

ISBP 745 is now available

Introduction

The new ISBP (ICC publication 745) has now been published

The purpose of this article is to offer a high level description of some of the changes in ISBP 745 compared to its predecessor.

General changes to ISBP 745

Compared to the previous version (ISBP 681), this updated iteration is more than twice the size. There are a number of general changes to ISBP 745 compared to its predecessor (ISBP 681).

In quite a number of places, the new paragraphs are more elaborate. The ISBP drafting group have tried to formulate the practices in a clearer – more direct manner.

In many places examples has been added for the purpose of illustrating the point made. This is for example in paragraph A4 where a certificate issued by the carrier or its agent is used as two examples of 1) a certificate, which need not be dated, and 2) a certificate, which must be dated.

Language wise there are many changes. For examples many of the new paragraphs starts with the word “when.” I.e. they start by defining the scenario covered by the paragraph. For example paragraph A3: *“When a certificate, certification, declaration or statement is required by a credit, it is to be signed.”*

In this paragraph the “is to” should also be noted. This is a new approach. The ISBP drafting group felt that ISBP 681 included too many “vague” formulations (like “it is expected” and “may be”), and wanted – to the extent possible – to replace those with a more firm wording. However, since ISBP 745 are not rules it would be wrong to use the word “must.” For that reason “is to” has been used: It is the closest you can come to “must” without actually saying “must.”

The drafting group have also tried to avoid words that require subjective evaluation. For example ISBP 681 paragraph 24: *“Detailed mathematical calculations in documents will not be checked by banks.”*

has been changed to

ISBP 745 paragraph A22: *“When the presented documents indicate mathematical calculations, banks only determine that the stated total in respect of criteria such as amount, quantity, weight or number of packages, does not conflict with the credit or any other stipulated document.”*

The word “detailed” has been deleted, because it was not possible to identify a common way to define the word.

The practice documented by ISBP 745

However ISBP 745 is much more than form. There are many new practices documented in addition to “old” practices that have been elaborated upon for the purpose of describing them in a clearer manner.

The below are examples of news to the ISBP:

Paragraph A19 is also an expanded version of its predecessor. It is the paragraph that defines “Expressions not defined in UCP 600.” Some of the “expressions” have been elaborated upon and new ones has been introduced:

Shipping documents

This now means all documents required by the credit, except drafts, teletransmission reports and courier receipts, postal receipts or certificates of posting evidencing the sending of documents. New to ISBP 745 is that also teletransmission reports and courier receipts, postal receipts or certificates of posting evidencing the sending of documents are excluded from the definition of shipping documents.

Third party documents acceptable

This means that all documents for which the documentary credit or UCP 600 do not indicate an issuer, except drafts, may be issued by a named person or entity other than the beneficiary. This means in effect that if for example the invoice is to be issued by a party other than the beneficiary, the expression “third party documents acceptable” is not sufficient.

Third party documents not acceptable

This definition is new, and the expression is now “defined” so that it has no meaning and is to be disregarded.

Shipping company

Is new to ISBP 745, and is defined so that when used in the context of the issuer of a certificate, certification or declaration relating to a transport document – it may be any one of the following: carrier, master or, when a charter party bill of lading is presented, the master, owner or charterer, or any entity identified as an agent of any one of the aforementioned, regardless of whether it issued or signed the presented transport document.

Documents acceptable as presented

Is also new to ISBP 745, and means that the presentation may consist of one or more of the stipulated documents provided they are presented within the expiry date of the LC and the drawing amount is within that which is available under the LC. The documents will not otherwise be examined for compliance under the LC or UCP 600, including whether they are presented in the required number of originals or copies.

Transport matters amount to a big part of ISBP 745. In fact, around 60% of the total content (measured in number of words) are transport-related.

These paragraphs also offer many new and expanded practices. For example:

Paragraph D1(c) that reads:

When a credit requires the presentation of a transport document other than a multimodal or combined transport document, and it is clear from the routing of the goods stated in the credit that more than one mode of transport is to be utilized, for example, when an inland place of receipt or final destination are indicated, or the port of loading or discharge field is completed but with a place which is in fact an inland place and not a port, UCP 600 article 19 is to be applied in the examination of that document.

This paragraph signals a 180-degree change in practice compared to ICC Opinion TA.735rev,¹ which was subject to strong discussions and even a vote at the ICC Banking Commission meeting². The “new” practice is that even if the LC calls for a bill of lading, UCP 600 article 19 (Transport Document Covering at Least Two Different Modes of Transport) will apply to the examination of the document if the transport route described by the LC indicates more than one mode of transport.

Paragraphs D4, E4, F3, and H4 are new to the ISBP and describe (in the same manner) the consequence of an LC stating that freight forwarders’ transport documents are not acceptable or the like. The opposite (freight forwarders’ transport documents are acceptable) was covered in ISBP 681. Content-wise the paragraphs are in line the ICC Opinions³ on which they are based: that such wording in itself has no meaning in the context of the title, format, content, or signing of a transport document.⁴

Paragraphs D5(b), E5(b), F4(b), H5(b), and J2(b) describe that a transport document which is signed by a named branch of the carrier is considered to have been made by the carrier. This paragraph is new to the ISBP and is based on two ICC Opinions approved at the same meeting of the ICC Banking Commission⁵.

Also the insurance paragraphs have been subject to many changes. For example:

Paragraph K10(c) that describes a practice that has been changed 180-degree. It reads:

“An insurance document that indicates coverage has been effected from “warehouse-to-warehouse” or words of similar effect, and is dated after the date of shipment, does not indicate that coverage was effective from a date not later than the date of shipment.”

This is different from ICC Opinion TA709rev, which concludes:

“An insurance document that is dated later than the date of shipment, but clearly indicates on the document, by addition or note, “coverage effected on a warehouse to warehouse basis” or words of similar effect, is acceptable.”

The basis for the change is an extensive dialogue with the insurance industry, regarding the actual insurance practice.

There are of course many other changes made to the ISBP 745, and the above must be seen as examples.

New documents covered by ISBP 745

Not only do ISBP 745 introduce a new style and new practices – it also includes more documents compared to ISBP 681. New documents covered by ISBP 745 are:

- NON-NEGOTIABLE SEA WAYBILL
- PACKING LIST, NOTE OR SLIP (“Packing List”)
- BENEFICIARY’S CERTIFICATE
- ANALYSIS, INSPECTION, HEALTH, PHYTOSANITARY, QUANTITY QUALITY AND
- OTHER CERTIFICATES (“certificate”)

Conclusion

ISBP 745 is a comprehensive work. LC experts from all over the world have invested thousands of hours in its creation. No doubt it is not perfect. There may be issues to which one may not agree – after all – this is a “compromise” between many countries, so it would be strange if everyone would agree to everything.

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¹ Approved by the ICC Banking Commission, September 2010.

² A vote in favour of using UCP600 Article 20 in this situation.

³ ICC Opinions TA.727rev and TA.572.

⁴ The issue of freight forwarders has been elaborated upon in chapter “4.3.1 Freight Forwarders” in SINDBERG, “UCP 600 Transport Documents”.

⁵ ICC Opinions TA.748 and TA.750rev approved at the meeting in the ICC Banking Commission October 2011. Both queries were raised by ICC Denmark. One based on a Maersk Line bill of lading and the other based on a Hapag-Lloyd bill of lading.