

Emerging Electronic Documentary Credit and Electronic Presentation of Documents

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I. Introduction

One of the most widely used international payment means is the documentary credit. The Documentary Credit which has been in use was introduced to provide payment against proper presentation of documents.

The documentary credit customs are embodied largely in the Uniform Customs and Practice for Documentary Credits(UCP), International Chamber of Commerce. Documentary credit have been used for many years as a means of payment on both international and domestic transactions. The latest version referred as "UCP 500" was revised in 1993 to address new developments in transport industry and information technology. The UCP is typically incorporated into a credit by express reference on the letter of credit issuance application form and on the letter of credit.

The international business community has been seeking to dematerialise

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shipping documents for paperless trade. Electronic documents offer compelling benefits to international traders: they are fast to issue, transmit and process. Moreover, the presentation of electronic documents and records in documentary credit transactions are less expensive and more convenient than presentation of paper based documents. Several projects devoted to development of an electronic letter of credit infrastructure have recently been proposed such as Bolero, SWIFTNet, UNeDocs, @GlobalTrade and eUCP.

There is not as yet any means of international trade payment that serves the interests currently satisfied by documentary credits, despite the emergence of new international electronic payment devices. At the same time there is increasing pressure to move from existing paper based documentary credit to electronic documentary credit.

In response, the Banking Commission of International Chamber of Commerce(ICC) established a working group consisting of experts in the related fields to prepare the appropriate rules as a Supplement to Uniform Customs and Practice for Documentary Credits Publication No. 500 for Electronic Presentation: eUCP. These rules came into force on April 1, 2002.

In developing eUCP, the ICC has taken a major step in encouraging international traders to accommodate presentation of electronic records alone or in combination with paper documents. The eUCP will provide the necessary rules for the presentation of the electronic equivalents of paper documents under letters of credit.

This paper examines the trends of standardization and electronization of trade documents and SWIFT network. Also, this paper reviews on emerging electronic documentary credit for electronic payment and electronic presentation of documents.

II. Trends of electronization of trade documents and SWIFT network

1. The standardization and electronization of trade documents

The existing paper-based trade documents will be eventually replaced by globally accepted electronic trade documents. The paper requirement in commercial transactions significantly limits the acceleration of electronic commerce. Further, formal requirements that differ among international parties could handicap electronic trade and electronic data interchange(EDI) to the point at which the technology offers little advantage over existing paper-based systems. Requirements for documents, writings, and notice contribute to this particular barrier.¹⁾

The cost of maintaining trade documentation is a significant component of the final market price of the goods. It is estimated that direct and indirect costs of trade documentation accumulate to 5% to 10% of the value of the goods, depending on the nature of the goods and the specific supply chain scenario. In the presence of documentary errors this percentage will significantly increase. With an international trade volume in goods of 5,500 billion US\$ annually, documentation is a significant cost component of international trade. In order to reduce these costs and to permit efficient international trade a set of standards for efficient trade procedures and documentation has been developed. The standards and practice of the United Nations electronic Trade Documents (UNeDocs) for aligned trade documentation have been developed in the United Nations Economic

1) Randy V. Sabett, "International Harmonization in Electronic Commerce and Electronic Data Interchange: A Proposed First Step toward Signing on the Digital Dotted Line," *American University Law Review*, Vol. 46, December, 1996, p. 527.

Commission for Europe (UNECE).²⁾

For documents for international standardisation, in September 1999 UN/CEFACT³⁾ launched an international initiative to develop an open XML based framework, enabling the global use of electronic business information, in a consistent, interoperable, and secure manner, in application to application, application to person and person to application environments.

The initiative, which was subsequently named ebXML, was undertaken in conjunction with the Organization for the Advancement of Structured Information Standards(OASIS). The project first phase was completed on time in May 2001, following an open international standardisation process, involving both a series of global meetings and the review of very many virtual contributions.

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- 2) The UNECE has therefore set up the United Nations electronic Trade Documents (UNeDocs) project to develop guidelines and tools for implementing aligned trade documentation. UNeDocs provides the basis for a later definition of the electronic equivalent of the trade document in UN/EDIFACT or XML format. UN/EDIFACT and XML are today's most widely used electronic business protocols and provide access and connectivity to e-business systems and electronic supply chain management. Owing to the importance of this subject, the United Nations has set up a Centre for Trade Facilitation and Electronic Business (UN/CEFACT) within the UNECE to further develop and maintain these standards:<http://www.uncitral.org/en-index.htm>(last visited December 30, 2003).
- 3) UN/CEFACT is the United Nations Centre for Trade Facilitation and Electronic Business. UN/CEFACT was established in 1996 in response to new technological developments, a desire to officially recognize the contributions made by the above-mentioned experts (many of whom come from outside the UN/ECE region), and the need to make better use of available resources. UN/CEFACT is open to participation from Member States, intergovernmental organizations, and sectoral and industry associations recognized by the Economic and Social Council of the United Nations (ECOSOC). The Centre's objective is to be "inclusive" and it actively encourages organizations to contribute and help develop its recommendations and standards. The participation of many private-sector associations in UN/CEFACT's work at the policy level, and of hundreds of private-sector technical experts in UN/CEFACT working groups, is a unique feature of the Centre which is forging new cooperative relationships between private business and public organizations. Within the United Nations, UN/CEFACT is located in the Economic and Social Council of the United Nations (ECOSOC). This is the ideal location for developing practical recommendations for action because, within various work areas in the United Nations system, the regional commissions have the closest links to national Governments at the expert level: Commission for Europe (UN/ECE), which is part of the United Nations network of regional commissions. These regional commissions report to the highest United Nations body in the area:<http://www.unecoe.org/oefact>(last visited December 30, 2003).

2. Negotiability of electronic bill of lading

For the infrastructure of electronic trade, Bolero.net, created by the global banking and logistics communities and arguably the most supported experimentation with an electronic bills of lading system, promises to solve the problems of electronic bills of lading and electronic insurance documents.⁴⁾

The mechanism of the bolero.net concept is based on the "Core Messaging Platform," which acts as a hub for users to exchange documents between themselves.⁵⁾ The platform guarantees the sender's message, which is forwarded to the receiver.⁶⁾ When the receiver downloads the message, it automatically acknowledges the message to bolero.net. Then bolero.net, acting as a trusted third party -or a certification authority- notifies the sender of the acknowledgement. If the message involves the transfer of documents, bolero.net ensures their originality. In order to facilitate the exchange of data between users working on several types of computer

4) Bolero (Bill of Lading Electronic Registry Organisation) was initiated in 1994 by a consortium of carriers, traders, banks and telecommunications companies in conjunction with the European Commission after it became clear the CMI Rules were not the solution for EBLs. After technical trials, the Bolero project went into a slow period and nearly became defunct. SWIFT and the TTC (Through Transport Mutual Insurance Association Ltd.), two influential organisations in the international transport and payment business, joined the project in late 1997 and injected fresh enthusiasm and support into the project. Bolero Operations Ltd. was incorporated in April 1998 under the stewardship of SWIFT and the TTC to run the Bolero system. Together with the BAL (Bolero Association Limited), SWIFT and TTC and over five hundred companies and industry organisations worldwide worked together to review the functional and legal capabilities of the Bolero service. The work culminated in a second phase of trial in late 1998 and early 1999; Emmanuel T. Laryea, "Paperless Shipping Documents: An Australian Perspective," *Tulane Maritime Law Journal*, Vol 25, Winter 2000, pp.286-287.

5) The security of the platform depends on the RSA technology. RSA, the acronym of the founders Ronald Rivest, Adi Shamir and Leonard Adleman, was the first entity to offer public key technology for enterprises. For details on RSA technology; <http://www.rsasecurity.com> (last visited December 28, 2003).

6) For instance, the sender may be the beneficiary, and the receiver may be the issuing bank.

systems or software, bolero.net offers inter-operability between all these systems.⁷⁾

An important part of the Bolero system is the Title Registry. The registry is supplied and operated by SWIFT. The registry is designed to capture all information in relation to bills of lading. The general aim of the Title Registry is to replicate electronically the functions of traditional paper bills of lading. Bolero describes bill of lading as a document signed by a carrier and which serves as (1) a receipt for goods in carriage, (2) a contract for that carriage, and (3) a token, the surrender of which entitles the Holder to delivery of the goods from the carrier. Functionally, the bill of lading moves from the carrier to the Shipper and ultimately to the buyer of the goods, and it may pass through the hands of others such as banks along the way. As they come into possession of the bill, they may acquire rights and obligations in relation to it.⁸⁾

Among many elements that the issuer of the bill of lading has to specify about bill of lading are transferability and blank-endorsement of the bill of lading.

The title registry carries on an endorsement chain for each bill of lading, replicating "the negotiability function of bills of lading in a creative way, using the principles of novation and assignment." This is important for the buyer because it knows whether someone holds a security interest in the purchased merchandise. All parties are required to accept the rules of bolero.net, contained in the Rule Book.⁹⁾

Canadian company CCEWeb¹⁰⁾ has produced an electronic letter of credit

7) Marc Lacoursiere, op. cit., p.171.

8) Role of Secured Informational Systems in International Commercial Transactions By Sergey Zaytsev ; <http://serg.us/paper/bolero.doc>(last visited December 20, 2003).

9) Marc Lacoursiere, op. cit., p.171.

10) CCEWeb Corp. was founded in 1996 to create a virtual Internet commodity exchange for internationally traded goods. Over the ensuing three years, it evolved into a business-to-business (B2B) network connecting producers, financial institutions, exporters, importers, carriers, freight forwarders, customs brokers, insurance providers, surveyors, chambers of commerce, and trade associations into an on-line trading network.

and trade payment system called @GlobalTrade. It combines a letter of credit with a credit card. The service as a key component revolves around a "documentary clearance centre," which oversees the trade, like the trade finance department of a bank. It centralizes and oversees all types of trade, transport, insurance and financial documents and effectively takes on part of the role of the bank that issues a letter of credit. CCEWeb said its documentary clearance center processes all events relating to documentary letter of credit and provides trade processing services to the trade parties, the bank and all related parties in the trade cycle.

Letters of credit are payable through the documentary clearance center. The center will check documents presented by the beneficiary for compliance and complete the trade cycle by paying the beneficiary.¹¹⁾

As with some other electronic letter of credit systems, there is no advising bank in the communication chain. The electronic letter of credit is advised directly to the beneficiary by the document clearance centre on behalf of the Issuing bank. Having been advised of the letter of credit, the beneficiary can then make electronic arrangements with trade service providers such as carriers, insurers and inspection companies. Documents are presented electronically to the document clearance centre for checking and then settlement.¹²⁾

Like Bolero.net, CCEWeb runs a secure electronic platform. However, CCEWeb does not operate a "title registry" to govern the ownership of goods between trade parties. It can work with paper bills of lading and with waybills. CCEWeb has written certain binding clauses in its waybills to provide to users some of the legal protection associated with bills of lading.¹³⁾ @GlobalTrade's legal structure will compliment local laws and will provide a framework for accommodating a combination of both

11) <http://www.thedigitalship.com>(last visited December 30, 2003).

12) <http://www.mantissa.co.uk/support/newtrade.htm>(last visited November 30, 2003).

13) Ibid.; Marc Lacoursiere, "Designing an Electronic Documentary Credit for Small and Medium-Size Enterprises," *Banking & Finance Law Review*, Vol. 18, 2002-2003, p. 173.

electronic and paper documents.

According to CCEWeb, for users, CCEWeb has lower setup fees and annual fees than Bolero.net. Also, @GlobalTrade fully complies with the UCP Supplement for Electronic Presentation eUCP.¹⁴⁾

It may be possible, on the basis of existing technology and under the existing legal framework, to replace bills of lading by electronic documents, which can in principle afford to the parties security at least as great as existing paper documents.

3. SWIFT network for electronic documentary credit

The documentary credit mechanism between banks can operate electronically without major problems. Moreover, electronic documentary credits remain the best option in the current age. Much trade credit-related information is currently electronically transmitted. The major hindrance to a complete electronic letters of credit system is not the application of the credit transactions itself but the absence of a generally transmitting network between credit parties concerned.

SWIFT¹⁵⁾ has been provided as value-added services including messaging associated with the payment and settlement infrastructure in international trade. It is generally accepted that a point will soon be reached where more

14) <http://www.cceweb.com/vision.asp> (last visited December 30, 2003).

15) SWIFT(Society for Worldwide Interbank Financial Telecommunication) established on May 3, 1973, in Belgium. An industry-owned organisation, SWIFT supplies highly secure and reliable messaging services to over 7,000 financial institutions in almost 200 countries, handling a daily message volume in excess of 7 million. SWIFT employs 1,600 people world-wide. SWIFT links banks, broker-dealers, investment managers, stock exchanges, depositories, trustees, payment systems, clearing systems, settlement systems, banks' corporate customers, etc. All these institutions must comply with the SWIFT eligibility criteria. SWIFT is also the messaging hub for numerous domestic and cross-border clearing and settlement systems (so-called market infrastructures). In payments, SWIFT supports more than 30 systems, varying in size from 500 to over 120,000 payments per day. In securities, 10 major systems use SWIFT messaging to support their clearing and settlement activities; SWIFT User Handbook Corporate Rules, September 2003.

traditional means of settlement using cable, telex and facsimile will no longer be able to cope. SWIFT is therefore focusing its attentions to the requirements for international settlement of large value payments. Its existing proprietary network and charging structure are simply not cost effective when making lower value payments.

Nowadays, the issuance¹⁶⁾ and amendment of documentary credit are performed by the SWIFT System. The advising bank will then either print out, or in some cases electronically transmit, the credit to the beneficiary. In SWIFT, enhanced technology and a spirit of cooperation purport to deliver a universal, efficient, and reliable global communication system on which the effectiveness of the international transfer system depends. SWIFT facilitates interbank communication through regional processors, linking the various countries through networks of slice processors.

SWIFTNet FIN, one of the payment solutions of SWIFT went ahead on time as a result of the forward planning of SWIFT, its customers and partners. A number of challenges were overcome in 2002, not least the transition to multiple vendor IP network partners. In addition to SWIFT's dedicated computer-to-computer and browser-based SWIFTNet interfaces, there are third party connections that, taken together, account for significant volumes of end-user traffic. SWIFT worked closely with solution partners throughout 2002 to ensure that all the major interface products were certified 'SWIFTNet Ready' to support the migration process.¹⁷⁾

Currently, SWIFTNet allows traders to do business in an environment that now combines the security of a private network and the guarantees of a trusted third party with the flexibility of Internet technologies.

16) The date on which an electronic document appears to have been sent by the issuer shall be considered the date of issuance, unless the document specifically states otherwise. The date of receipt will be the date it was sent if no other date is obvious. It is worth noting that the eUCP supplement provides that where an electronic record evidencing transport does not indicate a date of shipment or dispatch, the date of issuance of the electronic record will be the date of shipment or dispatch; eUCP Article e9.

17) http://www.swift.com/index.cfm?item_id=2584 (last visited December 30, 2003).

III. Emerging electronic documentary credit for electronic payment

Legal drivers are facilitating cross border electronic trade in a significant number of countries across all regions. The United Nations Commission on International Trade Law(UNCITRAL) Model Law on Electronic Commerce is a pragmatic driver in providing a legislative model for nations to follow. The International Chamber of Commerce (ICC) has published a supplement to UCP500, the eUCP, to provide a framework for combined paper and electronic presentations. While the UCP and its supplement are not law, they do provide rules of practice for those trades that are settled via a documentary credit. These are but two examples with other legal drivers in the pipeline from international bodies such as UNCITRAL, ICC, and the World Customs Organisation.¹⁸⁾

The letters of credit have been issued electronically since the advent of telegram, cable and Telex. However, nowadays SWIFT networks are used domestically to transmit letters of credit from issuing banks to advising banks. A letter of credit transmitted in this fashion is printed in hard copy at the advising bank, stamped "original," and provided to the beneficiary in that form.

The encryption and verification procedures used by SWIFT are considered by many in the banking industry to be commercially sufficient to prevent tampering with either the transmission or reproduction of documents. On the other hand, concern has been expressed over the security of the Telex system, and the sophistication of its methods for authenticating documents.¹⁹⁾

According to International Chamber of Commerce, discrepancies in credits

18) Clyde Fletcher, *op. cit.*, p. 32.

19) R. David Whitaker , "Electronic Documentary Credits," *Business Lawyer*, August, 1991, p. 1781.

found by banks in the understanding and application of the UCP have led to 60-70% of letters of credit being rejected on first presentation. As documentary credits are one of the chosen methods of payment for financing world trade, these rejections have been slowing trade and have led to costly disputes and court cases.²⁰⁾

The expansion of electronic commerce and increase of using internet have raised the spectre of fundamental change to the banking system together with international trade usage and holds great potential to revolutionize payment systems. Although there are various international electronic payment systems such as electronic fund transfers and TradeCard, some of the existing electronic payment methods are unable to replace traditional methods of payment.

At its May 2000 meeting, the ICC Banking Commission approved the formation of two working groups. One working group is tasked to articulate "international standard banking practice (ISBP)" as the term is used in Article 13 of UCP500. This is timely, as the ICC in association with the Chartered Institute of Bankers (UK) and the International Financial Services Association (US) had approved in 1998 a program to certify document credit specialists, much as credit, treasury and securities professionals are designated. In furtherance of this educational effort, the ICC recently announced the launch of a European Commission project under the name DC Professional. This on-line service has two components, one a training program, DC-Mentor, and the other, DC-Focus. DC-Focus makes all of the ICC's documentary credit information, text of rules, official opinions, unpublished queries, legal cases, newsletter back issues among other resources, available in fully searchable texts.

A second working group was formed to develop what will amount to a electronic supplement to the UCP. This supplement will address how documents, which may be presented electronically, will be treated and

20) ICC, New ICC banking paper to make documentary credits easier, <http://www.iocwbo.org/home.news/archives/2002/> (last visited July 6, 2003)

examined under a UCP500 regime. This effort, supported in the states by the US Council on International Business and the International Financial Services Association comes on the heels of the Uniform Rules and Guidelines for Electronic Trade Settlement (URGRETS),²¹⁾

By using electronic documentary credit, the handling costs of credit will be eventually drop to levels that make good business sense. However, the environment between bank and network is not yet mature.

IV. Electronic Presentation of Documents

1. Issuance and format of electronic documentary credit

With the current evolution from paper-based credits to electronic credits, the ICC Banking Commission presented the new direction of paperless trade. The result is the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP). The eUCP supplements the UCP 500.

The eUCP will provide the necessary rules for the presentation of the electronic equivalents of paper documents under letters of credit. This availability of new eUCP came into force on April 1, 2002.

In order to enable banks to adhere rules proposed by the eUCP, SWIFT published a number of guidelines for Category 7 message usage in a standardised way.²²⁾ Effective immediately, the guidelines cover: (1) How

21) Vincent M. Maulella, *Documentary Credit Decisions, Developments and Directions*, <http://www.lconnect.com> (last visited November 30, 2003).

22) SWIFT Standards Category 7 Documentary Credits & Guarantees are as follows: MT 700 Issue of a Documentary Credit, MT 701 Issue of a Documentary Credit, MT 705 Pre-Advice of a Documentary Credit, MT 707 Amendment to a Documentary Credit, MT 710 Advice of a Third Bank's Documentary Credit, MT 711 Advice of a Third Bank's Documentary Credit, MT 720 Transfer of a Documentary Credit, MT 721 Transfer of a Documentary Credit, MT 730 Acknowledgement, MT 732 Advice of Discharge,, MT 734 Advice of Refusal, MT 740 Authorisation to Reimburse, MT 742

issuing banks should indicate adherence to eUCP, (2) Where electronic records may be presented, and (3) In what format this may be done.²³⁾

This document contains all the changes to category 7 standards that will be integrated in the November 2002 update of the SWIFT standards documentation. None of these changes impact SWIFT network validation.

SWIFT-issued credits are not automatically subject to eUCP. Therefore, if the credits are issued subject to eUCP, they must explicitly stipulate how they can be made subject to eUCP.²⁴⁾ In this case MTs affected MT 700 / 701, MT 710 / 711 and MT 720 / 721.

In connection with the query of ICC Banking commission on credits issued by SWIFT MT 700/701 not stating to be subject to UCP 500, the SWIFT user handbook does state that credits issued using the SWIFT transmission are automatically subject to the UCP in operation on the date of issuance. Whilst credits issued using the SWIFT system (without mention of UCP) would seem to be inconsistent with Article 1, it has long been accepted that these types of credits are subject to the UCP in operation on the day of issue and has become a recognised practice. In an ICC opinion given in publication No. 434 R.101 it is stated "The Commission considered that banks advising credits issued through SWIFT should ensure

Reimbursement Claim, MT 747 Amendment to an Authorisation to Reimburse, MT 750 Advice of Discrepancy, MT 752 Authorisation to Pay, Accept or Negotiate, MT 754 Advice of Payment/Acceptance/Negotiation, MT 756 Advice of Reimbursement or Payment, MT 760 Guarantee, MT 767 Guarantee Amendment, MT 768 Acknowledgement of a Guarantee Message, MT 769 Advice of Reduction or Release, MT 790 Advice of Charges, Interest and Other Adjustments, MT 791 Request for Payment of Charges, Interest and Other Expenses, MT 792 Request for Cancellation, MT 795 Queries, MT 796 Answers, MT 798 Proprietary Message, MT 799 Free Format Message; <http://www.swift.com/temp/40712/41967/Us7m.pdf> (last visited December 30, 2003), November 2003 Standards Release, Standards Release Guide 2003 - Final edition - February 2003.

23) eUCP Guidelines Summary, http://www.swift.com/temp/41921/8835/eUCP_guidelines_summary_020625_V6.pdf (last visited December 15, 2003).

24) The eUCP shall apply as a supplement to the UCP where the Credit indicates that is subject to eUCP; eUCP Article e1(c). This version is Version 1.0. A Credit must indicate the applicable version of the eUCP. If it does not do so, it is subject to the version in effect on the date the Credit is issued or, if made subject to eUCP by an amendment accepted by the Beneficiary, on the date of that amendment; eUCP Article e1(b).

in accordance with SWIFT rules that the appropriate UCP incorporation clause was included in the credit advice sent to the beneficiary." It can therefore be seen that absence in the original SWIFT credit advice as to being subject to UCP 500 does not infer that the credit is not subject to the rules.²⁵⁾

Format should not be confused with the form in which a paper document is laid out or printed or data is visually organized on a screen or print-out. Format means the method by which the data processor organizes and reads the data.²⁶⁾

The eUCP does not specify formats. This is left to the parties to decide. The format chosen must be one that the Beneficiary or other originating party can create and that at least the Nominated Bank, but probably also the Issuing Bank and the Applicant, can read. Logical candidates, especially if e-mail will be the means of presentation, are Windows versions of Microsoft Word 97 (*.doc), ASCII text (*.txt), and Adobe Acrobat 5.0 (*.pdf). Possibilities for scanned images include graphic image format (*.gif) and bitmaps (*.bmp), but this raises the question of whether or not the Applicant will permit payment against scanned images. This is just a starting point as any format the parties can agree on is allowed.²⁷⁾

However, an eUCP credit must specify the formats²⁸⁾ in which electronic records are to be presented. If the format of the electronic records require d²⁹⁾ is not so specified, they may be presented in any format.³⁰⁾ In this case, MTs affected MT 700 / 701, MT 710 / 711 and MT 720 / 721. For

25) TA. 97/2 ; ICC document 470/ 829, Meeting 7 April 1998.

26) James Byrne and Dan Taylor, ICC Guide to the eUCP, ICC Publication No.639, ICC Publishing S.A., 2002, p. 79.

27) ABN-AMRO, eUCP Introduction, 11.

28) Format means the data organisation in which the electronic record is expressed or to which it refers; eUCP Article e3(b)(iii); Format is used to describe the system language or protocol in which the electronic record is encoded; James Byrne and Dan Taylor, op. cit., p. 79.

29) FIELD 46a: DOCUMENTS REQUIRED.

30) An eUCP Credit must specify the formats in which electronic records are to be presented. If the format of the electronic record is not so specified, it may be presented in any format; eUCP, Article e4.

credits subject to eUCP, the format in which electronic records are to be presented must be specified in this field.

2. Electronic presentation of documents and records

Traditionally, banks have offered trade finance on the basis of physical presentation of paper documents. So a bank agrees to pay a seller located in one country on behalf of a buyer based in another country on physical presentation of paper-based documentary credits. The new eUCP brings the documentary credit into the electronic age and permits payment to be made on electronic presentation. All the indications are that electronic presentation is the way of the future and once adopted by the international banking community, will revolutionise international trade finance and signal the real beginning of international electronic trade.³¹⁾

Presentation is not defined by either UCP 500 or the eUCP. The terms such as presentation or presenting are used to describe the tender of individual documents with the expectation that other documents would be presented.³²⁾

Under the eUCP, an electronic record is a type of document as provided in the eUCP Article e3(a)(ii).³³⁾ The term 'electronic records' is defined, on a technology neutral basis to include: any data created, generated, sent, communicated, received or stored by electronic means that is capable of being authenticated as to the apparent identity of the sender and the apparent source of the data contained in it, and as to whether it has remained complete and unaltered; and is capable of being examined for compliance with the terms and conditions of the eUCP credit.³⁴⁾ Electronic

31) John Worthy and Charles Morrison, "Entering the Digital Age with the eUCP," *Trade and Forfaiting Review*, April 2002, p. 1.

32) James Byrne and Dan Taylor, *op. cit.*, p. 86.

33) Document shall include an electronic record.

34) eUCP Article e3(b)(i).

records therefore include email, other internet-based messages, EDI records, STP messages and any other electronic records to be developed in the future.

Furthermore, additional guidelines on how to use characters that are not supported in SWIFT FIN standards in electronic addresses are provided, eg, “@” and “_”. In this case, MTs affected MT 700 / 701, MT 710 / 711 and MT 720 / 721.³⁵⁾

Where applicable, for credits subject to eUCP: (1) Adherence to the eUCP should be indicated in this field. In this case, the credit is also subject, without express reference, to the UCP (2) If presentation of both electronic records and paper documents is allowed, the place for presentation of the electronic records (ie, the electronic address to which presentation must be made) as well as the place for presentation of the paper documents must be specified in this field. If presentation of only electronic records is allowed, the place for presentation of the electronic records (ie, the electronic address to which presentation must be made) must be specified in this field.³⁶⁾

If not already part of the original documentary credit, the advising bank, ie, the receiver of the message, must provide the beneficiary or another advising bank with the electronic address.³⁷⁾

An eUCP Credit allowing presentation of: i. electronic records must state a place for presentation of the electronic records, ii. both electronic records and paper documents³⁸⁾ must also state a place for presentation of the paper documents.³⁹⁾

Therefore, credit subject to eUCP must state a place⁴⁰⁾ for presentation of

35) eUCP Guidelines Summary, http://www.swift.com/temp/41921/8835/eUCP_guidelines_summary_020625_V6.pdf (last visited December 15, 2003).

36) Ibid.

37) Ibid.

38) If an eUCP Credit allows the Beneficiary to choose between presentation of paper documents or electronic records and it chooses to present only paper documents, the UCP alone shall apply to that presentation. If only paper documents are permitted under an eUCP Credit, the UCP alone shall apply; eUCP Article e2(c).

39) eUCP Article e5(a).

the electronic records. This information must not be specified in field 41a, but rather in field 47a. In this case, MTs affected MT 700, MT 710 and MT 720.

eUCP Article e5(a) reiterates the requirement of the UCP 500 sub-Article 42(a)(Expiry Date and Place for Presentation of Documents) that a credit must state the place for presentment. An under UCP 500, it is implied that a paper document would be presented to a physical address.⁴¹⁾

Electronic records may be presented separately and need not be presented at the same time.⁴²⁾ Issuer such as electronic bill of lading and applicant may prefer certain electronic records to be sent directly by the third party that created them.

In the case of presentation of one or more electronic records, the beneficiary must provide a 'notice of completeness' to the bank to which presentation is made signifying that presentation is complete. This is particularly important as many electronic records may be presented direct by third parties.

Each presentation of an electronic record and the presentation of paper documents under an eUCP credit must identify the eUCP credit which it is presented. A presentation not so identified may be treated as not received.⁴³⁾

If the Bank to which presentation is to be made is open but its system is unable to receive a transmitted electronic record on the stipulated expiry date and/or the last day of the period of time after the date of shipment for presentation, as the case may be, the Bank will be deemed to be closed and the date for presentation and/or the expiry date shall be extended to the first following banking day on which such Bank is able to receive an electronic record. If the only electronic record remaining to be presented is the notice of completeness, it may be given by telecommunications or by

40) "Place for presentation" of electronic records means an electronic address; eUCP Article e3(a)(iii).

41) James Byrne and Dan Taylor, *op. cit.*, p. 87.

42) eUCP Article e5(b).

43) eUCP Article e5(d).

paper document and will be deemed timely, provided that it is sent before the bank is able to receive an electronic record.⁴⁴⁾

If the place of the presentation is closed to a force majeure event indicated in UCP 500 Article 17(Force Majeure), however, there will be no extension. Under the UCP 500, this risk is borne by the beneficiary. It should be noted that, to a limited extent thought to be justified by the expectation of the users of eUCP credits, a bank undertaking to receive electronic presentations will assume the risk of its failure or negligence in maintaining facilities able to receive those presentations.⁴⁵⁾ An electronic record that cannot be authenticated is deemed not to have been presented.⁴⁶⁾ This will result in a discrepancy that can possibly be corrected by the Beneficiary or waived by the Applicant. The eUCP requires a level of authentication of electronic records that differs from that required for paper documents.

V. Conclusion

The cost of maintaining trade documentation is a significant component of the final market price of the goods. It is estimated that direct and indirect costs of trade documentation accumulate to 5% to 10% of the value of the goods, depending on the nature of the goods and the specific supply chain scenario. In order to reduce costs and to permit efficient international trade, the standards and practice of the United Nations electronic Trade Documents have been developed in the United Nations Economic Commission for Europe.

For the infrastructure of electronic trade, Bolero.net, created by the globe's banking and logistics communities and arguably the most supported

44) eUCP Article e5(e).

45) James Byrne and Dan Taylor, *op. cit.*, p. 95.

46) eUCP Article e5(f).

experimentation with an electronic bills of lading system, promises to solve the problems of the negotiability function of electronic bills of lading and electronic trade documents.

Payment systems, especially documentary credits, still slow modern transport systems to the leisurely pace of nineteenth century paper-based banking practices. There is hardly any competition between banks in this part of their business.

However, there is not as yet any means of international trade payment that serves the interests currently satisfied by documentary credits, despite the emergence of new international electronic payment devices. At the same time there is increasing pressure to move from existing paper based documentary credit to electronic documentary credit.

SWIFTNet FIN, one of the payment solutions of SWIFT went ahead on time as a result of the forward planning of SWIFT, its customers and partners. SWIFTNet interfaces, there are third party connections such as applicant, beneficiary and trusted third party. However, the SWIFT network has not functioned between applicant and beneficiary.

With the current evolution from paper-based credits to electronic credits, the ICC Banking Commission presented the new direction of paperless trade. The result is the Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP). The eUCP is a supplement to the UCP that, when used in conjunction with the UCP, will provide the necessary rules for the presentation of the electronic equivalents of paper documents under letters of credit. In order to enable banks to adhere rules proposed by the eUCP, SWIFT published a number of guidelines for Category 7 message usage in a standardised way.

The new eUCP brings the documentary credit into the electronic age and permits payment to be made on electronic presentation. All the indications are that electronic presentation is the way of the future and once adopted by the international banking community, will revolutionise international trade finance and signal the real beginning of international electronic trade.

Some problems of electronic presentation under the eUCP, exist such as format, presentation of electronic records, examination and beneficiary's notice for completeness.

In anticipation of the electronic credit transactions, it is necessary for applicant and beneficiary to make a contract for electronic documentary credit providing more detailed guide of the banking operations and eUCP rules.

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ABSTRACT

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In this paper, I examined the trends of standardization and electronization of trade documents and SWIFT network. Also, I reviewed on emerging electronic documentary credit for electronic payment and electronic presentation of documents.

New international trade customs and practices are being established and changed as a result of the growth of the Internet and other on-line networks. At the same time there is increasing pressure to move from existing paper-based documentary credit to electronic documentary credit.

Several projects devoted to development of an electronic letter of credit infrastructure have recently been proposed such as Bolero, SWIFTNet, UNeDocs and eUCP, etc. Yet, little can be done until the presentation process is electrified between traders and banks.

Also, interbank communication of letters of credit has long been electronic, mainly through the SWIFT. However, it is not functioned between applicant and beneficiary, although the solution of SWIFTNet has recently been developed.

The Banking Commission of International Chamber of Commerce established a working group consisting of experts in the related fields to prepare the appropriate rules as a Supplement to UCP 500 for Electronic Presentation: eUCP. The eUCP will provide the necessary rules for the presentation of the electronic equivalents of paper documents under letters of credit.

Some problems of electronic presentation under the eUCP, exist such as format, presentation of electronic records and the way of beneficiary's notice for completeness under the Article e5 if more than one record is to be presented electronically by third parties. Therefore, it is encouraged to

provide more detailed guide for eUCP Article e5.

Keywords : Electronic Documentary Credit, Electronic Presentation, eUCP