

Documentary credits





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Preface

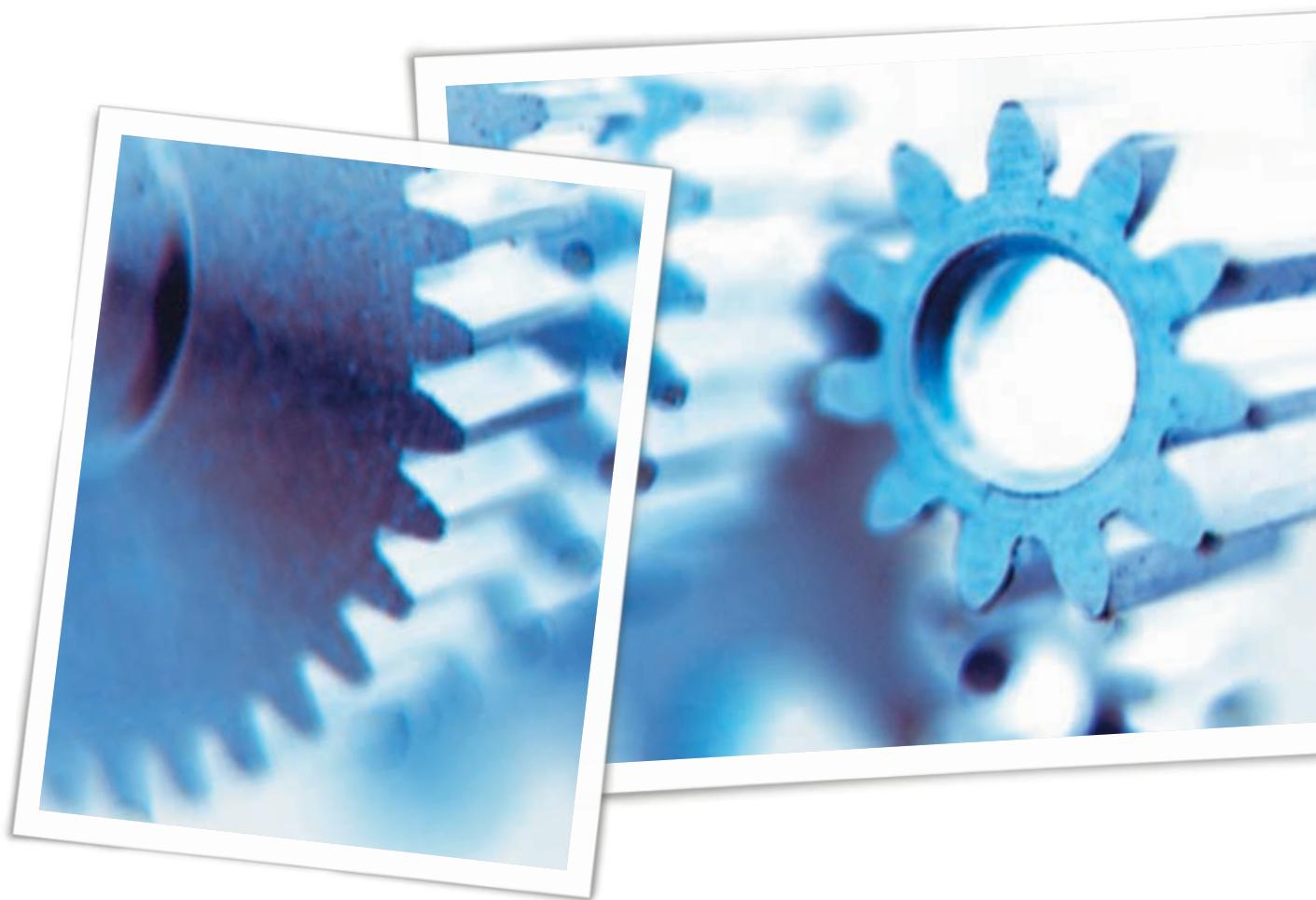
The purpose of this publication is to convey an understanding of the documentary credit instrument, as well as outlining the rules and practices applicable in this area.

We hope you will find this publication useful whether you intend to use or are already using documentary credits, and please feel free to contact us if you need any further information. We are always prepared to advise or assist you in matters related to your documentary credit business.

For further information or material, please contact one of our Trade Finance departments. You will find the contact details on the back of this publication.

Nordea, 2009





Introduction

The information in this publication is based on our acquired expertise in international documentary credits, the ICC Uniform Customs and Practice for Documentary Credits, Publication No. 600 (the UCP 600), as well as the International Standard Banking Practice for the Examination of Documents under Documentary Credits – 2007 revision for UCP 600, ICC publication No. 681 (the ISBP 2007).

Article numbers referred to in this publication are the articles contained in the UCP 600 – Paragraph numbers referred to are the paragraphs contained in ISBP 2007.

The documentary credit is termed differently in different parts of the world, like “Letter of Credit”, “LC”, “DC” or “Credit”. For the purpose of this publication the abbreviation “DC” will be used to describe a “commercial documentary credit” i.e. a payment instrument covering a transaction of goods or services. The principles laid out may of course also apply to other types of DCs.

Where other “types” of DCs are described or referred to, that will be reflected in the text e.g. “Standby Letter of Credit” (Chapter 5,1).

The intention is to provide an “easy-to-read” introduction to the DC – for that reason an appendix describing the commonly used technical terms of the DC is available (Appendix 1). The terms defined in this appendix are underlined in the text.

One main purpose of this publication is to guide you step-by-step through the DC process. This is mainly reflected in chapter 3, which in addition to describing each specific step provides recommendations for the buyer and the seller.

The DC in a historical perspective

The DC has been in use for many years and is believed to date back to the beginning of the 18th century. Some of the principles involved can even be traced as far back as to the ancient Rome.

It was not, however, until much later that the DC assumed the shape we see today.

In the beginning of the last century various countries developed their own rules governing DCs. In the early 1930s national sets of rules for handling DCs still existed in the Nordic countries. These rules were established and issued by the major banks that were active in DC transactions in the relevant countries.

At the same time the International Chamber of Commerce (the ICC) made an attempt to draw up international rules for DCs (today known as the “UCP” – Uniform Customs and Practice). The first version of the UCP was drafted at the ICC congress in Vienna in 1933. It was later revised in 1951 and again in 1962. The 1962 revision was particularly significant as – for the first time – Great Britain and the Commonwealth accepted the UCP.

New revisions of the UCP were implemented in 1974, 1983, 1994 and latest in 2007. The 2007 revision is known as UCP 600 “ICC Uniform Customs and Practice for Documentary Credits – ICC publication No. 600”.

It is extremely rare for DCs not to be issued subject to the UCP.

Since World War II the volume of DCs issued in world trade has remained at a steady level, despite natural market variations.

The development of new technology has also had an impact on the DC.

A number of initiatives have already been taken by organisations and private companies, including Nordea, to adapt the practice to the new demands.

The ICC has developed a set of rules designed to support presentations of electronic documents under DCs. This is called “Supplement for Electronic Presentation (Version 1.1)”. It uses the acronym “eUCP”. It is however still most common that the documents presented under DCs are in paper form.

Although the DC is sometimes referred to as an old or perhaps even outdated method of payment, it is unlikely to disappear from international trade. This is largely due to the absence of an internationally recognised alternative instrument providing a similar mix of payment, financing and risk management on the market today.

What is a DC?

To fully understand what a DC is, there are a few important concepts that one must be familiar with. First of all it is important to understand what kind of need the DC covers – i.e. where does it fit into the commercial transaction that it is supposed to support. As such the DC covers a very basic need: Two parties are prepared to enter into a transaction – one has the money and the other one has the goods, and the question is how to make the “exchange”. One answer to that question is to use a DC.

See below the official *Definition of a DC*, which describes *The independent nature of the DC* as well as *The parties involved in the DC transaction*. It also describes *The functions of the DC*, shows *The DC cycle* and outlines *Advantages, disadvantages and risks*.

1) Definition of a DC

UCP 600 article 2 defines the DC as:

... any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.

In this definition some of the core principles are introduced:

- **The DC is irrevocable**

A DC issued subject to UCP 600 is by definition irrevocable. This means that once issued the DC can neither be amended nor cancelled without the agreement of the issuing bank, confirming bank, if any, and the beneficiary (article 10(a)).

- **Definite undertaking to honour**

Once a complying presentation is made, the obligation to honour occurs.

- **A complying presentation**

A prerequisite for the bank's obligation to honour is that a complying presentation is made. This means that the documents presented by the seller must comply with the terms and conditions stipulated in the DC, the UCP 600 and also international standard banking practice.

2) The independent nature of the DC

When using the DC it is important to note that it is an independent payment instrument. This is reflected in a number of articles in the UCP 600:

Article 4 underlines that the DC is a transaction that is separate from the agreement on which it may be based, and that the banks involved are not concerned with, or bound by, such contracts.

Article 5 states that the banks involved deal with documents and not with goods, services or performance to which the documents may relate.

Article 34 states that the banks are not liable for the effectiveness of the documents, i.e. the banks will not go beyond the documents to check if the information contained there is correct.

The background to the UCP 600 articles mentioned above is that the DC is dependent on the documents presented – and based on those documents it is up to the banks to evaluate if the beneficiary (seller) has fulfilled the requirements set out by the DC. This decision made by the bank is based on an examination of the documents presented. The principles for the bank's examination are outlined in article 14(a): “*..the bank ... must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation*”.

3) The parties involved in the DC transaction

A certain terminology is used in DC transactions– not least when it comes to the parties related to the transaction. Of primary importance are:

Applicant

Applicant is defined as “*the party on whose request the credit is issued*” (article 2). In a DC that would normally be the buyer.

Beneficiary

Beneficiary is defined as “*the party in whose favour a credit is issued*” (article 2). In a DC that would normally be the seller.

Issuing bank

Issuing bank is defined as “*the bank that issues a credit at the request of an applicant or on its own behalf*” (article 2). In the case of a DC that would normally be the buyer's bank.

The role of the issuing bank is outlined in article 7, Issuing Bank Undertaking.

Advising bank

Advising bank is defined as “*the bank that advises the credit at the request of the issuing bank*” (article 2). In a DC that would normally be the seller's bank – or a bank close to the seller, normally in the same country as the seller.

The role of the advising bank is outlined in article 9, Advising of Credit and Amendments.

Nominated bank

Nominated bank is defined as “*the bank with which the credit is available or any bank in the case of a*

credit available with any bank” (article 2). In the case of a DC, this would normally be the advising bank. The role of the nominated bank is outlined in article 12, Nomination.

Confirming bank

Confirming bank is defined as “*the bank that adds its confirmation to a credit upon the issuing bank’s authorization or request*” (article 2). In most situations this would be a bank in the country of the seller. The role of the confirming bank is outlined in article 8, Confirming Bank Undertaking.

Reimbursing bank

The role of the reimbursing bank is described in article 13. It is the bank designated in the DC to reimburse the nominated bank. The nominated bank will claim the funds from the reimbursing bank after having accepted the documents. It is the bank where the issuing bank maintains an account for the designated currency.

From the above it may seem as if there are many banks involved in each DC transaction. This is often not the case. The above should primarily be understood as the “role” or “roles” a bank can assume under a DC. It is that “role” or “roles” that defines the responsibility the single bank may have in the transaction.

4) The functions of the DC

Given the characteristics of the DC as described above, it may be used for a number of purposes – i.e. there may be different reasons for its use but three core functions must be highlighted:

Payment instrument

The main function of the DC is to facilitate the flow of money from the buyer to the seller through the banks involved.

Guarantee

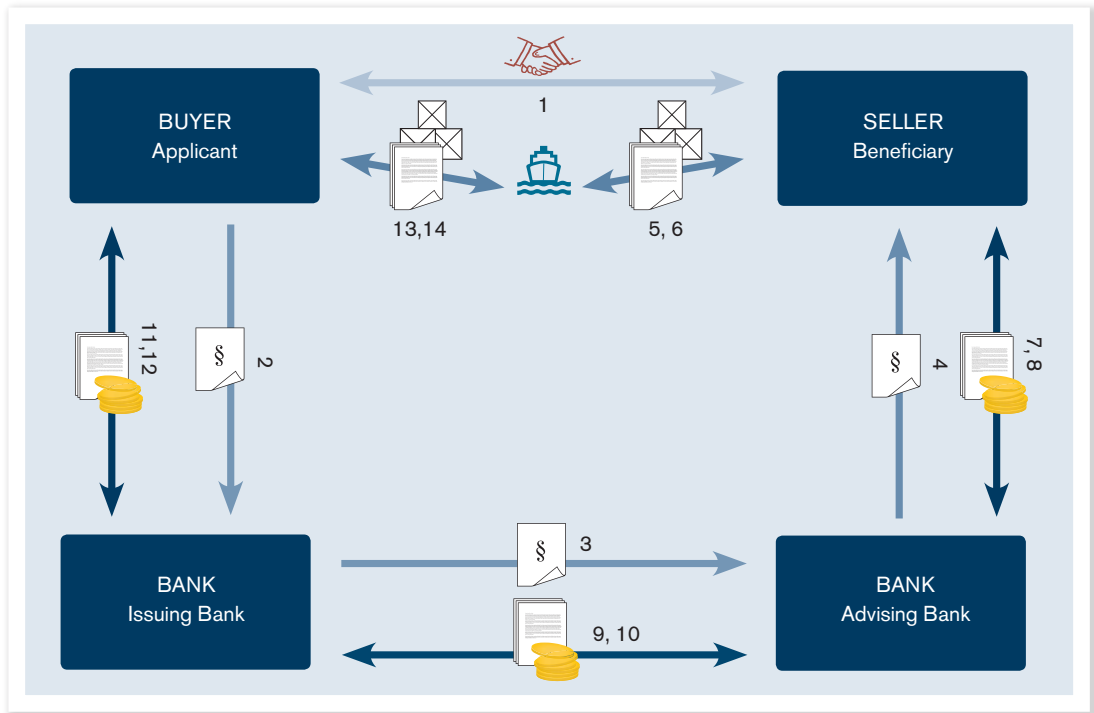
By issuing the DC, the bank guarantees the payment to the seller, provided that the seller fulfils the stipulations of the DC and the UCP 600. The buyer is ensured that no payment will take place until the conditions of the DC have been met.

Financing instrument

The seller, by using a DC available at sight, often obtains payment at the time he presents the stipulated documents, while the buyer normally pays upon receipt of documents by the issuing bank. By using a time DC, the DC provides for the seller’s granting of credit to the buyer, and the seller can usually obtain finance through the banking system.

5) The DC cycle

To illustrate the various steps through which a DC passes during its lifetime, we will first describe the cycle as a whole workflow (see figure below) and in Chapter 3 – each step of the process is described in more detail. The numbers mentioned in the figure below – showing the DC cycle – is identical to the sub-chapters in Chapter 3.



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|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> 1) Agreement between buyer and seller 2) DC application (from the buyer to the issuing bank) 3) Issue of the DC / amendment 4) Advising of the DC /amendment 5) Shipment of goods 6) Preparation of the documents 7) Document presentation 8) Examination of the documents by the seller's bank + Payment to the seller | <ul style="list-style-type: none"> 9) Documents are forwarded to the issuing bank 10) Examination of the documents by the issuing bank + Payment to the Advising Bank 11+12) Documents are released to the buyer + Buyer pays for the documents 13+14) Buyer claims the goods + Buyer receives and clears the goods |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

6) Advantages, disadvantages and risks

This publication describes a DC, how it works – and the reasons for its use. Concerning the various advantages and reasons for the buyer and the seller, it is relevant to ask whether no disadvantages exist.

The general answer is that an advantage for one party may be a disadvantage for another.

Before using the DC it is important to identify the advantages, disadvantages and risks, bearing in mind that the risks involved often can be migrated via the structure and wording of the DC.

Buyer	Seller
Advantages	
<ul style="list-style-type: none"> • The buyer is only obliged to pay against presentation of complying documents • Normally, payment is not to be effected until the buyer's bank has received the documents • The DC improves the cash flow especially compared to payment in advance • Increased possibility to obtain discount or financing from the seller • The transaction and action of the banks involved is regulated by internationally accepted rules 	<ul style="list-style-type: none"> • Security for obtaining payment for the goods delivered • Payment will be predictable. <u>Sight</u> DCs: against presentation of documents. <u>Time</u> DCs: at maturity • Security against amendment or cancellation of an order without the seller's consent • Increased possibility to obtain finance from the nominated/confirming bank • The transaction and action of the banks involved is regulated by internationally accepted rules
Disadvantages	
<ul style="list-style-type: none"> • The buyer has an obligation to pay for complying documents, regardless of the condition of the goods • Once the DC has been issued the buyer cannot amend or cancel it, unless accepted by the seller. 	<ul style="list-style-type: none"> • There may be extra work involved in connection with the preparation of the documents stipulated in a DC • Delayed receipt of the DC may cause problems in observing an agreed time limit for dispatch of the goods
Risks	
<ul style="list-style-type: none"> • There is no guarantee of receiving the goods ordered. Only certainty of the seller's presentation of the stipulated documents 	<ul style="list-style-type: none"> • Documents not fulfilling the stipulations of the DC can be refused – resulting in late or non-payment • The DC is no better than the bank that has a payment undertaking

7) Resources: Rules and practices

When engaged in a DC transaction the following rules and practices are useful to know about.

UCP 600

Uniform Customs and Practice for Documentary Credits (2007 Revision) (ICC Publication No. 600).

The UCP 600 contains the DC rules (The history of the UCP is briefly described in Chapter 1).

UCP 600s is mainly used for DCs – but can also be used for standby letters of credit (Chapter 5,1).

ISBP (2007)

International Standard Banking Practice for the Examination of Documents under Documentary Credits – 2007 revision for UCP 600 (ICC publication No. 681)

The ISBP 2007 can be explained as the interpretation of the UCP 600. It collects a number of acknowledged practices within the DC area. The ISBP 2007 focuses on the content of documents and other practices from the stipulations set forth by the UCP 600. The ISBP 2007 should be regarded as a handbook when preparing documents under a DC and its approach is very practical.

ISP98

International Standby Practices – ISP98

Developed by the Institute of International Banking Law and Practice, endorsed and published by the ICC, ISP98 constitutes the standardised rules for the use of standby letters of credit worldwide (Chapter 5,1).

ICC Opinions

The UCP 600 is drafted by the *ICC Commission on Banking Technique and Practice* (also known as the *Banking Commission*). They allow for questions by banks and others who seek an article of the UCP 600 clarified – often related to a specific problem. These answers are called “Opinions” and form part of the international standard banking practice. These opinions are published in books.

ICC Decisions

From time to time the Banking Commission issues decisions on specific topics when relevant e.g. the following:

- *The determination of an “Original” document in the context of UCP 500 sub-Article 20(b)* (This decision is also applicable under UCP 600)

DOCDEX Decisions

The ICC Banking Commission also offers a service called “DOCDEX” (short for *Dispute Resolution Expertise*). It is related to:

- a DC incorporating the ICC Uniform Customs and Practice for Documentary Credits (UCP), and the application of the UCP and/or of the ICC Uniform Rules for Bank-to-Bank Reimbursement under Documentary Credits (URR),
- a collection incorporating the ICC Uniform Rules for Collections (URC), and the application of the URC,
- a demand guarantee incorporating the ICC Uniform rules for Demand Guarantees (URDG), and the application of the URDG.

The objective of DOCDEX is to provide an independent, impartial and prompt expert decision on how the dispute should be resolved on the basis of the terms and conditions of the DC, the collection instruction, or the demand guarantee and the applicable ICC Rules, be it the UCP, the URR, the URC or the URDG (ICC Rules).

The ICC charges a fee for handling cases under the DOCDEX system – and a submission will be subject to the “*ICC Rules for Documentary Instruments Dispute Resolution Expertise*”.

The DC step by step

The following is a detailed outline of the DC process, which describes each step – indicating the commercial parties (buyer and seller) for whom it is of primary importance. In addition, where appropriate it provides recommendations.

It should be noted that this signifies a standard DC, and for a specific DC it may of course be different depending on the circumstances.

1) Agreement between buyer and seller

Of primary importance to: The buyer and the seller

It is the buyer who arranges for the DC to be issued by sending an application to their bank, the issuing bank. This application is normally based on the agreement made with the seller. This agreement (outlined in a contract, proforma invoice etc.) should preferably also include information about the DC to be issued. This would at least include information on which documents the DC should call for and what conditions that must be met.



Besides that there are a number of key questions that should be considered:

- **Which banks should be involved?**

When getting a DC, one could say that the seller “moves” the risk of non-payment from the buyer to a bank. It is therefore important which bank issues the DC.

Similarly, it is important that the advising, nominated or confirming bank (Chapter 2,3) is acceptable to the seller.

- **When must payment be made?**

In general a distinction should be made between an “at sight” DC – where payment is made in connection with presentation of documents and a “time” (deferred payment or acceptance) DC where payment is made at a later date – determined in the DC, as for instance “xx days after shipment”.

- **Should the DC be confirmed or unconfirmed?**

If the seller requires that a bank other than the issuing bank (most often the seller’s own bank) is obliged to pay when a complying presentation is made, then the DC should be confirmed. If however the seller is satisfied with the issuing bank – it is sufficient that the DC is unconfirmed.

- **How to split the charges?**

It is very important to have a solid agreement as to who is to pay which charges. For the charges related to the DC this will often be reflected in the DC itself.

Note that the applicant (buyer) is ultimately responsible for the charges related to the DC (article 37(c)).

There may of course be other issues. The important focus that the buyer and seller should have is that if the transaction is to be handled via a DC – then it is preferable for all DC-relevant issues to be handled as early in the process as possible.

Recommendations to buyer and seller:

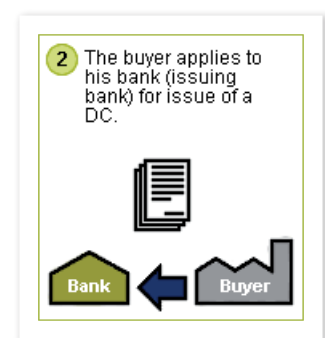
When making the commercial agreement on a transaction to be handled via a DC, the following should be considered:

- Agree on which documents the DC should call for. The preferable position is to identify the documents that the buyer needs in order to obtain and clear the goods – and the documents that the seller is able to provide.
- The requirements that the bank are to check – must be based on the documents presented. Consequently all DC requirements should be “documentary”.
Example: If the goods are to be shipped on a line vessel, it could for instance be worded as follows: “*Bill of lading must indicate that shipment has been made on a line vessel*”.
- The DC should not as an integral part include copies of the underlying contract, proforma invoice and the like (article 4(b)).
- The general structure of the DC, including the banks involved, payment terms, and if confirmation is required.
- If the DC is to be confirmed, the seller should preferably contact his bank in order to find out if this bank is prepared to add its confirmation.
- It is advisable to contact Nordea at an early stage.

2) DC application

Of primary importance to: The buyer

When the contract is concluded the next step is to apply for issuance of the DC. Most banks have application forms especially for this. The buyer/applicant fills in all relevant facts that should go in to the DC such as seller, timeframes, amounts and required documents. This should reflect what has been agreed in the contract.



If the DC must be advised to the seller through a specific bank, then this should also be stated in the application. Most issuing banks will, if possible, use this bank. In all other cases the issuing bank will independently choose its own advising bank.

The application also serves as the agreement between the issuing bank and the applicant for the issuance of the DC. The application therefore also contains General Terms and Conditions under which the bank is prepared to issue the DC.

It is important to bear in mind that this application is the basis for the DC to be issued; the information should therefore be clear and precise. There may however be information in the application that the bank cannot know if the seller will be able to comply with, for instance if it is possible to ship the goods from the port in question within the specified period of time. This will not be checked by the bank.

The applicant (the buyer) is committed to the issuing bank according to the application. The issuing bank is bound by the terms and conditions stated in the DC vis à vis the beneficiary (the seller), while all the terms and conditions stipulated in the trade agreement concern only the buyer and the seller.

Recommendations to the buyer:

- Make sure that all requirements are worded as clearly and precisely as possible.
- Make sure that the information included in the application is agreed with the seller – in order to avoid amendments – or in worst case ending up with a DC that is unusable.
- Send a draft of the DC application to the seller to obtain the seller's comments before sending it to the issuing bank.

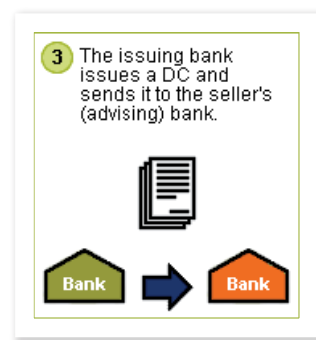
3) Issue of the DC / amendment

Of primary importance to: The buyer

The issuance of the DC by the issuing bank is based on the application received from the buyer (applicant) (Chapter 3,2). The bank will only issue the DC after having checked and accepted the buyer's application form.

The issuance of the DC is usually done via SWIFT – i.e. sent via electronic means to the seller's bank.

From the moment the DC is issued, the issuing bank is irrevocably bound to honour (article 7(b)) if a complying presentation is made. This means that the DC cannot be cancelled or amended without agreement from the issuing bank, the confirming bank, if any, and the beneficiary (article 10(a)).



Amendments to the DC are however common. An amendment must be routed through the same bank(s) as the original DC (article 9(d)). The issuing bank is bound by the amendment from the time of issue (article 10(b)), but the DC is not formally amended until the amendment is accepted by the beneficiary.

A confirming bank may choose either to extend its confirmation to the amendment or not. If the bank chooses to continue, it will be irrevocably bound as of the time it advises the amendment, but has the option to advise the amendment without extending the confirmation obligation.

In practice the amendment is agreed between the buyer and the seller – and the buyer will in turn contact the issuing bank asking them to issue the amendment – who will in most cases act accordingly.

It is of course preferable for all parties involved in the DC to hold the same opinion of it – as to which amendments have been accepted and rejected. Consequently, it is important that the seller (beneficiary) gives notification of acceptance or rejection of the amendments (article 10(c)).

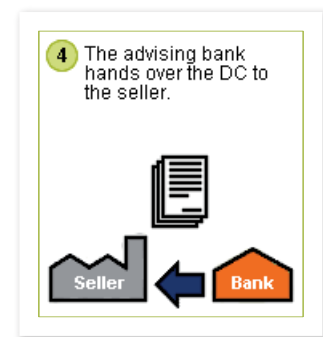
Recommendation to the buyer:

- When receiving a copy of the DC issued, check it carefully in order to ascertain that it complies with the agreement made with the seller as well as the application form sent to the issuing bank.

4) Advice of the DC /amendment

Of primary importance to: The seller

Having received the DC from the issuing bank, the advising bank will check the contents of the DC before advising it to the seller. If there are unclear points in the DC, the advising bank will – depending on the nature of the unclear points – inform the seller accordingly – and perhaps even seek clarification from the issuing bank.



When advising the DC the advising bank will also check the apparent authenticity of the DC and is responsible for ensuring that the advice sent to the seller accurately reflects the terms and conditions of the DC (article 9(b)).

The bank receiving the DC may assume different roles (*Chapter 2,3*). The DC may include instructions, nominations and/or authorisations e.g. instructions about confirmation.

The advising bank will advise the seller of the DC by forwarding it either in paper or electronic form.

The seller should, immediately on receipt of the DC, examine it to make sure that it is in accordance with the contract or any other agreement, and that it will be possible for him to comply with all the terms and conditions of the DC.

If the seller is either unable or unwilling to accept the DC as received, he should immediately contact the buyer to seek amendment.

It should be observed that the UCP 600 contains articles stipulating requirements for some of the presented documents even though such requirements are not expressly stated in the DC. There are specific articles for the invoice (article 18), the transport documents (article 19–27) and insurance documents (article 28).

For example when the DC requires presentation of a B/L, article 20(a)(ii) states that the B/L must indicate that the goods have been shipped on board a named vessel at the port of loading stated in the DC as well as port of discharge.

For the procedure for amending the DC see Chapter 3,3 above.

Recommendations to the seller:

- Immediately upon receipt of the DC or amendment, examine it carefully in order to ascertain that it complies with the agreement made, and that it will be possible to meet the requirements. A checklist for this purpose is available on www.nordea.com/tradefinance.
- If necessary initiate an amendment – through the buyer – soonest possible.
- If the DC or amendment contains requirements that are unclear, contact the bank for clarification.
- If the DC is advised without confirmation or if it is a time DC, contact the advising bank to find out how they can assist with silent confirmation and/or financing.

5) Shipment of goods

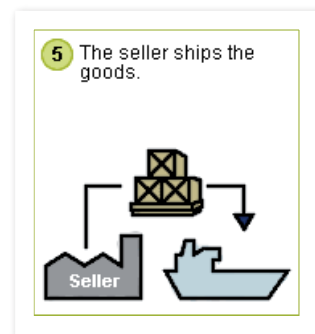
Of primary importance to: The seller

When the seller (beneficiary) has received and examined the DC, and is confident about the content, he will arrange for shipment of the goods.

The seller should make sure to inform relevant parties of the requirements in the DC. For example provide the shipping line or freight forwarder with a copy of the DC including information about the terms and conditions of importance with respect to the transport and the documentation to be issued.

Recommendations to the seller:

- Inform relevant parties (shipping line, freight forwarder, insurance company etc.) of the transaction in good time, providing relevant DC information.



6) Preparation of the documents

Of primary importance to: The seller

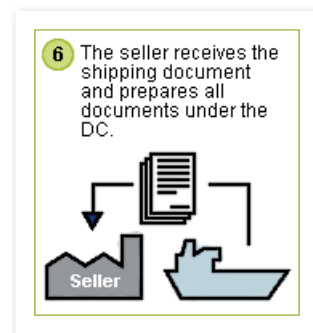
In connection with shipment of the goods, the seller must make sure that all the documents stipulated in the DC have been issued – and are consistent with the requirements stipulated in the DC. This phase of the DC process is of course extremely important, and all efforts should be focused on preparing the documents to meet the requirements of the DC and UCP 600, to enable payment when they are presented to the bank. The seller must be aware of the concept complying presentation which means that the requirements that must be complied with are not limited to what is stated in the DC. Both the UCP 600 and the paragraphs of the ISBP 2007 will include specific requirements. A few examples:

- A certificate or declaration must be signed (paragraph 8)
- At least one original of each document stipulated in the DC must be presented (article 17(a))
- A B/L must indicate that the goods has been shipped on board a named vessel at the port of loading stated in the DC (article 20(a)(ii))

(Note that the above only applies if not otherwise stated in the DC)

Recommendations to the seller:

- If in doubt it is advisable to contact Nordea for guidance.
- When preparing the documents, focus on the requirements of the DC.
A checklist for this purpose is available on www.nordea.com/tradefinance.



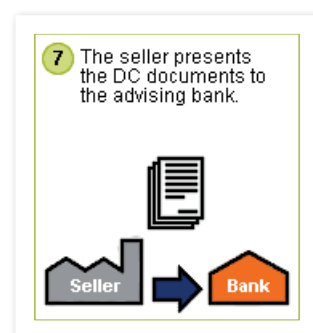
7) Document presentation

Of primary importance to: The seller

After preparing the documents – they must be presented to the bank.

In this context “bank” is a generic term, and what should be considered carefully is the role of the bank that the documents are presented to. In this example the presentation is made to the advising bank and/or nominated bank and/or confirming bank, but in other cases it may also be made directly to the issuing bank (Chapter 2,3).

The seller must carefully read the DC as well as the letter from the advising bank, in order to make sure that the presentation is correctly made – i.e. to the correct bank at the correct place. This is important because the obligation of the issuing bank is triggered when the seller



makes a complying presentation to the so-called correct bank. The correct bank will often (but not necessarily) be the advising bank – if that one has been “nominated” (See “nominated bank” Chapter 2,3) by the DC. In such case the issuing bank is obliged under the terms and conditions of the DC even where the documents are lost in transit between the nominated bank and the issuing bank (article 35). In such (rare) cases the nominated bank may be asked to provide copy documents in order for the issuing bank to ascertain that the documents were in compliance.

Which banks are under obligation to honour or negotiate when a complying presentation is made depends on the obligation they have assumed. The issuing bank is obliged to honour when a complying presentation is made – just as a confirming bank is obliged to honour or negotiate. For nominated (not confirming) banks it depends on the agreement made with the seller.

It should also be noted that when the DC states availability with a nominated bank (other than the issuing bank) – it is of course available with that bank, but also with the issuing bank. This means that the seller has the option to present the documents to the issuing bank, i.e. to bypass the nominated bank. This may be relevant for instance in force majeure situations when the nominated bank is closed due to strike. In such case the seller may choose to present the documents directly to the issuing bank. It should be remembered however that this does not extend the time lines given in the DC e.g. date of expiry or latest date for presentation, just as the risk that the documents are lost or delayed in transit between the seller and the issuing bank is borne by the seller.

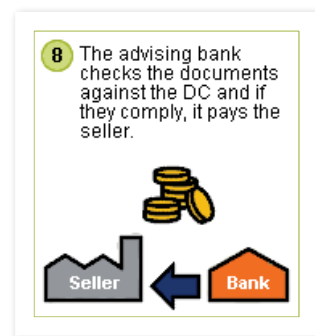
Recommendations to the seller:

- Make sure that the documents are presented to the right bank – at the right place – at the right time.

8) Examination of the documents by the seller’s bank + Payment to the seller

Of primary importance to: The seller

After receiving the documents the bank carefully examines them to ensure that they meet the terms and conditions of the DC. As mentioned in Chapter 2,2 the DC is independent of the commercial agreement and the goods. The main principle expressed in the UCP 600 is that the bank must examine a presentation (i.e. the documents) to determine, on the basis of the documents alone, whether or not they appear on their face to constitute a complying presentation (article 14(a)).



The bank will also compare the data between the documents presented and the DC. Such data “...when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit” (article 14(d)).

Such wording may sound unnecessarily complex – but the intention is to stress that the bank’s examination of the document must relate to the context in which the data appears – and not require a mirror image.

For example if the “Consignee” in the B/L presented is mentioned as “To order of Bank X” – and the consignee in the Certificate of origin is mentioned as the buyer (The applicant to the DC) – then this is not considered a discrepancy, as “read in context” it makes sense to have the B/L issued in negotiable form to the issuing bank and at the same time showing the buyer in the Certificate of origin.

Having examined the documents the advising bank will determine how to proceed. This will depend on a number of issues, such as:

- Is it a complying presentation – or do they contain discrepancies?
The steps following the banks determination on whether or not the documents comply, are described in Chapter 3,9.
- The role of the bank:
If the nominated bank has also confirmed the DC – it is obliged to honour or negotiate, if a complying presentation is made
If the nominated bank has not confirmed the DC, it is not obliged to honour or negotiate, and it will depend on the agreement made with the seller if payment is made immediately – and subject to which conditions (e.g. with or without recourse) (article 12(a)).
- The wording / structure of the DC (outlining what can be achieved).
In some cases the issuing bank stipulates that they will transfer the funds only after having received and approved the documents, while in other cases the DC includes an authorisation to the nominated bank to draw the funds from the issuing bank’s account with themselves. Alternatively, the nominated bank can reimburse (cover) themselves on another bank – a reimbursing bank (Chapter 2,3)– with which the issuing bank maintains an account for the prevailing currency.
- When payment is due from the issuing bank.
If for example the DC is available by payment at sight – the issuing bank must pay after having examined the documents and ascertained that they did indeed comply. If on the other hand payment is due at a later date, as for instance “xx days after shipment”, the issuing bank will only pay at that date.

Recommendations to the seller:

- Do not rely on a “pre-approval” by the buyer. Bear in mind that it is the issuing bank that has the final decision to refuse to honour or negotiate if the documents do not comply.
- If the presentation fails to comply, discuss the next steps in detail with the bank. The steps following the bank’s determination as to whether or not the documents comply, are described in Chapter 3,9.

9) Documents are forwarded to the issuing bank

Of primary importance to: The buyer and the seller

When the nominated bank has examined the documents, the next steps depend on whether or not they constitute a complying presentation as well as the agreement made with the seller.

The presentation is complying:

The nominated bank must forward the documents to the issuing bank.

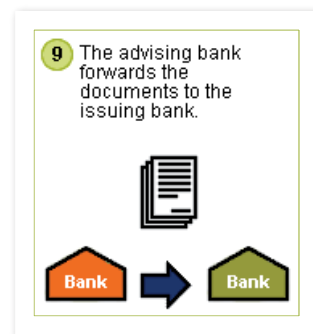
If the nominated bank is also a confirming bank it must honour or negotiate without recourse. If the nominated bank has not confirmed the DC, it may negotiate with recourse – i.e. reserving the right to claim the funds back from the seller in case it is not covered by the issuing bank. In some cases, for example where the issuing bank maintains an account with the nominated bank and the DC is available at sight, the nominated bank may choose to pay the seller without recourse even if it has not confirmed the DC.

The presentation is not complying

If the documents do not comply, there are a number of options available, for example:

- *Correct the document(s)* that contain discrepancies.
This may not always be possible due to for instance of the time limits set by the DC (Expiry date or latest date for presentation), or where the discrepancy is linked to an event that has already taken place – like shipment of the goods.
- *Request an amendment* to the DC that would bring the documents in compliance.
In this case the time issue should be considered carefully. If the discrepancy is only discovered after the goods are shipped, then there may not be enough time for an amendment to be issued.
- *Ask the issuing bank if it is willing to accept* the documents containing discrepancies.
In such case the issuing bank will in turn ask the buyer. Also here the time issue should be carefully considered.
- *Present the discrepant documents* to the issuing bank. In this case there is the risk that the issuing bank will refuse the documents, which means that payment will either be delayed or not made at all. It is therefore advisable for the seller to contact the buyer and ask him to accept the documents that arrived at the issuing bank.
Depending on the agreement between the seller and the nominated bank, the nominated bank may choose to pay despite the documents being discrepant. Such payment will be made subject to the reservation that the nominated bank can claim the funds back if the documents are refused by the issuing bank.

The bank also has the option to return the documents to the seller. It is however common practice for one of the above four positions to be chosen.



The DC will often stipulate how the documents should be forwarded – for instance to a specific address, via courier services or registered mail in one or two lots. If the documents are presented to a nominated bank, it is the responsibility of the bank concerned to ensure that this is complied with.

UCP 600 article 35 contains an important rule regarding the forwarding of the documents, namely that if a nominated bank determines that a presentation is in compliance and forwards the documents to the issuing bank, the issuing bank or confirming bank must then honour or negotiate, or reimburse that nominated bank, even when the documents have been lost in transit between the nominated bank and the issuing bank. In such (rare) cases the nominated bank may be asked to provide copy documents in order for the issuing bank to ascertain that the documents did comply.

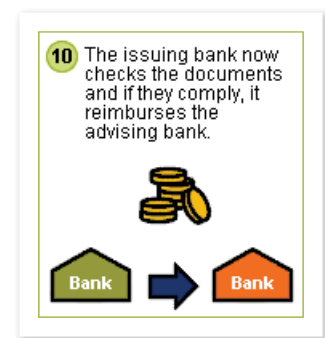
Recommendations to the seller:

- If the documents contain discrepancies that cannot be corrected, or it is not possible to have the DC amended, and it is agreed that the discrepant documents are forwarded to the issuing bank, it is advisable for the seller to contact the buyer and ask him to accept the documents that arrived at the issuing bank

10) Examination of the documents by the buyer's bank (issuing bank) +
Payment to the advising bank

Of primary importance to: The buyer

Even though the documents have been examined by the nominated bank, the issuing bank must carefully examine the documents to ensure that they meet the terms and conditions of the DC. As mentioned in Chapter 2,2 the DC is independent of the commercial agreement and the goods. The main principle expressed in the UCP 600 is that the bank must examine a presentation (i.e. the documents) to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation (article 14(a)).



The bank will also compare the data between the documents presented and the DC. Such data “... when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit” (article 14(d)).

Such wording may sound unnecessarily complex – but the intention is to stress that the bank’s examination of the document must relate to the context in which the data appears – and not require a “mirror image”.

Having examined the documents the issuing bank will determine how to proceed. This will mainly depend on whether or not the documents comply – or if they contain discrepancies.

- If the documents comply the issuing bank must honour (article 7). This means that the bank must pay the nominated bank. This payment may be now (at sight) or at a later fixed date, depending on the structure of the DC.
- If the documents contain discrepancies it may refuse to honour (article 16(a)).

UCP 600 article 16 contains very detailed requirements as to how the bank, in choosing to refuse documents must act:

- It may contact the buyer (applicant) asking him to waive the discrepancies (article 16(b)).
- If however the bank chooses to refuse, it must give a single notice to the presenter clearly stating that it refuses to honour (article 16(c) and article 16(c)(i)).
- The message must show each discrepancy (article 16(c)(ii)).
- The message must also state the status of the documents (i.e. what the bank is doing with the documents). The UCP 600 contains four possibilities outlined in article 16(c)(iii):
 - a) the bank is holding the documents pending further instructions from the presenter; or
 - b) the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept them, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
 - c) the bank is returning the documents; or
 - d) the bank is acting in accordance with instructions previously received from the presenter.
- The message to the presenter must be given within a maximum of five banking days following the day of presentation (article 14(b)).
- It is important that banks carefully observe the above rules, because if an issuing bank or a confirming bank fails to act in accordance with these, it is precluded from claiming that the documents do not constitute a complying presentation (article 16(f)) with the consequence that such bank would be obliged to honour or negotiate.

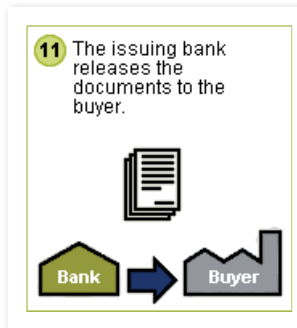
Recommendations to the buyer:

- Make sure to have a close dialogue with the issuing bank. Did the bank find discrepancies? Are these of importance to the buyer? How to proceed if the documents are discrepant – waive the discrepancies and pay – or ask the issuing bank to refuse the documents?

11+12) Documents are released to the buyer + Buyer pays for the documents

Of primary importance to: The buyer

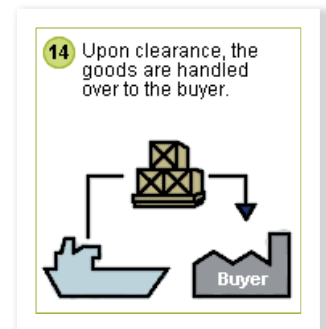
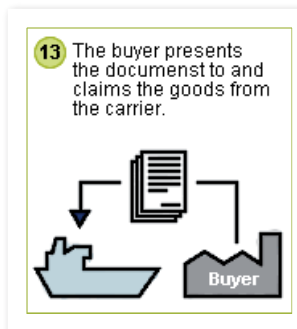
Once the documents are approved by the issuing bank – either because they were in compliance with the terms of the DC or because the buyer accepted the discrepancies, the bank will forward the documents to the buyer. Depending on the payment terms, the bank will also draw the funds from the account of the buyer – either now (if the DC is available by sight) or at a later date if the DC is available by acceptance or deferred payment.



13+14) Buyer claims the goods / Buyer receives and clears the goods

Of primary importance to: The buyer

Having received the documents, the buyer is now in a position to clear the goods for import, as well as claim the goods from the transport company. Depending on the transport document and how it is completed, the bank may need to assist the buyer in obtaining release of the goods, e.g. by endorsing the B/L issued to their order, or releasing the goods arrived via air freight on an air waybill consigned to the bank.



Chapter 4:

Documents presented under a DC

As explained in Chapter 2 banks deal with documents and not with goods or services (article 5). Banks may refuse documents only if they do not comply with the stipulations in the DC (article 14(a)). Accordingly, the obvious question arises: which documents are required under a DC?

The answer is that it is impossible to set general requirements as to the documents required under a DC because it is a flexible instrument that is adapted exactly to the specific transaction.

Every DC must stipulate exactly those documents which are most appropriate in the specific DC. Most DCs cover a specific business transaction. For DCs some documents appear more frequently than other documents. The most widely used documents in a commercial transaction covered by a DC are listed below.

The documents must be drawn up in accordance with the specific DC and the UCP 600, but also the ISBP 2007 can be of help as it outlines how to interpret the UCP rules from a practical perspective, for example what information, data and signatures that must be indicated on the documents.

Article 14 (*Standard for Examination of Documents*) expresses the general requirements for examining documents.

Documents below are divided into groups according to their purpose.

1) Documents for obtaining payment

Draft/Bill of exchange

(Paragraph 43 – 56)

A draft is issued by the beneficiary and must be drawn on the bank stipulated in the DC. The draft may be payable at sight or at a later date of maturity. The bill of exchange is used as an instrument of payment and/or finance. The obligation of the banks involved exists irrespective of on whom the bill of exchange (draft) is drawn. A DC must not be issued available by a draft drawn on the applicant (article 6(c)).

Invoice

(Article 18, paragraph 57-67)

The invoice is to be made out by the beneficiary in the name of the applicant (article 18(a)). The description of goods in the invoice must correspond with the description in the DC (article 18 (c)). Any reference in the invoice to a pro forma invoice or a contract does not mean that banks will examine any connection between the different documents. Banks will only check that the reference stated in the DC is also shown in the invoice.

Example:

If the goods description in the DC mentions "Contract number 1234" then the bank will ascertain that the same reference is mentioned in the invoice – but the bank will not check – or ask to see a copy of Contract number 1234.

2) Transport documents

The UCP 600 and the ISBP 2007 contains specific provisions for the different types of transport documents. These set specific requirements for the documents as to the contents and by whom they must be issued. These requirements include rules for on board notation, transshipment, consignee, order party, shipper details etc. It is recommended that these provisions are carefully examined when transport documents are prepared for the presentation under a DC.

Transport document covering at least two different modes of transport (Multimodal transport document)

(Article 19, paragraph 68-90)

This document, sometimes referred to as either multimodal transport document or combined transport B/L, covers at least two different modes of transport, one of which is typically (but not necessarily) shipment by vessel.

Bill of lading (B/L)

(Article 20, paragraph 91-114)

A B/L is the classical instrument used in connection with a port-to-port shipment by vessel. According to article 20, the B/L must show that the goods are actually on board a named vessel, and that the B/L has been issued and signed by the carrier, the master (captain) of the vessel or by an agent.

The B/L is a negotiable document of title, i.e. it enables its holder (possessor) to receive, retain, sell, or otherwise dispose of the document and thereby the goods covered by the B/L. The release of the goods by the shipping line to the consignee depends upon the surrender of the original B/L.

Non-Negotiable Sea Waybill

(Article 21)

For the purpose of DCs the Non-Negotiable Sea Waybill covers a port-to-port shipment by vessel. Contrary to the B/L it is not a document of title meaning that the goods will be delivered to

the consignee without surrender of the waybill, and title cannot be transferred via endorsement. According to article 21, the Non-negotiable Sea Waybill must show that goods are actually on board a named vessel, and that the B/L has been issued and signed by the carrier, the master (captain) of the vessel or by an agent.

Charter Party Bill of Lading (CPBL)

(Article 22, paragraph 115-133)

A CPBL is a B/L issued subject to a charter party agreement. It is not acceptable under a DC unless specifically authorised in the DC. Like the B/L it covers a port-to-port shipment by vessel (showing that the goods are shipped on board a named vessel at a specific port).

Air Transport Document

(Article 23, paragraph 134-156)

This document is issued by the carrier (typically an airline company) or its agent. An air waybill evidences that the carrier has accepted the goods for carriage.

Railway consignment note

(Article 24, paragraph 157-169)

A railway consignment note is issued by the railway company for the transport of goods by rail. The document confirms that the railway company has received the goods for transportation.

Road consignment note

(Article 24, paragraph 157-169)

A road consignment note is issued by the carrier and is used for carriage by truck. The document evidences that the carrier has received the goods for transportation.

Freight forwarder's certificate

(Paragraph 19)

A freight forwarder's certificate is issued by a freight forwarder for any conceivable means of conveyance. The certificate may confirm the receipt of the goods for transportation or evidence that the goods are sent. Sometimes the document is issued in a negotiable form, which is as a document of title. This is not a transport document defined in articles 19-25, and therefore these articles do not apply. Consequently, it is of extra importance to stipulate the preferred requirements in the DC as precisely as possible.

Courier Receipt, Post Receipt or Certificate of Posting

(Article 25)

Post receipts are issued by a post office when goods are sent by post (parcels), by surface mail or airmail. The post receipt confirms that the goods have been received for dispatch.

Article 25 covers the situation where the goods covered by the DC are sent by post or courier. This article is not applicable for instance when copy documents are to be sent to the buyer – and courier receipt must evidence this.

3) Insurance documents

If goods are to be insured for an amount exceeding the value of the goods, the DC must indicate the relevant percentage. If the DC does not stipulate an amount or percentage, the minimum amount of insurance must be 110% of the CIF or CIP value (article 28(f)(ii)). The DC must stipulate the risks to be covered.

Insurance policy

(Article 28, paragraph 170–180)

Insurance policies are issued by the insurance company. The insurance policy states the amount of the insurance, the goods insured, the risk covered and all the terms of the insurance.

Insurance certificate

(Article 28, paragraph 170–180)

Insurance certificates are issued by the insurance company in reference to a comprehensive insurance policy and its conditions. The insurance certificate stipulates the amount of the insurance, the goods insured and risks covered.

If the DC calls for an insurance certificate, a policy is acceptable.

Notice to the insurance company

This is the beneficiary's letter to the buyer's insurance company with information about the shipment made. A copy of this letter may be required in cases where the buyer (the applicant) is to take out insurance (FOB, CFR etc).

Notice to the buyer/issuing bank

The beneficiary's letter to the buyer, the issuing bank or any other party stated in the DC, with information about the shipment made. A copy of this letter may be required in cases where the buyer (the applicant) is to take out insurance (FOB, CFR etc).

4) Documents for customs clearance

Customs invoice

A customs invoice is issued by the beneficiary if required for import. Specific forms are often required. Different conditions will apply depending on the countries demanding such a document.

Consular invoice

A DC may stipulate the presentation of a consular invoice, because this is a requirement for import into the relevant country. The consular invoice must be made out on a special form and legalised by the embassy or consulate of the importing country (see article 3 regarding a requirement for a document to be legalized, visaed, certified or similar.)

Certificate of origin

(Paragraph 181-185)

The certificate of origin is often required by the DC for the purpose of showing the country of origin of the goods in question. If the DC requires a certificate of origin with no further stipulations then it may be issued by the beneficiary (or any other party). Often the DC requires authentication or issuance by a Chamber of Commerce and in such case this has to be performed in accordance with the practices of the local Chamber of Commerce.

Sometimes a DC requires further details on the certificate, such as the name and address of the manufacturer.

Health certificate or phyto-sanitary certificate

This certificate gives evidence of the state or quality of the goods and is usually issued by a veterinary, by veterinary authorities or the agricultural ministry. The requirements in the DC may be quite specific and vary from one country to another.

5) Documents for various purposes

Packing list

The packing list is usually drawn up by the seller, and it specifies the relevant shipment giving details on the contents of each packaging unit.

Weight list or weight certificate

This document indicates the weight of the goods and usually the weight of each packaging unit. A certificate must be signed.

Certificate of quality

The certificate of quality contains data concerning the quality of the goods. It is normally issued by the manufacturer who is to sign it.

Inspection certificate

The inspection certificate contains confirmation that the goods have been inspected as per an agreed specification. Inspection is normally done by a third party and before the goods are loaded for transportation.

Other types of DCs

1) Standby Letter of Credit

Despite the fact that the Standby Letter of Credit (hereafter “standby”), has been known for many years, its use has gained ground only in recent years in the Nordic region and in the rest of Europe.

As the name indicates, a standby takes the form of a DC while its function and content is that of a guarantee. It was developed in the USA some half a century ago when US banks were not allowed under US law to issue bank guarantees. By issuing a standby, the banks were able to accommodate customers’ needs for products that naturally belonged to the banking business area.

Even though US legislation has since been modified, standbys still enjoy widespread use as a guarantee undertaking. At first the standby was primarily used in the USA and in connection with business transactions relating to the USA or countries whose banking systems were influenced by US banking practice. Today however, standbys have gained popularity world-wide to an extent where the issuance of standbys by non-US banks is believed to outnumber issuance by US banks.

A standby can be defined as a demand guarantee assuming the shape of a DC.

As with the DC, the beneficiary under a standby is to present documents in accordance with the stipulations of the standby (and the UCP 600 or ISP98 as the case may be (Chapter 2,7)) in order to obtain payment.

Instead of requiring the presentation of shipping documents the beneficiary under a standby must present a document stipulated in the standby declaring that the applicant has failed to fulfil his payment obligation, or to perform a job or to meet some other commitment called for in the commercial contract, and sometimes also to state the manner in which the applicant has failed to fulfil his obligation.

The standby occasionally stipulates that the beneficiary’s declaration must be accompanied by other documents supporting the claim, such as copies of invoice, transport document or an account statement. Such copies will in most cases not be examined for their correctness instead their mere presence is required.

Like a DC and a bank guarantee, a standby is a very flexible instrument that can be used for all types of business. It can cover anything ranging from an ordinary guarantee commitment to more sophisticated financial instruments.

It should be noted that it is normally recommendable to use an ordinary DC if a payment risk in respect of a single sale or purchase transaction is to be covered. Although the standby may cover a buyer's payment undertaking, it does not share the feature of an ordinary DC, which can be used as a management tool in connection with payments and the transfer of commercial documents between parties.

The advantage of using a standby rather than an ordinary guarantee is that the standby is subject to internationally recognised rules drawn up by the ICC. Originally the standbys were issued subject to the UCP version applicable at time of issuance. Many bankers found however that the rules – developed for DCs – did not fully accommodate the standby, and in 1998 the *Institute of International Banking Law and Practice (IIBLP)* drafted a new set of rules specially designed for standbys: *International Standby Practices (ISP98)*, taking effect on 1 January 1999. These rules have been duly endorsed by the *ICC Commission on Banking Technique and Practice*. However, the UCP 600 may be used for standbys as well (article 1).

2) Transferable credit

Sometimes the beneficiary in a DC is not the producer or the ultimate seller of the goods. It may be necessary for the beneficiary to provide some security for the producer or the ultimate seller. The beneficiary of the DC, sometimes referred to as "the company in the middle", must buy the goods from the producer and is sometime asked to issue a DC.

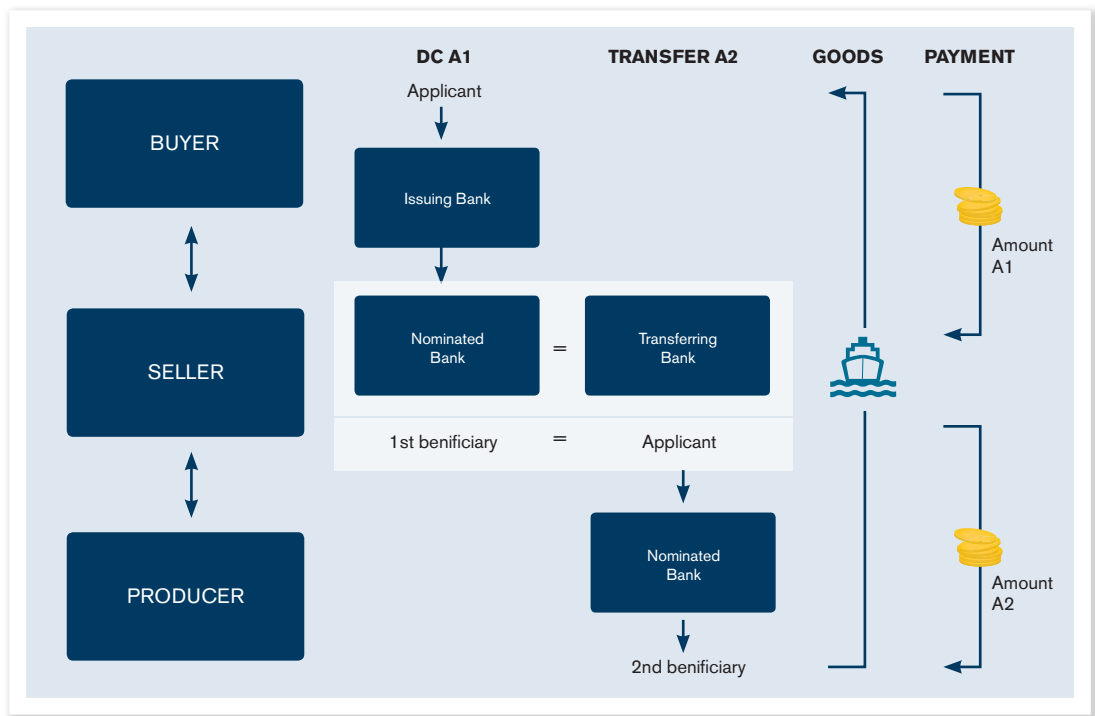
If the beneficiary is unable to, or do not wish to, induce his bank to issue the requested DC on his own behalf, a transfer of a DC he has received as security for his sale to an ultimate buyer may be a suitable method, which means that a first beneficiary (often a middleman) transfers his rights to a second beneficiary (normally the producer or ultimate seller).

According to article 38(b), a DC can only be transferred if the issuing bank expressly designates it as transferable.

Only the nominated bank, or a bank authorized by the issuing bank may transfer the DC. Article 38(a) states that a bank has no obligation to transfer a DC except to the extent and in the manner expressly consented to by that bank. Some banks are only prepared to transfer DCs which are available with themselves, other banks even require their own confirmation of the DC.

Nordea will normally transfer DCs for their customers if we are confident that the underlying commercial transaction is sound and acceptable.

When transferring a DC (A1), the beneficiary of this DC acts as "applicant" under the transfer (A2). Similarly, the nominated bank of the DC (A1) becomes the "transferring bank" for the transfer (A2) – see figure.



The transfer must be made in strict compliance with the provisions of the UCP 600, article 38. The terms and conditions of the DC must not be changed in any way, with the following exceptions (article 38(g)):

- The amount of the DC and the unit price, if any, may be reduced.
- The date of expiry, the date or period for shipment and/or for presenting documents may be changed to an earlier date.
- The percentage for which insurance cover is to be arranged may be increased so as to cover the sum insured for the first beneficiary's invoice.
- The name of the first beneficiary may be substituted for that of the applicant. If the DC (A1) specifically requires the name of the applicant to be stated in a document other than the invoice, such requirement must be met.

If the stipulations as set out in the UCP 600 are strictly followed, the transfer will not involve a credit risk for the transferring bank. But because of the very complex type of transaction, the transferring bank undertakes an essential risk of handling.

Normally, the first beneficiary (the beneficiary of A1) will substitute the invoice from the second beneficiary with his own invoice (for a larger amount) in order to obtain a profit. If the first beneficiary fails to present his invoice at the request of the transferring bank on first demand, or if the invoices presented by the first beneficiary create discrepancies that did not exist in the presentation made by the second beneficiary and the first beneficiary fails to correct them on first demand, the bank may, according to article 38(i), use all the documents presented by the second beneficiary under the transfer (A2) for honouring the DC (A1) in order to demand reimbursement for its payment under the transfer (A2). This means that the second beneficiary's invoice will also be used, possibly for an amount lower specified in the first beneficiary's invoice.

A DC can only be transferred once (article 38 (d)). However, fractions of a DC may be transferred to different second beneficiaries, provided that partial shipment is not prohibited. The fact that several second beneficiaries exist after the transfer of a DC may cause difficulties in the event of subsequent amendments. Consequently, any request for transfer must indicate if and under what conditions amendments may be advised to the second beneficiary (article 38(e)).

It should be noted that even if the two transactions of the DC have been described as A1 and A2 respectively, there is only one DC. The original DC from the issuing bank and the transfer are inseparable.

Assignment of proceeds to a third party

Sometimes a producer or a supplier who is to deliver goods to a beneficiary under a DC requires a more regulated payment undertaking than open account with the beneficiary before he agrees to deliver the goods.

One possibility to accommodate this business demand is given by article 39. This article refers to local law for the possibility to assign proceeds from a DC to a third party. This does not however mean that a third party can make a claim (present documents) under a DC, as it is still only the beneficiary who is to present the documents required by the DC, even if he has assigned (some of) the forthcoming proceeds to a third party.

As shown below, the rights of a third party are no better than the rights of the beneficiary in relation to the relevant bank.

The starting point for an assignment of proceeds is a letter from the beneficiary to the supplier referring to the DC. This letter will state the relevant details of the assignment such as the amount, reference to the DC and the name of the nominated bank. The beneficiary of the DC thereafter sends a letter to the nominated bank for notification of the assignment which also contains the instruction to the bank to pay the assigned proceeds to the assignee when they are available under the DC. Upon receipt of the letter the bank itself will send a letter to the supplier conveying information regarding the instruction received.

Notification of the assignment of the proceeds under a DC provides no guarantee from the notifying bank that payment will be made to the assignee. The assignee can only claim payment if and to the extent that the beneficiary (the assignor) has a claim for payment under the DC.

An assignment is subject to the applicable law of the country where the assignment is made. An assignment gives the assignee some security, even in a situation where the beneficiary of the DC (the assignor) has been declared bankrupt. The administration of the estate must act subject to the claim of the assignee if the statement of claim has been duly notified.

Payment under the assignment depends on whether the beneficiary of the DC has a valid claim for payment under the DC. This depends, among other things, on the following factors:

- The beneficiary of the DC makes a complying presentation.
- Payment is made under the DC.
If the assignment relates to an unconfirmed DC, the nominated bank may be unwilling to make payment before it is reimbursed, and if, for commercial or political reasons, the issuing bank does not fulfil its obligation no payment is made.

Even if an assignment does not give the assignee a guarantee of payment, the procedure nevertheless creates a more controlled mechanism and puts the assignor on equal footing with the beneficiary in the sense that if the proceeds become available under the DC the nominated bank is then bound to pay in accordance with the assignment.

Appendix

1) Definition of DC terms

Term	Reference	Description
Acceptance	Article 2	See <u>Honour</u>
Confirmation	Article 2 Article 8	<p>The UCP 600 defines Confirmation as</p> <p>... a definite undertaking of the confirming bank, in addition to that of the issuing bank, to <u>honour</u> or negotiate a <u>complying presentation</u>.</p> <p>In order to fully understand the concept of "Confirmation" see also the definition of a "Confirming bank" (Chapter 2,3), as well as article 8 defining the obligation of the confirming bank.</p>
Complying Presentation	Article 2 Article 15	<p>Complying presentation is a new concept in UCP context. It provides the hierarchy by which a document checker is to determine whether or not the documents presented are in compliance, namely the following:</p> <ul style="list-style-type: none"> • the terms and conditions of the DC. • the applicable rules (The UCP 600). • international standard banking practice (including but not limited to the ISBP 2007). <p>This definition is very important as it is the backbone for a number of other UCP 600 provisions. For example the undertaking of the issuing and confirming bank is dependent on a complying presentation being made.</p> <p>This definition should be read in context with article 15 "Complying presentation" that explains what issuing, confirming and nominated banks must do when they determine that a presentation is in compliance.</p>
Deferred payment	Article 2	See <u>Honour</u>

Term	Reference	Description
Honour	Article 2	<p>In the UCP 600 Honour is defined as:</p> <p>a. to pay at <u>sight</u> if the credit is available by <u>sight</u> payment.</p> <p>b. to incur a <u>deferred payment</u> undertaking and pay at maturity if the credit is available by <u>deferred payment</u>.</p> <p>c. to accept a bill of exchange ("draft") drawn by the beneficiary and pay at maturity if the credit is available by <u>acceptance</u>.</p> <p>It comprises three payment methods under a DC. It should be noted that the DC will not be made "available by honour", but by one of the three ways:</p> <ul style="list-style-type: none"> • Payment at <u>sight</u> • <u>Deferred payment</u> • <u>Acceptance</u> <p>"Payment at <u>sight</u>" indicates that payment is initiated when the bank determines that the presentation is complying.</p> <p>"<u>Deferred payment</u>" and "<u>Acceptance</u>" indicates that payment is due at a later date, as for instance "xx days after shipment", and the issuing bank will only pay at that date.</p>
Negotiation	Article 2	<p>In the UCP 600 Negotiation is defined as:</p> <p>... the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a <u>complying presentation</u>, 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.</p> <p>For a DC that has been confirmed negotiation must be made without <u>recourse</u> if a <u>complying presentation</u> is made.</p> <p>For a DC that is not confirmed the manner of negotiation will depend on the agreement between the seller (beneficiary) and the negotiating bank, e.g. whether payment is made now or later, and whether payment is with or without <u>recourse</u>.</p>

Term	Reference	Description
Recourse	Article 8	<p>The concept of recourse is only mentioned in article 8(a)(ii) which says that</p> <p><i>Provided that the stipulated documents are presented to the confirming bank or to any other nominated bank and that they constitute a <u>complying presentation</u>, the confirming bank must:</i></p> <p>...</p> <p><i>negotiate, without recourse, if the credit is available by <u>negotiation</u> with the confirming bank.</i></p> <p>The legal definition of recourse is: <i>The rights of a holder in due course of a negotiable instrument to force prior endorsers to meet their legal obligations to pay on the instrument if it is dishonoured by the maker or acceptor.</i></p> <p>In DC transactions it normally represents a nominated banks right to revert to the beneficiary (seller) to claim the funds back in case the nominated bank does not receive cover from the issuing bank.</p>
Sight	Article 2	See <u>Honour</u>
Silent confirmation		<p>A confirmation is given by a confirming bank which is defined as "<i>the bank that adds its confirmation to a credit upon the issuing bank's authorization or request</i>" (article 2).</p> <p>In some situations the seller requires a confirmation by their bank even though this bank is not authorised to do so by the DC. In many cases the bank may still be able to offer an undertaking similar to that of a confirmation. Such an undertaking is normally referred to as a silent confirmation.</p> <p>Nordea will in many cases be able to offer silent confirmations on a case-by-case basis generally depending on the commercial and political risk related to the issuing bank and that Nordea is nominated to <u>honour</u> or negotiate under the DC.</p>
SWIFT		<p>S.W.I.F.T. (Society for Worldwide Interbank Financial Telecommunication) has its headquarters in Brussels and was founded by and is still owned by banks in many countries. Its function is to provide an electronic network connecting the participating banks (and companies). The infrastructure is based on standardised messages and a high degree of security.</p>
Time		<p>In DC transactions the word "time" is often used to indicate that payment is due at a later date, as for instance "xx days after shipment", and the issuing bank will only pay at that date.</p> <p>See also <u>Deferred Payment</u>, <u>Acceptance</u> and <u>Honour</u>.</p>

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