



ICC Banking Commission

Technical Advisory Briefing No. 10

Subject: Acceptance or rejection of an amendment, by a beneficiary, under a documentary credit issued subject to UCP 600

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ISSUE

UCP 600 sub-article 10 (c) provides clear details of the rules that apply regarding the notification of acceptance or rejection of an amendment by a beneficiary. Despite these rules, it has been noted that occasionally there is a lack of understanding as to how they work in practice.

INTRODUCTION

As we know, an irrevocable documentary credit constitutes a definite undertaking of the issuing bank to honour a complying presentation. Similarly, a confirmation of that irrevocable documentary credit constitutes a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation. Accordingly, the terms and conditions of an irrevocable documentary credit can only be amended with the agreement of the issuing bank, the confirming bank, if any, and the beneficiary.

It should be noted that UCP 600 sub-article 10 (b) imposes no obligation on a confirming bank to extend its confirmation to an amendment. If the confirming bank is not in a position to extend its confirmation, but is still willing to advise the amendment, it is to indicate to the beneficiary that its confirmation does not apply to the terms and conditions of that amendment and must inform the issuing bank without delay. It will then be for the beneficiary to decide whether or not it will accept that amendment, whilst noting that the issuing bank would still be bound by its terms and conditions, unless the beneficiary has rejected it.

The essential principle is that, even though an issuing bank is irrevocably bound by an amendment as of the time it is issued, an irrevocable documentary credit cannot be considered to be amended until the beneficiary provides an

acceptance of that amendment; it is the acceptance of the beneficiary that is primary. Silence, on the part of the beneficiary, cannot be deemed to represent acceptance or rejection. If the amendment has neither been accepted nor rejected, it simply remains as an offer and does not bind the beneficiary to comply with the content. Some form of affirmatory action is required by the beneficiary to be bound by the content.

In certain circumstances, it would appear that confusion can prevail with regard to notification of acceptance or rejection. One example is the assumption that a presentation of documents covering a partial shipment, which complies with the documentary credit but not to the terms and conditions of an amendment, constitutes a notification of rejection of that amendment. This may not necessarily be the case as, even when the presentation may have been made after the amendment was issued, such amendment may have been requested to apply to one or more future shipment(s).

Linked to this assumption, and although not good practice, it has been observed that some documentary credits include a requirement for the presentation of a certificate issued by the beneficiary indicating which amendments have been accepted or rejected, this certificate only being required if one or more amendments have been issued. This requirement ignores the possibility, as outlined in the previous paragraph, of an amendment that is not currently accepted or rejected, with the view that it may be applied to a future shipment with a notification of acceptance or rejection being made at or before the next or subsequent presentation.

ANALYSIS

UCP 600 sub-article 10 (a) states that a documentary credit cannot be amended or cancelled without the agreement of the issuing bank, confirming bank, if any, and the beneficiary. This unmistakably confirms the involvement of the beneficiary in the process.

It should be noted that sub-article 10 (a) does not refer to a nominated bank. In the event that a nominated bank has provided a beneficiary with an express agreement to honour or negotiate, as stated in sub-article 12 (a), it may be necessary for such bank to document the process for acceptance or rejection of amendments in the agreement made with the beneficiary.

In accordance with UCP 600 sub-article 10 (b), an issuing bank is irrevocably bound by an amendment as of the time the amendment is issued. This is irrespective of whether a confirming bank, if any, extends its confirmation to that amendment. In the event that a confirming bank extends its confirmation to an amendment, it is irrevocably bound as of that time.

As stated in UCP 600 sub-article 10 (c), the terms and conditions of the documentary credit remain in force from the perspective of the beneficiary until such time as the beneficiary communicates its acceptance of the amendment to the bank that advised such amendment. It is incumbent upon the beneficiary to provide acceptance or rejection of an amendment.

Nevertheless, sub-article 10 (c) further explains that if the beneficiary fails to give such notification (which is often the case), a presentation that complies with the documentary credit, and with any not yet accepted amendment(s), will be deemed to be notification of acceptance by the beneficiary of such amendment(s). As of that moment the documentary credit will be amended.

However, if a presentation complies with the documentary credit both with and without an amendment, it is not transparent whether the necessary acceptance or rejection has actually been provided by the content of the presented documents. On these occasions, it may be necessary for a bank to contact the beneficiary in order to clarify and determine whether or not the beneficiary has accepted an amendment.

When a beneficiary submits a presentation of documents which does not include any acceptance or rejection of an amendment, and such presentation complies with the original documentary credit terms and conditions but does not comply with the amended terms and conditions (i.e., not taking into account the content of the issued amendment), the amendment will be deemed to have not yet been accepted or rejected by the beneficiary.

A beneficiary may accept or reject an amendment at any time including, in the case of a documentary credit allowing partial shipment, after one or several further presentations of documents have been made and after the date of receipt of the amendment by the beneficiary.

Similarly, a beneficiary may, when submitting a presentation of documents, communicate at the same time its acceptance of the amendment in relation to any future presentation, but not for that particular presentation.

On a separate issue, an amendment must not contain a provision to the effect that the amendment will come into force unless it is rejected by the beneficiary within a certain period of time. Sub-article 10 (f) states that such a provision shall be disregarded.

SUMMARY

Although a beneficiary should provide notification of its acceptance or rejection of an amendment, it is under no obligation to do so immediately. The beneficiary may defer its decision up until the time of presentation of the documents, as is the case in the vast majority of cases, or even later. Even then, the beneficiary may not provide a specific notification of acceptance or rejection.

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