

INTRODUCTION TO UCP 600

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1. Background

UCP first came into operation in 1933 and UCP 500, the revision currently in force, came into force with effect from 01 January 1994. In May 2003 ICC authorized the ICC Commission on Banking Technique and Practice (Banking Commission) to begin a revision of ICC. The Drafting Group considered a methodical survey of ICC Opinions and DOCDEX decisions, the legal cases and the ICC rules since UCPSOO, URR525, eUCP, ISBP for incorporation.

A study of ICC Opinions under UCP500 revealed that 17 articles had either none, one or two opinions, 7 Articles in UCP accounted for over 58% of all Opinions rendered by the Banking

This is the most comprehensive review in the history of UCP. While no draft will satisfy everyone, the drafting committee gave everyone an opportunity to express their views. All suggestions were considered, no matter how minor or small. Many UCP 500 articles have been moved or merged with older articles, while others have been deleted. Decisions on the new draft, is taken using a voting system by ICC 's National Committees.

5 The Structure of UCP600

The structure of the UCP600 is as follows:

- Articles 1-5 : Framework of the UCP 600
- Articles 6-10 : Structure of and obligations under documentary credits
- Articles 11-18 : Pre-advice; Nomination; Reimbursement; Standard for examination of documents; Discrepant documents, waiver and notice; Originals; Invoice
- Articles 19-27 : Transport documents
- Article 28 : Insurance documents
- Articles 29-37 : Extension; Tolerance; Partial shipment; Instalments; Disclaimers; Force Majeure
- Articles 38-39 : Transferable credits; Assignment

6. Major changes

The following articles of UCP 500 are not reflected in UCP 600

- Article 5 : Instructions to Issue / Amend Credits
 - Article 6 : (part) Revocable
 - Article 8 : Revocation
 - Article 12 : Incomplete or Unclear Instructions
 - Article 38 : Other Documents
- Content of Articles 2, 6, 9, 10, 20, 21, 22, 30, 31, 33, 35, 36, 46, 47 moved or merged.

The following articles in UCP 600 are not reflected in UCP 500

- Article 2 : Definitions
- Article 3 : Interpretations
- Article 9 : Advising of Credits, Amendments
- Article 12 : Nomination
- Article 15 : Complying Presentation
- Article 17 : Original Documents and Copies

7. Key issues

7.1 Article 2 - Definitions

All definitions were brought under a single article and definitions were provided for the following, which were absent in the UCP500: Advising Bank, Applicant. Banking day, Beneficiary, Complying Presentation, Confirming Bank,

Honour, Issuing Bank, Negotiation (ICC Position Paper 2), Nominated Bank, Presentation, Presenter. The two definitions found in UCP500, Credit (UCP 500 Article 2) and Confirmation (UCP 500 article 9b) were also moved here.

7.2 Article 3 - Interpretations

All sub articles in UCP500 relating to interpretation was brought under this article. They are: Signed (UCP 500 sub-Article 20b), Legalised (UCP 500 sub-Article 20d), Branches (UCP 500 Article 2), First class (UCP 500 sub-Article 20a), Prompt (UCP 500 sub-Article 46b), On or about (UCP 500 sub-Article 46c: now 'calendar' days), To, until (UCP 500 sub-Article 47a), From, after (UCP 500 sub-Article 47b), First half second half (UCP 500 sub-Article 47c), Be-ginning, middle, end (UCP 500 sub-Article 47d).

Two new interpretations on Singular / Plural and Irrevocable were also included.

7.3 Article 2 - Concept of Honour

Under article 2, 'Honour' was defined as:

§ to pay at sight if the credit is available by sight payment.

§ to incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.

§ to accept a bill of exchange ("draft" , drawn by the beneficiary and pay at maturity if the credit is available by acceptance.

All types placed under one concept 'Honour' to simplify the rules and avoid repetition throughout UCP. Bank's obligation under an LC. Is the basic concept of an LC is an instrument of payment and honour is the all-encompassing term for giving of value.

7.4 Article 2 - Negotiation

The term 'Negotiation' continues to be a contentious issue. What does negotiation mean? Different interpretations exist all over the world and general agreement on the meaning has not been forthcoming.

How can it be defined? /CC Position Paper No. 2:

... a number of banks fail to understand the meaning of the term 'negotiation in connection with the availability of a documentary credit. The term 'negotiation' is defined in UCP 500 as 'the giving of value by the bank authorised to negotiate' ... the phrase 'giving of value ... may be interpreted as either 'making immediate payment' or 'undertaking an obligation to make payment'

UCP 600 Article 2 Definition:

Negotiation means the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and / or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank.

7.5 Parties or Banks

UCP 500 had no interpretation of bank. The previous draft revision read 'The term bank includes but is not limited to entities traditionally known as a bank or other financial institution'. However, in the final draft revision this interpretation was removed. Since non-banks are already issuing Documentary credits we have missed an opportunity to resolve the problem that the Banking Commission will be faced with when a request for an opinion is submitted after adoption/implementation of the new rules.

7.6 Articles 7c, 8c & 12 - Discount of Deferred Payment Undertaking

Nomination of a bank includes authorising a bank to prepay or purchase. This has also been included in Article 7 Issuing Bank Undertaking and Article 8 Confirming Bank Undertaking. Article 12 states 'By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank'. There is a doubt as to whether all issues have been incorporated and whether there will be a conflict with local laws of some countries and who should be responsible for fraud?

7.14 Article 16 - Discrepant Documents, Waiver and Notice

This article has been expanded in order to stress the need for a single notice and to outline the required content of such notice. (receiving waiver from the applicant)

7.15 Article 17 Original Documents

Now follows the principle of ICC Policy statement dated 12 July 1999 in respect of original documents and includes an express provision that each required document must be presented at least in one original.

7.16 Transport Articles 19- 22

UCP 500

Article 23: Marine/Ocean Bill of Lading

Article 24: Non-Negotiable Sea Waybill

Article 25: Charter Party Bill of Lading

Article 26: Multimodal Transport Document

UCP 600

Article 20: Bill of Lading (i.e. Port-to-Port)

Article 21: Non-Negotiable Sea Waybill

Article 22: Charter Party Bill of Lading

Article 19: Transport Document covering at least two different modes of transport

7.17 Transport Articles 23- 25

UCP 500

Article 7: Air Transport Document

Article 28: Road, Rail or Inland Waterway Transport Document

Article 29: Courier and Post Receipts

UCP 600

Article 23: Air Transport Document

Article 24: Road, Rail or Inland Waterway Transport Document

Article 25: Courier Receipt, Post Receipt or Certificate of Posting

7.18 Art. 30 UCP500 Transport Document Issued by a Freight Forwarder

There is no need for an equivalent of UCP500 Article 30. A freight forwarder signing as agent of a carrier or as carrier is covered in UCP 600 Article 20 and the content of the other transport articles. Majority of countries voted for removal of this article from new draft. It should be noted that UCP has never excluded transport documents because the issuer was a forwarding agent

7.19 Transport Articles 19 - 25

Transport Document Covering at least Two Different Modes of Transport has been placed at the front of the transport articles as it is the more common type of document used today.

Deletion of reference to carrying vessel propelled by sail only.

7.20 Transport Articles 19 - 25 Re-definition of Transhipment

UCP 500: Sea / Air / Road / Rail / Waterway

For the purpose of this Article, transhipment means unloading and reloading from one vessel / aircraft / means of conveyance to another vessel / aircraft / means of conveyance.

UCP 600: Sea / Air / Road / Rail / Waterway

For the purpose of this article, transhipment means conveyance and reloading to another vessel / aircraft / means of conveyance.

7.21 Transshipment

LC requiring presentation of BL and containing a prohibition against transshipment will, in most cases, have to exclude UCP600 sub-article 20(c) to make the prohibition against transshipment effective.

c.i. A bill of lading may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same bill of lading. ii. A bill of lading indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment, if the goods have been shipped in a container, trailer or LASH barge as evidenced by the bill of lading.

7.22 Article 28 Insurance Document

Previously in UCP 500 Article 34 Insurance Documents; Article 35 Types of Insurance Cover; Article 36 All Risks Insurance Cover.

Insurance document must be issued and signed by an insurance company, an underwriter or their agents or their proxies. Cover notes will not be accepted (previously cover notes issued by brokers) The Insurance document must indicate that risks are covered at least between the place of taking in charge or shipment as stated in the credit and the place of discharge or final destination as stated in the credit. Amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods. An insurance document may contain reference to any exclusion clause.

7.23 Article 31 Partial Drawings or Shipments

A presentation consisting one or more sets of transport documents evidencing shipment on more than one means of conveyance within the same mode of transport will be regarded as a partial shipment, even if the means of conveyance leave on the same day for the same destination.

7.24 Article 35 - Disclaimer on Transmission of Documents

UCP 600 outlines the responsibility of the Issuing or Confirming Bank in the event of documents being

7.25 Article 36 - Force Majeure

UCP 600 includes acts of terrorism

7.26 Article 38 Transferable Credits

UCP 600 requires the presentation of documents by or on behalf of a second beneficiary be made to the transferring bank

8. Further Issues

8.1 International Standard Banking Practice (ISBP)

ISBP is being redrafted and is expected to be available by 01 July 2007 on which date UCP600 comes into force. All countries indicated the value of ISBP. However, 'international standard banking practice' is deemed to be wider than just the ISBP publication. Therefore the full title of the publication has been avoided. There was general agreement that there may be reference to ISBP within foreword / introduction to the UCP but not a specific mention therein.

8.2 Status of Position Papers

The Position Papers issued under UCP500 will no longer be applicable under UCP600.

8.3 UCP 600 Commentary

ICC will as usual issue the Commentary on UCP600 giving a detailed description on the changes and the reasons for such changes and this publication is expected to be available before 01 July 2007.

8.4 Review of Opinions for UCP 600 applicability

ICC does not consider it necessary to review their Opinions under UCP500 since such opinions were based on a particular set of facts and cannot be always generalised.

9. SWIFT Changes

9.1 Alignment with UCP 600 Article 1 Application of the UCP New mandatory field 40A Applicable Rules with list of codes

Previous default rule contracted UCP 500 Article 1 'where they are incorporated into the text of the Credit. Implied information may be an issue for courts and parties not familiar with SWIFT. Implemented in November 2006

9.2 Alignment with UCP 600 Transport Articles Four new optional fields (65 characters) Current fields unclear especially for Multimodal documents

Not properly aligned with UCP 500 / 600
Implementation November 2006

10. SWIFT Guidelines

10.1 Alignment with UCP 600 Article 6 Availability, Expiry Date

Change the definition of field 31D Date and Place of Expiry: 'For Credits that are only available with the issuing bank, the place of the issuing bank must be repeated in sub-field 'place' of field 31D

Implementation 1 July 2007
Subject to SWIFT National User Groups and Board approval

10.2 Alignment with UCP 600 Article 6 Place for Presentation

Change the definition of field 41a Available With ... By ... to mention availability and place of