Chapter 2: Documentary Credits -- A Brief Overview

- On the documentary credit rules
- On the documentary credit functions
- On the independence principle
- On the parties to the documentary credit transaction
- On the standard for examination of documents
- The documentary credit lines

2.1 Documentary Credit Rules

Many people consider the documentary credit to be a complex instrument and only use it when it is absolutely necessary. There are many rules and much “practice” surrounding the documentary credit, but the basic principles of the documentary credit instrument are fairly simple.

This chapter is aimed at providing a basic understanding of what a documentary credit is.

The documentary credit described here is a basic one, covering a commercial transaction involving the sale of goods or services between a buyer and a seller.

Most documentary credits are issued subject to the ICC Uniform Customs and Practice for Documentary Credits. The latest version of these rules—the UCP 600—came into force 1 July 2007.

The UCP 600 is a mix of high level information and very detailed requirements to the documents presented. It includes documentary credit rules on a conceptual level, e.g. explaining what a documentary credit is and the obligation of the parties involved, dictating requirements for the documents that are to be presented under the documentary credit such as explaining who must sign the transport document.

Sections include:

- Scope and application of the rules
- Definitions and interpretations of commonly used parties and terminology used in the rules or in documentary credits
- Obligations and liabilities
- Basis of document examination; high level and in detail (Including articles regarding “invoice”, “transport documents”, and “insurance documents”)
• Disclaimers
• Transfers and assignments

All 39 articles of UCP 600 are important for banks dealing with documentary credits. For buyers and sellers, however, some articles have only limited relevance while others are essential for the transaction to go smoothly and end successfully for both parties. These articles are primarily the ones related to the examination of documents.

In that respect, another ICC publication must be mentioned: International Standard Banking Practice for the Examination of Documents under UCP 600 (2013), ICC publication No. 745 (the ISBP 745).

This publication attempts to capture a major part of what is “international standard banking practice,” mainly related to the examination of documents. It functions as a relevant and practical checklist for sellers preparing documents for presentation.

The content of the ISBP includes:

• Preliminary Considerations
• General Principles
• Drafts and Calculation of Maturity Date
• Invoices
• Transport Documents Covering at Least Two Different Modes of Transport
• Bills of Lading
• Non-Negotiable Sea Waybills
• Charter Party Bills of Lading
• Air Transport Documents
• Road, Rail or Inland Waterway Transport Documents
• Insurance Documents and Coverage
• Certificates of Origin
• Packing List, Note or Slip (“Packing Lists”)
• Weight List, Note or Slip (“Weight Lists”)
• Beneficiary’s Certificates
• Analysis, Inspection, Health, Phytosanitary, Quantity, Quality and other Certificates (“Certificates”)

### 2.2 Documentary Credit Definition

The documentary credit is defined as follows:¹

“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.”

¹ UCP 600 Article 2 ¶ 8.
This includes the following elements:

- The documentary credit is issued by a bank – the **issuing bank**.\(^2\)
- The documentary credit is **irrevocable**, which means that once issued it can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, and the seller (beneficiary).\(^3\)
- The documentary credit constitutes a **definite undertaking**, i.e. a promise.
- In order to evoke the obligation of the issuing bank, the beneficiary (seller) or nominated bank must make a **complying presentation** by presenting documents that comply with the terms and conditions of the documentary credit.
- Once a complying presentation has been made, the issuing bank must honour. Basically, this means to make payment as defined in the documentary credit.

### 2.3 Documentary Credit Functions

The documentary credit has three main functions:

**Guarantee**

The documentary credit serves as a **guarantee**. This means that one or more banks, in the event the credit is confirmed, issue an independent undertaking. The banks promise to pay a certain amount provided that the documents stipulated in the documentary credit are presented and comply.

(Please see **The Independence Principle** below.)

**Payment vehicle**

The documentary credit also manages the flow of money. This means that the buyer does not initiate the payment as he normally would. Rather, the banks that are part of the documentary credit transaction manage payment. Ultimately, the issuing bank draws the relevant amount from the account of the buyer. The payment of the documentary credit satisfies as payment for the underlying transaction.

**Financing instrument**

The documentary credit is a very suitable means of financing and can be structured in a number of ways. A frequent method is to have the documentary credit available for acceptance upon a complying presentation with payment at a later date. This means that the buyer receives the documents when they arrive but may postpone payment, until, for example, 90 days after the goods are shipped.

### 2.4 The Independence Principle

One of the core principles of the documentary credit instrument is that it is an independent undertaking. This is reflected a number of places throughout the rules for documentary credits.

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2. It should be noted that any party can issue a documentary credit. For instance, some large US department stores are issuing their own documentary credits. In Europe and other regions, this is not a common practice.
3. UCP 600 Article 10(a).
For example, **UCP 600 Article 4(a) (Credits v. Contracts)** states:

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

(article continues)

(article continued)

**Article 4** distinguishes the commercial contract/agreement from the documentary credit and makes it clear that the only basis for determining whether or not a bank is obligated to pay under a documentary credit is the documents presented. If they “comply,” the bank must pay. If they do not comply, the bank has the option to refuse to pay.

Second, **UCP 600 Article 5 (Documents v. Goods, Services or Performance)** states: “Banks deal with documents and not with goods, services or performance to which the documents may relate.”

This article relates to the goods or services covered by the documents presented. The principle is that the buyer cannot refuse to pay based on the condition of the goods. The obligation of the issuing bank depends solely on the documents presented.

Third, **UCP 600 Article 14(a) (Standard for Examination of Documents)** states: “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.”

This article states that in evaluating a presentation of documents, a bank examines only the documents as they appear. The bank will not look to other sources, nor look beyond the documents, e.g., to check if the goods are in fact shipped on the vessel mentioned on the bill of lading.⁴

Fourth, **UCP 600 Article 34 (Disclaimer on Effectiveness of Documents)** states: “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.”

This article states that banks will not verify the facts, the status of the issuers, or the parties mentioned in the documents. In general, issuing banks will accept the

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⁴ It should be noted though, that many banks – as part of their due diligence – do routine checks in order to verify if there are indeed goods. This is e.g. done via the IMB (The International Maritime Bureau).
documents as presented – and if they “appear on their face to constitute a complying presentation,” banks are obligated under the documentary credit.

2.4.1. The Fraud Exception

Generally, the independence principle holds that the bank that issues a documentary credit must pay when a complying presentation is made, regardless of the goods and the commercial agreement between the buyers and sellers. From time to time, however, buyers may attempt to stop a bank from paying under a documentary credit. The reasons for this may be many, but often it is because the buyer knows or expects that the goods are not as agreed, or because he knows or expects that the seller is in breach of the commercial contract. The remedy for forcing the issuing bank not to honour its obligations under a documentary credit is referred to as court injunction or stop payment order. Such cases are not handled subject to the UCP 600 but rather under local law, with varying results. Most legal systems uphold the independence principle rather strictly, but there are cases and circumstances where it seems unreasonable to insist that a bank make payment to the seller, especially when the seller has behaved unscrupulously towards the buyer. In such circumstances, courts may stop payment by upholding what is known as the Fraud Exception, but only if the buyer can prove that the seller is not entitled to payment because the seller committed fraud. Proof of fraud must be clearly established—a mere allegation of fraud is not sufficient.

For an independent instrument like the documentary credit, court injunctions and stop payment orders provide some special challenges. Often, more than one bank is involved in the documentary credit transactions. For example, a confirming bank has an independent obligation, while a nominated bank may have pre-paid the beneficiary. So even though the issuing bank is prohibited from paying because of beneficiary fraud, another bank may have already paid the beneficiary. As a result, the court injunction or stop payment order may well damage the wrong party—the bank instead of the fraudulent seller. In such cases the UCP 600 attempts to protect nominated banks that have acted in accordance with their nomination. The principle from the perspective of the UCP 600 is that the risk of fraud lies with the bank that issued the documentary credit and/or the applicant (the buyer).

2.5 The Parties to the Documentary Credit Transaction

There may be many parties in a documentary credit transaction. UCP 600 Article 2 uses the following terminology:

**Advising bank** means the bank that advises the credit at the request of the issuing bank.

**Applicant** means the party on whose request the credit is issued.

**Beneficiary** means the party in whose favour a credit is issued.

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5. UCP 600 Article 14(a).
Confirming bank means the bank that adds its confirmation to a credit upon the issuing bank’s authorization or request.

Issuing bank means the bank that issues a credit at the request of an applicant or on its own behalf.

Nominated bank means the bank with which the credit is available or any bank in the case of a credit available with any bank.

Presenter means a beneficiary, bank or other party that makes a presentation.

In a documentary credit, the applicant is usually the buyer and the beneficiary is usually the seller. From reading the above, it may seem as if there are many banks involved. This need not be the case. Usually there are only two banks:

Buyer’s bank – the issuing bank that issued the documentary credit.

Seller’s bank – can assume various roles and responsibilities. It can be the advising bank which advises the documentary credit to the seller, the nominated bank if it is “invited” under the documentary credit to honour or negotiate, and/or the confirming bank which assumes the obligation to honour or negotiate provided the seller makes a compliant presentation.

It is very important that the seller identifies the roles and responsibilities of the banks that are part of the documentary credit transaction. The beneficiary must know how and when the funds are expected.

Evaluating the risk: Seller’s perspective

The seller risks that goods are shipped but no money is received.

1. At the outset, seller risk is on the buyer. This is a combined commercial and political risk; i.e. on the buyer and his country/region.

2. After a documentary credit is issued, that risk shifts to a bank (the issuing bank). This will usually be the buyer’s bank, located in the same country as the buyer. This means that the risk of the seller is on the buyer’s bank and his country/region.

3. If the documentary credit is confirmed, then the confirming bank has assumed a definite undertaking similar to that of the issuing bank. Often (but not necessarily), the confirming bank will be the seller’s bank, or at least a bank located in the same country as the seller. In such case that is the risk that the seller must relate to. Seller’s risk hinges on the confirming bank paying as specified in the documentary credit.

4. If the advising bank is a “nominated bank” that has not confirmed the documentary credit, then that bank is not obligated under the documentary credit. It may, however, choose to obligate itself under an express agreement with the seller (the beneficiary to the documentary credit). In such case, it is important that the seller understands what kind of obligation the bank has entered into, what the seller can expect from the bank, and the cost in that respect.
5. If the advising bank is neither a nominated bank nor a confirming bank, it will normally act as a mere conduit between banks—passing on the documentary credit to the beneficiary and forwarding the documents to the issuing bank. Such banks normally will not be positioned to assume any kind of obligation under the documentary credit. They are formally referred to as “transmitting banks.”

2.6 Standard for Examination of Documents

The seller must present documents in order to obtain payment under the documentary credit. The bank will examine the documents based on the criteria described in the UCP 600. The following articles are relevant in this context:

UCP 600 Article 2:

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.

Presentation means either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered.

The term Presentation has a dual meaning. It can mean the physical delivery of the documents to the issuing bank or nominated bank. It can also mean the set of documents that have been delivered for the document checker to examine.

Complying presentation defines the basis and standard for the bank to examine and accept the documents. The definition provides a three level hierarchy:

- The terms and conditions of the credit.
  This rule specifies the requirements in the documentary credit for the transaction in question.

  Example: A documentary credit states that the transport document must show that goods are shipped from Hong Kong port to Hamburg port.

  Where the requirements of the documentary credit differ from those stated in the UCP 600, the words of the documentary credit apply. The UCP 600 contains exceptions to this principle.

  Example: The UCP 600 states that even where the documentary credit prohibits transhipment, a bill of lading indicating transhipment is acceptable if the goods have been shipped in a container, trailer or LASH barge as evidenced by the bill of lading.6

The Applicable Provisions of These Rules

The UCP 600 governs provided the documentary credit has been issued subject to those rules.7

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6. UCP 600 Article 20(c)(ii).
7. UCP 600 Article 1.
An example of this is where the documentary credit calls for a “bill of lading.” In that case UCP 600 article 20 must be complied with. This article includes specific requirements as to who must sign the bill of lading.

**International Standard Banking Practice**

International standard banking practice is the practical interpretation of the rules. The documentary credit area has a high degree of documented practice. This practice is available from a number of sources issued by the ICC (International Chamber of Commerce).

International Standard Banking Practice for the Examination of Documents under UCP 600 (2013), ICC publication No. 745 (the ISBP 745).

**ICC Opinions**

The UCP 600 is drafted by the ICC Commission on Banking Technique and Practice (also known as the Banking Commission). The ICC allows banks and others who seek clarification of the UCP 600 to submit queries, often related to a specific problem. The ICC’s responses are called Opinions and form part of international standard banking practice. These opinions are published in books.

**ICC Decisions**

Decisions issued by the ICC address specific topics, for example, on what constitutes an original document.

**DOCDEX Decisions**

The ICC Banking Commission also offers a service called DOCDEX (short for Documentary Credit Dispute Resolution by Expertise). Revised in 2014, DOCDEX is available under certain conditions to handle trade finance-related disputes whether or not a set of ICC Banking Commission rules applies.

The objective of DOCDEX is to provide an independent, impartial and prompt expert decision on how the dispute should be resolved on the basis of the terms and conditions of the instrument in question.

The ICC charges a fee for handling disputes under the system and submissions are subject to the DOCDEX rules.8

Furthermore, UCP 600 Article 14 (Standard for Examination of Documents) is relevant—in this context only articles (a), (d), and (f) will be mentioned:

a. 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.

d. 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.

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f. 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 article 14 (d).

Banks will examine documents based on:

- **The documents alone**, NOT the commercial contract or the goods.

- How they appear on their face.
  This means that banks will not “go behind” the documents and check the facts reflected by the documents. They will merely look at how the documents appear.

  For example, if the bill of lading says that one container has been shipped on Mette Maersk from Hong Kong, then the bank will not call the local Maersk Line agent to ask whether such container is in fact on board the ship.

- The principle that data in a document need not be identical to but must not conflict with data in that document or any other document stipulated and presented. This means that banks will not require a “mirror image” between documents. Spelling mistakes and missing commas do not make a document discrepant. In addition, UCP 600 Article 14(d) states that the data in a document must be read in context, i.e. banks examining documents must relate to the context in which the data in the documents forms a part. For example, if the “Consignee” field on a bill of lading states “to the order of Bank A” and the “Consignee” field on the certificate of origin mentions the actual buyer (the applicant to the documentary credit), then even though the data obviously differs, this is not a discrepancy. This is because it makes sense that the certificate of origin is issued to the actual buyer and that the bill of lading is issued to the order of a bank with the possibility of passing on the ownership of the goods via endorsement of the bill of lading to the actual buyer.

- The principle that if the documentary credit requires presentation of a document other than a transport document, insurance document, or commercial invoice, then the documentary credit should state who should issue the documents, as well as the contents of the documents. If the documentary credit does not, then the document will be accepted if its content appears to fulfil the function of the document.

  **Example:** When the documentary credit calls for a “Packing List,” then the document checker will ascertain that a presented document contains information on how the goods have been packed, whether or not a document has been labelled as such.

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9. This is of course depending on the nature of the spelling mistake. ISBP 745 § A23 addresses this by stating: “A misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant. For example, a description of the goods shown as “machine” instead of “machine”, “fountain pen” instead of “fountain pen” or “modle” instead of “model” would not be regarded as a conflict of data under UCP 600 sub-article 14 (d). However, a description shown as, for example, “model 123” instead of “model 321” will be regarded as a conflict of data under that sub-article.”
Such documents may be titled precisely as called for in the credit, bear a similar title, or be untitled.\(^\text{10}\)

### 2.7 The Documentary Credit Lines

In books, brochures, and websites discussing documentary credits, flowcharts are often used that attempt to provide a graphic illustration of how the documentary credit works. I have provided one such chart below:

#### 2.7.1 Graphic Overview of the Documentary Credit Lines

![Diagram of Documentary Credit Lines]

#### 2.7.2 Line 1 – The Agreement between Buyer and Seller

This line illustrates an agreement that is formally outside the documentary credit transaction but is the foundation on which the issued documentary credit is based.

The commercial agreement is important because at this stage parties should begin to consider the documentary credit by, for example, stipulating which documents should be required by the documentary credit. By agreeing on this during the drafting of the agreement, the parties can establish what documents the buyer needs to obtain, and clear the goods for import and detail what the seller is able to provide.

#### 2.7.3 Line 2 – The Parties

(See 2.5 The Parties to the Documentary Credit Transaction.)

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10. ISBP 745 § A39. The full wording of this paragraph is: “Documents may be titled as called for in the credit, bear a similar title or be untitled. The content of a document must appear to fulfil the function of the required document. For example, a requirement for a “Packing List” will be satisfied by a document containing packing details whether it is titled “Packing List”, “Packing Note”, “Packing and Weight List”, etc., or bears no title.”
2.7.4 Line 3 – Issuing the Documentary Credit

Documentary Credit Application
The documentary credit is usually initiated by the buyer, who makes a documentary credit application and sends it to his bank. This application has two basic purposes:

a) It provides the bank with the information needed to issue the documentary credit: the amount, the description of goods, and the required documents that are to be presented.

b) It is the agreement between the buyer (now termed applicant) and the bank (now termed issuing bank).

Issuance of the Documentary Credit
Based on the documentary credit application, the issuing bank issues the documentary credit and sends it to the seller's bank, with the instruction to advise it to the seller (now termed "beneficiary").

Once the issuing bank issues the documentary credit it cannot be "amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary."[11]

This is because the documentary credit is irrevocable.[12] In practical terms this means that if something needs to be corrected, then the issuing bank must issue an amendment, which must follow the same path as the documentary credit itself.[13] Once the amendment is “accepted” by the beneficiary (and a confirming bank if it is a confirmed documentary credit), the documentary credit is amended. If, however, the amendment is refused, then the original documentary credit is still in force.[14]

When there is a confirming bank, and the beneficiary to the documentary credit accepts the amendment but the confirming bank does not, the confirmation is not extended to cover the amendment.

The detailed content of the documentary credit will not be explained here, but a sample of a documentary credit is available in 4.4 A sample transport document with comments.

Advising the Documentary Credit
Once having received the documentary credit, the seller’s bank will advise the documentary credit to the seller. The advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit and that the advice accurately reflects the terms and conditions of the documentary credit (this principle also applies to amendments).[15]

Seller’s Handling of the Documentary Credit
After receiving the documentary credit, the seller should read it through carefully.

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[12] UCP 600 Article 3 states: “A credit is irrevocable even if there is no indication to that effect.”
[13] UCP 600 Article 9(d).
[14] UCP 600 Article 10 describes this process in detail.
[15] UCP 600 Article 9(b).
to assure himself that he will be able to fulfil the requirements, make the required documents, and meet all stated deadlines.

A major source for problems under documentary credits is that “defects” in credits are not discovered until the goods are shipped and documents are presented, at which point it is practically too late to make the necessary corrections.

### 2.7.5 Line 4 – Presenting the Documents and Paying

The presentation of documents and the payment flow are explained together because of the close link between the presentation of documents and payment. It is the presentation that triggers payment and in the worst case may be to blame for late or non-payment.

Normally, the seller presents the documents to his own bank. That bank will examine the documents and if found in order, will pay the seller.

Seller’s bank will then forward the documents to the issuing bank. If the documents are found in order, the issuing bank will debit buyer’s account and pay the seller’s bank.

There are many variations to this process, depending on how the documentary credit has been structured and the specific role of the seller’s bank.

If the documents are not in order, or more precisely, do not form a “complying presentation,” the issuing bank is not obligated to pay. In practical terms, the buyer is contacted if the documents are not compliant and asked to waive the discrepancies. Fortunately, the buyer usually agrees to waive the discrepancies and the seller is paid accordingly.

After documents are received and paid or accepted accordingly, the buyer holds the documents that will enable him to obtain and clear the goods for import.

### 2.8 Documentary Credit Compliance

There is an increasing demand from regulatory bodies and other authorities that banks and transport companies take active part in fighting financial crime. For the purpose of documentary credits, financial crime includes the following:

- **Sanctions** risks (i.e. the risk that a sanctioned party is part of the transaction). Sanctions are in place for political reasons. UN Security Council, EU, US, and other governmental entities have decided to impose sanctions against certain named persons, companies, and countries. Therefore banks and transport companies must have in place processes that ensure that they do not violate applicable law when dealing with a transaction where a sanctioned party is named.

16. See definition of “Complying presentation” in UCP 600 Article 2, as well as UCP 600 Article 15 (Complying Presentation).
• **Money laundering** and **terrorist financing** risks (i.e. the risk that the funds under the transaction are being used in a criminal manner). Banks and transport companies must have in place processes to prevent their handling of transactions / shipments used to facilitate money laundering or finance terrorist activity.

• **Dual Use Goods** risks (i.e. the risk that the goods covered by the trade finance transaction could be used militarily or as weapons of mass destruction). Banks and transport companies must have in place processes to prevent their handling of transactions / shipments of dual use goods.

Prudent banks and transport companies perform due diligence for the purpose of mitigating the above-mentioned risks. In this respect – both for banks and transport companies – transport documents are critically important. Transport documents include the names of a number of parties that are part of the transaction (for example shipper, issuing bank, consignee, as well as the shipping line and perhaps their agent), just as they reveal the description of the goods shipped.

Transport documents therefore are screened against sanctions lists to which the bank/transport company is applicable. Also the description of goods is taken into account. Both for the purpose of making certain that the goods shipped are in line with what the customer normally sends / receives, but also for the purpose of identifying any “high risk commodities” such as weapons.

Since a transport document is issued by a “third party” and normally includes specific information as to the shipment details, it is a vital document in determining if the presentation under the documentary credit is fraudulent. A number of banks utilize the International Maritime Bureau (IMB) to have selected bills of lading presented under documentary credits checked; i.e. to verify that the goods are, in fact, on the vessel mentioned en route between the ports mentioned.

Any instance where financial crime has been identified by a bank is handled outside the UCP 600 and the handling and outcome will depend on the actual case and applicable law. For example, a presentation under a documentary credit that includes a party on a sanctions list prohibiting the issuing bank from paying will prevent such issuing bank from paying under the documentary credit – even if a complying presentation has been made and the issuing bank is obligated under the UCP 600.

When it comes to documentary credits, compliance issues can vary from jurisdiction to jurisdiction and no uniform practices exist for dealing with such matters. For example, it is common practice for issuing banks and confirming banks to simply return documents if a sanctioned party appear on the transaction. When there is a “hit” against a sanctions list, this does not in itself mean that there is a sanctions breach. It means that the case must be considered carefully – and the underlying directive must be checked to determine whether or not a bank is permitted to pay. Simply returning documents may violate applicable sanctions and may well damage a confirming bank or a nominated bank that has acted upon its nomination. Had there been fraud, such bank would be protected under the UCP 600 (see 2.4.1. The Fraud Exception).
The International Chamber of Commerce (ICC) should formulate an international standard sanction practice which could include the following:

- A bank’s obligation under a documentary credit and sanctions are by nature two different matters. The fact that there are sanctions in force that prohibit a bank from fulfilling its obligation under a documentary credit does not change the fact that such bank is obligated vis-à-vis the UCP 600. If there are sanctions in force, the bank may be prohibited from fulfilling its obligation under the documentary credit. Sanctions are legal requirements. The UCP is a contractual requirement. Legal requirements will always override the contractual requirement.

- The fact that a documentary credit transaction indicates a person, company, commodity, or country that appears on a sanction list does not in itself mean that an issuing/confirming bank is prohibited from fulfilling its obligation under the documentary credit.

- A bank should only refuse to honour its obligation under a documentary credit where there are sanctions in force actually prohibiting that bank from honouring its obligation.

- When a bank refuses to honour its obligation under a documentary credit with reference to sanctions, it should provide sufficient proof to the presenter.

- As a general rule a nominated bank that has acted pursuant to its nomination should be protected, just as is the case where the issuing bank is prevented from paying due to an injunction / stop payment order issued by a court.