

# Summary of Contents

---

## TABLE OF CONTENTS

<b>1</b>	Credits in the Credit Transaction—An Introduction
<b>2</b>	The Nature of Credits: What They Are and Are Not
<b>3</b>	The Function of Credits
<b>4</b>	Sources of Credit Law
<b>5</b>	Establishing, Amending, and Terminating the Credit
<b>6</b>	The Issuer and the Beneficiary
<b>7</b>	The Issuer and the Applicant
<b>8</b>	The Issuer and Third Parties
<b>9</b>	Breach: Remedies and Defenses
<b>10</b>	Transfer and Assignment
<b>11</b>	Questions of Procedure and Practice
<b>12</b>	Credits and Bank Regulation
<b>APPENDIX C</b>	UCP 600: Uniform Customs and Practice for Documentary Credits (2006 Version)
<b>APPENDIX D</b>	Uniform Customs and Practice for Documentary Credits (1993 Version)
<b>APPENDIX G</b>	Comptroller of the Currency Interpretive Ruling
<b>APPENDIX H</b>	ICC Uniform Rules for Demand Guarantees
<b>APPENDIX K</b>	Uniform Customs and Practice for Documentary Credits (1983 Version)

S-x

SUMMARY OF CONTENTS

**APPENDIX M** Memorandum to Uniform Law Commissioners from  
Committee to Implement the UNCITRAL Convention on  
Independent Guarantees and Standby Letters of Credit

**GLOSSARY OF LETTER OF CREDIT TERMS**

**BIBLIOGRAPHY**

**CUMULATIVE TABLE OF UNIFORM COMMERCIAL CODE  
CITATIONS**

**CUMULATIVE TABLE OF UNIFORM CUSTOMS AND PRACTICES**

**CUMULATIVE TABLE OF CASES**

**CUMULATIVE INDEX**

# Table of Contents

---

## **1 Credits in the Credit Transaction—An Introduction**

---

¶ 1.01	Standard Commercial Credit Transactions .....	S1-1
	[2] Documentary Sales .....	S1-1
	[3] Commercial Credit Sales .....	S1-1
¶ 1.02	“Pay, Accept, or Negotiate” .....	S1-2
	[1] Payment Credit .....	S1-2
	[2] Acceptance Credit .....	S1-2
	[6] Deferred Payment Credit .....	S1-3
¶ 1.03	Role of the Correspondent [Revised] .....	S1-3
	[1] Banks .....	S1-3
	[2] Arrangers .....	S1-4
¶ 1.04	Standby Credit .....	S1-8
¶ 1.05	Distinguishing the Standby Credit From Performance and Payment	
	Bonds .....	S1-9
	[1] The Distinction .....	S1-9
	[2] The Primary “Guaranty” .....	S1-11
¶ 1.06	Frequent Uses of the Standby Credit .....	S1-12
	[1] Forcing the Standby Into the Bond Context .....	S1-22
	[2] Standby as Escrow Fund .....	S1-23
	[3] Direct Pay Standby [New] .....	S1-23
¶ 1.07	Accompanying Documents .....	S1-24
	[1] Commercial Credit Documents .....	S1-24
	[a] Draft or Demand for Payment .....	S1-24
	[c] Bill of Lading .....	S1-24
¶ 1.11	Seller’s Protection Under Section 2-325 of the Code [Revised] .....	S1-25
¶ 1.12	Synthetic or Structured Letters of Credit [New] .....	S1-27

## **2 The Nature of Credits: What They Are and Are Not**

---

¶ 2.01	The Credit Is Unique .....	S2-1
¶ 2.02	Functional Definition .....	S2-1
	[1] A Unique Undertaking .....	S2-1
	[2] Some Common Fraudulent Practices .....	S2-2

¶ 2.03	Uniform Commercial Code Definition .....	S2-7
	[1] Elements of Letter of Credit [Revised] .....	S2-7
	[2] Credits and Demand Guaranties .....	S2-7
¶ 2.05	The <i>Wichita</i> Requirement .....	S2-11
	[2] The <i>Wichita</i> Rationale and Nondocumentary Conditions .....	S2-11
	[a] Rationale .....	S2-11
	[c] Ambiguities and Application of Letter of Credit Law .....	S2-11
	[d] Effect of UCP on Nondocumentary Conditions [Revised] .....	S2-12
	[4] Drafting the Credit's Conditions .....	S2-12
¶ 2.06	Documents Referred to as Letters of Credit .....	S2-13
¶ 2.08	Distinguishing the Credit From Related Contracts .....	S2-13
	[1] Contracts Between Issuer and Applicant .....	S2-13
	[2] Contracts Between Applicant and Third Parties .....	S2-15
	[3] Contracts Between Banks .....	S2-15
¶ 2.09	Clarifying Distinctions Between Credits and Related Contracts .....	S2-16
	[3] Tying the Credit to the Underlying Contract .....	S2-16
	[5] Applying the Independence Principle .....	S2-17
	[a] In General .....	S2-17
	[b] Within Limits .....	S2-17
	[6] Suits Between Parties to the Underlying Contract .....	S2-18
	[7] Claims on the Reimbursement Agreement .....	S2-19
¶ 2.10	Distinguishing Credit From Surety Contracts, Loan Commitments, Avals, and Open Account Collections .....	S2-20
	[1] Surety Contracts .....	S2-20

### **3 The Function of Credits**

---

¶ 3.01	A Basic Misunderstanding—Letters of Credit vs. Contract and Negotiable Instrument Principles .....	S3-1
¶ 3.02	Early Use of Bills of Exchange and Letters of Credit .....	S3-2
¶ 3.03	The Credit Confronts the Law of Contract and the Law of Negotiable Instruments .....	S3-3
	[3] Oral Engagement as a Credit .....	S3-3
	[5] Virtual Acceptance .....	S3-4
¶ 3.05	Increased Use of the Commercial Credit and Adoption of the Uniform Customs .....	S3-4
¶ 3.06	Standby Credit .....	S3-5
¶ 3.07	The Credit's Functions .....	S3-6
	[1] Providing Liquidity .....	S3-7
	[2] Substituting Credit .....	S3-8
	[3] Reducing Cost .....	S3-10

## **4 Sources of Credit Law**

---

¶ 4.01	Basic Sources of Credit Law .....	S4-1
	[2] The Law Merchant .....	S4-1
	[4] UN Convention.....	S4-1
	[a] Scope .....	S4-1
¶ 4.02	Choice of Law .....	S4-2
¶ 4.03	The Uniform Commercial Code .....	S4-5
	[1] Definitions and Scope.....	S4-6
	[5] Relationships With Applicant.....	S4-6
	[b] Applicant and Others .....	S4-6
¶ 4.04	The Uniform Customs and Practice for Documentary Credits .....	S4-7
¶ 4.05	Legislative Deference to the Uniform Customs—Section 5-102(4) .....	S4-9
¶ 4.06	The Code and the Uniform Customs .....	S4-9
	[1] Nature of the Uniform Customs .....	S4-9
	[a] Uniform Customs as a Contract Term.....	S4-9
	[b] Uniform Customs as a Descriptive Definition .....	S4-10
	[c] Uniform Customs as a Prescriptive Definition.....	S4-11
	[2] Conflicts Between the Code and the Uniform Customs .....	S4-11
	[b] Time for Honor or Dishonor [Revised].....	S4-11
	[c] Fraud Rules [Revised].....	S4-11
	[g] Documentary Compliance.....	S4-12
	[h] Nondocumentary Conditions .....	S4-13
¶ 4.07	Role of Custom and Usage .....	S4-14
	[1] Between Issuer and Beneficiary .....	S4-14
¶ 4.08	Rules of Construction .....	S4-14
	[1] Questions of Intent .....	S4-15
	[3] Construction Against Issuer or Drafter.....	S4-15
	[5] Credits With Inconsistent Conditions .....	S4-16
¶ 4.09	The International Standby Practices 1998 (ISP98) [Revised].....	S4-16
	[5] Other Idiosyncratic Provisions .....	S4-16
	[h] Good Points in ISP98.....	S4-16
¶ 4.10	Alternate Dispute-Resolution Rules .....	S4-17
	[1] DOCDEX .....	S4-17

## **5 Establishing, Amending, and Terminating the Credit**

---

¶ 5.01	Establishing the Credit .....	S5-1
	[2] Section 5-106 of the Code .....	S5-1
	[5] Confirmation .....	S5-1
	[6] Authority [New] .....	S5-2

¶ 5.02	Amending the Credit .....	S5-3
	[1] Irrevocable Credit .....	S5-3
¶ 5.03	Terminating the Credit .....	S5-4
	[1] Revoking the Credit .....	S5-4
	[2] Honoring the Credit .....	S5-5
	[b] Negotiation Credits .....	S5-5
	[3] Expiration of the Credit .....	S5-6
	[b] Strict Cases .....	S5-6
	[e] Need for a Firm Expiry .....	S5-7
	[f] Evergreen Clauses .....	S5-8
	[5] Canceling the Credit .....	S5-10

## **6 The Issuer and the Beneficiary**

---

¶ 6.02	Two Views on Document Compliance—Strict Compliance vs. Substantial Compliance .....	S6-1
¶ 6.03	Strict Compliance Rule .....	S6-2
	[1] Level of Strictness .....	S6-2
	[3] Level of Banker Knowledge .....	S6-3
¶ 6.04	Strict Compliance Cases .....	S6-4
	[1] Describing the Goods .....	S6-4
	[2] Other Invoice Problems .....	S6-5
	[3] Drafts .....	S6-6
	[4] Bills of Lading .....	S6-7
	[5] Certificates and Documents .....	S6-7
	[a] Documents in General .....	S6-7
	[b] Documents With the Standby Credit .....	S6-8
	[6] Bank Practices and the Uniform Customs .....	S6-8
¶ 6.06	Tempering the Effect of the Strict-Compliance Rule .....	S6-10
	[1] Estoppel and Preclusion .....	S6-10
	[b] The Code and the Uniform Customs .....	S6-10
	[ii] The pre-UCP 600 preclusion rule .....	S6-10
	[iii] The preclusion rule in UCP 600 .....	S6-11
	[iv] Timeliness .....	S6-12
	[vi] Contents of notice .....	S6-14
	[viii] Sufficiency of notice .....	S6-15
	[ix] Extent of preclusion [New] .....	S6-16
	[c] Estoppel and Defect Asserted After the Fact .....	S6-16
	[2] True Waiver .....	S6-16
¶ 6.07	Warranties of the Beneficiary and the Presenting Bank .....	S6-17
	[1] Nature of the Warranty .....	S6-17
	[2] Function of the Warranty .....	S6-19
	[4] Purpose and Standing .....	S6-19
	[5] Elements of Warranty Breach .....	S6-21
	[6] Warranty [Common Law Rule] [Revised] .....	S6-22

¶ 6.08	Issuer Duties to Beneficiary Outside the Credit.....	S6-23
[2]	Contract to Issue Credit.....	S6-23
[3]	In Tort or Matters of Good Faith [New].....	S6-23

## 7 The Issuer and the Applicant

---

¶ 7.02	Issuer's Duty to Pay.....	S7-1
¶ 7.03	Stopping Payment.....	S7-1
[1]	Failure to Deliver Merchandise Under the Purchase Contract and Similar Defenses in the Underlying Transaction.....	S7-1
[2]	Unlawfulness of the Underlying Agreement.....	S7-2
[3]	Applicant Insolvency.....	S7-2
[a]	Property of the Debtor and Preferences.....	S7-3
[b]	Automatic Stay.....	S7-5
[c]	Postpetition Transfer.....	S7-6
[d]	The Need for a Theory.....	S7-6
[g]	State Insolvency Proceedings.....	S7-7
[h]	Ipso Facto Default Rule.....	S7-7
[i]	Letter of Credit as Executory Contract.....	S7-8
[j]	Lease Cap.....	S7-8
[l]	Excess Proceeds.....	S7-10
[4]	Government Intervention.....	S7-12
¶ 7.04	Fraud in the Transaction.....	S7-12
[1]	Prerequisites for Relief.....	S7-13
[2]	Letter of Credit Fraud: The <i>Sztejn</i> Rule.....	S7-14
[3]	Codification of the <i>Sztejn</i> Rule.....	S7-15
[a]	In the 1995 Code.....	S7-15
[4]	Fraud Cases.....	S7-16
[c]	The Fraud Cases.....	S7-16
[i]	Finding no or insufficient fraud.....	S7-16
[ii]	Finding sufficient fraud.....	S7-17
[d]	Credit That Incorporates the Underlying Contract Explicitly.....	S7-18
[g]	Good Faith.....	S7-18
¶ 7.05	Issuer's Right to Reimbursement and Subrogation.....	S7-19
[1]	Contract or Statute.....	S7-19
[2]	Subrogation.....	S7-20
[a]	Subrogating Issuer to Applicant's Rights Against Beneficiary.....	S7-21
[b]	Subrogating Issuer to Beneficiary's Rights Against Applicant.....	S7-22
[h]	Subrogating Issuer or Applicant to Beneficiary's Rights Against Third Parties.....	S7-23
[i]	Subrogating Applicant to Rights of Account Party [New].....	S7-25
¶ 7.06	Issuer's Duty to Counsel Applicant.....	S7-28
¶ 7.07	Contracts to Issue a Credit.....	S7-30

## 8 The Issuer and Third Parties

---

¶ 8.02	Purchasers of Beneficiary's Draft or Demand and Other Protected Parties.....	S8-1
	[1] Exceptions to Forgery and Letter of Credit Fraud Rule.....	S8-1
	[2] Holder in Due Course.....	S8-1
	[3] Holder of a Demand.....	S8-2
	[5] Holder to Whom a Negotiable Document of Title Has Been Duly Negotiated.....	S8-2
	[6] Distinction Between a Straight Credit and a Negotiation Credit.....	S8-3
	[7] Advisers and Confirmers.....	S8-4
	[a] Nature of Relationship.....	S8-4
¶ 8.04	Issuer's Interest in the Draft and Accompanying Documents.....	S8-5
	[1] Banker's Lien.....	S8-5
	[2] Title and the Security Interest.....	S8-5
	[b] Perfection Under the Revised Code.....	S8-6
	[c] Under the 1962 Code.....	S8-6
	[ii] Extent of the security interest.....	S8-6
	[4] Extent of the Issuer's Interest.....	S8-6
¶ 8.05	Issuer's Interest in Proceeds of Credit Postpayment.....	S8-7
¶ 8.06	Issuer's Interest in Applicant's Deposit Account [New].....	S8-9

## 9 Breach: Remedies and Defenses

---

¶ 9.02	Improper Dishonor.....	S9-1
	[2] Elements of Breach and Anticipatory Breach.....	S9-1
	[3] Standing: Determining the Proper Plaintiff.....	S9-3
	[4] Liability: Determining the Proper Defendant.....	S9-4
	[5] Damages.....	S9-5
	[a] The Independence Principle and the Code's Damages Rules.....	S9-5
	[b] Mitigation.....	S9-5
	[ii] Standby credits.....	S9-5
	[c] Incidental Damages.....	S9-6
	[d] Punitive and Consequential Damages.....	S9-6
¶ 9.03	Improper Payment and Disputes Among Applicant, Issuer, and Others.....	S9-7
	[1] Nature of the Breach.....	S9-7
	[b] Kinds of Breach.....	S9-7
	[c] Draws in Excess of Rights in Underlying Contract.....	S9-7
	[2] Standing: Determining the Proper Plaintiff.....	S9-8
¶ 9.04	Breach of Warranty, Fraud, and Other Actions.....	S9-8
	[3] Warranty Breach and Other Causes of Action (Wrongful Draws).....	S9-8
	[5] Common Law Warranties.....	S9-13
	[6] Damages for Breach of Warranty and Fraud.....	S9-13

¶ 9.05	Attachment .....	S9-15
¶ 9.06	Some Affirmative Defenses.....	S9-18
	[4] Act of State Doctrine and Similar Defenses .....	S9-18
	[b] Foreign Assets Control and Transactions Regulations .....	S9-18
	[c] Foreign Sovereign Immunity .....	S9-18
	[f] Comity and Res Judicata.....	S9-19
	[8] Statute of Limitations .....	S9-20
¶ 9.08	Subrogation .....	S9-21
¶ 9.09	Attorneys' Fees.....	S9-22

## 10 Transfer and Assignment

---

¶ 10.01	Introduction .....	S10-1
¶ 10.02	Benefits From the Credit .....	S10-1
	[6] Other Strategies [New].....	S10-1
¶ 10.03	Transferring the Right to Claim the Benefit .....	S10-2
	[1] Reasons for Restricting Transfer .....	S10-2
	[a] Assigning a Cause of Action [New].....	S10-2
	[b] Assignment of Applicant's Interest [New].....	S10-2
	[c] Assignment of Issuer's Interest [New].....	S10-3
	[2] Mechanics of Transfer and Assignment .....	S10-4
	[3] Consequences of the Restriction.....	S10-7
¶ 10.04	Assigning the Right to Proceeds (Herein of Security Interests).....	S10-8
	[2] More on the Manner of Assigning Proceeds.....	S10-8
	[a] Creating the Security Interest.....	S10-9
	[i] Under the 1962 version of Article 9.....	S10-9
	[ii] Under Revised Article 9.....	S10-10
¶ 10.05	Consequences of Transfer and Assignment .....	S10-10
¶ 10.06	Attachment and Other Involuntary Conveyances to Creditors .....	S10-11
	[3] Creditors.....	S10-11
	[b] More on Third-Party Creditors.....	S10-11
	[c] The Applicant as Creditor [New].....	S10-12

## 11 Questions of Procedure and Practice

---

¶ 11.02	Jurisdiction and Venue .....	S11-1
	[1] Contacts and Fairness .....	S11-1
	[a] Actions Against Issuers and Other Banks .....	S11-1
	[b] Actions Against Beneficiaries.....	S11-2
	[c] Actions Against Applicants.....	S11-3
	[3] Federal Jurisdiction .....	S11-4
	[a] Diversity .....	S11-4

[b]	Section 632 .....	S11-6
[c]	Abstention .....	S11-7
[5]	Bankruptcy Jurisdiction .....	S11-8
[8]	Forum Non Conveniens .....	S11-9
[9]	Removal [New] .....	S11-10
¶ 11.03	Joinder, Intervention, and Consolidation .....	S11-11
[1]	Joinder and Intervention .....	S11-11
[a]	Federal Rules .....	S11-11
[b]	State Rules .....	S11-12
¶ 11.05	Injunctions .....	S11-14
[1]	Equity Standard .....	S11-14
[2]	Absence of an Adequate Remedy at Law: Irreparable Injury .....	S11-14
[a]	Relief Requested .....	S11-14
[b]	Monetary Damages .....	S11-14
[c]	Suits at Law Against Solvent or Insolvent Defendants [Revised] .....	S11-15
[3]	Letter of Credit Standard .....	S11-19
[a]	Problems Created by Fraud Claims .....	S11-19
[b]	Court-Fashioned Responses .....	S11-20
[iv]	Foreign courts .....	S11-20
[4]	Likelihood of Success on the Merits .....	S11-24
[6]	Jurisdictional Questions .....	S11-25
¶ 11.06	Summary Judgment .....	S11-26
[1]	In General .....	S11-26
[2]	Independence Principle .....	S11-27
[4]	Questions of Fact .....	S11-27
[a]	Good Faith .....	S11-27
[c]	Waiver, Preclusion, and Estoppel .....	S11-28
[e]	Fraud in the Transaction .....	S11-28
[h]	Expiry .....	S11-29
[j]	Defining “Letter of Credit” [New] .....	S11-30
¶ 11.07	Declaratory Judgment, Interpleader, and Similar Actions .....	S11-30

## **12 Credits and Bank Regulation**

---

¶ 12.02	Issuer Bank Insolvency .....	S12-1
[1]	Beneficiary’s Rights Against the Issuing Bank .....	S12-1
[a]	General Claimants .....	S12-1
¶ 12.03	The Ultra Vires Question .....	S12-2
[1]	The Standby Credit Is Not a Guaranty .....	S12-2
[a]	Rule Against Guaranties .....	S12-2
[b]	Business of Banking .....	S12-3
[c]	Primary Obligation: The Material Distinction .....	S12-5
[2]	Raising the Ultra Vires Issue .....	S12-5
[3]	Moves Toward Further Regulation .....	S12-6

## TABLE OF CONTENTS

S-xix

¶ 12.04 Lending Limits, Participations, Interbank Liability, Insiders, and Affiliates.....	S12-6
[1] Section 84 of the National Bank Act .....	S12-6
[4] Loan Participations.....	S12-7
¶ 12.05 Miscellaneous.....	S12-8
[1] Other Unsound Practices .....	S12-8
[2] Securities Law Considerations .....	S12-11
[3] Tying .....	S12-11
[4] Anti-Money Laundering Regulations .....	S12-11
[5] Other Illegal Activity [New].....	S12-12
<b>APPENDIX C</b> UCP 600: Uniform Customs and Practice for Documentary Credits (2006 Version) .....	SApp. C-1
<b>APPENDIX D</b> Uniform Customs and Practice for Documentary Credits (1993 Version) .....	SApp. D-1
<b>APPENDIX G</b> Comptroller of the Currency Interpretive Ruling.....	SApp. G-1
<b>APPENDIX H</b> ICC Uniform Rules for Demand Guarantees.....	SApp. H-1
<b>APPENDIX K</b> Uniform Customs and Practice for Documentary Credits (1983 Version).....	SApp. K-1
<b>APPENDIX M</b> Memorandum to Uniform Law Commissioners From Committee to Implement the UNCITRAL Convention on Independent Guarantees and Standby Letters of Credit .....	SApp. M-1
<b>GLOSSARY OF LETTER OF CREDIT TERMS</b> .....	SG-1
<b>BIBLIOGRAPHY</b> .....	SB-1
<b>CUMULATIVE TABLE OF UNIFORM COMMERCIAL CODE CITATIONS</b> .....	UCC-1
<b>CUMULATIVE TABLE OF UNIFORM CUSTOMS AND PRACTICES</b> .....	UCP-1
<b>CUMULATIVE TABLE OF CASES</b> .....	CASES-1
<b>CUMULATIVE INDEX</b> .....	I-1