

# Basics of export letters of credit

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**Glenn Ransier**

Trade Services Product Manager

April 20, 2017

Together we'll go far



# Speaker – Glenn Ransier

- Recognized trade finance banking professional with strong ties to the international trade community. Accomplishments include:
  - **International Chamber of Commerce (ICC), Paris**
    - Technical advisor supporting the production of official ICC Banking Commission Opinions
    - Member of the Banking Commission Opinions Drafting Group, which revised the Uniform Rules for Demand Guarantees (URDG) revision 758
    - Member of the global Task Force on Guarantees
    - Accredited as a Documentary Credit Dispute Resolution Expertise (DOCDEX) expert by ICC International Centre for Expertise for all ICC trade-related rule sets, Uniform Customs and Practice for Documentary Credits (UCP), Uniform Rules for Collections (URC), Uniform Rules for Bank-to-Bank Reimbursements (URR), and URDG
    - U.S. delegate to ICC Banking Commission meetings
    - Designer of comparison training document for UCP 500 to UCP 600 transition
  - **International Organization for Standardization (ISO)**
    - Active delegate on the ISO 20022 team, which developed industry standards for trade finance messages

# Speaker – Glenn Ransier (continued)

## – **Bankers Association for Finance and Trade (BAFT)**

- Oil and Commodity Letters of Credit (L/C) Working Group Chair; led development of the industry publication “The Oil and Gas Industry: A Practical Guide to Undertakings” (2015)
- National Chapter, Commercial L/C Committee Chair for three years (2005–2007); Vice Chair for seven years (1998–2004)
- Consolidated and edited U.S. bank comments on all UCP 600 draft versions and aided in representing various U.S. positions to ICC Banking Commission
- Member of the development team for the ICC – IFSA Certified Documentary Credit Specialists (CDCS) program
- Chairman of the New York Uptown Regional L/C Committee (1990–1995)

## – **Institute for Fiscal Studies (IFS) School of Finance**

- Designed test questions used in the CDCS and newly created Certificate for Specialists in Demand Guarantees (CSDG) examinations

## – **A Drafter’s Notes to URDG 758**

- Authored this publication

# Trade basics: the concept of trade transactions

- Trade has been in existence for as long as people have been in existence; you can trade goods for cash, other goods (barter trade), or services
- Trade helps to facilitate peace
- In a typical trade transaction, the seller and buyer enter into an agreement about the goods to be delivered, services to be performed, or rights (e.g. licenses) to be transferred
- It is important to note that the basic agreement, once signed by both parties, becomes the legal contract between the buyer and seller; accordingly, both parties should always protect their interests before signing the agreement

# What risks do you want to mitigate?

- **Politics**
  - Strikes
  - Civil commotion
  - War
  - Tariffs
- **Economy**
  - Buyer and seller country risks
  - Different legal systems
  - Foreign exchange (FX) risk
- **Language**
  - English can be a foreign language
- **Culture**
  - Time zones
  - Business practices and terminology
- **Fraud**
  - Documentation
  - Products
  - Phony financial instruments
- **Shipping**
  - Piracy
  - Weather and natural disasters
- **Foreign customs**
  - Quotas
  - Delays
  - Seizures
  - Fees and tariffs

Note: This list is not exhaustive

# Sales contract

- As with most trade transactions, the proforma invoice or sales contract is mutually agreed upon between the buyer and seller
- It details the agreed terms of sale, including:
  - Merchandise or service amount
  - Unit pricing
  - Method of merchandise shipment or service delivery
  - Who is obligated to pay which fees
  - Which documents are required by the buyer to clear customs
  - Who insures and at what stage does insurance begin
  - At what point does the title to the goods transfer

# Incoterms® 2010

## INCOTERMS® 2010 QUICK REFERENCE CHART

### INCOTERMS® 2010

	Rules for any mode or modes of transport							Rules for sea and inland waterway transport			
	EXW	FCA	CPT	CIP	DAT	DAP	DDP	FAS	FOB	CFR	CIF
	Ex Works	Free Carrier	Carriage Paid To	Carriage & Insurance Paid to	Delivered at Terminal	Delivered at Place	Delivered Duty Paid	Free Alongside Ship	Free on Board	Cost & Freight	Cost, Insurance & Freight
SERVICES	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays	Who Pays
Export Packing	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Marking & Labeling	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Block & Brace	1	1	1	1	1	1	1	1	1	1	1
Export Clearance (License, EEI/AES)	Buyer	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Freight Forwarder Documentation Fees	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Inland Freight to Main Carrier	Buyer	2	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller	Seller
Origin Terminal Charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Vessel loading charges	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Seller	Seller	Seller
Ocean Freight / Air Freight	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Nominate Export Forwarder	Buyer	Buyer	Seller	Seller	Seller	Seller	Seller	Buyer	Buyer	Seller	Seller
Marine Insurance	3	3	3	Seller	3	3	3	3	3	3	Seller
Unload Main Carrier Charges	Buyer	Buyer	4	4	Seller	Seller	Seller	Buyer	Buyer	4	4
Destination Terminal Charges	Buyer	Buyer	4	4	4	Seller	Seller	Buyer	Buyer	4	4
Nominate On-Carrier	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Security Information Requirements	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer
Customs Broker Clearance Fees	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Duty, Customs Fees, Taxes	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Seller	Buyer	Buyer	Buyer	Buyer
Delivery to Buyer Destination	Buyer	Buyer	5	5	5	5	Seller	Buyer	Buyer	Buyer	Buyer
Delivering Carrier Unloading	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer	Buyer

**Notes:**

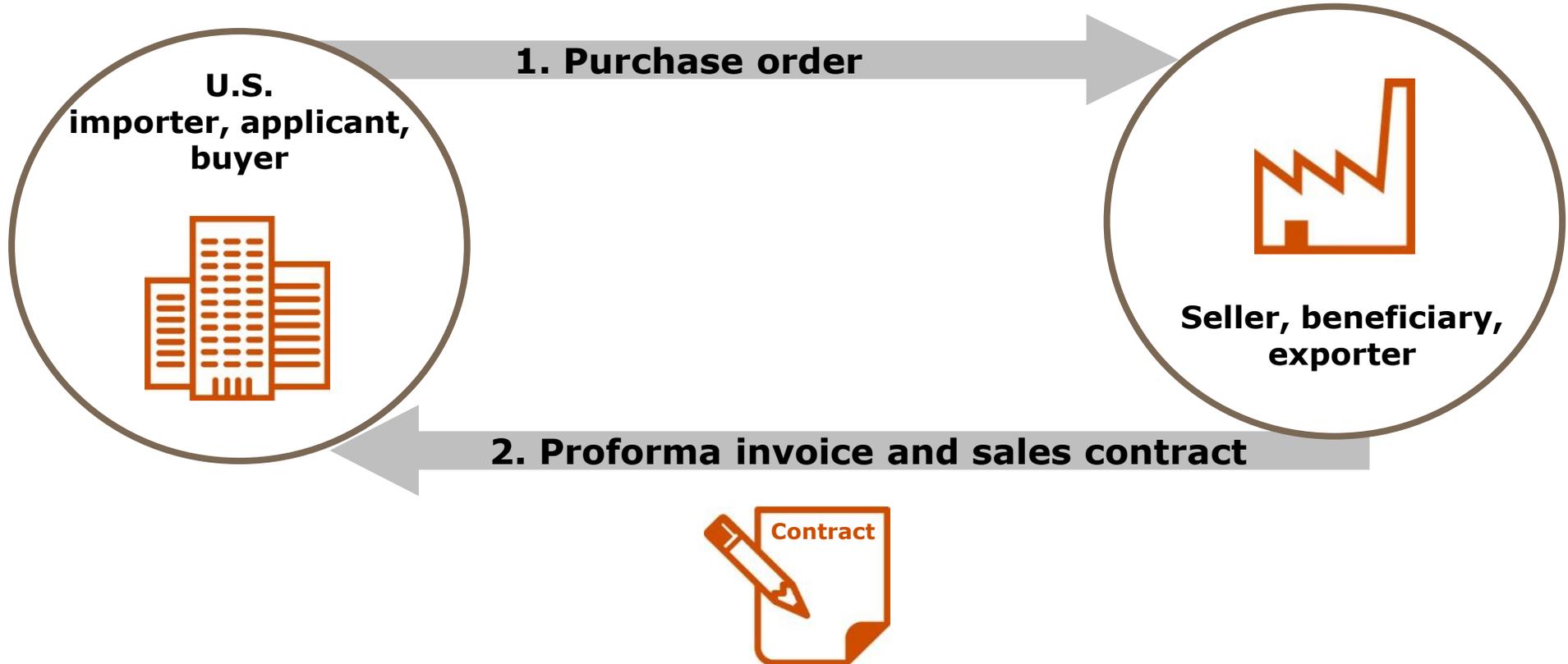
- 1 - Incoterms® 2010 do not deal with the parties' obligations for stowage within a container and therefore, where relevant, the parties should deal with this in the sales contract.
- 2 - FCA Seller's facility - Buyer pays inland freight; other FCA qualifiers. Seller arranges and loads pre-carriage carrier and pays inland freight to the "F" delivery place.
- 3 - Incoterms® 2010 does not obligate the buyer nor must the seller to insure the goods, therefore this issue be addressed elsewhere in the sales contract.
- 4 - Charges paid by Buyer or Seller depending on contract of carriage
- 5 - Charges paid by Seller if through Bill of Lading or door-to-door rate to Buyer's destination.

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# Incoterms® 2010 – Did you know?

- Banks do not review L/C presentations based on any stated Incoterms® rules in an L/C. Typically, banks only ensure that the L/C's stated term is properly recorded on the invoice. Reference is made to UCP 600 Article 4, which states, in part: "A credit by its nature is a separate transaction from the sale or other contract on which it may be based."
- "Buyer's disposal" used throughout Incoterms 2010® does not mean that the buyer is there to receive the goods, but rather that the buyer is offered the opportunity to obtain the goods
- Transfer of risk versus property rights differs – see Transfer of Ownership in International Trade (ICC pub. 546)
- As recognized in the ICC Guide to Incoterms 2010® (pub. 720), Incoterms® rules do not have significant influence in the U.S. The American Foreign Trade Definitions, circa 1941, remains a viable alternative.

# Basics – Concept of trade transaction



# Typical import payment methods

**Seller friendly**

Cash in advance

- **Buyer risk**
- Seller may fail or be otherwise prevented from shipping

Letter of credit

- **Buyer and seller risks**
- Buyer reimburses the issuer only when a presentation is deemed compliant
- Seller must be familiar with document preparation requirements and governing rule set

Documentary collections

- **Seller risk**
- No obligation of collecting banks to assure payment
- Buyer can simply not pay

Open account

- **Seller risk**
- Goods shipped and documents released without any third-party promise of payment
- Buyer could refuse or be prevented from paying

**Buyer friendly**

# Trade basics – Concept of trade transactions

- In several business situations, payment support might be needed to win the contract
- One of the most common means of support takes the form of an L/C, most often issued by a third-party financial institution
- The L/C enhances a buyer's creditworthiness by providing an irrevocable undertaking to make a payment to the seller from a neutral third party — provided the seller has shipped the contracted goods, performed the services, and has provided the required documentation stated in the L/C
- Wells Fargo provides its clients with certain contract negotiation leverage as our high credit rating will further enhance our client's creditworthiness and reduce the need to outlay upfront cash, negotiate improved pricing, etc.
- Without the assistance of L/Cs, many trade transactions would not be completed

# Suggestions for incoming LCs using an MT700 format

**2018 Changes in blue:** large, free-text fields changed from x-character set to z-character set, which also allows for the use of the special characters = ! " % & \* < > ; { @ # \_

**SWIFT MT700 – ISSUANCE OF A DOCUMENTARY CREDIT TO WFBIUS6S or PNBUS33**

**WELLS FARGO BANK NA**

**27 SEQ OF TOTAL:**

**40A FORM OF DOC CREDIT:**

IRREVOCABLE TRANSFERRABLE (OPTIONAL)

**20 DOCUMENTARY CREDIT NUMBER:** (Issuing bank will insert its number)

**23 REFERENCE TO PRE-ADVICE**

**31C DATE OF ISSUE:** (Date issuing bank agreed to issue the L/C)

**40E APPLICABLE RULES:** UCP LATEST VERSION

**31D DATE AND PLACE OF EXPIRY:** (YYMMDD) IN U.S.A. – Try to avoid places overseas e.g. issuing bank's counters

**51 APPLICANT BANK** – Should not be considered the issuing bank

**50 APPLICANT:**

**59 BENEFICIARY:**

**32B CURRENCY CODE AND AMOUNT:**

(THREE-LETTER CURRENCY CODE – e.g. USD FOLLOWED BY AMOUNT OF LETTER OF CREDIT)

**39A Percentage Credit Amount Tolerance e.g. 10/10 = 10% more or less 1<sup>st</sup> field is positive and second neg.**

**39C Additional Amounts covered e.g. Ocean freight up to USD 5,000.00 is allowed**

~~**39B MAXIMUM CREDIT AMOUNT:** NOT EXCEEDING TOLERANCE AMOUNT (OPTIONAL)~~

**41A AVAILABLE WITH . . .BY . . .:** ANY BANK (Note, a key field for exporters).

BY SIGHT (NEGOTIATION or PAYMENT) OR BY TIME (ACCEPTANCE OR DEFERRED PAYMENT or NEGOTIATION)

**42C DRAFTS AT:**

Examples include: SIGHT, or XX DAYS AFTER SHIPMENT or XX DAYS AFTER INVOICE DATE OR XX DAYS AFTER SIGHT, ETC.

**42A DRAWEE:** ISSUING BANK OR CONFIRMING BANK OR ADVISING BANK (Tied to Field 41A above)

**42M Mixed Payment Details**

**42P Negotiation/Deferred Payment Details (4 lines of 35 characters allowing a date or method to determine payment date)**

**43P PARTIAL SHIPMENTS:**

ALLOWED OR PROHIBITED; NOTE: THE UCP 600 RULES DEFAULT TO ALLOWABLE

**43T TRANSHIPMENT:**

ALLOWED OR PROHIBITED; NOTE: THE UCP 600 RULES DEFAULT TO ALLOWABLE

**44A PLACE OF TAKING IN CHARGE/DISPATCH FROM.../PLACE OF RECEIPT: }** NOTE: USE OF THIS FIELD SHOULD AUTOMATICALLY REQUIRE A MULTIMODAL TRANSPORT DOCUMENT

**44E PORT OF LOADING/AIRPORT OF DEPARTURE: }** USE OF ONLY 44E AND 44F WILL REQUIRE AN OCEAN PORT-TO-PORT BL

**44F PORT OF DISCHARGE/AIRPORT OF DESTINATION: }** USE OF ONLY 44E AND 44F WILL REQUIRE AN OCEAN PORT-TO-PORT BL

**44B PLACE OF FINAL DESTINATION/FOR TRANSPORTATION TO...PLACE OF DELIVERY: }** NOTE: USE OF THIS FIELD SHOULD AUTOMATICALLY REQUIRE A MULTIMODAL TRANSPORT DOCUMENT

**44C LATEST DATE OF SHIPMENT:**

**44D SHIPMENT PERIOD – 6 lines with 65 characters per line**

# Suggestions for incoming LCs using an MT700 format

## **45A GOODS DESCRIPTION:**

BRIEF DESCRIPTION OF GOODS AS PER PURCHASE ORDER NUMBER (INSERT) DATED (INSERT)

(IF SUBJECT TO INCOTERMS 2010 THIS MUST BE STATED USING THE RELEVANT TERM – E.G. FOB NEW YORK PER INCOTERMS REV. 2010

## **46A DOCUMENTS REQUIRED: (NOTE: ENSURE YOU CAN PRODUCE THE NEEDED DOCUMENTS/KEEP LIST SHORT!!!)**

1. COMMERCIAL INVOICES IN \_\_\_ ORIGINAL AND COPIES

2. PACKING LIST IN \_\_\_ ORIGINAL AND COPIES.

3. TRANSPORTATION DOCUMENTS: OPTION

+ FOR OCEAN SHIPMENT: FULL SET OF CLEAN ON-BOARD OCEAN BILLS OF LADING

+ FOR THRU SHIPMENT: FULL SET CLEAN ON-BOARD **MULTIMODAL** TRANSPORT DOCUMENT

CONSIGNED TO ORDER OF (CHOOSE ONE): THE SHIPPER AND BLANK ENDORSED; THE ISSUING BANK OR THE BUYER

NOTIFY APPLICANT MARKED FREIGHT PREPAID FOR INCOTERMS 2010 CFR, CIF, CPT, CIP (AND ALL D TERMS)

FREIGHT COLLECT FOR INCOTERMS 2010 FOB, FCA, FAS, EXW

+ FOR AIR SHIPMENT: CLEAN AIR WAYBILL CONSIGNED TO ISSUING BANK,

NOTIFY APPLICANT AND MARKED

FREIGHT PREPAID FOR INCOTERMS 2010 CPT, CIP

FREIGHT COLLECT FOR INCOTERMS 2010 FCA, EXW

4. INSURANCE POLICY OR CERTIFICATE, BLANK ENDORSED, FOR 110% OF CIF OR CIP VALUE, IN THE CURRENCY OF THE CREDIT AND PAYABLE IN THE COUNTRY OF APPLICANT COVERING ALL RISKS. (NOTE FOR CIF & CIP ONLY)

## **47A ADDITIONAL CONDITIONS: (NOTE: REVIEW FOR NON-DOCUMENTARY CONDITIONS OR POTENTIAL SURPRISES)**

1. INSERT AS NEEDED AND ENSURE IT IS TIED TO A DOCUMENT – E.G. INVOICES MUST NOT SHOW PACKING IN WOODEN CRATES

## **49G SPECIAL PAYMENT CONDITIONS FOR BENEFICIARY**

## **49H SPECIAL PAYMENTS CONDITIONS FOR RECEIVING BANK (NOTE, TECHNICALLY A BENEFICIARY SHOULD NOT SEE THIS)**

## **71D CHARGES:**

Details which party is responsible for what fees. Beneficiary should pay close attention to the fees that they are responsible for including confirmation, acceptance, etc.

## **48 PERIOD FOR PRESENTATION IN DAYS:**

WITHIN 21 DAYS AFTER SHIPMENT DATE, BUT WITHIN THE VALIDITY OF THE CREDIT. (NOTE 21 DAYS IS THE UCP DEFAULT)

## **49 CONFIRMATION INSTRUCTIONS: OPTIONAL WITHOUT OR CONFIRM**

## **58 REQUESTED CONFIRMATION PARTY**

## **53 REIMBURSEMENT BANK**

(NAME AND SWIFT ADDRESS OF USA REIMBURSING BANK)

## **78 INSTRUCTIONS TO THE PAYING/ACCEPTING/NEGOTIATING BANK:**

T/T REIMBURSEMENT ALLOWED

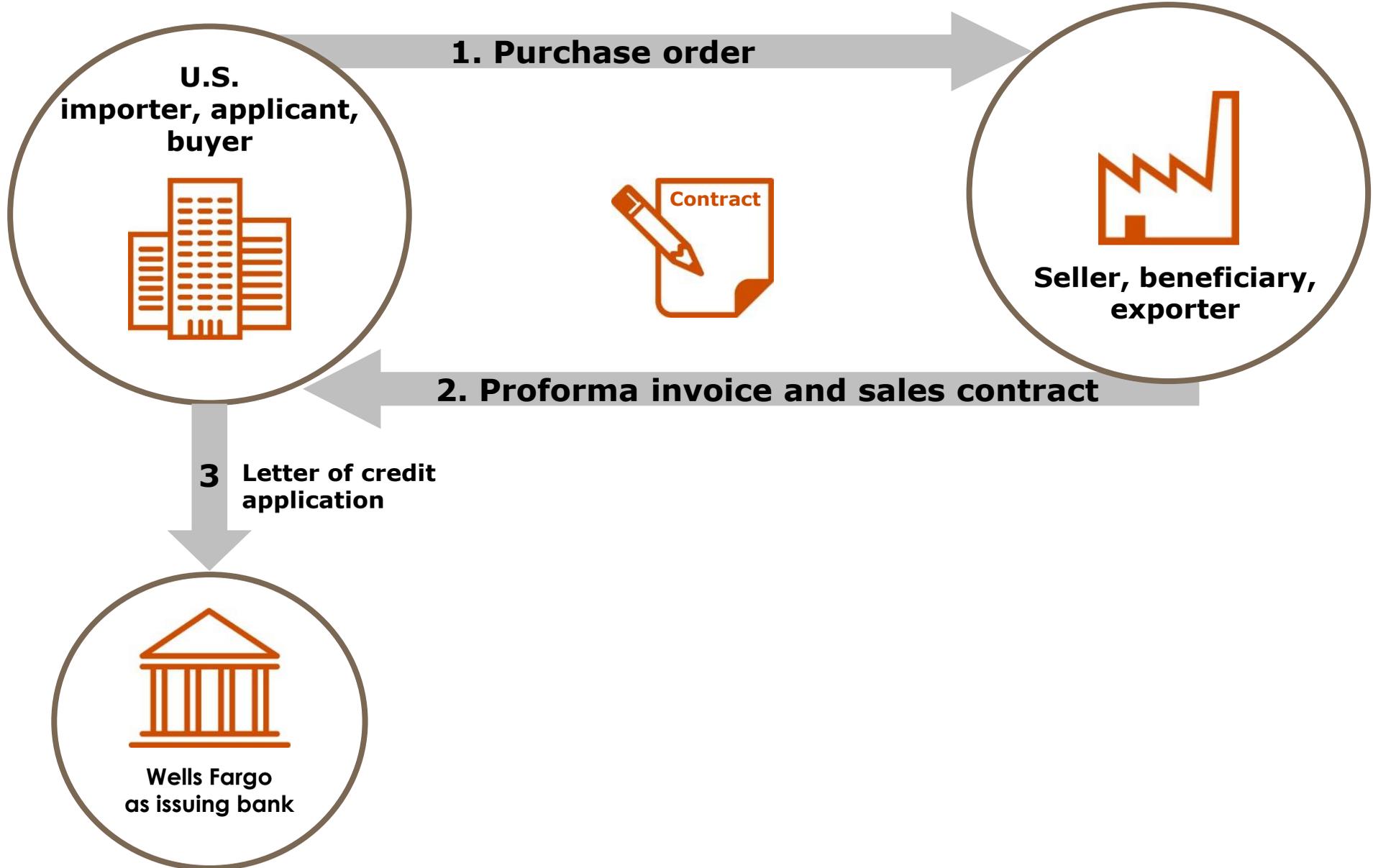
DEBIT ISSUING BANK ACCOUNT WITH WELLS FARGO BANK (PREFERRED – TYPICALLY THE SHORTEST DSO PERIOD)

## **57 ADVISE THROUGH BANK**

## **72Z SENDER TO RECEIVER INFORMATION**

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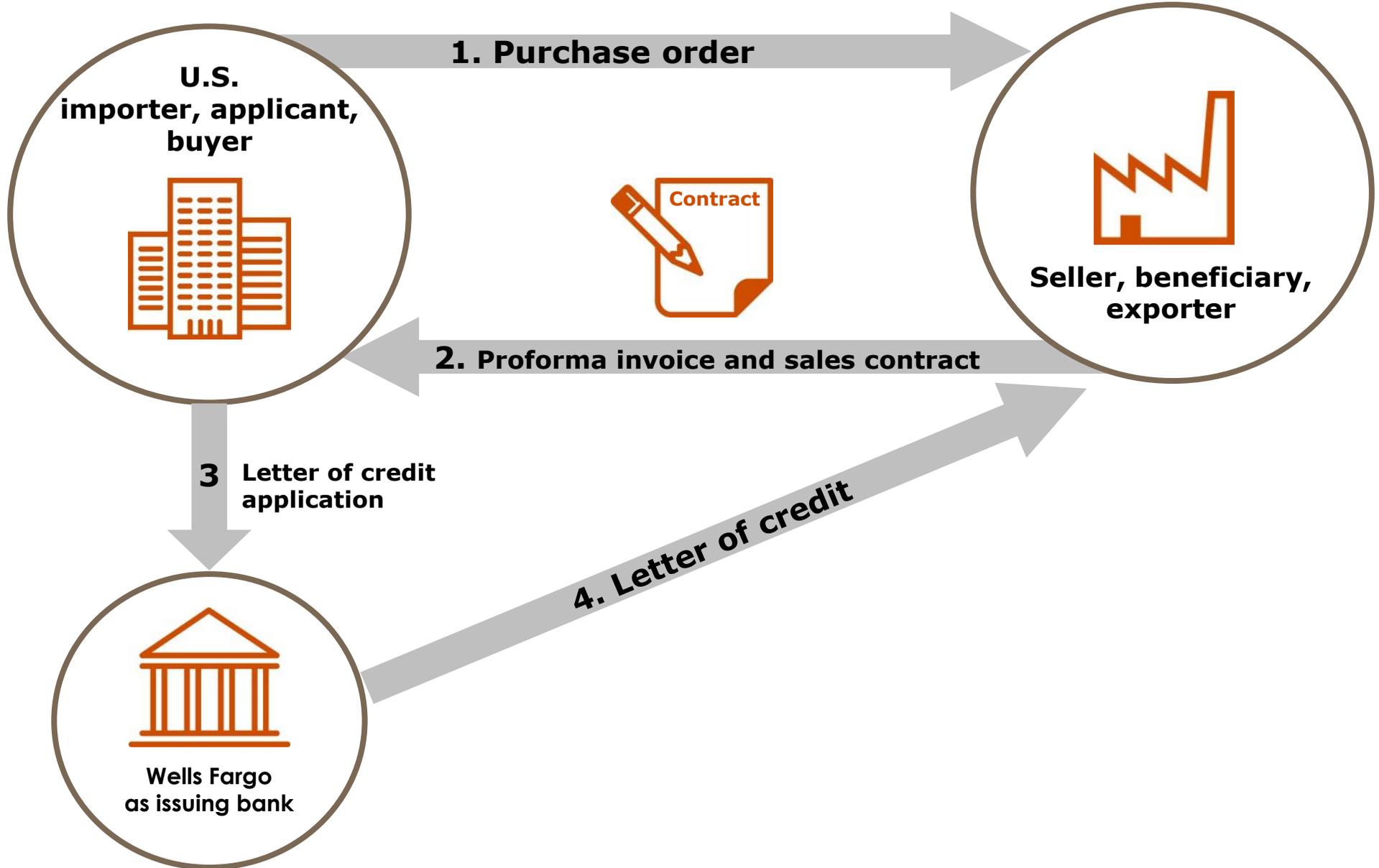
# Basics – Letter of credit



# The letter of credit

- If the application is acceptable to the financial institution, they will issue their L/C
- The type of L/C we are discussing is a commercial L/C, which typically covers a movement of goods; from the seller's side they are also known as an export L/C
- The L/C becomes a stand-alone, independent undertaking (not a contract) different from the underlying sales contract on which it may have been based
- Once an L/C is issued, the issuing bank (Wells Fargo in the example) is now irrevocably committed to making a payment to the seller/beneficiary, provided that their document presentations comply with the L/C's terms
- The applicant/buyer is not a party to the L/C; if the applicant should declare bankruptcy or simply refuse to pay, the issuing bank remains obligated to honor their L/C, upon their receipt of complying documents
- To a seller/beneficiary (the party entitled to proceeds against the L/C), the L/C becomes the primary means of payment; it replaces/exchanges the applicant/buyer's payment obligations in the underlying contract
- However, the underlying contract remains a viable payment option in the event the L/C issuer should go bankrupt or otherwise refuse to pay

# Basics – Letter of credit



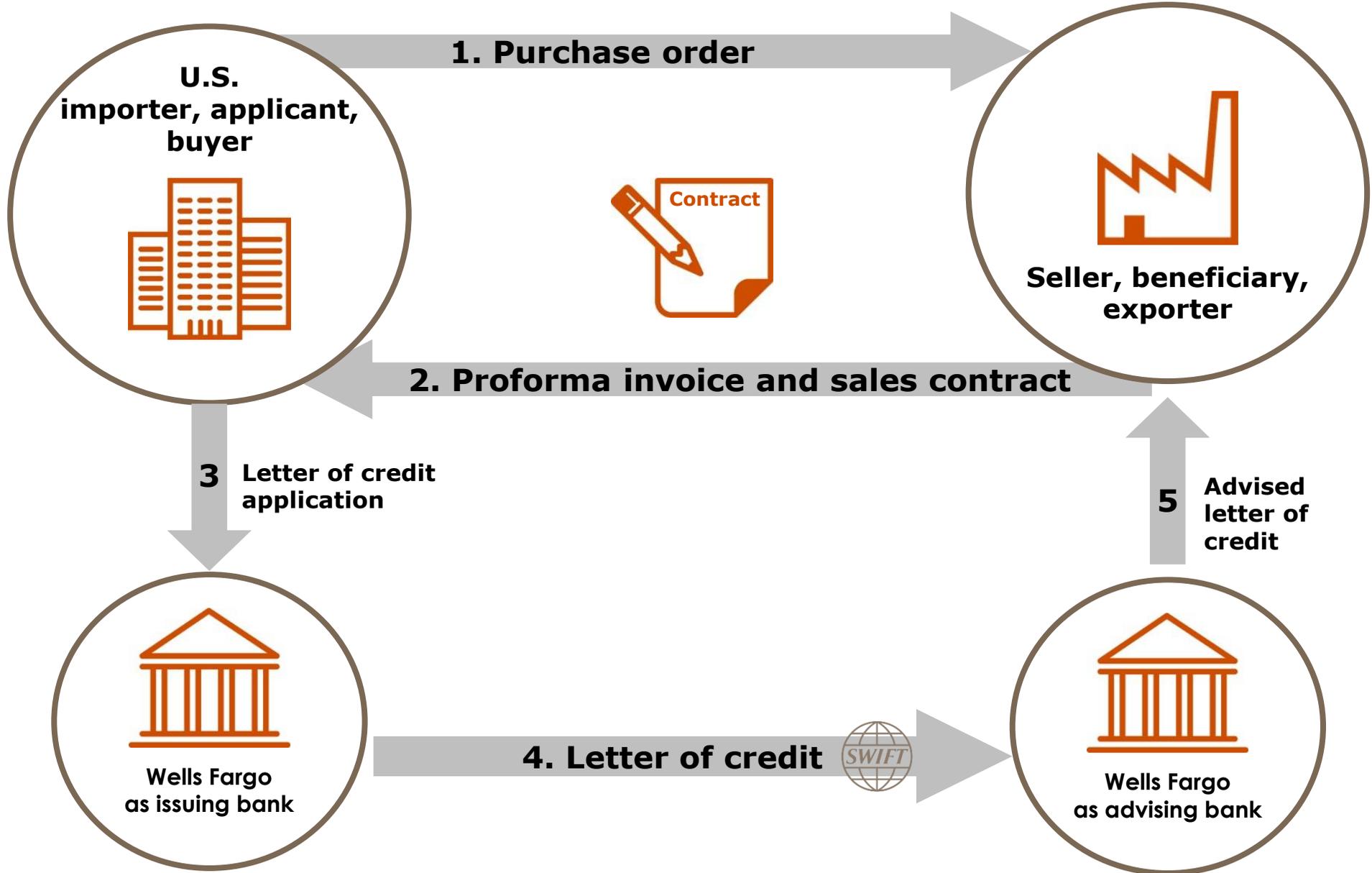
# Advising bank

- Often, the beneficiary is in a country that differs from that of the issuing bank
- The beneficiary will typically request that an L/C be sent to a bank in their country or one with which they have a relationship
- If the beneficiary does not request a specific bank, the issuing bank will generally choose a bank with which they have a relationship; the bank that receives the L/C from the issuing bank will be known as the advising bank
- The vast majority of commercial L/Cs are forwarded to the beneficiary through the use of an advising bank

# Advising Bank (continued)

- The advising bank's role is to:
  - A. Verify the authenticity of the L/C, typically through means of:
    1. authenticator keys, if the L/C is transmitted via SWIFT; or
    2. reviewing the signatures and determining that the signatures match and are authorized signatures of the issuer on file with the advising bank, if the L/C is sent via mail/courier
  - B. Accurately advise the details of the L/C they've received to the beneficiary
- An advising bank is not a party to the L/C
- An advising bank does not need to review an incoming LC or vet its terms

# Basics – Letter of credit

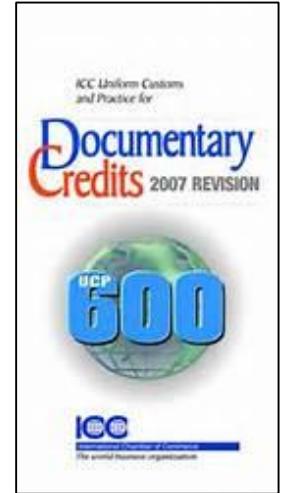


# Receiving the L/C

Ensure that the received L/C mirrors the terms of the contract entered into between the buyer and seller

- All of this information should agree with the sales contract:
  - Name of applicant (buyer) and beneficiary (seller)
  - Expiry date and place
  - Agreed upon amount
  - Partial and/or trans-shipments
  - Incoterms or other shipping terms
  - Payment terms, honor or negotiation
  - Last ship date and presentation period
  - Required documents
  - Foreign bank charges (who pays?)
  - Brief description of merchandise
  - Notify party for notice of arrival of goods
- Common things to consider:
  - Applicant's and beneficiary's names must be an exact match on all docs
  - If expiry place isn't local, docs will need to reach the overseas issuer
  - If a UCP 600 L/C is silent, then partials and transshipments are allowed
  - Negotiation provides flexibility; typically at a cost to a beneficiary
  - If silent then shipment date defaults to expiry date and presentation period is 21 days
  - Can you provide the required docs and in the required time frames?
  - Ensure the goods description conforms to the contracted goods

# Important notes on UCP 600<sup>©</sup>



- **UCP 600 Article 4 states in part:**

“Credits v. Contracts

a. A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary.”

- **UCP 600 Article 5 states:**

“Documents v. Goods, Services or Performance

Banks deal with documents and not with goods, services or performance to which the documents may relate.”

# Interpreting L/C terms – should you accept these terms?

- “Not Exceeding a total amount of ‘about’ USD 1 million against an L/C subject to UCP”
- “Shipment from any Eastern Port”
- “Documents must strictly comply with the L/C’s terms and conditions”
- “6 copies of invoice” (see UCP Article 20 c ii)
- “This credit is subject to ISP98 and as to matters not covered by ISP98 the UCP 600 complies”
- “All bank charges or any drawdown under this L/C are for the customer’s account”
- “This L/C expires at the confirming bank’s counters on 4/16/22. Special condition - our liability expires on 4/16/22.”

# Amendments

- Once the advising bank sends the L/C to the beneficiary, the beneficiary is expected to review the L/C to ensure that they can comply with its terms and conditions; if they agree, they will ship the goods in accordance with the L/C's terms and forward the documents for payment as instructed in the L/C
- If they do not agree with a term or condition, they should contact the buyer/applicant and request a change to the L/C
- Any change to an L/C is called an "amendment," however named or described; the flow for an amendment is the same as the L/C flow; amendments change the L/C terms or conditions and become part of the L/C; they do not become separate undertakings
- The beneficiary cannot partially accept an amendment (see UCP 600 Article 10e and ISP98 rule 2.06d); UCP states: it will be "deemed to be notification of rejection of the amendment"
- Amendments must be complete and precise; you must review them against the original L/C terms
- Costly, time consuming, but "worth it!"; this is the best way to ensure payment, especially when a discrepancy is incurable (e.g. late shipment or L/C expired)

# Confirmation

When requested, an L/C can nominate an advising or other bank to add its confirmation; the definition is provided in UCP 600 Article 2: “**Confirmation** means a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.”

## Pros

- Dual recourse – beneficiary has primary recourse to the confirmer and a secondary recourse to the issuer
- Payment assurance – when complying documents are presented, the issuer and confirmer are irrevocably bound to pay

## Cons

- More expensive – applicant and beneficiary are responsible for the confirming bank’s fees (note: fees are largely based on the credit strength of the issuer)
- Actions occur at the confirmer’s rather than at the issuer’s counters – L/Cs must allow expiration and negotiation or honor at the confirmer’s counters
- Limits – confirmers may limit their confirmations (e.g. reduced confirmation amounts or shorter expiration periods, etc.)

# Beware the stop-gap L/Cs

- Prior to shipment, the beneficiary must send samples of goods to the applicant for their approval; upon approval, notice will be sent by us (issuing bank) to the advising bank
- Negotiating bank must supply a credit report for the beneficiary
- This L/C will only become operative upon our amendment
- Also, avoid any “revocable” L/Cs or L/Cs that indicate that they are not operative or not available for drawings, honor, or negotiation upon their issuance

# In your opinion

- Are bankers responsible for knowing general industry codes and abbreviations?

# Response - In your opinion

- No, banks are not responsible for being familiar with or appreciating the differences for every merchandise code or abbreviation
- This is supported by numerous court cases; one of the most cited is a 1986 court case – *Marino Industries Corp. versus Chase Manhattan Bank*

# The International Chamber of Commerce (ICC), Paris

- The International Chamber of Commerce (ICC) was founded in 1919 with an overriding aim that remains unchanged: To serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital; members include many of the world's most influential companies and represent every major industrial and service sector
- Traditionally, ICC has acted on behalf of business in making representations to governments and intergovernmental organizations; it has ensured that the international business view receives due weight within the U.N. system and before intergovernmental bodies and meetings, such as the G8, where decisions affecting the conduct of business are made
- ICC commissions of experts, with members from the private sector, cover every specialized field of concern to international business; subjects include banking techniques, financial services, taxation, competition law, intellectual property rights, telecommunications and information technology, air and maritime transport, international investment regimes, and trade policy
- ICC is not a Chamber of Commerce in the traditional sense; it is a collective group of businesspeople who attempt to bring uniformity to trade transactions

# The International Chamber of Commerce (ICC), Paris (continued)

- ICC facilitates trade and publishes internationally accepted rules, which define roles and responsibilities for parties involved in trade transactions
- It provides Official Opinions relative to the rules that it has published; these Opinions provide banks and companies guidance
- While the courts are many times guided by ICC publications, the publications are not law

# The International Chamber of Commerce (ICC), Paris (continued)

- Globally accepted publications for trade transactions include but are not limited to:
  - Uniform Customs and Practices for Documentary Credits (UCP), current Revision 2007, Publication no. 600
  - Uniform Rules for Collections (URC), current Revision 1995, Publication no. 522
  - Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR), current Revision 1995, Publication no. 525
  - Uniform Rules for Demand Guarantees (URDG), current Revision 1992, Publication No. 458, Revision 758 July 1, 2010
  - International Commercial Terms (Incoterms® rules), current revision 2010
  - International Standby Practices (ISP), current Revision 1998, Publication No. 590 (Note: adopted by but not owned by ICC; this is an IIBLP publication)

# Official Opinion TA779rev - unpublished UCP 600

- L/C required:
  - Description of goods and services: Supply of lighting as per applicant's purchase order ... and beneficiary's proforma invoice....
  - **CIP** (place) seaport or airport (no unit pricing or individual costs)
- A commercial invoice is received for an amount equal to the credit amount and states:
  - The goods description exactly per the L/C
  - The delivery term as "**CIF** (place) seaport"
  - "Saudi Arabian Standard Organization (SASO) certification and its fee (EUR XX) was included in the calculation of the total invoice amount"
  - "Sea freight to (place in Country S)"
  - The invoice referred to the CIF price and not the CIP price; the issuing bank did not raise this as a discrepancy
- Part of the refusal cited a discrepancy: "Commercial invoice includes SASO certification charges for EUR...."
- Is this a valid refusal?

# Response - Official Opinion TA779rev - unpublished UCP 600

- International Standard Banking Practice (ISBP) 681 paragraph 61 states that “charges and costs must be included within the value shown against the stated term in the credit and invoice”
- The inclusion of the certification charges does not conflict with the requirement of the credit, the UCP 600, or ISBP 681 paragraph 61, and the discrepancy is not valid

# Official Opinion R631 / TA644rev – 2005-2008

- A company has ongoing credit business in favor of a particular beneficiary
- Its L/Cs include a condition stipulating details of transport: To and from and a latest shipment date
- L/Cs do not stipulate any documentary requirements to confirm compliance with the stated conditions (e.g. no transport documents are called for)
- Does a nominated bank have to ensure compliance with L/C terms before honoring or negotiating the documents?

# Response - Official Opinion R631 / TA644rev

- According to UCP 600 Sub-article 14h, banks will deem a non-documentary condition as not stated (on the basis that there is no necessity for the beneficiary to provide any evidence of compliance) and will disregard it
- However, should the beneficiary nevertheless elect to insert such data on any other stipulated document, then it must ensure that the data does not conflict with the data in the credit
- The view of the Banking Commission is that Sub-article 14h is not absolute and is qualified by the content of Sub-article 14d

# Understanding L/C payments

# Bank roles in the examination process – presenting bank

- A presenting bank is a bank that accepts the L/C-required documents on or before an L/C beneficiary and forwards them to the issuing bank for payment
- There is no obligation on their part to review or otherwise make a payment against a complying presentation
- The presenting bank may and will often review documents prior to sending them to the issuing bank for their honor
- They have no rights under an L/C
- They will receive the payment on or before the beneficiary when the issuer honors the presentation

# Bank roles in the examination process – negotiation

- **Rights/responsibilities from a beneficiary's point of view:**
- An LC can nominate the advising bank and/or other bank(s) to negotiate the beneficiary's documents
- Per UCP Article 2, "**Negotiation** means the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank."
- Any bank that receives the nomination to negotiate but is not a confirmer **is not obligated** to negotiate; the nominated bank can negotiate "with recourse" to the beneficiary
- A confirmer must negotiate when they determine the documents are complying and they must do so without recourse to the beneficiary
- Negotiation is meant to ensure that the beneficiary receives funds, on or before the time the issuer reimburses the nominated negotiating bank; used effectively, it will shorten a beneficiary's DSO
- In order to induce a local bank to negotiate – the beneficiary must often pay a fee, often interest based, predicated on factors such as the issuer's size and reputation, their credit rating, the number of days in which the negotiating bank expects to receive reimbursement from the L/C issuer, and the reputation of the beneficiary
- Negotiation is the most flexible of the UCP terms in that the tenor can be available at sight or time (e.g. 180 days from the BL date), by negotiation or at sight by negotiation, etc.
- A nominated negotiating bank which has only examined and forwarded a presentation to the issuer, without providing a firm payment commitment or an upfront payment, is deemed a presenting bank

# Negotiation and pre-payment options

- Assume an LC's tenor and reimbursement states: at sight; by negotiation and reimbursement states that the documents must be presented to the issuer for reimbursement
  - In this example, a nominated bank willing to negotiate a complying presentation will assume a reimbursement period of at least 10 days from the date they've determined compliance (e.g. 2+ days for the issuer to receive the documents, 6 working days maximum for the issuer to examine them, and at least one weekend); in this example, the bank willing to negotiate must either:
    - Commit to payment at a fixed future certain date (e.g. 10 calendar days and most often a commitment fee is applied); or
    - If beneficiary wishes to shorten their DSO, they may request to prepay the negotiation period, most often against a simple request and agreement to pay negotiation discount interest costs in addition to the above commitment fee
  - If a bank does not negotiate, a beneficiary will be paid upon receipt of the issuer's reimbursement and must assume a delay
- Now let's assume an LC's tenor and reimbursement states: at 150 days from the BL date; by negotiation or by deferred payment or by acceptance and reimbursement states that the documents must be presented to the issuer for reimbursement
  - In this example, the prepayment options are similar to the above with the exception that the commitment and/or prepayment periods are predicated on the number of days between the date the nominated bank deemed a presentation to be compliant and the L/C tenor's maturity date:
    - For example: A presentation is received on 1/2/2016 against a L/C with a tenor of 150 days after the BL date; the bank examines the presentation and finds the document compliant on 1/4/2016; the BL was dated 12/28/2015; adding 150 days to the BL date makes the due date 5/26/2016; assuming a prepayment agreement is reached on 1/4/2016, the interest would be based on 143 days

# Bank roles in the examination process – honor

- An L/C can nominate the advising bank or other bank(s) to:
  - Honor the beneficiary's documents
- Per UCP 600 Article 2, "**Honor** means:
  - a. To pay at sight if the credit is available by sight payment.
  - b. To incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.
  - c. To accept a bill of exchange (draft) drawn by the beneficiary and payable at maturity if the credit is available by acceptance."
- A confirmer must honor when it has determined the documents are complying; any other bank that receives the nomination to honor is not obligated to do so
- A nominated bank that has only examined and forwarded a presentation to the issuer, without otherwise honoring the presentation, is deemed a presenting bank

# Bank roles in the examination process – honor

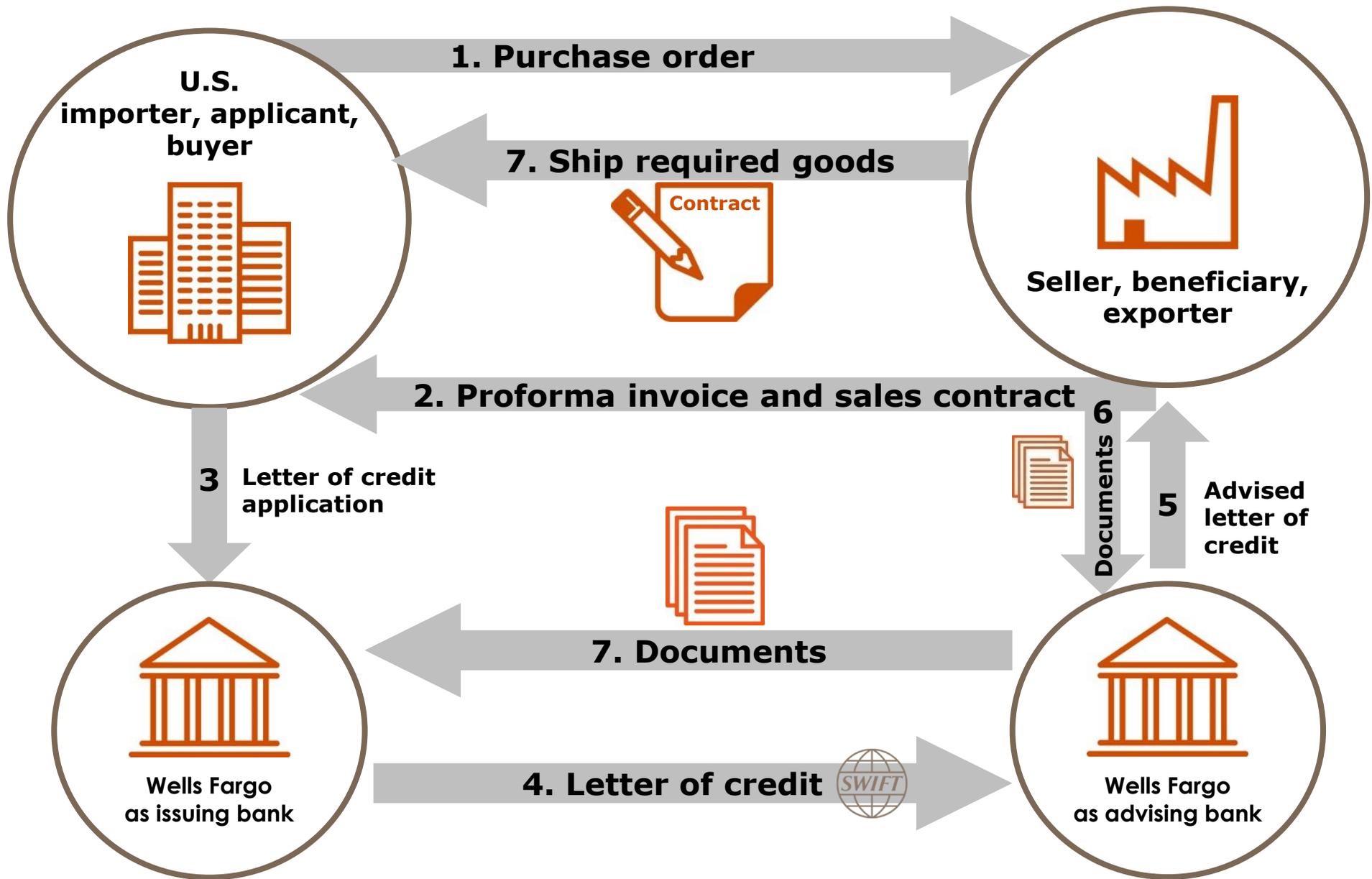
(continued)

- When an L/C is made available with another bank(s) to honor or negotiate and that bank has done so in good faith, it receives certain rights and protections to an L/C's payment
- It is for this reason that UCP 600 Article 7c states, in part:  
“Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, whether or not the nominated bank prepaid or purchased before maturity. An issuing bank’s undertaking to reimburse a nominated bank is independent of the issuing bank’s undertaking to the beneficiary.”

# Why a deferred payment instead of an acceptance?

- There is a convenience in not requesting a draft
- It may avoid an applicant having to pay a stamp duty or similar fee
- Some companies are concerned about privacy regarding their transactions; if a bank-accepted draft is sold in an open market, then the information is no longer confidential
- Where the laws for negotiable instruments apply for banker's acceptances, the laws for deferred payments do not always follow negotiable instrument law

# Basics – Letter of credit

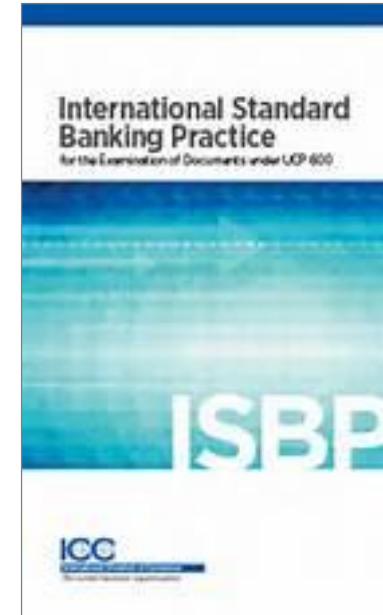


# Reimbursement

- Funds can come from:
  - Issuing bank
  - Nominated bank (advising bank, confirming bank, any bank, etc.); or
  - A third-party bank (reimbursing bank)
- Reimbursement/payment:
  - Each L/C's terms dictate where reimbursement funding comes from
  - An L/C may contain special conditions that affect the timing of payment (e.g. claim reimbursement from XXX Bank three days after you've notified us via SWIFT that documents are in compliance)
  - Unless a bank is negotiating a complying presentation, L/C payments are made upon receipt of reimbursement
  - When negotiating, the beneficiary typically assumes additional costs for the payment method but their DSO is shortened
  - The longer the reimbursement delays the longer the DSO period is for the beneficiary

# International Standard Banking Practice (ISBP<sup>®</sup>)

- ISBP 745<sup>®</sup> (current revision)
- How it helps:
  - Provides a global document examination checklist for banks to follow
  - Helps alleviate improper presentation refusals
  - Goes beyond and provides interpretations of UCP 600
  - Wells Fargo is guided by it



# ISBP 745<sup>©</sup> – Are you guided?

- **Title of invoice**

- C1) a. When a credit requires presentation of an "invoice" without further description, this will be satisfied by the presentation of any type of invoice (commercial invoice, customs invoice, tax invoice, final invoice, consular invoice, etc.). However, an invoice is not to be identified as "provisional," "pro-forma," or the like.
- b. When a credit requires presentation of a "commercial invoice," this will also be satisfied by the presentation of a document titled "invoice," even when such document contains a statement that it has been issued for tax purposes.

- **Issuer of an invoice**

- C2) a. An invoice is to appear to have been issued by the beneficiary or, in the case of a transferred credit, the second beneficiary.
- b. When the beneficiary or second beneficiary has changed its name and the credit mentions the former name, an invoice may be issued in the name of the new entity provided that it indicates "formerly known as (name of the beneficiary or second beneficiary)" or words of similar effect.

- **Description of the goods, services, or performance and other general issues related to invoices**

- C3) The description of the goods, services, or performance shown on the invoice is to correspond with the description shown in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when read together, represent a description of the goods corresponding to that in the credit.

# Discrepancies = payment delays = extended DSO

<b><i>Method of resolution</i></b>	<b><i>Average payment period</i></b>
Documents in order	1- 6 days
Payment under beneficiary's indemnity	1- 6 days
Documents corrected (as possible)	3 - 7 days
SWIFT message for issuers approval	3 - 11 days
Documents sent on approval	11- 15 days

## Additional notes:

- Each L/C's reimbursement terms add payment delays even to a complying presentation
- Per UCP 600 Article 14 Sub-article b, banks have a maximum of 5 + 1 days to determine whether a presentation is compliant; the sub-article does not address when to make a payment
- When discrepancies are not curable, sending documents on approval basis may be the fastest resolution
- In a worse case scenario, payments do not have to be made when documents are discrepant

# ICC unpublished opinion document 70/TA.848rev

- A credit was available with the issuing bank, by payment, at their counters
- Description of goods as follows:
  - Invoice: "FROZEN IQF BLANCHED PEELED DEVEINED TAIL-OFF (BPD) VANNAMEI SHRIMPS. 1,140 CTNS – SIZE 70/90 760 CTNS – SIZE 90/120"
  - Health certificate: Health certificate issued in Italian and English language to be used for import into EU of fishery products intended for human consumption
- Beneficiary presented documents to their bank, which negotiated them and sent them to the issuer
- Issuer promptly refused the documents citing: "HEALTH CERTIFICATE STATES IN BOX I.28: PENAEUS VANNAMEI INSTEAD OF VANNAMEI SHRIMP IN INVOICE"
- Negotiating bank reviewed the discrepancy and noted that, in addition to the L/C goods description, the specific box number I.28 in the Health Certificate is titled "IDENTIFICATION OF THE COMMODITY" and, among others, was subtitled "SPECIES/SCIENTIFIC NAME"
- They refuted the discrepancy and the issuer reaffirmed their refusal and returned the documents

## **Questions:**

- Is this a valid refusal?
- Based on the facts presented, is there anything else unusual about this case?

# Response - ICC unpublished opinion document 470/TA.848rev

- The discrepancy stated by the issuing bank is not valid
- The bank of the beneficiary was not a nominated bank under the documentary credit; any claim vis-à-vis the issuing bank would not be based on UCP 600 but on their financing agreement with the beneficiary

# Unpublished official ICC opinion document

## 470/TA.846rev

- On examination of the documents, the nominated bank found that the presented bills of lading bore the following remarks made by the master of the vessel under the “Description of Cargo” section:  
MASTERS REMARKS:
  1. CONTAINERS STORED IN AN OPEN AREA
  2. CONTAINERS EXPOSED TO WEATHER BEFORE SHIPMENT
  3. CONTAINERS LOADED FROM OPEN STORAGE
  4. CONTAINERS WET/MOIST BEFORE SHIPMENT
  5. CONTAINERS LOADED DURING RAIN
  6. CONTAINERS COVERED WITH DIRT/DUST PRIOR TO SHIPMENT
  7. CONTAINERS ARE SECOND HAND, SOME OF THEM SLIGHTLY DENTED PRIOR TO SHIPMENT
  8. SURFACES OF THE CONTAINERS ARE RUST STAINED, WITH SCRATCHES BEFORE SHIPMENT
  9. THE MARKS OF SOME CONTAINERS ARE NOT CLEAR / MISSING
- Note: UCP 600 Article 27 states that a clean bill of lading is one that does not contain a clause or notation expressly declaring a defective condition of the goods or their packaging
- ISBP 745 Paragraph F18b states that clauses about packaging such as “may not be sufficient for the sea journey” and similar words do not make the document discrepant
- Would these clauses contained in a BL be considered a discrepancy (e.g. not a clean bill of lading)?

# Response to unpublished official ICC opinion document 470/TA.846rev

- None of the statements would make a BL discrepant

# DOCDEX (Documentary Credit Dispute Resolution)

- ICC recognized the need for a less expensive and time consuming way to resolve disputes rather than through local courts
- Their objective is to provide an independent, impartial, and prompt expert decision on how a dispute should be resolved on the basis of the terms and conditions of the documentary credit, the collection instruction, the demand guarantee, and the applicable ICC rules, be it UCP, the URR, the URC or the URDG
- Each case is weighed by a panel of three ICC nominated experts who render decisions based on compliance with UCP and the L/C; the decisions are vetted by a technical adviser from the UCC Banking Commission
- Technical advisor parties may file a request for a DOCDEX decision for any dispute relating to:
  - a documentary credit
  - a standby letter of credit
  - a bank-to-bank reimbursement
  - a collection
  - a demand guarantee or counter-guarantee
  - a forfaiting transaction
  - a bank payment obligation (BPO)
  - a other trade finance-related instrument, undertaking or agreement.
- Unless otherwise agreed, a DOCDEX decision is not binding upon the parties
- DOCDEX decisions permit parties to stay out of court and to settle reliably at a low cost
- The average DOCDEX decision is handed down in 2-3 months, while courts may easily take between 6-18 months or much longer
- DOCDEX saves money compared to the unlimited costs of litigation; in DOCDEX the total cost is capped at USD 5K or USD 10K depending on the amount in dispute; even in exceptional cases, the Centre will only charge an additional maximum fee of USD 2,500 or USD 5,000

# Helpful Resources

# U.S. government oversight

- Special export licenses by the seller's country
- Office of Foreign Assets Control (OFAC)
  - SDN (Specially Designated Nationals)
- Antiboycott regulations
- Money laundering “watch”
- USA PATRIOT Act (Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001)
- Bank Secrecy Act (BSA) – i.e. know your customer

# Useful websites

## **OFAC (Office of Foreign Assets Control)**

<http://www.treas.gov/ofac>

- Specially Designated Nationals such as terrorists, OFAC country list

## **Bureau of Industry and Security**

<https://www.bis.doc.gov/>

- Export policies and regulations
- Export enforcement
- Lists to check:
  - Denied persons
  - Unverified list
  - Specially Designated Nationals (OFAC)
  - Debarred list
  - Avoiding dealings with unauthorized parties
- Antiboycott compliance

## **U.S. Customs and Border Patrol**

<http://www.cbp.gov/>

## **FirstGov (online resources for the federal government)**

[http://www.firstgov.gov/Business/Business\\_Gateway.shtml](http://www.firstgov.gov/Business/Business_Gateway.shtml)

- International trade
- Financing
- Exporting
- Buying from and selling to the government
- Get an export license

## **ICC (International Chamber of Commerce)**

<http://www.iccwbo.org>

## **Wellsfargo.com – International Group**

<https://www.wellsfargo.com/com/international/>

# Contact us

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## **El Monte, CA**

Phone: 800-798 -2815  
Fax: 704-715-0199

## **International Direct Dial**

Phone: 305-789-6975

## Wells Fargo International Trade Operations contact information

### **Charlotte Import/ Export Trade Operations**

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Wells Fargo Bank, N.A.  
Trade Customer Connection  
1525 West W.T. Harris Boulevard  
MAC: D1109-011  
Charlotte, NC 28262

Fax:  
Import Letter of Credit / Import Documentary Collections: 704-427-6758  
Export Letter of Credit / Export Documentary Collections: 704-427-6868

SWIFT: PNBPUS33CHA  
FED ABA: 026005092  
CHIPS ABA: 0509

Email: [trade.ccuore@wellsfargo.com](mailto:trade.ccuore@wellsfargo.com)

### **El Monte Import/Export Trade Operations**

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Wells Fargo Bank, N.A.  
Trade Customer Connection  
9000 Flair Drive, 3<sup>rd</sup> Floor  
MAC: E2002-031  
El Monte, CA 91731

Fax: 704-715-0199  
SWIFT: WFBIUS6S

E-mail: [core.tradeconnections@wellsfargo.com](mailto:core.tradeconnections@wellsfargo.com)

### **Hong Kong Import/Export Trade Operations**

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Wells Fargo Bank, N.A.  
7F Cityplaza, Four  
12 Taikoo Wan Road  
Taikoo Shing, Island East  
Hong Kong

Phone: 852-2509-0888  
Fax: 852-2845-2073  
SWIFT: PNBPHKHH

### **Standby Letter of Credit Operations**

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Wells Fargo Bank, N.A.  
Standby Customer Connection  
401 N Research Parkway, 1<sup>st</sup> Floor  
MAC: D4004-012  
Winston Salem, NC 27101

Fax: 336-735-0950  
SWIFT: PNBPUS33SLC  
FED ABA: 053000219

Wells Fargo Bank, N.A.  
Standby Customer Connection  
794 Davis St., 2<sup>nd</sup> Floor  
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San Leandro, CA 94577

E-mail: [SBLC-New@wellsfargo.com](mailto:SBLC-New@wellsfargo.com)

Any questions, on any topic?



Thank you for working together  
with Wells Fargo

