

## Topic 1 The history and use of documentary credits

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### Learning objectives

By the end of this topic, you should be able to:

- describe the origins of a documentary credit; and
- understand the range of transactions for which a documentary credit may be the chosen method of settlement.

### Introduction

This topic includes a brief history of the documentary credit, an insight into currently available statistics (2019 data) and the types of transaction for which a documentary credit is often chosen as the method of settlement.

#### **UCP 600 and ISBP 745**

Throughout this course, reference to articles and sub-articles applies to the content of UCP 600 and reference to paragraph numbers to ISBP 745.

*It is important to note that ISBP 745 does not amend UCP 600. It explains how practices articulated in UCP 600 are to be applied by documentary credit practitioners, in particular when examining documents. ISBP 745 and UCP 600 need to be read in their entirety and not in isolation.*

#### **Think...**

Before you start work on this topic, consider what you already know about the use of documentary credits.

For instance, you are likely to have been, or are currently, involved in handling various aspects of a documentary credit, but have you thought about its origins?

Documentary credits are used on a global basis, but one region in particular sends and receives the greatest volume of documentary credits. Why do you think this is the case? Why do you think it is useful to review this type of statistic?

Do you know whether the majority of documentary credits are advised with or without confirmation being added?

### 1.1 A brief history

Historians have been able to trace the use of documentary credits and financial instruments back as far as ancient Egypt and Babylon.

For example, a promissory note in the form of a clay tablet, which originated from Babylon and dates from 3000 BC, is exhibited in the University of Pennsylvania Museum of Archaeology and Anthropology in the US. This ancient promissory note was used for repaying an amount plus interest on a specific date.

However, it was not until the eighteenth and nineteenth centuries that the term 'letter of credit' became widely used and recognised. During this period, it was common for merchants to seek out new markets and to make use of the trading opportunities offered by such markets. In order to provide their clients with a means of obtaining cash during their overseas travels, banks in the Western world introduced the concept of a traveller's letter of credit. This document allowed bank clients to avoid the need to carry large sums of money, which could be lost or stolen.

In addition to the traveller's letter of credit, it was usual for a formal letter of introduction to be addressed to the bank's overseas correspondent or agent. This letter, usually sent in advance of travel, would indicate that the client was a valued customer of the bank. It would also request that the correspondent or agent provide the client with any necessary assistance.

A traveller's letter of credit took the form, literally, of a letter. It indicated that the issuing bank would honour bills of exchange drawn on it by the correspondent or agent in respect of amounts paid to the named traveller, plus any charges incurred by the correspondent or agent. There would also be an indication of a maximum amount that could be drawn and an expiry date.

Each correspondent or agent was required to indicate on the original traveller's letter of credit details of amounts paid and the relevant dates. The client always retained possession of the original document.

It can therefore be seen that the origins of the documentary credit lay in a 'letter' provided by a bank to a correspondent or agent. Upon production of that letter, 'credit' was provided to a named client in the form of money. From the 1840s, documentary credits began to serve as a means of facilitating payment for foreign trade transactions. It may well be that, as a result of personal contacts made during their travels, merchants were able to arrange for goods to be sent from overseas.

#### **An early traveller's letter of credit from 1803**

One of the oldest available examples of a traveller's letter of credit can be found in the archives of the US Library of Congress. It was issued in Washington on 4 July 1803 and signed by the then President of the United States, Thomas Jefferson. It was provided to explorers Captain Meriwether Lewis and Captain William Clark as they departed on their famous expedition through the western part of the US.

The letter reads:

Washington. US. of America. July 4. 1803.

Dear Sir

In the journey which you are about to undertake for the discovery of the course and source of the Missouri, and of the most convenient water communication from thence to the Pacific ocean, your party being small, it is to be expected that you will encounter considerable dangers from the Indian inhabitants. Should you escape those dangers and reach the Pacific ocean, you may find it imprudent to hazard a return the same way, and be forced to seek a passage round by sea, in such vessels as you may find on the Western coast. But you will be without money, without clothes, & other necessaries; as a sufficient supply cannot be carried with you from hence. Your resource in that case can only be in the credit of the US. for which purpose I hereby authorise you to draw on the Secretaries of State, of the Treasury, of War & of the Navy of the US. according as you may find your draughts will be most negociable, for the purpose of obtaining money or necessaries for yourself & your men: and I solemnly pledge the faith of the United States that these draughts shall be paid punctually at the date they are made payable. I also ask of the Consuls, agents, merchants & citizens of any nation with which we have

intercourse or amity to furnish you with those supplies which your necessities may call for, assuring them of honorable and prompt retribution. And our own Consuls in foreign parts where you may happen to be, are hereby instructed & required to be aiding & assisting to you in whatsoever may be necessary for procuring your return back to the United States. And to give more entire satisfaction & confidence to those who may be disposed to aid you, I Thomas Jefferson, President of the United States of America, have written this letter of general credit for you with my own hand, and signed it with my name.

Th: Jefferson

Prior to World War I, the use of documentary credits had become more widespread but – as is the case today – a large number of sales were made without the support of a bank undertaking. As a result of the outbreak of war, previously established trading chains were suddenly put under the spotlight and either ceased completely or a bank undertaking, in the form of a documentary credit, became a prerequisite before goods would be shipped or handed over to buyers. With new trading chains being established out of necessity, and with little or no available information on the trading experience of any new counterparty buyer, exporters increasingly looked to the documentary credit to secure their payment.

Even today, the establishment of new trading chains is often cited as one of the main reasons for using a documentary credit for the settlement of a trade transaction.

In the event of financial difficulties being experienced at a bank, country or regional level, an exporter will change its settlement method from open account or documentary collection to a documentary credit. This was increasingly the case during the global financial crisis of 2008–09.

## 1.2 Documentary credit statistics

The use of documentary credits as a method of settlement for a trade transaction remains steady today, despite the global preference for using open account terms. Open account is covered in Topic 4.

According to the International Chamber of Commerce (ICC) 2020 Global Survey on Trade Finance, released in July 2020, the volume of SWIFT MT700 messages ('Issue of a Documentary Credit') fell by 3.9% between 2018 and 2019 (ICC Banking Commission, 2020).

As the use of a SWIFT MT700 message is the most common form of documentary credit issuance, SWIFT volume figures provide the only reliable data on the use of documentary credits.

The following is some key 2019 data from the ICC 2020 Global Survey on Trade Finance relating to the issuance of MT700 messages, as provided by SWIFT to the ICC. The percentages shown reflect little change from the 2018 data.

- Banks in the Asia-Pacific region issued 76% of the total volume, followed by the Eurozone (6.5%) and the Middle East (5.4%).
- Banks in the Asia-Pacific region received 78.1% (stated to be approximately 3.1 million) of the total volume, followed by the Eurozone (7.8%) and non-Eurozone Europe (4.5%).
- The top three countries for issuance were (in order) Bangladesh, South Korea and China.
- The top three countries for receipt were (in order) China, Bangladesh and India.
- 89.3% of the total volume did not request that confirmation be added.
- 6.9% of the total volume requested confirmation be added and 3.8% indicated 'MAY ADD'.
- 74.1% of the total volume was available by negotiation, followed by payment (9.7%), deferred payment (8.8%), acceptance (7.1%) and mixed payment (0.3%).
- 38.9% of the total volume was payable in the range of 31–60 days (eg after date of shipment,

date of invoice, etc), with 74.3% of the total volume payable in the range of 31-90 days.

### 1.3 Using a documentary credit

Today, a documentary credit can be used for almost any situation in which goods are being shipped, or services or performance are being provided. This can range from multimillion-dollar, -renminbi, -euro, etc, building projects to the shipment of a simple spare part for a machine or vehicle.

By far the most common type of goods falls into the category of consumables, clothing, food (rice, wheat, sugar, etc). However, transactions can equally apply to more unusual items, such as the sale, lease or scrapping of a vessel or aircraft and suchlike.

In some countries, local legislation will impose a requirement for the use of a documentary credit for all, or certain, types of good that are imported. This ensures that the import of the underlying goods will be subject to specific terms and conditions that can mirror and / or comply with local requirements.

Documentary credits are also used in some countries to support local assembly industries. For example, a documentary credit will cover the import of goods in a kit form. The staff of the local factory will put these materials together to create a finished article. These can be goods such as televisions, fridge freezers, motor vehicles, etc. The use of a documentary credit allows for its terms and conditions to include details of when and how certain components are to be shipped, in order to match the process and workflow of the factory.

Provided that a shipment of goods or the provision of a service or performance can be documented, and those documents can be presented to a bank, it is possible for a documentary credit to be the method of settlement.

### Conclusion

Documentary credits have been used in various forms for hundreds of years. The types of underlying trade transactions, for which documentary credits continue to be used, are largely unchanged – ie to provide an independent bank undertaking to pay for the sale and purchase of goods or the provision of services or performance.

Volumes of documentary credits have declined in recent years, though not dramatically. Documentary credits are a product that buyers and sellers turn to in times of economic distress, or when a buyer or government determine that settlement is to be made subject to a set of documentary requirements and terms and conditions, which are to be complied with by a seller as beneficiary.

#### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the origins and current types of use for documentary credits?
- outline the global picture for the regions that do or do not rely heavily on documentary credits?
- describe how the majority of documentary credits are issued, such as whether confirmation is required or not, and how documentary credits are available for settlement?
- identify the most common payment terms in the context of when a beneficiary may expect to receive settlement?



## Test your knowledge

Use these questions to assess your learning for Topic 1.

1. One of the first forms of letter of credit introduced was known as which of the following?

- a. A businessman's letter of credit.
- b. An exporter's letter of credit.
- c. A traveller's letter of credit.**
- d. A seller's letter of credit.

Answer: One of the first forms of documentary credit was known as the traveller's letter of credit.

See section 1.1.

2. Documentary credits have only been in existence for the past 300 years. True or false?

- a. True.
- b. False.**

Answer: Documentary credits have been traced back to Ancient Egypt and Babylon.

See section 1.1.

3. Complete the following statement:

\_\_\_\_\_ was the most common form of availability stated in a SWIFT MT700 message issued in 2019.

- a. Acceptance.
- b. Deferred payment.
- c. Negotiation.**
- d. Payment.

Answer: Negotiation. See section 1.2.

4. Documentary credits can be payable on a sight basis or on a specific number of days in the future. What was the most common payment term in an MT700 issued in 2019?

- a. Sight.
- b. Up to 30 days.
- c. Between 31 and 60 days.**
- d. Between 61 and 90 days.

e. Answer: Between 31 and 60 days. See section 1.2.

5. A documentary credit can be used only for the purchase of consumables, food and clothing, and for the provision of services or performance. True or false?

- a. True.

**b. False.**

A documentary credit can potentially be used for any purpose.

Answer: False. See section 1.3.

## References

ICC (2020) *ICC Global trade and finance survey report 2020*, p39–47. Paris: ICC.

ICC Banking Commission (2020) *2020 Global survey on trade finance* [pdf]. Available at: <https://library.iccwbo.org/content/tfb/pdf/2020iccglobaltradesurveyweb.pdf> [Accessed: 18 November 2020].



## Topic 2 The role of the ICC and the development of the UCP

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### Learning objectives

By the end of this topic, you should be able to:

- describe the function and reach of the ICC; and
- understand the origins of the UCP and the development of its text.

### Introduction

This topic provides an outline of the activities undertaken by the International Chamber of Commerce (ICC) and an overview of how the text of the Uniform Customs and Practice for Documentary Credits (UCP) has developed across the six revisions that have occurred since the first UCP was implemented in 1933.

Some background information is also provided to the rules that existed prior to the development of the first UCP.

Since the implementation of the UCP 400, and up to November 2020, the ICC has released a number of guidance papers, as well as three revisions of the International Standard Banking Practice for the Examination of Documents (ISBP) and these are discussed in this topic.

#### Think...

Before you start work on this topic, consider what you already know about the ICC and the rules around UCP 600.

You should be familiar with the content of the UCP 600, but are you aware of how the UCP rules have evolved since the first UCP was implemented in 1933?

The ICC is not simply an organisation that prints and sells the UCP 600 and other trade finance rules and publications. Do you understand the wider roles that are undertaken by the ICC and its involvement with the United Nations, World Trade Organization (WTO) and intergovernmental forums, such as the G20?

### 2.1 The role of the ICC

The ICC is the world business organisation – a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The ICC was founded in 1919. Today, its global network comprises more than six million companies, chambers of commerce and business associations in more than 130 countries and territories. National committees, in more than 90 countries, work with ICC members in their countries to address concerns and to convey to government the business views formulated by the ICC.

The fundamental mission of the ICC is to promote open international trade and investment, and to help business to meet the challenges and opportunities of globalisation.

The ICC has three main activities: rule setting; dispute resolution; and policy advocacy. Because its

member companies and associations are also engaged in international business, the ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in thousands of transactions every day and have become part of the fabric of international trade.

The ICC works closely with the United Nations, the World Trade Organization (WTO) and intergovernmental forums, including the G20.

In its function as a rule-setting organisation, the ICC Banking Commission produces universally accepted rules for different forms of trade settlement and guidelines for international banking practice.

In addition, the ICC Banking Commission responds to requests for official opinions that are submitted periodically by ICC national committees or banking associations.

The Commercial Law & Practice Commission is responsible for the revision of the Incoterms rules. We will discuss Incoterms in Topic 5.

### **2.1.1 The development of rules for documentary credits and the documenting of practices**

In order to obtain global understanding, and a common interpretation and application, of documentary credits, the ICC developed and published its first version of the Uniform Customs and Practice for Documentary Credits (more commonly known as the UCP) in 1933 (UCP 82). Subsequent revisions occurred in 1951 (UCP 151), 1962 (UCP 222), 1974 (UCP 290), 1983 (UCP 400), 1993 (UCP 500) and 2007 (UCP 600). UCP 600 is the current version and came into effect on 1 July 2007.

The UCP 600 is supplemented by:

- the ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR 725);
- the ICC Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP) version 2.0; and
- the International Standard Banking Practice for the Examination of Documents under UCP 600 (ISBP 745).

In addition to UCP 600, these learning materials cover all of the publications referred to above in some detail.

The UCP rules are the most successful privately drafted trade rules ever developed and it is estimated that today they are the basis for approximately USD2 trillion in trade transactions per year.

## **2.2 Before the UCP**

The origins of the UCP can be traced back to the publication of the Regulations Affecting Export Commercial Credits adopted at the New York Bankers Commercial Credit Conference in 1920. More than 30 banks contributed to the creation of this document, and each indicated to its overseas correspondent banks that it would apply the regulations to the handling of its documentary credits. More than 15,000 copies of the regulations were distributed globally.

By the mid-to-late 1920s, Argentina, Czechoslovakia, Denmark, France, Germany, Italy, Norway and

Sweden had created rules for handling export commercial credits. For example, in 1928, several banks in Copenhagen, Denmark, produced the Joint Regulations Governing the Handling of Documentary Credits Opened with the Principal Copenhagen Banks.

In 1929, ICC national committees discussed a draft document titled 'Uniform Regulations for Commercial Documentary Credits'. It seems that this document became the forerunner for the development and publication of the first UCP in 1933, as ICC Publication No. 82 (UCP 82).

## 2.3 The main changes to the UCP text across each revision

In this section, we highlight six of the main changes that were introduced into each revision. Each development led to the wording that appears in UCP 600 today, and it may come as a surprise to many that a number of the positions taken in UCP 600 are the result of changes made over 50 years ago.

More extensive details of each revision, as well as the text of each version of UCP, are available in the ICC's *The Complete UCP – Texts, Rules and History 1920-2007*, Publication No. 683.

### 2.3.1 UCP 82 (1933)

Although UCP 82 was the first document to be issued under the title of 'Uniform Customs and Practice', a number of significant changes had been made since a draft version had been circulated to ICC national committees in 1929.

These changes included:

- the stipulation that '[b]anks must examine all documents and papers with care so as to ascertain that on their face they appear to be in order';
- introduction of the term 'honour';
- detailed requirements for transport and insurance documents;
- the provision that when a documentary credit stipulates 'insurance against all risks', banks cannot be held responsible for any particular risk that is not covered;
- the provision that when a documentary credit requires the presentation of other documents, without further definition, banks will accept such documents as tendered without any responsibility on their part; and
- the stipulation that when the expiry date of a documentary credit falls on a Sunday, or a legal or local holiday, the period of validity will be extended to the next following business day. (This extension was stated not to apply to the latest shipment date.)

In addition, UCP 82 article 11 which is the disclaimer article regarding the effectiveness of documents, is almost identical to the wording that appears today in UCP 600 article 34.

Similarly, UCP 82 article 12 contains largely the same requirements as those in the first and third paragraphs of UCP 600 article 35.

Other articles regarding date terms (that is, 'first half', 'second half', 'beginning', 'middle' and 'end' of a month) have the same meaning as that mentioned in UCP 600 article 3.

### 2.3.2 UCP 151 (1951)

Because this publication represented the first revision of the UCP rules, a number of changes occurred to the text. These included:

- introduction of methods of settlement – that is, payment, acceptance, negotiation and

- purchase;
- use of the term 'applicant' instead of 'principal';
- the addition of the statement that, '[i]n documentary credit operations, all parties concerned deal in documents and not in goods';
- a statement that, in addition to the wording used in UCP 82 relating to the examination of documents on their face, 'banks must determine compliance on the basis of the documents alone';
- a provision that the issuing bank had a 'reasonable time' in which to examine the documents; and the stipulation that the description of the goods on the commercial invoice 'must correspond with the description in the credit'.

### 2.3.3 UCP 222 (1962)

The 1962 revision saw the UK and the Commonwealth banks adopt the UCP for the first time. This resulted from the ICC's concerted effort to gain greater acceptance of the rules among its member countries. The changes made in this round included:

- the provision that a documentary credit is binding on all parties;
- a rule that a credit is separate from the sales or other contracts on which it may be based;
- the stipulation that a confirming bank negotiates without recourse;
- the requirement that a notice of refusal must be given 'by cable or other expeditious means', and that it must state that the documents are being held at the disposal of the bank or are being returned;
- the provision that terms such as 'divisible', 'fractionable', 'assignable' and 'transmissible' should not be used in the context of a credit that is to be transferable, and shall not be so used; and
- details of how to handle the documents of the second beneficiary should the first beneficiary fail to substitute its own.

### 2.3.4 UCP 290 (1974)

Compared to other revisions, very few changes were made to the text during the 1974 round. The changes included:

- the introduction of the term 'nomination' and its use;
- the addition of details regarding inconsistency between documents;
- the addition of the concept of preclusion to the requirements for refusal of documents;
- a new article to cover combined transport;
- a new article indicating the default position of presentation within 21 days after the date of issuance of the bill of lading or other transport document; and
- a new article covering assignment of proceeds.

### 2.3.5 UCP 400 (1983)

The 1983 revision resulted in a large amount of restructuring of the text and effectively established the layout of the UCP as we know it today. The main changes included:

- a requirement that an advising bank is to take reasonable care to check the authenticity of a credit;
- the addition of a deferred payment undertaking as a settlement means;
- a new separate article covering bank-to-bank reimbursements;
- a new article covering original documents;
- a change of tolerance from 3% to 5% for goods that are not described as a number of packing units or individual items; and
- the addition of a 'transshipment' definition.

### 2.3.6 UCP 500 (1993)

For the vast majority of current documentary credit practitioners, UCP 500 is the first UCP that they will have experienced. This revision involved two drafting groups: one to look at the transport documents; and one for all other issues. This revision contained by far the largest number of changes. These included:

- a changed presumption that a credit is irrevocable if a documentary credit is silent on this issue (instead of being revocable);
- the granting to banks of permission to advise a credit that could not be authenticated;
- the prohibition of partial acceptance of amendments;

the provision to banks of a reasonable time, not to exceed seven banking days following the day of presentation of the documents, in which to determine compliance or non-compliance;

- the requirement that non-documentary conditions were to be disregarded; and
- for transport documents, the introduction of the term 'however named' and an indication of who can sign transport documents. ('Transshipment' was also redefined in the context of containerised shipments.)

### 2.3.7 Between UCP 400 and UCP 600

Following the revision of UCP 400 and leading up to the revision of UCP 500, the ICC was instrumental in the issuance of a number of papers and two new sets of rules.

On 1 September 1994, the ICC issued a set of four position papers relating to the application of UCP 500. These papers were deemed necessary because some banks were not applying the content of UCP 500 in the manner intended. These position papers covered:

- banks wrongly inserting clauses into an amendment to the effect that it would become effective were the beneficiary not to refuse it within a specific period of time;
- the definition of 'negotiation', explaining that negotiation not only means the immediate payment of funds to the beneficiary less a charge for interest, but also can mean agreeing to pay on a future date or event (and mentioning the concept of 'giving value');
- the process of examining documents when a documentary credit contains one or more non-documentary conditions; and
- the naming of the carrier on transport documents and the signing thereof.

In 1998, the ICC approved a set of rules relating to standby letters of credit, known as the

International Standby Practices (ISP98). Although the UCP had made reference to standby letters of credit since their incorporation into UCP 400, article 1, it was not felt that the UCP adequately reflected standby letter of credit practice. The ISP98 is covered in Topic 21.

In January 1999, when the euro replaced the legacy currency of a number of European countries, the ICC was required to issue guidelines relating to documentary credits issued in those legacy currencies that would remain valid beyond January 1999. To explain the acceptable process, the ICC issued a decision on 6 April 1998 on The Impact of the European Single Currency (Euro) on Monetary Obligations Related to Transactions Subject to ICC Rules.

Following a couple of controversial court decisions with regard to what constituted an original document for the purpose of UCP 500, on 12 July 1999 the ICC issued a paper entitled: The determination of an 'Original' document in the context of UCP 500 sub-article 20(b). This paper sought to dispel the idea that the only way in which a document could be determined to be an original was if it was manually signed and/or marked 'original', offering instead other possible scenarios. Following the implementation of UCP 600, this paper remained valid and continued to be referred to by many documentary credit practitioners – but it has since been superseded by the content of ISBP 745, paragraph A27.

The next document to be issued by the ICC was actually a set of rules: the first rules covering electronic presentations under a documentary credit, known as the eUCP. Version 1.0 of the eUCP was implemented in January 2002 as a supplement to the UCP 500. A revised eUCP, version 1.1, was released in 2007 to coincide with the implementation of the UCP 600. The latest version, 2.0, was released on 1 July 2019 and is covered in more detail in Topic 23.

The final document to be issued prior to the implementation of UCP 600 was the first version of the International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP 645). Issued in 2003, it represented the first collation of practices that were deemed acceptable by the membership of the ICC Banking Commission. The implementation of this publication also helped to explain the concept of 'international standard banking practice', which had been introduced into the text of UCP 500, sub-article 13(a) (Standard for Examination of Documents).

### **2.3.8 UCP 600 (2007)**

UCP 600 represents the latest version of UCP. A number of changes were made to the text to align it with some of the principles established in ISP98 and to create a standardised format that could be used in other revisions of ICC rules. The changes included:

- new articles covering definitions and interpretations;
- the removal of reference to revocable credits;
- a new sub-article covering documents lost in transit;
- the setting of the maximum examination period as five banking days following the day of presentation;
- the stipulation that documents are to appear to fulfil their function where the credit is silent with regard to their data content; and
- additional possibilities for the handling of discrepant documents – that is, contacting the applicant for a waiver and acting according to instructions previously provided by the presenter.

The implementation of UCP 600, on 1 July 2007, also saw the release of an updated ISBP publication reflecting the changes made in UCP 600 (in the context of content and changes to UCP article references), under the cover of Publication No. 681. Since then, a complete

revision of ISBP has been undertaken, and on 1 July 2013 Publication No. 745 was released.

### Check your understanding

Was the first version of ISBP issued before or after the implementation of the UCP 600?

## 2.3.9 ICC guidance and interpretative papers issued post-UCP 600 implementation

### Guidance paper on the use of sanctions clauses in trade finance-related instruments subject to ICC rules

The [Guidance Paper on the use of Sanctions Clauses 2014](#) was originally issued in 2010 and updated in 2014. It highlights the use of clauses in relation to trade, economic or financial sanctions or embargos in trade finance instruments (documentary and standby letters of credit, demand guarantees and counter-guarantees) that are subject to the ICC Banking Commission rules.

The subject of sanction clauses and their scope has surfaced on a number of occasions over the years. As stated in the guidance paper, the use of sanction clauses often becomes a problematic issue as there can be uncertainty on how they should be applied and their use could potentially defeat the independent nature of bank undertakings. The purpose of the guidance paper was to highlight this issue and recommend best practices.

In May 2020, owing to a resurgence in the use of sanctions clauses in documentary credits, the ICC decided to address this issue again and released an [Addendum to the ICC Guidance Paper on the use of Sanction Clauses \(2014\)](#) (ICC, 2020).

The key messages highlighted in the guidance paper are that:

- sanction clauses should not be used routinely; and
- any clause should be drafted in clear terms, according to the sample clause, to limit the reference only to mandatory law applicable to a bank.

The following is offered as a sample clause:

“[notwithstanding anything to the contrary in the applicable ICC Rules or in this undertaking,] We disclaim liability for delay, non-return of documents, non-payment, or other action or inaction compelled by restrictive measures, counter-measures or sanctions laws or regulations mandatorily applicable to us or to [our correspondent banks in] the relevant transaction.”

### Guidance paper on the use of drafts (bills of exchange) under documentary credits

On 8 January 2019, the ICC released [Guidance Paper – The use of drafts \(bills of exchange\) under documentary credits](#) following questions raised about whether it was still appropriate for drafts to be required for presentation under any documentary credit.

It was concluded that, in most circumstances, a documentary credit subject to UCP 600 need not require a draft to be presented together with the stipulated documents, and that a sight draft does not benefit a nominated bank or issuing bank.

A number of recommendations were made (ICC, 2019):

- that the habit of requiring a draft for a documentary credit available at sight be curtailed, particularly sight drafts drawn on an issuing bank, confirming bank, or a bank nominated to pay, unless required for a specific commercial, regulatory or legal reason;
- that article 2 allows for negotiation to occur under a documentary credit available by negotiation with or without a presentation of a draft – it is recommended that the habit of requiring a sight draft for a documentary credit available by negotiation be reviewed and that negotiating banks be encouraged to rely, not on negotiable instruments' law, but on specific agreements with beneficiaries evidencing negotiation and their respective recourse and other rights and remedies;
- that banks issue usance documentary credits available by deferred payment as an alternative to availability by acceptance of a draft, unless there is a specific commercial, regulatory or legal reason to create a banker's acceptance;
- that all banks should review their UCP 600 documentary credit application forms, whether in paper format and/or online, to indicate that a draft is not a standard requirement of the issuing bank and to specify their requirements for another form of demand.

It was left to each bank to make their own decision as to whether there was a further need for a draft to be presented under any of their documentary credits.

### **ICC Banking Commission Executive Committee paper on the principal of strict compliance**

As noted in [ICC Banking Commission Executive Committee Issues Paper – Notes on the Principle of Strict Compliance](#), issued by the ICC on 24 May 2016, the issue of strict compliance has surfaced continually regarding the examination of documents presented under documentary credits.

Documentary credits are issued referring to a bank being authorised to reimburse or be reimbursed dependent on the documents strictly complying with the terms and conditions of the documentary credit. Nominated banks are asked to certify that documents have been presented in strict compliance with the terms and conditions of the documentary credit.

A significant number of ICC Opinions and Documentary Instruments Dispute Resolution Expertise (DOCDEX) decisions have dealt with this issue and this paper details the most relevant ICC rules and practices, supported by summaries of several DOCDEX decisions and ICC Opinions. The DOCDEX process and ICC Opinions are explored in Topic 24.

However, the issue is whether strict compliance exists in the context of the UCP 600 and the ISBP 745 publications.

The answer will not be found in the UCP 600 as strict compliance is not mentioned. However, sub-article 14(d) implies a standard less than strict compliance where it states “need not be identical to, but must not conflict with” (ICC, 2016).

The term ‘strict compliance’ is a legal principle derived from contract law that has been applied by the courts to documentary credits. The fact that UCP remains silent means that interpretation has been left to the courts. Banks have often taken the ‘substantial compliance’ position in determining the compliance of the presentation under a documentary credit and on an often case-by-case basis.

ISBP, particularly the latest version ISBP 745, has lessened the impact of strict compliance to



such an extent that it is arguable whether or not strict compliance exists anymore. A review of the General Principles section of ISBP 745 highlights numerous aspects of the document examination process that reduce the need for a literal application.

### **Guidance paper on Covid-19's impact on trade finance transactions subject to ICC rules**

[Guidance paper on the impact of COVID-19 on trade finance transactions issued subject to ICC rules](#) reflects how the ICC responds to an act which is outside the control of banks threatening the fulfilment of trade finance transactions subject to ICC rules.

The guidance paper, issued in April 2020, provides not only practical advice but also highlights best practices in handling trade finance transactions that are subject to ICC rules.

The scope of this guidance paper is strictly focused on the application of ICC rules, particularly the force majeure provisions.

### **Interpretive paper regarding article 35**

On 29 May 2020, the ICC Banking Commission issued [Interpretative Paper on the correct interpretation of the first paragraph of UCP 600 article 35](#), which provided further clarity regarding the Covid-19 guidance paper.

“For the avoidance of any doubt, the ICC Banking Commission confirms that, in its true interpretation, article 35 of UCP 600 should be read also to apply to the case where the nominated bank or the confirming bank is not able to transmit or to send letters or documents in paper form (collectively “Documents”) in accordance with the requirements stated in the documentary credit because:

- the courier or postal service provider nominated in the documentary credit does not accept, collect or deliver the Documents; or
- where no courier or postal service provider has been nominated in the documentary credit, no such service provider accepts, collects or delivers the Documents at the time the nominated bank or the confirming bank is to send the Documents to the confirming bank or issuing bank,

provided that, in both cases, the nominated bank or the confirming bank has first made reasonable efforts to (a) find a courier or postal service provider that would accept or collect and thereafter deliver the Documents and (b) obtain the consent of, or instructions from, the issuing bank approving delivery in that manner.

This Interpretative Paper applies generically to all situations involving the application of UCP 600, including to documentary credits that are outstanding at the time of its publication.”

(ICC, no date)

It does not amend article 35, but merely states its correct interpretation during the Covid-19 pandemic and any other circumstances in the future that may restrict the movement of documents and messages between banks and other concerned parties.

## Conclusion

The ICC acts as a body representing the interests of enterprises from all sectors worldwide. It lobbies governments and intergovernmental forums, such as the G20 and G7. Working very closely with the WTO, it helps develop strategies for future trade development on a number of fronts including sustainable products. It is also known for its active participation in environmental and climate change initiatives.

The ICC Banking Commission is the representative forum for all matters relating to trade finance. Its members form the basis of the drafting groups for the development of new rules and the revision of existing rules. The ICC Banking Commission also reviews and approves the requests for official opinions that are submitted by ICC national committees and banking associations. Its members form the basis of expert panels that review disputes under the DOCDEX rules, managed by the ICC Centre for Expertise.

Apart from the gap between UCP 82 (1933) and UCP 151 (1951), which was mainly due to the Second World War, the UCP had been revised on average every 9–12 years up to UCP 500 in 1993. It was 14 years later in 2007 when the UCP 600 was implemented and, at the time of writing (November 2020), there are no plans to start any revision of the UCP 600. Major structural changes occurred in UCP 500 and UCP 600, which enhanced the rules and incorporated the remaining issues that had been identified by practitioners.

Today, a revision of the UCP would only be made on the basis that the rules themselves no longer reflected current practices and requirements of the banking, transport and/or insurance industries.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- outline the activities for which the ICC is renowned?
- describe how UCP 600 has developed to reflect changes in the practices of the banking, transport and insurance industries?
- illustrate how, outside an actual revision of UCP 600, the ICC has provided guidance to the documentary credit community on an array of pertinent and appropriate issues?

## Test your knowledge

Use these questions to assess your learning for Topic 2.

1. Which of the following is **not** an activity performed by the ICC?
  - a. Rule setting.
  - b. Dispute resolution.
  - c. Signing of certificates of origin.**
  - d. Policy advocacy.

The ICC does not become involved in signing documents that are traditionally presented under documentary credits.

See section 2.1.

2. How many revisions of the UCP have there been since 1933?
  - a. Five.
  - b. Eight.
  - c. Six.**
  - d. Seven.

The first UCP was issued in 1933, and revisions were made in 1951, 1962, 1974, 1983, 1993 and 2007 (totalling six revisions).

See section 2.1.1.

3. Today, it is estimated that the UCP serves as the basis for what value of trade transactions per year?
  - a. USD20 billion.
  - b. USD2 trillion.**
  - c. USD200 billion.
  - d. USD20 trillion.

The ICC estimates that documentary credits issued subject to UCP 600 amount to approximately USD2 trillion per year.

See section 2.1.1.

4. What is the current publication number of the International Standard Banking Practice for the Examination of Documents (ISBP) under UCP 600?
  - a. 645.
  - b. 681.
  - c. 745.**
  - d. 781.

The most recent revision of the ISBP is provided in ICC 745.

See section 2.3.9.

5. The first eUCP set of rules, version 1.0, was implemented during the lifetime of which revision of the UCP?

- a. 290.
- b. 400.
- c. **500.**
- d. 600.

eUCP version 1.0 came into effect during the lifetime of UCP 500.

See section 2.3.7.

## References

ICC (no date) *Guidance Paper on the impact of COVID-19 on trade finance transactions issued subject to ICC rules* [online]. Available at: <https://iccwbo.org/publication/guidance-paper-on-the-impact-of-covid-19-on-trade-finance-transactions-issued-subject-to-icc-rules/> [Accessed: 23 November 2020].

ICC (no date) *Guidance Paper on the use of Sanctions Clauses 2014* [online]. Available at: <https://iccwbo.org/publication/guidance-paper-on-the-use-of-sanctions-clauses-2014/> [Accessed: 23 November 2020].

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ICC (2020) *Addendum to the ICC Guidance Paper on the use of Sanction Clauses (2014)* [pdf]. Available at: <https://iccwbo.org/content/uploads/sites/3/2020/05/20200504-addendum-to-sanction-clauses-paper.pdf> [Accessed: 23 November 2020].

## Answers

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### CHECK YOUR UNDERSTANDING

ISBP 645 was issued prior to the implementation of UCP 600. See section 2.3.7.

## Topic 3 Roles and responsibilities – defining terms and conditions

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### Learning objectives

By the end of this topic, you should be able to:

- describe the main responsibilities of an applicant and a beneficiary;
- identify the types of roles and responsibilities performed by banks in a documentary credit;
- understand the traditional terms used in a documentary credit or UCP 600.

### Introduction

In these learning materials, reference is made repeatedly to different terms that are associated with documentary credits and the types of roles that a bank may perform. Article 2 Definitions explains these key terms. This topic expands on these definitions and provides a short introduction to the roles and responsibilities of the entities that participate in a documentary credit.

#### Key terms in context

Article 2 helps users to understand the context in which certain words that appear in a documentary credit are to be considered when performing various roles and functions under that credit. They also provide a short, descriptive outline of the entities involved.

You are advised to review article 2 regularly to maintain your understanding of key words and terms that are used elsewhere in UCP 600 and in each documentary credit.

#### Think...

Before you start work on this topic, think about what you already know about the roles and responsibilities involved when issuing a documentary credit. For instance:

Do you know how a documentary credit is structured?

Can you name the main responsibilities of an issuing bank?

Why, and under what circumstances, would an advising bank also be a confirming bank?

What are the differences between a nominated bank and a reimbursing bank?

### 3.1 Roles and responsibilities of parties involved in a documentary credit

This section outlines the type of role that can be performed by a bank and its main responsibilities in that capacity. It also outlines the main responsibility of the beneficiary.

The most common structure of a documentary credit involves at least three parties:

- an issuing bank;
- an advising bank; and
- a beneficiary.

The advising bank could also be the confirming bank, if confirmation is authorised or requested in the documentary credit, and a nominated bank. Each of these roles are discussed in this topic.

It should also be noted that a documentary credit could consist of only two parties:

- an issuing bank; and
- a beneficiary.

This would most likely arise in a domestic documentary credit, eg where the issuing bank and beneficiary are located within the same country.

### 3.1.1 Issuing bank (or opening bank)

Article 2 defines an 'issuing bank' as the bank that issues a credit at the request of an applicant or on its own behalf.

An issuing bank issues its documentary credit in favour of a beneficiary. In so doing, it incorporates its irrevocable and independent undertaking to honour – that is, to pay, to accept a draft and pay at maturity, or to incur a deferred payment undertaking and pay at maturity – provided that:

- all documents, as stipulated in the documentary credit, are presented; and
- the beneficiary has complied with all of the terms and conditions of the documentary credit.

An irrevocable undertaking is enforceable against an issuing bank even if an applicant is unable or unwilling to reimburse it. The scope of the issuing bank undertaking is covered in article 7.

It should be noted from the UCP definition that, albeit in rare circumstances, an issuing bank could have two roles in a single transaction: one as the applicant of the documentary credit; and one as its issuing bank.

The role of the issuing bank, when reviewing the applicant's application for issuance of a documentary credit and the issuance of that documentary credit, is detailed in Topic 6 and Topic 7.

### 3.1.2 Beneficiary (or seller or exporter)

Article 2 defines a 'beneficiary' as the party in whose favour a credit is issued.

Following shipment or dispatch of the goods, or when the required service or performance has been provided, the beneficiary will issue, collate and present the stipulated documents to the issuing bank, a confirming bank (if any), or a nominated bank for honour or negotiation.

The various interactions of the beneficiary are handled in a number of the topics in these learning materials.

### 3.1.3 Advising bank

Article 2 defines an 'advising bank' as the bank that advises the credit at the request of the issuing bank.

For a cross-border transaction, an issuing bank will usually electronically transmit, or send, a documentary credit to a bank in the beneficiary's country with which it maintains a correspondent banking relationship, requesting that bank to advise it to the beneficiary.

The transmission of a documentary credit to an advising bank is normally completed by the use of a Society for Worldwide Interbank Financial Telecommunication (SWIFT) MT700 message, but it could also be accomplished by telex, fax, email or letter, depending upon the arrangements that are in

place between the two banks.

The requirements and role of an advising bank, when advising a credit, are detailed in Topic 9 and are covered in article 9.

#### 3.1.4 Confirming bank

Article 2 defines a 'confirming bank' as the bank that adds its confirmation to a credit upon the issuing bank's authorization or request.

A bank that adds its confirmation to a documentary credit, upon the authorisation or request of an issuing bank, provides a beneficiary with an additional irrevocable and independent undertaking that is separate from that of the issuing bank. The scope of the confirming bank undertaking is covered in article 8.

It is common for a confirming bank to also act in the role of advising bank and nominated bank, but this is not an absolute requirement of UCP 600.

The requirements of a bank, when adding confirmation to a credit, are detailed in Topic 10.

#### 3.1.5 Nominated bank

Article 2 defines a 'nominated bank' as the bank with which the credit is available or any bank in the case of a credit available with any bank.

An issuing bank, at the request of an applicant, or even as a matter of its own internal policy, may make a documentary credit available for payment, acceptance, deferred payment or negotiation with a named bank.

This named bank will usually be located in the country of the beneficiary. Alternatively, a documentary credit may indicate that it is available with any bank; however, this is also usually restricted, by reference in the documentary credit, to an expiry place (ie a city or country), in which event it will be available with any bank located in that place.

A bank that agrees to act on a nomination of an issuing bank to pay, accept, incur a deferred payment undertaking or negotiate will be known as a nominated bank.

It should be noted that a documentary credit could be made available with the issuing bank only. In this case, there is no nominated bank and the beneficiary will be required to ensure delivery of the stipulated documents to the issuing bank no later than the expiry date and the latest date of presentation.

A named nominated bank usually, but not necessarily, will also be an advising bank and could be a confirming bank.

The role of a nominated bank is detailed in Topic 16.

### 3.2 Applicant (or buyer or importer)

Article 2 defines an 'applicant' as the party on whose request the credit is issued.

It should be noted that although an applicant is responsible for completing an application form to issue, or to amend, a documentary credit, it is not a party to that documentary credit.



The use of the term 'party' in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit. It is used to reflect the concept that 'applicant' can mean an entity other than the bank's actual customer. In this regard, it should be noted that:

- the interaction between an applicant and its bank prior to the issuance of a documentary credit is outside the scope of UCP 600; and
- following the issuance of a documentary credit, an applicant may subsequently request an amendment to its terms and conditions, or provide a waiver of discrepancies that have been identified by the issuing bank. An issuing bank is under no obligation to accept or take note of such request or waiver.

These issues are covered in more detail in Topic 6 and Topic 18.

### 3.3 Other roles performed by banks

#### Reimbursing bank

Sub-article 13(a) reimbursements describes a 'reimbursing bank' as the bank named in a documentary credit upon which the nominated bank (the 'claiming bank') may claim in respect of any honour or negotiation that it has effected to the beneficiary.

Bank-to-bank reimbursements are covered in more detail in Topic 22.

#### Second advising bank

Article 9, sub-article 9(c) describes a 'second advising bank' as a bank utilized by the advising bank to advise the credit or any amendment to the beneficiary.

A second advising bank may also be named in the documentary credit. In this event, it is likely that the named bank will be the beneficiary's banker and that the beneficiary will have previously requested the applicant to route the documentary credit through its bank. However, the issuing bank may not be in a correspondent banking relationship with that bank, so it will advise it through its own branch or one of its correspondent banks for further routing through the named second advising bank.

#### Transferring bank

Sub-article 38(b) defines a 'transferring bank' as a nominated bank that transfers the credit or, in a credit available with any bank, a bank that is specifically authorized by the issuing bank to transfer and that transfers the credit. An issuing bank may be a transferring bank.

The issuance and handling of a transferable credit is covered in more detail in Topic 19.

### Check your understanding

Under what circumstances would a documentary credit be made available with the issuing bank only?

## 3.4 Terms used in documentary credits and/or UCP 600

### 3.4.1 Banking day

Article 2 defines 'banking day' as a day on which a bank is regularly open at the place at which an act subject to these rules is to be performed.

An important aspect of this definition lies in the use of the word 'regularly'. For example, if a bank is regularly open Monday to Friday, and also opens on a Saturday, but only to perform general banking services, Saturday is not considered a banking day for UCP purposes. If, however, the same bank was open on Saturday for a half or a full day to perform the handling of documentary credits, it would count as a banking day.

### 3.4.2 Complying presentation

Article 2 defines 'complying presentation' as a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.

It should be noted that the reference to 'international standard banking practice' does not refer exclusively to the ICC publication of the same name (ICC Publication No. 745, or ISBP 745). The phrase clearly encompasses the practices described in that publication, but it also extends to other practices as determined by the ICC in its official opinions and DOCDEX decisions, and to established procedures that may apply between two or more countries and which can be equally described as representing such practice.

### 3.4.3 Confirmation

Article 2 defines 'confirmation' as a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.

Confirmation is added at either the request or the authorisation of the issuing bank.

- A request is an instruction in the documentary credit for a bank, usually the advising bank, to add confirmation – by the use of words such as 'confirm' or 'add your confirmation'.
- An authorisation is an instruction in the documentary credit to add confirmation upon a specific request of the beneficiary – by the use of the words 'may add'.

### (Documentary) Credit

#### **Credit**

Article 2, in the context of an irrevocable undertaking, defines 'credit' as any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.

Sub-article 4(a), highlights the separateness of a documentary credit from a sales contract. The autonomy of the documentary credit is paramount, and is covered in Topic 6 and Topic 7.

## Honour

Article 2 defines 'honour' as:

- a. to pay at sight if the credit is available by sight payment.
- b. to incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.
- c. to accept a bill of exchange ('draft') drawn by the beneficiary and pay at maturity if the credit is available by acceptance.

It should be noted that the term honour encompasses three types of settlement: payment, deferred payment and acceptance.

## Negotiation

Article 2 defines 'negotiation' as the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank.

A documentary credit that is available by negotiation is the most common form of issuance today.

Both honour and negotiation are covered in more detail in Topic 17.

### 3.4.7 Presentation

Article 2 defines 'presentation' as either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered.

The definition contemplates two different uses of the term: the first part of the definition refers to the actual delivery of the documents to the bank; the second part refers to documents that have been delivered and are in the bank's possession.

## Presenter

Article 2 defines 'presenter' as a beneficiary, bank or other party that makes a presentation.

The definition of presenter is most relevant in the context of article 16 when a refusal notice needs to be sent to the presenter. The presenter may or may not be the beneficiary of the documentary credit.

### Check your understanding

What is the role of an advising bank?

## Conclusion

Definitions perform an important role in any set of rules and UCP 600 is no exception.

The intent is to avoid any ambiguity in the use of the stated terms and to provide a common

understanding for all parties to a documentary credit.

Ideally, banks should use the terms as stated in article 2 rather than any variants. For example, a number of banks will use the term 'negotiating bank' either within a documentary credit or any associated correspondence. This is despite the term 'negotiating bank' not appearing in UCP 600. The correct term would be nominated bank.

**Think again...**

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the roles that can be performed by a bank that is operating as the intermediary between the issuing bank and the beneficiary?
- list the banks that could be involved in the handling of a documentary credit other than the issuing bank, advising bank, confirming bank and nominated bank?
- describe the concept of 'international standard banking practice'?

## Test your knowledge

Use these questions to assess your learning for Topic 3.

1. It is possible for an issuing bank to also be an applicant. True or false?

- a. **True.**
- b. False.

Answer: True. It can be the case that the issuing bank will be the applicant under a standby letter of credit. See section 3.1.1.

2. A documentary credit is always advised by the use of the SWIFT MT700. True or false?

- a. True.
- b. **False.**

Answer: False. A documentary credit can be advised by any method that provides for its authentication – that is, including by letter, telex, fax or email. See section 3.1.3.

3. An applicant is a party to a documentary credit. True or false?

- a. True
- b. **False**

Answer: False. The applicant is not a party to the credit. Any instruction that it provides after the issuance of the credit, such as a request for an amendment or a waiver of discrepancies, is subject to the consent of the issuing bank. See section 3.2.

4. Which of the following is **true** of a second advising bank?

- a. A second advising bank is used by the advising bank to advise a credit to the beneficiary.
- b. A second advising bank is named in the credit to advise the credit to the beneficiary.
- c. **Either of the above.**

Answer: C. A second advising bank can be named in the documentary credit *or* be selected by the advising bank. See section 3.3.2.

5. Which of the following is not a form of 'honour'?

- a. Acceptance.
- b. Deferred payment.
- c. **Negotiation.**
- d. Payment.

Answer: C. The definition of honour is composed of payment, acceptance and deferred payment. See section 3.4.5.

## Answers

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### **CHECK YOUR UNDERSTANDING (section 3.3)**

A documentary credit would be made available with the issuing bank only where there is no nominated bank. The beneficiary would have to ensure delivery of the stipulated documents to the issuing bank no later than the expiry date and the latest date of presentation. See section 3.1.5.

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### **CHECK YOUR UNDERSTANDING (section 3.4.7)**

It advises the credit at the request of the issuing bank. See section 3.1.3.

## Topic 4 Documentary credits and other methods of settlement

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### Learning objectives

By the end of this topic, you should be able to:

- describe the meaning of a documentary credit; and
- identify how a documentary credit differs in process and substance to other methods of trade settlement.

### Introduction

This topic provides an overview of what a documentary credit is, with a basic flow chart to describe the steps from contract agreement until settlement for a documentary credit that is not confirmed by the advising bank.

In order to draw comparisons with other methods of trade settlement, flow charts are provided covering advance payment, open account, documentary collection (sight and usance) and the use of a bank guarantee to secure payment under an open account or documentary collection transaction.

#### Think...

Before you start work on this topic, consider what you already know about the various methods of settlement. For example:

Can you name the different types of settlement that can be agreed between a buyer and a seller to fulfil a trade transaction? What are these different types of settlement and how can they be distinguished from a documentary credit?

Can you explain the roles and responsibilities of banks in each settlement type? What are the various risks and risk mitigants of each settlement type?

### 4.1 What is a documentary credit?

In very simple terms, a documentary credit is an irrevocable undertaking issued by a bank whereby it undertakes to make payment to a named beneficiary, provided that the documents stipulated in the documentary credit are presented, and all of its terms and conditions are complied with.

The definition of 'credit' offered in article 2 is a short and definitive statement:

#### **Credit**

Credit means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.

If we review this definition, we can see that any method of settlement ('however named or described') that describes itself as being irrevocable, and which is payable upon the presentation of one or more stipulated documents, can be made subject to UCP 600. In this context, it would be possible for not only a standby letter of credit to be made subject to the rules (as specifically

provided in article 1), but also a bank guarantee. We will discuss standby letters of credit in Topic 21. Although it is a bank that will usually issue a documentary credit, any company or individual may also act in the capacity of issuer. It is often a decision for a beneficiary whether an issuer has the financial means to fulfil the terms of the undertaking given in its documentary credit. A beneficiary would be well advised to seek the advice of its bankers on the suitability of the issuer of a documentary credit, because there may be various risks that require consideration. For example, the availability of foreign exchange, political risks, etc. as well as the creditworthiness of the issuer, are potential concerns that may impact any payment due to that beneficiary.

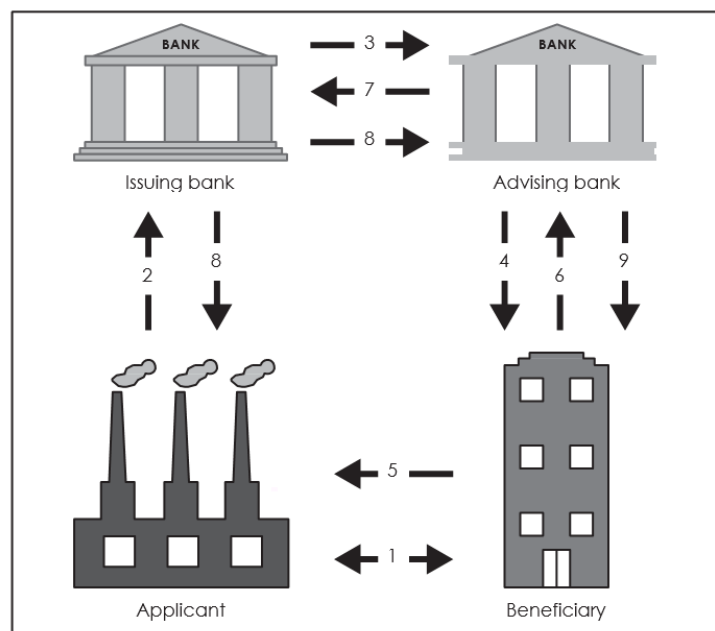
For the purpose of this topic, we will focus on documentary credits that are issued by banks.

## 4.2 The structure of a basic documentary credit transaction

A trade transaction will normally begin with the establishment of a purchase or sale contract, or proforma invoice, between a buyer and seller. The contract or proforma invoice will indicate the method of settlement, among other details such as the nature of the goods, the amount, and the names of the buyer and seller. In the example in Figure 4.1, the contract indicates a documentary credit as the chosen method of settlement.

The structure of a basic documentary credit transaction that does not bear the confirmation of the advising bank, and which covers the movement of goods, is highlighted and described in Figure 4.1. It should be noted that there are a number of variations to this structure, and we will explore these throughout the learning materials.

**Figure 4.1 Documentary credit without confirmation of advising bank**



### Notes to Figure 4.1

1. The contract is agreed between the buyer ('applicant') and seller ('beneficiary') indicating a documentary credit as the method of settlement.
2. Applicant applies to its bank to issue a documentary credit, usually by completing the bank's standard application form.
3. Subject to a credit facility being in place and the bank agreeing to the terms and conditions that have been stated in the application form, the bank issues the documentary credit and advises it through a bank in the country of the beneficiary, known as the 'advising bank'.



4. Advising bank issues its documentary credit advice and sends it to the beneficiary.
5. The beneficiary, if in agreement with the terms and conditions of the documentary credit, arranges shipment of the goods.
6. Having shipped the goods, the beneficiary issues, collates and presents the documents in the documentary credit to the advising bank, which is also the 'nominated bank'.
7. Because the advising bank has not added its confirmation to the credit, it may or may not examine the documents prior to sending them to the issuing bank. It is also under no obligation to honour or negotiate the beneficiary's documents. We will assume that the advising/nominated bank has not examined the documents.
8. Issuing bank determines that the documents comply and the applicant's account is debited for the value of the drawing. The documents are handed over to the applicant so that it may take control of the goods. Issuing bank reimburses the advising/nominated bank.
9. Advising/nominated bank, receives the proceeds from the issuing bank, and makes settlement to the beneficiary, as requested.

Under the documentary credit, the applicant was able to indicate the terms and conditions that were to be complied with by the beneficiary before honour or negotiation would occur. Conversely, the beneficiary knew that if it were to comply with those terms and conditions, it would receive settlement according to the payment terms in the documentary credit and under the undertaking provided by the issuing bank.

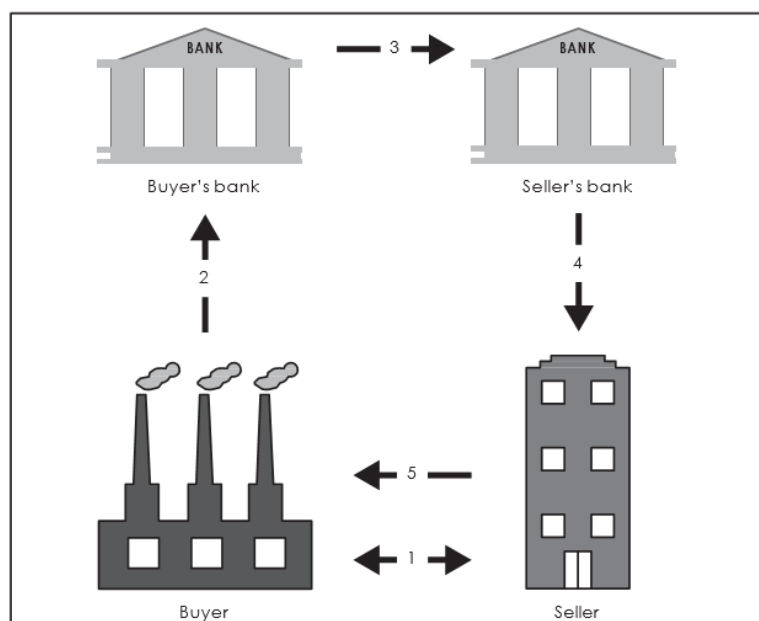
All of steps 1–9 will be covered in some detail in subsequent topics.

For comparative purposes with a documentary credit, sections 4.3–4.7 provide an overview of the other methods of settlement in international trade

### 4.3 Other methods of settlement – advance payment

Advance payment is the form of settlement that offers the least risk to the seller, but a high level of risk to the buyer. The process is described in Figure 4.2.

**Figure 4.2 Advance payment**





## Notes to Figure 4.2

1. The contract is agreed between the buyer and seller, indicating advance payment as the method of settlement.
2. Buyer instructs its bank to make payment to the seller's account with a specific bank.
3. Buyer's bank makes payment, as requested.
4. Seller's bank credits the amount to the account of the seller under advice.
5. Seller ships the goods.

In this example, the buyer made payment in accordance with the contract, but had no guarantee that the goods would be shipped once the payment had been made or that the goods would be of the required quality.

### 4.3.1 Reasons for use

Seller's perspective:

- **Unwillingness** to ship goods to the country in which the buyer is located prior to receipt of payment for reasons of 'country risk'.
- **Lack of finance** to buy or prepare the goods for shipment.

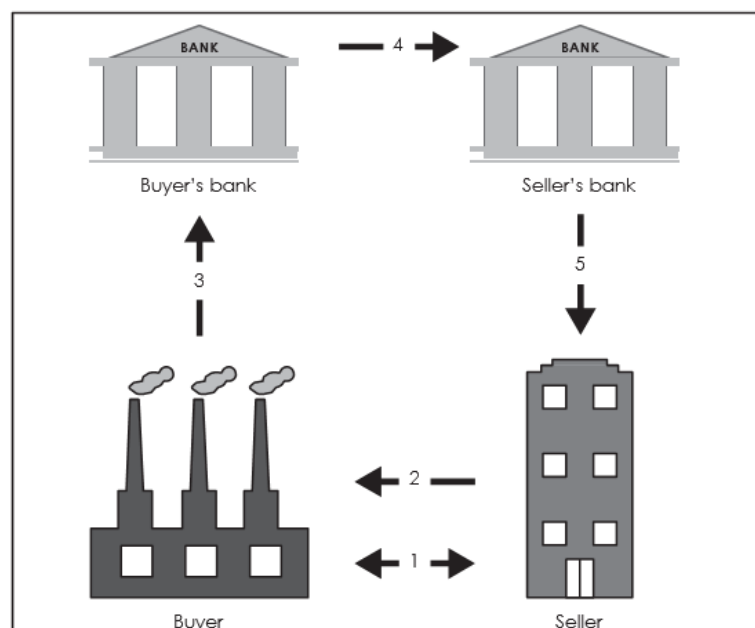
Buyer's perspective:

- **Long-term perspective** – the buyer may wish to encourage the seller to enter into a long-term trade relationship.
- **Low risk to the buyer** – the buyer may feel comfortable with its relationship with the seller, and with both the credit and country risks relating to that seller.

## 4.4 Other methods of settlement – open account

Open account is the form of settlement that offers the least risk to the buyer, but a high level of risk to the seller. The process is described in Figure 4.3, which covers a transaction payable on a sight basis.

Figure 4.3 Open account



### Notes to Figure 4.3

1. Contract is agreed between the buyer and seller, indicating settlement by open account terms.
2. Seller arranges shipment of the goods according to the agreed terms and forwards the underlying shipping documents to the buyer.
3. Buyer, if satisfied with the goods and/or the documents, instructs its bank to make settlement to the seller as requested.
4. Buyer's bank makes payment to the seller's bank.
5. Seller's bank credits the amount to the seller's account under advice.

In this example, the seller had no bank undertaking and was entirely reliant on the buyer to make payment, as agreed in the sale contract.

When business is conducted on open account terms, the seller dispatches goods to the buyer without any guarantee of payment. On dispatch, the seller sends the buyer an invoice (together with other appropriate shipping documents) for payment on an agreed date or at the end of an agreed period. For example, the agreed period might be for payment to be made at the end of the month following the month of shipment. The buyer will make arrangements to pay on the relevant date, according to the terms of the sale contract. The buyer may use any appropriate payment method, such as an international bank transfer or bank draft, absent any specific request of the seller.

Open account trading is most commonly used when the two companies concerned have a long-established trading relationship. For example, transactions between sellers and buyers located in countries in Western Europe and the United States are often conducted on this basis. Sellers may also use open account trading to secure contracts with parties in some developing countries to which documentary credit terms have been applied in the past.

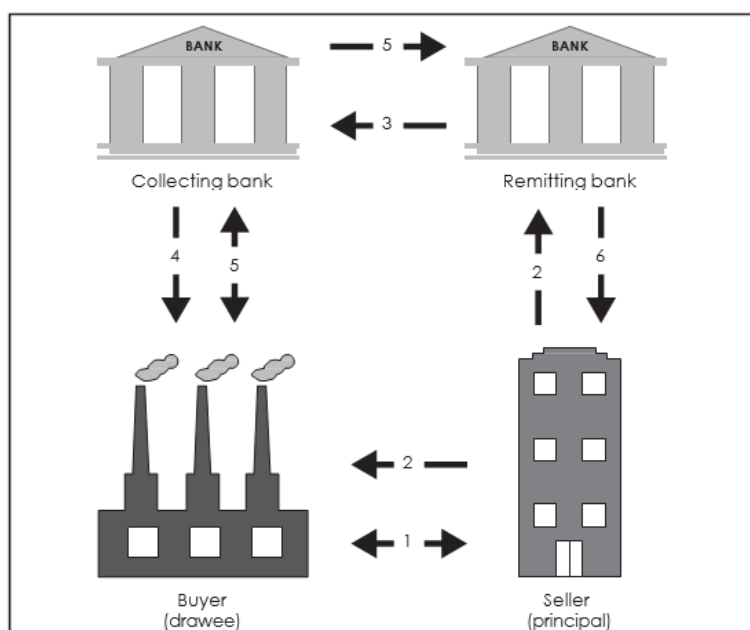
Open account trading offers several advantages – particularly that it is simple to administer and involves minimal banking fees or other costs. The system is particularly attractive to buyers because it affords them the opportunity to examine the goods before they have to make payment. Sellers using open account methods obtain no security for payment and have to rely entirely on the creditworthiness and good faith of the buyer. This may be contrasted with the situation under documentary credits and documentary collections, in which the seller obtains the security of a bank undertaking or a bank retaining control over the documents that relate to the shipment. The only involvement by banks in open account trading is in the transfer of funds on behalf of the buyer to the seller.

## 4.5 Other methods of settlement – documentary collection payable on a sight basis

Documentary collection payable on a sight basis is a form of settlement that can offer reduced risk for both the buyer and seller. The buyer need not pay the collection until it has viewed the documents at the offices of its bank, which will be known as the 'collecting bank'. The seller knows that its documents will be held within the banking system until such time as they are honoured. However, the seller, known as the 'principal', has no guarantee of payment.

The process is described in Figure 4.4, which covers a transaction payable on a sight basis.

**Figure 4.4 Documentary collection payable at sight**



**Notes to Figure 4.4**

1. Contract is agreed between the buyer and seller, indicating a documentary collection payable at sight as the settlement method.
2. Seller arranges shipment of the goods on the agreed terms and forwards the shipping documents to its bank, known as the 'remitting bank'.
3. Remitting bank sends the documents to the buyer's bank, known as the 'collecting bank'.
4. Collecting bank makes the documents available for review at its counters, so that the buyer can make a payment decision.
5. Buyer authorises payment, and the collecting bank pays the remitting bank and releases the documents to the buyer to collect the goods.
6. Remitting bank credits the amount to the seller's account under advice.

**Check your understanding**

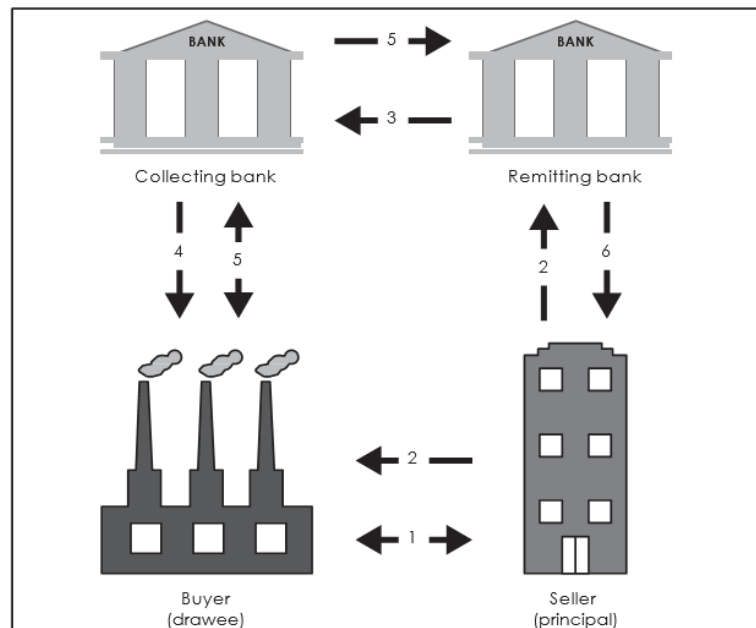
As a form of settlement, does advance payment guarantee the least risk to the buyer?

**4.6 Other methods of settlement – documentary collection payable on a usance basis**

Documentary collection payable on a usance basis is a form of settlement that can offer reduced risk for both the buyer and seller. The buyer need not accept the draft presented with the collection (or provide any deferred payment undertaking) until it has viewed the documents at the offices of its bank, which will be known as the 'collecting bank'. The seller knows that its documents will be held within the banking system until such time as the draft is accepted or a deferred payment undertaking is issued by the buyer. However, the seller has no undertaking that the draft will be honoured on the due date, even if accepted by the buyer ('drawee'), or that a deferred payment undertaking will be issued by the buyer and/or honoured by it on the due date.

The process is described in Figure 4.5, which covers a transaction payable on a usance basis.

**Figure 4.5 Documentary collection payable on a usance basis**



**Notes to Figure 4.5**

1. Contract is agreed between the buyer and seller, indicating a documentary collection payable on a usance basis as the settlement method.
2. Seller arranges shipment of the goods and forwards the underlying shipping documents to its bank, known as the 'remitting bank', including a draft drawn on the buyer on the agreed payment terms or a request for a deferred payment undertaking of the buyer.
3. Remitting bank sends the documents to the bank of the buyer, known as the 'collecting bank'.
4. Collecting bank makes the documents available for review at its counters for the buyer to make a decision about acceptance of the draft or issuance of a deferred payment undertaking.
5. Buyer accepts the draft or issues its deferred payment undertaking, and the collecting bank informs the remitting bank and releases the documents to the buyer.
6. Collecting bank can retain the accepted draft or the deferred payment undertaking. An advice of acceptance/deferred payment is sent to the remitting bank, or the draft or deferred payment undertaking can be returned to the seller via the remitting bank for presentation prior to the maturity date. The seller will receive the accepted draft or deferred payment undertaking for re-presentation near to the maturity date or an advice of acceptance.

The payment of the accepted draft or deferred payment undertaking will happen as a result of the buyer making payment on the due date or a new collection instruction being raised to forward the accepted draft or deferred payment undertaking that had previously been returned to the seller.

In summary, under a documentary collection, the seller ships the goods to the buyer in the importing country. At the same time, it hands over to its bank the shipping documents relating to the goods and their shipment. Examples of common documents are bills of lading, commercial invoices, insurance documents and certificates of origin. The bank forwards these to a correspondent bank in the buyer's country, which is often the buyer's bank, to handle the documents in accordance with the instructions of the seller, as instructed by the seller's bank in its collection instruction.

Under this procedure, banks manage the document-handling process, but they do not usually themselves give any payment undertaking. This solution offers the seller less security than a documentary credit, but as a consequence the costs are lower. It nonetheless gives the seller some measure of security for payment. The seller's interest is best served where the buyer is not able to obtain possession of the goods without the documents that are sent through the banking system. The full security of a documentary collection applies only if the transport document is a negotiable bill of lading and/or if the goods are consigned to the bank in the importing country, with the consent of that bank.

If the seller has agreed to supply the goods on short-term credit, it can stipulate that the documents be handed over against the buyer's acceptance of a bill of exchange or signature on a promissory note or issuance of a deferred payment undertaking. The seller may be able to discount the bill, note or deferred payment undertaking in return for an immediate payment. The international rules governing collections are the ICC Uniform Rules for Collections, ICC Publication No. 522.

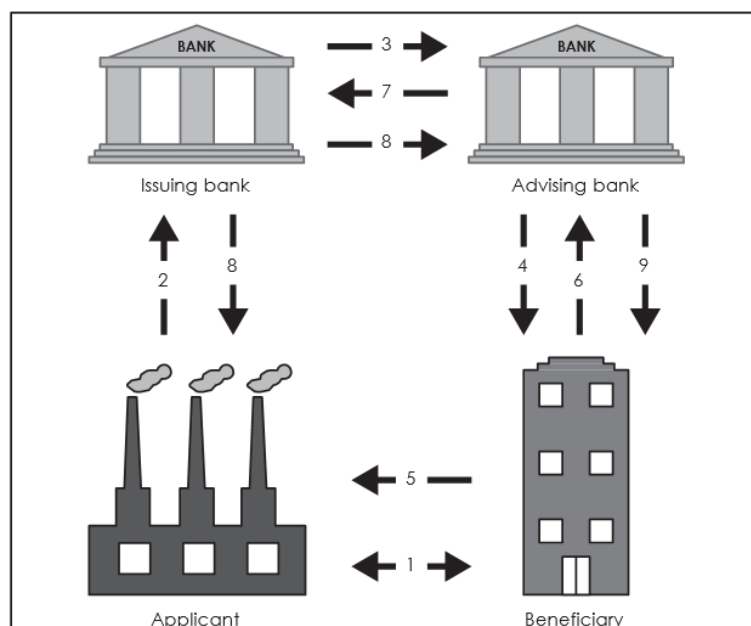
On 1 July 2019, ICC implemented an electronic supplement to the Uniform Rules for Collections, known as eURC version 1.0.

#### 4.7 Other methods of settlement – payment secured by a bank guarantee or standby letter of credit

It may be the case that a seller will look to secure a payment that is to be made on open account terms, or by documentary collection, by requesting that the buyer arrange for the issuance of a bank guarantee or standby letter of credit under which it may draw in the event that the underlying transaction is not honoured in the manner that has been agreed.

For the purpose of demonstrating this transaction, Figure 4.6 uses a bank guarantee as an example, but the process could equally apply to a standby letter of credit. Standby letters of credit are covered in Topic 21.

**Figure 4.6 Payment secured by a bank guarantee (or standby letter of credit)**



### Notes to Figure 4.6

1. Contract is agreed between the buyer and seller, indicating open account terms or a documentary collection as the settlement method, supported by a bank guarantee.
2. Buyer applies to its bank to issue a bank guarantee, usually by completing the bank's standard application form.
3. Subject to a credit facility being in place, and the bank agreeing to the terms and conditions that have been stated in the application form, the bank issues the guarantee and advises it through a bank in the country in which the beneficiary is located, known as the 'advising bank'.
4. Advising bank generates its advice of the guarantee and sends it to the beneficiary.
5. Beneficiary, if in agreement with the terms and conditions of the guarantee, arranges shipment of the goods. Having shipped the goods, the beneficiary issues, collates and presents its documents directly to the buyer (open account terms) or to the remitting bank (if documentary collection terms) for sending to the collecting bank.
6. If the open account transaction, or the documentary collection, is honoured, the guarantee is not used. However, if there is a payment default by the buyer, the seller issues a demand in accordance with the requirements of the guarantee and presents it to the advising bank.
7. Advising bank sends the demand to the issuing bank.
8. The issuing bank determines that the demand complies and arranges to debit the applicant's account for the value of the drawing. In return, the demand is handed over to the applicant. At the same time, the issuing bank reimburses the advising bank.
9. The advising bank, upon receipt of the proceeds from the issuing bank, effects settlement to the beneficiary in the manner requested.

Although the seller has obtained a bank undertaking to ensure that payment for its goods, services or performance will be met, the buyer has the risk of an unjustified claim being made under the guarantee or standby letter of credit.

#### Check your understanding

What kinds of factors would influence a seller to consider a documentary credit over any other settlement type?

### Conclusion

Documentary credits provide the seller (beneficiary) with an independent irrevocable undertaking that payment will be made provided the beneficiary complies with all the terms and conditions of the documentary credit.

However, a documentary credit is not without risk to a beneficiary. If the beneficiary is unable to comply with the terms and conditions of the credit, the undertaking of the issuing bank and that of any confirming bank is at risk if either decline to accept a waiver of any discrepancies that have been observed in the documents.

Documentary credits require careful attention by the beneficiary at the time the credit is issued. The beneficiary must:

- review the credit in order to ensure that its terms and conditions meet those previously agreed with the buyer (applicant) in the sale contract;
- check any amendment to the documentary credit at the time of receipt;
- ensure that its terms and conditions meet those requested from the applicant;
- ensure that there is time to ship the goods, collate all the documents, present them to the



bank and allow time for any corrections that may be necessary prior to the documentary credit expiring, or the latest date for presentation passing; and, finally,

- ensure at the time of presentation of the documents, that the data content of the presented documents meet the terms and conditions of the documentary credit.

**Think again...**

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the basic flow for each of the different settlement types discussed in this topic?
- identify the risks that exist in each of the settlement types for the buyer and seller?
- outline why a seller would choose a documentary credit over any other settlement type?

## Test your knowledge

Use these questions to assess your learning for Topic 4.

1. A bank guarantee can be issued subject to UCP 600. True or false?

- a. **True.**
- b. False.

Answer: True. Any undertaking that is subject to the presentation of one or more documents can be made subject to UCP 600. This will include a bank guarantee. See section 4.1.

2. The issuance of a bank guarantee offers an applicant little risk because it covers only the non-payment of an open account or documentary collection transaction. True or false?

- a. True.
- b. **False.**

Answer: False. There is the risk that the beneficiary may draw under the guarantee even if there has been no default under the open account arrangement or documentary collection. See section 4.7.

3. Under a sight documentary collection, for what reason is the buyer exposed to only minimal risk?

- a. Because it need only pay when it has received and reviewed the original shipping documents.
- b. **Because it need only pay when it has reviewed the original shipping documents at the counters of the collecting bank.**
- c. Because it need only pay when it has reviewed the original shipping documents at the counters of the remitting bank.

Answer: B. The buyer agrees to pay once it has seen the documents at the counters of the collecting bank. See section 4.5.

4. Under which method of settlement is there a guarantee that payment will be made for an accepted draft?

- a. **Documentary credit.**
- b. Documentary collection.
- c. Open account.

Answer: A. Only under a documentary credit is there a guarantee of payment on the due date. For an acceptance under open account trading or documentary collection, the buyer (as acceptor) may or may not effect settlement on the due date. See section 4.2.

5. In terms of the type, number and form of documents that will be received, the buyer has the same protection under an open account transaction as it does under a documentary credit. True or false?

- a. True.
- b. **False.**

Answer: False. In an open account transaction, there are no predefined documents that the seller

must present to the buyer. See section 4.4.

## Recap quiz – Topics 1-4

1. What is the most common form of documentary credit issuance?

SWIFT MT700 message – SWIFT volume figures provide the only reliable data on the use of documentary credits. See section 1.2.

2. Which region issued the highest percentage of MT700 messages in 2019?

- a. **Asia-Pacific.**
- b. Eurozone.
- c. Middle East.

Answer: A. The Asia-Pacific region issued 76% of the total volume. See section 1.2.

3. One of the main reasons for using a documentary credit when settling a trade transaction is where sales are made without the support of a bank undertaking. True or false?

Answer: False. The establishment of new trading chains is often cited as one of the main reasons for using a documentary credit for a trade transaction settlement. See section 1.1.

4. The ICC's mission is described as promoting open international trade and investment, and to help business to meet the challenges and opportunities of European regulation. True or false?

Answer: False. To promote open international trade and investment, and to help business to meet the challenges and opportunities of globalisation. See section 2.1.

5. When undertaking a cross-border transaction, what role does an issuing bank play?

- a. It will advise a documentary credit prior to it being sent to another bank in the beneficiary's country.
- b. **It will usually electronically transmit, or send, a documentary credit to a bank in the beneficiary's country.**
- c. It agrees to pay, accept, incur a deferred payment undertaking or negotiate on behalf of the beneficiary.

Answer: B. An issuing bank will usually electronically transmit, or send, a documentary credit to a bank in the beneficiary's country where it has a correspondent banking relationship, requesting that bank to advise it to the beneficiary. See section 3.1.3.

6. Complete the sentence by adding the missing words, which refer to the purchasing of drafts by a nominated bank.

A documentary credit that is available by \_\_\_\_\_ is the most common form \_\_\_\_\_ today.

Answer: A documentary credit that is available by **negotiation** is the most common form of **issuance** today. See section 3.4.6.

7. Presenter refers to an applicant, exporter or other party that makes a presentation. True or false?

Answer: False. Presenter means a beneficiary, bank or other party that makes a presentation. See section 3.4.8.

8. For what reason would a buyer adopt an advance payment method of settlement?
- To allow more time for the terms and conditions of a documentary credit to be checked.
  - To encourage a long-term trade relationship with the seller.**
  - To enable the seller to receive payment quicker.

Answer: B. The buyer may wish to encourage a long-term trade relationship with the seller and/or it may feel comfortable with its relationship with the seller, and with both the credit and country risks relating to that seller. See section 4.3.1.

## Answers

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### CHECK YOUR UNDERSTANDING (section 4.5)

No. Advance payment provides the least risk to the seller, but a high level of risk to the buyer. See section 4.4.

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### CHECK YOUR UNDERSTANDING (section 4.7)

Under the documentary credit, the beneficiary (seller) knows that if it were to comply with the terms and conditions indicated by the applicant, it would receive settlement according to the payment terms in the documentary credit and under the undertaking provided by the issuing bank. See section 4.2.

## Topic 5 The sale contract

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### Learning objectives

By the end of this topic, you should be able to:

- outline the parties to a sale contract;
- understand the relationship between the sale contract and the payment to be made there under;
- explain the use of Incoterms 2020 in domestic and international trade; and
- identify the need to apply the correct Incoterm to a transaction.

### Introduction

This topic outlines the importance of the sale contract. It emphasises the need for the buyer and seller to agree upon specific data elements that will enable the shipment of the goods, or provision of services or performance, and the creation and presentation of the appropriate documents. It will also provide for an agreement on how the seller will be paid for those goods, services or performance.

#### Think...

Before you start work on this topic, consider what you already know about the sale contract and how it relates to Incoterms 2020.

A sale contract essentially represents the commencement of a trade transaction, but what is its purpose and what should be included?

Who are the parties to a sale contract and whose law should be applied?

Why do you think identification of the correct Incoterm is crucial to the successful completion of a trade transaction?

Incoterms are used in cross-border sales as well as domestic transactions. Do you know which Incoterm would be more appropriate in a sea, air or road shipment?

### 5.1 Introduction: the sale contract

The most basic agreement in international trade is the sale contract concluded between a seller and a buyer. This is often referred to as a 'sale agreement', an 'export contract' or a 'foreign sale agreement'. For the purpose of these learning materials, we use the term 'sale contract'.

All other agreements and procedures commonly used in international trade result from the performance of this contract. For example, two essential components of a sale contract are the seller's agreement to provide the goods to a buyer and the buyer's agreement to pay the specified price in return. In the context of a cross-border transaction, the first of these usually involves the conclusion of a contract with a carrier to transport the goods from the country in which the seller is

located to that of the buyer. The buyer's agreement makes it necessary for it to arrange payment through the banking system.

The payment mechanisms commonly used in cross-border trade transactions were briefly examined in Topic 4. Other procedures related to a sale and payment can be subject to government requirements, such as customs procedures and exchange control regulations.

A documentary credit, as a chosen method of settlement, is an undertaking separate from the sale or other contract on which it may be based. This essential characteristic and its consequences will be covered in further detail throughout these learning materials, but in commercial (rather than legal) terms documentary credits are issued to facilitate performance of the buyer's payment obligation to a seller.

This topic explores the relationship between the seller and buyer. It identifies the key decisions that both parties need to make in a sale contract, and it concludes with the assumption that the parties choose a documentary credit as the method of settlement.

Many sale contracts are made between a seller and a buyer located in the same country. In these circumstances, the laws of that country will govern the contract's execution and any disputes that might arise.

For a cross-border transaction, the situation is different. There is no general system of international commercial law that covers such a contract. This means that the execution of a sale contract is likely to be governed by provisions that will differ from one country to another, reflecting the different commercial laws in each.

This situation provides significant scope for uncertainty in the event of a dispute between a seller and a buyer. Resolving such disputes can be time-consuming and costly, especially if they are to be resolved in court or via arbitration. In extreme cases, a sale contract can be deemed null and void, with a consequent loss for both parties.

This potential for confusion makes it vital that a seller and buyer reach agreement over the precise content of their sale contract.

Banks play no role in the negotiation of the sale contract, which is signed only by the seller and buyer.

### **5.1.2. The content of a sale contract**

The key element of any sale contract (see Figure 5.1) is the agreement of a buyer to pay a seller an agreed price for a specified quantity of goods. In many countries, this simple agreement is sufficient to constitute an import-export contract. In other words, the contract does not need to be a lengthy or formal document to be legally enforceable. A contract does not need to be formally notarised. An agreement can equally be reached in a telephone conversation, or via an email or fax message.

**Figure 5.1 Sample sale contract**

<b>CONTRACT FOR SALE OF GOODS</b>	
THIS AGREEMENT IS MADE ON THE (Date) BETWEEN	
"The Seller" (Name and address of the Business offering the service)	
AND	
"The Buyer" (Name and address of the client)	
CONCERNING	
"The Goods" (Description of Goods)	
IT IS HEREBY AGREED AS FOLLOWS	
1. The Sale and Contract Price	
1.1. The Seller agrees to sell the Goods to the Buyer	
1.2. The Buyer agrees to pay the sum of £	for the Goods ("the Purchase Price")
1.3. The Purchase Price is: (delete as applicable)	
• Inclusive of tax	
• Exclusive of tax	
• Not subject to tax	
1.4. The Purchase Price shall be paid: (delete as applicable)	
• In Full in advance	
• By	
(Specify details of payment terms and method e.g., sight or XX days after shipment, open account, documentary credit, documentary collection etc.)	
2. Delivery of Goods	
2.1. The Goods shall be delivered by the seller or collected by the buyer according to the following terms: (Specify details of collection/delivery terms and dates)	
3. Property Rights and Assumption of Risk	
.....	
4. The Condition of the Goods and Warranties	
.....	
5. Force Majeure	
.....	
6. Whole Agreement, Governing Law, Severability and Miscellaneous Provisions	
.....	
IN WITNESS OF WHICH the Buyer and the Seller have signed their names below:	
On behalf of the Buyer	On behalf of the Seller
(Sign)	(Sign)
(Print Name)	(Print Name)
(Position if signing on behalf of a company)	(position if signing on behalf of a company)
(date)	(date)

In practice, a sale contract will contain more detail than only the quantity of goods and the sale price. It will usually also cover related items such as the time period for delivery, the method of payment and the manner in which the goods are to be delivered, usually by reference to a trade term (or an ICC Incoterm – see section 5.3). A sale contract will often specify which country's law will apply and which court or arbitration system has jurisdiction to hear any claims in the event of a dispute.

Rather than use a sale contract, a seller will often send the buyer a proforma invoice (see Figure 5.2), containing the details of the goods and their unit price(s), before the transaction is concluded. Similarly, a buyer may send the seller a purchase order (see Figure 5.3) confirming its commitment to purchase certain goods at an agreed price and on specified terms.

Figure 5.2 Sample proforma invoice

<b><u>PROFORMA INVOICE</u></b>							
<b>BILL TO:</b>				<b>SOLD BY:</b>			
Company Name	_____			Company Name	_____		
Contact Person	_____			Contact Person	_____		
Address	_____			<del>Address</del>	_____		
City, State,	_____			City, State,	_____		
Country	_____			<del>Country</del>	_____		
Phone	_____			<del>Phone</del>	_____		
Fax	_____			<del>Fax</del>	_____		
Email	_____						
Business ID	_____						
<b>SHIP VIA:</b>		<b>REMARKS</b>		<b>SHIP BY:</b>			
_____		_____		_____			
PRODUCT CODE	DESCRIPTION OF ITEMS	QTY	PRICE USD	<del>CARTON</del> QTY	<del>CARTON</del> WEIGHT	UNIT	TOTAL WEIGHT
<b>CODE NUMBER:</b>				<b>PROFORMA INVOICE NUMBER AND DATE:</b>			
_____				_____			
<b>SHIPPING OR MISC INSTRUCTIONS:</b>				<b>PAYMENT TERMS:</b>			
_____				_____			
_____				_____			
_____				_____			
<b>ORDER ISSUED BY:</b>				<b>APPROVED:</b>			
_____				_____			



Figure 5.3 Sample purchase order

<p><b>THE LONDON INSTITUTE OF BANKING &amp; FINANCE</b></p> <p><i>[Company Slogan]</i></p> <p>[Street Address] [City, ST ZIP Code]</p> <p>[Phone Number]</p> <p>[Fax Number]</p>		<p><b>PURCHASE ORDER</b></p>		
<p><u>ID:</u></p> <p><b>[Purchaser Name]</b></p> <p>[Company Name]</p> <p>[Street Address]</p> <p>[City, ST ZIP Code]</p> <p>[Phone Number]</p>	<p><u>SHIP TO:</u></p> <p><b>[Recipient Name]</b></p> <p>[Company Name]</p> <p>[Street Address]</p> <p>[City, ST ZIP Code]</p> <p>[Phone Number]</p>	<p>P.O. NUMBER:</p> <p><b>[P.O. number]</b></p> <p><i>[The P.O. number must appear on all related correspondence, shipping papers, and invoices]</i></p>		
<u>P.O. DATE</u>	<u>REQUISITIONER</u>	<u>SHIPPED VIA</u>	<u>DELIVERY POINT</u>	<u>TERMS</u>
DD/MM/YY				
<u>QTY</u>	<u>UNIT</u>	<u>DESCRIPTION</u>	<u>UNIT PRICE</u>	<u>TOTAL</u>
<p>1 Please send two copies of your invoice.</p> <p>2 Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.</p> <p>Please notify us immediately if you are unable to ship as specified.</p> <p>3 Send all correspondence to:</p> <p>[Name] [Street Address] [City, ST ZIP Code] [Phone Number] [Fax Number]</p>			SUBTOTAL	
			<u>SALES TAX</u>	
			<u>SHIPPING AND HANDLING</u>	
			OTHER	
			<b>TOTAL</b>	
<p>Signature and Date</p>				

### Check your understanding

In commercial terms, documentary credits are issued to facilitate what?

#### 5.1.3 Contract terms and conditions

A sale contract is usually agreed between a seller and buyer acting in their normal course of business, rather than between private individuals. Moreover, many sellers and buyers have their own standard conditions of sale and purchase. These set out the terms on which they normally conduct business and will typically be included by reference in a sale contract.

Problems can arise, however, because there are likely to be some differences between the standard terms of the seller and those of the buyer. The two parties may well exchange these standard terms during pre-contract negotiations. If the differences are not resolved at this stage, problems can arise later if there is a dispute. This is because it can be difficult to establish which set of conditions, if either, will apply to the transaction.

In extreme cases, the dispute will be taken to a court or tribunal, where a judge or arbitrator might decide that no contract was ever concluded because the seller and buyer did not agree on the applicable conditions. In practice, however, a judge or arbitrator is likely to try to seek a resolution by determining one or other set of conditions applies, or even that both sets of conditions apply to the extent that they do not conflict.

#### 5.1.4 The law governing a sale contract

In most cases, a sale contract is governed, at least in part, by the laws of the country in which one of the parties involved is located. The seller and buyer may themselves agree which law is to apply by including a specific provision in the sale contract.

If there is no such agreement or provision, then in the event of a dispute a judge or arbitrator may first have to determine the governing law. In these circumstances, a judge or arbitrator will often decide to apply the law of the country most connected with the contract, which may be the country to which the goods are being delivered. The use of trade terms (Incoterms – see section 5.3) determines the point at which delivery is deemed to have occurred, for example a seller fulfils its delivery obligation when the goods are loaded on board a ship at the named port of loading under both CIF ('cost, insurance and freight') and FOB ('free on board') Incoterms.

There have been a number of attempts to introduce an international law for export sales. The latest is the United Nations Convention on Contracts for the International Sale of Goods (CISG), signed on 11 April 1980 in Vienna and which came into force as a multilateral treaty on 1 January 1988, after being ratified by 11 countries. The CISG provides a standardised set of legal rules for import–export transactions. As of 25 September 2020, 94 countries had ratified the Convention.

#### 5.1.5 A checklist for an effective sale contract

In addition to determining the quantity of goods and any unit price, a seller and buyer should agree the following points to minimise the risk of dispute and thereby establish the appropriate Incoterm.

- The terms of delivery of the goods.
- The point at which the risk in respect of the goods passes from seller to buyer.
- Who should clear the goods through customs and where?
- Who arranges for insurance for the carriage of the goods and up to what point or place?

- What precise risks to the goods need to be covered and specifically shown as covered on the insurance document?
- What commercial documents are needed and what should be shown on them?
- Whether any other documents (such as inspection certificates) are needed and who is to issue them?

### 5.1.6 The sale contract and the method of settlement

Having agreed that the method of settlement is to be a documentary credit, it is important that the sale contract be as specific as possible in describing the payment terms and the type of documentary credit that is required.

For example, a sale contract that merely indicates:

- settlement by irrevocable documentary credit;
- settlement by documentary credit;
- documentary credit payable at sight; or
- documentary credit payable 60 days after the date of shipment

and such like may not achieve the expectations of the seller. As we will explore in Topic 6 and Topic 7, there are a number of different forms of documentary credit, each of which can offer an element of benefit to a seller or buyer.

For a seller that is looking to sell its goods on a sight basis with the expectation of full payment, less normal bank charges, once a complying presentation is made to a nominated bank, it is not sufficient to state in the sale contract 'payment by documentary credit at sight'. The buyer, as applicant of the documentary credit, may arrange for the issuance of a documentary credit that is available by negotiation, on a sight basis (and therefore meet the condition of the sale contract for a sight documentary credit), but the outcome will be that if the seller (as beneficiary) requires immediate settlement, it will receive the proceeds for a complying presentation less interest for the period between the nominated bank effecting settlement and the issuing bank providing the nominated bank with reimbursement.

A seller requiring immediate settlement, without deduction for interest, should indicate 'documentary credit available with [name of its preferred bank] by payment'.

We will discuss these types of issues in Topic 6 and Topic 7.

## 5.2 The use of Incoterms in trade

One of the challenges in any sale contract is to ensure that both parties understand their responsibilities. These include the payment of carriage, insurance, loading and unloading costs, import and export taxes, and any other associated costs. Each of these will be the responsibility of either the seller or buyer. The buyer needs to understand these responsibilities to be able to calculate the full purchase price; the seller, to provide an accurate sale price. The chance of dispute is minimised when the parties share the same understanding of their respective responsibilities.

One of the best ways in which to minimise the chance of a dispute, in both domestic and international trade, is to use Incoterms. The ICC first published its Incoterms in 1936, and over time they have become the accepted international standard for trade terms referred to in a sale contract.

Incoterms 2020 came into effect on 1 January 2020. The full version is provided in ICC Publication

No. 723. Incoterms 2020 have been designed to reflect changes in commercial needs and practices that have occurred since the last revision in 2010. These include:

- providing the demonstrated market need in relation to bills of lading with an on-board notation and the 'free carrier' (FCA) Incoterms rule;
- aligning different levels of insurance coverage in 'cost insurance and freight' (CIF) and 'carriage and insurance paid to' (CIP);
- including arrangements for carriage with a buyer or seller's own means of transport under the 'free carrier' (FCA), 'delivery at place' (DAP), 'delivery at place unloaded' (DPU), and 'delivered duty paid' (DDP) Incoterms;
- changing the three-letter name for 'delivered at terminal' (DAT) to DPU ('delivered at place unloaded');
- security-related requirements within carriage obligations and costs.

### 5.2.1 The scope of Incoterms

Incoterms deal solely with the rights and responsibilities of parties involved in the delivery of goods sold under a sale contract. They do not extend to other contracts, such as insurance, carriage and payment, although the Incoterm that is used may have implications for such contracts.

For example, the Incoterm CFR ('cost and freight') implies that carriage will be effected on a port-to-port basis. This means that either a bill of lading, a charter party bill of lading or a non-negotiable sea waybill should be requested. Under a documentary credit, the type of transport document called for should comply with the stated Incoterm.

#### Check your understanding

The main element of a sale contract is a payment agreement between a shipper and carrier. True or false?

### 5.2.2 Incoterm categories

There are 11 Incoterms, which are for use in domestic and international transactions. Each one sets out the obligations of the seller and buyer under the sale contract and indicates the point at which responsibility is transferred from seller to buyer. A seller's obligations escalate from EXW ('ex works' – the minimum) to DDP ('delivered duty paid' – the maximum). Any obligation that does not appear in a particular Incoterm is the responsibility of the buyer unless the sale contract states otherwise.

The 11 Incoterms are divided into two groups: seven that are suitable for any mode or modes of transport; the remaining four applying to sea or inland waterway transport only. When incorporating an Incoterm into a sale contract, the seller and buyer should take care to ensure that the term selected is appropriate to the agreed point of delivery and the mode of transportation to be used.

The 11 Incoterms are grouped as follows:

#### Group 1: Rules for any mode or modes of transport

EXW ('ex works')

FCA ('free carrier')

CPT ('carriage paid to')

CIP ('carriage and insurance paid to')

DAP ('delivered at place')

DDP ('delivered duty paid')

DPU ('delivered at place unloaded')

**Group 2: Rules for sea or inland waterway transport only**

FAS ('free alongside ship')

FOB ('free on board')

CFR ('cost and freight')

CIF ('cost, insurance and freight')

**5.2.3 Applying the appropriate Incoterm, and the applicable transport and insurance document requirements**

Figures 5.4–5.14 indicate some of the main aspects of each Incoterm listed in section 5.3.2. The Incoterms are set out in a logical order under each grouping, starting with the term that imposes the least obligation on a seller and ending with that which imposes the most.

Sellers and buyers are advised to review the full content of ICC Publication No. 723 once an Incoterm has been identified, so that they understand its full implication and the obligations that it imposes.

Irrespective of the chosen Incoterm, the buyer pays for the goods according to the terms of settlement agreed in the sale contract, proforma invoice or purchase order.

### Group 1: Incoterms for use with any mode or modes of transport

These Incoterms may be used irrespective of the mode of transport selected and may be used where more than one mode of transport is used.

Figure 5.4 EXW Incoterm

<b>EX WORKS</b>		
<b>EXW [insert named place of delivery] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller places the goods at the disposal of the buyer at a named place (such as a factory or warehouse), which may or may not be the seller's premises.	
	The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export, where such clearance is applicable.	
<b>Contract of carriage and insurance</b>	The seller has no obligation to the buyer to make a contract of carriage. However, the seller must provide the buyer, at the buyer's request, risk and cost, with any information in the possession of the seller, including transport-related security requirements, that the buyer needs for arranging carriage.	It is up to the buyer to contract or arrange at its own cost for the carriage of the goods from the named place of delivery.
	The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and cost, with information in the possession of the seller that the buyer needs for obtaining insurance.	The buyer has no obligation to the seller to make a contract of insurance.

Figure 5.5 FCA Incoterm

<b>FREE CARRIER</b>		
<b>FCA [insert named place of delivery] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods to the buyer in one or other of two ways.	
	First, when the named place is the seller's premises, the goods are delivered when they are loaded on the means of transport arranged by the buyer.	
	Second, when the named place is not the seller's premises, the goods are delivered when, having been loaded on the seller's means of transport, they reach the named other place and are ready for unloading from that seller's means of transport and at the disposal of the carrier or of another person nominated by the buyer.	
	Whichever of the two is chosen as the place of delivery, that place identifies where risk transfers to the buyer and the time from which costs are for the buyer's account.	
<b>Contract of carriage and insurance</b>	The seller has no obligation to the buyer to make a contract of carriage. However, the seller must provide the buyer, at the buyer's request, risk and cost, with any information in the possession of the seller, including transport-related security requirements, that the buyer needs for arranging carriage. If agreed, the seller must contract for carriage on the usual terms at the buyer's risk and cost.	The buyer must contract or arrange at its own cost for the carriage of the goods from the named place of delivery, except when the contract of carriage is made by the seller.
	The seller must comply with any transport-related security requirements up to delivery.	
	The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and cost, with information in the possession of the seller that the buyer needs to obtain insurance.	The buyer has no obligation to the seller to make a contract of insurance.

Figure 5.6 CPT Incoterm

<b>CARRIAGE PAID TO</b>		
<b>CPT [insert named place of destination] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods – and transfers the risk – to the buyer by handing them over to the carrier contracted by the seller or by procuring the goods so delivered.	
	The seller may do so by giving the carrier physical possession of the goods in the manner and at the place appropriate to the means of transport used.	
	Once the goods have been delivered to the buyer in this way, the seller does not guarantee that the goods will reach the place of destination in sound condition, in the stated quantity or indeed at all.	
<b>Contract of carriage and insurance</b>	The seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, at the place of delivery to the named place of destination or, if agreed, any point at that place. The contract of carriage must be made on usual terms at the seller's cost and provide for carriage by the usual route in a customary manner of the type normally used for carriage of the type of goods sold. If a specific point is not agreed or is not determined by practice, the seller may select the point of delivery and the point at the named place of destination that best suit its purpose.	The buyer has no obligation to the seller to make a contract of carriage or of insurance.
	The seller must comply with any transport-related security requirements for transport to the destination.	
	The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and cost, with information in the possession of the seller that the buyer needs for obtaining insurance.	



Figure 5.7 CIP Incoterm

<b>CARRIAGE AND INSURANCE PAID TO</b>		
<b>CIP [insert named place of destination] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods – and transfers the risk – to the buyer by handing them over to the carrier contracted by the seller or by procuring the goods so delivered.	
	The seller may do so by giving the carrier physical possession of the goods in the manner and at the place appropriate to the means of transport used.	
	Once the goods have been delivered to the buyer in this way, the seller does not guarantee that the goods will reach the place of destination in sound condition, in the stated quantity or indeed at all.	
<b>Contract of carriage and insurance</b>	The seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, at the place of delivery to the named place of destination or, if agreed, any point at that place. The contract of carriage must be made on usual terms at the seller’s cost and provide for carriage by the usual route in a customary manner of the type normally used for carriage of the type of goods sold. If a specific point is not agreed or is not determined by practice, the seller may select the point of delivery and the point at the named place of destination that best suit its purpose.	The buyer has no obligation to the seller to make a contract of carriage.
	The seller must comply with any transport-related security requirements for transport to the destination.	
	Unless otherwise agreed or customary in the particular trade, the seller must obtain at its own cost cargo insurance complying with the cover provided by Clauses (A) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses as appropriate to the means of transport used. The insurance shall be contracted with underwriters or an insurance company of good repute and entitle the buyer, or any other person having an insurable interest in the goods, to claim directly from the insurer.	The buyer has no obligation to the seller to make a contract of insurance. However, the buyer must provide the seller, upon request, with any information necessary for the seller to procure any additional insurance requested by the buyer as mentioned opposite.

	When required by the buyer, the seller must, subject to the buyer providing any necessary information requested by the seller, provide at the buyer's cost any additional cover, if procurable, such as cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA) or any similar clauses (unless such cover is already included with the cargo insurance described in the preceding paragraph).	
	The insurance shall cover, at a minimum, the price provided in the contract plus 10% (ie 110%) and shall be in the currency of the contract.	
	The insurance shall cover the goods from the point of delivery to at least the named place of destination.	
	The seller must provide the buyer with the insurance policy or certificate or any other evidence of insurance cover.	
	Moreover, the seller must provide the buyer, at the buyer's request, risk and cost, with information that the buyer needs to procure any additional insurance.	

Figure 5.8 DAP Incoterm

<b>DELIVERED AT PLACE</b>		
<b>DAP [insert named place of destination] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods – and transfers risk – to the buyer; when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination; or at the agreed point within that place, if any such point is agreed.	
<b>Contract of carriage and insurance</b>	The seller must contract or arrange at its own cost for the carriage of the goods to the named place of destination or to the agreed point, if any, at the named place of destination. If a specific point is not agreed or is not determined by practice, the seller may select the point at the named place of destination that best suits its purpose.	The buyer has no obligation to the seller to make a contract of carriage or of insurance.
	The seller must comply with any transport-related security requirements for transport to the destination.	
	The seller has no obligation to the buyer to make a contract of insurance.	



Figure 5.9 DPU Incoterm

<b>DELIVERED AT PLACE UNLOADED</b>		
<b>DPU [insert named place of destination] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods – and transfers risk – to the buyer; when the goods, once unloaded from the arriving means of transport, are placed at the disposal of the buyer, at a named place of destination or at the agreed point within that place, if any such point is agreed.	
	The seller bears all risks involved in bringing the goods to and unloading them at the named place of destination. In this Incoterms rule, therefore, the delivery and arrival at destination are the same. DPU is the only Incoterms rule that requires the seller to unload goods at destination. The seller should therefore ensure that it is in a position to organise unloading at the named place. Should the parties intend the seller not to bear the risk and cost of unloading, the DPU rule should be avoided and DAP should be used instead.	
<b>Contract of carriage and insurance</b>	The seller must contract or arrange at its own cost for the carriage of the goods to the named place of destination or to the agreed point, if any, at the named place of destination. If a specific point is not agreed or is not determined by practice, the seller may select the point at the named place of destination that best suits its purpose.	The buyer has no obligation to the seller to make a contract of carriage.
	The seller must comply with any transport-related security requirements for transport to the destination.	
	The seller has no obligation to the buyer to make a contract of insurance.	The buyer has no obligation to the seller to make a contract of insurance. However, the buyer must provide the seller, at the seller's request, risk and cost, with information that the seller needs for obtaining insurance.

Figure 5.10 DDP Incoterm

<b>DELIVERED DUTY PAID</b>		
<b>DDP [insert named place of destination] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the <b>goods are placed</b> at the disposal of the buyer, cleared for import, on the arriving means of transport, ready for unloading, at the named place of destination or at the agreed point within that place, if any such point is agreed.	
	The seller bears all risks involved in bringing the goods to the named place of destination or to the agreed point within that place. In this Incoterms® rule, therefore, delivery and arrival at destination are the same.	
<b>Contract of carriage and insurance</b>	The seller must contract <b>or arrange</b> at its own cost for the carriage of the goods to the named place of destination or to the agreed point, if any, at the named place of destination. If a specific point is not agreed or is not determined by practice, the seller may select the point at the named place of destination that best suits its purpose.	The buyer has no obligation to the seller to make a contract of carriage.
	The seller must comply with any transport-related security requirements for transport to the destination.	
	The seller has no obligation to the buyer to make a contract of insurance.	The buyer has no obligation to the seller to make a contract of insurance. However, the buyer must provide the seller, at the seller's request, risk and cost, with information that the seller needs for obtaining insurance.

## Group 2: Incoterms for use with sea and inland waterway transport only

Figure 5.11 FAS Incoterm

<b>FREE ALONGSIDE SHIP</b>		
<b>FAS [insert named port of shipment] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods to the buyer by placing the goods alongside the ship (eg on a quay or a barge) nominated by the buyer at the named port of shipment or when the seller procures goods already so delivered.	
	The risk of loss of or damage to the goods transfers when the goods are alongside the ship, and the buyer bears all costs from that moment onwards.	
<b>Contract of carriage and insurance</b>	The seller has no obligation to the buyer to make a contract of carriage. However, the seller must provide the buyer, at the buyer's request, risk and cost, with any information in the possession of the seller, including transport-related security requirements, that the buyer needs for arranging carriage. If agreed, the seller must contract for carriage on the usual terms at the buyer's risk and cost.	The buyer must contract at its own cost for the carriage of the goods from the named port of shipment, except when the contract of carriage is made by the seller.
	The seller must comply with any transport-related security requirements up to delivery.	

	The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and cost with information in possession of the seller that the buyer needs for obtaining insurance.	The buyer has no obligation to the seller to make a contract of insurance.



Figure 5.12 FOB Incoterm

<b>FREE ON BOARD</b>		
<b>FOB [named port of shipment] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods to the buyer on board the vessel nominated by the buyer at the named port of shipment or procures the goods already so delivered.	
<b>Contract of carriage and insurance</b>	The seller has no obligation to the buyer to make a contract of carriage. However, the seller must provide the buyer, at the buyer's request, risk and cost, with any information in the possession of the seller, including transport-related security requirements, that the buyer needs for arranging carriage. If agreed, the seller must contract for carriage on the usual terms at the buyer's risk and cost.	The buyer must contract at its own cost for the carriage of the goods from the named port of shipment, except when the contract of carriage is made by the seller.
	The seller must comply with any transport-related security requirements up to delivery.	
	The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and cost, with information in the possession of the seller that the buyer needs for obtaining insurance.	The buyer has no obligation to the seller to make a contract of insurance.

Figure 5.13 CFR Incoterm

<b>COST AND FREIGHT</b>		
<b>CFR [insert named port of destination] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods to the buyer on board the vessel or procures the goods already so delivered.	
<b>Contract of carriage and insurance</b>	The seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, at the place of delivery to the named port of destination or, if agreed, any point at that port. The contract of carriage must be made on usual terms at the seller's cost and provide for carriage by the usual route in a vessel of the type normally used for the transport of the type of goods sold.	The buyer has no obligation to the seller to make a contract of carriage.
	The seller must comply with any transport-related security requirements for transport to the destination.	
	The seller has no obligation to the buyer to make a contract of insurance. However, the seller must provide the buyer, at the buyer's request, risk and cost, with information in the possession of the seller that the buyer needs for obtaining insurance.	The buyer has no obligation to the seller to make a contract of insurance.

Figure 5.14 CIF Incoterm

<b>COST, INSURANCE AND FREIGHT</b>		
<b>CIF [named port of destination] Incoterms 2020</b>		
	<b>Seller</b>	<b>Buyer</b>
<b>Delivery occurs...</b>	when the seller delivers the goods to the buyer on board the vessel or procures the goods already so delivered.	
<b>Contract of carriage and insurance</b>	The seller must contract or procure a contract for the carriage of the goods from the agreed point of delivery, if any, at the place of delivery to the named port of destination or, if agreed, any point at that port. The contract of carriage must be made on usual terms at the seller's cost and provide for carriage by the usual route in a vessel of the type normally used for the transport of the type of goods sold.	The buyer has no obligation to the seller to make a contract of carriage.
	The seller must comply with any transport-related security for transport to the destination.	
	Unless otherwise agreed or customary in the particular trade, the seller must obtain at its own cost cargo insurance complying with the cover provided by Clauses (C) of the Institute Cargo Clauses (LMA/IUA) or any similar clauses. The insurance shall be contracted with underwriters or an insurance company of good repute and entitle the buyer, or any other person having an insurable interest in the goods, to claim directly from the insurer.	The buyer has no obligation to the seller to make a contract of insurance. However, the buyer must provide the seller, upon request, with any information necessary for the seller to procure any additional insurance requested by the buyer as mentioned opposite.
	When required by the buyer, the seller must, subject to the buyer providing any necessary information requested by the seller, provide at the buyer's cost any additional cover, if procurable, such as cover complying with the Institute War Clauses and/or Institute Strikes Clauses (LMA/IUA) or any similar clauses (unless such cover is already included with the cargo insurance described in the preceding paragraph).	

	The insurance shall cover, at a minimum, the price provided in the contract plus 10% (ie 110%) and shall be in the currency of the contract.	
	The insurance shall cover the goods from the point of delivery to at least the named place of destination.	
	The seller must provide the buyer with the insurance policy or certificate or any other evidence of insurance cover.	
	Moreover, the seller must provide the buyer, at the buyer's request, risk and cost, with information that the buyer needs to procure any additional insurance.	

## 5.2.4 Understanding rights and responsibilities when using Incoterms

Figures 5.4–5.14 illustrate how the rights and responsibilities of the seller and buyer vary depending on the Incoterm used. Understanding the limits of each party's responsibilities is crucial when negotiating the precise terms of a sale contract, especially when payment is due under a documentary credit.

Sellers agree to payment under a documentary credit because a bank gives an undertaking that payment will be made, as long as the documents presented conform to its requirements. This undertaking is independent of the buyer's ability to pay. Following contract negotiations, the seller should scrutinise the terms of a documentary credit to make sure, among other aspects, that it conforms to the Incoterm quoted in the sale contract. For example, a documentary credit should not indicate the need for presentation of an air waybill if the Incoterm is designed for sea shipment. Similarly, if the seller is not responsible for insuring the goods, the documentary credit should not indicate a requirement for the seller to procure an insurance document.

Any conflict between the Incoterm, the documentary credit and the sale contract can result in delays in the issuance of, advising of, or payment under a documentary credit. Any delays will have a financial cost – including, as a minimum, the impact of the delay on cash flow. In extreme cases, if the terms of the documentary credit cannot be complied with because of such conflict, a bank will not be in a position to honour or negotiate.

## Conclusion

For buyers and sellers, Incoterms represent a key component of any sale contract. Quite often, they get it wrong – ie using FOB for an air dispatch when FCA is the appropriate Incoterm, or using CFR when CPT is the relevant Incoterm as the goods have been shipped in a container that will have been handed over to the carrier, or its agent, at a location other than the port of loading (see section 5.3.2).

Banks have minimal interest in Incoterms and are usually only concerned with ensuring that the chosen Incoterm matches the requirements for which party is responsible for the freight charges, as to be evidenced on a transport document, and who is responsible for arranging insurance coverage.

The sale contract is an act that is outside the documentary credit and the UCP 600. To this extent, sub-article 4(a) includes the following: "A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever is included in the credit."

It is the responsibility of the applicant to ensure that any pertinent conditions of the sale contract are incorporated into its documentary credit application form.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the purpose of a sale contract and its key components?
- identify the 11 Incoterms and which of them requires an insurance document to be presented by the beneficiary?
- outline the Incoterms that are applicable to sea shipment only?
- describe the position of the banks with regard to reviewing the sale contract?

## Test your knowledge

Use these questions to assess your learning for Topic 5.

1. An exporter sells goods overseas on FOB and CIF Incoterms, respectively. Who is responsible for the freight charges in each?

- a. **FOB – importer / CIF – exporter.**
- b. FOB – importer / CIF – importer.
- c. FOB – exporter / CIF – importer.
- d. FOB – exporter / CIF – exporter.

Answer: A. Under FOB terms, the importer is responsible for the freight charges, and under CIF, the exporter. See section 5.1.4.

2. Under FOB terms and UCP 600, a bill of lading would be required to state which of the following?

- a. Shipped on board and freight paid.
- b. Received for shipment and freight paid.
- c. **Shipped on board and freight payable at destination.**
- d. Received for shipment and freight payable at destination.

Answer: C. Article 20 requires the bill of lading to indicate that the goods have been shipped on board. Use of the FOB Incoterm means that freight is payable at destination. See section 5.2.2, Figure 5.12.

3. What is the meaning of Incoterm CIF?

- a. Carriage, insurance and freight.
- b. **Cost, insurance and freight.**
- c. Cost including freight.
- d. Charges, insurance and freight.

Answer: B. CIF stands for 'cost, insurance and freight'. See section 5.2.2, Figure 5.14.

4. Complete the sentence.

Incoterm EXW imposes the least obligation on \_\_\_\_\_.

- a. the buyer.
- b. **the seller.**

Answer: B. The seller delivers by making the goods available to the buyer at its own location, loaded or unloaded on the departing conveyance. See sections 5.2.3 and 5.2.4, Figure 5.4.

5. Which of the following is **true** of the use of trade terms such as Incoterms 2020?

- a. They determine the port or place at which title to the goods passes from seller to buyer.
- b. **They determine the port or place at which delivery of the goods is determined to have been made by the seller.**
- c. They determine the port or place at which the goods are to clear customs.
- d. They determine the port or place at which the buyer is expected to make payment.

Answer: B. They determine the port or place at which delivery of the goods is determined to have been made by the seller. See section 5.2.3.

## Answers

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### **CHECK YOUR UNDERSTANDING (section 5.1.2)**

To facilitate the performance of the buyer's payment obligation to a seller. See section 5.1.

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### **CHECK YOUR UNDERSTANDING (section 5.2.1)**

False. The key element of any sale contract is the agreement of a buyer to pay a seller an agreed price for a specified quantity of goods. In many countries, this simple agreement is sufficient to constitute an import-export contract. See section 5.1.2.

## Topic 6 Pre-issuance considerations and requirements

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### Learning objectives

By the end of this topic, you should be able to:

- describe the benefits and risks when a documentary credit is the method of settlement;
- understand the basic components of a credit facility when a documentary credit is issued;
- explain the know your customer and customer due diligence policies and procedures;
- identify the key fields of a documentary credit application form; and
- recognise the different delivery modes of a documentary credit application form to an issuing bank.

### Introduction

This topic provides details of the benefits and risks that are faced by an applicant and beneficiary when deciding upon a documentary credit as the means of settlement, the need for a credit facility to be in place with the bank that is to issue the documentary credit, and the completion and delivery to that bank of a documentary credit application form.

#### Think...

Before you start work on this topic, consider what you already know about the issuance of a documentary credit, and the risks and benefits to an applicant and a beneficiary.

There are no rules or guidelines detailing what is required to occur, or be in place, prior to the issuance of a documentary credit. This is left to each bank to manage. Are you aware of the policies and procedures that are to be followed on your bank or company?

Does your documentary credit application form allow the customer, as applicant, to indicate the type, issuer and data content for each required document?

Do you know the criteria that an applicant and beneficiary should consider agreeing in a sale contract, so that the completed documentary credit application form will truly reflect the agreement that exists between the two parties?



## 6.1 A documentary credit as the method of settlement

As you learned in Topic 5, one of the key decisions to be made when a seller and buyer negotiate a sale contract is the selection of the terms of payment. When a documentary credit is chosen, both the buyer (who will be known as the 'applicant') and seller (who will be known as the 'beneficiary') receive an independent undertaking in the exchange of goods, services or performance for settlement.

The comfort provided to both an applicant and a beneficiary by the independent undertaking of a bank is one of the main reasons why a documentary credit is often the preferred method of settlement in international trade.

### 6.1.1 Benefits

#### Applicants

As the applicant of a documentary credit, the buyer receives an undertaking from an issuing bank that no settlement will be made unless the beneficiary has:

- presented the documents as stipulated in the documentary credit; and
- complied with all of its terms and conditions.

An applicant's mandate to the issuing bank is on this basis. The mandate should incorporate an authorisation to debit the applicant's account or contain an undertaking from the applicant that it will remit the value of any presentation to the issuing bank concerning any settlement made by the issuing bank.

#### Beneficiaries

As the beneficiary of a documentary credit, the seller receives an irrevocable undertaking from the issuing bank of that documentary credit (and the separate undertaking from a confirming bank, in the case of a confirmed documentary credit – see Topic 10) that it will receive settlement provided that the:

- documents are presented as stipulated in the documentary credit; and
- all of the terms and conditions of the documentary credit are complied with.

An undertaking of an issuing bank, or confirming bank, is addressed directly to the beneficiary and is legally binding. When an issuing bank or confirming bank effects settlement to a beneficiary, it does so on a 'without recourse' basis, which means that settlement is final and there can be no claim upon the beneficiary for any refund or repayment.

### 6.1.2 The autonomy of the documentary credit

Documentary credits are used in international trade because settlement is made on the basis of the presentation of complying documents. An issuing bank, confirming bank, if any, or nominated bank acting on its nomination is required to effect settlement only if all of the terms and conditions of the documentary credit are met. There is no responsibility to assess whether or not the terms of the sale contract have been met. This is what we mean by the 'autonomy' of the documentary credit.

This autonomy has been upheld in the courts of many countries. Any party seeking to obtain an injunction preventing a bank from honouring its obligations under a documentary credit will usually find it very difficult to do so. This can even be true when there has been fraud and the granting of an injunction is appropriate. Issues relating to fraud and injunctions are covered in Topic 25.

The autonomy of a documentary credit is evidenced in the following articles and sub-articles:

- article 2 by the definition of credit, refers to an irrevocable and definite undertaking of the issuing bank to honour a complying presentation;
- sub-article 4 (a) by emphasising that a documentary credit is separate from any sale or other contract on which that documentary credit may be based, even if there is reference to that sale or other contract in the documentary credit;
- article 5 by clearly stating that banks deal with documents and not with goods, services or performance to which any documents may relate.
- sub-article 7 (a) , by reference to the undertaking that is applicable to every issuing bank of a documentary credit; and
- sub-article 8 (a), by reference to the undertaking that is applicable to a confirming bank, where the documentary credit authorised or requested that confirmation be added and such confirmation was added.

It is the responsibility of the applicant and the beneficiary to reflect the applicable terms and conditions of the sale contract that are to be complied with and/or evidenced within one or more stipulated documents by their incorporation into the completed documentary credit application form, or to ensure that they are added to the terms and conditions of an issued documentary credit by a subsequent amendment. We will cover amendments in Topic 8 and Topic 11.

### Check your understanding

An applicant's \_\_\_\_\_ to an \_\_\_\_\_ bank should incorporate an \_\_\_\_\_ to \_\_\_\_\_ the applicant's account.

### 6.1.3 The roles, responsibilities and risks involved in using documentary credits

It is important to recognise that although a documentary credit can provide comfort to both an applicant and beneficiary, the respective interests and risks they face in both the documentary credit and the underlying transaction remain different. Their interests differ in two key ways:

- **Cash flow** – a beneficiary usually wants to receive payment as soon as possible, while an applicant will normally want to delay payment until the latest possible time.
- **Documents** – an applicant will want to ensure that the documents received are as stipulated in the documentary credit. This is certainly the case if the applicant has sold the imported goods and settlement to them depends on correct documentation. A beneficiary will want to make sure that the stipulated documents can be presented as soon as possible after the shipment of the goods or completion of any services or performance to which the documentary credit relates. A beneficiary should be concerned about the possibility of settlement being delayed because of potential discrepancies in these documents.

These different interests are reflected in the different risks to which the two parties are exposed.

### Check your understanding

A buyer (applicant) of a documentary credit receives an undertaking from an issuing bank that no settlement will be made unless the beneficiary has done what? Select the correct answer.

- a. Presented the documents as stipulated in the documentary credit and complied with all of its terms and conditions.
- b. Instructed a nominated bank to effect settlement.
- c. Assessed whether or not the terms of the sale contract have been met.
- d. Arranged an examination of the documentary credit.

#### 6.1.4 The risks faced by an applicant

An applicant faces the following risks.

- **Non-delivery of goods as described in the presented documents** – goods may not be delivered because of fraud by the beneficiary. In such circumstances, the applicant may still remain liable to reimburse the issuing bank when a complying presentation is made.
- **Short-shipment, or shipment of inferior goods** – goods may be short-shipped (that is, a lesser quantity shipped than ordered or a lesser quantity as evidenced in the presented documents) or the goods may be of inferior quality, despite the presentation of documents that comply with the terms and conditions of the documentary credit. In this event, an applicant may suffer a loss on the eventual sale of the goods. The same risk also applies if the goods are received late and an applicant is unable to sell at the price originally anticipated. To minimise losses being sustained for these reasons, it is important that an applicant makes every attempt to establish the integrity and trading record of the proposed beneficiary before entering into a documentary credit transaction. In this respect, some comfort may be gained by obtaining a bank or credit agency status report on the beneficiary. It may also be appropriate to require an independent pre-shipment inspection of the goods, with the outcome evidenced on one of the documents to be called for in the documentary credit.
- **Goods received by the applicant prior to documents being received by the issuing bank** – if an applicant is required to take delivery of the goods by the use of a shipping guarantee, rather than by using the usual transport document, this will normally require it to authorise settlement under the documentary credit notwithstanding any discrepancy in the documents when they are received. We will discuss shipping guarantees in Topic 20.
- **Loss or damage to goods in transit** – if goods are lost or damaged in transit, the owner of the goods at the time of such occurrence will look to its insurers for financial compensation. Both parties should ensure that they fully understand which party is responsible for arranging insurance when agreeing the terms of the sale contract, for example via the use of an Incoterm, which should be reflected in the type and content of the documents called for under the documentary credit. The applicant should be satisfied that the level of cover to be arranged provides an appropriate level of protection.
- **Foreign exchange risk** – if the currency of the documentary credit is not the applicant's operating currency, there may be a difference in exchange rates between the time when the documentary credit is issued (or the time of the underlying agreement) and the time at which settlement is made. If the movement is unfavourable to the applicant, it may have to pay more than the anticipated price, reducing its profit margin or incurring a loss. An applicant can protect against this

risk by entering into a forward foreign exchange contract ('forward') or by buying an option. A forward has the effect of fixing the future exchange rate (which could be at a higher rate than the market rate at the time of settlement).

- **Failure of the issuing bank** – in the event of a failure of the issuing bank, an applicant may be required to settle with the beneficiary directly. This may result in the applicant effectively paying twice – that is, if it had already deposited funds with the issuing bank to meet its liability under the documentary credit, as part of the conditions of the credit facility.
- **Fraud in the presented documents** – an applicant also faces the risk that settlement will be obtained for non-existent or worthless merchandise against the presentation of one or more documents that are subsequently found to be fraudulently issued or signed.

### Check your understanding

1. What is meant by the autonomy of a documentary credit? Select the correct answer.
  - a. Only the applicant can make an amendment to the terms and conditions of an issued documentary credit.
  - b. A court injunction can prevent a bank from honouring its obligations under a documentary credit.
  - c. There is no responsibility to assess whether or not the terms of the sale contract have been met.
  - d. Banks deal with the goods, services or performance to which the documents relate.
2. A documentary credit provides reassurance to both the applicant and the beneficiary. The respective risks and interests to both parties are the same. True or false?

#### 6.1.5 The risks faced by a beneficiary

A beneficiary faces the following risks.

- **Failure to comply with the terms and conditions of the documentary credit** – a documentary credit is a substantial safeguard of settlement for a beneficiary. The main risk for a beneficiary is that the nominated bank or issuing bank will refuse settlement because the documents do not comply with the terms and conditions of the documentary credit. A beneficiary can minimise this risk by reading the documentary credit carefully as soon as it is received. The beneficiary should then immediately request an amendment if any of the terms and conditions appear to vary from those of the sale contract, or if the beneficiary would find it difficult to satisfy any of those terms and conditions.
- **Failure of, or delays in settlement from, the issuing bank** – in the case of an irrevocable, but unconfirmed, documentary credit, a beneficiary bears the risk of failure of the issuing bank, together with the country risk relating to the country in which that bank is located. This can pose a potential problem when the country concerned lacks adequate foreign exchange reserves. If an issuing bank becomes insolvent, its undertaking is placed in jeopardy and the beneficiary may need to rely on settlement for the goods being received directly from the applicant. In the case of country risk, settlement may be prevented or delayed by incidents

such as balance of payments difficulties affecting the country of the issuing bank or by government restrictions on the transfer of funds outside the country. A beneficiary can mitigate these risks by obtaining a confirmation of the documentary credit from a bank located in its own country. Confirmation of a documentary credit is covered in Topic 10.

- **Documentary credit issued by an entity other than a bank** – all of these risks to a beneficiary, as outlined above, may increase if the issuer of the documentary credit is not a bank. If a beneficiary has any doubts as to the status of the issuer of a documentary credit, or if it is clearly issued by a non-banking institution, the beneficiary should exercise caution before shipping the goods and placing reliance on the documentary credit as its guarantee of payment. The ICC Banking Commission issued Opinion R505 – [When a non-bank issues a letter of credit](#) – on this subject on 30 October 2002.
- **Fraud** – there is the risk that the documentary credit itself may be fraudulently issued. This might induce a beneficiary to ship goods or perform a service against an apparent bank undertaking to pay that does not in fact exist. In this event, the beneficiary will have no enforceable claim against the named bank because either that bank did not issue the documentary credit or the bank does not exist.
- **Foreign exchange risk** – if the currency of the documentary credit is not the beneficiary's operating currency, there may be a difference in exchange rates between the time when the documentary credit is issued (or the time of the underlying agreement) and the time at which settlement is made. If the movement is unfavourable to the beneficiary, it may receive less than the anticipated price, reducing its profit margin or incurring a loss. A beneficiary can protect against this risk by entering into a forward foreign exchange contract or by buying an option. A forward has the effect of fixing the future exchange rate (which could be at a lower rate than the market rate at the time of settlement).

### 6.1.6 General risks

There are also some general risks that affect all parties to a documentary credit. The simple solution for an applicant to avoid becoming involved in a fraudulent transaction or falling foul of legislative and regulatory requirements is simply to 'know your customer' – that is, the seller (beneficiary). The old maxim 'If goods are being offered for sale at a price that sounds too good to be true, then it probably is too good to be true' is a good yardstick that, if followed, may save a good deal of embarrassment and financial loss that could prove disastrous to a company.

Wide-ranging legislation is aimed at the prevention of money laundering, transferring the proceeds of drug trafficking and the funding of terrorist activity. Legislation varies in content and application from country to country, but as the global community seeks to control and eradicate such activities there is an increasing responsibility on banks to understand better who their customers are and the true nature of their customers' businesses. Banks that fail to undertake the required levels of due diligence run the risk of incurring severe penalties imposed by their local regulatory or legislative bodies (see section 6.2.3 and, for more detail, Topic 25).

Other general risks include the following.

- **Sovereign and regulatory risks** – these are the risks that performance of the documentary credit may be prevented by government action outside the control of the parties. This may occur, for instance, if a government imposes foreign payment restrictions or import / export prohibitions after a documentary credit has been issued, but before it has been fully performed. This risk may also be referred to as 'country risk'.
- **Legal risks** – while sovereign and regulatory risks may disrupt the documentary credit by

means of events outside the framework of the documentary credit operation itself, legal risks concern the possibility that performance of a documentary credit may be disturbed by legal action relating directly to the parties and to their rights and obligations under the documentary credit.

### **Check your understanding**

Name three possible risks that the beneficiary could face. Try to think about the potential scenarios from your studies before checking the answers.

## **6.2 The prerequisites for the issuance of a documentary credit**

When a documentary credit has been chosen as the means of settlement, establishing a documentary credit is not a straightforward task whereby the buyer (applicant) can simply go to its bank and request its issuance. As we have seen, a documentary credit constitutes a definite and independent undertaking of an issuing bank to honour a complying presentation made by, or on behalf of, the beneficiary (seller).

If an issuing bank is to be expected to make settlement to a beneficiary, on a 'without recourse' basis, it needs to be certain that the applicant will reimburse it.

### **6.2.1 The need for a credit facility**

A credit facility agreement or documentation serves to establish the terms and conditions under which the bank will agree to issue one or more undertakings on behalf of the applicant. For example, if the bank is willing to treat the purchased goods as adequate security for issuing a documentary credit, it will seek to control access to those goods by having the transport document indicate that the goods are consigned to, or to order of, the bank.

However, it may require the applicant to deposit with it a certain percentage of the value of each documentary credit issued, or even a deposit for the full amount, as a form of security. It may also seek other forms of security that have a monetary value and can be used in the event of default by the applicant. The terms and conditions will be agreed between the bank and the applicant, and such terms and conditions will vary between different bank clients.

In simple terms, a credit facility can be described as an arrangement with a bank that enables a person or company to be given credit or to borrow money when it is needed, for example for the establishment of documentary credits, bank guarantees or other products that require an undertaking to be given by a bank, to a seller or supplier, in respect of the purchase of goods, or the provision of services or performance.

Most credit facilities covering trade finance products will refer to the rules under which a bank is willing to issue a bank undertaking. For documentary credits, this will be UCP 600, a set of internationally accepted rules that were discussed in Topic 2 and which will be referred to throughout the learning materials. For a standby letter of credit, either UCP 600 or ISP98 will be the chosen rules. A bank may either leave the choice to the applicant or identify a preference within the facility documentation. We discuss standby letters of credit in Topic 21.

Sub-article 4 (a), makes it clear that the beneficiary cannot avail itself of the relationship that exists between an applicant and the issuing bank, or between all the banks involved in the documentary credit.

One effect of this sub-article is that a beneficiary cannot argue that it has knowledge of an existing credit facility that has been granted by the issuing bank to the applicant, and as a consequence the bank is bound to issue a documentary credit in its favour that would fall within the parameters of that facility. An issuing bank is at liberty to accept or reject any instructions from its customer, even if a credit facility is in place and there is sufficient availability for a new transaction. A similar rule can be seen in ISP98 rule 1.07 Independence of the Issuer-Beneficiary Relationship for standby letters of credit.

## **6.2.2 The main components of a credit facility agreement or document**

As mentioned in section 6.2.1, a credit facility serves to inform a bank's client of the terms and conditions under which it will be willing to issue one or more bank undertakings – this will include the maximum amount that may be outstanding at any one time, the maximum period for which an undertaking may be issued (in terms of expiry date and/or usance period for any settlement to be made) and the expectations of the bank as to how it will be reimbursed by the applicant for any settlement that is made under any undertaking it issues.

Other components or sections of a credit facility agreement or document include:

- representations and warranties – that is, requirements that the client should inform the bank of any change in status of the company or matters that could impact the fulfilment of its obligations under the facility document;
- the responsibilities of the bank – that is, to act with reasonable care according to instructions that it will receive, except to the extent that the bank may advise that it is unable or unwilling to issue a transaction in the manner requested;
- limitations on liability – such as that the bank will issue a transaction only subject to rules such as UCP for documentary credits or standby letters of credit, or ISP for standby letters of credit, and that it will also abide by any laws, customs or regulations to which it is subject;
- reference to the basis under which the credit facility is being granted – that is, with the goods as partial or full security, or partial or full collateral being deposited with the bank;
- general indemnification and disclaimer clauses that will protect not only the issuing bank, but also any bank that the issuing bank chooses to act as an advising bank and/or confirming bank;
- a discrepancy waiver – that is, a clause to the effect that the bank is under no obligation to accept any waiver of discrepancies, in the presented documents, that may be offered by the applicant either in response to a request of the bank or as a result of information provided by the beneficiary directly to the applicant;
- the period of validity – that is, the time for which the credit facility will operate prior to renewal being required;
- fees and expenses – that is, the charges that will be levied by the bank and an agreement that the customer will pay them, which will include not only the usual transaction fees, but also legal fees and local regulatory fees that may be incurred; and
- the applicable law to which the credit facility will be subject.

The general indemnification and disclaimer clauses will usually follow the format of UCP 600 articles and sub-articles, and be suitably adapted where a standby letter of credit is a form of undertaking that is to be requested. The relevant articles and sub-articles are:

- Sub-article 4(a) that it is the responsibility of the applicant to ensure that its documentary credit application form reflects the terms and conditions of the sale or other contract, as agreed with the beneficiary, and that it will not be able to rely on any conditions in that sale or other contract that are not reflected in the documentary credit that will be issued – also, that any honour effected under the documentary credit will be the decision of the issuing bank and



- without any claims or defences put forward by the applicant;
- article 5 a recognition that “banks deal with documents and not the goods, services or performance to which the presented documents may relate”;
- article 34 as a consequence of article 5, that banks are required to examine a presentation on the basis of the documents alone, to determine whether or not the documents appear, on their face, to constitute a complying presentation (as referred to in sub-article 14(a)), that banks have no liability or responsibility for matters such as the form, sufficiency, accuracy and genuineness of any presented document;
- article 35 that banks have “no responsibility for any delays or loss [of documents] in transit or the mutilation or errors in the transmission of [...] messages”, where they are sent according to the requirements of the documentary credit;
- article 36 the impact on a documentary credit if an event of force majeure is declared by a court or tribunal with jurisdiction, a government or a regulatory authority;
- article 37 general indemnification for the choice of another bank, failure of instructions to be carried out by that bank, collection of unpaid fees and charges, and obligations and responsibilities imposed by foreign laws and usages.

### Check your understanding

Fill in the blanks in the following sentence.

----- that fail to undertake the required levels of ---- ----- risk incurring severe ----- imposed by their local regulatory or legislative bodies.

### 6.2.3 Completion of know your customer (KYC) and customer due diligence (CDD) formalities

Today, the principles of know your customer (KYC) and customer due diligence (CDD) are firmly established in the day-to-day activities of banks when opening new accounts and / or credit facilities (KYC) and engaging in the ongoing monitoring of a customer’s business profile (CDD).

A bank’s KYC procedures should include a process whereby it is able to obtain sufficient evidence of a prospective client’s identity. This is achieved by means of identification – that is, obtaining information from the client as to the ownership and corporate structure, up to the ultimate beneficial owner – and verification – that is, the checking of this data against an independent source or by other means. In addition, banks will seek information such as the background and geography of the company, the range of its business activities, the source of the goods, the frequency of its transactions, the product and service needs – that is, whether documentary credits are to be issued or received – and the source and nature of funds that the company will receive and / or the wealth of the owners.

A bank’s CDD measures require the ongoing review of a client’s business profile. Completion of the KYC process is not a single one-time event. Each bank should have processes in place that will identify any change in the business activities of a company, for example a company originally imported household electrical equipment and has now started importing pipe and engineering materials. Any changes in a company profile should be reported to the relationship manager for the client so that follow-up action may be taken as necessary. For example, this could mean a new review of the client’s business activities so that the bank is satisfied as to the purpose for which the new line of goods will be used.



The required due diligence should, as a minimum, be undertaken in relation to the customer who is the instructing party for a transaction. Any further, or enhanced, due diligence will be subject to the internal policy of each bank. For the issuance of a documentary credit, the instructing party will be the applicant, and for the advising or confirmation of a documentary credit, it will be the issuing bank.

In addition to KYC and CDD formalities, a bank should also assess transactions from a potential money laundering, terrorist financing and sanctions perspective. We will consider these issues in Topic 25.

### **Check your understanding**

Complete the following sentence.

A ----- agreement or ----- serves to establish the ----- and ----- under which the bank will agree to issue one or more undertakings on behalf of the -----.

## **6.3 Applying for the issuance of a documentary credit**

It is a buyer's responsibility to request the issuance of a documentary credit. The time when it should be opened should be detailed in the sale contract. If no date is indicated, a documentary credit should be issued so as to be in the hands of the beneficiary prior to the earliest date of any specified shipment date.

Beneficiaries often use documentary credits opened in their favour as the basis for obtaining bank finance. This finance may be necessary to enable them to procure raw materials or to ship the goods. As a result, a beneficiary is under no obligation to do anything until the documentary credit is issued.

You should not be concerned with the legal remedies that an applicant and beneficiary may have against each other, but simply with the fact that an applicant has a responsibility to arrange for the documentary credit to be issued in good time to enable shipment to be made.

### **The type, nature, terms and conditions of a documentary credit**

An applicant and beneficiary should jointly agree the type, nature, and terms and conditions of a documentary credit. Most problems with the execution of documentary credits occur because the parties have not completely agreed these points. In many cases, it may have been assumed that they have reached agreement, but it will subsequently be found that their interpretations of that agreement are different.

This is recognised in Preliminary Considerations, paragraphs iii and iv.

#### **6.3.1 General conditions when completing a documentary credit application form**

Having agreed the establishment of a credit facility with a bank or that there is sufficient availability within a previously agreed credit facility, the main responsibility of an applicant is to complete the bank's documentary credit application form.

The main purpose of a documentary credit is to pay for an applicant's purchase, not to police or administer the underlying sale contract or proforma invoice. Therefore, when completing the application form, an applicant should:

- provide its bank with clear and precise instructions, avoiding any form of ambiguity in describing the terms and conditions that are to be complied with by the beneficiary;
- maintain an awareness of the documents that are necessary for the import of the concerned goods, or those that are to evidence delivery of the services or performance that is to be provided by the beneficiary;
- provide details of the type, issuer (if applicable) and data content of the documents that are to be presented, which should include within one or more of those documents any reference to specifications or quality requirements that are to be met and evidenced;
- (where there is a requirement that the goods are to be subject to a form of inspection) clearly indicate the type of document and, where appropriate, the name or type of company that should issue it (for example the presentation of an inspection certificate issued by an inspection or quality assurance company, with or without stating the name of that company), along with the standard or quality that is to apply to the goods; and
- ensure that all terms and conditions, and the documents called for, are in accordance with the sale contract or proforma invoice agreed with the beneficiary.

It is often the case that, apart from describing the goods and indicating the value of those goods, the only other information provided in a sale contract or proforma invoice will be the desire of the beneficiary to receive a documentary credit that is payable on a sight basis or at a future date. This leaves the buyer to complete the application form in a manner that it will deem appropriate and it often leads to subsequent amendments being required as a result of the inability of the beneficiary to comply with one or more conditions.

As part of the sale contract negotiation, an applicant and beneficiary should agree, at least, upon the answers to the following questions relating to the issuance of a documentary credit.

- Is settlement due on a sight or usance basis? Is it to be available by sight payment, deferred payment, acceptance or negotiation?
- What is the currency and amount? Is there any tolerance that is to be applied?
- What is the validity (or expiry) date?
- What is the last date for shipment, and what is to be the period for presentation of documents?
- What is the routing of the goods to be?
- Are partial shipments or drawings to be allowed or prohibited, and is transshipment to be allowed or prohibited?
- How are the goods, services or performance to be described? If there is a quantity of goods, is it subject to a tolerance? Is there a unit price or prices that are applicable?
- What is the appropriate transport document (for goods) and which Incoterm is applicable?
- What are the other required documents?
- Are there any special terms and conditions? If so, what are the documents to be presented to evidence compliance with such terms and conditions?
- Who will pay the respective bank charges under the credit?
- Is it to be confirmed or not?

Each bank will maintain its own style of application form, whether in paper form or available online, but the individual fields will usually follow the structure of a SWIFT MT700 message to make the review and issuance process easier to manage.

The standard terms and conditions applied by a bank in its application form or format, including indemnification clauses, usually seek to evidence the applicant's acknowledgement at least that:

- the documentary credit will be issued subject to UCP 600;
- any necessary insurance will be arranged by the buyer, depending on the Incoterm (for example FOB);
- any necessary government regulations have been/will be complied with;
- the applicant will reimburse the issuing bank for any payments made under the credit;
- the applicant recognises that the bank has no liability or responsibility for the form, sufficiency, accuracy, genuineness, or falsification of documents, as detailed in article 34; and
- the applicant agrees to pay all charges and costs designated for its account and those not paid by the beneficiary.

### **Check your understanding**

A beneficiary has to arrange for a documentary credit to be issued in good time to enable shipment. True or false?

### **6.3.2 Delivery of the completed documentary credit application form to the issuing bank**

The application form, when completed and either approved online or signed by the applicant, acts as a request to its bank (which will become known as the 'issuing bank') to issue an irrevocable documentary credit in favour of the named beneficiary. The application will be submitted to the bank in either electronic or hard copy.

The application form itself and/or other documents signed by the applicant, as part of the credit facility documentation, will provide not only details of the documentary credit that is being requested to be issued, but also an agreement for the bank to debit the applicant's account for any payment made (or an undertaking that the applicant will remit funds as requested by the bank). The general indemnification clauses will also mirror some of the clauses that appear in the credit facility agreement.

At this point, it should be remembered that an applicant is not a party to the documentary credit. Once the documentary credit has been issued, any attempt to change its terms and conditions will be subject to at least the agreement of the issuing bank and the beneficiary. It is therefore imperative that an applicant ensures that the terms and conditions of the documentary credit that is to be issued are complete and precise, and accurately reflect its understanding of the sale contract agreed with the proposed beneficiary.

## Conclusion

A documentary credit cannot be issued without a completed documentary credit application form; the importance of which cannot be understated. It is therefore incumbent on each bank that offers a documentary credit issuance service that its application form allows its customer (the applicant) to provide complete details for the required documents, and applicable associated terms and conditions.

Banks will often maintain their own standard terms and conditions that are either embedded into the application form or added when the documentary credit is issued. These terms and conditions will be part of the bank's policies and procedures and will include requirements like the presentation of a draft (bill of exchange), that documents must be issued in a certain language, a sanctions clause (see Topic 25), and clauses relating to fees such as discrepancy fees.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- outline the risks for an applicant and a beneficiary?
- describe the criteria that forms the basis of a credit facility that is granted to a bank customer?
- explain the roles of the applicant and the beneficiary when completing a documentary credit application form?

## Test your knowledge

Use these questions to assess your learning for Topic 6.

1. Of what is 'an ongoing review of a client's business profile' a definition?

- a. Know your customer (KYC) principles.
- b. Customer due diligence (CDD) principles.**
- c. Anti-money laundering (AML) principles.
- d. Anti-terrorist financing (ATF) principles.

Answer: B. CDD is recognised as the process for the ongoing review of a customer's business profile. See section 6.2.3.

2. Which of the following are potential risks faced by an applicant?

- i. Loss or damage to goods in transit.
  - ii. Foreign exchange risk.
  - iii. Failure of the issuing bank.
  - iv. Fraud in the presented documents.
- 
- a. i, ii and iii.
  - b. ii, iii and iv.
  - c. i, ii, iii and iv.**
  - d. i, iii and iv.

Answer: C. All of them are risks that an applicant can face. See section 6.1.4.

3. Which of the following is **not** a component usually seen in a credit facility agreement or document?

- a. Security requirements for the establishment of the facility.
- b. Representations and warranties.
- c. Types of document that can be called for.**
- d. Fees and expense.

Answer: C. A credit facility agreement or document will not specify the documents that are expected to be called for other than indicating whether the bank may wish to be shown as the consignee or order party, in order to control the goods on arrival. See section 6.2.1.

4. When an applicant requests the presentation of a document such as an inspection or analysis certificate, what type of conditions should be expressed in the application form?

- a. Name or type of issuer.
- b. The data content.
- c. The standard or quality to which the goods are to be inspected or analysed.
- d. All of the above.**

Answer: D. All three conditions should be covered in an application form, not only for an inspection or analysis type of document, but any document. See section 6.3.1.

5. Which of the following is a way of describing what is meant by the 'autonomy' of the documentary credit?

- a. **A documentary credit is separate from the sale contract on which it is based.**
- b. A documentary credit is supplemented by the sale contract on which it is based.
- c. A documentary credit is supported by the sale contract on which it is based.
- d. A documentary credit is superseded by the sale contract on which it is based.

Answer: A. This is essentially the wording that appears in sub-article 4 (a). See section 6.1.2

## Answers

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### CHECK YOUR UNDERSTANDING (section 6.1.2)

An applicant's **mandate** to an **issuing** bank should incorporate an **authority/authorisation to debit** the applicant's account. See section 6.1.1.

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### CHECK YOUR UNDERSTANDING (section 6.1.3)

Answer: Presented the documents as stipulated in the documentary credit and complied with all of its terms and conditions. See section 6.1.1.

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### CHECK YOUR UNDERSTANDING (section 6.1.4)

There is no responsibility to assess whether or not the terms of the sale contract have been met. See section 6.1.2.

False. Usually, an applicant will want to make sure that the documents received are as stipulated in the documentary credit. A beneficiary should ensure that the stipulated documents can be presented as soon as possible after the shipment of the goods or completion of any services or performance to which the documentary credit relates.

From a cash flow perspective, a beneficiary usually wants to receive payment as soon as possible, while an applicant will normally want to delay payment until the latest time possible. See section 6.1.3.

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### CHECK YOUR UNDERSTANDING (section 6.1.6)

- Failure to comply with the terms and conditions of the documentary credit.
- Failure of, or delays in settlement from, the issuing bank.
- Documentary credit issued by an entity other than a bank.
- Fraud.
- Foreign exchange risk.

See section 6.1.5.

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### CHECK YOUR UNDERSTANDING (section 6.2.2)

**Banks** that fail to undertake the required levels of **due diligence** risk incurring severe **penalties** imposed by their local regulatory or legislative bodies. See section 6.1.6.

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### CHECK YOUR UNDERSTANDING (section 6.2.3)

A **credit facility** agreement or **documentation** serves to establish the **terms** and **conditions** under which the bank will agree to issue one or more undertakings on behalf of the **applicant**. See section 6.2.1.

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### CHECK YOUR UNDERSTANDING (section 6.3.1)

**False.** An applicant is responsible for arranging a documentary credit. See section 6.3.

### Reference

ICC (2002) *Articles 1 and 2 of UCP 500 When a non-bank issues a letter of credit* [pdf]. Available at: <https://library.iccwbo.org/tfb/ps/When-a-non-bank-issues-a-letter-of-credit.pdf> [Accessed: 30 November 2020].







## Topic 7 Issuing a documentary credit

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### Learning objectives

By the end of this topic, you should be able to:

- understand the process of determining whether a documentary credit application form has been completed in an acceptable manner for a bank;
- determine that a transaction falls within the availability and terms of a credit facility granted to a customer;
- understand the risks associated with the issuance of a documentary credit;
- explain the choice between an advising bank or a confirming bank to deliver a documentary credit to a named beneficiary; and
- understand the need to ensure that the form of availability and location of the place of expiry is commensurate to the settlement and reimbursement instructions that will be provided to a nominated bank, if any.

### Introduction

In the context of this topic, the words 'customer' and 'applicant' are interchangeable and reflect the status pre-issuance (customer) and post-issuance (applicant).

This topic describes the process performed by a bank from the time of its receipt of an application form, as completed by its customer, until a documentary credit is sent to an advising or confirming bank, or the beneficiary directly, using SWIFT, telex or paper as the mode of transmission.

#### Think...

Before you start work on this topic, consider what you already know about the various ways of issuing a documentary credit. For example:

Globally, banks issue documentary credits every day of the week, but do you know the type of risks that banks must consider when deciding whether or not to issue a documentary credit?

Are you aware of the differences between the four types of availability – payment, deferred payment, acceptance and negotiation – and how they affect the issuing bank?

## 7.1 Pre-issuance considerations

Before looking at the content of a documentary credit application form, bank staff should be aware of and understand various aspects of documentary credit practice. This includes the risks that an issuing bank faces when issuing a documentary credit; the extent of the undertaking contained in a documentary credit (as detailed in article 7); and the need for the separation of the underlying sale contract and the proforma invoice, for example, from the terms and conditions of a documentary credit.

## 7.2 The risks applicable to an issuing bank

The risks faced by a bank that is willing to issue a documentary credit can be broadly summarised as follows.

- **Applicant risk** – the applicant may be unable to reimburse the bank for any settlement or reimbursement that it is required to make in respect of a presentation that complies with the terms and conditions of the documentary credit, or in respect of a presentation under which the applicant had previously issued a waiver of discrepancies and that waiver was acceptable to the bank.
- **Financial crime** – the documentary credit may be used to facilitate criminal activity (that is, money laundering, fraud against the bank and / or other entities, terrorist financing, etc).
- **Errors in conveying the requirements of the customer** – if the advice of the documentary credit or amendment that the beneficiary receives differs from the content of the application form that the customer completed, the issuing bank is bound to the beneficiary in terms of the documentary credit as issued. This is irrespective of any inability of the issuing bank to obtain reimbursement from the applicant, who may refuse to reimburse the bank because of the failure to fully incorporate its instructions.
- **Any errors in rekeying will be the responsibility of the issuing bank** – article 35 only allows for ‘errors’ resulting from a SWIFT or telex advice of a documentary credit being mutilated between the sending and receiving of the message. They do not include any errors made by an issuing bank in rekeying the data that its customer has provided.
- **Errors in document examination or a failure to follow the requirements of article 16 when refusing documents** – an issuing bank may make an error in determining the status of the documents, by considering the documents to be compliant when there is a clear and undeniable discrepancy. In these circumstances, an issuing bank may find that the applicant will withdraw or cancel its authorisation for the bank to obtain reimbursement from its account(s).

Similarly, if an issuing bank determines that the documents are discrepant, but it issues a refusal notice that is not in conformity with the requirements of article 16, it may find itself precluded from claiming that the documents are discrepant. As a result, it will be required to honour what will be discrepant documents, and once again will find itself in the hands of the applicant as to whether it may be reimbursed for the settlement made to the nominated bank or beneficiary.

The topic of refusal notices and preclusion is discussed further in Topic 18.

### 7.2.1 The application of article 7

Article 7 outlines the scope of the undertaking of an issuing bank.

An issuing bank is irrevocably bound to honour a complying presentation that is made to it, or to a nominated bank, as of the time it issues a documentary credit. It is consequently imperative that the documentary credit is vetted thoroughly before it is issued, because any attempt by the issuing bank to correct an anomaly or error in its content, by means of a subsequent communication, can be considered to be an amendment, which will be subject to the consent of the beneficiary and a confirming bank, if any.

However, if an error or omission were of such a nature that, without the subsequent communication, the documentary credit would not be in a workable form for the beneficiary, or any nominated or confirming bank, it would not be an amendment, but would form an integral part of the documentary credit issued in favour of the beneficiary.

Sub-article 6(a) provides that a credit that is available with a nominated bank is also available with the issuing bank. Note that an issuing bank is not a nominated bank.

To supplement the content of sub-article 6(a), sub-article 6(d)(ii) adds that the place for presentation other than that of the issuing bank (ie at the counters of the nominated bank) is in addition to the place of the issuing bank.

Sub-articles 7(a)(i)–(v) indicate that an issuing bank will honour (pay, accept a draft or incur a deferred payment undertaking) when a documentary credit is available with the issuing bank. It also indicates that it will honour when a documentary credit is available with a nominated bank and that bank does not act on its nomination at the time of presentation to it of complying documents, or it does not pay on the maturity date – a draft that it has accepted, or a deferred payment undertaking that it has incurred, or it fails to advance funds on that date when it had agreed to negotiate.

Primarily, an issuing bank provides an undertaking to a beneficiary to honour a complying presentation. UCP 600 also reflects the obligation of an issuing bank when a nominated bank has acted on its nomination and honoured or negotiated, and is expecting to be reimbursed according to the terms and conditions of the documentary credit. This undertaking to reimburse and the independent undertaking that is given to a beneficiary is reflected in sub-article 7(c).

### 7.2.2 The autonomy of a documentary credit

As discussed in Topic 6, the autonomy of a documentary credit is of paramount importance for any issuing bank.

Issuing banks, as well as any other participating banks, have no concern with any conditions or agreements made between a buyer and seller in a sale contract, proforma invoice, etc, if such conditions or agreements are not adequately reflected within the documentary credit application form and the documentary credit itself, or unless they are incorporated into the documentary credit as a result of an amendment to it – that is, should the beneficiary (seller) find upon receipt of the

documentary credit that its terms and conditions are not as previously agreed.

The autonomy of a documentary credit is evidenced in the following sub-article and article:

- sub-article 4(a), by emphasising that a documentary credit is separate from any sale or other contract on which that documentary credit may be based, even if there is reference to that sale or other contract in the documentary credit;
- article 5, by clearly stating that banks deal with documents and not with goods, services or performance to which any documents may relate.

Banks are not concerned with the content of any underlying sale contract, proforma invoice, etc, do not require sight of a copy of that document other than for internal bank policy or regulatory requirements, and do not expect an applicant to raise issues concerning the acceptability of documents if specific conditions of the sale contract, proforma invoice, etc, have not been adequately reflected within the documentary credit application form.

### Check your understanding

Fill in the missing words in the following sentence.

An ----- bank is irrevocably bound to ----- a ----- presentation that is made to it, or to a ----- bank, as of the time it issues a documentary credit.

## 7.3 Receipt of the completed documentary credit application form

ISBP 745 places a responsibility on a customer (applicant) to provide clear instructions to issue or amend a documentary credit and to understand the impact of certain provisions of UCP 600. Details are provided in the preliminary considerations, paragraphs (iii)–(vii).

Bank staff will be regularly called upon to discuss details of the application with a customer. Often, the information shown on the documentary credit application is not consistent with the documentation requested or is lacking in content or detail. The review of an application form should be completed so as to draw the attention of a customer to any such issues.

As we saw in Topic 6, application forms for the issuance of a documentary credit are generally delivered to the bank by mail (paper), telex, email or fax, or through a bank's own front-end electronic system with the customer. Irrespective of the method of receipt, a bank must satisfy itself with regard to the authenticity of the application. The procedures for examining and approving an application form vary from bank to bank, but it is reasonable to assume that these will include the bank's own internal operational procedures.

When using front-end systems, banks often take a proactive role in establishing some basic wording for certain documents and conditions. This can include standard conditions for an invoice, insurance and transport documents. However, the data to be completed should be no different whether the application form is in hard copy or electronic form.

When a customer has a preferred form of words for a documentary credit, either for one or more

different suppliers or type of transaction, the bank or customer can usually create templates that avoid the need for a whole application form to be completed each time. The customer will then select the appropriate template for the beneficiary or type of transaction, complete the remaining fields and submit it to the bank.

Some of the detailed checking procedures undertaken by a bank may be eliminated if the correct data, clauses and wording are stored with the customer. When a bank's electronic system receives the application for issuance, and, subject to the bank's verification procedures, it can prepare the documentary credit in a form that is ready for approval, authentication and dispatch by SWIFT, telex, mail or courier.

There are two important aspects to be borne in mind:

- the security connected with the use of the electronic system at the customer's premises is a major consideration, subject to individual arrangements and documentation between each bank and its customer; and
- there is a danger that an unintended addition or deletion at either the customer's or the bank's end may go through undetected.

Once the documentary credit application is received, one or more of the following tasks are usually performed at the outset and will vary depending on the mode of delivery of the application form:

- recording and noting the time of receipt;
- allocating a unique reference number;
- determining the authenticity of the application;
- checking the customer facility availability;
- updating the bank's liabilities;
- updating the customer liabilities;
- blocking funds / taking marginal deposits, if appropriate; and / or
- recovering charges.

Each bank will have its own operational guidelines and requirements in this respect.

### **Check your understanding**

Banks that are willing to issue a documentary credit face a number of risks, among them are errors in conveying a customer's requirements. Whose responsibility is it if the documentary credit or amendment received by the beneficiary differs from the content of the application form completed by the customer?

## 7.4 Reviewing the documentary credit application form against an agreed credit facility

It is expected that prior to a customer completing a documentary credit application form it will already have an agreed credit facility in place. A facility will establish the maximum value of documentary credits that may be outstanding at any one time.

Any utilisation appearing against the facility amount may include an amount for which documentary credits have been issued, but no presentation has been made. It may also include a remaining amount under one or more documentary credit(s) for which a partial drawing has already been made and / or an amount in respect of payments due at a future date where a complying presentation has been made or where the applicant had provided an acceptable waiver when discrepancies were found in documents presented under a documentary credit.

For a new transaction, bank staff must determine the maximum amount that may be drawn under the documentary credit, taking into account any tolerance that may be applicable, to assess whether or not there is sufficient availability within the unused portion of the facility. If the documentary credit is to be issued in a currency other than that of the facility, bank staff will need to apply the applicable internal conversion rate to assess whether the transaction may be accommodated.

In addition to the amount, the facility will also have an expiry date – that is, a date upon which the bank will consider whether to renew the facility on the same terms and conditions, or to provide increased or reduced facilities, or to cancel it. The facility must be valid at the time of reviewing the documentary credit application form, otherwise reference should be made to the appropriate relationship manager and / or internal department for approval.

Finally, the settlement terms indicated in a documentary credit application form must fall within the agreed parameters. For example, a facility will always accommodate a documentary credit that is available on a sight basis. However, a documentary credit that is available at a future date, such as 120 days after the date of shipment, must fall within the maximum agreed period. Most banks will provide facilities with payment terms of up to 180 days' sight, or 180 days after the date of shipment or another event, or after the date of another document, such as an invoice date.

In addition to these provisions, bank staff must follow internal policies and procedures relating to the recording of a liability against the facility and the internal approval process that may apply – that is, who must, or is allowed to, approve the issuance of a documentary credit.

It should be noted that even though a facility may be in place, there is no obligation for a bank to use any sufficient remaining balance to issue a documentary credit or to approve a transaction that may go beyond an agreed limit.

### 7.4.1 Reviewing a documentary credit application form against bank policy and regulatory requirements

Internal operational guidelines must be fully understood and applied to ensure that the issuance of a documentary credit is in compliance with such guidelines.

Particular note must be taken of the following aspects:

- the nature of the goods or type of underlying transaction, for example most banks have policies with regard to the handling of documentary credits covering armaments, explosives, drugs, dual-use goods, etc;
- the requirement, if any, for import licences and approvals;
- compliance with other government or central bank requirements, including compliance to any sanction regulation to which the bank is subject;
- identification of transactions that fall outside the usual course of business for a customer; and
- the inherent potential for fraud, for example knowledge or lack of knowledge of the proposed beneficiary, particularly when the documentary credit amount is large.

It should not be forgotten that a documentary credit, when issued, carries the name of the issuing bank and bears its irrevocable undertaking to the beneficiary, and is independent of all considerations outside the documentary credit. As a result, all applications should be examined to make sure that they comply with the issuing bank's internal operational guidelines and applicable regulatory requirements.

#### **Reviewing the content of a documentary credit application form**

Fundamentally, an issuing bank is required to follow its customer's instructions to the extent that the bank is in agreement and the content is not in breach of any regulatory requirements.

If a customer has corrected its instructions, before or after discussion with the issuing bank, such correction should be authenticated by the initials or signature of the customer's authorised signatory (or signatories). Where such a correction is made subsequent to an application sent electronically, it is preferable to have a separate message confirming the correction.

Any correction or alteration made by the issuing bank as a result of telephone discussions should similarly be confirmed in a separate message.

#### **Check your understanding**

Most banks will provide facilities with payment terms of up to how many days?

- Up to 80 days.
- Up to 100 days.
- Up to 180 days.
- Up to 200 days.



## 7.4.2 Types of settlement

Sub-article 6(b) requires that a documentary credit state whether it is available by sight payment, deferred payment, acceptance or negotiation.

In article 2 sight payment, deferred payment and acceptance are mentioned in the context of the definition of 'honour'. An act of honour is deemed to be final as far as the beneficiary or presenter of the documents is concerned.

It is often the case that a bank will be required to guide its customer in choosing the correct or appropriate method of settlement. It is also true to say that some banks have difficulty in understanding the fundamental differences that apply to each of the four settlement types.

It should be noted that a customer and a proposed beneficiary may have different views on how a documentary credit should be payable. These issues should be resolved by clear and unambiguous language in the sale contract, proforma invoice, etc. For example, an indication of a requirement for 'settlement by documentary credit available at sight' could mean a documentary credit that is available by sight payment or sight negotiation. Similarly, a requirement for a documentary credit 'payable 90 days after the date of shipment' could mean a documentary credit that is available by deferred payment, acceptance or negotiation.

A documentary credit may be made available by honour (payment, deferred payment or acceptance) or negotiation with a named nominated bank or any bank, or be made available by honour (payment, deferred payment or acceptance) with the issuing bank only. It should be noted that a documentary credit that is available with a named nominated bank or any bank is also available with the issuing bank.

Even though an issuing bank may issue a documentary credit that is available with a named nominated bank or any bank, a nominated bank is under no obligation to honour or negotiate. A bank that has added its confirmation to a documentary credit will be required to honour or negotiate if a complying presentation is made to it or to another nominated bank and that other nominated bank does not honour or negotiate. An issuing bank is liable in terms of its undertaking, to honour at sight or at maturity.

Sub-article 12(a) emphasises that unless confirmation has been added by a nominated bank, that nominated bank has no obligation to honour or negotiate unless expressly agreed to by that nominated bank and so communicated to the beneficiary.

### 7.4.3 Sight payment

When a documentary credit is issued available by 'sight payment', it means that settlement is due once a nominated bank or issuing bank has determined that the documents comply. Because payment is intended to be immediate, the documentary credit should indicate that the nominated bank is authorised to claim reimbursement at the time of payment to the beneficiary by debiting an account of the issuing bank that is held with them, or by claiming reimbursement from a named reimbursing bank, or by claiming reimbursement from the issuing bank, by sending a SWIFT message with details of where the issuing bank is to remit the covering funds.

A sight payment documentary credit may or may not require drafts to be presented. Because drafts may attract stamp duty in some countries, a documentary credit may be issued without a requirement for a draft. In any event, and in most cases, a draft should not be necessary for this type of settlement.

It should be noted that the requirement for a draft is usually a pre-printed condition on an issuing bank's documentary credit application form and not a requirement that is usually indicated by a customer. Whether or not a draft is required is therefore within the control of each issuing bank.

Because settlement by payment falls under the definition of 'honour', any payment should be effected without recourse to the beneficiary, unless the nominated bank and beneficiary enter into a recourse agreement. We will discuss recourse in Topic 17.

Given a choice, a beneficiary that requires payment on a sight basis would be well advised to specifically indicate in its sale contract, proforma invoice, etc, that the documentary credit is to be available with a nominated bank (which may be its own bank) by 'sight payment'.

### 7.4.4 Deferred payment

When a documentary credit is issued available by 'deferred payment', it means that:

- payment is not immediate;
- payment is at a time in the future, determinable in accordance with the terms and conditions of the documentary credit; and
- presentation of a draft is not required.

The date for payment, as defined in a documentary credit, will usually fall within a specific period after the date of shipment, or a specific period after the date of presentation or another defined event or date.

For a documentary credit that is available by deferred payment, the reimbursement instruction should indicate that a nominated bank is authorised to claim reimbursement on the due date, by debiting an account of the issuing bank that is held with the nominated bank, or by claiming reimbursement from a named reimbursing bank, or by claiming reimbursement from the issuing bank, by sending a SWIFT message with details of where the issuing bank is to remit the covering funds, or by instructing the issuing bank, at the time of sending the documents to the issuing bank, to remit funds to the account of the nominated bank held with a correspondent bank of the nominated bank.

Because settlement by deferred payment falls under the definition of honour, the issuance of a

deferred payment undertaking is made without recourse to the beneficiary.

Documentary credits available by deferred payment provide a means by which the beneficiary may be able to obtain finance by requesting the issuer of the deferred payment undertaking to prepay it.

Sub-article 12(b) indicates that by issuing a documentary credit that is available by deferred payment, the issuing bank is authorising the nominated bank that has incurred its deferred payment undertaking to provide early settlement to the beneficiary.

#### 7.4.5 Acceptance

When a documentary credit is issued available by 'acceptance', it means that:

- payment is not immediate;
- payment is at a time in the future, determinable in accordance with the terms and conditions of the documentary credit; and
- presentation of a draft is required.

The date for payment, as defined in a documentary credit, will usually fall within a specific period after the date of shipment, or a specific period after the date of presentation or another defined event or date.

For a documentary credit that is available by acceptance, the reimbursement instruction should indicate that a nominated bank is authorised to claim reimbursement on the due date, by debiting an account of the issuing bank that is held with the nominated bank, or by claiming reimbursement from a named reimbursing bank, or by claiming reimbursement from the issuing bank, by sending a SWIFT message with details of where the issuing bank is to remit the covering funds, or by instructing the issuing bank, at the time of sending the documents to the issuing bank, to remit funds to the account of the nominated bank held with a correspondent bank of the nominated bank.

Because settlement by acceptance falls under the definition of honour, the acceptance of a draft is made without recourse to the beneficiary. Recourse is discussed in Topic 17.

Documentary credits available by acceptance provide a means by which the beneficiary may be able to obtain finance by discounting the accepted draft with the bank that accepted it, or with any other bank or financial institution of its choice.

Recall that sub-article 12(b) indicates that by issuing a documentary credit that is available by acceptance, the issuing bank is authorising the nominated bank that has accepted a draft drawn on it to provide early settlement to the beneficiary.

Although this sub-article makes reference to the purchase of a draft, the bill of exchange laws or regulations that apply to the nominated bank will usually cover such an act and a nominated bank need not rely exclusively on the content of the sub-article when looking to purchase a draft.

### Check your understanding

Fill in the missing words in the following type of settlement:

An -----bank may issue a documentary credit that is available with a named ---- ----- or any bank, though a nominated bank is under no obligation to -----or-----.

## 7.5 Negotiation

Negotiation is defined in article 2.

When a documentary credit is issued available by 'negotiation', it means that:

- an advance may or may not be made immediately by a nominated bank;
- drafts may or may not be required for presentation; and
- settlement, if the documentary credit is not negotiated earlier, is made on receipt of documents by the issuing bank (sight) or the maturity date of the draft (usance).

When a draft is required, it is to be drawn on the issuing bank or reimbursing bank.

For a documentary credit that is available by negotiation on a sight basis, the reimbursement instruction should be that the issuing bank will remit proceeds in accordance with the instructions of the nominated bank upon its receipt of a complying presentation.

This position is stated in ICC Opinion R666, which includes the following in its conclusion to an enquiry concerning a credit available by sight negotiation:

"A letter of credit stated to be available with a nominated bank, by negotiation, should not include any reference to claiming reimbursement from a reimbursing bank or, indeed, any reference to the debiting of the issuing bank's account held with the nominated bank. This form of structure is a payment letter of credit. A negotiation letter of credit should specify that the nominated bank is to send the documents to the issuing bank and, upon the issuing bank's ascertaining that it complies with the terms and conditions of the credit, the issuing bank will reimburse in accordance with the instructions of the negotiating bank."

For a documentary credit that is available by negotiation on a future date (often referred to as on a usance basis), the reimbursement instruction should indicate that a nominated bank is authorised to claim reimbursement on the due date, by debiting an account of the issuing bank that is held with the nominated bank, or by claiming reimbursement from a named reimbursing bank, or by claiming reimbursement from the issuing bank, by sending a SWIFT message with details of where the issuing bank is to remit the covering funds, or, at the time of sending the documents to the issuing bank, by instructing the issuing bank to remit funds to the account of the nominated bank held with a correspondent bank of the nominated bank.

In the case of an unconfirmed documentary credit, a nominated bank will normally negotiate on a with recourse basis to the beneficiary. A confirming bank negotiates without recourse to the beneficiary.

Documentary credits available by negotiation provide a means by which the beneficiary may be able to obtain finance by requesting the nominated bank to negotiate – that is, to provide an advance of

the proceeds earlier than the date that settlement or reimbursement is due from the issuing bank, or to agree to effect settlement on such date.

## 7.6 The place and date of expiry

In addition to determining the manner by which settlement will be made and with whom the documentary credit is to be made available, it is important to align such conditions with the place at which the documentary credit will expire.

The position adopted by article 6 is that the place of expiry and that of the bank(s) with which the documentary credit is available will be the same. Any deviation from this structure can have a significant impact on a nominated bank or confirming bank, and ultimately on the beneficiary.

For example, a documentary credit that expires at the counters of the issuing bank, but is available with a nominated bank by payment, deferred payment, acceptance or negotiation does not provide for the expiry date to be a latest date for presentation of documents to that nominated bank by, or on behalf of, the beneficiary.

An expiry date that applies at the counters of the issuing bank requires that the issuing bank must receive the documents no later than that expiry date, subject to sub-article 29(a) not being applicable, ie that the expiry date is not a non-banking day in the issuing bank's country. In which case, the expiry date will be extended to the next banking day.

It also requires that the documents must be presented to the issuing bank within the applicable presentation period.

As another example, a documentary credit that expires in the country of the beneficiary, but which is available only with the issuing bank, allows for the beneficiary to present its documents to any bank in its country on or before the expiry date. There is no nominated bank, and the issuing bank is the only bank authorised to pay, incur a deferred payment undertaking or accept a draft. Provided complying documents are presented to a bank in the beneficiary's country no later than the expiry date, the issuing bank will be required to honour that presentation even if received by them after the expiry date.

## 7.7 Inoperative documentary credits

It should be noted that there might be occasions when it is necessary for a documentary credit to be issued as 'inoperative' or 'non-operative'. In these circumstances, the required practice is that the issuing bank clearly indicates in the documentary credit the action that is to occur to make the credit operative.

Examples of clauses that have the effect of making a documentary credit inoperative include:

- 'this documentary credit will become operative only upon the issuance of an amendment indicating that an import licence has been issued'; or
- 'this documentary credit will become operative upon your [or the issuing bank's] receipt of a performance guarantee in the following form ...'

## 7.8 The workability of a documentary credit

Examination of the application form and close liaison with the customer at this stage is key to the success of the entire documentary credit transaction. Many of the problems that arise when documents are presented can be avoided if bank staff pay attention to detail and can anticipate problems that may occur before the documentary credit is issued.

To understand the items to be reviewed, examples of the fields of a documentary credit application form are referred to in each of the following sections, with some indications of any incorrect instructions.

## 7.9 Applicant and beneficiary details

The applicant and beneficiary details are important with regard to how documents will be made out (in the name of the applicant, or where the applicant is to be shown as the consignee or notify party on a transport document) and for the correct delivery of the documentary credit to the beneficiary.

✓ <b>Applicant name and address</b>	<b>Beneficiary name and address</b> X
European Dinner Service Gmbh French Strasse 26 FRANKFURT Germany	Dinner World Inc New York, USA

In this example, the details provided for the beneficiary would not be sufficient to ensure delivery of the documentary credit by an advising or confirming bank.

In addition to a full address, other details such as phone or fax numbers may be included.

### 7.9.1 Documentary credit amount and tolerance, if any

<b>Currency and amount</b>	<b>Tolerance</b>
USD215,050.00	Plus / minus %

The customer has indicated that the amount of the documentary credit is to be USD215,050.00. This amount should agree with any calculation that would apply to quantity × unit price, as may be shown in the goods description.

In section 7.9.4, for example, it will be seen that a quantity of 2,530 sets of dinner services have been ordered at a unit price of USD85 each. This calculation equals the amount of the documentary credit ( $2,530 \times \text{USD}85 = \text{USD}215,050$ ).

It may be that the amount of a documentary credit is to be subject to a 'tolerance'. A tolerance is used when it may not be possible to ship an exact quantity of goods, for example 100MT, and a beneficiary may require the option of shipping goods to a value and/or quantity above or below that figure. By inserting the percentage that will apply, the amount that may be drawn will fall between the upper and lower limits. When a tolerance is applied to an amount and the goods description includes a quantity of goods, it is likely that the quantity should also be stated to be subject to the same tolerance. Similarly, if there is to be a tolerance to be applied against any stated unit price(s), specific reference to the tolerance should be shown against each unit price.

It should be noted that stating a tolerance against the amount of the documentary credit does not automatically apply it to the quantity or unit price, if any, and vice-versa.

Article 30 provides rules regarding the interpretation of terms and the application of tolerances.

### 7.9.2 Partial shipments and transshipment

Whether partial shipments are to be allowed or not will often depend on the type and / or quantity of goods that are being shipped and the needs of the applicant. Allowing partial shipments offers greater flexibility to a beneficiary when multiple goods are to be shipped or dispatched.

Because it is more than likely that transshipment will occur when goods are shipped in a container, or even in airfreight where airlines often do not cover the complete journey via one aircraft, transshipment should be allowed. A customer should be referred to the transshipment provisions that appear in articles 19, 20, 21, 23 and 24, if a transport document, as indicated in the heading of one of these articles, is to be presented under the documentary credit.

In addition to indicating whether partial shipment or transshipment is allowed or not allowed, the SWIFT MT700 message also includes the option of 'conditional'. This option allows for a customer to indicate how many partial shipments are allowed instead of using 'allowed' which would permit any number of partial shipments. For transshipment, the option of conditional allows the applicant to provide details of where any transshipment may be made.

Where the option conditional is used in a SWIFT MT700 message (field 43P – Partial Shipments and field 43T – Transshipment) the details of the conditionality are to be shown in field 47A – Additional Conditions.

### 7.9.3 Shipment routing and latest shipment date or period

The documentary credit application form should mirror the requirements for Fields 44A, E, F and B of the SWIFT MT700 message. In so doing, it will simplify the process of identifying the appropriate transport document.

For example, completion of three or four of the fields will always mean that a multimodal transport document should be presented. The required transport document should match the applicable Incoterm that has been agreed upon in the sale contract, proforma invoice, etc (see Topic 5).

#### Shipment from / to

(Field 44A) Place of taking in charge / Dispatch from / Place of receipt:

(Field 44E) Port of loading / Airport of departure: Any USA port

(Field 44F) Port of discharge / Airport of destination: Hamburg

(Field 44B) Place of final destination / For transportation to / Place of delivery:

#### Latest shipment date:

(Field 44C) 9 June 20XX.

In this example, the goods are being shipped on a port-to-port basis, and a bill of lading or non-negotiable sea waybill should be the chosen transport document (or a charter party bill of lading, if a bulk cargo is being shipped).

If no latest shipment date is stated, the latest shipment date will default to the expiry date of the credit. It may be that a customer will indicate a shipment period or schedule instead of a latest shipment date (see section 7.10.6).



#### 7.9.4 Goods description

It is not unusual for a customer to provide an excessive level of detail in respect of the goods description. While some will insist that an itemised breakdown of goods is included in the documentary credit, others are prepared (following discussion with the bank) to accept a more general description, supported by a certification in the invoice such as 'We certify that goods are in accordance with order number xx', or 'We certify goods are in accordance with proforma invoice number xx dated xx'. Wherever possible, a bank should encourage a customer to adopt a more general description.

This was covered in UCP 500, sub-article 5(a), which stated that banks should "discourage any attempt to include excessive detail". Although there is no equivalent clause in UCP 600, sub-article 4(b), does state that an issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like.

A customer should be advised that its protection lies not in a lengthy goods description, but the documents that are requested to be presented, whether those documents have a named issuer or type of issuer, and the degree and type of data content to appear therein.

##### Description of goods and / or services and / or performance:

2,530 SETS 'NEW YORK' BRAND DINNER SERVICES AT USD85.00 PER SET (EACH SET CONSISTING OF 5 X DINNER PLATES, 5 X SIDE PLATES, 5 X SAUCERS, 5 X CUPS, 5 X SOUP PLATES, 5 X DESERT DISHES) AS PER PROFORMA INVOICE NO. DW67295 DATED JANUARY 20, 20XX CFR HAMBURG INCOTERMS 2020

For this example, the goods description could remain as stated, or be shortened as follows.

2,530 SETS 'NEW YORK' BRAND DINNER SERVICES AT USD85.00 PER SET CFR HAMBURG INCOTERMS 2020

This could be accompanied by a requirement that the invoice certify that the goods are 'as per proforma invoice no. DW67295, dated January 20, 20XX'.

### 7.9.5 Documents required

The documents required is one of the most important areas of the application form as far as a customer is concerned, in terms of whether the detail given is either sufficiently comprehensive or too limited in name and content. The content of the documents may provide the only form of security to a customer that the goods ordered are those that will be received.

An application form will usually include the issuing bank's pre-printed wording requiring the creation of documents such as a commercial invoice, insurance document and transport document.

An issuing bank may, as part of the credit facility agreement, require that the goods are consigned to it, or to its order, and this will be reflected in the pre-printed wording. The customer will be required to indicate whether the transport document is to be marked 'freight prepaid' or 'freight payable at destination', in accordance with the agreed Incoterm. For bulk cargoes, the requirement may be for the charter party bill of lading to be marked 'freight payable as per charter party'.

Once a transport document has been selected (most banks will offer a choice of some, or all, from among bill of lading, air waybill, multimodal transport document or truck consignment note), a customer should ensure that it is the most appropriate document for the routing that has been chosen. It may be that a documentary credit application form does not provide for the appropriate transport document, for example a multimodal transport document, in which case the customer should separately indicate this requirement rather than select, for example, a bill of lading as the closest form of document.

If there is a requirement for the presentation of an insurance document, the risks to be covered should be clearly expressed. Most documentary credit application forms will include some basic reference to the usual clauses that are applicable, but it is for the applicant to indicate whether these clauses – that is, Institute Cargo Clauses (A), (B), or (C), War Risks, Strikes Risks, etc – are appropriate, or whether different or additional clauses are necessary, based upon local requirements or requirements that are specific to the nature of the goods being imported.

A customer should be advised against requesting insurance cover on an 'all risks' basis. Observe the content of sub-article 28(h), which indicates that, in such a circumstance, an insurance document indicating any all risks coverage will be acceptable, even if there are stated exclusions.

If the customer is to arrange insurance cover, the issuing bank may wish to see evidence, or at least receive the customer's confirmation, that adequate insurance cover is in place. As part of the credit facility renewal process, banks will often require sight of the insurance policy that the customer has taken out to ensure that the cover is commensurate to the documentary credits that are being issued, in particular, in terms of the maximum amount of coverage that is available in the event of a claim.

Article 28, contains some important sub-articles that address the minimum insured amount, risks to be covered or that can be excluded, and the use of terms that indicate less than the full amount of a claim will be honoured.

For documents such as inspection certificates or analysis certificates, a customer should give careful thought to indicating either a specific name of an issuer for the document or the type of issuer, avoiding the use of terminology such as 'first class', 'well known', 'qualified', 'independent', 'official', 'competent' or 'local', which will permit the issuance by any entity except the beneficiary (see article 3). The requirements for such documents should indicate the basis under which any inspection or analysis is to occur – that is, the standard that is required or that the goods are to meet minimum

(stated) specifications.

### **Check your understanding**

When referring to partial shipment or transshipment, the SWIFT MT700 message includes a conditional option. What does conditional mean in this context?

### **7.9.6 Additional conditions**

There may be additional conditions that will apply to a documentary credit. For example, if the customer is responsible for insuring the goods, the customer will check the box against that requirement.

In a documentary credit, an issuing bank will often add its own conditions that apply to the transaction, such as details of any discrepancy fee, a sanctions clause or the language in which documents are to be issued.

A bank should avoid inserting data in this field that is directly linked to one of the documents in the 'documents required' field, such as providing details for the packing of the goods when the documents required field merely mentions 'Packing list'. In other words, a requirement for a specific document, by title, should be followed by the data that is to appear thereon and not be given as separate requirements. This will avoid the potential for a non-documentary condition (see section 7.10.3).

#### **Charges under the documentary credit**

The customer will indicate who is responsible for the costs in its country and those that are incurred outside its country. The usual split is that the applicant will bear the costs of the issuing bank and the beneficiary will bear all other costs.

### **7.10 Period for presentation**

The 'period for presentation' is the period of time (in terms of calendar days) after the date of shipment within which the documents are to be presented to a nominated bank or issuing bank. In the absence of any specific period, the default of 21 calendar days under sub-article 14(c) will apply.

A customer should insert a period that is commensurate with the time that will be taken for the carriage of the goods, the urgency to gain possession of the documents and the type of goods that are being shipped. A period of 21 calendar days may not be appropriate in all cases.

Although there is no specific rule in this respect, it is common for the latest shipment date plus the presentation period to equal the expiry date. For example, if the latest shipment date were 9 June 20XX and the presentation period were 21 days, the expiry date would be 30 June 20XX.

#### **7.10.1 Confirmation instructions**

If the proposed beneficiary has requested that the documentary credit be confirmed by a bank local to it, or a bank of its choice, the instructions will appear here. An instruction stating 'confirm' is a request for the advising bank to add its confirmation. An instruction stating 'may add' is an

authorisation for the advising bank to add its confirmation, if requested to do so by the beneficiary, and is usually subject to the beneficiary paying the confirmation fee in advance.

An instruction stating 'without' means that the documentary credit is to be advised without the confirmation of the advising bank.

### 7.10.2 Bank-to-bank instructions

Bank-to-bank instructions do not form part of the standard application form but is a key field in the documentary credit. The issuing bank will complete this field with instructions regarding the disposal of the documents and instructions regarding reimbursement. If there is a reimbursing bank, the name will be indicated in Field 53a of the SWIFT MT700 message.

If the documentary credit is to be advised through a second advising bank, this information will be stated in field 57a. Where a second advising bank is indicated, and there is an instruction 'confirm' or 'may add', the name of the bank that is requested or authorised to add confirmation is to be stated, ie the advising or second advising bank. In the SWIFT MT700 message, these details will be given in field 58a 'requested confirmation party'.

### 7.10.3 The need for conditions to be applied to documents

Any condition that is not associated with a document to be presented under a documentary credit should be identified. If such conditions are found, they should be rectified, in liaison with the customer, before the documentary credit is issued. Rectification is achieved by requesting a document to be presented that will indicate compliance with the condition, or for compliance to be indicated in a document already listed for presentation.

These are generally referred to as 'non-documentary conditions'. Sub-article 14(h) explains why a customer should be encouraged to act in this way and provide details of the document that is to evidence compliance with the condition, ie that such conditions will be disregarded.

#### **Ambiguous issuers of documents and lack of precise data content**

If an application form uses terms that are covered in article 3, bank staff should explain to the customer the interpretation(s) that will be applied unless more detail is provided as to their intentions.

### 7.10.4 Absence of the name of an issuer and/or the absence of any data content

Sub-article 14(f) is, in anyone's description, a penalty rule for issuing banks and applicants. It indicates that if a documentary credit does not provide information as to the issuer of a required document it may be issued by any entity. If there is no required data content given, the document will be accepted as presented, provided that it fulfils the function of the required document. Sub-article 14(f) does not apply to transport documents, insurance documents or commercial invoices, which are covered by separate articles within UCP.

It should be noted that the function of a document, such as an inspection certificate or analysis certificate, is to provide evidence that an inspection or analysis has taken place, and not the

outcome of that inspection or analysis.

On the other hand, when a credit simply requires the presentation of a packing list with no further details, a packing list that does not provide packing details cannot be deemed to fulfil its function.

A customer should be advised to complete the documentary credit application form, wherever possible, with details of an issuer of a required document and the data content that is to appear within that document. This is particularly relevant when a documentary credit requires the presentation of an inspection certificate, analysis certificate, etc – that is, a document that has significant value to a customer in providing an assessment of the quality of the goods that are being shipped or dispatched.

#### 7.10.5 Acceptable clauses regarding the condition of goods on a transport document

To those without specialist knowledge of a particular industry, certain clauses in transport documents might suggest that a carrier, master, owner or charterer, or their respective agents, have received the goods in a defective or unacceptable condition. An example of this may be a clause such as ‘atmospheric rust’ shown on a bill of lading covering a shipment of iron bars. In fact, this clause would give no cause for concern to those involved in the trade, because it is an acceptable status for such goods.

When a customer is engaged in a commodity that is often shipped with acceptable clauses relating to its condition, the acceptance of certain clauses that may appear on the transport document should be obtained. These clauses should then be referenced in the documentary credit. Such clauses will modify the effect of the rule quoted in article 27 which states that banks only accept clean transport documents.

**Definition**

Article 27 defines a ‘clean transport document’ as “one bearing no clause or notation expressly declaring a defective condition of the goods or their packaging”.

### 7.10.6 Instalment shipments

If an application form requires the documentary credit to stipulate that shipment of goods should be made in accordance with a stated instalment schedule, the exact needs with regard to delivery of the goods should be ascertained. This will ensure that the documentary credit, when issued, accurately reflects these needs – particularly in respect of partial shipments and the continued availability of the documentary credit in the event of failure by the beneficiary to adhere to the instalment schedule. This is covered in article 32 Instalment drawings or shipments.

It should be noted that this article applies only when a documentary credit indicates a series of given periods, as opposed to a sequence of latest shipment dates. A given period has a start and an end date, and the dates of each period should not overlap.

Instalment drawings or shipments are also covered in paragraph C15.

### 7.10.7 Transferable credits

If an application form requires that the documentary credit is to be transferable, the customer should be made aware of the content of article 38. The definition of a transferable credit is contained in sub-article 38(b).

Transferable credits will be discussed in Topic 19.

### 7.10.8 Abbreviations

If an application form indicates abbreviated terms, or uses any form of non-standard lettering or numbering, such as horizontal or vertical lines, virgules ( / ) or mathematical symbols, commas, etc, the customer's intention should be obtained, unless this is absolutely clear. Additionally, consideration should be given to how such non-standard markings would appear when incorporated into the text of the credit, particularly if issued in SWIFT or telex formats.

Paragraph A2(a) and (b) provide a definition of the use of the virgule (also known as the solidus or the forward slash) and commas, respectively. A customer would be better served using 'and / or' or 'or' instead of a virgule or comma.

### 7.10.9 Ambiguous terminology

The following terms are defined in paragraph A19, but not in UCP 600:

- shipping documents,
- stale documents acceptable,
- third-party documents acceptable,
- third- party documents not acceptable,
- exporting country,
- shipping company, and
- documents acceptable as presented.

If an application form uses these terms, a customer should be warned that it bears the risk of any ambiguity in its instructions (see preliminary considerations outlined in paragraph (v)). The customer should be encouraged to use different or more definitive terminology that provides clarity as to its meaning. If the customer insists on using the stated terms, it should be advised that the meaning

applied would be that provided under paragraph A19.

### 7.10.10 Documents to be issued or countersigned by an applicant

A customer will sometimes attempt to keep control of the payment process by making it a condition of a documentary credit that it issue or sign one or more of the stipulated documents. The beneficiary and the customer may have both agreed to such a condition(s), and for this reason it is of no concern of the banks. However, rule 4.10 in ISP98 and paragraph (vii) of the preliminary considerations in ISBP 745, attempt to reinforce the unacceptability of this practice and emphasise the consideration that should be made by the beneficiary.

Wherever possible, an issuing bank should resist any requirement for a document to be issued or signed by an applicant unless it knows that the requirement has been agreed with the beneficiary.

### 7.11 Selecting an advising bank and / or a confirming bank

Wherever possible, banks use their own branches, associate offices or preferred correspondent banks to advise a documentary credit to a beneficiary. The reasons are that:

- arrangements already exist for authentication of messages; and
- the lines of communication are well established, which enables the speedy resolution of any problems that may arise.

If the application form indicates an advising bank that does not fall within these parameters, the issuing bank will choose a routing in terms of its own operational guidelines under advice to, and with the consent of, the customer.

An application form will usually include the name and location of an advising bank when a proposed beneficiary has indicated a preference for the bank through which the documentary credit is to be advised and the documents to be presented.

If the chosen bank of the beneficiary is not a correspondent of the issuing bank, the credit may still be routed through that bank by means of the advising bank sending it to that bank. The bank of the beneficiary will be known as a 'second advising bank'.

Sub-articles 37(a) and (b), act as a disclaimer when an issuing bank transmits instructions to another bank.

The advising of a documentary credit, and the role of an advising bank and a second advising bank, are covered in Topic 9.

It can be that a beneficiary will require the confirmation of the credit by a bank local to it. Like an advising bank, the issuing bank must be in a correspondent banking relationship with a bank that will be requested or authorised to add confirmation and have a credit facility in place to allow that confirmation to occur.

The establishment of a credit facility in the name of the issuing bank, confirmation of a documentary credit and the role of a confirming bank are covered in Topic 10.



### 7.11.1 Documentary requirements for a domestic or local documentary credit

A domestic or local documentary credit will usually require minimal documents. In most cases, this will consist of a commercial invoice and a delivery note or receipt.

For a local transaction, it is common for the applicant to be required to sign for the goods, and this will be evidenced on a delivery note or receipt that is issued by the beneficiary or the applicant.

## 7.12 The issuance of a pre-advise of a documentary credit

A preliminary advice of a documentary credit, sometimes known as 'brief details' or a 'pre-advise', is very much a declining practice. Such advices were designed to provide early notice to a beneficiary that a documentary credit had been issued and that full details, in letter form, were being forwarded by airmail or courier. Sub-article 11(b) clearly sets out the issuing bank's position if such a preliminary advice has been given.

With the widespread use of the SWIFT MT700 message, the issuance of documentary credits in letter form is rapidly declining, and remains prevalent only for local or domestic transactions in which the applicant and beneficiary are located in the same country.

### 7.12.1 Preparing a documentary credit

When bank staff have completed their internal procedures and processed the application form, the actual documentary credit is ready to be prepared.

If the application data is already captured in an electronic system, the bank staff need only complete the additional data fields required in order to produce the documentary credit. If, however, the application form is received by either mail or telex, it is usually necessary for all of the instructions to be keyed into the issuing bank's system. In addition to the details supplied by the customer, the issuing bank will include reimbursement instructions and any other bank-to-bank information, such as how documents are to be forwarded and whether the advising bank or another bank is requested or authorised to add its confirmation before sending the documentary credit to the beneficiary.

The application for issuance and the actual documentary credit, as issued, must match and be in accordance with the instructions of the customer, and it is the responsibility of the issuing bank to ensure that this is the case before transmitting or sending the documentary credit to an advising bank or the beneficiary.

### 7.13 Transmitting a documentary credit

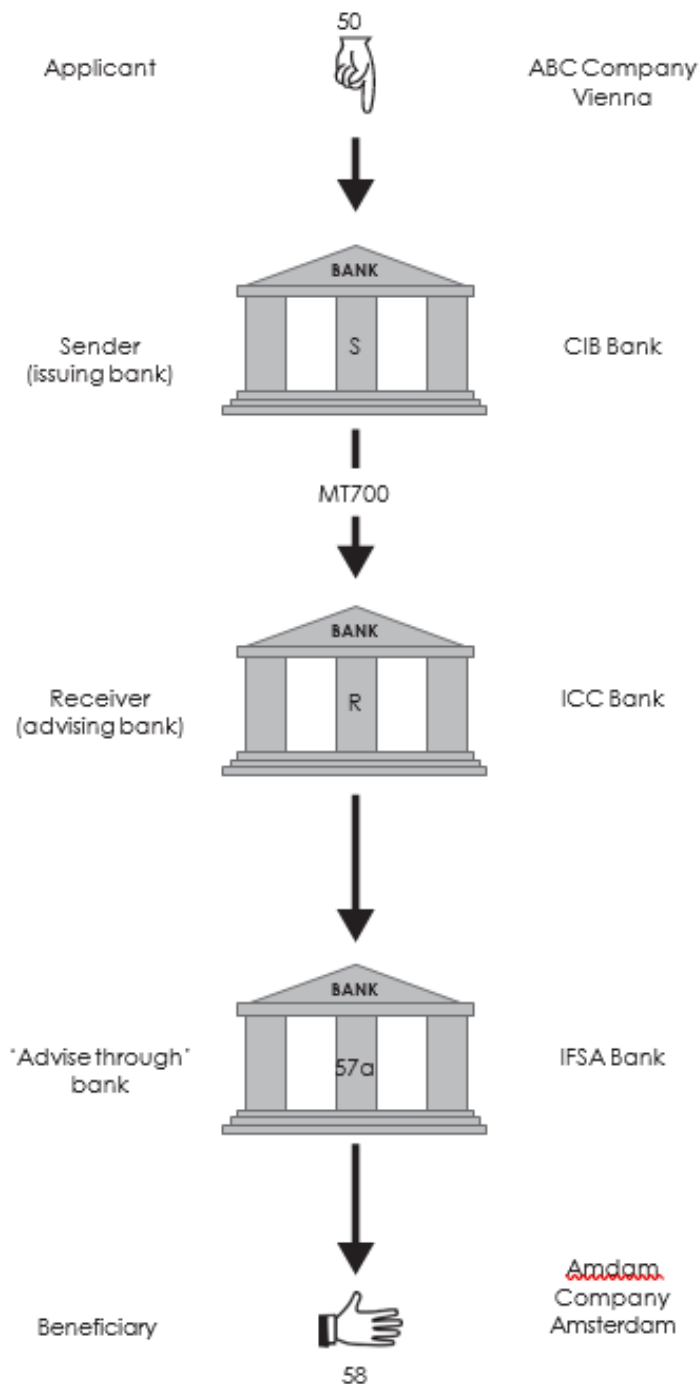
Once the documentary credit is prepared and the issuing bank's internal release procedures are completed, the credit will be transmitted by SWIFT or telex, or delivered by mail or courier, to an advising bank or directly to the beneficiary. A copy of the transmitted documentary credit will be made available to the customer in hard copy or electronic form, together with the issuing bank's advice of charges, if applicable. At the time the issuing bank issues the credit it becomes irrevocably bound to honour (see sub-article 7(b)).

The applicant should be encouraged to read the documentary credit carefully, to ensure that it matches its instructions. If it does not, the applicant should advise the issuing bank without delay. However, and as stated earlier in this topic, if it does not match the instructions, any attempt to rectify the error may be considered an amendment that is subject to the consent of the beneficiary and the confirming bank, if any (see section 7.2.1).

Today, the vast majority of documentary credits are issued in SWIFT MT700 format, and the transmitted details are considered to be the operative credit. It is extremely rare for issuing banks to prepare a mail confirmation if details of the documentary credit have been transmitted in full.

Figure 7.1 illustrates a process for issuing a documentary credit. In the example provided, there is not only an advising bank, but also a second advising bank (see section 7.11). The process for issuing amendments is identical, other than that the applicable SWIFT message type is MT707, instead of MT700.

**Figure 7.1 Information flow chart**



Source: SWIFT

MT700 is the SWIFT message type generally used to convey the details of a documentary credit to an advising bank, with or without a request or authorisation for confirmation to be added. An MT799 message may also be used when a formatted message, such as the MT700, is not appropriate. Both of these SWIFT message types are authenticated messages.

An MT199 is authenticated, but it is free format and can be used for anything, while an MT999 is an unauthenticated message type. A message establishing a documentary credit by telex must be

authenticated, and often the issuing bank will have testing arrangements with the advising bank. If such direct testing arrangements do not exist, the issuing bank will send the message to a correspondent bank that has testing arrangements, with a request to pass on the documentary credit authenticated between such correspondent bank and the advising bank.

If the documentary credit is sent in hard copy form, the signature(s) appearing thereon can be authenticated against specimens held with the advising bank.

The issuing bank should not send a telex to the advising bank and its correspondent with a request to the advising bank to verify the test with the correspondent.

Article 1 requires that the text of a documentary credit make express reference to the rules to which it is subject.

To accommodate this, SWIFT has created the following code words to be used in Field 40E of the MT700 message series by the issuing bank.

- For UCP 600: 'UCPLATESTVERSION'
- For eUCP: 'EUCPLATESTVERSION'
- For UCP 600 and URR 725: 'UCPURRLATESTVERSION'
- For eUCP and URR 725: 'EUCPURRLATESTVERSION'

For documentary credits issued by telex or mail, the documentary credit is to indicate 'Subject to UCP 600' or 'Subject to the Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600', or words of similar effect.

Figure 7.2 Example of a MT700 message

LOC:XX0015 INSWFT MSG-700 TRN:B0000-1000  
{1:C02FUENXITWAXXX8395461056}  
{2:81630765539623GHQULITXNCAX918400337629618469261B}  
\*\*\*\*\*

FROM: FINANCING BANK, FRANKFURT, GERMANY

27: **Sequence of Total**  
1/1

40A: **Form of Documentary Credit**  
IRREVOCABLE

20: **Documentary Credit Number**  
00/PP/1278

31C: **Date of Issue**  
XX0331

40E: **Applicable Rules**  
UCPLATESTVERSION

31D: **Date and Place of Expiry**  
XX0630 USA

50: **Applicant**  
EUROPEAN DINNER SERVICE GMBH  
FRENCH STRASSE 26, FRANKFURT, GERMANY

59: **Beneficiary**  
DINNER WORLD INC  
295 EAST 750TH STREET, NEW YORK 001001, USA

32B: **Currency Code, Amount**  
USD215050,00

41a: **Available With ..By..**  
MANHATTAN TRADE FINANCE BANK, NEW YORK BY NEGOTIATION

42C: **Drafts at...**  
SIGHT

42a: **Drawee**  
ISSUING BANK

43P: **Partial Shipments**  
ALLOWED

43T: **Transshipment**  
ALLOWED

- 44E: **Port of Loading/Airport of Departure**  
ANY USA PORT
- 44F: **Port of Discharge/Airport of Destination**  
HAMBURG
- 44C: **Latest Date of Shipment**  
XX0609
- 45A: **Description of Goods and/or Services**  
2530 SETS 'NEW YORK' BRAND DINNER SERVICES AT USD85.00 PER SET (EACH SET CONSISTING OF 5 X DINNER PLATES, 5 X SIDE PLATES, 5 X SAUCERS, 5 X CUPS, 5 X SOUP PLATES, 5 X DESERT DISHES) AS PER PROFORMA INVOICE NO. DW67295 DATED JANUARY 20, 20XX CFR HAMBURG INCOTERMS 2020
- 46A: **Documents Required**  
+COMMERCIAL INVOICE IN ONE ORIGINAL AND 3 COPIES  
+PACKING LIST IN ONE ORIGINAL AND 3 COPIES  
+FULL SET OF CLEAN ON BOARD OCEAN BILLS OF LADING ISSUED TO ORDER OF FINANCING BANK MARKED NOTIFY APPLICANT AND FREIGHT PAID  
+CERTIFICATE OF ORIGIN ISSUED BY NEW YORK CHAMBER OF COMMERCE INDICATING THAT THE GOODS ORIGINATED IN USA  
+SHIPMENT ADVICE ADDRESSED TO THE APPLICANT GIVING DETAILS OF SHIPMENT: INCLUDING NAME OF THE VESSEL, DATE OF SHIPMENT, QUANTITY OF GOODS SHIPPED AND THEIR VALUE. THE SHIPMENT ADVICE IS TO BE ACCOMPANIED BY A COPY OF A COURIER RECEIPT INDICATING THAT THE ADVICE WAS SENT BY COURIER SERVICE, TO THE APPLICANT, NO LATER THAN 5 WORKING DAYS AFTER THE DATE OF SHIPMENT  
+PRE-SHIPMENT INSPECTION CERTIFICATE ISSUED BY CREATIVE INSPECTION SERVICES INDICATING THAT THE GOODS ARE BRAND NEW, FULLY MEET THE SPECIFICATIONS AS GIVEN TO THEM BY THE APPLICANT AND HAVE BEEN PACKED IN PACKAGING SUITABLE FOR THEIR CARRIAGE TO HAMBURG PORT
- 47A: **Additional Conditions**  
+A DISCREPANCY FEE OF USD75 WILL BE DEDUCTED FROM THE PROCEEDS FOR EACH SET OF DOCUMENTS PRESENTED WITH DISCREPANCIES  
+INSURANCE WILL BE COVERED BY THE APPLICANT
- 71D: **Charges**  
ALL CHARGES OUTSIDE GERMANY ARE FOR ACCOUNT OF THE BENEFICIARY
- 48: **Period for Presentation in Days**  
21
- 49: **Confirmation Instructions**  
WITHOUT
- 78: **Instructions to the Paying/Accepting/Negotiating Bank**  
DOCUMENTS MUST BE SENT TO US IN ONE LOT BY COURIER SERVICE. UPON RECEIPT OF DOCUMENTS THAT WE DETERMINE COMPLY WITH THE TERMS AND CONDITIONS OF THIS CREDIT, WE SHALL EFFECT SETTLEMENT IN ACCORDANCE WITH YOUR INSTRUCTIONS

-} {5:MAC:00011100} {CHK:Y452FQ8273D9}

## Conclusion

When a beneficiary presents its documents under a documentary credit it often has a second chance to either correct an error or to replace a discrepant document. When issuing a documentary credit, an issuing bank does not have that luxury. It must stand by, and act according to the terms and conditions as stated. Any attempt to correct an error or omission would be in the form of an amendment that will be subject to the consent of the beneficiary and any confirming bank.

Therefore, it is imperative that the issuing bank ensures that the details provided by the customer are clear, precise and all-encompassing, and that the wording of the issued documentary credit is correct and in line with the principles of UCP 600.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain to a customer the fundamental differences between a documentary credit available by payment, deferred payment, acceptance or negotiation?
- outline the form of undertaking that an issuing bank provides when it issues a documentary credit?
- describe the autonomy of the documentary credit from any sale contract or proforma invoice, for example, that may be referred to in the documentary credit?

## Test your knowledge

Use these questions to assess your learning for Topic 7.

1. When a documentary credit is available with the issuing bank, which type of settlement is not appropriate?

- a. Payment.
- b. Deferred payment.
- c. Acceptance.
- d. Negotiation.**

Answer: D. A credit may be available with an issuing bank only by payment, acceptance or deferred payment. See section 7.5.

2. For a documentary credit that is available with a nominated bank by sight payment, which of the following reimbursement conditions would not be appropriate?

- a. 'Please debit our account held with you.'
- b. 'We will remit proceeds in accordance with your instructions upon receipt of complying documents.'**
- c. 'Please claim reimbursement from ZZZ Bank, New York.'
- d. 'We will remit proceeds in accordance with your instructions upon receipt of a SWIFT message confirming that you have received a complying presentation.'

Answer: B. A credit that is available by payment must allow the nominated bank to obtain reimbursement by debiting the account of the issuing bank, or claiming reimbursement from a reimbursing bank, or by the issuing bank honouring a claim sent by SWIFT. See section 7.4.2.

3. 'There must always be a gap of 21 calendar days between the latest shipment date and the expiry date.' True or false?

- a. True.
- b. False.**

Answer: False. The reference to 21 calendar days, in sub-article 14(c), is a default rule when the credit is silent with regard to a presentation period. The period can be whatever is agreed between the applicant and the beneficiary. The latest shipment date and expiry date could be the same. See section 7.10.

4. For which of the following settlement types must a draft be required for presentation?

- a. Payment.
- b. Deferred payment.
- c. Acceptance.**
- d. Negotiation.

Answer: C. Only a credit available by acceptance requires that a draft be presented (drawn on the bank that is to accept it). See section 7.4.5.

5. A credit facility will usually cover which of the following?

- i. The maximum amount that may be outstanding.
- ii. The period for which the facility will be available.



- iii. Whether partial shipments or drawings may be allowed.
  - iv. The maximum usance period for any documentary credit.
- a. i and iv.
  - b. i, iii and iv.
  - c. ii, iii and iv.
  - d. i, ii and iv.**
  - e. All of them.

Answer: D. A credit facility will not dictate whether or not partial shipments or drawings are to be allowed. This is left to the applicant and beneficiary to agree. See section 7.9.2.

## Answers

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### CHECK YOUR UNDERSTANDING (section 7.2.2)

An **issuing** bank is irrevocably bound to **honour** a **complying** presentation that is made to it, or to a **nominated** bank, as of the time it issues a documentary credit. See section 7.2.1.

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### CHECK YOUR UNDERSTANDING (section 7.3)

The issuing bank is bound to the beneficiary in terms of the documentary credit as issued. This is irrespective of any inability of the issuing bank to obtain reimbursement from the applicant, who may refuse to reimburse the bank because of the failure to fully incorporate its instructions. See section 7.2.

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### CHECK YOUR UNDERSTANDING (section 7.4.1)

Up to 180 days' sight, or 180 days after the date of shipment or another event, or after the date of another document, such as an invoice date. See section 7.4.

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### CHECK YOUR UNDERSTANDING (section 7.4.5)

An **issuing** bank may issue a documentary credit that is available with a named **nominated bank** or any bank, though a nominated bank is under no obligation to **honour** or **negotiate**. See section 7.4.2.

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### CHECK YOUR UNDERSTANDING (section 7.9.5)

The conditional option lets a customer indicate how many partial shipments are allowed, instead of using 'allowed' which would permit any number of partial shipments. For transshipments, this option allows the applicant to provide details of where any transshipment may be made. See section 7.9.2.

## Topic 8 Amendments from an issuing bank perspective

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### Learning objectives

By the end of this topic, you should be able to:

- recognise the need to consider the content of an amendment request in the context of the terms and conditions of the documentary credit as a whole; and
- outline the process for handling an amendment request, from receipt through to an amendment being issued or the declining of an amendment request.

### Introduction

This topic describes the considerations for the creation of an amendment request by an applicant, the review of that request by the issuing bank and, subject to that bank's consent, the issuance of an amendment.

#### Think...

Before you start work on this topic, think about what you already know about amendment requests. For example:

Although most amendment requests originate by the beneficiary contacting the applicant, are you aware that they also occur at the instigation of the applicant, such as when they identify an error or omission in the documentary credit text?

Do you know why amendments often need to take account of all the terms and conditions of a documentary credit, and not just those that are the focus of the request?

Why do you think an extension to a latest shipment date will have implications for any shipment schedule that is mentioned in the documentary credit?

## 8.1 The risks applicable to an issuing bank

The same types of risk exist for issuing an amendment as exist for the issuance of the underlying documentary credit.

- **Applicant risk** – when an amendment extends the validity of the documentary credit, or extends its payment terms (for example from 90 days' sight to 180 days' sight), or its amount is increased, the risk is that the applicant may be unable to reimburse the bank for any settlement or reimbursement that it is required to make in respect of a presentation that complies with the terms and conditions of the documentary credit and the amendment, or in respect of a presentation under which the applicant had previously issued a waiver of discrepancies and that waiver was acceptable to the bank.
- **Financial crime** – the amendment may increase the likelihood that the transaction is used to facilitate criminal activity (that is money laundering, fraud against the bank and/or other entities, terrorist financing, etc).
- **Errors in conveying the requirements of the applicant** – if the advice of the amendment received by the beneficiary differs from the content of the request submitted by the applicant, the issuing bank is bound to the beneficiary in terms of the documentary credit and the amendment received by the beneficiary. This is irrespective of any inability of the issuing bank to obtain reimbursement from the applicant, who may refuse to reimburse the bank because of a failure to fully incorporate its instructions.

## 8.2 The application of article 10 in respect of an issuing bank

An amendment to a documentary credit is made with the consent of the issuing bank. Note that consent is also required from the beneficiary and a confirming bank, if any, but this is covered in later topics.

The fact that a bank previously agreed to issue a documentary credit at the request of its customer does not mean that it is required to amend it as requested by that customer. For example, a customer may submit a request for an amendment that does not meet bank policy or which contravenes the applicable regulatory requirements. It might also be the case that a bank does not wish to extend further credit to its customer by increasing the amount of the documentary credit, by extending its validity or by agreeing to extend the payment terms.

As indicated in sub-article 10(b), an issuing bank is irrevocably bound by an amendment as of the time it issues the amendment. An issuing bank must, therefore, ensure that its amendment advice is complete and precise at the time of issuance.

As a documentary credit constitutes an irrevocable undertaking of the issuing bank, it cannot be amended without the express consent of the beneficiary and any confirming bank. Therefore, an amendment should not incorporate any condition that implies that it will be automatically accepted or rejected in the event that the beneficiary does not provide a notification of acceptance or rejection within a specified period. This is made clear in sub-article 10(f).

The principle that an irrevocable undertaking cannot be amended by silence will prevail.

Acceptance or rejection of the amendment is to be determined in accordance with sub-article 10(c).

### 8.3 Receipt of the completed amendment request

It is normally the beneficiary who will request an amendment to the documentary credit by communicating its requirements to the applicant. If the applicant is in agreement, it should submit a request to the issuing bank to issue an amendment. It should be noted that an amendment might equally be required as the result of a specific requirement of the applicant.

The applicant may wish to consult the issuing bank regarding the actual text of the amendment, so that both the request to amend and the amendment itself are complete, precise and do not affect any other terms and conditions of the documentary credit.

Any amendment request should be given to the issuing bank in good time, before the goods are to be shipped or the service or performance is to be provided. If the beneficiary ships goods prior to the receipt of a required amendment, it bears the risk of being unable to make a complying presentation if the issuance of the amendment is delayed or refused.

Most banks do not maintain a standard amendment request form and will accept a simple letter from the applicant indicating its requirements. Banks that provide an online service may also provide for electronic delivery of an amendment request.

As mentioned in section 8.2, an issuing bank is under no obligation to take note of an amendment request.

### 8.4 Reviewing the amendment request against an agreed credit facility

A review of the amendment request against the credit facility will need to occur for certain criteria, such as where the amount, validity date, or the period for settlement is to be increased. Some credit facilities may also make reference to the type of goods that are to be covered by any documentary credit that is issued, and the type of transport document that is to be called for and the consignee details that are to appear thereon. If applicable, any changes to these criteria will warrant further review and may require separate internal approval.

Amendment requests to increase the number of originals or copies of documents, delete certain documents, add additional documents, or change the latest shipment date or period for presentation will not usually require examination against the credit facility.

#### **Check your understanding**

An amendment to a documentary credit is made with the consent of the advising bank. True or false?

## 8.5 Reviewing an amendment request against bank policy and regulatory requirements

The content of an amendment request should be examined against bank policy and regulatory requirements to ensure that the transaction, as amended, will remain in an acceptable form.

Changes, such as those relating to the goods description, ports of loading and discharge, airports of departure and destination, places of receipt and delivery, names of issuers of documents and the name of the beneficiary should be reviewed closely to ensure that compliance with all bank and regulatory requirements is maintained.

## 8.6 The workability of an amendment

Examination of the request and close liaison with the applicant at this stage are key to the continued success of the documentary credit transaction. Many of the problems that arise when documents are presented can be avoided if bank staff pay attention to detail and anticipate the problems that may occur before the amendment is issued.

Individual changes, deletions or additions that appear on a request for an amendment should be reviewed against each term and condition of the documentary credit – not only the most obvious term or condition – to ensure that the amendment will cover all related terms and conditions.

### Example

A documentary credit requires a full set of bills of lading to be issued to order of the issuing bank, marked 'notify applicant' and 'freight prepaid'. The bills of lading are to indicate that shipment has been effected from Bangkok to Shanghai. The trade term was stated to be 'CFR Shanghai Incoterms 2020'. A latest shipment date is given of '30 October 20XX'.

Following some discussions, the applicant and beneficiary agree that the presentation of a full set of bills of lading is not the most appropriate document. Instead, the goods should be collected by the applicant's freight forwarder and a forwarder's certificate of receipt issued.

As a consequence, the applicant submits an amendment request in the form DELETE "Full Set Bills of Lading ... Prepaid" and ADD "Forwarder's Certificate of Receipt", and indicates that all other terms and conditions are to remain unchanged.

On its face, the amendment in the example appears to solve the problem of the inappropriate transport document. However, the amendment request does not:

- delete the routing from Bangkok port to Shanghai port;
- change the emphasis from a latest shipment date to one of a latest date for receipt of the goods (if a forwarder's certificate of receipt is issued, there is only a date of receipt of the cargo and not a shipment date);
- address the issue of the consignee and notify party information (a freight forwarder's certificate of receipt is not a document that should be issued to order of a named entity); or
- address whether the Incoterm is still applicable.

Without the amendment addressing these issues, the credit will not be issued in a workable form, and leaves the examination of documents open to differing levels of interpretation by the issuing bank, nominated bank and (not least) the beneficiary.

### **Error correction by the applicant**

If an applicant has corrected its amendment request, before or after discussion with the issuing bank, the correction should be authenticated by the initials or signature of the customer's authorised signatory (or signatories). Where a correction is made subsequent to a request sent electronically, it is preferable to have a separate message confirming the correction.

Any correction or alteration made by the issuing bank as a result of discussions over the telephone should similarly be confirmed in a separate message.

### **Preparing an amendment**

When bank staff have completed their internal procedures and processed the request, the amendment is ready to be prepared.

If the amendment data is already captured in an electronic system, the bank staff need only complete the additional data fields required in order to produce the amendment. If, however, the request is received by either mail or telex, it is usually necessary for all of the content to be keyed into the issuing bank's system. In addition to the details supplied by the applicant, the issuing bank may need to include some additional bank-to-bank information that may be linked to the text of the amendment.

The amendment request and the actual amendment, as issued, must match and be in accordance with the applicant's request. It is the responsibility of the issuing bank to ensure that this is the case before transmitting or sending the amendment to an advising bank or the beneficiary.

## 8.7 The routing of an amendment

When a documentary credit has been advised to the beneficiary through an advising or second advising bank, the issuing bank must use the same advising bank, and the advising bank must use the same second advising bank to convey the amendment to the beneficiary. This is made clear in sub-article 9(d).

It should be noted that an advising bank, or second advising bank, is under no obligation to advise the beneficiary of any amendment that it receives. If it declines to advise the amendment, it must inform the bank from which it received the amendment without delay. In the case of an advising bank, this means informing the issuing bank. In the case of a second advising bank, this means informing the advising bank, which should then inform the issuing bank.

There is no requirement for a bank to indicate the reason(s) for its decision not to advise the amendment. Even if such bank declines to advise the amendment, the issuing bank is still bound by its terms and conditions (see section 8.2), and if the beneficiary wishes to make use of it, the documents will need to be sent to the issuing bank for honour.

### Check your understanding

A corrected amendment request should be authenticated by the beneficiary's signature before or after discussion with the issuing bank. Yes or no?



## 8.8 Transmitting an amendment

Once the amendment is prepared and the issuing bank's internal release procedures are completed, it will be transmitted by SWIFT or telex, or delivered by mail or courier, to the advising bank to which the documentary credit was sent (possibly with instructions to send it via a second advising bank that was also involved in the advising of the documentary credit) or directly to the beneficiary. As stated in sub-article 10(b), at this time the issuing bank is irrevocably bound by the amendment.

A copy of the transmitted amendment will usually be made available to the applicant in hard copy or electronic form, together with the issuing bank's advice of charges, if applicable.

The applicant should be encouraged to read the amendment carefully, to ensure that it matches its request. If it does not match, the applicant should advise the issuing bank without delay. If the amendment does not match the instructions, any attempt to rectify the error may be considered a further amendment, which will also be subject to the consent of the beneficiary and the confirming bank, if any.

The vast majority of amendments are issued in SWIFT MT707 format, and the transmitted details are considered to be the operative amendment. It is extremely rare for issuing banks to prepare a mail confirmation if details of the amendment have been transmitted in full.

Figure 8.1 contains details of an amendment made to the terms and conditions of the documentary credit that appears in Figure 7.1. Note the structured nature of the MT707 message in that its fields match those in the MT700.

Figure 8.1 Example of an amendment to an MT700 message

LOC:XX0015 INSWFT MSG-700 TRN:B0000-1000  
{1:C20FUENXITWAXXX7391997305}  
{2:63910038894462GHQULITXNCA529114758899301638291S}  
\*\*\*\*\*

**MT707**  
**FROM: FINANCING BANK, FRANKFURT, GERMANY**

27: Sequence of Total  
1/1

20: **Senders Reference**  
00/PP/1278

21: **Receivers Reference**  
EXP990088

23: Documentary Credit Number  
00/PP/1278

31C: **Date of Issue**  
XX0331

26E: **Number of Amendment**  
01

30: **Date of Amendment**  
XX0422

22R: Purpose of Amendment  
ISSU

31E: New Date of Expiry  
XX0731

44C: New Latest Date of Shipment  
XX0710

46B: Documents Required  
DELETE/+PRE-SHIPMENT INSPECTION CERTIFICATE ISSUED BY CREATIVE INSPECTION SERVICES INDICATING THAT THE GOODS ARE BRAND NEW, FULLY MEET THE SPECIFICATIONS AS GIVEN TO THEM BY THE APPLICANT AND HAVE BEEN PACKED IN PACKAGING SUITABLE FOR THEIR CARRIAGE TO HAMBURG PORT.  
ADD+PRE-SHIPMENT INSPECTION CERTIFICATE ISSUED BY PRISTINE INSPECTION SERVICES INDICATING THAT THE GOODS ARE BRAND NEW, FULLY MEET THE SPECIFICATIONS AS GIVEN TO THEM BY THE APPLICANT AND HAVE BEEN PACKED IN PACKAGING SUITABLE FOR THEIR CARRIAGE TO HAMBURG PORT.  
ADD/ INSURANCE CERTIFICATE OR POLICY SHOWING THE ASSURED AS FINANCING BANK AND ISSUED FOR 110% OF THE CIF VALUE OF THE GOODS COVERING ICC (A), WAR RISKS AND STRIKES RISKS

**-} {5:MAC:11100011} {CHK:Z628US9107J4}**

An MT799 message may also be used when the MT707 is not appropriate. Both of these SWIFT message types are authenticated messages.

An MT199 message is authenticated, but it is free format and can be used for anything, while MT999 is an unauthenticated message type. A message providing details of an amendment sent by telex must be authenticated, and most likely the issuing bank will have authentication arrangements with the advising bank. If such direct testing arrangements do not exist, the issuing bank will send the message to a correspondent bank that has testing arrangements, with a request to pass on the amendment authenticated between such correspondent bank and the advising bank.

If the amendment is sent in hard copy form, the signature(s) appearing thereon can be authenticated against specimens held with the advising bank.

The issuing bank should not send a telex to the advising bank and its correspondent with a request to the advising bank to verify the test with the correspondent.

As previously mentioned, once an amendment has been issued, the issuing bank is irrevocably bound by the amended terms. However, it may be some time before it becomes aware of whether or not the beneficiary has accepted the amendment.

It is therefore important when, for example, an amendment is reducing the value of a documentary credit, that an issuing bank does not reverse any liabilities recorded against the applicant's credit facility pending notification that the beneficiary has accepted the amendment. Usually, this evidence will take the form of a presentation of documents that meets the terms of the original documentary credit and the amended terms. The beneficiary may also provide a separate notification of acceptance (or rejection) of an amendment prior to the presentation of documents, but this is not a common occurrence.

## Conclusion

Amendments are an important component of documentary credits. For example, shipments may be delayed, goods may increase in price, additional goods may be ordered, or different or additional documents may be required. Each of these occurrences can lead to an amendment being issued.

Although the data content of an amendment will be much reduced from that appearing in the documentary credit, it has equal importance. An issuing bank must ensure that the content of the amendment is precise and that all fields of the MT700, or content of a telex or mail advice of the documentary credit, have been reviewed to determine whether the amendment affects more than one of the stated terms and conditions.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the structure of an amendment as an MT707 message?
- outline the routing process for an amendment?
- describe how an amendment originates?

## Test your knowledge

Use these questions to assess your learning for Topic 8.

1. An amendment is subject to the consent of whom?
  - a. The beneficiary.
  - b. The issuing bank and the beneficiary.
  - c. The issuing bank, the beneficiary and any confirming bank.
  - d. The issuing bank, the beneficiary and any nominated bank.

Answer: C. An amendment is subject to the consent of the issuing bank (to issue it in the first place), a confirming bank, if any, and the beneficiary. See section 8.2.

2. Which of the following is true of an amendment issued stating that it will be deemed to have been accepted by the beneficiary unless it rejects the amendment within seven calendar days of its date?
  - a. The inclusion of this condition is an acceptable practice and is a way of determining whether the beneficiary has accepted or rejected an amendment.
  - b. The inclusion of this condition is not acceptable and is not one of the ways of determining whether the beneficiary has accepted or rejected an amendment.
  - c. The inclusion of this condition is an acceptable practice if inserted by the advising bank in its advice of the amendment and is a way of determining whether the beneficiary has accepted or rejected an amendment.
  - d. The inclusion of this condition is an acceptable practice if inserted by the confirming bank in its advice of the amendment and is a way of determining whether the beneficiary has accepted or rejected an amendment.

Answer: B. Amendments must not include a condition relating to a timeline in which the beneficiary is to accept or reject an amendment (sub-article 10(f)). If one is included, it will be disregarded. See section 8.2.

3. An issuing bank is irrevocably bound by an amendment when:
  - a. it approves the request of the applicant.
  - b. it issues the amendment.
  - c. the advising bank or confirming bank advises the amendment.
  - d. the beneficiary receives the amendment.

Answer: B. An issuing bank is bound as of the time at which it issues the amendment (sub-article 10(b)). See section 8.2.

4. An amendment decreases the value of a documentary credit. The credit facility amount should be reduced accordingly when:
  - a. the amendment is issued.
  - b. the advising bank or confirming bank advises the beneficiary of the amendment.
  - c. the beneficiary provides its consent to the amendment by way of a notification of acceptance.
  - d. the beneficiary provides its consent to the amendment by way of a notification of acceptance or the presentation of documents that comply with the original documentary credit and the amendment.

Answer: D. The credit facility amount should not be reduced until such time as the beneficiary has consented to the amendment, according to sub-article 10(c). See section 8.8.

5. If a second advising bank decides not to advise an amendment to the beneficiary, it must inform the issuing bank without delay. True or false?

- a. True.
- b. False.

Answer. False. A second advising bank should inform the advising bank of its decision. The advising bank will inform the issuing bank. See section 8.7.

## Answers

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### CHECK YOUR UNDERSTANDING (section 8.4)

False. An amendment to a documentary credit is made with the consent of the issuing bank. See section 8.2.

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### CHECK YOUR UNDERSTANDING (section 8.7)

No. It is authenticated by the initials or signature of the customer's authorised signatory (or signatories). Where such a correction is made subsequent to a request sent electronically, it is preferable to have a separate message confirming the correction. See section 8.6.

## Topic 9 Advising a documentary credit

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### Learning objectives

By the end of this topic, you should be able to:

- describe the role of an advising bank;
- outline the responsibilities of an advising bank when advising a documentary credit to a beneficiary; and
- understand the role and responsibilities of a second advising bank.

### Introduction

This topic describes the process from the time of receipt of a documentary credit by a bank designated as the advising bank or second advising bank to the time it is advised to a beneficiary.

#### Think...

Before you start work on this topic, consider what you already know about how an advising bank works. For example:

An advising bank is a feature of almost every cross-border documentary credit, but do you know how an advising bank is chosen?

Do you know that a second advising bank can be used by an advising bank, without the agreement of the issuing bank?

## 9.1 Considerations prior to advising a documentary credit

The choice of advising bank may have been made either by the beneficiary indicating in the sale contract the details of its own bank as its preferred advising bank and the applicant indicating these details in the documentary credit application form, or by the issuing bank, in the absence of such bank being indicated in the documentary credit application form.

For banks that maintain a global or regional presence, the advising bank is very often a branch of the issuing bank. This enables the same bank to be on both ends of the transaction from a processing and revenue viewpoint. Otherwise, to be an advising bank, a bank must maintain a correspondent banking relationship with the issuing bank. This should ensure that the documentary credit is routed in an apparently authentic form for advising to the beneficiary.

A documentary credit might indicate that an advising bank is to advise the beneficiary of its issuance through the intermediary of another bank. This bank is known as the 'second advising bank'.

A second advising bank is often the beneficiary's banker and, as mentioned previously, is likely to have been indicated in the sale contract as the bank through which the documentary credit is to be advised. However, due to no correspondent banking relationship existing between the issuing bank and that bank, or because of an internal policy at the issuing bank to route documentary credits through another preferred correspondent bank in that country or to use a branch of the issuing bank, the chosen advising bank was not that which was requested at the outset by the beneficiary.

The advising bank will be directed to advise the documentary credit to the beneficiary via the second advising bank.



### 9.1.1 The application of article 9

Article 9 contains some minimal rules, when advising a documentary credit, which relate to an advising bank and a second advising bank.

Sub-article 9(a) establishes the basic position that a credit and any amendment may be advised to a beneficiary through an advising bank and that if the advising bank agrees to advise the documentary credit, or any amendment, it does so without any undertaking to honour or negotiate a complying presentation made by, or on behalf of, the beneficiary.

The fact that a bank is not required to advise a credit is made clear in sub-article 9(e).

Should a bank decide not to advise a documentary credit or any amendment, it is not required to indicate its reason(s) for not advising the documentary credit or amendment.

An advising bank's primary role is establishing the apparent authenticity of the documentary credit or amendment that it receives from the issuing bank. Either by a specific statement or the absence of any statement in its advice of the documentary credit or an amendment, the advising bank will indicate that it has "satisfied itself as to the apparent authenticity" of the documentary credit or amendment. This is covered in sub-article 9(b).

Similarly, sub-article 9(c) addresses the same requirement for a second advising bank. However, in the case of a second advising bank, we are referring to the apparent authenticity of the advice created by the advising bank. This could be a SWIFT MT710 message (Advice of third bank's or a non-bank's documentary credit), a SWIFT MT707 message (Amendment to a documentary credit) or an advice that has been issued and sent in a letter by mail or courier service.

Although the main requirement for an advising bank or second advising bank is to determine the apparent authenticity of the documentary credit (advising bank) or the advising bank's advice of a documentary credit (second advising bank), sub-article 9(f) provides for the advising of a documentary credit where authentication has not been possible and details the requirements for advising the issuing bank and the beneficiary of this fact.

Because of the significant use of the SWIFT MT700 message type for the issuance of a documentary credit, the occurrence of non-authentication is confined to a very small percentage of transactions that are sent by telex or in letter form. However, in today's regulatory environment, a bank would be expected not to advise a documentary credit until its apparent authenticity could be determined.

The rules in article 9, are mirrored in the content of ISP98, rule 2.05.

Should an advising bank or second advising bank agree to advise a documentary credit, the issuing bank is ultimately liable, as instructing party, for any uncollected charges of the advising or second advising bank. This is covered in sub-article 37(c). Reimbursement of these charges from the applicant will form part of the separate agreement between the issuing bank and the applicant.

Similarly, sub-article 37(d) indicates that the applicant indemnifies each bank for all obligations and responsibilities imposed by foreign laws and usages – that is, the laws and usages of the country of the other banks – if these are different from those of the country of the issuing bank.

### **Check your understanding**

1. In what circumstances can an advising bank be a branch of an issuing bank?
2. What is the role of a second advising bank?

#### **9.1.2 The risks applicable to an advising bank**

An advising or second advising bank undertakes no obligation to honour or negotiate and therefore incurs no credit risk by advising a documentary credit or an amendment. As we have learned, the only obligation of the advising bank and second advising bank, if accepting the issuing bank's instructions, is to satisfy itself as to the apparent authenticity of the documentary credit or amendment (advising bank) or the advice of the advising bank (second advising bank) and to advise the documentary credit or amendment to the beneficiary.

An advising or second advising bank is also to ensure that it advises the documentary credit or an amendment substantially in the form in which it was received. For example, the bank is to ensure that the details received, by way of content of the documentary credit and the number of pages of that documentary credit, are forwarded to the beneficiary.

Information that is considered strictly bank-to-bank information need not form part of the advice to the beneficiary unless it may be appropriate to another nominated bank, in the event that the documentary credit is available with any bank.

## 9.2 Receipt of the documentary credit

As we learned in Topic 7, a documentary credit is generally issued by use of a SWIFT MT700 message, and occasionally by a SWIFT MT799 message. This will enable an advising bank to determine the apparent authentication of the message in accordance with sub-article 9(b).

For documentary credits sent by telex or in letter form, authentication will be achieved, respectively, by means of the agreement of the testing algorithm, which will appear on the telex, or the examination of the signature(s) against specimens held on file.

A second advising bank will receive the documentary credit from the advising bank by means of a SWIFT MT710 message or telex, or in letter form. As we saw in section 9.1.1, a second advising bank is required to determine the apparent authenticity of the advice that has been issued by the advising bank.

## 9.3 Reviewing the documentary credit against an agreed credit facility

One of the first items to be reviewed will be whether there is an authorisation or request for confirmation to be added. If the answer is 'yes', this will change the form of advice and the process that needs to be followed. Issues relating to the adding of confirmation are covered in Topic 10.

Even if the documentary credit does not indicate a request or authorisation for confirmation to be added, there may still be a need to review the main criteria against a credit facility in the name of the issuing bank.

If a documentary credit is to be advised to the beneficiary, without confirmation, but it is available with the advising bank and / or second advising bank by deferred payment or acceptance, the bank is being asked to incur a liability against the issuing bank, should it agree to act on the nomination of the issuing bank and incur its deferred payment undertaking or accept a draft drawn on it. Prior to advising such a documentary credit, the bank should check to ensure that the terms and conditions fall within the parameters of the facility, so that if the beneficiary were to ask the bank to act on its nomination, there would be a reasonable chance that it will agree.

For example, if the advising or second advising bank were to observe that the terms and conditions were outside the agreed parameters or that there was little chance of the bank acting on its nomination, it should inform the beneficiary and issuing bank prior to advising the documentary credit. This is a prudent course of action so that the beneficiary is not misled in any way that the bank may be willing or able to act should a complying presentation be made.

## 9.4 Reviewing a documentary credit against bank policy and regulatory requirements

The terms and conditions of a documentary credit, including the names of entities or countries, should be checked against any regulatory requirements, such as sanction regulations that are applicable to the bank.

Bank policy should also be followed in relation to the type and nature of the transaction, including the goods and their description in the documentary credit. For example, if a documentary credit

quotes goods as being 'equipment', the bank should seek a more detailed description to understand what type of equipment is to be shipped.

### **Check your understanding**

If an advising bank or second advising bank agree to advise a documentary credit, the issuing bank is ultimately liable for any uncollected charges of the advising or second advising bank. In which sub-article is this covered?

- a. sub-article 37(c).
- b. sub-article 37(a).
- c. sub-article 37(d).
- d. sub-article 38(c).

## 9.5 Reviewing the content of a documentary credit

There is no requirement in UCP 600 for an advising or second advising bank to review the text of a documentary credit to ensure that its terms and conditions appear to be in a workable form. It should be noted that even if a bank were to complete such a review and come to the conclusion that the documentary credit appears to be in a workable form, it would be only the beneficiary who could definitively make that decision.

In this context, some advising and second advising banks will examine every detail and contact the issuing bank should there be a conflict of data or a need for clarification of a term or condition.

Other banks will review one or more of a select number of criteria, such as expiry date and place, latest shipment date, goods description, form of availability, Incoterm in relation to freight and insurance requirements, correct transport document called for, reimbursement conditions commensurate with the form of availability, etc.

Others will not review the text at all, on the basis that the advice of the documentary credit conveys no undertaking on the part of the advising bank or second advising bank.

Ultimately, the choice is left to each bank, and the process that is undertaken can often be a factor in a beneficiary choosing a preferred advising or second advising bank.

In the following section, you will learn about the considerations made by an advising or second advising bank when reviewing a documentary credit.

## 9.6 Considerations

There are several considerations made by an advising or second advising bank when reviewing a documentary credit.

### Types of settlement

A bank that examines all, or some, of the terms and conditions of a documentary credit will look at the form of availability to see what will be expected of it if it agrees to act on a nomination to honour or negotiate (noting that, in most cases, an advising bank will also be the named nominated bank or a nominated bank, by virtue of the documentary credit stating that it is available with 'any bank').

In this respect, see Topic 7, section 7.4.2, which provides an outline of the four different forms of settlement and the types of reimbursement instruction that a nominated bank should expect to see for each form of settlement.

### The place and date of expiry

The place of expiry should be that of the advising or second advising bank (or its country), if the advising or second advising bank is to consider offering the beneficiary an indication in its advice of the documentary credit that it may be willing to consider honouring or negotiating a complying presentation.

### Transferable credits

If a documentary credit is stated to be transferable and the advising or second advising bank is the nominated bank, or the documentary credit is available with any bank and the advising or second advising bank is nominated to be the transferring bank, and if the advising or second advising bank is willing to consider a request for transfer submitted by the beneficiary, it should attach to its advice of the documentary credit its standard transfer request form.

Transferable credits are covered in more detail in Topic 19.

### Was the issuance of the documentary credit subject to an earlier pre-advice?

It is highly unlikely that a pre-advice will have been issued where a documentary credit is issued using the SWIFT MT700 or MT799 message type, or by telex. Pre-advice is discussed in Topic 7, section 7.12.

A pre-advice will commonly occur when the full terms and conditions of a documentary credit are issued in letter form. In this event, the documentary credit should clearly refer to issuance of the pre-advice and its date. The advice of the advising or second advising bank to the beneficiary should make reference to the pre-advice message.

## 9.7 Preparing a documentary credit for advising to the beneficiary

An advising or second advising bank will usually maintain a standard form of advice that it uses to advise a documentary credit to a beneficiary. These will vary in substance from bank to bank.

Some banks will provide an advice that merely indicates that a credit has been issued, will attach a copy of it and will indicate the charges that are due from the beneficiary, if any.

Other banks will take a more proactive role by indicating the conditions under which they may be willing to honour or negotiate. They may advertise their willingness to finance where a draft is accepted or where a deferred payment undertaking is incurred, or to negotiate where a documentary credit is available by negotiation.

Some banks will also provide beneficiaries with a short guide of how to review the terms and conditions of the documentary credit, or one indicating the main points for consideration when the documents are being prepared for subsequent presentation to the bank.

It should be noted that in its advice of the documentary credit an advising or second advising bank is not required to translate any of its text or interpret any technical terms (see article 35).

An advising or second advising bank may incorporate its own standard wording in relation to certain matters, such as sanction clauses, the imposition of discrepancy fees, delivery instructions for the documents, etc.

If a non-bank financial institution has issued the documentary credit, the advising or second advising bank should make this clear to the beneficiary in its advice.

### **Check your understanding**

Advising or second advising banks are required to examine every detail of a documentary credit. True or false?

## 9.8 Transmitting a documentary credit to the beneficiary

In most cases, the advising or second advising bank will advise the details of the documentary credit in letter form. This letter will either be sent to the beneficiary by mail or by courier, or the beneficiary will collect it from the offices of the bank. The latter is often the option chosen when an advising bank wishes to collect its fees in advance – that is, where the documentary credit is available with any bank and the beneficiary is a non- customer of the advising or second advising bank.

Some banks now provide electronic delivery of the advice of the documentary credit to their clients through their front-end systems.

In relation to the actual transmission of the documentary credit or an advice thereof, article 35 provides a disclaimer for banks in the event that any messages or letters are delayed, lost in transit, mutilated or received with other errors that arose during transmission.

A beneficiary should review the documentary credit upon its receipt to determine if its terms and conditions are acceptable. If not, the beneficiary should contact the applicant and request an amendment. It is advisable that only when the documentary credit is in an acceptable form should the beneficiary commence the manufacture, production or shipment of the goods, or provide the required service or performance.



## Conclusion

Advising or second advising banks perform a valuable service to any beneficiary as an intermediary between the issuing bank and that beneficiary. As the intermediary, they offer the beneficiary comfort in knowing that the received documentary credit (or amendment) is apparently authentic. This removes the risk that a beneficiary could act on a documentary credit that was not actually issued by the named issuing bank.

As a basic rule, the advice of an advising or second advising bank will have given no undertaking to the beneficiary that honour or negotiation will take place. However, it should be noted that the advising or second advising bank could also be named as the confirming bank (see Topic 10).

### Think again ...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the responsibilities of the advising and second advising bank under UCP 600?
- outline the kind of data that forms the basis of an advising or second advising bank's advice to the beneficiary?
- describe the different approaches that can be considered by an advising or second advising bank when reviewing the text of a documentary credit?

## Test your knowledge

Use these questions to assess your learning for Topic 9.

1. When an advising or second advising bank issues its advice of a documentary credit, it signifies that it has found the documentary credit or its advice to be which of the following?

- a. Genuine.
- b. Authentic.
- c. Apparently genuine.
- d. Apparently authentic.

Answer: D. An advising or second advising bank is in a position to determine only whether a documentary credit (or the advice of the advising bank) is apparently authentic (sub-articles 9(b) and (c)). See section 9.1.1.

2. An advising bank receives a documentary credit by way of a telex instruction. The bank is unable to agree the testing algorithm that has been used. The bank must obtain a corrected authentication before it advises the documentary credit to the beneficiary. Under UCP 600, is this true or false?

- a. True.
- b. False.

Answer: False. Sub-article 9(f) permits an advising bank to advise a documentary credit that it has been unable to apparently authenticate, provided that it informs the beneficiary or second advising bank of this fact. See section 9.1.1.

3. A second advising bank is required to determine the apparent authenticity of the documentary credit issued by the issuing bank. True or false?

- a. True.
- b. False.

Answer: False. A second advising bank is required to determine the apparent authenticity of the advice that it receives from the advising bank. See section 9.1.1.

4. Fill in the missing words in the following sentence.

An **advising** or **second** advising bank is not required to **examine** a documentary credit to determine whether it is in a **workable** form.

There is no rule in UCP 600 that requires either bank to review the documentary credit to ensure that it appears to be in a workable form. See section 9.5.

5. Because a documentary credit that is to be advised to a beneficiary conveys no engagement or responsibility of an advising or second advising bank, its contents need not be examined against bank policy. True or false?

- a. True.
- b. False.

Answer: False. Banks should always review a documentary credit from the perspective that it does not breach any bank policy. See section 9.4.

## Answers

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### **CHECK YOUR UNDERSTANDING (section 9.1.1)**

The advising bank is very often a branch of the issuing bank where they maintain a global or regional presence. See section 9.1.

A second advising bank is often the beneficiary's banker and is likely to have been indicated in the sale contract as the bank through which the documentary credit is to be advised. See section 9.1.

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### **CHECK YOUR UNDERSTANDING (section 9.4)**

a. sub-article 37(c). See section 9.1.1.

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### **CHECK YOUR UNDERSTANDING (section 9.7)**

False. These banks can choose whether to examine all the content details or not review the text at all. The process that is undertaken can often be a factor in a beneficiary choosing a preferred advising or second advising bank. See section 9.5.

## Topic 10 Confirming a documentary credit

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### Learning objectives

By the end of this topic, you should be able to:

- understand the process of determining whether the content of a documentary credit is acceptable, as well as complying with bank policy and regulatory requirements;
- understand whether the terms and conditions of the documentary credit may be accommodated within the availability and terms of a credit facility granted to the issuing bank;
- identify the risks associated with adding confirmation to a documentary credit;
- understand that the form of availability and location of the place of expiry is linked not only to the settlement and reimbursement instructions that will be provided to the confirming bank, but also to the form and scope of the confirmation that is being authorised or requested.

### Introduction

This topic describes the process performed by banks from the time a documentary credit is received, which includes an authorisation or request for confirmation to be added, through to the sending of its advice to the beneficiary, directly or via a second advising bank by a SWIFT MT710 message or telex, or mail (letter) form.

According to the SWIFT statistics included in the [2020 ICC Global Survey on Trade Finance](#), only 6.9% of the SWIFT MT700 messages issued in 2019 indicated 'confirm' and only 3.8% of those messages indicated 'may add' – both in field 49. It can, therefore, be seen that confirmation of documentary credits only occurs in a relatively small percentage of documentary credits issued in any one year. For comparison purposes, the percentages in 2018 were 7.2% and 3.9% respectively.

#### Think...

Before you start work on this topic, consider what you already know about the processes involved in confirming a documentary credit? For example:

Do you understand the reasons why a beneficiary may require confirmation to be added to a documentary credit?

Can you describe the difference between advising a documentary credit without confirmation and advising with confirmation added?

## 10.1 Pre-confirmation considerations

Before assessing the content of a documentary credit, bank staff should be aware of, and have consideration for, various aspects of documentary credit practice, for example of the risks that a bank faces when adding confirmation to a documentary credit, and due consideration of the terms and conditions of the documentary credit and the content of article 8.

The definition of confirmation in article 2 emphasises that it represents a “definite undertaking of the confirming bank [...] to honour or negotiate a complying presentation”. Importantly, it also describes the undertaking of the confirming bank as being in addition to that of the issuing bank. The concept of confirmation should be understood in the context that whereas the issuance of a documentary credit, by an issuing bank, removes the payment risk of the applicant, the adding of confirmation removes the payment risk of the issuing bank.

If a proposed beneficiary is not comfortable with receiving an irrevocable undertaking from a particular issuing bank, it may require the applicant to instruct its bank to authorise or request a bank to add its confirmation to the documentary credit. This is most likely to occur when the issuing bank is located in a country that the proposed beneficiary believes represents a risk to receipt of settlement. It may also occur when the proposed beneficiary has an internal policy that dictates that documentary credits are to be confirmed when they are issued from certain countries or regions of the world. Confirmation will often be added by a bank that is the proposed beneficiary’s own, or preferred, banker.

In this context, article 2 defines the confirming bank as “the bank that adds its confirmation [to a credit] upon the issuing bank’s authorization or request” as will be indicated within the terms and conditions of the documentary credit.

In most cases, it is the advising bank that will be the bank that is authorised or requested to add its confirmation.

An authorisation to add confirmation will be given via a specific clause in the documentary credit such as ‘You are authorised to add your confirmation at the specific request of the beneficiary’. This type of clause implies that the fee for adding confirmation is to be collected from the beneficiary in advance. In a SWIFT MT700 message, field 49 would state ‘MAY ADD’.

A request to add confirmation will be made via a specific clause in the documentary credit, such as ‘Please add your confirmation’ or, in field 49 of a SWIFT MT700 message, the insertion of the word ‘CONFIRM’.

It should be noted that honour or negotiation by a confirming bank is not conditional upon the confirming bank first being reimbursed by the issuing bank, or the issuing bank providing an indication that it has accepted the documents. A confirming bank honours or negotiates according to its own determination of compliance of the documents with the terms and conditions of the documentary credit and in the expectation of being reimbursed by the issuing bank.

### 10.1.1 The risks applicable to a confirming bank

The risks faced by a bank that is willing to confirm a documentary credit can be broadly summarised as follows.

- **Issuing bank risk** – the issuing bank may be unable to reimburse the bank for any settlement or reimbursement that it is required to make in respect of a presentation that complies with the terms and conditions of the documentary credit, or in respect of a presentation where the applicant had previously issued a waiver of discrepancies, and that waiver was acceptable to the issuing bank and the confirming bank was willing to continue with its confirmation.
- **Financial crime** – the transaction may be used to facilitate criminal activity, such as money laundering, fraud against the bank and / or other entities, terrorist financing, etc.
- **Errors in conveying the requirements of the issuing bank** – in most cases, the bank requested to add its confirmation will take a copy of the incoming documentary credit and send this to the beneficiary, with a covering advice indicating the terms and conditions that apply to the confirmation. The bank must ensure that the copy it sends is a true reflection of the documentary credit it received; otherwise, compliance by the beneficiary to the terms and conditions as advised to it, rather than the terms and conditions of the documentary credit issued by the issuing bank, may leave the confirming bank in a situation in which it is required to honour or negotiate a complying presentation, but its right to reimbursement from the issuing bank is placed in jeopardy.

When a confirming bank advises a documentary credit via a second advising bank, it may use the SWIFT MT710 message type. In this case, the bank is required to copy across the text from the MT700 to the MT710 message. Any errors in rekeying will be the responsibility of the confirming bank. However, it should be noted that a number of banks' back-office systems populate the fields of the MT710 to match those of the MT700 to avoid the risks involved in rekeying data.

Although article 35 provides a 'Disclaimer on Transmission and Translation', the errors stated in article 35 refer to a SWIFT or telex advice of a documentary credit or amendment being mutilated between the sending and receiving of the message, and do not include any errors made by a confirming bank in rekeying the data the issuing bank has provided.

- **Errors in document examination or a failure to follow the requirements of article 16 when refusing documents** – a confirming bank may make an error in determining the status of the documents, by considering the documents to be compliant when there is a clear and undeniable discrepancy. In these circumstances, a confirming bank may find that the issuing bank will immediately issue a refusal notice and, possibly, return the documents, or that the issuing bank will not accept a waiver that is given to it by the applicant.

Similarly, if a confirming bank determines that the documents are discrepant, but it issues a refusal notice that is not in conformity with the requirements of article 16, it may find itself precluded from claiming that the documents are discrepant. As a result, it will be required to honour or negotiate what will be discrepant documents, and once again will find itself in the hands of the issuing bank and the applicant as to whether it may be reimbursed for the settlement made to another nominated bank or beneficiary.

The topic of refusal notices and preclusion is discussed further in Topic 18.

### Check your understanding

1. Complete the missing words in the sentence.

The issuance of a documentary credit, by an issuing bank, removes the ----- risk of the -----, whereas the adding of ----- removes the payment risk of the issuing bank

2. What message type may be used when a confirming bank advises a documentary credit via a second advising bank?

### 10.1.2 The application of article 8

Sub-article 8(a) recognises that a documentary credit may be available with another nominated bank or more than one nominated bank – that is, that a documentary credit may be available with any bank.

It should be noted here that while a confirming bank need not be a nominated bank, it is advisable that it is. If a bank is authorised or requested to add its confirmation to a documentary credit that is not available with it, it should fully understand the scope of the confirmation that is being authorised or requested. If a confirming bank is not a nominated bank, it is likely that it is being asked to undertake to pay in the event of non-payment of a complying presentation by the issuing bank, and not to undertake to honour or negotiate against the presentation of complying documents to it. The wording of the confirmation advice must clearly reflect the form of undertaking that the bank is giving.

When a confirming bank is a nominated bank under a documentary credit that is available with any bank, sub-articles 8(a)(i)(b)–(e) require that it honour or negotiate if another nominated bank does not act on its nomination or, having acted on its nomination, does not effect settlement on the due date.

The possible impact of these sub-articles can be modified by the confirmation advice clearly indicating that the undertaking of the confirming bank is applicable only in the context of a complying presentation being made to it, at its designated office, within the expiry date of the documentary credit (see section 10.6).

A bank is irrevocably bound to honour or negotiate as of the time at which it issues its advice of confirmation. Any subsequent attempt to amend or cancel the terms and conditions of the confirmation will be subject to the consent of the beneficiary.

Sub-article 8(c) is similar in content to sub-article 7(c), which was discussed in Topic 7. Primarily, a confirming bank provides an undertaking to a beneficiary to honour or negotiate a complying presentation (subject to the comments made earlier in this section).

Sub-article 8(c) also reflects the obligation of a confirming bank when another nominated bank has acted on its nomination and honoured or negotiated and is expecting to be reimbursed according to the terms and conditions of the documentary credit. This undertaking to reimburse and the independent undertaking that is given to a beneficiary is reflected in the sub-article.

Any honour or negotiation of a complying presentation, or reimbursement of a claim made by another nominated bank, is made without recourse.

Last, but not least, a bank authorised or requested to add its confirmation is under no obligation to do so. If it decides not to add its confirmation, it is not required to offer any reason(s); the only

requirement is to inform the issuing bank without delay (see sub-article 8(d)). The bank may still choose to advise the documentary credit to the beneficiary without confirmation.

There are a number of reasons why a bank may not be prepared to add its confirmation. Some of the more common ones are that:

- the limit available under its own guidelines for issuing bank risk may already have been reached;
- a similar limit in respect of the country risk of the country in which the issuing bank is located may have been reached; and / or
- the terms and conditions of the documentary credit may not be acceptable to the bank.



## 10.2 Receipt of the documentary credit

As mentioned earlier, in most cases the bank that is authorised or requested to add its confirmation will also be the advising bank – that is, the bank that receives the documentary credit from the issuing bank.

As we saw in Topic 9, a documentary credit is generally issued by use of a SWIFT MT700 message, and occasionally by a SWIFT MT799 message. This will enable a confirming (advising) bank to determine the apparent authentication of the message in accordance with sub-article 9(b).

For documentary credits sent by telex or in letter form, authentication will be achieved, respectively, by means of the agreement of the testing algorithm, which will appear on the telex, or the examination of the signature(s) against specimens held on file.

When a proposed confirming bank is not the advising bank, it will need to be able to determine the authentication of the authorisation or request to add confirmation. It should also request that the issuing bank provide it with a copy of the documentary credit and any amendment(s) that may have been issued. In these circumstances, the advice of confirmation (if agreed to by the bank requested to add its confirmation) will normally be routed to the beneficiary through the advising or second advising bank.

### **Check your understanding**

Under article 8, why would a confirming bank that is not a nominated bank be used?

### 10.3 Reviewing the documentary credit against an agreed credit facility

One of the first items to be considered will be whether there is an authorisation or request for confirmation to be added. If the answer is 'yes', there is a need to review the main criteria against a credit facility that has been granted in the name of the issuing bank.

Just as an applicant will establish a credit facility with its bank for the issuance of documentary credits, so will an issuing bank with a number of its correspondent banks in order that confirmation may be added as and when required by the beneficiary and / or the applicant. Details such as the expiry date, amount, payment terms and goods description will be reviewed for compliance with the terms and conditions of the credit facility and the availability thereunder.

### 10.4 Reviewing the documentary credit against bank policy and regulatory requirements

The terms and conditions of a documentary credit, including any names of entities or countries appearing thereon, should be checked against any regulatory requirements, such as sanction regulations that are applicable to the bank.

Bank policy should also be adhered to in relation to the type and nature of the transaction, including the goods and how they may be described in the documentary credit. For example, if a documentary credit quotes a goods description of 'equipment', it would be prudent for the bank to seek a more detailed description to understand exactly what type of equipment is to be shipped.

It is true to say that some banks, when authorised or requested to add confirmation, will insist on the documentary credit being available by payment, acceptance or deferred payment (and not by negotiation), and require that the issuing bank provide a reimbursement instruction that allows the confirming bank to debit the account of the issuing bank or to claim reimbursement from a named reimbursing bank. This is purely a matter of bank policy and not a requirement of UCP 600, in particular article 8.

## 10.5 Reviewing the content of the documentary credit

A bank that is considering adding its confirmation should review the entire text of the documentary credit to determine that it appears to be in a workable form. If there is any ambiguity with, or clarification needed to, any of its terms and conditions, the issuing bank should be contacted in the first instance. Pending a suitable response from the issuing bank, the documentary credit could be advised to the beneficiary without confirmation being added. Confirmation will then be added when a satisfactory response is received from the issuing bank.

When adding confirmation to a documentary credit, terms and conditions such as those relating to the place of expiry (which should be the location of the confirming bank), the bank with which the credit is available (which should be the confirming bank or should otherwise allow honour or negotiation with any bank) and the manner in which the bank will be reimbursed are paramount.

The terms and conditions of the documentary credit may have a bearing on the scope of the confirmation that will be added. For example, a documentary credit that expires 270 days after the date of issuance will prove problematic if the credit facility is established for a maximum period of 180 days. The choice for the confirming bank is to decline the transaction, or to add confirmation for 180 days and perhaps review every 30 days to see whether a further period may be covered, and so on up to the stated expiry date. Similarly, a documentary credit may provide for payment terms whereby the confirming bank is willing to add confirmation for only, say, 90% of the amount of the documentary credit.

In either case, the advice of confirmation must clearly reflect the scope of the confirmation and the issuing bank should be similarly informed. It will then be for the beneficiary to determine whether it can operate within the parameters set by the confirming bank. If not, the beneficiary may need to find a bank that will be willing to add confirmation based on the original documentary credit terms. Any new confirming bank would be indicated by way of an amendment to the documentary credit.

## 10.6 Preparing the confirmation advice

As already mentioned, the words used in an advice to convey the scope of the confirmation are critical. Such wording will establish the basis under which the confirming bank will be expected to honour, negotiate or reimburse. Any ambiguity can have serious consequences for a bank.

A number of banks make the mistake of simply stating 'We confirm the credit'. Such wording can have implications for a confirming bank, especially when there are one or more other nominated banks with which the documentary credit is available.

As discussed earlier, sub-articles 8(a)(i)(b)–(e) require a confirming bank to honour or negotiate when another nominated bank fails to act on its nomination to honour or negotiate or, having acted on that nomination, fails to effect settlement on the due date. In either event, a confirming bank that has stated 'We confirm the credit' will be obligated to honour or negotiate where a complying presentation was previously made.

Consider, however, a confirming bank using the following wording.

We hereby add our confirmation to this credit and undertake that we shall [honour or negotiate] all drafts and / or documents that are presented to us, at our address mentioned above, on or before the expiry date mentioned in the credit, provided that they fully comply with the terms and conditions of the credit.

In this case, the undertaking of the confirming bank is limited to a presentation being made to it and to no other bank. In these circumstances, sub-articles 8(a)(i)(b)–(e) will be modified.

When a bank is authorised to add confirmation to a documentary credit, the documentary credit will normally be advised on an unconfirmed basis, with a clause in the advice of the advising bank stating the following (or words of similar effect):

- **where charges are for the account of the applicant or may be collected from the proceeds of any presentation**, 'We are authorised to add our confirmation to this credit, at your request. Upon our receipt of your written request, the matter will receive our further consideration'; or
- **where charges are to be collected from the beneficiary (in advance)**, 'We are authorised to add our confirmation to this credit, at your request and upon our receipt of your payment for the confirmation fee. Upon our receipt of your request and payment for [currency] XXXX the matter will receive our further consideration'.

In both cases, the bank leaves open its option to add confirmation until the preconditions have been met.

## 10.7 Transmitting the confirmation advice

In most cases, a confirming bank will advise the details of a documentary credit in letter form. This letter will either be sent to the beneficiary by mail or courier, or the beneficiary will collect it from the offices of the bank.

Some banks now provide electronic delivery of the advice of the documentary credit to their clients through their front-end system.

In relation to the actual transmission of the documentary credit or an advice thereof, article 35 provides a disclaimer for banks should any messages or letters be delayed, lost in transit, mutilated or received with other errors that arose during transmission. A beneficiary should review the documentary credit upon its receipt to determine if its terms and conditions are acceptable. If not, the beneficiary should contact the applicant and request an amendment. It is advisable that only when the documentary credit is in an acceptable form should the beneficiary commence the manufacture, production or shipment of the goods, or provide the required service or performance.

The beneficiary should also review the wording of the confirmation to ensure that the undertaking of the confirming bank is as expected and in line with its requirements.

When the documentary credit is being advised to the beneficiary through another bank – a second advising bank – the confirming bank may send its advice of confirmation and the documentary credit by mail, courier or through a SWIFT MT710 message.

Whether the advice is sent to another bank or the beneficiary, the required manner of sending may be indicated in the documentary credit.

### **Check your understanding**

Under article 8, a bank authorised or requested to add its confirmation may insist that the documentary credit only be available by payment, acceptance or deferred payment. True or false?

## Conclusion

Confirmation of a documentary credit becomes more popular when there are heightened financial issues in a country, region or worldwide. For example, the financial crisis of 2008/09 saw a considerable number of documentary credits being confirmed. Today, the need for confirmation is driven by the perception of bank and country risk, and beneficiary policy.

Confirmation offers an extra layer of financial protection, ie the removal of the issuing bank settlement risk, and replaces it with the settlement risk of a bank that may be more familiar to the beneficiary, and may even be the beneficiary's banker.

The adding of confirmation should not be taken lightly by a beneficiary. In most cases, it will be responsible for payment of the confirmation fee. On this basis, the onus to present documents that comply with the terms and conditions of the credit increases significantly.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain why confirmation of a documentary credit may be required by a beneficiary?
- describe how a bank may indicate that it has added its confirmation to a documentary credit and restricted the scope of the confirmation to a presentation to the confirming bank?
- outline the criteria in a documentary credit to be viewed against the credit facility of the issuing bank to determine if confirmation may be added?

## Test your knowledge

Use these questions to assess your learning for Topic 10.

1. A bank receives a documentary credit which includes a request to add its confirmation. When reviewing its terms and conditions, the bank is not in agreement with one or more conditions. It decides not to add its confirmation and informs the issuing bank the next day. The bank is not required to advise the documentary credit on an unconfirmed basis. True or false?

- a. True.
- b. False.

Answer: True. Sub-article 8(d) states that the bank may advise the credit without confirmation. There is no obligation to advise it. See section 10.1.2.

2. According to article 8, a confirming bank is irrevocably bound to honour or negotiate when:

- a. the beneficiary receives the documentary credit.
- b. the beneficiary presents complying documents under the credit.
- c. it issues its advice of confirmation.
- d. it determines that the transaction falls within the scope of the credit facility of the issuing bank.

Answer: C. A confirming bank is irrevocably bound as of the time at which it adds its confirmation to the credit (sub-article 8(b)). See section 10.1.2.

3. An authorisation of the issuing bank for a bank to add its confirmation is indicated in field 49 of a SWIFT MT700 message by the word 'confirm'. True or false?

- a. True.
- b. False.

Answer: False. An authorisation to add confirmation would be indicated by the use of 'may add' in field 49. The word 'confirm' is a specific request to add confirmation, rather than just an authorisation. See section 10.1.

4. When is settlement for a complying presentation under a credit available by deferred payment made by the confirming bank?

- a. On the maturity date.
- b. Subject to issuing bank approval.
- c. Only after receipt of funds into their account.
- d. Following receipt of an advice from the reimbursing bank.

Answer: A. On the maturity date as stated in article 8(c). See section 10.1.2

5. Which of the following criteria will a bank not usually review when determining whether a documentary credit, authorising or requesting the adding of confirmation, falls within the scope of a credit facility granted to the issuing bank?

- a. Expiry date.
- b. Payment terms.
- c. Presentation period.
- d. Amount.

Answer: C. A presentation period has no impact on a credit facility. See section 10.3.

### CHECK YOUR UNDERSTANDING (section 10.1.1)

1. The issuance of a documentary credit, by an issuing bank, removes the **payment** risk of the **applicant**, whereas the adding of **confirmation** removes the payment risk of the issuing bank. See section 10.1.

2. The SWIFT MT710 message type may be used. See section 10.1.1.

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### CHECK YOUR UNDERSTANDING (section 10.2)

It is likely that it is being asked to undertake to pay in the event of non-payment of a complying presentation by the issuing bank, and not to undertake to honour or negotiate against the presentation of complying documents to it. See section 10.1.2.

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### CHECK YOUR UNDERSTANDING (section 10.7)

False. This is not a requirement of article 8, but instead a matter of individual bank policy. See section 10.4.



## Reference

ICC Banking Commission (2020) *2020 Global survey on trade finance* [pdf]. Available at: <https://library.iccwbo.org/content/tfb/pdf/2020iccglobaltradesurveyvweb.pdf> [Accessed: 18 November 2020].

## Topic 11 Advising amendments to a beneficiary

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### Learning objectives

By the end of this topic, you should be able to:

- describe the considerations that are made by an advising bank, second advising bank or confirming bank when advising an amendment to a beneficiary;
- understand that these banks have the right to refuse to advise an amendment; and
- be able to explain how the beneficiary may indicate whether it has accepted or rejected an amendment.

### Introduction

This topic describes the process of advising an amendment to a beneficiary, with or without confirmation, and the manner in which the beneficiary notifies acceptance or rejection of an amendment.

#### Think...

Before you start work on this topic, consider what you already know about the advising of an amendment to the beneficiary.

For example, what are the responsibilities of an advising bank or second advising bank when advising an amendment?

Do you know the options available to a confirming bank when it receives an amendment for advising to the beneficiary?

In what respects should an amendment be reviewed prior to advising it to a beneficiary?

At the time of presentation of the documents, is it possible, in all circumstances, to determine that an amendment has been accepted or rejected by the beneficiary?

## 11.1 Risks

### Advising bank or second advising bank

An advising bank or second advising bank undertakes no obligation to honour or negotiate and therefore it incurs no credit risk by advising an amendment.

As explained in the sub-articles 9(b) and 9(c), the main requirement of an advising bank or second advising bank, if it accepts the issuing bank's instructions, is to satisfy itself as to the apparent authenticity of:

- the amendment (advising bank); or
- the advising bank's advice that incorporates details of the amendment (second advising bank).

Another requirement is to advise the amendment to the beneficiary.

As part of the advising process, an advising bank or second advising bank is also to ensure that it advises the amendment substantially in the form in which it was received. For example, the bank is to ensure that the details received by way of content of the amendment are forwarded to the beneficiary.

Information that is considered strictly bank-to-bank information need not form part of the advice to the beneficiary unless it may be appropriate to another nominated bank – that is, where the documentary credit is available with 'any bank' or available with a nominated bank that is other than the advising bank or second advising bank.

### Confirming bank

A bank that adds its confirmation to a documentary credit is usually the advising bank. Therefore, the requirements to satisfy itself as to the apparent authenticity of the amendment and to convey the details of the amendment as received apply equally to a bank that has added its confirmation. See section 11.3 regarding further requirements that are applicable to a confirming bank.

## 11.2 The application of article 9 in respect of an advising bank or second advising bank

Article 9 contains some minimal rules which are applicable to an advising bank and a second advising bank, if any, when advising an amendment.

As you will have learned in Topic 9, this article covers the advising of the documentary credit, as well as any amendment thereto. In the context of an amendment, sub-article 9(a) highlights the use of an advising bank to convey the details of an amendment to a beneficiary. It also reaffirms the position that an advising bank, unless it has added its confirmation to the documentary credit, advises an amendment without any undertaking to honour or negotiate.

Having used an advising bank or second advising bank to advise the documentary credit to the beneficiary, sub-article 9(d) requires that the same bank(s) be used to advise the amendment to the beneficiary.

It should be noted, however, that sub-article 9(e) does not require that an advising bank or second advising bank must advise an amendment. If either bank decides that it is not willing to advise an amendment, it is entitled to do so but is required to inform the bank from which it received the amendment or advice of that decision.

There is no requirement to indicate the reason(s) for not advising an amendment. However, such reason(s) would include a breach of any sanction or regulatory requirement, or non-compliance with bank policy.

An advising bank or second advising bank is not required to specifically indicate in its amendment advice to the beneficiary that it has satisfied itself as to the apparent authenticity of the amendment or the advice, as referred to in section 11.1 and sub-article 9(b) (advising bank) or sub-article 9(c) (second advising bank). An advice of amendment that contains no comment as to the apparent authenticity of the amendment or advice will be deemed to be an indication that the bank has satisfied itself as to the apparent authenticity of the amendment or the advice.

Although the main requirement for an advising bank or second advising bank is to determine the apparent authenticity of the amendment (advising bank) or the apparent authenticity of the advising bank's advice that incorporates details of the amendment (second advising bank), sub-article 9(f) provides for the advising of an amendment where authentication has not been possible.

Even though such a rule exists, it is unlikely to be adopted by an advising bank or second advising bank. Today, the majority of amendments are conveyed to an advising bank through the use of the SWIFT MT707 message (Amendment to a Documentary Credit) or SWIFT MT799 message (free format) both of which are an authenticated message. In addition, and largely due to regulatory requirements, where other forms of advising are used, an advising bank or second advising bank will usually ensure that the apparent authentication has been achieved before providing any formal advice of the amendment to the beneficiary.

### Check your understanding

What are the main requirements of an advising bank when accepting an amendment from the issuing bank?

- a. The advising bank does not need to send details of the amendment to the beneficiary.
- b. The second advising bank sends the amendment to the beneficiary for authentication.
- c. The bank has to satisfy itself as to the apparent authenticity of the amendment and advise the amendment to the beneficiary substantially in the form in which it was received.
- d. The advising bank has to ensure that the details received by way of content of the amendment are forwarded to the confirming bank.

### 11.3 The application of articles 9 and 10 in respect of a confirming bank

Because it is likely that an advising bank will be the bank that adds its confirmation, similar provisions to those listed in section 11.2 will apply to a bank that has added its confirmation.

A documentary credit cannot be amended without the agreement of the confirming bank.

According to sub-article 10(b), a bank that has added its confirmation to a documentary credit is not obligated to add its confirmation to an amendment. In effect, this means that a bank is not required to extend its confirmation to an extension of the expiry date of the documentary credit or any increase to its amount, or to agree to any extension of its payment terms, for example from 90 days after date of shipment to 180 days after date of shipment.

Amendments that change criteria such as partial shipments 'not allowed' to 'allowed' or make changes to the data content of documents should not cause problems for the continuation of a bank's confirmation, unless they breach any sanction or regulatory requirement that are applicable to the confirming bank.

If a confirming bank decides not to extend its confirmation to an amendment, it may also decide not to advise the amendment, in which case it must inform the issuing bank of its decision without delay. Such advice need not indicate the bank's reason(s) for its decision.

As stated in sub-article 10(b), it should be noted that in the event of the confirming bank refusing to advise the amendment, the issuing bank would still be bound by its terms and conditions. This position prevails whether or not the beneficiary actually receives a formal advice of the amendment from the confirming bank (or an advising bank or second advising bank).

Alternatively, sub-article 10(b), allows a confirming bank to advise the amendment without its confirmation. In this event, it must inform the issuing bank without delay and clearly indicate the status of the amendment in its advice to the beneficiary.

An amendment that a confirming bank advises to a beneficiary without any comment as to the status of the confirmation is understood to bear the confirmation of the bank. As of the time at which it advises the amendment, the confirming bank is irrevocably bound by its terms and conditions.

### Check your understanding

By what means are most amendments conveyed to an advising bank?

- a. Email.
- b. SWIFT MT700.
- c. SWIFT MT707 or SWIFT MT799.
- d. Telex or letter.

### 11.4 Receipt of the amendment

As mentioned in Topic 8 and in section 11.2, an issuing bank will generally send an amendment using a SWIFT MT7 type message, such as an MT707 or MT799. This will enable an advising bank to satisfy itself as to the apparent authenticity of the message in accordance with sub-article 9(b). For an amendment sent by telex or in letter form, authentication will be achieved, respectively, by means of the agreement of the testing algorithm that will appear on the telex, or the examination of the signature(s) against specimens held on file.

For a second advising bank, an amendment will be received from the advising bank by means of a SWIFT MT707 message or telex, or in letter form. The second advising bank is required to determine the apparent authenticity of the advice that has been issued by the advising bank. This will be achieved in the manner just described.

## 11.5 Reviewing the amendment against an agreed credit facility, bank policy and regulatory requirements

Even if an amendment does not relate to a documentary credit for which confirmation has been added, there may still be a need to review some of its content against a credit facility in the name of the issuing bank.

For example, if an amendment is extending the payment terms under a documentary credit that is available with the advising bank and / or second advising bank by deferred payment or acceptance, the bank is being asked to incur a liability against the issuing bank should it agree to act on the nomination of the issuing bank and incur its deferred payment undertaking or accept a draft drawn on it. Prior to advising such an amendment, the bank should check to ensure that the new payment terms fall within the parameters of the facility, so that if the beneficiary were to ask the bank to act on its nomination, there would be a reasonable chance that it will agree.

When a documentary credit has been confirmed, any amendment that affects its amount (an increase), an extension of the expiry date or a change in payment terms should be reviewed against the issuing bank's credit facility to ensure that the scope of the confirmation will remain within the agreed terms and conditions of that facility. Depending on the structure of the facility, other forms of data may also need to be reviewed.

Bank policy should also be adhered to in relation to the type and nature of the documentary credit. For example, the goods description and how it may be described in an amendment.

When an amendment changes the routing of the goods, the description of the goods, or incorporates different or additional names of individuals or companies that are required to issue certain stipulated documents, these details should be checked against any regulatory requirements, such as the sanction regulations that are applicable to the bank.

## 11.6 Reviewing the content of the amendment

A confirming bank should review the text of an amendment to ensure that its terms and conditions appear in a workable form.

There is no requirement under UCP 600 for an advising bank or second advising bank to review the text of an amendment to ensure that its terms and conditions appear to be in a workable form. It should be noted that even if a bank were to complete such a review and come to the conclusion that the amendment – and, as a result, the documentary credit – appeared to be in a workable form, it would be only the beneficiary that could definitively make that decision.

In this context, some advising banks and second advising banks will examine every detail and contact the issuing bank should there be a conflict of data or a need for clarification of an amended term or condition.

Some banks will focus only on certain changes, such as to the expiry date and place, the latest shipment date, the goods description, the form of availability, etc.

Others will not review the text at all, on the basis that the documentary credit, as amended, conveys no undertaking on the part of the advising bank or second advising bank.

When a bank or beneficiary carries out a review of an amendment, it is not only the obvious data that should be reviewed.

### Example

A documentary credit requires the presentation of a bill of lading evidencing that the goods are consigned to the order of the issuing bank, marked 'notify applicant' and 'freight prepaid'. An amendment is received stating: 'DELETE bills of lading ..... and ADD forwarder's certificate of receipt (FCR) ... .'

This amendment is not a simple exercise of deletion and addition. An FCR is not a title document and therefore will not generally indicate that goods are received to the order of the issuing bank. There would be no need for a notify party to appear or even for an indication of freight payment, because no shipment will have occurred at the time of issuance of the FCR. In fact, the actual shipment of the goods is to be made and completed outside the terms and conditions of the documentary credit. If the documentary credit were to indicate an Incoterm, the requirement for a FCR would affect that also.

In effect, the terms and conditions of an amendment should be reviewed against each term and condition of the documentary credit to ensure that there is no conflict or ambiguity caused by its wording. In the event of any ambiguity or a need for clarification, the issuing bank should be contacted without delay.



## 11.7 Preparing an amendment for advising to the beneficiary

**Note:** For the purpose of this section, reference to 'advising bank' includes confirming bank, as may be applicable.

An advising bank or second advising bank will usually maintain a standard form of advice that it uses to advise an amendment to a beneficiary. These will vary from bank to bank.

In most cases, the advice merely indicates that an amendment has been issued and that a copy of the amendment is attached, and there will be an indication of the charges that are due from the beneficiary, if any.

It should be noted that, in its advice of the amendment, an advising bank or second advising bank is not required to translate any of the amendment text or to interpret any technical terms (see article 35).

An advising bank or second advising bank may incorporate its own standard wording in relation to certain matters relating to the content of the amendment including, but not limited to, a sanction clause.

If the amendment has been issued in respect of a documentary credit that a non-bank financial institution issued, the advising bank or second advising bank should bring this fact to the attention of the beneficiary.

## 11.8 Transmitting an amendment to the beneficiary

In most cases, the advising bank or second advising bank will advise the beneficiary of details of the amendment in hard copy. This will either be sent to the beneficiary by mail or courier, or the beneficiary will collect it from the offices of the bank. The latter is often the option chosen when an advising bank or second advising bank wishes to collect its fees in advance – that is, where the documentary credit is available with ‘any bank’ and the beneficiary may be a non-customer of the advising bank or second advising bank.

Some banks now provide their clients with electronic delivery of the advice of the documentary credit, and any amendments thereto, by means of their front-end systems.

As mentioned in article 35, and in relation to the actual transmission of the amendment or an advice thereof, a bank assumes no liability or responsibility for matters such as any consequences arising out of any delay, loss in transit, mutilation or other errors in the transmission of the advice of the amendment.

A beneficiary should review the amendment upon its receipt to determine whether its content is as expected or requested. If not, the beneficiary should contact the applicant and request a further

amendment. It is advisable that only when the documentary credit is in an acceptable form should the beneficiary commence manufacture, production or shipment of the goods, or provide the required service or performance.

### **Check your understanding**

There is no requirement under the UCP 600 for an advising bank or second advising bank to review the text of an amendment to ensure that its terms and conditions appear to be in a workable form. True or false?

## 11.9 Notifying acceptance or rejection of an amendment

Documentary credit practice dictates that the beneficiary's consent is required for an amendment to be effective. Although sub-article 10(c) indicates that the beneficiary should provide a notification of acceptance or rejection of an amendment, ie a notification provided to the advising bank, confirming bank or second advising bank prior to the date of presentation of the documents, this does not happen in respect of most documentary credits.

It is far more likely that a bank will be required to make its own determination as to whether an amendment has been accepted or rejected, based on its examination of a presentation made by, or on behalf of, the beneficiary.

In this respect, sub-article 10(c) indicates that should the beneficiary fail to provide a prior notification of acceptance or rejection of an amendment, a presentation that complies with the documentary credit and to any not yet accepted amendment will be deemed to be notification of acceptance by the beneficiary of such amendment(s) and, as of that moment, the documentary credit will be amended.

As already discussed, it is a fact that beneficiaries rarely signify their acceptance or rejection of amendment prior to the presentation of documents. For example, a presentation for the full amount of the documentary credit will:

- indicate acceptance if it complies with the terms and conditions of the documentary credit and any previously unaccepted amendment(s); or
- indicate rejection if it complies with the terms and conditions of the documentary credit, but not with any unaccepted amendment.

A determination of acceptance or rejection, by means of the presentation of documents, can become somewhat clouded when partial shipments are effected, with questions raised such as whether the amendment is to apply to the presentation under examination, or only to a later shipment and presentation. In this respect, it should be noted that sub-article 10(c) includes wording to the effect that the documentary credit is amended only as of the moment at which a presentation is made that complies with the documentary credit and any unaccepted amendment(s), absent any prior notification of the beneficiary.

However, it should be noted that it is not always the case that acceptance or rejection of an amendment can be determined by means of an examination of the presented documents.

### **Example**

A documentary credit is issued for USD25,000 covering a shipment of 5,000 books. Partial shipments are stated to be allowed. An amendment is issued reducing the credit amount to USD15,000 and the number of books is reduced to 3,000. The beneficiary has not provided a notification of acceptance or rejection of the amendment prior to the presentation of the documents.

Documents are presented in the amount of USD15,000 covering a shipment of 3,000 books. Given that partial shipments are allowed, the question – for the banks that will examine the documents – is whether the beneficiary has accepted the amendment, or is this simply a partial shipment? The wording of sub-article 10(c) will not help in this situation. Even if the beneficiary was contacted to enquire as to the status of the amendment, it could simply advise that it has not yet

decided to accept or reject the amendment. The safest course of action, where no definitive notification has been received or is possible, would be to treat the drawing as a partial shipment.

This simple example highlights that the acceptance or rejection of an amendment is not always a clear and unambiguous task. In such circumstances, a bank may be required to contact the beneficiary and obtain an advice of the status of the amendment, prior to concluding the examination process.

Additionally, some amendments may have no bearing on the content of the stipulated documents and will make the task even more difficult.

In order to hasten the acceptance or rejection process, some issuing banks have been known to incorporate clauses such as the following into their amendments.

- Acceptance or rejection of this amendment must be notified by the Beneficiary to us (Issuing Bank) through the Advising Bank via SWIFT message within 7 banking days after the date of this amendment, otherwise the amendment will come into force.
- This amendment must be rejected in writing within 14 days of its date, and if not rejected within that time, this amendment will be deemed to have been accepted.

Sub-article 10(f) counteracts the use of such clauses by stating that they will be disregarded.

Should a beneficiary remain silent on the matter, this cannot be interpreted as either acceptance or rejection, particularly due to UCP 600 allowing the beneficiary to signify acceptance or rejection up to, and including, the point at which documents are presented. The presentation of documents may indicate the beneficiary's acceptance or rejection in the absence of any prior notification.

Sub-article 10(e), indicates that an amendment cannot be accepted partially.

If some parts of an amendment are not acceptable, a beneficiary must decide whether to reject the amendment in its entirety and seek reissuance in an acceptable form, or to accept the amendment, but seek a further amendment that rectifies the anomalies in the current amendment.

## Conclusion

Amendments form an important function with documentary credits. They provide the means to correct errors in the issuance of a documentary credit and facilitate changes to the terms and conditions when a beneficiary finds that it is unable to comply with certain conditions, such as the latest shipment date, the availability of one or more stipulated documents, the need to part ship the goods or to modify the description and/or value of those goods.

Each of the advising, second advising or confirming banks have a role to play in the advising of an amendment. Each must consider its own role and risks when considering whether an amendment may be advised to a beneficiary.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the requirements of a confirming bank when advising an amendment to a documentary credit and the options available to it when considering the advising of that amendment to the beneficiary?
- outline the different authentication responsibilities that are applicable to an advising bank and a second advising bank?
- describe how notification of acceptance or rejection of an amendment may be conveyed?

## Test your knowledge

Use these questions to assess your learning for Topic 11.

1. A confirming bank is irrevocably bound by an amendment at what time?
  - a) When it approves the request of the issuing bank.
  - b) When it advises the amendment.
  - c) When the beneficiary provides its consent.
  - d) When the beneficiary receives the amendment.

Answer: B. Sub-article 10(b) states that a confirming bank will be irrevocably bound as of the time at which it advises the amendment. See section 11.3.

2. Which of the following is true if a confirming bank decides not to add its confirmation to an amendment?
  - a) It must advise the amendment to the beneficiary without its confirmation.
  - b) It must nevertheless advise the amendment to the beneficiary with its confirmation, as it confirmed the documentary credit.
  - c) It may advise the amendment without its confirmation.
  - d) It may contact the issuing bank and advise that its confirmation no longer applies to the documentary credit.

Answer: C. Sub-article 10(b) states that a confirming bank may extend its confirmation to an amendment. In circumstances under which it decides not to extend its confirmation, a confirming bank must inform the issuing bank without delay and may choose to advise the amendment without confirmation. The advice to the beneficiary should clearly indicate that confirmation has not been extended to the amendment. See section 11.3.

3. An amendment contains three changes to the terms and conditions of the documentary credit. Which of the following statements is correct?
  - a) The beneficiary may comply with one or two of the conditions and reject the remainder.
  - b) The beneficiary must accept or reject the amendment in its entirety.
  - c) The beneficiary must provide its acceptance or rejection of the amendment no later than the date of presentation of the documents.
  - d) If the beneficiary does not provide its acceptance or rejection of the amendment by the time that it presents its documents, the amendment is deemed to have been accepted.

Answer: B. The beneficiary must accept or reject the amendment in its entirety. See section 11.9.

4. When a second advising bank advises an amendment to the beneficiary, without any specific comment, it is signifying that it has:
  - a) satisfied itself as to the apparent authenticity of the amendment.
  - b) satisfied itself as to the apparent authenticity of the amendment and the advice of the advising bank.

- c) satisfied itself as to the apparent authenticity of the advice received from the advising bank.
- d) not satisfied itself as to the apparent authenticity of the amendment or advice of the advising bank.

Answer : C. It is signifying that it has satisfied itself as to the apparent authenticity of the advice received from the advising bank. See section 11.2.

5. In the context of article 10, which of the following statements is correct?
- a) A documentary credit need only be amended with the agreement of the beneficiary.
  - b) If a confirming bank decides not to add its confirmation to an amendment, it need only advise the issuing bank of its decision.
  - c) In a documentary credit that permits partial shipments, and where a first partial shipment has been made, the beneficiary need not comply with the amendment in the presentation it is making in respect of that partial shipment.
  - d) In a documentary credit that permits partial shipments, and where a first partial shipment has been made, the beneficiary must provide an acceptance or rejection of the amendment no later than the time of presentation of the documents or through the content of the presentation itself.

Answer: C. In a documentary credit that permits partial shipments, and where a first partial shipment has been made, the beneficiary need not comply with the amendment in the presentation it is making in respect of that partial shipment. See section 11.9.

## Answers

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### CHECK YOUR UNDERSTANDING (section 11.2)

c. The bank has to satisfy itself as to the apparent authenticity of the amendment and advise the amendment to the beneficiary substantially in the form in which it was received. See section 11.1.

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### CHECK YOUR UNDERSTANDING (section 11.3)

c. Through the use of the SWIFT MT707 message (Amendment to a documentary credit) or SWIFT MT799 message (free format) both of which are an authenticated message. See section 11.2.

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### CHECK YOUR UNDERSTANDING (section 11.8)

True. See section 11.6.

## Topic 12 Document characteristics and preparing documents

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### Learning objectives

After studying this topic, you should be able to:

- understand the characteristics of transport documents as a necessary document to be presented under most documentary credits;
- explain the key features of other documents and the presentation process; and
- understand the options available to a beneficiary when a presentation is found to be discrepant.

### Introduction

This topic identifies the key characteristics of documents such as transport, insurance, commercial and official documents. It also focuses on title to the goods, the negotiability of the transport document, whether a bank can exercise control over the goods, and how the carrier or its agent will usually deliver those goods.

The undertaking that is given to a beneficiary by an issuing bank or a confirming bank is conditioned on that beneficiary being able to present a complying set of documents to the nominated bank or issuing bank. Failure to do so puts at risk one or both of those undertakings.

It is a fact that most documents contain far more data than is required by a documentary credit and the applicable rules of UCP 600.

The most common form of discrepancy that is found in a presentation is conflict of data, ie that data repeated across two or more documents has been completed incorrectly. Examples include packing details, weights of the goods, shipping marks, and details relating to the origin of the goods, routing of the goods or details of the vessel name, flight number or truck licence plate details.

The question for any beneficiary is whether certain data needed to appear at all or whether it needed to appear on more than one document.

#### Think...

Before you start work on this topic, consider what you already know about the documents that are commonly presented under a documentary credit. For example:

Can you name the entity that will usually issue and/or sign those documents?

Do you know the kind of data that is often required to appear on those documents?

Can you describe the three important stages of preparing transport documents?



## 12.1 Overview

As we discussed in Topic 7, an issuing bank of a documentary credit gives an undertaking that it will honour a complying presentation made under it. A presentation will be made by, or on behalf of, the beneficiary.

An issuing bank assumes the risk of the applicant becoming insolvent and is responsible for the recovery of any funds from the applicant to reimburse the issuing bank for a payment made to a beneficiary or a reimbursement made to a nominated bank. In order to cover this risk, an issuing bank may take security from the applicant, for example in the form of a cash deposit. More often, though, it will take comfort from any security obtained from the transport document tendered under a documentary credit.

Some transport documents, such as bills of lading, can provide transfer of title or confer ownership of the goods to the bank. In these circumstances, an issuing bank may have the means of obtaining possession of the goods for resale in the event of a default by the applicant. When an issuing bank cannot obtain title to the goods, it may try to exercise some other measure of control over the goods in transit.

In addition to a transport document, a documentary credit will also require the presentation of one or more of the following documents:

- **insurance documents** – providing cover against risk to the goods during their carriage from the beneficiary's premises / country of export to the country of import / applicant's premises;
- **commercial documents** – identifying and describing the goods, as stipulated in the documentary credit; and
- **official documents** – evidencing compliance with the requirements of the country of export or the country of import.

In most cases, a documentary credit will also require the presentation of a financial document – that is, a draft (or bill of exchange) that determines the amount to be drawn under the documentary credit by way of honour or negotiation. The underlying characteristics of all of these documents are outlined in this topic.

Finally, the beneficiary will arrange for the documents required under the documentary credit to be presented to the nominated bank or the issuing bank. This topic concludes with an explanation of this presentation process and explains the options available to a beneficiary should the documents be determined as discrepant.

## 12.2 Preparing transport documents

The cycle of a transport document comprises three important stages:

- 1) understanding the requirements, as stipulated in the documentary credit;
- 2) creating the transport document; and
- 3) managing its handling from creation through to delivery of the goods.

### 12.2.1 Understanding the requirements of a transport document as stipulated in the documentary credit

From the point of view of both the beneficiary and the concerned banks, this is by far the most important stage of the cycle. It is essential that a beneficiary understands the precise nature of the transport document required under the documentary credit. In order to achieve this understanding, a beneficiary must carefully read the wording of the transport document requirement in the documentary credit. The beneficiary should then refer to the sale contract or proforma invoice agreed with the applicant and ensure that the required document matches that which was expected. If necessary, the beneficiary should clarify any concern with the applicant and, where appropriate, seek an amendment to the documentary credit.

It can also be useful to refer to the advising bank or confirming bank, because the bank may be willing to seek clarification, if need be, from the issuing bank on behalf of the beneficiary. If issues are resolved in this way, there is less chance of documents being unnecessarily refused by any of the banks.

The transport document required by the documentary credit should also reflect the routing that is shown in field 44 of the SWIFT MT700 message.

- If only fields 44E and 44F are completed, the required document should be a bill of lading, a non-negotiable sea waybill, charter party bill of lading or air transport document.
- If only fields 44A and 44B are completed, the required document should be a multimodal transport document, a road, rail or inland waterway transport document (except where the inland waterway transport document is issued in the form of a bill of lading), or a courier receipt, postal receipt or certificate of posting.
- If any three or four of fields 44A, 44E, 44F and 44B are completed, the required document should be a multimodal transport document.

### 12.2.2 Creating the transport document

In the case of carriage of goods by sea, traditionally when the mate of the vessel receives the goods on behalf of the master, a mate's receipt is issued. This document provides evidence of receipt on behalf of the vessel. It also shows that the goods have been received in good order and condition or contains a statement as to the condition of the cargo if there are any apparent issues with the goods or their packaging.

The document will also indicate the number of packages, marks and numbers, and the name of the shipper.

When a forwarding agent or carrier completes the documentation for the bills of lading, just before or at the time the vessel is due to sail, the bills of lading are signed and delivered in exchange for the mate's receipt.

In the case of other transport documents, there is rarely an intermediate stage, during which air, road, rail, inland waterway, courier, and parcel post transport documents are issued in exchange for acceptance and / or receipt of the goods.

### 12.2.3 Managing the transport document handling from creation through to delivery of the goods

The transport document flow is illustrated in Figure 12.1.

Figure 12.1 Transport document flow

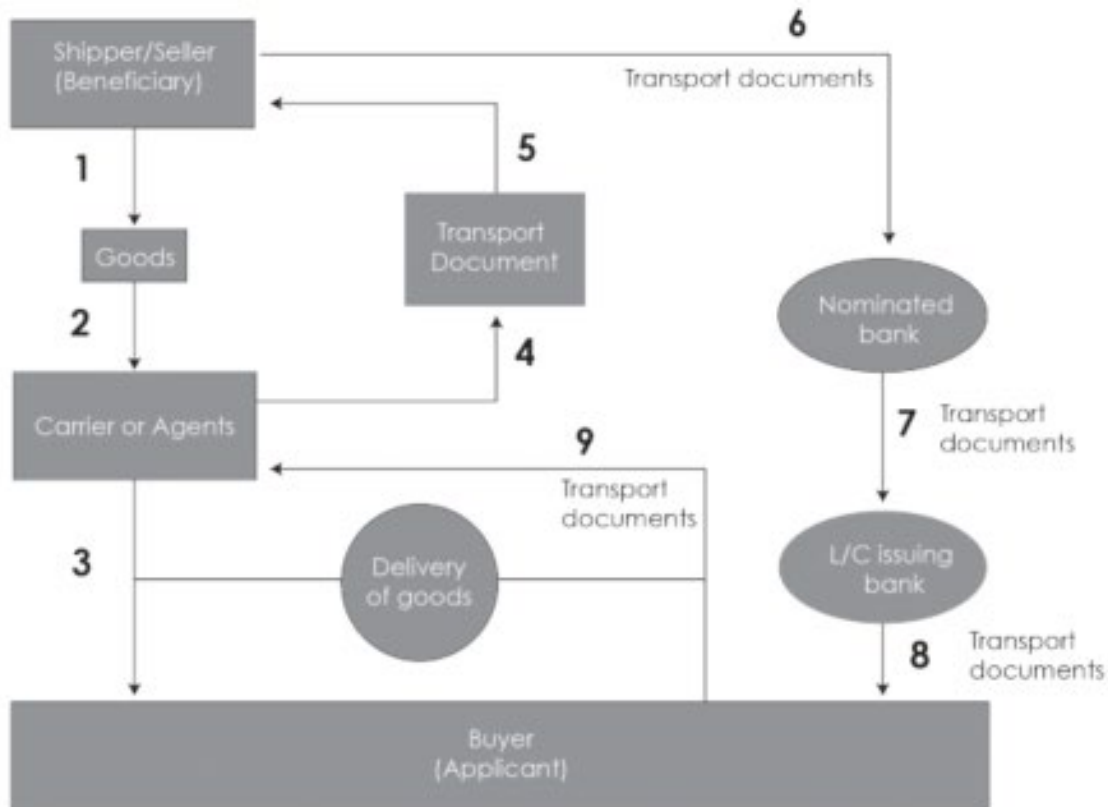


Figure 12.1 shows that the flow of a document, in this example a bill of lading, is from the carrier to the beneficiary (shipper / seller) and then to the nominated bank. After handling a presentation, in terms of its nomination (with or without acting on its nomination to honour or negotiate) and which would include the bills of lading, the nominated bank forwards the presentation to the issuing bank.

The issuing bank examines the documents against the documentary credit and, in the case of conforming documents, honours in accordance with its terms and conditions. The applicant receives the documents in exchange for reimbursement or in terms of any arrangement made with the issuing bank. The applicant will then surrender one original bill of lading to the carrier or its agent in exchange for its goods.

### Check your understanding

A transport document required by a documentary credit should reflect the routing that is shown in field 44 of the SWIFT MT700 message. If only fields 44A and 44B are completed, the required document should be a bill of lading, a non-negotiable sea waybill, charter party bill of lading or air transport document. True or false?

## 12.3 Types of transport document

As previously mentioned, the type of transport document used is determined by the method of carriage and the routing of the goods. The next section outlines the characteristics of each type of transport document.

### 12.3.1 Multimodal transport documents

A multimodal transport document is a document that covers at least two different modes of transport. Multimodal transport has developed rapidly over recent decades.

In particular, it allows goods to be sent from the beneficiary's premises to those of the applicant, using a single document. In these cases, a multimodal transport operator (MTO) or combined transport operator (CTO) undertakes contractual responsibility for ensuring that the goods are carried to their destination. The goods can be transported by a combination of different modes of transport, for example any combination of road, sea, air and rail. Under article 19, an MTO or CTO is not authorised to sign a transport document in either capacity. While it may be a transport operator, it must sign either as an agent of a named carrier or of the master, or in the capacity of carrier.

The shipper (the party sending the goods and usually the beneficiary) concludes a single contract of carriage with the MTO or CTO. The MTO or CTO makes its own contractual arrangements with the individual carriers for each successive part of the carriage. The MTO or CTO need not operate its own means of transport. For this reason, MTOs or CTOs are sometimes described as 'contractual carriers' to distinguish them from those carriers that physically transport the goods.

Multimodal transport techniques have a number of potential advantages, as follows.

- **They can help to reduce transit times** – an MTO or CTO and the shipper are able to select the quickest mode of transport for each leg of the journey, without diminishing the operator's responsibility for the whole journey. Because an MTO or CTO deals with transport, carriers, storage and clearing agents on a daily basis on behalf of many shippers, the various associated activities can be completed more speedily at the different ports and points of despatch and arrival.
- **They can lower costs** – an MTO or CTO may be able to command more competitive prices across all activities, including loading, unloading, storage and carriage.

At the same time, both the applicant and beneficiary will benefit from having a single arrangement to monitor. When multimodal transport involves an element of ocean carriage, the goods are generally placed in containers. In a few cases, the goods are loaded onto a barge at a river point, and the barge (often referred to as a 'LASH' barge) is stowed on the ocean-going vessel at the sea port. 'Roll-on, roll-off' (ro-ro) techniques are also employed on shorter voyages. In these cases, a lorry (truck) or trailer carrying the goods is loaded onto the vessel, or rail car, or wagon.

#### Title, negotiability and transfer

If the carriage involves, for example, travel over land and then by sea, the transport document is usually titled a 'combined', 'through' or 'multimodal' transport document. In such circumstances, where a vessel is the mode of transport for the last leg of the carriage, trade practice is to use it as a negotiable document capable of transferring title by delivery in the same way as a bill of lading. Negotiability and title are subject to any previous defect in title, such as that the multimodal transport document has not been stolen or fraudulently altered.

Under a documentary credit, an issuing bank will usually require a multimodal transport document to evidence that the goods are consigned to its order, or 'to the order of the shipper' (or 'to order'), and to be endorsed by the shipper in blank or to order of the issuing bank.

It should be noted that neither UCP 600 nor ISBP 745 makes any reference to title or negotiability. This is left to the applicable law.

### **Control over goods**

If an issuing bank seeks to obtain security through the goods by means of a multimodal transport document, it should insist that all originals of the document are presented to it.

If, however, the carriage does not involve a final leg by sea to the country of import, the multimodal transport document may not be classed as a negotiable document capable of transferring title by delivery, or by delivery and endorsement (whichever applies). However, this will be dependent on the terms and conditions of carriage, as declared by the carrier on the presented multimodal transport document.

### **Delivery of goods**

If a multimodal transport document is issued to order of a named entity, or 'to order', or 'to order of shipper', delivery of goods will be made against the surrender of an original multimodal transport document, or against an indemnity or shipping guarantee to facilitate the release of goods should the transport document be absent or lost at the time the goods arrive at their destination. If a multimodal transport document is not issued in the manner described earlier – that is, if it is consigned to a named party (known as a 'straight consigned document') – goods will be delivered to the named consignee against simple identification, or against a delivery order or release note from the named consignee.

Indemnities (or shipping guarantees) are covered in Topic 20.

### 12.3.2 Bills of lading

The bill of lading first appeared in its modern form in the mid-nineteenth century and became the principal document used in maritime transport. Bills of lading are normally issued by, or on behalf of, a named carrier. A documentary credit should require the presentation of a bill of lading only when the goods are to be shipped from port to port, ie where no inland place of receipt or inland place of final destination is involved. When goods are to be transported in one or more containers, the required transport document should be a multimodal transport document as the container will be handed over to the carrier or its agent at a place other than the port of loading and will be made available to the consignee at a place other than the port of discharge, eg a container terminal or container yard.

#### Title, negotiability and transfer

Over the years, it has become trade practice to use and accept bills of lading as transferable documents of title. Today, their legal status as negotiable documents of this type is specifically set out in the legislation of most countries. This means that when a bill of lading is issued in negotiable form, ownership of the goods to which the bill of lading relates can be conveyed by transferring the document from one person to another. Negotiability and title are subject to any previous defect in title, such as that the bill of lading has not been stolen or fraudulently altered.

An issuing bank will usually require bills of lading to be made out to its order, or 'to order of the shipper' (or 'to order'), and to be endorsed in blank or to order of the issuing bank. Rights under such bills of lading can then be transferred by endorsement and delivery. Regulations in some countries require bills of lading to be issued to the order of the nominated bank and to be duly endorsed by them to order of the issuing bank.

Depending upon the form of endorsement, a further endorsement by the issuing bank may be required before delivery of the document to the applicant. An issuing bank that requires the issuance of bills of lading to its order should be aware of the potential liability for charges, port dues and other expenses.

It should be noted that neither UCP 600 nor ISBP 745 make any reference to title or negotiability. This is left to the applicable law.

#### Control over goods

If an issuing bank seeks to obtain security through the goods by means of a bill of lading, it should insist that all originals of the document are presented to it.

#### Delivery of goods

**Against surrender of an original bill of lading** – The carrier is entitled to effect delivery of goods to the holder of one original bill of lading (duly endorsed, where necessary). If more than one original bill of lading is issued, the carrier is not concerned with the whereabouts of the others. In delivering goods to the holder of the one original bill of lading or the only original bill of lading, the carrier fulfils its primary obligation under its contract of carriage.

However, if a bill of lading is consigned to a named party (a straight consigned document), goods will be delivered to the named consignee against simple identification, or against a delivery order or release note from the named consignee.



**Against an indemnity or shipping guarantee** – If the goods have arrived at the port of discharge and the bills of lading have not been received, the carrier may agree to deliver the goods against an indemnity or shipping guarantee. The carrier will almost always insist upon the issuing bank either countersigning or actually issuing the indemnity or shipping guarantee. This is because the carrier is subsequently liable to a holder of an original bill of lading and, as such, liability is not restricted in time. This indemnity or guarantee will normally be issued in the format required by the carrier, and may be unlimited as to amount and have no expiry date, depending on the requirements of the carrier.

It is important that the consignee arranges to clear the goods as quickly as possible after their arrival at the port of discharge or liabilities may be incurred to the port authorities for demurrage.

'Demurrage' may be defined as a charge levied by the port authorities for a failure to remove the goods within a specified time. Delays in receiving the original bills of lading may be the result of short sea journeys, delays in the beneficiary presenting documents to a nominated bank, or documents being held by a nominated or issuing bank because discrepancies have been found.

Indemnities (or shipping guarantees) are covered in Topic 20.

### 12.3.3 Non-negotiable sea waybills

A non-negotiable sea waybill is to be consigned to a named party – usually the issuing bank in a documentary credit transaction. They are also referred to as a ‘straight consigned transport document’.

Non-negotiable sea waybills are used because a traditional bill of lading, the surrender of which is required before the carrier will deliver the goods, is not practical for short sea journeys. This is because often the goods will arrive at the port of discharge before the underlying bills of lading have been received through banking channels; as a result, the clearance of goods can be delayed. The applicant may then incur demurrage charges and could also suffer loss in the sale of goods as a result of such delay.

The non-negotiable sea waybill was also created to aid the transition process from paper-based bills of lading to electronic forms of bills of lading – that is, to allow the release of the goods without the need for the surrender of an original document to the carrier or its agent.

#### Title, negotiability and transfer

A non-negotiable sea waybill is not a document of title and is not a negotiable document.

#### Control over goods

If an issuing bank wishes to exercise control over the goods, it should insist upon being named as the consignee. This is sometimes subject to the consignor waiving its right to change the named consignee prior to delivery. This can be achieved by the non-negotiable sea waybill containing what is known as a ‘lien’ clause – that is, a clause indicating that the carrier or its agent will not change the name of the consignee without the submission of all of the original non-negotiable sea waybills for alteration and authentication by the carrier or its agent.

#### Delivery of goods

Delivery is made by the carrier or its agent to the named consignee and is not dependent upon the surrender of an original non-negotiable sea waybill. Delivery may also be made to a named entity against a delivery order or release note from the named consignee.

### 12.3.4 Charter party bills of lading

Shipments of large bulk consignments – that is, of commodities such as oil, rice, wheat, sugar, steel, etc – will be made on a vessel hired specifically for the shipment. This hiring arrangement is called a ‘charter party’. Such arrangements may be concluded either for a period of time or for a single voyage. The party hiring the ship concludes a contract of carriage with the owner or its agent. This is known as the ‘charter party contract’ and will include terms such as the time period for the charter, the basis for loading and unloading the cargo, the ports of loading and discharge, and the party responsible for the freight cost.

Once shipment has been effected, a charter party bill of lading is issued and signed by the owner, master or charterer, or its respective agent.

The precise legal effects of charter parties vary from one jurisdiction to another. A particular problem is that, in many cases, rights conferred by a charter party bill of lading take second place to any rights that the shipowner may have against a charterer. For example, if a charterer defaults on payment to the owner, the latter may be able to recoup its losses by selling the goods. A bank is generally not aware, nor does it need to be aware, of the terms of even the most commonly used charter party contracts. A charterer may be the applicant (in an FOB contract) or the beneficiary (in a CFR or CIF contract).

There is also uncertainty as to how clauses of the charter affect the legal rights of the holder of a charter party bill of lading. Under UCP 600, except as required or permitted by a documentary credit, bills of lading indicating that they are issued subject to a charter party are not acceptable. If a charter party bill of lading is required or permitted, banks will not examine the underlying charter party contract even if it is listed as a required document.

### 12.3.5 Air transport documents

The transport of goods by air gives rise to the issuance of an air transport document, more commonly known as an 'air waybill' or 'air consignment note'. The carrier, or its agent, issues such a document as evidence that the goods have been accepted for carriage.

#### Title, negotiability and transfer

An air transport document is not a document of title and is not a negotiable document.

#### Control over goods

Control over goods rests with the shipper as consignor and the carrier up to the point of delivery. To allow control over the goods, sub-article 23 (a)(v), requires that the presented air transport document be the original for consignor or shipper. This should prevent the consignor or shipper from exercising its right to request the carrier to change the destination or the consignee of the goods. The carrier or its agent should agree to such a request only if the original for consignor or shipper is handed over to it for amendment and authentication.

If an issuing bank wishes to exercise control over the goods, it should insist on being named as the consignee.

#### Delivery of goods

The carrier will deliver goods to the consignee, as shown on the air transport document, against proper identification, or against a delivery order or release note from the named consignee.

### 12.3.6 Road, rail or inland waterway transport documents

Transport documents covering the despatch of goods by rail or by road are known as 'rail consignment notes' or 'road consignment notes', respectively. Road consignment notes are also referred to as 'truck waybills', 'truck consignment notes', or 'Convention Merchandises Routiers (CMR) notes' (named after the 1956 United Nations Convention on the Contract for the International Carriage of Goods by Road).

These documents provide evidence that the carrier has received the goods and of the address of the consignee for delivery.

#### Title, negotiability and transfer

Road, rail or inland waterway transport documents are not documents of title and are not negotiable documents. The exception is when an inland waterway transport document is issued in the form of a bill of lading – that is, to order of a named entity, or 'to order' or 'to order of the shipper'.

#### Control of goods

The control over the goods remains in the care of the carrier.

#### Delivery of goods

Delivery is to the named consignee at the address shown on the document or, in the case of an inland waterway transport document issued in the form of a bill of lading by the surrender of an original inland waterway transport document. Delivery may also be made to a named entity against a delivery order or release note from the named consignee.

### 12.3.7 Courier receipts, post receipts or certificates of posting

A courier receipt, post receipt or certificate of posting serves as evidence that the goods have been received by a courier service or post office for delivery and show the name and address of the consignee.

#### Title, negotiability and transfer

These are not documents of title and are not negotiable documents.

#### Control of goods

The control over the goods remains in the care of the courier company or postal authority.

#### Delivery of goods

Delivery is to the named addressee.

#### Check your understanding

A documentary credit should require the presentation of a bill of lading only when the goods are to be:

- a. transported inland.
- b. shipped from port to port.
- c. transported in one or more containers.
- d. handed over to a carrier at a place other than the port of loading.

## 12.4 Common characteristics

There are some characteristics common to all types of transport document that need to be understood when they are prepared for presentation under a documentary credit.

The following sections refer heavily to ISBP 745 – that is, the International Standard Banking Practice for the Examination of Documents under UCP 600 – the contents of which, despite the title referring to ‘Examination of Documents’, provide significant guidance as to how each described document should be created in order to comply under a documentary credit.

### 12.4.1 Shipper or consignor and consignee

All types of transport document will include boxes, spaces or fields that are to be populated with the names of the shipper or consignor (the party arranging for shipment of the goods) and the consignee (the party receiving or controlling delivery of the goods). Under a documentary credit, the shipper or consignor is usually the beneficiary. However, this is not an absolute requirement. According to sub-article 14(k), any party can be named as shipper or consignor unless the documentary credit states otherwise.

The consignee may be a named entity, in which case the document may be referred to as being 'straight consigned'. If the transport document is issued in negotiable form, it is to show that goods have been consigned 'to order of [named entity]', 'to order' or 'to order of shipper'. If the transport document is consigned 'to order' or 'to order of shipper', it will need endorsement by the shipper or consignor in blank for it to be negotiable and available for transfer of title, or it is to be endorsed to order of the named entity stated in the documentary credit.

#### Consignee requirements

The consignee requirements for each transport document, as detailed in ISBP 745, are as follows.

**For multimodal transport documents** – Consignee, order party, shipper and endorsement, and notify party, paragraphs D16 and D17.

**For bills of lading** – Consignee, order party, shipper and endorsement, and notify party paragraphs E12 and E13.

**For non-negotiable sea waybills** – Consignee, order party, shipper, and notify party, paragraph F11.

**For charter party bills of lading** – Consignee, order party, shipper and endorsement, and notify party, paragraphs G11 and G12.

**For air transport documents** – Consignee, order party and notify party, paragraph H13.

**For road, rail or inland waterway transport documents** – Consignee, order party and notify party, paragraph J8.

## 12.4.2 Notify party

Most types of transport document will make provision for a 'notify party' to be inserted. A notify party is a party that is to be advised by the carrier, or its agent, upon arrival of goods at the named destination. The notify party will usually be the applicant, its clearing agent or the issuing bank.

### Notify party requirements

The notify party requirements for each transport document, as detailed in ISBP 745, are as follows.

**For multimodal transport documents** – Consignee, order party, shipper and endorsement, **and notify party**, paragraphs D18(b)(i) and (ii).

**For bills of lading** – Consignee, order party, shipper and endorsement, and notify party, paragraphs E14(b)(i) and (ii).

**For non-negotiable sea waybills** – Consignee, order party, shipper, and notify party, paragraphs F12(b)(i) and (ii).

**For charter party bills of lading** – Consignee, order party, shipper and endorsement, and notify party, paragraphs G13(b)(i) and (ii).

**For air transport documents** – Consignee, order party and notify party, paragraphs H14(b)(i) and (ii).

**For road, rail or inland waterway transport documents** – Consignee, order party and notify party, paragraphs J9(b)(i) and (ii).

When a documentary credit stipulates the details of one or more notify parties, the respective transport document may also indicate the details of one or more additional notify parties.

However, a documentary credit may not require the transport document to indicate a named notify party or parties. In this context, it should be noted that sub-article 14(j) states that whenever the applicant's address and contact details appear as part of the notify party details, whether requested in the documentary credit or not, those details must not be in conflict with those stated in the documentary credit.

### 12.4.3 Corrections/alterations to data content

Ideally, documents should be presented with no corrections or alterations to their data content. If corrections or alterations have been made or are required to documents not issued by the beneficiary, the beneficiary should consider the possibility of obtaining replacements prior to their presentation in order to minimise the risk of potential disputes arising, or to ensure that the proper authentication has been made.

At this point, it should be noted that corrections and alterations to documents issued by the beneficiary do not require authentication, with the exception of drafts and the circumstances described in paragraph A7(a)(ii).

#### The correction/alteration requirements

The correction/alteration requirements, for each transport document, as detailed in ISBP 745, are as follows.

**For multimodal transport documents** paragraphs D28 and D29.

**For bills of lading** paragraphs E24 and E25.

**For non-negotiable sea waybills** paragraphs F22 and F23.

**For charter party bills of lading** paragraphs G22 and G23.

**For air transport documents** paragraphs H23 and H24.

**For road, rail or inland waterway transport documents** paragraphs J18 and J19.



#### 12.4.4 Signing requirements

Detailed examination of the different signing requirements for each type of transport document under the respective articles 19–25, is undertaken in Topic 14. Although it is important that a transport document has been signed in the prescribed manner, this does not mean that every space, box or field shown on a transport document (as requiring a signature) needs to be populated. This position is indicated in paragraph A37.

#### Check your understanding

Most types of transport document will make provision for a notify party to be inserted. This is a party that is advised by the issuing bank when goods arrive at their named destination. True or false?

#### 12.4.5 Shipping marks

Paragraphs A32–A34, provide detail on the purpose and use of shipping marks, and specify the ways in which a document may indicate those marks.

### 12.4.6 Goods covered by more than one transport document

Possession of, for example, a full set of negotiable charter party bills of lading is required to ensure that title to the goods and delivery rights are secured. If the goods loaded into a container or other packing unit are subject to the presentation of more than one set of bills of lading, presentation of all associated sets of bills of lading may be required for the goods to be released to the respective consignees.

Consider the presentation under a documentary credit of a bill of lading that specifically indicates that goods covered by that bill of lading will be released only when other (numbered) bills of lading are presented to the carrier or its agent for delivery. The document will not be accepted unless all of the other bills of lading referred to accompany the same presentation under the same documentary credit.

#### Release of goods covered by more than one transport document

The requirements for each transport document, as detailed in ISBP 745, are as follows.

**For multimodal transport documents** – Release of goods with more than one multimodal transport document to be surrendered, paragraph D32.

**For bills of lading** – Release of goods with more than one bill of lading to be surrendered, paragraph E28.

**For charter party bills of lading** – Release of goods with more than one bill of lading to be surrendered, paragraph G26.

This issue does not arise with transport documents such as air transport documents, non-negotiable sea waybills, or road, rail or inland waterway transport documents (except where the inland waterway transport document is issued in the form of a bill of lading), as the presentation of an original transport document is not necessary to obtain access to the goods covered by such documents.

### **12.4.7 Transport documents issued by freight forwarders**

It should be noted that ISBP 745 contains details of practices when a documentary credit indicates that freight forwarder transport documents are acceptable or are not acceptable.

For example, where a documentary credit requires or allows the presentation of multimodal transport documents issued by a freight forwarder, paragraph D3(b) states that a multimodal transport document may be signed by the issuing entity without it being necessary to indicate the capacity in which it has been signed or the name of the carrier.

Similar practices exist for bills of lading paragraph E3(b), non-negotiable sea waybills paragraph F2(b) and air transport documents paragraph H3(b).

Where a documentary credit indicates that multimodal transport documents issued by a freight forwarder are not acceptable, paragraph D4 states that such words “or words of similar effect has no meaning in the context of the title, format, content or signing of a multimodal transport document unless the credit provides specific requirements detailing how the multimodal transport document is to be issued and signed. In the absence of these requirements, such a stipulation is to be disregarded, and the multimodal transport document presented is to be examined according to the requirements of article 19.”

Similar practices exist for bills of lading paragraph E4, non-negotiable sea waybills paragraph F3 and air transport documents paragraph H4.

### **12.4.8 The format and content of a multimodal transport document**

Figure 12.2 provides an example of a form of multimodal transport document. The layout for this document is very similar to that which would be seen for a bill of lading or non-negotiable sea waybill.

A description of the type of information that is to appear in each field is given, together with an indication of the relevant UCP 600 articles and ISBP 745 paragraphs.

**Figure 12.2 Annotated example of a multimodal transport document**

Shipper (Complete name, address and phone number)		<b>Bill of Lading For Combined Transport or Port-to-Port Shipment</b> B/L No.: Booking Ref: Shipper's Ref: <h1 style="text-align: center;">CDCS Line</h1> <h2 style="text-align: center;">Anytown, Anywhere</h2>		
Consignee (Not negotiable unless consigned to order)				
Notify party (Carrier not to be responsible for failure to notify)				
Pre-carriage by*	Place of receipt*			
Vessel	Voy. No.	Port of loading		
Port of discharge		Place of delivery*	*Applicable only when this document is used as a Combined Transport Bill of Lading	
Marks and Nos. Container Nos./Seals	No. of packages	Description of packages and goods	Gross weight (kg)	Measurement (cbm)
		<b>ABOVE PARTICULARS DECLARED BY SHIPPER: CARRIER NOT RESPONSIBLE</b>	Net Weight	
Freight and charges (indicate whether prepaid or collect)  Origin Inland Haulage charges ..... Origin terminal  Handling/ LCL Service charges .....  Ocean Freight  Destination Terminal Handling/ LCL Service charges ..... Destination Inland haulage charges.....		<p><b>RECEIVED</b> by the Carrier from the shipper in apparent good order and condition (unless otherwise noted herein) the total numbers or quantity of Containers or other packages or units indicated above stated by the shipper to comprise the cargo specified above, for transportation subject to all the terms hereof (including the terms on the reverse hereof) from the place of receipt or the port of loading, whichever applicable, to the port of discharge or the place of delivery, whichever applicable.</p> <p>Delivery of the Goods will only be made on payment of all freight and charges. On presentation of this document (duly endorsed) to the Carrier, by or on behalf of the holder, the rights and liabilities arising in accordance with the terms hereof shall (without prejudice to any rule of common law or statute rendering them binding upon the shipper, holder and Carrier) become binding in all respects between the carrier and holder as though the contract contained herein or evidenced hereby had been made between them.</p> <p>In witness whereof three (3) original Bills of Lading unless otherwise stated below have been issued, one of which being accomplished, the others to be void.</p> <p>Freight, charges and primage whether prepayable or not and whether paid or not shall be considered as fully earned upon shipment and shall be paid vessel and/or cargo lost or not lost.(CONTINUED ON REVERSE SIDE)</p>		
Declared value by shipper (see clause 5.C.4 and tariff)	Freight payable at	Place and date of issue		
Number of original Bs/L		Signed By:		

Source: Author, 2015

**Notes to Figure 12.2**

**Multimodal transport document (MMTD) content and the UCP 600 and ISBP 745 references**

1. The shipper details are often those of the beneficiary but could be any entity (sub-article 14(k)).

2. The consignee details are to be as specified in the documentary credit. Expressions 'to order' or 'to order of' preceding the named entity, or the expression 'or order' following the named entity, whether typed or pre-printed, are not to be included when a documentary credit requires a MMTD to evidence that goods are (straight) consigned to a named entity (paragraphs D16–D17 and D19–D20). When a documentary credit includes a requirement that an MMTD is to evidence goods consigned to or to the order of 'issuing bank' or 'applicant', or notify 'applicant' or 'issuing bank', then it is to state the name of the issuing bank or applicant, as applicable, but need not state their respective addresses or any contact details that may be included in the documentary credit (paragraph D19)
3. When a documentary credit includes the requirements or details for one or more notify parties, details of one or more additional notify parties can also be included on an MMTD. In the event that a documentary credit does not provide details of any notify party, an MMTD may indicate the details of any notify party and in any manner. The exception to this is when a documentary credit does not stipulate the details of a notify party, but the details of the applicant appear as notify party on an MMTD. If these details include the applicant's address and contact details, they are not to conflict with those stated in the documentary credit (paragraph D18).
4. Article 19 allows the document to be 'however named' and must indicate the name of the carrier. The name of the carrier can be shown anywhere on the document (sub-article 19(a), and paragraphs D1–D3).
5. Provides routing information, including any means of pre-carriage, place of receipt, port of loading, port of discharge or place of delivery, all of which should comply with those stated in the documentary credit, and vessel name. The place of receipt or place of delivery may or may not be the same as the ports of loading or discharge (sub-article 19(a)(iii), and paragraphs D8–D10 and D12–D14).
6. Provides information on shipping marks and container numbers, as applicable (paragraphs A32–A34).
7. Provides information on the number of packages and, while not mandatory, if completed must not conflict with data in any other stipulated document required by the documentary credit (sub-article 14(d)).
8. Bears a description of the goods in general terms, not conflicting with the description of goods in the documentary credit (sub-article 14(e), and paragraph D26).
9. Details of the gross and net weights are not to conflict with similar details on other stipulated documents (sub-article 14(d)).
10. Details of the measurement, if any, are not to conflict with similar details on other stipulated documents (sub-article 14(d)).

11. To indicate whether freight is prepaid or payable at destination (freight collect) (paragraphs D30–D31).
12. Must indicate the number of originals that have been issued and all originals are to be presented unless the documentary credit provides otherwise (sub-article 19(a)(iv), and paragraph D15).
13. To indicate whether freight is prepaid or payable at destination (freight collect) (paragraphs D30–D31).
14. Indication that the goods have been received for shipment by the carrier but note that contents of terms and conditions of carriage are not examined under a credit (sub-article 19(a) (ii)).
15. Indicates the place and date of issue of the MMTD (sub-article 19(a)(ii), and paragraph D6).
16. Signed by the carrier or master or a named agent of either entity (sub-article 19(a)(i), and paragraph D5).

## 12.4.9 A summary of the characteristics of key transport documents

Multimodal transport document (article 19)	Document covers two or more modes of transport: <ul style="list-style-type: none"> <li>• Delivery against original multimodal transport document, if negotiable</li> <li>• Delivery to consignee against identification, if straight consigned</li> </ul>
Bill of lading (article 20)	<ul style="list-style-type: none"> <li>• Document covers a port-to-port shipment</li> <li>• Often a negotiable document</li> <li>• Grants title to goods in most cases</li> <li>• Delivery against an original bill of lading when issued 'to order', 'to order of shipper' or to order of a named entity</li> <li>• Delivery to consignee against identification if straight consigned</li> </ul>
Non-negotiable sea waybill (article 21)	<ul style="list-style-type: none"> <li>• Non-negotiable document covering port- to-port shipment</li> <li>• Does not grant title to goods</li> <li>• Delivery to named consignee</li> </ul>
Charter party bill of lading (article 22)	<ul style="list-style-type: none"> <li>• Negotiability subject to charter party</li> <li>• Title to goods subject to charter party</li> <li>• Delivery in terms of charter party</li> </ul>
Air transport document (article 23)	<ul style="list-style-type: none"> <li>• Non-negotiable document covering single mode</li> <li>• Does not grant title to goods</li> <li>• Delivery to named consignee</li> </ul>
Road, rail or inland waterway transport document (article 24)	<ul style="list-style-type: none"> <li>• Non-negotiable document covering single mode</li> <li>• Does not grant title to goods, except possibly inland waterway</li> <li>• Delivery to named consignee or possibly against original inland waterway transport document</li> </ul>
Courier receipt, post receipt, or certificate of posting (article 25)	<ul style="list-style-type: none"> <li>• Non-negotiable document covering dispatch by post or courier</li> <li>• Does not grant title to goods</li> <li>• Delivery to named addressee</li> </ul>

#### 12.4.10 Common discrepancies in respect of transport documents

The most common discrepancies identified during examination include:

- late shipment;
- late presentation;
- the ports of loading / dispatch / taking in charge differ from those specified in the documentary credit;
- the ports of discharge / final destination / place of delivery differ from those specified in the documentary credit;
- the transport document shows an intended vessel / intended port of loading, but an on board notation does not additionally evidence the named vessel or actual port of loading;
- transshipment has been effected when the documentary credit specifically prohibits it and excludes sub-articles 20(c)(ii), 21(c)(ii), 23(c)(ii) or 24(e)(ii);
- absence of an on board notation;
- the on board notation is not dated;
- the goods were shipped on deck;
- the full set of transport documents have not been presented, as required by the documentary credit;
- claused bills of lading have been presented, showing a defective condition of the packages or goods;
- the transport documents do not identify the name of the carrier;
- the documents are not signed in accordance with the respective article of UCP 600;
- the bills of lading are made out to order of shipper, or to order, and not endorsed in blank or to the order of the stated named entity;
- the data content is otherwise in conflict with that shown on other stipulated documents;
- there has been an unauthenticated alteration to the transport document;
- the goods are covered by more than one set of transport documents; and / or
- the notify party details are incorrectly shown.

Other discrepancies might naturally arise, depending on the terms and conditions of the documentary credit and the content of the presented documents.



## 12.5 Preparing other documents

As well as transport documents, a documentary credit will require the presentation of other documents. These are outlined below and examined in more detail in Topics 13 and 15.

### 12.5.1 Insurance documents

The decision as to whether the beneficiary or applicant pays for and arranges the insurance of goods depends upon a number of factors. Most are beyond the scope of this text. If, however, the sale contract evidences that goods are sold either on a 'cost, insurance and freight' (CIF) basis or on a 'carriage and insurance paid to' (CIP) basis, an insurance document should be shown as a required document in the documentary credit. The requirements for this document are detailed under article 28.

Insurance document requirements vary not only from issuing bank to issuing bank, depending upon the internal guidelines of each, and from industry to industry, but also from country to country, to comply with export and import regulations. The aim of the documentary credit requirement should be to provide at least basic cover in respect of the goods.

Figure 12.3 provides an example of a form of insurance document. A description of the type of information that is to appear in each field is given, together with an indication of the relevant UCP 600 articles and ISBP 745 paragraphs.

Figure 12.3 Annotated example of an insurance document

**INSURANCE CERTIFICATE**  
L C Insurance Ltd

Insurance House, 500 High Road, London EC7N 6GH  
Telephone 0847 1234567, Fax: 0847 9876543

ASSURED REFERENCE

**INSURANCE CERTIFICATE No. ....**

This is to certify that we have insured the goods specified below under Open Policy No.....  
subject to the Policy Terms, Conditions and other details shown hereon in favour of..... 1

Ocean Vessel/Means of Transport 2	From Port, Airport or Place 3	
To Port, Airport or Place 3	Date of Shipment 4	Currency and Insured value 5
Marks and Numbers 6	Description of Cargo 7	In the event of loss or damage application must be made by the ASSURED or any endorsee to the following agents to arrange for a Surveyor to be appointed  Claims payable in by 8 Please refer to instructions below. Failure to comply with these instructions may prejudice any claim.

**INSTRUCTIONS TO BE FOLLOWED IN CASE OF LOSS OR DAMAGE (CLAIMS):**  
 In the event of loss or damage, immediately notify the nearest Claim Settling Agent nominated herein. If no such agent is available, please contact the following without delay:  
 Agent:  
 Address: 9  
 Contact Details:

**CONDITIONS OF INSURANCE**  
 Subject to Institute Cargo Clauses (A) or Institute Cargo Clauses (Air) as applicable or as otherwise indicated under Additional and/or Special Conditions below, including War, Strikes, Riots and Civil Commotion Risks as per Institute Clauses. 10

**ADDITIONAL AND/OR SPECIAL CONDITIONS**

Signed for the Insurer  
  
*Sabrina Chan*  
 LC Insurance Ltd 11

Place and Date of Issue 12

Countersignature 13

*(The Institute Clauses referred to are those which are current at the time of commencing the transit or risk)*  
**THIS CERTIFICATE REQUIRES COUNTERSIGNATURE**  
 This certificate is not valid unless countersigned by  
 XXXXXXXXXXXXXXXX

Source: Author, 2015

## Notes to Figure 12.3

### Insurance document content and the UCP 600 and ISBP 745 references

1. The name of the assured party (paragraphs K19–K21).
2. Transport details, not mandatory, but when such data is shown, it must not conflict with the same data appearing on other documents, especially the transport documents, or the documentary credit (sub-article 14(d)).
3. Routing details must not conflict with the same data appearing on other documents, especially the transport documents, or the documentary credit (sub-article 14(d)) and comply with sub-article 28(f)(iii).
4. If the date of shipment is shown, it must not conflict with the same data appearing on other documents, especially the transport documents, or the documentary credit (sub-article 14(d)).
5. The amount is as required by the credit, in the currency of the documentary credit, and for at least 110% of the CIF or CIP value of the goods (sub-article 28(f) and paragraphs K12–K16).
6. The shipping marks or container numbers, if shown, should not conflict with those appearing on the transport document or as may be stated in the documentary credit (paragraphs A32–A34).
7. Description of goods not conflicting with the documentary credit (sub-article 14(e)).
8. Indicates details of where claims are payable and by which entity.
9. Provides contact details of the agent.
10. Provides details of risk coverage (sub-article 28(g) and paragraphs K17–K18).
11. Signed by an insurance company or underwriter or their agent or proxy (sub-article 28(a) and paragraphs K2–K7).
12. Dated no later than the date of shipment unless the document indicates that coverage is effective from a date no later than the date of shipment (paragraphs K10–K11).
13. Countersigned, if required, by the issuer, the assured or a named entity (paragraph K5).

#### Check your understanding

Which of the following transport documents are usually negotiable?

- a. Bill of lading, charter party bill of lading, air transport document.
- b. Multimodal transport document, road consignment note, bill of lading.
- c. Air transport document, multimodal transport document, charter party bill of lading.
- d. Bill of lading, charter party bill of lading, multimodal transport document.



### 12.5.3 Commercial documents

Commercial documents include invoices, certificates (of weight, inspection and of analysis, etc), and packing and weight lists.

Figure 12.5 provides an example of a form of invoice. It should be noted that the invoice used is quite detailed and an invoice need not have the level of detail that is shown. A description of the type of information that is to appear in each field is given, together with an indication of the relevant UCP 600 articles and ISBP 745 paragraphs.

**Figure 12.5 Annotated example of an invoice**

Seller (name, address, VAT reg. No.) <b>8</b>		Invoice number <b>2</b>	<b>INVOICE</b> <b>1</b>	Sheet no. <b>3</b>
		Invoice date (tax point) <b>4</b>		Seller's reference <b>5</b>
		Buyer's reference <b>6</b>		Other reference <b>7</b>
Consignee <b>9</b>		Buyer (if not consignee)		VAT no.
		Country of origin of goods <b>11</b>	Country of destination <b>11</b>	
Vessel/flight no. and date <b>10</b>	Port/airport of loading <b>10</b>	Terms of delivery and payment <b>12</b>		
Port/airport of discharge <b>10</b>	Place of delivery <b>10</b>			
Shipping marks; container number <b>13</b>	No. and kind of packages, description of goods <b>14</b>	Commodity code	Total gross wt (kg) <b>15</b>	Total cube (m3)
Name of signatory <b>16</b>				
Place and date of issue <b>16</b>				
Signature <b>16</b>				

Source: Author, 2015

## Notes to Figure 12.5

### Invoice content and the UCP 600 and ISBP 745 references

1. The title of the document should be as shown in the credit or may be abbreviated to 'Invoice'. It should not be titled 'provisional', 'proforma' or similar unless required by the documentary credit (paragraph C1).
2. Unique reference number allocated to the invoice.
3. Should be completed if there is more than one page to the invoice, for example '1 / 2', '2 / 2' (paragraph A24).
4. Date of issue, which is optional, but usually stated (paragraph C10).
5. Any reference other than the invoice number that may be relevant. This is optional.
6. Any reference of the applicant (buyer), which may be the contract or proforma number stated in the documentary credit, if not stated elsewhere on the invoice. This is optional.
7. Any other reference that may be relevant to the transaction. This is optional.
8. Beneficiary's name and address. For other forms of invoice, this will be accounted for by the use of the beneficiary's letterhead (sub-article 18(a)(i) and paragraph C2).
9. Name and address of the applicant, unless otherwise required by the documentary credit. On other forms of invoice, this will be accounted for by a simple reference to 'To', followed by the name, or name and address of the applicant (sub-article 18(a)(ii)).
10. Routing details, not mandatory, but when such data is shown, it must not conflict with the same data appearing on other documents, especially the transport documents or the documentary credit (sub-article 14(d)).
11. Additional data, not mandatory, but when such data is shown, it must not conflict with the same data appearing on other documents or as may be stated in the documentary credit (sub-article 14(d)).
12. Usually includes reference to the applicable Incoterm and documentary credit reference, etc but is not mandatory. The Incoterm could also be stated against the amount of the invoice.
13. The shipping marks or container numbers should not conflict with those shown on the transport document or as may be stated in the documentary credit (paragraphs A32–A34).
14. Description of goods that corresponds with that shown in the documentary credit and an indication of the amount that is due. If the description in the documentary credit includes the Incoterm, then this should be quoted here (sub-article 18(c), and paragraphs C3–C5).
15. Weight and measurement details, not mandatory, but when such data is shown, it must not conflict with the same data appearing on other documents (sub-article 14(d)).
16. Signed and dated, but only if required by the documentary credit (sub-article 18(a)(iv), and paragraph C10).

### 12.5.4 Official documents

Official documents allow a party to the sale contract to satisfy regulatory requirements. An applicant may need an official document to satisfy import regulations or health regulations. A beneficiary may need an official document to satisfy export control authorities.

Figure 12.6 provides an example of a form of certificate of origin. This particular layout relates to a certificate of origin where a documentary credit requires it to be issued by a Chamber of Commerce. A description of the type of information that is to appear in each field is given, together with an indication of the relevant UCP 600 articles and ISBP 745 paragraphs.

**Figure 12.6 Annotated example of a certificate of origin**

1 Consignor	No.	ORIGINAL
2 Consignee	<b>CERTIFICATE OF ORIGIN</b>	
	3 Country of origin	
4 Transport details (Optional)	5 Remarks	
6 Item number; marks; numbers and kind of packages; description of goods	7 Quantity	
<p>8 THE UNDERSIGNED AUTHORITY CERTIFIES THAT THE GOODS DESCRIBED ABOVE ORIGINATE IN THE COUNTRY SHOWN IN BOX 3</p> <p>ANYWHERE CHAMBER OF COMMERCE</p> <p>Place and date of issue, name, signature and stamp of competent authority</p> <p style="text-align: center;">..... 20 .....</p> <p style="text-align: right;">Anywhere Chamber of Commerce</p>		

Source: Author, 2015

## Notes to Figure 12.6

### Certificate of origin content and the UCP 600 and ISBP 745 references

1. Usually the beneficiary or the shipper or consignor shown on the transport document. However, paragraph L6 states that the consignor or exporter may be an entity other than the beneficiary of the credit or the shipper as shown on any other stipulated documents.
2. Not to conflict with the consignee information in the transport document. However, this is subject to the allowances made in paragraph L5.
3. The country of origin of the goods.
4. Routing details, not mandatory, but when such data is shown, it must not conflict with the same data appearing on other documents, especially the transport documents, or the documentary credit (sub-article 14(d)).
5. Optional additional information, not to conflict if stated elsewhere in other documents (sub-article 14(d)).
6. Generic description not to conflict with other documents (sub-article 14(e) and paragraph L4). Container number or shipping marks etc. to be the same as that shown on the transport document. Number of boxes within the container, if stated, to be the same number as shown on other documents (sub-article 14(d)). The shipping marks, if stated, should not conflict with those stated in the documentary credit (paragraphs A32–A34).
7. If completed, data not to conflict with other documents (sub-article 14(d)).
8. Signed by the issuer and may be dated (paragraph L1).

Document to be legalised, certified or visaed as required by the documentary credit.

## 12.6 Presenting the documents and the mode of presentation

In order to receive settlement, the beneficiary is required to prepare and present (or arrange the presentation of) a set of documents that complies with the terms and conditions of the documentary credit.

The majority of presentations under documentary credits are still paper based. Over time, it is expected that there will be an increasing number of document presentations comprising a mixture of part paper, part electronic, or entirely electronic.



### 12.6.1 Presentation and UCP 600

Articles and sub-articles 6, 14(c), 29 and 33 collectively refer to where and when documents are to be presented in order to meet the requirements of a documentary credit. It should be noted that UCP 600 is concerned with the presentation of paper-based documents.

Sub-article 6(d)(i) indicates that a documentary credit must state an expiry date for presentation.

Each documentary credit should also state the number of days after the date of shipment within which the documents are to be presented to the nominated bank or issuing bank. In the absence of such a period being stated, sub-article 14(c) indicates that a presentation including one or more original transport documents, issued subject to articles 19–25, must be made not later than 21 calendar days after the date of shipment, as described for each transport document in articles 19–25, but in any event not later than the expiry date of the documentary credit.

However, it may be the case that the expiry date and/or the latest date for presentation falls on a non-banking day, eg a weekend or national holiday. In this event, the sub-article 29(a), permits the presentation to be made on the next banking day.

It should be noted that when the latest shipment date and expiry date are the same, sub-article 29(c) states that the latest shipment date is not extended to the next banking day as a result of sub-article 29(a) being applicable.

When documents have been presented, there are a number of key points that will be considered by a document examiner. These are as follows.

- **Have all documents been presented to the correct location?**
  - In a documentary credit available by payment, acceptance, deferred payment or negotiation with a named nominated bank, this is usually the counter of that nominated bank.
  - In a documentary credit available with any bank, this may be stated more generally, for example as any bank in the city or the country in which the beneficiary is located.

In either case, the beneficiary may also present documents directly to the issuing bank. If a documentary credit is available only with the issuing bank, the place for presentation of documents is the location of the issuing bank.

- **Have all the documents been presented on, or before, the expiry date of the documentary credit?**

Technically, an expired documentary credit is not a discrepancy, but a non-existent documentary credit. To facilitate the documentary credit and as an accommodation to the presenter, however, most banks treat 'credit expired' as a discrepancy and advise the presenter accordingly.

- **Have all documents been presented no later than the stated presentation period or the default period stated in sub-article 14(c)?**

As we have seen, if one or more original transport documents form part of the presentation, they must also be presented within the latest presentation date after the date of shipment, as stipulated in the documentary credit, or the default 21-calendar-day period if the documentary credit is silent on the subject.

An extension of the expiry date stipulated in the documentary credit or the latest date for presentation, as mentioned in sub-article 29(a), does not apply in the case of 'Force Majeure', which is explained in article 36.

If documents have been presented on an extended expiry date in accordance with UCP 600, sub-article 29(a), the covering schedule of the nominated bank should be marked with a statement to this effect.

Linked to the expiry date and latest date for presentation are the operating hours of the bank to whom the presentation is to be made. The article 33, states that banks are not obliged to accept documents outside of their banking hours.

If a bank does accept a presentation outside its banking hours, care should be taken to ensure that the presentation date is understood for the purposes of examination under UCP 600.

A bank may indicate shorter hours than the banking hours available at a particular centre for the presentation of documents and, accordingly, the presentation schedules must be examined for any evidence of compliance with such limitation.

## 12.7 Discrepant documents

In most cases, a beneficiary will present documents that it believes comply with the terms and conditions of the documentary credit. A document examiner may examine documents (if the documentary credit is not confirmed) or will examine documents (if the documentary credit is confirmed) before forwarding them to the issuing bank. The examination process is considered in detail in Topics 13, 14 and 15. If discrepancies are found in the documents, a nominated bank will usually follow the process outlined in the following sections.

If the beneficiary knows that it will be presenting discrepant documents, it may request an amendment from the applicant in advance to try and rectify some, or all, of the discrepancies. If this is agreed, the issuing bank will forward its amendment to the advising bank. The document examiner will ignore any statements from the presenter that discrepancies have been approved unless the issuing bank has forwarded its acceptance of the discrepancies or it has issued an amendment that covers the discrepancies observed.

### 12.7.1 The role of a nominated bank in processing discrepant documents

This includes where the nominated bank is the confirming bank. In this process, the document examiner will be guided by a number of principles, as follows.

- Document examination is independent of the sale or other contract upon which the documentary credit may be based (article 4).
- Document examination is independent of the beneficiary's relationship with the applicant (sub-article 4(a)).
- Document examination is independent of the goods, services or performance to which the documents relate (article 5).

Document examination is on the basis of the documents alone and on their face. A determination as to whether the documents comply or not is not based on knowledge that may be gained from other sources (sub-article 14(a)). This process is covered in more detail in Topic 13.

### 12.7.2 Giving notice of refusal to a beneficiary or presenting bank

If, after examination, the document examiner decides to give notice of refusal to the beneficiary – if the beneficiary has presented the documents; otherwise, to the presenter – this is generally completed over the telephone, or in writing by SWIFT, telex, fax or email. If notice is initially given over the telephone, it is best practice to confirm the content of the refusal in writing.

It is important that the bank's records contain details of dates, time and methods of notification. Copies of the notification, or access thereto, should form part of these records. If a bank has presented the documents on behalf of the beneficiary, in most cases, the notice of refusal will be sent via a SWIFT MT734 message. Although an MT734 is an authenticated message, it should be noted that a refusal notice is not required to be sent using an authenticated message.

As required by sub-article 16(d), a notice of refusal should be sent or given no later than the close of the fifth banking day following the day of presentation.

### 12.7.3 Discussions with beneficiaries

In this section and section 12.7.4, reference to beneficiary includes any other entity that has made the presentation on behalf of the beneficiary.

Because the documents belong to the beneficiary, a document examiner must not initiate any further action or handling without the beneficiary's agreement. In particular, the issuing bank must not be advised of discrepancies because the beneficiary may well be able to correct them. Alternatively, the beneficiary may wish to contact the applicant directly. Any prior contact with the issuing bank may jeopardise the beneficiary's position.

After preliminary discussions, a document examiner and beneficiary may agree that one or a combination of the following would offer the best course of action.

- The beneficiary will submit corrected documents, if possible, or arrange alteration or correction to the concerned document(s).
- The beneficiary will request a suitable amendment to the documentary credit.
- The beneficiary will request that a message be sent to the issuing bank for permission to honour or negotiate despite discrepancies, as originally determined.
- A document examiner, on behalf of his or her bank and in terms of such bank's internal guidelines, may accept a beneficiary indemnity (with or without the counter-guarantee from the beneficiary's bankers) in respect of the discrepancies. (Note that some documentary credits do not allow payment against a beneficiary indemnity or under reserve.)
- The beneficiary will instruct the document examiner to despatch documents to the issuing bank for settlement.

The beneficiary's instructions must be clearly recorded on the bank's files and should be confirmed in writing.

It is in the interests of a document examiner to record accurately on the bank's files all details of discussions with a beneficiary, including dates and times.

In summary, when an entity other than the beneficiary presents documents to a bank, any notice of refusal and any communications and instructions received thereafter must be made to, and with, that presenter.

### 12.7.4 Correction of documents by beneficiaries

A document examiner may prefer to return for correction only the discrepant documents. If the beneficiary agrees to this, it may be easier for a document examiner to examine the re-presented documents with those originally presented and which are compliant. If all the documents as originally presented are returned, a document examiner's task may become a little more difficult when the fresh presentation is made because all the documents will need to be re-examined.

A document examiner must treat the return of the corrected documents, on their own or as part of the whole set of documents, as a new presentation. A fresh presentation made in these circumstances often causes more difficulties than checking a new presentation. There is an inherent tendency to make assumptions in respect of documents that did not require correction and a document examiner must avoid this. Frequently, a re-presentation of documents will create fresh discrepancies, such as late presentation or credit expired.

### **12.7.5 Obtaining the issuing bank's authority to accept discrepancies**

A document examiner must ensure that the sending of the message has the beneficiary's authorisation. On receipt of the necessary authorisation from the issuing bank, the documents may be honoured or negotiated and forwarded to the issuing bank. The forwarded documents should include a notation on the covering schedule that the documents have been taken up 'notwithstanding the stated discrepancies, as authorised by the issuing bank in its message dated xxxx' or words of similar effect.

### **12.7.6 Receiving instructions from a beneficiary to dispatch documents to an issuing bank for honour**

Because the documents belong to the beneficiary, a notice of refusal should specifically state that the documents are held pending the beneficiary's further instructions. Accordingly, any instructions to forward the documents to the issuing bank must be followed carefully.

A document examiner must ensure that the documents are dispatched to the issuing bank as a presentation under the terms and conditions of the documentary credit and UCP 600, and no reference must be made to documents being sent on collection terms, on approval or in trust. Similarly, the covering schedule enclosing the documents must not be headed in such a manner as to give an indication of a documentary collection, nor must they state that the presentation is subject to the rules for documentary collections, ie the Uniform Rules for Collections, ICC Publication No. 522.

### **12.7.7 Dispatch of documents to an issuing bank**

A document examiner must read the instructions in the documentary credit and dispatch documents in accordance with such instructions, including any specified choice of courier company.

### **12.7.8 Handling of documents pending settlement**

The terms of a refusal notice may indicate that the documents are held pending the beneficiary's further instruction or being handled in accordance with instructions previously received. Accordingly, the beneficiary should continue to be kept advised of any developments with the issuing bank, or efforts to seek further instructions in the absence of any authority to honour or negotiate being received from the issuing bank. A document examiner should follow the operational guidelines of its bank regarding the handling of outstanding items.

### Check your understanding

When a nominated bank is involved in processing discrepant documents, the document examiner will be guided by which **two** of the following principles? Document examination is:

- a. based solely on the documents presented and not on any knowledge gained from other sources.
- b. subject to the goods or services supplied by the beneficiary meeting the requirements of the applicant.
- c. independent of any dispute in the sale or other contract upon which the documentary credit may be based.
- d. dependent on the willingness and ability of the applicant to pay, when due, the value of the documents presented.

### **12.7.9 Settlement obligations of confirming and nominated banks**

The obligations and liabilities of a confirming bank to honour or negotiate a complying presentation are clearly set out in article 8.

The position of a nominated bank in this respect is provided for in sub-article 12(a).

The handling of discrepant documents is covered in more detail in Topic 18, and honour and negotiation is examined in Topic 17.



## Conclusion

In this topic, we have learned that the preparation of documents for presentation under a documentary credit is not a simple task. It often requires attention to detail at various stages, even prior to actually preparing the documents, ie reviewing the documentary credit to ensure that the terms and conditions can be complied with, and seeking an amendment when one or more terms and conditions, or documentary requirements, cannot be met.

A beneficiary is reliant on a carrier or its agent, an insurance company or its agent, and the issuer of any document by another named entity to prepare the document(s) in their control in such a way that it will be acceptable under the documentary credit. In fact, it would be wise for the beneficiary to put themselves in the shoes of the nominated bank or issuing bank and examine that document to determine whether or not it complies. Where it does not comply, the beneficiary should seek a new or amended document.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- identify the data that should appear on each of the main types of document, and refer to the applicable rules in UCP 600 and practices described in ISBP 745?
- outline the steps that occur from the point of delivery of the goods to the carrier or its agent, to the delivery of an original bill of lading to the carrier or its agent, to secure the release of the goods?
- describe which transport documents are negotiable and the attributes that influence their negotiability?

## Test your knowledge

Use these questions to assess your learning for Topic 12.

1. Which of the following transport documents is not appropriate for any transport by sea?

- a. A multimodal transport document.
- b. A bill of lading.
- c. A charter party bill of lading.
- d. A CMR note.

Answer: D. A CMR note is a transport document covering dispatch by road. See section 12.3.6.

2. Which of the following documents can convey title to the goods?

- a. A non-negotiable sea waybill.
- b. Air transport documents.
- c. A bill of lading.
- d. A CMR note.

Answer C. A bill of lading is capable of conveying title to the goods. See sections 12.3.2 and 12.4.9.

3. If a nominated bank is closed on the expiry date of a documentary credit and the beneficiary is ready to present its documents, what action must the beneficiary take to prevent the expiration of the credit?

- a. It must present the documents on the last day on which the bank is open before the expiry date.
- b. It must seek an amendment to the documentary credit, with a new expiry date.
- c. It must present the documents on the first day on which the bank is open after the expiry date.
- d. It must notify the applicant it cannot present in time.

Answer C. If the bank is expected to be closed – that is, because it falls on a weekend, a national holiday, etc – on the expiry date, it will extend to the next banking day, according to sub-article 29(a). See section 12.6.1.

4. What is the type of bill of lading that is not acceptable under article 20, and paragraph E1 unless it is specifically required or permitted by the documentary credit?

- a. A liner bill of lading.
- b. A through bill of lading.
- c. A marine bill of lading.
- d. A charter party bill of lading.

Answer: D. A charter party bill of lading must be specifically required or permitted by the terms of the documentary credit (paragraph G1). See section 12.3.4.

5. A documentary credit is issued with the following requirement: “Full set clean on board bills of lading issued to order of the issuing bank, marked notify the issuing bank and freight prepaid.” The

presented bills of lading comply fully with this requirement, but also indicate a further notify party: the applicant. The applicant name is that which is stated in the documentary credit, but with a different address. The document is complying, because additional notify parties are acceptable and because the documentary credit did not require the applicant to appear as notify party, so that any address may be shown. True or false?

- a. True.
- b. False.

Answer: False. Sub-article 14(j) states that when the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document subject to articles 19–25, they must be as stated in the credit. Sub-article 14(j) draws no distinction between a documentary credit that requires the applicant details to appear as notify party and one that does not. See section 12.4.2.

## Answers

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### CHECK YOUR UNDERSTANDING (section 12.2.3)

False. If only fields 44A and 44B are completed, the required document should be a multimodal transport document, a road, rail or inland waterway transport document (except where the inland waterway transport document is issued in the form of a bill of lading), or a courier receipt, postal receipt or certificate of posting. See section 12.2.1.

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### CHECK YOUR UNDERSTANDING (section 12.3.7)

b. A documentary credit should require the presentation of a bill of lading only when the goods are to be shipped from port to port, ie where no inland place of receipt or inland place of final destination is involved. See section 12.3.2.

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### CHECK YOUR UNDERSTANDING (section 12.4.4)

False. A notify party is a party that is to be advised by the carrier, or its agent, upon arrival of goods at the named destination. The notify party will usually be the applicant, its clearing agent or the issuing bank. See section 12.4.2.

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### CHECK YOUR UNDERSTANDING (section 12.5.1)

d. Bill of lading, charter party bill of lading, multimodal transport document. See section 12.4.9.

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### CHECK YOUR UNDERSTANDING (section 12.7.8)

a. based solely on the documents presented and not on any knowledge gained from other sources.

c. independent of any dispute in the sale or other contract upon which the documentary credit may be based. See section 12.7.1.

## Topic 13 Examining documents

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### Learning objectives

By the end of this topic, you should be able to:

- explain the role of banks in examining documents;
- describe preliminary examination tasks and techniques; and
- explain the general practices that relate to the examination of documents.

### Introduction

This topic details the role of the document examiner in the examination of documents. The principles are the same whether the document examiner is working for a nominated bank, confirming bank or issuing bank.

To develop an understanding of what is considered to represent international standard banking practice for the examination of documents, we will refer extensively to the ICC publication widely known as ISBP 745.

#### Think...

Before you start work on this topic, consider what you already know about examining documents that are commonly presented under a documentary credit. Think about how the applicable rules of UCP 600 and the content of ISBP 745 help to facilitate that process. For example:

You may know that some documentary credits will provide details of the issuer and / or data content when describing the documents that are to be presented. Are you aware that others, apart from the transport document and insurance document requirements, may simply provide the name of the type of document that is to be presented?

Do you know that when only the name of a document is provided, a document examiner should be aware of the content of sub-article 14(f) and be able to determine if the presented document fulfils the function of the stipulated document?

## 13.1 Preliminary tasks I

The examination tasks that a document examiner performs will reflect the requirements of their role specific to the remit of their bank in the documentary credit transaction. In performing the examination, a document examiner should consider the following.

### Recording

A document examiner must ascertain that the documents have been allocated to the correct documentary credit.

With regard to individual documents received (including copies), a document examiner should ensure that the documents are as indicated on the covering schedule or letter – that is, in terms of both type and number of originals or copies.

In terms of date and time of receipt, a document examiner should ensure that both have been recorded clearly on the covering schedule or letter and on the bank's systems.

### The covering schedule or letter enclosing the documents

A presentation of documents is usually accompanied by:

- a covering schedule issued by a bank based overseas or locally; or
- a covering letter from the presenter, usually the beneficiary.

### Settlement or payment instructions

A document examiner must ascertain whether the covering schedule or letter has given clear instructions regarding:

- settlement – that is, where payment should be sent and how;
- whether settlement has already been made as a result of an earlier reimbursement claim;
- charges being claimed by a presenting bank, if any; and
- advice of payment – that is, how this should be sent.

Once the documents are determined to be a complying presentation, a document examiner must compare the presenter's settlement request with the documentary credit terms in order to determine whether it can be complied with.

### Discrepancies noted by the presenter

A document examiner should check whether the presenter has noted any discrepancies. Where discrepancies are noted, the document examiner is still required to determine whether or not the documents comply. Additional comments (such as that the discrepancies have been agreed between the applicant and the beneficiary) should be disregarded unless the issuing bank has already forwarded an approval of such discrepancies, or the documentary credit has recently been amended to allow for them.

## 13.2 Preliminary tasks II

### The availability of the documentary credit

A document examiner must determine whether the documentary credit is available with their bank by honour or negotiation and whether it is subject to a transfer or a back-to-back arrangement. Transferable and back-to-back documentary credits are discussed in Topic 19.

If the documentary credit is not available with the document examiner's bank, the covering schedule or letter should be reviewed to determine what type of request or instruction has been provided by the presenter for the further handling of the presentation.

In the case of a presentation for which the documentary credit has been advised through another bank, but which is available for honour or negotiation with any bank, a document examiner must make inquiries with the advising bank to ensure that all amendments that have been advised to the beneficiary have been presented.

### Reviewing the documentary credit

Prior to commencing the examination of the documents, a document examiner should read the documentary credit and any amendments to become familiar with its terms and conditions, including whether:

- the documentary credit has expired;
- the amount available is sufficient for the drawing that is being made;
- previous drawings, if any, appear to be correctly recorded; and
- the documentary credit is available for the goods and prices covered by the presentation.

### Completing the bank's document examination record

It is common for a bank to use a document examination record as part of its internal process. This record, which may vary in terms of design and the extent of its detail, is aimed at providing a history of everything that occurs to the presentation, from the date of presentation through to either settlement or refusal. For most banks, these records will be maintained within the back-office systems that are used for the issuance, advising and settlement of documentary credits. For others, this will be a paper-based record, for example a list of discrepancies that have been observed.

The type of information that will be recorded will include:

- details of discrepancies ascertained on examination; and
- brief notes on discussions or other communications with the beneficiary or presenting bank.

In discussions with third parties, senior management and legal advisers, and in any possible litigation, a document examiner can find the bank's document examination record of primary importance.

### 13.3 Examining the documents

A document examiner should examine the documents systematically, following a procedure that includes:

- examination of the documents with reference to the documentary credit, including accepted amendments;
- examination of the documents with reference to the applicable articles of UCP 600; and
- examination of the documents with reference to one another.

Over time, a document examiner will develop their own routine for the examination of the documents, including the order in which the documents are examined.

A nominated bank acting on its nomination, a confirming bank and the issuing bank each has a maximum of five banking days following the day of presentation to determine whether a presentation is complying. It should be noted that if documents are presented within five banking days of the expiry date, a bank is not required to accelerate the examination process for that presentation (sub-article 14(b)).

### 13.4.1 Examining the documents against the documentary credit

Documentary credits are generally transmitted as a SWIFT MT700 message, occasionally with an accompanying MT701 message where there is a large amount of data in fields 45A (Description of Goods and/or Services), 46A (Documents Required) or 47A (Additional Conditions). Where a documentary credit is advised to the beneficiary through another bank (a second advising bank), an advising bank will generally convey the details of the documentary credit by means of a SWIFT MT710 message (Advice of a Third Bank's or a Non-Bank's Documentary Credit). The fields of an MT700 message map directly to those in an MT710 message. Documentary credits may also be issued in telex or letter form.

If the documentary credit is sent by SWIFT MT700 or MT710 message, it will be in a structured format, with fields designated for each type of data content. The layout of a documentary credit issued by telex or letter may not be so consistent in its structure.

Key field data designators, as extracted from the SWIFT MT700 format specification, are as follows and, where appropriate, comment is made on what a document examiner should be reviewing and which article or sub-article should be reviewed.

**1. Form of documentary credit (40A) – a mandatory field**

The type and characteristics of the documentary credit – that is, whether it is IRREVOCABLE, IRREVOCABLE TRANSFERABLE, IRREVOCABLE STANDBY or IRREVOC TRANS STANDBY (ie Irrevocable Transferable Standby) – is indicated here.

While UCP 600 does not specifically recognise revocable documentary credits, such credits may be issued subject to UCP 600. In this event, the terms and conditions relating to the revocability of the documentary credit must be incorporated into its terms and conditions.

**2. Documentary credit number (20) – a mandatory field**

This is the number assigned to the documentary credit by the issuing bank.

**3. Date of issue (31C) – a mandatory field**

Is there a stipulation in the documentary credit indicating that one (or more) of the documents dated prior to the issue date is (are) not acceptable? A document examiner should refer to sub-article 14(i) in respect of the dating of documents.

**4. Applicable rules (40E) – a mandatory field**

The rules that are applicable to the documentary credit must be specified here. Depending on whether UCP 600, ISP98, or eUCP, and URR are applicable, this will read 'UCP LATEST VERSION', 'EUCP LATEST VERSION', 'UCPURR LATEST VERSION', 'EUCPURR LATEST VERSION', 'ISP LATEST VERSION' or 'OTHR' (reference to 'LATEST VERSION' being the rules in operation on the date of issuance of the documentary credit or standby credit). Use of the code 'OTHR' will signify that UCP 600 or ISP98 do not apply to the transaction, in which case the documentary credit should indicate in field 47A of the SWIFT message the applicable rules or law. A documentary credit that is not subject to UCP 600 would be extremely rare.

**5. Date and place of expiry (31D) – a mandatory field**

Date of expiry – presentation must be made on or before the date stipulated other than as provided for in sub-article 29(a).



Place (country) of expiry – the place of expiry should be that of the bank(s) with which the documentary credit is available (sub-article 6(d)(ii)).

If the place of expiry is that of the issuing bank, this should only be where the documentary credit is available solely with the issuing bank by honour.

**6. Applicant (50) – a mandatory field**

This will be the name of the entity on whose behalf the documentary credit has been issued. This will usually be the buyer of the goods, services or performance that are described in field 45A of the MT700 message.

The applicant is defined in article 2.

**7. Beneficiary (59) – a mandatory field**

This will be the name of the party in whose favour the documentary credit has been issued.

Unless the documentary credit stipulates otherwise, invoices must be made out in the name of the applicant and be issued by the named beneficiary, except where the documentary credit is transferred (in which case an invoice may also be issued by the named second beneficiary).

The beneficiary is defined in article 2.

**8. Currency code, amount (32B) – a mandatory field**  
**Percentage credit amount tolerance (39A) – an optional field**  
**Maximum credit amount (39B) – an optional field – and/or**  
**Additional amounts covered (39C) – an optional field**

A document examiner must ascertain that values and quantities evidenced on a stipulated document are within any stated tolerances, and that the drawing is in accordance with the documentary credit amount, including any specified tolerance or additional amounts.

Article 30 provides the rules relating to the application of a tolerance that may be applicable to the documentary credit amount, the quantity of goods and/or the unit price of those goods.

**9. Available with ... by ... (41a) – a mandatory field**

This field identifies the bank authorised to pay, accept a draft, incur a deferred payment undertaking (ie to honour) or negotiate. It may also indicate that any bank is so authorised. A document examiner is to ensure that his or her bank is a nominated bank if other than the issuing bank.

**10. Drafts at (42C) – an optional field**  
**Drawee (42a) – an optional field**

A document examiner must determine whether a draft, if required, is drawn as specified in the documentary credit, in terms of the amount, payment terms and drawee name. The amount should be the invoice amount unless there is a stipulation indicating otherwise, for example, in respect of a discount or adjustment for an advance payment that has already

been made. The draft should be endorsed, if necessary, evidence any additional wording as may be specifically required by the documentary credit, and the amount as expressed in figures and words should agree. ISBP 745 section B provides extensive details of the practices relating to drafts and the calculation of a maturity date.

**11. Mixed payment details (42M) – an optional field**

Occasionally, a documentary credit will be available for settlement not just at sight or at a future determinable date, but by a mixture of both or a mixture of future determinable dates. If this is the case, this field should be completed with the details of how the amount of any presentation is to be paid. Such conditions may also be found in field 47A (Additional Conditions) where this field is not used.

**12. Negotiation/deferred payment details (42P) – an optional field**

As a draft is not to be required when a documentary credit is available by deferred payment and the definition of negotiation, in article 2, states that negotiation may be with or without a draft, this field can be completed with the settlement details when a draft is not necessary.

**13. Partial shipments (43P) – an optional field**

If partial shipments are stated to be not allowed, a document examiner must determine whether the documents are consistent with a full shipment and / or a full drawing, and (unless otherwise stipulated) whether, if applicable, the amount and goods are within the 5% tolerance indicated in sub-article 30(b).

If partial shipments are stated to be allowed, the drawing, if it is in respect of a second or subsequent shipment, must be consistent with the amount and quantity of goods that are remaining, and any unit prices, if any. It should be noted that completion of field 43P is optional and if not completed will, according to sub-article 31(a), mean that partial shipments (or drawings) are permitted.

This field may also be completed with the word 'CONDITIONAL'. In this event, field 47A (Additional Conditions) should be reviewed to determine the circumstances under which a partial shipment may occur, eg this may be to limit the number of partial shipments that are allowed or that only certain types of goods may be part shipped.

**14. Transshipment (43T) – an optional field**

If transshipment is stated to be not allowed, a bill of lading, as an example, must not evidence unloading and reloading from one vessel to another during the course of ocean carriage from the port of loading to the port of discharge mentioned in the documentary credit, unless shipment is effected in a container(s), trailer(s) or LASH barge(s) and the entire carriage is covered by one and the same bill of lading (as stated in sub-articles 20(b) and 20(c)).

A document examiner must examine the transport document against the transshipment rule that appears in the applicable transport article in UCP 600.

Where goods are being transported in containers or where a multimodal transport is involved, transshipment should always be allowed in the documentary credit.

This field may also be completed with the word 'CONDITIONAL'. In this event, field 47A (Additional Conditions) should be reviewed to determine the circumstances under which transshipment may occur, eg this may be to limit the names of the port(s) or airport(s) at which transshipment may occur.

**15. Place of taking in charge/Dispatch from ... /Place of Receipt (44A) – an optional field  
Port of loading/Airport of departure (44E) – an optional field  
Port of discharge/Airport of Destination (44F) – an optional field – and/or  
Place of Final Destination/For transportation to ... /Place of Delivery (44B) – an optional field**

A document examiner must examine the transport document against the routing stipulations in the documentary credit, and the detailed rules made under the respective UCP 600 transport article, as well as the applicable paragraphs of ISBP 745 for the concerned transport document.

A document examiner must be especially vigilant regarding any reference on the transport document to an intended vessel or an intended port of loading. If, for example, such references have been made on a bill of lading, then a dated on-board notation is required containing the name of the vessel and the port of loading, or the word 'intended' is to be deleted and the correction authenticated by the carrier or its agent. The examination of transport documents is covered in Topic 14.

**16. Latest date of shipment (44C) – an optional field**

A document examiner must ensure that the date of shipment, as evidenced on the transport document and as defined in transport document articles 19-25, is no later than the date stipulated in this field or, if no date is shown, the expiry date of the documentary credit as shown in field 31D.

**17. Shipment period (44D) – an optional field**

In addition to, or in place of, a latest date of shipment, a documentary credit may indicate one or more shipment period(s) applicable to the goods. A document examiner must examine the transport document(s) closely to determine that the goods have been shipped within the stated period(s).

**18. Description of goods and/or services (45A) – an optional field**

A document examiner must ensure that the wording of the description of goods on the invoice corresponds with that shown on the documentary credit (sub-article 18(c)).

Further, a document examiner must ensure that other stipulated documents do not contain a goods description that conflicts with that shown on the invoice or the documentary credit. When a goods description is shown on other stipulated documents, it may be given in general terms not conflicting with the description in the documentary credit (sub-article 14(e)). Any shipment terms or Incoterms stipulated as part of the goods description should be evidenced on the invoice.

The examination of invoices and other documents is covered in Topic 15.

## 19. Documents required (46A) – an optional field

This field describes the documentary requirements. A document examiner must:

- read the requirements in this field in relation to all documents; and
- read any requirements elsewhere in the documentary credit that may relate to one or more of the stipulated documents, ie in field 47A (Additional Conditions).

The following review points, where appropriate, should not be overlooked.

A document examiner, using an invoice as an example, should check that it:

- appears to have been issued by the beneficiary;
- is made out in the name of the applicant;
- is issued in the same currency as the documentary credit;
- has been signed, if required by the documentary credit; and
- contains a description of the goods, services or performance that corresponds to that in field 45A (Description of Goods and/or Services) of the documentary credit;
- not contain any data in conflict with data shown elsewhere within that document, or within any other stipulated document or the documentary credit.

An insurance document must:

- not be a cover note;
- not be presented in the form of a certificate, where a policy is specifically required;
- (when the documentary credit is silent as to the assured party) be issued or endorsed in favour of the applicant or issuing bank, or endorsed in blank by the named assured;
- cover the risks as stipulated in the documentary credit and show them specifically on its face;
- be dated no later than the date of shipment, as evidenced on the accompanying transport document or, if dated later than the date of shipment, indicate that cover was effective no later than the date of shipment; and
- not contain any data in conflict with data shown elsewhere within that document, or within any other stipulated document or the documentary credit.

For other documents, the document examiner must:

- examine them against the stipulations in the documentary credit;
- check that they have been issued by the named party, as may be stipulated;
- check that the data content, if stipulated, complies with that in the documentary credit and, where not stipulated, that the document complies with sub-article 14(f); and
- ensure that they do not contain any data in conflict with data shown elsewhere within that document, or within any other stipulated document or the documentary credit.

The examination of invoices and other documents is discussed in Topic 15.

## 20. Additional conditions (47A) – an optional field

A document examiner must review any additional conditions against the content of the stipulated documents. If a condition is stated but no document is stipulated to evidence compliance with that condition, the condition must be considered as not stated and should be disregarded. In this respect, a document examiner's attention is drawn to sub-article 14(h).

**21. Special payment conditions for the beneficiary (49G) – an optional field**

**Special payment conditions for receiving bank (49H) – an optional field**

If completed in the MT700 message, these fields should be reviewed and complied with to the extent that the content does not conflict with any other instructions or conditions that have been agreed. Any conflict should be resolved before any payment is made.

**22. Charges (71D) – an optional field**

This field will indicate which of the applicant or beneficiary is responsible for the payment of all or some of the charges of the respective banks. It is usual practice that the applicant will bear the charges of the issuing bank and that the beneficiary will bear the costs of the other banks.

**23. Period for presentation in days (48) – an optional field**

A document examiner must determine that if a number of days is stipulated in this field, that the presentation has been made within such period after the date of shipment or date of a document or event. A document examiner's attention is drawn to sub-article 14(c) for the default period of 21 calendar days when no presentation period is specified.

**24. Confirmation instructions (49) – a mandatory field**

A document examiner must ascertain whether there was a request or authorisation for confirmation to be added and what was the name of the confirming bank, if other than his or her bank, along with whether confirmation has been added, and if so, whether confirmation has been extended to all amendments, if any (article 8 and sub-article 10(b)). If the document examiner's bank has added confirmation to the documentary credit, the document examiner should review the advice of confirmation and any amendments to ascertain the scope of the confirmation that has been added.

**25. Reimbursing bank (53a) – an optional field**

A document examiner must ascertain whether this field includes the name of a bank from which reimbursement is to be obtained and the manner in which it is to be obtained. He or she should determine whether the method is consistent with the payment that is being requested by the beneficiary. If reference is made in field 40E to URR 725, then those rules will apply to the reimbursement under the documentary credit; otherwise, sub-articles 13(b) and (c) will apply. Field 78 may also need to be reviewed to ascertain the basis of claiming reimbursement from the reimbursing bank.

**26. Instructions to the paying/accepting/negotiating bank (78) – an optional field**

This field will provide the document examiner with information as to where and by which method the documents are to be sent to the issuing bank (MT700) or the confirming bank or other nominated bank (MT710). It may also state if the nominated bank is to provide any SWIFT message indicating brief details of the drawing. This field also conveys the reimbursement instructions where no reimbursing bank is stated in field 53a.

### **Check your understanding**

What should a document examiner check for prior to examining the documents? Select two that apply.

- a. Whether the documentary credit has expired.
- b. The documentary credit was issued correctly.
- c. The date of issuance of the documentary credit matches the date of shipment.
- d. The amount available is sufficient for the drawing that is being made.

### 13.4.2 Examining the documents against any amendments

If a documentary credit has been amended, a document examiner should examine the documents against the amended terms, unless the beneficiary has given prior notification of the rejection of such amendment(s) or, from the presentation of documents, it can be ascertained that it has rejected one or more amendments or, it becomes apparent that an amendment is not being applied to the presentation under review but, possibly, will be applied to a subsequent presentation.

If a document examiner is acting for a confirming bank, additional attention should be paid to ascertain whether or not confirmation has been extended to each amendment. If it has not been extended, the confirming bank will not be bound by the amended terms and conditions, even though the documents presented may be in compliance with such terms and conditions.

As previously stated in this topic, if a nominated bank receives a presentation from a beneficiary under a documentary credit that is available with any bank and where that bank is not the advising bank, a document examiner should contact the advising bank to establish that full details of the documentary credit and amendments are held before performing the document examination. When requesting such information, and where the nominated bank is willing to act on its nomination to honour or negotiate a complying presentation, the document examiner must be mindful to examine the documents no later than the fifth banking day following the day of presentation.

Article 10 covers amendments, including:

- the need to obtain the agreement of the issuing bank, beneficiary and the confirming bank, if any, before a documentary credit can be amended or cancelled;
- the point at which an amendment becomes binding on the issuing bank and a confirming bank (if any);
- an option for the confirming bank to decline to extend its confirmation to the terms and conditions of an amendment;
- the need for the beneficiary to communicate acceptance or rejection of an amendment;
- the sufficiency of a presentation of documents conforming to the documentary credit, and any not previously accepted amendment(s), as notification of such acceptance;
- the need for any prior notification of acceptance or rejection of amendments to be advised to an issuing bank;
- the need for acceptance or rejection of an amendment in its entirety.

### Check your understanding

What must an insurance document include? Select all that apply.

- a. A date no later than the date of shipment.
- b. The risks as stipulated in the documentary credit and show them on its face.
- c. A cover note.
- d. Data that conflicts with other data shown elsewhere within that document.
- e. An endorsement in favour of the nominated bank.



### 13.4.3 The standards for examination of documents under article 14 and ISBP 745

#### Article 14

As well as examining documents against the terms and conditions of a documentary credit, a document examiner must also take into account the relevant provisions of UCP 600.

A number of standards for the examination of documents are set out in article 14. Sub-article 14(c) indicates that if no time limit is stipulated in the documentary credit, a period of 21 calendar days after the date of shipment is allowed for the presentation of documents that contain an original transport document. Such presentation must, in any event, be made no later than the expiry date of the documentary credit.

Note that sub-article 14(c) applies only to a documentary credit that requires presentation of an original transport document.

The content of sub-article 14(e), relating to the description of the goods that may appear on documents other than the commercial invoice, is further amplified in paragraphs D26 (Multimodal Transport Documents), E22 (Bill of Lading), F20 (Non-Negotiable Sea Waybill), G20 (Charter Party Bill of Lading), H22 (Air Transport Document) and J17 (Road, Rail or Inland Waterway Transport Document).

The content of sub-article 14(l), relating to the issuer of a transport document, is further amplified in paragraphs D3(a) (Multimodal Transport Document), E3(a) (Bill of Lading), F2(a) (Non-Negotiable Sea Waybill) and H3(a) (Air Transport Document).

If errors occur in a presentation, there is always the potential for conflict, regardless of how insignificant the error appears to be. In this context, paragraph A23 states that an obviously misspelled word or typing error does not need to be raised as a discrepancy.

#### 'On their face'

The doctrine of examination of documents 'on their face' and 'on the basis of the documents alone' is enshrined in sub-article 14(a).

This means that the decision as to whether the documents comply with the terms and conditions of a documentary credit is based exclusively upon the bank's visual examination of the documents. It cannot encompass someone else's understanding of it, nor information obtained from elsewhere. The phrase 'on their face' does not refer to a simple front versus the back of the document but extends to the review of data within a document in order to determine that a presentation complies with international standard banking practice and the principles contained in UCP 600.

#### International standard banking practice (ISBP 745)

International standard banking practice is represented by the content and the provisions of UCP 600. It is supported by the explanations given in ISBP 745. This section outlines the more generic aspects of document examination practices, which are not specific to any particular document or article of UCP 600. In this respect, a document examiner should apply the content of the following ISBP paragraphs as and when required by the documentation, and where local law does not compel a different practice.

Paragraphs A1 and A2 consider abbreviations and the use of virgules (ie slash '/' marks) or commas.

While paragraph A1 provides details of some commonly seen abbreviations, the examples should not be seen as being exhaustive.

The use of virgules and commas, as referred to in paragraph A2, should be avoided to remove any possibility of confusion when examining the documents.

**Example**

44E: Port of Loading/Airport of Departure      ROTTERDAM/HAMBURG/FELIXSTOWE

45A: Description of Goods and/or Services      5,000 BLACK, ORANGE, YELLOW PENS

Ideally, and for clarity, if any combination of the options may be used, then 'and/or' should be inserted between each option; and if only one of the options is to be applicable then 'or' should be inserted after the first and second option. Otherwise, any one option or any combination may be used in one or more presentations.

Paragraphs A3–A5 relate to certificates, certifications, declarations and statements.

Certificates, certifications, declarations and statements must be signed, as mentioned in paragraph A3.

Paragraph A4 indicates that a date may not always be necessary and will depend on (i) any specific wording in the documentary credit, (ii) the type of document, and (iii) the wording that appears within that document.

### Example

#### 46A: Documents Required

CERTIFICATE ISSUED BY THE CARRIER OR ITS AGENT STATING THAT THE CARRYING VESSEL IS NO MORE THAN TEN YEARS OLD.

When a certificate is presented by the carrier or its agent, bearing no date, but evidencing that the vessel was built in a year that is less than ten years prior to the date of the shipment, it can be seen that the vessel is less than ten years old at the time of shipment. No date need appear on the document.

A certification, declaration or statement given in a document that is already signed and dated does not need to be signed and dated separately provided that it appears to have been completed by the same entity that issued and signed it, (paragraph A5). Paragraph A6 explains the examination requirements when a documentary credit requires the presentation of only a copy of a transport document, with the originals being disposed of to the applicant, issuing bank or another named entity.

When examining a copy of a transport document, a document examiner is to ensure that the data appearing on the copy of the transport document, including that in relation to the routing of the goods, is not in conflict with that shown on the documentary credit. Similarly, any date of shipment, as shown on the copy of the transport document, is to be within any stated latest shipment date on the documentary credit.

Paragraphs A7–A9 explain the prevailing practice should any documents contain corrections or alterations.

Apart from drafts (see paragraph B16) and when a document is to be legalised, visaed, certified, etc, paragraph A7 indicates that a document examiner is not required to look for any authentication of any correction or alteration of data to a document issued by the beneficiary.

However, when a document issued by the beneficiary, such as an invoice, certificate of origin, etc, has been legalised, visaed and/or certified by an embassy and/or chamber of commerce, there is a need for a document examiner to be satisfied that any correction or alteration was made with the knowledge of at least one of these entities. In other words, that the correction or alteration was not made after the completion of the legalisation, visa or certification process. In this event, the embassy or chamber of commerce must provide their authentication of the correction or alteration.

When more than one correction or authentication is made to a document issued by an entity other than the beneficiary, the entity that authenticates the correction or alteration, ie the issuer of the document or an agent or proxy acting for the issuer (and a chamber of commerce, embassy or similar entity when the document is legalised, visaed or certified), has a choice as to how to indicate such authentication. They can provide:

- a separate authentication for each correction or alteration; or
- one authentication that covers all of the corrections or alterations.

As mentioned in paragraph A9, a document may contain data in various type styles, fonts or handwriting. This does not, as a stand-alone, create a discrepancy. However, a document examiner should remain mindful as to the context in which data is shown in a different form.

For example, if a documentary credit requires a specific clause to be inserted on a document that is to be certified, legalised or notarised and so on, and that clause has been added in a different font and type, a document examiner should be satisfied that it appears such data was apparent when the document was certified, legalised or notarised (ie not added afterwards).

Paragraph A10 refers to documentary credits that require the presentation of documents such as courier receipts, post receipts or certificates of posting as evidence that certain copies or original documents have been forwarded to the issuing bank or applicant. Such documents are examined under sub-article 14(f) and not article 25.

Paragraphs A11–A16 relate to dates.

Paragraph A11 refers to the requirement for a date to appear on a draft, an insurance document and a transport document, as follows:

- A draft should indicate a date of issuance.
- An insurance document requires a date of issuance or an indication of the effective date of coverage (refer also to paragraphs K10(b) and K11).
- Original transport documents (covered by articles 19–25) are to evidence one of a date of issuance (and possibly a dated on board notation), date of shipment, date of receipt for shipment, date of dispatch or carriage, date of taking in charge, or date of pickup or receipt, as applicable.

The basic requirement for other documents are: a date of issuance, or a reference on a document to the date of, or a date appearing in, another stipulated document that forms part of the same presentation, or a date appearing on a stipulated document indicating that an event has occurred.

Documents that indicate an issuance date later than the date of shipment is not a reason for refusal of a presentation. These may include, for example, a certificate of analysis or inspection, fumigation certificate, phytosanitary certificate, and so on (paragraph A12).

Additionally, paragraph A12 indicates that when a documentary credit refers to a pre-shipment event or includes reference to 'pre-shipment' in the title of a document, the presented document, by its title, date or content is to indicate that the pre-shipment event (ie inspection) took place on or before the date of shipment.

In most cases, a document other than a transport document and, possibly, an insurance document, will only contain one date and that date will be considered to be the date of issue. However, when a document bears a date of signing in addition to a date of issue and that date is later than the date of issue, paragraph A13 states that the date of signing is to be considered as the date the document was issued.

Paragraph A14 provides an interpretation of terms such as 'not later than' or 'at least X days before' or 'within X days after a date or event'.

The terms 'from' and 'after' are commonly used in the context of determining a due date for payment, eg '30 days from the date of shipment' and for establishing the presentation period

following the date of shipment, eg 21 days after [or from] the date of shipment. Both article 3 and paragraph A15 indicate that the use of either term excludes the date mentioned.

Paragraph A16 describes the different formats in which a date may be indicated on a document. Document examiners should be mindful of the different formats that are used, for example Europe and Asia versus North America.

Paragraph A17 explains that although a document may have a box, field or space in which data is to be inserted, it need not be completed.

Examples would include the accounting information and handling information fields within an air waybill or the sender instructions field in a CMR (road transport document).

Paragraph A18 refers to a transport document other than those mentioned in articles 19–25, and the examination requirements for those documents, including the determination of a presentation period.

A documentary credit must be specific when describing the basis for determining a presentation period when a transport document not covered by articles 19-25 is to be presented. It is not sufficient to include a number of days in field 48 on an MT700 message. Naturally, this also means that the default presentation period defined in sub-article 14(c) is not applicable.

Paragraph A19 covers words and expressions that should not be used in documentary credits, but which in practice are still seen by a document examiner. There is no definition of their meaning in UCP 600.

The following words or expressions are referred to:

- 'Shipping documents'.
- 'Stale documents acceptable'.
- 'Third party documents acceptable'.
- 'Third party documents not acceptable'.
- 'Exporting country'.
- 'Shipping company'.
- 'Documents acceptable as presented'.

As an expansion of the practice that applies when reference is made to 'shipping documents' in a documentary credit, ICC Opinion R883 (TA853rev) responded to a question as to whether a contract number and date was to appear on a draft and courier receipt when a documentary credit required 'all documents to indicate the contract number and date'. In its analysis, the Opinion stated that the courier receipt was an accompaniment to a beneficiary statement that certain documents had been sent to the applicant and the contract number could appear on either the courier receipt or the statement. The term "all documents" does not include a draft. A draft is an unconditional order in writing and not a document. If the contract number and date were to appear on the draft, the documentary credit should have indicated 'all documents and drafts are to indicate the contract number and date'.

Paragraph A20 describes the practice for identifying that a document has been issued by the entity named in a documentary credit. This point is emphasised in ICC Opinion R867 (TA851rev3), where it is stated: “According to international standard banking practice, a document examiner should determine on the basis of the document presented which party appears to be the issuer.”

Paragraph A21 provides guidance regarding the language in which documents are issued.

Today, it is fairly common to see documentary credits include a condition that all documents must be issued in the English language.

However, the basic principles are:

- Language of documents is stated in a documentary credit, therefore data to be in that language.
- Documentary credit is silent with regard to language, therefore documents may be issued in any language. A confirming bank or nominated bank may, however, restrict to one or more languages.
- Documentary credit allows two or more acceptable languages; a confirming bank or nominated bank may restrict to one or more languages.
- Documentary credit is silent and confirming bank or advising bank does not restrict language in its advice, therefore must examine data in any language.
- The name of a person or entity, any stamps, legalisation, endorsements or similar, and the pre-printed text shown on a document, such as, but not limited to, field headings; may be in a language other than that required in the credit or advice of the credit.
- Some data is in a language additional to that required or allowed in the documentary credit; banks do not examine such data.

Paragraph A22-A23 states that a document examiner is not responsible for verifying the accuracy of any mathematical calculation evidenced by documents but will rely solely on the totals shown as being produced from the outcome of such calculation.

Document examiners will be familiar with the fact that misspellings and typing errors can cause all sorts of problems and, in a worst-case scenario, will often lead to a refusal of documents. The treatment of misspellings or typing errors is covered in paragraph A23.

A number of such issues have been the subject of ICC Opinions. One such Opinion, R871 (TA856rev), referred to a situation where the documentary credit referred to two contract numbers – 20335389 or 20335390. The presented invoice made reference to these contract numbers but with an additional '3', ie 203335389 or 203335390. The presented invoice otherwise complied with the terms and conditions of the credit. With this compliance, it was stated that the additional 3 could be considered as a typographical error.

Paragraph A24-A25 indicate the practice that should be applied when documents are presented with multiple pages, attachments or riders and to the signing or endorsing of such documents.

In ICC Opinion R915 (TA896rev), an invoice and certificate of origin were presented as part of the documentary requirements. The certificate of origin mentioned that a copy of the invoice was attached and there was also a cross-reference to the invoice number and certificate of origin number in each document. During the process of examination by the nominated bank, the copy of the invoice became detached from the certificate of origin. The issuing bank refused the documents due to the invoice referenced on the certificate of origin not being attached thereto. The analysis given by the ICC Banking Commission indicated that paragraph A24 refers to documents that contain cross-references, as well as those that are physically bound together as constituting a single document. The documents were not discrepant.

Paragraph A26 refers to non-documentary conditions and the fact that if a non-documentary condition is complied with by the beneficiary, the data appearing on the stipulated documents must not conflict with the non-documentary condition. The wording of this paragraph is aligned with the rule appearing in sub-article 14(h).

Paragraphs A27–A31 cover the issue of determining an original document, the number of originals that need to be presented and the requirements for copy documents. The text in these paragraphs provide additional context to the rule in article 17.

As most document examiners will be aware, the subject of originals and copies has been one of major contention for many years. This is especially so today, with advancements in technology making it almost impossible to determine the originality or otherwise of a document.

An overriding consideration is for each issuing bank and applicant to determine the relevance of an original document being presented and whether one is required in all cases, ie in the example of a packing list, weight list, etc.

Paragraph A29 provides some clarity with regard to determining whether documents should be presented in a certain number of originals and/or copies.

The fact that a document is produced in black and white (as opposed to a coloured heading) does not in itself imply that the document is a copy. This was made clear in ICC Opinion R874 (TA843rev), where it is stated: “The colour of the document, which is neither defined nor described in the credit, is not a criterion to determine the compliance of the document.” It goes on to add that UCP 600 “does not determine that printouts in black and white are to be treated as copies”.

As should be known, the mere mention of a copy invoice is not sufficient to exclude the presentation of an original. An exception is when a documentary credit provides a disposal instruction for all originals of a transport document and only requires the presentation of a copy transport document. Under these circumstances, the presentation should not include any originals of that document. (paragraph A30).

It is not always the case that an original document must be signed. The requirement for an original document to be signed is subject to when it is:

- prescribed in the documentary credit;
- required by the document itself (note the exception within paragraph A37); or
- mandated by the UCP 600.

Countersigning of documents, such as an insurance certificate, is covered in paragraph A38.

Copies of documents need not be signed or dated (paragraph A31).

Paragraphs A32–A34 explain how documents will be examined with regard to shipping marks.

Paragraphs A35–A38 cover the signature requirements for documents presented under a documentary credit and reference should also be made to article 3.

Types of signatures are referred to in paragraph A35(a) where it is emphasised that a signature need not always be handwritten.

ICC Opinion R881 (TA842rev3) responded to a question as to whether a copy of a document needed to be signed when the documentary credit describes a requirement as ‘manually signed and duly dated beneficiary’s commercial invoice addressed to applicant, marked L/C number, evidencing delivery and payment terms – in 1 original and 1 copy’. The issuing bank had refused the documents due to the copy of the invoice not being signed.

The analysis provided by the ICC referred to the position taken by the ISBP, ie ‘copies of documents need not be signed’. It also stated: “The concept of copies of documents do not need to be signed is so entrenched in international standard banking practice that, where a manual signature is exceptionally required to be added to a copy of a document, it must be expressly stated in the credit eg, ‘all documents, and also copies, are to be manually signed.’”

Paragraphs A39–A41 relate to the title of documents and the situation if combined documents are presented or required.

### **Check your understanding**

Where a documentary credit is advised to the beneficiary through another bank, an advising bank will generally convey the details of the documentary credit by means of a SWIFT MT707 message. True or false?

## 13.5 The standards for examination of documents under UCP 600



## Documents not stipulated by the documentary credit

If additional documents are presented to those stipulated in the documentary credit, they are not to be examined and, according to sub-article 14(g), may be returned to the presenter. The nominated bank may, however, choose or agree to send such documents to the issuing bank without any responsibility on its part.

## Non-documentary conditions

A condition should not be stipulated in a documentary credit if it is not specific to a document that is to be presented. If such a condition is stipulated, and according to sub-article 14(h), it should be disregarded by a document examiner.

However, any non-documentary data in the documentary credit, if nevertheless indicated on any stipulated document, will be subject to examination, according to sub-article 14(d).

Original documents

Article 17, relates to the originality of documents.

Reference should also be made to paragraphs A27–A31. The content of paragraph A27 acts as the formal guidance for the determination of an original document.

## Disclaimer on the effectiveness of the documents

Article 34 provides a disclaimer for banks in respect of the content and issuer of documents presented.

### Check your understanding

Documentary credits that require the presentation of courier receipts or certificates of posting as evidence that certain copies or original documents have been sent to the issuing bank or applicant are examined under article 25. True or false?

## 13.6 Determining compliance on the basis of the documents alone

It is the document examiner's review of the documents alone that determines whether or not a complying presentation has been made according to sub-article 14(a). A document examiner must not be influenced in his or her examination of documents by any other factor, with the exception of clear and established fraud or regulatory requirements. If documents are found to comply, the bank, if acting as a confirming bank or issuing bank, is obligated to honour or negotiate and to provide reimbursement or settlement in accordance with the terms and conditions of the documentary credit. If documents are found to be discrepant, a document examiner may choose to refuse the documents, in which case their actions in such circumstances are to be according to the content of article 16. The refusal of documents is covered in Topic 18.

Depending upon the value or type of presentation, a bank may require more than one document examiner to examine the documents.

### Check your understanding

An original document should be signed in the following circumstances. Select two that apply.

- a. It is prescribed in the documentary credit.
- b. It is requested by the advising bank.
- c. It is mandated by the rules.
- d. It is a copy of an original document.

## 13.7 Examining the documents against one another

Examining documents with reference to one another is the third part of the examination process that a document examiner undertakes. This is performed in conjunction with the examination of documents with reference to the terms and conditions of the documentary credit and to the application of international standard banking practice, as provided by the relevant articles of UCP 600 and any explanatory paragraphs of ISBP 745.

Sub-article 14(d) requires that data appearing in a document must not be in conflict with other data appearing on that document, any other stipulated document or the documentary credit itself. If data in documents is found to be in conflict, the documents are to be regarded as discrepant.

### Example

An analysis certificate shows the potassium content at 5%, as required by the documentary credit, while the invoice provides evidence of the potassium content at 8%.

In such circumstances, the data on the invoice will be considered to be in conflict with that shown on the analysis certificate.

## 13.8 Extending the expiry date or last day for presentation

If no separate latest shipment date is specified, the latest shipment date is automatically understood to be the same as the expiry date of the documentary credit.

If the expiry date falls on a non-banking day, other than a day as referred to in article 36, the expiry date is extended to the next banking day. However, this does not apply to the latest shipment date.

Sub-article 29(a) provides for the expiry date and the latest day for presentation of the documents to be extended to the next banking day.

## 13.9 Tolerances in credit amount, quantity and unit prices

Article 30 provides three basic rules in relation to the application of a tolerance, whether mentioned in the documentary credit or not.

1. That terms such as 'about' or 'approximately' that are stated in relation to the documentary credit amount or quantity of the goods or any unit price will be understood to allow a tolerance of 10% more or 10% less (sub-article 30(a)). A tolerance must be stated against each criterion to which it is to be applied, ie the amount, quantity or unit price. For an MT700 message, a tolerance in respect of the amount will normally be shown in field 39A (Percentage Credit Amount Tolerance) and a tolerance in respect of the quantity of the goods and/or unit price will be shown in field 45A (Description of Goods and/or Services).
2. Even if not stated in the documentary credit, where the quantity of goods is given in terms other than a stipulated number of packing units (eg 300 cartons of pens) or individual items (eg 20 laptop computers), a tolerance of 5% more or 5% less will be permitted provided the amount drawn does not exceed the documentary credit amount. The quantities for which this tolerance will be applicable would include those shown in terms of metric tonnes, kilograms, etc (sub-article 30(b)).
3. Provided the quantity of goods, if stated in the documentary credit, is shipped in full, a drawing may be made for up to 5% less than the documentary credit amount. This tolerance applies provided sub-article 30(b) is not applicable and that the terms quoted in sub-article 30(a) are not used (sub-article 30(c)). It also does not apply where the documentary credit provides a specific tolerance.

Paragraphs C11–C14 provide further detail on the application of article 30.

ICC Opinions R688 (TA619) and R896 (TA872) demonstrate how the addition of one word can change the approach to the application of a stated tolerance to the quantity of the goods. In each Opinion, the goods description in the documentary credit indicated a number of individual items, each of which had an assigned weight.

In Opinion R688, the goods description included "Quantity: 250MT (+/-10%)".

In Opinion R896, the goods description included "10% more or less on total quantity and amount allowed". The total quantity was stated to be 5,000MT.

For Opinion R688, the view of the ICC Banking Commission was that the tolerance applied to each individual quantity and to the total. For Opinion R896, the view of the ICC Banking Commission was that the inclusion of the word 'total' made the tolerance apply to the total quantity and not to the individual quantities. Therefore, each quantity could be of any weight provided the total quantity did not exceed 5,000MT +/-10% and that the credit amount was not exceeded.

### Check your understanding

Following presentation, how many banking days does a nominated bank, confirming bank and issuing bank each have to determine whether the presentation is complying?

- a. Six.
- b. Five.
- c. Seven.
- d. Ten.

### 13.10 Partial drawings or shipments

There are three basic principles relating to partial drawings or shipments, as mentioned in article 31:

1. They are allowed unless the documentary credit states otherwise.
2. Presentation of more than one set of transport documents evidencing shipment on the same means of conveyance (eg same vessel name) and for the same journey (eg same ports of loading and discharge) will not be considered to be a partial shipment, even if the transport documents indicate a different date of shipment. The latest date of shipment, as evidenced by the different sets of transport documents, will be considered to be the date of shipment. Sub-article 31(b) allows different ports of loading on the transport documents provided the conveyance, journey and destination are the same.
3. Presentation of one or more sets of transport documents evidencing shipment on more than one means of transport (eg truck licence plate 123 and truck licence plate 456), even if they leave on the same day for the same destination, will be considered to be a partial shipment.

The provisions of article 31 are amplified by paragraphs D22 and D23 (Multimodal Transport Document), E18 and E19 (Bill of Lading), F16 and F17 (Non-Negotiable Sea Waybill), G16 and G17 (Charter Party Bill of Lading), H18 and H19 (Air Transport Document), and J13 and J14 (Road, Rail or Inland Waterway Transport Document), all of which provide a similar wording for the type of transport document to which they relate.

## Conclusion

The examination of documents is the most labour-intensive role for any documentary credit practitioner. A simple mistake in missing a valid discrepancy could result in a bank facing a loss for the value of the presentation.

A knowledge of UCP 600 and the content of ISBP 745 is critical to the document examination process.

Each document examiner should devise their own way of examining the documents and be comfortable in that process.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain how the content of the fields of an MT700 message should be considered when examining a presentation under a documentary credit, and which UCP 600 articles and sub-articles will apply in respect of each field?
- list the types of tolerances that could be applicable under a documentary credit?
- outline the language requirements for the presented documents when a single preferred language is mentioned, when more than one preferred language is stated, and when no preferred language is quoted?
- describe the different forms in which documents may be signed and the requirements for examining each type of signature?



## Test your knowledge

Use these questions to assess your learning for Topic 13.

1. A confirming bank receives documents two days prior to the expiry date. The examination process concludes one day after the expiry date. The confirming bank has refused the presentation because of a conflict of data between the packing list and the invoice. The beneficiary argues that the confirming bank should have examined the documents within the expiry date so that any discrepancies could be corrected (where possible) in advance and so holds the confirming bank liable for failing to examine the documents in a timely manner. The confirming bank argues that it had no obligation to accelerate the examination process. Which of the two is right?

- a. The beneficiary.
- b. The confirming bank.

Answer: B. Sub-article 14(b) states that the maximum examination period of five banking days following the day of presentation is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation. See section 13.3.

2. A documentary credit indicates that documents must be presented within 15 days after the date of shipment but also indicates 'stale documents are acceptable'. Which of the following statements is true when examining the documents?

- a. The reference to presentation within 15 days after the date of shipment overrides the reference to stale documents being acceptable.
- b. The reference to presentation within 15 days after the date of shipment is overridden by the reference to stale documents being acceptable.

Answer: B. Paragraph A19(b) states that 'stale documents' means that documents may be presented later than 21 days after the date of shipment but in any event no later than the expiry date, and this position will apply even if the credit additionally states a presentation period. See section 13.4.3.

3. 'A credit indicates in field 44E ('Port of loading / Airport of departure') 'Lisbon, Barcelona, Marseille'. Field 43P ('Partial shipments') states 'Allowed'. The requirement is for the beneficiary to effect a shipment from each of the named ports.' Is this statement true or false?

- a. True.
- b. False.

Answer: False. The use of commas allows for any one port or any combination to be used (paragraph A2(b)). See section 13.4.3.

4. A documentary credit requires a certificate issued by the beneficiary stating that it has sent a copy of the invoice to the applicant at least two days before the date of shipment. The date of shipment was Thursday 24 July. When was the copy invoice to be sent?

- a. Between 22 and 24 July.
- b. Between 20 and 22 July.
- c. Any time before 22 July.

Answer: C. Paragraph A14(a)(ii) states that such wording means that an act or event is to take place not later than two days before that date of event. There is no limit as to how early it may take place. See section 13.4.3.

5. The documentary credit requires the presentation of a certificate of analysis issued by a named laboratory. The named laboratory issues the certificate and states at the bottom “This document has been produced by electronic means and requires no signature”. The document is acceptable in this form. True or false?

- a. True.
- b. False.

Answer: False, A document that is printed requires a signature. Paragraph A35(c) states that such wording does not in itself represent an electronic method of authentication in accordance with the signature requirements of article 3. See section 13.4.3.

## Answers

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### CHECK YOUR UNDERSTANDING (section 13.4.1)

- a. Whether the documentary credit has expired.
- d. The amount available is sufficient for the drawing that is being made.

Prior to commencing the examination of the documents, a document examiner should read the documentary credit and any amendments to become familiar with its terms and conditions, including whether:

- the documentary credit has expired;
- the amount available is sufficient for the drawing that is being made;
- previous drawings, if any, appear to be correctly recorded; and the documentary credit is available for the goods and prices covered by the presentation.

See section 13.2.

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### CHECK YOUR UNDERSTANDING (section 13.4.2)

- a. A date no later than the date of shipment.
- b. The risks as stipulated in the documentary credit and show them on its face.

An insurance document must:

- not be a cover note;
- not be presented in the form of a certificate, where a policy is specifically required;
- (when the documentary credit is silent as to the assured party) be issued or endorsed in favour of the applicant or issuing bank, or endorsed in blank by the named assured;

- cover the risks as stipulated in the documentary credit and show them specifically on its face;
- be dated no later than the date of shipment, as evidenced on the accompanying transport document or, if dated later than the date of shipment, indicate that cover was effective no later than the date of shipment; and
- not contain any data in conflict with data shown elsewhere within that document, or within any other stipulated document or the documentary credit.

See section 13.3.

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#### **CHECK YOUR UNDERSTANDING (section 13.4.3)**

False. An advising bank will generally convey the details of the documentary credit by means of a SWIFT MT710 message (Advice of a Third Bank's or a Non-Bank's Documentary Credit). See section 13.4.1.

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#### **CHECK YOUR UNDERSTANDING (section 13.5)**

False. Such documents are examined under sub-article 14(f) and not article 25. See section 13.4.3.

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#### **CHECK YOUR UNDERSTANDING (section 13.6)**

- a. It is prescribed in the documentary credit.
- c. It is mandated by the rules.

Answer: The requirement for an original document to be signed is subject to when:

- it is prescribed in the documentary credit;
- required by the document itself (there is an exception within paragraph A37); or
- mandated by the rules.

Copies of documents need not be signed or dated (paragraph A31).

See section 13.4.3.

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#### **CHECK YOUR UNDERSTANDING (section 13.9)**

- a. Five.

A nominated bank acting on its nomination, a confirming bank and the issuing bank each has a maximum of five banking days following the day of presentation to determine whether a presentation is complying. See section 13.3.

## References

ICC Opinions R867, R871, R874, R881, R883 – *ICC Banking Commission Opinions 2016*, ICC Publication No. 799.

ICC Opinion R896 – *ICC Banking Commission Opinions 2017*, ICC Publication No. 802.

ICC Opinion R915 – *ICC Banking Commission Opinions 2018 - 2019*, ICC Publication No. 807.

## Topic 14 Examining transport documents

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### Learning objectives

By the end of this topic, you should be able to:

- understand the key examination criteria for transport documents;
- identify the different elements of a transport document; and
- explain a bank's examination of transport documents against the provisions of articles 19–25, and the practices articulated in ISBP 745 sections D–H and J.

### Introduction

This topic highlights the requirements when examining different types of transport documents.

When examining transport documents, you should have knowledge of the:

- transport documents covered in articles 19–25;
- transport documents not covered in articles 19–25, but referred to in paragraph A18; and
- individual requirements that need to be met for each type of transport document.

To develop an understanding of what is considered to represent international standard banking practice for the examination of transport documents, this topic extensively refers to the ICC publication of the same name, and which is widely known as ISBP 745.

#### Think...

Before you start work on this topic, consider what you already know about the criteria for examining transport documents. For example:

Did you know that transport documents play an important role in documentary credits by providing evidence of shipment or dispatch and of compliance with the routing instructions in the documentary credit?

## 14.1 Examining a multimodal transport document (MMTD)

Article 19 is the rule to be applied when examining a transport document that covers at least two different modes of transport.

There is further detail in paragraph D1 as to when article 19 will apply.

An MMTD is a document that covers the transport of goods by more than one mode (that is, by use of multiple modes of transport). It is also referred to as a combined transport document or through bill of lading.

The key under a documentary credit is that the presented document complies with the terms and conditions of the documentary credit and article 19. There are a number of rules in article 19 that are important for the document examiner to follow. These are indicated by notes 1–10 as follows.

### 1. '... **two different modes of transport**'

A document examiner must determine whether either of the following conditions are met:

- the documentary credit stipulates, or by its terms and conditions requires, the presentation of a transport document covering more than one mode of transport or identifies the document to be presented as a multimodal transport document or by similar wording, such as 'a combined transport document' or 'through bill of lading'; or
- the documentary credit does not expressly describe the document to be presented as a multimodal or combined transport document or through bill of lading, but instead calls for a transport document covering two or more specified journeys that will involve different modes of transport.

### 2. '... **however named**'

Subject to the terms and conditions of the documentary credit, a document complying with the requirements of article 19 will be accepted irrespective of the title shown on the document. The title of the document is not a criterion (sub-article 19(a)).

The criteria are that:

- the terms and conditions of the documentary credit have been satisfied; and
- the document complies with the requirements of article 19.

### 3. '**indicate the name of the carrier and be signed**'

An MMTD must clearly indicate the name of the carrier. This may be by a specific reference therein to a company name as being the carrier or as part of the manner in which the MMTD is signed.

It must appear to have been signed by:

- the carrier or a named agent for or on behalf of the carrier; or
- the master or a named agent for or on behalf of the master (sub-article 19(a)(i)).

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent. Any signature by an agent must indicate whether it has signed for or on behalf of the carrier or for or on behalf of the master. This is covered in sub-article 19(a)(i) and also in paragraph D5.

4. ‘... **dispatched, taken in charge or shipped on board at the place stated in the credit**’

An MMTD must indicate ‘that the goods have been dispatched, taken in charge or shipped on board at the place stated in the credit’. This indication must be in one of two forms:

- pre-printed wording on the document; or
- a stamp or notation on the document.

Pre-printed wording may be used in cases where an MMTD is issued after the goods have been dispatched, taken in charge or shipped. A separate notation (added after the MMTD is issued) is required in cases in which it is issued before dispatch, taking in charge or shipment.

The MMTD must contain clear evidence that any dispatch, taking in charge or shipped on board date relates to the place stated in the credit.

This is covered in sub-article 19(a)(ii).

5. ‘... **date of shipment**’

Dispatch, taking in charge or shipped on board may be indicated by either:

- wording to that effect on the MMTD; or
- stamp or notation.

If it is indicated by wording to that effect, the date of issuance of the MMTD is deemed to be the date of dispatch, taking in charge or shipped on board, and the date of shipment. If it is indicated by stamp or notation, the date of the stamp or notation is deemed to be the date of shipment.

This is covered in sub-article 19(a)(ii) and also in paragraph D6.

6. ‘... **place of dispatch, taking in charge or shipment and the place of final destination**’

The MMTD must indicate the place of taking in charge and the place of final destination stipulated in the documentary credit (sub-article 19(a)(iii)). This rule also specifically provides that the place of taking in charge may be different from the port, airport or place of loading.

These provisions reflect normal practice in multimodal transport operations.

**Example**

The MTO (Multimodal Transport Operator) may take the goods in charge at a warehouse in the beneficiary’s location (an inland city), for shipment by sea, and deliver them to another warehouse in the applicant’s home city. In this case, the documentary credit may indicate that the starting point is the port of loading, with the final destination as the applicant’s warehouse. The multimodal transport document will also indicate both of these places, but it may also show the taking in charge at the beneficiary’s warehouse. This information has no bearing on the documentary credit. The transport document must evidence an on board notation at the port of loading stated in the credit, as that is the point of commencement of the journey under the documentary credit.

Paragraph D10 covers the situation in which the documentary credit indicates a geographical area, or range of places or ports, for the commencement of the journey.

7. ‘... **full set**’

Original MMTDs must be presented. The following rules have been established.

- If an MMTD is issued in one original only, that sole original must be presented.
- If an MMTD is issued in more than one original, the full set as indicated on the document itself must be presented.

This means that a document examiner must determine:

- whether the MMTD has been issued as a sole original or as a set;
- (if the MMTD has been issued as a set of more than one original) how many originals constitute the full set – this would usually be three originals;
- (in the case of a sole original) whether or not the MMTD presented is the original in question; and
- (in the case of an MMTD issued in a set) whether or not all of the originals comprising the set have been presented.

It is normal practice for an MMTD to include an indication of the number of originals that have been issued. This usually appears next to the space for signature of the document, at the bottom of the page.

A documentary credit may, for example, require one original MMTD to be sent directly to the applicant or to a named third party. In this event, and in the case of an MMTD issued as a sole original, no original MMTD could be submitted with the other documents. In the case of an MMTD issued in more than one original, the number of original MMTDs presented with the other documents should be less by one of the number of originals shown as issued.

This is covered in sub-article 19(a)(iv) and also in paragraph D15.

#### 8. '... **terms and conditions of carriage**'

In most cases, the terms and conditions of carriage will be stated on the MMTD. It can also be that the detailed terms and conditions of carriage are set out in a master document held by the carrier for convenience or available from another source, eg the carrier's website. The MMTD will then incorporate these conditions by reference, but it will not quote them on the MMTD itself. Documents of this type are often referred to as 'short form' or 'blank back' documents. Sub-article 19(a)(v) specifically provides that short-form or blank-back MMTDs are acceptable. This rule applies whenever an MMTD appears to 'contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage'.

A document examiner is required to examine the MMTD only against those conditions required by the documentary credit and article 19 and not any terms and conditions of carriage mentioned, or referred to, on the MMTD. There is no obligation to find out what the detailed terms and conditions of carriage are and they are not to be examined.

#### 9. '... **charter party**'

An MMTD is not acceptable if it contains any indication that it is subject to a charter party. This is covered in sub-article 19(a)(vi).

#### 10. '... **transhipment**'

A prohibition of transhipment, as defined in paragraph D21, is ineffective in the case of carriage conducted solely under a single MMTD.



Should transshipment be prohibited, banks will accept an MMTD showing that transshipment has occurred, as long as the entire journey is covered by one and the same MMTD. Transshipment is covered in sub-articles 19(b), (c)(i) and (c)(ii).

### **Notes to Figure 14.1**

#### **Key criteria**


A documentary credit requires the presentation of an MMTD covering shipment from Hong Kong port to Manchester.

1. However named – document can be titled multimodal transport document, combined transport document, through bill of lading, etc.
2. Name of the carrier – at the signature line, the carrier (Titanic Line) is identified.
3. Signed – the document is signed by IFS Shipping as agents of the carrier.
4. Evidence of shipment from Hong Kong – there is a dated on board notation indicating that the goods were shipped from Hong Kong port on 30 May 20XX.
5. Date of shipment – the document is issued on 28 May 20XX but the on board date is 30 May 20XX. The date of shipment is 30 May 20XX.
6. Although the documentary credit required shipment from Hong Kong to Manchester, the document indicates that the goods were received by the agent or the carrier in Kowloon. The carriage between Kowloon and Hong Kong port is outside the terms of the documentary credit. A document examiner is only interested in the carriage from Hong Kong port and when this occurred.
7. Full set – the document indicates that three originals have been issued.

Also note the following:

- Terms and conditions of carriage – either the full terms will be indicated on the reverse of this page or they will be referenced by an address, web address, location where they may be viewed (short form or blank back).
- Charter party – there is no indication that the shipment was subject to a charter party.
- Transshipment – this document covers the carriage from Kowloon to Manchester via Hong Kong and Southampton ports.

Figure 14.1 Multimodal transport document

Shipper (Complete name, address and phone number)		<p><b>Bill of Lading</b> <span style="float: right;">1</span>  <b>For Combined Transport or</b>  <b>Port to Port Shipment</b></p> <p>Bill No.: 134          Booking Ref: ABC987          Shipper's Ref: XYZ098</p> <p><b>Titanic Line</b> +           Anytown, Anywhere</p>		
Consignee (Not negotiable unless consigned to order)				
Notify party (Carrier not to be responsible for failure to notify)				
Pre-carriage by*	Place of receipt*	<p>*Applicable only when this document is used as a          Combined Transport Bill of Lading</p>		
Road	Kowloon <span style="float: right;">6</span>			
Vessel	Voy. No.	Port of loading	<p>6</p>	
CCCS Express		Hong Kong		
Port of discharge	Place of delivery*	<p>7</p>		
Southampton	Manchester	<p>7</p>		
Marks and Nos. Container Nos./Seals	No. of packages	Description of packages and goods	Gross weight (kg)	Measurement (cbm)
<p>ABOVE PARTICULARS DECLARED BY SHIPPER; CARRIER NOT RESPONSIBLE</p>				
<p>Freight and charges (Indicate whether prepaid or collect)</p> <p>Origin Inland Haulage charges .....</p> <p>Origin Terminal Handling/ LCL Service charges .....</p> <p>Ocean Freight</p> <p>Destination Terminal Handling/ LCL Service charges .....</p> <p>Destination Inland Haulage charges .....</p>	<p>Shipped on Board CCCS Express 30 May 20xx at Hong Kong</p> <p>4</p> <p>5</p>	<p><b>RECEIVED</b> by the Carrier from the shipper in apparent good order and condition (unless otherwise noted herein) the total numbers or quantity of Containers or other packages or units indicated above stated by the shipper to comprise the cargo specified above, for transportation subject to all the terms hereof (including the terms on the reverse hereof) from the place of receipt or the port of loading, whichever applicable, to the port of discharge or the place of delivery, whichever applicable.</p> <p>Delivery of the Goods will only be made on payment of all freight and charges. On presentation of this document (duly endorsed) to the Carrier, by or on behalf of the holder, the rights and liabilities arising in accordance with the terms hereof shall (without prejudice to any rule of common law or statute rendering them binding upon the shipper, holder and Carrier) become binding in all respects between the carrier and holder as though the contract contained herein or endorsed hereby had been made between them.</p> <p>In witness whereof three (3) original Bills of Lading unless otherwise stated below have been issued, one of which being accomplished, the others to be void.</p> <p>Freight, charges and primage whether prepayable or not and whether paid or not shall be considered as fully earned upon shipment and shall be paid vessel and/or cargo lost or not lost. (CONTINUED ON REVERSE SIDE)</p>		
Declared value by shipper (see clause 5.C.4 and tariff)	Movement	Place and date of issue	<p>Kowloon 28 May 20xx <span style="float: right;">5</span></p>	
Releasing Agent	Freight payable at	Signed By:	<p>2</p> <p>ITS Shipping as agent for the Carrier, Titanic Line</p> <p>3</p> <p><i>George Hopkins</i></p>	
	Number of original B/L	<p>3 <span style="float: right;">7</span></p>		

Source: Author, 2015

## 14.2 Examining a bill of lading

Article 20 is the rule to be applied when examining a bill of lading.

There is further detail in paragraph E1(a) as to when article 20 will apply.

The key under a documentary credit is that the presented document complies with the terms and conditions of the documentary credit and article 20. There are a number of rules in article 20 that are important for the document examiner to follow. These are indicated by notes 1–7 below.

Many of the terms are used in the same way as under article 19. Where there are additional requirements specific to article 20, these are indicated below.

### 1. '... **however named**'

Subject to the terms and conditions of the documentary credit, a document complying with the requirements of article 20 will be accepted irrespective of the title shown on the document. The title of the document is not a criterion (sub-article 20(a)).

The criteria are that:

- the terms and conditions of the documentary credit have been satisfied;
- the document complies with the requirements of article 20; and
- the document must meet the required method of transport, such as 'by sea'.

### 2. '... **indicate the name of the carrier and be signed**'

The requirement is the same as under article 19.

If an agent signs for or on behalf of the master, there is no need for the name of the master to be stated. UCP 600 does not define the terms 'carrier' or 'master' for this purpose. It should also be noted that a master or an agent acting on the master's behalf does not need to indicate the name of the carrier when signing the document, as long as the name of the carrier is indicated elsewhere on the face of the bill of lading (sub-article 20(a)(i)).

This is also covered in paragraph E5.

### 3. '... **shipped on board**'

The requirements are clearly outlined in sub-article 20(a)(ii) and also in paragraph E6.

### 4. '... **date of shipment**'

#### 4a '... **date of issuance**'

In the case of a bill of lading bearing pre-printed wording that the goods have been shipped on board, the date of issuance of the bill of lading will be deemed to be the date of shipment.

#### 4b '... **date of on board notation**'

If a bill of lading that is pre-printed 'received for shipment' is presented, it must contain an on board notation indicating the date of shipment. In this event, the date stated in the on board notation will be deemed to be the date of shipment.

This is covered in sub-article 20(a)(ii) and paragraph E6.

5. '... **does not indicate the port of loading stated in the credit as the port of loading**'

In transportation by sea, it is common for goods to be transhipped between the ports of loading and discharge stated in the documentary credit. In these circumstances, bills of lading may show the port of loading stated in the documentary credit in the field reserved for the place of receipt, rather than in the port of loading field. In this event, the port of loading shown on the bill of lading will represent the port of transhipment. If this situation occurs, the bill of lading requires a dated on board notation that also includes the port of loading stated in the documentary credit and the name of the vessel that left that port.

The requirement to name the vessel applies even if the goods have been loaded on the vessel named in the bill of lading.

Sub-article 20(a)(iii) and also paragraph E6 cover this, and paragraphs E8–E10 cover practices relating to the port of discharge.

6. '... **full set**'

The requirements are the same as under article 19.

This is covered in sub-article 20(a)(iv) and paragraph E11.

7. '... **transhipment**'

Transhipment is defined as 'unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge stated in the credit' (sub-article 20(b)).

Unless transhipment is prohibited by the terms of the documentary credit – that is, by exclusion of sub-article 20(c), banks will accept a bill of lading that indicates that the goods will be transhipped, as long as the entire ocean carriage is covered by one and the same bill of lading.

Even if the documentary credit prohibits transhipment, but does not exclude sub-article 20(c), a bill of lading indicating that transhipment will take place is still to be accepted provided that:

- the bill of lading evidences that the relevant cargo has been shipped in a container, trailer or LASH barge; and
- the entire ocean carriage is covered by one and the same bill of lading (sub-article 20(c)(i)).

This is also covered in paragraph E17.

Figure 14.2 Marine/ocean port-to-port bill of lading

Shipper (Complete name, address and phone number)		<p style="text-align: center;"><b>1</b></p> <p><b>Bill of Lading For Combined Transport or Port to Port Shipment</b></p> <p>BL No: 134 Booking Ref: ABCDEF Shipper's Ref: XYZ986</p> <p style="text-align: center;"><b>Titanic Line</b> </p> <p style="text-align: center;">Anytown, Anywhere</p>		
Consignee (Not negotiable unless consigned to order)				
Notify party (Carrier not to be responsible for failure to notify)				
Pre-carriage by*	Place of receipt*			
Vessel	Voy. No.	Port of loading		
CDCS Express		Hong Kong		
Port of discharge		Place of delivery*		
Southampton		*Applicable only when this document is used as a Combined Transport Bill of Lading		
Marks and Nos. Container Nos./Seals	No. of packages	Description of packages and goods	Gross weight (kg)	Measurement (cbr)
ABOVE PARTICULARS DECLARED BY SHIPPER. CARRIER NOT RESPONSIBLE				
Freight and charges (indicate whether prepaid or collect)	Shipped on Board CDCS Express 20 May 20xx at Hong Kong		<p><b>RECEIVED</b> by the Carrier from the shipper in apparent good order and condition (unless otherwise noted herein) the total numbers or quantity of Containers or other packages or units indicated above stated by the shipper to comprise the cargo specified above, for transportation subject to all the terms hereof (including the terms on the reverse hereof) from the place of receipt or the port of loading, whichever applicable, to the port of discharge or the place of delivery, whichever applicable.</p> <p>Delivery of the Goods will only be made on payment of all freight and charges.</p> <p>On presentation of this document (duly endorsed) to the Carrier, by or on behalf of the holder, the rights and liabilities arising in accordance with the terms hereof shall (without prejudice to any rule of common law or statute rendering them binding upon the shipper, holder and Carrier) become binding in all respects between the carrier and holder as though the contract contained herein or evidenced hereby had been made between them.</p> <p>In witness whereof three (3) original Bills of Lading unless otherwise stated below have been issued, one of which being accomplished, the others to be void.</p> <p>Freight, charges and primage whether payable or not and whether paid or not shall be considered as fully earned upon shipment and shall be paid vessel and/or cargo lost or not lost. (CONTINUED ON REVERSE SIDE)</p>	
Origin Inland Haulage charges .....	<b>4</b>			
Origin Terminal Handling / LCL Service charges .....	<b>5</b>			
Ocean Freight			<p>Place and date of issue    Kowloon 20 May 20xx    <b>5</b></p>	
Destination Terminal Handling / LCL Service charges .....				
Destination Inland Haulage charges .....			<p>Signed By: PS Shipping as agent for the Carrier, Titanic Line    <b>2</b></p> <p style="text-align: center;"><i>George Hyhans</i></p>	
Declared value by shipper (see clause 5.4 and tariff)	Movement			
Releasing Agent	Freight payable at    Hong Kong		<p style="text-align: center;"><b>3</b></p>	
	Number of original (s),    3 <b>6</b>			

Source: Author, 2015

### Notes to Figure 14.2

#### Key criteria

A documentary credit requires the presentation of a bill of lading covering shipment from Hong Kong to Southampton.

1. However named – document can be titled bill of lading, house bill of lading, forwarder's bill of lading etc.
2. Name of carrier – at the signature line, the carrier (Titanic Line) is identified.
3. Signed – the document is signed by IFS Shipping as agents of the carrier.
4. Evidence of shipment from Hong Kong – there is a dated on board notation indicating that the goods were shipped from Hong Kong port on 30 May 20XX. The addition of a place of receipt that is different to the port of loading requires no additional information to appear as part of the on board notation.
5. Date of shipment – the document is issued on 28 May 20XX but the on board date is 30 May 20XX. The date of shipment is 30 May 20XX.
6. Full set – the document indicates that three originals have been issued.

In addition note the following:

- Terms and conditions of carriage – either the full terms will be indicated on the reverse of this page or they will be referenced by an address, web address, location where they may be viewed (short form or blank back).
- Charter party – there is no indication that the shipment was subject to a charter party.
- Transshipment – this document covers the carriage from Kowloon to Southampton via Hong Kong but there is no indication of transshipment occurring between Hong Kong and Southampton. In any event, provided the goods were shipped in containers, trailers or LASH barges, any indication of transshipment would be acceptable, provided the entire carriage was covered by one and the same bill of lading.

### **Check your understanding**

An MMTD can be signed only by the carrier or the master. True or false?

### 14.3 Examining a non-negotiable sea waybill

Article 21 is the rule to be applied when examining a non-negotiable sea waybill.

The provisions of article 21 are the same substantive requirements as those for bills of lading under article 20.

There is further detail in paragraph F1(a) as to when article 21 will apply.

#### **Check your understanding**

A 'received for shipment' bill of lading bears a dated on board notation in addition to a date of issue. Which of the following is true? The shipment date:

- a. Is the date of issue of the bill of lading.
- b. Is the date of the on board notation.
- c. Is the earliest of the two dates quoted.
- d. Cannot be determined due to conflicting dates on the document.

## 14.4 Examining a charter party bill of lading

Article 22 is the rule to be applied when examining a charter party bill of lading.

There is further detail in paragraphs G1 and G2 as to when article 22 will apply.

The key under a documentary credit is that the presented document complies with the terms and conditions of the documentary credit and article 22. There are a number of rules in article 22 that are important for the document examiner to follow. These are indicated by notes 1–6 below.

Many of the terms are used in the same way as under article 19. Where there are additional requirements specific to article 22, these are indicated below.

### 1. '... **indication**'

A documentary credit may allow for, or require, the presentation of a charter party bill of lading (sub-article 22(a)).

If the credit does not allow for, or require, the presentation of a charter party bill of lading, banks will refuse a bill of lading if it contains any indication that it is subject to a charter party.

When determining whether a bill of lading contains an indication that it is subject to a charter party, this cannot always be ascertained from the title of the document. It will be the content that determines whether the document is examined under article 22 or not. This is covered in paragraph G3.

### 2. '... **signed**'

A charter party bill of lading must appear to have been signed by:

- the master or a named agent for or on behalf of the master;
- the owner or a named agent for or on behalf of the owner; or
- the charterer or a named agent for or on behalf of the charterer.

Any signature by the master, owner, charterer or agent must be identified as that of the master, owner, charterer or agent. Any signature by an agent must indicate whether the agent has signed for or on behalf of the master, owner or charterer. When signing for or on behalf of the master, the agent need not name the master (sub-article 22(a)(i)).

This is also covered in paragraph G4.

### 3. '... **shipped on board**' and '... **date of shipment**'

This is covered in sub-article 22(a)(ii) and also in paragraph G5, which substantially follows the requirements as outlined in paragraph E6.

### 4. '... **port of discharge**'

This must be as stated in the documentary credit (sub-article 22(a)(iii)).

This is also covered in paragraphs G7–G9.

### 5. '... **full set**'

The requirements are the same as under article 19.

This is also covered in sub-article 22(a)(iv) and paragraph G10.



6. '... charter party contracts'

Charter party contracts are essentially matters for the applicant or beneficiary, or their agents, who arrange the contract, hiring of vessels, and time and purpose of the hire (and any other matters) in order to ensure that the cargo is delivered according to their agreement. It would be unfair and burdensome if banks were to be asked to scrutinise such contracts and, accordingly, a document examiner is not required to perform this task.

See sub-article 22(b) and also paragraph G27.

Figure 14.3 Charter party bill of lading

CODE NAME: "CONSENBILL"		<b>BILL OF LADING</b> TO BE USED WITH CHARTER-PARTIES		Page 2
Shipper		Reference No: EFG 2289		B/L No. 1
Consignee				
Notify address				
Vessel	Port of loading			
Sea Largo	Dammam			
Part of discharge				
Mumbai				
Shipper's description of goods		Gross weight:		
(of which                      on deck at Shipper's risk; the Carrier not being responsible for loss or damage howsoever arising)				
Freight payable as per	SHIPPED		4	
CHARTER-PARTY dated 15 February 20xx	at the Port of Loading in apparent good order and condition on board the Vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above.			
FREIGHT ADVANCE	Weight, measure, quality, quantity, condition, contents and value unknown.			
Received on account of freight:	IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.			
Time used for loading                      days                      hours.	FOR CONDITIONS OF CARRIAGE SEE OVERLEAF			
Freight payable at	Place and date of issue Dammam – May 4, 20xx		5	
Number of original B/L	Signature			
3	For and on behalf of the Master of the MV Sea Largo Speedy Shipping as agents			
	<i>George Hyams</i>		3	

Source: Author, 2015

### Notes to Figure 14.3

#### Key criteria

A documentary credit requires or allows the presentation of a charter party bill of lading.

1. However named – document is called a bill of lading.

2. Indication of charter party – reference appears in the heading and in the freight field below.
3. Signed – the document is signed by an agent of the master of the named vessel.
4. Loading on board – there is pre-printed wording that the goods have been shipped at the port of loading.
5. Date of shipment – the date of issue will be deemed to be the date of shipment.
6. Port of loading and port of discharge – these are to be those stated in the documentary credit.
7. Full set – the document indicates that three originals have been issued.
8. Charter party contract – even if attached or requested under the documentary credit, it will not be examined.

## 14.5 Examining an air transport document

Article 23 is the rule to be applied when examining an air transport document.

There is further detail in paragraphs H1 and H2 as to when article 23 will apply.

The key under a documentary credit is that the presented document complies with the terms and conditions of the documentary credit and article 23. There are a number of rules in article 23 that are important for the document examiner to follow. These are indicated by notes 1–8 below.

Many of the terms are used in the same way as under article 19. Where there are additional requirements specific to article 23, these are indicated below.

### 1. '... **however named**'

The requirements are the same as under article 19.

When freight forwarders act as contractual carriers on air shipments, they sometimes group together the goods received from several different shippers and obtain from the carrier a single air waybill, known as a 'master air waybill' (MAWB), covering the full load being shipped. The MAWB is issued in favour of the forwarding company.

The forwarder then issues its own separate air waybills, known as house air waybills (HAWBs), for each of the shippers concerned. For purposes of identification, the forwarder's air waybill may then indicate a number referred to in the document as the 'HAWB no.'. For internal administrative purposes, the document may also indicate the 'MAWB no.'.

The use of a HAWB does not prejudice its acceptability, as long as the forwarding agent issuing it appears to be named on its face as the carrier or agent of a named carrier and that the air waybill has been signed in one of the ways stipulated in article 23. An air waybill is therefore not to be refused only because it indicates a HAWB and / or a MAWB number, unless the documentary credit does not allow the presentation of HAWBs.

This is covered in sub-article 23(a).

### 2. '... **name of the carrier**'

The document presented must appear to indicate the name of the carrier (sub-article 23(a)(i)). For example, an International Air Transport Association (IATA) code for an airline without the name of the carrier would not be acceptable.

As already mentioned, freight forwarders often issue air waybills in the capacity of contractual carriers. A contractual carrier is a company that undertakes responsibility for the carriage of the goods without being the actual carrier that operates the means of transport. An air waybill (or other transport document) is not to be refused on the grounds that it is issued by a forwarder acting as a contractual carrier in terms of sub-article 14(l), as long as the documentary credit does not prohibit a transport document issued by a freight forwarder and the documentary credit indicates the type of document that will or will not be acceptable under such a condition.

When a documentary credit prohibits the issuance of an air transport document by a freight forwarder, a document examiner should consider the content of paragraph H4.

### 3. '... signed'

The document must appear to have been signed by:

- the carrier; or
- a named agent for or on behalf of the carrier.

This is also covered under sub-article 23(a)(i) and also in paragraph H5.

### 4. '... accepted for carriage'

The document must indicate that the goods have been accepted for carriage (sub-article 23(a)(ii)).

This is also covered in paragraph H7.

### 5. '... specific notation'

If the documentary credit calls for an actual date of dispatch, a specific notation or stamp indicating that date must appear on the air transport document. An indication of an intended flight date is not sufficient.

It is also customary for air transport documents to include a box headed with the phrase 'for carrier use only', 'required flight date', 'routing and destination' or similar. The flight number and date contained in any such box is not considered a specific notation of the actual date of dispatch. This position applies to any other flight information that may appear on the air transport document that is outside a notation or flight stamp. This is covered in sub-article 23(a)(iii).

### 6. '... date of shipment'

If the documentary credit calls for an actual date of dispatch, the date of shipment is deemed to be the actual date of dispatch appearing within a specific notation or flight stamp on the air transport document. Even when not called for by the documentary credit, a document examiner will always take the date in a notation or flight stamp as the date of shipment. In all other cases, the date of issuance of the air transport document will be deemed to be the date of shipment. This is covered in sub-article 23(a)(iii) and paragraph H8.

### 7. '... airport of departure and airport of destination'

An air transport document must indicate the airport of departure and the airport of destination stipulated in the documentary credit.

This is covered in sub-article 23(a)(iv) and also in paragraphs H9–H11.

### 8. '... original for consignor or shipper'

Air transport documents are customarily drawn up in sets of three originals. The set of originals issued by the carrier or its agent are distributed as follows:

- one original for the consignor or shipper (including a multimodal transport operator), which entrusts the goods to the airline for despatch (usually marked for the consignor or shipper) and to be presented under the documentary credit;
- one original for the consignee as the recipient of the goods; and
- one original retained by the airline.

This is covered in sub-article 23(a)(v) and also in paragraph H12.

When in possession of an air transport document that is marked for shipper or consignor, the shipper or consignor has the right to request a change in the name and address of the consignee up to the point of actual delivery of goods to the consignee. UCP 600 refers to the presentation of the document as being that designated for the consignor or shipper to minimise any chance of misdirection of goods on the journey. Figure 14.4 provides an example of an air transport document.



## 14.6 Examining a road, rail or inland waterway transport document

Article 24 is the rule to be applied when examining a road, rail or inland waterway transport document.

There is further detail in paragraph J1 as to when article 24 will apply.

The key under a documentary credit is that the presented document complies with the terms and conditions of the documentary credit and article 24. There are a number of rules in article 24 that are important for the document examiner to follow. These are indicated by notes 1–8 below.

Many of the terms are used in the same way as under article 19. Where there are additional requirements specific to article 24 these are indicated below.

### 1. '... **name of the carrier**'

The document must indicate the name of the carrier (sub-article 24(a)(i)).

### 2. '... **signed**' and '... **indicate receipt**'

The document must appear to:

- have been signed by the carrier or a named agent for, or on behalf of, the carrier; or
- indicate receipt of the goods by signature, stamp or notation by the carrier or a named agent for or on behalf of the carrier (sub-article 24(a)(i)).

This is also covered in paragraphs J2–J4.

### 3. '... **received for shipment, dispatch or carriage**'

The transport document must indicate that the goods have been received for shipment, dispatch or carriage (sub-article 24(a)(ii)).

### 4. '... **date of shipment**'

If the transport document contains a dated reception stamp, the date of that stamp will be deemed to be the date of shipment. If not, the date of issuance of the document will be deemed to be the date of shipment (sub-article 24(a)(ii)).

### 5. '... **place of shipment and the place of destination**'

The transport document must indicate the place of shipment and the place of destination stated in the documentary credit (sub-article 24(a)(iii)) and paragraph J5.

### 6. '... **marked as an original or not**'

Unless the documentary credit stipulates that the transport document should be specifically marked as original, a document examiner may accept documents as presented as originals even if they are not marked as such (but see conditions in sub-article 24(b), and paragraph J7).

### 7. '... **full set**'

If there is no indication of the number of original documents issued, a document examiner may accept the documents as presented as representing a full set (sub-article 24(c)).



## 8. '... transshipment'

A transport document that indicates that transshipment occurs from one transport mode to a different one – for example road to rail, river to rail, or road to air – is subject to review under article 19.

Sub-article 24(d) applies only if the entire carriage is covered by one and the same transport document. A presentation of multiple transport documents will not comply with the documentary credit terms unless, together, they cover the entire carriage stipulated in the documentary credit and the documentary credit allows the presentation of more than one transport document (sub-article 24(e)).

### **Road transport documents**

In the case of international road transport, the transport document issued is most often known as a 'CMR consignment note' (see Topic 12, section 12.3.6). Characteristically, CMR consignment notes are drawn up as a set of several originals. One original only is handed to the shipper (the beneficiary or other person sending the goods) – typically bearing the printed indication 'original for shipper', 'copy for sender' or similar wording. Other originals in the set are used for the internal administrative procedures of the road carrier issuing the note and for other parties involved in the movement of the goods.

If a documentary credit calls for a CMR consignment note without specifically stipulating the original for shipper, copy for sender or similar, banks are not concerned to see that wording to this effect appears on the document presented to them. This results from the fact that sub-article 24(b)(i) refers to a document so marked or one that bears no marking for whom the document is intended.

Figure 14.5 provides an example of a road transport document (CMR).

Figure 14.5 Road, rail and inland waterway transport document

LETTRE DE VOITURE INTERNATIONALE		CMR	INTERNATIONAL CONSIGNMENT NOTE	
Sender (Name, Address, Country) Expéditeur (Nom, Adresse, Pays) 1		Customs Reference/Status Référence/Désignation pour mise en douane 2		
		Senders/Agents reference Référence de l'expéditeur/l'agent 3		
Consignee (Name, Address, Country) Destinataire (Nom, Adresse, Pays) 4		Carrier (Name, Address, Country) Transporteur (Nom, Adresse, Pays) 5		
Place & date of taking over the goods (place, country, date) Lieu et date de la prise en charge des marchandises (Lieu, pays, date) 6		Successive Carriers Transporteurs Successifs 7		
Place designated for delivery of goods (place, country) Lieu prévu pour la livraison des marchandises (Lieu, pays) 8		This carriage is subject, notwithstanding any clause to the contrary, to the Convention on the Contract for the International Carriage of Goods by Road (CMR) Ce transport est soumis notwithstanding toute clause contraire à la Convention Relative au Contrat de Transport International de Marchandises par Route (CMR)		
Marks & Nos; No & Kind of Packages; Description of Goods* Marques et Nos; No et nature des colis; Désignation des Marchandises*9		Gross weight (kg) 10 Poids Brut (kg)		Volume (m <sup>3</sup> ) Cubage (m <sup>3</sup> ) 11
Carriage Charges Prix de Transport 12		Senders Instructions for Customs, etc ... Instructions de l'Expéditeur (optional) 13		
Reservations Réserves 14		Documents Attached Documents Annexés (optional) 15		
		Special agreements Conventions particulières (optional) 16		
Goods Received/Marchandises Reçues 17		Signature and stamp of Carrier/Signature et timbre du Transporteur 18		Company completing this note Société émettrice 19
		Place and Date; Signature Lieu et Date; Signature 20		

Source: Author, 2015

## 14.7 Examining a courier receipt, postal receipt or certificate of posting

Article 25 is the rule to be applied when examining a courier receipt, postal receipt or certificate of posting.

The key under a documentary credit is that the presented document complies with the terms and conditions of the documentary credit and article 25. There are a number of rules in article 25 that are important for the document examiner to follow. These are indicated by notes 1–10 below.

### 1. '... **however named**'

A courier document need not be called a 'courier receipt' (sub-article 25(a)).

### 2. '... **name of the courier**'

This must be shown so that there is no doubt about who is carrying the goods (sub-article 25(a)(i)). If a documentary credit calls for despatch by a named courier company, its name must appear on the document.

### 3. '... **stamped or signed**'

The document must appear to have been stamped or signed by a named courier service (sub-article 25(a)(i)).

### 4. '... **named courier service**'

Unless the documentary credit specifically calls for a document issued by a named courier service, banks will accept a document issued by any courier service.

### 5. '... **pick-up or of receipt**'

The document must indicate a date of pick-up or of receipt, or must use wording to this effect (sub-article 25(a)(ii)). 'Pick-up' applies if the courier service collects the goods from the sender. 'Receipt' is the situation in which the sender takes the goods to the courier service.

### 6. '... **date of shipment**'

The date of pick-up or of receipt is deemed to be the date of shipment or dispatch of the goods (sub-article 25(a)(ii)).

### 7. '... **a post receipt or certificate of posting**'

A document need not be called a 'postal receipt' or 'certificate of posting' (sub-article 25(c)).

### 8. '... **stamped or signed**'

The document must show that it was issued by a post office, usually by means of a post office stamp, sometimes followed by an initial or signature at the bottom of the document (sub-article 25(c)).

### 9. '... **at the place from which the credit states**'



There must be evidence on the document that it was issued from the place required under the documentary credit as being the place of dispatch (sub-article 25(c)).

10. '... the date of shipment'


The date of shipment will be the date shown on the stamp, and if not, the date as evidenced elsewhere on the receipt or certificate (sub-article 25(c)).

Figure 14.6 provides an example of a courier receipt and Figure 14.7 provides an example of a certificate of posting.

Figure 14.6 Specimen courier receipt

		<b>INSTRUCTIONS</b> 1. Type or print firmly. 2. Complete applicable unshaded areas. 3. Call us if you have any questions.		FORWARDER AIRBILL - NON NEGOTIABLE		ORIGIN	DESTINATION	
		SHIPPER'S ACCOUNT No.		SHIPPER'S REFERENCE No.				PIECES
							kg ● gr	
<b>SENT BY (COMPANY NAME)</b>			<b>CONSIGNEE (COMPANY NAME)</b>			<b>SERVICES</b>		<b>CHARGES</b>
NAME/DEPARTMENT			NAME/DEPARTMENT			DOCUMENT <input type="checkbox"/> EXPRESS <input type="checkbox"/> DOCUMENT		
ADDRESS			ADDRESS - DHL CANNOT DELIVER TO PO BOX			WORLDWIDE PARCEL EXPRESS (INTERNATIONAL DUTYABLE) <input type="checkbox"/>		
CITY STATE/PROVINCE COUNTRY			CITY STATE/PROVINCE COUNTRY			WORLD MAIL AIR MAIL <input type="checkbox"/> PRINTED MATTER <input type="checkbox"/>		
ZIP/POST CODE		PHONE/TELEFAX	ZIP/POST CODE		PHONE/TELEFAX	INSURANCE YES <input type="checkbox"/> NO <input type="checkbox"/> AMOUNT		
						OTHER <input type="checkbox"/>		
						<b>TOTAL</b>		
<b>DESCRIPTION OF CONTENTS/COMMODITY CODE</b>				<b>IMPORT CHARGES</b>		<b>COLLECTED BY DHL</b>		<b>LIMITATIONS OF LIABILITY</b>
PLEASE ATTACH FOUR COPIES OF A COMMERCIAL OR PROFORMA INVOICE FOR ALL NON-DOCUMENT SHIPMENTS				DUTY OTHER TOTAL		DATE TIME		THE HANSAW CONVENTION AND OTHER CONTRACTUAL EXCLUSIONS AND LIMITATIONS OF LIABILITY APPLY. SEE REVERSE OF SHIPPER'S COPY FOR DETAILS.
DIMENSIONS (cm) LENGTH WIDTH HEIGHT = VOLUME		DECLARED VALUE FOR CUSTOMS SPECIFY CURRENCY		CHARGE TO: <input type="checkbox"/> SHIPPER <input type="checkbox"/> CONSIGNEE ACCOUNT No.		SHIPPER'S SIGNATURE DATE		

**Figure 14.7 Postal receipt or certificate of posting**



LIST OF PARCELS

Posted Beneficiary Ltd Date \_\_\_\_\_  
 by Hong Kong Time \_\_\_\_\_

Serial No.	FULL NAME AND ADDRESS AS SHOWN ON PARCEL	Postage Paid
1		
2		
3		
4	Hong Kong	
5		
6		
7	Hong Kong	
8		
9		
0	Hong Kong	
1		
2		
3	Hong Kong	
4		
5		
6	Hong Kong	Marked:-
7		IET
8		
9	Hong Kong	
0		Made in Hong Kong
1		
2		

List checked at the post office \_\_\_\_\_ signature of Checking Officer

Note for Checking Officer - Any unused spaces on the form must be cancelled.

### 14.8 Transport documents issued by freight forwarders and indication of a goods description

Articles 19–24 do not indicate the issuing party for each of the transport documents that are described therein. The potential party is outlined in sub-article 14(l), which states:

“A transport document may be issued by any party other than a carrier, owner, master or charterer provided that the transport document meets the requirements of articles 19, 20, 21, 22, 23, or 24 of these rules.”

A document examiner should observe that this wording allows, for example, a transport document to be issued on the letterhead of the carrier or that of a company that is acting in the capacity as agent for a named carrier.

It follows from the content of sub-article 14(l) that a transport document that is issued on the letterhead of a company acting as an agent of the carrier, eg a freight forwarder, will be acceptable provided the content of that document meets the requirements of the respective article for that transport document.

Despite this allowance in sub-article 14(l), some banks still issue documentary credits indicating, for example, 'Freight Forwarder's bills of lading are acceptable'. Given that the referenced sub-article already permits a freight forwarder to issue a bill of lading, the position taken in ISBP 745 is that any bank that specifically mentions wording such as 'Freight Forwarder's bills of lading are acceptable' must be allowing a deviation from the requirements of article 20.

In this respect, paragraph E3(b) (Bill of Lading), indicates that a bill of lading will be acceptable without any indication of the name of the carrier.

A similar allowance is made in paragraphs D3(b) (Multimodal Transport Document), F2(b) (Non-Negotiable Sea Waybill) and H3(b) (Air Transport Document).

As much as a documentary credit may indicate 'Freight Forwarder's bills of lading are acceptable', it may indicate 'Freight Forwarder's bills of lading are not acceptable'. As mentioned in paragraph E4, such a term has no meaning in the context of the title, format, content or signing of a bill of lading unless more specific requirements are given in the documentary credit. If not, the condition is to be disregarded and the document examined according to article 20.

A document examiner is required to examine the bill of lading on its face to determine compliance. Such an examination may not determine the status of the issuer, ie a carrier or a freight forwarder, paragraph E4.

A similar stance is made in paragraphs D4 (Multimodal Transport Document), and F3 (Non-Negotiable Sea Waybill) and H4 (Air Transport Document).

Paragraphs D26 (Multimodal Transport Document), E22 (Bill of Lading), F20 (Non-Negotiable Sea Waybill), G20 (Charter Party Bill of Lading), H22 (Air Transport Document) and J17 (Road, Rail or Inland Waterway Transport Document), provide the practice for indicating a goods description on a transport document and supplement the rule in sub-article 14(e).

## 14.9 Clean transport documents

An applicant is assumed to want a clean transport document. This is defined in article 27 as being a document that bears no clause or notation that expressly declares a defective condition of the goods or its packaging. Unless the documentary credit stipulates otherwise, banks will refuse documents bearing such clauses or notations.

Sometimes, what appears to be a defect may be acceptable in a particular trade, in which case the documentary credit should specifically allow the notation. An example would be for a shipment of steel where the transport document indicates the steel is rusty or showing evidence of rust.

These provisions are amplified by paragraphs D24 and D25 (Multimodal Transport Document), E20 and E21 (Bill of Lading), F18 and F19 (Non-Negotiable Sea Waybill), G18 and G19 (Charter Party Bill

of Lading), H20 and H21 (Air Transport Document), and J15 and J16 (Road, Rail or Inland Waterway Transport Document), all of which provide a similar wording for the type of transport document to which they relate.

### Check your understanding

Match the UCP 600 articles with the correct description.

Article no.	Description
	The rule to be applied when examining a transport document that covers at least two different modes of transport.
	The rule to be applied when examining a bill of lading.
	The rule to be applied when examining a non-negotiable sea waybill.
	The rule to be applied when examining a charter party bill of lading.
	The rule to be applied when examining an air transport document.
	The rule to be applied when examining a road, rail or inland waterway transport document.
	The rule to be applied when examining a courier receipt, postal receipt or certificate of posting.

## 14.10 Examination checklist

The following examination checklist is not exhaustive but is provided as a general guide when examining transport documents that may be presented under a documentary credit.

It is not to be construed as being other than solely for guidance, and each document examiner is required to complete a full review of all of the stipulated documents presented under a documentary credit in order to determine whether or not they comply.

A document examiner should ensure that:

- the full set of originals issued is presented unless there are instructions in the documentary credit for the disposal of one or more originals;
- the document is not a 'charter party' transport document, unless allowed or required in the documentary credit;
- the document meets the conditions of the respective transport article of UCP 600 and, if applicable, has been issued according to sub-article 14(l);
- the name of the consignee is as required under the documentary credit;
- if the transport document requires endorsement, it is appropriately endorsed;
- the document bears the name of the carrier (when required by the respective transport article of UCP 600);
- the name and address of the notify party, if any, is as specified in the documentary credit and as outlined in sub-article 14(j);
- the description of the goods in the document does not conflict with the description of the goods stated in the documentary credit, and that the marks and numbers, as well as any other specifications, are not in conflict with those appearing on any other stipulated document;
- the transport document indicates 'freight prepaid' or 'freight collect', as required by the terms of the documentary credit;
- there are no clauses on the transport document that may render it unclean according to article 27;
- all other conditions stipulated in the applicable transport article of UCP 600 are complied with, including that the documents are correctly signed.



## 14.11 Transport documents not covered by UCP 600

Articles 19–25 cover the more common types of transport documents that are required to be presented under documentary credits. As you will have noted, some extensive requirements appear within each of the articles against which the presented transport document is to be examined.

This means that the wording in a documentary credit, for a particular transport document, need not be expansive or extend beyond providing the consignee, notify party and freight payment details.

This is not the case for transport documents that fall outside the content of articles 19–25. As mentioned in paragraph A18, these include a “Delivery Note, Delivery Order, Cargo Receipt, Forwarder’s Certificate of Receipt, Forwarder’s Certificate of Shipment, Forwarder’s Certificate of Transport, Forwarder’s Cargo Receipt and Mate’s Receipt”.

When these types of documents are to be presented, it is the responsibility of the applicant and issuing bank to ensure that details such as the issuer, data content, presentation period (linked to a date within the respective document) and any signing requirements are clearly stated in the documentary credit. Failure to do so will enable the document to be examined according to the requirements of sub-article 14(f).

## 14.12 Common issues that have been the subject of an ICC Opinion

### Signing a transport document

The signing requirements for each transport document are clearly outlined in articles 19–25. Despite this, transport documents are still not signed correctly, and this leads to disputes between a nominated bank and an issuing bank, and between the beneficiary and a nominated bank.

Using a bill of lading as an example, the requirements in sub-article 20(a)(i) are:

“indicate the name of the carrier and be signed by: the carrier or a named agent for or on behalf of the carrier or the master or a named agent for or on behalf of the master. Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent. Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.”

In practice, nearly all bills of lading will be signed by the carrier or by the agent of the carrier. The latter being the more common form of signing.

In ICC Opinion R916 (TA890) it was stated that a bill of lading had been signed “ROH on behalf of HAP – the carrier”. The issuing bank had refused the documents due to the signing capacity not being specified.

The wording for the signing evidenced the name of the carrier ie HAP. However, the role of ROH, although maybe implied, is not stated, ie there is no indication that ROH is acting as agent for HAP. See the wording of sub-article 20(a)(i): “Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent” and “Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.”

The correct wording would have been “ROH as agent for [or on behalf of] HAP, the carrier.”

The conclusion of the ICC Banking Commission supported the discrepancy raised by the issuing bank.

### Naming of the carrier

Over the years, naming of the carrier has been a common form of discrepancy. Transport documents have not clearly identified the carrier either separately within the transport document or as part of the signing of the transport document, ie LMN as agents for the carrier, XYZ.

It has often been the case that a document examiner has looked at the name appearing in the upper right quartile of a document and identified it as a carrier without there being a specific statement to that effect on the face of the document. This is quite common with air waybills. For example, an air waybill is issued on the letterhead of British Airways – a well-known airline carrier. The air waybill is signed as follows “Air Agents Ltd as agent for British Airways [or as agents for the carrier]”. In each example of the signing, there is no indication that British Airways is the carrier. Such evidence must appear on the face of the document.

### **On board notations on bills of lading**

Another common area for dispute is whether a dated on board notation is correct and whether it needs to contain the name of the vessel and port of loading.

In ICC Opinion R876 (TA858rev) a bill of lading had been refused due to the on board notation containing the name of the pre-carriage vessel instead of the ocean vessel.

The documentary credit required shipment to be effected from 'Any port in Europe' to 'H Port in Country V'.

The presented bill of lading included the following information:

[Field] Pre-carriage by VESSEL 'W'.

[Field] Place of receipt PORT H, COUNTRY F (EUROPEAN PORT)'.

[Field] Ocean Vessel VESSEL 'O'.

[Field] Port of loading PORT H, COUNTRY F (EUROPEAN PORT)'.

[Field] Port of discharge H PORT, COUNTRY V.

[Field] Place of delivery H PORT, COUNTRY V.

[Body] SHIPPED ON BOARD MV [VESSEL W] 04.05.2016 FROM PORT H, COUNTRY F.

The question asked of the ICC Banking Commission was whether or not the on board notation was correct. The structure of this bill of lading had also been the subject of previous ICC Opinions.

In answering the question, the ICC Banking Commission stated that the credit required shipment to be effected from any port in Europe. The presented bill of lading showed the name of two vessels, each of which were stated to be sailing from a port in Europe (ie Port H, Country F). Clearly, this would not be a correct issuance of the bill of lading, but banks must examine that document from the data appearing on its face. On its face, the vessel that was indicated as leaving Port H (for H Port, Country V) is Vessel O. Therefore, the on board notation should have indicated the name of Vessel O.

## Conclusion

Transport documents are a key feature of any documentary credit covering the shipment or dispatch of goods. It is important to ensure that the correct form of transport document is referenced in the documentary credit. This may sound obvious, but when goods are being shipped in a container the chosen transport document should be a multimodal transport document and not a bill of lading. Containers are not driven to the port by a beneficiary and loaded directly onto the vessel. They are delivered to a container yard or terminal of the carrier and from there they are transported by road or rail to the port. It is for this reason that the multimodal transport document is the first transport document mentioned in UCP 600 and ISBP 745.

When examining such documents, care is to be taken to ensure that the carrier has been clearly identified and that the capacity in which the transport document has been signed is clearly defined. For example, XXX as agent for the carrier, YYY.

### Think again

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the signing requirements for each type of transport document?
- outline who can issue each type of transport document?
- describe how the date of shipment is determined for each of the transport documents?

## Test your knowledge

Use these questions to assess your learning for Topic 14.

1. A multimodal transport document is a document that covers the shipment of goods using more than one mode of transport. For the purpose of examining the multimodal transport document, there is no need for there to be an indication of the modes of transport that have been utilised. True or false?

- a. True.
- b. False.

Answer: True. Paragraph D1(b)(i) states that a multimodal transport document may be silent regarding some or all of the modes of transport utilised. See section 14.1.

2. A documentary credit requires shipment to be effected from Antwerp to New York with the presentation of a bill of lading. The presented bill of lading indicates as follows.

Pre-carriage: Blank

Place of receipt: Brussels

Ocean vessel: European Star

Port of loading: Antwerp

Port of discharge: New York

Place of delivery: Blank

It also indicates “shipped on board 30 March 20XX”.

Because there is an indication of a place of receipt that is different from the port of loading, the document should be refused, because the on board notation should also include the name of the vessel and the port of loading. True or false?

- a. True.
- b. False.

Answer: False. The dated on board notation on the bill of lading will require the addition of the name of the vessel and the port of loading only if the pre-carriage field was completed or there was evidence of a means of pre-carriage shown elsewhere on the bill of lading. See section 14.2.

3. An air transport document is presented and it has been issued by British Airways. It is signed “For British Airways”. Nowhere on the document does it specifically refer to the name of the carrier. Even though British Airways is a global carrier of goods, the document should be refused for the absence of an indication that British Airways is the carrier. True or false?

- a. True.
- b. False.

Answer: True. The requirement under sub-article 23(a)(i) is that an air transport document must indicate the name of the carrier. UCP 600 does not make any allowance for issuers that are known to be carriers. See sections 14.5 and 14.12.

4. A bill of lading is presented and it is signed “John Smith Ltd as agent of the master”. The bill of lading need not indicate the name of the master. True or false?

- a. True.
- b. False.

Answer: True. Paragraph E5(d), states that the name of the master (captain) need not be stated. See section 14.2.

5. A documentary credit requires the presentation of ‘3 / 3’ (that is, three of three) original multimodal transport documents. The presented document indicates that four originals have been issued. The beneficiary has presented three originals. The nominated bank has refused the documents for the absence of one original multimodal transport document. The beneficiary is arguing that the documentary credit required only three originals to be presented and, therefore, the presentation is compliant. Whose position is correct?

- a. The beneficiary.
- b. The nominated bank.

Answer: B. Sub-article 20(a)(iv) requires that the bill of lading be the sole original, or if issued in more than one original, be the full set as indicated on the bill of lading. See section 14.1.

## Answers

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### CHECK YOUR UNDERSTANDING (section 14.2)

False. The document can be signed by the carrier, master, or an agent acting on its behalf. According to article 19(a)(i) and paragraph D5, the document must appear to have been signed by:

- the carrier or a named agent for or on behalf of the carrier; or
- the master or a named agent for or on behalf of the master.

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent. Any signature by an agent must indicate whether it has signed for or on behalf of the carrier or for or on behalf of the master. See section 14.1.

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### CHECK YOUR UNDERSTANDING (section 14.3)

- a. Is the date of the on board notation.

If a bill of lading is pre-printed ‘received for shipment’, it must contain an on board notation indicating the date of shipment. In this event, the date stated in the on board notation will be deemed to be the date of shipment. This is covered in sub-article 20(a)(ii). See section 14.2.

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## CHECK YOUR UNDERSTANDING (section 14.9)

Article no.	Description
19	The rule to be applied when examining a transport document that covers at least two different modes of transport.
20	The rule to be applied when examining a bill of lading.
21	The rule to be applied when examining a non-negotiable sea waybill.
22	The rule to be applied when examining a charter party bill of lading.
23	The rule to be applied when examining an air transport document.
24	The rule to be applied when examining a road, rail or inland waterway transport document.
25	The rule to be applied when examining a courier receipt, postal receipt or certificate of posting.

See sections 14.1–14.7.

## References

ICC Opinion R916 – *ICC Banking Commission Opinions 2018–2019*, ICC Publication No. 807.

ICC Opinion R876 – *ICC Banking Commission Opinions 2016*, ICC Publication No. 799.

## Topic 15 Examining insurance, financial, commercial and official documents

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### Learning objectives

By the end of this topic, you should be able to:

- understand the key examination criteria for insurance, financial, commercial and other official documents;
- identify the different characteristics of commercial and official documents; and
- explain the general practices that relate to the examination of documents subject to the provisions of ISBP 745, sections B, C, K, L–N, P and Q.

### Introduction

This topic highlights the requirements when examining documents such as insurance documents or financial, commercial and official documents.

To develop an understanding of what is considered to represent international standard banking practice for the examination of insurance, financial, commercial and official documents, this topic extensively refers to the ICC publication of the same name, which is widely known as ISBP 745.



### Think...

Before you start work on this topic, consider what you already know about the examination criteria for insurance, financial, commercial and other official documents.

For example:

Do you know that documents, other than transport documents, have varying levels of significance to an applicant? Invoices, certificate of origin, insurance documents, inspection and analysis documents will have more importance than, say, a packing list or weight list.

No matter which of these documents are required, with the exception of invoices and insurance documents which have their own articles in UCP 600, you should note that the documentary requirement should, at the very least, indicate the data content for that document and not simply rely on the title of a document.

Did you know that adding the name of the issuer or type of issuer will also be beneficial? Otherwise, the examination is to be completed according to sub-article 14(f).

Are you aware that a requirement for presentation of an inspection certificate, with no further detail, will not guarantee that the presented document will provide any evidence of compliance with any specifications or quality standard that may have been agreed in the sale contract? A requirement for 'Inspection Certificate' would also permit the issuer to be the beneficiary of the documentary credit.

## 15.1 Examining insurance documents

Whether it is an applicant or beneficiary that will arrange and pay for insurance coverage of the goods will depend upon a number of factors that, for the purpose of this study text, are not discussed. However, it should be noted that if it is agreed in a sale contract that goods are to be sold on a 'cost, insurance and freight [named port of destination]' (CIF) or 'carriage and insurance paid to [named place of destination]' (CIP) basis, the type of insurance document, ie a policy or certificate, including the cover requirements, should be listed in the documentary credit as one of the documents to be presented by the beneficiary.

These requirements will vary from issuing bank to issuing bank, depending upon their own internal guidelines, and from industry to industry. Most documentary credit application forms will include the wording preferred by the issuing bank, including a selection of risks that are to be covered. These may be preset or subject to the applicant indicating the risks that are to be covered.

The requirements can also depend on the export and import regulations of the concerned country. In any event, a requirement in a documentary credit for the presentation of an insurance document should be written so that at least basic cover in respect of the goods is achieved.

As an example, the more common insurance requirements seen in a documentary credit are Institute Cargo Clauses (A) or Institute Cargo Clauses (Air), Institute War Clauses and Institute Strikes, Riots and Civil Commotion Clauses. Insurance documents, in general terms, provide basic cover in the terms of these clauses or variations of them. The best-known clauses are the Institute of London Underwriters Clauses 1982 (or 1/1/82), or Institute of London Underwriters Clauses 2009 (or 1/1/09), and the American Institute Clauses.

### 15.1.1 The application of article 28

Article 28 is the rule to be applied when examining an insurance document.

There is further detail in paragraph K1 as to when article 28 will apply.

Sub-article 28(a) specifically provides for the acceptance of open cover certificates and declarations, and banks will accept a pre-signed insurance certificate or declaration under an open cover provided that:

- it has been pre-signed by an insurance company, underwriter or its agent or proxy; and
- the documentary credit does not stipulate otherwise.

This provision applies to cases where insurance has been taken out on open cover terms, whether or not the documentary credit expressly refers to 'open cover' insurance. Open cover insurance does not need to be specifically authorised in the documentary credit. This is because it concerns the internal procedure under which the cover is granted, rather than the cover itself, as stipulated in the documentary credit.

If a documentary credit specifically calls for an insurance certificate or a declaration under an open cover, banks will accept an insurance policy in lieu of such a certificate or declaration (sub-article 28(d)). However, when a documentary credit requires the presentation of an insurance policy, the presentation of an insurance certificate or declaration under an open cover will not be acceptable.

The following may be of assistance when determining the correct form of document that may be presented under a documentary credit requiring presentation of an insurance document.

<b>Insurance requirement in documentary credit</b>	<b>Other document acceptable</b>	<b>Document not acceptable</b>
Policy	None	N/A
Certificate	Policy	Cover note

A key examination feature is that the date of the presented insurance document must be no later than the date of shipment. Sub-article 28(e) indicates that when the insurance document is dated later than the date of shipment, there must be evidence on the face of the insurance document to the effect that cover was effective no later than the date of shipment. In this respect, a clause stating 'Goods shipped on 10 February 20XX' would not be an indication that cover was effective as of the date of shipment.

### 15.1.2 Type and extent of insurance cover

It is the responsibility of the applicant to indicate in its documentary credit application form the type and extent of cover required, and to ensure that such instructions in this respect accord with the sale contract. Sub-article 28(f)(ii) establishes the minimum level of coverage, when a documentary credit is silent in this respect, as at least 110% of the CIF or CIP value of the goods. It should be noted that article 28 does not impose any maximum level of coverage.

Sub-articles 28(g) and (h) make it clear that banks assume no responsibility for ensuring that the cover is adequate or appropriate for the needs of the commercial parties if the documentary credit fails to indicate precisely what type of cover is required. Terms such as 'usual risks' or 'customary risks' should be avoided.

It is quite common for a documentary credit to be issued requiring cover for 'all risks' rather than listing the individual cover that is required. This is not a recommended course of action and this fact is highlighted by the content of sub-article 28(h) which indicates that the insurance document will be accepted without regard to any risks that are stated to be excluded. In some cases, the extent of the exclusions may not be consistent with an applicant's needs. For this reason, an applicant should be advised to indicate the specific risks that are to be covered in the documentary credit application form.

Institute Cargo Clauses (A) or Institute Cargo Clauses (Air) are considered as being representative of 'all risks' cover – that is, suitable when a documentary credit requires insurance against 'all risks', even though there are a number of risks excluded in its standard terms. This is emphasised in paragraph K18.

When examining an insurance document, a document examiner is not required to be an expert in insurance practice or to be aware that certain risks are included in another clause, such as the Institute Cargo Clauses (A) which include cover for 'theft, pilferage, non-delivery and short delivery' (TPND). A document examiner expects to see the specific risks individually noted on the face of the insurance document and expects these to comply with those stated in the documentary credit.

### 15.1.3 Exclusion clauses: Insurance claims subject to a franchise or excess, Average, Shipment on deck, Claims payable [name of place]

#### Exclusion clauses

Owing to the general incorporation of exclusion clauses relating to terrorism risks, etc, sub-article 28(i) refers to the acceptability of insurance documents that contain any exclusion clause.

Insurance claims subject to an excess or franchise

Many insurance documents exclude cover for claims of less than a specified threshold amount and for loss up to that amount on larger claims. The main purpose is to offer cover at a lower premium in return for the insured retaining a small part of the risk for its own account. The loss excluded from cover in the above way is referred to by different terms in different countries, including 'a franchise', 'an excess' or 'a deductible'.

For the purpose of certainty, sub-article 28(j) expressly provides that an insurance document may indicate that cover is subject to such a franchise or excess (deductible). This is also covered in paragraph K14.

#### Key learning point

Franchise is an amount below which claims will not be honoured. Claims above that amount are paid in full.

Excess is an amount that will be deducted from the value of any claim.

#### Average

'Average' is a term commonly used in marine insurance and may also be referred to on insurance documents. There are two concepts that apply in the event of a loss or damage sustained by a ship or its cargo. **General average** is incurred in the common interests of the ship and its cargo and is borne by all of the parties interested in the ship and cargo, in proportion to such interests, as determined by persons known as 'average adjusters'.

A **particular average** applies when the owner (or its insurer) of lost or damaged cargo has to bear the full loss.

#### Shipment on deck

Although containerised shipment has reduced the risks associated with shipments made on deck, the risks are not entirely eliminated. As a result, an applicant may specifically request insurance cover for 'jettisoning/washing overboard' (JWOB).

#### Claims payable [name of place]

An applicant may wish to avoid unnecessary negotiations or litigation in foreign jurisdictions in the event of any claims made in respect of damaged or lost goods. In these circumstances, a documentary credit may stipulate that an insurance document is to evidence that claims, if any, are to be payable in the country of the applicant.

In addition to a requirement for claims to be payable in the country of the applicant, it is also quite normal for a documentary credit to require the insurance document to indicate the name and address of a claims settling agent in that country.

### **Check your understanding**

Which UCP 600 article contains requirements for the examination of insurance documents?

- a. Article 30.
- b. Article 3.
- c. Article 28.
- d. Article 14.

#### 15.1.4 Warehouse-to-warehouse clauses

An applicant may decide that standard extended cover does not provide sufficient or effective cover. For example, it may wish to ensure that insurance cover remains effective until the goods are delivered to its premises or a location of its choice. In this event, a documentary credit should require cover to be effected up to the applicable location. If so, a document examiner must ensure that a specific notation is shown on the insurance document covering this requirement, even if the standard policy terms cover this risk.

It should be noted that an insurance document indicating coverage effected on a warehouse-to-warehouse basis must be dated no later than the date of shipment, as evidenced on the presented transport document, or if dated later than the date of shipment, it is to indicate that cover was effective no later than the date of shipment.

In this respect, paragraph K10(c) emphasises that the mere indication of cover on a warehouse-to-warehouse basis does not indicate that cover was effective no later than the date of shipment.

### 15.1.5 Number of original insurance documents

It is often the case that a documentary credit will require the presentation of a full set of insurance policies or certificates. Most insurance companies will usually issue their documents in a single original, but there may be additional forms marked 'duplicate' or 'copy'.

Sub-article 28(b) states that when an insurance document indicates that it has been issued in more than one original, all originals must be presented. The question then arises as to whether a 'duplicate' is an original or a copy. ICC Opinion R841 (TA784rev) addressed this issue and others in relation to how an insurance document is issued and presented.

Five scenarios were presented as follows, with the opinion of the ICC Banking Commission appended beneath each scenario:

**A.** The credit is silent as to the number of originals/copies to be presented (eg 'Insurance certificate for 110% of CIF value').

1. If an insurance policy does not indicate that it is issued in more than one original, then only one original is to be presented.
2. When an insurance policy is presented in more than one original and does not indicate the number of originals that have been issued, the number presented will be considered to be the number of originals issued.

**B.** The credit requires 'Insurance policy in original and duplicate'.

Paragraph A28 states:

Documents issued in more than one original may be marked "Original", "Duplicate", "Triplicate", "First Original", "Second Original", etc. None of these markings will disqualify a document as an original.

1. There is no requirement for an insurance policy to indicate the number of originals that have been issued. The presentation may consist of two original insurance policies or one original and one copy (duplicate).
2. There is no requirement for an insurance policy to indicate the number of originals that have been issued.

If an issuing bank or applicant requires two originals of an insurance policy, and to avoid any potential ambiguity, a credit should require the presentation of the document in 'two originals' as opposed to an 'original and duplicate' or 'in duplicate'.

**C.** The credit requires 'Insurance policy in duplicate'.

Sub-article 17(e) states:

If a credit requires presentation of multiple documents by using terms such as "in duplicate", "in two fold" or "in two copies", this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise.



1. There is no requirement for an insurance policy to indicate the number of originals that have been issued. The number of original insurance policies presented will be considered to be the number of originals that have been issued.
2. There is no requirement for an insurance policy to indicate the number of copies that have been issued.

A duplicate may be a copy or an original insurance policy.

If an issuing bank or applicant requires two originals of an insurance policy, and to avoid any potential ambiguity, a credit should require the presentation of the document in 'two originals' as opposed to an 'original and duplicate' or 'in duplicate'.

**D.** The credit requires 'Insurance policy in 2 originals'.

There is no requirement for an insurance policy to indicate the number of originals that have been issued, but at least two originals must be presented.

**E.** The credit requires 'Full set Insurance policy'.

There is no requirement for an insurance policy to indicate the number of originals that have been issued. However, if it does, that number must be presented. Absent of any such indication, the number of originals presented will be considered as the full set.

Although the Query, Analysis and Conclusion refer to insurance policy, the Analysis and Conclusion will apply to any form of insurance document.

### 15.1.6 Endorsement of insurance documents

Documentary credits will often indicate that the insurance document is to be issued to order of the issuing bank or applicant. Most insurance documents will already be pre-printed with the name of the assured (or insured), ie the beneficiary or an agent that may be acting for them in procuring the insurance cover. This occurrence will require the insurance document to be endorsed by the named assured (or insured) in order for the document to be complying.

Such an endorsement, where XYZ Exporting Ltd is the named assured (or insured) and the requirement is for the insurance document to be issued to order of the issuing bank, would be:

To order of [name of issuing bank].

For XYZ Exporting Ltd.

*John Smith*

Some documentary credits, erroneously, indicate that the insurance document is to be issued 'To Order' (with no name mentioned) or simply state 'blank endorsed'. In these circumstances, the question is, what form of endorsement is required, if any? This issue was addressed in ICC Opinion R778 (TA688rev), where six cases were cited. The opinion of the ICC Banking Commission is appended beneath each example:

#### Case 1 where the L/C required insurance document blank endorsed

The presented insurance policy without endorsement showed:

Assured: To bearer

Opinion: This is acceptable.

#### Case 2 where the L/C required insurance document blank endorsed

The presented insurance policy without endorsement showed:

Assured: ABC Exporting Co Ltd

To bearer

Opinion: The insurance document requires endorsement by ABC Exporting Co Ltd.

#### Case 3 where the L/C required insurance document blank endorsed

The presented insurance policy without endorsement showed:

Assured: To order

Opinion: This is acceptable as 'To order' has the same effect as 'To bearer'.

#### Case 4 where the L/C required insurance document blank endorsed

The presented insurance policy without endorsement showed:

Assured: ABC Exporting Co Ltd

To order

Opinion: The insurance document requires endorsement by ABC Exporting Co Ltd.

Case 5 where the L/C required insurance document to be issued to order of XYZ Bank Ltd

The presented insurance policy without endorsement showed:

Assured: To order of XYZ Bank Ltd

Opinion: This is acceptable.

Case 6 where the L/C required the insurance document to be issued to order of XYZ Bank Ltd

The presented insurance policy without endorsement showed:

Assured: ABC Exporting Co Ltd

To order of XYZ Bank Ltd

Opinion: The insurance document requires endorsement by ABC Exporting Co Ltd.

Even when the documentary credit makes no mention of the name of a required assured (or insured) party, the insurance document must be endorsed by the assured (or insured) party mentioned on the insurance document, either in blank or in favour of the issuing bank or applicant. This requirement is covered by paragraph K21.

**Check your understanding**

What is meant by the term 'franchise' in relation to insurance documents claims cover?

- a. An amount that will be deducted from the value of any claim.
- b. There is no indication in the credit of the insurance coverage required.
- c. An amount below which claims will not be honoured; claims above that amount are paid in full.
- d. A credit should state the type of insurance required and, if any, the additional risks to be covered.

### 15.1.7 General requirements

Only one insurance document should usually be submitted under a documentary credit covering the same risks for the same shipment. There may, however, be a need to spread the risk between insurers, which may result in more than one insurance document being presented. This is recognised in paragraph K16.

An insurance document should not evidence cover for goods not requested in the documentary credit.

Insurance documents must appear to have been countersigned if there is a requirement for such on the face of the document.

### 15.1.8 Common discrepancies that arise upon examination of an insurance document

Insurance documents (as is the case for other documents tendered under a documentary credit) are to be examined as a whole.

Insurance documents can be complicated. Apart from the technical language that can appear in the text, an insurance policy, for example, will often consist of one or more riders or attachments that combine to form a single document. As a result, it is neither practicable nor necessary for a document examiner to read and understand all of the details of the text; instead, a functional standard of examination should be adopted. This standard should be directed towards focusing on:

- the amount of insurance;
- the name of the insurance company, agent or proxy that issued the document;
- the type of insurance document presented, as compared with that required in the documentary credit, and whether it has been correctly signed;
- the insured party;
- the endorsement or countersignature of the insured, if appropriate;
- the date of issue;
- whether an expiry date has been inserted for submission of any claim;
- the party to whom claims are payable and where such claims are payable;
- the risks covered (as compared with the specific requirements in the documentary credit);
- the description of goods;
- the insurance document indicating coverage has been effected at least between the place of taking in charge or shipment and the place of discharge or final destination as stated in the documentary credit;
- the currency of the insurance document; and
- whether the number of originals stated on the document have been presented (if applicable).

Paragraph K22, does not require a document examiner to review the printed terms and conditions of an insurance document to determine compliance. This would include most, if not all, of the data that would appear on a rider or attachment.

The following are the more common discrepancies seen in respect of insurance documents:

- the currency of the insurance document is not the same as that specified in the documentary credit;
- the amount of insurance coverage is insufficient;
- the goods description does not correspond to, or is not quoted in general terms, when compared with that shown in the documentary credit;
- the start and end points of the insurance are not in accordance with the documentary credit or sub-article 28(f)(iii);
- specific risks, as stipulated in the documentary credit, are not indicated on the document;
- the insurance document is not countersigned (where such countersignature is required);
- the insurance document is not endorsed in terms of the documentary credit;
- the insurance document is not that stipulated in the documentary credit or otherwise authorised by sub-article 28(a);
- the effective date of insurance is later than the date of shipment; and/ or
- all of the originals shown on the insurance document, as issued, are not presented.

## 15.2 Examining financial documents

Financial documents, such as bills of exchange (drafts) and promissory notes, are legal documents evidencing claims for amounts owed. In some countries, there is a distinction between bills of exchange relating to the settlement of debt within a country (known as 'inland bills') and bills of exchange relating to the settlement of debt between a buyer in one country (importer) and a seller (exporter) in another country (known as 'foreign bills').

Foreign bills were used as trade settlement instruments before documentary credits. They were incorporated as a feature of documentary credits, because the instrument provides evidence of the claim of the beneficiary for payment. Such bills of exchange (drafts) and promissory notes are negotiable, which means that:

- complete transfer is made by delivery or by endorsement and delivery;
- a full and legal title passes upon delivery; and
- the title that passes is free from equities – that is, any defect – provided that it is passed to a holder who has given value in good faith and without knowledge of any defect in title.

This is different from the negotiability of bills of lading, which is subject to any previous defect in title.

### 15.2.1 Defining 'financial documents'

The essential features of financial documents are often found in the definitions of laws covering bills of exchange. These vary between countries. For example, the following definition shows the elements of the document as applicable to the United Kingdom under the Bills of Exchange Act 1882, s 3(1):

A **bill of exchange** is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person or to bearer.

In the context of a documentary credit, the elements may be summarised as follows.

- The person giving it is the beneficiary of the documentary credit (the 'drawer').
- The person to whom it is addressed is the issuing bank, nominated bank or reimbursing bank (the 'drawee').
- To pay 'on demand' or 'at a fixed or determinable future time' means:
  - at a fixed period after the date of the bill of exchange or at sight of the bill of exchange;  
or
  - on or at a fixed period after the occurrence of a specified event, which is certain to happen, as opposed to a time that may be uncertain (for example 'pay Mary Jane on arrival of ship Titanic in New York' would not be a determinable period because the Titanic may never arrive in New York);
- a 'sum certain in money' is the amount shown in words and figures, inclusive of any interest clauses or other term on the bill.

The following should also be noted.

- A documentary credit can be issued with no requirement for a financial document. This practice has been developed in some places to avoid stamp duty in the country of origin or country of payment.
- Documentary credits generally use the term 'drafts' rather than 'bills of exchange'.
- Drafts drawn payable at a future date (known as 'usance drafts') are capable of being bought and sold after acceptance by banks.

Sub-article 12(b), allows a nominated bank to prepay or purchase, ie to provide financing, under a documentary credit where the nominated bank has accepted a draft drawn on it or where it has incurred its deferred payment undertaking.

### 15.2.2 Documentary credit requirements

Usually, the first documentary requirement seen is that for a bill of exchange or draft. This requirement, by way of example, may be shown on a SWIFT MT700 message.

Field 42C: Drafts at ...

- ◆ sight;
- ◆ xxx days' sight;
- ◆ xxx days' date;
- ◆ xxx days after date of shipment;
- ◆ xxx days after invoice date;
- ◆ fixed date.

Field 42a: Drawee

- ◆ Issuing Bank;
- ◆ Nominated Bank;
- ◆ Reimbursing Bank;
- ◆ [Name of the bank on which the draft is to be drawn].

Drafts must always be drawn as stipulated in the documentary credit. This is explained in paragraphs B2, B3 and B8–B12.

A documentary credit should never require that honour or negotiation be effected against the presentation of a draft drawn on the applicant.

With regard to the use of drafts, your attention is drawn to the ICC Guidance Paper – “The use of drafts (bills of exchange) under documentary credits” as referred to in Topic 2.



### 15.2.3 Corrections or alterations

Given the legal standing and purpose of bills of exchange, some jurisdictions do not allow any corrections or alterations to their data content. Because of this, a nominated bank should take care if a draft is presented, drawn on a party other than itself, which shows any correction or alteration. In such circumstances, even if the correction or alteration has been authenticated, it is sometimes prudent to request the beneficiary to present a replacement, unaltered draft.

This is covered in paragraphs B16 and B17.

#### 15.2.4 Calculating maturity

When usance (term) drafts are presented under a documentary credit, calculation of the maturity date will depend upon:

- the tenor of the draft, for example '60 days' sight';
- on whom the draft is drawn (the drawee); and
- whether the presentation is clean or discrepant.

This is covered in paragraphs B4–B6.

For the purpose of determining the maturity date of a time draft, the words 'from' and 'after' have the same effect. This is specified in article 3.

It is reinforced by paragraph B2(d).

### 15.2.5 Payment at maturity

The maturity date of a draft, often referred to as the 'due date', is the date on which the drawee must make payment. If this date falls on a non-banking day in the country of the currency of the draft, payment must be made on the next banking day. Funds should be remitted without delay at maturity, in accordance with the instructions received from the presenter.

When an issuing bank is to arrange the reimbursement and it is closed on the maturity date, but the country of the currency is open, the issuing bank is required to make arrangements in advance of the maturity date. This is in order to ensure that reimbursement is made according to the terms and conditions of the documentary credit.

This is covered in paragraph B7.

## 15.3 Examining commercial documents

Some of the commercial documents commonly seen in documentary credits are listed in Table 15.1, along with comments on the basis of the following criteria:

- by whom it is issued;
- the content of the document; and
- the purpose for which it is issued.

**Table 15.1 Types of commercial document**

Document	Issued by	Content	Purpose
Commercial invoice	The beneficiary of the documentary credit, or the second beneficiary when the documentary credit has been transferred	A description and value of goods, terms of sale and other detail as may be stipulated in the documentary credit  Any additional information should not be in conflict with such wording	To show the manner in which the drawing under the documentary credit is made up  To show the sale of goods in terms required by the documentary credit
Certified invoice	The beneficiary of the documentary credit, or the second beneficiary when the documentary credit has been transferred	Similar to the commercial invoice, together with certification by the beneficiary or named third party in terms of the documentary credit  For example, a beneficiary may be required to certify that the contents are correct and in the terms of the sale contract, proforma invoice, etc, or a certification may be required by an external body such as a chamber of commerce	To satisfy a specific concern of the buyer in relation to the certification required
Certificate of analysis	The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of sub-article 14(f)	As stipulated by the documentary credit  Generally, such stipulation will relate to the analysis of goods as required by the relevant trade. For example, details of temperature and chemical content  In the absence of any required data, the document may be accepted in terms of sub-article 14(f)	To satisfy an applicant, end buyer or import control authorities

Certificate of weight	The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of sub-article 14(f)	As stipulated in the documentary credit  Generally, such stipulation will relate to the gross and net weights of packages  In the absence of any required data, the document may be accepted in terms of sub-article 14(f)	To satisfy an applicant or end buyer
Inspection certificate	The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of sub-article 14(f)	As stipulated by the documentary credit  Generally, such stipulation will relate to whether the goods inspected by sample or otherwise have reached standards as may have been described in the documentary credit  In the absence of any such standards, the document may be accepted in terms of sub-article 14(f)	To satisfy an applicant, end buyer or import control authorities
Packing list	The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of sub-article 14(f)	Details of the packaging of goods  In the absence of any required data, the document may be accepted in terms of sub-article 14(f)	To satisfy the applicant, clearing agents or customs authorities in the country of import  To enable spot checks to be made of the content of packages
Weight list	The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of sub-article 14(f)	Details of the weight of the goods In the absence of any such standards, the document may be accepted in terms of sub-article 14(f)	To satisfy the applicant, clearing agents or carriers

If a documentary credit indicates specific data requirements, the document must comply with those conditions. If the documentary credit is silent in respect of the required data, a document examiner must ascertain that the content fulfils the function of the document as expressed in sub-article 14(f). For example, if a documentary credit requires presentation of a packing list, the content must contain some element of packing details to fulfil the function of that document.

### **15.3.1 Examining a commercial invoice**

Article 18 is the rule to be applied when examining a commercial invoice.

The definition of an 'invoice' is found in paragraph C1.

There is further detail for the examination of a commercial invoice in paragraphs C1–C15.

In addition, article 30 and paragraphs C12–C14 cover tolerances in the credit amount, quantity and unit price.

## 15.4 Examining other commercial documents and documents for official purposes

It is often the case that for documents other than commercial invoices, transport documents and insurance documents, there is very little (if any) information given in a documentary credit as to the required data content and issuer of these types of documents. It is most likely that only the name of the required document will be given. In this event, a document examiner is required to examine the document according to the requirements of sub-article 14(f).

The recommended course of action for these other types of document is that a documentary credit should clearly state by whom they are to be issued and what is to be their data content. For example, calling for an inspection certificate without further qualification neither guarantees that the document presented will show that such inspection has been undertaken by an appropriate party, nor that the document presented will show that the goods did, in fact, meet a desired inspection standard. In this example, presentation of an inspection certificate issued by the beneficiary certifying only that goods have been inspected to its standard will be sufficient to meet the documentary credit requirement. It is clear that the need for precision in this respect is vital.

Paragraph A20 applies if a documentary credit clearly indicates that a document is to be issued by a named party.

Paragraphs A39–A41 relate to the title of documents and when the required data may be given in combined documents.

Unless a documentary credit stipulates that a commercial document must be dated, the need to show a date will be determined by the nature and content of each specific document. This is covered in paragraph A11(b).

If a documentary credit requires a document to be dated but does not stipulate that such date should be prior to the date of shipment, a document that is dated after the date of shipment is acceptable, subject to the content of paragraph A12(b). Dating of a document after the date of shipment is acceptable as long as the document is dated on or before the date of presentation to the nominated bank or issuing bank, even if the document appears to cover an event that occurred prior to shipment (sub-article 14(i)).

This is covered under paragraphs A12 and A13.

Certificates of origin are frequently called for under documentary credits. They are not specifically referred to in the articles of UCP 600, although they are covered in paragraphs L1–L8. It should be noted that none of these paragraphs require the certificate of origin to be dated. The origin of the goods does not change by a date.

## 15.5 Common discrepancies that arise on examination of documents I

When a document examiner reviews financial and commercial documents, and documents for official purposes, presented under a documentary credit, he or she will often find that documents do not comply. The more common discrepancies can be summarised as follows.

### Financial documents

- The draft is not signed by the beneficiary.
- The draft is signed, but there is no indication of the name of the beneficiary.
- The draft has not been endorsed, as required.
- The draft has not been drawn on the correct party.
- The amount is in excess of that available under the documentary credit.
- The tenor of the draft is shown incorrectly, for example:
  - at sight, instead of at 60 days' sight;
  - x days after the date of shipment and does not indicate the date of shipment.

### Commercial invoices

- The invoice was not issued by the beneficiary.
- The invoice is not signed, if so required by the documentary credit.
- The description of goods on the invoice does not correspond with the description shown in the documentary credit.
- The invoice is neither visaed nor legalised, as required by the documentary credit.
- The legalisation of the invoice is not in the terms required by the documentary credit.
- The breakdown of charges is not shown, as required by the documentary credit (where the documentary credit requires CIF charges to be shown separately).
- The quantity of goods shipped exceeds the tolerance of 5% under sub-article 30(b).
- The unit price is not as stipulated in the documentary credit.
- Partial shipment has been effected when prohibited by the documentary credit.
- The shipping marks and numbers on the invoice are in conflict with the shipping marks and numbers shown on the transport document.



## 15.5 Common discrepancies that arise on examination of documents II

### Certified invoices

All of the discrepancies common to the commercial invoice apply to certified invoices, along with:

- certification that is not as stipulated in the documentary credit.

### Certificates of analysis

- The certificate contains data conflicting with the description of goods shown on the invoice and/or documentary credit.
- The certificate does not indicate the precise specifications and / or detail required by the documentary credit.
- The certificate has been issued by a party whose name is not as stipulated in the documentary credit.

### Certificates of weight

- The weight shown is in conflict with that on the transport document or other stipulated document.
- The document submitted is not a certificate, but a listing.

### Inspection certificates

- The certificate is not issued by the party stipulated in the documentary credit.
- The certificate shows data in conflict with the description of goods in the invoice and/or documentary credit.
- The wording of the certificate is not as stipulated by the documentary credit.

### Packing lists

- The document indicates packing of goods that is not as required under the documentary credit, or as shown on the invoice or transport document
- The document contains data in conflict with that on other stipulated documents.

### Weight lists

- The document indicates weight in conflict with that detailed on other stipulated documents.
- The document contains data in conflict with that on other stipulated documents.

## 15.5 Common discrepancies that arise on examination of documents III

### Documents required for official purposes:

#### Certificate of origin

- The certificate indicates the origin of goods to be other than that stipulated in the documentary credit.
- The certificate was not issued by the party stipulated in the documentary credit.
- The certificate does not indicate that it has been legalised and visaed, as required by the documentary credit.
- The certificate's legalisation was not in the terms specified under the documentary credit.
- The data on the certificate is in conflict with that on other stipulated documents.

#### Consular invoice

- The description of goods does not correspond with the description shown on the documentary credit.
- The invoice contains data in conflict with that on other stipulated documents.
- The invoice has not been visaed and stamped, as stipulated in the documentary credit.

#### Legalised invoice

- Legalisation is not in terms of the documentary credit.

#### Export licence

- The licence is not issued by the authority or body named in the documentary credit.
- The goods are not in accordance with the description of goods on the invoice and/or documentary credit.
- The licence contains data that is in conflict with that on other stipulated documents.

#### Health certificate

All of the discrepancies common to the export licence apply to a health certificate, along with the certification not being as stipulated on the documentary credit.

## 15.6 Examination checklists

The following examination checklists are not exhaustive but are provided as a general guide to the examination of documents that may be presented under a documentary credit.

It is not to be construed as being other than solely for guidance, and each document examiner is required to complete a full review of all of the stipulated documents presented under a documentary credit in order to determine whether or not they comply.

### 15.6.1 The covering letter or schedule

Ensure or determine:

- that the covering letter or schedule is addressed to your bank.
- that it has a current date.
- that it relates to the documentary credit number referenced.
- that all of the documents enumerated are attached.
- that the value of the documents and the value mentioned in the cover letter are the same (unless the documentary credit provides an explanation for the difference, such as that only 90% is payable against the documents and 10% is payable later).
- whether the bank (if any) remitting the documents has honoured or negotiated or is acting solely as a presenting bank.
- that the settlement instructions are clear and understood.
- whether any discrepancy (or discrepancies) has (have) been noted, and check whether honour or negotiation is indicated to have been effected against an indemnity or under reserve.

## 15.6.2 The documentary credit

Ensure or determine:

- that the documentary credit is the correct one.
- that it is still valid (not expired / cancelled).
- that the available balance is sufficient to cover the value of the drawing.
- that no amendments or previous drawdowns are subject to ongoing discussions or communications.

### 15.6.3 The draft

Ensure or determine:

- that the draft appears to be signed by the drawer.
- that the name of the drawer corresponds with the name of the beneficiary.
- that it is drawn on the correct drawee.
- that the amount in figures and words correspond (noting the content of paragraph B14).
- that the tenor is as required by the documentary credit.
- that the name of the payee is identified or is issued 'to order'.
- that it is properly endorsed, if required.
- that there are no restricted endorsements.
- that it contains any necessary clauses as specifically required by the documentary credit.
- that the amount of the draft does not exceed the balance available under the documentary credit.
- that the values of the draft and invoice correspond, unless a lesser amount is due.

## 15.6.4 The invoice

Ensure or determine:

- that it is issued by the beneficiary.
- that the applicant (the buyer) is indicated as the invoiced party, unless otherwise stated in the documentary credit.
- that it is not titled 'proforma', 'provisional' or similar.
- that the description of the goods corresponds with the description in the documentary credit.
- that no additional detrimental description of the goods appears that may call into question their condition or value.
- that any details of the goods, prices and terms, as mentioned in the documentary credit, are included in the invoice.
- that any other information supplied in the invoice, such as marks, numbers, transportation information, etc, does not conflict with that appearing on any other stipulated document.
- that the currency of the invoice is the same as that of the documentary credit.
- that the values of the invoice and of the draft correspond, unless a lesser amount is due.
- that the value of the invoice does not exceed the available balance of the documentary credit, except where sub-article 18(b), is applied.
- that the invoice covers the complete shipment as required by the documentary credit (if partial shipments are not allowed).
- that, if required by the documentary credit, the invoice appears to be dated, signed, notarised, legalised, certified, etc.
- that the information relative to the shipment, packaging, weight, freight charges or other related transport charges does not conflict with that appearing on any other stipulated document.
- that the correct number of originals and copies are presented.

### Check your understanding

If a document, other than a commercial invoice, transport or insurance document, is required and the documentary credit gives no detail as to the required data content and/or issuer of this type of document, which one of the following statements is correct?

- a. The issuing bank must be contacted for clarification.
- b. The principles detailed in article 14(f) will be applied to the examination process.
- c. The document will be disregarded.
- d. The document will be accepted as presented, without further examination of the data content.

## 15.6.5 Other documents

### Certificate of origin

Ensure or determine:

- that the certificate of origin appears to be signed, notarised, legalised, and visaed, as required by the documentary credit.
- that the data does not conflict with that appearing on any other stipulated document.
- that the country of origin is specified and that it meets the requirements of the documentary credit.

### Weight list/certificate

Ensure or determine:

- that a weight certificate, if such a certificate is called for, is signed.
- that the data does not conflict with that appearing on any other stipulated document.
- that the weight list or certificate meets with the requirements of the documentary credit, if any.

### Packing list

Ensure or determine:

- that the packing list meets with the requirements of the documentary credit.
- that the data does not conflict with that appearing on any other stipulated document.

### Inspection certificate

Ensure or determine:

- that the inspection company (if any) nominated in the documentary credit issued the inspection certificate.
- that it is signed.
- that the certificate complies with any inspection requirements stated in the documentary credit.



### 15.6.6 A document fulfilling its function

Recall that sub-article 14(f) covers the concept of documents other than invoices, transport documents or insurance documents needing to fulfil their function where the documentary credit does not provide any details for the data content of the required document.

For example, a request for a packing list will be satisfied by the presentation of a document, however named, that provides any data relating to the packing of the goods. The document will still be subject to review of its data according to sub-article 14(d).

Conversely, a document titled 'packing list' but providing no data as to the packing of the goods cannot be considered to have fulfilled its function.

Another example would be when a documentary credit requires the presentation of an inspection certificate or a certificate of analysis but provides no further details. The fulfilment of the function of each of these documents is that the presented document evidences that an inspection or analysis occurred, and not the result of that inspection or analysis.

## 15.7 An examination logic

A document examiner must be guided by the provisions of UCP 600 and international standard banking practice in the task of examining documents. It is not good enough simply to be able to quote articles of UCP 600 or to refer to ISBP 745 to justify any decision regarding a complying or non-complying presentation; a document examiner must also be guided by any internal operational procedure within their own bank and take a common-sense approach.

Bernard Wheble's *Documentary Credits: UCP 1974/1983 Revisions, Compared and Explained* (1984) remains relevant.

It still has to be appreciated, however, that UCP is not – and cannot be – intended to give a precise answer to each and every problem arising in practice. Those concerned with international trade, whether in banking, commerce and industry, transport or insurance, should not act like robots. Whilst taking full advantage of the overall guidance given by UCP, they should still apply their own intelligence and experience to finding the solution to the occasional essentially individual problem. Better still if they can avoid the problem ever arising, by the early use of common sense – unfortunately the least common of the senses. Bankers, for example, as experts in this method of payment, could help their customers – and themselves – by providing timely advice to the applicant so that they give instructions that produce a workable credit at the outset, and to the beneficiary so that they know precisely what they have to do to get payment under that credit. In fact, UCP needs to be supplemented by what can be described as a form of education, with a constant readiness on the part of those who have the knowledge to impart it, and a matching willingness on the part of all concerned to receive it – and act on it.

## Conclusion

Documentary credits will often contain some detailed requirements for documents, such as commercial invoices, transport documents and insurance documents. For other documents, only the name may be given. Although this may benefit a beneficiary in that they will not be required to provide any extensive information, for a document examiner it means that the presented document must stand the test of fulfilling its function, as mentioned in sub-article 14(f).

In the context of the examination of documents other than commercial invoices, transport documents and insurance documents, UCP 600 offers no specific rules. This is where the content of ISBP 745 paragraphs L-N and P-Q becomes an invaluable aid to a document examiner and should be followed when examining the respective documents.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the key points relating to the examination of an insurance document?
- describe the purpose of each type of commercial document?
- describe the process for determining that a document fulfils its function?

## Test your knowledge

Use these questions to assess your learning for Topic 15.

1. A documentary credit requires an insurance policy indicating coverage for Institute Cargo Clauses (A), War and Strikes risks. The document is presented and covers the required risks but evidences exclusions to certain aspects of the Institute Clauses that apply to those risks. The document is discrepant. True or false?

- a. True.
- b. False.

Answer: False. Sub-article 28(i) states that an insurance document may contain reference to any exclusion clause. See section 15.1.3.

2. A bill of lading indicates an on-board date of 25 July. The presented insurance document is dated 26 July and includes within the body of the document 'Shipment effected on vessel Ocean Cruise on 25 July'. The document is discrepant. True or false?

- a. True.
- b. False.

Answer: True. The insurance document is required to indicate that the insurance was effective no later than the date of shipment (25 July), as required by sub-article 28(e). An indication of shipment details will be seen purely as being for information

and not providing an effective date of insurance. See section 15.1.1.

3. A certificate of origin and an invoice must be dated. True or false?

- a. True.
- b. False.

Answer: False. There is no requirement for either to be dated (paragraph C10: 'An invoice need not be signed or dated'). The basic requirement of a certificate of origin, as referred to in paragraph L1, incorporates only that it be signed, certifies the origin of the goods and appears to relate to the invoiced goods. See section 15.4.

4. Documents are presented to the issuing bank with a draft drawn on them at 90 days' sight. The documents are received on 15 October (Wednesday). The issuing bank examines the documents on 17 October, determines that they do not comply and issues a notice of refusal. On 20 October, the issuing bank contacts the applicant for a waiver of the discrepancies. The applicant provides its waiver on 21 October and the issuing banks accepts it the same day.

What is the latest due date that the issuing bank must give the nominated bank?

- a. 13 January.
- b. 15 January.
- c. 19 January.

Answer: C. Paragraph B5(b)(ii) indicates that the latest date for commencement of the period will be 90 days after the date on which the issuing bank accepts the waiver of the applicant. See section 15.2.4.

5. To which of the following could the plus or minus 5% tolerance referred to in sub-article 30(b) be applied?

- a. 500 laptop computers.
- b. 500 boxes of paper.
- c. 500MT sugar.
- d. 500 cars.

Answer: C. The items mentioned under A, B and D fall under the category of packing units or individual items, to which sub-article 30(b) states that the plus or minus 5% tolerance will not apply. See section 15.5.

## Answers

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### CHECK YOUR UNDERSTANDING (section 15.1.3)

c. Article 28. See section 15.1.1.

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### CHECK YOUR UNDERSTANDING (section 15.1.6)

c. An amount below which claims will not be honoured; claims above that amount are paid in full.

Franchise is an amount below which claims will not be honoured. Claims above that amount are paid in full. Excess is an amount which will be deducted from the value of any claim. See section 15.1.3.

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### **CHECK YOUR UNDERSTANDING (section 15.6.4)**

b. The principles detailed in article 14(f) will be applied to the examination process.

In the event that only the name of the required document will be given, a document examiner is required to examine the document according to the requirements of sub-article 14(f). See section 15.4.

### **References**

ICC Opinion R841 – *ICC Banking Commission Opinions 2012–2016*, ICC Publication No. 785.

ICC Opinion R778 – *ICC Banking Commission Opinions 2009–2011*, ICC Publication No. 732.

## Topic 16 The role of the nominated bank

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### Learning objectives

By the end of this topic, you should be able to:

- describe the concept of a bank 'acting on its nomination'; and
- understand what it means to be a nominated bank.

### Introduction

This topic describes the role and responsibilities of a nominated bank.

#### **Think...**

Before you start work on this topic, consider what you already know about the role and function of a nominated bank. For example:

How is a nominated bank selected?

What are the responsibilities of a nominated bank?

Does a nominated bank have an obligation to honour or negotiate a complying presentation?

## 16.1 What is a 'nominated bank'?

As discussed in previous topics, and in simple terms, a documentary credit constitutes an irrevocable undertaking of an issuing bank to honour – that is, to pay at sight, to accept a draft drawn on it and pay at maturity or to incur a deferred payment undertaking and pay at maturity – when a complying presentation is made to it.

A beneficiary – rather than being required to make a presentation directly to an issuing bank, which in most cases will be located in a different country or region – will generally prefer the option of being able to present its documents to a local or preferred bank for honour or negotiation.

It may be that an issuing bank will permit a beneficiary to present its documents to a bank in its country or region with the view that such bank will act as a trusted intermediary between the two parties.

It may also be that a beneficiary will request such local or preferred bank only to examine its documents before they are sent to the issuing bank, so that any discrepancies can be corrected conveniently and with minimal delay, without requesting such bank to honour or negotiate, or to request such bank to honour or negotiate only when the issuing bank has taken up the documents.

As can be inferred by its title, a 'nominated bank' (as defined by article 2) can fulfil these requirements – that is, it is a bank nominated by the issuing bank in its documentary credit, which may offer to honour or negotiate a complying presentation that is made to it. It may also be a bank that merely receives the documents from the beneficiary to facilitate presentation within the expiry date and presentation period.

It should be noted that even though a bank may be named in the documentary credit as the nominated bank, unless such bank is also the confirming bank, it is under no obligation to act on that nomination.

Even if it does agree to act, it may impose its own conditions for doing so, which may include a right of recourse to the beneficiary in the event that the issuing bank does not reimburse it according to the terms and conditions of the documentary credit. The circumstance under which recourse is available is covered in Topic 17.

A nominated bank may be described in the context of a single (named) bank or as 'any bank' – that is, in the case of the latter, the beneficiary will have a choice of bank with which it may present its documents. This allows the situation in which presentations under the same documentary credit can be presented to different banks.

It is important to note the context in which a nominated bank is referred to in UCP 600. For example, sub-article 6(a), provides that a documentary credit must state the name of the bank with which it is available or whether it is available with any bank. In either event, the documentary credit will also be available with the issuing bank, if the beneficiary decides to present its documents directly to that bank.

In this context, reference to 'nominated bank' is in respect of an indication in the documentary credit of the bank, other than the issuing bank, with which it may possibly be available for honour or negotiation.

However, in sub-article 14(a), we see the first reference to a 'nominated bank acting on its nomination'. This sub-article is describing the responsibilities of the nominated bank once it has decided to act on the nomination to honour or negotiate.



### 16.1.1 UCP 600 articles that relate directly to a nominated bank

As noted in section 16.1, sub-article 6(a), indicates that a credit must state the bank with which it is available or whether it is available with any bank. A credit that is available with a nominated bank is also available with the issuing bank, meaning that the beneficiary may choose to by-pass a local or preferred bank – that is, the nominated bank – and present its documents to the issuing bank directly.

Articles 7 and 8, require an issuing bank or confirming bank to honour (and, in the case of a confirming bank, to negotiate) when a nominated bank (article 7) or another nominated bank (article 8) does not honour or negotiate between the time at which it determines that a complying presentation has been made and the date on which payment is due under the documentary credit.

Each rule reflects the circumstances under which a bank that is nominated to honour or negotiate decides not to do so (or the beneficiary does not request honour or negotiation), or where the nominated bank has initially acted on its nomination by accepting a draft drawn on it, or by incurring a deferred payment undertaking, or by agreeing to advance funds on a future date under a documentary credit available by negotiation but fails to pay on the maturity date.

In the context of financing under a documentary credit, sub-article 12(b), provides that the mere issuance of a documentary credit that is available with a nominated bank by acceptance or deferred payment, permits that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.

This issue will be covered further in Topic 17.

Because a nominated bank gives no undertaking to a beneficiary, unlike a confirming bank or an issuing bank, it is not affected by the preclusion rule mentioned in sub-article 16(f), should it fail to provide a refusal notice in accordance with the requirements of sub-articles 16(c) and (d), even if it has agreed to act on its nomination to honour or negotiate.

It can be the case that documents are lost in transit between a nominated bank and the confirming bank or issuing bank. Article 35, states that in the event of a nominated bank examining documents and determining that they are complying, and irrespective of whether or not it has honoured or negotiated those documents, an issuing bank or confirming bank will remain liable to honour (and in the case of a confirming bank, to negotiate), or to reimburse the nominated bank. In these circumstances, the issuing bank or confirming bank have no grounds to request that the beneficiary submits replacement original documents, including an original transport document, and will invariably be required to complete its examination based on copies of the documents that have been lost.

When a credit is stated to be transferable, and unless the documentary credit states otherwise, the nominated bank is the bank that is authorised to transfer that credit. When a documentary credit is available with any bank it must indicate the name of the bank that is authorised to effect a transfer. Transferable credits are covered in Topic 19.

#### Check your understanding

What does the term 'nominated bank' mean in the context of an unconfirmed documentary credit?



### 16.1.2 Indicating a nominated bank in the documentary credit

You will recall that a documentary credit must state the bank with which it is available or whether it is available with any bank.

For a documentary credit issued using a SWIFT MT700 message, this will be indicated in field 41a 'Available With ... By ...'. This field will indicate the name of the bank with which it is to be available or state 'Any Bank' or 'Available with Any Bank'.

Where the option 'Any Bank' or 'Available with Any Bank' is indicated, the range of banks to which a beneficiary is able to present its documents will be subject to the place of expiry that is indicated in field 31D 'Date and Place of Expiry'. For example, if field 31D were to state 'XX0630 Germany', documents could be presented to any bank in Germany. However, if this field were to state 'XX0630 Frankfurt', the range of banks would be narrowed to those with a Frankfurt address.

As was noted in Topic 10, a confirming bank need not be a nominated bank, although it is advisable that it should be.

#### Check your understanding

When a documentary credit is transferable, how is the bank authorised to effect the transfer identified?

### 16.2 Nominated bank acting on its nomination

Sub-article 12(a), specifically provides that unless the nominated bank is the confirming bank, it has no obligation to honour or negotiate even if a complying presentation is made to it.

The exception is where the nominated bank communicates otherwise to the beneficiary. This can be in the advice of the documentary credit or at any time up until an agreement is given. Unless this has been done, the beneficiary should not place reliance on the nomination given in the documentary credit.

Whether the nominated bank accepts its nomination to honour or negotiate will often depend upon a variety of factors, including:

- the relationship, if any, that the nominated bank has with the issuing bank;
- the standing of the issuing bank;
- the country from which the documentary credit has been issued; and / or
- whether the nominated bank is satisfied with the means by which it is authorised to claim reimbursement.

Under sub-article 12(c), the receipt by the nominated bank of documents, or its examination and forwarding of those documents, does not obligate the bank in the absence of any agreement with the beneficiary, nor does it constitute honour or negotiation.

In the event that a bank agrees to act as nominated bank, it should:

- examine all documents received in terms of sub-article 14(a), and other related articles; and
- handle discrepant documents in terms of article 16, and other related articles.

Upon effecting honour or negotiation, a nominated bank is required to dispatch the documents to the issuing bank (or confirming bank) according to the instructions stated in the documentary credit (sub-article 15(c)).

Reimbursement that is due to a nominated bank for any honour or negotiation made to a beneficiary is effected in accordance with the reimbursement condition that should be specified in the documentary credit. This may, for example, allow for the nominated bank:

- to debit an account of the issuing bank that is held with it;
- to claim reimbursement from another bank (a reimbursing bank) or to claim from a funding institution such as the World Bank;
- to be reimbursed by the issuing bank when the issuing bank determines that the documents represent a complying presentation; or
- to claim reimbursement from the issuing bank by SWIFT message when it determines that the documents represent a complying presentation.

### 16.3 Nominated bank not acting on its nomination

When a bank is nominated in the documentary credit to honour or negotiate and it decides not to do so, or the beneficiary does not request the bank to honour or negotiate, the bank acts in no greater capacity than the beneficiary in presenting the documents to the issuing bank.

While it may agree, on behalf of the beneficiary, to contest any dubious or unfounded discrepancy that may be raised by the issuing bank, it is under no obligation to do so. It may choose merely to act as a form of 'post box' between the issuing bank and the beneficiary in respect of any communications relating to the documents.

The fact that a nominated bank does not act on its nomination at the time of determining that the documents comply does not stop that bank from honouring or negotiating at any future time, up to and including the date on which payment is due to the beneficiary and reimbursement is expected from the issuing bank.

For example, a number of banks will honour or negotiate only when they receive an advice from the issuing bank that the documents have been found to be compliant.

## 16.4 The risks to a nominated bank

A nominated bank undertakes no independent payment obligation towards the beneficiary; accordingly, it incurs no counterparty risk with regard to the issuing bank. A different situation arises, however, if a nominated bank makes a payment to the beneficiary under a complying presentation and is unable to obtain reimbursement from the issuing bank. These issues are addressed in Topic 17.

### Check your understanding

If a bank agrees to act as a nominated bank, what are the two main actions it should take? Select all that apply.

- a. Examine all documents received in terms of sub-article 14(a), and other related articles.
- b. Handle discrepant documents in terms of article 16, and other related articles.
- c. Handle discrepant documents in terms of sub-article 15(c), and other related articles.
- d. Examine all documents received in terms of sub-article 12(c), and other related articles.

## Conclusion

A nominated bank plays an important role in a documentary credit. It acts as an intermediary in the document examination process and any honour or negotiation that it may decide to make to the beneficiary when a presentation is found to be complying. The alternative would be that the beneficiary must deal directly with the issuing bank in relation to the presentation, correction or replacement of one or more documents under the documentary credit.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the different approach between how UCP 600 describes a nominated bank and a nominated bank acting on its nomination?
- define the basis under which a nominated bank may prepay or purchase a draft accepted by it or a deferred payment undertaking incurred by it?
- describe the factors that a nominated bank would take into consideration when deciding whether to agree to any request of the beneficiary to honour or negotiate a complying presentation?

## Test your knowledge

Use these questions to assess your learning for Topic 16.

1. A documentary credit is available by deferred payment with Bank X (the nominated bank). Because Bank X has been nominated in the credit, it must incur a deferred payment undertaking if the beneficiary makes a complying presentation. True or false?

- a. True.
- b. False.

Answer: False. A nominated bank that has not added its confirmation has no obligation to honour or negotiate, except when it has expressly agreed with the beneficiary to do so (sub-article 12(a)). See section 16.2.

2. A nominated bank has received a set of documents that it has determined to be discrepant. It has issued a refusal notice, but it is sent on the sixth banking day following the day of presentation of the documents. Despite this late sending of the refusal notice, the nominated bank is not precluded from claiming that the documents are discrepant and is under no obligation to honour or negotiate. True or false?

- a. True.
- b. False.

Answer: True. Preclusion, as mentioned in sub-article 16(f), applies only to a bank that has given an undertaking to the beneficiary – that is, an issuing bank or confirming bank. See section 16.1.1.

3. When a documentary credit is available with any bank and multiple presentations are envisaged, to whom is the beneficiary to present each set of documents?

- a. The bank to which the first presentation was made.
- b. Any bank willing to handle the presentation.

Answer: B. The beneficiary is not compelled to present documents to the same bank to which it has previously made a presentation. It may present to any bank within the confines expressed in the credit – that is, field 31D expressing a place or country for expiry. See section 16.1.2.

4. A credit is available with a nominated bank by deferred payment. Upon presentation of complying documents, it decides not to issue its deferred payment undertaking. Following receipt of the issuing bank's advice of acceptance of the documents, the beneficiary requests the nominated bank to prepay (discount) the proceeds. Which of the following is true in this event?

- a. The nominated bank may agree to do so, because the issuing bank has provided its advice of acceptance.
- b. The nominated bank may agree to do so, provided that it issues its own deferred payment undertaking.

Answer: B. Sub-article 12(b) indicates that an issuing bank authorises a nominated bank to prepay a deferred payment undertaking provided that the nominated bank has issued it. See section 16.1.1.

5. Under a usance negotiation credit, when may a nominated bank act on its nomination?
- a. Only at the time of determining that the documents comply.
  - b. Only on the maturity date.
  - c. At any time between determining that the documents comply and the date on which payment is due to the beneficiary and reimbursement is expected from the issuing bank.
  - d. At the time when the issuing bank provides the nominated bank with its advice of acceptance of the documents.

Answer: C. The act of negotiation may occur at any time between determining a complying presentation and the day on which the nominated bank expects to receive reimbursement from the issuing bank. See section 16.3.

## Answers

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### **CHECK YOUR UNDERSTANDING (section 16.1.1)**

It is a bank nominated by the issuing bank in its documentary credit, typically located in the country of the beneficiary, to which documents can be presented. It may or may not offer to honour or negotiate a complying presentation made to it. See section 16.1.

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### **CHECK YOUR UNDERSTANDING (section 16.1.2)**

Unless the documentary credit states otherwise, the nominated bank is the bank that is authorised to transfer that credit. When a documentary credit is available with any bank it must indicate the name of the bank that is authorised to effect a transfer. See section 16.1.1.

### **CHECK YOUR UNDERSTANDING (section 16.4)**

- a. Examine all documents received in terms of sub-article 14(a), and other related articles.
- b. Handle discrepant documents in terms of article 16, and other related articles.

See section 16.2.

## Topic 17 Honour or negotiation

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### Learning objectives

By the end of this topic, you should be able to:

- explain the different settlement terms;
- understand settlement flows;
- explain the terms 'honour', 'negotiation', and 'prepay and purchase', and understand how they are used; and
- explain the transmission of proceeds.

### Introduction

This topic provides an overview of the concepts of honour and negotiation, and the settlement process.

#### **Think...**

Before you start work on this topic, consider what you already know about honour and negotiation.

For example:

Are you aware that the term honour incorporates documentary credits that are available by sight payment, by deferred payment or by acceptance?

Do you know that an issuing bank does not negotiate; it can only honour a complying presentation?



## 17.1 Settlement

The settlement process of a documentary credit is driven by the presentation of complying documents. If complying documents are presented, UCP 600 requires that a bank act according to its own defined and agreed role or the undertaking that it may have given under that documentary credit.

The delivery of documents to the applicant and the control over the goods that those documents may have is similarly driven by the presentation of complying documents.

In simple terms, if a presentation has been examined and found to be complying, or if a waiver of discrepancies has been obtained from an applicant and is acceptable to the issuing bank, settlement should be made to the presenter without delay and in accordance with the availability conditions expressed in the documentary credit.

Whether or not a nominated bank or a confirming bank accepts the issuing bank's advice of acceptance of discrepancies will determine which bank will make such settlement to the beneficiary.

### 17.1.1 Settlement terms

Article 2 provides the definitions of 'honour' and 'negotiation'.

Sub-article 6(b) requires that each documentary credit must state whether it is available by sight payment, deferred payment or acceptance (collectively referred to under the term honour) or by negotiation.

The settlement requirements for these forms of availability, when a complying presentation has been made, are as follows.

**Note:** For the purpose of the content of this section, and where applicable, the documentary credit is to be considered as expiring at the counters of a nominated bank.

- **By sight payment**

- A confirming bank must honour by effecting payment, and such honour is without recourse.
- A nominated bank may or may not honour. Any honour of the presentation, by effecting payment to the beneficiary, is generally without recourse, unless the nominated bank has entered into a recourse agreement with that beneficiary.
- An issuing bank must honour by effecting payment, and such honour is without recourse.

The documentary credit may or may not stipulate a requirement for a sight draft.

- **By deferred payment**

- A confirming bank must honour by incurring a deferred payment undertaking and paying at maturity, and such honour is without recourse.
- A nominated bank may or may not incur a deferred payment undertaking. When incurred, a deferred payment undertaking and its payment at maturity are without recourse.
- An issuing bank must honour by incurring a deferred payment undertaking and paying at maturity, and such honour is without recourse.

The documentary credit will not stipulate a requirement for a draft.

**Note:** An issuing bank or confirming bank is required to incur a deferred payment undertaking and / or to pay at maturity when a nominated bank or another nominated bank does not incur a deferred payment undertaking or, having incurred a deferred payment undertaking, does not pay at maturity. In this respect, sub-articles 7(a)(ii)–(v) and 8(a)(i)(b)–(e) should be referred to respectively. The effect of sub-articles 8(a)(i)(b)–(e) can be modified by the wording of the confirmation advice as indicated in Topic 10, section 10.1.2.

- **By acceptance**

- A confirming bank must honour by accepting a draft drawn on it and paying at maturity, and such honour is without recourse.
- A nominated bank may or may not accept a draft that is to be drawn on it. When accepted, a draft and its payment at maturity are without recourse.
- An issuing bank must honour by accepting a draft drawn on it and paying at maturity, and such honour is without recourse.

**Note:** An issuing bank or confirming bank is required to accept a draft or pay at maturity when a nominated bank or another bank does not accept a draft or, having accepted a draft, does not pay at maturity. In this respect, sub-articles 7(a)(ii)–(v) and 8(a)(i)(b)–(e), should be referred to respectively. The effect of sub-articles 8(a)(i)(b)–(e) can be modified by the wording of the confirmation advice as indicated in Topic 10, section 10.1.2.

- **By negotiation**

- A confirming bank must advance funds or agree to advance funds to the beneficiary on or before the banking day on which reimbursement is due to it. Negotiation is effected without recourse, less interest for the period commencing the date of payment until the expected date that reimbursement will be received from the issuing bank. A draft, if any, will usually be drawn on the issuing bank, but could be drawn on a reimbursing bank.
- A nominated bank may advance funds or may agree to advance funds to the beneficiary on or before the banking day on which reimbursement is due to it. Negotiation is effected either with or without recourse (usually with recourse), less interest for the period commencing the date of payment until the expected date that reimbursement will be received from the issuing bank. A draft, if any, will usually be drawn on the issuing bank, but could be drawn on a reimbursing bank.
- An issuing bank cannot issue a documentary credit that is available with it by negotiation. An issuing bank can only pay at sight, accept a draft and pay at maturity, or incur a deferred payment undertaking and pay at maturity. An issuing bank does not negotiate.

### **Check your understanding**

A difference between a documentary credit that is available by acceptance and one that is available by negotiation can be explained by stating that a bank accepts a draft drawn on it and negotiates a draft drawn on another bank. True or false?

### 17.1.2 Considerations

As mentioned in Topic 7, an issuing bank, depending on the terms of its documentary credit, may allow a nominated bank to obtain reimbursement by sending to it a SWIFT message claiming reimbursement for a complying presentation that has been made, or by authorising the nominated bank to debit the account of the issuing bank that is held with that nominated bank, or by authorising the nominated bank to claim reimbursement from a reimbursing bank, or by undertaking to reimburse the nominated bank in accordance with its instructions, upon receipt of a complying presentation.

For a letter of credit that is available by sight payment, the concern for an issuing bank is that funds are paid (or are available) to the nominated bank before the issuing bank has had an opportunity to examine the documents. The procedures for obtaining a refund can often prove to be difficult and arduous. If a document examiner finds discrepancies upon receipt of documents for which the nominated bank's covering schedule indicates that reimbursement has already been obtained, he or she must provide a notice of refusal and consider whether a request for a refund is warranted at that time. If not made as part of the refusal message, a request for a refund may be made at a later date if the discrepancies are not subsequently waived by the applicant or issuing bank.

#### Check your understanding

What drives the settlement process of a documentary credit?

- a. Delivery of documents to the applicant.
- b. The presentation of certified documents.
- c. The presentation of complying documents.
- d. Supply of goods or services by the beneficiary.

### 17.1.3 Complying documents

When a complying presentation has been made, a beneficiary can receive settlement from:

- a nominated bank that is willing to act on a nomination for it to honour or negotiate, and this bank will be reimbursed in accordance with the terms and conditions expressed in the documentary credit;
- a confirming bank, if any, which will honour or negotiate in accordance with the undertaking given in its advice of confirmation, and this bank will be reimbursed in accordance with the terms and conditions expressed in the documentary credit; or
- the issuing bank, which will honour a presentation made directly to it.

These principles are covered in article 15. Note that a nominated bank and a confirming bank may be one and the same bank.

The issuing bank will seek reimbursement from the applicant for any settlement made to a confirming bank, nominated bank or beneficiary in accordance with the arrangements agreed at the time the documentary credit is issued.

#### 17.1.4 Non-complying documents

If the presented documents do not comply and they are not capable of being corrected or replaced, no bank is under any obligation to honour or negotiate.

If the documents apparently comply in the view of one bank, but not that of another, the position, in simple terms, is as follows.

- If documents are considered to be compliant by a nominated bank, but not by the confirming bank:
  - the confirming bank need not reimburse the nominated bank or may seek refund of any amount that the nominated bank has already received from the confirming bank; and
  - the nominated bank may be able to recover funds from the beneficiary if settlement was made with recourse.
- If documents are considered to be compliant by a nominated bank, but not by the issuing bank:
  - the issuing bank need not reimburse the nominated bank, or may seek refund of any amount that the nominated bank has already received from the issuing bank or a reimbursing bank; and
  - the nominated bank may be able to recover funds from the beneficiary if settlement was made with recourse.
- If documents are considered to be compliant by the confirming bank, but not by the issuing bank:
  - the issuing bank need not reimburse the confirming bank, or may seek refund of any amount that the confirming bank has already received from the issuing bank or a reimbursing bank; and
  - the confirming bank cannot recover funds from a nominated bank or beneficiary, because its settlement was made without recourse.
- If documents are considered to be compliant by the issuing bank, but not by the applicant:
  - the applicant need not reimburse the issuing bank, or may seek refund of any amount that has already been debited to its account; and
  - the issuing bank cannot recover funds from the confirming bank, a nominated bank or the beneficiary, because its settlement was made without recourse.

### Check your understanding

Sub-article 6(b) requires that each documentary credit must state whether it is available by which of the following? Select all that apply.

- a. Sight payment.
- b. Negotiation.
- c. Confirmation.
- d. Acceptance.

### 17.1.5 Settlement considerations

When determining settlement terms, a document examiner must check whether or not any of the following considerations apply. These issues will determine the precise nature and amount of settlement.

- **A mix of settlement terms** – occasionally, a documentary credit will stipulate that part of the settlement is to be made on a sight basis and part on a usance (or tenor) basis.
- **Assignment of proceeds** – a document examiner must check whether:
  - there is any instruction from the beneficiary authorising the payment of all or any part of the proceeds to a third party;
  - the signatory (or signatories) on such an instruction have been authenticated and the authority (or authorities) verified:
    - if the beneficiary is a customer, there should be evidence of an in-house verification of the signature;
    - if the beneficiary is not a customer, its own bankers should verify the signature(s) and authorities.
  - the beneficiary has not withdrawn a prior instruction – that is, whether the assignee has provided its agreement to such cancellation. Assignment of proceeds is covered in Topic 19.
- **Special documentary credits** – the following relates to special types of documentary credit.
  - **Revolving documentary credit** – in this case, a document examiner must check:
    - the amount drawn under the presentation is in accordance with the revolving clause stipulated in the documentary credit (that is, the terms under which it revolves); and
    - any conditions regarding reinstatement of amounts and whether any undrawn balances are to be reinstated on a cumulative or non-cumulative basis. Revolving and reinstatement documentary credits are covered in Topic 20.
- **Refinancing under a documentary credit** – it may be the case that an issuing bank seeks to use a documentary credit as a means of financing either for its own purpose or that of the applicant. In such circumstances, the documentary credit will require settlement to the beneficiary to be effected on a sight or usance basis, but the reimbursement condition will indicate that the nominated bank is requested to provide finance for a period beyond sight or the stated usance period.

#### Example

A documentary credit is payable 60 days after the date of shipment, but the reimbursement condition is for the nominated bank to claim 120 days after the date of shipment. This provides an additional 60 days' credit.

The beneficiary will receive settlement on the 60th day after the date of shipment, or if it wishes to receive early settlement, it will be responsible for payment of the interest costs up to that 60th day.

The issuing bank will reimburse the nominated bank on the due date for the principal amount plus 60 days' interest costs.

Refinancing can also occur when a draft has been accepted or a deferred payment undertaking has been incurred and, shortly prior to the due date, the issuing bank will request an extension for a further period. Such requests are subject to the agreement of the bank that has accepted the draft



or incurred the deferred payment undertaking. If such instruments have been prepaid or purchased, an agreement will also need to be made as to who will be responsible for the additional interest cost.

- **Advance payment documentary credit** – a document examiner must check whether the presentation is in respect of an advance payment or whether part of the proceeds are to be applied against any outstanding advance.
- **Transferable documentary credit** – a document examiner must check:
  - whether the presentation is from the second beneficiary or first beneficiary; and
  - that the settlement is to be made in accordance with the terms of the transfer (see Topic 19).
- **Collection of charges** – to determine the settlement amount, a document examiner should establish which party is responsible for the payment of charges under the documentary credit and whether any charges have already been collected. Usually, when charges are for the account of the beneficiary, they are deducted from the proceeds paid to it. If charges are for the account of the applicant, they are collected by the issuing bank in addition to the drawing amount and distributed accordingly. The beneficiary and the applicant often agree to apportion the charges, with the beneficiary being responsible for charges other than those of the issuing bank.

Sub-article 37(c) outlines the position regarding charges that have been incurred by a party under a documentary credit that cannot be collected as instructed – that is, due to non-utilisation of the documentary credit with a nominated bank.

## 17.2 Payment and negotiation

When a documentary credit has not been confirmed, it is widely understood that any negotiation thereunder may be made with recourse to the beneficiary. For a documentary credit that has not been confirmed and is available with a nominated bank by payment, any payment to the beneficiary should be made without recourse unless a recourse agreement has been made with that beneficiary.

Note that except for sub-article 8(a)(ii), UCP 600 does not provide any guidance with regard to the scope of recourse that may be available, and a nominated bank would be well advised to document the basis under which recourse will occur and to make this known to the beneficiary, either in its advice of the documentary credit or prior to effecting settlement.

### 17.2.1 Payment/negotiation with recourse

If complying documents have been presented to a bank that has agreed to act on its nomination to negotiate and such bank has communicated the extent of this agreement to the beneficiary, the bank will often agree to advance funds on the basis that it is with recourse to the beneficiary.

Recourse entitles a nominated bank to reclaim the funds in the event that reimbursement is not forthcoming from either the issuing bank or confirming bank, as applicable.

Because a nominated bank is effectively providing a period of short-term finance to the beneficiary, such payments are generally recorded as a risk against the beneficiary and / or the issuing bank and / or the confirming bank. It is reversed only upon receipt of reimbursement. Reimbursement made by the issuing bank or the confirming bank is without recourse.

A nominated bank may also be prepared to pay or negotiate a discrepant presentation on a 'with recourse' basis, either against a formal indemnity or under an arranged negotiation facility established up to an agreed limit for the beneficiary.

To determine that its bank is acting within its mandate and before making payment to the beneficiary, a document examiner must be aware of:

- the extent to which its bank has agreed to act in the role of nominated bank;
- whether an indemnity has been provided for a non-complying presentation or a recourse agreement is in place; and
- whether the beneficiary has a separate negotiation facility.

### 17.2.2 Payment/negotiation without recourse

Payment made by an issuing bank and payment or negotiation effected by a confirming bank, in settlement of a complying presentation, is always without recourse to the presenter. This means that, once paid, the funds cannot be reclaimed. Similarly, once a draft has been accepted or a deferred payment undertaking incurred by an issuing bank, confirming bank or nominated bank, this cannot be undone, except possibly in the circumstances of fraud.

When honouring a documentary credit available by payment, a nominated bank may look to reach an agreement with the beneficiary that any settlement is with recourse, otherwise it will be without recourse.

In some cases, a nominated bank may provide a commitment to the beneficiary that has a similar effect to adding a confirmation to the documentary credit. Such commitments go under a number of names, including 'commitments to honour' or 'commitments to negotiate', but the most frequently used term is 'silent confirmation'.

Because banks issue silent confirmations (or a similar type of undertaking), it is important to understand the following key issues.

- The essence of the arrangement is that a third bank or nominated bank provides an undertaking, at the request of the beneficiary, to honour or negotiate. A bank that provides a silent confirmation is not recognised as a confirming bank in the context of article 8.
- An issuing bank that has neither requested nor authorised such commitment or confirmation is not informed of the silent confirmation (thus the reference to 'silent').
- Because the bank giving the commitment or silent confirmation is not recognised under UCP 600, such bank will normally insist that the beneficiary assigns its rights under the documentary credit to the bank. The beneficiary will also usually be required to obtain the prior approval of the bank for any amendment that it wishes to accept or reject.
- The undertaking given in a commitment or silent confirmation will be in the form of a separate agreement given by the bank to the beneficiary. This agreement should detail all the terms and conditions that will apply to the fulfilment of the commitment or silent confirmation.

### 17.2.3 Providing short-term finance

Documentary credits provide a mechanism for a beneficiary and an applicant to manage their cash flows better. An applicant may request that a documentary credit be made available by acceptance, deferred payment or usance negotiation. This can give the applicant time to sell the goods into the local market before being required to reimburse the issuing bank under the terms of its counter-indemnity or agreement to issue the documentary credit.

A beneficiary may be able to obtain immediate payment from a nominated bank by requesting that complying documents be purchased, prepaid or negotiated.

#### Negotiation (advancing)

Interest and charges are usually deducted up front, and settlement is made after such deductions. The nominated bank will receive reimbursement from the issuing bank or from a confirming bank, if applicable, for the face value of the drawing.

#### Prepay or purchase

Sub-article 12(b) provides a specific authorisation for a nominated bank to prepay or purchase under a documentary credit that is available with it by acceptance or deferred payment.

Note that this authorisation extends only to situations in which the nominated bank has accepted a draft drawn on it or in which it has incurred its own deferred payment undertaking. It does not extend to situations in which a nominated bank may be requested by a beneficiary, and so agrees, to prepay a deferred payment undertaking incurred by another bank – that is, the issuing bank, confirming bank or another nominated bank. The discounting of accepted drafts is a matter covered in applicable bill of exchange law and local law practices.

Banks often refer to the advancing of funds as a discount of the proceeds rather than use the legal terms 'prepay' or 'purchase'.

In documentary credit operations, drafts are drawn on the issuing, nominated, confirming or reimbursing banks. If accepted, they provide the means by which the beneficiary or its bankers may be able to obtain finance prior to the due date. In discounting drafts, interest and charges are deducted up front, and payment is made after such deductions. On the maturity date, the holder expects to receive payment for the face value of the draft.

Historically, a draft would be 'accepted' by the bank on whom it was drawn, ie it would bear a stamp with the word 'accepted' with places for signature(s) of the accepting bank and details of the due date. Today, this is not the case and the acceptance of a draft is usually conveyed by means of a SWIFT MT799 message from the issuing bank to the nominated bank, nominated bank to a presenting bank, or in letter or electronic form from the nominated bank to the beneficiary or presenter of the presentation. Care also needs to be taken that maturity dates are recorded and noted to ensure either that claims are made or that sufficient funds are available to meet claims at maturity.

However, you should recall that a documentary credit available by deferred payment requires no draft to be presented.

### 17.3 Transmitting proceeds

Having established the amount that is to be paid in settlement of a complying presentation, the next stage is to identify the method by which payment is to be made. The following sections summarise the payment procedures available to a named nominated bank, a confirming bank, any bank in a freely available documentary credit and the issuing bank.

#### **Check your understanding**

Recourse entitles a nominated bank to reclaim the funds from the beneficiary in the event that reimbursement is not forthcoming from either the issuing bank or confirming bank, as applicable. True or false?

### 17.3.1 Settlement by bank role

#### **Settlement by a named nominated bank**

An issuing bank will name a specific nominated bank for a variety of reasons, for example because it maintains an account or banking relationship with it. The named nominated bank may be required to pay the beneficiary and then claim from the issuing bank. An established relationship between the nominated bank and the issuing bank will help in this regard.

If a documentary credit is in the currency of the country in which both the nominated bank and the beneficiary are located, the bank may be able to debit the account of the issuing bank and effect payment in terms of the beneficiary's instructions.

If a documentary credit is in another currency and stipulates that a reimbursement claim is to be made directly to the issuing bank, the nominated bank's claim will indicate the details of where the issuing bank is to make payment.

A documentary credit may also indicate the details of the name of a reimbursing bank (usually domiciled in the country of the currency) to which a reimbursement claim should be sent.

Two significant problems for a nominated bank and a beneficiary relate to:

- matching the value date of funds to be received by the nominated bank with the value date to be applied to the payment made to the beneficiary; and
- possible delays in the nominated bank receiving reimbursement. Bank-to-bank reimbursement is covered more fully in Topic 22.

#### **Settlement by a confirming bank**

Most of the comments made in respect of a named nominated bank will also apply to a confirming bank. The main difference is that the confirming bank is required to effect settlement to the beneficiary in accordance with the terms and conditions of the documentary credit and of its confirmation, and in doing so it will attempt to match the value date of the payment to the beneficiary with the date on which it expects to receive reimbursement from the issuing bank or a reimbursing bank.

A confirming bank, as part of its decision process to confirm the credit, may insist upon a specific form of reimbursement instruction to be put in place.

#### **Settlement by any bank in a freely available documentary credit**

The claims procedure by a bank nominated in the circumstances of a freely available documentary credit are also the same as those for a named nominated bank. The one exception is that there may be no ability to debit the account of an issuing bank, unless such nominated bank is also the advising bank and therefore the holder of any accounts in the name of the issuing bank.

#### **Settlement by an issuing bank**

The issuing bank is required to reimburse the nominated bank and, sometimes, to honour a presentation made directly by or on behalf of the beneficiary. In these circumstances, the issuing bank cannot escape liability for any delay in effecting settlement.

## 17.4 Transmitting claims, effecting payment and advising beneficiaries or nominated banks

Most of the problems related to payment of proceeds are caused by the use of non-standard messages and advices. In order to minimise these problems, the international practice (where possible) is to use SWIFT, the advantages of which are that:

- most messages are authenticated automatically;
- there are specific message formats for specific tasks associated with paying a beneficiary and a nominated bank;
- the formats used have unique fields for each element of the message; and
- the fields that are essential are mandatory, which means that the message cannot be sent without their completion.

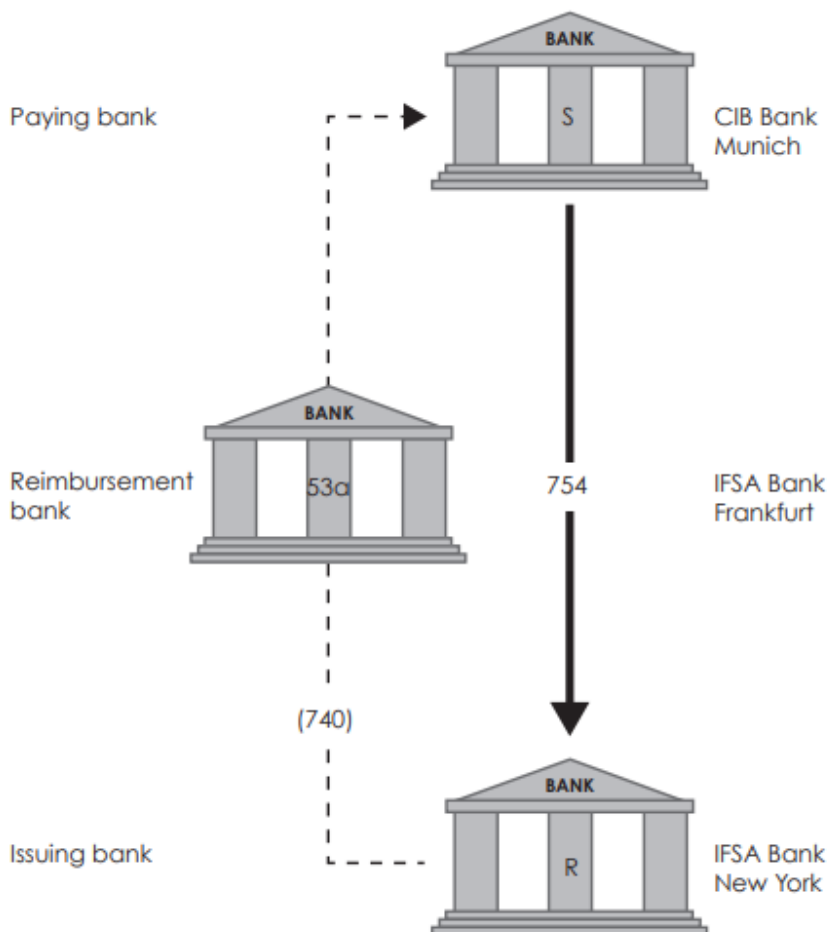
More information can be obtained from the SWIFT operating guidelines.

### 17.4.1 SWIFT message types

Information flow charts extracted from the SWIFT operating guidelines are shown for message types:

- MT754 – advice of payment / acceptance / negotiation (Figure 17.1); and
- MT756 – advice of reimbursement or payment (Figure 17.2).

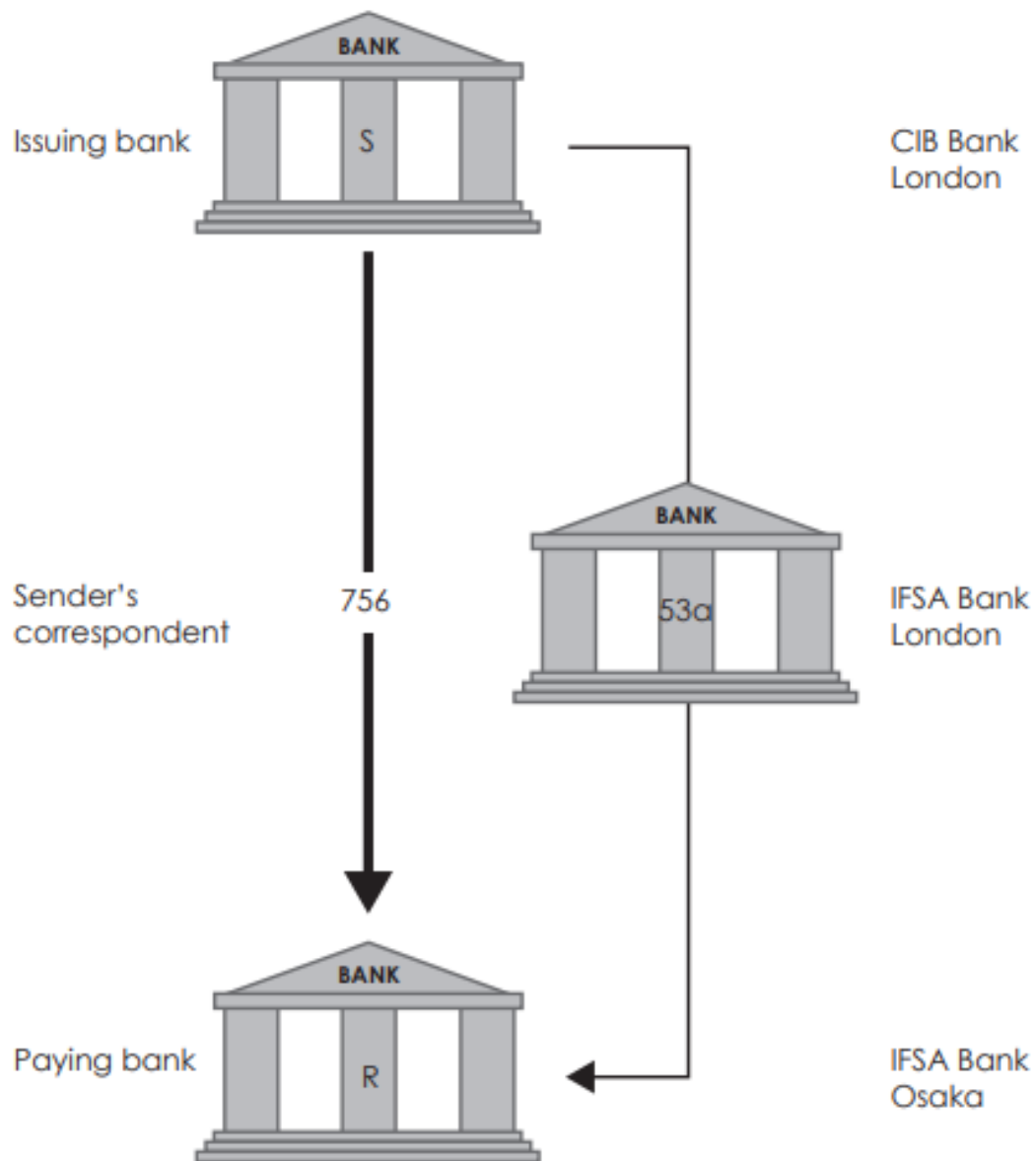
**Figure 17.1 MT754 (Advice of payment / acceptance / negotiation)**



Source: SWIFT



Figure 17.2 MT756 (Advice of reimbursement or payment)



Source: SWIFT

Note that the number codes in Figures 17.1 and 17.2 refer to the SWIFT MT message types. For example, the reference to '740' refers to the SWIFT MT message that is sent by the issuing bank to the reimbursing bank to provide a reimbursement authorisation. The figure '53a' refers to the field in the MT700 in which the name of the reimbursing bank will be indicated. The letter 'S' refers to the sender and 'R', to the recipient.

## Conclusion

Selecting the appropriate settlement term is fundamental to the agreement between the applicant and the beneficiary. However, this entails knowing the differences between sight payment, deferred payment, acceptance and negotiation.

Aligned to the selection of the most appropriate settlement term is assigning the correct reimbursement instruction for any nominated bank or confirming bank receiving reimbursement for any honour or negotiation that is effected.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- outline the difference between honour and negotiation?
- explain which settlement type provides for recourse by a nominated bank and what recourse, if any, is available to a confirming bank that has honoured or negotiated?
- explain why the acceptance of a draft is conveyed by a SWIFT MT799 message?

## Test your knowledge

Use these questions to assess your learning for Topic 17.

1. A documentary credit expires in the country of the beneficiary and the advising bank. The advising bank is named as the nominated bank, and the amount of the documentary credit is available to the beneficiary against presentation of drafts drawn on the issuing bank at 30 days after shipment accompanied by specified documents in field 46A. Of what type of availability is this a description?

- a. Acceptance.
- b. Deferred payment.
- c. Negotiation.
- d. Payment.

Answer: C. The credit is available with a nominated bank with a draft drawn on the issuing bank. If it agrees to act on its nomination, the nominated bank will negotiate. See section 17.1.1.

2. A customer of your bank, who is the beneficiary of a documentary credit available by negotiation and confirmed by your bank, presents a set of documents to you. The payment is due 90 days after the date of shipment. The beneficiary asks you to advance funds to it. If the documents meet the requirements of the documentary credit, what is this type of negotiation?

- a. Negotiation under reserve.
- b. Negotiation at sight.
- c. Negotiation with recourse.
- d. Negotiation without recourse.

Answer: D. Because the credit has been confirmed, any negotiation is effected without recourse (sub-article 8(a)(ii)). See section 17.2.2.

3. When a documentary credit is made available with a nominated bank by payment, which of the following reimbursement instructions is not appropriate?

- a. Debit the account of the issuing bank held with the nominated bank.
- b. Claim reimbursement from a named reimbursing bank.
- c. Issuing bank to reimburse the nominated bank on receipt of documents by the issuing bank.
- d. Issuing bank to reimburse the nominated bank upon receipt of a SWIFT message indicating the presentation of complying documents to the nominated bank.

Answer: C. If a documentary credit is available with a nominated bank by payment, the reimbursement instruction must be either options a, b or d. Option c is applicable to a credit available by sight negotiation. See section 17.3.1.

4. A documentary credit is available with a nominated bank by acceptance of a draft drawn at 90 days after the date of shipment. The documentary credit has not been confirmed. The beneficiary

presents complying documents to the nominated bank and requests the nominated bank to accept the draft and to advance the funds to it less the charges and interest costs of the nominated bank. The nominated bank agrees. On the due date, the issuing bank is not in a position to reimburse the nominated bank because of its insolvency. The nominated bank, which had not confirmed the credit, has the right to seek recourse from the beneficiary. True or false?

- a. True.
- b. False.

Answer: False. Because the nominated bank has accepted a draft drawn on it, this constitutes an undertaking to pay on the due date. This undertaking is without recourse to the beneficiary. See sections 17.1.1 and 17.2.2.

5. A documentary credit is available with a nominated bank by deferred payment. The credit is not confirmed. The beneficiary presents documents to the nominated bank that are found to be in compliance with the terms and conditions of the credit. The beneficiary requests that the nominated bank issue its deferred payment undertaking and then provide a prepayment thereof. The nominated bank declines and states that it is not willing to take the documentary risk. The documents are sent to the issuing bank for honour. The issuing bank sends an advice to the nominated bank, indicating that the documents have been taken up and that, on the due date, the issuing bank will effect settlement to the nominated bank. The beneficiary now requests the nominated bank to provide an advance based on the advice of the issuing bank. Which of the following is true?

- a. The nominated bank may go ahead and provide an advance based on the advice of acceptance received from the issuing bank.
- b. The nominated bank may go ahead and provide an advance on the basis that both it and the issuing bank find the documents to be compliant.
- c. The nominated bank may go ahead and provide an advance, provided that it issues its own deferred payment undertaking.

Answer: C. A nominated bank may act on its nomination after receipt of an advice from the issuing bank that documents have been taken up. Because the credit is available by deferred payment, sub-article 12(b) authorises the nominated bank to prepay, but only on the proviso that it incurs its deferred payment undertaking. See section 17.2.3.

## Answers

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### CHECK YOUR UNDERSTANDING (section 17.1.1)

True. This is a difference between acceptance and negotiation. See section 17.1.1.

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### CHECK YOUR UNDERSTANDING (section 17.1.2)

c. The presentation of complying documents.

If complying documents are presented, UCP 600 requires that a bank act according to its own defined and agreed role or the undertaking that it may have given under that documentary credit. The delivery of documents to the applicant and the control over the goods that those documents may have is similarly driven by the presentation of complying documents. See section 17.1.

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**CHECK YOUR UNDERSTANDING (section 17.1.4)**

- a. Sight payment.
- b. Negotiation.
- d. Acceptance.

See section 17.1.1.

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**CHECK YOUR UNDERSTANDING (section 17.3)**

True. Recourse entitles a nominated bank to reclaim the funds in the event that reimbursement is not forthcoming. See section 17.2.1.

## Topic 18 Refusing documents

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### Learning objectives

By the end of this topic, you should be able to:

- describe the required data for a notice of refusal; and understand the requirements of article 16 as an issuing bank, confirming bank or nominated bank.

### Introduction

Once the document examination has been completed, a document examiner will decide whether or not the documents comply. If the documents do not comply, a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may decide to refuse to honour or negotiate.

This topic looks at how discrepant documents should be handled.

#### Think...

Before you start work on this topic, consider what you already know about discrepant documents.

For example:

Are you aware of the criteria that is needed for a notice of refusal to meet the requirements of article 16?

Do you know why an incomplete or incorrectly worded notice of refusal may lead to a confirming bank or issuing bank being required to honour or negotiate what is a discrepant presentation?

Are you familiar with the risks involved in creating a notice of refusal and how banks need to manage those risks by aligning their processes with the content of article 16?

## 18.1 Preliminary considerations

UCP 600 prescribes the process following presentation, for examination, seeking a waiver and providing notice of refusal. These processes are primarily governed by the provisions of sub-articles 14 (a) and (b), and article 16.

Sub-articles 14(a) and (b), and article 16 specifically prescribe the actions expected of a nominated bank that is acting on its nomination, a confirming bank, if any, and the issuing bank, in the examination of documents presented under a documentary credit. These sub-articles and article specifically dictate the process of examination of documents, the decision as to whether to take up or refuse the documents, the process of seeking waiver of discrepancies by the issuing bank, providing notice of discrepancies and the maximum time for the performance of the steps prescribed. Several variations on the performance of the prescribed actions in UCP 600 have evolved over the years, many of which are not in accordance with UCP 600. The development of these practices is invariably outside the scope of UCP 600 and could place an issuing bank or confirming bank at risk for not complying with the terms of UCP 600.

It should be noted that article 16 does not impose a requirement that messages relating to a discrepant presentation, sent from or to an issuing bank, confirming bank or nominated bank, are authenticated.

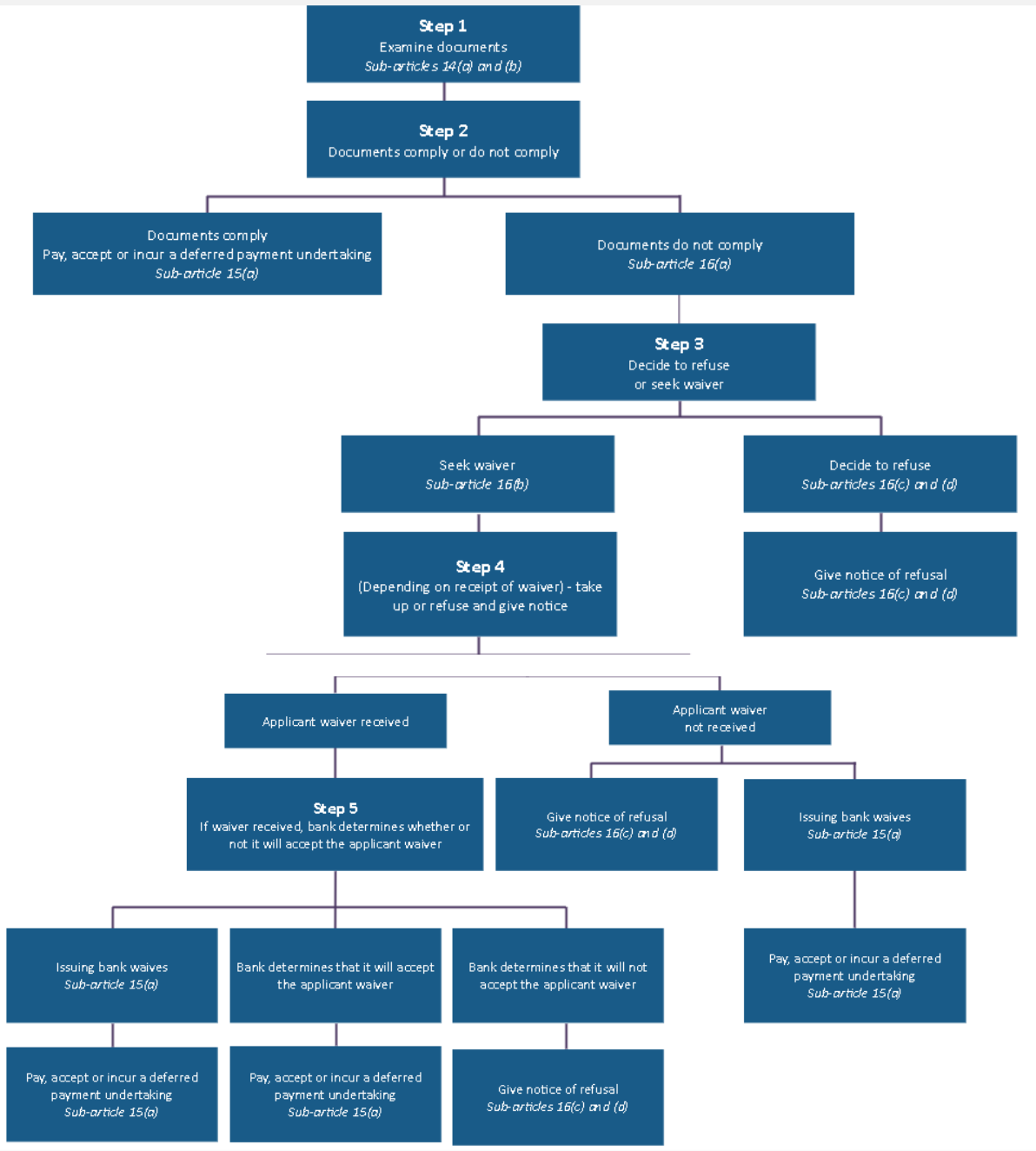
Although there are no published statistics for the number of presentations that are found to be discrepant on first presentation, it is widely reported in trade magazines that the figure is in the region of 60% or more. This figure has not changed significantly over recent years. No matter the actual percentage figure, this does not mean that these presentations are never honoured or negotiated. Almost all of them will be honoured or negotiated at some stage. This will occur due to the correction or replacement of a discrepant document by the beneficiary or other issuer of a document, and/or by the applicant providing the issuing bank with an acceptable waiver of the discrepancies and the issuing bank authorising the nominated bank or confirming bank to honour or negotiate, or by the issuing bank effecting honour or reimbursement itself.

To understand the specific steps that are involved, it is necessary to follow the process of examination of documents specifically as it is prescribed by UCP 600 and to examine each step and the individual requirements.

Figure 18.1 provides a useful visual guide to the required steps and action points. The text that follows is aligned to the five steps that appear in the flowchart.

The text only addresses the obligations of the issuing bank because it is the only bank authorised to seek a waiver from the applicant. Comments are added, where appropriate, for a confirming bank or a nominated bank acting on its nomination.

Figure 18.1 Examination of documents, waiver of discrepancies and notice under UCP 600





### 18.1.1 Step 1: Examine documents

As discussed in Topics 13-15, the first step in the process when documents are presented is to examine them.

Sub-article 14(b) states that a nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank each has a maximum of five banking days following the day of presentation in which to examine and determine whether a presentation is complying.

The maximum of five banking days should not be seen as automatically giving a five-banking-day period for every transaction. Specific circumstances within an issuing bank, at the time of presentation, or the number or type of required documents presented, may require that it takes the entire period to examine the documents, make a decision whether to take up or refuse the documents, and inform the presenter accordingly. However, this period is not expected to apply to every presentation of documents. In most cases, the examination will be completed in fewer than five banking days following the day of presentation.

The maximum period of five banking days is not curtailed or otherwise affected by a presentation that is made less than five banking days prior to the expiry date or the latest presentation date that is applicable under the documentary credit.

### 18.1.2 Step 2: Deciding whether documents comply or do not comply

Once the documents have been examined, the issuing bank has to determine whether or not they appear on their face to be in compliance with the terms and conditions of the documentary credit.

- **Documents comply** – if the issuing bank determines that the documents comply with the terms and conditions of the documentary credit, it must take up the documents and effect honour or reimbursement (sub-article 15 (a)).

For a confirming bank, sub-article 15(b), will be applicable. For a nominated bank acting on its nomination, sub-article 15(c), will be applicable.

- **Documents do not comply** – if the issuing bank determines that the documents do not comply with the terms and conditions of the documentary credit, it is not required to take up the documents and may decide to refuse to honour (sub-article 16(a)).

This stance equally applies to a confirming bank or a nominated bank acting on its nomination who may decide to refuse to honour or negotiate (sub-article 16(a)).

#### **Check your understanding**

The nominated bank is the bank that may seek a waiver from the applicant. True or false?

### 18.1.3 Step 3: Decide to refuse or seek applicant waiver

If the issuing bank determines that the documents do not comply, it has two options:

1. it may refuse the documents and give notice of refusal to the presenter; or
  2. it may first seek applicant waiver of the discrepancies.
- **Give notice of refusal** – if the issuing bank decides to refuse the documents, it must provide a notice of refusal in accordance with sub-article 16(c). This must be a single notice, eg multiple notices of refusal within the same day or within the five-banking-day period are not acceptable. In such circumstances, the first notice of refusal will be the one that is binding on the issuing bank.

Sub-article 16(c) requires that the notice of refusal provide an indication to the effect that the bank is refusing the documents and must state all discrepancies in respect of which the issuing bank is refusing the documents. In addition, sub-article 16(c)(iii) specifically provides that the notice must state one of the following statuses for the documents:

- a) that the bank is holding the documents pending further instructions from the presenter;
- b) that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver;
- c) that the bank is returning the documents; or
- d) that the bank is acting in accordance with instructions previously received from the presenter.

A confirming bank or a nominated bank acting on its nomination is also required to issue a notice of refusal in the same structure, except that status b) above is not applicable to these banks.

- **Seek applicant waiver** – sub-article 16(b) gives the issuing bank the option, in its sole judgement, to approach the applicant for a waiver of the discrepancies. There is no requirement on the part of the issuing bank to seek a waiver and any decision to do so is completely within its discretion.

If the issuing bank decides to seek a waiver, prior to issuing its refusal notice, it must still comply with the requirement of five banking days under sub-articles 14(b) and 16(d).

The issuing bank is not bound by an applicant's decision to waive the discrepancies.

When issuing banks have elected to contact the applicant for a waiver prior to giving notice of refusal to the presenter, they will impose a time frame on the applicant. This prescribes the amount of time that the applicant has to make the decision to waive the discrepancies and provide this information to the issuing bank. In order to avoid a refusal of documents by the issuing bank, an applicant waiver should be provided to the issuing bank within the time frame prescribed by the issuing bank. This timeframe will be governed by the need for the issuing bank to issue any notice of refusal by the close of the fifth banking day following the day of presentation.

Sub-article 16(d) prescribes the manner and timing in which a notice of refusal must be sent.

#### 18.1.4 Step 4: (Depending on receipt of waiver) take up or refuse and give notice

**Determine if the issuing bank will waive the discrepancies** – if the applicant has not provided its waiver of discrepancies within the time frame prescribed by the issuing bank, the issuing bank must make a decision as to whether it will take up or refuse the documents. The fact that the issuing bank could waive the discrepancies despite not having received a waiver from the applicant is often overlooked. Having placed the applicant on notice of discrepancies and then waiving them, an issuing bank should consider the possible implications with regard to its reimbursement agreement with the applicant.

- **If the issuing bank waives the discrepancies** – take up the documents: if the issuing bank decides on its own to waive the discrepancies, it must take up the documents. The decision to take up non-complying documents does not amend the documentary credit. It also does not bind the issuing bank to honour subsequent drawings with the same discrepancies under that or any other documentary credit.
- **If the issuing bank refuses the documents** – refuse and give notice: if the issuing bank decides to refuse the documents, it must send a notice of refusal in accordance with sub-articles 16(c) and (d).

A confirming bank or nominated bank acting on its nomination will also make the above assessments as to whether to take up the documents or to issue a notice of refusal to the presenter.

### 18.1.5 Step 5: (If waiver received) determine whether or not to accept the applicant waiver

**Determine if the issuing bank will waive the discrepancies** – if the applicant conveys its waiver of discrepancies, the issuing bank must then make its decision as to whether it will agree to accept it. Even if an applicant waives the discrepancies, the issuing bank is not required to accept such waiver. This applies even if the issuing bank requested such waiver. However, in some cases, local law may have a bearing if an issuing bank declines to act after requesting, and receiving, a waiver from the applicant.

- **If the issuing bank agrees to accept the applicant's waiver of the discrepancies** – take up the documents: if the issuing bank determines that it will accept the waiver, it must take up the documents despite the discrepancies that it had identified and honour or reimburse.
- **If the issuing bank does not accept the applicant's waiver** – refuse and give notice: if the issuing bank receives the applicant's waiver and decides to refuse the documents despite the waiver, it must send its notice of refusal in accordance with sub-articles 16(c) and (d).

It should be noted that if the issuing bank decides not to accept the applicant's waiver, where a notice of refusal has already been issued, it should inform the presenter of this decision and seek further instructions for the handling of the documents.

**Performance under the rules** When the issuing bank performs according to article 16, there is no risk provided that it conforms specifically to the steps outlined for examination, waiver and notice.

**Check your understanding**

If an issuing bank decides that the documents do not comply, it may give notice of refusal including a status for the documents. Which of the following meet the requirements of UCP 600? Select three correct answers.

- a. The issuing bank is holding the documents pending further instructions from the presenter.
- b. The issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it or receives further instructions from the presenter prior to agreeing to accept a waiver.
- c. The issuing bank is sending the documents to the applicant for their approval.
- d. The issuing bank is returning the documents.

## 18.2 Receiving prior requests from a nominated bank for authority to honour or negotiate

If a nominated bank finds discrepancies in the presented documents, it is common (at the specific request of the presenter in its covering letter or as a result of a presenter request in response to a notice of refusal) for it to ask the issuing bank for authority to honour or negotiate, despite those discrepancies. These requests are often sent in the form of a SWIFT MT750 message and include wording along the following lines.

May we negotiate documents for USD 124,563 under your credit DC no. 78910 despite the following discrepancies:

1. Late shipment – bill of lading dated 25/07/xx.
2. Gross weight on weight list shows 126.15MT, whereas the bill of lading shows 122.56MT.
3. Inspection certificate issued by ABC Ltd, Singapore instead of ABCD Co. Ltd, Hong Kong.

Because the applicant's mandate to the issuing bank is to debit its account, or to remit funds to the issuing bank, only with respect to conforming documents, the issuing bank may refer such requests to the applicant for approval (although there is no obligation to do so). If the applicant gives approval in the form of a waiver and the issuing bank agrees to accept the waiver, the issuing bank may reply to the request in the following terms using a SWIFT MT752 message:

You may negotiate USD124,563 against our credit DC no. 78910 despite the discrepancies stated in your message of ... [date] if otherwise in order.

The words 'if otherwise in order' inform the nominated bank that approval is conditional upon there being no other discrepancies found upon receipt of documents by the issuing bank.



### 18.2.1 Approaching the applicant

If a document examiner of the issuing bank has found discrepancies (including those noted by the nominated bank), sub-article 16(b) indicates that the issuing bank may, in its sole judgment, approach the applicant for a waiver of the discrepancies.

The purpose of approaching the applicant is confined to consultation. It is not intended to allow the applicant any part in the decision to refuse documents, or to allow the applicant to examine documents in order to find further discrepancies. The determination of whether or not documents comply with the terms and conditions of the documentary credit is for the issuing bank alone.

If the issuing bank seeks a waiver from the applicant, the applicant should respond promptly.

### 18.2.2 Giving notice of refusal

If an applicant (when approached) has indicated an inability to approve any noted discrepancy or the issuing bank decides to refuse documents without prior consultation with the applicant for a waiver, the issuing bank must give notice to the presenter of the documents of its decision to refuse them.

The requirements and format for a notice of refusal are stated in sub-articles 16(c) and (d) and equally apply to a confirming bank or a nominated bank acting on its nomination.

There are three basic requirements:

1. An indication of refusal of the presentation.
2. A list of the applicable discrepancies, and these should be clearly stated.
3. One of the status of the documents as indicated in sub-article 16 (c)(iii)(a-d).

The notice is invalid if one or more of these requirements are not satisfied.

If presentation has been received from a bank, the notice of refusal is usually transmitted by SWIFT MT734 message.

Because the SWIFT MT734 message is titled 'Advice of Refusal', there is no need for the content of the message to indicate 'We refuse' or words of similar intent.

When using the SWIFT MT734 message, a bank may indicate the status of the documents, in field 77B, by the use of a code word rather than by repeating the full text specified in sub-article 16(c)(iii)(a–d). The code words are: for a), 'HOLD'; for b), 'NOTIFY'; for c), 'RETURN'; and for d), 'PREVINST'.

If a bank has issued a notice of refusal indicating (a) or (b) as the status of the documents, it may subsequently return the documents to the presenter at any time (sub-article 16(e)). This course of action would usually occur if, despite repeated requests, no applicant waiver appeared to be forthcoming, or due to the absence of any further instructions from the presenter as to the handling of the discrepant documents.

A notice of refusal may also be conveyed to a presenter by the use of free format SWIFT messages such as the MT799, MT199 or by other forms of telecommunication, like fax, email, telex or telephone. When conveying a notice of refusal using one of these methods, care should be taken to ensure compliance with the three basic requirements outlined earlier in this section.

A number of banks use a SWIFT MT799 (free format) message as the method of advising its notice of refusal and include words to the effect that the receiver of the message should treat it as an MT734 (Advice of Refusal) message. The ICC Banking Commission, in response to a question posed in ICC Opinion R914 (TA892rev), has stated:

The notice of refusal was provided via SWIFT MT799, ie not via SWIFT MT734, which is the appropriate SWIFT message type for a refusal notice sent between banks. Although a refusal notice may be sent as an MT799 message, and even if it states 'Kindly treat it as MT734', this does not change the requirements for the refusal notice as stated in article 16. As a

consequence, it should be noted that reference in an MT799 to treating the message as an MT734, noting that the MT734 is titled as an 'Advice of Refusal', does not allow for the MT799 message to not indicate that the sender is refusing the documents.

Therefore, the addition of wording, such as, "Kindly treat it as MT734" or similar, can be misleading and should not be used.

It is common for a confirming bank or a nominated bank acting on its nomination, to advise the presenter of discrepancies by telephone. This is especially so where the presenter is the beneficiary. In these circumstances, it is advisable to confirm the content of the telephone conversation in writing that is sent immediately after the call is concluded. However, note that the notice of refusal is conveyed in the telephone conversation and the written communication is just a confirmation of what should have been said. The telephone advice of the refusal must include the three basic requirements mentioned earlier in this section.

### 18.2.3 Actions following a notice of refusal

After a nominated bank acting on its nomination, a confirming bank or the issuing bank has given notice of refusal of documents, it is not uncommon for the presenter to dispute the discrepancies with that bank. A document examiner who has made the determination to refuse must be in a position to respond to the presenter.

In most cases, there will usually be a relatively short interval between refusal and eventual honour, negotiation or reimbursement. Nevertheless, a document examiner must be able to justify his or her action to a presenter or applicant (in the case of an issuing bank). To do so, a document examiner must not only have a thorough knowledge of UCP 600 and documentary credit procedure, but also of commercial practice.

In all cases, a document examiner should maintain a record with whom discussions were held and of the content of such discussion. It is prudent banking practice for a bank to retain the documents in a secure location, for example a locked room or safe, and to keep the presenter or applicant regularly advised of the status and to regularly follow-up for further instructions or waiver, as applicable.

Upon receipt of an acceptable waiver from the applicant, the documents should be delivered to them against immediate honour or reimbursement to the presenter or, in the case of usance drawings, an undertaking to the presenter to honour or reimburse on the due date. It is important to be fully aware of these procedures.

If the applicant receives documentation that it considers to be discrepant after the issuing bank has accepted the presentation as being compliant, it should immediately contact the issuing bank. However, it should be noted that once honour or reimbursement is effected by the issuing bank it is without recourse to the presenter. Any dispute as to the status of the documents will need to be resolved between the issuing bank and the applicant.

In the absence of further instructions from the presenter or receipt of an acceptable waiver from the applicant, at some stage, a decision may be taken to return the documents to the presenter to the complete discharge of the nominated bank, confirming bank or issuing bank. This is covered by sub-article 16(e) and was explained in section 18.2.2. Returning the documents is usually a last resort and most banks would provide the presenter with prior notice of an intention to return the documents, in order to hasten a response from the presenter or applicant.

The period for which documents may be held without receipt of further instructions or an acceptable waiver will usually form part of a bank's standard procedures.

**Check your understanding**

Which of the following are basic requirements for a notice of refusal from an issuing bank?

Select two correct answers.

- a. It must state that the bank is refusing to honour.
- b. An applicant waiver must have been sought prior to sending.
- c. It must include each discrepancy in respect of which the bank is refusing.
- d. The notice must be authenticated.

## 18.3 Preclusion and the right to claim a refund and interest

### The preclusion rule

Sub-article 16(f) indicates that preclusion only applies to an issuing bank or a confirming bank, ie the banks that have provided the beneficiary with an undertaking to honour or negotiate a complying presentation. This preclusion applies in the event that either bank fails to act according to the requirements of article 16 when refusing documents.

**Note:** If a nominated bank fails to act according to the requirements of article 16, it is not precluded under this rule. A nominated bank may have agreed to act on its nomination to honour or negotiate, but it gave no undertaking to do so.

### The right to claim a refund and interest

If an issuing bank identifies discrepancies in the documents received from a nominated bank, and that nominated bank has already been reimbursed in accordance with the terms and conditions of the documentary credit because, in its opinion, the documents were complying, in addition to issuing its notice of refusal the issuing bank may also request a refund of the amount that has been paid to the nominated bank, together with interest covering the period commencing the day on which the issuing bank's account was debited to the date on which the funds are returned (sub-article 16(g)).

In most cases, a refund is not requested. However, if the applicant decides not to provide a waiver of the discrepancies or the issuing bank decides not to approach the applicant for a waiver or refuses to accept a waiver, a request for refund and interest is to be expected.

## 18.4 Common mistakes when refusing documents

### Indicating refusal

Sub-article 16(c)(i) requires a notice of refusal to state that the bank is refusing to honour or negotiate.

As previously mentioned, when a SWIFT MT734 message is sent, it is not a requirement that there be an indication of the bank refusing the documents. The MT734 message is designated as being an 'Advice of Refusal' and, as such, would meet the requirements of sub-article 16(c)(i).

When banks provide a notice of refusal by other means, such as by MT799 (free format) message, telex, email, telephone, etc. it is often the case that there is no indication given to the presenter that the bank is refusing the documents. These advices may state wording such as 'We have noted the following discrepancies' or 'We have observed the following discrepancies', neither of which sets of words provide an indication of refusal. If such a message were to be sent or given by an issuing bank or confirming bank, it would face preclusion under sub-article 16(f), and the bank would be required to honour or negotiate what will still be discrepant documents. Such banks would then be at the mercy of the applicant or issuing bank, respectively, as to whether they will be reimbursed.

Such occurrences have been highlighted in a number of ICC Opinions including R892 (TA878rev) where an issuing bank sent an MT799 message to the issuing bank in the following form:

[The] following discrepancies have been found with the document ... [Applicant name] ... has advised that there has been delay in commissioning of project as per date specified in contract as per additional clause 47A 3. Meanwhile, we hold your document at your risk and responsibility.

As outlined in the analysis and conclusion given by the ICC Banking Commission, there is no indication of a refusal and, although discrepancies appear to have been quoted, the status of the documents does not conform with any of the status in sub-article 16(c)(iii)(a-d). The references to the contract have no significance on the determination of compliance of the documents. The conclusion stated that the message was not a notice of refusal as defined by article 16. As a result, the issuing bank was precluded under sub-article 14(f), from claiming that the documents were discrepant.

Another Opinion, R914 (TA892rev), also quoted the text from an MT799 message of the issuing bank:

Kindly treat as MT734 under our ref [XXXXXX] for [Amount] for [Issuing bank credit no.],  
Importer [Applicant name], Exporter [Beneficiary name]. Kindly find the below discrepancy:

1. Draft survey report omits to evidence the page no. as 'page 1 of 2'.

Thanks and regards.

Again, there is no indication of refusal. There is an indication of a discrepancy, but there is no status according to sub-article 16(c)(iii)(a-d).

The analysis and conclusion of the ICC Banking Commission stated that the message did not comply with article 16 and that the issuing bank is precluded from claiming that the documents were not compliant. In any event, this opinion stated that the discrepancy was not valid based on the other facts that were presented.

### Indicating each discrepancy

Sub-article 16(c)(ii) requires that a notice of refusal state each discrepancy in respect of which a bank refuses to honour or negotiate.

The discrepancies must be clear and unambiguous. For example, a discrepancy of 'Invoice not as per LC' would not be considered a clear or valid discrepancy and should be disregarded in any refusal notice. The wording of the discrepancy should indicate in what respect(s) the invoice does not conform to the requirements of the documentary credit or UCP 600. For example, whether the goods description is incorrect, the name of the beneficiary or applicant is different, etc.

### The status of the documents

Sub-article 16(c)(iii) requires that a notice of refusal indicate one of four status for the documents. It should be noted that, after each of the first three status, the word 'or' appears. This denotes that only one of the status should appear in a notice of refusal.

However, it is often seen that a notice of refusal will contain a mixture of both status (a) and (b), as the following example demonstrates.

Documents are held pending your further instructions. [Status (a)] In the meantime, we are contacting the applicant for a waiver, and if we receive a waiver that is acceptable to us, we will honour and release the documents to the applicant without any further reference to you. [Status (b)].

The issue with this clause is that, in the first sentence, the bank is indicating that the documents are being held pending the instructions of the presenter, while the second sentence indicates that if an acceptable waiver is received, the bank will release the documents to the applicant without further reference to the presenter.

Therefore, a conflict exists regarding the holding of the documents. While such a combination of words will not create preclusion under sub-article 16(f), using these words would require the issuing bank to seek the agreement of the presenter to any waiver received from the applicant prior to releasing the documents. In effect, the wrong choice of words creates an additional administrative burden that was not necessary.



## Conclusion

The refusal of documents should be a straightforward process given that there are only three components to the required message – an indication of refusal, a list of the discrepancies and the status that is being applied to the presentation.

Despite this, many banks get it wrong and, where they are an issuing bank or confirming bank, they face possible preclusion from claiming that the documents are discrepant. This can create a serious risk to the bank if the applicant or issuing bank, respectively, decide not to waive the discrepancies that will exist in the presentation.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain some key decisions that need to be made before a notice of refusal is sent by an issuing bank?
- outline which of the four status in sub-article 16(c)(iii)(a-d) would apply to a nominated bank?
- describe the steps involved from the time the documents are examined until a decision is made to accept the waiver of an applicant?

## Test your knowledge

Use these questions to assess your learning for Topic 18.

1. An issuing bank refuses documents and decides to approach the applicant for a waiver. The request is sent on a Tuesday afternoon. On Wednesday morning, the applicant replies, giving its waiver. The issuing bank is bound to accept the waiver of the applicant. True or false?

Answer: False. Irrespective of the time that transpires between requesting a waiver and the issuing bank receiving it from the applicant, an issuing bank is under no obligation to accept it. See section 18.1.5.

2. A nominated bank receives documents on Monday 15 July. There is a heavy workload at the time because of the holiday period and the examination process is concluded late on Monday 22 July. Discrepancies have been found and a notice of refusal is sent on the morning of 23 July. The beneficiary states that the nominated bank is precluded under sub-article 16(f), from claiming that the documents are discrepant and that it must negotiate. The nominated bank disagrees. With which do you agree?

- a. The nominated bank.
- b. The beneficiary.

Answer: A. Preclusion, as outlined in sub-article 16(f), applies only to the banks that have given an undertaking to the beneficiary – that is, the issuing bank and a confirming bank. See section 18.3.

3. When an issuing bank finds discrepancies in documents, it must always contact the applicant for a waiver. True or false?

Answer: False. Sub-article 16(b) states that when an issuing bank determines that a presentation does not comply, it may in its sole judgement approach the applicant for a waiver of the discrepancies. An issuing bank may, at the time of determining that the presentation is discrepant, decide that it will not accept any waiver of the applicant. In these circumstances, no contact with the applicant will be made. See section 18.1.5.

4. A confirming bank issued a notice of refusal to the beneficiary on 15 July. The status indicated that the bank is 'holding documents pending your further instructions'. By 30 July, the confirming bank has not received any response from the beneficiary despite sending two further reminders. Which of the following is true of this situation?

- a. The confirming bank must retain the documents until such time as the beneficiary provides instructions.
- b. The confirming bank may return the documents to the beneficiary, in the absence of any instructions.
- c. The confirming bank may forward the documents to the issuing bank for settlement without contacting the beneficiary further.

Answer B. Sub-article 16(e) allows a bank that has indicated such a status to the presenter to return the documents at any time thereafter. This will usually happen when, despite numerous requests, the presenter provides no instructions for the further handling of the documents, or when the applicant decides that it will not provide a waiver. See section 18.2.2.

5. A nominated bank receives documents from the beneficiary and identifies two discrepancies. These discrepancies are advised to the issuing bank, with a request that the bank seek a waiver from the applicant so that the nominated bank may negotiate. An acceptable waiver is received and the issuing bank informs the nominated bank accordingly. The nominated bank negotiates the documents. When the issuing bank receives the documents, it identifies a further discrepancy in addition to the two discrepancies identified by the nominated bank. Since the issuing bank has obtained the waiver of the applicant, it must honour and reimburse the nominated bank. True or false?

Answer: False. The waiver obtained by the issuing bank related only to the discrepancies identified by the nominated bank. If the issuing bank identifies further discrepancies, then it is entitled to refuse the documents for those reasons. See section 18.2.

## Answers

### CHECK YOUR UNDERSTANDING (section 18.1.2)

False. The issuing bank is the bank that may seek waiver from the applicant. See section 18.1.

### CHECK YOUR UNDERSTANDING (section 18.1.5)

- a. The bank is holding the documents pending further instructions from the presenter.
- b. The issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it or receives further instructions from the presenter prior to agreeing to accept a waiver.
- d. The bank is returning the documents.

Sub-article 16(c), requires that the notice of refusal provide an indication to the effect that the bank is refusing the documents and must state all discrepancies in respect of which the issuing bank is refusing the documents. In addition, sub-article 16(c)(iii), specifically provides that the notice must state one of the following status for the documents that:

- a) the bank is holding the documents pending further instructions from the presenter; or
- b) the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
- c) the bank is returning the documents; or
- d) the bank is acting in accordance with instructions previously received from the presenter.

See section 18.1.3.

### CHECK YOUR UNDERSTANDING (section 18.2.3)

- a. It must state that the bank is refusing to honour.
- c. It must include each discrepancy in respect of which the bank is refusing.

There are three basic requirements as follows:

1. An indication of refusal of the presentation.
2. A list of the applicable discrepancies and these should be clearly stated.
3. One of the status of the documents as indicated in sub-article 16 (c)(iii)(a-d).

These are set out in sub-articles 16(c). Article 16(b) states that a waiver may be sought but does not place any obligation on the bank to do so. There is no requirement for a refusal notice to be authenticated. See sections 18.1, 18.1.3 and 18.2.2.

## References

ICC Opinion R892 (TA878rev) *ICC Banking Commission Opinions 2017*, ICC Publication No. 802E.

ICC Opinion R914 (TA892rev) *ICC Banking Commission Opinions 2018-2019*, ICC Publication No. 807E.

## Topic 19 Transferable documentary credits, back-to-back documentary credits and assignment of proceeds

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### Learning objectives

By the end of this topic, you should be able to:

- describe the basic function and the features of a transferable credit, back-to-back credit and assignment of proceeds;
- identify the difference between a transferable credit and a back-to-back credit; and
- describe the process for an assignment of proceeds.

### Introduction

This topic provides an overview of the purpose and function of transferable documentary credits, back-to-back documentary credits and an assignment of proceeds.

#### Think...

Before you start work on this topic, consider what you already know about a transferable credit, back-to-back credit and the assignment of proceeds. For example:

You may be familiar with transferable documentary credits, and you may have had limited, if any, experience of handling a back-to-back documentary credit, but are you aware of the differences between the two?

Can you describe the circumstances under which a back-to-back documentary credit would be used, rather than a transferable documentary credit?

Assignment of proceeds serve a useful purpose, but do you understand the role that banks may perform when an assignment has been concluded between the beneficiary and another entity, who is often the actual supplier of the goods?

## 19.1 Purpose of a transferable documentary credit

In its simplest form, a documentary credit is issued in favour of the seller (beneficiary), as the manufacturer or producer of the required goods. The seller will effect shipment of the goods, present the stipulated documents to a nominated bank, confirming bank, if any, or the issuing bank and seek honour or negotiation.

In some cases, however, an applicant will conduct business with an intermediary trader, agent or middleman (referred to hereafter as trader) who is engaged to obtain certain goods from one or more manufacturers, producers or suppliers (referred to hereafter as supplier). In this event, the trader will need to buy the goods or make arrangements for their purchase before supplying them to the applicant. Alternatively, it can also occur that a trader is engaged by a supplier where it requires that trader to find buyers for its goods in one or more countries.

Typically, a trader will operate on narrow margins. It does not carry a stock of goods and often has limited working capital. A trader will therefore seek a means of financing the purchase in a manner that does not place a burden on its own resources.

Transferable documentary credits were devised as a response to these needs and are quite common today. The basic idea underlying this feature is that a documentary credit can be issued in favour of the trader that is then used as a means of paying the supplier(s) from which the goods are to be obtained and can act as security for payment for such goods. It also allows for the transfer of the undertaking in the documentary credit to the actual supplier of the goods.

There are a number of similarities with (and differences to) back-to-back documentary credits, which are reviewed in section 19.2.

### 19.1.1 The basic features of a transferable documentary credit

To arrange the issuance of a transferable documentary credit, the final buyer (applicant) instructs its bank to issue a documentary credit in favour of the trader from which the goods are to be bought, stating that it is transferable. For example, field 40A of the SWIFT MT700 message will read 'IRREVOCABLE TRANSFERABLE'.

If an application form for the issuance of a documentary credit requires that the documentary credit be issued as 'divisible', 'fractionable', 'assignable' or 'transmissible', the issuing bank should check with the applicant that it simply requires the documentary credit to be issued as transferable. The bank should explain that the stated terminology has no meaning in the context of UCP 600 and is not to be used. The definition of transferable credit is contained in sub-article 38(b).

When a transferable documentary credit indicates that it is available with a nominated bank by honour or negotiation, that bank is authorised to effect transfer.

When a transferable documentary credit indicates that it is available with any bank by honour or negotiation, the transferable documentary credit must indicate the name of the bank that is authorised to effect transfer.

In each case, the bank that transfers the transferable documentary credit will also be referred to as the transferring bank.

If the bank authorised to effect transfer declines to do so, transfer may be effected by the issuing bank. Alternatively, the beneficiary of the transferable documentary credit will require an amendment to incorporate the name of a bank that is willing to effect transfer.

When a documentary credit is only available with the issuing bank by honour, and unless otherwise stated in the documentary credit, the issuing bank is the only bank authorised to effect transfer. In this case, if the issuing bank transfers the transferable documentary credit it will also be referred to as the transferring bank.

It should be noted that sub-article 38(a), indicates that no bank (not even the issuing bank or a confirming bank) is under any obligation to effect transfer. If it does effect transfer it is only obliged to do so to the extent and manner in which it expressly consents.

When advising a transferable documentary credit to the trader, and where the advising bank or confirming bank is authorised to effect transfer, it should attach its transfer request form to its advice of the transferable documentary credit for completion by the trader. If the transferring bank is a bank other than the advising bank or confirming bank, the trader will need to contact that bank to obtain a copy of its transfer request form.

The transfer request form allows the trader to request the bank to transfer the transferable documentary credit in whole or in part to the trader's supplier(s). If the trader is buying from several suppliers, the bank may be requested to transfer parts of the transferable documentary credit to each supplier. The value of the parts transferred to each supplier represents the price that the trader is paying for the goods. The balance, if any, represents the trader's profit margin.

Once issued, the transferable documentary credit will be referred to as the transferred credit. The beneficiary of the transferable documentary credit (the trader) will then be referred to as the first beneficiary. The beneficiary of the transferred documentary credit (the supplier) will be referred to as the second beneficiary. This is covered in sub-article 38(b).

This structure provides the supplier with security for payment because part of the documentary credit itself is transferred to the supplier and the supplier becomes the beneficiary of its own (transferred) documentary credit. In this way, each supplier obtains the right to claim settlement directly from the bank at which its portion of the documentary credit is available for honour or negotiation against presentation of complying documents. This means that a supplier obtains a large measure of control over the settlement process, because it is within its own control to ensure that the stipulated documents are presented within the time limits established in the transferred documentary credit.

Most importantly, and from the perspective of a trader, a transferable documentary credit allows a trader to provide its supplier with the security of a documentary credit without having to use any part of its own banking facilities, if any exist.



### 19.1.2 The risks and costs of a transferable documentary credit

A transferable documentary credit can involve extra risks and costs for the applicant (the buyer for which the goods are destined). In particular, it accepts the risk of receiving goods from a third party, whom it may not know and with whom there may have been no previous business dealings.

Moreover, once a transferable documentary credit is transferred, more parties are involved. This means that the documents have to be examined and, possibly, mailed twice before they reach the issuing bank. This increases the risk of delay, loss and error along the way.

The greater difficulties involved in controlling the operation under a transferable documentary credit may also increase the risk of fraud. A large part of this risk ultimately falls on the applicant, which undertakes to reimburse the issuing bank provided that a complying presentation has been made under the transferable documentary credit.

The difference between the price paid by the trader and the price that the trader charges to the applicant may be unknown to the applicant.

In respect of costs in relation to the establishment of the transferred documentary credit, sub-article 38(c), indicates that such charges should be borne by the trader (first beneficiary), unless otherwise agreed at the time of transfer. It is usual that the fees involved in transferring a transferable documentary credit are paid to the transferring bank prior to the issuance of the transferred documentary credit.

#### Check your understanding

A transferable credit can only be made available in whole to a second beneficiary at the request of the first beneficiary. True or false?

### 19.1.3 Managing the transferable documentary credit and transferred documentary credit process

A transferable documentary credit will involve:

- the trader who will become known as the first beneficiary and one or more suppliers who will become known as second beneficiaries;
- more than one presentation of documents;
- dealings in possibly more than one country;
- more than one reimbursement; and
- a longer chain of banks than are involved in a non-transferable documentary credit.

As a consequence of these features, a number of risks or problems may arise, and a transferring bank and issuing bank should have in place detailed procedures to manage them. For example:

- It can prove difficult to monitor advices of amendments to the transferable documentary credit and the transferred documentary credit through the chain of the applicant, first beneficiary and one or more second beneficiaries. However, it should be noted that sub-article 38(f), allows for each transferred credit to be amended individually, and that the acceptance or rejection of an amendment by one second beneficiary does not bind any other second beneficiary to the same course of action.
- The second beneficiary or a bank acting on its behalf as presenter or the nominated bank might inadvertently dispatch documents directly to the issuing bank, causing problems for the transferring bank and first beneficiary.
- If there are discrepancies in the documents, it may prove difficult to obtain the second beneficiary's and first beneficiary's agreement to an agreed course of action.

The following steps can be taken to address some of these risks or problems.

- The issuing bank can restrict honour or negotiation and transfer to a single nominated bank. While a trader may be reluctant to agree to such an arrangement, the question that the issuing bank should ask itself is whether it wishes to be exposed to the greater risk inherent in any alternative arrangement and to what extent, if any, the applicant would agree to indemnify the bank for doing so.
- The transferred documentary credit should clearly indicate the routing instructions for the documents by showing a full mailing address of the transferring bank or, where no substitution of documents by the first beneficiary is to occur, the full mailing address of the issuing bank.
- The transferring bank can require the trader to agree on certain aspects, such as the handling of discrepant documents, at the time of submission of its request to transfer.
- The issuing bank should indicate to the applicant the potential for amendments to be accepted or rejected by different second beneficiaries, should there be more than one transfer.

#### 19.1.4 Transferable documentary credits and UCP 600, article 38

A transferable documentary credit can cover the provision of services or performance as well as the shipment of goods. For the purpose of this section, reference is made to a transfer where goods are being shipped.

Sub-article 38(a) gives the transferring bank total control over any agreement to a transfer request, and it attempts to exclude any possibility of the beneficiary (trader) acquiring a legally enforceable right to have the documentary credit transferred. As we discussed in section 19.1.1, no bank is under any obligation to transfer a transferable documentary credit and, if it agrees to a transfer request, it need only do so in the manner expressly consented by that bank.

The justification for this wording is that, when a transferable documentary credit is issued, there is generally no information available relating to the possible transfer(s) that may be requested by the beneficiary (trader). Sub-article 38(a), accordingly protects a nominated bank, or the bank authorised to effect a transfer, against any possibility of being forced to carry out a transfer that it may find unacceptable for commercial or other reasons. This position applies equally to an issuing bank, which may be approached by the beneficiary (trader) to transfer the transferable documentary credit if the nominated bank or a bank authorised to transfer has declined to act.

Sub-article 38(b), requires the issuing bank to indicate the name of the transferring bank when the transferable documentary credit is available with any bank. In all other cases, the bank that is nominated to honour or negotiate will be deemed to be the transferring bank.

Sub-article 38(d), expressly provides that a transferable documentary credit can be transferred only once.

Consequently, the transferred documentary credit cannot be transferred at the request of a second beneficiary to any subsequent third beneficiary, and so on, unless specifically authorised in the transferable documentary credit.

ISP98 treats the transfer of a standby letter of credit differently. ISP98 rule 6.02 applies if a standby letter of credit is issued subject to ISP98. This rule indicates that a transferred standby letter of credit, subject to ISP98, may be transferred more than once but only in its entirety and may not be partially transferred.

In some cases, a trader (first beneficiary) may wish to exclude the automatic application of an amendment received to the transferable documentary credit in its favour, to the transferred credit in favour of the supplier (second beneficiary), pending issuance of its specific instructions to the transferring bank.

The preference of the trader is to be given at the time it requests that a transfer be made and before any transfer has taken place. It is to take the form of an instruction, within the request for transfer, indicating whether the trader retains the right to refuse to allow the advising of any amendments to the supplier (second beneficiary) or that amendments may be issued to the transferred documentary credit(s) automatically. Sub-article 38(e) requires that if the transferring bank consents to the transfer, it must advise the trader's instruction at the time of issuing its transferred documentary credit.

The rules and procedures concerning amendments of documentary credits naturally apply equally to transferable documentary credits (sub-article 38(f)).

Sub-article 38(g) allows the trader, in its transfer request, to request a number of specific changes to the terms and conditions of the transferred documentary credit when a transferred credit is issued. Otherwise, the transferred documentary credit must accurately reflect the terms and conditions of the transferable documentary credit, including any confirmation that may have been added to that documentary credit.

The criteria that may be reduced or curtailed are:

- the amount of the credit;
- any unit price stated therein;
- the expiry date;
- the period for presentation; or
- the latest shipment date or given period for shipment.

As we discussed in section 19.1.1, a nominated bank or a bank authorised to transfer has the authority to decide whether or not it will accept a transfer request, and if it will, on what terms.

The listing of permitted reductions and curtailments in sub-article 38(g) will usually ensure that all of the relevant parties to the transferable and transferred documentary credits are bound by such reductions and curtailments that are made within the scope of that rule. This includes the issuing bank, which is not directly involved in the transfer process and which therefore does not give its specific consent to the particular reductions and curtailments requested by the trader.

In the specific context of a transferable documentary credit, sub-article 38(g) provides that, on transfer, the percentage for which insurance cover must be effected may be increased to provide the amount of cover stipulated in the transferable documentary credit or in sub-article 28(f)(ii). The rationale for this is that the trader will usually be buying the goods from a supplier at a lower price than the sale price that the trader is charging to the applicant of the transferable documentary credit. Thus, a higher percentage insurance cover will be required under the transferred credit to cover the amount of insurance required under the transferable documentary credit.

Where an insurance document is required for presentation under a transferable documentary credit, it is important that the transferring bank obtains the specific instructions of the trader in respect of insurance and that these instructions are clearly shown in the request for transfer, together with instructions in relation to the other permitted alterations.

As may be required by the trader, and as far as practicable, confidentiality in the transferred documentary credit may need to be preserved. For example, the trader may not want the name of the applicant to be divulged to the supplier and vice versa.

When a transferable documentary credit is transferred, the name of the trader, as first beneficiary, can be substituted in the transferred documentary credit for that of the applicant. This provision can make it more difficult for the supplier (as second beneficiary) to find out to whom the trader is supplying the goods. If the supplier obtains this information, they may be able to avoid the trader in subsequent transactions by going direct to the ultimate buyer. However, it is often the case that all the parties are aware of their existence in the transaction.

If the name of the applicant is specifically required by the transferable documentary credit to appear in any document other than the invoice, that requirement must be reflected in the transferred

credit, for example where the transferable documentary credit requires a transport document to indicate the name and address of the applicant as notify party.

When the supplier (as second beneficiary) has shipped the required goods or provided the required services or performance, and presented its documents to the transferring bank, sub-article 38(h) allows the trader (as first beneficiary) to substitute its own invoice and draft, if any, for those of the second beneficiary.

As the supplier has shipped its goods, or provided its service or performance, it is entitled to receive honour or negotiation with the minimum of delay if its documents are complying. Therefore, sub-article 38(i) places an obligation on the trader to submit its substitute documents on first demand. Failure to do so entitles the transferring bank to present the documents of the supplier to the issuing bank, without further regard or responsibility to the trader. The same entitlement applies if the substituted documents create discrepancies that were not apparent in the presentation of the supplier. If the trader does not correct those discrepancies on first demand, the transferring bank may present the documents of the supplier to the issuing bank, without further regard or responsibility to the trader.

The term 'first demand' is not defined in UCP 600. Therefore, the transferring bank should, at the time of transfer, indicate to the trader the period it will permit for substitution to occur.

When submitting its request for transfer, a trader may indicate that honour or negotiation is to occur at the place to which the transferred documentary credit is to be transferred (sub-article 38(j)). Such request is subject to the consent of the transferring bank.

As previously mentioned, one of the risks that can occur with a transferred documentary credit is that the documents of the second beneficiary by-pass the transferring bank by being sent directly to the issuing bank. Sub-article 38(k), provides a rule regarding the disposal of documents.

### Check your understanding

Which of the following statements is correct in respect of a transferable documentary credit?  
Select two correct answers.

- a. It will involve more than one presentation of documents.
- b. The trader is known as the second beneficiary and supplies the goods or services.
- c. It will usually involve more than one country.
- d. Any amendment will automatically apply to the transferred documentary credit.

### 19.1.5 An overview of transferable and transferred documentary credit procedures

This section highlights the main steps in a transferable and transferred documentary credit by briefly summarising the process of a simple transaction, where the advising bank is the nominated bank, and it does not honour or negotiate. Note that the precise details will not be the same in all cases and that the handling of transferable documentary credits does not always go to plan.

As a trader will be engaged by either the buyer or seller of the goods, there will be initial contact between the respective parties. For example, the buyer will make contact with the trader and indicate that it requires the trader to secure the purchase of 500 printers. The details may also include the required specification for the printers.

The trader will identify a potential supplier and agree a purchase price of USD50,000. The trader will contact the buyer, informing them of a potential supplier and that the cost is USD55,000. In this example, the USD5,000 difference is the margin to be earned by the trader. The buyer agrees to the price. The process is as follows:

1. The buyer (applicant) and the seller (trader) conclude a sale contract. They agree that the buyer will request its bank to issue a documentary credit, in favour of the trader, which is designated as being 'transferable'. They should also agree on the other details of the documentary credit, including transport documents and other documents to be presented, expiry date and latest date for shipment, etc. The trader will have agreed another similar sale contract with the supplier(s).
2. The buyer asks its bank to issue an irrevocable transferable documentary credit for USD55,000.
3. The issuing bank transmits the transferable documentary credit details to the advising bank.
4. The advising bank advises the transferable documentary credit to the trader and will attach its standard form of request for transfer to be completed by the trader.
5. The trader requests that the advising bank transfer part of the transferable documentary credit to a supplier in the same country or in another country from which the goods are to be obtained, to fulfil its contract with the applicant, by completing the bank's request for a transfer form. The transferable documentary credit is to be issued for the amount of USD50,000.
6. At the request of the trader (now referred to as the first beneficiary), the transferring bank makes the transferred part of the transferable documentary credit available to the supplier (now referred to as the second beneficiary).
7. The transferred documentary credit is advised to the second beneficiary.
8. The second beneficiary ships all the goods in accordance with the requirements of the transferred documentary credit.
9. The second beneficiary prepares and collates all of the documents stipulated in the transferred documentary credit issued in its favour. The documents will include the second beneficiary's invoice, together with its draft, if any, for USD50,000. The other stipulated documents match those stated in the transferable documentary credit issued in favour of the trader and repeated in the transferred documentary credit.
10. The second beneficiary sends its documents to the transferring bank, or to the nominated bank mentioned in the transferred documentary credit, which will send them to the transferring bank.

11. When the transferring bank receives the documents, the trader (first beneficiary) will be requested to present its own invoice and draft, if any, in substitution for those of the second beneficiary.
12. The second beneficiary's invoice and draft, if any, will show the trader's source of supply and the amount that the trader has paid for the goods (USD50,000). To avoid the applicant obtaining this information, these two documents are substituted for those of the trader. The invoice and draft, if any, of the trader (for US\$55,000), together with all of the other documents submitted by the second beneficiary, are sent to the issuing bank. The invoice and draft, if any, of the second beneficiary are sent to the trader when honour or negotiation is effected.
13. Upon determination of a complying presentation, the trader and the second beneficiary receive their respective amounts less any charges that are due to the banks.

### Check your understanding

A transferable documentary credit for USD100,000 requires insurance cover for a minimum of 110% of the CIF goods value. What percentage should be expressed in the transferred documentary credit for which the CIF goods value is USD90,000?

- a. 90%.
- b. 100%.
- c. 115%.
- d. 123%.

## 19.2 Back-to-back documentary credits

In some circumstances, a trader may not be able to use or obtain a transferable documentary credit for the purpose of making payment to its supplier(s). The most common reason is that the terms of a sale contract between the ultimate buyer and end supplier may be substantially different, and that authorised changes allowed under transferable documentary credits (in terms of article 38(g)) may not be sufficient to match these differing needs. In these circumstances, a back-to-back documentary credit may provide an alternative solution.



### 19.2.1 An overview of back-to-back documentary credit procedures

1. A documentary credit (Credit A) is issued in favour of a trader at the request of the ultimate buyer (applicant).
2. The trader uses this documentary credit as a means by which to request a bank (usually the advising bank or confirming bank of Credit A) to issue a separate documentary credit (Credit B) on its behalf in favour of the supplier.

When Credit B is issued, it is referred to as a 'back-to-back' documentary credit. This is because the advising or confirming bank of Credit A issues Credit B on 'the back of' Credit A. It is also commonly referred to as the 'baby' credit.

The key elements are as follows.

- The two documentary credits are entirely separate, and each issuing bank is liable on its own undertaking. There is therefore no need for a separate article in UCP 600 that refers specifically to the handling of a back-to-back documentary credit.
  - Documents from Credit B will often be used in part to form the presentation under Credit A.
  - The trader is obligated to pay the bank that issued Credit B on its behalf, irrespective of whether proceeds are obtained under Credit A.
  - Credit A does not provide security to the bank that issued Credit B; Credit A merely evidences the means of payment that may be forthcoming to meet the payment obligation under Credit B. Accordingly, Credit A provides 'comfort' to the bank that issued Credit B, rather than part or full security.
  - However, depending on an assessment made by the advising bank or confirming bank, Credit A may be considered as part or full security for the issuance of Credit B. If it forms part of the security, the advising bank or confirming bank will look for additional security from the trader, such as a cash deposit or bank guarantee, to provide the additional support that it requires for the issuance of the back-to-back documentary credit.
3. If the transaction is to be completed successfully, and before Credit B is opened, it is important that the issuing bank ensures that:
    - the documents stipulated in Credit B mirror the requirements of Credit A as far as possible; or
    - (if they do not) the trader has provided satisfactory evidence that the required documents or amended documents are capable of being submitted outside Credit B; and / or
    - the terms and conditions of Credits A and B match as far as possible, subject to satisfactory explanation from the trader.

It is advisable that Credit B is handled by staff capable of understanding these basic principles. They must also be able to examine the application for issuance of Credit B against the terms and conditions of Credit A. They will also need a suitable level of experience in order to ask any necessary questions of the trader to ensure that the documents for presentation under Credit A can be achieved from the presentation of documents made under Credit B and, independently, by the trader.

### Example

Consider the circumstances that would arise if the issuing bank of Credit B received a complying presentation but were unable to make a valid presentation under Credit A due to the absence of a document or a difference in terms and conditions between the two documentary credits.

In this case, the issuing bank of Credit B would be in possession of documents that are discrepant under Credit A but compliant under Credit B. Therefore, if the trader were to be unable to pay from its own resources, the issuing bank of Credit B might have to resort to the sale of the goods and suffer any loss that would result. A sale of the goods would not normally result in the full amount to be paid under the documentary credit being recovered.

It is important to note that transport documents stipulated under documentary credits need not necessarily give title to the underlying goods, in which case a loss could be substantially higher.

### 19.2.2 Managing risk under a back-to-back documentary credit

The issuing bank of a back-to-back documentary credit (Credit B) is exposed to the greatest risk. It should take care to ensure that:

- the stipulated documents, and terms and conditions, mirror the requirements of Credit A as far as possible;
- the trader has given adequate explanations and assurances where there are gaps;
- consideration is given to Credit A being confirmed by it so that it may control any amendments;
- the trader executes adequate undertakings and other legal documentation, including a legal assignment of proceeds under Credit A;
- the bank holds the original advice of Credit A; and
- the records of both documentary credits identify them as back-to-back transactions and the two are cross-referenced.

### 19.3 Comparing transferable and back-to-back documentary credits

There are some similarities between transferable and back-to-back documentary credits:

- both involve a trader;
- both involve the substitution of documents; and
- both should be issued so that they expire at the counters of the nominated bank for the transferred or back-to-back documentary credit, so that the bank can exercise control not only in the substitution of documents, but also in handling discrepancies.

The key difference is that the transferred documentary credit derives not only its existence from the transferable documentary credit from which it receives its terms and conditions (except for the permitted exceptions mentioned in sub-article 38(g)) but also its use. In a back-to-back documentary credit, on the other hand, there are two separate documentary credits with independent undertakings from the two issuing banks.

It should be noted that UCP 600 provides for the transferring bank to utilise the second beneficiary's documents under the transferable credit should the first beneficiary fail to present substitute documents. This remedy is not available under a back-to-back transaction, because the two are considered separate documentary credits.

## 19.4 Assignment of proceeds

National law determines the extent and legal effect of an assignment of proceeds under a documentary credit.

It is possible, in some cases, for the beneficiary of a documentary credit (who will be referred to as the 'assignor') to ask the nominated bank, confirming bank, if any, or issuing bank to pay part of the proceeds that are due to it to its own supplier (the 'assignee') or another named entity. This request is worded in the form of an irrevocable instruction outlining the basis for the assignment of proceeds. The bank then writes to the assignee, informing it that the bank has received irrevocable instructions to make a payment to the assignee out of the documentary credit proceeds. This communication is referred to as an 'acknowledgement of an assignment of proceeds'. The instruction of the beneficiary is also acknowledged.

The bank should not undertake any payment or guarantee obligation towards such assignee unless confirmation has been added or the bank is the issuing bank, and this should be made clear in the bank's letter to it. The bank merely acts as an agent for payment of the money received on behalf of the beneficiary.

The bank should exercise care to word its acknowledgement so as to avoid any risk that it might be called upon to pay the assignee if it does not have free use of the proceeds received from performance of the documentary credit. This situation would arise if, for instance, the proceeds were to be seized by a creditor of the beneficiary (assignor).

The assignee does not receive the same sort of payment security that it would have if it were itself the beneficiary of a documentary credit or a transferred documentary credit. Its entitlement to payment depends, first, on the beneficiary (assignor) making a complying presentation under the documentary credit, and secondly, on the nominated bank, confirming bank, if any, or issuing bank having free use of the proceeds.

Article 39 covers assignment of proceeds. It does not grant a right to the assignee to perform under the documentary credit – that is, to present documents. It allows a beneficiary to assign its right to receive some, or all, of the proceeds to a third party, which in most cases would be a supplier, but this could be another entity or a bank. An example of the latter would be where the beneficiary may be required to provide an assignment to give security, for example, for pre-financing or the issue of a back-to-back documentary credit. Such an assignment may take place whether or not the documentary credit is transferable, and the procedures to be followed will be governed by the applicable law.

## Conclusion

Transferable documentary credits and back-to-back documentary credits, to a lesser extent in volume terms, provide a valuable contribution to international trade. They allow the completion of a sale or purchase that otherwise may not have been possible without a bank undertaking being included.

However, both come with their risks, and these need to be managed. Unfortunately, a large number of transactions go wrong due to adherence to a request for transfer or issuance that was not complete or compatible with the underlying transaction. It should always be remembered that no bank is under any obligation to effect transfer, not even a confirming bank or issuing bank. Likewise, no bank would be under any obligation to issue a back-to-back credit.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the process for the establishment of a transferred documentary credit?
- outline the requirements for a bank when presented with evidence of an assignment of proceeds?
- describe the criteria of a transferable documentary credit that can be reduced or curtailed when issuing a transferred documentary credit?
- identify the key differences between transferable and back-to-back credits?

## Test your knowledge

Use these questions to assess your learning for Topic 19.

1. If a documentary credit that is available with any bank indicates that it is transferable, which of the following is true?

- a. Only the issuing bank may effect a transfer.
- b. Any bank may effect a transfer.
- c. No bank may effect a transfer pending the issuing bank nominating a transferring bank.
- d. Only the advising bank may effect a transfer.

Answer: C. When a documentary credit is available with any bank, it must indicate the bank that is authorised to effect transfer. This is detailed in sub-article 38(b). See section 19.1.1.

2. The beneficiary has advised an assignment of proceeds to your bank. It has instructed you to pay 80% of the value of each invoice to a named assignee. Which of the following statements is true in this situation?

- a. This allows the assignee to present documents under the documentary credit.
- b. This does not allow the assignee to present documents under the documentary credit.
- c. This allows the assignee or beneficiary to present documents under the documentary credit.

Answer: B. As explained in article 39, an assignment of proceeds relates only to the right of the beneficiary to assign all or part of the proceeds that are due to it to another entity. It does not provide a right to an assignee to perform under the documentary credit. See section 19.4.

3. A transferable credit has been confirmed. The beneficiary has provided its request for transfer. Which of the following is now true?

- a. The transferred credit must be confirmed.
- b. The transferred credit must not be confirmed without specific instructions from the first beneficiary.
- c. The transferred credit must not be confirmed without specific instructions from the issuing bank.
- d. The transferred credit need not be confirmed.

Answer: A. Sub-article 38(g), which outlines the terms and conditions that may be reduced or curtailed in a transfer, indicates that the transferred credit must accurately reflect the terms and conditions of the (transferable) credit, including confirmation, if any. See section 19.1.4.

4. A transferable credit has been confirmed by Bank A. The beneficiary has submitted its request for transfer to Bank A, which has declined to effect a transfer. The beneficiary insists that, as a transferring bank that has added its confirmation, the confirming bank must agree to its request. The confirming bank insists that it will not transfer the credit. Is the confirming bank permitted to take this position: Yes or no?

Answer: Yes. Sub-article 38(a) states that no bank is under any obligation to transfer a credit except to the extent and manner to which it expressly consents to do so. See section 19.1.1.

5. Which of the following is true of a transferred credit? The expiry date, latest shipment date and/or period for presentation that appear in a transferable credit may:

- i. be increased.
  - ii. be reduced.
  - iii. remain the same.
- a. i.
  - b. ii.
  - c. ii and iii.
  - d. i, ii and iii.

Answer: C. Sub-article 38(g) indicates the terms and conditions that may be reduced or curtailed. These terms and conditions may remain the same but cannot be increased. See section 19.1.4.

## Answers

### CHECK YOUR UNDERSTANDING (section 19.1.2)

False. A transferable credit may be made available in whole or in part to another beneficiary (second beneficiary) at the request of the beneficiary (first beneficiary). See section 19.1.1.

### CHECK YOUR UNDERSTANDING (section 19.1.4)

- a. It will involve more than one presentation of documents.
  - c. It will usually involve more than one country.
- 
- More than one presentation of documents will be made.
  - The trader will become known as the first beneficiary. One or more suppliers will become known as second beneficiaries.
  - More than one country. The supplier may be in a different country to the trader.
  - An amendment may or may not be transferred. If transferred, it has to be accepted by the supplier.

See section 19.1.3.

### CHECK YOUR UNDERSTANDING (section 19.1.5)

- d. 123%.

In the specific context of a transferable documentary credit, sub-article 38(g) provides that, on transfer, the percentage for which insurance cover must be effected may be increased to provide the amount of cover stipulated in the transferable documentary credit.

In this instance, compliance with the transferable credit will require presentation of an insurance document covering at least USD110,000. Based on a transfer value of USD90,000, the insurance cover required in the transferred credit will be 123%. See section 19.1.4.



## Topic 20 Selected features and conditions of documentary credits

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### Learning objectives

By the end of this topic, you should be able to:

- identify the types of features and conditions that often appear in a documentary credit; and
- understand the requirements, scope and application of these features and conditions.

### Introduction

Some features and conditions are fundamental to all documentary credits; others, by means of the insertion of clauses or a recognised form of wording, provide a specific function. A number of these features and conditions are provided for within UCP 600 and ISP98, but others have gained acceptance under the umbrella of international standard banking practice. This topic looks at those features and conditions that are more commonly encountered when handling documentary credits.

#### Think...

Before you start work on this topic, consider what you already know about the features and the conditions that apply to a documentary credit. For example:

Do you know the difference between an irrevocable documentary credit and a revocable documentary credit?

If asked by a customer or colleague, could you describe the structures of a revolving or a reinstatement documentary credit?

Tolerances are a common feature of documentary credits, especially those that cover the shipment of a commodity where the quantity of goods cannot be exactly determined at the time the documentary credit is issued, and where a unit price for that commodity can fluctuate on a daily or hourly basis. Can you describe how a tolerance should be shown in a documentary credit, and how the content of article 30 should be applied?

## 20.1 Revocable documentary credits

A revocable documentary credit may be amended or cancelled by the issuing bank at any time and without prior notice to, or with the consent of, the beneficiary.

It should be noted that a revocable documentary credit offers no security of payment to a beneficiary and may not be considered a fair exchange for the goods, services or performance to be provided by a beneficiary.

As a consequence, revocable documentary credits are rarely issued and are not covered in UCP 600. Among other things, article 3 presumes that documentary credits will be issued on an irrevocable basis.

In the unlikely event that a revocable documentary credit is to be issued, it is to state specifically that it is revocable and incorporate the terms and conditions that will apply to the revocability.

Due to the SWIFT MT700 message only accommodating reference to irrevocable documentary credits for inclusion in field 40A (Form of Documentary Credit), ie IRREVOCABLE, IRREVOCABLE TRANSFERABLE, IRREVOCABLE STANDBY and IRREVO TRANS STANDBY, a revocable credit would have to be sent via a SWIFT MT799 (free format) message or in paper or email format.

An issuing bank remains liable to reimburse a nominated bank for any honour or negotiation made before the nominated bank received any notice that the revocable documentary credit had been revoked. This includes a liability to reimburse such bank for any deferred payment undertaking incurred before it received that revocation notice.

### 20.1.1 Managing risk under a revocable documentary credit

When a revocable documentary credit is issued, an issuing bank should restrict honour or negotiation to a single nominated bank – that is the advising bank. This means that, in the event of an amendment or the need for a cancellation notice, the issuing bank can communicate clearly and directly with a specific bank, reducing the chances of error and delay in notification to the beneficiary. It also removes the possibility of another nominated bank acting under a revocable documentary credit, which was available with any bank, where it was unaware of any amendment or cancellation notice received by the advising bank.

If it receives a revocable documentary credit, an advising bank should make the beneficiary aware that it is subject to cancellation at any time up to, and including, the day of presentation of documents, and can be cancelled without prior notice to, or with the consent of, the beneficiary.

If a request for cancellation is received from an applicant, the issuing bank should inform the applicant that it remains liable for any honour or negotiation made by a nominated bank prior to its receipt of the cancellation notice. Ideally, the applicant should be so advised at the time of issuance.

The issuing bank must advise the cancellation to the advising bank without delay. At the same time, it should also request the advising bank to confirm its receipt of the message and / or the details of any honour or negotiation that it has undertaken prior to the receipt of the cancellation notice.

If an advising bank receives notice of cancellation from an issuing bank, it should inform the beneficiary without delay. Even if not requested by the issuing bank, it should advise and / or claim on the issuing bank if it has already honoured or negotiated a complying presentation prior to receipt of a cancellation notice.

Banks should not issue revocable documentary credits that are transferable, nor should banks confirm revocable documentary credits.

## 20.2 Irrevocable documentary credits

The definition of 'credit' can be found under article 2.

The definition provides that any form of undertaking that is irrevocable and conditioned upon a complying presentation being made to an issuing bank may be issued subject to the application of UCP 600. This would include documentary credits, standby letters of credit and even bank guarantees.

Sub-article 10(a) provides that once issued, a documentary credit cannot be amended or cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary.

This means that the beneficiary gains considerable comfort from the clear and unambiguous undertaking of the issuing bank. For standby credits issued subject to ISP98, a similar comfort comes from rule 1.06(a) and (b).

### Check your understanding

A SWIFT MT700 message only accommodates reference to irrevocable documentary credits for inclusion in which field?

- a. Field 42A.
- b. Field 41A.
- c. Field 40A.
- d. Field 44A.

## 20.3 Clean documentary credits

The following definitions of a clean documentary credit provide a reasonable description.

**Clean credit:** A credit opened by a banker under which a person abroad may draw bills upon the banker, the banker undertaking to accept the bills if drawn in accordance with the conditions in the credit. It is called 'clean' because the bills have no documents attached. Such a credit is granted only to firms of the highest standing, or against securities.

(Hanson, 1985)

**Clean credit:** A letter of credit issued by a bank against which the designated foreign seller may draw a bill without documentary support. The issuing bank engages to accept a clean bill, if otherwise drawn in accordance with the conditions imposed by the relative letter of credit. A clean credit is granted only to concerns of the highest credit standing.

(Garcia et al., 1991)

The distinguishing features in both definitions are that the issuer of a clean documentary credit is obligated to pay against bills of exchange (drafts) drawn on the issuer and that no other documents are required for payment. Historically, the clean documentary credit was also used as a means by which a paying bank, which paid a beneficiary under a traveller's letter of credit, would obtain reimbursement by drawing a bill of exchange on the bank that issued the traveller's letter of credit.

This type of structure can be, and is, used for a variety of commercial purposes that do not envisage either the movement of goods or an event of default. A documentary credit that is payable through a number of stage payments, such as for a building project, is an example of its potential use.

## 20.4 Advance payment under a documentary credit

At the beneficiary's request, the applicant may agree to make a part of the purchase price available to the beneficiary as a pre-shipment advance and may further agree that such advance should be made from within the documentary credit when issued. This arrangement provides for the amount of the advance to be deducted from the amount to be paid to the beneficiary upon presentation of complying documents.

### 20.4.1 An overview of an advance payment under a documentary credit

The issuing bank incorporates a clause in its documentary credit authorising the nominated bank to pay a specific amount, or a percentage of the value of the documentary credit, to the beneficiary in advance of any shipment, or provision of any services or performance. Historically, this clause appeared in bold red type on documentary credits issued in paper form, in order to draw attention to the advance, and for this reason such credits were commonly referred to as a 'red clause documentary credit'. The term red clause is still used today by some practitioners to describe a documentary credit that includes a condition allowing for an advance payment.

A typical advance payment clause may require the presentation of:

- a receipt for the advance duly signed by the beneficiary;
- an undertaking of the beneficiary to utilise the funds to purchase, pack and ship the merchandise; or
- an undertaking of the beneficiary to present the documents, as stipulated in the documentary credit, to the nominated bank within the expiry date, or to repay the advance or part thereof in the event that it does not.

In reimbursement, the nominated bank will claim on the issuing bank in terms of the documentary credit supported by the stipulated document(s).

In order to provide some measure of comfort to the issuing bank (and the applicant), the advance payment is sometimes to be made not only against a receipt and/or undertaking, but also against the beneficiary providing confirmation from a shipping agent that it has booked shipping space on a particular vessel, the sailing date of which is consistent with the latest shipment date shown in the documentary credit.

### 20.4.2 Managing risk of an advance payment under a documentary credit

An advance payment guarantee is the best way to manage the risk of paying in advance – that is, the beneficiary's bank issues a separate irrevocable undertaking that, in the event that the beneficiary fails to perform, a claim may be made thereunder by the applicant of the documentary credit, as beneficiary of that separate undertaking, ie a bank guarantee.

The issuing bank should ensure that honour or negotiation is restricted to a single nominated bank.

The nominated bank should ensure that the:

- advance payment is made strictly in terms of the documentary credit;
- necessary document in support of its claim for reimbursement from the issuing bank is obtained from the beneficiary and complies with the documentary credit requirements; and
- the claim for reimbursement for the advance is made promptly.

#### **Check your understanding**

An irrevocable documentary credit can be amended or cancelled after issuance without the agreement of the confirming bank, if any, or beneficiary. True or false?

## 20.5 Revolving documentary credits

A documentary credit that revolves, in terms of time or value, is generally issued when an applicant and beneficiary have a long-standing repetitive trading relationship and experience in the shipment of the goods described in the documentary credit.

The applicant will arrange for a documentary credit to be issued, which allows the amount thereof to revolve, usually without amendment – that is, on an automatic basis. Under this arrangement, the continuing availability of the documentary credit revolves upon shipment or presentation of documents or at a specific time, such as the 1st of each month, and not upon the issuance of a specific amendment.

Such an arrangement avoids the need for repetitive documentary credits to be issued on, for example, a monthly or bimonthly basis.



### 20.5.1 An overview of a revolving documentary credit

A revolving documentary credit depends on three main features:

1. The type of revolvment.
  2. Whether the revolvment is automatic or not.
  3. Whether the revolvment is cumulative or not, as follows.
- **Type of revolvment**
    - If revolvment is dependent on time, a specific amount is allowed to be drawn within a defined period as stipulated in the documentary credit and during its validity. For example, a documentary credit may indicate that USD25,000 may be drawn each month during its six-month validity. The revolvment of the amount may occur on an automatic or non-automatic basis and on a cumulative or non-cumulative basis (see below).
    - If revolvment is dependent upon value, a documentary credit may indicate that its amount is to revolve upon utilisation within the overall validity of the documentary credit. In the absence of any other indication, such an authorisation allows it to revolve upon each and every utilisation. So, in the above example, the beneficiary could theoretically make a shipment every day for six months – that is, make 180 revolvments of the amount shipped. It is almost impossible to calculate the liability in these circumstances. For this reason, banks issuing documentary credits under which revolvments are dependent upon value must indicate the overall maximum amount for which the documentary credit can be drawn for all shipments made during its validity, or the number of times that the documentary credit will revolve. Again, the revolvment may occur on an automatic or non-automatic basis and on a cumulative or non-cumulative basis.

- **Whether the revolvment is automatic or not**

A documentary credit must indicate whether the revolvments are automatic or not.

- If the revolvments are automatic, there is no need for any further amendment from the issuing bank.
- A revolvment is considered non-automatic if it is dependent upon receipt by the advising bank/nominated bank of the issuing bank's authorisation for a further revolvment to occur – that is, by way of an amendment.

Using the example for a documentary credit revolving on the basis of time, the liability of the issuing bank on the date of issue of the documentary credit will be:

- USD150,000 if revolvments are automatic; or
- USD25,000 if it is non-automatic.

- **Whether the revolvment is cumulative or not**

- The documentary credit may indicate that the revolvment is on a cumulative basis. For example, if USD25,000 can be drawn each month during a documentary credit's six-month validity, any amount not used in a month remains available for drawing in the following month(s). Therefore, in the sixth month, the documentary credit could

potentially be available for the cumulative total of USD150,000 if no previous drawings have been made.

- If the documentary credit indicates that the revolvement is on a non-cumulative basis, and using the above example, it means that if one month's shipment of USD25,000 were not made (either completely or partially), the unused amount will not be carried forward to the succeeding month. If, for example, no shipments had been made for five months, the maximum drawing for the sixth month would be USD25,000 only.

## 20.5.2 Managing risk under a revolving documentary credit

The issuing bank should ensure that:

- honour or negotiation is restricted to a named nominated bank; and
- revolvment of amounts (particularly if the revolvment is dependent upon value) remains under its control, or there is wording in the documentary credit that limits the liability to a fixed amount and/or period.

It should be noted that revolvments that occur on an automatic basis can have a significant effect on the applicant's credit facility. The maximum amount that may be drawn under the documentary credit, and the final date that it may be available for drawing, must be recorded against the credit facility on the date the documentary credit is issued.

It is often the case that issuing banks prefer to issue a documentary credit that does not revolve automatically, while beneficiaries favour one that does.

### Check your understanding

What is meant by a clean documentary credit?

- a. The issuer is obligated to inspect it for errors.
- b. Only a confirming bank can honour it.
- c. The issuer is obligated to pay only against bills of exchange (drafts) drawn on the issuer.
- d. The paying bank is obligated to reject it in the case of default.

## 20.6 Reinstatement documentary credits

A documentary credit incorporating a reinstatement clause is used when the applicant wishes to control the amount of goods that are shipped in any one shipment, but the beneficiary considers the conditions of article 32 to be unacceptable because of the risk of the documentary credit ceasing to be available for that or any subsequent instalment, should it not keep to the designated schedule of shipments.

A reinstatement clause in a documentary credit must incorporate:

- the base amount – that is, the value that is shown as the documentary credit amount and which is the maximum value that may be drawn in respect of any one shipment or drawing;
- that reinstatement will occur automatically following each presentation of documents; and
- the maximum amount that may be drawn under the documentary credit.

### Example

The applicant and beneficiary agree on a sale contract for USD200,000 and that a number of partial shipments will be necessary. They also agree that the maximum amount that may be drawn at any one time will be USD20,000. The documentary credit is issued for the amount of USD200,000.

Field 47A, 'Additional Conditions', will state: 'This documentary credit will automatically reinstate to the amount of USD20,000 following each presentation of documents, subject to a maximum drawing amount of USD200,000.'

Under this structure, the issuing bank's liability at the time of issuance of the documentary credit is USD200,000. However, the applicant knows that only an amount up to USD20,000 may be drawn in any one presentation. The beneficiary has the flexibility to ship goods, and to draw under the documentary credit, for any amount up to USD20,000 in any one shipment.

## 20.7 Instalment drawings or shipments under a documentary credit

If the documentary credit application form requires that shipment of goods is to be made in accordance with a defined shipment schedule, an issuing bank may wish to check the applicant's exact needs with regard to delivery of the goods. This will ensure that the documentary credit, when issued, accurately reflects these needs, particularly in respect of partial shipments and the continued availability of the documentary credit in the event of a failure by the beneficiary to adhere to an instalment schedule as covered in article 32.

Applicants and banks that intend to incorporate an instalment schedule into a documentary credit, and for it to be subject to article 32, often make the mistake of not expressing the dates in terms of given periods. Each instalment in a sequence of given periods should have a start and an end date, and these dates are not to overlap. However, a number of documentary credits are issued with wording that consists only of a series of latest shipment dates. In this event, the provision under article 32 – that is, that the credit will cease to be available for that and any subsequent instalment if the beneficiary fails to keep to the stated schedule – will not be applied.

These principles are also covered in paragraph C15.

Consider the following example of a shipment of 500 computers and two examples of text in a documentary credit.

### Example

#### **Documentary credit 1** states:

- '200 computers to be shipped no later than 31 May 20XX';
- '150 computers to be shipped no later than 31 July 20XX'; and
- '150 computers to be shipped no later than 30 September 20XX'.

In this structure, the beneficiary could ship all 500 computers by 31 May, when the intention of the applicant was most likely for three separate shipments to occur.

In this example, article 32 will not apply.

#### **Documentary credit 2** states:

- '200 computers to be shipped between 1 May and 31 May 20XX';
- '150 computers to be shipped between 1 July and 31 July 20XX'; and
- '150 computers to be shipped between 1 September and 30 September 20XX'.

In this structure, the documentary credit indicates three given periods and the beneficiary is unable to combine any shipments without creating a discrepancy.

Any failure to adhere to the schedule would mean that article 32 applies.

## 20.8 Use of tolerances in a documentary credit

It is often the case that a beneficiary will not be able to determine in advance the exact quantity of goods that will be shipped. This is especially so for shipments of commodities such as oil, wheat, rice, steel, etc.

For these types of transactions, the applicant and beneficiary will usually agree on a specific tolerance that may be applied to the quantity, such as 'plus/minus 10%'. There are no set rules as to the tolerance that can be set. For example, it could be stated as 'plus 5%; minus 10%'.

Sub-article 30(a) provides a definition when terms such as 'about' or 'approximately', rather than an actual percentage figure, are used in relation to the amount, quantity of goods or the unit price. Both terms mean that a tolerance of plus or minus 10% will be applied in terms of the details for the amount, quantity and/or unit price.

An issuing bank should keep in mind, and consult with the applicant if necessary, that if a tolerance is applied to either the amount of the documentary credit or to the quantity of goods to be shipped, it is most likely that a similar tolerance should also be applied to the other.

It is important to note that the addition of the term 'about' or 'approximately' or an actual percentage figure, in relation to the quantity of the goods, will not automatically apply to the amount or unit price, if any, and vice versa. For an applicable tolerance to be applied in relation to the amount and the quantity of the goods, field 39A of the MT700 (Percentage credit amount tolerance) should indicate the tolerance applicable to the amount, eg 10/10 to denote a tolerance of plus or minus 10%, and in field 45A (Description of Goods and/or Services), eg 10,000MT (metric tonnes) plus or minus 10%. If any unit price is also to be subject to a tolerance, a similar indication to that applied to the amount should appear after the details of the unit price, eg USD10 per MT plus or minus 10%.

Sub-article 30(b) provides for an automatic tolerance of plus or minus 5% in the quantity of the goods, subject to the amount of the documentary credit not being exceeded, where the documentary credit does not describe the goods in terms of a stipulated number of packing units or individual items.

Therefore, this sub-article would not apply, for example, to a quantity expressed as '50 boxes of nuts and bolts' or as individual items expressed as '500 cars'; rather, the tolerance would apply to quantities expressed in terms of metric tonnes (MT), kilograms (kg), etc.

When one quantity is shown for a single type, size, style, and so on of goods, the application of a tolerance is straightforward. However, when a documentary credit provides an overall description of goods, eg 500MT of steel plates as per proforma invoice No. 1234 dated 1 February 20XX, and indicates different sizes to be shipped, with their own individual quantities within that 500MT, the question arises as to whether the tolerance under sub-article 30(b) will be applicable to each individual quantity or to the total quantity.

This issue has been addressed in two ICC opinions with two different outcomes due to the dissimilar wording used in each documentary credit.

In ICC Opinion R688 (TA619) a documentary credit was issued with a general description of the goods (galvanised coils) but with the quantity of 250MT split between three different specifications of the coils. The goods description further indicated 'quantity 250MT (+/-10PCT)'. The question asked of the ICC Banking Commission was whether the tolerance was to be applied to the overall total quantity and/or to the individual quantities that were shown as 125MT, 100MT and 25MT.

The analysis and conclusion provided by the ICC Banking Commission indicated that the tolerance is to be applied against the individual quantities and, as a result, the total quantity.

Contrast this opinion with ICC Opinion R896 (TA872), where similar circumstances existed, ie multiple sizes of goods with an individual quantity applied to each. However, in this particular documentary credit the tolerance was specifically stated as "10% more or less on total quantity and amount allowed". Take note of the reference to 'total quantity'.

In the analysis and conclusion, the ICC Banking Commission stated that the inclusion of the words total quantity made it clear that the tolerance was to be applied to the total quantity and not necessarily to the individual quantities. This opinion highlights the need for wording in a documentary credit to be carefully drafted in order to avoid any unexpected consequences.

Another example related to the application of sub-article 30(b), is where ICC Opinion R689 (TA618) stated that a documentary credit had been issued with field 39A of the SWIFT MT700 (Percentage credit amount tolerance) indicating '00/00' and that partial shipments were not allowed. This question was raised in respect of a documentary credit issued subject to UCP 500 but the response is still valid under UCP 600.

The question was whether the inclusion of 00/00 modified the content of UCP 500, sub-articles 39(b) and (c) (now UCP 600, sub-articles 30(b) and (c)), to the extent that the 5% plus or minus tolerance would not be applicable. The analysis and conclusion provided by the ICC Banking Commission indicated that according to the SWIFT usage rules for field 39A, the first two digits represent the positive tolerance and the second two digits the negative tolerance.

The conclusion indicated that the use of 00/00 has no effect on the amount to be drawn under a documentary credit and the applicable rule in UCP 500 would still apply. As we have discussed, this opinion would also apply in the context of a documentary credit issued subject to UCP 600 (and the application of sub-article 30(b)).

Sub-article 30(c) allows for a tolerance not to exceed 5% less than the documentary credit amount, provided that the quantity of goods indicated in the documentary credit has been shipped in full, that any unit price has not been reduced and that sub-article 30(b) is not applicable.

### Example

The documentary credit amount is USD10,000.

Field 45A indicates that the FOB value of the described goods is USD9,250 with freight costs of USD750.

The presented invoice indicates the FOB value as USD9,250 (thereby indicating that the goods have been shipped in full) and the freight cost as USD600 (ie less than that estimated at the time of concluding the sale contract).

The drawing will be acceptable as there is evidence of a full shipment and the drawing amount is within the 5% less tolerance.

Paragraphs C12–C14 provide further detail on the application of article 30 and where an invoice indicates an overshipment of goods or indicates shipment of goods, services or performance not called for in the credit. In the case of the latter, even when additional goods, services or performance are provided free of charge.

### Check your understanding

Field 39A of an MT700 message provides for a tolerance of plus or minus 10% in both the credit amount and the quantity of the goods. True or false?



## 20.9 Cancelling a documentary credit

UCP 600 contains no specific rule relating to the requirements for any cancellation of a documentary credit or standby letter of credit. Sub-article 10(a) indicates that a documentary credit, except as provided by article 38 (ie where a transferred documentary credit is involved), cannot be amended or cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary.

Any request for cancellation of a documentary credit or standby letter of credit issued subject to UCP 600 will usually be advised by way of an amendment.

An issuing bank, confirming bank or advising bank, in addition to receiving the written consent of the beneficiary, may require the return of the original advice of the documentary credit and any amendments issued thereto. A bank may also require the written consent of the beneficiary to be authenticated by the bankers of the beneficiary, but this will be the choice of the concerned bank.

For a standby letter of credit issued subject to ISP98, rules 7.01 and 7.02 provide specific requirements in the event of cancellation. In respect of a standby letter of credit issued subject to UCP 600, it may be the case that a bank will insist on the same requirements being fulfilled.

## 20.10 Partial drawings or shipment under a documentary credit

Article 31 outlines the basis under which a presentation will be understood to cover a partial shipment.

The principle is one of how many vessels, aircraft or trucks are used in the shipment of the goods from the port of loading, or airport of departure to the port of discharge or airport of destination, and as evidenced in the presentation.

### Example

A presentation containing two sets of bills of lading covering shipments from Dubai to Hong Kong on vessel ICC1 and vessel ICC2, even if dated the same, clearly indicate a partial shipment has been effected.

However, if two sets of bills of lading were presented indicating shipment of one container on board vessel ICC1 on 12 January 20XX and shipment of one container on board the same vessel on 13 January 20XX, this would be considered a shipment on the same means of conveyance (same vessel), for the same journey and destination (from Dubai to Hong Kong) and is not a partial shipment under sub-article 31(b).

Examples where partial shipment has been effected would include the following:

- A presentation consisting of two truck consignment notes dated the same with the same routing details, but evidencing shipment effected on two different trucks.
- A presentation consisting of a single truck consignment note evidencing shipment effected on two different trucks. Determining partial shipment is not conditioned on the number of transport documents that are presented. In this example, there is evidence of more than one truck being used.

The provisions of article 31 are amplified by paragraphs D22 and D23 (for multimodal transport documents), E18 and E19 (for bills of lading), F16 and F17 (for non-negotiable sea waybills), G16 and G17 (for charter party bills of lading), H18 and H19 (for air transport documents), and J13 and J14 (for road, rail or inland waterway transport documents), all of which provide a similar wording for the type of transport document to which they relate.

It should be noted that field 43P (Partial shipments) of the SWIFT MT700 message is optional and that the position taken under sub-article 31(a) is that partial drawings or shipments are allowed unless the documentary credit states otherwise. Therefore, the absence of any data in this field will permit partial drawings or shipment.

Field 43P allows for three code words to be entered – ALLOWED, NOT ALLOWED OR CONDITIONAL.

The first two are self-explanatory. The code word CONDITIONAL would be used, for example, where the applicant wishes to restrict the number of partial shipments. Simply stating ALLOWED would permit any number of partial shipments to occur. Therefore, if the applicant requires, say, a maximum of three partial shipments to occur, field 43P would indicate CONDITIONAL and field 47A (Additional conditions) would state that a maximum of three partial shipments may be effected.

## 20.11 Transhipment under a documentary credit

'Transhipment' means unloading from one vessel (or aircraft, or means of conveyance) and reloading to another vessel (or aircraft, or means of conveyance within the same mode of transport) during the carriage from the port of loading (or airport of departure, or place of shipment / dispatch/ carriage) to the port of discharge (or airport of destination, or place of destination) stated in the documentary credit.

This definition is referred to in sub-articles 19(b) (multimodal transport documents), 20(b) (bills of lading), 21(b) (non-negotiable sea waybills), 23(b) (air transport documents) and 24(d) (road, rail or inland waterway transport documents). The decision to allow transhipment is one upon which the applicant and beneficiary should agree. However, in light of the trend towards increasing containerisation of goods, it is unlikely that most goods will move directly between two countries. Transhipment is even more prevalent in air dispatch, with goods being transhipped at a hub airport.

For a transport document covering at least two different modes of transport, as covered by article 19 (multimodal transport documents), transhipment must be permitted in the documentary credit.

Field 43T (Transhipment) of the SWIFT MT700 message is optional and allows for three code words to be entered – ALLOWED, NOT ALLOWED OR CONDITIONAL.

The first two are self-explanatory. The code word CONDITIONAL would be used, for example, where the applicant wishes to restrict where transhipment may occur. Simply stating ALLOWED would permit transhipment to occur at any port (subject to any sanction or regulatory requirements). Therefore, if the applicant requires that transhipment only occur at a specific port, field 43T would indicate CONDITIONAL and field 47A (Additional conditions) would state that transhipment may only be effected at Port X. However, it should be noted that where shipment by sea is involved, it is not common for the transport document to indicate where transhipment will or is intended to occur, unless required by the documentary credit.

## 20.12 Impact of a force majeure event and effect of disclaimer rules on a documentary credit

It can occur that a bank is unable to fulfil its obligations to examine documents in a timely manner or to complete the process of honour, negotiation or refusal due to events that are deemed to be outside their control. In this respect, article 36 indicates that a bank assumes no liability or responsibility for such circumstances that include natural events like typhoons or earthquakes.

In effect, this rule means that if the beneficiary is unable to make a presentation to the nominated bank or issuing bank by the expiry date or latest presentation date because of a force majeure event closing the concerned bank, when the presentation can be made, the documents will be discrepant.

For this reason, and due to the fact that demands under a standby letter of credit are often presented on or close to its expiry date, it is often the case that a beneficiary will insist that a standby letter of credit issued in its favour modify the application of article 36 by imposing a period of time after the bank reopens during which the beneficiary may present its demand.

This is the position that is taken in ISP98, rule 3.14(a), where the last day for presentation is automatically extended to the day occurring 30 calendar days after the bank re-opens for business, unless the standby letter of credit indicates a different period.

For further information relating to the application of force majeure, read [ICC Guidance Paper on the impact of COVID-19 on trade finance transactions issued subject to ICC rules](#).

Article 34 is a disclaimer clause that follows the principle established in sub-article 14(a), ie that a nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank “examine a presentation to determine, on the basis of the documents alone, compliance with the terms of the documentary credit”.

This article also has a direct relationship with articles 4 and 5 in that it provides no liability or responsibility on a bank for matters such as content, form, accuracy, genuineness, falsification or legal effect of any documents, the data contained therein or for the acts of any issuer of such documents.

Article 35 contains three disclaimers. Probably the most commonly referred to is the second paragraph, which deals with the situation where a nominated bank has examined a presentation and determined that it is compliant, whether or not it has honoured or negotiated that presentation, and the documents are lost in transit between that nominated bank and the confirming bank or the issuing bank. This paragraph emphasises that the confirming bank or issuing bank must still honour or negotiate, or reimburse the nominated bank, in these circumstances.

This does not mean that the confirming bank or issuing bank will be expected to honour or negotiate solely on the word of the nominated bank that the documents, when presented to the nominated bank, complied with the terms and conditions of the documentary credit. What it does mean is that the confirming bank or issuing bank cannot insist on the beneficiary providing a fresh set of original documents possibly including a new set of original bills of lading. The confirming bank or issuing bank will be entitled to request the submission of copies of all the presented documents in order to make their own determination of a complying presentation. The copies are to be examined as if they were presented in the number of originals and copies as required by the documentary credit and on the basis of the date they were originally submitted to the nominated bank.

Read [\*ICC Interpretative Paper on the correct interpretation of the first paragraph of UCP 600 article 35.\*](#)

Article 37 provides a number of disclaimers in respect of the actions carried out by the issuing bank, at the request of the applicant, including the choice of advising bank or confirming bank.

The most commonly referred to disclaimer is in sub-article 37(c), where it is stated that the issuing bank remains liable for charges not collected from the beneficiary or where they were not capable of being deducted from proceeds. It should be noted that if a nominated bank had the opportunity to deduct its charges from the proceeds paid to the beneficiary but failed to do so, and the beneficiary refused to pay the charges at a later date, the nominated bank is unable to claim those charges from the issuing bank.

### 20.13 Other conditions and products

In this section, we discuss the following products that can apply to a documentary credit:

- release of goods by a carrier against a shipping guarantee, or indemnity, issued or countersigned by an issuing bank;
- the use of a letter of indemnity (LOI) as an instrument, either as part of a documentary credit or on its own; and
- participation and syndication of risk in the issuance or confirmation of a documentary credit.

### 20.13.1 The release of goods by a carrier against a shipping guarantee, or indemnity, issued or countersigned by an issuing bank

As has been noted, an issuing bank must honour under a documentary credit when documents are found to comply with its terms and conditions. However, articles 4 and 5 indicate that:

- a documentary credit is separate from the sale or other contract on which it may be based; and
- banks deal with documents and not with goods, services or performance.

The protection that these principles provide to an issuing bank may be endangered by it issuing a shipping guarantee or indemnity to a carrier to facilitate the release of the goods without honour having previously occurred.

In the absence of honour or reimbursement, an issuing bank may also face the risk of dispute regarding conversion.

**Conversion** is a legal term signifying wrongful interference with another person's property, inconsistent with the owner's right of possession. It has been defined as follows: Any person who, however innocently, obtains possession of goods the property of another who has been fraudulently deprived of the possession of them and disposes of them whether for his own benefit or that of another person is guilty of a conversion. A banker will be liable for conversion if he delivers to an unauthorized person articles left with him by a customer for safe custody.

(Hanson, 1985)

It is important to understand how an indemnity differs from a guarantee.

- For a guarantee, there must be three parties:
  - the principal creditor;
  - the principal debtor, who is primarily liable; and
  - the guarantor, who is secondarily liable if the principal debtor fails to pay.
- For an indemnity, there are only two parties: the issuer and the beneficiary. The bank that issues an indemnity is primarily liable.

### 20.13.2 Carrier indemnity (shipping guarantee) I

An issuing bank may not receive documents under its documentary credit prior to the goods arriving at their destination. This may happen quite often if the forwarding of documents by a nominated bank is delayed because they have been found discrepant on first presentation or perhaps when they were presented by the beneficiary towards the end of the applicable presentation period. This means, for example, that an applicant may not be in possession of an original bill of lading when the vessel arrives at the port of discharge.

Unless the goods are cleared from the port with the minimum of delay, the port authorities may:

- levy charges (eg demurrage) and the rate of charge may increase the longer the goods remain at the port; and
- in a worst-case scenario, confiscate goods after the expiration of a stated statutory period.

In these circumstances, an applicant will often wish to clear the goods despite the absence of an original bill of lading. To do this, it will ask the carrier for its standard indemnity form against which the carrier may be willing to release goods despite the absence of an original bill of lading. A carrier will usually not accept an indemnity directly from an applicant and will usually require the indemnity to be countersigned or issued by the issuing bank of the documentary credit or another bank. If the carrier does not maintain a standard form and is willing to accept a bank-issued indemnity, an applicant may request its bank to issue the indemnity in a format that will be satisfactory to the carrier.

## 20.13.2 Carrier indemnity (shipping guarantee) II

### The form of indemnity

Although most carriers will maintain their own standard form, its content will differ from carrier to carrier and often from country to country. There are, however, a number of common features, as follows.

- The form is pre-printed with the heading of the carrier. It will indicate that it is an indemnity containing an undertaking in connection with delivery of the described goods without production of an original bill of lading.
- The applicant and issuing bank, both of which may sign the indemnity (in the case of an indemnity issued directly by the bank, only the bank will sign), will undertake:
  - to indemnify the carrier and hold it harmless in respect of any liability, loss or damage of whatsoever nature that it may sustain by delivering the goods as requested;
  - to provide funds to defend any action brought against the carrier;
  - to pay on demand any freight and / or charges due on the goods (with the bank insisting, in some cases, that the goods be released only after payment of freight or other charges); and
  - to surrender an original bill of lading as soon as it is received and to acknowledge that each and every person is joint and severally liable, and that liability shall not be conditional upon proceeding first against any person.

A carrier's indemnity form may indicate that the incorporation of an expiry date or any qualifying remarks is not acceptable. The following particulars are typically shown:

- consignee;
- vessel and voyage number;
- bill of lading number;
- quantity and description of goods / container numbers; and
- amount (some carriers will insist on the indemnity having an amount that is upwards of 200% of the goods value or, in some cases, no amount).

To countersign or issue an indemnity, an issuing bank will normally require the applicant to sign its own form of indemnity in favour of the bank. Unsurprisingly, this indemnity will usually seek to protect the bank as fully as possible. It should include the applicant's undertaking to accept the documents, when presented, irrespective of any discrepancies, and it should contain an irrevocable authority for the bank to debit the applicant's account or an undertaking that the applicant will transfer funds to the issuing bank on first demand (when no account is held with the issuing bank).

### The risks

The risks to an issuing bank, in addition to those already detailed, are that:

- there will most likely be no date limitation of the bank's liability; and
- the liability may, in some cases, be unlimited in amount.

Accordingly, an issuing bank may insist upon a cash deposit to cover at least the invoice value plus a margin and will record the amount of liability against the customer's credit facility. Local bank regulations may dictate the specific procedure for establishing the bank's liability, limitation on its duration and specific accounting requirements. In most jurisdictions, the applicable statute of



limitations may apply to the expiry period for the indemnity, which, for most countries, would be a minimum of six or seven years.

### **20.13.3 Airway release and delivery orders**

An airway release deals with the delivery of goods despatched by air. A delivery order deals with the delivery of goods despatched by modes other than sea and air, and are generally seen in respect of goods despatched by road. However, it should be noted that banks will often refer to the issuance of a delivery order for the release of air cargo.

Goods despatched by air or road generally arrive sooner than the underlying documents. An issuing bank is therefore often called upon to issue an airway release or delivery order to the respective carrier holding the goods, enabling them to be released to the applicant under the documentary credit or its nominee.

#### **The form of airway release and delivery orders**

Airway release and delivery orders usually take the form of a letter, telex, fax or electronic message. They are issued by the issuing bank of the documentary credit, addressed to the carrier, and will show some, or all, of:

- air waybill number or truck waybill number;
- consignor;
- carton detail or container numbers;
- description of goods;
- documentary credit number;
- invoice number and invoice amount; and
- an instruction to release the goods to the applicant or its nominee.

The airway release or delivery order do not always include an indemnity to the carrier because, in the case of air despatch, the goods are often consigned to the issuing bank.

In these circumstances, the airway release or delivery order serves as an instruction to deliver goods to the applicant or its nominee.

## 20.14 Counter-indemnity

An applicant's counter-indemnity to an issuing bank to cover the issuance of an indemnity, airway release or delivery order, will usually indicate that the applicant:

- undertakes to accept the documents, when presented, irrespective of any discrepancies;
- indemnifies the bank against all actions, proceedings, damages or costs in relation to the issue, of the indemnity, release or order;
- undertakes that, should the goods released form part of a larger consignment, it will accept such larger consignment and pay the full value thereof; and
- gives the issuing bank irrevocable authority to debit its account, or an undertaking that the applicant will transfer funds to the issuing bank on first demand (when no account is held with the issuing bank).

## 20.15 The risks

The risks involved are that:

- the issuing bank takes on a primary responsibility by instructing a carrier to release goods to the applicant;
- the issuing bank is dealing with goods, contrary to the position under UCP 600; and,
- unless the beneficiary has been paid, or a draft has been accepted or a deferred payment undertaking incurred, the issuing bank is instrumental in delivering goods of an unpaid beneficiary to the applicant.

## 20.16 Letter of indemnity (LOI)

An LOI is usually seen in commodity trades, such as oil, in which the cargo can be sold many times before it is delivered to the end buyer. The following describes the circumstances under which an LOI could be used in a transaction covering a shipment of oil.

- Individual oil transactions typically have high values. They can be in the range of USD50m–100m or more.
- Intermediary buyers and sellers are often brokers who have no interest in the oil as end users, but who simply look to make a profit on each sale. A particular seller in the chain may well be a subsequent buyer of the same oil.
- Original charter party bills of lading are issued upon shipment, but the problem is that prior intervening parties may take their time to release and deliver the charter party bills of lading (duly endorsed to the next buyer), and therefore the final seller has little option but to use an LOI to fulfil its transaction.

A documentary credit covering a shipment, such as oil, will provide a list of the documents that are required in order for the beneficiary to be paid. This list will include documents such as a commercial invoice and a full set of charter party bills of lading. It will also often indicate that, should the charter party bills of lading not be available at the time of presentation or payment, the beneficiary may present an LOI and a commercial invoice in lieu of the listed documents. The documentary credit may incorporate the wording of the LOI that is to be issued.

If the beneficiary presents its invoice and LOI, settlement is made against these documents only. When the beneficiary has collated all of the other documents, it will present them to the nominated bank or issuing bank in exchange for the release of the LOI. These documents are not examined under the terms and conditions of the documentary credit or UCP 600, as honour or negotiation will already have been effected to the presenter against the presentation of the LOI and invoice of the beneficiary.

### 20.16.1 The form of the LOI

The LOI is generally a one-page document that:

- confirms the issuer's ownership rights over the goods;
- indemnifies the party to which it is addressed against the absence of a full set of original charter party bills of lading;
- undertakes to surrender such full set of charter party bills of lading as soon as they are received; and
- agrees to hold the addressee harmless and indemnified against all consequences resulting from the sale and the absence of a full set of original charter party bills of lading.

As previously stated, an LOI is usually issued by the beneficiary of the documentary credit and, if required, countersigned by its bankers. See Figure 20.1 for an example of a letter of indemnity in respect of a consignment of oil.

## 20.16.2 The countersigning of an LOI by a bank

It may be the case that a bank will be asked to countersign an LOI issued by the beneficiary. There are no rules that govern the countersigning of an LOI or the level of liability that a bank will record against its client's credit facility for doing so.

It has been known for some banks to record a nominal amount merely to track an outstanding LOI and the presentation of the charter party bills of lading and any other documents for its release. With the recording of a nominal liability will come a nominal fee for the bank adding its counter-signature.

Other banks will record the full amount against the credit facility of the beneficiary and charge accordingly.

It is for each bank to develop its own policies for the countersigning of such documents and to understand fully what their countersignature means with regard to risk and liability.

**Figure 20.1 Sample letter of indemnity**

**INDEMNITY FOR MISSING DOCUMENTS:**

TO: (BUYER/APPLICANT)

DATE:

RE: SHIPMENT OF ..... METRIC TONS OF ..... CRUDE OIL SHIPPED PER MTW ..... B/L DATED ..... 20XX, COVERED BY DOCUMENTARY CREDIT NUMBER ..... OF ..... (DATE) .....

DEAR SIRs,

ALTHOUGH WE, ..... (SELLER) ....., HAVE SOLD THE ABOVE MENTIONED CARGO TO ... (BUYER) ... WE HAVE BEEN UNABLE TO PROVIDE YOU WITH THE ORIGINAL SHIPPING DOCUMENTS INCLUDING 3/3 ORIGINAL CLEAN ON BOARD BILLS OF LADING ISSUED OR ENDORSED TO THE ORDER OF ... (BANK OR BUYER) ... AS REQUESTED BY DOCUMENTARY CREDIT NUMBER ..... COVERING THE SAID SALE.

IN CONSIDERATION OF ..... (BANK – IF APPLICABLE) ..... FOR ACCOUNT OF ..... (BUYER) ... PAYING US THE FULL PURCHASE PRICE OF USD ..... WE HEREBY TRANSFER TITLE TO YOU AND EXPRESSLY WARRANT THAT WE HAVE MARKETABLE TITLE TO SUCH CARGO FREE AND CLEAR OF ANY LIEN OR ENCUMBRANCE AND THAT WE HAVE FULL RIGHT AND AUTHORITY TO TRANSFER SUCH TITLE AND TO EFFECT DELIVERY OF SUCH MATERIAL TO YOU.

WE FURTHER AGREE TO EXERCISE OUR UTMOST EFFORTS TO LOCATE AND SURRENDER TO ..... (BANK OR BUYER) ..... FOR ACCOUNT OF ..... (BUYER) ....., AS SOON AS POSSIBLE THE ORIGINAL SHIPPING DOCUMENTS INCLUDING 3/3 ORIGINAL CLEAN ON BOARD BILLS OF LADING ISSUED OR ENDORSED TO THE ORDER OF ..... (BANK OR BUYER) ..... AS REQUESTED BY DOCUMENTARY CREDIT NUMBER. .... AND TO PROTECT, INDEMNIFY AND SAVE YOU HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, COSTS, COUNSEL FEES (INCLUDING REASONABLE ATTORNEY FEES) AND ANY OTHER EXPENSES WHICH YOU MAY SUFFER BY REASON OF THE ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS REMAINING OUTSTANDING, INCLUDING, BUT NOT LIMITED TO, ANY CLAIMS AND DEMANDS WHICH MAY BE MADE BY A CONSIGNOR, A HOLDER OR TRANSFEREE OF THE ORIGINAL BILLS OF LADING AND OTHER SHIPPING DOCUMENTS, OR BY ANY OTHER THIRD PARTY CLAIMING AN INTEREST IN OR LIEN ON THE CARGO OR PROCEEDS THEREOF.

THIS LETTER OF INDEMNITY SHALL BE CONSTRUED, INTERPRETED AND GOVERNED BY THE LAWS OF ... (COUNTRY ) ..... (WITHOUT LIMITATION AS TO ITS FORM CONTENTS, VALIDITY AND ENFORCEABILITY, BUT WITHOUT REFERENCE TO ANY CONFLICT OF LAW RULES).

THIS LETTER OF INDEMNITY WILL EXPIRE UPON OUR TENDERING TO ..... (BANK) ..... FOR ACCOUNT OF ..... (BUYER) ....., THE ORIGINAL SHIPPING DOCUMENTS INCLUDING 3/3 ORIGINAL CLEAN ON BOARD BILLS OF LADING ISSUED OR ENDORSED TO THE ORDER OF ..... (BANK OR BUYER) ..... AS REQUESTED BY DOCUMENTARY CREDIT NUMBER ..... AND ISSUED IN STRICT CONFORMITY WITH SAID DOCUMENTARY CREDIT.

YOURS FAITHFULLY,  
..... (SELLER) .....

.....  
AUTHORISED SIGNATORY

COUNTERSIGNED BY: ..... (BANK NAME)  
AUTHORISED SIGNATORY: ..... (NAME)

Source: Author, 2021

### Check your understanding

A bank is closed on the expiry date of the documentary credit due to circumstances beyond its control. What is the impact of article 36?

- a. The bank will refuse to examine documents once it reopens.
- b. The expiry date of the credit is automatically extended until the bank is open again.
- c. The bank must honour documents that are otherwise in order, even though the credit has expired.
- d. Only documents presented prior to the closure are considered to have been presented within the credit validity.

## 20.17 Syndicating, and participating in, risk

Increasingly, the values of many transactions are becoming so large that individual banks are less willing to undertake these transactions and to retain the full liability in their own books. As a result, banks may prefer to share the risk, and arrangements are made to syndicate part or all of the risk to participating banks. These arrangements are described in general terms as 'syndication' and 'participation'.

A group of banks may, at the request of an applicant, arrange a facility on a syndicated basis under which they share the risk of an applicant's inability to repay in (agreed) percentage terms. Part of such a facility may be available to open documentary credits. Such documentary credits may be opened by one bank, with the others sharing in the risk, or by each bank up to the percentage of the facility or risk agreed by it.

The syndication of, or participation in, risk in a documentary credit is handled in different ways depending upon:

- the banks concerned;
- the countries involved;
- legal issues and advice; and
- the approval of each bank's legal advisers on documentation.

The most common instances in which an act of syndication and participation may occur are as follows.

- A documentary credit may be established on behalf of an applicant (often a multinational) on a syndicated basis and to facilitate the process that follows from doing so – that is, the examination of documents and effecting payment thereunder.
- It may concern the confirmation of a large-value documentary credit.

It should be noted that arrangements may take either of two forms: silent or disclosed.

- **Silent** syndication is a one-off transaction under which the lead bank adds its confirmation and examines documents, and then honours or negotiates on behalf of the syndicate. The lead bank is the public voice of the syndicate, which means that third parties are unaware of the participation of the other banks.
- Syndication may be **disclosed** – that is, the sharing of a facility among banks in the syndicate under which each bank in turn confirms its own portion of the documentary credit and examines documents, and then honours or negotiates up to the amount for which it added its confirmation. Even with a disclosed syndication, the banks may agree on a single bank being responsible for the examination of documents and the honour, negotiation or refusal thereof.

### 20.17.1 Syndication agreements

An agreement signed by all participating banks is central to any syndication.

One bank will be appointed as the lead bank, either because such bank is to take the largest proportion of the risk or simply by common agreement of all banks that are involved. The lead bank will, in consultation with the other banks (and the applicant, when the syndicate is in respect of the issuance of one or more documentary credits), draw up a syndication agreement.

The agreement should cover some or all of the following aspects.

- i. The total value of the documentary credit(s)
- ii. The type and nature of the goods
- iii. The length of validity for shipment and expiry
- iv. The minimum documentary requirements to be stipulated in each documentary credit and required for presentation for honour or negotiation
- v. What type of amendment will or will not be permitted?
- vi. Whether the other banks wish to approve the text of each documentary credit and any amendment thereto prior to issuance
- vii. How documents are to be handled – that is, whether the lead bank’s examination of documents will be acceptable and the other banks will accept the lead bank’s decision with regard to conforming documents, and whether such acceptance will be qualified by exclusion of liability of the other banks in respect of manifest error or negligence on the part of the lead bank
- viii. If documents presented under the documentary credit are discrepant:
  - a. whether the other banks need to be advised of such discrepancies
  - b. whether the refusal of documents in terms of article 16 will end the liability of all banks
  - c. and where a waiver of the applicant has been accepted by the issuing bank, whether the other banks need to be consulted and whether they need to approve such waiver prior to reinstatement of their liability
- ix. Whether there are any circumstances (that is, bankruptcy or liquidation) in which banks will wish to retain their rights to:
  - a. refuse documents without reference to the applicant
  - b. refuse to reinstate their liability even if the applicant has subsequently accepted the discrepant documents
- x. The basis for sharing of commissions and fees
- xi. The documentary requirements for any claims under the syndication agreement
- xii. The sharing of any security that the applicant may have surrendered, including the sharing of the sale proceeds of the underlying goods

These points illustrate some aspects that need to be considered in drafting a syndication agreement, although not all will apply in every situation and some may involve additional issues. Each syndication arrangement needs to be examined separately and an agreement relevant to each must be drafted separately.



### 20.17.2 Confirming a large-value documentary credit when a single bank is unwilling to take all of the risk

The aspects of a syndication agreement, as shown in i–xii (see section 20.17.1), have equal application to the syndication of a confirmation of a documentary credit. In order to maintain control in handling such confirmations, bank staff should:

- clearly mark the system record to ensure that anyone can see that it relates to a syndicated transaction;
- ensure that the system record contains:
  - a copy of the syndication agreement; and
  - the names and telephone numbers of contacts in the participating banks (in each case, the bank’s in-house legal advisers and relationship manager);
- ensure that the transaction is handled by staff with sufficient experience in UCP 600, documentary credits and syndicated transactions, who are able to have meaningful conversations with participating banks, legal advisers and the relationship manager; and
- ensure that all developments are documented, including conversations with participating banks, legal advisers and relationship managers.

In view of the large amounts of money involved, the speed with which transactions need to be handled and the involvement of other banks, senior management or more experienced personnel should become involved when there is the slightest doubt or difficulty with a syndicated transaction.

## Conclusion

Examining documents is not all about the features and data that appear within certain fields or boxes in a document. It is also about understanding what certain terms and conditions mean and if a condition is not described properly it can have unintended consequences. For example, where the applicant requires the insertion of a shipment schedule that will be subject to compliance with article 32 but the wording is simply providing a sequence of latest shipment dates where that article will not apply.

It is likely that most document examiners pay little attention to the disclaimer articles of UCP 600. However, these are of equal importance to, say, the transport articles or article 18 covering commercial invoices. These disclaimer articles provide the protection for banks and outline a level of responsibility in the examination and handling of documents.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the basis under which a document examiner should determine whether or not a partial shipment has occurred?
- outline the different types and structures of tolerances that can be applied to a quantity of goods described in a documentary credit?
- describe the criteria that is necessary for the establishment of a documentary credit that is to revolve or contain a reinstatement clause?

## Test your knowledge

Use these questions to assess your learning for Topic 20.

1. A documentary credit is issued as follows:

- Field 45A: '500 Cars (200 Type A, 150 Type B and 150 Type C).'
- Type A are to be shipped no later than 20 June 20XX.
- Type B are to be shipped no later than 15 August 20XX.
- Type C are to be shipped no later than 30 September 20XX.

The beneficiary makes a presentation on 30 June 20XX, which includes two sets of bills of lading issued as follows: one set of on board bills of lading dated 19 June 20XX, covering shipment of 175 Type A cars; and one set of on board bills of lading dated 21 June 20XX, covering shipment of 25 Type A cars.

The documents are discrepant, but which of the following is correct?

- a. The credit ceases to be available for this drawing and the subsequent instalments.
- b. The credit ceases to be available for the subsequent instalments.
- c. Late shipment applies because 25 cars were shipped on 21 June, but the credit remains available for the subsequent instalments.
- d. Late shipment applies because 25 cars were shipped on 21 June and the credit ceases to be available for the subsequent instalments.

Answer: C. Field 45A consists of a series of latest shipment dates, as opposed to a requirement for three shipments to be made within given periods. In effect, all cars could be shipped by 20 June 20XX. Late shipment has occurred for the shipment of 25 cars shipped on 21 June. Because the shipments were not stated to occur within given periods, article 32 will not apply and the credit will remain available for the beneficiary to make the remaining shipment(s). See section 20.7.

2. Against what does an LOI indemnify the holder?

- a. Failure of the applicant to pay.
- b. Failure of the issuing bank to pay.
- c. The absence of a commercial invoice.
- d. The absence of an original charter party bill of lading.

Answer: D. An LOI is issued in respect of the absence of a full set of original charter party bills of lading. See section 20.16.

3. In most jurisdictions, after a minimum of how long will a carrier's indemnity (shipping guarantee) that contains no expiry date expire?

- a. Six months.
- b. Six or seven years.
- c. Four or five years.

d. One or two years.

Answer: B. Shipping guarantees and indemnities that are issued without an expiry date will usually be considered null and void after a period of six or seven years, which represents the statute of limitations that applies in most legal jurisdictions. See section 20.13.2.

4. Which of the following will not normally be included in a syndication agreement?

- a. Validity for shipment and expiry.
- b. Type of amendments that may be issued.
- c. A list of all required documents.
- d. The type and nature of the goods.

Answer: C. A list of the required documents will usually be left to the applicant and beneficiary to determine. See section 20.17.1.

5. Which of the following accurately describes a revocable documentary credit?

- a. It may be cancelled at any time.
- b. It may be amended at any time.
- c. It may be cancelled or amended at any time and without the prior consent of the beneficiary.
- d. It may be cancelled or amended without the prior consent of the beneficiary.

Answer: C. It is an amalgamation of the options shown in a, b and d. See section 20.1.

## Answers

### CHECK YOUR UNDERSTANDING (section 20.2)

c. Field 40A.

Field 40A (Form of Documentary Credit), ie IRREVOCABLE, IRREVOCABLE TRANSFERABLE, IRREVOCABLE STANDBY and IRREVOC TRANS STANDBY. See section 20.1.

### CHECK YOUR UNDERSTANDING (section 20.4.2)

False. Under sub-article 10(a), once issued a documentary credit cannot be amended or cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary. See section 20.2.

### CHECK YOUR UNDERSTANDING (section 20.5.2)

c. The issuer is obligated to pay only against bills of exchange (drafts) drawn on the issuer.

The issuer of a clean documentary credit is obligated to pay only against bills of exchange (drafts) drawn on the issuer and no other documents are required for payment. See section 20.3.

## CHECK YOUR UNDERSTANDING (section 20.8)

False. Field 39A indicates the tolerance applicable to the credit amount only. Any similar tolerance in quantity of goods must be shown in field 45A (Description of goods and/or services). See section 20.8.

## CHECK YOUR UNDERSTANDING (section 20.16.2)

d. Only documents presented prior to the closure are considered to have been presented within the credit validity.

The bank has no liability or responsibility for the closure. If the beneficiary was unable to make a presentation prior to the expiry date because of a force majeure event, the documents will be discrepant once the bank reopens. See section 20.12.

## References

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## Topic 21 Standby letters of credit

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### Learning objectives

By the end of this topic, you should be able to:

- describe the origins and use of a standby letter of credit; and
- understand the content of ISP98 as the rules specifically developed for use with a standby letter of credit.

### Introduction

This topic provides an overview of standby letters of credit and the content of ISP98.

#### Think...

Before you start work on this topic, consider what you already know about standby letters of credit. For example:

You are probably familiar with UCP 600, but how much do you know about ISP98?

Do you know that UCP 600, at best, accommodates the issuance of a standby letter of credit, as there are no articles that are specific to it? ISP98 rules were developed for use with standby letters of credit and it is plausible that a bank guarantee can also be issued subject to ISP98.

## 21.1 What is a standby letter of credit?

Standby letters of credit were initially developed because banks in the United States had limited legal authority to issue guarantees. Today, except under limited circumstances, that restriction on the issuance of guarantees no longer exists.

Standby letters of credit are used to underwrite a wide variety of commercial and financial operations.

Standby letters of credit are not legally distinct from demand guarantees, which also require the presentation of stipulated documents and compliance with the terms and conditions of the guarantee. The distinction lies in practice and terminology.

A standby letter of credit acts as a guarantee if there is a failure to perform a contractual undertaking, such as the obligation of a buyer to pay or that of a seller to deliver. It has the same basic form as a commercial documentary credit. However, the intention is often that a beneficiary, in whose favour a standby letter of credit is issued, draws only in case of default on the transaction to which the standby letter of credit relates.

## 21.2 Types of standby letter of credit

Standby letters of credit (or simply 'standbys') can be extremely flexible and are therefore a suitable product in a wide range of payment scenarios. The following are the types most commonly used.

- A **performance standby** supports an obligation to perform other than to pay money and includes an obligation to pay for losses arising from a default of the applicant in completion of the underlying transaction.
- An **advance payment standby** supports an obligation to account for an advance payment made by the beneficiary to the applicant.
- A **bid-bond, or tender bond, standby** supports an obligation of the applicant to execute a contract if it is awarded a bid.
- A **counter-standby** supports the issuance of a separate standby letter of credit or other undertaking by the beneficiary of the counter-standby.
- A **financial standby** supports an obligation to pay money, including any instrument evidencing an obligation to repay borrowed money.
- An **insurance standby** supports an insurance or reinsurance obligation of the applicant.
- A **commercial standby** supports the obligations of an applicant to pay for goods or services in the event of non-payment by other methods.
- A **direct-pay standby** is intended to be the primary means of payment and may or may not be linked to a default in performance or payment.



**Sample commercial standby letter of credit**

ISSUING BANK  
XYZ PLC LONDON  
100 MAIN STREET  
LONDON EC20 9XX

International Sellers Ltd  
35th Floor,  
Two Exchange Square Connaught Place  
Hong Kong

19 July xxxx

Dear Sirs,

We hereby issue our irrevocable standby letter of credit No. ... by order of Buyers (UK) Ltd., 100 High Street, London EC15 2AB, in your favour for an amount of GBP 100,000.00 (one hundred thousand pounds) which expires at this office on 31 December XXXX.

This standby letter of credit is issued to cover any non-payment for the delivery of [nature of the goods being shipped] and is available with us by payment against presentation to us of the following documents:

- i. Your sight draft drawn on us for the amount of your drawing.
- ii. Your certificate stating that you have (a) made shipment of the goods as described above; (b) made a demand for payment on Buyers (UK) Ltd; and (c) have not been paid within 30 days of the invoice date.
- iii. Copy of unpaid invoice.
- iv. Copy of bill of lading evidencing Buyers (UK) Ltd as consignee, covering shipment of the described goods from Hong Kong to Felixstowe.

Partial drawings are allowed.

All charges under this standby letter of credit are for your account and are as follows [details].

Except where otherwise expressly stated, this standby letter of credit is subject to the International Standby Practices, (ISP98), ICC Publication No. 590

Please quote our reference number on any correspondence.

Yours faithfully

ISSUING BANK XYZ PLC

## 21.3 Standby letters of credit and UCP 600

The first reference to standby letters of credit, in this context, was made by the ICC Banking Commission in March 1977. It expressed its opinion that such credits fell within the UCP definition of a 'documentary credit' and should therefore be subject to UCP (then UCP 290). The first reference to standby letters of credit in UCP itself came in UCP 400 in 1983.

A commercial documentary credit is issued at the request of the buyer (applicant) in favour of a seller (beneficiary). Its function is to enable the beneficiary to obtain payment due from the applicant once the beneficiary's part in the commercial contract has been fulfilled. The beneficiary can demonstrate fulfilment by presenting the stipulated documents to a nominated bank for honour or negotiation, or to the issuing bank for honour.

The role of the standby letter of credit is different, although it possesses all of the elements of a documentary credit subject to UCP. Standby letters of credit can be used in a variety of scenarios, including:

- as a performance guarantee, for example in respect of major construction contracts or major long-term sales;
- as a form of guarantee by, for example, a parent company for loans granted to a subsidiary (in which case, the standby letter of credit ensures payment if the subsidiary fails to repay the loan when due);
- to support a beneficiary (in which case, it will act to ensure payment under the standby letter of credit if the beneficiary does not receive payment under the pre-agreed method); or
- to cover a guarantee issued by a bank in favour of the beneficiary (in which case, the standby letter of credit may either be issued in favour of the beneficiary or in favour of a bank in the beneficiary's country).

These examples demonstrate how a standby letter of credit can be issued to cover a case of default, or non-performance. This contrasts with a commercial documentary credit, which ensures payment in a performance situation – that is, the shipment of goods or providing a service or performance – followed by the presentation of the stipulated documents. This affects both the position of the issuing bank and the type of documentation called for. Even if an applicant claims that it has performed, the issuing bank must pay under the terms of the standby letter of credit if the stipulated documents are presented in a complying form – usually a sight draft on the issuing bank, accompanied by a statement of claim issued by the beneficiary. This position has been upheld in a number of cases in which the courts have ruled against an applicant seeking an injunction to prevent an issuing bank from honouring its undertaking.

### **Standby credits and demand guarantees distinguished**

Although it is not always easy to distinguish on the basis of the basic wording, there is a difference between a standby letter of credit and a normal demand guarantee. Demand guarantees are usually subject to the Uniform Rules for Demand Guarantees (URDG), ICC Publication No. 758 (URDG 758). Demand guarantees subject to the URDG 758 do not, however, fall within the scope of this text.

As was the case with the development of UCP 500, which was implemented in 1994, a discussion took place at the time of the drafting of UCP 600 to determine whether to retain reference to the applicability of standby letters of credit. The decision to do so was explained in the Commentary to UCP 600, ICC Publication No. 680 (2007, p12):

During the course of the revision, a number of ICC national committees suggested that the reference to standby letters of credit be deleted from the UCP. Their rationale was that with the introduction of ISP98, there were now specific rules for standby credits. After considerable discussion, the Drafting Group felt that the reference to standby credits could not be deleted since, despite the introduction of ISP98, there were still a significant number of standby credits that continued to be issued subject to UCP. The Drafting Group also believed that even if reference were deleted, banks would continue to issue standby credits subject to the UCP.

Article 1 makes explicit reference to standby letters of credit and they may therefore be issued subject to the rules. However, it should also be noted that, because the function of a standby letter of credit is different from that of a commercial documentary credit, many articles, such as 18–32, have no practical application to a standby letter of credit.

It is often left to the concerned banks to determine which articles will be applicable.

The problem of the limited applicability of UCP to standby letters of credit has become more acute with their increasing development and the wide variety of uses that have arisen in more recent times. As a consequence, the need for separate rules to deal with problems specific to standby letters of credit became increasingly apparent to the international banking community.

In recognition of this need, the ICC obtained the approval of the international banking community for the introduction of separate rules for standby letters of credit. These rules are the International Standby Practices, ICC Publication No. 590 (ISP98).

### **Check your understanding**

A performance standby letter of credit supports an obligation to pay money, including any instrument evidencing an obligation to repay borrowed money. True or false?

## 21.4 Standby letters of credit and ISP98

Implemented on 1 January 1999, ISP98 reflects generally accepted practice, custom and usage specifically for standby letters of credit.

It is true to say that a number of standby letters of credit continue to be issued subject to UCP. However, there is a growing awareness internationally that ISP98 provides a more relevant framework for a standby letter of credit and, as a consequence, ISP98 is increasingly used.

ISP, in line with UCP, has been drafted as a set of rules intended for use in daily practice. As may be expected, some of the rules in ISP98 share a basic similarity with their counterpart in UCP and actually shaped some of the drafting of UCP 600.

That said, a different style and approach has been adopted in the ISP98 construction. This is because of the need for ISP98 to gain acceptance not only among the traditional parties to a standby letter of credit, but also among a broader range of those involved in standby letter of credit law and practice, including corporate treasurers and credit managers, rating agencies, government agencies and regulators, and members of the legal profession.

There are a number of differences in substance between ISP98 and UCP 600. These differences result from different practices or problems encountered in the use of standby letters of credit or the need for more precision in the wording of articles. In reality, a beneficiary will draw on a standby letter of credit only if there is a dispute over the performance of the underlying sales contract, and as such its wording, together with the governing rules, is likely to be subject to some robust legal scrutiny.

These differences in substance, together with the structural approach, will be seen in the rules that follow. The ISP98 rules are grouped together under ten generic headings, as follows.

1. General provisions
2. Obligations
3. Presentation
4. Examination
5. Notice, preclusion and disposition of documents
6. Transfer, assignment and transfer by operation of law
7. Cancellation
8. Reimbursement obligations
9. Timing
10. Syndication/participation

### 21.4.1 General provisions

ISP98 rules 1.01–1.11 establish some basic criteria in light of which ISP98 is to be considered:

- the scope and application of the rules – that is, to standby letters of credit of any form, however named or described, and whether for international or domestic use;
- that an undertaking (standby) subject to ISP98 may modify or exclude any rule therein (note the similarity with article 1); and
- that, should a standby be issued subject to ISP98 and another set of rules, ISP98 will prevail and will supplement the applicable law to the extent not prohibited by that law.

ISP98 rule 1.03 establishes a formal international standard banking practice for standbys subject to ISP98.

It should be noted that a beneficiary is only a party to a standby to the extent that it uses the standby and that an applicant is a recognised party under ISP98 rule 1.04. Note the difference with UCP 600 where the beneficiary is a party from the moment the standby is issued and the applicant is not a party to a standby letter of credit.

Unless the context otherwise requires, or unless expressly modified or excluded, ISP98 applies as terms and conditions incorporated into a standby, confirmation, advice, nomination, amendment, transfer, request for issuance, or other agreement of:

- i. the issuer;
- ii. the beneficiary to the extent it uses the standby;
- iii. any advisor;
- iv. any confirmer;
- v. any person nominated in the standby who acts or agrees to act; and
- vi. the applicant who authorises issuance of the standby or otherwise agrees to the application of these Rules.

ISP98 rules 1.06 and 1.07 outline the nature of a standby (that is, the irrevocable and binding nature of the undertaking when issued).

Note the relationship of the wording in ISP98 rule 1.06(b) with that which appears in the sub-article 10(a). Note too that:

- ISP98 does not define or provide for defences to honour based on fraud, abuse or similar matters; and
- the obligation of the issuer does not depend on the ability to obtain reimbursement from an applicant but does depend on the presentation of a complying demand.

Limitations of responsibility are explained in ISP98 rule 1.08 and include not being responsible for any performance or breach of the underlying transaction, accuracy or genuineness of any document presented (as in article 34), any action or omission of other persons chosen (as in sub-article 37(b)).

ISP98 rules 1.09, 1.10, and 1.11 provide, respectively, a definition of terms used in ISP98, a list of redundant or undesirable terms, and interpretations of the rules. Similar coverage can be found in articles 2 and 3.

### Check your understanding

Which **two** of the following are common scenarios in which a standby letter of credit may be used?

- a. To support a parent company if a subsidiary fails to repay an outstanding bank loan.
- b. To support the beneficiary if it does not receive payment under a pre-agreed method.
- c. To cover a guarantee issued by a bank.
- d. To help a company to hedge against the risks associated with export trading.

### 21.4.2 Obligations

There are strong similarities in intent to be found in articles 2 and 6–11. The key differences are:

- the introduction of the concept of ‘timely’, with ISP98 rule 2.01(c) defining when an issuer acts in such a manner;
- the obligations of the same issuing entity when operating from another location in a different capacity (ISP98 rule 2.02);
- the exclusion of a nominated person from binding the person making the nomination (ISP98 rule 2.04(c));
- that an amendment does not require the applicant’s consent to be binding on the issuer, confirmer or the beneficiary (ISP98 rule 2.06(c) (iii)).

The concept of honour or negotiation will be well known to documentary credit practitioners. The use of the word honour in UCP 600 was based upon its use in ISP98 to describe a standby letter of credit that is available by:

- payment at sight;
- acceptance of a draft drawn by the beneficiary on the issuer, the timely acceptance of that draft and payment to the holder of that draft on its presentation to the issuer on or after the maturity date; or
- by deferred payment of a demand made by the beneficiary on the issuer, by the timely incurring of a deferred payment obligation (deferred payment undertaking in UCP 600) and payment thereof on the maturity date.

The issuance of standby letters of credit that are available by acceptance or deferred payment are quite rare, but the rules need to reflect all the possibilities.

A standby letter of credit may also be available by negotiation. These factors are covered in ISP98 rule 2.01(a), (b) and (c). The issuer’s obligation regarding the payment is covered in ISP98 rule 2.01(e).

It is also important to note the separate undertaking of the confirming bank to the beneficiary under ISP98 rule 2.01(d).

In particular, note ISP98 rule 2.01(d)(ii) and the confirmer's undertaking being extended to a situation where the standby letter of credit permits presentation to the issuer and the issuer wrongfully dishonours.

### Check your understanding

For a standby letter of credit issued subject to ISP98, which of the following statements is **incorrect**? The ISP98 rules apply as terms and conditions for:

- a. The beneficiary from the moment the standby is issued.
- b. Any person nominated in the standby who agrees to act.
- c. The issuer.
- d. The applicant who authorises issuance.

### 21.4.3 Presentation

ISP98 rule 3.09 addresses one of the more difficult problems with which issuers of standby letters of credit have to contend, which is as follows.

1. Applicants and beneficiaries are in contact with each other in order to resolve problems with the underlying contract and to extend the standby letter of credit.
2. In the meantime, while such discussions are taking place, a beneficiary (with or without the knowledge of the applicant) makes a claim under the standby letter of credit in order to protect its position. The claim forms the basis of a 'extend or pay' request from the beneficiary.
3. Upon receipt of notification of the claim from the issuer, the applicant often leaves the issuer with the impression that there is no urgency with regard to the claim.
4. However, the issuer is anxious to examine the claim in the light of the irrevocable undertaking given, and this anxiety is heightened if there is not much time remaining for the expiry of the standby letter of credit and the need for examination of the claim on a timely basis.

These circumstances often also cloud genuine claims made by beneficiaries, and, further, a standby letter of credit itself sometimes provides for the presentation of an extend or pay demand. Contrast the problem as addressed in ISP98 with the way in which it is addressed in URDG 758.

In terms of article 36, banks need not honour their obligations under documentary credits that expire during a force majeure event and where no presentation was possible. This type of provision would not be equitable in default situations, which are the rationale for the issuance of standby letters of credit. Accordingly, ISP98 rule 3.14(a) makes provision for presentation to be made up to 30 calendar days after the issuer reopens for business.

#### 21.4.4 Examination

Compare ISP98 rule 4.01 with sub-article 14(a) in respect of the standard to which a presentation will be examined.

Although worded differently, there is no practical difference between the two rules. Document examiners should approach the examination of a presentation in the same manner, no matter whether ISP98 or UCP 600 apply.

Similarly, the position taken in ISP98 rule 4.02 is identical to that in sub-article 14(g). Documents presented, that are additional to those required by the standby letter of credit, will be disregarded and may be returned to the presenter.

In documentary credits, a common form of discrepancy relates to conflict of data. This could be a conflict with the terms and conditions of the documentary credit or with data appearing on any other stipulated document(s).

It should be noted that ISP98 rule 4.03 represents a distinct difference to the requirements of sub-article 14(d) with regard to the examination of documents for inconsistency (that is, not conflicting). This means that, unless otherwise specified in the standby letter of credit, a document examiner need only establish that the documents presented are those called for in the standby. These will be acceptable, notwithstanding that some of the data content of the documents may be in conflict.

Compare the wording of ISP98 rules 4.05–4.07 with that of their counterparts, particularly in articles 3, 14 and 18.

In particular, ISP98 rule 4.05 where it is stated that any required document must be issued by the beneficiary unless the standby letter of credit indicates the name of another issuer or the type of document requested is associated with a third person as issuer. Contrast this with the content of sub-article 14(f), where, with the exception of the invoice and transport or insurance documents, the absence of an issuer for a document allows any issuer.

The position expressed in ISP98 rule 4.06 that the issuance date of a required document may be earlier but not later than the date of its presentation, is replicated in sub-article 14(i).

ISP98 rule 4.07 provides extensive rules in relation to the required signature on a document. In article 3 the form of an acceptable signature is given. This is supplemented by the content of paragraphs A35 and A36.

Comparison should also be made between the wording of ISP98 rule 4.11(a) and (b) and sub-article 14(h) when describing the impact of a non-documentary condition on the examination of a presentation.

ISP98 rule 4.11(c) refers to determinations that are made from the issuer's own records or within the issuer's normal operations, and the re-computing of a beneficiary's computations arises in rule 4.11 (d). No similar rule exists in UCP 600, but paragraph A22 states that banks only determine that the totals of the amount, quantity, weight or number of packages do not conflict with the documentary credit or any other stipulated document. You may wish to compare the ISP98 position with the content of URDG 758 article 7, sub-article 13(b) and sub-article 19(e).

ISP98 rule 4.12 provides guidance with regard to statements, countersignatures, legalisation and certification of documents. In UCP 600, this is covered in more concise terms in article 3.



ISP98 rules 4.16–4.21 indicate the difference in usage between standby letters of credit and documentary credits in respect of any demand for payment, statement of default or other drawing event, negotiable documents, legal or judicial documents, other documents and requests to issue a separate undertaking. For a standby letter of credit that is subject to UCP 600, the issuer will be required to cover such issues within the terms and conditions of the standby letter of credit or as part of the requirements for a stipulated document.

#### 21.4.5 Notice, preclusion and disposition of documents

The nine rules covered under the generic heading 'Notice, preclusion, and disposition of documents' set out the requirements and responsibilities if a presentation under a standby letter of credit is refused. A parallel can be drawn with article 16, but some wording is again included in order to provide precision in the rules' meaning and application.

ISP98 rule 2.01(c) defines when an issuer is deemed to act in a timely manner, ie 'within the time permitted for examining the presentation and giving notice of dishonour'. ISP98 rule 5.01 designates that this time should not be unreasonable: within three business days is never unreasonable, whereas beyond seven business days is always unreasonable.

Note that the reference to seven business days refers to the same position that prevailed under UCP 500, ie when the ISP98 rules were drafted and implemented. Since then, UCP 600 has reduced the examination and refusal process to five banking days following the day of presentation.

The content of ISP98 rules 5.01(a) and (b) largely follow the content of sub-articles 14 (b) and 16(d).

ISP98 rule 5.09 recognises the fact that applicants sometimes raise objections or discrepancies after payment by the issuer and provides limitations on the applicant to provide such information. However, it should be noted that once an issuer has honoured a demand that process would not be undone by an applicant correctly asserting that the presentation was discrepant. It will be for the applicant and issuer to resolve the dispute.

ISP98 rules 5.09(a) and (c) use the words 'timely notice', which is defined in ISP98 rule 5.01. The two paragraphs together indicate that any objections by the applicant should not be made in a time that is considered unreasonable, although it is the issuer alone that has to decide whether to honour a presentation in terms of its irrevocable, independent and binding undertaking.

#### **21.4.6 Transfer, assignment and transfer by operation of law**

ISP98 rules on transferability of a standby letter of credit differ significantly from those under article 38. The prime differences are contained in ISP98 rule 6.02(b)(i) and (ii) which provides for the standby letter of credit to be transferred in its entirety more than once and prohibits partial transfer, unless otherwise stated in the terms of the standby letter of credit.

The ISP98 rules on the assignment of proceeds provide greater detail than the corresponding article 39 with regard to the responsibilities and obligations of an issuer or nominated party when acknowledging assignment of proceeds requests. ISP98 rules 6.06–6.10 will apply if the beneficiary has made an assignment of proceeds.

#### **21.4.7 Cancellation**

Given the nature of the use of standby letters of credit and the 'extend or pay' practice, as defined in ISP98 rule 3.09 it is of vital importance that the issuer is able to determine with absolute certainty that the beneficiary has agreed to any request for cancellation of the standby letter of credit.

ISP98 rules 7.01 and 7.02 cover cancellation and the information that may be requested by an issuer in order to action such a request.

#### **21.4.8 Reimbursement obligations**

The four rules collated under the heading 'Reimbursement obligations' cover the right to reimbursement not only of a nominated party from the issuer, but also of the issuer from the applicant. In this regard, ISP98 rule 8.01(b) also builds into the rules the obligations of the applicant, which will invariably be covered to differing degrees in a separate agreement or facility letter between the issuer and applicant.

By way of ISP98 rule 8.04, ISP98 adopts the incorporation of the ICC Rules for Bank-to-Bank Reimbursements into its terms without specific reference in the standby.

### 21.4.9 Timing

The separation of presentation under ISP98 section 3 from expiry in section 9 contrasts with their provisions under articles 6, 14, 29 and 33.

A further point that should be noted is the reinforcement, as provided in ISP98 rule 9.05 of the fact that retention of the standby letter of credit by the beneficiary after expiry does not preserve any rights to demand payment.

The aim of this provision is to establish the position of a standby letter of credit subject to ISP98 where the laws of certain countries permit demands to be made against guarantees, in some cases long after their expiry date.

#### Check your understanding

According to ISP98, which of the following statements is correct?

- a. Documents additional to those required will be disregarded.
- b. Data that conflicts between documents will always be deemed discrepant.
- c. The statement of default need not be issued by the beneficiary.
- d. Beneficiary computations must be re-computed.

## 21.5 Evergreen (or annually renewable) standby letters of credit

A feature of many standby letters of credit – especially those that relate to long-term projects or transactions – is what is known as an ‘evergreen’ (or ‘annually renewable’) clause.

It can often be the case that an applicant will require the issuance of a standby letter of credit with a validity of more than one year, but its credit facility permits a validity of only one year maximum. In order that the transaction may still be issued, a bank may offer an evergreen clause as the solution.

Consider the example of a standby letter of credit that is to be issued with a validity of five years.

1. The standby letter of credit is issued with a validity of one year (which is the maximum under the applicant’s credit facility), the expiry date being ‘31 December 20XX’.
2. The standby letter of credit incorporates the following clause.

This standby letter of credit will automatically extend for further periods of one year from the current and any future expiry date, subject to a maximum expiry date of 31 December 20XX [ie the date five years hence], unless we advise you at least 60 days prior to the then expiry date that we elect not to renew for a further one year period(s). In the event that we elect not to renew, you may draw hereunder for any amount that may be due to you.

3. If, each year, the bank decides not to provide a notice of non-renewal, the standby letter of credit will automatically extend for a further period of one year until the final expiry date is reached.
4. If the bank decides at any point not to renew and issues its non-renewal notice at least 60 days prior to the then expiry date, the standby letter of credit will expire on 31 December of that year.
5. If the notice of non-renewal is issued later than 60 days prior to the then expiry date, the standby letter of credit will expire on 31 December of the following year.

## Conclusion

A standby letter of credit was developed as a viable alternative to a bank guarantee when banks located in the US were not authorised to issue bank guarantees. Today, a standby letter of credit is used in most countries and provides a useful risk mitigation product for sellers of goods or services, especially those that are delivering goods on open account or documentary collection terms.

Over the years, a number of exporters have moved from documentary credits to open account or documentary collections, due to the cumbersome nature of some terms and conditions applied in documentary credits. Exporters use the standby letter of credit as a simple mechanism for obtaining payment in the event of default by their client.

Standby letters of credit issued subject to ISP98 (or UCP 600) also provide an alternative option to bank guarantees where most are still subject to an applicable law of the issuer.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the approach to be taken under one standby letter of credit subject to ISP98 and another that is subject to UCP 600 where the data appearing on documents presented thereunder, such as a copy of an invoice and a copy of a transport document, are in conflict?
- outline the different approach taken in ISP98 to that applicable under UCP 600 for the transfer of a standby letter of credit?
- describe the rules in ISP98 compared to those in UCP 600 for the time permitted to examine a demand and to refuse, if necessary?

## Test your knowledge

Use these questions to assess your learning for Topic 21.

1. What is the type of standby letter of credit that is intended to be the primary means of payment?

- a. Financial.
- b. Direct-pay.
- c. Performance.
- d. Advance payment.

Answer: B. A direct-pay standby is a type of standby that is intended to be drawn under. For example, it will allow for interest payments when the standby covers a loan to the applicant. See section 21.2.

2. An issuer of a standby subject to ISP98 is responsible for which of the following?

- a. The accuracy of any document.
- b. Any act of omission by the nominated bank.
- c. The observance of law, as stated in the standby.
- d. The performance of any underlying transaction.

Answer: C. ISP98 rule 1.08 states that an issuer is not responsible for the observance of law or practice other than that chosen in the standby or applicable at the place of issuance. Therefore, an issuer is responsible for the observance of law as stated in the standby. See section 21.4.1.

3. The issuing bank of a standby credit subject to ISP98 acknowledges an instruction from the beneficiary to assign proceeds. Which of the following statements is incorrect?

- a. The rights of the assignee are subject to the rights of any other acknowledged assignee.
- b. The rights of the assignee are subject to the rights of any other assignees, pending acknowledgement.
- c. The rights of the assignee are subject to any other rights or interests that may have priority under the applicable law.
- d. The rights of the assignee are subject to the existence of any net proceeds payable to the beneficiary by the person making the acknowledgement.

Answer: B. According to ISP98 rule 6.07(b), the rights of the assignee are not subject to the rights of any other assignee, pending acknowledgement. See section 21.4.6.

4. A standby letter of credit that supports the obligations of an applicant to pay for goods or services in the event of non-payment by another method is usually described as which of the following?

- a. A financial standby.
- b. A direct-pay standby.
- c. A commercial standby.
- d. An advance payment standby.

Answer: C. This type of standby is commonly described as a 'commercial standby'. See section 21.2.

5. Which of the following is true of a standby credit subject to ISP98 that states that it is not operative?

- a. It is irrevocable from date of issue.
- b. It is deemed not to have been issued.
- c. It is available for drawing immediately.
- d. It is revocable prior to becoming operative.

Answer: A. ISP98 rule 1.06 states that 'a standby is an irrevocable, independent, documentary, and binding undertaking when issued and need not so state'. ISP98 rule 2.03 states that unless the standby indicates that it is not then 'issued' or 'enforceable', a statement that it is not operative does not affect its irrevocability and binding nature when it leaves the issuer's control. See section 21.4.1.

## Answers

### **CHECK YOUR UNDERSTANDING (section 21.3)**

False. A performance standby supports an obligation to perform other than to pay money and includes an obligation to pay for losses arising from a default of the applicant in completion of the underlying transaction. See section 21.2.

### **CHECK YOUR UNDERSTANDING (section 21.4.1)**

- b. To support the beneficiary if it does not receive payment under a pre-agreed method.
- c. To cover a guarantee issued by a bank.

Answer: To cover a guarantee issued by a bank in favour of the beneficiary (in which case, the standby letter of credit may either be issued in favour of the beneficiary or in favour of a bank in the beneficiary's country). See section 21.3.

### **CHECK YOUR UNDERSTANDING (section 21.4.2)**

- a. The beneficiary from the moment the standby is issued.

Rule 1.04 states that the beneficiary is only a party to the standby to the extent that it uses the standby. See section 21.4.1.

### **CHECK YOUR UNDERSTANDING (section 21.4.9)**

- a. Documents additional to those required will be disregarded.

Documents not called for by the standby credit will be disregarded and may be returned to the presenter per rule 4.02. See section 21.4.4.



## Topic 22 Bank-to-bank reimbursements and reimbursement from multilateral development finance institutions

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### Learning objectives

By the end of this topic, you should be able to:

- describe the role of a reimbursing bank; and
- understand the process that applies when a development finance institution (DFI) is responsible for providing reimbursement.

### Introduction

This topic looks at arrangements that involve a reimbursing bank or DFI providing reimbursement to a nominated bank.

#### Think...

Before you start work on this topic, consider what you already know about bank-to-bank reimbursements. For example:

How much do you know about obtaining reimbursement from a source other than an account in the name of the issuing bank held with the nominated bank?

Or, where the issuing bank is to provide reimbursement upon its receipt of a SWIFT message or the issuing bank determining that a presentation is complying?

## 22.1 The relationship between an issuing bank and a reimbursing bank

Although only an issuing bank is necessary to facilitate reimbursement under a documentary credit, in many cases an issuing bank will nominate, and instruct, another bank to reimburse a nominated bank that has honoured or negotiated a complying presentation made under a documentary credit. Such a bank is referred to as the reimbursing bank.

The nomination of, and instruction to, a reimbursing bank could also arise in circumstances where the nominated bank or a bank presenter (acting on behalf of the beneficiary) is to effect settlement to the beneficiary following the issuing bank's acceptance of a waiver of discrepancies issued by the applicant. It could also be where a nominated bank has not acted on its nomination to honour or negotiate, but settlement is due to the beneficiary. This situation would be based on the issuing bank authorising the nominated bank or bank presenter for settlement to occur, and that reimbursement for such settlement may be claimed from a named reimbursing bank.

Although the UCP were developed to standardise the operation of documentary credits, the practice of interbank currency reimbursement was typically carried out in line with local market practice. As the volume of international trade increased, this became a significant cause of additional risk for reimbursing banks in documentary credits.

Although article 13 contains rules relating to bank-to-bank reimbursements, they are deliberately limited in content due to the ICC having developed a set of rules for bank-to-bank reimbursements to help banks to manage this risk. The current version is the ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits, Publication No. 725 (referred to as URR 725).

Article 13 covers some very basic arrangements for bank-to-bank reimbursements. URR 725 provides additional clarification and more detailed rules to be followed at each stage of the process.

Sub-article 13(a) requires a documentary credit to state whether URR 725 is to apply to it. URR 725 requires the reimbursement authorisation issued by the issuing bank and sent to the reimbursing bank to make it clear that URR 725 is to apply to it. If the documentary credit and reimbursement authorisation is silent in this respect and a bank-to-bank reimbursement is to occur, then the contents of sub-articles 13(b) and (c) will apply.

Reimbursing banks act upon the instruction and authority of the issuing bank, and any difficulties that a claiming bank has in respect of non-payment, late payment or interest charges are to be referred to the issuing bank and not the reimbursing bank.

### 22.1.1 The risks to a reimbursing bank

A reimbursing bank is entitled to be reimbursed by the issuing bank when it has honoured a claim of a claiming bank (usually the nominated bank) as specified in the issuing bank's reimbursement authorisation. However, it has no obligation to reimburse a claiming bank unless it has issued a reimbursement undertaking.

It should be noted that a reimbursing bank is neither concerned with nor bound by the terms and conditions of the underlying documentary credit, and therefore is not concerned with whether or not a complying presentation has been made to that claiming bank.

The main risk to the reimbursing bank is that, once it has paid the claiming bank's claim, it may not be able to obtain reimbursement from the issuing bank (for the same reasons as a confirming bank may not be able to obtain reimbursement from an issuing bank). However, in most cases, a reimbursing bank will not honour a claim unless sufficient funds are available on the account of the issuing bank or other arrangements are in place where there may be a shortfall.

## 22.2 The ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR 725)

As noted earlier, sub-article 13(a) requires a documentary credit to state whether URR 725 rules are to apply. If the documentary credit is silent in this respect and a bank-to-bank reimbursement is to occur, then the contents of sub-articles 13(b) and (c) will apply.

The principle expressed in sub-article 13(c), ie that an issuing bank remains obligated to provide reimbursement if reimbursement is not made by a reimbursing bank on first demand, also applies if the URR rules are to apply.

Neither article 13 nor URR 725 apply in respect of a documentary credit where:

- reimbursement is to be arranged by the issuing bank upon the issuing bank's receipt of a complying presentation;
- a nominated bank is authorised to debit an account, held with that nominated bank, in the name of the issuing bank; or
- an issuing bank undertakes to reimburse a nominated bank upon receiving a SWIFT message from that nominated bank confirming that a complying presentation has been made under the documentary credit.

### 22.2.1 URR 725 articles 3, 4, 5, 6 and 10

The key points made in URR 725 articles 3, 4 and 5 are as follows.

- A reimbursement authorisation is separate from the documentary credit (URR 725 article 3).
- Except under its own separate undertaking, a reimbursing bank has no liability to honour a claim made under a documentary credit; rather, such liability rests with the issuing bank and confirming bank, if any (URR 725 article 4).
- It is only the issuing bank that can and should provide the necessary and correct information (URR 725 article 5).

URR 725 article 6 deals with the Issuance and Receipt of a Reimbursement Authorization or Reimbursement Amendment.

It is not uncommon for issuing banks to stipulate a two- or three-day (sometimes longer) notice requirement prior to claims being met. This is primarily for cash management purposes, to enable the issuing bank to allow covering funds to be transferred to its account with the reimbursing bank.

Details of the requirement for a pre-debit notification (from the reimbursing bank to the issuing bank) should be included in the reimbursement authorisation and the documentary credit.

URR 725 article 10 establishes the Standards for a Reimbursement Claim.

In order to avoid any delay in the processing of reimbursement claims under reimbursement undertakings, the reimbursing bank should state in the terms of its reimbursement undertaking if it requires a claim to be authenticated. Similarly, upon receipt of a reimbursement authorisation, the reimbursing bank may wish to advise the issuing bank of its requirement, which might then be

incorporated into future documentary credit instructions. In any event, the reimbursing bank has the right to request that a reimbursement claim be authenticated, without being liable for any consequence resulting from any delay incurred.

## 22.3 A step-by-step guide to URR 725

The step-by-step guide that follows is intended to offer guidance only. While the relevant articles of URR 725 are cited and sometimes quoted, this can be no substitute for referring directly to URR 725 itself.

### Issuance (step 1)

1.1 The issuing bank sends the documentary credit to the advising bank. It indicates that reimbursement is subject to URR 725 and specifies, as applicable, any requirements for pre-notification of a claim to be sent to the issuing bank, any pre-debit instructions (for compliance by the reimbursing bank) and the party responsible for the reimbursing bank's charges.

The issuing bank sends to the reimbursing bank an authenticated reimbursement authorisation, stating that it is subject to URR 725 and specifying the details as mentioned in URR 725 sub-articles 6(d) (i)–(v), namely:

- |   |
|---|
| <ul style="list-style-type: none"><li>i. credit number;</li><li>ii. currency and amount;</li><li>iii. additional amounts payable and tolerance if any;</li><li>iv. claiming bank or, in the case of a credit available with any bank that claims can be made by any bank. In the absence of any such indication, the reimbursing bank is authorized to pay any claiming bank;</li><li>v. parties responsible for charges (claiming bank's and reimbursing bank's charges) in accordance with article 16 of these rules.</li></ul> |
|---|

If the reimbursement authorisation requires the reimbursing bank to accept and pay a term draft, it must additionally specify the details as mentioned in URR 725, sub-articles 6(e)(i)–(iii), namely:

- |  |
|--|
| <ul style="list-style-type: none"><li>i. tenor of draft to be drawn;</li><li>ii. drawer;</li><li>iii. party responsible for acceptance and discount charges, if any.</li></ul> |
|--|

If the reimbursement authorisation is irrevocable and requires the reimbursing bank to issue its reimbursement undertaking, it must specify the details as mentioned in URR 725 sub-articles 9(b)(i)–(vi), namely:

- |   |
|---|
| <ul style="list-style-type: none"><li>i. credit number;</li><li>ii. currency and amount;</li><li>iii. additional amounts payable and tolerance, if any;</li><li>iv. full name and address of the claiming bank to which the reimbursement undertaking should be issued;</li><li>v. latest date for presentation of a claim, including any usance period;</li><li>vi. parties responsible for charges (claiming bank's and reimbursing bank's charges and reimbursement undertaking fee) in accordance with article 16 of these rules.</li></ul> |
|---|

If the reimbursement authorisation is irrevocable and requires the reimbursing bank to issue its reimbursement undertaking, and also to accept and pay a term draft, it must additionally specify the details as mentioned in URR 725 sub-articles 9(c)(i)–(iii).

1.2 The advising bank receives the authenticated documentary credit and advises the beneficiary.

The reimbursing bank receives the authenticated reimbursement authorisation and reviews its details:

- if it is not prepared to act, it should advise the issuing bank without delay; or
- if it is prepared to act, it records the details of the reimbursement authorisation pending receipt of any claim.

If it has been requested to issue its reimbursement undertaking, the reimbursing bank either advises the issuing bank without delay if it is not prepared to do so, or it sends its authenticated reimbursement undertaking to the named claiming bank, specifying its terms and conditions, and including the details as required by URR 725 sub- articles 9(e)(i)–(vi).

1.3 The issuing bank receives notification from the reimbursing bank if it is not prepared to act and is required to provide new reimbursement instructions to the advising bank.

Alternatively, the claiming bank (for example, the advising bank) receives an authenticated reimbursement undertaking (if required and issued), which it records pending receipt of a presentation under the documentary credit.

### **Amendment (step 2)**

2.1 The issuing bank sends an authenticated amendment to the documentary credit to the advising bank.

The issuing bank sends a reimbursement amendment to the reimbursing bank if details in the original reimbursement authorisation have changed as a result of the amendment to the documentary credit.

2.2 The advising bank receives the authenticated amendment transmission and advises the beneficiary.

The reimbursing bank receives the authenticated reimbursement amendment and reviews the details:

- if it is prepared to act in accordance with the reimbursement amendment, it records the details pending receipt of any claim;
- if it is not prepared to act in accordance with the reimbursement amendment, it should advise the issuing bank without delay; or
- if the reimbursement amendment is to an irrevocable reimbursement authorisation, the reimbursing bank decides whether or not to amend its reimbursement undertaking and either sends its authenticated reimbursement undertaking amendment to the claiming bank, or advises the issuing bank without delay that the reimbursement amendment is not acceptable.

2.3 Where applicable, the claiming bank receives the authenticated reimbursement undertaking amendment and reviews its details. It then either records the amended reimbursement undertaking under advice to the reimbursing bank (if the reimbursement undertaking amendment is acceptable) or communicates its rejection of the reimbursement undertaking amendment to the reimbursing bank without delay.

2.4 The reimbursing bank receives the reimbursement undertaking amendment communication from the claiming bank:

- if the claiming bank accepts its terms, the reimbursing bank notifies the issuing bank that the reimbursement amendment is acceptable; or
- if the claiming bank rejects its terms, the reimbursing bank notifies the issuing bank that the reimbursement amendment is not acceptable, and the terms of the unamended or previously accepted amended reimbursement undertaking remain in place.

2.5 The issuing bank receives the reimbursement amendment communication from the reimbursing bank. If the terms have been rejected, it reviews the need to provide additional reimbursement guidance or new instructions to the advising bank.

### Claiming (step 3)

3.1 The claiming bank sends its reimbursement claim to the reimbursing bank, usually by teletransmission, but possibly in the form of an original letter, specifying the details as required under URR 725 sub-articles 10(a)(ii) and (iii), together with instructions of where funds are to be paid.

a. The claiming bank's claim for reimbursement:

[ ... ]

ii. must clearly indicate the credit number and the issuing bank

(and reimbursing bank's reference number, if known);

iii. must separately stipulate the principal amount claimed, any additional amount due and charges;

- If a term draft is to be forwarded for acceptance and payment at maturity, the claiming bank must forward the draft, together with the details specified in URR 725 sub-articles 10(b)(i)–(v).

- i. general description of the goods, services or performance;
- ii. country of origin;
- iii. place of destination or performance;
- iv. and if the transaction covers the shipment of merchandise
- v. date of shipment;
- vi. place of shipment.

- If the reimbursement is due on a future (predetermined) date, the reimbursement claim should not be sent to the reimbursing bank more than ten banking days prior to the predetermined date.

3.2 The reimbursing bank receives the reimbursement claim. The reimbursing bank has a maximum of three banking days following the day of receipt of the reimbursement claim in which to process it (URR 725 sub-article 11(a)).



- If the reimbursement claim is acceptable, and in the absence of a reimbursement undertaking, the reimbursing bank pays funds to the claiming bank, in accordance with instructions received subject to funds being made available by the issuing bank. It also sends an advice to either the claiming bank or the issuing bank, or both, if so required.
- If the reimbursement claim is acceptable and is presented in respect of a reimbursement undertaking issued by the reimbursing bank, the reimbursing bank pays funds to the claiming bank in accordance with instructions received. It also sends an advice to either the claiming bank or the issuing bank, or both, if so required.
- If the reimbursement claim is refused, the reimbursing bank sends notice of its refusal to both the claiming bank and the issuing bank by telecommunication or other expeditious means no later than the close of the third banking day following the day of receipt of the claim plus any pre-debit notification period, if any. If such refusal is under a reimbursement undertaking, the reimbursing bank must state the reason for its non-payment of the reimbursement claim.

If it disregards a reimbursement claim because the claim has been presented more than ten banking days prior to the predetermined reimbursement date, the reimbursing bank should send a telecommunication to this effect to the claiming bank without delay.

3.3 The issuing bank receives advice of reimbursement or refusal from the reimbursing bank. If the reimbursement claim has been refused, it must provide alternative reimbursement to the claiming bank without delay.

The claiming bank receives timely payment of funds in accordance with its instructions or a non-payment notification from the reimbursing bank.

- If non-payment is the result of its reimbursement claim being submitted too early, the claiming bank re-presents its claim within ten banking days of the predetermined reimbursement date.
- If non-payment is the result of its reimbursement claim being issued incorrectly, the claiming bank presents a new conforming claim.
- If non-payment is for any other reason, the claiming bank contacts the issuing bank without delay, seeking immediate reimbursement of funds, together with interest, if applicable.

#### **Cancellation of reimbursement authorisation while the documentary credit is still valid (step 4)**

4.1 The issuing bank sends an authenticated message to the advising bank revising the documentary credit reimbursement instructions. If appropriate, it sends a reimbursement authorisation to another reimbursing bank.

The issuing bank sends an authenticated reimbursement authorisation cancellation to the reimbursing bank.

4.2 The advising bank receives the authenticated message revising the reimbursement instructions, which it records pending presentation under the documentary credit.

If a reimbursement undertaking has been issued, an advising bank, which is also the claiming bank, may diarise for receipt of the reimbursement undertaking cancellation request from the reimbursing bank.

The reimbursing bank receives the authenticated reimbursement authorisation cancellation transmission from the issuing bank, which it records, and notes that, if the reimbursement authorisation is revocable, it is cancelled for any future claims received.

If the reimbursement authorisation is irrevocable and the reimbursing bank has issued its reimbursement undertaking, it sends a reimbursement undertaking cancellation notice to the claiming bank without delay.

4.3 Where applicable, the claiming bank receives the authenticated reimbursement undertaking cancellation notice from the reimbursing bank. It sends its communication of acceptance or refusal of cancellation to the reimbursing bank without delay.

4.4 The reimbursing bank receives the reimbursement undertaking cancellation acknowledgement from the claiming bank. It advises the issuing bank without delay of its acceptance or refusal of the reimbursement authorisation cancellation.

4.5 The issuing bank receives the reimbursement authorisation cancellation acknowledgement from the reimbursing bank. If cancellation is refused, it reviews the need to provide additional reimbursement guidance or new instructions to the advising bank.

## **Cancellation of reimbursement authorisation after expiry of the documentary credit (step 5)**

5.1 The issuing bank sends an authenticated reimbursement authorisation cancellation request to the reimbursing bank.

5.2 The reimbursing bank receives the authenticated cancellation request from the issuing bank, and if it is not an irrevocable reimbursement authorisation, it cancels it in its records. If a reimbursement undertaking has been issued, it checks that the terms of the reimbursement undertaking have expired before accepting or refusing the cancellation request and advises the issuing bank without delay.

## **Problems**

The most frequent problems and issues that arise in respect of reimbursements under documentary credits can be summarised as follows. The name of the party (or parties) with primary ownership of each problem or issue is also indicated (in parentheses).

- The reimbursing bank has received no reimbursement authorisation from the issuing bank (issuing bank).
- There has been withdrawal or cancellation of the reimbursement authority without new reimbursement instructions being advised to the advising bank (issuing bank).
- The reimbursement authorisation does not match the claim (claiming bank and / or issuing bank).
- There are inadequate funds available to effect reimbursement (issuing bank).
- There may be issues relating to operations of law, such as international boycotts, government freezing of assets or court action (international bodies / central banks / governments / courts).
- Payment may have been late (issuing bank and / or claiming bank and / or reimbursing bank, where a reimbursement undertaking is issued).
- There may be charges due (issuing bank and / or claiming bank).

### **Check your understanding**

Under URR 725 article 5, which bank can provide the necessary and correct information in the reimbursement authorisation?

- a. Nominated.
- b. Reimbursing.
- c. Issuing.
- d. Claiming.

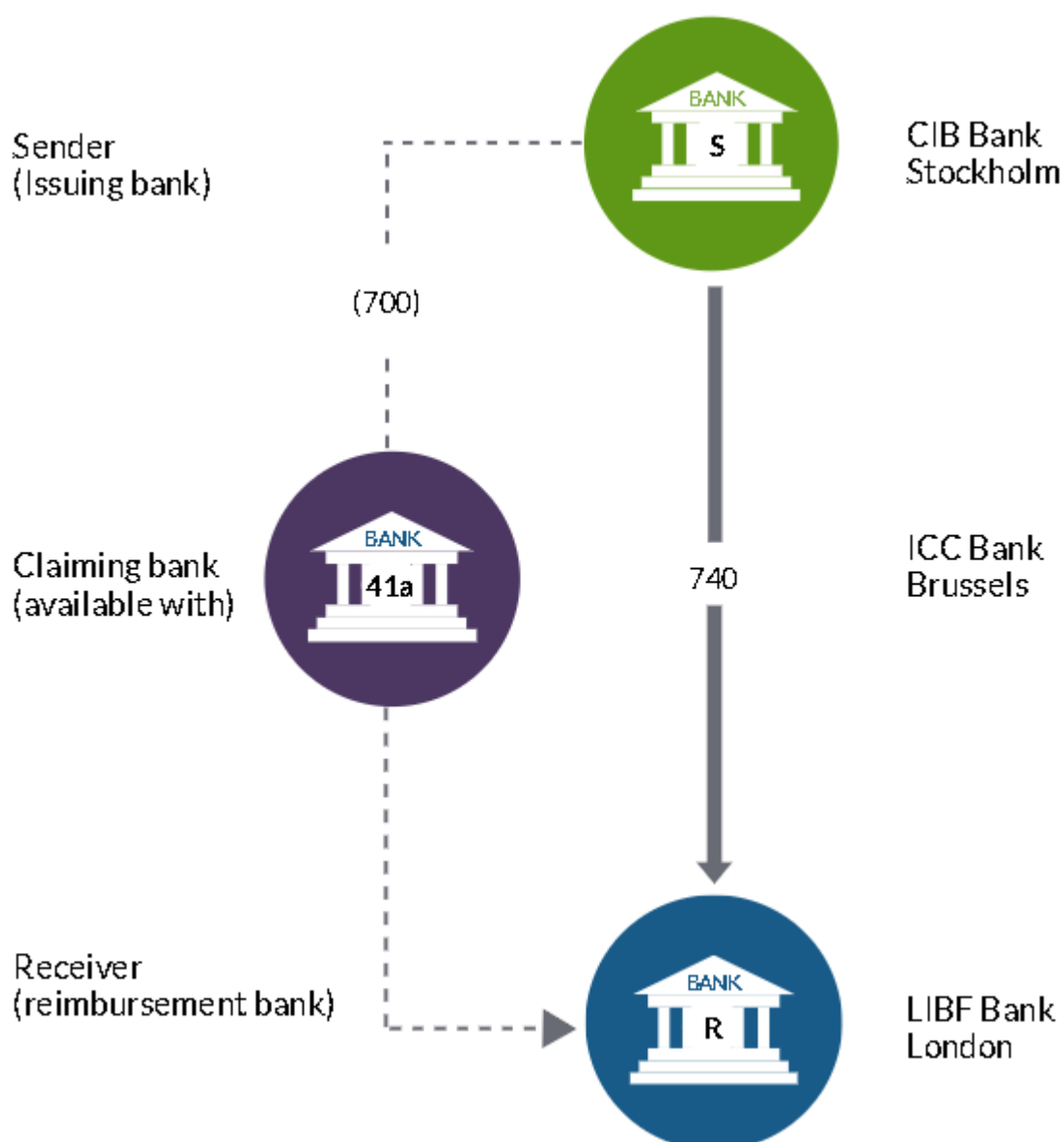
## 22.4 Disciplines prompted by SWIFT message types

SWIFT message types and operating guidelines impose an additional discipline with respect to bank-to-bank reimbursements. Three message types apply – in particular:

- MT740 ('Authorisation to reimburse');
- MT747 ('Amendment to an authorisation to reimburse'); and
- MT742 ('Reimbursement claim').

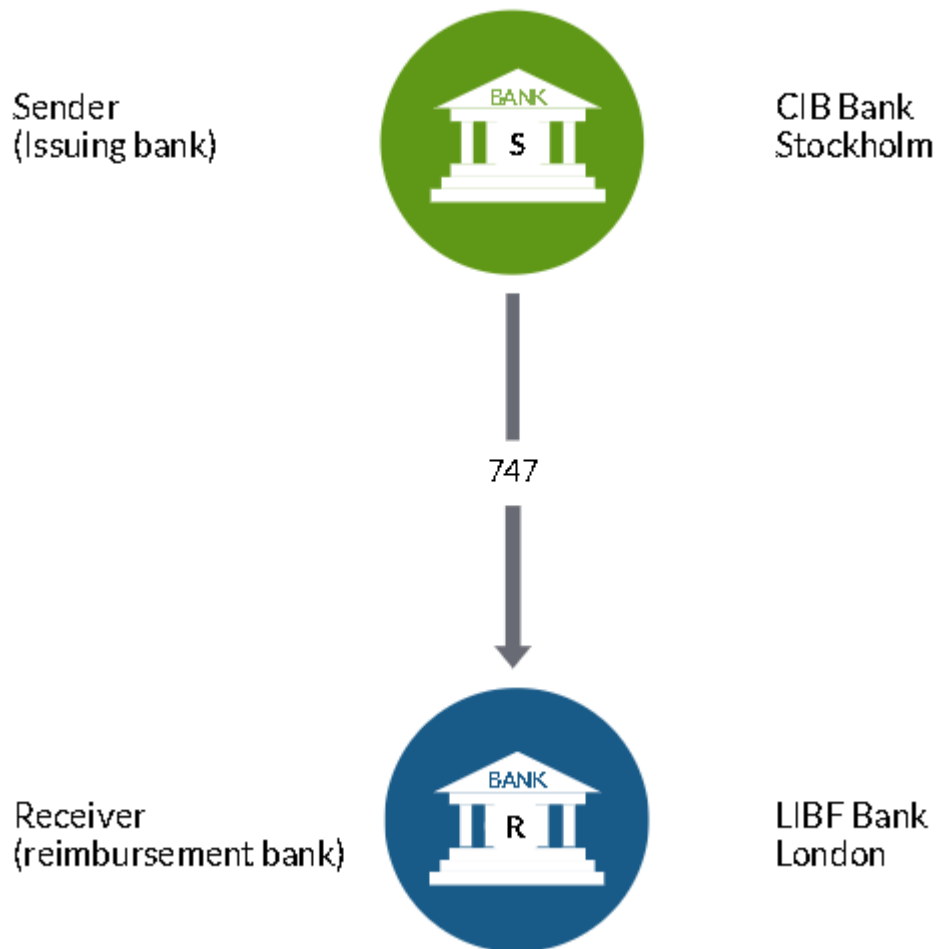
See Figures 22.1–22.3 for an illustration of the information flow in each case.

**Figure 22.1 MT740 ('Authorisation to reimburse') information flow**



Source: SWIFT

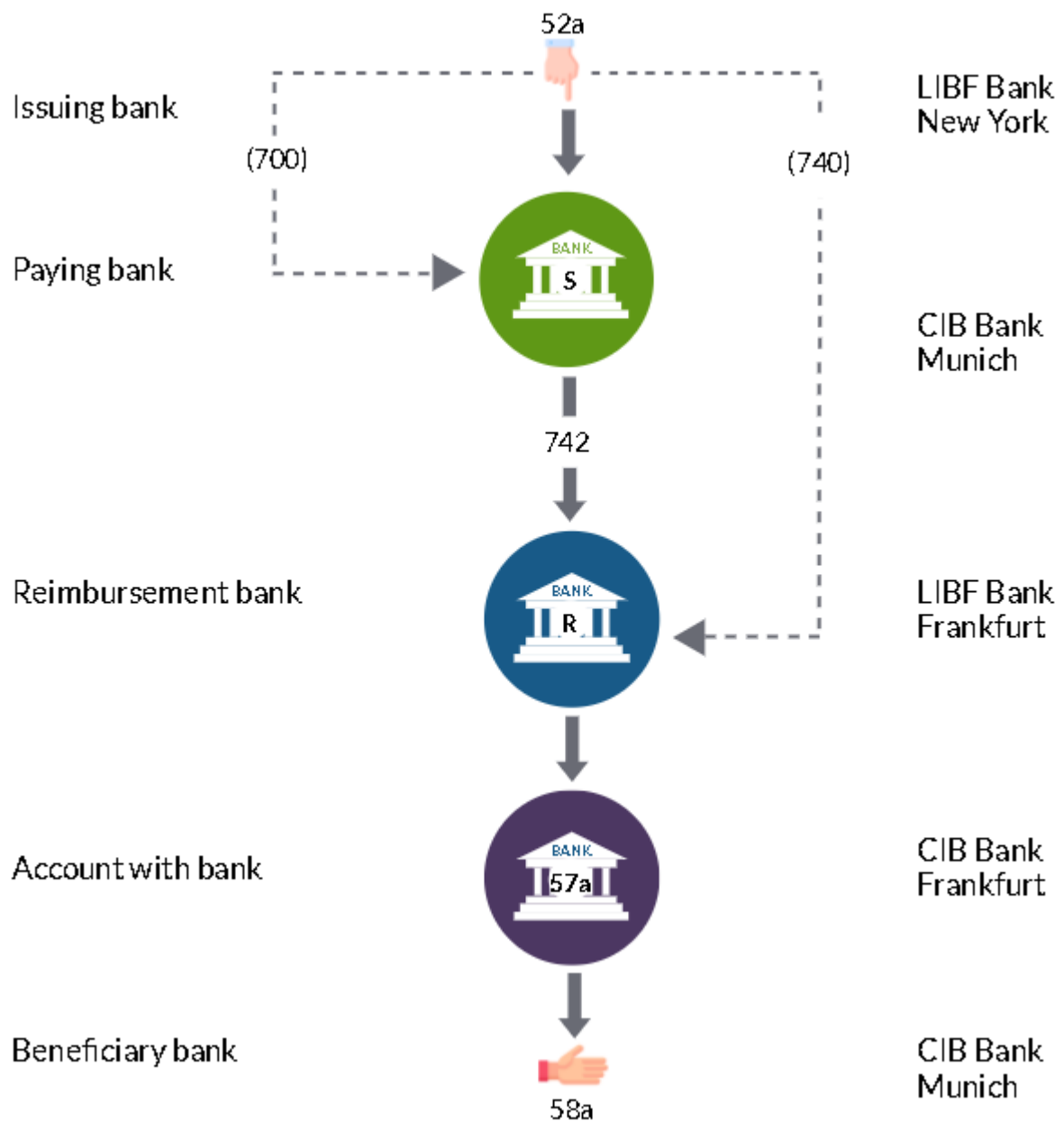
Figure 22.2 MT747 ('Amendment to an authorisation to reimburse')



Source: SWIFT

**Figure 22.3 MT742 ('Reimbursement claim') – information flow**

(incorporating MT700 and MT740)



Source: SWIFT

## 22.5 Documentary credits with reimbursement provided by multilateral DFIs

Organisations such as The World Bank, the European Bank for Reconstruction and Development (EBRD), the Asian Development Bank (ADB) and the Inter- American Development Bank (IDB), among others, will often provide funding for local projects in the form of loans, particularly in parts of Africa, Latin America and Asia.

To ensure that such funding is used for the correct purpose, it is often the case that a local bank will issue a documentary credit, but instead of the local bank being responsible for reimbursing a nominated bank, one of these organisations will issue its guarantee or reimbursement agreement in favour of the nominated bank, whereby the organisation will provide the reimbursement to a nominated bank that honours or negotiates a complying presentation.

It is often the case that a bank will add its confirmation upon receipt of the guarantee or reimbursement agreement, when under normal circumstances it might not be willing to add its confirmation to a documentary credit that indicates that the local issuing bank is responsible for reimbursement.

The issuing bank will be required to send a copy of its documentary credit to the organisation so that it might issue its guarantee or reimbursement agreement. In the meantime, the documentary credit will be advised to the beneficiary on a non-operative basis, pending receipt of the guarantee or reimbursement agreement from the named organisation.

In these circumstances, when a bank is requested or authorised to add its confirmation, it will do so only upon receipt of the guarantee or reimbursement agreement, and it will record its liability against the named organisation and not the issuing bank.

The guarantee or reimbursement agreement will usually provide for reimbursement to be made within a maximum of 30 days after the date of the claim, and such claim is often to be supported by a copy of the invoice and (sometimes) the transport document.

Any amendment to the documentary credit will be advised to the beneficiary as inoperative pending the approval of the organisation. For some organisations, any amendment is automatically acceptable, provided that it does not impact upon the expiry date, the amount, the goods description or the names of the applicant and beneficiary.

### Check your understanding

If a reimbursement authorisation is irrevocable, requiring the reimbursing bank to issue its reimbursement undertaking for a sight letter of credit, it must specify a number of details. Select three correct answers.

- a. The full name and address of the reimbursing bank.
- b. The latest date for presentation of a claim.
- c. Additional amounts payable and tolerance, if any.
- d. The party responsible for reimbursing bank charges.
- e. The name of the party that is to draw a draft on the reimbursing bank.

### Check your understanding

Which SWIFT message type refers specifically to 'Amendment to an authorisation to reimburse'?

- a. MT740.
- b. MT742.
- c. MT747.
- d. MT745.



## Conclusion

By using the services of a reimbursing bank, an issuing bank avoids having to maintain bank accounts with each of its correspondent banks with whom it may advise documentary credits. While some banks will maintain more than one reimbursing bank in a major currency centre, eg the United States for USD transactions, most will centre their operation on a single bank. Use of one or more reimbursing banks provides an issuing bank with greater control over their commitments based on the due dates for any payments to a nominated bank.

It is advisable, where a reimbursing bank is involved, that the documentary credit and reimbursement authorisation refer to it being subject to URR 725. These rules not only facilitate the basis for bank-to-bank reimbursements to occur, but also provide the necessary information that must flow between the issuing bank and reimbursing bank, and the reimbursing bank and the claiming bank.

Multilateral DFIs offer loans to issuing banks covering the import of certain types of goods. They perform a similar function to an irrevocable reimbursement undertaking provided by a reimbursing bank.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the relationship of a reimbursement authorisation to the terms and conditions of the documentary credit to which it relates?
- list the basic criteria that is required for a reimbursement authorisation where no reimbursement undertaking is required?
- outline the responsibilities of an issuing bank if a reimbursing bank declines to handle a reimbursement authorisation or where an issuing bank decides to cancel a reimbursement authorisation?
- describe the role and function of a multilateral development financial institution?

## Test your knowledge

Use these questions to assess your learning for Topic 22.

1. A reimbursing bank has a maximum of how many banking days following the day of receipt of a reimbursement claim in which to process it?

- a. Two.
- b. Three.
- c. Four.
- d. Five.

Answer: B. URR 725 sub-article 11(a)(i) states that a reimbursing bank shall have a maximum of three banking days following the day of receipt of the reimbursement claim in which to process the claim. See section 22.3.

2. Which of the following is not a true statement?

- a. Reimbursement may be made subject to sub-articles 13(b) and (c).
- b. Reimbursement may be made subject to URR 725.
- c. Reimbursement may be made subject to URR 725 and UCP 600 sub-articles 13(b) and(c).
- d. Reimbursement may be made subject to URR 725, with certain modifications or exclusions made in the reimbursement authorisation.

Answer: C. UCP 600 sub-article 13(a) requires a documentary credit to indicate whether URR 725 is to apply to the reimbursement conditions. UCP 600 sub-articles 13(b) and (c) will apply only where URR 725 is not applicable. See sections 22.1 and 22.2.

3. An issuing bank's instruction to a reimbursing bank requesting issuance of a reimbursement undertaking subject to URR 725 must indicate which of the following?

- i. Whether partial drawings are allowed.
  - ii. The latest date for presentation of a claim, including the usance period.
  - iii. The expiry date of the documentary credit.
  - iv. That the claiming bank must certify compliance with the credit terms.
- a. ii only.
  - b. iii only.
  - c. i, ii and iii only.
  - d. ii, iii and iv only.

Answer: a. ii only. There must be an indication of the latest date for presentation of a claim, including the usance period. For a sight transaction, the latest date would need to reflect

the expiry date of the documentary credit plus a period for the examination of documents and a claim to be made, should the documents be presented to the nominated (claiming) bank on or shortly prior to the expiry date. (See also URR 725 sub-article 9(e)(v).) See section 22.3.

4. A reimbursing bank has received a valid claim under its reimbursement undertaking and is simultaneously instructed by the issuing bank not to honour the claim. In accordance with URR 725, how should the reimbursing bank proceed?

- a. It should request that the claiming bank cancel the claim.
- b. It should instruct the claiming bank to contact the issuing bank.
- c. It should honour the claim and debit the issuing bank's account.
- d. It should dishonour the claim as per the issuing bank's instruction.

Answer: C. The reimbursing bank has given its own independent undertaking to the claiming bank that it will honour a complying claim. Any disputes between the issuing bank and the nominated (claiming) bank should be resolved without the involvement of the reimbursing bank. See sections 22.1, 22.2 and 22.3.

5. In the event that a reimbursing bank does not honour a claim under a reimbursement authorisation for which no reimbursement undertaking has been issued, who is responsible under URR 725 for the interest in the delay in reimbursement?

- a. The beneficiary.
- b. The issuing bank.
- c. The reimbursing bank.
- d. The claiming bank.

Answer: B. URR 725 article 17 indicates that any claim for interest is between the claiming bank and the issuing bank. See sections 22.1 and 22.3.

## Answers

### CHECK YOUR UNDERSTANDING (section 22.3)

- c. Issuing.

It is only the issuing bank that can and should provide the necessary and correct information (URR 725 article 5). See section 22.2.1.

### CHECK YOUR UNDERSTANDING (section 22.5)

- b. The latest date for presentation of a claim.
- c. Additional amounts payable and tolerance, if any.
- d. The party responsible for reimbursing bank charges.

It must specify the details as mentioned in URR 725 sub-articles 9(b)(i)–(vi), namely:

- i. credit number;
- ii. currency and amount;
- iii. additional amounts payable and tolerance, if any;
- iv. full name and address of the claiming bank to which the reimbursement undertaking should be issued;
- v. latest date for presentation of claim, including any usance period;
- vi. parties responsible for charges (claiming bank's and reimbursing bank's charges and reimbursement undertaking fee) in accordance with article 16 of these rules.

Also, according to URR 725 sub-article 9(c), there should not be any requirement for a sight draft to be drawn on the reimbursing bank. See section 22.3.

### **CHECK YOUR UNDERSTANDING (section 22.5)**

c. MT747.

SWIFT message types and operating guidelines impose an additional discipline with respect to bank-to-bank reimbursements. Three message types apply – in particular:

- MT740 (Authorisation to reimburse);
- MT747 (Amendment to an authorisation to reimburse); and
- MT742 (Reimbursement claim).

See section 22.4.

## Reference

SWIFT (2021) *SWIFT Standards* [online]. Available at: <https://www.swift.com/standards> [Accessed: 1 March 2021].

## Topic 23 eUCP

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### Learning objectives

By the end of this topic, you should be able to:

- describe the features of eUCP; and
- understand the contrast between the rules in UCP 600 and those under eUCP.

### Introduction

This topic includes a brief history and outline of eUCP.

#### **Think...**

Before you start reading this topic, consider what you already know about eUCP and the presentation of electronic records. For example:

How much do you know about the scope of eUCP in the context of the type of presentation that is intended for examination?

Do you understand eUCP version 2.0 to be a supplement to UCP 600?

## 23.1 eUCP

The first ICC published supplement, Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentations (eUCP), came into effect at midnight on 31 March 2002. At the time, they were the most quickly developed set of ICC rules, taking just 18 months from the initial drafting to publication.

eUCP represented the first move by the ICC Banking Commission to expand the reach of UCP to cater for dematerialised documentation transactions transmitted electronically.

The rules were updated on 1 July 2007 to accompany the implementation of UCP 600 and again in 2019 in order to ensure continued digital compatibility.

In recent years, there has been a reported upsurge in documentary credits issued subject to eUCP, primarily in the commodity market where speed of movement of the documents, from beneficiary through to the issuing bank and the applicant, is often critical given the nature of the goods that are involved and their value.

The Covid-19 pandemic has heightened the need to move from paper documents to electronic records. It is expected that the number of eUCP credits will increase steadily in the years to come.

## 23.2 The key features of eUCP

### **eUCP version 2.0 rules and supporting resources**

You can access the full eUCP version 2.0:

ICC - [ICC Banking Commission releases new eRules on the use of electronic documents](#)

The news release states that the “ICC has made the full text of both [eURC](#) and [eUCP](#) available online for the use of trade finance professionals everywhere”.

**Students should refer to the definition of the rules in conjunction with the content of this topic which discusses the eUCP articles and sub-articles.**

To complement the eUCP version 2.0, read:

ICC - [Commentary on eUCP version 2.0 eURC version 1.0](#), which is an article-by-article analysis, highlighting the general categories of issues that should be considered when using eUCP.

In addition, [Supplement to the commentary on eUCP version 2.0 and the eURC version 1.0 \(eRules\)](#) outlines the preparations and usage of the rules.

The key features of eUCP can be summarised as follows.

- eUCP version 2.0 is a supplement to, and must be used in conjunction with, UCP 600. eUCP version 2.0 is the second supplement that may be used in conjunction with UCP 600. The other is the version 1.1. Version 1.0 was drafted for use with UCP 500.
- It is flexible and may be used to facilitate mixed presentations comprising part-paper and part-electronic presentations, or fully electronic presentations.
- It is intended to be dynamic. The current version 2.0 is a foundation for the future revisions that will be needed to keep pace with changes to technology and practice.
- It is structured to align with UCP 600 and its rules follow a logical sequence of activities undertaken in an electronic presentation.
- It provides definitions of terminology used within its text.
- The provisions of its articles, in relation to UCP 600, may be categorised into four groupings, as follows.
  - Provisions of UCP 600 that have no parallel in eUCP and are applicable to an eUCP documentary credit.

For example, the provisions regarding the undertaking and obligations of the issuing bank, confirming bank and advising bank, and the limitation on the obligations of a nominated bank that does not act pursuant to its nomination contained in UCP 600 articles 2, 4–9 and 12, remain unchanged.

- Provisions of eUCP that add to, but do not contradict, UCP 600 rules with respect to an electronic record and which do not impact the UCP 600 provisions with respect to paper documents.



For example, eUCP sub-article e3(a) provides definitions of terms that are used in UCP 600 but which have an expanded understanding under eUCP, when an electronic record is presented.

- Provisions of eUCP that differ from the treatment of paper documents under UCP 600, but which relate only to an electronic record so that there is no change to the provisions of UCP 600 as to paper documents under an eUCP documentary credit.

For example, eUCP article e12 provides the course of action required when an electronic record is received but appears to have been affected by a data corruption. Similarly, eUCP article e13 states that a bank, once having satisfied itself as to the apparent authenticity of an electronic record, has no liability or responsibility for the characteristics of an electronic record, such as the identity of the sender, source of the information as received by a data processing system or for the unavailability of a data processing system, other than its own.

- Provisions of the eUCP that change the UCP 600 rule under which a documentary credit is subject to eUCP and which are applicable whether or not they apply to an electronic record or a paper document presented under an eUCP documentary credit.

eUCP articles and sub-articles e2, e6(c) and (e), e7(a) (i) and (ii), e8 and e9 are examples.

- Documentary credits issued subject to eUCP version 2.0 (or 1.1) are automatically subject to UCP 600 without specific reference.
- Under a documentary credit issued subject to eUCP, the provisions of eUCP prevail over those of UCP 600 in the event of their application providing different results.

### Check your understanding

A documentary credit is issued subject to eUCP version 2.0 but only refers to the presentation of paper documents. Will eUCP version 2.0 still be applicable to the presentation. Yes or no?

## Conclusion

For documentary credits, eUCP provides the foundation for the transition from paper documents to electronic records. The rules, which are technology neutral, allow all the parties to a documentary credit to come together and create transactions which are to be fulfilled by the presentation of entirely electronic records or a presentation consisting of a mix of paper documents and electronic records.

In recent years, there have been numerous reports appearing in trade magazines, online articles, blogs and newsletters of documentary credits being issued subject to eUCP. These have primarily involved commodity companies and often reported as 'firsts', occurring in or between certain countries, or of shipments of a certain type of goods. Now that the basis for electronic records has been established, ie rules and a number of available electronic platforms to facilitate their handling, the numbers and types of transactions should steadily grow.

Unlike UCP 600, the eUCP supplement is issued in version numbers. This process facilitates the ability to update the supplement at any given point in time to cater for any changes to the digitalisation of traditional paper documents and the processes that facilitate the handling of electronic records.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- remember the number of versions of eUCP and when they were issued?
- describe the relationship of eUCP version 2.0 to UCP 600?
- explain the four groupings of the eUCP articles in relation to the content of UCP 600?

## Test your knowledge

Use these questions to assess your learning for Topic 23.

1. Which of the following is true if a bank requests that an electronic record be re-presented because the initial presentation appears to be corrupted?
  - a. The date of the re-presentation becomes the new presentation date.
  - b. The beneficiary has 21 calendar days in which to re-present the electronic record.
  - c. The time for examination is suspended and resumes when the re-presented record is received.
  - d. The re-presentation may be with paper documents, even if the documentary credit calls for electronic records.

Answer: C. eUCP sub-article e12(b)(i) states that the time for examination is suspended and resumes when the presenter re-presents the electronic record. See section 23.2.

2. Complete the following sentence.

Notice of completeness under eUCP is sent by the:

- a. confirming or nominated bank to the issuing bank, confirming receipt of electronic and paper documents.
- b. presenting bank to the confirming bank or the issuing bank, signifying that the presentation is complete.
- c. beneficiary to the bank to which presentation is made, signifying that the presentation is complete.
- d. bank to which presentation is made, to the beneficiary, signifying that the bank has received the complete presentation.

Answer: C. eUCP sub-article e6(c) states that the beneficiary is responsible for providing a notice of completeness to the bank to which presentation has been made. See section 23.2.

3. Which of the following is true of eUCP?

- a. They are a set of stand-alone rules.
- b. They are a supplement to UCP 600.
- c. They are a publication that indicates the international banking practice that applies to electronic records.
- d. They are a set of guidelines for use with electronic records.

Answer: B. eUCP sub-article e1(a) describes the publication as a supplement to the UCP 600. See section 23.1.

4. Which of the following is true of a documentary credit that is subject to eUCP?

- a. It is also subject to UCP 600 without express incorporation of the UCP.
- b. It is also subject to UCP 600 if there is express incorporation of the UCP.
- c. It is subject to UCP if the parties so agree.
- d. It is subject to UCP if the parties so agree in a written agreement.

Answer: A. eUCP sub-article e2(a) states that a credit subject to the eUCP is also subject to UCP 600 without express incorporation of the latter. See section 23.2.

5. If an eUCP documentary credit does not specify the format in which electronic records are to be presented, how may the electronic record be presented?

- a. In paper format only.

- b. In a PDF attached to an email.
- c. In any format.
- d. As a scanned or faxed form.

Answer: C. eUCP article e5 states that if the format of the electronic record is not specified in an eUCP credit, it may be presented in any format. See section 23.2.

## Answer

### CHECK YOUR UNDERSTANDING (section 23.2)

No. The eUCP sub-article e2(c) indicates that if only paper documents are permitted under an eUCP credit, UCP 600 alone shall apply. See section 23.2.

## References

ICC (no date) *Commentary on eUCP version 2.0 eURC version1.0* [online]. Available at: <https://iccwbo.org/content/uploads/sites/3/2019/07/icc-commentary-on-eucp-2-0-and-eurc-1-0-article-by-article-analysis.pdf> [Accessed: 11 February 2021].

ICC (no date) *Supplement to the commentary on eUCP version 2.0 and the eURC version1.0 (eRules)* [online]. Available at: <https://iccwbo.org/publication/supplement-to-the-commentary-on-eucp-version-2-0-and-eurc-version-1-0-erules/> [Accessed: 11 February 2021].

ICC (no date) *Users guide to the eUCP* [online]. Available at: <https://2go.iccwbo.org/users-guide-to-the-eucp.html> [Accessed: 28 April 2021].

ICC (2019) *ICC Banking Commission releases new eRules on the use of electronic documents* [online]. Available at: <https://iccwbo.org/media-wall/news-speeches/icc-banking-commission-releases-new-erules-use-electronic-documents/> [Accessed: 11 February 2021].

## Topic 24 Dispute resolution

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### Learning objectives

By the end of this topic, you should be able to:

- describe the dispute resolution services made available by the International Chamber of Commerce (ICC); and
- select the appropriate forum for the different types of dispute that may be encountered.

### Introduction

This topic reviews the options that are available to the parties to a documentary credit when a dispute arises, usually in the context of the status of a presentation of documents.

#### Think...

Before you start work on this topic, consider what you already know about dispute resolution.

For example:

Do you know how the ICC provides guidance, direction and decisions to help resolve disputes that may arise between applicants and issuing banks; issuing banks and nominated banks or confirming banks; and between nominated banks or confirming banks and the beneficiary?

Do you know which services the ICC provides that are free and those for which a fee is payable?

Are you aware of the process and requirements for obtaining guidance, direction or a decision from the ICC?

## 24.1 How disputes arise

The process of examination of documents under a documentary credit will often result in a difference of opinion as to whether the documents comply or not, and if they are considered to be discrepant, which discrepancies are applicable.

Some discrepancies will be quite obvious or known to the presenter. These are generally resolved by the submission of a new document or the correction of a document, or by the applicant providing a waiver that is acceptable to the issuing bank.

While most of these disputes will relate to the interaction between a beneficiary and a nominated bank (whether or not it has added its confirmation), they may equally concern:

- an applicant and an issuing bank (where the issuing bank has honoured a presentation, but the applicant is of the view the documents are discrepant);
- a beneficiary and an issuing bank (where the beneficiary has presented documents directly to the issuing bank, or where a nominated bank has not agreed to act on a nomination to honour or negotiate and may have acted only as a delivery service for the documents, but has left the beneficiary to interact with the issuing bank); or
- the nominated bank and the issuing bank (where the nominated bank has honoured or negotiated what it believes to be a complying presentation, and the issuing bank disagrees and refuses to reimburse or authorise reimbursement, or is seeking a refund of reimbursement already received by the nominated bank).

In each of these cases, it is to be hoped that an amicable solution will be reached and that the applicant will eventually take up the documents. However, for some, the arguments put forward on both sides are so strong that an external source of information or decision-maker is required to help to determine who is right and who is wrong.

## 24.2 ICC services

Since 1933, the ICC has made available seven UCP publications, two URR publications, three ISBP publications, and two decision documents relating to the determination of an original document and the handling of documentary credit transactions during the transition from European legacy currencies to the euro, as well as a number of educational and guidance papers.

In addition, the ICC Banking Commission has given hundreds of official Opinions in respect of questions posed by banks, corporates, lawyers, logistics organisations, etc, many of which relate to whether or not documents complied.

Since 1997, more than 160 decisions of the Documentary Dispute Resolution Expertise (DOCDEX) service (see section 24.2.2) have also been rendered, the vast majority relating to documentary disputes.

The text of ICC Opinions and transcripts from DOCDEX cases will often help parties to understand the correct application of the UCP or URR in relation to a transaction with similar circumstances or issues.

### 24.2.1 ICC Opinions

While ICC Opinions are not binding, they do provide some understanding of how the UCP or URR should be applied in a number of given situations. For many years, ICC Opinions have proved to be invaluable when used as part of the evidence submitted in court cases to support the position of a defendant or plaintiff.

It is usual that a single entity will submit a request for an Opinion. A joint submission has been made in only two known instances. It therefore follows that only one set of views of a transaction will be given. From the perspective of the ICC Banking Commission, there is no guarantee that all of the facts will have been given or that they will have been properly represented in the query as submitted.

As a result, it is important to note that the analysis and conclusions that are given to these Opinions must be read in the context of the query that has been outlined and the question(s) that have been asked.

It should also be noted that the request for an Opinion must include all of the pertinent details, because no supporting documents (such as copies of shipping documents) are permitted unless absolutely necessary for an understanding of the query, analysis and/or conclusion. Particular attention should be made to the question(s) that the ICC Banking Commission is required to respond to, as requested by the initiator. The ICC Banking Commission will answer only the question(s) submitted, even if other issues may become apparent when reading the outline of the request.

The ICC Banking Commission has established a set of guidelines for the submission of a request for an Opinion, which include the following:

1. All requests for an Opinion must be routed to the ICC Banking Commission Secretariat in Paris, through the initiator's local ICC national committee or, where this is not available, a local banking association or similar.
2. Only one topic or issue may be raised in a request for Opinion, but each request may contain more than one question related to the text of the query. Where issues cover more than one documentary credit, collection, guarantee or reimbursement, they must be submitted as separate requests unless the facts are identical for each transaction.
3. It is the responsibility of each ICC national committee or banking association to ensure that the issue contained in any request does not represent a hypothetical situation or question. The ICC Banking Commission technical advisers may seek separate assurances before issuing a draft Opinion if they have any doubts as to the nature of the query.
4. An Opinion request should, unless there are special mitigating circumstances, consist of a maximum of two A4 pages, in Times New Roman font at font size 12. If more than two A4 pages are submitted, the officers will consider whether or not the request, in its presented form, can be considered for an Opinion.
5. Even with requests that are of one or two pages, it can be difficult to follow the sequence of events in a query when the various banks are described as 'Bank A', 'Bank B', etc. Therefore, the banks should be identified in the query by their roles – that is, as 'issuing bank', 'advising bank', 'confirming bank', 'nominated bank', etc.



6. The deadline for submission to the ICC Banking Commission Secretariat in Paris of a request for an Opinion is no later than ten weeks prior to the next scheduled meeting of the ICC Banking Commission.
7. The technical advisers are responsible for the review of the query as submitted and the drafting of an interim draft Opinion. The ICC Banking Commission Secretariat will email the consolidated final draft Opinions to national committees and members of the ICC Banking Commission eight weeks prior to the next scheduled meeting of the ICC Banking Commission.
8. The ICC national committees and members are required to submit their agreement or comments to each of the draft Opinions no later than two weeks prior to the next scheduled meeting of the ICC Banking Commission. It is only after the text of the analysis and conclusion, provided to each draft Opinion, is approved at that meeting that the Opinion can be considered to be the official Opinion of the ICC Banking Commission.

The ICC Banking Commission currently provides Opinions free of charge.

A draft version of the Opinion will be sent to the initiator quite quickly, usually within two weeks after submission of the request. However, it should be noted that, because the ICC Banking Commission meets only twice a year, it could be anything up to six months before the draft Opinion is approved. Requesting an ICC Opinion is therefore not suitable for resolving disputes in respect of a current transaction. It may be possible, however, to find an Opinion given previously on a similar issue that will help the parties to understand and resolve any dispute.

The ICC publishes Opinions periodically in book and e-book formats.

### **Check your understanding**

An ICC official Opinion is to be considered as binding on the initiator and any other party that is involved in the underlying documentary credit. True or false?

## **24.2.2 The Documentary Dispute Resolution Expertise (DOCDEX) service**

The ICC's DOCDEX service commenced in October 1997 but was applicable only for disputes relating to transactions subject to UCP or URR. When the DOCDEX rules were updated in March 2002, the scope was widened to include transactions subject to URC 522 and URDG 758.

In November 2014, the Banking Commission approved a new set of DOCDEX rules that additionally caters for transactions subject to ISP98 and also trade finance transactions that are not subject to ICC rules.

Today, the DOCDEX service offers bankers and traders a means by which to settle trade finance disputes, usually within two to three months or less. The key advantage of DOCDEX is that parties can stay out of court and settle a dispute reliably, quickly and at a low cost.

The ICC International Centre for Expertise, a unit within the Secretariat of the ICC International Court of Arbitration, administers the DOCDEX process.

DOCDEX offers a system whereby experts carefully examine all documents before reaching a decision. A panel of three such impartial experts decides the cases. The Centre selects each expert after carefully screening to check their qualifications and independence. Experts include bankers, lawyers, consultants and individuals who have dealt with trade finance issues for many years.

The panel's decision is further scrutinised by a technical adviser to the Banking Commission, who personally reviews each decision to ensure that it conforms to applicable ICC rules and their interpretation by the Banking Commission, or to established international practice where no ICC rules are applicable.

Decisions are binding only if both parties have so agreed in their respective submission to the Centre.

The full text of the DOCDEX rules is available free of charge from the ICC - [DOCDEX](#).

### Example

To settle a documentary credit dispute using DOCDEX, the parties follow two simple steps.

1. The initiator (known as the 'claimant') – usually the party with most at risk – submits a request for a DOCDEX decision, along with the applicable fee (USD5,000 for drawings up to USD1 million or USD10,000 for drawings in excess of USD1 million) and all relevant documents, to the ICC International Centre for Expertise. These documents will include a copy of the documentary credit and any amendments thereto, copies of the shipping documents and copies of all correspondence between the two parties concerning those documents, including the refusal notice.
2. The Centre will approach the other party (known as the 'respondent') to see if it wishes to take part in the process. If it does, the respondent will be invited to submit its copies of the relevant documents. Clearly, these documents should match with those submitted by the claimant.

If the respondent decides not to take part, a DOCDEX decision will still be rendered, but it will be clausured to the effect that the respondent chose not to take part.

DOCDEX decisions are reached much faster than decisions resulting from litigation or other forms of dispute resolution. The average DOCDEX decision is handed down in less than three months, while cases could take between 6 and 18 months to come before a court.

The ICC publishes details of the DOCDEX decisions periodically, although the identities of the parties are never disclosed. The purpose is to provide information that will enable practitioners to avoid common errors leading to disputes, while at the same time preserving confidentiality.

It should be noted that a refusal of documents and a dispute as to whether the discrepancies are valid or not should not directly lead to a request for a DOCDEX decision, in much the same way as a bank would not immediately seek court action in the event of a dispute to decide who was correct. The DOCDEX service will invariably be used only when all communication avenues have been exhausted, without agreement, and the process will be seen as a key indicator as to how the transaction may be viewed by a court should the dispute progress that far.

### Check your understanding

An ICC Opinion is only considered to be the official Opinion of the ICC Banking Commission when:

- a. the first draft of the Opinion is approved at a meeting of the ICC Banking Commission.
- b. the text of the analysis and conclusion are approved at a meeting of the ICC Banking Commission.
- c. the initiator requests the text of the analysis and conclusion.
- d. the ICC national committees and members submit their agreement or comments to each of the draft Opinions.

### 24.3 The use of the courts

If all attempts at resolving a dispute fail, including seeking an ICC Opinion or a DOCDEX decision, court action may be the only option available.

This can be a very expensive exercise and, depending on the jurisdiction, can take up to 18 months (or more) for the case to come before a judge. Costs incurred will include those in respect of the court, the lawyers and solicitors that will be engaged by the defendant and plaintiff, and the selection of one or more expert witnesses to testify on behalf of the defendant or plaintiff.

If there are ICC Opinions or DOCDEX decisions that can support the position taken by the defendant or plaintiff, these can be cited in court. It has become commonplace over recent years for ICC Opinions to be widely cited and recognised by the courts as authoritative documents. Likewise, a defendant or plaintiff entering into evidence a DOCDEX decision rendered in its favour will find the decision extremely beneficial to its case.

Court cases involving documentary credit or standby letter of credit disputes are widely reported in locations such as the US, UK, Hong Kong, Singapore and mainland China.

## 24.4 Arbitration

The use of an arbitration or mediation service is far more likely to occur in disputes between a buyer and seller relating to a sale contract than those concerning the status of documents under a documentary credit and the UCP.

Most major centres will have their own arbitration services, as do some industries and commodities, for example the Grain and Feed Trade Association (GAFTA).

The arbitration procedure is usually as follows.

1. The arbitrator, who may be part of a panel of between three and five individuals, initiates the hearing by swearing in the parties and the witnesses who will testify.
2. The parties then give opening arguments, and present both documentary (usually written) and testimonial (oral) evidence.
3. The lawyers are allowed to question witnesses and the arbitrator may ask questions if necessary. Rebuttal questions are also allowed.
4. The arbitrator then makes a decision and issues an arbitration award.

In some systems, the parties can have a document hearing, at which the arbitrator studies only the paperwork or electronic documents submitted by each party, on the basis of which he or she makes a decision and issues an arbitration award.

Alternatively, the parties may opt for a participatory hearing, at which each party submits evidence and appears before an arbitrator, who studies the evidence, makes a decision and issues an arbitration award.

The arbitration decision, or 'award', is legally enforceable and often reviewable by the courts.

## Conclusion

Although a large percentage of presentations under documentary credits are found to be discrepant, these do not all lead to a dispute that will require the advice or intervention of the ICC or a court decision. In fact, most disputes are amicably resolved between the concerned parties.

However, it is worthwhile understanding the options that are available when all lines of communication fail to reach a satisfactory conclusion.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- outline the requirements for requesting an official Opinion from the ICC Banking Commission?
- describe the difference between requesting an official Opinion of the ICC Banking Commission and a decision under the DOCDEX service?

## Answers

### CHECK YOUR UNDERSTANDING (section 24.2.1)

False. An official Opinion is non-binding but could still be used as evidence in a resultant court case. See section 24.2.1.

### CHECK YOUR UNDERSTANDING (section 24.2.2)

b. the text of the analysis and conclusion are approved at a meeting of the ICC Banking Commission.

The ICC national committees and members are required to submit their agreement or comments to each of the draft Opinions no later than two weeks prior to the next scheduled meeting of the ICC Banking Commission. It is only after the text of the analysis and conclusion, provided to each draft Opinion, is approved at that meeting that the Opinion can be considered to be the official Opinion of the ICC Banking Commission. See section 24.2.1.

## Reference

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## Topic 25 Overriding considerations

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### Learning objectives

After studying this topic, you should be able to:

- explain the impact of anti-money-laundering and anti-terrorist financing rules and regulations on trade and on the use of documentary credits; and
- identify the impact of sanctions.

### Introduction

Anti-money-laundering and counter-terrorist financing regulations and economic sanctions can all place restrictions on the operation of a documentary credit. This topic explains the impact of anti-money-laundering and counter-terrorist financing regulations. It also identifies how economic sanctions can affect the payment obligations that exist under a documentary credit.

#### **Think...**

Before you start work on this topic, consider what you already know about criminal activity in relation to trade and the use of documentary credits. For example:

What are the consequences of financial crime in your country? How would you deal with suspicious activity related to financial crime? Does your bank or company provide guidance on dealing with suspicious activity?

## 25.1 The practice of money laundering

The term 'money laundering' is used to refer to all techniques used to conceal the origin of money that has been illegally obtained or which is being used for illegal purposes. It gets its name from the process of turning 'dirty' money into 'clean'. This can be achieved in a variety of ways, whereby the underlying objective is to disguise or confuse any audit trail that could link the clean (that is, apparently legitimate) funds to the dirty (that is, illegally obtained) money.

One technique is to use the proceeds of crime as a cash deposit to induce a bank to issue a documentary credit covering the purchase of goods, from a legitimate seller, which will then be sold in the local market. The proceeds of such a transaction will then be perceived as clean.

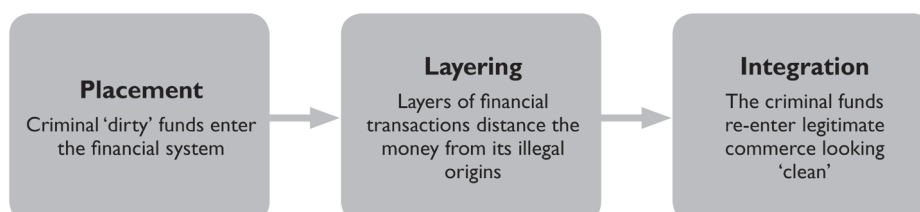
Money launderers use a variety of other techniques to achieve their objectives, including the following.

- **Cash transactions** – cash can be deposited into bank accounts in jurisdictions with greater bank secrecy or a less rigorous anti-money-laundering environment. Businesses that receive cash payments can deposit both legal and illegal cash receipts in bank accounts, claiming all to be legitimate earnings. They can also pay employees partly or fully in cash to avoid having to record illegal cash receipts.
- **Under- or overvaluing invoices** – inflating the true value of an invoice can disguise the movement of illegal funds.
- **Shell companies and trusts** – these can disguise the true owner of funds, especially if the jurisdiction in which the shell company or trust is located does not require the disclosure of the beneficial owner. The use of shell banks is explicitly prohibited by the United States' USA PATRIOT Act of 2001 ('USA PATRIOT' being an acronym deriving from the full title of the Act – that is, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act).
- **Bank capture** – in extreme cases, money launderers may have a controlling interest in a bank, allowing them to move funds without scrutiny.

All of these have implications for banks involved in a documentary credit. In each case, a money launderer's priority is to make a transaction look legitimate. To achieve this, the money launderer may try to use all of the normal trade finance services offered by a bank to legitimate import-export businesses.

There are three recognised stages to money laundering, as shown in Figure 25.1.

**Figure 25.1 Stages in money laundering**



Source: Adapted from FATF (2018)



### 25.1.1 The practice of terrorist financing

There is no single definition of terrorism; however, as a catchall, the FATF definition includes “unspecified acts carried out with the relevant intention to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict with the purpose of intimidating a population, or compelling action by a government or an international organisation” (Financial Action Task Force (FATF) 2016).

Although terrorist financing may involve money laundering, in principle the two activities are distinct. Financial support for terrorist activities may come directly from certain states or jurisdictions, or from organisations large enough to be able to collect and make the funds available to the terrorist organisation. Terrorism may also be funded from sources channelled more directly through the financial system. A terrorist organisation may even engage in revenue-generating activities of its own, which often may be – or certainly appear to be – legitimate businesses. Unlike other criminal organisations, however, terrorist groups may also derive some of their funding from income that individuals or entities have legitimately earned.

From the perspective of a bank engaged in a documentary credit, the main challenge is to ‘know its customer’ to try to identify the true beneficial owners of the parties involved and to ensure that the transaction is in line with its normal course of business.

### 25.1.2 Combating money laundering and terrorist financing

Over a number of years, legislation and regulation has been introduced at both national and international levels to try to combat money laundering and terrorist financing. The lead international body in the fight against money laundering and terrorist financing is the Financial Action Task Force (FATF). The FATF was established in 1989 and has developed a list of guidelines for national governments and regulators to follow. Known as the '40 Recommendations' (FATF, 2004), these were first introduced in 1990 and were updated in 2012.

#### **FACTFIND**

You can read more about the FATF and how it was set up to “promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system”.

[FATF Recommendations](#)

Although the FATF Recommendations apply internationally, each country is responsible for developing its own legislation to put them into practice. As a result, specific legal requirements vary from country to country.

It is, however, possible to identify general rules that a bank should follow when engaged in a documentary credit transaction. These rules place a responsibility on banks and other financial institutions to exercise due diligence when establishing relationships with customers, to carry out occasional reviews of transactions and to report any suspicion of money-laundering or terrorist-financing activity. Banks therefore need to adopt procedures to ensure that they:

- know their customers;
- know the beneficial owners of parties to any transaction; and
- understand the nature of any underlying business relationship and transaction.

Each bank involved in a documentary credit will have its own operating procedures for each of these issues. These need to be followed closely.

In most cases, banks will not have a direct relationship with both the applicant and the beneficiary in a documentary credit. There are some instances in which only one bank is involved as the issuing bank, but these are often confined to documentary credits covering domestic or local trade. As a result, banks will work with correspondent banks both to transmit documents and to make payments. Each bank will also need to scrutinise the controls set in place by its correspondent banks to address the above key criteria. This applies whether the correspondent bank is a foreign subsidiary or branch in the same banking group, or a separate institution.

In addition, the FATF maintains a list of higher-risk countries (that is, those in which it assesses anti-money-laundering and counter-terrorist financing rules to be insufficiently robust). If a correspondent bank is located in one of these countries, banks have a greater responsibility to conduct enhanced scrutiny of their counterpart(s).

These measures are designed to avoid illegal transactions taking place. However, it is still possible that a member of staff within a bank may suspect money laundering or terrorist financing. National legislation places a personal responsibility on each individual within a bank (as well as on the bank or financial institution employer) to report such suspicions.

It is an offence under the law to help someone to control assets that an individual knows, or has reasonable grounds to suspect, are the proceeds of crime or are intended to support terrorism. This assistance includes a failure to report this suspicion. Individuals are also prevented from disclosing to a customer or any other outside party that they are, or may be, under investigation.

To avoid committing offences under these rules, staff should follow their bank's operating procedures. Suspicion reports should be filed at the earliest opportunity. In some circumstances, this may be after a transaction has taken place.

To avoid disclosure to a customer, it may be appropriate to avoid contacting them. However, if a bank has ongoing business with the customer that involves routine contact, continuing customer contact will not usually constitute an offence as long as only routine matters are discussed.

In summary, it is essential to adhere to the following rules.

- **Know your customer (KYC)** – this means following identity verification procedures designed to establish the identity of those in control of the customer.
- **Know your customer's business** – this means understanding the likely transactional requirements in terms of documentary credits, which will help to identify possible illegal transactions. This may involve asking about the source of the customer's funds, the type of transactions to expect, along with their size and frequency, the customer's dealings with foreign countries, the purpose of transactions or the services that the bank is to provide.
- **Know your business (obligations)** – staff members also need to understand their and the bank's obligations under a documentary credit, given the role that the bank is performing. This includes following the correct procedures.
- **Keep records** – each bank must record the detail of all transactions, including size and currency. Other information that must be recorded includes account-opening details, details of documents used to verify identity and details of any changes to signatories. The FATF's 40 Recommendations require that this information be held for five years, although some jurisdictions may have more onerous requirements.

Where the money-laundering risk is at its greatest, banks will require more extensive records that may include the purpose of specific arrangements, the identities of parties to a transaction and other relevant information.

As well as these details, bank staff should keep records of any contact with customers and other enquiries that they may make in connection with a customer's arrangements.

- **Report suspicions** – bank staff must always be alert for customers, arrangements, assets and transactions that give rise to a suspicion of money laundering or terrorist financing. Any suspicions must be reported. The procedures for filing a suspicion report will be outlined in a bank's operating procedures. Such reports usually have to be filed with a nominated officer or team. That nominated officer or team has the responsibility for deciding whether the report is submitted to external authorities.

Each bank's procedures should specify what its staff must do. This will depend on various factors, including the extent of customer contact and the degree of risk attached to the services that the member of staff and the bank are providing.

Failure to follow these procedures may result in damage to the bank's reputation, and criminal proceedings against both the bank and the individual concerned.

## 25.2 Sanctions

International sanctions can have a significant impact on the payment obligation under a documentary credit. Economic sanctions, in the form of trade restrictions, are sometimes imposed on countries or individuals by the United Nations, OFAC (Office of Foreign Assets Control), the European Union or governments (either acting alone or jointly with others). These sanctions can be imposed without notice and with immediate effect, with the result that even when a complying presentation is made, the beneficiary will not receive payment.

There is no mention in UCP 600 of the impact of sanctions. Certainly, if sanctions are imposed and a bank considers the transaction to be subject to those sanctions, the bank will not honour or negotiate. This applies whether or not a sanctions clause is included in the documentary credit.

Because the application of sanctions is not always clear, many banks are seeking to incorporate sanctions clauses into documentary credits to protect their own position. An ICC Guidance Paper on the Use of Sanctions Clauses in Trade-finance Related Instruments Subject to ICC Rules (ICC Document no. 470/1238), published in June 2014, advised against the use of sanctions clauses by banks, especially where such clauses can cast doubt on the undertaking given by the bank in its documentary credit or in an advice of confirmation. From a beneficiary's perspective, such clauses can add uncertainty, because they can give the bank some discretion whether or not to honour or negotiate if sanctions are imposed.

### **FACTFIND**

Find out more about ICC guidance on the use of sanctions clauses in trade finance-related instruments that are subject to ICC rules.

ICC – [Guidance Paper on the use of Sanctions Clauses 2014](#).

In May 2020, the ICC published an addendum to this guidance paper.

ICC – [Addendum to Guidance Paper on the use of Sanctions Clauses 2014](#).

Sanctions are a force of law, which will override the rules in UCP 600. Imposed sanctions may direct banks not to undertake business or may impose a duty on banks to refuse payments for transactions already in existence.

## Conclusion

Documentary credits, like all other forms of trade finance transactions, are open to abuse by those who wish to launder money for personal gain or to fund terrorist-type activities. Careful monitoring of transactions to identify changes in attitude and business attributes of clients is critical. These include the sale or purchase of goods that are not according to the expected line of business, or where goods are being bought or sold from new markets that are known to be susceptible to money-laundering activities, or where the types of documents to be presented change from original documents to copies. Questions should be asked as much for the client's benefit as your bank or organisation.

### Think again...

Now that you have completed this topic, how has your knowledge and understanding improved. For instance, can you:

- explain the purpose of performing customer due diligence?
- outline the sanction regulations that are applicable to your bank or organisation?
- describe the process for reporting suspicious transactions within your bank or organisation?

## References

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