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Supply Chain Finance Using Drafts and Bills of Exchange

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Who Are We?

- ***Global Receivables and Supply Chain Finance Team***
 - Over 50 professionals across the firm focused on receivables and supply chain finance
 - Coverage across Europe, Asia and the Americas, including the US, the UK, France, Germany, Hong Kong, Singapore, Brazil and Mexico
 - We are the go-to law firm for a number of the world's leading participants in the supply chain finance market.



Welcome To Our Webinar Series!

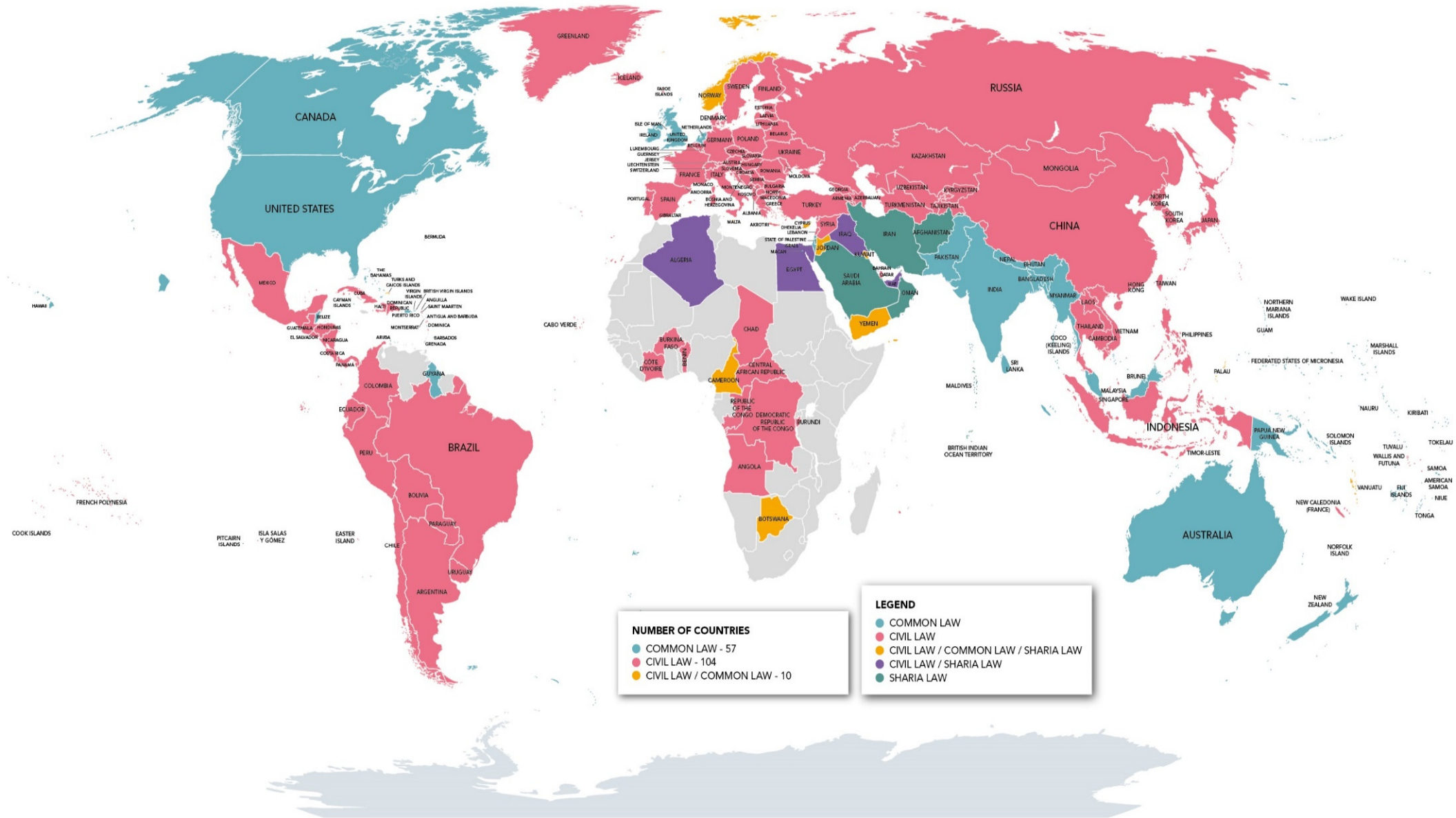
- ***Supply Chain and Working Capital Finance Webinars***

- 9 webinars from July to November (repeated twice daily)
- Previous webinar: 2 September – 5 Most Common Questions About Financing Foreign Receivables; Issues Beyond Simple Perfection, Priority and Enforcement
- Next webinars:
 - 7 October – Working Together for Mutual Benefit: Non-Recourse Receivables Purchase and Trade Receivables Securitization
 - Remaining program schedule available in Appendix to this presentation
- We will have our normal live programs in New York, London, Singapore and Hong Kong in 2021 – circumstances permitting, early in the year



Background

- Across the globe there are broadly 4 approaches to dealing with Bills of Exchange
 - Countries which follow the English position as set out in the Bills of Exchange Act 1882
 - Convention Providing a Uniform Law for Bills of Exchange and Promissory Notes (Geneva, 1930) The League of Nations
 - Countries which have addressed such negotiable instruments in their civil codes
 - Countries which have no laws dealing with bills of exchange
- Countries that are signatories to the United Nations Convention on International Bills of Exchange and International Promissory Notes (New York 1988) (no country has this in force yet)



NUMBER OF COUNTRIES

- COMMON LAW - 57
- CIVIL LAW - 104
- CIVIL LAW / COMMON LAW / SHARIA LAW - 10

LEGEND

- COMMON LAW
- CIVIL LAW
- CIVIL LAW / COMMON LAW / SHARIA LAW
- CIVIL LAW / SHARIA LAW
- SHARIA LAW

What is a Bill of Exchange?

- Unconditional order in writing
- Addressed by one person to another
- Signed by the person giving it
- Requires the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to, or to the order of, a specified person, or to bearer
- Independent payment obligation
- Created by statute
- In the US bills of exchange are called "drafts"

BILL OF EXCHANGE

DATE: _____

Amount:

At _____ days from _____ please pay [Payee's / (Bank's) Name & Address]
_____ or order, the sum of U.S. \$ [] only covering the value of Invoice No. []

Dated _____

To,
[Drawee's / (Buyer's) Name & Address]

[Drawer's / (Seller's) Signature with stamp]

Accepted for Payment on _____

Bills of Exchange



Seller / Drawer

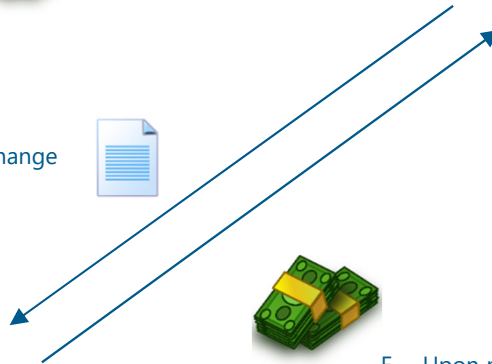
A. Drawer issues a bill of exchange for cargo shipped



D. Finance Provider discounts the bill of exchange and the Seller endorses bill of exchange in favour of the Finance Provider



C. Drawee accepts the bill of exchange



Buyer / Drawee / Acceptor ⁷

B. Finance Provider participates as payee or endorsee of the bill of exchange



Finance Provider (Bank / Payee / Endorsee)

E. Finance Provider waits for the bill of exchange to mature to collect payment

F. Upon maturity of the bill of exchange, the buyer pays the Finance Provider





Holder in due course

- Transferable but accords more protection to a holder in due course as compared to holder for value
 - holder in due course holds the bill free from any defect of title of prior parties:
 - England and Wales - Section 38(2) of the Bills of Exchange Act 1882
 - Hong Kong - Section 38(b) of the Bills of Exchange Ordinance, Cap.19
 - Singapore - Section 38(1)(b) of the Bills of Exchange Act (Cap. 23, 2004 Rev Ed)
 - United States - Section 3-305 of the Uniform Commercial Code



Holder in due course

- where a holder's title is defective and if he negotiates the bill to a holder in due course, that holder obtains a good and complete title to the bill:
 - England and Wales - Section 38(3)(a) of the Bills of Exchange Act 1882
 - Hong Kong - Section 38(c)(i) of the Bills of Exchange Ordinance, Cap.19
 - Singapore - Section 38(2)(a) of the Bills of Exchange Act (Cap. 23, 2004 Rev Ed)
 - United States - Section 3-305 of the Uniform Commercial Code
- the acceptor is precluded from denying to a holder in due course the existence of the drawer, the genuineness of his signature and his capacity and authority to draw the bill:
 - England and Wales - Section 54(2)(a) of the Bills of Exchange Act 1882
 - Hong Kong - Section 54(b)(i) of the Bills of Exchange Ordinance, Cap. 19
 - Singapore - Section 54(b)(i) of the Bills of Exchange Act (Cap. 23, 2004 Rev Ed)
 - United States - Section 3-305 of the Uniform Commercial Code



Holder in due course – status in the United States

- Intersection of Article 3 (Negotiable Instruments) and Article 9 (Secured Transactions) is complex
 - The meaning of terms like “good faith” and “notice” do not have consistent meanings and, even when they do, the determination of the holder in due course status is highly fact specific
 - Duty of inquiry? Constructive notice?
- UCC 3-302: Holder in due course
 - (2) the holder took the instrument (i) for value, (ii) **in good faith**, (iii) **without notice** that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in Section 3-306, and (vi) without notice that any party has a defense or claim in recoupment described in Section 3-305(a)
- UCC 9-330(d): Instrument Purchaser’s Priority
 - Except as otherwise provided in Section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument **in good faith** and **without knowledge** that the purchase violates the rights of the secured party



Conflicts of laws

- Conflicts of laws – bills of exchange are financial instruments created by statute in one jurisdiction, as such their
 - form
 - form of negotiation
 - form of acceptance
 - need for noting and protesting in other jurisdictions

give rise to conflicts of law issues / considerations



How are Bills of Exchange signed and accepted

- Paper Bill of Exchange with wet ink signatures
- Executed by Power of Attorney
- Executed via E-signature

The background of the slide features a close-up, slightly blurred image of several Euro banknotes. The focus is on the portrait of a man, likely a historical figure, with intricate patterns and colors like blue, green, and pink. A vertical orange bar is visible on the left side of the image.

Monetising a Bill of Exchange

- A bill of exchange is an asset of the holder
- A bill of exchange can be monetised through discounting if it is transferable (by way of negotiation and delivery)
- A bill of exchange is a negotiable instrument thus transferable by one person to another for the settlement of debt
- Allegation of a dispute is insufficient to relieve the Buyer's obligations on the bill of exchange



Bills of Exchange – Current use in Supply Chain Finance

- Forfaiting:
 - discounting of payment instruments like bills of exchange independent from the underlying trade and are easily transferable to third parties through endorsement
- Documentary Collection (URC522)
 - presentation of commercial documents and a bill of exchange in exchange for payment for a shipment of goods



Bills of Exchange – Current use in Supply Chain Finance

- Large Scale Payables Platform
 - conversion of open accounts receivable to bills of exchange to facility discounting for large multi-jurisdictional buyer-focused payables programs



Bills of Exchange – UNCITRAL Model Law on Electronic Transferable Records

- Aims to harmonise rules on the recognition of electronic transferable records and consequently facilitate cross-border trade and economic development
- Focuses on the transferability of the record and not on its negotiability on the understanding that negotiability relates to the underlying rights of the holder of the instrument, which fall under substantive law
- Applicable to both bills of exchange and bills of lading
- **Article 8 of the Model Law** – where the law requires information to be in writing, such requirement will be met by an electronic transferable record if the information is accessible for subsequent reference
- **Article 10 of the Model Law** – stipulates the requirements to be met for an electronic record to be transferable



UNCITRAL Model Law on Electronic Transferable Records – General principles

- Technological neutrality:

“Legislation shall not impose the use of or otherwise favour any specific technology.”

- Functional equivalence:

“Purposes and functions of paper-based requirements may be satisfied with electronic communications, provided certain criteria are met.”



Future of Bills of Exchange – Digital Negotiable Instruments (A “smart” bill of exchange?)

- A negotiable instrument that exists purely in electronic format. Such instrument must:
 - be an irrevocable and unconditional payment obligation (with no defences to payment) payable to a holder in due course
 - exist in an immutable electronic form controlled by the holder
 - be freely transferable by the holder
- Achievable or trade utopia?
 - The technology exists, but requires changes to the Bills of Exchange legislation globally if to be recognised as a Bill of Exchange
 - ITFA’s electronic payment undertaking (ePU) - relies on DLT and contract law instead

Questions



Presenter Bios



Angelia Chia | Partner, Singapore | Angelia.Chia@mayerbrown.com

Angelia Chia is a partner in Mayer Brown's Singapore office and a member of Mayer Brown's Global Finance Practice Group. She has more than 20 years of experience in trade and trade finance spanning the globe. Angelia's unique advisory capability stem from her in-house experience in Cargill, JPMorgan and most recently Standard Chartered Bank where she was global head of legal for trade, ensuring she can provide comprehensive end-to-end advice covering the myriad of issues faced by clients as they manage the interplay of laws, regulations, industry rules, systems and policies in the confines of the organisation's operational requirements. Angelia is an active member of the ICC Legal, ITFA and BAFT Committees and is internationally recognised for her trade advisory experience.



Charles Thain | Partner, London | Charles.Thain@mayerbrown.com

Charles Thain is a partner in the Banking & Finance practice of the London office. His work is particularly focused on asset based lending (ABL), receivables finance, supply chain/payables finance and trade finance. Charles represents financial institutions, sponsors, corporates and fintechs in both domestic and cross-border transactions. He joined Mayer Brown in 2015.

Presenter Bios



Massimo Capretta | Partner, Chicago and New York | MCapretta@mayerbrown.com

Massimo Capretta is a partner in Mayer Brown's Chicago and New York offices and a member of the Banking & Finance practice. Massimo's transactional practice focuses on representing both financial institutions and companies across a broad spectrum of domestic and international financing transactions. He has been involved in transactions spanning a number of key industries including automotive, heavy manufacturing, chemicals, metals and energy.

Massimo has particular experience with domestic and cross-border trade receivables securitization, asset-based finance, factoring, supply chain/vendor finance, trade finance and other receivables monetization strategies. He regularly advises clients on the creation and management of bespoke receivables finance transactions. He also has considerable experience advising creditors on workouts and other out of court restructurings of troubled credit facilities.

Massimo has been a speaker and panellist on a number of presentations to industry participants on topics including receivables finance, asset-based lending and cross-border finance.

The background of the slide features a close-up, slightly blurred image of several Euro banknotes. The notes are in shades of blue, green, and yellow. The faces of the historical figures on the notes are visible, along with some of the intricate patterns and text on the paper. A vertical orange bar is positioned on the left side of the slide, partially overlapping the banknotes.

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The background of the slide features a close-up, slightly blurred image of several Euro banknotes. The notes are in shades of blue, green, and yellow, with the faces of historical figures visible. The text 'Appendix - Upcoming webinars' is overlaid in white on the left side of this image.

Appendix - Upcoming webinars

- October 7: Working Together for Mutual Benefit: Non-Recourse Receivables Purchase and Trade Receivables Securitization
- October 21: Credit Insurance – How Does It Actually Work in Supply Chain Finance?
- November 4: The UN Convention on the Assignment of Receivables – What Is It, and How Will It Change Trade Finance?

Registrations for the upcoming webinars will be sent approximately a week in advance.



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