



# Fundamentals of International Business Transactions

## Finance and Payments of Exports

# Selected Instruments of Payment and Export Financing

- **Cross Border Bank Transfer**
- **(Documentary) Letter of Credit (LoC)**
- **Bank Guarantee**
- **Exportfactoring**

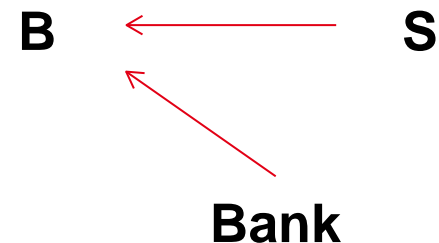
# Selected Instruments of Payment and Export Financing

- Cross Border Bank Transfer
- **Letter of Credit (LoC)**  
= payment guarantee
- Bank Guarantee
- Exportfactoring



# Selected Instruments of Payment and Export Financing

- Cross Border Bank Transfer
- Letter of Credit (LoC)  
= payment guarantee
- **Bank Guarantee**  
= performance guarantee  
in case of non-performance  
of the seller
- Exportfactoring

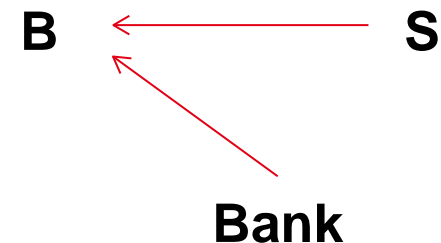


# Selected Instruments of Payment and Export Financing

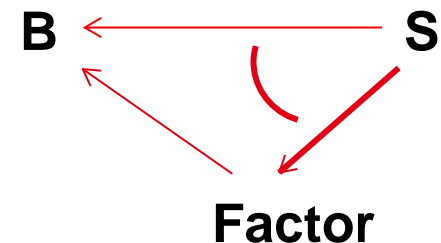
- Cross Border Bank Transfer
- Letter of Credit (LoC)



- Payment guarantee



- **Exportfactoring / Forfaiting**  
= purchase of seller's payment claim



# Cross Border Bank Transfer - Legal Basis

## ➤ SWIFT

= a company, not a Convention

= Society for Worldwide Interbank Financial Telecommunication (Headquarter in Belgium, Offices in Netherlands, Switzerland, USA)

- Cooperation agreements with more than 10.000 banks of 212 countries, affecting 90% of financial cross border transactions
- Swift Agreement (2010) between USA and EU
  - restricting the transfer of bankdata to US-officials concerning cross-border transfers from EU
- since 2007 EU financial transactions data are saved on the server in the Netherlands and a copy in Switzerland (not in the USA anymore)

# **Selected Instruments of Payment and Export Financing**

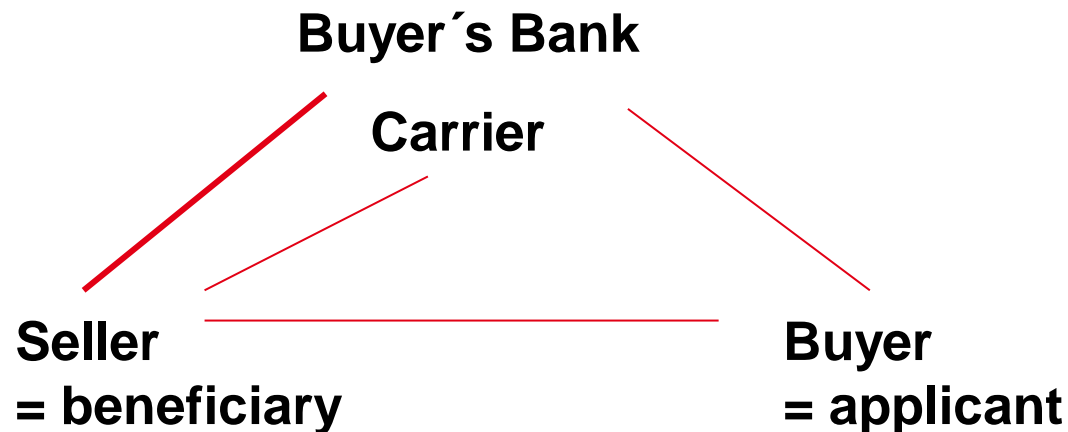
## **- Legal Basis (2) -**

- **Documentary Letter of Credit (LoC)**
  - **ICC UCP no. 500 (1993) / no. 600 (2007) – Uniform Customs and Practices for Documentary Credits**
  - **non-governmental Rules > Int. Chamber of Commerce**
- **Bank Guarantee**
  - **United Nations Convention on Independent Guarantees and Stand-by-Letters of Credit (1995)**
  - **ICC Uniform Rules for Demand Guarantees – URDG, version no. 458 (1991) and no. 758 (2010)**  
**- barely accepted**
- **Exportfactoring**
  - **UNIDROIT Factoring Convention of 1988**
  - **Membership of very few countries**

# - Documentary Letter of Credit -

## I. Definition

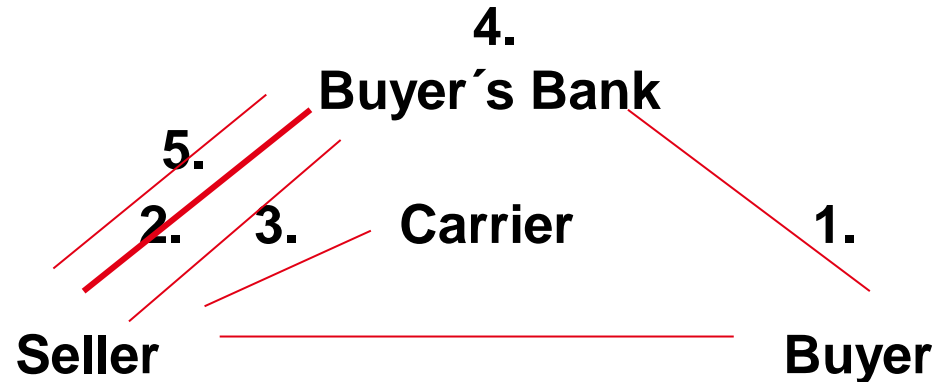
LoC is an arrangement whereby a bank acting at the request of a customer („applicant“) is to make a payment to a third party („beneficiary“) against the presentation of stipulated documents (e.g. B/L and other transport documents)





## - Documentary Letter of Credit (2)

### II. The Course of Business



- 1. Request of the bank's customer (buyer) for the LoC**
- 2. Acceptance and Issuance of the LoC**
- 3. Presentation of the carrier's documents (B/L)**
- 4. Examination of the documents**
- 5. Payment**

## - Documentary Letter of Credit (3)

### **III. Principles of the Documents' Examination**

➤ **Art. 14 UCP 600:**

**“A nominated bank acting on its nomination ... and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.”**

➤ **strict or substantial compliance?**

## - Documentary Letter of Credit (4)

### III. Principles of the Bank's Obligation to Pay

➤ Art. 3 UCP 600:

*„pay first, sue later“*

1. LoC is by its nature a separate transactions from the sales contracts
2. Problems arising under the sales agreement do not influence the obligation of bank to pay an issued LoC (“pay first, sue later”)
3. Under the UCP the buyer has to sue the seller for any problems under the sales agreement
4. Under the UCP the bank is liable only for a breach of its duty of examination

# - Bank Guarantee -

## 1. Common types

- a) Performance Bond
- b) Warranty Bond
- c) Bid Bond (tender bond)
- d) Advance Payment Bond

## 2. Function

- security for the fulfillment of the debtor's obligation:
  - a) payable in case of non-performance of the seller
  - b) covers costs of warranty obligations of the seller under the sale agreement
  - c) to perform his tender
  - d) to pay back his advance payment

## 3. Legal Nature

- Separate and independent obligation of the bank  
= independent from the purchase agreement
- Payable on demand of the beneficiary (drawee)

# - Bank Guarantee (2)-

## 4. Content of a Demand Guarantee

- a) **Extent of the Guarantee (maximum amount)**
- b) **Beneficiary**
- c) **Maturity (formal guarantee case)**
- d) **Conditions of the Demand (written demand, DAB-Decision)**
- e) **Expiration date**

## - Bank Guarantee (2)-

### ➤ formal guarantee case and conditions of the demand

#### - strict documentary approach:

„At the request of the Contractor, we .... hereby irrevocably undertake to pay you (as a primary obligor) any sum or sums not exceeding in the aggregate an amount of ... (Maximum Amount) upon our receipt of your first demand in writing and your written statement that the Contractor is in breach of its obligations under the Agreement.

Your written demand for payment of any sum under this performance bond must further be accompanied by the following documents: ...“

- Protocol of the performance related negotiations between the parties
- Dispute Adjudication Board-Decision