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# Are You Familiar with the Current Rules for Demand and Counter Guarantees?

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The regulatory landscape continues to evolve with new rules and regulations for trade finance.

July 1, 2011, will mark the one-year anniversary of the Uniform Rules for Demand Guarantees, 2010 Revision, International Chamber of Commerce ("ICC") Publication No. 758 (the "URDG 758"), which was designed to unify independent guarantee practice. This revised set of rules for demand and counter guarantees replaces ICC Publication No. 458, which was issued in 1992.

In the United States there was little need to focus on the changes to Publication No. 458, as it was not widely used. That made it possible to concentrate mainly on Publication 758, which is fashioned after the widely successful Uniform Customs and Practice for Documentary Credits (UCP) 600.

Similar to UCP 600, URDG 758 is not law. It merely defines a common set of roles and responsibilities for all parties at each key stage of the life cycle of a demand guarantee and reflects "best practice" in the guarantee business.

After three years of working on these new rules, the ICC has produced a publication that is comprehensive, innovative and concise.

## Standby Letters of Credit

A standby letter of credit is issued subject to the ICC's UCP 600, or its rules for standbys, the ISP 98. While a documentary letter of credit is used to effect payment for goods and services, a standby letter of credit — or a guarantee subject to the URDG 758 — will represent a bank's obligation to the beneficiary to make payment on behalf of the bank's client in the event the client fails to perform certain obligations. This may include issuing on the client's behalf instruments in connection with advance payments or bid bonds, or such instruments when they are required to post guarantees for warranty assurance, customs clearance, lawsuits, workmen's compensation obligations or for tax purposes.

## A List of Key Changes

More than an update of the existing rules, the URDG 758 contains significant changes, including:

- New definitions and rule interpretation for greater clarity and precision

- The treatment of non-documentary conditions, incomplete presentations and many other contentious practices

- Comprehensive coverage of advice of guarantees, amendments, electronic documents and transfers

- A provision on force majeure that triggers an extension of a guarantee for 30 calendar days

- The replacement of "reasonable time" with fixed periods for the examination of demands, the extension of guarantees and the suspension of payments

- The clearly recognizable and independent role of the guarantor, as detailed in URDG 758 Article 5, which points out that a guarantee is independent of the underlying relationship and application, and in Article 6, which states that guarantors deal with documents and not with the goods, services or performance to which the documents may relate

- Clear layout of the examination of demand process

- A step-by-step roadmap to handling extend or pay demands and force majeure

- A checklist of drafting recommendations and a ready-to-use model form

## First US Bank to Use These Rules

URDG 758 is being actively promoted and marketed by the ICC and has been officially translated into 16 languages. Considering that the URDG 458 reportedly governs over $14 trillion in trade, Deutsche Bank understands the many opportunities this new regulation provides the trade finance community with its more comprehensive, stronger and clearer rules for demand guarantees.

Currently, as the only US bank to use these rules, Deutsche Bank is well positioned with an expansive branch network and expertise to help clients achieve best practices in the use of URDG 758.