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**Policy and Business Practices**

## Commission on Banking Technique and Practice

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### **Uniform Rules for Forfaiting – Discussion Draft #2**

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**International Chamber of Commerce**

38 Cours Albert 1er, 75008 Paris, France  
Tel +33 (0)1 49 53 28 28 Fax +33 (0)1 49 53 28 59  
E-mail [icc@iccwbo.org](mailto:icc@iccwbo.org) Website [www.iccwbo.org](http://www.iccwbo.org)

12 September 2011/TS/nm  
Document 470/1183



## Instructions

This document will be discussed at the meeting of the ICC Banking Commission to be held in Beijing on October 25, 26, 2011.

Written comments are also desired from national committees of the IFA and ICC.

Written comments should be received not later than November 25, 2011.

The Drafting Group wishes to acknowledge and thank the members of the ICC Consulting Group and the IFA Market Practice Committee for their valuable input to this project and for their comments and responses to questions and previous drafts.

When replying in writing we require that you please:

A) Restrict your comments at this time to the actual text of the URF.

B) Comments from the national committee must be contained within ONE email.

Please only provide comments once you have completely reviewed the document.

Comments received outside of the national committee process will not be considered.

C) Comments must be in a “word” format and refer to the line number(s) in the “clean” draft where the comments apply / a change is suggested with the text that should be inserted or

deleted. Please do not cross refer to comments previously made or earlier in the same set of comments. The document has been 'locked' in a pdf format so that the line numbers should be consistent wherever you are based and whatever size paper you use to print the document.

D) DO NOT forward with the attached text. We only require an email with specific comments - no attachments.

E) Your reply be sent to Natalie Montelongo, [nmo@iccwbo.org](mailto:nmo@iccwbo.org), only.



1 **Article 1 - Scope and Application of the Rules**

2 The Uniform Rules for Forfaiting (URF) are rules that apply to a Forfaiting Transaction when the  
3 Parties expressly indicate that their agreement is subject to these rules. They are binding on all  
4 Parties thereto except so far as modified or excluded by agreement.

5 **Article 2 - Definitions**

6 2.1 For the purpose of these rules:

7 **Availability Date** – means the last day on which the Seller must deliver to the Buyer Satisfactory  
8 Documents or satisfy any other Condition. In the Secondary Market, if the Availability Date is  
9 described in a Forfaiting Confirmation as ‘immediately available’ or similar terms, that means the  
10 day falling 10 Business Days after the Trade Date.

11 **Business Day** - means a day on which the place of business where an act of a kind subject to  
12 these rules is to be performed is regularly open for the performance of such an act.

13 **Buyer** - means the Party buying the Payment Claim.

14 **Condition** – means, in the Primary Market a condition set out in the Forfaiting Agreement and, in  
15 the Secondary Market, a condition set out in the Secondary Sale Terms and/or a Forfaiting  
16 Confirmation; [the delivery of Satisfactory Documentation being, in both cases, a condition.]

17 **Credit Support Document** - means any document evidencing an obligation of a person other  
18 than the Primary Obligor to make payment in respect of the Payment Claim.

19 **Forfaiting Agreement** – means, the written agreement between the Primary Forfaiter and the  
20 Initial Seller reflecting the terms of the Forfaiting Transaction.

21 **Forfaiting Confirmation** – means the Secondary Market document signed by the Seller and  
22 Buyer reflecting the Secondary Sale Terms or as may be otherwise agreed by the Seller and the  
23 Buyer.

24 **Forfaiting Transaction** - means the sale by the Seller and the purchase by the Buyer of the  
25 Payment Claim on the terms of these rules.

26 **Initial Seller** - means the Seller who first sells the Payment Claim to the Primary Forfaiter, which  
27 could be a Primary Obligor when he creates the Payment Claim in favour of the Primary Forfaiter.

28 **Obligor** - means the Primary Obligor and/or any other obligor in respect of any Credit Support  
29 Document.

30 **Parties** - means the parties to the Forfaiting Transaction (each a "Party").

31 **Payment Claim** - means all the rights to receive payment from the Primary Obligor of a specified  
32 amount on a specified date or dates or on demand.



- 33           **Points of Reserve** - means, in relation to the Forfaiting Transaction, those obligations of the  
34 Seller that the Buyer has agreed may be satisfied as at the Reserve Date.
- 35           **Primary Forfeiter** - means the Party who first purchased or otherwise acquired the Payment  
36 Claim from the Initial Seller.
- 37           **Primary Market** - means, a sale of a Payment Claim by an Initial Seller to a Primary Forfeiter.
- 38           **Primary Obligor** - means the person or persons primarily responsible for payment of the  
39 Payment Claim.
- 40           **Purchase Price** - means the amount (or the formulae for calculation of an amount) agreed  
41 between the Seller and Buyer to be paid for a Payment Claim.
- 42           **Repurchase Terms** - means the terms on which the Seller must repurchase any Payment Claim  
43 from the Buyer if the Points of Reserve are not unconditionally or irrevocably satisfied by the  
44 Seller by the Reserve Date.
- 45           **Required Documents** - means, in respect of the Forfaiting Agreement or the Forfaiting  
46 Confirmation:
- 47           (a)     the document or instrument evidencing the Payment Claim together with any document  
48           issued by the Primary Obligor supplementing or accompanying the Payment Claim.;
- 49           (b)     any document or instrument which is, or should be, known by the Seller, as at the  
50           Settlement Date, to be required to transfer ownership of the Payment Claim or to be  
51           presented when enforcing or otherwise exercising rights to receive payment on the  
52           relevant payment date in relation to the Payment Claim or the Credit Support  
53           Documents;
- 54           (c)     any Credit Support Document;
- 55           (d)     any other document, specified in the Forfaiting Agreement or the Forfaiting Confirmation  
56           which may include documents relating to the Underlying Transaction; and
- 57           (e)     any document which the Buyer is entitled to request pursuant to, in the case of a  
58           Forfaiting Transaction in the Primary Market, Article 6.3 or, in the case of a Forfaiting  
59           Transaction in the Secondary Market, Article 9.4.
- 60           **Reserve Date** - means the date by which the Points of Reserve have to be satisfied by the Seller.
- 61           **Satisfactory Documents** - means Required Documents that are satisfactory in accordance with  
62           the Forfaiting Agreement or the Forfaiting Confirmation as determined pursuant to Article 6 or  
63           Article 9 as applicable.
- 64           **Secondary Market** - means a sale of a Payment Claim by a Primary Forfeiter or a subsequent  
65 Buyer to, in each case, another Buyer.



66           **Secondary Sale Terms** - means, in the Secondary Market, all of the terms and conditions of the  
67           Forfaiting Transaction agreed orally and/or by written exchanges between the Seller and the  
68           Buyer on or before the Trade Date.

69           **Seller** - means the Party selling the Payment Claim.

70           **Settlement Date** - means the day falling three (3) Business Days after the date on which the  
71           Buyer has determined that it has received Satisfactory Documents, or if relevant is deemed to  
72           have received, Satisfactory Documents.

73           **Trade Date** - means:

74           (a)       in relation to a Forfaiting Transaction taking place in the Primary Market, the date on  
75           which the Primary Forfeiter and the Initial Seller sign the Forfaiting Agreement; or

76           (b)       in relation to a Forfaiting Transaction taking place in the Secondary Market, the date on  
77           which the Seller and Buyer agree the Secondary Sale Terms.

78           **Under Reserve** – means, in either the Primary or the Secondary Market, any payment made or to  
79           be made by the Buyer that is specified as being conditional upon Points of Reserve.

80           **Underlying Transaction** - means the transaction pursuant to which the Payment Claim arises.

## 81   2.2   Interpretations

82           Unless the context otherwise requires:

83           (a)       any reference to the singular number shall include the plural and vice versa;

84           (b)       headings are for convenience only and shall not affect the interpretation of any Article;

85           (c)       all rules shall relate to the Primary Market and the Secondary Market except where  
86           expressly provide to the contrary.

87           [Add more interpretations]

## 88   **Article 3 - Without recourse**

89   3.1    On the relevant Settlement Date, the Seller sells to the Buyer and the Buyer buys from the Seller  
90   the Payment Claim without recourse with the consequence that the Buyer shall have no claim  
91   whatsoever against the Seller, any prior seller or the Primary Forfeiter for the non-payment of any  
92   amount due in respect of the Payment Claim excepting, and subject always to, the provisions of  
93   Article 12 or, if different, the Forfaiting Agreement or the Forfaiting Confirmation.

94   3.2    Nothing in these rules shall affect or reduce the obligations of a Seller who is a Primary Obligor  
95   or any other Obligor in respect of that Payment Claim and rights shall exist as against those  
96   persons as permitted under the terms of and the law applicable to that Payment Claim.



97 **Article 4 - Forfaiting Agreements in the Primary Market**

98 4.1 In order to create a Forfaiting Transaction in the Primary Market there must be an agreement on  
99 the Trade Date between the Primary Forfeiter and the Initial Seller to sell the Payment Claim.  
100 Such agreement shall be a Forfaiting Agreement if it is made subject to these rules.

101 4.2 it is recommended a Forfaiting Agreement contain at a minimum:

- 102 (a) details of the Payment Claim including the amount and currency, the names of the  
103 Primary Obligor and any other Obligors;
- 104 (b) a list of the Required Documents known at the date of the Forfaiting Agreement ;
- 105 (c) the Availability Date;
- 106 (d) the Purchase Price; and
- 107 (e) the estimated Settlement Date if available.

108 **Article 5 - Conditions in the Primary Market**

109 5.1 Each Party must endeavour to satisfy in full all Conditions in accordance with the Forfaiting  
110 Agreement by the relevant Availability Date.

111 5.2 If any Condition remains unsatisfied by the relevant Availability Date the Parties may agree to  
112 postpone that Availability Date to such date as the Parties determine as being the date on which  
113 the Condition should be satisfied.

114 (a) .

115 **Article 6 - Satisfactory Documents in the Primary Market**

116 6.1 The Initial Seller must deliver the Required Documents to the Primary Forfeiter no later than the  
117 relevant Availability Date.

118 6.2 The Primary Forfeiter must review the Required Documents (or any clarification, revision or  
119 addition to any previously delivered Required Documents) to determine whether they constitute  
120 Satisfactory Documents and in so doing may consider, without limitation, whether or not:

- 121 (a) it possesses satisfactory evidence as to the authenticity of the Required Documents;
- 122 (b) the Required Documents delivered are in conformity with the provisions of the Forfaiting  
123 Agreement; and
- 124 (c) each of the Payment Claim and the obligations contained in any Credit Support  
125 Document are legal, valid, binding and enforceable obligations of the relevant Obligor to  
126 pay the relevant amount in full without set-off or counterclaim or any deduction or



127 withholding for tax or otherwise when due in the currency of the Payment Claim and are  
128 freely transferable in accordance with the Required Documents.

129 6.3 If the documents delivered are not Satisfactory Documents or additional documents are required  
130 or considered to be necessary by the Primary Forfeiter, the Primary Forfeiter must notify the  
131 Initial Seller of such determination (providing details of such determination and what the  
132 Primary Forfeiter requires further) and each Party must endeavour to clarify or agree any  
133 necessary revisions or additions to the Required Documents.

134 6.4 The Primary Forfeiter must notify the Initial Seller when it has determined that it has received  
135 Satisfactory Documents. The Primary Forfeiter must act in accordance with market practice in its  
136 determination that the Required Documents are satisfactory.

137 **Article 7 - Forfaiting Confirmations in the Secondary Market**

138 7.1 In order to create a Forfaiting Transaction in the Secondary Market there must be an agreement  
139 on the Trade Date between a Primary Forfeiter or a subsequent Buyer to, in each case, another  
140 Buyer to sell the Payment Claim. Such agreement shall constitute the Secondary Sale Terms if it  
141 is made subject to these rules.

142 7.2 The Party which has agreed to prepare the Forfaiting Confirmation (or in the absence of  
143 agreement the Seller) must deliver to the other Party a duly signed Forfaiting Confirmation,  
144 within one Business Day of the Trade Date.

145 7.3 The Forfaiting Confirmation must set out the Secondary Sale Terms.

146 7.4 The Party receiving the Forfaiting Confirmation must within two Business Days of receipt either

147 (a) sign and return it to the other Party; or

148 (b) notify the other Party of its disagreement with the terms of the Forfaiting Confirmation  
149 including in such notification details of the points of disagreement,

150 and if the Party receiving the Forfaiting Confirmation fails to satisfy either of (a) or (b) then that  
151 Party is deemed to have accepted the Forfaiting Confirmation as received by it.



152 7.5 If the Party receiving the Forfaiting Confirmation has notified details of the points of  
153 disagreement each Party must endeavour to agree a revised Forfaiting Confirmation. If the Parties  
154 fail to agree a revised Forfaiting Confirmation within two Business Days of the Buyer's  
155 notification, the Parties may take such action as is available to them under applicable law.

156 **Article 8 - Conditions in the Secondary Market**

157 8.1 Each Party must endeavour to satisfy in full all Conditions in accordance with the Forfaiting  
158 Confirmation by the relevant Availability Date.

159 8.2 If any Condition remains unsatisfied on the relevant Availability Date the Parties may agree to  
160 postpone that Availability Date to such date as the Parties determine as being the date on which  
161 the Condition should be satisfied.

162 **Article 9 - Satisfactory Documents in the Secondary Market**

163 9.1 The Seller must deliver the Required Documents to the Buyer no later than the relevant  
164 Availability Date.

165 9.2 The Buyer must review the Required Documents (including a clarification, revision or addition to  
166 any previously delivered Required Documents), when received, to determine whether or not:

167 (a) the Required Documents are supported by satisfactory evidence as to its authenticity;

168 (b) the Required Documents are in accordance with the Forfaiting Confirmation; and

169 (c) each of the Payment Claim and the obligations contained in any Credit Support  
170 Document are legal, valid, binding and enforceable obligations of the relevant Obligor to  
171 pay the relevant amount in full without set-off or counterclaim or any deduction or  
172 withholding for tax or otherwise when due in the currency of the Payment Claim and are  
173 freely transferable in accordance with the Required Documents.

174 9.3 The Seller may at any time notify the Buyer requiring it to finish its review within a stated time  
175 which shall not be less than five Business Days from the date of receipt of the notice.

176 9.4 If the documents delivered are not Satisfactory Documents or additional Documents are required  
177 or considered to be necessary by the Buyer, the Buyer must notify the Seller of such  
178 determination (providing details of such determination and what the Buyer requires further)  
179 and the Parties must endeavour to clarify or agree any necessary revisions or additions to the  
180 Required Documents. If no such notice is given by the Buyer by the end of the period specified in  
181 any notice served by the Seller pursuant to Article 9.3, the Buyer shall be deemed to have  
182 received Satisfactory Documents.

183 9.5 The Buyer must notify the Seller when it has determined that it has received Satisfactory  
184 Documents. The Buyer must act in accordance with market practice in its determination that the  
185 Required Documents are satisfactory.



186 **Article 10 - Payment in the Primary and Secondary Markets**

187 10.1 The Buyer must pay the Purchase Price by crediting the Seller's account on the Settlement Date.

188 10.2 Payment must be made in the currency specified in the Forfaiting Agreement or Forfaiting  
189 Confirmation without deduction or counter-claim.

190 10.3 Payment must be made in immediately available funds at the place stated in the Forfaiting  
191 Agreement or Forfaiting Confirmation as the case may be, provided such Settlement Date is a  
192 Business Day in that place. If the Settlement Date is not a Business Day, payment will be due on  
193 the first banking day in that place following the Settlement Date.

194 **Article 11 - Payment Under Reserve**

195 11.1 Notwithstanding Articles 6 or 9, if the Parties agree to include in or vary the terms in the  
196 Forfaiting Agreement or the Secondary Sale Terms so that payment by the Buyer can be made  
197 Under Reserve, the Forfaiting Agreement or the Forfaiting Confirmation, as the case may be, must  
198 specify or be varied to specify (a) the Points of Reserve, (b) the date (the "Reserve Date") by which  
199 the Points of Reserve must be unconditionally satisfied by the Seller and (c) the Repurchase  
200 Terms. In the absence of any agreement between the Parties in the Forfaiting Agreement or the  
201 Forfaiting Confirmation, as the case may be, the Repurchase Terms must use the original all-in  
202 discount rate for the remaining period (utilising, save where otherwise agreed, in the case where  
203 a floating rate forms part of the discount rate, the floating rate determined under the original sale  
204 terms).

205 [Each Party must endeavour to satisfy the Points of Reserve by the relevant Reserve Date]

206 11.2 If the Seller fails to unconditionally satisfy the Points of Reserve by the relevant Reserve Date, and  
207 the Parties fail to agree an extension to such Reserve Date by the relevant Reserve Date, the Buyer  
208 shall be entitled to request that the Seller repurchase from the Buyer the Payment Claim on the  
209 Repurchase Terms.

210 11.3 Within five Business Days of receipt of the Buyer's request in accordance with Article 11.2, the  
211 Seller must complete the repurchase from the Buyer of the relevant Payment Claim on the  
212 Repurchase Terms and pay the relevant amount by crediting the Buyer's account and otherwise  
213 complying with Article 10.

214 11.4 Within five Business Days of receipt of payment by the Buyer, the Buyer's shall return to the  
215 Seller all Required Documents received from the Seller and must take all actions and sign all  
216 documents necessary to ensure that ownership of the Payment Claim and Required Documents  
217 are re-transferred to the Seller.



218 **Article 12 - Liabilities of the Parties**

219 12.1 A Party to a Forfaiting Transaction shall be liable to the other Party if any of the following events  
220 occur:

221 (a) it does not have the power to execute, deliver and perform its obligations under the  
222 Forfaiting Agreement or the Forfaiting Confirmation or has failed to take such action as  
223 is necessary to ensure proper execution, delivery or performance; or

224 (b) its obligations in relation to the Forfaiting Agreement or under the Forfaiting  
225 Confirmation do not constitute its legal, valid and binding obligations enforceable in  
226 accordance with their terms.

227 12.2 A Seller shall be liable to its Buyer if any of the following events occur:

228 (a) any event listed in Article 12.1; or

229 (b) it is actually aware of an encumbrance, set-off or counterclaim, or other preferential right  
230 in favour of a third party which would materially adversely affect the likelihood of  
231 payment of the Payment Claim on its due date; or

232 (c) either the Payment Claim or the Credit Support Documents have not been irrevocably  
233 and unconditionally transferred to the Buyer; or

234 (d) it is not, or will not be, on the relevant Settlement Date, the sole legal and beneficial  
235 owner of the Payment Claim.

236 Subject to the above, a Seller who is not subject to Article 12.3 or 12.4 shall sell to its Buyer  
237 without recourse to it provided that the Seller in the Forfaiting Confirmation has irrevocably and  
238 unconditionally delivered to the Buyer all Required Documents that constitute Satisfactory  
239 Documents.

240 12.3 An Initial Seller shall be liable to the Primary Forfeiter if any of the following events occur:

241 (a) any event listed in Article 12.1 or 12.2; or

242 (b) [it has not complied with and/or has breached any obligations binding on it under the  
243 Payment Claim or the Underlying Transaction; or]

244 (c) it is actually aware of any event, circumstances or information relating to the Payment  
245 Claim or the Underlying Transaction which would materially adversely affect the  
246 likelihood of payment of the Payment Claim on its due date.

247 Subject to the above, an Initial Seller who is not a Primary Obligor shall sell to the Primary  
248 Forfeiter without recourse to it provided that the Initial Seller in the Forfaiting Agreement has  
249 irrevocably and unconditionally delivered to the Primary Forfeiter all Required Documents (if  
250 available) that constitute Satisfactory Documents.



- 251 12.4 The Primary Forfeiter shall be liable to its Buyer if any of the following events occur:
- 252 (a) any event listed in Article 12.1 or 12.2; or
- 253 (b) it has not taken all reasonable steps to verify the authenticity and binding nature of the  
254 signatures of the Initial Seller and the Obligors on the Required Documents provided to  
255 the Primary Forfeiter, or obtained satisfactory legal opinions in lieu thereof; or
- 256 (c) it did not, at the time it purchased the Payment Claim, take all reasonable steps to verify  
257 that the relevant Payment Claim is legal, valid, binding and enforceable against the  
258 Primary Obligor and that the Payment Claim (or the benefit of it) is capable of being  
259 freely transferred/assigned; or
- 260 (d) it has not checked that the Required Documents reflect the relevant Underlying  
261 Transaction.

262 Subject to the above, a Seller who is a Primary Forfeiter shall sell to its Buyer without recourse to  
263 it provided that the Primary Forfeiter in the Forfeiting Confirmation has irrevocably and  
264 unconditionally delivered to the Buyer all Required Documents (if available) that constitute  
265 Satisfactory Documents.

266 12.5 The Parties may agree to any additional fact, event or circumstance for the purposes of any of the  
267 above articles in Article 12.

268 12.6 A Seller is only liable to its immediate Buyer but may agree in a Forfeiting Agreement or in a  
269 Forfeiting Confirmation that it shall be liable to Buyers other than its immediate Buyer in respect  
270 of all or any of the above agreed events either by stating that liability for such events are for the  
271 benefit of such future Buyers or by permitting assignment of the liability for such events or by any  
272 other legally effective means.

273 12.7 In all cases, the relevant events set out above as between the Seller and its Buyer shall survive  
274 execution of the Forfeiting Agreement or the Forfeiting Confirmation and the Settlement Date.

275 12.8 Nothing in any part of the rules shall change the liability of a Seller as set out in this Article 12.

276 12.9 If an event occurs so that a Party is liable to the other Party then the without recourse provisions  
277 of the rules shall no longer apply and the Parties shall have such liabilities as are determined  
278 under the relevant applicable law.



279 **Article 13 - Notices**

280 13.1 Any notice or other communication (other than Secondary Sales Terms made orally) delivered in  
281 respect of the Forfeiting Transaction must be in writing and may be made by electronic means,  
282 fax or letter to the relevant contact numbers and addresses set out in the Forfeiting Agreement or  
283 the Forfeiting Confirmation.

284 13.2 Any notice, communication or document sent, including any Forfeiting Confirmation, shall be  
285 deemed to have been received:

- 286 (a) if sent electronically, on the day of transmission;
- 287 (b) if sent by fax, with a confirmed receipt of transmission from the sending machine, on the  
288 day on which transmitted; and
- 289 (c) if sent by letter, on actual delivery.

290 A notice or communication given in accordance with the above but received on a day which is  
291 not a Business Day or after normal business hours in the place of receipt shall be deemed to have  
292 been received on the next Business Day.

293 **Article 14 - Funding Compensation**

294 14.1 Unless specified in the Forfeiting Agreement or the Forfeiting Confirmation if the Forfeiting  
295 Transaction is cancelled in accordance with the rules, neither Party shall be obliged to  
296 compensate the other Party for any costs or expenses incurred in unwinding, breaking or  
297 redeploying any funding taken by the other Party in connection with the Forfeiting Transaction.

298 14.2 Nothing contained in Article 14.1 shall otherwise affect the rights of one Party to claim against the  
299 other Party for any breach by the other Party of any term of the Forfeiting Agreement or Forfeiting  
300 Confirmation.

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