

LBBC Webinar

Documentary Credits in International Trade

Practical Issues, Risks and Challenges

27 May 2021

The purpose of this free webinar is to provide LBBC members and guests with information on the following key principles:

- Banks deal with documents not goods
- How to avoid discrepancies
- The “autonomy principal” of Documentary Credits and regulatory compliance
- Avoiding the pitfalls
- Confirmed and unconfirmed LCs

The webinar's particular focus is on Libya but the principles affecting LCs are of course applicable to other markets where LCs are frequently used.



LBBC Webinar

Documentary Credits in International Trade Practical Issues, Risks and Challenges



Webinar Chair: Paul Jennings

Paul Jennings has over 35 years' experience in the International Wholesale Banking sector. Paul is a board member of the Arab Bankers Association and joined the Board of LBBC in September 2018. Paul has spent the past 21 years at ABC International Bank where he was Managing Director and CEO until December 2020. Prior to this he was Deputy CEO of ABC International Bank plc and Group Head, Global Trade Finance of Arab Banking Corporation (B.S.C.).

Webinar Speaker and Panelist

John Turnbull, Executive Advisor, ABC International

Senior Banker and Trade Finance specialist with over 40 years' experience of origination, negotiation, structuring, risk management and regulation of the full range of international commodity trade finance and documentary credit transactions. For 15 years, Global Head of SMBC's Structured Trade & Commodity Finance Group - responsible for structured commodity trade and documentary credit business strategy, as well as client and risk appetite worldwide (across eight regional hubs and 30 global trade locations). Member of the ICC Banking Commission Global Financial Crime Committee and the joint Wolfsberg Group, ICC and BAFT Trade Finance Principles drafting group for the control of Financial Crime risks in Trade Finance. Chairman of the ICC UK Banking Committee and Chairman of the ICC UK Technical sub-committee. Chairman of the ICC UK Trade Finance, Financial Crime, Risk and Policy sub-committee. Chairman of the Association of Foreign Banks trade finance committee.



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Mike Galer, Director of Corporate and Institutional Banking, BACB

Mike Galer is Director of Corporate and Institutional Banking, responsible for the Trade Finance Front Office, and the coverage areas of the Levant, Asia, and the Americas. He has been with BACB for over 20 years and has a wealth of experience in handling trade finance across the markets in which BACB operates, before joining the Bank Mike previously worked at HSBC.



Assad Riyany, Head of Libyan Business, Bank ABC

Assad Riyany is Head of Libyan Business at Bank ABC based in London and heads a team responsible for Bank ABC's Libyan relationships including, Banks, Corporate and non-Banking Institutions, covering all products areas. Assad started with Bank ABC in the Treasury Department in a number of roles culminating in being appointed as Head of Treasury Sales for ABC international Bank (European subsidiary of Bank ABC) where he managed the treasury relationships of the European units. In 2016 he was appointed as the head of the newly created Libyan business desk. He has extensive knowledge of Libyan financial institutions and corporates through his work covering the Libyan market for many years as well as his position as a board member of a Libyan commercial bank.



Mark Wasmuth, Associate Director, BACB

Mark Wasmuth is an Associate Director in the Trade Finance Front Office, having spent four years at BACB he is responsible for Corporate Marketing and managing the Structured LC portfolio, prior to BACB Mark was at First Abu Dhabi Bank (previously National Bank of Abu Dhabi) where he was Corporate Marketing and Relationship Manager in the Trade Finance Department, and also managed the Trade Finance Bonding Portfolio. Mark spent nine years at BankABC as the Commodities Relationship Manager in the Trade Finance Team where he managed bi-lateral facilities and RCF's. Mark also worked at HSBC where he spent 3 years in Trade Finance Operations handling the issuance of LCs and guarantees, document checking and payments.



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About the LBBC

The LBBC is a non-political business association established in 2004 to promote business relations and commercial activity between the British and Libyan business communities. We achieve this primarily through the provision of trade development initiatives and networking opportunities for our Council and Corporate Members, which include some of the UK's leading corporations and represent every major industrial sector.

LBBC Membership

The LBBC is a membership body and currently has over 100 member companies and the full list of members can be found on the lbcc website:
<https://lbcc.org.uk/lbcc-members/>

Membership benefits include:

Current news & key information

Events including:

- Webinars with guest speakers
- Council Lunches
- Annual Lunch at House of Lords
- Sector focused events in UK
- Annual Business Mission in Tunis, pending return to Libya

Advocacy on members' issues, with UK & Libyan authorities, including:

- UK study visas
- Libyan commercial debts
- Performance bonds

Visa service for members visiting Libya

Access to advice on legal, tax or security issues



LBBC Banking Webinar

Documentary Credits in International Trade - Practical Issues, Risks and Challenges

London 27th May 2021

John Turnbull — Executive Adviser — Bank ABC

Programme

Key Principles:

- Banks deal in documents not the goods
- **The “autonomy principle” of LCs and regulatory compliance**
- How to avoid discrepancies and get paid
- Bank responsibilities – confirmed and unconfirmed LCs

DOCUMENTARY CREDITS and UCP 600

What are they? – Definition

Why are they needed? – Risks

Who are the parties involved and how do they interact?

Transaction flow – Diagram

DEFINITION:

'A written conditional undertaking given by a bank on behalf of the buyer, to pay the seller an amount of money within a specified time, provided the seller presents documents strictly in accordance with the terms laid down in the letter of credit.'

It is therefore important to understand that banks deal in documents and not goods which the documents represent and that the documents must strictly comply with the credit terms.

An IRREVOCABLE CREDIT cannot be amended or cancelled without the **beneficiary's** agreement – it therefore provides the seller with an effective pre-shipment undertaking.

Under UCP 600 all credits are “**irrevocable**” unless otherwise expressly stated.

CONTRACTUAL RELATIONSHIPS BETWEEN THE PARTIES UNDER A DOCUMENTARY CREDIT

- Applicant [Buyer] and Beneficiary [Seller]
- Applicant and Issuing Bank
- Issuing Bank and Beneficiary
- Issuing Bank and Nominated/Confirming Bank
- Confirming Bank and Beneficiary

TERMS OF PAYMENT & THEIR IMPLICATIONS

- Sight payment
 - Deferred payment
 - Acceptance
 - Negotiation
- } Honour
- (Article 2. Definitions and sub-articles 6 a. & b. of UCP 600 provide definitions of these terms)

THE ROLE OF THE ADVISING BANK

The Advising Bank is requested by the Issuing Bank to advise the Beneficiary of the terms of the documentary credit and any amendments.

There is no obligation to honour or negotiate. The main function is to take reasonable care to verify the apparent authenticity of the credit and to accurately reflect the terms of the credit and any amendments received. [*Article 9 UCP 600*]

THE ROLE OF THE NOMINATED BANK

A nominated bank is a bank which is authorised by the Issuing Bank to honour or negotiate.

A nominated bank who has not confirmed the LC has no obligation to honour or negotiate

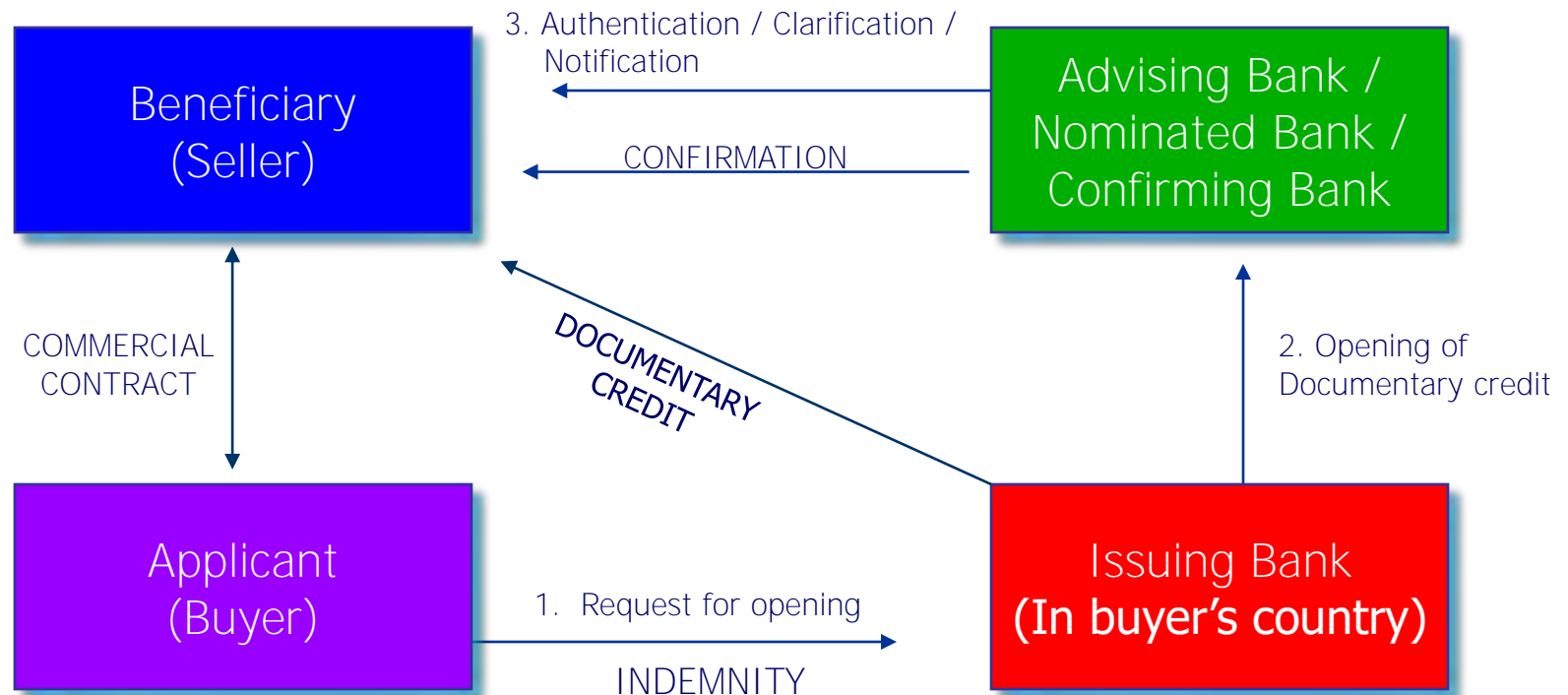
- UNCONFIRMED CREDIT is one which provides the Beneficiary with only the undertaking of the Issuing Bank and is therefore subject to the following risks:
 - Country Risk
 - Credit Risk
 - Risk associated with Foreign Law, Custom and Practice

- The nominated bank has no obligation to pay unless it is reimbursed by the issuing bank

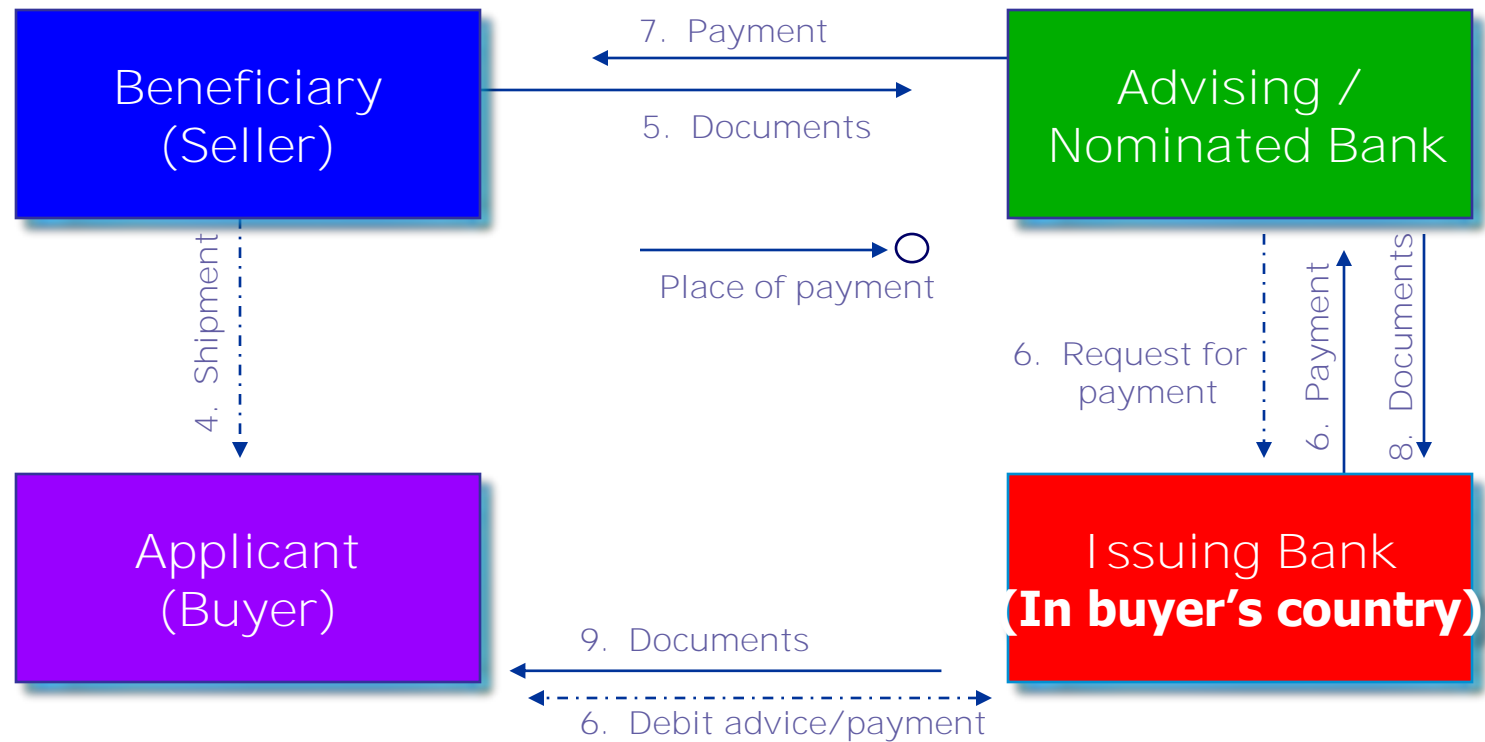
THE ROLE OF THE CONFIRMING BANK

The Confirming Bank is a nominated bank who undertakes to honour or negotiate a complying presentation under the credit. This undertaking is in addition and completely independent from that of the Issuing Bank.

Roles & Responsibilities of Parties to a Documentary Credit Transaction



Document and Payment Circuit - Documentary Credit Payable at Counters of Nominated / Confirming Bank



- Background and focus of UCP 600
- Objectives and key features
- Major changes
- Importance of – **“International Standard Banking Practice for the examination of documents under UCP 600” (ICC 745)**

- Standards for checking and refusing documents
- Replacing **“reasonable time”** with definite time limits
- Consistency of data within documents
- Originality
- Authority to pre-pay under deferred payment L/Cs
- Removal of subjective wording

Sub-article c. states that,

"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"

Sub-article e. states that

*"**Partial** acceptance of an amendment is not allowed and will be deemed to be notification of rejection of the amendment."*

Sub-article f. states that

*"**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."*

- Banks must check on basis of documents alone whether they appear on “their face” to constitute a complying presentation
- Banks shall have a maximum of five banking days following day of document presentation to determine compliance
- Consistency of data :
data, when read in context, must not conflict with data in “that” document, any other stipulated document or the credit.

- Waiver of discrepancies may be sought at the sole discretion of the issuing bank
- **If documents are discrepant, the Bank's notice of refusal to honour or negotiate must provide a:**
 - Single notice stating ;
 - (i) refusal
 - (ii) each discrepancy

- (iii) (a) bank is holding documents pending further instructions from presenter, or
- (b) issuing bank is holding documents until it receives waiver from applicant, or further instructions from the presenter (prior to its agreement to accept waiver), or
- (c) bank is returning the documents, or
- (d) bank is acting in accordance with instructions previously received from presenter

- Notice of refusal by telecommunication no later than close of fifth banking day after presentation
- Failure to comply with Article 16 precludes rejection of the documents even if discrepant

INTERNATIONAL STANDARD BANKING PRACTICE

ICC PUBLICATION NO. 745 (ISBP)

Why was ISBP needed?

- Lack of clear International Standards
- Reduce disputes and document refusals
- Problems with badly issued credits
- To clarify imprecise terms and incorporate ICC Opinions and Decisions
- ‘... to fill a gap between the general principles in the UCP and the daily job of the **practitioner**’

“This publication reflects international standard banking practice for all parties to a documentary credit”

Linkage to UCP 600

“Practitioners are urged to refer to ISBP whenever doubts arise as to how to check documents under UCP 600”

The use of generally accepted abbreviations e.g. **"Ltd"** i/o **"Limited"**, **"mfr"** i/o **"manufacturer"**, **Ind** i/o **Industry** does not make a document discrepant.

Virgules (slash marks **"/"**) may have different meanings and unless apparent in the context used, should not be used as a substitute for a word. If they are used and no context is apparent, then for example **"Red/Black/Blue"** with no further clarification will mean only Red or only Black or only Blue or any combination of them.

The position is the same where a comma is used when indicating a range of data. Eg **"Hamburg, Rotterdam, Antwerp"**.

- Any correction of data in a document issued by the beneficiary need not be authenticated.
- The use of multiple type styles or font sizes or handwriting in the same document does not, by itself, signify a correction.

- Drafts, transport documents and insurance documents must be dated.
- A document, such as, but not limited to a certificate of analysis, inspection certificate or fumigation certificate, may indicate a date of issuance later than the date of shipment.
- Whether documents require dating will depend upon the nature of the document.

The following phrases should not be used as they are not defined in the UCP. If used in a credit, their meaning should be made apparent in the credit.

If not, they should have the following meaning:

“shipping documents” – all documents required by the credit (not only transport documents), except drafts, (or courier receipts/postal receipts etc...)

- “stale documents acceptable” – documents presented later than 21 days after the date of shipment are acceptable as long as they are presented within the validity of the credit.
- “exporting country” – the country where the beneficiary is domiciled, and/or the country of origin of the goods, and/or the country of receipt by the carrier and/or the country from which shipment or dispatch is made.

A misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs, do 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 be regarded as a conflict of data under UCP 600 sub-article 14 (d). However, a description shown as, "model 123" instead of "model 321" will be regarded as a conflict under that sub-article.

- ✓ **Invoices marked “provisional/proforma” are not acceptable unless specifically authorised.**
- ✓ Need not be signed or dated unless specifically required by L/C.
- ✓ Must not show over-shipment or merchandise not called for in the L/C even if FOC.
- ✓ The description of goods must correspond to L/C, but mirror image not required!

- ✓ Goods description must reflect what is actually shipped.
- ✓ Invoice showing entire goods description as per L/C, then stating what has actually been shipped is acceptable.
- ✓ Must evidence the value of goods shipped, unit price (if any), and currency shown in the credit.
- ✓ May show a deduction for advance payment, discount etc. not stated in the L/C.

The Autonomy Principle of Documentary Credits and the Challenges of Regulation, Compliance and Fraud

GENERAL ISSUES

- The autonomy of the Documentary Credit
- The fraud exception in Documentary Credits
- The **bank's** duty to pay against complying documents
- The **bank's** options when faced with the knowledge that the documents may be fraudulent
- **"Red Flags"** and the suspicion of Financial Crime

THE AUTONOMY OF THE DOCUMENTARY CREDIT

Documentary credits are governed by the “Uniform Customs and Practice for Documentary Credits” (UCP 600) issued by the International Chamber of Commerce

- Article 4 - Separate from the underlying contract
- Article 5 - All parties deal with documents not goods
- Articles 7 & 8 - Banks are required to pay against compliant documents

THE AUTONOMY OF THE DOCUMENTARY CREDIT *cont.*

- Article 14 - “Examination of a presentation on the basis of the documents alone” and “documents on their face”
- Article 34 - Banks have no responsibility for the accuracy, genuineness, falsification... of the documents or the goods

Financial Crime,
KYC and AML Issues in
International Trade and the impact
upon payment under LCs

Thematic Review TR13/3

The FCA visited 17 banks in the UK between September 2012 – February 2013. 4 UK banks, 5 global wholesale and investment banks, and a number of smaller overseas banks.

Review of:- governance and M.I., risk assessment, policies and procedures, due diligence, training and awareness, money laundering controls, terrorist financing controls, and sanctions controls.

Focus upon Documentary Letters of Credit and Documentary Bills for Collection.

Main conclusion was that the majority of banks reviewed were not taking adequate measures to mitigate the risk of money laundering and terrorist financing in their trade finance business.

Red flag examples.

Restraining Payment for Fraud or Financial Crime

- Proof of fraud
- **Financial crime considerations...**
- What checks must a bank make?
- When can the bank refuse to pay?