

Advising and confirmation of documentary credits

1. Selection of the Advising Bank

The advising bank is not a mandatory party to a documentary credit and has no compulsory role under UCP 600. In domestic trade, where both applicant and beneficiary maintain accounts with the issuing bank, the LC may be advised directly to the beneficiary without the involvement of any other bank.

In cross-border transactions, however, the issuing bank usually relies on the services of another bank to advise the LC to the beneficiary. Beneficiaries generally prefer to receive the LC through their own bank and to present documents through the same bank. Accordingly, the beneficiary often requests the applicant to arrange for the LC to be advised through its bankers, and these details may be included in the sales contract or confirmed separately by correspondence. The applicant then incorporates the beneficiary's bank details in the LC application.

The issuing bank, upon receiving the application, will check whether it has a direct correspondent relationship with the beneficiary's bank. If such a relationship exists, it will advise the LC through that bank. If no direct relationship exists, the issuing bank may route the LC through its own branch in the beneficiary's country (if available), or otherwise through a correspondent bank with which it maintains a relationship and which in turn may have ties with the beneficiary's bank. In some cases, the first advising bank may even be located in a country other than the beneficiary's country, depending on the correspondent arrangements of the issuing bank.

In such cases, two banks are involved in the advising process. The bank that first receives the LC from the issuing bank (commonly via SWIFT MT700) is called the *first advising bank*. The first advising bank then forwards the LC to the beneficiary's bank, often using SWIFT MT710, this bank is referred to as the *second advising bank*. Under UCP 600, both first and second advising banks have the same obligations. In practice, both are also expected to perform regulatory and compliance checks as part of their respective risk management policies.

A bank that employs the services of another bank to execute the applicant's instructions does so at the applicant's expense and risk. Neither the issuing bank nor the advising bank assumes liability if the instructions it forwards to another bank are not fulfilled, even when the issuing bank itself selected that bank.

2. Obligations of the Advising Bank – Apparent Authenticity of the LC

As per UCP rules, the advising bank must check the apparent authenticity of the credit and ensure that the terms and conditions of the credit are properly reflected in the advice being sent to the beneficiary.

These days, LCs are usually received through SWIFT MT700 by advising banks. Since SWIFT messages are authenticated, no further check is needed. However, if LCs are received through any other modes such as post/courier services or telex, the advising bank must satisfy itself as to the apparent authenticity of the credit.

- In case of a **mail LC (hard copy)** received through postal or courier services, the advising bank must verify the signatures of authorised officers of the issuing bank who signed the LC against the specimen signatures already held by the advising bank as a correspondent of the issuing bank. This constitutes a check of **apparent authenticity**—it is not a deep investigation, but rather a verification based on available records.
- In the case of **telex messages**, authenticity is established through a **test key arrangement** that exists between the issuing bank and the advising bank.

Once a letter of credit is received through an authenticated telecommunication, the advising bank shall disregard any subsequent mail confirmation received from the issuing bank. This means the issuing bank should not send a duplicate hard copy by post or courier once the LC has already been sent via authenticated telecommunication.

If the advising bank cannot establish the authenticity of the LC, UCP rules require it to inform the same to the bank from which the LC **appears to have been received**. The use of the word “*appears*” is intentional, as the bank cannot fully satisfy itself as to the true sender when authentication is missing. The advising bank may still pass on the LC to the beneficiary, clearly indicating that authenticity could not be established.

However, most banks do not advise unauthenticated LCs to their customers due to internal policies. Instead, they provide information to the beneficiary that an unauthenticated LC has been received, with brief details, and that the original LC is being held for authentication. This enables the beneficiary to follow up with the applicant for retransmission of the LC by the issuing bank. Such caution is important because if the LC were to be forwarded without authentication, there is a risk that the beneficiary might overlook the lack of authentication or may not fully understand its significance and may effect shipment.

In the case of authenticated LCs, there is no need to state in the advising bank’s cover letter that the LC is authenticated. By advising the LC without any such indication, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the LC.

If the advising bank chooses not to advise the LC to the beneficiary, for example due to regulatory compliance requirements or other reasons, it must inform the issuing bank without delay. Although not required under UCP, the advising bank may also inform the beneficiary that it has received the LC but is not in a position to advise it, with or without

stating the reasons, for the beneficiary's information if the beneficiary is a customer of the advising bank.

3. Confirmation

Though providing confirmation instructions is not mandatory in an LC under UCP 600, if an LC is transmitted through SWIFT MT700 it is mandatory to complete confirmation instructions under Field 49 (Confirm / May Add / Without):

- **Confirm:** Request to add confirmation
- **May Add:** Authorisation to add confirmation
- **Without:** Not to add confirmation

Field 49: Confirmation Instructions are primarily intended for the advising bank. If more than one advising bank is involved in advising the Letter of Credit (LC), Field 58a: Requested Confirmation Party may be completed to indicate the bank that is specifically requested or authorised to add confirmation. This field can also be used when the issuing bank is authorising or requesting a bank other than the advising bank to confirm the credit.

If the advising bank is a branch of the issuing bank, the issuing bank may still authorise or request its own branch in the beneficiary's country to add confirmation to the credit. Under UCP 600, branches of a bank in different countries are treated as separate banks. By having the LC confirmed by a local bank, the beneficiary can mitigate both commercial risk and country risk associated with the issuing bank.

When the issuing bank requests ("CONFIRM") the advising bank to add confirmation, the confirmation charges are to be borne by the issuing bank, even though the LC may indicate that charges in the beneficiary's country are for the account of the beneficiary. Since the confirming bank is acting on the request of the issuing bank, the issuing bank is an instructed party under UCP 600 Article 37(c). Therefore, if the beneficiary refuses to pay, the issuing bank remains liable to settle the confirmation charges.

When the issuing bank authorises ("MAY ADD") the advising bank to add confirmation at the expense of the beneficiary, and the advising bank is willing to add confirmation, the advising bank may indicate the confirmation charges and their willingness to add confirmation in their cover letter to the beneficiary.

Confirmation is a definite undertaking by the confirming bank to honour or negotiate a complying presentation, in addition to the undertaking by the issuing bank. Payment by the confirming bank under a complying presentation is always without recourse.

By adding confirmation, the advising bank assumes both the credit risk and the country risk of the issuing bank. Therefore, before adding confirmation, the bank must check whether it has sufficient approved credit limits on the issuing bank and on the issuing bank's country. These limits represent the maximum exposure the bank is willing to take. Once confirmation is added, the confirming bank records the LC amount against these limits (sometimes referred to as "blocking" the limit) until the LC expires or is settled. This ensures that the bank does not take on risks beyond its approved capacity.

If the advising bank is unwilling to add confirmation to the credit, it must inform the issuing bank without delay and may advise the LC to the beneficiary without adding confirmation.

Even if the LC text states "CONFIRM" or "MAY ADD" regarding confirmation instructions, in the absence of any indication of confirmation in the cover letter to the beneficiary, the LC is deemed to be unconfirmed. When advising an unconfirmed LC, the advising bank typically indicates in their cover letter that they do not undertake to honour or negotiate, and are not bound to accept any presentation under the LC.

If the nominated bank is neither authorised nor requested by the issuing bank to add confirmation, the nominated bank may, at the request and expense of the beneficiary, expressly indicate to the beneficiary that they undertake to honour or negotiate a complying presentation. This action amounts to the nominated bank acting upon nomination. While this arrangement does not meet the definition of confirmation under UCP 600, it provides the beneficiary with similar benefits, such as protection against the credit and country risk of the issuing bank. This arrangement is commonly known as **silent confirmation**.

4. Regulatory Compliance Checks

The advising bank must perform certain checks as part of its regulatory and risk management obligations. These checks can be broadly classified under **Sanction Policies** and **AML Policies**:

A. Sanction Policies

- Screen the names of all parties and countries appearing in the LC (i.e., applicant, notify party, and issuer of documents if specified in the LC), as well as the goods and their origin, and the routing (port of loading, port of destination, any reference to transshipments, and vessel names if provided in the LC).
- **Unsanctioned countries:** The advising bank must not handle transactions containing boycott clauses that are not legally supported or allowed by its policies.
 - *Example:* A U.S. bank cannot advise an LC stating “vessel must not call at any Israeli port,” because the U.S. does not impose sanctions on Israel, a friendly country.
- **Sanctioned countries:** The advising bank must comply with legally imposed restrictions.
 - *Example:* A clause stating “goods must not be of North Korean origin” must be followed, because the U.S. has officially sanctioned North Korea.
- Check for other relevant restrictions or provisions as required under bank policies.

B. AML Policies

- Review the goods description to ensure it is precise and specific, particularly to determine if the goods qualify as dual-purpose goods (used for both civilian and military purposes). For dual-purpose goods, the transaction may require licenses, special approvals, or clearances from the compliance team. If the goods description is generic (e.g., chemicals, advanced software, telecommunication equipment, robotic equipment, spare parts), escalate the transaction to the compliance team for further scrutiny.
- Confirm that the goods are within the customer's normal line of business. Unusual transactions outside the customer's regular business activities may require further scrutiny to ensure they are not facilitating money laundering, terrorism financing, or other illegal activities.
 - *Example:* If a trading company primarily handling agricultural commodities is exporting gold under an LC, this would trigger additional review.
- **Fair Market Value (FMV) check:** The advising bank may review the transaction value against normal market prices to ensure it is reasonable. This helps prevent **over-invoicing or under-invoicing**, which is when the exporter deliberately misstates the invoice value to move extra money through the LC, potentially for illegitimate purposes.
 - *Example – Over-invoicing:* Goods worth \$10,000 are invoiced at \$20,000, so the exporter receives extra money under the LC.
 - *Example – Under-invoicing:* Goods worth \$20,000 are invoiced at \$10,000, allowing funds to be parked outside the country for illegitimate activities.
- If the transaction involves the movement of goods, check whether transport documents are included as part of the required documents under the LC.

5. Workability Checks

While the advising bank is not obligated to review the terms and conditions of a letter of credit (LC) for workability, many banks undertake such checks as part of customer service. However, if the advising bank agrees to add its confirmation to the LC, it must conduct a thorough examination of the LC terms and seek clarification from the issuing bank wherever any terms appear ambiguous or conflicting.

Key points to review include:

- The **name of the beneficiary** in the LC matches the name appearing in the bank's records.
- The **expiry date** is compatible with the period allowed for presentation from the shipment date.
- The **place of expiry** is consistent with the bank with which the credit is available.

- Any **quantity tolerance** stated in the LC is aligned with the tolerance allowed for the LC amount.
- Where **drafts are required**, ensure the drawee is compatible with the credit's availability:
 - For **sight payment or acceptance**, the drawee must be a confirming bank.
 - For an **LC available by negotiation**, the drawee must be a bank other than the confirming bank.
- The **entries under Field 44A–E** are aligned with the transport documents required:
 - **Fields 44E (Port of Loading) and 44F (Port of Discharge)** must be completed when the LC calls for a **Bill of Lading (B/L), Non-Negotiable Sea Waybill, Charter Party Bill of Lading, Air Waybill (AWB), or Inland Waterways Transport Document**.
 - **Fields 44A (Place of Taking in Charge/Dispatch) and 44B (Place of Final Destination/Delivery)** must be completed when the LC calls for a **Road Waybill, Rail Waybill, Postal/Courier Receipt, or Multimodal Transport Document**.
- The **terms and conditions of the LC** are consistent with the **Incoterms** specified, for example:
 - **CFR/CIF** terms apply for Bills of Lading or Non-Negotiable Sea Waybills, but not for Air Waybills.
 - **Freight prepaid** is relevant for CFR, CPT, and similar terms.
 - **Freight collect (to pay)** is relevant for FAS, FOB, and similar terms.
 - **Insurance documents** must be required where the LC specifies **CIF/CIP** terms.
- Verify whether any **inoperative conditions** are included in the LC.
 - Example: “This credit is operative only upon receipt of a Performance Guarantee from the beneficiary’s bank for 20% of the credit amount.”
 - In such cases, the advising bank may highlight the condition in its cover letter to the beneficiary, as an additional trigger.

6. Charges

If advising charges are for the account of the beneficiary and the charges cannot be collected from the beneficiary, the issuing bank shall pay these charges to the advising bank. The issuing bank should not impose a condition that requires the advising bank to advise the LC only after collecting advising charges from the beneficiary.

7. Cover Letter

a) Unauthenticated LC

We hereby advise you of the Letter of Credit received from the issuing bank. However, we have been unable to ascertain the authenticity of the credit as received. Please treat this credit accordingly.

While we are seeking the issuing bank to arrange retransmission through authenticated means, you may also wish to follow up with the applicant to expedite the retransmission.

b) LC advised without confirmation

We hereby advise you of the enclosed Letter of Credit without any undertaking on our part. Please note that we do not undertake to honour or negotiate under this Letter of Credit.

c) LC advised with confirmation

We hereby advise you of the enclosed Letter of Credit, to which we have added our confirmation. We therefore undertake to honour or negotiate any complying presentation **made to us** in accordance with the terms and conditions of this Letter of Credit.

d) “May Add” confirmation (authorisation to confirm)

We have been authorised to add our confirmation to this Letter of Credit. We are willing to add our confirmation upon receipt of our confirmation commission of [currency/amount]. Kindly confirm your acceptance and arrange payment of this commission.

e) Clarifications / amendments on workability

For your information, we have sought clarification / amendment from the issuing bank regarding [insert details]. We will advise you once the issuing bank provides its response.

f) Advising charges

Advising charges of this Letter of Credit are for your account. Accordingly, we have debited / will debit your account with [currency/amount]. Kindly arrange to maintain sufficient balance / authorise us to debit your account for these charges.