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NOVA PRAVILA U MEĐUNARODNOJ TRGOVINI I BANKARSTVU

Redovno, jesenje zasedanje Komisije za bankarsku tehniku i praksu Međunarodne trgovinske komore, održano je u Briselu 23 - 25. novembra, 2009. godine uz prisustvo 340 članova iz 52 zemlje.

NEW RULES IN INTERNATIONAL TRADE AND BANKING

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Technique and Practice

The regular, autumn session of the ICC Commission on Banking Technique and Practice was held in Brussels from 23 - 25 November 2009, and attended by 340 members from 52 countries.

Na sastanku Komisije za bankarsku tehniku i praksu Međunarodne trgovinske komore skupu su se obratili generalni sekretar ICC, Jean Rozwadowski, zatim predsjednik Nacionalnog odbora ICC Belgije Bruno van Lierde i viceguverner Centralne banke Belgije. Svi su oni istakli veliki značaj harmonizacije međunarodnih pravila koja se odnose na međunarodnu trgovinu, posebno kada se naziru znaci poboljšanja na svetskoj finansijskoj sceni. Velike su pohvale za zemlje članice ICC Paris, što su na dnevni red svojih skupova stavile pitanje Finansiranja trgovine u vreme finansijske krize. Istaknuto je da je Bankarska komisija postala partner za mnoge multilateralne organizacije uključujući WTO i Asian Development Bank (ADB) čiji su predstavnici bili prisutni i na ovom sastanku u Briselu.

Interesantno je bilo izlaganje profesora Hermana Daelusa, predsednika najveće banke u Belgiji - BNP Paribas Fortis, koji je istakao da je međunarodna strategija da vlasti treba da stimulišu trgovinu i firme. Po njegovom mišljenju firme nisu mnogo zainteresovane za domaće tržište već za međunarodno jer smatraju da im je to jedini način da prežive. Zato se više bave istraživanjem tržišta i traganjem za pouzdanim partnerima.

U tom istraživanju procenjuju, pre svega, koji partner koristi najsavremeniju tehnologiju i odlučuju da li da izgrađuju lanac vrednosti za ulaganja u mala i srednja preduzeća. Tu im najviše mogu pomoći banke.

Uloga banaka je velika jer treba da pomognu svojim klijentima da se dobro plasiraju van granica svoje zemlje a upravljanje rizicima banka najbolje poznaje. Kako se budu širile kompanije u svetu banke će postajati poslovni partneri i samo njihova finansijska uloga neće biti dovoljna u budućnosti.

Usvojena su nova Jednoobrazna pravila za garancije na prvi poziv URDG 758 - Uniform Rules for Demand Guarantees

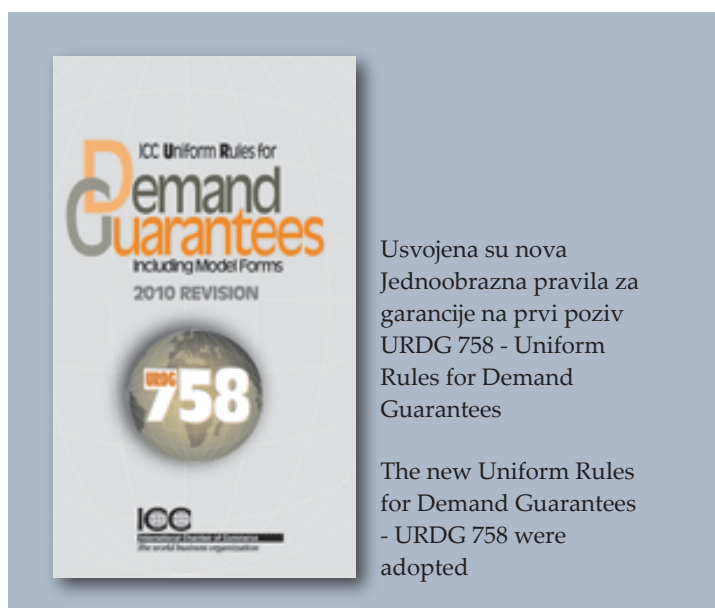
Generalni sekretar ICC Paris je u svom uvodnom obraćanju istakao da su nova pravila pripremana dve i po godine i rezultat su saradnje više grupa i da su ispunila očekivanja svih relevantnih sektora. Grupa za izradu nacrtu, koju je stručno i uspešno vodio dr Georges Affaki, pregledala je stotine stranica komentara primljenih od nacionalnih odbora raznih zemalja da bi sačinila konačan tekst koji je prezentovan za usvajanje u Briselu.

Nakon 17 godina "života" Jednoobraznih pravila za garancije na poziv, revizija istih je bila ambiciozan proces koji uvodi u 21. vek novi set Pravila za garancije koja su jasnija, preciznija i sveobuhvatnija. Primenjivaće se od **1. jula 2010. godine kao URDG 758**, a do tog datuma će se prevesti na više jezika i štampati u skladu sa zahtevima nacionalnih odbora zemalja članica. Nacionalni odbor Srbije priprema za štampu ovu značajnu publikaciju.

Ono što je u ovom procesu pozitivno u odnosu na ranije periode je i činjenica da će Publikaciju URDG 758 pratiti i Vodič kroz pravila kao i novi modeli obrazaca raznih vrsta garancija na poziv, predloženih radi lakšeg rada sa garancijama u međunarodnom poslovanju.

Cilj je da URDG 758 postanu novi svetski standard za garancije na prvi poziv.

Loše stipulisana garancija je loša za sve strane učesnice. Eliminirani su nedokumentarni uslovi, a korisnik je više zaštićen jer kad uloži zahtev za plaćanje koji je usklađen sa uslovima navedenim u garanciji, nije potrebna saglasnost



At the ICC Commission on Banking Technique and Practice session the participants were addressed by the ICC Secretary General, Jean Rozwadowski, the President of the Belgium ICC National Committee, Bruno von Lierde, and the Vice-Governor of the Central Bank of Belgium. They all emphasized the huge importance of harmonization of international rules relating to international trade, in particular in the face of improvement at the global financial scene. The ICC Paris member countries were highly praised for putting the issue of Trade Finance in Times of the Financial Crisis on the agenda of their previous meetings. It was highlighted that the Banking Commission became a partner of many multilateral organizations, including WTO and Asian Development Bank - ADB, whose representatives were also present at this meeting in Brussels.

It was interesting to hear the presentation of Professor Herman Daelus, President of the largest bank in Belgium - BNP Paribas Fortis, who pointed out that the international strategy is for the authorities to stimulate trade and companies. In his opinion, companies are not much interested in domestic markets, but rather in the international market, since they believe that is their only way to survive. Therefore, they pay more attention to market research and quest for reliable partners.

In this research they, first and foremost, estimate which partner uses the most advanced technology, and decide whether to build a value chain for investments in SMEs. This is where banks' may help them most.

The role of banks is significant, since they are to help their clients rank well abroad, and banks excel in risk management. As companies start to expand worldwide, banks will be becoming business partners and their financial role alone will not suffice in the future.

The new Uniform Rules for Demand Guarantees - URDG 758 were adopted

In his introductory address, the ICC Paris Secretary General highlighted that the new rules had been prepared for two and a half years, were a result of the cooperation between

several groups, and met the expectations of all relevant sectors. The Drafting Group, expertly and successfully led by Georges Affaki, PhD, examined hundreds of pages of comments submitted by the national committees from various countries in order to prepare the final text presented for adoption in Brussels.

After 17 years of existence of the Uniform Rules for Demand Guarantees, their revision was an ambitious process introducing the new set of Rules for Guarantees - clearer, more precise and more comprehensive, into the 21st century. These Rules will come into effect **on July 1st, 2009 as URDG 758**, and until then they will be translated into several languages and printed in accordance with the requests of the national committees of member countries. The National Committee of Serbia is preparing this significant publication for printing.

What is positive in this process compared with the previous periods is the fact that the URDG 758 publication will be accompanied by the Rule Guide, along with the new form models of various types of demand guarantees, proposed in order to make the operations with guarantees in the international trade easier.

The objective is for URDG 758 to become the new global standard for demand guarantees.

An incorrectly stipulated guarantee is detrimental for all parties involved. Non-documentary conditions have been eliminated, and beneficiary is protected to a greater extent, because once he/she submits a complying demand for payment with the conditions stated in the guarantee, he/she does not need the consent of the instructing party. The instructing party is just notified that the demand has been submitted and the bank as a guarantor acts in accordance with the guarantee requirements.

The new Rules are based on the concepts and approaches of the UN Convention, Uniform Rules for Letters of Credit, and Rules for Standby Letters of Credit, where they proved to be useful for demand guarantees practice and for the international market. The intention was for the new rules to establish the international standard practice with guarantees, as is the case with letters of credit. The rules for guarantees have never been so similar to the rules for letters of credit. The objective was also to synchronize

nalagodavca već se ovaj samo obaveštava da je uložen zahtev i banka garant postupa u skladu sa garancijskim uslovima.

Nova Pravila su građena na idejama i pristupima Konvencije Ujedinjenih nacija, Jednoobraznim pravilima za akreditivne i Pravilima za stendbajakreditivne gde se pokazalo da su korisna za praksu po garancijama na prvi poziv i da su korisna za međunarodno tržište. Težilo se da nova pravila uspostave i međunarodnu standardnu garancijsku praksu, kao što je to slučaj sa akreditivima. Nikada kao sada pravila za garancije nisu bila bliža pravilima za akreditivne. Težilo se da se usklade i u terminologiji, jer se u većini banaka u svetu ovi instrumenti obrađuju u istom sektoru, imajući u vidu da su i akreditiv i garancija dokumentarnog karaktera.

Treba istaći da je ključna i suštinska promena i novina član 26 - Viša sila.

Tražen je način za bolji tretman korisnika garancije ali i da se zaštiti garant i kontragarant od konsekvenci suspenzije plaćanja, produženja i izvršenja plaćanja u skladu sa preuzetom obavezom, kao što diktira novi član 26 koji je adekvatno izbalansiran i obezbeđuje pravi tretman u svim sličnim situacijama sa kojima bi se neko suočio u slučaju više sile.

Pravila su jasnija, preciznija i sveobuhvatnija. Umesto 28, sada imamo 35 članova. Jasno je definisan prenos garancije, aviziranje garancije, usklađen zahtev za plaćanje, date su definicije

svih značajnih pojmova u garancijskom poslovanju i tumačenje određenih termina.

URDG 758 su usvojena jednoglasno sa primenom od 1. jula 2010. godine, a do tada će Nacionalni odbor Srbije pri Privrednoj komori Srbije štampati Pravila na engleskom i srpskom jeziku nakon čega sledi detaljna obuka bankara i firmi o njihovoj primeni.

Revizija INCOTERMS

U januaru 2010. će biti dostupna treća verzija revizije INCOTERMS-a za davanje komentara. Posle toga, u martu će se sastati Drafting grupa u cilju izrade četvrte verzije. Očekuje se da će konačan tekst biti urađen do septembra 2010. godine da bi primena revidiranih INCOTERMS počela od januara 2011.

Predlaže se da INCOTERMS budu kraći (umesto sada važećih 13 termina biće 10) i da više liče na Jednoobrazna pravila za akreditivne. Uradiće se i vodič korišćenja trgovinskih termina (kada i kako određeni termin treba ugovarati). Klauzule o osiguranju će biti bolje obrađene, posebno CIF i FOB termini, tamo gde je bilo najviše problema u praktičnoj primeni.

Osnivanje Trade Finance Registra

Grupa eksperata WTO je zaključila da rigidnost pravila Bazela II neadekvatno tretiraju finansiranje trgovine (Trade Finance)

the terminology in the two areas, since in most banks in the world these instruments are processed within a single sector, given that L/Cs and guarantees are of documentary character.

What should also be highlighted is the key, essential change and innovation, i.e. Article 26 - Force Majeure.

The aim was to enable better treatment for guarantee beneficiary, but also to protect the guarantor and counter-guarantor from the consequences of payment suspension, extension and payment execution pursuant to the undertaken obligation, just like the new Article 26 prescribes. It is adequately balanced and provides the right treatment in all similar situations that one might face in case of force majeure.

The rules are clearer, more precise and more comprehensive. Instead of the previous 28, there are now 35 articles. Transfer and advising of guarantees are clearly defined, and complying demand for payment, along with definitions of all significant terms in guarantee operations, and interpretations of certain terms are provided.

URDG 758 have been unanimously adopted and are to come into effect on July 1st, 2009, by which time the ICC Serbia National Committee will have printed the Rules in English and in Serbian, followed by an in-depth training of bankers and companies on their implementation.

INCOTERMS Revision

The third version of revised INCOTERMS will be available for comments in January 2010. After that, the Drafting Group will meet in March to prepare the fourth version. It is expected that the final version of the text will be available by September 2010, so that the implementation of the revised INCOTERMS could start in January 2011.

It has been suggested that INCOTERMS should be shorter (instead of the existing 13, there will be 10 of them), and more similar to the Uniform Rules for Documentary Letters of Credit. A guidebook for using trade terminology will also be prepared (when and how a certain term is to be negotiated). Insurance clauses will be better elaborated, in particular, CIF and FOB terms, which cause the most problems in practice.

Trade Finance Register Establishment

A **WTO Expert Group** has reached a conclusion that the rigidity of Basle II rules inadequately treats Trade Finance, although this segment was recognized long time ago as bearing a lower risk profile than the regularly unsecured bank loan. Since the analyses have shown that banks do not hold the adequate and reliable data on companies that would



iako je odavno ovaj segment prepoznat da ima niži profil rizika nego regularno neobezbeđen bankarski kredit. Pošto su analize pokazale da banke nemaju adekvatne i pouzdane podatke o firmama kojima bi ponudile finansijsku podršku, zaključeno je, na sastanku WTO 15. septembra 2009. godine, da se uspostavi Registar pri ICC Paris, gde bi se obezbedili pouzdani podaci o totalnom obimu finansiranja trgovine, po finansijskim proizvodima, koji pokazuju koliko od totala predstavlja gubitak. Registar neće sadržati nazive firmi u neizvršenju.

ICC Paris i ADB (Azijska razvojna banka) imaju zadatak da sačine preporuke i definišu zahteve za uspostavljanje Registra u kome bi se akumulirali, sortirali i održavali podaci o propustima finansiranja trgovine, za konkretno korišćenje i evaluaciju.

Akumulirani podaci bi se koristili:

1. da se prezentuju Bazelskom komitetu kao

argument za adekvatniji režim finansiranja trgovine u dokumentu Basel II,

2. da se informacije kanališu dalje finansijskim institucijama koje će ih koristiti za procenu rizika i uspostavljanje odnosnih unutrašnjih limita za finansiranje trgovine.

Najvažnija poruka firmama i bankama je da uvek nastoje da se u međunarodnom poslovanju ugovara primena međunarodnih pravila. Ona pružaju sigurnost svim stranama učesnicama u poslu, prihvaćena su u celom svetu i pošto ne poznajete svoga partnera, jer vas razdvajaju velike distance, po pravilima znate kako će se ponašati, a u slučaju spora zaštićeni ste i usmereni kako da delujete.

Međunarodna pravila za garancije, akreditive, inkaso poslove su ugovornog karaktera i spoljnotrgovinske firme moraju voditi računa da u ugovoru sa stranim partnerom specificuju primenu određenih Pravila, a njihova banka to dalje da sledi.

offer their financial support, the conclusion reached at the WTO meeting, on September 15th 2009, was to establish a Register within the ICC Paris, to store reliable data on total transaction volume by trade finance product, indicating how many of the total represent a loss. Names of the defaulting parties will not be provided in the Register.

ICC Paris and ADB (Asian Development Bank) have a task to prepare the recommendations and define the requirements for establishing the Register in which to accumulate, sort, and maintain the data on trade finance oversights, for practical usage and evaluation.

The accumulated data would be used for the following purposes:

1. To be presented to the Basle Committee as the argument for a more adequate trade finance regime in the Basle II document;
2. For the information to be further channeled

to the financial institutions, which will use them in risk assessment and establishment of relevant internal trade finance limits.

The most important message for companies and banks is to always tend to negotiate the implementation of international rules in international business transactions. They provide security for all stakeholders in the business, are accepted worldwide, and since you do not know your partner, due to the large distances that separate you, the rules tell you how to act, whereas in case of litigation, you are protected and know how to proceed.

The international rules for guarantees, letters of credit, and documentary collection are of contractual nature and foreign trade companies must bear in mind that they need to specify the implementation of certain Rules in negotiation with their foreign partner, which their bank will subsequently follow.