

Securing payment transactions in international trade

CURRENT ICC RECOMMENDATIONS REGARDING THE IMPACT OF THE COVID-19 PANDEMIC ON LETTERS OF CREDIT

Executive Summary

- Social distancing rules and difficulties in postal delivery jeopardise international payment transactions.
- The ICC (International Chamber of Commerce) calls on governments to repeal laws that require paper-based letters of credit or documentary credits.
- Transferring these documents electronically could relieve the delivery services and allow for faster and more efficient processing.
- The “Uniform Customs and Practice for Documentary Credits” (UCP600) should be supplemented by individual agreements. Processing times could be extended, for instance.
- In the event of a dispute, the “ICC Rules for Documentary Instruments Dispute Resolution Expertise” (DOCDEX) are applicable to documentary credits. The procedure is carried out in writing and ends with a decision of the ICC’s competent body.

Securing trade through documentary credits / letters of credit

In international trade, letters of credit are a common means of securing trade and distributing risks appropriately among the contracting parties. The letter of credit

is defined as an “abstract promise of payment by a credit institution to pay a fixed amount to the beneficiary on behalf of the originator within a certain period of time against certain documents and subject to certain conditions”. This primarily serves as a payment guarantee for the exporter who ships goods once the letter of credit has been received. However, there are also advantages for the importer, because it reduces the risk of non-contractual delivery. The need for a letter of credit usually arises when the conclusion of the contract, shipment, or loading and payment of the goods take place at different times and in different places. Approximately 15 % of international trade worldwide is secured by letters of credit.

Documentary credits are usually processed in accordance with the current “Uniform Customs and Practice for Documentary Credits” (UCP600) of the ICC. This is a set of rules that is internationally recognised and qualified by the German Federal Court of Justice as a commercial practice. Consequently, this is an optional right; contractual parties can amend or modify individual provisions of the UCP600 according to their specific needs. The UCP600 standardize international trade relations and at the same time leave importers and exporters enough room for individual agreements. The subject matter of the UCP600 is, among other things, the procedure, liability, tasks and duties of the parties involved and the assignment of claims.





How does COVID-19 affect letters of credit?

The ICC is concerned that the effects of the coronavirus pandemic are increasingly affecting the financing of international trade. Despite the progressing digitalization the law in many countries still requires that letters of credit be processed in paper form. As a result, the payments involve considerable personnel costs for the banks. Due to current social distancing constraints, it is becoming increasingly difficult to cover these expenses and to ensure in-person processing on-site. There is also a risk that in some countries the postal service is delayed or will even be interrupted altogether. The ICC's own Guidance Paper¹ also identified the issue of transferring documents as probably the greatest weakness of financial transactions. In this context, Art. 35 UCP600 comes into play, according to which the advising bank cannot be held liable if documents that have been duly dispatched are lost in the postal service or are delivered late, which may happen in the following cases:

- All courier services refuse to accept these documents for delivery.
- The issuing bank insists on commissioning a specific courier service, which refuses to accept.

¹ "Guidance Paper on the impact of COVID-19 on trade finance transactions issued subject to ICC rules", https://www.iccgermany.de/fileadmin/user_upload/Content/Banktechnik_und_-_praxis/2020_10_theimpactofcovid-19.pdf (last accessed 17 April 2020).

- The courier service returns the duly sent documents.
- The courier service delivers to the destination country, but not to the location of the receiving bank.

Furthermore, there is a possibility that these risks will have a negative impact on supply chains and could eventually lead to supply bottlenecks. The ICC is therefore calling on the governments of the affected countries to immediately lift legal prohibitions on the use of electronic trade documents and to enable electronic processing of documentary credits.

Our recommendation

The simplest and also generally valid advice is: communication can move mountains. This applies to communication between all parties involved, namely the trading parties and the banks. With regard to the transfer of documents, the ICC makes the following recommendations, among others:

- Banks should exchange information on the status of document transfers on an ongoing basis.
- Banks should always confirm receipt of the documents, even if this has not been expressly agreed. This should be done as detailed as possible and it should be documented, e.g. stating the number and type of documents.
- Copies should be made of all documents that are sent.
- The flexibility of the UCP600 can be exploited and complementary individual agreements can be made to compensate for any problems that arise during document transfer. As an example, the ICC mentions the possibility of extending the maximum processing time of five bank working days provided for in Articles 14(b) and/or 16(c) UCP600 in order to allow for delays.



Dispute resolution mechanisms

In case of dispute, the “ICC Rules for Documentary Instruments Dispute Resolution Expertise” (DOCDEX)² apply. The DOCDEX procedure is opened by filing a complaint. The form for the complaint (Form 1) can be requested from the ICC.³ The ICC reserves the right to examine the case for its admissibility and can decide not to accept it for decision. The DOCDEX procedure is a purely written procedure and ends once the ICC has issued its decision. However, this decision is not legally binding on the parties. As part of the procedure, the parties are given sufficient opportunity to comment on the case. As a rule, the ICC’s responsible body should receive the statement of defence in electronic form no later than 30 days after the receipt of the complaint (see Art. 4(4) DOCDEX).

However, if witnesses or experts are to be heard for a certain case, this type of dispute resolution is not suitable. The ICC fees of a DOCDEX procedure are USD 5,000 for an amount in dispute up to USD 1,000,000 and USD 10,000 for an amount in dispute above USD 1,000,000, although it is possible to deviate from this (cf. Appendix – Fees and Costs DOCDEX).

Our GSK experts will be happy to advise you on any questions and problems arising in connection with letters of credit / documentary credits – not only in commercial, business and banking law, but also when things go wrong and dispute resolution expertise is required.

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²<https://iccwbo.org/dispute-resolution-services/docdex/docdex-rules/>
(last accessed on 16 April 2020).

³<https://iccwbo.org/dispute-resolution-services/docdex/filing-instructions-forms/> (last accessed on 16 April 2020).



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