

## B. Uniform customs and practice for documentary credits: report of the Secretary-General (A/CN.9/251)<sup>a</sup>

1. The Commission, at its fifteenth session (1982), received a note submitted by the secretariat describing the revision then in progress by the International Chamber of Commerce (ICC) of the 1974 version of the Uniform Customs and Practice for Documentary Credits (UCP) (A/CN.9/229; *Yearbook 1982*, part two, VI, C).

2. The note pointed out that the subject of documentary credits had been on the Commission's priority list of topics since 1968 and that the Commission at its second session in 1969 had recommended to Governments the use of the 1962 version of UCP, while at its eighth session in 1975 it had recommended the use of the 1974 version of UCP. The latter recommendation was adopted in a form suitable for ICC to reprint in its brochure containing the text of UCP.

3. The note further pointed out that developments in documentary credit practice, and especially those brought about by changes in transport technology and documentation and the increased use of stand-by letters of credit, had led to the revision of UCP then in progress. In order to permit interested circles in countries not represented in ICC to make observations on the operation of UCP so that these could be taken into account in the revision, the Secretary-General, in accordance with the past practices on this subject, had addressed to all Governments the same questionnaire as was sent by ICC to its National Committees and had transmitted the replies received to ICC for its consideration. It was expected that the final version of the revised text would be available for the sixteenth session of the Commission, and it was suggested that the Commission might wish to consider at its sixteenth session the possibility of recommending the use of the revised text of UCP, as it had in respect of the 1962 and 1974 versions of UCP.

4. At the fifteenth session of the Commission, a proposal was made that a study should be undertaken by the secretariat on the operation of letters of credit in order to identify legal problems arising from their use, especially in connection with contracts other than those for the sale of goods.<sup>1</sup> The proposal was accepted. However, it was noted that such a study, which would be a long-term project, should not prejudice any future endorsement by the Commission of the new revision of UCP, since the revision had been undertaken largely to reflect recent changes in transport technology and banking practice as they affected the sale of goods.<sup>2</sup>

5. Although it had been initially expected that the revised text of UCP would be ready for the Commission's sixteenth session for endorsement, final approval of the text was delayed beyond that time, and on 21 June 1983 the Council of ICC adopted the 1983 revised version of UCP to be in force as from 1 October 1984. Accordingly, ICC has now submitted the 1983 revised version of UCP to the Commission with a request that the Commission consider recommending its use in international trade, as was done in respect of the 1962 and 1974 revisions. A short explanatory note on the current revision prepared by ICC is contained in annex I. The original text of the 1983 revision of UCP, in English or French, is contained in annex II.

### ANNEX I

#### Explanatory note submitted by the International Chamber of Commerce to the seventeenth session of the United Nations Commission on International Trade Law on the 1983 revision of uniform customs and practice for documentary credits

The code applied to documentary credit operations throughout the world—the Uniform Customs and Practice for Documentary Credits—has been revised. The revision was carried out by the Code's "author", the International Chamber of Commerce (ICC), and will come into effect on 1 October 1984.

Documentary credits—also known as letters of credit—are often used to effect payment for goods in international trade. A bank in the buyer's country undertakes to pay the seller against presentation of documents giving shipment and other key details of the goods. Usually the credit is made payable to the seller at a bank in his own country. Payment may be at sight or on deferred terms. Credits frequently stipulate that drafts are to be presented for acceptance or negotiation.

The international rules of practice applied to these operations were first codified by ICC in 1933. The last revision—agreed in 1974—is accepted in nearly every country, and was commended for use by UNCITRAL at its eighth session in 1975.

The principal aim of the 1983 revision has been to update the sections dealing with the transport documents the seller has to produce to show that the goods have been dispatched to the buyer. The old rules emphasized the traditional maritime bill of lading which indicated loading on board a particular ship. The amended version makes it easier for banks to accept new style documents covering containerized shipment and multi-modal transport operations. Such documents normally indicate taking in charge at an inland point rather than loading on board.

<sup>a</sup>For consideration by the Commission see Report, chapter VI, B (part one, A, above).

<sup>1</sup>Report of the United Nations Commission on International Trade Law on the work of its fifteenth session, *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 17 (A/37/17)*, paras. 109-112 (*Yearbook 1982*, part one, A).

<sup>2</sup>The secretariat intends to submit, after consultation with ICC, a preliminary report on this study at the eighteenth session of the Commission (1985).

Other changes include clarification of the different ways of making a credit payable to the seller, and of procedures for amending the credit terms. A new provision stipulates that documents produced by electronic and other copying processes are acceptable as originals, subject to safeguards. Stand-by letters of credit—issued mainly by banks in the United States of America to guarantee the obligations of suppliers in international projects—are now specifically covered by the rules.

The revision was adopted by the Council of ICC on 21 June 1983, and is the result of three and a half years' work of the ICC Banking Commission. The time-lag before it will come into effect is intended to give banks and other interested parties enough time to acquaint themselves with the new provisions and to adapt their procedures accordingly.

The work was carried out by representatives of the users of the rules—banks, commercial parties, insurers and transport operators in particular. Business and financial interests in ICC member countries in both the industrialized and developing worlds were able to comment and influence the revision procedure as it progressed. Other interested international organizations—including the UNCITRAL secretariat—were also kept informed of progress, and the revision work was periodically reviewed in a Special ICC Liaison Committee with Chambers of Commerce from the Socialist Countries of Eastern Europe.

The revised Uniform Customs and Practice will be published initially in English and French. Additional language versions will be made available at a later time.

The work is a private codification applied by voluntary acceptance. National banking associations obtain their members' adherence and notify this to ICC headquarters. Individual credits make reference to the Uniform Customs and Practice.

## ANNEX II

### Text of the uniform customs and practice for documentary credits\* (1983 revision)

#### A. General provisions and definitions

##### Article 1

These articles apply to all documentary credits, including, to the extent to which they may be applicable, standby letters of credit and are binding on all parties thereto unless otherwise expressly agreed. They shall be incorporated into each documentary credit by wording in the credit indicating that such credit is issued subject to Uniform Customs and Practice for Documentary Credits, 1983 revision, ICC Publication No. 400.

##### Article 2

For the purposes of these articles, the expressions "documentary credit(s)" and "standby letter(s) of credit" used herein (hereinafter referred to as "credit(s)"), mean any

arrangement, however named or described, whereby a bank (the issuing bank), acting at the request and on the instructions of a customer (the applicant for the credit),

- i. is to make a payment to or to the order of a third party (the beneficiary), or is to pay or accept bills of exchange (drafts) drawn by the beneficiary, or
- ii. authorizes another bank to effect such payment, or to pay, accept or negotiate such bills of exchange (drafts),

against stipulated documents, provided that the terms and conditions of the credit are complied with.

##### Article 3

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

##### Article 4

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

##### Article 5

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

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

##### Article 6

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

#### B. Form and notification of credits

##### Article 7

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

##### Article 8

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

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