

RULE 1: GENERAL PROVISIONS

Scope, Application, Definitions, and Interpretation of These Rules

Rule 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**”.

Official Comments:

1. **Generally.** This Rule outlines the scope and application of ISP98, and indicates the types of undertaking for which the Rules are intended.

2. **Intended Use.** Subrule (a) indicates the intended scope of ISP98 in order to provide guidance for its proper use and application. Theoretically, any undertaking, however far removed from a standby letter of credit, can be issued subject to ISP98. Use of ISP98 for dependent undertakings such as bilateral contracts, insurance obligations, and accessory (suretyship) obligations, however, would invite confusion. Nor is ISP98 intended or suitable for quasi-independent undertakings such as commercial paper or other similar negotiable instruments which operate under a very different regime of law and practice. Its intended use is for standby letters of credit. It may be

used, as well, for independent (first demand) (bank) guarantees, although another set of ICC Rules, the Uniform Rules for Demand Guarantees (URDG), has been drafted for this type of undertaking. The not insignificant differences in approach between the two sets of Rules give parties a meaningful choice.

3. **For Standbys.** This Rule uses the term “standby” in two distinct senses. Subrules (a) and (b) refer to a “standby letter of credit”. No definition of a standby letter of credit is provided in these Rules. A precise definition has not been given because the distinction between commercial letters of credit and standby letters of credit is not precise. A standby letter of credit is any letter of credit undertaking which is not a commercial letter of credit. This approach, however, only shifts the difficulty. The question becomes what constitutes a commercial letter of credit, hardly a matter which is appropriate for standby rules. In most situations, those involved have sufficient clarity as to which undertaking with which they are working. That there may be some overlap is not a source of significant difficulty. Rather than being overly concerned with a technical definition, ISP98 leaves it to the market to decide with which undertakings it is best used. As indicated in Subrule (d), an undertaking is a “standby” for purposes of ISP98 if it is issued subject to it. As recognized in ISP98 Rule 1.11(b) (Interpretation of These Rules), “standby letter of credit” and “standby” have different meanings in the Rules. A “standby letter of credit” is the type of letter of credit which is understood to be a letter of credit. A “standby” is any undertaking subject to these Rules. Thus, an independent guarantee issued subject to ISP98 would be a “standby” for purposes of these Rules.

4. **To Signify Independent Character of Undertaking.** ISP98 is also useful in signaling the intent of the parties. The format and text used for some types of guarantees makes it difficult to determine whether they are independent or dependent (accessory or suretyship). Issuing such an undertaking subject to ISP98 with its careful formulation of the independence principle in ISP98 Rules 1.06 (Nature of Standbys) and 1.07 (Independence of the Issuer-Beneficiary Relationship) sends a clear signal that the undertaking is intended to be independent.

5. **Performance and Financial Standbys.** Where the applicant fails to perform a non-monetary obligation (for example, to

complete a building) a standby can assure payment of an agreed amount. These types of standbys are known loosely as “performance” standbys. It can also be used where there has been a failure to pay money owed. These types of standbys are known loosely as “financial” standbys. The differences between the two types are not precise. Financial institutions in many countries are required to classify standbys as one or the other for capital adequacy purposes.

6. Limits to Classification; Not “Default” Undertakings.

Because these classifications of financial and performance standbys are linked to the underlying transaction, it does not provide a satisfactory means of distinguishing undertakings whose principal character is independence. Regardless of the underlying transaction, the standby will require the issuer to honor upon the presentation of the required documents. Moreover, standbys have often been casually defined as “default undertakings” because they are commonly used in the event of default. While this explanation is partially correct as a functional description, it is incomplete and incorrect as a definition because it fails to encompass direct pay standbys.

7. Direct Pay Standbys. Subrule (a) expressly indicates that ISP98 applies to direct pay standby letters of credit. Direct pay standbys provide for payment of principal or interest or both as it regularly becomes due and without their being any default. Direct pay provisions can be and are (but need not be) regularly coupled with a default undertaking making them also payable in the event of default. Their use in support of offerings in the capital markets is driven in part by insolvency-related concerns regarding preferential payment. Direct pay standbys exceed performance standbys in the outstanding amount by a ratio of 2:1. ISP98 has been drafted expressly to include direct pay standbys and to address issues related to direct pay standby practice. In this field, overly technical and abstract distinctions have little utility, and are a potential source of confusion especially where the basis for the distinction is functional and lies outside the transaction being defined. The standby letter of credit is an undertaking to pay against the presentation of documents regardless of whether those documents are the result of a default or a regular payment. This approach has led to the retention, for example, of a provision permitting the issuer to seek waiver from the ap-

plicant in the event of a discrepant presentation in ISP98 Rule 5.05 (Issuer Request for Applicant Waiver without Request by Presenter). Such a Rule would make less sense in a situation where the drawing on the standby only occurred as a result of the applicant's willful failure to perform the underlying obligation.

8. **"However Named or Described"**. Subrule (b) indicates that the title of the undertaking is not determinative. However it may be denominated or entitled does not determine whether an undertaking operates as a standby letter of credit. It is common for undertakings which are standby letters of credit to be named or entitled "Letter of Credit" without any reference to "Standby". It is not uncommon for them to be titled "Documentary Letter of Credit". Neither of these appellations is wrong although they are less useful. For similar reasons, a standby letter of credit may be denominated a "commercial letter of credit" or a "bank guarantee". Indeed, there have been situations where standby letters of credit were entitled "contract", "guarantee", or other names of financial undertakings which would otherwise be inappropriate or given no name at all. In determining whether the undertaking is a standby letter of credit, it is to the undertaking that one must look rather than the formal title used.

9. **"Documentary Letter of Credit"**. In this *Official Commentary* and the Preface to ISP98, the phrase "Documentary Letter of Credit" is avoided. Because it applies equally to standbys which are both "documentary" and "letters of credit" and to which the Uniform Customs and Practice for Documentary Credits also applies, it is ambiguous. For clarity and precision the term "commercial letter of credit" is used in the *Official Commentary* drawing upon the original title of the UCP, the "Uniform Customs and Practice for Commercial Documentary Credits" in effect since 1933 and which was only shortened in the 1962 revision. Where both a commercial credit and a standby are intended, the term "letter of credit" or "LC" is used.

10. **"By Express Reference"**. Subrule (b) provides that ISP98 "may be made subject to these Rules by express reference to them." As indicated in the Preface to ISP98, a specific phrase in the standby will suffice. For example, it could state:

This undertaking is issued subject to the International Standby Practices 1998
or;
Subject to ISP98.

These examples are not exclusive but merely suggestive and any phrase which conveys the link to ISP98 (e.g., “Subject to Standby Rules”) would suffice if it provided an identification of the Rules capable of general understanding.

11. **Notice.** Because issuance of a letter of credit obligates only the issuer, the issuer may add, limit, or qualify its stated obligations by issuing it subject to ISP98 (or other published rules of practice). ISP98 may be incorporated by a statement in the undertaking as issued or by agreement with the person to whom the standby is sent. For example, if a special message type for standbys were to be developed by S.W.I.F.T., then incorporation of ISP could be achieved by using that message type in sending an undertaking via S.W.I.F.T.

12. **Customary Usage.** As indicated in the Preface to ISP98, it “reflects generally accepted practice, custom, and usage of standby letters of credit”. Even where a standby letter of credit is not issued subject to it, ISP98 may nevertheless be relevant in explaining the meaning of the terms of the standby letter of credit or the actions of various persons and their respective obligations and expectations. Under most systems of commercial law, standard practice is admissible as evidence to explain the meaning of an undertaking. In reflecting standard practice and custom, ISP98 is evidence of the normal expectations and practices of the standby letter of credit community.

13. **“Subject to”.** While it is common to speak of “incorporation by reference” of private rules of practice, it is really the undertaking that is being placed in the context of a practice system such as the UCP or ISP system. Like the UCP, these Rules are more than a set of “contract terms”. They provide an alternative remedial and regulatory system analogous to many systems of law. An undertaking subject to them is subject to this system which preempts traditional rules of bi-lateral contracts and commercial law, to the extent that they may be derogated from or varied. The differences between transfer and assignment under

letter of credit practice and general commercial law affords a classic example. Under most modern systems of commercial law, the principle of party autonomy would assure the freedom of the parties to opt for such an alternative system unless it violated fundamental public policies. Indeed, the freedom of the parties to elect a choice of law is widely respected and, as is sometimes recognized (e.g., Rev. UCC Art. 5 Section 5-116), the selection of a system of practice rules is one aspect of a choice of law.

14. **For Domestic or International Use.** The term “International” in the title of the Rules, International Standby Practices, is intended to emphasize that the practices it embodies are internationally accepted and not that it is applicable only to standbys where the parties are from different nations. ISP98 is applicable to both domestic and international transactions, as is stated in Subrule (b).

Cross References ISP98 Rules

Generally Applicable Provisions

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| <ul style="list-style-type: none"> • Interpretive Principles - ISP98 Rule 1.03 • Persons Affected by ISP - ISP98 Rule 1.04 • Fraud Excluded - ISP98 Rule 1.05 • Nature of Standbys - ISP98 Rule 1.06 • Redundant or Undesirable Terms - ISP98 Rule 1.10 | <ul style="list-style-type: none"> • Rules Subject to Standby Terms - ISP98 Rule 1.11(d) • Interpretation of Rules - ISP98 Rule 1.11
“expressly” / “clearly” - 1.11(d)(iii) • Standby Undertaking - ISP98 Rule 2.01 • Different Branches - ISP98 Rule 2.02 |
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Other Sources

UCP 500: Art. 1 provides that the UCP applies to documentary credits including standbys which expressly state that they are subject to it, and that the parties to the credit are bound by the UCP unless the credit states otherwise.

URDG: Art. 1 provides that the URDG applies to guarantees which state that they are subject to its provisions and its rules are binding on parties to the guarantee unless it or an amendment to it expressly states that they are not bound.

UN Convention: (As a law, its scope of application differs from a private rule.) Art. 1 states that the rules apply to independent guarantees and standby letters of credit “[i]f the place of business of the guarantor/issuer at which the undertaking is issued” is in a state which has adopted the Convention or “[i]f the rules of private international law lead to the application of the law of a Contracting

state”. In addition, the Convention will apply to other types of international letters of credit (e.g., commercial letters of credit) if they state that they are subject to it.

Rev. UCC Art. 5: (As a law, its scope of application differs from a private rule.) Section 5-103 states that Art. 5 “applies to letters of credit and to certain rights and obligations arising out of transactions involving letters of credit”.

Rule 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.

Official Comments:

1. **Generally.** This Rule addresses situations where ISP98 intersects with law or where a standby issued subject to it is also subject to other rules of practice.

2. **Relationship to Law.** While it is axiomatic that the applicable law controls where there is a conflict between law and rules of practice, the axiom holds true only where there is a conflict. Under modern commercial law, especially as it relates to international financial undertakings, there is a healthy relationship between law and practice. Most commercial law can be derogated from, is non-mandatory, or variable. Giving effect to party autonomy, the law typically defers to the selected private rule except where that rule conflicts with public policy. This observation is true of both judge-made (case) law and positive statutory law. As a result, there are relatively few instances of conflict between law and rules of practice.

3. **The Role of Practice.** The significance of rules of practice in modern commerce stems in part from their international character. In the absence of an effective international regime of law, it has been necessary for parties in need of certainty to turn to private rules of practice to order their collective behavior in international transactions. Such rules are often formulations of widely accepted practices which are given currency and credibility by endorsement of recognized national or international organizations and widespread use. As such systems of rules have emerged, they constitute far more than a formulation of trade terms or definitions. In their most advanced form, they are, in effect, an alternative system which orders behavior, providing sophisticated remedial provisions and attempting to balance various rights and equities in various situations. In the annals of commercial law,

the UCP stands out as the classic example of private rule-making. Its near universal adherence makes it far more effective at governing transnational relationships than any known system of positive or judicial law.

4. **Role of Law.** The application and use of private rules of practice, however, does not render law unnecessary. There are certain matters which cannot be decided by private rule-making or, if decided, enforced. These matters include giving legal force to definitions, enforcement of obligations and delineation of rights, enforcement of the rules themselves, enforcement of the effective date of obligations and their limitation or termination, determination of priorities between competing entitlements, overriding or supervening issues of public policy, affect on third parties, and fraud or illegality. Even though private rules can address some of these questions, they cannot be given effect without the sanction of law. As a result, law and practice naturally complement one another, as is the case in this field between ISP98 and the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (UN Convention) and other well known national systems of law applicable to standby letters of credit, such as U.S. Revised UCC Art. 5. UN Convention Arts. 13, 14, & 16 expressly defer to rules of practice.

5. **Provides Applicable Rule of Law.** Many provisions of law relating to standby letters of credit are not mandatory. Typically, they are default rules which may be derogated from or varied. Rev. UCC Art. 5 Section 5-103(c) goes so far as to list the UCC provisions which are mandatory, expressly permitting variation of other provisions. Where applicable law may be derogated from or varied, Subrule (a) provides that the ISP98 Rule would control over the default rule of law.

6. **Relation to Other Rules of Practice.** There is a choice of rules available to an issuer of standby letters of credit in addition to ISP98. This choice includes the Uniform Customs and Practice for Documentary Credits (UCP) (ICC Publication No. 500) to which, until the formulation of ISP98, man standbys were subject. For various reasons, parties may wish to continue issuing some or all standbys subject to the UCP. It is less likely that they will use the ISP for commercial letters of credit because of the differences regarding the typical documents presented and

the expectations of the parties. Nonetheless, certain Rules of ISP98 clarify provisions of the UCP and may serve as models for specific clauses in commercial letters of credit or be of assistance in interpreting provisions of UCP 500. An undertaking may be inadvertently or deliberately issued subject to these Rules and also issued subject to other rules of practice (e.g., "Subject to both ISP98 and UCP 500"). In the case where such an undertaking is deemed to be a standby letter of credit, ISP98 would supercede any conflicting provisions in the UCP. This result is consistent with the stated intent to apply to and govern standby letters of credit. If an undertaking is not a standby letter of credit but instead, for example, a commercial letter of credit, then Subrule (b) would not apply to conflicting provisions. Where there were no conflicts or where one rule enhanced or explained the other, both would be applicable.

7. Relation to Forms and Data Transmission Systems. It is not uncommon for standbys to be issued in standardized formats or via data transmission systems. These media impose certain constraints in the terms used and their length. Some formats have detailed protocols for placing information within certain blocks or fields. As ISP98 standardizes standby documentary types, it is likely that specialized standby message types will evolve. Occasionally, issuers or other nominated banks will err in the use of the various blocks or fields. Where there is a conflict between the actual terms used in a standby in the light of ISP98 which demonstrates the intent of the issuer and its placement under various protocols, ISP98 would control.

Cross References ISP98 Rules

- Independence of the Issuer-Beneficiary Relationship - ISP98 Rule 1.07
- Limits to Responsibilities - ISP98 Rule 1.08(d)
- Examination for Compliance - ISP98 Rule 4.01(b)
- Assignment of Proceeds - ISP98 Rule 6.06
- Request for Acknowledgment - ISP98 Rule 6.07(a) & (b)(ii)(d)
- Transferee by Operation of Law - ISP98 Rule 6.11
- Right to Reimbursement - ISP98 Rule 8.01(b)(i) & (c)

Generally Applicable Provisions

- “standby letter of credit” - ISP98 Rule 1.01(a) & (b)
- Rules Subject to Standby Terms - ISP98 Rule 1.01(c); Rule 1.11(d)
- Interpretive Principles - ISP98 Rule 1.03
- Persons Affected by ISP - ISP98 Rule 1.04
- Fraud Excluded - ISP98 Rule 1.05
- Nature of Standbys - ISP98 Rule 1.06
- Redundant or Undesirable Terms - ISP98 Rule 1.10
- Standby Undertaking - ISP98 Rule 2.01

Other Sources

UCP 500: No rule.

URDG: No rule.

UN Convention: Art. 13 provides that the rights and obligations of the issuer and the beneficiary are to be determined from the terms and conditions of the undertaking “including any rules, general conditions or usages specifically referred to therein ...”. Art. 14 provides that the issuer shall exercise reasonable care “having due regard to generally accepted standards of international practice ...”. Art. 16 provides that in determining whether documents comply, the issuer shall have “due regard to the applicable international standard of ... standby letter of credit practice”. The Convention does not expressly note that its provisions may be modified because it was deemed that the principle of

party autonomy applied and that such a provision was unnecessary.

Rev. UCC Art. 5: Section 5-103(c) lists the eight provisions which cannot be varied and states that “the provisions of the article may be varied ... by a provision stated or incorporated by reference in an undertaking”. The non-variable provisions relate to the scope of the article, the principle of independence, a cap on the validity of a letter of credit which has no expiration date or is perpetual, a provision regarding the obligation to recognize an assignment of proceeds in limited circumstances, a provision on subrogation, and a limitation on the ability to disclaim obligations of good faith, diligence, reasonableness and care.

Rule 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.

Official Comments:

1. **Generally.** This Rule suggests the principles by which ISP98 should be interpreted. The principles derive their meaning from the practice which ISP98 seeks to articulate.

2. **Mercantile Usage.** The system of letter of credit practice was created by merchants and their bankers to meet the reasonable commercial expectations of the various businesses in which they were engaged. The practices antedate formal rules of practice which are declaratory of practice and which attempt to articulate and rationalize it. The system was shaped by the need for money-like promises, the importance of certainty and finality, the international character of the transactions and relationships, the vital role of correspondent bank relationships, and the significance of other non-financial intermediaries. The standby practices reflected in these Rules are either based on long-standing letter of credit practices reflected in the UCP or on practices which have evolved from standby letters of credit consistent with the UCP but not reflected in it.

3. **Lex Mercatoria.** The practices upon which these Rules are based are not primarily created by lawyers nor do they operate primarily for the benefit of lawyers. The system is not a traditional legal system, relying on legal rules and principles to achieve desired balances and equities in the context of the judicial system and traditional bi-lateral contracts, but rather a system of merchants and their bankers for merchants and their bankers. The system is an expression of international mercantile usage or the

lex mercatoria and the significance of this point is emphasized in regard to the interpretation of ISP98 because its Rules are, at times, counter-intuitive to lawyers and judges versed in general commercial law.

4. **Payment Mechanism.** In interpreting ISP98, consideration should be given to the role of the standby as a payment mechanism. Standbys have achieved widespread use because of their deserved reputation as reliable payment mechanisms. Indeed, in many situations a standby is taken in lieu of a deposit of cash or something of equivalent liquidity. It is the expectation of beneficiaries that a standby, while not equivalent to cash, will provide a similar liquidity subject to its documentary terms and conditions. The existence of a dispute regarding who is ultimately entitled to the funds represented in the standby is not a reason for non-payment of a drawing under the standby. In fact, the very *raison d'être* of the standby is to assure payment regardless of disputes. Only in the case of manifest or material fraud or abuse under which there is undoubtedly no colorable basis upon which a drawing can be made would the issuer be excused from making payment under applicable rules of law as is provided, for example, in UN Convention Art. 19(1)(c).

5. **Day-to-Day Transactions.** These Rules are drawn from daily practice and are intended to be eminently practical. While they have significant theoretical underpinnings, the Rules cannot work as intended unless they are interpreted so as to be capable of being applied by the persons who must use them in a daily setting rather than by theorists or experts. Any interpretation which unduly complicates them or requires a high level of legal expertise or determinations of facts outside the purview of bank operations in making a decision about their meaning would be contrary to the purpose of ISP98.

6. **Flexibility.** Indeed, it is the ability of the standby to respond to market needs with flexibility and the creativity of practitioners which accounts for its extraordinary growth. These Rules are intended to encourage this flexibility as the standby adapts itself to new uses and markets.

7. **World Wide System.** In its formulation, ISP98 was designed to support the system of standby practice which provides,

on the whole, a complete international scheme of obligations and remedies. With some notable exceptions, chiefly related to public policy questions regarding fraud and illegality, ISP98 does so. Any interpretation which renders the Rules inconsistent with the worldwide system of international banking operations would be contrary to its purpose.

8. **Uniformity.** Because ISP98 is designed for international use, any interpretation which is parochial or based on unique local legal practice would be contrary to its purpose. There should not be different material interpretations of the Rules between different countries or regions.

9. **Official Comments.** To facilitate uniform interpretation of these Rules, these Official Comments have been developed and will, from time-to-time be supplemented and revised. In addition, the Institute of International Banking Law & Practice has established a Council on International Standby Practices to monitor ISP98, address questions, and oversee its revision in cooperation with various international organizations, including the United Nations Commission on International Trade Law, the Commission on Banking Technique and Practice of the International Chamber of Commerce, and the International Financial Services Association.

Cross-References ISP98 Rules

- Independence of the Issuer-Beneficiary Relationship - ISP98 Rule 1.07
- Limits to Responsibilities - ISP98 Rule 1.08(d)
- Examination for Compliance - ISP98 Rule 4.01(b)
- Non-Documentary Terms or Conditions - ISP98 Rule 4.11(b) & (c)

Generally Applicable Provisions

- "standby" - ISP98 Rule 1.01(d)
- Rules Subject to Standby Terms - ISP98 Rule 1.01(c); Rule 1.11(d)
- Persons Affected by ISP - ISP98 Rule 1.04
- Fraud Excluded - ISP98 Rule 1.05
- Nature of Standbys - ISP98 Rule 1.06
- Redundant or Undesirable Terms - ISP98 Rule 1.10
- Interpretation of Rules - ISP98 Rule 1.11
- Standby Undertaking - ISP98 Rule 2.01

Other Sources

UCP 500: No rule.

URDG: No rule.

UN Convention: Art. 5 states that when interpreting the “Convention, regard is to be had to its international character and to the need to promote uniformity in its application and the observance of good faith in the international practice of independent guarantees and stand-by letters of credit”.

Rev. UCC Art. 5: The Official Comment to Section 5-101 states that “[I]etter of credit law should remain responsive to commercial reality and in particular to the customs and expectations of the international banking and mercantile community” and instructs courts to “read the terms of [Art. 5] in a manner consistent with these customs and expectations”.

Rule 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.

Official Comments:

1. **Generally.** This Rule indicates to what and to whom these Rules apply when a standby is issued subject to them.
2. **To What Applicable.** The ISP98 system of standby credit practice encompasses not only the original standby but also a host of other inter-related undertakings, including the confirmation, advice, amendment, transfer, acknowledgment of assignment of proceeds, and other similar undertakings. By having been undertaken in relation to a standby subject to these Rules, these related undertakings also become governed by ISP98 except to the extent expressly modified or excluded.
3. **Person to Whom it Applies.** As indicated in this Rule, a standby issued subject to these Rules affects not only the issuer and beneficiary who uses the standby but also any advisor, confirmer, or any other person who agrees to act or does act within the scope of a nomination in the standby.
4. **Applicant.**
 - a. **When Applies.** The Rule also indicates that, to the extent applicable, its provisions apply to an applicant who

“authorises issuance of the standby or otherwise agrees to the application of these Rules”. This provision would encompass the situation where the application expressly provides that the standby will be issued subject to these Rules. It also conceivably would encompass the situation where the standby was issued subject to the Rules and the applicant, after having been given due notice, failed to object.

b. How Affected. Although the Rules contain numerous provisions which affect the applicant and its rights and obligations, particularly with regard to reimbursement, the applicant is not a party to the standby and is not in privity with any party other than the issuer. For example, it has no right to object to the amendment of the standby if the issuer decides to amend without applicant instruction or approval (e.g., if the applicant is insolvent) but this action may jeopardize the issuer’s right to reimbursement. In addition, an applicant cannot assert discrepancies directly against a nominated person or the beneficiary.

c. Not Comprehensive. ISP98 addresses some but not all aspects of the legal relationship between the issuer and the applicant. It is to the reimbursement agreement between issuer and applicant that one must look for the complete context of the various obligations and responsibilities between them. For example, it is common for applications, course of dealings, or usage of trade to provide for a different standard of examination than that provided in these Rules. They would prevail over the ISP98 rule with respect to the applicant’s obligation to reimburse as is indicated in ISP98 Rule 8.01(c) (Right to Reimbursement).

Cross References ISP98 Rules

- Defined Terms - ISP98 Rule 1.09(a):
 - “Applicant”
 - “Beneficiary”
 - “Person”
- Independence of the Issuer-Beneficiary Relationship - ISP98 Rule 1.07
- Nomination - ISP98 Rule 2.04
- Advice of Standby or Amendment - ISP98 Rule 2.05
- Request to Transfer Drawing Rights - ISP98 Rule 6.01
- Assignment of Proceeds - ISP98 Rule 6.06
- Transferee by Operation of Law - ISP98 Rule 6.11

Generally Applicable Provisions

- “standby” - ISP98 Rule 1.01(d)
- Rules Subject to Standby Terms - ISP98 Rule 1.01(c); Rule 1.11(d)
- Interpretive Principles - ISP98 Rule 1.03
- Fraud Excluded - ISP98 Rule 1.05
- Nature of Standbys - ISP98 Rule 1.06
- Redundant or Undesirable Terms - ISP98 Rule 1.10
- Interpretation of Rules - ISP98 Rule 1.11
 - “Issuer” includes “Confirmer” - 1.11(c)(i)
 - “Beneficiary” includes “Transferee” - 1.11(c)(ii)
- Standby Undertaking - ISP98 Rule 2.01
- Different Branches - ISP98 Rule 2.02

Other Sources

UCP 500: Art. 2 mentions the applicant and other provisions are directed to the applicant, notably the disclaimer provisions of Arts. 15-28, some of which expressly mention the obligation of the applicant. Nonetheless, the applicant is not a party to a credit.

URDG: Art. 2 mentions the principal and other provisions are directed to the principal, notably the disclaimer provisions of URDG Arts. 11-

14, some of which expressly mention the obligation of the principal, nonetheless the principal is not a party to the independent guarantee.

UN Convention: The UN Convention refers to the applicant in Art. 2 and other provisions affect the obligation of the applicant.

Rev. UCC Art. 5: Rev. UCC Art. 5 refers to the applicant and Section 5-108(i) provides for a right of reimbursement.