

International Business Alert - Winter 2010

March 1, 2010

International Trade News

ICC Banking Commission Passes URDG 758

At its Fall Meeting in Brussels, at the National Bank of Belgium, the International Chamber of Commerce Commission on Banking Technique and Practice voted to approve a new revision of the Uniform Rules for Demand Guarantees (ICC Publication 758). The revision is the product of more than two years of drafting and preparations.

Intended to reflect international standard practice in the use of demand guarantees, the Rules were first developed in 1991 and have not been revised since. They had gained acceptance more recently, however, as the World Bank incorporated the Rules into its guarantee forms and the United Nations Commission on International Trade Law endorsed them.

The revision is an attempt to make the Rules clearer, more precise, and more comprehensive, and is the product of consensus among bankers, users, and other members of the guarantee community. The Rules' articles have been renumbered into a more logical sequence, and the guarantor's independent role is stated more clearly in documentary terms. The relationships between the guarantor and customer or the applicant and beneficiary have been more clearly separated and defined. The Rules share some similarities with the ICC's work in letters of credit, particularly the Uniform Customs and Practice for Documentary Credits (UCP 600). The Rules will be accompanied by a set of model guarantee and counter-guarantee forms.

URDG 758 will be implemented July 1, 2010, but those who routinely are beneficiaries of or apply for demand guarantees should familiarize themselves with the Rules now, as the revision is significant in most areas. Please contact a member of Dinsmore & Shohl's [International Business Transactions Group](#) for more information, or visit the [ICC Bookstore](#) to obtain a set of the Rules (available in March 2010).

Temporary Protected Status for Haitian Nationals

On January 21, 2010, the United States Secretary of Homeland Security designated Haiti for Temporary Protected Status (TPS) relief in response to the severe impact and aftermath of the earthquake that struck near the country's capital on January 12, 2010. TPS for Haitian nationals will be effective for 18 months beginning January 21, 2010 through July 22, 2011. Whether this period will be extended beyond the 18 months will be determined closer to the expiration of this timeframe.

Although TPS is not a measure that leads to legal permanent residence in the United States, TPS allows nationals of the affected country to apply for temporary stay and work authorization in the United States. Foreign nationals in this status are not barred from pursuing other immigration options that may be available to them under the law.

Dinsmore & Shohl's Immigration Practice Group has summarized the filing process and provided further information about the TPS process [here](#). More general information about the Immigration Practice Group

may be found [here](#).

European Union Takes Steps Towards Common Patent System

In December, the European Union took important steps towards EU-wide patent protection, agreeing to several key elements of a common patent system. The action taken by the EU Council is seen as important progress in negotiations that had largely been stalled since 2004.

The EU Council reached an agreement in several areas, with the remainder to be negotiated in the coming months. The Council agreed to establish a single EU patent and agreed to create a new EU patent court system, which will reduce or eliminate the need for litigation in multiple national venues and bring more uniformity to the law. The Council also reached some agreement as to renewal fees for EU patents, distribution of patents, and Enhanced Partnership by Contracting States under the new patent system. The draft agreement is currently being examined by the European Court of Justice which must deliver an opinion on the compatibility of the draft agreement with the EC Treaty. The opinion is expected at the earliest by summer 2010.

For more information regarding this or any other developments in domestic or international intellectual property law, please contact a member of Dinsmore & Shohl's [Intellectual Property Practice Group](#).

Coalition for Security and Competitiveness Presents Export Control Recommendations to President Obama

Following President Barack Obama's State of the Union Address--in which the President announced a goal of doubling U.S. exports over the next five years--the Coalition for Security and Competitiveness (CSC) released detailed recommendations on the specific steps the Obama Administration and Congress can take to reform and modernize the U.S. export control system. The document is entitled, "Recommendations for a 21st Century Technology Control Regime", and was included with a letter sent to President Obama and other key members of the Obama Administration.

The CSC, noting that the export control system has not been updated in more than twenty years, stated: "The result is a system that no longer fully protects our national security, has not kept up with accelerating technological change, and does not function with the efficiency and transparency needed to keep the United States competitive in the global marketplace." The CSC suggested that the government guide reforms around five basic themes: 1) Draw clear lines of agency responsibility; 2) Control lists should be revised and reduced; 3) Complete the transition to an end user-based system; 4) Enhance cooperation with allies; and 5) Enhance cooperation with the business community.

The CSC also provided detailed recommendations in eleven areas applicable to the dual-use and munitions control systems control systems that can be taken within the existing legislative authorizations. The CSC's letter to the President noted that, "our principles and recommendations would create a 21st century export control regime that protects critical technologies, safeguards our national security, spurs innovation and promotes economic growth." More information about the CSC (including a list of its member organizations), the letter to President Obama, and the recommendations may be found on the CSC's [website](#).

Australia to Update International Commercial Arbitration Law

Australia is taking steps to update its International Arbitration Act, a move that its Attorney-General hopes will improve domestic arbitration but also make Australia "an attractive venue for parties from around the world to resolve their disputes."

Australia has long been a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and has incorporated the Convention into Australian law. The country also has adopted the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, although in its 1985 version. The Bill introduced into Federal Parliament in

November, however, would adopt the 2006 revision to the UNCITRAL Model Law and takes additional steps intended to promote arbitration as an efficient and final alternative to litigation and improve the parties ability to keep confidential the arbitral process and documents disclosed within it.

The members of Dinsmore & Shohl's [International Business Transactions Group](#) have experience negotiating and drafting effective arbitration agreements and can provide advice concerning the selection of an appropriate forum or conducting arbitral proceedings within a given forum.

Upcoming Events

Dinsmore & Shohl to Host Discussion on Doing Business in India

On March 16, 2010, Dinsmore & Shohl will host a panel discussion on doing business in India. The discussion will focus on critical tax, intellectual property and employment issues to consider when conducting business in one of the world's fastest growing markets.

Rajesh Gandhi, an International Tax Director with Deloitte Tax LLP from India, will address tax strategies for businesses working within India's regulatory environment. Rajarshi Chakrabarti will appear in person in Cincinnati from Kochhar & Co.'s Mumbai, India office. Raj will address the intellectual property challenges presented by the marketplace and share strategies for combating fraud and protecting IP assets. Raj will be joined by Michael Hawkins, a partner in Dinsmore & Shohl's Labor & Employment Department, to discuss hiring/firing, wrongful terminations and non-compete issues from the staffing side of the business equation. They will also touch upon some of the cultural issues impacting the Indian workplace. This discussion is geared toward executive officers, in-house counsel, tax, human resources and IP personnel. For more information or to register to attend, please visit the Dinsmore & Shohl [website](#).

Raj has also made himself available for no-charge, private meetings in Dinsmore & Shohl's Cincinnati office on Monday, March 15, 2010. Please contact Raj via [email](#) to schedule your meeting.

ALFA International to Host International Client Seminar

On March 11-13, 2010, the International Law and Product Liability Practice Groups of ALFA International will co-host an International Client Seminar. The event, to be held at the J.W. Marriott Desert Springs, in Palm Desert, California, is entitled, "Pioneering Through the New Economic Frontier: Product Liability in a Changed World," and was planned by Dinsmore & Shohl attorney Harvey Cohen, co-chair of the International Practice Group of ALFA International.

The program will feature panels of ALFA International attorneys, in-house counsel, and safety managers from around the world and was designed to address those issues facing companies in the aftermath of the international financial calamity. Three general sessions will address the coordination of product safety efforts with the European Union and other foreign regulators, International Alternate Dispute Resolution, and dealing with foreign component suppliers or manufacturers in a lawsuit. Attendees will also choose from numerous break-out sessions, each of which are focused on specific areas of business and each of which are hosted by panels of international experts. To date, more than one hundred clients have registered to attend. More information about the seminar may be found on the ALFA International [website](#).

Firm News

Dinsmore & Shohl's Louisville Office Joins ALFA International

ALFA International, a global legal network comprised of 133 law firms, recently voted to admit Dinsmore & Shohl as the ALFA International member firm in Louisville, Kentucky. According to Richard Hetke, CEO of ALFA International, "With the merger of ALFA's existing Louisville, KY member into the Dinsmore & Shohl law firm, and the ALFA Board's approval of this offices regional representation, we will continue to field and expand the strongest legal team for business in this area of Kentucky."

ALFA International also recently expanded by admitting new member firms in Korea (the [Barun Law Firm](#)), Paraguay (the [Berkemeyer firm](#)), Egypt ([Sarie-Eldin & Partners](#) law firm in Cairo), and Nigeria (the [Sterling Partnership](#)). Founded in 1980, ALFA is the oldest and largest U.S. based non-profit association of law firms operating worldwide. ALFA International is comprised of 133 international law firms (85 U.S. based firms, 48 non U.S. based firms) employing over 8,500 lawyers and 10,000 other legal professionals. ALFA's membership network is based on exclusive grants of territorial responsibility. Each metropolitan area, state, or country is served by one ALFA law firm.

Dinsmore & Shohl is proud to have been a member of ALFA since 1985 and currently is the ALFA member firm in both Lexington and Louisville, Kentucky, as well as Cincinnati and Dayton, Ohio. Michael Hawkins, a partner in the firm's Cincinnati office, recently served as the immediate past chair of ALFA International. Harvey Cohen, a partner in the firm's Cincinnati office, chairs the International Practice Group and that Group's International Member Committee, which has largely been responsible for ALFA International's growth into new markets over the past three years.

Transaction Highlights Capabilities of Dinsmore & Shohl's Natural Resources Practice Group

Dinsmore & Shohl's Natural Resources Practice Group has represented both domestic clients interested in investing in natural resources in foreign countries and foreign clients interested in investing in the United States. The Group's ongoing work on behalf of a Canadian manufacturer interested in establishing its first U.S. facility highlights its abilities in this area.

Dinsmore & Shohl represents a Calgary, Alberta based manufacturer of liquid oxygen and nitrogen, primarily used in the oil and gas industry. The client is interested in locating and building its first liquid nitrogen facility in the United States. Dinsmore & Shohl attorneys have advised the client in site selection by guiding it through the various economic incentive packages available from Kentucky, West Virginia, and Virginia, as well as with permitting, transportation, labor, and tax issues specific to each State. With Dinsmore & Shohl's assistance, the client hopes to be the first supplier of liquid nitrogen for the natural gas industry with plants located in the middle of the Central Appalachian gas fields. Once a site is selected and incentive packages are negotiated and signed, Dinsmore & Shohl will assist with construction contracts, supply contracts, trucking and transportation issues, and general project development on an ongoing basis.

Please contact Lexington attorney, [Chauncey Curtz](#), for more information regarding this transaction or the services provided by members of the [Natural Resources Practice Group](#).

Attorney Jacob Manning to Serve as Guest Lecturer at George Mason University School of Law

Jacob A. Manning, an associate in Dinsmore & Shohl's International Practice Group, will present a guest lecture to students at his alma mater, the George Mason University School of Law on March 1. Manning will be speaking to students in Professor James Byrne's Commercial Fraud class regarding fraud in international transactions and civil remedies for victims of commercial fraud.

Professor Byrne has served as an expert in fraud cases for a number of years, particularly in the areas of high yield investment fraud and fraud involving letters of credit. He was instrumental in the United Nations

Commission on International Trade Law's study of the impact of commercial fraud on international trade over the past seven years, and Manning assisted Byrne while in law school and later served as a member of the Commission's Group of Experts on Commercial Fraud. The effort resulted in the Commission's publication of a list of "Indicators of Commercial Fraud" which Byrne and Manning assisted in drafting, and which has been approved for dissemination by the Commission. For more information, or to obtain the "Indicators of Commercial Fraud", please contact [Jacob Manning](#).