 5 buyers of the 10 sales defaulted on payments, S Automobile Limited Company applied for indemnity but was refused by H Insurance Company.

The plaintiff, H Insurance Company, sued to the Beijing Higher People's Court and attempted to terminate the entire insurance contract and thus not be obligated to the insurance liabilities due mainly to S Automobile Limited Company not reserving the proprietorship of the car or hypothec and other security rights according to the purchase contract, which subsequently increased the extent of risk attending the subject matter of insurance, and changed the basis of the insurance contract. The insurer should be discharged from liabilities according to Art.37 of the Insurance Law of the PRC, and

when defendant, S Automobile Limited Company, received the suit, it challenged that the Beijing Higher People's Court should hand over the case to the local people's court where S Automobile Limited Company was located, with reference to the purchase contract which provided that the jurisdiction is the people's court where S Automobile Limited Company was located. The Beijing Higher People's Court and the Supreme People's Court of PRC overruled S Automobile Limited Company's jurisdiction demurrer application and held that among insurance contract legal relationships, although other civil contract rights and obligations are the basis for the insurer to determine the insurance condition, they cannot change the legal independence between entity and procedure of the two contracts. Other civil contracts and insurance contracts are not of a principal and subordinate relationship.

The holdings of the courts

The Beijing Higher People's Court and the Supreme People's Court of PRC held that H Insurance Company is entitled to terminate the 21 insurance contracts with respect to reservation of proprietorship and hypothec and should not be liable for approximately 100 million RMB of insurance debt in accordance with Art. 16, Art 17, Art 37 of the Insurance Law of PRC.

The judgment made by the Supreme People's Court of PRC (No.152, civil, 2002) held that the insurance agreement entered by two parties is an intent-oriented agreement but not a conclusive insurance contract. Certificates of insurance included the ascertained insurant, the insured, the insurance subject matter and rights and obligations of the two parties. The clauses, attached clauses, items, insurance agreement and purchase contract of payment by installment are all contents of the insurance contract. The contents of the insurance agreement and the insurance clause are complementary and supplementary to each other, even if the existence of conflict appears, and the clauses provided by the certificate of insurance should be applied because the subsequently signed certificate of insurance is the confirmation and specification of the insurance agreement.

The certificate of insurance specifically provided that the certificate of insurance is corresponding with the purchase contract of payment by installment, and clearly ascertained by insurance clauses that the insurant should strictly abide by the liabilities and obligations prescribed by the purchase contract of payment by installment. If there are some changes added to the purchase contract of payment by installment, the insurant should agree with the insurer in writing. The contents of reservation of proprietorship of the car by S Automobile Limited Company, the enactment of hypothec and other kinds

of guarantees in the purchase contract not only made up of the important parts of the insurance contract between S Automobile Limited Company and H Insurance Company, but also formed the base and condition for H Insurance Company to judge and forecast risk, to decide whether or not to insure, to determine the condition of the insurance and finally sign the certificate of insurance.

The Supreme People's Court of PRC also ruled that the agreements included by insurance clauses between S Automobile Limited Company and H Insurance Company, which prescribed that if the insurant transfer the car to the buyer during the insurance period, H Insurance Company will not be obligated for indemnity, and reservation of proprietorship of the car and the enactment of hypothec prescribed by the purchase contract of payment by installment between S Automobile Limited Company and the buyer, have legal binding force to both contracting parties because the agreements don't violate the forbidden regulations of law though they cannot be practical. S Automobile Limited Company could not do the registration of the reservation of proprietorship and mortgage of the car due to objective reasons, it should have timely informed the H Insurance Company and modified the insurance contract through negotiation, but it failed to do that. H Insurance Company is entitled to terminate the insurance contract and should not be obligated for insurance indemnity.

Case 2 H Leasing Company vs. F Bank (Appellant case about disputes of financial leasing contract)

Parties concerned
H Leasing Company (plaintiff of the first instance and appellee of the second instance)
F Bank (defendant of the first instance and appellant of the secondary instance)

Hearing courts
The first instance: Higher People's Court of Shandong Province
The second instance: The Supreme People's Court of PRC

Details of the case:
The H Leasing Company entered into a leasing contract with the F County Plastic Plant in April 1985 which provided that the H Leasing Company would buy production lines of plastic bags from Western Germany and then lease them to the F County Plastic Plant. The F County Plastic Plant paid the leasing fee under the contract by Japanese Yen. The F bank signed on the leasing contract as the warrantor. Art.13 of the contract (the clause about guarantor's liabilities) provided that the F bank is obligated to pay the H Leasing

Company, including damages, within 15 days when F County Plastic Plant fails to pay the debt due to the H Leasing Company. It also provided that the surety letter stating payment of the leasing fee is an inseparable part of the leasing contract and so has the same legal effect.

After the conclusion of the contract, and the H Leasing Company had performed all its responsibilities, the F County Plastic Plant had continued to default on the leasing fee for a long period of time.

The H Leasing Company sued the F bank, alleging that the F bank should be jointly liable to pay the defaulted leasing fees and late fees.

The F bank submitted a surety letter for payment of the leasing project which was signed and issued by the F bank as the issuing bank of F County Plastic Plant in August 1985. The letter gave clear indication that the H Leasing Company should sign and give back the letter, but there was no signature for the H Leasing Company on the letter. The F bank alleged that the letter limited its guarantee range to 10.3829 million RMB, and the F bank should only be liable for the 10.3829 million RMB guarantee debts instead of the entire leasing fee because the surety letter was issued after the conclusion of the leasing contract.

The holding of the courts

Higher People's Court of Shandong Province and the Supreme People's Court of PRC concluded that the F bank should pay the leasing fee of 679.512903 million Yen and a late fee of 1258.566774 million Yen to the H Leasing Company, and is obligated to pay for the late fees from 1st April 1994 to the date upon which the judgment became effective.
The judgment made by the Supreme People's Court of PRC (No.119, civil, 2000) held that both the conclusion of the contract under this case and the change of the way of payment happened before the implementation of Guarantee Law of PRC which has no trace-back force, and so is not applicable to this case. Regulation by the Supreme People's Court on Several Issues Regarding Guarantee in Hearing Cases about Economic Contract Disputes, as the judicial interpretation of General Principles of Civil Law of PRC and Economic Contract Law of PRC, is the applicable law to this case. The F bank alleged that its range of guarantee responsibilities is 10.3829 million RMB in accordance with the surety letter for payment of the leasing project. Art.1 (2) of the Regulation by the Supreme People's Court on Several Issues Regarding Guarantee in Hearing Cases about Economic Contract Disputes provides that guarantee contract is concluded if the guarantor expresses in

writing to the creditor that he will repay the creditor instead or assume joint responsibilities when the guaranteed person fails to repay the debts and such expression is accepted by the creditor. But the H Leasing Company denied his receipt and acceptance of the surety letter. The surety letter prescribes that it is in triplicate and it would be sent to the H Insurance Company to be signed and sent back after it is signed by the leasing Company and the issuing bank. However, the F Bank failed to submit the evidence of those receipts, so the conclusion is that the surety letter is a lack of evidence for support. Consequently, the F Bank's range of guarantee responsibilities can only be ascertained by the guarantee clauses of the leasing contract instead of the surety letter. Therefore the Court holds with the F Bank's appellant reason which contends that its guarantee responsibilities would be ascertained by the surety letter is not tenable or acceptable.

Lawyer's opinion

I. The applicable law to guarantee disputes is different divided by the date of 1st October 1995.

II. The Guarantee Law of PRC was adopted on 1st October 1995. The applicable law to guarantee contracts concluded before 1st October 1995 should be the laws, regulations and judicial interpretations of that time. While the applicable law to guarantee contracts entered into after 1st October 1995 should be the Guarantee Law and relevant legislative interpretations and judicial interpretations.

Case 2 is about a guarantee contract in which the F Bank assumed guarantee responsibilities to repay the H Leasing Company the leasing fee of F County Plastic Plant. This guarantee contract was concluded in 1985, so the applicable laws are laws, regulations and judicial interpretations of that time which include Economic Contract Law of the PRC, General Principles of Civil Law of the PRC, and the Regulation by the Supreme People's Court on Several Issues Regarding Guarantee in Hearing Cases about Economic Contract Disputes (abbreviated by " Several Issues").

It must be pointed out that the " Several Issues" was promulgated to carry out General Principles of Civil Law of the PRC and Economic Contract Law of the PRC in 1994, so its trace-back force extends to the date on which those two laws took effect. Thereby, " Several Issues" is the applicable law to case 2.

There are many or even substantial differences of regulations with respect to guarantee between " Several Issues" and Guarantee law of PRC seen from the above two cases. They include, but are not limited to, the following:

	Category of guarantee	If no agreed way of guarantee	Duration of guarantee	Effectiveness of guarantee by branch of bank
Several issues	Joint responsibility, indemnity, Instead of performance.	be inclined to be treated as indemnity	No prescription. be treated as lapse of time	Be effective. Guarantor assumes joint responsibility
Guarantee law	Ordinary and joint responsibility guarantees.	All are treated as joint responsibilities.	Has prescription. (Half or 2 years.)	Invalid. Share responsibility by faults

Regarding the effectiveness of foreign-related guarantee contracts, the Guarantee law of the PRC and its interpretation provide that the foreign-related guarantee contract is invalid if the guarantee is provided without the rectification and registration at the competent state authorities; The guarantee contract is also invalid if the guarantee is provided by a financial institution that has no right to run a foreign currency business. As foreign-related guarantees do not include foreign currency guarantees provided to financial leasing companies within the Chinese legal entity, so the guarantee involved in case 2 is not bound by the regulations of foreign-related guarantees, nor valid and effective.

II. Guarantee Laws and regulations should be applied to credit insurance and guarantee insurance.

The Insurance Law of PRC was adopted on 1st October 1995. Art.92 of this law provides that property insurance affairs include insurance against loss or damage to property, liability insurance and credit insurance. Seen from a broad sense, credit insurance involving the Insurance Law not only includes the credit insurance in which the applicant and the insured person are the same, but also includes guarantee insurance in which the applicant and the insured person are different entities. The applicant and the insured persons in case 1 are all within the S Automobile Limited Company, so the insurance is credit insurance.

There are great disputes about the application of law to credit insurance and guarantee insurance in practice. Some people think that Guarantee Law should be applied to credit insurance because credit insurance is to provide guarantee; some people think that

Insurance Law should be applied to credit insurance for credit insurance is still a kind of insurance which is prescribed by the Insurance Law. Other people believe that both Guarantee Law and Insurance Law are applicable to credit insurance.

The Supreme People's Court of the PRC applied Insurance Law to case 1 according to the insurance contract of the two parties and finally made a judgment which discharges the responsibilities of the insurer.

The primary contract and the guarantee contract are a principal and a subordinate relationship among a guarantee legal relationship. The jurisdiction of the guarantee contract is subordinate to the primary contract in accordance with the regulations about jurisdiction of guarantee contract disputes. Guarantee contract disputes of Case 2 should be heard by the local people's court where the S Automobile Company is located according to the agreed jurisdiction of the purchase contract if Guarantee Law is applied to this case. The Supreme People's court ruled that the insurance contract and the purchase contract is independent from each other and have no principal and subordinate relationship.

As to deal with the case in entity, Insurance Law was also applied by the Supreme People's court to make the final judgment to terminate the insurance contract and discharge the insurer from assuming insurance responsibilities. The applicable laws include Art.28 and Art. 37. Art. 28 provides that if the applicant, the insured or the beneficiary fabricates the occurrence of an insured event on purpose, the insurer is entitled to terminate the insurance contract and to bear no obligation for indemnity or payment of insurance benefits. Art. 37 provides that if the extent of risk attending the subject matter of insurance increases during the period of the contract, the insured shall, in accordance with the contract, notify the insurer in a timely manner, who shall then have the right to ask for an increase in the premium or terminate the contract. If the insured fails to notify the insurer as stipulated in the preceding paragraph, the insurer shall bear no obligation for indemnification where the occurrence of the insured event is caused by the increased risk attending the subject matter of the insurance. Insurance Law should be the applicable law to deal with credit insurance at present.

III. Several risks should be pointed out to the guarantor of the credit insurance and the creditor.

The above two cases were declared by the Supreme People's Court. We took part in the first and appellate trials as the agent lawyers for the H Leasing Company and H

Insurance Company respectively. We feel that there are many problems with respect to the investigation of credit, making contracts and avoiding risk for the creditor, the S Automobile Limited company in case 1, and the insurer F Bank in case 2. The following advice is for reference only.

(i) It provided some hidden potential trouble for future responsibility due to the failure to make a careful deliberation of the content of the contract. The S Automobile Limited Company held the H Insurance Company's certificate of insurance and accepted the insurance clauses attached to the back of the certificate of insurance. The F bank signed the standard leasing contract provided by the H Leasing Company and assumed the insurance responsibilities according to the guarantee clauses of the leasing contract. S Automobile Limited Company and F bank did not make a necessary deliberation about the relevant legal problems of insurance and leasing affairs. The prescription by the insurance clauses and leasing contract made greater consideration about the interest of the provider of the standard contract and finally considerably limited the defense against the S Automobile Limited Company's and the F Bank's responsibilities.

(ii) Failure to clarify and ascertain the relationship between the relevant legal documents which led to a lack of evidence for the defense. A purchase contract, insurance clauses and insurance agreements are involved in case 1, but the parties did not make a clarification about the relationship of these three legal documents. So the S Automobile Limited Company's contention that the insurance contract is subordinate to the purchase contract and the insurance agreement prevails over the insurance clauses, and cannot be supported due to shortage of legal and contractual basis. The Guarantor's responsibility clauses of leasing contract and surety letter for payment of leasing project were involved in case 2. Great disputes arose when the court determined the effectiveness and validity of the above two documents due to a failure to clarify them. Finally the F Bank's contention that the surety letter prevailed over the guarantee clause was not accepted by the court.

(iii) The arrangement of the guarantee was lacking firm logic and reasonableness without reference to international experience and practice. Chinese guarantee law and guarantee systems are different from those of foreign countries to a certain extent. The contracting parties should make a careful agreement to relative affairs with reference to contractual arrangements about credit guarantee, laws and regulations and usage in foreign countries. Jurisdiction and allocation of law should be properly agreed if foreign-related affairs are involved. The contract clauses in case 1 and case 2 are simple, and foreign practices were used less for reference. Of course, the combination of Chinese law and

foreign law should be carefully considered by mainland institutions.

(iv) Necessary attention was not placed on specific performance and less care was taken about default which finally led to loss of credit. The S Automobile Limited Company's failed to reserve the proprietorship and hypothec of the car during the performance of the purchase contract, which led to increase of the extent of risk attending the subject matter of insurance, and the S Automobile Limited Company did not give timely information to the H Insurance Company. The S Automobile Limited Company's action gave an excuse for the H Insurance Company's refusal to indemnify and subsequently led to its failure in the suit. The creditor of credit guarantee and credit insurance should pay due care during the performance of the contract.

The Beijng Xinxing Law Firm has been engaged in the practice of the legal affairs regarding guarantee and insurance for a long time, and has taken part in the discussion, study and drafting of the Guarantee Law of the PRC and Interpretation by the Supreme People's Court Regarding the application of the Guarantee Law of PRC and other relative laws and regulations. The lawyers of Beijing Xinxing Law Firm have dealt with more than 80 guarantee cases in Chinese courts and arbitration institutions, some of them leading cases, having been decided by the Supreme People's Court. We are really very glad to share our opinions with all friends regarding guarantee legal issues. Please contact us or visit our website.

Address: A 1901-1902, Huibin Office, Chaoyang District, Beijing, China
Telephone: 010-84985186 84976426 Fax: 64993902
Website: www.xinxinglaw.com
Email: xinglaw@sina.com

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Session 6. Independent guarantees: detailed analysis

How do independent guarantees work in international trade of both goods and services? What are the different types of independent guarantees? What model forms are there? What international rules may apply to them? What are the major differences in legal principles and rules governing independent guarantees between some major jurisdictions in the world? Are there any jurisdictions where independent guarantees encounter legal barriers? How to choose applicable rules as the principal, beneficiary and guarantor? Particular analysis of URDG and ISP98 and case study of disputes will be conducted.

Speaker:
Mr. Carlos Hoyos,
General Manager,
Mapfre Causion y Credito S.A.,
Spain

PowerPoint Presentation by Mr. Carlos Hoyos (click to view)

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Session 7. Conditional guarantees and others

How do conditional guarantees, such as contract bonds work in international trade of both goods and services? What are the different types of conditional guarantees? What model forms are there? What international rules may apply to them? What are the major differences in legal principles and rules governing conditional guarantees between some major jurisdictions in the world? How to choose applicable rules as the principal, beneficiary and guarantor? Particular analysis of URCB and case study of disputes will be conducted.

Speaker:s

Ms. Lynn Schubert
President
Surety Association of America
USA

LYNN M. SCHUBERT is President of The Surety Association of America. She received her B.S. in Business Administration, magna cum laude, from East Carolina University and her J.D. from the University of Notre Dame Law School. Ms. Schubert is a past member of the Council of the American Bar Association Tort and Insurance Practice Section and a past Chair of its Fidelity and Surety Law Committee. She currently is a member of the Construction Business Review Editorial Advisory Board; the State Bar of Georgia; the District of Columbia Bar; Board of Directors, Surety Claims Institute; the Construction Group Advisory Board for Federal Publications; the Fidelity Law Association; and the Forum Committee on the Construction Industry and Public Contract Sections of the American Bar Association and an Expert Commentator for IRMI.com. She is a Past Chair of the Torts and Insurance Practice Section - Fidelity and Surety Law Committee and formerly a member of the Council of the Torts and Insurance Practice Section of the American Bar Association, and formerly a member of the Board of Directors of the Atlanta Council of Young Lawyers.

Mr. Carlos Hoyos,
General Manager,
Mapfre Causion y Credito S.A.,
Spain

PowerPoint Presentation by Ms. Lynn Schubert(click to view)
PowerPoint Presentation by Mr. Carlos Hoyos (click to view)

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Speech Paper by Mr. Carlos Hoyos

THE INTERNATIONAL CHAMBER OF COMMERCE UNIFORM RULES FOR CONTRACT BONDS AND DEMAND GUARANTEES

- **What is the International Chamber of Commerce?**

The International Chamber of Commerce (ICC) groups thousands of companies from over 140 countries throughout the world. It is a private non-governmental organization that was founded in 1919 and is recognized as a consultative body by the U.N., European Union, World Trade Organization, O.E.C.D., International Monetary Fund, etc.

- **What does the International Chamber of Commerce do?**

The ICC has two main fields of activity:

- awareness-raising among international authorities dealing with trade and investment;
- providing useful services for enterprise.

The main achievements of ICC in this second field of activities include:

- Scrutiny and drafting of uniform trade practices for use throughout the world. Thus, it has established the Rules for Documentary Credits, Incoterms, Rules for Demand Guarantees, etc.
- Arbitration through the International Court of Arbitration.
- Services to combat international commercial crime.

At the end of the eighties, ICC noticed that the contract bond market had become highly diversified and particularly, that the increasingly widespread use of a guarantee - known as an "on-demand guarantee", had clearly altered the contractual equilibrium that should prevail between the parties to a contract. Under this type of guarantee, the beneficiary only had to demand payment for the guarantee to be enforced. The on-demand guarantee emerged after the II World War, when it became common to demand cash to guarantee contract performance. However, this system led to a great deal of abuse because the guarantee, i.e. the cash, was never returned and the situation eventually became unsustainable.

The pressure by contractors and their banks led to the creation of a bond – the demand bond, which was fast and easy to enforce. This bond was considered to be a replacement for cash and accordingly, it entailed the risk of improper claims - albeit a lesser risk than

in the case of a cash guarantee.

This type of bond was fine for banks whenever they stood surety. Its simplicity meant that it was also a good form of guarantee for beneficiaries and although it did not provide beneficiaries with the advantages of a cash guarantee, it nonetheless assured them of expeditious payment, with practically no leeway for argument.

In the face of this situation, the ICC felt that the market needed a more flexible instrument that would not require a court ruling to determine its validity and which, at the same time, would limit the risk of improper claims.

The ICC Banking Commission met with exporters, contractors of goods and services, etc., in order to establish a set of Rules for Guarantees that could be used throughout the world, thereby obtaining the desired level of international uniformity achieved by the Rules for Documentary Credits.
It is not my intention to offer a detailed description of the Uniform Rules on Demand Guarantees during my presentation. However, I would like to spend a few minutes talking about what I consider to be the most important article in these Rules and I am referring here to Article 20(a), which reads as follows:

" Any demand for payment under the guarantee shall be in writing and shall be supported by a written statement stating:

i. That the Principal is in breach of his obligation(s); and
ii. the respect in which the Principal is in breach.

By requiring a written statement of breach of contract to support a claim, this Article provides protection for both the contractor and the guarantor - albeit limited protection, if we bear in mind that the aforementioned statement of default is made by the beneficiary. Nonetheless, a beneficiary who would be prepared to enforce a bond by merely claiming breach of contract, would definitely be more wary about putting his claim in writing if he knew it was unfounded.

Notwithstanding this initial advantage of the Uniform Rules for Demand Guarantees, as insurers, we have always preferred conditional guarantees – also referred to as accessory guarantees, and we informed ICC of this in the early nineties.

In response to the pressure from insurers, ICC created a Working Group in order to draft a set of standards that would make conditional bonds more attractive for those

beneficiaries who were reluctant to use them, their argument being that they were extremely difficult to enforce.

After several years' efforts, the standards were adopted on 1st January 1994. Their major achievement lies in the fact that they established a system for enforcement and payment of guarantees, thereby attaining a level of effectiveness on a par with demand guarantees. At the same time, they maintained the contractual equilibrium between the parties, thereby preventing one party, i.e. beneficiaries, finding itself at an advantage vis-à-vis the other party, i.e. contractors and insurers.

The success of the Rules depends on their use and compliance and unfortunately, in this respect, we have to say that ICC's objective has not yet been fully attained.

I am of the opinion that although the Rules might not become as important as ICC Rules for Documentary Credits, they will nonetheless be equally effective.

I am going to briefly describe the main articles in ICC's Uniform Rules for Contract Bonds.

I shall begin by mentioning Article 3(b), which clearly defines, as follows, the accessory nature of the bond in relation to the underlying contract it guarantees:

Article 3 (b):

- **The liability of the Guarantor to the Beneficiary under the Bond is accessory to the liability of the Principal to the Beneficiary under the Contract.**

Furthermore, Article 2 provides a clear definition of **default,** as follows:

Article 2:

DEFAULT

Any breach, default or failure to perform any Contractual Obligation which shall give rise to a claim for performance, damages, compensation or other financial remedy by the Beneficiary and which is established pursuant to paragraph (j) of Article 7.

An important innovation in the Uniform Rules for Contract Bonds is found in Article 3 (a)(ix), which provides as follows:

Article 3 (a) (ix):
The Bond should stipulate:
Whether the Guarantor shall be entitled at its option to honour the claim or to perform the Contract or any Contractual Obligation.

There is no country, except the United States and Canada, where the guarantor has the option to perform the contract itself or through a third party, in the event that the principal defaults. Therefore, this is an interesting innovation and if put into practice, it will undoubtedly mean a significant modification of the current structures of Surety Insurance Companies.

Article 4 of the Rules determines the Expiry Date of a bond and provides different definitions that shall apply in case the bond does not clearly indicate its Expiry Date.

However, the most significant article of the Uniform Rules for Contract Bonds is Article 7, which provides as follows in paragraph (a):

Article 7 (a):

A claim under a Bond shall be in writing and shall be served upon the Guarantor on or before the Expiry Date.

Here we see that the obligation provided by Article 20 (a) of the Uniform Rules for Demand Guarantees has been included in this article. Likewise, Article 7 (f) of the URCB incorporates a further provision of the aforementioned Article 20, as follows:

Article 7 (f):

Any claim shall state brief details of the Contract to identify the same and state that there has been a breach or default.

Unlike the Uniform Rules for Demand Guarantees, Article 7 (g) obliges the Guarantor to give written notice of a claim to the Principal:

Article 7 (g):
Upon receipt of a claim from the Beneficiary, the Guarantor shall send notice in writing to the Principal of such claim as soon as reasonably practicable and before either:
(a) making any payment in satisfaction or partial satisfaction of the same; or
(b) performing the Contract or any part thereof pursuant to a Contractual Obligation.

This is an important article, according to which the liability of the Principal/Guarantor's Client is co-extensive to the Guarantor and accordingly, it follows that the Guarantor is entitled to dispute the claim with the same rights and objections vis-à-vis the Beneficiary as the Principal, thereby making it extremely important for the latter to be given the opportunity to comment upon the claim.

All of the aforementioned articles are important. However, none is as important as Article 7 (j):

Article 7 (j):
A default shall be deemed to be established:
(i) upon issue of a certificate of Default by a third party, or
(ii) upon the issue of a certificate of Default by the Guarantor, or
(iii) by the final judgement, order or award of a court or tribunal of competent jurisdiction.

This Article is ICC's greatest contribution in the field of guarantees, firstly, because it maintains the accessory nature of the guarantee in respect of the main contract and secondly, because it overcomes a major obstacle that beneficiaries have complained of regarding this type of bond, i.e. the great difficulty in the guarantee being enforced, which frequently leads to litigation and eventually, the postponement of a final decision in respect of the guarantee. According to the provisions of this Article, upon issue of a certificate of Default by a third party, designated by the parties by mutual agreement, Guarantor shall honour payment of the Bond immediately - almost as promptly as in the case of demand guarantees. However, such payment shall in no way restrict the rights of the Contractor or if applicable, the Guarantor, to subsequently challenge the claim and seek arbitration or a decision by a competent court.

Accordingly, it would be a question of applying the well-known rule of "solve et repete", i.e. "Respect your obligation first and then ask for reimbursement" or in other words, "Pay first and claim later".

Article 7 (j) was significant enough for the United Nations, through UNCITRAL - the United Nations Commission on International Trade Law, to include the following text in its first version of the Legislative Guide on Privately Financed Infrastructure Projects, (paragraph 54):

"The terms of an accessory guarantee usually require the beneficiary to prove the failure of the contractor to perform and the extent of the loss suffered by the beneficiary. Furthermore, the defences available to the debtor, if it is sued for a failure to perform, are

also available to the guarantor. Accordingly, there is a possibility that the contracting authority will face a protracted dispute when it makes a claim under a bond."

Following the proposal of a text by Insurers and ICC, the final version of this paragraph (currently numbered 115) reads as follows:

"The terms of an accessory guarantee usually require the beneficiary to prove the failure of the contractor to perform and the extent of the loss suffered by the beneficiary. Furthermore, the defences available to the debtor if it is sued for a failure to perform are also available to the guarantor. Accordingly, there is a possibility that the contracting authority will face a protracted dispute when it makes a claim under a bond.

In practice, the risk might be reduced, for example, if the submission of a claim under a bond were subject to a procedure, as provided by Article 7(j)(i) of the Uniform Rules for Contract Bonds (URCB) drafted by the International Chamber of Commerce. Article 7(j)(i) of the URCB provides that notwithstanding any dispute or difference between the Principal and the Beneficiary in relation to the performance of the Contract or of any Contractual Obligation, a Default shall be deemed to be established for the purpose of payment of a contract bond, upon issue of a certificate of Default by a third party."

The final article of the Rules, Article 8, deals with the jurisdiction and settlement of disputes. It is extremely important that the contractor and the beneficiary, or the contractor and the guarantor, hold a clear definition of which laws shall apply and which courts and tribunals are competent, and the parties should specify within the Contract Bond the preferred means of resolving disputes. The Rules make certain provisions for those cases where a bond does not make any mention of the governing laws and competent jurisdiction.

The Rules are not a strict, uniform body that may not be modified. Quite the opposite! They are extremely flexible in that the articles may be applied wholly or in part, thereby eliminating any possible difficulties that might arise between the parties regarding the convenience or otherwise of the Rules being strictly applied.

Bond percentage in respect of Contract price:

Whereas Demand Guarantees are not usually issued for more than 5% or 10% of the Contract price, accessory guarantees may be issued for up to 100%, as occurs in the

United States.

The URCB make no mention of the percentage of the bond. However, there would seem to be a consensus among insurers that the percentage should lie somewhere in the region of 30%. Why 30%? Basically, for two reasons: firstly, in order to offer a product that is attractive to beneficiaries and secondly, because we wish to avoid the American Bond model becoming widely accepted, i.e. for 100% of the Contract price, as I have already mentioned, since this would lead to serious problems in the capacity of the insurance sector. Furthermore, as we are all aware, contractors – in Europe, at least – do not favour this type of guarantee.

Anecdotically, in Japan, where the government has incorporated the URCB into its laws, the percentage of the performance bond in respect of the contract price is 30%.

No matter which way we look at it, the URCB are advantageous for all stakeholders. The Beneficiary would have a guarantee for at least 30% of the contract price - instead of a demand guarantee for 5% or 10%. The Guarantor would have the option to perform the Contract itself or through a third party.

Contractors or principals would eliminate the risk of improper calls on a bond, which would also benefit the Guarantor. And as I already mentioned, the latter would have the further advantage of being able to perform the Contract or to honour the bond amount.

Attempts are currently underway to implement a new framework in Europe. If its implementation is successful, there will be a domino effect in other markets, including the Latin American market. I will now briefly outline its main points.

The European Union has expressed its concern at what are termed "abnormally low tenders", i.e. procurement processes in which contractors, anxious to be awarded the contract, submit tenders at what might be termed as rashly low prices. The award procedure almost inevitably leads to the contract being awarded to the tenderer submitting the most competitive price. Experience shows that contracts awarded to firms that submit "abnormally low tenders" usually have dire consequences, e.g. poor quality of the executed works and/or the material used or supplied; pressure on

subcontractors to charge low prices – sometimes leading them to bankruptcy; and, in general, poor results for the taxpayer who, at the end of the day, is the one who has to pay for it all.

In the face of this situation, one of the solutions proposed by the European Union to try and prevent the negative effects of these "abnormally low tenders", involves a change in the bond models usually required.

The aim of the European legislator is to establish a system that is fairly similar to the bond issuing system in the United States. As you are probably aware and as I have already mentioned, in the United States the Performance Bond is issued for 100% of contract price. Furthermore, a second bond is usually issued – a payment bond, known as the "Labour and Material Payment Bond". This bond guarantees payment to the suppliers and subcontractors of the main contractor, who will be paid for any work carried out for the latter.

Under this system, in the event of default by the Principal, i.e. the Contractor, the Guarantor, which is always an insurance company, has the option to either perform the contract itself or through a third party. Practice has shown that in the majority of cases, the Guarantor opts to perform the Contract in case of default by the Principal and accordingly, we can say that the Contract Bond - or "Performance Bond", as it is known in the United States, truly guarantees what its name implies, i.e. performance of the contract. Furthermore, the payment bond provides protection for the most vulnerable stakeholders in the entire contractual relationship, i.e. suppliers and subcontractors, who will be paid either by the contractor or by the guarantor. Furthermore, this bond also protects the beneficiary by avoiding any possible claims or rights that the aforementioned persons or enterprises might have in respect of the specific works.

The European Union is of the opinion that a bond of this nature might eliminate - or at least significantly reduce the incidence of - "abnormally low tenders", based on the following reasoning:

A guarantor that is bound by its bond to perform a contract, will be specially scrutinous of its client's tender and will not issue the Bid Bond if the tender is abnormally low because it knows that should its client subsequently run into difficulties, as guarantor, it

would have to perform the contract at the price submitted by its client and consequently, might find itself in a very delicate situation, financially speaking. Since no guarantor would be willing to issue a Bid Bond, the tender would not be submitted and accordingly, the possibility of the contract being awarded to a rashly low tender would be avoided.

In concept, Surety Insurance companies in Europe would agree on this idea. Nonetheless, we have informed the EU authorities that a bond system for 100% of the contract price, along the lines of the system described in the United States, would not be accepted in Europe either by contractors or by guarantors - regardless of whether the latter were banks or insurance companies. The reasons for this type of bond being unacceptable are historical and are related to the size and capital structure of European construction firms and to the fact that the market does not have sufficient capacity to guarantee public works contracts in the European Union.

During the next few minutes, I am going to describe the offer that the Surety Insurance Sector in Europe intends to submit to European Union authorities, since I am sure that the implementation of a similar system in Brazil might also benefit the industrial tissue of small and medium enterprise there.

The first bond to be issued under this new system would be the Bid Bond, as it is termed in English. This bond would be practically identical to the bond currently in use, which guarantees that the successful tenderer shall enter into a contract and furnish a Performance Bond. We consider that this bond should be issued for a percentage of between 5% and 10% of the value of the tendered contract.

The second bond - the Performance Bond, would be issued for a percentage of at least 25% or 30% or at most 50%. In this case the nature of the bond would not be that of a penalty-bond, since what it really guarantees are any damages that might be caused to the beneficiary, i.e. public or local Administration, in case of default by the contractor (up to the maximum limit specified by the guarantee). In the same way as in the United States, in the event of default on the main contract, the guarantor would be entitled to choose - with the beneficiary's consent - whether to perform the contract itself or through a third party. This provision would imply a radical change in the current situation in Europe and in countries throughout Latin America, including Brazil, where the only option available to the guarantor, in case of default, is to pay the bond and ... end of story.

The Insurance Sector plans to submit a proposal that includes another interesting innovation relating to the introduction of what we term a " Payment Bond" , whereby the

Surety guarantees subcontractors and suppliers of the main contractor that they will receive payment for any work carried out under the contract to which they are a party.

This bond is particularly significant for SMEs, who are usually the subcontractors in these cases. As such, they are paid 3, 6 or 9 months after completing their work and there is always a high risk of their client defaulting on payment and as a result, their company being led to failure or bankruptcy. Taking into consideration that one of the major concerns in the European Union is the protection of small and medium enterprise, this new bond has been greeted favourably by European authorities.

European Surety providers are proposing the use of a bond model based on the Uniform Rules for Contract Bonds established by the International Chamber of Commerce, whose aim is to achieve international uniformity in the provision of guarantees. The URCB have been adopted by United Nations through UNCITRAL.

CASE STUDY

An important Brazilian aviation company, which is a customer of your company, has been awarded in Mexico a contract for the supply of aircraft. Your customer must issue the performance bond and all the other bonds required in the contract, but the Mexican law does not admit bonds issued by a foreign insurance company. Therefore, your company needs to contact a Mexican bond company and request the latter to issue the bonds. This is a type of operation very frequently used and it is called **fronting**.

Please reply to the following questions:

1. Do you know how to formalize fronting operations? Are there one or more manners of doing it? How does the fronting system or systems exactly operate?

2. Which company, the fronting or instructing one, issues the premium receipt? Where is it collected? **If you answered the preceding question that there are more than one manner of formalizing fronting operations, say now** where it is issued and where the premium receipt is collected for any of them.

3. Describe the risks of this type of operations for the instructing company and fronting company, and also how to minimize the risks according to your opinion.

4. **The bond required in the country where the contract is to be carried out, namely Mexico, is On First Demand.** What is the meaning of First Demand, Unconditional, and Independent and Unconditional?

5. Do you think the request for unconditional bonds is justifiable? Give your arguments on the matter. **Please assume that the bond, two years after its issue, is called-in and your customer tells you that the claim is improper and the bond should not be paid.**

6. Is the fronting company able to oppose payment to the Mexican beneficiary, taking into account that we said that the bond was unconditional and on first demand? Can you, as instructing company, request of the fronting company not to pay in this case?

7. Can your company oppose repayment to the fronting company if the latter decides eventually to pay against your instructions?

8. **You learn from the newspapers that the financial standing of your customer is very bad, and getting worse rapidly. You also know that the banks are bringing actions in order to protect their credits. None of the bonds issued by you has already been called-in and you are afraid that in case of a claim your procedures for recovery might be too late.** What could we do to protect our entity in a casa like this?

9. **Please imagine that a bond of your customer, with whom you have many other bonds in force, has been called-in. You have to close the fiscal year because it is December 31.** Would you create some type of claims reserve fund for possible calls-in in the future?

   Please imagine that today is December 31; no bond of your customer has been called-in, but you know from the newspapers and because it is publicly known, that his financial standing is in very bad condition. Would you crease some reserve fund?

10. **Please assume that you are the fronting company and that the bond you issued, according to the instructions of the instructing company, has been called-in. When you apply to the instructing company for reimbursement, it turns out that the latter was declared bankrupt.** What would you do? Could you go against the reinsurance of the instructing company? Whatever makes you believe that your company might go for the reinsurance of the instructing company?

11. **Please imagine that you are present during the bid of the contract, and that the bid bond delivered by the fronting company to your customer does not meet the text required by the Mexican beneficiary, and the latter refuses to accept the guarantee. This will cause your customer to bring an action, since he knows that his proposal was the best and had all the possibilities of being awarded the contract.** How would you oppose this type of claim?

12. **Please assume that your customer has contacted more than one company in Brazil for this deal, and he tells you that he received economic proposals more interesting than yours and that in addition other companies do not demand the same counter-guarantees as you do. If you should have to negotiate**, where are you prepared to yield or be more flexible with your customer, about the premium rate or guarantee level?

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Delegate List

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	Company	Name
1	Beijing Dayu Law Firm	Cai Chunsheng
2	Industrial and Commercial Bank of China， Shenzhen Branch	Cai Ling
3	China National Textiles Imprt & Export Corp.	Cai Wenxiang
4	Mapfre Causion y Credito S.A.	Carlos Hoyos
5	Citibank, Shanghai Branch	Chen Hong
6	Industrial and Commercial Bank of China, Shanghai Branch	Chen Yingjuan
7	Guangdong Development Bank	Chen Yiqun
8	China United Petrol Corp. Ltd.	Dai Kai
9	AIKE Electronics (Zhuhai) Corp. Ltd	DANIEL GRUZYNSKI
10	Commercial Bank of China, Lanzhou Branch	Dong Yan
11	BBLP Law Firm Beijing Office	Dr. Bjorn Etgen
12	Industrial and Commercial Bank of China, Anhui Branch	Du Zhongming
13	China Aviation Technology Imp.&exp, Beijing	Fan Jinyu
14	Dujiangyan Huaqi Tech. Corp., Ltd.	Fu Qianyu
15	Construction Bank of China, Wuhan Branch	Gao Shan
16	Commercial Bank of China, Lanzhou Branch	Gao Xuexin
17	Bank of China , Wuxi Branch	Gao Yehua
18	AIDES (Xiamen) Corp. Ltd	GOH TONG DATE
19	Commercial Bank of China	Gu Hong
20	HongKongTDC	He Jianrong
21	FCIB	Henry Chan
22	Bank of China	Hou Jun
23	Industrial and Commercial Bank of China	Huang Li
24	Industrial and Commercial Bank of China, Nibo Branch	Huang Xuefang
25	Sichuan East Power Equipment United Corp	Huang Yan
26	Bureau of Foreign Trade,Chinese Taipei	I-Min Tong
27	Credit Suisse Shanghai Representative	Jiang Yong
28	Bank of China, Beijing Branch	Jiang yun
29	All China Federation of Industry & Commerce	Jin Zhong

30	J.M. BAXI & Co	John Alexander
31	FCIB	K.F. Garrison Jr.
32	Korea International Trade Association	Stephen C.H. Kim
33	ICC CHINA	Li Haifeng
34	Construction Bank of China， Linyi Branch	Li Mei
35	China Aviation Technology Imp.&exp, Beijing	Li Qiang
36	Construction Bank of China, Shanxi Branch	Liang Wei
37	Bank of China, Guangdong Branch	Ling Yun
38	Construction Bank of China, Sichuan Branch	Liu Chunyun
39	Industrial and Commercial Bank of China , Beijing Brach	Liu Duan
40	Beijing Xinxin Law Firm	Liu Xin
41	Surety Association of America	Lynn Schubert
42	Huayuan Industrial and trade Group	Shao Xinqiang
43	Imp&Exp Bank of China	Shu Chang
44	Construction Bank of China	Sun Xuefeng
45	Bank of China, Wuxi Branch	Tan Fangfang
46	Bank of China, Sichuan Branch	Tan Yang
47	Beijing Arts & Crafts Imp. & Exp. Co.	Tian Wenhua
48	Bank of Communications	Tu Hong
49	Sichuan Machine Imp & exp Corp	Wang Gang
50	Jianwei (Beijing) Law Firm	Wang Jihong
51	China Council for the Promotion of International Trade	Wang Jinahen
52	BAIYIN Nonferrous Metals IMP.& EXP.Corp	Wang Zhaokun
53	Imp&Exp Bank of China	Wang Zhigang
54	Ningbo Commercial Bank	Wu Xiaobo
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56	Exim Bank	Xiao Liankui
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59	Industrial and Commercial Bank of China	Yang Kun
60	China Ever bright Bank	Yu Hongwei
61	Industrial and Commercial Bank of China, Shanghai Branch	Yu Jing
62	China Hardware Trade Corp.	Yu Shili
63	Beijing Xinxin Law Firm	Yue Feitao
64	Shanghai Bank	Zeng Yajuan

65	Industrial and Commercial Bank of China , Beijing Brach	Zhan xun
66	China Chamber of Commerce for Import & Export of textile	Zhang Aihua
67	CITICIB， Chengdu Branch	Zhang Rui
68	Imp&Exp Bank of China	Zhang Zujun
69	Beijing King & Wood Law Firm, Sichuan Branch	ZhangRuji
70	China Huarong Asset Management Corp.	Zheng Wanchun
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