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30 May 2012

**Subject: Document 470/TA.760**

Dear Ms Cirav,

Thank you for your query regarding URDG 758. Please find below the opinion of the ICC Banking Commission Group of Experts and Officers.

#### **QUOTE**

An MT760 has been received as follows:

- 40C Applicable Rules: URDG.
- At the end of field tag 77C (Details of the Guarantee) it reads: "Our counter-guarantee and your guarantee will be governed by Turkish Law and place of jurisdiction is Istanbul".

Our understanding, therefore, is that the counter-guarantee is deemed to be subject to URDG 758 and at the same time governed by Turkish law and jurisdiction, hence overriding sub-articles 34 (b) and 35 (b). The guarantee is requested to be issued subject to URDG 758 and be governed by Turkish law and jurisdiction in line with the provisions of URDG 758 sub-articles 34 (a) and 35 (a).

Furthermore, the applicable law and jurisdiction clause in the counter-guarantee changes only the application of sub-articles 34 (b) and 35 (b) and other rules of URDG 758 will still apply to the counter-guarantee.

Please advise as to whether our opinion is correct.

#### **ANALYSIS**

URDG 758 sub-article 1(a) states: "The Uniform Rules for Demand Guarantees ("URDG") apply to any demand guarantee or counter-guarantee that expressly indicates it is subject to them. They are binding on all parties to the demand guarantee or counter-guarantee except so far as the demand guarantee or counter-guarantee modifies or excludes them."

URDG 758 sub-article 1(b) further clarifies: “Where, at the request of a counter-guarantor, a demand guarantee is issued subject to the URDG, the counter-guarantee shall also be subject to the URDG, unless the counter-guarantee excludes the URDG. However, a demand guarantee does not become subject to the URDG merely because the counter-guarantee is subject to the URDG.”

Field 40C, in relation to a SWIFT MT760 message, specifies the rules to which the guarantee is subject. Unless otherwise specified in field 77C, the counter-guarantee will also be subject to such rules. By incorporation of URDG 758 in field 40C of the MT760, both the counter-guarantee and the guarantee are subject to URDG 758.

URDG 758 article 34 allows for the governing law to be provided in the wording of both the counter-guarantee and guarantee. URDG 758 article 35 allows for the country or place of jurisdiction to be provided in the wording of both the counter-guarantee and guarantee.

Field 77C of the MT760 states: “Our counter-guarantee and your guarantee will be governed by Turkish Law and place of jurisdiction is Istanbul”, which results in both the counter-guarantee and the guarantee also being subject to Turkish law with Istanbul jurisdiction.

## CONCLUSION

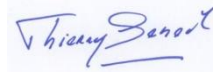
The counter-guarantee and guarantee will be subject to URDG 758 and Turkish law, with place of jurisdiction as Istanbul, with no guidance as to which should govern in the event of any conflict.

**The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Group of Experts and Officers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.**

**The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered. If this query relates to a matter currently under consideration by the courts, the ICC Banking Commission will refrain from considering it for adoption as an opinion.**

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Yours sincerely,



Thierry Senechal  
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Banking Commission