



COMMERZBANK



Until when must or at what time should a beneficiary communicate the acceptance or rejection of a letter of credit amendment?

Article 10 of the “ICC Uniform Customs and Practice for Documentary Credits UCP 600” provides comprehensive regulations for amendments. With reference to the question until when the beneficiary must accept or reject an amendment, article 10 c states:

“The terms and conditions of the original credit (or a credit incorporating previously accepted amendments) will remain in force for the beneficiary until the beneficiary communicates its acceptance of the amendment to the bank that advised such amendment. The beneficiary should give notification of acceptance or rejection of an amendment. If the beneficiary fails to give such notification, a presentation that complies with the credit and to any not yet accepted amendment will be deemed to be notification of acceptance by the beneficiary of such amendment. As of that moment the credit will be amended.”

A letter of credit remains valid in its original form until a confirming bank, if any, and the beneficiary agree to an amendment, except as otherwise provided by article 38 of the UCP 600 (“Transferable Credits”). The agreement by the beneficiary may be provided in two ways: either by an explicit statement towards the advising bank or by presentation of documents complying with the letter of credit and the amendment. The UCP 600 are unambiguous in this point.

However, on presentation of discrepant documents, if an amendment has not yet been explicitly accepted or rejected by the beneficiary, questions may arise which should be clarified at the time of presentation at the latest.

An example:

A letter of credit issued by Careful Bank is available by deferred payment 45 days after the date of shipment. At the request of the applicant, Careful Bank sends two individual letter of credit amendments to Free and Easy Bank which advised the letter of credit and with which the letter of credit is available,

- first amendment: amendment of the route of transport
- second amendment: amendment of the deferred payment period into 90 days after the date of shipment.

The documents presented by the beneficiary WellDone Ltd. show various discrepancies. Furthermore

- they show shipment of the goods on the route of transport stated in the original terms of the letter of credit,
- they do not show when the payment is due as such indication in documents is not required in the terms of the letter of credit.

What does the regulation in article 10 c of the UCP 600 now mean for the stated example? If the beneficiary has not given a notification by the time of the presentation, how will the banks involved know whether they shall consider the amendments of the letter of credit upon presentation of discrepant documents or not? On which basis is the processing of the presented documents intended? On the basis of the original terms of the letter of credit or on the basis of the amended terms of the letter of credit? The interests of the applicant and the beneficiary may possibly differ.

If the beneficiary has not given a notification by the time of the presentation whether it accepts or rejects the amendments, the processing will, according to article 10 c of the UCP 600, be made on the basis of the terms of the original letter of credit. The presented documents are discrepant. The regulation in article 10 c that the presentation which complies with the letter of credit and to any not yet accepted amendment will be deemed to be notification of acceptance by the beneficiary of such amendment does not apply.

But the above example raises further questions:

- On the one hand, the question whether a non-consideration of an amendment of a letter of credit in presented documents automatically constitutes a rejection of the amendment.
- On the other hand, the question whether a consideration of the amendment of the deferred payment period is desired when processing the presented documents. This is not undoubtedly traceable by the involved banks.

Following article 10 c of the UCP 600, it must first be noted that the non-consideration of an amendment of a letter of credit in presented documents does not automatically constitute a rejection of the amendment. The “International Chamber of Commerce” (ICC) has also expressed a clear statement in an Opinion and confirmed this point of view. The Opinion (which dealt with this question in case of presented compliant documents) states conclusively that an amendment will be deemed to have not yet been accepted or rejected if the beneficiary has not communicated its acceptance or rejection of the amendment and the presented documents comply with the terms and conditions of the letter of credit (prior to amendment). In the Opinion, the ICC has also made clear that the beneficiary may accept an amendment at any time, i.e. even after several presentations.

The second question needs to be evaluated differentiated: From a formal point of view, following article 10 c of the UCP 600, in this case, too, the presented discrepant documents are processed on the basis of the terms of the original letter of credit or, as the case may be, on the basis of the terms of the original letter of credit incorporating previously accepted amendments. But does this procedure correspond with the interests of the applicant and those of the beneficiary?

It's up to the beneficiary to notify whether it accepts or rejects an amendment. The applicant is not involved in this decision. Nor a provision in an amendment to the effect that the amendment shall enter into force unless rejected by the beneficiary within a certain time shall be disregarded (see article 10 f of the UCP 600). Certainty about the beneficiary's intention can only be achieved by a query at the time of the presentation.

It is difficult in individual cases to make a recommendation regarding the time at which a beneficiary should communicate the acceptance or rejection of an amendment of a letter of credit.

To have clarity on the current status of the letter of credit, it will be of advantage to all parties involved if the beneficiary informs the advising bank as soon as possible after receipt of the amendment on the acceptance or rejection thereof. However, there may also be cases in which it is advisable for the beneficiary to wait with this information. If, for instance, the applicant has the validity of the letter of credit extended at the request of the beneficiary and at the same time has further points amended in this amendment which had not been discussed in advance between the applicant and the beneficiary, an early rejection of the amendment could result in the beneficiary's inability to utilise the letter of credit in due time. A partial acceptance of an amendment is not allowed according to article 10 e of the UCP 600 and will be deemed to be notification of rejection of the amendment. In this case, a waiting attitude would keep the option open to the beneficiary of utilising the letter of credit within the original validity period according to the original terms of the letter of credit, or alternatively during the extended validity period according to the amended letter of credit terms.

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