

2007

. **2007/5/6 :**

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الذكريات

إلى أمني الغالي... نور عيني و"فرحة قلبي" من كتابي ولانما ألاب والضح والصديق المخلص

إلى أمني المحنونة... رحاها اللثما...

إلى اخوتي جبير وهديل ورياضة ومحمد...

إلى أرواح الشهداء الطاهرة...

إلى أسرى الحرية في سجون الاحتلال...

إلى أساتذتي ومدرسي...

إلى جميع أصدقائي...

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6	:
18	:
29	:
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48	:
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53	:
56	:
57	:
58	:
67	:
69	:

82	:
83	:
83	:
83	:
121	:
123	:
127	:
134	:
142	:
148	:
152	:
158	:
160	:
b	:

:

590 (ISP) -

1998

.1999

(UN convention) -

.1996

500 (UCP) -

1993

.1994

" (1/34)

“ ”

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“ ”

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.1994

1994

1930

(500)

1993

1983

400

1993

500

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()

1993 500

.1

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⋮

⋮

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(1)

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- :

(1/341)

1999

(17)

(2)

() () :

(1)

.400

1983

.1999

17 () 19

(2)

" .1

()

.2

.3

"

1964

"

(359)

()

()

(1)"

(1/273)

1984

(30)

"

(2)

.11 .1995

2987

)

: (1)

.1984/4/20 (26)

(1) (12)

"

(1/121)

1966

(2) "

1993

(18)

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()

()

(3)

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(1/408)

(1/121)

(1)

.1949 (149)

.472 1966/3/30

1910

(2)

2004

:

(3)

.1993/9/7

.24

“Uniform

(103-5)

Commercial (UCC)”

)

"

(102-5)

(

(1)

(102/5)

"

(2)

(UN Convention)

(/)

(2)"

.12 1995

:

(1)

(UCC) (5-103)

“ (Credit) or (letter of Credit) means:- engagement by a bank or other person made at the request of a customer and a kind with in – the scope of his Article (section 5-102) that – the issuer, will honor abates or author demands for payment upon compliance with the condition specialised in the Credit”

" For the purposes of this convention, an undertaking is (UN) (2) (2) an independent commitment, known is international practice as an independent warrenty or as a stand – by letter of credit, given by a bank or other institution or person (" quarantor issue") to pay to the beneficiary a certain or determinable amont upon simple demand or upon demand a companied by other documents, in comformity with the terms and any documentary conditions of the undertaking, indicating, or from which it is to be inferred, that payment is due because of a default in the performance of contiguency, or for money borrowed or advanced, or on account of any mature independence undertaken by the principle, applicant or an other person"

(3)"(1.06-a)

(1/340)

"

"

()
()

" A stand by is an irrevocable, independent, documentary, and binding undertaking when issued and need not to state

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"

(1) "

"

(2) "

()

1970/12/22		<u>682/858</u>		(1)
		.(15)	210	1971
69	.825	83/3/28	692	(2)
		.41		

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"
()
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) ()
() ()
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"
(1) "

1975 75/152

(1)
.173 1976

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”

()

() ()

(1) ”

” :

(2) ”

()

” (3)

()

.372 1968

: (1)

(1983)

: (2)

.14 1993 -

14 1992 -

: (3)

.15

"

"

(1) "

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"

"

1983 400

1929

1933

(UCP)

.16

:

(1)

290/1591 222/151)

1993/500

(1993/1983 500/1974 400/1962

1988

1983/400

500

.1994

400

(UCP)

500

1993

(UCP)

(UCP)

1994 (ICC)

(UCP)

()

(590)

1998

.1999

:

-:

;(1)

" 283. 36 1985/2/18 40 (372) (1)

"

(1)

:

(Credit Revocable)

:

()

()

(2)

" 500

(/9)

"

(3) "

"

"

"

" (3/7)

(UCP)

(/6)

(1)

400

(UCP)

-

:

(2)

450.

1996

.339.

.1999

-

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(3)

(1)

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(

: (1)

.21. 1984

(Irrevocable Documentary Credit)

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-:

(1)

.1

(2)

.2

()

.3

.UCP

(/9)

(1)

....

...":

(2)

282

36

1985/2/18

48

372

"...

65.

1997

()

(1)

"

"

(2) ...

;(3)

:

: Confirmed L/C

:

()

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: (1)

.451. 1996

.12. 1992

: (2)

" :

1984/2/27

45 443

(3)

"

(2)

(1)

(3)

(1)

(4)

: Unconfirmed Irrevocable

:

257.	2000								:	(1)
26.	.1995								:	(2)
		46.							:	(3)
									.	155.
(/9)	39/38.								:	(4)
		(ISP)	(1.11-c\I)	(1.09)	(UN)	(/6)				(UCP)

(1)

(2)

"

"

(3)

(SIGHT CREDIT) :

:

.1

.2

(ACCEPTANCE CREDIT) :

242. 1995 :

" This credit does not have our (2)

Michael Brindle and Richard Coleman, Ibid, P 404 confirmation"

Michael Brindle and Richard Coleman , P 404(3)

(1)

()

(2)

500 (48) (1)

(UCP) (/48) (2)

(1)

-:

)

(

Transferee

.(UCP)

(48) (1)

⁽¹⁾ :Back to back / LC :

:Revolving L/C :

.advance payment :

: :

Divisible credit .1

Un divisible credit .2

.3

.55. : (1)

29.

.4

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.1

.

.2

.3

.4

.5

()

.6

1993 500

" (3/34)

"

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;(1)

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(2)

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:

:

⁽³⁾S.Ztejnv. Shroder Banking Corporation

()

1992

(1)

.312.

(2)

.263.

:

(3)

(1)

(2)

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(1)

.331. .1989

1983

.8.

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(2)

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"

"

1954 4

(1)

.86. 1997

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(1)

(1)

: (1)

.6. 1993

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.1

.2

.3

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()

()

(1)

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:

(UCP)
(UN) (ISP)

(Bank)

(Issuer)

(UN)

(ISP)

(Bank)

(1)

. ...

:

()

:

()

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()

:

THE APPLICANT ()

:

(THE ACCOUNT

PARTY)

:(1)

.1

.2

.3

.249.

()

:

(1)

THE ISSUING BANK () :

.(1)

.1

" "

.2

" "

.3

.4

.5

.6

.7

.249.

:

(1)

()

(1)

(2)

BENIFICIARY () :

()

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.42.

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(1)

.44.

(2)

()

(1)

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: (1)

.41. 1984

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() ()

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()

”

(1)”

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292.	1976/1/26	551.	35	1984/2/27	45	433	(1)
		39	1989		391.		

(1)

(2)

:

:

" 500 (/3) (1)

"
" 500 (/3) (2)

(1)

()

(2)

(3)

(4)

		.105.	:		(1)
	.347.		:		(2)
.249.	:	1984/2/27	45	443	(3)
		"	500	(4)	(4)
(3)	."				
					500

()
(1)

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()

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"

.259. : (1)

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(1)

(2)

.52.

: (1)

. (2)

(1)

()

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(2)

(3)

(4)

⁽⁵⁾ (500)

(3)

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.1

.35-34.

1

25

.109.

1984/2/27

45

443

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(1)

(2)

.177.

1954/4/15

21

:

414

(3)

(4)

.36.

221.

(5)

.2

(1)

.3

.4

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(2)

(3)

:

"	1989/6/19	58	1685	(1)
---	-----------	----	------	-----

"	74.	:	(2)
---	-----	---	-----

.233.	:	(3)
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(1)

(1)

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(2)

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"

(UCP)

(4)

"

(UCP)

" ..

(3)

(1)

"

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(2)

.123-120.

:

"

"

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()

() :

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(SIGHT CREDIT)

:

.3

.4

(ACCEPTANCE CREDIT)

(DISCOUNT CREDIT)

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(1)

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(2)''

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.149.

.80.

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(1)

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(2)

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(2)

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.1

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.37.

.454.

3

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(1)

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(2)

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()

(1)

.2

"

(2)"

(3)

(4)

37.

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(1)

(833)

(2)

(835)

(3)

.45.

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(4)

(1)

(2)

" : (3) ()

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(4)

1968

.80.

.	(840)	(1)
.	(862)	(2)
:		(3)
	.80.	
:		(4)

: :

(1)

()

(2)

(3)

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(5)

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: .1

(6)

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.26.

1983

()

.	(590)	(1)
:		(2)
:		(3)
.	(953)	(4)
.	(1/980)	(5)
.	(988)	(6)

(1)

.2

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.⁽²⁾(212) (210)

()

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.()

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(3)

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(967) (1)

(210) (2)

" .1

.2

.3

.959.

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(3)

() ()
() ()

;(1)

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.56.

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"

(255-250)

(1)"

(2)

(255)

.1

.2

1

: (1)

.1987

(255) (2)

(252)

.3

()

(105)

" "

(1)

61. _____ : (1)
- 66 -

(1)

(2)

"

(3)

(4)

.259.	:	(1)
26.	:	(2)
.261.	:	(3)
.386.	:	(4)

"

"

(1)

.183.

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(1)

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: ... ()

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" "

" "

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(1)

.196. 3

: (1)

.1

" " :

()

.2

.3

(1)

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(1)

(1)

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:Receved for Shipment

.1

(2)

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.422

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(1)

.259

.29

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(2)

(1)

" 736 2 12

 1963 23 (1)

4 " .304-18 .1902

"

:Delivery orders

-3

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: .1

()

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(1)

: .2

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(1)

-44

736. 14

1963 23 (1)

.735. 1964 -

- 77 -

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.296.

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.502.

(2)

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(3)

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.766.

1973

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.493.

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.296.

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(1)

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(1/372)

(2)"

" "

(2/377)

"

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(3)

" "

3

: (1)

. 15. 1987

.245. 1997

: (2)

.139.

1993

353 2002

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(3)

(1)

"

"

(ISP)

(2)

(UCP)

(UN Convention)

(3)

(1/378)

"

"

(4)

Advice of standby or (2.05) (/7) (ISP)

341. : (1)

(USP) (12/11/7) (2)

" "

.Amendment

9. : (3)

107. 1994

(48) (4)

(380) .2006/9/17

"

."

(1)

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" "

(2)

⁽²⁾ (380 379)

(15-13)

(UCP)

(3/372)

(3)

(UCP)

.283.

:

(1)

281. 1978

:

(2)

.1147.

." :

(379)

(3)

."

"

(1)"

" (97)

(2)"

(3) 7

) (/13)

(...

(UCP) (/13)

(1)

.94. 1999

1

(2)

" (USP)

(/13)

(3)

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" "

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(1)

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(4)

_____ " (UCP) (/14) (1)

... " (UCP) 15 338. : " (2)

" ... " (UCP) 15 (3)

() .1" (UCP) (/14) (4)

- -

.2

"

" "

(1)

" (2)

"

:

:

Commercial INVOICE : .1

UCP (1/137) ()

(3)

) / " (UCP) (/14) (1)
(

" () /
.342. 1999 2 " : (2)

.56. 2003-2002 - : (3)

(1)

Bill Of Lading .2

()

: (1)

.47. 1984

(1)

" "

-:

:

:

(2)

(4)

(3)

(5)

-()

-:

(1)

.443. 1996

clean bill of lading

(2)

-

:

(3)

Non clean Bill of Lading

:

(4)

:

(5)

(24)

.227

:

.168

-

-

()

To Order

Letter Of

.Credit

" "

-:

Bill Of Lading

.

Multi-Modal Transport Document

(1)

.1

.2

.3

.4

(2)

Air Transport Document

()

(UCP) (3/2/1/ /6) (1)

(UCP) (/26) (2)

1983 400

;(1)

.1

.2

.3

)

(

.4

.5

.6

.7

(1)

Road, Rail,

In Land Water Way Transport Document)

(2)

.1

.2

.3

(UCP) (/27) (1)

(CUP) (/28) (2)

.4

/

(1)

.5

(2)

Charterparty Bill Of Lading

(3)

.1

.2

.3

.4

.5

.(CUP) (/28) (1)

.(CUP) (1/ /28) (2)

.(CUP) (6/5/4/3/2/1/ /25) (3)

.6

.7

(1)

Thorough Bill of Lading

.

Receiverd For Shipment Bill Lading

.

Straight Bill Lading

.

Non – Negatigble

Shipper

(Policy Insurance

)

.2

.(CUP)

(/25)

(1)

(Open Policy)

(1)

(CIF)

) (CIP)

(

(CIP)

(CIF)

:

Certification Of Origin

.1

(/34/)

.57.

2003-2002

-

:

(1)

.UCP

(1)

(2)

DRAFT/ BILL OF EXCHANGE .2

(FROM DRAWER TO DRAWEE)

CERTIFICATE OF SURVEILLANCE OR INSPECTION .3

:

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-

-

. 1996 .

: (1)

.448.

1989

: (2)

.1265.

(1)

%10

HEALTH CERTIFICATE .4

(2)

ANALYSIS CERTIFICATE .5

.212.

.63. : (1)

: (2)

(1)

WEIGHT CERTIFICATE : .6

(2)

.Dacking List

Description

Of Required Coods

latest Shipping Date "Late Date Of Dispatch"

.212. _____ : (1)

.213. : (2)

:

:

:

:

(1)

(UCP)

(/13)

12 414

(1)

.100. 1999

"

(1)

⁽²⁾UCP (/14)

:

.264. (1)
" : (UCP) (/14) (2)

- -

"

:
 .
 /24 /23 /39 :
 %5 " (1) /39 /48 /26
 .

" .
 (2) /26 /24 /23 :

:
 . -
 Containers -

" 500 (/48) :

" .
 1993 500 _____ (1)

.82. 2000 1
 1 : (2)
 .500 .82. 2000

()

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%5

(4999 700)

(500)

.⁽¹⁾ (500)

:

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(

.⁽²⁾

.102.

(1)

.2005

(2)

:

.

(UNITED KINGDOM)

(UK)

(1)

:Substantial Compliance standard

:

()

(1)

.11. 1993 2

-:

.1

(1)

.2

(2)

(3)

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21

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.415.

1990/7/9

54

1225

(1)

(2)

500

(/13)

1993

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(3)

106.

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.3
/
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() / .3

.1

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(1)

.3

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.1

(2)

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(3)

.404. (1)

.321. (2)

.345. (3)

.3

.4

(1)

:

(ISP98)

1993

500

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.25.

(1)

(1)

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*

: 1993 500

() .1

.2

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.121.

(1)

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.1

(1)

.2

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1993

500

(22)

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"

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500

(4)

.95. 1968 1314

(1)

"

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(1)

(500)

(/13)

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500

.104.

(1)

" (/13)

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(1)

(2)

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.2

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.3

() ()

.148.

(1)

.108.

(2)

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()

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⁽¹⁾ ()

:

" "

.85.

(1)

(1)

(2)

"

"(3)

(4)

	.224/223	:	(1)
	.1133.	:	(2)
	.81.	:	(3)
(7)	Timely ncetic of dishcenes" .(ISP)	(5/ /)	(4)

(1)

" " :

(2)

(3)

"Chnges for fees and costs" .(ISP)		()	(1)
-1/ " (CUP)		(/18)	

.245.		:	(2)
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"	(UCP)	.283.	(2/ /18)	(3)
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."

(500)

:" (UCP)

"

" "

(2)

(1)

.312.

_____ (1)

: (2)

.153.

(1)

" (1/382)

"

: (1)

" (UCP) (15)

/

/

" ...

()

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(1)

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(2)

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() ()

CIF ()

()

()

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(3)

()

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.458. : (1)

.177. : (2)

.91.

: .192. : (3)

.312.

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"

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(1)

.90.

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(1)

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(1)

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.464.

: (1)

(1)

" (2)

"

(3)

.598. : (1)

.442. : (2)

.1985/12/30 50 1013 (3)

"

"
5 48 (648) 1981/3/30 48 (618)

" 592. 1981/3/30

"

(1)

(2)

()

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(3)"

(4)

.1

.2

	.257.		:	(1)
	.249.		:	(2)
.257.	.1353.	39	89/1038	(3)
	.258.		:	(4)

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(1)

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ADVISING BANK

(2)

(3)

(ISP) (UCP) (1)

(UN convention)

(ISP) (2)

2.05 "Advice of standby or Amendment"

" (/7) (CUP)

" (UCP) (/7) (3)

Advice of standby or Amendment: b. A person who is requested to a " (ISP) (2.05)

."deoise a standby and lecideno to do so should notby the requesting posty

⁽¹⁾(UCP)

(ISP)

(2)

CONFIRMING BANK

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.James E. Byrne, The official commentary on the International standby prattid, Ibid, P. 79 (1)

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"Definition: a Confierior" is a person who upon an issuers nomination to the so, adds to the : (a

Un (16) issuer's undertaking its own undertaking to honaur astand by"

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"confirmation" of an undertaking means an under taking added to that of the guarantor/issuer, and authorized by the guarantor / issuer, providing the beneficiary which the option of alimenting payment from the confirmations tead of from the guarantor, issuer/ uponsiomple

NOMINATED BANK ⁽¹⁾

demand on upon clemand accompanied by othe Documents, inconformity with the terms and any document ary condition of the confirmed undertaking, whih out condition of the confirmedunderta king, without prjutic to the eneficiary's right to demand payment fromto quarantor/issure".

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Michalel Brindle and Richard Coleman, Ibid, p416. (2)

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**An-Najah National University
Faculty of Graduate Studies**

**Contractual Relations Between Parties to the Contract
of Letter of Credit**

**Prepared by
Samah Yousef Ismail Al-Said**

**Supervisor
Dr. Hussen Mashage**

*Submitted in Partial Fulfillment of the Requirements for the Degree of Masters
in Law, Faculty of Graduate Studies, at An-Najah National University, Nablus,
Palestine.*

2007

**Contractual Relations Between Parties to the
Contract of Letter of Credit**

**Prepared by
Samah Yousef Ismail Al-Said
Supervisor
Dr. Hussen Mashage**

Abstract

Our study theme focuses on the Letter of Credit , as it is one of the banking operations that played and is still playing a great important commercial and economic role at international commercial and economic level. And due to the lack of legal studies on this theme, I handled in my study an important aspect of the Letter of Credit, that is the Legal Relation which connects the relevant parties to each other based on the following international publications :

- The United Rules Group of International security Practices (ISP), Buletin No. 590 issued in 1998 by the International Chamber of Commerce in Paris, which entered into force as from 1st January, 1998.
- United Nations Convention (UN Convention) of independent Warranties and security, of 1996.
- The United traditions and Conventions Group of Letters of Credit, UCP Buletin No. 500 issued in 1993 by the International Chamber of Commerce in Paris, which entered into force as from 1st January, 1994 .

The contents of my study included three major chapters divided into subjects, requirements and sections. In my study, I handled the Letter of Credit and its legal organization implying jurisprudent, legislative and judicial opinions. if I want to give a comprehensive legal definition for the approach to the Letter of Credit, I find in dr. Jorgeit's definition the

inclusiveness of definition, as she defined it as a written undertaking issued by a bank called the issuing bank addressed to the seller who is called "The beneficiary", according to the buyer's request who is called the ordering client; in it, the bank undertakes to pay to the beneficiary a certain sum of money when the beneficiary submits the documents which are mentioned in the letter addressed to him, and this letter is called, " he Letter of Credit", during the period specified in it. The contract of the Letter of Credit is independent from the sale contract which is made according to it, as well as from all relations resulted from the operation of the Letter of Credit. Then I presented its importance, benefits and characteristics with which it is distinguished from other contracts. I also handled the cases which show the law that should be applied on the contract of letter of credit. We also have not forgotten to mention the most important documents which should be included in the Letter of credit such as (the commercial invoice, bill of lading, insurance policy, certificate of origin...etc), and their compliance with the provisions of the Letter of Credit, and the terms which are used in the international commerce in accordance with the rules issued by the International Chamber of Commerce in Paris (ICC) . As it has been dealt with since ancient times, several types of it appeared and it has been divided into traditional and modern types as follows :

- The Irrevocable Letter of Credit and Revocable Letter of Credit;
- The Enhanced and Non-Enhanced Letter of credit;
- The Transferable Letter of credit;

- The payable at Sight Letter of credit; Acceptance Letter of credit and Deferred payment Letter of Credit .
- The Totally and partially Transferred Letters of credit;
- The Security Credit
- The open credit and restricted credit

Then we mentioned the most important principles on which the contract of Letter of Credit is based; the most important principles are the independence of the contract of the Letter of Credit, the principle of apparent coincidence of the documents. Then we mentioned the parties to the contractual relation; the Bank, the ordering client and the beneficiary; and I briefly explained the impacts and obligations of each one of them towards the other and the results of breaching such obligations. But in discussing the legal nature of the Letter of Credit we only discussed the jurisprudential theories which contradicted each other in specifying this legal base. We also discussed briefly the theory of single will, the agency theory, the guarantee theory and the theory of provisions for the benefit of others .

Then we concluded with the adaptation of the legal nature of the contract of the Letter of credit , as it is a promise of contracting after giving it the characteristic of abstraction. Then we studied the impacts of the contractual relations on the parties to the Letter of credit by explaining the obligations of each party and the relation of the relevant parties with the intermediary banks .