

# The Guarantee & Standby Forum

For Dubai, Antwerp, & Stockholm Events



## Supplemental Materials



**The Institute**  
of International  
Banking Law & Practice

# “However Named or Described”

Independent Undertakings Come in All Shapes and Sizes ...

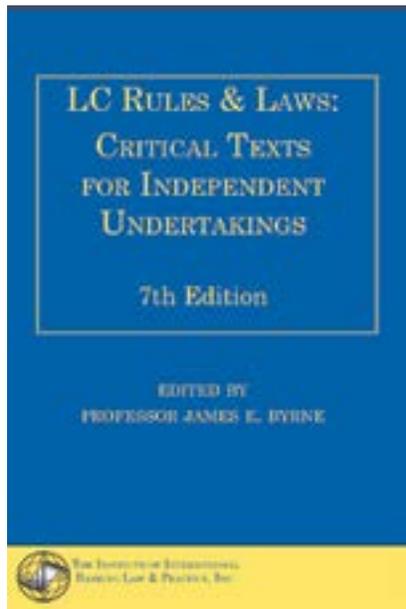
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# ACKNOWLEDGMENTS

The following persons have made this event possible:

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of the  
2018 Guarantee & Standby Forum

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Director, Institute of International Banking Law & Practice

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2018 Stockholm Guarantee & Standby Forum**

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Council for their assistance in promoting the 2018 Middle East and Europe  
Guarantee & Standby Forums**

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# Middle East Guarantee & Standby Forum

Sheraton Dubai Creek Hotel and Towers

Baniyas Road • Deira. • Dubai, UAE

(program and panelist participation tentative as of 4/11/2018)

**Tuesday 17 April 2018**

**8:30 – 9:00 Registration and Check-In**

**9:00 – 10:45 Pitfalls and Predicaments in Guarantee & Standby Practice**

- Meaningless Guarantee Wording & Motivations for Using It
- Meaning of “as primary obligor and not as surety”: *Autoridad* (p.2)
- “THE conditions of this bond are that it shall be null and void if: a) The Principal has paid to the Contractor the Contract Price and any other monies payable to the Contractor under the Contract”. Clark Road
- Commercial Standbys & Detailed Drawing Statements: Pros & Cons: *In re Factory Sales & Engineering, Inc.* (p.24); *Petrosaudi* (p.50) (terms of invoice)
- Banker’s Question: Should we attach Bank’s transfer form as an exhibit to the bank guarantee/ standby?

**Moderator:** Professor James E. BYRNE (IIBLP)

**Panelists:** SOH Chee Seng (ABS); Vin O’BRIEN (China Systems);  
Zahoor DATTU (Bastaki Management Consultancy)

**10:45 – 11:15 Networking Break**

**11:15 – 1:00 Practice Issues**

- To Whom Notices are directed and how sent and risks of deviation:
  - Of dishonour,
  - Of non-extension
  - Of change of address
- See *U.S. Bank v. Hernandez* (p.82) (notice of mediation meeting in foreclosure proceeding);
- ISP98 Official Commentary 2nd Edition: Official Interpretations & Analyzing 20 Years of ISP98 Use
- Issues in Drafting a Commercial Standby/Independent Guarantee
  - The beneficiary’s perspective
  - The applicant’s perspective
- Independent Guarantees/ Standbys used in legal proceedings: Issues and concerns. See *Beau Townsend* (p.7); *Covidien* (p.16); *LWR* (p.40).

**Moderator:** Ramesh RANGAN (National Bank of Fujairah)

**Panelists:** Abdulkader BAZARA (Abu Dhabi Islamic Bank);  
Zahoor DATTU (Bastak Management Consultancy)

**1:00 – 2:00 Lunch**

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## 2:00 – 3:15 When Should an Injunction be Granted? From Sane to Beyond Crazy!

- From Sane: *H. Troon* (p.29) (consider allocation of risk); *May* (p.41) & *Saipem* (p.68) (injunction refused)
- To Normal: *Powers Links* (p.56) (abusive drawing); *CPB* (p.17); *United Petroleum* (p.80) (injunction refused). [also *Powers Links* (p.56) (China)]
- To Extreme: *Good Living* (p.28) (unconscionable); *LQS* (p.38); *Tactic Engineering* (p.74):
- To Dangerous: Unhealthy emphasis on the terms of the underlying agreement: *Tomkins* (p.76)
- To Crazy: *Dedert* (p.21) (breach of contract); *Ottoway* (p.45) (what is the difference between granting the injunction?)
- AND BEYOND: Negative Stipulations: Even Singapore is affected: *Sin Herh* (p.70) (and no express agreement not to call on the bond)
- Who can be joined in the action? *Ecap* (p.23)
- Post Honour Actions as an alternative: *Jabneel* (p.31); *BP399* (p.9); *Kirchoff* (p.35)

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**Panelists:** Vin O'BRIEN (China Systems); Abdulkader BAZARA (Abu Dhabi Islamic Bank); Khalil MATAR (Alinma Bank)

## 3:15 – 3:45 SWIFT

Preparing for “Go Live” date for MT760 changes

**Moderator:** Robert MARCHAL (SWIFT)

## 3:45 – 4:15 Networking Break

## 4:15 – 5:30 Key Issues Litigated in 2017 Guarantee & Standby Cases

- *All Teckline* (p.1): “Amount Payable to Us” vs. The Name of the Beneficiary
- *Capital Plus* (p.10): Jurisdiction
- *Compass Bank* (p.14): Unauthorised Employee
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- *GGC* (p.26): Assignment of Standby? What is Going on?
- *Kawasaki Heavy Industries Ltd* (p.33): Link between Independent undertaking and Suretyship Undertaking
- *Lombard* (p.37): Interpretation of Mistake in Drafting of Independent Guarantee
- *National Infrastructure* (p.43): Comity (It's Not a Joke)
- Can the Beneficiary's Agent Sue for Wrongful Dishonour?
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- *SNC* (p.72): Can an Applicant for Counter Guarantee Sue to Enjoin Payment to Local Bank?

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## 5:30 – 6:00 Summary of Critical Issues

Critical issues regarding law and practice will be summarized and final comments solicited.

**Moderator:** Christopher S. BYRNES (IIBLP; DCW)

# Europe Guarantee & Standby Forum

Hyllit Hotel

De Keyserlei 28-30 • B-2018. • Antwerp, Belgium  
(program and panelist participation tentative as of 4/11/2018)

**Friday 20 April 2018**

**8:30 – 9:00 Registration and Check-In**

**9:00 – 10:45 Pitfalls and Predicaments in Guarantee & Standby Practice**

- Meaningless Guarantee Wording & Motivations for Using It
- Meaning of “as primary obligor and not as surety”: *Autoridad* (p.2)
- “THE conditions of this bond are that it shall be null and void if: a) The Principal has paid to the Contractor the Contract Price and any other monies payable to the Contractor under the Contract”. Clark Road
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- Banker’s Question: Should we attach Bank’s transfer form as an exhibit to the bank guarantee/standby?

**Moderator:** Professor James E. BYRNE (IIBLP)

**Panelists:** Ron van STATEN (ING); Michel JOSKIN (Rabobank);  
Dr. Karl MARXEN (Ostfalia University, BELS)

**10:45 – 11:15 Networking Break**

**11:15 – 1:00 Practice Issues**

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**Moderator:** Jeremy SMITH (Lloyds)

**Panelists:** Professor James E. BYRNE (IIBLP); Diana CURELEA (BCR); Michel JOSKIN (Rabobank)

**1:00 – 2:00 Lunch**

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## 5:30 – 6:00 Summary of Critical Issues

Critical issues regarding law and practice will be summarized and final comments solicited.

**Moderator:** Christopher S. BYRNES (IIBLP; DCW)

# Europe Guarantee & Standby Forum

SEB

Kungsträdgårdsgatan 8 • Stockholm • 106 40 Sweden  
(program and panelist participation tentative as of 4/11/2018)

**Tuesday 24 April 2018**

**8:30 – 9:00 Registration and Check-In**

**9:00 – 10:45 Pitfalls and Predicaments in Guarantee & Standby Practice**

- Meaningless Guarantee Wording & Motivations for Using It
- Meaning of “as primary obligor and not as surety”: *Autoridad* (p.2)
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**Moderator:** Professor James E. BYRNE (IIBLP)

**Panelists:** Len ANDERSSON (SEB); Lorna STRONG (HSBC)

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# INVITED PANELIST AND SPEAKER BIOGRAPHIES

*Panelist and speaker participation subject to change.*

*No endorsements of any sort by organizations are made or implied.*

**Lena ANDERSSON** is Global Product Specialist, Guarantees and Standby Letters of Credit. She has worked in SEB in Trade Finance area for many years and specialises in Guarantees. She was a member to the ICC's Task force translating URDG into Swedish and have since a long time a close professional relationship with ICC Sweden. Ms. Andersson is a regular speaker in Sweden at conferences and seminars relating to Guarantees and Standby letters of credit. Ms. Andersson is a member of the European Advisory Council for the International Banking Law and Practice.

**Abdul Kader BAZARA** has 38 years of experience in banking, mainly in Trade Finance Services (both conventional and Islamic Trade Finance), and currently works as Trade Finance Structuring Head for Abu Dhabi Islamic Bank, Abu Dhabi. In the past he has worked as Head of Trade Finance Sales, Trade Finance Products Management, Trade Finance Operations and was also involved in the management, implementation and integration of online trade system, revamp of core trade system, managing people, providing training to customers and staff on trade products in general. He has attended several trade finance seminars and conferences (local and international) as participant and panelist.

**Matthew BROWN** is a New York qualified lawyer, and formerly Associate Counsel for IIBLP. Matt is presently pursuing a Master's in Law (LL.M.) degree from Leiden University in The Netherlands.

**Professor James E. BYRNE** is the Director of the Institute of International Banking Law & Practice, Inc. and served as a faculty member of George Mason University School of Law for more than 30 years. He is the Editor of Documentary Credit World, a monthly journal of letter of credit law and practice, and has written and lectured extensively on LC law and practice, electronic commerce, international sales of goods, and commercial and financial fraud in more than 40 countries. He chaired and served as Reporter for the International Standby Practices (ISP98), and regularly attends meetings of the ICC Banking Commission, and was a member of its consulting group on the revision of UCP500, its Working Group on Electronic Credits which drafted the eUCP, and the Task Force that drafted the 2004 version of the International Standard Banking Practice (ISBP 2004). He chaired the American Bar Association/ U.S. Council on International Banking Task Force Study of U.C.C. Article 5, served as head of the U.S. Delegation to UNCITRAL in drafting the 1995 United Nations Convention on Bank Guarantees and Standby Letters of Credit, was an Advisor in the 1995 revision of the U.S. domestic statute, Uniform Commercial Code Article 5, is Past Chair of the American Bar Association's Letter of Credit Subcommittee. Professor Byrne has a Bachelor's degree from the University of Notre Dame, a Juris Doctor degree from Stetson University College of Law, and an LL.M. from the University of Pennsylvania College of Law. He clerked for the Honorable Paul H. Roney of the U.S. Circuit Court of Appeals for the Eleventh Circuit and practiced for several years in Florida. He is a member of the Florida and Maryland bars.

**Christopher S. BYRNES** is Managing Editor of the LC industry's monthly journal publication, Documentary Credit World, and co-editor with James E. Byrne of the Annual Survey of LC Law & Practice yearbook

series, an annual volume produced by the Institute of International Banking Law & Practice. Byrnes is a graduate of Georgetown University's School of Foreign Service.

**Diana CURELEA** is a holder of the ifs CITF (Certificate in International Trade and Finance), as of October 2009, & of the ifs CDCS professional designation, beginning of April 2004 & has an ifs Diploma status in International Trade Finance. She is an individual member of the ICC National Committee Romania & an alumni member of ifs & IFSA, being also an active trade expert practitioner with IIBLP.

She has been involved in documentary credits, bank guarantees, clean & documentary collections, cash management products, as well as in structuring, implementing & handling of the short term trade finance solutions available to importers & exporters through the Global Trade Finance Program (GTFP) - in partnership with the International Financial Corporation (IFC), division of The World Bank Group. She joined the banking field in 1992, working with various banks in Romania, at different levels of hierarchy.

As of October, 2013, she is the Head of Trade Finance Department, Transaction Banking Division – Corporate Banking, at BCR SA. She was previously employed by SC Bancpost SA, as Manager of the Cash & Trade Finance Sales Department, Corporate Transaction Banking Division (August 2010). She joined Bank of Cyprus Public Company Limited Nicosia, Romanian Branch, as Head of Trade Finance Department (May 2008 – Aug. 2010). Until Jan. 2008 she was with the ING BANK N.V. Amsterdam, Bucharest Branch, Romania, as Manager of the Trade Division. Before Oct. 1996 she worked as Trade Officer for the Romanian Bank for Foreign Trade, Bucharest, Romania (BANCOREX S.A.).

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Currently, Mr. Jin is vice director of Banking & Securities Commission of the All China Lawyers Association (ACLA), assisting the Association in drafting Guidelines for Letter of Credit Litigations in China, vice director of Commercial Banking Committee of Beijing Lawyers Association (BLA), director of Research Center of Banking Law & Practices, Shanghai Law Society (SBL&P), arbitrator enlisted with CIETAC's Special Commission on Real Estate Disputes Resolution and vice director of CIETAC's Special Arbitration

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Commission on Financing Disputes, assisting CIETAC in drafting Arbitration Rules on Financing Disputes, and he was appointed as the sole arbitrator in the first arbitration case applying those rules. He is a regular participant as an invited expert in Annual Survey of LC Law & Practice conference series of IIBLP (the Institute of International Banking Law & Practice, Inc.) in US, Europe, HK, Singapore and Beijing, delivering his opinions on trade financing, international commerce, and banking law of PRC.

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He is a CDCS qualified Islamic Trade Financier, his extensive experience includes more than 25 years of professional Trade Finance experience including 13 years in Islamic Banking. Prior to joining Al Hilal bank he has held similar positions with several other Islamic and conventional banks in the region.

Nizardeen also was involved in setting up Trade Finance Services including system implementation, policy and procedures at several leading banks.

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**Jeremy SMITH** joined the Overseas Department of -what was- Lloyds Bank Ltd (now Lloyds TSB Bank plc) on 31 August 1977 and started in the export documentary credits department. Since then he has fulfilled a number of 'international business' roles in Lloyds TSB including assistant manager of a

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demand guarantees department. Currently Jeremy is ‘Documentary Risk Adviser’ in Risk & Compliance, Group Operations; Group Operations processing all Lloyds TSB ‘documentary business’ (documentary credits, demand guarantees and standby letters of credit and documentary collections). Jeremy’s primary responsibility is Lloyds TSB’s operational risk policy in the field of documentary business. Jeremy is also Chairman of the British Bankers’ Association Guarantees Committee and represents Lloyds TSB on the BBA Documentary Credits Committee and the ICC UK Banking Committee. He is an Associate both of the Chartered Institute of Bankers and the Chartered Institute of Linguists.

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Mr Soh has been invited by the a number of financial institutions and bankers associations in South East Asia to conduct a series of workshops on international trade finance, risks in trade finance, ISBP, UCP, ISP98 and Incoterms 2000.

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Helen is since 2010 a member of the ICC Sweden Trade Finance Committee and attend the ICC Banking Commission meetings regularly. She was involved in the Swedish ICC working group on the latest revision of International Standard Banking Practices (ISBP). She has lectured at events and courses held by ICC Sweden, and at other events in Sweden and abroad, primarily on Documentary Credits but also on Guarantees.

She is a certified Documentary Credit practitioner through CDCS qualification. The CDCS® is an international professional qualification that is recognised worldwide as a benchmark of competence in Documentary Credits.

Helen is a member of the European Regional Advisory Council of Institute of International Banking Law and Practice (IIBLP) The members of this council are top experts of the region, in the areas of LC Banking, Corporate LC users and Legal Advisors, with a common goal to promote sound LC practice.

**Lorna STRONG** is Deputy General Counsel for HSBC Global Trade and Receivables Finance (GTRF), based at HSBC's head offices in London, UK, acting as primary legal advisor for GTRF's operations globally. Lorna joined HSBC in 2001 and held the position of Deputy General Counsel, HSBC Bank Canada before moving to her present role in 2014. Lorna holds degrees in law and in applied science from the University of British Columbia and has been recognized in the areas of banking law, fraud law and international law, most recently a recipient of the 2012 Global Counsel Award for Regulatory (Financial Services) Individual of the Year. As an adjunct to her practice, she lectures on matters relating to banking, compliance, fraud recovery and risk.

**Stephen TRICKS** has been a partner since 1986. He specialises in international trade. His clients include trading companies, banks, carriers and insurers.

Stephen handles high value commercial litigation and arbitration in the UK and in many other jurisdictions. In particular he has successfully handled one of the largest recent international commercial disputes in the High Court in London. He aims for a pragmatic approach to dispute resolution. A large part of his work involves giving advice on how to avoid disputes and how to resolve them quickly once problems occur.

He lectures regularly on banking, trade and insurance issues for the International Chamber of Commerce and the International Energy Credit Association.

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