

ICC Banking Commission

Technical Advisory Briefing No. 7 Subject: Title of Invoice

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ISSUE

It has recently been noted that frequent observations have been made by practitioners, and on social media, as to the types of invoice that are, or are not, acceptable for presentation under a documentary credit. Unfortunately, a number of misinterpretations have been observed.

INTRODUCTION

ISBP 745 paragraph C1, “Title of invoice”, divides the issue of the title of an invoice into two separate sub-paragraphs: C1 (a) addressing the type of invoice that is acceptable and the type that is not, and C1 (b) clarifying the interpretation of a “commercial invoice”.

Reference is drawn to the introduction to ISBP 745 which contains the following: “It should be noted that any term in a documentary credit that modifies or excludes the applicability of a provision of UCP 600 may have an impact on international standard banking practice” and “This principle is implicit throughout this publication. Where examples are given, these are solely for the purpose of illustration and are not exhaustive.”. Paragraph (ii) of Preliminary Considerations emphasizes this point “The practices described in this publication highlight how the articles of UCP 600 are to be interpreted and applied, to the extent that the terms and conditions of the credit, or any amendment thereto, do not expressly modify or exclude an applicable article in UCP 600.”

ANALYSIS

The main criterion for an invoice is that it must comply with the terms and conditions of the documentary credit and, unless otherwise stated in the documentary credit, with the 4 conditions cited in UCP 600 sub-article 18 (a):

- must appear to have been issued by the beneficiary (except as provided in article 38);
- must be made out in the name of the applicant (except as provided in sub-article 38 (g));
- must be made out in the same currency as the credit; and
- need not be signed;

as well as with the requirement for a goods description as outlined in sub-article 18 (c).

In addition, sub-article 18 (b) deals with the possible acceptance of an invoice issued for an amount in excess of the amount permitted by the documentary credit, although that is not a subject for this Briefing.

There is no mention in UCP 600 as to how an invoice should be titled. Such interpretation is to be found in ISBP 745 and is detailed below.

Paragraph C1 (a)

In the event that a documentary credit requires presentation of an “invoice”, and no illustrative comments are provided in respect of the exact type of invoice, then such requirement will be fulfilled by the presentation of any type of invoice.

Any type of invoice is explained as encompassing, but not limited to, commercial invoice, customs invoice, tax invoice, final invoice, consular invoice, and any other similar types of invoice. However, the critical aspect is that an invoice is not to be identified as “provisional”, “pro-forma” or the like, unless expressly permitted by the terms and conditions of a documentary credit.

Should a documentary credit clearly allow for presentation of a certain type of invoice including, for example, a provisional invoice, such invoice is to be presented and would fall under the category of types of invoice referred to in paragraph C1 (a) and be subject to examination in the same manner as a commercial invoice as stated in UCP 600 article 18.

Why are provisional or pro-forma invoices considered as unacceptable, unless authorised in the documentary credit?

- The primary function of an invoice is to provide formal “confirmation” of a specified supply of goods, services or performance.
- Issuance of a provisional invoice implies that a further, or final, invoice may still be issued and presented, noting that a final invoice is referred to in ISBP 745 paragraph C1 (a). A provisional invoice is often issued when the final price of the goods is to be determined by an inspection or analysis once the goods arrive at the port of discharge. A provisional invoice will cover the shipment of goods, as required by the documentary credit, but will usually be issued for up to 95% of the value of the goods as determined at the point of shipment. Depending on the outcome of the inspection or analysis at the port of discharge, a final invoice may follow.
- A pro-forma invoice represents a quote for sale of goods, services or performance. It does not fulfil the required primary function of a commercial invoice.

Paragraph C1 (b)

Presentation of a document simply titled “invoice” is sufficient to fulfil the requirement in a documentary credit for presentation of a “commercial invoice”.

This also applies when an “invoice” includes a statement that it has been issued for tax purposes. This aligns with paragraph C1 (a), wherein it is identified that a tax invoice is acceptable.

A requirement for presentation of a “commercial invoice” will also be satisfied by the presentation of any type of invoice including, but not limited to, those mentioned in paragraph C1 (a) such as customs invoice, tax invoice, final invoice, and consular invoice.

SUMMARY

The terms “invoice” and “commercial invoice” are, for the purpose of documentary credits and UCP 600, interchangeable. If a credit requires presentation of simply an “invoice”, UCP 600 article 18 still applies.

As stated within ISBP 745 paragraph A39 “Title of documents and combined documents”, a document, which would include an invoice:

- may be titled as called for in the applicable credit,
- may bear a similar title,
- or be untitled.

The crucial characteristic is that the content of an invoice must appear to fulfil the function of the required document.

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