

ISSN 1481-6261

In This Issue...

Doc Credit Clinic 2003/1

Vincent O'Brien tackles practical problems recently submitted to L/C Monitor.

4....

Shipping Guarantees 'A Cautionary Tale'

M.Umar Farooq warns banks about hidden dangers when issuing shipping guarantees to facilitate the release of goods in the absence of title documents.

Page 7

Page 3

Wrongful Honour

Robert M. Rosenblith examines *Blonder & Co., Inc. –v- Citibank, N.A.*, highlighting the decision in the case as an important addition to the body of letter-of-credit law, particularly as to the impact of reimbursement agreements.

Running Out Of Options

Robert M. Parson looks at a recent English court decision which will have a major impact on the way that bankers and traders use options in their trade transactions.

Page 10

Page 8

Asian Letters Of Credit

T.O. Lee speaks with LCM about the current status of Asian letters of credit focusing on the reasons for dishonour and fraudulent presentations, and giving advise on what one should and should not do when faced with an LC problem.

Page 14

Practical aspects of payment instruments in international trade

A legal financial journal

Volume 5, Issue 1, January/February 2003

TRADE SERVICES 2002 IN REVIEW

What have been the major challenges for trade services in 2002? What are corporate customers asking for in 2003? LCM's **Jacob Katsman** speaks with industry practitioners: Wolfgang Friedinger, Makoto Hasegawa, Gerard Sheridan, Soh Chee Seng, and Ole Malmqvist on the issues.

Faster than you can say 'eUCP' a year has passed. It seems if it were only yesterday when I sat down to write 'Trade Services 2001 in Review' (see *LCM*, Issue 1, Volume 4, January 2002). What happened in one year with trade services? To get an international picture I have taken the liberty to ask industry experts in Canada, Germany, Denmark, Japan, Singapore, and the United States what were the major issues for trade services in 2002 and what they expect to dominate their agenda in 2003?

MOVING TOWARDS ELECTRONIC TRADE SERVICES

Wolfgang Friedinger is Head of Product Management, Clean Payments/Documentary Business at HVB Corporates & Markets Bayerische Hypo-und Vereinsbank AG.

'The eUCP articles coming into force on April 1, 2002 have given a signal to the market at the right time,' said Friedinger. 'The ICC has created new international rules available for the electronic sector that are accepted as common standard in the same way as the normal UCP 500. But corporations worldwide are just beginning to re-organize the settlement of international trade and to move towards electronic documents. Therefore, the demand for information regarding eTrade Services is very high and a lot of awareness training has to be done.'



WOLFGANG FRIEDINGER, HVB

Friedinger added that his corporate customers are expecting HVB to inform them and provide training in these new areas. 'Having talks and workshops with corporations to keep them informed and make them feel comfortable with this future are issues that will be on our agenda for this year.





2727 Steeles Avenue West 3rd Floor, Toronto, Ontario Canada, M3J 3G9 Tel: +1-416-661-8520 Fax: +1-416-661-2139 E-mail: info@lcmonitor.com URL: www.lcmonitor.com

Published by: Continental Publishing

Editor-in-Chief: Nick Pachnev Managing Editor: Jacob Katsman

Legal Editors:

George F. Chandler III, Hill Rivkins&Hayden, U.S.A. Robert M. Parson, Clyde & Co, U.K. Robert M. Rosenblith, Rosenblith & Flynn LLP, U.S.A.

Honourary Legal Editor: Henry Harfield

Contributing Editors: Georges Affaki, BNP Paribas, France Rolf Andersen, Royal Bank of Canada, Canada Concetto Costa, Ordinario Nell'Universita, Italy Zahoor N. Dattu, Mashreq Bank Psc., U.A.E. Gerard A. Genevieve, The Bank of New York, U.S.A. Gerry Gross, Fortis Bank, U.K. Heinz Hertl, Bank Austria/Creditanstalt, Austria Peter Knudson, Comerica Bank, U.S.A. T.O. Lee, T.O. Lee Consultants Ltd., Canada Jack Leong, American Express Bank, U.S.A. Alan C.Y. Liu, EnTie Commercial Bank, Taiwan Neal S. Millard, White & Case LLP, U.S.A. Charles W. Mooney, Jr., Penn Law School, U.S.A. Vincent O'Brien, EBSI, Ireland Gleb Rysanov, U.A.J.V. Trais, Ukraine

Design & Layout: David Jack & Mabel Keung Copy Editor: Frances Mundy

L/C Monitor is published bi-monthly by Continental Publishing. Views expressed herein are solely the views of the authors of each article and do not necessarily reflect the official positions of their employers or organizations with which they are associated. This publication is designed to provide accurate and authoritative information with regard to the subject matter covered. It is sold with the understanding that the publisher is not engaged in rendering legal, accounting, or other professional services. If legal advice or other expert assistance is required, the services of a competent professional person should be sought. Copyright © 2003 by Continental Publishing. All rights reserved. No part of this journal may be reproduced in any form, by microfilm, xerography or otherwise, or incorporated into any information retrieval system, without the written permission of the publisher.

TRADE SERVICES continued from previous page ...

If they want to move forward we are prepared to pilot systems with them that assist in handling electronic documents or in making workflow processes for settlement of international trade more efficient," stated Friedinger.

Mizuho Corporate Bank Ltd., which is one of Japan's leading banks and serves seven of the ten Japanese corporations, hosted the International Trade Services e-Commerce Seminar last year. Invited to the seminar were three hundred companies that conduct a significant volume of international-trade-related financial transactions through the bank. Following the successful seminar, Mizuho invited interested corporate customers to participate in pilot projects.

'All our trade finance customers want to find an easier way to present trade documents - at low cost and in a secure environment,' said Ms. Makoto Hasegawa, Assistant Vice President of International Trade Services Division No.1 (e-Trade), Mizuho Corporate Bank, Ltd.

According to Hasegawa, Mizuho is still looking into the implications of eUCP and expects big changes in this area in the near future.

Friedinger agrees. 'The eUCP has been published at the right time and has given an important signal to the market as to where the future will be. We think for easy L/C structures electronic documents and consequently the eUCP will prevail in the market within the next two to three years.'

OUTSOURCING OF TRADE SERVICES

Outsourcing of trade services continued to be a topic discussed by banks of all sizes in 2002. The reorganization of Proponix, announced by AMS in November 2002, was expected by some industry insiders and yet came as a surprise to most bankers. According to the official Press Release AMS has agreed

... continued on page 4

Subscriptions:

US\$445.00 for 6 issues. Air Mail delivery included worldwide. Subscribe on-line: www.lcmonitor.com Price Per Issue US\$75.00

Reprints/Advertising:

Reprint and advertising inquiries should be directed to Customer Service Department, Continental Publishing, 2727 Steeles Avenue West, 3rd Floor, Toronto, Ontario, Canada, M3J 3G9. Tel: +1-416-661-8520, Fax: +1-416-661-2139, E-mail: info@lcmonitor.com

Letters to the Editor:

If you have a question for our editors or would like to see an article devoted to a particular subject, please feel free to submit your request via e-mail at: info@lcmonitor.com.

TRADE SERVICES continued from page 2...

to acquire the brand, the trade processing technology, and other assets of Proponix from other shareholders that have included Australia and New Zealand Banking Group Limited (ANZ) and Bank of Montreal (BMO). When the transaction is final, AMS intends to operate Proponix and will process business transactions for ANZ and BMO without any disruption in service. Proponix will offer this service to other banks globally.

According to AMS, since its June 2001 launch, Proponix has established itself as the leading independent provider of outsourcing solutions for trade services. As of September 2002, Proponix had processed 280,000 international trade transactions with an aggregate value of \$12 billion. Once the transaction is finalized, AMS has promised to speak with LCM about the reasons behind the reorganization and the future of Proponix.

Banks that have identified insourcing of other bank business as a new revenue opportunity have realized that it is easier said than done. Also banks that have wanted to outsource all or part of the back office have found that they still need to maintain staff in their office to speak with the bank's customers, although some insourcing providers offer to take on this function in one form or another.

Following bank mergers and acquisitions, some banks that had intended to outsource their trade processing became insourcers, while others that had intended to insource and develop their trade operations have found that their strategy has changed and that trade services may best be outsourced or sold to another bank completely.

'The trade services industry as a whole is experiencing relatively slow growth thus putting increased pressure on expenses and forcing banks to look at outsourcing as a solution,' says Gerard Sheridan, VP, Trade Services



Product Manager, **GERARD SHERIDAN, THE BANK OF NEW YORK** The Bank of New York. 'Banks need to cut their day-to-day operating expenses and keep up with the technology. It is becoming harder to justify investment in new technology and the upgrading of existing technology and therefore outsourcing becomes a real option,' adds Sheridan. The Bank of New York, Wachovia (after the merger with First Union National Bank) and ABN AMRO are known in the market as the leading providers of Trade Service Insourcing. All three providers offer various levels of Insourcing.

> 'The trade services industry as a whole is experiencing relatively slow growth thus putting increased pressure on expenses and forcing banks to look at outsourcing as a solution.'

> > Gerard Sheridan The Bank of New York

The Bank of New York provides the technology with private labeled software and system integration for import/export/standby credits and documentary collections. The Bank of New York can also insource all of the day to day back office processing of the outsourcing bank. 'On critical relationship issues we feel it is very important for the outsourced bank to be directly involved with their customer,' said Sheridan. 'For example, if the customer says, "I am thinking of doing business in Latin America, what is the best way for me to handle this," such issues from our experience are best handled by the outsourced bank. The Bank of New York provides letter-of-credit technicians who are able to answer questions about the set of documents presented or the credit application that needs to be processed, but they do not provide the full customer-consulting role. Although we can provide this service, some of our clients have opted to keep this function because the customer relationship is the real value added by the outsourced bank."

The big question with all outsourcing solutions is how does outsourcing affect the outsourced banks' corporate customers using the technology and people of another bank. Does the Insourcing bank answer the phone in the name of the outsourced bank? "We do both," says Sheridan. 'We usually answer the phone as: "Trade Services Division." In the end the customers know whom they are working with. In actual practice this cannot be completely hidden and it generally does not make a difference. The corporate customers are primarily interested in the service, cost, and credit.'

Banks that are looking to outsource their trade services operations are mainly interested in controlling cost and improving their competitive position. According to Sheridan, 80 percent of operating costs can be saved or offset by outsourcing. 'For a bank that handles about 10000 letters of credit a year, the savings are in the several millions of dollars,' he added.



For 2003 Sheridan sees The Bank of New York's and its customers' business growing in Asia and particularly in China where Bank of New York is one of the few banks with a full service branch. 'We have a well coordinated service that allows us to do processing in any of our international branches,' he said. 'As the benefits of outsourcing solutions become better understood we will have more and more opportunities.'

DOC PREP

Who said that preparing documents to comply with the terms and conditions of a letter of credit was an easy task? About 30-40 per cent of first presentations are discrepant due to errors in documents presented. If you count late presentation, LC expired for shipment, the percentage rises to over 70 per cent. To help in this regard some banks are offering document preparation services. Many banks in Europe obtain power of attorney from their customers/beneficiaries to sign and stamp original documents on their behalf.

'In the past years outsourcing of document preparation from corporations to banks has been identified as a solution to reduce costs on the corporate side and to obtain new profits from offering this service at the banking side,' said Friedinger. 'Both have recognized, however, that it is not so easy to handle this in practice.'

'All our trade finance customers want to find an easier way to present trade documents - at low cost and in a secure environment.'

> Ms. Makoto Hasegawa Mizuho Corporate Bank, Ltd.

Freight forwarders have been doing this service for many years. Independent companies have also been set up by former bankers, forwarders, or industry experts to help exporters with preparation and presentation of documents under letters of credit. Banks such as ABN AMRO, Deutsche Bank, JP Morgan, and Standard Chartered have invested in their proprietary electronic solutions allowing the transfer of SWIFT messages into document templates and remote printing of third party documents at their counters.

Such solutions help exporters reduce time for document preparation and courier costs. The drawback of such systems is that they are not multi-bank. Large exporters usually deal with three to seven local banks and could also receive letters of credit from over thirty banks around the world. Often credits are advised through the branches of issuing banks in the country of the exporter. An exporter outsourcing its complete credit department to one bank with a first-rate system could provide an answer, yet most companies cannot do that for many obvious reasons.

As far as multi-bank solutions for trade services are concerned the choice is between Bolero and @GlobalTrade, a system developed by the parent company of this publication. Banks and corporations around the world are currently piloting both systems. Bolero aims to set standards and achieve straight-through processing in moving data and documents. @GlobalTrade is taking a simpler approach starting first with improvement of the process of handing paper documents via the Internet. Large exporters are asking for a multi-bank solution for trade services as it would not only save them cost and time but would also give them far greater control over their entire export operation. Despite the fact that most large exporters run sophisticated ERP systems letters of credit, guarantees and documentary collections are handled manually and recorded on spreadsheets at best. Internal approvals and amendments are requested by phone, e-mail, or fax and are stored in master files.

'Our customers want to handle their international trade business as easily as possible and increase efficiency within the trade chain,' said Friedinger. 'They are looking for easy, cost-saving solutions that also hold the possibility of moving to paperless trade step-by-step.'

INTERNATIONAL STANDARD BANKING PRACTICE (ISBP)

In ROME on 30 October 2002, by a vote of 57 to 8, the ICC Commission on Banking Technique and Practice adopted the International Standard Banking Practices (ISBP) for the Examination of Documents under Documentary Credits.

The ICC Task Force started in May 2000 and has documented various standards in banking practice around the world. For example, there are different practices in Asia and North America for computing the maturity date of non-complying documents where the drawee bank has provided a notice of refusal of documents followed by an approval.

TRADE SERVICES continued from previous page ...

In Asia, the date of acceptance of the drafts is the date when the drawee bank receives and sees the drafts, whether or not the documents have been rejected and subsequently approved by the issuing bank. In North America the date of acceptance of the drafts is the date of approval of the documents (LCM, Volume 4, Issue 12, December 2002).

'Banks and beneficiaries of the credit in Asia may not be happy with the finding as they feel that the issuing banks and applicants of the credit may take advantage of discrepant documents and delay the approval of discrepancies after the notice of refusal of documents has been served,' said Soh Chee Seng, Former Head of Trade Services in OUB Singapore and Member of the ISBP Task Force.

'ISBP documents the current international standard banking practice for the examination of documents drawn under letters of credit. It is NOT a new set of rules. The market welcomes the publication as it helps to reduce the dispute and the discrepancy rate in document checking,' added Soh.

ICC's Canadian National Committee has voted against adoption of ISBP. 'The Canadian working group felt that there was a danger in having this official ICC Publication "International Standard Banking Practice" replacing the UCP 500 or having credits issued subject to both publications,' said a Canadian banker.

ICC's Swiss National Committee has also voted against the adoption of the ISBP in the version presented. In the article published by ICC's DCI, René Müller, on behalf of the ICC's Swiss National Committee, stated: 'We have been in favour of the principle of establishing ISBP since the working group was created. Yet we had a number of arguments where we are of the opinion that they are correct and should have been respected and incorporated into the document. In fact there are official ICC Banking Commission opinions that say something different from what the ISBP paper is contemplating.'

Danske Bank's Ole Malmqvist, member of the ISBP Task Force, says that it is very early to say much about how the ISBP will be accepted. The publication came out in its U.S. version on 6 February 2003, but U.S. practitioners and others, who have placed their orders with ICC Publishing, will not get their copies until the end of February 2003. However, many practitioners, lawyers, and others, who work within the letter of credit field, and are keeping an eye on what happens in the ICC Banking Commission, have read through the drafts sent out by the ICC during the last part of the two and a half years that it took the task force to write the publication.

'The mere fact that the draft of the ISBP was approved by the Banking Commission with such an overwhelming majority (57 to 8) tells me that the work done by the task force members and others has not been done in vain,' said Malmqvist. 'I have had many positive reactions from corporates as well as from banks around the world, and we, the task force members and others, feel confident that the publication represents a big step forward in making the checking of documents presented under letters of credit much more uniform than it has been so far, and therefore will help minimize the number of rejections based on individual interpretations of the UCP. We are happy to learn that the publishers of the ISBP, ICC Publication no. 645, have received a very large number of orders for the publication. This makes me even more confident that it will make a difference."

CONCLUSION

As this article is being read in the end of February 2003 our minds are preoccupied with world events that are filled with uncertainty. Most banks are reducing staff and additional cost cutting measures are on the agenda. New investments in technology are subject to extremely quick return on investments, which makes most new projects non-starters. One could argue that such environment does not breed innovation and progress. It is difficult to disagree with such a statement. Yet looking back @2002 Trade Services there are many interesting things to look forward to this year.

Jacob Katsman is Chairman & Chief Executive Officer of CCEWeb Corp., the parent company of this publication. Prior to founding CCEWeb, Katsman was the Director of Finance of a multinational steel trading company. He also managed trading companies in Asia, Europe, and North America. Katsman's book 'How to Make Money without Money: The Art of Transferable Letters of Credit and Assignments of Proceeds' is regarded by the international banking community as a standard guide to the practical use of letters of credit in trade finance. He has co-developed the @GlobalTrade Secure Payment and Trade Management System, and founded the International Trade & Banking Institute www.itbi.net. Comments can be sent via e-mail to: katsman@cceweb.com.