

## **ICC BANKING COMMISSION**

### **GUIDANCE PAPER - THE USE OF DRAFTS (BILLS OF EXCHANGE) UNDER DOCUMENTARY CREDITS – Executive summary**

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#### **INTRODUCTION**

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A major outcome of the UCP consultation on the revision of UCP 600<sup>1</sup> was a need for a greater understanding of documentary credit practices in the market. As such, it was agreed by the Executive Committee of the Banking Commission that more comprehensive guidance should be provided.

One feature of this consultation revealed that a number of ICC National Committees and practitioners questioned whether drafts should be required for presentation under any documentary credit.<sup>2</sup> Furthermore, it was highlighted that sight drafts do not provide any benefit to a nominated bank or issuing bank.

It is essential that UCP's unique characteristic of global acceptance is maintained and suggestions for non-optional changes that only benefit particular business or geographic segments of the user base are inappropriate. Guidance, and not deletion, is the appropriate response to the issue of whether a draft should be required under a documentary credit.

The UCP have evolved over the years, with drafts no longer a mandatory requirement apart from when a documentary credit is available by acceptance, unless required for a specific commercial, regulatory or legal reason for one to be presented. As an example, UCP 600 sub-article 12 (b) was specifically drafted to remove the difference in approach to financing that existed in UCP 500 for documentary credits available by acceptance and deferred payment. As a consequence of sub-article 12 (b), the issuance of documentary credits available by deferred payment should be the preferred choice rather than acceptance. Only where the beneficiary requires the return to it of an accepted draft, should a credit available by acceptance be necessary.

Likewise, sight or usance negotiation can occur without the presentation of a draft.

It should also be noted that courts do not mandate for the use of drafts; the choice is that of each issuing bank and is largely driven by the pre-printed text appearing in its documentary credit application form.

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<sup>1</sup> Document 470/1272 dated 15 June 2017

<sup>2</sup> Numerous practitioners have raised this issue over the last couple of years including at the ICC National Committee 'Networking Forum' in Rome on 8 November 2016 and the ICC National Committee 'Sharing Session' in Paris on 23 November 2016.

Drafts are, on occasion, an unnecessary cause of discrepancies and are less relevant than they were in the past. ICC Opinions and DOCDEX Decisions have provided guidance where presentations have been refused due to issues relating to a draft to the extent that, in most cases, the conclusions have indicated that the discrepancies were unwarranted.

It is considered appropriate to discourage the use of drafts with documentary credits issued subject to UCP 600. Drafts should only be required where there is a specific commercial, regulatory or legal reason for one to be presented or, as indicated above, where the beneficiary requires the return of an accepted draft.

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## CONCLUSION AND RECOMMENDATIONS

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Ordinarily, a UCP 600 documentary credit need not require a draft to be presented together with the stipulated documents. Accordingly:

1. It is recommended that the habit of requiring a draft for a documentary credit available at sight be curtailed, particularly sight drafts drawn on an issuing bank, confirming bank, or a bank nominated to pay, unless required for a specific commercial, regulatory or legal reason.
2. UCP 600 article 2 allows for negotiation to occur under a documentary credit available by negotiation with or without a presentation of a draft. It is recommended that the habit of requiring a sight draft for a documentary credit available by negotiation be reviewed and that negotiating banks be encouraged to rely, not on negotiable instruments' law, but instead on specific agreements with beneficiaries evidencing negotiation and their respective recourse and other rights and remedies.
3. It is recommended that banks issue usance documentary credits available by deferred payment as an alternative to availability by acceptance of a draft, unless there is a specific commercial, regulatory or legal reason to create a banker's acceptance.
4. All banks should review their UCP 600 documentary credit forms, whether in paper format and/or online, to indicate that a draft is not a standard requirement of the issuing bank and to indicate their requirements for another form of demand.

It is recommended that banks arrange for this Guidance Paper to be distributed throughout their network, and particularly to their legal departments. It can also be circulated to clients and, if considered appropriate, to courts and regulatory authorities. Sharing this Guidance Paper on a wider basis will help ensure amelioration of any problems.

Practitioner feedback can be found in the additional material relating to the Guidance Paper.