



ICC Banking Commission

Digital Commercialisation Briefing Paper No. 1

Subject: Risk of email presentations and file attachments under Documentary Credits subject to UCP 600

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ISSUE

During the height of the COVID 19 pandemic, the industry developed various innovative methods in order to be able to continue supporting the processing of documentary credit transactions based upon the premise that those involved were, to a great extent, forced to working remotely.

INTRODUCTION

One of the more commonly adopted methods was to allow for the presentation of documents under documentary credits via email. For many banks, this new practice was subject to exceptional risk approvals requiring due diligence and sign-offs from several internal departments including Legal, Compliance, Risk Management, and Operations. Most of these concessions were noted as ‘COVID’ exceptions which would cease to exist at the end of pandemic when activities reverted to BAU (business as usual).

ANALYSIS

However, since the end of the pandemic, feedback suggests that the trade finance industry has seen an increase in the number documentary credits allowing for email presentations. Furthermore, a minority are still referencing the former 'COVID' verbiage and allowing for email presentations by either the beneficiary to the nominated bank or by the nominated bank to the issuing bank.

This Briefing Paper seeks to highlight a number of the risks (listed below) associated with email presentations and strongly encourages organisations to review their practices whilst considering the adoption of a more secure and encrypted method for processing electronic records. Reference should also be made to ICC Guidance Papers in respect to the handling of documentary credits in a digital environment¹.

For comparative information purposes, under the eUCP Version 2.0, an electronic record means data created, generated, sent, communicated, received or stored by electronic means, including where appropriate, all information logically associated with or otherwise linked together so as to become part of the record, whether generated contemporaneously or not, that is (a) capable of being authenticated as to the apparent identity of a sender and the apparent source of the data contained in it, and as to whether it has remained complete and unaltered, and (b) capable of being examined for compliance with the terms and conditions of the eUCP credit.

It should be noted that a digital record is one that exists in digitised form only, whereas an electronic record may also encompass a copy of an original document that is stored in electronic form, e.g. a scanned copy.

As stated in the ICC Guidance Paper on the impact of COVID-19 on trade finance transactions issued subject to ICC rules², it is emphasised that any changes to the mode or location for the delivery of the documents, or any alternate solutions for the handling of a documentary credit subject to ICC rules will require the express

¹ <https://iccwbo.org/publication/eucp-version-2-0-icc-uniform-customs-and-practice-for-documentary-credits/>

² <https://iccwbo.org/publication/guidance-paper-on-the-impact-of-covid-19-on-trade-finance-transactions-issued-subject-to-icc-rules/>

agreement of the parties to the relevant undertaking: issuing bank and nominated/confirming bank; and the applicant and the beneficiary (as applicable).

It should be noted that the delivery of documents by, or on behalf of, a beneficiary is outside the scope of the UCP 600.

Potential Risks

- Dealing with non-client beneficiaries, potentially resulting in an unoptimised process.
- Inadequate client documentation to support this mode of presentation in respect of roles, responsibilities and subsequent outcomes.
- Presentation of mutable file formats (e.g., MS Word/Excel and other non-pdf formatted attachments) may lead to client / bank disputes in the event that data on document(s) is altered.
- Inability to process certain file formats.
- Duplicate presentation (both email and physical) to the nominated or issuing bank, or separate presentations to both banks.
- Screening of incoming data as to identity and source.
- Malware contained in email attachments.
- Legal & regulatory.
- Fraud.

Potential technical challenges

- Firewalls: inability to receive, or to access, the email and/or file attachment(s).
- Document encryption: impacting a bank's ability to open attachments or requiring the recipient to procure additional software.
- Handling of relevant formats for electronic records, authenticating messages, and executing electronic signatures.

- Threat of viruses: non-deployment of virus protection software may result in operating systems exposure to security issues.
- Virus protection software may delete file attachments.

Potential Operational challenges

- Banks will need to undertake a thorough analysis of the impact on operational risk related to the presentation of emails and attachments whilst creating new procedures and permanent risk guidelines for these practices.
- Organisations may additionally wish to consider a specific strategy for approaching customers as to their understanding of the risks associated with email presentations.
- Allocation of dedicated resources and establishment of dedicated email addresses in all documentary credit processing locations.
- Ensuring appropriate procedures and controls are in place to:
 - o Monitor and respond to emails.
 - o Register receipt and submit for processing (document examination).
 - o Process incomplete or hybrid (paper/electronic) presentations.
- Potentially print attachments to create a 'physical' presentation.
- The ICC Covid Guidance Paper, referenced above, suggests that when scanned, faxed or emailed images of paper documents have been sent by a nominated bank to an issuing bank, such sending should be supplemented by a SWIFT message, sent by the nominated bank to the issuing bank, confirming the action taken and the completeness of the scanned, faxed or emailed images. This would allow issuing banks to be in a position to make their own determination of whether or not an otherwise complying presentation had been made.

SUMMARY

It is strongly recommended, in view of the above identified risks and challenges, that the presentation of documents under documentary credits via email be avoided.

However, if such practice is to proceed then, at the minimum, careful note should be taken of the following:

- Format(s) of the emails and file attachments to be agreed up-front by all parties to the transaction.
- Availability and maintenance of an appropriate data processing system.
- Updated operational risk management policy(ies).
- Dedicated email addresses and resources.

Notwithstanding, the ideal solution should the involved parties consider it to be of benefit to allow for emailed presentations and file attachments and to continue with such a process, is for any relevant credits to be issued subject to the current version of eUCP. The UCP 600, although being invaluable in a paper world, provides limited protection when applied to emailed presentations. Usage of the eUCP extends the mitigation of risk from a paper environment to the electronic milieu, whilst explicitly and unambiguously supporting the usage of electronic file attachments and scanned images, as well as electronic records. This will ensure uniformity, consistency and standardisation in customs and practice.

As a final comment, when any solution has been agreed for the presentation of emailed documents and associated file attachments, it is extremely advisable that the terms and conditions of that solution are clearly documented and agreed between all relevant parties to avoid any potential dispute(s) at a later date.

This briefing is educational only



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