Standby & Demand Guarantee Practice: Understanding UCP600, ISP98 & URDG 758

First Edition

By

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This volume is dedicated to

Lena Andersson

Demonstrating in her work a commitment to the integrity and enhancement of demand guarantee & standby LC practice that is unparalleled, Lena exemplifies the best practices in this field and embodies the principles described in this book.

Lena is a Global Product Specialist in Guarantees and Standby Letters of Credit at SEB. She is a member of the European Advisory Council for the Institute of International Banking Law and Practice, Inc. She was a member of the ICC Task Force that translated the URDG into Swedish, and works with ICC Sweden. She is a regular speaker at conferences and seminars relating to Guarantees and Standby Letters of Credit.
Preface

This book is intended to provide a comparison of the three practice rules used in standby letters of credit and independent guarantees, namely UCP600, ISP98, and URDG 758. Incidentally, it compares and contrasts typical standby and independent guarantee practices and also surveys general rules of letter of credit law that are related to these undertakings.

In doing so, it breaks new ground. While separate treatments of each practice rule exist, until now there has been no serious comparison of the three practice rules. That such a comparison is needed is apparent to anyone considering the situation of major banks and users of these instruments. While one set of practice rules may be preferred, it is the rare Issuer/Guarantor or applicant who can insist that only these practice rules be used for its undertakings. Therefore, any serious user of these undertakings must be able to work with each of the rules.

Doing so, however, is not an easy matter. While the practice rules resemble one another in broad outline, they differ considerably in their application to specific issues and problems. The inability to move from practice rule to practice rule or ignorance or confusion about the differences will inevitably result in costly mistakes in presentation of documents, their examination, refusal, and other aspects of practice such as transfer, assignment of proceeds, etc. In addition, the failure to appreciate these differences will lead to errors in drafting of the undertaking. What is fundamental about these undertakings is not their name, whether “standby”, “demand/bank/independent guarantee”, “letter of credit”, “bond”, or whatever. What is important is the practice rule to which it is subject. An Issuer/Guarantor, Confirmer, Nominated Bank, Applicant, Beneficiary, Transferee, assignee, or successor overlooks the not insignificant differences between these practice rules at their peril.

The organization of this book follows that of the practice rules themselves, starting with basic propositions about independent undertakings (Chapter 1) and moving to obligations of the parties (Chapter 2), presentation (Chapter 3), examination (Chapter 4), honour and dishonour (Chapter 5), and miscellaneous issues such as retention of the original past expiry, transfer, assignment, succession, disclaimers, LC Fraud and Abuse, protected persons, sanctions, charges, reimbursement, syndication/participation, law, forum, and arbitration (Chapter 6).

Although the relevant text of the practice rule being discussed is recited, most readers will want to have the full text of the three rules at hand when they read this book. LC Rules & Laws: Critical Texts for Independent Undertakings (IIBLP) is an ideal means of doing so, containing all practice rules and legal documents related to independent undertakings in one easily managed volume. In effect, it is a companion volume to this book.

While this book was not designed to complement the Certified Standby and Guarantee Professional certification programme, it provides a useful accompanying text. This certification programme is the only one that covers all three practice rules and both standbys and demand guarantees.

James E. Byrne
10 April 2014
Upper Puddleby on Marsh

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