



Amendments to documentary credits

When is an amendment to a documentary credit accepted?



In the perfect world a documentary credit is issued, the (complying) documents are presented, and the payment is made. However, more often than not amendments to the documentary credit are required. There may be many reasons for that. For example that some issues were not (sufficiently) discussed between the buyer and the seller. That there were “mistakes” in the original documentary credit or that the agreement between the buyer and the seller has been changed.

Regardless the reason, the documentary credit is irrevocable whether or not it is stated in the documentary credit. This means that the documentary credit (i.e. the undertaking given) once issued cannot be amended, modified, changed or cancelled without the consent of the party entitled to claim under the documentary credit. Needless to say, this offers a special challenge when it comes to amendments to a documentary credit. As indicated above, such are of course required from time to time, and it is crucial that the parties to the documentary credit are well aware of the status of the amendments; i.e. whether or not they are accepted or rejected.

Broadly speaking, the amendment process is the process by which specific documentary credit terms and conditions are excluded, modified or added and become part of the documentary credit once accepted by the concerned parties.

The issue of amendments to a documentary credit is covered by UCP 600 article 10. The below will offer a structured and practical approach to the handling of amendments under a documentary credit issued subject to UCP 600.

1. **The documentary credit cannot be amended or cancelled without the agreement of the issuing bank, the confirming bank, and the beneficiary.**
 - a. **Issuing bank**: The documentary credit is issued by the issuing bank and so is the amendment. Therefore, by issuing the amendment, the amendment is logically agreed to by the issuing bank.

At the time the amendment is issued, the issuing bank is bound both by the terms and conditions of the original documentary credit, as well as the terms and conditions of the documentary credit as amended. This changes once the amendment is approved or rejected by the beneficiary.

- b. **Confirming bank**: For the confirming bank their confirmation applies to the original documentary credit. For that reason, the confirming bank may choose to advise the amendment to the beneficiary by either 1) extending its confirmation to the amendment, or 2) without extending its confirmation to the amendment.

Whether or not the confirmation is extended does not change the position of the issuing bank. More on the confirming banks position in point 5 below.

- c. **Beneficiary**: The beneficiary is the one that is entitled to draw under the documentary credit, which makes them the main party to accept or reject the amendment. More on how the beneficiary can accept or reject in point 3 below.
- d. **Nominated bank**: It is important to note that the nominated bank is not on the list of parties that can accept or reject an amendment. The reason is that unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate.

This places a special onus on a nominated bank who has obligate itself via an express agreement with the beneficiary; e.g. via a silent confirmation (an undertaking to pay the beneficiary similar to that of a confirmation without being authorized to do so in the documentary credit). In such case the nominated bank should include language in its agreement with the beneficiary that prevents the beneficiary from accepting amendments that are not acceptable to the nominated bank.

- 2. It is given that it is beneficial for all involved parties to know which amendments has been accepted and which has been rejected. For that reason, the beneficiary should give notification of acceptance or rejection of an amendment. This can be done as described in point 3 below. It is however often the case that the beneficiary does not give such notification. This may place the involved banks in different dilemmas, e.g.:
 - a. **Actual terms and conditions of the documentary credit?**

The parties do not know the actual terms and conditions of the documentary credit, and until the time where the amendment is accepted or rejected two (or more) different versions of the documentary credit exist – and both/all will bind the issuing bank.
 - b. **Documentary credit balance and timelines**

A core challenge for the issuing bank relates to the balance and timelines of the documentary credit. For amendments that amend the amount and/or timelines the issuing bank – per se – operates with two balances of the documentary credit and/or two expiry dates of the documentary credit. This is of particular interest if the amendment decreases the amount of the documentary credit and/or curtails the timelines.

3. Ways by which the beneficiary can accept or reject an amendment:

a. The beneficiary can accept an amendment two different ways:

1: By communicating its acceptance of the amendment to the bank that advised the amendment, or

2: By making a presentation that complies with the documentary credit and with the not yet accepted amendment.

As of that time the documentary credit is amended, and the issuing bank is bound (only) by the documentary credit “as amended.”

The confirming bank however is only bound by the amendment if it has extended its confirmation to also cover the amendment.

Important to note that this provision makes good logic; at least in theory. However in practice it may be very hard to determine. This is for example the case where an amendment that changes the date of expiry from 1 November 2020 to 1 October 2020, and the presentation is made 15 September 2020. In such case the presentation complies both with the original documentary credit as well as the documentary credit as amended.

b. The beneficiary can reject an amendment two different ways:

1: by communicating its rejection of the amendment to the bank that advised the amendment.

As of that time the documentary credit is not amended, and the issuing/confirming bank is bound only by the documentary credit “not amended.”

2: By partially accepting an amendment.

Partial acceptance of an amendment is not allowed and will be deemed to be notification of rejection of the amendment.

This is for example the case where the amendment includes different segments; for example, an amendment that changes the description of goods AND curtails the latest date of shipment. In such case if the beneficiary accepts the changes to the description of goods but rejects the new latest date of shipment, then the amendment is – as a whole – rejected.

It is important to note that a presentation that complies with the original documentary credit but not with the “not yet accepted amendment” does NOT mean that the amendment is rejected. The beneficiary has the option to accept the amendment at a later stage, from which point the amendment is accepted.

4. Confirming banks position

When receiving an amendment, the confirming bank has two options when advising it to the beneficiary:

- a. It may extend its confirmation to the amendment and will be irrevocably bound as of the time it advises the amendment.
- b. It may advise, the amendment without extending its confirmation. In such case it must inform the issuing bank without delay and inform the beneficiary in its advice.
In such case the beneficiary should carefully consider if and how to approach, as this means that if accepting the amendment, they will (most likely) “loose” their confirmation.

5. Line of notifications

A bank that advises an amendment should inform the bank from which it received the amendment of any notification of acceptance or rejection.

6. Automatic in force provisions

A provision in an amendment that the amendment will be deemed accepted unless rejected by the beneficiary within a certain time will be disregarded. If however, this provision is included into the documentary credit, then this UCP 600 provision is modified, and such “automatic in force provision” will apply. The beneficiary should be extremely careful in accepting such provision, as it may create unforeseen results – for example if the advice of an amendment is lost in the mail.

I hope this information is helpful to you, and will offer clarity on how to handle amendments under documentary credits. In any case, if you have Trade Finance related questions, do not hesitate to reach out to your local Trade Finance department.

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