
LC VIEWS

Guide to UCP 600

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UCP AS A BANKER'S BOSS

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ICC Uniform Customs
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The power of UCP

Do what I say to do!

Don't do what I say not to do!

Be aware of what to do; beware of what not to do

The UCP imposes responsibilities on the banks. It tells bankers what they should do, what not to do. The banker should know his responsibilities to fulfill them to the satisfaction and expectations of the consumers of LC services. **This newsletter checklists the banker's responsibilities under UCP 600.**

Responsibilities learning are a 3-step process. **First step, learn "definitions". Then learn "availability" as step 2. When you learn definitions and availabilities it becomes easy to learn the responsibilities as a last step.**

Step 1: Definitions

The first step toward understanding of responsibilities is to understand the definitions in article 2.

To understand the definitions is:

. **To understand the role and responsibilities of those involved in LC transactions.**

. **To understand the practices and processes.**

. **To understand the LC terminology.**

. **Advising bank** means the bank that **advises** the credit at the request of the issuing bank.

. **Applicant** means the party on whose request the credit is issued.

. **Banking day** means a day on which a bank is regularly open at the place at which an act subject to these rules is to be performed.

. **Beneficiary** means the party in whose favor a credit issued.

. **Complying presentation** means a presentation that is **in accordance with** the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.

. **Confirmation** means a definite undertaking of the confirming bank, **in addition** to that of the issuing bank, to honor or negotiate a complying presentation.

. **Confirming bank** means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request.

. **Credit** means any arrangement, however named or described, that is **irrevocable** and thereby constitutes a **definite undertaking** of the issuing bank to honor a complying presentation.

. **Honor** means:

A. to pay **at sight** if the credit is available by sight payment.

b. to **incur a deferred payment undertaking** and **pay at maturity** if the credit is available by deferred payment.

c. to **accept a bill of exchange** ("draft") drawn by the beneficiary and pay at maturity if the credit is available by acceptance

. **Issuing bank** means a bank that issues a credit at the request of the applicant or on its behalf.

. **Negotiation** means the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank.

. **Nominated bank** means the bank with which the credit is available or any bank in the case of a credit available with any bank.

. **Presentation** means either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered.

. **Presenter** means a beneficiary, bank or other party that makes a presentation.

In sum, the definitions in the beginning of the UCP let you know the outline of

- **actors** (parties, such as applicant, beneficiary, confirming/advising bank, etc.),
- **actions** (advise, confirmation, negotiation, presentation, for example), and
- **objective** – which is, to pay at sight or maturity.

The actors and actions revolve around the credit, as called in the UCP language – that is, LC in banking parlance. If you know the definitions you can easily learn more about the actors, actions and objective, when you go deeper into the UCP.

Step 2: **Availability**

The second step in understanding the responsibilities of banks is to understand “Availability” as stated in article 6, because it is “Availability” that gives some hints of what bank has what “Responsibility”:

a. A credit **must state the bank with which it is available or whether it is available with any bank. A credit available with a nominated bank is also available with the issuing bank.**

If a credit is made available with a bank that bank gets responsibilities. Availability is a gateway to responsibility.

b. A credit must state whether it is available by **sight payment, deferred payment, acceptance or negotiation.**

This indicates that a bank has the responsibility to honor or negotiate.

**Where there is availability
There is responsibility**

Step 3: Responsibilities

1, What instructions UCP issues to Issuing Bank?

For issuing an LC, the issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like (article 4b).

The issuing bank is irrevocably bound by an amendment as of the time it issues the amendment (article 10b).

A credit or amendment should not stipulate that the advising to a beneficiary is conditional upon the receipt by the advising bank or second advising bank of its charges (article 37c). The issuing bank that sends a pre-advise of the amendment is irrevocably committed to issue the operative credit or amendment, without delay, in terms not inconsistent with the pre-advise (article 11b).

. Article 7a says: provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honor if the credit is available by:

- i. sight payment, deferred payment or acceptance with the issuing bank;
- ii. sight payment with a nominated bank and that the nominated bank does not pay;
- iii. deferred payment with a nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;
- iv. acceptance with a nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity.

In simple terms this means that the issuing bank has an obligation to pay when a compliance presentation has been made either to it – or to the nominated or confirming bank.

We take a situation as an example to understand this responsibility. Suppose a compliant presentation is made to the nominated bank – and that bank chooses not to act on its nomination but simply forwards the documents to the issuing bank – but the documents are lost in transit between the nominated bank and the issuing bank. The issuing bank is required to honor even if the documents are lost in transit.

An issuing bank is irrevocably bound to honor **as of the time it issues the credit (article 7b). The banker must know when his responsibility starts.**

For examination of the complying presentation to determine whether to honor or not the issuing bank is required to follow the standard for examination of documents as codified in article 14. Article 14 guides what to accept, what to disregard (see LC VIEWS Newsletter No. 88 about standard for examination or visit www.lcviews.com).

When the issuing bank determines that the presentation is complying it must honor (article 15 a). When the issuing bank determines that a presentation does not comply it may in its sole judgment approach the applicant for a waiver of the discrepancies (article 16 b). When the issuing bank decides to refuse to honor it must give a single notice to that effect to the presenter (article 16)

- c). The notice must contain the information as prescribed by the article 16c - that is, the notice must state:
- i. that the bank is refusing to honor or negotiate; and
 - ii. each discrepancy in respect of which the bank refuses to honor or negotiate; and
 - iii.
 - a) that the bank is holding the documents pending further instructions from the presenter; or
 - b) that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
 - c) that the bank is returning the documents; or
 - d) the bank is acting in accordance with instructions previously received from the presenter.

The notice must be given by telecommunication or, if that is not possible, by other expeditious means, not later than the close of the 5th banking day following the day of presentation (article 16d).

An issuing bank undertakes to reimburse a nominated bank that has honored or negotiated a complying presentation and forwarded the documents to the issuing bank. The reimbursement is due at maturity whether or not the nominated bank prepaid or purchased before maturity in case of credits available by deferred payment undertaking or by acceptance (article 7c). If a credit states that charges are for the account of the beneficiary and charges cannot be collected or deducted from proceeds, the issuing bank remains liable for payment of charges (article 37).

2. UCP's Instructions to Confirming Bank. If a bank is not prepared to confirm on authorization or request by the issuing bank, it must inform the issuing bank without delay and may advise the credit without confirmation (article 8d). If the confirming bank adds its confirmation to the credit it is irrevocably bound to honor or negotiate as of the time it adds its confirmation to the LC (article 8b). The confirming bank may extend its confirmation to an amendment and will be irrevocably bound as of the time it advises the amendment (article 10b). The confirming may, however, choose to advise an amendment without extending its confirmation and, if so, it must inform the issuing bank without delay and inform the beneficiary in its advice (article 10b).

Article 8a says provided that the stipulated documents are presented to the confirming bank or to any other nominated bank and that they constitute a complying presentation, the confirming bank must:

- i. honor if the credit is available by:
 - a. sight payment, deferred payment or acceptance with the confirming;
 - b. sight payment with a nominated bank and that the nominated bank does not pay;
 - c. deferred payment with a nominated bank and that nominated bank does not incur its deferred payment undertaking or, having incurred its deferred payment undertaking, does not pay at maturity;
 - d. acceptance with a nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity.
 - e. negotiation with another nominated bank and that nominated bank does not negotiate.
- ii. negotiate without recourse, if the credit is available by negotiation with the confirming bank.

A confirming bank undertakes to reimburse the nominated bank the same way the issuing bank is required as discussed before. A confirming bank's undertaking to reimburse another nominated bank is independent of the confirming bank's undertaking to the beneficiary (article 8c).

3. UCP's advice to Advising Bank. A bank authorized or requested to advise if not ready to advise must inform, without delay, the bank from which the credit, amendment or advice has been received (article 9e). If the bank is ready to advise but subsequently cannot satisfy itself as to the apparent authenticity of the credit, amendment or advice it must inform, without delay, the bank from which the instructions appear to have been received and it also must inform the beneficiary as well (article 9f). **An advising bank that is not a confirming bank advises the credit and any amendment without any undertaking to honor or negotiate (article 9a).** By advising the credit the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received (article 9b). An advising bank may utilize the services of another bank ("second advising bank") to advise the credit and any amendment to the beneficiary (article 9c). In case of an amendment advised by the bank, if the beneficiary accepts or rejects the amendment that bank should inform the bank from which it received the amendment of any notification of acceptance or rejection (article 10d).

4. UCP's nomination for responsibility – nominated bank. The authorization to honor or negotiate does not impose any obligation on the authorized nominated bank to honor or negotiate unless the nominated bank is a confirming bank (article 12a) or expressly agrees to honor or negotiate and so communicates to the beneficiary. The authorization to accept a draft or incur a deferred payment undertaking includes the authorization to prepay, that is - before maturity (article 12b). If the nominated bank is not a confirming bank and receives or examines and forward documents this does not make the nominated bank liable to honor or negotiate (article 12c).

ESCAPE ROUTES

Articles 34, 35, 36, and 37 relate to disclaimer that bank assumes no responsibility or liability for so and so. They are thus the escape routes for the banker, to escape from the unpleasant situation arising during the performance of responsibilities. If something is wrong with the document – falsification, for example, something goes wrong in transmission and translation, if the bank's business gets interrupted by the circumstances beyond its control, if the instructed bank does not act as instructed by the instructing bank, the affected bank can use the escape routes built by the UCP. The banker must know which article is an escape route in what situation. (See LC VIEWS Newsletter No. 95).
