

Lost in transit documents under UCP 600 ICC

Role of sender	Documents sent as per instructions	Complying presentation	Risk of documents lost in transit
Advising bank	Yes	Yes	Beneficiary
Advising bank	No	Yes	Beneficiary
Advising bank	Yes	No	Beneficiary
Advising bank	No	No	Beneficiary
Nominated bank	Yes	Yes	Issuing Bank <i>(The applicant is not a party to the LC)</i>
Nominated bank	No	Yes	Beneficiary
Nominated bank	Yes	No	Beneficiary
Nominated bank	No	No	Beneficiary

Article 35 UCP 600 ICC: Disclaimer on Transmission and Translation:

“A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when the documents have been lost in transit between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.

A bank assumes no liability or responsibility for errors in translation or interpretation of technical terms and may transmit credit terms without translating them.”

This chart is intended to offer a general overview. For further details, please consult the official UCP 600/ISBP publications and ICC Opinions. The content has been prepared with care and to the best of our knowledge; however, no liability is assumed for its timeliness, completeness, or accuracy.

Paragraph 1 and 2 indicate the elements of variations that may impact at whose risk the documents are forwarded:

1. The role of the bank sending the documents.

Paragraph 2 assumes that the bank sending the documents to the issuing bank (or a confirming bank) is a nominated bank. It is not a requirement that the nominated bank have “acted on its nomination.” The consequence of this is that this article does not apply to an advising bank (that is not a nominated bank). Similar the article does not apply where the documentary credit is only available with the issuing bank. In such case the documents must be presented at the counters of the issuing bank in order to obligate the issuing bank. (i.e. in such case the risk of documents lost in transit between the advising bank and the issuing bank is that of the beneficiary.)

2. Whether or not the documents have been sent according to the instructions.

Paragraph 1 includes the provision that when the documents are sent according to the instructions in the documentary credit (or in the case of no instructions to that effect according to the choice of the sender) such bank is not liable once the documents have left its control (i.e. has been sent). This is not limited to a nominated bank, but also (as an example) to an advising bank. It must be added that the fact that the documents are not forwarded to the issuing bank according to the instructions does not make the presentation discrepant, and the issuing bank cannot use that as a reason to refuse the presentation. I.e. this is only relevant when the documents are lost in transit.

3. Whether or not a complying presentation has been made

Paragraph 2 underlines that the issuing bank is only obligated to the extent that a complying presentation has been made. (i.e. if the documents do not comply with the terms and conditions of the documentary credit, then the risk of documents lost or delayed in transit is always that of the beneficiary.)

As appears from the above there is only *one* scenario where the issuing bank has the risk that the documents are lost in transit, i.e.: ***“Where the documents are sent from a nominated bank, according to the instructions in the documentary credit (if any) and the documents constitute a complying presentation.”***

1. The sending bank must keep copies of the documents? And how to examine such “copy documents”?
2. “Upon receipt of full set of documents in conformity with the L/Cs terms, we will effect payment as per your instruction”



Official ICC Opinion R651/TA639rev



Source: From A to UCP – Kim Sindberg