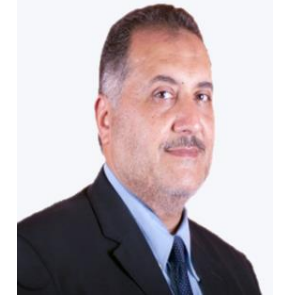


ندوة لشرح

مصطلح "بدون تأخير" الوارد في لائحة الأعراف و القواعد الموحدة للاعتمادات
المستندية اصدار رقم 600 طبقا للبيان الفني الصادر من اللجنة المصرفية بغرفة
التجارة الدولية باريس في ابريل 2022

**ICC Banking Commission Technical Advisory Briefing (2) about the
Meaning of 'without delay' in UCP 600
April 2022**

Mohamed Hosny Atteya



محمد حسنى عطية

- مستشار فني للتجارة الدولية في غرفة التجارة الدولية – السعودية، اتحاد الغرف السعودية
- عضو اللجنة المصرفية الدولية بغرفة التجارة الدولية باريس
- خبير مستقل في مجموعة التجارة والاستثمار بغرفة التجارة الدولية باريس
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ICC Banking Commission Technical Advisory Briefing (2) about the Meaning of 'without delay' in UCP 600 April 2022

2!!
يعنى فيه 1؟؟؟
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ICC Banking Commission

Technical Advisory Briefing No. 1

Subject: Non-documentary conditions in Documentary Credits subject to UCP 600

13 January 2022



Issuing Bank

MT 700
46A include
Non-documentary
condition

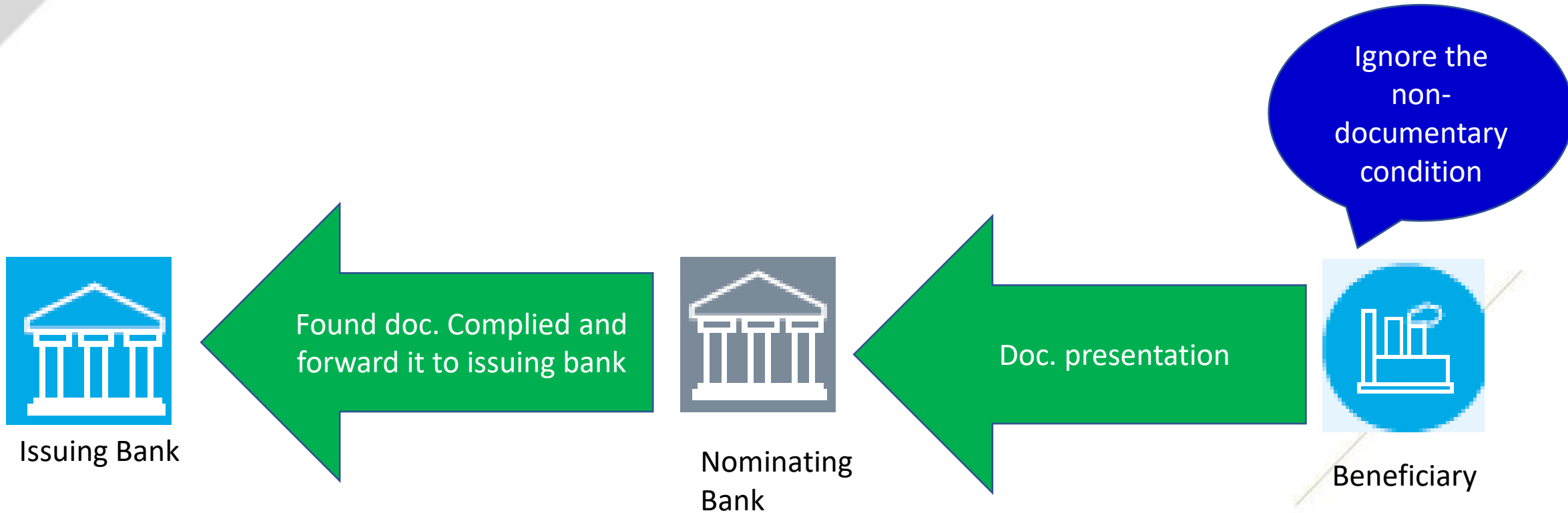


Nominating
Bank

Advise the MT 700



Beneficiary





Issuing Bank

Doc. Refused due to
non-compliance with
the term of the credit



Nominating
Bank



Beneficiary

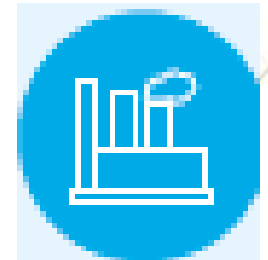


Issuing Bank

It is a non-documentary condition and to be disregarded as it do not contradict with any other data within documents



Nominating Bank



Beneficiary

يا غرفة التجارة الدولية افتنا في
هذا الأمر
هو صحيح حقل 46 يحول
المذكور فيه تلقائيا الى مستند حتى
لو ما كان كانت البيانات المكتوبة
مستند و كانت مجرد شرط غير
مشفع بمستند؟؟



Issuing Bank

Who said it is a non-documentary condition!!!
As long as it is stated within field 46A in MT 700 it IS A
DOCUMENT TO BE PRESENTED
READ CAREFULLY THE NAME OF FIELD 46A
“ DOCUMENTS REQUIRED”

يعنى المعلومة اللى تتكب في الحقل ده تتحول الى مستند اتوماتيكيا



Nominating
Bank



Beneficiary

ICC Banking Commission

Technical Advisory Briefing No. 1

Subject: Non-documentary conditions in Documentary Credits subject to UCP 600

13 January 2022

UCP 600 sub-article 14 (h)

states “If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it.”

ICC Banking Commission

Technical Advisory Briefing No. 1

Subject: Non-documentary conditions in Documentary Credits subject to UCP 600

13 January 2022

ISBP 745 paragraph A26

states “When a credit contains a condition without stipulating a document to indicate compliance therewith (“non-documentary condition”), compliance with such condition need not be evidenced on any stipulated document.

However, data contained in a stipulated document are not to be in conflict with the non-documentary condition. For example, when a credit indicates “packing in wooden cases” without indicating that such data is to appear on any stipulated document, a statement in any stipulated document indicating a different type of packing is considered to be a conflict of data.”

R631

R743

R892

ICC Banking Commission

Technical Advisory Briefing No. 1

Subject: Non-documentary conditions in Documentary Credits subject to UCP 600

13 January 2022

A bank may not refuse to honour or negotiate a presentation on the basis that a *non-documentary condition* is not addressed in any stipulated document that is presented.

It should be noted that the above applies regardless of the field of a SWIFT MT700 (or MT710 or MT720) message in which a *non-documentary condition* appears.

المحاور:

1. المواد التي ورد فيها ذكر مصطلح **without delay**
2. المنازعات الخاصة بمصطلح **without delay** والتي تم الفصل فيها بمعرفة اللجنة المصرفية بغرفة التجارة الدولية باريس
3. حكم قضائي خاص بمصطلح **without delay**
4. مخاطر استبدال مصطلح **without delay** بفترة زمنية محددة
5. الملخص

INTRODUCTION

Whilst the phrase is used in 4 articles of the UCP 600, no formal definition exists. In practice, relatively few problems have arisen despite the lack of a definition but, in reaction to a number of requests, it is considered appropriate that guidance now be given.

The UCP 600 articles in which the phrase appears are:

1. المواد التي ورد فيها ذكر مصطلح without delay

Sub-article 8 (d),

“If a bank is authorized or requested by the issuing bank to confirm a credit but is not prepared to do so, it must inform the issuing bank without delay and may advise the credit without confirmation.”

The UCP 600 articles in which the phrase appears are:

1. المواد التي ورد فيها ذكر مصطلح without delay

- Sub-article 9 (e),

“If a bank is requested to advise a credit or amendment but elects not to do so, it must so inform, without delay, the bank from which the credit, amendment or advice has been received.”

The UCP 600 articles in which the phrase appears are:

1. المواد التي ورد فيها ذكر مصطلح without delay

- Sub-article 9 (f),

“If a bank is requested to advise a credit or amendment but cannot satisfy itself as to the apparent authenticity of the credit, the amendment or the advice, it must so inform, without delay, the bank from which the instructions appear to have been received. If the advising bank or second advising bank elects nonetheless to advise the credit or amendment, it must inform the beneficiary or second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit, the amendment or the advice.”

The UCP 600 articles in which the phrase appears are:

1. المواد التي ورد فيها ذكر مصطلح without delay

Sub-article 10 (b),

“An issuing bank is irrevocably bound by an amendment as of the time it issues the amendment. A confirming bank may extend its confirmation to an amendment and will be irrevocably bound as of the time it advises the amendment. A confirming bank 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.”

The UCP 600 articles in which the phrase appears are:

1. المواد التي ورد فيها ذكر مصطلح without delay

- Sub-article 11 (a),

“An authenticated teletransmission of a credit or amendment will be deemed to be the operative credit or amendment, and any subsequent mail confirmation shall be disregarded. If a teletransmission states ‘full details to follow’ (or words of similar effect), or states that the mail confirmation is to be the operative credit or amendment, then the teletransmission will not be deemed to be the operative credit or amendment. The issuing bank must then issue the operative credit or amendment without delay in terms not inconsistent with the teletransmission.”

The UCP 600 articles in which the phrase appears are:

1. المواد التي ورد فيها ذكر مصطلح without delay

- Sub-article 11 (b),

“A preliminary advice of the issuance of a credit or amendment (“pre-advice”) shall only be sent if the issuing bank is prepared to issue the operative credit or amendment. An issuing bank that sends a pre-advice is irrevocably committed to issue the operative credit or amendment, without delay, in terms not inconsistent with the pre-advice.”

2. المنازعات الخاصة بمصطلح **without delay** والتي تم الفصل فيها بمعرفة اللجنة المصرفية بغرفة التجارة الدولية باريس

ICC Opinions

A number of ICC Opinions have addressed whether the action of a bank could be considered to have been completed without delay. The most recent are:

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TA909rev –

Extracted from the “Guidance Paper on the impact of COVID-19 on trade finance transactions subject to ICC rules” that the ICC Banking Commission released on 6 April 2020: “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.”

ICC Opinions

A number of ICC Opinions have addressed whether the action of a bank could be considered to have been completed without delay. The most recent are:

R905 (TA891rev) –

Queried whether 12 days can be considered as not being without delay or is outside the scope of UCP 600. It was concluded that in accordance with international standard banking practice, the issuing bank should return all documents to the presenter, without delay, in one lot or as otherwise directed. Whether 12 days represents a protracted delay is outside the scope of UCP 600.

3 - تفسير قضائي لمصطلح without delay

Legal interpretation

It is worth making reference to a UK Commercial Court judgement in *Fortis Bank and Stemcor UK Limited v Indian Overseas Bank* [2010] and the appeal in 2011 in respect of a documentary credit subject to UCP 600.

The question was whether or not the issuing bank, having sent a notice that documents would be returned in accordance with article 16, were obligated to return the documents with reasonable promptness.

3 - تفسير قضائي لمصطلح without delay

The Court of Appeal held that standard international banking and trading practices require an obligation to act in accordance with such notices and where an issuing bank elects to return documents, under sub-article 16 (c) (iii) (c), it is required to do so promptly and without delay.

Additionally, when acting in accordance with sub-article 16 (e), it is required to do so with reasonable promptness.

3 - تفسير قضائي لمصطلح **without delay**

The Court of Appeal also stated that whilst there was no express obligation on the issuing bank to return the documents promptly and without delay upon giving notice, such an obligation was implicit in the wording of article 16 and was in line with international practice.

Once the issuing bank had elected to refuse the documents, it breached this obligation by failing to return the documents for a substantial period of time and was therefore precluded under sub-article 16 (f) from relying on the discrepancies.

3 - تفسير قضائي لمصطلح **without delay**

The Court of Appeal did not consider that the obligation to return documents “promptly” or “within a reasonable time” would cause uncertainty although the exact meaning of these terms was likely to be tested in due course.

In this case, the Court of Appeal’s conclusion that the documents were not returned reasonably promptly was fairly straightforward given that in November 2008 the issuing bank had either issued its refusal notices, or had received instructions to return the documents to the presenter, and the documents were not returned until February 2009.

4- مخاطر استبدال مصطلح **without delay** بفترة زمنية محددة

IMPLICATION FOR REPLACING WITHOUT DELAY WITH A SPECIFIED PERIOD OF TIME

Using one of the above UCP 600 references as an example, UCP 600 sub-article 9 (e) states “If a bank is requested to advise a credit or amendment but elects not to do so, it must so inform, without delay, the bank from which the credit, amendment or advice has been received.”

4- مخاطر استبدال مصطلح **without delay** بفترة زمنية محددة

To remove **without delay** and insert a specific period of time would require the rule to additionally state an outcome for a failure to comply i.e., a form of penalty.

Clearly, an advising bank or second advising bank cannot be forced to advise a credit or amendment, whether or not a specific period of time is mentioned, and it certainly would not be for the UCP 600 to impose any form of penalty.

Therefore, no action could be attached for failure to comply and the insertion of a period of time would have no impact other than to raise unwarranted debate if the time period was exceeded.

SUMMARY

Without delay is a recognised term within UCP 600, but is deliberately not defined due to the fact that, as stated in various ICC Opinions, the precise interpretation of this term would depend upon the circumstances of each case. As mentioned above, the incorporation of a specific timeline would require an indication of the consequence (i.e., penalty) for failure to comply, in order for it to have any effect.

It is clear that whilst the term without delay does not signify an immediate action, or that an action is to be completed 'at once', it does imply a degree of urgency and attention that the concerned bank should apply.

Under international standard banking practice, reference in the UCP 600 to without delay means that the concerned bank must complete an action as soon as practicable for that activity and with due consideration to any given circumstance(s).

This briefing is educational only

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