

Table of Contents

CHAPTER 1. OVERVIEW OF LETTERS OF CREDIT

§ 1:1	Letters of credit defined
§ 1:2	—What is a letter of credit?
§ 1:3	—How do you obtain a letter of credit?
§ 1:4	—Various types of letters of credit
§ 1:5	— —Export letter of credit
§ 1:6	— — —Revocable
§ 1:7	— — —Irrevocable unconfirmed
§ 1:8	— — —Irrevocable confirmed
§ 1:9	— —Financing with letters of credit
§ 1:10	— — —Time letters of credit
§ 1:11	— — —Transferable letters of credit
§ 1:12	— — —Assignment of proceeds
§ 1:13	— —Revolving
§ 1:14	— —Revocable
§ 1:15	Fundamental principles
§ 1:16	—Documents only
§ 1:17	—Rule of independence
§ 1:18	— —Application of the rule
§ 1:19	— —Applicability of rule in light of court order to the contrary
§ 1:20	— —Application of the Uniform Customs and Practices for Documentary Credits versus the Uniform Commercial Code—Nondocumentary conditions
§ 1:21	— — —Modification of provisions
§ 1:22	— — —Mitigation of damages
§ 1:23	— — —Reasonable time to honor or dishonor a letter of credit
§ 1:24	— —Breach of warranty
§ 1:25	—Strict compliance—The principles
§ 1:26	— —Immaterial or insignificant discrepancies
§ 1:27	— —Ambiguity
§ 1:28	— —Material discrepancies—Names
§ 1:29	— — —Incorrect mode of shipment
§ 1:30	— — —Quantity of goods
§ 1:31	— — —Signed documents
§ 1:32	— — —Substituted beneficiary
§ 1:33	— — —Original documents
§ 1:34	— — —Amendments

CORPORATE COUNSEL'S GUIDE TO LETTERS OF CREDIT

§ 1:35	— — —Incorrect documents
§ 1:36	— — —Demand for payment
§ 1:37	— — —Time for demand
§ 1:38	— — —Strict compliance versus substantial compliance
§ 1:39	— — —Waiver of strict compliance by issuer
§ 1:40	— — —Notice
§ 1:41	—Electronic Uniform Customs and Practices for Documentary Credits
§ 1:42	Terms and conditions
§ 1:43	—Binding promise to pay
§ 1:44	—Expiration date
§ 1:45	—Beneficiary—Designated beneficiary
§ 1:46	— —Conforming documents
§ 1:47	— —Beneficiary's duty of good faith
§ 1:48	— —Beneficiary's receipt of the letter of credit
§ 1:49	— —Amount of draw
§ 1:50	—Revocable/irrevocable
§ 1:51	—Use of proceeds
§ 1:52	—Transferability/assignment
§ 1:53	— —Causes of action against issuer by transferee of beneficiary's rights
§ 1:54	— —Assignment by statute
§ 1:55	— —Assignment under foreign law
§ 1:56	— —Assignment and setoff
§ 1:57	—Amendments—Consent of the confirming bank
§ 1:58	— —Consent of the beneficiary
§ 1:59	— —Consent of issuing bank
§ 1:60	— —Consent of the customer
§ 1:61	— —Contract negotiations
§ 1:62	— —Cancellation
§ 1:63	—Duties and rights of the issuing bank—Duty of good faith
§ 1:64	— —No common-law duty to customer beyond the terms of the contract
§ 1:65	— —Right to subrogation
§ 1:66	— —Duty to customer
§ 1:67	—Place of performance
§ 1:68	Procedural issues—Choice of law
§ 1:69	—Standing
§ 1:70	—Application of international law
§ 1:71	—Jurisdiction
§ 1:72	—Preliminary injunction
§ 1:73	—Attachment
§ 1:74	—Interpleader
§ 1:75	—Intervention
§ 1:76	—Third party beneficiary
§ 1:77	Claim for breach—Statute of limitations

TABLE OF CONTENTS

§ 1:78	—Statement of claim
§ 1:79	Liabilities and obligations of advising and confirming banks—Advising bank’s liability where it limits its activities to conveying information
§ 1:80	—Confirming bank’s duty to execute instructions from a duly authorized signatory
§ 1:81	—Confirming bank’s potential inability to obtain reimbursement from the issuing bank
§ 1:82	—Silent confirmations
§ 1:83	Relation to underlying claim—Terms
§ 1:84	—Statute of limitations
§ 1:85	—Anti-deficiency statutes
§ 1:86	—Conversion
§ 1:87	The fraud exception and other issues affecting payability—The fraud exception
§ 1:88	— — —Fraud by the beneficiary—Commercial letter of credit
§ 1:89	— — —Standby letter of credit
§ 1:90	— — —Injunctions
§ 1:91	— — —Fraud by the issuer
§ 1:92	— — —Fraud by the applicant
§ 1:93	— — —Duty of confirming bank
§ 1:94	— — —Duty of advising bank
§ 1:95	— — —Punitive damages
§ 1:96	— — —Fraud and fidelity bonds
§ 1:97	— — —Obligation of issuing bank to act in good faith
§ 1:98	—Letters of credit in bankruptcy
§ 1:99	— — —Foundation
§ 1:100	— — —Insolvent account party
§ 1:101	— — —Antecedent debt
§ 1:102	— — —Preliminary injunction
§ 1:103	— — —Security interest in proceeds of letter of credit
§ 1:104	— — —Subrogation rights
§ 1:105	— — —Insolvent issuer
§ 1:106	— — —Insolvency of beneficiary
§ 1:107	— — —Conclusion
§ 1:108	—Receivership
§ 1:109	—Anticipatory repudiation
§ 1:110	—Standing of third parties
§ 1:111	Breach of warranties
§ 1:112	Forgery
§ 1:113	Mistake
§ 1:114	Attorneys fees
§ 1:115	Standby letters of credit—Generally
§ 1:116	—Areas of use
§ 1:117	—Issuing bank’s risk
§ 1:118	—Governing rules

- § 1:119 —Assumption
- § 1:120 —Fraud
- § 1:121 —Distinguished from guarantees or sureties
- § 1:122 —Standby letters of credit as deposits
- § 1:123 —Standby security for performance
- § 1:124 —Standby as a documentary letter of credit
- § 1:125 —Trade accounts receivable
- § 1:126 —Warranties
- § 1:127 —Expiration date
- § 1:128 —Drafting suggestions

CHAPTER 2. A COMPARISON BETWEEN THE UCC'S ORIGINAL AND REVISED VERSIONS OF ARTICLE 5

- § 2:1 Overview of revisions
- § 2:2 Interpretation of the letter of credit
- § 2:3 —Choice of law
- § 2:4 —Revocability and the irrevocability presumption
- § 2:5 —Default expiration of a letter of credit
- § 2:6 Electronic media addressed
- § 2:7 Autonomy of the parties
- § 2:8 Honoring of a letter of credit
- § 2:9 Transfer and assignment of beneficiary rights
- § 2:10 —Transfer of a letter of credit
- § 2:11 —Succession by operation of law
- § 2:12 —Assignment of letter of credit proceeds
- § 2:13 The fraud exception and warranties
- § 2:14 —Fraud and forgery
- § 2:15 —Warranties from the beneficiary
- § 2:16 Remedies
- § 2:17 —Interest and the English rule
- § 2:18 —Injunctive relief
- § 2:19 —Beneficiary's remedies for wrongful dishonor
- § 2:20 —The applicant's arsenal
- § 2:21 —Liability for confirmers and advisers

CHAPTER 3. OTHER LETTER OF CREDIT AUTHORITY

- § 3:1 The Uniform Customs and Practice for Documentary Credits and eUCP for electronic transmission of documents—The Uniform Customs and Practice for Documentary Credits
- § 3:2 —eUCP for electronic transmission of documents
- § 3:3 Standby letters of credit and the ICC Uniform Rules on Demand Guarantees

TABLE OF CONTENTS

- § 3:4 The U.N. Convention on Independent Guarantees and Standby Letters of Credit
- § 3:5 The International Standby Practices 1997
- § 3:6 —Extending expiration date
- § 3:7 —Obligation to make payment
- § 3:8 —Ability to modify rules
- § 3:9 SWIFT: The Standard-Setter for Electronic Media in Letter of Credit Transactions
- § 3:10 International arbitration mechanisms for letter of credit disputes
- § 3:11 —The ICC's Documentary Instruments Dispute Resolution Expertise Rules
- § 3:12 —The ICLOCA Rules
- § 3:13 —Confidentiality of arbitration proceedings

CHAPTER 4. CHECKLIST FOR PREPARING AND VERIFYING LETTERS OF CREDIT

- § 4:1 Checklist for preparing and verifying letters of credit

CHAPTER 5. LETTERS OF CREDIT IN INTERNATIONAL FINANCIAL TRANSACTIONS

- § 5:1 The essential nature of a letter of credit
- § 5:2 Choice of law in international transactions
- § 5:3 Letter of credit terms
- § 5:4 Strict compliance and construction
- § 5:5 Local law
- § 5:6 Financial strength concerns; Reimbursement agreement issues

CHAPTER 6. STRATEGIES AND MECHANISMS TO SECURE PAYMENT IN INTERNATIONAL TRANSACTIONS

- § 6:1 Introduction
- § 6:2 A short discussion of credit and underwriting the transaction—How well do you know the customer?
- § 6:3 —How much risk are you willing to assume?
- § 6:4 The contract
- § 6:5 —The payment terms
- § 6:6 —Performance terms
- § 6:7 —Dispute resolution terms
- § 6:8 —Assignments and transfers
- § 6:9 Payment mechanisms in the contract—Down payments and advance payments
- § 6:10 —Letters of credit

- § 6:11 —Guarantees by parent or third parties
- § 6:12 —Retention of title or security interest in the goods
- § 6:13 —Late payment charges and interest
- § 6:14 —Discounts for prompt payment
- § 6:15 —Delay costs where delay is caused by purchaser
- § 6:16 —Installment notes
- § 6:17 —Escrow accounts
- § 6:18 —Opinions of counsel
- § 6:19 Letters of credit
- § 6:20 —The unconditional and irrevocable letter of credit
- § 6:21 —Standby letters of credit
- § 6:22 —Attempts by the buyer to stop payment
- § 6:23 —General observations on letters of credit
- § 6:24 Miscellaneous mechanisms—Credit insurance
- § 6:25 —Bankruptcy law awareness
- § 6:26 —Currency issues
- § 6:27 —Financing of receivables
- § 6:28 Enforcing payment through arbitration or the courts—
Contract provisions on remedies and venue
- § 6:29 —The “Mareva Injunction”
- § 6:30 Conclusion

CHAPTER 7. ARBITRATING LETTERS OF CREDIT

I. IN GENERAL

- § 7:1 Introduction
- § 7:2 Types of alternative dispute resolution—Negotiation
- § 7:3 —Mediation
- § 7:4 —Arbitration (nonbinding/binding/final offer)
- § 7:5 —Mediation/arbitration
- § 7:6 —Mini-trial
- § 7:7 —Neutral factfinder
- § 7:8 —Ombudsman
- § 7:9 —Summary jury trial
- § 7:10 —“Private judging”
- § 7:11 —Other
- § 7:12 Use of consulting architect
- § 7:13 Ways to discourage litigation
- § 7:14 Litigation or arbitration
- § 7:15 —Stay of litigation
- § 7:16 Drafting arbitration agreement or clause
- § 7:17 Drafting arbitration agreement or clause—Checklist
- § 7:18 Federal Arbitration Act

TABLE OF CONTENTS

II. INTERNATIONAL COMMERCIAL ARBITRATION

A. TREATIES AND LEGISLATION

- § 7:19 Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- § 7:20 Inter-American Convention on International Commercial Arbitration
- § 7:21 Uniform Customs and Practices (UCP)

B. INTERNATIONAL ARBITRATION ORGANIZATIONS

- § 7:22 In general
- § 7:23 United Nations Commission on International Trade Law
- § 7:24 International Center for Letter of Credit Arbitration
- § 7:25 International Chamber of Commerce

III. FORMS

- § 7:26 Commercial arbitration agreement—Negotiation and mediation prerequisite
- § 7:27 Provision—Optional arbitration
- § 7:28 Provision—Mandatory—Expiration

CHAPTER 8. LETTERS OF CREDIT AND THE U.S. ANTIBOYCOTT LAWS

- § 8:1 Overview
- § 8:2 Illustrations of boycott problems in letters of credit
- § 8:3 —Illegal requests relating to goods and services
- § 8:4 — —OAC illustrations
- § 8:5 —Illegal requests relating to suppliers or producers
- § 8:6 — —OAC illustrations
- § 8:7 —Illegal requests relating to the country of origin of products
- § 8:8 — —OAC illustrations
- § 8:9 —Illegal requests relating to shippers or carriers
- § 8:10 — —OAC illustrations
- § 8:11 —Illegal requests relating to the applicability of local laws
- § 8:12 — —OAC illustrations
- § 8:13 Practice pointers
- § 8:14 —Lessons from the *BNL* case
- § 8:15 —Amending the letter of credit
- § 8:16 2000 regulatory amendments

CHAPTER 9. LETTERS OF CREDIT AND BANKRUPTCY

- § 9:1 Introduction—Issues raised

- § 9:2 —Letters of credit—Background
- § 9:3 Jurisdiction
- § 9:4 Objection to claim against estate
- § 9:5 Insolvent account party
- § 9:6 —Preferential transfers—Antecedent debt
- § 9:7 — —Secured claims
- § 9:8 — —New value exception
- § 9:9 — —Earmarking doctrine
- § 9:10 —Automatic stay
- § 9:11 —Default terms
- § 9:12 —Excess funds
- § 9:13 Insolvent issuer
- § 9:14 —Insured deposit
- § 9:15 —Provable claim
- § 9:16 Insolvency of beneficiary
- § 9:17 Codebtors and subrogation rights
- § 9:18 Pre-confirmation debts in reorganization
- § 9:19 Conclusion

CHAPTER 10. SAMPLE LETTERS OF CREDIT

- § 10:1 Irrevocable letter of credit reimbursement agreement
- § 10:2 Form of letter of credit, form of site draft, and form of transfer notice
- § 10:3 Form of Letter of Credit Request
- § 10:4 Form of letter of credit—Irrevocable clean letter of credit and instructions for transfer
- § 10:5 Credit to secure lease—Landlord's form—Sample 5
- § 10:6 Guaranty letter of credit—Account party's form—Sample 6
- § 10:7 Form of letter of credit
- § 10:8 Form of letter of credit
- § 10:9 Irrevocable standby letter of credit—Samples
- § 10:10 Letter of credit—Samples
- § 10:11 Transfer form
- § 10:12 Notice to buyer of dishonor of letter of credit
- § 10:13 Provision of sales agreement—Buyer to furnish letter of credit issued by foreign bank
- § 10:14 Form of letter of credit
- § 10:15 Form of sight draft
- § 10:16 Form of transfer notice
- § 10:17 Form of letter of credit
- § 10:18 Form of letter of credit request
- § 10:19 Form of letter of credit request
- § 10:20 Form of letter of credit
- § 10:21 Request for entire absolute and irrevocable transfer of letter of credit without substitution of invoices

TABLE OF CONTENTS

§ 10:22	Form of letter of credit report
§ 10:23	Form of irrevocable and transferable letter of credit
§ 10:24	Irrevocable standby letter of credit
§ 10:25	Form of irrevocable letter of credit
§ 10:26	Form of standby irrevocable transferable letter of credit, form of sight draft, and transfer request form for standby letter of credit
§ 10:27	Form of irrevocable standby letter of credit
§ 10:28	Form of irrevocable standby letter of credit
§ 10:29	Form of consent to extend expiry date for letter of credit
§ 10:30	Form of letter of credit request
§ 10:31	Amended and restated letter of credit promissory note
§ 10:32	Form of letter of credit request
§ 10:33	Form of irrevocable standby letter of credit
§ 10:34	Form of demand
§ 10:35	Form of irrevocable standby letter of credit
§ 10:36	Form of irrevocable standby letter of credit
§ 10:37	Change order for—Letter of credit reduction and extension
§ 10:38	Form of letter of credit with form of sight draft
§ 10:39	Form of sight draft
§ 10:40	Request for full transfer of a standby letter of credit
§ 10:41	Form of irrevocable letter of credit and reduction schedule
§ 10:42	Form of irrevocable standby letter of credit
§ 10:43	Form of letter of credit request
§ 10:44	Incumbency certificate

APPENDICES

Appendix A. Comparison Table of the Original and Revised Versions of the Uniform Commercial Code Article 5—Letters of Credit

Appendix B. Table of State Letter of Credit Statutes

Appendix C. Executive Legal Summaries

Bibliography

Table of Laws and Rules

Table of Cases

Index