



DISCLAIMER

ICC endorses no responsibility in this guidance paper which is aimed only at sharing practical views and guidance from experts in the management of Trade Finance transactions during this exceptional period of time.

All decisions taken with regard to a trade finance transaction that follows this guideline will be understood to be taken under the full responsibility and agreement of the parties involved.

1. EXECUTIVE SUMMARY

- (i) Up until recently, as with the volcanic eruption in Iceland of 2010, banks and guarantors (collectively described herein as “Bank” or “Banks”) have, to varying degrees, remained open for business, with the result that the question of whether or not force majeure could be applied, as a defence to non-performance, had not been considered. However, as the situation continues to evolve, it appears that some Banks are in the process of being closed or operating under reduced working hours and/or reduced staffing levels.
- (ii) Banks in a number of countries have started to ask whether the novel coronavirus (“COVID-19”) may be considered to be an interruption of its business or an event that is beyond the control of Banks, *as is referenced in the force majeure provisions of UCP, eUCP, URDG, URC, eURC, URR and URBPO (collectively described herein as “ICC rules”).*

The stance taken in ISP98 is referred to separately in this paper and in the context of the issue under discussion.

- (iii) The answer to the question in (ii) is: *even where a trade finance transaction is made subject to ICC rules, depending on the applicable law it will require a court or tribunal with jurisdiction, or a government or regulatory authority to make a decision as to whether an event of force majeure is to be declared.*

In the event of such a decision being taken it must be communicated to all parties in the transaction according to the applicable law.

It is not for ICC to pronounce whether any particular set of event(s) amount to a force majeure event. In this respect, attention is drawn to the content of paragraph 2 (v). This paper does, however, give indications, in relation to ICC rules only, on the factors which may be relevant in arriving at such a conclusion.

- (iv) In order to adapt to the current extraordinary circumstances, it is quite feasible that all parties could agree to modify specific articles of the ICC rules. However, it is strongly recommended that careful attention is paid, and professional advice is sought, as to the implications of any proposed change(s) in the rules and any such modifications should only be implemented while circumstances dictate. It should not be forgotten that a very simple way to resolve most issues is to encourage and promote dialogue between the commercial parties, as well as between the issuing bank and the nominated/confirming bank, or the counter-guarantor and the guarantor.
- (v) Questions have also been raised on many associated issues including, but not limited to, delivery and examination of documents, liaison with applicants and beneficiaries, different places for presentation, document examination period, definition of a banking or business day, events covered by ‘interruption of business’ under force majeure

provisions, etc. It is evident that clarification and direction on these and many other topics has created a global requirement for consistent information and guidance. Answers to, or guidance on, these questions can be found in the remainder of this guidance paper.

- (vi) It remains the core purpose of the ICC rules—and of industry practice—to facilitate and enable good-faith trade, and it is clear that the continuing flow of trade is critical during the COVID-19 pandemic. Accordingly, all parties are encouraged to continue to interact on this basis and to leverage rules as well as sound commercial practice to find solutions to the current situation.

We would emphasise that any changes to the mode or location for the delivery of the documents, or any alternate solutions for the handling of a trade finance transaction subject to ICC rules will require the express agreement of the parties to the relevant undertaking: issuing bank and nominated/confirming bank or counter-guarantor and guarantor; and the applicant or instructing party and the beneficiary (as applicable); or the parties to a documentary collection: principal, remitting bank, collecting or presenting bank; and the drawee (if applicable).

When any alternate solution has been agreed, it is advisable that the terms and conditions of that solution are clearly documented to avoid any potential dispute(s) at a later date.

It should be noted that for a standby letter of credit issued subject to ISP98, and where, on the last business day for presentation, the place for presentation is for any reason closed and a timely presentation cannot be made, rule 3.14 allows for the expiry date to be extended for 30 calendar days after the place for presentation re-opens and for an issuer of a standby letter of credit to authorise another reasonable place for presentation. This is further referred to in paragraph 3 (v).

2. ICC STATEMENT

- (i) As mentioned in a joint statement by ICC and the World Health Organization related to the COVID-19 situation worldwide: “as an immediate priority, businesses should be developing or updating, readying or implementing business continuity plans.”¹
- (ii) In line with that recommendation, and as a response to increasing requests for guidance, this guidance paper provides practical advice and highlights best practices in the handling of trade finance transactions that are subject to ICC rules. It is expected that, as circumstances evolve, further guidance on trade finance transactions will need to be produced in reaction to new developments and market needs, and this will be in the form of a regularly updated FAQ section that will be added to the ICC website.
- (iii) The scope of this guidance paper is strictly focused on the application of ICC rules and, in particular, the force majeure provisions within those rules.
- (iv) Many practitioners will recall the events of 2010 when a volcanic eruption in Iceland caused severe delays in the presentation of documents under numerous trade finance transactions. As a result, the ICC Banking Commission released a statement highlighting the impact on transactions that were issued subject to UCP 600, URDG 458 (the precursor to URDG 758), and URC 522. It is worth recalling what was stated at that time: *“It must be noted that this is not an event that is covered by the force majeure rules of UCP 600 (article 36), URDG 458 (article 13) and URC 522 (article 15). The concerned banks, guarantors and instructing parties are still open for business; it is the documents that are being delayed in transit to them.”*
- (v) As the situation is similar to that experienced in 2010, i.e. Banks are generally open for business (despite being at reduced strength/capacity), the same conclusion should apply although, as stated above, this is ultimately dependent on the facts and an issue that can only be decided by a court or tribunal with jurisdiction, or a government or regulatory authority.

3. FORCE MAJEURE

- (i) The ICC has crafted a contractual force majeure for use in commercial contracts. In general terms the wider general legal concept of “Force Majeure” means the occurrence of an event or circumstance (“Force Majeure Event”) that prevents or impedes a party from performing one or more of its contractual obligations under the contract, if and to the extent that the party affected by the impediment (“the Affected Party”) proves:
 - a. that such impediment is beyond its reasonable control; and
 - b. that it could not reasonably have been foreseen at the time of the conclusion of the contract; and
 - c. that the effects of the impediment could not reasonably have been avoided or overcome by the Affected Party.

The above reflects the concept of force majeure as proposed by the ICC Force Majeure Clause for the parties to agree in their contract. Absent an agreement, the applicable law may have different requirements as explained below.

¹ <https://iccwbo.org/media-wall/news-speeches/icc-who-covid19/>

- (ii) Commercial contracts often include general Force Majeure clauses setting out requirements for establishing the existence of a Force Majeure Event. ICC has developed general considerations to be taken into account for users involved in commercial contractual relations that are applicable in the context of the COVID-19 pandemic.
- (iii) It should be noted that while the general concept of force majeure is known by most legal systems, the principles developed in national laws may imply substantial differences.² While most common law countries require a contractual force majeure provision for it to be raised as a defence, in many civil law countries, force majeure provisions are not required in contracts as the statutory law, generally the civil code, provides for default rules in that respect.
- (iv) Each of the ICC rules contain an article on the concept of force majeure. A summary of the pertinent details are as follows:
- > **UCP 600 Article 36** - events such as those arising out of the interruption of a bank's business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.
 - > **URDG 758 article 26** - events such as Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism or any causes beyond the control of the guarantor or counter-guarantor that interrupt its business as it relates to acts of a kind subject to these rules. This article also provides for an extension of 30 calendar days if the guarantee expires at a time when presentation or payment under that guarantee is prevented by force majeure.
 - > **URC 522 article 15** - events such as the interruption of a bank's business by Acts of God, riots, civil commotions, insurrections, wars, or any other causes beyond their control or by strikes or lockouts.
 - > **URR 725 article 15** - events such as the interruption of the reimbursing bank's business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism or by any strikes or lockouts or any other causes beyond its control.
 - > **eUCP Version 2.0 article e14 and eURC Version 1.0 article e13** - for the consequences arising out the interruption of a bank's business, including but not limited to its inability to access a data processing system, or a failure of equipment, software or communications network, caused by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, cyberattacks, or by any strikes or lockouts or any other causes, including failure of equipment, software or communications networks, beyond its control.
 - > **URBPO 750 article 13** - for the consequences arising out the interruption of an involved bank's business, including its inability to access a TMA, or a failure of equipment, software or communications network, caused by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, cyberattacks, or by any strikes or lockouts or any other causes, including failure of equipment, software or communications networks, beyond its control.

The commonality in all of the force majeure provisions in the ICC rules set out above, is that the Bank is unable to fulfil its obligations due to certain events that are deemed to be beyond its control. This has led to the question as to whether or not the COVID-19 pandemic could be considered a force majeure event under ICC rules. As noted previously, this will be dependent on the facts and will ultimately be decided by a court or tribunal with jurisdiction, a government or regulatory authority.

² See [International Chamber of Commerce, ICC Force Majeure and Hardship Clauses \(March 2020\)](#).

- (v) ISP98 does not contain a rule specifically titled 'Force Majeure'. It provides a general rule, in 3.14, titled "Closure on a Business Day and Authorisation of Another Reasonable Place for Presentation":
- a. If on the last business day for presentation the place for presentation stated in a standby is for any reason closed and presentation is not timely made because of the closure, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides.
 - b. Upon or in anticipation of closure of the place of presentation, an issuer may authorise another reasonable place for presentation in the standby or in a communication received by the beneficiary. If it does so, then
 - i) presentation must be made at that reasonable place; and
 - ii) if the communication is received fewer than thirty calendar days before the last day for presentation and for that reason presentation is not timely made, the last day for presentation is automatically extended to the day occurring thirty calendar days after the last day for presentation.

(vi) Where, as outlined in the Executive Summary, a court or tribunal with jurisdiction, a government or regulatory authority decides that an event or circumstance can be characterised as force majeure that bars a claim for damages or for additional costs, or the application of a penalty in a trade finance transaction that is subject to ICC rules, such a decision may lead to the non-performance of certain obligations of Banks to be excused during the force majeure period. But it must be cautioned that such an excuse may not be upheld if a court finds, in the particular fact situation in hand, that the Bank could have performed its document examination duty, issued a refusal notice (if applicable) or honoured or negotiated according to the requirements of the applicable ICC rules.

(vii) It should be further noted that force majeure provisions in sale contracts or contracts of carriage are not an issue for ICC rules, as reflected, for example, in (i) UCP 600 article 4 wherein it is stated that banks "are in no way concerned with or bound by such [sale or other] contract, even if any reference whatsoever to it is included in the credit", and (ii) URDG 758 article 5 wherein it is stated that a guarantee "is by its nature independent of the underlying relationship and the application, and the guarantor is in no way concerned with or bound by such relationship".

While collections are not independent of the export contract, the collecting bank is not a party to that contract and would normally not be bound by a force majeure clause stated therein.

ISP98 rule 1.08 states that an issuer is not responsible for performance or breach of any underlying transaction.

(viii) The mere fact that force majeure is declared by a government or regulatory authority, does not, as such, necessarily amount to the application of the provision on the force majeure provision in ICC rules. Conversely, where a court or tribunal with jurisdiction finds that a set of facts or circumstances amount to force majeure under a particular set of ICC rules, then the relevant provision in those rules will apply. If the performance of an obligation or act is not impossible (as is meant by the reference to 'interruption'), but has only become more difficult, complex or expensive (for instance hiring additional employees to replace sick employees), the force majeure provision in ICC rules may not be triggered. Business continuity plans of Banks should be implemented and may include, for example, engaging a back-up site, notifying clients and/or courier companies of a new address, etc.

TABLE OF CONTENTS

4. Modification of ICC rules	6
5. Possible alternate solutions that involve the use of ‘Electronic, scanned, faxed or emailed documents’	7
6. Scenarios currently experienced in the delivery of documents	9
A. Interaction between the beneficiary and a nominated / confirming / issuing bank.....	9
B. Interaction between a nominated bank that has no responsibility to examine, honour or negotiate, and a confirming / issuing bank...	11
C. Interaction between a confirming bank and the issuing bank.....	13
D. Interaction between the issuing bank and the applicant	16
E. Other trade products.....	16

4. MODIFICATION OF ICC RULES

- (i) Where a trade finance transaction is issued subject to a set of ICC rules, such rules allow for their modification or exclusion. This is the consequence of the contractual nature of ICC rules which permits the parties to vary them by contract. For example, UCP 600 article 1 states: “... *binding on all parties thereto unless expressly modified or excluded by the credit.*”, whilst URDG 758 sub-article 1 (a) states: “... *binding on all parties to the demand guarantee or counter-guarantee except so far as the demand guarantee or counter-guarantee modifies or excludes them.*”.

As such, and in order to adapt to the current extraordinary circumstances, it is open to all parties to potentially agree to modify specific articles of the ICC rules within the individual trade finance instruments used. Examples include:

- > Extending the five-banking/business day examination period imposed by UCP 600 sub-article 14 (b) or URDG 758 sub-article 20 (a) in order to make allowance for any possible delay in the handling of documents or demands. Should this be the case, all parties under the documentary credit, counter-guarantee or guarantee must provide their agreement in order to avoid potential future problems. This can be implemented for existing transactions by an amendment acceptable to all parties, as well as in any new transactions.
 - > Extending the five-banking/business day period in which a notice of refusal must be provided as stated in UCP 600 sub-article 16 (d) or URDG 758 sub-article 24 (e). This can be implemented for existing transactions by an amendment acceptable to all parties, as well as in any new transactions.
- (ii) It is strongly recommended that careful attention is paid, and professional advice be sought where appropriate, as to the implications of any proposed change(s) in the rules, including amendments to existing transactions. Any such modifications should only be implemented while current circumstances dictate.

(iii) The following should also be noted:

- > To emphasise the point made in the Executive Summary, it should not be forgotten that a very simple way to resolve most issues is to encourage and promote dialogue between the applicant and the beneficiary, as well as between the issuing bank and the nominated/confirming bank or the counter-guarantor and the guarantor, to the extent that the applicant will have to instruct the Bank on the necessary amendment(s) and the beneficiary will need to accept the amendment to become effective. This may, for example, include notifications regarding changes to working hours.
- > It must be stressed that no revision of ICC rules is currently proposed. It is important for Banks to develop alternate solutions rather than rely upon rule revisions. Any such solutions should be transparent and straight forward. It can be defined simply as “what is in my control?” and “what is not in my control?”. For the latter, it is then an additional question of what do I need to do to bring it under my control?
- > Due diligence in the handling of all aspects of a trade finance transaction is still key in order to avoid any potential for fraudsters to take advantage of the current situation.
- > In answer to questions concerning what constitutes a banking day for the purpose of ICC rules, this has been addressed in ICC opinions R265 and R325.

In R265, the question was based around a correspondence department that operated 24/7 but the bank’s official working hours on a Saturday were 09:00-13:00. Documents were presented to the correspondence department at 13:30 on a Saturday and were signed for that day. The conclusion was that the examination period commenced on that day i.e., 7 banking days following the day of presentation (this was a credit subject to UCP 500).

In R325, the question was quite similar but focussed on where a bank was open for a half day on a Saturday i.e., 09:00-13:00 would this be considered as one of the banking days. The conclusion was yes. This conclusion reflects that any hours that are worked would be taken into account in determining the banking days for examination and refusal.

The above opinions offer guidance to the transposition into the situation of ‘business days’ under the URDG.

5. POSSIBLE ALTERNATE SOLUTIONS THAT INVOLVE THE USE of *‘Electronic documents, scanned, faxed or emailed images’*

- (i) There is no doubt that the increased use of digitalised documents, as has been the experience in recent years, has highlighted that many of the problems currently faced in the paper world, in respect of the physical transmission and delivery of paper documents, would be avoided. However, on a global basis, and in the context of current transactions where goods have already been shipped and/or where documents remain undelivered, this cannot be considered to be an immediate solution. Nevertheless, that does not mean that certain options cannot be considered, under certain levels of risk tolerance for transactions where shipments are still to be made, or where new transactions are initiated. Any such arrangement will require the express agreement of all parties.
- (ii) One possible solution would be for a nominated bank (whether or not it has added its confirmation) to send scanned, faxed or emailed images of paper documents to the issuing bank, together with a copy of the nominated bank’s covering schedule listing the name of each document and the number of originals and copies received. This sending should be supplemented by a SWIFT message, sent by the nominated bank

to the issuing bank, confirming the action taken and the completeness of the scanned, faxed or emailed images. This would allow issuing banks to be in a position to make their own determination of whether an otherwise complying presentation had been made. The issuing bank may then be in a position to arrange the issuance of delivery orders and shipping guarantees (also referred to as letters of indemnity (LOI)) for the release of any goods that were consigned to the applicant or the issuing bank, and the honour of an otherwise complying presentation.

Similarly, discrepant documents could be handled quickly and efficiently to obtain an applicant's waiver that would be acceptable to the issuing bank, so that honour, negotiation or reimbursement could be effected or authorised.

The documents forming the presentation made by, or on behalf of, the beneficiary would remain held with the nominated bank under the responsibility of the issuing bank, until the issuing bank can determine a new location for delivery or the courier service resumes. This would act as a modification of UCP 600 sub-article 7 (c) and article 8, and would require the agreement of all parties.

- (iii) Notwithstanding the possible solution described above, it should be borne in mind that when documents are forwarded and cannot be delivered due to the shutdown of delivery services in particular areas or countries, with the outcome that the carrier will not waive the requirement of the surrender of an original bill of lading, the issuing bank may be unable to issue a delivery order or shipping guarantee (LOI) due to insufficient credit facilities or cash collateral from the applicant.
- (iv) As a separate and ongoing exercise, ICC will continue to promote the broader use of ICC eRules i.e., eUCP Version 2.0 & eURC Version 1.0, URBPO, and the UNCITRAL Model Laws on Electronic Commerce, Electronic Transferable Records, and Electronic Signatures. Practitioners should strongly consider implementing the ICC eRules in their future transactions.
- (v) For existing credits subject to UCP 600, if all parties intend to change from paper documents to electronic records, they may do so by agreeing an amendment of the credit from UCP 600 to eUCP Version 2.0. Scanned documents will fall within the definition of an 'electronic record' in eUCP Version 2.0, but would need to meet the requirements for authentication as mentioned in eUCP sub-article e6. Similarly, electronic records could be agreed for use with eURC Version 1.0 for documentary collections, but would need to meet the requirements for authentication as mentioned in eURC sub-article e7.
- (vi) A digital record is one that exists in digitised form only, whereas an electronic record may also encompass a copy of an original document that is stored in electronic form e.g. a scanned copy. It should be noted that some documents may only be effective in paper form, or may require pre-agreement by all parties in order to be digitalised.

6. SCENARIOS CURRENTLY EXPERIENCED IN THE DELIVERY OF DOCUMENTS

One of the main areas of concern that has been expressed is the inability to deliver documents to a bank, or bank to bank, or guarantor to counter-guarantor, or from bank or guarantor to an applicant or instructing party. The same problem may also arise between remitting banks and collecting or presenting banks.

The relevant articles within the ICC rules are:

- > **UCP 600 article 35** – *“A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.”*
- > **URDG 758 sub-article 28 (a)** – *“The guarantor assumes no liability or responsibility for the consequences of delay, loss in transit, mutilation or other errors arising in the transmission of any document, if that document is transmitted or sent according to the requirements stated in the guarantee, or when the guarantor may have taken the initiative in the choice of the delivery service in the absence of instructions to that effect.”*
- > **URC 522 sub-article 14 (a)** – *“Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in transmission of any telecommunication or for error(s) in translation and/or interpretation of technical terms.”*

For documentary credits and standby credits issued subject to UCP 600, there are 4 main relationships in the presentation, handling, examination, settlement and/or refusal of documents:

A. Interaction between the beneficiary and a nominated bank that has not added its confirmation, a confirming bank or the issuing bank

This scenario relates to the delivery of documents by, or on behalf of, the beneficiary to the nominated, confirming or issuing bank, the examination and handling thereof, and any possible honour or negotiation, or the advising of discrepancies.

- (i) It should be noted that the delivery of documents by, or on behalf of, a beneficiary is outside the scope of the UCP 600.
- (ii) While a nominated, confirming or issuing bank may have indicated its office's address and the manner of delivery to its office, which could include the use of a specific courier company, if it is known that delivery cannot occur at that location or can only occur on certain days or between certain hours, such bank should be informing the beneficiary, at the earliest opportunity of alternative arrangements which would invariably include a different location.
- (iii) Notwithstanding the above, beneficiaries should consider checking with the nominated, confirming or issuing bank as to the status for delivery of documents, prior to making or arranging a presentation and, where appropriate, obtain alternative delivery instructions or an amendment to the delivery instructions in the credit. For credits that expire at the counters of the issuing bank, a beneficiary would be well advised to seek an amendment that would change the expiry place to be its own country (or at least remove reference to expiry at the issuing bank's office or country) and for the credit to be available with a bank in its own country by honour or negotiation.

- (iv) For the issuance of new credits, a beneficiary could consider requesting that the credit be made available with more than one named nominated bank by payment, acceptance, deferred payment or negotiation, thus affording the beneficiary a choice of options when presenting its documents. For regulatory reasons, some banks will not handle a credit that is stated to be available with any bank.
- (v) It should be noted by beneficiaries that a nominated bank has no obligation to receive or examine documents unless it has agreed to act on its nomination or has confirmed the credit. This may result in the beneficiary being required to arrange delivery directly to the issuing bank. Where a nominated bank has agreed to examine documents, it has no obligation to honour or negotiate (as mentioned in UCP 600 sub-article 12 (c)). However, where the nominated bank has agreed to act on its nomination to honour or negotiate, it should comply with the requirements of UCP 600 sub-articles 14 (b) and 16 (d) (see below), but no preclusion will apply for any failure to comply therewith. The nominated bank should also act according to any regulatory requirements.
- (vi) Where documents have been presented to a confirming or issuing bank, these banks have an obligation to examine and to honour or negotiate a complying presentation, subject to regulatory compliance. The content of UCP 600 sub-articles 14 (b) and 16 (d) will apply to these banks, with preclusion applying if the content of UCP 600 article 16 is not complied with.

UCP 600 sub-article 14 (b) "A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation."

UCP 600 sub-article 16 (d) "The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation."

- (vii) As mentioned earlier in this paper, modification of these two rules, in the terms and conditions of the credit, is possible but should be undertaken only on a strict case of need basis, and on the basis of professional advice.
- (viii) Honour or negotiation, where effected, should be made in accordance with the terms and conditions of the respective credit and the requirements of UCP 600 article 15.
- (ix) Any refusal notice should be sent to the beneficiary according to the requirements expressed in UCP 600 article 16.
- (x) ISP98 contains the following rules that are in the same context as the content of (v) and (vi):
 - > ISP98 rule 2.04 (b) "*Nomination does not obligate the nominated person to act except to the extent that the nominated person undertakes to act.*"
 - > ISP98 rule 5.01 (a) (i) "*Notice given within three business days is deemed to be not unreasonable and beyond seven business days is deemed to be unreasonable.*" and 5.01 (b) (i) "*The means by which a notice of dishonour is to be given is by telecommunication, if available, and, if not, by another available means which allows for prompt notice.*"

B. Interaction between a non-confirming nominated bank that has no responsibility to examine, honour or negotiate, and a confirming / issuing bank

This scenario relates to the delivery of documents from the nominated bank to a confirming or issuing bank where a complying presentation has been made, or where the nominated bank simply acts as an intermediary between the beneficiary and the confirming or issuing bank, and to requests for acceptance of documents despite identified discrepancies.

GENERAL NOTES APPLICABLE TO EACH SCENARIO:

Please note that what follows does not address the issues of liability between nominated, confirming and issuing banks arising out of delay in delivery, loss of documents or inability to deliver these documents, arising out of the current extraordinary circumstances, which depend on the applicable law.

Each nominated bank:

- > may wish to consider (if practical, and if not currently completed for all transactions) to examine all presentations to determine compliance, thus affording the protection of UCP 600 article 35 in the event the courier company loses any documents held by it in the intervening time.
- > should, even if not mentioned in a credit, consider sending a message to the confirming or issuing bank informing them that complying documents have been received and give brief details such as the amount, due date (if applicable), details of the shipment (by sea, air, road or rail) and, if documents have been sent, details of the courier name and air waybill number/courier receipt number.
- > should retain copies of all documents and, if agreed between the banks, implement the suggestion in paragraph 5 (ii) regarding the sending of scanned, faxed or emailed images, or act according to any other solution agreed by all parties.
- > should note that where the reimbursement under the credit is subject to the issuing bank determining that a complying presentation has been made, alternative delivery arrangements for the documents may be required to be in place before it agrees to act any further under the credit.

(i) *Nominated bank (NB) hands documents over to courier, courier cannot deliver anywhere in destination country.*

NB is covered by UCP 600 article 35 as the documents have been handed over to the courier—it is not responsible for any delay in delivery.

Documents remain with courier company. NB should inform the issuing bank of the inability of the courier company to deliver the documents, as soon as the courier company informs it of this.

However, the routing of documents is at the request of the issuing bank (in their credit—usually in field 78). It is, therefore, also incumbent upon the issuing bank to advise its advising/confirming banks when it is aware that deliveries cannot be made and to offer alternative delivery options or solutions.

(ii) *NB hands over documents to courier, courier can deliver into destination country but not to designated address.*

NB is covered by UCP 600 article 35 as the documents have been handed over to the courier—it is not responsible for any delay in delivery.

Documents remain with courier company. NB should inform the issuing bank of the inability of the courier company to deliver the documents, as soon as the courier company informs it of this.

However, the routing of documents is at the request of the issuing bank (in their credit—usually in field 78). It is, therefore, also incumbent upon the issuing bank to advise its advising/confirming banks when it is aware that deliveries cannot be made and to offer alternative delivery options or solutions.

(iii) *NB is unable to hand over to any courier service as they are unable to deliver and will not accept any package for delivery.*

NB is covered by UCP 600 article 35 as the documents could have been handed over to the courier, but the courier service cannot collect or deliver—it is not responsible for any delay in delivery.

Documents remain with NB. NB should contact the issuing bank to seek new routing instructions for the documents.

(iv) *LC requires documents by courier service and nominates a specific courier service, but that courier service cannot collect or deliver.*

NB is covered by UCP 600 article 35 as the documents could have been handed over to the specified courier, but the courier service cannot collect or deliver—it is not responsible for any delay in delivery.

Documents remain with NB. NB should contact the issuing bank to seek new routing instructions for the documents.

(v) *LC requires documents by courier service and does not nominate the courier service, the contacted courier service can accept but not deliver.*

NB is covered by UCP 600 article 35 if documents ARE or ARE NOT handed over—it is not responsible for any delay in delivery.

If documents ARE handed over, NB should inform the issuing bank of the inability of the courier company to deliver the documents, as soon as the courier company informs it of this. Documents remain with courier company.

However, the routing of documents is at the request of the issuing bank (in their credit—usually in field 78). It is, therefore, also incumbent upon the issuing bank to advise its advising/confirming banks when it is aware that deliveries cannot be made and to offer alternative delivery options or solutions.

If documents are NOT handed over due to knowledge of non-delivery, documents remain with NB. NB should contact the issuing bank to seek new routing instructions for the documents.

(vi) *Documents have been collected by a courier service but returned to the confirming bank as it is unable to deliver them*

NB is covered by UCP 600 article 35 as documents were handed over, even though subsequently returned to them—it is not responsible for any delay in delivery.

Documents remain with NB. NB should contact issuing bank advising it that on [date] the documents were collected by the courier service and on [date] they have been returned to the confirming bank as the courier service is unable to deliver them and seek new routing instructions for the documents.

Other considerations applicable to scenarios (i)-(vi):

1. The responses to the various scenarios would also apply to documents that are to be sent by registered airmail or similar.
2. When documents are refused by a confirming or issuing bank, the option of returning the documents to the nominated bank should only be used where delivery instructions have been requested and/or obtained from the nominated bank. This will be even more relevant where it is known by the issuing bank that the discrepant documents will not be accepted by the applicant and that they are to be returned.
3. Honour or negotiation, where effected by the nominated bank, should be in accordance with the terms and conditions of the respective credit and the requirements of UCP 600 sub-article 15 (c).
4. A confirming or issuing bank is required to reimburse or arrange reimbursement, for a complying presentation, in accordance with the conditions stated in the respective credit.
5. Delayed payment

When documents are received by a nominated bank that agrees to act on its nomination, the confirming or issuing bank prior to the interruption of the bank's business, and found to be a complying presentation, payment must be timely made in accordance with the terms of the credit. Where payment is delayed due to the closure of the confirming or issuing bank's office, the issue of whether the confirming or issuing bank is liable for interest for late payment is outside the scope of UCP 600 and is to be settled between the concerned parties or according to the applicable law.

C. Interaction between a confirming bank and the issuing bank

This scenario relates to the delivery of documents from the confirming bank to the issuing bank where a complying presentation has been made and to requests for acceptance of documents despite identified discrepancies.

GENERAL NOTES APPLICABLE TO EACH SCENARIO:

Please note that what follows does not address the issues of liability between confirming and issuing banks arising out of delay in delivery, loss of documents or inability to deliver these documents, arising out of the current extraordinary circumstances, which depend on the applicable law.

Each confirming bank:

- > should, even if not mentioned in a credit, consider sending a message to the issuing bank informing them that complying documents have been received and give brief details such as the amount, due date (if applicable), details of the shipment (by sea, air, road or rail) and, if documents have been sent, details of the courier name and air waybill number/courier receipt number.
- > should retain copies of all documents and, if agreed between the banks, implement the suggestion in paragraph 5 (ii) regarding the sending of scanned, faxed or emailed images, or act according to any other solution agreed by all parties.
- > should note that where the reimbursement under the credit is subject to the issuing bank determining that a complying presentation has been made, CB may wish to contact the issuing bank to determine whether or not the documents can be delivered or to seek an alternate solution so that reimbursement may be effected timely for a complying presentation.

(i) *Confirming bank (CB) hands documents over to courier, courier cannot deliver anywhere in destination country.*

CB is covered by UCP 600 article 35 as the documents have been handed over to the courier—it is not responsible for any delay in delivery.

Documents remain with courier company. CB should inform the issuing bank of the inability of the courier company to deliver the documents, as soon as the courier company informs it of this.

However, the routing of documents is at the request of the issuing bank (in their credit—usually in field 78). It is, therefore, also incumbent upon the issuing bank to advise its advising/confirming banks when it is aware that deliveries cannot be made and to offer alternative delivery options or solutions.

(ii) *CB hands over documents to courier, courier can deliver into destination country but not to designated address.*

CB is covered by UCP 600 article 35 as the documents have been handed over to the courier—it is not responsible for any delay in delivery.

Documents remain with courier company. CB should inform the issuing bank of the inability of the courier company to deliver the documents, as soon as the courier company informs it of this.

However, the routing of documents is at the request of the issuing bank (in their credit—usually in field 78). It is, therefore, also incumbent upon the issuing bank to advise its advising/confirming banks when it is aware that deliveries cannot be made and to offer alternative delivery options or solutions.

(iii) *CB is unable to hand over to any courier service as they are unable to deliver and will not accept any package for delivery.*

CB is covered by UCP 600 article 35 as the documents could have been handed over to the courier, but the courier service cannot collect or deliver—it is not responsible for any delay in delivery.

Documents remain with CB. CB should contact the issuing bank to seek new routing instructions for the documents.

(iv) *LC requires documents by courier service and nominates a specific courier service, but that courier service cannot collect or deliver.*

CB is covered by UCP 600 article 35 as the documents could have been handed over to the specified courier, but the courier service cannot collect or deliver—it is not responsible for any delay in delivery.

Documents remain with CB. CB should contact the issuing bank to seek new routing instructions for the documents.

(v) *LC requires documents by courier service and does not nominate the courier service, the contacted courier service can accept but not deliver.*

CB is covered by UCP 600 article 35 if documents ARE or ARE NOT handed over—it is not responsible for any delay in delivery.

If documents ARE handed over, CB should inform the issuing bank of the inability of the courier company to deliver the documents, as soon as the courier company informs it of

this. Documents remain with courier company.

However, the routing of documents is at the request of the issuing bank (in their credit—usually in field 78). It is, therefore, also incumbent upon the issuing bank to advise its advising/confirming banks when it is aware that deliveries cannot be made and to offer alternative delivery options or solutions.

If documents are NOT handed over due to knowledge of non-delivery, documents remain with CB. CB should contact the issuing bank to seek new routing instructions for the documents.

(vi) *Documents have been collected by a courier service but returned to the confirming bank as it is unable to deliver them.*

CB is covered by UCP 600 article 35 as documents were handed over, even though subsequently returned to them—it is not responsible for any delay in delivery.

Documents remain with CB. CB should contact issuing bank advising it that on [date] the documents were collected by the courier service and on [date] they have been returned to the nominated bank as the courier service is unable to deliver them and seek new routing instructions for the documents.

Other considerations applicable to scenarios (i)-(vi):

1. The responses to the various scenarios would also apply to documents are to be sent by registered airmail or similar.
2. When documents are refused by an issuing bank, the option of returning the documents to the confirming bank should only be used where delivery instructions have been requested and/or obtained from the confirming bank. This will be even more relevant where it is known that the discrepant documents will not be accepted by the applicant and that they are to be returned.
3. Honour or negotiation, where effected by the confirming bank, should be in accordance with the terms and conditions of the respective credit and the requirements of UCP 600 sub-article 15 (b).
4. An issuing bank is required to reimburse or arrange reimbursement, for a complying presentation, in accordance with the conditions stated in the respective credit.
5. Delayed payment
When documents are received by the confirming or issuing bank prior to the interruption of the bank's business, and found to be a complying presentation, payment must be timely made in accordance with the terms of the credit. Where payment is delayed due to the closure of the confirming or issuing bank's office, the issue of whether the confirming or issuing bank is liable for interest for late payment is outside the scope of UCP 600 and is to be settled between the concerned parties or according to the applicable law.

D. Interaction between the issuing bank and the applicant

This scenario relates to the delivery of the documents where a complying presentation has been made or where details of discrepancies have been advised to the applicant with a view to obtaining an acceptable waiver.

- (i) It should be noted that the delivery of documents to the applicant, by the issuing bank, is outside the scope of the UCP 600.
- (ii) An issuing bank should liaise with its customer (the applicant) to determine the best way to deliver the documents. This may, for example, involve delivery of certain documents to the customer's freight forwarder, or the carrier or its agent, to facilitate the release of the underlying goods from the customs area or port/airport facility or warehouse.
- (iii) The relationship between the customer and the issuing bank is the most important at times such as these. The customer's agreement to modify rules in the terms and conditions of its credit, identify different locations for the delivery of documents, and/or offer different solutions that will facilitate the release of goods, and/or agreeing to the acceptability of scanned, faxed or emailed documents (pending resumption of courier services) and/or the payment thereof, are paramount as it may affect the indemnity agreement with the bank.
- (iv) Any alternate solutions that are agreed between the parties, should be reflected in the customer reimbursement agreements or produced as an addendum to such agreement.
- (v) The quick turnaround of the applicant's instructions that provide an acceptable waiver to discrepancies identified in documents, will also play an important part in the flow of documents from beneficiary to applicant.

E. Other trade products

DOCUMENTARY COLLECTIONS

- (i) Collecting and presenting banks are only in a position to act from the time when they receive the collection instruction from the remitting bank. Principals and remitting banks should consider selecting a collecting or presenting bank on the basis of their close proximity to the importer so as to facilitate the obtaining of a payment or acceptance instruction and delivery of the documents.

Prior to sending any collection instruction, the remitting bank should contact the chosen collecting bank to confirm whether documents can be delivered, on what basis and to where.

A remitting bank that is not able to forward the collection instruction to a collecting bank, should revert to the principal to seek new instructions which could include sending scanned, faxed or emailed images of the documents to the collecting or presenting bank, with the original and copy documents being held by the remitting bank pending receipt of delivery details for the collecting or presenting bank, or the resumption of courier delivery. The original and copy documents will be held by the remitting bank under the responsibility of the principal.

DEMAND GUARANTEES

(i) ***Delivery of a demand by the beneficiary to a guarantor***

The comments made above in respect of the “Interaction between the beneficiary and a nominated bank that has not added its confirmation, a confirming bank or the issuing bank” will equally apply here. Beneficiaries should also take note of the content of URDG 758 sub-article 14 (d).

A guarantor should examine the demand in accordance with the requirements of URDG 758 article 20 and, if the demand complies, make payment. In the event of any refusal of that demand, the guarantor is to act in accordance with URDG 758 article 24.

(ii) ***Delivery of a demand by the beneficiary to a guarantor via an advising party***

URDG 758 sub-article 10 (c) states “*An advising party or a second advising party advises a guarantee without any additional representation or any undertaking whatsoever to the beneficiary.*” The advising party, therefore, has no obligation to forward a demand to the guarantor. Therefore, if the beneficiary requests the advising party to forward its demand in paper form to the guarantor, but the advising party is unable to do so, e.g., due to the courier service not being able to accept it for delivery, or to deliver it, to the guarantor, the advising party may assist the beneficiary, for example, through the initiation of a dialogue with the guarantor to seek an alternative option(s), but it does not have an obligation to do so.

(iii) ***Interaction between a guarantor and a counter-guarantor***

URDG 758 article 22 will allow for the transmission of copies of a complying demand to a counter-guarantor in an electronic form e.g., scanned, faxed or emailed. A guarantor should also ensure that the counter-guarantor is advised of the details of any demand as required by article 16.

(iv) ***Interaction between the counter-guarantor or guarantor and the instructing party***

URDG 758 article 22 will allow for the transmission of copies of a complying demand to an instructing party in an electronic form e.g., scanned, faxed or emailed. A counter-guarantor or guarantor should also ensure that the instructing party is advised of the details of any demand as required by article 16. Any extend or pay demands should be handled with minimal delay, and always within the timeframe set out in URDG 758 article 23, as this may help to reduce the number of demands that may need honouring.

(v) ***Delayed payment***

When a demand, and any supporting documentation (if any), are received by the guarantor prior to the interruption of the guarantor’s business, and found to be a complying presentation, payment must be timely made in accordance with the terms of the guarantee. Where payment is delayed due to the closure of the guarantor’s office, the issue of whether it is liable for interest for late payment is outside the scope of URDG 758 and is to be settled between the beneficiary and guarantor or according to the applicable law.