

# PRACTICAL EFFECT OF THE UNIFORM COMMERCIAL CODE ON DOCUMENTARY LETTER OF CREDIT TRANSACTIONS

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The practical effect of the Code's Letter of Credit Article on members of the commercial community—bankers, merchants and their counsel—is this: If heretofore they have been conducting their operations in accordance with widely accepted American practice, they may continue to do so in the future with the assurance of some statutory support. The situation is as simple as that because in the end, although there were periods during the exploratory process when other possibilities were examined, the article makes no attempt to revolutionize established letter of credit practice as it exists in the United States, but simply codifies it.

The Letter of Credit article is brief—it has only seventeen sections—and all but one of its comments begin with the comforting words,

“Prior Uniform Statutory Provision: None.”

In these two features lie its simplicity and charm. Its scope is limited to the essentials and there are few or no existing statutes to be discarded and replaced.

This previous absence of statutory regulation, however, by no means implies that the banking fraternity and the commercial community in general have been fumbling along in letter of credit transactions without the benefit of well established standards of practice and readily ascertainable rules of interpretation. Over many generations procedures and performance, while subject to gradual development and change, have had to be pretty generally understood and accepted or letters of credit would never have succeeded in obtaining their world-wide use and usefulness. For a long time, nonetheless, a newcomer to the field was likely to have to learn what letters of credit would and would not do in the sometimes harsh school of experience and by a process of trial and error.

But within a few years after letter of credit business in the United States had been given special impetus by the passage of the Federal Reserve Act<sup>1</sup> and by the commercial exigencies of the first World War,

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1. 41 STAT. 378 (1919), as amended, 49 STAT. 704 (1935), 12 U.S.C. § 615 (1946) specifically authorizes federal banks engaging in foreign banking to issue

the need for some guidepost, which he who ran might read, became evident. A set of regulations was adopted and published by the New York Bankers Commercial Credit Conference of 1920.<sup>2</sup> Historically and traditionally, however, letters of credit are an international rather than a national device, and in due course, under the aegis of the International Chamber of Commerce a more ambitious and comprehensive tabulation<sup>3</sup> of customs and practices was compiled which gradually obtained wide international acceptance. Virtually all of those American banks who were engaged in the letter of credit business adopted these international rules in 1938<sup>4</sup> in lieu of their own earlier version. Since then, by slow-moving but persistent study, discussion and exchange of views, a number of refinements and modifications have been evolved which have been given global distribution in international banking and commercial circles under the style of Uniform Customs and Practice for Commercial Documentary Credits, fixed by the Thirteenth Congress of the International Chamber of Commerce. Adherence to these Uniform Customs was given by American banks as of January 1, 1952.<sup>5</sup>

The Uniform Customs represent an attempt to find a common ground between somewhat conflicting national practices—and indeed between the phrasings peculiar to different languages—and constitute a curious combination of statements of principle, assertions of intent, and definitions of terms. The Code by no means incorporates or sanctifies the Uniform Customs. As the comment to section 5-102 carefully and quite properly emphasizes, the document in question was never submitted to the Code's sponsoring organizations for approval. In point of fact, being the conglomerate instrument that the Uniform Customs agreement is, the sponsors almost certainly would not have approved it as a statute or statutory base, if it had been so submitted.

Nonetheless, the Code does take those essential principles of letter of credit philosophy upon which the Uniform Customs rely and

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letters of credit. 38 STAT. 263 (1913), 39 STAT. 754 (1916), as amended, 12 U.S.C. §§ 372, 373 (1946) authorizes national banks to accept time bills of exchange, and this has been interpreted to include the issuance of letters of credit. See *Border National Bank v. American National Bank*, 282 Fed. 73, 79 (5th Cir.), *cert. denied*, 260 U.S. 701, 732 (1922). Thus the prior dispute as to whether letters of credit issued by national banks were *ultra vires* and thus void, was eliminated.

2. See WARD AND HARFIELD, *BANK CREDITS AND ACCEPTANCES* (3d ed. 1948).

3. Uniform Customs and Practice for Commercial Documentary Credits, fixed by the Seventh Congress of the International Chamber of Commerce and published by it in 1933 as its Brochure No. 82. See WARD AND HARFIELD, *op. cit. supra* note 2, c. 12 (reproduction of the Uniform Customs).

4. Adoption of the Uniform Customs, subject to "certain guiding provisions covering practice in the United States," was announced in 1938.

5. UCC § 5-102, comment 4 (Official Draft 1952), refers to this compilation of Uniform Customs as constituting part of the uniform customs among banks to which reference may be made in construing Article 5.

does enact them into law. There is then no attempt in the Code to reverse, remake, or revolutionize letter of credit practice but simply to ascertain the best existing American practice and to re-affirm it by statute. That result was not immediately reached; some effort to adopt a detached and idealistic approach to this problem was made by the Code's draftsmen and was discarded only with a certain reluctance.

Happily, ascertaining the best existing American practice was not too difficult because, while there are in round figures some 14,000 commercial banks in the United States, only about 100 of them do any international business of consequence. And although it may well be that letters of credit have an important future in domestic trade,<sup>6</sup> it is historically true that their development so far has stemmed primarily from international trade. It is also a fact that of the more or less 100 American banks which may be assumed to have had some experience with documentary letters of credit probably 25 of them handle 75% of the total letter of credit volume. All of these—as indeed the entire 100 banks to the best of their understanding—are devoted adherents to the Uniform Customs. Some differences in interpretation occasionally arise but they are not usually of a fundamental character, to which the relative absence of letter of credit litigation bears rather persuasive witness.

It was not difficult then to determine what was the accepted and approved practice currently applied to the great majority of letters of credit, and that is what the Code has written into law. The practical problem which the Code presents, therefore, relates only to unwitting or stubborn departure from what has all along been approved procedure. Now that we have statutory language, however, there are some things which perhaps deserve to be watched with especial care.

The first of these is the designation of letters of credit as irrevocable or revocable. As a general thesis it would appear that, if the commercial parties to a transaction wish the added financial as-

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6. In domestic trade, letters of credit have tended toward specialized uses. During recent years, for example, they have been employed—in a form tailored to the particular objective—to assure automobile manufacturers of prompt payment for repetitive shipments of cars to their distributors. Still another unusual type of credit has been utilized by a bank making personal loans to enable its borrower to shop and pay for the automobile of his choice. Sometimes when transactions are large or delivery periods prolonged letters of credit are demanded by the domestic seller either for his protection or as a basis for persuading a lender to finance the assembly or manufacture of the goods ultimately to be delivered. But in general the factors of time, distance, language and jurisprudence which, in international trade, have made it desirable to obtain (and pay for) the commitment of a third party, who is relatively impartial, abundantly responsible, and widely known, such as a bank, have not been nearly so consequential in domestic trade. Possibly the ready access to letter of credit law made possible by the Code may enlarge the number of banks prepared to issue such instruments.

insurance afforded by a letter of credit, it is hardly worthwhile considering one which is less than irrevocable. At any rate, if an irrevocable credit is what is desired, then the credit must stipulate that it is an irrevocable credit. Now to be sure, our language is an extraordinarily flexible one and offers an almost infinite variety of ways by which irrevocability can be indicated; but the sound rule would appear to be that an issuer should not be carried away by pride of authorship and search for sonorous synonyms, but should instead confine himself to the word which is used in the Code, namely, irrevocable.<sup>7</sup> And equally if the beneficiary of a letter of credit is tendered an instrument which purports to be irrevocable but which avoids the use of the word, he should consider it at least suspect from the beginning. An immediate corollary to the foregoing is, of course, that a beneficiary of a credit which does not "clearly stipulate" that it is irrevocable, and which therefore under the Code is revocable,<sup>8</sup> should not delude himself into thinking that he has a really protective instrument. A revocable credit, as the Code spells out in so many words, may be modified at any moment without notice to the customer or to the beneficiary,<sup>9</sup> although a paying or negotiating bank if it has been requested or invited by the issuer to act in that capacity is protected.

Perhaps the next thing to keep in mind is that the stipulations in letters of credit should be specific and should be clear. By reason of the "unless otherwise agreed" provision which so frequently introduces the prescriptions of article 5, it is possible to insert in a letter of credit almost any desired condition. When this is done the commitment in the credit becomes effective only if there is compliance with such

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7. UCC § 5-103(1) (a) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-103(1) (a) (Purdon Supp. 1953); provides:

"(1) In this Article, unless the context otherwise requires

(a) A 'credit' is a documentary credit and may be either irrevocable or revocable. An irrevocable credit is a signed writing, clearly stipulating that it is irrevocable. . . ."

UCC § 5-105 (Official Draft 1952), in distinguishing between revocable and irrevocable letters, casts no further light on the definition of a "clear stipulation." It provides: "A credit is revocable unless it clearly stipulates that it is irrevocable; a credit so stipulating is an irrevocable credit." UCC § 5-105 is a codification of Article 3 of the Uniform Customs.

8. UCC § 5-105 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-105 (Purdon Supp. 1953), quoted in note 7 *supra*.

9. UCC § 5-106(2) (b) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-106(2) (b) (Purdon Supp. 1953); provides:

"(2) Unless otherwise agreed

"(b) An established irrevocable credit can be modified or cancelled *only* with the agreement of all parties as to whom it has been established." (Italics added). Subsection (c) of the same section provides:

"(c) Revocable credits may be modified or cancelled at any moment without notice to the customer or the beneficiary. Any bank or branch authorized to honor or negotiate on behalf of the issuer is entitled to reimbursement for any draft duly honored or negotiated before receipt of notice of modification or cancellation."

a condition. Of course, if the stipulation is unfair or unreasonable, then the beneficiary may decline to take the credit and there never will be any letter of credit transaction. But the non-use of a credit is not ordinarily what provokes dispute and litigation; it is rather reliance upon and use of an instrument, the terms of which mean different things to different men. There should be avoidance, therefore, of terms that are ambiguous and of those which have a highly specialized or technical significance.<sup>10</sup> Terms of the latter sort may be plain enough to the seller and to the buyer (who, in the language of the Code, are probably the beneficiary<sup>11</sup> and the customer<sup>12</sup>), but how about a possible negotiating bank or even the issuing bank itself? If the language is crystal clear, however, no one should be deceived.

Notwithstanding the flexibility in terms which the Code endeavors to preserve for letters of credit, there are some stipulations which are beyond the pale. Under the provisions of section 5-107, for example, an issuing bank may not evade its responsibility by reason of having inserted in the credit a general requirement that all documents must be satisfactory to it.<sup>13</sup> The reason, of course, is obvious. To have purported in one breath to have given its irrevocable promise to pay subject to compliance with detailed conditions and to have added under its breath, so to speak, that fulfillment of the promise will be dependent on everything being satisfactory to it at the time of payment, is to make the whole commitment dependent upon the issuing bank's discretion, caprice, or even its responsiveness to its customer's pressure; in other words, to negate the entire protective concept of the letter of credit.<sup>14</sup>

Another feature which merits mention is that of an attempted reservation of lien or claim. This relates primarily to a beneficiary

10. Does "one automobile" mean Jeep or Cadillac, passenger car or truck, new or used? Is "one ton" metric or English, long or short? Does a bill of lading for salt meet the stipulation of a credit reading "Na Cl"?

11. UCC § 5-103(1) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-103(1) (Purdon Supp. 1953); provides:

"(1) In this Article, unless the context otherwise requires

"(d) A 'beneficiary' is a person who, under the terms of a credit, is entitled to draw under it.

12. Section 5-103(1); *id.*, further provides:

"(g) A 'customer' is a buyer or other person who causes a bank to issue a credit."

13. UCC § 5-107(1) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-107(1).

14. It must be observed, however, that ". . . the issuer *may require* that *specified* documents must be satisfactory to it." UCC § 5-107(1) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-107(1) (Purdon Supp. 1953) (*Italics added*). Of course, if the stipulation does not strike the beneficiary as being reasonable or consistent with the basic transaction, he will not accept it.

who may, either improperly or because of what seems to him to be fully justifiable reasons, have overshipped or overcharged and who may attempt to collect the amount available under the credit, but expect still to implement a claim on the buyer for the excess by retaining a lien on the documents. That is an endeavor to eat his cake and to have it too, and it does not work. If, by reason of the perhaps loose drafting of the letter of credit terms, it is possible for a beneficiary to present documents for a quantity or amount in excess of the credit and still not be at variance with the letter of credit stipulations, he may indeed collect under the credit itself, but in so doing section 5-109 requires him to surrender all of his documents and all of his liens.<sup>15</sup> If he has a claim to make against the buyer for the additional quantity or value, he must make it independently of the letter of credit and without benefit of documentary control.

A word of caution perhaps deserves to be sounded on the distinction between the documents and the goods. The Code deals with that subject early in the letter of credit presentation, saying in section 5-102 that the article "does not have relation to goods since the subject matter of a documentary credit transaction is documents."<sup>16</sup> The parties to a letter of credit transaction must concern themselves, therefore, with the form of the documents and with respect to this form banks cannot be expected on the one hand to give the documents the sort of detailed examination that a lawyer would if he were exploring the possible steps in litigation, but only to examine them with sufficient care to ascertain that on their face they appear to conform to the terms of the credit.<sup>17</sup> On the other hand, if the documents do appear to conform then the bank which has issued or confirmed a credit may not decline to pay simply because it is alleged that the documents

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15. UCC § 5-109 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-109 (Purdon Supp. 1953); provides:

"Unless otherwise specified

"(1) A person by presenting a documentary draft under a credit relinquishes upon its honor all claims to the documents and a person by transferring such draft or causing such presentment authorizes such relinquishment;

"(2) An express reservation of claim makes the draft not in accordance with the terms of the credit."

16. UCC § 5-102(1) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-102(1) (Purdon Supp. 1953).

17. UCC § 5-110(2) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-110(2); provides:

"(2) Unless otherwise agreed a bank called upon to pay or accept under a credit is required to examine documents with care so as to ascertain that on their face they appear to conform to the terms of the credit but assumes no liability or responsibility for the genuineness, falsification or effect of any document apparently regular on its face."

As to the effect of the "Unless otherwise agreed" clause on the standard of care, see UCC § 1-102(3)(d) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 1-

do not respond to the underlying contract for sale or do not truthfully reflect the goods.<sup>18</sup> Such an allegation, if made, would presumably be not without bias and furthermore it might not be factually correct. The whole philosophy of the letter of credit and its general usefulness to the community would break down if a bank were required or permitted to resort to factors outside of the documents in determining whether it should honor or dishonor them. But it does not follow that the buyer (or customer) should be left entirely at the mercy of a misbehaving seller (or beneficiary) and, therefore, section 5-111 contemplates that a court of appropriate jurisdiction may enjoin the bank from honoring such questionable documents if thus honoring would simply benefit the misbehaving beneficiary and not imperil an intervening negotiating bank or holder in due course who has by the terms of the credit been invited to assume such a position.<sup>19</sup>

Little in the letter of credit procedure which has been so far discussed is new. One new element has been introduced, however, in section 5-112 which deals with the time allowed for honor or rejection. Under the Code a bank to which a draft is presented under a credit may without dishonor withhold action for three banking days as a matter of inherent right and withhold action for an indefinite further period so long as the presenter raises no objection.<sup>20</sup> Thus the Code's language represents a reluctant recognition of reality. The fact is that under certain circumstances, such as those resulting from the

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102(3) (d) (Purdon Supp. 1953). UCC § 5-111(2) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-111(2). (Purdon Supp. 1953); provides:

"(2) Whether or not the issuing or confirming bank is notified of a forgery or fraud or an alleged forgery or fraud in a document apparently regular on its face, such bank, unless enjoined, may nevertheless honor or reimburse and, in turn, it shall be entitled to recover reimbursement from the person obligated to reimburse it."

18. UCC § 5-111(1) (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-111(1) (Purdon Supp. 1953); provides:

"Unless otherwise agreed

"(1) A bank which has issued or confirmed a credit is not excused from honor or reimbursement by the fact that the goods or documents do not conform to the underlying contract for sale or to the warranties implied from dealing with documents. . . ."

19. UCC § 5-111(1), note 18 *supra*, continues after the portion quoted above as follows: ". . . but in the event of forgery or fraud in a required document, a court of appropriate jurisdiction may enjoin the issuing or confirming bank from honoring or reimbursing unless such honor or reimbursement is demanded by a paying, accepting, or confirming bank which has acted in good faith in reliance on the document or by a negotiating bank or other endorsee of a draft which is a holder in due course and acts under a credit extending by its terms to a negotiating bank or endorsee." Cf. UCC § 5-111(2) quoted in note 17 *supra*.

20. UCC § 5-112 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-112 (Purdon Supp. 1953); provides:

"(1) A bank to which a documentary draft is presented under a credit may without dishonor of the draft or the credit—

(a) withhold honor until the close of the third banking day following receipt of the documents; and

swollen and imperative demands of a war economy, banks doing a letter of credit business, and particularly those banks in an international center like New York, find themselves overwhelmed with transactions. The techniques of letter of credit procedure and of documentary examination are highly specialized and individuals skilled in their application are not readily to be found. Nor are the skills acquired by a bank's staff in its domestic operations of any immediate help.

It becomes virtually impossible, therefore, to obtain additional personnel from within or without the institution and when the situation is aggravated by the concentration growing out of irregular ship departures and mail arrivals, drafts and documents are presented in quantities which are simply beyond the physical capacity of a bank's staff to deal with promptly. Yet it is under such emergency circumstances, when the market may be full of buyers and sellers not previously acquainted with one another, that the protection of the letter of credit instrument is most needed by the commercial community. It would be intolerable to commerce that the banks should decline to expand their letter of credit operations, but it would be equally intolerable to banks that they must run the risk of having bound themselves to honor a set of as yet unexamined documents simply because they had not specifically declined<sup>21</sup> to honor within the previously customary single day of grace. Hence, this provision in the Code recognizes what actually has taken place again and again and what seems fortunately to have occasioned little practical injury to anyone.

A presenter is not, however, compelled to stand helpless if the bank fails to honor the letter of credit within the three day period. He can then demand the return of his documents. Until the bank has paid for them they belong to the presenter, and the presenter, at least after the bank has dishonored, is under no compulsion to use the letter of credit if he prefers to dispose of his documents in some other way.

The section on indemnities (5-113) also tries to illuminate a twilight zone in which practice and philosophy have tended to conflict. The practical way of overcoming many a minor discrepancy—of technical importance but of commercial insignificance—is to provide indemnity against the possible, but frequently improbable, damage which

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(b) further withhold honor when the presenter has expressly or impliedly consented thereto.

“(3) ‘Presenter’ means any person presenting a draft for honor under a credit even though that person is a confirming bank or other correspondent which is acting under an issuer's authorization.”

21. NIL §§ 136, 137. See UCC § 3-506 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 3-506 (Purdon Supp. 1953).



may arise out of ignoring the discrepancy. But the circumstances under which an indemnity may properly be given by a bank, and particularly by a national bank, are narrowly prescribed.<sup>22</sup> This section<sup>23</sup> will, it is hoped, be helpful in excluding this sort of indemnity from the debatable category.<sup>24</sup> Such instruments constitute an extremely useful lubricant for the machinery of letters of credit, even though they should be used sparingly.

One point on which there frequently has been international dispute, particularly with those countries constituting the British Commonwealth of Nations, has been the question of whether, and at whose option, a credit might be used for several shipments or only for a single shipment in the absence of clear indication one way or the other. The Code reaffirms the American practice on that score by stating that, "Unless otherwise specified a credit may be used in portions at the discretion of the beneficiary."<sup>25</sup> It does not result from this, however, that a buyer cannot avoid the risk that a seller may ship and collect for only a part of the order and may then fail to complete the order even though the buyer may not be able to make any effective use of a partial delivery. The buyer can readily protect himself against that possibility by seeing to it that the credit contains a specific stipulation that no partial shipments are allowed. It is, nonetheless, a fertile source of misunderstanding and all parties to a letter of credit instrument will be in the future—as indeed they have been in the past—well advised to include as one of the credit terms a clear statement that partial shipments either are or are not permissible.

A useful compromise between divergent points of view appears to have been achieved by the Code in section 5-115<sup>26</sup> under the title of Transfer and Assignment. On the one hand, buyers of merchandise have held out sturdily for the right to expect performance on the part of sellers in whom they have had sufficient confidence to make the purchase initially and not to be projected involuntarily into dealing

22. See 7 MITCHIE ON BANKS AND BANKING § 163 (Perm. ed. 1944).

23. UCC § 5-113 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-113 (Purdon Supp. 1953); provides:

"A bank seeking to obtain (whether for itself or another) payment, acceptance, negotiation or reimbursement under a credit may give indemnities to induce such payment, acceptance, negotiation or reimbursement."

24. With respect to state banks, UCC § 5-113 eliminates any problems that existed with regard to the power of a bank to indemnify an issuer of a documentary credit, the documents of which are not in complete order. With respect to national banks, however, § 5-113, as state legislation, can have no effect. As to the providing of indemnity by state banks, an interesting conflict may arise between § 5-113 and the state's regulation of indemnity companies as part of the state's insurance legislation.

25. UCC § 5-114 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-114 (Purdon Supp. 1953).

26. UCC § 5-115 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 5-115 (Purdon Supp. 1953).

with someone else. On the other hand, sellers have with equal vigor claimed the right not to be hampered in their ability to utilize the security afforded by the letter of credit as a basis for obtaining financing which might be requisite to their carrying out the transaction at all. But at the same time banks called upon to implement the credit have protested that they cannot afford, for the small fees exacted for letter of credit services (usually of the order of 1/10 or 1/8 of 1% on the amount drawn), to assume the burden of giving effect to assignments; and that, if thus burdened, they would be impelled to avoid any credits likely to involve assignments.

In the solution reached by the Code, the right to draw under a credit may not be transferred or assigned unless the issuer (and that means as a practical matter the buyer as well) has assented. But the proceeds which will result from drawing under the credit may be assigned; this enables the beneficiary to offer a prospective lender some security. Nonetheless, that security arrangement lies primarily between the beneficiary and the lender; and the banks that are called upon to implement the credit are under no duty to police the assignment unless they so elect—which is to say unless they are compensated by an appropriate fee for the added trouble and responsibility.

A feature that is not dealt with in the Letter of Credit Article but is nonetheless important in connection with letter of credit procedure, has to do with the issuance of drafts in a set. This is a matter on which the Code has something to say in article 3.<sup>27</sup> The practice of drawing drafts in a duplicate, or even a triplicate set is an old international habit and originated as a device for minimizing the risk and uncertainty of sailing vessel mails. While its use is diminishing—triplicates are now rare and even duplicates are becoming less frequent—nonetheless it is a contingency which the parties to a letter of credit transaction must take into account. The rule which the Code establishes is clarifying rather than startling but it does mean that a negotiator under a letter of credit must for safety's sake examine the language of the draft to determine in how many parts it has been drawn and to insure that he receives all of those parts. Similarly, when a drawee bank honors the first of the multiple drafts which is presented, it should make a sufficiently detailed record of its action as to avoid the possibility of honoring another draft which may be later presented. A less careful handling is almost certain to give rise to a great deal of trouble and quite possibly to substantial monetary loss.

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27. UCC § 3-801 (Official Draft 1952); PA. STAT. ANN. tit. 12A, § 3-801 (Purdon Supp. 1953).

There is another item contained in article 3<sup>28</sup> which has no bearing on documentary letters of credit but which represents a time honored international practice quite likely to be encountered at one time or another by anyone engaged in foreign trade. This is the Letter of Advice on an International Sight Draft. Its nature is simple. It is merely a letter directed by the drawer of a draft to the drawee of that instrument advising the drawee that the draft has been issued. Ordinarily it is a letter from one bank to another, and it usually results in the drawee's setting aside from the general funds of the drawer on deposit with it the sum required to pay the draft when it is presented. The procedure has always appealed to drawee banks because it served to terminate the interest (in the days when interest was being paid) on the drawer's deposit and also somewhat to expedite control and payment at the time of the draft's actual presentation. Drawer banks have liked it because it provided an additional protection against the possibility of a forged or altered instrument.

To the commercial payee of the draft, however, the practice is more likely to constitute an annoyance than an advantage, for while the setting aside of funds gives the holder of a draft no special right or claim against them, the presentation of the draft before the letter of advice has reached the drawee bank (which, given the celerity of airmail, not infrequently occurs nowadays) may well result in its return to the presenter unpaid, with the request that he present it again, which is of course a nuisance. Nonetheless, the practice does exist and for a merchant to be aware of it is perhaps to be spared an unfounded fear that a draft of which he may be the holder and which is not paid upon first presentation, may never be paid.

In summary, it may be said that for the most part the Code simply reaffirms existing American letter of credit practice. But in one debatable area, namely the issuance of indemnities for discrepancies, it confers explicit authority for such action—at least by state banks. And in two respects it introduces new concepts. One of these is the countenancing of a three day delay after presentation before the bank must act on documents presented under a credit. The other is the establishing of distinctions in the transfer and assignment section which preserve for the buyer his right to insist on performance by the seller of his choice, still permit the seller to assign the proceeds of his credit as a basis for interim financing, but exempt the implementing banks from unremunerated responsibility for giving effect to assignments.

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28. UCC §3-806 (Official Draft 1952); PA. STAT. ANN. tit. 12A, §3-806 (Purdon Supp. 1953).