



联合国国际贸易法委员会
第三十二届会议
1999年5月17日至6月4日，维也纳

国际备用证惯例(ISP98)

秘书长的报告

1. 国际银行法及银行惯例学会主任 1999 年 3 月 3 日来函(转载于附件一)请求委员会考虑赞同在全世界采用最新公布的《国际备用证惯例规则》(ISP98)。ISP98 的原文(英文或法文)现载录于附件四。国际商会已认可该规则案文并作为国际商会第 590 号出版物出版印行,目前,国际商会已着手将其翻译成其他语文。
2. 该出版物在其封面上的简介中说:

“ISP98 填补了市场上的一个重要空白。虽然备用信用证与商业信用证及其他金融凭证有类似之处,但在应用范围和使用方法上仍有显著差异。再者,必须承认,国际商会公布的《跟单信用证统一惯例》(UCP)虽在商业信用证领域已为国际所公认,但它并不能适用于各种形式的备用信用证。但这一重要的商业和金融手段就其使用价值而言,大大超过了商业信用证,二者的比率为 5:1,因而大有必要在备用证方面拟订一套新的《规则》。”

ISP98 是广泛采集现有应用惯例后经筛选提炼而得到的结晶,其广泛采集的范围包括各个方面的使用者——银行界、商界、信誉评级机构、公司财务主管、信用管理人、政府官员和银行业务管控人。如同 UCP 之对于商业信用证的用途一样,ISP98 的预期作用是成为国际商业交易中使用备用信用证的准则。”
3. 就其一般背景而言,似应指出,跟单信用证和银行担保是委员会成立以来一直感到兴趣的一个课题。委员会早在召开第二届会议时就核可了《跟单信用证统一惯例》的 1962 年版本,后来第八届会议又核可了 1974 年版本,第十七届会议核可了 1983 年版本,第二十七届会议核可了其 1993 年版本。
4. 鉴于 ISP98 与 1995 年的《联合国独立担保和备用信用证公约》相互之间的密切关系,委员会秘书亲自参加了 ISP98 的编拟工作,以便确保这两个互补性文件之间的一致性。他为国际商会出版物撰写的前言现转录于附件三。关于编拟 ISP98 的理由以及它的显著特点方面的更多资料,可从载录于附件二的序言中略见一斑。

附件一

国际银行法及银行惯例学会主任
James E. Byrne 教授的信函

我请求联合国国际贸易法委员会赞同采用《国际备用证惯例》(ISP98)。

这一套私法惯例规则拟适用于备用信用证。编拟这套规则的设想是在贸易法委员会国际合同惯例工作组审议制定《联合国独立担保和备用信用证公约》期间酝酿形成的。这套规则的制定正是为了补充该项公约，因而在其正式序言中对该公约的采用备加推崇。草拟 ISP98 的过程本身就是与贸易法委员会秘书处开展经常性协商的过程，我学会还利用促进 ISP98 的各个场合同时也促进采用该公约。

ISP98 已于 1999 年 1 月 1 日开始生效。它已得到国际金融服务协会和国际商会银行技术及业务委员会的赞同，并作为国际商会第 590 号出版物发行。目前，它已为签发备用信用证的各大银行使用和推广，预计在几年之内将成为全世界采用的准则。

由于 ISP98 与上述联合国公约之间的密切联系，又鉴于贸易法委员会以往曾有过赞同类似惯例规则的先例，例如委员会曾正式赞同 UCP500(统一惯例)和 1990 年的 INCOTERM(贸易术语解释通则)，因此，本学会正式请求委员会考虑赞同此项国际备用证惯例。

附件二

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严禁不经过本学会书面同意以任何手段翻译本著作的任何部分。

经由国际金融服务协会及国际商会银行业务委员会核准

序言

国际备用证惯例(ISP98)反映了备用信用证方面得到普遍认可的惯例和作法。如同《跟单信用证统一惯例》和《即期担保统一规则》之适用于商业信用证和独立银行担保一样，它是备用信用证方面的一套单独的规则。

为备用信用证制定一套单独的规则，说明了这一金融产品的成熟性和重要性。备用证未兑现的金额远远超过商业信用证的未兑现金额。虽然备用信用证与美国的关系密切，因它发源于美国，在该国的应用最为广泛，但它目前已是一种国际产品。在美国本身，非美国银行的未兑现金额就超过了美国银行的未兑现金额。而且，备用证的使用正逐渐遍及全世界。

备用证的签发是用以支持付款义务，即对于贷款或预付款在到期时或违约后，或者在发生或不发生另一意外事件时的付款义务。

为方便起见，备用证的分类通常是按其在相关交易中的作用或根据其他因素来作名义上的区分，不一定与备用证本身的条款条件有关(而且在这些规则的执行上并无实质性意义)。例如：

“履约备用证”用以支持履行合同而不是付款义务，包括偿付因申请人在完成相关交易中的违约而造成的损失。

“预付款备用证”用以支持偿还受益人向申请人支付的预付款的义务。

“投标担保备用证”用以支持申请人在其得标后执行一项合同的义务。

“反担保备用证”用以支持开出另一备用证或反担保备用证受益人作出的另一承诺。

“金融备用证”用以支持付款义务，包括作为有义务偿还所借款项的证据的任何票据。

“直接付款备用证”用以支持一项相关付款义务到期时的付款，一般与并不涉及违约事件的金融备用证相关。

“保险备用证”用以支持申请人的保险或再保险义务。

“商业备用证”用以支持申请人在不以其他方法付款时支付货物或服务的价款。

在过去，许多备用证都是按照《统一惯例》(UCP)的规则签发的，尽管 UCP 的目的是针对商业信用证。《统一惯例》加强了备用证的独立性和跟单性。它提供了审查和发出拒付通知的标准，同时提供依据来抵抗那种迫使接受十分麻烦的操作的市场压力，例如签发并无到期日的备用证。

尽管有这些重要作用，然而，人们长期以来就明显看到，《统一惯例》并不完全适用于也不适合于备用信用证，正如 UCP500 的第 1 条中规定的，它适用于“这些规则所能适用的范围。”即使是最不复杂的备用证(只要求出示一份付款通知的备用证)也会发生某些问题是《统一惯例》中没有涉及的。更为复杂一点的备用证(涉及延长期限或自动展延、见索拨付、要求受益人向另一人签发自己的承诺等)更需要有专门一套惯例规则。ISP 正是适应了此种需要。

《备用证惯例》与《统一惯例》在风格上和处理方法上都不相同，因它不仅必须取得银行界和商界的认可，而且还须得到积极参与制定备用证法律和惯例的各界人士的赞同——公司财务主任和信贷经理，信誉评

级机构、政府机构和管理部门，双联合同受托人和他们的顾问。由于备用证常常是准备在发生纠纷或申请人无偿付能力时使用的，因而备用证的案文经受到一定程度的审查，这在商业信用证中是不会发生的。因此，《备用证惯例》的编写也是为律师和法官在解释备用证的惯例时提供指导。

实质的差异即来自不同的业务操作，不同的问题，也来自精确度的需要。此外，《备用证惯例》还提供某些基本定义，在备用证允许或要求通过电子手段出示证件时作为依据。由于备用证并不常常要求出示流通票据，备用证的操作目前更有利于电子手段的应用，而《备用证惯例》为促进以电子手段出示证件提供了定义和规则。预期出台的 S.W.I.F.T.电文格式正符合《备用证惯例》的要求。

如同《统一惯例》之对于商业信用证一样，《备用证惯例》也使备用证的文字进一步简化、标准化和精炼化，并对一些常见问题提供明确的、得到人们广泛认同的答案。它与《统一惯例》基本上是大同小异，因备用证和商业证的操作基本上是相同的。然而，在两套规则发生重叠时，《备用证惯例》亦显出更为精确，明文指出在《统一惯例》中只是隐含的意思，这使得对索款或兑现付款发生疑问时备用证显得更为可靠。

和《统一惯例》和《统一规则》一样，《备用证惯例》也将适用于遵行它而签发的任何独立担保。这样就避免了从独立担保之中以及在许多情况下须从商业信用证之中查明和区分出备用信用证的许多麻烦，而这种甄别工作又常常是无法做到的。因此，到底应该选择采用哪一套规则的问题完全由当事各方自己决定——也应该这样。人们大可以针对某几种备用证选择采用《备用证惯例》，另外类别的备用证则采用《统一惯例》或《统一规则》。《备用证惯例》当然不是应用于非独立担保，例如附加的担保和保险合同，但在某些情况下似应指出，有些担保虽然按当地的法律也许被当作附属担保处理，但实际上是作为独立担保应用的。

为使《备用证惯例》适用于某一备用证，所开立的承诺应明确表示遵守这一套规则，至少应在文书中写明：

此项承诺遵行 1998 年《国际备用证惯例》

或

遵行 ISP98。

虽然《备用证惯例》可通过备用证的文字作变更更改，但它提供的规则是中性的，在大多数情况下可为人们接受，在其他情况下亦可作为谈判的基础。它可节省各当事方(包括开证银行、保兑银行和作为备用证受益人的银行)谈判和草拟备用证条款的大量时间和费用。

《备用证惯例》的拟定有意配套补充《联合国独立担保和备用信用证公约》(它为拟定基本的备用证和独立担保法律提供有益而切实的依据)以及当地法律，包括法规和司法判例，并使此种法律规定的备用信用证惯例具体化。如果其中的规则在某些问题上，例如在收益的转让和法律的执行而引起的转让等问题上与强制性的法律发生冲突，当然应以适用的法律为准。尽管如此，多数此种问题在当地法律中很少涉及，进步中的商业法在此种情况下往往会从实际惯例中，即《备用证惯例》中所述的操作惯例中寻找指导性的答案，特别是在跨国界担保的问题上。因此，《备用证惯例》预计会对当地法律起补充作用，而不会与之相冲突。

《备用证惯例》还可用于仲裁和司法诉讼(例如由国际信用证仲裁中心规则制定的专家信用证仲裁办法，或一般的国际商会商业仲裁)，也可为解决争端提供替代方法。对于此种选择，应作出明文提示，并加以适当的细述。至少应在提到 ISP98 的条款中作出明文提示。例如，可以写明，本承诺的签发遵行 ISP98，由此引起的或与之相关的一切争端均提交国际信用证仲裁中心规则(1966 年)所述的仲裁解决。

虽然《备用证惯例》按设想还将译成其他语文，各语文译本的确切性将交付监测订正，但万一发生争议，应以英文文本作为《备用证惯例》的正式文本。

《备用证惯例》是备用证工作组在国际银行法及银行惯例学会主持下进行大量工作的成果，在长达五年的工作过程中接触了数以百计的专业人士，听取了各界人士、银行、国家和国际协会提出的意见。其中，尤应感谢国际金融服务协会(其前身为 USCIB)和以 Gary Collyer 为主席的特设工作组的参与合作(因此而使《惯

例》得到国际商会银行业务委员会的赞同)。此外,还感谢 Citibank N. A., The Chase Manhattan Bank, ABN-AMRO, Baker & McKenzie 和美洲自由贸易国家法律中心的赞助和支持。也许,《备用证惯例》最具有重大意义的一点是,它的问世揭开了国际银行业务界与国际法律界之间携手合作的新篇章。在这方面,联合国国际贸易法委员会在整个工作过程中发挥了尤其宝贵的积极作用。

《备用证惯例》的拟定目的在于作为日常实践中的指导规则。它的宗旨不是介绍备用证本身及其使用的知识。应当承认,有些规则如附加注解说明,大有好处,但我们没有对《备用证惯例》附加此种说明,因大量的附加说明反而给日常应用增加累赘。有关的介绍材料和正式评论请参阅《国际备用证惯例(ISP98)的正式评注》。关于《备用证惯例》的其他相关材料和发展过程,如需得到进一步资料或者如有任何查询,请访问 ISP98 的网址: [www. ISP98.com](http://www.ISP98.com)。

为探讨解决不可避免的疑问,为对各项规则给予正式的解释,以及为保证其正确的发展演变,国际银行法及银行惯例学会特别创建了国际备用证惯例理事会,它是对《备用证惯例》作出贡献的有关各方的一个代表机构,它的任务是与学会、国际商会银行业务委员会、金融服务协会和各个支助组织通力合作,共同维护《备用证惯例》的完善运作。

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Gary W. Collyer
国际商会特设工作组主席兼
国际商会银行业务委员会技术顾问

附件三

前言

联合国国际贸易法委员会秘书

Gerold Herrmann

对我来说，有机会参加起草 ISP98 是极为难得的一次丰富经验。它使我亲身经历了(我现在可以作为见证人)在一个精选的卓越小组中就此项文书进行彻底务实的编拟过程，该工作组的成员有积极从事备用信用证实际业务的各界代表，例如：银行家，特别是负责信用证操作和全球贸易者，银行顾问、律师、学术研究人员、行政管理人、政府官员、公司财务主管、以及有威望的受益人。他们所拥有的宝贵经验和专家学识以及所代表的多方面利益和观点，对于审查具体的实例，对于斟酌决定某一问题是否需要拟订一条实施规则，以及采用何种处理办法最为妥当、最能反映出最佳惯例，起到了宝贵的作用。

连续不断地参与此项编拟工作也使我深刻认识到——我相信，任何人都会由此而认识到——备用信用证在实际操作的细节和习惯做法方面有着其特殊之处。在我看来，备用证的这种特点不但有理由而且有必要为其拟定一套专门的契约规则。与《统一惯例》(UCP)作对比，使人明显看出，UCP 的某些条文对于备用信用证来说并不合适，而备用证操作中有些极为重要的事项在 UCP 之中根本没有涉及。类似的差异实际上存在于备用证和独立担保(欧洲方式的银行担保或即期担保)之间，而对于实际使用的有些类别(例如金融备用证、直接支付备用证)来说这种情形尤其突出，因这些类别的担保在担保实践中迄今极为罕见。由于这种原因以及其他原因，包括为了担保的坚定性，毫不奇怪，我曾看到不只是备用信用证，而且有某些即期担保在签发时都写上遵行 ISP98。

我作为从事法律统一工作的一个专业人员，参与此项规则编拟工作感到十分高兴，因它与其他组织所作的协调与改革努力互有相联。且不说它与 UCC(备用信用证的家乡的信用证法规)第 5 条的修订同步，也不说与 1993UCP 修订工作组的同样密切联系(人员也有重叠)，我特别想要提到的是贸易法委员会的工作，其最终的成果 1995 年由联合国大会通过了“联合国独立担保和备用信用证公约”。针对备用信用证编拟一套专门的操作规则的想法是在编拟上述公约过程中进行广泛辩论时形成的，当时人们对比了各国的法律以及由该公约撮合成婚的两个文书。既然新郎新娘都被推出亮相，由人们评头论足，让未来的岳丈岳母细加挑剔，这就使得贸易法委员会的准备工作文件具有很高资料价值(贸易法委员会简称为 CLOUT 的判例收集系统即将出版的法院判例摘要也是如此；请访问主页网址：www.un.or.at/uncitral)。我十分高兴地看到编拟 ISP98 的工作组不断查阅参考贸易法委员会编拟的公约，以便确保两者的完全一致。我特别感到高兴的是听到一位世界级的信用证专家对他的银行界同事说：“这个联合国公约很好，多看几遍之后，我更加喜欢它。”

上面所述在世界范围促进统一和革新法律方面的协调与合作是十分喜人的，而且也是极为重要的，因为两个截然不同的法律规范层面之间有着相互依存关系(这往往为人们所忽视)：一个是契约层面，各种现有的规则例如 ISP98，UCP500 和 URDG，经由各当事方的同意即可产生效力，一个是法规层面，包括例如上述联合国公约等国际拟定的法律和国内法(例如第 5 条 UCC)都承认上面提到的那种当事方自主权并给予充分效力，同时也涉及到只有在该层面才能有效解决的某些问题(例如，有关欺诈例外、强制令补救和其他法院事项)。因此，ISP98 和上述公约可以说很理想地实现了相互补充作用，共同为在全世界顺利实施备用信用证惯例而奠定必要的基础。

* * *

RULE 1: GENERAL PROVISIONS

SCOPE, APPLICATION, DEFINITIONS, AND INTERPRETATION OF THESE RULES

1.01 Scope and Application

- a. These Rules are intended to be applied to standby letters of credit (including performance, financial, and direct pay standby letters of credit).
- b. A standby letter of credit or other similar undertaking, however named or described, whether for domestic or international use, may be made subject to these Rules by express reference to them.
- c. An undertaking subject to these Rules may expressly modify or exclude their application.
- d. An undertaking subject to these Rules is hereinafter referred to as a "standby".

1.02 Relationship to Law and Other Rules

- a. These Rules supplement the applicable law to the extent not prohibited by that law.
- b. These Rules supersede conflicting provisions in any other rules of practice to which a standby letter of credit is also made subject.

1.03 Interpretative Principles

These Rules shall be interpreted as mercantile usage with regard for:

- a. integrity of standbys as reliable and efficient undertakings to pay;
- b. practice and terminology of banks and businesses in day-to-day transactions;
- c. consistency within the worldwide system of banking operations and commerce; and
- d. worldwide uniformity in their interpretation and application.

1.04 Effect of the Rules

Unless the context otherwise requires, or unless expressly modified or excluded, these Rules apply as terms and conditions incorporated into a standby, confirmation, advice, nomination, amendment, transfer, request for issuance, or other agreement of:

- i. the issuer;
- ii. the beneficiary to the extent it uses the standby;
- iii. any advisor;
- iv. any confirmer;
- v. any person nominated in the standby who acts or agrees to act; and
- vi. the applicant who authorises issuance of the standby or otherwise agrees to the application of these Rules.

1.05 Exclusion of Matters Related to Due Issuance and Fraudulent or Abusive Drawing

These Rules do not define or otherwise provide for:

- a. power or authority to issue a standby;
- b. formal requirements for execution of a standby (e.g. a signed writing); or

- c. defenses to honour based on fraud, abuse, or similar matters.

These matters are left to applicable law.

GENERAL PRINCIPLES

1.06 Nature of Standbys

- a. A standby is an irrevocable, independent, documentary, and binding undertaking when issued and need not so state.
- b. Because a standby is irrevocable, an issuer's obligations under a standby cannot be amended or cancelled by the issuer except as provided in the standby or as consented to by the person against whom the amendment or cancellation is asserted.
- c. Because a standby is independent, the enforceability of an issuer's obligations under a standby does not depend on:
 - i. the issuer's right or ability to obtain reimbursement from the applicant;
 - ii. the beneficiary's right to obtain payment from the applicant;
 - iii. a reference in the standby to any reimbursement agreement or underlying transaction; or
 - iv. the issuer's knowledge of performance or breach of any reimbursement agreement or underlying transaction.
- d. Because a standby is documentary, an issuer's obligations depend on the presentation of documents and an examination of required documents on their face.
- e. Because a standby or amendment is binding when issued, it is enforceable against an issuer whether or not the applicant authorised its issuance, the issuer received a fee, or the beneficiary received or relied on the standby or the amendment.

1.07 Independence of the Issuer-Beneficiary Relationship

An issuer's obligations toward the beneficiary are not affected by the issuer's rights and obligations toward the applicant under any applicable agreement, practice, or law.

1.08 Limits to Responsibilities

An issuer is not responsible for:

- a. performance or breach of any underlying transaction;
- b. accuracy, genuineness, or effect of any document presented under the standby;
- c. action or omission of others even if the other person is chosen by the issuer or nominated person; or
- d. observance of law or practice other than that chosen in the standby or applicable at the place of issuance.

TERMINOLOGY

1.09 Defined Terms

In addition to the meanings given in standard banking practice and applicable law, the following terms have or include the meanings indicated below:

a. Definitions

"Applicant" is a person who applies for issuance of a standby or for whose account it is issued, and includes (i) a person applying in its own name but for the account of another person or (ii) an issuer acting for its own account.

"Beneficiary" is a named person who is entitled to draw under a standby. See Rule 1.11(c)(ii).

"Business Day" means a day on which the place of business at which the relevant act is to be performed is regularly open; and **"Banking Day"** means a day on which the relevant bank is regularly open at the place at which the relevant act is to be performed.

"Confirmer" is a person who, upon an issuer's nomination to do so, adds to the issuer's undertaking its own undertaking to honour a standby. See Rule 1.11(c)(i).

"Demand" means, depending on the context, either a request to honour a standby or a document that makes such request.

"Document" means a draft, demand, document of title, investment security, invoice, certificate of default, or any other representation of fact, law, right, or opinion, that upon presentation (whether in a paper or electronic medium), is capable of being examined for compliance with the terms and conditions of a standby.

"Drawing" means, depending on the context, either a demand presented or a demand honoured.

"Expiration Date" means the latest day for a complying presentation provided in a standby.

"Person" includes a natural person, partnership, corporation, limited liability company, government agency, bank, trustee, and any other legal or commercial association or entity.

"Presentation" means, depending on the context, either the act of delivering documents for examination under a standby or the documents so delivered.

"Presenter" is a person who makes a presentation as or on behalf of a beneficiary or nominated person.

"Signature" includes any symbol executed or adopted by a person with a present intent to authenticate a document.

b. Cross References

"Amendment" - Rule 2.06

"Advice" - Rule 2.05

"Approximately" ("About" or "Circa") - Rule 3.08(f)

"Assignment of Proceeds" - Rule 6.06

"Automatic Amendment" - Rule 2.06(a)

"Copy" - Rule 4.15(d)

"Cover Instructions" - Rule 5.08

"Honour" - Rule 2.01

"Issuer" - Rule 2.01

"Multiple Presentations" - Rule 3.08(b)

"Nominated Person" - Rule 2.04

"Non-documentary Conditions" - Rule 4.11

"Original" - Rule 4.15(b) & (c)

"Partial Drawing" - Rule 3.08(a)

"Standby" - Rule 1.01(d)

"Transfer" - Rule 6.01

"Transferee Beneficiary" - Rule 1.11(c)(ii)

"Transfer by Operation of Law" - Rule 6.11

c. Electronic Presentations

The following terms in a standby providing for or permitting electronic presentation shall have the following meanings unless the context otherwise requires:

"Electronic Record" means:

- i. a record (information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form);
- ii. communicated by electronic means to a system for receiving, storing, re-transmitting, or otherwise processing information (data, text, images, sounds, codes, computer programs, software, databases, and the like); and
- iii. capable of being authenticated and then examined for compliance with the terms and conditions of the standby.

"Authenticate" means to verify an electronic record by generally accepted procedure or methodology in commercial practice:

- i. the identity of a sender or source, and
- ii. the integrity of or errors in the transmission of information content.

The criteria for assessing the integrity of information in an electronic record is whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage, and display.

"Electronic signature" means letters, characters, numbers, or other symbols in electronic form, attached to or logically associated with an electronic record that are executed or adopted by a party with present intent to authenticate an electronic record.

"Receipt" occurs when:

- i. an electronic record enters in a form capable of being processed by the information system designated in the standby, or
- ii. an issuer retrieves an electronic record sent to an information system other than that designated by the issuer.

1.10 Redundant or Otherwise Undesirable Terms

- a. A standby should not or need not state that it is:
- i. **unconditional** or **abstract** (if it does, it signifies merely that payment under it is conditioned solely on presentation of specified documents);
 - ii. **absolute** (if it does, it signifies merely that it is irrevocable);
 - iii. **primary** (if it does, it signifies merely that it is the independent obligation of the issuer);
 - iv. **payable from the issuer's own funds** (if it does, it signifies merely that payment under it does not depend on the availability of applicant funds and is made to satisfy the issuer's own independent obligation);
 - v. **clean** or **payable on demand** (if it does, it signifies merely that it is payable upon presentation of a written demand or other documents specified in the standby).

- b. A standby should not use the term “and/or” (if it does it means either or both).
- c. The following terms have no single accepted meaning:
 - i. and shall be disregarded:
 - “callable”,
 - “divisible”,
 - “fractionable”,
 - “indivisible”, and
 - “transmissible”.
 - ii. and shall be disregarded unless their context gives them meaning:
 - “assignable”,
 - “evergreen”,
 - “reinstate”, and
 - “revolving”.

1.11 Interpretation of these Rules

- a. These Rules are to be interpreted in the context of applicable standard practice.
- b. In these Rules, “standby letter of credit” refers to the type of independent undertaking for which these Rules were intended, whereas “standby” refers to an undertaking subjected to these Rules.
- c. Unless the context otherwise requires:
 - i. “Issuer” includes a “confirmer” as if the confirmer were a separate issuer and its confirmation were a separate standby issued for the account of the issuer;

- ii. “Beneficiary” includes a person to whom the named beneficiary has effectively transferred drawing rights (“transferee beneficiary”);
- iii. “Including” means “including but not limited to”;
- iv. “A or B” means “A or B or both”; “either A or B” means “A or B, but not both”; and “A and B” means “both A and B”;
- v. Words in the singular number include the plural, and in the plural include the singular; and
- vi. Words of the neuter gender include any gender.
- d. i. Use of the phrase “unless a standby otherwise states” or the like in a rule emphasizes that the text of the standby controls over the rule;
- ii. Absence of such a phrase in other rules does not imply that other rules have priority over the text of the standby;
- iii. Addition of the term “expressly” or “clearly” to the phrase “unless a standby otherwise states” or the like emphasizes that the rule should be excluded or modified only by wording in the standby that is specific and unambiguous; and
- iv. While the effect of all of these Rules may be varied by the text of the standby, variations of the effect of some of these Rules may disqualify the standby as an independent undertaking under applicable law.
- e. The phrase “stated in the standby” or the like refers to the actual text of a standby (whether as issued or effectively amended) whereas the phrase “provided in the standby” or the like refers to both the text of the standby and these Rules as incorporated.

RULE 2: OBLIGATIONS

2.01 Undertaking to Honour by Issuer and Any Confirmer to Beneficiary

- a. An issuer undertakes to the beneficiary to honour a presentation that appears on its face to comply with the terms and conditions of the standby in accordance with these Rules supplemented by standard standby practice.
- b. An issuer honours a complying presentation made to it by paying the amount demanded of it at sight, unless the standby provides for honour:
 - i. by acceptance of a draft drawn by the beneficiary on the issuer, in which case the issuer honours by:
 - (a) timely accepting the draft; and
 - (b) thereafter paying the holder of the draft on presentation of the accepted draft on or after its maturity.
 - ii. by deferred payment of a demand made by the beneficiary on the issuer, in which case the issuer honours by:
 - (a) timely incurring a deferred payment obligation; and
 - (b) thereafter paying at maturity.
 - iii. by negotiation, in which case the issuer honours by paying the amount demanded at sight without recourse.
- c. An issuer acts in a timely manner if it pays at sight, accepts a draft, or undertakes a deferred payment obligation (or if it gives notice of dishonour) within the time permitted for examining the presentation and giving notice of dishonour.

- d. i. A confirmer undertakes to honour a complying presentation made to it by paying the amount demanded of it at sight or, if the standby so states, by another method of honour consistent with the issuer’s undertaking.
- ii. If the confirmation permits presentation to the issuer, then the confirmer undertakes also to honour upon the issuer’s wrongful dishonour by performing as if the presentation had been made to the confirmer.
- iii. If the standby permits presentation to the confirmer, then the issuer undertakes also to honour upon the confirmer’s wrongful dishonour by performing as if the presentation had been made to the issuer.
- e. An issuer honours by paying in immediately available funds in the currency designated in the standby unless the standby states it is payable by:
 - i. payment of a monetary unit of account, in which case the undertaking is to pay in that unit of account; or
 - ii. delivery of other items of value, in which case the undertaking is to deliver those items.

2.02 Obligation of Different Branches, Agencies, or Other Offices

For the purposes of these Rules, an issuer’s branch, agency, or other office acting or undertaking to act under a standby in a capacity other than as issuer is obligated in

that capacity only and shall be treated as a different person.

2.03 Conditions to Issuance

A standby is issued when it leaves an issuer's control unless it clearly specifies that it is not then "issued" or "enforceable". Statements that a standby is not "available", "operative", "effective", or the like do not affect its irrevocable and binding nature at the time it leaves the issuer's control.

2.04 Nomination

- a. A standby may nominate a person to advise, receive a presentation, effect a transfer, confirm, pay, negotiate, incur a deferred payment obligation, or accept a draft.
- b. Nomination does not obligate the nominated person to act except to the extent that the nominated person undertakes to act.
- c. A nominated person is not authorised to bind the person making the nomination.

2.05 Advice of Standby or Amendment

- a. Unless an advice states otherwise, it signifies that:
 - i. the advisor has checked the apparent authenticity of the advised message in accordance with standard letter of credit practice; and
 - ii. the advice accurately reflects what has been received.
- b. A person who is requested to advise a standby and decides not to do so should notify the requesting party.

2.06 When an Amendment is Authorised and Binding

- a. If a standby expressly states that it is subject to "automatic amendment" by an increase or decrease in the amount available, an extension of the expiration date, or

the like, the amendment is effective automatically without any further notification or consent beyond that expressly provided for in the standby. (Such an amendment may also be referred to as becoming effective "without amendment".)

- b. If there is no provision for automatic amendment, an amendment binds:
 - i. the issuer when it leaves the issuer's control; and
 - ii. the confirmer when it leaves the confirmer's control, unless the confirmer indicates that it does not confirm the amendment.
- c. If there is no provision for automatic amendment:
 - i. the beneficiary must consent to the amendment for it to be binding;
 - ii. the beneficiary's consent must be made by an express communication to the person advising the amendment unless the beneficiary presents documents which comply with the standby as amended and which would not comply with the standby prior to such amendment; and
 - iii. an amendment does not require the applicant's consent to be binding on the issuer, the confirmer, or the beneficiary.
- d. Consent to only part of an amendment is a rejection of the entire amendment.

2.07 Routing of Amendments

- a. An issuer using another person to advise a standby must advise all amendments to that person.
- b. An amendment or cancellation of a standby does not affect the issuer's obligation to a nominated person that has acted within the scope of its nomination before receipt of notice of the amendment or cancellation.
- c. Non-extension of an automatically extendable (renewable) standby does not affect an issuer's obligation to a nominated person who has acted within the scope of its nomination before receipt of a notice of non-extension.

RULE 3: PRESENTATION

3.01 Complying Presentation under a Standby

A standby should indicate the time, place and location within that place, person to whom, and medium in which presentation should be made. If so, presentation must be so made in order to comply. To the extent that a standby does not so indicate, presentation must be made in accordance with these Rules in order to be complying.

3.02 What Constitutes a Presentation

The receipt of a document required by and presented under a standby constitutes a presentation requiring examination for compliance with the terms and conditions of the standby even if not all of the required documents have been presented.

3.03 Identification of Standby

- a. A presentation must identify the standby under which the presentation is made.
- b. A presentation may identify the standby by stating the complete reference number of the standby and the name

and location of the issuer or by attaching the original or a copy of the standby.

- c. If the issuer cannot determine from the face of a document received that it should be processed under a standby or cannot identify the standby to which it relates, presentation is deemed to have been made on the date of identification.

3.04 Where and to Whom Complying Presentation Made

- a. To comply, a presentation must be made at the place and any location at that place indicated in the standby or provided in these Rules.
- b. If no place of presentation to the issuer is indicated in the standby, presentation to the issuer must be made at the place of business from which the standby was issued.
- c. If a standby is confirmed, but no place for presentation is indicated in the confirmation, presentation for the purpose of obligating the confirmer (and the issuer)

must be made at the place of business of the confirmer from which the confirmation was issued or to the issuer.

d. If no location at a place of presentation is indicated (such as department, floor, room, station, mail stop, post office box, or other location), presentation may be made to:

- i. the general postal address indicated in the standby;
- ii. any location at the place designated to receive deliveries of mail or documents; or
- iii. any person at the place of presentation actually or apparently authorised to receive it.

3.05 When Timely Presentation Made

- a. A presentation is timely if made at any time after issuance and before expiry on the expiration date.
- b. A presentation made after the close of business at the place of presentation is deemed to have been made on the next business day.

3.06 Complying Medium of Presentation

- a. To comply, a document must be presented in the medium indicated in the standby.
- b. Where no medium is indicated, to comply a document must be presented as a paper document, unless only a demand is required, in which case:
 - i. a demand that is presented via S.W.I.F.T., tested telex, or other similar authenticated means by a beneficiary that is a S.W.I.F.T. participant or a bank complies; otherwise
 - ii. a demand that is not presented as a paper document does not comply unless the issuer permits, in its sole discretion, the use of that medium.
- c. A document is not presented as a paper document if it is communicated by electronic means even if the issuer or nominated person receiving it generates a paper document from it.
- d. Where presentation in an electronic medium is indicated, to comply a document must be presented as an electronic record capable of being authenticated by the issuer or nominated person to whom it is presented.

3.07 Separateness of Each Presentation

- a. Making a non-complying presentation, withdrawing a presentation, or failing to make any one of a number of scheduled or permitted presentations does not waive or otherwise prejudice the right to make another timely presentation or a timely re-presentation whether or not the standby prohibits partial or multiple drawings or presentations.
- b. Wrongful dishonour of a complying presentation does not constitute dishonour of any other presentation under a standby or repudiation of the standby.
- c. Honour of a non-complying presentation, with or without notice of its non-compliance, does not waive requirements of a standby for other presentations.

3.08 Partial Drawing and Multiple Presentations; Amount of Drawings

- a. A presentation may be made for less than the full amount available ("partial drawing").

b. More than one presentation ("multiple presentations") may be made.

c. The statement "partial drawings prohibited" or a similar expression means that a presentation must be for the full amount available.

d. The statement "multiple drawings prohibited" or a similar expression means that only one presentation may be made and honoured but that it may be for less than the full amount available.

e. If a demand exceeds the amount available under the standby, the drawing is discrepant. Any document other than the demand stating an amount in excess of the amount demanded is not discrepant for that reason.

f. Use of "approximately", "about", "circa", or a similar word permits a tolerance not to exceed 10% more or 10% less of the amount to which such word refers.

3.09 Extend or Pay

A beneficiary's request to extend the expiration date of the standby or, alternatively, to pay the amount available under it:

- a. is a presentation demanding payment under the standby, to be examined as such in accordance with these Rules; and
- b. implies that the beneficiary:
 - i. consents to the amendment to extend the expiry date to the date requested;
 - ii. requests the issuer to exercise its discretion to seek the approval of the applicant and to issue that amendment;
 - iii. upon issuance of that amendment, retracts its demand for payment; and
 - iv. consents to the maximum time available under these Rules for examination and notice of dishonour.

3.10 No Notice of Receipt of Presentation

An issuer is not required to notify the applicant of receipt of a presentation under the standby.

3.11 Issuer Waiver and Applicant Consent to Waiver of Presentation Rules

In addition to other discretionary provisions in a standby or these Rules, an issuer may, in its sole discretion, without notice to or consent of the applicant and without effect on the applicant's obligations to the issuer, waive

- a. the following Rules and any similar terms stated in the standby which are primarily for the issuer's benefit or operational convenience:
 - i. treatment of documents received, at the request of the presenter, as having been presented at a later date (Rule 3.02);
 - ii. identification of a presentation to the standby under which it is presented (Rule 3.03(a));
 - iii. where and to whom presentation is made (Rule 3.04(b), (c), and (d)), except the country of presentation stated in the standby; or
 - iv. treatment of a presentation made after the close of business as if it were made on the next business day (Rule 3.05(b)).

- b. the following Rule but not similar terms stated in the standby:
- i. a required document dated after the date of its stated presentation (Rule 4.06); or
 - ii. the requirement that a document issued by the beneficiary be in the language of the standby (Rule 4.04).
- c. the following Rule relating to the operational integrity of the standby only in so far as the bank is in fact dealing with the true beneficiary:
- acceptance of a demand in an electronic medium (Rule 3.06(b)).

Waiver by the confirmer requires the consent of the issuer with respect to paragraphs (b) and (c) of this Rule.

3.12 Original Standby Lost, Stolen, Mutilated, or Destroyed

- a. If an original standby is lost, stolen, mutilated, or destroyed, the issuer need not replace it or waive any requirement that the original be presented under the standby.
- b. If the issuer agrees to replace an original standby or to waive a requirement for its presentation, it may provide a replacement or copy to the beneficiary without affecting the applicant's obligations to the issuer to reimburse, but, if it does so, the issuer must mark the replacement or copy as such. The issuer may, in its sole discretion, require indemnities satisfactory to it from the beneficiary and assurances from nominated persons that no payment has been made.

CLOSURE ON EXPIRY DATE

3.13 Expiration Date on a Non-Business Day

- a. If the last day for presentation stated in a standby (whether stated to be the expiration date or the date by which documents must be received) is not a business day of the issuer or nominated person where presentation is to be made, then presentation made there on the first following business day shall be deemed timely.
- b. A nominated person to whom such a presentation is made must so notify the issuer.

3.14 Closure on a Business Day and Authorization of Another Reasonable Place for Presentation

- a. If on the last business day for presentation the place for presentation stated in a standby is for any reason closed and presentation is not timely made because of the closure, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides.
- b. Upon or in anticipation of closure of the place of presentation, an issuer may authorise another reasonable place for presentation in the standby or in a communication received by the beneficiary. If it does so, then
 - i. presentation must be made at that reasonable place; and
 - ii. if the communication is received fewer than thirty calendar days before the last day for presentation and for that reason presentation is not timely made, the last day for presentation is automatically extended to the day occurring thirty calendar days after the last day for presentation.

RULE 4: EXAMINATION

4.01 Examination for Compliance

- a. Demands for honour of a standby must comply with the terms and conditions of the standby.
- b. Whether a presentation appears to comply is determined by examining the presentation on its face against the terms and conditions stated in the standby as interpreted and supplemented by these Rules which are to be read in the context of standard standby practice.

4.02 Non-Examination of Extraneous Documents

Documents presented which are not required by the standby need not be examined and, in any event, shall be disregarded for purposes of determining compliance of the presentation. They may without responsibility be returned to the presenter or passed on with the other documents presented.

4.03 Examination for Inconsistency

An issuer or nominated person is required to examine documents for inconsistency with each other only to the extent provided in the standby.

4.04 Language of Documents

The language of all documents issued by the beneficiary is to be that of the standby.

4.05 Issuer of Documents

Any required document must be issued by the beneficiary unless the standby indicates that the document is to be issued by a third person or the document is of a type that standard standby practice requires to be issued by a third person.

4.06 Date of Documents

The issuance date of a required document may be earlier but not later than the date of its presentation.

4.07 Required Signature on a Document

- a. A required document need not be signed unless the standby indicates that the document must be signed or the document is of a type that standard standby practice requires be signed.
- b. A required signature may be made in any manner that corresponds to the medium in which the signed document is presented.
- c. Unless a standby specifies:
 - i. the name of a person who must sign a document, any signature or authentication will be regarded as a complying signature.
 - ii. the status of a person who must sign, no indication of status is necessary.

- d. If a standby specifies that a signature must be made by:
- i. a named natural person without requiring that the signer's status be identified, a signature complies that appears to be that of the named person;
 - ii. a named legal person or government agency without identifying who is to sign on its behalf or its status, any signature complies that appears to have been made on behalf of the named legal person or government agency; or
 - iii. a named natural person, legal person, or government agency requiring the status of the signer be indicated, a signature complies which appears to be that of the named natural person, legal person, or government agency and indicates its status.

4.08 Demand Document Implied

If a standby does not specify any required document, it will still be deemed to require a documentary demand for payment.

4.09 Identical Wording and Quotation Marks

If a standby requires:

- a. a statement without specifying precise wording, then the wording in the document presented must appear to convey the same meaning as that required by the standby;
- b. specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, then typographical errors in spelling, punctuation, spacing, or the like that are apparent when read in context are not required to be duplicated and blank lines or spaces for data may be completed in any manner not inconsistent with the standby; or
- c. specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, and also provides that the specified wording be "exact" or "identical", then the wording in the documents presented must duplicate the specified wording, including typographical errors in spelling, punctuation, spacing and the like, as well as blank lines and spaces for data must be exactly reproduced.

4.10 Applicant Approval

A standby should not specify that a required document be issued, signed, or counter-signed by the applicant. However, if the standby includes such a requirement, the issuer may not waive the requirement and is not responsible for the applicant's withholding of the document or signature.

4.11 Non-Documentary Terms or Conditions

- a. A standby term or condition which is non-documentary must be disregarded whether or not it affects the issuer's obligation to treat a presentation as complying or to treat the standby as issued, amended, or terminated.
- b. Terms or conditions are non-documentary if the standby does not require presentation of a document in which they are to be evidenced and if their fulfillment cannot be determined by the issuer from the issuer's own records or within the issuer's normal operations.

- c. Determinations from the issuer's own records or within the issuer's normal operations include determinations of:
 - i. when, where, and how documents are presented or otherwise delivered to the issuer;
 - ii. when, where, and how communications affecting the standby are sent or received by the issuer, beneficiary, or any nominated person;
 - iii. amounts transferred into or out of accounts with the issuer; and
 - iv. amounts determinable from a published index (e.g., if a standby provides for determining amounts of interest accruing according to published interest rates).
- d. An issuer need not re-compute a beneficiary's computations under a formula stated or referenced in a standby except to the extent that the standby so provides.

4.12 Formality of Statements in Documents

- a. A required statement need not be accompanied by a solemnity, officialization, or any other formality.
- b. If a standby provides for the addition of a formality to a required statement by the person making it without specifying form or content, the statement complies if it indicates that it was declared, averred, warranted, attested, sworn under oath, affirmed, certified, or the like.
- c. If a standby provides for a statement to be witnessed by another person without specifying form or content, the witnessed statement complies if it appears to contain a signature of a person other than the beneficiary with an indication that the person is acting as a witness.
- d. If a standby provides for a statement to be counter-signed, legalized, visaed, or the like by a person other than the beneficiary acting in a governmental, judicial, corporate, or other representative capacity without specifying form or content, the statement complies if it contains the signature of a person other than the beneficiary and includes an indication of that person's representative capacity and the organization on whose behalf the person has acted.

4.13 No Responsibility to Identify Beneficiary

Except to the extent that a standby requires presentation of an electronic record:

- a. a person honouring a presentation has no obligation to the applicant to ascertain the identity of any person making a presentation or any assignee of proceeds;
- b. payment to a named beneficiary, transferee, an acknowledged assignee, successor by operation of law, to an account or account number stated in the standby or in a cover instruction from the beneficiary or nominated person fulfills the obligation under the standby to effect payment.

4.14 Name of Acquired or Merged Issuer or Confirmer

If the issuer or confirmer is reorganized, merged, or changes its name, any required reference by name to the issuer or confirmer in the documents presented may be to it or its successor.

4.15 Original, Copy, and Multiple Documents

- a. A presented document must be an original.
- b. Presentation of an electronic record, where an electronic presentation is permitted or required, is deemed to be an "original".
- c.
 - i. A presented document is deemed to be an original unless it appears on its face to have been reproduced from an original.
 - ii. A document which appears to have been reproduced from an original is deemed to be an original if the signature or authentication appears to be original.
- d. A standby that requires presentation of a "copy" permits presentation of either an original or copy unless the standby states that only a copy be presented or otherwise addresses the disposition of all originals.
- e. If multiples of the same document are requested, only one must be an original unless:
 - i. "duplicate originals" or "multiple originals" are requested in which case all must be originals; or
 - ii. "two copies", "two-fold", or the like are requested in which case either originals or copies may be presented.

STANDBY DOCUMENT TYPES

4.16 Demand for Payment

- a. A demand for payment need not be separate from the beneficiary's statement or other required document.
- b. If a separate demand is required, it must contain:
 - i. a demand for payment from the beneficiary directed to the issuer or nominated person;
 - ii. a date indicating when the demand was issued;
 - iii. the amount demanded; and
 - iv. the beneficiary's signature.
- c. A demand may be in the form of a draft or other instruction, order, or request to pay. If a standby requires presentation of a "draft" or "bill of exchange", that draft or bill of exchange need not be in negotiable form unless the standby so states.

4.17 Statement of Default or Other Drawing Event

If a standby requires a statement, certificate, or other recital of a default or other drawing event and does not specify content, the document complies if it contains:

- a. a representation to the effect that payment is due because a drawing event described in the standby has occurred;
- b. a date indicating when it was issued; and
- c. the beneficiary's signature.

4.18 Negotiable Documents

If a standby requires presentation of a document that is transferable by endorsement and delivery without stating

whether, how, or to whom endorsement must be made, then the document may be presented without endorsement, or, if endorsed, the endorsement may be in blank and, in any event, the document may be issued or negotiated with or without recourse.

4.19 Legal or Judicial Documents

If a standby requires presentation of a government-issued document, a court order, an arbitration award, or the like, a document or a copy is deemed to comply if it appears to be:

- i. issued by a government agency, court, tribunal, or the like;
- ii. suitably titled or named;
- iii. signed;
- iv. dated; and
- v. originally certified or authenticated by an official of a government agency, court, tribunal, or the like.

4.20 Other Documents

- a. If a standby requires a document other than one whose content is specified in these Rules without specifying the issuer, data content, or wording, a document complies if it appears to be appropriately titled or to serve the function of that type of document under standard standby practice.
- b. A document presented under a standby is to be examined in the context of standby practice under these Rules even if the document is of a type (such as a commercial invoice, transport documents, insurance documents or the like) for which the Uniform Customs and Practice for Documentary Credits contains detailed rules.

4.21 Request to Issue Separate Undertaking

If a standby requests that the beneficiary of the standby issue its own separate undertaking to another (whether or not the standby recites the text of that undertaking):

- a. the beneficiary receives no rights other than its rights to draw under the standby even if the issuer pays a fee to the beneficiary for issuing the separate undertaking;
- b. neither the separate undertaking nor any documents presented under it need be presented to the issuer; and
- c. if originals or copies of the separate undertaking or documents presented under it are received by the issuer although not required to be presented as a condition to honour of the standby:
 - i. the issuer need not examine, and, in any event, shall disregard their compliance or consistency with the standby, with the beneficiary's demand under the standby, or with the beneficiary's separate undertaking; and
 - ii. the issuer may without responsibility return them to the presenter or forward them to the applicant with the presentation.

RULE 5: NOTICE, PRECLUSION, AND DISPOSITION OF DOCUMENTS

5.01 Timely Notice of Dishonour

Notice of dishonour must be given within a time after presentation of documents which is not unreasonable.

- i. Notice given within three business days is deemed to be not unreasonable and beyond seven business days is deemed to be unreasonable.

- ii. Whether the time within which notice is given is unreasonable does not depend upon an imminent deadline for presentation.
 - iii. The time for calculating when notice of dishonour must be given begins on the business day following the business day of presentation.
 - iv. Unless a standby otherwise expressly states a shortened time within which notice of dishonour must be given, the issuer has no obligation to accelerate its examination of a presentation.
- b. i. The means by which a notice of dishonour is to be given is by telecommunication, if available, and, if not, by another available means which allows for prompt notice.
 - ii. If notice of dishonour is received within the time permitted for giving the notice, then it is deemed to have been given by prompt means.
- c. Notice of dishonour must be given to the person from whom the documents were received (whether the beneficiary, nominated person, or person other than a delivery person) except as otherwise requested by the presenter.

5.02 Statement of Grounds for Dishonour

A notice of dishonour shall state all discrepancies upon which dishonour is based.

5.03 Failure to Give Timely Notice of Dishonour

- a. Failure to give notice of a discrepancy in a notice of dishonour within the time and by the means specified in the standby or these rules precludes assertion of that discrepancy in any document containing the discrepancy that is retained or re-presented, but does not preclude assertion of that discrepancy in any different presentation under the same or a separate standby.
- b. Failure to give notice of dishonour or acceptance or acknowledgment that a deferred payment undertaking has been incurred obligates the issuer to pay at maturity.

5.04 Notice of Expiry

Failure to give notice that a presentation was made after the expiration date does not preclude dishonour for that reason.

5.05 Issuer Request for Applicant Waiver without Request by Presenter

If the issuer decides that a presentation does not comply and if the presenter does not otherwise instruct, the issuer may, in its sole discretion, request the applicant to waive non-compliance or otherwise to authorise honour within the time available for giving notice of dishonour but without extending it. Obtaining the applicant's waiver does not obligate the issuer to waive non-compliance.

5.06 Issuer Request for Applicant Waiver upon Request of Presenter

If, after receipt of notice of dishonour, a presenter requests that the presented documents be forwarded to the issuer or that the issuer seek the applicant's waiver:

- a. no person is obligated to forward the discrepant documents or seek the applicant's waiver;
- b. the presentation to the issuer remains subject to these Rules unless departure from them is expressly consented to by the presenter; and
- c. if the documents are forwarded or if a waiver is sought:
 - i. the presenter is precluded from objecting to the discrepancies notified to it by the issuer;
 - ii. the issuer is not relieved from examining the presentation under these Rules;
 - iii. the issuer is not obligated to waive the discrepancy even if the applicant waives it; and
 - iv. the issuer must hold the documents until it receives a response from the applicant or is requested by the presenter to return the documents, and if the issuer receives no such response or request within ten business days of its notice of dishonour, it may return the documents to the presenter.

5.07 Disposition of Documents

Dishonoured documents must be returned, held, or disposed of as reasonably instructed by the presenter. Failure to give notice of the disposition of documents in the notice of dishonour does not preclude the issuer from asserting any defense otherwise available to it against honour.

5.08 Cover Instructions/Transmittal Letter

- a. Instructions accompanying a presentation made under a standby may be relied on to the extent that they are not contrary to the terms or conditions of the standby, the demand, or these Rules.
- b. Representations made by a nominated person accompanying a presentation may be relied upon to the extent that they are not contrary to the terms or conditions of a standby or these Rules.
- c. Notwithstanding receipt of instructions, an issuer or nominated person may pay, give notice, return the documents, or otherwise deal directly with the presenter.
- d. A statement in the cover letter that the documents are discrepant does not relieve the issuer from examining the presentation for compliance.

5.09 Applicant Notice of Objection

- a. An applicant must timely object to an issuer's honour of a noncomplying presentation by giving timely notice by prompt means.
- b. An applicant acts timely if it objects to discrepancies by sending a notice to the issuer stating the discrepancies on which the objection is based within a time after the applicant's receipt of the documents which is not unreasonable.
- c. Failure to give a timely notice of objection by prompt means precludes assertion by the applicant against the issuer of any discrepancy or other matter apparent on the face of the documents received by the applicant, but does not preclude assertion of that objection to any different presentation under the same or a different standby.

RULE 6: TRANSFER, ASSIGNMENT, AND TRANSFER BY OPERATION OF LAW

***TRANSFER OF DRAWING RIGHTS**

6.01 Request to Transfer Drawing Rights

Where a beneficiary requests that an issuer or nominated person honour a drawing from another person as if that person were the beneficiary, these Rules on transfer of drawing rights ("transfer") apply.

6.02 When Drawing Rights are Transferable

- a. A standby is not transferable unless it so states.
- b. A standby that states that it is transferable without further provision means that drawing rights:
 - i. may be transferred in their entirety more than once;
 - ii. may not be partially transferred; and
 - iii. may not be transferred unless the issuer (including the confirmer) or another person specifically nominated in the standby agrees to and effects the transfer requested by the beneficiary.

6.03 Conditions to Transfer

An issuer of a transferable standby or a nominated person need not effect a transfer unless:

- a. it is satisfied as to the existence and authenticity of the original standby; and
- b. the beneficiary submits or fulfills:
 - i. a request in a form acceptable to the issuer or nominated person including the effective date of the transfer and the name and address of the transferee;
 - ii. the original standby;
 - iii. verification of the signature of the person signing for the beneficiary;
 - iv. verification of the authority of the person signing for the beneficiary;
 - v. payment of the transfer fee; and
 - vi. any other reasonable requirements.

6.04 Effect of Transfer on Required Documents

Where there has been a transfer of drawing rights in their entirety:

- a. a draft or demand must be signed by the transferee beneficiary; and
- b. the name of the transferee beneficiary may be used in place of the name of the transferor beneficiary in any other required document.

6.05 Reimbursement for Payment Based on a Transfer

An issuer or nominated person paying under a transfer pursuant to Rule 6.03(a), (b)(i), and (b)(ii) is entitled to reimbursement as if it had made payment to the beneficiary.

ACKNOWLEDGMENT OF ASSIGNMENT OF PROCEEDS

6.06 Assignment of Proceeds

Where an issuer or nominated person is asked to acknowl-

edge a beneficiary's request to pay an assignee all or part of any proceeds of the beneficiary's drawing under the standby, these Rules on acknowledgment of an assignment of proceeds apply except where applicable law otherwise requires.

6.07 Request for Acknowledgment

- a. Unless applicable law otherwise requires, an issuer or nominated person
 - i. is not obligated to give effect to an assignment of proceeds which it has not acknowledged; and
 - ii. is not obligated to acknowledge the assignment.
- b. If an assignment is acknowledged:
 - i. the acknowledgment confers no rights with respect to the standby to the assignee who is only entitled to the proceeds assigned, if any, and whose rights may be affected by amendment or cancellation; and
 - ii. the rights of the assignee are subject to:
 - (a) the existence of any net proceeds payable to the beneficiary by the person making the acknowledgment;
 - (b) rights of nominated persons and transferee beneficiaries;
 - (c) rights of other acknowledged assignees; and
 - (d) any other rights or interests that may have priority under applicable law.

6.08 Conditions to Acknowledgment of Assignment of Proceeds

An issuer or nominated person may condition its acknowledgment on receipt of:

- a. the original standby for examination or notation;
- b. verification of the signature of the person signing for the beneficiary;
- c. verification of the authority of the person signing for the beneficiary;
- d. an irrevocable request signed by the beneficiary for acknowledgment of the assignment that includes statements, covenants, indemnities, and other provisions which may be contained in the issuer's or nominated person's required form requesting acknowledgment of assignment, such as:
 - i. the identity of the affected drawings if the standby permits multiple drawings;
 - ii. the full name, legal form, location, and mailing address of the beneficiary and the assignee;
 - iii. details of any request affecting the method of payment or delivery of the standby proceeds;
 - iv. limitation on partial assignments and prohibition of successive assignments;
 - v. statements regarding the legality and relative priority of the assignment; or
 - vi. right of recovery by the issuer or nominated person of any proceeds received by the assignee that are recoverable from the beneficiary;
- e. payment of a fee for the acknowledgment; and
- f. fulfillment of other reasonable requirements.

6.09 Conflicting Claims to Proceeds

If there are conflicting claims to proceeds, then payment to an acknowledged assignee may be suspended pending resolution of the conflict.

6.10 Reimbursement for Payment Based on an Assignment

An issuer or nominated person paying under an acknowledged assignment pursuant to Rule 6.08(a) and (b) is entitled to reimbursement as if it had made payment to the beneficiary. If the beneficiary is a bank, the acknowledgment may be based solely upon an authenticated communication.

TRANSFER BY OPERATION OF LAW

6.11 Transferee by Operation of Law

Where an heir, personal representative, liquidator, trustee, receiver, successor corporation, or similar person who claims to be designated by law to succeed to the interests of a beneficiary presents documents in its own name as if it were the authorized transferee of the beneficiary, these Rules on transfer by operation of law apply.

6.12 Additional Document in Event of Drawing in Successor's Name

A claimed successor may be treated as if it were an authorized transferee of a beneficiary's drawing rights in their entirety if it presents an additional document or documents which appear to be issued by a public official or representative (including a judicial officer) and indicate:

- a. that the claimed successor is the survivor of a merger, consolidation, or similar action of a corporation, limited liability company, or other similar organization;
- b. that the claimed successor is authorized or appointed to act on behalf of the named beneficiary or its estate because of an insolvency proceeding;
- c. that the claimed successor is authorized or appointed to act on behalf of the named beneficiary because of death or incapacity; or

d. that the name of the named beneficiary has been changed to that of the claimed successor.

6.13 Suspension of Obligations upon Presentation by Successor

An issuer or nominated person which receives a presentation from a claimed successor which complies in all respects except for the name of the beneficiary:

- a. may request in a manner satisfactory as to form and substance:
 - i. a legal opinion;
 - ii. an additional document referred to in Rule 6.12 (Additional Document in Event of Drawing in Successor's Name) from a public official;
 - iii. statements, covenants, and indemnities regarding the status of the claimed successor as successor by operation of law;
 - iv. payment of fees reasonably related to these determinations; and
 - v. anything which may be required for a transfer under Rule 6.03 (Conditions to Transfer) or an acknowledgment of assignment of proceeds under Rule 6.08 (Conditions to Acknowledgment of Assignment of Proceeds);

but such documentation shall not constitute a required document for purposes of expiry of the standby.

- b. Until the issuer or nominated person receives the requested documentation, its obligation to honour or give notice of dishonour is suspended, but any deadline for presentation of required documents is not thereby extended.

6.14 Reimbursement for Payment Based on a Transfer by Operation of Law

An issuer or nominated person paying under a transfer by operation of law pursuant to Rule 6.12 (Additional Document in Event of Drawing in Successor's Name) is entitled to reimbursement as if it had made payment to the beneficiary.

RULE 7: CANCELLATION

7.01 When an Irrevocable Standby is Cancelled or Terminated

A beneficiary's rights under a standby may not be cancelled without its consent. Consent may be evidenced in writing or by an action such as return of the original standby in a manner which implies that the beneficiary consents to cancellation. A beneficiary's consent to cancellation is irrevocable when communicated to the issuer.

7.02 Issuer's Discretion Regarding a Decision to Cancel

Before acceding to a beneficiary's authorization to cancel and treating the standby as cancelled for all purposes, an issuer may require in a manner satisfactory as to form and substance:

- a. the original standby;
- b. verification of the signature of the person signing for the beneficiary;
- c. verification of the authorization of the person signing for the beneficiary;
- d. a legal opinion;
- e. an irrevocable authority signed by the beneficiary for cancellation that includes statements, covenants, indemnities, and similar provisions contained in a required form;
- f. satisfaction that the obligation of any confirmer has been cancelled;
- g. satisfaction that there has not been a transfer or payment by any nominated person; and
- h. any other reasonable measure.

RULE 8: REIMBURSEMENT OBLIGATIONS

8.01 Right to Reimbursement

- a. Where payment is made against a complying presentation in accordance with these Rules, reimbursement must be made by:
- i. an applicant to an issuer requested to issue a standby; and
 - ii. an issuer to a person nominated to honour or otherwise give value.
- b. An applicant must indemnify the issuer against all claims, obligations, and responsibilities (including attorney's fees) arising out of:
- i. the imposition of law or practice other than that chosen in the standby or applicable at the place of issuance;
 - ii. the fraud, forgery, or illegal action of others; or
 - iii. the issuer's performance of the obligations of a confirmer that wrongfully dishonours a confirmation.
- c. This Rule supplements any applicable agreement, course of dealing, practice, custom or usage providing for reimbursement or indemnification on lesser or other grounds.

8.02 Charges for Fees and Costs

- a. An applicant must pay the issuer's charges and reimburse the issuer for any charges that the issuer is obligated to pay to persons nominated with the

applicant's consent to advise, confirm, honour, negotiate, transfer, or to issue a separate undertaking.

- b. An issuer is obligated to pay the charges of other persons:
- i. if they are payable in accordance with the terms of the standby; or
 - ii. if they are the reasonable and customary fees and expenses of a person requested by the issuer to advise, honour, negotiate, transfer, or to issue a separate undertaking, and they are unrecovered and unrecoverable from the beneficiary or other presenter because no demand is made under the standby.

8.03 Refund of Reimbursement

A nominated person that obtains reimbursement before the issuer timely dishonours the presentation must refund the reimbursement with interest if the issuer dishonours. The refund does not preclude the nominated person's wrongful dishonour claims.

8.04 Bank-to-Bank Reimbursement

Any instruction or authorization to obtain reimbursement from another bank is subject to the International Chamber of Commerce standard rules for bank-to-bank reimbursements.

RULE 9: TIMING

9.01 Duration of Standby

A standby must:

- a. contain an expiry date; or
- b. permit the issuer to terminate the standby upon reasonable prior notice or payment.

9.02 Effect of Expiration on Nominated Person

The rights of a nominated person that acts within the scope of its nomination are not affected by the subsequent expiry of the standby.

9.03 Calculation of Time

- a. A period of time within which an action must be taken under these Rules begins to run on the first business day

following the business day when the action could have been undertaken at the place where the action should have been undertaken.

- b. An extension period starts on the calendar day following the stated expiry date even if either day falls on a day when the issuer is closed.

9.04 Time of Day of Expiration

If no time of day is stated for expiration, it occurs at the close of business at the place of presentation.

9.05 Retention of Standby

Retention of the original standby does not preserve any rights under the standby after the right to demand payment ceases.

RULE 10: SYNDICATION / PARTICIPATION

10.01 Syndication

If a standby with more than one issuer does not state to whom presentation may be made, presentation may be made to any issuer with binding effect on all issuers.

10.02 Participation

- a. Unless otherwise agreed between an applicant and an issuer, the issuer may sell participations in the issuer's

rights against the applicant and any presenter and may disclose relevant applicant information in confidence to potential participants.

- b. An issuer's sale of participations does not affect the obligations of the issuer under the standby or create any rights or obligations between the beneficiary and any participant.