

*TRADE DISPUTE RESOLUTION  
PROCESS AND INTERNATIONAL  
PRACTICES WITH A CASE STUDY*

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# *Humble Questions*

*Have you ever faced a dispute in your personal life?*

*How have you solved it?*

*What is the size of Trade in Bangladesh?*

*What is the percentage of trade dispute in Bangladesh?*

# *TRADE*

Buying/Import or  
Selling/Export of Goods,  
Services or  
Performances.

## *TRADE DISPUTE*

**TRADE DISPUTE MEANS  
DISAGREEMENT OR ARGUMENT  
RELATED TO TRADE.**

**WHETHER IT IS RELATED WITH  
GOODS/ SERVICES/  
PERFORMANCE OR DOCUMENTS?**

# *METHODS OF DISPUTE RESOLUTION*

*CONSULTATION.*

*NEGOTIATION/MEDIATION*

*ARBITRATION*

*ADJUDICATION*

# *RULES FOR DISPUTE RESOLUTION*

*ICC RULES FOR DOCUMENTARY  
INSTRUMENTS DISPUTE RESOLUTION  
EXPERTISE (DOCDEX) IN FORCE FROM  
1ST MAY 2015.*

*ICC RULES FOR ARBITRATION.*

# *CONSULTATION*

*A MEETING WITH AN EXPERT  
OR PROFESSIONAL IN ORDER  
TO SEEK AN ADVIVCE.*

*No hard and fast rule for  
Consultation.*

# *MEDIATION*

*MEDIATION IS A STRUCTURED, INTERACTIVE, PROCESS WHERE AN IMPARTIAL THIRD PARTY NEUTRALLY ASSISTS TO RESOLVE A CONFLICT BETWEEN THE DISPUTED PARTIES.*

*No hard and fast rule for Consultation.*



# *ARBITRATION*

*IT IS A DISPUTE SETTLEMENT PROCESS IN WHICH AN INDEPENDENT PERSON OR BODY IS OFFICIALLY APPOINTED TO SETTLE A DISPUTE.*

*Applicable Rule: ICC Rules for Arbitration.*

# *ADJUDICATION*

*THE FORMAL PROCESS OF  
ADJUDICATING A CASE IN A COURT.*

- Applicable Rule/Law:  
Municipal/Domestic Law of a  
country.

# PROCESS FLOW IN ARBITRATION



*ICC RULES FOR DOCUMENTARY  
INSTRUMENTS DISPUTE RESOLUTION  
EXPERTISE (DOCDEX)*

*No. of Article: 12*

*DOCDEX is administered by ICC  
International Centre for Arbitration.*

*IN FORCE FROM 1ST MAY 2015.*

# DEFINITIONS: ARTICLE 1

Banking Commission

Claimant

Decisions

Respondent

ICC Banking Rules

Technical Adviser

# *SCOPE: ARTICLE 2*

*DOCUMENTARY CREDIT*

*STANDBY LETTER OF CREDIT*

*BANK TO BANK REIMBURSEMENT*

*DOCUMENTARY COLLECTION*

*DEMAND GUARANTEE*

*FORFAITING TRANSACTIONS*

*BANK PAYMENT OBLIGATION*

*IF AN INSTRUMENT IS NOT SUBJECT TO ICC BANKING RULES THERE SHALL HAVE*

# *CLAIM: ARTICLE 3*

CLAIM THROUGH FORM 1

PAYMENT OF FEES

SENDING THE COPY OF CLAIMS TO THE RESPONDENT BY THE CENTER.

THE CENTRE MAY REJECT THE CLAIM

BEFORE APPOINTMENT OF EXPERTS, IF CENTRE WANTS TO REJECT THE CLAIM, IT SHALL TAKE ADVICE OF TECHNICAL ADVISER.

# *SUPPLEMENTARY INFORMATION*

## *ARTICLE-5*

*THE CENTRE MAY SEEK ADDITIONAL INFORMATION*

*SUPPLEMENT TO BE SUBMITTED WITHIN 14 DAYS OF REQUEST Through Form 3*

*NO REQUEST, NO SUPPLEMENTARY SUBMISSION*

- *NO SUBMISSION BY A PERSON OTHER THAN CALIMANT OR RESPONDENT.*



## *FILING AND FINALITY OF SUBMISSION. ARTICLE 6*

*THE CENTRE MAY REQUIRE HARD COPY*

*LANGUAGE SHALL BE ENGLISH*

*IF DOCUMENT IS NOT IN ENGLISH, IT SHALL  
HAVE AN ENGLISH TRANSLATION*

*CLAIM, ANSWER AND SUPPLEMENT SHALL BE  
FINAL.*

# *APPOINTMENT OF EXPERTS.*

## *ARTICLE 7*

*1. Banking Commission maintains a list of experts*

*2. The Chair of the Banking Commission is the repository of the List*

*3. The Centre shall transmit a copy of the Claim to the Technical Adviser after verifying the Technical Adviser's independence.*

*4. Having regard to this guidance, the Centre shall make the appointments and designate one of the Appointed Experts to act as president*

*5. Must be impartial and independent*

*6. Expert shall not act for any party*

## *THE PROCEEDINGS. ARTICLE 8*

*Transmission of the Claim, any Answer and any Supplement(s) to the Appointed Experts.*

*If Claim is beyond ICC Rules, Appointed Experts shall inform so.*

*Preparation and submission of draft decision to the Centre.*

*No oral hearing*

## *THE DECISION. ARTICLE 9*

*The Decision shall be in English using Form 4*

*Transmit it to the Technical Adviser for scrutiny.*

*No Decision by the Appointed Experts until approval by the Technical Adviser.*

*The Decision may be unanimously or on a majority basis.*

# *COSTS: ARTICLE 10*

*STANDARD COST.*

*IT IS NON REFUNDABLE.*

*MAY REQUIRE ADDITIONAL FEES*

*PROCEEDINGS MAY BE SUSPENDED IF ADDITIONAL FEES IS NOT PROVIDED.*

*FEES: UPTO \$1 MILLION: \$5000, ABOVE \$1.00 MILLION: \$10000.00*

*ADDITIONAL FEE: UPTO 50% OF STANDARD FEES*

# Notification or Communications: Article 11

- ▶ A hard copy of claim to be sent
- ▶ Communication shall be made through email or any other telecommunications excluding fax
- ▶ Calculation of time from the first following business day.

## *DISCLAIMER. ARTICLE 12*

*The Technical Adviser, the Appointed Experts, the Centre, the ICC and its employees, and the ICC National Committees and Groups and their employees and representatives shall not be liable to any person for any act or omission in connection with any proceedings or Decision under the Rules, except to the extent such limitation of liability is prohibited by applicable law.*

# *CASES RELATED TO ARBITRATION*

*SAMSUNG - APPLE CASE: STARTED IN 2011.*

*PATENT INFRINGEMENT*

*MULTIPLE JURISDICTIONS*

*IN 2012, AGREED TO REFER TO ICC ARBITRATION*

*THREE MEMBER ARBITRAL TRIBUNAL.*

*FINAL AWARD IN 2015*

*\$120 MILLION DAMAGE WAS ORDERED TO PAY TO SAMSUNG.*



*CASE RELATED TO ADJUDICATION*

*Regent Spinning Ltd.*

# *DOCDEX CASE EXAMPLE*

*DOCUMENT WAS PRESENTED TO ISSUING BANK.*

*MATURITY WAS CONVEYED.*

*APPLICANT OBTAINED COURT ORDER FOR  
PREVENTING PAYMENT.*

*AS A LAST RESORT COURT ORDER MAY BE OBTAINED.*

*A COURT ORDER WILL OVERRIDE THE UCP RULE.*



# PRESENTATION ON OVERVIEW ON UCP-600 (Article 1-13)

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***WHAT ARE THE METHODS OF  
PAYMENT?***

***WHAT IS UCPDC?***

# *METHODS OF PAYMENT*

- Advance payment
- Open Account
- Documentary Collection
- Documentary Credit

# *UCPDC*

A set of rules for governing letter of credit.

**The Uniform Customs and Practice for Documentary Credits.**

**First Version: in 1933**

**Second version: in 1951**

**Third version: in 1962**

**Fourth version: in 1974**

**Fifth version: in 1983 (UCP 400)**

**Sixth version: in 1993 (UCP 500)**

**Latest version: in 2007 (UCP-600)**

**Latest version is in force from 1<sup>st</sup> July 2007**

**Number of Articles: 39**

***Article 1***  
***Application of UCP***

**The Uniform Customs and Practice for Documentary Credits.**

**Applicable for both Commercial Letter of Credit & Standby Letter of Credit.**

**Reference of UCP is mandatory in LC.**

**It can be modified or excluded.**

**To what extent can be modified or excluded?**



## ***Article 2*** ***Definitions***

For the purpose of these rules:

**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.

**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.

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

**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.

**Confirmation** means a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.

## ***Article 2***

### **Definitions**

**Confirming bank** means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request.

**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.

**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.

**Negotiation** means purchase of documents/drafts by the nominated bank other than the drawee by advancing or agreeing to advance funds.

**Whether Issuing Bank can negotiate?**

# ***Article 3***

## ***Interpretations***

For the purpose of these rules:

Where applicable, words in the singular include the plural and in the plural include the singular.

**A credit is irrevocable even if there is no indication to that effect.**

A document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication.

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.

## ***Article 3*** ***Interpretations***

Branches of a bank in different countries are considered to be another bank separate banks.

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.

Unless required to be used in a document, words such as "prompt", "immediately" or "as soon as possible" will be disregarded.

# ***Article 4***

## ***Credits v. Contracts***

Credit & Contracts are separate.

Credit is independent.

## ***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.

***Whether a bank never deals with goods or services or performances?***

## ***Article 6***

### ***Availability, Expiry Date and Place for Presentation***

Availability means availability of payment.

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.

**If a credit does not state with which bank it is available, it is only available with the issuing bank.** In a freely available credit, any bank is a nominated bank.

A credit must state whether it is available by sight payment, deferred payment, acceptance or negotiation.

**A credit must state an expiry date for presentation.**

# **Article 7**

## **Issuing Bank Undertaking**

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:**

- i.** sight payment, deferred payment or acceptance with the issuing bank;
- ii.** sight payment with a nominated bank and that nominated bank does not pay;
- iii.** 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;
- iv.** 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;
- v.** negotiation with a nominated bank and that nominated bank does not negotiated by any nominated bank.

**An issuing bank is irrevocably bound to honour as of the time it issues the credit.**



# ***Article 8***

## ***Confirming Bank Undertaking***

Honour or Negotiate without recourse.

Forward documents to Issuing Bank for reimbursement or payment.

## ***Article 9***

# ***Advising of Credits and Amendments***

A credit and any amendment **may** be advised to a beneficiary through an advising bank.

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.

An advising bank may utilize the services of another bank.

Advise through/Second Advising Bank in F57.

***Can an amendment be advised through a different bank?***

# ***Article 10***

## ***Amendments***

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.

An issuing bank is **irrevocably bound** by an amendment as of the time it issues the amendment.

Partial acceptance is **rejection**.

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***

## ***Teletransmitted and Pre-Advised Credits and Amendments***

Pre-advise may be sent.

But operative credit must be sent. It will not be inconsistent with the pre-advise.

## ***Article 12 Nomination***

Nominated Bank is **not bound** to act but if it **expressly agrees** to then it is binding upon it.

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.

## ***Article 13***

### ***Bank-to-Bank Reimbursement Arrangements***

Payment of a credit can be settled through a third bank.

Name of Reimbursing Bank to be mentioned in F53.

# ***QUESTION AND ANSWER***

***THANKS FOR  
PATIENCE HEARING***