



UNC  
SCHOOL OF LAW

NORTH CAROLINA JOURNAL OF  
INTERNATIONAL LAW AND  
COMMERCIAL REGULATION

---

Volume 18 | Number 3

Article 8

---

Summer 1993

# Reallocating Letter of Credit Risks: Chuidian v. Philippine National Bank

Julia Anderson Reinhart

Follow this and additional works at: <http://scholarship.law.unc.edu/ncilj>

---

## Recommended Citation

Julia A. Reinhart, *Reallocating Letter of Credit Risks: Chuidian v. Philippine National Bank*, 18 N.C. J. INT'L L. & COM. REG. 725 (1992).  
Available at: <http://scholarship.law.unc.edu/ncilj/vol18/iss3/8>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Journal of International Law and Commercial Regulation by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact [law\\_repository@unc.edu](mailto:law_repository@unc.edu).

---

# Reallocating Letter of Credit Risks: Chuidian v. Philippine National Bank

## **Cover Page Footnote**

International Law; Commercial Law; Law

# Reallocating Letter of Credit Risks: *Chuidian v. Philippine National Bank*

## I. Introduction

In *Chuidian v. Philippine National Bank*<sup>1</sup> the Ninth Circuit Court of Appeals addressed the question of whether to recognize and apply the law of a foreign nation to excuse the defendant's obligation under a letter of credit. Normally, such a decision would rest on a weighing of policy concerns under a conflict of laws analysis,<sup>2</sup> and the court's decision would have relatively little effect on the substantive law in the United States. This court, however, rooted its decision in a definition that it created for "place of performance" in the context of the law of letters of credit.<sup>3</sup>

This Note will begin by considering the complex facts and history of the *Chuidian* case. The basic law of letters of credit will then be discussed, followed by an outline of the legal principles governing a conflict of laws analysis and by a discussion of relevant case law. This Note will close by discussing the method of analysis used by the Ninth Circuit and the problems and impact that such an analysis presents. The purpose of this Note is to highlight concerns arising from this court's method of analysis, rather than to evaluate the final result of recognizing Philippine law.

## II. Statement of the Case

### A. *The Early Events*

In 1980, Asian Reliability Company, Inc. (ARCI), a Philippine corporation, received a loan guarantee of \$25 million from the Phil-

---

<sup>1</sup> No. 90-56031, 1992 U.S. App. LEXIS 32318 (9th Cir. Dec. 11, 1992) [hereinafter, *Chuidian III*]. An earlier, nearly identical decision of October 1, 1992 was published at 976 F.2d 561. Two sentences were amended after that publication and the entire decision was again filed on December 11, 1992. Therefore, this Note will reference the opinion available in LEXIS because it is the final opinion.

<sup>2</sup> See, e.g., *Wells Fargo Asia Ltd. v. Citibank, N.A.*, 936 F.2d 723 (2d Cir. 1991), *cert. denied*, 112 S.Ct. 2990 (1992) (applying federal common law conflict of laws analysis to conclude that New York law controlled rather than Philippine law, and holding that the bank's performance was not excused by illegality in the Philippines); *J. Zeevi and Sons, Ltd. v. Grindlays Bank (Uganda) Ltd.*, 333 N.E.2d 168 (N.Y. 1975), *cert. denied*, 423 U.S. 866 (1975) (weighing factors typical of a conflict of laws analysis to determine that New York laws applied and that illegality under a Ugandan executive order would not excuse performance in New York).

<sup>3</sup> *Chuidian III*, 1992 U.S. LEXIS 32318 at \*5.

ippine Export and Foreign Loan Guarantee Corporation (PG).<sup>4</sup> Vincent Chuidian, a Philippine citizen living in the United States, was a 98% shareholder in ARCI.<sup>5</sup> After ARCI defaulted on the loan, and caused PG to become liable through the guarantee, PG brought suit in Santa Clara County Superior Court alleging that Chuidian had misappropriated the funds for his own use and for investment in concerns outside of the scope of the loan guarantee.<sup>6</sup> The parties entered into a settlement carried out through a stipulated judgment under which (1) Chuidian surrendered to PG shares of stock in ARCI, Dynetics, Inc., and Interlek Semiconductors, Inc., and (2) PG agreed to pay Chuidian \$5.3 million "to be paid by means of an irrevocable letter of credit from a United States Bank."<sup>7</sup>

After Ferdinand Marcos fell from power in 1986, PG went back to the Santa Clara County Superior Court seeking to vacate the stipulated judgment on the grounds of fraud and coercion.<sup>8</sup> PG claimed that Chuidian threatened Marcos, who then forced PG to enter into the settlement.<sup>9</sup> PG also cited the order of the Presidential Commission on Good Government (PCGG)<sup>10</sup> that forbade the Philippine National Bank (PNB) to make payment on the \$5.3 million letter of credit, as a basis for vacating the judgment.<sup>11</sup> The lower court denied the motion to vacate the stipulated judgment and that decision was affirmed on appeal.<sup>12</sup>

### B. *The Present Case*

PNB's Los Angeles (PNB-LA) branch<sup>13</sup> was the designated place of payment for the letter of credit arising from the settlement agreement.<sup>14</sup> Based on the Philippine executive order, PNB-LA refused to honor Chuidian's request for payment on the letter of credit.<sup>15</sup> Chuidian brought suit against PNB in Los Angeles County Superior

---

<sup>4</sup> Chuidian v. Philippine National Bank, 734 F. Supp. 415, 417 (C.D. Cal. 1990)[hereinafter *Chuidian I*], *aff'd*, No. 90-56031, 1992 U.S. App. LEXIS 32318 (9th Cir. Dec. 11, 1992).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* The proceeds of the loan were supposed to be used for investment in industrial projects in the Philippines. PG alleged that the funds were instead used for Chuidian's personal benefit and to invest in two Silicon Valley corporations, Dynetics, Inc. and Interlek Semiconductor, Inc., in violation of the terms of the loan. Philippine Export and Foreign Loan Guar. Corp. v. Chuidian, 267 Cal. Rptr. 457, 460 (Cal. Ct. App. 1990).

<sup>7</sup> *Philippine Export*, 267 Cal. Rptr. at 460.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 460, 461, 468.

<sup>10</sup> *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*2. The PCGG was established by the Aquino government to recover wealth which Marcos improperly diverted from the public. *Id.*

<sup>11</sup> *Philippine Export*, 267 Cal. Rptr. 457, 460-61.

<sup>12</sup> *Id.* at 460.

<sup>13</sup> *Chuidian I*, 734 F. Supp. 415, 419 (C.D. Cal. 1990). PNB's witnesses admitted that PNB-LA is only a branch of PNB-Manila, and is not a separate bank. *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 418.

Court.<sup>16</sup> The case was removed to federal district court, where certain officials of the Philippine government were added as defendants<sup>17</sup> and where PG intervened to reassert its allegations of fraud in the underlying settlement agreement.<sup>18</sup> The primary issue at stake in the federal district court case was whether PNB had any defenses available to properly avoid payment on an irrevocable letter of credit.<sup>19</sup>

### 1. *The District Court*

The district court considered two defenses that would excuse PNB from liability under the letter of credit. The first was fraud and duress in the underlying settlement agreement.<sup>20</sup> The court rejected this defense.<sup>21</sup> A different line of defense, however, was recognized by the court, which offered alternative holdings that PNB's performance was excused because (1) it was illegal or (2) the doctrines of comity and act of state meant that the Philippine executive order should be observed by a U.S. court.<sup>22</sup> The district court therefore held that the settlement agreement between PG and Chuidian was valid, but that performance of the letter of credit arising under that settlement agreement was excused because it was illegal, or in the alternative, because the doctrines of comity and act of state gave the Philippine executive order validity in the United States.<sup>23</sup>

### 2. *The Court of Appeals*

The Court of Appeals for the Ninth Circuit affirmed the lower court decision, but focused solely on the illegality of performance in the Philippines.<sup>24</sup> In its opinion, the court of appeals held that unless a confirming bank is involved in the transaction, place of performance is to be determined by looking to the location of the bank

---

<sup>16</sup> *Id.*

<sup>17</sup> See *Chuidian v. Philippine Nat'l Bank*, 912 F.2d 1095 (9th Cir. 1990) [hereinafter, *Chuidian II*]. Chuidian claimed that these officials had intentionally interfered with his contractual relations with the bank. *Id.* at 1097. The suit against these defendants was dismissed for lack of subject matter jurisdiction based on sovereign immunity. *Id.*

<sup>18</sup> *Chuidian I*, 734 F. Supp. 415, 418 (C.D. Cal. 1990).

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 425. The district court reasoned that if there was any fraud or duress, it occurred between Marcos and Chuidian, and not between Chuidian and PG. *Id.* at 418. The court determined that PG had entered into the original settlement with Chuidian "only after the terms of the settlement were thoroughly considered and discussed by the [PG] board and the profitability of Interlek and Dynetics was analyzed." *Id.* at 425. Because there was no showing that a fraud was actually perpetrated against PG and there was a showing that PG had an adequate opportunity to evaluate the terms of the settlement, the court reasoned that PG was under no fraud or duress at the time of the settlement. *Id.*

<sup>22</sup> *Id.* at 420.

<sup>23</sup> *Id.* at 425.

<sup>24</sup> *Chuidian III*, 1992 U.S. App. Lexis 32318 (9th Cir. Dec. 11, 1992).

issuing the letter of credit.<sup>25</sup> By thus defining "place of performance," the court concluded that Chuidian's letter of credit was to be performed in the Philippines since PNB-Manila was the issuing bank.<sup>26</sup> Because (1) performance was illegal in the Philippines<sup>27</sup> and (2) conflict of laws analysis supported the theory of no liability since payment on the letter of credit was illegal at the place of performance,<sup>28</sup> the court held that PNB was excused from its obligation under the letter of credit.<sup>29</sup> The court declined to address the issues of comity and act of state.<sup>30</sup>

### 3. *The Dissent*

In his dissent, Judge Fernandez argued that the majority chose the wrong definition of "place of performance."<sup>31</sup> In his view, the place of performance should be the place(s) where payment is to occur under the letter of credit, rather than the location of the issuing or confirming banks.<sup>32</sup>

Under the place of issuance rule, the issuing bank has the most protection against the vagaries of the legal climate and the risk of illegality is borne by the beneficiary. Under the place of payment rule, the beneficiary has the most protection. . . . [The place of payment rule] more closely reflects the customary allocation of risk in letter of credit transactions and fosters the stability of those transactions.<sup>33</sup>

Judge Fernandez alluded to the distinction between the various banks' *locations* and their *obligations*.<sup>34</sup> His dissent cited other court decisions, the Uniform Commercial Code, and commentators to support the policy argument for this definition and its effect on letter of credit transactions.<sup>35</sup> He also added that if he had to decide on comity and act of state grounds, he would nonetheless hold PNB liable on the letter of credit.<sup>36</sup> Essentially, the dissent argued that the Philippine executive order should not be recognized in the United States because the resulting excuse of performance offends banking law policy in California and the United States.

---

<sup>25</sup> *Id.* at \*6.

<sup>26</sup> *Id.* at \*8.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at \*9. Place of performance is one of the factors considered in a conflicts of law analysis used for determining which nation's law is to be applied. The Ninth Circuit, however, was also considering place of performance in the context of the law of contracts in deciding whether there was a defense for illegality.

<sup>29</sup> *Id.* at \*14.

<sup>30</sup> *Id.* The issue of comity, however, is inherent in a conflict of laws analysis, so the court really did address this issue to some extent.

<sup>31</sup> *Id.* (Fernandez, J., dissenting).

<sup>32</sup> *Id.* at \*15 (Fernandez, J., dissenting).

<sup>33</sup> *Id.* at \*22-23 (Fernandez, J., dissenting).

<sup>34</sup> *Id.* at \*21 (Fernandez, J., dissenting).

<sup>35</sup> *Id.* at \*25 (Fernandez, J., dissenting).

<sup>36</sup> *Id.* at \*25 n.1 (Fernandez, J., dissenting).

### III. Background Law

#### A. Letters of Credit — Generally

An internationally recognized definition of letters of credit is as follows:

[A]ny arrangement . . . whereby a bank (the issuing bank), acting at the request and on the instructions of a customer (the applicant for the credit), (i) is to make a payment to, or to the order of a third party (the beneficiary), or is to pay or accept bills of exchange (drafts) drawn by the beneficiary, or (ii) authorizes another bank to effect such payment, or to pay, accept, or negotiate such bills of exchange. . .<sup>37</sup>

Letters of credit represent transactions that are entirely separate and distinct from the underlying contract(s) giving rise to the credit relationship.<sup>38</sup>

#### 1. Relationships Among Parties to a Letter of Credit

A basic letter of credit transaction involves a customer, an issuer, and a beneficiary. The customer is the party who obtains credit from a bank.<sup>39</sup> Usually the customer will be a buyer of goods who uses the letter of credit to assure a seller that payment will in fact be made on the goods. The issuer is the bank, or other party, to whom the customer has applied for credit.<sup>40</sup> By issuing the letter of credit, the bank essentially guarantees payment to the beneficiary, regardless of the customer's financial status.<sup>41</sup> So long as the requirements in the letter itself are met, the issuer will be obligated, under the letter of credit, to pay the beneficiary.<sup>42</sup> Therefore the issuing bank, not the beneficiary, bears the risk of the customer's potential insolvency.<sup>43</sup> The beneficiary, then, is the party who is protected by and who receives payment under the letter of credit.<sup>44</sup>

Letters of credit are used commonly in international trade. The buyer and the seller of goods or services may be located in different nations and not have any previous business experience with one another. As a result, the seller may be uncertain about the buyer's ability to pay for the goods or services. The seller wants some type of assurance that payment will be forthcoming upon the performance

---

<sup>37</sup> UNIF. CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, art. 2 (1983 Rev.) [hereinafter UCP]. The UCP has no binding legal effect on letters of credit except to the extent that parties' reference it in the letter. *Id.*

<sup>38</sup> UCP, *supra* note 37, art. 3. See also U.C.C. § 5-109 (1978) and JOHN F. DOLAN, THE LAW OF LETTERS OF CREDIT ¶ 3.01 (2d ed. 1991) [hereinafter DOLAN].

<sup>39</sup> U.C.C. § 5-103(g) (1978).

<sup>40</sup> U.C.C. § 5-103(c) (1978).

<sup>41</sup> See U.C.C. § 5-114(1) (1978).

<sup>42</sup> *Id.*

<sup>43</sup> See *Chuidian III*, 1992 U.S. App. Lexis 32318 at \*22 (9th Cir. Dec. 11, 1992) (Fernandez, J., dissenting) (citing JOHN F. DOLAN, THE LAW OF LETTERS OF CREDIT ¶ 3.07[2] (2d ed. 1991)).

<sup>44</sup> See U.C.C. § 5-103(d) (1978).

of the contract. The buyer thus obtains a letter of credit for the benefit of the seller to assure payment and to protect the seller from potential problems associated with seeking a judgment in a foreign jurisdiction.<sup>45</sup>

Often it arises that the issuer and the beneficiary are also in different nations, or that the beneficiary does not completely trust the creditworthiness of the bank issuing the letter of credit. In such cases, it may be necessary for another entity to become involved in the credit transaction.<sup>46</sup> The issuer will seek a bank that is local and trustworthy to the beneficiary to act as an intermediary on the letter of credit. This intermediary bank can assume one of two general roles: that of advising bank or that of confirming bank.<sup>47</sup> In either case, the intermediary will usually be the bank where payment is made.

The primary distinction between a confirming bank and an advising bank is the extent of the obligation that the intermediary bank assumes under the letter of credit. "[A]n advising bank by advising a [letter of] credit issued by another bank does not assume any obligation to honor drafts drawn or demands for payment made under the credit but it does assume obligation for the accuracy of its own statement."<sup>48</sup> An advising bank's role is simply to tell the beneficiary that the letter of credit has been issued, and it will only be liable for the accuracy of the information which it conveys to the beneficiary.<sup>49</sup> The advising bank is not required to make any payments to the beneficiary.

The confirming bank, on the other hand, "by confirming a credit becomes directly obligated on the credit to the extent of its confirmation as though it were its issuer and acquires the rights of an issuer."<sup>50</sup> Here, the beneficiary, upon meeting the requirements of the letter of credit, can demand payment from the confirming bank, which will be liable for payment of the credit.<sup>51</sup> Through this relationship, the risk of nonpayment by the issuing bank is shifted from the beneficiary to the confirming bank.<sup>52</sup>

## 2. Irrevocability

Letters of credit can be revocable or irrevocable.<sup>53</sup> A revocable letter of credit can be withdrawn at any time without prior notifica-

---

<sup>45</sup> See DOLAN, *supra* note 38, ¶¶ 3.07[3] - [5].

<sup>46</sup> See DOLAN, *supra* note 38, ¶ 1.03.

<sup>47</sup> *Id.*

<sup>48</sup> U.C.C. § 5-107(1) (1978).

<sup>49</sup> U.C.C. § 5-107(1) (1978); *see also* UCP, *supra* note 37, art. 8.

<sup>50</sup> U.C.C. § 5-107(2) (1978).

<sup>51</sup> *Id.*

<sup>52</sup> *See id.*

<sup>53</sup> *See* U.C.C. § 5-103(1)(a) (1978); UCP, *supra* note 37, art. 7(a).



tion to the beneficiary.<sup>54</sup> An irrevocable letter of credit, once established with the beneficiary, can only be altered with the consent of the beneficiary.<sup>55</sup> Once the beneficiary has complied with the terms of the letter, the issuer must honor the obligation created by the letter of credit.<sup>56</sup>

### *B. Grounds for Excusing the Obligation of the Issuer*

An issuer may be excused from its liability on a letter of credit through circumstances arising under the terms of the letter itself or through problems presented by fraud, bankruptcy, foreign relations, boycotts, and matters related to the underlying contract.<sup>57</sup> The first type of excuse, then, would involve interpretation of the letter of credit contracts, while the second type of excuse would involve a broader range of inquiries.

It is important, however, to remember that the letter of credit involves a transaction independent of the underlying contract, the function of which plays a very significant role in the financial world and especially in international trade.<sup>58</sup> The underlying contract defines rights as between the seller and buyer. A letter of credit, on the other hand, involves a series of related contracts: one contract between the customer and the issuer; one contract between the issuer and the beneficiary; more contracts, potentially, between an intermediary bank and each of the issuer and the beneficiary. Each of the letter of credit contracts is unrelated to the underlying contract between the buyer and seller.

#### *1. The Uniform Commercial Code*

The U.C.C. recognizes the special commercial significance of letters of credit through a separate article intended to control such transactions.<sup>59</sup> Article 5 sets out the rights and duties of the issuer when the documents presented by the beneficiary appear on their face to comply with the terms of the letter of credit but in fact these documents either do not comply, are fraudulent, or are tainted by "fraud in the transaction."<sup>60</sup> The U.C.C. thus recognizes a very limited range of events which will excuse the obligation of the issuer.<sup>61</sup> Unless the demanding party is an innocent holder of the letter of

---

<sup>54</sup> U.C.C. § 5-106(3) (1978).

<sup>55</sup> U.C.C. § 5-106(2) (1978). An irrevocable letter of credit may expire by its own terms, but cannot be terminated earlier without the consent of both parties. *Id.*

<sup>56</sup> See U.C.C. § 5-114 (1978). The issuer's obligation is limited, however, by the terms of the letter of credit itself. *Id.*

<sup>57</sup> See DOLAN, *supra* note 38, ¶¶ 7.04, 9.06, 12.02.

<sup>58</sup> See UCP, *supra* note 37, art. 3.

<sup>59</sup> See U.C.C. art. 5 (1978); see also DOLAN, *supra* note 38, ¶ 3.01 (discussing the distinction between principles of letters of credit specifically and contracts generally).

<sup>60</sup> U.C.C. § 5-114(2) (1978).

<sup>61</sup> See *id.*

credit, the issuer may, in good faith, refuse payment if (1) there has not been compliance with the terms of the letter; (2) the documents are fraudulent; or (3) there was "fraud in the transaction."<sup>62</sup> These references to fraud mean actual fraud, and the burden will be on the issuer to establish these facts as a defense.<sup>63</sup>

## 2. *Illegality and Conflict of Laws*

If payment on the letter of credit is illegal, certainly the issuer's dishonor will be excused.<sup>64</sup> The rule is quite simple if all of the parties are in the same jurisdiction and their acts are only subject to that jurisdiction's law. However, letters of credit are rarely so confined, and acts legal in one jurisdiction may not be legal in another. When such a jurisdictional conflict arises, a conflict of laws analysis is necessary to decide what is illegal. Such an analysis in the area of the law of letters of credit should recognize that these contractual transactions are to be treated differently than contracts generally by virtue of the fact that the U.C.C. devotes an entire article to letters of credit.<sup>65</sup> "The rules embodied in the Article can be viewed as those expressing the fundamental theories underlying letters of credit"—theories that a conflict of laws analysis in this area should respect.<sup>66</sup>

### a. *The Restatement of Conflict of Laws Approach*

#### Section 202 Illegality

(1) The effect of illegality upon a contract is determined by the law selected by application of the rules of [sections] 187-188.

(2) When performance is illegal in the place of performance, the contract will usually be denied enforcement.<sup>67</sup>

The referenced sections generally stand for the idea that a given state's law should be applied, notwithstanding the parties' contractual choice of law, if that state has a significant interest in the contract.<sup>68</sup> The significance of a state's interest in the contract is determined by a weighing of

(1) the needs of international systems, (2) the relevant policies of the forum, (3) the relevant policies of other jurisdictions and their relative interests in determination of the issue, (4) protection of justified

---

<sup>62</sup> *Id.*

<sup>63</sup> DOLAN, *supra* note 38, ¶ 7.04[4][d]. The meaning of "fraud in the transaction" is far from clear. Some courts have understood "fraud in the transaction" to excuse the issuer's obligation if the underlying contract between the customer and the beneficiary is somehow fraudulent. Other courts have refused to consider any aspect of the underlying contract. *See id.*

<sup>64</sup> *See* RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 202(2) (1971) [hereinafter RESTATEMENT]. Federal common law applies the RESTATEMENT principles to determine choice of law in actions involving a foreign state or its instrumentalities. *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*9 (9th Cir. Dec. 11, 1992).

<sup>65</sup> *See* U.C.C., art. 5 (1978).

<sup>66</sup> U.C.C. § 5-102, cmt. 2. (1978)

<sup>67</sup> RESTATEMENT, *supra* note 64, § 202.

<sup>68</sup> *See* RESTATEMENT, *supra* note 64, §§ 187, 188.

expectations, (5) basic policies underlying the field of law in issue, (6) predictability of result and (7) ease in determination of the law to be applied.<sup>69</sup>

These elements are to be considered in light of the places of contracting, negotiation, and performance, as well as the location of the subject matter and the parties' domicile and nationality.<sup>70</sup>

*b. Comity*

Inherent in the potential application of foreign law under a conflict of laws analysis is the notion of comity. Comity is defined as "the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, . . . [as an] expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of its own citizens or of other persons who are under the protection of its laws."<sup>71</sup> Recognition of a foreign law thus involves a policy decision grounded in a host of concerns which a court must balance.

*C. Case Law: Jurisdictional Conflict, Illegality, and International Credit Obligations*

Resolving the question of whether to recognize the conflicting law of another jurisdiction to excuse performance of a letter of credit requires consideration of many factors: the will of the parties, the special status of letters of credit under the U.C.C., the international economic function of banks, and international relations. Although the facts in *Chuidian* are distinct, many courts encountered the principal issue—whether to recognize a foreign law when banking obligations are involved—and have resolved the disputes through a balancing of the interests of the two jurisdictions, which is the basic approach of a conflict of laws analysis.

In an often cited case, *J. Zeevi and Sons, Ltd. v. Grindlays Bank (Uganda) Ltd.*,<sup>72</sup> the Court of Appeals of New York held that the is-

<sup>69</sup> RESTATEMENT, *supra* note 64, § 6.

<sup>70</sup> RESTATEMENT, *supra* note 64, § 188(2). Section 188(2) contains the following provision:

In the absense of an effective choice of law by the parties . . . , the contacts to be taken into account in applying the principles of § 6 to determine the law applicable to an issue include:

- (a) the place of contracting
- (b) the place of negotiation of the contract
- (c) the place of performance
- (d) the location of the subject matter of the contract, and
- (e) the domicile, residence, nationality, place of incorporation and place of business of the parties.

These contacts are to be evaluated according to their relative importance with respect to the particular issue.

<sup>71</sup> *Sompotex Ltd. v. Philadelphia Chewing Gum Corp.*, 453 F.2d 435 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017 (1972).

<sup>72</sup> 333 N.E.2d 168 (N.Y. 1975), *cert. denied*, 423 U.S. 866 (1975).

suer's obligation under the letter of credit was not excused based on illegality abroad.<sup>73</sup> An executive order of the Ugandan government made payment by the Ugandan issuing bank to the beneficiary, an Israeli firm, illegal.<sup>74</sup> The factors important to the court in deciding whether illegality in Uganda would excuse the liability of the issuer were that (1) New York was the designated place of payment in the letter of credit;<sup>75</sup> (2) New York, as a financial center, had a significant interest in the smooth and consistent enforcement of letters of credit obligations;<sup>76</sup> and (3) the Ugandan order represented a policy which was offensive to the citizens of New York.<sup>77</sup> Although this is a state court opinion, the decision illustrates the balancing of concerns relevant to the resolution of a problem quite similar to that presented in *Chuidian*.

*Banco de Vizcaya v. First National Bank of Chicago*<sup>78</sup> weighed similar factors in deciding whether to hold the home office of First National Bank of Chicago (FNBC) liable on a letter of credit that had been issued by the Bank's Abu Dhabi branch. The customer had brought suit in Abu Dhabi civil court and obtained an injunction against FNBC-AD barring payment to the beneficiary.<sup>79</sup> Although FNBC in Chicago was not a confirming bank, but only the bank where payment was to be made, the Court nonetheless applied Illinois law to maintain the liability of the home branch under the letter of credit.<sup>80</sup>

The court recognized that its decision meant that FNBC could face double liability—in the United States and in the United Arab Emirates.<sup>81</sup> This, the court indicated, is

a cost of doing business under a foreign sovereign. To rule otherwise would shift the risk of doing business in Abu Dhabi to a party which had relatively little involvement with that forum. Plaintiff recognized the risks of conducting business in Abu Dhabi and sought to avoid them by bargaining for the right to be reimbursed in dollars in

---

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 171.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 172.

<sup>77</sup> *Id.* at 173.

<sup>78</sup> 514 F. Supp. 1280 (N.D. Ill. 1981), *vacated by unpublished order* (July 23, 1981). This decision was vacated because the parties entered into a settlement agreement and joined in a motion to dismiss after the court's decision was filed. While the decision has no precedential value, it does present a persuasive discussion in the area of conflict of laws analysis and is cited in several sources: *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*18 (Fernandez, J. dissenting); Donald T. Kramer, *Modern Status of the Act of State Doctrine*, 12 A.L.R. FED. 707 (Supp. 1992); Allan T. Schwartz, *Construction and Effect of UCC Art. 5, Dealing with Letters of Credit*, 35 A.L.R.3d 1404 (Supp. 1992); Robert A. Brazener, *What Constitutes Reasonable or Appropriate Relation to a Transaction with the Meaning of Uniform Commercial Code § 1-105(1)* 64 A.L.R.3d 341 (Supp. 1992); John S. Herbrand, *Damages Recoverable for Wrongful Dishonor of Letter of Credit under UCC § 5-115*, 2 A.L.R.4th 665 (Supp. 1992).

<sup>79</sup> *First National Bank of Chicago*, 514 F. Supp. at 1282.

<sup>80</sup> *Id.* at 1284-85.

<sup>81</sup> *Id.* at 1285.

Chicago.<sup>82</sup>

After recognizing this element of risk allocation, the court cites the *J. Zeevi & Sons* reasoning and adds its own policy value that "enforcement of irrevocable letters of credit is vital to international commerce and to Illinois which provides a forum for international transactions."<sup>83</sup>

*Sabolyk v. Morgan Guaranty Trust Company of New York*<sup>84</sup> again involved a weighing of factors from which the District Court for the Southern District of New York decided that a Swiss court judgment should be recognized, and thereby excused the New York bank from liability under the letter of credit.<sup>85</sup> In that case, the letter of credit transaction had no contact with New York other than the fact that the issuing bank was a branch of a New York bank.<sup>86</sup> The New York branch was not designated as the place of payment, nor was it in any way a participant in the credit transaction.<sup>87</sup> All aspects of the transaction, including performance, were in Zurich.<sup>88</sup> Clearly the Zurich court had jurisdiction through the place of performance and through its significant interests in the transaction as a whole.<sup>89</sup> The court concluded that the Swiss attachment did not offend any public policy<sup>90</sup> and thus applied comity in choosing the law of the Swiss court as the law governing the letter of credit transaction. The court concluded that (1) the Swiss court was acting in comity with another U.S. court;<sup>91</sup> (2) the effect of the decision on the commercial acceptability of letters of credit was not significant;<sup>92</sup> (3) the beneficiaries had not made a sufficient effort to defend in Swiss court;<sup>93</sup> and (4) New York Banking Law specifically protected the New York branch under the facts.<sup>94</sup> All of these factors weighed heavily in the policy balancing that led the court to recognize Swiss law.

*Republic of Argentina v. Weltover*<sup>95</sup> was a Supreme Court decision

---

<sup>82</sup> *Id.*

<sup>83</sup> *Id.* at 1286.

<sup>84</sup> No. 84 Civ. 3179, 1984 WL 1275 (S.D.N.Y. Nov. 27, 1984).

<sup>85</sup> *Id.*

<sup>86</sup> *Id.* at \*2.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.* The court held that Zurich was the place of performance because the case was before the U.S. court on a summary judgment motion, in which defendants filed an affidavit asserting that performance was to take place in Zurich. *Id.* The plaintiffs never contested that claim by the defendants. *Id.* at \*4.

<sup>90</sup> *Id.* at \*3.

<sup>91</sup> See *id.* at \*2 (citing the fact that the Swiss attachment was in response to a suit brought by a third party alleging fraud in the underlying transaction, which was pending in the District Court for the Southern District of Texas).

<sup>92</sup> *Id.* at \*4.

<sup>93</sup> *Id.* Plaintiffs never made any effort to defend the Swiss action that resulted in the attachment at issue, but rather were trying to attack the validity of the Swiss court's judgment through a suit in the United States. *Id.*

<sup>94</sup> See *id.* at \*5 (citing N.Y. BANKING LAW § 183 (1) (McKinney 1971)).

<sup>95</sup> 1992 U.S. LEXIS 3542 (June 12, 1992).

which arose in a different procedural posture requiring statutory analysis to determine if United States courts had jurisdiction. This case involved the application of the Foreign Sovereign Immunities Act of 1976 (FSIA).<sup>96</sup> The FSIA addresses the situation where the defendant in a suit is an entity of a foreign sovereign.<sup>97</sup> In this case, the Republic of Argentina was being sued for its breach of obligations created under bonds which it sold on the New York stock market.<sup>98</sup> Under the FSIA, one of the requirements for exercising jurisdiction over the foreign sovereign is that the entity must have committed an act which had a "direct effect" in the United States.<sup>99</sup> To determine "direct effect," the Supreme Court applied an analysis similar to a conflict of laws analysis for determining a state's interest in action. The Court observed that (1) New York was the place designated in the contract for payment; (2) payments had been made in New York; (3) the contract was a negotiable debt instrument which could be sold anywhere in the world; (4) the debt instrument was denominated in U.S. dollars; and (5) the defendant had appointed a financial agent in New York.<sup>100</sup> The Court then reasoned that New York, as a state, had a significant interest in the transaction involved and that there was a direct effect in the United States.<sup>101</sup> The relevancy of this case is in an analogy to the balancing of interests codified in the FSIA. Argentina's potential liability for payment of the bonds, which had been excused in Argentina, depended on the weight of U.S. interests. An issuer's liability on a letter of credit, performance of which is illegal in another nation, could likewise be resolved through a similar balancing of interests.

The Fourth Circuit decision of *Consolidated Aluminum Corp. v. Bank of Virginia*,<sup>102</sup> while not involving an illegality defense, illustrates a typical resolution to a conflict of laws problem in the context of letters of credit. As a preliminary step to determining other issues, the court applied Maryland choice of law rules which said that "matters arising in connection with performance of the contract are governed by the place of performance."<sup>103</sup> The court went on to reason that

the letter of credit issued in this case required that the draft and documents be presented 'at the counters' of the Bank of Virginia in

---

<sup>96</sup> 28 U.S.C. § 1602 *et seq.* (1988).

<sup>97</sup> *Id.*

<sup>98</sup> *Welltover*, 1992 U.S. LEXIS 3542 at \*6, 7.

<sup>99</sup> *Id.* at \*8, 9 (citing U.S.C. § 1605(a)(2) (1988)).

<sup>100</sup> *Id.* at \*23.

<sup>101</sup> *Id.* at \*22, 23.

<sup>102</sup> 704 F.2d 136 (4th Cir. 1983).

<sup>103</sup> *Id.* at 137, n.3. It is important to note that the Fourth Circuit applied Maryland choice of law rules, rather than the rules of the Restatement or federal common law. The Restatement rules consider factors other than just place of performance. This Fourth Circuit opinion is useful, though, for understanding how a court may define "place of performance."

Richmond, Virginia. The place of performance is Virginia, and therefore the law of Virginia governs resolution of the issue here presented.<sup>104</sup>

This logic suggests that the Fourth Circuit is defining "place of performance" for choice of law purposes, and not for letter of credit purposes, as the place where payment was to be rendered.

*RSB Manufacturing Corp. v. Bank of Baroda*<sup>105</sup> fits into this analysis because the facts are very similar to those of *Chuidian*,<sup>106</sup> which really did not rest its decision to recognize foreign law on any conflict of laws balancing. The district court for the Southern District of New York held in *RSB Manufacturing* that "place of performance" must be defined in order to determine whether the New York branch of the Bank of Baroda could be held liable.<sup>107</sup> It then defined "place of performance" for a letter of credit as the place of issuance because only an issuing bank, and not an advising bank, is obligated under a letter of credit.<sup>108</sup> The court took the position that since an advising bank does not incur any obligation to make payment on the letter of credit, "the original contractual obligation [is] not enlarged, and the situs [place of performance] of the obligation remain[s] in [the jurisdiction of the issuing bank]."<sup>109</sup> The court, in defining "place of performance," was doing so only to determine the operation of a New York Banking Law provision,<sup>110</sup> which was what finally relieved the New York branch of liability.<sup>111</sup> The court did not engage in any substantive conflict of laws analysis.

#### IV. Analysis

The *Chuidian* court majority began its analysis with the presumption that if the place of performance was Manila, then performance was excused because the executive order issued by the PCGG made performance illegal.<sup>112</sup> No authority was specifically cited when the court first raised the assertion that illegality at the place of performance will excuse performance, but the inference from the later discussion of conflict of laws is that the majority was relying on section 202(2) of the Restatement of Conflict of Laws.<sup>113</sup>

The majority then attempted to define "place of performance"

---

<sup>104</sup> *Id.*

<sup>105</sup> 15 B.R. 650 (S.D.N.Y. 1981).

<sup>106</sup> *Chuidian III*, 1992 U.S. App. LEXIS 32318 (9th Cir. Dec. 11, 1992). Both cases involved the liability of U.S. branches of foreign banks where foreign law inhibited performance of a letter of credit.

<sup>107</sup> *RSB Manufacturing*, 15 B.R. at 652.

<sup>108</sup> *Id.* at 653, 654.

<sup>109</sup> *Id.* at 654.

<sup>110</sup> *Id.* (citing N.Y. BANKING LAW § 204(a)(3)(a) (McKinney 1990)).

<sup>111</sup> *Id.*

<sup>112</sup> *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*4 (9th Cir. Dec. 11, 1992).

<sup>113</sup> See *id.* Section 202 of the RESTATEMENT, supra note 64, is discussed later in the court's opinion. *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*10.

through an analysis of letters of credit law rather than by looking to the rules of conflict of laws.<sup>114</sup> The court relied on the decisions in *RSB Manufacturing*<sup>115</sup> and *Sabolyk*.<sup>116</sup> Unfortunately, the reliance on *Sabolyk* represented a misunderstanding of that decision,<sup>117</sup> which does not stand for the proposition that place of performance is to be determined by looking to the place of issuance, as held in *Chuidian*.<sup>118</sup> The *RSB Manufacturing* decision is in accordance with the *Chuidian* court's position.<sup>119</sup>

As it pursued this line of analysis, the Ninth Circuit focused on the fact that only issuing and confirming banks are obligated to pay on letters of credit.<sup>120</sup> Although this is correct, the court translated this notion of obligation into the rule that performance can only occur at the place where an obligation exists.<sup>121</sup> The court then offered an unclear justification for its rule by reference to the policy concern of flexibility in articulating rules governing letters of credit.<sup>122</sup>

The court failed to recognize that its rule deprives the forum of a paying or advising bank of any interest which that forum may have had through such a function. Surely the forum of the paying or advising bank has some interest in the transaction, even if it is only a minor one.<sup>123</sup> The forum of the issuing bank already has a significant interest in the transaction. This court's definition of "place of performance" has the effect of limiting the potential forums that may have a recognizable interest in the letter of credit transaction and thus limits, rather than fosters, the variety of relationships that the court sought to accord flexibility.<sup>124</sup>

---

<sup>114</sup> See *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*5, 6.

<sup>115</sup> 15 B.R. 650 (S.D.N.Y. 1981). See *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*5.

<sup>116</sup> No. 84 Civ. 3179, 1984 WL 1275 (S.D.N.Y. Nov. 27, 1984). See *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*5.

<sup>117</sup> The *Sabolyk* court was relying on an uncontested affidavit that, after listing many factors beyond place of issuance, concluded that performance was to take place in Zurich. *Sabolyk*, 1984 WL 1275 at \*2. Accepting that Zurich was the place of performance, the court was concerned with whether it should recognize a judgment of the Swiss court. *Id.* at \*3.

<sup>118</sup> *Id.* at \*5.

<sup>119</sup> *RSB Manufacturing* focused on defining what the place of performance under a letter of credit is rather than on weighing foreign and domestic concerns in determining whether to excuse performance. See 15 B.R. at 653-54.

<sup>120</sup> See *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*5-7; *RSB Manufacturing*, 15 B.R. at 652-53.

<sup>121</sup> *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*7; see also *RSB Manufacturing*, 15 B.R. at 654.

<sup>122</sup> See *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*6 (citing commentary to U.C.C. § 5-102(3)).

<sup>123</sup> See *J. Zeevi & Sons, Ltd. v. Grindlays Bank (Uganda) Limited*, 333 N.E.2d 168, 172 (N.Y. 1975), cert. denied, 423 U.S. 866 ("New York [the situs of the paying bank] has an overriding and paramount interest in the outcome of this litigation . . . [as] a financial capital of the world, serving as an international clearinghouse and market place for a plethora of international transactions.").

<sup>124</sup> While it is true that the parties can explicitly designate a place of performance,



Additionally, the majority opinion failed to recognize that there is no reason why there cannot be two places of performance.<sup>125</sup> A letter of credit involves a series of contracts: between the customer and the issuer; between the issuer and the beneficiary; and perhaps between the issuer and beneficiary, each, and an intervening bank.<sup>126</sup> By their very nature, the series of contracts involved in a letter of credit presents the possibility of more than one place of performance. If a beneficiary negotiates the letter of credit at the advising bank, the performance is complete in relation to the beneficiary, who then has received the benefit of his bargain, and the performance has occurred at the location of the advising bank. Yet the credit transaction remains incomplete in relation to the issuer who is now obligated to the advising bank.<sup>127</sup> Similarly, if the advising bank declines to participate, performance may occur at the place of issuance.<sup>128</sup> Thus, place of performance is relative to who is seeking performance as well as to the obligations of the various parties.

After working through its policy argument for the definition of "place of performance" in letters of credit law, the majority cited a list of district court findings which it said "support[ed]" its finding that Manila was the place of performance.<sup>129</sup> These findings were contacts which the credit transaction had with Manila.<sup>130</sup> The majority used them to further define "place of performance,"<sup>131</sup> and then used them again, along with place of performance, in its conflict of laws analysis.<sup>132</sup> This mixing of analyses created a circular argument that Judge Fernandez noted in his dissent.<sup>133</sup> The conflict of laws analysis "addresse[d] what effect one should give to an illegality once it has been determined that performance is illegal at the place of per-

---

there may be reasons why a party would feel more comfortable engaging a forum only through reference to an advising bank or paying bank. For instance, the other party may feel, rationally or not, that its interest is threatened by such an explicit designation. A compromise then could be reached by allowing each side to maintain an interest in its chosen forum, without any explicit, potentially formidable designation.

<sup>125</sup> See RESTATEMENT, *supra* note 64, § 188, cmt. a. If a confirming bank is involved, clearly there are two potential places of performance since both the issuing bank and the confirming bank are obligated on the letter of credit. Obligation, however, is only a part of performance; the two words are not synonymous.

[P]lace of performance can bear little weight in the choice of the applicable law when . . . performance by a party is to be divided more or less equally among two or more states with different local law rules on the particular issue.

*Id.*

<sup>126</sup> See DOLAN, *supra* note 38, ¶ 7.01.

<sup>127</sup> See U.C.C. § 5-114 (1978).

<sup>128</sup> See UCP, *supra* note 37, art. 11(c), 21(b).

<sup>129</sup> See *Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*7-8 (9th Cir. Dec. 11, 1992).

<sup>130</sup> *Id.* at \*7-8, 13.

<sup>131</sup> *Id.* at \*8 ("These findings . . . support our conclusion that Manila was the sole place of performance. . .").

<sup>132</sup> See *id.* at \*13.

<sup>133</sup> See *id.* at \*20 (Fernandez, J., dissenting).

formance. . . . It does not help with the determination of whether Manila or California was the place of performance."<sup>134</sup>

The conflict of laws analysis should have been the starting point and crux of the court's analysis.<sup>135</sup> Place of performance is only one factor to be considered in this analysis, though it is a significant one.<sup>136</sup> The Restatement recognizes that if there are two places of performance, then that element of the conflict of laws analysis deserves less weight.<sup>137</sup> A limiting, conclusive definition of "place of performance," specifically isolated to letters of credit law, was unnecessary for the resolution of the *Chuidian* case. The majority could have rested its decision to recognize the Philippine executive order on a broader conflict of laws analysis.<sup>138</sup> The court noted the Restatement's general principles, but engaged in a very limited analysis of weighing the various concerns as they were presented in the case.<sup>139</sup> A more expanded analysis of these general principles, as they apply to the *Chuidian* facts, would have obviated the court's need to define "place of performance."<sup>140</sup>

The dissenting opinion, which rejected the validity of the Philippines' order, recognized that policy concerns need to be weighed.<sup>141</sup> Judge Fernandez articulated a very persuasive policy argument relating to banking concerns and risk allocation under letters of credit.<sup>142</sup>

An irrevocable letter of credit is by its nature meant to be irrevocable in all but a few limited circumstances. . . . Recognizing the place of payment as the place of performance in this case would effectuate the parties' agreement and thus enhance the 'reliability and fluidity' of letters of credit.<sup>143</sup>

The dissent failed, however, to recognize that "place of perform-

<sup>134</sup> *Id.* (Fernandez, J., dissenting).

<sup>135</sup> *See, e.g.,* *J. Zeevi & Sons, Ltd. v. Grindlays Bank (Uganda) Limited*, 333 N.E.2d 168 (N.Y. 1975), *cert. denied*, 423 U.S. 866 (relying on a conflict of laws analysis in deciding not to recognize foreign law); *Sabolyk v. Morgan Guaranty Trust Company of New York*, No. 84 Civ. 3179, 1984 WL 1275 (S.D.N.Y. Nov. 27, 1984) (recognizing a foreign judgment after weighing factors important under a conflict of laws analysis).

<sup>136</sup> RESTATEMENT, *supra* note 64, §§ 188(2), 202(2).

<sup>137</sup> *See* RESTATEMENT, *supra* note 64, § 188, cmt. a.

<sup>138</sup> *Compare Sabolyk*, 1984 WL 1275 (relying on state law and public policy considerations under a conflict of laws analysis in upholding a foreign judgment) *with* *RSB Manufacturing Corp. v. Bank of Baroda*, 15 B.R. 650 (S.D.N.Y. 1981) (defining place of performance of a letter of credit to determine that performance was excused because payment on the letter was illegal at that defined place).

<sup>139</sup> The court only weighs the Restatement section 188(2) factors in its discussion, completely skipping an analysis of the Restatement section 6 general principles. *See Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*9-14 & \*12 n.2. *See also supra* notes 64-70 and accompanying text.

<sup>140</sup> *Compare J. Zeevi & Sons*, 333 N.E.2d 168 (N.Y. 1975) *with Chuidian III*, 1992 U.S. App. LEXIS 32318.

<sup>141</sup> *See Chuidian III*, 1992 U.S. App. LEXIS 32318 at \*22 (Fernandez, J., dissenting).

<sup>142</sup> *See id.* at \*22-23 (Fernandez, J., dissenting).

<sup>143</sup> *Id.* at \*24 (Fernandez, J. dissenting) (citing *Bank of Cochlin Ltd. v. Manufacturers Hanover Trust*, 612 F. Supp. 1533, 1537 (S.D.N.Y. 1985), *aff'd*, 808 F.2d 209 (2d Cir. 1986)).

ance" should not be the key to the decision. Because Judge Fernandez disagreed with the result of the majority opinion, he instead focused on an opposing definition of place of performance. Nonetheless, he grounded his entire argument in decisions that have applied the conflict of laws or similar balancing approaches to situations where an obligation is illegal under foreign law.<sup>144</sup> These decisions essentially used the broad principles of conflict of laws analysis to decide what impact the foreign law should have in the United States, and thus, stand as precedent for their *method* of analysis as well as for their result.<sup>145</sup> None of those courts saw a need to define "place of performance" to resolve the conflicts.

## V. Conclusion

This Note is not concerned with whether the result of excusing liability on the letter of credit under the facts of this case was necessarily the correct result. Rather, the focus is on the process which the court used in reaching its decision and on recognition that the dissenting opinion's policy concerns about the smooth functioning of letters of credit and a shift in the allocation of risks among parties to a letter of credit are valid. Conflict of laws rules function to allow recognition of foreign laws without creating precedential impact within our own system. The *Chuidian* court chose to allow a question of the enforceability of a foreign law to create a new rule of domestic substantive law that was not essential to its decision. Parties to letters of credit traditionally have used place of payment as one method of allocating the risks of the transaction. Under this court's rule, designation of a place of payment in the United States will not be enough to protect a beneficiary. Parties will have to explicitly state a "place of performance" if it is to be other than or in addition to the place of issuance. Yet, the place of issuance will remain a place of performance because of the contractual nature of letters of credit. In the end, courts will still be forced to balance the various interests under a conflict of laws analysis when facts similar to those in *Chuidian* arise.

JULIA ANDERSON REINHART

---

<sup>144</sup> See *id.* at \*18-22 (Fernandez, J., dissenting).

<sup>145</sup> See, e.g., *Republic of Argentina v. Weltover*, 1992 U.S. LEXIS 3542 (June 12, 1992) (employing factors important in a conflict of law analysis even though the issue concerned the meaning of direct effect in deciding to hold the Republic of Argentina liable on its bond obligations); *Sabolyk v. Morgan Guaranty Trust Company of New York*, No. 84 Civ. 3179, 1984 WL 1275 (S.D.N.Y. Nov. 27, 1984) (weighing New York's interests and determining that there would be no chilling effect in the area of letter of credit transactions if a Swiss judgment were upheld).

