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ICC Banking Commission

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Subject: Third party documents: usage, examination and acceptance under UCP 600

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It has been noted that there is often confusion regarding the meaning and effect of expressions such as "third party documents" when used in documentary credits, and whether such expressions alter documentary requirements under UCP 600.

Questions arise concerning examination criteria and whether third party documents are permitted.

INTRODUCTION

The expression "third party documents" is commonly used to refer to documents issued by persons or entities other than the beneficiary, although this expression is not defined in UCP 600. Such documents may include inspection certificates, certificates of origin, and other documents not expressly required by the credit or UCP 600 to be issued by the beneficiary.

By contrast, a commercial invoice must be issued by the beneficiary unless the credit expressly provides otherwise or, for example, in the case of a transferred credit.

Their acceptance is governed primarily by UCP 600 which establishes the conditions under which banks must determine conformity. ISBP 821 serves as a supplementary guidance tool, offering practical insights into how parties should interpret UCP 600 rules in transactions and reinforcing the standardisation of trade finance practices.

ANALYSIS

Notably, ISBP 821 explicitly states in paragraph A19 d) that the phrase "third party documents not acceptable" has no meaning and is to be disregarded. However, clauses such as 'third party as shipper not acceptable' are sometimes included in documentary credits. In this context, the clause relates specifically to the identity of the shipper appearing in the transport document, rather than to the broader concept of 'third party documents' under UCP 600 and ISBP 821.

Furthermore, ISBP 821 paragraph A19 c) states that the phrase "third party documents acceptable" should not be used, as it is not defined in UCP 600, Where used, it merely confirms the default UCP 600 position that, except for drafts, documents for which the credit or UCP 600 do not indicate an issuer may be issued by a person or entity other than the beneficiary. It does not alter specific UCP 600 requirements regarding document issuers, such as the requirement for a commercial invoice to be issued by the beneficiary.

Consequently, except for drafts, documents for which the credit or UCP 600 does not designate an issuer, may be issued by a person or entity other than the beneficiary. This provision ensures flexibility in trade transactions, allowing third party service providers, such as independent surveyors, to issue essential trade documents. However, while the allowance of third party documents is a default position under UCP 600, the terms of a documentary credit or the provisions of UCP 600 that designate an issuer for a specific document may override this general position, explicitly requiring documents to be issued solely by the beneficiary.

For transport and insurance documents, UCP 600 does not rely on the concept of issuance by a "third party". Transport documents are examined based on signature and capacity, while insurance documents must be issued and signed by insurers, underwriters, or their agents or their proxies. In this context, expressions such as "third party documents acceptable" have no operative meaning.

Despite the clear framework provided by UCP 600 and ISBP 821, challenges persist in the practical application of third party documents. Variations in banks' interpretations, coupled with differing national regulatory requirements, can lead to inconsistent treatment of third party documents. To mitigate such issues, trade finance practitioners must ensure clarity in their documentary credit terms, explicitly stating any restrictions or allowances regarding third party issuance. Moreover, applicants and beneficiaries should align their documentary practices with ISBP 821 best practices to reduce the risk of discrepancies.

UCP 600 and ISBP 821 regulate the examination of documents on their face and do not require banks to determine the authenticity of any presented document. Allegations of forgery or fraud fall outside the scope of documentary examination and are governed by applicable law. The fact that a document is issued by a third party does not alter the bank's examination standard under UCP 600, nor does it change the principle that banks deal with documents, not with goods, services, or underlying conduct.

SUMMARY

Under UCP 600, third-party documents are generally acceptable, except drafts, unless the credit or UCP 600 specify otherwise. Beneficiaries should verify documentary credit requirements to avoid discrepancies.

Third party documents play a vital role in international trade, facilitating the smooth execution of documentary credit transactions. UCP 600 establishes clear principles for their acceptance, while ISBP 821 provides essential interpretative guidance to standardise examination practices.

While documents issued by entities other than the beneficiary are generally permitted unless expressly restricted, the use of expressions such as "third party documents acceptable" does not, in itself, alter the application of UCP 600 or international standard banking practice. Banks, applicants, and beneficiaries must remain vigilant in the documentary requirements of the credit to mitigate the risks associated with discrepancies and inconsistent interpretations.

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