

ICC Banking Commission

Technical Advisory Briefing No. 3 Subject: Reducing discrepancy rates under Documentary Credits

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ISSUE

It is estimated that the global percentage of documents refused on first presentation under documentary credits ranges between 65-80%.

Whilst this does not necessarily mean that a beneficiary will not receive settlement at all, it is a matter of significant concern as it results, at the very least, in a delay in settlement or financing and a resultant increase in bank fees. In addition, it may delay delivery of documents to the applicant. Increased bank fees arise due to the extra processing needed to contact the presenter and/or applicant, to advise and maybe discuss the discrepancies, and to re-process the presentation in accordance with the received instructions. Discrepancies are a burden for all parties.

Refusals can be categorised as follows:

- (a) those that relate to the form and content of documents issued by the beneficiary as well as compliance with the timing requirements in the documentary credit, e.g., the latest shipment date, latest date for presentation and the expiry date;
- (b) those that relate to the form and content of documents issued by an entity other than the beneficiary;
- (c) those that are not valid; owing to a number of factors including (but not limited to) the lack of UCP and/or ISBP and/or ICC Opinion knowledge of the document examiner and confusing, ambiguous or unclear credit terms and conditions.

INTRODUCTION

In the most recent ICC Banking Commission Trade Survey that addressed this issue (Rethinking Trade & Finance – 2017), it was reported that the market had seen a reduction, in percentage terms, in the refusal rate for first presentation of documents under documentary credits.

On its face this appeared to be positive news but, in reality, this represented a fairly insignificant change in that whilst 26.7% of respondents had experienced a decrease, 12.3% had seen an increase, with 58.9% experiencing no change whatsoever.

The more common discrepancies are due to timing issues (expiry, shipment and presentation period), with a significant number deriving from poorly prepared documents or presentations, including (but not limited to): conflicting data between documents; missing documents; unauthenticated alterations; missing or incorrect endorsements; goods description not according to the documentary credit; port or place of loading, departure, receipt, taking in charge, or, port or place of discharge, destination or delivery are incorrect; insurance document dated later than the date of shipment; missing or incorrect shipped on board notations; as well as unclear capacity when transport documents are signed.

ANALYSIS

In documentary credit operations, the advising of discrepancies in a presentation is probably the most contentious issue that a bank will face with a presenter.

The UCP 600 sub-article 14 (a) indicates that a nominated bank acting on its nomination, a confirming bank, if any, 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. Complying presentation is defined in the UCP 600 article 2 as a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of the UCP 600 and international standard banking practice.

It should be noted that the term “strict compliance” is not used in the UCP 600 despite a widely conceived misunderstanding that documents must strictly comply with the terms and conditions of the documentary credit.¹

This act of determining a complying presentation may often fall to a single document examiner and be based on that individual’s knowledge, experience and judgement.

A good standard when determining if a presentation is discrepant is to consider a neutral, independent viewpoint. For, in a worst-case scenario, it is such an independent authority such as, for example, a court of law, that would be the entity providing judgement if a dispute were not amicably resolved.

At the ICC Banking Commission meeting held in Jakarta during April 2017, it was agreed with National Committees that a lack of understanding existed in respect of the *application and practice* of UCP 600 within both banks and corporates.

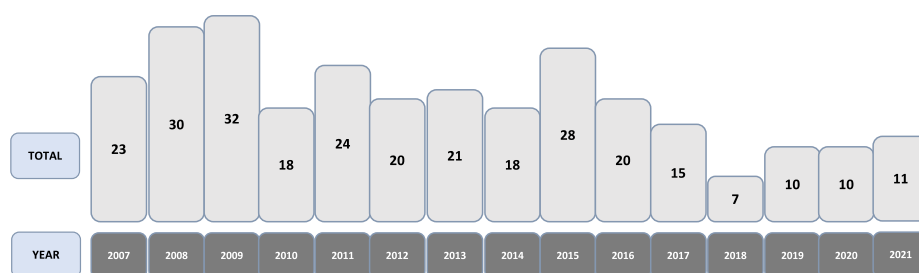
Feedback from ICC National Committees, based upon knowledge of their markets, made it very apparent that the majority of problems were caused by:

- Poor drafting of the credit;
- Outdated/inappropriate documentary credit application forms;
- Lack of understanding of documentary credit workflows and the principles of UCP 600;
- Lack of attention to detail and management of the production, shipment and document collation processes;
- Excessive and unnecessary data being added to documents; and,
- Restricted access to ISBP 745 and/or ICC opinions.

It is also worth examining ICC Opinions approved between 2007 and 2021, as per the diagram below, in order to understand exactly where many problems arise.

¹ https://iccwbo.org/publication/icc-banking-commission-executive-committee-issues-paper_notes-on-the-principle-of-strict-compliance/

ICC Opinions – Trend 2007-2021



Transport document issues (not signature related): 26%
 Function of document: 20%
 Presentation & expiry: 11%
 Description of goods: 6%
 Signing of document: 6%
 Insurance issues: 6%

Collection issues: 4%
 Guarantee issues: 3%
 Other issues: 18%

As mentioned above, the primary problem lies not with the UCP 600, but with how the rules are used, i.e., through application and practice.

Discrepancy fees

This subject cannot be fully addressed without mentioning discrepancy fees that are levied by banks.

It is often commented that a number of banks now consider discrepancy fees as an essential element of their revenue stream. Looking back, discrepancy fees were first introduced in order to cover the additional work imposed upon a bank in the event of a presentation being discrepant. Bearing in mind that discrepancy rates for the initial presentation of documents have always been on the high side, this was justified but is now, perhaps, being abused in some cases.

Some practitioners would like to see the abolition of such fees or the ineligibility of the fees if the discrepancies are subsequently accepted. The problem with this approach is that it is a matter of practice for each individual bank and neither the ICC, nor the UCP 600, can mandate how the market should handle this issue. As stated in ICC Opinion R441 (TA487), if an issuing bank intends to deduct a discrepancy fee the credit should contain a condition to this effect together with an indication of the fee.

Further guidance in respect of discrepancy fees can be found in ICC Opinions R741 (TA700rev) and R820 (TA795rev) wherein it is stated that when a bank deducts a discrepancy fee without having issued its refusal notice according to the UCP 600 sub-article 16 (c), i.e., it has exercised the right afforded in the UCP 600 sub-article 16 (b) to approach the applicant for a waiver and an acceptable waiver is received, the issuing bank should provide the presenter with the details of any discrepancies that were found in the presentation, either in the advice of payment or in a separate communication. In the event they fail to do so, this does not preclude them from subsequently providing such information.

The most appropriate response, to address discrepancy fees, is to concentrate on educational and guidance aspects and to find ways to actually reduce the discrepancy rate.

SUMMARY

Each bank has a duty to educate its own staff. In addition, and in order to avoid unnecessary extra cost, it is desirable that each bank educate their clients. Where a beneficiary has faced discrepancies in a presentation, an explanation of what caused the discrepancy, and what can be done next time to avoid it re-occurring, can only prove beneficial for future presentations. This applies especially if there are recurring discrepancies in the documents presented by the same client.

There are a number of simple tasks that can help to reduce discrepancy rates:

- Improved drafting of documentary credits by issuing banks. In this respect, reference should be made to the ICC guidance notes for documentary credit formats² which provide clear and transparent recommendations in respect of the optimal approach required in order to achieve a straightforward, uncomplicated documentary credit format.
 - When drafting ISBP 745 (International Standard Banking Practice for the Examination of Documents under UCP 600), it was recognised that a more methodical approach to the drafting of documentary credits and/or amendments would act as a positive factor in avoiding many of the problems that can arise when examining documents.
 - Enhanced attention to detail, and reflection as to whether or not all requirements are actually necessary, will provide benefit to all involved parties.
 - Avoiding the incorporation of non-documentary conditions into a documentary credit will result in improved clarity.
- Thorough review of documentary credits by confirming banks to identify and understand any risks and areas of possible contention. (Note: though not required by the UCP 600, many advising banks perform a similar review.)
 - The applicant and beneficiary should carefully consider the documents required for presentation, by whom they are to be issued, their data content and the time frame in which they are to be presented.
- Beneficiaries to:
 - Assess whether there is sufficient time to manufacture, produce or procure the goods, to package and ship them within the latest shipment date, and to present the documents to the nominated bank, confirming bank or issuing bank within the latest date for presentation and expiry date, allowing additional time in the event that any document(s) will require amendment or replacement due to discrepancies.
 - Consider the unexpected consequence of including additional or superfluous information on a document and avoid information that could call into doubt the compliance of a document.
 - Ensure that any required amendments are requested on a timely basis.
- Avoid, to the maximum extent possible, documentary credits that exclude specific articles / sub-articles of UCP.
 - There are individual articles / sub-articles that have implications for other articles / sub-articles of the UCP, and mere exclusion or modification of one without regard to the other(s) may lead to misunderstandings and different interpretations. It is often not as simple as inserting a clause in a documentary credit that article X or sub-article Y of the UCP is modified or is not to apply. Very often there is a need for a new term or condition to be inserted into the documentary credit to cover the gap that a modification or exclusion may leave and avoid any issues of differing interpretations.

² <https://iccwbo.org/publication/guidance-notes-for-documentary-credit-formats/>

It is apparent that significant attention should be paid to the distribution of, and guidance in, the ISBP. The question of online access, digital availability, pricing, regular updates in line with Opinions, etc., must also be addressed. Workshops, seminars and webinars should be considered on the subject of the ISBP by both the International Chamber of Commerce and by individual members of the ICC Banking Commission.

In addition to having a copy of the UCP 600, it is advisable for beneficiaries to have a copy of the ISBP 745. By understanding the practices that should be followed by banks in the examination of their documents, a beneficiary should be in a position to prepare their documents to that standard.

This briefing is educational only

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