

JAPAN INTERNATIONAL
COOPERATION AGENCY

Brochure on
Commitment Procedure for Japanese ODA Loans

November 2019

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Section 1. Introduction

- 1.01. Unless otherwise defined in this brochure, the capitalized words not defined herein have the same meanings as defined in the relevant Loan Agreement and/or the General Terms and Conditions to which this brochure applies.
- 1.02. If any provision of this brochure is inconsistent with any provision of the Loan Agreement, of which this brochure constitutes an integral part, such provision of the Loan Agreement shall govern.
- 1.03. Headings of Sections herein are inserted for convenient reference only, are not part of this brochure and do not affect the construction of, or be taken into consideration in interpreting this brochure.

Section 2. Letter of Credit

- 2.01. In foreign trade transactions, payment for import of goods and services are often arranged under a commercial letter of credit (hereinafter referred to as "L/C"), which is issued by a commercial bank, on behalf of a purchaser, to guarantee the payment by credit. A commercial bank operating in a supplier's country i) makes payment to the supplier against documents specified in the L/C and then, reimburses itself from funds made available by the purchaser through its bank or ii) collects the funds from the purchaser through its bank by sending documents specified in the L/C and then, makes payment to the supplier.

Section 3. Procedure

- 3.01. This brochure is to be followed in cases where payment for L/C is applied from the proceeds of the Loan. When the Borrower, its designated authority or any other purchaser in the territories of the Borrower chooses to issue an irrevocable L/C for a payment to the suppliers, contractors or consultants (hereinafter collectively referred to as the “**Supplier(s)**”), which is eligible for financing under the Loan, such party who becomes a purchaser (hereinafter collectively referred to as the “**Applicant**”) may instruct a designated foreign exchange bank issuing the L/C (hereinafter referred to as the “**Issuing Bank**”), to provide in the L/C that the bank of the Supplier(s) (hereinafter referred to as the “**Supplier’s Bank**”) will reimburse itself from a bank in Tokyo (hereinafter referred to as the “**Paying Bank**”), as stipulated in the Loan Agreement, in order to use the proceeds of the Loan for such payment. The Issuing Bank may be the same bank as the Paying Bank.
- 3.02. The Paying Bank shall obtain the funds for reimbursement from JICA under the assurance by JICA. Such assurance, whenever provided, takes the form of a letter of commitment from JICA to the Paying Bank (such assurance hereinafter being referred to as the “**L/COM**”) whereby JICA undertakes to disburse, based on the conditions set forth in the L/C and the relevant provisions of the Loan Agreement, the amount to be paid by the Paying Bank under and in accordance with the specified L/C.

Section 4. Procedure for issuing the L/C and the L/COM

- 4.01. The Applicant will request the Issuing Bank to issue an L/C. The Borrower shall confirm and warrant, by submitting or having any Applicant submit the Application for Irrevocable Letter of Credit to the Paying Bank, that:
- (a) the amount of the Application for Irrevocable Letter of Credit represents expenditures to be made for the purpose specified in the Loan Agreement;

(b) the Borrower has not previously applied for disbursement under the Loan Agreement for the purpose of meeting such expenditures and has not obtained nor will obtain funds for such purpose out of the proceeds of any other loan, credit or grant available to the Borrower;

(c) the concerned goods and services have been procured in accordance with the applicable procurement procedures agreed with JICA pursuant to the Loan Agreement and the cost and terms of purchase thereof are reasonable;

(d) the said goods and services are to be supplied by the Supplier(s) and have been or are to be produced in the country eligible for JICA's loan;

(e) the amount of the Application for Irrevocable Letter of Credit does not include any amount payable to non-eligible items for JICA's finance described in the schedule 2 of the Loan Agreement, namely, general administration expenses, taxes and duties, purchase of land and other real property, compensation or other indirect items; and

(f) as of the date of the Application for Irrevocable Letter of Credit, there is no existing default under the Loan Agreement, nor, to the best of the Borrower's knowledge and belief, under the Guarantee, if any.

4.02. The Issuing Bank shall issue an L/C, on behalf of and under authorization of the Borrower, in favour of the Supplier substantially as per Form LC attached hereto, and shall simultaneously send the L/C to the Paying Bank. The Paying Bank shall send a copy of the L/C to JICA in order to obtain the L/COM from JICA.

4.03. When JICA finds such L/C in order and in conformity with the terms of the relevant contract between the Borrower and the Supplier, and the provisions of the Loan Agreement between JICA and the Borrower, JICA shall issue an L/COM to the Paying Bank as per Form LCOM attached hereto.

4.04. Upon acknowledgement of receipt of the L/COM by the Paying

Bank, the L/C shall become effective and the Paying Bank shall send the L/C to the Supplier through the Supplier's Bank. The Paying Bank shall simultaneously send a copy of the L/COM to the Issuing Bank when the Issuing Bank is different from the Paying Bank, or send a copy of the L/C and L/COM directly to the Applicant when the Issuing Bank is identical to the Paying Bank.

Section 5. Procedure for Disbursement

- 5.01. The Supplier's Bank shall i) make payment to the Supplier pursuant to the said L/C and then, request the Paying Bank to reimburse the funds by sending documents specified in the L/C, or ii) collect the funds from the Paying Bank by sending documents specified in the L/C and then, make payment to the Supplier pursuant to the said L/C.
- 5.02. Upon receipt of such documents, once the Paying Bank finds that the submitted documents are in order, the Paying Bank shall present to JICA the Request for Disbursement in accordance with the attached Form RFD(C).
- 5.03. JICA shall, in principle, within fifteen (15) business days from the date of receipt of the Request for Disbursement, make disbursement in Japanese Yen of the requested amount to the Paying Bank under the provisions of L/COM. Accordingly, the Paying Bank shall make payment to the Supplier's Bank.
- 5.04. Immediately after disbursement, the Paying Bank shall send the submitted documents to the Applicant through the Issuing Bank.

Section 6. Contract in a Currency Other than Japanese Yen

- 6.01. The L/COM amount shall be in Japanese Yen equivalent to the amount in the relevant currency of the L/C, converted at the

telegraphic transfer selling (TTS) rate quoted by the Paying Bank two (2) business days before the date on which the L/COM is issued.

- 6.02. The amount stated in the Request for Disbursement shall be the equivalent in Japanese Yen, converted at the TTS rate of the Paying Bank two (2) business days before the date on which the disbursement is made.
- 6.03. When the amount of the Request for Disbursement for the L/C is not fully covered by the amount of the L/COM owing to exchange rate fluctuation, the L/COM may be amended by JICA to fully cover the amount of the Request for Disbursement for the L/C within the limit of the Loan Category. In the event that the amount of the Request for Disbursement for the L/C cannot be fully covered by this method, the Borrower shall bear the amount not covered by the L/COM.

Section 7. Others

- 7.01. The Borrower shall cause the Issuing Bank, the Applicant or the Applicant's bank, whichever applicable for this brochure, to take necessary action or enter into necessary arrangement and/or agreement with the Paying Bank, immediately after the signing of the Loan Agreement.
- 7.02. JICA shall not be liable for any banking charges or fees accrued in connection with the aforementioned transactions.
- 7.03. The Borrower shall bear all risks associated with foreign exchange fluctuations arising from disbursement and JICA shall not be liable therefor.
- 7.04. Claims or disputes in connection with the aforementioned L/C shall be settled among the parties concerned and such claims or

disputes shall not exempt the Borrower from any obligation incurred under the Loan Agreement concerned.

(Example LC)

Irrevocable Letter of Credit (Example)

L/C No.:
Date of Issue:
Date of Expiry:
Amount: JPY...(Say Japanese Yen.....)

This Letter of Credit has been issued pursuant to Loan Agreement No. [XXX] dated [Month Day, Year] between [Name of the Borrower] and the JAPAN INTERNATIONAL COOPERATION AGENCY, Tokyo, Japan (hereinafter referred to as the "Loan Agreement").

To. (Name of Address of the Advising Bank)

Dear Sirs,

We request you to advise [the beneficiary] that we have opened our irrevocable credit No. [XXX] in their favour for account of [the applicant] available by the beneficiary's drafts at sight for full invoice value drawn on [Name of the Paying Bank], in accordance the following conditions:

- a) Applicable Rules: UCP Latest Version
- b) Beneficiary: (Name) _____
(Address) _____
- c) Accountee: (Name) _____
(Address) _____
- d) Amount: (Currency and figures) _____
- e) Credit available with _____ ...By: (Any Bank or Nominated Bank (BIC)) By negotiation
- f) Draft at: sight
- g) Drawee: the Paying Bank
- h) Date and Place of Expiry: _____
- i) Latest date of Shipment*: _____
- j) Partial shipments*: Permitted / Prohibited
- k) Transshipment*: Permitted / Prohibited
- l) Place of Taking in Charge/Dispatch from.../Place of Receipt*: _____

- m) Port of Loading/Airport of Departure*: _____
- n) Port of Discharge/Airport of destination*: _____
- o) Place of Final Destination/For Transportation to.../Place of Delivery*: _____
- p) Trade Terms*: _____
- q) Description of Goods and/or Services: _____
- r) Contract No.: _____
- s) Contract date: _____
- t) Payment Terms***: _____
- u) Additional Conditions(If any): _____
- v) Period for Presentation*: _____
- w) Confirmation Instructions***: Without
- x) Advising bank****: (BIC)
- y) Advise the L/C by****: SWIFT / Mail
- z) Charges: (Bearer of charges)

* Please fill in only when there is shipment.

** Please refer to the following page for sample form.

*** Confirmation Instruction is always indicated as "Without" since we shall obtain the funds for reimbursement from JICA under the assurance by JICA(I.E: a Letter of Commitment) and upon receipt of a Letter of Commitment, JICA undertakes to disburse, based on the conditions set forth in the L/C and the relevant provisions of the Loan Agreement, the amount to be paid by ourselves under and in accordance with the specified L/C.

**** Please fill in only when beneficiary is outside Japan.

SAMPLE FORM

t) Sample form of Payment Terms/Goods:

I. On Shipment: (CURRENCY "hereinafter referred to as "CCY")AMOUNT
Payable against presentation of:

1. Beneficiary's Signed Invoice (In triplicate)
2. Clean on Board ocean bills of lading (In Full Set)*
*Please always indicate the number of issued.
3. Packing List (In 1 original)

4. Insurance Policy / Insurance Certificate(In duplicate)*

*Please always indicate the number of issued in case of insurance policy

II. On Acceptance: (CCY) AMOUNT

Payable against presentation of:

1. Beneficiary's Signed Invoice(In 1 original)
2. Accountee's Acceptance certificate(In 1 original)

t) Sample form of Payment Terms/Services

I. Advance Payment: (CCY) AMOUNT

Payable against presentation of:

1. Beneficiary's signed invoice(In triplicate)
2. Photocopy of bank guarantee (In 1 fold)

II. Interim Payment: (CCY) AMOUNT

Payable against presentation of:

1. Beneficiary's signed invoice(In 1 original)
2. Accountee's statement of performance (In duplicate)
3. Photocopy of Engineer's interim payment certificate approved by the Accountee (In 3 folds)

III. Final Payment: (CCY)AMOUNT

Payable against presentation of:

1. Beneficiary's signed invoice(In 1 original)
2. Accountee's final acceptance certificate(In triplicate)

All drafts and documents under this credit must be marked "Drawn under

[Name of the Issuing Bank] irrevocable credit No.[XXX] dated [Month Day, Year], and Import Reference No(s).[XXX] (if any)".

Draft must be endorsed and marked

- Letter of credit no. and date
- Drawn under [Name of the Issuing Bank]

Letter of credit number must be marked on all documents except for bank guarantee.

Draft and all documents must be presented only through a nominated bank.

If presented other than a nominated bank,

- We will not examine draft and all documents.
- We will return draft and all documents to the presenter without any responsibility on our part.

This credit is not transferable.

All documents must be issued in English language.

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We hereby undertake that all drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation and delivery of documents to the [Name of the Paying Bank].

This credit is subject to "Uniform Customs and Practice for Documentary Credits Latest Version".

Special Instruction to the negotiating bank:

1. This credit shall become effective when [Name of the Paying Bank] acknowledges receipt of the Letter of Commitment from the JAPAN INTERNATIONAL COOPERATION AGENCY under the aforementioned Loan Agreement.
After obtaining the reimbursement from the JAPAN INTERNATIONAL COOPERATION AGENCY in accordance with the provisions of the Letter of Commitment, [Name of the Paying Bank] undertakes to remit the amount of the drafts in accordance with instructions issued by you.
2. You must forward the drafts and one complete set of documents to [Name of the Paying Bank].

Yours faithfully,

[Authorized Signature]

[Name of the Issuing Bank]

(Form SOP)

Statement of Performance

Date:

Ref. No.:

To: [Name and address of the Supplier]

L/C No.:

Date of Issue:

Date of Expiry:

Amount: JPY...(Say Japanese Yen.....)

I, the undersigned, representing [Name of the Borrower], hereby issue a Statement of Performance to entitle to receive the sum of ¥_____ (Yen_____ Only) from the JAPAN INTERNATIONAL COOPERATION AGENCY in accordance with the Payment Terms stipulated in the Contract No._____, dated _____, between_____ and _____.

[Authorized Signature]

[Name of the Borrower]

(Form LCOM)

Date:

Commitment No.:

[Name of Issuing Bank]:

LETTER OF COMMITMENT

Reference: Letter of Credit No. _____

for _____

in favour of _____

We hereby irrevocably undertake to reimburse you for a sum or sums not exceeding ¥_____ against the Request for Disbursement, accompanied by a copy of the drafts drawn by the beneficiary, in principle, within fifteen (15) business days of our receipt of the Request.

This Letter of Commitment shall expire on [Month Day, Year]

It is further understood that in reimbursing you pursuant to this Letter of Commitment, we shall in no way be liable or responsible for the acts or omissions of the issuing bank, the negotiating bank, the beneficiary and/or any other parties concerned with the captioned Letter of Credit in connection with the issuance, negotiation, payments thereof or any other matters connected therewith.

Very truly yours,

[Authorized Signature]

Japan International Cooperation Agency

(Form RFD(C))

Request for Disbursement

Date:

Ref. No.:

To: JAPAN INTERNATIONAL COOPERATION AGENCY

Attn:

Re: Your Loan Agreement No. _____ Country: _____
Letter of Commitment No. _____
Our Letter of Credit No. _____

Gentlemen:

We have received the documents concerning the supply of [quantity and description of goods and services according to the L/C] and found them in order and in conformity with the terms of the said Letter of Credit.

Pursuant to the above Letter of Commitment we hereby request you to disburse us from the above Loan with the following particulars:

a) Amount of Disbursement: ¥ _____
(Say Yen _____)

b) Amount of the Draft:
(payable under the said Letter of Credit):

c) Rate of Exchange:

d) Date of Disbursement:

(b and c applicable only when the Draft is stated in the currency other than Japanese Yen)

Very truly yours,

[Authorized Signature]

[Name of the Paying Bank]

Enclosed: