



Frequently Asked Questions under UCP 600



Volume IV
March 2009

Introduction

Welcome to this fourth volume of "Frequently Asked Questions under UCP 600" provided by Collyer Consulting LLP. This publication demonstrates that the questions are still flowing with regard to the application and interpretation of the various rules in UCP 600. In the current financial climate, the proper structuring and handling of documentary credit transactions is critical. The slightest mistake may now turn itself into a huge problem or give rise to a discrepancy in a presentation that may lead to an outright refusal. With falling commodity prices and the worsening financial position of some applicants and banks, it has never been a better time to be properly equipped with the answers to potential issues.

In addition to those specific to the rules, there is the usual quantity of questions that fall under the category of "General" due to their specific, non-article based, nature. There are also some more questions in relation to international standard banking practice, under the ISBP section. Altogether, there are a further **200** questions on a wide variety of topics and issues covered in **40** pages.

All of these questions have been submitted or asked as a result of email requests to the author or raised during seminars that have been conducted. We hope that volumes I - III continue to assist in your day-to-day activities and with this and future volumes they will continue to do so, thereby providing a better understanding of the correct interpretation and application of UCP 600 and the handling of documentary credits. You will note that for each section of questions the numbering commences with the respective article number (or Gen/ISBP) followed by the question number. The numbering in this volume continues from the last number under the respective article/section in volume III. In the introduction to volume I we mentioned that an index is available. Due to the number of questions that we have covered so far i.e., **800**, we have decided to make this available in a separate PDF file for those that require it. Should you wish to receive a copy of the index please send an email to gary@collyerconsulting.com requesting same.

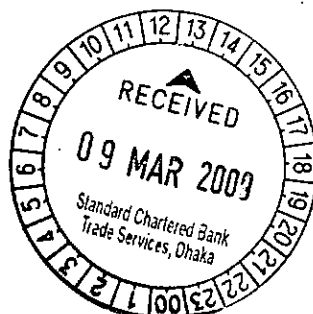
Questions continue to be welcomed from all readers and you may well find one or more of your questions, and the answers, in this or future volumes. Of course, names and organisations are kept confidential and you will always be the first to receive the response.

Look out for the next volume in September 2009!



Gary Collyer
Collyer Consulting LLP
March 2009

Contents



Article

Page Number

1	Application of UCP	3
2	Definitions	3
3	Interpretations	5
4	Credits v. Contracts	6
5	Documents v. Goods, Services or Performance	No new queries
6	Availability, Expiry Date and Place for Presentation	6
7	Issuing Bank Undertaking	8
8	Confirming Bank Undertaking	9
9	Advising of Credits and Amendments	10
10	Amendments	10
11	Teletransmitted and Pre-Advised Credits and Amendments	No new queries
12	Nomination	11
13	Bank-to-Bank Reimbursement Arrangements	12
14	Standard for Examination of Documents	12
15	Complying Presentation	14
16	Discrepant Documents, Waiver and Notice	14
17	Original Documents and Copies	16
18	Commercial Invoice	17
19	Transport Document Covering at Least Two Different Modes of Transport	18
20	Bill of Lading	18
21	Non-Negotiable Sea Waybill	No new queries
22	Charter Party Bill of Lading	21
23	Air Transport Document	No new queries
24	Road, Rail or Inland Waterway Transport Documents	No new queries
25	Courier Receipt, Post Receipt or Certificate of Posting	No new queries
26	"On Deck", "Shipper's Load and Count", "Said by Shipper to Contain" and Charges Additional to Freight	21
27	Clean Transport Document	No new queries
28	Insurance Document and Coverage	22
29	Extension to Expiry Date or Last Day for Presentation	No new queries
30	Tolerance in Credit Amount, Quantity and Unit Prices	23
31	Partial Drawings or Shipments	24
32	Instalment Drawings or Shipments	24
33	Hours of Presentation	No new queries
34	Disclaimer on Effectiveness of Documents	No new queries
35	Disclaimer on Transmission and Translation	25
36	Force Majeure	No new queries
37	Disclaimer for Acts of an Instructed Party	No new queries
38	Transferable Credits	26
39	Assignment of Proceeds	No new queries
Gen	General Queries	27
ISBP	International Standard Banking Practice Questions	40

Article 1 – Application of UCP

- 1.12 Can a documentary credit be issued for non-goods trade, i.e., something like the providing of copyright or services?

Suggested Answer:

While the most common form of documentary credit is one that covers the shipment or dispatch of goods, a documentary credit may be issued for any other purpose. The one basic requirement is that it requires the presentation of at least one document in order that compliance may be determined. It should be noted that UCP 600 article 5 states "[B]anks deal with documents and not with goods, services or performance to which the documents may relate". Reference to 'services or performance' indicates the further scope of the documentary credit product. For documentary credits covering services or performance, it is critical that the requirements for the stipulated document(s) are clearly outlined as they may not be fully covered by the rules of UCP 600 and would, most probably, be examined under the provisions of sub-article 14 (f).

- 1.13 As an issuing bank, when we stipulate some clauses different from the concepts in UCP, should we state at the same time that "xx article of UCP 600 is excluded"? Or, is the UCP 600 article excluded automatically?

Suggested Answer:

If the wording of your credit will give a different outcome to that which a particular UCP 600 article will give, you are modifying the rule rather than excluding it. Exclusion is where the entire article is deemed to be inapplicable to the credit and no alternative wording is inserted. In this circumstance, the credit should indicate "article x or xx is excluded". Where a term or condition in the credit is to be applied differently to that envisaged in the UCP 600, the wording of the credit will supersede that of the UCP and no further reference is required to be made to the UCP article or sub-article that is being modified.

- 1.14 Does UCP 600 apply only to documentary credits (LC's) or to other forms of payment like cash against documents, those with deferment terms, etc.

Suggested Answer:

The UCP can be applied to any transaction that is irrevocable and thereby constitutes a definite undertaking of the issuer. This would include a letter of credit, standby letter of credit and a guarantee. Cash against documents conveys no undertaking of a bank and therefore would not fall under the UCP. A cash against documents transaction may be handled as a documentary collection and be subject to URC522 (ICC Uniform Rules for Collections).

Article 2 - Definitions

- 2.22 We stipulated in our LC that the working days of our bills section were Monday to Friday. If the documents were received by our bank on a Saturday and signed by a person from another department, is it correct to say that Saturday is not one of our banking days?

Suggested Answer:

The definition of 'banking day' in UCP 600 article 2 specifies that it is a day on which the bank is regularly open to perform an act subject to the rules. Your advice of the credit clearly indicated the banking days for the department concerned. A presentation made and signed for on a Saturday would be considered as a presentation made on the following Monday or next banking day.

- 2.23 The definition of "Issuing Bank" - does this cover a non-bank issuer or not?

Suggested Answer:

The UCP is structured on the basis that a credit is issued by a bank, thus the definition of issuing bank. Where there is a non-bank issuer, the definition would apply to that non-bank in the context that the credit is being issued by the non-bank issuer on its own behalf. All further references in the UCP to 'issuing bank' would apply to that non-bank issuer.

- 2.24 Honour or negotiation - is this with or without recourse, or does it depend on which party (issuing bank, confirming bank or nominated bank) honours or negotiates?

Suggested Answer:

Honour under a credit is deemed to be without recourse whether it is made by an issuing bank, confirming bank or nominated bank. It is often the case that for a credit available with a nominated bank by payment the nominated bank may enter into a form of 'with recourse' agreement with the beneficiary as they have given no undertaking in respect of the payment that they are being asked to make. Negotiation effected by a confirming bank is without recourse to the beneficiary (see UCP 600 sub-article 8 (a) (ii)). Negotiation effected by a nominated bank is generally with recourse to the beneficiary, although the nominated bank may enter into a form of agreement with the beneficiary to do so on a without recourse basis.

- 2.25 If the nominated bank only agrees to advance funds to the beneficiary, are they authorised to state on their cover letter that they have negotiated the documents? If in actual practice the nominated bank does not advance funds but only transfers the funds he receives from the issuing bank, can the beneficiary sue him?

Suggested Answer:

If the nominated bank agrees to advance the funds to the beneficiary, on a specified date in the future, this meets one of the requirements of the definition of 'negotiation' and the bank may indicate on their schedule that they have negotiated. If at the time of the advance being due, the nominated bank is not comfortable in effecting settlement prior to receipt of the reimbursement from the issuing bank, then they are under no obligation to make settlement as they had not confirmed the credit. The agreement to advance is still conditional given the non-confirmation of the credit. The beneficiary should not be in a position to sue the bank due to them waiting until the covering funds arrived.

- 2.26 Please explain the meaning of "or the documents so delivered" in the definition of "presentation".

Suggested Answer:

The definition of 'presentation' must be read in the context in which it is used in the UCP. Delivery of documents is the actual delivery that is made to the concerned bank. The reference to "documents so delivered" refers to the documents that have already been delivered and are in the possession of the concerned bank.

- 2.27 Please explain negotiation under article 2. It is not clear what is understood by "advancing or agreeing to advance funds to the beneficiary".

Suggested Answer:

Negotiation may take two forms. First, where the beneficiary is looking for immediate settlement rather than wait until the due date or until the issuing bank honours under a sight transaction. This is when advancing will occur. The advancing of funds, by the nominated bank, will be made to the beneficiary less interest covering the period between the date of settlement to the beneficiary and the expected date reimbursement will be received from the issuing bank. Second, where the beneficiary

does not require immediate settlement but will await settlement on the due date or the date funds are expected to be received from the issuing bank. This will involve the nominated bank agreeing to advance the funds on the due or expected date. This is not an undertaking to do so, unless the advice of the bank is worded to that effect, or the nominated bank has added their confirmation.

- 2.28 Article 2 is not clear in terms of "international standard banking practice". It might be considered to be "too wide a concept", applicable to different countries and could then easily lead to dispute.

Suggested Answer:

It is true that international standard banking practice is neither defined nor confined in its application. For those practices that are articulated in ICC publication no. 681 of the same name, the "ICC countries" agreed that these were acceptable practices. For matters not covered, but nonetheless deemed international standard banking practice, it would be for one bank in a dispute to argue the case that it was an acceptable and usual practice. This can be based on past experience, previous transactions and general trading patterns and conditions existing for that type of transaction.

- 2.29 With reference to the definition of negotiation does "on or before the banking day on which the reimbursement is due to the nominated bank" apply only to advancing or also to agreeing to advance funds? If the answer is yes to both, then the nominated bank may make an advance even after the issuing bank has accepted the draft, is this true?

Suggested Answer:

The wording shown in quotation marks applies to both advancing and agreeing to advance funds. The basis of negotiation, in the UCP, is that it occurs at the point the nominated bank determines a complying presentation has been made. If a nominated bank does not negotiate at this time, it can be argued that they have not acted according to their nomination. If a nominated bank intends to advance funds once the issuing bank has accepted the draft, then they should "agree to advance funds to the beneficiary when the documents are taken up by the issuing bank". This advises the beneficiary the point at which settlement will occur and comes under the definition of "agreeing to advance".

Article 3 - Interpretations

- 3.9 It seems that UCP 600 does not define "signature". Could you explain it?

Suggested Answer:

Whilst there is no 'definition' of signature in UCP, an interpretation of what constitutes a signature is given in article 3. Article 3 states "[A] document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication".

- 3.10 Please explain once again the term "separate banks" in UCP 600, article 3.

Suggested Answer:

The reference to "[B]ranches of a bank in different countries are considered to be separate banks" applies to the roles banks perform under the UCP. They are considered separate for the purposes of the rules in a circumstance such as where a branch of a bank in London may issue a credit and a branch of the same bank in New York could confirm it. Where branches of the same bank, located in the same country, issue and confirm a credit they will be considered to be the same bank.

- 3.11 Regarding UCP 600 article 3 and issues of "on or about". If the credit says only "about", how do we interpret and understand it?

Suggested Answer:

Ideally, the word 'about' should not be used in attempting to define a timeline for something to occur. If used, it would be considered to have the same interpretation as if the words "on or about" had been used.

Article 4 – Credits v. Contracts

- 4.6 Why should copies of an underlying contract not be included?

Suggested Answer:

Banks are not concerned with the terms and conditions of a contract, some terms and conditions of which may go well beyond the requirements that are necessary for a credit. It is the responsibility of the applicant to include all the necessary components of the contract into the application for the issuance of the credit. It is then the responsibility of the beneficiary to ensure that the credit reflects the requirements of the contract from their perspective. To allow the inclusion of a sales contract as an accompaniment to the credit may cause serious misunderstanding or issues if the conditions conflict or there are some terms and conditions that are not included in the credit.

Article 5 – Documents v. Goods, Services or Performance

Article 6 – Availability, Expiry Date and Place for Presentation

- 6.31 If the draft is to be drawn on the advising bank and the LC is available with the advising bank, can it be available by negotiation?

Suggested Answer:

No. If the draft is drawn on the nominated bank (advising bank in this case) then it can only be available with the nominated bank by payment (sight) or acceptance (usance). The definition of negotiation refers to the purchase of drafts drawn on a bank other than the nominated bank i.e., drafts drawn on the issuing bank or reimbursing bank.

- 6.32 A LC must not be issued available by a draft drawn on the applicant. How can we abide by this if the LC was issued by a corporation?

Suggested Answer:

The drafts, if required, will still be drawn on a bank i.e., the bank that will be nominated in the credit to examine the documents and effect settlement if they comply.

- 6.33 LC is available with Bank A by negotiation. The beneficiary presents documents to Bank B. Bank B merely checks and sends the documents to the issuing bank and declares "We did not negotiate the documents". Will this be a discrepancy? Will the beneficiary get paid if all terms and conditions are complied with?

Suggested Answer:

Bank B is not a nominated bank and therefore they cannot declare that they have negotiated, thus their comment on the schedule. The issuing bank cannot refuse based solely on the fact that the documents have been received from a bank other than the nominated bank. If the documents comply and the issuing bank receive advice from Bank A that no other presentation was made to them, the issuing bank must honour an otherwise complying presentation.

- 6.34 The beneficiary's bank is asked by the beneficiary to negotiate documents under a LC that is restricted to the issuing bank for payment or acceptance. Is the bank in a good position to do that? Are there any risks?

Suggested Answer:

If the beneficiary's bank is not a nominated bank it has no greater rights than the beneficiary under the credit and UCP 600. The documents must reach the issuing bank no later than the expiry date and any stated last day for presentation. The bank will be responsible for ensuring delivery of the documents to the issuing bank and will not obtain any protection from UCP 600 article 35 in the event that they are lost in transit. Any negotiation that is effected should be handled under the credit facility of the beneficiary.

- 6.35 LC is opened in favour of a beneficiary in country AAA but indicates the place of presentation as country BBB (another country). Can we do this?

Suggested Answer:

Wherever possible, the place of presentation of documents should match that of the place of the beneficiary. In the circumstances as outlined, the beneficiary will be required to present the documents to a bank that is not in their own location, or to the issuing bank directly.

- 6.36 The LC is available with Bank A in Shanghai with expiry place and date as Shanghai 1st October. We (Bank B), acting as presenting bank in Hong Kong, received documents on 30 September and sent them directly to the issuing bank. Is this a complying presentation?

Suggested Answer:

It will be a complying presentation if the issuing bank receives the documents on 1 October (if 1 October is a banking day, otherwise the next banking day) and they comply with the terms and conditions of the credit.

- 6.37 Is an issuing bank considered to be a nominated bank?

Suggested Answer:

If the credit is stated to be available with the issuing bank by payment, acceptance or deferred payment, then it will be considered to be a nominated bank under the definition that is given in UCP 600 article 2.

- 6.38 A LC available with a nominated bank is also available with the issuing bank. My question is whether a LC available with a nominated bank, say Bank A, is also available with the confirming bank, say Bank B?

Suggested Answer:

This will depend on the terms and conditions stated in the credit. A confirming bank need not be a nominated bank. By stating that the credit is available with Bank A seems to indicate that it is not available with any other bank. In this case, for Bank B to be a nominated bank, the credit must so specifically state.

- 6.39 What happens if documents are presented to a non-nominated bank? Does the non-nominated bank have the right to say documents are compliant?

Suggested Answer:

As a bank that is not nominated to act, the bank has no status in the UCP. The bank may proceed to examine the documents, as a service to its customer, and its view on the documents will be just that – its own personal opinion as to whether they comply or not. The final decision will rest with the nominated bank and/or the issuing bank.

- 6.40 LC is available with any bank by negotiation stating that the advising bank holds special instructions regarding reimbursement. Documents must be presented to the advising bank or bank nominated by advising bank, otherwise delay payment or a penalty will occur. Can we present documents directly to the issuing bank?

Suggested Answer:

A credit constitutes a definite undertaking of the issuing bank to honour a complying presentation made to the nominated bank or the issuing bank. An issuing bank cannot refuse a presentation that is made directly and they must abide by the content of articles 14, 15 and 16 in the handling, settlement and/or refusal of those documents. Given the instruction in the credit, a bank acting under its nomination would be advised to follow the stated instructions as this will, invariably, hasten the payment process.

Article 7 – Issuing Bank Undertaking

- 7.18 An issuing bank's undertaking to reimburse a nominated bank is independent of the issuing bank's undertaking to the beneficiary, what does this mean?

Suggested Answer:

Sub-article 7 (c) recognises that an issuing bank's obligation to reimburse a nominated bank is separate and independent of its obligation to honour a beneficiary's presentation for honour.

- 7.19 LC is available by negotiation and issuing bank informs their acceptance via SWIFT but fails to honour on the maturity date. Please advise how to settle this matter.

Suggested Answer:

Other than pursuing the issuing bank for settlement (together with any interest for the delay in payment), the only course of action may be to take legal action to recover the amount due.

- 7.20 In a local LC, no confirmation is added. But how is it a secured payment under UCP 600?

Suggested Answer:

Security is achieved by having the LC issued by a bank that is well known and trusted in the local market. The issuing bank, which will be known to the beneficiary, will provide their undertaking to make settlement to the beneficiary upon presentation of complying documents.

- 7.21 MT700 sent at 9.00am on 10 October 2008 and MT799 sent at 3pm on 10 October 2008. The content of MT799 is to correct information in the MT700. Both of them are issued on the same day. Can we treat the MT799 as an amendment?

Suggested Answer:

Sub-article 7 (b) states that the issuing bank is irrevocably bound as of the time that the credit is issued. Unless the content of the MT799 is critical to the structure of the MT700 representing a workable credit that is acceptable under the UCP, it will be considered to be an amendment.

Article 8 – Confirming Bank Undertaking

- 8.9 A bank is authorized or requested by the issuing bank to confirm a LC, but the bank advised the LC to the beneficiary without confirmation and did not advise the issuing bank of this fact. Would you please inform us the risks of the nominated bank?

Suggested Answer:

Sub-article 8 (d) is quite clear that the bank should inform the issuing bank, without delay, that it is not confirming, or has not confirmed, the credit. Having sent such a message, the UCP allows the bank to advise the credit without confirmation. The message to the issuing bank is a courtesy so that the issuing bank is aware of the status of the transaction. The risks to the nominated bank lie predominantly outside the LC i.e., in the relationship between the two banks and the failure of one to advise the other of their non-adherence to a condition of a credit.

- 8.10 A credit issued by Bank A was confirmed by Bank B and it stated that Bank B was also the reimbursing bank. The documents are required to be sent to Bank A directly and for the presenting bank to claim reimbursement on Bank B. The presenting bank sent documents to Bank B. Is Bank B justified in saying that the presenting bank sent documents incorrectly and insist that the presenting bank send the documents to Bank A and only claim reimbursement on them?

Suggested Answer:

The structure of the credit would seem to indicate that another bank was named as a nominated bank otherwise how would compliance be determined and a reimbursement claim be sent? Whether the documents were sent to the wrong place or not would depend on the wording of the confirmation given by Bank B. If Bank B saw their role solely as reimbursing bank, the confirmation should have been in the form of a reimbursement undertaking rather than a conventional confirmation advice.

- 8.11 A bank agrees to add its confirmation to a sight credit. When the beneficiary presents their documents in compliance with the credit should the confirming bank pay the LC after deducting interest from the time it claims reimbursement to the time it is reimbursed?

Suggested Answer:

Any deduction of interest will arise when the credit does not provide reimbursement in the form of an authority to debit an account or claim from a reimbursing bank. In either of these two instances, the payment to the beneficiary will be with the same value date that the issuing bank's account was debited or the value date that reimbursement was requested. Where the credit is available by negotiation and the issuing bank will reimburse on their receipt of the documents, interest will be deducted for the period up to the time reimbursement was expected – if the beneficiary required an advance. If the beneficiary requested the bank to agree to advance funds, the confirming bank must give an undertaking to pay no later than a specified date i.e., the date that reimbursement is expected.

- 8.12 Does a confirming bank only undertake its confirmation obligations in respect of documents that are presented to that confirming bank?

Suggested Answer:

This will depend on the wording of the confirmation advice. If the wording states that the confirmation applies to the extent that complying documents are presented to the confirming bank in accordance with the terms and conditions of the credit, then the obligations only arise against a presentation so made to the confirming bank. If the advice states something like "we confirm this credit" and it is available with any bank, the confirmation will also stand for presentations made to another nominated bank (see sub-article 8 (a) (i) (b-e)).

Article 9 – Advising of Credits and Amendments

- 9.17 Question concerning an advising bank and a second advising bank. Our bank received an MT700 with field 57a (advise thru bank) as ABC Bank. Who is the advising bank? Is there a second advising bank?

Suggested Answer:

Your bank is the advising bank as you are the bank that received the credit from the issuing bank. ABC Bank will be considered to be the second advising bank.

- 9.18 Are there any rules concerning advising LCs through another country? Some countries refuse to accommodate this request.

Suggested Answer:

There are no rules in this respect. Banks use their correspondent network or branch network to facilitate the advising and confirmation of credits. If a bank is not able to do so, they may request/instruct another bank to issue the credit on their behalf. In this case, the instructing bank becomes the applicant bank in the advice of the credit.

Article 10 - Amendments

- 10.13 At the first drawing the beneficiary accepted the amendment. Can the beneficiary refuse the amendment at the second drawing? Is the acceptance of amendment binding on the beneficiary?

Suggested Answer:

If the beneficiary has accepted the amendment, by notification of acceptance or by the presentation of documents for the first drawing that complied with the credit and the amendment, then this is binding on the beneficiary for any future presentation that is made. The beneficiary cannot refuse the amendment for the second drawing.

- 10.14 The beneficiary is entitled to express his acceptance or refusal of an amendment by presenting documents. If the amendment is about fees, say "discount charges payable by the applicant" changed to "discount charges payable by the beneficiary", does a presentation by the beneficiary mean that the beneficiary has accepted the amendment, or how must the beneficiary express its acceptance or refusal of this amendment?

Suggested Answer:

This is a form of amendment that examination of the documents will not determine acceptance or rejection. Enquiries must be made of the beneficiary to determine whether or not they have accepted the amendment, before proceeding with the honour or negotiation of the documents.

- 10.15 In article 1 it is stated "unless otherwise expressly modified or excluded". May we treat the request of the issuing bank "beneficiary must inform their acceptance of the amendment within 7 days" as a modification and that it should be complied with?

Suggested Answer:

If such a condition is inserted into an amendment, it cannot be seen as a modification as UCP 600 sub-article 10 (f) states that such a condition will be disregarded. Sub-article 10 (f) qualifies the application of the wording in article 1 in respect of amendments containing such wording.

- 10.16 LC and amendment number 1 are received. The first shipment is completed according to the original LC, but not the amendment. The second shipment is completed complying with both the original LC and the amendment.

Questions:

1. Are the above 2 shipments acceptable to the bank?
2. Can a LC amendment be accepted at the time of the 2nd shipment when not utilised for the 1st shipment?

Suggested Answer:

1. Yes, it is possible. The amendment only stands to be accepted once notification to that effect is given by the beneficiary. If the first drawing occurred at around the time of the amendment, it can be seen that it may have been too late to incorporate it into that drawing. Also, the amendment may only have an impact on the second or subsequent drawing(s).
2. See comments above.

Article 11 – Teletransmitted and Pre Advised Credits and Amendments

Article 12 - Nomination

- 12.20 Is a nominated bank that agrees to advance funds to the beneficiary, but fails to perform the advancement, still a nominated bank?

Suggested Answer:

The nominated bank acted on its nomination at the time of presentation of documents with all intent to advance the funds on the agreed date. As the nominated bank had not given its undertaking to do so, they were under no obligation to fulfil that 'agreement' if circumstances with regard to the issuing bank changed between the time of negotiation and the time that settlement was due.

- 12.21 In a deferred payment LC must the nominated bank indicate that it has prepaid or purchased (or discounted) the documents in its covering schedule to get the position of a nominated bank?

Suggested Answer:

There is no requirement in the UCP for a bank to indicate on their covering schedule that they have prepaid or purchased under the credit. However, such an advice may deter any unnecessary communications later on, in the event of any issues relating to the financing status of the credit.

- 12.22 Question concerning negotiation. How do we declare that we have negotiated the LC, i.e., by merely indicating on the cover schedule that we have advanced or agreed to advance? If we decide to advance after presentation must we send a message to the issuing bank to declare our intentions?

Suggested Answer:

Indication of the fact that you have taken up the nomination to negotiate may be signified solely by stating "we have negotiated" or similar. There is no requirement to declare the form of that negotiation. If you have stated to the beneficiary that you agree to advance, this agreement could be to advance once the documents have been accepted by the issuing bank. In this case, the covering schedule could still mention that you have negotiated and avoid separate messages after the event.

- 12.23 LC states that it is available with Bank A by payment. It also states that Bank A holds special reimbursement and disposal instructions for the documents etc. Can we understand these sentences to be that Bank A agrees to honour or negotiate the documents?

Suggested Answer:

Unless Bank A has added their confirmation or gives a specific undertaking to honour or negotiate, the answer is no.

- 12.24 Can a nominated bank "discount" under a deferred payment credit?

Suggested Answer:

The wording 'prepay or purchase' is used in the UCP instead of discount. For all intents and purposes, this reflects an authorization to 'discount'.

- 12.25 If the confirming bank confirms a LC which is available with the issuing bank by deferred payment, is the confirming bank authorized to prepay before maturity under a complying presentation? Is there any difference if the LC is available with the nominated bank by deferred payment and to be confirmed by the nominated bank?

Suggested Answer:

If the credit is available with the issuing bank by deferred payment, the confirming bank is not a nominated bank. The authorization in sub-article 12 (b) to prepay or purchase is confined to a nominated bank. The confirming bank will require the issuing bank's specific authorization to prepay under the credit. A confirming bank that is a nominated bank and has given their deferred payment undertaking is authorized to prepay according to sub-article 12 (b).

Article 13 – Bank-to-Bank Reimbursement Arrangements

- 13.6 UCP 600 sub-article 13 (a) refers to a nominated bank being a claiming bank, while URR stipulates that a claiming bank is the nominated bank which negotiates, pays, accepts or incurs a deferred payment undertaking. In my opinion it seems that the two publications give a different definition of the claiming bank, is this right?

Suggested Answer:

No. The UCP looks at the position from the banks that are involved in a credit and the URR from the perspective of reimbursement. The definitions effectively mean the same thing i.e., that a claiming bank is the bank that is nominated to act under the credit and to make a claim.

Article 14 – Standard for Examination of Documents

- 14.53 If an inspection certificate only indicates a quantity or number of goods shipped, but no general description of the goods, will it be okay?

Suggested Answer:

Yes. The UCP does not require any form of linkage between the documents. If the individual document complies with its requirements in the credit and the content of sub-article 14 (f) it will be deemed to comply. Sub-article 14 (e) does not require a goods description to appear on every document.

- 14.54 The period of 5 banking days is not subject to any upcoming events. How to consider what is any upcoming event?

Suggested Answer:

An upcoming event will be either the expiry date or latest date for presentation falling between the date of presentation and the date that falls five banking days after the date of presentation.

- 14.55 LC requires 'certificate of inspection'. Will the presentation of a 'certificate of analysis' be acceptable?

Suggested Answer:

The title of the document is not the important feature but that the content meets the requirements of the stipulated document and UCP 600 sub-article 14 (f).

- 14.56 With article 14 (d) and (e), what is the difference?

Suggested Answer:

Sub-article 14 (d) talks of any form of data on any stipulated document not conflicting with the data shown in that document, any other stipulated document or the credit. Sub-article 14 (e) refers solely to the description of the goods and the manner in which it is to be stated on documents, if it is decided that a goods description will appear on documents other than the commercial invoice.

- 14.57 Should the address and telephone number of the applicant be stated as part of the notify party details?

Suggested Answer:

Although such information aids the process of notifying the named party of the arrival of the goods, it is only required if specified in the credit. Sub-article 14 (j) states that if the address and contact details of the applicant are shown, these must be the same as that stated in the credit.

- 14.58 As per UCP 600 sub-article 14 (k) "a transport document may be issued by any party other than a carrier". Can the BL be issued by the beneficiary?

Suggested Answer:

It is possible and does happen for certain industries or professions. For example, oil companies will own their own vessels and will sign as 'owner'. Some commodity companies own their own vessels and will sign as 'carrier'.

- 14.59 How many days are allowed for the presentation period if copy transport documents are presented and LC does not specify the number of days for presentation?

Suggested Answer:

The documents must be presented no later than the expiry date. Sub-article 14 (c) refers to the default period of 21 calendar days applying to original transport documents covered by articles 19-25 of UCP 600.

- 14.60 The shipper or consignor in any document need not be the beneficiary of the LC. Question: Any document includes the draft? In general practice under UCP 600, all documents means all documents except drafts?

Suggested Answer:

It is highly unusual for a draft to include the name of the shipper or consignor or for a credit to include such a condition. You are correct in saying that where a credit may state "all documents" in relation to the inclusion of certain data, this means all documents except the draft.

Article 15 – Complying Presentation

- 15.7 Can negotiation be made after 5 working days or after nominated bank receive the acceptance advice from the issuing bank or confirming bank?

Suggested Answer:

There is no pre-set time in UCP as regards to when negotiation must occur. Sub-article 15 (c) states that negotiation will occur, by a nominated bank acting on its nomination, when the bank determines that the documents comply. This could be day 1 or it could be day 5 or beyond. Documents could be determined to be compliant on day 5 but the negotiation occurs on day 7. Negotiation should occur on the basis of the completion of the nominated bank's determination of compliance. Negotiation once the issuing bank has advised their acceptance of the documents can occur under the auspices of 'agreeing to advance funds' once the advice has been received.

Article 16 – Discrepant Documents, Waiver and Notice

- 16.43 If a confirming bank determines a presentation is complying and forwards the documents to the issuing bank, whether or not the issuing bank has the right of holding the opposite view on the documents and refusing to pay the confirming bank?

Suggested Answer:

It is quite often the case that a view of a confirming or nominated bank differs to that of the issuing bank. If this situation arises, it is for the banks to come to an agreement on which bank was correct.

- 16.44 A nominated bank acting on its nomination should advise the beneficiary whether they accept the documents or not within five banking days. If the nominated bank, for example, a negotiating bank fails to advise the beneficiary they refuse the documents within five banking days, what risks will the negotiating bank take?

Suggested Answer:

Unlike an issuing or confirming bank, a nominated bank is not precluded by sub-article 16 (f) from claiming the documents are discrepant if they fail to provide a refusal by the close of the 5th banking day following presentation. Such delays in processing documents may reflect badly on the standing and reputation of the nominated bank, but no penalty attaches to the nominated bank.

- 16.45 If the nominated bank advises the beneficiary of their refusal of documents by fax, email or telephone, how can they evidence they have advised the beneficiary?

Suggested Answer:

It is always advisable to follow up a telephone conversation with a fax or email confirmation. For fax or email advising, a copy of the fax sending report and a return receipt message for an email should suffice as evidence of sending.

- 16.46 Please explain more on the 4 options available in refusing the documents (article 16).

Suggested Answer:

Options (a) and (c) reflect little change from the options that were available under UCP 500 i.e., for the bank to either hold the documents pending instructions from the presenter or to return them. Returning them is an option that is usually reserved for issuing banks where the issuing bank has no intention of accepting a waiver from the applicant or the applicant refuses to provide one. Option (b) has been added as this was what most banks were doing, in practice, under UCP 500, even though the rules did not specifically authorise it i.e., hold the documents and seek waiver and if

received (and acceptable) to honour or negotiate unless instructed otherwise. Option (d) is a new concept, but it reflects the fact that the presenter may often be aware of discrepancies in the documents and may provide instructions ahead of the examination by the nominated, confirming or issuing bank.

- 16.47 An issuing bank's refusal notice states that the content of a certificate of inspection is not as per other documents. Is it a valid discrepancy? If not, can the issuing bank provide another SWIFT message to explain what is the actual difference between the certificate of inspection and the other documents? How about if the second message is sent within the 5th banking day following presentation?

Suggested Answer:

The wording of the discrepancy is not clear in two respects (1) what content or data and (2) which other documents. On this basis, the discrepancy does not meet the criteria required by article 16 and should be disregarded. A further message may not be sent that changes the structure or intent of the original message, even if sent within the 5th banking day.

- 16.48 What sort of refund can the bank claim and from whom?

Suggested Answer:

The issuing bank or confirming bank can claim a refund of the amount that has been reimbursed by them or by a reimbursing bank together with interest from the time of the initial payment until the refund is received. The refund would be claimed from the nominated bank.

- 16.49 LC states: USD500 will be deducted for documents that contain discrepancies. This is a sight LC and the issuing bank checks the documents and finds discrepancies. The applicant and issuing bank decide to waive the discrepancies and pay the proceeds within the 5 banking days and the issuing bank deducts a USD500 discrepancy fee. Is this correct?

Suggested Answer:

Firstly, a fee of USD500 for discrepancies seems quite exorbitant. The situation that you highlight reflects a number of transactions i.e., where the issuing bank identifies discrepancies but before a refusal is sent the applicant provides their waiver. The presenter is unaware of the discrepancies but has a deduction for a discrepancy fee. In an ideal world the bank would deduct the fee and outline the discrepancies that had been observed and waived. In this way, the nominated bank could question the validity of them, if applicable. The fact that the issuing bank has not advised the discrepancies, does not stop the nominated bank seeking a subsequent advice of them for their consideration.

- 16.50 In case the confirming bank accepts the documents presented, will the issuing bank still have a 5 working day period for refusal of such documents after it has received them?

Suggested Answer:

The maximum of 5 banking days to examine documents applies to each of the banks i.e., the confirming and the issuing bank.

- 16.51 Can a nominated bank, after informing a customer of discrepancies in a single notice, inform the customer of further discrepancies in another notice sent after the first one? What if the bank decides to pay after the correction of discrepancies under the first notice has been completed and then they find additional discrepancies? How can it be protected that it will get reimbursed by the issuing bank?

Suggested Answer:

Sub-article 16 (c) requires that a single notice of refusal be given. If the nominated bank observes further discrepancies, it may be that they will decline to act any further on their nomination and not honour or negotiate. A nominated bank is not precluded under sub-article 16 (f) in the same way as an issuing or confirming bank for failure to perform under this article.

- 16.52 If a presenting bank has listed the discrepancies in its letter, is it necessary for the issuing bank to send an MT734 or MT799 after checking the documents?

Suggested Answer:

Yes. The issuing bank must send a refusal message even if the discrepancies that they have observed are the same as those listed on the covering schedule of the presenting bank. Failure to do so will preclude the issuing bank from claiming that the documents are discrepant and they will be required to honour the presentation.

Article 17 – Original Documents and Copies

- 17.17 Photocopy of bill of lading or insurance document manually signed by the carrier or insurance company, do we treat them as original?

Suggested Answer:

Yes. The manual signature constitutes one of the ways in which a document may be considered to be an 'original'.

- 17.18 LC requires 'duplicate of packing list', will a copy of packing list presented be ok?

Suggested Answer:

Yes, for 'duplicate' you can also read "copy".

- 17.19 What is the difference between documents that are typed or printed? If there is no signature, what is an original? Which of the following documents is original or not?

1. typed without letterhead and signature
2. printed without letterhead and signature
3. printed with letterhead but no signature

Suggested Answer:

The reference to 'typed' in the rule refers to a document that is created on a typewriter.

1. This is an original as it is a 'typed' document.
2. This is a completely reproduced document and therefore will not be considered to be an original.
3. This is data added to another document containing the letterhead of the company and will be considered to be an original.

- 17.20 What do you mean by the words "document issuer's original stationery"? Can a document sent by fax, by the customer to the bank, bearing customers fax number be accepted as original?

Suggested Answer:

Document issuer's original stationery is letterhead paper of the company. A fax is not an original document as it is a copy of an original that resides with the sender of the fax.

Article 18 – Commercial Invoice

- 18.20 If a commercial invoice is issued for an amount in excess of the amount permitted by the LC this means the draft may be drawn for the same amount in excess of the LC permitted amount and the issuing bank may accept and pay the claiming amount over the LC amount. This is different from UCP 500. Is this right?

Suggested Answer:

If the invoice is issued for a greater amount than the amount of the credit, the draft should be drawn for the credit amount or the amount remaining under the credit. If both the invoice and draft are drawn in excess of the credit amount, this would indicate that the beneficiary is requiring full settlement rather than that which is allowed in sub-article 18 (b). There is no change in practice or process from UCP 500.

- 18.21 Should all the content in field 45A be indicated in the invoice?

Suggested Answer:

In most cases, the answer will be yes. However, there will be occasions where the content is not applicable to the shipment at hand and only the data that relates to the shipment under that invoice will be stated.

- 18.22 In the calculation of total amount in the invoice, there is a currency that is different from LC currency. Is that acceptable?

Suggested Answer:

No. Sub-article 18 (a) (iii) states that the invoice must be made out in the currency of the credit. This would include individual items listed within the invoice.

- 18.23 In article 18 it states that the description of goods in a commercial invoice must correspond with that appearing in the LC, but in sub-article 14 (d) it states that data in a document does not need to be identical. Why is that, please explain?

Suggested Answer:

Sub-article 18 (c) provides a specific rule in respect of commercial invoices. Sub-article 14 (d) is a rule that governs other form of data across all documents. Sub-article 14 (e) governs the wording of the goods description on documents other than the commercial invoice.

- 18.24 We are the nominated bank, the invoice we receive is US\$110,000 but the LC amount is only US\$100,000. However, on our covering letter, we instruct the issuing bank to pay US\$100,000. Please suggest how we can collect the amount of US\$10,000?

Suggested Answer:

Settlement of the remaining USD10,000 is a matter for the beneficiary and the applicant outside the credit and the UCP.

- 18.25 In an MT700 it stipulates that drafts are to be issued at sight for 100% invoice value. In this case, can the nominated bank accept a commercial invoice for an amount in excess of the amount permitted by the LC?

Suggested Answer:

No. When the credit is issued, the expectation is that the invoice will not be for an amount that is greater than the credit. This wording does not modify the rule in sub-article 18 (b).

Article 19 – Transport Document Covering at Least two different modes of Transport

- 19.13 Can transshipment be considered to be transshipment in more than 2 modes of transport, maybe 3 or 4?

Suggested Answer:

Sub-article 19 (c) (ii) recognises that in a multimodal or combined shipment transshipment must be allowed, even if prohibited by the credit. When transshipment is referred to in a credit it is not necessarily an action that occurs once, it can happen any number of times. In a multimodal or combined transport, the goods may be loaded and unloaded from (and to) more than 2 modes of transport.

- 19.14 Different from the UCP 500, and according to the UCP 600, a multimodal transport document does not need the name of a multimodal transport operator to be indicated and such a document can only be signed by the carrier instead of being signed by either the carrier or multimodal transport operator. Why is the multimodal transport operator excluded in UCP 600?

Suggested Answer:

Signing of the document by a multimodal transport operator or an agent acting on their behalf was removed from the UCP due to the fact that the drafting group were advised by transport companies and agencies that this is not a common occurrence and it is more likely that the document will be signed by the carrier, the master or their agent.

Article 20 – Bill of Lading

- 20.32 Can the name of the carrier be different from the name of the carrier who signed?

Suggested Answer:

No. This will create a conflict in the document and is not permitted by the rule in sub-article 14 (d).

- 20.33 Can you provide your comments on the following?
LC requires Full set Marine Bill of Lading.

P. of loading: A

P. of Discharge: B

Bill of lading presented:

Place of receipt: C

P. of loading : A

P. of discharge: B

Issuing bank refuses bill of lading stating:

Multimodal Transport Document presented

Is the issuing bank's refusal correct?

Suggested Answer:

The fact that the bill of lading indicates a place of receipt does not make the document discrepant. To comply with the requirements of sub-article 20 (a) (ii) the

bill of lading will require a shipped on board notation showing the name of the vessel, the port of loading and the date. Provided the document is so issued, there is no discrepancy.

- 20.34 In the pre-printed condition of a BL (on the front page), the following words are included "if required by the carrier this bill of lading duly endorsed must be surrendered in exchange for goods or delivery order" is it acceptable?

Suggested Answer:

This was first raised in question 20.25 and the answer was given that it will be discussed at the ICC meeting in October 2008. That meeting saw the ICC declare that no opinion could be issued as the Banking, Transport and Commercial Law & Practice Commissions could not agree on the stance for the response. However, there was common agreement that the wording reflects terms and conditions of carriage. Sub-article 20 (v) states that banks will disregard the content of terms and conditions of carriage.

- 20.35 BL signed by ABC Company for the carrier 'XYZ Company' not showing ABC Company as agent. Is this Bill of Lading acceptable?

Suggested Answer:

If an agent signs the bill of lading on behalf of or for a named carrier, the agent must declare their name and capacity i.e., ABC Company as agent for XYZ company the carrier. This is covered in UCP 600 sub-article 20 (a) (i).

- 20.36 For a pre-printed received for shipment BL a dated on board notation was made just in or very close to the signature box. The bill of lading did not have a separate issuance date. Could the date of the on board notation play two functions - one for the notation, another for the issuance date or did the BL need to be dated separately?

Suggested Answer:

The bill of lading requires two dates – one for issuance and one for the on board notation. Also see paragraph 13 of ISBP.

- 20.37 As per the UCP, both a bill of lading and a sea waybill can be 'however named'. But as you know, in the UCP, the contents of the two articles are the same, except for their names. Furthermore, a marine bill of lading acts as title to the goods, but the sea waybill does not. In view of the expression "however named" can a bank accept a document named sea waybill instead of a marine BL in case the sea waybill complies with article 20 in every other respect?

Suggested Answer:

A sea waybill will not be acceptable as a form of bill of lading for most credits due to the fact that a sea waybill is incapable of being issued to order of a named party. Where the credit requires the goods to be straight consigned to a party it would be acceptable as the bill of lading and the sea waybill will operate in the same manner i.e., will be straight consigned, and will not require the presentation of an original in return for taking control of the goods.

- 20.38 A Bill of Lading shows in its heading or in the top right hand corner "XYZ Ltd." It is signed by "XYZ Ltd as carrier" instead of XYZ Ltd, the carrier" Can it be deemed as correctly signed?

Suggested Answer:

Yes, a bill of lading that is signed "as carrier" indicates the party signing is the carrier of the goods.

- 20.39 If the BL indicates the name of the carrier as K Line it is clear, but if a BL is issued by a freight forwarder, how does it indicate the carrier name?

Suggested Answer:

In exactly the same way – either by a statement to that effect or in the manner of the signing i.e., ABC Co. as agents for K Line, the carrier.

- 20.40 Can you give a definition of an "on board notation"

Suggested Answer:

A notation that is either typed, stamped or written on a transport document indicating the date the goods were shipped on board. In certain circumstances, the on board notation may require further information such as the name of the vessel, the port of loading or, in a few cases, the port of discharge. The date of the on board notation is taken as the date of shipment for the purposes of determining compliance with any date of shipment stated in the credit.

- 20.41 At the signature line, there is wording "signed for carrier ABC" (ABC is a name of shipping line), would this be acceptable, considering that there's no word as agents of the carrier or as the carrier?

Suggested Answer:

A party signing "for carrier ABC" is doing so in the name of the carrier unless there is an indication that they are a named agent signing on behalf of the carrier.

- 20.42 Why does sub-article 20 (a) (iii) not include the port of discharge?

Suggested Answer:

In standard terms of carriage, the carrier contracts to deliver the goods to a stated port of discharge or any nearest port of convenience in the event that access to the named port of discharge is denied. For this reason, there is no need to make any specific provision in UCP for a situation which the carrier has a declared right in any event.

- 20.43 If goods are shipped by a pre-carriage vessel and transshipment is effected on to an ocean vessel, how do we show the 2 vessels on the B/L (in pre-carriage vessel field, in ocean vessel field or on board notation)

Suggested Answer:

The vessels should be shown in the respective boxes on the bill of lading. The details to appear in the on board notation are those that relate to the shipment taking place from the port that is stated in the credit i.e., the port from which the pre-carriage vessel or ocean vessel sailed.

- 20.44 What if "name of vessel", "shipped on board date" and "port of loading" are in accordance with the LC but are stipulated in different boxes in the bill of lading, would they be considered altogether as "on board notation"?

Suggested Answer:

No. A notation is a specific statement on the bill of lading indicating the required details. In most cases, the details shown in an on board notation are reflected elsewhere in the bill of lading.

Article 21 – Non-Negotiable Sea Waybill

Article 22 – Charter Party Bill of Lading

- 22.6 Charter party BL which is pre-printed as follows "..... as per charter dated between and" but the charter party BL is presented indicating a blank date box and without showing the charterer and charteree". Acceptable or not?

Suggested Answer:

Yes. There is no requirement in the UCP for these details to appear. It is also unlikely that the credit requested such information to appear.

- 22.7 LC requires loading port – any port in India and discharge port – Chinese ports
CPBL received says – load port – Mumbai port
Discharge port – Chinese port
LC states charter party BL acceptable. Question - is it necessary to put the exact discharge port in the BL or will the bank accept a CPBL issued as above?

Suggested Answer:

In this situation, for a charter party bill of lading, the port of discharge may be a named port in China or "Chinese port(s)". This is due to the fact that the loading and unloading operation is governed by the terms of the charter party contract which may determine offloading at more than one Chinese port.

- 22.8 If LC required charter party BL, could you present a liner BL?

Suggested Answer:

Yes, if the liner bill of lading indicated that it was subject to a charter party.

Article 23 – Air Transport Document

Article 24 – Road, Rail or Inland Waterway Transport Documents

Article 25 – Courier Receipt, Post Receipt or Certificate of Posting

Article 26 – "On Deck", "Shipper's Load and Count", "Said by Shipper to Contain" and Charges Additional to Freight

- 26.4 LC says transport document should not show any additional costs. The bill of lading says all the costs at the destination port are to be borne by consignee, but it does not show any cost. Is this a discrepancy?

Suggested Answer:

Yes. The reference to "cost" is not confined to the transport document showing an actual stated amount.

- 26.5 A beneficiary received a LC that stated "shipment on deck prohibited". Some carriers refuse to indicate this wording on the BL even though this beneficiary showed them the LC. Is there any way to force the carrier to mention this wording on the B/L?

Suggested Answer:

The wording in the credit does not require any form of words to appear on the bill of lading to indicate compliance. In fact, it is the opposite. It is stating that if the bill of lading indicates that any of the goods were shipped on deck, then the presentation will be discrepant.

Article 27 – Clean Transport Documents

Article 28 – Insurance Document and Coverage

- 28.19 When an agent or proxy sign an insurance document, must the insurance company or underwriters name be stated in the insurance document?

Suggested Answer:

Yes. The requirement in sub-article 28 (a) is that the insurance company or underwriter issue the insurance document or that if issued or signed by an agent or proxy that the document indicate whether the agent or proxy have signed for the insurance company or the underwriter.

- 28.20 As per UCP 600 sub-article 28 (b) all original insurance documents must be presented, therefore insurance documents must always indicate the number of originals, in the same way as a B/L (yes or no)

Suggested Answer:

No. Only where the document indicates that it has been issued in more than one original must all the originals be presented. Where there is no indication of the number of originals issued, only one need be presented.

- 28.21 If an insurance document is presented without any signature, but there is a clause "this document is computer generated and no signature is required" appearing on it, is it acceptable?

Suggested Answer:

No. Sub-article 28 (a) requires that the insurance document be signed by the insurance company, an underwriter or their agents or proxy.

- 28.22 The insurance document must indicate that risks are covered at least between the two places stated in the credit. The shipment details on the insurance document show shipment by sea from AAA to BBB on or about XXX. Whether those indications are deemed to cover the requirements of this sub-article or not?

Suggested Answer:

Provided AAA and BBB are at least the two places stated in the credit, then the document will be acceptable. The document must be dated no later than the date of shipment shown on the transport document.

- 28.23 If a LC requires the insurance cover to be irrespective of percentage, must the insurance document indicate I.O.P (as we have received several refusal notice mentioning this).

Suggested Answer:

All the requirements for insurance coverage mentioned in the credit, including 'irrespective of percentage', must appear on the face of the insurance document.

- 28.24 In the event that the invoice amount is in excess of the LC value, which amount should be taken for the insurance coverage? Invoice amount plus the excess amount or the LC value exactly?

Suggested Answer:

The insurance coverage should be for the full invoice value plus the percentage shown in the credit or 110% of that value.

- 28.25 If the insurance policy indicates "warehouse to warehouse clause is included" but does not indicate the place of taking in charge and place of discharge, does it comply with sub-article 28 (f) (iii)?

Suggested Answer:

Yes, warehouse to warehouse coverage is the maximum that can be obtained and will "at least" cover the shipment between the two places stated in the credit and as referred to in sub-article 28 (f) (iii).

- 28.26 Query under sub-article (f) (ii). LC requires insurance document for 110% of the invoice value. Invoice number 1 is for USD1,000 (insurance to be effected for USD1,100)
Insurance policy presented showing "covering 110% of invoice number 1" without specifying the amount. Is this acceptable?

Suggested Answer:

No, unless the invoice and insurance document are a combined document (as is the case for some beneficiaries). Otherwise, the insurance document is a stand alone document that must contain all the requirements of the credit and article 28.

Article 29 – Extension to Expiry Date or Last Day for Presentation

Article 30 – Tolerance in Credit Amount, Quantity and Unit Prices

- 30.4 The LC stipulates that partial shipment is not allowed and does not indicate a unit price or quantity. The invoice shows quantity and unit price and the total amount is less than the LC amount but within the 5% range, can UCP 600 sub-article 30 (c) be applicable here?

Suggested Answer:

For sub-article 30 (c) to apply, the bank must be able to determine from the credit and the documents presented that a full shipment of the goods has occurred.

- 30.5 How can we understand "unless sub-article 30 (b) above is applicable" in the quotation?
Can you give an example?

Suggested Answer:

This question refers to the content of sub-article 30 (c). Sub-article 30 (b) allows for a 5%+/- tolerance to apply when the goods are not subject to a stipulated number of packing units or individual items. Sub-article 30 (c) states that a tolerance of 5% less is allowed if all the goods have been shipped in full. The reference to "unless sub-article 30 (b) above is applicable" is to emphasise that where sub-article 30 (c) is applicable, there is not a doubling up of the 5% tolerances allowed in sub-articles (b) and (c).

- 30.6 In case of goods, such as pipes and cables, which are shipped by weight, banks always reject because of differences of a minor nature such as LC for 500MT whereas actual cable shipped was 500.5 MT. How can this be overcome?

Suggested Answer:

Where the goods are subject to a weight measurement, such as 500MT, a tolerance of 5%+/- applies to the quantity provided the amount that is drawn does not exceed the credit amount. Banks should not refuse for the reason you have stated.

Article 31 – Partial Drawings or Shipments

- 31.8 Partial shipment not allowed. Two sets of BL, for the same vessel, same journey but different port of loading and different port of destination. Is it a partial shipment?

Suggested Answer:

For shipment from different ports of loading to different ports of destination, the credit must allow for this. UCP 600 sub-article 31 (b) refers specifically to shipments to the same destination (as opposed to different destinations) not being considered as a partial shipment.

- 31.9 LC allows quantity 5% more or less, and partial shipment is allowed. Is 5% more or less in quantity allowed in every partial shipment?

Suggested Answer:

The tolerance applies on the total quantity of goods that is stated in the credit. Provided the total quantity that is shipped in all the partial shipments does not exceed the sum of quantity + 5%, the presentations will be acceptable. With such a credit, it is only normally the final shipment in which this issue will arise i.e., to ensure that the total quantity shipped falls within the parameters set by the credit.

Article 32 – Instalment Drawings or Shipments

- 32.7 Can we issue a LC with the following terms:
20% of invoice value upon order booking confirmation.
50% upon evidencing shipment.
30% upon receipt of the documents.

Suggested Answer:

Yes, however the credit must specify the document(s) that must be presented to draw each of the instalments.

- 32.8 Partial Shipment: Allowed
In field 44C it states 'latest shipment date' June 30, 2008
Field 47A states "Shipment should be effected in 2 lots. The 1st lot should be before June 1, 2008 the 2nd lot should be before June 30, 2008." In fact the 1st lot of goods was effected on June 15th, 2008 and 2nd lot was effected on June 30, 2008. Is this a discrepancy?

Suggested Answer:

Yes, the instalment schedule has not been met. The documents for the first shipment are discrepant and the credit ceases to be available for that and the second shipment unless the applicant gives an approval for that shipment to occur.

- 32.9 Field 45A shows shipment for goods item 1, latest shipment date: 30 Sep 2008
Shipment for goods item 2, latest shipment date: 30 Sep 2008
Is this considered to be an instalment shipment?

Suggested Answer:

Although the credit is specifying individual details for the two types of goods, this is not an instalment credit as envisaged by article 32. The structure of the credit allows for the goods to be shipped together within 30 September. An instalment credit is one that provides details of instalment shipments where the dates are within given periods that do not overlap, thereby requiring individual shipments to occur.

Article 33 – Hours of Presentation

Article 34 – Disclaimer on Effectiveness of Documents

Article 35 – Disclaimer on Transmission and Translation

- 35.21 Can the issuing bank refuse a new set of documents or photocopies of the lost documents if the re-presentation is later than the presentation period?

Suggested Answer:

No. Provided the documents were originally presented to the nominated bank in compliance with the terms and conditions of the credit, including the expiry date and presentation period, the issuing bank will be required to honour if the new set or copies otherwise comply.

- 35.22 LC states "expiry place" as the issuing bank's counters and the nominated bank sends the documents to the issuing bank. However, due to the delay of the courier service, the issuing bank received the documents after the expiry date. Does this constitute a discrepancy? Which party will be protected under article 35 - the issuing bank or the nominated bank?

Suggested Answer:

If the credit expires at the counters of the issuing bank, the documents must be received by the issuing bank within that date. If a bank is nominated to act under such a credit, they should request that the expiry place be amended to their location. The issuing bank would be entitled to refuse for credit expired. It should be noted that article 35 does not cover the situation envisaged by the query.

- 35.23 If a nominated bank determines that the presentation is complying and forwards the documents to the issuing bank, but it does not act on its nomination, for example it does not negotiate, can the nominated bank be protected by UCP 600 and get reimbursed by the issuing bank?

Suggested Answer:

Article 35 clearly states that a nominated bank is not required to honour or negotiate in order to obtain the protection of this article for the beneficiary.

- 35.24 L/C is subject to UCP 600. In field 78 'instructions to paying/accepting/negotiating bank', it states that "upon receipt of compliant documents at your counter, please forward all documents to issuing bank at address, upon receipt of documents in compliance with L/C terms and conditions at our counter, we shall pay as per your instruction."

If documents are lost in transit by the courier and the negotiating bank sends a set of photocopies of documents to the issuing bank and states that the original documents are in compliance with LC, does the issuing bank have to pay? Can issuing bank consider that with such stipulations in field 78 modify UCP 600 article 35?

Suggested Answer:

The wording stated in the credit does not modify the rule in article 35. The wording is a standard form of reimbursement text where the credit is available by negotiation. Provided the documents are examined by the nominated bank and determined by them to be compliant, the issuing bank will be required to honour a set of copy documents that otherwise comply with the credit.

Article 36 – Force Majeure

Article 37 – Disclaimer for Acts of an Instructed Party

Article 38 – Transferable Credits

- 38.49 If a LC is available with the issuing bank or a nominated bank, is the issuing bank correct to specify that it is transferable by a bank other than the nominated bank?

Suggested Answer:

No. The transferring bank should be the bank that is nominated to honour or negotiate.

- 38.50 When transferring a credit should the transferring bank check the documents presented by the second beneficiary or not? Or is the transferring bank just checking the documents substituted by the beneficiary?

Suggested Answer:

My view is yes. The content of sub-article 38 (i) states that if the substitution of documents by the first beneficiary creates discrepancies in the documents that did not exist in the presentation of the second beneficiary, the first beneficiary must correct the discrepancies on first demand or risk the sending of the second beneficiary's documents. If the documents of the second beneficiary are not examined how would the bank determine that the substitution of documents did or did not cause discrepancies to occur? If a bank is not willing to examine the documents of the second beneficiary, I would advise that they inform the second beneficiary of this fact, outlining exactly what will happen once the documents are received by the bank.

- 38.51 When using a transferable LC would it secure me as an applicant to put a condition that "no 3rd party documents are acceptable"?

Suggested Answer:

Such a clause may make the transfer unworkable, unless all the documents issued by the second beneficiary are substituted by the first beneficiary, and should not be included.

- 38.52 In a transferable LC, can we make a transfer without partial shipment being allowed whereas the original LC states that partial shipment is allowed?

Suggested Answer:

Yes. Such a change does not alter the terms of the original credit.

- 38.53 If a transferable credit is confirmed by the transferring bank, is it a must that the transferred credit be confirmed as well?

Suggested Answer:

Yes. This is a requirement in sub-article 38 (g) of UCP 600.

- 38.54 Under a transferable LC with terms of trade as DDP (Delivery Duty Paid), one of the documents asked for in the LC is "invoice to be countersigned/certified by applicant's authorized signatory". Does this requirement restrict the operation of a transferable LC?

Suggested Answer:

This will certainly restrict the ability to transfer as the applicant will only approve one invoice. A different form of document should be sought for the countersignature.

- 38.55 We (one of the 2nd beneficiaries) have received a transferable LC from the 1st beneficiary. Later, the 1st beneficiary arranged for the forwarding of an amendment to all 2nd beneficiaries. Is it possible for us to refuse to accept the said amendment?

Suggested Answer:

Yes, each transfer stands individually and any amendments may be accepted or rejected by each second beneficiary without concern as to whether any other second beneficiary has accepted or rejected it – see sub-article 38 (f).

- 38.56 Can a transferable LC also be transferred if the applicant insists on doing so? Is there any risk for the issuing bank?

Suggested Answer:

Sub-article 38 (d) states that the transferred credit cannot be transferred. This is the basic rule. However, it may be modified by reference in the transferable credit to the fact that the transferred credit may also be transferred. There are no additional documentary risks for the issuing bank as they will still make their decision based on the documents received from the nominated bank. There may be risks that the underlying parties to the transaction become more transparent.

Article 39 – Assignment of Proceeds

General Queries

- Gen79 L/C conditions - B/L, consigned to order and blank endorsed by shipper. B/L presented – consigned to order and blank endorsed by shipper and showing additional endorsement by a 3rd party. (L/C does not request an additional endorsement). Is it a discrepancy if the endorsement of B/L shows 'pay to the order of ABC Bank'?

Suggested Answer:

Endorsements are effective provided there is a logical trail from the endorsement of the shipper to the name of the party shown on the last endorsement. If the shipper has provided an endorsement in blank, any other endorsement is invalid.

- Gen80 An L/C required a signed and stamped beneficiary certificate. Beneficiary presented a certificate with a rubber stamp indicating both the company name and signature of the Company Manager. Is it a discrepancy that the beneficiary certificate is not signed and stamped?

Suggested Answer:

The rubber stamp includes the signature of the manager of the company. Article 3 states that a document may be signed by stamp. The certificate would not require a manual signature if the signature formed part of the stamp that was applied to the document.

- Gen81 A L/C is issued indicating the availability as "usance LC but pay on sight basis". The negotiating bank negotiated the documents after deducting interest. The beneficiary claimed that the interest should have been borne by the applicant and issuing bank consented to this by issuing a usance L/C 'to paid on a sight basis', but the bank refuses to refund the interest. How do we solve the problem?

Suggested Answer:

The intent behind issuing a credit that is on usance terms but for the beneficiary to be paid on a sight basis, is that the applicant bears the financing costs as it is cheaper for the applicant to have the transaction financed in the country of the beneficiary than in their own. The interest costs should be for the applicant and the

nominated bank should claim the drawing amount plus interest at the due date of the usance period.

- Gen82 LC is confirmed by the nominated bank. The compliant documents were sent to the confirming bank through our bank and our bank is going to discount them. My question is whether the confirming bank's authorisation to discount is effective?

Suggested Answer:

If the confirming bank authorise your bank to discount the transaction then they have their instruction to this effect. This instruction, which is outside the rule in sub-article 12 (b), would still be effective as an authenticated instruction from the confirming bank.

- Gen83 If FCR is presented, there are usually three dates, cargo received date, shipped on board and date of issue. All of them can differ from each other. Which one should be judged as date of shipment if the LC does not stipulate?

Suggested Answer:

A FCR is a receipt for goods and therefore there should never be a requirement for a shipped on board date. The date to use would be the date of issuance or, if a cargo received date is shown, that date.

- Gen84 An issuing bank (Bank A) issued a L/C to the beneficiary. The beneficiary requested cancellation of the L/C. Therefore, the advising bank sent the issuing bank an MT799 as follows:

79: Narrative -'We have received a request from beneficiary for the cancellation of A/M L/C. we've closed our files....'.

Q1. Is the advising banks action acceptable?

Q2. As issuing bank, do we need to give an MT799 to the advising bank confirming the cancellation of the original L/C at the advising banks counter?

Suggested Answer:

1. The advising bank is merely informing the issuing bank of the instructions of the beneficiary. A credit cannot be cancelled without the consent of the issuing bank.
2. In order to complete the transaction, it would be advisable to confirm the cancellation to the advising bank although it must be appreciated that whilst the issuing bank must consent to the cancellation, if the beneficiary has indicated their wish to cancel the likelihood of the credit being subsequently utilised (due to the issuing bank rejecting the cancellation request) is remote.

- Gen85 I cannot distinguish a revolving L/C from a reinstatement L/C. Would you please tell us the differences between these two kinds of L/C?

Suggested Answer:

A revolving credit has three features that need to be addressed in a credit:-

1. whether it is automatic or not;
2. whether the revolvment amount is cumulative or non-cumulative; and
3. the basis under which the revolvment will occur.

Beneficiaries prefer a cumulative, automatic revolving credit as they have a bank undertaking for the full amount of the value of their goods.

Banks prefer a non-cumulative or cumulative, but non-automatic revolving credit as it limits the bank's exposure to the value of one revolvment.

A non-cumulative revolving credit allows the bank to reduce their liability by any undrawn balance within any revolvment period.

A reinstatement credit has three features that need to be addressed in a credit:-

1. the initial amount of the credit;
2. the basis under which the reinstatement will occur; and
3. the maximum amount to which the reinstatement will be made.

A reinstatement credit allows the applicant to limit the value of any one shipment by setting the value of the credit to that level. For example, the total contract price is USD100,000 but the maximum that would be drawn in any one presentation is USD15,000

The credit will be issued for an initial amount of USD15,000 and state that the amount will be reinstated after each drawing to the amount of USD15,000 subject to a maximum of USD100,000

For example, if the beneficiary makes an initial drawing of USD12,500 the amount will reinstate to USD15,000 but the remaining total amount reduces to USD87,500 and so on until the full credit amount is drawn. The bank's liability is for the full USD100,000

- Gen86 Must field 44B be an inland place? Or can it also be a port? If field 44B is a port and L/C requires presentation of a B/L, in this case the B/L presented must bear the name of the port in the 'port of discharge' field?

Suggested Answer:

Under the SWIFT handbook rules, field 44B is designated as a place other than a port or airport. If more than one port of discharge is required, the final port of discharge should be the one stated in the credit. If the intermediary (transshipment) port is to be mentioned on the transport documents, this should be included in the requirements for the transport document or in field 47A.

- Gen87 A credit states that charges are for the account of the applicant. For a usance L/C may the nominated bank claim the discount interest from the issuing bank? For a sight L/C may the nominated bank claim interest charge of 8 days (transit and processing time) from issuing bank?

Suggested Answer:

No. These interest charges are for the account of the beneficiary if they require early settlement.

- Gen88 The LC required the presentation of a LC report showing details in relation to the beneficiary. This report was to be provided by the negotiating bank. The report was presented without showing all the details according to the LC. Can the issuing bank refuse and deduct discrepancy fees?

Suggested Answer:

Firstly, such documents have no role in a documentary credit. If information is required of the beneficiary, this should be obtained prior to the issuance of the credit. Second, the issuing bank has given an undertaking to the beneficiary to honour a complying presentation made by the beneficiary. The LC report is not a document to be presented by the beneficiary and, as such, is not subject of an examination to determine compliance. The issuing bank may have a problem with the nominated bank not providing the document but that does not remove their obligation to honour a complying presentation made by the beneficiary.

- Gen89 When does a nominated bank 'honour' instead of 'negotiate'?

Suggested Answer:

A nominated bank honours under a credit that is available with them by payment, acceptance or deferred payment (see the definition in article 2).

Gen90 If the LC states that "all documents must state H.S. code no." and in field 46A (documents required) or 47A (additional conditions) it requires presentation of a beneficiary's certificate stating that one set of copy documents has been sent to the applicant and courier receipt to this effect is required, does the courier receipt have to mention the H.S. Code no.?

Suggested Answer:

The beneficiary certificate and the courier receipt reflect one action i.e., the sending of the copy documents by courier service. As such, the courier receipt does not require the insertion of the H.S. Code.

Gen91 LC mentioned all documents must show description of goods, does this apply to the drafts?

Suggested Answer:

No. This will only apply to the documents that are listed in field 46A of the MT700 message.

Gen92 LC requires shipment advice to be sent to applicant within 2 days after shipment. The shipment advice presented by the beneficiary is dated 2 days before shipment, but there is another sentence at the end of the advice, added by the beneficiary, certifying that the advice was sent to the applicant within 2 days after shipment. Is this a discrepancy or can we accept it?

Suggested Answer:

Where the credit requires an advice to be sent within 2 days after shipment, it must be sent in the period commencing the date of shipment and concluding two days thereafter. Although the document is dated 2 days prior to shipment, the certification of action by the beneficiary states that it occurred within two days after shipment. The wording of the certificate would comply with the credit.

Gen93 If a LC requires the beneficiary to present a certified fax copy of a document, what does it mean - a copy is okay or should they present an original?

Suggested Answer:

A certified fax copy of a document is a document that is sent by fax whereupon the fax is certified to be a true copy of the original.

Gen94 LC requires that the certificate of origin indicate "China origin" but the presented document contains the statement "produced in China". My question is whether the document satisfies the LC condition or not? Is it necessary to add the exact wording "China origin"?

Suggested Answer:

For the purposes of the certificate of origin, "China origin" and "produced in China" have the same meaning and intent. There would be no discrepancy.

Gen95 In certain LCs, some banks always require the negotiating bank to advise the issuing bank by SWIFT of the date of negotiation, shipment date, vessel name etc. If the presenting bank did not negotiate the documents should it send the SWIFT and how?

Suggested Answer:

Based on a literal reading of the requirement in the credit, if the nominated bank did not negotiate then they are not required to send the notification. This may not be the intent of the issuing bank but if they require the information to be sent whether or not the bank negotiates, the wording should be revised to reflect the need in all circumstances.

Gen96 The ISBP refers to differing consignee information on the Certificate of Origin when compared to a transport document. How about consignee information on other Certificates such as phytosanitary certificate or health certificate?

Suggested Answer:

The same criteria would apply i.e., the certificates could reflect the data on the transport document or show the applicant or any other party named in the credit as the consignee.

Gen97 LC requires "beneficiary's certificate certifying that copies of all documents have been sent to applicant and courier receipt must be presented". Beneficiary certificate is dated 1st August 2008 and the courier receipt is dated 2nd August 2008. Is this beneficiary's certificate discrepant as it is dated earlier than the courier receipt?

Suggested Answer:

No. The certificate is providing evidence of compliance of the condition in relation to the sending of copy documents and the courier receipt is indicating the date that the copies were sent.

Gen98 Normally, the shipping company will require a shipping guarantee from the bank to release goods to the importer where the goods arrive prior to receipt of the shipping documents or where the shipping documents are lost in transit. The requirement of the shipping company is for the guarantee to be made out in the text provided by the shipping company, without limitation on the amount and with no expiry date. How can we limit the amount of the guarantee?

Suggested Answer:

It is quite common for shipping guarantees to be issued with no expiry date, although the statute of limitations in most countries will only run for 6 or 7 years. With regard to the amount, some shipping companies insist on no limitation on amount whereas others will look for up to 200% of the invoice value. If the shipping company has a standard form, it may be quite difficult to change their stance on the amount although it may be worth discussing the capping at an agreed % amount i.e., 200%. The shipping guarantee will otherwise be released once an original bill of lading has been submitted to them by the applicant of the shipping guarantee or the bank that issued it.

Gen99 Should all the documents required be stated under MT700 field 46A? Will a document required under other fields e.g. MT700 field 47A (additional conditions) be regarded as a non-documentary condition?

Suggested Answer:

A required document should appear in the documents required field. However, a requirement for presentation of a document in field 47A must also be complied with and it will not be considered to be a non-documentary condition unless the condition does not specify the document that is required to be presented to evidence compliance with that condition.

Gen100 If the issuing bank received the documents before a stipulated presentation period, for example, the credit requires that documents must be presented 15 days after shipment, on which day should the payment be effected by the issuing bank if all terms and conditions have been complied with?

Suggested Answer:

If, for example, the documents are presented on a day falling 12 days after shipment and otherwise comply, the documents will be discrepant due to 'early presentation'. However, once the 15th day arrives the documents will automatically become compliant and the issuing bank should then commence the process of honour. If the

issuing bank had previously informed the applicant of the discrepancy and sought a waiver, they must inform the applicant of the new status.

Gen101 LC does not stipulate consignee for Certificate of Origin, Sanitary Certificate or Inspection Certificate which are all issued by an authority. Could you tell us whether we should check the consistency between consignee in BL and the ones in the above documents?

Suggested Answer:

The consignee details should match those on the bill of lading or show the consignee or any other named party in the credit as consignee. The details need not be the same across all 3 documents.

Gen102 The shipping marks stipulated in the LC are in capital letters while it is shown on the documents presented by the beneficiary in small letters. Is it deemed as a discrepancy?

Suggested Answer:

No. The requirement is for the data to comply not whether it is in capitals or small letters.

Gen103 What is the difference between a house BL and a forwarding agent's BL?

Suggested Answer:

None. They are both bills of lading that are issued on the letterhead of the freight forwarder. A credit allowing the presentation of these forms of bills of lading allows them to be signed by the freight forwarder in the capacity of freight forwarder without naming the carrier.

Gen104 Can we regard a BL as a forwarder BL just because there is the word 'forwarding' in the agent's name?

Suggested Answer:

No. A forwarder bill of lading is one that is issued and signed by the freight forwarder in the capacity of freight forwarder, as opposed to one that is issued on the letterhead of the shipping company (carrier) and signed by an agent (forwarder) as agents for a named carrier.

Gen105 Must a "blank endorsement" include the stamp and the signature of the company making the endorsement?

Suggested Answer:

A blank endorsement must consist of the name of the shipper or order party (as shown in the consignee field on the BL or by way of any other endorsement on the BL) and a signature on behalf of that company. The information regarding the name of the company can be typed, written or stamped. The signature can be a manual one or one that is included within a stamp.

Gen106 An insurance policy is corrected with a correction stamp. There is an abbreviation of the insurance company's name in the stamp, but without the signature or initial of one of its officials. Is it acceptable?

Suggested Answer:

A correction on an insurance document requires evidence as to the party that is making the correction i.e., the insurance company, underwriter or their agent or proxy. In addition to the identification of the party, the document must bear the signature or initial of the person making the correction. The document will be discrepant without a signature or initial.

Gen107 A first class bank in USA rejected documents, due to the following discrepancy:
"Inspection certificate titled as 'certificate' only". Does an issuing bank have the right or not? If not, what about a credit that requires an "inspection certificate, analysis certificate and test certificate", all presented untitled with the same contents and text?

Suggested Answer:

Provided the content of the document meets the requirements of the credit and otherwise complies with the requirements of sub-article 14 (f) it will be acceptable. ISBP paragraph 41 states that a document may bear the same title as that stated in the credit, a similar title or be untitled. It is the data within the document that will determine if the document fulfils the function of the document. With regard to inspection certificates, analysis certificates and test certificates, they are all serving the same purpose and the content could all be the same.

Gen108 What form of document that declares or certifies an action by the beneficiary can protect the applicant other than wording such as "beneficiary declaration"?
What is the legal opinion of said declarations/certifications?

Suggested Answer:

A beneficiary declaration is often a simple statement from the beneficiary declaring that something has happened or that they have complied with a request. There is no determination as to whether or not the statement is correct. Legally, the declaration could be held against the provider in the event that the declaration was found to be false. A better option would be a declaration or statement from an independent party.

Gen109 SGS certificate is a major document to verify the quality and quantity of goods. Who will protect us (the buyer) from any mistake, mishandling or fraud that might happen by SGS people?

Suggested Answer:

The answer to this question lies outside the UCP and banking practice. You would need to see what indemnities exist from SGS in the event of a false or inaccurate statement/declaration or certification.

Gen110 What does a revolving LC mean?

Suggested Answer:

A credit that becomes available for a similar amount or amounts upon the occurrence of an event (a specific date, shipment, drawing etc.). The credit can be designated as being automatically revolving in which case no further amendments are required from the issuing bank. Non-automatic, in which event the issuing bank must amend the credit each time a revolvment is due. Cumulative i.e., any undrawn balance in one revolvment is carried forward to the next. Non-cumulative, any undrawn balance is lost.

Gen111 Does a clause in a credit "will be satisfied by" have the same interpretation as "being acceptable"?

Suggested Answer:

Yes. If a credit states something like 'the requirement that goods are to be packing in steel drums will be satisfied by the presentation of a packing list so evidencing this condition' it is saying that a certain document, evidencing compliance of a certain condition, is required (acceptable).

Gen112 If the applicants countersignature date is later than the actual date of delivery specified on the document, will this become a discrepancy? In this case what will be the date the bank uses to calculate the payment if the payment is due 60/90 days from the date of delivery?

Suggested Answer:

If the credit requires presentation of a delivery order, it is the date of delivery that is the operative date. It matters not when the applicant countersigned. The due date would be calculated from the delivery date shown in the document. If no delivery date is shown, the date of issuance would be taken as the delivery date.

Gen113 When an inspection certificate is issued, who will have possession of the consignment? Will the supplier have any control over the consignment after the inspection is done?

Suggested Answer:

At the time the inspection is completed, the goods are usually still be in the hands of the beneficiary unless the inspection occurs on the carrying vessel.

Gen114 LC expired. As amendment charge is more than discrepancy charge, customer is not willing to amend the LC and requested us to send the documents on approval and confirmed that they will accept the documents and release the payment. What is the bank's view on this?

Suggested Answer:

It is always advisable to have a workable credit in place before shipment is made. If the documents do not comply with the credit, the undertaking of the issuing bank no longer exists and they need not take account of any payment instructions from the applicant.

Gen115 For a standby LC where will be the expiry place? Will it be the country of issue or in beneficiary's country?

Suggested Answer:

In most cases, similar to bank guarantees, the expiry will be at the place of the issuing bank.

Gen116 A standby LC available by payment with the issuing bank. In case the bank receives a claim from the beneficiary and at the same time they receive a court decision in favour of the applicant, (to stop payment) which prevails?

Suggested Answer:

The bank cannot ignore a court order if received before payment is made. The effects of the court order will need to be assessed and it may be that the bank will seek its rescinding if it does not cover issues relating to fraud. Quality issues should be resolved between buyer and seller outside the operation of the credit.

Gen117 If clean documents are negotiated by a bank under a LC but issuing bank finds a discrepancy, is our payment secure?

Suggested Answer:

If the credit was not confirmed by the negotiating bank, they may seek recourse from you for the amount previously paid. Some negotiating banks will deem their examination of documents as final and in the event that the issuing bank finds discrepancies they will not seek recourse from the beneficiary but may seek their assistance in resolving the dispute. You should check with the bank as to their recourse conditions.

Gen118 What does payment term "180 days from disbursement date" mean?

Suggested Answer:

This is not a term that should be used by banks, but it is generally understood to mean that the maturity date is 180 days from the date that negotiation was effected to the beneficiary.

Gen119 What is a conference line vessel and the difference between conference and regular line vessel?

Suggested Answer:

A conference line vessel is a vessel owned by a shipping company that belongs to an association of shipping companies who have an agreement to establish freight rates and to rationalise sailings on a regular and adequate basis to service particular ports. A regular line vessel is a vessel that sails according to a published timetable and generally has a reserved berth at the port of discharge.

Gen120 Please define briefly "Incoterms 2000"

Suggested Answer:

Incoterms 2000 are the ICC's set of shipping terms i.e., FOB, CFR, CIF etc. The publication explains where the seller and buyer risks start and finish for the 13 defined Incoterms. The ICC is in the process of updating this publication with a view to implementation in 2010.

Gen121 If the LC expired and the materials were not shipped, why does my bank need a letter from the beneficiary bank before cancellation?

Suggested Answer:

The credit will probably be expiring in the country of the beneficiary. The bank needs to be sure that no documents have been presented to the nominated bank before they agree to cancel the credit. Following 30 days after the expiry date the bank may generally consider the credit as being unutilised and could cancel without confirmation from the nominated bank. The content of article 35 and the risk that documents may be lost in transit may have a bearing as to when the issuing bank will be comfortable to cancel the credit.

Gen122 LC price terms are EXW and a receipt issued by the applicant is required by the LC instead of transport documents. As the issuing bank, how can we know the actual trade background between the applicant and beneficiary when issuing the LC?

Suggested Answer:

As part of the process for agreeing to a credit facility for your customer, due diligence should have been performed so as to comply with your established 'know your customer' principles and policies. Understanding your customer's business will give you the background to understand the type of goods that are being imported or bought by your customer and to be able to match that with the information that will be stated on an application form for the issuance of a credit.

Gen123 L/C states: Forwarder BL not acceptable

BL issued with "XYZ Company's" letterhead, with "ABC Company" as agent for carrier, XYZ Company at the bottom right. Is this BL a forwarder BL?

Suggested Answer:

No. The bill of lading is issued on the letterhead of the carrier and is signed by a named agent of a named carrier. The condition has no real meaning and the issuing bank should be asked exactly what they mean. In general practice, a forwarder bill of lading is one that is issued on the letterhead of the freight forwarder, signed by the freight forwarder in that capacity and indicating or not the name of the carrier. This

may not be the entire intention of the issuing bank and therefore they should be contacted as above.

Gen124 What is a simple receipt, could you explain the concept of a simple receipt?

Suggested Answer:

A simple receipt is usually requested when an advance payment is being made or when a bank requires a document indicating the amount to be paid but does not wish to have the presentation of a draft. Where an advance payment is made under a credit, the credit will usually require a 'simple' receipt issued by the beneficiary for the amount that has been paid. The word 'simple' is used as the document is not intended to be one that has a large amount of data. The content can be as 'simple' as "we acknowledge receipt of the sum of [] being xx% advance payment under letter of credit number 12345 of [bank]". The same form of words can be used when a receipt is requested in lieu of a draft i.e., "we acknowledge receipt of the sum of [] being the amount of our invoice number 1234 presented under letter of credit number 56789 of [bank]".

Gen125 Is it acceptable for a bill of lading to cover additional commodities which are not covered in the LC?

Suggested Answer:

No. The documents presented under a credit, including the bill of lading, should only cover the goods that are mentioned in the description of goods field of the credit.

Gen126 LC requires the below documents:

- Signed commercial invoice for net quantity loaded based on shore tank measurements taken immediately prior and immediately after completion of loading of buyer's vessel.
- Certificate of quantity, issued by an independent surveyor, indicating the actual surveyed quantity of shipped goods, load port, vessel name, BL date, loaded quantity and issuance date.

(i) Whether "signed invoice" will be satisfied by a computerized invoice with the typed name of employee in the signature box?

Suggested Answer:

Where a document is to be signed, it must be signed in accordance with the requirements of article 3.

(ii) Whether the "Net quantity Loaded" in invoice should tally with BL quantity (Net)?

Suggested Answer:

Yes. The net quantity is the basis upon which the payment will be fixed. In liquid cargoes there is only a net weight

(iii) Whether the "LOADED QUANTITY" in document 2 refers to net quantity loaded as per invoice and BL net quantity?

Suggested Answer:

Yes.

(iv) Whether the actual surveyed quantity can be lower than the net quantity loaded?

Suggested Answer:

The surveyed quantity is a sample and therefore could be any value.

Gen127 LC stipulates that all documents should be made out in the name of ABC Company. What does it mean?

Suggested Answer:

All the required documents must be addressed to ABC Company. This position applies unless otherwise stated in the credit i.e., the credit may give specific instructions regarding the consignee and notify party on the transport document.

Gen128 The draft is issued earlier than the BL date, is it a reason to reject?

Suggested Answer:

There is no reason to refuse. Sub-article 14 (i) states that a document may be dated any date up to the date of its presentation.

Gen129 BL only indicates quantity without the measurement unit. Is this a discrepancy?

Suggested Answer:

Although there are boxes or fields on a document, i.e., the measurement field on the bill of lading, there is no requirement for the box or field to be completed unless required by the credit or UCP. There is no requirement in the UCP for the measurement field to be completed.

Gen130 LC requires BL to be issued "To order" but it is shown on the BL as "to order of shipper" and same is shown on certificate of origin. Is this a discrepancy?

Suggested Answer:

Where a credit requires a bill of lading to be issued "to order" it is to be issued to 'order of the shipper' named in the bill of lading. You would normally expect to see the credit require the bill of lading to be 'issued to order and blank endorsed' or 'issued to order and endorsed to the order of [a named party]'. See Gen105 for further information regarding endorsements.

Gen131 46A: Inspection certificate issued by SGS at loading port

47A: Third party documents acceptable

Docs presented: Inspection certificate issued by beneficiary.

Is it acceptable? How do I persuade my banker e.g., opening bank?

Suggested Answer:

The credit required the inspection certificate to be issued by SGS. Although there was a condition that third party documents were acceptable, this would apply to documents for which no issuer has been named in the credit. The document would be discrepant. Refer to ISBP paragraph 21 (c) for further information where the credit allows 'third party documents'.

Gen132 LC stipulates that documents should be sent to issuing bank in two lots. If the beneficiary's bank sent them in one lot, does it cause any discrepancy?

Suggested Answer:

This is not a discrepancy if the issuing bank received the documents. However, if the documents are lost in transit the issuing bank would be under no obligation to honour as the conditions for mailing the documents were not met by the concerned bank.

Gen133 Should an "on board notation" be shown on all types of BL for example, charter party BL, cargo receipt etc.

Suggested Answer:

An on board notation may be required for a bill of lading, charter party bill of lading, non-negotiable sea waybill or a transport document covering more than one mode of

transport. A cargo receipt is not a type of bill of lading nor is it a document that evidences the shipment of goods. A credit requiring the presentation of such a document should not be requesting evidence of a shipment date.

Gen134 LC calls for insurance policy blank endorsed. It was presented without an endorsement. Before the issuing bank sent a refusal message, the negotiating bank was requested to act on behalf of the beneficiary and arrange with the issuing bank to endorse the insurance policy on behalf of the beneficiary. Should the issuing bank reject the document?

Suggested Answer:

The endorsement may be completed on the basis of the bank acting in an agency type capacity for the beneficiary i.e., endorse the insurance policy as agent for the [named] beneficiary. The decision to do so would rest with the issuing bank.

Gen135 In a back-to-back LC operation, the applicant insists on inserting a clause into the LC, i.e. "LC issuing bank will make payment only after receiving proceeds under Master LC No. xxx" and at the same time the beneficiary agrees to accept such a condition. Should the bank issue such a LC? Is it acceptable for the issuing bank to reject documents against such a clause?

Suggested Answer:

With the inclusion of the wording stated, the back-to-back LC is not an irrevocable credit. The credit does not contain an undertaking of the issuing bank to honour upon presentation of complying documents. The payment thereunder is subject to the receipt of funds under the original credit. It is noted that the beneficiary has agreed to accept the credit as issued. They appear to be willing to take the risk that they will ship the goods, present complying documents and still not be paid if the funds are not forthcoming under the original credit. This is not a form of credit that is supported by the ICC or the UCP.

Gen136 LC required: shipping company's certificate certifying that the carrying vessel's age is less than 15 years. Documents presented: Certificate from ABC Company certifying that the carrying vessel's age is under 15 years. BL is signed by ABC company on behalf of the carrier, i.e. XYZ company. Does the certificate comply with the credit?

Suggested Answer:

Provided the certificate is signed "ABC Company as agents for XYZ Company", the document will be acceptable.

Gen137 The LC stipulated "usance draft at 180 days sight, to be negotiated on a sight basis". Documents were presented. Nominated bank effected negotiation and sent the documents to the issuing bank. Within 5 banking days the issuing bank sent a SWIFT MT734 stating a discrepancy: injunction by order of the court. The nominated bank, as the holders, should be reimbursed within 5 working days by the issuing bank, i.e. the issuing bank should pay immediately. Is this right?

Suggested Answer:

The law will always override the UCP. The issuance of a court order or injunction will have the effect of stopping the payment process. The reasons for the issuance should be obtained and the nominated bank should request a copy for their review. Technically, the issuance of a court order is not a reason for refusal; it is a reason why the bank has been denied the opportunity to honour a complying presentation. As the nominated bank had already negotiated, and was presumably an innocent party i.e., unaware of the reasons for issuance of the injunction at the time of negotiation, the court should be advised of the circumstances of the transaction including the content of articles 4, 5 and 12 of UCP 600 so as to arrange the rescinding of the order and reimbursement from the issuing bank.

Gen138 Mixed payment details:

50% of invoice value will be paid at sight against full set of documents.
50% of invoice value will be paid against certificate issued by applicant. If this certificate is not presented, amount will be paid 180 days from BL date. The negotiating bank presented a cover schedule with the following words:
50% of amount xxx at sight and no certificate will be presented. We require issuing bank to provide an acceptance notice for the remaining 50% amount xxx and advise maturity date. What should the issuing bank do?

Suggested Answer:

The issuing bank has already given their undertaking in the credit to pay on the date that falls 180 days from the bill of lading date, should the certificate not be issued. There is no requirement to give any further undertaking at the time of presentation of documents, when it is still possible that the certificate could be presented (by the beneficiary or the applicant) within the expiry of the credit. A request for the undertaking could be made at the time of expiry, recognising the non-presentation of the certificate at that time.

Gen139 Back-to-back LC is not stipulated in UCP 600. If exporters and importers use back-to-back LC in their transaction, what source can we refer to govern the transaction? Can we combine transferable LC and back-to-back LC or standby LC and back-to-back LC together?

Suggested Answer:

The UCP does cover back-to-back transactions. Each credit is an individual credit that is subject to UCP 600. Different forms of credit such as transferable and back-to-back should not be combined without careful thought and careful structuring. A standby credit could be the subject of a back-to-back credit.

Gen140 Can an issuing bank apply ICC's opinions for cases under UCP 500 in solving disputes and other matters related to UCP 600?

Suggested Answer:

The wording of a number of the articles of UCP 500 have not been changed in UCP 600. Similarly, a number of the requirements of some articles have not changed in the way that they are applied or interpreted. For opinions given in respect of those issues, they should also apply to the same issues raised under UCP 600. For opinions given in respect of disputes between parties, the application of that opinion would depend on the same circumstances arising under the UCP 600 transaction and the articles in question not having a different stance than that under UCP 500.

Gen141 LC stipulates name of goods as fabric and quality as 90% cotton. LC also asks for certificate of quality issued by SGS. In the presented SGS document, the issuing bank notices that the result of the survey is 80% cotton. Can the issuing bank treat this as a discrepancy?

Suggested Answer:

The data in the certificate of quality is in conflict with the data in the credit (sub-article 14 (d)) and therefore will be considered to be discrepant.

Gen142 L/C required document: Filled in traceability record as per applicant's specification. Beneficiary presented a beneficiary certificate certifying that they have filled in the traceability record as per the applicant's specification. Does this fulfil the function of the required document?

Suggested Answer:

The wrong document has been presented. The credit required the presentation of a traceability report not a beneficiary certificate evidencing completion of that document.

Gen143 L/C required B/L made out to order of ABC Bank. B/L showed consignee as 'To order of ABC Bank, Ha Nou, Vietnam', is it a discrepancy? L/C required "BL made out to order of ABC Bank, Ha Nou, Vietnam" B/L showing consignee as 'To order of ABC Bank', is it a discrepancy?

Suggested Answer:

The insertion of 'Ha Nou, Vietnam' would not create a discrepancy. The omission of 'Ha Nou, Vietnam' in the second example would not be considered to be a discrepancy. The critical data is the name of the bank not the branch.

Gen144 If a bill of lading bears corrections in more than 3 places, is it discrepant? What should we (as a negotiating bank) do if the issuing bank refuses the documents stating it is an international standing banking practice?

Suggested Answer:

There is no prohibition on the number of corrections that may be made on a bill of lading and there is no international standard banking practice that indicates it is a discrepancy.

ISBP

ISBP17 ISBP paragraph 11 - the use of multiple styles or font sizes or handwriting does not signify a correction. What is the condition that this article will apply to? Will it only be used for the documents issued by beneficiary?

Suggested Answer:

This practice can apply to any form of document. In a recent ICC opinion, the CMR document was issued showing a date of shipment and date issuance as [month] 2008. In each of the spaces shown with the actual date was shown i.e., 28, in pen. The opinion stated that the document was acceptable under this paragraph.

ISBP18 In ISBP article 199 it stipulates that "consignee can be another party named therein". What does this mean? Who and where are the other parties named?

Suggested Answer:

This means any other party that may be mentioned in the credit. For example, a freight forwarder or agent of the applicant.

ISBP19 ISBP allows endorsement on the bill of lading by another party for or on behalf of shipper, is it necessary to present any authorization from the shipper to do so to make this practice apply?

Suggested Answer:

There is no requirement for any authorization of the shipper to be presented. In fact, if it was presented it would be considered to be an additional document and should be disregarded by banks (sub-article 14 (g)).

ISBP20 According to paragraph ISBP 43 (e) if a bill of lading shows more than one on board notation, the earliest of these on board notations will be used for calculation of the maturity date, could you explain which date will be used for calculation of the presentation date in a LC?

Suggested Answer:

The dated on board notation that will be used will be the one that relates to the vessel that leaves the port of loading stated in the credit. Given the example in paragraph 43 (e) it will also be the earliest one.

ISBP21 ISBP paragraph 13 says that transport documents have to be dated. A B/L is presented not showing date of issuance, but it shows an on board date. Is it a discrepancy?

Suggested Answer:

If the bill of lading indicates a date of issuance field and it is not dated, then it is a discrepancy - even if the bill of lading indicates an on board notation.

ISBP22 If the LC shows two terms, shipping documents and transportation documents, are they the same? Is my understanding correct that transportation is issued by shipping and include shipping company documents and certificates; shipping document covers all documents except financial documents like a draft.

Suggested Answer:

Shipping documents is defined in ISBP paragraph 21 (a) as all documents (including transport documents) except drafts. Transportation documents has no meaning and the issuing bank should clearly indicate their intent. A literal reading would give you the same definition as shipping documents.

ISBP23 Should all the documents bear an issuance date e.g. is a BL without an issuance date, okay?

Suggested Answer:

Paragraph 13 of ISBP requires that drafts, transport documents and insurance documents must be dated. There is no other requirement for documents to be dated other than where the credit may state otherwise.

ISBP24 A credit required the presentation of a manufacturer's certificate in five copies. When presented there is only one certificate which is signed and stamped "original". The others are not signed, is this acceptable?

Suggested Answer:

ISBP paragraph 32 states that copies of documents do not need to be signed. There is no discrepancy.

ISBP25 If a document issued by the beneficiary has had something added to it without any authorisation, how can you judge whether or not it was added by the issuer or any other party? (Do you think, in fact, anybody can add something to the commercial invoice?)

Suggested Answer:

ISBP paragraph 10 states that correction in documents issued by the beneficiary, unless certified or legalised etc., need not be authenticated by the beneficiary. This is due to the fact that banks are only interested in corrections made to documents issued by parties other than the beneficiary i.e., to ensure that no unauthorised person has made the correction. For corrections made to a beneficiary issued document, including a commercial invoice, who else but the beneficiary would make the correction?

ISBP26 L/C payment term: 15 days after sight. Documents presented with discrepancies. Issuing bank sent an MT734 refuse notice. Three months later, the applicant accepts to pay but they want the issuing bank to honour 15 days after their acceptance. Issuing bank releases the documents to the applicant and effects payment 15 days after the date they received acceptance from the applicant. Is this okay?

Suggested Answer:

ISBP paragraph 46 (b) states that the due date should, at the latest, be 15 days after the date of acceptance of the draft by the drawee bank. The date of acceptance must be no later than the date the issuing bank accepts the waiver of the applicant.

Whilst every effort has been made to ensure that the answers given under "suggested answer" are completely accurate, the details of a credit and the circumstances under which an issue may arise can affect the application of that response. The authors cannot accept any legal responsibility whatsoever for consequences that may arise from any errors or omissions or any opinion or advice given. It should be pointed out that formal positions can only be provided through ICC opinions.