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LETTERS OF CREDIT THE LAW AND CURRENT PRACTICE Third Edition

Lazar Sarna

Release 2020-5 • November 2020

Publisher's Special Release Note 2020

The pages in this work were reissued in November 2020 and all the pages carry that date in the release line. Please note that we have not reviewed the content on every page of this work in this current release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This publication is an authoritative guide to contemporary letter of credit transactions. It describes the mechanics and operation of the letter of credit from the point of view of the issuing bank, the intermediate bank, the applicant and the beneficiary. It illustrates the international character of the modern letter of credit as it is used in business today with cases from Canada, the U.S., the U.K., France and Australia. It also features coverage of important new cases as well as material on the International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits.

What's New in this Update

Release 2020-5 features updates to the case law and commentary in Chapters 1 (Introduction), 2 (Legal Nature of the Letter of Credit), 3 (Parties to the Letter of Credit), 4 (Documentary Requirements), 8 (Judicial Remedies) and 9 (Conflict of Laws).

Highlights

Judicial Remedies — Dispute Resolution — DOCDEX Dispute Resolution — In force as of May 1, 2015, ICC Rules for Documentary Instruments Dispute Resolution Expertise (DOCDEX) establish a resolution procedure for settling disputes involving trade finance-related instruments. Decisions or opinions issued through DOCDEX are only binding if both parties have so agreed. Even if rendered ex parte, a DOCDEX decision is of persuasive value before the courts in the sense that it may serve as evidence of international commercial practice among bankers and traders. Parties may file a Request for a DOCDEX Decision for any dispute relating to: a documentary credit; a standby letter of credit; a bank-to-bank reimbursement; a collection; a demand guarantee or counter-guarantee; a forfaiting transaction, a bank payment obligation (BPO); or any other trade finance-related instrument, undertaking or agreement. The process is hailed by the ICC as a preferred dispute resolution method because of litigation unlimited costs. Depending on the amount in dispute, DOCDEX proceedings are capped at US\$10,000. Cases are decided by a panel of three impartial experts having extensive knowledge and experience in trade finance transactions, selected from a list maintained by the ICC Banking Commission. While DOCDEX Decisions are kept private and are not arbitral awards, anonymized DOCDEX Decisions are widely distributed and accessible through the ICC.

Legal Nature of the Letter of Credit — Theory of Estoppel and Trust — There is a distinction between discounting and negotiation. Discounting means the discounting bank advancing or lending money after the bill has been accepted, which becomes the security for the advancement or loan. Upon failure of that security, there is recourse to the borrower for reimbursement of the moneys advanced or lent. A discounting transaction is a separate side trans-

action outside the credit to which the issuing bank is not privy. Negotiation means giving value to or purchasing the bill usually prior to acceptance and making payment to the beneficiary without recourse, after the negotiating bank is satisfied that the documents tendered for negotiation are in compliance with the credit. Once negotiated, the recourse against the beneficiary is gone even if the issuing bank fails to pay under the credit. Unlike discounting, negotiation is a transaction under the credit, to which the issuing bank is privy: *Grains and Industrial Products Trading Pte Ltd. v. Bank of India and another*, [2014] SGHC 274.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable