

Guide to Export Documentary Credits

This guide has been developed for information purposes only and does not in any way attempt to explore or offer solutions to risks associated with Documentary Credits and is provided without obligation on the part of Westpac Banking Corporation.

Introduction

Documentary credits are issued by Banks, on behalf of their customers, to facilitate payments for international trade. They take the form of a written undertaking by a bank, given to the beneficiary (exporter) at the request and in accordance with the instructions of the applicant (importer) to effect payment up to a stated amount of money, within a prescribed time limit against presentation of stipulated documents.

It should be remembered that documentary credits and commercial contracts, whilst they may apply to the same shipment, are considered to be entirely separate instruments. Banks only deal with documents presented for negotiation under a documentary credit and does not have any involvement with commercial contracts or goods being shipped.

All Documentary Credits issued by Banks are subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision) International Chamber of Commerce Publication No. 500, commonly referred to as the UCP 500.

This Guide is intended to be used as an aid for exporters in preparing their documents for presentation under an export documentary credit.

Comments on content or suggestions are appreciated and may be made to the address on the final page.

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Receiving a Documentary Export Credit

Documentary Credits are transmitted by the applicant's (importer's) bank direct to the exporter's bank or a bank nominated by the exporter, or alternatively to a preferred correspondent should a particular bank not be nominated or known.

The receiving (advising) bank will check that the documentary credit that has been remitted is a workable instrument prior to handing to the beneficiary. However, they are unable to determine the accuracy of terms and conditions contained within the Credit e.g., description of goods, date of expiry, tenor (term), amount etc. *Therefore, responsibility ultimately lies with you, the exporter, to ensure that terms and conditions contained within the Credit reflect those agreed with the importer eg.*

- Is the credit the type agreed upon in the sales contract?
- Are the names and addresses correct?
- Is the payment term as agreed upon in the sales contract?
- Can the shipment be effected within the shipment expiry period?
- Is the product description as agreed upon in the sales contract?
- Are the terms of delivery as agreed?

Should any terms or conditions be incorrect, you should contact the importer ***immediately*** and arrange for the Documentary Credit to be amended.

On the following page we have included a suggested documentary credit format which you can provide to your overseas buyer.

Documentary Credit

Suggested Format

The following format may be included in your pro forma invoice or as part of the underlying sales contract between you and your overseas buyer.

To: [Buyers' name]

We suggest that you request your bank to issue an irrevocable documentary credit incorporating the following terms and conditions.

- Establish by SWIFT and advise through Westpac Banking Corporation, International Trade Services, Sydney
- Confirmation by Westpac Banking Corporation required YES/NO
- Documentary Credit to be transferable YES/NO
- Beneficiary [your company name and address]
.....
- Amount Currency..... Amount
- Payable at ... Sight
 ... days after sight
 ... days after shipment
- Discount charges account: Seller / Buyer
- Covering: [goods description]
.....
- Documents required:
 - signed commercial invoice(s)
 - packing list
 - transport document
 - clean on-board marine bill of lading
 - sea waybill
 - air waybill
 - insurance certificate
 - other
- Shipment from:
Shipment to:
- Partial shipments: Allowed/Not Allowed
- Transshipment: Allowed/Not Allowed
- Shipping terms: FOB/CFR/CIP..... As per Incoterms 2000
- Latest shipment date:
- Expiry date for the documentary credit:
- Westpac Banking Corporation's charges are for account of: Applicant / Beneficiary
- Special Instructions:
.....

Guidelines for Preparing Documents

The following checklist has been prepared to assist an exporter with the preparation of documents under a Documentary Export Credit established subject to Uniform Customs and Practice for Documentary Credits (1993 Revision) Publication No. 500.

The Credit

Ensure that:

- Documents have been presented to Westpac (the negotiating bank) within the time specified (if no time has been specified within 21 days of shipment date), and on or before expiry date of the credit
- The amount of the drawing does not exceed the amount of the credit

The Draft (Bill of Exchange)

Ensure that the draft is:

- Drawn without errors [whiteout/erasures are not permitted], correctly signed and bears all clauses specified
- Drawn for the correct tenor (term) eg. sight or 180 days after bill of lading date
- Correctly dated within the validity of the credit
- Drawn on the party specified
- Drawn to order and correctly endorsed
- Drawn for the amount and currency of the invoice (or percentage of invoice value as stipulated in the credit)
- Amounts in words and figures agree

Invoices

(Refer UCP Article 37)

Ensure that:

- They are completed in the required number
- They are addressed to the correct party
- They show the exact description of the goods as specified in the credit and that prices, price basis (eg. FOB/CIF), quantities and specifications are as called for (Refer UCP Article 39 for amount and quantity tolerance, if any, that may be allowed)
- They bear any other details specified and do not include any unauthorised goods even though not charged for
- If the credit specifically stipulates signed invoices that they are signed (Refer UCP Article 20 for definition of signature) and stamped "original"
- That no extraordinary charges (eg. teletransmission costs, storage, airmail postage) are included unless authorised in the credit
- Shipping marks and numbers agree with other documents
- Quantities and weights (if any) agree with other documents
- If a part shipment, credit does not prohibit partial shipment and amount drawn is pro-rata to quantity shipped

Insurance Documents

(Refer to UCP Articles 34 to 36)

Ensure that:

- They comprise a properly signed, dated and stamped (if applicable) policy (unless a certificate is permitted). Brokers' cover notes are not acceptable unless authorised in the credit
- They are in negotiable form (if drawn to order of shipper, all copies must be properly endorsed in blank), unless credit specifies otherwise
- Cover is for the amount specified (including any specified percentage excess). If the credit does not specify amount; minimum amount of insurance is to be 110% of CIF or CIP value of the goods as determined from the documents on their face. If this cannot be so determined, the amount should be 110% of the amount claimed under the credit or 110% of the gross amount of the invoice, whichever is the greater
- All risks specified in the credit are covered for the complete journey
- Unless the credit specifies otherwise, insurance is expressed in the currency of the credit, with claims payable in the country of destination. They adequately describe the merchandise and that the name of the carrying vessel, marks, numbers, quantities, weights, ports of shipment and destination agree with other documents
- If the goods are to be transhipped, or if an "on deck" shipment is involved these aspects are covered by the policy/certificate
- They are dated not later than the bill of lading, or otherwise establish that cover is effective at latest from date of shipment or dispatch
- Any alterations or attachments have been properly authenticated by the insurance company

Transport Documents

(Refer UCP Articles 23 - 33)

Bills of Lading/Sea Waybills etc.

Ensure that:

- They are properly issued by a steamship company or its agent, and that the full set of signed negotiable copies is tendered (unless the credit instructs otherwise)
- They are made out to order of the party specified. If required to order of shipper, that shipper has endorsed in blank
- They indicate port of shipment; destination and if called for name of ship and "notify party"
- They indicate "shipped" or "on board", unless the credit allows otherwise, evidenced either by such wording embodied within the bill of lading or by means of an "on board" notation which must be dated and include the name of the vessel on which the goods have been loaded
- They cover the goods specified in the credit and invoice, however the description may be in general terms provided they are not inconsistent with the credit description
- If transhipment is indicated, that the credit does not specifically prohibit transhipment and that the entire voyage is covered by one and the same bill of lading
- Goods are not shown as shipped "on deck" unless the credit permits. If the credit specifically calls for shipment "under deck" that the bill of lading categorically states this
- They are 'clean', i.e. bear no clause or notation which expressly declares a defective condition of the goods and / or the packaging, unless the credit specifies clauses which may be accepted. A clause or notation qualifying the good order and condition of goods / packing may be placed on the bill of lading by the shipping company or be included in the description of the goods in either case the bill of lading is 'unclean'

- If they bear superimposed or additional clauses (other than those covered above), then the utmost caution is exercised before accepting such Bills of Lading unreservedly as good tender
- They are presented within the specified period of time after date of issuance of the Bills of Lading (or other shipping documents), or if no such period is stipulated, not later than 21 days after date of issuance of the Bills of Lading or other shipping documents
- They evidence prepayment of freight where the credit and / or the invoice indicates shipment is C.I.F. or CFR
- Bills of Lading issued by forwarding agents indicate that they are issued by a freight forwarder acting as a carrier or multimodal transport operator or the named agent of a carrier or multimodal transport operator
- They are dated before the expiry date of the credit or the time limit for shipment, if specified by the credit
- The goods specified agree in quantity, weight and marks with other documents
- Any alterations have been authenticated by the shipping company
- Charter party Bills of Lading are not presented unless authorised by the credit

Air Waybills / Air Transport Documents (Refer to UCP Article 27)

Ensure that:

- The credit authorises transport by air
- Consignee is named as required by the credit
- The goods specified agree in quantity, general terms, marks, numbers, weights (as applicable), with credit and other documents
- It indicates that the goods have been accepted for carriage
- It is the original for consignee / shipper
- It is signed correctly by the carrier or his named agent

Courier and Post Receipts (Refer to UCP Article 29)

Ensure that:

- The credit authorises transport by such medium
- Addressee / consignee is named as required by the credit
- The goods specified agree in quantity, general terms, marks, numbers, weights (as applicable), with credit and other documents
- They are properly dated, signed, stamped or authenticated in the place from which the goods are to be shipped

Other Documents (Refer UCP Article 33)

These documents could include such items as Consular Invoice, Certificates of Origin, Analysis, Inspection, Weight Notes, Packing Lists.

Ensure that:

- They comply with the credit requirements and that the details and date, if applicable, are not inconsistent with other documents
- They are issued by a particular party or authority, if specified in the credit, and are properly signed where necessary
- The original and any requisite copies are presented, unless the credit otherwise provides

Common Discrepancies

- Documentary Credit has expired
- Documentary Credit is overdrawn
- Description of goods on invoice does not match description of goods on Documentary Credit
- Shipping terms (eg. FOB/CFR) omitted from invoice
- Late shipment of goods
- Incorrect freight terms stated on Bill of Lading ie. freight prepaid in lieu of freight collect
- Documents presented to negotiating bank outside stated period (late presentation)
- Goods insured for incorrect amount
- Bill of Lading endorsed incorrectly
- Transshipment effected when prohibited by Documentary Credit
- Port of Loading or delivery differs from the Documentary Credit

It is important to ensure that documents you have prepared appear, on their face, to be in compliance with the terms and conditions of the Credit. Discrepancies should be corrected where possible before lodging documents with your bank to avoid delays in payment and additional costs.

Dispute Resolution

The best advice for dispute resolution involving documentary credits is, plan for it **before** negotiating your sales contract. After the contract has been signed is often too late.

A lot of trade transactions are based upon mutual trust of the parties involved and the exporter is often reluctant to discuss dispute resolution. It is too late after a dispute has arisen to agree a suitable process satisfactory to all parties.

Exporters should first have investigated their potential buyers before signing a contract. Do they have a reputation for reliability, payment of their obligations and above all credit worthiness?

Reference to ICC Incoterms (standard “trade terms”) in the contract can avoid any misunderstandings between the parties involved. Incoterms such as FCA, FOB and CIF clearly indicate the responsibility of the buyer and seller for the various costs relating to transport and insurance.

International dispute resolution can be quite costly, however, for major contracts the ICC International Court of Arbitration is probably the most used. Costs can include arbitrators’ fees and expenses, administrative charges and lawyers’ fees and expenses. Time to completion of arbitration is dependent upon the complexity of the issues and appeals. On average, arbitration cases can take from 1 to 3 years to completion. Amicable resolution of disputes without resorting to arbitration would always be the preferred outcome.

Confirmation - Avoidance of Bank and Country Risks

Basically, the receipt of a documentary credit issued by an overseas bank minimises the buyer risk only. That is, the overseas bank will honour a draft, or otherwise pay, on presentation of specific documents by the exporter within a stated period of time. The risk remains for the exporter that the issuing bank may not meet its obligations due to insolvency (bank risk) or is prevented due to regulatory reasons (country risk). The exporter can eliminate these additional risks by seeking to have their export documentary credit confirmed by Westpac. If agreed, Westpac provides an additional guarantee of payment through confirming the credit. (Risks associated with bank collapses in Asia in late 1997 could have been minimised through confirmation of their documentary credits).

A confirmation fee, based upon assessment of the bank and country risk and the term required is payable at time of confirmation, usually by the exporter. Negotiations of compliant documents under a confirmed documentary credit have the additional benefit of being "without recourse" to the exporter.

Transferable Documentary Credits

A transferable documentary credit is one which allows the first beneficiary to make part or all of their export documentary credit available to another supplier (second beneficiary). It is often used by middlemen or brokers. The use of a transferable credit requires the knowledge and agreement of the importer (applicant of the documentary credit). The exporter's bank will charge a fee based upon the complexity and risks involved in the transfer.

Assignment of Proceeds under an Export Documentary Credit

The exporter may request his bank to assign all or part of the proceeds payable under the documentary credit to a third party, usually a supplier. A request for assignment is made prior to negotiation of documents and the assignee is provided with a letter of assignment by the bank. The export documentary credit must not specifically prohibit assignment. Application must be in the bank's required application/indemnity format. The bank charges a flat fee for this service.

Recommended Reading

For further information or reading on the subject we recommend the following:

- ICC Guide to Export - Import Basics, (publication No. 543) ICC Australia, Level 50, 101 Collins Street, Melbourne, Victoria 3000
- ICC Uniform Customs and Practice for Documentary Credits, 1993 Revision (publication No. 500) ICC Australia, Level 50, 101 Collins Street, Melbourne, Victoria 3000
- ICC Guide to Documentary Credit Operations, (publication No. 515) ICC Australia, Level 50, 101 Collins Street, Melbourne, Victoria 3000
- ICC Incoterms 2000, (publication No. 560) ICC Australia, Level 50, 101 Collins Street, Melbourne, Victoria 3000
- ICC Guide to Incoterms 2000, (publication No. 620) ICC Australia, Level 50, 101 Collins Street, Melbourne, Victoria 3000
- Country Economic Briefs, Department of Foreign Affairs and Trade, R.G. Casey Building, John McEwen Crescent, Barton ACT 0221
- Export Handbook 2000 17th Edition, College of International Business /Australian Institute of Exports (NSW) Ltd, 320-324 Sussex Street, Sydney NSW 2000

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