Guide to Documentary Credits

Fifth Edition

Gary Collyer
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ifs University College
ifs House
4-9 Burgate Lane
Canterbury
Kent
CT1 2XJ
T 01227 818609
F 01227 784331
E editorial@ifslearning.ac.uk
W www.ifslearning.ac.uk

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ICC International Standard Banking Practice for the Examination of Documents Under Documentary Credits 2013 Revision for UCP 600


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Author information

Gary Collyer is Managing Director of Collyer Consulting Global Ltd, a company that provides trade advisory, consultancy and training services. He previously worked for Midland Bank/HSBC, Citibank and ABN Amro in a banking career spanning over 30 years. In his last position at ABN Amro, he was the Global Trade Product Head based in London. Gary is a Visiting Professor for ifs University College.

Note to students

For the purpose of consistency this study text refers to ‘documentary credit’. However, ‘DC’, ‘letter of credit’, ‘LC’ or ‘credit’ are also widely used in the same context as ‘documentary credit’. Students should decide on their own preference for describing the product.

ICC Publications

To view the catalogue of ICC publications that are available for purchase, please visit the ICC Book Store on the following link: www.iccwbo.org.

This book also provides reference to other guidance and advisory papers that have been issued by the ICC and which are available at the above link.
1

The history and use of documentary credits

Learning objectives

This chapter includes a brief history of the documentary credit, an insight into currently available statistics (2013 data) and the types of transaction for which a documentary credit is often chosen as the method of settlement.

By the end of this chapter, 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.

1.1 A brief history

Historians have been able to trace the use of documentary credits back as far as ancient Egypt and Babylon. However, it was not until the 18th and 19th 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.

One of the oldest available examples of a traveller’s type 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 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 United States.

The letter read as follows.


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
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, often became a prerequisite before goods would be shipped or handed over to buyers. With new trading chains being established 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.

1.2 The use of documentary credits

1.2.1 Documentary credit statistics

The use of documentary credits as a method of settlement for a trade transaction remains steady today. The International Chamber of Commerce (ICC) *Global Trade and Finance Survey Report*, released in July 2014, indicated that the volume of SWIFT MT700 messages (‘Issue of a Documentary Credit’) increased by 3.3 per cent between 2012 and 2013 (ICC, 2014). Because 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.

This increase contributed to an annual volume of 4,787,071 documentary credit issuances during 2013 – an average of almost 399,000 issued per month. The Asia-Pacific region continued to account for the bulk of the documentary credit volume, with almost 70 per cent of the market (ICC, 2014). Despite this increase, global volumes remain below those experienced in the 1970s, 1980s and 1990s.

The Chinese renminbi (RMB) is now the second most-used currency, after the US dollar (USD). The average value of a documentary credit issued in 2013 was USD653,000 – a 6 per cent increase on the 2012 figure.
1.2.2 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.

Questions

1. One of the first forms of letter of credit introduced was known as which one 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
Questions

2. ‘Documentary credits have been in existence for only the past 300 years.’ Is this statement true or false?

A. True
B. False

3. What was the second most-used currency in documentary credits issued using the SWIFT MT700 message in 2013?

A. The US dollar (USD)
B. The euro (EUR)
C. The pound sterling (GBP)
D. The Chinese renminbi (RMB)

4. What was the average value of a documentary credit issued by MT700 in 2013?

A. USD563,000
B. USD653,000
C. USD356,000
D. USD635,000

5. ‘A documentary credit can be used only for the purchase of consumables, food and clothing, and for the provision of services or performance.’ Is this statement true or false?

A. True
B. False

References

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

Learning objectives
This chapter 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.

In addition, some background information is provided to the rules that existed prior to the development of the first UCP.

By the end of this chapter, 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.

2.1 The role of the International Chamber of Commerce (ICC)

The International Chamber of Commerce (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 6 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.

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.

These rules are 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 1.1; and

- the *International Standard Banking Practice for the Examination of Documents under UCP 600* (ISBP 745).

The UCP rules are the most successful privately drafted trade rules ever developed and today serve as the basis for USD2 trillion in trade transactions a year.
In addition to UCP 600, this study text will cover all of the publications noted above in some detail.

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.

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 for goods that are not described as a number of packing units or individual items, from 3 to 5 per cent; and
- the addition of a definition of ‘transhipment’.

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
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 Chapter 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; the revised eUCP, version 1.1, is covered in more detail in Chapter 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, in 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 in July 2013 Publication No. 745 was released.

Questions

1. Which of the following is not an activity performed by the International Chamber of Commerce?
   - A. Rule setting
   - B. Dispute resolution
   - C. Signing of certificates of origin
   - D. Policy advocacy

2. How many revisions of the UCP have there been since 1933?
   - A. Five
   - B. Eight
   - C. Six
   - D. Seven

3. Today, 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
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

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
3 Documentary credits and other methods of settlement

Learning objectives
This chapter 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.

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

◆ describe what a documentary credit is; and
◆ identify how a documentary credit differs in process and substance to other methods of trade settlement.

3.1 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 UCP 600, article 2, is a short and definitive statement:

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 UCP 600, article 1), but also a bank guarantee.

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 study text, we will focus on documentary credits that are issued by banks.

### 3.2 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 3.1, 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 in Figure 3.1 and described in more detail below. It should be noted that there are a number of variations to this structure, and these are explained later in this study text.

**Notes to Figure 3.1**

1. The contract is agreed between the buyer (‘applicant’) and seller (‘beneficiary’) indicating a documentary credit as the method of settlement.

2. The applicant applies to its bank for the issuance of 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. The advising bank issues its advice of the documentary credit 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 stipulated in the documentary credit to the advising bank, which is also the ‘nominated bank’ named in the documentary credit.

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. The issuing bank determines that the documents comply and arranges to debit the applicant’s account for the value of the drawing. In return, the documents are handed over to the applicant so that it may take control of the goods. At the same time, the issuing bank reimburses the advising/nominated bank.

9. The advising/nominated bank, upon receipt of the proceeds from the issuing bank, effects settlement to the beneficiary in the manner 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 chapters.

### 3.3 Basic flow charts for other settlement methods

#### 3.3.1 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 3.2.

**Figure 3.2 Advance payment**
Notes to Figure 3.2
1. The contract is agreed between the buyer and seller, indicating advance payment as the method of settlement.
2. The buyer instructs its bank to make payment to the seller’s account with a specific bank.
3. The banker of the buyer makes payment, as requested.
4. The banker of the seller credits the amount to the account of the seller under advice.
5. The 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.

The reasons for adopting this method may be summarised as follows.

◆ The seller may be unwilling to ship goods to the country in which the buyer is located prior to receipt of payment, for reasons of ‘country risk’.

◆ The buyer may wish to encourage the seller to enter into a long-term trade relationship.

◆ The seller may not have finance with which to buy or prepare the goods for shipment.

◆ The buyer may feel comfortable with its relationship with the seller, and with both the credit and country risks relating to that seller.
3.3.2 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 3.3, which covers a transaction payable on a sight basis.

Figure 3.3 Open account

Notes to Figure 3.3

1. The contract is agreed between the buyer and seller, indicating open account terms as the method of settlement.
2. The seller arranges shipment of the goods according to the agreed terms and also forwards the underlying shipping documents to the buyer.
3. If the buyer is satisfied with the goods and/or the documents, it instructs its bank to make settlement to the seller in the manner requested.
4. The banker of the buyer makes payment to the banker of the seller.
5. The banker of the seller credits the amount to the account of the seller under advice.
In this example, the seller had no bank undertaking and was entirely reliant upon the buyer to make payment, as agreed in the sales 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 sales 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.

### 3.3.3 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 3.4, which covers a transaction payable on a sight basis.

**Figure 3.4 Documentary collection payable at sight**

![Diagram of documentary collection payable at sight](image)

**Notes to Figure 3.4**

1. The contract is agreed between the buyer and seller, indicating a documentary collection payable at sight as the method of settlement.
2. The seller arranges shipment of the goods according to the agreed terms and forwards the underlying shipping documents to its bank, known as the ‘remitting bank’.
3. The remitting bank sends the documents to the bank of the buyer, known as the ‘collecting bank’.
4. The collecting bank makes the documents available for review at its counters, so that the buyer may make a decision regarding payment.
5. The buyer authorises payment, and the collecting bank remits the proceeds to the remitting bank and releases the documents to the buyer, so that the goods may be collected.
6. The remitting bank credits the amount to the account of the seller under advice.
3.3.4 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 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. However, the seller has no undertaking that the draft will be honoured on the due date, even if accepted by the buyer (‘drawee’).

The process is described in Figure 3.5 (overleaf), which covers a transaction payable on a usance basis.
3: Documentary credits and other methods of settlement

Figure 3.5 Documentary collection payable on a usance basis

Notes to Figure 3.5

1. The contract is agreed between the buyer and seller, indicating a documentary collection payable on a usance basis as the method of settlement.

2. The seller arranges shipment of the goods according to the agreed terms 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.

3. The remitting bank sends the documents to the bank of the buyer, known as the ‘collecting bank’.

4. The collecting bank makes the documents available for review at its counters, so that the buyer may make a decision regarding acceptance.

5. The buyer accepts the draft, and the collecting bank informs the remitting bank of this fact and releases the documents to the buyer.

6. The collecting bank can retain the accepted draft, in which event an advice of acceptance is sent to the remitting bank, or the draft can be returned to the seller via the remitting bank for presentation just prior to the maturity date. The seller will receive the accepted draft for representation near to the maturity date or an advice of acceptance.
The payment of the accepted draft 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 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. The seller may be able to discount the bill or note in return for an immediate payment. The international rules governing collections are the ICC Uniform Rules for Collections, ICC Publication No. 522.

### 3.3.5 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 3.6 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 Chapter 21.
Figure 3.6 Payment secured by a bank guarantee (or standby letter of credit)

Notes to Figure 3.6
1. The contract is agreed between the buyer and seller, indicating open account terms or a documentary collection as the method of settlement, supported by a bank guarantee.
2. The buyer applies to its bank for the issuance of 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. The advising bank issues its advice of the guarantee and sends it to the beneficiary.
5. The 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 utilised. 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. The 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.

Questions

1. ‘A bank guarantee can be issued subject to UCP 600.’ Is this statement true or false?
   A. True
   B. False

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.’ Is this statement true or false?
   A. True
   B. False

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.
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

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.’ Is this statement true or false?
   A. True
   B. False
4
Definitions

Learning objectives
In this study text, reference is made repeatedly to different terms that are associated with documentary credits and the type(s) of role that a bank may undertake. This chapter provides the definitions that should be applied whenever such terms or roles are mentioned.

This chapter also provides a short introduction to the roles and responsibilities of the entities that participate in a documentary credit.

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

◆ describe the main responsibilities of an applicant and beneficiary;
◆ identify the types of role performed by banks in a documentary credit and the banks’ main responsibilities; and
◆ define the more common terms used in a documentary credit or UCP 600.

4.1 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.

It should be noted that a documentary credit could consist of only two parties: an issuing bank and a beneficiary.
4.1.1 Issuing bank (or opening bank)

**UCP 600, article 2**, defines an ‘issuing bank’ as follows.

**Issuing bank** means 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.

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 Chapters 6 and 7.

4.1.2 Beneficiary (or seller, or exporter)

**UCP 600, article 2**, defines a ‘beneficiary’ as follows.

**Beneficiary** means 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 chapters of this study text.

4.1.3 Advising bank

**UCP 600, article 2**, defines an ‘advising bank’ as follows.
4.1 Roles and responsibilities of parties involved in a documentary credit

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 Chapter 9.

4.1.4 Confirming bank

UCP 600, article 2, defines a ‘confirming bank’ as follows.

**Confirming bank** means 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.

It is common for a confirming bank to act in the capacity 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 Chapter 10.

4.1.5 Nominated bank

UCP 600, article 2, defines a ‘nominated bank’ as follows.

**Nominated bank** means 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
bank will usually be located in the country of the beneficiary. Alternatively, a documentary credit may indicate that it is available with any bank, but this is also usually restricted, by reference in the documentary credit, to an expiry place (that is, 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.

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

### 4.2 Applicant (or buyer, or importer)

**UCP 600, article 2** defines an ‘applicant’ as follows.

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<tr>
<th>Applicant</th>
<th>means the party on whose request the credit is issued.</th>
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</table>

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 Chapters 6 and 18.
4.3 Other roles performed by banks

4.3.1 Reimbursing bank

UCP 600, sub-article 13(a), 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 Chapter 22.

4.3.2 Second advising bank

UCP 600, sub-article 9(c), describes a ‘second advising bank’ as a bank utilised 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 have been in a correspondent banking relationship with that bank, so it may have advised it through its own branch or another correspondent for further routing through the named bank.

4.3.3 Transferring bank

UCP 600, sub-article 38(b), defines a ‘transferring bank’ as follows.

*Transferring bank* means 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 Chapter 19.
4.4 Terms used in documentary credits and / or UCP 600

4.4.1 Banking day

UCP 600, article 2, defines ‘banking day’ as follows.

**Banking day** means 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 were open on Saturday for a half or full day to perform the handling of documentary credits, either would count as a banking day.

4.4.2 Complying presentation

UCP 600, article 2, defines ‘complying presentation’ as follows.

**Complying presentation** means 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.

4.4.3 Confirmation

UCP 600, article 2, defines ‘confirmation’ as follows.

**Confirmation** means 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 to add confirmation upon a specific
request of the beneficiary – by the use of the words ‘May add’.

4.4.4 (Documentary) Credit

UCP 600, article 2, in the context of an irrevocable undertaking, defines
‘credit’ as follows.

| 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. |

UCP 600, sub-article 4(a), highlights the separateness of the documentary
credit from the sales contract. The autonomy of the documentary credit is
paramount, and is a topic covered in Chapters 6 and 7.

4.4.5 Honour

UCP 600, article 2, defines ‘honour’ as follows.

| Honour | means:
|        | 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. |

The term honour therefore encompasses these three types of settlement.

4.4.6 Negotiation

UCP 600, article 2, defines ‘negotiation’ as follows.

| Negotiation | means 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 Chapter 17 of this study text.

4.4.7 Presentation

UCP 600, article 2, defines ‘presentation’ as follows.

| Presentation | means 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 already been delivered and are in the bank’s possession.

4.4.8 Presenter

UCP 600, article 2, defines ‘presenter’ as follows.

| Presenter | means a beneficiary, bank or other party that makes a presentation. |

The definition of presenter is most relevant in the context of UCP 600, article 16, and the need for a refusal notice to be sent to the presenter. The presenter may or may not be the beneficiary of the documentary credit.

Questions

1. ‘It is possible for an issuing bank to also be an applicant.’ Is this statement true or false?

   A. True
   B. False

2. ‘A documentary credit is always advised by the use of the SWIFT MT700.’ Is this statement true or false?

   A. True
   B. False
3. ‘An applicant is a party to a documentary credit.’ Is this statement true or false?

A. True

B. False

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

A. A second advising bank is utilised 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.

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

A. Acceptance

B. Deferred payment

C. Negotiation

D. Payment
5
The sales contract

Learning objectives
This chapter outlines the importance of the sales 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.

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

◆ outline the parties to a sales contract;

◆ analyse the relationship between the sales contract and the payment to be made thereunder;

◆ explain the use of Incoterms 2010 in domestic and international trade; and

◆ identify the need to apply the correct Incoterm to a transaction.

5.1 Introduction
The most basic agreement in international trade is the sales contract concluded between a seller and a buyer. This is often referred to as a ‘sales agreement’, an ‘export contract’ or a ‘foreign sales agreement’. For the purpose of this study text, we will use the term ‘sales 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 sales 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 Chapter 3. Other procedures related to sales 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 this study text, but in commercial (rather than legal) terms documentary credits are issued to facilitate performance of the buyer’s payment obligation to a seller.

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

### 5.2 Sales contracts

Many sales 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 contracts. This means that the execution of a sales 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, sales contracts 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 the sales contract.

Banks play no role in the negotiation of the sales contract, which is signed only by the seller and buyer.
5.2.1 The content of a sales contract

The key element of any sales contract (see sample 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. Contracts also do 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 sales contract

CONTRACT FOR SALE OF GOODS

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 £ (delete as applicable) 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


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 sales 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). Some contracts will also 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 sales contract, a seller will often send the buyer a proforma invoice (see Figure 5.2), containing the details of the goods and their unit prices, 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**

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<th>PAYMENT TERMS:</th>
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ORDER ISSUED BY: | APPROVED:
<table>
<thead>
<tr>
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<tbody>
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</tbody>
</table>
Figure 5.3 Sample purchase order

IFS UNIVERSITY COLLEGE

PURCHASE ORDER

TO: [Purchaser Name]  
Company Name:  [Company Name]
Address:  [Street Address]
City, ST ZIP Code:  [City, ST ZIP Code]
Phone Number:  [Phone Number]

SHIP TO: [Recipient Name]  
Company Name:  [Company Name]
Address:  [Street Address]
City, ST ZIP Code:  [City, ST ZIP Code]
Phone Number:  [Phone Number]

P.O. NUMBER: [P.O. number]  
[The P.O. number must appear on all related correspondence, shipping papers, and invoices]

P.O. DATE REQUISITIONER SHIPPED VIA DELIVERY POINT TERMS
DD/MM/YY

<table>
<thead>
<tr>
<th>QTY</th>
<th>UNIT</th>
<th>DESCRIPTION</th>
<th>UNIT PRICE</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
</tbody>
</table>

SUBTOTAL

SALES TAX

SHIPPING AND HANDLING

OTHER

TOTAL

1. Please send two copies of your invoice.
2. Enter this order in accordance with the prices, terms, delivery method, and specifications listed above.
3. Please notify us immediately if you are unable to ship as specified.
4. Send all correspondence to:
   [Name]
   [Street Address]
   [City, ST ZIP Code]
   [Phone Number]
   [Fax Number]

Signature and Date
5.2.2 Contract terms and conditions

Sales contracts are 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 sales 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.

5.2.3 The law governing contracts

In most cases, sales contracts are 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 sales 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 July 2015, 83 countries had ratified the Convention.
5.2.4  A checklist for an effective sales agreement

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 goods through customs and where
✓ Who arranges for insurance for the carriage of goods and up to what point
✓ 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

5.2.5  The sales contract and the method of settlement

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

For example, a sales 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 will be noted in Chapters 6 and 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 sales 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 sales 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’.

These types of issue will be covered in Chapters 6 and 7.

5.3 The use of Incoterms in trade

One of the challenges in any sales 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 sales 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 sales contracts.

The current version of Incoterms, Incoterms 2010, came into effect on 1 January 2011. The full version is provided in ICC Publication No. 715. Incoterms 2010 have been designed to reflect changes in commercial practices that have occurred since the last revision in 2000. These include reference to electronic alternatives to paper documentation, cargo insurance clauses, and also the establishment of two new Incoterms: DAT (‘delivered at terminal’) and DAP (‘delivered at place’).
5.3.1 The scope of Incoterms

Incoterms deal solely with the rights and responsibilities of parties involved in the delivery of goods sold under a contract of sale. 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.

5.3.2 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 sales contract, and indicates the point at which responsibility is transferred from seller to buyer. The 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 sales 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 sales 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’)
  - DAT (‘delivered at terminal’)
  - DAP (‘delivered at place’)
  - DDP (‘delivered duty paid’)

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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’)

5.3.3 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. 715 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 sales contract, proforma invoice or purchase order.

5.3.3.1 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

<table>
<thead>
<tr>
<th>EX WORKS</th>
<th>EXW [insert named place of delivery] Incoterm 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Seller</strong></td>
<td><strong>Buyer</strong></td>
</tr>
<tr>
<td>Delivery occurs...</td>
<td>when the seller places the goods at the disposal of the buyer at the seller’s premises or at another named place (i.e., works, factory, warehouse, etc.). The seller does not need to load the goods on any collecting vehicle, nor does it need to clear the goods for export.</td>
</tr>
<tr>
<td><strong>Contract of carriage and insurance</strong></td>
<td>The seller has no obligation to the buyer to make a contract of carriage or of insurance. The buyer has no obligation to the seller to make a contract of carriage or of insurance.</td>
</tr>
</tbody>
</table>

### Figure 5.5 FCA Incoterm

<table>
<thead>
<tr>
<th>FREE CARRIER</th>
<th>FCA [insert named place of delivery] Incoterms 2010</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Seller</strong></td>
<td><strong>Buyer</strong></td>
</tr>
<tr>
<td>Delivery occurs...</td>
<td>when the seller delivers the goods to the carrier or another person nominated by the buyer at the seller’s premises or another named place. FCA requires the seller to clear the goods for export, where applicable. The seller has no obligation to clear the goods for import, or to pay any import duty, or for any import or customs formalities.</td>
</tr>
<tr>
<td><strong>Contract of carriage and insurance</strong></td>
<td>The seller has no obligation to the buyer to make a contract of carriage. However, if requested by the buyer, or if it is commercial practice and the buyer does not give an instruction to the contrary in due time, the seller may contract for the carriage on usual terms at the buyer’s risk and expense. In either case, the seller may decline to make the contract of carriage, and if it does, should notify the buyer promptly. The buyer must contract at its own expense for the carriage of the goods from the named place of delivery, except when a contract of carriage is made by the seller. The buyer has no obligation to the seller to make a contract of insurance. The seller must provide the buyer, at its request, risk and expense (if any), with any information that the buyer needs to obtain insurance.</td>
</tr>
</tbody>
</table>
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 carriage or of insurance.

The seller may select the point of delivery and the point of the named place of destination. If a specific point is not agreed or is not determined by practice, the contract of carriage must be made on the usual terms of the seller.

When CPT is used, the seller fulfills its obligation to deliver when it hands over the goods to the carrier, not when they reach the buyer at the place of destination.

When the seller delivers the goods to the carrier or another person nominated by the seller at an agreed place (if any) or at the place of destination, no point of delivery occurs.

The seller must contract, or procure a contract, for the carriage of the goods from the agreed point of delivery, if any, or the place of delivery.

The contract of carriage must be made on the usual terms of the seller's expenses and provide for compensation by the usual route and in the customary manner.

The contract of carriage and insurance

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 carriage or of insurance.

### Table: CPT Incoterm

<table>
<thead>
<tr>
<th>Seller</th>
<th>Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>CPT [insert named place of destination] Incoterms 2010</td>
<td>CARRIAGE PAID TO</td>
</tr>
</tbody>
</table>

Figure 5.6 CPT Incoterm
### CIP Incoterm

<table>
<thead>
<tr>
<th>CARRIAGE AND INSURANCE PAID TO</th>
<th>Seller</th>
<th>Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>CIP [insert named place of destination] Incoterms 2010</td>
<td>When the seller delivers the goods to the carrier or another person nominated at an agreed place (if any such place is agreed between the parties), and the seller must contract for and pay the cost of carriage necessary to bring the goods to the named place of destination.</td>
<td>The buyer has no obligation to the seller to make a contract of carriage or of insurance.</td>
</tr>
<tr>
<td></td>
<td>When CIP is used, the seller fulfills its obligation to deliver when it hands the goods over to the carrier and not when they reach the buyer at the place of destination.</td>
<td></td>
</tr>
</tbody>
</table>

**Contract of carriage and insurance**

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 the usual terms at the seller’s expense and provide for carriage by the usual route and in a customary manner. 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 suits its purpose.

In addition, the seller must obtain at its own expense cargo insurance complying at least with the minimum cover as 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 insurance shall cover, at a minimum, the price provided in the contract plus 10 per cent (i.e. 110%) and shall be in the currency of the contract. The seller must provide the buyer with an insurance policy or other evidence of insurance cover. When a documentary credit is involved, the requirements for the presentation of an insurance policy or certificate should be clearly expressed.
### Figure 5.8 DAT Incoterm

**Dataterritory**

<table>
<thead>
<tr>
<th>Seller</th>
<th>Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>The seller has no obligation to make a contract of insurance.</td>
<td>The buyer has no obligation to make a contract of insurance.</td>
</tr>
<tr>
<td>The seller must contract if it owns expenses for carriage of the goods to the named terminal at the port or point of destination.</td>
<td>The seller has no obligation to the buyer to make a contract of insurance.</td>
</tr>
<tr>
<td>The seller may select the point of destination or the named terminal at the port or point of destination if any, or the named place of destination, if any.</td>
<td>The buyer has no obligation to the seller to make a contract of carriage or of insurance.</td>
</tr>
<tr>
<td>When the seller places the goods at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination, delivery occurs...</td>
<td>Delivery occurs when the seller places the goods, once unloaded from the arriving means of transport, at the disposal of the buyer at the named terminal at the port or place of destination.</td>
</tr>
</tbody>
</table>

### Figure 5.9 DAP Incoterm

**Dapterritory**

<table>
<thead>
<tr>
<th>Seller</th>
<th>Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td>The seller has no obligation to make a contract of insurance.</td>
<td>The buyer has no obligation to make a contract of insurance.</td>
</tr>
<tr>
<td>The seller must contract if it owns expenses for carriage of the goods to the named place of destination or to the agreed point, if any, at the named place of destination.</td>
<td>The seller has no obligation to the buyer to make a contract of insurance.</td>
</tr>
<tr>
<td>The seller may select the point at the named place of destination that best suits its purpose.</td>
<td>The buyer has no obligation to the seller to make a contract of carriage or of insurance.</td>
</tr>
<tr>
<td>When the seller places the goods at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination, delivery occurs...</td>
<td>Delivery occurs when the seller places the goods, once unloaded from the arriving means of transport, at the disposal of the buyer on the arriving means of transport, ready for unloading at the named place of destination.</td>
</tr>
</tbody>
</table>
The use of Incoterms in trade

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

These Incoterms may be used only for sea or inland waterway transport.

**Figure 5.10 DDP Incoterm**

<table>
<thead>
<tr>
<th>DELIVERED DUTY PAID</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>DDP [insert named place of destination] Incoterms 2010</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Seller</strong></td>
<td><strong>Buyer</strong></td>
</tr>
<tr>
<td>Delivery occurs...</td>
<td>when the seller places the goods at the disposal of the buyer, cleared for import on the arriving means of transport, ready for unloading at the named place of destination.</td>
</tr>
<tr>
<td><strong>Contract of carriage and insurance</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The seller must contract at its own expense 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 seller has no obligation to the buyer to make a contract of insurance.</td>
</tr>
<tr>
<td></td>
<td>The buyer must contract at its own expense for the carriage of the goods from the named port of shipment, except where the contract of carriage is made by the seller. The buyer has no obligation to the seller to make a contract of insurance.</td>
</tr>
</tbody>
</table>

**Figure 5.11 FAS Incoterm**

<table>
<thead>
<tr>
<th>FREE ALONGSIDE SHIP</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FAS [insert named port of shipment] Incoterms 2010</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Seller</strong></td>
<td><strong>Buyer</strong></td>
</tr>
<tr>
<td>Delivery occurs...</td>
<td>when the seller places the goods alongside the vessel (eg on a quay or a barge) nominated by the buyer at the named port of shipment.</td>
</tr>
<tr>
<td><strong>Contract of carriage and insurance</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>The seller has no obligation to the buyer to make a contract of carriage or insurance.</td>
</tr>
<tr>
<td></td>
<td>The buyer must contract at its own expense for the carriage of the goods from the named port of shipment, except where the contract of carriage is made by the seller. The buyer has no obligation to the seller to make a contract of insurance.</td>
</tr>
</tbody>
</table>
COST AND FREIGHT
CFR [insert named port of destination] Incoterms 2010

Seller

Delivery occurs… when the seller delivers the goods on board the vessel nominated by the buyer at the named port of destination.

When CFR is used, the seller fulfils its obligation to deliver when it hands the goods over to the carrier at the point of delivery, if any, at the place of delivery, or when it hands the goods over to the carrier at the agreed point of delivery, if only at the place of delivery to the named port of destination.

The seller must contract, or procure a contract, for the carriage of the goods from the place of delivery to the named port of destination.

The seller has no obligation to make a contract of carriage or of insurance.

The seller must contract, or procure a contract, for the carriage of the goods from the place of delivery to the agreed point of delivery.

The seller has no obligation to make a contract of carriage or of insurance.

Contract of carriage and insurance

Insure

Figure 5.13 CFR Incoterm

FREE ON BOARD
FOB [insert named port of shipment] Incoterms 2010

Seller

Delivery occurs… when the seller delivers the goods on board the vessel nominated by the buyer at the named port of shipment.

When FOB is used, the seller fulfils its obligation to deliver when it hands the goods over to the buyer at the vessel nominated by the buyer at the named port of shipment.

The buyer has no obligation to the seller to make a contract of carriage or of insurance.

The seller has no obligation to the buyer to make a contract of carriage or of insurance.

Contract of carriage and insurance

Insure

Figure 5.12 FOB Incoterm
The use of Incoterms in trade

**Figure 5.14 CIF Incoterm**

<table>
<thead>
<tr>
<th>COST INSURANCE AND FREIGHT</th>
<th>Seller</th>
<th>Buyer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>CIF [insert named port of destination] Incoterms 2010</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Delivery occurs...</strong></td>
<td>when the seller delivers the goods on board the vessel or procures the goods already so delivered.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>When CIF is used, the seller fulfils its obligation to deliver when it hands the goods over to the carrier and not when they reach the buyer at the place of destination.</td>
<td></td>
</tr>
<tr>
<td><strong>Contract of carriage and insurance</strong></td>
<td>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 the usual terms at the seller’s expense 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.</td>
<td>The buyer has no obligation to the seller to make a contract of carriage or of insurance.</td>
</tr>
<tr>
<td></td>
<td>The seller must obtain at its own expense cargo insurance complying at least with the minimum 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 insurance shall cover, at a minimum, the price provided in the contract plus 10 per cent (ie 110%) and shall be in the currency of the contract. The seller must provide the buyer with an insurance policy or other evidence of insurance cover. When a documentary credit is involved, the requirements for the presentation of an insurance policy or certificate should be clearly expressed.</td>
<td></td>
</tr>
</tbody>
</table>
5.3.4 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 sales 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 sales 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 sales 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.

Questions

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
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

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

4. On whom does Incoterm EXW impose the least obligation?
   A. The buyer
   B. The seller

5. Which of the following is true of the use of trade terms such as Incoterms 2010?
   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.
6
Pre-issuance considerations and requirements

Learning objectives
This chapter 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.

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

◆ describe the benefits obtained and the risks incurred by an applicant and a beneficiary when a documentary credit is the proposed method of settlement;

◆ understand the basic components of a credit facility that should be in place for the issuance of a documentary credit and the need for know your customer (KYC) and customer due diligence (CDD) policy and procedures to be in place;

◆ identify the key fields of a documentary credit application form and the considerations to be made in its completion; and

◆ recognise the different modes of delivery for that application form to a bank that will be requested to issue the documentary credit.

6.1 A documentary credit as the chosen method of settlement

As covered in Chapter 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 payment.

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 payment in international trade.

### 6.1.1 Benefits for an applicant

As the applicant of a documentary credit, the buyer receives an undertaking from an issuing bank that no payment 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.

### 6.1.2 Benefits for a beneficiary

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

### 6.1.3 The autonomy of the documentary credit

Documentary credits are used in international trade because payment 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 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 Chapter 25.

The autonomy of a documentary credit is evidenced in UCP 600, articles 2, 4, 5, 7 and 8.

The definition of ‘credit’ in UCP 600, article 2, is as follows.

**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.

**UCP 600, sub-article 4(a),** states as follows.

*a.* 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 to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary.

A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank.

**UCP 600, article 5,** states as follows.

Banks deal with documents and not with goods, services or performance to which the documents may relate.

**UCP 600, sub-article 7(a),** reads in part:

*a.* Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour if the credit is available by:

[…]

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It is the responsibility of the applicant and 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 means of 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 way of a subsequent amendment. Amendments are covered in Chapters 8 and 11.

6.1.4 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 ultimate payment 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 the transaction. A beneficiary will be concerned about the possibility of payment 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.

6.1.4.1 The risks faced by an applicant

An applicant faces the following risks.

UCP 600, sub-article 8(a), reads in part:

*a.* Provided that the stipulated documents are presented to the confirming bank or to any other nominated bank and that they constitute a complying presentation, the confirming bank must:

[...]

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◆ **Non-delivery of goods** - 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 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 payment under the documentary credit notwithstanding any discrepancy in the documents when they are received. Shipping guarantees are covered in Chapter 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 pay 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 payment 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.

### 6.1.4.2 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 payment for a beneficiary. The main risk for a beneficiary is that the nominated bank or issuing bank will refuse payment 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 conditions appear to vary from those of the sale contract, or if the beneficiary would find it difficult to satisfy any of those conditions.

◆ **Failure of, or delays in payment 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 payment for the goods being received directly from the applicant. In the case of country risk, payment 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 Chapter 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 an Opinion on this subject on 30 October 2002 (ICC, 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).

### 6.1.4.3 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 6.2.2 and, for more detail, Chapter 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.

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

#### 6.2.1 The need for a credit facility

When a documentary credit has been chosen as the means of settlement, establishing the credit is not a straightforward task whereby the buyer (applicant) can simply go along 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. The credit facility agreement or documentation serves to establish the terms and conditions under which the bank will agree to issue 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 or provision of goods, 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 Chapter 2 and which will be referred to throughout this study text. 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. Standby letters of credit are covered in Chapter 21.

Note that **UCP 600, sub-article 4(a)**, includes the following provision:

<table>
<thead>
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<th>a.</th>
<th>[... ]</th>
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</thead>
<tbody>
<tr>
<td>A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank.</td>
<td></td>
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</table>

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.

**ISP98, rule 1.07**, expresses a similar intent to UCP 600, sub-article 4(a).

| An issuer’s obligations toward the beneficiary are not affected by the issuer’s rights and obligations toward the applicant under any applicable agreement, practice, or law. |

### 6.2.1.1 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 – that is, 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 honour 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 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 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 4(a), 5, 16(b), and 34–37, and be suitably adapted where a standby letter of credit is a form of undertaking that is to be requested.
The prerequisites for the issuance of a documentary credit

**UCP 600, sub-article 4(a)**, reads in part as follows.

**a.** 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 to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary.

[...]

**UCP 600, article 5**, provides the following.

Banks deal with documents and not with goods, services or performance to which the documents may relate.

The following appears as **UCP 600, sub-article 16(b)**.

**b.** 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. This does not, however, extend the period mentioned in sub-article 14(b).

**UCP 600, article 34**, comprises a ‘Disclaimer on Effectiveness of Documents’.

A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person.

**UCP 600, article 35**, comprises a ‘Disclaimer on Transmission and Translation’.

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.
If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when the documents have been lost in transit between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.

A bank assumes no liability or responsibility for errors in translation or interpretation of technical terms and may transmit credit terms without translating them.

UCP 600, article 36, provides for circumstances of ‘Force Majeure’.

A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.

A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.

UCP 600, article 37, comprises a ‘Disclaimer for Acts of an Instructed Party’.

a. A bank utilizing the services of another bank for the purpose of giving effect to the instructions of the applicant does so for the account and at the risk of the applicant.

b. An issuing bank or advising bank assumes no liability or responsibility should the instructions it transmits to another bank not be carried out, even if it has taken the initiative in the choice of that other bank.

c. A bank instructing another bank to perform services is liable for any commissions, fees, costs or expenses ("charges") incurred by that bank in connection with its instructions.

If a credit states that charges are for the account of the beneficiary and charges cannot be collected or deducted from proceeds, the issuing bank remains liable for payment of charges.

A credit or amendment should not stipulate that the advising to a beneficiary is conditional upon the receipt by the advising bank or second advising bank of its charges.

d. The applicant shall be bound by and liable to indemnify a bank against all obligations and responsibilities imposed by foreign laws and usages.
6.2.2 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 commodity 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. These issues are covered in Chapter 25.
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.

6.3.1 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 ISBP 745, ‘Preliminary Considerations’, paragraphs iii and iv.

iii. The terms and conditions of a credit and any amendment thereto are independent of the underlying sale or other contract even if the credit or amendment expressly refers to that sale or other contract. When agreeing the terms of the sale or other contract, the parties thereto should be aware of the ensuing implications for the completion of the credit or amendment application.

iv. Many of the problems that arise at the document examination stage could be avoided or resolved by the respective parties through careful attention to detail in the credit or amendment application and issuance of the credit or any amendment thereto. The applicant and beneficiary should carefully consider the documents required for presentation, by whom they are to be issued, their data content and the time frame in which they are to be presented.
6.3.2 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 will 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 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 transhipment 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 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;
6. Pre-issuance considerations and requirements

◆ 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 UCP 600, article 34; and
◆ the applicant agrees to pay all charges and costs designated for its account and those not paid by the beneficiary.

6.3.3 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 a 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.
Questions

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

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

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 expenses
Questions

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

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.

References

Learning objectives

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

This chapter 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.

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

◆ the process of determining whether a documentary credit application form has been completed in a manner that is acceptable to the bank, in terms of its content, bank policy and regulatory requirements, and determining that the transaction falls within the availability and terms of a credit facility granted to a customer;

◆ the risks associated with the issuance of a documentary credit;

◆ the choice between an advising bank or a confirming bank to deliver a documentary credit to a named beneficiary; and

◆ that there is a need to ensure, among all other terms and conditions, 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.
7.1 Pre-issuance considerations

Before even looking at the content of a documentary credit application form, bank staff should be aware, and have an understanding, of various aspects of documentary credit practice. These aspects include an understanding of the risks that an issuing bank faces when issuing a documentary credit, the extent of the undertaking contained in a documentary credit and as detailed in UCP 600, article 7, and the need for the separation of the underlying sale contract, proforma invoice, etc, from the terms and conditions of a documentary credit.

7.1.1 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 payment 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 transaction 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 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.

It may be noted that **UCP 600, article 35**, provides as follows.

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

[ ... ]
However, such ‘errors’ 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 an issuing bank in rekeying the data that its customer has provided.

◆ Errors in document examination or a failure to follow the requirements of UCP 600, 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 UCP 600, 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 Chapter 18.

7.1.2 The application of UCP 600, article 7

UCP 600, article 7, outlines the scope of the undertaking of an issuing bank.

<table>
<thead>
<tr>
<th>a. Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour if the credit is available by:</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. sight payment, deferred payment or acceptance with the issuing bank;</td>
</tr>
<tr>
<td>ii. sight payment with a nominated bank and that nominated bank does not pay;</td>
</tr>
<tr>
<td>iii. deferred payment with a nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;</td>
</tr>
<tr>
<td>iv. acceptance with a nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity;</td>
</tr>
</tbody>
</table>
An issuing bank is therefore 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.

**UCP 600, sub-article 6(a),** provides as follows.

| a. | ... A credit available with a nominated bank is also available with the issuing bank. |

**UCP 600, sub-article 6(d)(ii),** adds the following.

| ii. | ... A place for presentation other than that of the issuing bank is in addition to the place of the issuing bank. |

UCP 600, sub-article 7(a)(i)–(v), indicates 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 **UCP 600 sub-article 7(c)**.

### 7.1.3 The autonomy of a documentary credit

As discussed in Chapter 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 whole concept of the autonomy of a documentary credit is adequately summed up by the content of **UCP 600, article 5**.

Banks deal with documents and not with goods, services or performance to which the documents may relate.

The opening sentences of **UCP 600, sub-article 4(a)**, are also relevant.

**a.** 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 to it is included in the credit. ...
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.

7.2 Pre-issuance requirements

7.2.1 Receipt of the completed documentary credit application form

ISBP 745, ‘Preliminary Considerations’, paragraphs (iii)–(vii), place a responsibility on a customer to provide clear instructions to issue or amend a documentary credit and to understand the impact of certain provisions of UCP 600.

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 mentioned in Chapter 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 selects the appropriate template for the beneficiary or type of transaction, completes the remaining fields and submits 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.

7.2.2 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
credit 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 unutilised 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 a 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 utilise any sufficient remaining balance to issue a documentary credit or to approve a transaction that may go beyond an agreed limit.
7.2.3  **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 and any amendment of a documentary credit are 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.

7.3  **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.
7.3.1 Error correction by a customer

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 discussions on the telephone should similarly be confirmed in a separate message.

7.3.2 Types of settlement

UCP 600, sub-article 6(b), requires as follows.

b. A credit must state whether it is available by sight payment, deferred payment, acceptance or negotiation.

In UCP 600, 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, acceptance or deferred payment) or negotiation with a named nominated bank or any bank, or be made available by honour (payment, acceptance or deferred payment) 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.

UCP 600, sub-article 12(a), offers the following guidance to a nominated bank.

| a. | Unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary. |

### 7.3.2.1 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 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. Recourse is discussed in Chapter 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’.

7.3.2.2 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 correspondent 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. Recourse is discussed in Chapter 17.

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.

UCP 600, sub-article 12(b), offers the following guidance.

b. By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.

This position prevails unless there is wording to the contrary in the documentary credit.
7.3.2.3 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 correspondent 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 Chapter 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 **UCP 600, sub-article 12(b)**, provides as follows.

| b. | By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank. |

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.
7.3.2.4 Negotiation

Negotiation is defined in **UCP 600, article 2**, as follows.

Negotiation means 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.

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 (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
by instructing the issuing bank to remit funds to the correspondent of the
nominated bank at the time of sending the documents to the issuing 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. Recourse is discussed
in Chapter 17.

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.

7.3.3 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 UCP 600, 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, acceptance,
defered payment 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, as described in UCP 600, sub-article 6(d)(i).

i. A credit must state an expiry date for presentation. An expiry date
stated for honour or negotiation will be deemed to be an expiry date for
presentation.

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 UCP 600, sub-article 29(a), not being applicable.

a. If the expiry date of a credit or the last day for presentation falls on
a day when the bank to which presentation is to be made is closed for
reasons other than those referred to in article 36, the expiry date or the
last day for presentation, as the case may be, will be extended to the first
following 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, accept a draft or incur a deferred payment undertaking. 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.

7.3.4 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 … ’

7.3.5 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.
7.3.5.1 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.

<table>
<thead>
<tr>
<th>✓  Applicant name and address</th>
<th>Beneficiary name and address ✗</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Dinner Service GmbH</td>
<td>Dinner World Inc</td>
</tr>
<tr>
<td>French Strasse 26</td>
<td>New York, USA</td>
</tr>
<tr>
<td>FRANKFURT</td>
<td></td>
</tr>
<tr>
<td>Germany</td>
<td></td>
</tr>
</tbody>
</table>

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.

If necessary, other details such as phone or fax numbers may be included.

7.3.5.2 Documentary credit amount and tolerance, if any

<table>
<thead>
<tr>
<th>Currency and amount</th>
<th>Tolerance</th>
</tr>
</thead>
<tbody>
<tr>
<td>USD215,050.00</td>
<td>Plus / minus %</td>
</tr>
</tbody>
</table>

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 7.3.5.5, 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 × USD85 = USD215,050).

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 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.

**UCP 600, article 30**, provides rules regarding the interpretation of terms and the application of tolerances.

- **a.** The words “about” or “approximately” used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer.

- **b.** A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms of a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount of the credit.

- **c.** Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (b) is not applicable. This tolerance does not apply when the credit stipulates a specific tolerance or uses the expressions referred to in sub-article 30 (a).

### 7.3.5.3 Partial shipments and transhipment

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 transhipment 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, transhipment should be allowed. A customer should be referred to the transhipment provisions that appear in UCP 600, 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.

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

The documentary credit application form should mirror the requirements for Field 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 Chapter 5).

**Shipment from / to**

Place of taking in charge / Dispatch from / Place of receipt:

Port of loading / Airport of departure: Any USA port

Port of discharge / Airport of destination: Hamburg

Place of final destination / For transportation to / Place of delivery:

**Latest shipment date:**

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 7.3.5.16).

### 7.3.5.5 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 make the following statement.

**b.** 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, 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 @ 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 2010

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

2,530 SETS ‘NEW YORK’ BRAND DINNER SERVICES @ USD85.00 PER SET CFR HAMBURG INCOTERMS 2010

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’.

### 7.3.5.6 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 are received.

An application form will usually include the issuing bank’s pre-printed wording requiring the creation of documents such as a commercial invoice, packing list, weight list, 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.

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 UCP 600, 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.

UCP 600, 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 (UCP 600, 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.

### 7.3.5.7 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 or a sanctions clause.

Banks 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 7.3.5.12).

7.3.5.8 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, all other costs.

7.3.5.9 Period for presentation

The ‘period for presentation’ is the period of time 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 UCP 600, 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.

7.3.5.10 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.

### 7.3.5.11 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.

### 7.3.5.12 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’. **UCP 600, 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.

> **h.** If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.

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

If an application form uses terms that are covered in **UCP 600, 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.
For the purpose of these rules:

Where applicable, words in the singular include the plural and in the plural include the singular.

A credit is irrevocable even if there is no indication to that effect.

A document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication.

A requirement for a document to be legalized, visaed, certified or similar will be satisfied by any signature, mark, stamp or label on the document which appears to satisfy that requirement.

Branches of a bank in different countries are considered to be separate banks.

Terms such as “first class”, “well known”, “qualified”, “independent”, “official”, “competent” or “local” used to describe the issuer of a document allow any issuer except the beneficiary to issue that document.

Unless required to be used in a document, words such as “prompt”, “immediately” or “as soon as possible” will be disregarded.

The expression “on or about” or similar will be interpreted as a stipulation that an event is to occur during a period of five calendar days before until five calendar days after the specified date, both start and end dates included.

The words “to”, “until”, “till”, “from” and “between” when used to determine a period of shipment include the date or dates mentioned, and the words “before” and “after” exclude the date mentioned.

The words “from” and “after” when used to determine a maturity date exclude the date mentioned.

The terms “first half” and “second half” of a month shall be construed respectively as the 1st to the 15th and the 16th to the last day of the month, all dates inclusive.

The terms “beginning”, “middle” and “end” of a month shall be construed respectively as the 1st to the 10th, the 11th to the 20th and the 21st to the last day of the month, all dates inclusive.
7.3.5.14 Absence of the name of an issuer and / or the absence of any data content

UCP 600, sub-article 14(f), indicates as follows.

f. If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfil the function of the required document and otherwise complies with sub-article 14 (d).

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.

7.3.5.15 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 UCP 600, article 27.

A bank will only accept a clean transport document. A clean transport document is one bearing no clause or notation expressly declaring a defective condition of the goods or their packaging. ...

7.3.5.16 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 **UCP 600, article 32**.

| If a drawing or shipment by instalments within given periods is stipulated in the credit and any instalment is not drawn or shipped within the period allowed for that instalment, the credit ceases to be available for that and any subsequent instalment. |

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.

The matter is also covered in ISBP 745, paragraph C15.

### 7.3.5.17 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 UCP 600, article 38. The definition of transferable credit is contained in **UCP 600, sub-article 38(b)**.

<table>
<thead>
<tr>
<th><strong>b.</strong> For the purpose of this article:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transferable credit means a credit that specifically states it is “transferable”. 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”).</td>
</tr>
<tr>
<td>Transferring bank means 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.</td>
</tr>
<tr>
<td>Transferred credit means a credit that has been made available by the transferring bank to a second beneficiary.</td>
</tr>
</tbody>
</table>

Transferable credits are covered in Chapter 19.
7.3.5.18 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.

**ISBP 745, 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.

### A2)

a. Virgules (i.e., slash marks “/”) may result in different meanings and should not be used as a substitute for a word. If, nevertheless, a virgule is used and no context is apparent, this will allow the use of one or more of the options. For example, a condition in a credit stating “Red/Black/Blue” with no further clarification will mean only Red or only Black or only Blue or any combination of them.

b. The use of a comma when indicating a range of data in a credit such as ports of loading or discharge or countries of origin, may result in different meanings and should not be used as a substitute for a word. If, nevertheless, a comma is used and no context is apparent, this will allow the use of one or more of the options. For example, when a credit allows partial shipment and indicates the port of loading information as “Hamburg, Rotterdam, Antwerp” with no further clarification, this will mean only Hamburg or only Rotterdam or only Antwerp or any combination of them.

7.3.5.19 Ambiguous terminology

The terms defined in ISBP 745, paragraph A19 (‘shipping documents’, ‘stale documents acceptable’, ‘third-party documents acceptable’, ‘third-party documents not acceptable’, ‘exporting country’, ‘shipping company’ and ‘documents acceptable as presented’) are not defined in UCP 600. If an application form uses these terms, a customer should be warned that it bears the risk of any ambiguity in its instructions (ISBP 745, ‘Preliminary Considerations’, 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 ISBP 745, paragraph A19.
7.3.5.20 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, two provisions attempt to reinforce the unacceptability of this practice and emphasise the consideration that should be made by the beneficiary.

**ISP98, rule 4.10**, provides as follows.

A standby should not specify that a required document be issued, signed, or counter-signed by the applicant. However, if the standby includes such a requirement, the issuer may not waive the requirement and is not responsible for the applicant’s withholding of the document or signature.

**ISBP 745, ‘Preliminary Considerations’, paragraph (vii)**, similarly provides the following.

vii. A credit or any amendment thereto should not require presentation of a document that is to be issued, signed or countersigned by the applicant. If, nevertheless, a credit or amendment is issued including such a requirement, the beneficiary should consider the appropriateness of such a requirement and determine its ability to comply with it, or seek a suitable amendment.

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.

7.4 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
Selecting an advising bank and / or a confirming bank

◆ 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’.

UCP 600, sub-articles 37(a) and (b), act as a disclaimer when an issuing bank transmits instructions to another bank.

| a. | A bank utilizing the services of another bank for the purpose of giving effect to the instructions of the applicant does so for the account and at the risk of the applicant. |
| b. | An issuing bank or advising bank assumes no liability or responsibility should the instructions it transmits to another bank not be carried out, even if it has taken the initiative in the choice of that other bank. |

The advising of a documentary credit, and the role of an advising bank and a second advising bank, are covered in Chapter 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 asked 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 Chapter 10.
7.5 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.

7.6 The issuance of a pre-advice of a documentary credit

A preliminary advice of a documentary credit, sometimes known as ‘brief details’ or a ‘pre-advice’, 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. UCP 600, sub-article 11(b), clearly sets out the issuing bank’s position if such a preliminary advice has been given.

b. A preliminary advice of the issuance of a credit or amendment (“pre-advice”) shall only be sent if the issuing bank is prepared to issue the operative credit or amendment. An issuing bank that sends a pre-advice is irrevocably committed to issue the operative credit or amendment, without delay, in terms not inconsistent with the pre-advice.

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.

7.7 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.

### 7.8 Transmitting a documentary credit

Recall that **UCP 600, sub-article 7(b)**, provides as follows.

*An issuing bank is irrevocably bound to honour as of the time it issues the 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.

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 chapter, 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 7.1.2).

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 7.4). 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.

**UCP 600, article 1**, requires that the text of a documentary credit make express reference to the rules to which it is subject.

The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 (“UCP”) are rules that apply to any documentary credit (“credit”) (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit.

To accommodate this, SWIFT has created the following code words to be used in Field 40E of the MT7 message series.

- 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 illustrates an MT700 message, based on some of the data and examples discussed throughout this chapter.

**Figure 7.2 Example of an MT700 message**

<table>
<thead>
<tr>
<th>LOC:XX0015</th>
<th>INSWFT MSG-700</th>
<th>TRN:B0000-1000</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1:C02FP8UHK7TWAKXXB355461056)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(2:B14307655396230QW7LXY39CA818400337629618469261B)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>******************</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>FROM:</strong> FINANCING BANK, FRANKFURT, GERMANY</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>27:</strong> Sequence of Total</td>
<td>1/1</td>
<td></td>
</tr>
<tr>
<td><strong>40A:</strong> Form of Documentary Credit</td>
<td>IRREVOCABLE</td>
<td></td>
</tr>
<tr>
<td><strong>20:</strong> Documentary Credit Number</td>
<td>00/PV/1278</td>
<td></td>
</tr>
<tr>
<td><strong>31C:</strong> Date of Issue</td>
<td>XX0331</td>
<td></td>
</tr>
<tr>
<td><strong>40E:</strong> Applicable Rules</td>
<td>UCPLATESTVERSION</td>
<td></td>
</tr>
<tr>
<td><strong>31D:</strong> Date and Place of Expiry</td>
<td>XX0630 USA</td>
<td></td>
</tr>
<tr>
<td><strong>50:</strong> Applicant</td>
<td>EUROPEAN DINNER SERVICE GMBH</td>
<td>FRENCH STRASSE 26, FRANKFURT, GERMANY</td>
</tr>
<tr>
<td><strong>59:</strong> Beneficiary</td>
<td>DINNER WORLD INC</td>
<td>295 EAST 750TH STREET, NEW YORK 001001, USA</td>
</tr>
<tr>
<td><strong>32B:</strong> Currency Code, Amount</td>
<td>USD215050,00</td>
<td></td>
</tr>
<tr>
<td><strong>41a:</strong> Available With ..By..</td>
<td>MANHATTAN TRADE FINANCE BANK, NEW YORK BY NEGOTIATION</td>
<td></td>
</tr>
<tr>
<td><strong>42C:</strong> Drafts at...</td>
<td>SIGHT</td>
<td></td>
</tr>
<tr>
<td><strong>42a:</strong> Drawee</td>
<td>ISSUING BANK</td>
<td></td>
</tr>
<tr>
<td><strong>43P:</strong> Partial Shipments</td>
<td>ALLOWED</td>
<td></td>
</tr>
<tr>
<td><strong>43T:</strong> Transhipment</td>
<td>ALLOWED</td>
<td></td>
</tr>
<tr>
<td><strong>44E:</strong> Port of Loading/Airport of Departure</td>
<td>ANY USA PORT</td>
<td></td>
</tr>
<tr>
<td><strong>44F:</strong> Port of Discharge/Airport of Destination</td>
<td>HAMBURG</td>
<td></td>
</tr>
<tr>
<td><strong>44C:</strong> Latest Date of Shipment</td>
<td>XX0609</td>
<td></td>
</tr>
<tr>
<td><strong>45A:</strong> Description of Goods and/or Services</td>
<td>2530 SETS 'NEW YORK' BRAND DINNER SERVICES @ 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 2010</td>
<td></td>
</tr>
<tr>
<td><strong>46A:</strong> Documents Required</td>
<td>+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 +SHIEMENT 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.</td>
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Questions

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

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.’
3. ‘There must always be a gap of 21 calendar days between the latest shipment date and the expiry date.’ Is this statement true or false?

A. True
B. False

4. For which of the following settlement types must a draft be required for presentation?

A. Payment
B. Deferred payment
C. Acceptance
D. Negotiation

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
8 Amendments from an issuing bank perspective

Learning objectives

This chapter 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 the issuing bank’s consent, the issuance of an amendment.

By the end of this chapter, 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 the handling of an amendment request, from receipt through to the issuance or declining of the amendment request.

8.1 Pre-issuance considerations

8.1.1 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 will be unable to reimburse the bank for any payment 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 where 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, such as 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 is different from the content of the request submitted by the applicant, the issuing bank is bound to the beneficiary in terms of the advice 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 it as a result of a failure to fully incorporate its instructions.

### 8.1.2 The application of UCP 600, 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 chapters.)

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.

**UCP 600, sub-article 10(b),** makes the following statement.

| 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.

**UCP 600, sub-article 10(f),** provides as follows.

| f. | A provision in an amendment to the effect that the amendment shall enter into force unless rejected by the beneficiary within a certain time shall be disregarded. |

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. 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 UCP 600, sub-article 10(c).

8.2 Pre-issuance requirements

8.2.1 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 the workability 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 before 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.

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.

It should be noted that this refers to an amendment request made by the applicant and not to an instruction. As mentioned in section 8.1.2, an issuing bank is under no obligation to take note of an amendment request.
8.2.2 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.

8.2.3 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 all bank and regulatory requirements are met.

8.3 Reviewing the content of an amendment request

Fundamentally, an issuing bank is required to follow the applicant’s request to the extent that the bank is in agreement with its content and the content is not in breach of any regulatory requirements, as discussed in section 8.2.3.
8.3.1 Error correction by the applicant

If an applicant has corrected its amendment request, 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 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.

8.3.2 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’. 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 certificate of receipt issued.

As a consequence, the applicant submits an amendment request in the form ‘Delete “Full Set Bills of Lading ... Prepaid” and insert “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:
8: Amendments from an issuing bank perspective

- 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.

8.4 The routing of an amendment

UCP 600, sub-article 9(d), provides as follows.

\[d.\] A bank utilizing the services of an advising bank or second advising bank to advise a credit must use the same bank to advise any amendment thereto.

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 8.1.2), and if the beneficiary wishes to make use of it, the documents will need to be sent to the issuing bank for honour.

8.5 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, and 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.

### 8.6 Transmitting an amendment

Recall, UCP 600, sub-article 10(b), provides as follows.

b. An issuing bank is irrevocably bound by an amendment as of the time it issues the 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. A copy of the transmitted amendment will 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.

The flow for issuing a documentary credit in Figure 7.1 is identical for amendments, other than that the applicable SWIFT message type is MT707 instead of MT700. In the example provided in Chapter 7, there is not only an advising bank, but also a second advising bank.
Figure 8.1 contains details of an amendment made to the terms and conditions of the documentary credit that appears in Figure 7.2. Note the structured nature of the MT707 message in that some fields match those in the MT700.

Figure 8.1 Example of an amendment to an MT700 message

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 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 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 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, but this is not a common occurrence.

Questions

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

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.

3. When is an issuing bank irrevocably bound by an amendment?

   A. When it approves the request of the applicant
   B. When it issues the amendment
   C. When the advising bank or confirming bank advises the amendment
   D. When the beneficiary receives the amendment

4. An amendment decreases the value of a documentary credit. When should the credit facility amount be reduced accordingly?

   A. When the amendment is issued
   B. When the advising bank or confirming bank advises the beneficiary of the amendment
   C. When the beneficiary provides its consent to the amendment by way of a notification of acceptance
   D. When 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

5. ‘If a second advising bank decides not to advise an amendment to the beneficiary, it must inform the issuing bank without delay.’ Is this statement true or false?

   A. True
   B. False
9
Advising a documentary credit

Learning objectives
This chapter 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.

By the end of this chapter, 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
◆ describe the role and responsibilities of a second advising bank if it is to be the bank that advises a documentary credit to a beneficiary.

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 name of its own banker as its preferred advising bank, 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 may be 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 be in 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, because no correspondent banking relationship existed 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 indicated 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 UCP 600, article 9

UCP 600, article 9, contains some minimal rules, when advising a documentary credit, which relate to an advising bank and a second advising bank.

**UCP 600, sub-article 9(a),** provides as follows.

| a. | A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank that is not a confirming bank advises the credit and any amendment without any undertaking to honour or negotiate. |

It should be noted, however, that **UCP 600, sub-article 9(e),** does not require an advising bank or second advising bank to advise a documentary credit.

| e. | If a bank is requested to advise a credit or amendment but elects not to do so, it must so inform, without delay, the bank from which the credit, amendment or advice has been received. |

There is, however, no requirement for the bank to indicate its reason(s) for not advising the documentary credit.

**UCP 600, sub-article 9(b),** provides as follows.

| b. | By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received. |
Similarly, **UCP 600, sub-article 9(c)**, makes the following statement.

**c.** ... By advising the credit or amendment, the second advising bank signifies that it has satisfied itself as to the apparent authenticity of the advice it has received and that the advice accurately reflects the terms and conditions of the credit or amendment received.

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), **UCP 600, sub-article 9(f)**, provides for the advising of a documentary credit where authentication has not been possible.

**f.** If a bank is requested to advise a credit or amendment but cannot satisfy itself as to the apparent authenticity of the credit, the amendment or the advice, it must so inform, without delay, the bank from which the instructions appear to have been received. If the advising bank or second advising bank elects nonetheless to advise the credit or amendment, it must inform the beneficiary or second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit, the amendment or the advice.

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 UCP 600, article 9, are mirrored by the content of **ISP98, rule 2.05**.

**a.** Unless an advice states otherwise, it signifies that:

i. the advisor has checked the apparent authenticity of the advised message in accordance with standard letter of credit practice; and

ii. the advice accurately reflects what has been received.

**b.** A person who is requested to advise a standby and decides not to do so should notify the requesting party.

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
(UCP 600, sub-article 37(c)). Reimbursement from the applicant for these will form part of the separate agreement between the issuing bank and the applicant.

Similarly, 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 (UCP 600, sub-article 37(d)).

### 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. The sole 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 (advising bank) or the advice (second advising bank) and to advise the documentary credit to the beneficiary.

An advising or second advising bank is also to ensure that it advises the credit 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 Requirements prior to advising a documentary credit

#### 9.2.1 Receipt of the documentary credit

As mentioned in Chapter 7, a documentary credit is generally issued by use of a SWIFT MT7 type message, such as an MT700 or MT799. This will enable an advising bank to determine the apparent authentication of the message in accordance with **UCP 600, sub-article 9(b)**.

\[ b. \] By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.
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. The second advising bank is required to determine the apparent authenticity of the advice that has been issued by the advising bank.

**9.2.2 Reviewing the documentary credit against an agreed credit facility**

One of the first items to be reviewed will be whether there is a request or authorisation 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 Chapter 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 a 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 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.
9.2.3 Reviewing a 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 were to quote a goods description of ‘Equipment’, the bank should be seeking a more detailed description to understand exactly what type of equipment is to be shipped.

9.3 Reviewing the content of a documentary credit

There is no requirement in UCP 600 for an advising bank 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.
Was the issuance of the documentary credit subject to an earlier pre-advice?

The following are some of the matters that an advising or second advising bank will consider when reviewing a documentary credit.

### 9.3.1 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 Chapter 7, section 7.3.2, 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.

### 9.3.2 The place and date of expiry

The place of expiry should be that of the advising bank 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 honour or negotiate a complying presentation.

### 9.3.3 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 bank 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 Chapter 19.

### 9.4 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-advices are discussed in Chapter 7, section 7.6.
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.

9.5 Preparing a documentary credit for advising to the beneficiary

An advising bank 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 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 (UCP 600, 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 inform the beneficiary of this fact in its advice.
9.6 Transmitting a documentary credit to the beneficiary

In most cases, the advising bank 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, UCP 600, article 35, states as follows.

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

[ ... ]

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.

Questions

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

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 statement true or false?

A. True

B. False

3. ‘A second advising bank is required to determine the apparent authenticity of the documentary credit issued by the issuing bank.’ Is this statement true or false?

A. True

B. False

4. ‘An advising bank or second advising bank is not required to examine a documentary credit to determine whether it is in a workable form.’ Is this statement true or false?

A. True

B. False

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.’ Is this statement true or false?

A. True

B. False
10
Confirming a documentary credit

Learning objectives
This chapter describes the process performed by a bank from the time of receipt of a documentary credit, which includes an authorisation or request for confirmation to be added, through to its sending of the advice to a second advising bank or to the beneficiary by means of SWIFT or telex, or mail (letter) form.

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

◆ the process of determining whether a documentary credit is acceptable in terms of its content and its meeting of bank policy and regulatory requirements, and whether the transaction falls within the availability and terms of a credit facility granted to the issuing bank, such that a bank will add its confirmation;

◆ the risks associated with adding confirmation to a documentary credit; and

◆ that there is a need to ensure, among all other terms and conditions, 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.

10.1 Pre-confirmation considerations
Before they even assess 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
10: Confirming a documentary credit

of the terms and conditions of the documentary credit and the content of UCP 600, article 8.

UCP 600, article 2, defines ‘confirmation’ as follows.

**Confirmation** means a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.

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.

UCP 600, article 2, defines ‘confirming bank’ as follows.

**Confirming bank** means the bank that adds its confirmation to a credit upon the issuing bank’s authorization or request.

In most cases, the advising bank 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 will often indicate that the charges for the confirmation are to be collected from the beneficiary, usually 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 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 payment 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.

◆ **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.

**UCP 600, article 35**, a ‘Disclaimer on Transmission and Translation’ provides as follows.

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when
However, such ‘errors’ 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 UCP 600, 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 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 UCP 600, 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 Chapter 18.

### 10.1.2 The application of UCP 600, article 8

UCP 600, 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, UCP 600, 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 effect 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 10.4).

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.

**UCP 600, sub-article 8(c),** is similar in content to UCP 600, sub-article 7(c), which was discussed previously in Chapter 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).

**c.** A confirming bank undertakes to reimburse another nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the confirming bank. Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, whether or not another nominated bank prepaid or purchased before maturity. A confirming bank’s undertaking to reimburse another nominated bank is independent of the confirming bank’s undertaking to the beneficiary.

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. 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 Pre-confirmation requirements

10.2.1 Receipt of the documentary credit

As mentioned earlier, in most cases the bank that is 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 indicated in Chapter 9, a documentary credit is generally issued by use of a SWIFT MT7 type message – that is, an MT700 or MT799. This will enable a confirming (advising) bank to determine the apparent authentication of the message in accordance with UCP 600, sub-article 9(b).

b. By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.

For documentary credits 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.

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.

10.2.2 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.

10.2.3 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', the bank should be seeking 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 UCP 600, article 8.
10.3 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.

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 per cent 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.

10.4 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, UCP 600, 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, UCP 600, 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.
10.5 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.

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 was 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 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.

Questions

1. ‘A bank receives a documentary credit in which it is requested 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.’ Is this statement true or false?
   
   A. True
   
   B. False

2. According to UCP 600, article 8, a confirming bank is irrevocably bound to honour or negotiate from when?
A. When the beneficiary receives the documentary credit
B. When the beneficiary presents complying documents under the credit
C. When it issues its advice of confirmation
D. When it determines that the transaction falls within the credit facility of the issuing bank

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”.’ Is this statement true or false?

A. True
B. False

4. ‘The beneficiary presents documents to the confirming bank, which are found to be compliant. The documentary credit is available by sight payment. The confirming bank is authorised to claim reimbursement from a named reimbursing bank value three banking days after sending its claim to that bank. The confirming bank claims reimbursement value 20 May 20XX (Monday). Because of the time-zone differences between it and the reimbursing bank, the confirming bank will not receive confirmation that funds have been credited to its account until the morning of 21 May. The confirming bank should effect payment to the beneficiary on 21 May, when confirmation of receipt of funds is received.’ Is this statement true or false?

A. True
B. False

5. Which of the following criteria will a bank not usually review when determining whether a documentary credit falls within the structure of a credit facility granted to the issuing bank?

A. The expiry date
B. The payment terms
C. The presentation period
D. The amount
Advising amendments to a beneficiary

Learning objectives
This chapter 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.

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

◆ describe the considerations that are made by an advising, second advising or confirming bank when advising an amendment to a beneficiary;

◆ understand that these banks have the right to refuse to advise an amendment; and

◆ identify the requirements for the beneficiary to indicate whether it has accepted or rejected an amendment.

11.1 Considerations prior to advising an amendment

11.1.1 The risks applicable to an advising or second advising bank
An advising or second advising bank undertakes no obligation to honour or negotiate and therefore it incurs no credit risk by advising an amendment.

The sole obligation of the 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 advice (second advising bank) and to advise the amendment to the beneficiary.

An advising 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’.

### 11.1.2 The risks applicable to a confirming bank

A bank that adds its confirmation to a documentary credit is often 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 11.1.4 regarding further requirements and risks that are applicable to a confirming bank.

### 11.1.3 The application of UCP 600, article 9, in respect of an advising or second advising bank

UCP 600, article 9, contains some minimal rules that apply when advising an amendment, which relate to an advising bank and a second advising bank.

**UCP 600, sub-article 9(a),** provides as follows.

| a. | A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank that is not a confirming bank advises the credit and any amendment without any undertaking to honour or negotiate. |

It should be noted, however, that **UCP 600, sub-article 9(e),** does not require that an advising bank or second advising bank must advise an amendment.

| e. | If a bank is requested to advise a credit or amendment but elects not to do so, it must so inform, without delay, the bank from which the credit, amendment or advice has been received. |
There is no requirement to indicate the reason(s) for not advising the amendment.

**UCP 600, sub-article 9(b),** provides as follows.

**b.** By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.

Similarly, **UCP 600, sub-article 9(c),** makes the following statement.

**c.** ...By advising the credit or amendment, the second advising bank signifies that it has satisfied itself as to the apparent authenticity of the advice it has received and that the advice accurately reflects the terms and conditions of the credit or amendment received.

Although the main requirement for an advising bank or second advising bank is to determine the apparent authentication of the amendment (advising bank) or the advising bank’s advice of an amendment (second advising bank), **UCP 600, sub-article 9(f),** provides for the advising of an amendment where authentication has not been possible.

**f.** If a bank is requested to advise a credit or amendment but cannot satisfy itself as to the apparent authenticity of the credit, the amendment or the advice, it must so inform, without delay, the bank from which the instructions appear to have been received. If the advising bank or second advising bank elects nonetheless to advise the credit or amendment, it must inform the beneficiary or second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit, the amendment or the advice.

### 11.1.4 The application of UCP 600, 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 11.1.3 will apply to a bank that adds its confirmation.

A documentary credit cannot be amended without the agreement of the confirming bank.

According to UCP 600, 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.

If a confirming bank decides not to extend its confirmation to an amendment, it may decline the advising of 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. 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.

Alternatively, UCP 600, 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 comment 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.

### 11.2 Requirements prior to advising an amendment

#### 11.2.1 Receipt of the amendment

As mentioned in Chapter 8, 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 determine the apparent authentication of the message in accordance with UCP 600, 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.
11.2.2 Reviewing the amendment against an agreed credit facility

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 the main criteria against a credit facility in the name of the issuing bank.

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 a deferred payment undertaking or accept a draft drawn on it. Prior to advising such an amendment, 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.

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 compliance with its terms and conditions. Depending on the structure of the facility, other forms of data may also need to be reviewed.

11.2.3 Reviewing the amendment against bank policy and regulatory requirements

When an amendment changes the routing of the goods, changes 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 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, for example the goods description and how it may be described in an amendment.

11.3 Reviewing the content of the amendment

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 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 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 insert forwarder’s certificate of receipt (FCR). All other terms and conditions remain unchanged.’

This amendment is not a simple exercise of deletion and addition. An FCR is not a title document and therefore will not 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 has occurred. If the credit were to indicate an Incoterm, the requirement for a FCR would affect it.

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 ambiguity or clarification being needed, the issuing bank should be contacted without delay.

**11.4 Was the advice of issuance of the documentary credit made through a second advising bank?**

If the documentary credit was advised to the beneficiary through a second advising bank, the advising bank must use the same bank to advise the amendment to the beneficiary.
A second advising bank is under no obligation to advise an amendment. If it decides not to advise an amendment, it must inform the advising bank of its decision without delay. Such advice need not indicate the reason(s) for the bank’s decision.

### 11.5 Preparing an amendment for advising to the beneficiary

**Note:** For the purpose of this section and section 11.6, 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 its text or to interpret any technical terms (UCP 600, 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, sanction clauses.

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.

### 11.6 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 is a non-customer of the advising bank or second advising bank.
Some banks now provide electronic delivery of the advice of the documentary credit, and any amendments thereto, to their clients by means of their front-end systems.

In relation to the actual transmission of the amendment or an advice thereof, **UCP 600, article 35**, states as follows.

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

[...]

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.

### 11.7 Notifying acceptance or rejection of an amendment

**UCP 600, sub-article 10(c)**, provides as follows.

- **c.** The terms and conditions of the original credit (or a credit incorporating previously accepted amendments) will remain in force for the beneficiary until the beneficiary communicates its acceptance of the amendment to the bank that advised such amendment. The beneficiary should give notification of acceptance or rejection of an amendment. If the beneficiary fails to give such notification, a presentation that complies with the credit and to any not yet accepted amendment will be deemed to be notification of acceptance by the beneficiary of such amendment. As of that moment the credit will be amended.

Documentary credit practice recognises that the consent of the beneficiary is required for an amendment to be effective. It is a fact that beneficiaries rarely signify their consent prior to the presentation of documents. An indication of acceptance or rejection is generally determined by the status of the presented documents.
For example, a presentation for the full amount of the documentary credit will:

◆ indicate acceptance if it complies with the terms of the documentary credit and any previously unaccepted amendment(s); or

◆ indicate rejection if it complies with the terms 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 applies only to a later shipment. In this respect, it should be noted that UCP 600, 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.

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. Some amendments may have no bearing on the content of the stipulated documents. 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.

**UCP 600, sub-article 10(e),** indicates as follows.

| e. Partial acceptance of an amendment is not allowed and will be deemed to be notification of rejection of the amendment. |

If some parts of an amendment are not acceptable, a beneficiary must decide whether to reject the amendment in its entirety and seek reissueance in an acceptable form, or to accept the amendment, but seek a further amendment that rectifies the anomalies in the first amendment.

In order to hasten the acceptance or rejection process, some 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 telex/SWIFT within 7 working 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.
11: Advising amendments to a beneficiary

**UCP 600, sub-article 10(f),** counteracts the use of such clauses.

| 10(f) | A provision in an amendment to the effect that the amendment shall enter into force unless rejected by the beneficiary within a certain time shall be disregarded. |

Should a beneficiary remain silent on the matter, this cannot be interpreted as either acceptance or rejection, particularly because UCP 600 allows 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.

**Questions**

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

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.

3. ‘An amendment contains three changes to the terms and conditions of the documentary credit. The beneficiary may accept any combination of those changes and any unaccepted changes will be considered as
disregarded and the issuing bank will be bound only by the accepted amendment(s).’ Is this statement true or false?

A. True

B. False

4. ‘A documentary credit indicates that the draft accepted by the nominated bank is to be discounted and that the discount charges are for account of the applicant. An amendment is issued stating that these charges are now for account of the beneficiary. The beneficiary has not provided a notification of acceptance or rejection prior to its presentation of documents. The covering letter of the beneficiary is silent with regard to the amendment. At that point in time, the amendment should not be considered to have been accepted.’ Is this statement true or false?

A. True

B. False

5. ‘When an advising bank advises an amendment to a beneficiary without any comment, it is to be considered that the amendment is genuine.’ Is this statement true or false?

A. True

B. False
12 Document characteristics and preparing documents

Learning objectives
This chapter identifies the key characteristics of documents such as transport, insurance, commercial and official. 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.

After studying this topic, you should be able to:

◆ understand the characteristics of transport documents as a necessary document 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.

12.1 Introduction
As discussed in Chapter 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 in respect of any payment to a beneficiary or 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.

It may 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 chapter.

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 chapter 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 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, because the bank may be willing to seek clarification 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, 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, road, rail or inland waterway transport document, 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 its 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, for 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.

### 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 UCP 600, 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.

### 12.3.1.1 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 its order.

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.

### 12.3.1.2 Control over goods

If an issuing bank seeks to obtain security through the goods by means
of a multimodal transport document, it will 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).
12.3.1.3 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 a shipping guarantee or indemnity to facilitate the release of goods should the transport document be absent or lost. 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.

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.

12.3.2.1 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 its order. Rights under such bills of lading can then be transferred by endorsement and delivery. Regulations in certain countries require bills of lading to be issued to the order of the nominated bank and to be duly endorsed to 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.
12.3.2.2 Control over goods

If an issuing bank seeks to obtain security through the goods by means of bills of lading, it will insist that all originals are presented to it.

12.3.2.3 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 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 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 Chapter 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 ‘straight consigned transport documents’.

Non-negotiable sea waybills are used because a traditional bill of lading, the surrender of which is required before the carrier will deliver 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 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.

12.3.3.1  Title, negotiability and transfer

A non-negotiable sea waybill is not a document of title and is not a negotiable document.

12.3.3.2  Control over goods

If an issuing bank wishes to exercise control over the goods, it will 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.

12.3.3.3  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 items 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 acceptable, 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 documents as evidence that the goods have been accepted for carriage.

12.3.5.1 Title, negotiability and transfer

An air transport document is not a document of title and is not a negotiable document.
12.3.5.2 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, UCP 600, 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.

In most cases, if the bank wishes to take control of the goods, it will be the named consignee on the air transport document.

12.3.5.3 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 known as ‘truck waybills’ or ‘Convention Merchandises Routiers (CMR) notes’ (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.

12.3.6.1 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’.

12.3.6.2 Control of goods

The control over the goods remains in the care of the carrier.
12.3.6.3 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 as indicated in section 12.3.6.1, by the surrender of an original inland waterway transport document.

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.

12.3.7.1 Title, negotiability and transfer

These are not documents of title and are not negotiable documents.

12.3.7.2 Control of goods

The control over the goods remains in the care of the courier company or postal authority.

12.3.7.3 Delivery of goods

Delivery is to the named addressee.

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 provide significant guidance as to how each described document should be created in order to comply under a documentary credit.
12.4.1 Consignor or shipper and consignee

All types of transport document will include boxes, spaces or fields that are to be populated with the names of the consignor or shipper (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 consignor or shipper is usually the beneficiary. This is not an absolute requirement, because any party can be named as consignor or shipper 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 a 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 consignor or shipper in blank for it to be negotiable and available for transfer of title, or it is to be endorsed to order of a named entity (as stated in the documentary credit).

The consignee requirements for each transport document are as follows.

12.4.1.1 For multimodal transport documents

ISBP 745, paragraph D16, provides as follows.

| When a credit requires a multimodal transport document to evidence that goods are consigned to a named entity, for example, “consigned to (named entity)” (i.e., a “straight” multimodal transport document or consignment) rather than “to order” or “to order of (named entity)”, it is not to contain the 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. |

ISBP 745, paragraph D17, reads as follows.

| a. When a multimodal transport document is issued “to order” or “to order of the shipper”, it is to be endorsed by the shipper. An endorsement may be made by a named entity other than the shipper, provided the endorsement is made for [or on behalf of] the shipper. |
| b. When a credit requires a multimodal transport document to evidence that goods are consigned “to order of (named entity)”, it is not to indicate that the goods are straight consigned to that named entity. |
12.4.1.2 For bills of lading

**ISBP 745, paragraph E12**, provides as follows.

When a credit requires a bill of lading to evidence that goods are consigned to a named entity, for example, “consigned to (named entity)” (i.e., a “straight” bill of lading or consignment) rather than “to order” or “to order of (named entity)”, it is not to contain the 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.

**ISBP 745, paragraph E13**, reads as follows.

a. When a bill of lading is issued “to order” or “to order of the shipper”, it is to be endorsed by the shipper. An endorsement may be made by a named entity other than the shipper, provided the endorsement is made for [or on behalf of] the shipper.

b. When a credit requires a bill of lading to evidence that goods are consigned “to order of (named entity)”, it is not to indicate that the goods are straight consigned to that named entity.

12.4.1.3 For non-negotiable sea waybills

**ISBP 745, paragraph F11**, provides as follows.

a. When a credit requires a non-negotiable sea waybill to evidence that goods are consigned to a named entity, for example, “consigned to (named entity)”, it is not to contain the 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.

b. When a credit requires a non-negotiable sea waybill to evidence that goods are consigned “to order of (named entity)”, it may indicate that the goods are consigned to that entity, without mentioning “to order of”.

c. When a credit requires a non-negotiable sea waybill to evidence that goods are consigned “to order” without naming the entity to whose order the goods are to be consigned, it is to indicate that the goods are consigned to either the issuing bank or the applicant, without the need to mention the words “to order”.
12.4.1.4 For charter party bills of lading

**ISBP 745, paragraph G11**, provides as follows.

When a credit requires a charter party bill of lading to evidence that goods are consigned to a named entity, for example, “consigned to (named entity)” (i.e., a “straight” charter party bill of lading or consignment) rather than “to order” or “to order of (named entity)”, it is not to contain the 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.

**ISBP 745, paragraph G12**, reads as follows.

a. When a charter party bill of lading is issued “to order” or “to order of the shipper”, it is to be endorsed by the shipper. An endorsement may be made by a named entity other than the shipper, provided the endorsement is made for [or on behalf of] the shipper.

b. When a credit requires a charter party bill of lading to evidence that goods are consigned “to order of (named entity)”, it is not to indicate that the goods are straight consigned to that named entity.

12.4.1.5 For air transport documents

**ISBP 745, paragraph H13**, provides as follows.

a. When a credit requires an air transport document to evidence that goods are consigned “to order of (named entity)”, it may indicate that the goods are consigned to that entity, without mentioning “to order of”.

b. When a credit requires an air transport document to evidence that goods are consigned “to order” without naming the entity to whose order the goods are to be consigned, it is to indicate that the goods are consigned to either the issuing bank or the applicant, without the need to mention the words “to order”.
12.4.1.6 For road, rail or inland waterway transport documents

**ISBP 745, paragraph J8**, provides as follows.

<table>
<thead>
<tr>
<th>a. When a credit requires a road or rail transport document to evidence that goods are consigned “to order of (named entity)”, it may indicate that the goods are consigned to that entity, without mentioning “to order of”.</th>
</tr>
</thead>
<tbody>
<tr>
<td>b. When a credit requires a road or rail transport document to evidence that goods are consigned “to order” without naming the entity to whose order the goods are to be consigned, it is to indicate that the goods are consigned either to the issuing bank or the applicant, without the need to mention the words “to order”.</td>
</tr>
<tr>
<td>c. When a credit requires an inland waterway transport document, paragraphs J8) (a) and (b) will apply except when the document is issued in the form of a bill of lading. In such event, the consignee field is to be completed according to the requirements of the credit.</td>
</tr>
</tbody>
</table>

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. A documentary credit may or may not require the transport document to indicate a named notify party or parties. If it does not, ISBP 745, paragraphs D18(b)(i) and (ii), E14(b)(i) and (ii), F12(b)(i) and (ii), G13(b)(i) and (ii), H14(b) (i) and (ii), and J9(b)(i) and (ii) all provide similar guidance for the different types of transport document to which they relate.

As an example, the following is the text that relates to multimodal transport documents, which appears at **ISBP 745, paragraph D18(b)(i) and (ii)**.

<table>
<thead>
<tr>
<th>b. i. When a credit does not stipulate the details of a notify party, a multimodal transport document may indicate the details of any notify party and in any manner (except as stated in paragraph D18) (b) (ii)).</th>
</tr>
</thead>
<tbody>
<tr>
<td>ii. When a credit does not stipulate the details of a notify party, but the details of the applicant appear as notify party on a multimodal transport document, and these details include the applicant’s address and contact details, they are not to conflict with those stated in the credit.</td>
</tr>
</tbody>
</table>
It should be noted 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, the 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 circumstances described in ISBP 745, paragraph A7(a)(ii).

**ISBP 745, paragraph A7**, provides a general application for a document examiner.

<table>
<thead>
<tr>
<th>a. i.</th>
<th>Any correction of data in a document issued by the beneficiary, with the exception of drafts (see paragraph B16), need not be authenticated.</th>
</tr>
</thead>
<tbody>
<tr>
<td>ii.</td>
<td>When a document issued by the beneficiary has been legalized, visaed, certified, etc., any correction of data is to be authenticated by at least one of the entities that legalized, visaed or certified, etc., the document. Such authentication is to indicate the name of the entity authenticating the correction either by use of a stamp incorporating its name, or by the addition of the name of the authenticating entity accompanied by its signature or initials.</td>
</tr>
</tbody>
</table>

| b. i. | Any correction of data in a document, other than in a document issued by the beneficiary, is to appear to have been authenticated by the issuer or an entity acting as agent, proxy or for [or on behalf of] the issuer. Such authentication is to indicate the name of the entity authenticating the correction either by use of a stamp incorporating its name, or by the addition of the name of the authenticating entity accompanied by its signature or initials. In the case of authentication by an agent or proxy, the capacity of acting as agent or proxy for [or on behalf of] the issuer is to be stated. |

| ii.   | When a document other than one issued by the beneficiary has been legalized, visaed, certified, etc., any correction of data is, in addition to the requirements of paragraph A7) (b) (i), to be authenticated by at least one of the entities that... |
legalized, visaed or certified, etc., the document. Such authentication is to indicate the name of the entity authenticating the correction either by use of a stamp incorporating its name, or by the addition of the name of the authenticating entity accompanied by its signature or initials.

c. Any correction of data in a copy document need not be authenticated.

In addition, ISBP 745, paragraphs D28 and D29, E24 and E25, F22 and F23, G22 and G23, H23 and H24, and J18 and J19, all provide the authentication requirements for the type of transport document to which they relate.

As an example, the following is the text relating to multimodal transport documents, which is found at ISBP 745, paragraphs D28 and D29.

D28) Any correction of data on a multimodal transport document is to be authenticated. Such authentication is to appear to have been made by the carrier, master (captain) or any one of their named agents, who may be different from the agent that may have issued or signed a multimodal transport document, provided they are identified as an agent of the carrier or master (captain).

D29) Non-negotiable copies of a multimodal transport document need not include authentication of any corrections that may have been made on the original.

12.4.4 Signing requirements

Detailed examination of the different signing requirements for each type of transport document under the respective UCP 600, articles 19–25, is undertaken in Chapter 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 ISBP 745, paragraph A37.

The fact that a document has a box, field or space for a signature does not in itself mean that such box, field or space is to be completed with a signature. For example, a signature is not required in the space titled “Signature of shipper or their agent” commonly found on an air waybill or “Signature of shipper” on a road transport document. Also see paragraph A17 in respect of the requirements for data to appear in a box, field or space.
12.4.5 Shipping marks

**ISBP 745, 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.

A32) When a credit specifies the details of a shipping mark, documents mentioning the shipping mark are to show those details. The data in a shipping mark indicated on a document need not be in the same sequence as those shown in the credit or in any other stipulated document.

A33) A shipping mark indicated on a document may show data in excess of what would normally be considered a “shipping mark”, or which is specified in the credit as a “shipping mark”, by the addition of information such as, but not limited to, the type of goods, warnings concerning the handling of fragile goods or net and gross weight of the goods.

A34) a. Transport documents covering containerized goods often only show a container number, with or without a seal number, under the heading “Shipping mark” or similar. Other documents that show a more detailed marking will not be in conflict for that reason.

b. The fact that some documents show additional information as mentioned in paragraphs A33 and A34 (a), while others do not, will not be regarded as a conflict of data under UCP 600 sub-article 14 (d).

12.4.6 Goods covered by more than one transport document

Possession of, for example, a full set of negotiable 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.
ISBP 745, paragraphs D32, E28 and G26 provide similar wording to cover this eventuality for multimodal transport documents, bills of lading and charter party bills of lading, respectively.

As an example, the following is the text relating to multimodal transport documents, which appears at ISBP 745, paragraph D32.

A multimodal transport document is not to expressly state that goods covered by that multimodal transport document will only be released upon its surrender together with one or more other multimodal transport documents, unless all of the referenced multimodal transport documents form part of the same presentation under the same credit.

For example, “Container XXXX is covered by B/L No. YYY and ZZZ, and can only be released to a single merchant upon presentation of all multimodal transport documents of that merchant” is considered to be an express statement that one or more other multimodal transport documents, related to the referenced container or packing unit, must be surrendered prior to the goods being released.

### 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 allowed or not allowed.

For example, ISBP 745, paragraph D3(b), states as follows (in relation to multimodal transport documents, where the credit indicates that such documents are acceptable).

- **b.** When a credit indicates “Freight Forwarder’s Multimodal Transport Document is acceptable” or “House Multimodal Transport Document is acceptable” or words of similar effect, 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 paragraphs exist for bills of lading (ISBP 745, paragraph E3(b)), non-negotiable sea waybills (ISBP 745, paragraph F2(b)) and air transport documents (ISBP 745, paragraph H3(b)).
**ISBP 745, paragraph D4,** provides as follows (in relation to multimodal transport documents where the credit indicates that such documents are not acceptable).

A stipulation in a credit that “Freight Forwarder’s Multimodal Transport Documents are not acceptable” or “House Multimodal Transport Documents are not acceptable” 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 UCP 600 article 19.

Similar paragraphs exist for bills of lading (ISBP 745, paragraph E4), non-negotiable sea waybills (ISBP 745, paragraph F3) and air transport documents (ISBP 745, paragraph H4).

**12.4.8 The format and content of a multimodal transport document**

Figure 12.2 on page 182 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

<table>
<thead>
<tr>
<th>Shipper (Complete name, address and phone number)</th>
<th>Consignee (Not negotiable unless consigned to order)</th>
<th>Notify party (Carrier not to be responsible for failure to notify)</th>
<th>Pre-carriage by*</th>
<th>Place of receipt*</th>
<th>Vessel</th>
<th>Place of loading</th>
<th>Port of discharge</th>
<th>Place of delivery*</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill of Lading For Combined Transport or Port-to-Port Shipment</td>
<td>CDCS Line Anytown, Anywhere</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Gross weight (kg)**

**Measure- (cbm)**

**ABOVE PARTICULARS DECLARED BY SHIPPER: CARRIER NOT RESPONSIBLE**

**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**

**RECEIVED 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.

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.

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.

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)

**Declared value by shipper (see clause 5.C.4 and tariff)**

**Freight payable at**

**Place and date of issue**

**Signed By:**

**Source:** Author, 2015

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Notes to Figure 12.2
Multimodal transport document (MMTD) content and additional references

1. The shipper details are often those of the beneficiary, but could be any entity (UCP 600, 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 (ISBP 745, paragraphs D16–D17 and D19–D20).

3. 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 (ISBP 745, paragraph D19).

4. 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. (ISBP 745, paragraph D18).

5. UCP 600, 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 (UCP 600, sub-article 19(a), and ISBP 745, paragraphs D1–D3).

6. 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 (UCP 600, sub-article 19(a)(iii), and ISBP 745, paragraphs D8–D10 and D12–D14).

7. Provides information on shipping marks and container numbers, as applicable (ISBP 745, paragraphs A32–A34).

8. 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 (UCP 600, sub-article 14(d)).

9. Bears a description of the goods in general terms, not conflicting with the description of goods in the documentary credit (UCP 600, sub-article 14(e), and ISBP 745, paragraph D26).

10. Details of the gross and net weights are not to conflict with similar details on other stipulated documents (UCP 600, sub-article 14(d)).

11. Details of the measurement, if any, are not to conflict with similar details on other stipulated documents (UCP 600, sub-article 14(d)).

12. To indicate whether freight is prepaid or payable at destination (freight collect) (ISBP 745, paragraphs D30–D31).

13. Must indicate the number of originals that have been issued and all originals are to be presented unless the documentary credit provides otherwise (UCP 600, sub-article 19(a)(iv), and ISBP 745, paragraph D15).

14. To indicate whether freight is prepaid or payable at destination (freight collect) (ISBP 745, paragraphs D30–D31).

15. 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 (UCP 600, sub-article 19(a)(ii)).

16. Indicates the place and date of issue of the MMTD (UCP 600, sub-article 19(a)(ii), and ISBP 745, paragraph D6).

17. Signed by the carrier or master or a named agent of either entity (UCP 600, sub-article 19(a)(i), and ISBP 745, paragraph D5).
### 12.4.9 A summary of the characteristics of key transport documents

<table>
<thead>
<tr>
<th>Name</th>
<th>Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multimodal transport document (UCP 600, article 19)</td>
<td>Document covers two or more modes of transport:</td>
</tr>
<tr>
<td></td>
<td>◆ delivery against original multimodal transport document, if negotiable</td>
</tr>
<tr>
<td></td>
<td>◆ delivery to consignee against identification, if non-negotiable</td>
</tr>
<tr>
<td>Bill of lading (UCP 600, article 20)</td>
<td>◆ Often a negotiable document covering a port-to-port shipment</td>
</tr>
<tr>
<td></td>
<td>◆ Grants title to goods in most cases</td>
</tr>
<tr>
<td></td>
<td>◆ Delivery against an original bill of lading when issued ‘to order’, ‘to order of shipper’ or to order of a named entity</td>
</tr>
<tr>
<td></td>
<td>◆ Delivery to consignee against identification if non-negotiable</td>
</tr>
<tr>
<td>Non-negotiable sea waybill (UCP 600, article 21)</td>
<td>◆ Non-negotiable document covering port-to-port shipment</td>
</tr>
<tr>
<td></td>
<td>◆ Does not grant title to goods</td>
</tr>
<tr>
<td></td>
<td>◆ Delivery to named consignee</td>
</tr>
<tr>
<td>Charter party bill of lading (UCP 600, article 22)</td>
<td>◆ Negotiability subject to charter party</td>
</tr>
<tr>
<td></td>
<td>◆ Title to goods subject to charter party</td>
</tr>
<tr>
<td></td>
<td>◆ Delivery in terms of charter party</td>
</tr>
<tr>
<td>Air transport document (UCP 600, article 23)</td>
<td>◆ Non-negotiable document covering single mode</td>
</tr>
<tr>
<td></td>
<td>◆ Does not grant title to goods</td>
</tr>
<tr>
<td></td>
<td>◆ Delivery to named consignee</td>
</tr>
</tbody>
</table>
### Common characteristics

<table>
<thead>
<tr>
<th>Name</th>
<th>Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Road, rail or inland waterway transport document (UCP 600, article 24)</td>
<td>◆ Non-negotiable document covering single mode</td>
</tr>
<tr>
<td></td>
<td>◆ Does not grant title to goods, except possibly inland waterway</td>
</tr>
<tr>
<td></td>
<td>◆ Delivery to named consignee or possibly against original inland waterway transport document</td>
</tr>
<tr>
<td>Courier receipt, post receipt, or certificate of posting (UCP 600, article 25)</td>
<td>◆ Non-negotiable document covering dispatch by post or courier</td>
</tr>
<tr>
<td></td>
<td>◆ Does not grant title to goods</td>
</tr>
<tr>
<td></td>
<td>◆ Delivery to named addressee</td>
</tr>
</tbody>
</table>
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 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;
◆ transhipment has been effected when the documentary credit specifically prohibits it and excludes UCP 600, sub-articles 20(c)(ii), 21(c)(ii), 23(c)(ii) or 24(e)(ii);
◆ an on board notation is absent from the bill of lading;
◆ 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;
◆ clausded 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;
◆ 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 documents presented.

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 Chapters 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. This document is detailed under UCP 600, article 28 (‘Insurance Document and Coverage’).

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**

<table>
<thead>
<tr>
<th><strong>INSURANCE CERTIFICATE</strong></th>
<th><strong>L C Insurance Ltd</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Insurance House, 500 High Road, London EC7N 6GH</strong></td>
<td><strong>ASSURED REFERENCE</strong></td>
</tr>
<tr>
<td><strong>Telephone 0847 1234567, Fax: 0847 9876543</strong></td>
<td></td>
</tr>
</tbody>
</table>

**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 .................

<table>
<thead>
<tr>
<th>Ocean Vessel/Means of Transport</th>
<th>From Port, Airport or Place</th>
<th>To Port, Airport or Place</th>
<th>Date of Shipment</th>
<th>Currency and Insured value</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>5</td>
</tr>
</tbody>
</table>

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 

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:**

**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.

**ADDITIONAL AND/OR SPECIAL CONDITIONS**

Signed for the Insurer

*Sabrina Chan*

**LC Insurance Ltd**

**Place and Date of Issue**

**Countersignature**

Source: Author, 2015
Notes to Figure 12.3

Insurance document content and additional references

1. The name of the assured party (ISBP 745, 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 (UCP 600, 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 (UCP 600, sub-article 14(d)) and comply with UCP 600, 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 (UCP 600, 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 (UCP 600, sub-article 28(f) and ISBP 745, 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 (ISBP 745, paragraphs A32–A34).
7. Description of goods not conflicting with the documentary credit (UCP 600, 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 (UCP 600, sub-article 28(g) and ISBP 745, paragraphs K17–K18).
11. Signed by an insurance company or underwriter or their agent or proxy (UCP 600, sub-article 28(a) and ISBP 745, 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 (ISBP 745, paragraphs K10–K11).
13. Countersigned, if required, by the issuer, the assured or a named entity (ISBP 745, paragraph K5).
12.5.2 Financial documents

Financial documents are legal documents that provide evidence of claims for amounts owed, such as a draft (bill of exchange) and promissory notes.

Figure 12.4 provides an example of a form of draft (bill of exchange). A description of the type of information that is to appear in each field is given, together with an indication of the relevant ISBP 745 paragraphs.

**Figure 12.4 Annotated example of a draft (bill of exchange)**

```
Bill of Exchange

Draft No.:  1  Date:  2
At:  [payment terms]  3  Exchange For:  [amount in figures including currency]  4
Pay this sole of exchange to the order of  [name of company or banker]  5
the sum of  [amount in words]  6
For value received.
To:  [party to whom draft is addressed]  7  For and on behalf of  [name of company]  8
```

*Source:* Author, 2015

**Notes to Figure 12.4**

**Draft content and additional references**

1. Unique reference number allocated to the draft by the beneficiary (optional).
2. Date on which the draft is drawn (ISBP 745, paragraph B8).
3. Tenor shown in accordance with the terms of the documentary credit. The maturity date must be capable of being determined from the face of the draft, for example '60 days after date of shipment (BL dated 10 November 20XX)' and not '60 days after date of shipment' (ISBP 745, paragraphs B2–B6).
4. Amount demanded under the presentation in figures, with amount in words and figures not to conflict (ISBP 745, paragraphs B13–B14).
5. Unless the beneficiary requests a bank to finance the draft and the bank requires it to be drawn to its order, this area will be completed with 'ourselves' or the name of the beneficiary, in which case the beneficiary should endorse the reverse in blank.
6. Amount demanded under the presentation in words, with amount in words and figures not to conflict (ISBP 745, paragraphs B13–B14).
7. The party on whom the draft is to be drawn – normally the issuing bank, the confirming bank or the nominated bank, which will be indicated in the documentary credit (ISBP 745, paragraphs B1 and B9–B12). Drafts should not be drawn on the applicant (ISBP 745, paragraph B18).
8. Signed for [or on behalf of] the beneficiary (ISBP 745, paragraph B8).
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 (overleaf) 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

<table>
<thead>
<tr>
<th>Seller (name, address, VAT reg. No.)</th>
<th>Invoice number</th>
<th>INVOICE</th>
<th>Sheet no.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2</td>
<td>1</td>
<td>3</td>
</tr>
<tr>
<td>Invoice date (tax point)</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Seller’s reference</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buyer’s reference</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other reference</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Consignee</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buyer (if not consignee)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>VAT no.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Country of origin of goods</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Country of destination</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vessel/flight no. and date</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port/airport of loading</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Terms of delivery and payment</td>
<td>12</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Port/airport of discharge</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place of delivery</td>
<td>10</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shipping marks; container number</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. and kind of packages, description of goods</td>
<td>14</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commodity code</td>
<td></td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>Total gross wt (kg)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total cube (m3)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name of signatory</td>
<td></td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Place and date of issue</td>
<td></td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Signature</td>
<td></td>
<td>16</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author, 2015
Notes to Figure 12.5
Invoice content and additional 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 (ISBP 745, 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’ (ISBP 745, paragraph A24).
4. Date of issue, which is optional, but usually stated (ISBP 745, 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 (UCP 600, sub-article 18(a)(i), and ISBP 745, 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 (UCP 600, 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 (UCP 600, 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 (UCP 600, 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 (ISBP 745, 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 (UCP 600, sub-article 18(c), and ISBP 745, 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 (UCP 600, sub-article 14(d)).
16. Signed and dated, but only if required by the documentary credit (UCP 600, sub-article 18(a)(iv), and ISBP 745, 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 in a case in which 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**

<table>
<thead>
<tr>
<th>1 Consignor</th>
<th>No.</th>
<th>ORIGINAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2 Consignee</td>
<td></td>
<td>CERTIFICATE OF ORIGIN</td>
</tr>
<tr>
<td></td>
<td>3</td>
<td>Country of origin</td>
</tr>
<tr>
<td>4 Transport details (Optional)</td>
<td>5 Remarks</td>
<td></td>
</tr>
<tr>
<td>6 Item number; marks; numbers and kind of packages; description of goods</td>
<td>7 Quantity</td>
<td></td>
</tr>
<tr>
<td>8 THE UNDERSIGNED AUTHORITY CERTIFIES THAT THE GOODS DESCRIBED ABOVE ORIGINATE IN THE COUNTRY SHOWN IN BOX 3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ANYWHERE CHAMBER OF COMMERCE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Place and date of issue, name, signature and stamp of competent authority</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Author, 2015
12.6 Presenting the documents

In order to receive payment, the beneficiary needs to prepare and present (or arrange the presentation of) a set of documents that complies with the terms and conditions of the documentary credit.

12.6.1 Mode of presentation or transmission

The vast majority of presentations under documentary credits are still paper-based. Over time, it is likely that there will be an increasing number of mixed presentations, comprising part paper, part electronic documentation, or of entirely electronic presentations.

12.6.2 Presentation and UCP 600

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. (This section relates to paper-based presentations.)

Under **UCP 600, article 29**, the instances under which ‘Extension of Expiry Date or Last Day for Presentation’ will be permitted are as follows.
Under **UCP 600, article 33**, the ‘Hours of Presentation’ are limited as follows.

A bank has no obligation to accept a presentation outside of its banking hours.

When documents have been presented, there are a number of key points that will be considered by a document examiner, 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.

---

**a.** If the expiry date of a credit or the last day for presentation falls on a day when the bank to which presentation is to be made is closed for reasons other than those referred to in article 36, the expiry date or the last day for presentation, as the case may be, will be extended to the first following banking day.

**b.** If presentation is made on the first following banking day, a nominated bank must provide the issuing bank or confirming bank with a statement on its covering schedule that the presentation was made within the time limits extended in accordance with sub-article 29 (a).

**c.** The latest date for shipment will not be extended as a result of sub-article 29 (a).
Have all documents been presented no later than the stated presentation period or the default period stated in UCP 600, sub-article 14(c)?

If one or more original transport documents form part of the presentation, they must also be presented within the latest presentation date after shipment, as stipulated in the documentary credit, or the default 21-calendar-day period if the documentary credit is silent on the subject.

If the expiry date stipulated in the documentary credit or the latest date for presentation falls on a day when the bank is not open to perform an act subject to UCP 600, such date or dates are automatically extended to the next banking day. This does not apply in the case of ‘Force Majeure’, which is explained in UCP 600, article 36.

A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.

A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.

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.

A bank is under no obligation to accept a presentation made after its published 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 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 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 Chapters 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 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 (UCP 600, article 4).

◆ Document examination is independent of the beneficiary’s relationship with the applicant (UCP 600, sub-article 4(a)).

◆ Document examination is independent of the goods, services or performance to which the documents relate (UCP 600, 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 (UCP 600, sub-article 14(a)).

This process is covered in more detail in Chapter 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 by telex or fax. If the notice is given over the telephone, it is best practice to confirm the content of the refusal in writing (by means of fax advice).

It is important that the bank’s document examination record or the documentary credit file is annotated with details of dates, time and methods of notification. Copies of the notification should form part of these records. If a bank has made presentation, the notice of refusal should be sent to that bank by telecommunication or, if that is not possible, by other expeditious
means no later than the close of the fifth banking day following the day of presentation. In most cases, the notice will be sent via SWIFT MT734 message. It should be noted that a refusal notice is not required to be sent using an authenticated message.

12.7.3 Discussions with beneficiaries

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 or as amended as above.

◆ 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 discrepancies, as originally determined or as amended as above. (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 annotated on the bank’s document examination record and should be confirmed in writing.

The relevant date for presentation is the date of presentation of the last document(s) required to make a set of compliant documents. It is in the interests of a document examiner to record accurately on the bank’s document examination record all details of discussions with a beneficiary, including dates and times.
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 the beneficiary takes away all of the documents as originally presented, a document examiner’s task may become a little more difficult when the fresh presentation is made, because all 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 authorisation of the beneficiary. 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’.

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 from the beneficiary to forward 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
Discrepant documents

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.

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 UCP 600, article 8.

<table>
<thead>
<tr>
<th>a. Provided that the stipulated documents are presented to the confirming bank or to any other nominated bank and that they constitute a complying presentation, the confirming bank must:</th>
</tr>
</thead>
<tbody>
<tr>
<td>i. honour, if the credit is available by</td>
</tr>
<tr>
<td>a. sight payment, deferred payment or acceptance with the confirming bank;</td>
</tr>
<tr>
<td>b. sight payment with another nominated bank and that nominated bank does not pay;</td>
</tr>
<tr>
<td>c. deferred payment with another nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;</td>
</tr>
</tbody>
</table>
The position of a nominated bank in this respect is provided for in UCP 600, sub-article 12(a).

**a.** Unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary.

The handling of discrepant documents is covered in more detail in Chapter 18, and honour and negotiation is examined in Chapter 17.

**Questions**

1. Which of the following transport documents is *not* appropriate for any transport by sea?
Questions

1. A multimodal transport document
   B. A bill of lading
   C. A charter party bill of lading
   D. A CMR note

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

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.

4. What is the type of bill of lading that is not acceptable under UCP 600 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
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.’ Is this statement true or false?

A. True

B. False

Note
13
Examining documents

Learning objectives
This chapter is focused on the handling and examination of documents under documentary credits.

By the end of this chapter, 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.

13.1 Introduction
To develop an understanding of what is considered to represent international standard banking practice in the examination of documents, the ICC Banking Commission published the ISBP, first in 2003 (ISBP 645), then in an updated form in 2007 (ISBP 681), and in a revised form in 2013 (ISBP 745), to explain how the practices articulated in the UCP are to be applied by documentary credit practitioners.

This chapter 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, confirming or issuing bank.
13.2 Preliminary tasks

The examination tasks that a document examiner performs will reflect the requirements of his or her role specific to the designation of his or her bank in the documentary credit transaction. In performing the examination, the document examiner should consider the following.

13.2.1 Recording

With regards 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 schedule, letter or compliments slip and on internal bank systems.

13.2.2 The schedule or letter enclosing the documents

A presentation of documents is usually accompanied by:

◆ a document schedule issued by a bank based overseas or locally;

◆ a covering letter from the presenter, usually the beneficiary; or

◆ a compliments slip or unidentified slip of paper attached to the documents.

A document examiner usually has little difficulty with schedules issued by banks.

If the presenter has no customer relationship with the bank, and is not a name known to the document examiner, there may be internal guidelines that need to be followed in the case of a covering letter from that presenter.

With regard to the use of a compliments slip or unidentified slip of paper, a document examiner may need to consider how an effective line of communication can be established with the presenter. Internal guidelines will need to be followed.
13.2.3 The availability of the documentary credit

A document examiner must ascertain that the documentary credit number is correct, that the credit is available with the bank for presentation, honour or negotiation (appropriate when the bank is not the issuing bank), and that:

◆ the documentary credit has not expired;
◆ the amount available is sufficient;
◆ previous drawings, if any, appear to be correctly recorded;
◆ the documentary credit is available for the goods and prices covered by the presentation; and
◆ all amendments are identified and recorded correctly.

In the case of a presentation for which the documentary credit has been advised through another bank, a document examiner must make inquiries with that bank to ensure that all amendments have been presented.

13.2.4 Settlement or payment instructions

A document examiner must ascertain whether the covering schedule, letter, compliments slip or unidentified slip of paper 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.

13.2.5 Discrepancies noted by the presenter

A document examiner should look to see whether the presenter has noted any discrepancies. Where discrepancies are noted, the document examiner is still required to make its own determination of 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 approval of such discrepancies.
13.2.6 Reviewing the documentary credit

Prior to commencing the examination of the documents, a document examiner should read the documentary credit and any amendments thereto, to become familiar with its terms and conditions.

13.2.7 The characteristics of the documentary credit and payment terms

A document examiner should ascertain whether the documentary credit is available at the counters of his or her bank and whether it is available by:

◆ sight payment;
◆ deferred payment;
◆ sight negotiation;
◆ usance negotiation; or
◆ acceptance.

He or she should also assess whether it is:

◆ a transferable credit;
◆ subject to a back-to-back arrangement;
◆ a revolving credit;
◆ a standby letter of credit; or
◆ (rarely) a revocable credit.

Once the documents are found to be compliant, 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.

In respect of transferable, back-to-back arrangement, revolving, standby or revocable documentary credit types, a document examiner should check any internal operational guidelines and the relevant files to ascertain whether the bank can comply with the requested settlement terms.
13.2.8 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.

The essential fields that must be populated relate to:

◆ details of the documentary credit number, amount, expiry and latest shipment date;

◆ details of discrepancies ascertained on examination;

◆ brief notes on discussions or other communications with the beneficiary or presenting bank; and

◆ settlement terms.

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.

The essential fields of a paper-based document examination record can be illustrated as follows (the example being a presentation for £22,495 under a documentary credit).

**Documentary credit and details of presentation**

Documents received: 22 Mar 20XX 10.40am [examiner’s initial]

Presenter: ABC Ltd TLX TEL Contact: Mr xxxxx Export Manager

Presenter’s ref.: Exp ABC 19982

Credit no.: 123456 Issuing Bank CIB validity 30 Apr 20XX discrepancy?

Amount of credit: GBP 100,000

Amount available: GBP 22,500 Amount of presentation: GBP 22,495

Shipment expiry: 15 Apr 20XX No. of days for presentation: 15 days discrepancy?
Date of shipment:
BL/AWB 14 Mar 20XX

List of discrepancies
23 Mar 20XX

i. Description of goods not as per credit (does not show NEW)

ii. Insurance policy does not specifically indicate coverage for WAR risk

iii. Weight list shows gross weight as 13,746kgs, whereas bill of lading shows 13,546kgs

Rejection notified to Mr xxxxx Export Manager by telephone on 24 Mar 20XX at PM.

Confirmed by telex / letter / fax on 24 Mar 20XX (strikethrough two of options)

Discussions with Mr xxxxx Export Manager who advises
‘sending amended invoices for (i)’ since rcvd 27 Mar 20XX
‘requests we contact issuing bank for authority for (ii)’ sent 27 Mar 20XX
‘sending amended weight list for (iii)’ rcvd 27 Mar 20XX

Settlement terms and charges

Pay UK Clearing Bank Ltd at …

A/c ABC Ltd Ref. EXP ABC 19982

Deduct charges ADV

Special instruction

YES NO

Other details TRANSFERABLE  X

REVOLVING  X

BACK-TO-BACK  X
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.

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 (UCP 600, sub-article 14(b)).

13.3.1 Examining the documents against the documentary credit

Documentary credits are generally transmitted as a SWIFT MT700 message, occasionally with an MT701 message where there is a large amount of data, although they may also be issued either in telex or letter form. If the documentary credit is sent by SWIFT 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.

1. **Form of credit (40A)**
   The type and characteristics of the documentary credit – that is, whether it is irrevocable, transferable or a standby – is indicated here. While UCP 600 does not specifically recognise revocable documentary credits, such credits may be issued subject to UCP 600 and must incorporate all the conditions of the revocability.

2. **Documentary credit number (20)**
   This is the number assigned to the documentary credit by the issuing bank.
3. **Date of issue (31C)**
   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? (If no date is indicated, the date of issue of the documentary credit is the date of the message.) A document examiner should refer to **UCP 600, sub-article 14(i)**, in respect of dating of documents.

   **i.** A document may be dated prior to the issuance date of the credit, but must not be dated later than its date of presentation.

4. **Applicable rules (40E)**
   The rules that are applicable to the documentary credit must be specified here. Depending on whether the UCP 600, or ISP98, or eUCP, and URR are applicable, this will read ‘UCPLATESTVERSION’, ‘EUCPLATESTVERSION’, ‘UCPURRLATESTVERSION’, ‘EUCPURRLATESTVERSION’, ‘ISPLATESTVERSION’ or ‘OTHER’ (reference to ‘LATESTVERSION’ being the rules in operation on the date of issuance of the documentary credit or standby credit). Use of the word ‘OTHER’ will signify that the UCP 600 and 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.

5. **Date and place of expiry (31D)**
   - **Date of expiry** – presentation must be made on or before the date stipulated other than as provided for in **UCP 600, sub-article 29(a)**.

   **a.** If the expiry date of a credit or the last day for presentation falls on a day when the bank to which presentation is to be made is closed for reasons other than those referred to in article 36, the expiry date or the last day for presentation, as the case may be, will be extended to the first following banking day.

   - **Place of expiry** – the place of expiry should be that of the bank(s) with which the documentary credit is available. It may also be the place (country) of the issuing bank.

6. **Applicant (50)**
   This will be the name of the entity that has requested the issuance of the documentary credit.

7. **Beneficiary (59)**
   This field will be populated with 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...
Examining the documents

(in which case an invoice may also be issued by the named second beneficiary).

8. **Credit amount (32B, 39A, 39B and 39C)**
   Percentage tolerance and qualifications such as ‘up to’, ‘maximum’ and ‘not exceeding’ are shown in these fields. A document examiner must ascertain that values and quantities are within any stated tolerances, and that the drawing is in line with the documentary credit amount.

9. **Available with and by (41a)**
   This field identifies the bank authorised to pay, accept, incur a deferred payment undertaking 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 (42C and 42a)**
    A document examiner must examine whether drafts, if required, are drawn as specified in the documentary credit. The amount should be the invoice amount unless there is a stipulation indicating otherwise. The drafts should be endorsed, if necessary, and evidence any additional wording as specifically required by the documentary credit, and the amounts expressed in figures and words should agree.

11. **Partial shipments (43P)**
    If partial shipments are prohibited, 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 per cent tolerance indicated in UCP 600, sub-article 30 (‘Tolerance in Credit Amount, Quantity and Unit Prices’).

   **a.** The words “about” or “approximately” used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer.

   **b.** A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms of a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount of the credit.

   **c.** Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (b) is not applicable. This tolerance does not apply when the credit stipulates a specific tolerance or uses the expressions referred to in sub-article 30 (a).
If partial shipments are 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.

12. **Transhipment (43T)**
   A document examiner must ascertain whether transhipment is prohibited, and if so, a bill of lading, for 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. A document examiner must examine the transport document against the rule under the applicable transport article in UCP 600.

13. **Place of taking in charge / ports / airports / place of delivery (44A, 44E, 44F and 44B)**
   A document examiner must examine the transport document against the stipulations in the documentary credit, and the detailed rules made under the respective UCP 600 transport article and the applicable paragraphs of ISBP 745. Terms used include 'place of taking in charge / dispatch from / ... place of receipt', 'port of loading / airport of departure', 'port of discharge / airport of destination' and / or 'place of final destination / for transportation to ... / place of delivery'.

   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 such references have been made on a bill of lading, for example, 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.

14. **Latest date of shipment (44C)**
   A document examiner must ensure that the transport document is not dated after the date stipulated in this field or, if no date is shown, after the expiry date of the documentary credit.

15. **Description of goods (45A)**
   A document examiner must ensure that the wording of the description of goods on the invoice corresponds with that shown on the documentary credit (UCP 600, 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 (UCP 600, sub-article 14(e)). Any shipment terms or Incoterms stipulated as part of the goods description should be evidenced on the invoice.

16. **Documents required (46A)**

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.

The following review points, where appropriate, should not be overlooked.

For a transport document, the examiner should check:

◆ the on board notation;
◆ that the on board notation also includes the vessel name and port of loading (where necessary);
◆ the port of loading and port of discharge;
◆ any qualifications about defective goods or packaging;
◆ any shipping marks;
◆ that it is not a charter party document (unless specifically required or allowed);
◆ that the goods description is not in conflict with that on other documents; and
◆ that there is no 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;
◆ be presented in the form of a policy, where it is so stipulated;
◆ (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;
13: Examining documents

◆ cover the risks as stipulated in the documentary credit and show them specifically on its face;
◆ feature a date on which cover is effective that is no later than the date of shipment indicated on the transport document; 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 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
◆ 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.

17. Additional conditions (47A)
A document examiner must review any additional conditions against the stipulated documents. If no document is stipulated, the condition must be considered as not stated and should be disregarded. Attention is drawn to UCP 600, sub-article 14(h).

h. If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.

18. Period for presentation (48)
A document examiner must determine that if a period is stipulated in this field, the presentation has been made within such period after the date of shipment or date of a document or event. Attention is drawn to UCP 600, sub-article 14(c), for the default period when no presentation period is specified.

c. A presentation including one or more original transport documents subject to articles 19, 20, 21, 22, 23, 24 or 25 must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.
19. **Confirmation instructions (49)**
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 (UCP 600, article 8, and sub-article 10(b)). If the document examiner’s bank has added confirmation to the credit, the document examiner should review the advice of confirmation and any amendments to ascertain the scope of the confirmation that has been added.

20. **Reimbursing bank (53a)**
A document examiner must ascertain whether this field features 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, then those rules will apply to the documentary credit; otherwise, UCP 600, sub-articles 13(b) and (c) will apply.

21. **Charges (71B)**
The documentary credit should stipulate from whom charges are to be recovered.

### 13.3.2 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 care should be taken to ascertain whether or not confirmation has been extended to the amendment. If it has not been extended, the confirming bank will not be bound by the amended terms, even though the documents presented may be in compliance with such terms.

If a document examiner is acting for a nominated bank and documents are presented under a documentary credit that is available with any bank, he or she should contact the advising bank (if different from his or her own bank) to establish that full details of the documentary credit and amendments are held before performing the document examination.
UCP 600, article 10, covers amendments, including:

- the need to obtain the agreement of all parties to a documentary credit before it can be amended or cancelled;
- when an amendment becomes binding on the issuing bank and a confirming bank (if any);
- the option that the confirming bank has to decline to extend its confirmation to the terms of an amendment;
- the need for the beneficiary to communicate acceptance or rejection of an amendment;
- the sufficiency of presentation of documents conforming to the documentary credit, and not previously accepted amendments, as notification of such acceptance;
- the need for any 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;
- the absence of time limits that may be applied with regard to the effectiveness of an amendment.

13.3.3 Examining documents against UCP 600

As well as examining documents with reference to the terms and conditions of the documentary credit, a document examiner must also take into account the relevant provisions of UCP 600.

13.3.3.1 The standards for examination of documents

A number of standards for the examination of documents are set out in UCP 600, article 14. **UCP 600, 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.

**c.** A presentation including one or more original transport documents subject to articles 19, 20, 21, 22, 23, 24 or 25 must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.

Uncertain terms, such as ‘stale bills of lading are acceptable’, should not be included in the terms of a documentary credit.
**ISBP 745, paragraph A19(b)**, provides an interpretation if such a term is used.

b. “stale documents acceptable” – documents may be presented later than 21 calendar days after the date of shipment as long as they are presented no later than the expiry date of the credit. This will also apply when the credit specifies a period for presentation together with the condition “stale documents acceptable”.

Note that UCP 600, sub-article 14(c), applies only to a documentary credit that requires presentation of an original transport document.

The content of UCP 600, sub-article 14(e), is further amplified in ISBP 745, paragraphs D26, E22, F20, G20, H22 and J17.

The content of UCP 600, sub-article 14(l), is further amplified in ISBP 745, paragraphs D3(a), E3(a), F2(a) and H3(a).

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, **ISBP 745, paragraph A23**, states that an obviously mis-spelled word or typing error does not need to be raised as a discrepancy.

A misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant. For example, a description of the goods shown as “mashine” instead of “machine”, “fountan pen” instead of “fountain pen” or “modle” instead of “model” would not be regarded as a conflict of data under UCP 600 sub-article 14 (d). However, a description shown as, for example, “model 123” instead of “model 321” will be regarded as a conflict of data under that sub-article.

‘On their face’ The doctrine of examination of documents ‘on their face’ and ‘on the basis of the documents alone’ is included in **UCP 600, sub-article 14(a)**.

a. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.

It 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.

**International standard banking practice** 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 article or document. 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.

**ISBP 745, paragraphs A1 and A2**, consider abbreviations and the use of virgules or commas.

A1) Generally accepted abbreviations, such as, but not limited to, “Int”l” instead of “International”, “Co.” instead of “Company”, “kgs” or “kos” instead of “kilograms” or “kilos”, “Ind.” instead of “Industry”, “Ltd” instead of “Limited”, “mfr” instead of “manufacturer” or “mt” instead of “metric tons” may be used in documents in substitution for a word or vice versa. A credit that includes an abbreviation in its text allows a document to show the same abbreviation or any other abbreviation that has the same meaning, or to show the complete spelling of the word or vice versa.

A2) a. Virgules (i.e., slash marks “/”) may result in different meanings and should not be used as a substitute for a word. If, nevertheless, a virgule is used and no context is apparent, this will allow the use of one or more of the options. For example, a condition in a credit stating “Red/Black/Blue” with no further clarification will mean only Red or only Black or only Blue or any combination of them.

b. The use of a comma when indicating a range of data in a credit such as ports of loading or discharge or countries of origin, may result in different meanings and should not be used as a substitute for a word. If, nevertheless, a comma is used and no context is apparent, this will allow the use of one or more of the options. For example, when a credit allows partial shipment and indicates the port of loading information as “Hamburg, Rotterdam, Antwerp” with no further clarification, this will mean only Hamburg or only Rotterdam or only Antwerp or any combination of them.
Examining the documents

**ISBP 745, paragraphs A3–A5**, relate to certificates, certifications, declarations and statements.

A3) When a certificate, certification, declaration or statement is required by a credit, it is to be signed.

A4) Whether a certificate, certification, declaration or statement needs to be dated will depend on the type of certificate, certification, declaration or statement that has been requested, its required wording and the wording that appears within the document.

For example, when a credit requires the presentation of a certificate issued by the carrier or its agent stating that the vessel is no more than 25 years old, the certificate may evidence compliance by indicating:

a. the date or year the vessel was built, and such date or year is no more than 25 years prior to the date of shipment or the year in which shipment was effected, in which case a date of issuance is not necessary, or

b. the wording as stated in the credit, in which case a date of issuance is required, thereby certifying that as of that date the vessel was not more than 25 years old.

A5) When a certification, declaration or statement is to appear in a document which is to be signed and dated, it does not require a separate signature or date when the certification, declaration or statement appears to have been given by the same entity that issued and signed the document.

**ISBP 745, 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 other named entity.

a. When a credit requires the presentation of a copy of a transport document covered by UCP 600 articles 19–25, the relevant article is not applicable, as these articles only apply to original transport documents. A copy of a transport document is to be examined only to the extent expressly stated in the credit, otherwise according to UCP 600 sub-article 14 (f).

b. Any data shown on a copy of a transport document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.
c. Copies of transport documents covered by UCP 600 articles 19–25 are not subject to the default presentation period of 21 calendar days stated in UCP 600 sub-article 14 (c) or any presentation period stated in the credit, unless the credit explicitly states the basis for determining such presentation period. Otherwise, a presentation may be made at any time, but in any event no later than the expiry date of the credit.

ISBP 745, paragraphs A7–A9, explain the standard practice should any documents contain corrections and alterations

A7) a. i. Any correction of data in a document issued by the beneficiary, with the exception of drafts (see paragraph B16), need not be authenticated.

ii. When a document issued by the beneficiary has been legalized, visaed, certified, etc., any correction of data is to be authenticated by at least one of the entities that legalized, visaed or certified, etc., the document. Such authentication is to indicate the name of the entity authenticating the correction either by use of a stamp incorporating its name, or by the addition of the name of the authenticating entity accompanied by its signature or initials.

b. i. Any correction of data in a document, other than in a document issued by the beneficiary, is to appear to have been authenticated by the issuer or an entity acting as agent, proxy or for [or on behalf of] the issuer. Such authentication is to indicate the name of the entity authenticating the correction either by use of a stamp incorporating its name, or by the addition of the name of the authenticating entity accompanied by its signature or initials. In the case of authentication by an agent or proxy, the capacity of acting as agent or proxy for [or on behalf of] the issuer is to be stated.

ii. When a document other than one issued by the beneficiary has been legalized, visaed, certified, etc., any correction of data is, in addition to the requirements of paragraph A7 (b) (i), to be authenticated by at least one of the entities that legalized, visaed or certified, etc., the document. Such authentication is to indicate the name of the entity authenticating the correction either by use of a stamp incorporating its name, or by the addition of the name of the authenticating entity accompanied by its signature or initials.

c. Any correction of data in a copy document need not be authenticated.
Examining the documents

A8) When a document other than one issued by the beneficiary contains more than one correction, either each correction is to be authenticated separately, or one authentication is to indicate that it applies to all the corrections. For example, when a document issued by XXX shows three corrections numbered 1, 2 and 3, one statement such as ‘Correction numbers 1, 2 and 3 authenticated by XXX’ or similar, together with the signature or initials of XXX, will satisfy the requirement for authentication.

A9) The use of multiple type styles, font sizes or handwriting within the same document does not, by itself, signify a correction.

ISBP 745, paragraphs A11–A16, relate to dates.

<table>
<thead>
<tr>
<th>A11)</th>
<th>a. Even when a credit does not expressly so require:</th>
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<tr>
<td></td>
<td>i. drafts are to indicate a date of issuance;</td>
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<tr>
<td></td>
<td>ii. insurance documents are to indicate a date of issuance or effectiveness of the insurance coverage as reflected in paragraphs K10 (b) and K11; and</td>
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<tr>
<td></td>
<td>iii. original transport documents, subject to examination under UCP 600 articles 19–25, are to indicate a date of issuance, a dated on board notation, a date of shipment, a date of receipt for shipment, a date of dispatch or carriage, a date of taking in charge or a date of pick up or receipt, as applicable.</td>
</tr>
<tr>
<td></td>
<td>b. A requirement that a document, other than a draft, insurance document or original transport document, be dated will be satisfied by the indication of a date of issuance or by reference in the document to the date of another document forming part of the same presentation (for example, by the wording “date as per bill of lading number xxx” appearing on a certificate issued by a carrier or its agent) or a date appearing on a stipulated document indicating the occurrence of an event (for example, by the date of inspection being indicated on an inspection certificate that otherwise does not contain a date of issuance).</td>
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</table>

<table>
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<tr>
<th>A12)</th>
<th>a. A document, such as, but not limited to, a certificate of analysis, inspection certificate or fumigation certificate, may indicate a date of issuance later than the date of shipment.</th>
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<td></td>
<td>b. When a credit requires a document to evidence a pre-shipment event (for example, “pre-shipment inspection certificate”), the document, either by its title, content or date of issuance, is to</td>
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</table>
indicate that the event (for example, inspection) took place on or prior to the date of shipment.

c. When a credit requires a document such as, but not limited to, an “inspection certificate”, this does not constitute a requirement that the document is to evidence a pre-shipment event, and it need not be dated prior to the date of shipment.

A13) A document indicating a date of issuance and a later date of signing is deemed to have been issued on the date of signing.

A14) a. When a credit uses phrases to signify time on either side of a date or an event, the following shall apply:

   i. “not later than 2 days after (date or event)” means a latest date. If an advice or document is not to be dated prior to a specified date or event, the credit should so state.

   ii. “at least 2 days before (date or event)” means that an act or event is to take place not later than 2 days before that date or event. There is no limit as to how early it may take place.

b. i. For the purpose of calculation of a period of time, the term “within” when used in connection with a date or event excludes that date or the event date in the calculation of the period. For example, “within 2 days of (date or event)” means a period of 5 days commencing 2 days prior to that date or event until 2 days after that date or event.

   ii. The term “within” when followed by a date or a reference to a determinable date or event includes that date or event date. For example, “presentation to be made within 14 May” or “presentation is to be made within credit validity (or credit expiry)” where the expiry date of the credit is 14 May, means 14 May is the last day upon which presentation is allowed, provided that 14 May is a banking day.

A15) The words “from” and “after” when used to determine a maturity date or period for presentation following the date of shipment, the date of an event or the date of a document, exclude that date in the calculation of the period. For example, 10 days after the date of shipment or 10 days from the date of shipment, where the date of shipment was 4 May, will be 14 May.

A16) Provided that the date intended can be determined from the document or from other documents included in the presentation, dates may be expressed in any format. For example, the 14th of May 2013 could be expressed as 14 May 13, 14.05.2013, 14.05.13, 2013.05.14, 05.14.13, 130514, etc. To avoid any risk of ambiguity, it is recommended that the month be stated in words.
ISBP 745, 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 populated.

The fact that a document has a box, field or space for data to be inserted does not necessarily mean that such box, field or space is to be completed. For example, data are not required in the box titled ‘Accounting Information’ or ‘Handling Information’ commonly found on an air waybill. Also see paragraph A37 in respect of the requirements for a signature to appear in any box, field or space.

ISBP 745, paragraph A18, refers to a transport document other than those mentioned in UCP 600, articles 19–25, and the examination requirements for those documents, including the determination of a presentation period.

a. Documents commonly used in relation to the transportation of goods, such as but not limited to, 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 are not transport documents as defined in UCP 600 articles 19–25. These documents are to be examined only to the extent expressly stated in the credit, otherwise according to UCP 600 sub-article 14 (f).

b. i. For documents referred to in paragraph A18 (a), a condition of a credit that presentation is to occur within a certain number of days after the date of shipment will be disregarded, and presentation may be made at any time, but in any event no later than the expiry date of the credit.

   ii. The default presentation period of 21 calendar days stated in UCP 600 sub-article 14 (c) only applies to a presentation including one or more original transport documents covered by UCP 600 articles 19–25.

c. For a presentation period to apply to a document referred to in paragraph A18 (a), the credit should specify that presentation is to be made within a certain number of days after the issuance date of the respective document, or a date that is to be mentioned in the document (for example, when a credit requires the presentation of a document titled cargo receipt, “documents to be presented no later than 10 days after the date of the cargo receipt”).
ISBP 745, 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 expressions “shipping documents”, “stale documents acceptable”, “third party documents acceptable”, “third party documents not acceptable”, “exporting country”, “shipping company” and “documents acceptable as presented” should not be used in a credit, as they are not defined in UCP 600. If, nevertheless, they are used, and their meaning is not defined in the credit, they shall have the following meaning under international standard banking practice:

a. “shipping documents” – all documents required by the credit, except drafts, teletransmission reports and courier receipts, postal receipts or certificates of posting evidencing the sending of documents.

b. “stale documents acceptable” – documents may be presented later than 21 calendar days after the date of shipment as long as they are presented no later than the expiry date of the credit. This will also apply when the credit specifies a period for presentation together with the condition “stale documents acceptable”.

c. “third party documents acceptable” – all documents for which the credit or UCP 600 do not indicate an issuer, except drafts, may be issued by a named person or entity other than the beneficiary.

d. “third party documents not acceptable” – has no meaning and is to be disregarded.

e. “exporting country” – one of the following: the country where the beneficiary is domiciled, the country of origin of the goods, the country of receipt by the carrier or the country from which shipment or dispatch is made.

f. “shipping company” – when used in the context of the issuer of a certificate, certification or declaration relating to a transport document – any one of the following: carrier, master or, when a charter party bill of lading is presented, the master, owner or charterer, or any entity identified as an agent of any one of the aforementioned, regardless of whether it issued or signed the presented transport document.

g. “documents acceptable as presented” – a presentation may consist of one or more of the stipulated documents provided they are presented within the expiry date of the credit and the drawing amount is within that which is available under the credit. The documents will not otherwise be examined for compliance under the credit or UCP 600, including whether they are presented in the required number of originals or copies.
Examining the documents

**ISBP 745, paragraph A20**, describes the practice for identifying that a document has been issued by the entity named in a documentary credit.

When a credit requires a document to be issued by a named person or entity, this condition is satisfied when the document appears to be issued by the named person or entity by use of its letterhead, or when there is no letterhead, when the document appears to have been completed or signed by, or for [or on behalf of], the named person or entity.

**ISBP 745, paragraph A21**, provides guidance regarding the language in which documents are issued.

a. When a credit stipulates the language of the documents to be presented, the data required by the credit or UCP 600 are to be in that language.

b. When a credit is silent with respect to the language of the documents to be presented, the documents may be issued in any language.

c. i. When a credit allows two or more acceptable languages, a confirming bank or a nominated bank acting on its nomination may restrict the number of acceptable languages as a condition of its engagement in the credit, and in such a case the data contained in the documents are only to be in the acceptable language or languages.

   ii. When a credit allows a document to contain data in two or more acceptable languages and a confirming bank or a nominated bank acting on its nomination does not restrict the language or the number of acceptable languages as a condition of its engagement in the credit, it is required to examine the data in all of the acceptable languages appearing in the documents.

d. Banks do not examine data that have been inserted in a language that is additional to that required or allowed in the credit.

e. Notwithstanding paragraphs A21 (a) and (d), the name of a person or entity, any stamps, legalization, 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.
ISBP 745, paragraph A22, 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.

When the presented documents indicate mathematical calculations, banks only determine that the stated total in respect of criteria such as amount, quantity, weight or number of packages, does not conflict with the credit or any other stipulated document.

ISBP 745, paragraphs A24 and A25, state how standard practice should be applied when documents are presented with multiple pages, attachments or riders, and to the signing or endorsing of such documents.

A24) When a document consists of more than one page, it must be possible to determine that the pages are part of the same document. Unless a document provides otherwise, pages which are physically bound together, sequentially numbered or contain internal cross references, however named or titled, will meet this requirement and are to be examined as one document, even if some of the pages are regarded as an attachment or rider.

A25) When a signature or endorsement is required to be on a document consisting of more than one page, and the credit or the document itself does not indicate where a signature or endorsement is to appear, the signature or endorsement may appear anywhere on that document.

ISBP 745, 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.

When a credit contains a condition without stipulating a document to indicate compliance therewith (“non-documentary condition”), compliance with such condition need not be evidenced on any stipulated document. However, data contained in a stipulated document are not to be in conflict with the non-documentary condition. For example, when a credit indicates “packing in wooden cases” without indicating that such data is to appear on any stipulated document, a statement in any stipulated document indicating a different type of packing is considered to be a conflict of data.
ISBP 745, 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.

A27) A document bearing an apparently original signature, mark, stamp or label of the issuer will be considered to be an original unless it states that it is a copy. Banks do not determine whether such a signature, mark, stamp or label of the issuer has been applied in a manual or facsimile form and, as such, any document bearing such method of authentication will satisfy the requirements of UCP 600 article 17.

A28) 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.

A29) a. The number of originals to be presented is to be at least the number required by the credit or UCP 600.

b. When a transport document or insurance document indicates how many originals have been issued, the number of originals stated on the document is to be presented, except as stated in paragraphs H12 and J7 (c).

c. When a credit requires presentation of less than a full set of original transport documents, (for example, “2/3 original bills of lading”), but does not provide any disposal instructions for the remaining original bill of lading, a presentation may include 3/3 original bills of lading.

d. When a credit requires, for example, presentation of:

i. “Invoice”, “One Invoice”, “Invoice in 1 copy” or “Invoice – 1 copy”, it will be understood to be a requirement for an original invoice.

ii. “Invoice in 4 copies” or “Invoice in 4 fold” will be satisfied by the presentation of at least one original invoice and any remaining number as copies.

iii. “photocopy of invoice” or” copy of invoice” will be satisfied by the presentation of either a photocopy, copy or, when not prohibited, an original invoice.

iv. “photocopy of a signed invoice” will be satisfied by the presentation of either a photocopy or copy of the original invoice that was apparently signed or, when not prohibited, a signed original invoice.
A30) a. When a credit prohibits the presentation of an original document by stating, for example, “photocopy of invoice – original document not acceptable in lieu of photocopy” or the like, only a photocopy of an invoice or an invoice marked copy is to be presented.

        b. When a credit requires the presentation of a copy of a transport document and indicates a disposal instruction for all originals of that document, a presentation is not to include any original of such document.

A31) a. Original documents are to be signed when required by the credit, the document itself (except as stated in paragraph A37) or UCP 600.

        b. Copies of documents need not be signed nor dated.

**ISBP 745, paragraphs A32–A34**, explain how documents will be examined with regard to shipping marks.

A32) When a credit specifies the details of a shipping mark, documents mentioning the shipping mark are to show those details. The data in a shipping mark indicated on a document need not be in the same sequence as those shown in the credit or in any other stipulated document.

A33) A shipping mark indicated on a document may show data in excess of what would normally be considered a “shipping mark”, or which is specified in the credit as a “shipping mark”, by the addition of information such as, but not limited to, the type of goods, warnings concerning the handling of fragile goods or net and gross weight of the goods.

A34) a. Transport documents covering containerized goods often only show a container number, with or without a seal number, under the heading “Shipping mark” or similar. Other documents that show a more detailed marking will not be in conflict for that reason.

        b. The fact that some documents show additional information as mentioned in paragraphs A33 and A34 (a), while others do not, will not be regarded as a conflict of data under UCP 600 sub-article 14 (d).

**ISBP 745, paragraphs A35–A38**, cover the signature requirements for documents presented under a documentary credit.
A35) a. A signature, as referred to in paragraph A31 (a), need not be handwritten. Documents may also be signed with a facsimile signature (for example, a pre-printed or scanned signature), perforated signature, stamp, symbol (for example, a chop) or any mechanical or electronic method of authentication.

b. A requirement for a document to be “signed and stamped” or a similar requirement is satisfied by a signature in the form described in paragraph A35 (a) and the name of the signing entity typed, stamped, handwritten, pre-printed or scanned on the document, etc.

c. A statement on a document such as “This document has been electronically authenticated” or “This document has been produced by electronic means and requires no signature” or words of similar effect does not, by itself, represent an electronic method of authentication in accordance with the signature requirements of UCP 600 article 3.

d. A statement on a document indicating that authentication may be verified or obtained through a specific reference to a website (URL) constitutes a form of electronic method of authentication in accordance with the signature requirements of UCP 600 article 3. Banks will not access such websites to verify or obtain authentication.

A36) a. A signature on the letterhead paper of a named person or entity is considered to be the signature of that named person or entity unless otherwise stated. The named person or entity need not be repeated next to the signature.

b. When a signatory indicates it is signing for [or on behalf of] a branch of the issuer, the signature will be considered to be that of the issuer.

A37) The fact that a document has a box, field or space for a signature does not in itself mean that such box, field or space is to be completed with a signature. For example, a signature is not required in the space titled “Signature of shipper or their agent” commonly found on an air waybill or “Signature of shipper” on a road transport document. Also see paragraph A17 in respect of the requirements for data to appear in a box, field or space.

A38) When a document includes wording such as “This document is not valid unless countersigned [or signed] by (name of the person or entity)” or words of similar effect, the applicable box, field or space is to contain a signature and the name of the person or entity that is countersigning the document.
ISBP 745, paragraphs A39-A41, relate to the title of documents and the situation if combined documents are presented or required.

A39) Documents may be titled as called for in the credit, bear a similar title or be untitled. The content of a document must appear to fulfil the function of the required document. For example, a requirement for a “Packing List” will be satisfied by a document containing packing details whether it is titled “Packing List”, “Packing Note”, “Packing and Weight List”, etc., or bears no title.

A40) Documents required by a credit are to be presented as separate documents. However, and as an example, a requirement for an original packing list and an original weight list will also be satisfied by the presentation of two original combined packing and weight lists, provided that such documents state both packing and weight details.

A41) A document required by a credit that is to cover more than one function may be presented as a single document or separate documents that appear to fulfil each function. For example, a requirement for a Certificate of Quality and Quantity will be satisfied by the presentation of a single document or by a separate Certificate of Quality and Certificate of Quantity provided that each document appears to fulfil its function and is presented in the number of originals and copies as required by the credit.

Documents not to be in conflict with one another The need for documents to contain data not in conflict with one another is explained in section 13.3.4.

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 may be returned to the presenter. The nominated bank may 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, it should be disregarded by a document examiner.

Under UCP 600, sub-article 14(h), a non-documentary condition will be disregarded.

h. If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.
This non-documentary data in the documentary credit, if indicated on any stipulated document, will, however, be subject to review, according to **UCP 600, sub-article 14(d)**.

| d. Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit. |

### 13.3.3.2 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 the presentation is compliant according to UCP 600, 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 take up the presentation and to provide reimbursement or settlement in accordance with instructions as received. If documents are found not to be compliant, a document examiner may choose to refuse the documents, in which case his or her actions in such circumstances are covered in Chapter 18 and by UCP 600, article 16.

**Note:** Depending upon the value or type of presentation, a bank may require more than one document examiner to examine the documents.

### 13.3.3.3 A disclaimer on the effectiveness of the documents

**UCP 600, article 34**, provides a disclaimer for banks in respect of the content and issuer of documents presented.

| A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person. |
13.3.3.4 Determining the acceptability regarding the issuer, originality and authentication of the documents

UCP 600, article 3 (‘Interpretations’) permits any issuer other than the beneficiary to issue a document under the conditions specified therein.

[ ... ]

Terms such as “first class”, “well known”, “qualified”, “independent”, “official”, “competent” or “local” used to describe the issuer of a document allow any issuer except the beneficiary to issue that document.

UCP 600, article 17, relates to the originality of documents.

a. At least one original of each document stipulated in the credit must be presented.

b. A bank shall treat as an original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not an original.

c. Unless a document indicates otherwise, a bank will also accept a document as original if it:

   i. appears to be written, typed, perforated or stamped by the document issuer’s hand; or

   ii. appears to be on the document issuer’s original stationery; or

   iii. states that it is original, unless the statement appears not to apply to the document presented.

d. If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted.

e. 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.

Reference should also be made to ISBP 745, paragraphs A27–A31. The content of ISBP 745, paragraph A27, acts as the formal guidance for the determination of an original document.
13.3.4 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.

UCP 600, 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 that shows potassium content at 5 per cent, as required by the documentary credit, while a transport document provides evidence of potassium content at 8 per cent (even though the documentary credit does not require this detail to be shown on the transport document).

In such circumstances, the data on the transport document will be considered to be in conflict with that shown on the analysis certificate.

13.3.5 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 as referred to in UCP 600, article 36, the expiry date is extended to the next banking day. However, this does not apply to the latest shipment date.
13. Examining documents

**UCP 600, article 29**, provides as follows.

a. If the expiry date of a credit or the last day for presentation falls on a day when the bank to which presentation is to be made is closed for reasons other than those referred to in article 36, the expiry date or the last day for presentation, as the case may be, will be extended to the first following banking day.

b. If presentation is made on the first following banking day, a nominated bank must provide the issuing bank or confirming bank with a statement on its covering schedule that the presentation was made within the time limits extended in accordance with sub-article 29 (a).

c. The latest date for shipment will not be extended as a result of sub-article 29 (a).

### 13.3.6 Tolerances in credit amount, quantity and unit prices

**UCP 600, article 30**, provides as follows.

a. The words “about” or “approximately” used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer.

b. A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms of a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount of the credit.

c. Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (b) is not applicable. This tolerance does not apply when the credit stipulates a specific tolerance or uses the expressions referred to in sub-article 30 (a).

**ISBP 745, paragraphs C11–C14**, provide further detail on the application of UCP 600, article 30.

C11) Any total quantity of goods and their weight or measurement shown on the invoice is not to conflict with the same data appearing on other documents.
C12) An invoice is not to indicate:

a. over-shipment (except as provided in UCP 600 sub-article 30 (b)), or

b. goods, services or performance not called for in the credit. This applies even when the invoice includes additional quantities of goods, services or performance as required by the credit or samples and advertising material and are stated to be free of charge.

C13) The quantity of goods required in the credit may be indicated on an invoice within a tolerance of +/-5%. A variance of up to +5% in the quantity of the goods does not allow the amount demanded under the presentation to exceed the amount of the credit. The tolerance of +/-5% in the quantity of the goods will not apply when:

a. a credit states that the quantity is not to be exceeded or reduced; or

b. a credit states the quantity in terms of a stipulated number of packing units or individual items.

C14) When no quantity of goods is stated in the credit, and partial shipments are prohibited, an invoice issued for an amount up to 5% less than the credit amount will be considered to cover the full quantity and not a partial shipment.

13.3.7 Partial drawings or shipments

UCP 600, article 31, provides as follows.

a. Partial drawings or shipments are allowed.

b. A presentation consisting of more than one set of transport documents evidencing shipment commencing on the same means of conveyance and for the same journey, provided they indicate the same destination, will not be regarded as covering a partial shipment, even if they indicate different dates of shipment or different ports of loading, places of taking in charge or dispatch. If the presentation consists of more than one set of transport documents, the latest date of shipment as evidenced on any of the sets of transport documents will be regarded as the date of shipment.

A presentation consisting of one or more sets of transport documents evidencing shipment on more than one means of conveyance within the same mode of transport will be regarded as covering a partial shipment, even if the means of conveyance leave on the same day for the same destination.
The provisions of UCP 600, article 31, are amplified by ISBP 745, paragraphs D22 and D23, E18 and E19, F16 and F17, G16 and G17, H18 and H19, and J13 and J14, all of which provide a similar wording for the type of transport document to which they relate.

As an example, ISBP 745, paragraphs D22 and D23, relate to multimodal transport documents.

D22) Shipment on more than one means of conveyance (more than one truck [lorry], vessel, aircraft, etc.) is a partial shipment, even when such means of conveyance leaves on the same day for the same destination.

D23) a. When a credit prohibits partial shipment, and more than one set of original multimodal transport documents are presented covering receipt, dispatch, taking in charge or shipment from one or more points of origin (as specifically allowed, or within a geographical area or range of places stated in the credit), each set is to indicate that it covers the carriage of goods on the same means of conveyance and same journey and that the goods are destined for the same destination.

b. When a credit prohibits partial shipment, and more than one set of original multimodal transport documents are presented in accordance with paragraph D23 (a) and incorporate different dates of receipt, dispatch, taking in charge, or shipment, the latest of these dates is to be used for the calculation of any presentation period and must fall on or before the latest date of receipt, dispatch, taking in charge or shipment stated in the credit.

c. When partial shipment is allowed, and more than one set of original multimodal transport documents are presented as part of a single presentation made under one covering schedule or letter and incorporate different dates of receipt, dispatch, taking in charge or shipment, on different means of conveyance, the earliest of these dates is to be used for the calculation of any presentation period, and each of these dates must fall on or before the latest date of receipt, dispatch, taking in charge or shipment stated in the credit.

Partial drawings or shipment are not allowed if the documentary credit specifically prohibits partial drawing or shipment.
Questions

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

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.

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
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

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.’ Is this statement true or false?

A. True

B. False
14
Examining transport documents

Learning objectives
This chapter highlights the requirements when examining transport documents.

By the end of this chapter, you should be able to:
◆ understand the key examination criteria for transport documents;
◆ identify the different characteristics of transport documents; and
◆ explain a bank’s examination of documents against the provisions of UCP 600, articles 19–25, and the practices articulated in ISBP 745, sections D–J.

14.1 Transport documents issued by freight forwarders and indication of a goods description
ISBP 745, paragraphs D3(b), E3(b), F2(b) and H3(b) provide the practice that is to be applied when a documentary credit specifically makes mention of the acceptance of a freight forwarder type of transport document.

ISBP 745, paragraph D3(b), relates to multimodal transport documents.

b. When a credit indicates “Freight Forwarder’s Multimodal Transport Document is acceptable” or “House Multimodal Transport Document is acceptable” or words of similar effect, 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.
ISBP 745, paragraph E3(b), relates to bills of lading.

b. When a credit indicates “Freight Forwarder’s Bill of Lading is acceptable” or “House Bill of Lading is acceptable” or words of similar effect, a bill of lading 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.

ISBP 745, paragraph F2(b), relates to non-negotiable sea waybills.

b. When a credit indicates “Freight Forwarder’s non-negotiable sea waybill is acceptable” or “House non-negotiable sea waybill is acceptable” or words of similar effect, a non-negotiable sea waybill 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.

ISBP745, paragraph H3(b), relates to air transport documents.

b. When a credit indicates “Freight Forwarder’s air waybill is acceptable” or “House air waybill is acceptable” or words of similar effect, an air 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.

ISBP 745, paragraphs D4, E4, F3 and H4, provide the practice that is to be applied when a documentary credit states that a freight forwarder type transport document is not allowed.

ISBP 745, paragraph D4, relates to multimodal transport documents.

A stipulation in a credit that “Freight Forwarder’s Multimodal Transport Documents are not acceptable” or “House Multimodal Transport Documents are not acceptable” 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 UCP 600 article 19.
ISBP 745, paragraph E4, relates to bills of lading.

A stipulation in a credit that “Freight Forwarder’s Bills of Lading are not acceptable” or “House Bills of Lading are not acceptable” or words of similar effect has no meaning in the context of the title, format, content or signing of a bill of lading unless the credit provides specific requirements detailing how the bill of lading is to be issued and signed. In the absence of these requirements, such a stipulation is to be disregarded, and the bill of lading presented is to be examined according to the requirements of UCP 600 article 20.

ISBP 745, paragraph F3, relates to non-negotiable sea waybills.

A stipulation in a credit that “Freight Forwarder’s non-negotiable sea waybill is not acceptable” or “House non-negotiable sea waybill is not acceptable” or words of similar effect has no meaning in the context of the title, format, content or signing of a non-negotiable sea waybill unless the credit provides specific requirements detailing how the non-negotiable sea waybill is to be issued and signed. In the absence of these requirements, such a stipulation is to be disregarded, and the non-negotiable sea waybill presented is to be examined according to the requirements of UCP 600 article 21.

ISBP 745, paragraph H4, relates to air transport documents.

A stipulation in a credit that “Freight Forwarder’s air waybill is not acceptable” or “House air waybill is not acceptable” or words of similar effect has no meaning in the context of the title, format, content or signing of an air transport document unless the credit provides specific requirements detailing how the air transport document is to be issued and signed. In the absence of these requirements, such a stipulation is to be disregarded, and the air transport document presented is to be examined according to the requirements of UCP 600 article 23.

ISBP 745, paragraphs D26, E22, F20, G20, H22 and J17, provide the practice for indicating a goods description on a transport document.

ISBP 745, paragraph D26, applies to multimodal transport documents.

A goods description indicated on a multimodal transport document may be in general terms not in conflict with the goods description in the credit.
14: Examining transport documents

**ISBP 745, paragraph E22**, applies to bills of lading.

A goods description indicated on a bill of lading may be in general terms not in conflict with the goods description in the credit.

**ISBP 745, paragraph F20**, applies to non-negotiable sea waybills.

A goods description indicated on a non-negotiable sea waybill may be in general terms not in conflict with the goods description.

**ISBP 745, paragraph G20**, applies to charter party bills of lading.

A goods description indicated on a charter party bill of lading may be in general terms not in conflict with the goods description in the credit.

**ISBP 745, paragraph H22**, applies to air transport documents.

A goods description indicated on an air transport document may be in general terms not in conflict with the goods description in the credit.

Finally, **ISBP 745, paragraph J17**, applies to road, rail or inland waterway transport documents.

A goods description indicated on a road, rail or inland waterway transport document may be in general terms not in conflict with the goods description in the credit.

14.2 Examining a transport document covering at least two different modes of transport

**UCP 600, article 19**, is the rule to be applied when examining a transport document that covers at least two different modes of transport.
Examining a transport document...

a. A transport document covering at least two different modes of transport (multimodal or combined transport document), however named, must appear to:

   i. 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.
   
   ii. indicate that the goods have been dispatched, taken in charge or shipped on board at the place stated in the credit, by:
      
      ◆ pre-printed wording, or
      ◆ a stamp or notation indicating the date on which the goods have been dispatched, taken in charge or shipped on board.
   
      The date of issuance of the transport document will be deemed to be the date of dispatch, taking in charge or shipped on board, and the date of shipment. However, if the transport document indicates, by stamp or notation, a date of dispatch, taking in charge or shipped on board, this date will be deemed to be the date of shipment.
   
   iii. indicate the place of dispatch, taking in charge or shipment and the place of final destination stated in the credit, even if:
   
      a) the transport document states, in addition, a different place of dispatch, taking in charge or shipment or place of final destination, or
   
      b) the transport document contains the indication “intended” or similar qualification in relation to the vessel, port of loading or port of discharge.
   
   iv. be the sole original transport document or, if issued in more than one original, be the full set as indicated on the transport document.
   
   v. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back transport document). Contents of terms and conditions of carriage will not be examined.
vi. contain no indication that it is subject to a charter party.

b. For the purpose of this article, transhipment means unloading from one means of conveyance and reloading to another means of conveyance (whether or not in different modes of transport) during the carriage from the place of dispatch, taking in charge or shipment to the place of final destination stated in the credit.

c.

i. A transport document may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same transport document.

ii. A transport document indicating that transhipment will or may take place is acceptable, even if the credit prohibits transhipment.

There is further detail on when UCP 600, article 19, will apply in ISBP 745, paragraph D1.

a. A requirement in a credit for the presentation of a transport document, however named, covering movement of goods utilizing at least two different modes of transport means that UCP 600 article 19 is to be applied in the examination of that document.

b. i. A multimodal or combined transport document is not to indicate that shipment or dispatch has been effected by only one mode of transport, but it may be silent regarding some or all of the modes of transport utilized.

ii. A multimodal or combined transport document is not to contain any indication of a charter party as described in paragraphs G2 (a) and (b).

c. When a credit requires the presentation of a transport document other than a multimodal or combined transport document, and it is clear from the routing of the goods stated in the credit that more than one mode of transport is to be utilized, for example, when an inland place of receipt or final destination are indicated, or the port of loading or discharge field is completed but with a place which is in fact an inland place and not a port, UCP 600 article 19 is to be applied in the examination of that document.

A multimodal transport document is a document that covers the transport of goods by more than one mode (that is, by use of multiple modes of transport).
14.2.1 Document analysis – multimodal or combined transport document

As with other documents, the key under a documentary credit is that the presented document complies. There are a number of rules in UCP 600, article 19, that are important for the document examiner. These are indicated by notes 1–10 in the extracts from article 19 below.

a. A transport document covering at least two different modes of transport [1] (multimodal or combined transport document), however named [2], must appear to:

i. indicate the name of the carrier and be signed [3] 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.

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 with similar wording, such as ‘combined transport document’; or

◆ the documentary credit does not expressly describe the document to be presented as a multimodal, combined or through transport document, 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 UCP 600, article 19, will be accepted irrespective of the title shown on the document. The title of the document is not a criterion.

The criteria are that:

◆ the terms and conditions of the documentary credit have been satisfied; and
◆ the document complies with the requirements of UCP 600, article 19.

3. ‘indicate the name of the carrier and be signed’

The document 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 document is signed.

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 (UCP 600, 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 ISBP 745, paragraph D5.

- A multimodal transport document is to be signed in the form described in UCP 600 sub-article 19 (a) (i) and to indicate the name of the carrier, identified as the carrier.

- When a multimodal transport document is signed by a named branch of the carrier, the signature is considered to have been made by the carrier.

- When an agent signs a multimodal transport document for [or on behalf of] the carrier, the agent is to be named and, in addition, to indicate that it is signing as “agent for (name), the carrier” or as “agent on behalf of (name), the carrier” or words of similar effect. When the carrier is identified elsewhere in the document as the “carrier”, the named agent may sign, for example, as “agent for [or on behalf of] the carrier” without naming the carrier again.
Examining transport documents

4. ‘... dispatched, taken in charge or shipped on board at the place stated in the credit’

The multimodal transport document 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 in which the document is issued after the goods have been dispatched, taken in charge or shipped. A separate notation (added after the document is issued) is required in cases in which it is issued before dispatch, taking in charge or shipment.

The document must contain clear evidence that any dispatch, taking in charge or shipped on board date relates to the place stated in the credit.
5. ‘... date of shipment’

Dispatch, taking in charge or shipped on board may be indicated by either:

- wording to that effect on the multimodal transport document; or
- stamp or notation.

If it is indicated by wording to that effect, the date of issuance of the document 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 ISBP 745, paragraph D6.

The issuance date of a multimodal transport document will be deemed to be the date of receipt, dispatch, taking in charge or shipment on board and the date of shipment, unless it bears a separate dated notation evidencing receipt, dispatch, taking in charge or shipment on board from the place, port or airport stated in the credit. In the latter event, such date will be deemed to be the date of shipment whether that date is before or after the issuance date of the multimodal transport document. A separate dated notation may also be indicated in a designated field or box.

iii. indicate the place of dispatch, taking in charge or shipment and the place of final destination [6] stated in the credit, even if:

a. the transport document states, in addition, a different place of dispatch, taking in charge or shipment or place of final destination, or

b. the transport document contains the indication “intended” or similar qualification in relation to the vessel, port of loading or port of discharge.

6. ‘... place of dispatch, taking in charge or shipment and the place of final destination’

The multimodal transport document must indicate the place of taking in charge and the place of final destination stipulated in the documentary credit (UCP 600, 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 finally 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, if that is the point of commencement of the journey under the documentary credit.

**ISBP 745, 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.

When a credit indicates a geographical area or range of places of receipt, dispatch, taking in charge, ports of loading or airports of departure (for example, “Any European Country” or “Hamburg, Rotterdam, Antwerp Port”), a multimodal transport document is to indicate the actual place of receipt, dispatch, taking in charge, port of loading or airport of departure, which is to be within that geographical area or range of places. A multimodal transport document need not indicate the geographical area.

iv. be the sole original transport document or, if issued in more than one original, be the full set [7] as indicated on the transport document.

7. ‘... full set’

Original transport documents must be presented. The following rules have been established.

◆ If a multimodal transport document (MMTD) is issued in one original only, that sole original must be presented.

◆ If a 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 in several originals) how many originals constitute the full set;
◆ (in the case of a sole original) whether or not the document presented is the original in question; and
◆ (if 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 submitted with the other documents would be less by one of the number of originals shown as issued.

This is covered in ISBP 745, paragraph D15.

a. A multimodal transport document is to indicate the number of originals that have been issued.

b. Multimodal transport documents marked “First Original”, “Second Original”, “Third Original”, or “Original”, “Duplicate”, “Triplicate” or similar expressions are all originals.

v. contain terms and conditions of carriage [8] or make reference to another source containing the terms and conditions of carriage (short form or blank back transport document). Contents of terms and conditions of carriage will not be examined.

vi. contain no indication that it is subject to a charter party [9].
8. ‘... terms and conditions of carriage’

In most cases, the terms and conditions of carriage will be stated on the transport document. It can be that the detailed terms and conditions of carriage are set out in a master document held by the carrier for convenience. The transport document will then incorporate these conditions by reference, but will not quote them on the document itself. Documents of this type are often referred to as ‘short form’ or ‘blank back’ documents. UCP 600, sub-article 19(a)(v) specifically provides that short-form or blank-back transport documents are acceptable. This rule applies whenever such document 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 transport document only against those required by the documentary credit and under UCP 600, article 19. There is no obligation to find out what the detailed terms and conditions of carriage are and they do not need to be examined.

9. ‘... charter party’

A multimodal transport document is not acceptable if it contains any indication that it is subject to a charter party.

b. For the purpose of this article, transhipment [10] means unloading from one means of conveyance and reloading to another means of conveyance (whether or not in different modes of transport) during the carriage from the place of dispatch, taking in charge or shipment to the place of final destination stated in the credit.

c.

i. A transport document may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same transport document.

ii. A transport document indicating that transhipment will or may take place is acceptable, even if the credit prohibits transhipment.

10. ‘... transhipment’

A prohibition of transhipment, as defined in ISBP 745, paragraph D21, is ineffective in the case of carriage conducted solely under a single multimodal transport document.

Should transhipment be prohibited, banks will accept a multimodal transport document showing that transhipment has occurred, as long
as the entire journey is covered by one and the same multimodal transport document.

In multimodal transport transhipment will occur. Transhipment is the unloading and reloading of goods from one means of conveyance to another means of conveyance (whether or not in different modes of transport) during the carriage of those goods from the place of receipt, dispatch or taking in charge, port of loading or airport of departure to the place of final destination, port of discharge or airport of destination stated in the credit.

Notes to Figure 14.1

Key criteria

Documentary credit requires the presentation of a multimodal transport document covering shipment from Hong Kong to Manchester.

1. However named – document can be titled multimodal transport document, combined transport document, through 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.
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 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.
◆ Transhipment – this document covers the carriage from Kowloon to Manchester via Hong Kong and Southampton ports.
Examining a transport document...

Figure 14.1 Multimodal transport document

<table>
<thead>
<tr>
<th>Bill of Lading For Combined Transport or Port to Port Shipment</th>
</tr>
</thead>
</table>

- **Shipper** (Complete name, address and phone number)
- **Consignee** (Not negotiable unless consigned to order)
- **Notify party** (Carrier not to be responsible for failure to notify)

**Titanic Line**

- **Anytown, Anywhere**

- **Bill No.**
- **Booking Ref.**
- **Shippers Ref.**
- **Consignment No.**
- **Vehicle No.**
- **Voy. No.**
- **Port of loading**
- **Port of discharge**
- **Place of delivery**
- **Marks and Nos.**
- **Container Nos./Seals**
- **No. of packages**
- **Description of packages and goods**
- **Gross weight (kg)**
- **Measurement (cm)**

**ABOVE PARTICULARS DECLARED BY SHIPPER: CARRIER NOT RESPONSIBLE**

- **Freight and charges** (Indicate whether prepaid or collect)
- **Origin inland handling charges**
- **LCL Service charges**
- **Ocean Freight**
- **Destination terminal handling charges**
- **Destination inland handling charges**

**Shipped on Board Cocis Express**

**5 May 2016 at Hong Kong**

**RECEIVED** by the Carrier from the Shipper in apparent good order and condition (unless otherwise noted herein) the total number or quantity of Containers or other packages or units, included above stated by the shipper to comprise the cargo specified above for transportation subject to all the terms herein (excluding 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.

**Delivered at the port of discharge or place of delivery**

**Source**: Author, 2015
14.3 Examining a bill of lading

**UCP 600, article 20**, is the rule that applies when examining a bill of lading.

**a.** A bill of lading, however named, must appear to:

  **i.** 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.

  **ii.** indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:

  - pre-printed wording, or
  - an on board notation indicating the date on which 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 unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

  If the bill of lading contains the indication “intended vessel” or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

  **iii.** indicate shipment from the port of loading to the port of discharge stated in the credit.

  If the bill of lading does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication “intended” or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the bill of lading.
Examining a bill of lading

There is further detail on when UCP 600, article 20, will apply in ISBP 745, paragraph E1(a).

A requirement in a credit for the presentation of a transport document, however named, only covering a port-to-port shipment, i.e., a credit that contains no reference to a place of receipt or taking in charge or place of final destination means that UCP 600 article 20 is to be applied in the examination of that document.

ISBP 745, paragraph E2, provides further as follows.

A bill of lading need not be titled “marine bill of lading”, “ocean bill of lading”, “port-to-port bill of lading” or words of similar effect even when the credit so names the required document.
### 14.3.1 Document analysis – bill of lading

Many of the terms are used in the same way as under UCP 600, article 19. Where there are additional requirements specific to UCP 600, article 20, these are indicated below.

**a.** A bill of lading, however named,[1] must appear to:

i. indicate the name of the carrier and be signed [2] 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.

1. ‘... however named’

   The requirements are the same as under UCP 600, article 19. In addition, 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 UCP 600, 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.

This is covered in **ISBP 745, paragraph E5**.

a. A bill of lading is to be signed in the form described in UCP 600 sub-article 20 (a) (i) and to indicate the name of the carrier, identified as the carrier.
b. When a bill of lading is signed by a named branch of the carrier, the signature is considered to have been made by the carrier.

c. When an agent signs a bill of lading for [or on behalf of] the carrier, the agent is to be named and, in addition, to indicate that it is signing as “agent for (name), the carrier” or as “agent on behalf of (name), the carrier” or words of similar effect. When the carrier is identified elsewhere in the document as the “carrier”, the named agent may sign, for example, as “agent for [or on behalf of] the carrier” without naming the carrier again.

d. When the master (captain) signs a bill of lading, the signature of the master (captain) is to be identified as the “master” (“captain”). The name of the master (captain) need not be stated.

e. When an agent signs a bill of lading for [or on behalf of] the master (captain), the agent is to be named and, in addition, to indicate that it is signing as “agent for the master (or captain)”, or as “agent on behalf of the master (or captain)” or words of similar effect. The name of the master (captain) need not be stated.

ii. indicate that the goods have been shipped on board [3] a named vessel at the port of loading stated in the credit by:

- pre-printed wording, or
- an on board notation indicating the date on which the goods have been shipped on board.

3. ‘... shipped on board’
The requirements are clearly outlined in ISBP 745, paragraph E6. This paragraph includes the content of the ICC Recommendation Paper for on board notations that was issued by the ICC Banking Commission in 2010.

a. When a pre-printed “Shipped on board” bill of lading is presented, its issuance date will be deemed to be the date of shipment unless it bears a separate dated on board notation. In the latter event, such date will be deemed to be the date of shipment whether that date is before or after the issuance date of the bill of lading. The on board date may also be indicated in a designated field or box.

b. Notwithstanding that a credit may require a bill of lading to evidence a port-to-port shipment:
i. when a bill of lading indicates a place of receipt that is the same as the port of loading, for example, place of receipt Rotterdam CY and the port of loading Rotterdam, and there is no indication of a means of pre-carriage (either in the pre-carriage field or the place of receipt field); or

ii. when a bill of lading indicates a place of receipt different from the port of loading, for example, place of receipt Amsterdam and port of loading Rotterdam, and there is no indication of a means of pre-carriage (either in the pre-carriage field or the place of receipt field), then:

   (a) when a bill of lading is pre-printed “shipped on board”, the date of issue will be deemed to be the date of shipment, and no further on board notation is required.

   (b) when a bill of lading is pre-printed “received for shipment”, a dated on board notation is required, and the date appearing in the notation will be deemed to be the date of shipment. The on board date may also be indicated in a designated field or box.

c. Notwithstanding that a credit may require a bill of lading to evidence a port-to-port shipment, when a bill of lading:

   i. indicates a place of receipt different from the port of loading, for example, place of receipt Amsterdam and port of loading Rotterdam, and there is an indication of a means of pre-carriage (either in the pre-carriage field or the place of receipt field), regardless of whether it is pre-printed “shipped on board” or “received for shipment”, it is to bear a dated on board notation which also indicates the name of the vessel and the port of loading stated in the credit. Such notation may also appear in a designated field or box. The date appearing in the on board notation or designated field or box will be deemed to be the date of shipment.

   ii. indicates a means of pre-carriage (either in the pre-carriage field or the place of receipt field), no matter if no place of receipt is stated or whether it is pre-printed “shipped on board” or “received for shipment”, it is to bear a dated on board notation which also indicates the name of the vessel and the port of loading stated in the credit. Such notation may also appear in a designated field or box. The date appearing in the on board notation or designated field or box will be deemed to be the date of shipment.

d. When a bill of lading indicates wording such as “When the place of receipt box has been completed, any notation on this bill of lading of ‘on board’, ‘loaded on board’ or words of similar effect shall be deemed to be on board the means of transportation performing the
Examining a bill of lading

carriage from the place of receipt to the port of loading” or words of similar effect, and if, in addition, the place of receipt box is completed, a bill of lading is to bear a dated on board notation. The dated on board notation is also to indicate the name of the vessel and the port of loading stated in the credit. Such notation may also appear in a designated field or box. The date appearing in the on board notation or designated field or box will be deemed to be the date of shipment.

e. The named port of loading, as required by the credit, should appear in the port of loading field on a bill of lading. However, it may also be stated in the field headed “Place of receipt” or words of similar effect, provided there is a dated on board notation evidencing that the goods were shipped on board a named vessel at the port stated under “Place of receipt” or words of similar effect.

f. A bill of lading is to indicate the port of loading stated in the credit. When a credit indicates the port of loading by also stating the country in which the port is located, the name of the country need not be stated.

g. When a credit indicates a geographical area or range of ports of loading (for example, “Any European Port” or “Hamburg, Rotterdam, Antwerp Port”), a bill of lading is to indicate the actual port of loading, which is to be within that geographical area or range of ports. A bill of lading need not indicate the geographical area.

h. When a bill of lading indicates more than one port of loading, it is to evidence an on board notation with the relevant on board date for each port of loading, regardless of whether it is pre-printed “received for shipment” or “shipped on board”. For example, when a bill of lading indicates that shipment has been effected from Brisbane and Adelaide, a dated on board notation is required for both Brisbane and Adelaide.

The date of issuance [4a] of the bill of lading will be deemed to be the date of shipment [4] unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation [4b] will be deemed to be the date of shipment.

If the bill of lading contains the indication “intended vessel” or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.
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 pre-printed received for shipment bill of lading 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.

iii. indicate shipment from the port of loading to the port of discharge stated in the credit.

If the bill of lading does not indicate the port of loading stated in the credit as the port of loading [5], or if it contains the indication “intended” or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the bill of lading.

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 as the place of receipt. The port of loading on the bill of lading will represent the port of transhipment. If this situation occurs, the bill of lading requires an on board notation showing the port of loading stated in the documentary credit, the name of the vessel leaving that port and the date of shipment.

The requirement to name the vessel applies even if the goods have been loaded on the vessel named in the bill of lading.

ISBP 745, paragraph E6 (see above) covers this and ISBP 745, paragraphs E8–E10 cover issues relating to the port of discharge.
E8) a. The named port of discharge, as required by the credit, should appear in the port of discharge field within a bill of lading.

   b. However, the named port of discharge may be stated in the field headed “Place of final destination” or words of similar effect provided there is a notation evidencing that the port of discharge is that stated under “Place of final destination” or words of similar effect. For example, when a credit requires shipment to be effected to Felixstowe, but Felixstowe is shown as the place of final destination instead of the port of discharge, this may be evidenced by a notation stating “Port of discharge Felixstowe”.

E9) A bill of lading is to indicate the port of discharge stated in the credit. When a credit indicates the port of discharge by also stating the country in which the port is located, the name of the country need not be stated.

E10) When a credit indicates a geographical area or range of ports of discharge (for example, “Any European Port” or “Hamburg, Rotterdam, Antwerp Port”), a bill of lading is to indicate the actual port of discharge, which is to be within that geographical area or range of ports. A bill of lading need not indicate the geographical area.

iv. be the sole original bill of lading or, if issued in more than one original, be the full set [6] as indicated on the bill of lading.

v. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back bill of lading). Contents of terms and conditions of carriage will not be examined.

vi. contain no indication that it is subject to a charter party.

6. ‘... full set’

   The requirements are the same as under UCP 600, article 19.

This is covered in **ISBP 745, paragraph E11**.

a. A bill of lading is to indicate the number of originals that have been issued.

b. Bills of lading marked “First Original”, “Second Original”, “Third Original”, or “Original”, “Duplicate”, “Triplicate” or similar expressions are all originals.
b. For the purpose of this article, transhipment [7] means 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.

c.

i. A bill of lading may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same bill of lading.

ii. A bill of lading indicating that transhipment will or may take place is acceptable, even if the credit prohibits transhipment, if the goods have been shipped in a container, trailer or LASH barge as evidenced by the bill of lading.

d. Clauses in a bill of lading stating that the carrier reserves the right to tranship will be disregarded.

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’ (UCP 600, sub-article 20(b)).

Unless transhipment is prohibited by the terms of the documentary credit – that is, by exclusion of UCP 600, 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, 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 (UCP 600, sub-article 20(c)(i)).

If transhipment is prohibited, banks will nonetheless accept a bill of lading that incorporates clauses stating that the carrier reserves the right to tranship (UCP 600, sub-article 20(d)).
This is covered in ISBP 745, paragraph E17.

Transhipment is the unloading and reloading of goods from one vessel to another during the carriage of those goods from the port of loading to the port of discharge stated in the credit. When a bill of lading does not indicate unloading and reloading between these two ports, it is not transhipment in the context of the credit and UCP 600 sub-articles 20 (b) and (c).
### Figure 14.2 Marine / ocean port-to-port bill of lading

<table>
<thead>
<tr>
<th>Bill of Lading</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>For Combined Transport or Port to Port Shipment</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>Shipment</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Carrier</strong></td>
</tr>
<tr>
<td><strong>Consignee</strong></td>
</tr>
<tr>
<td><strong>Notify party</strong></td>
</tr>
<tr>
<td><strong>Pre-shipping by</strong></td>
</tr>
<tr>
<td><strong>Place of receipt</strong></td>
</tr>
<tr>
<td><strong>Vessel</strong></td>
</tr>
<tr>
<td><strong>GODS</strong></td>
</tr>
<tr>
<td><strong>Port of loading</strong></td>
</tr>
<tr>
<td><strong>Port of discharge</strong></td>
</tr>
<tr>
<td><strong>Consignment no.</strong></td>
</tr>
<tr>
<td><strong>Marks and numbers</strong></td>
</tr>
<tr>
<td><strong>No. of packages</strong></td>
</tr>
<tr>
<td><strong>Description of packages and goods</strong></td>
</tr>
<tr>
<td><strong>Gross weight (kg)</strong></td>
</tr>
<tr>
<td><strong>Measurement (cm)</strong></td>
</tr>
</tbody>
</table>

**ABOVE PARTICULARS DECLARED BY SHIPPER: CARRIAGE NOT RESPONSIBLE**

<table>
<thead>
<tr>
<th>Freight and charges (additions whether prepaid or collect)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Origin shrinkage charges</td>
</tr>
<tr>
<td>Origin terminal handling charges</td>
</tr>
<tr>
<td>Ocean Freight</td>
</tr>
<tr>
<td>Destination terminal handling charges</td>
</tr>
<tr>
<td>Destination shrinkage charges</td>
</tr>
</tbody>
</table>

**RECEIVED** by the Carrier from the shipper in apparent good order and condition (unless otherwise stated herein the total numbers or quantities of containers or other packages or units indicated above stated by the shipper to contain 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. Delivery of the Goods will only be made on payment of all freight and charges. In presentation of this document **(see clause 5.4 and 10.1)** by or on behalf of the holder, the rights and liabilities arising in accordance with the terms hereof (without prejudice to any right of action that may be available under any bond or insurance herein or hereinafter mentioned) the Carrier and the Carrier become binding in all respects between the carrier and holder, the name of the shipper or the consignee above-mentioned.

In witness whereof these 1 original Bills of Lading unless otherwise stated below have been issued, one of which being accomplished, the others to be void.

Freight, charges and pre-shipping whether prepaid or not and whether paid or not shall be considered as fully earned upon shipment and shall be paid to the Carrier and/or cargo less or not less.

**Place and date of issue**

| **2** |
| **3** |
| **4** |
| **5** |

**Source**: Author, 2015
Notes to Figure 14.2

Key criteria

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.
◆ Transhipment – this document covers the carriage from Kowloon to Southampton via Hong Kong but there is no indication of transhipment occurring between Hong Kong and Southampton. In any event, provided the goods were shipped in containers, trailers or LASH barges, any indication of transhipment would be acceptable, provided the entire carriage was covered by one and the same bill of lading.

14.4 Examining a non-negotiable sea waybill

UCP 600, article 21, is the rule that applies when examining a non-negotiable sea waybill.

a. A non-negotiable sea waybill, however named, must appear to:

i. 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.
ii. indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
   ➢ pre-printed wording, or
   ➢ an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the non-negotiable sea waybill will be deemed to be the date of shipment unless the non-negotiable sea waybill contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

If the non-negotiable sea waybill contains the indication “intended vessel” or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

iii. indicate shipment from the port of loading to the port of discharge stated in the credit.

If the non-negotiable sea waybill does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication “intended” or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the non-negotiable sea waybill.

iv. be the sole original non-negotiable sea waybill or, if issued in more than one original, be the full set as indicated on the non-negotiable sea waybill.

v. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back non-negotiable sea waybill). Contents of terms and conditions of carriage will not be examined.

vi. contain no indication that it is subject to a charter party.

b. For the purpose of this article, transhipment means 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.
Examining a charter party bill of lading

The provisions of UCP 600, article 21, are the same substantive requirements as those for bills of lading under UCP 600, article 20.

14.5 Examining a charter party bill of lading

UCP 600, article 22, is the rule that applies when examining a charter party bill of lading.

a. A bill of lading, however named, containing an indication that it is subject to a charter party (charter party bill of lading), must appear to:

i. be signed by:
   - the master or a named agent for or on behalf of the master, or
   - 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.

An agent signing for or on behalf of the owner or charterer must indicate the name of the owner or charterer.
ii. indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:

◆ pre-printed wording, or
◆ an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the charter party bill of lading will be deemed to be the date of shipment unless the charter party bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

iii. indicate shipment from the port of loading to the port of discharge stated in the credit. The port of discharge may also be shown as a range of ports or a geographical area, as stated in the credit.

iv. be the sole original charter party bill of lading or, if issued in more than one original, be the full set as indicated on the charter party bill of lading.

b. A bank will not examine charter party contracts, even if they are required to be presented by the terms of the credit.

There is further detail on when UCP 600, article 22, will apply in ISBP 745, paragraphs G1 and G2.

G1) When there is a requirement in a credit for the presentation of a charter party bill of lading, or when a credit allows presentation of a charter party bill of lading and a charter party bill of lading is presented, UCP 600 article 22 is to be applied in the examination of that document.

G2) a. A transport document, however named, containing any indication that it is subject to, or any reference to, a charter party is deemed to be a charter party bill of lading.

b. A transport document, however named, indicating expressions such as “freight payable as per charter party dated (with or without mentioning a date)”, or “freight payable as per charter party”, will be an indication that it is subject to a charter party.
14.5.1 Document analysis – charter party bill of lading

Many of the terms are used in the same way as under UCP 600, article 19. Where there are additional requirements specific to UCP 600, article 22, these are indicated below.

a. A bill of lading, however named, containing an indication [1] that it is subject to a charter party (charter party bill of lading), must appear to:

i. be signed [2] by:

- the master or a named agent for or on behalf of the master, or
- 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.

An agent signing for or on behalf of the owner or charterer must indicate the name of the owner or charterer.

1. ‘... indication’

A documentary credit may also allow for, or call for, a charter party bill of lading to be presented. If the credit does not call for, or allow, 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 ISBP 745, paragraph G3.

A transport document, however named, containing a code name or form name usually associated with a charter party bill of lading, for example, “Congenbill” or “Tanker Bill of Lading” without any further indication or reference to a charter party, is not by itself an indication of, or reference to, a charter party.
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.

This is covered in **ISBP 745, paragraph G4**.

---

a. A charter party bill of lading is to be signed in the form described in UCP 600 sub-article 22 (a) (i).

b. When the master (captain), owner or charterer signs a charter party bill of lading, the signature of the master (captain), owner or charterer is to be identified as “master” (“captain”), “owner” or “charterer”.

c. When an agent signs a charter party bill of lading for [or on behalf of] the master (captain), owner or charterer, the agent is to be named and, in addition, to indicate that it is signing as agent for [or on behalf of] the master (captain), owner or charterer as the case may be.

i. When a charter party bill of lading is signed by an agent for [or on behalf of] the master (captain), the name of the master (captain) need not be stated.

ii. When a charter party bill of lading is signed by an agent for [or on behalf of] the owner or charterer, the name of the owner or charterer is to be stated.

---

ii. indicate that the goods have been shipped on board [3] a named vessel at the port of loading stated in the credit by:

◆ pre-printed wording, or
◆ an on board notation indicating the date on which the goods have been shipped on board.
The date of issuance of the charter party bill of lading will be deemed to be the date of shipment [3] unless the charter party bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

3. ‘... shipped on board’ and ‘... date of shipment’

This is covered in ISBP 745, paragraph G5, which substantially follows that in ISBP 745, paragraph E6 (see section 14.3).

iii. indicate shipment from the port of loading to the port of discharge [4] stated in the credit. The port of discharge may also be shown as a range of ports or a geographical area, as stated in the credit.

4. ‘... port of discharge’

This must be as stated in the documentary credit (UCP 600, sub-article 22(a)(iii)).

This is also covered in ISBP 745, paragraphs G7–G9.

G7) a. The named port of discharge, as required by the credit, should appear in the port of discharge field within a charter party bill of lading.

   b. However, the named port of discharge may be stated in the field headed “Place of final destination” or words of similar effect provided there is a notation evidencing that the port of discharge is that stated under “Place of final destination” or words of similar effect. For example, when a credit requires shipment to be effected to Felixstowe, but Felixstowe is shown as the place of final destination instead of the port of discharge, this may be evidenced by a notation stating “Port of discharge Felixstowe”.

G8) A charter party bill of lading is to indicate the port of discharge stated in the credit. When a credit indicates the port of discharge by also stating the country in which the port is located, the name of the country need not be stated.

G9) When a credit indicates a geographical area or range of ports of discharge (for example, “Any European Port” or “Hamburg, Rotterdam, Antwerp Port”), a charter party bill of lading may indicate the actual port of discharge, which is to be within that geographical area or range of ports, or it may show the geographical area or range of ports as the port of discharge.
Figure 14.3 Charter party bill of lading

Source: Author, 2015
Notes to Figure 14.3

Key criteria
Documentary credit calls for or permits 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.

iv. be the sole original charter party bill of lading or, if issued in more than one original, be the full set as indicated on the charter party bill of lading.

5. ‘... full set’

The requirements are the same as under UCP 600, article 19.

This is also covered in ISBP 745, paragraph G10.

a. A charter party bill of lading is to indicate the number of originals that have been issued.

b. Charter party bills of lading marked “First Original”, “Second Original”, “Third Original”, or “Original”, “Duplicate”, “Triplicate” or similar expressions are all originals.

b. A bank will not examine charter party contracts [6], even if they are required to be presented by the terms of the credit.

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, 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.
14: Examining transport documents

See also ISBP 745, paragraph G27.

Unless UCP 600 sub-article 22 (b) is specifically excluded and the credit specifically indicates the data that are to be examined and to what extent, banks do not examine any content of a charter party contract, even when such contract is required as a stipulated document under the credit.

14.6 Examining an air transport document

UCP 600, article 23, is the rule that applies when examining an air transport document.

a. An air transport document, however named, must appear to:
   i. indicate the name of the carrier and be signed by:
      ◆ the carrier, or
      ◆ a named agent for or on behalf of the carrier.
   Any signature by the carrier or agent must be identified as that of the carrier or agent.
   Any signature by an agent must indicate that the agent has signed for or on behalf of the carrier.
   ii. indicate that the goods have been accepted for carriage.
   iii. indicate the date of issuance. This date will be deemed to be the date of shipment unless the air transport document contains a specific notation of the actual date of shipment, in which case the date stated in the notation will be deemed to be the date of shipment.
   Any other information appearing on the air transport document relative to the flight number and date will not be considered in determining the date of shipment.
   iv. indicate the airport of departure and the airport of destination stated in the credit.
   v. be the original for consignor or shipper, even if the credit stipulates a full set of originals.
vi. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage. Contents of terms and conditions of carriage will not be examined.

b. For the purpose of this article, transhipment means unloading from one aircraft and reloading to another aircraft during the carriage from the airport of departure to the airport of destination stated in the credit.

c.

i. An air transport document may indicate that the goods will or may be transhipped, provided that the entire carriage is covered by one and the same air transport document.

ii. An air transport document indicating that transhipment will or may take place is acceptable, even if the credit prohibits transhipment.

There is further detail on when UCP 600, article 23, will apply in ISBP 745, paragraphs H1 and H2.

H1) A requirement in a credit for the presentation of an air transport document, however named, covering an airport-to-airport shipment means that UCP 600 article 23 is to be applied in the examination of that document.

H2) An air transport document need not be titled “air waybill”, “air consignment note” or words of similar effect even when the credit so names the required document.

14.6.1 Document analysis – air transport document

Many of the terms are used in the same way as under UCP 600, article 19. Where there are additional requirements specific to UCP 600, article 23, these are indicated below.
14: Examining transport documents

a. An air transport document, however named [1], must appear to:

i. indicate the name of the carrier [2] and be signed [3] by:
   ◆ the carrier, or
   ◆ a named agent for or on behalf of the carrier.

Any signature by the carrier or agent must be identified as that of the carrier or agent.

Any signature by an agent must indicate that the agent has signed for or on behalf of the carrier.

1. ‘... however named’

The requirements are the same as under UCP 600, 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), in favour of 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 a ‘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 UCP 600, 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 HAWBs.

2. ‘... name of the carrier’

The document presented must appear to indicate the name of the carrier. For example, an International Air Transport Association (IATA) code for an airline without the name of the carrier would not be acceptable.
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 UCP 600, 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 \textit{ISBP 745, paragraph H4}.  

A stipulation in a credit that “Freight Forwarder’s air waybill is not acceptable” or “House air waybill is not acceptable” or words of similar effect has no meaning in the context of the title, format, content or signing of an air transport document unless the credit provides specific requirements detailing how the air transport document is to be issued and signed. In the absence of these requirements, such a stipulation is to be disregarded, and the air transport document presented is to be examined according to the requirements of UCP 600 article 23.

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 \textit{ISBP 745, paragraph H5}.

a. An air transport document is to be signed in the form described in UCP 600 sub-article 23 (a) (i) and to indicate the name of the carrier, identified as the carrier.
b. When an air transport document is signed by a named branch of the carrier, the signature is considered to have been made by the carrier.
c. The carrier is to be identified by its name instead of an IATA airline code, for example, British Airways instead of BA, Lufthansa instead of LH.
A carrier signing the document must indicate that it signs as carrier. An agent must indicate the name and capacity of the party on whose behalf it signs (the carrier), as well as its own name. Under UCP 600, article 23, the name of the carrier must appear on the air waybill.

ii. indicate that the goods have been accepted for carriage [4].

4. ‘... accepted for carriage’

An air transport document must indicate that the goods have been accepted for carriage. Unless there is a contrary stipulation on the documentary credit, this indication is sufficient by itself.

This is also covered in ISBP 745, paragraph H7.

An air transport document is to indicate that the goods have been accepted for carriage or words of similar effect.

iii. indicate the date of issuance. This date will be deemed to be the date of shipment unless the air transport document contains a specific notation [5] of the actual date of shipment, in which case the date stated in the notation will be deemed to be the date of shipment [6].

Any other information appearing on the air transport document relative to the flight number and date will not be considered in determining the date of shipment.

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.

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
Examining an air transport document

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.

iv. indicate the airport of departure and the airport of destination [7] stated in the credit.

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 also covered in ISBP 745, paragraphs H9–H11.

H9) An air transport document is to indicate the airport of departure and airport of destination stated in the credit. When a credit indicates either of these airports by also stating the country in which the airport is located, the name of the country need not be stated.

H10) The airport of departure and airport of destination may also be indicated by the use of IATA codes instead of evidencing the airport name in full (for example, LAX instead of Los Angeles).

H11) When a credit indicates a geographical area or range of airports of departure or destination (for example, “Any Chinese Airport” or “Shanghai, Beijing, Guangzhou airport”), an air transport document is to indicate the actual airport of departure or destination, which is to be within that geographical area or range of airports. An air transport document need not indicate the geographical area.

v. be the original for consignor or shipper [8], even if the credit stipulates a full set of originals

vi. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage. Contents of terms and conditions of carriage will not be examined.

b. For the purpose of this article, transhipment means unloading from one aircraft and reloading to another aircraft during the carriage from the airport of departure to the airport of destination stated in the credit.
Examining transport documents

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);

◆ one original for the consignee as the recipient of the goods; and

◆ one original retained by the airline.

This is also covered in ISBP 745, paragraph H12.

An air transport document is to appear to be the original for consignor or shipper. When a credit requires a full set of originals, this is satisfied by the presentation of an air transport document indicating that it is the original for consignor or shipper.

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 Air transport document

<table>
<thead>
<tr>
<th>Shipment Name and Address</th>
<th>Shipment Account Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consignor's Name and Address</td>
<td>Consignor's Account Number</td>
</tr>
</tbody>
</table>

It is agreed that the goods described herein are accepted in apparent good order and condition (except as noted) for carriage SUBJECT TO THE CONDITIONS OF CONTRACT FOR THE REVERSE FURNISHED TO ALL CARRIERS INCURRED IN CONSIGNING AND CARING FOR THE GOODS AND SUBJECT TO THE DANGERS AND HAZARDS TO WHICH GOODS ARE EXPOSED IN THE COURSE OF TRANSPORTATION AND STORAGE. Issuer should be Aged as indicated. ISSUING CARRIERS MAINTAIN CARGO ACCIDENT LIABILITY INSURANCE.

Issuing Carrier's Agent Name and City: 
Agent's AITA Code: 
Accounting Information: 
Airport of Departure (Addl. of First Carrier) and Requested Routing: 
To: By First Carrier: 
Airport of Destination: 
Handling Information: 

<table>
<thead>
<tr>
<th>Net Weight</th>
<th>Gross Weight</th>
<th>kg</th>
<th>Metric Weight</th>
<th>Chargeable Weight</th>
<th>Kilometers</th>
</tr>
</thead>
</table>

Other Charges: 
- Valuation Charge: 
- Total Other Charges: 
- Total Other Charges by Cature: 
- Total Other Charges by Cature:

Shipment certifies that the particulars on the face hereof are correct and that it will not take any part of the consignment containing dangerous goods, except as properly described by invoice and is, in proper condition for carriage by air according to the applicable Dangerous Goods Regulations.

Signature of Shipped or Issuing Carrier or its Agent: 
Executed on (date): 
Signature of Issuing Carrier or its Agent:

106 -34567389

Source: Author, 2015
14.7 Examining a road, rail or inland waterway transport document

**UCP 600, article 24**, is the rule that applies when examining a road, rail or inland waterway transport document.

**a.** A road, rail or inland waterway transport document, however named, must appear to:

- **i.** indicate the name of the carrier and:
  
  ◆ be 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.

Any signature, stamp or notation of receipt of the goods by the carrier or agent must be identified as that of the carrier or agent.

Any signature, stamp or notation of receipt of the goods by the agent must indicate that the agent has signed or acted for or on behalf of the carrier.

If a rail transport document does not identify the carrier, any signature or stamp of the railway company will be accepted as evidence of the document being signed by the carrier.

- **ii.** indicate the date of shipment or the date the goods have been received for shipment, dispatch or carriage at the place stated in the credit. Unless the transport document contains a dated reception stamp, an indication of the date of receipt or a date of shipment, the date of issuance of the transport document will be deemed to be the date of shipment.

- **iii.** indicate the place of shipment and the place of destination stated in the credit.

**b.**

- **i.** A road transport document must appear to be the original for consignor or shipper or bear no marking indicating for whom the document has been prepared.

- **ii.** A rail transport document marked “duplicate” will be accepted as an original.
There is further detail on when UCP 600, article 24, will apply in ISBP 745, paragraph J1.

A requirement in a credit for the presentation of a transport document covering movement of goods by either road or rail or inland waterway means that UCP 600 article 24 is to be applied in the examination of that document.

### 14.7.1 Document analysis – road, rail or inland waterway transport document

Many of the terms are used in the same way as under UCP 600, article 19. Where there are additional requirements specific to UCP 600, article 24, these are indicated below.

**a.** A road, rail or inland waterway transport document, however named, must appear to:

- **i.** indicate the name of the carrier [1] and:
1. ‘... name of the carrier’

The name of the carrier must be shown on the face of the document.

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.

Any signature, stamp or notation of receipt of the goods by the carrier or agent must be identified as that of the carrier or agent.

Any signature, stamp or notation of receipt of the goods by the agent must indicate that the agent has signed or acted for or on behalf of the carrier.

If a rail transport document does not identify the carrier, any signature or stamp of the railway company will be accepted as evidence of the document being signed by the carrier.

This is covered in **ISBP 745, paragraphs J2–J4.**

**J2**

a. A road, rail or inland waterway transport document is to be signed in the form described in UCP 600 sub-article 24 (a) (i) and to indicate the name of the carrier, identified as the carrier (except as stated in paragraph J4 (b)).

b. When a road, rail or inland waterway transport document is signed by a named branch of the carrier, the signature is considered to have been made by the carrier.

c. The term “carrier” includes terms such as “issuing carrier”, “actual carrier”, “succeeding carrier” and “contracting carrier”.
J3) Any signature, stamp or notation of receipt of the goods is to appear to indicate that it has been made by:

a. the carrier, identified as the carrier; or

b. a named agent acting or signing for [or on behalf of] the carrier and indicating the name of the carrier, identified as the carrier, on whose behalf that agent is acting or signing; or

c. a railway company or railway station of departure.

J4) a. The term “carrier” need not appear on the signature line provided the transport document appears to be signed by the carrier or a named agent for [or on behalf of] the carrier, and the carrier is otherwise identified elsewhere in the transport document as the “carrier”.

b. A rail transport document may bear a date stamp by the railway company or railway station of departure without indicating the name of the carrier or a named agent signing for [or on behalf of] the carrier.

ii. indicate the date of shipment or the date the goods have been received for shipment, dispatch or carriage [3] at the place stated in the credit. Unless the transport document contains a dated reception stamp, an indication of the date of receipt or a date of shipment, the date of issuance of the transport document will be deemed to be the date of shipment [4].

3. ‘... received for shipment, dispatch or carriage’

The transport document must indicate that the goods have been received for shipment, dispatch or carriage (UCP 600, 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 (UCP 600, 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.

b.

i. A road transport document must appear to be the original for consignor or shipper or bear no marking indicating for whom the document has been prepared.

ii. A rail transport document marked “duplicate” will be accepted as an original.

iii. A rail or inland waterway transport document will be accepted as an original whether marked as an original or not [6].

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 UCP 600, sub-article 24(b), and ISBP 745, paragraph J7).

a. A rail or inland waterway transport document is to be considered as an original whether or not it is so marked.

b. A road transport document is to indicate that it is the original for consignor or shipper (copy for sender) or bear no marking indicating for whom the document has been prepared.

c. Presentation of the original for consignor or shipper (copy for sender) of a road transport document or duplicate rail transport document shall suffice even when the credit requires presentation of a full set of the relevant transport documents.

d. A duplicate (often a carbon copy) of a rail transport document, authenticated by the signature or stamp of the railway company or the railway station of departure, is considered to be an original.
c. In the absence of an indication on the transport document as to the number of originals issued, the number presented will be deemed to constitute a full set [7].

d. For the purpose of this article, transhipment [8] means unloading from one means of conveyance and reloading to another means of conveyance, within the same mode of transport, during the carriage from the place of shipment, dispatch or carriage to the place of destination stated in the credit.

e.

i. A road, rail or inland waterway transport document may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same transport document.

ii. A road, rail or inland waterway transport document indicating that transhipment will or may take place is acceptable, even if the credit prohibits transhipment.

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.

8. ‘... transhipment’

A transport document that indicates that transhipment 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 UCP 600, article 19.

UCP 600, 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.

In the case of international road transport, the transport document issued is most often known as a ‘CMR consignment note’ (see Chapter 12, section 12.3.6). Characteristically, CMR consignment notes are drawn up as a set of several originals. One original only – typically bearing the printed indication ‘original for shipper’, ‘copy for sender’ or similar wording – is handed to the shipper (the beneficiary or other person sending the goods). Other originals in the set are used for the
Examining transport documents

internal administrative procedures of the road carrier issuing the note and for other parties involved in the goods movement.

If a 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 UCP 600, 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).
Examining transport documents

Examining a road, rail or inland waterway transport document

Figure 14.5 Road, rail and inland waterway transport document

<table>
<thead>
<tr>
<th>Field</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Custom Reference/Status</td>
</tr>
<tr>
<td>2</td>
<td>Reference/descrizione pour mise en douane</td>
</tr>
<tr>
<td>3</td>
<td>Sending Agent/Reference</td>
</tr>
<tr>
<td>4</td>
<td>Carrier (Name, Address, Country)</td>
</tr>
<tr>
<td>5</td>
<td>Transporter (Name, Address, Country)</td>
</tr>
<tr>
<td>6</td>
<td>Place &amp; date of taking over the goods (place, country, date)</td>
</tr>
<tr>
<td>7</td>
<td>Successive Carriers</td>
</tr>
<tr>
<td>8</td>
<td>Place designated for delivery of goods (place, country)</td>
</tr>
<tr>
<td>9</td>
<td>Marks &amp; Nos. No &amp; Kind of Packages, Description of Goods*</td>
</tr>
<tr>
<td>10</td>
<td>Gross weight (kg)</td>
</tr>
<tr>
<td>11</td>
<td>Volume (m³)</td>
</tr>
<tr>
<td>12</td>
<td>Carriage Charges</td>
</tr>
<tr>
<td>13</td>
<td>Sender’s Instructions for Customs, etc. ... Instructions de l’Expéditeur (optional)</td>
</tr>
<tr>
<td>14</td>
<td>Reservations</td>
</tr>
<tr>
<td>15</td>
<td>Documents Attached</td>
</tr>
<tr>
<td>16</td>
<td>Special agreements</td>
</tr>
<tr>
<td>17</td>
<td>Goods Received/Received Goods</td>
</tr>
<tr>
<td>18</td>
<td>Signature and stamp of Carrier/Signature et sceau du Transporteur</td>
</tr>
<tr>
<td>19</td>
<td>Company completing this note</td>
</tr>
<tr>
<td>20</td>
<td>Place and Date; Signature</td>
</tr>
</tbody>
</table>

Source: Author, 2015
14.8 Examining a courier receipt, postal receipt or certificate of posting

UCP 600, article 25, is the rule that applies when examining a courier receipt, postal receipt or certificate of posting.

a. A courier receipt, however named, evidencing receipt of goods for transport, must appear to:
   i. indicate the name of the courier service and be stamped or signed by the named courier service at the place from which the credit states the goods are to be shipped; and
   ii. indicate a date of pick-up or of receipt or wording to this effect. This date will be deemed to be the date of shipment.

b. A requirement that courier charges are to be paid or prepaid may be satisfied by a transport document issued by a courier service evidencing that courier charges are for the account of a party other than the consignee.

c. A post receipt or certificate of posting, however named, evidencing receipt of goods for transport, must appear to be stamped or signed and dated at the place from which the credit states the goods are to be shipped. This date will be deemed to be the date of shipment.

14.8.1 Document analysis – courier receipt, postal receipt or certificate of posting

There are several terms in UCP 600, article 25, that are important for the document examiner, as follows.

a. A courier receipt, however named [1], evidencing receipt of goods for transport, must appear to:
   i. indicate the name of the courier [2] service and be stamped or signed [3] by the named courier service [4] at the place from which the credit states the goods are to be shipped; and
   ii. indicate a date of pick-up or of receipt [5] or wording to this effect. This date will be deemed to be the date of shipment [6].

1. ‘... however named'
   A courier document need not be called a ‘courier receipt'.
2. ‘... name of the courier’

This must be shown so that there is no doubt about who is carrying the goods. 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.

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. ‘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.

b. A requirement that courier charges are to be paid or prepaid may be satisfied by a transport document issued by a courier service evidencing that courier charges are for the account of a party other than the consignee.

c. A post receipt or certificate of posting [7], however named, evidencing receipt of goods for transport, must appear to be stamped or signed [8] and dated at the place from which the credit states [9] the goods are to be shipped. This date will be deemed to be the date of shipment [10].

7. ‘... a post receipt or certificate of posting’

A document need not be called a ‘postal receipt’ or ‘certificate of posting’.
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.

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.

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.

Figure 14.6 provides an example of a courier receipt and Figure 14.7 provides an example of a certificate of posting.
Examining transport documents

### Figure 14.6 Specimen courier receipt

<table>
<thead>
<tr>
<th>INSTRUCTIONS</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Type or print firmly.</td>
<td>2. Complete applicable unshaded areas.</td>
<td>3. Call us if you have any questions.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SHIPPER'S ACCOUNT No.</th>
<th>SHIPPER'S REFERENCE No.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FORWARDER ARBILL - NON NEGOTIABLE</th>
<th>ORIGIN</th>
<th>DESTINATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>PIECES</td>
<td>WEIGHT</td>
<td></td>
</tr>
<tr>
<td>kg</td>
<td>gr</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SENT BY (COMPANY NAME)</th>
<th>CONSIGNEE (COMPANY NAME)</th>
<th>SERVICES</th>
<th>CHARGES</th>
</tr>
</thead>
<tbody>
<tr>
<td>NAME/DEPARTMENT</td>
<td>NAME/DEPARTMENT</td>
<td>DOCUMENT</td>
<td>EXPRESS DOCUMENT</td>
</tr>
<tr>
<td>ADDRESS</td>
<td>ADDRESS</td>
<td>WORLDWIDE PARCEL EXPRESS</td>
<td>(INTERNATIONAL, DUTIABLE)</td>
</tr>
<tr>
<td>CITY</td>
<td>CITY</td>
<td>WORLD MAIL</td>
<td>AIR MAIL</td>
</tr>
<tr>
<td>STATE/PROVINCE</td>
<td>STATE/PROVINCE</td>
<td>PRINTED MATTER</td>
<td></td>
</tr>
<tr>
<td>COUNTRY</td>
<td>COUNTRY</td>
<td>INSURANCE</td>
<td>YES</td>
</tr>
<tr>
<td>ZIP/POST CODE</td>
<td>ZIP/POST CODE</td>
<td>AMOUNT</td>
<td></td>
</tr>
<tr>
<td>PHONE/TELEX/FAX</td>
<td>PHONE/TELEX/FAX</td>
<td>OTHER</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>TOTAL</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>DESCRIPTION OF CONTENTS/COMMODITY CODE</th>
<th>IMPORT CHARGES</th>
<th>COLLECTED BY DHL</th>
<th>LIMITATIONS OF LIABILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Duty</td>
<td>Other</td>
<td>Total</td>
</tr>
</tbody>
</table>

**PLEASE ATTACH FOUR COPIES OF A COMMERCIAL OR PROFORMA INVOICE FOR ALL NON-DOCUMENT SHIPMENTS**

<table>
<thead>
<tr>
<th>DIMENSIONS (cm)</th>
<th>DECLARED VALUE FOR CUSTOMS</th>
<th>CHARGE TO:</th>
<th>SHIPPER</th>
<th>ACCOUNT No.</th>
<th>CONSIGNEE</th>
<th>DATE</th>
<th>TIME</th>
</tr>
</thead>
<tbody>
<tr>
<td>LENGTH ' WIDTH ' HEIGHT = VOLUME</td>
<td>SPECIFY CURRENCY</td>
<td>ACCOUNT No.</td>
<td>CONSIGNEE</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**THE WARSAW CONVENTION AND OTHER CONTRACTUAL EXCLUSIONS AND LIMITATIONS OF LIABILITY APPLY. SEE REVERSE OF SHIPPER'S COPY FOR DETAILS.**

**SHIPPERS SIGNATURE**

**DATE**
Figure 14.7 Postal receipt or certificate of posting

<table>
<thead>
<tr>
<th>Serial No.</th>
<th>FULL NAME AND ADDRESS AS SHOWN ON PARCEL</th>
<th>Postage Paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Hong Kong</td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>Hong Kong</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>Hong Kong</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Hong Kong</td>
<td></td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Hong Kong</td>
<td>Marked:-</td>
</tr>
<tr>
<td>7</td>
<td>IET</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>Hong Kong</td>
<td></td>
</tr>
<tr>
<td>0</td>
<td>Made in Hong Kong</td>
<td></td>
</tr>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

List checked at the post office

__________________________ signature of Checking Officer

Note for Checking Officer - Any unused spaces on the form must be cancelled.
14.9 Clean transport documents

UCP 600, article 27, covers what is meant by ‘clean transport document’.

A bank will only accept a clean transport document. A clean transport document is one bearing no clause or notation expressly declaring a defective condition of the goods or their packaging. The word “clean” need not appear on a transport document, even if a credit has a requirement for that transport document to be “clean on board”.

These provisions are amplified by ISBP 745, paragraphs D24 and D25, E20 and E21, F18 and F19, G18 and G19, H20 and H21, and J15 and J16, all of which provide a similar wording for the type of transport document to which they relate.

As an example, ISBP 745, paragraphs D24 and D25, relate to multimodal transport documents.

D24) A multimodal transport document is not to include a clause or clauses that expressly declare a defective condition of the goods or their packaging.

For example:

a. A clause on a multimodal transport document such as “packaging is not sufficient for the sea journey” or words of similar effect is an example of a clause expressly declaring a defective condition of the packaging.

b. A clause on a multimodal transport document such as “packaging may not be sufficient for the sea journey” or words of similar effect does not expressly declare a defective condition of the packaging.

D25) a. It is not necessary for the word “clean” to appear on a multimodal transport document even when the credit requires a multimodal transport document to be marked “clean on board” or “clean”.

b. Deletion of the word “clean” on a multimodal transport document does not expressly declare a defective condition of the goods or their packaging.

The applicant is assumed to want a clean transport document. This is defined 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.

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.

✓ 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.

✓ Ensure that the document is not a ‘charter party’ transport document, unless authorised or required in the documentary credit.

✓ Ensure that it meets the conditions of the respective transport article of the UCP 600 and, if applicable, has been issued according to UCP 600, sub-article 14(l).

✓ Ensure that the name of the consignee is as required under the documentary credit.

✓ Ensure that if the transport document requires endorsement, it is appropriately endorsed.

✓ Ensure that the document bears the name of the carrier (when required by the respective transport article of the UCP 600).

✓ Ensure that the name and address of the notify party, if any, is as specified in the documentary credit and under UCP 600, sub-article 14(j).

✓ Ensure that 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.
✓ Ensure that the transport document indicates ‘freight prepaid’ or ‘freight collect’, as required by the terms of the documentary credit.

✓ Ensure that there are no clauses on the transport document that may render it unclean under UCP 600, article 27.

✓ Ensure that all other conditions stipulated in the appropriate transport article of the UCP 600 are complied with, including that the documents are correctly signed.

Questions

1. ‘A multimodal transport document is a document that covers the shipment of goods on 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.’ Is this statement true or false?

   A. True

   B. False

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
14: Examining transport documents

on board notation should also include the name of the vessel and the port of loading.' Is this statement true or false?

A. True
B. False

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.’ Is this statement true or false?

A. True
B. False

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.’ Is this statement true or false?

A. True
B. False

5. A 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 credit required only three originals to be presented. Whose position is right?

A. The beneficiary
B. The nominated bank
15

Examining insurance, financial, commercial and official documents

Learning objectives

This chapter highlights the requirements when examining documents such as insurance documents or financial, commercial and official documents.

By the end of this chapter, 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.

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 sales 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, an insurance document should be listed as one of the documents to be presented by a beneficiary under a documentary credit.

Requirements for an insurance document will vary from issuing bank to issuing bank, depending upon their own internal guidelines, and from industry to industry. These 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 usual marine insurance requirements seen in a documentary credit are Institute Cargo Clauses, 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), updated in 2009, but yet to be widely referred to or applied, and the American Institute Clauses.

15.1.1 The application of UCP 600, article 28

UCP 600, article 28, is the rule that applies to the examination of insurance documents.

**a.** An insurance document, such as an insurance policy, an insurance certificate or a declaration under an open cover, must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies.

Any signature by an agent or proxy must indicate whether the agent or proxy has signed for or on behalf of the insurance company or underwriter.

**b.** When the insurance document indicates that it has been issued in more than one original, all originals must be presented.

**c.** Cover notes will not be accepted.

**d.** An insurance policy is acceptable in lieu of an insurance certificate or a declaration under an open cover.

**e.** The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment.

**f.**

**i.** The insurance document must indicate the amount of insurance coverage and be in the same currency as the credit.

**ii.** A requirement in the credit for insurance coverage to be for a percentage of the value of the goods, of the invoice value or similar is deemed to be the minimum amount of coverage required.
Examining insurance documents

If there is no indication in the credit of the insurance coverage required, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods.

When the CIF or CIP value cannot be determined from the documents, the amount of insurance coverage must be calculated on the basis of the amount for which honour or negotiation is requested or the gross value of the goods as shown on the invoice, whichever is greater.

iii. The insurance document must indicate that risks are covered at least between the place of taking in charge or shipment and the place of discharge or final destination as stated in the credit.

g. A credit should state the type of insurance required and, if any, the additional risks to be covered. An insurance document will be accepted without regard to any risks that are not covered if the credit uses imprecise terms such as “usual risks” or “customary risks”.

h. When a credit requires insurance against “all risks” and an insurance document is presented containing any “all risks” notation or clause, whether or not bearing the heading “all risks”, the insurance document will be accepted without regard to any risks stated to be excluded.

i. An insurance document may contain reference to any exclusion clause.

j. An insurance document may indicate that the cover is subject to a franchise or excess (deductible).

The application of UCP 600, article 28, is confirmed in ISBP 745, paragraph K1.

A requirement in a credit for the presentation of an insurance document, such as an insurance policy, insurance certificate or declaration under an open cover, means that UCP 600 article 28 is to be applied in the examination of that document.

UCP 600, 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 in which the insurance is 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 by 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 (UCP 600, sub-article 28(d)).

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.

<table>
<thead>
<tr>
<th>Insurance requirement in documentary credit</th>
<th>Other document acceptable</th>
<th>Document not acceptable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Policy</td>
<td>None</td>
<td>N/A</td>
</tr>
<tr>
<td>Certificate</td>
<td>Policy</td>
<td>Cover note</td>
</tr>
</tbody>
</table>

### 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. **UCP 600, sub-article 28(f)(ii),** establishes the minimum level of coverage when a documentary credit is silent in this respect.

ii. [...]  
If there is no indication in the credit of the insurance coverage required, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods.

When the CIF or CIP value cannot be determined from the documents, the amount of insurance coverage must be calculated on the basis of the amount for which honour or negotiation is requested or the gross value of the goods as shown on the invoice, whichever is greater.

UCP 600, 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.

The widest general marine cargo cover, as seen in the London market, is the Institute of London Underwriters Cargo Clauses (A) 1/1/82 (‘Institute Cargo Clauses (A)’), Cargo Clauses (B) 1/1/82 (‘Institute Cargo Clauses (B)’) and Cargo Clauses (C) 1/1/82 (‘Institute Cargo Clauses (C)’), each of which is progressively more confined in its cover. For example, Institute Cargo Clauses (A) 1/1/82 include cover for ‘theft, pilferage, non-delivery and short delivery’ (TPND).

The Institute Cargo Clauses were updated on 1 January 2009.

Institute Cargo Clauses (A) 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 ISBP 745, paragraph K18.

When a credit requires “all risks” coverage, this is satisfied by the presentation of an insurance document evidencing any “all risks” clause or notation, whether or not it bears the heading “all risks”, even when it is indicated that certain risks are excluded. An insurance document indicating that it covers Institute Cargo Clauses (A) or Institute Cargo Clauses (Air), when dispatch is effected by air satisfies a condition in a credit calling for an “all risks” clause or notation.

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.

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). 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**

Owing to the general incorporation of exclusion clauses relating to terrorism risks, etc, UCP 600, sub-article 28(i), refers to the acceptability of insurance documents that contain any exclusion clause.
15.1.4 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 purposes of certainty, UCP 600, 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 covered in ISBP 745, paragraph K14.

An insurance document may indicate that cover is subject to a franchise or excess (deductible). However, when a credit requires the insurance cover to be irrespective of percentage, the insurance document is not to contain a clause stating that the insurance cover is subject to a franchise or an excess (deductible). An insurance document need not state “irrespective of percentage”.

15.1.5 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.

15.1.6 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).
15.1.7 **Claims payable [name of place]**

An applicant may wish to avoid unnecessary negotiations or litigation in foreign jurisdictions in respect 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 will also be quite common for a documentary credit to require the insurance document to indicate the name and address of a claims settling agent in that country.

15.1.8 **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 coverage 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, **ISBP 745, paragraph K10(c)**, provides as follows.

An insurance document that indicates coverage has been effected from “warehouse-to-warehouse” or words of similar effect, and is dated after the date of shipment, does not indicate that coverage was effective from a date not later than the date of shipment.

15.1.9 **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 **ISBP 745, paragraph K16**.
Insurance covering the same risk for the same shipment is to be covered under one document unless more than one insurance document is presented indicating partial cover, and each document clearly reflects, by percentage or otherwise:

a. the value of each insurer’s cover;

b. that each insurer will bear its share of the liability severally and without pre-conditions relating to any other insurance cover that may have been effected for that shipment; and

c. the respective coverage of the documents, when totalled, equals at least the insured amount required by the credit or UCP 600 sub-article 28 (f) (ii).

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.

Insurance documents must be endorsed, where applicable and as required, to assign the rights to the applicant or other party named in the documentary credit. This requirement is covered by ISBP 745, paragraphs K19 and K21.

K19) An insurance document is to be in the form required by the credit and, where necessary, be endorsed by the entity to whose order or in whose favour claims are payable.

[...]

K21) a. When a credit is silent as to the insured party, an insurance document is not to evidence that claims are payable to the order of, or in favour of, the beneficiary or any entity other than the issuing bank or applicant, unless it is endorsed by the beneficiary or that entity in blank or in favour of the issuing bank or applicant.

b. An insurance document is to be issued or endorsed so that the right to receive payment under it passes upon, or prior to, the release of the documents.
15.1.10 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).
ISBP 745, 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.

Banks do not examine general terms and conditions in an insurance document.

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 UCP 600, 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 UCP 600, 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.

**UCP 600, sub-article 12(b),** allows a bank to prepay or purchase under a documentary credit available by acceptance (or deferred payment).

```
By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.
```

### 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;
```
Examining financial documents

Drafts must always be drawn as stipulated in the documentary credit.

This is explained in ISBP 745, paragraphs B2, B3 and B8–B12.

B2) a. The tenor stated on a draft is to be in accordance with the terms of the credit.

b. When a credit requires a draft to be drawn at a tenor other than sight or a certain period after sight, it must be possible to establish the maturity date from the data in the draft itself.

For example, when a credit calls for drafts at a tenor 60 days after the bill of lading date, and when the date of the bill of lading is 14 May 2013, the tenor is to be indicated on the draft in one of the following ways:

i. “60 days after bill of lading date 14 May 2013”, or

ii. “60 days after 14 May 2013”, or

iii. “60 days after bill of lading date” and elsewhere on the face of the draft state “bill of lading date 14 May 2013”, or

iv. “60 days date” on a draft dated the same day as the date of the bill of lading, or

v. “13 July 2013”, i.e., 60 days after the bill of lading date.

c. When the tenor refers to, for example, 60 days after the bill of lading date, the on board date is deemed to be the bill of lading date even when the on board date is prior to or later than the date of issuance of the bill of lading.
d. The words “from” and “after” when used to determine maturity dates of drafts signify that the calculation of the maturity date commences the day following the date of the document, shipment or the date of an event stipulated in the credit, for example, 10 days after or from 4 May is 14 May.

e. i. When a credit requires a bill of lading and drafts are to be drawn, for example, at 60 days after or from the bill of lading date and a bill of lading is presented evidencing unloading and reloading of the goods from one vessel to another, and showing more than one dated on board notation and indicating that each shipment was effected from a port within a permitted geographical area or range of ports, the earliest of these dates is to be used for the calculation of the maturity date. For example, a credit requires shipment from any European port, and the bill of lading evidences on board vessel “A” from Dublin on 14 May, with transhipment effected on board vessel “B” from Rotterdam on 16 May. The draft should reflect 60 days after the earliest on board date in a European port, i.e., 14 May.

ii. When a credit requires a bill of lading and drafts are to be drawn, for example, at 60 days after or from the bill of lading date, and a bill of lading is presented evidencing shipment of goods on the same vessel from more than one port within a permitted geographical area or range of ports, and shows more than one dated on board notation, the latest of these dates is to be used for the calculation of the maturity date. For example, a credit requires shipment from any European port, and the bill of lading evidences part of the goods loaded on board vessel “A” from Dublin on 14 May and the remainder on board the same vessel from Rotterdam on 16 May. The draft should reflect 60 days after the latest on board date, i.e. 16 May.

iii. When a credit requires a bill of lading and drafts are to be drawn, for example, at 60 days after or from the bill of lading date, and more than one set of bills of lading is presented under one draft, the on board date of the latest bill of lading will be used for the calculation of the maturity date.

B3) While the examples in paragraphs B2) (e) (i-iii) refer to bill of lading dates, the same principles apply to any basis for determining a maturity date.

[ ... ]

B8) a. A draft is to be drawn and signed by the beneficiary and to indicate a date of issuance.

b. When the beneficiary or second beneficiary has changed its name, and the credit mentions the former name, a draft may be drawn
Examining insurance, financial, commercial and official documents

B9) When a credit indicates the drawee of a draft by only stating the SWIFT address of a bank, the draft may show the drawee with the same details or the full name of the bank.

B10) When a credit is available by negotiation with a nominated bank or any bank, the draft is to be drawn on a bank other than the nominated bank.

B11) When a credit is available by acceptance with any bank, the draft is to be drawn on the bank that agrees to accept the draft and is thereby willing to act on its nomination.

B12) When a credit is available by acceptance with:

- a nominated bank or any bank, and the draft is to be drawn on that nominated bank (which is not a confirming bank), and it decides not to act on its nomination, the beneficiary may choose to:
  
  i. draw the draft on the confirming bank, if any, or request that the presentation be forwarded to the confirming bank in the form as presented;
  
  ii. present the documents to another bank that agrees to accept a draft drawn on it and thereby act on its nomination (applicable only when the credit is available with any bank); or

  iii. request that the presentation be forwarded to the issuing bank in the form as presented with or without a draft drawn on the issuing bank.

- a confirming bank, and the draft is to be drawn on that confirming bank and the presentation is non-complying, and it decides not to reinstate its confirmation, the beneficiary may request that the presentation be forwarded to the issuing bank in the form as presented, with or without a draft drawn on the issuing bank.

In respect of drafts to be drawn on the applicant, ISBP 745, paragraph B18, provides as follows.

a. A credit must not be issued available by a draft drawn on the applicant.
15.2.3 Corrections and alterations

Given the legal standing and purpose of bills of exchange, some jurisdictions do not allow any 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 alterations. In such circumstances, even if the alterations have been authenticated, it is sometimes prudent to request the beneficiary to present a replacement, unaltered draft.

This is covered in ISBP 745, paragraphs B16 and B17.

B16) Any correction of data on a draft is to appear to have been authenticated with the addition of the signature or initials of the beneficiary.

B17) When no correction of data is allowed in a draft, an issuing bank should have included a suitable stipulation in its credit.

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.

B4) When a draft states a maturity date by using an actual date, that date is to reflect the terms of the credit.

B5) For drafts drawn, for example, “at 60 days sight”, the maturity date is established as follows:

a. in the case of a complying presentation, the maturity date will be 60 days after the day of presentation to the bank on which the draft is drawn, i.e., the issuing bank, confirming bank or a nominated
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 UCP 600, article 3.

b. in the case of a non-complying presentation:

i. when such drawee bank has not provided a notice of refusal, the maturity date will be 60 days after the day of presentation to it;

ii. when the drawee bank is the issuing bank and it has provided a notice of refusal at the latest 60 days after the date the issuing bank accepts the waiver of the applicant;

iii. when the drawee bank is a bank other than the issuing bank and it has provided a notice of refusal, at the latest 60 days after the date of the acceptance advice of the issuing bank. When such drawee bank does not agree to act on the acceptance advice of the issuing bank, the undertaking to honour on the due date is that of the issuing bank.

c. The drawee bank is to advise or confirm the maturity date to the presenter.

B6) The method of calculation of tenor and maturity dates, as shown above, also applies to a credit available by deferred payment or, in some cases, negotiation, i.e., when there is no requirement for a draft to be presented by the beneficiary.

The words “from” and “after” when used to determine a maturity date exclude the date mentioned.

It is reinforced by ISBP 745, paragraph B2(d).

d. The words “from” and “after” when used to determine maturity dates of drafts signify that the calculation of the maturity date commences the day following the date of the document, shipment or the date of an event stipulated in the credit, for example, 10 days after or from 4 May is 14 May.
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 instructions received from the presenter.

This is covered in ISBP 745, paragraph B7.

Payment is to be made in immediately available funds on the due date at the place where the draft or documents are payable, provided that such due date is a banking day in that place. When the due date is a non-banking day, payment is due on the first banking day following the due date. Delays in the remittance of funds, for example grace days, the time it takes to remit funds, etc., are not to be in addition to the stated or agreed due date as defined by the draft or documents.

15.3 Examining commercial documents

Some of the commercial documents that are 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

<table>
<thead>
<tr>
<th>Document</th>
<th>Issued by</th>
<th>Content</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial invoice</td>
<td>The beneficiary of the documentary credit, or the second beneficiary when the documentary credit has been transferred</td>
<td>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.</td>
<td>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.</td>
</tr>
<tr>
<td>Certified invoice</td>
<td>The beneficiary of the documentary credit, or the second beneficiary when the documentary credit has been transferred</td>
<td>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 proforma invoice, or a certification may be required by an external body such as a chamber of commerce.</td>
<td>To satisfy a specific concern of the buyer in relation to the certification required.</td>
</tr>
<tr>
<td>Document</td>
<td>Issued by</td>
<td>Content</td>
<td>Purpose</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Certificate of analysis</td>
<td>The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td>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 UCP 600, sub-article 14(f)</td>
<td>To satisfy an applicant, end buyer or import control authorities</td>
</tr>
<tr>
<td>Certificate of weight</td>
<td>The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td>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 UCP 600, sub-article 14(f)</td>
<td>To satisfy an applicant or end buyer</td>
</tr>
<tr>
<td>Document</td>
<td>Issued by</td>
<td>Content</td>
<td>Purpose</td>
</tr>
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<td>------------------</td>
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<td>-------------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Inspection</td>
<td>The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td>As stipulated by the documentary credit</td>
<td>To satisfy an applicant, end buyer or import control authorities</td>
</tr>
<tr>
<td>certificate</td>
<td></td>
<td>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</td>
<td></td>
</tr>
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<td></td>
<td></td>
<td>In the absence of any such standards, the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td></td>
</tr>
<tr>
<td>Packing list</td>
<td>The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td>Details of the packaging of goods</td>
<td>To satisfy the applicant, clearing agents or customs authorities in the country of import</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In the absence of any required data, the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>To enable spot checks to be made of the content of packages</td>
<td></td>
</tr>
<tr>
<td>Weight list</td>
<td>The party as stipulated in the documentary credit, in the absence of which the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td>Details of the weight of the goods</td>
<td>To satisfy the applicant, clearing agents or carriers</td>
</tr>
<tr>
<td></td>
<td></td>
<td>In the absence of any required data, the document may be accepted in terms of UCP 600, sub-article 14(f)</td>
<td></td>
</tr>
</tbody>
</table>
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. 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

UCP 600, article 18, is the rule that applies in the examination of a commercial invoice.

**a.** A commercial invoice:

i. must appear to have been issued by the beneficiary (except as provided in article 38);

ii. must be made out in the name of the applicant (except as provided in sub-article 38 (g));

iii. must be made out in the same currency as the credit; and

iv. need not be signed.

**b.** A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may accept a commercial invoice issued for an amount in excess of the amount permitted by the credit, and its decision will be binding upon all parties, provided the bank in question has not honoured or negotiated for an amount in excess of that permitted by the credit.

**c.** The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit.

This is supported by ISBP 745, paragraphs C1–C15.

In addition, UCP 600, article 30, covers tolerances in the credit amount, quantity and unit price.

**a.** The words “about” or “approximately” used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer.

**b.** A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms
of a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount of the credit

c. Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (b) is not applicable. This tolerance does not apply when the credit stipulates a specific tolerance or uses the expressions referred to in sub-article 30 (a).

This is supported by ISBP 745, paragraphs C12–C14.

The definition of an ‘invoice’ is found in ISBP 745, paragraph C1.

a. When a credit requires presentation of an “invoice” without further description, this will be satisfied by the presentation of any type of invoice (commercial invoice, customs invoice, tax invoice, final invoice, consular invoice, etc.). However, an invoice is not to be identified as “provisional”, “pro-forma” or the like.

b. When a credit requires presentation of a “commercial invoice”, this will also be satisfied by the presentation of a document titled “invoice”, even when such document contains a statement that it has been issued for tax purposes.

ISBP 745, paragraphs C3–C8 and C10, continue as follows.

C3) The description of the goods, services or performance shown on the invoice is to correspond with the description shown in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when read together, represent a description of the goods corresponding to that in the credit.

C4) The description of goods, services or performance on an invoice is to reflect what has actually been shipped, delivered or provided. For example, when the goods description in the credit indicates a requirement for shipment of “10 trucks and 5 tractors”, and only 4 trucks have been shipped, an invoice may indicate shipment of only 4 trucks provided that the credit did not prohibit partial shipment. An invoice indicating what has actually been shipped (4 trucks) may also contain the description of the goods stated in the credit, i.e., 10 trucks and 5 tractors.
C5) An invoice showing a description of the goods, services or performance that corresponds with that in the credit may also indicate additional data in respect of the goods, services or performance provided that they do not appear to refer to a different nature, classification or category of the goods, services or performance.

For example, when a credit requires shipment of “Suede Shoes”, but the invoice describes the goods as “Imitation Suede Shoes”, or when the credit requires “Hydraulic Drilling Rig”, but the invoice describes the goods as “Second Hand Hydraulic Drilling Rig”, these descriptions would represent a change in nature, classification or category of the goods.

C6) An invoice is to indicate:

a. the value of the goods shipped or delivered, or services or performance provided.

b. unit price(s), when stated in the credit.

c. the same currency as that shown in the credit.

d. any discount or deduction required by the credit.

C7) An invoice may indicate a deduction covering advance payment, discount, etc., that is not stated in the credit.

C8) When a trade term is stated as part of the goods description in the credit, an invoice is to indicate that trade term, and when the source of the trade term is stated, the same source is to be indicated. For example, a trade term indicated in a credit as “CIF Singapore Incoterms 2010” is not to be indicated on an invoice as “CIF Singapore” or “CIF Singapore Incoterms”. However, when a trade term is stated in the credit as “CIF Singapore” or “CIF Singapore Incoterms”, it may also be indicated on an invoice as “CIF Singapore Incoterms 2010” or any other revision.

[ ... ]

C10) An invoice need not be signed or dated.
15.4 Examining other commercial documents and documents for official purposes

UCP 600, sub-article 14(f), is important for the examination of all non-financial documents called for by a documentary credit that are not subject to UCP articles containing specific provisions regarding their issuance and data content, such as transport documents, insurance documents and commercial invoices.

If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfil the function of the required document and otherwise complies with sub-article 14 (d).

For all of these other types of document, 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.

ISBP 745, paragraph A20, applies if a credit clearly indicates that a document is to be issued by a named party.

When a credit requires a document to be issued by a named person or entity, this condition is satisfied when the document appears to be issued by the named person or entity by use of its letterhead, or when there is no letterhead, when the document appears to have been completed or signed by, or for [or on behalf of], the named person or entity.

ISBP 745, paragraphs A39–A41, relate to the title of documents and combined documents.

A39) Documents may be titled as called for in the credit, bear a similar title or be untitled. The content of a document must appear
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 ISBP 745, paragraph A11(b).

b. A requirement that a document, other than a draft, insurance document or original transport document, be dated will be satisfied by the indication of a date of issuance or by reference in the document to the date of another document forming part of the same presentation (for example, by the wording “date as per bill of lading number xxx” appearing on a certificate issued by a carrier or its agent) or a date appearing on a stipulated document indicating the occurrence of an event (for example, by the date of inspection being indicated on an inspection certificate that otherwise does not contain a date of issuance).

If a documentary credit requires a document to be dated, but does not stipulate that such date should be prior to shipment, a document that is dated after the shipment date is acceptable, subject to the content of ISBP 745, 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 or issuing bank, even if the document appears to cover an event that occurred prior to shipment (UCP 600, sub-article 14(i)).
Examining other commercial documents...

This is covered under **ISBP 745, paragraphs A12 and A13.**

A12) a. A document, such as, but not limited to, a certificate of analysis, inspection certificate or fumigation certificate, may indicate a date of issuance later than the date of shipment.

    b. When a credit requires a document to evidence a pre-shipment event (for example, “pre-shipment inspection certificate”), the document, either by its title, content or date of issuance, is to indicate that the event (for example, inspection) took place on or prior to the date of shipment.

    c. When a credit requires a document such as, but not limited to, an “inspection certificate”, this does not constitute a requirement that the document is to evidence a pre-shipment event, and it need not be dated prior to the date of shipment.

A13) A document indicating a date of issuance and a later date of signing is deemed to have been issued on the date of signing.

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 **ISBP 745, paragraphs L1–L8.**

L1) When a credit requires the presentation of a certificate of origin, this will be satisfied by the presentation of a signed document that appears to relate to the invoiced goods and certifies their origin.

L2) When a credit requires the presentation of a specific form of certificate of origin such as a GSP Form A, only a document in that specific form is to be presented.

L3) a. A certificate of origin is to be issued by the entity stated in the credit.

    b. When a credit does not indicate the name of an issuer, any entity may issue a certificate of origin.

    c. i. When a credit requires the presentation of a certificate of origin issued by the beneficiary, the exporter or the manufacturer, this condition will also be satisfied by the presentation of a certificate of origin issued by a Chamber of Commerce or the like, such as, but not limited to, Chamber of Industry, Association of Industry, Economic Chamber, Customs Authorities and Department of Trade or the like,
provided it indicates the beneficiary, the exporter or the manufacturer as the case may be.

ii. When a credit requires the presentation of a certificate of origin issued by a Chamber of Commerce, this condition will also be satisfied by the presentation of a certificate of origin issued by a Chamber of Industry, Association of Industry, Economic Chamber, Customs Authorities and Department of Trade or the like.

L4) A certificate of origin is to appear to relate to the invoiced goods, for example, by:

a. a goods description that corresponds to that in the credit or a description shown in general terms not in conflict with the goods description in the credit; or

b. referring to a goods description appearing in another stipulated document or in a document that is attached to, and forming an integral part of, the certificate of origin.

L5) Consignee information, when shown, is not to conflict with the consignee information in the transport document. However, when a credit requires a transport document to be issued “to order”, “to the order of shipper”, “to order of issuing bank”, “to order of nominated bank (or negotiating bank)” or “consigned to issuing bank”, a certificate of origin may show the consignee as any entity named in the credit except the beneficiary. When a credit has been transferred, the first beneficiary may be stated to be the consignee.

L6) A certificate of origin may indicate as the consignor or exporter an entity other than the beneficiary of the credit or the shipper as shown on any other stipulated document.

L7) When a credit indicates the origin of the goods without stipulating a requirement for the presentation of a certificate of origin, any reference to the origin on a stipulated document is not to conflict with the stated origin. For example, when a credit indicates “origin of the goods: Germany” without requiring the presentation of a certificate of origin, a statement on any stipulated document indicating a different origin of the goods is to be considered a conflict of data.

L8) A certificate of origin may indicate a different invoice number, invoice date and shipment routing to that indicated on one or more other stipulated documents, provided the exporter or consignor shown on the certificate of origin is not the beneficiary.
15.5 Common discrepancies that arise on examination of documents

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.

15.5.1 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 not endorsed, as required.
◆ The draft has not been drawn on the correct party.
◆ The amount is in excess of that on 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.

15.5.2 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 per cent under UCP 600, 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.

15.5.3 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.

15.5.4 Certificates of analysis

- The certificate contains data conflicting with the description of goods shown on the invoice and documentary credit.

- The certificate does not indicate the precise specifications and detail required by the documentary credit.

- The certificate has been issued by a party whose name is not as stipulated in the documentary credit.

15.5.5 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.
15.5.6 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 documentary credit.

◆ The wording of the certificate is not as stipulated by the documentary credit.

15.5.7 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.

15.5.8 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.

15.5.9 Documents required for official purposes

15.5.9.1 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.

### 15.5.9.2 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.

### 15.5.9.3 Legalised invoice

- Legalisation is not in terms of the documentary credit.

### 15.5.9.4 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 documentary credit.
- The licence contains data that is in conflict with that on other stipulated documents.

### 15.5.9.5 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 per cent is payable against the documents and 10 per cent 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).
15: Examining insurance, financial, commercial and official documents

✓ 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.

✓ 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 in the documentary credit.

✓ that the values of the draft and invoice correspond.

✓ that it is not drawn ‘without recourse’ unless authorised by the documentary credit.

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.

✓ that the value of the invoice does not exceed the available balance of the documentary credit, except where UCP 600, sub-article 18(b), is applied.

✓ that the invoice covers the complete shipment as required by the documentary credit (if no part-shipments are 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.

### 15.6.5 Other documents

#### 15.6.5.1 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.

15.6.5.2 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.

15.6.5.3 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.

15.6.5.4 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.

15.6.5.5 Other miscellaneous documents

Recall that UCP 600, sub-article 14(f), covers the concept of documents other than invoices, transport documents or insurance documents needing to fulfil their function.
Examination checklists

f. If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfil the function of the required document and otherwise complies with sub-article 14 (d).

If a documentary credit specifies a requirement for a document, without indicating the issuer or content of that document, it must appear to fulfil its function. For example, a request for a packing list will be satisfied by the presentation of a document that provides any data that provides packing information. The document will still be subject to review of its data according to UCP 600, sub-article 14(d).

d. Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.

When a documentary credit requires a document to be issued as a certificate, declaration or statement, the document must be signed, under ISBP 745, paragraph A3.

When a certificate, certification, declaration or statement is required by a credit, it is to be signed.

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 the UCP 600 or to refer to the 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 his or her own bank and take a common sense approach.

Questions

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.’ Is this statement true or false?

A. True

B. False

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.’ Is this statement true or false?

A. True

B. False
3. ‘A certificate of origin and an invoice must be dated.’ Is this statement true or false?

   A. True
   B. False

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 bank 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

5. To which of the following could the + / −5 per cent tolerance referred to in UCP 600, sub-article 30(b), be applied?

   A. 500 laptop computers
   B. 500 boxes of paper
   C. 500MT sugar
   D. 500 cars
16
The role of the nominated bank

Learning objectives
This chapter describes the role and responsibilities of a nominated bank.

By the end of this chapter, 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.

16.1 What is a ‘nominated bank’?

As discussed in previous chapters, 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’ 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 the beneficiary makes. It may also be a bank that merely receives the documents from the beneficiary to facilitate presentation within the expiry date and presentation period.

To this extent, **UCP 600, article 2**, defines a ‘nominated bank’ as follows.

**Nominated bank** means the bank with which the credit is available or any bank in the case of a credit available with any bank.

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 Chapter 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, **UCP 600, sub-article 6(a)**, provides as follows.

a. A credit must state the bank with which it is available or whether it is available with any bank. A credit available with a nominated bank is also available with the issuing 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 **UCP 600, sub-article 14(a)**, we see the first reference to a ‘nominated bank acting on its nomination’.
What is a ‘nominated bank’?

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, UCP 600, 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.

UCP 600, 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 or another nominated bank 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.

This 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, UCP600, sub-article 12(b), provides as follows.

b. By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes 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 Chapter 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 UCP 600, sub-article 16(f), should it fail to provide a refusal notice in accordance with the requirements of UCP 600, sub-articles 16(c) and (d), even if it has agreed to act on its nomination to honour or negotiate.

If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.

It can be the case that documents are lost in transit between a nominated bank and the issuing bank or confirming bank. UCP 600, 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 will invariably 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 Chapter 19.

16.1.2 Indicating a nominated bank in the documentary credit

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 Chapter 10, a confirming bank need not be a nominated bank, although it is advisable that it should be.

16.2 Nominated bank acting on its nomination

UCP 600, sub-article 12(a), specifically provides as follows.

a. Unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary.

Such agreement must be communicated 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 UCP 600, 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 UCP 600, sub-article 14(a), and other related articles; and
◆ handle discrepant documents in terms of UCP 600, 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 (UCP 600, 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.

Whilst 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 Chapter 17.

Questions

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.’ Is this statement true or false?

   A. True
   B. False

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.’ Is this statement true or false?

   A. True
   B. False

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
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.

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
Honour or negotiation

Learning objectives
This chapter provides an overview of the concept of honour and negotiation.

By the end of this chapter, 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 transmission of proceeds.

17.1 Introduction
This chapter focuses on the settlement process.

With a documentary credit, the settlement process 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 and / 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.
17.2 Settlement

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.

17.2.1 Settlement terms

UCP 600, article 2, provides definitions of ‘honour’ and ‘negotiation’

<table>
<thead>
<tr>
<th>Honour means:</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. to pay at sight if the credit is available by sight payment.</td>
</tr>
<tr>
<td>b. to incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.</td>
</tr>
<tr>
<td>c. to accept a bill of exchange (“draft”) drawn by the beneficiary and pay at maturity if the credit is available by acceptance.</td>
</tr>
</tbody>
</table>

[ ... ]

Negotiation means 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.

UCP 600, sub-article 6(b), provides as follows.

| b. A credit must state whether it is available by sight payment, deferred payment, acceptance or 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 drawing, 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, UCP 600, sub-articles 7(a)(ii)–(v) and 8(a)(i)(b)–(e), should be referred to respectively. The effect of UCP 600, sub-articles 8(a)(i)(b)–(e) can be modified by the wording of the confirmation advice as indicated in Chapter 10, section 10.1.2.
17: Honour or negotiation

◆ 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 and / or to pay at maturity when a nominated bank or another nominated bank does not accept a draft or, having accepted a draft, does not pay at maturity. In this respect, UCP 600, sub-articles 7(a)(ii)–(v) and 8(a)(i)(b)–(e), should be referred to respectively. The effect of UCP 600, sub-articles 8(a)(i)(b)–(e) can be modified by the wording of the confirmation advice as indicated in Chapter 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.

- 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.

- 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.

17.2.1.1 Considerations

As mentioned in Chapter 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 or telex 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.

### 17.2.2 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, which 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, which 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 **UCP 600, article 15**. Note that a nominated bank and a confirming bank may be one and the same bank.

<table>
<thead>
<tr>
<th>a.</th>
<th>When an issuing bank determines that a presentation is complying, it must honour.</th>
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<tbody>
<tr>
<td>b.</td>
<td>When a confirming bank determines that a presentation is complying, it must honour or negotiate and forward the documents to the issuing bank.</td>
</tr>
<tr>
<td>c.</td>
<td>When a nominated bank determines that a presentation is complying and honours or negotiates, it must forward the documents to the confirming bank or issuing bank.</td>
</tr>
</tbody>
</table>

The issuing bank will seek reimbursement from the applicant for any settlement made to a confirming bank, nominated bank or beneficiary.
17.2.3 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.

17.2.3.1 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.

◆ **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.

- **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 principle 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.

**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.

**UCP 600, 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.

### c.
A bank instructing another bank to perform services is liable for any commissions, fees, costs or expenses (“charges”) incurred by that bank in connection with its instructions.

If a credit states that charges are for the account of the beneficiary and charges cannot be collected or deducted from proceeds, the issuing bank remains liable for payment of charges.

A credit or amendment should not stipulate that the advising to a beneficiary is conditional upon the receipt by the advising bank or second advising bank of its charges.

### 17.2.4 Payment, negotiation, prepay and purchase

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.

### 17.2.4.1 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.

### 17.2.4.2 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, 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 UCP 600, 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 to all amendments.

- 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.

### 17.2.5 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.

#### 17.2.5.1 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.
17.2.5.2 Prepay or purchase

UCP 600, 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.

b. By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.

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.

A draft should be examined to ensure that it has been properly accepted. This should include verification of the authenticity of the acceptance. In most cases, the sending of a SWIFT message from the accepting bank to the presenter or nominated bank serves as the advising of an acceptance of the documents and an advice of the maturity date. 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.

17.3.1 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 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 Chapter 22.

17.3.2 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.

17.3.3 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.

17.3.4 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.

Questions

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
Questions

1. '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 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

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

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.

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.’ Is this statement true or false?

A. True  
B. False

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.

References

SWIFT Operating Guidelines
18
Refusing documents

Learning objectives
This chapter describes the process to be followed when a bank decides to refuse documents.

By the end of this chapter, you should be able to:
◆ describe the required data for a refusal notice; and
◆ understand the requirements of UCP 600, article 16, whether acting as an issuing bank, confirming bank or nominated bank.

18.1 Handling discrepant documents

Once examination has been completed and after taking account of any regulatory or legislative requirements, a document examiner will decide whether or not the documents comply. If the documents comply, the document examiner will take up the documents and arrange settlement. If the documents do not comply, the document examiner will refuse them.

This chapter looks at how documents that are discrepant should be handled.

18.1.1 An ICC overview: examining documents, waiving discrepancies and issuing notice under UCP 600

Following presentation, the examination process and the refusal of documents are primarily governed by the provisions of UCP 600, sub-articles 14(a) and (b), and UCP 600, article 16.
UCP 600, sub-articles 14(a) and (b), provide as follows.

**a.** A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.

**b.** A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period 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.

UCP 600, article 16, provides as follows.

**a.** When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.

**b.** 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. This does not, however, extend the period mentioned in sub-article 14 (b).

**c.** When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state:

**i.** that the bank is refusing to honour or negotiate; and

**ii.** each discrepancy in respect of which the bank refuses to honour or negotiate; and

**iii.**

a) that the bank is holding the documents pending further instructions from the presenter; or

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; or

b) that the bank is returning the documents; or
Handling discrepant documents

d) that the bank is acting in accordance with instructions previously received from the presenter.

d. The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.

e. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may, after providing notice required by sub-article 16 (c) (iii) (a) or (b), return the documents to the presenter at any time.

f. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.

g. When an issuing bank refuses to honour or a confirming bank refuses to honour or negotiate and has given notice to that effect in accordance with this article, it shall then be entitled to claim a refund, with interest, of any reimbursement made.

To assist in understanding and interpreting these articles, and to remind issuing and confirming banks that deviation from these procedures may result in either bank facing preclusion from claiming that the documents are discrepant, the ICC Banking Commission issued an educational paper entitled Examination of Documents, Waiver of Discrepancies and Notice under UCP in April 2002. While originally written for application under UCP 500, articles 13 and 14, the paper is the basis of what follows, with suitable amendments to facilitate usage under UCP 600.

**Introduction**

UCP 600, sub-articles 14(a) and (b), and article 16, specifically prescribe the actions of an issuing, confirming or nominated 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 procedures in UCP have evolved over the years, many of which are not in accordance with the UCP. The development of these practices is invariably outside the scope of the UCP and could place an issuing bank or confirming bank at risk for not complying with the terms of the UCP.
To understand the specific steps outlined in the UCP, 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. This process is referenced within the descriptions detailed below.

**Note:** The following text only addresses the obligations of the issuing bank because it is the only bank authorised to seek a waiver from the applicant. Similar obligations may apply to the confirming bank, with the exception of the seeking of a waiver from the applicant.

**Step 1: Examining documents**

The first step in the process when documents are presented is to examine them.

UCP 600 sub-article 14(b) states that the bank 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, 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 automatically expected for each presentation of documents. In most cases, the examination will be completed in fewer than five banking days following the day of presentation.

**Step 2: Deciding whether documents comply or do not comply**

Once 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 settlement (UCP 600, sub-article 15(a)).

- **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 effect settlement.
Step 3:  Decide to refuse or seek a waiver

If the issuing bank determines that the documents do not comply, it has two options:

i. it may refuse the documents and provide notice of refusal; or

ii. it may seek the applicant’s waiver of the discrepancies.

◆ Give notice of refusal – if the issuing bank decides to refuse the documents, it must provide a notice in accordance with UCP 600, sub-article 16(c). This must be a single notice.

UCP 600, sub-article 16(c), requires that the notice of refusal give notice to that effect and must state all discrepancies in respect of which the issuing bank is refusing the documents. In addition, UCP 600, sub-article 16(c)(iii), specifically provides that the notice must state the following:

iii.

a) that the bank is holding the documents pending further instructions from the presenter; or

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; or

c) that the bank is returning the documents; or

d) that the bank is acting in accordance with instructions previously received from the presenter.

UCP 600, sub-article 16(d), prescribes the process if the bank decides to refuse the documents.

**d.** The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.

◆ Seek applicant waiver – UCP 600, 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, it must still comply with the five banking days requirement under UCP 600, sub-article 14(b).

The issuing bank is not bound by an applicant’s decision to waive the discrepancies.

When issuing banks have deferred giving notice of refusal, they usually impose conditions on the applicant. These prescribe 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, any applicant waiver should be provided to the issuing bank within the time frame established by the issuing bank.

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 period 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 UCP 600, sub-articles 16(c) and (d).

Step 5: (If waiver received) determine whether or not to accept 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. 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 may have found.

◆ **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 UCP 600, sub-articles 16(c) and (d).

**Performance under the rules** When the issuing bank performs according to the UCP, there is no risk provided that it conforms specifically to the steps outlined for examination, waiver and notice.

**Conclusion**

UCP 600 prescribes the process for examination, seeking a waiver and providing notice of refusal. Issuing banks should follow these rules or understand the risks that they may be taking when they deviate from them.

### 18.2 Processing discrepant documents in the role of the issuing bank

#### 18.2.1 Receiving prior requests from nominated banks for authority to honour or negotiate

If a nominated bank finds discrepancies in presented documents, it is common for it to ask the issuing bank for authority to honour or negotiate, despite such discrepancies. These requests are often received in the form of a teletransmission (SWIFT message or telex) and show wording along the following lines.
18: Refusing documents

May we negotiate documents for USD 124563 under your Credit DC no. 78910 despite the following discrepancies:

i. Late shipment BL dated 25/7/xx
ii. Credit expired
iii. 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 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:

You may negotiate USD 124563 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.

**Note:** UCP 600, 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.

### 18.2.2 Approaching the applicant

If the document examiner has found discrepancies (including those noted by the nominated bank), UCP 600, 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, it should respond promptly.
18.2.3 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 consulting the applicant for a waiver, the issuing bank must give notice to the bank from which the documents were received (or to the beneficiary, if documents were received directly) of its decision to refuse the documents.

The requirements and the format of the notice are stated in UCP 600, sub-articles 16(c) and (d).

c. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state

i. that the bank is refusing to honour or negotiate; and

ii. each discrepancy in respect of which the bank refuses to honour or negotiate; and

iii.

a) that the bank is holding the documents pending further instructions from the presenter; or

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; or

c) that the bank is returning the documents; or

d) that the bank is acting in accordance with instructions previously received from the presenter.

d. The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means, but no later than the close of the fifth banking day following the day of presentation.

The notice is invalid if these requirements are not satisfied. If presentation has been received from a bank, the refusal notification 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 by the use of a code word rather than by repeating the full text specified in UCP 600, 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 refusal notice indicating options (a) or (b) as the status of the documents, it may subsequently return the documents to the presenter at any time.

It should be noted that UCP 600, sub-articles 16(c)(iii) (a–d), make no reference to holding documents at the ‘risk and disposal’ of the presenter. UCP 500, sub-article 14(c)(ii), indicated as follows.

Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.

By the words ‘holding the documents at the disposal of’, a bank was not in a position to return the documents to the presenter arbitrarily, even if some time had passed without any communication being received from the presenter or the applicant.

Because UCP 600, sub-article 16(e), allows for a bank to return the documents to the presenter if a notice has been issued as required by UCP 600, sub-articles 16(c)(iii)(a) or (b), the equivalent rule in UCP 600, article 16, can no longer make reference to holding documents at the disposal of the presenter.

Despite this change, a number of banks still (incorrectly) include ‘documents held at your risk and disposal’ in their refusal notices.

18.2.4 Actions following a notice of refusal

After the issuing bank has given notice of refusal of documents, it is not uncommon for the presenter to dispute the discrepancies with the issuing bank. A document examiner who has made the determination to refuse must be in a position to respond to the presenter.

There will usually be a relatively short interval between refusal and eventual payment. Nevertheless, a document examiner must be able to justify his or her action to a presenter or applicant. 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 keep a record with whom discussions were held and of the content of such discussion. It is prudent banking practice for a document examiner to retain documents securely, and to keep the applicant and presenter advised by formal telecommunication or letter. Upon receipt of an acceptable waiver from the applicant, the documents should be delivered to them against immediate payment 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.

18.2.5 Handling pending dishonoured documents

If, within a short period following the issuance of a refusal notice, an applicant does not provide the issuing bank with an acceptable waiver, a document examiner may be required to hand over the documents to another area of the department that has responsibility for further handling of such pending items. The fundamental principles here are as follows.

♦ Notice of refusal must have been given, and the documents must be held pending further instructions of the presenter or receipt of a waiver from the applicant.

♦ Developments should be recorded on the bank’s document examination record and history files, where appropriate.

♦ The presenter must be kept advised at regular intervals.

♦ The documents must be securely stored.

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 issuing bank’s complete discharge. This is covered by UCP 600, sub-article 16(e), and was explained in section 18.2.3.

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.
18.3 Preclusion and the right to claim a refund and interest

18.3.1 The preclusion rule

UCP 600, sub-article 16(f), provides as follows.

f. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.

Note: If a nominated bank fails to act according to the requirements of the article, it is not precluded under this rule. Preclusion applies only to the banks that have given an undertaking to the beneficiary to honour or negotiate – that is the issuing bank and a confirming bank, if any.

18.3.2 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, 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.

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

18.4.1 Indicating refusal

UCP 600, sub-article 16(c)(i), requires the notice to state that the bank is refusing to honour or negotiate.
Common mistakes when refusing documents

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’.

When banks provide a refusal notice by other means, such as by MT799 (free format) message, telex, email or telephone, it is often the case that there is no indication given to the presenter that the bank is refusing the documents. Such advices may state ‘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 UCP 600, 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.

18.4.2 Indicating each discrepancy

UCP 600, sub-article 16(c)(ii), requires that the notice of refusal state each discrepancy in respect of which the 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 valid discrepancy and should be disregarded in any refusal notice. The discrepancy that should be quoted is 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.

18.4.3 The status of the documents

UCP 600, sub-article 16(c)(iii), requires that the notice of refusal indicate one of four statuses for the documents. It should be noted that, after each of the first three statuses, the word ‘or’ appears. This denotes that only one of the statuses should be apparent in a refusal notice.

However, it is often seen that a refusal notice will contain both options (a) and (b), as the following example demonstrates.

Documents are held pending your further instructions. [Option (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. [Option (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.

There is therefore a conflict regarding the holding of the documents. Whilst such a combination of words will not create preclusion under UCP 600, sub-article 16(f), the use of such 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.

Questions

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.’ Is this statement true or false?

A. True
B. False

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 refusal notice is sent in the morning of 23 July. The beneficiary states that the nominated bank is precluded under UCP 600, sub-article 16(f), from claiming that the documents are discrepant, and that it must honour or negotiate. The nominated bank disagrees. With which do you agree?

A. The nominated bank
B. The beneficiary

3. ‘When an issuing bank finds discrepancies in documents, it must always contact the applicant for a waiver.’ Is this statement true or false?

A. True
B. False
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.

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.’ Is this statement true or false?

A. True

B. False
19
Transferable credits, back-to-back credits and assignment of proceeds

Learning objectives
This chapter provides an overview of the functions of transferable credits, back-to-back credits and assignment of proceeds.

By the end of this chapter, you should be able to:
◆ understand the basic function of a transferable credit, back-to-back credit and assignment of proceeds;
◆ describe the features of these three products;
◆ identify the difference between a transferable credit and a back-to-back credit; and
◆ describe the process for an assignment of proceeds.

19.1 Transferable documentary credits
Transferable documentary credits are one of the more common types of documentary credit. There are a number of similarities with (and differences to) back-to-back documentary credits, which are reviewed in section 19.2.

In its simplest form, a documentary credit is issued in favour of the seller (beneficiary), which ships the goods, presents the stipulated documents and claims payment. This scenario is particularly applicable if the beneficiary is the manufacturer or producer of the goods. In some cases, however, an applicant will conduct business with an intermediary trader, agent or middleman (referred to hereafter as trader) who obtains the goods from one or more other sources. In this event, the trader will need to buy the goods or make arrangements for their purchase before supplying them to the applicant.
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 purchases in a manner that does not place a burden on its own resources.

In the context of a standby letter of credit, the underlying debt obligation is often sold, necessitating the transfer of the documentary credit to the new owner of the debt.

Transferable documentary credits were devised as a response to these needs. The basic idea underlying this feature is that the documentary credit issued in favour of the trader can be used as a means of paying the supplier(s) from which the goods are 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 seller of the goods.

### 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 (who will become known as the ‘first beneficiary’), stating that it is transferable. This allows the trader to request the nominated bank with which the documentary credit is available for honour or negotiation to transfer it in whole or in part to the trader’s supplier(s) (who will become known as the ‘second beneficiary’). When a documentary credit is available with any bank, it must indicate the name of the bank that is authorised to transfer it.

If an application for the issuance of a documentary credit calls for it to 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 other terminology used has no meaning in the context of UCP 600. The definition of transferable credit is contained in UCP 600, sub-article 38(b).

Transferable credit means a credit that specifically states it is “transferable”. 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”).

If the trader is buying from several suppliers, the bank may be requested to transfer parts of the documentary credit to each such supplier. The value of the parts of the documentary credit transferred to each supplier represents
Transferable documentary credits

the price that the trader is paying for the goods. The balance represents the trader’s profit or margin.

This arrangement provides a trader’s supplier(s) with security for payment because part of the documentary credit itself is transferred to the supplier(s). In this way, each supplier obtains the right to claim payment direct from the bank at which its portion of the documentary credit is available (against presentation of complying documents). This means that a supplier obtains a large measure of control over the payment process, because it is able to ensure that the stipulated documents are presented within the time limits established in the transferred documentary credit.

A transferable documentary credit is also a convenient solution for a trader. It allows a trader to provide its supplier(s) with the security of a documentary credit without having to use any part of its own banking facilities.

19.1.2 The risks and costs of transferable documentary credits

A transferable documentary credit can involve extra risks and costs for the original 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 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 original applicant, which undertakes to reimburse the issuing bank provided that a complying presentation has been made.

Additional costs arise because of the difference between the price paid by the trader and the price that the trader charges to the applicant.

19.1.2.1 Managing the transferable documentary credit process

Transferable documentary credits will involve:

◆ a first beneficiary (trader) and one or more second beneficiaries (supplier(s));
more than one set 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 challenges may arise, and a transferring bank and issuing bank should have in place detailed procedures to manage them.

• 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. The monitoring of the necessary consents might also cause concern. However, it should be noted that UCP 600, 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.

f. If a credit is transferred to more than one second beneficiary, rejection of an amendment by one or more second beneficiary does not invalidate the acceptance by any other second beneficiary, with respect to which the transferred credit will be amended accordingly. For any second beneficiary that rejected the amendment, the transferred credit will remain unamended.

• The bank of the second beneficiary might 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 beneficiary and applicant 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.
Transferable documentary credits

- The transferred credit should clearly indicate the routing instructions for the documents by showing a full mailing address.
- The transferring bank can require the first beneficiary to agree on certain aspects such as the handling of discrepant documents, prior to providing a 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.

### 19.1.3 Transferable documentary credits and UCP 600, article 38

**UCP 600, sub-article 38(a),** gives the transferring bank total control over the transfer decision, and it attempts to exclude any possibility of the beneficiary acquiring a legally enforceable right to have the documentary credit transferred.

#### a. A bank is under no obligation to transfer a credit except to the extent and in the manner expressly consented to by that bank.

The justification for this wording is that, when a transferable credit is issued, there is generally no information available relating to the possible transfer(s) that may be requested by the beneficiary. The UCP 600 provisions accordingly protect 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 a first beneficiary to transfer the documentary credit if the nominated bank or a bank authorised to transfer has declined to act.

**UCP 600, sub-article 38(b),** requires the issuing bank to indicate the name of the transferring bank when the 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.

[ ... ]

Transferring bank means 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.

[ ... ]
UCP 600, sub-article 38(d), expressly provides that a transferable documentary credit can be transferred only once.

<table>
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<th>d.</th>
<th>A credit may be transferred in part to more than one second beneficiary provided partial drawings or shipments are allowed.</th>
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<td>A transferred credit cannot be transferred at the request of a second beneficiary to any subsequent beneficiary. The first beneficiary is not considered to be a subsequent beneficiary.</td>
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Consequently, the 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 documentary credit.

ISP98 treats the transfer of a standby letter of credit differently. ISP98, rule 6.02 (‘When Drawing Rights are Transferable’), applies if a standby letter of credit is issued subject to ISP98.

| a.     | A standby is not transferable unless it so states. |
|        | b. A standby that states that it is transferable without further provision means that drawing rights: |
|        | i. may be transferred in their entirety more than once; |
|        | ii. may not be partially transferred; and |
|        | iii. may not be transferred unless the issuer (including the confirmer) or another person specifically nominated in the standby agrees to and effects the transfer requested by the beneficiary. |

In some cases, a first beneficiary may wish to exclude the automatic application of an amendment received to the transferable credit in its favour, to the transferred credit in favour of the second beneficiary, pending issuance of its specific instructions. In this instance, UCP 600, sub-article 38(e), provides as follows.

| e.     | Any request for transfer must indicate if and under what conditions amendments may be advised to the second beneficiary. The transferred credit must clearly indicate those conditions. |

The first beneficiary is, however, entitled to make this request only if it has given notice to this effect to the transferring bank.
Transferable documentary credits

Such notice is to be given at the time when the first beneficiary 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 first beneficiary retains the right to refuse to allow the transferring bank to advise any amendments to the second beneficiary or that amendments may be issued to the transferred credit(s) automatically. If the transferring bank consents to the transfer, it must advise the second beneficiary of the first beneficiary’s instruction at the time of making the transfer.

The rules and procedures concerning amendments of documentary credits naturally apply equally to transferable credits (UCP 600, sub-article 38(f)).

f. If a credit is transferred to more than one second beneficiary, rejection of an amendment by one or more second beneficiary does not invalidate the acceptance by any other second beneficiary, with respect to which the transferred credit will be amended accordingly. For any second beneficiary that rejected the amendment, the transferred credit will remain unamended.

UCP 600, sub-article 38(g), allows the first beneficiary to request a number of specific alterations to the original documentary credit terms when a transferred credit is issued.

g. The transferred credit must accurately reflect the terms and conditions of the credit, including confirmation, if any, with the exception of:

- 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,

any or all of which may be reduced or curtailed.

The percentage for which insurance cover must be effected may be increased to provide the amount of cover stipulated in the credit or these articles.

The name of the first beneficiary may be substituted for that of the applicant in the credit.

If the name of the applicant is specifically required by the credit to appear in any document other than the invoice, such requirement must be reflected in the transferred credit.
As noted earlier, 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 alterations in UCP 600, sub-article 38(g), will usually ensure that all of the relevant parties to the documentary credit are bound by any alterations that are made within the scope of that provision. 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 alterations requested by the first beneficiary. In circumstances under which a documentary credit has been confirmed, the transferred documentary credit must also bear the confirmation of the confirming bank.

In the specific context of transferable documentary credits, UCP 600, 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 original documentary credit or in the UCP. The rationale for this is that the first beneficiary will usually be buying the goods from a second beneficiary (or beneficiaries) at a lower price than the sale price that the first beneficiary is charging to the applicant. Thus a higher percentage insurance cover will be required under the transferred credit to cover the amount of insurance required under the original credit.

It is important that the transferring bank obtains the specific instructions of the first beneficiary in respect of insurance (if an insurance document is required) 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 first beneficiary, and as far as practicable, confidentiality in the transferred documentary credit should be preserved. For example, the first beneficiary may not want the name of the applicant to be divulged to the second beneficiary and vice versa.

When a documentary credit is transferred, the name of the first beneficiary can be substituted in the transferred documentary credit for that of the applicant. This provision makes it more difficult for the second beneficiary (or beneficiaries) to find out to whom the first beneficiary is supplying the goods. If the second beneficiary (or beneficiaries) obtains this information, they may be able to avoid the first beneficiary 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 credit requires the transport document to indicate the name and address of the applicant as notify party.

When the second beneficiary has shipped the required goods or provided the required services or performance, and presented its documents to the transferring bank, UCP 600 sub-article 38(h) allows the first beneficiary to substitute its own invoice and draft, if any, for those of the second beneficiary.

**h.** The first beneficiary has the right to substitute its own invoice and draft, if any, for those of a second beneficiary for an amount not in excess of that stipulated in the credit, and upon such substitution the first beneficiary can draw under the credit for the difference, if any, between its invoice and the invoice of a second beneficiary.

As the second beneficiary 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, UCP 600, sub-article 38(i) places an obligation on the first beneficiary to submit its substitute documents on first demand. Failure to do so entitles the transferring bank to present the documents of the second beneficiary to the issuing bank, without further regard or responsibility to the first beneficiary.

The term 'first demand' is not defined in UCP 600. Therefore, the transferring bank should, at the time of transfer, indicate to the first beneficiary the period it will permit for substitution to occur.

**i.** If the first beneficiary is to present its own invoice and draft, if any, but fails to do so on first demand, or if the invoices presented by the first beneficiary create discrepancies that did not exist in the presentation made by the second beneficiary and the first beneficiary fails to correct them on first demand, the transferring bank has the right to present the documents as received from the second beneficiary to the issuing bank, without further responsibility to the first beneficiary.

When submitting its request for transfer, a first beneficiary may indicate that honour or negotiation is to occur at the place to which the credit has been transferred (UCP 600, sub-article 38(j)). Such request is subject to the consent of the transferring bank.

**j.** The first beneficiary may, in its request for transfer, indicate that honour or negotiation is to be effected to a second beneficiary at the place to which the credit has been transferred, up to and including the expiry date of the credit. This is without prejudice to the right of the first beneficiary in accordance with sub-article 38 (h).
As previously mentioned, one of the risks that can occur with a transferred credit is that the documents of the second beneficiary by-pass the transferring bank by being sent directly to the issuing bank. **UCP 600, sub-article 38(k),** provides a rule regarding the disposal of documents.

**k. Presentation of documents by or on behalf of a second beneficiary must be made to the transferring bank.**

### 19.1.4 An overview of transferable documentary credit procedures

This section highlights the main steps in a transferable documentary credit by briefly summarising the progress 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 credits does not always go to plan.)

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 last 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.

3. The issuing bank transmits the documentary credit details to the advising bank.

4. The advising bank advises the documentary credit to the trader (first beneficiary) 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 documentary credit to a supplier in the same country or in another country (second beneficiary) from which the goods are to be obtained, to fulfil its contract with the applicant, by completing the bank’s request for transfer form.

6. At the request of the trader, the transferring bank makes the transferred part of the documentary credit available to the second beneficiary by issuing its advice of transfer.

7. The transferred credit is advised to the second beneficiary.
8. The second beneficiary ships the goods in accordance with the requirements of the transferred credit.

9. The second beneficiary prepares and collates all of the documents stipulated in the transferred credit issued in its favour. The documents will include the second beneficiary’s invoice, together with its draft, if any. The other stipulated documents will match those stated in the documentary credit issued in favour of the trader.

10. The second beneficiary sends its documents to the transferring bank or to the nominated bank mentioned in the transferred 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.

12. The second beneficiary’s invoice and draft, if any, will show the trader’s sources of supply and the amount that the trader has paid for the goods. 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, together with all of the other documents, are sent to the issuing bank.

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.

19.2 Back-to-back (counter) documentary credits

In some circumstances, a trader may not be able to use a transferable 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 UCP 600, article 38(g)) may not be sufficient to match these differing needs. In these circumstances, a back-to-back documentary credit may provide an acceptable alternative.
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 an article in the 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 security.

◆ However, depending on the assessment of the advising 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 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:
Back-to-back (counter) documentary credits

◆ 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 essential that Credit B is handled by staff capable of understanding these basic principles. They must also be able to examine the application for Credit B against the terms and conditions of Credit A. They will also need to ask the 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 were unable to make a valid presentation under Credit A.

In this case, the issuing bank of Credit B would be in possession of documents that are discrepant under Credit A. 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 back-to-back documentary credits

The issuing bank of the 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

both documentary credit files are marked to 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 UCP 600, 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 (who will be referred to as the ‘assignor’) to ask the nominated bank or issuing bank to pay part of the proceeds that are due to it to its own supplier (the ‘assignee’). This request is worded in the form of an irrevocable instruction. 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, 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 credit. Its entitlement to payment depends, first, on the beneficiary (assignor) making a complying presentation under the documentary credit, and secondly, on the nominated or issuing bank having free use of the proceeds.

UCP 600, article 39, covers assignment of proceeds. It does not grant a right to the assignee to perform under the 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 can be a bank. 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.

The fact that a credit is not stated to be transferable shall not affect the right of the beneficiary to assign any proceeds to which it may be or may become entitled under the credit, in accordance with the provisions of applicable law. This article relates only to the assignment of proceeds and not to the assignment of the right to perform under the credit.
Questions

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.

2. The beneficiary has advised an assignment of proceeds to your bank. It has instructed you to pay 80 per cent 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.

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.

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?

A. Yes
B. No

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
20
The features of documentary credits

Learning objectives
This chapter looks at the different types of features and conditions that can be seen in documentary credits.

By the end of this chapter, you should be able to:
◆ identify the different types of features and the data that is required to appear in a documentary credit; and
◆ understand the requirements, scope and application of these features and conditions.

20.1 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 speciality function. A number of these characteristics are provided for within UCP 600 and ISP98, but others have gained acceptance under the umbrella of international standard banking practice. This chapter looks at those features and conditions that are more commonly encountered when handling documentary credits.

20.2 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.
As a consequence, revocable documentary credits are rarely used and are not covered in UCP 600. Among other things, UCP 600, article 3, presumes that documentary credits are irrevocable.

When a revocable documentary credit is issued, it needs to state specifically that it is revocable, and incorporate the terms and conditions that will apply to the revocability.

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.

An issuing bank remains liable to reimburse a nominated bank for any honour or negotiation made before it received notice that the documentary credit had been revoked. This includes a liability to reimburse such bank for any deferred payment undertaking incurred before it received a revocation notice.

20.2.1 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. It also removes the possibility of another nominated bank acting under the revocable documentary credit, while unaware of any amendment or cancellation notice, in circumstances under which it was available with any bank.

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 the 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 advising bank of the cancellation 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.
Banks should not issue revocable documentary credits that are transferable, nor should banks confirm revocable documentary credits.

If it receives a revocable documentary credit, an advising bank should bring to the attention of the beneficiary the fact 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 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 the cancellation notice.

### 20.3 Irrevocable documentary credits

The definition of an irrevocable documentary credit can be found under **UCP 600, article 2**.

**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.

**UCP 600, sub-article 10(a)**, provides as follows.

**a.** Except as otherwise provided by article 38, a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary.

This means the beneficiary gains considerable comfort from the clear and unambiguous undertaking of the issuing bank. For standby credits issued subject to ISP98, this comfort comes from **ISP98, rule 1.06(a) and (b)**.

**a.** A standby is an irrevocable, independent, documentary, and binding undertaking when issued and need not so state.

**b.** Because a standby is irrevocable, an issuer’s obligations under a standby cannot be amended or cancelled by the issuer except as provided in the standby or as consented to by the person against whom the amendment or cancellation is asserted.
20.4 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 direct-pay standby letter of credit is an example of its potential use.

20.5 Advance payment (red clause) documentary credits

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.
20.5.1 An overview of an advance payment 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. 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 documentary credits were termed ‘red clause’.

The clause may require:

◆ 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 a document as indicated above.

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;
◆ providing a receipt from an independent warehouse that the goods are or will be stored and insured; and / or
◆ agreeing that the nominated bank may retain the original advice of the documentary credit.

Sometimes, either because of local custom or at the request of the issuing bank, the nominated bank may agree to monitor part of these arrangements. However, it is under no obligation to do so.
20.5.2 Managing risk under an advance payment documentary credit

An advance payment guarantee is the best way of managing the risk of paying in advance – that is, a bank gives a separate undertaking that, in the event that the beneficiary fails to perform, a claim may be made thereunder.

Because the number of advance payment documentary credits is relatively small, all parties should ensure that:

◆ advance payment files are clearly marked as such; and
◆ all advices and transactions are handled by more experienced staff.

The issuing bank should also 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;
◆ the 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.

20.6 Revolving documentary credits

Revolving documentary credits are generally used between an applicant and beneficiary who 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.
20.6.1 An overview of a revolving documentary credit

A revolving documentary credit depends on three main features: the type; whether or not it is to occur on an automatic basis; and whether or not it is to be on a cumulative basis, as follows.

◆ Type of revolvement

- If revolvement is dependent upon 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 revolvement of the amount may occur on an automatic or non-automatic basis and on a cumulative or non-cumulative basis (see below).

- If revolvement is dependent upon value, a revolving 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 revolvements of the amount shipped. It is almost impossible to calculate the liability in these circumstances. For this reason, banks issuing revolving documentary credits under which revolvements 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 revolvement may occur on an automatic or non-automatic basis and on a cumulative or non-cumulative basis (see below).

◆ Whether the revolvement is automatic or not

A documentary credit must indicate whether the revolvements are automatic or not.

- If the revolvements are automatic, there is no need for any further amendment from the issuing bank.

- A revolvement is considered non-automatic if it is dependent upon receipt by the nominated bank of the issuing bank’s authorisation for a further revolvement to occur – that is, by way of an amendment.

Using the same example, the liability of the issuing bank on the date of issue of the revolving documentary credit will be:
◆ USD150,000 if revolvements are automatic; or
◆ USD25,000 if it is non-automatic.

◆ Whether the revolvement is cumulative or not

- The documentary credit may indicate that the revolvement 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 is available in each following month. Therefore, in the sixth month, the 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 cannot be carried forward to the succeeding month. If, for example, no shipments had been made for five months, the drawing for the sixth month would be USD25,000 only.

20.6.2 Managing risk under a revolving documentary credit

The issuing bank should ensure that:

◆ honour or negotiation is restricted to a named nominated bank; and
◆ revolvement of amounts (particularly if the revolvement 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.

20.7 Reinstatement documentary credits

A reinstatement documentary credit 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 UCP 600, article 32, to be unacceptable (because of the risk of losing the ability to perform under the documentary credit, should it not keep to the designated schedule of shipments).

A reinstatement documentary credit must indicate:
Instalment drawings or shipments under documentary credits

- the base amount – that is, the value that is shown as the credit amount and which is the maximum value that may be drawn for any one shipment;

- 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 will be drawn at any one time will be USD20,000. The documentary credit is issued for the amount of USD20,000.

Field 47A, ‘Additional Conditions’, will state: ‘This 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 credit, for any amount up to USD20,000 in any one shipment.

### 20.8 Instalment drawings or shipments under documentary credits

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. This is covered in UCP 600, article 32.

If a drawing or shipment by instalments within given periods is stipulated in the credit and any instalment is not drawn or shipped within the period allowed for that instalment, the credit ceases to be available for that and any subsequent instalment.
Applicants and banks that intend to incorporate an instalment schedule into a documentary credit, and for it to be subject to UCP 600, 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 UCP 600, 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.

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.

UCP 600, 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 therefore mean that UCP 600, article 32, applies.

In this respect, **ISBP 745, paragraph C15**, is also relevant.
20.9 Use of tolerances in a documentary credit

It is often the case that a beneficiary cannot determine in advance the exact quantity of goods that will be shipped. This is especially so for bulk cargoes such as oil, wheat, rice, steel, etc.

In these cases, the applicant and beneficiary will agree on a specific tolerance that may be applied to the quantity, such as '+ / – 10 per cent'. There are no set rules as to the tolerance that can be set. For example, it could be stated as ‘plus 5 per cent; minus 10 per cent’.

UCP 600, sub-article 30(a), provides a definition when terms such as ‘about’ or ‘approximately’ are used in relation to the amount, quantity of goods or the unit price.
If a tolerance is applied to an amount or to the quantity of goods to be shipped, it is most likely that the tolerance is also to be applied to the other. It should be noted that a tolerance applied to the amount of the documentary credit is not automatically applied to the quantity of the goods or vice versa.

If the unit price is capable of increasing or decreasing, a tolerance may be applied against the figure quoted in the documentary credit, but again a similar tolerance would need to be shown against the amount of the documentary credit.

**UCP 600, sub-article 30(b),** provides for an automatic tolerance of plus or minus 5 per cent in the quantity of the goods, subject to the amount of the documentary credit not being exceeded, under certain circumstances.

**b.** A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms of a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount of the credit.

So this would not apply, for example, to a quantity expressed as ‘50 boxes of nuts and bolts’ or as individual items (‘500 cars’); rather, the tolerance would apply to quantities expressed in metric tonnes (MT), kilograms (kg), etc.

**UCP 600, sub-article 30(c),** allows for a tolerance not to exceed 5 per cent less than the credit amount, provided that the quantity of goods indicated in the documentary credit has been shipped in full and that any unit price has not been reduced.

**c.** Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (b) is not applicable. This tolerance does not apply when the credit stipulates a specific tolerance or uses the expressions referred to in sub-article 30 (a).

**ISBP 745, paragraphs C12–C14** provide further detail on the application of UCP 600, article 30.
Cancelling a documentary credit

20.10 Cancelling a documentary credit

UCP 600 contains no specific rule relating to the cancellation of a documentary credit or standby letter of credit. UCP 600, sub-article 10(a), indicates that a documentary credit, except as provided by UCP 600, article 38, cannot be amended or cancelled without the agreement of the issuing bank, theconfirming 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, will usually require the return of the original advice of the documentary credit and any amendments issued thereto. A bank may 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.

C12) An invoice is not to indicate:

a. over-shipment (except as provided in UCP 600 sub-article 30 (b)), or

b. goods, services or performance not called for in the credit. This applies even when the invoice includes additional quantities of goods, services or performance as required by the credit or samples and advertising material and are stated to be free of charge.

C13) The quantity of goods required in the credit may be indicated on an invoice within a tolerance of +/-5%. A variance of up to +5% in the quantity of the goods does not allow the amount demanded under the presentation to exceed the amount of the credit. The tolerance of +/-5% in the quantity of the goods will not apply when:

a. a credit states that the quantity is not to be exceeded or reduced; or

b. a credit states the quantity in terms of a stipulated number of packing units or individual items.

C14) When no quantity of goods is stated in the credit, and partial shipments are prohibited, an invoice issued for an amount up to 5% less than the credit amount will be considered to cover the full quantity and not a partial shipment.
For a standby letter of credit issued subject to ISP98, **ISP98, rules 7.01 and 7.02**, provide specific requirements in the event of cancellation.

### 7.01 When an Irrevocable Standby is Cancelled or Terminated

A beneficiary's rights under a standby may not be cancelled without its consent. Consent may be evidenced in writing or by an action such as return of the original standby in a manner which implies that the beneficiary consents to cancellation. A beneficiary's consent to cancellation is irrevocable when communicated to the issuer.

### 7.02 Issuer's Discretion Regarding a Decision to Cancel

Before acceding to a beneficiary's authorization to cancel and treating the standby as cancelled for all purposes, an issuer may require in a manner satisfactory as to form and substance:

a. the original standby;

b. verification of the signature of the person signing for the beneficiary;

c. verification of authorization of the person signing for the beneficiary;

d. a legal opinion;

e. an irrevocable authority signed by the beneficiary for cancellation that includes statements, covenants, indemnities, and similar provisions contained in a required form;

f. satisfaction that the obligation of any confirmer has been cancelled;

g. satisfaction that there has not been a transfer or payment by any nominated person; and

h. any other reasonable measure.
20.11 Partial drawings or shipment under a documentary credit

UCP 600, article 31 (‘Partial Drawings or Shipments’), provides as follows.

| a. | Partial drawings or shipments are allowed. |
| b. | A presentation consisting of more than one set of transport documents evidencing shipment commencing on the same means of conveyance and for the same journey, provided they indicate the same destination, will not be regarded as covering a partial shipment, even if they indicate different dates of shipment or different ports of loading, places of taking in charge or dispatch. If the presentation consists of more than one set of transport documents, the latest date of shipment as evidenced on any of the sets of transport documents will be regarded as the date of shipment. A presentation consisting of one or more sets of transport documents evidencing shipment on more than one means of conveyance within the same mode of transport will be regarded as covering a partial shipment, even if the means of conveyance leave on the same day for the same destination. |
| c. | A presentation consisting of more than one courier receipt, post receipt or certificate of posting will not be regarded as a partial shipment if the courier receipts, post receipts or certificates of posting appear to have been stamped or signed by the same courier or postal service at the same place and date and for the same destination. |

The provisions of UCP 600, article 31, are amplified by ISBP 745, paragraphs D22 and D23, E18 and E19, F16 and F17, G16 and G17, H18 and H19, and J13 and J14, all of which provide a similar wording for the type of transport document to which they relate.

As an example, ISBP 745, paragraphs D22 and D23, relate to multimodal transport documents.

D22) Shipment on more than one means of conveyance (more than one truck [lorry], vessel, aircraft, etc.) is a partial shipment, even when such means of conveyance leaves on the same day for the same destination.

D23) a. When a credit prohibits partial shipment, and more than one set of original multimodal transport documents are presented covering receipt, dispatch, taking in charge or shipment from one or more points of origin (as specifically allowed, or within a geographical
20.12 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 UCP 600, sub-articles 19(b), 20(b), 21(b), 23(b) and 24(d). 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 most unlikely that those goods will move directly between two countries. Transhipment is even
becoming 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 UCP 600, article 19, transhipment must be permitted in the documentary credit.

20.13 Impact of a force majeure event and effect of disclaimer rules on a documentary credit

UCP 600, article 36 (‘Force Majeure’), provides as follows.

A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrection, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.

A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.

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, the documents will be discrepant.

For this reason, it is often the case that a beneficiary will insist that a standby letter of credit issued in its favour should modify the application of UCP 600, article 36, by imposing a period of time after the bank reopens during which the beneficiary may present its demand.

Contrast this position with that which appears in ISP98, rule 3.14(a).

a. If on the last business day for presentation the place for presentation stated in a standby is for any reason closed and presentation is not timely made because of the closure, the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides.
**UCP 600, article 34**, is a disclaimer clause that provides as follows.

A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person.

It has a direct relationship with UCP 600, 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.

**UCP 600, article 35**, contains three disclaimers:

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when the documents have been lost in transit between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.

A bank assumes no liability or responsibility for errors in translation or interpretation of technical terms and may transmit credit terms without translating them.

**UCP 600, 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.
20.14 Other conditions and products relating to a documentary credit

In this section, we discuss the following products that can apply to a documentary credit:

- release of goods by carriers 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.
20.14.1 The release of goods by carriers 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, UCP 600, 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 settlement to a beneficiary, 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.
20.14.2 Carrier indemnities (shipping guarantees)

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 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.

20.14.2.1 Transaction

In these circumstances, an applicant will 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. Carriers 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.

20.14.2.2 The form of indemnity

Although most carriers maintain their own standard forms, 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.

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).
20.14.2.3 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.

Where an amount is to be inserted into the indemnity, it is not uncommon for carriers to insist that it be for at least 200 per cent of the invoice value.

20.14.3 Airway releases and delivery orders

Airway releases deal with the delivery of goods despatched by air. Delivery orders deal 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.

20.14.3.1 The form of airway releases and delivery orders

Airway releases and delivery orders usually take the form of letters, telexes, faxes or electronic messages. 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;
20: The features of documentary credits

◆ description of goods;

◆ documentary credit number;

◆ invoice number and invoice amount; and

◆ an instruction to release the goods to the applicant or its nominee.

These releases or orders 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 release or order serves as an instruction to deliver goods to the applicant or its nominee.

20.15 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).

20.16 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,
20.17 Letters of indemnity (LOIs)

An LOI is usually seen in commodity trades, such as oil, in which the cargo can be sold many times during its voyage. 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 the shipment of 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. 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.

20.17.1 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.

20.17.2 The countersigning of the LOI by a bank

It may be the case that a bank will be asked to countersign the LOI issued by the beneficiary. There are no rules that govern the countersigning of the LOI or the level of liability that a bank will record against its client's credit facility.

It has been known for some banks to record a nominal amount merely to track an outstanding LOI and the presentation of the shipping 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.
Figure 20.1 Sample letter of indemnity

INDEMNITY FOR MISSING DOCUMENTS:

TO: [BUYER/APPLICANT]

DATE:


DEAR SIRS,


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 CONSIGNEE, 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) ..........

............ (AUTHORIZED SIGNATORY)

20.18 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’.

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 confirming 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.
20.18.1 Establishing documentary credits and follow-up operations

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, as above, or by each bank up to the percentage of the facility or risk agreed by it.

20.18.2 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 UCP 600, 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.

20.18.3 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 above, 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 file or system record to ensure that anyone can see that it relates to a syndicated transaction;
Questions

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
   one complete set of documents, but 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.

2. Against what does a letter of indemnity 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

3. In most jurisdictions, after 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

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

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.
Questions

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.

References


21
Standby letters of credit

Learning objectives
This chapter provides an overview of standby letters of credit and the content of ISP98.

By the end of this chapter, 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.

21.1 Introduction
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 with 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
Standby letters of credit and UCP 600

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.

UCP 600 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 of the articles of UCP 600 (for example articles 18–32) have no practical application to a standby letter of credit. This point is recognised in **UCP 600, article 1**.

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).

### 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 UCP 600, 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.

These Rules shall be interpreted as mercantile usage with regard for:

a. integrity of standbys as reliable and efficient undertakings to pay;

b. practice and terminology of banks and businesses in day-to-day transactions;

c. consistency within the worldwide system of banking operations and commerce; and

d. worldwide uniformity in their interpretation and application.
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**.

Unless the context otherwise requires, or unless expressly modified or excluded, these Rules apply 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).

**Rule 1.06 Nature of Standbys**

a. A standby is an irrevocable, independent, documentary, and binding undertaking when issued and need not so state.

b. Because a standby is irrevocable, an issuer’s obligations under a standby cannot be amended or cancelled by the issuer except as provided in the standby or as consented to by the person against whom the amendment or cancellation is asserted.

c. Because a standby is independent, the enforceability of an issuer’s obligations under a standby does not depend on:

i. the issuer’s right or ability to obtain reimbursement from the applicant;
ii. the beneficiary's right or ability to obtain payment from the applicant;

iii. a reference in the standby to any reimbursement agreement or underlying transaction; or

iv. the issuer’s knowledge of performance or breach of any reimbursement agreement or underlying transaction.

d. Because a standby is documentary, an issuer’s obligations depend on the presentation of documents and an examination of required documents on their face.

e. Because a standby or amendment is binding when issued, it is enforceable against an issuer whether or not the applicant authorised its issuance, the issuer received a fee, or the beneficiary received or relied on the standby or the amendment.

**Rule 1.07 Independence of the Issuer–Beneficiary Relationship**

An issuer’s obligations toward the beneficiary are not affected by the issuer’s rights and obligations toward the applicant under any applicable agreement, practice, or law.

Note the relationship of ISP98, rule 1.06(b), with UCP 600, 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 UCP 600, article 34), any action or omission of other persons chosen (as in UCP 600, sub-article 37(b)).

An issuer is not responsible for:

a. performance or breach of any underlying transaction;
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 UCP 600, articles 2 and 3.

### 21.4.2 Obligations

There are strong similarities in intent to be found in UCP 600, 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;

  c. An issuer acts in a timely manner if it pays at sight, accepts a draft, or undertakes a deferred payment obligation (or if it gives notice of dishonour) within the time permitted for examining the presentation and giving notice of dishonour.

- the obligations of the same issuing entity when operating from another location in a different capacity (**ISP98, rule 2.02**);

  For the purposes of these Rules, an issuer’s branch, agency, or other office acting or undertaking to act under a standby in a capacity other than as issuer is obligated in that capacity only and shall be treated as a different person.

- the exclusion of a nominated person from binding the person making the nomination (**ISP98, rule 2.04(c)**);

  c. A nominated person is not authorised to bind the person making the nomination.
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)).

iii. an amendment does not require the applicant’s consent to be binding on the issuer, the confirmer, or the beneficiary.

It is also important to note the separate undertaking of the confirming bank to the beneficiary under ISP98, rule 2.01.

### Rule 2.01 Undertaking to Honour by Issuer and Any Confirmer to Beneficiary

a. An issuer undertakes to the beneficiary to honour a presentation that appears on its face to comply with the terms and conditions of the standby in accordance with these Rules supplemented by standard standby practice.

b. An issuer honours a complying presentation made to it by paying the amount demanded of it at sight, unless the standby provides for honour:

   i. by acceptance of a draft drawn by the beneficiary on the issuer, in which case the issuer honours by:

      (a) timely accepting the draft; and

      (b) thereafter paying the holder of the draft on presentation of the accepted draft on or after its maturity.

   ii. by deferred payment of a demand made by the beneficiary on the issuer, in which case the issuer honours by:

      (a) timely incurring a deferred payment obligation; and

      (b) thereafter paying at maturity.

   iii. by negotiation, in which case the issuer honours by paying the amount demanded at sight without recourse.

c. An issuer acts in a timely manner if it pays at sight, accepts a draft, or undertakes a deferred payment obligation (or if it gives notice of dishonour) within the time permitted for examining the presentation and giving notice of dishonour.
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.

d. i. A confirmer undertakes to honour a complying presentation made to it by paying the amount demanded of it at sight or, if the standby so states, by another method of honour consistent with the issuer’s undertaking.

   ii. If the confirmation permits presentation to the issuer, then the confirmer undertakes also to honour upon the issuer’s wrongful dishonour by performing as if the presentation had been made to the confirmer.

   iii. If the standby permits presentation to the confirmer, then the issuer undertakes also to honour upon the confirmer’s wrongful dishonour by performing as if the presentation had been made to the issuer.

e. An issuer honours by paying in immediately available funds in the currency designated in the standby unless the standby states it is payable by:

   i. payment of a monetary unit of account, in which case the undertaking is to pay in that unit of account; or

   ii. delivery of other items of value, in which case the undertaking is to deliver those items.
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.

A beneficiary’s request to extend the expiration date of the standby or, alternatively, to pay the amount available under it:

a. is a presentation demanding payment under the standby, to be examined as such in accordance with these Rules; and

b. implies that the beneficiary:

i. consents to the amendment to extend the expiry date to the date requested;

ii. requests the issuer to exercise its discretion to seek the approval of the applicant and to issue that amendment;

iii. upon issuance of that amendment, retracts its demand for payment; and

iv. consents to the maximum time available under these Rules for examination and notice of dishonour.

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 the URDG 758.

In terms of UCP 600, 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.

a. If on the last business day for presentation the place for presentation stated in a standby is for any reason closed and presentation is not timely made because of the closure, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides.
21.4.4 Examination

Compare ISP98, rules 4.01–4.03, with UCP 600, sub-articles 14(a), (d) and (g).

**Rule 4.01 Examination for Compliance**

a. Demands for honour of a standby must comply with the terms and conditions of the standby.

b. Whether a presentation appears to comply is determined by examining the presentation on its face against the terms and conditions stated in the standby as interpreted and supplemented by these Rules which are to be read in the context of standard standby practice.

**Rule 4.02 Non-Examination of Extraneous Document**

Documents presented which are not required by the standby need not be examined and, in any event, shall be disregarded for purposes of determining compliance of the presentation. They may without responsibility be returned to the presenter or passed on with the other documents presented.

**Rule 4.03 Examination for Inconsistency**

An issuer or nominated person is required to examine documents for inconsistency with each other only to the extent provided in the standby.

a. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.

[ ... ]

d. Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.

[ ... ]

g. A document presented but not required by the credit will be disregarded and may be returned to the presenter.
It will also be noted that ISP98, rule 4.03, represents a distinct difference to the requirements of UCP 600, 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 credit. 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 in UCP 600, particularly articles 3, 14 and 18.

**Rule 4.05  Issuer of Documents**

Any required document must be issued by the beneficiary unless the standby indicates that the document is to be issued by a third person or the document is of a type that standard standby practice requires to be issued by a third person.

**Rule 4.06  Date of Documents**

The issuance date of a required document may be earlier but not later than the date of its presentation.

**Rule 4.07  Required Signature on a Document**

a. A required document need not be signed unless the standby indicates that the document must be signed or the document is of a type that standard standby practice requires be signed.

b. A required signature may be made in any manner that corresponds to the medium in which the signed document is presented.

c. Unless a standby specifies:

   i. the name of a person who must sign a document, any signature or authentication will be regarded as a complying signature.

   ii. the status of a person who must sign, no indication of status is necessary.

d. If a standby specifies that a signature must be made by:

   i. a named natural person without requiring that the signer’s status be identified, a signature complies that appears to be that of the named person;
Comparisons should also be made between the wording of ISP98, rules 4.11 and 4.12, and their counterparts in UCP 600, particularly article 3 and sub-article 14(h).

Rule 4.11  Non-Documentary Terms or Conditions

a. A standby term or condition which is non-documentary must be disregarded whether or not it affects the issuer’s obligation to treat a presentation as complying or to treat the standby as issued, amended, or terminated.

b. Terms or conditions are non-documentary if the standby does not require presentation of a document in which they are to be evidenced and if their fulfilment cannot be determined by the issuer from the issuer’s own records or within the issuer’s normal operations.

c. Determinations from the issuer’s own records or within the issuer’s normal operations include determinations of:

   i. when, where, and how documents are presented or otherwise delivered to the issuer;

   ii. when, where, and how communications affecting the standby are sent or received by the issuer, beneficiary, or any nominated person;

   iii. amounts transferred into or out of accounts with the issuer; and

   iv. amounts determinable from a published index (e.g., if a standby provides for determining amounts of interest accruing according to published interest rates).

d. An issuer need not re-compute a beneficiary’s computations under a formula stated or referenced in a standby except to the extent that the standby so provides.
Rule 4.12  Formality of Statements in Document

a. A required statement need not be accompanied by a solemnity, officialization, or any other formality.

b. If a standby provides for the addition of a formality to a required statement by the person making it without specifying form or content, the statement complies if it indicates that it was declared, averred, warranted, attested, sworn under oath, affirmed, certified, or the like.

c. If a standby provides for a statement to be witnessed by another person without specifying form or content, the witnessed statement complies if it appears to contain a signature of a person other than the beneficiary with an indication that the person is acting as a witness.

d. If a standby provides for a statement to be counter-signed, legalized, visaed, or the like by a person other than the beneficiary acting in a governmental, judicial, corporate, or other representative capacity without specifying form or content, the statement complies if it contains the signature of a person other than the beneficiary and includes an indication of that person’s representative capacity and the organization on whose behalf the person has acted.

ISP98, rules 4.16–4.21, indicate the difference in usage between standby letters of credit and commercial documentary credits.

Rule 4.16  Demand for Payment

a. A demand for payment need not be separate from the beneficiary’s statement or other required document.

b. If a separate demand is required, it must contain:

   i. a demand for payment from the beneficiary directed to the issuer or nominated person;

   ii. a date indicating when the demand was issued;

   iii. the amount demanded; and

   iv. the beneficiary’s signature.
c. A demand may be in the form of a draft or other instruction, order, or request to pay. If a standby requires presentation of a "draft" or "bill of exchange", that draft or bill of exchange need not be in negotiable form unless the standby so states.

**Rule 4.17 Statement of Default or Other Drawing Event**

If a standby requires a statement, certificate, or other recital of a default or other drawing event and does not specify content, the document complies if it contains:

a. a representation to the effect that payment is due because a drawing event described in the standby has occurred;

b. a date indicating when it was issued; and

c. the beneficiary’s signature.

**Rule 4.18 Negotiable Documents**

If a standby requires presentation of a document that is transferable by endorsement and delivery without stating whether, how, or to whom endorsement must be made, then the document may be presented without endorsement, or, if endorsed, the endorsement may be in blank and, in any event, the document may be issued or negotiated with or without recourse.

**Rule 4.19 Legal or Judicial Document**

If a standby requires presentation of a government-issued document, a court order, an arbitration award, or the like, a document or a copy is deemed to comply if it appears to be:

i. issued by a government agency, court, tribunal, or the like;

ii. suitably titled or named;

iii. signed;

iv. dated; and

v. originally certified or authenticated by an official of a government agency, court, tribunal, or the like.
Rule 4.20 Other Documents

a. If a standby requires a document other than one whose content is specified in these Rules without specifying the issuer, data content, or wording, a document complies if it appears to be appropriately titled or to serve the function of that type of document under standard standby practice.

b. A document presented under a standby is to be examined in the context of standby practice under these Rules even if the document is of a type (such as a commercial invoice, transport documents, insurance documents or the like) for which the Uniform Customs and Practice for Documentary Credits contains detailed rules.

Rule 4.21 Request to Issue Separate Undertaking

If a standby requests that the beneficiary of the standby issue its own separate undertaking to another (whether or not the standby recites the text of that undertaking):

a. the beneficiary receives no rights other than its rights to draw under the standby even if the issuer pays a fee to the beneficiary for issuing the separate undertaking;

b. neither the separate undertaking nor any documents presented under it need be presented to the issuer; and

c. if originals or copies of the separate undertaking or documents presented under it are received by the issuer although not required to be presented as a condition to honour of the standby:

i. the issuer need not examine, and, in any event, shall disregard their compliance or consistency with the standby, with the beneficiary’s demand under the standby, or with the beneficiary’s separate undertaking; and

ii. the issuer may without responsibility return them to the presenter or forward them to the applicant with the presentation.
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 UCP 600, 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, i.e., ‘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.

a. Notice of dishonour must be given within a time after presentation of documents which is not unreasonable.

   i. Notice given within three business days is deemed to be not unreasonable and beyond seven business days is deemed to be unreasonable.

   ii. Whether the time within which notice is given is unreasonable does not depend upon an imminent deadline for presentation.

   iii. The time for calculating when notice of dishonour must be given begins on the business day following the business day of presentation.

   iv. Unless a standby otherwise expressly states a shortened time within which notice of dishonour must be given, the issuer has no obligation to accelerate its examination of a presentation.

b. i. The means by which a notice of dishonour is to be given is by telecommunication, if available, and, if not, by another available means which allows for prompt notice.

   ii. If notice of dishonour is received within the time permitted for giving the notice, then it is deemed to have been given by prompt means.

c. Notice of dishonour must be given to the person from whom the documents were received (whether the beneficiary, nominated person, or person other than a delivery person) except as otherwise requested by the presenter.
This can be compared with UCP 600, sub-article 14(b), which gives each bank five banking days following the date of presentation in which to determine whether a presentation complies.

**ISP98, rule 5.09**, recognises the fact that applicants sometimes raise objections or discrepancies after payment by the issuer.

a. An applicant must timely object to an issuer’s honour of a noncomplying presentation by giving timely notice by prompt means.

b. An applicant acts timely if it objects to discrepancies by sending a notice to the issuer stating the discrepancies on which the objection is based within a time after the applicant’s receipt of the documents which is not unreasonable.

c. Failure to give a timely notice of objection by prompt means precludes assertion by the applicant against the issuer of any discrepancy or other matter apparent on the face of the documents received by the applicant, but does not preclude assertion of that objection to any different presentation under the same or a different standby.

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

The ISP98 rules on transferability of a standby letter of credit differ significantly from those under UCP 600, 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 UCP 600, 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.
Rule 6.06 Assignment of Proceeds

Where an issuer or nominated person is asked to acknowledge a beneficiary’s request to pay an assignee all or part of any proceeds of the beneficiary’s drawing under the standby, these Rules on acknowledgment of an assignment of proceeds apply except where applicable law otherwise requires.

Rule 6.07 Request for Acknowledgment

a. Unless applicable law otherwise requires, an issuer or nominated person

   i. is not obligated to give effect to an assignment of proceeds which it has not acknowledged; and

   ii. is not obligated to acknowledge the assignment.

b. If an assignment is acknowledged:

   i. the acknowledgment confers no rights with respect to the standby to the assignee who is only entitled to the proceeds assigned, if any, and whose rights may be affected by amendment or cancellation; and

   ii. the rights of the assignee are subject to:

      (a) the existence of any net proceeds payable to the beneficiary by the person making the acknowledgment;

      (b) rights of nominated persons and transferee beneficiaries;

      (c) rights of other acknowledged assignees; and

      (d) any other rights or interests that may have priority under applicable law.

Rule 6.08 Conditions to Acknowledgment of Assignment of Proceeds

An issuer or nominated person may condition its acknowledgment on receipt of:

a. the original standby for examination or notation;
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b. verification of the signature of the person signing for the beneficiary;

c. verification of the authority of the person signing for the beneficiary;

d. an irrevocable request signed by the beneficiary for acknowledgment of the assignment that includes statements, covenants, indemnities, and other provisions which may be contained in the issuer's or nominated person's required form requesting acknowledgment of assignment, such as:

   i. the identity of the affected drawings if the standby permits multiple drawings;

   ii. the full name, legal form, location, and mailing address of the beneficiary and the assignee;

   iii. details of any request affecting the method of payment or delivery of the standby proceeds;

   iv. limitation on partial assignments and prohibition of successive assignments;

   v. statements regarding the legality and relative priority of the assignment; or

   vi. right of recovery by the issuer or nominated person of any proceeds received by the assignee that are recoverable from the beneficiary;

   e. payment of a fee for the acknowledgment; and

   f. fulfillment of other reasonable requirements.

Rule 6.09 Conflicting Claims to Proceeds

If there are conflicting claims to proceeds, then payment to an acknowledged assignee may be suspended pending resolution of the conflict.
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.

Rule 7.01 When an Irrevocable Standby is Cancelled or Terminated

A beneficiary’s rights under a standby may not be cancelled without its consent. Consent may be evidenced in writing or by an action such as return of the original standby in a manner which implies that the beneficiary consents to cancellation. A beneficiary’s consent to cancellation is irrevocable when communicated to the issuer.

Rule 7.02 Issuer’s Discretion Regarding a Decision to Cancel

Before acceding to a beneficiary’s authorization to cancel and treating the standby as cancelled for all purposes, an issuer may require in a manner satisfactory as to form and substance:

a. the original standby;

b. verification of the signature of the person signing for the beneficiary;

c. verification of the authorization of the person signing for the beneficiary;

d. a legal opinion;

e. an irrevocable authority signed by the beneficiary for cancellation that includes statements, covenants, indemnities, and similar provisions contained in a required form;
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.

b. An applicant must indemnify the issuer against all claims, obligations, and responsibilities (including attorney’s fees) arising out of:
   
   i. the imposition of law or practice other than that chosen in the standby or applicable at the place of issuance;
   
   ii. the fraud, forgery, or illegal action of others; or
   
   iii. the issuer’s performance of the obligations of a confirmer that wrongfully dishonours a confirmation.

By way of ISP98, rule 8.04, the ISP98 adopts the incorporation of the ICC Rules for Bank-to-Bank Reimbursements into its terms without specific reference in the standby.

Any instruction or authorization to obtain reimbursement from another bank is subject to the International Chamber of Commerce standard rules for bank-to-bank reimbursements.

21.4.9 Timing

The separation of presentation under ISP98, section 3, from expiry in section 9 contrasts with their provisions under UCP 600, 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.

Retention of the original standby does not preserve any rights under the standby after the right to demand payment ceases.

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.

### 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 [i.e., 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.

Questions

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

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

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.
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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.

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

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.
Bank-to-bank reimbursements and reimbursement from aid agencies

Learning objectives
This chapter looks at arrangements that involve a reimbursing bank or aid agency providing reimbursement to a nominated bank.

By the end of this chapter, you should be able to:
◆ describe the role of a reimbursing bank; and
◆ understand the process that applies when an aid agency is responsible for providing reimbursement.

22.1 The relationship between an issuing bank and a reimbursing bank

Although only one bank (an issuing bank) is necessary to facilitate reimbursement under a documentary credit, in many cases an issuing bank will nominate another bank to reimburse a nominated bank that has honoured or negotiated a presentation made under its documentary credit. Such a bank is known as a ‘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. The ICC 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 (URR 725).
UCP 600, article 13, covers some very basic arrangements for bank-to-bank reimbursements. URR 725 provides additional clarification and more detailed rules to be followed in such circumstances.

UCP 600, 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 UCP 600, sub-articles 13(b) and (c), will apply.

a. If a credit states that reimbursement is to be obtained by a nominated bank (“claiming bank”) claiming on another party (“reimbursing bank”), the credit must state if the reimbursement is subject to the ICC rules for bank-to-bank reimbursements in effect on the date of issuance of the credit.

b. If a credit does not state that reimbursement is subject to the ICC rules for bank-to-bank reimbursements, the following apply:

i. An issuing bank must provide a reimbursing bank with a reimbursement authorization that conforms with the availability stated in the credit. The reimbursement authorization should not be subject to an expiry date.

ii. A claiming bank shall not be required to supply a reimbursing bank with a certificate of compliance with the terms and conditions of the credit.

iii. An issuing bank will be responsible for any loss of interest, together with any expenses incurred, if reimbursement is not provided on first demand by a reimbursing bank in accordance with the terms and conditions of the credit.

iv. A reimbursing bank’s charges are for the account of the issuing bank. However, if the charges are for the account of the beneficiary, it is the responsibility of an issuing bank to so indicate in the credit and in the reimbursement authorization. If a reimbursing bank’s charges are for the account of the beneficiary, they shall be deducted from the amount due to a claiming bank when reimbursement is made. If no reimbursement is made, the reimbursing bank’s charges remain the obligation of the issuing bank.

c. An issuing bank is not relieved of any of its obligations to provide reimbursement if reimbursement is not made by a reimbursing bank on first demand.
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 the reimbursing bank

A reimbursing bank is entitled to be reimbursed by the issuing bank when it has honoured a claim of a claiming 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 a claiming bank (nominated 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, UCP 600, sub-article 13(a), requires a documentary credit to state whether the URR 725 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 UCP 600, sub-articles 13(b) and (c), will apply. The principle expressed in UCP 600, sub-article 13(c), also applies if the URR rules are to apply.

Neither UCP 600, article 13, nor URR 725 apply in respect of a documentary credit where reimbursement is to be obtained from the issuing bank.
22.2.1 URR 725, articles 3, 4 and 5

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 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).

22.2.2 URR 725, article 6

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.

22.2.3 URR 725, article 10

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 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, as applicable.

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).

i. credit number;

ii. currency and amount;

iii. additional amounts payable and tolerance if any;

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;

v. parties responsible for charges (claiming bank’s and reimbursing bank’s charges) in accordance with article 16 of these rules.

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).

i. tenor of draft to be drawn;

ii. drawer;

iii. party responsible for acceptance and discount charges, if any.
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)**.

| 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 a 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. |

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)**.

| i. tenor of draft to be drawn; |
| ii. drawer; |
| iii. party responsible for acceptance and discount charges, if any. |

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 advises the issuing bank without delay; or
- if it is prepared to act, it files or records 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
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conditions, and including the details as required by **URR 725, sub-articles 9(e)(i)–(vi)**.

i. the credit number and name of the issuing bank;

ii. the currency and amount of the reimbursement authorization;

iii. additional amounts payable and tolerance, if any;

iv. the currency and amount of the reimbursement undertaking;

v. the latest date for presentation of a claim, including any usance period;

vi. the party to pay the reimbursement undertaking fee, if other than the issuing bank. The reimbursing bank must also include its charges, if any, that will be deducted from the amount claimed.

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 files or 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 files or records it pending receipt of any claim;

◆ if it is not prepared to act in accordance with the reimbursement amendment, it advises the issuing bank without delay; or
2.3 Where applicable, the claiming bank receives the authenticated reimbursement undertaking amendment and reviews its details. It then either files or 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);
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).

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)).

A reimbursing bank shall have a maximum of three banking days following the day of the reimbursement claim to process the claim. A reimbursement claim received outside banking hours will be deemed to be received on the next following banking day.

If the reimbursement claim is acceptable, 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 while documentary credit 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 files or 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 files or 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 after expiry of the documentary credit (step 5)**

5.1 The issuing bank sends the authenticated reimbursement authorisation cancellation to the reimbursing bank.

5.2 The reimbursing bank receives the authenticated reimbursement authorisation cancellation from the issuing bank, and if it is not an irrevocable reimbursement authorisation, it cancels it in its files or records. If a reimbursement undertaking has been issued, it checks that the terms of the reimbursement undertaking have expired before accepting or refusing the reimbursement authorisation cancellation 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 (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).

### 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’) information flow

Source: SWIFT
Figure 22.3 MT742 (‘Reimbursement claim’) – information flow (incorporating MT700 and MT740)

Source: SWIFT
22.5 Documentary credits with reimbursement provided by aid (funding) organisations

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. The documentary credit will be advised to the beneficiary on a non-operative basis, pending receipt of the guarantee or reimbursement agreement from the 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 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, 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.
Questions

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

2. Which of the following is not a true statement?
   A. Reimbursement may be made subject to UCP 600, sub-articles 13(b) and (c).
   B. Reimbursement may be made subject to the 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.

3. An issuing bank’s instruction to a reimbursing bank requesting issuance of a reimbursement undertaking subject to the 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
Questions

C. i, ii and iii only
D. ii, iii and iv only

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 the claiming bank to 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.

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

References

SWIFT Operating Guidelines
23 eUCP

Learning objectives
This chapter includes a brief history and outline of eUCP.

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

◆ describe the features of eUCP; and
◆ understand the contrast between the rules in UCP 600 and those under eUCP.

23.1 eUCP

The ICC published its *Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentations* (eUCP) 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.

The 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 in 2007 to accompany the publication of UCP 600.

23.2 The key features of eUCP

The key features of eUCP can be summarised as follows.

◆ eUCP version 1.1 is a supplement to, and must be used in conjunction with, UCP 600.
◆ 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 1.1 represents the second version and 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 the 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 the 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, article e3(a), provides as follows.

### Definitions

a. Where the following terms are used in the UCP, for the purposes of applying the UCP to an electronic record presented under an eUCP credit, the term:

i. **appear on their face** and the like shall apply to examination of the data content of an electronic record.

ii. **document** shall include an electronic record.

iii. **place for presentation** of electronic records means an electronic address.

iv. **sign** and the like shall include an electronic signature.

v. **superimposed, notation** or **stamped** means data content whose supplementary character is apparent in an electronic record.
The key features of eUCP

- Provisions of the 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, articles e11 and e12, provide as follows.

Article e11

Corruption of an Electronic Record after Presentation

a. If an electronic record that has been received by the issuing bank, confirming bank, or another nominated bank appears to have been corrupted, the bank may inform the presenter and may request that the electronic record be re-presented.

b. If the bank requests that an electronic record be re-presented:

i. the time for examination is suspended and resumes when the presenter re-presents the electronic record; and

ii. if the nominated bank is not the confirming bank, it must provide the issuing bank and any confirming bank with notice of the request for re-presentation and inform it of the suspension; but

iii. if the same electronic record is not re-presented within thirty (30) calendar days, the bank may treat the electronic record as not presented, and

iv. any deadlines are not extended.

Article e12

Additional Disclaimer of Liability for Presentation of Electronic Records under eUCP

By satisfying itself as to the apparent authenticity of an electronic record, banks assume no liability for the identity of the sender, source of the information or its complete and unaltered character other than that which is apparent in the electronic record received by the use of a commercially acceptable data process for the receipt, authentication and identification of electronic records.

- Provisions of the eUCP that change the UCP 600 rule under which the 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 e2, e5(c) and (e), e7(a) and (b), and e8, are examples. eUCP, article e2, reads as follows.

**Relationship of the eUCP to the UCP**

a. A credit subject to the eUCP (“eUCP credit”) is also subject to the UCP without express incorporation of the UCP.

b. Where the eUCP applies, its provisions shall prevail to the extent that they would produce a result different from the application of the UCP.

c. If an eUCP credit allows the beneficiary to choose between presentation of paper documents or electronic records and it chooses to present only paper documents, the UCP alone shall apply to that presentation. If only paper documents are permitted under an eUCP credit, the UCP alone shall apply.

- Documentary credits issued subject to eUCP version 1.1 are automatically subject to UCP 600 without specific reference.

- Under a documentary credit issued subject to the eUCP, the provisions of the eUCP prevail over those of UCP 600 in the event of their application providing different results.

**Questions**

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.
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.

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.

4. Which of the following is true of a 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 the UCP if the parties so agree.

D. It is subject to the UCP if the parties so agree in a written agreement.
5. If an eUCP 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
24
Dispute resolution

Learning objectives
This chapter reviews the options that are available to the parties to a documentary credit when a dispute arises.

By the end of this chapter, you should be able to:
◆ describe the services made available by the ICC; and
◆ select the appropriate forum for the different types of dispute that may be encountered.

24.1 Introduction
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 and/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, 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 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 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 130 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 and / or URR should be applied in a number of given situations. ICC Opinions have been used in evidence in court cases for many years, 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 instances.) It therefore follows that only one set of views of the transaction will be given. From the perspective of the 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. The Banking Commission will answer only the question(s) submitted.

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.

The Banking Commission has established a set of guidelines for the submission of a request for an Opinion, which are as follows.

1. All requests for an Opinion must be routed through the 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 or guarantee, 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’s officers may seek separate assurances before issuing a draft Opinion if they have any doubts as to the nature of the query.

4. It has recently been the case that a number of requests have consisted of five or more A4 pages of text. Such requests, with often a high level of detail, are more appropriate for the DOCDEX service (see section 24.2.2). National committees and banking associations should consider recommending this service to initiators in cases in which review of the shipping documents may be necessary to come to any conclusion. 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. It has therefore been decided that the banks should be identified in the query by their roles – that is, as ‘issuing bank’, ‘advising bank’, ‘confirming bank’, ‘nominated bank’, etc. National committees and banking associations are requested to take note prior to submitting any request for an Opinion.

6. The deadline for submission to ICC headquarters in Paris of a request for an Opinion is ten weeks prior to a meeting of the Banking Commission.

7. The technical advisers and officers will be responsible for review of the query as submitted, and ICC headquarters will email the consolidated final draft Opinions to national committees and members of the Banking Commission eight weeks prior to a meeting of the Banking Commission.

The Banking Commission currently provides Opinions free of charge.

A draft version of the Opinion will be sent to the initiator quite quickly. 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 Banking Commission will approve the draft Opinion. Requesting an ICC Opinion is therefore not suitable for resolving disputes over 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.

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 the UCP and / 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, online at www.iccwbo.org.

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 standard fee of USD5,000 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 be rendered, but it will be claused 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 courts may easily take between 6 and 18 months or longer.

The standard fee for DOCDEX is USD5,000, although the cost may vary depending on the amount in dispute. Even in exceptional cases, the fee will not exceed USD10,000.

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.

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 the United States, the United Kingdom, 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 sales 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.
25

Overriding considerations

Learning objectives

Anti-money laundering and counter-terrorist financing regulations and economic sanctions can all place restrictions on the operation of a documentary credit. This chapter 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.

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.

25.1 Money laundering and terrorist financing

25.1.1 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.

### 25.1.2 The practice of terrorist financing

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.

### 25.1.3 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 most recently updated in 2012.

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 carefully.

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, the bank and staff members should also keep records of any contact with customers and other enquiries that they may make in connection with customers’ arrangements.

◆ **Report suspicions** – staff members 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 members 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, 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 pay. 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 (2014) 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 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 pay if sanctions are imposed.

Sanctions are a force of law, which will override the rules of 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.

References


Answers to chapter review questions

Chapter 1

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

   The correct answer is C. One of the first forms of documentary credit was known as the traveller’s letter of credit.

2. ‘Documentary credits have been in existence for only the past 300 years.’ Is this statement true or false?
   A. True
   B. False

   The correct answer is B. Documentary credits have been traced back to Ancient Egypt and Babylon.

3. What was the second most-used currency in documentary credits issued using the SWIFT MT700 message in 2013?
   A. The US dollar (USD)
   B. The euro (EUR)
   C. The pound sterling (GBP)
D. The Chinese renminbi (RMB)

The correct answer is D. In 2013, the Chinese renminbi became the second most-used currency in an MT700 message, after the US dollar.

4. What was the average value of a documentary credit issued by MT700 in 2013?
   A. USD563,000
   B. **USD653,000**
   C. USD356,000
   D. USD635,000

The correct answer is B. According to the statistics provided by SWIFT for the 2014 ICC Trade Finance Survey, the average value of a documentary credit was USD653,000.

5. ‘A documentary credit can be used only for the purchase of consumables, food and clothing, and for the provision of services or performance.’ Is this statement true or false?
   A. True
   B. **False**

The correct answer is B. A documentary credit can potentially be used for any purpose.

Chapter 2

1. Which of the following is not an activity performed by the International Chamber of Commerce?
   A. Rule setting
   B. Dispute resolution
   C. **Signing of certificates of origin**
   D. Policy advocacy
The correct answer is C. The ICC does not become involved in signing documents that are traditionally presented under documentary credits.

2. How many revisions of the UCP have there been since 1933?

A. Five
B. Eight
C. Six
C. Seven

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

3. Today, 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 correct answer is B. The 2014 ICC Trade Finance Survey estimated that documentary credits issued subject to UCP 600 amounted to some USD2tn per year.

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 correct answer is C. The most recent revision of the ISBP is provided in ICC Publication No. 745.

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

The correct answer is C. eUCP version 1.0 came into effect during the lifetime of UCP 500.

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**Chapter 3**

1. ‘A bank guarantee can be issued subject to UCP 600.’ Is this statement true or false?

   A. True
   B. False

The correct answer is A. 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.

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.’ Is this statement true or false?

   A. True
   B. False

The correct answer is B. 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.
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.

The correct answer is B. The buyer agrees to pay once it has seen the documents at the counters of the collecting bank.

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

The correct answer is 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.

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.’ Is this statement true or false?

A. True

B. False

The correct answer is B. In an open account transaction, there are no predefined documents that the seller must present to the buyer.
Chapter 4

1. ‘It is possible for an issuing bank to also be an applicant.’ Is this statement true or false?
   
   A. True
   
   B. False
   
   The correct answer is A. It can be the case that the issuing bank will be the applicant under a standby letter of credit.

2. ‘A documentary credit is always advised by the use of the SWIFT MT700.’ Is this statement true or false?
   
   A. True
   
   B. False
   
   The correct answer is B. A documentary credit can be advised by any method that provides for its authentication – that is, including by letter, telex, fax or email.

3. ‘An applicant is a party to a documentary credit.’ Is this statement true or false?
   
   A. True
   
   B. False
   
   The correct answer is B. 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.

4. Which of the following is true of a second advising bank?
   
   A. A second advising bank is utilised 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.
The correct answer is C. A second advising bank can be named in the documentary credit or be selected by the advising bank.

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

A. Acceptance  
B. Deferred payment  
C. Negotiation  
D. Payment

The correct answer is C. The definition of ‘honour’ is composed of payment, acceptance and deferred payment.

Chapter 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

The correct answer is A. Under FOB terms, the importer is responsible for the freight charges, and under CIF, the exporter.

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
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

The correct answer is **B**. CIF stands for ‘cost, insurance and freight’.

4. On whom does Incoterm EXW impose the least obligation?

A. The buyer

B. **The seller**

The correct answer is **B**. The seller delivers by making the goods available to the buyer at its own location, loaded or unloaded on the departing conveyance.

5. Which of the following is true of the use of trade terms such as Incoterms 2010?

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.

The correct answer is **B**. Incoterms determine the point at which delivery occurs, and as a result the point at which costs and risk pass between the seller and buyer.
Chapter 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

   The correct answer is B. CDD is recognised as the process for the ongoing review of a customer’s business profile.

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

   The correct answer is C. All of them are risks that an applicant can face.

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 expenses
The correct answer is **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.

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**

   The correct answer is **D**. All three conditions should be covered in an application form, not only for an inspection or analysis type of document, but any document.

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.

   The correct answer is **A**. This is essentially the wording that appears in UCP 600, sub-article 4(a).
Chapter 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

The correct answer is D. A credit may be available with an issuing bank only by payment, acceptance or deferred payment.

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.’

The correct answer is 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.

3. ‘There must always be a gap of 21 calendar days between the latest shipment date and the expiry date.’ Is this statement true or false?

A. True
B. False

The correct answer is B. The reference to 21 calendar days, in UCP 600, 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.

4. For which of the following settlement types must a draft be required for presentation?
   A. Payment
   B. Deferred payment
   **C. Acceptance**
   D. Negotiation

   The correct answer is **C**. Only a credit available by acceptance requires that a draft be presented (drawn on the bank that is to accept it).

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

   The correct answer is **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.
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

   The correct answer is 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.

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.

   The correct answer is B. Amendments must not include a condition relating to a timeline in which the beneficiary is to accept or reject an amendment (UCP 600, sub-article 10(f)). If one is included, it will be disregarded.

3. When is an issuing bank irrevocably bound by an amendment?

   A. When it approves the request of the applicant
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B. **When it issues the amendment**

C. When the advising bank or confirming bank advises the amendment

D. When the beneficiary receives the amendment

The correct answer is **B**. An issuing bank is bound as of the time at which it issues the amendment (UCP 600, sub-article 10(b)).

4. An amendment decreases the value of a documentary credit. When should the credit facility amount be reduced accordingly?

A. When the amendment is issued

B. When the advising bank or confirming bank advises the beneficiary of the amendment

C. When the beneficiary provides its consent to the amendment by way of a notification of acceptance

D. **When 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**

The correct answer is **D**. The credit facility amount should not be reduced until such time as the beneficiary has consented to the amendment, according to UCP 600, sub-article 10(c).

5. ‘If a second advising bank decides not to advise an amendment to the beneficiary, it must inform the issuing bank without delay.’ Is this statement true or false?

A. True

B. **False**

The correct answer is **B**. A second advising bank should inform the advising bank of its decision. The advising bank will inform the issuing bank.
Chapter 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**

   The correct answer is **D**. An advising bank 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 (UCP 600, sub-articles 9(b) and (c)).

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 statement true or false?

   A. True
   **B. False**

   The correct answer is **B**. UCP 600, 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.

3. ‘A second advising bank is required to determine the apparent authenticity of the documentary credit issued by the issuing bank.’ Is this statement true or false?

   A. True
   **B. False**

   The correct answer is **B**. A second advising bank is required to determine the apparent authenticity of the advice that it receives from the advising bank.
4. ‘An advising bank or second advising bank is not required to examine a documentary credit to determine whether it is in a workable form.’ Is this statement true or false?

**A. True**

**B. False**

The correct answer is **A**. 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.

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.’ Is this statement true or false?

**A. True**

**B. False**

The correct answer is **B**. Banks should always review a documentary credit from the perspective that it does not breach any bank policy.

### Chapter 10

1. ‘A bank receives a documentary credit in which it is requested 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.’ Is this statement true or false?

**A. True**

**B. False**

The correct answer is **A**. UCP 600, sub-article 8(d), states that the bank may advise the credit without confirmation. There is no obligation to advise it.

2. According to UCP 600, article 8, a confirming bank is irrevocably bound to honour or negotiate from when?
A. When the beneficiary receives the documentary credit

B. When the beneficiary presents complying documents under the credit

C. When it issues its advice of confirmation

D. When it determines that the transaction falls within the credit facility of the issuing bank

The correct answer is C. A confirming bank is irrevocably bound as of the time at which it adds its confirmation to the credit (UCP 600, sub-article 8(b)).

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”.’ Is this statement true or false?

A. True

B. False

The correct answer is B. An authorisation to add confirmation would be indicated by the use of ‘MAY ADD’ in Field 49.

4. ‘The beneficiary presents documents to the confirming bank, which are found to be compliant. The documentary credit is available by sight payment. The confirming bank is authorised to claim reimbursement from a named reimbursing bank value three banking days after sending its claim to that bank. The confirming bank claims reimbursement value 20 May 20XX (Monday). Because of the time-zone differences between it and the reimbursing bank, the confirming bank will not receive confirmation that funds have been credited to its account until the morning of 21 May. The confirming bank should effect payment to the beneficiary on 21 May, when confirmation of receipt of funds is received.’ Is this statement true or false?

A. True

B. False

The correct answer is B. Payment is due on 20 May 20XX and the confirming bank should pay the beneficiary with that value date.
5. Which of the following criteria will a bank not usually review when determining whether a documentary credit falls within the structure of a credit facility granted to the issuing bank?

A. The expiry date
B. The payment terms
C. The presentation period
D. The amount

The correct answer is C. A presentation period has no impact on a credit facility.

Chapter 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

The correct answer is B. UCP 600, sub-article 10(b), states that a confirming bank will be irrevocably bound as of the time at which it advises the amendment.

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.
The correct answer is C. UCP 600, 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.

3. ‘An amendment contains three changes to the terms and conditions of the documentary credit. The beneficiary may accept any combination of those changes and any unaccepted changes will be considered as disregarded and the issuing bank will be bound only by the accepted amendment(s).’ Is this statement true or false?

A. True

B. False

The correct answer is B. UCP 600, sub-article 10(e), states that partial acceptance of an amendment is not allowed and will be deemed to be notification of rejection of the amendment (as a whole).

4. ‘A documentary credit indicates that the draft accepted by the nominated bank is to be discounted and that the discount charges are for account of the applicant. An amendment is issued stating that these charges are now for account of the beneficiary. The beneficiary has not provided a notification of acceptance or rejection prior to its presentation of documents. The covering letter of the beneficiary is silent with regard to the amendment. At that point in time, the amendment should not be considered to have been accepted.’ Is this statement true or false?

A. True

B. False

The correct answer is A. There has been no prior notification of acceptance of the amendment and neither does the presentation provide any indication of acceptance. The bank should contact the beneficiary to ascertain the position.

5. ‘When an advising bank advises an amendment to a beneficiary without any comment, it is to be considered that the amendment is genuine.’ Is this statement true or false?

A. True

B. False
The correct answer is B. The advising of an amendment signifies that the advising bank has satisfied itself as to the apparent authentication of the amendment that has been received from the issuing bank. It is not conveying that the amendment is genuine. UCP 600, sub-article 9(b), applies.

Chapter 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**

   The correct answer is D. A CMR note is a transport document covering dispatch by road.

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

   The correct answer is C. A bill of lading is capable of conveying title to the goods.

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.

The correct answer is **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 UCP 600, sub-article 29(a).

4. What is the type of bill of lading that is not acceptable under UCP 600 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**

The correct answer is **D**. A charter party bill of lading must be specifically required or permitted by the terms of the documentary credit (ISBP 745, paragraph G1).

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.’ Is this statement true or false?

A. True

B. False

The correct answer is **B**. UCP 600, 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. UCP 600, 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.
Chapter 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

The correct answer is B. UCP 600, 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.

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.

The correct answer is B. ISBP 745, 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.

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

The correct answer is B. The use of commas allows for any one port or any combination to be used (ISBP 745, paragraph A2(b)).

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

The correct answer is C. ISBP 745, 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.

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.’ Is this statement true or false?

A. True

B. False

The correct answer is B. A document that is printed requires a signature. ISBP 745, paragraph A35(c), states that such wording does not in itself represent an electronic method of authentication in accordance with the signature requirements of UCP 600, article 3.
need for there to be an indication of the modes of transport that have been utilised.’ Is this statement true or false?

**A. True**

**B. False**

The correct answer is **A**. ISBP 745, paragraph D1(b)(i), states that a multimodal transport document may be silent regarding some or all of the modes of transport utilised.

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
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‘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.’ Is this statement true or false?

**A. True**

**B. False**

The correct answer is **B**. 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.

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.’ Is this statement true or false?

A. True

B. False

The correct answer is A. The requirement under UCP 600, 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.

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.’ Is this statement true or false?

A. True

B. False

The correct answer is A. ISBP 745, paragraph E5(d), states that the name of the master (captain) need not be stated.

5. A 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 credit required only three originals to be presented. Whose position is right?

A. The beneficiary

B. The nominated bank

The correct answer is B. UCP 600, 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.
Chapter 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.’ Is this statement true or false?

   A. True
   
   B. False

The correct answer is B. UCP 600, sub-article 28(i), states that an insurance document may contain reference to any exclusion clause.

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.’ Is this statement true or false?

   A. True
   
   B. False

The correct answer is A. The insurance document is required to indicate that the insurance was effective no later than the date of shipment (25 July), as required by UCP 600, 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.

3. ‘A certificate of origin and an invoice must be dated.’ Is this statement true or false?

   A. True
   
   B. False

The correct answer is B. There is no requirement for either to be dated (ISBP 745, paragraph C10: ‘An invoice need not be signed or dated’). The basic requirement of a certificate of origin, as referred to in ISBP 745, paragraph L1, incorporates only that it be signed, certify the origin of the goods and appear to relate to the invoiced goods.
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

The correct answer is C. ISBP 745, 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.

5. To which of the following could the + / –5 per cent tolerance referred to in UCP 600, sub-article 30(b), be applied?

A. 500 laptop computers
B. 500 boxes of paper
C. 500MT sugar
D. 500 cars

The correct answer is C. The items mentioned under A, B and D fall under the category of packing units or individual items, to which UCP 600, sub-article 30(b), states that the + / –5 per cent tolerance will not apply.

Chapter 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.’ Is this statement true or false?
A. True

B. False

The correct answer is B. 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 (UCP 600, sub-article 12(a)).

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.’ Is this statement true or false?

A. True

B. False

The correct answer is A. Preclusion, as mentioned in UCP 600, 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.

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

The correct answer is 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.

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.**

The correct answer is B. UCP 600, 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.

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

The correct answer is 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.

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**Chapter 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
The correct answer is **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.

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**

   The correct answer is **D**. Because the credit has been confirmed, any negotiation is effected without recourse (UCP 600, sub-article 8(a)(ii)).

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.

   The correct answer is **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.

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.' Is this statement true or false?

A. True

B. False

The correct answer is B. 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.

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.

The correct answer is 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, UCP 600, sub-article 12(b), authorises the nominated bank to prepay, but only on the proviso that it incurs its deferred payment undertaking.
Chapter 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.’ Is this statement true or false?

A. True
B. False

The correct answer is B. 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.

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 refusal notice is sent in the morning of 23 July. The beneficiary states that the nominated bank is precluded under UCP 600, sub-article 16(f), from claiming that the documents are discrepant, and that it must honour or negotiate. The nominated bank disagrees. With which do you agree?

A. The nominated bank
B. The beneficiary

The correct answer is A. Preclusion, as outlined in UCP 600, 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.

3. ‘When an issuing bank finds discrepancies in documents, it must always contact the applicant for a waiver.’ Is this statement true or false?

A. True
B. False

The correct answer is B. UCP 600, 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.

4. A confirming bank issued a notice of refusal to the beneficiary on 15 July. The status indicated is 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.

The correct answer is **B**. UCP 600, 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.

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.’ Is this statement true or false?

A. True

B. **False**

The correct answer is **B**. 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.
Chapter 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.

   The correct answer is **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 UCP 600, sub-article 38(b).

2. The beneficiary has advised an assignment of proceeds to your bank. It has instructed you to pay 80 per cent 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.

   The correct answer is **B**. As explained in UCP 600, 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.

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.

The correct answer is A. UCP 600, 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.

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?

A. Yes

B. No

The correct answer is A. UCP 600, 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.

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

The correct answer is C. UCP 600, 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.
Chapter 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 one complete set of documents, but two sets of bills of lading issued as follows: one set of onboard bills of lading dated 19 June 20XX, covering shipment of 175 Type A cars; and one set of onboard 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.

The correct answer is 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, UCP 600, article 32, will not apply and the credit will remain available for the beneficiary to make the remaining shipment(s).

2. Against what does a letter of indemnity 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

The correct answer is D. An LOI is issued in respect of the absence of a full set of original charter party bills of lading.

3. In most jurisdictions, after 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

The correct answer is 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.

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

The correct answer is C. A list of the required documents will usually be left to the applicant and beneficiary to determine.

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.

The correct answer is C. It is an amalgamation of the options shown in A, B and D.

Chapter 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

The correct answer is 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.

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

The correct answer is 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.
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.

The correct answer is 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.

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

The correct answer is C. This type of standby is commonly described as a ‘commercial standby’.

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.
The correct answer is **A.** 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.

### Chapter 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

   The correct answer is **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.

2. Which of the following is *not* a true statement?

   - **A.** Reimbursement may be made subject to UCP 600, 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.

   The correct answer is **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.
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

The correct answer is A. 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).)

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 the claiming bank to 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.

The correct answer is 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.
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

The correct answer is **B**. URR 725, article 17, indicates that any claim for interest is between the claiming bank and the issuing bank.

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**Chapter 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.

The correct answer is **C**. eUCP, sub-article e11(b)(i), states that the time for examination is suspended and resumes when the presenter re-presents the electronic record.

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.

The correct answer is C. eUCP, sub-article e5(c), states that the beneficiary is responsible for providing a notice of completeness to the bank to which presentation has been made.

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.

The correct answer is B. eUCP, sub-article e1(a), describes the publication as a supplement to the UCP 600.

4. Which of the following is true of a 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 the UCP if the parties so agree.

   D. It is subject to the UCP if the parties so agree in a written agreement.

The correct answer is 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.

5. If an eUCP 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

The correct answer is **C**. eUCP, article e4, states that if the format of the electronic record is not specified in a eUCP credit, it may be presented in any format.
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