



International Chamber of Commerce

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Policy statement

The determination of an "Original" document in the context of UCP 500 sub-Article 20(b)

Commission on Banking Technique and Practice, 12 July 1999

Original documents

The attached ICC Banking Commission Decision on original documents was sent to members in July. At the time, there were two typographical errors in it, which have since been corrected in the attached text. The first error was in Section 2, sub-section UCP 500 Requirements and referred to sub-Article 13(d) of UCP 500. The correct reference is sub-Article 13(c). The second was in the last paragraph of Section 2. The sentence in the previous draft read: "Sub-Article 13(b) of UCP 500 refers to compliance of the presented documents being determined by international standard banking practice as defined in the articles of UCP." The correct reference, as in the attached document, is to sub-Article 13(a). These corrections have also been made on the Internet version on the ICC web site, <http://www.iccwbo.org>.

This Decision emphasizes the need to correctly interpret and apply sub-Article 20(b) of UCP 500. Consequently, ICC national committees and associated organizations are strongly urged to distribute this Decision as widely as possible to help ensure the correct interpretation in the evaluation of documents issued under letters of credit. This Decision does not amend sub-Article 20(b) of UCP 500 in any way, but merely indicates the correct interpretation thereof which has been adopted unanimously by the ICC Commission on Banking Technique and Practice on 12 July 1999.

1. Background

Over a period of several years there have been a number of queries raised with the ICC Banking Commission as to the determination, by banks, of what is an "original" document under a letter of credit and the necessity, if any, for such a document to be so marked.

For ease of reference the text of sub-Article 20(b) reads:

- "Unless otherwise stipulated in the Credit, banks will also accept as an original document(s), a document(s) produced or appearing to have been produced
- by reprographic, automated or computerized systems
- as carbon copies;

provided that it is marked as original and, where necessary, appears to be signed.

A document may be signed by handwriting, by facsimile signature, by perforated signature, by stamp, by symbol, or by any other mechanical or electronic method of authentication."

2. Determination of originality

In documentary credit operations, the document checker is faced with a number of issues pertaining to originality including:

Apparent originality

Banks undertake to determine whether a document appears on its face to be an original document, as distinguished from a copy. Except as expressly required by a letter of credit including an incorporated

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term – such as UCP 500 sub-Articles 23(a)(iv) or 34(b) – banks do not undertake to determine whether an apparent original is the sole original. Banks rely on the apparent intent of the issuer of the document that it be treated as an original rather than a copy.

In this regard, a person sending a telefax or making a photocopy on plain paper or pressing through carbon paper presumably intends to produce a copy. On the other hand, a person printing a document on plain paper from a text that that person created and electronically stored presumably intends to produce an original. Accordingly, documents bearing facsimile signatures or printed in their entirety (even including the issuer's letterhead and/or signature) from electronically stored text are presumably intended by the document issuer to be original and in practice are accepted by banks as original.

Documents that appear to be original but are not

Banks do not undertake to determine whether a document is original in fact. Under UCP 500 Article 15, banks are not responsible for the genuineness or falsification of any document. If a document appears to be original or to have been marked as original but is in fact not original, then its presentation may give rise to exceptional defences, rights, or obligations under the law applicable to forged or fraudulent presentations and is beyond the scope of UCP 500.

UCP 500 requirements:

The UCP neither requires nor permits an examination beyond the face of a document to determine how the document was in fact produced, unless the document was produced by the bank, e.g. on a telefax, telex, e-mail, or other system that prints out messages received by the bank. The "produced or appearing to have been produced" language in sub-Article 20(b) does not override UCP 500 sub-Articles 13(a), 13(c), or 14(b), or other practice and law that prohibit issuers and confirmers from determining compliance on the basis of extrinsic facts.

As indicated by inclusion of the word "also" ("... banks will also accept as original(s) ..."), sub-Article 20(b) is neither comprehensive nor exclusive in its provisions that distinguish originals from copies. For example, a document printed on plain paper from electronically stored text is acceptable, without regard to 20(b), if it appears to be an original.

Sub-Article 20(b) does not apply to documents that appear to be only partially produced by reprographic, automated, or computerized systems or as carbon copies. In this regard, a photocopy ceases to be "reprographically produced" within the meaning of sub-Article 20(b) when it is also manually stamped, dated, completed, or signed by the issuer of the document.

The "marked as original" proviso in sub-Article 20(b) is satisfied by any marking on a document or any recital in the text of a document that indicates that the issuer of the document intends it to be treated as an original rather than a copy. Accordingly, a document that appears to have been printed on plain paper from electronically stored text is "marked as original" under sub-Article 20(b) if it also states that it is original or includes letterhead or is hand marked.

Sub-Article 13(a) of UCP 500 refers to compliance of the presented documents being determined by international standard banking practice as defined in the articles of UCP. International standard banking practice in relation to determination of "original" documents could be described as follows:

3. Correct interpretation of sub-article 20(b)

General approach

Banks examine documents presented under a letter of credit to determine, among other things, whether on their face they appear to be original. Banks treat as original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the

document itself indicates that it is not original. Accordingly, unless a document indicates otherwise, it is treated as original if it:

(A) appears to be written, typed, perforated, or stamped by the document issuer's hand; or

(B) appears to be on the document issuer's original stationery; or

(C) states that it is original, unless the statement appears not to apply to the document presented (e.g. because it appears to be a photocopy of another document and the statement of originality appears to apply to that other document).

Hand signed documents.

Consistent with sub-paragraph (A) above, banks treat as original any document that appears to be hand signed by the issuer of the document. For example, a hand signed draft or commercial invoice is treated as an original document, whether or not some or all other constituents of the document are preprinted, carbon copied, or produced by reprographic, automated, or computerized systems.

Facsimile signed documents

Banks treat a facsimile signature as the equivalent of a hand signature. Accordingly, a document that appears to bear the document issuer's facsimile signature is also treated as an original document.

Photocopies

Banks treat as non-original any document that appears to be a photocopy of another document. If, however, a photocopy appears to have been completed by the document issuer's hand marking the photocopy, then, consistent with sub-paragraph (A) above, the resulting document is treated as an original document unless it indicates otherwise. If a document appears to have been produced by photocopying text onto original stationery rather than onto blank paper, then, consistent with sub-paragraph (B) above, it is treated as an original document unless it indicates otherwise.

Telefaxed presentation of documents

Banks treat as non-original any document that is produced at the bank's telefax machine. A letter of credit that permits presentation by telefax waives any requirement for presentation of an original of any document presented by telefax.

Statements indicating originality

Consistent with either or both of sub-paragraphs (A) and (C) above, a document on which the word "original" has been stamped is treated as an original document. A statement in a document that it is a "duplicate original" or the "third of three" also indicates that it is original. Originality is also indicated by a statement in a document that it is void if another document of the same tenor and date is used.

Statements indicating non-originality

A statement in a document that it is a true copy of another document or that another document is the sole original indicates that it is not original. A statement in a document that it is the "customer's copy" or "shipper's copy" neither disclaims nor affirms its originality.

4. What is not an "Original"?

A document indicates that it is not an original if it

- appears to be produced on a telefax machine;
- appears to be a photocopy of another document which has not otherwise been completed by hand marking the photocopy or by photocopying it on what appears to be original stationery; or

- states in the document that it is a true copy of another document or that another document is the sole original.

5. Conclusion

Based upon the comments received from ICC national committees, members of the ICC Banking Commission and other interested parties, the statements in clauses 3 and 4 above reflect international standard banking practice in the correct interpretation of UCP 500 sub-Article 20(b).

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