

# Transport Document & Bank's Security in L/C

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# L/C Workflow



## Legal framework for L/C

- UCP600 (2007) and ISBP No.745 (2013)?
- Chinese Judicial Interpretation (2006): *The Provisions on Several Issues Concerning the Trial of Disputes over Letters of Credit* (the LC Judicial Interpretations) --the first Chinese statute on LC
- Article 2: agreement given priority; however, absent an agreement, the UCP and other relevant standards as formulated by the International Chamber of Commerce shall be applicable.

Q: When banks need security for L/C?

Q: What security can be offered under L/C?

- 1) the paying party has become insolvent
- Resort: any previous security arrangements & documents which can provide security
- 2) the bank has wrongly paid on documents which are not complying with L/C
- Resort: only documents which provide security

## What banks want most from documents?

### *Legal title rather than physical property*

- Right to stop delivery to the unpaid party
- Right to claim delivery from the carrier
- Right to sue against the default carrier
- Right to resell the cargo and release money

## What UCP600 offered vs. What banks need?

- Article 19-25 & ISBP No.745 section D-J
- Now only focus on sea-related transport document
- Article 19 Multimodal Transport Document
- Article 20 Bill of Lading
- Article 21 Non-Negotiable Sea Waybill
- Article 22 Chapter Party Bill of Lading

## Article 20 Bill of Lading

- a.
  - i. indicate the name of the carrier and signature
  - ii. indicate the goods have been ***shipped on board***
  - iii. indicate shipment ***from the port of loading to the port of discharge***
  - iv. be the sole original or the ***full set*** of B/L
  - v. contains terms and conditions of carriage or make reference to them; however, ***they will not be examined.***
  - vi. no indication for subject to a C/P
- b. definition of transshipment
- c.
  - i. a B/L may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same B/L
  - ii. a B/L 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 B/L.
- d. clauses in a B/L stating that the carrier reserves the right to tranship will be disregarded.

UCP600: mainly designed for realising the receipt function; slightly touched carriage contract terms and right of delivery; none for the right of disposal

UCP600 & ISBP745	COGSA 1992	CMC1993
B/L	B/L (transferable)	B/L
Sea waybill	Sea waybill (Straight B/L)	Sea waybill
Chaterparty B/L		Chaterparty B/L
Multimodal transport		Multimodal transport
Other documents	Ship's delivery order	Other documents

# Bill of Lading

ISBP745 E12)-E15): illustrate the application of UCP600 art.20 including straight B/L and “to order” B/L.

Provisions affect the right of delivery:

UCP600 art.20 (a) (vi) requires a full set of B/Ls.

ISBP745 E28) [*Release of goods with more than one B/L to be surrendered*]:

A B/L is not to expressly state that goods covered by that B/L will only be released upon its surrender together with one or more other B/Ls, unless all of the referenced B/Ls form part of the same presentation under the same credit.

## Right of delivery under English law:

### COGSA1992

The bank must make sure itself fall into the scope of a lawful B/L holder to get rights of suit and right of delivery [s. 2 (1) (a)]

-- Bank holds a bearer B/L: s.5 (2) (b)

-- Bank holds an order B/L naming it as consignee: s.5 (2) (a)

-- Bank holds an order B/L endorsed to it: s 5 (2) (b)  
[need other's cooperation for endorsement]

Other remedies: Implied contract or sue in bailment

However, COGSA 1992 does not apply to straight B/L [s.1 (2)]. It is suggested putting straight B/L into the category of sea waybill [s.1 (3)] so that the consignee is entitled to claim delivery [s.2 (1) (b)].

Question: Whether a straight B/L needs to be presented for delivery? Whether the shipper of goods described in a straight B/L can, prior to discharge, instruct the carrier to deliver the goods to someone other than the person named as a consignee? [s.2 (5) and s.5 (3)]

CMC art.71 and the Judicial Interpretation: B/L includes straight B/L, to order B/L and to bearer B/L

## Safest way for banks:

- Request a full set of B/Ls
- NOT accept a B/L containing the clause, e.g. delivery without presentation of the B/L on reasonable proof of identity. [*However, it might be difficult to use it as a defence for rejection, since banks will not examine the carriage terms and conditions.*]

# Sea Waybill

- What UCP600 offered? – Identical to Art.20 B/L
- But, is it appropriate? Since no need to present the sea waybill for delivery.
- Art.21 a. (iv): tender a full set of documents if has more than one originals
- ISBP 745 F10) a. A non-negotiable sea waybill is to indicate the number of originals that have been issued.

# Delivery under COGSA1992

- Consignee of the sea waybill is entitled to claim delivery by identification: s. 2 (1) (b)
- Delivery to the person for the time being named as consignee: s.5(3) allows for the identity of the person [to whom the goods are deliverable] to be varied, in accordance with the terms of the document, after its issue.
- If being both consignor and consignee, the bank has to bear liabilities under the carriage contract.
- The best way seems to be consignee, but restrict the shipper's right to alter the identity of consignee.

## Who is consignee? ISBP745 section F11

- b. When a credit requires a non-negotiable sea waybill to evidence that goods are consigned “to order of (named entity)”, it **may indicate that the goods are consigned to that entity**, without mentioning “to order of”.
- c. When a credit requires a non-negotiable sea waybill to evidence that goods are consigned “to order” without naming the entity to whose order the goods are to be consigned, it is to indicate that the goods **are consigned to either the issuing bank or the applicant**, without the need to mention the words “to order”.

# Multimodal Transport Document

- UCP 600 Article 19 a. (ii) indicate that the goods have been dispatched, taken in charge or shipped on board at the place stated in the credit.
- But ISBP 745 D7: When a credit requires shipment to commence from a port, i.e., when the first leg of the journey, as required by the credit, is by sea, a multimodal transport document is to indicate a dated on board notation, and in this event paragraph E6 (b)-(d) (for B/L) will also apply.

# Multimodal Transport Document

Received for shipment B/L included: COGSA 1992 s.1 (2)

Arguably, lawful holder of multimodal B/L has title of suit and right of delivery?

Thank you!