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STANDBY LETTER OF CREDIT AS A MEANS OF SECURITY IN INTERNATIONAL CONTRACTUAL RELATIONS

ABSTRACT: The subject of this paper is a type of letter of credit that is not commonly encountered in the practices of domestic banks. It is not specifically regulated by domestic legislation; however, its significance is expected to grow in the international business relations of our businessmen with companies from other countries where the use of this payment security instrument is common in the banking industry. This type of letter of credit is theoretically of disputed legal nature, raising questions about whether it qualifies as a letter of credit, a type of guarantee, or a distinct legal institute. The focus of the research is on the standby letter of credit as a security measure in international contractual relations, particularly in sales and construction contracts. In sales contracts, the standby letter of credit serves to secure the interests of the seller, while in construction contracts, it can secure interests of both the client the contractor, depending on the party for whose benefit it was issued. The paper aims to define the standby letter of credit, explain its role in protecting the rights and interests of contracting parties, and explore its legal nature. In particular, we will conduct a comparative analysis between this legal institute and a 'classic' documentary letter of credit and a bank guarantee. In our legal theory, and to a greater extent in American and English legal theory, there are numerous works that deal with the topic of standby letters of credit. However, the legal regulations related to banking operations have changed

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over time, which requires a fresh perspective. The goal of this work is to familiarize our companies and banks engaged in transactions with foreign entities, where the issuance of this type of letter of credit is customary, with the role of a standby letter of credit as an instrument for ensuring contractual obligations. In addition to that, the paper aims to explore the legal relationships established with this type of letter of credit.

Keywords: *standby letter of credit, documentary letter of credit, bank guarantee, international contractual relations.*

1. Introduction

Standby letters of credit were created in the United States of America (hereinafter referred to as the USA) after the great economic crisis that lasted from 1929 to 1934, as a need for banks based in the USA to provide assurance that their clients – American companies will fulfill their obligations from of the basic work that they have undertaken towards foreign companies. Under the basic work, we understood the sales contract, the construction contract, the contract on the performance of investment works. “In the USA, after the banking crisis of 1929, it was forbidden to issue bank guarantees” (Vukmir, 2007, p. 262), i.e. “according to domestic regulations, American banks are not authorized to issue independent bank guarantees” (Vukadinović 1987, p. 449). Banks in the USA were “not allowed to be sureties, which meant they could not issue guarantees in the traditional common law sense. In such circumstances, it was natural to avoid the nomenclature of “guarantees” in describing this new form of undertaking” (Ellinger & Neo, 2010, p. 303). After the adoption of the Uniform Rules for Documentary Letters of Credit by the International Chamber of Commerce in 1933, American banks, in order to preserve their competitive positions in relation to European banks, began to apply a new instrument of international payment called a standby letter of credit. Pavićević (1999) points out that “banks in the USA are not authorized and therefore do not have the right to issue bank guarantees with the obligation to pay at the first call and without objection, in that case US banks would be uncompetitive, because their clients would be at a disadvantage when participating at international auctions” (p. 208). “Standby letters of credit have been used for many years in the USA, Canada and Japan, but were relatively less known in European banking practice” (Vukmir, 2007, p. 260).

The term standby itself means a state of readiness, i.e. to be in a state of readiness, so this type of letter of credit could be translated as a standby letter

of credit, that is, a letter of credit that is activated when a certain condition is met, i.e. when the debtor from the basic business does not fulfill his obligation or if he does not fulfill his obligation within the agreed period. In our theory, standby letters of credit meant “guarantee letter of credit” (Carić & Hribovšek, 1990, p. 188) or “credit with deferred payment” (Stojiljković, 2003, p. 208). In this paper, we will use the term in English because this term is generally accepted in international business practice, domestic and foreign legal theory, as well as in the international sources of law that regulate this legal institute.

2. Sources of law for standby letters of credit

In our positive law, the letter of credit is regulated by the provisions of the Law on Obligations from Art. 1072 to Art. 1082; however, there are no provisions governing the standby letter of credit. This is understandable because the standby letter of credit appears primarily in international business relations, so this legal institute is regulated by international sources of law, namely: Uniform rules and customs for documentary letters of credit from 2007 adopted by the International Chamber of Commerce, Publication MTK 600 (UCP 600), International Standby Practices ISP 98 adopted by the International Chamber of Commerce in 1998 (ICC Publication No 590) and the United Nations Convention on Independent Guarantees and Standby Letters of Credit, adopted by the UN General Assembly on December 11, 1995, which entered into force on January 1, 2000. The UN Convention on Independent Guarantees and Standby Letters of Credit has so far been ratified by eight UN member states, so the dominant sources of law for standby letters of credit are represented by the rules adopted by the International Chamber of Commerce, namely UCP 600 and ISP 98. According to Article 1 of the UCP 600 Uniform rules and customs for documentary letters of credit, Revision 2007 MTK publication no. 600 (UCP) are the rules that apply to each documentary letter of credit (“credit”) (including, to the extent applicable, to each standby letter of credit) when the letter of credit expressly indicates that the letter of credit is subject to these rules. They are binding on all participating parties unless expressly modified or excluded in the letter of credit. It follows from this provision that UCP 600 will be applied to the standby letter of credit, provided that their application is foreseen in the contract between the bank and its client who gives the order for the opening of the letter of credit, with the contracting parties having the possibility to provide for modification or exclusion in the letter of credit opening contract application of certain rules. In addition, this provision indicates that not all provisions of these rules can be applied to

standby letters of credit precisely because of their specific legal nature, and for this reason, it is stipulated that these rules will be applied “to the extent that they can be applied to each standby letter of credit”. If we look at the structure of the UCP 600 rules, it is evident that these rules primarily regulate issues that are key to the functioning of a documentary letter of credit, and to a lesser extent issues that are important for a standby letter of credit. On the other hand, ISP 98 contains rules that regulate standby letters of credit in more detail, that is, these rules regulate in more detail the issue of mutual obligations of participants of standby letters of credit, submission of documents, types of documents that are submitted during the realization of standby letters of credit. According to Article 1.01 b ISP 98, “a standby letter of credit or other similar undertaking, however named or described, whether for domestic or international use, may be made subject to these Rules by express reference to them” (Goode, Kronke, McKendrick & Wool, 2007, p. 245). Whether UCP 600 or ISP 98 will be applied to the standby letter of credit depends on the will of the contracting parties who conclude the contract on opening this type of letter of credit. The question arises as to which rules will be applied if the contracting parties refer to both UCP 600 and ISP 98. The answer is found in Article 1.02 b of ISP 98 according to which “these Rules supersede conflicting provisions in any other rules of practice to which a standby letter of credit is also made subject” (Goode et al. 2007, p. 245).

3. The concept of Standby Letter of Credit and the legal relationships that exist with Standby Letter of Credit

According to Article 1.06 of ISP 98, a standby letter of credit is an irrevocable, independent, documentary, and binding undertaking when issued and need not to state” (Goode et al. 2007, p. 246). Three basic features of the standby letter of credit derive from this provision, namely irrevocability, independence in relation to the main business and the documentary character of this legal institute. Irrevocability means that “an issuer’s obligations under a standby cannot be amended or cancelled by the issuer except as provided in the standby or as consented to by person against whom the amendment or cancellation is asserted” (Article 1.06 b. ISP 98, Goode et al. 2007, p. 246). The independence of the standby letter of credit implies that “the enforceability of an issuer’s obligations under a standby does not depend on: i. the issuer’s right or ability to obtain reimbursement from the applicant; ii. the beneficiary’s right to obtain payment from the applicant; iii. a reference in the standby to any reimbursement agreement or underlying transaction; iv. the issuer’s

knowledge of performance or breach of any reimbursement agreement or underlying transaction (Article 1.06 c. ISP 98 Goode et al. 2007, p. 246). The documentary character of the standby letter of credit implies that “an issuer’s obligations depend on presentation of documents and an examination of required documents on their face” (Article 1.06 d ISP 98, Goode et al. 2007, p. 246). We note that in this provision the term “required documentation on their face” is used for the review of documents, which could be translated as required documents by their appearance, and the same term is also used in UCP 600 in the part “Standard for Document Review” in Article 14 and where it is stated that a nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank 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.

“In transactions in which a standby letter of credit is used, the bank agrees to pay the financier if the debtor defaults upon his obligation to pay” (Banks 1984, p. 71).

Pavićević (1999) defines a standby letter of credit as “a letter of credit in which the bank undertakes according to its beneficiary, that on the order of his client (principal), he will pay him a certain sum of money in a certain currency if the beneficiary of the letter of credit submits to the bank, within a certain time, a statement that the debtor (principal) has not fulfilled his obligation from the basic contract when due” (p. 207). Vukadinović (1987) defines a standby letter of credit “as any agreement by which one person (issuer) obligates a third party (beneficiary) to a third party (beneficiary) on the order of another person (the principal) to pay a certain sum of money on the condition that the beneficiary submits a written statement within a certain time that the debtor (principal) did not fulfill his obligation by the due date and to submit any other required documents” (p. 449).¹ A standby letter of credit could be classified as a neutral banking business, given that the bank does not appear here either as a creditor or as a debtor. A standby letter of credit could be defined as a neutral banking business and an irrevocable payment security instrument that is independent of the basic business for which it was issued, and on the basis of which the bank undertakes to the user of the letter of credit to perform remuneration, if the user submits to the bank the documents stipulated by

¹ Vukadinović notes that similar definitions exist in other authors; Rozenberg, Uniform rules and customs for documentary letters of credit, Revision from 1983, Zagreb, 1984, pp. 17-18; Pavićević, Legal forms of economic cooperation with foreign partners, appendix to the “Economic Law Manual”, 1987, p. 85.

the letter of credit, and which indicate that the principal has not fulfilled his obligation regarding maturity.

The basic legal relationships that exist with standby letters of credit are the legal relationship between the principal and the bank and the legal relationship between the bank and the beneficiary. In addition to these two basic legal relationships, there may also be a legal relationship between the letter of credit bank (issuing bank) and the correspondent bank, which usually has its headquarters in the country where the beneficiary of the letter of credit also has its headquarters. A correspondent bank can act as a confirming, notifying or nominated bank. In addition to these legal relationships, there is also a legal relationship that precedes the issuance of a standby letter of credit, which is a legal relationship between the principal (debtor from the basic business) and the beneficiary (creditor from the basic business), i.e. it is the basic work that represents the reason for issuing the letter of credit, which is most often: a sales contract, a construction contract, an equipment delivery contract or a contract for the performance of investment works. When it comes to the sales contract as a basic business, Carić and Hribovšek (1990) point out that “the legal relationship between the seller and the buyer is an external letter of credit relationship, it arises on the basis of the contract on the international purchase and sale of goods or on the basis of another legal transaction, it is not yet true credit relationship, it only precedes credit relationships” (p. 168). In order for a standby letter of credit to be issued, it is necessary that the basic contract contains a letter of credit clause which stipulates that one contracting party undertakes to ensure the issuance of a standby letter of credit by the bank as a means of guaranteeing the other party that it will fulfill its obligations within the agreed period. When it comes to the purchase contract, the buyer undertakes that a standby letter of credit will be opened in favour of the seller as a means of securing payment. When it comes to the construction contract, the person ordering the opening of the letter of credit can be either the contractor or the client. “The construction company may require the landowner to procure the issuance of a standby credit to ensure payment for a building” (Graham & Geva, 1984, p. 183). “The landowner might also require the construction company to procure the issuance of a standby credit to ensure completion of the building” (Graham & Geva, 1984, p. 184).

The first legal relationship that is established within this complex legal institute is the legal relationship between the principal and the bank. When we talk about the participants of this legal relationship, we notice that ISP 98 does not use the term bank as the only authorized entity for issuing standby letters

of credit, but uses the term with a broader meaning “issuer”, while on the other hand UCP 600 uses the term “issuing bank” to denote the contracting party which is authorized to issue letters of credit, and therefore also to issue standby letters of credit, if the contracting parties have foreseen the application of UCP 600. Given that in international business practice the bank most often appears as the issuer of standby letters of credit, for the purposes of this paper we will talk about the legal relationship between the principal and the bank, without the label “issuing” bank due to the disputed legal nature of this legal institute. This legal relationship is based on the contract between the bank and the principal, by which the bank undertakes to issue a standby letter of credit to the beneficiary named by the principal, and the principal undertakes to pay the bank a fee for issuing the standby letter of credit and to compensate (regress) the bank for the amount paid by the bank to the user in the event of a guarantee event provided for in the letter of credit. The bank’s obligations under the standby letter of credit agreement have certain similarities with the documentary letter of credit agreement, which are reflected in the fact that the bank has certain obligations towards the principal, and certain obligations towards the beneficiary, from the moment the beneficiary is informed that the letter of credit has been issued. With a documentary letter of credit, “the bank’s obligations to the principal are: a) the obligation to open the letter of credit and b) the obligation to deliver to the principal the documents that the bank has received from the beneficiary of the letter of credit” (Đorđević, 2013, p. 109).

After the bank informs the user that a standby letter of credit has been issued in his favour, the bank enters into a legal relationship with the user and undertakes the obligation to pay the letter of credit sum in the event that the user submits to the bank the required documents proving that the principal, i.e. the debtor has not fulfilled his obligation from the basic contract. With a documentary letter of credit, “the bank’s obligation towards the beneficiary of the letter of credit are: a) the bank’s obligation to review the documents it receives from the beneficiary, b) the bank’s obligation to settle the debt based on the letter of credit (the obligation to honour and the obligation to negotiate)” (Đorđević, 2013, p. 109). However, unlike a documentary letter of credit, with a standby letter of credit, the bank has the obligation to review the documents submitted by the user and the obligation to pay the contracted amount only in the event that the principal has not fulfilled the obligation from the basic transaction. As for the documents that the user is obliged to submit to the bank if he wants to exercise the right to the payment of the letter of credit sum, it is important to note that it can only be a written statement that the principal has

not fulfilled his obligation, and there can also be documents proving that the principal has not fulfilled his obligations that he assumed in the basic contract or that he did not fulfil them within the agreed period.

4. The role of standby letters of credit in international contractual relations and the relationship with other banking operations

4.1. General notes

When we talk about the role of standby letters of credit in international contractual relations, it is necessary to mention that this legal institute represents one of the instruments of international goods and payment transactions. International goods and payment instruments aim “to meet the practical needs of business people in payment transactions and to unify their way of issuing, using and interpreting” (Dukić-Mijatović, 2010, p. 485). The basic role of a standby letter of credit in contracts in the field of international commercial law is to provide assurance by the bank to one contracting party that the other contracting party will fulfill its obligations, that is, that it will fulfill its obligations on maturity. A standby letter of credit can refer to guaranteeing the fulfillment of monetary obligations, such as in the case of sales contracts, and it can also refer to guaranteeing the fulfillment of non-monetary obligations, such as in the case of construction contracts or contracts for the performance of investment works. The question arises as to what is the bank’s interest in providing security to its client’s creditor that he will fulfill his obligations. The main interest is in the payment of the fee for the issuance of the standby letter of credit by the client – the principal. However, by assuming the obligation to issue a standby letter of credit, the bank assumes a significantly higher risk than the income it will generate by charging the issuing fee. Therefore, in practice, the bank most often asks the principal to provide it with certain payment security instruments, such as a mortgage, a pledge on movable property, a deposit, etc. In earlier presentations, we stated that the standby letter of credit belongs to the group of neutral banking transactions, however, the documentary letter of credit and bank guarantee also belong to this group, so it is necessary to delineate the role of the standby letter of credit as a neutral banking transaction in relation to the role of the documentary letter of credit and bank guarantee. However, before entering into the discussion of this issue, it is important to note that there is also a similarity between a documentary letter of credit and a bank guarantee, which is reflected in the fact that “both a

documentary letter of credit and a bank guarantee are instruments for securing the fulfillment of obligations from the basic business” (Dukić-Mijatović, 2010, p. 487). “However, while in bank guarantee it is the basic and only function, the documentary letter of credit primarily represents a means of payment and only in parallel with it a means of securing payment” (Dukić-Mijatović, 2010, p. 488).

4.2. Relationship between standby letter of credit and documentary letter of credit

With standby letters of credit, we can distinguish between those in which the bank ensures the performance of payment obligations (financial standby), which occur in sales contracts and those in which the bank guarantees that the contractor will fulfill its obligations, which occur in construction contracts with a foreign element. In American legal theory, the name “performance standby” is used for the second type of standby letter of credit, which could be translated as standby for good work performance. Kozolchuk (1995) points out that performance standbys “assure the seriousness of a supplier’s, contractor’s or subcontractor’s bid or the successful completion of the contract awarded to them” (p. 406). In the case of the financial standby “its issuer must pay the beneficiary if the tendered documents conform with terms and conditions that solely reflect the maturity of the applicant’s underlying financial obligations or the applicant default” (Kozolchuk, 1995, p. 406). It is obvious that the performance standby has very few points of contact with the documentary letter of credit, while the financial standby letter of credit has many more similarities.

When we compare a standby letter of credit with a documentary letter of credit, the first question that arises is whether a standby letter of credit is a type of letter of credit at all or is about another contract of international commercial law. The common feature of these two legal institutes is that they were created as a need to ensure the mutual obligations of the contractual parties from the basic business and to achieve a certain balance when taking risks by participants in international business relations. Banks played a key role in the creation of both legal institutes as a necessary link in international trade relations. “Standby letters of credit and traditional letters of credit are both mechanisms for allocating risks among the parties in commercial transaction” (Stern, 1985, p. 222). “The traditional commercial letter of credit is used as a payment service and is expected to be drawn upon, whereas the

standby letter of credit acts as a means of securing payment if the bank's customer defaults on the underlying obligation" (Banks, 1984, p. 74).

Similarities also exist in the sources of law by which these legal institutes are regulated, given that UCP 600 contains rules for both standby and documentary letters of credit. There is also a similarity in the economic function of these two legal institutes because both aim to ensure the seller that the buyer will pay the purchase price when the seller submits certain documents to the bank. The difference is reflected in the fact that the documentary letter of credit primarily has the role of an instrument for payment of the purchase price from the contract for the sale of goods, while the standby letter of credit has the role of a payment security instrument and is "activated", i.e. realized only in the event that the buyer does not pay the purchase price within the stipulated period. Vukmir (2007) states that "a documentary letter of credit is a normal way of payment for the performance of an obligation, most often related to the delivery of goods or services, while a standby letter of credit is insurance in case of non-performance of an obligation" (p. 266). With a documentary letter of credit, "the specificity of the legal relationship between the letter of credit and confirming bank on the one hand and the user of the letter of credit on the other is reflected in the fact that only one party has obligations (the letter of credit and the confirming bank), and the other party (the user of the letter of credit) has the right to request payment letter of credit amount, but in order to realize his right, he must fulfill certain conditions" (Đorđević, 2013, p. 155). The same is the case with the standby letter of credit, considering that the issuing bank undertakes obligations towards the beneficiary regarding the payment of the letter of credit sum, and the beneficiary does not undertake obligations towards the bank, except that in the case of submitting a request for payment, he should attach the documents provided for in the announcement on the issuance of the letter of credit. The difference between these two legal institutes can also be seen in terms of the documents that the user is obliged to submit. With a documentary letter of credit, one or more documents proving the delivery of the goods can be provided, namely: commercial invoice, transport document covering at least two different types of transport, bill of lading (bill of lading), non-transferable maritime bill of lading, charter party bill of lading, air transport document, documents on transport by road, rail or inland waterways, courier receipt, postal receipt, or confirmation of shipment by post, insurance document. "With standby, all the documents required for payment usually come from the standby user himself and are not collected from various sources, as is the case with a commercial letter of credit. These documents usually consist of evidence that some obligation has not been

fulfilled” (Vukmir, 2007, p. 266). Schutze and Fontane (2001) point out that there is a difference between these two legal institutes in terms of the type of document that needs to be presented, “for payment under a standby letter of credit the beneficiary needs to provide payment demand stating that the applicant has not meet his obligations under the secured transaction and possibly some supporting documents to substantiate the claim” (p. 17). Documents that prove that the principal or the debtor from the basic business did not fulfill their obligation can be “an arbitral award, a statement by an expert, a reservation in a certificate of delivery or a written refusal to grant such a certificate” (Houtte, 2022, p. 282).

4.3. The relationship between standby letters of credit and bank guarantees

When we talk about the role of the standby letter of credit in international commercial law contracts, it is obvious that it has more similarities with a bank guarantee than with a documentary letter of credit. The economic function of the standby letter of credit is to ensure the fulfillment of the principal’s obligations, i.e. debtor from the basic business. A bank guarantee has the same economic function. In particular, we notice the similarities between the standby letter of credit and the type of bank guarantee with a “no objection” or “on first call” clause, and it is a type of bank guarantee that “deprives the bank of the right to raise objections against the beneficiary of the bank guarantee, which could be raised by the bank’s client, such as the debtor towards his creditor, who in this particular case is the beneficiary of the bank guarantee (Carić, Vitez, Dukić-Mijatović & Veselinović, 2016, p. 303). “Such bank guarantees appear in foreign trade exchange in order to protect the interests of creditors, which can be seriously threatened by the initiation of court and arbitration disputes” (Carić et al., 2016, p. 303).

“In the case of a bank guarantee, submitting a request for payment with the prescribed documents shows that the debtor from the basic business, that is, the principal of the guarantee, has not fulfilled his contractual obligations” (Dukić-Mijatović, 2016, p. 263). The case is identical to the standby letter of credit, where the user of the letter of credit submits a written request to the issuing bank for the payment of the letter of credit amount due to the fact that the principal has not fulfilled his contractual obligation. Schutze (2001) points out that “a standby letter of credit has function and commercial effects of a guarantee” (p. 17). Vukadinović (1987) believes that “standby letters of credit in the legal sense do not represent final legal transactions, and

given that they are increasingly used in continental law, it could be expected that business practice expands them in the direction of independent bank guarantees” (p. 457). Stojiljković (2003) also takes the position that a standby letter of credit “is essentially equal to an independent bank guarantee (p. 208). “Between standby letters of credit and bank guarantees on a first call, there is a complete similarity both in terms of functionality and legal characteristics” (Vukadinović, Anđelković & Vuković, 2000, p. 18).

Although the standby letter of credit and the bank guarantee have the same role in the goods trade contract, we cannot completely equate them because there are certain differences. “The distinction between a standby letter and guarantee lies in the documentary nature of the letter of credit. The bank issuer will pay the beneficiary not when the customer in fact defaults, but when it receives documents which notify it of that default” (Miryam, 1980, p. 615). “Standby credits also tend in practice to be used for more varied and complex purposes than independent guarantees generally. It is common for the issuer’s obligation under a standby credit to be advised, confirmed, paid or negotiated by a correspondent bank, whereas this is more unusual in an independent guarantee” (Ellinger & Neo, 2010, p. 304). “While the bank guarantee on the first call is payable only upon a simple call of the user, i.e. only on the basis of a written call, the standby letter of credit is essentially a documentary letter of credit with all the features that letters of credit have. This means, for example, that a standby letter of credit can be connected to the issuance or redemption of a bill of exchange, that it can be fully or partially transferable, that it can be connected to the presentation of a series of documents that are subject to a special examination, and that, in short, it can also be subject to most other rules to which documentary letters of credit are subject” (Vukmir, 2007, p. 267). There is also a difference in terms of the source of law that regulates these legal institutes, considering that the guarantees are regulated by the Uniform Rules for Guarantees on First Call (URDG 758) adopted by the International Chamber of Commerce, which are applied from 01.07.2010. and standby letters of credit are regulated by the Uniform Rules and Practices for Documentary Letters of Credit from 2007 (UCP 600) and the International Standby Practices (International Standby Practices ISP 98) from 1998. A standby letter of credit “could not be fully equated with a bank guarantee, especially when it comes to proving the occurrence of a guarantee case, where it is more appropriate to use the rules that apply to documentary letters of credit, and which refer to the assessment of the compliance of documents with the letter of credit conditions” (Đorđević, 2013, p. 58).

5. Conclusion

A standby letter of credit is a complex legal institution that is unknown to our obligation law and can only appear in foreign trade between our and foreign businessmen. We find the reasons for its existence in the need to protect the contractual party that first fulfils its contractual obligation (e.g. the seller who delivers the goods in the case where advance payment is not provided for) so that the third party – the bank will guarantee that the other contractual party that according to the contract will later to fulfill an obligation (e.g. a customer who pays the price after receiving the goods), to fulfill that obligation within the maturity date. A standby letter of credit can refer to both financial obligations and performance obligations. In the sales contract, the bank undertakes the seller to pay the letter of credit amount in case the buyer fails to do so after receiving the goods. In the case of construction contracts, the user of the standby letter of credit can be both the client of the works and the contractor.

The primary function of a standby letter of credit is to ensure that the principal will fulfill contractual obligations to the beneficiary. A standby letter of credit is a means or an instrument for ensuring the fulfillment of obligations. If the principal does not fulfill its obligations, the issuing bank will be obliged to pay the letter of credit amount to the beneficiary, and then it becomes a means or instrument of payment, which means that its secondary function in economic relations is the payment of the agreed price.

In order to determine its legal nature, we compared this legal institute with a documentary letter of credit and with a bank guarantee and concluded that it has more similarities with a guarantee than with a letter of credit. However, despite significant similarities with the guarantee, we could not equate it with a bank guarantee because there are differences in terms of the source of law, the form in which it is issued and the documents that are presented. When it comes to the legal nature of the standby letter of credit, we are of the opinion that this is a special contract of international banking law that contains to a lesser extent the elements of a documentary letter of credit, and to a greater extent contains the essential elements of a bank guarantee. This means that the role of standby letters of credit is the same as guarantees, to provide assurance to one contracting party that the other party will fulfill its obligations, but regulations related to guarantees cannot be applied to standby letters of credit – Uniform rules for guarantees at first call, but only the International Standby Practices (International Standby Practices ISP 98) or the Uniform Rules and

Practices for Documentary Credits of 2007 (UCP 600) depending on which rules are provided for in the standby letter of credit agreement.

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STANDBY AKREDITIV KAO SREDSTVO OBEZBEĐENJA U MEĐUNARODNIM UGOVORNIM ODNOSIMA

REZIME: Tema ovog rada je vrsta akreditiva koju ne srećemo u praksi domaćih banaka, i koja nije posebno regulisana domaćim zakonodavstvom, ali se može pretpostaviti da će imati sve veći značaj u međunarodnim poslovnim odnosima naših privrednika sa kompanijama drugih zemalja gde je upotreba ovog instrumenta obezbeđenja plaćanja uobičajena u bankarskom poslovanju. Reč je o vrsti akreditiva kod koje je u teoriji sporna pravna priroda, odnosno sporno je da li se ovde uopšte radi o vrsti akreditiva, ili je reč o vrsti garancije, ili je ovde u pitanju poseban pravni institut. Tema istraživanja je standby akreditiv kao sredstvo obezbeđenja u međunarodnim ugovornim odnosima. Kada govorimo o međunarodnim ugovornim odnosima kod kojih se javlja potreba uspostavljanja sredstva obezbeđenja ispunjenja međusobnih obaveza ugovornih strana u obliku standby akreditiva, pre svega mislimo na: ugovor o prodaji i ugovor o građenju. Standby akreditiv kod ugovora o prodaji obezbeđuje interese prodavca, dok kod ugovora o građenju može obezbeđivati interese i naručioca i izvođača, u zavisnosti od činjenice u čiju je korist izdat. U radu ćemo pokušati da definišemo standby akreditiv, da objasnimo njegovu ulogu u zaštiti prava i interesa ugovornih strana iz osnovnog posla a koji predstavljaju i razlog njegovog postojanja, da pokušamo da odredimo pravnu prirodu standby akreditiva istovremeno upoređujući ovaj pravni institut sa „klasičnim” dokumentarnim akreditivom i bankarskom garancijom. U našoj pravnoj teoriji, a još u većem obimu u američkoj i engleskoj pravnoj teoriji postoje brojni radovi koji obrađuju tematiku standby akreditiva,

međutim, tokom vremena pravna regulativa koja se odnosi na bankarsko poslovanje se menjala, a pored toga cilj ovog rada je da upoznamo naša privredna društva i banke koji posluju sa stranim kompanijama i stranim bankama kod kojih je uobičajeno izdavanje ove vrste akreditiva sa ulogom standby akreditiva kao instrumenta obezbeđenja ispunjenja ugovornih obaveza, kao i sa pravnim odnosima koji se uspostavljaju kod ove vrste akreditiva.

Ključne reči: *standby akreditiv, dokumentarni akreditiv, bankarska garancija, međunarodni ugovorni odnosi.*

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