

## ICC Banking Commission

### **Technical Advisory Briefing No. 9** **Subject: Direct presentation of documents to an Issuing Bank under a documentary credit subject to UCP 600**

20 March 2024

#### **ISSUE**

When a documentary credit stipulates a nominated bank (which may also be a confirming bank), it is usually expected that presentation of documents will be made to the stated nominated bank. However it has been observed that, on occasion, a presenter may deliver the documents directly to the issuing bank, bypassing the nominated bank.

Unless otherwise stated in the documentary credit, the presenter always has the choice of presenting either to a nominated bank or to the issuing bank.

In a situation where the nominated bank has been bypassed, the question has been raised as to whether the issuing bank has a responsibility to inform the nominated bank of such “direct” presentation.

For the purposes of this Briefing, "direct" presentation includes presentation through a bank other than a nominated bank'.

#### **INTRODUCTION**

UCP 600 article 2 defines presentation as “either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered.”

UCP 600 article 2 defines a nominated bank as “the bank with which the credit is available or any bank in the case of a credit available with any bank.”

UCP 600 article 2 defines a presenter as “a beneficiary, bank or other party that makes a presentation.”

UCP 600 sub-article 6 (a) states that: “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.”

UCP 600 sub-article 6 (d) (ii) states that: “The place of the bank with which the credit is available is the place for presentation. The place for presentation under a credit available with any bank is that of any bank. A place for presentation other than that of the issuing bank is in addition to the place of the issuing bank.”

UCP 600 sub-article 7 (a) states that: “Provided 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 honour if the credit is available by ....”

## **ANALYSIS**

As stated in UCP 600 sub-article 6 (a), “A credit available with a nominated bank is also available with the issuing bank.” Essentially this allows for presentation of documents by a presenter directly to the issuing bank, regardless of whether there is a nominated bank. Furthermore, as stated in sub-article 6 (d) (ii), a place for presentation other than that of the issuing bank is in addition to the place of the issuing bank.

However, in virtually all cases, a presenter will take advantage of presentation to a nominated bank, particularly if confirmation has been added. There may, however, be circumstances wherein the presenter bypasses the nominated bank.

ICC Opinion R518 (TA519rev) states: “Where a credit has been made available with a nominated bank, the beneficiary may elect to present documents directly to the nominated bank or to the issuing bank. Presentation to the issuing bank is an acceptable act on the basis that it is the issuing bank that has provided its undertaking to honour complying documents.”

Should a presentation be made directly to the issuing bank, the undertaking of the issuing bank as stated in UCP 600 sub-article 7 (a) still remains, i.e., provided that the documents constitute a complying presentation, the issuing bank must honour. The fact that the nominated bank is not the presenter is not grounds for refusal.

The issuing bank must, as stated in UCP 600 sub-article 14 (a), examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.

If the presenter decides to send documents directly to the issuing bank, they must be received by the issuing bank within the expiry date and/or latest date for presentation. In the event that such documents are presented in two separate lots, both lots must be received by the issuing bank within the expiry date and/or latest date for presentation. A presenter making a presentation directly to the issuing bank should also carefully consider the second paragraph of UCP 600 article 35. Under this rule, the presenter will bear the risk of documents being lost (or delayed) in transit to the issuing bank. For a complying presentation made to the nominated bank, the issuing bank bears the risk of the documents being lost or delayed in transit between the nominated bank and the issuing bank.

#### *Informing the nominated bank*

In the event that documents are presented directly to the issuing bank, UCP 600 is silent on whether or not the nominated bank should be informed of such presentation.

Nevertheless, as a matter of good practice, when a documentary credit is available with a named nominated bank, but documents are presented directly to the issuing bank, the issuing bank would be well advised to contact the nominated bank to inform them of the direct presentation (so that the nominated bank's records can be updated) and to enquire of the details of any presentation(s) that have been made for which the issuing bank may be unaware. Whilst the examination of the presentation must be concluded by the close of the 5<sup>th</sup> banking day following the day of presentation, settlement to the presenter can be delayed pending receipt of a response from the nominated bank. Any delay in settlement would be as a direct consequence of the presenter choosing to bypass the nominated bank.

This is emphasised in ICC Opinion R518 (TA519rev) which states: "In circumstances where the documents are presented directly to the issuing bank, the issuing bank would be entitled to seek certain assurances prior to effecting settlement. If there is a nominated bank (in the sense of a restricted credit), then it would be entitled to contact that bank to ascertain that no other drawing had been made which may draw into conflict the presentation received directly."

For documentary credits that are available with any bank, it will not be feasible for an issuing bank to make contact as outlined above. A nominated bank, when deciding whether to negotiate or not, needs to be aware that the issuing bank is only required to honour drawing(s) that meet the terms and conditions of their credit. Therefore, any presentations made to the issuing bank by one or more other nominated banks will be taken into account when determining compliance.

#### *Confirmation fees*

UCP 600 sub-article 37 (c) states that “A bank instructing another bank to perform services is liable for any commissions, fees, costs or expenses (“charges”) incurred by that bank in

connection with its instructions. 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.”

Accordingly, in the event that documents are not presented via an advising bank, second advising bank or confirming bank, the issuing bank remains liable for payment of their charges if they cannot be collected from the beneficiary.

#### *Terms and conditions*

It has been noted that issuing banks occasionally add a clause to a documentary credit stating that documents cannot be presented directly to their counters by anyone other than the nominated bank. In such circumstances, the presenter should avoid direct presentation to the issuing bank and consider the risk if it is not possible to present to the nominated bank.

### **SUMMARY**

The obligation and undertaking of the issuing bank remain the same whether documents are presented via a nominated bank or directly to the issuing bank. In both scenarios, the issuing bank must honour provided the stipulated documents have been presented and that they constitute a complying presentation.

In the interests of good practice it is strongly recommended that, in the event a documentary credit is available with a named nominated bank and documents are presented directly to the issuing bank, the issuing bank should contact the nominated bank accordingly and inform them of such presentation and, where appropriate, await confirmation that no other presentation has been made to the nominated bank.

**This briefing is educational only**