



Nisha S Koshal



UNDERSTANDING Letter of Credit

Learner's Guide to Letter of Credit

UNDERSTANDING Letter of Credit

Learner's Guide to Letter of Credit

Nisha S Koshal





Notion Press

Old No. 38, New No. 6

McNichols Road, Chetpet

Chennai - 600 031

First Published by Notion Press 2017

Copyright © Nisha S Koshal 2017

All Rights Reserved.

ISBN 978-1-946822-08-6

This book has been published with all reasonable efforts taken to make the material error-free after the consent of the author. No part of this book shall be used, reproduced in any manner whatsoever without written permission from the author, except in the case of brief quotations embodied in critical articles and reviews.

The Author of this book is solely responsible and liable for its content including but not limited to the views, representations, descriptions, statements, information, opinions and references [“Content”]. The Content of this book shall not constitute or be construed or deemed to reflect the opinion or expression of the Publisher or Editor. Neither the Publisher nor Editor endorse or approve the Content of this book or guarantee the reliability, accuracy or completeness of the Content published herein and do not make any representations or warranties of any kind, express or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose. The Publisher and Editor shall not be liable whatsoever for any errors, omissions, whether such errors or omissions result from negligence, accident, or any other cause or claims for loss or damages of any kind, including without limitation, indirect or consequential loss or damage arising out of use, inability to use, or about the reliability, accuracy or sufficiency of the information contained in this book.

Dedication

With the grace of my Guru Datta, Shripad Ji and Gajanan Maharaj. In loving memory of my grandmothers Smt. Kaushalya Devi and Smt. Sandhya Sharma.

I dedicate this book to my grandparents, My father Mr. Suresh Kumar Koshal, My mother Mrs. Sudesh Koshal, My sisters Neha and Nandita and all loved ones.

Archana, Parth, Anvay, Sabya – thanks for your continuous support and encouragement. God Bless you all.

Contents

[Preface](#)

- [1. Introduction to Trade Finance](#)
- [2. Types of Documentary Credits](#)
- [3. Issuance of Letter of Credit](#)
- [4. Availability and Payment Terms, Types of Transport Documents](#)
- [5. UCP Articles and their Explanations](#)
- [6. UCP 600 Article 2 Definitions Explanation](#)
- [7. UCP 600 Article 3 Interpretations Explanation](#)
- [8. UCP 600 Article 4 Credits Vs Contracts Explanation](#)
- [9. UCP 600 Article 5 Documents v. Goods, Services or Performance Explanation](#)
- [10. UCP 600 Article 6 Availability, Expiry Date and Place for Presentation Explanation](#)
- [11. UCP 600 Article 7 Issuing Bank Undertaking Explanation](#)
- [12. UCP 600 Article 8 Confirming Bank Undertaking Explanation](#)
- [13. UCP 600 Article 9 Advising of Credits and Amendments Explanation](#)
- [14. UCP 600 Article 10 Amendments Explanation](#)
- [15. UCP 600 Article 11 Tele transmitted and Pre-Advised Credits and Amendments Explanation](#)
- [16. UCP 600 Article 12 Nomination Explanation](#)
- [17. UCP 600 Article 13 Bank-to-Bank Reimbursement Arrangements Explanation](#)
- [18. UCP 600 Article 14 Standard for Examination of Documents Explanation](#)
- [19. UCP 600 Article 15 Complying Presentation Explanation](#)
- [20. UCP 600 Article 16 – Discrepant Documents, Waiver and Notice Explanation](#)
- [21. UCP 600 Article 17 Original Documents and Copies Explanation](#)
- [22. UCP 600 Article 18 Commercial Invoice Explanation](#)
- [23. UCP 600 Article 19 Transport Document Covering Atleast Two Different Modes of Transport Explanation](#)
- [24. UCP 600 Article 20 Bill of Lading Explanation](#)
- [25. UCP 600 Article 21 Non Negotiable Sea Waybill Explanation](#)

- [26. UCP 600 Article 22 Charter Party Bill of Lading Explanation](#)
- [27. UCP 600 Article 23 Air Transport Document Explanation](#)
- [28. UCP 600 Article 24 Road, Rail or Inland Waterway Transport Documents Explanation](#)
- [29. UCP 600 Article 25 Courier Receipt, Post Receipt or Certificate of Posting Explanation](#)
- [30. UCP 600 Article 26 “on Deck”, “Shipper’s Load and Count”, “Said by Shipper to Contain” and Charges Additional to Freight Explanation](#)
- [31. UCP 600 Article 27 Clean Transport Document Explanation](#)
- [32. UCP 600 Article 28 Insurance Document and Coverage Explanation](#)
- [33. UCP 600 Article 29 Extension of Expiry Date or Last Day for Presentation Explanation](#)
- [34. UCP 600 Article 30 Tolerance in Credit Amount, Quantity and Unit Prices Explanation](#)
- [35. UCP 600 Article 31 Partial Drawings or Shipments Explanation](#)
- [36. UCP 600 Article 32 Instalment Drawings or Shipments Explanation](#)
- [37. UCP 600 Article 33 Hours of Presentation Explanation](#)
- [38. UCP 600 Article 34 Disclaimer on Effectiveness of Documents Explanation](#)
- [39. UCP 600 Article 35 Disclaimer on Transmission and Translation Explanation](#)
- [40. UCP 600 Article 36 Force Majeure Explanation](#)
- [41. UCP 600 Article 37 Disclaimer for Acts of an Instructed Party Explanation](#)
- [42. UCP 600 Article 38 Transferable Credits Explanation](#)
- [43. UCP 600 Article 39 Assignment of Proceeds Explanation](#)
- [44. Incoterms](#)

[*Points to Remember*](#)

[*Questions for Revision and Practice*](#)

[*Answers to the Above Questions*](#)

[*Glossary*](#)

Preface

The idea for writing a book on my favorite subject came to me after I had taken my CDCS exam in 2014. I chose to write a book on a subject like letter of credit because of my love for the subject and also keeping in mind my own struggles while I was preparing for the exam. The thought of generating interest in trade finance professionals for letter of credit motivated me to write this book. The book gives a brief description of trade finance, types of letters of credit, explanation of the 39 articles of UCP 600 followed by a questionnaire to test the understanding of the reader and a glossary.

The journey of writing this book was not free of hiccups as being a professional I was most of the time occupied by work. The fact that I had written a book on this subject landed me a job in my current organization. But before I could give it for publication, I went out of country for professional reasons. After I came back, I decided to go after my dream and I started working on my book again. With the grace of almighty God, finally this book is being published and I hope that it would be liked by the readers. My sincere apologies in advance for any unintentional mistakes in the text.

Nisha Koshal

Chapter 1

Introduction to Trade Finance

Trade finance is made of two words that are trade and finance. Trade means buying and selling of goods and services in return for money or something that is in money's worth. Trade has been going on for centuries now and with changing times the methods employed in flow of trade have also changed. In trade there may be many parties that are involved right from seller and buyer to middlemen, financial institutions etc. Trade can be done by selling and buying of goods/services either within the domestic boundaries of a country or at an international level. Finance means money or funds required to facilitate trade. So trade finance refers to procurement or arrangement of finance for facilitating domestic or international trade flows. But this flow of trade is not free from risk and both the buyer and seller can suffer heavy losses if the risks are not properly studied and measured. Risks involved in trade finance may range from, the seller selling low quality goods to the buyer, to, the buyer not paying the seller in time or the entire transaction being fraudulent. In international trade, in addition to the above risks, the regulatory risk, country risk, foreign exchange risk etc. can have their impact on smooth flow of any trade finance transaction.

The seller sells goods to the buyer but how the buyer will pay him or the method of payment that will be used will depend upon what the seller and buyer have agreed upon and their relationship.

Depending upon the agreement of the buyer and seller, there are four main payment or settlement terms that range from payment in advance to open account trading to documentary collections and documentary credits. The buyer has the most risk in payment in advance and the seller has the most risk in open account trading.

1. Payment in Advance

The seller may not have long term trade relationship with the buyer and hence the seller may be unwilling to ship the goods. In order to encourage the seller to build a long-term trade relationship the buyer may pay the seller in advance. The seller supplies the goods after receipt of payment from the buyer.

2. Documentary Collections

Under this method the seller ships the goods and provides documents related to the goods and shipment to its bank. The seller's bank forwards the documents to the buyer's bank in buyer's country. The buyer's bank handles the documents as per the seller's instructions as provided in his collection instructions or schedule. In documentary collections banks have no undertaking to

pay, they just act as intermediaries in directing the documents from the seller to the buyer and managing payment from buyer to seller. It is to be noted that in documentary collections the goods are not to be consigned to the buyer's bank without its consent.

3. Documentary Credits

Documentary credits are a secured method of payment as the credit issuing bank gives an independent undertaking to pay the seller/beneficiary provided the terms and conditions of the credit have been complied with and all the stipulated documents as required by the documentary credit are presented. The undertaking of the documentary credit issuing bank is independent and irrevocable.

4. Open Account Trading

In this method the seller ships the goods to the buyer without any guarantee of payment. This method of payment is common in parties having long term trading relationship. The buyer pays the seller as per the terms of the contract.

In both payment in advance and open account trading banks just take part in the movement of funds from the buyer to the seller. For the purpose of this text we will concentrate on documentary credit as a means of payment.

UCP 600 and Other Publications

A letter of credit deals with presentation of documents by the beneficiary/seller as required by the credit, in compliance with the terms and conditions of the credit, and examination of documents by the banks for compliance with the terms and conditions of the credit. But how the documents are to be examined for compliance? Every bank may have its own interpretation with respect to application of letter credit and its terms and conditions which might lead to discrepancies in documents which may eventually delay or deny payment to the beneficiary. Therefore, in order to achieve uniformity and a common interpretation and application of the documentary credits, as the letters of credit are commonly known, the International Chamber Of Commerce developed and published its first version of the Uniform Customs and Practice for Documentary Credits (UCP) in 1933. The UCP has been subject to various revisions and the current revision is UCP 600 that came into effect on 1st July 2007. These rules are supported by:

1. International Standard Banking Practice for the Examination of Documents Under Documentary Credits (ISBP)
2. ICC Uniform Rules for Bank-to- Bank Reimbursements Under Documentary Credits (URR 725)
3. ICC Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (Eucp) version 1.1

The rules that apply to documentary credits are known as UCP 600 which has 39 articles. It

should be noted that UCP lays down the guidelines for examining documents and is just a rule book but what happens in practice may be different depending upon the regulatory guidelines of respective countries, political environment, banks' internal policies, the customer service provided by banks to their clients (especially the premier ones) and to an extent relationship between beneficiary and applicant. It is also important to note that the terms and conditions of the documentary credits override the UCP. For example, Article 18 of UCP states that a commercial invoice need not be signed or dated but if the terms of the credit request presentation of a signed commercial invoice then the commercial invoice will have to be signed.

Parties Involved in Documentary Credits

In a letter of credit transaction there are only two parties that are necessary:

the first party is the issuing bank which issues the letter of credit at the request of the applicant or on its own behalf. The issuing bank is irrevocably bound to honor provided all the documents as stated in the documentary credit are presented and all terms and conditions of the documentary credit are met. This undertaking of the issuing bank is independent and is enforceable against it irrespective of whether the applicant is able or willing to reimburse it. In other words the issuing bank is bound to honor a complying presentation.

The second party is the beneficiary or the exporter. The beneficiary is responsible for shipment of goods and preparation of documents. On receipt of the documentary credit the beneficiary must go through it properly to see if all the terms and conditions are acceptable to him and if not then he should contact the advising/nominated bank or the applicant and request an amendment. If there is any term or condition that is not acceptable then the beneficiary should not start with the production of goods and then shipment or providing of services until the credit is amended. It is the responsibility of the beneficiary to ensure that the documents presented by him are those called for in the credit and that they meet the terms and conditions of the credit.

Role of Applicant in A Letter of Credit

A very important aspect in international trade is the sales contract concluded between an exporter and importer. A sales contract lays down the seller's undertaking to provide the goods to a buyer and buyer's undertaking to pay the seller in return.

Banks have no part to play in the formation, negotiation or conclusion of a sales contract. The only two parties to a sales contract are the buyer and seller. As discussed the buyer undertakes to pay the seller in return for the goods received. This obligation forms a part of the sales contract itself. What method of payment is to be employed in the transaction is also stated in the sales contract and letter of credit could be one of them. Hence the key element of a sales contract is the agreement of the buyer to pay a specified sum for an agreed quantity of goods and contains details regarding the method of payment, time period for delivery, the manner in which the goods will be delivered and so on.

If letter of credit is the agreed method of payment as concluded in the sales contract then the applicant provides the instructions to the issuing bank who, if it agrees, issues a credit and becomes the first party. Technically an applicant is not a party to a documentary credit since the undertaking to honor a complying presentation is given by the issuing bank. The applicant is responsible to properly complete the letter of credit application form and avoid any ambiguous terms and conditions. They should keep in mind the following points:

1. The documents called for must be in accordance with the terms of pro forma invoice or sales contract agreed between the buyer and seller.
2. Any specific data content that should be in the required documents including any quality/quantity/weight/inspection/packing etc. specifications that are to be met and evidenced on documents.
3. Who is to issue the required documents.
4. Draft should not be mentioned under the field for required documents because drafts have a designated field where they are mentioned.
5. The transport document called for should match the mode of transport. For eg the mode of transport is sea but an airway bill has been called for.
6. The details of correspondent banks should be correct and complete.

Therefore it should be kept in mind that although the application requesting issuance of a letter of credit is given by the applicant, main parties to a letter of credit transaction are the issuing bank that has given an independent undertaking to honor a presentation that complies with the terms and conditions of the credit and the beneficiary which has to make sure that all documents as stipulated in the credit are presented and that they comply with the terms and conditions of the credit.

Risks and Benefits under Documentary Credits as a Method of Payment

Although documentary credits are a secured method of payment and provide some level of comfort to the beneficiary and the applicant still there are certain risks and benefits involved.

Risks Faced by the Beneficiary

1. **Risk of failure to provide credit complying documents** – even though the issuing bank assumes the payment risk of the applicant by giving an irrevocable undertaking, the risk for the beneficiary is non payment by either nominated/confirming bank or the issuing bank if the documents are not complying. To minimize this risk the beneficiary must carefully read all the terms and conditions of the credit when he receives it. If there is any variation from the sales contract or if there is any condition that the beneficiary finds will be difficult to meet then he should immediately request the advising bank to request the issuing bank for an amendment of the terms that the beneficiary is not comfortable with. The beneficiary

may also contact the applicant directly to request the required amendment from the issuing bank. The beneficiary should start the manufacture of goods and shipment only when the terms and conditions including any amendment are acceptable to him otherwise he would fail to make a complying presentation.

2. **Non-bank issuer of credit** – a documentary credit may be issued by any party other than a bank but it is the beneficiary who determines whether it is acceptable to him. If he has any doubts with respect to the credit standing or reliability of the issuer of the credit then he should be careful before shipping any goods.
3. **Risk of delay in payment or failure of payment from the issuing bank** – if the credit is not confirmed then certainly there is a risk to the beneficiary because of the country risk of the issuing bank. The issuing bank may be unable to pay due to insufficient foreign exchange reserves or due to insolvency which will effect the undertaking of the issuing bank. The beneficiary may then have to directly obtain payment from the applicant. To avoid such circumstances the beneficiary may opt for confirmation of credit from a bank in his own country.
4. **Risk of fluctuation in exchange rate** – exchange rate fluctuation is an imminent risk factor in international trade specially if payment is on usance basis. The beneficiary can be protected if he opts to enter into a forward contract which fixes the future exchange rate (the actual rate could be lower or higher than the market rate on the day of settlement).
5. **Fraud** – it may be a case where the credit received by the beneficiary is forged that means either the issuing bank did not issue it or the bank that issued it does not exist. The beneficiary may ship the goods on the basis of the forged credit but would not receive the payment.

Risks Faced by the Applicant

1. **Inferior quality goods** – the applicant runs the risk of receipt of inferior quality goods whereas the documents received by the bank may be credit complying. In such a scenario the applicant may suffer a loss due to inferior quality of goods or may also fail to sell the goods in the worst case scenario. To safeguard himself the applicant may request presentation of an inspection certificate from an independent authority.
2. **Late arrival of goods** – it is also possible that the goods may reach the country of the importer later than expected hence the applicant may not be able to sell the goods at anticipated price.
3. **Arrival of goods before the arrival of documents** – many times it happens that the goods arrive before the documents are received by the issuing bank. In such cases either the applicant sometimes has to bear the demurrage charges if the issuing bank has no policy to issue shipping guarantee or if the bank has issued the shipping guarantee then it is against

an undertaking from the applicant that payment under the LC will be made irrespective of any discrepancies in the documents.

4. **Inability of issuing bank to pay** – in the event that the issuing bank becomes insolvent or due to some other reason it is unable to fulfill its obligation to pay the beneficiary, then the applicant may be required to pay the beneficiary directly. Effectively it would result in paying twice as the applicant may have already deposited funds in the bank or the bank may have held margin money against the LC.
5. **Exchange rate fluctuation risk** – just like the beneficiary the applicant also faces the exchange rate fluctuation risk specially if the payment would be on usance basis. To obtain protection from this risk the applicant has the option of entering into forward contracts and fix a future exchange rate.
6. **Fraud** – in international trade and especially when the importer and exporter are new to each other the risk of fraud is the highest. Since the issuing bank examines the documents on their faces it is quite possible that the documents may be fraudulent and payment has been made against them.

There could also be sovereign risks or regulatory risks which may effect the performance under documentary credits. Also there could be legal risks which could jeopardize the payment obligations of the issuing bank. It is also very important for all parties involved to know their customers and the true nature of their businesses. Any suspicion must be properly handled.

Benefits of Documentary Credit Transactions

Benefits for the Applicant

The applicant is assured that no payment would be made by the issuing bank under its irrevocable undertaking if:

- a) All the documents as mentioned in the credit are not presented.
- b) All the terms and conditions of the credit are not met.

Benefits for the Beneficiary

The beneficiary is assured that payment would be received from the issuing bank under its irrevocable undertaking if:

- a) All the documents as stipulated in the documentary credit are presented.
- b) All the terms and conditions of the documentary credit have been complied with.

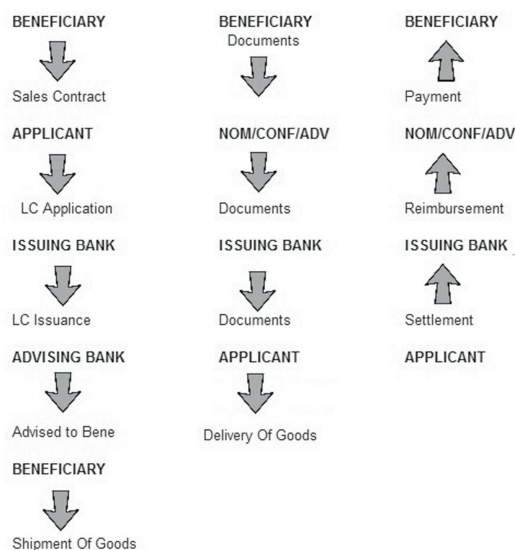
Let us understand what we have read so far through an example:

Mr. A is an exporter of iron ore and exporting mainly to country X. His business is doing quite well and he is contented with the progress of his business. He has a long trusting relationship

with his party in country X. Mr. A however feels the need to grow his business and reach out to other importers in other countries. His marketing team, after doing a lot of research and groundwork, suggests to him that country Y is a developing country and the economy is opening up to outsiders. His team suggests a few clients who can be approached. Mr. A develops contacts with Mr. B in country Y and they both enter into an agreement to supply iron ore at a certain price. Unlike Mr. A's client in country X, this client is new and Mr. A is in dilemma whether he would get the money after he supplies the goods? Doubts start cropping up in his mind whether this new client is really credit worthy? To mitigate all these risks Mr. A asks Mr. B to get a letter of credit issued by Mr. B's bank in favor of Mr. A. A letter of credit (as studied) is an irrevocable undertaking issued in favor of a named beneficiary. Irrevocable meaning unalterable and undertaking meaning a pledge or a promise. A letter of credit lays down the terms and conditions upon whose compliance this undertaking would be fulfilled. The terms and conditions relate to the presentation of documents and their content (as laid down in letter of credit). The undertaking is given by a bank known as the issuing bank that it will honor (pay) the beneficiary provided the documents presented by him comply with terms and conditions of the credit. Hence Mr. A is satisfied that the risk of non payment has been mitigated by the involvement of a bank on the other hand Mr. B is also satisfied that payment would not be made unless all the terms and conditions of the letter of credit are met.

Why is it that Mr. A chose letter of credit and not any other method of payment? As we had seen earlier a letter of credit is a preferred method since it carries an independent irrevocable undertaking of an LC issuing bank to honor a complying presentation.

BASIC STRUCTURE OF A DOCUMENTARY CREDIT TRANSACTION



Chapter 2

Types of Documentary Credits

We will start this chapter with learning of different types documentary credits. Although almost every documentary credit that is issued nowadays is irrevocable, there are also revocable credits which are very rarely used.

Revocable Documentary Credits

Even though UCP 600 only recognizes the standard for the issuance of an irrevocable credit, it does not prohibit issuance of a revocable credit. Such a credit would need to incorporate terms and conditions that will apply to revocability.

If the undertaking of the issuing bank is revocable, the beneficiary has no security of payment. Such a credit may be amended or even cancelled by the issuing bank **‘at any moment’** and **‘without prior notice to the beneficiary.’**

An issuing bank however remains liable to reimburse a nominated bank for any honor or negotiation made before receipt of cancellation of credit. At the time of issuance of a revocable credit it should be made clear to the applicant in writing that he will remain liable for any payment made by a nominated bank before it received cancellation notice.

Banks should not confirm credits that are revocable, also they should not be issued as transferable. The advising bank/nominated bank must advise the beneficiary on receipt of a revocable credit that it is subject to cancellation any time up to and including the latest date of presentation of documents without any prior consent of the beneficiary.

The nominated bank must advise the beneficiary of any cancellation notice that it has received from the issuing bank without delay. Also it must advise the issuing bank of any payment obligation that it has undertaken prior to receipt of notice of cancellation.

Irrevocable Documentary Credits

A credit subject to UCP 600 is irrevocable even if there is no mention to this effect in the documentary credit. An irrevocable credit cannot be amended or cancelled without the consent of the issuing bank, the confirming bank if any and the beneficiary.

Irrevocable Confirmed Documentary Credits

A confirmed documentary credit carries a definite undertaking of the confirming bank, in addition to that of the issuing bank to honor or negotiate a complying presentation. If a beneficiary is not satisfied with the undertaking of the issuing bank it may require another bank preferably in his own country to confirm the credit. For confirming a credit the issuing bank

must authorize or request a bank to confirm and field 49 of letter of credit must state “CONFIRM” or “MAY ADD”. It is not uncommon for banks these days to add silent confirmation to a credit as per its internal policies in order to accommodate certain beneficiaries.

Standby Letter of Credit

A standby letter of credit is a contingency payment mechanism which becomes active on non-performance or default. Standby letters of credit were developed because USA banks had limited legal authority to issue guarantees. A standby letter of credit is like a guarantee that can be enforced in case of failure to perform under a contractual undertaking by either the buyer (payment) or seller (delivery or performance). Although standby letters of credit may possess elements of a documentary credit subject to UCP 600, the intention, however, is that the beneficiary gets paid only in case of default on the transaction to which the standby letter of credit relates. Standby letters of credit may be issued subject to UCP 600 but since their functions are different from those of a commercial letter of credit some of the UCP articles (eg articles 18–32) have no practical application to an SBLC. Therefore ISP98 was introduced on 1st January 1999, which provides a more relevant framework for a standby letter of credit.

Transferable Credits

A transferable credit, as the name suggests, is a credit that states that it is transferable. In a transferable credit, a credit stating that it is transferable is issued in favor of a named beneficiary who in turns gets it transferred to a second beneficiary. A transferable credit may be transferred to more than one second beneficiary at the request of the first beneficiary. In the simplest scenario a letter of credit is issued in favour of the beneficiary (seller/exporter) who is the manufacturer/producer of the goods. He ships the goods and presents the stipulated documents and claims his payment. Sometimes, however, the importer conducts its business with a middleman or agent or an intermediary trader who himself purchases goods and then supplies to the importer. These traders function on limited margins hence they seek a source of financing their purchases without putting any load on their own assets and supplies. Therefore transferable credits were devised as a technique that the trader can use to pay the parties from whom goods are purchased.

Simple Form

Applicant → issuing bank → advising bank → beneficiary

Transferable Credit and Transferred Credit

Applicant → issuing bank → advising bank → beneficiary → nominated bank (transferring bank) → second beneficiary

Back to Back Documentary Credits

The occurrence of a back to back credit is very similar to that of a transferable credit in the way

that very often they involve an agent functioning as the intermediary between a buyer and seller. A letter of credit (credit 1) is initially issued in favour of the agent/middleman/ trader at the request of the ultimate buyer.

The trader makes use of this credit as means to request another bank to issue a separate credit (credit 2) in favour of his supplier on his behalf. When credit 2 is issued by the same bank that advised credit 1 in favour of the trader then it is called back to back credit.

When credit 2 is issued by the trader's own bank (not being the advising bank) then it is called counter letter of credit because credit 1 is the ' counter' for credit2.

The key points of back to back or counter credit are:

- ◆ the two documentary credits are entirely separate and each issuing bank holds separate undertaking.
- ◆ the trader has the obligation to pay the bank that issued credit 2 on its behalf irrespective of whether payment is received under credit 1.
- ◆ the documents from credit 2 may be utilized in part to make a presentation under credit 1.

A back to back credit is used in cases where transferable credit may not be possible or where the agent or middleman wants a separate credit issued on its behalf in order to appear as an applicant. The issuing bank of the back to back credit requires the master credit as a part of the security for issuing the back to back credit.

Because of this arrangement, the documents required under the back to back or counter credits must match fully or partially to those required under the original credit. The issuing bank of the back to back credit wants to be satisfied that it can be paid under the master credit and this can only be achieved by presentation of documents that would be acceptable under the master credit.

Just as is the case in a transferable credit, the agent or trader (middleman) will only be looking to substitute his own invoice and draft, if any for those of the beneficiary of the back to back or counter credit.

Revolving Documentary Credits

Revolving documentary credits are used between buyer and seller who have a long standing trading relationship. The applicant and the beneficiary agree to the issuance of a credit in which the amount gets reinstated usually without any amendment. The revolvment of the amount depends on the type of revolvment, whether the revolvment is automatic or not and whether it is cumulative or non cumulative.

Revolving Credits and Article 32 of UCP

Article 32 states that if shipments by installments is given in any credit and if any installment is not shipped then the credit ceases to be available for that installment and any further

installments. People may draw similarities between revolving credits and article 32 (installment drawing or shipment) but in reality and conceptually these two are different facets of a credit.

In an installments drawing there is a single credit amount and shipments/drawings are to be made in given periods, in respect of the amount or goods shipped, upto that single amount. In revolving credits there is a base amount which is made available repeatedly on the same terms and conditions, subject to the maximum number of times it is stated to revolve. When a credit is issued on an automatic, cumulative, revolving basis then article 32 should be excluded.

Types of Revolvment

- ❖ **Revolvment dependent upon time:** in this case a specific amount is allowed to be drawn within a defined period during the validity of the credit. For eg the documentary credit may indicate that US\$10000 may be drawn during each month during the letter of credit's 8 month validity. The revolvment of the amount may be cumulative or non cumulative.
- ❖ **Revolvment dependent upon value:** in this case the credit may indicate that the amount is to revolve upon utilization within the validity of the credit. If no other indication is stated, this will allow revolvment upon each and every utilization. Theoretically this would mean that the beneficiary could make a shipment everyday for 8 months that is 240 revolvments. It is next to impossible and difficult for banks to calculate the liabilities in such cases hence they are required to indicate the maximum amount for which credit can be drawn for all shipments during its validity.

Automatic or Non Automatic Revolvment

- ❖ When the revolvment is automatic there is no requirement for any amendment from the issuing bank. The issuing bank's liability would be the maximum amount that could be drawn under the credit covering all revolvments.
- ❖ The revolvments are non automatic when they are dependant upon issuing bank's authorization to the nominated bank for further revolvments, through amendments. In this circumstance the issuing bank's maximum liability at any given time is the value of a single revolvment.

Cumulative or Non Cumulative Revolvments

- ❖ If a credit states that the revolvment is cumulative it means that if any amount is not utilized during any month then it is available to be utilized in each following month. For example if USD 10000 can be drawn each month for 4 months and if no amount is drawn in 3 months then in the fourth month the cumulative amount USD 40000 would be drawn.
- ❖ If the credit indicates that the revolvment is non cumulative then any undrawn amount cannot be carried forward to the next month.

In both the cases the maximum liability of the issuing bank at the time of issuance would be

USD 40000.

Clean Documentary Credits

A clean documentary credit is the one where the issuer pays against the bills of exchange that are drawn on the issuer. No other document is required for payment.

Red Clause Documentary Credits

Also known as the advance payment documentary credit. On the request of the seller, the buyer may agree for a preshipment advance to be paid to him and that advance would be utilized from the documentary credit. Accordingly the issuing bank will insert a clause in the letter of credit thereby authorizing the nominated bank to pay a certain percentage of the documentary credit value to the beneficiary as advance.

Chapter 3

Issuance of Letter of Credit

In the earlier chapter we had studied about letter of credit as a method of payment and other types of credits. This chapter will focus on the issuance of a documentary credit. After the conclusion of the sales contract, and selection of letter of credit as a method of payment, it is the buyer's responsibility to request issuance of documentary credit and dual responsibility of seller and buyer to agree on the contents of the documentary credit as stated in the sales contract. The content should give details about how the credit is to be issued. Banks, mostly issue letters of credit on behalf of customers with whom they have a long standing or established relationships but in current scenario and growing business needs, letters of credit are also issued on behalf of new clients. Since it's the issuing bank which gives its irrevocable undertaking to honor a complying presentation, it is important that the issuing bank is able to obtain reimbursement/settlement from the importer. Banks provide facility (non fund based limits) to its customers against some collateral. Sometimes banks also issue letters of credit by either keeping 100 pct cash margin or a certain pct of the credit amount in the form of a fixed deposit. The banks must ensure that such fixed deposits are lien marked so that the applicant does not get it liquidated. Again it depends upon the sanctions/limits provided to the applicant that what should be the percentage of cash margin. The buyer submits to the issuing bank:

1. A letter requesting the issuance of documentary credit, also giving the bank the authority to debit its account for charges and margin. The applicant also agrees to reimburse the issuing bank at the time of payment.
2. A letter of credit application form.
3. 100rs non judicial stamp paper (Indian banks take).
4. Pro forma invoice/confirmed purchase order.
5. Insurance document (depending on the incoterm) having the name of the issuing bank.

The buyer and seller should agree to the following points relating to the issuance of letter of credit in order to avoid any problem that may arise at document examination stage:

- ◆ Validity, expiry date and expiry place.
- ◆ Whether the credit is to be available by sight, acceptance, negotiation or deferred payment.
- ◆ The bank with which the credit is to be available.
- ◆ The currency and amount of credit.

- ◆ Whether partial shipment is allowed.
- ◆ Whether transshipment is allowed.
- ◆ Which type of transport document will be applicable.
- ◆ The incoterm that will be applicable and depending on it the insurance requirements.
- ◆ How the goods are to be described.
- ◆ What all documents are required.
- ◆ Who will pay the respective bank charges.
- ◆ Which bank will act as the advising bank.
- ◆ Whether the credit is to be confirmed and who will bear the confirmation charges.
- ◆ Depending upon the credit requirement whether to nominate a reimbursing bank.
- ◆ Whether the credit is to be issued as transferable.

Some Important Points to be Noted

The transport document to be called should be according to the modes of transport that are likely to be utilized.

The documents to be presented by the beneficiary should be very clearly mentioned in order to avoid any disputes later.

Although its optional to add tolerance but if it is mentioned then it should be clear whether it relates to quantity, amount or unit price.

In simple words the terms and conditions of the credit should be such that they render the credit workable, that is, it should be capable of being honored on presentation of stipulated documents.

The Role of the Issuing Bank on Receipt of Letter of Credit Application

The credit when issued carries the name of the issuing bank and its independent irrevocable undertaking hence the letter of credit application must be examined carefully. When an issuing bank receives the letter of credit application it performs the following tasks:

- ◆ Notes and records the time of receipt of the application.
- ◆ Checks the authenticity of the application.
- ◆ Checks the clients' limits availability.
- ◆ Checks whether there are enough funds in the client's account for margin and letter of credit opening charges or other applicable charges.
- ◆ Banks have internal guidelines with respect to certain types of goods hence the sanction

letters of the client must be checked to see if the import of that good is allowed.

- ◆ Banks must check if any special approvals or licenses are required.

Since the applicant is responsible for any ambiguity in its instructions, the bank must promptly notify the applicant if there is any error on his part in the letter of credit application. It is the responsibility of the issuing bank to discuss in detail any term or condition that would impact the workability of the credit. For example, if an airway bill is required, the applicant may state in its application that Airway bill be issued “to order.” Also many times applicants request that they issue or countersign a document which could affect a complying presentation being made by the beneficiary. The bankers must discuss the consequences of such conditions with the applicant.

After the examination of application and performing the above tasks the issuing bank may proceed with the issuance of documentary credit. The issuing bank is responsible for:

- ◆ issuing the credit strictly in accordance with the instructions of the applicant.
- ◆ issuing the letter of credit in accordance with UCP600

Banks, wherever possible, use their preferred correspondent banks with which they have arrangements for advising of credit. In case the advising bank as named by the applicant is not a correspondent bank of the issuing bank then the issuing bank may, after taking consent of the applicant, route the credit through its correspondent bank. If the applicant has not named any bank, the issuing bank may choose any of its correspondent banks to route the LC. The documentary credit is transmitted to the advising bank by SWIFT, telex, mail or courier. In the year 2013 in India software called SFMS was introduced for inland letters of credit which were earlier issued in paper form.

The documentary credit should be opened in a manner that is workable for the beneficiary that is, he is able to draw under the credit by presentation of documents. The issuing bank should promptly respond to requests to amend the credit, to waive the discrepancies and honor its obligation etc.

MT (Message Type) 700 is used for issuance of letter of credit by SWIFT. MT 700 has fields which indicate the terms and conditions of a documentary credit.

MT 700 Field Specifications		
Status	Tag	Field Name
M	27	Sequence of Total
M	40A	Form of Documentary Credit
M	20	Documentary Credit Number

O	23	Reference to Pre-Advice
O	31C	Date of Issue
M	40E	Applicable Rules
M	31D	Date and Place of Expiry
O	51a	Applicant Bank
M	50	Applicant
M	59	Beneficiary
M	32B	Currency Code, Amount
O	39A	Percentage Credit Amount Tolerance
O	39B	Maximum Credit Amount
O	39C	Additional Amounts Covered
M	41a	Available With... By...
O	42C	Drafts at...
O	42a	Drawee
O	42M	Mixed Payment Details
O	42P	Deferred Payment Details
O	43P	Partial Shipments
O	43T	Transshipment
O	44A	Place of Taking in Charge/Dispatch from.../Place of Receipt
O	44E	Port of Loading/Airport of Departure
O	44F	Port of Discharge/Airport of Destination
O	44B	Place of Final Destination/For Transportation to.../Place of Delivery
O	44C	Latest Date of Shipment
O	44D	Shipment Period

O	45A	Description of Goods and/or Services
O	46A	Documents Required
O	47A	Additional Conditions
O	71B	Charges
O	48	Period for Presentation
M	49	Confirmation Instructions
O	53a	Reimbursing Bank
O	78	Instructions to the Paying/Accepting/Negotiating Bank
O	57a	'Advise Through' Bank
O	72	Sender to Receiver Information
O: Optinal M: Mandatory		

The Field specifications are as follows:

Field 27 Sequence Total- specifies the number of this message in the series of messages sent for a documentary credit and total number of messages in the series.

Field 40A – Form of Documentary Credit- specifies the type of credit. It must be any of the following:

Irrevocable

Revocable

Irrevocable Transferable

Revocable Transferable

Irrevocable Standby

Revocable Standby

Irrevocable Transferable Standby

Any special conditions related to the transferability of the credit and/or the bank authorized to transfer in a freely available credit should be included in field 47A Additional Conditions.

Field 20 – Documentary Credit Number- states the documentary credit number that has been assigned by the sender.

Field 23 – Reference to pre advice- specifies if credit has been pre advised. This field must contain the code PREADV.

Field 31C – Date of issue- states the date on which the issuing bank considers the documentary credit as being issued. If this field is absent then it implies that the date of issue is the date this message is sent. The date should be expressed in YYMMDD format. This field becomes important if credit requires that issuance date of the credit is to be mentioned in all documents.

Field 40E – Applicable rules- specifies the rules, the credit is subject to.

Field 31D – Date and place of expiry- states the latest date of presentation under the documentary credit and the place where documents must be presented.

Field 51a – Applicant Bank- states the bank of the applicant customer, if different from the issuing bank.

Field 50 – Applicant- states the party on whose behalf the documentary credit is being issued.

Field 59 – Beneficiary- states the party in whose favour the documentary credit is being issued.

Field 32B – Currency Code, Amount- contains the currency code and amount of the documentary credit.

Field 39A – Percentage Credit Amount Tolerance- states the tolerance relative to the documentary credit amount as a percentage plus and/or minus the amount. At times field 47 A states the tolerance to which amount/qty/unit price is subject.

Field 39B – Maximum Credit Amount- this field further qualifies the documentary credit amount.

Field 39C – Additional Amounts Covered-states any additional amounts available to the beneficiary under the terms of the credit, such as insurance, freight, interest etc.

Field 41a – Available With...By- identifies the bank authorized to pay, accept, negotiate or incur a deferred payment undertaking under the credit and an indication of how the credit is available (payment, acceptance, negotiation, deferred payment).

Field 42C – Drafts at... –states the tenor of drafts to be drawn under the documentary credit. Depends upon the payment type under which credit is issued.

Field 42a – Drawee- identifies the drawee of the drafts to be drawn under the documentary credit.

The drawee must be a bank. If drafts on the applicant are required, they are to be listed as documents in field 46A.

Field 42M – Mixed Payment Details- states the payment dates, amounts and/or method for their determination in a documentary credit which is available by mixed payment.

Field 42P – Deferred Payment Details- states the payment date or method for its determination

in a documentary credit which is available by deferred payment only.

Field 43P – Partial Shipments- states whether partial shipments are allowed or not under the documentary credit.

Field 43T – Transshipment-states whether or not transshipment is allowed under the documentary credit.

Field 44A – Place of Taking in Charge/Dispatch from.../Place of Receipt- states the place of taking in charge (for a multimodal transport document), the place of receipt (for a road, rail or inland waterway transport document or a courier receipt, post receipt or certificate of posting), the place of dispatch or the place of shipment to be indicated on the transport document.

Field 44E – Port of Loading/Airport of Departure-states the port of loading or airport of departure to be indicated on the transport document.

Field 44F – Port of Discharge/Airport of Destination- states the port of discharge or airport of destination to be indicated on the transport document.

Field 44B – Place of Final Destination/For Transportation to.../Place of Delivery- states the final destination or place of delivery to be indicated on the transport document.

Field 44C – Latest Date Of Shipment- states the latest date for loading on board/dispatch/taking in charge.

Field 44D – Shipment Period-states the period of time during which the goods are to be loaded on board/despached/taken in charge.

Field 45A – Description of Goods and/or services- contains description of goods and/or services. Incoterms such as FOB, CIF etc should be specified in this field.

Field 46A – Documents Required-contains a description of any document that is required. For credits subject to eUCP, the format in which electronic records are to be presented must be specified in this field.

Field 47A – Additional Conditions- contains a description of further conditions of the documentary credit.

Field 71B – Charges- specifies the charges to be borne by beneficiary/applicant. In case of any ambiguous terminology used with respect to the charges in this field, the advising bank must seek clarification from issuing bank. Charges details may sometimes be stated in field 47A.

Field 48 – Period of Presentation-specifies the period of time after the date of shipment within which the documents must be presented for payment, acceptance or negotiation. The absence of this field means that the presentation period is 21 days, where applicable.

Field 49 – Confirmation Instructions-contains confirmation instructions for the receiver whether it is MAY ADD, CONFIRM OR WITHOUT. This field is meant for the receiver of the

credit that is the first advising bank. While routing the credit through second advising bank this field should be changed to WITHOUT in case it read MAY ADD or CONFIRM.

Field 53a – Reimbursing Bank- specifies the name of the bank which has been authorized by the sender to reimburse drawings under the documentary credit. This may be a branch of the sender or the receiver or an entirely different bank.

Field 78 – Instructions to the Paying/Accepting/Negotiating Bank- states the instructions to the paying, accepting or negotiating bank. It may also indicate if prenotification of a reimbursement claim or pre-debit notification to the issuing bank is required. This field may also state the address of the issuing bank where the documents are to be dispatched.

Field 57a – Advice Through Bank-identifies the bank if different from the receiver, through which the documentary credit is to be advised to the beneficiary.

Field 72 – Sender to Receiver Information-specifies additional information for the receiver.

Chapter 4

Availability and Payment Terms, Types of Transport Documents

In a documentary credit, the payment or settlement is dependent on the presentation of complying documents. When complying documents are presented, then a bank must act according to its defined or agreed role and/or any undertaking it may have given under the credit. When a bank (nominated, confirming, issuing) receives a presentation, it must examine it to determine whether its complying. If it is determined as complying, or if a waiver (for discrepancies in case of discrepant documents) has been sought from the applicant and the issuing bank has accepted the waiver, then settlement must be made to the presenter without any delay and according to the availability as mentioned in the letter of credit.

When a presentation is found to be complying, the beneficiary is entitled to receive payment/settlement from:

- a) The nominated bank that is willing to act on its nomination and accordingly honor or negotiate. The nominated bank will be reimbursed as per terms and conditions mentioned in the documentary credit or,
- b) The confirming bank, which will honor or negotiate as per its undertaking as given in the confirmation advice conforming with the availability in the letter of credit. The confirming bank will be reimbursed as per terms and conditions mentioned in the documentary credit or,
- c) The issuing bank, when the documents are directly presented to it.

Availability of a Documentary Credit

A credit available with a nominated bank is also available with the issuing bank. A credit may be made available with a nominated bank or the issuing bank. For credits available with issuing bank there is no nominated bank. A credit may be made available by:

Payment

Negotiation

Acceptance

Deferred payment

What is available by payment?

A credit available by payment means that payment has to be immediate or at sight. In other

words, the nominated bank acting on its nomination has the direct authority of the issuing bank to pay the beneficiary before the issuing bank has examined the documents. In such cases, the issuing bank either authorizes the nominated bank to debit its account held with the nominated bank, or issues a reimbursement authorization to a reimbursing bank named in the credit to honor the claim of the nominated bank when it pays the beneficiary and presents its claim to the reimbursing bank. A sight draft may or may not be called in a credit available by payment.

A confirming bank must honor a credit available with it by payment and such honor is without recourse. Without recourse meaning that if reimbursement is not obtained from the issuing bank, the confirming cannot ask the beneficiary for a refund.

A nominated bank may or may not honor. Any honor by the nominated bank is without recourse to the beneficiary unless the nominated bank has entered into a with recourse agreement with the beneficiary. When a payment is with recourse, a nominated bank can claim its money back from the beneficiary if reimbursement is not received from the issuing bank or confirming bank as applicable.

An issuing bank must honor by making payment and such honor is without recourse.

What is available by negotiation?

A credit available by negotiation means that the nominated bank acting on its nomination may advance or agree to advance funds to the beneficiary on or before the banking day on which reimbursement from the issuing bank is due. That means if due date for payment is 15th May 20XX then the nominated bank may advance funds to the beneficiary on or before 15th May 20XX. If advance is provided the same day as the due date, the nominated bank has to part with its own funds, for qualifying the transaction as negotiation, and not utilise the funds received from the issuing bank. There may or may not be a requirement for a draft but if a draft is required it is to be drawn on a bank other than the nominated bank.

A confirming bank will advance funds or agree to advance funds to the beneficiary on or before the banking bank on which reimbursement is due to it. Negotiation effected by a confirming bank is on a without recourse basis. A confirming bank has to negotiate if credit is available with it by negotiation. If the credit is available with another nominated bank by negotiation and that nominated bank does not negotiate, the confirming bank is bound to honor.

A nominated bank may or may not negotiate meaning that it may advance funds or agree to advance funds to the beneficiary on or before the banking bank on which reimbursement is due to it. Negotiation may be effected on a with or without recourse basis. A nominated bank that is not a confirming bank negotiates with recourse unless otherwise agreed.

A credit will never be available with an issuing bank by negotiation. An issuing bank only honors that is pays at sight, accepts a draft and pays at maturity, or incurs a deferred payment undertaking and pays at maturity as per the availability of the credit. An issuing bank does not negotiate. The fact that a draft is required to be drawn on a bank other than the nominated bank is

because a bank does not negotiate a draft drawn on itself. Therefore an issuing bank does not negotiate, and a nominated bank will not negotiate in a negotiation credit if the draft is drawn on it. The issuing bank either pays (at sight/usance), or accept the draft (usance credit) when drafts are drawn on them. Negotiation may be both at sight or usance.

What is available by acceptance?

A credit available by acceptance means that a draft is certainly required and it is to be drawn on the nominated bank. When the credit is available with the issuing bank by acceptance then the draft is required to be drawn on the issuing bank. The payment is due in future on the due date of the draft. If a nominated bank accepts a draft drawn on it then it becomes irrevocably bound to honor at maturity whether it has confirmed the credit or not.

A confirming bank must honor by accepting the draft drawn on it and effecting payment on maturity in a credit available with it by acceptance. Such honor is without recourse.

A nominated bank may or may not accept a draft drawn on it in a credit available with it by acceptance. When it accepts the draft, the nominated bank is bound to honor on the due date of draft and such an honor is without recourse.

An issuing bank must honor by accepting a draft drawn on itself and paying at maturity in a credit available with it by acceptance. This honor is without recourse.

An issuing bank or a confirming bank are required to accept and/or pay at maturity when another nominated bank does not accept a draft, or having accepted a draft does not pay at maturity.

What is available by deferred payment?

A credit that is available by deferred payment means that payment is due at some time in the future and due date is calculated, for example from the date of a document or shipment or invoice or similar. A draft will never be called in a credit available by deferred payment.

A confirming bank must honor by incurring its deferred payment undertaking and paying at maturity in a credit available with it by deferred payment. This honor is without recourse.

A nominated bank may or may not incur its deferred payment undertaking in a credit available with it by deferred payment. When a nominated bank incurs a deferred payment undertaking it is bound to pay at maturity. This honor is without recourse.

An issuing bank must honor by incurring its deferred payment undertaking and paying at maturity in a credit available with it by deferred payment. This honor is without recourse.

An issuing bank or a confirming bank are required to incur a deferred payment undertaking and/or pay at maturity when another nominated bank does not incur a deferred payment undertaking, or having incurred a deferred payment undertaking does not pay at maturity.

No Matter the Payment Terms, a Bank Honors or Negotiates a Presentation

that is Credit Complying

An important point to remember here is that a credit may be available with the issuing bank by sight, acceptance, deferred payment but it will never be available with the issuing bank by negotiation.

We read earlier the responsibility of the nominated, confirming and issuing bank on receipt of complying presentation, however when the presentation is found to be non complying and discrepant documents cannot be replaced or corrected, then no bank is under any obligation to honor or negotiate.

Its possible that one bank determines the documents to be compliant while the other does not. In such situations, the position of the banks may be as follows:

If the documents are found compliant by the nominated bank but not by the confirming bank:

- ◆ The confirming bank need not provide reimbursement to the nominated bank
- ◆ The nominated bank may be able to recover the funds from the beneficiary if settlement was made on a 'with recourse basis'.

If the documents are found to be compliant by the nominated bank but not by the issuing bank:

- ◆ The issuing bank need not reimburse the nominated bank or may even seek refund of any amount that the nominated bank has received from the issuing bank or reimbursing bank.
- ◆ The nominated bank may be able to recover the funds from the beneficiary if settlement was made on a 'with recourse basis'.

If the documents are found to be compliant by the confirming bank but not by the issuing bank:

- ◆ The issuing bank need not reimburse the confirming bank or may even seek refund of any amount that the confirming bank has received from the issuing bank or reimbursing bank.
- ◆ The confirming bank cannot recover funds from the nominated bank or beneficiary or cannot seek to cancel any deferred payment undertaking, acceptance of a draft or agreement to advance funds on a specified date because its settlement was made on a without recourse basis.

If the documents are found to be compliant by the issuing bank but not by the applicant:

- ◆ The applicant need not reimburse the issuing bank or may seek to recover any amount that has been debited from its account.
- ◆ The issuing bank cannot recover funds from the confirming bank, the nominated bank or beneficiary because its settlement was made on a without recourse basis.

The below mentioned table reflects the draft requirements when a documentary credit is

subject to different payment terms.

Availability	Payment	Negotiation	Acceptance	Deferred Payment
Tenor	Sight	Sight/Usance	Usance	Usance
Draft	Optional- To be drawn on nominated bank/the issuing bank as the case may be	Optional- To be drawn on a bank other than the nominated bank	Mandatory- To be drawn on nominated bank or issuing bank as the case may be	No draft required
Available with	Nominated Bank/Issuing Bank	Nominated bank	Nominated bank/Issuing Bank	Nominated bank/Issuing Bank

Transport Documents

Transport documents are one of the most important documents that are required under a documentary credit. It evidences that goods have been shipped by the beneficiary for delivery to the applicant. The issuing bank assumes the credit risk of the applicant since its the issuing bank that gives an irrevocable undertaking to honour a complying presentation. So in such a case the issuing bank would prefer to have control over the goods. The same can be achieved by the issuing bank by either having a transport document issued or endorsed to its order, or by being the consignee. Some types of transport documents are:

Multimodal transport document – as the name suggests a multimodal transport document involves movement of goods on more than one mode of transport for e.g movement by road, then by sea, then by air etc. A multimodal transport document may be negotiable or non negotiable.

Bill of lading – a bill of lading is issued when goods are transported by sea. A bill of lading is a negotiable document that means the ownership of the goods passes on endorsement. This document gives security to the issuing bank in case the applicant becomes insolvent. To release the goods an original bill of lading is required if it is issued in a negotiable form.

Airway bill – when goods are transported by air an airway bill is issued. An airway bill is a non negotiable document. Banks, if they wish to have control over the goods, must call for the consignor copy or original for consignor/shipper (3) form of airway bill. The goods are delivered to the named consignee.

Non negotiable seaway bill – non negotiable seaway bill is used for short sea journeys as goods may arrive at port before the documents reach the bank. A non negotiable sea way bill is a straight consigned transport document hence an original is not required to take delivery of goods.

Charter party bill of lading – when a carrier or other companies hire vessels, they enter into a

hiring agreement or arrangement known as a charter party contract. The party which has hired the vessel enters into a contract of carriage with the shipper and issues a charter party bill of lading. It should be noted that UCP does not permit presentation of charter party bills of lading unless it is permitted by the terms of the documentary credit. The concern with charter party bills of lading is that the banks are not required to know the terms of charter party contracts and the shipowner may sell the goods to recover the loss if a charterer defaults on his payment. All these conditions are in charter party contract which banks are generally not aware of. Even if a credit calls for a copy of a charter party contract as a required document, the nominated bank/confirming bank/issuing bank will not examine it.

Road, rail or inland waterway transport documents – documents that cover dispatch of goods by road, rail are also known as rail or road consignment notes, truck waybill or CMR (Convention Merchandizes Couriers) notes. They are non negotiable documents. If an inland waterway document is issued in the form of a bill of lading then it becomes a negotiable document. This is an exceptional case.

Courier Receipt, Post Receipt or certificate of positing – when goods are transported through courier or post, courier receipt, post receipt or certificate of posting is issued. These are non negotiable documents and goods are delivered to the named consignee.

Chapter 5

UCP Articles and their Explanations

As we had read in the first chapter the UCP was developed by the ICC to have a common interpretation and understanding of the documentary credits globally. The current version of UCP is UCP 600 and is the seventh revision since its inception in 1933. The UCP 600 has 39 articles. The first article explains that a credit is subject to UCP when its text expressly states that it is subject to these rules. It is not to be presumed that any credit will be subject to UCP 600 automatically. When a credit is issued by Swift then Field 40E of MT 700 needs to specify that which rule is to apply that is UCP, eUCP, or ISP.

The operation of a letter of credit is often associated with banks. Does it mean that only a bank can issue, confirm or negotiate a letter of credit? The answer is no. There is no reason why a non bank entity or even a natural person for that matter cannot issue, confirm or negotiate a documentary credit. So why do we not see non bank entities issuing letters of credit? The reason being that the indispensable quality of a letter of credit lies in the credit risk of the applicant being covered by the issuing bank. The beneficiary has the irrevocable undertaking of the issuing bank to honor a complying presentation. If the beneficiary is not satisfied with the credit standing of the issuer, he has all the rights to refuse to perform under the credit.

Now let us assume a scenario where, for eg ABC limited in USA starts its business with YRS limited in India. ABC Ltd asks YRS Ltd. to get a documentary credit issued in its favour. YRS Ltd approaches a financial institution in India (a non bank entity) to issue the credit. Will this letter of credit be acceptable to ABC Ltd? It could be yes or it could be no. It is to be noted that the non bank issuer will have the same responsibilities that the UCP has laid down for an issuing bank. It will have the same undertaking as that of an issuing bank to honor a complying presentation. However ABC Limited may refuse to accept such a credit because he may not have trust on the credit standing of the financial institution. Moreover, the regulatory body may also not allow a non bank entity to issue a documentary credit. But the fact remains that the issuance of a documentary credit is not restricted to a bank.

A credit that has been issued by a non bank entity may be confirmed by a bank thereby providing a reason to the beneficiary to perform under the credit and also obtain finance. While it is possible for non bank entity to advise, confirm, negotiate a credit, in reality their roles may be restricted to just issuance of a credit. Functions like advising, confirming, or negotiating may be taken care of by other banks.

When we talk about exports and imports the one thing that comes to our minds is cross border trade and with such thinking we interpret that the application of UCP600 is confined to import

letters of credit. This is not true. UCP600 equally applies to inland letters of credit as they do to import letters of credit. However there could be some modifications depending on the local regulatory requirements. For eg. UCP sub article 24(b)(i), calls for an original for consignor road transport document, whereas in India, for locally issued credits, banks ask for the original for consignee or consignee copy of a road transport document. This could be due to regulatory guidelines.

Article 1 also states that any rule of UCP may be modified or excluded. What is important to note is that no exclusion or modification should be allowed to weaken the process or working of a letter of credit. Whenever any rule is excluded, a new rule should be inserted in its place. An example of a modification of a rule could be that sub article 14(b) allows an issuing bank, a confirming bank if any and a nominated bank 5 banking days each after the receipt of documents to examine the documents for compliance, but the rule in an LC may be modified and each may bank be given 6 banking days to determine compliance.

Let's take another example to understand exclusion of an article. The credit states that sub article 14(e) is excluded. Now the credit will have to state how the goods description on documents other than commercial invoice is to appear.

Exclusion of clauses may at times lead to unnecessary discrepancies thereby wasting a lot of time of all the parties involved. For example if a credit states that article 14(I) is excluded then it is possible, while all documents are dated after the issuance date of the credit, an invoice may have an earlier date as the beneficiary may have started preparing it before LC was issued. This would make the otherwise compliant documents as discrepant and unnecessary delay in payment to the beneficiary. Instead the issuing bank may modify this sub article by stating which docs are to be dated after the issuance date of LC.

While issuing standby letters of credit, it is a common practice by many banks to issue them subject to UCP. Although not a wrong practice, it is to be remembered that UCP has limited applicability to standby letters of credit because the inherent functions of a letter of credit and a standby letter of credit are different. Also UCP articles 18–32 have no practical application in a standby letter of credit so it is always better to issue standby letters of credit subject to ISP98 because it was designed keeping in mind the requirements under SBLCs and limitations of UCP with respect to SBLCs. It is also possible to issue guarantees under UCP 600 but again due to limited applicability it is always advisable to issue guarantees subject to URDG.

Chapter 6

UCP 600 Article 2 Definitions Explanation

Article 2 of the UCP defines credit as any arrangement, whatever be its name or however it may be described, that is irrevocable and forms or carries a definite or clear undertaking of the issuing bank to honor a complying presentation. An issuing bank issues a letter of credit on behalf of an applicant or on its own behalf. It is interesting to note that even though it is an applicant who provides instructions to issue or amend a documentary credit, it is not a necessary party involved in the letter of credit. This is because of the reason that it is an issuing bank that has given the undertaking to determine compliance of documents and pay or determine non compliance and refuse. Thus issuing bank is ultimately responsible for any reimbursement to the nominated bank that has acted on its nomination, or settlement to a beneficiary.

Article 2 also defines a complying presentation as a presentation that is in accordance with the terms and conditions of the credit, the UCP and international standard banking practice. But any refusal of documents should be made on the basis of the terms and conditions of the credit and the UCP. The ISBP only provides a support to the UCP as the UCP does not cover every aspect of the actions the banks may take in relation to a letter of credit transaction.

Field 51a of the MT 700 names an applicant bank. What is an applicant bank? How is it different from an issuing bank? It is possible that the beneficiary wants the applicant to get a letter of credit issued through a particular bank, but that bank is not the applicant's bank. In this case the applicant may approach its bank and ask it to request the named bank to issue the credit, usually under the protection of a guarantee or some other arrangement. Also in order to be associated with the credit, the applicant bank will request the issuing bank to insert its name in the credit. It is to be noted that the applicant bank has no recognition under the UCP and it is the named issuing bank that has undertaken to honor a complying presentation.

Negotiation, as defined by article 2, will be discussed in 3 parts.

Part 1 – the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank)/documents under a complying presentation. A nominated bank is a bank with which credit is available (restricted credit) or any bank in case of a credit available with any bank (freely available credit), in simple words it means that the documents by the beneficiary are to be submitted at the counters of the nominated bank for further submission to the issuing bank. A nominated bank can be further defined as a bank nominated by the issuing bank to step into its shoes and offer honor or negotiate. It is a bank that has the authorization of the issuing bank to honour or negotiate a complying presentation. A nominated bank unless it's a confirming bank gives no independent undertaking to pay. However if the nominated bank accepts a draft (in case

of credit available by acceptance) or incurs a deferred payment undertaking (in case of credit available by deferred payment) the nominated bank becomes irrevocably bound to pay at maturity. Negotiation of documents is possible only when the credit is available by negotiation. If a draft is required under a negotiation credit, it is NOT to be drawn on the nominated bank. Purchase of drafts is a method of finance that the beneficiary may avail from the nominated bank. If a draft is not called for in a credit, then negotiation will take the form of purchase of documents that have been determined to be complying by the nominated bank.

Part 2 – advance or agree to advance funds to the beneficiary. In negotiation the nominated banks advance their own funds to the beneficiary. Negotiation with recourse is the most common form of negotiation unless the credit is confirmed. With recourse meaning that the nominated bank can recover funds from the beneficiary if it does not get reimbursement from the issuing bank. A nominated bank will usually indicate the same on its payment advice to avoid any dispute that may arise in future. A nominated bank, may either immediately advance funds to the beneficiary (less interest) or agree to advance funds at some future date. It is to be noted that since the nominated bank does not give any undertaking to negotiate, unless it has confirmed the credit, it may refuse to advance funds to the beneficiary even after agreeing to advance. It will, however be liable, if it has entered into a separate agreement with the beneficiary or communicated in its advice that it undertakes to negotiate. In a sight negotiation a nominated bank may advance funds immediately on determining compliance of documents whereas in usance negotiation a nominated bank may advance funds before the due date or after receiving acceptance of documents from the issuing bank.

Part 3 – on or before the banking day on which reimbursement is due from the issuing bank. As discussed earlier, the basic principle of negotiation is that the nominated bank pays out of its own funds. If it pays from the funds received from the issuing bank, then it will be considered as honor and not negotiation. The act of negotiation may take place on the due date of payment when reimbursement is expected from the issuing bank, provided the nominated bank utilizes its own funds.

As we discussed, the act of negotiation is usually with recourse unless the nominated bank has confirmed the credit, or entered into a negotiation on without recourse basis agreement with the beneficiary. But the act of honor, whether it is by the issuing bank, the confirming bank or the nominated bank, is always without recourse. However, in a credit available by payment, the nominated bank may enter into a with recourse agreement with the beneficiary as it has not given any independent undertaking to make payment.

An issuing bank may utilize the services of its correspondent banks in other countries to advice a documentary credit to the beneficiary. Such a correspondent bank is known as the advising bank as mentioned in Article 2. An advising bank's only responsibility is to satisfy itself as to the apparent authenticity of the credit or any amendment to that credit that it has received from the issuing bank and that its advice of credit or amendment to the beneficiary accurately reflects the

terms and conditions of the credit. This means that there should not be any ambiguity between what has been received from the issuing bank and what has been advised to the beneficiary. If this happens then advising bank will be responsible for the same. Apparent meaning that is evident or prima facie and authentic meaning not false.

The advising bank may sometimes be more than an advising bank. It may be a nominated bank or a confirming bank. The applicant mostly mentions an advising bank in his letter of credit application form. But if the issuing bank does not have arrangements with the bank given by the applicant then the issuing bank will route the letter of credit to the bank with which the issuing bank has arrangements, with the consent of the applicant, to further advice it to beneficiary. However, if the applicant has not specified a bank, the issuing bank can use its own advising bank. In most cases the advising bank is the nominated bank or in other words it could be beneficiary's bank if the credit is directly advised. The applicant and beneficiary may have agreed to have beneficiary's bank as the advising bank/nominated bank.

Article 2 also mentions about a confirming bank. Sometimes, despite the irrevocable independent undertaking of the issuing bank, the beneficiary may have doubts whether the issuing bank will be able to pay because of reasons like the issuing bank is in a country that has foreign exchange deficiency, or where the political environment is unstable or the like. In such a case the beneficiary may want the credit to be confirmed by a bank in his own country. In this case the documentary credit will have to mention that the credit is to be confirmed. Confirmation means a definite or clear or exact (not vague) undertaking of the confirming bank, in addition to that of the issuing bank to honor or negotiate a complying presentation. A confirming bank has to be very sure about confirming a credit because it has no recourse either from the issuing bank or the beneficiary. Therefore a confirming bank may limit the scope of its confirmation. For example it may mention in its confirmation advice that it will not pay if the beneficiary presents the documents directly to the issuing bank, or that if the documents are discrepant the confirmation will not be reinstated even in case of acceptance from the issuing bank etc. Confirmation is added at the request or authorization of the issuing bank.

A presenter of documents could be the beneficiary, bank or any party that makes a presentation on behalf of the beneficiary. At times even freight forwarders act as presenter of documents on behalf of the beneficiary to a bank. The reference to the documents so delivered means the documents that have been delivered to the bank and are in its possession.

Banking day means the day on which a bank is regularly open to perform an act that is subject to these rules. For example Bank A negotiates documents between Monday and Friday. Monday – Friday becomes its banking days. It is also advisable to banks to communicate their banking days to other banks and beneficiaries. For example middle eastern banks operate from Sunday-Thursday.

Negotiating Bank

Due to the virtue of many credits being issued by negotiation, negotiating bank is a term often seen in documentary credits where nominated bank's name is supposed to appear. In reality, this term is not defined by UCP. Negotiation is an act of providing finance. It can not be pre determined whether a particular bank would negotiate or not. Therefore the issuing bank should avoid using this terminology in issuance of letter of credit.

Chapter 7

UCP 600 Article 3 Interpretations Explanation

One of the most important points that article 3 highlights is that a credit subject to UCP 600 is irrevocable even if it does not indicate the same. However this does not mean that UCP prohibits issuance of revocable credits. If field 40 A of MT700 mentions 'Revocable', this will modify the rule in article 3 which states a credit is irrevocable. The issuing bank will have to insert the rules that will apply to the revocability of the credit. But as we had studied earlier, revocable credits do not provide any payment security to the beneficiary as they may be cancelled or amended any time without any prior notice to the beneficiary. In other words, a credit issued subject to UCP 600 is irrevocable unless otherwise modified.

There are a few documents that are required to be signed. But how exactly they are to be signed? A document may be signed by handwriting, facsimile signature, stamp, symbol etc or any mechanical or electronic methods of authentication. For eg a bar code, pre printed signature, scanned signature. ISBP 745 explains that if a statement in a document gives reference to a website (URL) for verification or authentication, then it would be considered as an electronic method of authentication in accordance with the signature requirements of UCP600 article 3. A statement in a document that this document has been electronically verified or authenticated, or that this document has been electronically produced and does not require any signature, does not qualify as an electronic or mechanical method of authentication in accordance with the signature requirements of UCP 600 article 3.

Indian banks and foreign banks have their overseas branches. For eg. State bank of India has branches in London, New York, Chicago etc. Are these branches considered to be the same bank? The answer is provided by article 3 which states that branches of a bank in different countries are considered to be different banks. Hence if State Bank of India, India issues a credit, then State Bank of India, London can confirm it. It is also possible to nominate a bank in the same country as the issuing bank to honor or negotiate. If the branch of the issuing bank in the same country is acting in the capacity of a nominated bank, then the credit can only be available with them by honor and not by negotiation. The wording of article 3 brings into special prominence the situations where a branch of a bank issues a credit and the other is requested to confirm. If both these branches are in the same country, then the country risk of the issuing bank is not getting covered. The basic principle of confirmation is to cover the payment risk of the issuing bank. If both the branches are in the same country, then they are subject to the same risks.

UCP 600 sub article 14(f) allows any document other than a transport document, an insurance document and a commercial invoice, to be issued by any party if the credit does not specify its

issuer. That means even a beneficiary is free to issue any document. However, there are certain words specified in UCP 600 which when used in a credit allow any party **except** the beneficiary to issue a document. For eg. the credit states that an inspection certificate issued by an independent authority is required, then the beneficiary cannot issue it. If it states inspection certificate is required then any party, including the beneficiary, may issue the document. When a credit says that a document is to be **‘issued’** by a party, it denotes the party on whose letterhead the document is to be issued.

Very often, banks use the terminology to describe certain events like, the shipment to take place on or about 20th January. It is to be remembered that banks should be very clear about dates that are associated with an event. However when such terminology is used, it is interpreted as a period of 11 calendar days beginning from 5 calendar days prior to 20th Jan, Jan 20th and 5 calendar days after 20th Jan that is from 15th Jan to 25th Jan and both 15th Jan and 25th Jan included.

Drafts usually have maturity dates like xx days from the date of bill of lading or xx days after the bill of lading date. Confusion that mostly arises is that what is meant by ‘from’ and ‘after’. Do they include the date of bill of lading when maturity is to be calculated or exclude the date of bill of lading. The answer is that when ‘from’ or ‘after’ is used they exclude the date mentioned. For example the on board date is 15th Feb and the maturity date of the draft is given as 10 days from the bill of lading date that is 15th Feb. So, maturity date of the draft would be 25th Feb.

If a credit states that the shipment is to be effected during the first half of the month then this means that the goods are to be shipped anytime between 1st to the 15th of the month, both dates included. If the credit states that shipment is to be effected during second half of the month then it means anytime between 16th to the last day of the month, both the dates included.

Sometimes credits use terminologies like beginning of the month, middle of the month or end of the month for an event to take place. For example the credit states that shipment of goods is to take place during beginning of the month. This would be interpreted as allowing shipment to take place anytime between 1st to 10th of the month, both dates included. Similarly middle of the month would be interpreted as 11th to the 20th of the month, both dates included and end of the month would be interpreted as 21st to the last date of the month, both dates included.

Chapter 8

UCP 600 Article 4 Credits Vs Contracts Explanation

As we had discussed earlier, a sales contract, apart from other details with respect to the sale of goods, will mention the type of settlement that is to take place between the buyer and seller. It is to be remembered that although a letter of credit may contain reference to a sales contract on which it may be based, but it is an entirely a separate transaction. It is very common that in place of a general description of goods, an applicant provides a statement in the letter of credit application form with respect to type of goods required, or reference to a proforma invoice or the sales contract. The applicant then requests the issuing bank to forward a copy of that invoice or contract to the advising or nominated bank so that they review the documents not only against the terms and conditions of the credit, but also against the content of the proforma invoice or contract. It is this act of sending the contract or proforma invoice that is discouraged by this article.

Banks are not required to examine the content of sales contract or proforma invoices. Therefore even if an issuing bank adds a proforma invoice or an underlying contract as an integral part of the credit, the advising bank or nominated bank should revert to the issuing bank asking them to remove this condition. If they however proceed, then they will be required to examine the documents against the underlying contract which will be like an extra burden.

Since every applicant comes with a different approach, the issuing bank must always be willing to hold discussion with the clients when they find any term or condition which may affect the workability of the credit. It is also worth noting that banks are not concerned with the terms and conditions of the sales contract which is between the buyer and the seller to decide and agree. It is the responsibility of the applicant to include the necessary components of the contract into the letter of credit application form. An applicant may insist on having a detailed description of goods, the issuing bank should advise them to give more general description. The same could also be supported by a separate certificate or a statement in the invoice that goods are as per sales contract no xx or goods are as per proforma invoice no yy. Proper examination of the credit application form and regular discussions with the applicants are important for the success of the entire letter of credit transaction.

The applicants are under the impression that asking for detailed description of goods consisting of many pages or inclusion of underlying contract as an integral part of the credit will safe guard their interests. But reality may run contrary to their expectations. A beneficiary, with the intentions of defrauding the applicant, may copy every word of the goods description on the documents but ship goods which do not reflect that description. The protection to the applicant does not lie in goods description but in the documents to be presented, their issuers (independent

organizations or agencies that will conduct inspection on behalf of the applicant) and their data content. Since it's the applicant that will bear the result of any ambiguity in its instruction to issue the credit, he has to be very careful and choose his words carefully while completing the credit application form. He should also be very clear about the data content that is to appear in documents.

A bank's obligation under a letter of credit transaction to honor or negotiate should not be subject to consequences arising out of the applicant's relationship with the issuing bank or the beneficiary. The applicant should not be allowed to interfere in the working of the issuing bank to discharge its responsibilities under the credit. For example, an applicant A has been banking with Bank B for quite some time now. A runs a business of garments. A requested Bank B to issue a letter of credit on its behalf and in goods description wrote shirts. The beneficiary C shipped nylon shirts and the invoice also mentions nylon shirts. The documents were found to comply and issuing bank paid on due date. A blamed Bank B that since it knew that A only deals in cotton shirts, it should not have paid C as he shipped nylon shirts. Here A is at fault because he should have mentioned in the credit application form that he required cotton shirts, but since he just mentioned shirts C shipped nylon shirts.

Chapter 9

UCP 600 Article 5 Documents Vs. Goods, Services or Performance Explanation

Article 5 emphasizes that banks have no responsibility with respect to the goods for eg their quality. Banks honor, negotiate on the basis of documents alone. If the documents comply, banks honor/negotiate. For example applicant receives goods that are of poor quality whereas the beneficiary has presented documents that credit complying. The applicant approaches the issuing bank and asks them not to pay the beneficiary. Will the issuing bank refuse payment? The answer is no. Banks do not concern themselves with the goods. Issues of quality etc are between the buyer and seller and should be resolved outside the terms and conditions of the credit. Banks are also not responsible to ensure that there are no derogatory remarks with respect to the shipped goods in documents.

It is also quite common that an applicant may take a legal route to stop the issuing bank from paying if goods are not as per the requirements of the applicant. While applicant has every right to go to the court of law and also an issuing bank can not ignore a court order, an issuing bank can argue outlining its responsibilities under the UCP. The issuing bank can also bring to the notice of the court, if any payment has been made by the nominated bank which acted in good faith. Also the applicant should include in the list of documents inspection certificates, quality certificates etc issued by independent agencies if he wants that the goods he is importing are as per the quality standards that he requires.

Chapter 10

UCP 600 Article 6 Availability, Expiry Date and Place for Presentation Explanation

Availability of a credit, under UCP can be understood in two ways. For the first aspect, a bank will be nominated by the issuing bank or the issuing bank will state that any bank may be a nominated bank. It will be a bank which will have the authority of the issuing bank to receive documents from the beneficiary and accordingly honor or negotiate. The second aspect is about the method of settlement that is by payment, acceptance, deferred payment or negotiation. If a credit is confirmed then the confirming bank is expected to act as per the stated nomination. If a credit is not confirmed then the nominated bank is under no obligation to act on its nomination that is to honor or negotiate.

Sub article 6(a) emphasizes that it must to mention in a credit the bank with which credit is available or whether it is available with any bank. It also says that a credit that is available with the nominated bank is also available with the issuing bank. It is to allow the beneficiary to directly present the documents to the issuing bank. However in such a case the beneficiary assumes the risk of non-delivery of documents within any stated presentation period/expiry. It is the responsibility of the issuing bank to check with the nominated bank before initiating any payment to the beneficiary in case the documents are directly received by the issuing bank. When the credit is restricted to a particular bank and documents are received by the issuing bank from a bank other than the nominated bank, then the issuing bank should enquire of the nominated bank to determine if any other drawings have been made to it and inform them of the drawing directly made to the issuing bank. In case the beneficiary delivers documents to a bank that is not the nominated bank, then that bank is advised to send the documents to the nominated bank especially if the last date for presentation or expiry date of the credit is nearing. It is to be noted that an issuing bank cannot refuse payment if documents are directly presented to it and the presentation is complying. The issuing bank is not obliged to verify the authenticity of the documents since sub article 14(a) refers to examination of documents on their face and article 34 refers to banks having no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document. If the credit contains a condition that beneficiary has to present documents to a nominated bank for further dispatch to the issuing bank then he cannot directly present the documents to the issuing bank.

A credit must also clearly state whether it is available by sight payment, deferred payment, acceptance or negotiation. It is a common scenario in Indian banking to get the availability of the local or inland credits changed from acceptance to negotiation so as to provide financing to the beneficiary. A credit is not to be issued available by a draft drawn on the applicant that is for

example if a credit is available by acceptance then the draft should not be required to be drawn on the applicant as this would create confusion in payment and the applicant will be in control of the transaction and as we had discussed earlier an applicant should not have any role in determination of compliance of documents and payment.

The UCP structure states that the credit availability and place of expiry should match but the issuing bank is always in a position to modify that structure with the terms and conditions of the credit. If a credit is available with the issuing bank by payment, acceptance or deferred payment then ideally credit should expire at the counters of the issuing bank, but the issuing bank can make it expire in the country of the beneficiary. In this case expiry is just a date for presentation of documents in the country of the beneficiary. The documents may reach the issuing bank after expiry. The issuing bank will be required to honor provided the documents were presented in the country of the beneficiary within any presentation period or expiry date. If a beneficiary wants to have a bank nominated, then he must seek an amendment to change the availability from being available with an issuing bank to being available with a nominated bank. However the issuing bank is under no obligation to agree with the beneficiary's request.

If the credit is available with a bank, nominated in the country of the beneficiary by payment, acceptance, deferred payment or negotiation and expiring at the counters of the issuing bank, then the documents must reach the issuing bank within any presentation period or expiry of the credit. The nominated bank also has to decide whether it needs to act on its nomination under the given circumstances and honor or negotiate. For example if the expiry of the credit is 31st march and presentation period is 21 days then the nominated bank may state to the beneficiary that for any honor or negotiation to take place the documents must reach them within 10 days after the date of shipment or by 20th march so that the nominated bank gets enough time to process the documents and deliver to the issuing bank.

Technically if a credit is freely available then it should not indicate a place for expiry. The intension and objective behind a freely available credit is that the beneficiary is able to present the documents to any bank, in any place, that he may choose. If a credit includes a place of expiry, then the beneficiary will only be able to present the documents to a bank in that country and his ability to present documents to any bank will be restricted.

Chapter 11

UCP 600 Article 7 Issuing Bank Undertaking Explanation

Issuing bank, as the UCP defines it, is a bank that issues the documentary credit at the request of the applicant or on its own behalf. An issuing bank becomes bound by the terms and conditions of the credit as and when it issues the credit. It becomes irrevocably bound to honor a complying presentation. Sub article 7(a) states that, when the documents are presented to the nominated bank or to the issuing bank and they constitute a complying presentation the issuing bank is bound to honor if the credit is available by sight payment. A credit that is available with the issuing bank with acceptance requires a draft to be drawn on the issuing bank. The issuing bank is bound to accept the draft and pay the beneficiary on the maturity date of the draft if the presentation is complying.

In a credit that is available with the issuing bank with deferred payment, the issuing bank is bound to incur its deferred payment undertaking and pay the beneficiary at a future date if the presentation is complying. Just like sub article 6(a), sub article 7(a) also states that the documents can be directly presented to the issuing bank. What if a credit contains a condition that sub article 6(a) is excluded? Can then the documents be directly presented to the issuing bank? Yes they can be because excluding one sub article does not exclude the other and provisions of article 7 are still there which allow a beneficiary to directly present documents to the issuing bank.

As we had discussed in article 2, a nominated bank is a bank nominated by the issuing bank to step into its shoes to honor or negotiate. A bank acts on its nomination when it honors that is when it pays, accepts a draft drawn on it or incurs a deferred payment undertaking or when it negotiates as per the availability expressed in the credit. It agrees to act on a specific request from the beneficiary. If it is not the confirming bank, the nominated bank is under no obligation to honor or negotiate. It may not even examine the documents and may also refuse to present the documents to the issuing bank. A credit that is available with a nominated bank by payment will have an instruction from the issuing bank to the nominated bank to debit its account held with the nominated bank, or claim from a reimbursing bank stated in the credit when it honors a complying presentation. If a nominated bank does not act on its nomination and does not pay then the issuing bank will honor on presentation of credit complying documents to it.

A credit that is available with the nominated bank by acceptance requires a draft to be drawn on the nominated bank. A nominated bank, acting on its nomination will accept the draft drawn on it and undertake to pay the beneficiary on maturity. In case the nominated bank does not accept the draft the beneficiary may draw the draft on the issuing bank or request that the

documents be forwarded to the issuing bank as presented. In case the beneficiary decides to draw the draft on the issuing bank then the issuing bank is required to accept it and pay at maturity if the presentation is complying. In case no draft is presented, a deferred payment undertaking would be given by the issuing bank. Although the nominated bank is bound to pay once it accepts the draft, in case it does not pay the issuing bank is bound to pay on the due date if the presentation is complying.

In a credit that is available with the nominated bank with deferred payment, the nominated bank acting on its nomination will incur its deferred payment undertaking and pay the beneficiary at a future date in case of a complying presentation. In case the nominated bank does not incur its deferred payment undertaking and just forwards the documents to the issuing bank, the issuing bank is required to incur its deferred payment undertaking and pay the beneficiary if the presentation is complying. Although incurring of deferred payment undertaking by the nominated bank bounds it to honor but if the nominated bank does not honor then the issuing bank has to honor if the presentation is complying.

When a nominated bank honors or negotiates a complying presentation and forwards the documents to the issuing bank, then the issuing bank's undertaking is to reimburse the nominated bank if the issuing bank also determines that the documents comply. This undertaking of the issuing bank is independent of its undertaking to the beneficiary where a nominated bank has not honored or negotiated or where the beneficiary has presented the documents directly to the issuing bank.

An issuing bank's undertaking is to honor complying presentation. If the issuing bank determines that the presentation is not complying then it is not obliged to pay the beneficiary or reimburse the confirming bank or nominated bank even if in their opinion the documents complied.

A beneficiary may also request an issuing bank to discount the documents when the credit is available with the issuing bank by deferred payment or acceptance, but the issuing bank is under no obligation to discount the documents. It may or may not do the same.

Chapter 12

UCP 600 Article 8 Confirming Bank Undertaking Explanation

A confirming bank is a bank that adds its confirmation to a credit upon issuing bank's authorization or request. A confirmation is a definite undertaking of the confirming bank in addition to that of the issuing bank to honor or negotiate a complying presentation. A confirmation is a form of a contract between the confirming bank and the beneficiary. The issuing bank requests or authorizes the confirming bank to add confirmation and the confirming bank may agree, according to its agreement, to act to the full or partial extent of the credit terms and conditions. If a confirming bank adds partial confirmation (reduced amount, expiry) then the terms and conditions of the confirmation should be made clear to the beneficiary and the issuing bank should be informed of the extent to which confirmation has been added.

When a bank adds confirmation to a credit without the request or authorization of the issuing bank, but at the request of the beneficiary, such a bank is said to have added silent confirmation to the credit. A silent confirmation is not recognized under UCP and the bank has no right in relation to agreeing to any amendment that has been made to the credit. The bank must clearly indicate in a separate agreement with the beneficiary the conditions under which the bank will add its silent confirmation and how it will be effective. It is not necessary that a confirmation is to be added by a bank only. Any party that is acceptable to the beneficiary and the issuing bank may add confirmation to the credit. An issuing bank requests confirmation when it states 'confirm' in the credit and authorizes confirmation when it states 'may add.' The instruction to add confirmation is directed to the receiver of message that is the advising bank. But if another bank is requested or authorized to confirm the credit then there must be a specific instruction in the credit to this effect but if there is no such instruction then no other bank can confirm the credit. A confirming bank assumes the credit risk of the issuing bank when it confirms a credit. When a credit states confirm there is no requirement for a bank that is requested to confirm, to seek the agreement of the beneficiary before doing so. When a credit states "may add" the banks usually advise the credit without confirming it and state that they are authorized to add confirmation by the issuing bank but may do so upon receipt of a request from the beneficiary along with the confirmation fee. It is also possible to have two confirming banks in a credit.

The concept of confirmation is to add confirmation prior to receipt of documents and commit to honor or negotiate a complying presentation made to the confirming bank. As studied earlier, confirming bank can always limit the scope of its confirmation and the obligation of the confirming bank will be determined by what it has stated in its confirmation advice, for example the confirmation advice may state that we confirm the credit and undertake to honor or negotiate

a complying presentation that is made at our counters within the credit validity. In such circumstances, if the issuing bank does not pay (for documents directly presented to issuing bank) and the documents cannot be presented to the confirming bank within expiry of the credit then the confirmation will cease. A confirming bank may withdraw its confirmation if discrepancies are found in the documents, but this should be indicated at the time of refusal of documents.

It is very common that banks would confirm credits only if the credit is available with them that is they are named as the nominated bank in the credit. A confirming bank that is not a nominated bank has no recognition as a nominated bank under UCP. However article 8 will apply whether or not the confirming bank is a nominated bank or not.

Article 8 states that a confirming bank negotiates without recourse that is unlike a nominated bank which is not a confirming bank, a confirming bank will have no recourse to the beneficiary if it does not get reimbursed by the issuing bank. The confirming bank must either advance funds immediately or at a future date as requested by the beneficiary. A confirming bank is also required to accept a draft drawn on itself and pay the beneficiary on the maturity date of the draft if presentation is complying. If the credit is available by deferred payment with the confirming bank then the confirming bank is bound to incur its deferred payment undertaking and pay the beneficiary at a future date if presentation is complying.

If a bank is requested to confirm a credit that is available with the issuing bank, then the confirming bank will have to very specific with the wording they insert in the confirmation advice and about the extent of their confirmation. If a bank decides not to confirm the credit then it must advise the issuing bank without delay of its decision to advise the credit without adding confirmation to the beneficiary.

A confirming bank may not receive any reimbursement from the issuing bank if the confirming bank honors or negotiates, but the issuing bank finds discrepancies in the presented documents. Also its honor or negotiation is without recourse.

Chapter 13

UCP 600 Article 9 Advising of Credits and Amendments Explanation

An advising bank is a correspondent bank to the issuing bank that acts merely as a transmitter of credit between the issuing bank and the beneficiary. It does not undertake any liability on its own account to honor or negotiate. Although an issuing bank may act for both the applicant and the beneficiary, this is not very common. The advising bank may also act as an advising and nominated bank or as advising, nominated and confirming bank. The issuing bank needs to agree to the name of the advising bank requested by the applicant. It is possible that the issuing bank may not be willing to deal with that bank. If the issuing bank is not willing to use the bank named by the applicant as the advising bank and prefers to use another bank, then it requires the agreement of the applicant in the first place. If the issuing bank does not obtain the approval of the applicant and insists on his own choice of the advising bank, then it may not be protected under UCP 600 sub article 37(a). In case the applicant has not named any bank as the advising bank, the issuing bank may choose any bank of its choice as the advising bank.

An advising bank has to satisfy itself as to the apparent authenticity of the credit by resorting to the usual checks that is as per bank policy and international standard banking practice. Usual checks do not extend to absolute verification of authenticity. Since the advising bank does not undertake any obligation to honor or negotiate, it does not take any credit risk by advising the credit. An advising bank must make sure that it only advises a credit that is apparently authentic otherwise it might find itself liable to the beneficiary who has suffered a loss due to the documentary credit being fraudulent. An advising bank and second advising bank also have to take care to ensure that all details of credit and amendment that are relevant to the beneficiary are sent to him. Any detail that is relevant only to the banks and are of no concern to the beneficiary may be deleted. In short the advice to the beneficiary must accurately reflect the terms and conditions of the credit and amendment.

The issuing bank or the advising bank must use the same advising bank and the second advising bank respectively to advise any amendment to the beneficiary, as the case may be. A second advising bank is a bank that is either named in the credit by the issuing bank or has been chosen by the advising bank to further route the credit or amendment to the beneficiary.

If a credit states that the credit is to be advised by the advising bank utilizing a named second advising bank, then the advising bank should follow the instructions contained in the credit. On receiving the credit an advising bank should check whether it has swift arrangement with the advice through bank. In case it does not have swift arrangement with that bank then it must

request issuing bank to either change the advice through bank or to provide revised instructions.

It is possible that the beneficiary may request the advising bank to advise the credit directly. This is because in most cases charges of the second advising bank will be to the account of the beneficiary. So in order to reduce costs he may not want involvement of too many banks. If an advising bank decides to bypass a second advising bank, then it should inform the issuing bank as it has deviated from the terms and conditions of the credit.

Sub article 9(f) allows an advising bank and a second advising bank to advise a credit and amendments to the beneficiary even if they have not been able to satisfy themselves as to the apparent authenticity of the credit or amendment. They must inform the beneficiary in their advice and should also inform the issuing bank of the same. We had read in earlier chapters that instruction in field 49 regarding confirmation of credit is for the receiver of the credit that is the advising bank. In case the advising bank advises the credit without confirming it then it should not be assumed that the credit has been confirmed by the advising bank. The advising bank should inform the issuing bank, the second advising bank if any, and the beneficiary in its advice that it has not confirmed the credit. The advising bank is not obliged to state reasons for not confirming the credit.

If an advising bank or a second advising bank is not willing to advise a credit or an amendment then it must inform the bank, without delay, from which the credit or amendment was received, of its decision. There could be many reasons for its refusal however it is not liable to state its reasons for not advising the credit or amendment.

Chapter 14

UCP 600 Article 10 Amendments Explanation

Amendment of a credit refers to any change in any term or condition of the credit. In order to amend a credit the consent of the issuing bank, the confirming bank, if, any and the beneficiary is required. The structure of any amendment is based on the premise that all other terms and conditions remain the same. An issuing bank is bound by an amendment as of the time it issues it. Any amendment to the credit is to be advised by the same bank that advised the credit to the beneficiary. If a confirming bank extends its confirmation to an amendment, it becomes irrevocably bound by the amendment as and when it advises the amendment. It may however choose not to extend its confirmation to an amendment and advise the amendment without adding confirmation. If a confirming bank decides not to add its confirmation to an amendment it must inform the issuing bank without delay and inform the beneficiary in its advice.

Sub article 10(c) requires a beneficiary to give a notification of acceptance of an amendment to the bank that advised the amendment. But what if the beneficiary fails to do so? In that case the presentation of documents will determine whether the amendment has been accepted by the beneficiary. Non adherence to the amendment would imply that the beneficiary has rejected the amendment and therefore the presentation should comply with the original credit (or a credit incorporating previously accepted amendments). For example, an amendment increases the credit amount from \$50,000.00 to \$100,000.00 in a credit in which partial shipments were not allowed. The beneficiary fails to provide a notification of acceptance or rejection of the amendment. The beneficiary presents documents for \$50,000.00 to the advising bank for negotiation. In this situation it is implied that the beneficiary has rejected the amendment by the virtue of its presenting the documents for \$50,000.00. The advising bank may inform the issuing bank about the beneficiary rejecting the amendment but they are under no obligation to do so.

The advising bank may also enquire of the beneficiary whether he has accepted or rejected the amendment, but the beneficiary is under no obligation to inform the bank about his decision. In case a beneficiary has informed the advising bank/confirming bank of his decision to reject the amendment, the advising bank/confirming bank should inform the bank from whom amendment was received, of the beneficiary's notification to reject the amendment.

A beneficiary is not allowed to partially accept an amendment. This will be deemed to be a rejection of the amendment. For example credit amount was \$50,000.00 and partial shipment was not allowed. The credit amount has been increased to \$100,000. The beneficiary does not give any notification of acceptance or rejection of the amendment and presents documents for \$75,000.00. Since the claim has been made for \$75,000.00 it would imply that the beneficiary has accepted the amendment but the bank to whom presentation is made would raise discrepancy

stating that partial shipment has been effected. It could also be the case that the beneficiary has done over shipment and the credit has been overdrawn. The nominated bank/confirming bank or issuing bank should enquire of the beneficiary whether he has rejected the amendment and over shipped or accepted the amendment and has effected partial shipment.

Any cancellation also comes under the definition of amendment and a credit cannot be amended without the consent of the beneficiary. For example the applicant requests an issuing bank to cancel the credit. The issuing bank sends an amendment to the advising bank and the advising bank advises the amendment to the beneficiary. The beneficiary has already shipped the goods to the applicant and dispatched the documents to the advising bank, to be sent to the issuing bank. If the documents are complying, then the issuing bank is bound to honor as presentation of documents would imply rejection of the amendment.

It may also happen that after the credit is issued but before it is advised to the beneficiary, the issuing bank sends a message to the advising bank to treat the credit as null and void. In this case also the consent of the beneficiary is required to cancel the credit.

Can the beneficiary accept the amendments for first drawing and reject the amendment for the second drawing? The answer is no. If an amendment has been accepted by the beneficiary either by notification of acceptance or presentation of documents for first drawing which complies with the original credit and amendment, then the beneficiary is bound by the amendment for any future drawing (in case of partial shipment being allowed). The beneficiary cannot reject the amendment for any subsequent drawing.

There should not be any wording in the credit which conditions the automatic acceptance of the amendment of the credit by the beneficiary if he does not reject it within a specific period of time. For example a condition in the amendment states that if the beneficiary does not give notification of the acceptance of the amendment within 10 days before he presents the documents then it will be deemed that he has accepted the amendment. Such a condition would be disregarded.

Chapter 15

UCP 600 Article 11 Tele Transmitted and Pre-Advised Credits and Amendments Explanation

An authenticated tele transmission of a credit or amendment will be considered as the operative credit or amendment and any mail confirmation sent thereafter will be disregarded. The same may even be stated in the letter of credit that this is the operative instrument and no mail confirmation shall follow. If the tele transmitted message states that full details are to follow, or states that the mail confirmation is to be considered as the operative credit or amendment then the tele transmitted message will not be considered as the operative credit or amendment. The issuing bank must then issue the operative credit or amendment, without delay, that is consistent with the tele transmission.

An issuing bank should not issue a pre-advice of a credit or amendment if it is not sure of issuing the credit or amendment in future. Although issuing of a pre-advice is almost a declined practice, the issuing bank is irrevocably bound to issue the credit or amendment if it has already issued the pre-advice. The operative credit or amendment should mirror the details as given in the pre-advice of a credit or amendment. An issuing bank cannot cancel a credit or amendment if it has already sent a pre-advice.

Chapter 16

UCP 600 Article 12 Nomination Explanation

We had studied in article 2 that the nominated bank is nominated by the issuing bank to step into its shoes to offer honor or negotiation. This gives the beneficiary an option to present the documents to the named nominated bank instead of presenting directly to the issuing bank. If the nominated bank has not confirmed the credit, then the issuing bank's authorization does not impose any obligation on the nominated bank to honor or negotiate. However, if the advising bank which is also a nominated bank conveys to the beneficiary in its advice, its undertaking to honor or negotiate even if the credit is not confirmed or if there is a separate agreement by the nominated bank with the beneficiary to act on a without recourse basis then the nominated bank has expressly agreed to honor or negotiate and it will be obliged to pay or negotiate.

When a credit is available with a nominated bank by acceptance, or deferred payment and the nominated bank accepts the draft drawn on it or incurs a deferred payment undertaking, then it is authorized by the issuing bank to purchase the draft or pre pay its deferred payment undertaking. Accepting of draft or incurring of deferred payment undertaking by the nominated bank is without recourse to the beneficiary whether or not the credit is confirmed. A nominated bank that accepts a draft or incurs a deferred payment undertaking is not obliged to pre pay or purchase, it is only obliged to honor on due date. The nominated bank can accept the draft or incur its deferred payment undertaking either at the time the documents are presented to it or when the documents have been taken up by the issuing bank and it has advised acceptance of the documents.

If a nominated bank is not willing to accept the draft or incur a deferred payment undertaking, then any discount to the beneficiary would be with the separate authority of the issuing bank as in that case the nominated bank would be discounting the undertaking given by the issuing bank. The authority given to nominated banks in sub article 12(b), is with respect to them accepting a draft or them incurring a deferred payment undertaking. If a nominated bank discounts a deferred payment undertaking given by the issuing bank without the authority of the issuing bank then it has no protection under the UCP.

Let us understand the above working of the nominated bank with the help of examples:

1. A credit is available with XYZ bank with acceptance/deferred payment. The beneficiary presented the documents to XYZ bank. XYZ bank examined the documents and found them complying. It accepted the draft drawn on it/incurred its deferred payment undertaking. The beneficiary approaches XYZ bank to purchase the draft/pre pay the documents. XYZ bank is authorized under sub article 12(b) to purchase/pre pay when it

has accepted a draft drawn on it or incurred its deferred payment undertaking.

2. A credit is available with XYZ bank with acceptance/deferred payment. The beneficiary presented the documents to XYZ bank. XYZ bank forwards documents to the issuing bank without examining them. The issuing bank examines the documents and confirms to the XYZ bank that documents are compliant. XYZ bank accepts the draft drawn on it/incurs its deferred payment undertaking and is authorized under sub article 12(b) to purchase the draft/pre pay the documents.
3. A credit is available with XYZ bank with acceptance/deferred payment. The beneficiary presented the documents to XYZ bank. XYZ bank finds the documents discrepant and forwards to the issuing bank (upon beneficiary's request). The Issuing bank advises it about accepting the documents. XYZ bank accepts the draft drawn on it/incurs its deferred payment undertaking and is authorized under sub article 12(b) to purchase the draft/pre pay the documents.
4. A credit is available with XYZ bank with acceptance/deferred payment. The beneficiary presented the documents to XYZ bank. XYZ bank finds the documents discrepant and forwards to the issuing bank/forwards without examining. The Issuing bank advises it about accepting the documents. XYZ is not willing to accept the draft or incur a deferred payment undertaking. It will require the issuing bank's authorization before any discount is made to the beneficiary as in that case the issuing bank is required to accept the draft/incur deferred payment undertaking. It is to be remembered that sub article 12(b) only applies when the credit is available with the nominated bank by acceptance or deferred payment.

A nominated bank that acts on a nomination is a bank that agrees to honor or negotiate subject to a specific request by the beneficiary. If the nominated bank declines to honor or negotiate, or the beneficiary does not request it to honor or negotiate, then it just acts as a presenter of documents. Sub article 12(c) states that mere receipt or examination and forwarding of documents does not oblige the nominated bank to honor or negotiate (if it's not a confirming bank), neither does it amount to honor or negotiation. It can be concluded that a nominated bank which is not a confirming bank is not even obliged to examine the documents.

Chapter 17

UCP 600 Article 13 Bank-to-Bank Reimbursement Arrangements Explanation

A letter of credit may instruct a nominated bank to claim reimbursement from another bank (reimbursing bank) when it honors or negotiates. In such a case the credit must state whether the reimbursement is subject to the ICC rules for bank to bank reimbursements. If the reimbursement is not subject to URR725, an issuing bank must provide the reimbursing bank with a reimbursement authorization at the time of issuance of credit that conforms with the availability stated in the credit. An issuing bank maintains its account with a reimbursing bank in the currency of the credit. For eg in a credit available by payment, the honor to the beneficiary is made by the nominated bank before the documents are received and examined by the issuing bank. Therefore in a payment credit an issuing bank should always mention a reimbursing bank so that the nominated bank can claim from it. This is required for smooth flow of the documentary credit operation. A reimbursement authorization should not be subject to an expiry date. However, if the reimbursement authorization states an expiry date then the reimbursing bank is required to refuse the claim received after expiry date.

A bank that claims on the reimbursing bank is not required to provide any certificate of compliance with the terms and conditions of the credit to the reimbursing bank. When a claiming bank presents a claim to a reimbursing bank, the reimbursing bank is required to honor the claim on first demand. If it does not do so then the issuing bank becomes immediately liable to reimburse the claiming bank along with any interest. If a reimbursing bank decides not to honor a claim either because of no reimbursement authority of the issuing bank or any other reason, it must inform the claiming bank and issuing bank without delay. The issuing bank is liable for the charges of the reimbursing bank. In case the charges are for the account of the beneficiary then the issuing bank is responsible for stating the same in the credit and reimbursement authorization.

The charges of the reimbursing bank, that are for the account of the beneficiary are to be deducted from the amount that is due to the claiming bank when reimbursement is made. In case the claiming bank does not claim from the reimbursing bank or reimbursement is not made, the reimbursing bank's charges remain the obligation of the issuing bank unless modified by the credit.

Chapter 18

UCP 600 Article 14 Standard for Examination of Documents Explanation

An issuing bank, a confirming bank, if any, and a nominated bank acting on its nomination honor or negotiate a complying presentation and compliance is determined by the examination of documents. Banks are required to determine compliance on the basis of examination of documents alone. The documents must appear on their face to constitute a complying presentation. The documents are examined with respect to the terms and conditions of the documentary credit including any accepted amendments, the UCP 600 and with reference to one another. The examination of documents should be based on banks' visual examination exclusively and not upon any content or information that is obtained outside of the data appearing in documents. A nominated bank acting on its nomination, a confirming bank, if any, and an issuing bank have a maximum of 5 banking days each following the day of presentation, to determine compliance of documents. It does not matter whether the date of presentation is followed by the last day for presentation or date of expiry of the credit. For example the last date for presentation is 1st January and expiry date is 2nd January. If documents are presented (to the nominated bank, confirming bank or directly to the issuing bank) on 1st January then the respective bank will have to complete the examination of documents by 6th January (excluding Saturdays, Sundays or any day when the bank to which documents are presented is closed).

Sub article 14(c) states that if a presentation contains one or more original transport documents subject to UCP articles 19, 20, 21, 22, 23, 24, 25, then the presentation must be made by the beneficiary or on behalf of the beneficiary by not later than 21 calendar days from the date of shipment but not later than the expiry date of the credit. This is the default presentation period and will apply where the credit does not state any period of presentation. For example, if field 48 of MT 700 is silent then sub article 14(c) will apply but if field 48 states 10 days from the date of shipment but within LC expiry then it will be a modification of the rule and period of presentation will be 10 days from the date of shipment (but within LC expiry).

As read earlier, the documents are also to be examined with reference to one another to determine whether they are complying. The data in any document must not be in conflict with data in that document, any other stipulated document or the credit. For example, the credit requires presentation of a certificate of origin mentioning goods to be of Chinese origin. The certificate of origin states the goods to be of Chinese origin but the invoice states that goods are of Indian origin. There is a conflict of data within documents and also with credit terms.

If a description of goods is stated on any document other than the commercial invoice, then it

may be in general terms not conflicting with the data in credit. For example, the credit states description of goods as shirts. The invoice mentions shirts but the packing list states white shirts. The description is in general terms and not in conflict. It is worth noting that apart from commercial invoice, no other document is required to state the description of goods unless its stated in the credit.

A document, other than a commercial invoice, a transport document, and an insurance document may be issued by any entity if the credit is silent with respect to its issuer. The document should fulfil its function and should not contain any conflicting data. By fulfilling its function, it is meant that the data in the document must provide details that conforms to the title of the document or the documentary credit requirement. For example, a credit requires presentation of a certificate of quality. The presented document does not contain any data regarding the quality of the goods. Hence the document does not fulfil its function. If the credit did not mention about the issuer of the certificate, it could be issued by any entity including the beneficiary.

A document that is not required by the credit, but is still presented is to be disregarded and it may be returned to the beneficiary. For example, a presentation consists of a weight list whereas it was not required by the credit. This document will not be subject to examination and will be disregarded. It may be returned to the beneficiary. If there is a condition in a credit, but no document is to indicate compliance with it then such a condition will be disregarded. But there should be no data in any document that conflicts with the said condition. For example, a credit contains a condition that goods are to be of Indian origin without stipulating presentation of a certificate of origin. If in case the commercial invoice states goods to be of Chinese origin, then, although this condition was non-documentary, the data would be conflicting with the credit condition and discrepancy would arise.

Any required document in the documentary credit may be dated prior to the issuance date of the credit. However, it should not be dated later than its date of presentation. For example, a documentary credit was issued on 3rd January, last date of presentation is 25th January. A commercial invoice dated 2nd January will be acceptable but if it is dated 26th January then it is discrepant. In practice, many banks exclude sub article 14(i) in which case no document should be dated earlier than the date of issuance of the documentary credit.

A document that contains beneficiary's or applicant's address may state a different address than that stated in the credit or any other document but must be within the same country as stated in the credit. For example the address of the beneficiary in the credit states Delhi, India but on the packing list it states Chandigarh, Punjab India. The addresses of the beneficiary or applicant is not required to be stated on any document. Contact details of beneficiary/applicant will be disregarded. However, when the address and contact details of the applicant appear as part of notify party or consignee on a transport document subject to UCP 600 articles 19, 20, 21, 22, 23, 24, 25, it is to be same as stated in the credit.

The shipper or consignor of the goods as stated on any document does not necessarily have to be the beneficiary. The shipper details can vary between documents. Any transport document may be issued by any party other than the carrier, master, owner or charterer provided the transport document meets the requirements of articles 19, 20, 21, 22, 23, 24, 25. That means even the beneficiary may issue a transport document subject to the above condition.

Chapter 19

UCP 600 Article 15 Complying Presentation Explanation

A complying presentation is a presentation that is in accordance with the terms and conditions of the credit, the UCP and international standard banking practice. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank must either honor or negotiate when they determine that the documents comply. The timing of honor or negotiation will depend on the time of processing the documents taken by the banks and the reimbursement conditions stated in the credit. Often a sight credit is referred to a credit in which payment is made within 5 days. It is to be remembered that the UCP states that each bank has 5 banking days to examine a presentation after it is received. UCP does not require that payment should be made within 5 banking days. Banks are expected to honor or negotiate as and when the compliance is determined and it is practicable.

When a nominated bank acting on its nomination honors or negotiates after determination of compliance it must forward the documents to the confirming bank or the issuing bank. When a confirming bank determines that documents are complying and honors or negotiates, it must forward the documents to the issuing bank. In practice, banks forward the documents within a day or two after honor or negotiation and in some cases, from customer service point of view, documents may be dispatched the same day when they are deemed compliant.

Chapter 20

UCP 600 Article 16 – Discrepant Documents, Waiver and Notice Explanation

Discrepancies in documents refer to the mistakes which make them unclean. Banks only pay a complying presentation that is the documents which are in accordance with the terms and conditions of the credit, the UCP and the ISBP. Each bank has a maximum of 5 banking days following the day of presentation to determine whether the documents comply or not. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may refuse to honor or negotiate a presentation that is not credit complying. An issuing bank, in its sole judgment, may approach the applicant for a waiver of discrepancies but it is not obliged to do so. However, it will still have a maximum of 5 banking days to examine a presentation and if found discrepant, then send a refusal message. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must give a single notice of refusal when it determines that the presentation is not complying. The notice of refusal is given to the presenter of documents which could be either the beneficiary or a presenting bank.

A refusal notice must have three basic components:

1. It should mention that it is a refusal notice (the bank has refused the documents) and;
2. Reason for refusal that is each discrepancy due to which the bank is refusing to honor or negotiate and;
3. Treatment of documents that is:
 - a) the bank is holding the documents pending any further instructions from the presenter; or
 - b) only the issuing bank can write in its notice of refusal that it is holding documents until it receives a waiver from the applicant and agrees to accept it or receives further instructions from the presenter prior to agreeing to accept the waiver from the applicant. Since only the issuing bank may contact the applicant for a waiver, the nominated bank or the confirming bank cannot insert this wording in their refusal notice; or
 - c) the bank is returning the documents; or
 - d) the bank is acting according to the instructions previously received from the presenter.

In Indian banking the practice is that when the issuing bank (if Indian bank) sends a refusal notice, it always mentions point b. as mentioned above. If point a. is mentioned it is a possibility that the presenter may not provide any further instructions regarding treatment of documents.

The banks are required to give notice of refusal to the presenter by telecommunication or other prompt or efficient means by, no later than the close of the fifth banking day after the day of presentation. Close of fifth banking day means that the refusal should leave the system of the LC department of the banks by 11.59 pm. When refusal is communicated by telephone, it should always be followed by a written notice so that afterwards there is no dispute as to what was communicated and what was not.

After a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank has given notice of refusal in which it has mentioned for treatment of documents either point a, or point b, it can anytime return the documents to the presenter. After receipt of notice of refusal, the presenter can present the corrected documents within any latest presentation date if that date has not elapsed. It has been seen that many beneficiaries instead of presenting corrected documents request the nominated or confirming bank either to send documents on trust/approval or to send an MT750 message to the issuing bank to accept the discrepancies notified by the nominated/confirming bank. With the presentation of new documents there could be new discrepancies in the presented documents. However, if the banks raise discrepancies that were present in the documents before presentation of new documents but were not raised at that time then the banks will not be able to refuse. In case the corrected documents make the presentation clean and they are presented within latest presentation period and/or the expiry of the credit, the issuing bank or the confirming bank must honor or negotiate as the case may be. It should be noted that since each bank is required to examine the documents, then even if pre-acceptance message has been sent to the issuing bank or the covering schedule of the beneficiary or the nominated/confirming bank lists discrepancies, the confirming bank or the issuing bank is required to examine the documents and send a refusal notice even if they find the same discrepancies. An issuing bank, or a confirming bank are obliged to send a notice of refusal as per the provisions of UCP article 16. If they fail to do so, they will be precluded from claiming that the documents are discrepant and they will be liable to honor or negotiate. Therefore these banks must provide a refusal notice (if documents are discrepant) by the close of the fifth banking day following the day of presentation of documents. A nominated bank, which is not a confirming bank, gives no independent undertaking to honor or negotiate therefore even if a nominated bank does not provide a refusal notice by the close of the fifth banking day to the presenter it is not precluded as per UCP sub article 16(f).

An issuing bank that refuses to honor or a confirming bank that refuses to honor or negotiate post giving of refusal notice is entitled to claim a refund with interest, of any reimbursement made. It is important to note that for any presentation that is made after the expiry of the credit, there is no credit in existence and UCP600 will not apply. In case an issuing bank or a confirming bank receive presentation from a nominated bank/confirming bank after the expiry of the credit, they should enquire whether the documents were received by the nominated/confirming bank before expiry and if applicable give a refusal notice that docs were received after expiry to avoid the effect of sub article 16(f).

To avoid discrepancies, it is very important that terms and conditions to be stated in a letter of credit are clearly decided between applicant and beneficiary right from the time sales contract is entered into and the same are reflected in the letter of credit application form submitted to the issuing bank. The beneficiary must read the terms and conditions of the documentary credit clearly and request an amendment if any term or condition is likely to make the credit non-workable. This should be done before any document is presented.

Chapter 21

UCP 600 Article 17 Original Documents and Copies Explanation

A bank will treat a document as an original document if it contains an original signature, mark, stamp or label of the issuer of the document unless the document states that it is not an original document. The issuer is the party on whose letter head the document is issued. In case a credit requires presentation of copies of document then either original documents or copies could be presented. For example, a credit requires presentation of copies of invoice, the beneficiary could either present original invoices or copies of invoices. If the credit requires presentation of multiple documents by stating that the document is to be presented in two folds or in two copies or in duplicate, then at least one original document is to be presented and the remaining may be in copies. For example, a credit requires presentation of invoice in 3 copies then, either all original invoices may be presented by the beneficiary or at least one original and the remaining number in copies may be presented. If a credit requires photocopy of the original invoice, then the document presented has to be the exact photocopy of the original invoice and not just a copy.

If a document is a photocopy but contains an original signature of the document issuer or is signed as per sub article 17(b) then it will be considered as an original. For example, a credit calls for an invoice. The presented document is a copy of invoice but bears an original signature of the beneficiary. The invoice would be considered to be an original invoice. A signature need not be handwritten. It may be a facsimile signature (preprinted or scanned signatures), or perforated signature or a electronic signature like a bar code.

Chapter 22

UCP 600 Article 18 Commercial Invoice Explanation

As per sub article 18(a), a commercial invoice must appear to be issued by the beneficiary. ISBP 745 states that a requirement in a credit for the presentation of an 'invoice' will be satisfied by presentation of a document titled as commercial invoice, customs invoice, tax invoice, final invoice, consular invoice etc. however the invoice is not to be titled as 'provisional', 'proforma' etc. A requirement in a credit for the presentation of a commercial invoice will also be satisfied by the presentation of a document that is titled as 'invoice' even if contains a statement that it has been issued for tax purposes. The description of goods, services or performance on an invoice need not be a mirror image but it is to correspond with the description as shown in the credit and it is to show what has actually been shipped, delivered or provided. For example, credit states in description of goods 10 tables as per proforma invoice no 5678 and allows partial shipment. If the beneficiary ships only 6 tables, the invoice will mention 6 tables as per proforma invoice no 5678. It may also show, along with what has actually been shipped, description of goods as stated in the credit that is 10 tables as per proforma invoice no 5678. It is to be noted that the description of goods can appear anywhere in the invoice for example on top it can mention 6 tables and at the bottom page it can mention as per proforma invoice no 5678. The data is to be read collectively.

Additional data may be mentioned on an invoice in respect of goods, services, or performance provided it does not refer to a different nature, classification or category of goods, services or performance. For example a credit requires shipment of wooden tables but the invoice states 'second hand tables' or credit requires shipment of leather shoes but invoice states 'imitation leather shoes'. These descriptions would refer to a different nature, classification or category of goods. If unit prices are stated in the credit, then the invoice is to indicate them. An invoice is also to indicate any discount or deduction that is required by the credit. If there has been any advance payment or deduction that is not stated in the credit then the invoice may indicate the same.

A credit may indicate a trade term as part of goods description in the credit. In this case the invoice is to indicate the trade term. If the source of the trade term is mentioned, then the invoice is to indicate the source also. For example, trade term stated in the credit as 'CFR Nhava Sheva Port Incoterms 2010' is not to be indicated as CFR Nhava Sheva, or CFR Incoterms. However if a trade term is stated as CFR Nhava Sheva, or CFR Nhava Sheva Incoterms, then the invoice may state CFR Nhava Sheva Incoterms 2010 or any other revision.

An invoice must appear to have been issued by the beneficiary except in case of transferred credit, must be made out in the name of applicant except in case of transferred credit and it is to

be in the currency of the credit. UCP 600 sub article 18(b) allows a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank to accept an invoice which states an amount that is greater than the amount permitted by the credit, and its decision will be binding on all parties, provided the bank in question does not negotiate or honor for an amount that is greater than the amount permitted by the credit. For example, a credit is issued for \$50,000.00 and beneficiary presents invoice for \$60,000.00. He, however requests payment of \$50,000.00 only, then a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may accept the invoice for the greater amount provided it does not honor or negotiate for the greater amount. In case the beneficiary requests payment of \$60,000.00 then the documents would be discrepant for credit overdrawn.

An invoice should not state over shipment of goods except as provided under UCP600 sub article 30(b) and goods, services or performance not called for in the credit even if it includes additional quantities of the same goods, services or performance which are required by the credit, or samples and advertising materials even if they are stated to be free of charge. For example, if credit requires shipment of white shirts, the invoice is not to indicate that some additional white shirts (as those required by the credit) are also shipped as free samples and are free of charge. An invoice need not be signed or dated.

Chapter 23

UCP 600 Article 19 Transport Document Covering Atleast Two Different Modes of Transport Explanation

Modes of transport refer to the different modes like air, water, road or rail. When a credit requires presentation of a transport document which covers movement of goods using two different modes of transport then the said document is to be examined as per UCP Article 19. Such a transport document is known as a multimodal transport document or a combined transport document. It is to be noted that the UCP outlines that such a transport document may be however named. However, named means that a multimodal transport document need not be titled as multimodal transport document. It may be titled as bill of lading but the requirement in the credit should determine whether the presented transport document is to be examined under article 19. For example, in a credit the place of taken in charge is given as an inland place, port of loading is given and place of final destination is given. Transport document presented under this credit will be examined under article 19. A few points must be borne in mind when examining an MMTD:

- a) It must state the name of the carrier identified as the carrier anywhere on the document.
- b) It must be signed by the carrier or by a named agent acting for or on behalf of the carrier or:
- c) It must be signed by the master or by a named agent acting for or on behalf of the master.
- d) The signature by the carrier, master or agent must be identified as that of the carrier, master or agent.
- e) The signature by the agent must state whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

A multimodal transport document must not contain an indication that it is subject to a charter party. The issuance date of a multimodal transport document is to be taken to be the date of receipt, dispatch, taken in charge and the date of shipment. In case the document bears a separate dated notation evidencing receipt, dispatch, taken in charge or shipped on board from the port, place or airport as given in the credit, then that date would be deemed to be the date of shipment. This date may be before or after the issuance date of the MMTD. For example, the issuance date of an MMTD is 24th march 2015 but on the document, there is a separate dated notation which states goods taken in charge on 23rd March 2015. The transport document must indicate the place of dispatch, taken in charge or shipment and place of final destination as stated in the credit.

A multimodal transport document is to indicate the number of originals in which it has been issued for example 3 originals or 4 originals and unless prohibited by the terms and conditions of

the credit, all the originals as mentioned on the transport documents must be presented by the beneficiary. A multimodal transport document must contain terms and conditions of carriage or make reference to another source containing terms and conditions of carriage. Banks do not examine the contents of the terms and conditions of carriage.

Since a multimodal transport involves unloading from one mode of transport and reloading to another mode therefore in a multimodal transport transshipment will always take place even if the credit erroneously states that transshipment is prohibited. If a multimodal transport document indicates that the transshipment will or may take place, then it would be acceptable even if the credit does not permit transshipment.

Chapter 24

UCP 600 Article 20 Bill of Lading Explanation

A transport document required by the credit covering only a port to port shipment will be examined under Article 20. A bill of lading need not be named as marine bill of lading or ocean bill of lading. It must indicate the name of the carrier identified as the carrier and:

- a) It must be signed by the carrier or by a named agent acting for or on behalf of the carrier or;
- b) It must be signed by the master or by a named agent acting for or on behalf of the master.
- c) The signature by the carrier, master or agent must be identified as that of the carrier, master or agent.
- d) The signature by the agent must state whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

A bill of lading must indicate that the goods have been shipped on board a named vessel at the port of loading as stated in the credit. A bill of lading, when issued in a negotiable form is capable of transferring ownership of goods from one person to another. Negotiable form meaning when a bill of lading is issued to order, to the order of shipper etc. When a bill of lading is issued to the order of shipper or to order, then it needs to be endorsed by the shipper. The endorsement may be in the name of a given party (nominated bank, issuing bank or the applicant) or it may be blank endorsed meaning not naming any party. For example, a bill of lading is issued to the order of shipper. The shipper endorses (it's a stamp on document transferring ownership from shipper to the named party) it to the order of the issuing bank. Now the issuing bank becomes the owner of goods. When the documents are released to the applicant after payment, the issuing bank has to endorse the bill of lading to the order of the applicant otherwise it will not be able to get the goods released. If the credit requires the bill of lading to be issued to order of the issuing bank or applicant, then it is to state the name of the issuing bank or the applicant. If a credit states that the bill of lading is to be issued or made to the order of issuing bank, then it should be issued or made to the order of issuing bank. Endorsement to the order of issuing bank will not be acceptable.

For the purpose of using the date of shipment for any calculation, in a pre-printed 'shipped on board' bill of lading, its issuance date will be considered as the date of shipment. In case the bill of lading has a separate dated on board notation then that date will be considered as the date of shipment. On board notation, need not be signed. If a bill of lading has preprinted "received for shipment" notation then on board notation is required.

A bill of lading must indicate shipment from the port of loading to the port of discharge as stated in the credit. It must state the port of loading as required by the credit in the field designated to it. Nonetheless the port of loading may be stated in the field 'place of receipt'. In that case, there needs to be a dated-on board notation which evidences that the goods were shipped on board a named vessel at the port stated under place of receipt. It may happen that the credit indicates a geographical area or range of ports as the port of loading, but the bill of lading has to mention the actual port of loading. For example the credit states port of loading as any Indian port. The bill of lading should state the name of the Indian port in port of loading field like JNPT, Mundra port, Kandla Port etc. When more than one port of loading is indicated in the bill of lading, there has to be a relevant on board date for every port irrespective of whether it is preprinted 'received for shipment' or 'shipped on board'.

A bill of lading must state the port of discharge as required by the credit in the field designated to it. However the named port of discharge may appear in the field 'place of final destination'. In this case there has to be a notation stating that the port of discharge is that stated under place of final destination. For example the credit requires port of discharge to be Nhava Sheva but it is shown in the place for final destination instead of port of discharge, there must be a notation stating port of discharge is Nhava Sheva. If a range of ports of discharge or a geographical area is indicated in the credit, a bill of lading is to indicate the actual port of discharge which is to be within that geographical area or range of ports

A bill of lading must not have any indication that it is subject to charter party. A bill of lading must indicate the number of originals it has been issued in for example whether it has been issued as a sole original, 2 originals or 3 originals etc. and full set as indicated on the document must be presented unless credit allows otherwise. A bill of lading must appear to contain terms and conditions of carriage or make reference to another source containing terms and conditions of carriage. Banks do not examine the contents of the terms and conditions of carriage.

For the purpose of Article 20, transshipment means unloading of goods from one vessel and reloading to another during the carriage between the port of loading and port of discharge. For example the credit requires shipment from port A to port B. Transshipment would mean if goods are unloaded from vessel PQR and reloaded to vessel ABC between port A to port B. If credit prohibits transshipment, a bill of lading indicating that transshipment will or may take place will be acceptable if the goods have been shipped in a container, trailer or lash barge as evidenced by the bill of lading. In order to prohibit transshipment completely, along with stating that transshipment is not allowed, a credit will have to exclude sub article 20(c)

Chapter 25

UCP 600 Article 21 Non Negotiable Sea Waybill Explanation

A non negotiable sea waybill, as the name suggests, is a non negotiable transport document and used for short sea journeys. This document is mainly used in North America, Scandinavian countries etc. A non negotiable sea waybill is straight consigned and not issued to order of a named party therefore the consignee is not required to present the original non negotiable sea waybill to take delivery of goods. A non negotiable sea waybill need not be named non negotiable sea waybill. It must indicate the name of the carrier identified as the carrier and:

- a) It must be signed by the carrier or by a named agent for or on behalf of the carrier or:
- b) It must be signed by the master or by a named agent acting for or on behalf of the master.
- c) The signature by the carrier, master or agent must be identified as that of the carrier, master or agent.
- d) The signature by the agent must state whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

A non negotiable sea waybill must indicate that the goods have been shipped on board a named vessel at the port of loading as stated in the credit. For the purpose of using the date of shipment for any calculation, in a pre printed 'shipped on board' non negotiable sea waybill, its issuance date will be considered as the date of shipment. In case it has a separate dated on board notation then that date will be considered as the date of shipment. On board notation need not be signed. If a non negotiable sea waybill has pre printed "received for shipment" notation then a dated on board notation is required and that date will be treated as the date of shipment.

A non negotiable sea waybill must indicate shipment from port of loading to the port of discharge as stated in the credit. It must state the port of loading as required by the credit in the field designated to it. Nonetheless the port of loading may also be stated in the field 'place of receipt.' In that case there needs to be a dated on board notation which evidences that the goods were shipped on board a named vessel at the port stated under place of receipt. It may happen that the credit indicates a geographical area or range of ports as the port of loading, but the non negotiable sea waybill has to mention the actual port of loading. For example the credit states port of loading as any Indian port. The non negotiable sea waybill should state the name of the Indian port in port of loading field like JNPT, Mundra port, Kandla Port etc. When more than one port of loading is indicated in the non negotiable sea waybill, there has to be a relevant on board date for every port irrespective of whether it is pre printed 'received for shipment' or

‘shipped on board’.

A non negotiable sea waybill must state the port of discharge as required by the credit in the field designated to it. However the named port of discharge may appear in the field headed ‘place of final destination.’ In this case there has to be a notation stating that the port of discharge is that stated under place of final destination. For example the credit requires port of discharge to be Nhava Sheva but it is shown in the place for final destination instead of port of discharge, there must be a notation stating port of discharge Nhava Sheva. If a range of ports of discharge or a geographical area is indicated in the credit, a non negotiable sea waybill is to indicate the actual port of discharge which is to be within that geographical area or range of ports.

A non negotiable sea waybill must not have any indication that it is subject to charter party. It must indicate the number of originals it has been issued in for example whether it has been issued as a sole original, 2 originals or 3 originals etc. and full set as indicated on the document must be presented unless credit allows otherwise. A non negotiable sea waybill must appear to contain terms and conditions of carriage or make reference to another source containing terms and conditions of carriage. Banks do not examine the contents of the terms and conditions of carriage.

For the purpose of Article 21, transshipment means unloading of goods from one vessel and reloading to another during the carriage between the port of loading and port of discharge. For example the credit requires shipment from port A to port B. Transshipment would mean if goods are unloaded from vessel PQR and reloaded to vessel ABC between port A to port B. If credit prohibits transshipment, a non negotiable sea waybill indicating that transshipment will or may take place will be acceptable if the goods have been shipped in a container, trailer or lash barge as evidenced by the non negotiable sea waybill.

In order to prohibit transshipment completely, along with stating that transshipment is not allowed, a credit will have to exclude sub article 21(c)

Chapter 26

UCP 600 Article 22 Charter Party Bill of Lading Explanation

A credit may allow presentation of a charter party bill of lading but UCP does not allow it. Carriers and other companies may hire vessels from their shipowners and enter into a hiring agreement or arrangement with them known as a charter party contract. The party which has hired the vessel enters into a contract of carriage with the shipper and issues a charter party bill of lading. The problem with charter party bills of lading is that the banks are not required to know the charter party contracts. The shipowner may sell the goods to recover the loss if the charterer defaults on his payment. All these conditions are in charter party contract which banks are generally not aware of. Goods are loaded or unloaded as per the terms of the charter party contracts. A transport document, however named, if contains any indication or any reference to a charter party, will be deemed to be a charter party bill of lading. Names that are usually associated with charter party like congenbill, or tanker bill of lading, when appear on a transport document without any indication or reference to a charter party, are not any indication or reference to a charter party. The use of charter party bill of lading is mostly seen in bulk cargoes or commodity trade like oil etc. A charter party bill of lading must appear to be signed by:

- a) The master or by a named agent acting for or on behalf of the master,
- b) The owner or a named agent acting for or on behalf of the owner,
- c) The charterer or a named agent acting for or on behalf of the charterer.
- d) The signature by the master, owner, charterer or agent must be identified as that of the master, owner, charterer or agent.
- e) The signature by the agent must state whether the agent has signed for or on behalf of the master, owner or charterer.
- f) When an agent signs for or on behalf of the charterer, or owner it must indicate their names.

A charter party bill of lading must indicate that the goods have been shipped on board a named vessel at the port of loading as stated in the credit. For the purpose of using the date of shipment for any calculation, in a pre printed 'shipped on board' charter party bill of lading, its issuance date will be considered as the date of shipment. In case it has a separate dated on board notation then that date will be considered as the date of shipment. On board notation need not be signed.

A charter party bill of lading must indicate shipment from port of loading to the port of

discharge as stated in the credit. It must state the port of loading as required by the credit in the field designated to it. Nonetheless the port of loading may also be stated in the field 'place of receipt.' In that case there needs to be a dated on board notation which evidences that the goods were shipped on board a named vessel at the port stated under place of receipt. It may happen that the credit indicates a geographical area or range of ports as the port of loading, but the charter party bill of lading has to mention the actual port of loading. For example the credit states port of loading as any Indian port. The charter party bill of lading should state the name of the Indian port in port of loading field like JNPT, Mundra port, Kandla Port etc. When more than one port of loading is indicated in the charter party bill of lading, there has to be a relevant on board date for every port irrespective of whether it is pre printed 'received for shipment' or 'shipped on board'.

A charter party bill of lading must state the port of discharge as required by the credit in the field designated to it. However the named port of discharge may appear in the field 'place of final destination.' In this case there has to be a notation stating that the port of discharge is that stated under place of final destination. For example the credit requires port of discharge to be Nhava Sheva but it is shown in the place for final destination instead of port of discharge, there must be a notation stating port of discharge Nhava Sheva. If a range of ports of discharge or a geographical area is indicated in the credit, a charter party bill of lading may indicate the actual port of discharge which is to be within that geographical area or range of ports, or it may show the geographical area or range of ports as the port of discharge.

A charter party bill of lading must indicate the number of originals it has been issued in for example whether it has been issued as a sole original, 2 originals or 3 originals etc. and full set as indicated on the document must be presented unless credit allows otherwise.

Chapter 27

UCP 600 Article 23 Air Transport Document Explanation

An air transport document known as the air waybill or air consignment note, is issued when goods are transported by air and cover an airport to airport shipment. An air transport document is not a document of title and is non negotiable. Since it's a non negotiable document, in order to exercise control over the goods, the issuing bank must insist on being named as consignee of the goods. The issuing bank must also insist on holding the original for consignor copy of the airway bill. When a bank is named as a consignee on an air transport document, the carrier will deliver the goods to the applicant against a delivery order or airway release from the consignee bank. An AWB must indicate the name of the carrier identified as the carrier and:

- a) It must be signed by the carrier or by a named agent acting for or on behalf of the carrier.
- b) The signature by the carrier, or agent must be identified as that of the carrier, or agent.
- c) The signature by the agent must state that the agent has signed for or on behalf of the carrier.

The carrier is not be identified by an IATA airline code for example AI for air India or AF for Air France.

An air transport document has to indicate that goods have been accepted for carriage. It is to indicate an issuance date which will be considered as the date of shipment. In case the document contains a specific notation of the date of shipment, then the date in the notation will be deemed to be the date of shipment. In case the specific notation is absent on the document, any other information relative to flight number and date will be disregarded in the determination of date of shipment. An air transport document is to indicate the airport of departure and airport of destination as stated in the credit. IATA codes may also be used instead of the full name of the airport. If a credit indicates a geographical area or range of airports of departure or destination, the air transport is to indicate the actual airport of departure and actual airport of destination which are to be within that geographical area or range of airports.

The air transport document presented must appear to be the original for shipper or consignor. Even when credit contains a requirement for presentation of full set of originals, it will be satisfied by the presentation of an air transport document that is original for consignor or shipper. An air transport document must appear to contain terms and conditions of carriage or make reference to another source containing terms and conditions of carriage. Banks do not examine the contents of the terms and conditions of carriage.

For the purpose of Article 23, transshipment means unloading from one aircraft and reloading to another during the carriage between the airport of departure and airport of destination. If credit prohibits transshipment, an air transport document indicating that transshipment will or may take place will be acceptable.

Chapter 28

UCP 600 Article 24 Road, Rail or Inland Waterway Transport Documents Explanation

Transport of goods by road, rail are covered by road or rail consignment notes, truck waybills or CMR (convention merchandises routiers) notes. These documents are not documents of title and are non negotiable. The exception is where the inland waterway transport document is issued in the form of a bill of lading. The carrier delivers goods to the named consignee at the address shown on the document. When an inland waterway transport document is issued in the form of a bill of lading, the goods are delivered by the carrier on the surrender of an original inland waterway transport document. A road, rail or inland waterway transport document, however named, must indicate the name of the carrier, identified as the carrier and:

- a) Be signed by the carrier or a named agent for or on behalf of the carrier; or
- b) Indicate receipt of goods by signature, stamp or notation by the carrier or a named agent for or on behalf of the carrier.
- c) Any signature, stamp or notation of receipt of goods by the agent must indicate that the agent has signed for or on behalf of the carrier

In case a rail transport does not indicate a carrier then any signature or stamp of the railway company will be accepted as the document signed by a carrier.

A rail, road or inland water way transport document must indicate the place of shipment and place of destination as stated in the credit. If a credit indicates a geographical area or range of places of shipment or destination, a road, rail or inland water way transport document is to indicate the actual place of shipment or destination which are to be within that geographical area or range of places.

A rail or inland waterway transport document will be considered as original whether or not it is so marked. A rail transport document marked duplicate will be accepted as an original or a duplicate (carbon copy) of rail transport document authenticated by the stamp or signature of the railway company or railway station of departure will be considered as an original. Although UCP states that a road transport document must appear to be original for consignor or shipper, or bear no marking for whom the document has been prepared, in Indian Banking for inland credits the consignee copy of road transport document is required. Requirement in credit for presentation of full set of a road or rail transport document will be satisfied by the presentation of original for consignor copy of road transport document or duplicate rail transport document.

For the purpose of Article 24, transshipment means unloading from one means of conveyance

and reloading to another, within the same mode of transport, during the carriage from the place of shipment, dispatch or carriage to the place of destination stated in the credit. If credit prohibits transshipment, a road, rail or inland waterway transport document indicating that transshipment will or may take place will be acceptable.

Chapter 29

UCP 600 Article 25 Courier Receipt, Post Receipt or Certificate of Posting Explanation

These documents evidence shipment of goods by courier or through post and indicate name and address of the consignee. These are non negotiable documents and are not documents of title. Delivery of goods is made to the named addressee. A courier receipt, however named, evidencing receipt of goods for transport must indicate the name of the courier company and:

- a) be stamped or signed by the named courier service at the place stated in the credit from where the goods are to be shipped; and
- b) indicate a date of pick up or receipt or words of similar effect. This date will be considered as the date of shipment.

A post receipt or a certificate of posting, however named, evidencing receipt of goods for transport must:

- a) Be stamped or signed and dated at the place stated in the credit from where the goods are to be shipped. This date will be considered as the date of shipment.

Documents like courier receipt, post receipt or certificate of posting, required by a credit for evidencing sending of documents etc to a named entity, will not be examined under Article 25 of UCP 600. These documents will be examined as stated in the credit or otherwise according to UCP 600 sub article 14(f).

Chapter 30

UCP 600 Article 26 “on Deck”, “Shipper’s Load and Count”, “Said by Shipper to Contain” and Charges Additional to Freight Explanation

A transport document is not to state that goods are or goods will be loaded on deck. Clause on a transport document stating that goods may be loaded on deck is acceptable. Clauses such as shipper’s load and count, said by shipper to contain, particulars furnished by the merchant/shipper; carrier not responsible etc. are also acceptable on a transport document. These clauses mean that the carrier has no knowledge of what is there in any packaging or container. There may be a reference to charges additional to freight by a stamp or otherwise on a transport document. However if a credit states that the transport document is not to evidence charges additional to freight then any indication of charges additional to freight will render the transport document as discrepant. Charges additional to freight could be handling charges, but charges incurred as result of delay in unloading the goods are not additional charges.

Chapter 31

UCP 600 Article 27 Clean Transport Document Explanation

As per this article, a bank will only accept a clean transport document. A clean transport document is the one that does not contain any clause regarding the defective condition of the goods or their packaging. A clause stating that packaging may not be suitable for sea journey is acceptable. A transport document need not have the word 'clean' appearing on it even though the credit requires a clean on board transport document. Even though photocopies of transport documents if required by the credit, are not subject to articles 19–25, still they will be subject to examination under article 27. Therefore they must not contain any clause regarding the defective condition of the goods or their packaging.

Chapter 32

UCP 600 Article 28 Insurance Document and Coverage Explanation

Insurance is required to cover damage to goods during transit. Whether the insurance will be provided by the applicant or the beneficiary, will depend on a lot of factors. We will however restrict them to the trade terms agreed between the two in the sales contract. If in the sales contract the goods are agreed to be sold on FOB then the insurance will be provided by the applicant but if the goods are agreed to be sold on CIF or CIP then the insurance document should be one of the documents that will be required from the beneficiary.

The credit may ask for an insurance policy or an insurance certificate. An insurance document may also be in the form of a declaration under an open cover. It is to be remembered that cover notes are not acceptable. A cover note is basically an advice which states that an insurance policy will be issued sometime in the future. It also does not give any details about the risks that would be covered and the ones that would be excluded.

The insurance document must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies. If a credit requires an insurance certificate or an insurance declaration under an open cover, an insurance policy may be presented in lieu of them but vice versa is not acceptable. An insurance policy is a contract of insurance with full details of the terms and conditions agreed between the insurance company and the insured. An insurance certificate is an extract or an abridged version of the insurance policy issued by insurance company, its agent or proxy which verifies that an insurance policy is in existence, often by referring to the policy. An open cover is an insurance taken out in lump sum. The insured and insurance company enter into an agreement containing details regarding the type of cargo, voyages, maximum value of goods in one shipment etc. and agree to insure all shipments that fall under the agreed terms and conditions. The insurance cover is usually for one year. For example, an importer of garments imports goods worth \$50,000.00 every month on FOB. So he will purchase an insurance under an open cover for \$700,000 (not less than 110%).

The date of insurance document must not be later than the date of shipment or it is not to indicate that insurance cover is effective from a date later than the date of shipment. Earlier ICC opinion 766 stated that an insurance document that is dated later than the date of shipment but indicates on the insurance document that coverage is effective from warehouse-to-warehouse was acceptable. However ISBP 745 K10(c) states that even if an insurance document contains a clause of coverage effective from warehouse-to-warehouse, the insurance document is not to be dated later than the date of shipment or to indicate that cover was effective from a date later than

the date of shipment.

The amount of insurance must be indicated on the insurance document and be in the currency of the credit. If the credit does not indicate the amount of insurance coverage, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods. If CIP or CIF values cannot be ascertained from the documents then the insurance coverage must be calculated on the basis of amount for which honor or negotiation is requested or gross value of goods on the invoice, whichever is greater. For example CIF value of goods in invoice is \$140,000.00 and there is a discount for \$10,000.00. The insurance coverage would be on the gross value that is 110% of \$140,000.00 and not on \$130,000.00. The insurance coverage for the percentage value of goods, or the invoice value or similar is deemed to be the minimum amount of coverage. There is no limit to the maximum amount of insurance coverage that may be indicated on the insurance document. However it should not be enormously large.

The coverage of risk at least between the place of taking in charge or shipment and the place of discharge or final destination as stated in the credit, should be indicated in the insurance document. It should be stated in the credit if any additional risks are to be covered. If the credit uses terms such as 'usual risks' or 'customary risks' with respect to the risks that are to be covered, the insurance document will be accepted without regard to any risks that are not covered. A requirement in a credit for insurance against 'all risks' will be satisfied by the presentation of an insurance document that evidences any 'all risks' clause or notation, even if it is indicated that certain risks are not covered. If the documentary credit specifies certain risks, to be covered then those should be stated on the insurance document.

An insurance document may indicate that cover is subject to a franchise or excess deductible. An applicant may request an insurance document to indicate that claims are payable irrespective of percentage. In this case the insurance document must not indicate that a franchise or excess will be applicable.

All originals of the insurance document must be presented when it indicates that it has been issued in more than one original. It is to be noted that banks are not required to examine general terms and conditions of insurance in the insurance document. A banker is not expected to be an expert in insurance industry but the terms and conditions of the credit and UCP should be followed while examining insurance documents.

Chapter 33

UCP 600 Article 29 Extension of Expiry Date or Last Day for Presentation Explanation

It is likely that the expiry date of a credit, or the last date for presentation falls on a day when the bank to which presentation is to be made, is closed for some reasons (except for the reasons of force majeure). In that case the expiry date or the last date for presentation will be extended to the first following banking day. For example if the expiry date of the credit falls on a Sunday or last date of presentation falls on a Sunday then the expiry or last date of presentation will fall on the first following Monday (provided it's a banking day for the bank to which presentation is to be made).

A nominated bank must state on its covering schedule while presenting documents to the issuing bank or confirming bank, that presentation to it was made within the extended time limits according to sub article 29(a).

It is to be remembered that the latest date of shipment will not be extended because of effect of sub article 29(a). For example if the last date for shipment falls on a Sunday then goods will have to be shipped by then. Latest date of shipment will not extend.

Documents may be dated upto the extended expiry date or extended last date of presentation. However the transport document must not indicate a date of shipment later than the latest date of shipment.

Chapter 34

UCP 600 Article 30 Tolerance in Credit Amount, Quantity and Unit Prices Explanation

A tolerance is a percentage increase/decrease in quantity, amount or unit prices which may be stated in the credit or may be applied by way of an amendment. Field 39(a) of MT700 shows tolerance with respect to the credit amount. It is stated like 2/2 or 5/5 or 10/10 etc. Sub article 30(a) states that if terms like ‘about’ or ‘approximately’ are used in relation the credit amount, or the quantity or unit prices in the credit, these terms are to be interpreted as allowing a tolerance not to exceed 10% more or 10% less than the amount, quantity or unit price to which they may refer. For example the credit states in field 45(a) goods description about 1000 plastic chairs. This would mean 900–1100 plastic chairs may be shipped.

Sub article 30(b), states that in a credit where quantity is not given in terms of a stipulated number of packing units, individual items etc, a tolerance not to exceed 5% more or 5% less than the quantity of goods is allowed. The total amount of the drawings, however, should not exceed the credit amount. Examples of individual items or packing units can be 100 chairs, 500 tables, 1000 boxes etc. 1000MT of wheat or 5000 gallons of oil would not be considered as packing units or individual items. The credit amount may be underdrawn by not more than 5%. In case a credit allows a specific tolerance, in field 39 A still sub article 30(b) would apply if quantity is given in MTs, KGs etc.

Sub article 30(c), states that when partial shipment is not allowed, 5% less than the credit amount is allowed provided quantity of goods or unit price when stated in the credit are not reduced or when sub article 30(b) is not applicable. If a credit states specific tolerance or when terms described in sub article 30(a) are used, sub article 30(c) will not apply. An important point to note is that the quantity of the goods are to be shipped in full. An example for sub article 30(c) would be credit states breakdown of CIF value i.e FOB value= \$1500, insurance= \$200, freight=\$300. At this point, insurance and freight are tentative or estimated costs. The invoice states FOB value= \$1500, insurance=\$150, freight=\$270. Insurance and freight are actual costs and less than the estimated costs. FOB value remains the same which shows that goods are shipped in full.

Chapter 35

UCP 600 Article 31 Partial Drawings or Shipments

Explanation

A credit allowing partial shipments allows the beneficiary to incur more than one shipment. A credit may also prohibit partial shipments. A presentation will not be regarded as covering partial shipments when it consists of more than one set of transport documents which evidence shipment on the same means of conveyance and for the same journey, and the same destination. The transport documents may indicate different dates of shipment or different ports of loading, places of taking in charge or dispatch. On the other hand if the transport documents evidence shipment on more than one means of conveyance within the same mode of transport, it will be regarded as covering partial shipment even if the means of conveyance leave on the same day for the same destination. The latest date of shipment as shown on any of the sets of the transport document would be considered as the date of shipment for the purpose of calculating maturity date.

For example if a presentation has two sets of bills of lading with one dated 7th march indicating shipment of 200 chairs from Rotterdam to China on vessel ABC and the other dated 9th march with shipment of 100 chairs from Rotterdam to China on vessel ABC. This would be an example of same journey, on the same means of conveyance and for the same destination. But if one bill of lading was dated 7th march with shipment from Rotterdam to China on vessel ABC and the other was dated 9th march with shipment from Rotterdam to China on vessel PQR, this would constitute partial shipment.

For goods exported by courier, or post, when more than one courier receipt, post receipt or certificate of posting form part of a presentation, if the post receipts, courier receipts or certificates of posting appear to have been stamped or signed by the same courier or postal service at the same place and date and for the same destination, then it will not be regarded as a partial shipment.

If a credit allows partial shipment, the beneficiary is permitted to ship any part of or all the goods within the latest date of shipment/expiry. Partial shipments are allowed if a credit is silent with respect to whether it is allowed.

Chapter 36

UCP 600 Article 32 Instalment Drawings or Shipments

Explanation

If in a credit, drawings or shipments by instalments within a given period are stated and any instalment or drawing is not shipped within the given period for that instalment, the credit will cease to be available for that and any following instalment.

Given periods mean a sequence of date with a start date and an end date. For example a credit requiring shipment of 50 cycles in May and 50 cycles in June is an example of given periods with starting dates on 1st May and 1st June and end dates on 31st May and 30th June respectively. If the first instalment is not shipped within the given period of 1st May- 31st May, credit will cease to be available for this instalment and the following instalment for the period 1st June- 30th June.

Chapter 37

UCP 600 Article 33 Hours of Presentation Explanation

If a presentation is made to a bank outside of its banking hours, it has no obligation to accept it. The documents will be deemed to be presented the same day if a bank accepts and signs the documents beyond its banking hours.

For example, Bank ABC in country Y has its banking hours starting from 9 am to 5 pm.

Docs are received by Bank ABC on 10th Jan 20XX at 5.30 pm.

The documents will be deemed to be presented on 11th Jan 20XX if the stamp of the bank states that the documents were received after banking hours.

The period of 5 banking days to examine the documents will start from 12th Jan 20XX.

The issuing bank may state in the credit their banking hours, similarly the advising bank or second advising bank, in their advices to the beneficiary may state their respective banking hours in which time the documents can be presented to them.

Chapter 38

UCP 600 Article 34 Disclaimer on Effectiveness of Documents Explanation

It is not the liability, responsibility or duty of a bank to determine whether the documents presented to it are accurate, genuine etc. and are not responsible for falsification or any legal effect of any document. For example a certificate of origin issued by Chinese Chamber of Commerce is presented as required by the credit. No bank will assume the responsibility to establish the fact whether that document has actually been issued by the Chinese Chamber of Commerce or is forged. It is also not liable or responsible for any representation of description, quantity, quality, value or existence of goods, services or performance on any document.

A bank is also not responsible for any act, omissions, solvency, performance or standing of the carrier, forwarder, consignor, consignee, insurer of the goods or any other person. A bank determines on the basis of documents alone, whether on their face they constitute a complying presentation.

Chapter 39

UCP 600 Article 35 Disclaimer on Transmission and Translation Explanation

When a bank dispatches documents, or transmits messages according to the requirements stated in the credit, it does not remain liable or responsible for consequences arising out of delay, mutilation, loss in transit or other errors arising in the transmission of messages or delivery of documents. Same applies if, in the absence of any such instructions in the credit, the bank takes an initiative in the choice of delivery service.

When a nominated bank determines that documents are complying and forwards the documents to the confirming bank or issuing bank, whether or not the nominated bank has honored or negotiated, an issuing bank or confirming bank must honor or negotiate, or reimburse that nominated bank, even if the documents have been lost in transit between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank. This article does not apply if the nominated bank does not examine the documents and determines compliance, but just forwards the documents to the issuing bank or confirming bank. However, the issuing bank or confirming bank has a right to ask for the copies of documents for examination since they have given an undertaking to honor or negotiate a complying presentation.

Chapter 40

UCP 600 Article 36 Force Majeure Explanation

Interruption of a bank's business by acts of God, riots, civil commotion, insurrections, wars, acts of terrorism, strikes, lockout or any other reasons beyond its control does not make a bank liable or responsible for any consequences arising out of these acts. A bank will also not honor or negotiate under a credit that expired during such interruption, when it resumes its business.

For example:

A credit is expiring with a confirming bank on 1st Jan 2017 and the beneficiary is unable to present the documents to them due to any reason quoted above, (basically which is beyond the control of the confirming bank), on resuming business the confirming bank will not be liable to act under the credit.

However it should be noted that if the presentation is made within expiry or latest date of presentation and any force majeure situation occurs after receipt of documents, the banks after reopening should examine the documents for compliance. The beneficiary can also make a direct presentation to the issuing bank.

Chapter 41

UCP 600 Article 37 Disclaimer for Acts of an Instructed Party Explanation

A bank that utilizes the services of another bank, for carrying out instructions of the applicant does so for the account of and at the risk of the applicant. An issuing bank or an advising bank is not responsible or liable if the instructions it transmits to another bank are not carried out, even though it had chosen that other bank.

A bank that instructs another bank to perform services becomes liable for any commission, costs, expenses (charges), or fees that the other bank incurs while carrying out instructing bank's instructions.

An issuing bank will remain liable for payment of charges to another bank, if charges cannot be deducted or collected from proceeds, when the credit states that the charges are for the account of the beneficiary. If a bank is in a position to deduct charges from proceeds but fails to do so, it can not claim charges from the issuing bank.

There should not be any condition in a credit or amendment that the credit or amendment will be advised to the beneficiary upon receipt of charges by the advising bank or second advising bank.

Even in cases where credit expires unutilized and beneficiary refuses to pay charges of the advising bank, the issuing bank remains liable to the unrecovered charges of the advising bank.

Chapter 42

UCP 600 Article 38 Transferable Credits Explanation

A transferable credit is a credit which specifically mentions that it is transferable. A transferable credit may be transferred wholly or partially, at the request of the first beneficiary, to one or more than one second beneficiaries. A bank is not obliged to transfer a credit. A bank may express the extent and manner in which it will consent to transfer the credit. A transferable credit can be transferred by a nominated bank, or in a credit available with any bank, a bank that has been specifically authorized by the issuing bank to transfer the credit. An issuing bank may be a transferring bank.

A credit that has been made available to the second beneficiary by the transferring bank is known as the transferred credit. When a credit is transferred to more than one second beneficiaries, the credit must allow partial shipments or partial drawings. The charges incurred with respect to the transfer of the credit must be borne by the first beneficiary, unless otherwise agreed at the time of transfer. A transferred credit cannot be transferred to any subsequent beneficiary at the request of the second beneficiary. However, the second beneficiary may request to transfer the credit back to the first beneficiary. The first beneficiary is not a subsequent beneficiary.

When a beneficiary requests transfer of a transferable credit, the request must state if and under what conditions the amendments may be advised to the second beneficiary. These conditions must also be stated in the transferred credit. When there are more than one second beneficiaries, if one second beneficiary rejects an amendment, the other second beneficiaries may accept the amendment. For the second beneficiary who rejected the amendment, the transferred credit will stand unamended.

A transferred credit must, apart from:

- amount of credit
- any unit price that is stated in credit
- the date of expiry
- the period for presentation
- the latest date for shipment

Any or all of which may be reduced, accurately reflect the terms and conditions of the transferable credit. If a transferable credit is confirmed, the transferred credit must also be confirmed. The percentage of insurance cover may also be increased to provide sufficient

coverage as stipulated in the credit. For example the credit value is \$100 and insurance coverage is to be provided at 110% of invoice value that is \$110. Credit is transferred to the second beneficiary for \$90. In order to provide sufficient cover of \$110 the percentage of insurance cover will be increased from 110% to 122.22% in transferred credit. The first beneficiary's name may be substituted for that of the applicant in the transferred credit. If the transferable credit states that applicant's name is to appear in any document other than the invoice, such a requirement must be reflected in the transferred credit. Any other change apart from what the UCP allows is with the agreement and at the risk of the transferring bank.

The first beneficiary substitutes his invoice and draft for those of the second beneficiary for an amount that is not in excess of the credit amount, after such substitution. If the first beneficiary is to present its own invoice and draft for substitution, but does not present on first demand or the documents provided by the first beneficiary create discrepancies which were not present in the presentation made by the second beneficiary and the first beneficiary fails to correct them, the transferring bank has the right to present documents that were received from the second beneficiary, to the issuing bank.

When the beneficiary requests transfer of credit, he may request that the place of expiry of transferable credit may be changed to the place of the second beneficiary. The presentation of second beneficiary's documents must be made to the transferring bank.

Chapter 43

UCP 600 Article 39 Assignment of Proceeds

Explanation

A beneficiary has a right to assign any proceeds to which he may become entitled to under the credit, according to the provisions of the applicable law. The assignee of proceeds does not perform under the credit. It is the beneficiary who performs under the credit. The nominated/confirming bank has no obligation to accept assignment of proceeds request from the beneficiary. Banks charge the beneficiary of any assignment that they make under the credit. It is the beneficiary's responsibility to provide details of the party to whom proceeds under the credit are to be assigned. The assignment of proceeds are governed by the provisions of local law.

Chapter 44

Incoterms

As discussed earlier the sales contract provides details of various responsibilities that have to be shared between the buyer and seller and one of them is the payment for carriage, insurance, loading of goods, unloading of goods etc. The concept of an incoterm is to determine where cost and risk involved in transportation of goods pass from seller to buyer. It is important to note that banks do not review documents against incoterms. While issuing a documentary credit the issuing bank should carefully incorporate the incoterm keeping in mind the transport document that is being called for. For example incoterm FOB is used for sea shipment but many banks issue credits incorrectly by mentioning FOB and calling an air transport document.

Incoterms may be divided into:

1. E category
2. F category
3. C category
4. D category

Incoterm	Risk	Cost
EXW (ex works)	Seller has the least risk and it passes to the buyer when the goods are handed over to the buyer either at seller's premises or to a named person in seller's country.	Cost of pre carriage, carriage and insurance is that of the buyer.
FCA (free carrier)	Risk passes from seller to buyer when the seller hands over the goods to a named place or person in sellers country	Seller is responsible for pre carriage. Buyer is responsible for main carriage, insurance.
FAS (free alongside ship)	Risk passes from seller to buyer when the goods reach the port of loading.	Seller is responsible for pre carriage. Buyer is responsible for main carriage, insurance.
FOB (free on board)	Risk passes from the seller to buyer when the goods are on board the	Seller is responsible for pre carriage. Buyer is responsible for

	vessel.	main carriage, insurance.
CFR (cost and freight)	Risk passes from the seller to buyer when the goods are on board the vessel.	Seller is responsible for main carriage till the port of discharge but not insurance.
CIF (cost, insurance, freight)	Risk passes from the seller to buyer when the goods are on board the vessel.	Seller is responsible for main carriage and insurance till the port of discharge.
CPT (carriage paid to)	Risk passes from seller to buyer when the seller hands over the goods to a named place or person in seller's country	Seller is responsible for main carriage till a named place of destination but not responsible for insurance.
CIP (carriage and insurance paid to)	Risk passes from seller to buyer when the seller hands over the goods to a named place or person in seller's country.	Seller is responsible for main carriage and insurance till the named place of destination.
DAT (delivered at terminal)	Seller is responsible to make the goods available to the buyer at the named port/terminal/place of destination. From there the risk passes to the buyer.	Seller is responsible for main carriage till the named port of discharge but not insurance.
DAP (delivered at place)	Seller is responsible to make the goods available to the buyer at the named place of destination. From there the risk passes to the buyer.	Seller is responsible for main carriage till the named place of destination but not insurance.
DDP (delivered duty paid)	Seller is responsible to make the goods available to the buyer at the buyer's premises or his warehouse.	Seller is responsible for main carriage till the buyer's premises or warehouse but not responsible for insurance.

It should be noted that export clearance remains the seller's responsibility except in EXW, and import clearance remains buyer's responsibility except in DDP.

FOB, FAS, CFR, CIF- are used only for marine or inland waterway transport. While the remaining may be used for any mode of transport including marine, port to port or inland waterway transport.

Group wise denotation of incoterms

The E group denotes departure

The F group denotes that the main carriage is not arranged by the seller.

The C group denotes that the main carriage is arranged by the seller.

The D group denotes arrival.

Reimbursement

Reimbursement is an act of repaying money to a party who has paid on behalf of another party.

It is the issuing bank's/confirming bank's undertaking to reimburse a nominated bank that has honored or negotiated a complying presentation and forwarded the documents to the issuing bank/confirming bank.

Reimbursement Subject to URR 725

An issuing bank is responsible at the time of issuance of the credit to indicate whether reimbursement is subject to URR725. URR725 are rules that apply to bank to bank reimbursements provided the text of the reimbursement authorization indicates that it is subject to these rules.

What is a Reimbursing Bank?

A reimbursing bank comes into picture where in a documentary credit the issuing bank indicates that reimbursement for the honor or negotiation of a complying presentation is to be claimed by a nominated bank from a reimbursing bank and field 53A states a reimbursing bank. A reimbursing bank acts under the authority and according to the instructions given by the issuing bank. An issuing bank at the time of issuance of credit provides a reimbursing bank with a reimbursement authorization which should not be subject to an expiry date. A reimbursing bank has no obligation to honor a reimbursement claim unless it has issued its own separate reimbursement undertaking. When a reimbursing bank decides not to honor a claim, it must inform the bank from which claim was received and also inform the issuing bank accordingly.

Since the reimbursing bank honors claim by debiting the issuing bank's account that is held with it, it is important that the issuing bank maintains sufficient balance in their accounts held with reimbursing banks, in the currency in which claim needs to be honored.

At times the reimbursing bank may not be in a position to honor a claim. There may be various reasons behind a claim not getting honored by the reimbursing bank. Like:

1. the reimbursement authority has not been provided by the issuing bank or;
2. there is insufficient balance in issuing bank's account; or
3. in case where additional charges are stated in the reimbursement claim, but the issuing bank has given RA for only the bill amount. Hence it's a case of insufficient RA provided by the issuing bank. In this case the reimbursing bank may honor only the amount for

which RA is provided.

After receipt of claim, a reimbursing bank has 3 banking days to honor the same. A reimbursement claim sent 10 banking days before the due date of the claim may be disregarded by the reimbursing bank. The reimbursing bank must inform the claiming bank about the same without any delay.

Some Other Documents

Drafts

Drafts or bills of exchange are legal/financial documents and indicate the amount owed. It is an unconditional order given by the beneficiary and addressed to the drawee bank to pay on sight/demand or after a fixed time in future a certain sum of money. The amount may be shown either in words or in figures and must correspond when both are shown. If there is any conflict in the amounts in words and figures, then amount in words should be considered as the amount demanded. A letter of credit should not ask for a draft to be drawn on the applicant. In India drafts come under the purview of negotiable instruments act. A draft is to be drawn by the beneficiary. It should be signed and indicate a date of issuance. When a draft is required under a credit and tenor is, other than sight, or in a usance credit X number of days after sight, it must be possible to determine the maturity date from the data presented in the draft.

Certificate of Origin

A certificate of origin is a certificate that relates to the invoiced goods and certifies their origin. Mostly it will appear to be issued by a Chamber Of Commerce or a similar organization. If the credit does not state the issuer of the certificate of origin, then any party, including the beneficiary may issue the same. If a credit indicates the origin of goods but does not require presentation of a certificate of origin, then in no document, origin of goods contrary to that in the credit should be stated.

Packing List

A packing list, as the name suggests, is a document which provides information with respect to packing of goods. It may be titled as packing list/packing note or be not titled at all. It should however fulfil its function of stating the packing details of the goods without conflicting with any packing specifications stated in the credit. Even when a packing list is not required by the credit, the packing specifications on any required document should not conflict with those, if any, stated in the credit. A packing list has to be issued by the party named in the credit. If no issuer is named in the credit, any party including the beneficiary may issue the same.

Weight List

A weight list, as the name suggests, is a document which provides information with respect to weight of the goods. It may be titled as weight list or a similar name or be not titled at all. It

should however fulfil its function of stating the weight details of the goods without conflicting with any weight requirements stated in the credit. Even when a weight list is not required by the credit, the weight requirements on any required document should not conflict with those, if any, stated in the credit. A weight list has to be issued by the party named in the credit. If no issuer is named in the credit, any party including the beneficiary may issue the same.

Discrepancies in Documents

As discussed earlier, discrepancies are mistakes or in other words deviation from the terms and conditions of a letter of credit which delay the payment to the beneficiary. A beneficiary should prepare documents exactly as they are required by the credit thereby refraining from including any detail which might make his presentation as unclean. The beneficiary should always look to present revised documents rather than asking the nominated/confirming bank to send them on approval or trust. This is because if revised documents make the presentation as credit complying then the beneficiary can get the confirming bank (if credit is confirmed) to honor or negotiate, since after all he has paid for the confirmation or even if he has not paid still a confirming bank is bound to honor or negotiate a complying presentation. If a credit is not confirmed then he can approach the nominated bank to provide finance to it on relationship grounds on a with or without recourse basis depending upon the internal policies of the nominated bank.

The issuing bank may in its sole judgement waive any discrepancy but in practice the discrepancies are shared with the applicant and once they provide their waiver the issuing bank accepts the documents. Issuing banks have no obligation to accept the waiver of the applicant but most issuing banks do so. Once the documents are accepted by the issuing bank, they are bound to honor or reimburse as the case may be.

Points to Remember

1. UCP makes no distinction between local LCs and international LCs.
2. Even a non bank entity can issue, confirm and negotiate under an LC provided the beneficiary is satisfied with the undertaking of such a non bank entity.
3. UCP can be applied to any transaction that is irrevocable and constitutes a definite undertaking of the issuer.
4. A documentary credit can be issued for non-goods trade for example services, performances also.
5. There can be only one advising bank in a credit and any other bank involved performs the role of a second advising bank
6. Honor is always without recourse.
7. A nominated bank is a bank that is nominated by the issuing bank to step in its shoes and offer honor or negotiation.
8. An issuing bank will always honor, it does not negotiate.
9. A credit subject to UCP 600 is irrevocable even if it does not indicate the same. Although revocable credits are not common and UCP does not cover them, still they can be issued subject to UCP by mentioning that they are revocable and terms and conditions applicable to revocability are stated therein.
10. Banks deal with documents and not with goods services or performance to which the documents may relate.
11. The idea behind a freely available credit is that the beneficiary may choose any bank to which he wishes to make a presentation.
12. If a credit is available with the issuing bank and expiry is in the country of the beneficiary, then in such a case the documents may reach the issuing bank after expiry but they must be presented in the country of the beneficiary before expiry.
13. If the credit is available with the bank of the beneficiary but is expiring at the counters of the issuing bank then the documents must reach the issuing bank before expiry or latest date of presentation as stated in the credit.
14. An issuing bank cannot refuse a presentation that is made directly to it unless the credit instructed otherwise.
15. The documents must appear on their face to constitute a complying presentation.

16. The period of 5 banking days following the day of presentation is for examination of documents and not for payment as is often confused by many banks specially in case of sight credits. Documents under sight credits, when determined as credit complying must be paid in immediately available funds. Immediately has no definition in terms of time limit and depends from bank to bank.
17. Only an issuing bank and a confirming bank are precluded from claiming that the documents are not clean if they fail to send a refusal advice to the presenter of documents as per provisions of Article 16 and hence are liable to honor or negotiate.
18. Documentary credits communicated by SWIFT are automatically authenticated. For paper based credits authentication is done by verifying the signature of the signatories who have signed the credit. In India, the local credits are being issued via SFMS.
19. Partial shipments and transshipments are allowed if the credit is silent with respect to them.
20. The three basic areas to check whether a bill of lading is correctly signed is
 - a) name- carrier, agent
 - b) signature- carrier, master or agent
 - c) capacity- whether signed as carrier, master or agent and when signed by an agent, on whose behalf he has signed (carrier/master).
21. A credit cannot be amended including cancelled without the agreement of the issuing bank, the confirming bank if any and the beneficiary.
22. The basic structure of an amendment is that all other terms and conditions remain unchanged.
23. Negotiation is purchase of drafts and/or documents under a complying presentation by the nominated bank. In negotiation, the nominated bank advances its own funds to the beneficiary. It is with recourse unless the credit is confirmed. There are two basic premises of negotiation that are advancing and agreeing to advance. Negotiation by any bank other than a nominated bank is outside UCP.
24. If no period for presentation is specified in the credit then the default period of 21 calendar days applies if the presentation consists of an original transport document.
25. An issuing bank is not obliged to contact the applicant for a waiver of discrepancies nor it is obliged to accept the waiver of the applicant even if it might have contacted the applicant for a waiver.
26. Terms and conditions of a credit override the UCP.
27. Freight collect or freight payable at destination are same.

Questions for Revision and Practice

Pls refer to UCP and ISBP for better understanding

Q.1 UCP does not cover domestic letters of credit.

True

False

Q.2 Only a bank can issue a letter of credit.

True

False

Q.3 An applicant asks the issuing bank not to honor credit complying documents because goods received are of poor quality. The issuing bank should follow the applicant's instructions.

True

False

Q 4. A credit may be made available with the issuing bank by negotiation.

True

False

Q.5 A beneficiary may send the documents directly to the issuing bank.

True

False

Q 6. A nominated bank receives documents, examines them and determines that they comply and forwards them to the issuing bank. This constitutes negotiation.

True

False

Q. 7 A draft is optional in a payment credit.

True

False

Q.8 For a credit to be amended the consent of the beneficiary is not required.

True

False

Q9 A credit is issued for \$10000 and subsequently amended to \$11000. The beneficiary presents documents for \$10000 and partial shipment was not allowed hence this presentation is discrepant.

True

False

Q.10 A credit is advised through bank ABC in country X. An amendment to the same can be advised through bank PQR in country X.

True

False

Q.11 A credit is available with a nominated bank by acceptance. The nominated bank has accepted the draft. On the due date the issuing bank fails to pay due to country risk. The nominated bank is also not bound to pay the beneficiary.

True

False

Q.12 A credit is available with the nominated bank by deferred payment. The nominated bank does not incur its deferred payment undertaking and sends the documents to the issuing bank. The issuing bank takes up the documents. The nominated bank discounts the same set of documents believing that it is covered under UCP sub article 12(b). The nominated bank is right in its approach.

True

False

Q.13 A confirming bank incurs a deferred payment undertaking for a credit available with confirming bank by deferred payment. In this case the confirming bank is bound to prepay the documents.

True

False

Q.14 A nominated bank accepts a draft drawn on it in a credit available by acceptance with the nominated bank and purchases under the same. On the due date the issuing bank fails to reimburse the nominated bank. The nominated bank can claim the funds back from the beneficiary.

True

False

Q. 15 An amendment is issued to a credit. The beneficiary accepts the amendment for the first

drawing. The beneficiary can refuse the amendment for the second drawing.

True

False

Q.16 A credit is issued with additional condition that UCP sub article 6(a) is not applicable which implies that the beneficiary cannot send the documents directly to the issuing bank.

True

False

Q.17 In a multimodal transport one of the modes of transport must be by sea.

True

False

Q.18 A credit requires presentation of a charter party bill of lading. A charter party bill of lading is presented. This will lead to a discrepancy as UCP does not permit charter party bill of lading.

True

False

Q.19 In a documentary credit transaction a beneficiary faces the risk of the failure of the applicant to pay.

True

False

Q.20 An advising bank is responsible for ensuring genuineness of the credit or amendment.

True

False

Q.21 An irrevocable transferable credit is freely available. The beneficiary approaches the advising bank to transfer the credit. The advising bank may transfer the credit at the request of the beneficiary.

True

False

Q.22 When a nominated bank incurs a deferred payment undertaking, it makes payment to the beneficiary on due date when funds are received from the issuing bank.

True

False

Q.23 A credit calls for a certificate of quality. The certificate indicates that quality of goods is substandard. This certificate will be considered discrepant.

True

False

Q.24 A credit mentions in additional conditions that goods should be of German origin. The beneficiary does not provide certificate of origin. This is not a discrepancy.

True

False

Q.25 A credit mentions in additional conditions that goods should be of Indian origin. The invoice mentions goods to be of Chinese origin. Issuing bank raises a discrepancy of conflicting data but nominated bank contests that since the condition was non-documentary it should be disregarded. The nominated bank is right in its argument.

True

False

Q. 26 A credit calls for an inspection certificate. The beneficiary presents a document with no title but the data provides details of inspection. The nominated bank raises a discrepancy that the title of the document is missing. This discrepancy is incorrect.

True

False

Q.27 A beneficiary presents a quality certificate that was not required by the credit which states detrimental condition of the goods. The issuing bank raises a discrepancy. The action of the issuing bank is correct.

True

False

Q. 28 A credit states description of goods as potatoes but on the commercial invoice it states vegetables. This is not a discrepancy.

True

False

Q.29 A nominated bank sent a refusal notice to the beneficiary. The beneficiary instructed to forward the documents to the issuing bank. The nominated bank forwarded the documents and indicated the discrepancies to the issuing bank. No refusal notice was sent by issuing bank. The issuing bank is bound to honor the presentation.

True

False

Q.30 An issuing bank sent a refusal notice to the nominated bank stating all discrepancies and also that the bank is holding documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver. After two weeks the issuing bank returned documents to the nominated bank as the nominated bank failed to provide any instructions and the applicant also did not provide a waiver. This action of the issuing bank is not acceptable.

True

False

Q. 31 A credit calls for an insurance certificate but the beneficiary presents an insurance policy. This is acceptable under UCP.

True

False

Q.32 An insurance policy mentions that it has been issued in more than one original. But in the presentation there is only one original. The nominated bank raises a discrepancy. This action of nominated bank is correct.

True

False

Q. 33 It is not mandatory to mention the insurance amount in the insurance document.

True

False

Q.34 In a multimodal transport transshipment will take place.

True

False

Q.35 A bill of lading is issued on 1st January but the on board date is 4th January. 1st January should be the date of shipment.

True

False

Q.36 A credit states port of discharge as any port in India. Bill of lading indicates port of discharge as Mumbai and place of final destination as Pune. The bill of lading is discrepant.

True

False

Q.37 A carrier should be named in a charter party bill of lading.

True

False

Q.38 An on board notation has to be authenticated.

True

False

Q. 39. UCP says that a bill of lading may be however named that means it would be acceptable if a bill of lading is named charter party bill of lading.

True

False

Q. 40 A bill of lading is issued by carrier XYZ ltd but it has been signed by the carrier ABC ltd. This is acceptable.

True

False

Q.41 When a credit requires a courier receipt as an evidence of sending documents to the applicant, such courier receipt is examined under UCP article 25.

True

False

Q.42 A credit calls for a weight certificate. The certificate is issued by the beneficiary. The issuing bank can refuse as it has been issued by the beneficiary.

True

False

Q. 43 A nominated bank does not examine the documents and sends the documents to the issuing bank. The documents are lost in transit. However the nominated bank is protected as per UCP article 35.

True

False

Q.44 A transferable credit allows partial shipment but transferred credit does not allow partial shipment. This is a discrepancy.

True

False

Q.45 Documents are lost in transit between the nominated bank and the issuing bank. The documents were compliant but the issuing bank is asking for a copy of documents to examine. This action of the issuing bank is not acceptable.

True

False

Q. 46 When an agent signs a bill of lading on behalf of the master, the name of the master is required.

True

False

Q. 47 The credit mentions the address of the applicant in Delhi but in the invoice it is Mumbai. This is not a discrepancy.

True

False

Q. 48 A presentation was discrepant. However the beneficiary presented the corrected documents but after the expiry. The issuing bank will refuse the presentation.

True

False

Q.49 The address of the applicant is given in the credit. However in the bill of lading only the name of the applicant is appearing in the consignee field. This is a discrepancy.

True

False

Q.50 A credit calls for a weight certificate and a certificate of quality. The description of goods is stated in the weight certificate but it is not stated in the certificate of quality. This is not a discrepancy.

True

False

Answers to the Above Questions

Ans1. False. UCP makes no distinction between domestic or international documentary credit.

And 2. False. Any entity may issue a documentary credit provided it is acceptable to the beneficiary.

And 3. False. The undertaking of the issuing bank is to honor credit complying documents. (refer UCP article 4 and article 5)

And 4. False. Negotiation is purchase of draft/documents under a complying presentation by the nominated bank. The draft is to be drawn on a bank other than the nominated bank. An issuing bank does not negotiate drafts drawn on itself.

And 5. True. A beneficiary can always send the documents directly to the issuing bank and the issuing bank cannot refuse such a presentation. (UCP sub article 6a and 7a).

And 6. False. Negotiation is purchase of drafts/documents by nominated bank by either:

a) advancing of funds to the beneficiary or

b) agreeing to advance funds. If none of the above mentioned has taken place then it is not negotiation.

And 7. True. A draft is not mandatory in a sight credit.

And 8. False. A credit which is issued subject to UCP 600 is irrevocable therefore it cannot be amended without the consent of the issuing bank, the confirming bank if any and the beneficiary.

And 9. False. Since the presentation complies with the original credit, it signifies rejection of the amendment by the beneficiary hence it is not discrepant.

And 10. False. Amendments must be advised through the same bank that advised the documentary credit.

Ans 11. False. The nominated bank has accepted the draft therefore it is bound to honor its undertaking on the due date.

And 12. False. UCP provides protection to a nominated bank if it prepays under the deferred payment undertaking incurred by that bank. If the nominated bank discounts under the deferred payment undertaking incurred by the issuing bank then it is outside UCP.

And 13. False. A confirming bank (which is also a nominated bank) has the authority of the issuing bank to prepay under the deferred payment undertaking that it has incurred but it is not bound to prepay.

And 14. False. Any prepayment to beneficiary under acceptance or deferred payment

undertaking is without recourse.

And 15. False. The beneficiary, if, by virtue of notification of acceptance or by presentation of documents that complies with original credit and amendment, has accepted the amendment for the first drawing then the amendment is binding for future drawings also. The beneficiary cannot refuse the amendment for future drawings.

Ans 16. False. Excluding sub article 6a does not imply exclusion of sub article 7a which mentions that the documents may be sent either to nominated bank or the issuing bank.

Ans 17. False. It is not necessary that in a multimodal transport one of the modes has to be by sea. Multimodal means where more than one mode of transport is used.

Ans 18. False. The credit has specifically called for a charter party bill of lading hence there will be no discrepancy.

Ans 19. False. A letter of credit is an irrevocable undertaking of the issuing bank to honor credit complying documents. Therefore an applicant has no role in the payment procedure.

Ans 20. False. An advising bank has to satisfy itself as to the apparent authenticity of the credit or advice by doing the usual checks. It does not go into the investigation to find out whether the credit is genuine or not.

Ans 21. False. Only a nominated bank named in the credit or in a freely available credit, a bank that has been specifically authorized by the issuing bank to transfer the credit can effect transfer of a credit.

Ans 22. False. Since the nominated bank has incurred its deferred payment undertaking it has to make payment to the beneficiary on due date whether or not funds have been received from the issuing bank.

Ans 23. False. Credit asked for a quality certificate but did not specify anything with regard to its data content. As long as the certificate fulfils its function of mentioning about the quality of the shipped goods, it is not discrepant.

Ans 24. True. This is a non documentary condition however no document should mention the origin of goods other than Germany then it will constitute a discrepancy.

Ans 25. False. Although the condition is non documentary but if any document mentions the origin of goods other than India then it will be a case of conflicting data since the credit clearly mentions that goods should be of Indian origin hence this will be a discrepancy.

Ans 26. True. The document may or may not have a title. But it should contain data that fulfils the function of the required document.

Ans 27. False. Since the document was not required by the credit, it will be disregarded.

Ans 28. False. The credit specified the description of goods as potatoes hence the description on

the invoice should correspond with that of the credit. Vegetables is a wider term.

Ans 29. True. Since the issuing bank did not provide a notice of refusal it is precluded from claiming that the documents do not comply and hence it is bound to pay on due date.

Ans 30. False. Since the issuing bank provided notice of refusal it may return the documents at any time after that if no waiver from the applicant or any instruction from the presenter is received.

Ans 31. True. An insurance policy is acceptable in lieu of an insurance certificate or declaration under an open cover.

Ans 32. True. If an insurance document indicates that it has been issued in more than one original, then all originals must be presented.

Ans 33. False. An insurance document must mention the amount of insurance and the currency should be the same as that in the credit.

Ans 34. True. Transshipment is unloading of goods from one means of conveyance and reloading to another means of conveyance (whether or not in the same mode of transport). Since multimodal transport involves more than one mode of transport, transshipment will take place.

Ans 35. False. An on board date is to be taken as the date of shipment whether its after or before the issuance date of the bill of lading.

Ans 36. False. There is no discrepancy since the place of final destination is in addition to the port of discharge and the bill of lading is mentioning the port of discharge as an Indian port.

Ans 37. False. There is no carrier in a charter party bill of lading.

Ans 38. False. There is no requirement for an on board notation to be authenticated.

Ans 39. False. Although UCP mentions that a bill of lading may be however named it also clearly indicates that it should not contain any indication that it is subject to a charter party.

Ans 40. False. The bill of lading has to be signed by the same carrier that issued it or any of its named agents.

Ans 41. False. A courier receipt that evidences sending of documents is not to be examined under article 25.

Ans 42. False. Any entity, including the beneficiary, may issue the certificate if the credit does not mention by whom it is to be issued.

Ans 43. False. The nominated bank is only protected if it had examined the documents and determined compliance.

Ans 44. False. The transferred credit may mention that partial shipment is not allowed. However the vice versa is not allowed.

Ans 45. False. The issuing bank is entitled to ask for a copy of documents since it has given an irrevocable undertaking to honor credit complying documents.

Ans 46. False. The agent should be named and it should indicate that it has signed on behalf of the master. The name of the master, however, is not required.

Ans 47. True. The address need not be the same but must be within the same country.

Ans 48. True. The corrected documents must be presented within the latest presentation date and/or expiry of the credit.

Ans 49. False. There is no requirement to mention the address of the applicant.

Ans 50. True. Other than the commercial invoice, there is no requirement for a goods description to appear on any document.

Glossary

A

Act of God: An act that is beyond the control of humans, like cyclones, floods etc.

Advising Bank: A bank that advises the credit either directly to the beneficiary or through a second advising bank after satisfying itself as to the apparent authenticity of the credit.

Agent: A person who has the authority to transact on behalf of another person, company etc.

Applicant: On whose request or instructions a credit is issued.

B

Banking day: A day on which a bank is regularly open at the place where an act subject to given rules is to be performed. For example banks in UK are closed on Sunday whereas Sunday is a banking day for banks in UAE.

Banking hours: The business hours of a bank. For example 9 am -5 pm.

Beneficiary: The second necessary party in a letter of credit transaction in whose favour letter of credit is issued.

C

Carrier: A person or an entity who undertakes to perform or procure performance of carriage, in a contract of carriage, by road, rail, sea, air, inland waterway or any combination of such modes.

Confirm: The instruction stated in field 49 of an MT700. It is a request by the issuing bank, to the receiver of the credit to advise the credit after adding confirmation. In practice, most banks will advise the credit without adding their confirmation and would wait for beneficiary to approach them to add confirmation.

Confirmation: The irrevocable undertaking of a confirming bank to honor or negotiate a complying presentation.

Consignee: A person or company to whom the goods are shipped

D

Delivery Order: A letter/electronic message etc that is issued by the issuing bank that is addressed to the carrier for the release of air cargo when the goods are consigned to the issuing bank.

Demurrage: A charge or penalty against the shippers or consignees for delaying the vessel or equipment beyond the allowed free time.

Discount: Terminology used by banks to describe the advance payment given to the beneficiary on presentation of complying documents. This term is not defined by UCP. The advance payment can be for usance or in some cases for sight credits also.

E

Expiry Date: The date after which the letter of credit will cease to be in existence.

F

Freight: Charges for the carriage of cargo.

Freight Forwarder: A person whose business is to act on behalf the shipper in the capacity of an agent.

I

Irrevocable: Which can not be amended or cancelled without the agreement of the issuing bank, the beneficiary and confirming bank, if any.

Issuing Bank: A bank that issues a letter of credit on the instructions and request of the applicant or on its own behalf.

L

Laden: Loaded on board a vessel

M

Mate Receipt: An acknowledgement of cargo issued by the mate of the vessel. The one to whom this mate receipt is issued becomes entitled to the bill of lading in exchange of that receipt.

May Add: The instruction in field 49 of an MT700. Its an authorisation from the issuing bank to the receiver of the credit to add confirmation to the credit. The LC is mostly advised without adding confirmation.

N

Negotiable instruments: A document of title like a draft, cheque or a bill of lading, that is capable of being transferred from one person to another in good faith for a consideration.

Non Negotiable document: A document that is straight consigned and in which ownership cannot be transferred.

O

On Board: A notation on a bill of lading stating that the cargo has been loaded on board a vessel

On Deck: A notation on a bill of lading stating that the cargo has been stowed on the open deck of the ship.

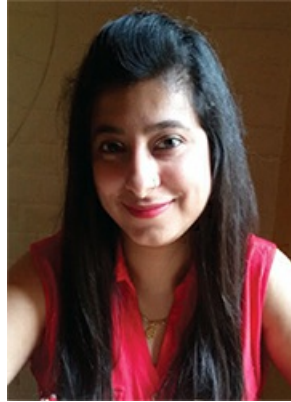
P

Pro forma invoice: A tentative invoice provided by the supplier of goods to the buyer before the shipment of goods informing the buyer of the kind, quantity, value, specifications etc of the goods to be sent.

W

Without: Instruction in field 49 of an MT700 that indicates to the receiver that LC is to be advised without adding confirmation

About the Author



Nisha Koshal is a certified documentary credit specialist and trade finance professional.

She developed an interest in trade finance while pursuing her Post Graduate Diploma in Management (PGDM).

The author worked at a multinational banking company and subsequently at a private limited bank. She wanted to acquire the Certificate for Documentary Credit Specialists (CDCS), however did not understand the complex subject.

It was then that the author took a serious career decision to quit her banking career and focus on learning the subject. It was not long before she successfully completed the certification.

Understanding Letter of Credit is her attempt to share her understanding of the complex subject.

She currently works as a trade finance professional in Chennai.