



International Banking – Additional Reading Material

ADR/GDR

American Depositary Receipt (ADR) or **Global Depositary Receipt (GDR)** is a simple way for investors to invest in companies whose shares are listed abroad. The ADR or GDR is essentially a certificate issued by a bank that gives the owner rights over a foreign share. It can be listed on a stock exchange and bought and sold just like a normal share. The holder of an ADR or GDR is entitled to all benefits such as dividends and rights issues from the underlying shares. They are sometimes – but not always – able to vote. As you might expect from the name, an ADR is listed in the US. A GDR is typically listed in London or Luxembourg. A depositary receipt where the issuing bank is European will sometimes be called a **European Depositary Receipt (EDR)**, although this term is less common.

Operative guidelines for the limited two way fungibility under the "Issue of Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993"

- a) Re-issuance of ADR/GDR would be permitted to the extent of ADRs/GDRs which have been redeemed into underlying shares and sold in the domestic market. The arrangement is demand driven with the process of reconversion emanating with the request for acquisition of domestic shares by non-resident investor for issue of ADRs/GDRs.
- b) Investments under the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depositary Receipt Mechanism) Scheme, 1993 is treated as direct foreign investment. Accordingly, the transaction under the reconversion arrangement will be distinct and separate from FII portfolio investments.
- c) The transaction will be effected through Securities and Exchange Board of India (SEBI) registered stockbrokers as intermediaries between foreign investors and domestic



shareholders. A general permission has been conveyed by Reserve Bank of India (RBI) through a Notification No. FEMA.41/2001-RB dated 2nd March 2001 authorising such stock brokers to acquire domestic shares on behalf of the overseas investors for being placed with the domestic custodian.

d) For this purpose, all SEBI registered brokers will be able to act as intermediary in the two-way fungibility of ADRs/GDRs. RBI has conveyed general permission through a Notification No. FEMA.41/2001-RB dated 2nd March 2001 for these brokers to buy shares on behalf of the overseas investor.

e) As a secondary market transaction, the acquisition of such shares through the intermediary on behalf of the overseas investors would fall within the regulatory purview of SEBI. The Custodian would monitor the re-issuance and furnish a certificate to both RBI & SEBI to ensure that the sectoral caps are not breached. RBI would monitor the receipt of certificates from the Custodian to this effect.

f) The domestic custodian who is the intermediary between overseas depository on the one hand and Indian company on the other will have the record of the ADRs/GDRs issued and redeemed and sold in the domestic market.

g) The domestic custodian will also be required to ascertain the extent of registration in favour of ADR/GDR holders'/non-resident investor based on the advice of Overseas Depository to the Domestic custodian for the underlying shares being transferred in the books of account of the issuing company in the name of the non-resident on redemption of the ADRs/GDRs.

h) The custodian is also required to verify with the Company Secretary/NSDL/CDSL if the total cap is being breached if there is a percentage cap on foreign direct investment.

i) On request by the overseas investor for acquisition of shares for re-issuance of ADRs /GDRs, the SEBI registered Broker will purchase a given number of shares after verifying with the custodian whether there is any Head Room available:

j) $\text{Head Room} = \text{Number of ADRs/GDRs originally issued} - \text{number of GDRs outstanding}$ further adjusted for ADRs/GDRs redeemed into underlying shares and registered in



the name of the non-resident investor(s). The domestic custodian would notify the extent up to which re-issuance would be permissible – the redemption effected minus the underlying shares registered in the name of the non-resident investor with reference to original GDR issue and adjustment on account of sectoral caps/approval limits.

k) The Indian Broker would receive funds through normal banking channels for purchase of shares from the market. The shares would be purchased in the name of the Overseas Depository and the shares would need to be purchased on a recognized stock exchange.

l) Upon acquisition the Indian Broker would place the domestic share with the custodian; the arrangement would require a revised custodial agreement under which the custodian would be authorized by the company to accept shares from entities other than the company

m) Custodian would advise overseas depository on the custody of domestic share and that corresponding ADRs/GDRs may be issued to the non-resident investor.

n) Overseas depository would issue corresponding ADRs/GDRs to the investor.

o) The domestic custodian in addition would have to ensure that the advices to the overseas depository is issued on the first come first serve basis i.e. the first deposit of domestic /underlying shares with a custodian shall be eligible for the first re-issuance of ADRs/GDRs to the overseas investors.

p) The custodian would also have to ensure that ordinary shares only to the extent of the depletion in ADR/GDRs stock are deposited with it. This can be readily ensured by adopting a system similar to the trigger mechanism adopted for FIIs. Once the trigger mechanism is reached, say at 90% of the depletion in the ADR/GDR stock, each buying transaction of domestic shares would be complete only after the custodian has approved it.

q) A monthly report about the ADR/GDR transaction under the two-way fungibility arrangement is to be made by the Indian Custodian in the prescribed format to RBI and SEBI.

r) The Broker has to ensure that each purchase transaction is only against delivery and payment thereof is received in foreign exchange.



- s) The Broker will submit the contract note to the Indian custodian of the underlying shares on the day next to the day of the purchase so that the Custodian can reduce the Head Room accordingly. Copy of the Contract Note would also need to be provided by the custodians to RBI and SEBI. The Broker will also ensure that a separate rupee account will be maintained for the purpose of buying shares for the purpose of effecting two-way fungibility. No forward cover will be available for the amounts lying in the said rupee account. The ADs will be permitted to transfer the monies lying in the above account on the request of the Broker.
- t) The custodian of the underlying shares and the Depositories would coordinate on a daily basis in computing the Head Room. Further, the company secretary of each individual company would provide details of non-resident investment at weekly intervals to the custodian and the depository. The custodian would monitor the re-issuance and furnish a certificate to both RBI & SEBI, to ensure that the sectoral caps are not breached. RBI would monitor the receipt of certificates from the custodian to this effect.
- u) The re-issuance would be within the already approved/issued limits and would only effectively mean transfer of ADRs/GDRs from one non-resident to another and accordingly no further approval mechanism be insisted upon.
- v) In the limited two way fungibility arrangement, the company is not involved in the process and is demand driven i.e request for ADRs/GDRs emanates from overseas investors. Consequently, the expenses involved in the transaction would be borne by the investors, which would include the payments due to overseas intermediary/broker, domestic custodians, charges of the overseas and domestic brokers.
- w) The tax provision under Section 115 AC of the Income Tax Act 1961, which is applicable to non-resident investors investing in ADRs/GDRs offered against issue of fresh underlying shares would extend to non-resident investors investing in foreign exchange in ADRs/GDRs issued against existing shares under these guidelines, in terms of the relevant provisions of the Income Tax Act 1961.



Difference between GDR and ADR

1. Global depository receipt (GDR) is compulsory for foreign company to access in any other country's share market for dealing in stock. But American depository receipt (ADR) is compulsory for non-us companies to trade in stock market of USA.
2. ADRs can get from level -I to level -III. GDRs are already equal to high preference receipt of level -II and level -III.
3. Indian companies prefer to get GDR due to its global use for getting foreign investment for own business projects.
4. ADRs up to level -I need to accept only general condition of SEC of USA but GDRs can only be issued under rule 144 A after accepting strict rules of SEC of USA.
5. GDR is negotiable instrument all over the world but ADR is only negotiable in USA.
6. Many Indian Companies listed foreign stock market through foreign bank's GDR.
Names of these Indian Companies are:- (A) Bajaj Auto (B) Hindalco (C) ITC (D) L&T (E) Ranbaxy Laboratories (F) SBI
Some of Indian Companies are listed in USA stock exchange only through ADRs:- (A) Patni Computers (B) Tata Motors
7. Investors of UK can buy GDRs from London stock exchange and Luxembourg stock exchange and invest in Indian companies without any extra responsibilities. Investors of USA can buy ADRs from New York stock exchange (NYSE) or NASDAQ (National Association of Securities Dealers Automated Quotation).
8. American investors typically use regular equity trading accounts for buying ADRs but not for GDRs.
9. The US dollar rate paid to holders of ADRs is calculated by applying the exchange rate used to convert the foreign dividend payment (net of local withholding tax) to US dollars, and



adjusting the result according to the ordinary share but GDRs is calculated on numbers of Shares. One GDR's Value may be on two or six shares

UCP600

The latest {July 2007} revision of UCP is the sixth revision of the rules since they were first promulgated in 1933. It is the outcome of more than three years of work by the ICC's Commission on Banking Technique and Practice.

Note that UCP600 does not automatically apply to a credit if the credit is silent as to which set of rules it is subject to. A credit issued by SWIFT MT700 is no longer subject by default to the current UCP; it has to be indicated in field 40E, which is designated for specifying the "applicable rules".

Where a credit is issued subject to UCP600, the credit will be interpreted in accordance with the entire set of 39 articles contained in UCP600. However, exceptions to the rules can be made by express modification or exclusion. For example, the parties to a credit may agree that the rest of the credit shall remain valid despite the beneficiary's failure to deliver an installment. In such case, the credit has to nullify the effect of article 32 of UCP600, such as by wording the credit as: "The credit will continue to be available for the remaining installments notwithstanding the beneficiary's failure to present complied documents of an installment in accordance with the installment schedule."

UCP ARTICLES

Article 1

Application of UCP

The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 (UCP) are rules that apply to any documentary credit (credit) (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly



indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit.

Article 2

Definitions

For the purpose of these rules:

1. **Advising bank** means the bank that advises the credit at the request of the issuing bank.
2. **Applicant** means the party on whose request the credit is issued.
3. **Banking day** means a day on which a bank is regularly open at the place at which an act subject to these rules is to be performed.
4. **Beneficiary** means the party in whose favour a credit is issued.
5. **Complying presentation** means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.
6. **Confirmation** means a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.
7. **Confirming bank** means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request.
8. **Credit** means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.
9. **Honour** means:
 - a. To pay at sight if the credit is available by sight payment.
 - b. To incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.



- c. To accept a bill of exchange (draft) drawn by the beneficiary and pay at maturity if the credit is available by acceptance.
10. **Issuing bank** means the bank that issues a credit at the request of an applicant or on its own behalf. Negotiation means the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank.
11. **Nominated Bank** means the bank with which the credit is available or any bank in the case of a credit available with any bank.
12. **Presentation** means either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered.
13. **Presenter** means a beneficiary, bank or other party that makes a presentation.

Article 3

Interpretations

For the purpose of these rules:

1. Where applicable, words in the singular include the plural and in the plural include the singular.
2. A credit is irrevocable even if there is no indication to that effect.
3. A document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication.
4. A requirement for a document to be legalized, visaed, certified or similar will be satisfied by any signature, mark, stamp or label on the document which appears to satisfy that requirement.
5. Branches of a bank in different countries are considered to be separate banks.



6. Terms such as first class, well known, qualified, independent, official, competent or local used to describe the issuer of a document allow any issuer except the beneficiary to issue that document.
7. Unless required to be used in a document, words such as prompt, immediately or as soon as possible will be disregarded.
8. The expression on or about or similar will be interpreted as a stipulation that an event is to occur during a period of five calendar days before until five calendar days after the specified date, both start and end dates included.
9. The words to, until, till, from and between when used to determine a period of shipment include the date or dates mentioned, and the words before and after exclude the date mentioned.
10. The words from and after when used to determine a maturity date exclude the date mentioned.
11. The terms first half and second half of a month shall be construed respectively as the 1st to the 15th and the 16th to the last day of the month, all dates inclusive.
12. The terms beginning, middle and end of a month shall be construed respectively as the 1st to the 10th, the 11th to the 20th and the 21st to the last day of the month, all dates inclusive.

Article 4

Credits v. Contracts

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



2. A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank.
3. An issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like.

Article 5

Documents v. Goods, Services or Performance

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

Article 6

Availability,

1. A credit must state the bank with which it is available or whether it is available with any bank. A credit available with a nominated bank is also available with the issuing bank.
2. A credit must state whether it is available by sight payment, deferred payment, acceptance or negotiation.
3. A credit must not be issued available by a draft drawn on the applicant.

Expiry Date

A credit must state an expiry date for presentation. An expiry date stated for honour or negotiation will be deemed to be an expiry date for presentation.

Place for Presentation

1. The place of the bank with which the credit is available is the place for presentation. The place for presentation under a credit available with any bank is that of any bank. A place for presentation other than that of the issuing bank is in addition to the place of the issuing bank.

Except as provided in sub-article 29 (1), a presentation by or on behalf of the beneficiary must be made on or before the expiry date.



Article 7

Issuing Bank Undertaking

1. Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour if the credit is available by:
 - a. sight payment, deferred payment or acceptance with the issuing bank;
 - b. sight payment with a nominated bank and that nominated bank does not pay;
 - c. deferred payment with a nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;
 - d. acceptance with a nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity;
 - e. Negotiation with a nominated bank and that nominated bank does not negotiate.
2. An issuing bank is irrevocably bound to honour as of the time it issues the credit.
3. An issuing bank undertakes to reimburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank. Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, whether or not the nominated bank prepaid or purchased before maturity. An issuing bank's undertaking to reimburse a nominated bank is independent of the issuing bank's undertaking to the beneficiary.

Article 8

Confirming Bank Undertaking



- 1) Provided that the stipulated documents are presented to the confirming bank or to any other nominated bank and that they constitute a complying presentation, the confirming bank must:
 - a) honour, if the credit is available by
 - i) sight payment, deferred payment or acceptance with the confirming bank;
 - ii) sight payment with another nominated bank and that nominated bank does not pay;
 - iii) deferred payment with another nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;
 - iv) acceptance with another nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity;
 - v) negotiation with another nominated bank and that nominated bank does not negotiate.
 - b) negotiate, without recourse, if the credit is available by negotiation with the confirming bank.
- 2) A confirming bank is irrevocably bound to honour or negotiate as of the time it adds its confirmation to the credit.
- 3) A confirming bank undertakes to reimburse another nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the confirming bank. Reimbursement for the amount of a complying presentation under a credit available by acceptance or deferred payment is due at maturity, whether or not another nominated bank prepaid or purchased before maturity. A confirming bank's undertaking to reimburse another nominated bank is independent of the confirming bank's undertaking to the beneficiary.
- 4) If a bank is authorized or requested by the issuing bank to confirm a credit but is not prepared to do so, it must inform the issuing bank without delay and may advise the credit without confirmation.

Article 9

Advising of Credits and Amendments

1. A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank that is not a confirming bank advises the credit and any amendment without any undertaking to honour or negotiate.
2. By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.
3. An advising bank may utilize the services of another bank (second advising bank) to advise the credit and any amendment to the beneficiary. By advising the credit or amendment, the second advising bank signifies that it has satisfied itself as to the apparent authenticity of the advice it has received and that the advice accurately reflects the terms and conditions of the credit or amendment received.
4. A bank utilizing the services of an advising bank or second advising bank to advise a credit must use the same bank to advise any amendment thereto.
5. If a bank is requested to advise a credit or amendment but elects not to do so, it must so inform, without delay, the bank from which the credit, amendment or advice has been received.
6. If a bank is requested to advise a credit or amendment but cannot satisfy itself as to the apparent authenticity of the credit, the amendment or the advice, it must so inform, without delay, the bank from which the instructions appear to have been received. If the advising bank or second advising bank elects nonetheless to advise the credit or amendment, it must inform the beneficiary or second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit, the amendment or the advice.



Article 10

Amendments

1. Except as otherwise provided by article 38, a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary.
2. An issuing bank is irrevocably bound by an amendment as of the time it issues the amendment. A confirming bank may extend its confirmation to an amendment and will be irrevocably bound as of the time it advises the amendment. A confirming bank may, however, choose to advise an amendment without extending its confirmation and, if so, it must inform the issuing bank without delay and inform the beneficiary in its advice.
3. The terms and conditions of the original credit (or a credit incorporating previously accepted amendments) will remain force for the beneficiary until the beneficiary communicates its acceptance of the amendment to the bank that advised such amendment. The beneficiary should give notification of acceptance or rejection of an amendment. If the beneficiary fails to give such notification, a presentation that complies with the credit and to any not yet accepted amendment will be deemed to be notification of acceptance by the beneficiary of such amendment. As of that moment the credit will be amended.
4. A bank that advises an amendment should inform the bank from which it received the amendment of any notification of acceptance or rejection.
5. Partial acceptance of an amendment is not allowed and will be deemed to be notification of rejection of the amendment.
6. A provision in an amendment to the effect that the amendment shall enter into force unless rejected by the beneficiary within a certain time shall be disregarded.

Article 11

Tele-transmitted and Pre-Advised Credits and Amendments



- An authenticated teletransmission of a credit or amendment will be deemed to be the operative credit or amendment, and any subsequent mail confirmation shall be disregarded.
- If a teletransmission states full details to follow (or words of similar effect), or states that the mail confirmation is to be the operative credit or amendment, then the teletransmission will not be deemed to be the operative credit or amendment. The issuing bank must then issue the operative credit or amendment without delay in terms not inconsistent with the teletransmission.
- A preliminary advice of the issuance of a credit or amendment (pre-advice) shall only be sent if the issuing bank is prepared to issue the operative credit or amendment. An issuing bank that sends a preadvice is irrevocably committed to issue the operative credit or amendment, without delay, in terms not inconsistent with the pre-advice.

Article 12

Nomination

1. Unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary.
2. By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.
3. Receipt or examination and forwarding of documents by a nominated bank that is not a confirming bank does not make that nominated bank liable to honour or negotiate, nor does it constitute honour or negotiation.

Article 13

Bank-to-Bank Reimbursement Arrangements

1. If a credit states that reimbursement is to be obtained by a nominated bank (claiming bank) claiming on another party (reimbursing bank), the credit must state if the reimbursement is subject to the ICC rules for bank-to-bank reimbursements in effect on the date of issuance of the credit.
2. If a credit does not state that reimbursement is subject to the ICC rules for bank-to-bank reimbursements, the following apply:
 - a. An issuing bank must provide a reimbursing bank with a reimbursement authorization that conforms with the availability stated in the credit. The reimbursement authorization should not be subject to an expiry date.
 - b. A claiming bank shall not be required to supply a reimbursing bank with a certificate of compliance with the terms and conditions of the credit.
 - c. An issuing bank will be responsible for any loss of interest, together with any expenses incurred, if reimbursement is not provided on first demand by a reimbursing bank in accordance with the terms and conditions of the credit.
 - d. A reimbursing bank's charges are for the account of the issuing bank. However, if the charges are for the account of the beneficiary, it is the responsibility of an issuing bank to so indicate in the credit and in the reimbursement authorization. If a reimbursing bank's charges are for the account of the beneficiary, they shall be deducted from the amount due to a claiming bank when reimbursement is made. If no reimbursement is made, the reimbursing bank's charges remain the obligation of the issuing bank.
3. An issuing bank is not relieved of any of its obligations to provide reimbursement if reimbursement is not made by a reimbursing bank on first demand.

Article 14

Standard for Examination of Documents

1. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing 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.
2. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.
3. A presentation including one or more original transport documents subject to articles 19, 20, 21, 22, 23, 24 or 25 must be made by or on behalf of the beneficiary not later than 21 calendar days after the date of shipment as described in these rules, but in any event not later than the expiry date of the credit.
4. Data in a document, 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.
5. In documents other than the commercial invoice, the description of the goods, services or performance, if stated, may be in general terms not conflicting with their description in the credit.
6. If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfil the function of the required document and otherwise complies with sub-article 14 (4).
7. A document presented but not required by the credit will be disregarded and may be returned to the presenter.



8. If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.
9. A document may be dated prior to the issuance date of the credit, but must not be dated later than its date of presentation.
10. When the addresses of the beneficiary and the applicant appear in any stipulated document, they need not be the same as those stated in the credit or in any other stipulated document, but must be within the same country as the respective addresses mentioned in the credit. Contact details (telefax, telephone, email and the like) stated as part of the beneficiary's and the applicant's address will be disregarded. However, when the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document subject to articles 19, 20, 21, 22, 23, 24 or 25, they must be as stated in the credit.
11. The shipper or consignor of the goods indicated on any document need not be the beneficiary of the credit.
12. A transport document may be issued by any party other than a carrier, owner, master or charterer provided that the transport document meets the requirements of articles 19, 20, 21, 22, 23 or 24 of these rules.

Article 15

Complying Presentation

1. When an issuing bank determines that a presentation is complying, it must honour.
2. When a confirming bank determines that a presentation is complying, it must honour or negotiate and forward the documents to the issuing bank.
3. When a nominated bank determines that a presentation is complying and honours or negotiates, it must forward the documents to the confirming bank or issuing bank.

Article 16

Discrepant Documents, Waiver and Notice

1. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.
2. When an issuing bank determines that a presentation does not comply, it may in its sole judgement approach the applicant for a waiver of the discrepancies. This does not, however, extend the period mentioned in sub-article 14 (2).
3. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter. The notice must state:
 - a. that the bank is refusing to honour or negotiate; and
 - b. each discrepancy in respect of which the bank refuses to honour or negotiate; and
 - c.
 - i. that the bank is holding the documents pending further instructions from the presenter; or
 - ii. that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
 - iii. that the bank is returning the documents; or
 - iv. that the bank is acting in accordance with instructions previously received from the presenter.
4. The notice required in sub-article 16 (3) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.
5. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may, after providing notice required by sub-article 16 (3) (c) (i) or (ii), return the documents to the presenter at any time.



6. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.
7. When an issuing bank refuses to honour or a confirming bank refuses to honour or negotiate and has given notice to that effect in accordance with this article, it shall then be entitled to claim a refund, with interest, of any reimbursement made.

Article 17

Original Documents and Copies

- 1) At least one original of each document stipulated in the credit must be presented.
- 2) A bank shall treat as an original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not an original.
- 3) Unless a document indicates otherwise, a bank will also accept a document as original if it:
 - a) appears to be written, typed, perforated or stamped by the document issuer's hand; or
 - b) appears to be on the document issuer's original stationery; or
 - c) states that it is original, unless the statement appears not to apply to the document presented.
- 4) If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted.
- 5) If a credit requires presentation of multiple documents by using terms such as in duplicate, in two fold or in two copies, this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise.

Article 18

Commercial Invoice

- 1) A commercial invoice:



- a) must appear to have been issued by the beneficiary (except as provided in article 38);
 - b) must be made out in the name of the applicant (except as provided in sub-article 38 (7));
 - c) must be made out in the same currency as the credit; and
 - d) need not be signed.
- 2) A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may accept a commercial invoice issued for an amount in excess of the amount permitted by the credit, and its decision will be binding upon all parties, provided the bank in question has not honoured or negotiated for an amount in excess of that permitted by the credit.
- 3) The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit.

Article 19

Transport Document Covering at Least Two Different Modes of Transport

- 1) A transport document covering at least two different modes of transport (multimodal or combined transport document), however named, must appear to:
- a) indicate the name of the carrier and be signed by:
 - i) the carrier or a named agent for or on behalf of the carrier, or
 - ii) the master or a named agent for or on behalf of the master.Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.
Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.
 - b) indicate that the goods have been dispatched, taken in charge or shipped on board at the place stated in the credit, by:
 - i) pre-printed wording, or
 - ii) a stamp or notation indicating the date on which the goods have been dispatched, taken in charge or shipped on board.

The date of issuance of the transport document will be deemed to be the date of dispatch, taking in charge or shipped on board, and the date of shipment. However, if the transport document indicates, by stamp or notation, a date of dispatch, taking in charge or shipped on board, this date will be deemed to be the date of shipment.

- c) Indicate the place of dispatch, taking in charge or shipment and the place of final destination stated in the credit, even if:
 - i) the transport document states, in addition, a different place of dispatch, taking in charge or shipment or place of final destination,
or
 - ii) the transport document contains the indication intended or similar qualification in relation to the vessel, port of loading or port of discharge.
 - d) be the sole original transport document or, if issued in more than one original, be the full set as indicated on the transport document.
 - e) contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back transport document). Contents of terms and conditions of carriage will not be examined.
 - f) Contain no indication that it is subject to a charter party.
- 2) For the purpose of this article, transshipment means unloading from one means of conveyance and reloading to another means of conveyance (whether or not in different modes of transport) during the carriage from the place of dispatch, taking in charge or shipment to the place of final destination stated in the credit.
- 3)
- a) A transport document may indicate that the goods will or may be transshipped provided that the entire carriage is covered by one and the same transport document.
 - b) A transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment.



Article 20

Bill of Lading

1) A bill of lading, however named, must appear to:

a) indicate the name of the carrier and be signed by:

- i) the carrier or a named agent for or on behalf of the carrier, or
- ii) the master or a named agent for or on behalf of the master.

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.

Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

b) indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:

- i) pre-printed wording, or
- ii) an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the bill of lading will be deemed to be the date of shipment unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

If the bill of lading contains the indication intended vessel or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

c) indicate shipment from the port of loading to the port of discharge stated in the credit.

If the bill of lading does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication intended or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision

applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the bill of lading.

- d) be the sole original bill of lading or, if issued in more than one original, be the full set as indicated on the bill of lading.
 - e) contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back bill of lading). Contents of terms and conditions of carriage will not be examined.
 - f) contain no indication that it is subject to a charter party.
- 2) For the purpose of this article, transshipment means unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge stated in the credit.
- 3)
- a) A bill of lading may indicate that the goods will or may be transshipped provided that the entire carriage is covered by one and the same bill of lading.
 - b) A bill of lading indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment, if the goods have been shipped in a container, trailer or LASH barge as evidenced by the bill of lading.
- 4) Clauses in a bill of lading stating that the carrier reserves the right to tranship will be disregarded.

Article 21

Non-Negotiable Sea Waybill

- 1) A non-negotiable sea waybill, however named, must appear to:
- a) indicate the name of the carrier and be signed by: -
 - i) the carrier or a named agent for or on behalf of the carrier, or
 - ii) the master or a named agent for or on behalf of the master.

Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.

Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

- b) indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
 - i) pre-printed wording, or
 - ii) an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the non-negotiable sea waybill will be deemed to be the date of shipment unless the non-negotiable sea waybill contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

If the non-negotiable sea waybill contains the indication intended vessel or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

- c) indicate shipment from the port of loading to the port of discharge stated in the credit. If the non-negotiable sea waybill does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication intended or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the non-negotiable sea waybill.
- d) be the sole original non-negotiable sea waybill or, if issued in more than one original, be the full set as indicated on the non-negotiable sea waybill.
- e) contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back non-

negotiable sea waybill). Contents of terms and conditions of carriage will not be examined.

- f) contain no indication that it is subject to a charter party.
- 2) For the purpose of this article, transshipment means unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge stated in the credit.
- 3)
- a) A non-negotiable sea waybill may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same non-negotiable sea waybill.
 - b) A non-negotiable sea waybill indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment, if the goods have been shipped in a container, trailer or LASH barge as evidenced by the non-negotiable sea waybill.
- 4) Clauses in a non-negotiable sea waybill stating that the carrier reserves the right to transship will be disregarded.

Article 22

Charter Party Bill of Lading

- 1) A bill of lading, however named, containing an indication that it is subject to a charter party (charter party bill of lading), must appear to:
- a) be signed by:
 - i) the master or a named agent for or on behalf of the master, or
 - ii) the owner or a named agent for or on behalf of the owner, or
 - iii) the charterer or a named agent for or on behalf of the charterer.

Any signature by the master, owner, charterer or agent must be identified as that of the master, owner, charterer or agent.



Any signature by an agent must indicate whether the agent has signed for or on behalf of the master, owner or charterer.

An agent signing for or on behalf of the owner or charterer must indicate the name of the owner or charterer.

- b) indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
 - i) pre-printed wording, or
 - ii) an on board notation indicating the date on which the goods have been shipped on board.
 - c) The date of issuance of the charter party bill of lading will be deemed to be the date of shipment unless the charter party bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.
 - d) indicate shipment from the port of loading to the port of discharge stated in the credit. The port of discharge may also be shown as a range of ports or a geographical area, as stated in the credit.
 - e) be the sole original charter party bill of lading or, if issued in more than one original, be the full set as indicated on the charter party bill of lading.
- 2) A bank will not examine charter party contracts, even if they are required to be presented by the terms of the credit.

Article 23

Air Transport Document

- 1) An air transport document, however named, must appear to indicate the name of the carrier and be signed by:
 - a) the carrier, or
 - b) a named agent for or on behalf of the carrier.



- 2) Any signature by the carrier or agent must be identified as that of the carrier or agent.
- 3) Any signature by an agent must indicate that the agent has signed for or on behalf of the carrier.
- 4) indicate that the goods have been accepted for carriage.
- 5) indicate the date of issuance. This date will be deemed to be the date of shipment unless the air transport document contains a specific notation of the actual date of shipment, in which case the date stated in the notation will be deemed to be the date of shipment. Any other information appearing on the air transport document relative to the flight number and date will not be considered in determining the date of shipment.
- 6) indicate the airport of departure and the airport of destination stated in the credit.
- 7) be the original for consignor or shipper, even if the credit stipulates a full set of originals.
- 8) contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage. Contents of terms and conditions of carriage will not be examined.
- 9) For the purpose of this article, transshipment means unloading from one aircraft and reloading to another aircraft during the carriage from the airport of departure to the airport of destination stated in the credit.
 - a) An air transport document may indicate that the goods will or may be transhipped, provided that the entire carriage is covered by one and the same air transport document.
 - b) An air transport document indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment.

Article 24

Road, Rail or Inland Waterway Transport Documents

- 1) A road, rail or inland waterway transport document, however named, must appear to:
 - a) indicate the name of the carrier and:

- i) be signed by the carrier or a named agent for or on behalf of the carrier, or
- ii) indicate receipt of the goods by signature, stamp or notation by the carrier or a named agent for or on behalf of the carrier.

Any signature, stamp or notation of receipt of the goods by the carrier or agent must be identified as that of the carrier or agent.

Any signature, stamp or notation of receipt of the goods by the agent must indicate that the agent has signed or acted for or on behalf of the carrier.

If a rail transport document does not identify the carrier, any signature or stamp of the railway company will be accepted as evidence of the document being signed by the carrier.

- b) indicate the date of shipment or the date the goods have been received for shipment, dispatch or carriage at the place stated in the credit. Unless the transport document contains a dated reception stamp, an indication of the date of receipt or a date of shipment, the date of issuance of the transport document will be deemed to be the date of shipment.
- c) indicate the place of shipment and the place of destination stated in the credit.

2)

- a) A road transport document must appear to be the original for consignor or shipper or bear no marking indicating for whom the document has been prepared.
- b) A rail transport document marked duplicate will be accepted as an original.
- c) A rail or inland waterway transport document will be accepted as an original whether marked as an original or not.

3) In the absence of an indication on the transport document as to the number of originals issued, the number presented will be deemed to constitute a full set.

4) For the purpose of this article, transshipment means unloading from one means of conveyance and reloading to another means of conveyance, within the same mode of



transport, during the carriage from the place of shipment, dispatch or carriage to the place of destination stated in the credit.

5)

- a) A road, rail or inland waterway transport document may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same transport document.
- b) A road, rail or inland waterway transport document indicating that transhipment will or may take place is acceptable, even if the credit prohibits transhipment.

Article 25

Courier Receipt, Post Receipt or Certificate of Posting

- 1) A courier receipt, however named, evidencing receipt of goods for transport, must appear to:
 - a) indicate the name of the courier service and be stamped or signed by the named courier service at the place from which the credit states the goods are to be shipped; and
 - b) indicate a date of pick-up or of receipt or wording to this effect. This date will be deemed to be the date of shipment.
- 2) A requirement that courier charges are to be paid or prepaid may be satisfied by a transport document issued by a courier service evidencing that courier charges are for the account of a party other than the consignee.
- 3) A post receipt or certificate of posting, however named, evidencing receipt of goods for transport, must appear to be stamped or signed and dated at the place from which the credit states the goods are to be shipped. This date will be deemed to be the date of shipment.

Article 26



On Deck, Shipper's Load and Count, said by Shipper to Contain and Charges Additional to Freight

- 1) A transport document must not indicate that the goods are or will be loaded on deck. A clause on a transport document stating that the goods may be loaded on deck is acceptable.
- 2) A transport document bearing a clause such as shipper's load and count and said by shipper to contain is acceptable.
- 3) A transport document may bear a reference, by stamp or otherwise, to charges additional to the freight.

Article 27

Clean Transport Document

A bank will only accept a clean transport document. A clean transport document is one bearing no clause or notation expressly declaring a defective condition of the goods or their packaging. The word clean need not appear on a transport document, even if a credit has a requirement for that transport document to be clean on board.

Article 28

Insurance Document and Coverage

- 1)
 - a) An insurance document, such as an insurance policy, an insurance certificate or a declaration under an open cover, must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies.
 - b) Any signature by an agent or proxy must indicate whether the agent or proxy has signed for or on behalf of the insurance company or underwriter.
- 2) When the insurance document indicates that it has been issued in more than one original, all originals must be presented.
- 3) Cover notes will not be accepted.

- 4) An insurance policy is acceptable in lieu of an insurance certificate or a declaration under an open cover.
- 5) The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment.
- 6)
 - a) The insurance document must indicate the amount of insurance coverage and be in the same currency as the credit.
 - b) A requirement in the credit for insurance coverage to be for a percentage of the value of the goods, of the invoice value or similar is deemed to be the minimum amount of coverage required.

If there is no indication in the credit of the insurance coverage required, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods.

When the CIF or CIP value cannot be determined from the documents, the amount of insurance coverage must be calculated on the basis of the amount for which honour or negotiation is requested or the gross value of the goods as shown on the invoice, whichever is greater.
 - c) The insurance document must indicate that risks are covered at least between the place of taking in charge or shipment and the place of discharge or final destination as stated in the credit.
- 7) A credit should state the type of insurance required and, if any, the additional risks to be covered. An insurance document will be accepted without regard to any risks that are not covered if the credit uses imprecise terms such as usual risks or customary risks.
- 8) When a credit requires insurance against all risks and an insurance document is presented containing any all risks notation or clause, whether or not bearing the heading all risks, the insurance document will be accepted without regard to any risks stated to be excluded.
- 9) An insurance document may contain reference to any exclusion clause.



- 10) An insurance document may indicate that the cover is subject to a franchise or excess (deductible).

Article 29

Expiry Date

- 1) If the expiry date of a credit or the last day for presentation falls on a day when the bank to which presentation is to be made is closed for reasons other than those referred to in article 36, the expiry date or the last day for presentation, as the case may be, will be extended to the first following banking day.
- 2) If presentation is made on the first following banking day, a nominated bank must provide the issuing bank or confirming bank with a statement on its covering schedule that the presentation was made within the time limits extended in accordance with sub-article 29 (1).
- 3) The latest date for shipment will not be extended as a result of sub-article 29 (1).

Article 30

Tolerance in Credit Amount, Quantity and Unit Prices

- 1) The words about or approximately used in connection with the amount of the credit or the quantity or the unit price stated in the credit are to be construed as allowing a tolerance not to exceed 10% more or 10% less than the amount, the quantity or the unit price to which they refer.
- 2) A tolerance not to exceed 5% more or 5% less than the quantity of the goods is allowed, provided the credit does not state the quantity in terms of a stipulated number of packing units or individual items and the total amount of the drawings does not exceed the amount of the credit.

- 3) Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (2) is not applicable. This tolerance does not apply when the credit stipulates a specific tolerance or uses the expressions referred to in sub-article 30 (1).

Article 31

Partial Drawings or Shipments

- 1) Partial drawings or shipments are allowed.
- 2) A presentation consisting of more than one set of transport documents evidencing shipment commencing on the same means of conveyance and for the same journey, provided they indicate the same destination, will not be regarded as covering a partial shipment, even if they indicate different dates of shipment or different ports of loading, places of taking in charge or dispatch. If the presentation consists of more than one set of transport documents, the latest date of shipment as evidenced on any of the sets of transport documents will be regarded as the date of shipment.

A presentation consisting of one or more sets of transport documents evidencing shipment on more than one means of conveyance within the same mode of transport will be regarded as covering a partial shipment, even if the means of conveyance leave on the same day for the same destination.

- 3) A presentation consisting of more than one courier receipt, post receipt or certificate of posting will not be regarded as a partial shipment if the courier receipts, post receipts or certificates of posting appear to have been stamped or signed by the same courier or postal service at the same place and date and for the same destination.

Article 32

Installment Drawings or Shipments



If a drawing or shipment by installments within given periods is stipulated in the credit and any installment is not drawn or shipped within the period allowed for that installment, the credit ceases to be available for that and any subsequent installment.

Article 33

Hours of Presentation

A bank has no obligation to accept a presentation outside of its banking hours.

Article 34

Disclaimer on Effectiveness of Documents

A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or for the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person.

Article 35

Disclaimer on Transmission and Translation

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or



negotiated, an issuing bank or confirming bank must 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 or confirming bank, or between the confirming bank and the issuing bank.

A bank assumes no liability or responsibility for errors in translation or interpretation of technical terms and may transmit credit terms without translating them.

Article 36

Force Majeure

A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.

A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.

Article 37

Disclaimer for Acts of an Instructed Party

- 1) A bank utilizing the services of another bank for the purpose of giving effect to the instructions of the applicant does so for the account and at the risk of the applicant.
- 2) An issuing bank or advising bank assumes no liability or responsibility should the instructions it transmits to another bank not be carried out, even if it has taken the initiative in the choice of that other bank.
- 3) A bank instructing another bank to perform services is liable for any commissions, fees, costs or expenses (charges) incurred by that bank in connection with its instructions.

If a credit states that charges are for the account of the beneficiary and charges cannot be collected or deducted from proceeds, the issuing bank remains liable for payment of charges.



A credit or amendment should not stipulate that the advising to a beneficiary is conditional upon the receipt by the advising bank or second advising bank of its charges.

- 4) The applicant shall be bound by and liable to indemnify a bank against all obligations and responsibilities imposed by foreign laws and usages.

Article 38

Transferable Credits

- 1) A bank is under no obligation to transfer a credit except to the extent and in the manner expressly consented to by that bank.
- 2) For the purpose of this article:
 - a) Transferable credit means a credit that specifically states it is transferable. A transferable credit may be made available in whole or in part to another beneficiary (second beneficiary) at the request of the beneficiary (first beneficiary).
 - b) Transferring bank means a nominated bank that transfers the credit or, in a credit available with any bank, a bank that is specifically authorized by the issuing bank to transfer and that transfers the credit. An issuing bank may be a transferring bank.
 - c) Transferred credit means a credit that has been made available by the transferring bank to a second beneficiary.
- 3) Unless otherwise agreed at the time of transfer, all charges (such as commissions, fees, costs or expenses) incurred in respect of a transfer must be paid by the first beneficiary.
- 4) A credit may be transferred in part to more than one second beneficiary provided partial drawing or shipments are allowed.
 - a) A transferred credit cannot be transferred at the request of a second beneficiary to any subsequent beneficiary. The first beneficiary is not considered to be a subsequent beneficiary.

- b) Any request for transfer must indicate if and under what conditions amendments may be advised to the second beneficiary. The transferred credit must clearly indicate those conditions.
- 5) If a credit is transferred to more than one second beneficiary, rejection of an amendment by one or more second beneficiary does not invalidate the acceptance by any other second beneficiary, with respect to which the transferred credit will be amended accordingly. For any second beneficiary that rejected the amendment, the transferred credit will remain unamended.
- 6) The transferred credit must accurately reflect the terms and conditions of the credit, including confirmation, if any, with the exception of:
- a) the amount of the credit,
 - b) any unit price stated therein,
 - c) the expiry date,
 - d) the period for presentation, or
 - e) the latest shipment date or given period for shipment,
- any or all of which may be reduced or curtailed.

The percentage for which insurance cover must be effected may be increased to provide the amount of cover stipulated in the credit or these articles.

The name of the first beneficiary may be substituted for that of the applicant in the credit.

If the name of the applicant is specifically required by the credit to appear in any document other than the invoice, such requirement must be reflected in the transferred credit.

- 7) The first beneficiary has the right to substitute its own invoice and draft, if any, for those of a second beneficiary for an amount not in excess of that stipulated in the credit, and upon such substitution the first beneficiary can draw under the credit for the difference, if any, between its invoice and the invoice of a second beneficiary.
- 8) If the first beneficiary is to present its own invoice and draft, if any, but fails to do so 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 transferring bank has the right to present the documents as received from the second beneficiary to the issuing bank, without further responsibility to the first beneficiary.

- 9) The first beneficiary may, in its request for transfer, indicate that honour or negotiation is to be effected to a second beneficiary at the place to which the credit has been transferred, up to and including the expiry date of the credit. This is without prejudice to the right of the first beneficiary in accordance with sub-article 38 (8).
- 10) Presentation of documents by or on behalf of a second beneficiary must be made to the transferring bank.

Article 39

Assignment of Proceeds

The fact that a credit is not stated to be transferable shall not affect the right of the beneficiary to assign any proceeds to which it may be or may become entitled under the credit, in accordance with the provisions of applicable law. This article relates only to the assignment of proceeds and not to the assignment of the right to perform under the credit.

Cost Reduction Structures i.e. cross currency option cost reduction structures and foreign currency –INR option cost reduction structures.

Participants

Market-makers - AD Category I banks

Users - Listed companies and their subsidiaries/joint ventures/associates having common treasury and consolidated balance sheet or unlisted companies with a minimum net worth of Rs. 200 crore provided:

- a) All such products are fair valued on each reporting date;



- b) The companies follow the Accounting Standards notified under section 211 of the Companies Act, 1956 and other applicable Guidance of the Institute of Chartered Accountants of India (ICAI) for such products/ contracts as also the principle of prudence which requires recognition of expected losses and non-recognition of unrealized gains;
- c) Disclosures are made in the financial statements as prescribed in ICAI press release dated 2nd December 2005; and
- d) The companies have a risk management policy with a specific clause in the policy that allows using the type/s of cost reduction structures.

(Note: The above accounting treatment is a transitional arrangement till AS 30 / 32 or equivalent standards are notified.)”

Purpose

To hedge exchange rate risk arising out of trade transactions, External Commercial Borrowings (ECBs) and foreign currency loans availed of domestically against FCNR (B) deposits.

Operational Guidelines, Terms and Conditions

- a) Writing of options by the users, on a standalone basis, is not permitted.
- b) Users can enter into option strategies of simultaneous buy and sell of plain vanilla European options, provided there is no net receipt of premium.
- c) Leveraged structures, digital options, barrier options, range accruals and any other exotic products are not permitted.
- d) The portion of the structure with the largest notional, computed over the tenor of the structure, should be reckoned for the purpose of underlying.
- e) The delta of the options should be explicitly indicated in the term sheet.
- f) AD Category I banks may, stipulate additional safeguards, such as, continuous profitability, higher net worth, turnover, etc depending on the scale of forex operations and risk profile of the users.



- g) The maturity of the hedge should not exceed the maturity of the underlying transaction and subject to the same the users may choose the tenor of the hedge. In case of trade transactions being the underlying, the tenor of the structure shall not exceed two years.
- h) The MTM position should be intimated to the users on a periodical basis.

Hedging of Borrowings in foreign exchange which are in accordance with the provisions of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000. P

Products

Interest rate swap, Cross currency swap, Coupon swap, Cross currency option, Interest rate cap or collar (purchases), Forward rate agreement (FRA)

Participants

Market-makers

- a) AD Category I banks in India
- b) Branch outside India of an Indian bank authorized to deal in foreign exchange in India
- c) Offshore banking unit in a SEZ in India.

Users

Persons resident in India who have borrowed foreign exchange in accordance with the provisions of Foreign Exchange Management (Borrowing and Lending in Foreign Exchange) Regulations, 2000.

Purpose

For hedging interest rate risk and currency risk on loan exposure and unwinding from such hedges.

Operational Guidelines, Terms and Conditions

- a) The products, as detailed above should not involve the rupee under any circumstances.



- b) Final approval has been accorded or Loan Registration Number allotted by the Reserve Bank for borrowing in foreign currency.
- c) The notional principal amount of the product should not exceed the outstanding amount of the foreign currency loan.
- d) The maturity of the product should not exceed the unexpired maturity of the underlying loan.
- e) The contracts may be cancelled and rebooked freely.

INCOTERMS 2010

Incoterms 2010 is the eighth set of pre-defined international contract terms published by the International Chamber of Commerce, with the first set having been published in 1936. Incoterms 2010 defines 11 rules, down from the 13 rules defined by Incoterms 2000.

Four rules of the 2000 version ("Delivered at Frontier", DAF; "Delivered Ex Ship", DES; "Delivered Ex Quay", DEQ; "Delivered Duty Unpaid", DDU) are replaced by two new rules ("Delivered at Terminal", DAT; "Delivered at Place", DAP) in the 2010 rules.

In the prior version, the rules were divided into four categories, but the 11 pre-defined terms of Incoterms 2010 are subdivided into two categories based only on method of delivery. The larger group of seven rules may be used regardless of the method of transport, with the smaller group of four being applicable only to sales that solely involve transportation by water where the condition of the goods can be verified at the point of loading on board ship. They are therefore not to be used for containerized freight, other combined transport methods, or for transport by road, air or rail.

EXW – Ex Works (named place of delivery)

The seller makes the goods available at their premises, or at another named place. This term places the maximum obligation on the buyer and minimum obligations on the seller. The Ex Works term is often used when making an initial quotation for the sale of goods without any costs included.



EXW means that a buyer incurs the risks for bringing the goods to their final destination. Either the seller does not load the goods on collecting vehicles and does not clear them for export, or if the seller does load the goods, he does so at buyer's risk and cost. If the parties agree that the seller should be responsible for the loading of the goods on departure and to bear the risk and all costs of such loading, this must be made clear by adding explicit wording to this effect in the contract of sale.

There is no obligation for the seller to make a contract of carriage, but there is also no obligation for the buyer to arrange one either - the buyer may sell the goods on to their own customer for collection from the original seller's warehouse. However in common practice the buyer arranges the collection of the freight from the designated location, and is responsible for clearing the goods through Customs. The buyer is also responsible for completing all the export documentation, although the seller does have an obligation to obtain information and documents at the buyer's request and cost.

These documentary requirements may result in two principal issues. Firstly, the stipulation for the buyer to complete the export declaration can be an issue in certain jurisdictions (not least the European Union) where the customs regulations require the declarant to be either an individual or corporation resident within the jurisdiction. If the buyer is based outside of the customs jurisdiction they will be unable to clear the goods for export, meaning that the goods may be declared in the name of the seller, in breach of the EXW term.

Secondly, most jurisdictions require companies to provide proof of export for tax purposes. In an EXW shipment, the buyer is under no obligation to provide such proof to the seller, or indeed to even export the goods. In a customs jurisdiction such as the European Union, this would leave the seller liable to a sales tax bill as if the goods were sold to a domestic customer. It is therefore of utmost importance that these matters are discussed with the buyer before the contract is agreed. It may well be that another Incoterm, such as FCA *seller's premises*, may be more suitable, since this puts the onus for declaring the goods for export onto the seller, which provides for more control over the export process.



FCA – Free Carrier (named place of delivery)

The seller delivers the goods, cleared for export, at a named place (possibly including the seller's own premises). The goods can be delivered to a carrier nominated by the buyer, or to another party nominated by the buyer.

In many respects this Incoterm has replaced FOB in modern usage, although the critical point at which the risk passes moves from loading aboard the vessel to the named place. It should also be noted that the chosen place of delivery has an impact on the obligations of loading and unloading the goods at that place.

If delivery occurs at the seller's premises, or at any other location that is under the seller's control, the seller is responsible for loading the goods on to the buyer's carrier. However, if delivery occurs at any other place, the seller is deemed to have delivered the goods once their transport has arrived at the named place; the buyer is responsible for both unloading the goods and loading them onto their own carrier.

CPT – Carriage Paid to (named place of destination)

CPT replaces the venerable C&F (cost and freight) and CFR terms for all shipping modes outside of non-containerized sea freight.

The seller pays for the carriage of the goods up to the named place of destination. However, the goods are considered to be delivered when the goods have been handed over to the first or main carrier, so that the risk transfers to buyer upon handing goods over to that carrier at the place of shipment in the country of Export.

The seller is responsible for origin costs including export clearance and freight costs for carriage to the named place of destination (either the final destination such as the buyer's facilities or a port of destination. This has to be agreed by seller and buyer, however).

If the buyer requires the seller to obtain insurance, the Incoterm CIP should be considered instead.

CIP – Carriage and Insurance Paid to (named place of destination)



This term is broadly similar to the above CPT term, with the exception that the seller is required to obtain insurance for the goods while in transit. CIP requires the seller to insure the goods for 110% of the contract value under at least the minimum cover of the Institute Cargo Clauses of the Institute of London Underwriters (which would be Institute Cargo Clauses (C)), or any similar set of clauses. The policy should be in the same currency as the contract, and should allow the buyer, the seller, and anyone else with an insurable interest in the goods to be able to make a claim.

CIP can be used for all modes of transport, whereas the Incoterm CIF should only be used for non-containerized sea freight.

DAT – Delivered at Terminal (named terminal at port or place of destination)

This Incoterm requires that the seller delivers the goods, unloaded, at the named terminal. The seller covers all the costs of transport (export fees, carriage, unloading from main carrier at destination port and destination port charges) and assumes all risk until arrival at the destination port or terminal.

The terminal can be a Port, Airport, or inland freight interchange, but must be a facility with the capability to receive the shipment.

All charges after unloading (for example, import duty, taxes, customs and on-carriage) are to be borne by buyer. However, it is important to note that any delay or demurrage charges at the terminal will generally be for the seller's account.

DAP – Delivered at Place (named place of destination)

Incoterms 2010 defines DAP as 'Delivered at Place' - the seller delivers when the goods are placed at the disposal of the buyer on the arriving means of transport ready for unloading at the named place of destination. Under DAP terms, the risk passes from seller to buyer from the point of destination mentioned in the contract of delivery.



Once goods are ready for shipment, the necessary packing is carried out by the seller at his own cost, so that the goods reach their final destination safely. All necessary legal formalities in the exporting country are completed by the seller at his own cost and risk to clear the goods for export.

After arrival of the goods in the country of destination, the customs clearance in the importing country needs to be completed by the buyer at his own cost and risk, including all customs duties and taxes. However, as with DAT terms any delay or demurrage charges are to be borne by the seller.

Under DAP terms, all carriage expenses with any terminal expenses are paid by seller up to the agreed destination point. The necessary unloading cost at final destination has to be borne by seller under DAP terms. If unloading cannot be carried out by the seller, it might be better to ship under DAT (Delivered at Terminal) terms instead.

DDP – Delivered Duty Paid (named place of destination)

Seller is responsible for delivering the goods to the named place in the country of the buyer, and pays all costs in bringing the goods to the destination including import duties and taxes. The seller is not responsible for unloading. This term is often used in place of the non-Incoterms "Free in Store (FIS)". This term places the maximum obligations on the seller and minimum obligations on the buyer. No risk or responsibility is transferred to the buyer until delivery of the goods at the named place of destination.^[7]

The most important consideration for DDP terms is that the seller is responsible for clearing the goods through customs in the buyer's country, including both paying the duties and taxes, and obtaining the necessary authorisations and registrations from the authorities in that country. Unless the rules and regulations in the buyer's country are very well understood DDP terms can be a very big risk, both in terms of delays and in unforeseen extra costs, and should be used with caution.

Rules for sea and inland waterway transport



To determine if a location qualifies for these four rules, please refer to 'United Nations Code for Trade and Transport Locations (UN/LOCODE)'.

The four rules defined by Incoterms 2010 for international trade where transportation is entirely conducted by water are as per the below. It is important to note that these terms are generally not suitable for shipments in shipping containers; the point at which risk and responsibility for the goods passes is when the goods are loaded on board the ship, and if the goods are sealed into a shipping container it is impossible to verify the condition of the goods at this point.

Also of note is that the point at which risk passes under these terms has shifted from previous editions of Incoterms, where the risk passed at the ship's rail.

FAS – Free Alongside Ship (named port of shipment)

The seller delivers when the goods are placed alongside the buyer's vessel at the named port of shipment. This means that the buyer has to bear all costs and risks of loss of or damage to the goods from that moment. The FAS term requires the seller to clear the goods for export, which is a reversal from previous Incoterms versions that required the buyer to arrange for export clearance. However, if the parties wish the buyer to clear the goods for export, this should be made clear by adding explicit wording to this effect in the contract of sale. This term should be used only for non-containerised sea freight and inland waterway transport.

FOB – Free on Board (named port of shipment)

Under FOB terms the seller bears all costs and risks up to the point the goods are loaded on board the vessel. The seller must also arrange for export clearance. The buyer pays cost of marine freight transportation, bill of lading fees, insurance, unloading and transportation cost from the arrival port to destination. Since Incoterms 1980 introduced the FCA incoterm, FOB should only be used for non-containerised sea freight and inland waterway transport. However, FOB is still used for all modes of transport despite the contractual risks that this can introduce.

CFR – Cost and Freight (named port of destination)



The seller pays for the carriage of the goods up to the named port of destination. Risk transfers to buyer when the goods have been loaded on board the ship in the country of Export. The Shipper is responsible for origin costs including export clearance and freight costs for carriage to named port. The shipper is not responsible for delivery to the final destination from the port (generally the buyer's facilities), or for buying insurance. If the buyer does require the seller to obtain insurance, the Incoterm CIF should be considered. CFR should only be used for non-containerized sea freight and inland waterway transport; for all other modes of transport it should be replaced with CPT.

CIF – Cost, Insurance & Freight (named port of destination)

This term is broadly similar to the above CFR term, with the exception that the seller is required to obtain insurance for the goods while in transit to the named port of destination. CIF requires the seller to insure the goods for 110% of their value under at least the minimum cover of the Institute Cargo Clauses of the Institute of London Underwriters (which would be Institute Cargo Clauses (C)), or any similar set of clauses. The policy should be in the same currency as the contract. CIF can be used by any transport by sea and air not limited to containerized or non-containerized cargo and includes all charges up to the port/terminal of entrance. CIP covers additional charges at the port/terminal of entrance.

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