

## ICC Banking Commission

### Technical Advisory Briefing No. 5

#### Subject: Modifications and Exclusions under Documentary Credits subject to UCP 600

7 December 2022

### ISSUE

It is a fact that a number of documentary credits are issued with a modification or exclusion of one or more of the UCP 600 articles and/or sub-articles. Whilst this is permitted by the content of article 1, the manner in which these modifications and exclusions are indicated in a documentary credit often causes unexpected and, in many cases, unnecessary problems.

### INTRODUCTION

The prime aims of the UCP 600 are to:

- provide more transparency and clarity for processing whilst removing ambiguity;
- provide a uniform rules-based approach to documentary credits;
- reduce misunderstanding; and
- detail the examination requirements for a presentation.

A documentary credit containing any modification to, or exclusion of, a UCP 600 rule should continue to uphold these aims.

The ICC Banking Commission has regularly responded to questions that relate to the impact of a rule modification and/or exclusion. Two notable ICC Opinions are R634 (TA638rev) which responded to questions relating to the exclusions of sub-articles 14 (f), 14 (k), 14 (l), 16 (c) (iii) (d), 28 (h) and (i), and R716 (TA704rev) which responded to a question relating to a clause stating: “Should any terms or conditions stipulated in this credit be contradictory to or inconsistent with that of the UCP 600, the relative UCP 600 provisions are deemed expressly modified and/or excluded.”

In addition, the International Standard Banking Practice for the Examination of Documents under UCP 600 (ISBP 745) has provided interpretations of terms or conditions often inserted in a documentary credit with the intention of either modifying or excluding an article or sub-article of the UCP 600. These are included in Paragraph A19 under the heading ‘Expressions not defined in UCP 600’ and include:

- Freight forwarder transport documents allowed (sub-article 14 (l))
- Stale documents acceptable (sub-article 14 (c))
- Third party documents acceptable or not acceptable (sub-article 14 (f))
- Shipping company (transport articles 19-25)
- Documents accepted as presented (impact on article 6, article 7, article 8, article 14)

### ANALYSIS

Article 1 states that the rules contained in the UCP “are binding on all parties thereto unless expressly modified or excluded by the credit”.

Furthermore, ISBP 745 Preliminary Considerations (ii) provides that the practices described in the ISBP 745 do not expressly modify or exclude an applicable article in the UCP 600. However, a term or condition of a documentary credit may impact the application of one or more paragraphs of the ISBP 745.

In a wider context, it is critical for banks, applicants and beneficiaries to understand what kind of modification or exclusion is being suggested and, even more importantly, why it needs to be made. The latter raises the following considerations:

- Is it the case that the rule being contemplated for modification or exclusion is completely unworkable for the structure of the documentary credit that is under discussion? Or, is it simply a misunderstanding or lack of knowledge as to how a rule is implemented in practice?
- Think of the impact, if any, on the documentary credit as a whole (and not just the term or condition that will be impacted by a modification or exclusion), paying particular attention to how it may affect the subsequent issuance of one or more documents and/or the manner in which the presentation will be made. UCP rules often cannot be read in isolation and changing one rule may affect another rule(s) in an unintended way.
- Where an exclusion is being contemplated, is there a void that will need to be filled by a new term or condition? If yes, what wording will need to be inserted into the documentary credit to provide clarity and a clear understanding to an advising bank, confirming bank if any, and/or a nominated bank, and the beneficiary?
- As English is not the natural language of many countries, and when in the role of an issuing bank, are you satisfied that you can adequately describe any term or condition that will effectively create a new rule, bearing in mind that any ambiguity will be at the risk of the applicant (ISBP 745 Preliminary Consideration (v))?

Essentially, the message, as also conveyed in Opinion R716 (TA704rev), is that banks should keep any exclusions (if at all needed) to a minimum recognising that it is often not as simple as merely making a statement in the documentary credit that article X or sub-article Y is deleted or is not to apply. Very often there is a need for a new term or condition to be expressly inserted into the documentary credit to cover the void that the exclusion leaves.

Some modifications do not create a different perspective to a rule, but simply a revised outcome. For example, in a SWIFT MT700 message, field 48 (Presentation Period in Days) indicates the number '15'. By completing field 48 in this manner, the default period of 21 calendar days after the date of shipment, as mentioned in sub-article 14 (c), has been modified to 15 calendar days.

## SUMMARY

Three approaches are recommended in order to reduce problems in these areas:

- Better understanding of documentary credit workflows and the principles of UCP 600.
- Wider awareness of ISBP 745 by all persons, not just banks. For example, if beneficiaries and applicants held a copy of the ISBP 745 and could see how the UCP 600 should be interpreted and the practices that prevail today, it is likely that the number of requests for modification or exclusion will reduce.



- Distribution of information, i.e., ensuring that ICC Opinions, DOCDEX Decisions and ICC Guidance Papers reach all persons involved in the handling of documentary credits.

Overall, the key is education and it should not be forgotten that a documentary credit is in place to facilitate trade and not to hinder it.

Banks should have in place a recommended approach on how to deal with modifications or exclusions of UCP 600 rules in documentary credits. Otherwise, they will need to accept, along with the applicant, the risk that will prevail in the event of ambiguity.

**This briefing is educational only**

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