The US laws were crafted with LCs in mind and the specific laws that govern them are found in the UCC, Section 5. Yet the laws apply to any transaction, however named, that are:

1. An “independent” obligation of the issuer; and

2. “Documentary in nature”

The definition of an LC as provided in New York’s UCC Section 5-102 (10) is: “Letter of credit” means a definite undertaking that satisfies the requirements of Section 5-104 by an issuer to a beneficiary at the request or for the account of an applicant or, in the case of a financial institution, to itself or for its own account, to honor a documentary presentation by payment or delivery of an item of value.”
“Independent” Defined in UCC 5

- UCC Section 5-103 provides an overview of an issuer’s commitment as:

- “(d) Rights and obligations of an **issuer** to a **beneficiary** or a **nominated person** under a letter of credit are **independent of the existence, performance, or nonperformance of a contract or arrangement** out of which the letter of credit arises or which underlies it, including contracts or arrangements between the issuer and the applicant and between the applicant and the beneficiary”
The Rules Are Set in Stone?

• UCP 600 Article 1 - … ("UCP") are rules that apply to any documentary credit ("credit") (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto **unless expressly modified or excluded by the credit**

• ISP98 Rule 1 c. An undertaking subject to these Rules **may expressly modify or exclude their application**

• Current URDG Article 1 - a. The Uniform Rules for Demand Guarantees ("URDG") apply to any demand guarantee or counter-guarantee that expressly indicates it is subject to them. They are binding on all parties to the demand guarantee or counter-guarantee **except so far as the demand guarantee or counter-guarantee modifies or excludes them**
Revocability

- UCP Article 2 Definitions states: “Credit means any arrangement, however named or described, that is **irrevocable**…”. And UCP Article 3 which includes: “A credit is irrevocable even if there is no indication to that effect”
- ISP98 Rule 1.06 - a. A standby is an **irrevocable**, independent, documentary, and binding undertaking when issued and need not so state
- URDG Article 4 b. A guarantee is **irrevocable** on issue even if it does not state this
• UCP 600 Article 2 Defined a Credit (see previous slide) and then defined “Presentation”: “means either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered”. And Article 5 further reinforces by stating: “Banks deal with documents and not with goods, services or performance to which the documents may relate”.

• ISP 98 1.06 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.

• URDG 758 Article 6 states: “Guarantors deal with documents and not with goods, services or performance to which the documents may relate.”.
• UCP 600 does not provide a direct description. Article 3 provides some interpretations for documents and Article 14 discusses examining them while 17 does list some of the requirements for considering a document an original or a copy

• ISP 98 Rule 1-09 "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”

• URDG 758 Article 2 states: “document means a signed or unsigned record of information, in paper or in electronic form, that is capable of being reproduced in tangible form by the person to whom it is presented. Under these rules, a document includes a demand and a supporting statement”
Expiration Date

- UCP 600 Article 6.d.i. states: A credit must state an expiry date for presentation. **An expiry date stated for honor or negotiation will be deemed to be an expiry date for presentation**

- ISP98 9.01 states: A standby **must**:
  - a. contain an expiry date; or
  - b. permit the issuer to terminate the standby upon reasonable prior notice or payment

- URDG 758 Article 2 states:
  - **Expiry** means the **expiry date** or the **expiry event** or, **if both are specified, the earlier of the two**
  - **Expiry date** means the date specified in the guarantee on or before which a presentation may be made
  - **Expiry event** means an event which under the terms of the guarantee results in its expiry, whether immediately or within a specified time after the event occurs, for which purpose the event is deemed to occur only:
    - a. when a document specified in the guarantee as indicating the occurrence of the event is presented to the guarantor, or
    - b. if no such document is specified in the guarantee, when the occurrence of the event becomes determinable from the guarantor's own records
Advising

- UCP 600 article 9 states:
  - a. A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank that is not a confirming bank advises the credit and any amendment **without any undertaking to honor or negotiate**; and
  - b. By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.

- ISP98 Rule 2.05 states: “a. Unless an advice states otherwise, it signifies that:
  - i. The advisor has checked the apparent authenticity of the advised message in accordance with standard letter of credit practice; and
  - ii. The advice accurately reflects what has been received.

- URDG 758 Article 10 States:
  - a. A guarantee may be advised to a beneficiary through an advising party. By advising a guarantee, whether directly or by utilizing the services of another party ("second advising party"), the advising party signifies to the beneficiary and, if applicable, to the second advising party, that it has satisfied itself as to the apparent authenticity of the guarantee **and that the advice accurately reflects the terms and conditions of the guarantee** as received by the advising party; &
  - c. An advising party or a second advising party advises a guarantee without any additional representation or any undertaking whatsoever to the beneficiary.
Amendments

- All the rules govern that “all parties” must agree to amendments unless the document presented conform to the “amended” instrument. UCP 600 has an opinion re: acceptance equals when docs conform to “only” the amended LC.

- “Partial acceptance” is treated as a “rejection” of the “whole” amendment.

- ISP98 Rule 2.06 states: “a. If a standby expressly states that it is subject to "automatic amendment" by an increase or decrease…, an extension of the expiration date; or the like, the amendment is effective automatically without any further notification or consent beyond that...”.

- In addition Rule ISP98 3.11 allows: “In addition to other discretionary provisions in a standby or these Rules, an issuer may, in its sole discretion, without notice to or consent of the applicant …, waive a. the following Rules and any similar terms stated in the standby which are primarily for the issuer's benefit or operational convenience: i. treatment of documents received, at the request of the presenter, as having been presented at a later date (Rule 3.02); ii. identification of a presentation to the standby under which it is presented (Rule 3.03(a)); iii. where and to whom presentation is made (Rule 3.04(b), (c), and (d)), except the country of presentation stated in the standby; or iv. treatment of a presentation made after the close of business as if it were made on the next business day (Rule 3.05(b)). b. the following Rule but not similar terms stated in the standby: i. a required document dated after the date of its stated presentation (Rule 4.06); or ii. the requirement that a document issued by the beneficiary be in the language of the standby (Rule 4.04). c. the following Rule relating to the operational integrity of the standby only in so far as the bank is in fact dealing with the true beneficiary: acceptance of a demand in an electronic medium (Rule 3.06(b)). Waiver by the confirmer requires the consent of the issuer with respect to paragraphs (b) and (c) of this Rule.
Amendments

- URDG 758 Article 13 refers to increases/decreases stated in an guarantee
UCP 600 generally provides the same obligations as mandated for an LC issuer. See Article 8

ISP98 Rule 1.09 states: “'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)”

URDG 758 does not recognize a confirmer
Who is Authorized to Pay?

- **UCP 600 Article 12** states:
  - a. Unless a nominated bank is the **confirming bank**, an authorization to honour or negotiate **does not impose any obligation** on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary.
  - Further Article 6 d. states: ii. **The place of the bank with which the credit is available is the place for presentation.** The place for presentation under a credit available with any bank is that of any bank. A place for presentation **other than that of the issuing bank** is in addition to the place of the issuing bank.

- **ISP98 Rule 2.04** states:
  - “a. A standby may nominate a person to advise, receive a presentation, effect a transfer, confirm, pay, negotiate, incur a deferred payment obligation, or accept a draft.
  - b. **Nomination does not obligate the nominated person to act except to the extent that the nominated person undertakes to act**”.
  - Article 3.04 states: b. **If no place of presentation** to the issuer is indicated in the standby, presentation to the issuer must be made **at the place of business from which the standby was issued**.

- **URDG 758 Article 20 b.** the guarantor. No other parties are nominated.
Question – Drafting

- Which Rules provide guidance on how best to draft an undertaking subject to it?
  - UCP
  - ISP
  - URDG
Response - Drafting

- ISP98 – Just provided Model Forms on IIBLP’s website
- URDG 758 - Sample formats are provided in the rules & Article 8:
  - Content of instructions and guarantees
  - All instructions for the issue of guarantees and guarantees themselves should be clear and precise and should avoid excessive detail. It is recommended that all guarantees specify:
    - a. the applicant;
    - b. the beneficiary;
    - c. the guarantor;
    - d. a reference number or other information identifying the underlying relationship;
    - e. a reference number or other information identifying the issued guarantee or, in the case of a counter-guarantee, the issued counter-guarantee;
    - f. the amount or maximum amount payable and the currency in which it is payable;
    - g. the expiry of the guarantee;
    - h. any terms for demanding payment;
    - i. whether a demand or other document shall be presented in paper and/or electronic form;
    - j. the language of any document specified in the guarantee; and
    - k. the party liable for the payment of any charges.
Documents needed?

- Undertaking requires:
  - Shipment of Oil
  - Amount = USD 3 million and available “at sight”
  - No documentary requirements – oops.

- Received:
  - A cover letter which quotes the undertaking’s number and requests USD 3 million to be paid via wire transfer to their account with Citibank.

- Under the Rules – UCP, ISP and URDG

Do you honor?
• UCP 600 does not specifically address this issue.

• ISP98 Rule 4.08 states:
  – If a standby does not specify any required document, it will still be deemed to require a documentary “demand” for payment

• Further Rule 4.17 states:
  – If a standby does not specify content, the document complies if it contains: a representation to the effect that payment is due because a drawing event described in the standby has occurred; b. a date indicating when it was issued; and c. the beneficiary’s signature, requires a statement, certificate, or other recital of a default or other drawing event and……

• URDG 758 Article 15 states:
  – a. A demand under the guarantee shall be supported by such other documents as the guarantee specifies, and in any event by a statement, by the beneficiary, indicating in what respect the applicant is in breach of its obligations under the underlying relationship. This statement may be in the demand or in a separate signed document accompanying or identifying the demand.
  – c. The requirement for a supporting statement in paragraph (a) or (b) of this article applies except to the extent the guarantee or counter-guarantee expressly excludes this requirement. Exclusion terms such as "The supporting statement under article 15[(a)] [(b)] is excluded" satisfy the requirement of this paragraph."
Electronic Presentations Allowable?

- Undertaking requirements:
  - USD 3 million and available “at sight”
  - Beneficiary’s Demand that they have not received repayment from the applicant.

- Received:
  - A SWIFT message indicating they have not received repayment from the applicant for USD 3 million indicating the LC number.

- Under the Rules – UCP, ISP and URDG

Do you Honor?
UCP 600 does not directly cover the topic as the eUCP is meant to utilized when a LC calls for an electronic document

ISP98 Rule 3.06 defines:
- a. To comply, a document must be presented in the medium indicated in the standby
- b. Where no medium is indicated, **to comply a document must be presented as a paper document, unless only a demand is required, in which case:**
  - i. a demand that is presented via S.W.I.F.T., tested telex, or other similar authenticated means by a beneficiary that is a S.W.I.F.T. participant or a bank complies; otherwise
  - ii. a demand that is not presented as a paper document does not comply unless the issuer permits, in its sole discretion, the use of that medium.
- c. A document is not presented as a paper document if it is communicated by electronic means even if the issuer or nominated person receiving it generates a paper document from it
- d. Where presentation in an electronic medium is indicated, to comply a document must be presented as an electronic record capable of being authenticated by the issuer or nominated person to whom it is presented
Electronic Presentations (Cont.)

- URDG 758 Article 14 states:
  - c. Where the guarantee indicates that a presentation is to be made in electronic form, the guarantee should specify the format, the system for data delivery and the electronic address for that presentation. If the guarantee does not so specify, a document may be presented in any electronic format that allows it to be authenticated or in paper form. An electronic document that cannot be authenticated is deemed not to have been presented.
  - d. Where the guarantee indicates that a presentation is to be made in paper form through a particular mode of delivery but does not expressly exclude the use of another mode, the use of another mode of delivery by the presenter shall be effective if the presentation is received at the place and by the time indicated in paragraph (a) of this article.
  - e. **Where the guarantee does not indicate whether a presentation is to be made in electronic or paper form, any presentation shall be made in paper form.**
You’ve received a drawing against the undertaking you’ve issued. Is there a duty to inform the applicant/similar?
• UCP 600 Article 16 states:
  – b. When an issuing bank determines that a presentation does not comply, it may in its **sole judgement approach the applicant for a waiver of the discrepancies**. This does not, however, extend the period mentioned in sub-article 14 (b)

• ISP98 Rule 3.10 states:
  – **An issuer is not required to notify the applicant of receipt of a presentation** under the standby”.

• URDG 758 Article 16 states:
  – The guarantor **shall without delay inform the instructing party** or, where applicable, the counter-guarantor of any demand under the guarantee and of any request, as an alternative, to extend the expiry of the guarantee. The counter-guarantor shall without delay inform the instructing party of any demand under the counter-guarantee and of any request, as an alternative, to extend the expiry of the counter-guarantee
Identifying a Presentation?

- Undertaking requires:
  - Draft
  - Copy of Invoice
  - Statement of Non-payment

- Received
  - Cover letter stating nothing more than their payment instructions and contact info.
  - Draft

- Neither document bears any reference to the LC!

These could float around the bank for days, weeks, etc. Is the bank responsible to honor within the timelines stated in each rule set?
UCP 600 does not address this

ISP98 Rule 3.03 sub article c. states: If the issuer **cannot determine** from the face of a document received that it should be processed under a standby or **cannot identify** the standby to which it relates, presentation is deemed to have been made on the date of identification…

Current URDG 458 Article 14 f. **Each presentation shall identify the guarantee under which it is made**, such as by stating the guarantor's reference number for the guarantee. If it does not, the time for examination indicated in article 20 shall start on the date of identification. Nothing in this paragraph shall result in an extension of the guarantee or limit the requirement in article 15 (a) or (b) for any separately presented documents also to identify the demand to which they relate
What Constitutes a Presentation?

- Undertaking requires:
  - Draft
  - Copy of Invoice
  - Statement of Non-payment

- Received
  - Draft + Statement of Non-Payment. Invoice missing
  - Cover letter stating nothing more than their payment instructions and contact info.

- Under the Rules – Examination Period begins when?
Response - What Constitutes a Presentation?

- UCP600 Article 2 states:
  - **Presentation** means either **the delivery of documents** under a credit **to the issuing bank or nominated bank** or the documents so delivered.

- ISP98 3.02 states:
  - The **receipt of a document required** by and presented under a standby **constitutes a presentation requiring examination for compliance** with the terms and conditions of the standby **even if not all of the required documents have been presented** and Rule 3.04 states; d. If no location at a place of presentation is indicated (such as department, floor, room, station, mail stop, post office box, or other location), presentation may be made to: i. the general postal address indicated in the standby; ii. any location at the place designated to receive deliveries of mail or documents.

- URDG 758 Article 14 b. A presentation has to be **complete** unless it indicates that it is to be completed later. In that case, it shall be completed on or before expiry.
• True or False - Examination principles are based on “international” standards for all rule sets?
- UCP 600 (True) - Article 14 a. states:
  - “… must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation”. Article 2 defines: “Complying presentation” means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice”

- ISP98 – (False) - Rule 2.01 states:
  - a. An issuer undertakes to the beneficiary to honour a presentation that appears on its face to comply with the terms and conditions of the standby in accordance with these Rules supplemented by standard standby practice
  - And Rule 4.01 states: b. Whether a presentation appears to comply is determined by examining the presentation on its face against the terms and conditions stated in the standby as interpreted and supplemented by these Rules which are to be read in the context of standard standby practice”.

- URDG 758 –(True) - Article 2 defines complying presentation under a guarantee means a presentation that is in accordance with, first, the terms and conditions of that guarantee; second, these rules so far as consistent with those terms and conditions and; third, in the absence of a relevant provision in the guarantee or these rules, international standard demand guarantee practice;
How Long to Examine?

- Once we’ve determined that we’ve received a presentation, what’s the allowable examination period under each rule set?
Response - How Long to Examine?

- **UCP Article 14** states:
  - b. A nominated bank **acting on its nomination**, a confirming bank, if any, and the issuing bank shall each have **a maximum of five banking days following the day of presentation** to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.

- **ISP98 Rule 5.01** states:
  - a. Notice of dishonour must be given within a time after presentation of documents **which is not unreasonable**. i. Notice given **within three business days is deemed to be not unreasonable** and beyond seven business days is deemed to be un-reasonable and ... iii. The time for calculating when notice of dishonour must be given begins on the business day following the business day of presentation.

- **URDG Article 20**:
  - a. **If a presentation of a demand does not indicate that it is to be completed later**, the guarantor shall, **within five business days** following the day of presentation, examine that demand and determine if it is a complying demand. This period is not shortened or otherwise affected by the expiry of the guarantee on or after the date of presentation. However, if the presentation indicates that it is to be completed later, it need not be examined until it is completed.
Inconsistent?

- Undertaking requires:
  - Draft
  - Statement of Non-payment
  - Copy of Invoice
  - Copy of BL
  - Covering a shipment of Gold Bullion

- Received
  - All documents stated above
  - Inv. Quotes “Gold Bullion” – Latter on it states: “14K gold with 5% impurities”
  - BL states “Gold Bullion” – under “Shipper’s Ref.” it also states “10K gold with 5% impurities”.

- Under the Rules – UCP, ISP and URDG

Is this a discrepancy?
Response – Inconsistent

- UCP 600 – (Yes) - Article 14 d. states:
  - Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, **but must not conflict with**, data in that document, any other stipulated document or the credit

- ISP98 – (No) - Rule 4.03 states:
  - An issuer or nominated person is required to examine documents for inconsistency with each other **only to the extent provided in the standby**

- URDG 758 – (Yes) - Article 19 states:
  - b. Data in a document required by the guarantee shall be examined in context with that document, the guarantee and these rules. Data need not be identical to, **but shall not conflict with**, data in that document, any other required document or the guarantee
What are you Honoring?

• Undertaking requires:
  – Draft
  – Swedish Krona (SEK) 5 Million
  – Expiry three years

• One year after issuance the headlines read:
  – Sweden joins the Euro! Swedish Krona has been replaced!

• Two years later:
  – 2 Days prior to maturity date – Draft for 5 Million Swedish Krona’s is received

• Under the Rules – UCP, ISP and URDG

Will you refuse or will you pay?
Response – What are you Honouring?

- UCP 600 does not directly address this

- ISP98 Rule 2.01 states:
  - e. An issuer **honours by paying in immediately available funds in the currency designated in the standby** unless the standby states it is payable by: i. payment of a monetary unit of account, in which case the undertaking is to pay in that unit of account; or ii. delivery of other items of value, in which case the undertaking is to deliver those items”.

- URDG 758 Article 21 states:
  - a. The guarantor shall pay a complying demand in the currency specified in the guarantee.
  - b. If, on any date on which a payment is to be made under the guarantee:
    - i. the guarantor is **unable to make payment in the currency specified in the guarantee due to an impediment beyond its control; or**
    - ii. **it is illegal under the law of the place for payment to make payment in the specified currency**
    - The guarantor shall make payment in the currency of the place for payment even if the guarantee indicates that payment can only be made in the currency specified in the guarantee. The instructing party or, in the case of a counter-guarantee, the counter-guarantor, shall be bound by a payment made in such currency. The guarantor or counter-guarantor may elect to be reimbursed either in the currency in which payment was made or in the currency specified in the guarantee or, as the case may be, the counter-guarantee
Extend or Pay?

- Undertaking requires:
  - Statement that work was not performed in accordance with the contract 12345
  - Expires 12/11/2012

- Received
  - Statement on 12/10/2012 stating: “The services mentioned in contract 12345 were not performed in accordance with the said contract’s terms. We are willing to provide the applicant time to remedy this provided the undertaking is extended for 6 months until 6/10/2013”

- Under the Rules – UCP, ISP and URDG

Bank’s credit policy for this applicant allows extensions for 3 months without additional credit approvals.

Under the rules what should you do with the extension request?
Response - Extend or Pay

- UCP 600 does not address this issue

- ISP 98 Rule 3.09 states:
  - A beneficiary's request to extend the expiration date of the standby or, alternatively, to pay the amount available under it: a. is a presentation demanding payment under the standby, to be examined as such in accordance with these Rules; and b. implies that the beneficiary:
    - i. consents to the amendment to extend the expiry date to the date requested;
    - ii. requests the issuer to exercise its discretion to seek the approval of the applicant and to issue that amendment; iii. upon issuance of that amendment, retracts its demand for payment; and iv. consents to the maximum time available under these Rules for examination and notice of dishonour”

- URDG Article 23 states:
  - a. Where a complying demand includes, as an alternative, a request to extend the expiry, the guarantor may suspend payment for a period not exceeding 30 calendar days following its receipt of the demand.
  - d. The demand for payment is deemed to be withdrawn if the period of extension requested in that demand or otherwise agreed by the party making that demand is granted within the time provided under paragraph (a) or (b) of this article. If no such period of extension is granted, the complying demand shall be paid without the need to present any further demand
• The bank names new Chairperson, Stock doubles overnight. As the first official pronouncement, the new Chair has declared this day a holiday for the bank and all employees are given the day off!

Is this a Force Majeure Event as defined in each rule set?
Closed for Business - Response

- **UCP600 – (No) - Article 36 states:**
  - A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts **or any other causes beyond its control.** A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.

- **ISP98 3.14 – (Yes) - states:**
  - a. If on the last business day for presentation the place for presentation stated in a standby **is for any reason closed** and presentation is not timely made because of the closure, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides.

- **URDG758 – (No) - Article 26 states:**
  - a. In this article, "force majeure" means acts of God, riots, civil commotions, insurrections, wars, acts of terrorism **or any causes beyond the control of the guarantor** or counter-guarantor that interrupt its business as it relates to acts of a kind subject to these rules.
Ability to Transfer

- **UCP 600 Article 38** provides the rules for LC’s that *indicate that they are “transferable”*. Sub Article b. states in part: “may be made available *in whole or in part* to another beneficiary ("second beneficiary")” and g. states: The transferred credit must accurately reflect the terms and conditions of the credit, including confirmation, if any, with the exception of: - the amount of the credit, - any unit price stated therein, - the expiry date, - the period for presentation, or - the latest shipment date or given period for shipment, any or all of which may be reduced or curtailed”.

- **ISP98 Rule 6.02** states:
  - a. A standby **is not transferable unless it so states**.
  - b. A standby that states that it is transferable without further provision **means that drawing rights:**
    - i. may be transferred in their entirety more than once;
    - ii. may not be partially transferred; and iii. may not be transferred unless the issuer...

- **URDG 758 Article 33** states:
  - d. The following provisions apply to the transfer of a guarantee:
    - i. a transferred guarantee shall include all amendments to which the transferor and guarantor have agreed as of the date of transfer; and
    - ii. a guarantee can only be transferred where, in addition to the conditions stated in paragraphs (a), (b) and (d)(i) of this article, the transferor has provided a signed statement to the guarantor that the transferee has acquired the transferor’s rights and obligations in the underlying relationship
Question - Expiry

- When an independent instrument is silent with regards to its expiration, when does it expire?
• URDG 758 Article 25 states:
  – c. If the guarantee or the counter-guarantee states neither an expiry date nor an expiry event, the guarantee shall terminate after the lapse of three years from the date of issue and the counter-guarantee shall terminate 30 calendar days after the guarantee terminates

• The other publications do not address this issue

• It is determined by applicable law. NY’s UCC Section 5-106 states:
  – (c) If there is no stated expiration date or other provision that determines its duration, a LC expires one year after its stated date of issuance or, if none is stated, after the date on which it is issued
  – (d) A LC that states that it is perpetual expires five years after its stated date of issuance, or if none is stated, after the date on which it is issued
Applicable Law

• Undertaking requires:
  – “Copy of Mate’s Receipt quoting LC no.”.
  – Expires 12/25/2014
  – Issued for USD 325,000,000.00

• Received:
  – Mates Receipt issued Ah Matey omits LC No.
  – Citi refuses, Beneficiary represents Mates Receipt on its letterhead in conformity with undertaking’s terms. Citi refuses and Beneficiary sues Citi.

• Under the Rules – UCP, ISP and URDG

Whose Laws apply? What Jurisdiction applies?
Response – Applicable Law

- Only URDG clearly defines this issue
- UCP 600 does not address this issue
- ISP98 Rule 1.08 states:
  - An issuer is not responsible for
    - d. observance of law or practice other than that chosen in the standby or applicable at the place of issuance” and Rule 8.01 which states: “a. Where payment is made against a complying presentation in accordance with these Rules, reimbursement…;
    - b. An applicant must indemnify the issuer against all claims, obligations, and responsibilities (including attorney's fees) arising out of: i. the imposition of law or practice other than that chosen in the standby or applicable at the place of issuance
- URDG Article 34 states:
  - a. Unless otherwise provided in the guarantee, its governing law shall be that of the location of the guarantor's branch or office that issued the guarantee
- URDG Article 35:
  - a. Unless otherwise provided in the guarantee, any dispute between the guarantor and the beneficiary relating to the guarantee shall be settled exclusively by the competent court of the country of the location of the guarantor's branch or office that issued the guarantee
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Any Questions?
Thank you
In January 2007, Citi released a Climate Change Position Statement, the first US financial institution to do so. As a sustainability leader in the financial sector, Citi has taken concrete steps to address this important issue of climate change by: (a) targeting $50 billion over 10 years to address global climate change; includes significant increases in investment and financing of alternative energy, clean technology, and other carbon-emission reduction activities; (b) committing to reduce GHG emissions of all Citi owned and leased properties around the world by 10% by 2011; (c) purchasing more than 52,000 MWh of green (carbon neutral) power for our operations in 2006; (d) creating Sustainable Development Investments (SDI) that makes private equity investments in renewable energy and clean technologies; (e) providing lending and investing services to clients for renewable energy development and projects; (f) producing equity research related to climate issues that helps to inform investors on risks and opportunities associated with the issue; and (g) engaging with a broad range of stakeholders on the issue of climate change to help advance understanding and solutions.

Citi works with its clients in greenhouse gas intensive industries to evaluate emerging risks from climate change and, where appropriate, to mitigate those risks.

efficiency, renewable energy & mitigation