

Publisher's Note

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Previous release was 2018-6

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Letters of Credit: The Law and Current Practice Third Edition

This publication is an authoritative guide to contemporary letter of credit transactions. It describes the mechanics and operation of the letter of credit from the point of view of the issuing bank, the intermediate bank, the applicant and the beneficiary. It illustrates the international character of the modern letter of credit as it is used in business today with cases from Canada, the U.S., the U.K., France and Australia. It also features coverage of important new cases as well as material on the International Chamber of Commerce's Uniform Customs and Practice for Documentary Credits.

Release 2019-1 features updates to the case law and commentary in Chapters 1 (Introduction), 2 (Legal Nature of the Letter of Credit), 3 (Parties to the Letter of Credit), 5 (Autonomy of the Credit Transaction), 6 (Payments Through Letters of Credit), 7 (Duration, Amendments and Transfer), 8 (Judicial Remedies), 9 (Conflict of Laws), and 10 (Bankers' Acceptances). In addition, this release includes updates to the Appendices.

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CASE LAW HIGHLIGHTS

Parties to the Letter of Credit: Issuing Bank and the Applicant — Duty to Inform — An implied duty to cooperate and renegotiate may be incident to a contract according to the nature of the contract if the duty is consistent with the general scheme of the contract and if its coherency seems to require such a duty. Such an implied clause must not merely add duties to the contract that might enhance it, but must fill a gap. In this case, there is no gap or omission in the scheme of the contract that requires that an implied duty to cooperate and to renegotiate the agreed prices be read into the contract in order to make it coherent. *Churchill Falls (Labrador) Corp. v. Hydro-Québec*, 2018 CSC 46, 2018 SCC 46, 2018 CarswellQue 9514, 2018 CarswellQue 9515 (S.C.C.).

Introduction: Foreign Trade Transactions — Interest — Where security for costs is given by plaintiff in the form of a letter of credit, the interest paid to maintain the credit is not a cost of the proceedings, and is therefore not recoverable from the losing party. The interest is the cost of the credit, not of the proceeding, in the same way that interest paid to obtain a loan to finance the litigation is not a recoverable cost of the proceedings. *Jayco, Inc. v. The Queen*, 2018 TCC 239, 2018 CarswellNat 7470 (T.C.C.).

Payment Through Letters of Credit: Introduction — Value added and sales taxes (GST) do not arise from the application for and issuance of letter of credit, nor on the draw-down of the funds upon presentation of documents. However, if the funds are being used as payment for goods and services, the payment attracts such taxes which are payable by the purchaser. *International Hi-tech Industries Inc. v. The Queen*, 2018 TCC 240, 2018 CarswellNat 7494 (T.C.C. [General Procedure]).

Judicial Remedies: Dispute Resolution — While a court may decline jurisdiction in deference to an arbitration panel, there is no certainty the latter once constituted will accept jurisdiction. If the matter in dispute is a call on a letter of credit following a termination of contract on the grounds of default, the panel would have to determine inter alia whether the right to call the letters of credit is conditional upon a finding of proper termination for default. *Astaldi Canada Inc. v. Muskrat Falls Corporation*, 2018 NLSC 229, 2018 CarswellNfld 431 (N.L. S.C.).