

Preface

This fourth edition is intended to be permanent. It is necessary because the International Chamber of Commerce has promulgated UCP 600, which is effective for letters of credit issued on or after July 1, 2007, and it became apparent that much of this treatise merited revision. UCP 500, the 1993 version of the Uniform Customs, will continue to govern credits issued prior to July 1, 2007. This fourth edition discusses the major issues of letter of credit law with attention to both of those important documents. The publication of the third edition of this treatise, in 1996, followed two major developments in letter of credit law. In 1993, the International Chamber of Commerce had adopted UCP 500, which became effective on January 1, 1994; and in 1995, the Uniform Commercial Code's sponsoring agencies adopted a new letter of credit article (Article 5), which the state legislatures have now adopted. Courts continue to fashion a common law of letters of credit. The publisher and I plan to update this fourth edition, as we updated prior editions. This fourth edition, however, is permanent. Supplements will appear after the divider tab "Cumulative Supplements."

Each supplement enables readers to maintain a current, up-to-date revised edition. The text and footnotes will continue to incorporate the new and old versions of Article 5 and the new and old versions of the UCP.

ORGANIZATION

With few exceptions, the organization of the treatise remains the same. That organization permits those familiar with letters of credit to browse through the pages to find late developments and educate themselves in areas with which they are unfamiliar. The structure and sequence of subjects in the text rest on the assumption that many researchers read selectively. Moreover, the text takes pains to address issues that will interest those litigating letter of credit questions.

But this edition is not simply a manual for seasoned letter of credit lawyers and bankers alone. It retains an organization that lends itself to the letter of credit novice.

The first three chapters are introductory. Their role is to introduce the novice to the letter of credit as it appears in commerce and banking and to introduce the major themes of letter of credit law. That introduction is not easy. Letters of credit resemble contracts and secondary guarantees; and a primary objective of the first three chapters is to disabuse the reader of the notion that a modicum of

letter of credit learning coupled with some contract law and some suretyship law will yield efficient letter of credit law. The purpose of the first three chapters is to demonstrate that the formula spells trouble for letters of credit as commercial products and for the lawyer who tries to apply such law to them.

The following chapters treat specific areas of letter of credit law. Chapter 4 describes the balance in letter of credit law among UCC Article 5, UCP 600 and UCP 500, the common law of letters of credit, various other legal regimes fashioned for letters of credit, and the law of contract. Chapter 5 makes the case for the special rules that govern the issuance, amendment, termination, and enforcement of letters of credit. Here, for the first time, the uninitiated will see how different letters of credit are from similar legal devices.

Chapter 6 and 7 treat the heart of letter of credit law. They deal with the documentary compliance rules and the rules for stopping payment under letters of credit—the loci of letter of credit litigation. These chapters explain the two grand precepts of letter of credit law (the strict compliance rule and the independence principle) and make the case for discipline in letter of credit practice and enforcement. Chapter 7 also addresses the challenges that bankruptcy law poses for letters of credit when the bank's customer, the applicant, becomes insolvent and the difficult, complex questions that the subrogation remedy raises for letters of credit.

Chapter 8 is a short chapter with a measure of esoteric leaning on documents of title, security interests, and negotiable instruments law. Few treatises address these issues, but the questions they cover are important to the letter of credit issuer and to its correspondents, especially when they must look to the documents for reimbursement. This chapter deals with matters relating to bankers' acceptances, negotiation credits, and the credit issuer's rights to documents that arise in the transaction.

Chapter 9 deals with remedies in the letter of credit context. The discussion illustrates the operation of unique letter of credit rules when the transaction breaks down.

Chapter 10 deals with the unusual and somewhat opaque rules under which parties other than the letter of credit beneficiary may enjoy the benefit of the issuer's undertaking. The rules are not always clear, are unique to letter of credit law, and permit letter of credit benefits to flow through to a number of parties: transferees, assignees, and negotiating banks.

Chapter 11 addresses many questions that litigators face when they engage in suits arising out of the letter of credit. The features of the credit command unique rules of practice and procedure, and this chapter details them with special attention to the litigator who may be proficient in commercial matters but is unfamiliar with the letter of credit.

Finally, Chapter 12 addresses specific issues that arise by virtue of the fact that most letter of credit issuers are commercial banks subject to a panoply of

state and federal regulation. In particular, this chapter covers the knotty issues that arise in what one hopes is the rare case of bank insolvency.

The law of letters of credit has not reached a stage of repose. Each year, courts decide letter of credit cases that demonstrate the growth of the credit as a commercial device and the development of the law to serve that commercial dynamism.

In the meantime, this treatise will continue, as it has in the past, to provide comprehensive treatment of the subject and to report on late developments by means of periodic supplements.

This work is now the most frequently cited source on letter of credit law. The publisher and I are committed to making this treatise a rich resource for lawyers and bankers as letters of credit play their role in commerce in this new century.

THE APPENDIXES

There are eleven appendixes. Appendixes A and B set forth both versions of Article 5, so that readers do not have to hunt for the version that is not effective in their state. The 2006 UCP (UCP 600) and the 1993 UCP (UCP 500) versions of the Uniform Customs and Practice for Documentary Credits with annotations for each appear in Appendixes C and D, respectively.

Appendix E contains a number of illustrative documents that appear in letter of credit transactions with some frequency. These are not reproduced as forms but as examples of the various documents, so that persons unfamiliar with them will be able to see in detail the documents that courts are talking about and that a letter of credit may require.

Appendix F is a basic document produced by UNCITRAL in connection with the drafting of the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit. This appendix includes the text of the convention with helpful discussion of UNCITRAL deliberations in connection with the drafting of the convention.

Appendix G is the interpretive ruling of the U.S. Comptroller of the Currency that guides nationally chartered banks and that has influence in state bank regulation dealing with letters of credit. Appendix H is the International Chamber of Commerce (ICC) Uniform Rules for Demand Guarantees; and Appendix I is the ICC's Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits. Appendix J sets forth sections of revised Uniform Commercial Code Article 9 that relate to letters of credit. Appendix K is the 1983 version of the UCP (UCP 400), which we have retained in order to provide

the historical treatment of UCP provisions, many of which are part of the latest versions of the UCP, UCP 600 and UCP 500.

The glossary is a comprehensive treatment of letter of credit terms drafted with a view to making it easier for nonlawyer bankers and nonbanker lawyers to deal with this work and the letters of credit it covers.

CITATIONS

The text and footnotes refer to the Uniform Customs as the Uniform Customs or the UCP. We have taken care to differentiate articles in UCP 600 and those in UCP 500. Occasionally, the cases we discuss rely on earlier versions of the UCP, and we have endeavored to make those references clear.

References to the Uniform Commercial Code (UCC) are generally to the official version, unless dates indicate the contrary. The text often refers to Revised Article 2, though that revision has not as of this writing been adopted by any of the jurisdictions. Frequently, those citations will also refer to the pre-revised version of that important article, which remains the source of sales law in the United States.

ACKNOWLEDGMENTS

The first edition of this treatise in 1984 was some four years in the making. Changes in the Uniform Customs and the Uniform Commercial Code prompted revisions in 1991 and 1996. These and more than thirty-five supplements over the last twenty-three years were an effort to keep pace with the dynamism of this corner of commercial law. None of these would have been possible without the support of family and a host of practitioners, bankers, academic colleagues, and especially librarians and support staff of the seven law faculties where I have taught and studied over that period. I've acknowledged many of those folks in earlier editions and want to recognize a few signal contributions over the ten years since the last revision. First, are deans who provided financial support through research grants for this work and other publications: James K. Robinson, Joan Mahoney, Frederica Lombard, and Frank Wu. Generous gifts from the Law School's graduates and friends made that support possible. In addition, the University's President, Dr. Irvin D. Reid, named me a University Professor and supplemented the decanal research support with University grants. These votes of confidence typify Wayne State's commitment to scholarship and academic research. They made this treatise possible. Finally, it is fitting to add the names of several people for their personal loyalty over the last ten years or

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