Recent Developments: Letter of Credit Transactions

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Introduction

The role that letters of credit play in facilitating domestic and international commercial transactions is so significant that it is imperative that letters of credit transactions operate as expeditiously and flawlessly as possible. The laws and rules governing letters of credit transactions continue to evolve in concert with the changing demands and conditions of the domestic and international marketplaces.

Because of the importance of letter of credit transactions, it's worthwhile to examine some of the more notable changes that have occurred within the last decade with respect to those laws and rules. The seemingly endless efforts of the relevant authoritative and legislative bodies to maintain the practical and commercial viability of this instrument is a testament to its critical role in domestic commercial transactions and international trade. This article focuses on letter of credit because that is the most commonly accepted method of securing international transactions where a U.S. party is involved.

By way of background, a letter of credit is defined as an instrument, issued to a beneficiary by an issuer for the account of an applicant by which the issuer promises it will honor a draft or a demand for payment by the beneficiary, provided the terms specified in the letter of credit are met. The two basic types of letters of credit are commercial and standby. The commercial letter of credit serves as a means of payment to a beneficiary when the underlying transaction is properly performed, and the standby letter of credit serves as a means of payment to the beneficiary when the underlying transaction is not properly performed.

The commercial letter of credit is used in domestic and international sales of goods and services transactions in which the seller relies on the creditworthiness of a bank (the “issuing bank”), and the ease by which payment is received, to provide payment for its goods rather than that of the purchaser. Simply stated, upon delivery of the goods, the issuing bank makes payment to the seller under the terms of the letter of credit, and the purchaser reimburses the issuing bank. The standby letter of credit is used in commercial transactions where the issuing bank is engaged to honor a demand for payment of a specified sum of money in accordance with the terms of the standby letter of credit.

In such transactions, typically the trigger for the payment demand relates to the occurrence of a default or other non-performance of obligations under the terms of the underlying transaction documents. As an aside, in non-U.S. countries, a standby letter of credit may be used interchangeably with a bank guarantee; although there are some distinctions between the two instruments, the standby letter of credit is the functional equivalent of a bank guarantee. Due, however, to a prohibition that exists under U.S. law against banks granting guarantees, standby letters of credit are used in the U.S. in lieu of bank guarantees.

The laws and rules that govern letters of credit transactions emanate from many sources. In the U.S., certain domestic laws relate to letters of credit, namely, Revised Article 5 of the Uniform Commercial Code (Revised Article 5). Certain other rules may be incorporated by the contracting parties on a contract-by-contract basis, such as the Uniform Customs and Practices for Documentary Letters of Credit, International Chamber of Commerce Brochure No. 500 (the UCP), which is a set of standard terms written by the International Chamber of Commerce (ICC) that have been incorporated into virtually every letter of credit around the world. In addition to the foregoing, in the U.S. there is a substantial body of case law regarding the major principles that underlie this area of law.
Over the past decade, the laws and rules applicable to letters of credit transactions have undergone significant change. The more interesting trends and changes that have occurred include: (i) the response of the marketplace to the often draconian effects of the “strict compliance principle”; (ii) the current and anticipated effects of electronic technology on letters of credit transactions; (iii) the prospective applications of the new fraud standard for letters of credit transactions and (iv) the ICC’s progress in establishing efficient standardized provisions for commercial and standby letters of credit.

The effects of the “strict compliance principle” have been unfortunate, to say the least. The basic principle is that documents presented (presentation documents) to the issuer by the beneficiary must comply, without deviation in any respect, with the terms of the letter of credit. Under the strictest application of this principle, even the slightest deviation in the presentation documents would not be an acceptable discrepancy and would afford the issuing bank the right to refuse to honor its obligations under the letter of credit.

This standard has had a stifling impact on the marketplace, and the market has responded with new initiatives to standardize document review processes to avoid frivolous disputes over meaningless discrepancies in presentation documents. The anticipated transition from paper-based to paperless transactions, destined to progress rapidly with the recent introduction by the ICC of an electronic supplement to the UCP, known as the eUCP, will facilitate better communication between parties. We will review the scope of the new eUCP, as well as other progress that has been made to advance the paperless transaction initiative. We will also consider some of the other market inefficiencies that have been addressed and eliminated recently by the ICC that have satisfied certain demands of the marketplace, and other matters that, perhaps, still need to be addressed, such as the drafting a revised version of the UCP.

**Strict Compliance Principle**

The results of a survey published by the ICC in February of last year indicated that between 60 percent and 70 percent of letters of credits were rejected by the applicable issuing bank on first presentation of the relevant presentation documents. Understandably, these statistics raise concerns at the domestic and international levels. The ICC has indicated that while some of the rejections may have been based also upon substantive discrepancies among the presentation documents and the requirements of the respective letter of credit, other rejections were based on typographical errors, personal opinions and the varying degrees of expertise among practitioners. The staggering results of the survey clearly demonstrate the need for substantive reform; as noted by the ICC, these rejections “have been slowing trade and have led to costly litigation.”

Perhaps the place to begin is in the courts, both U.S. and non-U.S. Since a high percentage of all documents tendered for payment in connection with letter of credit transactions contain discrepancies, the role of the courts in determining which discrepancies constitute substantive grounds for dishonoring a letter of credit is very important. Numerous letters of credit transactions are being dishonored due to minor discrepancies in the presentation documents; many courts have applied the strict compliance principle and have ruled in favor of issuers that refuse to honor the applicable letters of credit notwithstanding the commercial performance of the moving party.

For a clear statement of the “strict compliance principle” in the U.S., we look to Section 5-108(a) of Revised Article 5. Section 5-108(a) reads, in relevant part, as follows: “an issuer shall honor a presentation that, . . . appears on its face strictly to comply with the terms and conditions of the letter of credit.” Although the principle was codified in Revised Article 5, it has long been applied by the U.S. courts. In 1924, the Court in *Old Colony Trust Co. v. Lawyers’ Title and Trust Co.*, addressed the issue of the proper application of the strict compliance principle. In that case, the letter of credit required the presentation of documents, together with certain other requirements. The letter of credit stipulated how the goods delivered were to be packed and weighed. According to the Court’s analysis, it was clear from the letter of credit that the object of these additional requirements was to ensure that the goods had been cleared by governmental authorities before the beneficiary proffered the presentation documents to the issuing bank; however, the goods were not cleared by the government until after the letter of credit had expired. The beneficiary presented drafts that falsely indicated that the terms of the letter of credit had been satisfied. The Court, in granting the defendant’s motion for summary judgment focused on the discrepancy between the requirement of the letter of credit and untruthful statement contained in the drafts, stating that “the transaction is one to purchase documents and not goods and that, in our view, the documents referred to in a
The application of this principle requires that every party to a letter of credit transaction that is seeking payment must tender documents that comply in every respect with the requirements of the letter of credit. If the documents tendered are in strict compliance, then the party who is obligated to make payment must honor its obligation. To the contrary, if the documents tendered on their face do not strictly comply with the terms of the letter of credit, then the party with the obligation to make payment may reject the documents and refuse payment to the tendering party. The purpose and justification for the rule is to protect the applicant by ensuring that it will not have to pay the issuer of the letter of credit except against documents it has specifically designated as triggering the obligation. The rule also protects the issuing bank because the bank can rely solely on the documents presented in its decision to make payment and need not make value judgments regarding any discrepancies in the documents. The ramifications of a mechanical application of this principle, however, are borne out by the survey results described above.

On a transactional level, the rigid application of this standard can lead to seemingly inequitable results for contracting parties who have fully performed under the terms of the underlying agreement. A recent case that illustrates the potential harshness of this rule is Hanil Bank v. PT. Bank Negara. In Hanil, PT. Kodeco Electronics Indonesia (Kodeco) applied for a letter of credit to be issued by PT. Bank Negara Indonesia (Pesero) (BNI) for the benefit of Sung Jun Electronics Co., Ltd. (Sung Jun). When BNI issued the letter of credit, it misspelled Sung Jun’s name as follows “Sung Jin Electronics Co. Ltd.” Sung Jun did not request an amendment to the letter of credit to correct its name on the letter of credit. Subsequently, Sung Jun sold the letter of credit to Hanil Bank (Hanil). When Hanil presented the documents to BNI for payment, BNI refused to honor the letter of credit because of discrepancies between the presentation documents from the requirements of the letter of credit, including the misspelling of the beneficiary’s name. Hanil filed suit and both parties moved for summary judgment.

In granting the motion in favor of BNI, the Court, relying on Beyene v. Irving Trust Co., held that the misspelling of the beneficiary’s name was a “material discrepancy.” In Beyene, the facts and issues were very similar to those in Hanil. The plaintiffs in that case brought an action against the issuer/defendant seeking damages for failure to honor a letter of credit. The Court granted the defendant’s motion for summary judgment finding that the bill of lading failed to comply with the terms of the letter of credit; the bill of lading erroneously listed the name of the person to whom notice was to be given of the arrival of prefabricated houses. In this transaction, the name was listed as “Mohammed Sofan” rather than “Mohammed Soran.” The Court in Beyene held that “the misspelling in the bill of lading of Sofan’s name as ‘Soran’ was a material discrepancy that entitled [the defendant] to refuse to honor the letter of credit.” The Court noted that “this is not a case where the name intended is unmistakably clear . . . as might be the case if . . . ‘Smith’ were misspelled ‘Smithh.’” The Court in Hanil relied on the reasoning of Beyene in reaching its decision.

Recognizing the problematic nature of the application of the strict compliance principle, many courts have developed other standards that have been applied to provide a more equitable disposition of these types of commercial disputes. An example is the “doctrine of substantial compliance,” which allows certain discrepancies and permits the court to examine whether such discrepancies creates ambiguity, or whether the issuing bank could be misled into thinking there was compliance with the letter of credit. However, it is the strict compliance principle that is deemed to be a “cornerstone” of letter of credit jurisprudence.

In an effort to address this problem on an international level, the ICC has taken various steps to standardize the approach taken by the bank employees responsible for checking documents for documentary compliance on behalf of an issuer. In February 2003, the ICC announced the availability of the International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP). The ISBP is a supplement to the UCP and it serves as a primer for the rules used in day-to-day practice. The ICC believes that this supplement will dramatically reduce the number of letters of credit that are rejected on first presentation by issuing banks. Also, in July 2002, the ICC published a collection of opinions on its rules governing, among other things, letters of credit. The opinions provide guidance on the interpretation of the UCP and encourage uniformity of UCP practice. Additionally, the International Financial Services Association has published a standard practice manual that attempts to codify the practices of U.S. banks. These guidelines may serve to help banks improve the review of letters of credit and avoid unnecessary litigation. In addition, these guidelines may serve to as criteria for courts to evaluate...
when deciding cases relating to documentary compliance of letters of credit.

**Electronic Letter of Credit Transactions**

Another significant change for letters of credit transactions is the trend toward automating entire transactions. The most notable recent development in this arena is the ICC’s introduction of the new electronic supplement to the UCP, the eUCP, on March 31, 2002. The supplement contains twelve articles which, if incorporated in a documentary letter of credit, will be effective where there are electronic or partially electronic presentations of documents. These rules are similar to the recently introduced rules for standby letters of credit, the International Standby Practices (ISP 98) which include provisions for electronic documents. These developments are the industry’s response to the ever-increasing number of electronic documents being used in letter of credit transactions. The eUCP is expected to revolutionize the way in which letters of credit are currently used. One member of the task force that created the eUCP predicted “that ‘after 10 years there will be virtually no paper-based trade documentation’.”

It would seem that electronic documents are the way of the future. It will be possible for letter of credit transactions to operate electronically without major problems. Progress has been made to eliminate the obstacles that currently exist with respect to this goal. For example, a major impediment to a complete electronic letter of credit system is the absence of a generally accepted electronic bill of lading system. A solution to this problem, however, seems imminent. A consortium of international bankers and logistical support providers are currently experimenting with an electronic bill of lading system known as “bolero.net.” In addition, the eUCP contributed to this initiative by supplementing the UCP with defined terms and other articles that take into account the “fact that in the electronic world things are done differently from the paper-based world.”

Another challenge for the automation of these transactions is government-generated documents; documents required by governments for international trade and documents that embody rights with respect to property. In recent years, however, accelerated efforts have been undertaken by various governments to remove documentary obstacles to trade and commerce in their regulations. The U.S. and other governments are “moving to revise old laws and enact new ones to create electronic commerce-enabled environments.”

Additional contributions to the initiative to automate letters of credit transactions should also be noted. In September 2000, the ICC announced the availability of a system called DC-PRO Focus. The new system is a web-based archive of all the ICC’s documentary credit information, and is available on a by subscription basis. Within the first five (5) months of its implementation, users from more than twenty-five (25) countries had subscribed to the service. Other pending projects include a product called “LC connect” that seeks to provide an electronic market in which “applicants, beneficiaries and banks can bid for letter of credit issuances and confirmations,” and a product called “Quality LC” that will attempt to improve the process of document issuance and presentation, as well as projects such as “bolero.net,” “originals on line” and “SWIFT” “seek to replace the mails and courier services with secure and reliable Internet transmission of electronic records.”

**The New Fraud Rules**

In October 1995, Article 5 of the UCC was revised to cure some of the shortcomings of the original statute. By May 30, 2002, the revised version was adopted by almost all of the states in the U.S. The revised version is consistent with, and complementary to, the UCP. Revised Article 5, however, is primarily concerned with issues of liabilities and responsibility and contains provisions regarding the fraud rule which is not included in the UCP.

The fraud rule is an important component of Revised Article 5 and was modified from its prior version to clarify the appropriate standard to be applied. The new standard for the fraud rule is extremely important for cases and disputes relating to letters of credit transactions. Prior to its inception, various standards of “fraud” were applied in these types of cases, but no standard was consistently applied. Fraud is the only exception to the “principle of independence”, which holds that an issuer’s obligation to honor a demand or draft from a beneficiary under a letter of credit is distinct from any matters or disputes relating to the underlying transactions. Thus, a uniform standard for fraud is very important for certainty and consistency in the resolution of commercial disputes.

Prior to the drafting of the revised version, a task force was formed to study previous case law and make recommendations for the revision. The task force recommended, among other things, that the standard of fraud should be higher than that for
common law fraud and that a different standard should apply for commercial and standby letters of credit.93

Ultimately, the drafters of Revised Article 5 adopted a “material fraud” standard of fraud.94 The Official Comment on Section 5-109 explains the meaning of “material fraud” for commercial letters of credit and standby letters of credit. For commercial letters of credit, “material fraud” requires a factual determination that the “fraudulent aspect of a document be material to a purchaser of that document or that the fraudulent act be significant to the participants in the underlying transaction.”95 For standby letters of credit, “material fraud” requires a finding that “the beneficiary has no colorable right to expect honor and where there is no basis in fact to support such a right to honor.”96 The new standard does not consider the beneficiary’s subjective intent to defraud but rather examines “the severity of the effect of the fraud on the transaction.”97 The drafters of Revised Article 5 accepted the recommendations of the task force and set a new standard applicable exclusively to letters of credit.98

A brief historical review of the application of the fraud standard prior to Revised Article 5, beginning with the seminal case, illustrates the inconsistent treatment of the fraud standard by U.S. courts, thereby demonstrating the need for a clearly defined new standard. The seminal case is Sztejn v. Henry Schroder Bank- ing Corp.99 In Sztejn, before the issuing bank made payment to the beneficiary, the applicant filed a suit seeking a declaration that the letter of credit and the draft thereunder were void, and for injunctive relief to prevent the issuer from paying the draft because the beneficiary allegedly shipped worthless materials in lieu of the goods that the applicant had bargained for.100 The applicant/plaintiff also alleged that the confirming bank that presented the draft documents for payment to the issuing bank received notice of the beneficiary’s active fraud before it accepted the draft.101 The confirming bank filed a motion to dismiss claiming that its only concern was documentary compliance.102 In this landmark decision, the Court, assuming the facts in the most favorable light for the non-moving party, rejected the motion to dismiss.103 The Court held that “where the seller’s fraud has been called to the bank’s attention before the drafts and documents have been presented for payment, the principle of the independence of the bank’s obligation under the letter of credit should not be extended to protect the unscrupulous seller.”104 The Court also noted that the confirming bank’s motion to dismiss was denied because the Court was bound by the allegation that the confirming bank was not a holder in due course.105 The Court stated, “If it had appeared from the face of the complaint that the bank presenting the draft for payment was a holder in due course, its claim against the bank issuing the letter of credit would not be defeated even though the primary transaction was “tainted with fraud”.106 Thus, following the Sztejn decision, the elements of the fraud rule were established to be: (i) payment under a letter of credit may only be interrupted in a case of fraud, mere allegation of breach of warranty cannot be an excuse for such an interruption; (ii) payment under a letter of credit can only be interrupted when fraud is proven or established, mere allegations of fraud should not be an excuse for such an interruption; and (iii) payment should be made in accordance with the terms of the credit, notwithstanding the existence of the proven fraud, of a holder in due course or a presenter with similar status makes demand for payment.107

The original version of Article 5 of the UCC codified the Sztejn fraud standard.108 However, “neither the Code nor its comments [gave] any hint as to what type of fraud [gave] the bank an option to pay or not to pay under this section”.109 As a consequence, a number of standards of fraud were suggested in the cases applying the prior version of Article 5.110 Some of those standards were “egregious fraud” (denoting very serious misconduct in the context of letter of credit transactions)111, “intentional fraud” (requiring a misrepresentation made knowingly or recklessly with the intention of inducing another to rely thereon)112, “statutory letter of credit fraud”113, the “flexible standard” (requiring the beneficiary’s misconduct to be something more serious than mere breach of warranty)114 and “constructive fraud” (prohibiting any conduct of the beneficiary that breaks an equitable duty).115

Perhaps the pivotal event demonstrating the need for a standard for the fraud rule to be applied consistently arose from a cataclysmic event, oddly enough, in the Middle East. In the wake of the fall of the Shah of Iran and the subsequent Iranian revolution, many U.S. companies feared that the new Iranian regime would arbitrarily demand payment under existing letters of credit, so they sought assistance from the U.S. courts hoping to prevent the letters of credit from being paid, asserting fraud as their basis for relief.116 In cases filed after the seizure of U.S. hostages, the courts routinely granted temporary and permanent injunctions, enjoining payment of letters of credit without an opinion.117 Even though the Iranian cases were decided at a time of great geo-political tension, “the conduct of the United States courts shocked the letter of credit world” and made it abundantly clear that the fraud rule needed immediate improvement.118 The
solution was Revised Article 5. Although it sets a clear standard of fraud, the new standard has not been sufficiently tested to make a reliable determination as to how the new standard will be applied.119 The initial decisions, however, reveal that U.S. courts, in applying the new “material fraud” standard appear to be taking an approach similar to those courts that applied the “egregious fraud standard.”120

Interestingly, the Sztejn case is also the cornerstone of the English law in this area.121 The settled standard of fraud in the law governing letters of credit in the United Kingdom appears to be “material misrepresentation,” a position that seems close to the United States current standard of “material fraud.”122 However, neither standard has been sufficiently tested to draw comparisons between the two.123 Unlike its common law brethren, Australia seems to have adopted and applied an “intentional fraud” standard.124

**OTHER DEVELOPMENTS IN LETTER OF CREDIT LAWS & RULES**

There have been several developments and anticipated developments relating to the laws and rules concerning letter of credit transactions in addition to those described above. Most notably, the letter of credit world is anticipating a major amendment to the UCP.125 Professor James E. Byrne, Director of the Institute of International Banking Law and Practice, Inc. indicated that a “creeping decision” has been made to revise the UCP.126 It is anticipated that the changes will relate to the strict compliance principle, as well as Article 13 (entitled “Standard for Examinations of Documents”) and Article 14 (entitled “Discrepant Documents and Notice”) of the UCP.127

Apparently, the ICC is considering a deviation from the strict compliance principle.128 This is no surprise, given its effects on the international trade as noted in detail above, but it will be interesting to see how the ICC deals with this issue. With respect to Articles 13 and 14 of the UCP specifically, the ICC may seek to clarify the standard procedures for granting a waiver of a discrepancy in presentation documents and providing notice to beneficiaries of an issuer’s intent to dishonor a letter of credit under the UCP which have recently received increased attention from beneficiaries and their counsel, as these parties have become more familiar with the provisions of the UCP.129 As an aside, as beneficiaries and their counsel become more familiar with their rights under the UCP, they have been eager to assert those rights against banks.130 Illustrative of this trend is the case of Voest-Alpine Trading USA Corp. v. Bank of China.131 In the

**Voest case**, the defendant Bank of China (BOC) issued a letter of credit to plaintiff Voest-Alpine Trading USA Corporation (Voest).132 The letter of credit contained numerous typographical errors.133 When Voest tendered the presentation documents to Texas Commerce Bank (TCB), (who was then obligated to present the documents to BOC), TCB advised Voest that there were discrepancies between the letter of credit and the presentation documents.134 Notwithstanding, Voest instructed TCB to present the documents because none of the discrepancies “would warrant refusal to pay”.135 After receipt of the documents, BOC notified TCB of numerous discrepancies and indicated that it would advise Voest of the same.136 TCB advised BOC that the discrepancies “were not an adequate basis to refuse to pay the letter of credit and requested that the bank honor the letter of credit . . .”137 BOC, in its response, indicated its disagreement with TCB’s position and stated, “Now the discrepant documents may have us refuse to take up the documents . . . .”138 BOC subsequently refused the honor the letter of credit and returned the presentation documents to Voest.139 In the ensuing litigation, the initial issue addressed by the Court was whether BOC provided a timely notice of refusal as required by Article 14(d) of the UCP.140 BOC argued that a certain prior written communication with TCB constituted a timely and valid notice of refusal because it contained the required elements of Article 14(d).141 Voest argued that such communication was not a notice of refusal because it was ambiguous and contained “no clear statement of refusal . . .”.142 After a brief analysis of Article 14 of the UCP, the Court held that BOC’s notice was deficient because “nowhere does it state that it is actually rejecting the documents or refusing to honor the letter of credit or any words to that effect.”143 The Court noted that the “failure to formally refuse the documents before the deadline precludes the bank from claiming that the documents are not in compliance with the terms and conditions of the credit.”144 The Court went on to consider whether the discrepancies would have justified BOC’s refusal to honor the letter of credit and ultimately decided in favor of the plaintiff on that issue as well.145 The manner in which the ICC decides to deal with the issues raised in this case, as well as the strict compliance principle may serve to adjust the entire landscape of letter of credit law.

The ICC can focus on the necessary changes to the UCP now completed its initiative to adopt rules specifically for standby letters of credit. In 1999, the ICC introduced the new ISP98 rules mentioned previously.146 The introduction of these rules is an indication of the importance of standby letters of credit on an in-
international level. Although standby letters of credit were initially associated solely with the U.S. domestic markets, the standby letter of credit has become an international product worthy of its own set of rules. In fact, the “amounts of standbys outstanding in value terms exceeds those of commercial credits by a ratio of more than 5:1.”

Historically, the UCP provisions have been incorporated into both commercial and standby letters of credit, although those provisions are primarily intended for commercial letters of credit. The ISP98 rules are intended to be an alternative to the UCP for standby letters of credit. ISP98 was created by the U.S. based Institute for International Banking Law and Practice, Inc. with the support of the U.S. Council on International Banking (now the International Financial Services Association) and was revised and adopted in 1998 by the ICC. These rules also present a standard by which the “quality, reliability and integrity of standbys may be measured.” ISP98 has gained widespread acceptance since its introduction.

CONCLUSION

The numerous changes to the laws and rules that apply to letters of credit transactions reflect the recognition by all parties of the need to remain current with many changes in practices occurring in the modern global marketplace. This acknowledgement of the need to adopt proactive measures and implement procedural reform to provide the necessary certainty required by an increasingly sophisticated marketplace will ensure the commercial viability of letters of credit transactions.

ENDNOTES


2  Id.


5  Id. at 170.

6  Id. at 171.

7  Id. at 172.

8  Id. at 175.


13  Id. at 977-978.


19  International Chamber of Commerce, supra note 17.

21 Id.

22 Conley, supra note 12, at 26.


25 See, e.g., Old Colony Trust Co. v. Lawyers' Title and Trust Co., 297 F. 152, 155 (2d Cir. 1924).

26 Id.

27 Id.

28 Id.

29 Id.

30 Id. at 155.

31 Xiang & Buckley, supra note 1, at 122.

32 Id. at 123.

33 Id.

34 Id. at 124.

35 Old Colony Trust Co., 297 F. at 155–156.

36 Id. at *3.

37 Id.

38 Id.

39 Id.

40 Id.

41 Id.


44 Beyene, 762 F. 2d at 5–7.

45 Id.

46 Id.

47 Id.

48 Id. at 6–7

49 Id.


51 See, Conley, supra note 12, at 32–36.

52 Id. at 33.

53 Xiang & Buckley, supra note 1, at 124.

54 International Chamber of Commerce, supra note 17.

55 Id.

56 Id.

57 Id.


59 Id.


62 Id.

63 Brook Wiennicke, et al, Standby and Commercial Letters of Credit, §3.11 (3rd edition 2003) (defining documentary letter of credit as “any credit that requires that documents be presented for payment […][a]ll commercial [and] standby … letter of credit can be considered documentary credits”).

64 International Chamber of Commerce, supra note 61.


67 Id.

68 International Chamber of Commerce, supra note 61.

69 International Chamber of Commerce, supra note 66.
93 Id. at 315-16.
94 Id. at 317. Revised U.C.C. Article 5, Section 109, reads in pertinent part:

(a) If a presentation is made that appears on its face to comply with the terms and conditions of the letter of credit, but a required document is forged or materially fraudulent, or honor of the presentation would facilitate a material fraud by the beneficiary on the issue or applicant . . . and (b) If an applicant claims that a required document is forged or materially fraudulent or that honor of the presentation would facilitate a material fraud by the beneficiary on the issuer or applicant, a court of competent jurisdiction may temporarily or permanently enjoin the issuer from honoring a presentation or grant similar relief against the issuer or other persons . . . UCC §5.109 (1995)

95 Official Comments to Article 5 of the Uniform Commercial Code, para. 2.
96 Id. at para. 3.
97 Xiang v. Buckley, supra note 15 at 318.
98 Id.
99 31 N.Y.S. 2d 631 (1941).
100 Id. at 632.
101 Id.
102 Id. at 636.
103 Id.
104 Id. at 634.
105 Id. at 635.
106 Id.
108 Id.
109 Xiang & Buckley, supra note 15 at 298.
110 Id.
111 Id.
112 Id. at 302.
113 Id. at 304.
114 Id. at 306.
115 Id. at 307.
116 Id. at 311-12.
117 Id. at 312.
118 Id. at 314-15.
119 Id. at 319.
120 Id. at 322.
121 Buckley & Xiang, supra note 107 at 689.
122 Xiang & Buckley, supra note 15 at 324.
123 Id.
124 Id. at 332.
127 Byrne, *supra* note 125 at 3.
128 Id.
129 Id.
130 Id.
131 Id.
133 Id.
134 Id.
135 Id.
136 Id. at 942-943.
137 Id. at 943.
138 Id.
139 Id.
140 Id. at 945.
141 Id. at 944.
142 Id.
143 Id. at 945.
144 Id.
145 Id. at 946.
146 International Chamber of Commerce, *supra* note 16.
147 International Chamber of Commerce, *supra* note 16.
148 Xiang & Buckley, *supra* note 1 at 115.
149 Byrne, *supra* note 125 at 7.
150 Xiang & Buckley, *supra* note 1 at 115.
151 International Chamber of Commerce, *supra* note 16. 
152 Byrne, *supra* note 125 at 7.