The long-awaited *Rules on International Standby Practices* (ISP98) are published for the first time in this booklet format. Five years in preparation, the Rules cover all aspects of a standby transactions from the issuance through presentation, examination, notice transfer, cancellation and syndication/participation.

*ISP98* fills an important gap in the market place. Though standby letters of credit have similarities with commercial letters of credit and other financial instrument, there are significant differences in scope and practice. Moreover, it is recognized that the ICC’s *Uniform Customs and Practice for Documentary Credits* (UCP), which is internationally accepted for commercial letters of credit, is not appropriate for all forms of standbys. A new set of Rules was required for this workhorse of commerce and finance, which, in terms of value, exceeds commercial credits by a ratio of 5:1.

*ISP98* reflects a distillation of practices from a wide range of standby users-bankers, merchants, rating agencies, corporate treasurers, credit managers, government officials and banking regulators. Like the UCP for commercial credits, *ISP98* is destined to become the standard for the use of standbys in international transactions.

The *International Chamber of Commerce*, the world business organization, based in Paris, is the global leader in the development of standards, rules and reference guides for international trade.
International Standby Practices

ISP98

in force as 1 January 1999
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publication N°590.

The English language edition is the official text of the ISP98. Official translations will be approved by the Institute of International Banking Law & Practice, Inc. and available from ICC Publishing or ICC National Committees.

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FOREWORD
By Maria Livanos-Cattaui, Secretary General of ICC

I take great pleasure in introducing the publication of the International Standby Practices by the ICC.

ISP98 embodies the commitment of ICC, through its Commission on Banking Technique and Practice, to provide global leadership in the formulation of standard banking practice for letters of credit and related independent undertakings such as standby letters of credit. In the tradition of ICC’s Uniform Customs and Practice for Documentary Credits (UCP), which is recognized worldwide as the code of practice governing commercial letters of credit, endorsement of the ISP98 by ICC assures that these rules will assume a global character as well.

As standbys came into their own under the UCP, it nevertheless became clear that issues of practice had emerged which required different solutions than those provided by the UCP. ISP98, in a sense, is an evolutionary product of the application of the UCP to standbys, as can be seen in the similarities between the two sets of rules. It is important to note that standbys can still be issued subject to UCP, if the parties determine it is their wish to do so.

It is also significant that ICC has joined hands with the Institute of International Banking Law and Practice in the development of ISP98. The rules, originally developed over several years by the Institute and all segments of the international standby community, benefited from the input of an ICC Working Party, chaired by the Banking Commission’s Technical Adviser, Gary Collyer, which reviewed and made suggestions concerning the rules during the last several months of their development. The result, we are pleased to say, reflects many of ICC’s concerns and represents the output of a productive partnership formed to provide a workable and realistic set of rules for the users of standbys worldwide.
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PREFACE

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.

The formulation of standby letter of credit practices in separate rules evidences the maturity and importance of this financial product. The amounts outstanding of standbys greatly exceed the outstanding amounts of commercial letters of credit. While the standby is associated with the United States where it originated and where it is most widely used, it is truly an international product. Non-U.S. bank outstandings have exceeded those of U.S. banks in the United States alone. Moreover, the standby is used increasingly throughout the world.

Standbys are issued to support payment, when due or after default, of obligations based on money loaned or advanced, or upon the occurrence or non-occurrence of another contingency.

For convenience, standbys are commonly classified descriptively (and without operative significance in the application of these Rules) based on their function in the underlying transaction or other factors not necessarily related to the terms and conditions of the standby itself. For example:

- A “Performance Standby” supports an obligation to perform other than to pay money including for the purpose of covering losses arising from a default of the applicant in completion of the underlying transactions.
- An “Advance Payment Standby” supports an obligation to account for an advance payment made by the beneficiary to the applicant.
• A “Bid Bond/Tender Bond Standby” supports an obligation of the applicant to execute a contract if the applicant is awarded a bid.

• A “Counter Standby” supports the issuance of a separate standby or other undertaking by the beneficiary of the counter standby.

• A “Financial Standby” supports an obligation to pay money, including any instrument evidencing an obligation to repay borrowed money.

• A “Direct Pay Standby” supports payment when due of an underlying payment obligation typically in connection with a financial standby without regard to a default.

• An “Insurance Standby” supports an insurance or reinsurance obligation of the applicant.

• A “Commercial Standby” supports the obligations of an applicant to pay for goods or services in the event of non-payment by other methods.

In the past, many standbys have been issued subject to the UCP even though it was intended for commercial letters of credit. The UCP reinforced the independence and documentary character of the standby. It also provided standards for examination and notice of dishonor and a basis to resist market pressures to embrace troublesome practices such as the issuance of standbys without expiration dates.

Despite these important contributions, it has long been apparent that the UCP was not fully applicable nor appropriate for standbys, as is recognized in UCP 500 Article 1 which provides that it applies to the extent to which they may be applicable. Even the least complex standbys (those calling for presentation of a draft only) pose problems not addressed by the UCP. More complex standbys (those involving longer terms or automatic extensions, transfer on demand, requests that the beneficiary issue its own undertaking to another, and the like) require more specialized rules of practice. The ISP fills these needs.

The ISP differs from the UCP in style and approach because it must receive acceptance not only from
bankers and merchants, but also from a broader range of those actively involved in standby law and practice corporate treasurers and credit managers, rating agencies, government agencies and regulators, and indenture trustees as well as their counsel. Because standbys are often intended to be available in the event of disputes or applicant insolvency, their texts are subject to a degree of scrutiny not encountered in the commercial letter of credit context. As a result, the ISP is also written to provide guidance to lawyers and judges in the interpretation of standby practice.

Differences in substance result either from different practices, different problems, or the need for more precision. In addition, the ISP proposes basic definitions should the standby permit or require presentation of documents by electronic means. Since standbys infrequently require presentation of negotiable documents, standby practice is currently more conducive to electronic presentations, and the ISP provides definitions and rules encouraging such presentations. The development of S.W.I.F.T. message types for the ISP is anticipated.

The ISP, like the UCP for commercial letters of credit, simplifies, standardizes, and streamlines the drafting of standbys, and provides clear and widely accepted answers to common problems. There are basic similarities with the UCP because standby and commercial practices are fundamentally the same. Even where the rules overlap, however, the ISP is more precise, stating the intent implied in the UCP rule, in order to make the standby more dependable when a drawing or honor is questioned.

Like the UCP and the URDG, the ISP will apply to any independent undertaking issued subject to it. This approach avoids the impractical and often impossible task of identifying and distinguishing standbys from independent guarantees and, in many cases, commercial letters of credit. The choice of which set of rules to select is, therefore, left to the parties as it should be. One may well choose to use the ISP for certain types of standbys, the UCP for others, and the URDG for still others. While the ISP is not intended to be
used for dependent undertakings such as accessory guarantees and insurance contracts, it may be useful in some situations in indicating that a particular undertaking which might otherwise be treated as dependent under local law is intended to be independent.

For the ISP to apply to a standby, an undertaking should be made subject to these Rules by including language such as (but not limited to):

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

Although the ISP can be varied by the text of a standby, it provides neutral rules acceptable in the majority of situations and a useful starting point for negotiations in other situations. It will save parties (including banks that issue, confirm, or are beneficiaries of standbys) considerable time and expense in negotiating and drafting standby terms.

The ISP is designed to be compatible with the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (which represents a useful and practical formulation of basic standby and independent guarantee law) and also with local law, whether statutory or judicial, and to embody standby letter of credit practice under that law. If these rules conflict with mandatory law on issues such as assignment of proceeds or transfer by operation of law, applicable law will, of course, control. Nonetheless, most of these issues are rarely addressed by local law and progressive commercial law will often look to the practice as recorded in the ISP for guidance in such situations, especially with respect to cross border undertakings. As a result, it is expected that the ISP will complement local law rather than conflict with it.

The ISP is intended to be used also in arbitration as well as judicial proceedings (such as the expert based letter of credit arbitration system developed by the International Center for Letter of Credit Arbitration (ICLOCA) Rules or general commercial ICC arbitration) or with alternative methods of dispute resolution. Such a choice should
be made expressly and with appropriate detail. At a minimum, it can be made in connection with the clause relating to ISP98 - e.g. This undertaking is issued subject to ISP98, and all disputes arising out of it or related to it are subject to arbitration under ICLOCA Rules (1996).

Although translations of the ISP into other languages are envisioned and will be monitored for integrity, the English text is the official text of the ISP in the event of disputes. The ISP is the product of the work of the ISP Working Group under the auspices of the Institute of International Banking Law & Practice, Inc. which interacted with hundreds of persons over a five year period, and has benefitted from comments received from individuals, banks, and national and international associations. In particular, the participation of the International Financial Services Association (formerly the USCIB) and the Ad Hoc Working Group under the chairmanship of Gary Collyer (which led to its endorsement by the ICC Banking Commission) is gratefully recognized. In addition, the sponsorship and support of Citibank N.A., The Chase Manhattan Bank, ABN-AMRO, Baker & McKenzie, and the National Law Center for Inter-American Free Trade is acknowledged. Perhaps the greatest significance of the ISP is that its creation marks a new chapter in the collaboration between the international banking operations community and the legal community at an international level. In this respect, the active role played in this process by the Secretariat of the United Nations Commission on International Trade Law has been invaluable.

The ISP is drafted as a set of rules intended for use in daily practice. It is not intended to provide introductory information on standbys and their uses. While it is recognized that specific rules would benefit from explanatory comments, such comments are not appended to the ISP because the resulting work would be too cumbersome for daily use. Instead, introductory materials and Official Comments are available in the Official Commentary on the International Standby Practices (ISP98). For further information on support materials and developments on the ISP and to pose queries, consult the ISP98 website: www.ISP98.com.
To address inevitable questions, to provide for official interpretation of the rules, and to assure their proper evolution, the Institute of International Banking Law & Practice, Inc. has created a Council on International Standby Practices which is representative of the several constituencies which have contributed to the ISP and has charged it with the task of maintaining the integrity of the ISP in cooperation with the Institute, the ICC Banking Commission, the IFSA, and various supporting organizations.

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