

A status on the ISBP Revision

In 2010 it was decided that a revision process of the ISBP should be initiated. The ISBP is the ICC publication titled "International Standard Banking Practice for the Examination of Documents under Documentary Credits, 2007 Revision for UCP 600." More than two years into the process it may be interesting to take a look at where the revision is right now, and what topics are being discussed.

June 2012 ISBP Draft 4 was circulated for comments from the National Committees (NCs). Draft 4 is the result of the comments received prior to the ICC Banking Commission meeting in Doha March 2012. Despite the fact that many NCs comments had already been incorporated in each of the released drafts, Draft 4 attracted a large number of comments that had not previously been made, and also comments from a few national committees that had not contributed previously. For that reason the Drafting Group decided to identify the "controversial areas" – basically highlighting the main areas where differing viewpoints have been received asking the NCs to share their viewpoint as to the direction of each of the controversial areas.

In addition the Drafting group presented a list of 10 suggested items for inclusion that have been submitted by various NCs asking for an indication of whether or not to include those in the final ISBP draft.

In a number of paragraphs of the new ISBP the Drafting Group have attempted to be clearer than the current ISBP version. Further they have attempted – more than has been the case in the past – to ensure that the paragraphs covering transport and insurance are in line with the respective industry practice. Both have – surprisingly – attracted quite a number of harsh comments. Here are some examples to that effect:

Paragraph 21 of the current ISBP (ICC publication 681) has been expanded so that it now includes the following new expressions "third party documents not acceptable," "shipping company" and "documents acceptable as presented."

For paragraph 21 it should be borne in mind that the premise is that it covers expressions that should not be used in an LC. Instead the LC should spell out the intention of the issuer in a clear manner. The ISBP should not help to interpret or encourage continued use of a term or condition that can only, at best, be considered as poor or incomplete drafting. For that reason the Drafting Group have suggested rather "open" interpretations. For example that "documents acceptable as presented" means that only one document need be presented within validity and drawing amount.

These interpretations have caused quite a number of comments from the NCs –in general requesting that the interpretations be more precise and elaborate.

Another paragraph where the Drafting Group have sought more clarity is paragraph 23 dealing with language. The current paragraph is worded as follows:

Under international standard banking practice, it is expected that documents issued by the beneficiary will be in the language of the credit. When a credit states that documents in two or more languages are acceptable, a nominated bank may, in its advice of the credit, limit the number of acceptable languages as a condition of its engagement in the credit.

Instead of this wording the Drafting Group simply suggests the position that when an LC is silent with respect to the language of the documents, they may be issued in any language. Apparently this seems to be causing some NCs quite some trouble. However when you read the current paragraph 23 carefully it offers no real guidance or firm position regarding the language of the documents. For the ones not issued by the beneficiary there is no guidance at all. For the ones issued by the beneficiary there is an “expectation” that they will be issued in the language of the LC but there is no requirement to that effect. So can a bank refuse a presentation where a document issued by the beneficiary is not in the language of the LC? Probably not! So instead the Drafting Group is trying to persuade banks to be precise!

The current paragraphs 90 and 114 deals with goods covered by more than one transport document. In this case the Drafting Group have included the situation where the transport document both indicates that it is a “part load” and that movement terms are LCL/FCL. Such indication is considered to be an express statement that one or more transport document (e.g. bill of lading), related to the referenced container or packing unit, must be surrendered prior to the goods being released. Some comments from NCs simply indicated that it is a standard banking practice to accept such combination. Now, the industry expert may of course be wrong, but it is a somewhat bold statement simply to say: “this is not banking practice!” A prudent way would be to liaise with local transport experts – and then submit their comments as to the accuracy to the new paragraph.

The above was merely a few examples – just to show that there are still outstanding issues. The good question is when the ISBP revision has come to an end. No doubt it is the hope of the ICC that the new ISBP is approved by the NCs sometime during 2013, but a lot depend on the ICC meeting to be held in Mexico in November 2012, and the feedback on the various outstanding issues. A best guess is that the ISBP is approved in the ICC Banking Commission meeting fall 2013. But only time will tell.

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