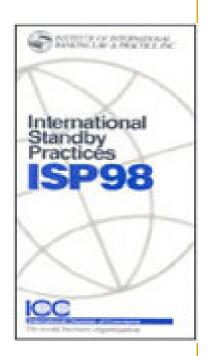
International Standby Practices (ISP98)

A
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PRESENTATION



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What is a Standby?

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CAN YOU
REMEMBER
THE STORY
BEHIND THE
SCENE???



TAMIM IQBAL, Bangladesh Cricketer Scored four consecutive half-centuries in the ASIA CUP 2012 who was initially listed as a Standby Player.

Standby Letter of Credit: History

- Due to implementation of the Glass-Steagall Act of 1933, functions of investment and commercial banks were separated in USA.
- Commercial banks were barred from issuing bank guarantees.
- In the changed scenario, Commercial banks invented the concept of 'Standby' instead of 'bank guarantee' to **dodge** the legislative prohibition.
- Thus Standbys became an American invention.
- Though the bar has been withdrawn (in 1996), practice of standbys continues.

Glass-Steagall Act 1933

- Came in to effect on June 16, 1933
- The term Glass-Steagall Act most often refers to four provisions of the 1933 Banking Act that separated commercial and investment banking.



Sen. Carter Glass and Cong. Henry B. Steagall, the cosponsors of the Glass—Steagall Act.

What is a Standby Letter of Credit?

- Standby credits were a U.S. invention, developed to allow banks to provide the functional equivalent of guarantees without violating regulatory restrictions on the issuance of guarantees.
- To maintain the distinction from guarantees, they took the same form as commercial credits, with payment based solely on the presentation of documents and independent of the contractual arrangements between the beneficiary and applicant of the credit.

What is a Standby Letter of Credit?

- □ A standby letter of credit is basically a bank guarantee.
- □ A guarantee of payment issued by a bank on behalf of a client that is used as "payment of last resort" should the client fail to fulfill a contractual commitment with a third party.
- ☐ Also known as a "non-performing letter of credit".

Major Standby Types

Most standbys seem to fall into one of three general categories:

PERFORMANCE STANDBY: those that secure payment due on the failure of a person to complete performance of an obligation,

FINANCIAL STANDBY: those that secure payment due on the occurrence of a financial default and

DIRECT PAY STANDBY: those that provide for the payment of amounts coming due on debt instruments in lieu of payment by the obligor on the debt.

BID BOND/ TENDER BOND STANDBY

- Supports an obligation of the applicant to execute a contract if the applicant is awarded a bid.
- When someone (i.e., a corporate company or government) invites bid or tender to deliver goods or to complete a contract, it will be concerned to receive bids only from genuine suppliers who are capable of and willing to sign a contract if the bid is awarded.

BID BOND/ TENDER BOND STANDBY (continued)

- To ensure receiving bids form genuine suppliers and to avoid any possible losses, the buyers inviting tenders /bids may ask BID BOND/ TENDER BOND STNADBYs from the bidders.
- The value of such standbys is typically a small percentage of the contract value.



Example



20-Feb-20xx

The General Manager,

BAPEX, Dhaka, Bangladesh.

We ABC Bank Ltd hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of USD10,000.00 upon receipt by us of your written demand accompanied by a written statement that the tenderer, XYZ Ltd is in breach of its obligation under the tender conditions, because the tenderer

HAS WITHDRAWN ITS TENDER DURING THE PERIOD OF TENDER VALIDITY or

FAILS OR REFUSE TO EXECUTE THE CONTRACT FORM when awarded the tender.

This standby expires

This standby is subject to ISP98 rules.

ISP98 Rule 8.02 excluded.

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PERFORMANCE STANDBY

- Secure payment due on the failure of a person to complete performance of an obligation.
- For example, once a bid is awarded to a supplier, the purchaser may a require a standby from the supplier in the regard that the underlying job will be performed otherwise the performance standby will be called upon.
- Generally a Bid Bond Standby is replaced by a Performance Standby (when bid is awarded).

ADVANCE PAYMENT STANDBY

- Secure an advance payment made by the beneficiary to the applicant.
- For example, once a bid is awarded to a supplier, the supplier may require a portion of the contract value (e.g, 20%) in advance to purchase raw materials and/or to undertake other preparatory works. The purchaser may then require an Advance Payment Standby in exchange to secure the advancement made by them.

COUNTER STANDBY

- A standby which backs issuance of another standby by its beneficiary.
- For example, CITI BANK NA New York, at the request of one of its customer ABC Inc., NY, may issue a counter standby in favour of Dhaka Bank BD for further issuance of a performance standby in favour of GOB on account of ABC Inc., NY.
- This is an indirect way of issuing a standby when a beneficiary (e.g, GOB in the above example) does not accept overseas guarantee/standby.

FINANCIAL STANDBY

- Secure payment due on the occurrence of a financial default.
- For example, a Financial Institution advancing loans to an obligor may require a financial standby from another FI to secure their advance in case of default by the obligor.

DIRECT PAY STANDBY

- Provides for the payment of amounts coming due on debt instruments in lieu of payment by the obligor on the debt.
- Typically it is connected with a financial standby without regard to a default.
- For example, an issuer of a Direct Pay standby may directly pay installments due on a loan taken by the applicant (obligor) from the beneficiary (a FI) against installment due notices from the beneficiary of the standby.

COMMERCIAL STANDBY

- Supports the obligation of an applicant to pay for goods or services in the event of nonpayment by other methods.
- For example, an (importexport) transaction covered by a commercial letter of credit may be backed up by a commercial standby to secure non-payment by the commercial letter of credit.

Commercial Credits VS Standby Credits

THE DISTINCTION BETWEEN THEM IS NOWHERE PRECISELY STATED AND PROBABLY UNNECESSARY TO STATE.

-OFFICIAL ISP98 COMMENTARY

Commercial Credits VS Standby Credits

Commercial Credits

Undertaking of the issuer against performance of the beneficiary (i.e. presentation of complying documents).

Standby Credits

Undertaking of the issuer against performance of the beneficiary (i.e. presentation of complying documents) triggered by non-performance of the applicant.

Commercial Credits VS Standby Credits

Commercial Credits

 Commercial Credits are payment instruments.

 It is common for commercial credits to be utilized.

Standby Credits

 Standby Credits are security instruments against possible nonpayments (by payment insturments).

 It is common for standby credits to remain unutilized.

Commercial Credits VS Standby Credits

Commercial Credits

• The parties involved with a commercial credit generally expect that the credit will be drawn upon.

Standby Credits

• The parties expect or at least hope (except direct pay standby) that the event triggering the right to draw is a contingency that will not occur.

Rules that Govern Standby Letters of Credits

- Uniform Customs and Practice for documentary credits (UCP 600)
- The International Standby Practices (ISP 98)
- Uniform Rules for Demand Guarantees (URDG 458)
- U.N. Convention on Independent Guarantees and Stand-by Letters of Credit
- Local law in the country(ies) of the issuer (and confirmer)

ISP98 Rules

- □ The International Standby Practices (ISP98) reflects generally accepted practice, custom, and usage of standby letters of credit.
- □ It provides separate rules for standby letters of credit in the same sense that the Uniform Customs and Practice for Documentary Credits (UCP) and the Uniform Rules for Demand Guarantees (URDG) do for commercial letters of credit and independent bank guarantees.

ISP98 Rules

- □ ISP98 is a work of INSTITUTE OF INTERNATIONAL BANKING LAW AND PRACTICE, USA.
- □Came into effect on 1st January 1999.
- □ICC has published the rules as one of its publication (no.590)

UCP VS ISP

UCP ISP

 Has been designed for
 Has been designed for those letters of credit whose primary purpose is to serve as a medium of payment.

those letters of credit whose primary purpose is to provide credit assurance.

UCP VS ISP

UCP ISP

• UCP makes an assumption that the documents required under a letter of credit have commercial value and that the applicant will authorize payment even when there are discrepancies.

ISP assumes that the documents are merely pieces of paper having no commercial value and that the reason for drawing is probably that there is a dispute between the applicant and beneficiary or the applicant has gone bankrupt. Therefore, the likely impact of discrepancies is that payment will not be made.

UCP VS ISP

UCP

The UCP formulation is less applicant-friendly than the ISP formulation. For example, the UCP 600 language can be interpreted to require the applicant to indemnify the issuer against foreign law liabilities without regard to the governing law stated in the credit — which could be a problem for an applicant if the credit is a UCP 600 credit, the credit is stated to be subject to New York law, and the

ISP

The ISP formulation is more applicant-friendly than the UCP formulation. For example, Under the ISP98 version, the applicant's indemnification obligation arises only if the issuer incurs liabilities under foreign law other than the law chosen to govern the credit.

issuer is not located in New York.

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".

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).



1.01 (a)

Interpretations

The intended use of ISP98 rules is for standby letters of credit.

1.01 (a)

Interpretations

- **ISP98 sub-rule 1.01(a)** mentions the major standby categories: performance, financial, and direct pay undertakings.
- ISP98 rules apply not only to undertakings payable on default but also to direct pay standbys or independent guarantees under which there need be no default and where payment is made in the ordinary course of business.

RULE 1: GENERAL PROVISIONS

Scope, application, definitions, and interpretation of these Rules
1.01 Scope and application

(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.

1.01 (b)

Interpretations



- ISP98 rules may be used in both domestic or international transactions.
- ISP98 rules may be applied to any standby letter of credit or other similar undertaking by express reference.

Example(s):

- (i) This Standby Letter of Credit is subject to ISP98 rules.
- (ii) In field 40C of SWIFT MT760:

ISP98

1.01 (b)

Interpretations

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.

RULE 1: GENERAL PROVISIONS

Scope, application, definitions, and interpretation of these Rules

- 1.01 Scope and application
 - (c) An undertaking subject to these Rules may expressly modify or exclude their application.

1.01 (c)

Interpretations

Any of the ISP98 rules may be modified or excluded by express indication in the undertaking subject to these rules.

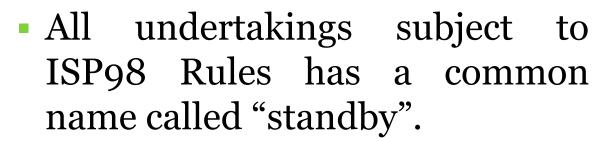
Scope, application, definitions, and interpretation of these Rules

1.01 Scope and application

(d) An undertaking subject to these Rules is hereinafter referred to as a "standby".

1.01 (d)

Interpretations



• This is purely for the convenience of the readers.

20-Feb-20xx
The General Manager,
BAPEX, Dhaka, Bangladesh.

Standby

Total Control of the State of t

We ABC Bank Ltd hereby irrevocably undertake to pay you, argument, any sum or sums not exceeding in total an amount of upon receipt by us of your written demand accompanied by a written statement that the tenderer, XYZ Ltd is in breach of its obligation under the tender conditions, because the tenderer

HAS WITHDRAWN ITS TENDER DURING THE PERIOD OF TENDER VALIDITY or

FAILS OR REFUSE TO EXECUTE THE CONTRACT FORM when awarded the tender.

This standby expires

This standby is subject to ISP98 rules.

ISP98 Rule 8.02 excluded.

Any of the ISP98 rules may be modified or excluded by express indication Express indication is required for application of ISP Rules



(a) These Rules supplement the applicable law to the extent not prohibited by that law.



Law VS Rules of Practice

- Law (e.g, UCC) and Rules of Practice (e.g, ISP98, UCP600) are not exclusive.
- The application and use of private rules of practice, however, does not render law unnecessary.
- There are certain matters (e.g., fraud cases) which cannot be decided by private rule-making or, if decided, enforced.
- Law and practice naturally complement one another.

LAW VS

Rules of Practice

- A letter of credit is always subject to law even if it is expressly subject to rules of practice.
- It is important to understand to what extent will the practice rules be given effect under applicable law.

LAW VS Rules of Practice

 Many provisions of laws relating to standby letters of credit and independent guarantees can be varied and, so, are non-mandatory (In fact in US perspective).

For an example, the US law, Uniform Commercial Code (UCC) Section 5-103(c), lists the provisions which are mandatory, expressly permitting variation of other provisions.

ISP98 Rule 1.02 (a)

General Rule

ISP98 Rules supplement the applicable law (unless supplementation is not prohibited by that law).

Exception

Applicable law controls over ISP98 rules where there is a true conflict.

Exception

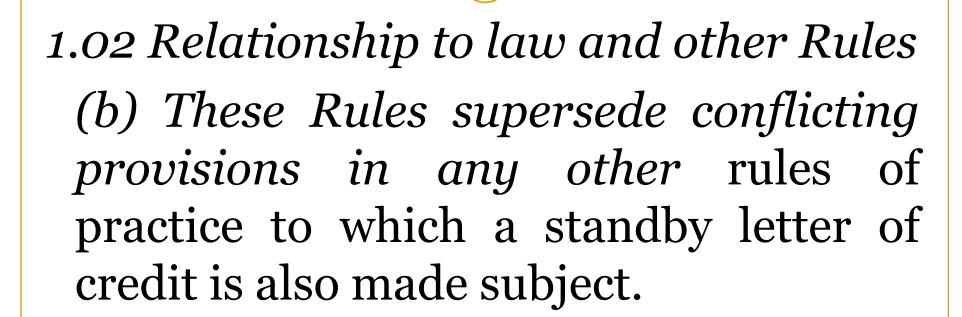
ISP98 takes priority over nonmandatory local law.

Quiz 01

A guarantee states that it is subject to ISP98 and local law. Which of the following statements is correct?

- A. All terms of ISP98 take precedence over local law
- B. All local law takes precedence over ISP98
- C. ISP98 takes precedence over non-mandatory local law
- D. Local law takes precedence over nonmandatory ISP98 terms

Ans: (c)





1.02 (b) Interpretations

ISP

VS

Other Rules of Practice



- When a standby letter of credit (or an independent guarantee) is issued subject to both ISP98 and other rules of practice, the ISP would control over a conflicting provision in another rule.
- For example, ISP does not allow partial transfer of a credit but UCP does. Therefore, when a Standby Letter of Credit is subject to both ISP98 and UCP600, the Standby LC can not be transferred partially since ISP98 would control over UCP600.

Standby Letter of Credit

20-Feb-20xx

The General Manager,

BAPEX, Dhaka, Bangladesh.

We ABC Bank Ltd hereby irrevocably undertake to pay you, without cavil or argument, any sum or sums not exceeding in total an amount of USD10,000.00 upon receipt by us of your written demand accompanied by a written statement that the tenderer, XYZ Ltd is in breach of its obligation under the tender conditions, because the tenderer

HAS WITHDRAWN ITS TENDER DURING THE PERIOD OF TENDER VALIDITY or

FAILS OR REFUSE TO EXECUTE THE CONTRACT FORM when awarded the tender.

This standby LC expires

This standby LC is subject to ISP98 and UCPDC600 Rules.

ISP98 rules take priority over conflicting UCP600 rules.



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.

Rule 1.03

Interpretations

ISP98 Rule 1.03 (Interpretative Principles) formulates the principles upon which ISP98 is based.

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 authorizes issuance of the standby or otherwise agrees to the application of these Rules.

Effect of ISP98 Rules Applicable to any person who acts on a standby subject to the rules and any transaction subject to the rules.

ISP98 Rules

Applicable to the applicant where it authorizes the issuance of a standby subject to ISP98 or otherwise agrees to the application of the ISP98.

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.

1.05 Interpretations

ISP98 Rules assume that all standbys are properly issued and the world is free from all forms of fraud.



Following matters are not dealt by ISP98 Rules and are left to applicable law:

- (a) power or authority to issue a standby;
- (b) formal requirements for execution of a standby (i.e., necessary formalities for execution of a standby)
- (c) defenses to honour based on fraud, abuse, or similar matters. (i.e., issues related to Letter of credit fraud)

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.

1.06 (a)

Nature of standbys

A standby is automatically an irrevocable, independent, documentary, and binding undertaking when issued.

General principles

1.06 Nature of standbys

(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.

1.06 (b) Significance of irrevocability

When there remains provision for automatic amendment in the standby

An issuer's obligations under a standby cannot be amended or cancelled by the issuer except

- (i) as provided in the standby or
- (ii) 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.



Significance of independence of a standby



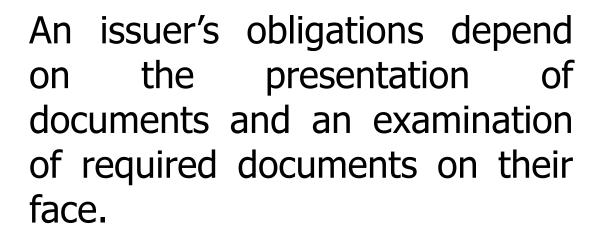
The enforceability of an issuer's obligations under a standby does not depend on:

- (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.



Significance of being documentary of a standby



(e) Because a standby or amendment is binding when issued, it is enforceable against an issuer whether or not the applicant authorized its issuance, the issuer received a fee, or the beneficiary received or relied on the standby or the amendment.



Effect of binding undertaking

A standby (or amendment) is enforceable against an issuer whether or not

- ✓ the applicant authorized its issuance,
- ✓ the issuer received a fee, or
- ✓ the beneficiary received or relied on the standby or the amendment.

General principles

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.

Rule 1.07

Independence of the issuer-beneficiary relationship

An issuer's obligations toward the beneficiary are not affected by any separate relationship that the issuer has with the applicant.



General principles

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.

Rule 1.08

Limits to responsibilities of the issuer



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).

Definitions

Applicant



- "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.

Applicant

In some situations, the person who applies for issuance of a standby is not the same person noted on the face of the standby. Where these two persons are different, the ISP98 definition notes that the term "applicant" includes not only the person listed on the face of the standby but also the person applying if it is someone else.



Beneficiary

"Beneficiary" is a named person who is entitled to draw under a standby.

1.09 Defined terms

- "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).

RULE 1.09(a): Definitions



Business day

"Business day" means a day on which the place of business at which the relevant act is to be performed is regularly open.

Banking day

"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.

1.09 Defined terms

"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).

Definitions

Confirmer

"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.

1.09 Defined terms

"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.



Demand

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

Definitions

"Document"

"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

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

1.09 Defined terms

"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.

Definition

Expiration date

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



Person

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

1.09 Defined terms

- "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.



Presentation

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

Definition

Presenter

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



Signature

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

1.09 Defined terms

- 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) and (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).

Redundant or otherwise undesirable terms

Sometimes, as per requirement of the beneficiary or their lawyers, few terminologies may be used in a standby (subject to ISP98 rules) which may not correspond fully with Standard Standby Practice.

For example, a statement in a standby that it is unconditional, may be interpreted by someone that there is no requirement to present documents under the standby though payment under a standby is always conditioned to presentation of documents. Redundant or otherwise undesirable terms

• Therefore, ISP98 Rule 1.10(a) discourage use of those terminologies and, at the same time, explains the meaning of those terms if used in a standby even though.

1.10 (a)

(a) A standby should not or need not state that it is:

Redundant or otherwise undesirable terms

- (i) unconditional or abstract
- (ii) absolute
- (iii) primary
- (iv) payable from the issuer's own funds
- (v) clean or payable on demand

1.10 (a)

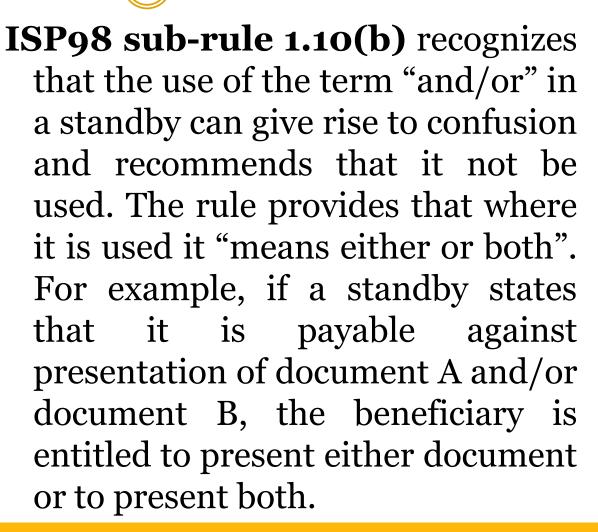
Significances of Redundant or otherwise undesirable terms if used in a standby

- (i) A standby is Unconditional or abstract: Payment under a standby is conditioned solely on presentation of specified documents.
- (ii) A standby is Absolute: A standby is irrevocable.
- (iii) A standby is Primary: A standby is a independent obligation of the issuer.
- (iv) A standby is Payable from the issuer's own funds: Payment under a standby does not depend on the availability of applicant funds.
- (v) A standby is clean or payable on demand: A standby 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).



Interpretation



- (c) The following terms have no single accepted meaning:
 - (i) and shall be disregarded:
 - "callable",
 - "divisible",
 - "fractionable",
 - "indivisible", and
 - "transmissible".

1.10(c) (i)

INTERPRETATION

There are certain terms that are used in connection with standby letters of credit that have no single accepted meaning. Some of these terms are so ambiguous and confusing that ISP98 subrule 1.10(c)(i) provides that they shall be disregarded.



- i. "callable",
- ii. "divisible",
- iii. "fractionable",
- iv. "indivisible",
- v. "transmissible"



- (c) The following terms have no single accepted meaning:
 - (ii) and shall be disregarded unless their context gives them meaning:

"assignable",

"evergreen",

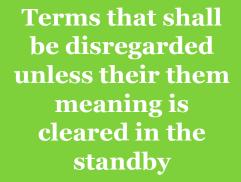
"reinstate", and

"revolving".

1.10(c) (ii)

Interpretation

- There are terms which have no single accepted meaning but whose perspective is typically explained in a standby letter of credit.
- ISP98 sub-rule 1.10(c)(ii) recognizes that the use of the terms Assignable, Evergreen, Reinstate, and Revolving by themselves has no implication but that these terms can be given meaning in the context of the standby letter of credit.
- There is no inherent problem in the use of these terms as long as it is clear what was intended and as long as that is clearly explained and stated in the standby.



- i. "assignable"
- ii. "evergreen"
- iii. "reinstate"
- iv. "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.



Interpretation of ISP Rules

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- (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.

RULE 1.11 (c)

Interpretation of ISP Rules

- "Issuer" = "confirmer"
- "Beneficiary"="transferee beneficiary"
- "Including" means "including but not limited to";
- "A or B": "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";
- Singular=plural and vice versa
- Neuter gender = 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.

Interpretation of ISP Rules

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Interpretation of ISP Rules

- (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 1.11 (e)



"Provided in the standby"=
 Actual Text of the Standby+ISP98