

## Are Banks Required to Know Vessel Movement under New US North Korea Sanctions?

**O**n 20 September 2017, US President Donald J. Trump signed an Executive Order imposing additional sanctions with respect to North Korea. The order, effective the following day, has drawn the attention of LC specialists within and outside the US. In particular, one subsection of the order has prompted serious concern among specialists about its implications for the LC community. Section 2(b) states:

“No vessel in which a foreign person has an interest that has called at a port in North Korea within the previous 180 days, and no vessel in which a foreign person has an interest that has engaged in a ship-to-ship transfer with such a vessel within the previous 180 days, may call at a port in the United States.”

In LC discussion circles, the following questions have been raised: Can banks be held liable for the fact that they accepted and paid documents relating to a vessel that has called at a North Korean port over the last 180 days? Under LCs and collections, will banks have to check that a vessel or other means of transport has not called on a North Korean port or territory over the last 180 days? Is this viable?

For several years, many US banks have not dealt with North Korea at all simply due to reputational risk. Likewise, numerous non-US banks in recent years have also opted against any business dealings with the country. Nonetheless, Section 2(b) of the Executive Order seems to place an obligation on banks to investigate in order to determine that a vessel for which it has an interest has not called at a North Korean port over the past six months.

## Taiwanese Bank Victimized by Cyber Heist

**C**yber-criminals again targeted the banking community when Taiwan's Far Eastern International Bank reported that its system fell victim to implanted malware. According to Taiwan news reports, the hackers attempted to steal some USD 60 million however funds wired to the US, Cambodia, and Sri Lanka were detected and all but USD 500,000 was recovered.

Multiple media sources cited cyber-security firm BAE Systems research that points toward the North Korean Lazarus hacking group as the entity responsible.

The incident drew similarities to hackers' February 2016 theft of USD 81 million from Bangladesh Bank. In both cases, the attackers breached banks' internal security controls and targeted their access to the SWIFT system. In neither instance was the SWIFT core messaging system compromised, but the latest attack rekindles questions whether banks have appropriate security controls in place to guard against cyber-attacks.

## Southeast Asia's War on Expiry

**A**dd Indonesia to the list of jurisdictions in which the meaning of expiry can be changed or distorted. Courts in Singapore and Malaysia have decided in some cases that an independent guarantee continues to be available after its expiry date and until its expiry event has occurred. In Indonesia, banks are often requested to add a claim period.

One example of a bank-issued performance guarantee appears at page 42 of this *DCW* issue. We invite your comments and reaction.

For independent undertakings, this practice should be vigorously resisted. If the intention is to have 14 days after an expiry event in which to claim, then the conclusion of this 14-day period should be the expiry date.

#### BAFT News

An ambitious effort to study the use of auto extension clauses in standby LCs was the inspiration for BAFT's decision in November 2015 to form a Task Force for purposes of producing a White Paper reflecting Auto Extension Best Practices in the US. Donald Smith of Global Trade Advisory was appointed Chair and Mary Ann McCarty of PNC was named Vice Chair.

Invitations to participate on the Task Force were extended to US-based issuing banks with the largest outstanding standby LC amounts, based on quarterly statistics published in *DCW*. At present, work continues and is progressing.

In other developments, the BAFT Documentary Collections Committee has been absorbed by the Commercial LC Committee and the BAFT Collections Manual is under review for possible updating.

#### Hold for Value

'Hold for value' requests, also known as 'extend or hold for value' or 'pay or hold for value', have been described by Roeland F. Bertrams' *Bank Guarantees in International Trade* (Fourth Edition, 2013) as a means for instructing a bank to 'block the amount of the (counter) guarantee and do not consider the period of validity as expired' by the beneficiary and/or second issuing bank shortly before expiry.

What is the motive behind this practice? A hold for value request allows the beneficiary to avoid making a drawing call on the guarantee and counter guarantee which might have to be refunded later while simultaneously avoids the lapse of time on the counter-guarantee. Hold for value serves the purpose to extend the guarantee.

What is the significance of hold for value? According to one view, hold for value "is to be deemed a demand for payment, although at a future date" while according to another view, it is "for all practical purposes, not a demand for payment, but a request for extension."

How should hold for value requests be treated? For practical purposes, one approach is that hold for value requests should be treated in much the same way as 'extend or pay' requests as the beneficiary does not seek payment at the time, but wishes to avoid the lapse of the guarantee.

*DCW* Readers: Have you experience with "hold for value" requests? How have you handled such requests?