United Nations A/CN.9/919

General Assembly

Distr.: General
6 February 2017

Original: English

United Nations Commission on International Trade Law
Fiftieth session
Vienna, 3-21 July 2017

Endorsement of texts of other organizations: ICC Uniform Rules for Forfaiting (URF 800)

Note by the Secretariat

1. By letter of 14 November 2016 (reproduced in annex I), the Secretary General of the International Chamber of Commerce (the "ICC") requested the Commission to consider endorsing ICC Uniform Rules for Forfaiting (ICC Publication Number 800) (the "URF 800") for worldwide use. With its request, the ICC submitted a summary of the URF 800 (reproduced in annex II).

2. The Commission may wish to note that it has already endorsed a number of ICC texts, such as the Incoterms 2010, the Uniform Rules for Demand Guarantees: 2010 Revision (URDG 758), the Uniform Customs and Practices for Documentary Credits (UCP 600), the Incoterms 2000, the International Standby Practices (ISP98), the Uniform Rules for Contract Bonds (URCB), the Uniform Customs and Practices for Documentary Credits (UCP 500) and others.[1]

3. In addition, the Commission may wish to note that the objective of the URF 800 is to facilitate international receivables financing transactions and thus international trade by providing a new set of rules applicable to forfaiting transactions. Moreover, the Commission may wish to note that forfaiting transactions are covered by the United Nations Convention on the Assignment of Receivables in International Trade (New York, 2001),[2] and the URF 800 complement and are consistent with the rules of that Convention. Thus, the Commission may wish to consider endorsing the URF 800.

[1] http://www.uncitral.org/uncitral/en/other_organizations_texts.html.
[2] United Nations publication, Sales No. E.04.V.14.

Annex I

[14 November 2016]

Letter of Mr. John Danilovich, Secretary General of the International Chamber of Commerce

In partnership with the International Trade & Forfaiting Association (the "ITFA"), the International Chamber of Commerce (the "ICC") has developed the first ever global rules for forfaiting, the Uniform Rules for Forfaiting, ICC publication No. 800 (the "URF 800"). The URF 800 is a set of standardized terms and conditions applicable to a forfaiting transaction when the parties indicate that their forfaiting agreement is subject to these rules. The URF 800 drafts were reviewed and commented upon by over 500 members of the ICC Banking Commission and ICC National Committees in 92 countries before adoption by the ICC Banking Commission at its biannual meeting held in Mexico in November 2012. The URF 800 came into effect on 01 January 2013.

A result of a three and half year joint effort by the ICC and the ITFA, the URF are the first ever global rules for forfaiting and have been developed to take into account the legitimate expectations of all relevant sections with the aim of becoming the standard set of rules applied within the forfaiting market worldwide in all developed countries as well as many emerging markets. The current market size of forfaiting is estimated to be close to USD 300 billion per year.

Forfaiting is a trade financing technique based on discounting of an exporter's receivables payable at a future date without recourse to the exporter. The "without recourse discounting" benefits the exporter immensely by eliminating risks typically associated with an international trade transaction such as country risk, commercial risk, interest risk and currency rate risk, improving cash flow of the exporter and enhancing exporter's competitive advantage by offering attractive credit terms to the importers/buyers.

Comprising of a total of 14 articles, the URF 800 cover the entire gamut of a forfaiting transaction starting from the origination of a forfaiting transaction in the primary market and the trading of the forfaited asset in the secondary, market providing access to a deep and liquid market which can provide much needed funding to producers, manufacturers and exporters and also assist banks in managing their portfolios and credit exposures.

We are submitting to you the full URF 800 text along with a summary note on forfaiting. ICC trusts that UNCITRAL will appreciate the efforts made by ICC to promote international trade through forfaiting as a flexible and creative alternative to traditional trade financing, helping exporters to cover the political, commercial and transfer risks in an export transaction, especially involving emerging markets/developing nations and thus facilitating international trade which is now well recognized as an engine for economic development and growth.

Therefore, as with previous requests for endorsement of ICC rules, we hereby request formal endorsement of the URF 800 by UNCITRAL. We hope to receive a favourable response to this request.

Annex II

Summary Document on ICC Uniform Rules for Forfaiting (ICC Publication Number 800)

Executive summary

This document briefly explains forfaiting as a technique for financing trade by discounting exporter's receivables without recourse to the exporter. The discounting is effected by a forfaiter (a specialized financing company, a bank or a financial institution) benefitting the exporter immensely by eliminating risks typically associated with an international trade transaction, improving cash flow of the exporter with an increased speed and simplicity enhancing exporter's competitive advantage due to the availability of finance under forfaiting.

This document also briefly explains and summarizes the key provisions of the URF 800.

What is forfaiting?

Forfaiting is a trade financing technique based on discounting of an instrument representing exporter's receivables payable at a future date without recourse to the exporter, such instrument evidencing a payment claim or a debt obligation of an importer or a bank/financial institution pursuant to a letter of credit, standby letter of credit, guarantee, aval, bill of exchange or a promissory note created under an export transaction.

Since the payment under a forfaiting transaction is without recourse to the exporter, the exporter has no further interest in the transaction. It is the forfaiter who collects the future payments due from the importer or the obligor and bears the risk of non-payment. In return, the forfaiter gets discount (interest) and any agreed fees or commission income.

What are the benefits of forfaiting?

By seeking financing of receivables to the extent of 100 per cent of contract value, using the forfaiting technique the exporter gets access to immediate cash from the forfaiter without recourse to the exporter and therefore his risks in a cross-border transaction such as country risk, commercial risk, interest risk and currency rate risk etc. are eliminated and by availing the forfaiting opportunities, the exporter can enhance his competitive advantage by offering attractive credit terms to the importers/buyers. The documentation associated with a forfaiting transaction that an exporter has to sign is concise, straightforward and are fairly standard.

What is the URF 800?

The Uniform Rules for Forfaiting, ICC Publication No. 800 (the "URF 800") are a set of standardized terms and conditions applicable to a forfaiting transaction when the parties indicate that their forfaiting agreement is subject to these rules. The URF 800 have been developed to facilitate the purchase of a payment claim arising out of a debt instrument such as a bill of exchange, promissory notes, documentary credit and any other instrument that reflects a debt undertaking of an importer, a bank or a guarantor.

The URF 800 are the first ever global rules for forfaiting, a result of a three and half years of joint effort by the International Chamber of Commerce (the "ICC") and the ITFA (the "International Trade & Forfaiting Association"), the erstwhile International Forfaiting Association (the "IFA") which have been developed taking into account the legitimate expectations of all relevant sections with the aim of becoming the standard set of rules applied within the Forfaiting market worldwide.

These rules cover both the primary market in which transactions are originated by exporters and other sellers of goods and the secondary market where those transactions are traded between banks and financial institutions.

Are the URF 800 universally accepted?

The various URF 800 drafts were reviewed and commented upon by over 500 members of the ICC Banking Commission and ICC National Committees in 92 countries before their adoption by the ICC Banking Commission in its meeting held at Mexico in Nov 2012 where representative of more than 60 ICC National Committees were present. Some votes were submitted electronically.

The URF 800 is a globally accepted set of rules. The ICC Banking Commission has constituted an international Forfaiting Task Force to promote the usage and awareness of URF 800 amongst global banks, exporting and importing companies. As a result of the efforts undertaken by both the ICC and the ITFA in developing a set of Frequently Asked Questions, organizing seminars on forfaiting, responding to queries, the URF 800 are fairly known in the international markets and are used by the global banks worldwide.

What are the key provisions of the URF 800?

Comprising of a total of 14 articles, the URF 800 cover the entire gamut of a forfaiting transaction starting from the origination of the transaction in the primary market, the obligations and liabilities of the parties involved, and the trading of the forfaited asset in the secondary market by the primary forfaiter, thus providing access to a deep and liquid market which can provide much needed funding to producers, manufacturers and exporters and also assist banks in managing their portfolios and credit exposures.

Aligning the format and drafting style of the URF 800 with ICC Rules like the Uniform Customs and Practice for Documentary Credit (the “UCP 600”) and the ICC Uniform Rules for Demand Guarantees (the “URDG 758”), the URF 800 have been written in an easy to read and clear language and provide separate articles on Definitions and Interpretations. The URF 800 article on definitions (article 2) provides a total of “28” definitions of terms commonly used in a forfaiting transaction or in a forfaiting agreement. The definitions include the definitions of a “forfaiting transaction” and a “forfaiting agreement” apart from the definitions of what constitutes a “buyer, “obligor”, a “payment claim”, “primary forfaiter”, “required documents”, “satisfactory documents” etc. amongst others. The definitions ascribe precise and clear meaning to the terms using simple language.

The URF 800 article on “interpretations” (article 3) provides further clarity as to how commonly used phrases in a forfaiting transaction are to be interpreted. A separate article (article 4) clearly defines what the term “without recourse” stands for in international forfaiting markets. The article expressly states that under a forfaiting transaction, “a buyer will have no claim against a seller for the non-payment of any amount due in respect of the payment claim” except as provided under certain circumstances.

Other key provisions of the URF 800 are articles on “forfaiting agreements in the primary market”; “conditions in the primary market”; “satisfactory documents in the secondary market”; “payment”, and “liabilities of the parties”.

For guidance of the parties as to how a forfaiting agreement in the primary market should be formulated, article 5 of the URF 800 presents aspects that should be included in the forfaiting agreement. Article 6 states, inter-alia, that if the conditions of the forfaiting agreement are not satisfied, the agreement will terminate, however, without prejudice to either party's rights under the agreement or the applicable law. The two articles on "satisfactory documents" (article 6 and article 10) prescribe the initial seller's responsibility in the primary market or that of seller in the secondary market respectively, to deliver required documents to the primary forfaiter no later than the availability date and the course of action that both the primary forfaiter (in case of primary market) and the buyer (in case of a secondary forfaiter) should follow if they determine as per market practice that documents provided are not satisfactory.

To assist the users of the URF 800 in drafting contracts, the URF 800 also provide four model agreements in annexes.

Summing up

As a flexible and innovative alternative to traditional trade financing, forfaiting is a technique that promotes competitiveness and facilitates expansion of trade. By forfaiting without recourse, the exporters cover political, commercial and transfer risks associated to an export transaction especially in emerging markets/ developing countries. As a result, international trade is increased, which is well recognized now as an engine for economic development and growth.