**International Payments**

**UCP500 – PAGE 6.10**

**1. WHEN DOES UCP 500 Apply?**

**Art 1 -**

For the UCP500 to apply, it must be incorporated into the text of the credit.

(ie Actual Reference within the contract for it to be applicable)

If it has not been included within the contract, it may be possible to argue it as the “general” set of rules in relation to trade (ie can it be implied).

**2. WHAT IS A LETTER OF CREDIT (under UCP500)?**

**Art 2 - Definition of a letter of credit:**

“Any arrangement, however named or described, whereby a bank (the “issuing Bank”) acting at the request and on the instructions of a customer (the “Applicant”) or on its own behalf,

**Issuing Bank** = Buyers Bank **Seller** = Beneficiary

**Collecting/Advising Bank** = Sellers Bank **Buyer** = Applicant/Account Party

1. is to make a payment to, or;

 to the order of a 3rd party (the “Beneficiary”), or;

 is to accept and pay bills of exchange (Draft(s)) drawn by the Beneficiary

1. authorises another bank to effect such payment, or;

to accept and pay such bills of exchange (Draft(s))

1. authorises another bank to negotiate, against stipulated document(s), provided that the terms and conditions of the Credit are complied with

**BANKS OBLIGATIONS? – REFER AUTONOMY**

**Summary**

**Art 3** also reiterates that as in ***Discount Records Ltd v Barclays Bank*** that letters of credit are separate contracts and banks are in *“no way concerned or bound by such contracts”* making it unfeasible, except in proven fraud cases, to avoid payment*.* This was established by ***Urquhart Lindsay v Eastern Bank*** wherebythe issuing bank is NOT entitled to refuse payment by any reference to the underlying contract of sale and this is true even when the issuing banker is in a position to know that the seller is in breach of the contract with the buyer and that the breach is sever enough to entitle the buyer to reject the documents and also in ***Rd Harbottle v National Westminster Bank*** where it was said that “*Banks are NOT concerned with the rights and wrongs of the underlying disputes but ONLY with the performance of the obligations which they themselves have confirmed”*. This is because banks are considered “*the life-blood of international commerce. Such obligation are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain”*

While **Art 9(a)(i)** provides that *an “irrevocable letter of credit constitutes a definite undertaking”* it does so provided that the stipulated documents are presented to the Nominated bank or to the issuing bank and that the terms and conditions of the Credit are complied with **s9 (b) & (c)**. Since the parties are dealing in documents, and the only obligation of the bank is to pay *“provided that the stipulated documents are presented and that the terms and conditions of the credit are complied with”* then only concerns for the bank are the meanings of the words *“stipulated documents”* and *“compliance”* Art 9. Thus, it implies that both terms relate only to conditions within the credit and no external factors will be considered or applied such as in the *Banque de l’Indochine et de Suez v J H Rayner* whereby clauses outside the credit itself were disregarded.

**Art 9 – Irrevocable** **letter of credit**

An irrevocable letter of credit constitutes a “definite undertaking” **[s9(a)(i)]** of the Issuing Bank, provided that the stipulated documents are presented to the Nominated bank or to the issuing bank and that the terms and conditions of the Credit are complied with **s9 (b) & (c).**

**Art 3**

Banks are not concerned or bound by any sales or other contracts between the applicant and the beneficiary, they are only concerned with the letter of credit as by nature it is a SEPARATE transaction from such a contract.

**WHEN DOES A LETTER BECOME REVOCKABLE? REFER POINT 11**

Note: Art 6,8 -

Recovable letter of credits. May be revoked at any time without notice to the beneficary

**Specifying Nominated Bank and Examination of Documents**

**Summary**

The UCP provides that banks must examine the stipulated documents with “reasonable care” to ascertain whether they appear, “on their face”, to complete with the requirements of credit (Art 13a). As in *National Bank of Egypt v Hannevigs Bank*, *“to assume..that..a bank is bound to carefully read through all bills of lading presented to it….to read through the policies and to exercise a judgement as to whether the legal effect of the bill of lading and the policy is…favourable to the client – is an obligation which I require to be investigated considerably before I accept it in that unhesitating form”* – thereby setting a precedent for banks to only examine the documents on their “face value”. This was further highlighted in *Golodetz & Co Inc v Czarnikow-Rionda Co* & in *Hansson v Hamel and Horley Ltd* whereby in the latter it was stated that” they have to be taken up or rejected promptly without any opportunity for prolonged inquiry…they should so conform…as to be reasonably and readily fit to pass current in commerce” reiterating the “reasonable care” wording in Art 13 (a) but not “exceeding 7 banking days” in 13 (b) to examine them.

**Art 10 (a) – Specify the Nominated Bank**

Nominated Bank which is authorised to make the payment according to the terms of the credit itself.

**Art 13 – Examination of Documents**

1. Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, **on their face value**, to be in compliance with the terms and conditions of the Credit.

If the documents on their face appear to be inconsistent with 1 another they will be considered as not in compliance with the terms and conditions of the Credit

Documents not stipulated in the Credit will not be examined by banks.

1. Issuing Bank, The Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, **NOT to exceed 7 banking** days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.

(ie each have 7 days to check everything AND determine a course of action AND must inform the party upon receiving the documents)

1. If letter does NOT state document(s) are required to be presented in compliance, then the bank will deem it as not stated and it will be disregarded.

 **Mention RAYNER CASE for 13(c)**

**DOCUMENTS ARE DISCREPANT?**

**Summary**

Bank does not owe a duty of care to the beneficiary to discover all the documents, as in *Skandinaviska Aktiebolaget v Barclays Bank* whereby it was rejected that banks must raise further reasons to reject documents, after it has rejected documents for some other reason. If the issuing, confirming or nominated bank decides to rejected the documents then there is an obligation on the bank to notify the bank from which the documents were received as per Art 14(d) **within 7 days**. The notice must also identify all discrepancies as to why the bank has refused the documents and whether it is holding or returning them to the presenter Art 14(d)(ii). Failure to do so may result in the bank being precluded from rejected the documents Art 14(e).

Art 14

1. Upon receiving documents Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf must determine on face value if they comply. If NOT in compliance banks MAY REFUSE to take up the documents

***Southland Rubber v Bank of China***

Name of carrier only appeared on letterhead of the BOL and not in the appropriate place – deemed INSUFFICIENT PAYMENT REFUSED!!!

1. If Bank find NOT in compliance, it may in its sole judgment approach the Applicant for a waiver of the discrepancy
2. i) If **banks refuse the documents**, it must give notice to that effect by telecommunication or, if that is not possible by other expeditious means, WITHOUT delay but NO later than the close of the 7th banking day following the day of receipt of the documents.

This notice is to be given to the bank from which it received the documents, OR to the Beneficiary if it received the documents directly from him.

ii) This notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is refusing them to, the presenter

iii) Issuing/Confirming Bank shall be entitled to claim from the remitting bank refund, with interest, any reimbursement which has been made to that bank

1. If the issuing/Confirming Bank fails to act in accordance with the provisions, or fails to hold the documents at their disposal, or return them to the presenter, they CANNOT claim the documents are NOT in compliance

**BANKS LIMITITED LIABILITIES & DISCLAIMERS**

**Summary**

Obligation on the bank to examine the documents with reasonable care to see that they appear on their face to be in accordance with the terms and conditions of the credit (Art 13) however the banker assumes no responsibility for the “form, sufficiency, accuracy, genuineness, falsification or legal affect (Art 15). At 16 exempts the bank from liability for matters which are within the control of the banker yet not for the accounting party/buyer (loss or errors in transit of message). Art 17 exempts bankers from any liability due to force majeure and if the issuing bank does use services of another bank, it holds no responsibility and does so at the risk of the accounting party (Art 18 a & b).

Art 15

**On documents**

Not liable or responsible for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document(s), or for the general and/or particular conditions stipulated in the document(s).

(ie if the documents are forged or are false but appear on face value as complying then the Bank has no liability or responsibility)

Art 16

**On the transmission of messages**

Not liable or responsible for the delay and loss in transit of any message(s), letter(s) or document(s), or for delay mutilation or other error(s) arising in the transmission of any telecommunication.

Art 17

**Force majeure**

If an unexpected or uncontrollable event occurs Banks assume NO liability

Art 18 – INSTRUCTING BANK IS NOT LIABLE FOR MISTAKES OF OTHER BANKS

**Using another bank’s services (acts of an instructed party)**

1. If banks do this they do so for the account and at the risk of their applicant
2. (b)Banks assume no liability/responsibility should the instructions that they transmit are not carried out. (ie the instructor carries out all liability/responsibility)

**DOCUMENTS BANKS ACCEPT? (IF SELLER)**

**Summary**

**Art 20(b)** authorises banks to accept documents which had been produced by reprographic, automated or computerised system or as carbon copies provided that the document submitted is marked original where necessary appears to be signed. If signed it may be by handwritten, by fax signature, performance signature, stamp, symbol or by any other mechanical or electronic method of authentication. Finally **Art** **20(d)** if the credit must be authenticated etc. the condition will be satisified by any signature, mark, stamp or label that appears on it face to satisfy.

**(ALSO REFER P6.47 OTHER DOCUMENTS)**

**Art 20**

(b) Unless otherwise stipulated Banks will accept as an original document(s), a document produced or appearing to have been produced by

i) by reprographic, automated or computerised systems

ii) as carbon copies

Provided that it is marked as original and, where necessary, appears to be signed, where signed can be handwritten, by fax signature, performance signature, stamp, symbol or by any other mechanical or electronic method of authentication

**8. SPECIFIC DOCUMENT SECTIONS (what kind of document is it)?**

**BOL** – Art 23(a) and 31(iii) – **PAGE 6.45 – “The Bill of Lading”**

**Air Waybill** – Art 27 - **“The Transhipment Problem” –** Last Paragraph

**Insurance Document – Art 34 – PAGE 6.46/6.47 “Marine Insurance”**

**Commercial Invoices** – Art 37 (note a BOL does NOT constitute an invoice (c))

* Refer **PAGE 6.47 – “The INVOICE”**

**CIF Contracts** – **PAGE 6.46/6.47 “The Transhipment Problem”** and **“Marine Insurance”**

**COMPLIANCE OF COMMERICAL INVOICE**

**Summary**

Art 37 (c) states that the *“the description of the goods in the commercial invoice must correspond with the description in the letter of credit”.* In *JH Rayner v Hambro’s Bank* the credit called for one type of nut and the bill had a different wording. Hambro’s bank refused to pay which was upheld by the English court whereby two *“descriptions cannot mean the same thing”.* In *Midland Bank v Seymour* *“the documents must contain all the particulars or…all the documents between them must contain the particulars”…subject to the qualification..to make it a valid document”* whereby it is invalid if the document specifically states that the exact description must be provided which was further affirmed in *Soproma v Marine & Animal By-Products Corporation* which incorporated s39(a) – (REFER “**The Invoice**”, **PAGE 6.47** for **s 39**)

Art 37

* + 1. Commercial Invoices must appear on their face to be issued by the Beneficiary named in the letter of Credit and to be made out in the name of the applicant

It need NOT be signed

* + 1. Banks MAY refuse credit if invoice amount is > than amount permitted by the letter of credit.

(c) The description of the goods in the commercial invoice must correspond with the description in the letter of credit.

In all other documents, the goods MAY be described in GENERAL terms NOT inconsistent with the description of the goods in the letter of credit

Art 39 - (REFER “**The Invoice**”, **PAGE 6.47** for **s 39**)

**Allowances in Credit amount, quantity and unit price**

* 1. The words “about”, “approximately”, “circa” or similar expressions in connection with the AMOUNT of the Credit or the quantity or the unit price stated in the Credit are to be construed as allowing a different NOT to exceed within 10% more/less.
	2. Unless otherwise stipulated the QUANTITY of goods must not fall outside 5%

This does NOT apply if the Credit stipulates the quantity in terms of a stated number of packing units or individual items

* 1. Specific to the price of the actual drawing payment itself (NOT TOO SURE)

**BANKS ONLY CARE ABOUT CREDIT (not underlying contract)**

**Summary**

**Principle of autonomy** (independent, self governing)

The credits are autonomous obligations, independent of the underlying contract between the account party and the beneficiary, although the credit is created for the underlying contract.

Bank is only concerned with the documents indicating:

* 1. Compliance with the terms of the contract in case of a letter of credit
	2. Non-performance or default by the account party in case of a standby credit.

The beneficiary is assured of receiving payment against confirming documents with no concern whatsoever with the underlying contract (Art 3)

***Urquhart Lindsay v Eastern Bank*** – **BANK LIABLE**

**Outline**

1. Co A sells machinery under contract with payment via irrevocable payment from Bk.
2. Ctt of sale provides for several shipments of machinery, and allows for price variation BUT credit does not refer to variations.
3. Buyers think price should be lowered, sellers do not.
4. Buyers instruct Bk not to pay over what it considers correct price
5. Bk refused payment upon presentation of seller’s docs (carried out Buyers instructions)

**Decision**

1. Court Held that the BANK was NOT entitled to do this, as the letter of contract was NOT subservient to the contract of sale (ie fully autonomous)
2. Breach of contract to pay under the letter of credit and was liable to pay damages on the contract as a whole
3. Bank was liable for all damages which flowed from the breach and that the sellers were under no obligation to take payment in some other way
4. The sellers were NOT OBLIGED to take a LESSER PAYMENT IN ANY OTHER WAY

**MAIN POINT of CASE**

**The issuing bank is NOT entitled to refuse payment by any reference to the underlying contract of sale and this is true even when the issuing banker is in a position to know that the seller is in breach of the contract with the buyer and that the breach is sever enough to entitle the buyer to reject the documents.**

**(except in the case of fraud)**

REFER BELOW FOR BOTH FRAUD AND INJUNCTIONS

**Fraud**

**Summary**

Where the seller, for the purpose of drawing on the credit, fraudulently presents the confirming bank documents that contain, expressly or by implication, material representations of fact that to his or her knowledge are untrue – this constitutes fraud.

**Proving Fraud**

The fraud exception entitles banks to decline payment despite technical compliance with the credit instrument. To do so, the declining bank must ensure:

1. that it has noticed or known the existence of fraud I he transaction
2. the fraud has been very clearly established, not merely alleged
3. that fraud is intentional on the party of the beneficiary
4. that the beneficiary has the knowledge of fraud committed by a 3rd party (the beneficiary’s being unaware of a 3rd party fraud would not justify non-payment)

For a BANK to REFUSE payment under the fraud exception,

* 1. the existence of fraud must be established to the satisfaction of the bank
	2. the beneficiary must have actual knowledge of fraud.

**DOCUMENTS PRESENTED ARE INSUFFICIENT EVIDENCE OF FRAUD AND MUST BE INTENTIONAL BY ONE OF THE PARTIES (usually seller)**

The Bank is protected under Art 15 & Art 3.

***Sztejn v Henry Schroder Banking Corp***

**Outline**

1. Plaintiff contracted to purchase bristles from Indian firm.
2. As partial fulfilment of contract plaintiff arranged with Bank to open irrevocable letter of credit.
3. Plaintiff discovered seller filled 50 crates with worthless cowhair, etc. to defraud Pl.
4. Plaintiff sought injunction preventing Bank from paying
5. It is fundamental under a motion for dismissal filed by the defendant and that the procedure called for the court to assume that the facts alleged, in particular the fraud, had been proved by the Plaintiff

**Decision**

1. HELD that the Plaintiff under these assumptions (of fraud) would be entitled to injunctive relief

**INJUNCTIONS**

**NEVER GRANTED EXCEPT FOR FRAUD AS ABOVE**

***Hamzeh Miles v British Imex Industries*** – **INJUNCTION REJECTED**

**Outline**

1. Sought by buyer to stop bank paying
2. Goods to be delivered in installments, but buyer considered first installment defective and sought injunction:
3. “…the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods, which imposes upon the banker an absolute obligation to pay…”.

**Decision**

1. Refused to grand an injunction on the basis that the credit constituted a separate contract

***Discount Records Ltd v Barclays Bank*** ­– **INJUNCTION REJECTED**

 \*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\***IMPORTANT**\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**RECOGNISED SEPARATE CONTRACT OF SALE!**

**Outline**

1. Plantiffs ordered goods from a French company
2. When goods arrived, cartons were filled with rubbish
3. Some of the cartons had shipping marks that had appeared to have been changed or tampered with.

**Decision**

1. Refused to grant injunction
2. **Contract between bank and the account party was a contract which was separate from the contract of sale.**
3. Found insufficient evidence to apply fraud distinction

***Wood hall v The Pipeline Authority***

**Outline**

1. High Court of OZ refused to grand an injunction to prevent payment of 1st demand guarantees

**Decision**

1. Based on an alleged breach of the underlying transactions
2. Reason was that the “usually commercial efficacy” reasons.

**Rd Harbottle v National Westminster Bank**

1. Seller in (UK) agrees to sell “horsebeans” to buyer in Egypt.
2. Seller to be paid by “irrevocable letter of credit”.
3. Seller to also establish guarantee against performance of £67,000 with Egyptian bank, to be paid if goods not delivered (ie “standby credit”).
4. Dispute arose when buyer failed to establish letter of credit (ie arrange payment)
5. Seller refused to deliver goods.
6. In response, buyer claims payment on standby credit (guarantee)
7. Mistake for SELLER on refusal to deliver goods as he had established a guarantee against his non-performance

**2 Important quotes:** (Banks ONLY care about fulfilling THEIR obligations)

*“It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks, they* ***are the life-blood of international commerce. Such obligation are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain”***

*“In both cases the banks are only concerned to ensure that the terms of their mandate and confirmations are complied with, eg of the conformity of the documents presented, and in this case of the fact that a demand for payment has been made by the buyers under their existing guarantee. This is unfortunate for the plaintiffs, bit it is what they have agreed.* ***Banks are NOT concerned with the rights and wrongs of the underlying disputes but ONLY with the performance of the obligations which they themselves have confirmed”***