

# USE OF IRREVOCABLE LETTERS OF CREDIT

## Guidance for Implementing OFPP Policy Letter 91-4



Executive Office of the President  
Office of Management and Budget  
Office of Federal Procurement Policy

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GUIDANCE FOR IMPLEMENTING POLICY LETTER 91-4  
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OFPP PAMPHLET NO. 7: GUIDANCE FOR IMPLEMENTING  
POLICY LETTER 91-4, USE OF IRREVOCABLE LETTERS OF CREDIT

A. BACKGROUND

*Historical usage*

Letters of credit (LOC) originally were used to facilitate long distance and international merchandise transfers. A seller initiated goods transport if the buyer gave a letter of credit to the seller. The seller would receive payment, upon presentation of a draft or other demand for payment on the buyer's bank, and upon presentation of certain specified documents such as bills of lading (showing that the goods had been shipped, or the goods had arrived at their destination). These were termed documentary letters of credit.

In more recent years letter of credit usage has expanded, and now letters of credit frequently are used to reduce the risk of nonperformance under a contract that calls for performance. These letters of credit not associated with a sale are termed "standby letters of credit."

*Current usage*

In 1990 1661 U. S. banks engaged in over \$170 billion dollars of standby letter of credit activity. Just eleven banks were responsible for over \$100 billion of the total amount.

Standby credits are frequently used in real estate development to ensure developer equity in a project pursuant to a loan commitment, and as the collateral for liquidated damages. Municipalities may use credits as security for developer promises to install improvements such as roads, utilities, etc. Promissory notes are frequently secured with a standby credit. Standby credits may secure the balance due on leases. Standby credits have also been used to guarantee obligations in connection with securities transactions.

B. NEED FOR BANK EVALUATION

It is important to evaluate a bank's credit worthiness before accepting a letter of credit issued by a bank, because letters of credit are not considered "deposits" that are covered by federal deposit insurance, *FDIC v. Philadelphia Gear*, 476 U.S. 426 (1986).

(If a bank is sufficiently unhealthy as to fail, the beneficiary of a letter of credit will generally be regarded as a general creditor.)

### C. SERVICES PROVIDED BY BANK RATING COMPANIES

There are many commercial rating services that rate financial institutions. Most banks know the specific rating that the rating companies have assigned their banks. Banks ratings are usually updated quarterly. Generally bank rating services fall into either quantitative or qualitative services. Quantitative services usually rate a large number of banks and do so through modeling of data elements--capital, asset quality, earnings, and liquidity,-- from call reports. Qualitative services usually rate a smaller number of banks, - frequently the larger banks - and may use information gleaned from bank management, as well as call report data elements. Because qualitative services rate the largest banks, they frequently rate bank holding companies as well, and may prepare a consolidated report that lumps the bank and the bank holding company. Some of the rating services (Fitch and Moodys) actually issue Letter of Credit (LOC) ratings by bank.

Rating companies considered to be quantitative companies are Ferguson/Cates, IDC, Lace, and Veribanc. Rating companies considered to be qualitative are Duff & Phelps, Fitch, Moodys, Standard and Poors, and Thomson BankWatch.

<b>Companies</b>	<b>Services</b>	<b>Charge</b>
Duff & Phelps (212-908-0200)	Rates 50 largest banks and bank holding companies (BHC).	Subscription service.
Ferguson/Cates 202-659-8300	Rates 1900 banks.	Subscription service, or \$50/bank for 1 rating.
Fitch 1-800-753-4824	Rates big banks and their products. Does not do credit service rating. They write full reports. Rates LOC's.	Can order a previous report for \$50.
IDC 1-800-544-5457	They rate 30,000 institutions: banks, BHCs, credit unions, S & L's.	\$25 for a bank rating. Can charge on VISA etc.

LACE 301-662-1011	Rates all banks and thrifts.	Subscription price or \$45 per bank report. Can charge on VISA etc.
Moody's	Rates approximately 400 banks and BHCs. Rates LOC's.	Subscription service.
Standard & Poors 212-208-1147	Rates 200 banks and 50 S & L's under financial institution service, and also rates 600-700 other institutions in the "Q" service.	Subscription service.
Thomson BankWatch 212-510-0300	Rates the top 400 banks, 50 thrifts.	Subscription service.
Veribanc 617-245-8370	Rates over 12,000 banks.	Oral bank rating for \$10. Verifax report for \$57.50.

#### D. ACCEPTABLE BANK RATINGS

A financial institution must receive an investment grade or better rating from any one of these companies for it to be considered an acceptable issuer or confirmer of a letter of credit in which the U.S. Government is the beneficiary.

If a rating service has issued a LOC rating for a bank, that LOC rating should be used in preference to other ratings. If both long term and short term ratings are available use the long term rating.

<b>Rating Service</b>	<b>Acceptable rating</b>
Duff & Phelps	Long term debt: AAA, AA+, AA, AA-, A+, A, A, BBB+, BBB, BBB- Short term debt: D1+, D1, D1-, D2, D3
Ferguson	Anything between 1 and 3.5 is acceptable on a scale of 1 to 5, with 1 being the best.
Fitch	F1+, F-1, F-2,

IDC	125 or higher is acceptable on a scale of 1 to 300, with 300 being the best.
LACE	A+ to B is acceptable on a scale of A to E, with A being the best.
Moodys	Short term debt: P-1, P-2, P-3 Long term debt: Aaa, Aa, A, Baa (1, 2, & 3 are used to modify the long term ratings.)
Standard & Poor	Short term: A-1, A-2, A-3 Long term: AAA, AA, A, BBB (+ and - are used to modify the long term ratings.)
Thomson BankWatch	A, A/B, B, B/C, C is acceptable, on a scale of A to E.
Veribanc	Green three star (Green ***)

#### E. LEGAL ISSUES

Much of the following discussion comes from "The Law of Letters of Credit" by John Dolan (Professor of Law at Wayne State University), Warren, Gorham & Lamont, Inc. 1991.

Letter of credit law is unique and is not premised on contract law. LOC are governed by either Article 5 of the Uniform Commercial Code (UCC) as adopted by the states, or by the Uniform Customs and Practices (UCP) as drafted by the International Chamber of Commerce and incorporated into specific letters of credit. (Generally the UCC does not prohibit a preference for the UCP; and four states, New York, Arizona, Missouri, and Alabama have adopted the UCP over the UCC.)

#### *Standby credits as distinguished from surety contracts.*

Surety contracts and standby credits are two commercial devices which ensure against an obligor's nonperformance. They function however in different ways.

With a surety contract, upon the obligor's default, the surety company may complete the obligor's performance by hiring someone to complete the performance. Until the fact of the obligor's nonperformance is determined, and the beneficiary and the surety may litigate this fact, the beneficiary bears the cost of delay.

The standby credit has the opposite effect of the surety contract: it reverses the financial burden of the parties during litigation. The beneficiary receives his money promptly upon presentation of the credit to the bank. The beneficiary's presentation of the documents may not be correct, but in that case the account party may sue the beneficiary for recovery.

#### *Letter of credit*

A letter of credit is a primary obligation by a bank that is payable against presentation of documents and is independent of the underlying transaction. It is this independence principle that distinguishes letter of credit law from contract law and the law of suretyship which is based on contract principles.

A "clean" credit is a letter of credit whose terms require the issuer or confirmer to honor the drafts without further documentation. That is, upon presentation of the draft saying "pay me," the bank will pay the beneficiary. No other documents are required, and the underlying contract is not at issue. The OFPP format is a clean credit.

#### *Issuing and confirming banks*

Issuing bank: A bank that promises to pay against presentation of documents. Confirming bank: A second bank that takes the first bank's promise and advises the beneficiary of the issuance of the letter of credit but also adds its own obligation to the credit. The beneficiary draws on the confirming bank, but if for some reason the confirming bank dishonors, the issuing bank is liable.

#### *Timely presentation*

Timely draw under a letter of credit is crucial. It is the general rule of credits that time is of the essence and that banks and courts will enforce the credit's expiry date strictly. The expiry date of a credit is the time by which the beneficiary must present the documents, not the time by which the issuer must pay. In one case, delay in the mails caused a beneficiary to lose its right to payment. In *Consolidated Aluminum Corp. v. Bank of Virginia*, the beneficiary mailed its draft and certificate by certified mail on April 2. The credit expired on April 7. The draft arrived at the issuer's counters on April 11. The court upheld the bank's refusal to pay.

Under the UCP a bank is allowed a "reasonable time" in which to dishonor the credit. The courts have interpreted this to mean anything from 3 to 14 days.

#### *Strict vs. substantial compliance*

The majority of cases follow the strict compliance rule and enforce the conditions of the credit strictly. Thus if a credit calls for a draft the beneficiary must present one. Failure to do so renders the presentation noncomplying. One case held that

a collection letter is insufficient since it is not a draft. If credits call for drafts in a specific format, that format must be followed.

#### F. OPERATIONAL TECHNIQUES

##### *Finding a rating company.*

A contracting officer may assist a contractor in finding a rating company by suggesting to the contractor that the contractor ask a bank what companies have rated that bank and what that bank's rating is. All banks should know which companies have rated their bank and what their rating is.

##### *Drawing on the bank.*

The beneficiary (the U. S. Government agency) draws on the confirming bank. If the confirming bank dishonors (i.e., refuses to pay) the beneficiary should also draw on the issuing bank prior to the expiration date.

IT IS RECOMMENDED THAT LETTERS OF CREDIT BE PRESENTED TO THE BANK AT LEAST 10 WORKING DAYS PRIOR TO THE EXPIRATION DATE.

If a beneficiary draws on the credit at least 10 working days prior to expiry, the bank should either pay or dishonor before the expiration date. A bank may dishonor but cite problems that can be cured. By drawing on the letter of credit prior to its expiration date, if the bank dishonors, the beneficiary may be able to cure in sufficient time to properly draw on the credit. If sufficient time is not available to the beneficiary to cure the problem before the expiry date, the beneficiary will not be able to collect.

##### *Procedures for subcontractors and suppliers to obtain payment under letters of credit.*

A contracting officer is authorized to draw on the bank for a payment credit prior to the expiry date upon notification (and proof) by subcontractors or suppliers that a suit has been filed. Pending the outcome of the suit the funds may be deposited with the court or put in an escrow account. The contracting officer may release those funds upon the Government's receipt of a court judgment, or a sworn statement by the subcontractor or supplier that the claim is correct along with a notarized authorization of the release by the contractor stating it approves of such release. This procedure is similar to that already in the FAR for escrow accounts established by individual sureties.

##### *Transfers and assignments of the letter of credit.*

A letter of credit may be transferred from one beneficiary to another. The transferee beneficiary now has all the rights and privileges of the original beneficiary. (It may be necessary to

privileges of the original beneficiary. (It may be necessary to do this if the original government agency named as beneficiary changes its name due to reorganization, etc.). After a beneficiary has drawn on the letter of credit, the beneficiary may want to assign the proceeds to someone else, for instance a subcontractor or supplier under the payment credit. **With both transfers and assignments it is imperative to contact the confirming bank, or issuing bank, before such transfer or assignments.** Banks have specialized procedures, forms, and charges for these transactions.

#### *Warranty periods*

It is assumed that a letter of credit for performance will remain in effect for the warranty period. The contracting officer has the discretion, and is encouraged, to reduce the amount required during the warranty period.

A letter of credit for payment should remain in effect for the duration of the statutory period for bringing suit under a bond.

#### *Cancellation of the letter of credit*

The contracting officer shall provide the financial institution with a written statement waiving the beneficiary's right to payment, in effect canceling the letter of credit, upon the later of, project acceptance or expiration of the warranty period for the performance credit, and upon the later of project acceptance or expiration of the statutory period for bringing suit for the payment credit.

#### *Issued and confirmed letters of credit*

If a letter of credit issued by the issuing bank is confirmed by a confirming bank, the contracting officer should carefully check both documents to ensure that the terms are identical. The dollar amounts, expiration date, and place of payment should be the same. Either the issuing bank's letter of credit or the confirming bank's letter of credit may not be automatically renewed. In either event the CO must ensure that another letter of credit is provided or the government should draw on the letter of credit prior to its expiration.

### G. RESPONSIBILITIES OF GOVERNMENT AND CONTRACTOR

#### Government

Drafts contract solicitation to state letters of credit are allowable.

#### Contractor

Arranges for delivery of (1) letter of credit from bank, (2) written proof of bank's rating, and (3) certifies that documents not fraudulent.

Contracting officer (CO) checks documents as submitted by contractor. USG reserves the right to request evidence that all signatures are valid and the signer is authorized to sign, such as a confirming telex, letter, or other appropriate evidence as determined by the CO. If acceptable, CO looks at expiration date on letter of credit and puts it in a tickler file to pop out 60 days before stated expiration date. The CO should carefully check both the confirmed and issued LOC to ensure that terms are consistent.

Inserts contract clauses that require: 1) renewal and submission of letter of credit to USG at least 30 days before expiration date. 2) updated bank rating every year. 3) substitution of letter of credit from acceptable bank if issuing bank falls below acceptable credit rating.

45 days prior to expiry, the CO may want to check with the bank to determine the status of the LOC renewal.

The CO shall provide written notification to contractor before presenting the letter of credit to the bank for payment. Other FAR procedures that provide written notification may be used in lieu of separate writing.

Contractor is solely responsible for timely renewal and substitution of letter of credit at least 30 days prior to expiration. Failure to do so may result in USG drawing on the letter of credit. Contractor is also responsible for submitting updated bank rating every time the letter of credit is renewed, or annually, whichever is earlier. If the bank's rating changes and becomes unacceptable, the contractor is responsible for finding a substitute credit. Failure to do so in a timely manner may result in the USG drawing on the letter of credit.

The CO should present the letter of credit to the bank for payment at least 10 working days before its expiration date. A request for payment in the format of Exhibit A-Sight Draft should accompany the letter of credit.

EXHIBIT A  
SIGHT DRAFT

\_\_\_\_\_  
[City, State]  
\_\_\_\_\_, 19\_\_

[Name and address of bank]

Pay to the order of \_\_\_\_\_(Beneficiary Agency)\_\_\_\_\_ the sum of  
United States \$ \_\_\_\_\_. This  
draft is drawn under Irrevocable Letter of Credit No.  
\_\_\_\_\_.

[Beneficiary agency]

By: \_\_\_\_\_

#### H. PROGRAM EVALUATION

The Office of Federal Procurement Policy (OFPP) is interested in knowing how this program is operating. Please call us with your questions or comments on how the program is progressing (Carol Dennis, Deputy Associate Administrator on FTS 395-3501 or 202-395-3501). You may also call if you would like us to check with a particular rating company to determine if the bank rating you have received is correct.

I. LISTING OF BANKS WITH OVER \$25 MILLION IN STANDBY LETTER OF CREDIT ACTIVITY IN 1990. Attached.

J. COPY OF UNIFORM CUSTOMS AND PRACTICES ("UCP"). Attached. Reprinted with permission of the International Chamber of Commerce and the U.S. Council on International Banking, Inc.

K. SAMPLE LETTER OF CREDIT FORMS

## [Issuing Bank's Letterhead]

## SAMPLE PERFORMANCE OR PAYMENT LETTER OF CREDIT FORM

Issue Date \_\_\_\_\_

IRREVOCABLE LETTER OF CREDIT NO. \_\_\_\_\_

Account party's name \_\_\_\_\_

Account party's address \_\_\_\_\_

For contract no. \_\_\_\_\_ (for reference only) \_\_\_\_\_

TO: Beneficiary (U.S. Government agency)

Beneficiary's address

We hereby establish this irrevocable and transferable Letter of Credit in your favor for drawings up to United States \$ \_\_\_\_\_ . This Letter of Credit is payable at [our] [confirming bank's] office at \_\_\_\_\_ [issuing bank's address] [confirming bank's address] \_\_\_\_\_ and expires with [our] [confirming bank's] close of business on \_\_\_\_\_, 19\_\_.

We hereby undertake to honor your or transferee's sight draft(s) drawn on [us] [confirming bank], for all or part of this Credit if presented at the office specified in the above paragraph on or before the expiry date or any automatically extended expiry date.

It is a condition of this Letter of Credit that it is deemed to be automatically extended without amendment for one year from the expiry date hereof, or any future expiration date, unless at least 60 days, prior to any expiration date we notify you or the transferee by registered mail, or other receipted means of delivery, that we elect not to consider this Letter of Credit renewed for any such additional period. At the time we notify you we also agree to notify the account party [and confirming bank] by the same means of delivery.

This Letter of Credit is transferable. Transfers and assignments of proceeds are to be effected without charge to either the beneficiary, or the transferee/assignee of proceeds.

This Letter of Credit is subject to the Uniform Customs and Practice (UCP) for Documentary Credits, 1983 Revision, International Chamber of Commerce Publication No. 400, and to the extent not inconsistent therewith, the laws of the \_\_\_\_\_ [state of the confirming bank if any, otherwise state of the issuing bank] \_\_\_\_\_. If this Credit expires during an interruption of business as described in Article 19 of said Publication No. 400, the bank hereby specifically agrees to effect payment if this Credit is drawn against within 30 days after the resumption of business.

Very truly yours,

\_\_\_\_\_  
[Issuing bank]

[Confirming Bank's Letterhead]

\_\_\_\_\_, 19\_\_

Our letter of credit  
Advice Number\_\_\_\_\_

Beneficiary:

Issuing Bank:

Issuing Bank's LC No. \_\_\_\_\_

Gentlemen:

We hereby confirm the above indicated letter of credit, the original of which is attached, issued by \_\_\_\_\_[Name of issuing bank]\_\_\_\_\_ for drawings of up to United States Dollars \_\_\_\_\_ U.S/ \$\_\_\_\_\_ and expiring with our close of business on \_\_\_\_\_(the expiration date), or any automatically extended expiration date.

It is a condition of this confirmation that it be deemed automatically extended without amendment for one year from the expiration date hereof, or any automatically extended expiration date, unless:

A) At least sixty (60) days prior to any such expiration date we shall notify you or the transferee and the issuing bank, by registered mail or other receipted means of delivery, that we elect not to consider this confirmation extended for any such additional period.

OR

B) The issuing bank shall have exercised its right to notify you or the transferee, the account party, and ourselves, of its election not to extend the expiration date of the letter of credit.

Draft(s) drawn under the letter of credit and this confirmation are payable at our office located at \_\_\_\_\_.

We hereby undertake to honor draft(s) drawn under the letter of credit and this confirmation if presented at our offices as specified herein.

This confirmation is subject to the Uniform Customs and Practice for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400 (the "UCP"), and to the extent not inconsistent therewith, the laws of the \_\_\_\_\_ [state of the confirming bank]\_\_\_\_\_.

If this confirmation expires during an interruption of business of this bank as described in Article 19 of the UCP, we hereby specifically agree to effect payment if drawn against under our confirmation within thirty (30) days after the resumption of our business.

Very truly yours,

\_\_\_\_\_  
[Confirming Bank]

**All Banks in 1990 with letter of credit activity**

**(Dollars in Thousands)**

<b>Institution Name</b>	<b>Fin Standby LC</b>	<b>Perf Standby LC</b>	<b>Comb. Standby LC</b>
1 Citibank, N. A.	\$13,650,000	\$14,089,000	\$27,739,000
2 The Chase Manhattan Bank (National A	\$2,631,104	\$9,388,560	\$12,019,664
3 Morgan Guaranty Trust Company of New	\$10,407,603	\$1,417,345	\$11,824,948
4 Bank of America Nat'l Trust & SA	\$2,239,000	\$7,956,000	\$10,195,000
5 Security Pacific National Bank	\$7,988,718	\$1,845,605	\$9,834,323
6 Manufacturers Hanover Trust Company	\$6,971,000	\$908,000	\$7,879,000
7 Bankers Trust Company	\$5,914,000	\$261,000	\$6,175,000
8 The First National Bank of Chicago	\$4,584,343	\$644,010	\$5,228,353
9 The Bank of New York	\$3,851,804	\$667,775	\$4,519,579
10 Chemical Bank	\$3,947,000	\$567,000	\$4,514,000
11 Continental Bank, N.A.	\$1,738,000	\$1,701,000	\$3,439,000
12 Mellon Bank, National Association	\$2,624,255	\$328,373	\$2,952,628
13 Marine Midland Bank, N.A.	\$2,233,284	\$422,503	\$2,655,787
14 National Westminster Bank USA	\$2,442,752	\$78,933	\$2,521,685
15 Pittsburgh National Bank	\$1,961,267	\$217,919	\$2,179,186
16 The First National Bank of Boston	\$1,192,106	\$970,335	\$2,162,441
17 The Bank of Tokyo Trust Company	\$919,692	\$1,067,640	\$1,987,332
18 First Bank, N.A.	\$1,833,565	\$45,441	\$1,879,006
19 Wells Fargo Bank, N.A.	\$847,278	\$991,542	\$1,838,820
20 Union Bank	\$1,574,914	\$77,827	\$1,652,741
21 NCNB National Bank of North Carolina	\$1,381,540	\$118,524	\$1,500,064
22 First Interstate Bank of California	\$1,336,594	\$125,494	\$1,462,088
23 NCNB Texas National Bank	\$800,497	\$449,542	\$1,250,039
24 Connecticut National Bank	\$978,964	\$195,068	\$1,174,032
25 Citizens & Southern National Bank	\$1,037,701	\$84,860	\$1,122,561
26 Republic National Bank of New York	\$1,057,885	\$39,292	\$1,097,177
27 The Philadelphia National Bank	\$175,374	\$839,771	\$1,015,145
28 Sovran Bank, National Association	\$897,231	\$106,187	\$1,003,418
29 Provident National Bank	\$661,418	\$335,648	\$997,066
30 Sanwa Bank California	\$968,872	\$28,127	\$996,999
31 Wachovia Bank and Trust Company, Nat	\$510,879	\$466,952	\$977,831
32 Harris Trust and Savings Bank	\$828,212	\$138,998	\$967,210

33	Trust Company Bank	\$849,066	\$34,018	\$883,084
34	Norwest Bank Minnesota, N.A.	\$701,232	\$128,166	\$829,398
35	National Bank of Detroit	\$772,075	\$48,227	\$820,302
36	The Northern Trust Company	\$620,241	\$79,972	\$700,213
37	Maryland National Bank	\$363,986	\$327,267	\$691,253
38	Seafirst Bank	\$634,127	\$35,410	\$669,537
39	Morgan Bank (Delaware)	\$632,226	\$35,000	\$667,226
40	Comerica Bank-Detroit	\$449,694	\$200,148	\$649,842
41	Texas Commerce Bank, N.A.	\$611,268	\$10,768	\$622,036
42	American National B&TC of Chicago	\$557,263	\$40,236	\$597,499
43	Security Pacific Bank WA, N.A.	\$437,971	\$112,738	\$550,709
44	Bank of New England, N.A.	\$524,504	\$24,549	\$549,053
45	Crestar Bank	\$399,163	\$127,243	\$526,406
46	The Bank of California, N.A.	\$523,119	\$1,515	\$524,634
47	First City National Bank of Houston	\$431,250	\$79,761	\$511,011
48	National City Bank	\$360,241	\$145,179	\$505,420
49	Shawmut Bank, N.A.	\$466,798	\$32,441	\$499,239
50	AmeriTrust Company National Associat	\$475,215	\$8,438	\$483,653
51	Meridian Bank	\$444,361	\$33,867	\$478,228
52	Bank One, Columbus, National Associa	\$349,724	\$122,469	\$472,193
53	IBJ Schroder Bank & Trust Company	\$378,783	\$88,234	\$467,017
54	Manufacturers National Bank of Detro	\$168,433	\$291,304	\$459,737
55	Society National Bank	\$296,919	\$156,724	\$453,643
56	First Fidelity Bank, National Associ	\$230,248	\$221,219	\$451,467
57	The Central Trust Company, N.A.	\$290,285	\$148,080	\$438,365
58	First Union National Bank of North C	\$339,846	\$94,174	\$434,020
59	Mellon Bank (East) PSFS, N.A.	\$307,867	\$113,243	\$421,110
60	Barnett Bank of South Florida, N.A.	\$400,781	\$20,167	\$420,948
61	AmSouth Bank, National Association	\$405,486	\$3,730	\$409,216
62	Midlantic National Bank	\$205,700	\$201,800	\$407,500
63	Exchange National Bank of Chicago	\$379,884	\$22,212	\$402,096
64	Bank One Texas, N.A.	\$187,521	\$190,758	\$378,279
65	The First National Bank of Maryland	\$189,051	\$183,135	\$372,186
66	Bank One, Indianapolis, National Asso	\$366,741	\$169	\$366,910
67	Fidelity Bank, N.A.	\$295,286	\$68,173	\$363,459
68	The First National Bank of Atlanta	\$5,238	\$347,939	\$353,177
69	Fleet National Bank	\$339,515	\$12,380	\$351,895
70	Citizens Fidelity Bank and Trust Com	\$277,843	\$58,540	\$336,383
71	Sun Bank, National Association	\$259,867	\$75,042	\$334,909

72	The Huntington National Bank	\$270,085	\$51,945	\$322,030
73	Southeast Bank, N.A.	\$223,421	\$87,083	\$310,504
74	United States National Bank of OR	\$264,081	\$39,072	\$303,153
75	Hibernia National Bank	\$293,130	\$3,150	\$296,280
76	The Boatmens NB of St. Louis	\$103,550	\$183,695	\$287,245
77	Signet Bank-Virginia	\$150,074	\$136,793	\$286,867
78	European American Bank	\$236,855	\$29,752	\$266,607
79	Barnett Bank of Jacksonville, Nation	\$250,985	\$1,141	\$252,126
80	State Street Bank and Trust Company	\$111,709	\$130,707	\$242,416
81	Bank of Hawaii	\$150,836	\$89,424	\$240,260
82	SouthTrust Bank of Alabama, NA	\$230,298	\$6,025	\$236,323
83	Mercantile Bank of St. Louis, N.A.	\$217,705	\$17,398	\$235,103
84	Northeastern Bank of Pennsylvania	\$216,217	\$15,935	\$232,152
85	Sovran Bank-Central South	\$196,300	\$32,800	\$229,100
86	First National Bank of Louisville	\$141,825	\$87,082	\$228,907
87	The Riggs National Bank of Washington	\$179,967	\$48,233	\$228,200
88	United Jersey Bank	\$70,724	\$155,794	\$226,518
89	The Fifth Third Bank	\$207,641	\$17,994	\$225,635
90	Bank One Milwaukee, NA	\$120,912	\$88,346	\$209,258
91	Norstar Bank of Upstate NY	\$192,837	\$16,395	\$209,232
92	Michigan National Bank	\$105,072	\$104,018	\$209,090
93	Chase Lincoln First Bank, National A	\$165,030	\$38,623	\$203,653
94	Norstar Bank, National Association	\$194,661	\$6,006	\$200,667
95	BancOhio National Bank	\$112,773	\$86,428	\$199,201
96	First Interstate Bank, N.A.	\$173,686	\$24,151	\$197,837
97	American Security Bank, National Ass	\$42,007	\$155,287	\$197,294
98	First Hawaiian Bank	\$90,493	\$105,630	\$196,123
99	Dominion Bank, National Association	\$136,171	\$55,167	\$191,338
100	Sun Bank/Miami, National Association	\$65,540	\$119,749	\$185,289
101	M&I Marshall and Ilsley Bank	\$184,395	\$2	\$184,397
102	NCNB National Bank of Florida, N.A.	\$130,073	\$52,882	\$182,955
103	First Union National Bank of Florida	\$118,550	\$59,245	\$177,795
104	First Wisconsin NB of Milwaukee	\$166,685	\$10,287	\$176,972
105	Continental Bank	\$155,576	\$19,951	\$175,527
106	Sovran Bank/Maryland	\$117,081	\$54,868	\$171,949
107	BayBank Middlesex	\$156,802	\$1,557	\$158,359
108	Central Fidelity Bank	\$108,905	\$48,623	\$157,528
109	First American National Bank	\$117,698	\$33,895	\$151,593
110	Old Kent Bank and Trust Company	\$137,608	\$12,429	\$150,037

111	The Merchants Bank	\$148,787	\$453	\$149,240
112	Bank Leumi Trust Company of New York	\$113,692	\$32,472	\$146,164
113	Hamilton Bank	\$34,767	\$109,371	\$144,138
114	First Interstate Bank of Oregon, N.A.	\$139,085	\$3,997	\$143,082
115	Third National Bank in Nashville	\$137,193	\$4,758	\$141,951
116	Star Bank	\$93,033	\$46,382	\$139,415
117	United States Trust Company of New Y	\$64,129	\$73,752	\$137,881
118	First Tennessee Bank, National Assoc	\$116,814	\$17,743	\$134,557
119	Barclays Bank of New York, National	\$38,980	\$92,789	\$131,769
120	City National Bank	\$116,534	\$12,310	\$128,844
121	U.S. Bank of Washington, N.A.	\$112,673	\$14,361	\$127,034
122	Canadian Imperial Bank of Commerce (	\$10,217	\$116,131	\$126,348
123	National Westminster Bank, New Jerse	\$121,171	\$4,576	\$125,747
124	Daiwa Bank Trust Company	\$71,910	\$53,660	\$125,570
125	INB National Bank	\$79,940	\$42,900	\$122,840
126	First Florida Bank, N.A.	\$104,161	\$16,305	\$120,466
127	The South Carolina National Bank	\$109,450	\$6,420	\$115,870
128	Texas Commerce Bank - Dallas, Nation	\$94,774	\$20,292	\$115,066
129	Key Bank N.A.	\$68,210	\$44,253	\$112,463
130	First Security Bank of Utah, N.A.	\$63,392	\$47,331	\$110,723
131	Zions First National Bank	\$30,874	\$78,903	\$109,777
132	Merchants National Bank & Trust Comp	\$84,909	\$22,748	\$107,657
133	Signet Bank-Maryland	\$30,755	\$76,776	\$107,531
134	Security Pacific Bank-Arizona	\$102,172	\$4,386	\$106,558
135	Bank One, Cleveland, National Associ	\$41,800	\$61,050	\$102,850
136	The Connecticut Bank & Trust Co., NA	\$70,843	\$31,635	\$102,478
137	NCNB National Bank of South Carolina	\$89,376	\$11,361	\$100,737
138	First Alabama Bank	\$95,758	\$4,914	\$100,672
139	First Interstate Bank of Denver, Nat	\$85,616	\$14,824	\$100,440
140	Chemical Bank, New Jersey N.A.	\$56,834	\$36,749	\$93,583
141	Boatmens First National Bank of Kansa	\$53,763	\$39,498	\$93,261
142	Marine Bank	\$67,569	\$24,687	\$92,256
143	United States Trust Company	\$1,021	\$85,732	\$86,753
144	Bank South, National Association	\$78,143	\$8,158	\$86,301
145	Norwest Bank Iowa, National Associati	\$54,710	\$30,649	\$85,359
146	First American Bank of Virginia	\$24,181	\$60,984	\$85,165
147	Deposit Guaranty National Bank	\$74,493	\$9,943	\$84,436
148	Norwest Bank Nebraska, National Asso	\$74,887	\$8,798	\$83,685
149	Banco Popular de Puerto Rico	\$73,573	\$9,849	\$83,422

150	First Eastern Bank, N.A.	\$48,311	\$34,392	\$82,703
151	Bankers Trust (Delaware)	\$79,738	\$2,519	\$82,257
152	First Interstate Bank of Nevada, Nat	\$68,849	\$12,598	\$81,447
153	Bank One, Dayton, National Associati	\$72,240	\$8,948	\$81,188
154	National Community Bank of New Jersey	\$64,152	\$16,053	\$80,205
155	Imperial Bank	\$52,449	\$27,020	\$79,469
156	Lincoln National Bank and Trust Comp	\$75,584	\$2,651	\$78,235
157	Sun Bank/South Florida, N.A.	\$71,822	\$3,849	\$75,671
158	The Union National Bank of Pittsburgh	\$63,279	\$12,224	\$75,503
159	First Bank Milwaukee	\$72,825	\$1,982	\$74,807
160	Norstar Bank	\$31,070	\$42,749	\$73,819
161	Citizens and Southern NB OF SC	\$70,247	\$2,869	\$73,116
162	The Chicago-Tokyo Bank	\$46,576	\$26,268	\$72,844
163	Barnett Bank of Central Florida, Nat	\$50,658	\$21,864	\$72,522
164	Barnett Bank of Tampa, N.A.	\$70,588	\$1,170	\$71,758
165	Commerce Bank of Kansas City, N.A.	\$59,380	\$11,330	\$70,710
166	First American Bank of Maryland	\$27,375	\$42,814	\$70,189
167	First Interstate Bank of Arizona, NA	\$31,319	\$38,217	\$69,536
168	United Bank of Denver National Assoc	\$63,708	\$5,771	\$69,479
169	Whitney National Bank	\$47,680	\$21,274	\$68,954
170	Barnett Bank of Palm Beach County	\$66,796	\$1,995	\$68,791
171	First Interstate Bank WA, N.A.	\$64,228	\$3,539	\$67,767
172	West One Bank Idaho, N.A.	\$63,057	\$1,950	\$65,007
173	Columbus Bank and Trust Company	\$53,533	\$9,623	\$63,156
174	The Provident Bank	\$21,258	\$41,722	\$62,980
175	Society Bank & Trust	\$53,334	\$9,645	\$62,979
176	Israel Discount Bank of New York	\$23,230	\$38,434	\$61,664
177	Valley Bank of Nevada	\$41,630	\$19,535	\$61,165
178	Citibank (Arizona)	\$54,210	\$6,468	\$60,678
179	Boulevard Bank National Association	\$58,096	\$458	\$58,554
180	Bank IV Wichita, N.A.	\$54,358	\$2,394	\$56,752
181	First City Texas-Dallas	\$51,722	\$4,120	\$55,842
182	Liberty National Bank and Trust Comp	\$40,061	\$15,170	\$55,231
183	Barnett Bank of Pinellas County	\$52,707	\$497	\$53,204
184	Dauphin Deposit Bank & Trust Co.	\$43,805	\$8,730	\$52,535
185	First Union National Bank of Georgia	\$16,609	\$35,593	\$52,202
186	The York Bank and Trust Company	\$40,333	\$11,310	\$51,643
187	Citizens & Southern National Bank, FL	\$36,908	\$14,320	\$51,228
188	Wilmington Trust Company	\$49,308	\$27	\$49,335

189	Dominion Bank of Greater Hampton Roa	\$37,040	\$10,864	\$47,904
190	First of America Bank-Michigan, N.A.	\$47,183	\$285	\$47,468
191	First American Bank of Georgia, N.A.	\$33,915	\$12,617	\$46,532
192	BayBank Harvard Trust Company	\$44,309	\$1,939	\$46,248
193	Citytrust	\$35,005	\$10,157	\$45,162
194	Midlantic National Bank/North	\$6,391	\$38,611	\$45,002
195	The Colorado National Bank of Denver	\$29,540	\$15,271	\$44,811
196	Union Trust Company	\$33,408	\$10,460	\$43,868
197	The Pacific Bank, National Associati	\$41,879	\$1,881	\$43,760
198	First Valley Bank	\$12,050	\$30,990	\$43,040
199	The First National Bank of Toms River	\$19,621	\$23,076	\$42,697
200	The Summit Trust Company	\$21,196	\$21,196	\$42,392
201	First Security Bank of Idaho, Nation	\$14,636	\$27,346	\$41,982
202	BayBank Norfolk	\$38,700	\$3,144	\$41,844
203	BayBank Boston, N.A.	\$40,575	\$735	\$41,310
204	Union Planters National Bank	\$37,852	\$3,269	\$41,121
205	Ameritrust National Bank-Michiana	\$13,847	\$27,219	\$41,066
206	Security Pacific Bank Oregon	\$39,781	\$1,120	\$40,901
207	Summit Bank	\$37,387	\$3,086	\$40,473
208	Marquette Bank Minneapolis, N.A.	\$38,460	\$1,640	\$40,100
209	Fulton Bank	\$25,593	\$12,943	\$38,536
210	Fleet Bank of Connecticut	\$30,978	\$7,051	\$38,029
211	National City Bank of Minneapolis	\$11,866	\$26,123	\$37,989
212	Premier Bank	\$35,027	\$1,908	\$36,935
213	Capital Bank	\$23,755	\$12,378	\$36,133
214	Bank of the West	\$21,886	\$14,044	\$35,930
215	Fleet Bank Maine	\$8,128	\$27,072	\$35,200
216	Citizens First National Bank of New	\$24,870	\$10,313	\$35,183
217	Bank of Oklahoma, N.A.	\$28,763	\$5,129	\$33,892
218	First American Bank, National Associ	\$28,710	\$5,020	\$33,730
219	American National Bank and Trust Com	\$28,339	\$5,372	\$33,711
220	The First National Bank	\$31,435	\$1,354	\$32,789
221	Dominion Bank of Middle Tennessee	\$18,942	\$13,821	\$32,763
222	National Bank of Commerce	\$13,631	\$19,107	\$32,738
223	First of America Bank-SE Michigan NA	\$21,943	\$10,223	\$32,166
224	Centura Bank	\$24,750	\$7,360	\$32,110
225	First Interstate Bank-OK, N.A.	\$13,405	\$18,630	\$32,035
226	Union Safe Deposit Bank	\$6,011	\$25,659	\$31,670
227	Barnett Bank of Southwest Florida	\$26,639	\$4,645	\$31,284

228	Central Bank of the South	\$27,042	\$4,128	\$21,170
229	The Howard Savings Bank	\$24,063	\$6,949	\$31,012
230	Central Trust Company	\$23,505	\$7,203	\$30,708
231	Cole Taylor Bank	\$12,919	\$17,578	\$30,497
232	Yasuda Bank & Trust Company (USA)	\$6,767	\$23,694	\$30,461
233	Norstar Bank of Central NY	\$22,104	\$8,276	\$30,380
234	Midwest Commerce Banking Company	\$28,316	\$1,965	\$30,281
235	Bank of Boston Connecticut	\$23,870	\$5,115	\$28,985
236	Bank of Pennsylvania	\$22,179	\$6,464	\$28,643
237	First National Bank of Ohio	\$26,605	\$1,994	\$28,599
238	Commerce Bank of St. Louis, N.A.	\$27,550	\$981	\$28,531
239	Valley National Bank	\$10,860	\$16,915	\$27,775
240	South Shore Bank	\$24,455	\$2,112	\$26,567
241	Citizens Bank of Maryland	\$13,438	\$12,814	\$26,252
242	First National Bank of Evergreen Park	\$20,149	\$5,811	\$25,960
243	Ohio Citizens Bank	\$23,320	\$2,591	\$25,911
244	First National Bank	\$18,717	\$6,881	\$25,598
245	First Fidelity Bank, National Associ	\$10,193	\$15,019	\$25,212
246	Trustmark National Bank	\$14,543	\$10,649	\$25,192
247	BayBank Valley Trust Company	\$20,181	\$4,949	\$25,130
248	Landmark Bank	\$20,950	\$3,970	\$24,920
249	The National State Bank, Elizabeth,	\$12,476	\$12,414	\$24,890
250	First American Bank of New York	\$20,260	\$4,447	\$24,707
251	Delaware Trust Company	\$21,207	\$3,466	\$24,673
252	Madison National Bank	\$5,188	\$19,378	\$24,566
253	Mid-State Bank	\$1,003	\$23,225	\$24,228
254	Casco Northern Bank	\$26	\$23,888	\$23,914
255	Puget Sound National Bank	\$7,437	\$16,364	\$23,801
256	Texas Commerce Bank-Austin, National	\$19,053	\$4,107	\$23,160
257	United Carolina Bank	\$14,813	\$7,945	\$22,758
258	Pacific Western Bank	\$2,210	\$20,487	\$22,697
259	First Commercial Bank, National Asso	\$278	\$21,790	\$22,068
260	The Central Trust Company of Northea	\$18,264	\$3,770	\$22,034
261	Valley Bank	\$21,098	\$838	\$21,936
262	First Interstate Bank of Wisconsin	\$21,738	\$10	\$21,748
263	The North Fork Bank and Trust Company	\$135	\$21,454	\$21,589
264	Fleet Bank	\$17,433	\$4,027	\$21,460
265	Southern National Bank of NC	\$7,513	\$13,244	\$20,757
266	First Business Bank	\$11,539	\$9,077	\$20,616



# U.S. COUNCIL ON INTERNATIONAL BANKING, INC.

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## UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS, 1983 REVISION, ICC PUBLICATION NO. 400.

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The Uniform Customs and Practice for Documentary Credits were first published by the International Chamber of Commerce (I.C.C.) in 1933. Revised versions were issued in 1951, 1962 and 1974. This latest revision was adopted by the I.C.C. in June 1983 and published as publication No. 400 and is effective October 1st, 1984. These rules, which are printed in their entirety herein, effectively standardize the banking practice relating to Documentary Credits and are adhered to by banks throughout the world.

### A. General provisions and definitions

#### Article 1

These articles apply to all documentary credits, including, to the extent to which they may be applicable, standby letters of credit, and are binding on all parties thereto unless otherwise expressly agreed. They shall be incorporated into each documentary credit by wording in the credit indicating that such credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication n° 400.

#### Article 2

For the purposes of these articles, the expressions "documentary credit(s)" and "standby letter(s) of credit" used herein (hereinafter referred to as "credit(s)"), mean any arrangement, however named or described, whereby a bank (the issuing bank), acting at the request and on the instructions of a customer (the applicant for the credit),

i is to make a payment to or to the order of a third party (the beneficiary), or is to pay or accept bills of exchange (drafts) drawn by the beneficiary,

or

ii authorizes another bank to effect such payment, or to pay, accept or negotiate such bills of exchange (drafts), against stipulated documents, provided that the terms and conditions of the credit are complied with.

#### Article 3

Credits, by their nature, are separate transactions from the sales or other contract(s) on which they may be based and banks are in no way concerned with or bound by such contract(s), even if any reference whatsoever to such contract(s) is included in the credit.

#### Article 4

In credit operations all parties concerned deal in documents, and not in goods, services and/or other performances to which the documents may relate.

#### Article 5

Instructions for the issuance of credits, the credits themselves, instructions for any amendments thereto and the amendments themselves must be complete and precise.

In order to guard against confusion and misunderstanding, banks should discourage any attempt to include excessive detail in the credit or in any amendment thereto.

#### Article 6

A beneficiary can in no case avail himself of the contractual relationships existing between the banks or between the applicant for the credit and the issuing bank.

### B. Form and notification of credits

#### Article 7

- a. Credits may be either
  - i revocable, or
  - ii irrevocable.
- b. All credits, therefore, should clearly indicate whether they are revocable or irrevocable.
- c. In the absence of such indication the credit shall be deemed to be revocable.

#### Article 8

A credit may be advised to a beneficiary through another bank (the advising bank) without engagement on the part of the advising bank, but that bank shall take reasonable care to check the apparent authenticity of the credit which it advises.

#### Article 9

- a. A revocable credit may be amended or cancelled by the issuing bank at any moment and without prior notice to the beneficiary.
- b. However, the issuing bank is bound to:
  - i reimburse a branch or bank with which a revocable credit has been made available for sight payment, acceptance or negotiation, for any payment, acceptance or negotiation made by such branch or bank prior to receipt by it of notice of amendment or cancellation, against documents which appear on their face to be in accordance with the terms and conditions of the credit.
  - ii reimburse a branch or bank with which a revocable credit has been made available for deferred payment, if such branch or bank has, prior to receipt by it of notice of amendment or cancellation, taken up documents which appear on their face to be in accordance with the terms and conditions of the credit.

#### Article 10

- a. An irrevocable credit constitutes a definite undertaking of the issuing bank, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with:
  - i if the credit provides for sight payment—to pay, or that payment will be made;
  - ii if the credit provides for deferred payment—to pay, or that payment will be made, on the date(s) determinable in accordance with the stipulations of the credit;
  - iii if the credit provides for acceptance—to accept drafts drawn by the beneficiary if the credit stipulates that they are to be drawn on the issuing bank, or to be responsible for their acceptance and payment at maturity if the credit stipulates that they are to be drawn on the applicant for the credit or any other drawee stipulated in the credit;
  - iv if the credit provides for negotiation—to pay without recourse to drawers and/or bona fide holders, draft(s) drawn by the beneficiary, at sight or at a tenor, on the applicant for the credit or on any other drawee stipulated in the credit other than the issuing bank itself, or to provide for negotiation by another bank and to pay, as above, if such negotiation is not effected.
- b. When an issuing bank authorizes or requests another bank to confirm its irrevocable credit and the latter has added its confirmation, such confirmation constitutes a definite undertaking of such bank (the confirming bank), in addition to that of the issuing bank, provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with:
  - i if the credit provides for sight payment—to pay, or that payment will be made;
  - ii if the credit provides for deferred payment—to pay, or

that payment will be made, on the date(s) determinable in accordance with the stipulations of the credit;

iii if the credit provides for acceptance—to accept drafts drawn by the beneficiary if the credit stipulates that they are to be drawn on the confirming bank, or to be responsible for their acceptance and payment at maturity, if the credit stipulates that they are to be drawn on the applicant for the credit or any other drawee stipulated in the credit;

iv if the credit provides for negotiation—to negotiate without recourse to drawers and/or bona fide holders, draft(s) drawn by the beneficiary, at sight or at a tenor, on the issuing bank or on the applicant for the credit or on any other drawee stipulated in the credit other than the confirming bank itself.

- c. If a bank is authorized or requested by the issuing bank to add its confirmation to a credit but is not prepared to do so, it must so inform the issuing bank without delay. Unless the issuing bank specifies otherwise in its confirmation authorization or request, the advising bank will advise the credit to the beneficiary without adding its confirmation.
- d. Such undertakings can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank (if any), and the beneficiary. Partial acceptance of amendments contained in one and the same advice of amendment is not effective without the agreement of all the above and named parties.

#### Article 11

- a. All credits must clearly indicate whether they are available by sight payment, by deferred payment, by acceptance or by negotiation.
- b. All credits must nominate the bank (nominated bank) which is authorized to pay (paying bank), or to accept drafts (accepting bank), or to negotiate (negotiating bank), unless the credit allows negotiation by any bank (negotiating bank).
- c. Unless the nominated bank is the issuing bank or the confirming bank, its nomination by the issuing bank does not constitute any undertaking by the nominated bank to pay, to accept, or to negotiate.
- d. By nominating a bank other than itself, or by allowing for negotiation by any bank, or by authorizing or requesting a bank to add its confirmation, the issuing bank authorizes such bank to pay, accept or negotiate, as the case may be, against documents which appear on their face to be in accordance with the terms and conditions of the credit, and undertakes to reimburse such bank in accordance with the provisions of these articles.

#### Article 12

- a. When an issuing bank instructs a bank (advising bank) by any teletransmission to advise a credit or an amendment to a credit, and intends the mail confirmation to be the operative credit instrument, or the operative amendment, the teletransmission must state "full details to follow" (or words of similar effect), or that the mail confirmation will be the operative credit instrument or the operative amendment. The issuing bank must forward the operative credit instrument or the operative amendment to such advising bank without delay.
- b. The teletransmission will be deemed to be the operative credit instrument or the operative amendment, and no mail confirmation should be sent, unless the teletransmission states "full details to follow" (or words of similar effect), or states that the mail confirmation is to be the operative credit instrument or the operative amendment.
- c. A teletransmission intended by the issuing bank to be the operative credit instrument should clearly indicate that the credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication n° 400.
- d. If a bank uses the services of another bank or banks (the advising bank) to have the credit advised to the beneficiary, it must also use the services of the same bank(s) for advising any amendments.
- e. Banks shall be responsible for any consequences arising from their failure to follow the procedures set out in the preceding paragraphs.

#### Article 13

When a bank is instructed to issue, confirm or advise a credit similar in terms to one previously issued, confirmed or advised (similar credit) and the previous credit has been the subject of amendment(s), it shall be understood that the similar credit will not include any such amendment(s) unless the instructions specify clearly the amendment(s) which is/are to apply to the similar credit. Banks should discourage instructions to issue, confirm or advise a credit in this manner.

#### Article 14

If incomplete or unclear instructions are received to issue, confirm, advise or amend a credit, the bank requested to act on such instructions may give preliminary notification to the beneficiary for information only and without responsibility. The credit will be issued, confirmed, advised or amended only when the necessary information has been received and if the bank is then prepared to act on the instructions. Banks should provide the necessary information without delay.

## C. Liabilities and responsibilities

#### Article 15

Banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit.

#### Article 16

- a. If a bank so authorized effects payment, or incurs a deferred payment undertaking, or accepts, or negotiates against documents which appear on their face to be in accordance with the terms and conditions of a credit, the party giving such authority shall be bound to reimburse the bank which has effected payment, or incurred a deferred payment undertaking, or has accepted, or negotiated, and to take up the documents.
- b. If, upon receipt of the documents, the issuing bank considers that they appear on their face not to be in accordance with the terms and conditions of the credit, it must determine, on the basis of the documents alone, whether to take up such documents, or to refuse them and claim that they appear on their face not to be in accordance with the terms and conditions of the credit.
- c. The issuing bank shall have a reasonable time in which to examine the documents and to determine as above whether to take up or to refuse the documents.
- d. If the issuing bank decides to refuse the documents, it must give notice to that effect without delay by telecommunication or, if that is not possible, by other expeditious means, to the bank from which it received the documents (the remitting bank), or to the beneficiary, if it received the documents directly from him. Such notice must state the discrepancies in respect of which the issuing bank refuses the documents and must also state whether it is holding the documents at

the disposal of, or is returning them to the presenter (remitting bank or the beneficiary, as the case may be). The issuing bank shall then be entitled to claim from the remitting bank refund of any reimbursement which may have been made to that bank.

- e. If the issuing bank fails to act in accordance with the provisions of paragraphs (c) and (d) of this article and/or fails to hold the documents at the disposal of, or to return them to, the presenter, the issuing bank shall be precluded from claiming that the documents are not in accordance with the terms and conditions of the credit.
- f. If the remitting bank draws the attention of the issuing bank to any discrepancies in the documents or advises the issuing bank that it has paid, incurred a deferred payment undertaking, accepted or negotiated under reserve or against an indemnity in respect of such discrepancies, the issuing bank shall not be thereby relieved from any of its obligations under any provision of this article. Such reserve or indemnity concerns only the relations between the remitting bank and the party towards whom the reserve was made, or from whom, or on whose behalf, the indemnity was obtained.

#### Article 17

Banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by any documents, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignor, the carriers, or the insurers of the goods, or any other person whomsoever.

#### Article 18

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any messages, letters or documents, or for delay, mutilation or other errors arising in the transmission of any telecommunication. Banks assume no liability or responsibility for errors in translation or interpretation of technical terms, and reserve the right to transmit credit terms without translating them.

#### Article 19

Banks assume no liability or responsibility for consequences arising out of the interruption of their business by Acts of God, riots, civil commotions, insurrections, wars or any other causes beyond their control, or by any strikes or lockouts. Unless specifically authorized, banks will not, upon resumption of their business, incur a deferred payment undertaking, or effect payment, acceptance or negotiation under credits which expired during such interruption of their business.

#### Article 20

- a. Banks utilizing the services of another bank or other banks for the purpose of giving effect to the instructions of the applicant for the credit do so for the account and at the risk of such applicant.
- b. Banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other bank(s).

### D. Documents

#### Article 22

- a. All instructions for the issuance of credits and the credits themselves and, where applicable, all instructions for amendments thereto and the amendments themselves, must state precisely the document(s) against which payment, acceptance or negotiation is to be made.
- b. Terms such as "first class", "well known", "qualified", "independent", "official", and the like shall not be used to describe the issuers of any documents to be presented under a credit. If such terms are incorporated in the credit terms, banks will accept the relative documents as presented, provided that they appear on their face to be in accordance with the other terms and conditions of the credit.
- c. Unless otherwise stipulated in the credit, banks will accept as originals documents produced or appearing to have been produced:
  - i by reprographic systems;
  - ii by, or as the result of, automated or computerized systems;
  - iii as carbon copies,if marked as originals, always provided that, where necessary, such documents appear to have been authenticated.

#### Article 23

When documents other than transport documents, insurance documents and commercial invoices are called for, the credit should stipulate by whom such documents are to be issued and their wording or data content. If the credit does not so stipulate, banks will accept such documents as presented, provided that their data content makes it possible to relate the goods and/or services referred to therein to those referred to in the commercial invoice(s) presented, or to those referred to in the credit if the credit does not stipulate presentation of a commercial invoice.

#### Article 24

Unless otherwise stipulated in the credit, banks will accept a document bearing a date of issuance prior to that of the credit, subject to such document being presented within the time limits set out in the credit and in these articles.

#### D.1 Transport documents (documents indicating loading on board or dispatch or taking in charge)

#### Article 25

Unless a credit calling for a transport document stipulates as such document a marine bill of lading (ocean bill of lading or a bill of lading covering carriage by sea), or a post receipt or certificate of posting:

- a. banks will, unless otherwise stipulated in the credit, accept a transport document which:
  - i appears on its face to have been issued by a named carrier, or his agent, and
  - ii indicates dispatch or taking in charge of the goods, or loading on board, as the case may be, and
  - iii consists of the full set of originals issued to the consignor if issued in more than one original, and

- c. The applicant for the credit shall be bound by and liable to indemnify the banks against all obligations and responsibilities imposed by foreign law and usages.

#### Article 21

- a. If an issuing bank intends that the reimbursement to which a paying, accepting or negotiating bank is entitled shall be obtained by such bank claiming on another branch or office of the issuing bank or on a third bank (all hereinafter referred to as the reimbursing bank) it shall provide such reimbursing bank in good time with the proper instructions or authorization to honour such reimbursement claims and without making it a condition that the bank entitled to claim reimbursement must certify compliance with the terms and conditions of the credit to the reimbursing bank.
- b. An issuing bank will not be relieved from any of its obligations to provide reimbursement itself if and when reimbursement is not effected by the reimbursing bank.
- c. The issuing bank will be responsible to the paying, accepting or negotiating bank for any loss of interest if reimbursement is not provided on first demand made to the reimbursing bank, or as otherwise specified in the credit, or mutually agreed, as the case may be.

iv meets all other stipulations of the credit.

- b. Subject to the above, and unless otherwise stipulated in the credit, banks will not reject a transport document which:
  - i bears a title such as "Combined transport bill of lading", "Combined transport document", "Combined transport bill of lading or port-to-port bill of lading", or a title or a combination of titles of similar intent and effect, and/or
  - ii indicates some or all of the conditions of carriage by reference to a source or document other than the transport document itself (short form/blank back transport document), and/or
  - iii indicates a place of taking in charge different from the port of loading and/or a place of final destination different from the port of discharge, and/or
  - iv relates to cargoes such as those in containers or on pellets, and the like, and/or
  - v contains the indication "intended", or similar qualification, in relation to the vessel or other means of transport, and/or the port of loading and/or the port of discharge.
- c. Unless otherwise stipulated in the credit in the case of carriage by sea or by more than one mode of transport but including carriage by sea, banks will reject a transport document which:
  - i indicates that it is subject to a charter party, and/or
  - ii indicates that the carrying vessel is propelled by sail only.
- d. Unless otherwise stipulated in the credit, banks will reject a transport document issued by a freight forwarder unless it is the FIATA Combined Transport Bill of Lading approved by the International Chamber of Commerce or otherwise indicates that it is issued by a freight forwarder acting as a carrier or agent of a named carrier.

#### Article 26

If a credit calling for a transport document stipulates as such document a marine bill of lading:

- a. banks will, unless otherwise stipulated in the credit, accept a document which:
  - i appears on its face to have been issued by a named carrier, or his agent, and
  - ii indicates that the goods have been loaded on board or shipped on a named vessel, and
  - iii consists of the full set of originals issued to the consignor if issued in more than one original, and
  - iv meets all other stipulations of the credit.
- b. Subject to the above, and unless otherwise stipulated in the credit, banks will not reject a document which:
  - i bears a title such as "Combined transport bill of lading", "Combined transport document", "Combined transport bill of lading or port-to-port bill of lading", or a title or a combination of titles of similar intent and effect, and/or
  - ii indicates some or all of the conditions of carriage by reference to a source or document other than the transport document itself (short form/blank back transport document), and/or
  - iii indicates a place of taking in charge different from the port of loading, and/or a place of final destination different from the port of discharge, and/or

iv relates to cargoes such as those in containers or on pallets, and the like.

c. Unless otherwise stipulated in the credit, banks will reject a document which:

- i indicates that it is subject to a charter party, and/or
- ii indicates that the carrying vessel is propelled by sail only, and/or
- iii contains the indication "intended", or similar qualification in relation to
  - e the vessel and/or the port of loading—unless such document bears an on board notation in accordance with article 27 (b) and also indicates the actual port of loading, and/or
  - e the port of discharge—unless the place of final destination indicated on the document is other than the port of discharge, and/or
- iv is issued by a freight forwarder, unless it indicates that it is issued by such freight forwarder acting as a carrier, or as the agent of a named carrier.

#### Article 27

- a. Unless a credit specifically calls for an on board transport document, or unless inconsistent with other stipulation(s) in the credit, or with article 26, banks will accept a transport document which indicates that the goods have been taken in charge or received for shipment.
- b. Loading on board or shipment on a vessel may be evidenced either by a transport document bearing wording indicating loading on board a named vessel or shipment on a named vessel, or, in the case of a transport document stating "received for shipment", by means of a notation of loading on board on the transport document signed or initialed and dated by the carrier or his agent, and the date of this notation shall be regarded as the date of loading on board the named vessel or shipment on the named vessel.

#### Article 28

- a. In the case of carriage by sea or by more than one mode of transport but including carriage by sea, banks will refuse a transport document stating that the goods are or will be loaded on deck, unless specifically authorized in the credit.
- b. Banks will not refuse a transport document which contains a provision that the goods may be carried on deck, provided it does not specifically state that they are or will be loaded on deck.

#### Article 29

- a. For the purpose of this article transshipment means a transfer and reloading during the course of carriage from the port of loading or place of dispatch or taking in charge to the port of discharge or place of destination either from one conveyance or vessel to another conveyance or vessel within the same mode of transport or from one mode of transport to another mode of transport.
- b. Unless transshipment is prohibited by the terms of the credit, banks will accept transport documents which indicate that the goods will be transhipped, provided the entire carriage is covered by one and the same transport document.
- c. Even if transshipment is prohibited by the terms of the credit, banks will accept transport documents which:
  - i incorporate printed clauses stating that the carrier has the right to transship, or
  - ii state or indicate that transshipment will or may take place, when the credit stipulates a combined transport document, or indicates carriage from a place of taking in charge to a place of final destination by different modes of transport including a carriage by sea, provided that the entire carriage is covered by one and the same transport document, or
  - iii state or indicate that the goods are in a container(s), trailer(s), "LASH" barge(s), and the like and will be carried from the place of taking in charge to the place of final destination in the same container(s), trailer(s), "LASH" barge(s), and the like under one and the same transport document.
  - iv state or indicate the place of receipt and/or of final destination as "C.F.S." (container freight station) or "C.Y." (container yard) at, or associated with, the port of loading and/or the port of destination.

#### Article 30

If the credit stipulates dispatch of goods by post and calls for a post receipt or certificate of posting, banks will accept such post receipt or certificate of posting if it appears to have been stamped or otherwise authenticated and dated in the place from which the credit stipulates the goods are to be dispatched.

#### Article 31

- a. Unless otherwise stipulated in the credit, or inconsistent with any of the documents presented under the credit, banks will accept transport documents stating that freight or transportation charges (hereinafter referred to as "freight") have still to be paid.
- b. If a credit stipulates that the transport document has to indicate that freight has been paid or prepaid, banks will accept a transport document on which words clearly indicating payment or prepayment of freight appear by stamp or otherwise, or on which payment of freight is indicated by other means.
- c. The words "freight prepayable" or "freight to be prepaid" or words of similar effect, if appearing on transport documents, will not be accepted as constituting evidence of the payment of freight.
- d. Banks will accept transport documents bearing reference by stamp or otherwise to costs additional to the freight charges, such as costs of, or disbursements incurred in connection with, loading, unloading or similar operations, unless the conditions of the credit specifically prohibit such reference.

#### Article 32

Unless otherwise stipulated in the credit, banks will accept transport documents which bear a clause on the face thereof such as "shipper's load and count" or "said by shipper to contain" or words of similar effect.

#### Article 33

Unless otherwise stipulated in the credit, banks will accept transport documents indicating as the consignor of the goods a party other than the beneficiary of the credit.

#### Article 34

- a. A clean transport document is one which bears no superimposed clause or notation which expressly declares a defective condition of the goods and/or the packaging.
- b. Banks will refuse transport documents bearing such clauses or notations unless the credit expressly stipulates the clauses or notations which may be accepted.
- c. Banks will regard a requirement in a credit for a transport document to bear the clause "clean on board" as complied with if such transport document meets the requirements of this article and of article 27 (b).

#### D2. Insurance documents

##### Article 35

- a. Insurance documents must be as stipulated in the credit, and must be issued and/or signed by insurance companies or underwriters, or their agents.
- b. Cover notes issued by brokers will not be accepted, unless specifically authorized by the credit.

##### Article 36

Unless otherwise stipulated in the credit, or unless it appears from the insurance document(s) that the cover is effective at the latest from the date of loading on board or dispatch or taking in charge of the goods, banks will refuse insurance documents presented which bear a date later than the date of loading on board or dispatch or taking in charge of the goods as indicated by the transport document(s).

##### Article 37

- a. Unless otherwise stipulated in the credit, the insurance document must be expressed in the same currency as the credit.
- b. Unless otherwise stipulated in the credit, the minimum amount for which the insurance document must indicate the insurance cover to have been effected is the CIF (cost, insurance and freight... "named port of destination") or CIP (freight/carriage and insurance paid to "named point of destination") value of the goods, as the case may be, plus 10%. However, if banks cannot determine the CIF or CIP value, as the case may be, from the documents on their face, they will accept as such minimum amount the amount for which payment, acceptance or negotiation is requested under the credit, or the amount of the commercial invoice, whichever is the greater.

##### Article 38

- a. Credits should stipulate the type of insurance required and, if any, the additional risks which are to be covered. Imprecise terms such as "usual risks" or "customary risks" should not be used; if they are used, banks will accept insurance documents as presented, without responsibility for any risks not being covered.

- b. Failing specific stipulations in the credit, banks will accept insurance documents as presented, without responsibility for any risks not being covered.

#### Article 39

Where a credit stipulates "insurance against all risks", banks will accept an insurance document which contains any "all risks" notation or clause, whether or not bearing the heading "all risks", even if indicating that certain risks are excluded, without responsibility for any risk(s) not being covered.

#### Article 40

Banks will accept an insurance document which indicates that the cover is subject to a franchise or an excess (deductible), unless it is specifically stipulated in the credit that the insurance must be issued irrespective of percentage.

### D3. Commercial invoice

#### Article 41

- a. Unless otherwise stipulated in the credit, commercial invoices must be made out in the name of the applicant for the credit.
- b. Unless otherwise stipulated in the credit, banks may refuse commercial invoices issued for amounts in excess of the amount permitted by the credit. Nevertheless, if a bank authorized to pay, incur a deferred payment undertaking, accept, or negotiate under a credit accepts such invoices, its decision will be binding upon all parties, provided such bank has not paid, incurred a deferred payment undertak-

ing, accepted or effected negotiation for an amount in excess of that permitted by the credit.

- c. The description of the goods in the commercial invoice must correspond with the description in the credit. In all other documents, the goods may be described in general terms not inconsistent with the description of the goods in the credit.

### D4. Other documents

#### Article 42

If a credit calls for an attestation or certification of weight in the case of transport other than by sea, banks will accept a weight stamp or declaration of weight which appears to have been superimposed on the transport document by the carrier or his agent unless the credit specifically stipulates that the attestation or certification of weight must be by means of a separate document.

## E. Miscellaneous provisions

### Quantity and amount

#### Article 43

- a. The words "about", "circa" or similar expressions used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a difference not to exceed 10% more or 10% less than the amount or the quantity or the unit price to which they refer.
- b. Unless a credit stipulates that the quantity of the goods specified must not be exceeded or reduced, a tolerance of 5% more or 5% less will be permissible, even if partial shipments are not permitted, always provided that the amount of the drawings does not exceed the amount of the credit. This tolerance does not apply when the credit stipulates the quantity in terms of a stated number of packing units or individual items.

### Partial drawings and/or shipments

#### Article 44

- a. Partial drawing and/or shipments are allowed, unless the credit stipulates otherwise.
- b. Shipments by sea, or by more than one mode of transport but including carriage by sea, made on the same vessel and for the same voyage, will not be regarded as partial shipments, even if the transport documents indicating loading on board bear different dates of issuance and/or indicate different ports of loading on board.
- c. Shipments made by post will not be regarded as partial shipments if the post receipts or certificates of posting appear to have been stamped or otherwise authenticated in the place from which the credit stipulates the goods are to be dispatched, and on the same date.
- d. Shipments made by modes of transport other than those referred to in paragraphs (b) and (c) of this article will not be regarded as partial shipments, provided the transport documents are issued by one and the same carrier or his agent and indicate the same date of issuance, the same place of dispatch or taking in charge of the goods, and the same destination.

### Drawings and/or shipments by instalments

#### Article 45

If drawings and/or shipments by instalments within given periods are stipulated in the credit and any instalment is not drawn and/or shipped within the period allowed for that instalment, the credit ceases to be available for that and any subsequent instalments, unless otherwise stipulated in the credit.

### Expiry date and presentation

#### Article 46

- a. All credits must stipulate an expiry date for presentation of documents for payment, acceptance or negotiation.
- b. Except as provided in Article 48 (a), documents must be presented on or before such expiry date.
- c. If an issuing bank states that the credit is to be available "for one month", "for six months" or the like, but does not specify the date from which the time is to run, the date of issuance of the credit by the issuing bank will be deemed to be the first day from which such time is to run. Banks should discourage indication of the expiry date of the credit in this manner.

#### Article 47

- a. In addition to stipulating an expiry date for presentation of documents, every credit which calls for a transport document(s) should also stipulate a specified period of time after the date of issuance of the transport document(s) during which presentation of documents for payment, acceptance or negotiation must be made. If no such period of time is stipulated, banks will refuse documents presented to them later than 21 days after the date of issuance of the transport document(s). In every case, however, documents must be presented not later than the expiry date of the credit.
- b. For the purpose of these articles, the date of issuance of a transport document(s) will be deemed to be:
- in the case of a transport document evidencing dispatch, or taking in charge, or receipt of goods for shipment by a mode of transport other than by air—the date of issuance indicated on the transport document or the date of the reception stamp thereon whichever is the later.
  - in the case of a transport document evidencing carriage by air—the date of issuance indicated on the transport document or, if the credit stipulates that the transport document shall indicate an actual flight date, the actual flight date as indicated on the transport document.
  - in the case of a transport document evidencing loading on board a named vessel—the date of issuance of the transport document or, in the case of an on board notation in accordance with article 27 (b), the date of such notation.
  - in cases to which Article 44 (b) applies, the date determined as above of the latest transport document issued.

#### Article 48

- a. If the expiry date of the credit and/or the last day of the period of time after the date of issuance of the transport document(s) for presentation of documents stipulated by the credit or applicable by virtue of Article 47 falls on a day

- on which the bank to which presentation has to be made is closed for reasons other than those referred to in article 19, the stipulated expiry date and/or the last day of the period of time after the date of issuance of the transport document(s) for presentation of documents, as the case may be, shall be extended to the first following business day on which such bank is open.
- b. The latest date for loading on board, or dispatch, or taking in charge shall not be extended by reason of the extension of the expiry date and/or the period of time after the date of issuance of the transport document(s) for presentation of document(s) in accordance with this article. If no such latest date for shipment is stipulated in the credit or amendments thereto, banks will reject transport documents indicating a date of issuance later than the expiry date stipulated in the credit or amendments thereto.
  - c. The bank to which presentation is made on such first following business day must add to the documents its certificate that the documents were presented within the time limits extended in accordance with Article 48 (a) of the Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication N° 400.

#### Article 49

Banks are under no obligation to accept presentation of documents outside their banking hours.

#### Loading on board, dispatch and taking in charge (shipment)

#### Article 50

- a. Unless otherwise stipulated in the credit, the expression "shipment" used in stipulating an earliest and/or a latest shipment date will be understood to include the expres-

sions "loading on board", "dispatch" and "taking in charge".

- b. The date of issuance of the transport document determined in accordance with article 47 (b) will be taken to be the date of shipment.
- c. Expressions such as "prompt", "immediately", "as soon as possible", and the like should not be used. If they are used, banks will interpret them as a stipulation that shipment is to be made within thirty days from the date of issuance of the credit by the issuing bank.
- d. If the expression "on or about" and similar expressions are used, banks will interpret them as a stipulation that shipment is to be made during the period from five days before to five days after the specified date, both end days included.

#### Date terms

#### Article 51

The words "to", "until", "till", "from", and words of similar import applying to any date term in the credit will be understood to include the date mentioned. The word "after" will be understood to exclude the date mentioned.

#### Article 52

The terms "first half", "second half" of a month shall be construed respectively as from the 1st to the 15th, and the 16th to the last day of each month, inclusive.

#### Article 53

The terms "beginning", "middle", or "end" of a month shall be construed respectively as from the 1st to the 10th, the 11th to the 20th, and the 21st to the last day of each month, inclusive.

## F. Transfer

#### Article 54

- a. A transferable credit is a credit under which the beneficiary has the right to request the bank called upon to effect payment or acceptance or any bank entitled to effect negotiation to make the credit available in whole or in part to one or more other parties (second beneficiaries).
- b. A credit can be transferred only if it is expressly designated as "transferable" by the issuing bank. Terms such as "divisible", "fractionnable", "assignable", and "transmissible" add nothing to the meaning of the term "transferable" and shall not be used.
- c. The bank requested to effect the transfer (transferring bank), whether it has confirmed the credit or not, shall be under no obligation to effect such transfer except to the extent and in the manner expressly consented to by such bank.
- d. Bank charges in respect of transfers are payable by the first beneficiary unless otherwise specified. The transferring bank shall be under no obligation to effect the transfer until such charges are paid.
- e. A transferable credit can be transferred once only. Fractions of a transferable credit (not exceeding in the aggregate the amount of the credit) can be transferred separately, provided partial shipments are not prohibited, and the aggregate of such transfers will be considered as constituting only one transfer of the credit. The credit can be transferred only on the terms and conditions specified in the original credit, with the exception of the amount of the credit, or any unit prices stated therein, of the period of validity, of the last date for presentation of documents in accordance with Article 47 and the period for shipment, any or all of which may be reduced or curtailed, or the percentage for which insurance cover must be effected, which may be increased in such a way as to provide the amount of cover stipulated in the original credit, or these articles. Additionally, the name of the first beneficiary can be substituted for that of the applicant for the credit, but if the name of the applicant for the credit is specifically required by the original credit to appear in any document other than the invoice, such requirement must be fulfilled.

- f. The first beneficiary has the right to substitute his own invoices (and drafts if the credit stipulates that drafts are to be drawn on the applicant for the credit) in exchange for those of the second beneficiary, for amounts not in excess of the original amount stipulated in the credit and for the original unit prices if stipulated in the credit, and upon such substitution of invoices (and drafts) the first beneficiary can draw under the credit for the difference, if any, between his invoices and the second beneficiary's invoices. When a credit has been transferred and the first beneficiary is to supply his own invoices (and drafts) in exchange for the second beneficiary's invoices (and drafts) but fails to do so on first demand, the paying, accepting or negotiating bank has the right to deliver to the issuing bank the documents received under the credit, including the second beneficiary's invoices (and drafts) without further responsibility to the first beneficiary.
- g. Unless otherwise stipulated in the credit, the first beneficiary of a transferable credit may request that the credit be transferred to a second beneficiary in the same country, or in another country. Further, unless otherwise stipulated in the credit, the first beneficiary shall have the right to request that payment or negotiation be effected to the second beneficiary at the place to which the credit has been transferred, up to and including the expiry date of the original credit, and without prejudice to the first beneficiary's right subsequently to substitute his own invoices and drafts (if any) for those of the second beneficiary and to claim any difference due to him.

#### Assignment of proceeds

#### Article 55

The fact that a credit is not stated to be transferable shall not affect the beneficiary's right to assign any proceeds to which he may be, or may become, entitled under such credit, in accordance with the provisions of the applicable law.