

International Trade Procedures

A guide to doing business abroad



Together we'll go far



Introduction

This handbook has been created to keep our customers informed on international trade procedures and options, as well as government resources available to them.

Wells Fargo has more than 100 years of experience in international banking. With our network of offices and affiliates, our superior international communications facilities, as well as thousands of correspondent bank relationships around the globe, we are a leader in international trade. Whether you are a corporation conducting trade globally, or a financial institution with international processing needs, we can assist you along each step of the financial supply chain, from letters of credit and documentary collections to trade finance and foreign exchange.

Wells Fargo welcomes the opportunity to help you with your international transactions, to answer your questions, and to provide you with any other information you may require to take full advantage of the benefits of international trade.

For more information, contact your Global Trade Specialist or your Relationship Manager.

For additional information on trade services and other Wells Fargo global product capabilities, please visit our international website:

wellsfargo.com/inatl/financial_institutions

Our global presence

Bangkok, Beijing, Bogotá, Buenos Aires, Cairo, Charlotte, Chennai, Dhaka, Dubai, Dublin, Frankfurt, Hanoi, Ho Chi Minh City, Hong Kong, Guayaquil, Hanoi, Istanbul, Jakarta, Johannesburg, Kuala Lumpur, London, Los Angeles, Madrid, Manila, Mexico City, Miami, Milan, Moscow, Mumbai, New Delhi, New York, Paris, Philadelphia, Santiago, San Francisco, São Paulo, Seoul, Shanghai, Singapore, Sydney, Taipei, Tokyo, Washington, DC, Winston Salem.

Our dedicated U.S. international bank trade centers

Atlanta, Charlotte, Chicago, Dallas, Houston, Irvine, Los Angeles, Miami, Minneapolis, New York, Palo Alto, Philadelphia, San Francisco, Seattle.

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Information for exporters

Export procedures

When selling abroad, the U.S. exporter should consider several factors before arriving at the terms of sale. The exporter's risks are two-fold: credit and country. Credit risk concerns the financial position of the importer and its ability to pay for the goods purchased from the exporter. Country risk refers to the political condition of the importer's country and the availability of hard currency to pay for foreign obligations.

In reviewing these factors, the exporter has two primary interests: timely receipt of payment, and protection from loss. At the same time, however, the terms of the agreement must be competitive with those offered by foreign competition and by other U.S. exporters. There are several methods of financing exports available to sellers, depending upon the degree of risk they are willing to assume.

The following pages describe the most widely used of these financing methods, the risks associated with each, as well as descriptions of the documents and procedures involved in each type of transaction. Useful start-up information for exporters is also provided along with handy charts and glossary terms.

Getting started — preparing your export quote

In any commercial trade transaction there are two primary participants — buyers and sellers. As any businessperson knows, it is imperative that there be a clear, well-defined agreement between these two parties regarding the pending transaction.

When your trading partner is in another country, setting up the transaction in advance becomes even more vital. Distant geography, foreign customs, regulations and special documentation may complicate the transaction. In addition, key participants in an import/export transaction may include not only you and your buyer, but one or more banks, an international freight carrier and a freight forwarder and/or customs house broker.

An international transaction usually begins with you (the exporter) having to supply an export quote to the potential buyer. The export quote accomplishes two basic goals:

- (1) It states the selling price of your product, and
- (2) It states the conditions under which you are willing to make a sale

Your export quote should include shipping terms. Following in Exhibit 1.1 is a list of potential costs associated with international trade and their corresponding shipping terms:

Exhibit 1.1: Price quote includes:	Then the corresponding shipping term is:
A. Merchandise Cost	
B. Packing.....	EX Works (seller's location-warehouse/plant)
PLUS	
C. Add Export Licenses/authorizations/formalities...	
D. Loading Costs and Inland Freight	
E. Forwarding Fees	
F. Receiving Port/Place Charges.....	FAS (ocean/inland waterway only), FCA
PLUS	(place of shipment/dispatch)
G. Loading onto Ship (ocean/inland waterway only).....	FOB (port of shipment)
PLUS	
H. Ocean/Air freight.....	CFR (for Ocean/inland waterway only), CPT
PLUS	(port/place of destination)
I. Insurance.....	CIF (for Ocean/inland waterway only), CIP
	(port/place of destination)
A Through H plus (insurance arrangements must be made as it is not a requirement of the below terms)	
J. Charges at foreign port/airport.....	
K. Delivery charges to final destination.....	DDU (place of delivery)
PLUS	
L. Customs Clearance and Duties.....	DDP (place of delivery)

Options for getting paid

As part of the condition of sale, you should include how you expect to be paid. A brief description of common payment terms is listed in Exhibit 1.2 below. Each of the methods of payment available to you has varying degrees of risk as highlighted on the schematic in Exhibit 1.3. The risks are

contrasted even further in Exhibit 1.4 by explaining the various payment options and the level of risk to both the importer and exporter.

Exhibit 1.2: Common payment terms

Open account	You ship, then forward your shipping documents directly to your buyer and await payment.
C.A.D. (Cash against documents)	You ship, then forward your shipping documents to an agent named by your buyer or the buyer directly. You are not protected under the ICC Rules No. 522 (see page 146), and the exporter bank cannot become involved later or follow up in the event of non-payment. Documentary Collections through a bank is the preferred method of CAD.
Sight draft (CAD) or time Draft (Documentary Collections)	You ship, then use your bank as agent or a bank form to forward shipping documents to your buyer through his bank. The buyer's bank must obtain payment/promise of payment from buyer before releasing shipping documents.
Unconfirmed letter of credit	Before you ship, you receive from your buyer's bank a written conditional obligation to pay you provided the terms and conditions of the letter of credit are met and include presentation of shipping documents to the advising bank after shipment. The advising bank is not under any obligation to pay the exporter until the buyer's bank (issuing bank) pays.
Confirmed letter of credit	Before you ship, you receive from your buyer's bank a written conditional obligation to pay you which is further "guaranteed" by a U.S. Bank (confirming bank) acceptable to you. To be paid, you must present conforming documents and satisfy the terms and conditions of the letter of credit. The confirming bank is obligated to pay the exporter provided conforming documents are presented.
Cash in advance	You receive cash from the buyer before shipping.

Exhibit 1.3: Methods of payment risk scale

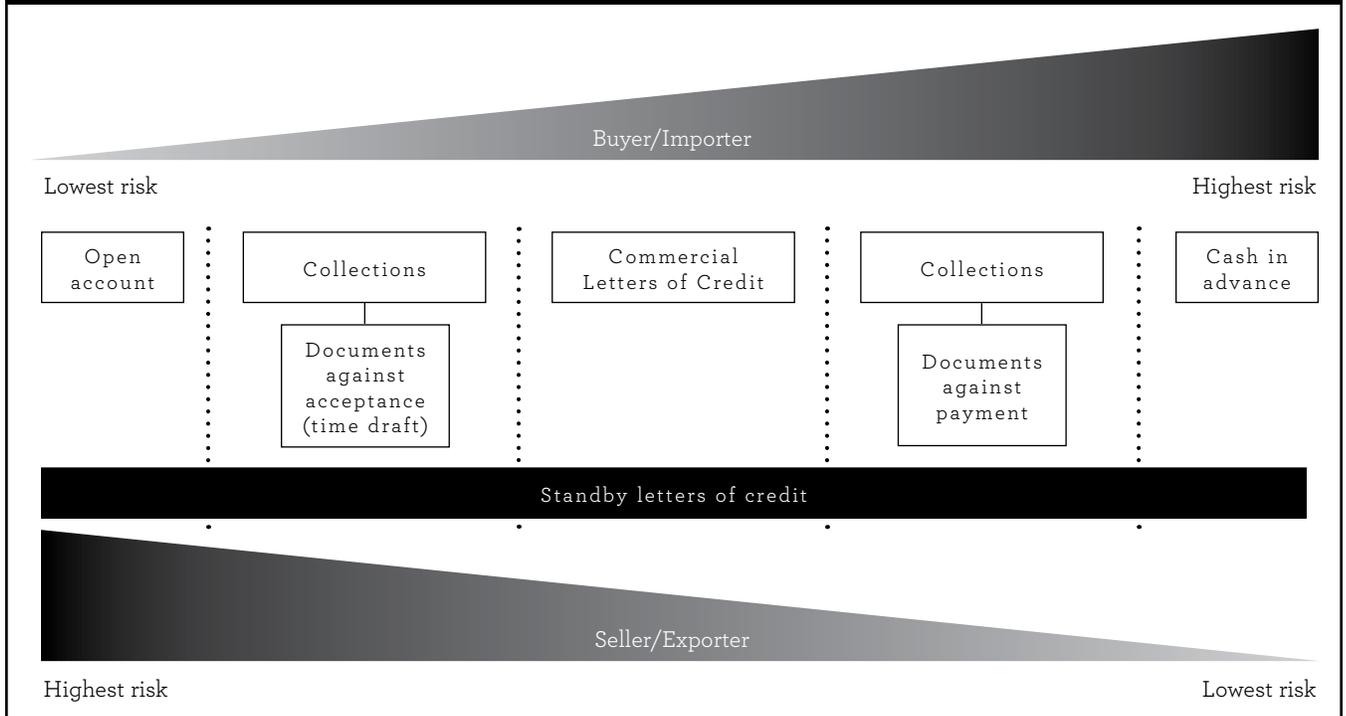


Exhibit 1.4: Comparison of various methods of payment

Method	Goods available to buyer	Usual time of payment	Risk to exporter	Risk to importer
Cash in Advance	After payment	Before shipment	None to ship goods as ordered	Maximum – Relies on exporter
Letter of Credit • Confirmed • Unconfirmed	After payment	When documents are available at shipment	Confirmed – Virtually none if all LC terms are met. Unconfirmed – relies on issuing bank to make a payment if all LC terms are met	Assumes that shipment is made but relies on exporter to ship goods as described in documents. Buyer may want to arrange for pre-inspection before shipment
Documentary Collection Sight Draft Documents against Payment	After payment	On presentation of draft to importer	If draft unpaid, goods must be returned or disposed of, usually at loss – an extra cost	Assumes shipment is made but no assurance of content, unless buyer arranges inspection of goods before shipment
Documentary Collection Time Draft Documents against Acceptance	Before payment	On maturity of draft	Relies on importer to pay draft	Minimal – Can check shipment for quantity and quality before payment
Open Account	Before payment	As agreed	Relies on importer to pay account according to pre-arranged terms – highest risk	Lowest risk, since it allows importer to receive and inspect goods before shipment

Methods of payment

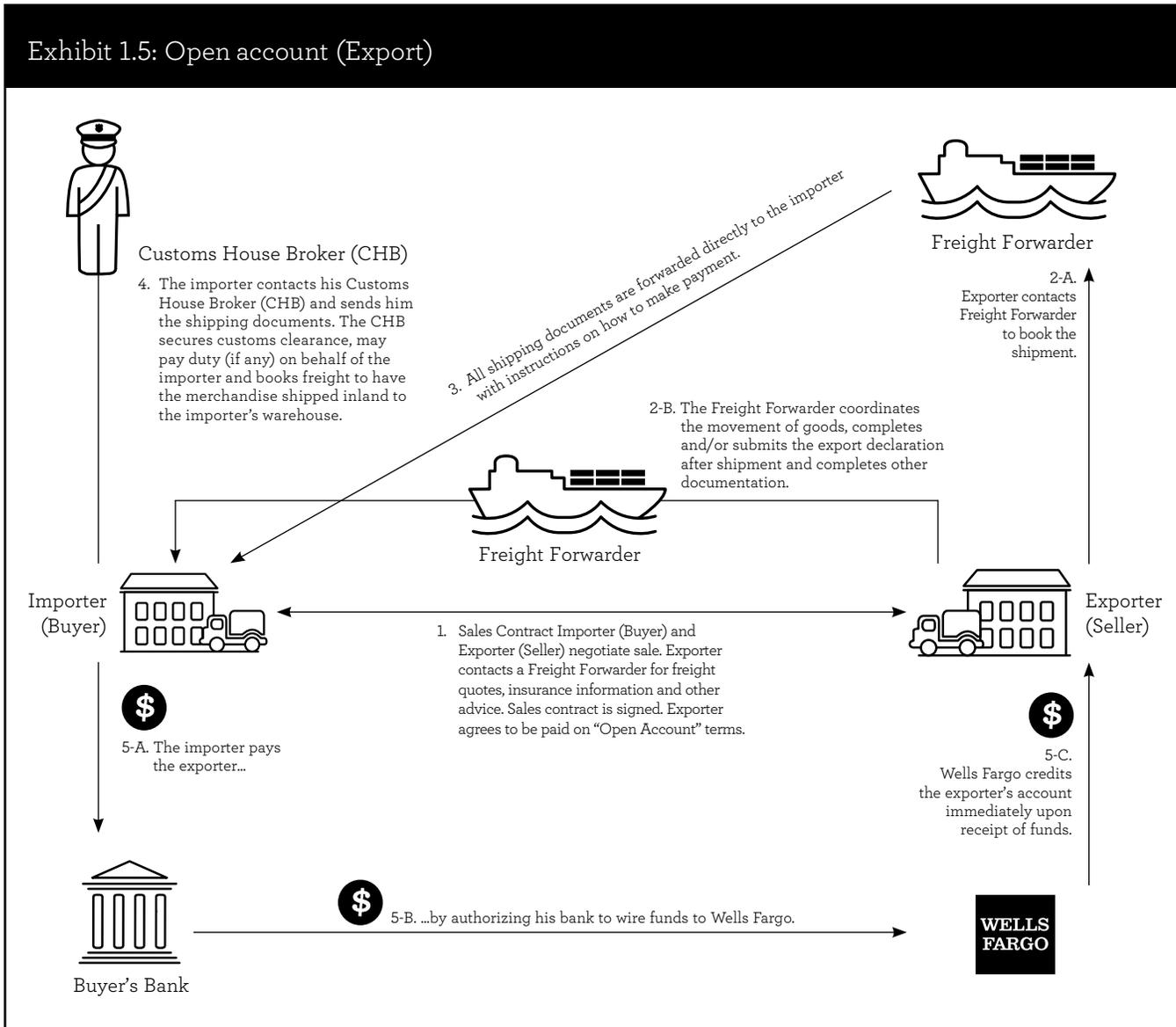
- **Open account**
- **Documentary collections**
- **Letter of credit**
- **Letter of credit variations**
 - **Assignment of proceeds**
 - **Transferrable LC**

Open account

An open account transaction is the least secure of the export methods available. It should not be used unless the exporter is dealing with its own overseas branch or subsidiary or is completely comfortable with taking the unsecured risk of the buyer located overseas.

Under an open account transaction, there are no financial institutions acting as intermediaries between the buyer and seller, except for the flow of funds. The exporter makes shipment, confident that payment will be forthcoming promptly in accordance with the terms of the agreement with the importer.

The potential dangers and complexities inherent in selling on an open account basis are great. They should not be undertaken by a U.S. exporter unless they have full confidence that the overseas customer will pay and can pay regardless of political or economic dilemmas arising with the buyer's country. A schematic outlining the flow of an open account transaction is illustrated in Exhibit 1.5 below.



Methods of payment: Documentary collections

An exporter may agree to payment on a documentary collection basis when the protection afforded by letter of credit is not possible or required by the commercial and country risks involved. Documentary collection is less costly and therefore enhances the exporter's competitive position in bidding for new sales. However, it is riskier than the letter of credit because goods first need to be shipped before a promise to pay is received from the buyer. In addition, there is no guarantee from a bank or that the buyer will pay at the time documents are presented or after acceptance and the maturity of the draft.

Under document against acceptance only, certain remitting banks (exporter's bank) will allow the exporter to also add instructions in their documentary collection cover letter for the collecting bank (buyer's bank) to add its Aval or guarantee in addition to the buyer's acceptance and promise to pay at maturity. Under an Aval, if the buyer does not pay at maturity, the collecting bank is required to pay. The remitting bank may also agree for certain exporters to discount the draft and pay the exporter in advance of actual payment at maturity also known as an avalized draft discount. Exhibit 1.6 outlines the documentary collection process. Please refer to page 69 of the glossary section to read more about avalized drafts.

The exporter draws a draft on the importer, with instructions to pay either on presentation (documents against payment), or at an agreed future date (documents against acceptance). The tenor may be 30, 60, 90, 120, 180 days or longer "after sight" (after presentation), "after date" (the date of the draft) or after transport document date. The draft may name the exporter as the party to be paid; more commonly, it specifies payment to the order of the bank handling the collection for the seller (remitting bank).

The exporter may send the draft and shipping documents for collection through their local bank (regular collection), or directly to the foreign importer's bank (direct collection). Both methods are described below:

Under the **regular collection** method, a U.S. exporter sends a draft and documents to the U.S. Bank (remitting bank). He or she also sends an instruction letter explaining exactly how the draft is to be collected. The remitting bank will usually provide a special combination form for the exporter, which includes both draft and letter of instructions. The remitting bank then sends the export collection instructions, together with the necessary documents, to the importer's bank.

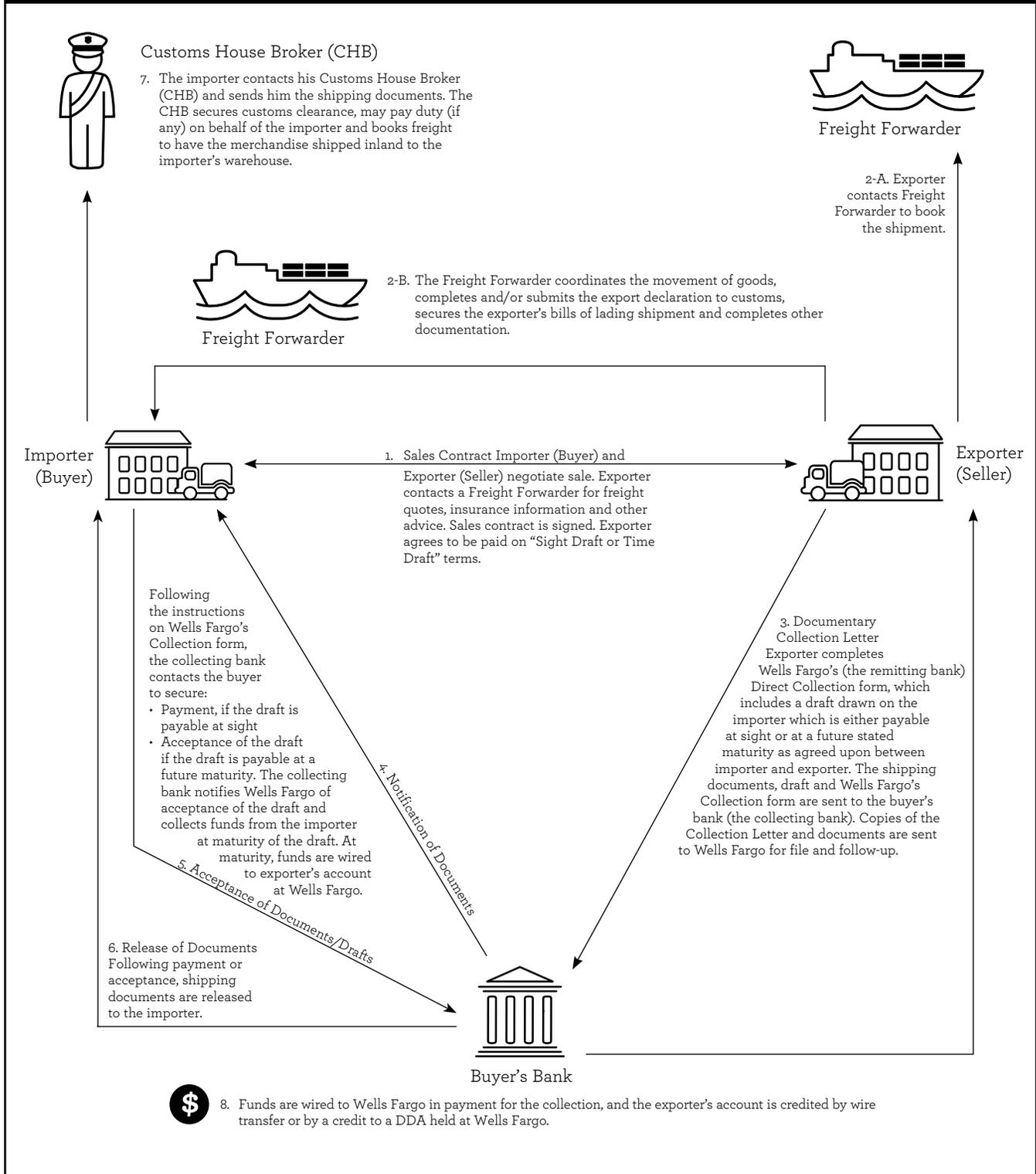
When the shipment is being made by air, or there are other time constraints, the exporter may mail the draft and documents directly to the importer's bank. This **direct collection** is more likely to ensure that the documents required for customs clearance are at the port of entry before the arrival of the goods. The exporter's bank may also provide a direct collection form for the exporter to send with the documents. The exporter then sends a copy of this form to his or her bank to expedite follow-up and receipt of payment. (The Wells Fargo documentary collection form in Exhibit 3.7 (Please refer to page 33) may be used for both the regular and direct collection methods.)

Once the foreign bank receives the draft and necessary documents, the importer is notified. The bank will release the documents to the importer "against payment" under sight or CAD or DP terms, or "against acceptance" under usance drafts for 30, 60, 90, etc. days after invoice or shipment date.

Technically, documents against payment may be presented for payment — or documents against acceptance for acceptance by the buyer — as soon as the foreign bank receives the documents. Although the foreign bank may notify the importer that the collection is there, the importer may wait to pay or accept the draft until the goods arrive in the country.

There are risks with this method of exporting. There is no guarantee that the importer will "sight" or accept the draft. The importer's financial position may change before the draft is presented for payment or before it matures. Or the importing country may make policy changes affecting the importer's ability to pay. The exporter has a risk until payment is received. In the case of documents against acceptance, the period between acceptance and maturity is analogous to an open account sale (see section on open account).

Exhibit 1.6: Direct collection (Export)



Methods of payment: letter of credit

Letters of credit are governed by a universally accepted set of rules. These rules are written and administered by the International Chamber of Commerce and are known as *The Uniform Customs and Practices for Documentary Credits (UCP)*. The rules are updated periodically to keep up with evolving technology and trade practices. The latest UCP is 600 and it is included in the final section of this guide under the ICC Information section.

The letter of credit (LC), short of cash-in-advance or avalized drafts, affords the seller the highest degree of protection from loss. All LCs are considered to be irrevocable unless specified otherwise. Irrevocable means that it also cannot be cancelled or altered without the consent of all the parties involved: the applicant, the issuing bank, confirming bank (if there is one) and the beneficiary. Exhibit 1.7 outlines some basic letter of credit terminology while Exhibit 1.8 describes various types of letters of credit.

Exhibit 1.7: Letters of credit – the basics

Definition	A documentary credit is a conditional undertaking of payment. It is a written undertaking by an issuing entity typically, but not exclusively, a bank (issuing entity) given to the seller (beneficiary) at the request, and on the instructions of the buyer (applicant) to pay at sight or at a determinable future date up to a stated sum of money, within a prescribed time limit and against stipulated documents. The issuing entity is substituting its credit and good name in place of the buyer.
Buyer (“Applicant”)	Because the documentary credit is a conditional undertaking, payment is made on behalf of the buyer against documents, which may represent the goods and/or services, and gives the buyer rights to them.
Seller (“Beneficiary”)	Because the documentary credit is a bank undertaking, the seller can look to the bank for payment, instead of relying upon the ability or willingness of the buyer to pay. However, because the undertaking is conditional, the seller only has the right to demand payment if he complies with the terms and conditions of the credit. It is, therefore, unwise for the seller to proceed with shipment until he is aware of these requirements and is satisfied he can meet them.
Summary	Documentary credits therefore: <ul style="list-style-type: none">• Are an arrangement by banks or other issuing entity for settling international commercial transactions.• Provide a form of security for the parties involved.• Ensure payment, provided that the terms and conditions of the letter of credit have been fulfilled.• Means that it is payable against documents only, and not on the actual merchandise delivered or services involved.

Exhibit 1.8: Types of Letters of Credit

Merchandise, Commercial, Trade	The majority of LCs issued are in payment for goods after shipment. Payment is normally made against documents for the goods shipped. Article 5, UCP 600, (See last section in the guide under ICC Information).
Standby	This type of LC functions like a guarantee. The standby letter of credit can be drawn against a simple statement indicating a default and failure to perform a service or financial obligation has occurred. It is a definite undertaking of the issuing bank. Similar to commercial LCs, standbys are governed by another ICC Publication, the International Standby Practices 1998 (ISP98). (See last section in this guide under UCC Information and/or UCP 600.)
Irrevocable	This type of credit cannot be amended or canceled without the agreement of the applicant, the beneficiary and the issuing bank. (Article 10 UCP 600).
Unconfirmed	Bears only the undertaking of the issuing bank. The beneficiary should look to the credit worthiness of only the issuing bank, and not to any intermediary or advising bank (Article 8, UCP 600).
Confirmed	Is a credit in which a second undertaking is added to the letter of credit by another bank, which means the exporter gets paid from the confirming bank, provided conforming documents are presented regardless of whether the issuing bank can pay or not pay. (Article 8, UCP 600).
Silent Confirmation	A silent confirmation is a confirmation provided outside the letter of credit and is not authorized by the issuing bank. For certain exporters and approved issuing banks, the advising bank, under its sole discretion, may enter into a separate draft purchase agreement with the beneficiary to guarantee or discount drafts drawn against the issuer, provided the documents presented under the letter of credit are conforming. The bank silently confirming may or may not require a separate assignment of proceeds form signed, and may or may not allow other issuing banks outside of certain regions.
Sight	Payment is at sight, which means that the drafts and documents are honored, if in order, by making payment without delay.
Time, Usance	The draft honored by accepting it for payment at a future date. Payment is made at the maturity of the draft.
Transferrable Credit	Can be transferred by the original beneficiary in full or partially up to the credit amount to one or more beneficiaries. It is normally used when the first beneficiary does not supply the merchandise himself, but is a middleman and wants to transfer all or part of his rights to the actual supplier. Issuing bank must state in the LC it is transferrable, and nominate a transferring bank (usually the advising bank or confirming bank) in the LC. (Article 38, UCP 600).

Letters of credit: what they can and cannot do

They can:

- Provide a means of prompt payment to the seller provided the terms and conditions of the LC are complied with.
- Enhance credit investigation of the buyer, since the buyer's credit risk has been assumed by the issuing and/or confirming bank.
- Provide a base for a bank to engage in inventory and receivable financing.

They cannot:

- Substitute for the integrity of the seller or make background and normal credit checking unnecessary.
- Lend soundness to transactions which were not basically sound at their inception.
- Absolve the seller or buyer from contractual liability.
- Have a bank assure that compliance with the terms and documents of the LC are being met before requiring the buyer to make a payment.
- Remove the exchange risk.
- Guarantee that shipment will be made by seller as LCs are goods payable on documents and not on the actual goods received at the pier, airport, border, etc.
- Letters of credit, by their nature, are separate transactions from the sales or other contract(s) between the buyer and seller. Banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the credit. (Article 4 of UCP 600).
- They cannot circumvent any customs restrictions imposed by U.S. or other governments.
- Disguise or cloud the transparency of the identity of the Applicant, Beneficiary, or other parties.

A basic concept of letters of credit is that banks handling letters of credit deal in documents and documents only. Any dispute with regard to quantity or quality of merchandise bears no relation to the bank's responsibility to examine documents as presented under the letter of credit, and to make their decision as to the acceptability of the documents solely based upon those documents versus the letter of credit terms and conditions.

The exhibits that follow are schematics showing the various phases of the letter of credit process. Exhibit 1.9 outlines the issuance/advising phase, Exhibit 2.0 outlines the presentation phase, and Exhibit 2.1 outlines the entire process when the process involves a sight draft, and again in Exhibit 2.2, when a time draft is used.

Exhibit 1.9: Export Letter of Credit Issuance and Advising

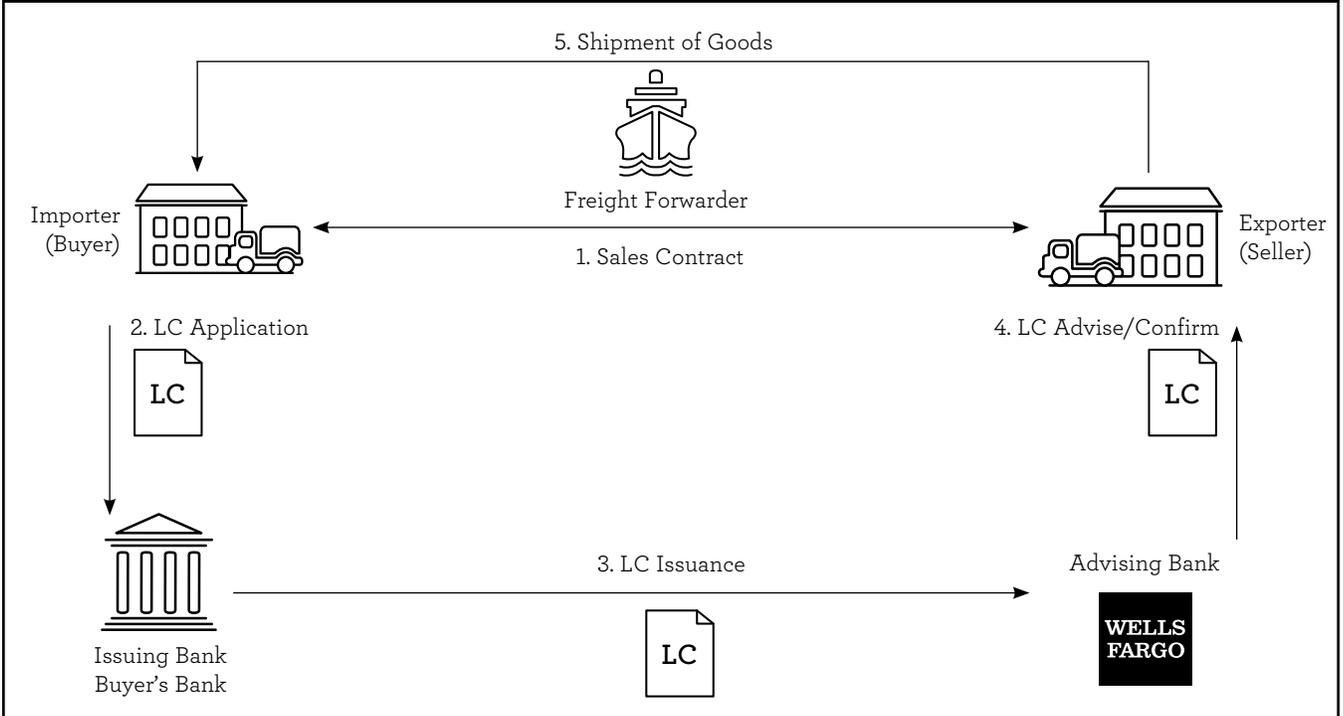


Exhibit 2.0: Export Letter of Credit Presentation

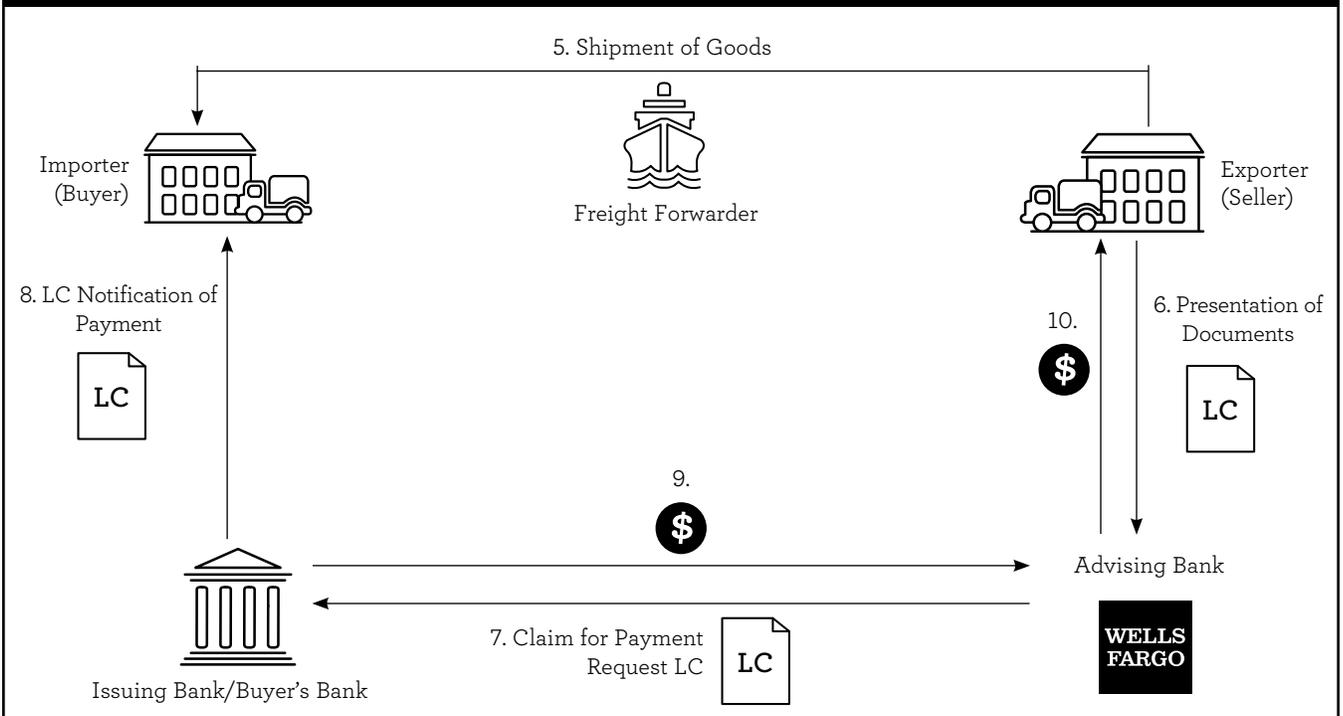


Exhibit 2.1: Export Letter of Credit The entire process – with sight draft

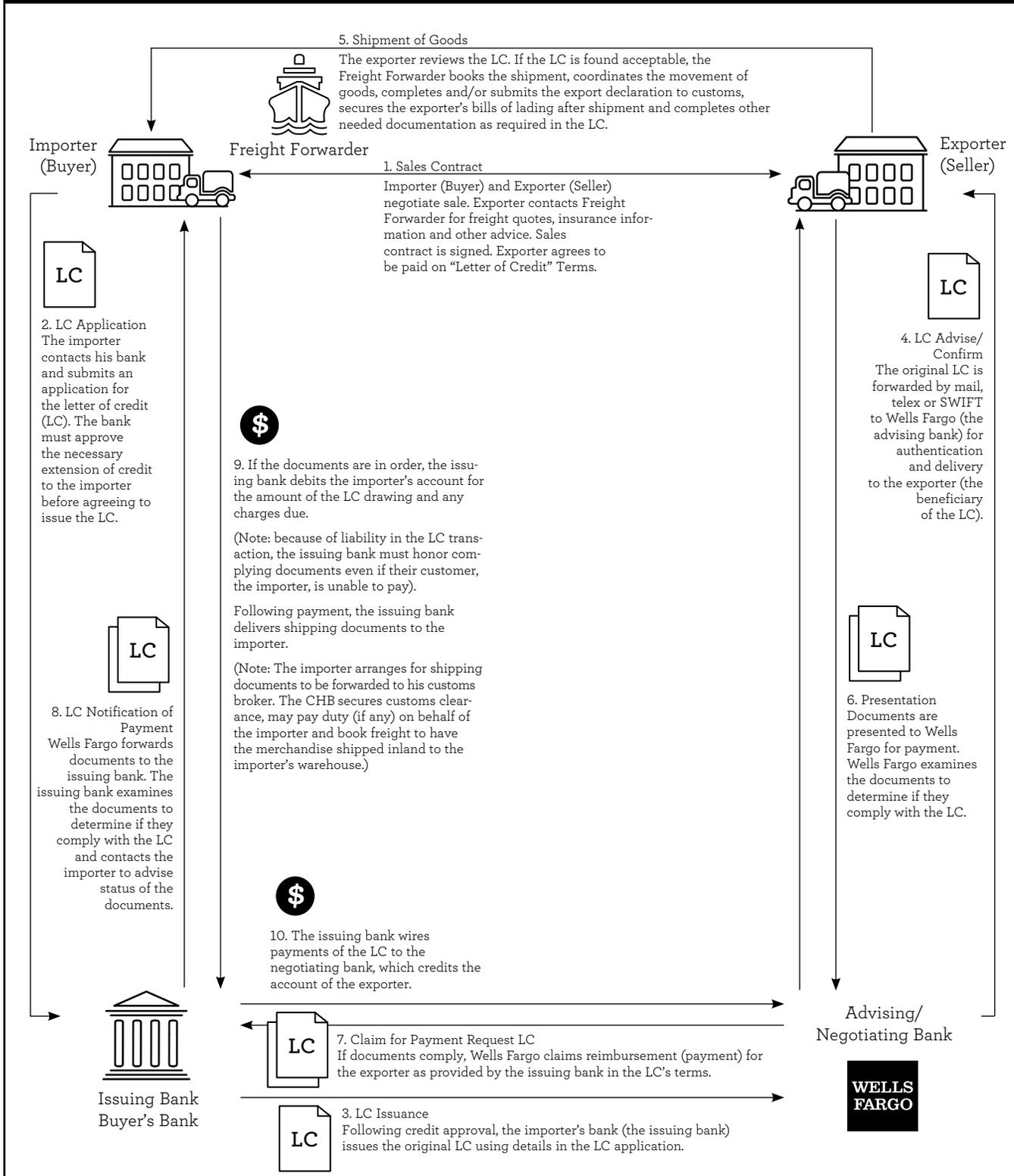
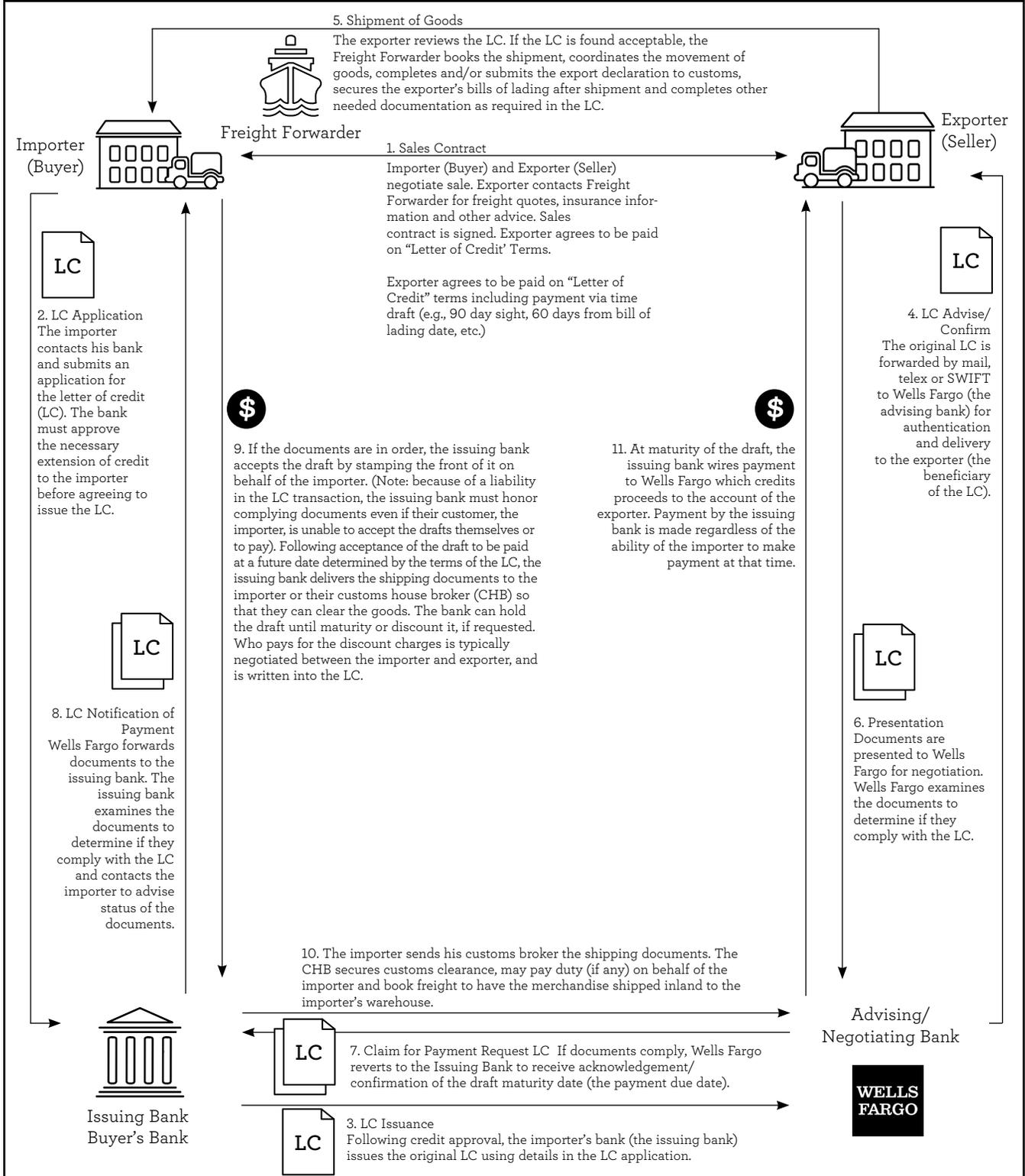


Exhibit 2.2: Export Letter of Credit The entire process — with time draft



The following section illustrates several of the Wells Fargo forms that are part of the letter of credit process. Also listed

are guidelines, recommendations and tips for exporters to be used throughout the entire letter of credit process.

Exhibit 2.3: Letter of credit instructions – (guideline) to be submitted by the exporter to the importer to verify the opening of a letter of credit in accordance with all of the correct terms and conditions.

Guideline for requesting a letter of credit from your buyer

When you, as the exporting company, sell on Letter of Credit terms, the following letter format is recommended to request the LC from your buyer:

Dear Buyer:

Regarding your purchase order number _____ dated _____, please ask that your bank issue an irrevocable Commercial Letter of Credit according to the following terms and conditions.

Beneficiary: _____ (Exporting Company's Name)
 _____ (Address – please provide a street address, not a PO Box)
 _____ U.S.A.

Advising Bank: Wells Fargo Bank, National Association

Mail and wire addresses of Wells Fargo Bank, National Association are as follows:

Mail: International Trade Operations
 1525 West W.T. Harris Blvd. D1109-011
 Charlotte, NC 28262-8522

Telex: 4990118 WACH PA

SWIFT: PNBPUS33PHL

Payment Terms: The Letter of Credit must be payable at the counters of Wells Fargo Bank, National Association.

Payment to be effected in U. S. Dollars or _____ (type of currency).

Draft(s) to be drawn at sight, or _____ days sight or _____ days after the date of shipment. In the case of time drafts, discount charges are for the account of the _____ buyer _____ seller.

_____ Please have the Letter of Credit confirmed by Wells Fargo Bank, National Association or confirmation is not requested.

Documentary Requirements: The Letter of Credit funds should be available upon presentation of the following documents:

- | | | |
|-------------------------------|----------|----------|
| 1. Signed Commercial Invoices | 2. _____ | 3. _____ |
| 4. _____ | 5. _____ | 6. _____ |

Other Important Points:

- * Shipment and price quotations are _____. (Incoterms 2000, ICC Publication No.560)
- * Shipment from _____ to _____.
- * Partial shipments _____ permitted or _____ not permitted.
- * Transshipment _____ permitted or _____ not permitted.
- * Latest shipment date _____.
- * Expiration date _____.
- * _____ days after the date of shipment must be allowed for presentation of documents to the negotiating bank.
- * If a transferrable letter of credit is required, the letter of credit must specifically state it is transferrable by Wells Fargo Bank, National Association.
- * All banking charges in the U.S. are for the account of the _____ buyer or _____ seller, including reimbursing bank fees.
- * Please ensure that the Letter of Credit is issued _____ days before our agreed upon shipment date.

PLEASE NOTE CAREFULLY:

If you are unable or unwilling to meet any of these terms and conditions, please contact us as soon as possible, and **prior** to having the Letter of Credit issued. Any deviations from the above terms and conditions without our agreement may result in a delay of the shipment until the LC can be amended.

Signed,

Exhibit 2.4: Guidelines for the beneficiary when reviewing the LC

Be sure to verify:

1. Correct name and address

2. Sufficient credit amount

3. Documents required are obtainable and according to terms of sale

4. Points of shipment and destination are correct

5. Insurance coverage requirements, if applicable, are obtainable and according to terms of sale

6. Shipping date allows sufficient time to dispatch goods

7. Days for presentation and expiration date allow sufficient time for presentation of draft and documents

8. Description of goods is correct and simply stated

Exhibit 2.5: Wells Fargo sample advice letter – without confirmation



WELLS FARGO BANK, NATIONAL ASSOCIATION
LETTER OF CREDIT ADVICE - UNCONFIRMED

OUR REFERENCE NO.: #EM568390 EXPIRY DATE: 10/21/XX

LETTER OF CREDIT AMOUNT: USD 39,100,000 PCT PLULUS/MINUS (10%)

BENEFICIARY:
DIGITAL LEADERS INC.
1800 MAIN STREET
SUITE A
MILFORD, OH 45145

ISSUING BANK:
BANK OF TOKYO MITSUBISHI
TUNG CENTER 01-02
20 COLLYER QUAY
SINGAPORE 0104, SINGAPORE

APPLICANT: TIMING CONCEPTS
3 PANDAN CRESCENT
SINGAPORE 123465, SINGAPORE

CREDIT NO. OF ISSUING BANK:
655-210-48267

DEAR BENEFICIARY:

WE HAVE BEEN INSTRUCTED BY THE ABOVE ISSUING BANK TO ADVISE YOU THAT THEY HAVE ESTABLISHED THEIR IRREVOCABLE DOCUMENTARY LETTER OF CREDIT IN YOUR FAVOR, AS BENEFICIARY.

THE ATTACHED LETTER OF CREDIT IS BEING FORWARDED TO YOU AT THE REQUEST OF THE ABOVE ISSUING BANK AND CONVEYS NEITHER ENGAGEMENT NOR CONFIRMATION ON OUR PART.

WHEN PRESENTING DOCUMENTS UNDER THIS CREDIT PLEASE INCLUDE THE ORIGINAL LETTER OF CREDIT (UNLESS RETAINED BY US) AND AN ADDITIONAL COPY OF ALL REQUIRED DOCUMENTS STIPULATED IN THE CREDIT.

DOCUMENTS MUST CONFORM STRICTLY WITH THE TERMS OF THE ATTACHED LETTER OF CREDIT. IF YOU ARE UNABLE TO COMPLY WITH SAME, PLEASE COMMUNICATE DIRECTLY WITH THE APPLICANT IN ORDER TO HAVE THE ISSUING BANK AMEND THE RELEVANT CONDITIONS. THIS SHOULD ELIMINATE DIFFICULTIES AND DELAYS IN PAYMENT WHEN YOUR DOCUMENTS ARE PRESENTED FOR NEGOTIATION.

IN THE EVENT NON-COMPLYING PRESENTATIONS, A DISCREPANCY FEE PLUS RELATED EXPENSES WILL BE DEDUCTED FROM THE PROCEEDS OF THE PAYMENT MADE TO YOU. DISCREPANCY FEES AND RELATED EXPENSES WILL BE DEDUCTED FROM PROCEEDS DESPITE AN INDICATION IN THE LC THAT ALL CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

IF ONE OR MORE DOCUMENTS ARE PRESENTED IN A LANGUAGE OTHER THAN WHAT IS USED IN THE CREDIT, EACH FOREIGN LANGUAGE DOCUMENT MUST BE ACCOMPANIED BY A CERTIFIED ENGLISH TRANSLATION OF THAT DOCUMENT BY AN INDEPENDENT TRANSLATING FIRM. UNLESS WE ARE PROHIBITED BY US REGULATIONS FROM DOING SO, ANY PRESENTATION CONTAINING FOREIGN LANGUAGE DOCUMENTS, EVEN IF ACCOMPANIED BY A CERTIFIED TRANSLATION, WILL BE FORWARDED TO THE

SEE CONTINUATION

ISSUING BANK FOR PAYMENT. IN ANY EVENT, PAYMENT OF A PRESENTATION THAT INCLUDES FOREIGN LANGUAGE DOCUMENTS WILL BE MADE ONLY UPON RECEIPT OF GOOD FUNDS FROM THE ISSUING BANK.

IN THE EVENT THAT NO ENGLISH TRANSLATION IS PROVIDED ALONG WITH A FOREIGN LANGUAGE DOCUMENT, WE RESERVE THE RIGHT TO OBTAIN TRANSLATION AT YOUR EXPENSE. WE ARE NOT RESPONSIBLE FOR ANY DELAYS IN PROCESSING THAT WILL OCCUR AS A RESULT OF OUR OBTAINING A TRANSLATION.

NOTE TO BENEFICIARY:

FOR THE PURPOSE OF EXPEDITING THE PAYMENT PROCESS, AND TO ENABLE US TO TRACE THIS ITEM SHOULD THE NEED ARISE, ALL DOCUMENTS PRESENTED TO US FOR EXAMINATION WILL BE FORWARDED TO THE ISSUING BANK VIA D.H.L., OR OTHER COURIER SERVICE, UNLESS WE ARE INSTRUCTED BY THE BENEFICIARY/FREIGHT FORWARDER TO THE CONTRARY. COURIER EXPENSES WILL BE DEDUCTED AT THE TIME OF PAYMENT.

WHEN PRESENTING DOCUMENTS, PLEASE INDICATE ON YOUR COVER LETTER OUR REFERENCE NUMBER, ISSUING BANK'S CREDIT NUMBER AND THE METHOD OF PAYMENT FROM THE CHOICES LISTED BELOW:

1. WIRE TRANSFER (ABA NO. OF RECEIVING BANK AND ACCOUNT NUMBER)
2. CREDIT TO ACCOUNT WITH WELLS FARGO BANK, NATIONAL ASSOCIATION.

NOTE: A PROCESSING FEE WILL BE DEDUCTED FROM THE PROCEEDS FOR OPTION (1) ABOVE.

***** IMPORTANT NOTE TO THE BENEFICIARY *****

IN ORDER TO AVOID A DELAY IN PAYMENT IT IS IMPORTANT TO PROVIDE US YOUR COMPLETE PAYMENT INSTRUCTIONS AT TIME OF DOCUMENT PRESENTATION. PLEASE ALSO INCLUDE A CONTACT NAME, PHONE NUMBER, AND EMAIL ADDRESS TO ASSIST US IN EXPEDITING THE NOTIFICATION OF DOCUMENT EXAMINATION RESULTS.

PLEASE NOTE THAT PAYMENT WILL BE EFFECTED ONLY UPON RECEIPT OF FUNDS FROM THE REIMBURSING/OPENING BANK. REIMBURSING BANK'S CHARGES, IF ANY, WILL BE DEDUCTED FROM PROCEEDS.

FOR YOUR CONVENIENCE DOCUMENTS MAY BE PRESENTED FOR NEGOTIATION AT ANY OF OUR U.S. PROCESSING LOCATIONS AS LISTED BELOW:

WELLS FARGO BANK, N.A.
INTERNATIONAL TRADE OPERATIONS,
1525 WEST WY HARRIS BOULEVARD - MAC D1109-011,
CHARLOTTE, NC 28262-8522, USA

WELLS FARGO BANK, N.A.
LOS ANGELES TRADE OPERATIONS
9000 FLAIR DRIVE, 3RD FLOOR
MAC E2002-031
EL MONTE, CA 91731, USA

EXCEPT AS OTHERWISE EXPRESSLY STATED THEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION)", INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600".

U.S. GOVERNMENT REGULATIONS REGARDING FOREIGN ASSET CONTROL REGULATIONS AND EXPORT DENIAL ORDERS:

UNDER THE CURRENT ASSETS CONTROL REGULATIONS, PERSONS SUBJECT TO THE JURISDICTION OF THE UNITED STATES ARE PROHIBITED FROM ENGAGING DIRECTLY OR

SEE CONTINUATION

INDIRECTLY WITH ANY NATIONALS OR SPECIALLY DESIGNATED NATIONALS WHICH CAN BE FOUND IN THE FOLLOWING WEB-SITE:
[HTTP://WWW.TREAS.GOV/OFFICES/ENFORCEMENT/OFAC/](http://www.treas.gov/offices/enforcement/ofac/)

PRESENTATION OF DOCUMENTS UNDER THIS CREDIT IMPLIES THAT THE EXPORTER CONFORMS IN EVERY RESPECT WITH ALL EXISTING UNITED STATES GOVERNMENT REGULATIONS AND IS NOT SUBJECT TO DENIAL ORDERS CURRENTLY AFFECTING EXPORT PRIVILEGES OF PRODUCTS UNDER THE ATTACHED CREDIT.

FOR FURTHER INFORMATION, PLEASE CONTACT THE OFFICE OF FOREIGN ASSETS CONTROL (202) 622-2000

PLEASE CONTACT ONE OF OUR CUSTOMER CARE UNITS REGARDING ANY INQUIRIES TO THIS LETTER OF CREDIT AS FOLLOWS:

CHARLOTTE CUSTOMER CARE: 1-800-776-3862
LOS ANGELES CUSTOMER CARE: 1-866-788-6297

THIS IS A COMPUTER GENERATED ADVICE. NO BANK SIGNATURE IS REQUIRED.

FOR BANK USE ONLY:

M:
O:
C:
F:
S:

ENCLOSURE

#

Exhibit 2.6: Wells Fargo sample advice letter — with confirmation

WELLS FARGO

WELLS FARGO BANK, NATIONAL ASSOCIATION
LETTER OF CREDIT ADVISE - CONFIRMED

OUR REFERENCE NO.: #EM579362 EXPIRY DATE: 10/22/XX
EXPIRY PLACE: OUR COUNTERS

LETTER OF CREDIT AMOUNT: USD 24, 455.50 HKINUM

BENEFICIARY: UNIVERSAL COATINGS
6718 EAST LANGDON STREET
PHILADELPHIA, PA 19147

ISSUING BANK: UNITED COCONUT PLANTERS BANK
GREEN HILL BRANCH, A AND E BLDG.
ORTEGAS, GREEN HILLS SAN JUAN
METRO MANILA, PHILIPPINES

APPLICANT: FIESTA TECHNOLOGIES
VALERO TOWERS
NAKATI, 1226 PHILIPPINES

CREDIT NO. OF ISSUING BANK:
FX81171999001198

DEAR BENEFICIARY:

WE HAVE BEEN INSTRUCTED BY THE ABOVE ISSUING BANK TO ADVISE YOU THAT THEY HAVE ESTABLISHED THEIR IRREVOCABLE DOCUMENTARY LETTER OF CREDIT IN YOUR FAVOR, AS BENEFICIARY.

WE HEREBY CONFIRM THIS CREDIT AND UNDERTAKE TO HONOR COMPLYING PRESENTATIONS MADE TO THE LOCATION SPECIFIED BELOW ON OR BEFORE THE EXPIRY DATE OF THE LETTER OF CREDIT.

PLEASE NOTE THAT OUR CONFIRMATION IS NOT IN EFFECT FOR ANY PRESENTATION THAT DOES NOT COMPLY WITH THE LC TERMS AND CONDITIONS. ALSO SHOULD A PRESENTATION BE MADE TO THE ISSUER DIRECTLY OR TO THE ISSUER THROUGH ANOTHER BANK, OUR CONFIRMATION WILL BE NULL AND VOID FOR ANY SUBSEQUENT PRESENTATION MADE TO US UNDER THIS LC.

PLEASE NOTE THAT IN THE EVENT THIS LC SPECIFIES A TIME PERIOD IN ORDER TO OBTAIN REIMBURSEMENT OF COMPLYING DOCUMENTS EITHER FROM AN EXTERNAL SOURCE OR BY DEBIT TO AN ACCOUNT HELD WITH WELLS FARGO, OUR UNDERTAKING IS TO HONOR A COMPLYING PRESENTATION ON THE EXPECTED DATE OF REIMBURSEMENT AS MAY BE STIPULATED IN FIELD 78 OR ELSEWHERE INDICATED IN THE ATTACHED LC.

WHEN PRESENTING DOCUMENTS UNDER THIS CREDIT PLEASE INCLUDE THE ORIGINAL LETTER OF CREDIT (UNLESS RETAINED BY US) AND AN ADDITIONAL COPY OF ALL REQUIRED DOCUMENTS STIPULATED IN THE CREDIT.

DOCUMENTS MUST CONFORM STRICTLY WITH THE TERMS OF THE ATTACHED LETTER OF CREDIT. IF YOU ARE UNABLE TO COMPLY WITH SAME, PLEASE COMMUNICATE DIRECTLY WITH THE APPLICANT IN ORDER TO HAVE THE ISSUING BANK AMEND THE RELEVANT CONDITIONS. THIS SHOULD ELIMINATE DIFFICULTIES AND DELAYS IN PAYMENT WHEN YOUR DOCUMENTS ARE PRESENTED FOR NEGOTIATION.

IN THE EVENT NON-COMPLYING PRESENTATIONS, A DISCREPANCY FEE PLUS RELATED EXPENSES WILL BE DEDUCTED FROM THE PROCEEDS OF THE PAYMENT MADE TO YOU.

SEE CONTINUATION

DISCREPANCY FEES AND RELATED EXPENSES WILL BE DEDUCTED FROM PROCEEDS DESPITE AN INDICATION IN THE LC THAT ALL CHARGES ARE FOR THE ACCOUNT OF THE APPLICANT.

ALTHOUGH THIS LETTER OF CREDIT BEARS OUR CONFIRMATION, IF DOCUMENTS PRESENTED FOR NEGOTIATION CONTAIN DISCREPANCIES MAKING IT NECESSARY FOR US TO EITHER CABLE FOR APPROVAL OR FORWARD DOCUMENTS ON A COLLECTION BASIS, PAYMENT WILL BE MADE ONLY UPON AUTHORIZATION FROM THE ISSUING BANK OR UPON RECEIPT OF FUNDS FROM THE ISSUING/REIMBURSING BANK. IN THE EVENT THAT ACCEPTANCE OF A TIME DRAFT IS INVOLVED, ACCEPTANCE/DISCOUNT WILL BE AVAILABLE ONLY UPON APPROVAL/ACCEPTANCE OF THE DISCREPANCIES BY THE ISSUING BANK/APPLICANT.

NOTWITHSTANDING THE SECOND PARAGRAPH OF UCP600 ARTICLE 35, SHOULD ORIGINAL DOCUMENTS BE LOST IN ROUTE TO US, IN ORDER FOR OUR CONFIRMATION TO BE IN EFFECT, COPIES OF ALL REQUIRED DOCUMENTS THAT ARE IN CONFORMITY WITH THE CREDIT TERMS WITH THE EXCEPTION OF MISSING ORIGINAL DOCUMENTS MUST BE PRESENTED TO US.

IN ORDER FOR OUR CONFIRMATION TO BE IN EFFECT, ALL DOCUMENTS PRESENTED TO US MUST BE IN THE SAME LANGUAGE AS THE CREDIT.
IF ONE OR MORE DOCUMENTS ARE PRESENTED IN A LANGUAGE OTHER THAN WHAT IS USED IN THE CREDIT, EACH FOREIGN LANGUAGE DOCUMENT MUST BE ACCOMPANIED BY A CERTIFIED ENGLISH TRANSLATION OF THAT DOCUMENT BY AN INDEPENDENT TRANSLATING FIRM. IN THIS EVENT AND PROVIDED THAT WE ARE NOT PROHIBITED BY US REGULATIONS FROM FORWARDING DOCUMENTS TO THE ISSUING BANK, PAYMENT OF A PRESENTATION CONTAINING FOREIGN LANGUAGE DOCUMENTS, EVEN IF OTHERWISE COMPLYING WITH THE CREDIT TERMS, WILL BE MADE ONLY UPON RECEIPT OF GOODS FUNDS FROM THE ISSUING BANK.

IN THE EVENT THAT NO INDEPENDENT TRANSLATION ACCOMPANIES A FOREIGN LANGUAGE DOCUMENT, WE RESERVE THE RIGHT TO OBTAIN TRANSLATION AT YOUR EXPENSE. WE ARE NOT RESPONSIBLE FOR ANY DELAYS IN PROCESSING THAT WILL OCCUR AS A RESULT OF OUR OBTAINING A TRANSLATION.

NOTE TO BENEFICIARY:
FOR THE PURPOSE OF EXPEDITING THE PAYMENT PROCESS, AND TO ENABLE US TO TRACE THIS ITEM SHOULD THE NEED ARISE, ALL DOCUMENTS PRESENTED TO US FOR EXAMINATION WILL BE FORWARDED TO THE ISSUING BANK VIA D.H.L., OR OTHER COURIER SERVICE, UNLESS WE ARE INSTRUCTED BY THE BENEFICIARY/FREIGHT FORWARDER TO THE CONTRARY. COURIER EXPENSES WILL BE DEDUCTED AT THE TIME OF PAYMENT.

WHEN PRESENTING DOCUMENTS, PLEASE INDICATE ON YOUR COVER LETTER OUR REFERENCE NUMBER, ISSUING BANK'S CREDIT NUMBER AND THE METHOD OF PAYMENT FROM THE CHOICES LISTED BELOW:
1. WIRE TRANSFER (ABA NO. OF RECEIVING BANK AND ACCOUNT NUMBER)
2. CREDIT TO ACCOUNT WITH WELLS FARGO BANK, NATIONAL ASSOCIATION.
NOTE: A PROCESSING FEE WILL BE DEDUCTED FROM THE PROCEEDS FOR OPTION (1) ABOVE.

***** IMPORTANT NOTE TO THE BENEFICIARY *****
IN ORDER TO AVOID A DELAY IN PAYMENT IT IS IMPORTANT TO PROVIDE US YOUR COMPLETE PAYMENT INSTRUCTIONS AT TIME OF DOCUMENT PRESENTATION. PLEASE ALSO INCLUDE A CONTACT NAME, PHONE NUMBER, AND EMAIL ADDRESS TO ASSIST US IN EXPEDITING THE NOTIFICATION OF DOCUMENT EXAMINATION RESULTS.

FOR YOUR CONVENIENCE, ALL DOCUMENTS FOR NEGOTIATION MAY BE PRESENTED AT ANY OF OUR U.S. PROCESSING LOCATIONS LISTED BELOW:

WELLS FARGO BANK, N.A.
INTERNATIONAL TRADE OPERATIONS.

SEE CONTINUATION

1525 WEST WY HARRIS BOULEVARD - MAC D1109-011,
CHARLOTTE, NC 28262-8522, USA

WELLS FARGO BANK, N.A.
LOS ANGELES TRADE OPERATIONS
9000 FLAIR DRIVE, 3RD FLOOR
MAC E2002-031
EL MONTE, CA 91731, USA

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS LETTER OF CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS (2007 REVISION)", INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 500".

U.S. GOVERNMENT REGULATIONS REGARDING FOREIGN ASSET CONTROL REGULATIONS AND EXPORT DENIAL ORDERS:

UNDER THE CURRENT ASSETS CONTROL REGULATIONS, PERSONS SUBJECT TO THE FOLLOWING JURISDICTION OF THE UNITED STATES ARE PROHIBITED FROM ENGAGING DIRECTLY OR INDIRECTLY WITH ANY NATIONALS OR SPECIALLY DESIGNATED NATIONALS WHICH CAN BE FOUND IN THE FOLLOWING WEBSITE: [HTTP://WWW.TREAS.GOV/OFFICES/ENFORCEMENT/OFAC](http://www.treas.gov/offices/enforcement/ofac)

PRESENTATION OF DOCUMENTS UNDER THIS CREDIT IMPLIES THAT THE EXPORTER CONFORMS IN EVERY RESPECT WITH ALL EXISTING UNITED STATES GOVERNMENT REGULATIONS AND IS NOT SUBJECT TO DENIAL ORDERS CURRENTLY AFFECTING EXPORT PRIVILEGES OF PRODUCTS UNDER THE ATTACHED CREDIT.

FOR FURTHER INFORMATION, PLEASE CONTACT THE OFFICE OF FOREIGN ASSETS CONTROL (202) 622-3000.
*****PLEASE CONTACT OUR CUSTOMER CARE UNIT REGARDING ANY INQUIRIES UNDER THIS LETTER OF CREDIT AS FOLLOWS*****

-FOR OUR REFERENCE NUMBERS ENDING IN "P" OR "A", PLEASE CALL 1-800-736-3862
-FOR OUR REFERENCE NUMBERS ENDING IN "M", PLEASE CALL 1-800-469-8285

THIS IS A COMPUTER GENERATED ADVISE NO SIGNATURE REQUIRED.

Exhibit 2.7: SWIFT formatted letter of credit and MT700 Sample



-----Instance Type and Transmission-----

Copy received from SWIFT
 Priority: Normal
 Message Output Reference: 0624 100601PNBPUS33CXX3032148254
 Correspondent Input Reference: 1924 100601IBKOKRSEAXX2184617182

-----Message Header-----

Swift Output: FIN 700 Issue of a Documentary Credit
 Sender: IBKOKRSEXX
 INDUSTRIAL BANK OF KOREA
 (HEAD OFFICE SEOUL)
 SEOUL
 KOREA, REPUBLIC OF KR
 Receiver: PNBUS33PHL
 WELLS FARGO BANK, N.A. (FORMERLY KNOWN AS WACHOVIA)
 (INTERNATIONAL OPERATIONS)
 PHILADELPHIA, PA
 UNITED STATES US

MUR: 0001181924

-----Message Text-----

27: Sequence of Total
 1/1

40A: Form of Documentary Credit
 IRREVOCABLE

20: Documentary Credit Number
 6NSOM04HY000025

31C: Date of Issue
 100601

40E: Applicable Rules
 UCP LATEST VERSION

31D: Date and Place of Expiry
 100920 IN YOUR COUNTRY

50: Applicant
 BINGHAM CHEMICAL CO., LTD
 12, JINYOUNG-EUP
 KIMHAE CITY, KYUNGNAM
 KOREA 802-621

59: Beneficiary - Name & Address
 ABC CHEMICAL COMPANY
 1200 ACHTON ROAD, SUITE 9
 JACKSONVILLE, FL 32111
 USA

32B: Currency Code, Amount
 Currency: USD (US DOLLAR)
 Amount: 22,463.20

39A: Percentage Credit Amt Tolerance
 10/10

SEE CONTINUATION

41D: Available With...By... - Name&Addr
 ANY BANK
 BY NEGOTIATION

42C: Drafts at...
 AT SIGHT

42D: Drawee - Name & Address
 INDUSTRIAL BANK OF KOREA (HEAD
 OFFICE SEOUL) SEOUL
 50, ULCHIRO 2-GA, CHUNG-GU
 SEOUL

43P: Partial Shipments
 ALLOWED

43T: Transshipment
 ALLOWED

44E: Port of Loading/Airport of Dep.
 U. S. PORT

44F: Port of Dischrge/Airport of Dest
 BUSAN PORT

44C: Latest Date of Shipment
 100830

45A: Descriptn of Goods &/or Services
 CLEANING CHEMICALS
 QUANTITY: 10.211KGS
 UNIT PRICE: USD2.20
 TOTAL AMOUNT: USD22,463.20
 +COUNTRY OF ORIGIN: USA
 +PRICE TERMS: CIF BUSAN PORT

46A: Documents Required
 +SIGNED COMMERCIAL INVOICE IN TRIPLICATE
 +FULL SET OF CLEAN ON BOARD OCEAN BILLS OF LADING MADE OUT TO
 THE ORDER OF INDUSTRIAL BANK OF KOREA
 MARKED "FREIGHT PREPAID" AND "NOTIFY ACCOUNTEE"

47A: Additional Conditions
 +A DISCREPANCY FEE OF USD 80.00 (OR EQUIVALENT) SHOULD BE DEDUCTED FROM THE
 AMOUNT CLAIMED OR WILL BE DEDUCTED FROM THE PROCEEDS OF ANY DRAWINGS, IF
 DOCUMENTS ARE PRESENTED WITH ANY DISCREPANCY(IES). NOTWITHSTANDING ANY
 INSTRUCTIONS TO THE CONTRARY, THIS CHARGE SHALL BE FOR ACCOUNT OF BENEFICIARY.
 IN ADDITION, THE PAYMENT OF THE RELATIVE CABLE EXPENSE,
 IF ANY, SHALL ALSO BE FOR ACCOUNT OF BENEFICIARY.
 +DRAFT DRAWN UNDER THIS CREDIT MUST BE ENDORSED AND CONTAIN THE CLAUSE,
 DRAWN UNDER INDUSTRIAL BANK OF KOREA, SEOUL, LETTER OF CREDIT NO
 6NSOM04HY000025 DATED 2010-06-01
 +10PCT MORE OR LESS IN QUANTITY AND AMOUNT ARE ACCEPTABLE
 +ONE ADDITIONAL PHOTOCOPY OF REQUIRED DOCUMENT(S) ARE REQUIRED FOR L/C
 ISSUING BANKS FILE AND WILL NOT BE RETURNED EVEN DOCUMENTS ARE FINALLY
 REFUSED. IF THESE DOCS ARE NOT PRESENTED, A PHOTOCOPY HANDLING FEE OF USD20.00
 PER SET WILL BE DEDUCTED FROM THE PROCEEDS OF PAYMENT.

SEE CONTINUATION

71B: Charges
 ALL BANKING COMMISSIONS AND CHARGES
 OUTSIDE KOREA, PLUS REIMBURSING
 CHARGES, ARE FOR ACCOUNT OF
 BENEFICIARY

48: Period for Presentation
 DOCUMENTS TO BE PRESENTED WITHIN
 21 DAYS AFTER THE DATE OF SHIPMENT
 BUT WITHIN THE VALIDITY OF THIS
 CREDIT

49: Confirmation Instructions
 WITHOUT

78: Instr to Payg/Acceptg/Negotg Bank
 +ALL DOCUMENTS MUST BE FORWARDED DIRECTLY TO OUR DOCUMENTARY
 CREDITS DEPT, RATHER THAN JUST TO THE BANK (ADD:INDUSTRIAL BANK OF KOREA (H.O.),
 50, ULCHIRO 2-GA, CHUNG-GU, SEOUL, KOREA)
 IN ONE LOT BY COURIER SERVICE. (SWIFT: IBKOKRSEXX)
 +IN REIMBURSEMENT: UPON RECEIPT OF DOCUMENTS AND DRAFTS IN COMPLIANCE WITH
 TERMS AND CONDITIONS OF THIS CREDIT, WE SHALL REMIT THE PROCEEDS TO YOU IN
 ACCORDANCE WITH YOUR INSTRUCTIONS.

-----Message Trailer-----
 {CHK: 1517CED07EDE}

For further detail on the meaning of the SWIFT message fields, please refer to Exhibit 2.8.

Exhibit 2.8: SWIFT Message Field Guide for MT700 communicated letter of credit

Field 27.....	Sequence of total	Field 43t.....	Transshipment
Field 40a.....	Form of documentary credit	Field 44a.....	Place of taking in charge/dispatch from../ place of receipt
Field 20.....	Documentary credit number	Field 44e.....	Port of loading/airport of departure
Field 23.....	Reference to pre-advice	Field 44f.....	Port of discharge/airport of destination
Field 31c.....	Date of issue	Field 44b.....	Place of final destination/ for transportation to../Place of delivery
Field 40e.....	Application rules	Field 44c.....	Latest date of shipment
Field 31d.....	Date and place of expiry	Field 44d.....	Shipment period
Field 51a.....	Applicant bank	Field 45a.....	Description of goods and/or services
Field 50.....	Applicant	Field 46a.....	Documents required
Field 59.....	Beneficiary	Field 47a.....	Additional conditions
Field 32b.....	Currency code, amount	Field 71b.....	Charges
Field 39a.....	Percentage credit amount tolerance	Field 48.....	Period for presentation
Field 39b.....	Maximum credit amount	Field 49.....	Confirmation instructions
Field 39c.....	Additional amounts covered	Field 53a.....	Reimbursing bank
Field 41d.....	Available with...by...	Field 78.....	Instructions to the paying/accepting/ negotiating bank
Field 42c.....	Drafts at...	Field 57a.....	Advise through bank
Field 42d.....	Drawee	Field 72.....	Sender to receiver information
Field 42m.....	Mixed payment details		
Field 42p.....	Deferred payment details		
Field 43p.....	Partial shipments		

Exhibit 2.9: Bill of Lading (BL) – definitions

When the primary means of shipment is by ocean carrier, the Bill of Lading (BL) is the most important document because it is not only a contract of carriage, but may represent title to the merchandise. Frequently, anyone presenting an original Bill of Lading to the shipping company will obtain ownership of the goods.

Whenever shipment involves an additional form of transportation in addition to shipment via the primary means of an ocean vessel, a multi-modal or combined transport document should be utilized. Ocean Bills of Lading should be used for Port-to-Port only.

Two categories

1. Received for shipment Bill of Lading – This is the standard format for most Bills of Lading, wherein the preprinted language on the Bill of Lading acknowledges the RECEIPT of the goods into the possession of the shipping company, however it does not provide indication that goods have been shipped on board. While received for shipments, Bill of Lading is the predominant format now used, virtually all Letters of Credit must still evidence that goods have been shipped on board. This is done via the addition of an On Board Notation placed onto the BL by the shipping company that provides the date the goods have been laden on board the vessel. The on board notation date is used to determine the date shipment was made.
2. A shipped on board Bill of Lading – This contains preprinted language indicating that the goods were SHIPPED or LOADED ON BOARD the vessel. The date shown as the date of issuance constitutes the ship date to determine when shipment was made. It is no longer commonly used for most cargo carried by liner vessels.

Three types

1. Negotiable Bill of Lading – This is the most commonly used as it provides for consignment to be obtained either by the party in possession of the BL, or more typically, by means of endorsement. Negotiability is always indicated by use of the terms “TO ORDER” or “TO ORDER OF.” In the former, the consignment is to the holder of the BL. This may cause concerns if one original BL is lost, so it is not commonly seen nor is it recommended. A BL consigned “TO ORDER OF” is to a named party such as the beneficiary of that LC, who when presenting documents must endorse the BL as directed under the LC terms. Usually endorsement to the issuing bank is required but sometimes only an endorsement in bank is stipulated (i.e., signed by the consignor on the back of the BL).
2. Straight Bill of Lading – This is consigned directly to a named party. The difference between a Negotiable BL and one that is straight consigned is that a straight BL will only show the consignee’s name, i.e., it omits the “Order of” phrase from the consignment. Therefore, a Straight Consigned Bill of Lading may not be transferred by endorsement, so it is far less used in International Trade transactions. Normally when it is used, it will be consigned directly to the buyer.
3. A number of shipping companies are now issuing Non-Negotiable Seaway Bills which is a form of straight-consigned BL. A Non-Negotiable Seaway Bill, sometimes referred to as an express Bill of Lading, is normally generated electronically at the place of destination but may be printed from any place permissible by its issuer. When required under a Letter of Credit, it must be generated at the point of shipment in order for the exporter to obtain the required original document for presentation under the LC. Unlike a traditional BL, only one original of the non-negotiable is typically issued (instead of the usual set of three in a conventional BL). Since it is non-negotiable, the seaway bill is not to be consigned to order since it may not be transferred by endorsement.

Air shipment versus ocean shipment

1. International air shipments are subject to different law from maritime movements.
2. Therefore, air waybills are non-negotiable and the exporter cannot retain title to the goods shipped by air.
3. In practice, it may be possible for the buyer to simply present proper identification to pick up the merchandise without presenting the air waybill.

Summary

A Bill of Lading is:

1. A receipt for the goods
2. A contract for transportation between the shipper and the ocean carrier
3. A document of title (if negotiable), however, may only be transferred if negotiable

DRAFT (bill of exchange)

Definition

- A draft is simply the formal demand for payment.
- Documents usually accompany the draft under a letter of credit.
- The exporter prepares the draft and signs it. Depending on the terms of the letter of credit, the draft can be drawn on (demand payment from) the bank of the buyer. The draft is most commonly drawn on the issuing bank under a letter of credit.

Two types of drafts:

Sight: Payable immediately upon the presentation of conforming documents.

Time: (Usance) payable at a stipulated future date, i.e., 90 days from the invoice or bill of lading date.

See below for instructions on how to prepare a draft.

How to prepare a draft

Exhibit 3.0: Draft form

HOW TO PREPARE A DRAFT

DRAFT	\$	(1)	(2)	, 20XX
(DRAFT WILL BE AT SIGHT OR DAYS AFTER) (3)				
PAY TO THE ORDER OF		(4)		
		(5)	DOLLARS	
VALUE RECEIVED AND CHARGE THE SAME TO ACCOUNT OF (6)				
TO	(7)	(8)	(10)	
NO.	(9)	(name and title) Authorized Signature		

IMPORTANT NOTE:

If your company is payee of the draft (item 4), be sure to endorse the back of the draft with your company's name and an authorized signature and title of the person endorsing before presenting the draft to the drawee.

1. Amount of drawing, in figures.
2. Date of drawing, usually same as your invoice date.
3. Tenor of draft – if payable at sight, use draft titled "sight." If payable at a future date, use draft that contains the words "day after" or "days from" either term is applied in the same manner. State number of days in the first blank (e.g.: 30, 60, 90) and from what date (e.g. from sight or a specific date such as the date of the bill of lading) in the second blank.
4. Your company – type your full name here.
5. Amount of drawing, in words.
6. This is an archaic clause appearing on many draft formats and need not be completed, the space after it can be used to insert other information if so required. If draft is being used with a Documentary Collection, leave this

- space blank. If draft is being drawn under an LC, refer to the LC for instruction for what to type here. For example, LC might say, "Drafts must indicate that they are drawn under irrevocable LC No. 1111...".
7. Drawee of draft – if draft is to be presented with a Documentary Collection; drawee should be your buyer. You cannot draw a collection draft on a bank without the bank's prior approval. If draft is to be presented under an LC, refer to the LC for name of drawee. LC drafts are often drawn on banks.
8. Full name of your company.
9. Draft's number, used for your records – probably same as your invoice number.
10. Authorized signature of your company.

Common discrepancies in documents

Incomplete or incorrect drafts

- Special wording required by credit omitted or incorrect
- Drawee incorrect
- Title of signer or endorser omitted
- Acceptance draft drawn “without recourse” when not specifically permitted
- Tenor not shown exactly as called for in the letter of credit
- Draft altered

Irregular invoices

- Merchandise description not exactly the same as that in the letter of credit
- Deviation in buyer’s name from that in the letter of credit
- Not issued by beneficiary
- Insufficient copies
- Amount differs from draft
- Excess drawing or excess shipment
- Not certified, notarized or visaed where this is required by the letter of credit
- Prices not as specified in the letter of credit
- Omission of the price basis (i.e., “FOB”, “FAS” or “CIF”) specified in the letter of credit
- Charges included that are not permitted under the terms of sale specified in the LC
- Extensions of prices incorrect
- Type of packing, weight or marks omitted from the invoice
- Marks and numbers are not consistent with all other documents
- Weights differ from those shown in other documents
- Gross weight shown for net when not expressly permitted by letter of credit terms
- Order and license numbers omitted when required by letter of credit
- Merchandise described as “used,” “second hand,” etc. when not allowed by the letter of credit
- Net value in excess of credit amount
- Omission of statements required by the letter of credit
- Lack of signature when letter of credit so specifies

Insurance shortcomings

When insurance does not cover all the specific risks called for by the credit or when a certificate is presented in cases where a policy is required, the letter of credit conditions have not been met.

Other common difficulties with insurance are:

- The amount is insufficient (unless otherwise stated, the insurance coverage should equal 110% of the invoice value including the insurance premium and all charges)
- Merchandise not properly described (particularly as to packing)
- Marks and numbers not shown
- The date when the insurance became effective is later than the date of the bills of lading
- A complete set of insurance papers is not presented
- Corrections in the papers are not authenticated
- Carrying steamer’s name not indicated
- Not countersigned or endorsed
- Not in negotiable form (unless otherwise authorized)
- Transshipments not covered when bills of lading indicated transshipment will take place
- Broker’s cover notes are presented when not specifically permitted
- “On deck” not mentioned when bills of lading so claused
- Not in the same currency as the credit

Bill of lading problems

When a full set of bills of lading are not presented, when they show changes not initialed by the signer of the bill of lading, or when they are not endorsed as required, the bank cannot accept them unless specifically authorized by the terms of the credit. It is essential to note that the bill of lading must show that goods are loaded on board (unless waived by credit terms) and that on board notations must be dated and signed or initialed by the carrier or agent.

Many letters of credit require bills of lading through place of shipment and/or place of receipt is inland and a second method of transportation is used to pick up and/or deliver the goods. In these instances a multimodal transport document should be required in the LC in lieu of an Ocean Bill of Lading.

Other frequent deviations from credit terms include:

- The goods are not properly consigned
- Bills of Lading made out “straight,” direct to consignee (“Consigned to ABC Co.”) are not the same as bills of lading made out to order (“Consigned to order of ABC Co.”)
- Bills of lading consigned to the order of the shipper and endorsed to the order of the issuing bank are not the same as bills of lading consigned to the order of the issuing bank
- There is no indication that the freight has been prepaid or that the merchandise is on board
- The date of the bill of lading is later than the shipping date specified in the letter of credit
- The documents are not presented within the time frame permitted by the period of presentation specified in the LC.
- Merchandise other than that specified in the credit included
- Non-negotiable copies not presented when required
- Shipment has been made from a port or to a destination other than the stipulated one
- Notations indicate that the condition or packing of the merchandise is not in good order
- Forwarder’s bills of lading are presented when they are not specifically authorized
- Shipment effected “on deck” when not specifically authorized; (If “on deck” shipment is made when so authorized, insurance, if required, must cover “on deck” shipment)

Frequent problem areas of letters of credit

Dates

- **Expiration** — Documents must be presented *in order* no later than the expiration date unless that date falls on a day that the bank is normally closed for business, in which case, documents will be accepted on the next business day. Closings as the result of riots or acts of God are not reasons for the bank upon resumption of its business to accept or honor or negotiate under a letter of credit that expired during such interruption of its business (Articles 29 and 36, UCP 600)

- **Insurance policy/certification date** — Must be dated or establish coverage no later than the loading on board, dispatch, or taking-in-charge date (Article 28, UCP 600)
- **Latest date for shipment** — Transport documents dated later than the stipulated date for shipment appearing in the credit, or dated after expiration date will be rejected (Article 29, UCP 600)
- **Period of presentation** — Sometimes referred to “Stale or Stale-Dated Documents,” however the use of this term is discouraged by the ICC and, if used, is interpreted to mean that documents may be presented beyond the period of presentation provided the documents are presented within the credit validity

Transport documents presented later than the latest date for presentation stipulated in the credit or in the absence of a specified date, 21 days, will be rejected unless that date falls on a day when the bank is normally closed, in which case, it moves to the next business day (Article 14, UCP 600)

Amounts

- Drawings may not exceed the credit amount no matter how insignificant the sum unless authorized by terms of the credit
- Use of the terms “about” or “approximate” implies 10% more or less; however, if used in specifying the amount of the credit, it does not affect quantities, and conversely used in reference to quantities, it does not affect amount of the credit (Article 30, UCP 600)

Quantities

- If a quantity is expressed in other than a stated number of items or packing units, a tolerance of 5% more or less is allowed. This does not have any effect on the amount available under the credit unless specifically noted (Article 30, UCP 600)

Letter of credit variations

- **Assignment of proceeds**
- **Transferrable letter of credit**
- **Silent confirmation**

Assignment of proceeds

Unlike a transfer of a letter of credit, which is governed by the desire of the applicant and issuing and advising banks, assignment of proceeds is at the discretion of the beneficiary.

Under Article 39, UCP 600, the beneficiary is entitled to assign any proceeds to which he may be, or may become, entitled under such credit, in accordance with the provisions of the applicable laws.

In order to assign any proceeds from a letter of credit drawing, the beneficiary must apply to the advising bank and agree, among other things, that the assignment is irrevocable.

The bank that assigns the proceeds must authenticate the request, acknowledge the assignment to the assignee, mark the assignment on the original credit, and notate their records.

While this document assures that the original beneficiary will not receive more than his share of a drawing, it does not guarantee payment unless documents are presented in accordance with terms and conditions and if the LC is unconfirmed, funds are received from the issuing bank.

Unless the assignee has absolute confidence in the beneficiary's performance, assignment of proceeds is a weak instrument at best. Assignees must be viable to receive payments according to OFAC and other governmental sanction lists.

The following forms and cover letter should be used for an assignment of proceeds:

Exhibit 3.1: Instruction letter — assignment of proceeds



Date

To Whom It May Concern:

Attached are forms for an Assignment of Proceeds which you have requested.

Please have the form completed in triplicate with an original signature on each of the three copies by an individual authorized to sign for and on behalf of your firm.

Once this is completed, please have your bank verify the authenticity of said signature on each copy — with an original signature on each.

The completed application must be returned to our Letter of Credit Department accompanied by the original credit (for our endorsement thereon) and any and all amendments.

You must also enclose your certified check issued in our favor (or you may authorize us to debit your account — if this is the case, please so state on the applications you are preparing).

Should you have any questions, please call our Letter of Credit Department (1-800-776-3862).

Sincerely,

Exhibit 3.2: Application and request for assignment of proceeds



ASSIGNMENT OF PROCEEDS APPLICATION

Re: Letter of Credit No. _____	Date: _____
Advice No. _____	
Issued By _____	

To whom it may concern:

We hereby authorize and direct you to pay the proceeds of each presentation for a drawing made by us, under the above-described Letter of Credit, if and when, such drawing is paid by you:

To: _____

whose address is:

(Herein called the "Designated Payee")

Each assignment hereunder is to be paid as follows:

- 1) _____% on a pro rate basis for each drawing not exceeding an aggregate to of \$ _____
- OR
- 2) \$ _____;
- OR
- 3) If payment is made on some other basis, the payment to the Designated Payee will be [INSERT DESCRIPTION, E.G. for specific merchandise described in the LC or purchase order listed in the LC] _____.

Payments of any residual amounts are to be made to us.

This Instrument, and your acceptance thereof, is not a transfer of the Credit, nor does it give the Designated Payee any rights or interest therein and does not affect our or your right to agree to any amendments thereto, the cancellation thereof, or any substitution thereof.

We warrant to you that we have not, and will not, assign or take any other act that has the effect of assigning the right to receive the whole or any part of such proceeds for this Letter of Credit or to give any other authorization or direction to make any payment thereof to any other third party.

We understand that in the event partial shipments are made, any payments made as a result thereof will be paid first to the Designated Payee until this assignment has been fully satisfied and thereafter any subsequent amounts paid will be remitted to us.



Wells Fargo Bank, N.A.

SEE CONTINUATION

... proceed otherwise in a separate writing, we agree that payment to the Designated Payee of applicable banking charges; all applicable banking charges being for our account. If payment has been paid in full, if no further payments are made under the Letter of Credit for which payment is due, we will be responsible for paying such charges.

... Designated Payee of your acceptance of this instrument and in consideration thereof, we agree to be bound and will stay in force for any drawing under this Letter of Credit for which payment is due, N.A., unless the Designated Payee returns Wells Fargo's original assignment of the Letter of Credit to us with the Designated Payee's written consent to its cancellation and both are received by us under the assignment that you may make.

... AND WARRANT TO YOU THAT WE HAVE THE POWER TO ENTER INTO THIS ASSIGNMENT AND TO PERFORM ITS TERMS; FURTHER, THIS ASSIGNMENT HAS BEEN DULY REVIEWED BY US AND IS ENFORCEABLE IN ACCORDANCE WITH ITS TERMS AGAINST US.

We agree to indemnify you and hold you harmless for any cost, liability or expense to which you may become subject in connection with this assignment including without limitation, costs of legal counsel.

We transmit to you herewith the Credit (including all amendments, if any) and request you to note thereon the foregoing authorization and direction. We also enclose an official or certified check OR authorize you to debit our Account Number _____ to cover your charges. In the event of an assignment of the full Letter of Credit value we understand that you will request us to, and we will immediately, remit an additional amount to cover anticipated future charges under the Credit, which may be refunded to us in part, if not fully utilized.

Very truly yours,

Signature: _____

Company Name (Beneficiary): _____

By:

COMPANY'S DULY Authorized Signature: _____

Name and Title of Signer: _____

Phone Number: _____

Transferring letters of credit

A transferrable letter of credit is one that can be transferred by the original (first) beneficiary to one or more second beneficiaries (Article 38, UCP600). It is normally used when the first beneficiary is a middle man only, and not involved with manufacturing the merchandise. Transferrable letters of credit are a tool used by trading companies, or other third parties, to facilitate a trade transaction.

This type of credit can only be transferred once. For example, the second beneficiary (or manufacturer) cannot transfer to a third beneficiary. The transfer must be effected in accordance with the terms of the original credit, subject to the following exceptions:

- The name and address of the first beneficiary may be substituted for that of the applicant for the credit
- The amount of the credit and any unit price may be reduced; this would enable the first beneficiary to allow for his profit
- The period of validity and the period for shipment may be shortened

It should be noted that a credit would only be issued as transferrable upon the specific instructions of the applicant. This would mean that both the credit application form and the credit itself must clearly state that the credit is transferrable. The credit must also nominate the transferring bank.

The transfer is effected upon the written instructions of the first beneficiary by the bank where the credit is available. If the letter of credit is available with “any bank,” then Wells Fargo will require that Wells Fargo be named the nominated transferring bank in the letter of credit.

Thus, it permits a credit to be arranged by the first beneficiary in favor of one or more beneficiaries, while allowing the first beneficiary to substitute invoices and other documents for those presented by the second beneficiary. The bank must then correlate and check both invoices and all documentation to ensure that all documents comply with the original terms and conditions of the credit. Transferees must be viable to receive payment according to OFAC and other governmental sanction lists.

Exhibit 3.3: Guidelines for transferring letters of credit

1. The original letter of credit must specifically state that it is transferrable

2. The transferred letter of credit can differ from the original in the following aspects only:

- a. Amount of the letter of credit (can **only** be reduced)
 - b. Amount of merchandise (can **only** be reduced)
 - c. Beneficiary's name and address
 - d. Shipment date (can **only** be earlier)
 - e. Expiration date (can **only** be earlier)
 - f. Presentation date (can **only** be earlier)
-

3. The original letter of credit can be transferred in its entirety, **only once** to one or more second beneficiaries.

4. If the partial transfer is requested, the original letter of credit must allow for partial shipments.

5. If the original letter of credit calls for either of the following, a partial transfer **cannot** be effected:

- a. Installment shipments
 - b. Shipment schedules
-

6. Wells Fargo Bank, N.A. must be prepared and able to present the transferee's documents under the original letter of credit to obtain payment in the event the original beneficiary does not substitute invoices or otherwise draw under the original letter of credit.

The following exhibits outline the steps taken in transferring a letter, both before and after shipment of the goods:

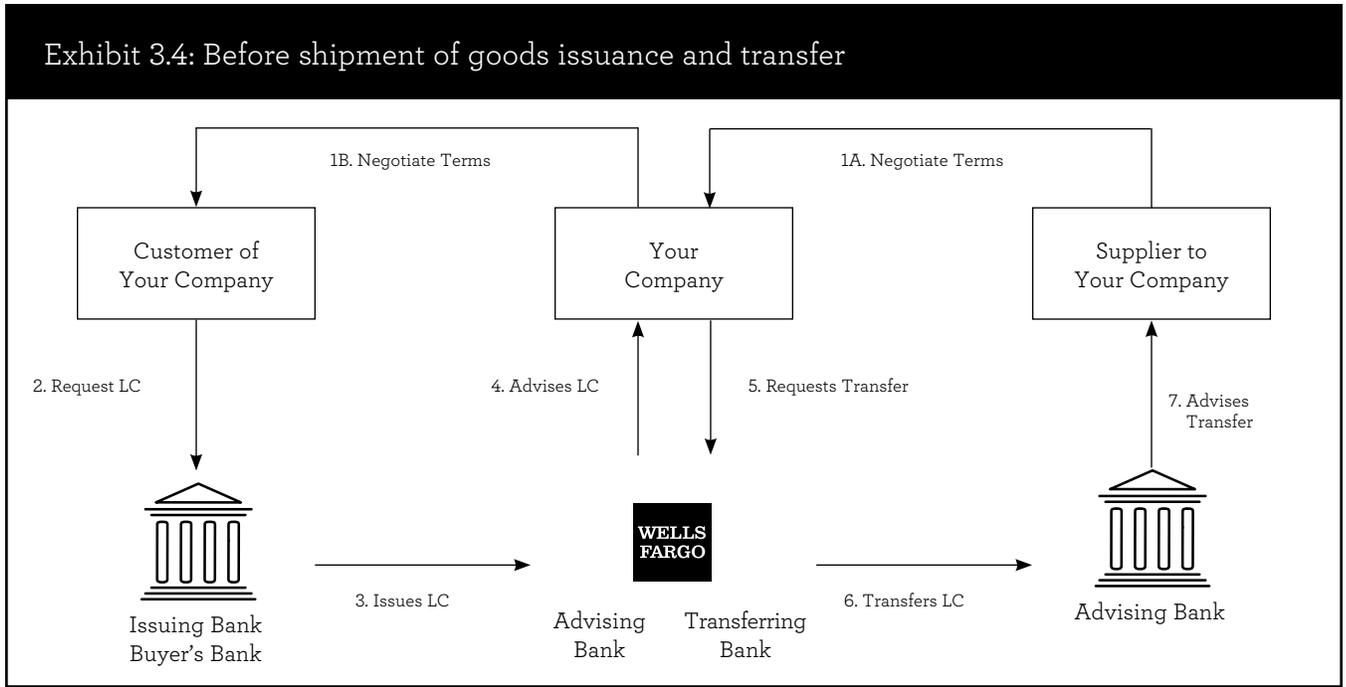
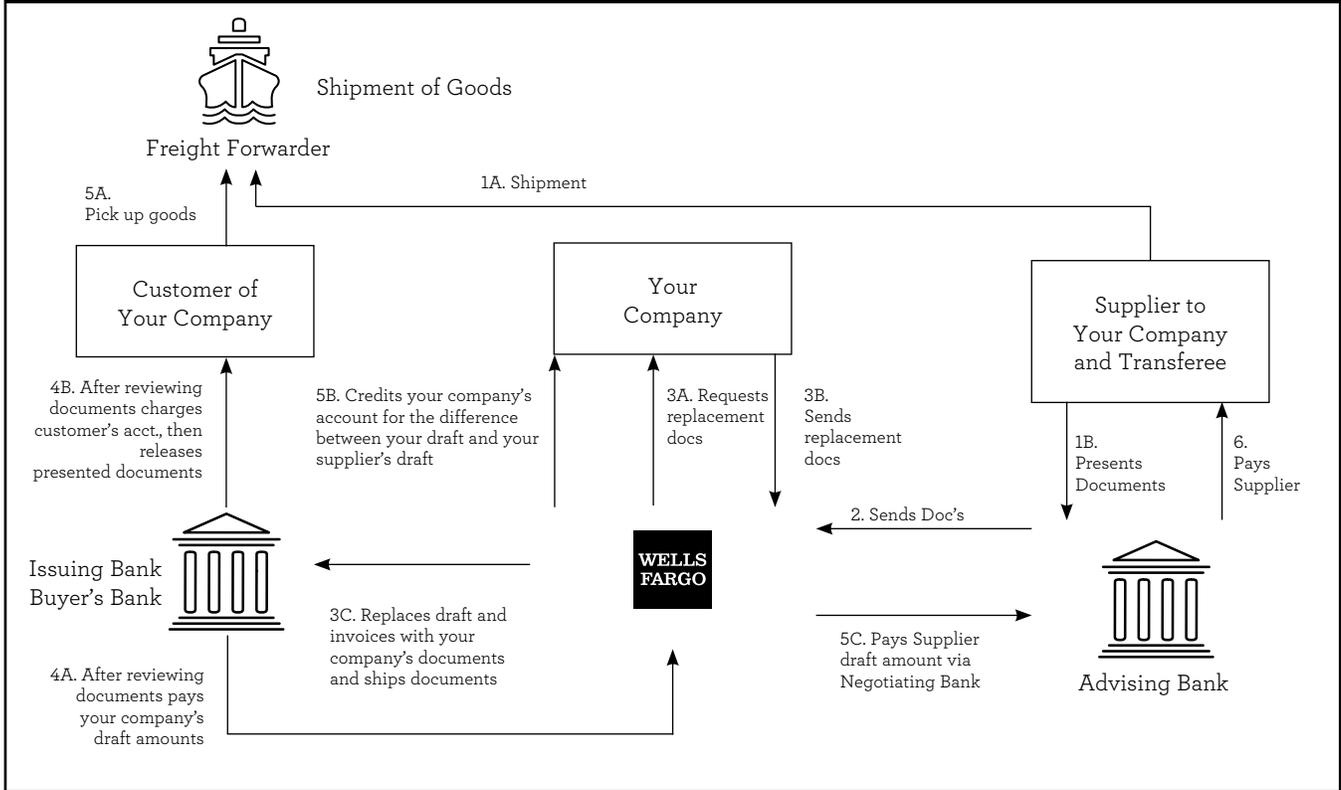


Exhibit 3.5: Shipment of goods on a transferred LC
 Shipment and negotiation of documents and movements of funds



The following forms will be used for either a partial transfer or when transferring the letter of credit in its entirety.

Exhibit 3.6: Application for transfer



Application for Transfer

WELLS FARGO BANK, NATIONAL ASSOCIATION
INTERNATIONAL TRADE OPERATIONS

RE: LETTER OF CREDIT NO: _____ ADVICE NO.: _____

ISSUED BY: _____

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY REQUEST IRREVOCABLE TRANSFER OF THE ABOVE REFERENCED CREDIT TO:

NAME OF TRANSFEREE		
ADDRESS:	PHONE:	
	FAX:	

AND HEREBY AGREES THAT ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY ARE TRANSFERRED FOR DRAWING UP TO BUT NOT EXCEEDING A SUM OF \$ _____ UNDER THE ABOVE CREDIT. SUBJECT TO THE SAME TERMS AND CONDITIONS WITH EXCEPTION OF THE FOLLOWING:

1. QUANTITY OF MERCHANDISE		
2. UNIT PRICE (IF APPLICABLE):	3. LATEST SHIP DATE	
4. PRESENTATION PERIOD _____ DAYS	5. EXPIRY DATE:	
6. INSURANCE FOR _____ OF INVOICE AMOUNT (IF APPLICABLE):		
7. RETAIN RIGHTS TO REFUSE TO ADVISE AMENDMENT		
(ONLY RETAIN RIGHTS TO REFUSE TO ADVISE AMENDMENTS FOR AMOUNTS AND DATES OF SHIPMENT AND EXPIRATION)		
8. WE WILL <input type="checkbox"/> WILL NOT <input type="checkbox"/> SUBSTITUTE DRAFTS		
9. OUR NAME (THE UNDERSIGNED BENEFICIARY) IS TO BE SUBSTITUTED FOR THAT OF THE LC APPLICANT:		
10. PLEASE ADVISE TRANSFER THROUGH		

Wells Fargo Bank, N.A.

This transfer is subject to the provisions of the versions of the Uniform Customs and Practices for Documentary Credits, (as amended, revised and updated from the time to time) published by the International Chamber of Commerce to which the underlying letter of credit transaction is subject.

In a full transfer, all rights of the undersigned beneficiary in such letter of credit and in any drafts drawn thereunder are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof. In a partial transfer of the credit, if the undersigned beneficiary has herein retained: (i) the full right to refuse to advise amendments to any transferee, then any amendments hereafter proposed must be first advised to the undersigned beneficiary, and if the undersigned beneficiary consents and instructs you to do so, it shall also be advised to the transferee for action thereon; (ii) the partial right to refuse to advise amendments to any transferee then only those amendments hereafter proposed pertaining to amounts and dates of shipment and to expiration dates shall be first advised to the undersigned beneficiary, and if the undersigned beneficiary consents and instructs you to do so, such proposed amendments will be advised to the transferee for action thereon; in such partial retention of rights, all other amendments shall be advised to the transferee. The undersigned beneficiary understands and agrees that: (a) in either a full or partial transfer, substitution of drafts or invoices in an amount lower than the invoice submitted by the transferee will not be permitted and (b) in a 100% transfer, substitution of drafts or invoices in an amount higher than the draft or invoice submitted by the transferee will not be permitted.

The undersigned beneficiary agrees to deliver to you on first demand (1) if drafts are required, with respect to sight letters of credit, its draft in an amount equal to 100% of the drawing authorized and with respect to usance letters of credit, its draft in an amount equal to the difference between the amount of the relative drawing authorized and the amount of the draft drawn by the transferee, so presented or such other arrangement to which bank may agree; and (2) its commercial invoice(s) to be substituted for the commercial invoice(s) presented to you with the draft drawn by the transferee. In each case, you are requested to deliver to the undersigned beneficiary your payment (net of fees and charges) for the pro rata share of the drawing of the undersigned beneficiary as described above provided, of course, that our draft, invoice(s) and/or other drawing documents conform with the conditions of the credit.

Should the undersigned beneficiary fail to deliver to you its draft and/or commercial invoice(s) as above provided, you are hereby authorized to forward to the issuing bank or, as instructed by the party at whose request you acted in the letter of credit transaction, the commercial invoice(s) and other relative documents accompanying the draft, if any, drawn by the transferee. In any such case, you shall have no responsibility to make payment to the undersigned beneficiary of the amount referred to above and you shall have no other responsibility to the undersigned beneficiary.

... until you notify the transferee thereof, and no re-transferred. The undersigned agrees to expense of any kind which may be incurred as a direct result and agree to pay you in full on demand for any

... THAT WE HAVE THE POWER TO ENTER INTO SUCH TRANSFER; FURTHER, THIS TRANSFER HAS BEEN TAKEN AND IS ENFORCEABLE IN FULL.

... for any cost, liability or expense to which you may be subjected, including without limitation, costs of legal counsel.

We are forwarding the original credit to you for your use in future negotiations under this letter of credit. Kindly notify the transferee in such form as you deem advisable of the terms and conditions of the credit as transferred. Please return to us a copy of your notification to the transferee. In payment of your transfer commission as set forth below, plus a \$100.00 communication fee for telex, courier or SWIFT.

(FEE: ¼% - MIN. \$250 PLUS \$100.00 communication fee)

WE ENCLOSE AN OFFICIAL CHECK OR CERTIFIED CHECK IN THE AMOUNT OF \$ _____.

YOU ARE AUTHORIZED TO DEBIT OUR WELLS FARGO ACCOUNT NO. _____ FOR \$ _____.

BENEFICIARY CONTACT INFORMATION: PHONE: _____ EMAIL: _____

In addition thereto, we agree to pay you on demand any expenses (in addition to the communication fee) that may be incurred in connection with this transfer.

Very Truly Yours,

☒

COMPANY NAME (BENEFICIARY)	
AUTHORIZED SIGNATURE	
NAME & TITLE OF SIGNER	☐

NOTE: APPLICATIONS WILL NOT BE PROCESSED UNLESS THEY HAVE BEEN PROPERLY AND FULLY COMPLETED. BLANK OR OMITTED INFORMATION MAY RESULT IN A DELAY OF PROCESSING.

NOTE: DUE TO APPLICABLE LAWS AND REGULATIONS, WE MAY BE PROHIBITED FROM TRANSFERRING TO CERTAIN COUNTRIES AND PARTIES AND WE EXPRESSLY RESERVE THE RIGHT NOT TO TRANSFER FOR THIS OR ANY OTHER REASON UNDER THE UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS ARTICLE 37 TITLED TRANSFERABLE CREDITS.

Silent confirmations

A “silent confirmation” refers to an agreement between the beneficiary and the advising bank wherein at the request of the beneficiary, the advising bank will undertake to pay a letter of credit that the issuing bank has not requested confirmation be added. Since the bank has not been authorized to confirm by the issuer, it may not rely on the rules in UCP600, applicable to the confirming bank’s role and responsibilities, nor may it rely on the issuing bank’s obligation with respect to a confirming bank. The silent confirmation is a misnomer since the “confirming bank” in a silent confirmation is not recognized under UCP; in actuality, the obligation of the bank is one that commits to purchase, and is entirely dependent on the written agreement between the beneficiary and bank.

Methods of payment:

Letter of credit collection:

The Letter of Credit Collection is simply a tracing service to follow-up and advise the beneficiary of status of presentations made at another domestic negotiating bank. Tracing is performed until payment is received.

If a letter of credit is received and is restricted to negotiation at another banks counters (other than Wells Fargo), the same collection form used for Direct Collections can be used. The documents would be prepared per the LC terms. The Direct Collection form would be used checking off the box for Letter of Credit Collections. The form would be placed on top of the documents and sent directly to

Exhibit 3.7: Direct Collections form

- 1 Complete name and address of the Wells Fargo foreign Collecting bank: a Wells Fargo Correspondent or Drawee bank.
- 3 Your reference number.
- 4 Date you are sending out documents.
- 7 Your complete company name and address.
- 9 Select the appropriate collection type. If you select Letter of Credit Collection, please complete the information requested.
- 10 Select the processing procedures you desire by placing an “X” in the appropriate box(es).
- 15 Written amount MUST agree with #6.
- 16 Complete name and address of foreign Drawee (Company).

The form is a Wells Fargo Direct Collections form. It includes fields for 'SEND TO' (1), 'DATE' (2), 'DRAWERS / BENEFICIARY'S REFERENCE NO.' (3), 'DATE OF DRAFT' (4), 'TENOR' (5), 'AMOUNT' (6), 'DRAWER / BENEFICIARY AND ADDRESS' (7), and 'DRAWEE / APPLICANT AND ADDRESS' (8). It has checkboxes for 'DIRECT COLLECTION', 'LETTER OF CREDIT COLLECTION', and 'OPEN ACCOUNT TERMS'. Below these are checkboxes for various processing options (9-10) such as 'Deliver documents against payment', 'Waive charges if refused', and 'Protest for non payment'. There is a table for 'DOCUMENTS ENCLOSED' (12) with columns for ORIGINALS, DUPLICATES, and various document types. It also includes 'OTHER INSTRUCTIONS' (13), 'SHIP FROM' and 'SHIP TO' fields, and a signature line for the drawer/beneficiary (14, 17). At the bottom, it has 'AMOUNT' (15), 'AT' (16), and 'PAY TO THE ORDER OF' (17) fields, along with a 'BANK COPY' section and a 'NON NEGOTIABLE' stamp.

- 2 Use the date that the draft is prepared.
- 5 Indicate the terms and specific period this instrument is valid. For example, Sight or Time (e.g., 90 days from bill of lading date).
- 6 Currency code and amount of transaction covered by draft.
- 8 Complete name and address of foreign Drawee (company/ buyer).
- 11 Type your account number.
- 12 Indicate the number of each type of document contained in the complete set.
- 13 List any other specific payment instructions, e.g.:
 - a) Interest or other fees to be charged to the customer.
 - b) Discount items.
- 17 Name of your company.
- 14 Signature of authorized individual.

the negotiating bank with a copy to Wells Fargo Bank. Wells Fargo's Letter of Credit Collection group will phone trace with the negotiating bank providing updates to the beneficiary on the document negotiation. The negotiating bank will then make payment to the beneficiary's account with Wells Fargo.

The benefits to the exporter by using this service are several. Wells Fargo has experienced staff dedicated to this process, facilitating prompt contact with the proper resources to obtain current transaction status information. Additionally, the high volume of transactions handled makes Wells Fargo well recognized by most U.S. negotiating banks, and stimulates greater cooperation than may be the case where an exporter calls a negotiating bank directly for a one-time transaction. Most importantly, the exporter receives the benefits of one-stop shopping, gaining access to the status of all of its letter of credit transactions from one source — Wells Fargo Bank.

Cash in advance

In certain circumstances, the credit risk of the overseas buyer, or the political or economic conditions of the foreign country are so forbidding that the exporter may not wish to extend any type of credit. He or she may request payment in cash, in whole or in part, in advance of shipment. While this protects the exporter, there is still some risk: for example, waiting for the importer's check to be cleared and paid. Exchange regulations in some countries prohibit purchases on a cash-in-advance basis. The volume of international trade conducted this way is small in relation to the total.

Standby letters of credit

Standby letters of credit

While a commercial letter of credit is used to effect payment for goods and services, the standby letter of credit serves as an assurance that the applicant (the issuing bank's customer) will fulfill his obligations under a contract. In other words, the beneficiary draws on a standby ONLY when the applicant fails to meet his obligations. The Comptroller of the Currency defines standbys as "any" letter of credit, or similar arrangement, however named or described, which represents an obligation to the beneficiary on the part of the issuer:

- To repay money borrowed or advanced to or for the account of the account party, OR
- To make payment on account of an indebtedness undertaken by the account party, OR

- To make payment on account of any default by the account party in the performance of any obligation.

In the first case, the bank issuing the standby credit agrees to repay the funds borrowed or advanced in the event the applicant fails to do so. For example, a U.S. bank which finances the local subsidiary of a foreign corporation may require a standby payable to the bank from the foreign corporation's bank to support the loan. In the event the local subsidiary fails to repay the loan, the U.S. bank is able to draw on the standby to recover unpaid loans.

Standbys may also be used to assure payment of invoices for sales made an open account. The buyer has his bank issue a standby to the seller with the provisions that the standby may be drawn on if outstanding bills are not paid within a specified period of time. If the buyer fails to pay when the original invoice is due, the seller can draw on the standby, usually by representing a draft, copies of the unpaid invoices, and a statement certifying that the invoices are unpaid.

A third common use for standbys is to be used as bid or performance bonds. The company bidding on a contract to provide merchandise or services may be required to post a bond (the standby), which is forfeited (drawn upon) if the company fails to fulfill the terms of the bid award.

Standbys are also used to assure performance under a contract. For instance, standby credits may be offered by building contractors to assure compliance with local, state or federal regulations and building codes. This type of standby, commonly called a "performance bond" may also be used to assure timely delivery of merchandise, quality of goods or services provided.

Both bid and performance bond standbys are usually payable upon presentation of a draft accompanied by a statement indicating that the applicant has failed to perform according to the underlying bid award, contract or agreement.

The following are sample standby letter of credit forms issued by Wells Fargo:

Exhibit 3.8: Standby letter of credit — advance payment



Wells Fargo Bank, N.A.
U. S. TRADE SERVICES – Standby Letters of Credit
MAC XXXXXXX
[INSERT ADDRESS]
[INSERT ADDRESS]
[INSERT PHONE]
[INSERT EMAIL]

SAMPLE – ADVANCE PAYMENT

IRREVOCABLE STANDBY LETTER OF CREDIT
NUMBER _____
Issue Date: _____

<p>BENEFICIARY: Beneficiary Name Address City, State Zip Attention: _____</p>	<p>APPLICANT: Applicant Name Address City, State Zip</p>
------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------

LETTER OF CREDIT ISSUE AMOUNT _____ EXPIRY DATE: _____

Ladies and Gentlemen:

At the request and for the account of the above referenced applicant, we hereby issue our Irrevocable Standby Letter of Credit (the "Wells Credit") in your favor in the amount of **[Insert Amount in Words]** **[US\$ Insert Amount in Numbers]** available with us at our above office by payment against presentation of the following documents:

1. A draft drawn on us at sight marked "Drawn under Wells Fargo Bank, N.A. Standby Letter of Credit No. _____."
2. The original of this Standby Letter of Credit and any amendments thereto.
3. Beneficiary's signed and dated statement worded as follows (with the instructions in brackets therein compiled with):
 "The undersigned, an authorized representative of the beneficiary of Wells Fargo Bank Letter of Credit No. _____, hereby certifies that the amount of the draft accompanying this statement represents the amount due to beneficiary pursuant to applicant's failure to fulfill its obligation under the terms and conditions of purchase order/contract number **[Insert PO/Contract]**."
4. Beneficiary's signed and dated statement worded as follows (with the instructions in brackets therein compiled with):
 "The undersigned, an authorized representative of the beneficiary of Wells Fargo Bank Letter of Credit No. _____, hereby certifies that advance payment in the amount of the draft accompanying this statement has been made to **[Insert Applicant]** account number **[Insert Account Number]** maintained with Wells Fargo Bank, N.A. on **[Insert Date]**."

No payment(s) under this credit will be honored until we are able to verify the receipt of advance payment in the amount of USD **[Insert Amount]**.

Beneficiary may present Documentary Requirement Number 4 as soon as advance payment is effected. Upon our verification of receipt of such funds, we will amend this Letter of Credit accordingly.

In the event of partial drawings where multiple drawings are not prohibited, Wells Fargo Bank, N.A. shall endorse the original of this Letter of Credit and return it to the beneficiary.

If any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions as that of the beneficiary's without any further validation.

We hereby engage with you that each draft drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored if presented together with the documents specified in this Letter of Credit at our office located at **[Insert Presentation Location]** on or before the above stated expiry date, or any extended expiry date if applicable.



Together we'll go far

edit sets forth in full the terms of our undertaking. This undertaking is independent of , amended, amplified or incorporated by reference to any document, contract or than the stipulated ICC rules and governing laws.

herein, this Standby Letter of Credit is subject to The International Standby Practice 1998, International Chamber of Commerce Publication No. 590.

Very truly yours
WELLS FARGO BANK, N.A.

BY: _____
 (AUTHORIZED SIGNATURE)

The original of this Letter of Credit contains an embossed seal over the Authorized Signature.

Please direct any written correspondence or inquires regarding this Letter of Credit, always quoting our reference number to Wells Fargo Bank, N.A., **[Insert Address]**

All phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals at **[Insert phone number]**.

Exhibit 3.9: Standby letter of credit – payment guarantee



Wells Fargo Bank, N.A.
 U. S. TRADE SERVICES – Standby Letters of Credit
 MAC XXXXXXXX
 [INSERT ADDRESS]
 [INSERT ADDRESS]
 [INSERT PHONE]
 [INSERT EMAIL]

SAMPLE – PAYMENT GUARANTEE

IRREVOCABLE STANDBY LETTER OF CREDIT
 NUMBER _____
 Issue Date: _____

<p>BENEFICIARY: Beneficiary Name _____ Address _____ City, State Zip _____ Attention: _____</p>	<p>APPLICANT: Applicant Name _____ Address _____ City, State Zip _____</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------

LETTER OF CREDIT ISSUE AMOUNT _____ EXPIRY DATE: _____

Ladies and Gentlemen:

At the request and for the account of the above referenced applicant, we hereby issue our Irrevocable Standby Letter of Credit (the "Wells Credit") in your favor in the amount of **[Insert Amount in Words] [US\$ Insert Amount in Numbers]** available with us at our above office by payment against presentation of the following documents:

1. A draft drawn on us at sight marked "Drawn under Wells Fargo Bank, N.A. Standby Letter of Credit No. _____."
2. The original of this Standby Letter of Credit and any amendments thereto.
3. Beneficiary's signed and dated statement worded as follows (with the instructions in brackets therein complied with):

"The undersigned, an authorized representative of the beneficiary of Wells Fargo Bank Letter of Credit No. _____, hereby certifies that the amount of the draft accompanying this statement represents the amount due to beneficiary pursuant to applicant's failure to make payment within the agreed upon terms. Demand for payment has been made and the funds have not been forthcoming from them or any other source."

In the event of partial drawings where multiple drawings are not prohibited, Wells Fargo Bank, N.A. shall endorse the original of this Letter of Credit and return it to the beneficiary.

If any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions as that of the beneficiary's without any further validation.

We hereby engage with you that each draft drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored if presented together with the documents specified in this Letter of Credit at our office located at **[Insert Presentation Location]** on or before the above stated expiry date, or any extended expiry date if applicable.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking is independent of and shall not in any way be modified, amended, amplified or incorporated by reference to any document, contract or agreement referenced herein other than the stipulated ICC rules and governing laws.

Except as otherwise expressly stated herein, this Standby Letter of Credit is subject to The International Standby Practice 1998, International Chamber of Commerce Publication No. 590.

Very truly yours
WELLS FARGO BANK, N.A.

Together we'll go far



BY: _____
 (AUTHORIZED SIGNATURE)

The original of this Letter of Credit contains an embossed seal over the Authorized Signature.

Please direct any written correspondence or inquires regarding this Letter of Credit, always quoting our reference number to Wells Fargo Bank, N.A., **[Insert Address]**

All phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals at **[Insert phone number]**.

Exhibit 4.0: Standby letter of credit – performance



Wells Fargo Bank, N.A.
 U. S. TRADE SERVICES – Standby Letters of Credit
 MAC XXXXXXXX
 [INSERT ADDRESS]
 [INSERT ADDRESS]
 [INSERT PHONE]
 [INSERT EMAIL]

SAMPLE – PERFORMANCE
IRREVOCABLE STANDBY LETTER OF CREDIT
NUMBER _____
Issue Date: _____

BENEFICIARY:
 Beneficiary Name
 Address
 City, State Zip
 Attention: _____

APPLICANT:
 Applicant Name
 Address
 City, State Zip

LETTER OF CREDIT ISSUE AMOUNT _____

EXPIRY DATE: _____

Ladies and Gentlemen:

At the request and for the account of the above referenced applicant, we hereby issue our Irrevocable Standby Letter of Credit (the "Wells Credit") in your favor in the amount of **[Insert Amount in Words] [US\$ Insert Amount in Numbers]** available with us at our above office by payment against presentation of the following documents:

1. A draft drawn on us at sight marked "Drawn under Wells Fargo Bank, N.A. Standby Letter of Credit No. _____."
2. The original of this Standby Letter of Credit and any amendments thereto.
3. Beneficiary's signed and dated statement worded as follows (with the instructions in brackets therein compiled with):

"The undersigned, an authorized representative of the beneficiary of Wells Fargo Bank Letter of Credit No. _____, hereby certifies that the amount of the draft accompanying this statement represents the amount due to beneficiary pursuant to applicant's failure to perform in accordance with the terms and conditions of Contract Number **[Insert PO/Contract]** dated **[Insert Contract Date]**."

In the event of partial drawings where multiple drawings are not prohibited, Wells Fargo Bank, N.A. shall endorse the original of this Letter of Credit and return it to the beneficiary.

If any instructions accompanying a drawing under this Letter of Credit request that payment is to be made by transfer to an account with us or at another bank, we and/or such other bank may rely on an account number specified in such instructions as that of the beneficiary's without any further validation.

We hereby engage with you that each draft drawn under and in compliance with the terms and conditions of this Letter of Credit will be duly honored if presented together with the documents specified in this Letter of Credit at our office located at **[Insert Presentation Location]** on or before the above stated expiry date, or any extended expiry date if applicable.

This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking. This undertaking is independent of and shall not in any way be modified, amended, amplified or incorporated by reference to any document, contract or agreement referenced herein other than the stipulated ICC rules and governing laws.

Except as otherwise expressly stated herein, this Standby Letter of Credit is subject to The International Standby Practice 1998, International Chamber of Commerce Publication No. 590.

Very truly yours
WELLS FARGO BANK, N.A.

Together we'll go far



BY: _____
 (AUTHORIZED SIGNATURE)

The original of this Letter of Credit contains an embossed seal over the Authorized Signature.

Please direct any written correspondence or inquires regarding this Letter of Credit, always quoting our reference number to Wells Fargo Bank, N.A., **[Insert Address]**

All phone inquiries regarding this credit should be directed to our Standby Customer Connection Professionals at **[Insert phone number]**.

Bankers Acceptances

Bankers Acceptances

A Banker's Acceptance (BA) is a method of financing Wells Fargo may provide to its customers to support their short-term (six months or less) trade transactions. A Banker's Acceptance is a time draft drawn on, and accepted by, a bank. The bank, as drawee of the draft, indicates its acceptance of the obligation by stamping the word "accepted" on the face of the draft, dating and signing it. By accepting the draft, the bank signifies its commitment to pay the stated amount of the draft on a specified future date. The company for whom the draft is accepted (drawer) may have the draft held until maturity to collect the full amount, or may discount the acceptance and collect immediate payment, less applicable discount rate.

BAs typically arise out of one of the following situations:

1. Banker's Acceptance under a Letter of Credit —

Wells Fargo accepts a time draft drawn on itself by a beneficiary under a letter of credit, that specifies drafts are to be drawn on Wells Fargo. This type of BA is used when the applicant of the letter of credit (the buyer of goods) has been granted extended payment terms by the beneficiary (the seller of the goods) with the provision that a bank credit obligation be provided. By accepting the draft, Wells Fargo promises to pay the full draft amount to the beneficiary on the stated maturity date of the draft, unless it was previously discounted. An exporter or beneficiary can negotiate to extend terms to his buyer using a letter of credit that calls for payment at a future date (e.g., 90 days from sight, 60 days from BL, etc.) rather than at sight. These time drafts can be discounted if properly structured, and by building this cost into an all-in price, the exporter may be able to preserve its target profit margin. An example is given below that illustrates how using BAs can help make a sale.

Export letter of credit as a "sales tool"

Scenario 1:

- Payment terms at sight (open account)
- Invoice amount - \$1,000,000.00
- Local financing cost = 10% p.a.; term is 180 days (Brazil)
- \$1MM @ 10% x 180/360 = \$50,000.00
- Total financing cost to buyer = \$1,050,000.00

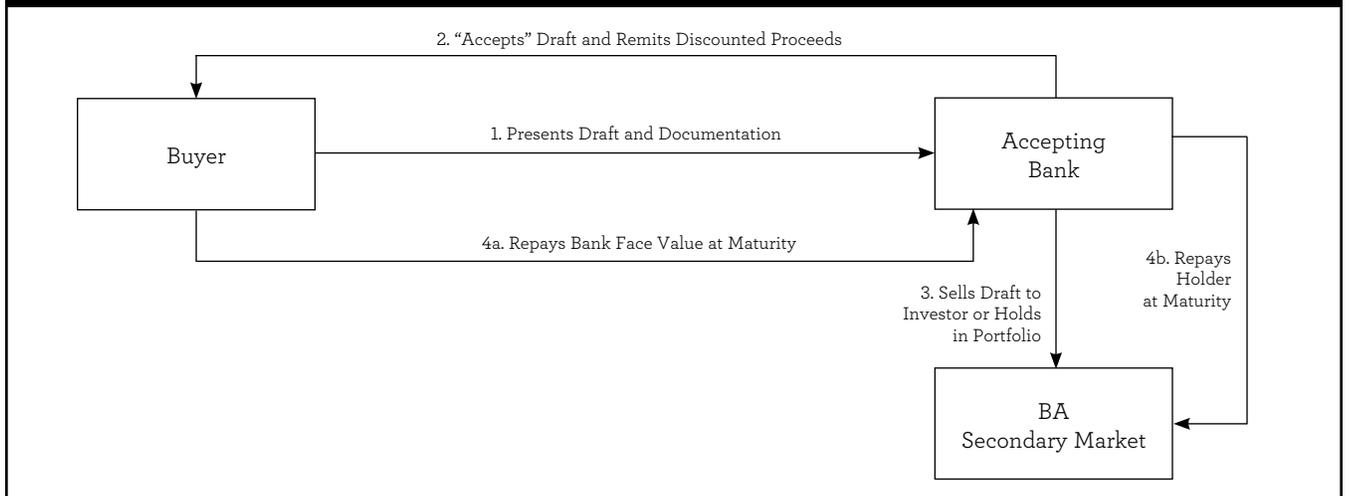
Scenario 2:

- Payment term is confirmed LC, 180 days from BL date
- LC fees (conf - .125%/qtr, exam - .125% flat and accept - 1.0% p.a.) = \$7,500.00
- Discount fees (5.5% p.a.) = \$27,500.00
- Total expenses rounded up = \$35,000.00
- Adjusted invoice price = \$1,035,000.00
- Financed cost to Buyer - Scenario 1 = \$1,050,000.00
- Cost to Buyer using LC - Scenario 2 = \$1,035,000.00

2. Clean/Prime Banker's Acceptances —

Wells Fargo accepts a time draft drawn on itself by one of its qualified borrowers. Wells Fargo discounts the draft. The total amount deducted from the proceeds is comprised of the acceptance commission and the discount charge. The discount charge is based on the discount rate in effect on that day, and is made up of the Bank's BA Discount Rate plus the borrower's acceptance commission. The borrower then receives the discounted proceeds from the transaction. The borrower repays Wells Fargo the face amount at maturity. This type of acceptance can occur anytime a qualified borrower has Fed-designated eligible transactions to finance. (See Exhibit 4.1 below for a diagram depicting the transaction flow of a clean banker's acceptance.)

Exhibit 4.1: Clean Banker's Acceptance



The accepting bank's funding mechanism and its benefit to you, the borrower.

A bank can choose to fund a discounted BA in two ways:

1. The bank can hold it in its portfolio and fund it as a traditional commercial loan,
– OR –
2. The bank can sell the draft to an investor in the secondary market.

Because an extremely active secondary market exists for BAs, most banks will fund the BA by selling it to an investor. By match funding it in this manner, the bank lends only its name, not its funds, to the financing.

BAs are referred to as “two-name paper” since they carry the obligation of the bank and the drawer or endorsers. Investors find them attractive investment vehicles since they are highly-liquid, provide an attractive yield and are considered relatively low-risk (based on the creditworthiness of the accepting bank). In addition, in the event of default, the investor's recourse extends to the accepting bank first and, in the event of the bank's default, to the drawer and the underlying transaction.

The rate at which the BA is sold in the secondary market is, to a great degree, a reflection of the value of the accepting bank's name in the market, as well as a reflection of the size and maturity of the drafts being sold. Wells Fargo enjoys a large, well-developed local investor base which enables us to provide acceptance financing, even on smaller-denominated BAs at consistent, competitive rates.

Rate structure

Banker's Acceptances are often quoted on “all-in” discount rate basis which consists of two components: the **discount rate** that is based upon the market rate for our commercial paper or many times may also be based of the LIBOR rate. The **acceptance commission** charged by the bank for adding its “acceptance” to the draft.

The market discount rate is the cost to the bank of selling the draft in the secondary market. BAs are money market instruments and, as such, discount rates can fluctuate daily along with other money market instruments, such as Treasury Bills and Certificates of Deposit. General BA market discount rates are quoted daily in major financial publications, such as the *Wall Street Journal*. Such published rates, however, are not always indicative of discount rates offered by individual accepting banks.

The acceptance commission is the charge that the accepting bank takes for adding its unconditional acceptance to the face of the draft for assuming the credit risk. The acceptance commission rate is based upon either the credit relationship between the borrower (drawer of the draft) and the bank or between the bank that issued the credit and the bank.

Note that the Banker's Acceptance market is a discount market. All costs associated with BA financing (market discount rate and the acceptance commission) are deducted from the face amount of the BA draft at the time the acceptance is created and the borrower receives the net proceeds. At maturity, the borrower repays the face amount of the draft. This is different from traditional commercial financing with promissory notes where interest is typically paid in arrears, or at the maturity of the loan with the principal. Since the BA is discounted, the true interest cost is fractionally higher than the quoted “all-in” discount rate.

On occasion Banker's Acceptances arising under letters of credit may contain letter of credit terms that stipulate that acceptance and discount charges are for the account of the applicant. This arrangement allows the exporter to be paid the full draft value at the time the acceptance is created. While this is commonly referred to as discounting, it is not as true discount reflects the premium paid by the holder of the draft in order to be paid in advance of the maturity and this premium would always be deducted from the face amount of the draft.

Eligibility requirements

There are two categories that are important in the BA market — eligible and ineligible. The Federal Reserve System, originator of these categories, has played an important role in the development of the BA market in the U.S. through regulations governing creation and trading of BAs.

When applied to BAs, the term “eligible” means the acceptance qualifies as being “eligible for discount at the Fed.” The Fed does not require reserve deposits against BAs designated as “eligible”. The term “ineligible” does not imply that the BA is improper, only that it does not satisfy the Fed’s “eligibility” requirements. Reserve deposits are required on ineligible BAs, and the cost of the reserves is passed along to the borrower, therefore, these acceptances are often discouraged as the borrower can generally borrow more competitively on a LIBOR-based loan.

Following is a list of criteria which must be met by the borrower to qualify the BA for the designation “eligible”, set forth by the Federal Reserve.

The requirements for an “eligible” designation are:

1. The BA must be created to cover current shipments generally defined as being within 30 days of the shipment of the financed goods. There may be exceptions granted based on the trade practice of a particular industry. The oil industry is 60 days.
2. The maximum tenor of the financing period is 180 days (six months) from the date of acceptance (plus grace days such as weekends, holidays, etc.), but it should not extend beyond the borrower’s trade or business cycle.
3. The tenor of the accepted draft should match the business cycle of the underlying transaction. In other words, if the borrower’s inventory is turning in 60 days and its accounts receivable in 30 days, then the business cycle is averaging or equal to 90 days. The transaction must be self liquidating, and may not be used for working capital purposes.

Exhibit 4.2: Discount of Banker’s Acceptance

Amount	\$100,000.00
Time	90 days
Sample all-in Discount Rate	4.26% per annum
Typical Acceptance Commission	1.5% to 3% per annum
Cost of Financing*	\$1,440.00
Net Proceeds	\$98,560.00

**Assumes 1.5% acceptance commission is used*

4. The drawer (borrower) must attest that there is no duplicate financing on the trade transaction being financed by the BA.
5. The financed transaction must represent the import or export of goods between any two Countries.

Banker’s Acceptance* — sample scenario

Drawn on and accepted by a bank.

Options:

1. Wait until maturity for full-face amount
2. Discount the draft immediately, or any time up until the maturity date.

*All rates and commissions are for example only and DO NOT reflect current market conditions. All rates and commissions are for above illustration only.

Exhibit 4.3: Draft form – Draft submitted when presenting under an unconfirmed letter of credit

		Customer Draft	
Tenor	90 Days Date	Date	April 29, 20xx
Pay to the order of	Wells Fargo Bank, N.A.	Amount	\$100,000.00
Amount in words	One Hundred Thousand and no/100 dollars		
To: Issuing Bank or Institution in Terms of LC	Firm Name The Exporter (Beneficiary):		
Drawn Under _____	_____ Authorized Signature		

Exhibit 4.4: Banker's Acceptance – Draft submitted when presenting under a confirmed letter of credit

		Customer Draft	
Tenor	90 Days Date	Date	April 29, 20xx
Pay to the order of	Wells Fargo Bank, N.A.	Amount	\$100,000.00
Amount in words	One Hundred Thousand and no/100 dollars		
To:	Firm Name:		
Wells Fargo Bank, N.A.	_____ Authorized Signature		
Drawn Under _____			

Information for importers

Information for importers

Import procedures

The methods of payment described in the preceding sections on exports from the U.S. are applicable also in general to imports into the U.S. The letter of credit is one of the predominant methods for settling international payments. In addition, long-standing foreign custom practices sometimes dictates its use in many forms of imports into the U.S. Exchange regulations in some countries require that export sales be made on a letter of credit basis. In addition, whenever the seller in a foreign country does not have sufficient information about the U.S. customer, or is unsure of the customer's credit worthiness, a letter of credit may be opened in the seller's favor as part of the sales agreement.

Getting started — preparing your import purchase order

In any commercial trade transaction there are two primary participants — buyer and seller. As any businessperson knows, it is imperative that there be a clear, well-defined agreement between these two parties regarding the transaction.

When your potential partner is in another country, setting up the transaction in advance becomes even more vital. Distant geography, customs regulations and special documentation may complicate the transaction. In addition, key participants in an import/export transaction may include not only the buyer and seller, but, perhaps, one or more banks, an international freight carrier and a customs house broker and/or freight forwarder.

When negotiating an import price from your seller, you should consider the potential costs and corresponding shipping or trade terms as shown below in Exhibit 4.5. The most commonly used rules for trade terms is the internationally recognized ICC rules known as INCOTERMS, the current version is INCOTERMS 2000. Reference the ICC Publication No. 560 (on page 79) in the last section of this guide under ICC information. On January 1, 2011, a new version of INCOTERMS, that will be known as INCOTERMS 2010 will be in effect. As of the time of the printing of this handbook INCOTERMS 2010 had not yet been published.

Exhibit 4.5: If your price quote includes

- A. Merchandise Cost
- B. Packing
PLUS
- C. Add Export Licenses/authorizations/formalities...
- D. Loading Costs and Inland Freight
- E. Forwarding Fees
- F. Receiving Port/Place Charges

PLUS
- G. Loading onto Ship (ocean/inland waterway only)
PLUS
- H. Ocean/Air freight

PLUS
- I. Insurance
- A Through H plus (insurance arrangements must be made as it is not a requirement of the below terms)
- J. Charges at foreign port/airport
- K. Delivery charges to final destination
PLUS
- L. Customs Clearance and Duties

Then the corresponding shipping term is:

- EX Works (seller's location-warehouse/plant)
- FAS (ocean/inland waterway only), FCA (place of shipment/dispatch)
- FOB (port of shipment)
- CFR (for Ocean/inland waterway only), CPT (port/place of destination)
- CIF (for Ocean/inland waterway only), CIP (port/place of destination)
- DDU (place of delivery)
- DDP (place of delivery)

Your Purchase Order should also include how you will pay the exporter. Some of the most common payments terms are:

Exhibit 4.6: Common payment terms

Open account	Exporter makes shipment, sends importer shipping documents directly and awaits payment.
C.A.D. (Cash against documents)	Exporter makes shipment, then sends shipping documents to either the bank of the importer or to your specified agent who pays the bank remitting on behalf of the exporter under documentary collection or the exporter directly exports when the importer authorizes payment. This is more like an open account transaction when it is not routed through the importer's bank. Documentary collections through a bank are the preferred method of CAD.
Sight draft (CAD) or Time draft (Documentary Collections)	Exporter makes shipment and uses his bank as agent to forward shipping documents through importer's bank. The importer's bank collects payment or promise of payment for the exporter before releasing document to importer.
Unconfirmed letter of credit	Before the exporter ships, you must receive an advising bank's written conditional obligation to make payment to the exporter. Payment is made by the issuing or confirming bank, usually against presentation to your bank or specific, conforming shipping documents. Frequently letters of credit may be available by sight payment with a bank other than the issuing bank, however, without a confirmation that bank is not obligated to act under the LC.
Confirmed letter of credit	You receive your bank's or another confirming bank's written obligation to make payment and in effect, the importer's (issuing) bank is also obligated to further "guarantee" the payment.
Cash in advance	You pay the exporter before they ship.

U. S. Customs Service

The U.S. Customs Service was established by the First Congress in 1789 to serve solely as a collector of duties and taxes. Today it administers the laws governing the importation of all merchandise entering the U.S., in addition to its collection responsibilities.

A Customs entry is required for every importation whether free or dutiable and regardless of value (unless the fair market value does not exceed \$1.00). There are some exceptions for intangibles — your customs broker can advise you on these exceptions.

An entry is a document with which you, the importer, or your licensed customs house broker declare to Customs precisely the description, total value and assigned Harmonized Code Number necessary for appraisal of your imported goods. The entry must be accompanied by supporting documents. Minimum documentation requirements are packing lists, evidence of ownership of goods (such as bills of lading) and your vendor's foreign commercial invoices.

In addition to documents, each entry of goods must be supported by an in-force surety bond, commonly called a customs bond, and payment of applicable duties or taxes. See below for more information about customs bonds.

Customs bonds

All U.S. importers are required by law to post bond with U.S. Customs to secure the importer's customs transactions. The form and amount of the bond are provided by Customs and the bond's purpose, among other things, is to provide Customs with an agreement to pay duties, taxes and charges.

The bond can secure a single transaction (called a Single Entry Bond) or multiple transactions even within multiple Customs' districts (called a Continuous Customs Bond). Without a bond, your goods cannot be processed for clearance through U.S. Customs.

For advice and assistance about bonding requirements, as well as for placement of a bond, contact a knowledgeable bond broker, generally available through your customs house broker.

Customs Power of Attorney

To initiate a relationship with a customs broker, you must complete a properly executed Power of Attorney form. The Power of Attorney allows the customs broker to complete import documents in your name. You may complete either a general Power of Attorney or a limited Power of Attorney as provided on Customs form #32217. The form must be signed by an authorized signatory of your company and also be witnessed by two people.

Note: Customs brokers can provide information, provide Customs bond and insurance, and perform certain other services without a Power of Attorney, but the Power of Attorney must be completed before an actual import move is consummated.

The role of the customs broker in import

A qualified and knowledgeable customs house broker is vital to your successful import program.

Your customs house broker will take care of the paperwork, processing and monitoring of your shipments and clearing U.S. Customs. Upon receipt of the notice of

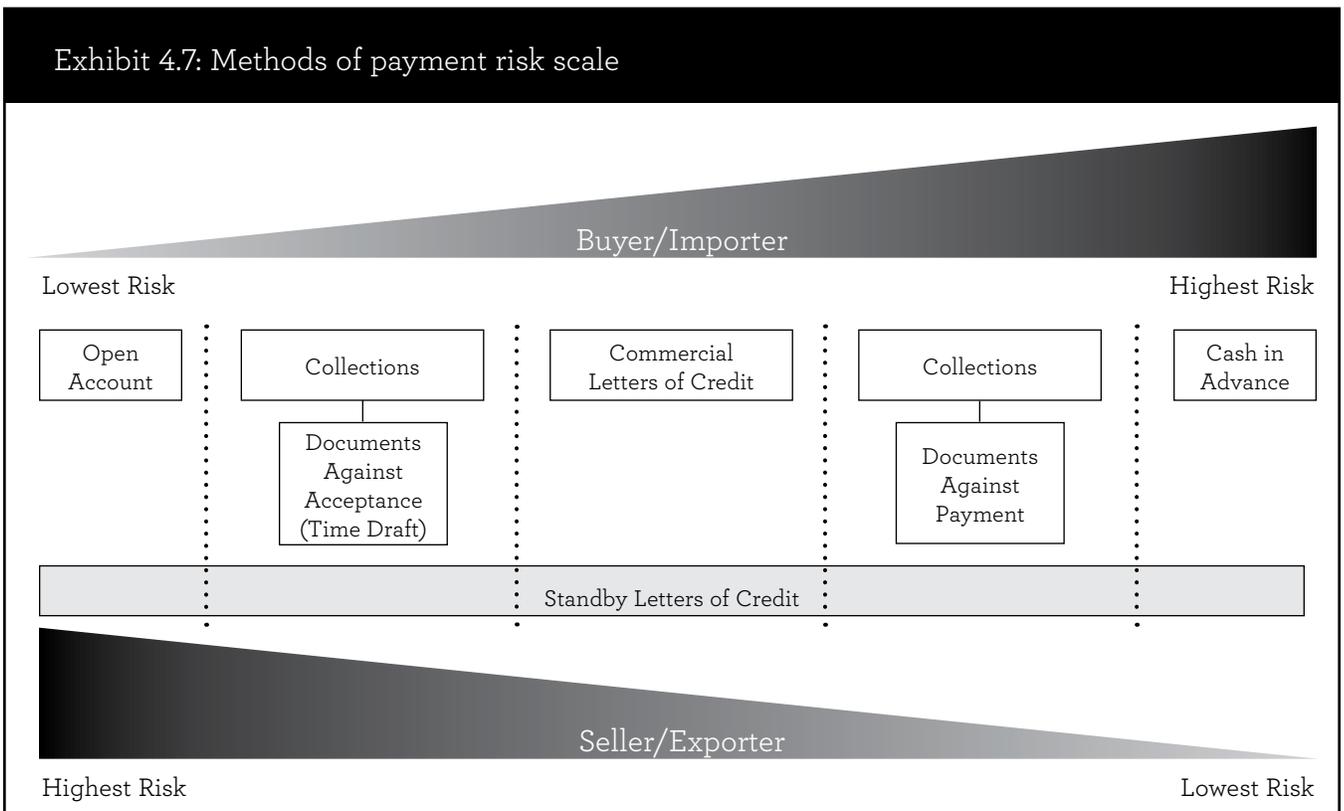
the scheduled arrival, your customs broker will prepare and help you check all documents for accuracy and completeness and obtain the freight release, as well as the Customs release and any special visas or restriction clearances (i.e., Department of Agriculture, FDA, EPA, etc.). Your cargo may not move to a truck, pier or air terminal until the proper releases have been secured. Your customs broker will also advise you about bonding requirements and marine insurance and secure those coverages which best suit your needs.

Your customs broker can also advise you of documentation necessary for Customs clearance for your products imported from various countries. This information can be very useful, especially when preparing a letter of credit application for your bank.

Your shipping documents, including a copy of the foreign commercial invoice and a properly endorsed original bill of lading, are necessary for the broker to complete all other necessary forms.

Import — Methods of payment

As for exporters, there is a methods of payments risk scale for importers. This is illustrated in Exhibit 4.7 below.

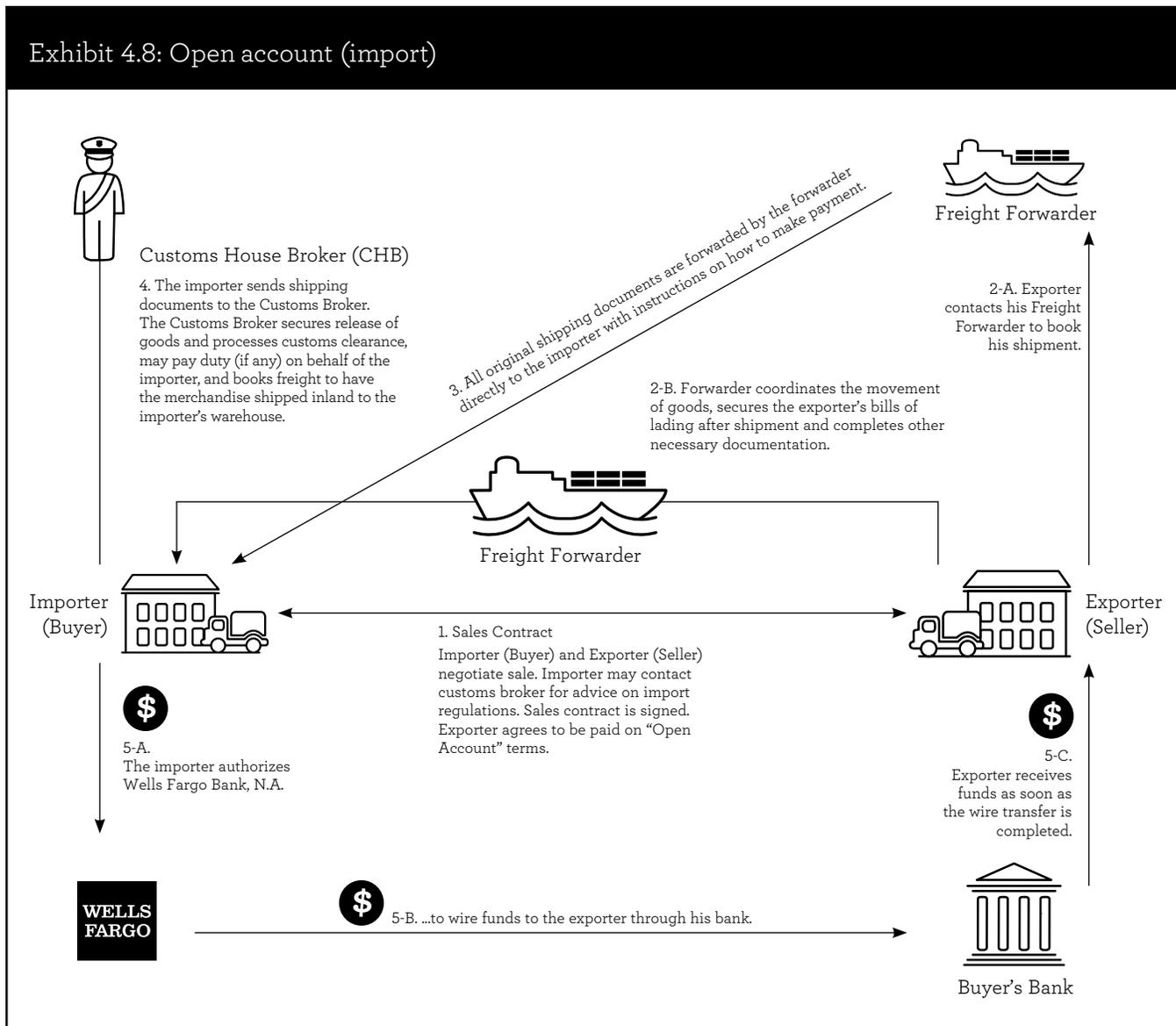


Methods of payment

- Open account
- Documentary collections
- Letter of credit

Import methods of payment — open account

Exhibit 4.8 below charts the flow in an import open account transaction.

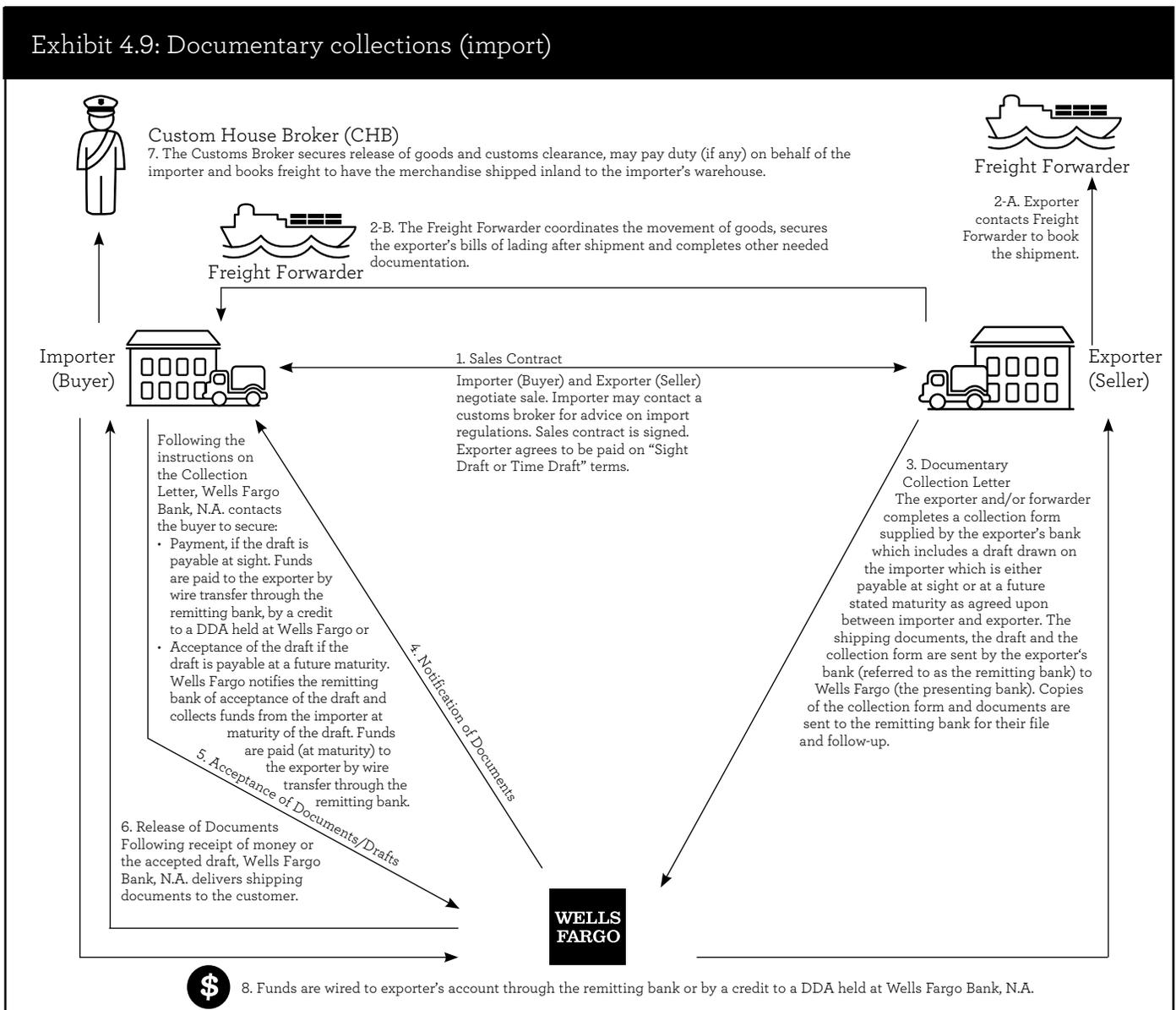


Import methods of payment — documentary collections

Just as documentary collections were discussed for use by the exporter on page 8, this method of payment is a valuable tool for the importer as well. Documentary collections do not require that any credit be approved by the importer's bank, so the importer does not tie up its credit availability, and related processing fees are less than for letters of credit. It also allows payment to be made closer to arrival of the goods in port. Since the importer's bank will be holding the documents on behalf of the exporter until the importer either pays in accordance with terms such as DP (documents against payment) or accepts the drafts, obligating the importer to pay at a later date, the exporter may feel more comfortable using a documentary collection

than merely sending the documents directly to the importer. Without certain original shipping documents which are held by the bank, the importer cannot get control of the goods, so the exporter can maintain some leverage. However, this control of goods applies only to ocean shipments where the exporter is sending a full set of negotiable ocean bills of lading consigned to collecting bank or importer as part of its collection. Documentary Collections is commonly seen where the amount of the transaction is smaller, or where there is an ongoing trade relationship established between the exporter and the importer and more stringent payment terms are deemed unnecessary.

Exhibit 4.9 below outlines the flow of an import documentary collection transaction.



Import methods of payment — letter of credit

The U.S. importer (applicant) fills out its bank's application for a letter of credit (Exhibit 5.0). Once the buyer's credit is approved, the bank will issue and forward the letter of credit in most instances by SWIFT to a correspondent abroad — either in or near the city of the beneficiary's or exporter's bank. This foreign correspondent (known as the advising bank) delivers the letter of credit to the exporter who examines it, and then prepares the shipment and documents as specified under the letter of credit. Letters of Credit may also be issued on Letterhead paper of the bank and sent by courier directly to the beneficiary. This method is most often employed when the transaction is domestic (i.e. the beneficiary and issuing bank are located in the same country). The overseas exporter or beneficiary then submits the documents with a draft and the original letter of credit either to the advising bank or another local bank. Depending on where and how the LC is made payable, the local bank may examine and negotiate the documents, enabling the exporter to be paid immediately, providing there are no discrepancies in the documents presented. If the document presentation is discrepant, then the issuing bank will contact the Importer or Applicant for its waiver or instructions for refusal. In the event of discrepancies, the Importer or Applicant can delay payment indefinitely until resolved by the the Applicant and Beneficiary.

An importer does well to discuss with his bank the most desirable form in which to open a letter of credit. For example, if processing or further manufacturing will prevent the imported goods from being sold for a while after their arrival, it may be advantageous to have the letter of credit provided for time drafts, which can serve as a form of interim financing.

An import letter of credit permits the foreign beneficiary/exporter to rely on the creditworthiness of a U.S. bank rather than that of the importer, which affords a greater measure of protection afforded by a bank obligation. The importer, however, does not enjoy the same degree of protection, because a bank will not assume responsibility for the goods supposedly represented by the letter of credit, the genuineness of the documents, or the financial responsibility of the carrier or the insurer. Consequently, it is of the utmost importance that the importer fully determine the character and solvency of the shipper in the foreign country, and the conditions of the sales contract.

Exhibit 5.1 illustrates the import letter of credit process. Exhibit 5.2 describes a sample SWIFT-formatted letter of credit.

Exhibit 5.0: Application for import letter of credit

APPLICATION FOR COMMERCIAL LETTER OF CREDIT

TO: WELLS FARGO BANK, NATIONAL ASSOCIATION
ISSUING BANK LOCATION: NORTH CAROLINA CALIFORNIA

PLEASE TYPE CLEAR INFORMATION IN THE BOXES BELOW. APPLICATIONS THAT ARE NOT LEGIBLE MAY BE RETURNED.

DATE (MM/DD/YY) ____/____/____	INFORMATION TO BE ENTERED BY WELLS FARGO	

THE APPLICANT(S) SIGNING BELOW HEREBY REQUEST THAT WELLS FARGO BANK, NATIONAL ASSOCIATION ("WELLS FARGO") ISSUE IN WELLS FARGO'S NAME AN IRREVOCABLE COMMERCIAL LETTER OF CREDIT (THE "CREDIT") ON SUBSTANTIALLY THE TERMS BELOW:

ADVISING BANK: <i>(If left blank, Wells Fargo may select)</i> _____	BENEFICIARY: <i>(Name and Address)</i> _____
PARTY (other than Applicant(s) signing below) TO BE NAMED IN THE CREDIT AS THE ACCOUNT PARTY OR AS THE PARTY REQUESTING ITS ISSUANCE. <i>(If Applicable): (Name and Address)</i> _____	AMOUNT: <i>(In words)</i> _____ <i>(In figures)</i> _____ <i>(Currency)</i> _____

AVAILABILITY: Unless otherwise specified herein, the Credit is to be available with any bank(s) (or, at Wells Fargo's option, with a bank nominated by Wells Fargo, which may be Wells Fargo) by negotiation (or, at Wells Fargo's option, by payment or by acceptance) of draft(s) drawn on Wells Fargo (or, at Wells Fargo's option, on a bank nominated by Wells Fargo).

PAYMENT OF ISSUER'S CHARGES: All Issuer's charges are to be paid by Applicant. All charges of other banks are to be paid by: <input type="checkbox"/> Applicant <input type="checkbox"/> Beneficiary	EXPIRATION DATE: _____ and draft(s) must be presented no later than _____ days after date of shipment <i>(unless otherwise specified, 21 days).</i> Place of Expiration: Unless otherwise specified herein, the Credit is to expire in the country where Beneficiary is located or, at Issuer's option, at Issuer's issuing office.
DRAFT(S): Draft(s) are to be drawn at _____ sight for _____ % of invoice value (unless otherwise specified, 100%).	DOCUMENT(S): <i>Draft(s) are to be accompanied by:</i> <input type="checkbox"/> Original and _____ copies of signed Commercial Invoice. <input type="checkbox"/> _____ <i>(unless otherwise specified, full set) original clean on board Marine Bills of Lading issued to order of shipper, endorsed in blank.</i> <input type="checkbox"/> Clean Air Waybill <input type="checkbox"/> Clean Truck Bill of Lading Consigned to: _____ <i>(Unless otherwise specified, consigned to Applicant)</i>

SHIPMENT INFORMATION: Partial shipment permitted: <input type="checkbox"/> YES <input type="checkbox"/> NO Transshipment permitted: <input type="checkbox"/> YES <input type="checkbox"/> NO Merchandise is to be shipped or dispatched from/taken in charge at: _____ Not later than: <i>(Optional)</i> _____ For transportation to: _____	DOCUMENT(S) to show: <input type="checkbox"/> Freight Collect <input type="checkbox"/> Freight Prepaid Notify: _____ <i>(Unless otherwise specified, notify Applicant)</i> <input type="checkbox"/> Negotiable Insurance Policy or Certificate for at least _____ % of invoice value <i>(unless otherwise specified, 110%)</i> indicating loss payable in the United States and covering: <input type="checkbox"/> Marine Risks <input type="checkbox"/> Air Risks <input type="checkbox"/> War Risks <input type="checkbox"/> All Risk <input type="checkbox"/> Other Risks: <i>(specify)</i> _____ Additional Documents: <i>(if any)</i> _____
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

INSURANCE: Insurance is to be arranged by Applicant. *(If not checked, evidence of insurance which is to accompany draft(s) must be specified herein under "DOCUMENT(S)".*

TERMS: Terms to be shown on Commercial Invoice(s):
 FOB _____
 CFR _____
 CIF _____
 Other: *(specify)* _____

MERCHANDISE DESCRIPTION: *(Brief description to be shown on Commercial Invoice(s).)*

TRANSMISSION OF CREDIT: Please transmit the original of the Credit yourself or through a bank selected by you to the following:
 BENEFICIARY APPLICANT OTHER: _____

S:\BEMIS\FORMS (MERGED)\LAW DEPARTMENT FORMS (WEBSITE)\Letters of Credit - Applicant Documents\Application for LC and LC Amendments\LC-APP-COMMERCIAL-WFB-FINAL(062110)\CLEAN\FoM_Merger.doc 062210

By: OVERNIGHT COURIER TELETRANSMISSION *(If no method of delivery is indicated, it will be determined by Wells Fargo.)*

SPECIAL INSTRUCTIONS: *Attach any special instructions on signed sheet(s) and label them as attachments to this Application.*

TRANSFERABILITY: *(If not checked, the Credit will not be transferable.)*
 The Credit is to be transferable, with transfer charges for: Applicant's account Beneficiary's account

PATRIOT ACT NOTICE: U.S. Federal laws require all financial institutions to obtain, verify, and record information that identifies each person who opens an account. Issuing the Credit is considered to be opening an account and will require compliance with these Federal laws.

GOVERNING RULES FOR CREDIT: The Credit will be subject to the Uniform Customs and Practice For Documentary Credits of the International Chamber of Commerce ("ICC"), Publication 600 ("UCP") or any subsequent version of the UCP in effect and in use by Wells Fargo on the date the Credit is issued, as Wells Fargo shall determine in its sole discretion.

APPLICANT'S AGREEMENT AND SIGNATURE: *(Each party obligated either alone or jointly and severally with others to reimburse Wells Fargo with respect to the Credit must sign this Application below.)* EACH APPLICANT'S SIGNATURE BELOW AFFIRMS THAT (1) IT HAS FULLY READ AND AGREED TO, (2) IT WILL BE BOUND BY, AND (3) THE CREDIT WILL BE GOVERNED BY, THE TERMS OF THIS APPLICATION AND THE TERMS OF THE COMMERCIAL LETTER OF CREDIT AGREEMENT SIGNED BY EACH APPLICANT IN FAVOR OF WELLS FARGO OR ANY OTHER AGREEMENT SIGNED BY EACH APPLICANT PURSUANT TO WHICH THE CREDIT IS ISSUED. THIS APPLICATION IS SIGNED BY EACH APPLICANT'S DULY AUTHORIZED REPRESENTATIVE(S) ON THE DATE SPECIFIED ABOVE.

Print or Type Name of Applicant: _____ Address: _____	Print or Type Name of Co-Applicant: _____ Address: _____
Authorized Signature (and Title, if applicable): _____	Authorized Signature (and Title, if applicable): _____
Authorized Signature (and Title, if applicable): _____	Authorized Signature (and Title, if applicable): _____
Applicant Contact: _____ Phone Number: _____	Applicant Contact: _____ Phone Number: _____

(TO BE COMPLETED BY WELLS FARGO BANK, NATIONAL ASSOCIATION)

CREDIT ISSUANCE HAS BEEN APPROVED IN ACCORDANCE WITH WELLS FARGO'S CREDIT POLICIES AND PROCEDURES

APPROVING OFFICER'S SIGNATURE _____	APPROVING OFFICER'S NAME (Print) _____	APPROVING OFFICER'S OFFICE (Print) _____	AU _____	MAC _____
APPROVING OFFICER'S TELEPHONE _____	APPROVING OFFICER'S E-MAIL ADDRESS _____		DATE ____/____/____	

For any questions regarding this transaction, please contact Approver Applicant directly Other: _____

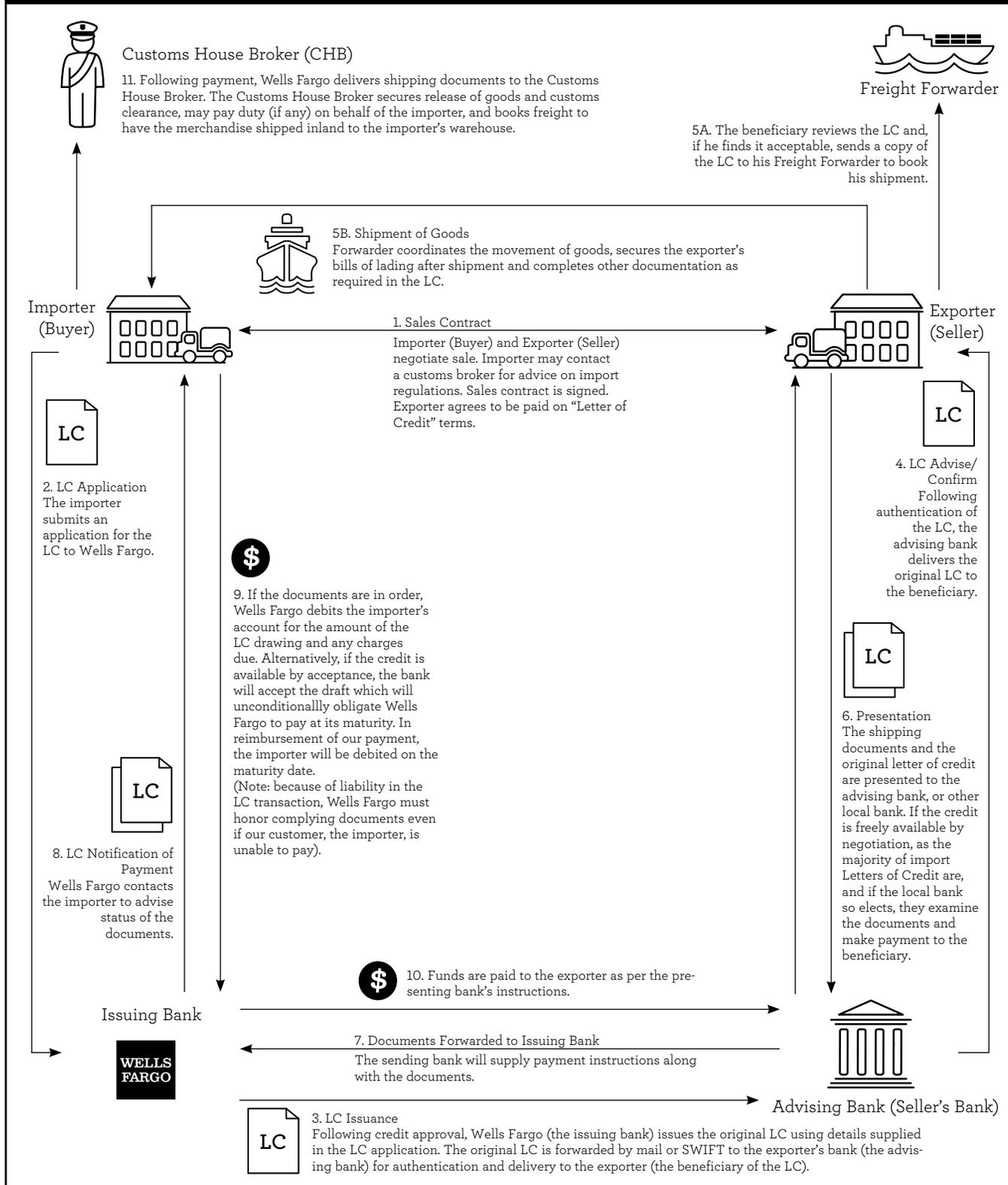
ABS BOOKING:	STANDALONE:	OBLIGOR NO.	COMMITMENT NO.	COLLATERAL CODE	PURPOSE CODE	NAIC
YES <input type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>	_____	_____	_____	_____	_____
CLAS BOOKING:	STANDALONE:	OBLIGOR NO.	CAT008 DEAL NO.	BORROWER DEFAULT GRADE	LOAN IQ BOOKING:	FACILITY ID
YES <input type="checkbox"/> NO <input type="checkbox"/>	YES <input type="checkbox"/> NO <input type="checkbox"/>	_____	_____	_____	_____	_____

Exception Pricing: Commission P.A. _____ Servicing Fees _____

SPECIAL INSTRUCTIONS: *(Indicate provisions applicable to the Credit different from those on Applicant's Relationship Management Instructions Form)*

S:\BEMIS\FORMS (MERGED)\LAW DEPARTMENT FORMS (WEBSITE)\Letters of Credit - Applicant Documents\Application for LC and LC Amendments\LC-APP-COMMERCIAL-WFB-FINAL(062110)\CLEAN\FoM_Merger.doc 062210

Exhibit 5.1: Import letter of credit



Steamship guarantees

This is a term often used to refer to an indemnity provided by the bank at the importing customer's request for a Bill of Lading issuer to release cargo to the importer without production of an original Bill of Lading (BL). The indemnity holds the BL issuer harmless from any claims that may arise from releasing the goods without the BL. A request for a Steamship Indemnity (SSI) most often occurs when the goods arrive prior to the documents. SSIs are used for Letters of Credit and Incoming Import Collections and only when the bank is certain it is a party to the transactions. The bank does not issue SSIs for Open Account Transactions or when it involves documents that are under another's bank's Letter of Credit or Collection. Because the bank is providing an undertaking to indemnify or otherwise pay a third party, it is booked as a separate liability apart from the LC liability to which it may apply.

Air waybill releases

This is an authorization provided by a bank for an airline to release goods to an importer without possession of the Air Waybill (AWB). The purpose of the Air Release and the circumstances under which it is requested is the same as for a Steamship Guarantee, but unlike an SSI, it is not a true indemnity. However, because the bank is authorizing release prior to receipt of the AWB, it may be subject to a claim from the air waybill issuer. Therefore, because there is a potential liability to a party other than the LC beneficiary, or the drawer of the draft under a documentary collection, a liability separate and apart from the LC is recorded. Air Waybill Releases will be issued only when the bank is certain it is a party to the transaction. The bank does not issue Air Waybill Releases for transactions on open account transactions, or where documents are supposed to go to another bank under another bank's LC or documentary collection.

Exhibit 5.2: Sample SWIFT format



----- Instance Type and Transmission -----

Original sent to SWIFT (ACK) : Normal
 Priority/Delivery : Normal
 Message Input Reference : 1703 100831PNBFS33AXXX1472974741
 ----- Message Header -----

Swift Input : FIN 700 Issue of a Documentary Credit
 Sender : PNBFS33CHA
 WELLS FARGO BANK, N.A. (FORMERLY KNOWN AS WACHOVIA)
 CHARLOTTE, NC
 UNITED STATES US
 Receiver : SCBLMYKXXXX
 STANDARD CHARTERED BANK MALAYSIA BERHAD
 (ALL OFFICES IN MALAYSIA)
 KUALA LUMPUR
 MALAYSIA MY
 ----- Message -----

<p>27: Sequence of Total 1/1</p> <p>40A: Form of Documentary Credit IRREVOCABLE TRANSFERABLE</p> <p>20: Documentary Credit Number LM612111</p> <p>31C: Date of Issue 100831</p> <p>40E: Applicable Rules UCP LATEST VERSION</p> <p>31D: Date and Place of Expiry 101006 MALAYSIA</p> <p>50: Applicant CRAFTY COMPANY 6 VEGAN STREET PHILADELPHIA, PA 19107 0167</p> <p>59: Beneficiary - Name & Address INCREDIBLE CRAFTS 22ND FLOOR NO. 875256-34 HANGIAH DATA KLANG, SELANGOR MALAYSIA.</p> <p>32B: Currency Code, Amount Currency : USD (US DOLLAR) Amount : 9285,00</p> <p>41D: Available With...By... - Name ANY BANK BY NEGOTIATION</p> <p>42C: Drafts at... 80 DAYS FROM B/L DATE</p> <p>42D: Drawee - Name & Address WELLS FARGO BANK, N.A. CHARLOTTE, NORTH CAROLINA</p>	<p>43P: Partial Shipments PERMITTED</p> <p>43T: Transshipment PERMITTED</p> <p>44A: Pl of Trans in Chq / of B/L PORT KLANG, MALAYSIA</p> <p>44B: Pl of Final Dest / of Delivery MIAMI, FLORIDA</p> <p>44C: Latest Date of Shipment 100921</p> <p>45A: Description of Goods &/or Services CRAFT SUPPLIES FOB PORT KLANG, MALAYSIA</p> <p>46A: Documents Required +SIGNED COMMERCIAL INVOICE IN 1 ORIGINAL AND 5 COPIES. +PACKING LIST IN 1 ORIGINAL AND 2 COPIES. +CERTIFICATE OF ORIGIN, SIGNED AND DATED, IN 1 ORIGINAL AND 2 COPIES, BEARING THE NAME OF THE APPLICANT AS THE CONSIGNEE. +CERTIFICATE OF ANALYSIS, SIGNED AND DATED, IN 1 ORIGINAL AND 2 COPIES. +CERTIFICATE OF INSPECTION, SIGNED AND DATED, IN 1 ORIGINAL AND 2 COPIES. +FULL SET PLUS ONE PHOTOCOPY CLEAN MULTIMEDIA MARKED FREIGHT COLLECT AND MARKED NOTIFY: APPLICANT</p> <p>47A: Additional Conditions +CONSIGNEE TO APPEAR ON BILL OF LADING - WELLS FARGO BANK, N.A. INT'L TRADE OPERATIONS 1525 WEST W.T. HARRIS BOULEVARD-D1109-011, CHARLOTTE, NC 28262-8522 +WE UNDERSTAND INSURANCE WILL NOT BE COVERED +DRAFTS TO INCLUDE THE NUMBER AND DATE OF +IF DOCUMENTS PRESENTED DO NOT COMPLY WITH CONDITIONS OF THIS CREDIT, A DISCREPANCY FEE DOCUMENTS WILL BE DEDUCTED FROM ANY REMITT BENEFICIARY UNDER THIS CREDIT. +THIS CREDIT IS SUBJECT TO THE CONDITION INDICATING GOODS ORIGINATING FROM, OR SHIP U.S. SANCTIONED COUNTRY WILL NOT BE ACCEPT DOCUMENTS INDICATING U.S. SANCTIONED COUNTRIES RETAINED BY US UNLESS OR UNTIL A LICENSE IS OBTAINED FROM THE U.S. TREASURY DEPARTMENT OFFICE OF FOREIGN ASSETS CONTROL +REFUSED DOCUMENTS HELD AT THE PRESENTER'S RISK MAY BE TAKEN UP AND HONORED BY THE ISSUING BANK ANY TIME BEFORE THEY MUST BE RETURNED TO THE PRESENTER. +PLEASE NOTE THAT IN THE EVENT OF A NON-COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT, THE PRESENTER'S APPROACH MAY OR MAY NOT BE THE PARTY SHOWN IN THIS LETTER OF CREDIT. +EACH PRESENTATION MUST BE ENDORSED ON THE ORIGINAL L/C ADVISE. THE PRESENTING BANK SIGNIFIES THAT THE ENDORSEMENT HAS BEEN MADE</p>	<p>MAKING THE PRESENTATION TO THE ISSUING BANK. +DRAFTS MUST BE DATED THE SAME DATE OF THE ON BOARD B/L DATE OR OTHER TRANSPORT DOCUMENT DATE AS APPLICABLE. +PLEASE NOTE THAT THE DATE OF THE DRAFT MUST COINCIDE WITH THE TRANSPORT DOCUMENT DATE WITHOUT MAKING REFERENCE TO THE TRANSPORT DOCUMENT ON THE DRAFT. +DISCOUNT CHARGES ARE FOR THE ACCOUNT OF THE BENEFICIARY. +DISCOUNT AVAILABLE WITH DRAWEE BANK ONLY. +THIS LETTER OF CREDIT IS TRANSFERABLE. HOWEVER, THIS CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON OR ENTITY (I) WHO IS SUBJECT TO A DENIAL ORDER OF THE UNITED STATES DEPARTMENT OF COMMERCE, PURSUANT TO 15 C.F.R. 301.10, 301.306, OR (II) WITH WHOM PAYMENT HEREUNDER IS PROHIBITED BY THE ASSET CONTROL REGULATIONS AS MAY BE AMENDED FROM TIME TO TIME. IN THE EVENT THAT ANY ATTEMPT IS MADE TO TRANSFER THIS CREDIT TO SUCH PERSON OR ENTITY, SUCH ATTEMPT SHALL BE NULL AND VOID AND NO PAYMENT SHALL BE MADE HEREUNDER TO ANY SUCH TRANSFEREE. ADDITIONALLY, NOTICE OF TRANSFER MUST EITHER BE MAILED TO US AT THE TIME OF TRANSFER OR ACCOMPANY DOCUMENTS PRESENTED FOR PAYMENT. SUCH NOTICE MUST INDICATE WHETHER THE FIRST BENEFICIARY HAS ELECTED TO RETAIN OR WAIVE RIGHTS RELATED TO AMENDMENTS AND SUBSTITUTION OF DOCS IN ADDITION TO CERTIFYING THAT THE TRANSFER WAS NOTED ON THE ORIGINAL LETTER OF CREDIT. +THIRD PARTY DOCUMENTS ARE PERMITTED TO THE EXTENT PROVIDED BY ARTICLE 14F OF THE UCP600 AND IN THE EVENT OF TRANSFER UCP 600 ARTICLE 38. L/C TRANSFERABLE THROUGH WELLS FARGO BANK, NATIONAL ASSOCIATION OR ADVISING BANK</p> <p>71B: Charges ALL BANKING CHARGES OTHER THAN THOSE OF THE ISSUING BANK, ARE FOR THE ACCOUNT OF THE BENEFICIARY.</p> <p>48: Period for Presentation DOCUMENTS MUST BE PRESENTED WITHIN 15 DAYS OF SHIPMENT BUT WITHIN THE VALIDITY OF THE CREDIT.</p> <p>49: Confirmation Instructions WITHOUT</p> <p>78: Index to Pay/Accept/Negot Bank UPON PRESENTATION OF COMPLYING DOCUMENTS AT OUR ADDRESS PROVIDED HEREIN WE WILL REIMBURSE YOU IN ACCORDANCE WITH YOUR INSTRUCTION, OR NOTWITHSTANDING UCP600 ARTICLE 15, IN THE EVENT OF LOST DOCUMENTS, AGAINST PRESENTATION OF COPIES OF ALL DOCUMENTS REQUIRED HEREIN THAT OTHERWISE CONFORM TO THE TERMS AND CONDITIONS OF THE LETTER OF CREDIT. DOCUMENTS MUST BE PRESENTED TO THE BELOW PROVIDED ADDRESS ONLY, PRESENTATION TO ANY OTHER WELLS FARGO OFFICE OR BRANCH WHETHER OR NOT ACCEPTED BY THAT LOCATION DOES NOT CONSTITUTE A VALID PRESENTATION UNDER THIS L/C</p> <p>57D: 'Advise Through' Bank -Name&Addc STANDARD CHARTERED BANK MALAYSIA BERHAD</p>
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72: Sender to Receiver Information
SEND DOCS IN ONE COURIER TO US AT:
1525 WEST W.T. HARRIS BOULEVARD-D1109-011, CHARLOTTE, NC 28262-8522
IMPORT L/C DEPT
ISS BK SWIFT ADDRESS IS PNBFS33CHA
----- Message Trailer -----

General information

- **Trade finance**
- **Supply chain finance**
- **Internet solutions**
- **Foreign exchange**
- **International treasury management for corporations**
- **Trade services for financial institutions**
- **Global financial institutions and multilateral banking services**
- **Assistance and global agencies**
- **Glossary of terms**
- **Exhibits**
 - **ICC 560, Incoterms 2000 (commonly used shipping terms)**
 - **UCP 600, Uniform Customs and Practice for Documentary Credits (2007 revision)**
 - **ICC 522, uniform rules for collections (1995 revision)**
 - **ICC No. 681 E, International Standard Banking Practice (ISBP) (2007 revision)**
 - **ICC 590, ISP98 rules (1998 revision)**

Trade finance

Trade Finance is funding provided to buyers or sellers during the course of a transaction for the purposes of improving working capital and cash flow. Financial institutions provide funds in the form of loans or discounts at an advance rate that is a percentage (up to 100%) of the value of the transaction and an interest rate that reflects an assessment of the risk of repayment and the funder's ability to secure an interest in the transaction collateral.

Questions considered in structuring Trade Finance include the following:

- Who is requesting the financing? Who is providing the financing?
 - Who bears the risk of the financing and what is the expected source of repayment in the case of default?
 - Is there an underlying asset securing the financing? If so, what is it?
 - What documentation or processes are needed to support securing the asset and/or providing the financing?
- Is there a transfer of the asset involved in the financing transaction?
 - Does the financier require any credit enhancement to provide the finance?
 - What is the tenor of the transaction?

The risk mitigation and settlement facilitation provided by the Letter of Credit has made it the traditional vehicle for provision of International Trade Finance. Finance provided under Collections is also common. The following list provides some of the common types of international financing:

- Pre-Shipment Packing Credits against LC, back-to-back LCs
- Export bills purchased/discounted or avalized draft discounts
- Export bills negotiated (against LC)
- Advances against bills sent on collection basis or BAs
- Advances against exports on consignment basis

Pre-shipment finance or trade cycle finance describes the provision of Trade Finance extended against a confirmed Purchase Order and is used to finance the procuring of raw materials, manufacturing, processing, transporting, warehousing and shipping of goods meant for export. This type of financing allows sellers to fulfill customer orders while maintaining a healthy cash flow. A pre-requisite to avail of pre-shipment finance is that the exporter should have a credit facility in place with the funding institution. Banking practice dictates that advances for pre-shipment finance will be less than 100% of the value of the Purchase Order with typical ranges of 65-90% of FOB value or 50-75% of CIF value. Typically pre-shipment finance is provided with recourse to the exporter of the goods and without a transfer of underlying assets to the funding institution.

Post-shipment finance describes provision of Trade Finance extended against evidence of shipping documents subsequent to the date of shipment and up to the point of realization of export proceeds. Post-shipment finance is most commonly utilized by exporters to finance their account receivables under negotiation of export documents under LC terms, as an advance against export bills sent on collection basis (avalized drafts), or the purchase/discount of export documents under confirmed orders or export contracts. Banking practice dictates that advances of 100% of the value of the Purchase Order for post-shipment finance are common.

With the shift away from Letter of Credit Terms to Open Account, the need for new types of financing products that do not rely on an LC are increasingly prevalent in the market. While Open Account terms typically have lower transactional fees and costs associated with them, loss of the financing options under an LC can lead exporters to resort to more expensive sources of financing that add cost and risk to the supply chain process. These financing costs are typically embedded in the costs of goods and passed on to the importer of the product.

Supply Chain Finance

The Supply Chain Finance group at Wells Fargo Capital Finance provides solutions that help both corporations and their trading partners obtain the financing and working capital they desire. With Wells Fargo Capital Finance, corporations can now take advantage of the world's first comprehensive, end-to-end supply chain finance solution. One platform, often one credit structure and set of legal agreements to cover the entire supply chain — from purchase order issuance through cash collection. With this solution, companies may:

- Enhance working capital by extending their payment terms
- Negotiate favorable terms relating to cost of goods sold
- Mitigate the risk associated with doing business with many business partners¹:
 - Default risk
 - Country risk
 - Credit risk
- Lower transaction costs
- Increase transparency into the payment process
- Reduce dependency on bank lines of credit

In addition, with the first platform to include both payables and receivables, companies can view transactions in real time, allowing immediate access and increased transparency into their supply chain accounts.

The Supply Chain Finance team at Wells Fargo Capital Finance provides a single point of global connectivity and service for companies seeking not only to improve their working capital efficiency, but also to increase the stability of their supplier network and strengthen relationships with their trading partners.

¹ All program activities are subject to Wells Fargo Credit and Country Risk approval.

Supply Chain Finance solutions

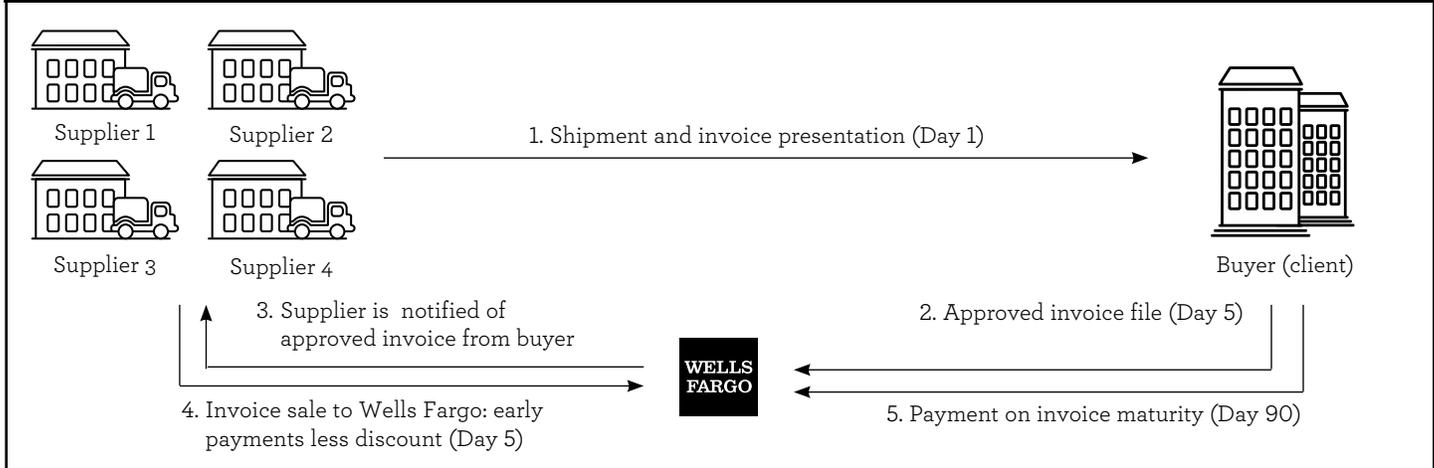
Wells Fargo Capital Finance provides two primary solution sets, each addressing the needs of two key segments within the supply chain:

- **Supplier Finance**
Helps corporations enhance their working capital while also helping to secure their supply base by offering an additional form of financing.
- **Sales Finance**
Used for risk mitigation and monetization of receivables to fund revenue growth in targeted markets.

Supplier Finance

Supplier Finance addresses the needs of larger corporations with wide supplier networks. Through this product, corporations can lower the cost of capital for domestic and international trading partners, while simultaneously achieving their target payables terms and/or cost reduction objectives.

Exhibit 5.3: How Supplier Finance works



1. Supplier ships goods and invoices to buyer.
2. Buyer approves invoices for payments (using existing processes); buyer sends an approved invoice file to Wells Fargo.
3. Supplier is notified via internet (email and website) of payment from buyer on a future due date and see settlement details.
4. Supplier may immediately and electronically discount the underlying receivables to cash at an agreed-upon rate.
5. Buyer funds Wells Fargo for the full amount of the payment due on the due date.

Exhibit 5.4: Benefits of Supplier Finance

Benefits for the buyers

- Enhances working capital or other commercial terms:
 - Improves cash flow by reducing working capital and related costs
 - Improves commercial terms without increasing cost to the supply chain
 - Reduces cost of goods sold by means of lowered supplier financing costs
- Transitions suppliers to electronic payments:
 - Utilizes a powerful electronic payment tool
 - Provides suppliers with remittance visibility over the Internet
 - Streamlines staff in the Accounts Payable back office since the purchase order/invoice and other shipping document matching can now be performed by Wells Fargo Capital Finance
- Reduces transaction costs:
 - Reduces payment issuance fees
 - Reduces administrative costs in Accounts Payable and minimizes supplier inquiries
 - Resolves errors early and eliminates replication proactively
- Improve relationships with suppliers
 - Introduces visibility into the payment process
 - Increase suppliers' cash flow
 - Reduce suppliers' borrowing costs

Benefits for the suppliers

- Attractive liquidity management tool through the early payment option:
 - Converts accounts receivable to cash through a more attractively-priced, non-recourse discounted advance
 - Frees up borrowing capacity with lenders
- Positive working capital benefits:
 - Increases cash flow, reduces Accounts Receivable and Days Sales Outstanding
 - Reduces capital costs (e.g., Accounts Receivable carrying costs)
 - Strengthen supplier's financial position
- Full payment transparency:
 - Provides details on approved payments and their timing
 - Provides full detail remittance information for each payment
 - Provides early resolution of errors and proactive elimination of replication
 - Enhances certainty of payment
- Ability to receive information and payment in a format that best suits their needs:
 - Authenticates and validates purchase order facilitating pre-shipment financing options
 - Documents preparation and management, thereby reducing document matching discrepancies and associated costs
 - Enhances access: over the internet, in either a statement or report format through their local relationship, via electronic payment

Sales Finance

Sales Finance addresses the receivables side of the supply chain. These programs are designed for large corporations that sell to many buyers, both domestically and internationally.

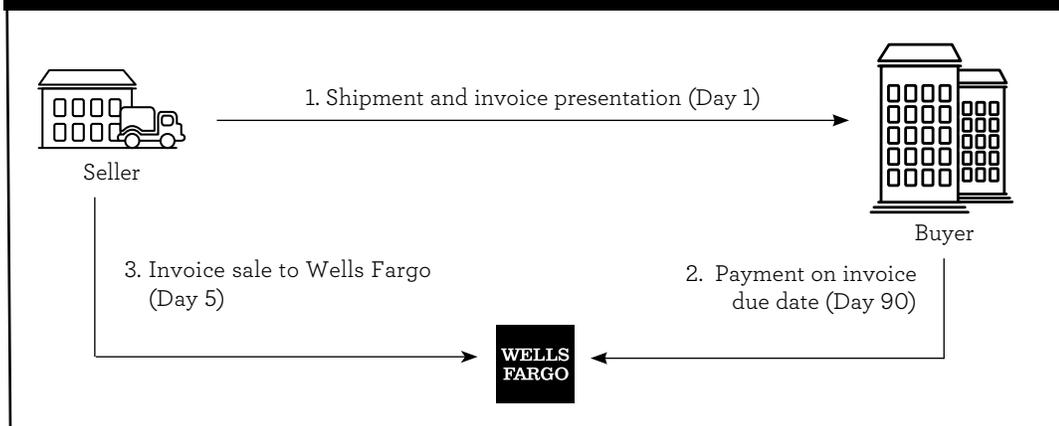
We offer two different products to address the needs of our clients:

- **Key Accounts Purchase**
- **Portfolio Accounts Purchase**

Key Accounts Purchase

With Key Accounts Purchase, the customer's objective is to accelerate the turn of receivables to cash. The customer enters into a contract with Wells Fargo to sell one or a group of its receivables related to business it does with an investment grade or near investment grade buyer. Generally one to 10 buyers are involved in this type of structure.

Exhibit 5.5: How Key Accounts Purchase works



1. Seller ships goods and invoice to the buyer
2. Wells Fargo purchases the invoices from the seller
3. The buyers pay Wells Fargo the invoice amounts on the maturity date

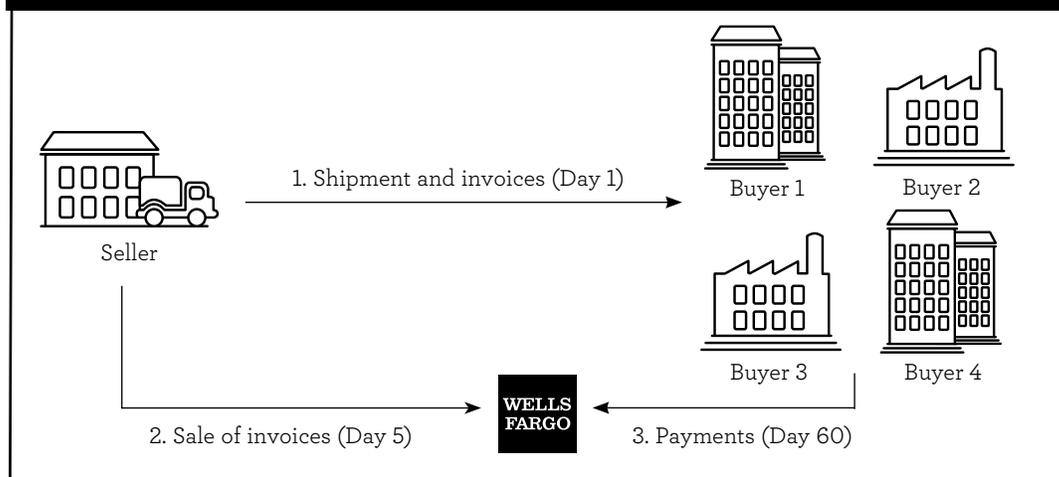
Exhibit 5.6: Benefits for the seller:

- **Risk mitigation:**
 - Mitigates buyer credit risk and concentration issues
 - Mitigates exposures to foreign countries and buyers
- **Working capital enhancement:**
 - Monetizes assets of receivables to fund additional sales and growth
 - Complements securitization in financing overseas and government receivables
- **Flexible and easier to set up than securitization:**
 - No SPV/conduit needed
- **Balance sheet optimization:**
 - Efficient financing structure — could be qualified for true sale of receivables
- **Supply chain liquidity:**
 - Ensures uninterrupted flow in the supply chain
 - Optimizes funding cost of the supply chain

Portfolio Accounts Purchase

The customer contracts with Wells Fargo Capital Finance to sell a larger group of receivables across a portfolio of buyers and distributors. Buyers and distributors tend to be located in emerging markets, and the customer's primary consideration is to increase sales and top-line revenue resulting from increasing payment terms and adding liquidity to their supply chain. The composition of the buyer/distributor portfolio, along with recourse to the customer or other risk mitigation tools, determine the credit risk of the program.

Exhibit 5.7: How Key Accounts Purchase works



1. Client ships goods and invoice to a portfolio of buyers.
2. Wells Fargo purchases the invoices from the seller.
3. The buyers pay Wells Fargo the invoice amounts on the maturity date.

Benefits for the seller:

- **Increased sales:**
 - Additional liquidity in the sales channel- very important given credit tightening
 - Enables seller to maintain control on agreed credit terms
- **Buyer loyalty:**
 - Strong differentiation from competition
- **Improved cash flow:**
 - Depending on the structure, the seller can accelerate cash flow from AR
- **Information and administration**
 - The Bank provides constant information on the status of each account
 - Possibility to reduce administrative costs related to the monitoring of receivables, repayment and reconciliation processes

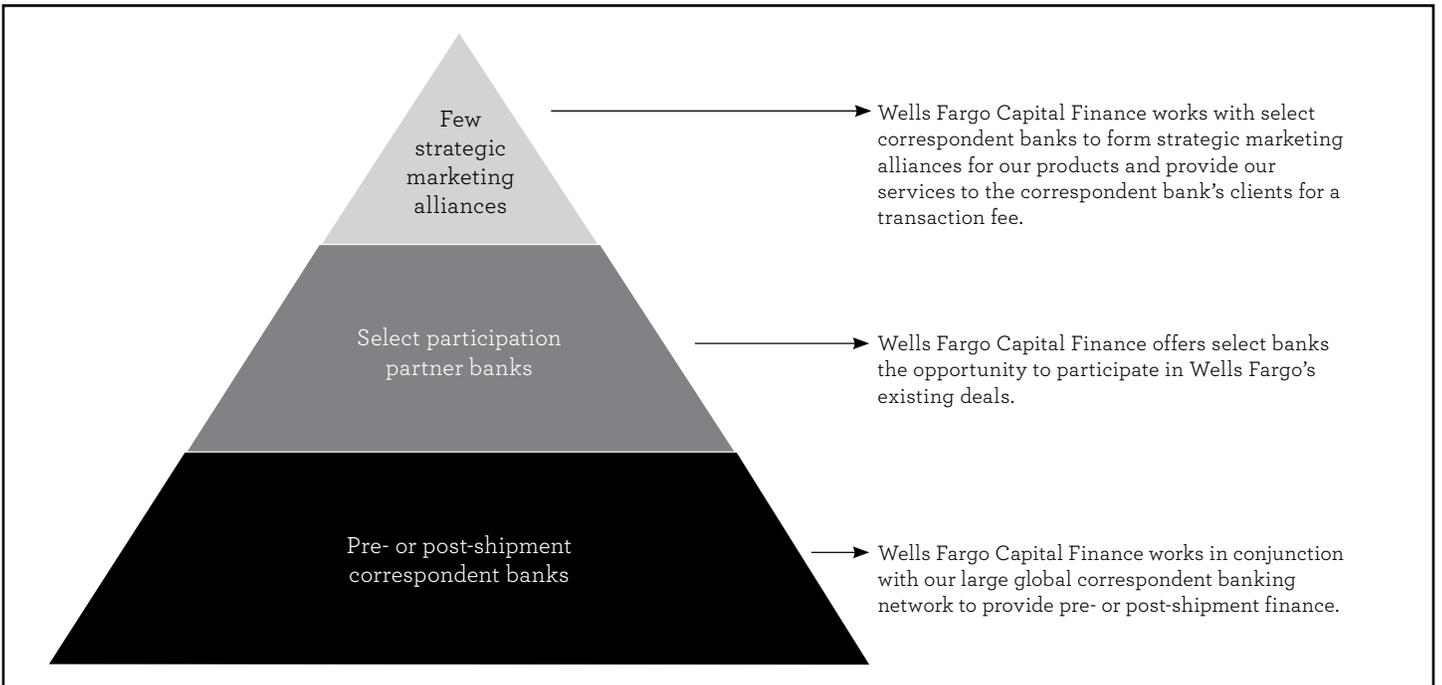
Benefits for the buyers:

- **Easy access to financing*:**
 - Critical success factor in markets in which there is limited or restricted access to bank finance
- **Competitive rates:**
 - Leverage credit arbitrage and automates process
- **Creates a credit history with a reputable financial institution**
- **Flexible terms of repayment**
- **Comprehensive information, with detailed reporting on account balance and repayment schedule**
- **Trade credit: extended terms preferable to debt**

* Assumes that process of loan acquisition is not time-consuming and is based on simple documentation with no collateral received

Supply Chain Finance for banks

Wells Fargo Capital Finance provides correspondent banks different financial transaction structures so that they can better service their own clients.



© 2010 Wells Fargo Capital Finance. Wells Fargo Capital Finance is the trade name for certain asset-based lending, accounts receivable and purchase order finance services of Wells Fargo and Company and its subsidiaries, including Wells Fargo Bank, N.A.; Wells Fargo Business Credit, a division of Wells Fargo Bank, N.A.; Wells Fargo Credit, Inc.; Wells Fargo Distribution Finance, LLC; Wells Fargo Capital Finance, Inc.; Wells Fargo Capital Finance, LLC; Wells Fargo Retail Finance, LLC; Wells Fargo Retail Finance II, LLC; Wells Fargo Trade Capital LLC; Wells Fargo Trade Capital Services, Inc.; and Wells Fargo Capital Finance Corporation Canada. Wells Fargo Capital Finance Corporation Canada (also doing business in Quebec as Société de Financement Wells Fargo Capital Canada) is an affiliate of Wells Fargo and Company, a company that is not regulated in Canada as a financial institution, a bank holding company or an insurance company.

Internet solutions

Wells Fargo's trade products online

As the first bank in the world to enable companies to initiate letters of credit on the Internet, Wells Fargo continues to develop web-based solutions for our customers.

Wells Fargo's TradeXchange — TradeXchange provides value to the entire supply chain community by creating a secure, collaborative online environment that enables greater visibility and automation. Included in the TradeXchange feature set are:

- Shipment Portal which provides for the automated interchange of data from Purchase Order (PO) to final settlement of the trade transaction, no matter the format of the data
- A collaborative environment where all trading partners regardless of their role, may initiate, review and react to new and existing trade transactions
- A PO Management System, from inception to settlement
- An Open Account Platform for the integration of PO's, the presentation of documents on Open Account terms and settlement
- Integrated online financing options for pre- or post-shipment finance
- Automated, online electronic shipping document generation

TradeXchange Import Services — With enhanced functionality and robust features that include support for open account and documentary collections, in addition to Letters of Credit, Import Services allow importers to benefit from the latest advances in Internet technology, along with the security and confidentiality Wells Fargo customers expect.

Import Services consolidates control over all import-related disbursement activities. Whether the terms of your vendor relationship call for the issuance of LCs, the presentation of documents against payment, documents against acceptance or open account, Import Services offer tools to help importers easily manage those processes that are so critical to global business success.

Purchase order processing with auto LC via

TradeXchange — When your company uses the Auto LC feature of Import Services, you can easily import formatted PO files into a database, enter manual PO records as needed, group PO's into one or many new import letter of credit requests, as well as upload data to the domestic and overseas bank processing sites.

TradeXchange Export Services — allows you to access the status of foreign receivables and collections. Exporters can also view export letters of credit, as well as initiate documentary or letter of credit collections. Additionally, the MIS & Images module allows you to quickly receive notification of a change in the status of any open collections item.

TradeXchange MIS & Images — our customers' window into Wells Fargo's global processing infrastructure. MIS & Images deliver all of the information needed about trade activity, all on-time and in real-time, including:

- Reporting and online inquiries about open and/or closed transactions
- File downloads of critical activity details
- Access to our archive of images of shipping documents

Foreign Exchange

For those institutional and corporate clients requiring a more personal solution, we offer access to a team of experienced, market-tested traders 24 hours a day, six days a week. With dealing floors located in San Francisco, Hong Kong, London and New York, clients can park orders, receive real-time market color and execute transactions.

Execution (liquidity), service and information are the linchpins of the Wells Fargo FX Institutional Sales and FX Trading Operation. In addition to spot/forward G10 (\$) and

Cross), select emerging market and exotic currency pairs, currency option quotations are also available. Our team tirelessly gathers and discretely disseminates pertinent market information and research with the stated goal of helping our clients' profitably achieve their FX targets.

We anticipate and understand the FX needs of our institutional and corporate clients, which allows us to offer products that match those needs. This is an ongoing, iterative process and a challenge we enthusiastically accept.

Exhibit 5.8: Currency Hedging Tools

Using the following basic hedging tools, your company/institution can plan for a risk management and trading strategy to better meet your specific objectives.

Spot contracts: A way of converting foreign currency into U.S. dollars (USD) or making payments in a foreign currency, spot contracts allow customers to convert currency at today's market rate with final settlement generally occurring two business days later.

Forward transactions: A way of eliminating exchange rate risks when a customer is to receive or make foreign currency payments in the future. Forward transactions enable customers to buy or sell currency at a fixed rate on a specified future date. By linking this date to the date of the currency payment, customers lock in the future exchange rate and eliminate the risk of further volatility in that exchange rate. Wells Fargo offers short- and long-dated foreign exchange forwards in all major and most minor currencies.

Options contracts: These are designed to lock in a worst-case exchange rates for the future purchase of one currency for another. Unlike forward contracts, options do not obligate the buyer to deliver a currency on the settlement date unless they choose to exercise them. Thus, foreign exchange options are designed to protect against unfavorable currency movements and allow customers to retain the ability to participate in favorable movements.

Non-dollar interest rate swaps: A company borrowing in foreign currency may want to manage its exposure to fluctuations in interest rates in that currency by using an interest rate swap. An interest rate swap allows customers to manage their mix of fixed- and floating-rate debt synthetically, without the need to refinance.

Cross-currency swaps: This is a way for a corporation with recurring cash flows in a foreign currency — or one seeking financing in a foreign country — to manage exchange rate risk. With currency swaps, customers simultaneously purchase and sell currency at a fixed exchange rate for a series of transactions, allowing them to convert a stream of cash flows in one currency into another currency at a fixed exchange rate.

Non-deliverable forwards: Non-deliverable forwards provide a simple and convenient way to hedge exposures in emerging market currencies where a conventional forward does not exist or is restricted. Like conventional forwards, non-deliverable forwards make it possible to hedge future currency exposures without incurring a fee. However, in contrast to conventional forwards, non-deliverable forwards are settled in USD and involve no physical exchange of foreign currencies at maturity.

International Treasury Management for Corporations

Wells Fargo International Treasury Management provides U.S. dollar and foreign currency cash management services to U.S. companies doing business abroad. Our powerful suite of services allows you to:

- Gain unprecedented access to and control over your company's funds worldwide
- Leverage our world-class technology to link domestic and international accounts to an array of services on our award-winning cash management platform, the Commercial Electronic Office® portal
- Enjoy single sign-on to our portal and access more than 50 applications, including cash management, credit, foreign exchange, trade services, and trust and investment services
- Stay connected to your accounts anytime, anywhere, with our CEO *Mobile*SM service that delivers time-sensitive account information to your web-enabled cell phone or PDA

Trade Services for Financial Institutions

Wells Fargo offers a comprehensive, highly technical array of trade operating services that allow our global correspondents to:

- Increase their brand and business value
- Minimize costs while maintaining competitiveness
- Reduce risks while maximizing reserves

These operating services consist of:

- Comprehensive Outsourcing
- Trade Agent
- Overnight Document Exam
- LC Relay
- Open Account Processing

Global Financial Institutions and Multilateral Banking Services

As one of the oldest providers of global correspondent banking services in the world today, Wells Fargo serves over 2,000 banks in 130+ countries. With locations in more than 30 overseas locations, including branches in Hong Kong, London, Shanghai, Seoul, Taipei and Tokyo, we offer a deep and extensive product array including:

- Payments, USD and multicurrency
- Collection and image services
- Deposits/liquidity
- Trade collection, reimbursement and outsourcing
- Trade Finance
- Supply chain finance
- FX
- Cybersuite/online access
- Factoring
- Institutional rates
- International personal banking
- Asset management
- Services for multilateral institutions, such as the World Bank and the United Nations

Assistance and global agencies

Export assistance programs

U.S. Department of Commerce

The U.S. Department of Commerce has many programs, services and publications to assist American manufacturers in marketing their products and services abroad. These are available through a network of Field Offices. In addition, local city and county Departments of Commerce usually have an International Trade department.

Managed by the U.S. Department of Commerce, www.Export.gov brings together resources from across the U.S. Government to assist American businesses in planning their international sales strategies and succeed in today's global marketplace.

From market research and trade leads for the U.S. Department of Commerce's Commercial Service, to export finance information from Export-Import Bank of the United States, Export.gov helps American exporters navigate the international sales process and avoid pitfalls, such as non-payment and intellectual property misappropriation.

Export.gov is one of the Presidential E-Government initiatives created to provide better customer service for businesses interacting with the Federal Government.

Finance, Credit and International Business (FCIB)

FCIB is the premier international association of managers responsible for worldwide export financing, credit, treasury and subsidiary management in the U.S. and 30 countries.

FCIB has helped train and educate many of these managers through its International Round Table Conferences, workshops, seminars and industry trade groups.

For further information, call FCIB at (888) 256-3242; www.fcibglobal.com

Industry-Organized Government-Approved (IOGA) Trade Missions

Industry-Organized Government-Approved (IOGA) Trade Missions are organized by trade associations, chambers of commerce, state development agencies and similar groups with the advice and support of the Department of Commerce. To qualify for Government sponsorship, such missions must agree to abide by certain criteria. The U.S. Department of Commerce assists in planning the missions and coordinating arrangements and support with the U.S. Foreign Service posts.

Financial institutions

Financial institutions can be another excellent source of assistance. Acting through their own international department or through the international department of an affiliate or branch bank overseas, it is possible for them to locate reputable firms, qualified and willing to represent U.S. firms.

Service organizations

Ocean freight carriers, airlines, port authorities and American Chambers of Commerce maintain offices throughout the world. Through these offices U.S. firms can find outlets or representation at no cost or obligation.

Many of these same organizations also publish newsletters or booklets, widely distributed overseas, in which exporters can describe their products, to attract representatives.

Publications

Exporters can place ads in many foreign circulation business and travel magazines to solicit representation or publicize products.

Selecting sales and distribution channels

There are two basic approaches to selling internationally: direct or indirect. When selling direct, the U.S. firm deals with a foreign firm and usually is responsible for shipping the products overseas. The indirect method involves dealing through another U.S. firm that acts as sales intermediary and normally will assume the responsibility for moving the product overseas.

I. Indirect selling

There are several types of intermediary firms. The manufacturer must decide which type will best sell his product.

Commission agents — Commission or buying agents are “finders” for foreign firms that want to purchase U.S. products. These purchasing agents obtain the desired equipment at the lowest possible price. Their foreign clients pay them a commission.

Country controlled buying agents — These are foreign government agencies or quasi-governmental firms empowered to locate and purchase desired goods.

Export Management Companies — EMCs, as they are called, act as the export department for several manufacturers of non-competitive products. They solicit and transact business in the names of the manufacturers they represent for a commission, salary or retainer plus commission. Many EMCs also will carry the financing for export sales, assuring immediate payment for the manufacturer’s products. For smaller firms that lack the resources to develop foreign markets, but wish to establish a corporate and product identity internationally, this is a good arrangement.

Export merchants — Export merchants purchase products direct from the manufacturer, have them packed, and marked to their own specifications. They then sell overseas through their contacts, in their own name, and assume all risks for their accounts.

Export agents — The export agent operates like a manufacturer’s representative, but the risk of loss remains with the manufacturer. In transactions with export merchants and export agents, the seller relinquishes control of the marketing and promotion of the product; this could adversely affect future success.

U.S. State Department/Commerce Department — These departments have attaché residents in U.S. embassies and consulate offices overseas. Their function is exclusively to promote and facilitate trade (especially U.S. exports) between the U.S. and the foreign country. They can also be called upon to assist in introducing potential buyers of U.S. goods and services in foreign markets.

II. Direct selling

The product involved, and the way it is marketed in the U.S., will provide a clue to how it might be marketed internationally; i.e., through a representative, stocking distributor, consignment agent, retail store, or even directly to the end-user. The customary business methods and established channels of distribution in individual foreign countries also have a bearing on how to proceed.

Sales representatives or agents — A sales representative is the equivalent of a manufacturer’s representative here. In the U.S., product literature and samples present the product to the potential buyer. The agent usually works on commission basis, assumes no risk or responsibility, and is under contract for a definite period of time (renewable by mutual agreement). This contract defines territory, terms of sale, method of compensation and other details. The sales representative may operate either on an exclusive or non-exclusive basis.

Distributors — The foreign distributor purchases merchandise from a U.S. manufacturer at the greatest possible discount and resells it for a profit. This is the preferred arrangement if the product being sold requires periodic servicing. The prospective distributor should be willing to carry a sufficient supply of spare parts and maintain adequate facilities and personnel to perform all normal servicing operations. Since the distributor buys in his or her name, it is easier for the U.S. manufacturer to establish a credit pattern, so that more flexible or convenient payment terms can be offered. As with a sales representative, the length of association is established by contract, renewable if the arrangement proves satisfactory.

Foreign retailers — Generally limited to the consumer line, this method relies mainly on direct contact by traveling sales representatives; depending on the product, catalogs, brochures or other literature promoting the product. However, even though it would eliminate commissions and traveling expenses, direct mail may mean the U.S. manufacturers’ proposal may not receive proper consideration.

Selling direct to the end-user — This is quite limited and again depends on the product. Opportunities often arise from advertisements in magazines with overseas distribution. Many times this can create difficulties — casual inquirers may not be fully familiar with their country's foreign trade regulations. They may not be able to receive the merchandise upon arrival, so it might be impounded and possibly sold at public auction, or returned on a freight-collect basis, a costly procedure.

State controlled trading companies — This term applies to countries that have state trading monopolies, where business is conducted by a few government-sanctioned and controlled-trading entities. These areas can become important future markets because of worldwide changes in foreign policy and their effect on trade between countries. For the time being, however, most opportunities are limited to such items as raw materials, agricultural machinery, manufacturing equipment, and technical instruments, rather than consumer or household goods. This is due to foreign exchange shortages and the emphasis on self-sufficiency.

U.S. Government and International Financial Agencies

The Export-Import Bank of the United States (Eximbank) [www.exim.gov]

Established in 1934, Eximbank is the U.S. government agency which helps to finance and facilitate the export of U.S. goods and services.

Eximbank accomplishes its mission by matching the effects of export credit subsidies from other governments and by absorbing reasonable credit risks that are beyond the current reach of the private sector. Eximbank programs fit into four major categories:

- Working capital guarantees to finance the growth of U.S. exports.
- Direct loans to foreign buyers offered to overcome gaps in private-sector financing and compete against foreign subsidized competition.
- Guarantees and/or insurance to commercial lenders, providing repayment protection for loans to foreign buyers of U.S. exports.
- Export credit insurance, protecting exporters against the failure of foreign buyers to pay their credit obligations.

Eximbank does not compete with private financial institutions. It offers assistance only when a transaction cannot take place without its help. Eximbank is not a foreign aid or development agency. They will support transactions only when there is a reasonable assurance of repayment.

Eximbank's Working Capital Guarantee Program (EWCG)

Eximbank's Working Capital Guarantee (EWCG) Program facilitates the growth of U.S. exports that would not otherwise occur without government assistance. The program helps small- and medium-sized businesses by providing the liquidity to accept new business, grow international sales and compete more effectively in the international marketplace.

The guarantee covers 90% of the loan including principal and interest used to finance export sales. Guaranteed loans must be fully-collateralized at all times. Acceptable collateral includes export accounts receivable and export-related inventory. The lender sets the loan advance rates, which tend to be more attractive with Eximbank support.

There is no minimum transaction amount, however, Wells Fargo, using their Fast Track Delegated authority, can approve EWCB loans up to \$25MM.

The loan can be used to purchase raw materials and supplies or to support overhead costs. It can also be used to issue standby letters of credit for bid or performance bonds.

Exporters must have a one-year operating history and positive tangible net worth to qualify. The goods or services exported must have at least 50% U.S. content and must be shipped from a U.S. port. Military/defense-related sales are excluded. Any services must be performed by U.S.-based personnel. Export accounts receivable must be due and payable in the U.S. and in U.S. dollars. Inventory must be located in the U.S.

Eximbank charges for the Working Capital Guarantee program include the following:

- \$100 application fee
- 1.5% per annum facility fee on the loan amount, due at closing

Eximbank approved Delegated Authority lenders, like Wells Fargo, are permitted to commit the Eximbank guarantee directly. To qualify for this accelerated loan processing, the exporter must meet certain financial criteria based on comparisons with other companies in the same SIC code.

Direct loans

Eximbank offers fixed-rate loans directly to foreign buyers of U.S. goods and services to help U.S. exporters compete against foreign suppliers offering officially-supported export credits and to fill in gaps in the availability of private-export financing. Direct loans generally involve sales of capital equipment and large-scale projects involving loan amounts over \$10 million and/or repayment terms over five years.

Loans cover up to 85% of the U.S. export value, with repayment terms of one year or more. Eximbank's lending rates are the lowest permitted under the export credit arrangement among 22 members of the Organization for Economic Cooperation and Development (OECD). In most cases, Eximbank's rate is the OECD Commercial Interest Reference Rate (CIRR), which changes monthly and varies according to the repayment period, as follows:

Repayment period	Eximbank lending rate (CIRR)
Up to 5 Years	3-year Treasury rate + 1%
Over 5 to 8½ years	5-year Treasury rate + 1%
Over 8½ years	7-year Treasury rate + 1%

Eximbank's lending rate is fixed at the date of final Eximbank approval, which is authorized only after export contracts have been signed. For an additional cost, Eximbank may "hold" rates for a four-month period prior to contract signing.

Any responsible party may apply for an Eximbank Letter of Interest or Preliminary Commitment. A Letter of Interest is not a financial offer but rather an indication of what terms may be considered if a commitment is issued at a later date. Turn around is relatively quick as a comprehensive analysis will not be performed at this time. A Preliminary Commitment outlines the amount, fees and other terms and conditions of a loan Eximbank is prepared to authorize for a potential export. A final commitment is a formal authorization of Eximbank support. Only the borrower may apply for a final commitment for a direct loan.

Eximbank charges:

- A processing fee of \$100 with each application for Letter of Interest, or for a Final Commitment that is not preceded by a Letter of Interest or Preliminary Commitment. A processing fee for a Preliminary Commitment is set based on the size and complexity of the credit.
- A commitment fee of 1/2% per annum on undisbursed balances of the loan.
- An exposure fee on each loan disbursement, based on the term of the loan, the type of borrower or guarantor, the borrower's country, and is assigned at time of approval.

Guarantees and medium term insurance

Eximbank issues guarantees or insurance policies to provide repayment protection for private-sector loans to creditworthy buyers of U.S. goods and services. Eximbank also may guarantee payments on cross-border or international leases structured as either operating or finance leases. Insurance is available only on loan amounts of \$10 million or less and tenors of five years or less.

Guaranteed or insured loans cover up to 85% of the U.S. export value, with repayment terms of one year or more. Eximbank covers fixed or floating interest rate export loans, covering 100% of the principal and interest on the financed portion.

Eximbank guarantees and insurance policies carry the full faith and credit of the U.S. government. Notes covered by Eximbank's guarantee may be freely transferred. Most guarantees provide comprehensive coverage of both political and commercial risks, but a guarantee covering only political risks also is available.

Credit guarantee facilities are available to cover multiple sales financed under a single line of credit provided by a U.S. bank to a foreign bank. Master guarantee agreements are available to qualified lenders for the financing of multiple transactions without a separate guarantee agreement for each transaction.

Any responsible party may apply for a Preliminary Commitment outlining the amount, fees, and other terms and conditions of a guarantee or a Letter of Interest, Eximbank is prepared to authorize for a potential export. A Final Commitment is a formal authorization of Eximbank support. Either the borrower or the lender may apply for a final commitment for a guarantee.

Eximbank charges:

- A processing fee of \$100 with each application for Letter of Interest or for a Final Commitment that is not preceded by a Letter of Interest or Preliminary Commitment. A processing fee for a Preliminary Commitment is set, based on the size and complexity of the credit.
- A commitment fee of 1/8% per annum on the undisbursed balance of a guaranteed loan. There are no commitment fees or facility fees charged on Insured Loans.
- An exposure fee, or in the case of an Insured Loan, an Insurance Premium, on each disbursement, based on the term of the loan, the type of borrower or guarantor, and the borrower's country.

Export credit insurance

Export credit insurance helps U.S. companies develop and expand their export sales by protecting against losses in case a foreign buyer defaults. With insured receivables, exporters can arrange more attractive financing and offer more attractive credit terms to their customers.

Types of policies

A wide range of policies accommodates many different export credit insurance needs:

- Policies for small businesses offer enhanced protection for short-term sales by companies with relatively little export credit experience. Applicants must meet the small business administration's definition of small business and possibly meet other criteria.
- Multi-buyer policies provide coverage for exporters' short-term (generally up to 180 days) credit sales and insure a reasonable spread of an exporter's sales. These policies carry a first-loss deductible, similar to other forms of insurance, and provide an exporter with a coverage selection option (90% commercial risks/100% political risks or equalized coverage at 95%). A discretionary credit limit (DCL) provides the exporter with flexibility to make its own credit decisions.

- Single-buyer policies insure short- or medium-term single or repetitive sales to one buyer. Exporters who sell to dealers may insure short-term inventory financing, followed by medium-term receivables financing, for qualifying transactions.
- Financial institution buyer credit policies protect financial institutions against losses on short-term loans to foreign importers of U.S. goods and services.
- Bank letter of credit policies protect banks against losses on irrevocable letters of credit issued by foreign banks in connection with the financing of U.S. exports.
- Leasing policies insure both operating and finance leases.
- Special coverage policies provide political risk insurance only, insurance on exported services, and insurance administered by trade associations.

Eximbank policies cover 90% to 95% of commercial risk and 90% to 100% of political risks. Certain agricultural commodities may be covered at 98% of commercial and political risks.

Exporters also may obtain special endorsements to cover sales into or out of consignment, sales made from an overseas warehouse, non-acceptance of shipments, pre-shipment, payments in a foreign currency, sales out of foreign trade fairs, used equipment sales, and sales of dairy/breeding cattle.

Premiums generally vary with the repayment term, obligor/guarantor classification, and country of importation. Multi-buyer policies also take into consideration the spread of risk insured, the exporter's experience, and related factors.

Eximbank also has special programs covering small business, medical equipment, and environmentally beneficial products and services that provide enhanced coverage and eligibility.

U.S. Small Business Administration [www.sba.gov]

The U.S. Small Business Administration offers aid to current and potential small or minority exporters through two major programs, in accordance with the provisions of *Public Law 96-481*: management assistance and financial assistance.

I. Management assistance

Management assistance programs are administered by the management assistance staff of each SBA district office.

An individual program of management assistance can be designed to meet the specific needs of the small business owner who is entering export markets for the first time, or has had previous experience in international trade, and is considering expanding into additional markets. The program can include: (1) one-on-one counseling by SCORE or ACE volunteers with international trade experience; (2) counseling through Small Business Institute or small business development center programs; (3) assistance from professional international trade management consulting firms; (4) referral to other public or private sector organizations offering more in-depth international trade programs and services; (5) international trade and export marketing publications; and (6) business management training.

Export training programs are co-sponsored by SBA district offices with the Department of Commerce and others interested in international trade. Emphasis is on the practical application of successful exporting procedures to small business.

II. Financial assistance

Financial assistance programs are administered by the financing staff of each SBA district office.

Funds may be used to purchase equipment or materials necessary for the manufacturing and sale of products overseas or for working capital. They may not be used to establish a joint venture abroad. The SBA may also assist a commercial bank to provide a manufacturer with working capital required to perform an export sales contract(s) already secured.

SBA's Export Working Capital Guarantee program can be used by manufacturers, wholesalers and export management companies to purchase supplies, inventories and materials, and for working capital needed for manufacturing or wholesaling products for sale overseas. For eligible borrowers, the SBA will guarantee up to 90% of a private-lending institution's loan up to \$750,000.

For more specific information, contact your local SBA office and ask for the District Office International Trade Designee; or call your regional SBA office and ask for the Regional Export Development Specialist.

The Private Export Funding Corp. (PEFCO) [www.pefco.com]

PEFCO was established with the support of the United States Department of the Treasury and the Export-Import Bank of the United States (Ex-Im Bank) to assist in the financing of exports of U.S. goods and services to supplement financing already available through Eximbank, commercial banks and other lending institutions. PEFCO lends U.S. dollars to U.S. export companies and foreign buyers of U.S. goods and services when traditional lenders cannot or will not complete the financing on market-oriented terms. The company is owned by various commercial banks, industrial companies, and financial services companies. To be eligible for financing by PEFCO, loans must be protected against non-payment under an appropriate guarantee or insurance policy issued by the Export-Import Bank of the U.S. (Ex-Im Bank) or for certain small business export loans under a guarantee issued by the Small Business Administration (SBA). For further information, contact:

Private Export Funding Corporation
280 Park Avenue, New York, NY 10017
(212) 916-0300 Fax: (212) 286-0307

Overseas Private Investment Corp. (OPIC) [www.opic.gov]

OPIC began operations in 1971 by amendment to the 1961 U.S. Foreign Aid Act to take over certain programs formerly administered by the U.S. Agency for International Development (AID). The new corporation was capitalized by the U.S. Treasury, which also guarantees all of its obligations. OPIC, like its predecessor agency, seeks to stimulate investments in underdeveloped countries that substantially contribute to the host country's economy, while aiding the employment and the balance of payments position of the United States.

The corporation attempts to accomplish these goals by providing insurance and loan guarantees designed to overcome the financial and political risks of investing in underdeveloped nations. In addition, OPIC has expanded its activities to include direct loans for ventures involving U.S. small businesses or cooperatives, special programs for contractors, and energy-related investments and leasing.

OPIC differs from its predecessor agency in that it has its own capital base and is profit-oriented. To introduce innovative techniques, the agency draws much of its management team from the private sector.

USDA Commodity Credit Corporation (CCC)
[www.fsa.usda.gov]

The U.S. Department of Agriculture administers export credit guarantee programs to facilitate the financing of U.S. agricultural exports. The USDA Commodity Credit Corporation provides assistance in the form of guarantees to encourage exports to buyers in countries where credit is necessary to maintain or increase sales, but where financing may not be available without the CCC guarantees.

The GSM 102 program provides guarantees to exporters who assign them to U.S. banks to finance eligible foreign bank obligors under refinancing of irrevocable letters of credit issued by those foreign banks on behalf of their importers. The program typically provides a 98% guarantee of principal and a portion of interest for financings up to three years. Repayment terms differ by country and/or region. In addition, each eligible foreign bank obligor also has a limit assigned to them by CCC (but undisclosed to the U.S. bank). Shipments must be from a U.S. port. In addition, the exporter must be qualified under CCC's guidelines. There are documentary requirements specific to the CCC Guarantee that must be completed by the exporter and submitted as part of the letter of credit negotiation process.

Facility Guarantee Program

The Commodity Credit Corporation's (CCC) Facility Guarantee Program (FGP) provides payment guarantees to facilitate the financing of manufactured goods and services exported from the United States to improve or establish agriculture-related facilities in emerging markets. By supporting such facilities, the FGP is designed to enhance sales of U.S. agricultural commodities and products to emerging markets where the demand for such commodities and products may be constricted due to inadequate storage, processing or handling capabilities for such products.

Glossary of terms

Acceptance under LC — a letter of credit which provides for payment by means of a time draft. Acceptance and payment of the draft are guaranteed by the bank issuing the credit only if the documents presented under the credit conform to the LC. Acceptance credits are advantageous because the beneficiary (the seller) can receive immediate payment by having the draft discounted, while the applicant's (buyer's) obligation to pay is deferred until the maturity of the draft (see letter of credit).

Acceptance or time draft — a time draft which has been accepted on its face and bears in writing the unconditional obligation of the person or firm upon whom it is drawn to pay the draft at its maturity.

Ad valorem — “according to value” — see duty.

Advising bank — a bank which authenticates another bank's LC and passes it along to the beneficiary without obligation to pay it.

Affreightment (contact of) — an agreement between a steamship line (or similar carrier) and an importer or exporter in which cargo space is reserved on a vessel for a specified time and at a specified price. The importer/exporter is obligated to make payment of freight whether or not the shipment is made.

After date — a term used on a draft, bill of exchange or note to indicate its maturity date. If an exporter draws a draft and stipulates “60 days after date,” the draft is due 60 days after the date of the draft, therefore, the date of maturity is fixed and is not dependent on the date of acceptance by the drawee (see date draft, also compare after sight).

After sight — a term used on a draft or note to indicate that payment is due a stipulated number of days after the draft has been sighted (or accepted) by the drawee or payor.

Air waybill — a bill of lading which covers both domestic and international flights transporting goods to a specified destination. It is a non-negotiable instrument of air transport which serves as a receipt for the shipper, indicating that the carrier has accepted the goods listed therein and obligates the carrier to carry the consignment to the airport of destination according to specified conditions. It is not a title document.

All-risk clause — an insurance provision that all loss or damage to goods is insured except that of inherent vice (self-caused) or any other causes listed in the insurance policy.

Alongside — a phrase referring to the side of the ship. Goods to be delivered “alongside” are to be placed on the dock or lighter within the reach of the transport ship's tackle so that they can be loaded aboard the ship.

Analysis certificate — a document which evidences that goods have been analyzed for such things as proof of quality, composition, etc.

Anti-dumping duty — a tariff imposed to discourage sale of foreign goods in the United States market at prices so low as to be detrimental to U.S. Manufacturers of the same goods.

Applicant (or Account Party) — means the party under a letter of credit transaction who requests the letter of credit be issued. The Applicant will be required by the issuing bank to have a credit facility and/or post cash collateral for the request.

Appraisalment — the determination, by a proper customs official, of the dutiable value of imported merchandise following procedures outlined in the U.S. Tariff Act of 1930.

Arbitrage — the process of buying foreign exchange, stocks, bonds and other commodities in one market and immediately selling them in another market at a higher price.

Arrival notice — a document issued by railroads, airlines and/or steamship lines to notify consignees of the schedule arrival of goods.

Ata carnet — a customs document which permits the holder to carry or send merchandise temporarily into this country for display, demonstration or similar purpose without payment of duties or posting of bonds.

At sight — a term indicating that a negotiable instrument is to be paid upon presentation or without delay.

Aval or Avalized Draft — a guarantee added by one party to pay a draft that has been accepted by another. Avals are mostly used in documentary collections wherein the bank presenting a D/A time draft to a drawee will add its avalization (guarantee) to pay a draft at maturity that has been accepted by the drawee. Avals are relatively common in Europe and some other parts of the world and though U.S. banks do not avalize trade acceptance drafts, they may discount drafts that are avalized by other banks.

Banker's Acceptance — a time draft which has been drawn on and accepted by a bank under a letter of credit or created by a bank under a credit facility (clean BA) to an importer or exporter provided certain eligibility requirements are met. The clean BA is another method of financing such as a LIBOR loan, except the proceeds are discounted so the borrower receives the face amount less the discount charges, which are paid upfront.

Barter — trade in which merchandise is exchanged directly for other merchandise without the use of money. Barter is an important means of trade with countries whose currency cannot be readily exchanged.

Beneficiary — the individual or company in whose favor a letter of credit is issued.

Bill of exchange — generally used interchangeably with the word “draft”; this is an unconditional order written from one person (the drawer) to another person (the drawee) directing the drawee to pay a certain sum at a fixed or future determinable date, to the order of the party who is to receive payment (the payee or drawer) — (see draft).

Bill of lading — a document issued by a carrier to a shipper, that serves a threefold purpose:

1. A receipt for the goods delivered to the carrier for shipment,
2. A definition of the contract of carriage of the goods from the port of shipment to the port of destination listed in the bill of lading, and
3. Evidence of title to the relative goods.

Bill of lading, charter party — a bill of lading issued under a charter party agreement. It is not acceptable under LCs unless specifically authorized in the credit (see charter party).

Bill of lading clean — a bill of lading issued which bears no superimposed clause or notation which expressly declares a defective condition of the goods and/or the packaging.

Bill of lading, consolidator’s NVOCC’s or forwarder’s — a bill of lading issued by a Freight Consolidator (also called an NVOCC) or Freight Forwarder to a shipper as a receipt for merchandise that will be consolidated with cargo obtained from other exporters and shipped to the forwarder’s agent at the port of destination. Forwarder’s bills are not acceptable under LCs unless specifically authorized in the credit.

Bill of lading inland — a transport document covering movement of goods within the boundaries of a single country.

Bill of lading, negotiable — a bill of lading where the consignee’s name is preceded by the words “to order,” thus allowing the consignee to endorse the bill of lading to another party, thereby transferring title of the relative goods to another party (compare bill of lading, straight).

Bill of lading, “on board” — a bill of lading indicating in its terms or by notation that the relative goods have been loaded “on board” a specified vessel.

Bill of lading, received for shipment — a bill of lading acknowledging the receipt of goods by a carrier for a shipment. This type of bill of lading is acceptable under LCs unless specifically authorized in the credit.

Bill of lading, straight — a non-negotiable bill of lading whereby the consignee named in the bill is the owner of the goods, i.e., the bill of lading cannot be endorsed from one party to another (compare bill of lading, negotiable).

Bill of lading, through, combined transport or intermodal — a bill of lading that covers transportation by more than one carrier, on more than one mode of transport, from the point of issue to the final destination.

Bonded warehouse — a warehouse authorized by customs authorities for storage of goods on which payment of duties is deferred until the goods are removed.

Booking — an arrangement with a steamship company for the acceptance and carriage of freight.

Cash against documents (CAD) — a method of payment (also known as DP or documents against payments) for goods in which documents transferring title are given to the buyer upon payment of cash to an intermediary acting for the seller, usually a bank.

Certificate of origin — a document, required by certain countries for tariff purposes, certifying as to the country of origin of specified goods.

Charter party — a written contract, usually on a special form, between the owner of a vessel and a “charterer” who rents use of the vessel or a part of its freight space. The contract generally includes the freight rates and the ports involved in the transportation.

Clean draft — a draft to which no documents are attached.

Collecting bank — the bank representing the buyer or importer to whom the remitting bank sends a draft and/or documents for collection.

Collection, documentary — drafts and shipping documents created by a seller, drawn on and payable by the buyer which are transmitted to the buyer’s bank (the collecting bank) from the seller’s bank (the remitting bank) with instruction to the collecting bank to deliver documents to the buyer ONLY against payment or acceptance of the draft (as appropriate). The remitting bank does not guarantee payment in a documentary collection, unless the draft is guaranteed or availed by the remitting bank under special arrangement.

Commercial invoice — an invoice from the seller of goods, addressed to the buyer of goods, giving a description of the goods, the price and charges, etc.

Commercial risk — in export financing, the risk of the foreign buyer's ability to pay.

Common carrier — an individual, partnership or corporation which transports persons or goods for compensation.

Consignment under bills of lading —

- **For letters of credit** — ocean bills of lading required under Letters of Credit issued by Wells Fargo must be in negotiable form, meaning in the consignee box in the BL, the consignee is to be shown as: "to the order of Wells Fargo Bank N.A." This form of consignment allows for Wells Fargo to endorse the bills of lading enabling the importer to obtain the goods from the shipping company. If the words "order of" are missing, i.e., the BL shows the consignee as "To Wells Fargo," this is known as a "Straight Consignment." Straight consigned BLs are non-negotiable and title to the goods cannot, therefore, be transferred by further endorsement.
- **For collections** — as banks have no liability or obligation under a Documentary Collection, Wells Fargo prefers not to be the consignee of a Bill of Lading under an Import Collection. However, it is recognized that some exporting countries utilizing documentary collections require bills of lading to be consigned to a bank and not directly to the importer. Under those circumstances, bills of lading are to be consigned to our order as they would be for a letter of credit. Any bill of lading presented under a collection will be handled without obligation in accordance with Article 10a of the Uniform Rules for Collections (URC522), International Chamber of Commerce publication number 522.

Consul — a government official residing in a foreign country who is charged with representing the interest of his country and its citizens.

Consular declaration — a formal statement, made to the consul of a foreign country, describing goods to be shipped to that country.

Consular invoice — a document, required by some foreign countries, describing a shipment of goods and showing information such as the consignor, consignee and value of shipment. Certified by a consular official of the foreign country, it is used by the country's Customs officials to verify the value, quantity, and nature of the shipment.

Contract — an oral or written agreement between two or more parties to do, perform or otherwise carry out certain terms, conditions and actions.

Correspondent bank — a bank which is a depository or agent for another bank and performs various banking services throughout the world.

Country risk — the risk that a foreign country may prohibit payments for imports or may have insufficient foreign exchange to allow payments for imports.

Countervailing duty — an extra duty imposed by the Secretary of the Treasury to offset export grants, bounties or subsidies, paid to foreign suppliers in certain countries by the governments of those countries, as an incentive to export.

Customs — the authorities designated to collect duties levied by a country on imports and exports.

Customs House Broker — an individual or firm licensed to enter and clear goods through Customs usually at the port of import for the buyer.

Date draft — a draft that matures a stipulated number of days after its date, regardless of the time of its acceptance (see after date).

Deferred payment credit — a type of commercial LC providing for payment to the beneficiary at a fixed period of time after the bill of lading date or presentation of conforming documents, although no time draft is required (compare acceptance credit).

Demand draft — a draft payable upon demand (see sight draft).

Demurrage — a penalty charged by the carrier to the charterer or shipper for exceeding the free time or days allowed for loading or unloading at a pier or freight terminal.

Destination control statement — any of various statements which the U.S. Government requires to be displayed on export shipments, and which specify the destinations for which export of the shipment, has been authorized.

Devaluation of currency — the official lowering of the value of one country's currency in relation to one or more other countries' currencies.

Direct exporting — sale by an exporter directly to an importer located in another country.

Discount —

1. **Commercial** — an allowance from the quoted price of goods usually made by the deduction of a certain percentage from the invoice price usually for paying sooner.
2. **Financial** — a deduction of interest from the face amount of commercial paper such as bills of exchange, notes and acceptances or interest that is payable upfront.

Dishonor — refusal on the part of the drawee (could be a buyer or bank) to accept a draft or to pay it when due.

Dock receipt — a document issued by an ocean carrier to acknowledge receipt of a shipment at the carrier's dock or warehouse facilities (also see warehouse receipt).

Documentary (Collection) draft — a draft, to which documents that can control title to the merchandise therein described are attached and delivered under a documentary collection; which documents are to be delivered to the drawee's bank when the drawee accepts or pays the accompanying draft (see collection).

Documentary credit or LC — an LC which is available to the beneficiary against presentation of a draft and certain other specified documents (compare letter of credit, clean).

Documents — papers under an LC or documentary collections evidencing individually the shipment (bills of lading), the cost (invoices), insurance (insurance policy or certificate), etc. of goods.

Documents against acceptance (DA) — instructions given by a seller (drawer) to his/her bank under a documentary collection that the documents attached to a TIME draft are deliverable to the drawee only against the drawee's acceptance of the accompanying draft (see collection).

Documents against payment (DP) — DP or also known as CAD or cash against documents. Instructions given by a Seller (drawer) to his/her bank under documentary collection that the document attached to a SIGHT draft is deliverable to the drawee (buyer) only against payment. (see collection).

Doc Prep company — A company in the business of preparing both export letter of credit or export documentary collection documents on behalf of the exporter.

Draft — a signed order by one party (the drawer), addressed to another party (the drawee), directing the drawee to pay a specified sum of money to the order of third party (the payee which could be the drawer). (See bill of exchange).

Drawback — a refund of duties paid on imported goods which is provided by Customs at the time that the goods are reexported.

Drawee — the party on whom a draft is drawn or payable by, such as the buyer of goods or services.

Dumping — the sale of imported merchandise in the U.S. market at a price so low as to be detrimental to the U.S. manufacturers of the same product.

Duty — a tax imposed on imports by the Customs Authority of that country. Duties are generally based on the value of the goods (ad valorem duties), some other factor such as weight or quantity (specific duties) or a combination of value and other factors (compound duties).

Endorsement — the signature on the back of a negotiable instrument made primarily for the purpose of transferring the rights of the holder to some other person.

Exchange rate — the price of one currency in terms of another, i.e., the number of one Japanese Yen that may be exchanged for one unit of another currency.

Exchange risk — the risk of purchasing or selling merchandise with the price denominated in a currency other than that of the purchaser or seller. Example: the U.S. seller sells in U.S. dollars so that his foreign buyer pays in U.S. dollars, a "foreign" currency to him. At the time of payment, the foreign buyer must purchase U.S. dollars in order to pay for goods. If the buyer has not made prior arrangements to purchase the U.S. dollars at a certain price, he has the risk that the dollars may have risen in value and cost him more than he had calculated. Thus, exchange risk is the risk involved in purchasing or selling in a foreign currency.

Expiration date — the final date upon which drafts and documents under an LC may be presented to a bank for negotiation or payment.

Export — to send or transport goods out of a country for sale in another country. In international sales, the exporter is usually the seller or the seller's agent (compare import).

Export broker — an individual or firm that brings together buyers and sellers for a fee but does not take part in actual sales transactions.

Export license — a government document which permits the “licensee” to engage in the export of designated goods to certain destinations. All U.S. exporters should know whether their products or services require an export license to complete the shipment to any overseas destination.

Force majeure — the title of a standard clause in marine contracts exempting the parties for nonfulfillment of their obligations as a result of conditions beyond their control such as earthquakes, floods, or war.

Foreign exchange — the currency or credit instruments of a foreign country; also for transactions involving purchase and/or sale of foreign currencies (see also exchange risk).

Foreign trade zone (free trade zone) — a port or location designated by the government of a country for duty-free entry of any non-prohibited goods. Merchandise may be stored, displayed and used for manufacturing, etc. within the zone and re-exported without duties being paid. Duties are imposed on the merchandise (or items manufactured from the merchandise) only when the goods pass from the zone into an area of the country subject to Customs Authority.

F.P.A. — “Free of particular average” — the title of a clause used in marine insurance, indicating that partial loss or damage to a shipment is not insured. (Note: loss resulting from certain conditions, such as the sinking or burning of a ship, may be specifically exempted from the effect of the clause). (Compare W.P.A.).

Freight forwarder — a business that dispatches shipments for exporters for a fee. Usually the forwarder handles all the services connected with an export shipment: preparation of documents, booking cargo, space, warehousing, pier delivery and export clearance. The U.S. forwarder is licensed by the Federal Maritime Commission for ocean shipments.

Gatt — “General agreement on tariffs and trade” — a multilateral treaty whose purpose is to help reduce trade barriers among the signatory countries and to promote trade through tariff concessions.

General export license — any of various export licenses covering export commodities for which validated export licenses are not required. No formal application or written authorization is needed to ship exports under a general export license (compare validated exported license).

Gross weight — the entire weight of goods including packing and container (compare legal, net and tare weights).

Guarantee — a written promise by one party to be liable for the debt of another party.

Guarantee, Bank — Refers to an independent Bank Guarantee, known as a Demand Guarantee (DG). DGs are predominately used in certain parts of the world for the same reasons standbys are used in the United States. However, where standbys are subject to accepted rules embodied in ISP98 (and to a lesser extent UCP600), DGs do not carry the same assurance with respect to the applicability of internationally-based rules.

Demand Guarantees are usually issued subject to ICC rules known as the URDG. A new URDG — URDG 758 — went into effect on July 1, 2010. These rules are a substantial improvement over the preceding publication (URDG 458) but nevertheless do little to alleviate some of the major concerns that have plagued acceptance of Demand Guarantees from the very beginning, including that in many countries, they may still be subject to local law. As a result, Wells Fargo may advise DGs issued subject to URDG 758 in European markets through our London office, but does not issue Demand Guarantees or confirm them.

Guarantor — one who extends a guarantee.

Holder in due course — one who has given value in good faith for a negotiable instrument (see letter of credit, negotiable).

ICC information

- **ICC No. 560, Incoterms** — set of international rules for the interpretation of the most commonly used trade rules in foreign trade
- **UCP 600 (ICC No. 600)** — Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication no. 600 (revised 2007). *This publication outlines regulations, when approved by banks, that govern bank letter of credit transactions.*
- **ICC No. 533** — details uniform rules for collections (most current date: 1995)
- **ICC 590** — reflects generally accepted practice, custom and usage of standby letters of credit.
- **ISBP (ICC No. 681 E)** — International Standard Banking Practice — a supplement to the latest UCP which is now UCP 600 (revised 2007).

Import — to bring foreign goods into a country. In international sales, the importer is usually the buyer or an intermediary who accepts and transmits goods to the buyer.

Import permit — some countries use this term interchangeably with IMPORT LICENSE. Permits are usually required for items which might affect the public health, morals, animal life or vegetation of a country.

Import license — a document required and issued by some national governments authorizing the importation of any goods into their countries.

Indirect exporting — sale by the exporter to the buyer through a domestically-located intermediary.

Inherent vice — an insurance term referring to any defect or other characteristic of a product which could result in damage to the product without external cause (for example, instability in a chemical that could cause it to explode spontaneously).

Inland carrier — a transportation line which hauls export or import traffic between ports and inland points.

Inspection certificate — a document which attests to the inspection of goods, reporting data which was the object of the inspection.

Insurance certificate — a document issued by the assured or his agent which pertains and makes reference to an open cargo/master cargo policy maintained by the assured to insure all shipments during the period of the insurance. The insurance certificate is an abbreviated form of the master policy and is, therefore, a negotiable document which must be endorsed by the assured or payee before it can be passed on to another party (compare open cargo policy).

Invoice — a statement prepared by the seller addressed to the buyer showing the details of the sale (see commercial invoice).

Irrevocable — as in irrevocable LC, means a written document that cannot be revoked or changed without specific agreement (usually in written form) from each party. When the parties who must agree are the issuing bank, confirming bank (if any), beneficiary and account party. Revocable LCs are not common practice and, if issued that way, would be clearly marked as such.

Issuing bank/opening bank — the bank which issues or opens an LC. In the case of a commercial LC, usually the buyer's bank.

Landing certificate — a document issued by consular officials of some importing countries at the time goods are exported to their country when the goods are being exported under bond.

Legal weight — the weight of goods plus any immediate wrappings which are sold with the goods, such as a tin can with its contents (compare gross, net, and tare weights).

Letter of correction — a document provided by consular officials to make corrections to previously consularized documents. Countries which require consularized documents generally provide special wording for LCs.

Letter of credit, advised — The bank advising and authenticating the LC for the issuing bank to the seller or beneficiary. The advising bank has no commitment to honor the drafts or the documents presented unless payment is made by the issuing bank. (compare letter of credit, confirmed).

Letter of credit, assignment of proceeds — A bank's recognition of the beneficiary's request to pay proceeds from an LC to a third party (the assignee). Unlike a transfer, the assignee does not gain the right to draw under the LC, but rather, they are to receive a portion of the proceeds due to the beneficiary if, and when, the LC is paid by the bank. Since the assignee is not a party to the credit, they are not privy to the LC details, and therefore, are completely reliant on the beneficiary to perform under the LC.

Letter of credit (LC), commercial — a written document issued by a bank (at the request of the bank's customer) to a specified beneficiary by which the bank substitutes its own credit for that of its customer. The bank undertakes to make payment to the beneficiary under conditions specified in the LC.

Letter of credit, confirmed (disclosed) — an LC issued by an importer's bank in favor of an exporter and to which another bank, usually in the exporter's country, adds its commitment to honor drafts and documents presented in accordance with the terms of the LC (compare letter of credit, advised).

Letter of credit, confirmed (Silent) — A “silent confirmation” refers to an agreement between the beneficiary and the advising bank, wherein, at the request of the beneficiary, the advising bank will undertake to pay a Letter of Credit that the issuing bank has not requested confirmation be added. Since the bank has not been authorized to confirm by the issuer, it may not rely on the rules in UCP 600 applicable to the confirming bank’s role and responsibilities, nor may it rely on or the issuing bank’s obligation with respect to a confirming bank. The silent confirmation is a misnomer since the “confirming bank” in a silent confirmation is not recognized under UCP. In actuality, the obligation of the bank is one that commits to purchase drafts under a compliant letter of credit document presentation and is entirely dependent on the written agreement between the beneficiary and bank.

Letter of credit, green clause and red clause —

- **Green clause** — a green clause LC is a variation of a red clause letter of credit which allows for an advance payment to be made before the shipment of goods. The green clause, so named because it was originally written in green ink, requires the beneficiary to present negotiable warehouse receipts in order to secure the advance payment. As with a red clause LC, the amount of the advance payment, plus interest, is deducted from the proceeds paid at the time the shipping documents are presented.
- **Red clause** — an LC that is rarely used because of obvious risks to the buyer, allowing advance drawings against the beneficiary’s written undertaking to present stipulated documents at a future date within the validity of the LC.

Letter of credit, negotiable — an LC which is available to the beneficiary by negotiation of documents with any bank and not restricted to the advising bank. The issuing bank’s engagement to make payment extends to “bona fide holders of drafts.” (See holder in due course).

Letter of credit, restricted — an LC which is available to the beneficiary by negotiation of documents with a particular bank named in the credit, usually the advising bank or confirming bank. (compare letter of credit, negotiable).

Letter of credit, standby — although similar to a commercial LC in structure, the use of a standby is very different. While a commercial LC is the primary payment mechanism for a commercial trade transaction, the standby LC is only used (drawn upon) in the event of a default by the bank’s customer on some contractual arrangement between him/her and the beneficiary of the LC outside the LC transaction itself. Standby LCs are often used in lieu of bid or performance bonds or as payment guarantees. (Compare letter of credit, commercial).

Letter of credit, transferrable — an LC which authorizes the beneficiary to transfer all or part of the LC to another party, thereby authorizing the other party to present documents for payment.

Letter of instruction — directions under a documentary collection to be followed by the bank presenting a draft for acceptance or payment (see collection).

Licensing — a business arrangement in which the manufacturer of a product, or a firm with proprietary rights over certain technology, trademarks, etc. grants permission for some other party to manufacture or otherwise make use of products/technology/trademarks in return for specified royalties or other payments.

Lighter — an open or covered barge towed by a tugboat mainly in harbors and inland waterways.

Manifest — a document which lists in detail all the bills of lading issued by a steamship vessel, agent or master for a particular voyage. The manifest is a detailed summary of the total cargo of a vessel and is used primarily for Customs purposes.

Marine cargo insurance policy — a contract of indemnity by which an insurance company, in return for payment of a premium, undertakes to refund the insured the amount of any loss arising from such casualty as may be insured against for goods in transit. Marine insurance may cover not only ocean shipments, but air shipments as well.

Marking (or marks) — letters, numbers and other symbols placed on cargo packages to facilitate identification.

Mate’s receipt — a document signed by the mate of a vessel which acknowledges receipt of cargo by the vessel. The person in possession of a mate’s receipt is entitled to the bill of lading which will be issued in due course and exchanged for the mate’s receipt.

Maturity date — the date upon which a draft or acceptance becomes due for payment.

Negotiable — the condition of an instrument (draft or other document) which allows it to be endorsed/transferred from owner to owner.

Negotiation credit — an LC which allows a bank (or banks) other than the issuing bank to examine documents and determine if the credit terms have been met (see letter of credit, negotiable).

Net weight — the weight of goods alone, without any immediate wrappings (compare gross, legal and tare weights).

NVOCC (non-vessel operating common carrier) — a cargo consolidator of small shipments in ocean trade, generally soliciting business and arranging for or performing containerization functions at the port. NVOCC bills of lading are not acceptable under LCs unless specifically authorized in the credit.

Open account — the exporter ships the merchandise to the customer (importer) in the foreign country and bills him/her directly with no additional guarantee of payment. The importer then makes payment on his/her account in the manner specified on the commercial invoice: Sight, 30, 60, 90 days, etc. Usually open account terms are only granted to an exporter's best customers.

Open cargo insurance policy — a marine insurance policy that applies to all shipments made by an exporter over a period of time rather than to each individual shipment only.

Packing list — a document showing the number and kinds of items being shipped.

Parcel post receipt — the postal authority's signed acknowledgment of receipt of merchandise to be sent by parcel post.

Parcel receipt shipment — an arrangement whereby a steamship company will, under rules and regulations established in the freight tariff of a given trade, accept small packages at rates below the minimum bill of lading rate. Parcel receipts are then issued in lieu of bills of lading.

Payee — the party to whom a draft or any negotiable instrument is made payable. The payee can be the drawer (seller) under a documentary collection or the paying bank under an LC.

Perils of the sea — those causes of losses attributed to elemental risks of ocean shipments for which an ocean carrier is not legally liable.

Phytosanitary certificate — a document by the U.S. Department of Agriculture which indicates that an export shipment has been inspected and found to be substantially free from harmful pests and plant diseases.

Port of discharge — port where vessel is off-loaded and cargo discharged (import port).

Port of entry — port where foreign goods are admitted into the receiving country (Customs clearance).

Port of loading — port where cargo is loaded aboard the vessel, lashed and stowed (export port).

Presentation time — in an LC transaction, a specified time period after date of the transport document in which a beneficiary must present documents to the negotiating bank. In the absence of any other specification, the time period is automatically 21 days after the date of the transport document. (Also see stale-dated and compare expiration date).

Pro-forma invoice — an invoice from seller to buyer outlining details of a proposed sale. It should contain sufficient information to enable the buyer to prepare an LC application.

Promissory note — a written promise which commits the signer to repay a certain sum to the payee, usually with interest, at a future date.

Protest — a notarized certificate of dishonor of the non-payment of a draft, generally made with regard to subsequent legal action, and sometimes asked for in a documentary collection transaction by the seller (exporter).

Quota — the quantity of goods to a specific kind that a country will permit to be imported without restriction or imposition of additional duties.

Release, air — an indemnity letter issued by a bank to an airline requesting release of merchandise in the absence of original air waybills of lading.

Recourse — the rights of a holder in due course of a negotiable instrument to force prior endorsers to meet their legal obligations to pay on the instrument if it is dishonored by the maker or acceptor.

Schedule B number — refers to product classification codes contained in Schedule B, Statistical Classification of Domestic and Foreign Commodities Exported from the United States provided by the U.S. Department of Commerce and U.S. Customs Service. Schedule B numbers must be included on the Shipper's Export Declaration submitted to U.S. Customs at the time a product is exported.

Shipper's export declaration — a form required by the U.S. Treasury Department for all export shipments to be prepared by a shipper (or his freight forwarder), indicating the value, weight, destination, Schedule B number and other basic information about an export shipment.

Sight draft — a draft so drawn as to be payable upon presentation on the drawee, which can be the buyer of the goods under a documentary collection or the paying bank under an LC. (See demand draft).

Spot exchange — the purchase or sale of foreign currency for immediate delivery.

Stale-dated — in an LC transaction, bills of lading not presented to negotiating bank within a specified time after their issuance (21 days after issuance, unless otherwise specified).

Steamship conference — a group of steamship operators that operate under mutually agreed upon freight rates.

Steamship guarantee — an indemnity letter issued by a bank under either a documentary collection or letter of credit transaction to a steamship line requesting release of merchandise in the absence of the original bills of lading. The bank issuing the steamship guarantee is under no obligation to do so unless it has sufficient collateral from or a credit facility in place for the importer. (See page 51 for further information on Steamship Guarantees)

Supply chain — the process of procuring, transporting and settling for goods acquired to satisfy customer demand. Supply chain management involves the tracking, analysis and optimization of information flows across the physical and financial processes supporting the supply chain as a means to increase efficiency and lower costs.

Supply chain finance — supply chain finance is funding provided to buyers or sellers during the course of a transaction for the purposes of improving working capital and cash flow.

Tare weight — the weight of a container and/or packing materials without the weight of the goods it contains. (compare gross, legal, and net weights).

Tenor — the term fixed for payment under a letter of credit, documentary collection of draft, for example: Sight, 30 days from sight, or 60 days from bill of lading date.

Terms, payment — the terms of sale under which a seller and buyer agree payment for the goods will take place (e.g., open account, Sight draft, letter of credit, etc.)

Terms, selling — the terms under which the seller is willing to sell his/her goods.

Terms, shipping — terms, stated in abbreviated form, which outline where the seller's responsibility ends and where the buyer's begins with regards to movement of freight and its associated charges (e.g., FAS, FOB, CFR, CIF). (See further information about Incoterms on page 80).

Time draft — a draft that is payable at a fixed or determinable future date.

Transshipment — the transfer and reloading during the course of carriage from the port of lading or place of dispatch to the port of discharge or place of destination either from one conveyance (or vessel) to another conveyance (or vessel) within the same mode of transport or from one mode of transport to another mode of transport.

Tramp steamer — a ship not operating on regular routes or schedules.

Trust receipt — release of merchandise by a bank to a buyer in which the bank retains title to the merchandise. The buyer, who obtains the goods for manufacturing or sales purposes, is obligated to maintain the goods (or the proceeds from their sale) distinct from the remainder of his/her assets and to hold them ready for repossession by the bank if demanded.

Validated export license — a document issued by the U.S. Government authorizing the export of a commodity for which written export authorization is required by law. (compare general export license).

W.P.A – “**with particular average**” – a marine insurance item meaning that a shipment is protected from particular damage when the damage exceeds 3% or some other stated percentage. (compare F.P.A. “Free of particular average”).

Warehouse receipt – a receipt issued by a warehouse listing goods received for storage. (compare dock receipt).

Wharfage – a charge assessed by a pier or dock owner for handling incoming or outgoing cargo.

With recourse – a phrase used on an instrument or (import port). See ICC No. 560, Incoterms 2000 in last section of this guide.

Without recourse – a phrase used on an instrument or endorsement to indicate that the drawer or endorser is **NOT** liable to subsequent holders or the institution that has financed the instrument, if the instrument is not honored when due.

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1. Purpose and scope of incoterms

The purpose of Incoterms is to provide a set of international rules for the interpretation of the most commonly used trade terms in foreign trade. Thus, the uncertainties of different interpretations of such terms in different countries can be avoided or at least reduced to a considerable degree.

Frequently, parties to a contract are unaware of the different trading practices in their respective countries. This can give rise to misunderstandings, disputes, and litigation, with all the waste of time and money that this entails. In order to remedy these problems, the International Chamber of Commerce first published in 1936 a set of international rules for the interpretation of trade terms. These rules were known as “Incoterms 1936”. Amendments and additions were later made in 1953, 1967, 1976, 1990, and 2000 in order to bring the rules in line with current international trade practices.

It should be stressed that the scope of Incoterms is limited to matters relating to the rights and obligations of the parties to the contract of sale with respect to the delivery of goods sold (in the sense of “tangibles,” not including “intangibles” such as computer software).

It appears that two particular misconceptions about Incoterms are very common. First, Incoterms are frequently misunderstood as applying to the contract of carriage rather than to the contract of sale. Second, they are sometimes wrongly assumed to provide for all the duties which parties may wish to include in a contract of sale.

As has always been underlined by ICC, Incoterms deal only with the relation between sellers and buyers under the contract of sale, and, moreover, only do so in some very distinct respects.

While it is essential for exporters and importers to consider the very practical relationship between the various contracts needed to perform an international sales transaction — where not only the contract of sale is required, but also contracts of carriage, insurance and financing — Incoterms relate to only one of these contracts, namely the contract of sale.

Nevertheless, the parties’ agreement to use a particular Incoterm would necessarily have implications for the other contracts. To mention a few examples, a seller having agreed to a CFR — or CIF — contract cannot perform such a contract by any other mode of transport than carriage by sea, since under these terms he must present a bill of lading or other maritime document to the buyer which is simply not possible if other modes of transport are used. Furthermore, the document required under a documentary credit would necessarily depend upon the means of transport intended to be used.

Second, Incoterms deal with a number of identified obligations imposed on the parties — such as the seller’s obligation to place the goods at the disposal of the buyer or hand them over for carriage or deliver them at destination — and with the distribution of risk between the parties in these cases.

Further, they deal with the obligations to clear the goods for export and import, the packing of the goods, the buyer’s obligation to take delivery as well as the obligation to provide proof that the respective obligations have been duly fulfilled. Although Incoterms are extremely important for the implementation of the contract of sale, a great number of problems which may occur in such a contract are not dealt with at all, like transfer of ownership and other property rights, breaches of contract and the consequences following from such breaches as well as exemptions from liability in certain situations. It should be stressed that Incoterms are not intended to replace such contract terms that are needed for a complete contract of sale either by the incorporation of standard terms or by individually negotiated terms.

Generally, Incoterms do not deal with the consequences of breach of contract and any exemptions from liability owing to various impediments. These questions must be resolved by other stipulations in the contract of sale and the applicable law.

Incoterms have always been primarily intended for use where goods are sold for delivery across national boundaries: hence, international commercial terms. However, Incoterms are in practice at times also incorporated into contracts for the sale of goods within purely domestic markets. Where Incoterms are so used, the A2 and B2 clauses and any other stipulation or other articles dealing with export and import do, of course, become redundant.

2. Why revisions of Incoterms?

The main reason for successive revisions of Incoterms has been the need to adapt them to contemporary commercial practice. Thus, in the 1980 revision the term Free Carrier (now FCA) was introduced in order to deal with the frequent case where the reception point in maritime trade was no longer the traditional FOB — point (passing of the ship’s rail) but rather a point on land, prior to loading on board a vessel, where the goods were stowed into a container for subsequent transport by sea or by different means of transport in combination (so-called combined or multimodal transport).

Further, in the 1990 revision of Incoterms, the clauses dealing with the seller’s obligation to provide proof of delivery permitted a replacement of paper documentation by EDI — messages provided the parties had agreed to communicate electronically. Needless to say, efforts are constantly made to improve upon the drafting and presentation of Incoterms in order to facilitate their practical implementation.

3. Incoterms 2000

During the process of revision, which took about two years, ICC had done its best to invite views and responses to successive drafts from a wide-ranging spectrum of world traders, represented as these various sectors are on the national committees through which ICC operates. Indeed, it has been gratifying to see that this revision process has attracted far more reaction from users around the world than any of the previous revisions of Incoterms. The result of this dialogue is Incoterms 2000, a version which when compared with Incoterms 1990 may appear to have effected few changes. It is clear, however, that Incoterms now enjoy world-wide recognition and ICC has therefore decided to consolidate upon that recognition and avoid change for its own sake. On the other hand, serious efforts have been made to ensure that the wording used in Incoterms 2000 clearly and accurately reflects trade practice. Moreover, substantive changes have been made in two areas:

- The customs clearance and payment of duty obligations under FAS and DEQ; and
- The loading and unloading obligations under FCA.

All changes, whether substantive or formal have been made on the basis of thorough research among users of Incoterms and particular regard has been given to queries received since 1990 by the Panel of Incoterms Experts, set up as additional service to the users of Incoterms.

4. Incorporation of Incoterms into the contract of sale

In view of the changes made to Incoterms from time to time, it is important to ensure that where the parties intend to incorporate Incoterms into their contract of sale, an express reference is always made to the current version of Incoterms. This may easily be overlooked when, for example, a reference has been made to an earlier version in standard contract forms or in order forms used by merchants. A failure to refer to the current version may then result in disputes as to whether the parties intended to incorporate that version or an earlier version as a part of their contract. Merchants wishing to use Incoterms 2000 should therefore clearly specify that their contract is governed by “Incoterms 2000.”

5. The structure of Incoterms

In 1990, for ease of understanding, the terms were grouped in four basically different categories; namely starting with the term whereby the seller only makes the goods available to the buyer at the seller's own premises (the "E"- term Ex works); followed by the second group whereby the seller is called upon to deliver the goods to a carrier appointed by the buyer (the "F"- terms FCA, FAS and FOB); continuing

with the "C"- terms where the seller has to contract for carriage, but without assuming the risk of loss of or damage to the goods or additional costs due to events occurring after shipment and dispatch (CFR, CIF, CPT and CIP); and, finally the "D"- terms whereby the seller has to bear all costs and risks needed to bring the goods to the place of destination (DAF, DES, DEQ, DDU and DDP). The following chart sets out this classification of the trade terms.

Exhibit 5.9: Incoterms 2000

Group E	Departure EXW Ex Works (...named place)
Group F	Main carriage unpaid FCA Free Carrier (...named place) FAS Free Alongside Ship (...named port of shipment) FOB Free on Board (...named port of shipment)
Group C	Main carriage paid CFR Cost and Freight (...named port of destination) CIF Cost, Insurance and Freight (...named port of destination) CPT Carriage Paid To (...named place of destination) CIP Carriage and Insurance Paid To (...named place of destination)
Group D	Arrival DAF Delivered At Frontier (...named place) DES Delivered Ex Ship (...named port of destination) DEQ Delivered Ex Quay (...named port of destination) DDU Delivered Duty Unpaid (...named place of destination) DDP Delivered Duty Paid (...named place of destination)

Further, under all terms, as in Incoterms 1990, the respective obligations of the parties have been grouped under 10 headings where each heading on the seller's side "mirrors" the position of the buyer with respect to the same subject matter.

6. Terminology

While drafting Incoterms 2000, considerable efforts have been made to achieve as much consistency as possible and desirable with respect to the various expressions used throughout the thirteen terms. Thus, the use of different expressions intended to convey the same meaning has been avoided. Also, whenever possible, the same expressions as appear in the 1980 UN Convention on Contracts for the International Sale of Goods (CISG) have been used.

“shipper”

In some cases it has been necessary to use the same term to express two different meanings simply because there has been no suitable alternative. Traders will be familiar with this difficulty both in the context of contracts of sale and also of contracts of carriage. Thus, for example, the term “shipper” signifies both the person handing over the goods for carriage and the person who makes the contract with the carrier: however, these two “shippers” may be different persons, for example under a FOB contract where the seller would hand over the goods for carriage and the buyer would make the contract with the carrier.

“delivery”

It is particularly important to note that the term “delivery” is used in two different senses in Incoterms. First, it is used to determine when the seller has fulfilled his delivery obligation which is specified in the A4 clauses throughout Incoterms. Second, the term “delivery” is also used in the context of the buyer’s obligation to take or accept delivery of the goods, an obligation which appears in the B4 clauses throughout Incoterms.

Used in this second context, the word “delivery” means first that the buyer “accepts” the very nature of the “C”- terms, namely that the seller fulfills his obligations upon the shipment of the goods and, second that the buyer is obliged to receive the goods. This latter obligation is important so as to avoid unnecessary charges for storage of the goods until they have been collected by the buyer. Thus, for example under CFR and CIF contracts, the buyer is bound to accept delivery of the goods and to receive them from the carrier and if the buyer fails to do so, he may become liable to pay damages to the seller who has made the contract of carriage with the carrier or, alternatively, the buyer might have to pay demurrage charges resting upon the goods in order to obtain the carrier’s release of the goods to him. When it is said in this context that the buyer must “accept delivery”, this does not mean that the buyer has accepted the goods

as conforming with the contract of sale, but only that he has accepted that the seller has performed his obligation to hand the goods over for carriage in accordance with the contract of carriage which he has to make under the A3 a) clauses of the “C”- terms. So, if the buyer upon receipt of the goods at destination were to find that the goods did not conform to the stipulations in the contract of sale, he would be able to use any remedies which the contract of sale and the applicable law gave him against the seller, matters which, as has already been mentioned, lie entirely outside the scope of Incoterms. Where appropriate, Incoterms 2000 have used the expression “placing the goods at the disposal of” the buyer when the goods are made available to the buyer at a particular place. This expression is intended to bear the same meaning as that of the phrase “handing over the goods” used in the 1980 United Nations Convention on Contracts for the International Sale of Goods.

“usual”

The word “usual” appears in several terms, for example in EXW with respect to the time of delivery (A4) and in the “C”- terms with respect to the documents which the seller is obliged to provide and the contract of carriage which the seller must procure (A8, A3). It can, of course, be difficult to tell precisely what the word “usual” means, however, in many cases, it is possible to identify what persons in the trade usually do and this practice will then be the guiding light. In this sense, the word “usual” is rather more helpful than the word “reasonable”, which requires an assessment not against the world of practice but against the more difficult principle of good faith and fair dealing. In some circumstances it may well be necessary to decide what is “reasonable”. However, for the reasons given, in Incoterms the word “usual” has been generally preferred to the word “reasonable”.

“charges”

With respect to the obligation to clear the goods for import it is important to determine what is meant by “charges” which must be paid upon import of the goods. In Incoterms 1990 the expression “official charges payable upon exportation and importation of the goods” was used in DDP A6. In Incoterms 2000 DDP A6 the word “official” has been deleted, the reason being that this word gave rise to some uncertainty when determining whether the charge was “official” or not. No change of substantive meaning was intended through this deletion. The “charges” which must be paid only concern such charges as are a necessary consequence of the import as such and which thus have to be paid according to the applicable import regulations. Any

additional charges levied by private parties in connection with the import are not to be included in these charges, such as charges for storage unrelated to the clearance obligation. However, the performance of that obligation may well result in some costs to customs brokers or freight forwarders if the party bearing the obligation does not do the work himself.

“ports”, “places”, “points” and “premises”

So far as concerns the place at which the goods are to be delivered, different expressions are used in Incoterms. In the terms intended to be used exclusively for carriage of goods by sea — such as FAS, FOB, CFR, CIF, DES and DEQ — the expressions “port of shipment” and “port of destination” have been used. In all other cases the word “place” has been used. In some cases, it has been deemed necessary also to indicate a “point” within the port or place as it may be important for the seller to know not only that the goods should be delivered in a particular area like a city but also where within that area the goods should be placed at the disposal of the buyer. Contracts of sale would frequently lack information in this respect and Incoterms therefore stipulate that if no specific point has been agreed within the named place, and if there are several points available, the seller may select the point which best suits his purpose (as an example see FCA A4). Where the delivery point is the seller’s “place” the expression “the seller’s premises” (FCA A4) has been used.

“ship” and “vessel”

In the terms intended to be used for carriage of goods by sea, the expressions “ship” and “vessel” are used as synonyms. Needless to say, the term “ship” would have to be used when it is an ingredient in the trade term itself such as in “free alongside ship” (FAS) and “delivery ex ship” (DES). Also, in view of the traditional use of the expression “passed the ship’s rail” in FOB, the word “ship” has had to be used in that connection.

“checking” and “inspection”

In the A9 and B9 clauses of Incoterms the headings “checking — packaging and marking” and “inspection of the goods” respectively have been used. Although the words “checking” and “inspection” are synonyms, it has been deemed appropriate to use the former word with respect to the seller’s delivery obligation under A4 and to reserve the latter for the particular case when a “pre-shipment inspection” is performed, since such inspection normally is only required when the buyer or the authorities of the export or import country want to ensure that the goods conform with contractual or official stipulations before they are shipped.

7. The seller’s delivery obligations

Incoterms focus on the seller’s delivery obligation. The precise distribution of functions and costs in connection with the seller’s delivery of the goods would normally not cause problems where the parties have a continuing commercial relationship. They would then establish a practice between themselves (“course of dealing”), which they would follow in subsequent dealings in the same manner as they have done earlier. However, if a new commercial relationship is established or if a contract is made through the medium of brokers — as is common in the sale of commodities — one would have to apply the stipulations of the contract of sale and, whenever Incoterms 2000 have been incorporated into that contract, apply the division of functions, costs, and risks following therefrom.

It would, of course, have been desirable if Incoterms could specify in as detailed a manner as possible the duties of the parties in connection with the delivery of the goods. Compared with Incoterms 1990, further efforts have been made in this respect in some specified instances (see for example FCA A4). But it has not been possible to avoid reference to customs of the trade in FAS and FOB A4 (“in the manner customary at the port”), the reason being that particularly in commodity trade the exact manner in which the goods are delivered for carriage in FAS and FOB contracts vary in the different sea ports.

8. Passing of risks and costs relating to the goods

The risk of loss of or damage to the goods, as well as the obligation to bear the costs relating to the goods, passes from the seller to the buyer when the seller has fulfilled his obligation to deliver the goods. Since the buyer should not be given the possibility to delay the passing of the risk and costs, all terms stipulate that the passing of risk and costs may occur even before delivery, if the buyer does not take delivery as agreed or fails to give such instructions (with respect to time for shipment and/or place for delivery) as the seller may require in order to fulfill his obligation to deliver the goods. It is a requirement for such premature passing of risk and costs that the goods have been identified as intended for the buyer or, as is stipulated in the terms, set aside for him (appropriation).

This requirement is particularly important under EXW, since under all other terms the goods would normally have been identified as intended for the buyer when measures have been taken for their shipment or dispatch (“F”- and “C”- terms) or their delivery at destination (“D”- terms). In exceptional cases, however, the goods may have been sent from the seller in bulk without identification of the quantity for each buyer and, if so, passing of risk and cost does not occur before the goods have been appropriated as aforesaid (cf. also article 69.3 of the 1980 United Nations Convention on Contracts for the International Sale of Goods).

9. The terms

9.1 The “E”- term is the term in which the seller’s obligation is at its minimum: the seller has to do no more than place the goods at the disposal of the buyer at the agreed place – usually at the seller’s own premises. On the other hand, as a matter of practical reality, the seller would frequently assist the buyer in loading the goods on the latter’s collecting vehicle. Although EXW would better reflect this if the seller’s obligations were to be extended so as to include loading, it was thought desirable to retain the traditional principle of the seller’s minimum obligation under EXW so that it could be used for cases where the seller does not wish to assume any obligation whatsoever with respect to the loading of the goods. If the buyer wants the seller to do more, this should be made clear in the contract of sale.

9.2 The “F”- terms require the seller to deliver the goods for carriage as instructed by the buyer. The point at which the parties intend delivery to occur in the FCA term has caused difficulty because of the wide variety of circumstances, which may surround contracts covered by this term. Thus, the goods may be loaded on a collecting vehicle sent by the buyer to pick them up at the seller’s premises: alternatively, the goods may need to be unloaded from a vehicle sent by the seller to deliver the goods at a terminal named by the buyer. Incoterms 2000 take account of these alternatives by stipulating that, when the place named in the contract as the place of delivery is the seller’s premises, delivery is complete when the goods are loaded on the buyer’s collecting vehicle and, in other cases, delivery is complete when the goods are placed at the disposal of the buyer not unloaded from the seller’s vehicle. The variations mentioned for different modes of transport in FCA A4 of Incoterms 1990 are not repeated in Incoterms 2000.

The **delivery point** under FOB, which is the same under CFR and CIF, has been left unchanged in Incoterms 2000 in spite of a considerable debate. Although the notion under FOB to deliver the goods “across the ship’s rail” nowadays may seem inappropriate in many cases, it is nevertheless understood by merchants and applied in a manner which takes account of the goods and the available loading facilities. It was felt that a change of the FOB-point would create unnecessary confusion, particularly with respect to sale of commodities carried by sea typically under charter parties.

Unfortunately, the word “FOB” is used by some merchants merely to indicate any point of delivery – such as “FOB factory”, “FOB plant”, “FOB Ex seller’s works” or other inland points – thereby neglecting what the abbreviation means: **Free On Board**. It remains the case that such use of “FOB” tends to create confusion and should be avoided.

There is an important change of FAS relating to the obligation to clear the goods for export, since it appears to be the most common practice to put this duty on the seller rather than on the buyer. In order to ensure that this change is duly noted, it has been marked with capital letters in the preamble of FAS.

9.3 The “C”- terms require the seller to contract for carriage on usual terms at his own expense. Therefore, a point up to which he would have to pay transport costs must necessarily be indicated after the respective “C”- term. Under the CIF and CIP terms, the seller also has to take out insurance and bear the insurance cost. Since the point for the division of costs is fixed at a point in the country of destination, the “C”- terms are frequently mistakenly believed to be arrival contracts, in which the seller would bear all risks and costs until the goods have actually arrived at the agreed point. However, it must be stressed that the “C”- terms are of the same nature as the “F”- terms in that the seller fulfills the contract in the country of shipment or dispatch. Thus, the contracts of sale under the “C”- terms, like the contracts under the “F”- terms, fall within the category of shipment contracts.

It is in the nature of shipment contracts that, while the seller is bound to pay the normal transport cost for the carriage of the goods by a usual route and in a customary manner to the agreed place, the risk of loss of or damage to the goods, as well as additional costs resulting from events occurring after the goods having been appropriately delivered for carriage, fall upon the buyer. Hence, the “C”- terms are distinguishable from

all other terms in that they contain two “critical” points, one indicating the point to which the seller is bound to arrange and bear the costs of a contract of carriage and another one for the allocation of risk. For this reason, the greatest caution must be observed when adding obligations of the seller to the “C”- terms which seek to extend the seller’s responsibility beyond the aforementioned “critical” point for the allocation of risk. It is of the very essence of the “C”- terms that the seller is relieved of any further risk and cost after he has duly fulfilled his contract by contracting for carriage and handing over the goods to the carrier and by providing for insurance under the CIF — and CIP — terms.

The essential nature of the “C”- terms as shipment contracts is also illustrated by the common use of documentary credits as the preferred mode of payment used in such terms. Where it is agreed by the parties to the sale contract that the seller will be paid by presenting the agreed shipping documents to a bank under a documentary credit, it would be quite contrary to the central purpose of the documentary credit for the seller to bear further risks and costs after the moment when payment had been made under documentary credits or otherwise upon shipment and dispatch of the goods. Of course, the seller would have to bear the cost of the contract of carriage irrespective of whether freight is pre-paid upon shipment or is payable at destination (freight collect); however additional costs which may result from events occurring subsequent to shipment and dispatch are necessary for the account of the buyer.

If the seller has to provide a contract of carriage which involves payment of duties, taxes, and other charges, such costs will, of course, fall upon the seller to the extent that they are for his account under that contract. This is now explicitly set forth in the A6 clause of all “C”-terms.

If it is customary to procure several contracts of carriage involving transshipment of the goods at intermediate places in order to reach the agreed destination, the seller would have to pay all these costs, including any costs incurred when the goods are transhipped from one means of conveyance to the other. If, however, the carrier exercised his rights under a transshipment — or similar clause — in order to avoid unexpected hindrances (such as ice, congestion, labour disturbances, government orders, war, or warlike operations) then any additional cost resulting therefrom would be for the account of the buyer, since the seller’s obligation is limited to procuring the usual contract of carriage.

It happens quite often that the parties to the contract of sale wish to clarify the extent to which the seller should procure a contract of carriage including the costs of discharge. Since such costs are normally covered by the freight when the goods are carried by regular shipping lines, the contract of sale will frequently stipulate that the goods are to be so carried or at least that they are to be carried under “liner terms”. In other cases, the word “landed” is added after CFR or CIF. However, it is advisable not to use abbreviations added to the “C”- terms unless, in the relevant trade, the meaning of the abbreviations is clearly understood and accepted by the contracting parties or under any applicable law or custom of the trade.

In particular, the seller should not — and indeed could not, without changing the very nature of the “C”- terms — undertake any obligation with respect to the arrival of the goods at destination, since the risk of any delay during the carriage is borne by the buyer. Thus, any obligation with respect to time must necessarily refer to the place of shipment or dispatch, for example, “shipment (dispatch) not later than ...” An agreement for example, “CFR Hamburg not later than ...” is really a misnomer and thus open to different possible interpretations. The parties could be taken to have meant either that the goods must actually arrive at Hamburg at the specified date, in which case the contract is not a shipment contract but an arrival contract or, alternatively, that the seller must ship the goods at such a time that they would normally arrive at Hamburg before the specified date unless the carriage would have been delayed because of unforeseen events.

It happens in commodity trades that goods are bought while they are at sea and that, in such cases, the word “afloat” is added after the trade term. Since the risk of loss of or damage to the goods would then, under the CFR — and CIF — terms, have passed from the seller to the buyer, difficulties of interpretation might arise. One possibility would be to maintain the ordinary meaning of the CFR — and CIF — terms with respect to the allocation of risk between seller and buyer, namely that risk passes on shipment: this would mean that the buyer might have to assume the consequences of events having already occurred at the time when the contract of sale enters into force. The other possibility would be to let the passing of the risk coincide with the time when the contract of sale is concluded. The former possibility might well be practical, since it is usually impossible to ascertain the condition of the goods while they are being carried. For this reason, the 1980 United Nations

Convention of Contracts for the International Sale of Goods article 68 stipulates that “if the circumstances so indicate, the risk is assumed by the buyer from the time the goods were handed over to the carrier who issued the documents embodying the contract of carriage”. There is, however, an exception to this rule when “the seller knew or ought to have known that the goods had been lost or damaged and did not disclose this to the buyer”. Thus, the interpretation of a CFR – or CIF – term with the addition of the word “afloat” will depend upon the law applicable to the contract of sale. The parties are advised to ascertain the applicable law and any solution which might follow therefrom. In case of doubt, the parties are advised to clarify the matter in their contract.

In practice, the parties frequently continue to use the traditional expression C&F (or C and F, C+F). Nevertheless, in most cases it would appear that they regard these expressions as equivalent to CFR. In order to avoid difficulties of interpreting their contract, the parties should use the correct Incoterm, which is CFR, the only world-wide-accepted standard abbreviation for the term “Cost and Freight (... named port of destination)”.

CFR and CIF in A8 of Incoterms 1990 obliged the seller to provide a copy of the charterparty whenever his transport document (usually the bill of lading) contained a reference to the charterparty, for example, by the frequent notation “all other terms and conditions as per charterparty”. Although, of course, a contracting party should always be able to ascertain all terms of his contract – preferably at the time of the conclusion of the contract – it appears that the practice to provide the charterparty as aforesaid has created problems particularly in connection with documentary credit transactions. The obligation of the seller under CFR and CIF to provide a copy of the charterparty together with other transport documents has been deleted in Incoterms 2000.

Although the A8 clauses of Incoterms seek to ensure that the seller provides the buyer with “proof of delivery”, it should be stressed that the seller fulfills that requirement when he provides the “usual” proof. Under CPT and CIP it would be the “usual transport document” and under CFR and CIF a bill of lading or a sea waybill. The transport documents must be “clean”, meaning that they must not contain clauses or notations expressly declaring a defective condition of the goods and/or the packaging. If such clauses or notations appear in the document, it is regarded as “unclean” and would then not be accepted

by banks in documentary credit transactions. However, it should be noted that a transport document even without such clauses or notations would usually not provide the buyer with incontrovertible proof as against the carrier that the goods were shipped in conformity with the stipulations of the contract of sale. Usually, the carrier would, in standardized text on the front page of the transport document, refuse to accept responsibility for information with respect to the goods by indicating that the particulars inserted in the transport document constitute the shipper’s declarations and therefore that the information is only “said to be” as inserted in the document. Under most applicable laws and principles, the carrier must at least use reasonable means of checking the correctness of the information and his failure to do so may make him liable to the consignee. However, in container trade, the carrier’s means of checking the contents in the container would not exist unless he himself was responsible for stowing the container.

There are only two terms that deal with insurance, namely CIF and CIP. Under these terms the seller is obliged to procure insurance for the benefit of the buyer. In other cases it is for the parties themselves to decide whether and to what extent they want to cover themselves by insurance. Since the seller takes out insurance for the benefit of the buyer, he would not know the buyer’s precise requirements. Under the Institute Cargo Clauses drafted by the Institute of London Underwriters, insurance is available in “minimum cover” under Clause C, “medium cover” under Clause B and “most extended cover” under Clause A. Since in the sale of commodities under the CIF term the buyer may wish to sell the goods in transit to a subsequent buyer who in turn may wish to resell the goods again, it is impossible to know the insurance cover suitable to such subsequent buyers and, therefore, the minimum cover under CIF has traditionally been chosen with the possibility for the buyer to require the seller to take out additional insurance. Minimum cover is however unsuitable for sale of manufactured goods where the risk of theft, pilferage, or improper handling or custody of the goods would require more than the cover available under Clause C. Since CIP, as distinguished from CIF, would normally not be used for the sale of commodities, it would have been feasible to adopt the most extended cover under CIP rather than the minimum cover under CIF. But to vary the seller’s insurance obligation under CIF and CIP would lead to confusion and both terms therefore limit the seller’s insurance obligation to the minimum cover. It is particularly important for the CIP-buyer to

observe this: should additional cover be required, he should agree with the seller that the latter could take out additional insurance or, alternatively, arrange for extended insurance cover himself. There are also particular instances where the buyer may wish to obtain even more protection than is available under Institute Clause A, for example insurance against war, riots, civil commotion, strikes or other labour disturbances. If he wishes the seller to arrange such insurance he must instruct him accordingly, in which case the seller would have to provide such insurance if procurable.

9.4 The “D”- terms are different in nature from the “C”-terms, since the seller according to the “D”- terms is responsible for the arrival of the goods at the agreed place or point of destination at the border or with **the country of import**. The seller must bear all risks and costs in bringing the goods thereto. Hence, the “D”-terms signify **arrival contracts**, while the “C”- terms evidence departure (shipment) **contracts**.

Under the “D”- terms, except DDP, the seller does not have to deliver the goods cleared for import **in the country of destination**.

Traditionally, the seller had the obligation to clear the goods for import under DEQ, since the goods had to be landed on the quay and thus were brought into the country of import. But owing to changes in customs clearance procedures in most countries, it is now more appropriate that the party domiciled in the country concerned undertakes the clearance and pays the duties and other charges. Thus, a change in DEQ has been made for the same reason as the change in FAS previously mentioned. As in FAS, in DEQ the change has been marked with capital letters in the preamble.

It appears that in many countries trade terms not included in Incoterms are used particularly in railway traffic (“franco border”, “franco-frontière”, “Frei Gränze”). However, under such terms it is normally not intended that the seller should assume the risk of loss of or damage to goods during the transport up to the border. It would be preferable in these circumstances to use CPT indicating the border. If, on the other hand, the parties intend that the seller should bear the risk during the transport, DAF indicating the border would be appropriate.

The DDU term was added in the 1990 version of Incoterms. The term fulfills an important function whenever the seller is prepared to deliver the goods in the country of destination without clearing the goods for import and paying the duty. In countries where import

clearance may be difficult and time-consuming, it may be risky for the seller to undertake an obligation to deliver the goods beyond the customs clearance point. Although, according to DDU B5 and B6, the buyer would have to bear the additional risks and costs, which might follow from his failure to fulfill his obligations to clear the goods for import. The seller is advised not to use the DDU term in countries where difficulties might be expected in clearing the goods for import.

10. The expression “no obligation”

As appears from the expressions “the seller must” and “the buyer must” Incoterms are only concerned with the obligations which the parties owe to each other. The words “no obligation” have therefore been inserted whenever one party does not owe an obligation to the other party. Thus, if for instance according to A3 of the respective term the seller has to arrange and pay for the contract of carriage we find the words “no obligation” under the heading “contract of carriage” in B3 a) setting forth the buyer’s position. Again, where neither party owes the other an obligation, the words “no obligation” will appear with respect to both parties, for example, with respect to insurance.

In either case, it is important to point out that even though one party may be under “no obligation” towards the other to perform a certain task, this does not mean that it is not in his interest to perform that task. Thus, for example, just because a CFR buyer owes his seller no duty to make a contract of insurance under B4, it is clearly in his interest to make such a contract, the seller being under no such obligation to procure insurance cover under A4.

11. Variants of Incoterms

In practice, it frequently happens that the parties themselves, by adding words to an Incoterm, seek further precision than the term could offer. It should be underlined that Incoterms give no guidance whatsoever for such additions. Thus, if the parties cannot rely on a well-established custom of the trade for the interpretation of such additions, they may encounter serious problems when no consistent understanding of the additions could be proven.

If for instance the common expressions “FOB stowed” or “EXW loaded” are used, it is impossible to establish a world-wide understanding to the effect that the seller’s obligations are extended not only with respect to the cost of actually loading the goods in the ship or on the vehicle respectively but also include the risk of fortuitous loss of or damage to the goods in the process of stowage and loading. For these reasons, the parties are strongly advised to clarify whether

they only mean that the function or the cost of the stowage and loading operations should fall upon the seller or whether he should also bear the risk until the stowage and loading has actually been completed. These are questions to which Incoterms do not provide an answer: consequently, if the contract too fails expressly to describe the parties' intentions, the parties may be put to much unnecessary trouble and cost.

Although Incoterms 2000 do not provide for many of these commonly used variants, the preambles to certain trade terms do alert the parties to the need for special contractual terms if the parties wish to go beyond the stipulations of Incoterms.

EXW the added obligation for the seller to load the goods on the buyer's collecting vehicle;

CIF/CIP the buyer's need for additional insurance;

DEQ the added obligation for the seller to pay for costs after discharge.

In some cases sellers and buyers refer to commercial practice in liner and charterparty trade. In these circumstances, it is necessary to clearly distinguish between the obligations of the parties under the contract of carriage and their obligations to each other under the contract of sale. Unfortunately, there are no authoritative definitions of expressions such as "liner terms" and "terminal handling charges" (THC). Distribution of costs under such terms may differ in different places and change from time to time. The parties are recommended to clarify in the contract of sale how such costs should be distributed between themselves.

Expressions frequently used in charterparties, such as "FOB stowed", "FOB stowed and trimmed", are sometimes used in contracts of sale in order to clarify to what extent the seller under FOB has to perform stowage and trimming of the goods onboard the ship. Where such words are added, it is necessary to clarify in the contract of sale whether the added obligations only relate to costs or to both costs and risks.

As has been said, every effort has been made to ensure that Incoterms reflect the most common commercial practice. However, in some cases — particularly where Incoterms 2000 differ from Incoterms 1990 — the parties may wish the trade terms to operate differently. They are reminded of such options in the preamble of the terms signaled by the word "However".

12. Customs of the port or of a particular trade

Since Incoterms provide a set of terms for use in different trade and regions, it is impossible always to set forth the

obligations of the parties with precision. To some extent it is therefore necessary to refer to the custom of the port or of the particular trade or to the practices which the parties themselves may have established in their previous dealings (cf. Article 9 of the 1980 United Nations Convention on Contracts for the International Sale of Goods). It is of course desirable that sellers and buyers keep themselves duly informed of such customs when they negotiate their contract and that, whenever uncertainty arises, they clarify their legal position by appropriate clauses in their contract of sale. Such special provisions in the individual contract would supersede or vary anything that is set forth as a rule of interpretation in the various Incoterms.

13. The buyer's options as to the place of shipment

In some situations, it may not be possible at the time when the contract of sale is entered into to decide precisely on the exact point or even the place where the goods should be delivered by the seller for carriage. For instance, reference might have been made at this stage merely to a "range" or to a rather large place, for example, seaport, and it is then usually stipulated that the buyer has the right or duty to name later on the more precise point within the range or the place. If the buyer has a duty to name the precise point as aforesaid, his failure to do so might result in liability to bear the risks and additional costs resulting from such failure (B5/B7 of all terms). In addition, the buyer's failure to use his right to indicate the point may give the seller the right to select the point which best suits his purpose (FCA A4).

14. Customs clearance

The term "customs clearance" has given rise to misunderstandings. Thus, whenever reference is made to an obligation of the seller or the buyer to undertake obligations in connection with passing the goods through customs of the country of export or import it is now made clear that this obligation does not only include the payment of duty and other charges but also the performance and payment of whatever administrative matters are connected with the passing of the goods through customs and the information to the authorities in this connection. Further, it has — although quite wrongfully — been considered in some quarters inappropriate to use terms dealing with the obligation to clear the goods through customs when, as in intra-European Union trade or other free trade areas, there is no longer any obligation to pay duty and no restrictions relating to import or export. In order to clarify the situation, the words "where applicable" have been added in the A2 and B2, A6 and B6 clauses of the relevant Incoterms **in order for them to be used without any ambiguity where no customs procedures are required.**

It is normally desirable that customs clearance is arranged by the party domiciled in the country where such clearance should take place or at least by somebody acting there on his behalf. Thus, the exporter should normally clear the goods for export, while the importer should clear the good for import.

Incoterms 1990 departed from this under the trade terms EXW and FAS (export clearance duty on the buyer) and DEQ (import clearance duty on the seller) but in the Incoterms 2000 FAS and DEQ place the duty of clearing the goods for export on the seller and to clear them for import on the buyer respectively, while EXW — representing the seller's minimum obligation — has been left unamended (export clearance duty on the buyer). Under DDP the seller specifically agrees to do what follows from the very name of the term — **Delivered Duty Paid** — namely to clear the goods for import and pay any duty as a consequence thereof.

15. Packaging

In most cases, the parties would know beforehand which packaging is required for the safe carriage of the goods to destination. However, since the seller's obligation to pack the goods may well vary according to the type and duration of the transport envisaged, it has been felt necessary to stipulate that the seller is obliged to pack the goods in such a manner as is required for the transport, but only to the extent that the circumstances relating to the transport are made known to him before the contract of sale is concluded (cf. Articles 35.1 and 35.2b of the 1980 United Nations Convention on Contracts for the International Sale of Goods where the goods, including packaging, must be "fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract, except where the circumstances show that the buyer did not rely, or that it was unreasonable for him to rely, on the seller's skill and judgment").

16. Inspection of goods

In many cases, the buyer may be well advised to arrange for inspection of the goods before or at the time they are handed over by the seller for carriage (so-called pre-shipment inspection of PSI). Unless the contract stipulates otherwise, the buyer would himself have to pay the cost for such inspection that is arranged in his own interest. However, if the inspection has been made in order to enable the seller to comply with any mandatory rules applicable to the export of the goods in his own country, the seller would have to pay for that inspection, unless the EXW term is used, in which case the costs of such inspection are for the account of the buyer.

17. Mode of transport and the appropriate Incoterm 2000 any mode of transport

- Group E** EXW Ex Works (...named place)
- Group F** FCA Free Carrier (...named place)
- Group C** CPT Carriage Paid To (...named place of destination)
CIP Carriage and Insurance Paid To (...named place of destination)
- Group D** DAF Delivered At Frontier (...named place)
DDU Delivered Duty Unpaid (...named place of destination)
DDP Delivered Duty Paid (...named place of destination)

Maritime and inland waterway transport only

- Group F** FAS Free Alongside Ship (...named port of shipment)
FOB Free On Board (...named port of shipment)
- Group C** CFR Cost and Freight (...named port of destination)
CIF Cost, Insurance and Freight (...named port of destination)
- Group D** DES Delivered Ex Ship (...named port of destination)
DEQ Delivered Ex Quay (...named port of destination)

18. The recommended use

In some cases the preamble recommends the use or non-use of a particular term. This is particularly important with respect to the choice between FCA and FOB. Regrettably, merchants continue to use FOB when it is totally out of place thereby causing the seller to incur risks subsequent to the handing over of the goods to the carrier named by the buyer. FOB is only appropriate to use where the goods are intended to be delivered "across the ship's rail" or, in any event, **to the ship** and not where the goods are handed over **to the carrier** for subsequent entry into the ship, for example stowed in containers or loaded on lorries or wagons in so-called roll on — roll off traffic. Thus, a **strong warning** has been made in the preamble of FOB that the term **should not be used** when the parties do not intend delivery across the ship's rail.

It happens that the parties by mistake use terms intended for carriage of goods by sea also when another mode of transport is contemplated. This may put the seller in the unfortunate position that he cannot fulfill his obligation to tender the proper document to the buyer (for example a bill of lading, sea waybill or the electronic equivalent). The chart printed at paragraph 17 above makes clear which trade term in Incoterms 2000 it is appropriate to use for which mode of transport. Also, it is indicated in the preamble of each term whether it can be used for all modes of transport or only for carriage of goods by sea.

19. The bill of lading and electronic commerce

Traditionally, the on board bill of lading has been the only acceptable document to be presented by the seller under the CFR and CIF terms. The bill of lading fulfills three important functions, namely:

- proof of delivery of the goods on board the vessel;
- evidence of the contract of carriage; and
- a means of transferring rights to the goods in transit to another party by the transfer of the paper document to him.

Transport documents other than the bill of lading would fulfill the two first-mentioned functions, but would not control the delivery of the goods at destination or enable a buyer to sell the goods in transit by surrendering the paper document to his buyer. Instead, other transport documents would name the party entitled to receive the goods at destination. The fact that the possession of the bill of lading is required in order to obtain the goods from the carrier at destination makes it particularly difficult to replace by electronic means of communication.

Further, it is customary to issue bills of lading in several originals but it is, of course, of vital importance for a buyer or a bank acting upon his instructions in paying the seller to ensure that all originals are surrendered by the seller (so-called “full set”). This is also a requirement under the ICC Rules for Documentary Credits (the so-called ICC Uniform Customs and Practice, “UCP”; current version at date of publication of Incoterms 2000: ICC publication 500).

The transport document must evidence not only delivery of the goods to the carrier but also that the goods, as far as could be ascertained by the carrier, were received in good order and condition. Any notation on the transport document, which would indicate that the goods had not been in such condition, would make the document “unclean” and would thus make it unacceptable under the UCP.

In spite of the particular legal nature of the bill of lading, it is expected that it will be replaced by electronic means in the near future. The 1990 version of Incoterms had already taken this expected development into proper account. According to the A8 clauses, paper documents may be replaced by electronic messages provided the parties have agreed to communicate electronically. Such messages could be transmitted directly to the party concerned or through a third party providing added-value services. One such service that can be usefully provided by a third party is registration of successive holders of a bill of lading. Systems providing such services, such as the so-called BOLERO service, may require further support by appropriate legal norms and principles as evidenced by the CMI 1990 Rules for Electronic Bills of Lading and articles 16-17 of the 1996 UNCITRAL Model Law on Electronic Commerce.

20. Non-negotiable transport documents instead of bills of lading

In recent years, a considerable simplification of documentary practices has been achieved. Bills of lading are frequently replaced by non-negotiable documents similar to those which are used for other modes of transport than carriage by sea. These documents are called “sea waybills”, “liner waybills”, “freight receipts”, or variants of such expressions. Non-negotiable documents are quite satisfactory to use except where the buyer wishes to sell the goods in transit by surrendering a paper document to the new buyer. In order to make this possible, the obligation of the seller to provide a bill of lading under CFR and CIF must necessarily be retained. However, when the contracting parties know that the buyer does not contemplate selling the goods in transit, they may specifically agree to relieve the seller from the obligation to provide a bill of lading, or, alternatively, they may use CPT and CIP where there is no requirement to provide a bill of lading.

21. The right to give instructions to the carrier

A buyer paying for the goods under a “C”- term should ensure that the seller, upon payment, is prevented from disposing of the goods by giving new instructions to the carrier. Some transport documents used for particular modes of transport (air, road or rail) offer the contracting parties a possibility to bar the seller from giving such new instructions to the carrier by providing the buyer with a particular original or duplicate of the waybill. However, the documents used instead of bills of lading for maritime carriage do not normally contain such a barring function. The Comité Maritime International has remedied this shortcoming of the above-mentioned documents by introducing the 1990 “Uniform Rules for Sea Waybills” enabling the parties to insert a “no-disposal” clause whereby the seller surrenders the right to dispose of the goods by instructions to the carrier to deliver the goods to somebody else or at another place than stipulated in the waybill.

22. ICC Arbitration

Contracting parties who wish to have the possibility of resorting to ICC Arbitration in the event of a dispute with their contracting partner should specifically and clearly agree upon ICC Arbitration in their contract or, in the event that no single contractual document exists, in the exchange of correspondence which constitutes the agreement between them. The fact of incorporating one or more Incoterms in a contract or the related correspondence does NOT by itself constitute an agreement to have resort to ICC Arbitration.

The following standard arbitration clause is recommended by ICC:

“All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.”

Incoterms 2000

A brief description of each category of Incoterms is presented on the following pages.

EXW

EX Works

(...named place)

“Ex works” means that the seller delivers when he places the goods at the disposal of the buyer at the seller’s premises or another named place (i.e. works, factory, warehouse, etc.) not cleared for export and not loaded on any collecting vehicle.

This term thus represents the minimum obligation for the seller, and the buyer has to bear all costs and risks involved in taking the goods from the seller’s premises.

However, if the parties wish the seller to be responsible for the loading of the goods on departure and to bear the risks and all the costs of such loading, this should be made clear by adding explicit working to this effect in the contract of sale¹. This term should not be used when the buyer cannot carry out the export formalities directly or indirectly. In such circumstances, the FCA term should be used, provided the seller agrees that he will load at his cost and risk.

1. Refer to Introduction paragraph 11.

FCA

Free Carrier

(...named place)

“Free Carrier” means that the seller delivers the goods, cleared for export, to the carrier nominated by the buyer at the named place. It should be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place. If delivery occurs at the seller’s premises, the seller is responsible for loading. If delivery occurs at any other place, the seller is not responsible for unloading.

This term may be used irrespective of the mode of transport, including multimodal transport.

“Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport by rail, road, air, sea, inland waterway or by a combination of such modes.

If the buyer nominates a person other than a carrier to receive the goods, the seller is deemed to have fulfilled his obligation to deliver the goods when they are delivered to that person.

FAS

Free Alongside Ship

(...named port of shipment)

“Free Alongside Ship” means that the seller delivers when the goods are placed alongside the vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment.

The FAS term requires the seller to clear the goods for export.

This is a reversal from previous Incoterms versions, which required the buyer to arrange for export clearance.

However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale¹.

This term can be used only for sea or inland waterway transport.

1. Refer to Introduction paragraph 11.

FOB**Free On Board**

(...named port of shipment)

“Free on Board” means that the seller delivers when the goods pass the ship’s rail at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that point. The FOB term requires the seller to clear the goods for export. This term can be used only for sea or inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the FCA term should be used.

CFR**Cost and Freight**

(...named port of destination)

“Cost and Freight” means that the seller delivers when the goods pass the ship’s rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer.

The CFR term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the CPT term should be used.

CIF

Cost Insurance and Freight

(...named port of destination)

“Cost, Insurance and Freight” means that the seller delivers when the goods pass the ship’s rail in the port of shipment.

The seller must pay the costs and freight necessary to bring the goods to the named port of destination BUT the risk of loss of or damage to the goods, as well as any additional costs due to events occurring after the time of delivery, are transferred from the seller to the buyer. However, in CIF the seller also has to procure marine insurance against the buyer’s risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium. The buyer should note that under the CIF term the seller is required to obtain insurance only on minimum cover¹. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

The CIF term requires the seller to clear the goods for export.

This term can be used only for sea and inland waterway transport. If the parties do not intend to deliver the goods across the ship’s rail, the CIP term should be used.

CPT

Carriage Paid To

(...named place of destination)

“Carriage paid to...” means that the seller delivers the goods to the carrier nominated by him but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any other costs occurring after the goods have been so delivered.

“Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CPT term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport including multimodal transport.

1. Refer to Introduction paragraph 9.3

CIP

Carriage And Insurance Paid to

(...named place of destination)

“Carriage and Insurance paid to...” means that the seller delivers the goods to the carrier nominated by him, but the seller must in addition pay the cost of carriage necessary to bring the goods to the named destination. This means that the buyer bears all risks and any additional costs occurring after the goods have been so delivered. However, in CIP the seller also has to procure insurance against the buyer’s risk of loss of or damage to the goods during the carriage.

Consequently, the seller contracts for insurance and pays the insurance premium.

The buyer should note that under the CIP term the seller is required to obtain insurance only on minimum cover¹. Should the buyer wish to have the protection of greater cover, he would either need to agree as much expressly with the seller or to make his own extra insurance arrangements.

“Carrier” means any person who, in a contract of carriage, undertakes to perform or to procure the performance of transport, by rail, road, air, sea, inland waterway or by a combination of such modes.

If subsequent carriers are used for the carriage to the agreed destination, the risk passes when the goods have been delivered to the first carrier.

The CIP term requires the seller to clear the goods for export.

This term may be used irrespective of the mode of transport, including multimodal transport.

1. Refer to Introduction paragraph 9.3

DAF

Delivered At Frontier

(...named place)

“Delivered at Frontier” means that the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport not unloaded, cleared for export, but not cleared for import at the named point and place at the frontier, but before the customs border of the adjoining country. The term “frontier” may be used for any frontier including that of the country of export. Therefore, it is of vital importance that the frontier in question be defined precisely by always naming the point and place in the term.

However, if the parties wish the seller to be responsible for the unloading of the goods from the arriving means of transport and to bear the risks and costs of unloading, this should be made clear by adding explicit wording to this effect in the contract of sale¹.

This term may be used irrespective of the mode of transport when goods are to be delivered at a land frontier. When delivery is to take place in the port of destination, on board a vessel or on the quay (wharf), the DES or DEQ terms should be used.

1. Refer to Introduction paragraph 11.

DES

Delivered EX ship

(...named port of destination)

“Delivered Ex Ship” means that the seller delivers when the goods are placed at the disposal of the buyer on board the ship not cleared for import at the named port of destination. The seller has to bear all the costs and risks involved in bringing the goods to the named port of destination before discharging. If the parties wish the seller to bear the costs and risks of discharging the goods, then the DEQ term should be used.

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on a vessel in the port of destination.

DEQ

Delivered EX Quay

(...named port of destination)

“Delivered Ex Quay” means that the seller delivers when the goods are placed at the disposal of the buyer not cleared for import on the quay (wharf) at the named port of destination. The seller has to bear costs and risks involved in bringing the goods to the named port of destination and discharging the goods on the quay (wharf). The DEQ term requires the buyer to clear the goods for import and to pay for all formalities, duties, taxes and other charges upon import.

This is a reversal from previous Incoterms versions, which required the seller to arrange for import clearance.

If the parties wish to include in the seller’s obligations all or part of the costs payable upon import of the goods, this should be made clear by adding explicit wording to this effect in the contract of sale¹.

This term can be used only when the goods are to be delivered by sea or inland waterway or multimodal transport on discharging from a vessel onto the quay (wharf) in the port of destination. However, if the parties wish to include in the seller’s obligations the risks and costs of the handling of the goods from the quay to another place (warehouse, terminal, transport station, etc.) in or outside the port, the DDU or DDP terms should be used.

1. Refer to Introduction paragraph 11.

DDU

Delivered Duty Unpaid

(...named place of destination)

“Delivered duty unpaid” means that the seller delivers the goods to the buyer, not cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear the costs and risks involved in bringing the goods thereto, other than, where applicable¹, and “duty” (which term includes the responsibility for and the risks of the carrying out of customs formalities, and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination. Such “duty” has to be borne by the buyer as well as any costs and risks caused by his failure to clear the goods for import in time.

However, if the parties wish the seller to carry out customs formalities and bear the costs and risks resulting therefrom as well as some of the costs payable upon import of the goods, this should be made clear by adding explicit working to this effect in the contract of sale².

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

1. Refer to Introduction paragraph 14.

2. Refer to Introduction paragraph 11.

DDP

Delivered Duty Paid

(... named place of destination)

“Delivered duty paid” means that the seller delivers the goods to the buyer, cleared for import, and not unloaded from any arriving means of transport at the named place of destination. The seller has to bear all the costs and risks involved in bringing the goods thereto including, where applicable¹, any “duty” (which term includes the responsibility for and the risk of the carrying out of customs formalities and the payment of formalities, customs duties, taxes and other charges) for import in the country of destination.

Whilst the EXW term represents the minimum obligation for the seller, DDP represents the maximum obligation.

This term should not be used if the seller is unable directly or indirectly to obtain the import license.

However, if the parties wish to exclude from the seller’s obligations some of the costs payable upon import of the goods (such as value-added tax: VAT), this should be made clear by adding explicit working to this effect in the contract of sale².

If the parties wish the buyer to bear all risks and costs of the import, the DDU term should be used.

This term may be used irrespective of the mode of transport but when delivery is to take place in the port of destination on board the vessel or on the quay (wharf), the DES or DEQ terms should be used.

1. Refer to Introduction paragraph 14.

2. Refer to Introduction paragraph 11.

UCP 600, uniform customs and practice for documentary credits (2007 revision)

The Uniform Customs and Practice for Documentary Credits were first published by ICC in 1933. Revised versions were issued in 1951, 1962, 1974, 1983 and 1993.

This revision was adopted by the ICC Executive Board in November 2006 and first published as ICC Publication No. 600 in December 2006.

The English language version of the Uniform Customs and Practice for Documentary Credits provides the official text of the rules. The titles provided for the articles are for reference only.

The official French translation is also published by ICC SERVICES, Publications Department. Translations in other languages and bilingual versions may be available from ICC national committees. Please visit www.ICCwbo.org for a full list of national committees.

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International Chamber of Commerce

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Foreword

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. It is the fruit of more than three years of work by the International Chamber of Commerce’s (ICC) Commission on Banking Technique and Practice.

ICC, which was established in 1919, had as its primary objective facilitating the flow of international trade at a time when nationalism and protectionism posed serious threats to the world trading system. It was in that spirit that the UCP were first introduced – to alleviate the confusion caused by individual countries’ promoting their own national rules on letter of credit practice. The objective, 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. Since its inception, ICC has insisted on the central role of self-regulation in business practice. These rules, formulated entirely by experts in the private sector, have validated that approach. The UCP remain the most successful set of private rules for trade ever developed.

A range of individuals and groups contributed to the current revision, which is entitled “UCP 600”. These include the UCP Drafting Group, which sifted through more than 5,000 individual comments before arriving at this consensus text; the UCP Consulting Group, consisting of members from more than 25 countries, which served as the advisory body reacting to and proposing changes to the various drafts; the more than 400 members of the ICC Commission on Banking Technique and Practice, who made pertinent suggestions for changes in the text; and ICC national committees worldwide, which took an active role in consolidating comments from their members. ICC also expresses its gratitude to practitioners in the transport and insurance industries, whose perceptive suggestions honed the final draft.

Guy Sebban
Secretary General
International Chamber of Commerce

Introduction

In May 2003, the International Chamber of Commerce authorized the ICC Commission on Banking Technique and Practice (Banking Commission) to begin a revision of the Uniform Customs and Practice for Documentary Credits, ICC Publication No. 500.

As with other revisions, the general objective was to address developments in the banking, transport and insurance industries. Additionally, there was a need to look at the language and style used in the UCP to remove wording that could lead to inconsistent application and interpretation.

When work on the revision started, a number of global surveys indicated that, because of discrepancies, approximately 70% of documents presented under letters of credit were being rejected on first presentation. This obviously had, and continues to have, a negative effect on the letter of credit being seen as a means of payment and, if unchecked, could have serious implications for maintaining or increasing its market share as a recognized means of settlement in international trade. The introduction by banks of a discrepancy fee has highlighted the importance of this issue, especially when the underlying discrepancies have been found to be dubious or unsound. Whilst the number of cases involving litigation has not grown during the lifetime of UCP 500, the introduction of the ICC's Documentary Credit Dispute Resolution Expertise Rules (DOCDEX) in October 1997 (subsequently revised in March 2002) has resulted in more than 60 cases being decided.

To address these and other concerns, the Banking Commission established a Drafting Group to revise UCP 500. It was also decided to create a second group, known as the Consulting Group, to review and advise on early drafts submitted by the Drafting Group. The Consulting Group, made up of over 40 individuals from 26 countries, consisted of banking and transport industry experts. Aply co-chaired by John Turnbull, Deputy General Manager, Sumitomo Mitsui Banking Corporation Europe Ltd, London and Carlo Di Ninni, Adviser, Italian Bankers Association, Rome, the Consulting Group provided valuable input to the Drafting Group prior to release of draft texts to ICC national committees.

The Drafting Group began the review process by analyzing the content of the official Opinions issued by the Banking Commission under UCP 500. Some 500 Opinions were reviewed to assess whether the issues involved warranted a

change in, an addition to or a deletion of any UCP article. In addition, consideration was given to the content of the four Position Papers issued by the Commission in September 1994, the two Decisions issued by the Commission (concerning the introduction of the euro and the determination of what constituted an original document under UCP 500 sub-article 20(b)) and the Decisions issued in DOCDEX cases.

During the revision process, notice was taken of the considerable work that had been completed in creating the International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP), ICC Publication No. 645. This publication has evolved into a necessary companion to the UCP for determining compliance of documents with the terms of letters of credit. It is the expectation of the Drafting Group and the Banking Commission that the application of the principles contained in the ISBP, including subsequent revisions thereof, will continue during the time UCP 600 is in force. At the time UCP 600 is implemented, there will be an updated version of the ISBP to bring its contents in line with the substance and style of the new rules.

The four Position Papers issued in September 1994 were issued subject to their application under UCP 500; therefore, they will not be applicable under UCP 600. The essence of the Decision covering the determination of an original document has been incorporated into the text of UCP 600. The outcome of the DOCDEX cases were invariably based on existing ICC Banking Commission Opinions and therefore contained no specific issues that required addressing in these rules.

One of the structural changes to the UCP is the introduction of articles covering definitions (article 2) and interpretations (article 3). In providing definitions of roles played by banks and the meaning of specific terms and events, UCP 600 avoids the necessity of repetitive text to explain their interpretation and application. Similarly, the article covering interpretations aims to take the ambiguity out of vague or unclear language that appears in letters of credit and to provide a definitive elucidation of other characteristics of the UCP or the credit.

During the course of the last three years, ICC national committees were canvassed on a range of issues to determine their preferences on alternative texts submitted by the Drafting Group. The results of this exercise and the considerable input from national committees on individual items in the text is reflected in the content of UCP 600. The

Drafting Group considered, not only the current practice relative to the documentary credit, but also tried to envisage the future evolution of that practice.

This revision of the UCP represents the culmination of over three years of extensive analysis, review, debate and compromise amongst the various members of the Drafting Group, the members of the Banking Commission and the respective ICC national committees. Valuable comment has also been received from the ICC Commission on Transport and Logistics, the Commission on Commercial Law and Practice and the Committee on Insurance.

It is not appropriate for this publication to provide an explanation as to why an article has been worded in such a way or what is intended by its incorporation into the rules. For those interested in understanding the rationale and interpretation of the articles of UCP 600, this information will be found in the Commentary to the rules, ICC Publication No. 680, which represents the Drafting Group's views.

On behalf of the Drafting Group, I would like to extend our deep appreciation to the members of the Consulting Group, ICC national committees and members of the Banking Commission for their professional comments and their constructive participation in this process.

Special thanks are due to the members of the Drafting Group and their institutions, who are listed below in alphabetical order.

Nicole Keller — Vice President, Service International Products, Dresdner Bank AG, Frankfurt, Germany; Representative to the ICC Commission on Banking Technique and Practice;

Laurence Kooy — Legal Adviser, BNP Paribas, Paris, France; Representative to the ICC Commission on Banking Technique and Practice;

Katja Lehr — Business Manager, Trade Services Standards, SWIFT, La Hulpe, Belgium, then Vice President, Membership Representation, International Financial Services Association, New Jersey, USA; Representative to the ICC Commission on Banking Technique and Practice;

Ole Malmqvist — Vice President, Danske Bank, Copenhagen, Denmark; Representative to the ICC Commission on Banking Technique and Practice;

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Dan Taylor — President and CEO, International Financial Services Association, New Jersey, USA; Vice Chairman, ICC Commission on Banking Technique and Practice;

Alexander Zelenov — Director, Vnesheconombank, Moscow, Russia; Vice Chairman, ICC Commission on Banking Technique and Practice;

Ron Katz — Policy Manager, ICC Commission on Banking Technique and Practice, International Chamber of Commerce, Paris, France.

The undersigned had the pleasure of chairing the Drafting Group.

It was through the generous giving of their knowledge, time and energy that this revision was accomplished so successfully. As Chair of the Drafting Group, I would like to extend to them and to their institutions my gratitude for their contribution, for a job well done and for their friendship. I would also like to extend my sincere thanks to the management of ABN AMRO Bank N.V., for their understanding, patience and support during the course of this revision process.

Gary Collyer
Corporate Director,
ABN AMRO Bank N.V., London, UK
and Technical Adviser to the ICC Commission
on Banking Technique and Practice
November 2006

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It is not to be construed as being other than solely for the benefit or guidance and there should be no legal imputation.

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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

For the purpose of these rules:

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.

Banking day means a day on which a bank is regularly open at the place at which an act subject to these rules is to be performed.

Beneficiary means the party in whose favour a credit is issued.

Complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.

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.

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

Honour means:

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

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.

Presentation means either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered.

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

Article 3

Interpretations

For the purpose of these rules:

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

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

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

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

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

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

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

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

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

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

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

The terms “beginning”, “middle” and “end” of a month shall be construed respectively as the 1st to the 10th, the 11th to the 20th and the 21st to the last day of the month, all dates inclusive.

Article 4

Credits v. Contracts

a. A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defenses by the applicant resulting from its relationships with the issuing bank or the beneficiary.

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

b. An issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like.

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. 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.
- b. A credit must state whether it is available by sight payment, deferred payment, acceptance or negotiation.
- c. A credit must not be issued available by a draft drawn on the applicant.
- d. i. A credit must state an expiry date for presentation. An expiry date stated for honour or negotiation will be deemed to be an expiry date for presentation.

ii. The place of the bank with which the credit is available is the place for presentation. The place for presentation under a credit available with any bank is that of any bank. A place for presentation other than that of the issuing bank is in addition to the place of the issuing bank.
- e. Except as provided in sub-article 29 (a), a presentation by or on behalf of the beneficiary must be made on or before the expiry date.

Article 7

Issuing bank undertaking

- a. Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour if the credit is available by:
 - i. sight payment, deferred payment or acceptance with the issuing bank;
 - ii. sight payment with a nominated bank and that nominated bank does not pay;
 - iii. deferred payment with a nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;
 - iv. acceptance with a nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity;
 - v. negotiation with a nominated bank and that nominated bank does not negotiate.

- b. An issuing bank is irrevocably bound to honour as of the time it issues the credit.
- c. An issuing bank undertakes to reimburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank. Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, whether or not the nominated bank prepaid or purchased before maturity. An issuing bank's undertaking to reimburse a nominated bank is independent of the issuing bank's undertaking to the beneficiary.

Article 8

Confirming bank undertaking

- a. Provided that the stipulated documents are presented to the confirming bank or to any other nominated bank and that they constitute a complying presentation, the confirming bank must:
 - i. honour, if the credit is available by
 - a) sight payment, deferred payment or acceptance with the confirming bank;
 - b) sight payment with another nominated bank and that nominated bank does not pay;
 - c) deferred payment with another nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;
 - d) acceptance with another nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity;
 - e) negotiation with another nominated bank and that nominated bank does not negotiate.
 - ii. negotiate, without recourse, if the credit is available by negotiation with the confirming bank.
- b. A confirming bank is irrevocably bound to honour or negotiate as of the time it adds its confirmation to the credit.

- c. A confirming bank undertakes to reimburse another nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the confirming bank. Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, whether or not another nominated bank prepaid or purchased before maturity. A confirming bank's undertaking to reimburse another nominated bank is independent of the confirming bank's undertaking to the beneficiary.
- d. If a bank is authorized or requested by the issuing bank to confirm a credit but is not prepared to do so, it must inform the issuing bank without delay and may advise the credit without confirmation.

Article 9

Advising of credits and amendments

- a. A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank that is not a confirming bank advises the credit and any amendment without any undertaking to honour or negotiate.
- b. By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.
- c. An advising bank may utilize the services of another bank ("second advising bank") to advise the credit and any amendment to the beneficiary. By advising the credit or amendment, the second advising bank signifies that it has satisfied itself as to the apparent authenticity of the advice it has received and that the advice accurately reflects the terms and conditions of the credit or amendment received.
- d. A bank utilizing the services of an advising bank or second advising bank to advise a credit must use the same bank to advise any amendment thereto.
- e. If a bank is requested to advise a credit or amendment but elects not to do so, it must so inform, without delay, the bank from which the credit, amendment or advice has been received.
- f. If a bank is requested to advise a credit or amendment but cannot satisfy itself as to the apparent authenticity of the credit, the amendment or the advice, it must so inform, without delay, the bank from which the instructions appear to

have been received. If the advising bank or second advising bank elects nonetheless to advise the credit or amendment, it must inform the beneficiary or second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit, the amendment or the advice.

Article 10

Amendments

- a. Except as otherwise provided by article 38, a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary.
- b. An issuing bank is irrevocably bound by an amendment as of the time it issues the amendment. A confirming bank may extend its confirmation to an amendment and will be irrevocably bound as of the time it advises the amendment. A confirming bank may, however, choose to advise an amendment without extending its confirmation and, if so, it must inform the issuing bank without delay and inform the beneficiary in its advice.
- c. The terms and conditions of the original credit (or a credit incorporating previously accepted amendments) will remain in force for the beneficiary until the beneficiary communicates its acceptance of the amendment to the bank that advised such amendment. The beneficiary should give notification of acceptance or rejection of an amendment. If the beneficiary fails to give such notification, a presentation that complies with the credit and to any not yet accepted amendment will be deemed to be notification of acceptance by the beneficiary of such amendment. As of that moment the credit will be amended.
- d. A bank that advises an amendment should inform the bank from which it received the amendment of any notification of acceptance or rejection.
- e. Partial acceptance of an amendment is not allowed and will be deemed to be notification of rejection of the amendment.
- f. A provision in an amendment to the effect that the amendment shall enter into force unless rejected by the beneficiary within a certain time shall be disregarded.

Article 11

Teletransmitted and pre-advised credits and amendments

- a. 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.

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

Article 12

Nomination

- a. Unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary.
- b. By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.
- c. Receipt or examination and forwarding of documents by a nominated bank that is not a confirming bank does not make that nominated bank liable to honour or negotiate, nor does it constitute honour or negotiation.

Article 13

Bank-to-bank reimbursement arrangements

- a. If a credit states that reimbursement is to be obtained by a nominated bank (“claiming bank”) claiming on another party (“reimbursing bank”), the credit must state if the reimbursement is subject to the ICC rules for bank-to-bank reimbursements in effect on the date of issuance of the credit.
- b. If a credit does not state that reimbursement is subject to the ICC rules for bank-to-bank reimbursements, the following apply:
 - i. An issuing bank must provide a reimbursing bank with a reimbursement authorization that conforms with the availability stated in the credit. The reimbursement authorization should not be subject to an expiry date.
 - ii. A claiming bank shall not be required to supply a reimbursing bank with a certificate of compliance with the terms and conditions of the credit.
 - iii. An issuing bank will be responsible for any loss of interest, together with any expenses incurred, if reimbursement is not provided on first demand by a reimbursing bank in accordance with the terms and conditions of the credit.
 - iv. A reimbursing bank’s charges are for the account of the issuing bank. However, if the charges are for the account of the beneficiary, it is the responsibility of an issuing bank to so indicate in the credit and in the reimbursement authorization. If a reimbursing bank’s charges are for the account of the beneficiary, they shall be deducted from the amount due to a claiming bank when reimbursement is made. If no reimbursement is made, the reimbursing bank’s charges remain the obligation of the issuing bank.
- c. An issuing bank is not relieved of any of its obligations to provide reimbursement if reimbursement is not made by a reimbursing bank on first demand.

Article 14

Standard for examination of documents

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

- b. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.
- c. A presentation including one or more original transport documents subject to articles 19, 20, 21, 22, 23, 24 or 25 must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.
- d. Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.
- e. In documents other than the commercial invoice, the description of the goods, services or performance, if stated, may be in general terms not conflicting with their description in the credit.
- f. If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfil the function of the required document and otherwise complies with sub-article 14 (d).
- g. A document presented but not required by the credit will be disregarded and may be returned to the presenter.
- h. If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.
- i. A document may be dated prior to the issuance date of the credit, but must not be dated later than its date of presentation.
- j. When the addresses of the beneficiary and the applicant appear in any stipulated document, they need not be the same as those stated in the credit or in any other stipulated document, but must be within the same country as the respective addresses mentioned in the credit. Contact details (telefax, telephone, email and the like) stated as part of the beneficiary’s and the applicant’s address will be disregarded. However, when the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document subject to articles 19, 20, 21, 22, 23, 24 or 25, they must be as stated in the credit.

- k. The shipper or consignor of the goods indicated on any document need not be the beneficiary of the credit.
- l. A transport document may be issued by any party other than a carrier, owner, master or charterer provided that the transport document meets the requirements of articles 19, 20, 21, 22, 23 or 24 of these rules.

Article 15

Complying presentation

- a. When an issuing bank determines that a presentation is complying, it must honour.
- b. When a confirming bank determines that a presentation is complying, it must honour or negotiate and forward the documents to the issuing bank.
- c. When a nominated bank determines that a presentation is complying and honours or negotiates, it must forward the documents to the confirming bank or issuing bank.

Article 16

Discrepant documents, waiver and notice

- a. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.
- b. When an issuing bank determines that a presentation does not comply, it may in its sole judgement approach the applicant for a waiver of the discrepancies. This does not, however, extend the period mentioned in sub-article 14 (b).
- c. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state:

- i. that the bank is refusing to honour or negotiate; and
- ii. each discrepancy in respect of which the bank refuses to honour or negotiate; and
- iii.a)that the bank is holding the documents pending further instructions from the presenter; or

- b)that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
- c) that the bank is returning the documents; or
- d)that the bank is acting in accordance with instructions previously received from the presenter.

- d. The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.
- e. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may, after providing notice required by sub-article 16 (c), (iii), (a) or (b), return the documents to the presenter at any time.
- f. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.
- g. When an issuing bank refuses to honour or a confirming bank refuses to honour or negotiate and has given notice to that effect in accordance with this article, it shall then be entitled to claim a refund, with interest, of any reimbursement made.

Article 17

Original documents and copies

- a. At least one original of each document stipulated in the credit must be presented.
- b. A bank shall treat as an original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not an original.

- c. Unless a document indicates otherwise, a bank will also accept a document as original if it:
 - i. appears to be written, typed, perforated or stamped by the document issuer's hand; or
 - ii. appears to be on the document issuer's original stationery; or
 - iii. states that it is original, unless the statement appears not to apply to the document presented.
- d. If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted.
- e. If a credit requires presentation of multiple documents by using terms such as "in duplicate", "in two fold" or "in two copies", this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise.

Article 18

Commercial Invoice

- a. A commercial invoice:
 - i. must appear to have been issued by the beneficiary (except as provided in article 38);
 - ii. must be made out in the name of the applicant (except as provided in sub-article 38 (g));
 - iii. must be made out in the same currency as the credit; and
 - iv. need not be signed.
- b. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may accept a commercial invoice issued for an amount in excess of the amount permitted by the credit, and its decision will be binding upon all parties, provided the bank in question has not honoured or negotiated for an amount in excess of that permitted by the credit.
- c. The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit.

Article 19

Transport document covering at least two different modes of transport

- a. A transport document covering at least two different modes of transport (multimodal or combined transport document), however named, must appear to:
 - i. indicate the name of the carrier and be signed by:
 - the carrier or a named agent for or on behalf of the carrier, or
 - the master or a named agent for or on behalf of the master.

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.

Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.
 - ii. indicate that the goods have been dispatched, taken in charge or shipped on board at the place stated in the credit, by:
 - pre-printed wording, or
 - a stamp or notation indicating the date on which the goods have been dispatched, taken in charge or shipped on board.

The date of issuance of the transport document will be deemed to be the date of dispatch, taking in charge or shipped on board, and the date of shipment. However, if the transport document indicates, by stamp or notation, a date of dispatch, taking in charge or shipped on board, this date will be deemed to be the date of shipment.
 - iii. indicate the place of dispatch, taking in charge or shipment, and the place of final destination stated in the credit, even if:
 - a) the transport document states, in addition, a different place of dispatch, taking in charge or shipment or place of final destination, or
 - b) the transport document contains the indication "intended" or similar qualification in relation to the vessel, port of loading or port of discharge.

- iv. be the sole original transport document or, if issued in more than one original, be the full set as indicated on the transport document.
 - v. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back transport document). Contents of terms and conditions of carriage will not be examined.
 - vi. contain no indication that it is subject to a charter party.
- b. For the purpose of this article, transshipment means unloading from one means of conveyance and reloading to another means of conveyance (whether or not in different modes of transport) during the carriage from the place of dispatch, taking in charge or shipment to the place of final destination stated in the credit.
- c. i. A transport document may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same transport document.
- ii. A transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment.

Article 20

Bill of lading

- a. A bill of lading, however named, must appear to:
- i. indicate the name of the carrier and be signed by:
 - the carrier or a named agent for or on behalf of the carrier, or
 - the master or a named agent for or on behalf of the master.

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.

Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

- ii. indicate that the goods have been shipped on board named vessel at the port of loading stated in the credit by:
 - pre-printed wording, or
 - an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the bill of lading will be deemed to be the date of shipment unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

If the bill of lading contains the indication “intended vessel” or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

- iii. indicate shipment from the port of loading to the port of discharge stated in the credit.

If the bill of lading does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication “intended” or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the bill of lading.

- iv. 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.
 - v. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back bill of lading). Contents of terms and conditions of carriage will not be examined.
 - vi. contain no indication that it is subject to a charter party.
- b. For the purpose of this article, transshipment means unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge stated in the credit.

- c. i. A bill of lading may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same bill of lading.
- ii. A bill of lading indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment, if the goods have been shipped in a container, trailer or LASH barge as evidenced by the bill of lading.
- d. Clauses in a bill of lading stating that the carrier reserves the right to tranship will be disregarded.

Article 21

Non-negotiable sea waybill

- a. A non-negotiable sea waybill, however named, must appear to:
 - i. indicate the name of the carrier and be signed by:
 - the carrier or a named agent for or on behalf of the carrier, or
 - the master or a named agent for or on behalf of the master.

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.

Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.
 - ii. indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
 - pre-printed wording, or
 - an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the non-negotiable sea waybill will be deemed to be the date of shipment unless the non-negotiable sea waybill contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

If the non-negotiable sea waybill contains the indication “intended vessel” or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

- iii. indicate shipment from the port of loading to the port of discharge stated in the credit.

If the non-negotiable sea waybill does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication “intended” or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the non-negotiable sea waybill.

- iv. be the sole original non-negotiable sea waybill or, if issued in more than one original, be the full set as indicated on the non-negotiable sea waybill.
 - v. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back non-negotiable sea waybill). Contents of terms and conditions of carriage will not be examined.
 - vi. contain no indication that it is subject to a charter party.
- b. For the purpose of this article, transshipment means unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge stated in the credit.
 - c. i. A non-negotiable sea waybill may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same non-negotiable sea waybill.
 - ii. A non-negotiable sea waybill indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment, if the goods have been shipped in a container, trailer or LASH barge as evidenced by the non-negotiable sea waybill.
 - d. Clauses in a non-negotiable sea waybill stating that the carrier reserves the right to tranship will be disregarded.

Article 22

Charter party bill of lading

a. A bill of lading, however named, containing an indication that it is subject to a charter party (charter party bill of lading), must appear to:

- i. be signed by:
 - the master or a named agent for or on behalf of the master, or
 - the owner or a named agent for or on behalf of the owner, or
 - the charterer or a named agent for or on behalf of the charterer.

Any signature by the master, owner, charterer or agent must be identified as that of the master, owner, charterer or agent.

Any signature by an agent must indicate whether the agent has signed for or on behalf of the master, owner or charterer.

An agent signing for or on behalf of the owner or charterer must indicate the name of the owner or charterer.

- ii. indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
 - pre-printed wording, or
 - an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the charter party bill of lading will be deemed to be the date of shipment unless the charter party bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

iii. indicate shipment from the port of loading to the port of discharge stated in the credit. The port of discharge may also be shown as a range of ports or a geographical area, as stated in the credit.

iv. be the sole original charter party bill of lading or, if issued in more than one original, be the full set as indicated on the charter party bill of lading.

b. A bank will not examine charter party contracts, even if they are required to be presented by the terms of the credit.

Article 23

Air transport document

a. An air transport document, however named, must appear to:

- i. indicate the name of the carrier and be signed by:
 - the carrier, or
 - a named agent for or on behalf of the carrier.

Any signature by the carrier or agent must be identified as that of the carrier or agent.

Any signature by an agent must indicate that the agent has signed for or on behalf of the carrier.

- ii. indicate that the goods have been accepted for carriage.
- iii. indicate the date of issuance. This date will be deemed to be the date of shipment unless the air transport document contains a specific notation of the actual date of shipment, in which case the date stated in the notation will be deemed to be the date of shipment.

Any other information appearing on the air transport document relative to the flight number and date will not be considered in determining the date of shipment.

- iv. indicate the airport of departure and the airport of destination stated in the credit.
- v. be the original for consignor or shipper, even if the credit stipulates a full set of originals.
- vi. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage. Contents of terms and conditions of carriage will not be examined.

- b. For the purpose of this article, transshipment means unloading from one aircraft and reloading to another aircraft during the carriage from the airport of departure to the airport of destination stated in the credit.
 - i. An air transport document may indicate that the goods will or may be transhipped, provided that the entire carriage is covered by one and the same air transport document.
 - ii. An air transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment.

Article 24

Road, rail or inland waterway transport documents

a. A road, rail or inland waterway transport document, however named, must appear to:

- i. indicate the name of the carrier and:
 - be signed by the carrier or a named agent for or on behalf of the carrier, or
 - indicate receipt of the goods by signature, stamp or notation by the carrier or a named agent for or on behalf of the carrier.

Any signature, stamp or notation of receipt of the goods by the carrier or agent must be identified as that of the carrier or agent.

Any signature, stamp or notation of receipt of the goods by the agent must indicate that the agent has signed or acted for or on behalf of the carrier.

If a rail transport document does not identify the carrier, any signature or stamp of the railway company will be accepted as evidence of the document being signed by the carrier.

- ii. indicate the date of shipment or the date the goods have been received for shipment, dispatch or carriage at the place stated in the credit. Unless the transport document contains a dated reception stamp, an indication of the date of receipt or a date of shipment, the date of issuance of the transport document will be deemed to be the date of shipment.
 - iii. indicate the place of shipment and the place of destination stated in the credit.
- b. i. A road transport document must appear to be the original for consignor or shipper or bear no marking indicating for whom the document has been prepared.
- ii. A rail transport document marked “duplicate” will be accepted as an original.
- iii. A rail or inland waterway transport document will be accepted as an original whether marked as an original or not.
- c. In the absence of an indication on the transport document as to the number of originals issued, the number presented will be deemed to constitute a full set.

d. For the purpose of this article, transshipment means unloading from one means of conveyance and reloading to another means of conveyance, within the same mode of transport, during the carriage from the place of shipment, dispatch or carriage to the place of destination stated in the credit.

- e. i. A road, rail or inland waterway transport document may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same transport document.
- ii. A road, rail or inland waterway transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment.

Article 25

Courier receipt, post receipt or certificate of posting

a. A courier receipt, however named, evidencing receipt of goods for transport, must appear to:

- i. indicate the name of the courier service and be stamped or signed by the named courier service at the place from which the credit states the goods are to be shipped; and
- ii. indicate a date of pickup or of receipt or wording to this effect. This date will be deemed to be the date of shipment.

b. A requirement that courier charges are to be paid or prepaid may be satisfied by a transport document issued by a courier service evidencing that courier charges are for the account of a party other than the consignee.

c. A post receipt or certificate of posting, however named, evidencing receipt of goods for transport, must appear to be stamped or signed and dated at the place from which the credit states the goods are to be shipped. This date will be deemed to be the date of shipment.

Article 26

“On deck”, “shipper’s load and count”, “said by shipper to contain” and charges additional to freight

- a. 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.
- b. A transport document bearing a clause such as “shipper’s load and count” and “said by shipper to contain” is acceptable.
- c. A transport document may bear a reference, by stamp or otherwise, to charges additional to the freight.

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

a. An insurance document, such as an insurance policy, an insurance certificate or a declaration under an open cover, must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies.

Any signature by an agent or proxy must indicate whether the agent or proxy has signed for or on behalf of the insurance company or underwriter.

- b. When the insurance document indicates that it has been issued in more than one original, all originals must be presented.
- c. Cover notes will not be accepted.
- d. An insurance policy is acceptable in lieu of an insurance certificate or a declaration under an open cover.
- e. The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment.
- f. i. The insurance document must indicate the amount of insurance coverage and be in the same currency as the credit.
- ii. A requirement in the credit for insurance coverage to be for a percentage of the value of the goods, of the invoice value or similar is deemed to be the minimum amount of coverage required.

If there is no indication in the credit of the insurance coverage required, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods.

When the CIF or CIP value cannot be determined from the documents, the amount of insurance coverage must be calculated on the basis of the amount for which honour or negotiation is requested or the gross value of the goods as shown on the invoice, whichever is greater.

iii. The insurance document must indicate that risks are covered at least between the place of taking in charge or shipment and the place of discharge or final destination as stated in the credit.

- g. A credit should state the type of insurance required and, if any, the additional risks to be covered. An insurance document will be accepted without regard to any risks that are not covered if the credit uses imprecise terms such as “usual risks” or “customary risks”.
- h. When a credit requires insurance against “all risks” and an insurance document is presented containing any “all risks” notation or clause, whether or not bearing the heading “all risks”, the insurance document will be accepted without regard to any risks stated to be excluded.
- i. An insurance document may contain reference to any exclusion clause.
- j. An insurance document may indicate that the cover is subject to a franchise or excess (deductible).

Article 29

Extension of expiry date or last day for presentation

- a. If the expiry date of a credit or the last day for presentation falls on a day when the bank to which presentation is to be made is closed for reasons other than those referred to in article 36, the expiry date or the last day for presentation, as the case may be, will be extended to the first following banking day.
- b. If presentation is made on the first following banking day, a nominated bank must provide the issuing bank or confirming bank with a statement on its covering schedule that the presentation was made within the time limits extended in accordance with sub-article 29 (a).
- c. The latest date for shipment will not be extended as a result of sub-article 29 (a).

Article 30

Tolerance in credit amount, quantity and unit prices

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

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

Article 31

Partial drawings or shipments

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

A presentation consisting of one or more sets of transport documents evidencing shipment on more than one means of conveyance within the same mode of transport will be regarded as covering a partial shipment, even if the means of conveyance leave on the same day for the same destination.

- c. A presentation consisting of more than one courier receipt, post receipt or certificate of posting will not be regarded as a partial shipment if the courier receipts, post receipts or certificates of posting appear to have been stamped or signed by the same courier or postal service at the same place and date and for the same destination.

Article 32

Installment drawings or shipments

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

Article 33

Hours of presentation

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

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. A bank utilizing the services of another bank for the purpose of giving effect to the instructions of the applicant does so for the account and at the risk of the applicant.
- b. An issuing bank or advising bank assumes no liability or responsibility should the instructions it transmits to another bank not be carried out, even if it has taken the initiative in the choice of that other bank.
- c. A bank instructing another bank to perform services is liable for any commissions, fees, costs or expenses (“charges”) incurred by that bank in connection with its instructions.

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

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

- d. The applicant shall be bound by and liable to indemnify a bank against all obligations and responsibilities imposed by foreign laws and usages.

Article 38

Transferrable credits

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

- b. For the purpose of this article:

Transferrable credit means a credit that specifically states it is “transferrable”. A transferrable 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.

- c. Unless otherwise agreed at the time of transfer, all charges (such as commissions, fees, costs or expenses) incurred in respect of a transfer must be paid by the first beneficiary.
- d. 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.

- e. Any request for transfer must indicate if and under what conditions amendments may be advised to the second beneficiary. The transferred credit must clearly indicate those conditions.
- f. If a credit is transferred to more than one second beneficiary, rejection of an amendment by one or more second beneficiary does not invalidate the acceptance by any other second beneficiary, with respect to which the transferred credit will be amended accordingly. For any second beneficiary that rejected the amendment, the transferred credit will remain unamended.

g. The transferred credit must accurately reflect the terms and conditions of the credit, including confirmation, if any, with the exception of:

- the amount of the credit,
- any unit price stated therein,
- the expiry date,
- the period for presentation, or
- the latest shipment date or given period for shipment, any or all of which may be reduced or curtailed.

The percentage for which insurance cover must be effected may be increased to provide the amount of cover stipulated in the credit or these articles.

The name of the first beneficiary may be substituted for that of the applicant in the credit.

If the name of the applicant is specifically required by the credit to appear in any document other than the invoice, such requirement must be reflected in the transferred credit.

- h. The first beneficiary has the right to substitute its own invoice and draft, if any, for those of a second beneficiary for an amount not in excess of that stipulated in the credit, and upon such substitution the first beneficiary can draw under the credit for the difference, if any, between its invoice and the invoice of a second beneficiary.
- i. If the first beneficiary is to present its own invoice and draft, if any, but fails to do so on first demand, or if the invoices presented by the first beneficiary create discrepancies that did not exist in the presentation made by the second beneficiary and the first beneficiary fails to correct them on first demand, the transferring bank has the right to present the documents as received from the second beneficiary to the issuing bank, without further responsibility to the first beneficiary.
- j. The first beneficiary may, in its request for transfer, indicate that honour or negotiation is to be effected to a second beneficiary at the place to which the credit has been transferred, up to and including the expiry date of the credit.

This is without prejudice to the right of the first beneficiary in accordance with sub-article 38 (h).

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

Article 39

Assignment of proceeds

The fact that a credit is not stated to be transferrable shall not affect the right of the beneficiary to assign any proceeds to which it may be or may become entitled under the credit, in accordance with the provisions of applicable law. This article relates only to the assignment of proceeds and not to the assignment of the right to perform under the credit.

Supplement to the uniform customs and practice for documentary credits for electronic presentation

Introduction

The official name for this publication is “Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (Version 1.1)”. It uses the acronym “eUCP”.

During the course of drafting UCP 600, ICC national committees indicated that, due to the limited usage of eUCP Version 1.0, the eUCP should remain as a supplement to the UCP. Version 1.1 has, therefore, been updated solely to reflect the changes made in UCP with regard to terminology and style of presentation.

The eUCP continues to provide definitions permitting UCP 600 terminology accommodating the electronic presentation of the equivalent of paper documents and providing necessary rules to allow both sets of rules to work together. The eUCP allows for presentation electronically or for a mixture of paper documents and electronic presentation.

It is important for the eUCP reader to understand that many articles of the UCP are not impacted by the presentation of the electronic equivalent of paper documents and do not require any changes to accommodate electronic presentation.

When read together, the UCP and the eUCP provide the necessary rules for electronic presentation and are broad enough to anticipate developing practice in this area. Where specific words or phrases used in the UCP are defined in the eUCP, these definitions, unless otherwise stated, apply wherever the terms appear in the UCP.

eUCP Version 1.1 is specific to UCP 600 and, if necessary, may have to be revised as technologies develop, perhaps prior to the next revision of the UCP. For that purpose, the eUCP is issued in version numbers that will allow for a revision and subsequent version if the need arises.

The eUCP has been specifically drafted to be independent of specific technologies and developing electronic commerce systems, i.e., it does not address specific technologies or systems necessary to facilitate electronic presentation. These technologies are evolving, and it is left to the parties to the credit to agree on the technology or systems to be used for presentation of electronic records in compliance with the requirements of the eUCP.

The eUCP has been created to meet the demands of the market for the presentation of electronic documents. The market has created a higher standard in anticipation of increased processing efficiencies when the electronic equivalents of paper documents are presented. In anticipation of this demand and to meet market expectations, several changes to the standards established by the UCP have been deemed necessary for an electronic presentation. These changes are consistent with current practice and the expectations of the marketplace.

All of the articles of eUCP Version 1.1 are consistent with UCP 600 except as they relate specifically to electronic presentations. Where necessary, changes have been made to address the unique issues related to presentation of the electronic equivalent of paper documents.

In order to avoid confusion between the articles of the UCP and those of the eUCP, the eUCP articles are numbered with an “e” preceding each article number.

Gary Collyer

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November 2006

Article e1

Scope of the eUCP

- a. The Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (“eUCP”) supplements the Uniform Customs and Practice for Documentary Credits (2007 Revision ICC Publication No. 600) (“UCP”) in order to accommodate presentation of electronic records alone or in combination with paper documents.
- b. The eUCP shall apply as a supplement to the UCP where the credit indicates that it is subject to eUCP.
- c. This version is Version 1.1. A credit must indicate the applicable version of the eUCP. If it does not do so, it is subject to the version in effect on the date the credit is issued or, if made subject to eUCP by an amendment accepted by the beneficiary, on the date of that amendment.

Article e2

Relationship of the eUCP to the UCP

- a. A credit subject to the eUCP (“eUCP credit”) is also subject to the UCP without express incorporation of the UCP.
- b. Where the eUCP applies, its provisions shall prevail to the extent that they would produce a result different from the application of the UCP.
- c. If an eUCP credit allows the beneficiary to choose between presentation of paper documents or electronic records and it chooses to present only paper documents, the UCP alone shall apply to that presentation. If only paper documents are permitted under an eUCP credit, the UCP alone shall apply.

Article e3

Definitions

- a. Where the following terms are used in the UCP, for the purposes of applying the UCP to an electronic record presented under an eUCP credit, the term:
 - i. appear on their face and the like shall apply to examination of the data content of an electronic record.
 - ii. document shall include an electronic record.
 - iii. place for presentation of electronic records means an electronic address.
 - iv. sign and the like shall include an electronic signature.

- v. superimposed, notation or stamped means data content whose supplementary character is apparent in an electronic record.

- b. The following terms used in the eUCP shall have the following meanings:

- i. electronic record means
 - data created, generated, sent, communicated, received or stored by electronic means
 - that is capable of being authenticated as to the apparent identity of a sender and the apparent source of the data contained in it, and as to whether it has remained complete and unaltered, and
 - is capable of being examined for compliance with the terms and conditions of the eUCP credit.
- ii. electronic signature means a data process attached to or logically associated with an electronic record and executed or adopted by a person in order to identify that person and to indicate that person’s authentication of the electronic record.
- iii. format means the data organization in which the electronic record is expressed or to which it refers.
- iv. paper document means a document in a traditional paper form.
- v. received means the time when an electronic record enters the information system of the applicable recipient in a form capable of being accepted by that system. Any acknowledgement of receipt does not imply acceptance or refusal of the electronic record under an eUCP credit.

Article e4

Format

An eUCP credit must specify the formats in which electronic records are to be presented. If the format of the electronic record is not so specified, it may be presented in any format.

Article e5

Presentation

- a. An eUCP credit allowing presentation of:
 - i. electronic records must state a place for presentation of the electronic records.
 - ii. both electronic records and paper documents must also state a place for presentation of the paper documents.
- b. Electronic records may be presented separately and need not be presented at the same time.
- c. If an eUCP credit allows for presentation of one or more electronic records, the beneficiary is responsible for providing a notice to the bank to which presentation is made signifying when the presentation is complete. The notice of completeness may be given as an electronic record or paper document and must identify the eUCP credit to which it relates. Presentation is deemed not to have been made if the beneficiary's notice is not received.
- d.
 - i. Each presentation of an electronic record and the presentation of paper documents under an eUCP credit must identify the eUCP credit under which it is presented.
 - ii. A presentation not so identified may be treated as not received.
- e. If the bank to which presentation is to be made is open but its system is unable to receive a transmitted electronic record on the stipulated expiry date and/or the last day of the period of time after the date of shipment for presentation, as the case may be, the bank will be deemed to be closed and the date for presentation and/or the expiry date shall be extended to the first following banking day on which such bank is able to receive an electronic record. If the only electronic record remaining to be presented is the notice of completeness, it may be given by telecommunications or by paper document and will be deemed timely, provided that it is sent before the bank is able to receive an electronic record.
- f. An electronic record that cannot be authenticated is deemed not to have been presented.

Article e6

Examination

- a. If an electronic record contains a hyperlink to an external system or a presentation indicates that the electronic record may be examined by reference to an external system, the electronic record at the hyperlink or the referenced system shall be deemed to be the electronic record to be examined. The failure of the indicated system to provide access to the required electronic record at the time of examination shall constitute a discrepancy.
- b. The forwarding of electronic records by a nominated bank pursuant to its nomination signifies that it has satisfied itself as to the apparent authenticity of the electronic records.
- c. The inability of the issuing bank, or confirming bank, if any, to examine an electronic record in a format required by the eUCP credit or, if no format is required, to examine it in the format presented is not a basis for refusal.

Article e7

Notice of refusal

- a.
 - i. The time period for the examination of documents commences on the banking day following the banking day on which the beneficiary's notice of completeness is received.
 - ii. If the time for presentation of documents or the notice of completeness is extended, the time for the examination of documents commences on the first following banking day on which the bank to which presentation is to be made is able to receive the notice of completeness.
- b. If an issuing bank, the confirming bank, if any, or a nominated bank acting on their behalf, provides a notice of refusal of a presentation which includes electronic records and does not receive instructions from the party to which notice of refusal is given within 30 calendar days from the date the notice of refusal is given for the disposition of the electronic records, the bank shall return any paper documents not previously returned to the presenter but may dispose of the electronic records in any manner deemed appropriate with out any responsibility.

Article e8

Originals and copies

Any requirement of the UCP or an eUCP credit for presentation of one or more originals or copies of an electronic record is satisfied by the presentation of one electronic record.

Article e9

Date of issuance

Unless an electronic record contains a specific date of issuance, the date on which it appears to have been sent by the issuer is deemed to be the date of issuance. The date of receipt will be deemed to be the date it was sent if no other date is apparent.

Article e10

Transport

If an electronic record evidencing transport does not indicate a date of shipment or dispatch, the date of issuance of the electronic record will be deemed to be the date of shipment or dispatch. However, if the electronic record bears a notation that evidences the date of shipment or dispatch, the date of the notation will be deemed to be the date of shipment or dispatch. A notation showing additional data content need not be separately signed or otherwise authenticated.

Article e11

Corruption of an electronic record after presentation

- a. If an electronic record that has been received by the issuing bank, confirming bank, or another nominated bank appears to have been corrupted, the bank may inform the presenter and may request that the electronic record be represented.
- b. If the bank requests that an electronic record be re-presented:
 - i. the time for examination is suspended and resumes when the presenter re-presents the electronic record, and
 - ii. if the nominated bank is not the confirming bank, it must provide the issuing bank and any confirming bank with notice of the request for re-presentation and inform it of the suspension; but

- iii. if the same electronic record is not re-presented within thirty (30) calendar days, the bank may treat the electronic record as not presented, and

- iv. any deadlines are not extended.

Article e12

Additional disclaimer of liability for presentation of electronic records under eUCP

By satisfying itself as to the apparent authenticity of an electronic record, banks assume no liability for the identity of the sender, source of the information or its complete and unaltered character other than that which is apparent in the electronic record received by the use of a commercially acceptable data process for the receipt, authentication and identification of electronic records.

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ICC at a glance

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

Because its member companies and associations are themselves engaged in international business, ICC has unrivaled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property.

ICC was founded in 1919. Today it groups thousands of member companies and associations from over 130 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

Some ICC specialized divisions

- ICC International Court of Arbitration (Paris)
- ICC International Centre for Expertise (Paris)
- ICC World Chambers Federation (Paris)
- ICC Institute of World Business Law (Paris)
- ICC Centre for Maritime Co-operation (London)
- ICC Commercial Crime Services (London)
- ICC Services (ICC affiliate, Paris)
- Events Department

ICC's programme of conferences and seminars is the essential channel for passing on the world business organization's expertise to a wider audience.

ICC Events, a Department of ICC Services, spotlights policy issues of direct concern to business such as banking techniques and practices, e-business, IT and telecoms, piracy and counterfeiting.

ICC Events also runs training courses on international arbitration and negotiating international contracts for business-people, corporate counsel, lawyers and legal practitioners involved in international trade.

- Publications Department

ICC Publications Department is committed to offering the best resources on business and trade for the international community

The content of ICC publications is derived from the work of ICC commissions, institutions and individual international experts. The specialized list covers a range of topics including international banking, international trade reference and terms (Incoterms), law and arbitration, counterfeiting and fraud, model commercial contracts and environmental issues.

ICC No. 681 E International Standard Banking Practice for the Examination of Documents under Documentary Credits

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International Standard Banking Practice
For the Examination of Documents
Under Documentary Credits
ICC 681E
2007 Revision for UCP 600

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Foreword

When the publication International Standard Banking Practice for the Examination of Documents under Documentary Credits was approved by ICC in 2002, it was widely acclaimed by letter of credit practitioners worldwide. The ISBP, as it is commonly called, provided an intelligent checklist of items document checkers could refer to in determining how ICC's rules on documentary credits, at the time called UCP 500, applied in daily practice. As such, it filled a needed gap in the market between the general principles in the UCP and the daily job of the practitioner.

Now that UCP 500 has been replaced by UCP 600, it has become necessary to update the ISBP to bring it in line with the new rules. Though much of the ISBP remains unchanged from the 2002 version, certain alterations have had to be made. These are essentially to remove paragraphs from ISBP where the principle has been incorporated in UCP 600; to make technical adjustments in capitalization; to substitute UCP 600 article references for those of UCP 500; to change dates (from 2006 to 2007); and to incorporate changes in ISBP paragraphs necessary to bring the wording in line with wording in UCP 600. Though some of these changes are minor, practitioners would be well advised to have this latest version of the ISBP at hand.

In addition to giving needed guidance to the practitioner, the ISBP was originally created to help reduce the large percentage of documents refused for discrepancies on first presentation. Anecdotal evidence suggests that this objective has been partially attained. Though refusals remain a serious problem with letters of credit, their numbers appear to be declining, in part because of the effectiveness of the checklist contained in the ISBP. Practitioners are urged to refer to this publication whenever doubts arise as to how to structure and check documents in credits utilizing UCP 600.

This revision of the ISBP has been developed by the same Drafting Group that created the final version of UCP 600. Their contribution in time and effort is gratefully acknowledged, and their names and professional affiliations appear below.

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Introduction

Since the approval of International Standard Banking Practice (ISBP) by the ICC Banking Commission in 2002, ICC Publication No. 645 has become an invaluable aid to banks, corporates, logistics specialists and insurance companies alike, on a global basis. Participants in ICC seminars and workshops have indicated that rejection rates have dropped due to the application of the 200 practices that are detailed in ISBP.

However, there have also been comments that although ISBP Publication No. 645 was approved by the Banking Commission, its application had no clear relationship with UCP 500. With the approval of UCP 600 in October 2006, it has become necessary to provide an updated version of the ISBP. It is emphasized that this is an updated version as opposed to a revision of ICC Publication No. 645. Where it was felt appropriate, paragraphs that appeared in Publication No. 645 and that have now been covered in effectively the same text in UCP 600 have been removed from this updated version of ISBP.

As a means of creating a relationship between the UCP and ISBP, the introduction to UCP 600 states: “During the revision process, notice was taken of the considerable work that had been completed in creating the International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP), ICC Publication No. 645. This publication has evolved into a necessary companion to the UCP for determining compliance of documents with the terms of letters of credit. It is the expectation of the Drafting Group and the Banking Commission that the application of the principles contained in the ISBP, including subsequent revisions thereof, will continue during the time UCP 600 is in force. At the time UCP 600 is implemented, there will be an updated version of the ISBP to bring its contents in line with the substance and style of the new rules.”

The international standard banking practices documented in this publication are consistent with UCP 600 and the Opinions and Decisions of the ICC Banking Commission. This document does not amend UCP 600. It explains how the practices articulated in UCP 600 are applied by documentary practitioners. This publication and the UCP should be read in their entirety and not in isolation. It is, of course, recognized that the law in some countries may compel results different from those stated here.

No single publication can anticipate all the terms or the documents that may be used in connection with documentary credits or their interpretation under UCP 600 and the standard practice it reflects. However, the Task Force that prepared Publication No. 645 endeavoured to cover terms commonly seen on a day-to-day basis and the documents most often presented under documentary credits. The Drafting Group have reviewed and updated this publication to conform with UCP 600.

It should be noted that any term in a documentary credit which modifies or excludes the applicability of a provision of UCP 600 may also have an impact on international standard banking practice. Therefore, in considering the practices described in this publication, parties must take into account any term in a documentary credit that expressly modifies or excludes a rule contained in UCP 600. This principle is implicit throughout this publication. Where examples are given, these are solely for the purpose of illustration and are not exhaustive.

This publication reflects international standard banking practice for all parties to a documentary credit. Since applicants' obligations, rights and remedies depend upon their undertaking with the issuing bank, the performance of the underlying transaction and the timeliness of any objection under applicable law and practice, applicants should not assume that they may rely on these provisions in order to excuse their obligations to reimburse the issuing bank. The incorporation of this publication into the terms of a documentary credit should be discouraged, as UCP600 incorporates international standard banking practice, which includes the practices described in this publication.

Preliminary considerations

The application and issuance of the credit

1. The terms of a credit are independent of the underlying transaction even if a credit expressly refers to that transaction. To avoid unnecessary costs, delays and disputes in the examination of documents, however, the applicant and beneficiary should carefully consider which documents should be required, by whom they should be produced and the time frame for presentation.

2. The applicant bears the risk of any ambiguity in its instructions to issue or amend a credit. Unless expressly stated otherwise, a request to issue or amend a credit authorizes an issuing bank to supplement or develop the terms in a manner necessary or desirable to permit the use of the credit.
3. The applicant should be aware that UCP 600 contains articles such as 3, 14, 19, 20, 21, 23, 24, 28(i), 30 and 31 that define terms in a manner that may produce unexpected results unless the applicant fully acquaints itself with these provisions. For example, a credit requiring presentation of a bill of lading and containing a prohibition against transshipment will, in most cases, have to exclude UCP 600 sub-article 20(c) to make the prohibition against transshipment effective.
4. A credit should not require presentation of documents that are to be issued or countersigned by the applicant. If a credit is issued including such terms, the beneficiary must either seek amendment or comply with them and bear the risk of failure to do so.
5. Many of the problems that arise at the examination stage could be avoided or resolved by careful attention to detail in the underlying transaction, the credit application and issuance of the credit as discussed.

General principles

Abbreviations

6. The use of generally accepted abbreviations, for example “Ltd” instead of “Limited”, “Int’l” instead of “International”, “Co.” instead of “Company”, “kgs” or “kos” instead of “kilos”, “Ind” instead of “Industry”, “mfr” instead of “manufacturer” or “mt” instead of “metric tons” – or vice versa – does not make a document discrepant.
7. Virgules (slash marks “/”) may have different meanings and, unless apparent in the context used, should not be used as a substitute for a word.

Certifications and declarations

8. A certification, declaration or the like may either be a separate document or contained within another document as required by the credit. If the certification or declaration appears in another document which is signed and dated, any certification or declaration appearing on that document does not require a separate signature or date if the certification or declaration appears to have been given by the same entity that issued and signed the document.

Corrections and alterations

9. Corrections and alterations of information or data in documents, other than documents created by the beneficiary, must appear to be authenticated by the party who issued the document or by a party authorized by the issuer to do so. Corrections and alterations in documents which have been legalized, visaed, certified or similar, must appear to be authenticated by the party who legalized, visaed, certified etc., the document. The authentication must show by whom the authentication has been made and include the signature or initials of that party. If the authentication appears to have been made by a party other than the issuer of the document, the authentication must clearly show in which capacity that party has authenticated the correction or alteration.
10. Corrections and alterations in documents issued by the beneficiary itself, except drafts, which have not been legalized, visaed, certified or similar, need not be authenticated. See also “Drafts and Calculation of Maturity Date”.
11. The use of multiple type styles or font sizes or handwriting in the same document does not, by itself, signify a correction or alteration.
12. Where a document contains more than one correction or alteration, either each correction must be authenticated separately or one authentication must be linked to all corrections in an appropriate way. For example, if the document shows three corrections numbered 1, 2 and 3, one statement, such as “Correction numbers 1, 2 and 3 above authorized by XXX” or similar, will satisfy the requirement for authentication.

Dates

13. Drafts, transport documents and insurance documents must be dated even if a credit does not expressly so require. A requirement that a document, other than those mentioned above, be dated may be satisfied by reference in the document to the date of another document forming part of the same presentation (e.g., where a shipping certificate is issued which states “date as per bill of lading number xxx” or similar terms). Although it is expected that a required certificate or declaration in a separate document be dated, its compliance will depend on the type of certification or declaration that has been requested, its required wording and the wording that appears within it. Whether other documents require dating will depend on the nature and content of the document in question.

14. Any document, including a certificate of analysis, inspection certificate and pre-shipment inspection certificate, may be dated after the date of shipment. However, if a credit requires a document evidencing a pre-shipment event (e.g., pre-shipment inspection certificate), the document must, either by its title or content, indicate that the event (e.g., inspection) took place prior to or on the date of shipment. A requirement for an “inspection certificate” does not constitute a requirement to evidence a pre-shipment event. Documents must not indicate that they were issued after the date they are presented.
15. A document indicating a date of preparation and a later date of signing is deemed to be issued on the date of signing.
16. Phrases often used to signify time on either side of a date or event:
 - a. “within 2 days after” indicates a period from the date of the event until 2 days after the event.
 - b. “not later than 2 days after” does not indicate a period, only a latest date. If an advice must not be dated prior to a specific date, the credit must so state.
 - c. “at least 2 days before” indicates that something must take place not later than 2 days before an event. There is no limit as to how early it may take place.
 - d. “within 2 days of” indicates a period 2 days prior to the event until 2 days after the event.
17. The term “within” when used in connection with a date excludes that date in the calculation of the period.
18. Dates may be expressed in different formats, e.g., the 12th of November 2007 could be expressed as 12 Nov 07, 12Nov07, 12.11.2007, 12.11.07, 2007.11.12, 11.12.07, 121107, etc. Provided that the date intended can be determined from the document or from other documents included in the presentation, any of these formats are acceptable. To avoid confusion it is recommended that the name of the month should be used instead of the number.

Documents for which the UCP 600 Transport Articles do not apply

19. Some documents commonly used in relation to the transportation of goods, e.g., Delivery Order, Forwarder’s Certificate of Receipt, Forwarder’s Certificate of Shipment, Forwarder’s Certificate of Transport, Forwarder’s Cargo Receipt and Mate’s Receipt, do not reflect a contract of carriage and are not transport documents as defined in UCP 600 articles 19–25. As such, UCP 600 sub-article 14(c) would not apply to these documents. Therefore, these documents will be examined in the same manner as other documents for which there are no specific provisions in UCP 600, i.e., under sub-article 14(f). In any event, documents must be presented not later than the expiry date for presentation as stated in the credit.
20. Copies of transport documents are not transport documents for the purpose of UCP 600 articles 19–25 and sub-article 14(c). The UCP 600 transport articles apply where there are original transport documents presented. Where a credit allows for the presentation of a copy transport document rather than an original, the credit must explicitly state the details to be shown. Where copies (non-negotiable) are presented, they need not evidence signature, dates, etc.

Expressions not defined in UCP 600

21. Expressions such as “shipping documents”, “stale documents acceptable”, “third party documents acceptable” and “exporting country” should not be used as they are not defined in UCP 600. If used in a credit, their meaning should be made apparent. If not, they have the following meaning under international standard banking practice:
 - a. “shipping documents” – all documents (not only transport documents), except drafts, required by the credit.
 - b. “stale documents acceptable” – documents presented later than 21 calendar days after the date of shipment are acceptable as long as they are presented no later than the expiry date for presentation as stated in the credit.
 - c. “third party documents acceptable” – all documents, excluding drafts but including invoices, may be issued by a party other than the beneficiary. If it is the intention of the issuing bank that the transport or other documents may show a shipper other than the beneficiary, the clause is not necessary because it is already permitted by sub-article 14(k).

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

Issuer of Documents

- 22. If a credit indicates that a document is to be issued by a named person or entity, this condition is satisfied if the document appears to be issued by the named person or entity. It may appear to be issued by a named person or entity by use of its letterhead, or if there is no letterhead, the document appears to have been completed or signed by, or on behalf of the named person or entity.

Language

- 23. Under international standard banking practice, it is expected that documents issued by the beneficiary will be in the language of the credit. When a credit states that documents in two or more languages are acceptable, a nominated bank may, in its advice of the credit, limit the number of acceptable languages as a condition of its engagement in the credit.

Mathematical Calculations

- 24. Detailed mathematical calculations in documents will not be checked by banks. Banks are only obliged to check total values against the credit and other required documents.

Misspellings or Typing Errors

- 25. A misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant. For example, a description of the merchandise as “mashine” instead of “machine”, “fountan pen” instead of “fountain pen” or “modle” instead of “model” would not make the document discrepant. However, a description as “model 123” instead of “model 321” would not be regarded as a typing error and would constitute a discrepancy.

Multiple Pages and Attachments or Riders

- 26. Unless the credit or a document provides otherwise, pages which are physically bound together, sequentially numbered or contain internal cross references, however named or entitled, are to be examined as one document, even if some of the pages are regarded as an attachment. Where a document consists of more than one page, it must be possible to determine that the pages are part of the same document.

- 27. If a signature or endorsement is required to be on a document consisting of more than one page, the signature is normally placed on the first or last page of the document, but unless the credit or the document itself indicates where a signature or endorsement is to appear, the signature or endorsement may appear anywhere on the document.

Originals and Copies

- 28. Documents issued in more than one original may be marked “Original”, “Duplicate”, “Triplicate”, “First Original”, “Second Original”, etc. None of these markings will disqualify a document as an original.
- 29. The number of originals to be presented must be at least the number required by the credit, the UCP 600 or, where the document itself states how many originals have been issued, the number stated on the document.
- 30. It can sometimes be difficult to determine from the wording of a credit whether it requires an original or a copy, and to determine whether that requirement is satisfied by an original or a copy.

For example, where the credit requires:

- a. “Invoice”, “One Invoice” or “Invoice in 1 copy”, it will be understood to be a requirement for an original invoice.
- b. “Invoice in 4 copies”, it will be satisfied by the presentation of at least one original and the remaining number as copies of an invoice.
- c. “One copy of Invoice”, it will be satisfied by presentation of either a copy or an original of an invoice.
- 31. Where an original would not be accepted in lieu of a copy, the credit must prohibit an original, e.g., “photocopy of invoice – original document not acceptable in lieu of photocopy”, or the like. Where a credit calls for a copy of a transport document and indicates the disposal instructions for the original of that transport document, an original transport document will not be acceptable.
- 32. Copies of documents need not be signed.

33. In addition to UCP 600 article 17, the ICC Banking Commission Policy Statement, document 470/871(Rev), titled “The Determination of an ‘Original’ Document in the Context of UCP 500 sub-Article 20(b)” is recommended for further guidance on originals and copies and remains valid under UCP 600. The content of the Policy Statement appears in the Appendix of this publication, for reference purposes.

Shipping marks

34. The purpose of a shipping mark is to enable identification of a box, bag or package. If a credit specifies the details of a shipping mark, the documents mentioning the marks must show these details, but additional information is acceptable provided it is not in conflict with the credit terms.
35. Shipping marks contained in some documents often include information in excess of what would normally be considered “shipping marks” and could include information such as the type of goods, warnings as to the handling of fragile goods, net and/or gross weight of the goods, etc. The fact that some documents show such additional information while others do not is not a discrepancy.
36. Transport documents covering containerized goods will sometimes only show a container number under the heading “Shipping marks”. Other documents that show a detailed marking will not be considered to be in conflict for that reason.

Signatures

37. Even if not stated in the credit, drafts, certificates and declarations by their nature require a signature. Transport documents and insurance documents must be signed in accordance with the provisions of UCP 600.
38. The fact that a document has a box or space for a signature does not necessarily mean that such box or space must be completed with a signature. For example, banks do not require a signature in the area titled “Signature of shipper or their agent” or similar phrases commonly found on transport documents, such as air waybills or road transport documents. If the content of a document indicates that it requires a signature to establish its validity (e.g., “This document is not valid unless signed” or similar terms), it must be signed.

39. A signature need not be handwritten. Facsimile signatures, perforated signatures, stamps, symbols (such as chops) or any electronic or mechanical means of authentication are sufficient. However, a photocopy of a signed document does not qualify as a signed original document, nor does a signed document transmitted through a fax machine, absent an original signature. A requirement for a document to be “signed and stamped”, or a similar requirement, is also fulfilled by a signature and the name of the party typed, or stamped, or handwritten, etc.
40. A signature on a company letterhead paper will be taken to be the signature of that company, unless otherwise stated. The company name need not be repeated next to the signature.

Title of documents and combined documents

41. Documents may be titled as called for in the credit, bear a similar title or be untitled. For example, a credit requirement for a “Packing List” may also be satisfied by a document containing packing details whether titled “Packing Note”, “Packing and Weight List”, etc., or an untitled document. The content of a document must appear to fulfil the function of the required document.
42. Documents listed in a credit should be presented as separate documents. If a credit requires a packing list and a weight list, such requirement will be satisfied by presentation of two separate documents, or by presentation of two original copies of a combined packing and weight list, provided such document states both packing and weight details.

Drafts and calculation of maturity date

Tenor

43. The tenor must be in accordance with the terms of the credit.
- a. If a draft is drawn at a tenor other than sight, or other than a certain period after sight, it must be possible to establish the maturity date from the data in the draft itself.

- b. As an example of where it is possible to establish a maturity date from the data in the draft, if a credit calls for drafts at a tenor 60 days after the bill of lading date, where the date of the bill of lading is 12 July 2007, the tenor could be indicated on the draft in one of the following ways:
 - i. “60 days after bill of lading date 12 July 2007”, or
 - ii. “60 days after 12 July 2007”, or
 - iii. “60 days after bill of lading date” and elsewhere on the face of the draft state “bill of lading date 12 July 2007”, or
 - iv. “60 days date” on a draft dated the same day as the date of the bill of lading, or
 - v. “10 September 2007”, i.e., 60 days after the bill of lading date.
- c. If the tenor refers to xxx days after the bill of lading date, the on board date is deemed to be the bill of lading date even if the on board date is prior to or later than the date of issuance of the bill of lading.
- d. UCP 600 article 3 provides guidance that where the words “from” and “after” are used to determine maturity dates, the calculation of the maturity commences the day following the date of the document, shipment or other event, i.e., 10 days after or from March 1 is March 11.
- e. If a bill of lading showing more than one on board notation is presented under a credit which requires drafts to be drawn, for example, at 60 days after or from bill of lading date, and the goods according to both or all on board notations were shipped from ports within a permitted geographical area or region, the earliest of these on board dates will be used for calculation of the maturity date. Example: the credit requires shipment from European port, and the bill of lading evidences on board vessel “A” from Dublin August 16 and on board vessel “B” from Rotterdam August 18. The draft should reflect 60 days from the earliest on board date in a European port, i.e., August 16.
- f. If a credit requires drafts to be drawn, for example, at 60 days after or from bill of lading date, and more than one set of bills of lading is presented under one draft, the date of the last bill of lading will be used for the calculation of the maturity date.

- 44. While the examples refer to bill of lading dates, the same principles apply to all transport documents.

Maturity date

- 45. If a draft states a maturity date by using an actual date, the date must have been calculated in accordance with the requirements of the credit.
- 46. For drafts drawn “at XXX days sight”, the maturity date is established as follows:
 - a. in the case of complying documents, or in the case of non-complying documents where the drawee bank has not provided a notice of refusal, the maturity date will be XXX days after the date of receipt of documents by the drawee bank.
 - b. in the case of non-complying documents where the drawee bank has provided a notice of refusal and subsequent approval, at the latest XXX days after the date of acceptance of the draft by the drawee bank. The date of acceptance of the draft must be no later than the date the issuing bank accepts the waiver of the applicant.
- 47. In all cases the drawee bank must advise the maturity date to the presenter. The calculation of tenor and maturity dates, as shown above, would also apply to credits designated as being available by deferred payment, i.e., where there is no requirement for a draft to be presented by the beneficiary

Banking days, grace days, delays in remittance

- 48. Payment must be available in immediately available funds on the due date at the place where the draft or documents are payable, provided such due date is a banking day in that place. If the due date is a non-banking day, payment will be due on the first banking day following the due date. Delays in the remittance of funds, such as grace days, the time it takes to remit funds, etc., must not be in addition to the stated or agreed due date as defined by the draft or documents.

Endorsement

- 49. The draft must be endorsed, if necessary.

Amounts

- 50. The amount in words must accurately reflect the amount in figures if both are shown, and indicate the currency, as stated in the credit.
- 51. The amount must agree with that of the invoice, unless as a result of UCP 600 sub-article 18(b).

How the draft is drawn

52. The draft must be drawn on the party stated in the credit.
53. The draft must be drawn by the beneficiary.

Drafts on the applicant

54. A credit may be issued requiring a draft drawn on the applicant as one of the required documents, but must not be issued available by drafts drawn on the applicant.

Corrections and alterations

55. Corrections and alterations on a draft, if any, must appear to have been authenticated by the drawer.
56. In some countries a draft showing corrections or alterations will not be acceptable even with the drawer's authentication. Issuing banks in such countries should make a statement in the credit to the effect that no correction or alteration must appear in the draft.

Invoices

Definition of invoice

57. A credit requiring an "invoice" without further definition will be satisfied by any type of invoice presented (commercial invoice, customs invoice, tax invoice, final invoice, consular invoice, etc.). However, invoices identified as "provisional", "pro-forma" or the like are not acceptable. When a credit requires presentation of a commercial invoice, a document titled "invoice" will be acceptable.

Description of the goods, services or performance and other general issues related to invoices

58. The description of the goods, services or performance in the invoice must correspond with the description in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when collated together, represent a description of the goods corresponding to that in the credit.
59. The description of goods, services or performance in an invoice must reflect what has actually been shipped or provided. For example, where there are two types of

goods shown in the credit, such as 10 trucks and 5 tractors, an invoice that reflects only shipment of 4 trucks would be acceptable provided the credit does not prohibit partial shipment. An invoice showing the entire goods description as stated in the credit, then stating what has actually been shipped, is also acceptable.

60. An invoice must evidence the value of the goods shipped or services or performance provided. Unit price(s), if any, and currency shown in the invoice must agree with that shown in the credit. The invoice must show any discounts or deductions required in the credit. The invoice may also show a deduction covering advance payment, discount, etc., not stated in the credit.
61. If a trade term is part of the goods description in the credit, or stated in connection with the amount, the invoice must state the trade term specified, and if the description provides the source of the trade term, the same source must be identified (e.g., a credit term "CIF Singapore Incoterms 2000" would not be satisfied by "CIF Singapore Incoterms"). Charges and costs must be included within the value shown against the stated trade term in the credit and invoice. Any charges and costs shown beyond this value are not allowed.
62. Unless required by the credit, an invoice need not be signed or dated.
63. The quantity of merchandise, weights and measurements shown on the invoice must not conflict with the same quantities appearing on other documents.
64. An invoice must not show:
 - a. over-shipment (except as provided in UCP 600 sub-article 30(b)), or
 - b. merchandise not called for in the credit (including samples, advertising materials, etc.) even if stated to be free of charge.
65. The quantity of the goods required in the credit may vary within a tolerance of +/- 5%. This does not apply if a credit states that the quantity must not be exceeded

or reduced, or if a credit states the quantity in terms of a stipulated number of packing units or individual items. A variance of up to +5% in the goods quantity does not allow the amount of the drawing to exceed the amount of the credit.

66. Even when partial shipments are prohibited, a tolerance of 5% less in the credit amount is acceptable, provided that the quantity is shipped in full and that any unit price, if stated in the credit, has not been reduced. If no quantity is stated in the credit, the invoice will be considered to cover the full quantity.
67. If a credit calls for instalment shipments, each shipment must be in accordance with the instalment schedule.

Transport document covering at least two different modes of transport

Application of UCP 600 Article 19

68. If a credit requires presentation of a transport document covering transportation utilizing at least two modes of transport (multimodal or combined transport document), and if the transport document clearly shows that it covers a shipment from the place of taking in charge or port, airport or place of loading to the place of final destination mentioned in the credit, UCP 600 article 19 is applicable. In such circumstances, the transport document must not indicate that shipment or dispatch has been effected by only one mode of transport, but it may be silent regarding the modes of transport utilized.
69. In all places where the term “multimodal transport document” is used within this document, it also includes the term “combined transport document”. A document need not be titled “multimodal transport document” or “combined transport document” to be acceptable under UCP 600 article 19, even if such expressions are used in the credit.

Full set of originals

70. A UCP 600 article 19 transport document must indicate the number of originals that have been issued.

Transport documents marked “First Original”, “Second Original”, “Third Original”, “Original”, “Duplicate”, “Triplicate”, etc., or similar expressions are all originals. Multimodal transport documents need not be marked “original” to be acceptable under a credit. In addition to UCP 600 article 17, the ICC Banking Commission Policy Statement, document 470/871(Rev), titled “The Determination of an ‘Original’ Document in the Context of UCP 500 sub-Article 20(b)” is recommended for further guidance on originals and copies and remains valid under UCP 600. The content of the Policy Statement appears in the Appendix of this publication, for reference purposes.

Signing of multimodal transport documents

71. Original multimodal transport documents must be signed in the form described in UCP 600 sub-article 19(a)(i) and indicate the name of the carrier, identified as the carrier.
 - a. If an agent signs a multimodal transport document on behalf of the carrier, the agent must be identified as agent and must identify on whose behalf it is signing, unless the carrier has been identified elsewhere on the multimodal transport document.
 - b. If the master (captain) signs the multimodal transport document, the signature of the master (captain) must be identified as “master” (“captain”). In this event, the name of the master (captain) need not be stated.
 - c. If an agent signs the multimodal transport document on behalf of the master (captain), the agent must be identified as agent. In this event, the name of the master (captain) need not be stated.
72. If a credit states “Freight Forwarder’s Multimodal transport document is acceptable” or uses a similar phrase, then the multimodal transport document may be signed by a freight forwarder in the capacity of a freight forwarder, without the need to identify itself as carrier or agent for the named carrier. In this event, it is not necessary to show the name of the carrier.

On board notations

73. The issuance date of a multimodal transport document will be deemed to be the date of dispatch, taking in

charge or shipped on board unless it bears a separate dated notation evidencing dispatch, taking in charge or shipped on board from the location required by the credit, in which event the date of the notation will be deemed to be the date of shipment whether or not the date is before or after the issuance date of the document.

74. “Shipped in apparent good order”, “Laden on board”, “clean on board” or other phrases incorporating words such as “shipped” or “on board” have the same effect as “Shipped on board”.

Place of taking in charge, dispatch, loading on board and destination

75. If a credit gives a geographical range for the place of taking in charge, dispatch, loading on board and destination (e.g., “Any European Port”), the multimodal transport document must indicate the actual place of taking in charge, dispatch, shipped on board and destination, which must be within the geographical area or range stated in the credit.

Consignee, order party, shipper and endorsement, notify party

76. If a credit requires a multimodal transport document to show that the goods are consigned to a named party, e.g., “consigned to Bank X” (a “straight” consignment), rather than “to order” or “to order of Bank X”, the multimodal transport document must not contain words such as “to order” or “to order of” that precede the name of that named party, whether typed or pre-printed. Likewise, if a credit requires the goods to be consigned “to order” or “to order of” a named party, the multimodal transport document must not show that the goods are consigned straight to the named party.
77. If a multimodal transport document is issued to order or to order of the shipper, it must be endorsed by the shipper. An endorsement indicating that it is made for or on behalf of the shipper is acceptable.
78. If a credit does not stipulate a notify party, the respective field on the multimodal transport document may be left blank or completed in any manner.

Transshipment and partial shipment

79. In a multimodal transport, transshipment will occur, i.e., unloading from one means of conveyance and reloading to another means of conveyance (whether or not in

different modes of transport) during the carriage from the place of dispatch, taking in charge or shipment to the place of final destination stated in the credit.

80. If a credit prohibits partial shipments and more than one set of original multimodal transport documents are presented covering shipment, dispatch or taking in charge from one or more points of origin (as specifically allowed, or within the geographical area or range stated in the credit), such documents are acceptable, provided that they cover the movement of goods on the same means of conveyance and same journey and are destined for the same destination. In the event that more than one set of multimodal transport documents are presented and if they incorporate different dates of shipment, dispatch or taking in charge, the latest of these dates will be taken for the calculation of any presentation period, and such date must fall on or before any latest date of shipment, dispatch or taking in charge specified in the credit.
81. Shipment on more than one means of conveyance (more than one truck (lorry), vessel, aircraft, etc.) is a partial shipment, even if such means of conveyance leave on the same day for the same destination.

Clean multimodal transport documents

82. Clauses or notations on multimodal transport documents that expressly declare a defective condition of the goods or packaging are not acceptable. Clauses or notations that do not expressly declare a defective condition of the goods or packaging (e.g., “packaging may not be sufficient for the journey”) do not constitute a discrepancy. A statement that the packaging “is not sufficient for the journey” would not be acceptable.
83. If the word “clean” appears on a multimodal transport document and has been deleted, the multimodal transport document will not be deemed to be clausured or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

84. A goods description in the multimodal transport document may be shown in general terms not in conflict with that stated in the credit.

Corrections and alterations

85. Corrections and alterations on a multimodal transport document must be authenticated. Such authentication must appear to have been made by the carrier or master (captain) or any one of their agents who may be different from the agent that may have issued or signed it, provided they are identified as an agent of the carrier or master (captain).
86. Non-negotiable copies of multimodal transport documents do not need to include any signature on, or authentication of, any alterations or corrections that may have been made on the original.

Freight and additional costs

87. If a credit requires that a multimodal transport document show that freight has been paid or is payable at destination, the multimodal transport document must be marked accordingly.
88. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.
89. If a credit states that costs additional to freight are not acceptable, a multimodal transport document must not indicate that costs additional to the freight have been or will be incurred. Such indication may be by express reference to additional costs or by the use of shipment terms which refer to costs associated with the loading or unloading of goods, such as Free In (FI), Free Out (FO), Free In and Out (FIO) and Free In and Out Stowed (FIOS). A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods or after the goods have been unloaded, e.g., costs covering the late return of containers, is not considered to be an indication of additional costs in this context.

Goods covered by more than one multimodal transport document

90. If a multimodal transport document states that the goods in a container are covered by that multimodal transport document plus one or more other multimodal transport documents, and the document states that all multimodal transport documents must be surrendered or words of similar effect, this means that all multimodal transport documents related to that container must be presented in order for the container to be released. Such a multimodal transport document is not acceptable unless all the multimodal transport documents form part of the same presentation under the same credit.

Bill of lading

Application of UCP 600 Article 20

91. If a credit requires presentation of a bill of lading (“marine”, “ocean” or “port-to-port” or similar) covering sea shipment only, UCP 600 article 20 is applicable.
92. To comply with UCP 600 article 20, a bill of lading must appear to cover a port-to-port shipment but need not be titled “marine bill of lading”, “ocean bill of lading”, “port-to-port bill of lading” or similar.

Full set of originals

93. A UCP 600 article 20 transport document must indicate the number of originals that have been issued. Transport documents marked “First Original”, “Second Original”, “Third Original”, “Original”, “Duplicate”, “Triplicate”, etc., or similar expressions are all originals. Bills of lading need not be marked “original” to be acceptable as an original bill of lading. In addition to UCP 600 article 17, the ICC Banking Commission Policy Statement, document 470/871(Rev), titled “The Determination of an ‘Original’ Document in the Context of UCP 500 sub-Article 20(b)” is recommended for further guidance on originals and copies and remains valid under UCP 600. The content of the Policy Statement appears in the Appendix of this publication, for reference purposes.

Signing of bills of lading

94. Original bills of lading must be signed in the form described in UCP 600 sub-article 20(a)(i) and indicate the name of the carrier, identified as the carrier.
 - a) If an agent signs a bill of lading on behalf of the carrier, the agent must be identified as agent and must identify on whose behalf it is signing, unless the carrier has been identified elsewhere on the bill of lading.
 - b) If the master (captain) signs the bill of lading, the signature of the master (captain) must be identified as “master” (“captain”). In this event, the name of the master (captain) need not be stated.
 - c) If an agent signs the bill of lading on behalf of the master (captain), the agent must be identified as agent. In this event, the name of the master (captain) need not be stated.

95. If a credit states “Freight Forwarder’s Bill of Lading is acceptable” or uses a similar phrase, then the bill of lading may be signed by a freight forwarder in the capacity of a freight forwarder, without the need to identify itself as carrier or agent for the named carrier. In this event, it is not necessary to show the name of the carrier.

On board notations

96. If a pre-printed “Shipped on board” bill of lading is presented, its issuance date will be deemed to be the date of shipment unless it bears a separate dated on board notation, in which event the date of the on board notation will be deemed to be the date of shipment whether or not the on board date is before or after the issuance date of the bill of lading.
97. “Shipped in apparent good order”, “Laden on board”, “clean on board” or other phrases incorporating words such as “shipped” or “on board” have the same effect as “Shipped on board”.

Ports of loading and ports of discharge

98. While the named port of loading, as required by the credit, should appear in the port of loading field within the bill of lading, it may instead be stated in the field headed “Place of receipt” or the like, if it is clear that the goods were transported from that place of receipt by vessel and provided there is an on board notation evidencing that the goods were loaded on that vessel at the port stated under “Place of receipt” or like term.
99. While the named port of discharge, as required by the credit, should appear in the port of discharge field within the bill of lading, it may be stated in the field headed “Place of final destination” or the like if it is clear that the goods were to be transported to that place of final destination by vessel and provided there is a notation evidencing that the port of discharge is that stated under “Place of final destination” or like term.
100. If a credit gives a geographical area or range of ports of loading or discharge (e.g., “Any European Port”), the bill of lading must indicate the actual port of loading or discharge, which must be within the geographical area or range stated in the credit.

Consignee, order party, shipper and endorsement, notify party

101. If a credit requires a bill of lading to show that the goods are consigned to a named party, e.g., “consigned to Bank X” (a “straight” bill of lading), rather than “to order” or “to order of Bank X”, the bill of lading must not contain words such as “to order” or “to order of” that precede the name of that named party, whether typed or pre-printed. Likewise, if a credit requires the goods to be consigned “to order” or “to order of” a named party, the bill of lading must not show that the goods are consigned straight to the named party.
102. If a bill of lading is issued to order or to order of the shipper, it must be endorsed by the shipper. An endorsement indicating that it is made for or on behalf of the shipper is acceptable.
103. If a credit does not state a notify party, the respective field on the bill of lading may be left blank or completed in any manner.

Transshipment and partial shipment

104. Transshipment is the unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge stated in the credit. If it does not occur between these two ports, unloading and reloading is not considered to be transshipment.
105. If a credit prohibits partial shipments and more than one set of original bills of lading are presented covering shipment from one or more ports of loading (as specifically allowed, or within the geographical area or range stated in the credit), such documents are acceptable provided that they cover the shipment of goods on the same vessel and same journey and are destined for the same port of discharge. In the event that more than one set of bills of lading are presented and incorporate different dates of shipment, the latest of these dates of shipment will be taken for the calculation of any presentation period and must fall on or before the latest shipment date specified in the credit. Shipment on more than one vessel is a partial shipment, even if the vessels leave on the same day for the same destination.

Clean bills of lading

106. Clauses or notations on bills of lading which expressly declare a defective condition of the goods or packaging are not acceptable. Clauses or notations which do not expressly declare a defective condition of the goods or packaging (e.g., “packaging may not be sufficient for the sea journey”) do not constitute a discrepancy. A statement that the packaging “is not sufficient for the sea journey” would not be acceptable.
107. If the word “clean” appears on a bill of lading and has been deleted, the bill of lading will not be deemed to be cloused or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

108. A goods description in the bill of lading may be shown in general terms not in conflict with that stated in the credit.

Corrections and alterations

109. Corrections and alterations on a bill of lading must be authenticated. Such authentication must appear to have been made by the carrier, master (captain) or any of their agents (who may be different from the agent that may have issued or signed it), provided they are identified as an agent of the carrier or the master (captain).
110. Non-negotiable copies of bills of lading do not need to include any signature on, or authentication of, any alterations or corrections that may have been made on the original.

Freight and additional costs

111. If a credit requires that a bill of lading show that freight has been paid or is payable at destination, the bill of lading must be marked accordingly.
112. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.
113. If a credit states that costs additional to freight are not acceptable, a bill of lading must not indicate that costs additional to the freight have been or will be incurred. Such indication may be by express reference to additional costs or by the use of shipment terms which refer to costs associated with the loading or unloading of goods, such as Free In (FI), Free Out (FO), Free In

and Out (FIO) and Free In and Out Stowed (FIOS). A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods or after the goods have been unloaded, e.g., costs covering the late return of containers, is not considered to be an indication of additional costs in this context.

Goods covered by more than one bill of lading

114. If a bill of lading states that the goods in a container are covered by that bill of lading plus one or more other bills of lading, and the bill of lading states that all bills of lading must be surrendered, or words of similar effect, this means that all bills of lading related to that container must be presented in order for the container to be released. Such a bill of lading is not acceptable unless all the bills of lading form part of the same presentation under the same credit.

Charter party bill of lading

Application of UCP 600 article 22

115. If a credit requires presentation of a charter party bill of lading or if a credit allows presentation of a charter party bill of lading and a charter party bill of lading is presented, UCP 600 article 22 is applicable.
116. A transport document containing any indication that it is subject to a charter party is a charter party bill of lading under UCP 600 article 22.

Full set of originals

117. A UCP 600 article 22 transport document must indicate the number of originals that have been issued. Transport documents marked “First Original”, “Second Original”, “Third Original”, “Original”, “Duplicate”, “Triplicate”, etc., or similar expressions are all originals. Charter party bills of lading need not be marked “original” to be acceptable under a credit. In addition to UCP 600 article 17, the ICC Banking Commission Policy Statement, document 470/871(Rev), titled “The Determination of an ‘Original’ Document in the Context of UCP 500 sub-Article 20(b)” is recommended for further guidance on originals and copies and remains valid under UCP 600. The content of the Policy Statement appears in the Appendix of this publication, for reference purposes.

Signing of charter party bills of lading

118. Original charter party bills of lading must be signed in the form described in UCP 600 sub-article 22(a)(i).
- a. If the master (captain), charterer or owner signs the charter party bill of lading, the signature of the master (captain), charterer or owner must be identified as “master” (“captain”), “charterer” or “owner”.
 - b. If an agent signs the charter party bill of lading on behalf of the master (captain), charterer or owner, the agent must be identified as agent of the master (captain), charterer or owner. In this event, the name of the master (captain) need not be stated, but the name of the charterer or owner must appear.

On board notations

119. If a pre-printed “Shipped on board” charter party bill of lading is presented, its issuance date will be deemed to be the date of shipment unless it bears an on board notation, in which event the date of the on board notation will be deemed to be the date of shipment whether or not the on board date is before or after the issuance date of the document.
120. “Shipped in apparent good order”, “Laden on board”, “clean on board” or other phrases incorporating words such as “shipped” or “on board” have the same effect as “Shipped on board”.

Ports of loading and ports of discharge

121. If a credit gives a geographical area or range of ports of loading or discharge (e.g., “Any European Port”), the charter party bill of lading must indicate the actual port or ports of loading, which must be within the geographical area or range indicated but may show the geographical area or range of ports as the port of discharge.

Consignee, order party, shipper and endorsement, notify party

122. If a credit requires a charter party bill of lading to show that the goods are consigned to a named party, e.g., “consigned to Bank X” (a “straight” bill of lading), rather than “to order” or “to order of Bank X”, the charter party bill of lading must not contain words such as “to order” or “to order of” that precede the name of

that named party, whether typed or pre-printed. Likewise, if a credit requires the goods to be consigned “to order” or “to order of” a named party, the charter party bill of lading must not show that the goods are consigned straight to the named party.

123. If a charter party bill of lading is issued to order or to order of the shipper, it must be endorsed by the shipper. An endorsement indicating that it is made for or on behalf of the shipper is acceptable.
124. If a credit does not state a notify party, the respective field on the charter party bill of lading may be left blank or completed in any manner.

Partial shipment

125. If a credit prohibits partial shipments, and more than one set of original charter party bills of lading are presented covering shipment from one or more ports of loading (as specifically allowed, or within the geographical area or range stated in the credit), such documents are acceptable, provided that they cover the shipment of goods on the same vessel and same journey and are destined for the same port of discharge, range of ports or geographical area. In the event that more than one set of charter party bills of lading are presented and incorporate different dates of shipment, the latest of these dates of shipment will be taken for the calculation of any presentation period and must fall on or before the latest shipment date specified in the credit. Shipment on more than one vessel is a partial shipment, even if the vessels leave on the same day for the same destination.

Clean charter party bills of lading

126. Clauses or notations on charter party bills of lading which expressly declare a defective condition of the goods or packaging are not acceptable. Clauses or notations that do not expressly declare a defective condition of the goods or packaging (e.g., “packaging may not be sufficient for the sea journey”) do not constitute a discrepancy. A statement that the packaging “is not sufficient for the sea journey” would not be acceptable.
127. If the word “clean” appears on a charter party bill of lading and has been deleted, the charter party bill of lading will not be deemed to be claused or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

128. A goods description in charter party bills of lading may be shown in general terms not in conflict with that stated in the credit.

Corrections and alterations

129. Corrections and alterations on charter party bills of lading must be authenticated. Such authentication must appear to have been made by the owner, charterer, master (captain) or any of their agents (who may be different from the agent that may have issued or signed it), provided they are identified as an agent of the owner, charterer or the master (captain).
130. Non-negotiable copies of charter party bills of lading do not need to include any signature on, or authentication of, any alterations or corrections that may have been made on the original.

Freight and additional costs

131. If a credit requires that a charter party bill of lading show that freight has been paid or is payable at destination, the charter party bill of lading must be marked accordingly.
132. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.
133. If a credit states that costs additional to freight are not acceptable, a charter party bill of lading must not indicate that costs additional to the freight have been or will be incurred. Such indication may be by express reference to additional costs or by the use of shipment terms which refer to costs associated with the loading or unloading of goods, such as Free In (FI), Free Out (FO), Free In and Out (FIO) and Free In and Out Stowed (FIOS). A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods or after the goods have been unloaded, is not considered to be an indication of additional costs in this context.

Air transport document

Application of UCP 600 Article 23

134. If a credit requires presentation of an air transport document covering an airport-to-airport shipment, UCP 600 article 23 is applicable.

135. If a credit requires presentation of an “air waybill”, “air consignment note” or similar, UCP 600 article 23 applies. To comply with UCP 600 article 23, an air transport document must appear to cover an airport-to-airport shipment but need not be titled “air waybill”, “air consignment note” or similar.

Original air transport document

136. The air transport document must appear to be the original for consignor or shipper. A requirement for a full set of originals is satisfied by the presentation of a document indicating that it is the original for consignor or shipper.

Signing of air transport documents

137. An original air transport document must be signed in the form described in UCP 600 sub-article 23(a)(i) and indicate the name of the carrier, identified as carrier. If an agent signs an air transport document on behalf of a carrier, the agent must be identified as agent and must identify on whose behalf it is signing, unless the carrier has been identified elsewhere on the air transport document.
138. If a credit states “House air waybill is acceptable” or “Freight Forwarder’s air waybill is acceptable” or uses a similar phrase, then the air transport document may be signed by a freight forwarder in the capacity of a freight forwarder without the need to identify itself as a carrier or agent for a named carrier. In this event, it is not necessary to show the name of the carrier.

Goods accepted for carriage, date of shipment, and requirement for an actual date of dispatch

139. An air transport document must indicate that the goods have been accepted for carriage.
140. The date of issuance of an air transport document is deemed to be the date of shipment unless the document shows a separate notation of the flight date, in which case this will be deemed to be the date of shipment. Any other information appearing on the air transport document relative to the flight number and date will not be considered in determining the date of shipment.

Airports of departure and destination

141. An air transport document must indicate the airport of departure and airport of destination as stated in the credit. The identification of airports by the use of IATA codes instead of writing out the name in full (e.g., LHR instead of London Heathrow) is not a discrepancy.

142. If a credit gives a geographical area or range of airports of departure or destination (e.g., “Any European Airport”), the air transport document must indicate the actual airport of departure or destination, which must be within the geographical area or range stated in the credit.

Consignee, order party and notify party

143. An air transport document should not be issued “to order” or “to order of” a named party, because it is not a document of title. Even if a credit calls for an air transport document made out “to order” or “to order of” a named party, a document presented showing goods consigned to that party, without mention of “to order” or “to order of”, is acceptable.
144. If a credit does not state a notify party, the respective field on the air transport document may be left blank or completed in any manner.

Transshipment and partial shipment

145. Transshipment is the unloading from one aircraft and reloading to another aircraft during the carriage from the airport of departure to the airport of destination stated in the credit. If it does not occur between these two airports, unloading and reloading is not considered to be transshipment.
146. If a credit prohibits partial shipments and more than one air transport document is presented covering dispatch from one or more airports of departure (as specifically allowed, or within the geographical area or range stated in the credit), such documents are acceptable, provided that they cover the dispatch of goods on the same aircraft and same flight and are destined for the same airport of destination. In the event that more than one air transport document is presented incorporating different dates of shipment, the latest of these dates of shipment will be taken for the calculation of any presentation period and must fall on or before the latest shipment date specified in the credit.
147. Shipment on more than one aircraft is a partial shipment, even if the aircraft leave on the same day for the same destination.

Clean air transport documents

148. Clauses or notations on an air transport document which expressly declare a defective condition of the goods or packaging are not acceptable. Clauses or notations on the air transport document which do not expressly declare a defective condition of the goods or

packaging (e.g., “packaging may not be sufficient for the air journey”) do not constitute a discrepancy. A statement that the packaging “is not sufficient for the air journey” would not be acceptable.

149. If the word “clean” appears on an air transport document and has been deleted, the air transport document will not be deemed to be claused or unclean unless it specifically bears a clause or notation declaring that the goods or packaging are defective.

Goods description

150. A goods description in an air transport document may be shown in general terms not in conflict with that stated in the credit.

Corrections and alterations

151. Corrections and alterations on air transport documents must be authenticated. Such authentication must appear to have been made by the carrier or any of its agents (who may be different from the agent that may have issued or signed it), provided it is identified as an agent of the carrier.
152. Copies of air transport documents do not need to include any signature of the carrier or agent (or shipper, even if required by the credit to appear on the original air transport document), nor any authentication of any alterations or corrections that may have been made on the original.

Freight and additional costs

153. If a credit requires that an air transport document show that freight has been paid or is payable at destination, the air transport document must be marked accordingly.
154. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.
155. If a credit states that costs additional to freight are not acceptable, an air transport document must not indicate that costs additional to the freight have been or will be incurred. Such indication may be by express reference to additional costs or by the use of shipment terms that refer to costs associated with the loading or unloading of goods. A reference in the transport document to costs which may be levied as a result of a delay in unloading the goods or after the goods have been unloaded is not considered an indication of additional costs in this context.

156. Air transport documents often have separate boxes which, by their pre-printed headings, indicate that they are for freight charges “prepaid” and for freight charges “to collect”, respectively. A requirement in a credit for an air transport document to show that freight has been prepaid will be fulfilled by a statement of the freight charges under the heading “Freight Prepaid” or a similar expression or indication, and a requirement that an air transport document show that freight has to be collected will be fulfilled by a statement of the freight charges under the heading “Freight to Collect” or a similar expression or indication.

Road, rail or inland waterway transport documents

Application of UCP 600 article 24

157. If a credit requires presentation of a transport document covering movement by road, rail or inland waterway, UCP 600 article 24 is applicable.

Original and duplicate of road, rail or inland waterway transport documents

158. If a credit requires a rail or inland waterway transport document, the transport document presented will be accepted as an original whether or not it is marked as an original. A road transport document must appear to be the original for consignor or shipper or bear no marking indicating for whom the document has been prepared. With respect to rail waybills, the practice of many railway companies is to provide the shipper or consignor with only a duplicate (often a carbon copy) duly authenticated by the railway company’s stamp. Such a duplicate will be accepted as an original.

Carrier and signing of road, rail or inland waterway transport documents

159. The term “carrier” need not appear at the signature line provided the transport document appears to be signed by the carrier or an agent on behalf of the carrier, if the carrier is otherwise identified as the “carrier” on the transport document. International standard banking practice is to accept a railway bill evidencing date stamp by the railway company or railway station of departure without showing the name of the carrier or a named agent signing for or on behalf of the carrier.

160. The term “carrier” used in UCP 600 article 24 includes terms in transport documents such as “issuing carrier”, “actual carrier”, “succeeding carrier” and “contracting carrier”.

161. Any signature, stamp or notation of receipt on the transport document must appear to be made either by:

- a. the carrier, identified as the carrier, or
- b. a named agent acting or signing for or on behalf of the carrier and indicating the name and capacity of the carrier on whose behalf that agent is acting or signing.

Order party and notify party

162. Transport documents which are not documents of title should not be issued “to order” or “to order of” a named party. Even if a credit calls for a transport document which is not a document of title to be made out “to order” or “to order of” a named party, such a document showing goods consigned to that party, without mention of “to order” or “to order of”, is acceptable.

163. If a credit does not stipulate a notify party, the respective field on the transport document may be left blank or completed in any manner.

Partial shipment

164. Shipment on more than one means of conveyance (more than one truck (lorry), train, vessel, etc.) is a partial shipment, even if such means of conveyance leave on the same day for the same destination.

Goods description

165. A goods description in the transport document may be shown in general terms not in conflict with that stated in the credit.

Corrections and alterations

166. Corrections and alterations on a UCP 600 article 24 transport document must be authenticated. Such authentication must appear to have been made by the carrier or any one of their named agents, who may be different from the agent that may have issued or signed it, provided they are identified as an agent of the carrier.

167. Copies of UCP 600 article 24 transport documents do not need to include any signature on, or authentication of, any alterations or corrections that may have been made on the original.

Freight and additional costs

168. If a credit requires that a UCP 600 article 24 transport document show that freight has been paid or is payable at destination, the transport document must be marked accordingly.
169. Applicants and issuing banks should be specific in stating the requirements of documents to show whether freight is to be prepaid or collected.

Insurance document and coverage

Application of UCP 600 article 28

170. If a credit requires presentation of an insurance document such as an insurance policy, insurance certificate or declaration under an open cover, UCP 600 article 28 is applicable.

Issuers of insurance documents

171. Insurance documents must appear to have been issued and signed by insurance companies or underwriters or their agents or proxies. If required by the insurance document or in accordance with the credit terms, all originals must appear to have been countersigned.
172. An insurance document is acceptable if issued on an insurance broker's stationery, provided the insurance document has been signed by an insurance company or its agent or proxy, or by an underwriter or its agent or proxy. A broker may sign as agent for the named insurance company or named underwriter

Risks to be covered

173. An insurance document must cover the risks defined in the credit. Even though a credit may be explicit with regard to risks to be covered, there may be reference to exclusion clauses in the document. If a credit requires "all risks" coverage, this is satisfied by the presentation of an insurance document evidencing any "all risks" clause or notation, even if it is stated that certain risks are excluded. An insurance document indicating that it

covers Institute Cargo Clauses (A) satisfies a condition in a credit calling for an "all risks" clause or notation.

174. Insurance covering the same risk for the same shipment must be covered under one document unless the insurance documents for partial cover each clearly reflect, by percentage or otherwise, the value of each insurer's cover and that each insurer will bear its share of the liability severally and without pre-conditions relating to any other insurance cover that may have been effected for that shipment.

Dates

175. An insurance document that incorporates an expiry date must clearly indicate that such expiry date relates to the latest date that loading on board or dispatch or taking in charge of the goods (as applicable) is to occur, as opposed to an expiry date for the presentation of any claims thereunder.

Percentage and amount

176. An insurance document must be issued in the currency of, and, as a minimum for, the amount required by the credit. The UCP does not provide for any maximum percentage of insurance coverage.
177. If a credit requires the insurance cover to be irrespective of percentage, the insurance document must not contain a clause stating that the insurance cover is subject to a franchise or an excess deductible.
178. If it is apparent from the credit or from the documents that the final invoice amount only represents a certain part of the gross value of the goods (e.g., due to discounts, pre-payments or the like, or because part of the value of the goods is to be paid at a later date), the calculation of insurance cover must be based on the full gross value of the goods.

Insured party and endorsement

179. An insurance document must be in the form as required by the credit and, where necessary, be endorsed by the party to whose order claims are payable. A document issued to bearer is acceptable where the credit requires an insurance document endorsed in blank and vice versa.

180. If a credit is silent as to the insured party, an insurance document evidencing that claims are payable to the order of the shipper or beneficiary would not be acceptable unless endorsed. An insurance document should be issued or endorsed so that the right to receive payment under it passes upon, or prior to, the release of the documents.

Certificates of origin

Basic requirement

181. A requirement for a certificate of origin will be satisfied by the presentation of a signed, dated document that certifies to the origin of the goods.

Issuers of certificates of origin

182. A certificate of origin must be issued by the party stated in the credit. However, if a credit requires a certificate of origin to be issued by the beneficiary, the exporter, or the manufacturer, a document issued by a chamber of commerce will be deemed acceptable, provided it clearly identifies the beneficiary, the exporter, or the manufacturer as the case may be. If a credit does not state who is to issue the certificate, then a document issued by any party, including the beneficiary, is acceptable.

Contents of certificates of origin

183. The certificate of origin must appear to relate to the invoiced goods. The goods description in the certificate of origin may be shown in general terms not in conflict with that stated in the credit or by any other reference indicating a relation to the goods in a required document.
184. Consignee information, if shown, must not be in conflict with the consignee information in the transport document. However, if a credit requires a transport document to be issued “to order”, “to the order of shipper”, “to order of the issuing bank” or “consigned to the issuing bank”, the certificate of origin may show the applicant of the credit, or another party named therein, as consignee. If a credit has been transferred, the name of the first beneficiary as consignee would also be acceptable.
185. The certificate of origin may show the consignor or exporter as a party other than the beneficiary of the credit or the shipper on the transport document.

Afterword*

** The information contained in this Afterword is not part of the official ISBP publication or approved by the ICC Commission on Banking Technique and Practice. The information contained herein is intended to provide a historical perspective and is solely the work of the author.*

Since the early days of letters of credit, bankers and banking groups have been collecting and documenting banking practices. The national rules established prior to the development of the first Uniform Customs and Practice for Documentary Credits (“UCP”) were, in fact, collections of banking practice in a number of individual countries. These national documents, created in the early 1900s, established basic rules for letters of credit in Argentina, Czechoslovakia, France, Germany, Italy, Sweden and the United States. The first paragraph of the Regulations Affecting Export Commercial Letters of Credit created in the United States in 1920 stated: “Payments under Export Commercial Credits advised to the undersigned are made in conformity with the following regulations, which are in accord with the standard practice adopted by the New York Bankers Commercial Credit Conference of 1920”. Note the reference to “standard practice”.

These rules and practices, distributed by banks to their correspondents throughout the world, were simply an articulation of how banks handled letters of credit and were intended to inform their correspondents of the practices they followed in their own countries. Ultimately, these practices were documented more formally and on a global scale in the first UCP, at the time entitled Uniform Customs and Practice for Commercial Documentary Credits. Even after this, it was not unusual for banks and banking groups to continue documenting banking practices in the form of checklists that were often used during the process of document examination.

After the revision of UCP 400 and the introduction of UCP 500 in 1993, banks in the United States decided to focus their attention on documenting the various banking practices in the U.S. and Mexico to supplement those articulated in the UCP. With the introduction of UCP 500, these practices were highlighted in Article 13 in the sentence “Compliance of the stipulated documents on their face with the terms and conditions of the Credit shall be determined by international standard banking practice as reflected in these Articles.” While this reference was restricted to the articles of the UCP, it was felt that standard banking practices were composed of many practices not specifically articulated in the UCP.

In 1996, these practices were published in the Standard Banking Practices for the Examination of Letter of Credit Documents (“SBPED”) by the US Council on International Banking (now the International Financial Services Association). Like the documents distributed in the early 1900s, the SBPED were distributed by banks to their correspondents worldwide.

In May 2000, a request was made for the International Chamber of Commerce to undertake a similar project on a more global scale. As a result, a working group was established to collect and document global banking practices that were not included in the UCP. The result of their work was the publication in January 2003 of the International Standard Banking Practice for the Examination of Documents under Documentary Credits (“ISBP”). This publication was updated in 2007 to bring it in line with the latest revision of the UCP, UCP 600.

Dan Taylor

President and CEO of the International Financial Services Association; and Vice Chairman of the ICC Commission on Banking Technique and Practice

Appendix

The determination of an “original” document in the context of UCP 500 sub-article 20(b)*

**Decision approved by the ICC Commission on Banking Technique and Practice and published on 12 July 1999*

1. Background

Over a period of several years there have been a number of queries raised with the ICC Banking Commission as to the determination, by banks, of what is an “original” document under a letter of credit and the necessity, if any, for such a document to be so marked.

For ease of reference the text of sub-Article 20(b) reads: “Unless otherwise stipulated in the Credit, banks will also accept as an original document(s), a document(s) produced or appearing to have been produced:

- i. by reprographic, automated or computerized systems;
 - ii. as carbon copies;
- provided that it is marked as original and, where necessary, appears to be signed.

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

2. Determination of originality

In documentary credit operations, the document checker is faced with a number of issues pertaining to originality including:

Apparent originality

Banks undertake to determine whether a document appears on its face to be an original document, as distinguished from a copy. Except as expressly required by a letter of credit including an incorporated term – such as UCP 500 sub-Articles 23(a), (iv) or 34(b) – banks do not undertake to determine whether an apparent original is the sole original. Banks rely on the apparent intent of the issuer of the document that it be treated as an original rather than a copy. In this regard, a person sending a telefax or making a

photocopy on plain paper or pressing through carbon paper presumably intends to produce a copy. On the other hand, a person printing a document on plain paper from a text that that person created and electronically stored presumably intends to produce an original. Accordingly, documents bearing facsimile signatures or printed in their entirety (even including the issuer's letterhead and/or signature) from electronically stored text are presumably intended by the document issuer to be original and in practice are accepted by banks as original.

Documents that appear to be original but are not

Banks do not undertake to determine whether a document is original in fact. Under UCP 500 Article 15, banks are not responsible for the genuineness or falsification of any document. If a document appears to be original or to have been marked as original but is in fact not original, then its presentation may give rise to exceptional defences, rights, or obligations under the law applicable to forged or fraudulent presentations and is beyond the scope of UCP 500.

UCP 500 requirements

The UCP neither requires nor permits an examination beyond the face of a document to determine how the document was in fact produced, unless the document was produced by the bank, e.g. on a telefax, telex, e-mail, or other system that prints out messages received by the bank. The "produced or appearing to have been produced" language in sub-Article 20(b) does not override UCP 500 sub-Articles 13(a), 13(c), or 14(b), or other practice and law that prohibit issuers and confirmers from determining compliance on the basis of extrinsic facts.

As indicated by inclusion of the word "also" ("... banks will also accept as original(s) ..."), sub-Article 20(b) is neither comprehensive nor exclusive in its provisions that distinguish originals from copies. For example, a document printed on plain paper from electronically stored text is acceptable, without regard to 20(b), if it appears to be an original.

Sub-Article 20(b) does not apply to documents that appear to be only partially produced by reprographic, automated, or computerized systems or as carbon copies. In this regard, a photocopy ceases to be "reprographically produced" within the meaning of sub-Article 20(b) when it is also manually stamped, dated, completed, or signed by the issuer of the document.

The "marked as original" proviso in sub-Article 20(b) is satisfied by any marking on a document or any recital in the text of a document that indicates that the issuer of the document intends it to be treated as an original rather than a copy. Accordingly, a document that appears to have been printed on plain paper from electronically stored text is "marked as original" under sub-Article 20(b) if it also states that it is original or includes letterhead or is hand marked.

Sub-Article 13(a) of UCP 500 refers to compliance of the presented documents being determined by international standard banking practice as defined in the articles of UCP. International standard banking practice in relation to determination of "original" documents could be described as follows:

3. Correct interpretation of sub-Article 20(b)

General approach

Banks examine documents presented under a letter of credit to determine, among other things, whether on their face they appear to be original. Banks treat as original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not original. Accordingly, unless a document indicates otherwise, it is treated as original if it:

- (A) appears to be written, typed, perforated, or stamped by the document issuer's hand; or
- (B) appears to be on the document issuer's original stationery; or
- (C) states that it is original, unless the statement appears not to apply to the document presented (e.g. because it appears to be a photocopy of another document and the statement of originality appears to apply to that other document).

Hand signed documents

Consistent with sub-paragraph (A) above, banks treat as original any document that appears to be hand signed by the issuer of the document. For example, a hand signed draft or commercial invoice is treated as an original document, whether or not some or all other constituents of the document are preprinted, carbon copied, or produced by reprographic, automated, or computerized systems.

Facsimile signed documents

Banks treat a facsimile signature as the equivalent of a hand signature. Accordingly, a document that appears to bear the document issuer's facsimile signature is also treated as an original document.

Photocopies

Banks treat as non-original any document that appears to be a photocopy of another document. If, however, a photocopy appears to have been completed by the document issuer's hand marking the photocopy, then, consistent with sub-paragraph (A) above, the resulting document is treated as an original document unless it indicates otherwise. If a document appears to have been produced by photocopying text onto original stationery rather than onto blank paper, then, consistent with sub-paragraph (B) above, it is treated as an original document unless it indicates otherwise.

Telefaxed presentation of documents

Banks treat as non-original any document that is produced at the bank's telefax machine. A letter of credit that permits presentation by telefax waives any requirement for presentation of an original of any document presented by telefax.

Statements indicating originality

Consistent with either or both of sub-paragraphs (A) and (C) above, a document on which the word "original" has been stamped is treated as an original document. A statement in a document that it is a "duplicate original" or the "third of three" also indicates that it is original. Originality is also indicated by a statement in a document that it is void if another document of the same tenor and date is used.

Statements indicating non-originality

A statement in a document that it is a true copy of another document or that another document is the sole original indicates that it is not original. A statement in a document that it is the "customer's copy" or "shipper's copy" neither disclaims nor affirms its originality.

4. What is not an "original"?

A document indicates that it is not an original if it

- i. appears to be produced on a telefax machine;
- ii. appears to be a photocopy of another document which has not otherwise been completed by hand marking the photocopy or by photocopying it on what appears to be original stationery; or
- iii. states in the document that it is a true copy of another document or that another document is the sole original.

5. Conclusion

Based upon the comments received from ICC national committees, members of the ICC Banking Commission and other interested parties, the statements in clauses 3 and 4 above reflect international standard banking practice in the correct interpretation of UCP 500 sub-Article 20(b).

ICC at a glance

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property.

ICC was founded in 1919. Today it groups thousands of member companies and associations from over 130 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

Some ICC specialized divisions

- ICC International Court of Arbitration (Paris)
- ICC International Centre for Expertise (Paris)
- ICC World Chambers Federation (Paris)
- ICC Institute of World Business Law (Paris)
- ICC Centre for Maritime Co-operation (London)
- ICC Commercial Crime Services (London)
- ICC Services (Paris):

- **Events Department**

ICC's programme of conferences and seminars is the essential channel for passing on the world business organization's expertise to a wider audience.

ICC Events, a Department of ICC Services, spotlights policy issues of direct concern to business such as banking techniques and practices, e-business, IT and telecoms, piracy and counterfeiting.

ICC Events also runs training courses on international arbitration and negotiating international contracts for business-people, corporate counsel, lawyers and legal practitioners involved in international trade.

- **Publications Department**

ICC Publications Department is committed to offering the best resources on business and trade for the international community.

The content of ICC publications is derived from the work of ICC commissions, institutions and individual international experts. The specialized list covers a range of topics including international banking, international trade reference and terms (Incoterms), law and arbitration, counterfeiting and fraud, model commercial contracts and environmental issues.

Publications are available in both traditional paper and electronic formats from the ICC Business Bookstore.

Source products for global business

ICC's specialized list of publications covers a range of topics including international banking, international trade reference and terms (Incoterms), law and arbitration, counterfeiting and fraud, model commercial contracts and environmental issues.

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You may also order ICC products online from the ICC Business Bookstore at www.iccbooks.com

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Foreword

The *raison d'être* for the existence of the ICC is to facilitate trade among the world's trading countries, within which one of our core tasks is an ongoing review of international trade practices in various fields.

Accordingly, the ICC undertook a review of the Uniform Rules for Collections in March 1993, and these revised rules, which represent the culmination of the revision work, were drafted by international experts drawn from the private sector who have worked in ICC Commissions over the last two years.

The review covered changes in collection procedures, technology, and laws and regulations, both national and international.

From the perspective of the ICC, a significant achievement of the revision is that National Committees and experts from all parts of the world took an active part in the discussions and made a positive contribution to the work.

These revised rules and their unanimous adoption by members of the ICC Banking Commission, which has a wide international representation, are a source of pride to us all, and the extensive and fruitful international consultation which preceded this work is the hallmark of the ICC.

Jean-Charles Rouher
Secretary General of the ICC

Preface

In keeping with the ICC policy of staying abreast of changes in international commerce, the ICC Banking Commission initiated a revision of *Uniform Rules for Collections* in March 1993, and these revised rules represent the work of the ICC Working Party entrusted with the revision project since that time.

The revised rules, which came into effect on 1 January, 1996, replace the *Uniform Rules for Collections*, ICC publication N°322, in force since January 1979. There is a separate new ICC publication, N°550, containing a comprehensive commentary covering relevant discussions that took place during the revision process. The commentary, which is intended to give guidance on practical issues and to provide an insight into the thinking of the Working Party, is not meant to replace the rules in any way.

The objectives of the Working Party were to review changes in international collection procedures, technology, laws and regulations both national and international since 1979. Similarly, issues that continue to cause problems to practitioners were to be examined to see the extent to which the revision could assist in their resolution.

Additionally, the text and language of UCP 500 were to be examined in order to achieve a degree of harmonization within the revision.

In the course of its work over the last two years, the Working Party examined approximately 2,500 comments from over 30 countries. In certain cases, such as in considering of Electronic Data Interchange, the Working Party felt that uncertainty on legal issues precluded any attempt to draft rules to cover this aspect at the present time.

Similarly, while the importance of local practices and requirements in certain countries were fully appreciated by the Working Party, it was considered unwise to draft rules to cover such practices and requirements, as they might not be acceptable to the rest of the international community.

In considering an extensive range of views and comments, the Working Party had considerable difficulty in evaluating some of them, and, where conflicting views were expressed, the Working Party adopted the point of view closest to, and most consistent with, accepted international practice.

The Working Party, in achieving its objectives, did not seek to make change for the sake of change and often left the wording of the old rules substantially unchanged. Changes were made only in response to altered practices and requirements and to resolve practical difficulties encountered by practitioners.

The Working Party would like to express its sincere thanks to ICC National Committees and the members of the Banking Commission for their helpful and constructive comments and their continuous participation in the revision.

I list below in alphabetical order the members of the Working Party:

Juneid M. Bajuneid, Assistant Manager Trade Services, the National Commercial Bank, Jeddah

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Paul C. Russo, Vice President, United States Council for International Banking, New York

Sia Chee-Hong, Vice President Bills and Remittances, Overseas Union Bank Ltd, Singapore

and

Carloz Velez-Rodriguez, Head of Division, International Chamber of Commerce, Paris

The undersigned had the pleasure of chairing the Working Party.

As Chairman, I extend my deep appreciation to the ICC National Committees, the Banking Commission and the individual members of the Working Party. It was through the generous contribution of their time and the sharing of their knowledge that this revision was accomplished so successfully. I also wish to convey the gratitude of the ICC for their selfless commitment to this work.

Lakshman, Y. Wickremeratne ACIB

Chairman, ICC Working Party on Collections

Former Manager Services, The Hong Kong and Shanghai Banking Corporation Ltd, London

Chairman, British Bankers' Association Trade Facilitation Group, 1992-1994

Uniform rules for collections

Please note that the title or classification on the heading of each Article is for reference as to intent and purpose. It is not to be construed as being other than solely for benefit or guidance and there should be no legal imputation.

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A. General provisions and definitions

Article 1: Application of URC 522

- a. The Uniform Rules for Collections, 1995 Revision, ICC Publication No. 522, shall apply to all collections as defined in Article 2 where such rules are incorporated into the text of the “collection instruction” referred to in Article 4 and are binding on all parties thereto unless otherwise expressly agreed or contrary to the provisions of a national, state or local law and/or regulation which cannot be departed from.
- b. Banks shall have no obligation to handle either a collection or any collection instruction or subsequent related instructions.
- c. If a bank elects, for any reason, not to handle a collection or any related instructions received by it, it must advise the party from whom it received the collection or the instructions by telecommunication or, if that is not possible, by other expeditious means, without delay.

Article 2: Definition of collection

For the purposes of these Articles:

- a. “Collection” means the handling by banks of documents as defined in sub-Article 2(b), in accordance with instructions received, in order to:
 - 1) obtain payment and/or acceptance,
or
 - 2) deliver documents against payment and/or against acceptance,
or
 - 3) deliver documents on other terms and conditions.
- b. “Documents” means financial documents and/or commercial documents:
 - 1) “Financial documents” means bills of exchange, promissory notes, cheques, or other similar instruments used for obtaining the payment of money;
 - 2) “Commercial documents” means invoices, transport documents, documents of title or other similar documents, or any other documents whatsoever, not being financial documents.

- c. “Clean collection” means collection of financial documents not accompanied by commercial documents.
- d. “Documentary collection” means collection of:

- 1) Financial documents accompanied by commercial documents;
- 2) Commercial documents not accompanied by financial documents.

Article 3: Parties to a collection

- a. For the purposes of these Articles the “parties thereto” are:
 - 1) the “principal” who is the party entrusting the handling of a collection to a bank;
 - 2) the “remitting bank” which is the bank to which the principal has entrusted the handling of a collection;
 - 3) the “collecting bank” which is any bank, other than the remitting bank, involved in processing the collection;
 - 4) the “presenting bank” which is the collecting bank making presentation to the drawee.
- b. The “drawee” is the one to whom presentation is to be made in accordance with the collection instruction.

B. Form and structure of collections

Article 4: Collection Instruction

- a. 1) All documents sent for collection must be accompanied by a collection instruction indicating that the collection is subject to URC 522 and giving complete and precise instructions. Banks are only permitted to act upon the instructions given in such collection instruction, and in accordance with these Rules.
 - 2) Banks will not examine documents in order to obtain instructions.
 - 3) Unless otherwise authorized in the collection instruction, banks will disregard any instructions from any party/bank other than the party/bank from whom they received the collection.
- b. A collection instruction should contain the following items of information, as appropriate.

- 1) Details of the bank from which the collection was received including full name, postal and SWIFT addresses, telex, telephone, facsimile numbers and reference.
- 2) Details of the principal including full name, postal address, and if applicable telex, telephone and facsimile numbers.
- 3) Details of the drawee including full name, postal address, or the domicile at which presentation is to be made and if applicable telex, telephone and facsimile numbers.
- 4) Details of the presenting bank, if any, including full name, postal address, and if applicable telex, telephone and facsimile numbers.
- 5) Amount(s) and currency(ies) to be collected.
- 6) List of documents enclosed and the numerical count of each document.
- 7) a. Terms and conditions upon which payment and/or acceptance is to be obtained.
b. Terms of delivery of documents against:
 - 1) payment and/or acceptance
 - 2) other terms and conditions It is the responsibility of the party preparing the collection instruction to ensure that the terms for the delivery of documents are clearly and unambiguously stated, otherwise banks will not be responsible for any consequences arising therefrom.
- 8) Charges to be collected, indicating whether they may be waived or not.
- 9) Interest to be collected, if applicable, indicating whether it may be waived or not, including:
 - a. rate of interest
 - b. interest period
 - c. basis of calculation (for example 360 or 365 days in a year) as applicable.
- 10) Method of payment and form of payment advice.
- 11) Instructions in case of non-payment, non-acceptance and/or non-compliance with other instructions.

- c. 1) Collection instructions should bear the complete address of the drawee or of the domicile at which the presentation is to be made. If the address is incomplete or incorrect, the collecting bank may, without any liability and responsibility on its part, endeavour to ascertain the proper address.
- 2) The collecting bank will not be liable or responsible for any ensuing delay as a result of an incomplete/incorrect address being provided.

C. Form of presentation

Article 5: Presentation

- a. For the purposes of these Articles, presentation is the procedure whereby the presenting bank makes the documents available to the drawee as instructed.
- b. The collection instruction should state the exact period of time within which any action is to be taken by the drawee.

Expressions such as “first”, “prompt”, “immediate”, and the like should not be used in connection with presentation or with reference to any period of time within which documents have to be taken up or for any other action that is to be taken by the drawee. If such terms are used banks will disregard them.
- c. Documents are to be presented to the drawee in the form in which they are received, except that banks are authorized to affix any necessary stamps, at the expense of the party from whom they received the collection unless otherwise instructed, and to make any necessary endorsements or place any rubber stamps or other identifying marks or symbols customary to or required for the collection operation.
- d. For the purpose of giving effect to the instructions of the principal, the remitting bank will utilize the bank nominated by the principal as the collecting bank. In the absence of such nomination, the remitting bank will utilize any bank of its own, or another bank’s choice in the country of payment or acceptance or in the country where other terms and conditions have to be complied with.
- e. The documents and collection instruction may be sent directly by the remitting bank to the collecting bank or through another bank as intermediary.

- f. If the remitting bank does not nominate a specific presenting bank, the collecting bank may utilize a presenting bank of its choice.

Article 6: Sight/acceptance

In the case of documents payable at sight the presenting bank must make presentation for payment without delay. In the case of documents payable at a tenor other than sight the presenting bank must, where acceptance is called for, make presentation for acceptance without delay, and where payment is called for, make presentation for payment not later than the appropriate maturity date.

Article 7: Release of commercial documents

Documents Against Acceptance (D/A) vs. Documents Against Payment (D/P)

- a. Collections should not contain bills of exchange payable at a future date with instructions that commercial documents are to be delivered against payment.
- b. If a collection contains a bill of exchange payable at a future date, the collection instruction should state whether the commercial documents are to be released to the drawee against acceptance (D/A) or against payment (D/P).

In the absence of such statement commercial documents will be released only against payment and the collecting bank will not be responsible for any consequences arising out of any delay in the delivery of documents.

- c. If a collection contains a bill of exchange payable at a future date and the collection instruction indicates that commercial documents are to be released against payment, documents will be released only against such payment and the collecting bank will not be responsible for any consequences arising out of any delay in the delivery of documents.

Article 8: Creation of documents

Where the remitting bank instructs that either the collecting bank or the drawee is to create documents (bills of exchange, promissory notes, trust receipts, letters of undertaking or other documents) that were not included in the collection, the form and wording of such documents shall be provided by the remitting bank, otherwise the collecting bank shall not be liable or responsible for the form and wording of any such document provided by the collecting bank and/or the drawee.

D. Liabilities and responsibilities

Article 9: Good Faith And Reasonable Care

Banks will act in good faith and exercise reasonable care.

Article 10: Documents Vs. Goods/Services/Performances

- a. Goods should not be dispatched directly to the address of a bank or consigned to or to the order of a bank without prior agreement on the part of that bank.

Nevertheless, in the event that goods are dispatched directly to the address of a bank or consigned to or to the order of a bank for release to a drawee against payment or acceptance or upon other terms and conditions without prior agreement on the part of that bank, such bank shall have no obligation to take delivery of the goods, which remain at the risk and responsibility of the party dispatching the goods.

- b. Banks have no obligation to take any action in respect of the goods to which a documentary collection relates, including storage and insurance of the goods even when specific instructions are given to do so. Banks will only take such action if, when, and to the extent that they agree to do so in each case. Notwithstanding the provisions of sub-Article 1(c) this rule applies even in the absence of any specific advice to this effect by the collecting bank.
- c. Nevertheless, in the case that banks take action for the protection of the goods, whether instructed or not, they assume no liability or responsibility with regard to the fate and/or condition of the goods and/or for any acts and/or omissions on the part of any third parties entrusted with the custody and/or protection of the goods. However, the collecting bank must advise without delay the bank from which the collection instruction was received of any such action taken.
- d. Any charges and/or expenses incurred by banks in connection with any action taken to protect the goods will be for the account of the party from whom they received the collection.
- e. 1) Notwithstanding the provisions of sub-Article 10(a), where the goods are consigned to or to the order of the collecting bank and the drawee has honoured the collection by payment, acceptance or other terms and conditions, and the collecting bank arranges for the release of the goods, the remitting bank shall be deemed to have authorized the collecting bank to do so.

- 2) Where a collecting bank on the instructions of the remitting bank or in terms of sub-Article 10(e)i, arranges for the release of the goods, the remitting bank shall indemnify such collecting bank for all damages and expenses incurred.

Article 11: Disclaimer for acts of an instructed party

- a. Banks utilizing the services of another bank or other banks for the purpose of giving effect to the instructions of the principal, do so for the account and at the risk of such principal.
- b. Banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank(s).
- c. A party instructing another party to perform services shall be bound by and liable to indemnify the instructed party against all obligations and responsibilities imposed by foreign laws and usages.

Article 12: Disclaimer on documents received

- a. Banks must determine that the documents received appear to be as listed in the collection instruction and must advise by telecommunication or, if that is not possible, by other expeditious means, without delay, the party from whom the collection instruction was received of any documents missing, or found to be other than listed.

Banks have no further obligation in this respect.

- b. If the documents do not appear to be listed, the remitting bank shall be precluded from disputing the type and number of documents received by the collecting bank.
- c. Subject to sub-Article 5(c) and sub-Articles 12(a) and 12(b) above, banks will present documents as received without further examination.

Article 13: Disclaimer on effectiveness of documents

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document(s), or for the general and/or particular conditions stipulated in the document(s) or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by

any document(s), or for the good faith or acts and/or omissions, solvency, performance or standing of the consignors, the carriers, the forwarders, the consignees or the insurers of the goods, or any other person whomsoever.

Article 14: Disclaimer on delays, loss in transit and translation

- a. Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in transmission of any telecommunication or for error(s) in translation and/or interpretation of technical terms.
- b. Banks will not be liable or responsible for any delays resulting from the need to obtain clarification of any instructions received.

Article 15: Force majeure

Banks assume no liability or responsibility for consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars, or any other causes beyond their control or by strikes or lockouts.

E. Payment

Article 16: Payment without delay

- a. Amounts collected (less charges and/or disbursements and/or expenses where applicable) must be made available without delay to the party from whom the collection instruction was received in accordance with the terms and conditions of the collection instruction.
- b. Notwithstanding the provisions of sub-Article 1(c), and unless otherwise agreed, the collecting bank will effect payment of the amount collected in favour of the remitting bank only.

Article 17: Payment in local currency

In the case of documents payable in the currency of the country of payment (local currency), the presenting bank must, unless otherwise instructed in the collection instruction, release the documents to the drawee against payment in local currency only if such currency is immediately available for disposal in the manner specified in the collection instruction.

Article 18: Payment in foreign currency

In the case of documents payable in a currency other than that of the country of payment (foreign currency), the presenting bank must, unless otherwise instructed in the collection instruction, release the documents to the drawee against payment in the designated foreign currency only if such foreign currency can immediately be remitted in accordance with the instructions given in the collection instruction.

Article 19: Partial payments

- a. In respect of clean collections, partial payments may be accepted if and to the extent to which and on the conditions on which partial payments are authorized by the law in force in the place of payment. The financial document(s) will be released to the drawee only when full payment thereof has been received.
- b. In respect of documentary collections, partial payments will only be accepted if specifically authorized in the collection instruction. However, unless otherwise instructed, the presenting bank will release the documents to the drawee only after full payment has been received, and the presenting bank will not be responsible for any consequences arising out of any delay in the delivery of documents.
- c. In all cases partial payments will be accepted only subject to compliance with the provisions of either Article 17 or Article 18 as appropriate.

Partial payment, if accepted, will be dealt with in accordance with the provisions of Article 16.

F. Interest, charges and expenses

Article 20: Interest

- a. If the collection instruction specifies that interest is to be collected and the drawee refuses to pay such interest, the presenting bank may deliver the document(s) against payment or acceptance or on other terms and conditions as the case may be, without collecting such interest, unless sub-Article 20(c) applies.
- b. Where such interest is to be collected, the collection instruction must specify the rate of interest, interest period and basis of calculation.
- c. Where the collection instruction expressly states that interest may not be waived and the drawee refuses to pay such interest the presenting bank will not deliver documents and will not be responsible for any consequences arising out of any delay in the delivery of document(s).

When payment of interest has been refused, the presenting bank must inform by telecommunication or, if that is not possible, by other expeditious means without delay the bank from which the collection instruction was received.

Article 21: Charges and expenses

- a. If the collection instruction specifies that collection charges and/or expenses are to be for account of the drawee and the drawee refuses to pay them, the presenting bank may deliver the document(s) against payment or acceptance or on other terms and conditions as the case may be, without collecting charges and/or expenses, unless sub-Article 21(b) applies.

Whenever collection charges and/or expenses are so waived they will be for the account of the party from whom the collection was received and may be deducted from the proceeds.

- b. Where the collection instruction expressly states that charges and/or expenses may not be waived and the drawee refuses to pay such charges and/or expenses, the presenting bank will not deliver documents and will not be responsible for any consequences arising out of any delay in the delivery of the document(s). When payment of collection charges and/or expenses has been refused the presenting bank must inform by telecommunication or, if that is not possible, by other expeditious means without delay the bank from which the collection instruction was received.
- c. In all cases where in the express terms of a collection instruction or under these Rules, disbursements and/or expenses and/or collection charges are to be borne by the principal, the collecting bank(s) shall be entitled to recover promptly outlays in respect of disbursements, expenses and charges from the bank from which the collection instruction was received, and the remitting bank shall be entitled to recover promptly from the principal any amount so paid out by it, together with its own disbursements, expenses and charges, regardless of the fate of the collection.
- d. Banks reserve the right to demand payment of charges and/or expenses in advance from the party from whom the collection instruction was received, to cover costs in attempting to carry out any instructions, and pending receipt of such payment also reserve the right not to carry out such instructions.

G. Other provisions

Article 22: Acceptance

The presenting bank is responsible for seeing that the form of the acceptance of a bill of exchange appears to be complete and correct, but is not responsible for the genuineness of any signature or for the authority of any signatory to sign the acceptance.

Article 23: Promissory notes and other instruments

The presenting bank is not responsible for the genuineness of any signature or for the authority of any signatory to sign a promissory note, receipt, or other instruments.

Article 24: Protest

The collection instruction should give specific instructions regarding protest (or other legal process in lieu thereof), in the event of non-payment or non-acceptance.

In the absence of such specific instructions, the banks concerned with the collection have no obligation to have the document(s) protested (or subjected to other legal process in lieu thereof) for non-payment or non-acceptance.

Any charges and/or expenses incurred by banks in connection with such protest, or other legal process, will be for the account of the party from whom the collection instruction was received.

Article 25: Case-of-need

If the principal nominates a representative to act as case-of-need in the event of non-payment and/or non-acceptance the collection instruction should clearly and fully indicate the powers of such case-of-need. In the absence of such indication banks will not accept any instructions from the case-of-need.

Article 26: Advices

Collecting banks are to advise fate in accordance with the following rules:

a. Form of advice

All advices or information from the collecting bank to the bank from which the collection instruction was received, must bear appropriate details including, in all cases, the latter bank's reference as stated in the collection instruction.

b. Method of advice

It shall be the responsibility of the remitting bank to instruct the collecting bank regarding the method by which the advices detailed in sub-Articles (c)i, (c)ii and (c)iii are to be given. In the absence of such instructions, the collecting bank will send the relative advices by the method of its choice at the expense of the bank from which the collection instruction was received.

c. 1) Advice of payment

The collecting bank must send without delay advice of payment to the bank from which the collection instruction was received, detailing the amount or amounts collected, charges and/or disbursements and/or expenses deducted, where appropriate, and method of disposal of the funds.

2) Advice of acceptance

The collecting bank must send without delay advice of acceptance to the bank from which the collection instruction was received.

3) Advice of non-payment and/or non-acceptance

The presenting bank should endeavour to ascertain the reasons for non-payment and/or non-acceptance and advise accordingly, without delay, the bank from which it received the collection instruction.

The presenting bank must send without delay advice of non-payment and/or advice of non-acceptance to the bank from which it received the collection instruction.

On receipt of such advice the remitting bank must give appropriate instructions as to the further handling of the documents. If such instructions are not received by the presenting bank within 60 days after its advice of non-payment and/or non-acceptance, the documents may be returned to the bank from which the collection instruction was received without any further responsibility on the part of the presenting bank.

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Preface

The International Standby Practices (ISP98) reflects generally accepted practice, custom, and usage of standby letters of credit. It provides separate rules for standby letters of credit in the same sense that the Uniform Customs and Practice for Documentary Credits (UCP) and the Uniform Rules for Demand Guarantees (URDG) do for commercial letters of credit and independent bank guarantees.

The formulation of standby letter of credit practices in separate rules evidences the maturity and importance of this financial product. The amounts outstanding of standbys greatly exceed the outstanding amounts of commercial letters of credit. While the standby is associated with the United States where it originated and where it is most widely used, it is truly an international product. Non-U.S. bank outstandings have exceeded those of U.S. banks in the United States alone. Moreover, the standby is used increasingly throughout the world.

Standbys are issued to support payment, when due or after default, of obligations based on money loaned or advanced, or upon the occurrence or non-occurrence of another contingency.

For convenience, standbys are commonly classified descriptively (and without operative significance in the application of these Rules) based on their function in the underlying transaction or other factors not necessarily related to the terms and conditions of the standby itself. For example:

A “**Performance Standby**” supports an obligation to perform other than to pay money, including for the purpose of covering losses arising from a default of the applicant in completion of the underlying transactions.

An “**Advance Payment Standby**” supports an obligation to account for an advance payment made by the beneficiary to the applicant.

A “**Bid Bond/Tender Bond Standby**” supports an obligation of the applicant to execute a contract if the applicant is awarded a bid.

A “**Counter Standby**” supports the issuance of a separate standby or other undertaking by the beneficiary of the counter standby.

A “**Financial Standby**” supports an obligation to pay money, including any instrument evidencing an obligation to repay borrowed money.

A “**Direct Pay**” Standby supports payment when due of an underlying payment obligation typically in connection with a financial standby without regard to a default.

An “**Insurance Standby**” supports an insurance or reinsurance obligation of the applicant.

A “**Commercial Standby**” supports the obligations of an applicant to pay for goods or services in the event of non-payment by other methods.

In the past, many standbys have been issued subject to the UCP even though it was intended for commercial letters of credit. The UCP reinforced the independence and documentary character of the standby. It also provided standards for examination and notice of dishonor and a basis to resist market pressures to embrace troublesome practices such as the issuance of standbys without expiration dates.

Despite these important contributions, it has long been apparent that the UCP was not fully applicable nor appropriate for standbys, as is recognized in UCP 500 Article 1 which provides that it applies “to the extent to which they may be applicable.” Even the least complex standbys (those calling for presentation of a draft only) pose problems not addressed by the UCP. More complex standbys (those involving longer terms or automatic extensions, transfer on demand, requests that the beneficiary issue its own undertaking to another, and the like) require more specialized rules of practice. The ISP fills these needs.

The ISP differs from the UCP in style and approach because it must receive acceptance not only from bankers and merchants, but also from a broader range of those actively involved in standby law and practice—corporate treasurers and credit managers, rating agencies, government agencies and regulators, and indenture trustees as well as their counsel. Because standbys are often intended to be available in the event of disputes or applicant insolvency, their texts are subject to a degree of scrutiny not encountered in the commercial letter of credit context. As a result, the ISP is also written to provide guidance to lawyers and judges in the interpretation of standby practice.

Differences in substance result either from different practices, different problems, or the need for more precision. In addition, the ISP proposes basic definitions should the standby permit or require presentation of documents by electronic means. Since standbys infrequently require

presentation of negotiable documents, standby practice is currently more conducive to electronic presentations, and the ISP provides definitions and rules encouraging such presentations. The development of S.W.I.F.T. message types for the ISP is anticipated.

The ISP, like the UCP for commercial letters of credit, simplifies, standardizes, and streamlines the drafting of standbys, and provides clear and widely accepted answers to common problems. There are basic similarities with the UCP because standby and commercial practices are fundamentally the same. Even where the rules overlap, however, the ISP is more precise, stating the intent implied in the UCP rule, in order to make the standby more dependable when a drawing or honor is questioned.

Like the UCP and the URDG, the ISP will apply to any independent undertaking issued subject to it. This approach avoids the impractical and often impossible task of identifying and distinguishing standbys from independent guarantees and, in many cases, commercial letters of credit. The choice of which set of rules to select is, therefore, left to the parties, as it should be. One may well choose to use the ISP for certain types of standbys, the UCP for others, and the URDG for still others. While the ISP is not intended to be used for dependent undertakings such as accessory guarantees and insurance contracts, it may be useful in some situations in indicating that a particular undertaking which might otherwise be treated as dependent under local law is intended to be independent.

For the ISP to apply to a standby, an undertaking should be made subject to these Rules by including language such as (but not limited to):

This undertaking is issued subject to the International Standby Practices 1998. or Subject to ISP98.

Although the ISP can be varied by the text of a standby, it provides neutral rules acceptable in the majority of situations and a useful starting point for negotiations in other situations. It will save parties (including banks that issue, confirm, or are beneficiaries of standbys) considerable time and expense in negotiating and drafting standby terms.

The ISP is designed to be compatible with the United Nations Convention on Independent Guarantees and Standby Letters of Credit (which represents a useful and practical formulation of basic standby and independent guarantee law) and also with local law, whether statutory or judicial, and to embody standby letter of credit practice under that law. If these rules conflict with mandatory law on issues

such as assignment of proceeds or transfer by operation of law, applicable law will, of course, control. Nonetheless, most of these issues are rarely addressed by local law and progressive commercial law will often look to the practice as recorded in the ISP for guidance in such situations, especially with respect to cross border undertakings. As a result, it is expected that the ISP will complement local law rather than conflict with it.

The ISP is intended to be used also in arbitration as well as judicial proceedings (such as the expert based letter of credit arbitration system developed by the International Center for Letter of Credit Arbitration (ICLOCA) Rules or general commercial ICC arbitration) or with alternative methods of dispute resolution. Such a choice should be made expressly and with appropriate detail. At a minimum, it can be made in connection with the clause relating to ISP98 — e.g., This undertaking is issued subject to ISP98, and all disputes arising out of it or related to it are subject to arbitration under ICLOCA Rules (1996).

Although translations of the ISP into other languages are envisioned and will be monitored for integrity, the English text is the official text of the ISP in the event of disputes.

The ISP is the product of the work of the ISP Working Group under the auspices of the Institute of International Banking Law & Practice, Inc. which interacted with hundreds of persons over a five year period, and has benefitted from comments received from individuals, banks, and national and international associations. In particular, the participation of the International Financial Services Association (formerly the USCIB) and the Ad Hoc Working Group under the chairmanship of Gary Collyer (which led to its endorsement by the ICC Banking Commission) is gratefully recognized. In addition, the sponsorship and support of Citibank N.A., The Chase Manhattan Bank, ABN AMRO, Baker & McKenzie, and the National Law Center for Inter-American Free Trade is acknowledged. Perhaps the greatest significance of the ISP is that its creation marks a new chapter in the collaboration between the international banking operations community and the legal community at an international level. In this respect, the active role played in this process by the Secretariat of the United Nations Commission on International Trade Law has been invaluable.

The ISP is drafted as a set of rules intended for use in daily practice. It is not intended to provide introductory information on standbys and their uses. While it is recognized that specific rules would benefit from

explanatory comments, such comments are not appended to the ISP because the resulting work would be too cumbersome for daily use. Instead, introductory materials and Official Comments are available in the Official Commentary on the International Standby Practices (ISP98). For further information on support materials and developments on the ISP and to pose queries, consult the ISP98 website: www.ISP98.com

To address inevitable questions, to provide for official interpretation of the rules, and to assure their proper evolution, the Institute of International Banking Law & Practice, Inc. has created a Council on International Standby Practices which is representative of the several constituencies which have contributed to the ISP and has charged it with the task of maintaining the integrity of the ISP in cooperation with the Institute, the ICC Banking Commission, the IFSA, and various supporting organizations.

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Rule 1: General provisions

Scope, application, definitions, and interpretation of these rules

1.01 Scope and application

- a. These Rules are intended to be applied to standby letters of credit (including performance, financial, and direct pay standby letters of credit).
- b. A standby letter of credit or other similar undertaking, however named or described, whether for domestic or international use, may be made subject to these Rules by express reference to them.
- c. An undertaking subject to these Rules may expressly modify or exclude their application.

- d. An undertaking subject to these Rules is hereinafter referred to as a “standby.”

1.02 Relationship to law and other rules

- a. These Rules supplement the applicable law to the extent not prohibited by that law.
- b. These Rules supersede conflicting provisions in any other rules of practice to which a standby letter of credit is also made subject.

1.03 Interpretative principles

These Rules shall be interpreted as mercantile usage with regard for:

- a. integrity of standbys as reliable and efficient undertakings to pay;
- b. practice and terminology of banks and businesses in day-to-day transactions;
- c. consistency within the worldwide system of banking operations and commerce; and
- d. worldwide uniformity in their interpretation and application.

1.04 Effect of the rules

Unless the context otherwise requires, or unless expressly modified or excluded, these Rules apply as terms and conditions incorporated into a standby, confirmation, advice, nomination, amendment, transfer, request for issuance, or other agreement of:

- i. the issuer;
- ii. the beneficiary to the extent it uses the standby;
- iii. any advisor;
- iv. any confirmer;
- v. any person nominated in the standby who acts or agrees to act; and applicant who authorizes issuance of the standby or otherwise agrees to the application of these Rules.

1.05 Exclusion of matters related to due issuance and fraudulent or abusive drawing

These Rules do not define or otherwise provide for:

- a. power or authority to issue a standby;
- b. formal requirements for execution of a standby (e.g. a signed writing); or
- c. defenses to honour based on fraud, abuse, or similar matters.

These matters are left to applicable law.

General principles

1.06 Nature of standbys

- a. A standby is an irrevocable, independent, documentary, and binding undertaking when issued and need not so state.
- b. Because a standby is irrevocable, an issuer's obligations under a standby cannot be amended or cancelled by the issuer except as provided in the standby or as consented to by the person against whom the amendment or cancellation is asserted.
- c. Because a standby is independent, the enforceability of an issuer's obligations under a standby does not depend on:
 - i. the issuer's right or ability to obtain reimbursement from the applicant;
 - ii. the beneficiary's right to obtain payment from the applicant;
 - iii. a reference in the standby to any reimbursement agreement or underlying transaction; or
 - iv. the issuer's knowledge of performance or breach of any reimbursement agreement or underlying transaction.
- d. Because a standby is documentary, an issuer's obligations depend on the presentation of documents and an examination of required documents on their face.

- e. Because a standby or amendment is binding when issued, it is enforceable against an issuer whether or not the applicant authorized its issuance, the issuer received a fee, or the beneficiary received or relied on the standby or the amendment.

1.07 Independence of the issuer-beneficiary relationship

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

1.08 Limits to responsibilities

An issuer is not responsible for:

- a. performance or breach of any underlying transaction;
- b. accuracy, genuineness, or effect of any document presented under the standby;
- c. action or omission of others even if the other person is chosen by the issuer or nominated person; or
- d. observance of law or practice other than that chosen in the standby or applicable at the place of issuance.

Terminology

1.09 Defined terms

In addition to the meanings given in standard banking practice and applicable law, the following terms have or include the meanings indicated below:

a. Definitions

"Applicant" is a person who applies for issuance of a standby or for whose account it is issued, and includes (i) a person applying in its own name but for the account of another person or (ii) an issuer acting for its own account.

"Beneficiary" is a named person who is entitled to draw under a standby. See Rule 1.11(c)(ii).

"Business Day" means a day on which the place of business at which the relevant act is to be performed is regularly open; and **"Banking Day"** means a day on which the relevant bank is regularly open at the place at which the relevant act is to be performed.

“Confirmer” is a person who, upon an issuer’s nomination to do so, adds to the issuer’s undertaking its own undertaking to honour a standby. See Rule 1.11(c)(i).

“Demand” means, depending on the context, either a request to honour a standby or a document that makes such request.

“Document” means a draft, demand, document of title, investment security, invoice, certificate of default, or any other representation of fact, law, right, or opinion, that upon presentation (whether in a paper or electronic medium), is capable of being examined for compliance with the terms and conditions of a standby.

“Drawing” means, depending on the context, either a demand presented or a demand honoured.

“Expiration date” means the latest day for a complying presentation provided in a standby.

“Person” includes a natural person, partnership, corporation, limited liability company, government agency, bank, trustee, and any other legal or commercial association or entity.

“Presentation” means, depending on the context, either the act of delivering documents for examination under a standby or the documents so delivered.

“Presenter” is a person who makes a presentation as or on behalf of a beneficiary or nominated person.

“Signature” includes any symbol executed or adopted by a person with a present intent to authenticate a document.

b. Cross references

“Amendment” – Rule 2.06

“Advice” – Rule 2.05

“Approximately” (“About” or “Circa”) – Rule 3.08(f)

“Assignment of proceeds” – Rule 6.06

“Automatic amendment” – Rule 2.06(a)

“Copy” – Rule 4.15(d)

“Cover instructions” – Rule 5.08

“Honour” – Rule 2.01

“Issuer” – Rule 2.01

“Multiple presentations” – Rule 3.08(b)

“Nominated person” – Rule 2.04

“Non-documentary conditions” – Rule 4.11

“Original” – Rule 4.15(b) & (c)

“Partial drawing” – Rule 3.08(a)

“Standby” – Rule 1.01(d)

“Transfer” – Rule 6.01

“Transferee beneficiary” – Rule 1.11(c)(ii)

“Transfer by operation of law” – Rule 6.11

c. Electronic presentations

The following terms in a standby providing for or permitting electronic presentation shall have the following meanings unless the context otherwise requires:

“Electronic record” means:

- i. a record (information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form);
- ii. communicated by electronic means to a system for receiving, storing, re-transmitting, or otherwise processing information (data, text, images, sounds, codes, computer programs, software, databases, and the like);
and
- iii. capable of being authenticated and then examined for compliance with the terms and conditions of the standby.

“**Authenticate**” means to verify an electronic record by generally accepted procedure or methodology in commercial practice:

- i. the identity of a sender or source, and
- ii. the integrity of or errors in the transmission of information content.

The criteria for assessing the integrity of information in an electronic record is whether the information has remained complete and unaltered, apart from the addition of any endorsement and any change which arises in the normal course of communication, storage, and display.

“**Electronic signature**” means letters, characters, numbers, or other symbols in electronic form, attached to or logically associated with an electronic record that are executed or adopted by a party with present intent to authenticate an electronic record.

“**Receipt**” occurs when:

- i. an electronic record enters in a form capable of being processed by the information system designated in the standby, or
- ii. an issuer retrieves an electronic record sent to an information system other than that designated by the issuer.

1.10 Redundant or otherwise undesirable terms

- a. A standby should not or need not state that it is:
 - i. **unconditional or abstract** (if it does, it signifies merely that payment under it is conditioned solely on presentation of specified documents);
 - ii. **absolute** (if it does, it signifies merely that it is irrevocable);
 - iii. **primary** (if it does, it signifies merely that it is the independent obligation of the issuer);
 - iv. **payable from the issuer’s own funds** (if it does, it signifies merely that payment under it does not depend on the availability of applicant funds and is made to satisfy the issuer’s own independent obligation);

- v. **clean or payable on demand** (if it does, it signifies merely that it is payable upon presentation of a written demand or other documents specified in the standby).

- b. A standby should not use the term “**and/or**” (if it does it means either or both).

- c. The following terms have no single accepted meaning:

- i. and shall be disregarded:

“**callable,**”

“**divisible,**”

“**fractionable,**”

“**indivisible.**” and

“**transmissible.**”

- ii. and shall be disregarded unless their context gives them meaning:

“**assignable,**”

“**evergreen,**”

“**reinstate,**” and

“**revolving.**”

1.11 Interpretation of these rules

- a. These Rules are to be interpreted in the context of applicable standard practice.
- b. In these Rules, “**standby letter of credit**” refers to the type of independent undertaking for which these Rules were intended, whereas “**standby**” refers to an undertaking subjected to these Rules.
- c. Unless the context otherwise requires:
 - i. “**Issuer**” includes a “**confirmer**” as if the confirmer were a separate issuer and its confirmation were a separate standby issued for the account of the issuer;
 - ii. “**Beneficiary**” includes a person to whom the named beneficiary has effectively transferred drawing rights (“**transferee beneficiary**”);

- iii. **“including”** means “including but not limited to;”
 - iv. **“A or B”** means “A or B or both;” **“either A or B”** means “A or B, but not both;” and **“A and B”** means “both A and B;”
 - v. Words in the singular number include the plural, and in the plural include the singular; and
 - vi. Words of the neuter gender include any gender.
- d. i. Use of the phrase **“unless a standby otherwise states”** or the like in a rule emphasizes that the text of the standby controls over the rule;
 - ii. Absence of such a phrase in other rules does not imply that other rules have priority over the text of the standby;
 - iii. Addition of the term **“expressly”** or **“clearly”** to the phrase “unless a standby otherwise states” or the like emphasizes that the rule should be excluded or modified only by wording in the standby that is specific and unambiguous; and
 - iv. While the effect of all of these Rules may be varied by the text of the standby, variations of the effect of some of these Rules may disqualify the standby as an independent undertaking under applicable law.
- e. The phrase **“stated in the standby”** or the like refers to the actual text of a standby (whether as issued or effectively amended) whereas the phrase **“provided in the standby”** or the like refers to both the text of the standby and these Rules as incorporated.
 - i. by acceptance of a draft drawn by the beneficiary on the issuer, in which case the issuer honours by:
 - (a) timely accepting the draft; and
 - (b) thereafter paying the holder of the draft on presentation of the accepted draft on or after its maturity.
 - ii. by deferred payment of a demand made by the beneficiary on the issuer, in which case the issuer honours by:
 - (a) timely incurring a deferred payment obligation; and
 - (b) thereafter paying at maturity.
 - iii. by negotiation, in which case the issuer honours by paying the amount demanded at sight without recourse.
- c. An issuer acts in a timely manner if it pays at sight, accepts a draft, or undertakes a deferred payment obligation (or if it gives notice of dishonour) within the time permitted for examining the presentation and giving notice of dishonour.
- d. i. A confirmer undertakes to honour a complying presentation made to it by paying the amount demanded of it at sight or, if the standby so states, by another method of honour consistent with the issuer’s undertaking.
 - ii. If the confirmation permits presentation to the issuer, then the confirmer undertakes also to honour upon the issuer’s wrongful dishonour by performing as if the presentation had been made to the confirmer.
 - iii. If the standby permits presentation to the confirmer, then the issuer undertakes also to honour upon the confirmer’s wrongful dishonour by performing as if the presentation had been made to the issuer.
- e. An issuer honours by paying in immediately available funds in the currency designated in the standby unless the standby states it is payable by:
 - i. payment of a monetary unit of account, in which case the undertaking is to pay in that unit of account; or

Rule 2: Obligations

2.01 Undertaking to honour by issuer and any confirmer to beneficiary

- a. An issuer undertakes to the beneficiary to honour a presentation that appears on its face to comply with the terms and conditions of the standby in accordance with these Rules supplemented by standard standby practice.
- b. An issuer honours a complying presentation made to it by paying the amount demanded of it at sight, unless the standby provides for honour:
 - i. payment of a monetary unit of account, in which case the undertaking is to pay in that unit of account; or

- ii. delivery of other items of value, in which case the undertaking is to deliver those items.

2.02 Obligation of different branches, agencies, or other offices

For the purposes of these Rules, an issuer's branch, agency, or other office acting or undertaking to act under a standby in a capacity other than as issuer is obligated in that capacity only and shall be treated as a different person.

2.03 Conditions to Issuance

A standby is issued when it leaves an issuer's control unless it clearly specifies that it is not then "issued" or "enforceable". Statements that a standby is not "available", "operative", "effective", or the like do not affect its irrevocable and binding nature at the time it leaves the issuer's control.

2.04 Nomination

- a. A standby may nominate a person to advise, receive a presentation, effect a transfer, confirm, pay, negotiate, incur a deferred payment obligation, or accept a draft.
- b. Nomination does not obligate the nominated person to act except to the extent that the nominated person undertakes to act.
- c. A nominated person is not authorized to bind the person making the nomination.

2.05 Advice of standby or amendment

- a. Unless an advice states otherwise, it signifies that:
 - i. the advisor has checked the apparent authenticity of the advised message in accordance with standard letter of credit practice; and
 - ii. the advice accurately reflects what has been received.
- b. A person who is requested to advise a standby and decides not to do so should notify the requesting party.

2.06 When an amendment is authorized and binding

- a. If a standby expressly states that it is subject to "**automatic amendment**" by an increase or decrease in the amount available, an extension of the expiration date, or the like, the amendment is effective automatically without any further notification or consent beyond that expressly provided for in the standby. (Such an amendment may also be referred to as becoming effective "**without amendment**")

- b. If there is no provision for automatic amendment, an amendment binds:

- i. the issuer when it leaves the issuer's control; and
- ii. the confirmer when it leaves the confirmer's control, unless the confirmer indicates that it does not confirm the amendment.

- c. If there is no provision for automatic amendment:

- i. the beneficiary must consent to the amendment for it to be binding;
- ii. the beneficiary's consent must be made by an express communication to the person advising the amendment unless the beneficiary presents documents which comply with the standby as amended and which would not comply with the standby prior to such amendments; and
- iii. an amendment does not require the applicant's consent to be binding on the issuer, the confirmer, or the beneficiary.

- d. Consent to only part of an amendment is a rejection of the entire amendment.

2.07 Routing of amendments

- a. An issuer using another person to advise a standby must advise all amendments to that person.
- b. An amendment or cancellation of a standby does not affect the issuer's obligation to a nominated person that has acted within the scope of its nomination before receipt of notice of the amendment or cancellation.
- c. Non-extension of an automatically extendable (renewable) standby does not affect an issuer's obligation to a nominated person who has acted within the scope of its nomination before receipt of a notice of non-extension.

Rule 3: Presentation

3.01 Complying presentation under a standby

A standby should indicate the time, place and location within that place, person to whom, and medium in which presentation should be made. If so, presentation must be so made in order to comply. To the extent that a standby does not so indicate, presentation must be made in accordance with these Rules in order to be complying.

3.02 What constitutes a presentation

The receipt of a document required by and presented under a standby constitutes a presentation requiring examination for compliance with the terms and conditions of the standby even if not all of the required documents have been presented.

3.03 Identification of standby

- a. A presentation must identify the standby under which the presentation is made.
- b. A presentation may identify the standby by stating the complete reference number of the standby and the name and location of the issuer or by attaching the original or a copy of the standby.
- c. If the issuer cannot determine from the face of a document received that it should be processed under a standby or cannot identify the standby to which it relates, presentation is deemed to have been made on the date of identification.

3.04 Where and to whom complying presentation made

- a. To comply, a presentation must be made at the place and any location at that place indicated in the standby or provided in these Rules.
- b. If no place of presentation to the issuer is indicated in the standby, presentation to the issuer must be made at the place of business from which the standby was issued.
- c. If a standby is confirmed, but no place for presentation is indicated in the confirmation, presentation for the purpose of obligating the confirmer (and the issuer) must be made at the place of business of the confirmer from which the confirmation was issued or to the issuer.

- d. If no location at a place of presentation is indicated (such as department, floor, room, station, mail stop, post office box, or other location), presentation may be made to:
 - i. the general postal address indicated in the standby;
 - ii. any location at the place designated to receive deliveries of mail or documents; or
 - iii. any person at the place of presentation actually or apparently authorized to receive it.

3.05 When timely presentation made

- a. A presentation is timely if made at any time after issuance and before expiry on the expiration date.
- b. A presentation made after the close of business at the place of presentation is deemed to have been made on the next business day.

3.06 Complying medium of presentation

- a. To comply, a document must be presented in the medium indicated in the standby.
- b. Where no medium is indicated, to comply a document must be presented as a paper document, unless only a demand is required, in which case:
 - i. a demand that is presented via S.W.I.F.T., tested telex, or other similar authenticated means by a beneficiary that is a S.W.I.F.T. participant or a bank complies; otherwise
 - ii. a demand that is not presented as a paper document does not comply unless the issuer permits, in its sole discretion, the use of that medium.
- c. A document is not presented as a paper document if it is communicated by electronic means even if the issuer or nominated person receiving it generates a paper document from it.
- d. Where presentation in an electronic medium is indicated, to comply a document must be presented as an electronic record capable of being authenticated by the issuer or nominated person to whom it is presented.

3.07 Separateness of each presentation

- a. Making a non-complying presentation, withdrawing a presentation, or failing to make any one of a number of scheduled or permitted presentations does not waive or otherwise prejudice the right to make another timely presentation or a timely re-presentation whether or not the standby prohibits partial or multiple drawings or presentations.
- b. Wrongful dishonour of a complying presentation does not constitute dishonour of any other presentation under a standby or repudiation of the standby.
- c. Honour of a non-complying presentation, with or without notice of its non-compliance, does not waive requirements of a standby for other presentations.

3.08 Partial drawing and multiple presentations; amount of drawings

- a. A presentation may be made for less than the full amount available (“**partial drawing**”).
- b. More than one presentation (“**multiple presentations**”) may be made.
- c. The statement “**partial drawings prohibited**” or a similar expression means that a presentation must be for the full amount available.
- d. The statement “**multiple drawings prohibited**” or a similar expression means that only one presentation may be made and honoured but that it may be for less than the full amount available.
- e. If a demand exceeds the amount available under the standby, the drawing is discrepant. Any document other than the demand stating an amount in excess of the amount demanded is not discrepant for that reason.
- f. Use of “**approximately**”, “**about**”, “**circa**”, or a similar word permits a tolerance not to exceed 10% more or 10% less of the amount to which such word refers.

3.09 Extend or pay

A beneficiary’s request to extend the expiration date of the standby or, alternatively, to pay the amount available under it:

- a. Is a presentation demanding payment under the standby, to be examined as such in accordance with these Rules; and
- b. Implies that the beneficiary:
 - i. consents to the amendment to extend the expiry date to the date requested;
 - ii. requests the issuer to exercise its discretion to seek the approval of the applicant and to issue that amendment;
 - iii. upon issuance of that amendment, retracts its demand for payment; and
 - iv. consents to the maximum time available under these Rules for examination and notice of dishonour.

3.10 No notice of receipt of presentation

An issuer is not required to notify the applicant of receipt of a presentation under the standby.

3.11 Issuer waiver and applicant consent to waiver of presentation rules

In addition to other discretionary provisions in a standby or these Rules, an issuer may, in its sole discretion, without notice to or consent of the applicant and without effect on the applicant’s obligations to the issuer, waive

- a. The following Rules and any similar terms stated in the standby which are primarily for the issuer’s benefit or operational convenience:
 - i. treatment of documents received, at the request of the presenter, as having been presented at a later date (Rule 3.02);
 - ii. identification of a presentation to the standby under which it is presented (Rule 3.03(a));
 - iii. where and to whom presentation is made (Rule 3.04(b), (c), and (d)), except the country of presentation stated in the standby; or
 - iv. treatment of a presentation made after the close of business as if it were made on the next business day (Rule 3.05(b)).

- b. The following Rule but not similar terms stated in the standby:
 - i. a required document dated after the date of its stated presentation (Rule 4.06); or
 - ii. the requirement that a document issued by the beneficiary be in the language of the standby (Rule 4.04).
- c. the following Rule relating to the operational integrity of the standby only in so far as the bank is in fact dealing with the true beneficiary:

acceptance of a demand in an electronic medium (Rule 3.06(b)).

Waiver by the confirmer requires the consent of the issuer with respect to paragraphs (b) and (c) of this Rule.

3.12 Original standby lost, stolen, mutilated, or destroyed

- a. If an original standby is lost, stolen, mutilated, or destroyed, the issuer need not replace it or waive any requirement that the original be presented under the standby.
- b. If the issuer agrees to replace an original standby or to waive a requirement for its presentation, it may provide a replacement or copy to the beneficiary without affecting the applicant's obligations to the issuer to reimburse. But, if it does so, the issuer must mark the replacement or copy as such. The issuer may, in its sole discretion, require indemnities satisfactory to it from the beneficiary and assurances from nominated persons that no payment has been made.

Closure on expiry date

3.13 Expiration date on a non-business day

- a. If the last day for presentation stated in a standby (whether stated to be the expiration date or the date by which documents must be received) is not a business day of the issuer or nominated person where presentation is to be made, then presentation made there on the first following business day shall be deemed timely.
- b. A nominated person to whom such a presentation is made must so notify the issuer.

3.14 Closure on a business day and authorization of another reasonable place for presentation

- a. If on the last business day for presentation the place for presentation stated in a standby is for any reason closed and presentation is not timely made because of the closure, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides.
- b. Upon or in anticipation of closure of the place of presentation, an issuer may authorize another reasonable place for presentation in the standby or in a communication received by the beneficiary. If it does so, then
 - i. presentation must be made at that reasonable place; and
 - ii. if the communication is received fewer than thirty calendar days before the last day for presentation and for that reason presentation is not timely made, the last day for presentation is automatically extended to the day occurring thirty calendar days after the last day for presentation.

Rule 4: Examination

4.01 Examination for compliance

- a. Demands for honour of a standby must comply with the terms and conditions of the standby.
- b. Whether a presentation appears to comply is determined by examining the presentation on its face against the terms and conditions stated in the standby as interpreted and supplemented by these Rules which are to be read in the context of standard standby practice.

4.02 Non-examination of extraneous documents

Documents presented which are not required by the standby need not be examined and, in any event, shall be disregarded for purposes of determining compliance of the presentation. They may without responsibility be returned to the presenter or passed on with the other documents presented.

4.03 Examination for inconsistency

An issuer or nominated person is required to examine documents for inconsistency with each other only to the extent provided in the standby.

4.04 Language of documents

The language of all documents issued by the beneficiary is to be that of the standby.

4.05 Issuer of documents

Any required document must be issued by the beneficiary unless the standby indicates that the document is to be issued by a third person or the document is of a type that standard standby practice requires to be issued by a third person.

4.06 Date of documents

The issuance date of a required document may be earlier but not later than the date of its presentation.

4.07 Required signature on a document

- a. A required document need not be signed unless the standby indicates that the document must be signed or the document is of a type that standard standby practice requires be signed.
- b. A required signature may be made in any manner that corresponds to the medium in which the signed document is presented.
- c. Unless a standby specifies:
 - i. the name of a person who must sign a document, any signature or authentication will be regarded as a complying signature.
 - ii. the status of a person who must sign, no indication of status is necessary.
- d. If a standby specifies that a signature must be made by:
 - i. a named natural person without requiring that the signer's status be identified, a signature complies that appears to be that of the named person;
 - ii. a named legal person or government agency without identifying who is to sign on its behalf or its status, any signature complies that appears to have been made on behalf of the named legal person or government agency; or

- iii. a named natural person, legal person, or government agency requiring the status of the signer be indicated, a signature complies which appears to be that of the named natural person, legal person, or government agency and indicates its status.

4.08 Demand document implied

If a standby does not specify any required document, it will still be deemed to require a documentary demand for payment.

4.09 Identical wording and quotation marks

If a standby requires:

- a. a statement without specifying precise wording, then the wording in the document presented must appear to convey the same meaning as that required by the standby;
- b. specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, then typographical errors in spelling, punctuation, spacing, or the like that are apparent when read in context are not required to be duplicated and blank lines or spaces for data may be completed in any manner not inconsistent with the standby; or
- c. specified wording by the use of quotation marks, blocked wording, or an attached exhibit or form, and also provides that the specified wording be “**exact**” or “**identical**”, then the wording in the documents presented must duplicate the specified wording, including typographical errors in spelling, punctuation, spacing and the like, as well as blank lines and spaces for data must be exactly reproduced.

4.10 Applicant approval

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

4.11 Non-documentary terms or conditions

- a. A standby term or condition which is non-documentary must be disregarded whether or not it affects the issuer's obligation to treat a presentation as complying or to treat the standby as issued, amended, or terminated.
- b. Terms or conditions are non-documentary if the standby does not require presentation of a document in which they are to be evidenced and if their fulfillment cannot be determined by the issuer from the issuer's own records or within the issuer's normal operations.
- c. Determinations from the issuer's own records or within the issuer's normal operations include determinations of:
 - i. when, where, and how documents are presented or otherwise delivered to the issuer;
 - ii. when, where, and how communications affecting the standby are sent or received by the issuer, beneficiary, or any nominated person;
 - iii. amounts transferred into or out of accounts with the issuer; and
 - iv. amounts determinable from a published index (e.g., if a standby provides for determining amounts of interest accruing according to published interest rates).
- d. An issuer need not re-compute a beneficiary's computations under a formula stated or referenced in a standby except to the extent that the standby so provides.

4.12 Formality of statements in documents

- a. A required statement need not be accompanied by a solemnity, officialization, or any other formality.
- b. If a standby provides for the addition of a formality to a required statement by the person making it without specifying form or content, the statement complies if it indicates that it was declared, averred, warranted, attested, sworn under oath, affirmed, certified, or the like.

- c. If a standby provides for a statement to be witnessed by another person without specifying form or content, the witnessed statement complies if it appears to contain a signature of a person other than the beneficiary with an indication that the person is acting as a witness.
- d. If a standby provides for a statement to be counter-signed, legalized, visaed, or the like by a person other than the beneficiary acting in a governmental, judicial, corporate, or other representative capacity without specifying form or content, the statement complies if it contains the signature of a person other than the beneficiary and includes an indication of that person's representative capacity and the organization on whose behalf the person has acted.

4.13 No responsibility to identify beneficiary

Except to the extent that a standby requires presentation of an electronic record:

- a. A person honouring a presentation has no obligation to the applicant to ascertain the identity of any person making a presentation or any assignee of proceeds;
- b. Payment to a named beneficiary, transferee, an acknowledged assignee, successor by operation of law, to an account or account number stated in the standby or in a cover instruction from the beneficiary or nominated person fulfills the obligation under the standby to effect payment.

4.14 Name of acquired or merged issuer or confirmer

If the issuer or confirmer is reorganized, merged, or changes its name, any required reference by name to the issuer or confirmer in the documents presented may be to it or its successor.

4.15 Original, copy, and multiple documents

- a. A presented document must be an original.
- b. Presentation of an electronic record, where an electronic presentation is permitted or required, is deemed to be an **"original"**.
- c. i. A presented document is deemed to be an **"original"** unless it appears on its face to have been reproduced from an original.

- ii. A document which appears to have been reproduced from an original is deemed to be an original if the signature or authentication appears to be original.
- d. A standby that requires presentation of a “copy” permits presentation of either an original or copy unless the standby states that only a copy be presented or otherwise addresses the disposition of all originals.
- e. If multiples of the same document are requested, only one must be an original unless:
 - i. “duplicate originals” or “multiple originals” are requested in which case all must be originals; or
 - ii. “two copies”, “two-fold”, or the like are requested in which case either originals or copies may be presented.

Standby document types

4.16 Demand for payment

- a. A demand for payment need not be separate from the beneficiary’s statement or other required document.
- b. If a separate demand is required, it must contain:
 - i. a demand for payment from the beneficiary directed to the issuer or nominated person;
 - ii. a date indicating when the demand was issued;
 - iii. the amount demanded; and
 - iv. the beneficiary’s signature.
- e. A demand may be in the form of a draft or other instruction, order, or request to pay. If a standby requires presentation of a “draft” or “bill of exchange”, that draft or bill of exchange need not be in negotiable form unless the standby so states.

4.17 Statement of default or other drawing event

If a standby requires a statement, certificate, or other recital of a default or other drawing event and does not specify content, the document complies if it contains:

- a. A representation to the effect that payment is due because a drawing event described in the standby has occurred;

- b. A date indicating when it was issued; and
- c. The beneficiary’s signature.

4.18 Negotiable documents

If a standby requires presentation of a document that is transferrable by endorsement and delivery without stating whether, how, or to whom endorsement must be made, then the document may be presented without endorsement, or, if endorsed, the endorsement may be in blank and, in any event, the document may be issued or negotiated with or without recourse.

4.19 Legal or judicial documents

If a standby requires presentation of a government-issued document, a court order, an arbitration award, or the like, a document or a copy is deemed to comply if it appears to be:

- i. issued by a government agency, court, tribunal, or the like;
- ii. suitably titled or named;
- iii. signed;
- iv. dated; and
- v. originally certified or authenticated by an official of a government agency, court, tribunal, or the like.

4.20 Other documents

- a. If a standby requires a document other than one whose content is specified in these Rules without specifying the issuer, data content, or wording, a document complies if it appears to be appropriately titled or to serve the function of that type of document under standard standby practice.
- b. A document presented under a standby is to be examined in the context of standby practice under these Rules even if the document is of a type (such as a commercial invoice, transport documents, insurance documents or the like) for which the Uniform Customs and Practice for Documentary Credits contains detailed rules.

4.21 Request to issue separate undertaking

If a standby requests that the beneficiary of the standby issue its own separate undertaking to another (whether or not the standby recites the text of that undertaking):

- a. The beneficiary receives no rights other than its rights to draw under the standby even if the issuer pays a fee to the beneficiary for issuing the separate undertaking;
- b. Neither the separate undertaking nor any documents presented under it need be presented to the issuer; and
- c. If originals or copies of the separate undertaking or documents presented under it are received by the issuer although not required to be presented as a condition to honour of the standby:
 - i. the issuer need not examine, and, in any event, shall disregard their compliance or consistency with the standby, with the beneficiary's demand under the standby, or with the beneficiary's separate undertaking; and
 - ii. the issuer may without responsibility return them to the presenter or forward them to the applicant with the presentation.

Rule 5: Notice, preclusion, and disposition of documents

5.01 Timely notice of dishonour

- a. Notice of dishonour must be given within a time after presentation of documents which is not unreasonable.
 - i. Notice given within three business days is deemed to be not unreasonable and beyond seven business days is deemed to be unreasonable.
 - ii. Whether the time within which notice is given is unreasonable does not depend upon an imminent deadline for presentation.
 - iii. The time for calculating when notice of dishonour must be given begins on the business day following the business day of presentation.
 - iv. Unless a standby otherwise expressly states a shortened time within which notice of dishonour must be given, the issuer has no obligation to accelerate its examination of a presentation.

- b.
 - i. The means by which a notice of dishonour is to be given is by telecommunication, if available, and, if not, by another available means which allows for prompt notice.
 - ii. If notice of dishonour is received within the time permitted for giving the notice, then it is deemed to have been given by prompt means.
- c. Notice of dishonour must be given to the person from whom the documents were received (whether the beneficiary, nominated person, or person other than a delivery person) except as otherwise requested by the presenter.

5.02 Statement of grounds for dishonour

A notice of dishonour shall state all discrepancies upon which dishonour is based.

5.03 Failure to give timely notice of dishonour

- a. Failure to give notice of a discrepancy in a notice of dishonour within the time and by the means specified in the standby or these rules precludes assertion of that discrepancy in any document containing the discrepancy that is retained or represented, but does not preclude assertion of that discrepancy in any different presentation under the same or a separate standby.
- b. Failure to give notice of dishonour or acceptance or acknowledgment that a deferred payment undertaking has been incurred obligates the issuer to pay at maturity.

5.04 Notice of expiry

Failure to give notice that a presentation was made after the expiration date does not preclude dishonour for that reason.

5.05 Issuer request for applicant waiver without request by presenter

If the issuer decides that a presentation does not comply and if the presenter does not otherwise instruct, the issuer may, in its sole discretion, request the applicant to waive non-compliance or otherwise to authorize honour within the time available for giving notice of dishonour but without extending it. Obtaining the applicant's waiver does not obligate the issuer to waive non-compliance.

5.06 Issuer request for applicant waiver upon request of presenter

If, after receipt of notice of dishonour, a presenter requests that the presented documents be forwarded to the issuer or that the issuer seek the applicant's waiver:

- a. No person is obligated to forward the discrepant documents or seek the applicant's waiver;
- a. The presentation to the issuer remains subject to these Rules unless departure from them is expressly consented to by the presenter; and
- c. If the documents are forwarded or if a waiver is sought:
 - i. the presenter is precluded from objecting to the discrepancies notified to it by the issuer;
 - ii. the issuer is not relieved from examining the presentation under these Rules;
 - iii. the issuer is not obligated to waive the discrepancy even if the applicant waives it; and
 - iv. the issuer must hold the documents until it receives a response from the applicant or is requested by the presenter to return the documents, and if the issuer receives no such response or request within ten business days of its notice of dishonour, it may return the documents to the presenter.

5.07 Disposition of documents

Dishonoured documents must be returned, held, or disposed of as reasonably instructed by the presenter. Failure to give notice of the disposition of documents in the notice of dishonour does not preclude the issuer from asserting any defense otherwise available to it against honour.

5.08 Cover instructions/transmittal letter

- a. Instructions accompanying a presentation made under a standby may be relied on to the extent that they are not contrary to the terms or conditions of the standby, the demand, or these Rules.
- b. Representations made by a nominated person accompanying a presentation may be relied upon to the extent that they are not contrary to the terms or conditions of a standby or these Rules.

- c. Notwithstanding receipt of instructions, an issuer or nominated person may pay, give notice, return the documents, or otherwise deal directly with the presenter.
- d. A statement in the cover letter that the documents are discrepant does not relieve the issuer from examining the presentation for compliance.

5.09 Applicant notice of objection

- a. An applicant must timely object to an issuer's honour of a noncomplying presentation by giving timely notice by prompt means.
- b. An applicant acts timely if it objects to discrepancies by sending a notice to the issuer stating the discrepancies on which the objection is based within a time after the applicant's receipt of the documents which is not unreasonable.
- c. Failure to give a timely notice of objection by prompt means precludes assertion by the applicant against the issuer of any discrepancy or other matter apparent on the face of the documents received by the applicant, but does not preclude assertion of that objection to any different presentation under the same or a different standby.

Rule 6: Transfer, assignment, and transfer by operation of law

Transfer of drawing rights

6.01 Request to transfer drawing rights

Where a beneficiary requests that an issuer or nominated person honour a drawing from another person as if that person were the beneficiary, these Rules on transfer of drawing rights ("**transfer**") apply.

6.02 When drawing rights are transferrable

- a. A standby is not transferrable unless it so states.
- b. A standby that states that it is transferrable without further provision means that drawing rights:
 - i. may be transferred in their entirety more than once;
 - ii. may not be partially transferred; and

- iii. may not be transferred unless the issuer (including the confirmer) or another person specifically nominated in the standby agrees to and effects the transfer requested by the beneficiary.

6.03 Conditions to transfer

An issuer of a transferrable standby or a nominated person need not effect a transfer unless:

- a. It is satisfied as to the existence and authenticity of the original standby; and
- b. The beneficiary submits or fulfills:
 - i. a request in a form acceptable to the issuer or nominated person including the effective date of the transfer and the name and address of the transferee;
 - ii. the original standby;
 - iii. verification of the signature of the person signing for the beneficiary;
 - iv. verification of the authority of the person signing for the beneficiary;
 - v. payment of the transfer fee; and
 - vi. any other reasonable requirements.

6.04 Effect of transfer on required documents

Where there has been a transfer of drawing rights in their entirety:

- a. A draft or demand must be signed by the transferee beneficiary; and
- b. The name of the transferee beneficiary may be used in place of the name of the transferor beneficiary in any other required document.

6.05 Reimbursement for payment based on a transfer

An issuer or nominated person paying under a transfer pursuant to Rule 6.03(a), (b)(i), and (b)(ii) is entitled to reimbursement as if it had made payment to the beneficiary.

Acknowledgment of assignment of proceeds

6.06 Assignment of proceeds

Where an issuer or nominated person is asked to acknowledge a beneficiary's request to pay an assignee all or part of any proceeds of the beneficiary's drawing under the standby, these Rules on acknowledgment of an assignment of proceeds apply except where applicable law otherwise requires.

6.07 Request for acknowledgment

- a. Unless applicable law otherwise requires, an issuer or nominated person
 - i. is not obligated to give effect to an assignment of proceeds which it has not acknowledged; and
 - ii. is not obligated to acknowledge the assignment.
- b. If an assignment is acknowledged:
 - i. the acknowledgment confers no rights with respect to the standby to the assignee who is only entitled to the proceeds assigned, if any, and whose rights may be affected by amendment or cancellation; and
 - ii. the rights of the assignee are subject to:
 - (a) the existence of any net proceeds payable to the beneficiary by the person making the acknowledgment;
 - (b) rights of nominated persons and transferee beneficiaries;
 - (c) rights of other acknowledged assignees; and
 - (d) any other rights or interests that may have priority under applicable law.

6.08 Conditions to acknowledgment of assignment of proceeds

An issuer or nominated person may condition its acknowledgment on receipt of:

- a. The original standby for examination or notation;
- b. Verification of the signature of the person signing for the beneficiary;

- c. Verification of the authority of the person signing for the beneficiary;
- d. An irrevocable request signed by the beneficiary for acknowledgment of the assignment that includes statements, covenants, indemnities, and other provisions which may be contained in the issuer's or nominated person's required form requesting acknowledgment of assignment, such as:
 - i. the identity of the affected drawings if the standby permits multiple drawings;
 - ii. the full name, legal form, location, and mailing address of the beneficiary and the assignee;
 - iii. details of any request affecting the method of payment or delivery of the standby proceeds;
 - iv. limitation on partial assignments and prohibition of successive assignments;
 - v. statements regarding the legality and relative priority of the assignment; or
 - vi. right of recovery by the issuer or nominated person of any proceeds received by the assignee that are recoverable from the beneficiary;
- e. Payment of a fee for the acknowledgment; and
- f. Fulfillment of other reasonable requirements.

6.09 Conflicting claims to proceeds

If there are conflicting claims to proceeds, then payment to an acknowledged assignee may be suspended pending resolution of the conflict.

6.10 Reimbursement for payment based on an assignment

An issuer or nominated person paying under an acknowledged assignment pursuant to Rule 6.08(a) and (b) is entitled to reimbursement as if it had made payment to the beneficiary. If the beneficiary is a bank, the acknowledgment may be based solely upon an authenticated communication.

Transfer by operation of law

6.11 Transferee by operation of law

Where an heir, personal representative, liquidator, trustee, receiver, successor corporation, or similar person who claims to be designated by law to succeed to the interests of a beneficiary presents documents in its own name as if it were the authorized transferee of the beneficiary, these Rules on transfer by operation of law apply.

6.12 Additional document in event of drawing in successor's name

A claimed successor may be treated as if it were an authorized transferee of a beneficiary's drawing rights in their entirety if it presents an additional document or documents which appear to be issued by a public official or representative (including a judicial officer) and indicate:

- a. That the claimed successor is the survivor of a merger, consolidation, or similar action of a corporation, limited liability company, or other similar organization;
- b. That the claimed successor is authorized or appointed to act on behalf of the named beneficiary or its estate because of an insolvency proceeding;
- c. That the claimed successor is authorized or appointed to act on behalf of the named beneficiary because of death or incapacity; or
- d. That the name of the named beneficiary has been changed to that of the claimed successor.

6.13 Suspension of obligations upon presentation by successor

An issuer or nominated person which receives a presentation from a claimed successor which complies in all respects except for the name of the beneficiary:

- a. May request in a manner satisfactory as to form and substance:
 - i. a legal opinion;
 - ii. an additional document referred to in Rule 6.12 (Additional Document in Event of Drawing in Successor's Name) from a public official;
 - iii. statements, covenants, and indemnities regarding the status of the claimed successor as successor by operation of law;

- iv. payment of fees reasonably related to these determinations; and
- v. anything which may be required for a transfer under Rule 6.03 (Conditions to Transfer) or an acknowledgment of assignment of proceeds under Rule 6.08 (Conditions to Acknowledgment of Assignment of Proceeds);

but such documentation shall not constitute a required document for purposes of expiry of the standby.

- b. Until the issuer or nominated person receives the requested documentation, its obligation to honour or give notice of dishonour is suspended, but any deadline for presentation of required documents is not thereby extended.

6.14 Reimbursement for payment based on a transfer by operation of law

An issuer or nominated person paying under a transfer by operation of law pursuant to Rule 6.12 (Additional Document in Event of Drawing in Successor's Name) is entitled to reimbursement as if it had made payment to the beneficiary.

Rule 7: Cancellation

7.01 When an irrevocable standby is cancelled or terminated

A beneficiary's rights under a standby may not be cancelled without its consent. Consent may be evidenced in writing or by an action such as return of the original standby in a manner which implies that the beneficiary consents to cancellation. A beneficiary's consent to cancellation is irrevocable when communicated to the issuer.

7.02 Issuer's discretion regarding a decision to cancel

Before acceding to a beneficiary's authorization to cancel and treating the standby as cancelled for all purposes, an issuer may require in a manner satisfactory as to form and substance:

- a. The original standby;
- b. Verification of the signature of the person signing for the beneficiary;
- c. Verification of the authorization of the person signing for the beneficiary;
- d. A legal opinion;

- e. An irrevocable authority signed by the beneficiary for cancellation that includes statements, covenants, indemnities, and similar provisions contained in a required form;
- f. Satisfaction that the obligation of any confirmer has been cancelled;
- g. Satisfaction that there has not been a transfer or payment by any nominated person; and
- h. Any other reasonable measure.

Rule 8: Reimbursement obligations

8.01 Right to reimbursement

- a. Where payment is made against a complying presentation in accordance with these Rules, reimbursement must be made by:
 - i. an applicant to an issuer requested to issue a standby; and
 - ii. an issuer to a person nominated to honour or otherwise give value.
- b. An applicant must indemnify the issuer against all claims, obligations, and responsibilities (including attorney's fees) arising out of:
 - i. the imposition of law or practice other than that chosen in the standby or applicable at the place of issuance;
 - ii. the fraud, forgery, or illegal action of others; or
 - iii. the issuer's performance of the obligations of a confirmer that wrongfully dishonours a confirmation.
- c. This Rule supplements any applicable agreement, course of dealing, practice, custom or usage providing for reimbursement or indemnification on lesser or other grounds.

8.02 Charges for fees and costs

- a. An applicant must pay the issuer's charges and reimburse the issuer for any charges that the issuer is obligated to pay to persons nominated with the applicant's consent to advise, confirm, honour, negotiate, transfer, or to issue a separate undertaking.

- b. An issuer is obligated to pay the charges of other persons:
 - i. if they are payable in accordance with the terms of the standby; or
 - ii. if they are the reasonable and customary fees and expenses of a person requested by the issuer to advise, honour, negotiate, transfer, or to issue a separate undertaking, and they are unrecovered and unrecoverable from the beneficiary or other presenter because no demand is made under the standby.

8.03 Refund of reimbursement

A nominated person that obtains reimbursement before the issuer timely dishonours the presentation must refund the reimbursement with interest if the issuer dishonours. The refund does not preclude the nominated person's wrongful dishonour claims.

8.04 Bank-to-bank reimbursement

Any instruction or authorization to obtain reimbursement from another bank is subject to the International Chamber of Commerce standard rules for bank-to-bank reimbursements.

Rule 9: Timing

9.01 Duration of standby

A standby must:

- a. contain an expiry date; or
- b. permit the issuer to terminate the standby upon reasonable prior notice or payment.

9.02 Effect of expiration on nominated person

The rights of a nominated person that acts within the scope of its nomination are not affected by the subsequent expiry of the standby.

9.03 Calculation of time

- a. A period of time within which an action must be taken under these Rules begins to run on the first business day following the business day when the action could have been undertaken at the place where the action should have been undertaken.

- b. An extension period starts on the calendar day following the stated expiry date even if either day falls on a day when the issuer is closed.

9.04 Time of day of expiration

If no time of day is stated for expiration, it occurs at the close of business at the place of presentation.

9.05 Retention of standby

Retention of the original standby does not preserve any rights under the standby after the right to demand payment ceases.

Rule 10: Syndication/participation

10.01 Syndication

If a standby with more than one issuer does not state to whom presentation may be made, presentation may be made to any issuer with binding effect on all issuers.

10.02 Participation

- a. Unless otherwise agreed between an applicant and an issuer, the issuer may sell participations in the issuer's rights against the applicant and any presenter and may disclose relevant applicant information in confidence to potential participants.
- b. An issuer's sale of participations does not affect the obligations of the issuer under the standby or create any rights or obligations between the beneficiary and any participant.

Solutions

解決方案

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해결방안

Lösungen

Soluções

คำตอบ

Soluciones

لولح

Soluzioni

פתרונות

Çözümler

ソリューション

Solusi

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