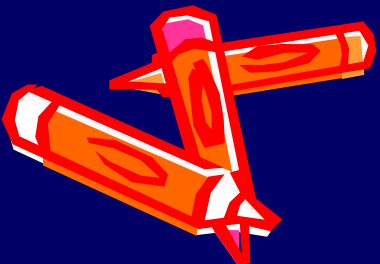


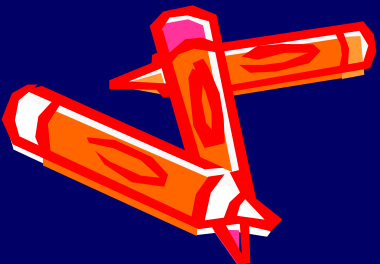
# Chapter five Letter of credit

- 5.1 An Overview of L/C
- 5.2 Procedures of L/C
- 5.3 Types of credit
- 5.4 Key Issues under L/C



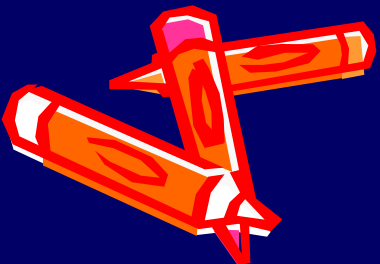
## 5.1 An Overview of L/C

- 5.1.1 Definition of L/C
- 5.1.2 Contents of a L/C
- 5.1.3 Characteristics of a L/C
- 5.1.4 Parties involved in a L/C



### 5.1.1 Definition of a L/C

- A L/c is a **written undertaking** by the **issuing bank to the beneficiary**, under which the bank will pay **a sum certain in money** to the beneficiary if the beneficiary of the L/C provides the bank with **specified documents within a prescribed time period**, which all comply with the terms and conditions of the credit.

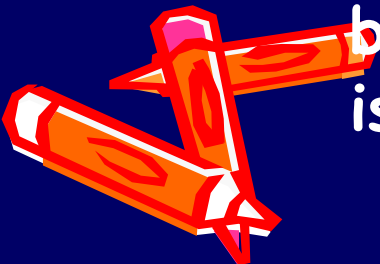


## ✚ UCP600 Article 2 Definition

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

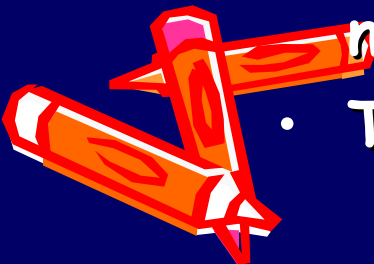
Here "**honor**" means:

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



## 5.1.2 Contents of a L/C

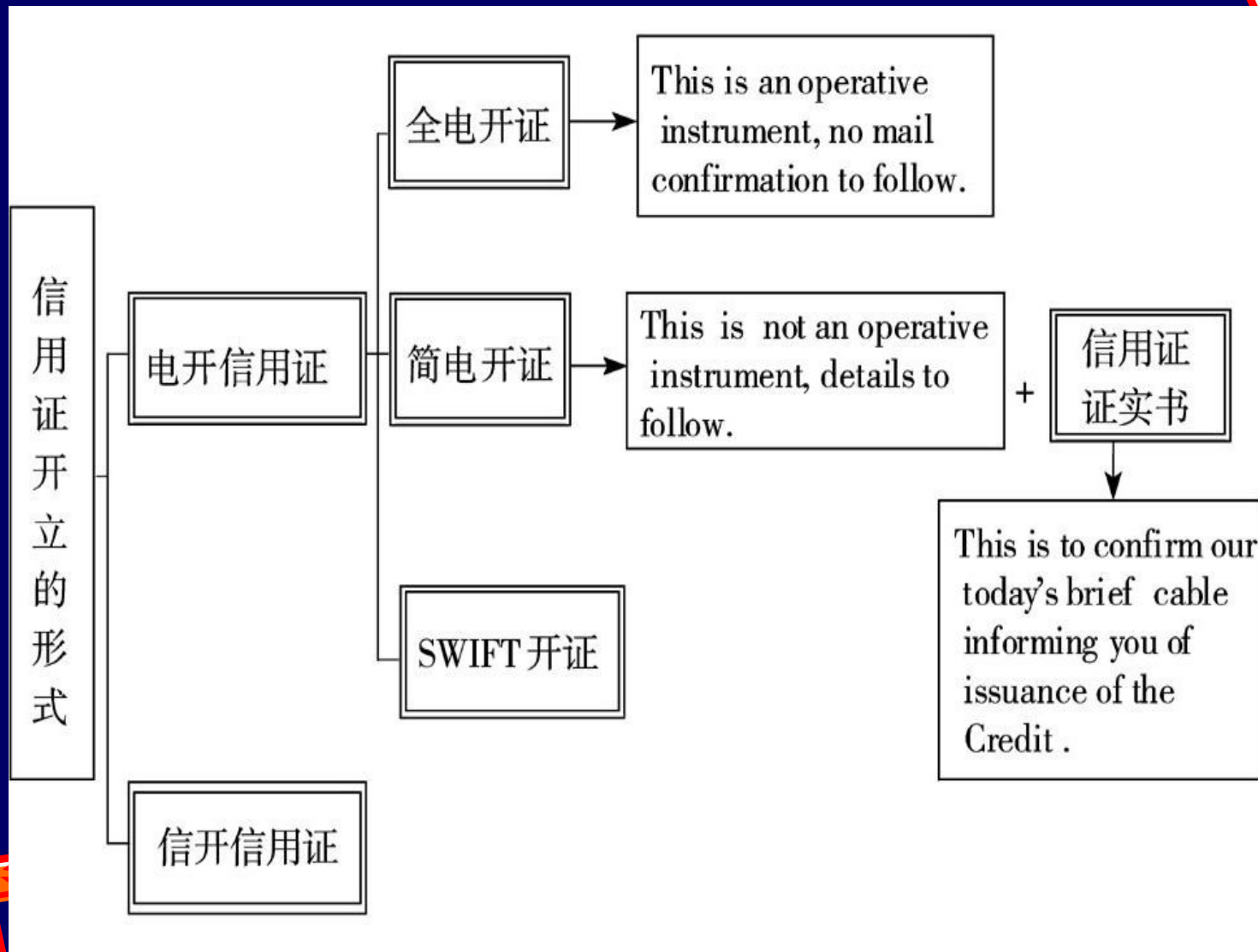
- Items on the credit itself
- Basic parties
- Items on draft
- Settlement conditions 兑付的方式
- Items on goods, shipping documents , transport and insurance
- L/C amount and currency
- Additional conditions
- Reimbursement of the paying, accepting and negotiating bank
- The notation of the credit subject to UCP600



Name of Issuing Bank: 开证行		Irrevocable Documentary Credit 不可撤销跟单信用证		Number 号码	
Place and Date of Issue: 开证地点、日期		Expiry date and Place for Presentation of documents Expiry Date: 到期日 Place for Presentation: 到期地点			
Applicant: 申请人					
Advising Bank: Reference No. 通知行 业务备查号		Beneficiary: 受益人			
		Amount: 金额			
Partial shipments <input type="checkbox"/> allowed 分运 <input type="checkbox"/> not allowed		Credit available with Nominated Bank: 付款方式 <input type="checkbox"/> by payment at sight <input type="checkbox"/> by deferred payment at: <input type="checkbox"/> by acceptance of drafts at: <input type="checkbox"/> by negotiation			
Transshipments <input type="checkbox"/> allowed 转运 <input type="checkbox"/> not allowed					
<input type="checkbox"/> Insurance will be covered by buyers 投保人					
Shipment as defined in UCP 500 Article 46 From: 起运港 For transportation to: 目的港 Not later than: 最迟装船期					
Against the documents detailed herein: 汇票 <input type="checkbox"/> and Beneficiary's draft(s) drawn on:					
单据要求					
Documents to be presented within <input type="checkbox"/> days after the date of shipment but within the validity of the Credit. 交单期					
We hereby issue the Irrevocable Documentary Credit in your favour. It is subject to the Uniform Customs and Practice for Documentary Credit (1993 Revision, International Chamber of Commerce, Paris, France, Publication No. 500) and engages us in accordance with the terms thereof. The number and the date of the Credit and the name of our bank must be quoted on all drafts required. If the Credit is available by negotiation, each presentation must be noted on the reverse side of this advice by the bank where the Credit is available.					
开证行保证付款条款; 议付金额背批条款					
This document consists of <input type="checkbox"/> signed page(s)					
<div style="text-align: right;">             开证行签名              Name and signature of the Issuing Bank           </div>					

Name of Issuing Bank: 开证行		Irrevocable Documentary Credit 不可撤销跟单信用证	Number 号码
Place and Date of Issue: 开证地点、日期		Expiry date and Place for Presentation of documents Expiry Date: 到期日 Place for Presentation: 到期地点	
Applicant: 申请人			
Advising Bank: 通知行	Reference No. 业务备查号	Beneficiary: 受益人	
		Amount: 金额	
Partial shipments <input type="checkbox"/> allowed 分运 <input type="checkbox"/> not allowed		Credit available with Nominated Bank: 付款方式 <input type="checkbox"/> by payment at sight	
Transshipments <input type="checkbox"/> allowed 转运 <input type="checkbox"/> not allowed		<input type="checkbox"/> by deferred payment at:	
<input type="checkbox"/> Insurance will be covered by buyers 投保人		<input type="checkbox"/> by acceptance of drafts at:	
Shipment as defined in UCP500 Article 46 From: 起运港 For transportation to: 目的港 Not later than: 最迟装船期		<input type="checkbox"/> by negotiation	
单据要求		Against the documents detailed herein: 汇票 <input type="checkbox"/> and Beneficiary's draft(s) drawn on:	
Documents to be presented within <input type="checkbox"/> days after the date of shipment but within the validity of the Credit. 交单期			
<p>We hereby issue the Irrevocable Documentary Credit in your favour. It is subject to the Uniform Customs and Practice for Documentary Credit(1993 Revision, International Chamber of Commerce, Paris, France, Publication No.500) and engages us in accordance with the terms thereof. We request you to advise the Beneficiary:</p> <p><input type="checkbox"/> Without adding your confirmation      <input type="checkbox"/> adding your confirmation</p> <p><input type="checkbox"/> adding your confirmation, if requested by the beneficiary</p> <p>Bank to Bank instruction: 开证行保证付款条款;保兑指示条款</p>			
This document consists of <input type="checkbox"/> signed page(s)		<p style="text-align: right;">开证行签名</p> <p style="text-align: right;">Name and signature of the Issuing Bank</p>	

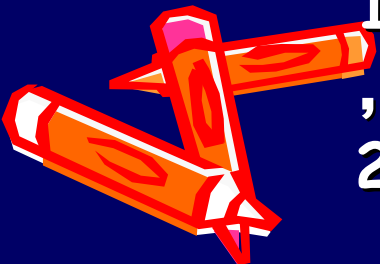
# The form of issuing a credit





### 5.1.3 Characteristics of a L/C

- Primary Liability of the Issuing Bank to Make Payment
- Separated from the Underlying Contracts
- Dealing with Documents Only
- High level of protection and security to both buyers and sellers
- Observing International Rules and Customs  
Uniform Customs and Practice for  
Documentary Credits, ICC Publication  
1929/74 , 1933/82 , 1951/151 , 1962/222  
, 1974/290 , 1983/400 , 1993/500,  
2006/600



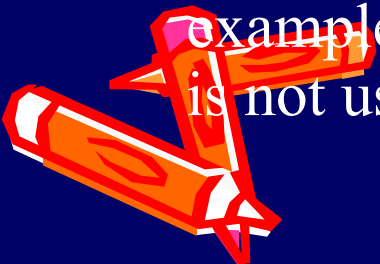
## UCP600 — 主要修改内容

- 1) Given 14 definitions at first and 12 interpretations to clarify the meaning of ambiguous terms, refer to Art 2 & 3. And we need pay attention to the change about 'negotiation'.
- 2) Agreed that the issuing bank must reimburse the nominated bank even though the documents are lost in the transmitting however, the presentation must be complying.
- 3) Denied the practice that banks stipulate the clause about which the amendment should be accepted by beneficiary who did not send any rejected advice in certain time, refer to sub-article 10 f.
- 4) Five banking days replaced reasonable time and seven banking days, refer to sub-article 14 b.
- 5) Two kinds of form about refusing have been added in UCP600, refer to sub-article 16 c iii.



## UCP600 — 主要修改内容

- 6) Banks can now accept an insurance document that contains reference to any exclusion clause, refer to sub-article 28 i.
- 7) The insurance document could be issued by proxies, refer sub-article 28 a.
- 8) The clause for transport documents issued by Freight Forwarders has been deleted.
- 9) The clause about carrying vessel propelled by sail only has been deleted since that kind of sailboat has dropped out of ocean transport.
- 10) The expression is straightaway, precise and compact, for example, the wording for 'unless the credit expressly stipulates...' is not used in UCP600.



## UCP600 — 主要修改内容

- 11) Transpot docs: master's name, issuance by charterer, refer to article 19-23.
- 12) Canceled the blocking frame about the form of clauses.
- 13) The number of the clauses has decreased to 39 from original 49.
- 14) Financing under deferred payment credit and acceptance credits, refer to article 12 b.
- 15) Added the acts of terrorism as a kind of Force Majeure, refer to Art 36.
- 16) Confirmed that the issuing bank may be a transferring bank, refer to sub-article 38 b.



## 5.1.4 Parties to a L/C

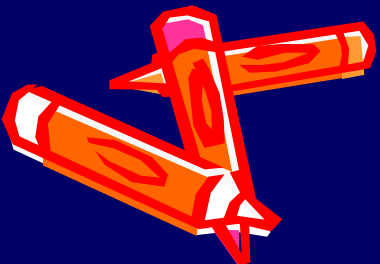
- 开证申请人 ( Applicant/buyer )
  - Liable for payment to the issuing bank provided no discrepancy between documents and the credit;
  - right to examine the documents and refuse payment;
  - any requirement of the applicant should be satisfied by certain documents and clearly indicated when making credit application

Issuing application form

- 开证行 ( Issuing bank/the buyer's bank )

By issuing a credit the issuing bank undertakes full responsibility for payment

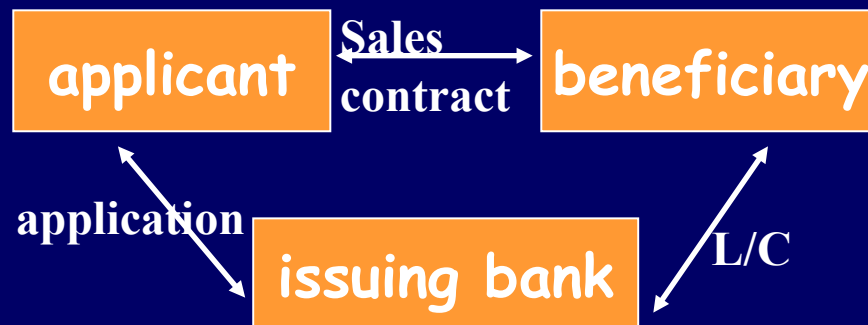
- If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, **an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when the documents have been lost in transit** between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.(Art.35)



## ■受益人（Beneficiary/seller）

The right to examine a credit upon receipt of it according to the sales contract;

whether be paid or not solely depends on the fulfillment of terms and conditions of the credit.



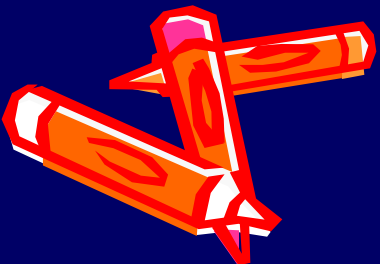
## ■通知行（Advising bank）

Accurately transmit the terms of credit and check the apparent authenticity of the credit

- Nominated bank

Nominated bank means the bank with which the credit is available or any bank in the case of a credit available with any bank.

Unless the credit stipulates that it is available only with the issuing bank, all credits must nominate the bank which is authorized to pay, to incur a deferred payment undertaking, to accept draft or to negotiate. In a freely negotiable credit, any bank can be seen as a nominated bank.





Claim  
-ing  
bank

## ■保兑行 ( Confirming bank )

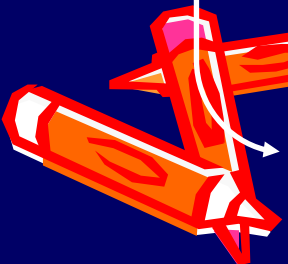
- Undertake the same obligations assumed by the issuing bank;
- Responsible for a credit independently and pay without recourse

## ■议付行 ( Negotiating bank )

- In a negotiation credit, purchases the drafts and documents;
- When dishonored by the issuing bank, it has the right of recourse to the beneficiary;
- Obtain the reimbursement from the issuing bank

## ■付款行 ( Paying/accepting bank )

- Designated by issuing bank to effect payment or acceptance, in most cases to be the advising bank;
- Once it has made payment to the beneficiary, it will lose the right of recourse to the beneficiary;
- Entitled to obtain reimbursement from the issuing bank

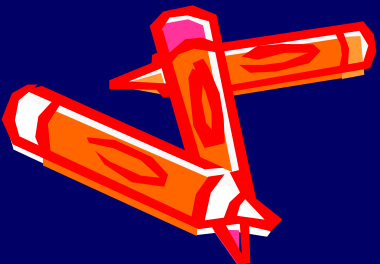




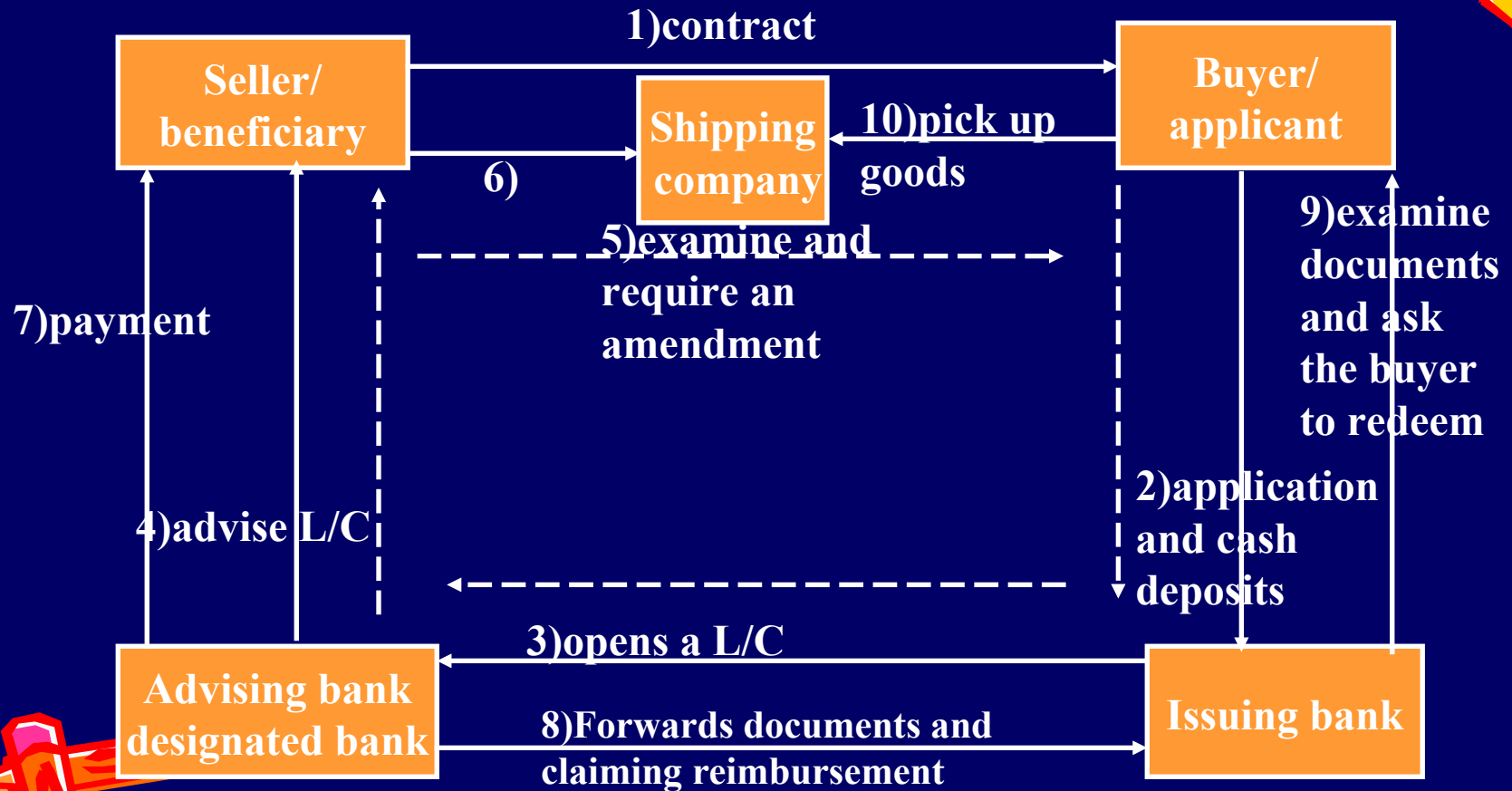
## ■ 偿付行（Reimbursing bank）

A bank named in credit from which the paying bank, accepting bank or negotiating bank may request cover after paying or negotiating the documents.

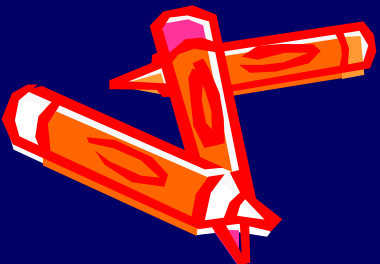
the reimbursing bank shall not examine the documents



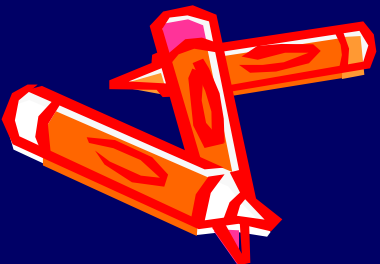
## 5.2 Procedures of L/C



- **Step 1:** A buyer and a seller enter into a sales contract providing payment by a documentary credit
- **Step 2:** The buyer instructs the issuing bank to issue a documentary credit in favor of the seller
- **Step 3:** The issuing bank opens a documentary credit according to the instructions of the applicant
- **Step 4:** The issuing bank asks another bank, usually in the country of the seller, to advise and perhaps also to add its confirmation to the documentary credit
- **Step 5:** The seller examines the documentary credit, and requires **an amendment** of the credit if necessary.



- **Step 6:** The seller examines the documentary credit and prepares for the required documents.
- **Step 7:** The seller presents his documents to the advising bank for settlement
- **Step 8:** The negotiating bank forwards documents to the issuing bank, claiming reimbursement as agreed between the two banks
- **Step 9:** The issuing bank examines the documents and reimburses the negotiating bank
- **Step 10:** The buyer redeems the documents and picks up the goods against the documents



1	Extension of latest shipment and expiry date	Latest shipment and expiry date extend to __ and __ respectively.
2	“ More or less clause” on the quantity of the commodity and the amount	L/C increased (decreased) by _____ to _____ and quantity of commodities increased (decreased) by ____ to ____.
3	The change on insurance coverage	Insurance covering All Risks instead of F.P.A.
4	The change on port of shipping and port of destination	Shipment from _____ to _____ instead of previously stipulated⑯/Port of destination amended to _____ instead of _____.
5	The change on consignee	B/L made out to order of _____ instead of previously stipulated.
6	Clause on partial shipment	Partial shipments permitted.
7	Clause on transshipment	Transshipment permitted/Transshipment at ____ permitted.
8	The change on unit price	Unit price now changed to read _____ instead of _____.
9	The change on trade terms	Trade terms amended to be on _____ instead of _____.
10	The change on freight and insurance premium	Freight and insurance premium to be paid by beneficiary/applicant.
11	The change on bank charges	All banking charges are for applicant account
12	Delete or insert a clause	Delete the clause: “_____”. Insert a new clause: “_____”.
13	The add of confirmation by the advising bank	Please add your confirmation to this Credit, your confirmation charges, if any, are for applicant/beneficiary account.

## 5.3 Types of L/C

- 5.3.1 Confirmed Irrevocable Credit
- 5.3.2 According to the mode of availability

Sight Payment/  
Acceptance/Deferred Payment/Negotiation Credit

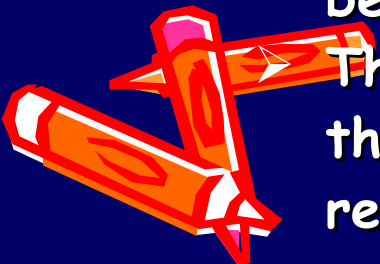
- 5.3.3 Straight Credit
- 5.3.4 Anticipatory Credit
- 5.3.5 Transferable Credit
- 5.3.6 Back-to-back credit
- 5.3.7 Revolving credit
- 5.3.8 Reciprocal credit
- 5.3.9 Standby letters of credit



# Confirmed L/C

According to the adding of confirmation  
Confirmed irrevocable credit

- means a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honor or negotiate a complying presentation. And gives the beneficiary a double assurance of payment
  - According to the UCP600, confirmation can be only added at the request of the issuing bank.
  - Used when the seller does not have confidence that the issuing bank can effectively guarantee payment .
- & Silent confirmation
- Based on a separate arrangement between the beneficiary and the “confirming” bank
  - The bank will not be considered the confirming bank by the issuing bank and acquiring no right of claiming reimbursement from the issuing bank.





# Sight payment L/C

According to the mode of availability

**Sight payment credit** --- available by sight payment to beneficiary with a named bank

- The paying bank may be the issuing bank, the advising bank, or a third bank;
- With or without draft;
- Payment without recourse;
- Usually marked in L/C as : “this credit is to expire on or before(date) at place and is available with issuing bank or advising bank/other bank by payment at sight against the beneficiary’s draft at sight drawn on nominated paying bank and the documents detailed herein”

- Straight credit

Two party involved only—the issuing bank and beneficiary

Draft and documents are honored by issuing bank ,L/C expires at the counter of the issuing bank and advised to beneficiary by the issuing bank directly.



## Acceptance/deferred payment L/C

-----Available by acceptance with a named drawee bank, be it the issuing bank or other nominated bank.  
the accepted draft can be discounted by the beneficiary;

& **buyer's acceptance credit** 买方承兑信用证、假远期信用证

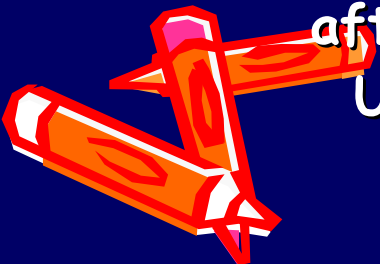
-----according to the contract, payment to the seller at sight;

time draft

discounting charges and acceptance commission are for the buyer's account

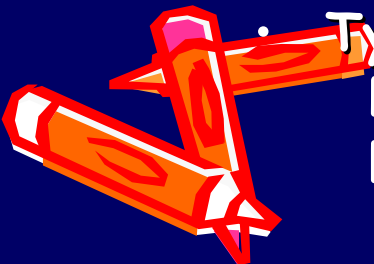
-----available by deferred payment with a nominated bank at a fixed time after the date of the B/L or after the presentation of documents.

Usually without a draft



# Negotiation L/C

- "Negotiation" means : the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank.
- premises
  - 1) the credit must indicate "available by negotiation";
  - 2) the negotiating bank should have got the authorization from the issuing bank;
  - 3) only advancing the complying presentation of documents;
  - 4) the draft, if any, should be drawn on a bank other than the nominated bank.
- Negotiating bank becomes holder in due course of a draft
- Types:
  - Restricted negotiation credit
  - Free negotiation credit

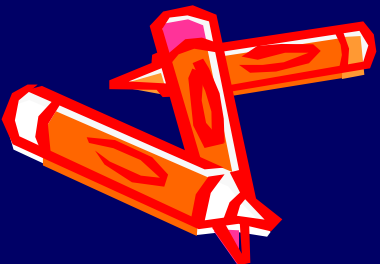


# Comparison of the five kinds

	Sight l/c	Deferre d l/c	Acceptance l/c	Restricted negotiation	Free negotiation
draft	With/ without	without	with	Sight- without Time-with	Sight- without Time-with
Tenor of draft	sight		time	Sight/time	Sight/time
drawee	Paying bank		Accepting bank	Issuing bank	Issuing bank
Time of payment	sight	deferre d	Due date	Sight minus interest	Sight minus interest
Restricted or free	R	R	R	R	F
Right of recourse	Without	Without	Without	With	With

### 5.3.4 Anticipatory L/C

- It is a credit with a special clause added that authorizes the advising bank or any other nominated banks to make advances to the beneficiary before the submission of document.
- Issued at the request of the applicant
- Places the burden of final repayment on the applicant who could be liable for repayment of advances and all costs if the beneficiary failed to present the documents required under the credit.
- Application
- &T/T



### 5.3.5 Transferable L/C

A credit under which the beneficiary (first beneficiary) may request the bank authorized to pay, incur a deferred payment undertaking, accept or negotiate (the "transferring bank"), or in the case of a freely negotiable credit, the bank specifically authorised in the credit as a transferring bank, to make the credit available in whole or in part to one or more other beneficiary (second beneficiary)

application :

enables a middleman who is receiving payment from a buyer to transfer his claim under the credit to his own supplier.

function :

- provides a bank undertaking to manufacturer and will not tie up the funds of middleman;
- simplifies the payment procedures;
- keeps the commercial secrets

- Transferring bank means a nominated bank that transfers the credit or, in a credit available with any bank, a bank that is specifically authorized by the issuing bank to transfer and that transfers the credit.  
An issuing bank may be a transferring bank.(Art.38)

UCP600 中允许开证行作为转让行解决了被指定银行拒绝转让的问题。

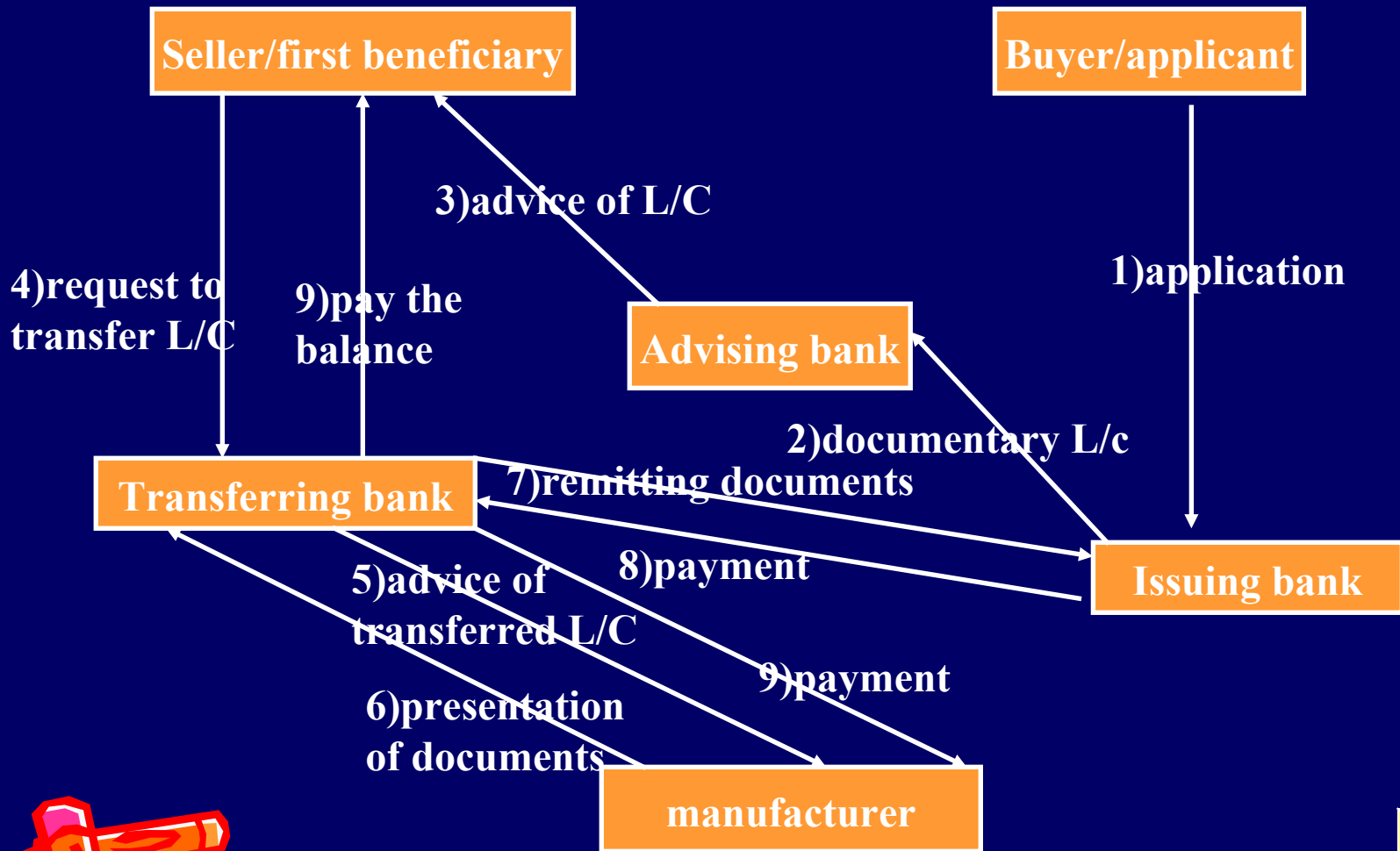
- If the first beneficiary is to present its own invoice and draft, if any, but fails to do so on the first demand, or if the invoices presented by the first beneficiary create discrepancies that did not exist in the presentation of the second beneficiary and the first beneficiary fails to correct them on first demand, the transferring bank has the right to present the documents as received from the second beneficiary to the issuing bank, without further responsibility to the first beneficiary.

转让行有权在第一受益人无法或疏于换单(发票及汇票)的情况下直接将收到的第二受益人的单据提交给开证行, 保护没有过错的第二受益人。

- Presentation of documents by or on behalf of a second beneficiary must be made to the transferring bank.

明确第二受益人必须向转让行交单, 为了保护第一受益人的利益不受侵害。

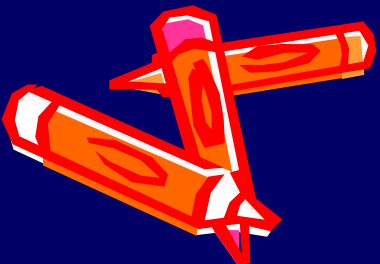






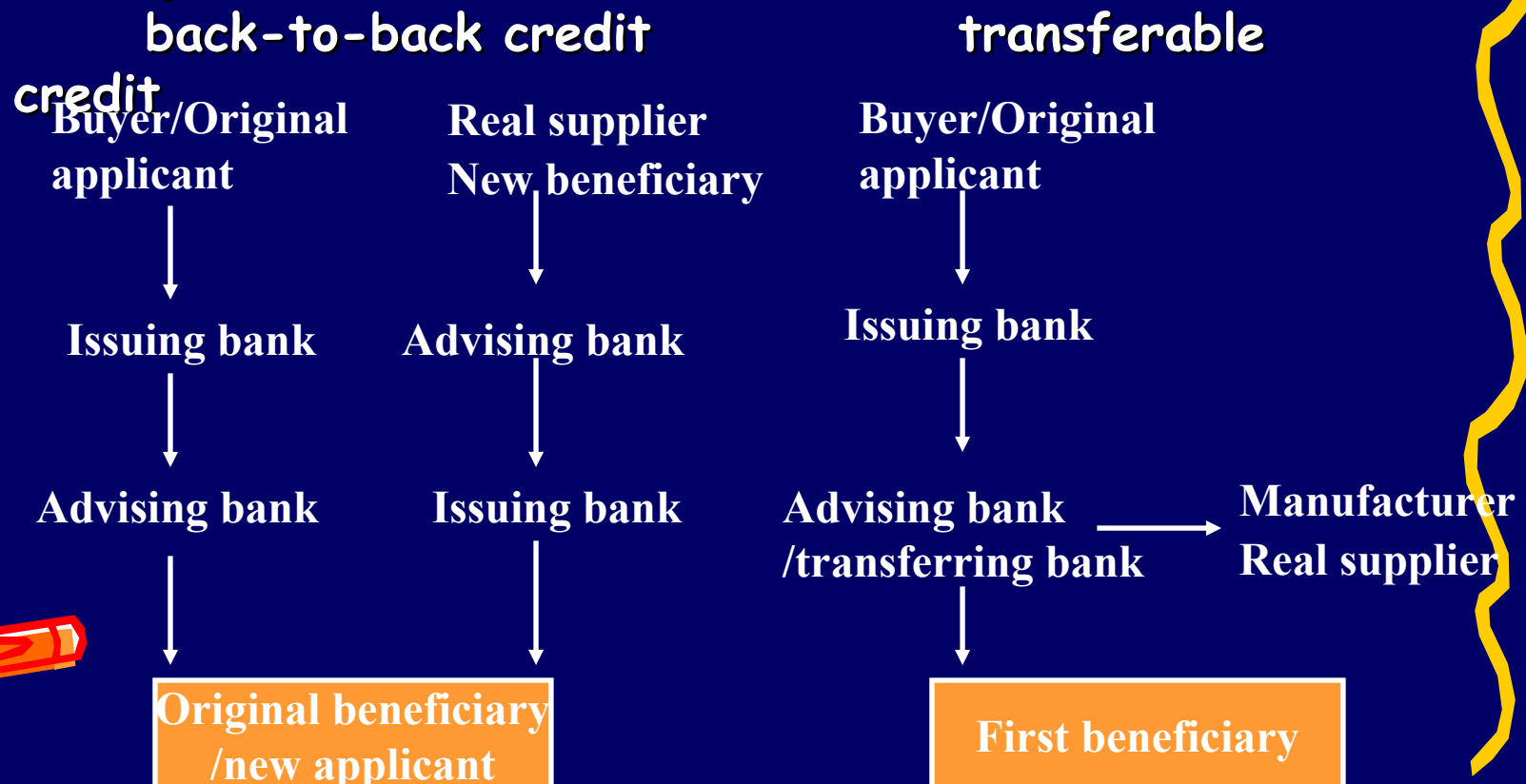
➤ Clauses can be changed in a transferred credit

- ◆ Unit price and the amount of credit can be reduced
- ◆ The expire date, final shipment date and the final date for presentation can be shortened
- ◆ The percentage of insurance cover may be increased
- ◆ The name and address of the first beneficiary can be substitute for that of the original buyer



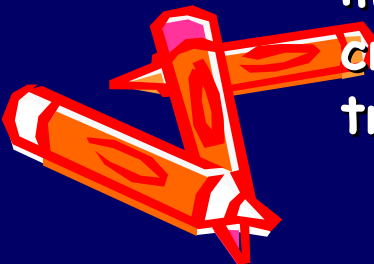
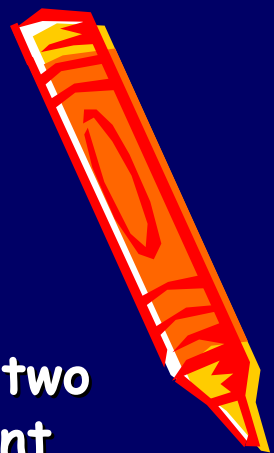
## 5.3.6 Back to back L/C

The beneficiary of an irrevocable credit (primary credit) may use the credit as security to open a separate credit (back-to-back credit / subsidiary credit).



# Back to back & transferable Credit

- Firstly, in back-to-back credit operation, the original credit and the back-to-back credit are two wholly independent credits with wholly independent issuing bank undertakings, while the transferred credit derives not only its existence from the original transferable credit, but also its utilization.
- Secondly, under a transferable credit, the transferring bank is authorized and designated by the issuing bank, while for a back-to-back credit, the middleman can freely choose the issuing bank of the new credit.
- Thirdly, the transferable credit can only be transferred once, while in case of more than one middleman involved in transaction, back-to-back credits can be issued in turn to satisfy the needs of transferring among several different middlemen.



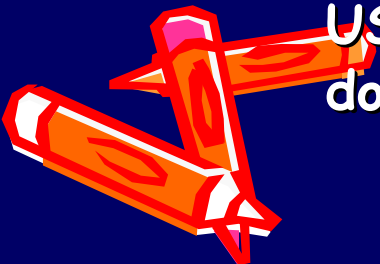
### 5.3.7 Revolving L/C

- The amount of the credit can be renewed or reinstated without specific amendments to the credit.
- Revolving around time

“This is a monthly revolving credit which is available for up to the amount of USD15000 per month, and the full credit amount will be automatically renewed on the 1<sup>st</sup> day of each succeeding calendar month. Our maximum liability under this revolving credit does not exceed USD90000 being aggregate value of six months. ”

#### Revolving around value

“This credit is revolving for three shipments only. Each shipment should be effected at one month interval. The amount of each shipment is not exceeding USD50000. The total value of this revolving credit does not exceed USD150000.”



### automatic revolving:

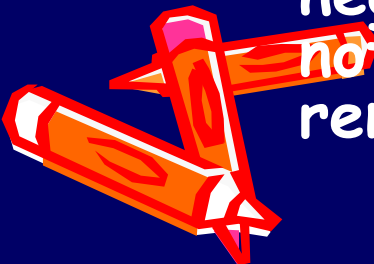
"This credit shall be renewable automatically twice for a period of one month each for an amount of USD50,000 for each period making a total of USD 150,000."

### periodic revolving (semi-automatic revolving):

"Should the negotiating bank not be advised of stopping renewal within 7 days, the unused balance of this credit shall be increased to the original amount on the 8<sup>th</sup> day after each negotiation."

### notice revolving (non-automatic revolving):

"The amount shall be renewal after each negotiation only upon receipt of issuing bank's notice stating that the credit might be renewal."



### 5.3.8 Reciprocal L/C

A reciprocal credit is mostly used in a barter trade, a trade of processing of incoming materials, a counter trade, or a compensation trade.

In the above types of trade, there are usually two transactions and letters of credit involved. The applicant of one credit (the original credit) may assume the position of the beneficiary of the other credit (the reciprocal credit), and the beneficiary of the first credit is the applicant of the second credit.

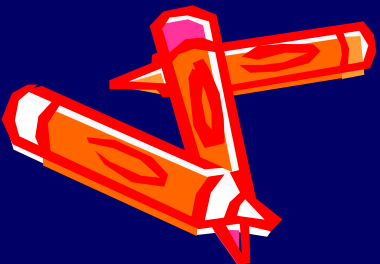
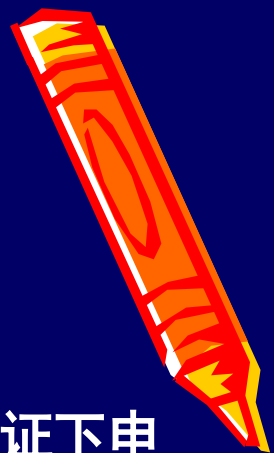


# 伊士克罗信用证（Escrow L/C）

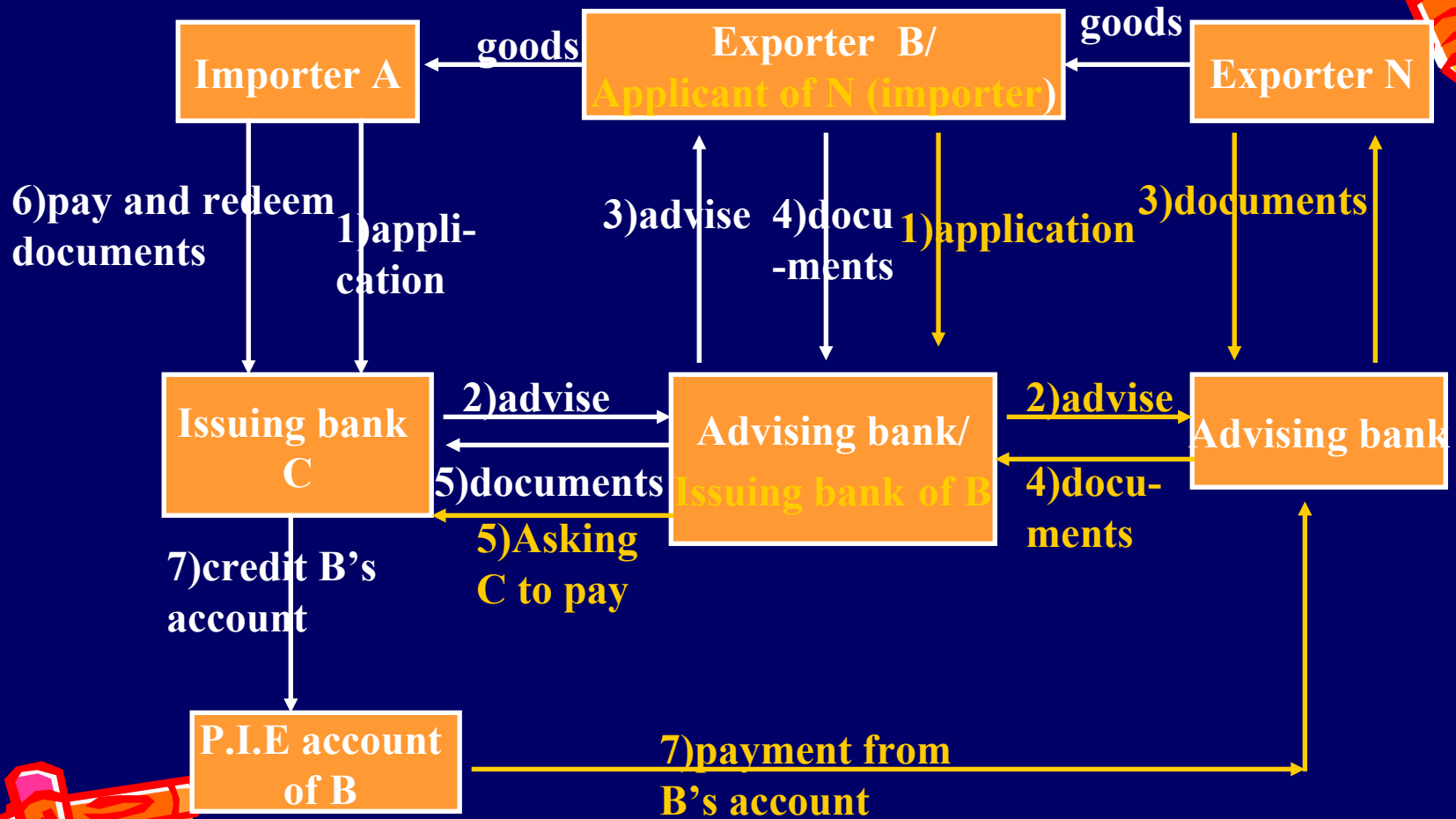
是指在对销贸易中，一国开立的 L/C 中规定，该信用证下申请人所付的款项，将以受益人的名义存放开证银行，用于支付受益人从开证行所在国的进口货款，也称为有条件支付。开证行为受益人开立的帐户叫“P. I. E”帐户。

## 特点：

- 1、“付款”只是以受益人的名义存在 P. I. E 帐户中，不能支取现金，类似与记帐贸易；
- 2、平衡进出口贸易收支；
- 3、实际的交易方涉及三方，而不像对开 L/C 中仅涉及两方。



# Escrow L/C





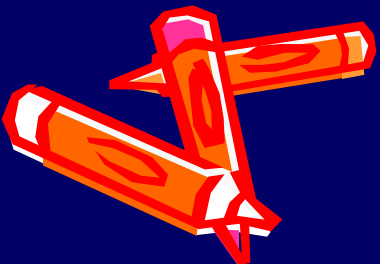
## 5.3.9 Standby letters of credit

- Definition

a standby letter of credit is an obligation on the part of an issuing bank to pay a beneficiary in the case of the nonperformance of the applicant.

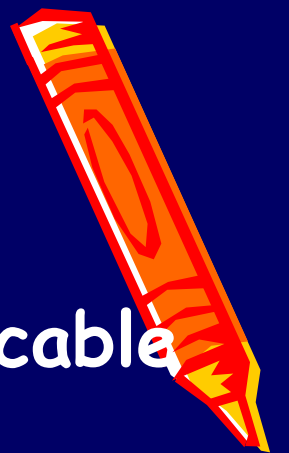
- Characteristics

- Types of Standby Credits



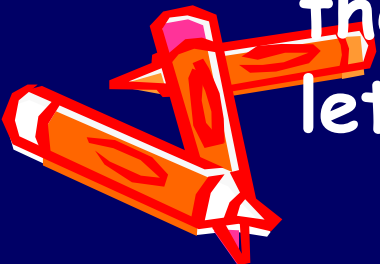
# Concept and characteristics

- Standby letter of credit means an issuer on behalf of an applicant that represents an obligation to the beneficiary, pursuant to a complying presentation:
  - to repay money borrowed by, advanced to, for the account of the applicant; or
  - to make payment on account of any indebtedness undertaken by the applicant ; or
  - to make payment on account of any default by the applicant in the performance of an obligation.
- Irrevocable form
- independent
- documentary
- Standby( 开立的意图是第二性的)



Certain documents required to obtain payment including:

- the standby letter of credit itself;
- a sight draft for the amount due acting as a demand for payment;
- a copy of the unpaid invoice;
- proof of dispatch and a signed declaration from the beneficiary stating that payment has not been received by the due date and therefore reimbursement is claimed by letter of credit.



- 示例：“凭以我行为付款人的即期汇票支款，汇票须随附由受益人签发的与下述内容完全一致的声明：

**ABC 公司（受益人）的下述签字人员兹证实：本备用信用证项下所开之汇票金额为 XYZ 公司（开证申请人）欠 ABC 公司的未付到期款项”。**

**( Available against drafts drawn at sight on us accompanied by beneficiary's signed statement reading precisely as follows : The undersigned officer of ABC company hereby certifies that the amount drawn under this standby letter of credit represents an amount due and owing to ABC company and is unpaid by XYZ company 。 )**

- 适用规则 《国际备用证惯例》 *ISP98, International Standby Practices, ICC Publication No.590*

- G 银行于 1999 年 3 月 1 日开立一份以 B 为受益人的备用信用证, 规定于 1999 年 4 月 1 日生效。3 月 14 日申请人指示开证行撤销备用信用证。

请依据 ISP98 的规定分析上述做法可否?

G 银行必须拒绝执行该项指示。

备用信用证自 3 月 1 日开立后即不可撤销, 而备用信用证的生效日, 即 4 月 1 日代表的是可凭备用信用证提出索款要求的最早日期, 但该日期与备用信用证变为不可撤销的时间无关。

## • 案例 1

一开证行开立一份不可撤销的备用信用证，通过 A 行通知给受益人。信用证要求受益人提供如下单据：

1. 申请人违约声明书，注明：按照 XXX 与 YYY 公司之间达成的第 111 号、日期为 1994 年 1 月 1 日的合同，我方已于 1994 年 2 月 2 日装运了 SSS 加仑的油。发货后，我方等待 YYY 按上面提及的合同规定付款期长达 120 天之久。YYY 方没有支付应付之款，因此，YYY 方违反了合同条件。根据该备用信用证规定，我方有权支取申请人（YYY 公司）所欠 USD 的款项。

2. 一份注明装运商品的商业发票副本。

3. 一份证明装运了货物并表示了装运日期的运输单据副本。

根据商业合同的要求，受益人装运了货物，按照销售合同，受益人对于应付给他的款项向 YYY 方开立了发票，付款期限是 120 天。装运后第 121 天，受益人未能从 YYY 方收到全部款项。于是，受益人按照备用信用证的要求备妥单据并提交给开证行索款。

开证行收到单据后，经审核认为单据不符拒绝接受，理由如下：

延迟交单。按照 UCP500 第四十三条规定，单据必须不迟于装运日后 21 天内提交，装运日期是 1994 年 2 月 2 日，而单据直至 1994 年 6 月 3 日才提交，受益人的交单构成延迟交单。

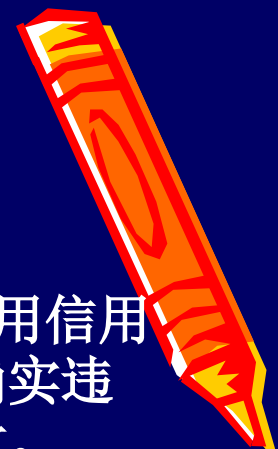
请根据 UCP500 的规定，分析开证行的拒付是否有理？

- 开证行对备用信用证的上述拒付是不合理的。

UCP500 第四十三条 a 分条适用于商业跟单信用证而不是备用信用证。开立后者是为了保证申请人履约。只有在证明申请人确实违反了其与受益人之间的商业合同条款后，备用信用证才生效。

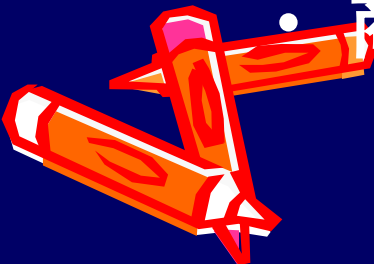
其次，为了与商业合同一致，违约声明书要求受益人必须在装运之后 120 天内等待申请人付款。只有申请人违反了合同的付款规定，受益人方可使用备用信用证索款。因此，受益人在制成违约声明书之前，不可能既允许受益人给申请人装运日后 120 天的融资又同时要求受益人在装运日后 21 天内提交要求的单据。因此，开证行的拒付是无理的。

另外，备用信用证被认为是付款的从属方式，只能凭违约声明书使用备用信用证，且不宜在备用信用证中规定提交运输单据的副本，以免授予开证行延迟交单的把柄。为慎重起见，在要求副本运输单据的备用信用证中应注明 UCP500 第四十三条 a 分条不适用。



## Types

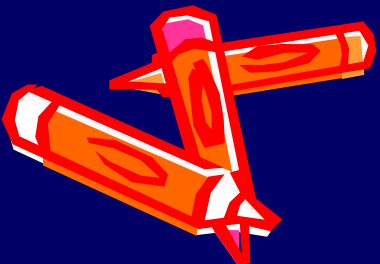
- 履约备用证 *Performance Standby*
- 预付款备用证 *Advance Payment Standby*
- 投标备用证 *Bid Bond/Tender Bond Standby*
- 反担保备用证 *Counter Standby*
- 融资备用证 *Financial Standby*
- 直接付款备用证 *Direct Pay Standby*
- 保险备用证 *Insurance Standby*
- 商业备用证 *Commercial Standby*





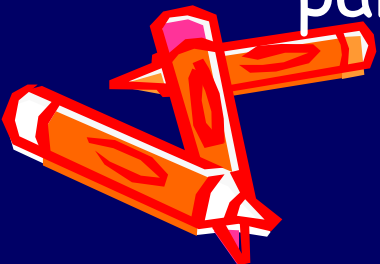
## 5.4 Key Issues under L/C

- 5.4.1 Regarding the Role of Banks
- 5.4.2 Common Problems with Documentary Credits
- 5.4.3 Risk Protection
- 5.4.4 Financing under L/C
- 5.4.5 Documentary Credit Application
- 5.4.6 Best practice when dealing with a L/C
- 5.4.7 Bank fees



## 5.4.1 Regarding the Role of Banks

- all parties, especially for banks, in the letter of credit transaction deal with documents
- banks' promise to pay under a documentary credit is conditional in essence and accompanied with many disclaimers on effectiveness of documents, transmission and translation, Force Majeure and acts of an instructed party.



### 5.4.3 Risks and protection

from the perspective of the beneficiary:

- Fake L/C;
- Trapped clause in the credit :
- "one set of original B/L sent directly to the applicant "

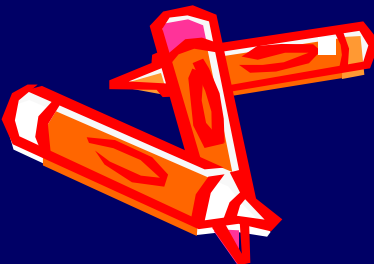
from the perspective of applicant:

- Risks from the delivery of the goods against bank guarantee ;
- Substandard goods ;
- Forgery documents

from the perspective of the issuing bank:

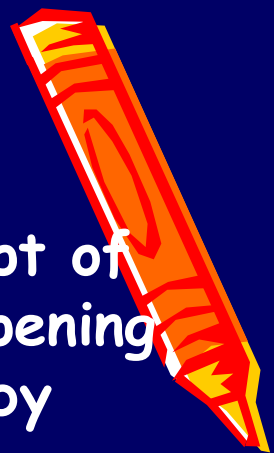
- "one set of original B/L sent directly to the applicant " ;

Delivery of the goods against bank guarantee



## Trapped clause

- Shipment can only be effected upon receipt of applicant's shipping instruction through L/C opening bank nominated the name of carrying vessel by means of subsequent credit amendment.
- Cargo receipt issued and signed by authorized signatures of the applicant, whose signature must be in conformity with our records,, certifying that the goods have been received in good order, showing the quantity, value of goods, date of delivery and letter of credit number.
- Documents must be negotiated within 15 days from B/L date.
- Shipping advice issued by the applicant whose signature must be in conformity with L/C issuing bank records, showing the name of vessel and approving the date of shipment.

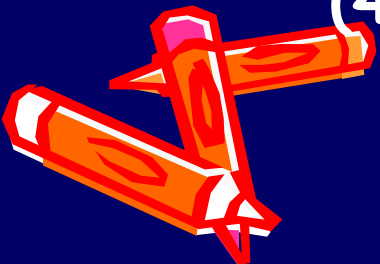


# 恶劣的软条款、付款条款造成客户损失

- 加拿大某银行开来购买渔产的信用证, 在特殊条款中有如下规定: “IT IS A CONDITION OF THIS CREDIT THAT ALL DOCUMENTS ARE TO BE RELEASED TO APPLICANT FREE OF PAYMENT AGAINST A TRUST RECEIPT TO PERMIT INSPECTION BY CANADIAN FOOD INSPECTION AGENCY OR CFIA APPOINTED AGENCY.”
  - THE REMITTING/NEGOTIATING BANK MUST INDICATE ON THEIR COVERING LETTER TO THE ISSUING BANK THAT ALL SHIPPING DOCUMENTS MUST BE DELIVERED TO THE APPLICANT AGAINST THEIR SIGNED TRUST RECEIPT IN ORDER TO OBTAIN CLEARANCE OF MERCHANDISE TO SECURE INSPECTION BY THE CANADIAN AUTHORITIES.
  - PAYMENT WILL BE MADE ONLY UPON RECEIPT BY ISSUING BANK OF AN ADVICE FROM APPLICANT STATING THAT THE GOODS HAVE THE GOVERNMENT CLEARANCE FOR ENTRANCE INTO CANADA.” 此外还声明, 如果申请人提供证明货物未能通关, 开证行免除一切付款责任。
  - 开证行在收到单据后凭申请人的信托收据释放单据。受益人从其它渠道得知货物已完成通关, 但款项迟迟没有收到, 那么, 开证行有无义务监督货物检验、通关的事实, 是否有义务督促申请人提供清关证明?
- 此类信用证条款源于进口国对渔产品的进口限制, 进口商只有货物通过检验办理通关手续后方才同意支付。请问针对进口国此种限制, 出口商是否应选择信用证结算? 选择何种结算方式更能保护我国出口商利益?

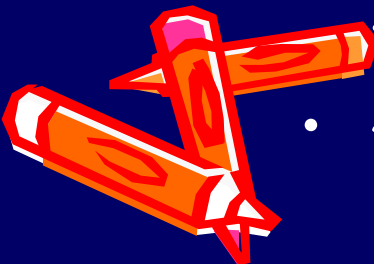
## 5.4.4 Financing under L/C


- **Financing provided to the exporter**
  - (1) Packing loan
  - (2) Export bill purchase
  - (3) Bill discounted
  - (4) Discounting against export commercial invoice
- **Financing provided to the importer**
  - (1) Approval of credit line by the issuing bank
  - (2) Import bill advance
  - (3) Trust receipt (T/R)
  - (4) Delivery of the goods against bank guarantee



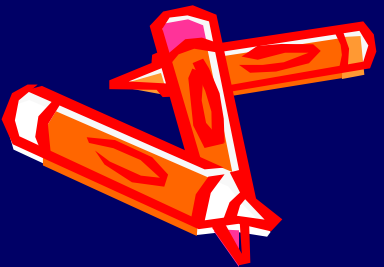

## 5.4.5 Documentary Credit Application

- 1 Signature of the applicant;
- 2 The full name and address of the beneficiary;  
be sure to make it correct and complete, or it may result in improper presentation of documents for the seller;
- 3 The amount of the credit and currency used; it should be in compliance with the sales contract, and the words “about”, or “approximate” used may indicate a 10% more or less tolerance of the drawing amount from the stated amount allowed.
- 4 Expiry date and place;



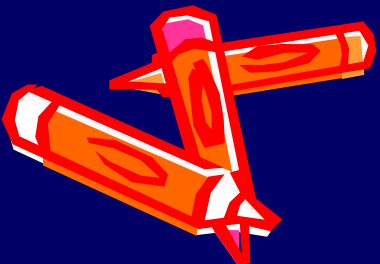
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- 5 Availability of the credit, i.e. by sight payment, deferred payment, acceptance, or negotiation and the nominated banks;
  - 6 A brief description of the goods, including details of quantity and unit price, if any;
  - 7 The documents required;

If the applicant has any requirements for the beneficiary to fulfill, then he should specify the specific documents to meet such requirements. If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.



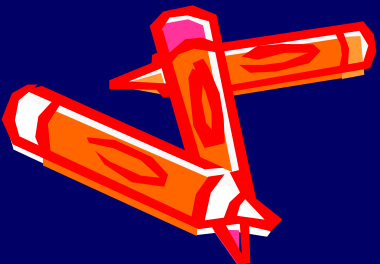


- 8 The requirements on the shipment, freight and insurance;
- 9 The period of time after the date of shipment within which the documents must be presented for payment, acceptance, or negotiation;
- 10 the way the credit is to be opened and whether or not the documentary credit is transferable or confirmed.



## 5.4.6 Best practice when dealing with a L/C

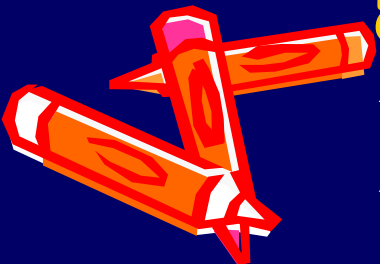
- If it is decided that a letter of credit is necessary, the terms and conditions of the credit should be agreed upon at the contract negotiation stage with the importer.
- Even when the above steps are followed, it is essential to check the letter of credit as soon as it is received. The following is a checklist to be reviewed immediately on receipt of a letter of credit



## Examination of L/C

From the perspective of beneficiary :

- ✓ The form of the credit and validity clause ;
- ✓ The type of credit ;
- ✓ Description of the goods ;
- ✓ Currency code and amount ;
- ✓ Quantity and weight of goods ;
- ✓ Price terms ;
- ✓ Loading port and discharging port ;
- ✓ The date of shipment, period of presentation of documents and the expiry date ;
- ✓ Partial shipment allowed or not ;
- ✓ Documents required



Shipment date, period of presentation of documents and the expiry date :

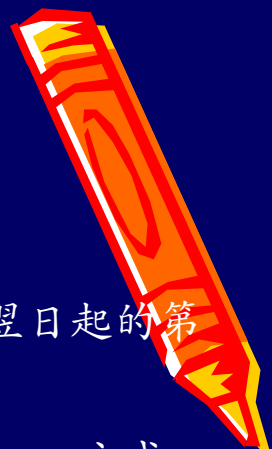
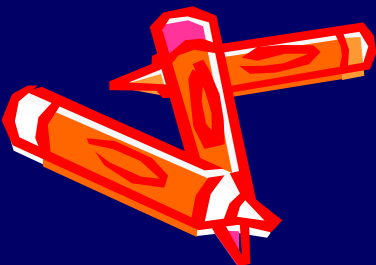
- 双到期（装效同期）—— if there is no fixed date for shipment, then the expiry date can be seen as the latest shipment date ;
- Latest date for presentation of documents — within 21 days after the bill of lading date if there is no definite regulation ;
- 修改中只展装期未展效期，可理解为装效同展，只展效期未展装期，不能认为装效同展



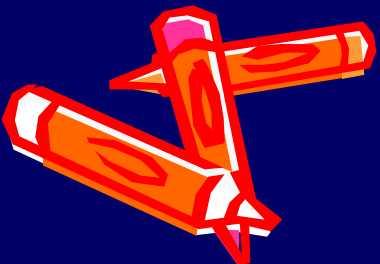
# 开证行的拒付及拒付后单据的处理

## · 现行信用证拒付操作实务

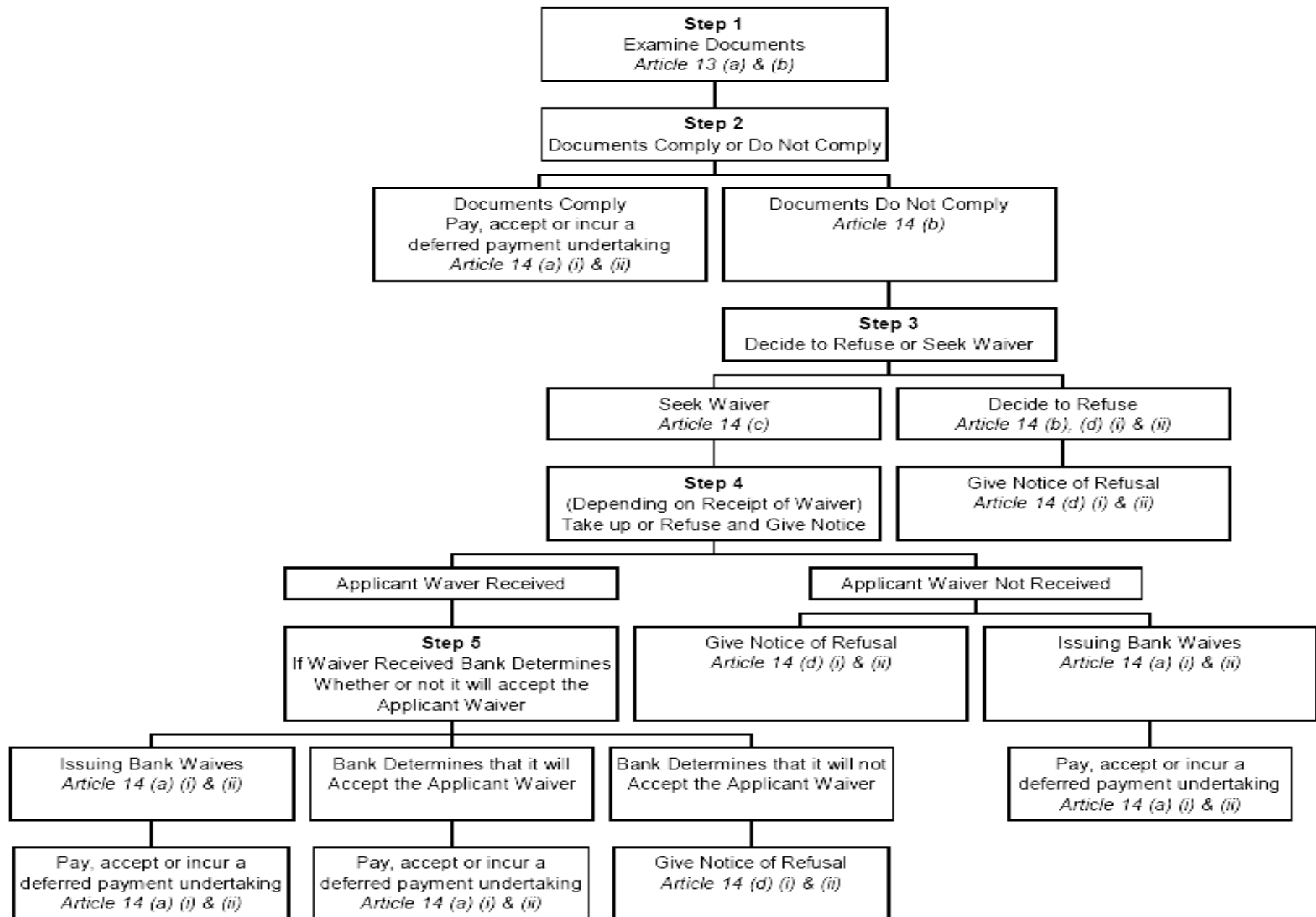
- 1. 必须是在合理时间 (REASONABLE TIME) 及不超过自收到单据翌日起的第七个银行工作日内通知交单行 / 机构 / 受益人;
- 2. 必须以最快捷方式通知不符点, 一般采用电传 (TELEX) 或 (SWIFT) 方式;
- 3. 一次性提出所有不符点 (“ ONLY ONE BITE OF CHERRY ” );
- 4. 提出的不符点须是实质性不符点, 不得一味偏袒开证申请人, 挑剔单据无理拒付;
- 5. 不符点通知上必须说明拒付及单据代交单行保存并听候处理 ( WE REFUSE THE DOCUMENTS DUE TO THE DISCREPANCY(IES) FOUND THEREIN. WE ARE HOLDING DOCS. AT YR DISPOSAL PENDING YR INSTRUCTIONS );
- 6. 若开证申请人在开证行收到单据前已向开证行申请开立提货担保凭以提取货物, 则即使单据中存在不符点, 亦不得再对外拒付。



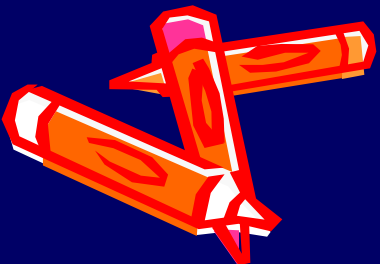
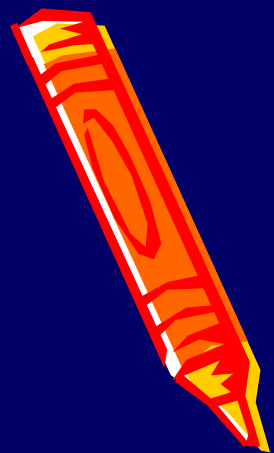
- 构成合格拒付通知的“三要素”：
  - 要有明确的拒付意思表示
    - WE REFUSE THE DOCUMENTS
  - 一次性列出全部不符点，不符点必须明确
    - DUE TO THE DISCREPANCY(IES) FOUND THEREIN
  - 表明单据已代为保管听候处理，或已退给交单人
    - WE ARE HOLDING DOCS. AT YR DISPOSAL PENDING YR INSTRUCTIONS.OR,
    - WE HAVE RETURNED DOCS.TO YOU




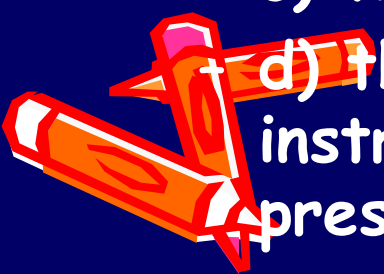

## Examination of Documents, Waiver of Discrepancies and Notice under UCP 500



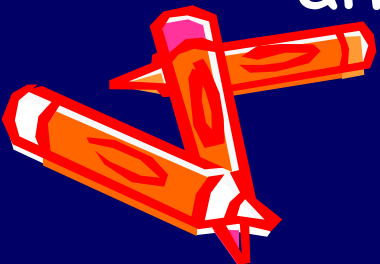
- UCP600 Article 16 Discrepant Documents, Waiver and Notice
- When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.





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- The notice must state:
  - i. that the bank is refusing to honour or negotiate; and
  - ii. each discrepancy in respect of which the bank refuses to honour or negotiate; and
  - iii. a) that the bank is holding the documents pending further instructions from the presenter; or
  - b) that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
  - c) that the bank is returning the documents; or
  - d) that the bank is acting in accordance with instructions previously received from the presenter

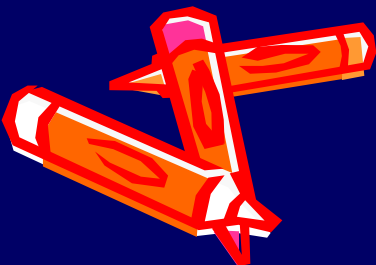
- A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may, after providing notice required by sub-article 16 (c) (iii) (a) or (b), return the documents to the presenter at any time.(Art.16)



## Case study

### 案例 1：

我某出口企业收到国外开来不可撤销信用证 1 份, 由设在我国境内的某外资银行通知并加以保兑。我出口企业在货物装运后, 正拟将有关单据交银行议付时, 忽接该外资银行通知, 由于开证银行已宣布破产, 该行不承担对该信用证的议付或付款责任, 但可接受我出口公司委托向买方直接收取货款的业务。对此, 你认为我方应如何处理为好?

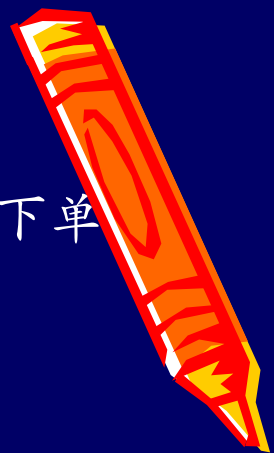


## 案例 2 :

- 主证开证行: 国内 A 银行
  - 主证受益人: 嘉陵公司 (香港)
  - 主证交单行、背对背信用证开证行: R 银行香港分行
  - 背对背信用证议付行: STANDARD CHARTERED BANK  
MALAYSIA BERHAD
  - 99 年 10 月 26 日, A 开立信用证号为 LCXXXX152/99, 金额为 USD1, 400, 000.00, 受益人为“嘉陵公司”, 信用证的付款期限为见票后 85 天, 适用任何银行自由议付
  - 10 月 29 日, 嘉陵公司凭上述信用证向 R 申请开立背对背信用证, 证号为 ILC90512, 受益人为 “Shin Yang 公司”, 金额为 USD1, 315, 000.00, 期限为即期, 自由议付
- 信用证通过马来西亚渣打银行通知受益人



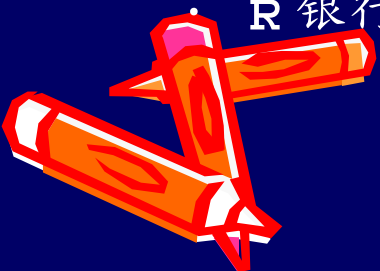
- 11月5日, R 银行从渣打银行收到背对背信用证项下单据。渣打银行在面函上声明:已议付相符的单据
- R 银行审单后亦认为单证相符
- 11月9日, 嘉陵公司向 R 银行提交主证项下全套单据, 金额为 USD1, 401, 495. 42, 期限为 85 days sight, 并指示 R 银行: "Please negotiate the above bill and pay our import bill under your L/C No. ILC90512 favouring Shin Yang Trading Sdn., Bhd. for USD1, 316, 404. 63"
- 11月12日, R 银行将主证项下单据以快邮方式寄给 A 银行, 其面函上声明:我行已议付单据
- 11月19日, R 银行汇出 USD1, 316, 344. 63 给渣打银行, 完成了其背对背信用证项下的付款



- 11月15日, A 银行收到 R 银行提交的单据
- 11月22日, A 银行发出拒付, 理由: 产地证系由受益人出具、经当地商会加签的, 并非信用证中要求的由当地商会出具。同时声明: “保留单据听候处理, 一旦申请人接受不符点即放单, 除非在此之前收到相反的指示。”
- 11月23日, A 银行收到法院的《协助执行通知书》, 以受益人嘉陵公司提交的不是主证项下的单据涉嫌欺诈为由, 要求 A 银行:
  - 查封、扣押 LCXXXX152/99 信用证项下所有单据
  - 停止支付 LCXXXX152/99 信用证项下款项
- A 银行当日将该情况通知 R 银行
- 11月24日, R 银行致电 A 银行, 称其所递交的单据已符合信用证条款, 同时声明: 作为议付行, 即使在发生欺诈的情况下, 也有权要求 A 银行偿付
- A 银行以如下理由坚持拒付:
  - 不符点成立;
  - 否认 R 银行的议付行地位, 认为其只是履行背对背信用证项下义务而已
  - 凭法院的止付令



- 2000年7月, 法院以证据不足为由, 驳回了R银行提出的要求撤销止付裁定申请。法院认为:
  - 1999年11月19日, R银行于支付给渣打银行的款项只是履行了其第 ILC90512 号背靠背信用证项下的付款义务
  - R银行向A银行提交单据的行为应认定为委托寄单索汇, 也就是说, R银行所处的地位只是托收行。因此, 止付裁定并未损害R银行作为托收银行的相关利益
- 2001年9月10日, R银行在香港正式起诉A银行。该案于2004年5月在香港高等法院开庭审理, 第一审判A银行胜诉。
- R银行未提起上诉



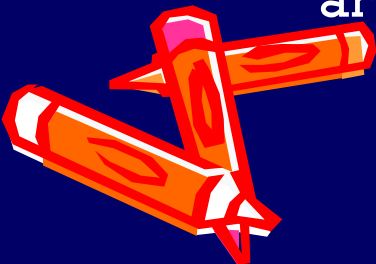
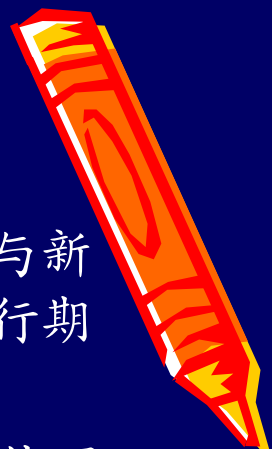
## 判决:

- **A** 银行所提的不符点不成立, 且拒付通知也不符合 UCP500 第 14 条的规定
- **R** 银行的议付行地位不成立, 其只能作为嘉陵公司的委托寄单行, 因此, **R** 银行无权向 **A** 银行主张要求获得赔偿的权利
- **R** 银行没有对单据做无追索的买断, 尽管 **R** 银行在其 1999 年 11 月 12 日的面函中声称其已议付该单据, 但实际上当天并未发生任何支付行为
- **R** 银行于 1999 年 11 月 19 日向其背靠背信用证受益人所支付的金额为 USD1, 316, 344. 63 的款项只是解除了其背靠背信用证项下自身的付款责任, 并不是对主证项下单据的议付行为。因为, **R** 银行并未对主证项下单据向嘉陵公司做出扣除银行费用、融资利息后的全额款项, 即 USD1, 401, 495. 42
- **R** 银行并未向嘉陵公司的帐户支付任何款项, 而金额为 USD1, 316, 344. 63 的款项并未先贷记嘉陵公司的帐户, 而是直接用于支付背靠背信用证项下的支款
- 金额为 USD1, 316, 344. 63 的融资, **R** 银行是作为进口融资而不是出口融资记录在册的



## • 判决:

- 经过数次开庭审理, 法院最终裁定共同被告方 JSB 银行与新远贸易公司败诉, 须赔付原告 BOC 贴现本金及诉讼及执行期间的利息, 并负担全部诉讼费用。
- 本判决再一次验证了贸易欺诈诉讼不得对抗在不知情条件下议付票据的“善意第三方”(即议付行)的法律原则。在此案的法庭判词中, William Stone 法官做出如下的判决:
- .....I have no hesitation in deciding that JSB, the defendant herein, must succeed in its claim for indemnification by Xinyuan against the claim of BOC, JSB's liability to BOC having been earlier established. I so order. I will hear counsel on the precise form of the Order, together with argument on interest and costs.....



# 案例 3：Banco Santander S.A. V. Banque Paribas

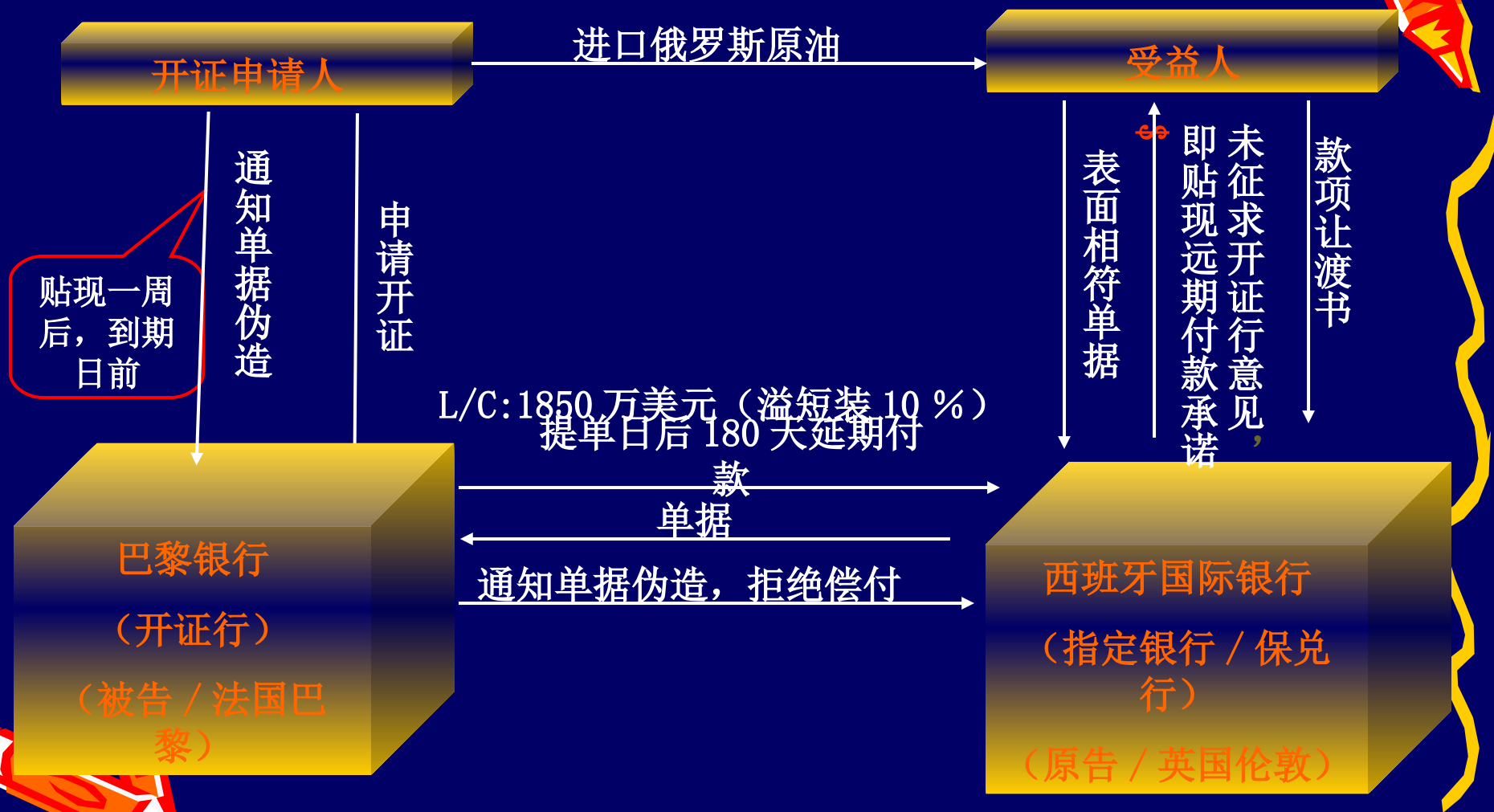
原告：Banco Santander（保兑行）被告：Banque Paribas

（开证行）

## · 背景

- Paribas 开立了一份金额为 USD18,500,000.00 的跟单信用证。该证规定“由开证行办理延期付款”，期限为提单日后 180 天
- Santander 通知该证，并根据开证行的请求对信用证加具了保兑
- 随后，受益人提交了证下单据，经审核，Santander 银行接受了单据，确定到期日为 1998 年 11 月 27 日
- 根据与受益人签订的有关协议，Santander 银行凭一份款项让渡书贴现了远期付款款项
- 贴现后不久，受益人被指控欺诈。开证行在到期日拒绝偿付保兑行，理由是：在到期日前发现了欺诈
- 经交涉无果，保兑行起诉开证行，要求开证行履行偿付责任

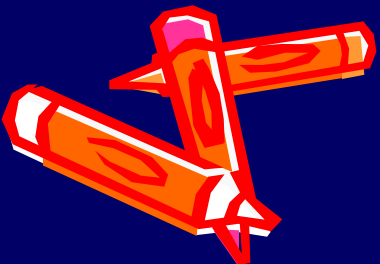
# 西班牙国际银行诉巴黎银行（2000 年英国法院判例）





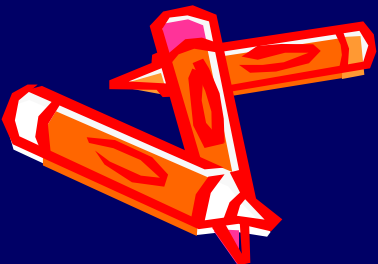
- 调查

- 欺诈确定成立
- Santander 银行在保兑信用证及贴现有关单据时不知悉欺诈存在
- 保兑行和开证行均是在到期日前获悉欺诈
- 问题：谁将胜诉？



# 法官意见

- 西班牙国际银行起诉巴黎银行, 要求其偿付。
- 英国法院判西班牙国际银行败诉
  - **UCP500** 授权保兑行到期付款, 并没有授权保兑行在单据相符的情况下贴现其做出的延期付款承诺。开证行因此受欺诈例外的保护。
  - 根据英国案例法, 延期付款信用证下的被指定银行如果对受益人提交的单据进行融资贴现其地位票据的正当持票人不同, 其权利不得优于前手出让人(本案中为受益人)。作为转让人的受益人伪造了单据, 开证行可以此拒绝到期偿付作为受让人的西班牙国际银行。
  - 如果是承兑信用证, 保兑行作为汇票的正当持票人, 可以贴现已承兑的远期汇票, 享有到期日获得开证行偿付的权利。开证行不受欺诈例外的保护。



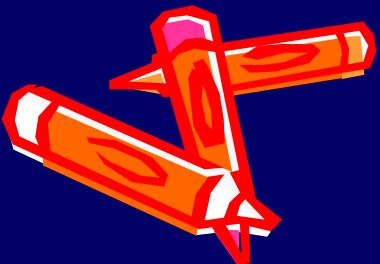
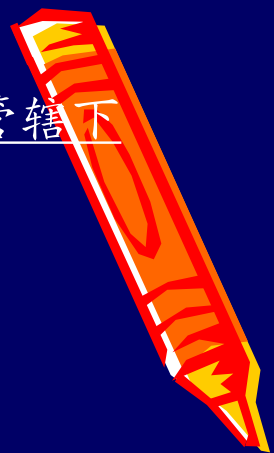
- 同样遵循 UCP500 的延期付款信用证案例, 在不同的司法管辖下, 结果截然不同

- 英国
- 韩国
- 美国

- 美国统一商法典:

» 延期付款信用证项下, 指定银行善意贴现其做出的延期付款承诺, 即使其后发生欺诈, 开证行到期也必须偿付。

- UCP600 从国际惯例角度, 统一了延期付款信用证允许指定银行预付或购买自己的延期付款承诺的做法, 加强了延期付款信用证的融资功能, 使融资的指定银行在发生基础交易欺诈时, 受到惯例保护。



## 案例 4：中国银行香港分行诉香港建新银行案

### - 基本案情介绍：

- 1998 年 7 月 3 日, 香港建新银行(以下称 **JSB**) 根据新远贸易公司的申请, 开出以南北行(以下称 **NPH**) 为受益人的 90 天远期承兑信用证;
- 1998 年 7 月 14 日, 受益人 **NPH** 向中国银行香港分行(以下称 **BOC**) 交单并申请融资, **BOC** 于同日将单据寄往 **JSB** 银行收款;
- 1998 年 7 月 23 日, **JSB** 银行向 **BOC** 发出承兑通知, 到期日为 1998 年 10 月 15 日。
- **BOC** 收到承兑通知后, 于同日为受益人 **NPH** 办理贴现。
- 事后, 进口商在提货时发现提单系伪造, 提单表面显示的 2 万吨燃料油实际装运数量只有 3 千吨。为此, 进口商立即向开证行 **JSB** 提出拒付并以单据欺诈为由向法院申请止付令;
- 贴现行 **BOC** 对此做出的反应是于 1998 年 10 月 26 日向开证行 **JSB** 正式发出律师函, 并向香港高等法院提出诉讼, 起诉开证行及开证申请人。

问题: 谁将胜诉?

- 经过数次开庭审理, 法院最终裁定共同被告方 JSB 银行与新远贸易公司败诉, 须赔付原告 BOC 贴现本金及诉讼及执行期间的利息, 并负担全部诉讼费用。
- 本判决再一次验证了贸易欺诈诉讼不得对抗在不知情条件下议付票据的“善意第三方”(即议付行)的法律原则。

