



ICC Banking Commission

Technical Advisory Briefing No. 13 **Subject: Confirmation of a documentary credit under UCP 600**

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ISSUE

It has been noted that potential misunderstandings occasionally arise with the confirmation of a documentary credit. Confusion can surface in a few specific areas:

- When does a confirmation become irrevocably binding on the confirming bank?
- The status and effectiveness of a confirmation when the presented documents contain discrepancies, but these discrepancies have been accepted by the issuing bank.
- Reinstatement of a confirmation.
- Conditional confirmation.
- Situations where two banks confirm the same credit, leading to what is known as “double confirmation.”
- Confirmation added to a transferred credit.
- What is the difference between a confirmation that is authorised and one that is requested by the issuing bank?

These scenarios can create uncertainty about the rights, obligations, and liabilities of a confirming bank. Understanding these nuances is crucial to avoid misunderstandings and potential disputes.

This Briefing provides explanations for each of the identified issues, thereby offering concise clarifications for better understanding.

This Briefing does not cover the topic of “silent confirmations” which are based on a separate express agreement to a beneficiary by a nominated, or other, bank to honour or negotiate. The subject will be considered for a future Briefing Paper.

INTRODUCTION

UCP 600 article 2 defines confirmation as a definite undertaking of the confirming bank, in addition to that of the issuing bank, to honour or negotiate a complying presentation.

Confirmation is normally requested by a beneficiary at the time of agreeing to the sale of goods, or the provision of services or performance, and appears as a pre-condition in the proforma invoice or sale contract. Although not an exhaustive list, a beneficiary will usually request confirmation when it has concerns with (a) the risk of the issuing bank (e.g., the ability of the bank to honour its undertaking), (b) country risk (e.g., the payment risk of the country where the issuing bank, and/or any first confirming bank, is domiciled), (c) documentary risk (e.g., they require a bank to take the risk of non-payment due to the issuing bank determining that documents do not comply), and/or (d) the availability of foreign exchange in the issuing bank's country.

In simple terms, when a bank adds its confirmation to a documentary credit, it effectively "undertakes" to the beneficiary that it will honour or negotiate a complying presentation without recourse, notwithstanding the financial position of the issuing bank and the financial or political status of the country in which the issuing bank is located.

Having confirmed a documentary credit, the confirming bank also accepts the documentary risk in the examination of documents. If the confirming bank determines that the documents comply, it must honour or negotiate without recourse, despite any subsequent view of the issuing bank that the documents do not represent a complying presentation.

ANALYSIS

Binding

The confirming bank becomes irrevocably bound to honour or negotiate without recourse as of the time it adds its confirmation to the documentary credit following an instruction or authorisation to confirm. This occurs subsequent to the confirming bank receiving the documentary credit, or an amendment including an instruction to confirm, from the issuing bank and reviewing and agreeing to its terms and conditions.

The confirming bank then communicates its confirmation to the beneficiary, typically through an advice or amendment of the documentary credit that includes a statement by the confirming bank that it has added its confirmation, or provided as a separate communication. At this juncture, the confirming bank has made a “definite and irrevocable undertaking” to honour or negotiate without recourse a complying presentation, in addition to the undertaking of the issuing bank. This creates a separate and independent obligation by the confirming bank to the beneficiary or to any other nominated bank.

It is important to note that the confirmation is subject to the beneficiary presenting documents that comply with the terms and conditions of the documentary credit. The confirming bank's obligation is to honour or negotiate without recourse only when faced with a “complying presentation” to it or any other nominated bank (as described in UCP 600 sub-article 8 (a) (i) (b-e) and sub-article 8 (c)). Additionally, the confirmation of the documentary credit does not obligate the confirming bank to extend its confirmation to any subsequent amendment(s) to the documentary credit. Prior to confirmation of the amendment, the content of each amendment should be considered by the confirming bank.

If the confirming bank agrees to extend its confirmation to an amendment, the amendment advice to the beneficiary need not make any mention of such decision, as it is implied in the advice. However, if the confirming bank decides not to extend its confirmation to an amendment it should inform the beneficiary in its amendment advice and advise the issuing bank without delay.

Discrepant documents

Confirmation is dependent on the presentation of complying documents. If the beneficiary presents documents that do not comply with the terms and conditions of the documentary credit, and is unable to correct the discrepancies within the timelines predicated by the documentary credit then, provided a valid notice of refusal has been given in accordance with UCP 600 article 16, the confirmation ceases to be applicable for the purpose of that specific presentation.

It is important to note that even if the issuing bank accepts a waiver of discrepancies from the applicant or otherwise accepts the documents, this does not automatically reinstate the confirmation. Discrepant documents, by definition, do not constitute a complying presentation and the original conditions of the confirmation have not been met.

The confirming bank's undertaking is separate from that of the issuing bank and it must separately decide whether to reinstate its confirmation should the issuing bank accept the discrepant documents. Accordingly, reinstatement is not automatic and requires a deliberate action by the confirming bank.

UCP 600 does not explicitly address the reinstatement process, leaving it to the discretion of the confirming bank and the agreement between it and the beneficiary. Any reinstatement should be clearly communicated to the beneficiary to avoid any misunderstanding about the status of the confirmation.

Nevertheless, it should be noted that confirming banks may choose to honour or negotiate without recourse once the issuing bank has accepted a waiver of the discrepancies or otherwise accepts the documents.

Reinstatement/Applicability

A confirmation may cease to be applicable in certain situations:

- Discrepant documents – refer to *Discrepant documents* above.
- Confirming a credit does not obligate the confirming bank to confirm any subsequent amendments. If it chooses not to do so, confirmation remains valid for the existing terms and conditions only, not the amended terms. It should be noted that the issuing bank remains bound by any amendment that it issues unless rejected by the beneficiary.
- The beneficiary refuses an amendment that affects the confirmation. The terms of the confirmation still apply to the terms and conditions of the documentary credit and/or any other accepted (or still to be accepted) amendment(s).
- The documentary credit expires or is cancelled. Confirmation is only reinstated if the documentary credit is extended and the confirming bank specifically agrees to reinstate.

Conditional confirmation

Conditional (or “soft” or “qualified”) confirmations, although not formally recognised by UCP 600, are used in practice. Such usage can lead to ambiguity and potential disputes.

Nevertheless, this practice allows a confirming bank to manage its risk and operational capabilities while still providing some level of confirmation to the beneficiary. Among others, examples can include:

- limiting the acceptable language of the documents to be presented.

- restricting the types of documents that the confirming bank will examine.
- specifying a shorter latest date for document presentation.
- imposing additional requirements for document compliance.
- limiting confirmation to a proportion of the credit amount, and stating no obligation to honour any claim in excess of that amount.

The key point is that these modifications apply only to the confirmation itself, not to the underlying documentary credit. The issuing bank remains bound by the original terms and conditions of the credit. Conditional confirmations are typically agreed upon between the confirming bank and the beneficiary, often without the knowledge or explicit approval of the issuing bank.

Double confirmation

Double, or second, confirmation refers to a transaction wherein two banks add their confirmation to a single documentary credit. This is rare but may occur in high-risk or high-value transactions or where the beneficiary requires confirmation to be added by a preferred bank but that preferred bank has no relationship, available credit limit, and/or SWIFT authenticators exchanged with the issuing bank but does with another bank (that does maintain a relationship with the issuing bank) who could act in the role of the first confirming bank. The second confirming bank, therefore, adds its confirmation on the strength of the confirmation added by the first confirming bank. The beneficiary would then have an undertaking from three banks - the issuing bank and two confirming banks.

Where there is more than one confirming bank, and to avoid documents being routed through each bank and thereby delaying receipt by the issuing bank, it is common for the second confirming bank to act in the traditional confirming bank role towards the beneficiary and for the first confirming bank to act as the reimbursing bank or guarantor for reimbursement to the second confirming bank. The issuing bank and the two confirming banks should agree the roles that each confirming bank is to perform, and their respective advice of confirmation should clearly outline those roles.

Confirmation added to a transferred documentary credit

When a transferable documentary credit has been confirmed, any transferred documentary credit must also be treated as confirmed (UCP 600 sub-article 38 (g)) and this should be expressly communicated to the second beneficiary. Despite the view of some practitioners, this is not a doubling-up of confirmation. For instance, a transferable documentary credit for EUR 100,000 that is confirmed and then transferred for EUR 95,000 reflects that the confirming bank is liable

under its confirmation for the amount of EUR 95,000.00 to the second beneficiary and for the amount of EUR 5,000.00 to the first beneficiary.

Confirmation authorised or requested

The definition of Confirming Bank in UCP 600 article 2 states “means the bank that adds its confirmation to a credit upon the issuing bank’s authorization or request.” There is often confusion as to what the terms authorization and request mean and how this is conveyed in a documentary credit.

If we take an MT700, field 49 can state CONFIRM, MAY ADD or WITHOUT for the confirmation instructions.

A request to add confirmation is when field 49 states CONFIRM. The confirming bank is entitled to add its confirmation and need not obtain the prior or later consent of the beneficiary to fulfil this requirement.

An authorisation to add confirmation is when field 49 states MAY ADD.

For MAY ADD, the international standard banking practice is that the documentary credit will be advised unconfirmed with a clause indicating that the bank has been authorised to add confirmation upon receipt of a request from the beneficiary.

SUMMARY

In summary, confirmation provides important additional security for beneficiaries in documentary credit transactions, but comes with specific rules and obligations for the confirming bank under UCP 600 article 8 and international standard banking practice. The confirming bank takes on an independent undertaking to pay against complying documents.

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