

ABA Section of Business Law

Letter of Credit Subcommittee of UCC Committee

Spring 2009

George Hisert, Bingham McCutchen LLP, San Francisco, Chair
Tony Calobre, Bingham McCutchen LLP, Los Angeles, Vice Chair

Our Subcommittee will be meeting on Thursday, April 16, from 12:30 - 1:30 p.m. Our agenda is driven by the events of the last 6 to 12 months and the impact of the national financial crisis on banks and their letter of credit operations. Generally we will be discussing three issues, all related to current market conditions:

1. The impact of the financial situation upon the wording of syndicated loan documents with respect to rights and responsibilities of the letter of credit issuer under a letter of credit sub-facility. Discussion will include beefed up defaulting lender provisions, mechanics for dealing with defaulting lenders, the expansion of the definition of defaulting lenders, and related issues.
2. Steps that the beneficiary can take if the financial condition of the issuer declines. In the past, receiving a letter of credit from a respectable large money center bank often would minimize the risk of issuer insolvency. The events of the last six months have undermined that assumption. Beneficiaries now need to develop strategies to address the risk of issuer insolvency.
3. Procedural issues in connection with attempts to enjoin payment on a letter of credit. As the economy worsens and deals sour, we anticipate that more applicants will seek to enjoin payment on letters of credit. We will focus on procedural issues such as: who are the necessary parties? what is a proper venue? what portion does the issuer take in what is essentially a dispute between the applicant and the beneficiary?

We look forward to seeing you in Vancouver.