



**COMPLYING PRESENTATION UNDER DOCUMENTARY  
CREDIT – HOW CRUCIAL AND COMPLEX IS IT TO  
COMPLY?**

**A whitepaper from J3 BankingLab**



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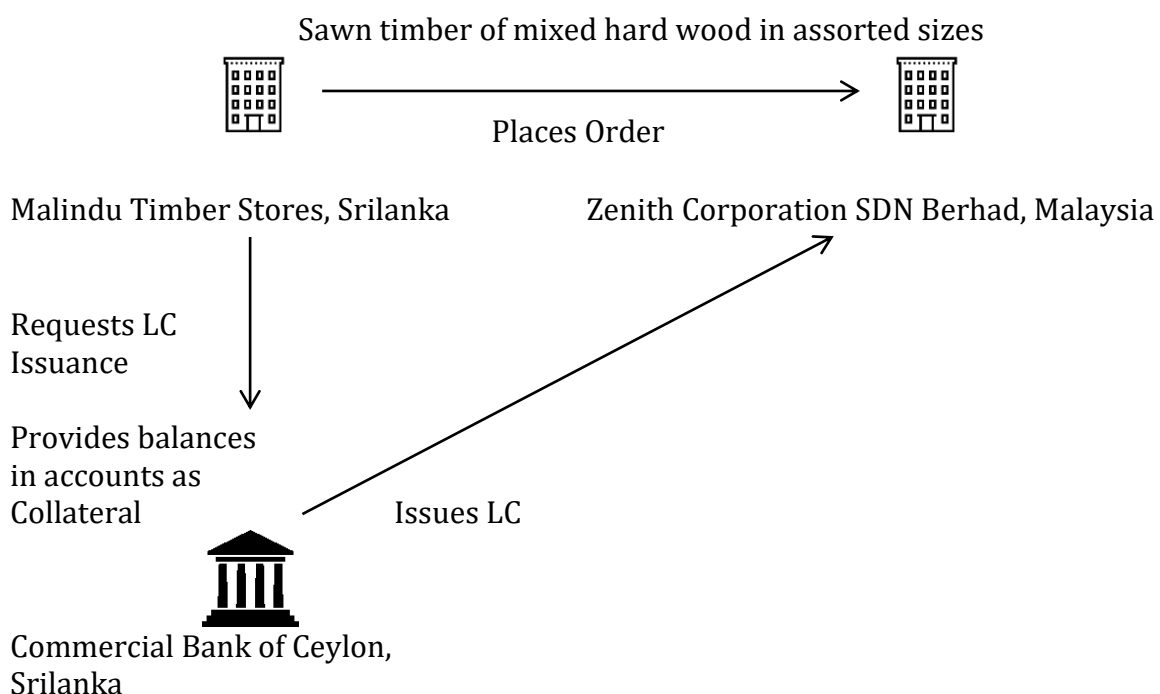
## Summary

- Complying Presentation is a basic tenet that guides payments under Documentary Credit. Uncomplicated as it may appear, given the slew of guidelines contained in UCP 600 and ISBP 745, implementation of this principle can be daunting and at times overwhelming
- Judicial rulings are often characterised by interpretations of this principle that may appear contradictory
- This white paper looks at problems faced in complying with this principle that impact the “3S” of payments under documentary credits, namely Safety, Security and Speed of payment
- The paper also examines some important case rulings in this regard
- The White Paper concludes with a view that banks can meet the challenges posed by this principle by diligently and logically applying the core principles of the underlying guidelines

Malindu Timber Stores, Colombo, a sole proprietorship firm, placed an order with Zenith Corporation SDN Berhad of Kuala Lumpur, Malaysia, for purchase of sawn timber of mixed hard wood in assorted sizes. The order was valued at SGD 161,245.11.

The firm opened a letter of credit (LC) with Commercial Bank of Ceylon, Colombo (a.k.a. CBC). The original beneficiary of the LC was Zenith Corporation SDN Berhad of Kuala Lumpur.

As a part of the import transaction, the applicant issued a letter of set off against its balances in current, fixed deposit, savings or other accounts with the bank for recovery of LC related payments and charges. The LC was opened and advised to the beneficiary.



It was subsequently agreed that instead of the original beneficiary, Shri Arvind Timber Sdn Bhd of Kuala Lumpur, Malaysia, a sister company of the beneficiary would ship the material. Shri Arvind Timber Sdn Bhd was substituted as the beneficiary to the aforesaid Letter of credit with the consent of the Applicant.

The applicant sent a fax to CBC highlighting certain 'special conditions' relating to quantity and sizes of timber, and insisted that the proforma invoice and the certificate of inspection issued by the Malaysian Timber Board should be thoroughly checked before releasing payment on the letter of credit.

Timber was eventually shipped by Shri Arvind Timber, the new beneficiary. Relevant shipping documents were presented for payment. CBC accepted the said documents and made payment for SGD 161,245.00. Upon making payment, the bank, acting on the letter of set-off proceeded to debit accounts of the applicant.

The applicant who had in the interim obtained copies of the relevant bill of lading, commercial invoice, certificate of insurance and the certificate of the Malaysian Timber Industry Board, found discrepancy in the timber shipped and asked CBC to reject the same.

Of the 5 discrepancies, the one relating to the goods shipped was stated as follows:

The LC described the goods as "MIXED HARDWOOD [100 PER CENT TUALANG] STANDARD AND BETTER GRADE, 2 INCHES X 4 INCHES TO 1 1/4 INCHES X 12 INCHES, C.I.F COLOMBO

In the Bill of Lading the goods were described as 154 BDLS MIXED HARDWOOD [100 PER CENT TUALANG] STANDARD AND BETTER GRADE, 2 INCHES X 4 INCHES TO 1 1/4 **INCHES 12 INCHES**, C.I.F COLOMBO

The multiplication mark (x) was missing in BL - hence documents were deemed to be discrepant

The issue was taken up by the applicant in a court of law.

Learned President's Counsel for the Applicant contended that the absence of a multiplication mark (x) between '4 INCHES TO 1 1/4 INCHES' and '12 INCHES' in the bill of lading constituted a material discrepancy and hence CBC should have rejected payment on the basis of non-conformity of documents.

The issuing bank denied that there was any discrepancy in the documents that would justify the rejection of the documents. The absence of a multiplication mark (x) did not give rise to a material discrepancy to justify the rejection of the goods.

The court of law rejected the claim of the applicant deeming the discrepancy to be not sufficiently material.

### **Let us analyse the decision of the honourable court.**

The basis of rejection of the applicant's claim by the court can be traced to UCP 600 article 18 read in conjunction with the articles 14d and 14e.

As per Provisions of 14 d, and I quote "data in a document, read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit."

Article 14e states “documents other than commercial invoice, the description of the goods, services or performance, if stated, may be in general terms not conflicting with their description in the credit.”

Moving further, Article 18c states “description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit.”

Can there be a different perspective to this “discrepancy”?

The “X” in the documents can be construed to be relevant to the size of the log that had been indented by the applicant. When the goods imported are not in line with the specifications of the importer, he has a right to refuse/reject documents.

What does this mean for a bank’s responsibility for document scrutiny? Clearly the principle of complying presentation can be a tricky affair. The bank that scrutinizes the document has to take a balanced and educated decision in applying this principle. This is easier said than done. It needs a clear and an analytical understanding of the underlying principles of UCP600.

**Let us consider another instance:**

A Letter of Credit issued by a bank mentioned “trucks” as the underlying commodity. The invoice mentioned the goods as trucks. However, the Bill of Lading described the commodity shipped as “automobiles”. The issuing bank refused payment evidencing a discrepancy between the Bill of Lading and the Letter of Credit. The rationale given by the bank was that the term automobile was generic and could be any other vehicle besides trucks. Was the issuing bank correct in rejecting the documents?

There are two sides to the coin in this case too. On the one hand one cannot fault the issuing bank for its views on the word “automobile”. On the other hand, it can also be argued that the relevant UCP 600 articles may deem the documents to be in order and require the issuing Bank to accept the same.

This is a typical issue faced by banks. The banks clearly have to go beyond the stated position of ICC to provide basis for its judgement.

It underlines the need for a judicious deployment of the principle of complying presentation while scrutinising the documents. Banks ought to take a logical view of what may or may not be a complying presentation.

### **So, what is Complying presentation and why is this important?**

The principle of complying presentation is the basic tenet that supports payments under documentary credit.

When payments are governed by Documentary Credit, the onus of making payment shifts from the importer / buyer to the issuing bank. The issuing bank covers the risk of probable challenge to its decision to pay the beneficiary by insisting on complying presentation.

### **How does the principle work?**

The issuing bank of a letter of credit is required to pay when documents are as per terms of the credit. The principle of strict compliance entitles the bank to reject documents that do not meet the requirements as stated in the letter of credit.



Complying presentation in effect, impacts the “3S of Trade” namely Safety, Security and Speed of payment. Strict adherence can improve safety and security, but at times may adversely impact speed of payment.

Notwithstanding the degree of complexity involved, the articles in UCP600 do help, to a certain degree, in clarifying the principle of compliance. An analysis of the Articles would show how the formulators have strove to standardise the interpretation of these important rules thereby directly contributing to reduced refusal for payment arising out of documentary discrepancies.

Articles 2, 5, 14, 15 and 16 are some of the articles that address this important principle. Some of the provisions of ISBP such as paragraph A1 (abbreviations), paragraph A23 (misspellings or typing errors) and paragraph A39 (title of documents and combined documents) assume a “companion status” to UCP600 by clarifying and interpreting brief UCP provisions.

Meeting the needs of Complying Presentation would require the appreciation of the interdependence of UCP 600 and ISBP 745. It emphasizes the need to refrain from using the provisions in silos.

Diligent application of this principle is therefore the need of the hour.

A very conservative application of this principle, irrespective of the materiality may cause disruption in the smooth functioning of Trade. On the other hand, document checkers have to protect the interests of the negotiating / issuing banks by a foolproof application of this principle. This calls for striking a fine balance between facilitating smooth conduct of trade and protecting the bank from risk of payment rejection by the issuing bank and/or the ultimate applicant based on unacceptable discrepancies.



It may be noted that the earlier version of UCP (UCP 500) was more complex and rigid. Article 13 of UCP 500 had an omnibus requirement where documents inconsistent with each other were to be treated as non-compliant.

Banks are now given specific responsibilities under Article 15. The article categorically requires the bank to honour a payment should it consider a presentation to be compliant.

The bank can return a non-complying presentation under provisions of Article 16a, only if it can rightfully decide that a presentation does not comply with the terms of credit.

Though the principle of Complying presentation seems very clear and unambiguous, its application has often been challenged based on differences in interpretation.

Recounting some decisions of courts would underline the above assertion.

Let us look at some decisions in this regard:

**Case – 1: Equitable Trust Company of New York v Dawson Partners Ltd [1927] 2 Lloyd’s Rep 49,52 per Viscount Sumner**

The stated consignment was “old iron, bits of wood and an odd bit of vanilla or two”. The Applicant instructed Equitable Trust to open a Letter of credit which required a certificate to “be issued by experts who are sworn brokers”. This was transmitted by HSBC the confirming bank to the beneficiary as a certificate to be issued by an expert. The beneficiary presented a certificate of one expert.

It was held that Equitable Trust could not recover the payment from the applicant - Dawson Partners as the letter of credit was not what they had asked Equitable Trust to issue.

The honorable court held that:

"It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk. The documents tendered were not exactly the documents which the defendants had promised to take up, and prima facie they were right in refusing to take them."

**Case-2: Evans LJ in Kredietbank Antwerp v Midland Bank and others [1999]**

In this case the following was the view of the learned judge:

"...the requirement of strict compliance is not equivalent to a test of exact literal compliance in all circumstances and as regards all documents. To some extent, therefore, the banker must exercise his own judgment whether the requirement is satisfied by the documents presented to him."

Other interesting judgements that I can recall are as follows:

1. Typing the Buyer's telex number as 931310 instead of 981310 was held to be trivial.
2. Where credit was issued in favour of Pan Associated Ltd when the documents were tendered in the name of Pan Associated Pte Limited discrepancy was held not to be trivial.

3. In another case the “Notify Party” was named as Mohammed Soran when the credit required Mohammed Sofan. This discrepancy was held not to be valid for rejection of documents

**Conclusion:**

Such instances of conflict in interpretation seem to be a characteristic feature of payments under a documentary credit.

Various attempts have been made to soften the doctrine of strict compliance and provide a better way for sellers to achieve compliance. Strict compliance however does not mean the data in any document could go unmatched. It only widens the scope of compliance where data in any document may differ expressly with one another but should not contradict each other. This approach of compliance will ensure smoother payment under the LC rather than looking for discrepancies and rejecting documents during the process of examination.

UCP600 together with ISBP 745 makes it easier to resolve issues on discrepant documents, where the seller and buyer, equally have some binding on how the discrepant documents should be dealt with.

At the end of the day what matters is the intelligent use of various guidelines to ensure the meeting of following twin objectives:

- (a) Easy conduct of trade
- (b) Protecting the interests of issuing and nominated banks.



## **Meet the Author**

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Earlier, he has been a **Managing Partner in Tata Consultancy Services** leading the Global Consulting Practice for Banking and Financial Services for New Growth Markets (that include Australia, Asia Pacific and India). Jeyaraaj was earlier **the Head of Business Process Re-Engineering for Banking in Oracle Financial Software Services** after working for **American Express Bank in Corporate and Retail Banking** for 10 years.

He has been involved in formulating and implementing Business strategies, evaluating financial impact of Strategic Initiatives and implementing Enterprise Wide transformational programs for banks across North America, Europe, Asia Pacific and Middle East. His banking experience extend to Trade Finance, Cash and Liquidity Management, Retail and Corporate Lending, Digital Banking Design and Customer experience Management.

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