

UCP 600

Why Documentary Credits

- Exchange of goods and services across national boundaries brings greater problems to both buyer and seller than does domestic business.
- Diversity of customs, standards, currencies, local regulations, languages and legal systems
- The Documentary Letter of Credit is widely used to reduce the financial risks of trade.
- Importer wants to ensure performance while exporter wants to secure payment.
- Few of the rules are subject to any national or international law. Provisions of International Chamber of Commerce & Industry (ICC) important, but not foolproof.
- Generally adopted set of rules for credits known as the Uniform Customs and Practice for Letters of Credit (UCP) issued by ICC, publication no.600, 2007 (earlier version no. 500, 1993).

Introduction

- This revision of the Uniform Customs and Practice for Documentary Credits (commonly called "UCP") is the sixth revision of the rules since they were first promulgated in 1933.
- The objective of UCP, since attained, was to create a set of contractual rules that would establish uniformity in that practice, so that practitioners would not have to cope with a plethora of often conflicting national regulations. The universal acceptance of the UCP by practitioners in countries with widely divergent economic and judicial systems is a testament to the rules' success.
- It is important to recall that the UCP represent the work of a private international organization, not a governmental body.

Steps in L/C Transaction

See slides on next two pages

Important Articles

Article 1 Application of UCP

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

Article 2: Definitions

- **Advising bank** means the bank that advises the credit at the request of the issuing bank.
- **Applicant** means the party on whose request the credit is issued.
- **Beneficiary** means the party in whose favour a credit is issued.

- **Confirmation** means a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation. **Confirming bank** means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request.
- **Issuing bank** means the bank that issues a credit at the request of an applicant or on its own behalf.
- **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.
- **Nominated bank** means the bank with which the credit is available or any bank in the case of a credit available with any bank.

Article 3: Interpretations

- The expression "on or about" or similar will be interpreted as a stipulation that an event is to occur during a period of five calendar days before until five calendar days after the specified date, both start and end dates included.
- The words "to", "until", "till", "from" and "between" when used to determine a period of shipment include the date or dates mentioned, and the words "before" and "after" exclude the date mentioned.
- The terms "first half" and "second half" of a month shall be construed respectively as the 1st to the 15th and the 16th to the last day of the month, all dates inclusive.
- The terms "beginning", "middle" and "end" of a month shall be construed respectively as the 1st to the 10th, the 11th to the 20th and the 21st to the last day of the month, all dates inclusive.

Article 4: Credits vs Contracts

- A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit.

Article 5: Documents v. Goods, Services or Performance

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

Article 6 Availability, Expiry Date and Place for Presentation

- A credit must state the bank with which it is available or whether it is available with any bank. A credit available with a nominated bank is also available with the issuing bank.
- A credit must state whether it is available by sight payment, deferred payment, acceptance or negotiation.
- A credit must state an expiry date for presentation.
- The place of the bank with which the credit is available is the place for presentation.

Article 9 Advising of Credits and Amendments

- A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank that is not a confirming bank advises the credit and any amendment without any undertaking to honour or negotiate.
- By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.
- A bank utilizing the services of an advising bank or second advising bank to advise a credit must use the same bank to advise any amendment thereto.

Article 10 Amendments

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

Article 11 Teletransmitted and Pre-Advised Credits and Amendments

- An authenticated teletransmission of a credit or amendment will be deemed to be the operative credit or amendment, and any subsequent mail confirmation shall be disregarded.
- If a teletransmission states "full details to follow" (or words of similar effect), or states that the mail confirmation is to be the operative credit or amendment, then the teletransmission will not be deemed to be the operative credit or amendment. The issuing bank must then issue the operative credit or amendment without delay in terms not inconsistent with the teletransmission.

Article 13 Bank-to-Bank Reimbursement Arrangements

- An issuing bank must provide a reimbursing bank with a reimbursement authorization that conforms with the availability stated in the credit. The reimbursement authorization should not be subject to an expiry date.
- An issuing bank will be responsible for any loss of interest, together with any expenses incurred, if reimbursement is not provided on first demand by a reimbursing bank in accordance with the terms and conditions of the credit.
- A reimbursing bank's charges are for the account of the issuing bank.

Article 14 Standard for Examination of Documents

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

- A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.
- A presentation must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.

Article 16 Discrepant Documents, Waiver and Notice

- When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.
- When an issuing bank determines that a presentation does not comply, it may in its sole judgement approach the applicant for a waiver of the discrepancies.
- When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.
- The notice must state:
 - **i.** that the bank is refusing to honour or negotiate; and
 - **ii.** each discrepancy in respect of which the bank refuses to honour or negotiate; and
 - **iii.** a) that the bank is holding the documents pending further instructions from the presenter; or
 - b) that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
 - c) that the bank is returning the documents; or
 - d) that the bank is acting in accordance with instructions previously received from the presenter.
- The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.

Article 20 Bill of Lading

- A bill of lading, however named, must appear to:
 - **i.** indicate the name of the carrier and be signed by:
 - the carrier or a named agent for or on behalf of the carrier, or
 - the master or a named agent for or on behalf of the master.
 - **ii.** indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
 - pre-printed wording, or
 - an on board notation indicating the date on which the goods have been shipped on board.
- be the sole original bill of lading or, if issued in more than one original, be the full set as indicated on the bill of lading.

Other Transport Documents

- Non-Negotiable Sea Waybill (Article 21)
- Charter Party Bill of Lading (Article 22)
- Multimodal Transport Document (Article 19)
- Air Transport Document (Article 23)
- Road, Rail or Inland Waterway Transport Documents (Article 24)
- Courier Receipts, Post Receipt or Certificate of Posting (Article 25)

Article 26 "On Deck"

- A transport document must not indicate that the goods are or will be loaded on deck. A clause on a transport document stating that the goods may be loaded on deck is acceptable.

Article 27 Clean Transport Document

- A bank will only accept a clean transport document. A clean transport document is one bearing no clause or notation expressly declaring a defective condition of the goods or their packaging. The word "clean" need not appear on a transport document, even if a credit has a requirement for that transport document to be "clean on board".

Article 28 Insurance Document and Coverage

- Cover notes will not be accepted.
- The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment.
- The insurance document must indicate the amount of insurance coverage and be in the same currency as the credit.
- If there is no indication in the credit of the insurance coverage required, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods.

Article 29 Extension of Expiry Date or Last Day for Presentation

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

Article 30 Tolerance in Credit Amount, Quantity and Unit Prices

- The words "about" or "approximately" used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer.
- A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms of a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount of the credit.

Article 31 Partial Drawings or Shipments

- Partial drawings or shipments are allowed.

Article 34 Disclaimer on Effectiveness of Documents

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

Article 35 Disclaimer on Transmission and Translation

- A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.
- If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when the documents have been lost in transit between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.
- A bank assumes no liability or responsibility for errors in translation or interpretation of technical terms and may transmit credit terms without translating them.

Article 36 Force Majeure

- A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.
- A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.

Article 37 Disclaimer for Acts of an Instructed Party

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

Article 38 Transferable Credits

- A bank is under no obligation to transfer a credit except to the extent and in the manner expressly consented to by that bank.

- Transferable credit means a credit that specifically states it is "transferable". A transferable credit may be made available in whole or in part to another beneficiary ("second beneficiary") at the request of the beneficiary ("first beneficiary").
- 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. Transferred credit means a credit that has been made available by the transferring bank to a second beneficiary.
- A credit may be transferred in part to more than one second beneficiary provided partial drawings or shipments are allowed.
- A transferred credit cannot be transferred at the request of a second beneficiary to any subsequent beneficiary. The first beneficiary is not considered to be a subsequent beneficiary.
- Any request for transfer must indicate if and under what conditions amendments may be advised to the second beneficiary. The transferred credit must clearly indicate those conditions.
- The transferred credit must accurately reflect the terms and conditions of the credit, including confirmation, if any, with the exception of:
 - the amount of the credit,
 - any unit price stated therein,
 - the expiry date,
 - the period for presentation, or
 - the latest shipment date or given period for shipment, any or all of which may be reduced or curtailed.
- The first beneficiary has the right to substitute its own invoice and draft, if any, for those of a second beneficiary for an amount not in excess of that stipulated in the credit, and upon such substitution the first beneficiary can draw under the credit for the difference, if any, between its invoice and the invoice of a second beneficiary.

Summary of Major Issues in LC Transactions

Check List for Issuing/Accepting L/C

- Quality of Issuing Bank
- Method of Payment: Sight or Deferred Basis
- Transport Documents
- Other Documents
- Documents: Banks deal in documents not in goods, services or performance
- Should not refer to underlying contract
- Timing: UCP norm is max. 21 days after shipment date for presentation of documents

Responsibilities and Obligations of Banks

- Irrevocable unless otherwise mentioned
- Issuing Bank: Prime obligation
- Advising Bank: Only obligation to authenticate the credit and passing it on promptly to beneficiary

- Confirming Bank: takes over payment responsibilities of the issuing bank as far as the beneficiary is concerned
- Reimbursing Bank: Responsibility of Issuing Bank to provide proper reimbursement instructions
- Applicability of Force Majeure clause limiting banks' liability on account of Acts of God, riots, etc.
- Banks have five banking days to examine documents after receipt of documents
- Banks will examine documents with reasonable care
- Documents should be consistent with each other and complete
- Documents should conform with the terms of the credit
- Documents should comply with the provisions of UCP

Common Defects in Documentation

Commonly found discrepancies between the letter of credit and supporting documents include:

- Letter of Credit has expired prior to presentation of draft.
- Bill of Lading evidences delivery prior to or after the date range stated in the credit.
- Stale dated documents.
- Changes included in the invoice not authorized in the credit.
- Inconsistent description of goods.
- Insurance document errors.
- Invoice amount not equal to draft amount.
- Ports of loading and destination not as specified in the credit.
- Description of merchandise is not as stated in credit.
- A document required by the credit is not presented.
- Documents are inconsistent as to general information such as volume, quality, etc.
- Names of documents not exact as described in the credit. Beneficiary information must be exact.
- Invoice or statement is not signed as stipulated in the letter of credit.

Options for Banks dealing in Discrepant Documents

- Ask beneficiaries to make corrections
- Accept minor discrepancies and pay under reserve
- Obtain indemnity from seller
- Telex/fax details of discrepancies to the issuing bank and request permission to pay
- Send the documents on collection

Marine or Ocean Bill of Lading

- They are documents of title. Should be signed by ship's master or his named agent
- If stated that goods are on board, then dated
- Load port and disport should be named
- 'On Deck' transport document not allowed
- Clean Transport Document
- Quasi-negotiable: transferable by endorsement and physical delivery, but no recourse
- Transshipment allowed unless prohibited in L/C

Other Transport Documents

- Some multi-modal transport operators (MTOs) also issue negotiable documents for transport operations where the goods are carried by several different modes of transport.
- Today goods often travel faster than the related documents. Rail, road and air transport documents are issued only in non-negotiable form with the goods consigned direct to a named consignee. Usually this will be the buyer unless the goods are consigned to a bank

Non-Transport Documents

- Insurance Documents (Article 28): Same currency as the Credit, Minimum amount to be CIF or CIP plus 10%,
- Commercial Invoices (Article 18)
- Consular Invoice
- Certificate of Origin
- Weight List
- Packing List
- Inspection or Survey Certificate
- Test Certificates

Lecture Notes of Prof Abhijit Roy for RBI Officers during September – October 2012.