

# DOCUMENTARY LETTER OF CREDIT IN THE REGULATION OF 600-PARIS PUBLICATION

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## Abstract:

*In the year 2007 was adopted the Publication no. 600 of Paris regarding the Rules and the Uniform Practices for documentary letters of credit which replaced the Publication no. 500.*

*Publication no. 600 (UCP 600) is applied to all the irrevocable documentary letters of credit when the parties make express reference to these Rules. The Publication no. 600 includes uniform rules, international practices and standards of irrevocable documentary letters of credit. The new Publication has brought a number of changes on the issues regarding the performance of the letters of credit, both in the relationship with the non-banking institutions participants and in the relationship between the credit institutions participating in the performance of the letter of credit.*

*This study, without being exhaustive, aims to capture the main aspects of novelty brought by the publication no. 600 and their legal approach to the new perspective of the international trade relations.*

*It has in view, in particular, the irrevocable character of the letter of credit, the elaboration method and procedure of the letter of credit, the participants to the unfolding of the specific relationship of the letter of credit and the main duties of the involved credit institutions.*

**Keywords:** *letter of credit, Publication 600, documentary, irrevocable, chief accountant, issuing bank, confirming bank, nominated bank, beneficiary.*

## Introduction

The documentary letter of credit is a payment method used in the international trade relations which implies, during its carrying out, the participation in the banking institutions.

In the specialty literature is considered that the documentary letter of credit may be considered as an autonomous bank guarantee<sup>1</sup>.

The character of bank guarantee is expressed by the fact that the creditor (the beneficiary of the letter of credit), besides the debtor of the main legal relations, also has the irrevocable obligation of payment undertaken by the issuing bank of the letter of credit. At the same time, as we shall see below, the letter of credit may be confirmed by the confirming bank, which means an extra obligation of payment incumbent to the confirming bank. Therefore, it is possible that, by issuing the letter of credit, besides the debtor's obligation undertaken within the main relationship, the creditor may obtain the obligation of payment from the issuing bank or, where appropriate, the confirming bank. Undoubtedly, by this method is provided a guarantee for cashing the money by the beneficiary creditor.

The main regulation of the documentary letters of credit is the Publication no. 600 regarding the uniform rules and practice of the letters of credit provided by the International Chamber of Commerce - Paris (UCP-600).

Publication 600 has entered into force on 1<sup>st</sup> of July 2007<sup>2</sup> and shall be applied to the letters of credit executed after this date.

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<sup>1</sup> See V. Pătulea, C. Turianu, *Garanițiile de executare a obligațiilor comerciale (Guarantees to perform the commercial obligations)*, Ed. Scripta, Bucharest, 1994, p. 80.

<sup>2</sup> Also see Hubert Martini, Dominique Depree, Joanne Klein-Cornede, *Credits documentaires, Lettres de credit stand-by. Cautions et garanties*, Revue banque edition, Paris 2007 p. 18.

## 1. Concept and legal character

### Preliminary specifications

The definition of the documentary letter of credit may be found in the Publication no. 600 which foresees its main legal characters.

#### 1.1 Notion

Publication no. 600 defines the letter of credit in the article 2, as being any arrangement, however named or described, which is irrevocable and thereby constitutes a firm commitment of the issuing bank to honor a proper presentation<sup>3</sup>.

Within the outlook of Publication 600, to honor a letter of credit means:

- a ) to pay at sight if the letter of credit is usable at sight;
- b ) undertaking a commitment to pay on time and the payment at maturity if the letter of credit is usable by payment at deadline;
- c ) acceptance of a promissory note drawn by the beneficiary and payment at maturity if the letter of credit is usable by acceptance.

Finally, the proper presentation means a presentation that is consistent with the terms and conditions of the letter of credit, with the applicable provisions of the rules foreseen in the Publication and with the standards of international banking practice.

From the regulations reproduced above results the notion and the main characteristics of the letter of credit.

Pursuant to the stated regulations, we define the letter of credit as being *the instrument by which the issuing bank, at the request and after the instructions of a customer, called chief accountant, makes a payment to a person, called beneficiary, or upon his/her order, or accepts and pays bills drawn by the beneficiary, or authorizes another bank to make the payment or to accept and pay the drawn promissory notes.*

#### 1.2 Features of the documentary letter of credit

According to article 4 of the Publication 600, the letters of credit, by their nature, are transactions distinct of the sale contracts or other agreements that underpin them and the banks are not in any way bound or implied by such contracts, even if the letter of credit makes any reference to such contracts.

From the regulations reproduced above result the main features of the letter of credit.

The documentary letter of credit is a method of payment: irrevocable, autonomous, institutionalized and subject to the submission of documentation.

#### A. The documentary letter of credit is an irrevocable method of payment

The irrevocable character of the letter of credit results from the definition given by the Publication 600 which qualifies it as an irrevocable commitment. The irrevocable character of the letter of credit is also resumed in the regulation of article 3 of the Publication where it expressly provides that the letter of credit is irrevocable even if there is no mention in this regard.

The irrevocable character means that the letter of credit, once drawn up and put into the banking circulation by the issuing bank cannot be withdrawn or revoked anymore. In other words, the letter of credit put into the banking circulation has to be paid by the issuing bank, respectively by the confirming bank if the letter of credit is confirmed.

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<sup>3</sup> For the definition of the letter of credit under the regulation contained in the Publication 500, see V. Nemeş, Drept bancar (Bank Law), Edit. Editas, Bucharest, 2004, p. 184

The irrevocable character of the letter of credit is clearly expressed in the content of article 10 of the Publication 600 which states that a letter of credit cannot be amended or canceled without the approval of the issuing bank, of the confirming bank and of the beneficiary.

The fact that the letter of credit cannot be revoked gives a supplementary guarantee to the beneficiary creditor as regards the payment, that is why, as we pointed out above, the letter of credit is considered as a guarantee of payment, too.

#### **B. The documentary letter of credit is an autonomous method of payment**

The autonomous character means that the documentary letter of credit creates liabilities independent of the basic relationship between the chief accountant and the beneficiary. This character occurs from the provisions of article 4 of the Publication no. 600 according to which the letters of credit are transactions distinct of the sale contracts or other agreements that may underpin them.

During the carrying out of the documentary letter of credit you cannot discuss issues or raise exceptions arising from the contractual relationship under which the letter of credit was opened.

The autonomous character of the letter of credit is extended on the existing contractual relationship between the participating banks and the chief accountant and the issuing bank, meaning that such relations are not related to the payment by letter of credit. More specifically, the obligations undertaken by the participating banks in the carrying out of a letter of credit may not be the subject of the chief accountant's complaints resulted from his relationship with the issuing bank or with the beneficiary.

As well, a beneficiary cannot prevail, under any circumstances, by the existing contractual relations between the banks or between the chief accountant and the issuing bank.

In order to maintain the autonomous character of the letter of credit, the issuing bank is bound to discourage and eliminate any attempt of the chief accountant to include, as part of the letter of credit, copies of the afferent contract, of the invoice and other documents of this kind (article 4 of the Publication).

#### **C. The documentary letter of credit is an institutionalized method of payment**

The institutionalized character of the documentary letter of credit means that this method of payment requires the participation of at least two credit institutions, the issuing bank and the beneficiary's bank.

As we shall see below, along with the issuing bank and the beneficiary's bank, in a letter of credit also may be involved the confirming bank and the advising bank.

The quality of advising bank and, respectively, the confirming bank may be owned even by the beneficiary's bank or by another nominated bank.

A letter of credit cannot be carried out without the participation of the credit institutions; other legal entities can contribute, but in operations subsidiary to the letter of credit, such as shipping agencies which authenticate the shipping documents.

#### **D. The documentary letter of credit is a method of payment subject to the submission of documentation**

The documentary character of the letter of credit is foreseen by article 5 of the Publication which provides that the banks operate with documents, not with goods, services or performance mentioned in such documents.

The documentary letter of credit is opened upon request and following the instructions of the chief accountant negotiated with the issuing bank which makes the payment of the letter of credit to be conditioned by the filing of the documents mentioned in the letter of credit.

Any documentary letter of credit makes the payment of the indicated sum to be conditioned by the presentation, made by the beneficiary or by the bank nominated for that transaction, of the

following documents: shipping documents (transport contract, shipping contract, air transportation documents, way bill etc.), insurance contracts and trade invoices.

The letter of credit may provide the obligation to submit other documents, such as: quality certificates, certificates of guarantee, of origin, of goods etc<sup>4</sup>.

The name of the letter of credit comes from the fact that it represents the mechanism which makes the payment of the amounts to be conditioned by the drawing up and submission of some documents by the beneficiary creditor of the letter of credit.

## 2. Mentions regarding the documentary letter of credit

Neither the previous publications nor the Publication 600 expressly regulate the content of the documentary letter of credit or the main mentions that should be included in it.

But the Publication 600 makes some references regarding the banks where it can be used and regarding the validity of the presentation period of the letter of credit and the place of payment.

Thus, according to article 6 of the Publication, a letter of credit must include the bank where it can be used or the mention that it can be used at any bank. If in the letter of credit is mentioned that it can be drawn (used) at the nominated bank, it also can be used at the issuing bank. Pursuant to the letter of credit, the issuing bank is the bank which represents the main obligation of the letter of credit and remains in that position until the completion of the operations specific to the letter of credit.

Then, the letter of credit should specify the maturity payment of the foreseen amounts. To this effect, the Publication 600 provides that a letter of credit should specify if it is usable (payable) by paying at sight, on time, or by acceptance or negotiation. The utilization methods of the letter of credit are also genuine maturities of the letter of credit. It means that the maturity may be at sight, at a settled date, or by negotiation or acceptance of some promissory notes.

Closely related to the maturity of the letter of credit is the expiry date for the presentation of the letter of credit. Before paying the amounts indicated in the letter of credit, it shall be submitted to the bank nominated to verify if the documents comply with the clauses of the letter of credit and the notification, as appropriate, to the issuing bank or to the confirming bank regarding the fulfillment of all the requirements of the letter of credit. After the checking and confirmation of such conditions, the letter of credit can be used to maturity in order to make the payments for which it was issued.

Finally, as regards the place for the payment of the letter of credit, the Publication provides that the place of presentation is the premises of the bank where the letter of credit is usable. The letter of credit may include the mention that it can be paid at any bank, meaning that it can be used at any bank chosen by the beneficiary of the letter of credit.

Being issued at the request of the debtor in the main legal relationship, the essential mentions of a documentary letter of credit will be determined in accordance with the application for opening the letter of credit and after the instructions given by the chief accountant and sent to the issuing bank.

The doctrine<sup>5</sup> considers that the application for opening the letter of credit and, implicitly, the instructions should include the following information: the name and full address of the beneficiary of the letter of credit (exporter, supplier); the amount; the format of the letter of credit (revocable, irrevocable, confirmed, unconfirmed etc.); the drawing up method of the letter of credit (by payment at sight, by referred payment, by acceptance, by negotiation); what kind of promissory notes should be drawn and the maturity; the brief description of the goods, specifying the quantity, the price and the maturity; if the way bill must be paid or not in advance; the documents to be submitted at the payment date; the place of loading, shipping or taking over the goods in his task, indicating their destination; if the transshipment is allowed or prohibited; if the partial shipments are allowed or

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<sup>4</sup> For other documents regarding the payment of the letters of credit, see **I.Turcu**, *op.cit.* p. 389.

<sup>5</sup> See **V. Pătulea, C. Turianu**, *op.cit.*, p. 87-88.

prohibited; deadline of loading, shipping or taking over in his task; the term in which, after the opening date of the letter of credit, must be submitted at the payment date, acceptance or negotiation, the bill of lading or other shipping documents; validity date and place of the letter of credit; if the letter of credit must be transferable; the transmission method of the letter of credit (telegram, telex, fax etc.).

Unlike the Publication 500, the current publication does not include anymore the specification that the letter of credit shall be concluded according to the instructions and clauses sent by the chief accountant. However, the main factors and mentions of the letter of credit will be indicated by the chief accountant. This is because the letter of credit is opened at the chief accountant's request who, on the basis of some compulsory legal relationship, is the debtor for the payment of some amounts. Because the payments may be made only by bank circuit, the chief accountant notifies the main aspects of the legal relationship with the co-contractor, establishing, ultimately, the essential clauses of the letter of credit.

It is understood that the above mentioned terms will constitute the content of the letter of credit drawn up by the issuing bank and it varies according to the nature of the legal relationship which have generated the issuing of the documentary letter of credit.

### 3. The participants in the letter of credit<sup>6</sup>

From the foregoing results that, for making a payment by means of a documentary letter of credit, is required the participation of at least four parties: the chief accountant, the issuing bank, the beneficiary and the beneficiary's bank.

In the carrying on of a documentary letter of credit also may be involved the advising bank, the confirming bank, the negotiating bank and the nominated bank.

Therefore, we consider that the letter of credit is an institutionalized method of payment and it cannot be conceived and used without the participation and involvement of the credit institutions.

#### 3.1 Chief accountant

Publication no. 600 provides that the chief accountant is the party who required the issuing of the letter of credit.

The chief accountant is the person who must make a payment based on an international trade contract in which has the capacity of debtor of an amount. In order to make the payment, the chief accountant applies to a bank and requests the opening of the documentary letter of credit pursuant to the instructions sent to that bank. The instructions for the issuing of the letter of credit may be agreed by the chief accountant together with the beneficiary and included in the international trade contract concluded between the two parties. In this case, the letter of credit will be in accordance with contractual terms and binds the chief accountant to request to the issuing bank to remove the possible inconsistencies<sup>7</sup>.

Therefore, the documentary letter of credit shall be triggered at the beneficiary's initiative in order to make the payment of some amounts to another person, called a beneficiary of the letter of credit<sup>8</sup>. It means that the letter of credit is opened at the beneficiary's initiative, for the creditor in the main legal relationship, in order the creditor to be sure that the price was paid. On the other hand, in the relationship with the issuing bank, the letter of credit is opened at the request of the debtor in the main relationship who, by issuing the letter of credit, obtains the position of chief accountant.

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<sup>6</sup> See V. Pătulea, C. Turianu, *op.cit.*, p.81. and I.Turcu, *op.cit.*, p.370.

<sup>7</sup> Court of Arbitration Bucharest, Judgement no.17 of June 19, 1975 in *Jurisprudența Comercială Arbitrală (Commercial Arbitration Jurisprudence) 1953 -2000*, Bucharest 2002 p. 69.

<sup>8</sup> For details regarding the procedure for the opening and achievement of the letter of credit, as well as its phases, see V. Pătulea, C. Turianu, *op.cit.*, p.87. and I.Turcu, *op. cit.*, p.370 and the following.

Therefore, the issuing bank will act according to the instructions of the chief accountant, not of the beneficiary.

Because the chief accountant has the position of debtor in the basic relationship with the beneficiary, unless the parties did not agree otherwise, all the expenses necessary to perform the letter of credit shall be borne by the chief accountant because the beneficiary has to collect the entire amount, as foreseen in the instrument of payment.

The practice of the documentary letters of credit established that the chief accountant may be bound to pay a *pro rata temporis* penalty for the delay in opening the letter of credit or the beneficiary (the creditor in the basic legal relationship) may consider the contract as terminated due to such delay<sup>9</sup>.

Also in the banking practice it was decided that, according to the chief accountant's viewpoint, the obligation of payment incumbent to him is considered executed at the opening date of the letter of credit by the issuing bank without being necessary the date when the amount was actually collected by the creditor as a result of the transfer operations<sup>10</sup>.

### 3.2 Issuing bank

Within the outlook of Publication 600, the issuing bank is the bank that issues a letter of credit, at the chief accountant's request or on its behalf.

The issuing bank is the bank of the chief accountant which opens the letter of credit at the request and according to the instructions received from him and which undertakes to pay an amount to a third party or to his order.

Consequently, the issuing bank is the bank the most involved in the carrying on of a documentary letter of credit which undertakes the obligation to pay the amount ordered by the chief accountant, thereby becoming the main obligee of the letter of credit.

The issuing bank will open and execute the letter of credit within the terms and conditions specified therein, set by the chief accountant, in accordance with the rules of the Publication 600 and the international bank practices applicable in this field.

The conditions for the issuing and execution of the letter of credit are called instructions for the issuing and amending of the letter of credit.

The instructions under which the letter of credit will be conducted must be complete and accurate, excluding the insertion of certain excessive details.

According to the international bank practices and standards, all the instructions for the issuing of the letter of credit, the letter of credit and, where applicable, all the additional instructions for amending the letter of credit must clearly indicate the documents under which the payment is made, the acceptance or the negotiation.

Therefore, the payment of the letter of credit is subject to the submission of the documentation specified by the beneficiary to the issuing bank.

#### 3.2.1 The obligations of the issuing bank

##### Preliminary specifications

As we mentioned above, the bank issuing is the main obligee of the letter of credit. In such position, the issuing bank has to drawn up the letter of credit according to the instructions of the chief accountant, to the rules of the Publication 600 and to the international bank practices and standards applicable in this field.

Then, the issuing bank has the obligation to endeavor and to take all measures in order to facilitate the carrying on of the letter of credit. In this respect, the issuing bank must nominate the

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<sup>9</sup> Court of Arbitration Bucharest, Judgement no. 161 of June 15, 1979 in *op.cit.*, p.69.

<sup>10</sup> Court of Arbitration Bucharest, Judgement no. 39 of June 11, 1973 in *op.cit.*, p.69.

banks involved in the carrying on of the letter of credit so that the amounts enter in the beneficiary's account, in his bank. Consequently, the issuing bank must find and nominate the confirming bank, if the letter of credit is confirmed, the advising bank to check the compliance of the documents, the negotiating bank, if the payment is made by accepted promissory notes and other correspondent banks, as appropriate, depending on the nature of the legal relationship specific to the letter of credit or to the beneficiary's location.

Finally, the issuing bank is required to make the payment of the letter of credit in the manner and within the terms set up in the letter of credit.

#### **A. The obligation to pay the letter of credit**

The payment of the letter of credit may be set up at sight, within a specific term or by accepting or negotiating the promissory notes issued in favour of the beneficiary of the letter of credit.

If the letter of credit has the maturity at sight, the issuing bank is required to make the payment at sight. The term „*at sight*” coincides with the submission of the documents of the letter of credit by the beneficiary and the determination of their conformity with the letter of credit. In this case, the payment will be made after the submission of the documents expressly mentioned in the letter of credit by the issuing bank or by the bank authorized for such transaction.

If the letter of credit provides the deferred payment, the issuing bank will pay to the beneficiary the amount within the terms specified in the letter of credit.

When the letter of credit contains a fixed maturity, the issuing bank is required to make the payment within the foreseen term.

The issuing bank is required not only to pay the amount mentioned in the letter of credit, but also to keep in force, at the beneficiary's disposal, within the term specified therein, undertaking a direct and personal obligation in relation to the beneficiary<sup>11</sup>.

#### **B. The obligation to accept the payment of the promissory notes drawn by the beneficiary**

The letter of credit may stipulate that the issuing bank accepts and pays at maturity the promissory notes drawn by the beneficiary on it.

In the letter of credit may be stipulated that the acceptance may be made by a bank, other than the issuing bank, called drawee bank or nominated bank.

For this latter situation, when the acceptance is made by the nominated bank, the issuing bank is required to pay, at maturity, the promissory notes drawn by the beneficiary on the issuing bank, if the issuing bank records, in the letter of credit, the refusal to accept the promissory notes drawn on it.

The issuing bank is required to make the payment even when the drawee bank accepts the promissory notes, but it does not pay them at maturity.

#### **C. The obligation to negotiate the promissory notes drawn by the beneficiary.**

Within the outlook of Publication 600, the negotiation means to buy the promissory notes and/or documents by the bank authorized to negotiate.

The simple inspection of the documents without buying them is not a negotiation. Under the obligation of negotiation, the issuing bank has to buy the promissory notes drawn by the beneficiary and/or the documents submitted in the content of the letter of credit and to advance the funds to pay the beneficiary.

According to the Publication, a letter of credit is not valid and it cannot be usable by promissory notes drawn on the chief accountant.

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<sup>11</sup> Court of Arbitration Bucharest, Judgement no. 161 of June 15, 1979, in *op.cit.*, p.70.

If the letter of credit uses the words “*promissory notes drawn on the chief accountant*”, the banks will consider such promissory notes as additional documents.

The bank will make the payment of the debt set up in the letter of credit from the own deposits of the chief accountant or from the loans granted to him by opening a credit line.

When the payment is made by negotiated promissory notes, their owner, namely the beneficiary is not bound to wait until the maturity of the letter of credit in order to get the corresponding amounts, but he has the opportunity to sell them to the negotiating bank or to other bank financial institutions<sup>12</sup>.

The issuing bank may nominate another bank to negotiate the promissory notes, being called the nominated bank. The issuing bank is required to honor the promissory notes if the nominated bank refuses to pay them, even if the nominated bank has issued a firm commitment in this regard. This is because, as we mentioned above, the only banks irrevocably bound to make the payment are the issuing bank and the confirming bank. Therefore, even if the bank nominated to negotiate undertakes to make the payment, it can change such promise, may revoke its commitment and refuse to make the payment. In all cases, if the documents comply with the letter of credit and all the requirements are met, the issuing bank remains liable to make the payment, in case the bank nominated for such negotiation refuses to pay it. However, even if the bank nominated under negotiation shall make the payment, this bank pays for and on behalf of the issuing bank or confirming bank, as appropriate, not by virtue of its own obligation of payment.

Besides the issuing bank, another bank, called confirming bank, may undertake a commitment for the payment of the letter of credit.

### 3.3 Confirming bank

According to the Publication 600, the confirmation of an irrevocable letter of credit by the confirming bank, under the authorization or at the request of the issuing bank, is a firm commitment of the confirming bank, added to the commitment of the issuing bank to honor or negotiate a proper presentation.

The confirming bank is the bank which adds its confirmation to a letter of credit after receiving the authorization or request of the issuing bank.

It follows that the confirming bank intervenes at the request of the issuing bank or after its approval. However, we consider that there are no impediments for the confirming bank to confirm the letter of credit of its own initiative or at the request of the beneficiary of the letter of credit.

Provided that the documents stipulated in the letter of credit comply with its terms and clauses and be submitted to the confirming bank or to other banks nominated for such operation, the confirming bank is required, just like the issuing bank, to pay the letter of credit.

By confirmation, the confirming bank undertakes an obligation, independent of the obligation of the issuing bank, to pay to the beneficiary or at his order, the amount mentioned in the letter of credit.

The payment of the amount specified in the letter of credit is subject to the compliance of the documents with the terms and directives of the letter of credit and to submit them, in due time, to the confirming bank or to other bank nominated to receive and check the documentation.

The confirmation of the letter of credit originates, for the beneficiary, the safety for the collection of the amount foreseen therein and the confirming bank will become a true debtor of the beneficiary. It means that the beneficiary can apply, for the payment of the letter of credit, at choice, to the issuing bank or to the confirming bank, both of them having the obligation to make the payment.

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<sup>12</sup> See V.Pătulea, C.Turianu, *op.cit.* p. 89.



### 3.3.1. The obligations of the confirming bank

The obligations of the confirming bank are stipulated in the letter of credit and they are similar with the obligations of the issuing bank.

#### A. The obligation to pay the letter of credit

If the letter of credit set up the maturity at sight, the confirming bank is required to make the payment at sight. If the letter of credit provides the deferred payment, the confirming bank will pay to the beneficiary the amount within the terms specified in the letter of credit.

#### B. The obligation to accept the payment of the promissory notes drawn by the beneficiary

The letter of credit may stipulate that the confirming bank accepts and pays at maturity the promissory notes drawn by the beneficiary on the confirming bank.

In the letter of credit may be stipulated that the acceptance may be made by a bank, other than the confirming bank, called drawee bank or nominated bank.

When the acceptance is made by the nominated bank, the confirming bank is required to pay, at maturity, the promissory notes drawn by the beneficiary on the confirming bank, if the drawee bank records, in the letter of credit, the refusal to accept the promissory notes drawn on it or it refuses to pay without any explanation.

The confirming bank is required to make the payment even when the drawee bank accepts the promissory notes, but it does not pay them at maturity.

#### C. The obligation to negotiate the promissory notes drawn by the beneficiary.

The confirming bank must negotiate the promissory notes, if so provided in the letter of credit.

The simple inspection of the documents without buying them is not a negotiation. Under the obligation of negotiation, the confirming bank has to buy the promissory notes drawn by the beneficiary and/or the documents specified in the letter of credit.

In the event that the issuing bank changes the letter of credit, the confirming bank may reserve the right to expand its confirmation also for the amendment of the letter of credit.

At the same time, the confirming bank may undertake the obligation to approve an amendment for the beneficiary, without expanding its confirmation on the change, in which case it must immediately notify both the issuing bank and the beneficiary of the letter of credit, without being bound as regards the occurred changes. On the contrary, when the confirming bank expands its confirmation also for the amendment of the letter of credit, it will be irrevocably bound to execute the amended letter of credit.

### 3.4. Advising bank (nominated bank)

Within the outlook of Publication 600, the advising bank is the bank which approves the letter of credit at the request of the issuing bank.

According to the international banking practices and standards, the approval means the operation of checking the compliance of the documents with the terms of the letter of credit. We specified that the letter of credit is documentary par excellence and the submission of the documents is the essence of documentary letter of credit. The drawing up and submission of the documents is a prerequisite for the payment of the amounts stated in the letter of credit. Due to the distance between the contracting parties, i.e. the seller and the buyer are not only in different states but also on other continents, just like the issuing bank and the beneficiary's bank. For this reason, the issuing bank, in order to be sure that the beneficiary fulfilled his obligations according to the provisions of the letter of credit, nominates another bank, called advising bank, to perform this operation of checking the

compliance of the documents with the requirements of the letter of credit. The documents specific to the letter of credit are: invoices, way bills, insurance policies and other documents such as certificates of quality, conformity, warranty, indications of origin etc. The issuing bank assigns the amounts in circuit to the beneficiary only if he proves that he loaded the goods into the transport vehicle and prepared all the documentation related to the goods sold pursuant to the main legal relationship. Due to that distance, the issuing bank has not the opportunity to check these requirements and, therefore, applies to the advising bank in order to carry out such operations.

The advising bank may be nominated by the issuing bank, by the beneficiary or by his bank.

The role of the advising bank is to check the authenticity of the letter of credit and the documents filed by the beneficiary in carrying on the letter of credit.

The advising bank undertakes no obligation to pay the letter of credit, independent of the obligation of the issuing bank or confirming bank.

According to the international banking practices and standards, within the operation to approve the letters of credit and the required documents, the advising bank "*will take reasonable care*".

Hence, the advising bank will act in a professional manner, according to the international banking practices and customs in order to fulfil the obligation to approve the letter of credit and the specific documents.

At the same time, the Publication 600 binds the advising bank, in the event that it decides to refuse the approval of the letter of credit, to immediately notify the issuing bank.

The advising bank must require to the issuing bank to provide precise and complete information and instructions necessary to approve the letter of credit.

If, however, it decides to approve the letter of credit, the advising bank must notify the beneficiary and the bank from which it received the instructions, stating that it is unable to determine the authenticity of the letter of credit.

When the issuing bank gives instructions to an advising bank, by a certified TV-transmission, to approve a letter of credit or an amendment to a letter of credit, the transmission will be deemed to be an operative instrument of the letter of credit and/or of the operative amendment without requiring another confirmation (in writing) by mail.

If a confirmation in writing is sent, it has no effect, meaning that the advising bank has no obligation to check such confirmation with the operative instrument of the letter of credit.

When the TV-transmission shows "*full details to follow*" or some words having similar meaning, or specifies that the operative instrument of the letter of credit or of the operative amendment is the confirmation in writing, then the TV-transmission will not be considered an operative instrument of the letter of credit or of the amendment and, therefore, it will not lead to the carrying on of the letter of credit.

If the TV-transmission is not considered an operative instrument of the letter of credit or of the amendment, the issuing bank will have to send, to the advising bank, the operative instrument of the letter of credit or of the operative amendment as soon as possible.

If a bank uses the services of an advising bank in order to approve the letter of credit for the beneficiary, the bank has the obligation to use the services of the same bank to approve an amendment, too.

### 3. 5. Beneficiary

The beneficiary is the party of the international trade contract who has a debt against the chief accountant, having, therefore, the capacity of creditor. Neither the legal character of the contract (sale-purchase, services, commission etc.) nor the kind of the trade relationship is important.

Within the main (basic) legal relationship, the parties may agree that the delay in opening the letter of credit may justify the seller's refusal to deliver the goods. Likewise, in the judicial practice it

was determined that the permission for the arrival of the ship, representing the notification of the buyer, by the seller, that he can take over the goods, in a specific harbor, on a settled date, will not be equivalent to the seller's will to deliver the goods, as long as the letter of credit was not opened yet<sup>13</sup>.

### 3. 6. The bank of the beneficiary of the letter of credit

The bank of the beneficiary of the letter of credit is the bank chosen by the beneficiary to collect, for him and on his behalf, the amount mentioned in the letter of credit.

The beneficiary will usually choose a bank located in the territory where he has the premises.

Note that the beneficiary's bank has no obligation to carry on a letter of credit, except to collect the amounts paid or transferred by the issuing bank or confirming bank in the beneficiary's accounts.

Our final statement is that the beneficiary's bank can confirm the letter of credit, in which case it becomes a confirming bank with all the consequences arising from that transaction or may act as an advising or negotiating bank, at the request of the issuing bank.

### 4. The forms of the letter of credit

The bank trade with letters of credit operates with multiple forms of documentary letters of credit, each type of letter of credit having its own legal system<sup>14</sup>.

Next, we set forth the main forms of letters of credit and the criteria according to which they have been classified.

#### 4. 1. As they may be amended or withdrawn, the letters of credit are classified as follows:

- revocable letters of credit;
- irrevocable letters of credit.

The revocable letter of credit<sup>15</sup> is the letter of credit which may be amended or withdrawn (cancelled) by the issuing bank, at any time, without requiring a prior notice to the beneficiary.

When the issuing bank decides to revoke the letter of credit and the letter of credit was used, meaning that the payments were made at sight, by acceptance or negotiation by a bank participating in the letter of credit before the approval, amendment or cancellation, then the issuing bank is required to reimburse all the expenses and payments made under the above mentioned terms.

Note that, within the outlook of Publication 600, the letter of credit may be issued only as irrevocable letter of credit.

An irrevocable letter of credit is a firm commitment of the bank which makes the payment at sight or at the determinable maturity, provided that the stipulated documents to be submitted to the nominated bank or to the issuing bank and to comply with the terms and conditions of the letter of credit.

The irrevocable letter of credit creates the same obligation for the confirming bank if there is such a bank.

An irrevocable letter of credit, excepting the transferable letters of credit, cannot be changed or cancelled without the consent of the issuing bank, confirming bank and of the beneficiary.

#### 4. 2. As the letter of credit creates the obligation of payment only in charge of the issuing bank and/or in charge of other banks, there are confirmed letters of credit and unconfirmed letters of credit.

<sup>13</sup> Court of Arbitration Bucharest, Judgement no. 161 of June 15, 1979, in *op.cit.*, p.69.

<sup>14</sup> For other types of letters of credit, see **I.Turcu**, *op.cit.* p. 372 și urm..

<sup>15</sup> Publication 600 no longer contains the mention of revocable documentary credit; however, the parties may set up revocable letters of credit but this fact must be specified in the letter of credit, also see **Hubert Martini, Dominique Depree, Joanne Klein-Cornede**, *op. cit.* p33.

**The confirmed letter of credit** is the letter of credit which contains a commitment of payment undertaken by the confirming bank, independent of the commitment (obligation) of payment undertaken by the issuing bank.

The confirmed letters of credit offer a greater certainty that the beneficiary received the payment by undertaking the obligation of the confirming bank.

By virtue of the confirmed letter of credit, the beneficiary shall be entitled to receive the payment, either from the issuing bank or from the confirming bank and the latter cannot invoke the benefit of discussion or division.

Therefore, the beneficiary of a confirmed letter of credit may request the full payment from any of the two banks, without being bound by a specific order to that effect. Basically, in this case, the beneficiary has 2 debtors: the issuing bank and the confirming bank. Thus, is avoided the bankruptcy risk of one of the banks irrevocably required to pay the letter of credit.

**The unconfirmed letter of credit** is the letter of credit which contains only the obligation of payment undertaken by the issuing bank, the other involved banks having no such obligation. If in the carrying on of an unconfirmed letter of credit also assist other banks such as: the advising bank, nominated bank, negotiating bank, beneficiary's bank etc., the latter, without the confirmation of the letter of credit, do not undertake any obligation to pay the letter of credit, distinct from that of the issuing entity.

#### **4. 3. According to the transmission criterion of the letter of credit to several beneficiaries, the letters of credit are classified in transferable letters of credit and non-transferable letters of credit.**

**The transferable letter of credit** is the letter of credit under which the beneficiary (the first beneficiary) may require the bank to pay at sight, at a postponed date, to accept or to negotiate the promissory notes under the letter of credit for one or more beneficiaries.

Within the outlook of Publication 600, the transferable letter of credit is the letter of credit which expressly provides that it is "transferable". A letter of credit may be totally or partially transferred in favour of another beneficiary.

The bank required by the first beneficiary to make the transfer of the letter of credit to other beneficiaries is called transferring bank.

The latter has the obligation to make the transfer of the letter of credit to other beneficiaries only if it expressly undertook an obligation in this regard.

To transfer a letter of credit, it must contain the express note "*transferable*".

Terms such as "*divisible*", "*commensurable*", "*transferable*" or "*transferable*" do not confer to that letter of credit the quality of transferable letter of credit.

If, however, the letter of credit contains such terms, they will not be taken into account by the participants in the letter of credit.

The transfer of the letter of credit may be total or partial, according to its clauses.

**The non-transferable letter of credit** is the letter of credit under which the payment shall be made exclusively to the first beneficiary, excluding the possibility of total or partial transfer of the letter of credit to the subsequent beneficiaries (third parties).

#### **4. 4. According to the maturity criterion of the letter of credit, we distinguish between letters of credit with payment at sight, letters of credit with payment in due time and negotiated letters of credit.**

**The letter of credit with payment at sight** is the letter of credit under which the payment is made upon the checking of the documentation submitted by the beneficiary and the determination of its compliance with the requirements and terms of the letter of credit.

Within the letters of credit with payment at sight, the beneficiary is entitled to receive the payment when the issuing bank, the confirming bank or other nominated bank, following the checking of the documentation, concludes that it complies with the clauses of the letter of credit.

**The letter of credit with payment in due time** is the letter of credit to be paid at the determinable terms, according to the provisions of the letter of credit.

The payment in due time of the letter of credit may be made in several instalments, unless otherwise specified.

Specifically, the maturity of the letter of credit may be determined at a certain settled date after the checking and determination if the documents comply with the terms of the letter of credit (a fixed number of days, 7, 10 etc.) or in a certain period of time after that date (within 2 weeks after the determination of compliance of the documents).

**The negotiated letters of credit** are the letters of credit which provide that the payment will be made following the purchase of the promissory notes by the bank authorized in this respect, called negotiating bank that may be the issuing bank itself or any bank involved in the letter of credit<sup>16</sup>.

In conclusion, you must note that unlike the Publication 500, in the regulation of the Publication 600, the maturity of the letter of credit may not be longer determined by the deferred payment.

## **5. Documents necessary to carry on the letters of credit**

### **Preliminary specifications**

As noted above, the payment of the letters of credit is subject to the submission of the documentation at the dates and under the form specified therein.

In practice, there are situations in which the issuing bank authorizes the correspondent banks to make payments in advance, to the beneficiary, before submitting the documents but, for this, it is necessary that the chief accountant have expressly stipulated that indication in the instructions. Such a letter of credit is called letter of credit “*with red clause*” because the clause which entitles the issuing bank to make payments before submitting the documentation is written in red ink in order to draw attention to its special character<sup>17</sup>.

The obligation to submit the documents is incumbent to the beneficiary or to the bank nominated with such operation, usually being the beneficiary's bank.

The main documents in return for which the payment is made within a letter of credit are: the transport documents, the insurance documents and the commercial invoices.

### **5. 1. Shipping documents**

The shipping documents are, mainly, the way bills which contain, depending on transport method, certain mandatory indications. These documents have different names, depending on the type of transport: maritime/ocean bill of lading, for waterborne transport, air-borne transport document, road transport, railway transport (way bill), for land transport or inland river transport and, as appropriate, (multimodal) combined transport documents, when several types of transport are used.

The (multimodal) combined shipping documents are the shipping documents which cover at least two different ways of transport (maritime and road), known as combined transport.

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<sup>16</sup> For other forms of letters of credit, see V. Pătulea, C. Turianu, *Garanțiile de executare a obligațiilor comerciale (Guarantees to perform the commercial obligations)*, Ed. Scripta, Bucharest, 1994, p.83 and the following.

<sup>17</sup> See V. Pătulea, C. Turianu, *op.cit.*, p.86. and I.Turcu, *Operațiuni și contracte bancare (Bank operations and contracts)*, Ed. Lumina Lex, Bucharest, 1995, p.373.

These (multimodal) combined shipping documents cannot be used unless the letter of credit expressly allows it.

### 5.1.1. Conditions regarding the shipping documents

The requirements to be met by the shipping documents, in order to be accepted, vary according to the type of transport.

**A. For waterborne transport**, the shipping document is called maritime/ocean bill of lading, received in order to make the payment, has to meet the following requirements:

- a. to indicate the carrier's name and be signed by him or by the ship captain or by an agent appointed to act on behalf of the carrier or of the ship captain;
- b. to include an indication that the goods have been loaded on board or have been delivered with a specific ship;
- c. to indicate the port of loading and the port of discharge mentioned in the letter of credit;
- d. to consist of one original bill of lading or, if it is issued in several original copies, to lay down the whole set;
- e. not to include any indication showing that it is a subject of a "*charter – party*" contract;
- f. the cargo ship which carries the goods is not propelled only by sails;
- g. to comply with all other requirements of the letter of credit.

The maritime bills of lading may be non-negotiable maritime bills of lading and charter-party bills of lading.

**B. In case of air-borne transport**, the Publications do not have a specific name for the shipping documents but specify the indications they must compulsorily include:

- the carrier's name, his signature or authentication thereof or of the agent who acts on behalf of the carrier;
- the specification that the goods have been accepted for shipping;
- the delivery date;
- the indication of the airport of departure and the airport of destination specified in the letter of credit;
- the statement that the documents comply with any other requirements specified in the letter of credit.

As regards the air-borne transport documents remember that the Publications establish the obligation to submit them, in original.

**C. For road, railway and inland river transport**, the shipping documents must include the following elements:

- the carrier's name of the agent who acts on his behalf;
- the indication that the goods have been received for loading, shipping or transport;
- the place of loading and the destination foreseen in the letter of credit;
- the statement that the documents comply with all other requirements of the letter of credit.

In case the letter of credit provides that the shipping documents will be issued by the shipping agencies, these documents will be received, at the date of payment, only if they specify the carrier's name or the chief accountant of the combined transport and if they have been signed or authenticated by the shipping agent, as the agent authorized to act on behalf of the carrier or on behalf of the chief accountant of the combined transport.

### 5.2. Insurance documents

The insurance policies must include the name of the insurance companies which issued them or the name of their agents.

If the insurance document provides that it has been issued in several original copies, all the original copies will be submitted, unless foreseen otherwise in the letter of credit.

According to the Publication, the cover notes issued by brokers may not be accepted if not stated expressly in the letter of credit.

The letter of credit must specify the required type of insurance and, if necessary, the additional risks that should be covered.

If not otherwise stated in the letter of credit, the banks will accept the insurance policies, as submitted.

In the absence of a contrary stipulation, the minimum amount foreseen in the insurance policies must be at least up to the C.I.F. (cost insurance and nominated freight port of destination) or C.I.P. (transport and insurance paid until the place of destination designated for the goods) value plus 10%, but only if the C.I.F. or C.I.P. value may be determined from the documents.

The banks are not allowed to accept the insurance policies which do not indicate the minimum insured amount of 110% of the amount specified in the letter of credit or 110% of the total amount of the invoice.

The banks can, however, accept an insurance certificate or a statement under open coverage, pre-signed by the insurance companies or by their agents, if not otherwise stated in the letter of credit.

At the same time, when the letter of credit does not provide otherwise or if the insurance document does not specify that the coverage is effective no later than the date of loading on board, delivery or taking over the goods for loading, the banks will not accept the insurance documents issued with a date later than the date of loading, delivery or taking over for loading.

Our final remark is that, unless otherwise specified, the currency established in the insurance documents must be the same with the one mentioned in the letter of credit.

### 5.3. Commercial invoices

According to the Publications, the commercial invoices must include the description of the goods in accordance with the specifications of the letter of credit.

However, in order to be received for payment, the commercial invoices should not be issued for amounts bigger than the ones allowed by the letter of credit.

The banks may still receive invoices containing amounts which exceed the limits of the letter of credit if it is expressly provided.

The commercial invoices will contain the beneficiary's name and the chief accountant's name.

They must not contain either the beneficiary's signature or the issuer's signature.

### 6. Submission and checking of documents

The documents are submitted to the nominated bank within the period specified in the letter of credit.

The issuing bank, the confirming bank or the nominated bank will have a reasonable time to check the submitted documents.

The period for checking the documents is of 5 banking days from the day following the reception of the documents.

The banks to which are submitted the documents for inspection verify if they meet the requirements and terms stipulated in the letter of credit and inform the party who submitted them whether they are accepted or refused.

When the issuing bank establishes, of own initiative or following the information given by the confirming bank or by the bank nominated to check the documents, that they do not meet the requirements of the letter of credit, it may apply to the chief accountant to obviate the discrepancies within a period not exceeding 5 banking days.

If the banks involved in the carrying on of a letter of credit find that the submitted documents do not comply with the letter of credit, within the same period of 5 banking days, following the reception date of the documents and decide to refuse the documents, are required to notify, by telecommunication or any other fast communication means, to the bank which sent the documents or to the beneficiary, if the documents were submitted by him.

Such notice must include all the discrepancies and to indicate whether keeps the documents or return them to the submitter.

If the issuing bank and/or the confirming bank breaches any of the above mentioned rules or fails to make the documents available to the submitter or to return them to him, these banks will be deprived of the right to complain about the non-compliance of the documents, having the obligation to pay the letter of credit.

## **7. Payment of the letter of credit**

### **Preliminary specifications**

Neither the Publication 600 nor the previous publications contained rules regarding the payment of the letter of credit. Moreover, the payment deadline is replaced with the “honor” term in the Publication 600.

Publication 600 contains specific rules regarding the honor of the letter of credit in the articles 15 and 32, but indirectly by reference to the proper submission, drawings and partial deliveries.

### **7.1. Terms of payment**

In accordance with article 15 of the Publication, when the issuing bank, respectively the confirming bank, decides that the submission is proper, it is required to honor the letter of credit.

The submission is proper when the documents are in strict accordance with the terms and conditions of the letter of credit.

In the regulation of Publication 600, the honor of the letter of credit means the payment of the letter of credit at sight, in due time or by acceptance and negotiation of the promissory notes drawn by the beneficiary.

As a method of making payments and checking the specific documentation, the letter of credit is a legal act with *uno actu* execution, suddenly. It means that, under a letter of credit, we cannot make partial withdrawals of amounts or partial deliveries of goods and, implicitly, to file documents.

Publication 600 provides an exception, namely when this issue is expressly mentioned in the content of the letter of credit.

The possibility of partial deliveries and drawings arises from article 32 of the Publication. According to this article, if in the letter of credit is provided a drawing or a delivery in installments within specified periods and any installment is not used or delivered within the period allowed for that installment, the letter of credit ceases to be valid for that installment or for any subsequent installment.

Therefore, the letter of credit which is not used for a certain partial payment within the established period of validity for all the subsequent installments; in other words, the letter of credit ceases to exist.



### **7. 2. Date of payment**

The actual methods for the maturity of the letter of credit are foreseen in the Publication 600.

One method is to pay in due time, namely at a certain date established in the letter of credit.

Another method for the maturity is the payment at sight. The letter of credit with the payment at sight is paid after checking if the documents comply with the terms and conditions of the letter of credit. In such case, the letter of credit is paid at the date when the issuing bank, the confirming bank or the nominated bank “sees” the documents submitted by the beneficiary or by his representative. So, in this method of the maturity, the payment is made at the date when the documents are submitted by the beneficiary.

The letter of credit may be paid also by acceptance or negotiation of the promissory notes drawn by the beneficiary. In the letter of credit may be provided that the payment is made by drawing promissory notes against the issuing bank, confirming bank or other bank nominated for that purpose.

Finally, as stated in the foregoing, pursuant to article 32 of the Publication, in the letter of credit may be stipulated partial payments or deliveries. The maturity of the partial payments may be determined as in the case of full payment, respectively, at fixed deadlines set out in the letter of credit, at sight, namely after the submission of the documents related to partial deliveries and by acceptance or negotiation of some promissory notes drawn by the beneficiary for partial amounts.

Publication 600 does not provide the situation of the letter of credit which does not contain aspects regarding the maturity of the payment of the letter of credit.

However, by virtue of the principles governing the payment, we believe that if the letter of credit does not provide the maturity date, the payment will be made at sight, namely after the submission of the documents.

### **7. 3. Place of payment**

The Publication does not require the indication of the place for the payment of the afferent amounts as regards the validity of the letter of credit.

As well, the Publication does not contain explicit rules concerning the place of payment. But, indirectly, they may be determined by reference to the provisions of the place of submission of the letter of credit. According to the provisions of article 6, the letter of credit must provide a date for the submission. The submission specified in the Publication is equivalent to the submission of the letter of credit and specific documents in order to make the payment. The same article 6 of the Publication provides that the place of submission is the premises of the bank where the letter of credit is used. The letter of credit may be used in a particular bank specified in the letter of credit or may be stipulated that it may be used at any bank.

Hence, the place of submission of the letter of credit, related documents and, implicitly, the place of payment is the bank where the letter of credit is usable.

Therefore, the place of payment is closely related to the bank where the letter of credit is used.

### **7. 4. Effects of the payment of the letter of credit**

By paying the amounts recorded in the letter of credit, all the obligations of the participants are extinguished, as well as the obligations undertaken in the main relationships.

The obligation of payment under a letter of credit is incumbent to the issuing bank or to the confirming bank if the letter of credit is confirmed. The issuing bank and the confirming bank may nominate another bank to pay the letter of credit, but the nominated bank will make the payment for and on behalf of the issuing bank or confirming bank that appointed it, not on its behalf and as its own obligation.

It follows that by paying the amounts recorded in the letter of credit, all the obligations arising from the letter of credit are extinguished, out of which the most important are the obligations to check the compliance of the documents and to pay the amounts.

The amounts recorded in the letter of credit arise from the main, basic legal relations that generated the issuing of the letter of credit, such as relationships of sale-purchase, enterprise, execution of works, services or other legal relations generating the payment of different amounts.

As in the letter of credit are recorded amounts arising from the main legal relations, it means that the payment of the letter of credit extinguishes also these main mandatory relationships between the creditor and the debtor of such obligations.

## **8. Amendment of the letter of credit**

### **Principles**

We mentioned that the letter of credit is an irrevocable method of payment. The irrevocable character of the letter of credit is expressed by the fact that, once issued, it cannot be revoked, withdrawn or amended by the issuer or by other participant.

Pursuant to the Publication 600, the parties may use only irrevocable letters of credit.

However, it is possible, during the carrying on of the operations in the main relationships that have determined the issuing of the letter of credit or the ones specific to bank circuit, the amounts or the related documents, to intervene the demand to amend the letter of credit by adapting its clauses to the current requirements of the market.

In response to these practical requirements, the Publication 600 establishes certain rules governing the amendment of the irrevocable documentary letter of credit.

Thus, as a principle, within the article 10 of the Publication is provided that a letter of credit cannot be amended without the consent of the issuing bank, confirming bank and, if any, of the beneficiary.

Consequently, although the letter of credit is put into circulation by the issuing bank, it cannot be amended subsequently without the consent of the confirming bank and of the beneficiary. The consent of the confirming bank is justified by the autonomous obligation of payment undertaken by the confirming bank and the beneficiary's consent is based on the fact that the amounts recorded in the letter of credit represent the price due to him according to the main mandatory relations.

As not otherwise specified in the Publication, theoretically, may be amended any notes in the letter of credit, the date of payment, the period for submission the documents, the conditions for drawing up the documents, the place where the letter of credit may be used etc.

If the amendment was agreed, the issuing bank will be bound according to the new amendments, once the amendment has been issued. It is understood that, by virtue of the irrevocable character of the letter of credit, its amendments also become irrevocable.

For the confirming bank, since the date of extension of the confirmation, the amendments are compulsory also for the occurred changes. The Publication provides that the confirming bank can only approve the amendments, namely to notify that it took into account this issue without expanding the confirmation over the changes. In such a situation, the letter of credit becomes partially confirmed, meaning that the confirmation for the letter of credit shall be kept in its original form and it is not confirmed for the amendments unaccepted by the confirming bank.

As concerns the beneficiary, the consent regarding the amendment of the letter of credit may be express or tacit. Publication 600 provides that the letter of credit is valid in its original form until the time the beneficiary notifies his agreement regarding that amendment. The beneficiary must notify his acceptance or refusal as regards the proposed changes. If the beneficiary stays in passivity and communicates his viewpoint as regards the proposed amendments, they become irrevocable and it may be considered that the beneficiary accepted them.

The amendment of the letter of credit shall be notified to all the banks involved in the carrying on of the letter of credit and they must express their acceptance or approval for such changes or their refusal. In this respect, according to the Publication, the bank that approves the amendment must notify the bank which sent the amendment and if it accepts or rejects the amendment.

Partial acceptance of amendments is prohibited and such acceptance shall be deemed as a notice of rejection of the amendments (article 10 of the Publication).

## **9. Transfer of the letter of credit**

### **General notions**

In the absence of express stipulation, a transferable letter of credit may be transferred only once.

In this case, the secondary beneficiary may not request the transfer of the letter of credit to other third party, as beneficiary.

If in the letter of credit is provided that it may be transferred to several beneficiaries, the refusal of acceptance of one or more secondary beneficiaries does not affect the acceptance of the letter of credit by the other secondary beneficiary.

The same happens with the amendments to the letter of credit, meaning that the rejection of the amendments to the letter of credit by one or more secondary beneficiaries has no effect on the other beneficiary/beneficiaries who accepted the changes. It is understood that for the beneficiaries who refused the changes of the letter of credit, the letter of credit will be deemed unchanged.

Pursuant to the Publications, in case of transferable letters of credit, the first beneficiary has the obligation, upon the application for transfer and before operating the transfer of the letter of credit, to provide to the transferring bank the instructions regarding the transfer operation.

When the transferring bank agrees the transfer, within the terms established by the first beneficiary, it is required to notify the other beneficiaries about the transfer instructions.

As we mentioned above, the letter of credit may be transferred only within the terms and conditions specified in its original form, except: the amount of the letter of credit, the specified unit price, the delivery period, the validity expiry date and the period of submission of the documents.

Publication 600 allows the name of the first beneficiary to be replaced with the chief accountant's name, but if the chief accountant's name is expressly requested in the original letter of credit, it must be written down in all the documents, excepting the invoices.

Within the transferable letter of credit, the first beneficiary is entitled to replace his own invoice and the promissory notes with those of the secondary beneficiary.

The invoices and the promissory notes of the first beneficiary replaced by those of the secondary beneficiary cannot include amounts bigger than the original amount indicated in the letter of credit. If there is a difference between the original amount, indicated in the letter of credit, and the amounts specified in the replaced invoices and promissory notes, the first beneficiary can draw the letter of credit for the difference.

In the absence of a contrary stipulation, the first beneficiary may request that the payment or the negotiation of the letter of credit be made by the secondary beneficiaries, at the place where the letter of credit was transferred.

It should be noted that, if the letter of credit was transferred and the first beneficiary will submit his own invoices and promissory notes in exchange for the invoices and promissory notes of the secondary beneficiaries, but he did not do that on the first demand, the transferring bank is entitled to send to the issuing bank the documents received within the transferred letter of credit, including the invoices and promissory notes of the secondary beneficiaries, without any responsibility in relation to the first beneficiary.

## **10. Assignment of receipts from the letter of credit**

Although the current practice of the documentary letters of credit uses the expression "assignment of the letter of credit" or "transferred letter of credit", actually it is about the assignment of the proceeds from the letter of credit.

The main function of the letter of credit is to perform, by bank circuit, the transfer of some amounts from the debtor in the main legal relations, becoming chief accountant by issuing the letter of credit to the creditor in the same main relations who became the beneficiary of the letter of credit.

Whereas the letters of credit are documents containing genuine rights of debt, such debts may be transferred<sup>18</sup>.

Publication 600 establishes the transfer of the amounts related to the letter of credit by setting up some rules in the article 39.

Thus, according to the Publication 600, the fact that a letter of credit does not specify that it is transferable will not affect the beneficiary's right to assign any receipts to which he is entitled under the letter of credit, in accordance with the provisions of the applicable law.

Assignment of the receipts does not mean and does not constitute the transfer of the right to use the letter of credit.

The regulation of the Publication provides that the transfer of receipts from the letter of credit cannot be confused with the transfer of the letter of credit. In other words, a transferred letter of credit is not confused with a transferable letter of credit. A letter of credit may be transferred only if there is an express indication to that effect in the letter of credit. On the other hand, the assignment of the debts may be done even if the letter of credit is transferable or non-transferable. In other words, the assignment of the receipts may be performed regardless the type of the letter of credit.

Then, the transfer of the letter of credit is performed as provided in the content of the letter of credit, while the assignment of the receipts shall be performed in accordance with the law chosen for the assignment.

Unless otherwise indicated in the Publication, the assignment may be total, namely all the debts related to a letter of credit may be transferred, or partial, when only a portion of the receipts is transferred.

The transfer is performed according to the assignment contract concluded between the beneficiary of the letter of credit and the assignee of receipts. The assignment is based on the main relationships, under which the assignee may be the manufacturer or the supplier of the goods sold by the beneficiary of the letter of credit to the chief accountant. For the safety of price collection by the supplier or manufacturer is concluded the assignment contract under which the receipts or a portion thereof are transferred to the supplier, respectively to the assignee manufacturer. Thereby, the assignee may be the bank or other financier of the beneficiary of the letter of credit.

According to the assignment contract, after the notification of assignment by the beneficiary of the letter of credit or by the assignee, or following the date of acceptance of the assignment, the payment of the amounts will be made to the assignee, not to the beneficiary of the letter of credit.

### **11. Cessation of the letter of credit**

Publication 600 does not contain rules regarding the cessation of the documentary letter of credit.

However, following the provisions of the Publication may be detached certain cases of cessation of the irrevocable documentary letter of credit.

As a general rule, the letter of credit ceases by carrying on its specific effects, namely the checking of compliance of the documents and the payment of the related amounts to the beneficiary or to the person appointed by him, in case of assignment or transferable letter of credit.

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<sup>18</sup> For the assignment of debt performed under the common law, see C. Stătescu, C. Bărsan *Drept civil. Teoria generală a obligațiilor* (Civil Law. The general theory of obligations), Edit. All Beck, Bucharest, 2000, p. 341 and the following; Liviu Pop, *Drept civil. Teoria generală a obligațiilor. Tratat, Ediție revizuită* (Civil Law. The general theory of obligations, Treatise, Revised edition), Edit. Chemarea, Iași, 1994, p. 455 and the following; I Dogaru, P. Drăghici, *Drept civil. Teoria generală a obligațiilor* (Civil Law. The general theory of obligations), Edit. All Beck, Bucharest, 2002, p. 485 and the following.

Then, any letter of credit should include the validity period of the submission, having as consequence that the expiry of the validity period automatically draws the cessation of the letter of credit.

Finally, we saw that there is a possibility that the letter of credit may specify partial deliveries and drawings and if they are not observed, meaning that the deliveries are not performed, respectively the drawings made during the periods mentioned in the letter of credit, it cannot be used for installments or subsequent deliveries. Therefore, we deduct that the failure to comply with the terms in a letter of credit with partial installments draws the validity of that letter of credit, which corresponds with the cessation of the effects of the letter of credit.

Note that, due to its irrevocable character, the letter of credit cannot cease and cannot be withdrawn or cancelled at the initiative of the chief accountant or of the issuing bank.

For this reason, the letter of credit is the safest method of payment used in the international commercial relations.

### Conclusions:

Of those mentioned above, the letter of credit is presented as one of the most stable and secure bank payment arrangements international trade relations.

Publication 600 from Paris, brought important changes to the letter of credit, such as: irrevocability of the letter of credit, letter of credit and the amendment revoking the ban without the consent of all participants, the possibility of making advance payments or partial performance of, the issuing and processing in electronic form letters, etc..

For these reasons, the letter of credit requires more care, both from the perspective of the issuer and its beneficiary, and especially banking entities involved in the movement of monies and related documents.

### References:

- V. Pătulea, C. Turianu, *Garanțiile de executare a obligațiilor comerciale (Guarantees to perform the commercial obligations)*, Ed. Scripta, Bucharest, 1994
- Hubert Martini, Dominique Depree, Joanne Klein-Cornede, *Credits documentaires, Lettres de credit stand-by. Cautions et garanties*, Revue banque edition, Paris 2007
- V. Nemeș, *Drept bancar (Bank Law)*, Edit. Editas, Bucharest, 2004
- Court of Arbitration Bucharest, Judgement no.17 of June 19, 1975 in *Jurisprudența Comercială Arbitrală (Commercial Arbitration Jurisprudence) 1953 -2000*, Bucharest 2002
- I.Turcu, *Operațiuni și contracte bancare (Bank operations and contracts)*, Ed. Lumina Lex, Bucharest, 1995
- C. Stătescu, C. Bârsan *Drept civil. Teoria generală a obligațiilor (Civil Law. The general theory of obligations)*, Edit. All Beck, Bucharest, 2000
- Liviu Pop, *Drept civil. Teoria generală a obligațiilor. Tratat, Ediție revizuită (Civil Law. The general theory of obligations, Treatise, Revised edition)*, Edit. Chemarea, Iași, 1994
- I Dogaru, P. Drăghici, *Drept civil. Teoria generală a obligațiilor (Civil Law. The general theory of obligations)*, Edit. All Beck, Bucharest, 2002