

FAQs on documentary credits

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- **Best Trade Finance Bank in the Middle East (2007)**
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'Middle East Logistics Awards'

- **Best Trade Finance Bank (2006-2007)**

Dear Trade and Supply Chain Customer,

On the back of falling credit standards and increasing possibility of payment defaults by buyers, I am seeing an increased demand for Documentary Credits as a tool for settling payments under domestic and international trade transactions.

I therefore felt that it would be of value for us to share with you a transcript of Question and Answer sessions that our Trade and Supply Chain customers across the region had with Gary Collyer during our last year's Regional Road Show 'Leveraging Documentary Credits to Grow Your Trade Business'.

You would recollect that following Gary Collyer's presentation at the Seminar, we had an extended Question and Answer session with him during which many of our customers raised interesting questions and obtained clarifications on real life trade related challenges being faced by them.

I am sure Mr. Collyer's guidance, as contained in his responses in the attached booklet, would help you better manage your trade transactions in the current very challenging business environment.

HSBC won several global awards in the category of best trade bank in Middle East:

- Best Trade Finance Bank in the Middle East and North Africa (2007-2008)
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Awarded by 'Global Trade Review'
- Best Trade Finance Bank in the Middle East (2006-2008)
Awarded by 'Trade Finance Awards'
- Best Trade Finance Bank in the Middle East (2007)
- Best Supply Chain Bank in the Middle East (2008)
- Best Trade Finance Provider in Saudi Arabia (Saudi British Bank) (2009)
Awarded by 'Global Finance Awards'
- Best Trade Finance Bank (2006-2007)
Awarded by 'Middle East Logistics Awards'

Above awards were based on customer polls carried out by the said magazines, and I would like to thank you for repeatedly nominating HSBC as the Best Trade Bank in the region and choosing us to be your preferred Trade partner.

Yours sincerely,

Kersi Patel,

Regional Head of Trade and Supply Chain, Middle East

HSBC Bank Middle East Limited



Disclaimer

The questions in this booklet were raised by delegates attending HSBC's regional trade seminar titled 'Leveraging Documentary Credits to grow your Trade Business' held in June 2008 and the answers reflect the personal views of Gary Collyer, as Technical Adviser to the ICC Banking Commission and are not necessarily the views of HSBC.

These views reflect the position that would apply for a transaction issued subject to UCP 600 and the answers that have been provided are based on the information in the question and may vary according to different circumstances or uses. Importantly the answers are not intended to be legal advice and we recommend that you always take independent legal advice. It must be understood that local law may affect the way in which the UCP is implemented and applied globally and that the position under the applicable local law would prevail over that in the UCP. It should also be noted that formal positions can only be provided through official ICC Opinions that may be requested through your local ICC office.

For the convenience of our customers, this booklet has been produced in English and Arabic. In the unlikely event of conflict between the two versions, due to the translation, the English version will prevail.



Questions relating to specific UCP 600 Articles

Article 1 – Application of UCP

1- How can UCP 600 be helpful with local or domestic DC's?

Answer:

The UCP does not draw any distinction between DCs issued on a domestic or international basis. Given that the UCP articles are an internationally recognised set of rules, they bring certainty to a domestic (or local) transaction so that the parties know the basis under which the bank or banks will handle the transaction.

2- Is UCP 600 acceptable to Iranian banks? DCs are restricted to their own branches and apply their own banking policies? What recourse does beneficiary have?

Answer:

The ICC does not request any country or bank to confirm their adherence to UCP. This is due to the fact that the applicability of the rules is subject to the rules being referred to in the transaction. Article 1 of UCP states that the rules apply only when the text of the credit expressly indicates that it is subject to the rules. It is true that Iranian banks tend to restrict LCs to their own branch network but this is down to bank policy rather than the content of UCP or non-application of UCP. Unfortunately, unless you can convince the Iranian importer to seek a change to this policy, as beneficiary you must make a decision as to whether you are willing to proceed with the transaction being solely available at a bank other than maybe your preferred choice. Unfortunately, unless you can convince the Iranian importer to seek a change to this policy, as beneficiary you must make a decision as to whether you are willing to proceed with the transaction being solely available at a bank other than maybe your preferred choice.

3- Is it possible to have an Arabic version of UCP 600?

Answer:

The UCP is translated into some 20+ languages of which one is Arabic. The Arabic version was translated by the ICC office in Jordan and is made available to ICC offices in the region. Any translated version must also contain the English language version and the English language version is the operative set of rules. Contact details of the ICC in the Middle East region are available at <http://www.iccwbo.org/wcf/id6698/index.html>.

4- Could a corporate issue a DC that requires a bank like HSBC to confirm their issuance?

Answer:

Although the UCP refers to an issuing bank, there is no prohibition on a corporate or

individual issuing a documentary credit. In fact, it can be argued that some corporate's have a better credit rating than some banks. If a corporate issues a credit, they must clearly indicate that they take on the responsibility of issuing bank as described in the UCP. It will be for the beneficiary to determine whether the terms of the credit will be acceptable or not. In most cases, although a corporate will issue the credit they will request a bank to act as the party that will examine documents, determine compliance and effect settlement.

5- Does UCP 600 apply only to documentary credits (DC's) or to other forms of payment like cash against documents, with deferment, etc?

Answer:

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

6- Is it correct if a bank, in its DC, indicates that it complies to UCP 600 and also indicates it excludes clause's (so & so)?

Answer:

Whilst the ICC does not expect there to be many occasions when a bank will need to exclude rules, article 1 states that the rules contained in UCP apply unless modified or excluded by the terms and conditions of the credit. When a rule is excluded by a bank (or applicant in their application form) care needs to be taken as it is often the case that a new rule will need to be inserted into the credit. Excluding a rule and saying nothing may leave the issuing bank and applicant at risk.

Article 2 – Definitions

7- UCP 600 – A DC available by negotiation states that a draft is optional. However, some banks insist that a draft be drawn. What is the reason behind this? Is there a need to have one under UCP 600 as compared to UCP 500?

Answer:

The definition of negotiation, in article 2, refers to negotiation of drafts and/or documents recognising that negotiation may be effected without a draft. DCs may be issued stating that a draft is optional. In this case, the nominated bank is at liberty to request that a draft be presented. Banks often feel more secure where they negotiate with a draft as opposed to without.

8- Please elaborate on 'payment DC' where an exporter can be paid immediately on presentation of documents to a nominated bank.

Answer:

If a credit is available by payment, the issuing bank must provide the nominated bank with reimbursement instructions such as an authority for the nominated bank to debit the account of the issuing bank or to claim reimbursement on another bank. By providing this form of reimbursement instruction, the beneficiary can be paid as soon as the documents have been found to comply and in line with the reimbursement instruction (which may be subject to a delay period of, say, 2 working days prior notice of the nominated bank debiting the account of the issuing bank).

9- When a DC is available by negotiation with the confirming bank, who is the drawee?

Answer:

If the credit is available by negotiation then the draft must be drawn on someone other than the confirming bank. This would mean the issuing bank (in most cases) or a reimbursing bank.

10- Sight negotiation – please explain further Negotiation and Acceptance – what is the difference?

Answer:

A DC available by sight negotiation allows the beneficiary to obtain immediate settlement from the negotiating bank, less a deduction for interest from the date of payment to the expected date of reimbursement from the issuing bank.

The basic difference between negotiation and acceptance is that under a credit available with a nominated bank by negotiation, any draft is drawn on the issuing bank. Also, for negotiation type DCs, these may be available at sight or usance. For acceptance DCs, the draft will be drawn on the nominated bank. An acceptance DC can only be drawn at a usance period.

11- Can a beneficiary request discount under a deferred payment DC?

Answer:

Yes, but the request is subject to the agreement of the nominated bank or the issuing bank.

12- In UCP 600 please could you define the word "honour"?

Answer:

The word "honour" is used to describe three forms of settlement – payment, acceptance



and deferred payment and how each is settled. By defining the word honour, this allows the UCP to be shorter in text as we can use the word "honour" throughout the rules instead of the words that appear in the definition.

13- Kindly explain – "acceptance", "deferred payment", "negotiation" and the difference between them.

Answer:

Acceptance is the act of a nominated bank accepting a draft drawn on it to mature at a future determinable date. The draft, once accepted, is capable of being discounted by the acceptor or any other financial institution. Under a deferred payment DC there is no draft. The transaction must be capable of determining a due date from the documents presented. Under sub-article 12 (b) of UCP 600, the beneficiary may seek prepayment of the nominated bank's deferred payment undertaking. Negotiation is the act of negotiating drafts drawn on the issuing bank accompanied by documents. In rare occasions, no draft is required. Immediate settlement, whether on a sight or usance basis would be subject to a deduction of interest.

Article 3 – Interpretations

14- Who would be considered a competent authority?

Answer:

According to article 3, a competent authority is any party other than the beneficiary. Banks should avoid calling for documents issued by a competent authority and either name the company or provide a more generic description of the type of issuer.

Article 4 – Credits v. Contracts

15- Can you provide more clarification of sub-article 4 (b) which relates to including proforma invoices etc. in the DC?

Answer:

Sub-article 4 (b) states "an issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, pro forma invoice and the like."

Attaching a proforma invoice or contract to a credit and requesting a bank to "tick off" the items contained in the goods description against that which appears on the invoice is a task that should not be undertaken by banks. Also, this process offers the applicant no protection in receiving the goods that were ordered in their quantity and/or standard. Issues of quality, standards and quantity are only satisfied by calling for documents issued

by independent parties that will certify compliance to such requirements.

Article 6 – Availability, Expiry Date and Place for Presentation

16- Is a bank correct in asking DC “Available with” clause to be amended in its favour if it is offering discounting to the beneficiary, or is “available with any bank in the country of beneficiary” sufficient?

Answer:

It is often the case that banks prefer a credit to be restricted to their offices so that they have complete control over the transaction. Such action also reduces costs involved in the transaction, improves turnaround times for the processing of documents and payment to the beneficiary and avoids situation where there can be multiple views on the compliance of the documents. However, the UCP provides the basis for a credit to be available with any bank thereby allowing the beneficiary the choice of bank with whom they wish to deal and to whom they wish to present documents. A credit that is ‘available with any bank’ should not stop a bank from discounting under a complying presentation.

Article 7 – Issuing Bank Undertaking

17- In a local or domestic DC, no confirmation is added to the DC. But how is it a secured payment under UCP 600?

Answer:

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

18- If an applicant dies and the beneficiary submitted invoices which were accepted by the bank. Can the bank still pay?

Answer:

A documentary credit is a bank undertaking and no matter whether an applicant “died” or the company were declared bankrupt, the issuing bank must honour a presentation that complies with the terms and conditions of the credit.

Article 8 – Confirming Bank Undertaking

19- As an applicant does it harm me in any way that a DC is available with and confirmed by the beneficiary’s bank?

Answer:

No. The fact that a credit is available and confirmed with the banker of the beneficiary

does not detract from the fact that it is your bank, the issuing bank, that will have the final decision as to whether or not the documents comply.

20- Should confirmation be done by my bank or any bank can accept to do so?

Answer:

Confirmation should be added by a bank that you know and with whom you are willing to place the transaction. In most cases, this is the banker or preferred trade finance bank of the beneficiary.

21- Confirmed DC. Please explain.

Answer:

A confirmed DC is a DC that not only bears the undertaking of an issuing bank to honour a complying presentation, but also that of the confirming bank. The undertaking of the confirming bank is in addition to that of the issuing bank. The confirming bank is authorised to effect settlement against presentation of complying documents at their counters and any settlement is without recourse to the beneficiary. By having a confirmed credit, the beneficiary removes any political or economic risk that may be associated with the issuing bank or the country of the issuing bank.

Article 9 – Advising of Credits and Amendments

22- What are the risks to a beneficiary when an applicant opens an unconfirmed DC?

Answer:

The main risk is that the issuing bank will not be able to effect payment at the appropriate time. In issuing the credit, the issuing bank removes the payment risk of the applicant. The beneficiary must determine whether the payment risk of the issuing bank is acceptable i.e., are they in a country where foreign exchange, political, war risks etc. are an issue. If so, the beneficiary should consider requesting confirmation be added by a bank that is known to the beneficiary and local to their place of business.

Article 10 – Amendments

23- An applicant receives requests from the beneficiary asking for amendments to the DC. This is especially common when shipment is delayed. Should the applicant agree to amend and at whose cost?

Answer:

The decision as to who is to pay for the costs of any amendment is to be determined between the applicant and the beneficiary. It is usually the case that the beneficiary pays the costs in their country and the applicant the costs in theirs. Where the amendment is

due to a failure on the part of the beneficiary to comply with the contract, the decision may be made that all costs are borne by the beneficiary.

24- In case we amend the currency of a DC based on a beneficiary request, does this amendment take effect or should we issue a new DC?

Answer:

Due to computerization of documentary credit transactions and the inability for most banks to change the currency of a credit that has already been advised, the advising bank may request that the credit be cancelled and re-issued in the new currency. It may be easier to leave the credit in the original currency and allow presentation in another currency and the exchange rate is to be subject to an agreed (or stated) criteria.

Article 12 – Nomination

25- Deferred Payment – discounting was refused. In which circumstances can banks refuse to discount?

Answer:

Banks can refuse for any reason. Sub-article 12 (b) does not impose a requirement that a bank must discount. The wording reflects that it is an authorization to prepay or purchase. In most cases, where the bank has incurred the liability to pay on a due date, the bank would be happy to offer or agree to a request to discount.

26- Can you clarify sub-article 12 (b) in UCP 600 concerning deferred payment?

Answer:

If an issuing bank issues a credit available with a nominated bank by deferred payment or acceptance, the issuance represents an authorization for the nominated bank to prepay or purchase (discount) the accepted draft or the deferred payment undertaking of the nominated bank. If an issuing bank (or applicant) does not wish a discount to occur, then they must exclude the rule in their DC.

27- According to a DC, the beneficiary is supposed to get payment from two different banks. Should shipping documents be sent to both banks? How would the beneficiary claim its percentage of money from both banks?

Answer:

If two banks are involved, which is unusual, the credit or the accompanying advice should explain the relationship of the two banks and how presentation is to be made. In most cases, only one presentation is made and either one or both banks make the



decision on whether the documents comply. Generally, one bank will make payment to the beneficiary and the other will reimburse the bank that paid with the amount for which they are committed.

Article 14 – Standard for Examination of Documents

28- If documents are submitted after 21 days of shipment as stipulated in the DC, is it a discrepancy?

Answer:

Yes. If the credit requires presentation within 21 days after the date of shipment that is the latest date by which the documents may be presented.

29- When it comes to a “third party document acceptable” clause, should this not be included in a DC since it is covered by UCP already? Does this mean that whatever UCP already allows need not be included at all? Why is this? What is wrong in just having a clause which is anyway allowed by UCP?

Answer:

The position taken by the UCP and the ISBP (International Standard Banking Practice) is that if the rules cover a certain position and the credit nevertheless states a condition that may be related to a rule or stated practice, the issuing bank must mean something different. It is in these circumstances that adding clauses already covered may provide an unanticipated result. If such words are to be included, the credit must clearly specify what is intended or allowed to avoid any ambiguity or misapplication.

30- In cases where there are more details on documents than specified in the DC, is it considered a discrepancy, even if the information provided is not conflicting? Can the bank reject payment?

Answer:

No, provided the added data does not conflict with data on that same document or any other stipulated document.

31- A short description of goods can be written in all the documents except the invoice, but if included should this short description be the same in all other documents?

Answer:

There is no requirement that the short description be the same on all documents. However, care should be taken to ensure that no conflict exists with descriptions shown on various documents.

32- What is the most important information that should be mentioned in the documents?

Answer:

The information that is required by the credit. The credit will generally detail the data that is required to appear on the documents or statements of compliance that have to appear. The beneficiary must ensure that the data on the documents does not conflict with that in the credit or any other stipulated document. UCP 600 articles 18-25 and 28 contain information that is necessary to appear on documents such as invoices, transport documents and insurance documents. Any other information is considered unnecessary and may cause the bank to refuse if it is found to be in conflict with any other data.

Article 15 – Complying Presentation

33- What is the maximum time that a bank can take to pay a beneficiary?

Answer:

There is no maximum period for the bank to pay. The UCP states that when a bank determines compliance, they must honour or negotiate. This means that once the bank finishes the process of examination it must move to the next step, which is settlement. This process may take hours or a few days depending on the reimbursement conditions in the credit.

34- In a sight DC, where the documents have been accepted by consignee, the consignee confirms that his account was debited by issuing bank. But, it takes the beneficiary a month to receive the money. What recourse does the beneficiary have?

Answer:

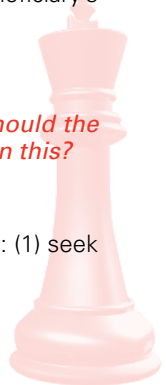
The beneficiary should contact the nominated bank and request that they follow up with the issuing bank to determine the date when the documents were approved by the applicant. Although the issuing bank is not required to accept the waiver of discrepancies from an applicant, it will give an approximate idea of when payment should have been received. If there is a delay, the nominated bank could claim interest on the beneficiary's behalf.

Article 16 – Discrepant Documents, Waiver and Notice

35- What happens if the discrepancy is not approved by the applicant? Should the goods be returned back to the exporter and what is the issuing bank role in this?

Answer:

If the discrepancies are not approved, there are two options for the beneficiary: (1) seek



another buyer in the same location or (2) arrange the return of the goods. In either event, these actions will be instigated by the beneficiary. The issuing bank role will merely be to administer the further handling of the documents.

36- If all discrepancies are allowed with the exception of invoice value and DC validity does this safeguard the interest of the beneficiary?

Answer:

It certainly safeguards the beneficiary as the banks can only refuse for two discrepancies. Provided the documents do not contain those two discrepancies, they will be paid. This is a highly dangerous clause for the applicant due to the fact that any other discrepancies may have a significant impact on the clearance of the goods or the quality of those goods.

37- Is it required for the applicant bank to receive the acceptance signature on a document that is negotiated in compliance to the terms and conditions of the DC? What happens if the applicant does not accept?

Answer:

The decision on accepting complying documents is that of the issuing bank. There is no requirement for the applicant signature to confirm compliance. If the applicant believes the documents were in fact discrepant, then they must communicate those discrepancies to the issuing bank without delay. This issue must be resolved between the applicant and the issuing bank.

38- It is often felt that bank staff 'invent' discrepancies where there are 'none' and it appears that Banks take more of a 'legal' stance than 'commercial'.

Answer:

Banks should only refuse based on discrepancies that exist in the documents i.e., discrepancies that relate to non-compliance to the credit terms and conditions, the requirements of the UCP or those that relate to conflicts of data between documents.

39- What recourse does a "client" have against a bank where original discrepancies were found to be "non-existent" after debate or arguments?

Answer:

There remains the possibility that the beneficiary could claim delay interest for the period concerned.

40- When the issuing bank refuses to accept the documents after issuing the DC, what is the course of action that is open to applicant?

Answer:

This depends on the reasons for the refusal. If the refusal is linked to discrepancies in documents, then the issuing bank is entitled to make that observation and maintain a position where they will not pay. Even if the applicant agrees to accept any discrepancies, the issuing bank is at liberty to ignore the instruction. In this event, the beneficiary may seek the return of the goods or seek another buyer.

41- There is a discrepancy in the documents and issuing bank notifies the beneficiary. If the beneficiary corrects the documents, will the discrepancy fee apply or not?

Answer:

Yes. The discrepancy fee is in respect of the handling of discrepant documents and not in relation to whether the documents remain discrepant.

42- A discrepancy memo is received without giving any details of the discrepancy. What should happen?

Answer:

The bank must provide a refusal notice stating it is refusing the documents, the discrepancies that have been found and the status of the documents. Failure of the confirming bank or issuing bank to act accordingly will mean that it cannot state that the documents are discrepant and must be honoured. Where a nominated bank is involved, the beneficiary should request the specific details of the discrepancies.

43- The issuing bank finds some discrepancies in the documents presented, which are not acceptable under the DC, due to a misunderstanding of the terms. How should a bank handle this with the issuing bank? As a beneficiary should these discrepancies be accepted?

Answer:

In most cases, the nominated bank will deal with this kind of issue by reverting to the issuing bank to guide it to the correct position. If the bank does not do this, then the beneficiary may need to request the nominated bank to act accordingly or contact their applicant directly to resolve the issue. As a beneficiary, you are in the hands of the banks to retract the discrepancies. If they do not, your only course of action is to contact the applicant.



44- If some documents such as the invoice need to be corrected, why should they be stamped from the last authority and not from the beneficiary?

Answer:

If the document has been certified etc. by another organisation, it must approve the changes that have been made in the document. That party must be aware of the final state of that document which is issued under their authorisation/certification.

Article 17 – Original Documents and Copies

45- If DC says “certificate in duplicate”, what does it mean, either two originals or one original and one copy?

Answer:

Where the credit refers to “in duplicate” or similar, this is satisfied by the presentation of at least one original and the remainder in copies. Therefore, either 2 originals or 1 original and 1 copy would be acceptable.

46- Can the “signature” on the document be treated as data content of the document?

Answer:

No. Signature and data are two different things.

47- DC says “certificate of origin” in 4 duplicates. Certificate of Origin from Ministry of Economy is issued in one original and two copies. Does the photocopy (4th copy) certificate of origin need to be signed and stamped by the shipper? Some banks ask for the photocopy to be signed and stamped.

Answer:

Where copies are allowed or required, these are satisfied by photocopies or copies. These photocopies or copies need not be signed or stamped.

48- Can a bank reject the presented original documents if the documents are totally black and white (including a black coloured stamp)?

Answer:

No. Originality of a document is not linked to the colour ink that is used within the document.

Article 18 – Commercial Invoice

49- If a DC only states “supply of xyz goods”, should the invoice, delivery order and packing list mention an item list with quantity and values?

Answer:

The invoice must include a description of goods that corresponds with that in the credit. All other documents may have a description which is in general terms. Lists, quantities and values will only be required on documents other than the invoice if stipulated in the credit.

50- Under UCP 500 the beneficiary can present documents with an amount exceeding the DC value, while it cannot be discrepant if the negotiating bank pays an amount not exceeding the DC value. What about UCP 600?

Answer:

The same position applies under UCP 600. See sub-article 18 (b).

51- A commercial invoice is 2 pages in length. The first page contains unit price, quality, total value, description details of customer etc. and second page has the additional notes as per the DC. Must the second page be certified by the Ministry of Economy?

Answer:

No. Provided the documents are linked (i.e., page 1, page 2) a certification on one page would suffice.

52- If the beneficiary submits an invoice in a different currency than that of the DC (i.e., DC amount in GBP and beneficiary submits invoice in Euro) and the applicant wants to pay in the original currency of DC, how is such a discrepancy handled?

Answer:

Under UCP 600 sub-article 18 (a) (iii) the invoice must be made out in the same currency as the credit. If an invoice is presented in a different currency, the presentation will be refused by the bank. It will be for the applicant to agree the amount that is to be paid to the beneficiary and the issuing bank to concur. The decision of the applicant to pay in the DC currency must then be conveyed first to the issuing bank and then to the beneficiary for their agreement.

53- In a case of short supply, compared to the data in documents like invoice, BL, packing list etc. The beneficiary has already been paid, how effective will insurance be in such a case?

Answer:

Unless specifically stated in the insurance risks covered, the insurance document will not cover such an event.

Article 20 – Bill of Lading

54- According to DC, what would be the BL date: BL issue date or shipped on board date?

Answer:

The bill of lading date is always the shipped on board date. The UCP refers to the bill of lading requiring evidence that the goods have been shipped on board.

55 -If DC is allowing the submission of BL issued by a forwarder, is it necessary to show the carrier's name on the BL?

Answer:

If the credit allows for such a presentation, the name of the carrier need not appear.

56- When signing a BL, is it correct to say – “on behalf of the carrier, MSC Egypt as agent only”?

Answer:

The question is whether MSC Egypt is the carrier or the agent. In either event, the name of the carrier must be added or the name of the agent.

57- DC states the discharge port as Lexious – Portugal but under the schedule of the vessel the discharge port is Lisbon– Portugal and the shipping line mentioned Lisbon in the BL as the port of discharge and the delivery place as Lexious – Portugal. Will this be a discrepancy or not. The shipping line refused to mention discharge port as shown in the DC.

Answer:

This will be a discrepancy. To avoid such an event, the bill of lading should bear an on board notation showing “port of discharge, Lexious”.

*58- Place of receipt: Europe
Port of loading: European port
Port of discharge: Doha port
Place of delivery: Doha*

If the BL mentions all the above, is an on board notation needed or just shipped on board with date is enough?

Answer:

The bill of lading will need an on board notation showing the actual name of the port of loading and the vessel.

59- Why do DC's request 3/3 original BL? How does it help from the point of view of a beneficiary, applicant or a banker?

Answer:

This is historical when documents were commonly sent in two mails. The third original allowed for situations where one original BL was sent direct to the bank or the applicant. The UCP refers to "the sole original or the full set as indicated on the bill of lading". The number of originals that are issued is determined by the shipping company or their agent.

Article 22 – Charter Party Bill of Lading

60- What is the interpretation of charter party BL under UCP 600?

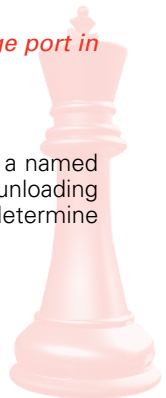
Answer:

There is no interpretation that is stated in UCP 600. The document is used where there are bulk cargoes involved, thereby necessitating the hiring of a vessel for a specific voyage or voyages.

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

Answer:

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



Article 23 – Air Transport Document

62- DC stipulates airport of departure as Egypt and shipment will be covered by air. The AWB is presented without stating the airport of dispatch as Cairo (i.e., it only states Egypt). Would this be a discrepancy?

Answer:

Yes, the air waybill must state the name of the airport from which the goods were shipped and the airport must be within Egypt.

Article 24 – Road, Rail and Inland Waterway Transport Documents

63- A DC asks for a truck consignment note. Is it necessary that the note should be issued on the transporting company letterhead? If the truck consignment note is issued on beneficiary letterhead will it be acceptable?

Answer:

Sub-article 14 (l) states that 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 UCP 600. Any party would include the beneficiary.

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

64- DC says transport document/bill of lading should not show any cost, but bill of lading says all the cost at the destination port is to be borne by consignee, but it does not show any cost. Is this a discrepancy?

Answer:

Yes. The reference to "cost" is not confined to an actual stated amount.

Article 27 – Clean Transport Document

65- What is the basic difference between "clean on board" and "shipped on board"?

Answer:

Clean denotes a status of the goods whereas "on board" or "shipped on board" signify the date the goods are loaded on the vessel and for the purposes of the UCP constitutes the date of shipment.

66- Most shipping companies refuse to include the “clean on board” reference, but banks include them. Is it a must under UCP?

Answer:

No. Article 27 states that the word “clean” need not appear on a transport document. Provided the document does not indicate any derogatory statement regarding the goods or their packaging it is deemed to be ‘clean’. A derogatory statement would be something like “10 drums of oil, 6 of which are leaking”.

67- If DC says clean on board and BL stated shipped on board, is there a discrepancy?

Answer:

No, provided the bill of lading did not indicate any defective nature of the packing or the goods. Article 27 clearly states that a bill of lading need not bear the word “clean”.

Article 28 – Insurance Document and Coverage

68- When endorsing the certificate of insurance, is it correct to stamp the back of the certificate or should it be signed beside the stamp?

Answer:

When endorsing any document, the endorsement should consist of a signature and the name of the company (written, stamped or typed). These should both be in the same proximity to determine that they are related forms of data.

69- What is a bank’s duty in verifying the insurance policy? The insurance policy may have many hidden clauses the buyer may not understand.

Answer:

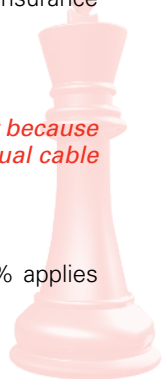
The bank’s duty is merely to determine whether the conditions of the insurance document presented meet the stipulations of the credit and the applicable rules contained in article 28. It is for the applicant to ensure that they understand the content of the insurance clauses and request the appropriate risks to be covered in the DC application.

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

70- In case of goods shipped by weight, such as cable or pipe, banks reject because of differences of a minor nature such as DC for 500 metric tons where actual cable shipped was 500.5 metric tons. How can this be overcome?

Answer:

Where the goods are subject to a weight measurement, a tolerance of +/-5% applies



to the quantity provided the amount that is drawn does not exceed the credit amount. Banks should not refuse for the reason stated.

Article 32 – Instalment Drawings or Shipments

71-Can amount tolerance be applied to instalment DC's?

Answer:

Yes. Each instalment may be subject to a tolerance amount. In this case, the credit amount must be subject to a tolerance that matches the total value of the individual tolerances.

*72- Is a DC with the following terms acceptable:
20% of invoice value upon order booking confirmation
50% upon evidencing shipment
30% upon receipt of the documents.*

Answer:

Yes. The credit must specify the document(s) that must be presented to draw each percentage amount.

Article 35 – Disclaimer on Transmission and Translation

73- Documents negotiated clean and forwarded to opening bank. The courier company misplaced the documents. Who is responsible? When will the beneficiary be paid?

Answer:

If the documents were negotiated, the beneficiary will already have been paid or the bank has agreed to pay on a specific date in the future. That position will still stand. The issuing bank will be responsible for payment, but will be entitled to request copies of the documents that were originally presented in order that they may determine that the documents did actually comply when they were originally presented. If the beneficiary has not already been paid, they will be paid once the determination of compliance has been made.

74- Documents lost. The documents were negotiated clean and discounted with beneficiary's bank. The documents are lost and applicant's bank will not pay. The beneficiary's bank called back the discounted funds. What is the solution?

Answer:

Under article 35 of UCP 600, the issuing bank is responsible for payment. The beneficiary and nominated bank will be required to provide the issuing bank with copies of the presented

documents. Once the issuing bank has examined them and determined compliance, they must pay. If the credit has not been confirmed by the nominated bank, they will be entitled to recover the funds already paid pending final settlement by the issuing bank.

Article 38 – Transferable Credits

75- A client will open DC in beneficiary's favour with 60 days credit. The beneficiary opens a DC with its supplier with 30 days credit. Will the payment be from the beneficiary facility or from the client DC?

Answer:

In all likelihood it would need you to have a facility with the bank unless the bank is happy to issue such a credit under a transferable credit structure where you authorise the discounting of the proceeds to pay supplier on their due date.

76- What about sub-article 38 (f) and sub article 10 (c), where there are more than 2 beneficiaries existing?

Answer:

Where more than 2 second beneficiaries exist, each credit is independent and may be amended individually. Each amendment to those credits is subject to acceptance or rejection by the individual second beneficiary.

77- Under what circumstances will the bank say “no” to the transfer of a transferable DC?

Answer:

The bank is not required to give an answer as to why but it may be due to the terms of the transfer, a change in perspective towards the issuing bank or that the transferring bank may not wish to deal with that beneficiary or the country in which the beneficiary is located.

78- Should a transferable DC explicitly indicate that presentation of third party documents are acceptable or is silence enough?

Answer:

There is no need for such a clause to appear in any credit. In a transferable credit, the expectation is that there will be some form of third party documents presented.

79- When using a transferable DC would it secure an applicant's position to put a condition that “no 3rd party documents are acceptable”?

Answer:

Such a clause may make the transfer unworkable and should not be used.



80- In a transferable DC, can a transfer be made without partial shipment allowed whereas the original DC states that partial shipment is allowed?

Answer:

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

81- If a transferable credit is confirmed by the transferring bank, is it a must that the transferred credit be confirmed too? (Under UCP 600)

Answer:

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

82- If I am a middle man and I do not want the applicant to know who the suppliers are, what would I ask for - "transferable DC" or would I go for "back-to-back DC"?

Answer:

You can choose either. The names of the parties can be equally protected in a transferable credit. The transferring bank should be consulted so that they may offer advice on the areas of a credit that may require amending, prior to the transfer, to remove conditions or documentary requirements that may divulge either of the names.

83- Under a transferable DC, the terms of trade are DDP (Delivery Duty Paid) and one of the documents asked for is "invoice to be countersigned/certified by applicants authorized signature". Does this requirement restrict the operation of transferable DC?

Answer:

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

84- If a credit is transferred to more than one 2nd beneficiary, is there a conflict if such 2nd beneficiaries are customers of the issuing bank?

Answer:

No. The issuing bank must protect the interests of the client that gave its instructions to issue (the applicant) and the beneficiary in determining a complying presentation.

85- Can the issuing bank of the transferable credit also act as an advising bank or a transferring bank?

Answer:

There is no reason why they cannot act in all of these capacities.

86- Can the issuing bank reject documents under a transferred credit if documents are received directly from the 2nd beneficiary?

Answer:

No. But they would be entitled to contact the transferring bank to ascertain whether or not substitution of documents had been envisaged.

General Questions

87- What can protect the applicant other than wording, "beneficiary declaration"? What is the legal opinion to said certification?

Answer:

While HSBC is not in a position to provide a legal opinion, we can provide the following insight from our experience. Please consult your legal experts for a formal legal opinion.

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

88- DC requires a notation to be mentioned on the shipping documents. In such an event, what are the shipping documents if DC require invoice, P/L, B/L and C/O?

Answer:

Shipping documents are classified as all documents except the draft (which is considered to be a financial document).

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

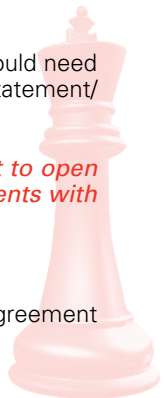
Answer:

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

90- What is the method to secure a payment if a customer does not want to open DC but wants goods shipped with payment against acceptance of documents with deferred period?

Answer:

A documentary collection with a draft drawn on the collecting bank (prior agreement



would need to be obtained from the bank beforehand) could be used.

91- What is the difference between local or domestic DC's and foreign or international DC's? What is the benefit of using DC's?

Answer:

There is no major difference as each are governed by UCP. The only real difference would be in the types of documents that may be called for in a local DC compared to a cross border DC. The benefit of using a DC is that payment is possible as soon as shipment has been effected against an undertaking given by a bank.

92- What does a revolving DC mean?

Answer:

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

93- Some exporters request a DC which is for 1 year or more. Is there an acceptable expiry period for an applicant to consider, which is not to their disadvantage i.e., higher cost etc?

Answer:

In most cases, it is how long the bank will consider issuing the DC that will determine the maximum. Generally, DCs are issued with an expiry of between 3 and 6 months.

94- Why does a Bank ask for an indemnity letter when the applicant requests a delivery order to clear the material under an air shipment? Is any such clause mentioned in UCP600?

Answer:

Where documents of the beneficiary have not been paid for, the documents remain the property of the beneficiary. Those documents convey rights towards the goods that they represent. If the bank allows the applicant to take control of the goods, the documents become worthless. The issuing bank, therefore, requires the applicant to sign a document that will authorise the bank to accept the documents notwithstanding any discrepancies. This requirement is general banking practice and is not covered in UCP.

95- Pro's and con's of a standby DC

Answer:

In brief terms, a standby is a simple mechanism for securing payment for goods, services or performance. Payment is usually made against a simple demand document. The standby credit requires the beneficiary to have performed and await default before claiming thereunder rather than upon shipment.

96- Briefly describe Bank Guarantees and Standby Documentary credit. When there is a counter guarantee issued for issuance of a guarantee, which is the real expiry of the guarantee?

Answer:

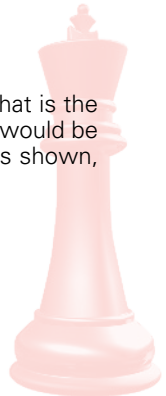
Bank guarantees and standby letters of credit effectively perform the same function. They act as a security in the event of default by the applicant. Any form of guarantee can be issued as a standby documentary credit. Applicants and beneficiaries often prefer the standby documentary credit to the bank guarantee due to the fact that it is subject to an international set of rules rather than the more common usage of local law for bank guarantees.

When a bank issues a counter guarantee, to enable the issuance of a guarantee by a bank local to the beneficiary, the expiry date of the counter guarantee will often be 15-30 days later than the expiry date of the guarantee. This allows for a claim to be made under the guarantee up to and including the expiry, the processing of the claim by the bank and delivery to the issuing bank of the counter guarantee. As far as the issuer of the counter guarantee is concerned, the expiry date of the guarantee is the last date that a claim may be made. A claim can only be made on them under the counter guarantee. Therefore, the expiry date for the liability against the applicant should be the expiry of the counter guarantee.

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

Answer:

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



98- The value of the commercial invoice has been over-stated by the beneficiary (by mistake or whatever reason) but still within the DC value. The applicant realises this before payment of documents by the bank. What can the applicant do to inform the bank about the actual amount to be debited?

Answer:

The bank must examine the documents on their face for compliance. If the applicant notices something of this nature, they should at first contact the beneficiary requesting that they ask their bank to communicate with the issuing bank to suspend the examination pending a replacement invoice. If fraud is suspected, the applicant should make representations to the court to obtain a court order refraining the issuing bank from effecting settlement.

99- In import DC, the USA authorities will not provide any certificate of origin. How can we waive this?

Answer:

Local chambers of commerce will issue or countersign certificates of origin in the US.

100- Is it possible to include a condition such as payment will be effected only after the food control authority of the importing country has accepted the import?

Answer:

Yes. But for the goods to be released this will usually require release of the documents by the issuing bank. The credit should therefore cater for this occurrence and indicate the document(s) that will be required for payment to be effected once the goods have been approved.

101- Should the date of delivery be mentioned specifically if DC asks for it? Isn't the date of the delivery order document to be taken as the date of delivery if it is not mentioned specifically?

Answer:

If the date of delivery is required to be inserted into a document then it must appear. If the credit does not require the date of delivery to appear then the date of issuance will be taken as the date of delivery.

102- How can a delay penalty be levied through a DC?

Answer:

Delay penalties are usually linked to a delay in shipment. For example, the credit will state:

Expiry date: 31 December 2008

Latest Shipment date: 31 October 2008

Shipment after 31 October 2008 is allowed subject to penalty deduction as follows:

A delay penalty of 1% for each full or part weeks delay will be applicable for shipment effected after 31 October 2008 and must be shown as a deduction on the invoice.

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

Answer:

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

104- An "OFAC" clause was included by a local bank in a DC to Germany. When an enquiry was made, an explanation was given that it was "as per UCP 600". Could you please give some light into the "OFAC" clause?

Answer:

There is no such thing as an "OFAC" clause under UCP. The OFAC clause is a clause inserted to remind banks and beneficiaries that the issuing bank is precluded from dealing with certain countries and parties and that if the documents convey data relating to those countries or parties, the bank may be unable to proceed with the transaction. OFAC stands for the Office of Foreign Asset Control and is based in the US. OFAC regularly update their website with entities and individuals that US banks and banks with US licences are unable to deal with.

105- What is the solution available to the buyer if an exporter negotiated the documents with an inflated invoice value e.g. BL, invoice and packing list show 10 numbers, whereas actual shipment is 5 numbers?

Answer:

This will be a buyer/seller issue. The matter must be resolved between those parties if the documents complied with the DC.

106- Most exporters refuse any kind of hold points before shipment, such as a shipping release issued by the importer following a satisfactory 3rd party factory inspection of the goods before packing. In such cases, what kind of quality guarantee can be provided to make sure the goods are in compliance with the technical specifications before any payment is made?

Answer:

Applicants can seek a performance bond issued in their favour that will act as a vehicle

for recovery in the event of defective goods. Alternatively, the inspection can be made at the point the goods are loaded into the container or on board the vessel.

107- DC expired, so we requested applicant to amend. Applicant said “they will accept the documents with discrepancy”, so what are the basic risk factors for the beneficiary in such a transaction?

Answer:

As the documents will be discrepant and the credit is no longer in existence, the issuing bank could decline to accept a waiver of the applicant to the discrepancies. The issuing bank may also decide that they are only willing to handle the documents on a collection basis subject to the Uniform Rules for Collections (URC522). It is always advisable for the beneficiary to have a workable credit in place before effecting shipment.

108- The details on certificate of origin are to be as per the BL. In a Chinese certificate of origin the port of loading is not mentioned. Is it a discrepancy?

Answer:

The reference to details on the certificate of origin matching with the BL does not link itself to all the data that appears, only that the data that appears on the certificate of origin that is in the bill of lading matches. There would be no discrepancy.

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

Answer:

It is always advisable to have a workable credit in place before shipment is made. If the credit has expired already, there is no DC in place and therefore the UCP does not apply.

110- DC due 180 days from BL date, by negotiation. Payment available to beneficiary 'at sight' with Libor applicable @ x% for applicant's account. This is supposed to be something to do with Re-finance, please add more 'light' on it.

Answer:

This form of documentary credit allows for the beneficiary to be paid on a sight basis but the applicant only pays on the due date. On the due date the applicant will pay the principal amount plus interest at the agreed rate. This is often used by applicants where the interest rates are more favourable in the country of the beneficiary and the nominated bank will handle the discount.

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

Answer:

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

112- How do you see the future of DC's globally?

Answer:

We have to move from the paper world to the electronic world. But, this will involve all parties being ready to accept data as opposed to documents. Some countries are already using electronic means for the customs formalities. To be successful, as a minimum, banks, transport, insurance, inspection companies and chambers of commerce will need to facilitate the movement of authenticated electronic data.

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

Answer:

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

114- In the DC it is mentioned that all bank charges outside Dubai are to the account of applicant. Who will pay the correspondent bank charge (in USA)?

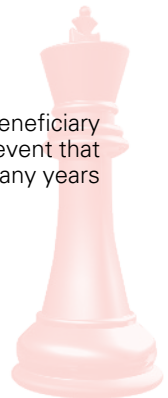
Answer:

If all bank charges outside Dubai are stated to be for the applicant's account, this would include all the charges in the beneficiary's country.

115- What does "payment under guarantee or reserve" mean?

Answer:

Where the bank pays discrepant documents against a document signed by the beneficiary wherein the beneficiary agrees to refund the amount paid, plus interest, in the event that the issuing bank does not accept the documents. This was used extensively many years ago but is not as common today.



116- When a party refuses to be bound by the decision of ICC's dispute resolution unit, what happens? Please share your experience.

Answer:

The ICC's dispute resolution service, known as DOCDEX, is a non-binding arbitration service. To our knowledge, only one case (out of some 70+) has been binding. Where a binding decision was agreed and one party reneged, it would be for a court to determine the outcome but the DOCDEX decision would be as good as any expert witness testimony as it is issued on ICC letterhead.

117- If clean documents are negotiated by a bank under a DC but issuing bank finds a discrepancy, is our payment secure?

Answer:

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

118- The following appears under documents required: shipment advice to be faxed to the customer and transmission report should accompany original documents. All documents are to indicate DC no and date and bank name. Is this possible on a transmission report?

Answer:

The transmission report is evidence of sending the fax and should be attached to the fax at the time of presentation. The transmission report does not require the addition of the DC number and bank name.

119- What is the status of "an irrevocable payment undertaking on first demand" vis-à-vis a "confirmed DC" especially relating to an issuing bank with "country risk"?

Answer:

The language "irrevocable payment undertaking on first demand" is similar to that you would see in a guarantee or standby documentary credit where a simple document is required to evidence default. If the payment undertaking is issued by a bank local to the beneficiary then this could be seen as the equivalent to a confirmation. If the payment undertaking is issued by a bank in the country of the applicant, the beneficiary has the

same decision to make as they have for a commercial documentary credit i.e., are we satisfied with the risk of the issuer? If not, then a confirmation should be sought.

120- What does payment term “180 days from disbursement date” mean?

Answer:

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

121- Are transshipment details mandatory for the insurance policy?

Answer:

Not unless required by the credit. Some insurance companies require insertion of any transshipment details to ensure that transshipment risks are clearly covered in the policy.

122- Can a bank reject documents under ISBP?

Answer:

No. A refusal is based on a document(s) not complying with the terms and conditions of the credit or the UCP. The ISBP is a list of practices that outline how the rules in UCP are to be interpreted. No paragraph of the ISBP states that a bank should refuse due to its content. A bank may use the paragraph number of the ISBP to support their refusal but not as the main reason for refusal i.e., bill of lading discrepant due to paragraph 93 (paragraph 93 states that the bill of lading must indicate the number of originals that have been issued). The discrepancy should read “bills of lading do not indicate the number of originals issued as required by sub-article 20 (a) (iv) – also refer to ISBP paragraph 93”.

123- There is a clause requesting the DC number and date to appear on all documents. If DC number and date are mentioned on one document and on other documents DC number, date and amendment date are mentioned, is it a discrepancy?

Answer:

This is additional data and would not be considered to be a discrepancy. However, a beneficiary should avoid placing data on documents that was not requested by the credit or the UCP.

124- If DC issuing bank advises due date to negotiating bank and if negotiating bank forgets or misses to intimate the information to the beneficiary or claim from reimbursing bank and the payment is overdue, is negotiating bank liable to pay interest to beneficiary for the number of days the payment was delayed?

Answer:

The negotiating bank has a duty of care but unless they have added their confirmation to



the credit they have no obligation to effect payment. However, if the beneficiary has not received payment on the due date they would be entitled to claim interest.

125- Can the following clause be added to a DC?

If the applicant does not collect the documents from the issuing bank before the expiry of the DC, the issuing bank will reshipe the goods to the beneficiary, at the cost of the applicant and intimate the shipping details to the beneficiary within 3 days of re-shipment.

Answer:

This would not be advisable. It takes the management of the goods out of the hands of the applicant and the beneficiary. Also, the clause would require the issuing bank to become involved with the goods, which is against the principle outlined in article 5. The choice of re-shipping the goods must remain with the beneficiary.

126- Would ICC include back-to-back DCs in any future UCP revision (as it is not covered by ICC now)

Answer:

I do not think so. Personally, I see no need as a back to back transaction is two individual letters of credit that are each subject to the UCP. The UCP specifically covers transferable credits as this is a transaction that has two or more credits under the cover of one master credit.

127- How can a supplier ensure that there are no discrepancies existing in documents when submitting to the bank?

Answer:

Apart from ensuring that all the dates (shipment, presentation and expiry) are met, the main thing to remember is to keep the data in documents as short as possible. Only provide the documents requested by the credit and only include data on those documents that is absolutely necessary for the document to be compliant. For example, a requirement for a packing list does not require a detailed document showing contents of each box etc. The requirement for "packing list" can be simply fulfilled by the presentation of a packing list that states "all goods covered by invoice number 123 are shipped in container number ABC3456789.

128- What are the important points to be considered for raising the documentary credit?

Answer:

As an applicant it must be remembered that the documents must 'speak' for the goods. Therefore, it is important that you do not visualise what you think the document will look like but provide detail in the credit as to what you expect to see i.e., the type of document required, the issuer and its content.

129- What is the difference in having a document requirement mentioned in 46A (Docs required) and 47A (additional conditions).

Answer:

None. It matters not where a documentary requirement may be specified in a credit.

130- If beneficiary shipped goods not as per contract under DC, is there any way under UCP600 for non-payment to the beneficiary apart from going to court?

Answer:

If the documents comply with the credit, the bank must honour or negotiate. If the applicant has proof of fraud in the transaction then they must make representation to the local court for an order to stop the issuing bank from paying under the credit. This must be obtained prior to the bank being in a position to effect payment.

131- Does the applicant have to provide complete details of the goods e.g. If we are importing a car, do we need to also state details of the internal fittings, engine etc. in the documentation or is it sufficient to only mention the product e.g. '20 cars of xx make'. How does the applicant protect himself under UCP 600?

Answer:

If the credit contains a simple description as shown above, then the beneficiary need only repeat that on their documents. If the goods are to be of a certain standard then independent inspection can help to minimise the risk of faulty goods being received.

132- A beneficiary wants to include a clause in the DC "third party and chartered documents is acceptable" Is this clause acceptable? What does "chartered document" mean?

Answer:

As mentioned in a previous response to a question, reference to "third party documents acceptable" is not necessary as this is already covered by the UCP (sub-articles 14 (f) and (k)). "Chartered documents is acceptable" should read "charter party bills of lading are acceptable". This condition would allow the beneficiary to present a form of bill of lading known as a charter party bill of lading and is used for commodity or bulk cargoes.



133- We import products from Netherlands and some components of the product are one of UK origin received from the suppliers branch in the UK. Should the DC call for a certificate of origin from Netherlands or should this be considered of UK origin? What happens should there be a legal case due to product having a mix of Netherlands and UK components?

Answer:

If the commodity contains more than one countries product then the credit should reflect this and call for a certificate of Netherlands and UK origin. If there were a legal case, this would be outside the scope of the UCP as it speaks to quotas of goods from various countries.

134- Kindly explain – “acceptance”, “deferred payment” and “negotiation”. What is the difference between them?

Answer:

Acceptance is the act of a nominated bank accepting a draft drawn on it to mature at a future determinable date. The draft, once accepted, is capable of being discounted by the acceptor or any other financial institution. Under a deferred payment DC there is no draft. The transaction must be capable of determining a due date from the documents presented. Under sub-article 12 (b) of UCP 600, the beneficiary may seek prepayment of the nominated bank's deferred payment undertaking. Negotiation is the act of negotiating drafts drawn on the issuing bank accompanied by documents. In rare occasions, no draft is required. Settlement, whether on a sight or usance basis would be subject to a deduction for interest.

135- In case of any discrepancy, what steps should be taken to stop the bank from effecting payment? How long can the payment be stopped? Can the payment be cancelled if the shipment was not as agreed?

Answer:

If the issuing bank gives a refusal notice in respect of documents presented under a credit, the issuing bank may only then pay if the discrepancies are found not to be valid or the applicant provides a waiver of those discrepancies. As applicant, there is no time limit for providing that waiver. However, if the applicant is not willing to take up the documents then they should inform the issuing bank as soon as possible so that the beneficiary may make alternative arrangements regarding the goods.

136- A DC was payable 120 days after BL date. Documents were submitted and accepted by the applicant. If there is any problem with the goods, can the applicant stop the payment to a beneficiary?

Answer:

If the issue is one of quality of goods, the courts will not generally provide an order stopping the bank from paying. Only in circumstances of fraud will the court act by giving an order. However, if the nominated bank has already honoured or negotiated in good faith the courts will usually protect that innocent party.

137- Please provide an opinion regarding DC's calling for documents that require the applicants acceptance and signature?

Answer:

In some cases it is necessary due to the specific nature of the goods which may be outside the scope of an inspection company. This does not mean to say that it is acceptable in all cases. It is for the beneficiary to determine whether or not the condition is acceptable and whether they are willing to proceed with the manufacture of the goods on that basis.

138- What is the recommendation for DC's which call for more than 65% of the value to be paid against applicant instructions and when does the bank's undertaking cease?

Answer:

Anything more than 50% shifts the balance in favour of the applicant. As mentioned in the previous response, the beneficiary needs to consider the implications of such clauses before proceeding. The bank's undertaking will stand until the expiry date and will be enforceable provided the beneficiary can present the appropriate documents.

139- A DC mentioned shipment from Djibouti in transit to Ethiopia. The shipping line refused to mention this in the BL. What should be done in this instance and will this be considered a discrepancy?

Answer:

Either an amendment to remove the condition must be obtained or documents that best match the credit terms and seek the applicant's approval of the discrepancy must be obtained.

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

Answer:

A conference line vessel is a vessel owned by a shipping company that belongs to an association of shipping companies who have an agreement to establish freight rates and



to rationalise sailings on a regular and adequate basis to service particular ports. A regular line vessel is a vessel that sails according to a published timetable and generally has a reserved berth at the port of discharge.

141- In a DC, under field no. 47A (additional conditions), there was a condition "all documents to be issued in English language only". Documents on pre-printed forms written in Arabic language and translated into English language. Are these documents discrepant?

Answer:

No. It is the data that is added that must be in the English language. Provided the field labels are translated into English, the document will be acceptable.

142- If a DC calls for FCR and states the latest delivery date but also stipulates latest date of shipment, port of loading and port of destination, is this acceptable and can it be stated in a DC?

Answer:

A FCR is receipt for goods, it is not evidence of shipment. Therefore, the credit should only require a date of receipt of the goods to appear. Reference to latest shipment date, port of loading and port of discharge should not appear.

143- Please define briefly "Incoterms 2000"

Answer:

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

144- If a DC expired and the materials were not shipped why does the bank need a letter from the beneficiary bank before cancellation?

Answer:

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