

Finance for Development

Banking Commission

The ICC Banking Commission refers to the “Guidance paper on the impact of COVID-19 on trade finance transactions subject to ICC rules” that it released on 6 April 2020 and, in particular, to sections B (iii)-(v) and C (iii)-(v).

That Guidance paper is not an official publication of the ICC Banking Commission. It is a paper that the Banking Commission released in relation to the application of its rules consistent with its tradition of clarifying their proper interpretation and application when it determines that there is a need to do so.

Practitioners globally have generally indicated their agreement to the content of the above sections in the Guidance paper. Nevertheless, some doubts have been raised from a legal perspective as to whether the inability of a bank to transmit or send letters or documents in paper form between a nominated bank, confirming bank and issuing bank, in the manner required by a documentary credit, due to events such as (but not limited to) those experienced during the COVID-19 pandemic, would prevent an application of the principles set out in those sections applying a literal reading of UCP 600 article 35 which, when applicable, qualifies the requirements to forward documents set out in UCP 600 sub-articles 7 (c), 8 (c), 15 (b) and/or 15 (c) .

To provide further clarity, the ICC Banking Commission issues the following Interpretative Paper

Interpretative Paper on the correct interpretation of the first paragraph of UCP 600 article 35

Article 35 of UCP 600 provides in its first paragraph:

"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."

For the avoidance of any doubt, the ICC Banking Commission confirms that, in its true interpretation, article 35 of UCP 600 should be read also to apply to the case where the nominated bank or the confirming bank is not able to transmit or to send letters or documents in paper form (collectively “Documents”) in accordance with the requirements stated in the documentary credit because:

- the courier or postal service provider nominated in the documentary credit does not accept, collect or deliver the Documents, or
- where no courier or postal service provider has been nominated in the documentary credit, no such service provider accepts, collects or delivers the Documents at the time the nominated bank or the confirming bank is to send the Documents to the confirming bank or issuing bank,

provided that, in both cases, the nominated bank or the confirming bank has first made reasonable efforts to (a) find a courier or postal service provider that would accept or collect and thereafter deliver the Documents and (b) obtain the consent of, or instructions from, the issuing bank approving delivery in that manner.

This Interpretative Paper applies generically to all situations involving the application of UCP 600, including to documentary credits that are outstanding at the time of its publication. It does not amend Article 35 of UCP 600, but merely states its correct interpretation.

Where operational problems arise or are anticipated, it is recommended that all banks involved in the documentary credit are encouraged to liaise without delay to seek to agree on a mutually acceptable solution.