

ICC Banking Commission

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Subject: Procedure for payment under documentary credits subject to UCP 600

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ISSUE

Both UCP 400 and 500 provided for payment, by the issuing bank, to be made to or to the order of a third party (the “Beneficiary”), i.e., it was expected that the beneficiary was to receive payment.

This was changed in UCP 600 by incorporating a definition of “Credit”, i.e., meaning any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.

No mention is now made of an actual payee, as was stated in UCP 400 and 500 (i.e., “Beneficiary”).

INTRODUCTION

The ultimate purpose of a documentary credit is to honour, i.e., make payment. However, a payment undertaking is conditional upon the beneficiary presenting a complying presentation or, where a non-complying presentation has been made, an applicant providing a waiver of discrepancies and the issuing bank agreeing to accept that waiver and make payment. At first glance, it seems logical that the beneficiary, as the party receiving the benefits of a documentary credit, should be the one to make a complying presentation. However, this understanding does not accurately reflect actual practice in documentary credits, and this is one of the reasons why UCP 600 no longer suggests that payment is due directly to the beneficiary.

In reality, the payment process under documentary credits can be more complex. Often, the payment is made to a nominated bank that has honoured or negotiated a complying presentation or to a presenting bank, rather than directly to the beneficiary. This approach allows for greater flexibility in the financial arrangements and better reflects the intermediary roles that banks often play in these transactions. UCP 600 recognises this complexity by using more inclusive language about who may receive payment, acknowledging that the beneficiary is not always the direct recipient of funds in a documentary credit transaction.

ANALYSIS

UCP 600 moves away from explicitly stating that payment is due to the beneficiary. Instead, it focuses on the issuing bank's undertaking to honour a complying presentation, reflecting the more complex reality of how payments are often made through intermediary banks. These changes reflect a shift towards a more document-centric, bank-intermediated payment process, rather than a direct payment to the beneficiary. This approach provides more flexibility and security in international trade transactions while maintaining the fundamental principle of payment against a complying presentation.

The entity which typically provides the payment instructions for settlement in a documentary credit transaction subject to UCP 600 depends on the specific situation:

- The issuing bank has a primary undertaking to reimburse the nominated bank when it has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank, even if the nominated bank prepaid or purchased before maturity; as a nominated bank, this also applies to the confirming bank. When presenting documents, the nominated or the confirming bank should provide clear payment instructions to the issuing bank.
- If there is no confirming or nominated bank involved (or where they have not honoured or negotiated), the issuing bank's undertaking is directly to the beneficiary or to a presenter that is acting on their behalf, upon receipt of a complying presentation. When presenting documents, the beneficiary or presenter should provide payment instructions, taking into account UCP 600 article 39 where necessary.

- It is good international standard banking practice for a confirming bank or any other nominated bank to indicate in its covering schedule whether it has honoured or negotiated or will do so once the issuing bank provides an acceptance of the documents.

Any assignment of proceeds operates as an instruction for the disposition of funds after the normal UCP 600 processes have determined that payment is due. It does not alter the payment priority under the documentary credit itself, but rather directs where the proceeds should go once they are payable to the beneficiary.

Similarly, a transferable and transferred documentary credit does not directly alter the payment priority (confirming bank, nominated bank, beneficiary). Instead, it creates a new payment structure within the existing documentary credit rather than changing the fundamental payment priority. The transferring bank becomes an intermediary between the original documentary credit structure and the second beneficiary, while the original payment undertakings remain in place.

SUMMARY

The issuing bank's undertaking to pay is triggered by a complying presentation or, where a non-complying presentation has been made, an applicant providing a waiver of discrepancies and the issuing bank agreeing to accept that waiver and honour, regardless of which party presents the documents.

This Briefing Paper does not address legal concepts such as rights of set-off, which may supersede the sequence of payment priority. Furthermore, legal issues such as fraud or court injunctions could potentially affect this sequence.

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