

Set of Guidance Papers on Recommended Principles and Usages around UCP 600 Rules

- **Recommendations in Respect of the Requirements for an On Board Notation**
- **Notes on the Principle of Strict Compliance**
- **The Use of Drafts under Documentary Credits**
- **Simple Documentary Credit Format**

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ICC Recommendations in Respect of the Requirements for an On Board Notation

Recommendation Paper

Document No. 470/1128

Highlights

- Bills of Lading and the need for onboard notation
- UCP 600 articles applicable for examination of bills of lading
- Position in respect of Sea Waybills, Multimodal/Combined Transport Documents and Charter Party Bills of Lading
- Simple flowchart

Requirements for an on board notation in respect of a transport document presented for examination under articles 19, 20, 21 or 22 of UCP 600

Overview

Background and Introduction

- 1.1 Following the implementation of UCP 500, the ICC has been asked to respond to requests for opinions on the subject of on board notations i.e., in the context of when they are required and what form they should take, given a particular set of circumstances. This trend has continued following the implementation of UCP 600 in July 2007.
- 1.2 This document will:
 - aid beneficiaries in instructing carriers and logistics companies of the requirements for any on board notation;
 - provide carriers and logistics companies with clear guidelines as to when an on board notation will be required to appear on a transport document and its data components; and
 - guide banks in the correct interpretation and application of the UCP in relation to on board notations for bills of lading, sea waybills and charter party bills of lading, and for multimodal or combined transport documents, where the first part of the carriage (as required by the credit) is by sea.
- 1.3 This document refers to the “on board notation” requirements of a Transport Document Covering at Least Two Different Modes of Transport (i.e., Multimodal or Combined Transport Document), Bills of Lading, Sea Waybills and Charter Party Bills of Lading. To avoid repetitive text and duplication of consistent requirements, this document focuses on bills of lading, the transport document with the most requests for an ICC Opinion. Whilst an on board notation may be required on any of these documents, the addition of a notation does not change the nature of such document as an article 19, 20, 21 or 22 type of document. The on board notation requirements in relation to all the referenced transport documents appear in section 5.
- 1.4 For ease of review and applying the requirements of this document, a simple flowchart (appearing in section 6) explains when an on board notation is required and the form that it is to take. Sections 2-4 give the background to the requirements of UCP and ISBP and the basis for how the conclusions, in section 5, have been drawn.

ICC Opinions already given under UCP 600

- 1.5 Since October 2007, , ICC has responded to seven requests for Opinions on the subject of on board notations.

ICC Opinions R.648 (TA.635rev) Query 3, R.644 (TA.665rev), R.645 (TA.667rev) and TA.679 have focussed on issues relating to bills of lading, whilst Opinions R.641 (TA.650rev), R.642 (TA.666rev) and TA.682 have been in respect of Multimodal or Combined Transport Documents.
- 1.6 The analysis and conclusions to Opinions R.644, R.645 and R.648 indicate that an on board notation will be required if the place of receipt was different to the port of loading “unless it is evident from the bill of lading that the shipped on board statement applies to the named vessel and the port of loading stated in the credit.” These opinions place the burden on the wording in the bill of lading to determine whether the on board notation requires more than just a date.
- 1.7 The conclusion to TA.679 was slightly different to that referred to above owing to the wording of the bill of lading (see section 2.6 for the wording). The conclusion in question stated:—“If the bill of lading evidences an inland place of receipt, the bill of lading will require a dated on board notation bearing the name of the vessel and port of loading stated in the credit, even if the bill of lading is pre-printed “shipped on board in apparent good order and condition” or similar.”

- 1.8 In order to fully understand the issues pertaining to these Opinions, and the content of the analysis and conclusion given, their full transcript should be reviewed.

Bills of Lading and the need for an on board notation

UCP and ISBP provisions

- 2.1 During the revision of UCP 500, communications were sent between the Drafting Group and members of the ICC Transport Commission. As a result it was agreed that the bill of lading is a transport document covering shipment from a port of loading to a port of discharge and that the rules should reflect that position. It should be noted that ICC Publication No.680 “Commentary on UCP 600” refers to article 20 in the following manner: “[T]his article applies when the documentary credit requires presentation of a bill of lading covering transport by sea from one port to another port.” Additionally, ISBP Publication 681, at paragraphs 91 and 92 states “[I]f a credit requires presentation of a bill of lading (“marine”, “ocean” or “port-to-port” or similar) covering sea shipment only, UCP 600 article 20 is applicable.” and “[T]o comply with UCP 600 article 20, a bill of lading must appear to cover a port-to-port shipment but need not be titled “marine bill of lading”, “ocean bill of lading”, “port-to-port bill of lading” or similar.”
- 2.2 The main problems with on board notations arise when the bill of lading indicates place of receipt and/or pre-carriage details and the place of receipt is different to the port of loading stated in the credit, and therefore the question arises of whether or not there is a need for an on board notation showing the name of the vessel and the port of loading, even if they are the same details as shown in the respective fields on the bill of lading. An element of confusion initially arose through the UCP 600 not incorporating the wording that appeared in UCP 500 sub-article 23 (a) (ii) i.e., “If the bill of lading indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named in the bill of lading. This provision also applies whenever loading on board the vessel is indicated by pre-printed wording on the bill of lading, and”.
- 2.3 The inclusion, in UCP 600 sub-article 20 (a) (ii) of “indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit” still requires a document examiner to be satisfied that the on board notation relates to the goods being on board the named vessel and not by any other means of conveyance for the pre-carriage (between a place of receipt and the port of loading).
- 2.4 It is often the case that the contract of carriage concluded between the carrier and shipper is not in line with the requirements for shipment expressed in the credit. The shipper may contract for the goods to be collected from an inland point for delivery to the port of loading for loading onto the vessel, but the letter of credit only refers to shipment from port to port. The bill of lading may consequently evidence a place of receipt that is different to the port of loading, and where there is a dated on board notation added to the bill of lading, or the bill of lading is pre-printed “shipped on board in apparent good order and condition ...” the issue for the document checker is to determine whether or not the on board notation can be understood to “indicate that the goods are on board the named vessel at the port of loading stated in the credit”.

Does “on board” always mean on board the named vessel?

- 2.5 Whilst a number of carriers, and their agents, specify verbally that they will not release a bill of lading unless the goods are actually loaded on board the vessel named in the bill of lading, this may not always be evident from the bill of lading itself and sub-article 14 (a) requires that a nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank

examine a presentation to determine, **on the basis of the documents alone**, whether or not the documents appear on their face to constitute a complying presentation (emphasis added).

- 2.6 Banks may encounter bills of lading containing specific wording as to the place to which the on board notation will apply. One such example has been given in ICC Opinion TA.679. This request for an Opinion highlighted the following wording that had been seen in a bill of lading: “[W]hen the place of receipt of the goods is an inland point and is so named herein, any notation of “on board”, “shipped on board” or words to like effect on this BL, shall be deemed to mean on board the truck, rail car, aircraft or other inland conveyance... from the place of receipt of the goods to the port of loading”. When incorporated into the pre-printed text on the bill of lading, the use of this form of wording clearly indicates that “shipped on board” or similar terms does not equate to “shipped on board a named vessel at the port of loading stated in the credit” (as required by sub-article 20 (a) (ii)).
- 2.7 Wording of similar effect has been found on the face of other bills of lading such as “[W]hen the place of receipt box has been completed, any notation on this bill of lading of “on board”, “loaded on board” or words to like effect, shall be deemed to be on board the means of transportation performing the carriage from the place of receipt to the port of loading.”
- 2.8 This raises the questions: should a document examiner be required to examine pre-printed text on the face of the bill of lading to determine whether shipped on board really means shipped on board the vessel (at the port of loading) and under what circumstances can a document examiner reasonably be expected to apply an on board notation to the named vessel and port of loading? Document examiners must recognise that in reviewing a pre-printed shipped on board statement i.e., “shipped on board in apparent good order and condition” the wording that follows thereafter determines the effect and application of that shipped on board statement and must be read. If, as indicated above, the wording indicates that “on board” means on board the conveyance from the place of receipt to the port of loading stated in the credit, then the document examiner must refuse the documents for absence of an on board notation in relation to the vessel and the port of loading. Document examiners should only read the pre-printed text as far as is necessary to determine the place of loading “on board” the conveyance for the sea journey.
- 2.9 Subject to a bill of lading not incorporating wording to the effect shown above, it is the opinion of ICC that a distinction can be drawn between bills of lading that evidence a place of receipt and a means of pre-carriage or those that only evidence a means of pre-carriage and those that only evidence a place of receipt—whether the place of receipt is the same as the port of loading or different. If the bill of lading only shows a place of receipt, with no reference to the means of pre-carriage, in the pre-carriage or place of receipt fields, an on board notation, or pre-printed wording to that effect can only be seen to apply to the named vessel and port of loading. Where a place of receipt and/or a means of pre-carriage is shown, there is doubt as to whether the on board notation or pre-printed wording refers to the named vessel and port of loading.

Which article of UCP 600 is applicable for examination of a transport document?

Transport documents must be examined under the article that is applicable to the conditions stated in the credit. These conditions include: the type of document that is to be presented and the details given with respect to the shipment of the goods e.g., those shown in fields 44A, E, F or B of the MT700, 710 or 720. Transport documents are not examined under the article applicable to the type of document that has been presented. For example, an MT700 is issued requiring presentation of a bill of lading with field 44E showing Rotterdam and field 44F showing Hong Kong. A transport document that is presented showing as place of receipt Paris, port of loading Rotterdam and port of discharge Hong Kong will be examined under article 20 and not article 19. For avoidance of doubt, any document called for by a credit containing the phrase “bill of lading”

and asking for port to port shipment (i.e., meeting the requirement of article 20 reading “A bill of lading, however named”) is to be examined against article 20, not article 19.

Note the following description for the SWIFT fields quoted above:

44A *Place of Taking in Charge/Dispatch from .../Place of Receipt*

44E *Port of Loading/Airport of Departure*

44F *Port of Discharge/Airport of Destination*

44B *Place of Final Destination/For Transportation to .../Place of Delivery*

Selecting the appropriate transport document

This is a key issue and one that banks should pay particular attention to. By selecting the transport document that reflects the correct routing and appropriate means of conveyance, many of the issues seen today can be avoided.

The structure of UCP 600, in particular in changing the order of the transport documents, was to emphasise that in most shipments today there is an element of multimodal or combined transport and that, perhaps, applicants should be calling for more multimodal or combined transport documents than bills of lading.

Banks are invited to educate their customers in selecting the correct transport document for the carriage that is being undertaken and that where transport by more than one means of conveyance will occur, to request the presentation of a multimodal or combined transport document instead of a bill of lading. This process can be aided significantly by the incorporation of SWIFT fields 44A, E, F and B into LC application forms. The correct completion of these fields, by the applicant and/or the issuing bank, will identify the suitable form of transport document e.g.

Fields 44E and F only = Bill of Lading, Sea Waybill, Charter Party Bill of Lading or Air Waybill

Fields 44A and B only = Multimodal or Combined Transport Document, Road, Rail or Inland Waterway or Post / Courier

Any 3 fields from 44A, E, F or B (or all of them) = Multimodal or Combined Transport Document

The recommendation for incorporation of these fields into the LC application form also pre-supposes that the form allows for the applicant to select from a range of transport documents and not only from a bill of lading or air waybill.

Requirements of UCP 600 (in respect of bills of lading)

The pertinent rules in article 20 are:

Sub-article 20 (a) (ii):

- indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:
- pre-printed wording, or
- an on board notation indicating the date on which the goods have been shipped on board.

The date of issuance of the bill of lading will be deemed to be the date of shipment unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in the on board notation will be deemed to be the date of shipment.

If the bill of lading contains the indication "intended vessel" or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

Sub-article 20 (a) (iii):

- indicate shipment from the port of loading to the port of discharge stated in the credit.

If the bill of lading does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication “intended” or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the bill of lading.

Selected wording from the ICC Publication No. 680 “Commentary on UCP 600”

Commentary on UCP 600 Pages 89-92 Article 20

This article applies when the documentary credit requires presentation of a bill of lading covering transport by sea from one port to another port.

As a bill of lading covers shipment from a port to a port, the wording that appeared in UCP 500 sub-article 23 (a) (ii) was seen to encourage the presentation of a document that covered pre-carriage of the goods to the port of loading. The wording of this sub-article reads: “If the bill of lading indicates a place of receipt or taking in charge different from the port of loading, the on board notation must also include the port of loading stipulated in the Credit and the name of the vessel on which the goods have been loaded, even if they have been loaded on the vessel named in the bill of lading. This provision also applies whenever loading on board the vessel is indicated by pre-printed wording on the bill of lading.”

Where pre-carriage by road, rail or air and shipment by sea is envisaged, the parties should ensure that the credit allows for a transport document to be presented that would be subject to examination under UCP 600 article 19.

The Drafting Group recognized that whilst UCP 600 conveys that the bill of lading is a port-to-port document, there will be occasions when the shipping company or its agent will include reference to a place of receipt or taking in charge that is different from the port of loading. To cover this eventuality, the content of sub-article 20 (a) (ii) reads: “indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:” The emphasis in this condition is that the document checker must be able to determine that the bill of lading appears to indicate that the shipped on board statement (pre-printed wording or by a separate notation) relates to loading on board the named vessel at the port of loading stated in the credit and not to any pre-carriage of the goods between a place of receipt or taking in charge and the port of loading. **Unless it is evident from the bill of lading that the shipped on board statement applies to the vessel and the port of loading, the bill of lading will require, as was the case in UCP 500, an on board notation showing the port of loading and the name of the vessel, even if the goods are loaded on the vessel named in the bill of lading.** [emphasis added]

Sub-article (a) (iii) states that if a bill of lading does not indicate the port of loading stated in the documentary credit as the port of loading, it must contain an on board notation which indicates the port of loading stated in the documentary credit, the date of shipment and the name of the vessel. The same criteria apply if the bill of lading indicates the qualification “intended” or similar in respect of the port of loading.

An example of where a bill of lading does not indicate the port of loading stated in the documentary credit as the port of loading would be when the port of loading stated in the documentary credit is shown as the place of receipt, since in the field “port of loading” it shows the port where transshipment is to occur. The documentary credit requires shipment from Rotterdam to Hong Kong. Sub-article (a) (iii) requires the bill of lading to indicate shipment from the port of loading to the port of discharge stated in the credit.

The bill of lading shows:

Pre-carriage	Moon Lagoon
Place of receipt	Rotterdam
Ocean Vessel	Sun Lagoon
Port of Loading	Dubai
Port of Discharge	Hong Kong

The bill of lading will require, according to sub-article (a) (iii), an on board notation showing the vessel Moon Lagoon, the port of loading Rotterdam and the on board date.

Conclusions

The opinion of ICC is as follows:

Bills of Lading

- a) where the bill of lading indicates a **place of receipt that is the same as the port of loading**, for example, place of receipt Rotterdam CY and port of loading Rotterdam **BUT there is NO indication of a means of pre-carriage** (either in the pre-carriage field or the place of receipt field) then:
 - i. if the bill of lading is pre-printed shipped on board, the date of issue will be deemed to be the date of shipment and no further on board notation is required;
 - ii. if the bill of lading is pre-printed received for shipment, a dated on board notation will be required and the date appearing in the notation will be deemed to be the date of shipment.
- b) where the bill of lading indicates a **place of receipt that is different from the port of loading** i.e., place of receipt Amsterdam and port of loading Rotterdam **BUT there is NO indication of a means of pre-carriage** (either in the pre-carriage field or the place of receipt field) then:
 - i. if the bill of lading is pre-printed shipped on board, the date of issue will be deemed to be the date of shipment and no further on board notation is required;
 - ii. if the bill of lading is pre-printed received for shipment, a dated on board notation will be required and the date appearing in the notation will be deemed to be the date of shipment.
- c) where the bill of lading indicates a **place of receipt that is different from the port of loading** i.e., place of receipt Amsterdam and port of loading Rotterdam **AND there is an indication of a means of pre-carriage** (either in the pre-carriage field or the place of receipt field) then:
 - i. if the bill of lading is pre-printed shipped on board, a dated on board notation will be required indicating the name of the vessel and the port of loading. The date of the notation will be deemed to be the date of shipment;
 - ii. if the bill of lading is pre-printed received for shipment, a dated on board notation will be required indicating the name of the vessel and the port of loading. The date of the notation will be deemed to be the date of shipment.

The exception to the above is where the bill of lading contains wording such as that quoted in section 2.6 or 2.7 of this paper. Where such wording is incorporated into the pre-printed wording, a dated on board notation will be required that also indicates the name of the vessel and the port of loading.

As a result of the contents of this document, the conclusion given to Opinion R.644 will be replaced by that under (b) above.

In the context of this document, “pre-carriage” refers to the carriage between a stated place of receipt and the stated port of loading on a transport document.

The flowchart in section 6 explains the requirements for an on board notation in relation to the data content of the bill of lading as may be presented.

Sea Waybills

Same position as for bills of lading.

Multimodal or Combined Transport Documents

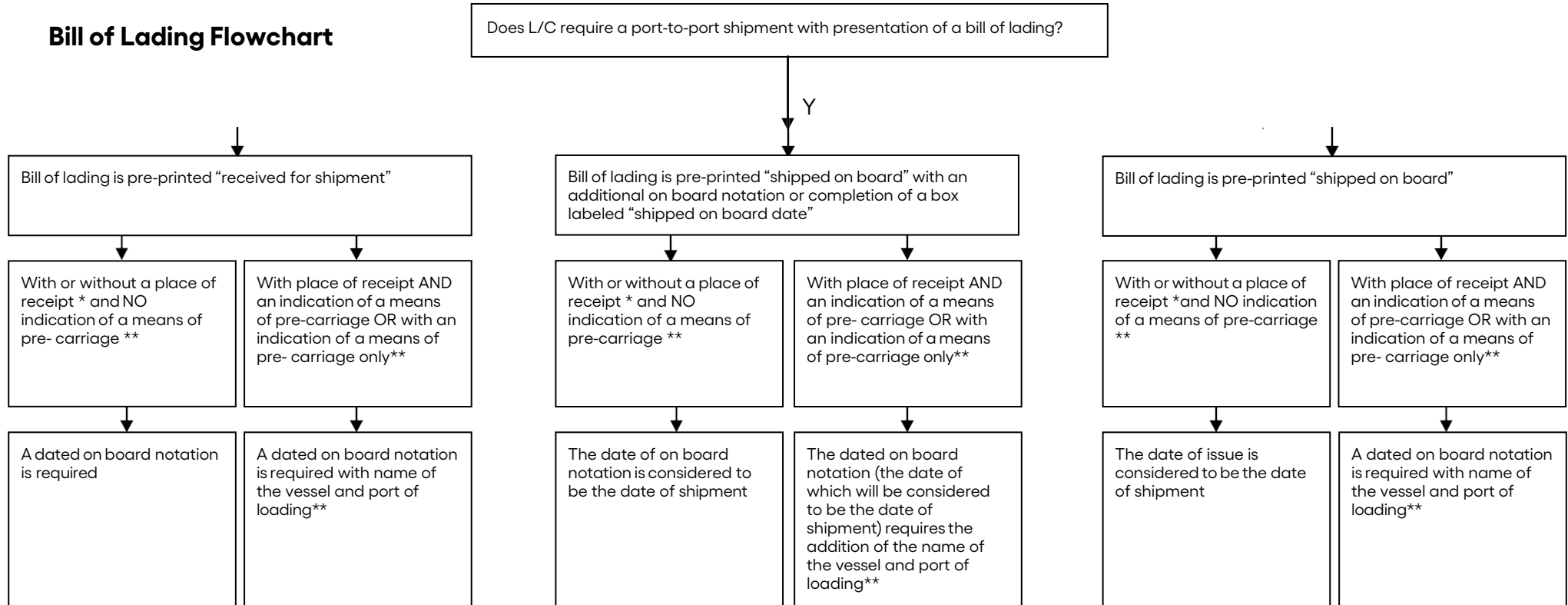
Article 19 provides for an indication of the goods being dispatched, taken in charge or shipped on board. The applicable wording will depend upon the mode of conveyance for the first leg of the carriage. It should be noted that article 19 does not require an on board notation as a default position for most of the time. However, in line with ICC Opinion R. 641 (TA.650rev), a dated on board notation is clearly required when the credit so requests. It is also required when the credit requires shipment to be effected from a port to the place of final destination i.e. the first leg of the journey, as required by the credit, is by sea. If a multimodal or combined transport document nonetheless evidences a place of receipt that is different to the place stated in the credit, and that place stated in the credit is a port, the dated on board notation will require the addition of the name of the vessel and port of loading, unless the transport document evidences that the on board notation or pre-printed shipped on board wording applies to the named vessel and port of loading. The key, therefore, is for the credit either:

- a) to expressly require an on board notation, or absent that;
- b) to make clear whether the place from which the goods are to be taken in charge by the carrier is a sea port.

Charter Party Bills of Lading

The content of the flowchart in section 6 will apply where the bill of lading contains an indication that it is subject to a charter party (charter party bill of lading).

Bill of Lading Flowchart



Footnotes/Guidance:

- *"With or without place of receipt" if only a place of receipt is shown, it can be the same place or a different place provided there is no mention of a means of pre-carriage in the pre-carriage or place of receipt fields on the document.
- **"Indication of a means of pre-carriage"—where an indication of the means of pre-carriage is given i.e., by truck or rail, the bill of lading will require an on board notation indicating the name of the vessel and the port of loading, whether or not a place of receipt field is completed.
- An on board notation is also required where the ocean vessel and/or port of loading are stated to be "intended". In this event, the on board notation is to include the name of the vessel and/or the port of loading. Alternatively, the word "intended" may be deleted and the deletion authenticated by the carrier or their agent.
- Where the port of loading stated in the credit is shown as the place of receipt (the ocean vessel and port of loading fields, in this case, are reflecting the transshipment details) with shipment by sea from that port, a dated on board notation is required evidencing the port of loading stated in the credit and the vessel that is leaving that port.
- Where the bill of lading indicates the place of receipt as the same as the port of loading, for example, place of receipt Rotterdam CY and port of loading Rotterdam but there is no indication of the means of pre-carriage, the date of a pre-printed shipped on board bill of lading will be deemed to be the date of shipment. If the bill of lading is pre-printed received for shipment, a dated on board notation will be required and that date will be deemed to be the date of shipment.
- The exception to the above is where the bill of lading contains wording such as that quoted in section 2.6 or 2.7 of this paper. Where such wording is incorporated into the pre-printed wording, a dated on board notation will be required that also indicates the name of the vessel and the port of loading.

Notes on the Principle of Strict Compliance

Issues Paper

Document No. 470/1261

Summary and highlights

- Introduction
- Relevant ICC Rules and Practices
- DOCDEX Decisions and ICC Official Opinions
- Legal Perspective: Interpretation In The Courts
- Expert Perspective: Reference Books
- Conclusion: Is There a Defined Approach?

Notes on the principle of strict compliance

The issue of “strict compliance” has continually surfaced with respect to the examination of documents presented under documentary credits. Over the last couple of years, several discussions have been generated on Internet forums and in trade finance journals in respect of the interpretation and application of this doctrine. This has also been reflected in the challenging discussions behind numerous ICC Official Opinions.

With this in mind, ICC tasked David Meynell, Senior Technical Advisor to ICC, with drafting a paper to reflect the issues.

Introduction

Over the last couple of years, several discussions have been generated on Internet forums and in trade finance journals in respect of the interpretation and application of “strict compliance” with regard to the examination of documents presented under documentary credits. This has also been reflected in the challenging discussions behind numerous ICC Official Opinions.

The question of “strict compliance” has often been raised with regard to documents presented under documentary credits and a significant number of ICC Opinions and DOCDEX decisions have dealt with this issue. As mentioned in one of the most authoritative textbooks on the subject, *Jack: Documentary Credits*, the documents must strictly comply with the requirements of the credit.

Nevertheless, it is important to note that circumstances can change with each individual query and much depends on the actual context.

As highlighted by David Meynell and Gary Collyer in their blog of 9th November 2015—<https://www.tradefinance.training/blog/articles/strict-compliance/>—checking documents, at least in the paper world, is not a matter of applying a computer algorithm or mathematical formula. It goes beyond strict compliance and, in certain circumstances, requires judgement based on experience.

Applying common sense is an essential factor in protecting the integrity of the documentary credit. However, pinpointing a defined understanding of “strict compliance” in this perspective is not easily achievable: it is certainly not explicitly clear from a reading of UCP or ISBP.

ICC Publication no. 399 (Opinions 1980-1981) included the comment that banks could not act like robots, but had to check each case individually and use their judgement.

The fundamental question remains: exactly how strict must compliance be and can it be defined?

Relevant ICC rules and practices

Underlying the question are various related ICC rules and practices. The below are not all-inclusive and particular attention must be paid to all of the General Principles of ISBP 745.

UCP 600 sub-article 14 (a): A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, **on the basis of the documents alone**, whether or not the documents **appear on their face to constitute a complying presentation**.

UCP 600 sub-article 14 (d): Data in a document, when read in context with the credit, the document itself and international standard banking practice, **need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit**.

UCP 600 sub-article 14 (e): In documents other than the commercial invoice, the description of the goods, services or performance, if stated, **may be in general terms not conflicting with their description in the credit**.

UCP 600 sub-article 14 (f): If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, **banks will accept the document as presented if its content appears to fulfil the function of the required document** and otherwise complies with sub-article 14 (d).

UCP 600 sub-article 14 (j): When the addresses of the beneficiary and the applicant appear in any stipulated document, **they need not be the same as those stated in the credit or in any other stipulated document**, but must be within the same country as the respective addresses mentioned in the credit. Contact details (telefax, telephone, email and the like) stated as part of the beneficiary’s and the applicant’s address **will be disregarded**. However, when the address and contact details of the applicant appear as part of the consignee or notify party details on a

transport document subject to articles 19, 20, 21, 22, 23, 24 or 25, they must be as stated in the credit.

ISBP 745 Paragraph A23: A **misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant**. For example, a description of the goods shown as “mashine” instead of “machine”, “fountan pen” instead of “fountain pen” or “modle” instead of “model” would not be regarded as a conflict of data under UCP 600 sub- article 14 (d). However, a description shown as, for example, “model 123” instead of “model 321” will be regarded as a conflict of data under that sub-article.

DOCDEX decisions and ICC official opinions

A very large proportion of both DOCDEX decisions and ICC Official Opinions have dealt with, in one way or another, “strict compliance”. I have therefore restricted the following only to those wherein the analysis or conclusion mentions the term “strict compliance”.

DOCDEX Decision No. 202

It was stated that the issue was to assess whether absolute reliance on the doctrine of strict compliance for two of the three stated discrepancies would be suffice to reach a sound decision and, if relied upon, whether it would prove to be working against the intended contribution of the documentary credit system and the UCP to the banking industry.

Discrepancies had been raised in respect of a third party issuing a packing list and a certificate of quality being issued by a third party instead of a beneficiary’ s certificate. There was no indication in the credit as to the issuing entity of the packing list; therefore it was considered as compliant. Additionally, there was no indication in the credit as to the title or issuing entity of the relevant certificate; therefore it was considered as compliant.

It was concluded that the issues raised by the Respondent as discrepancies should not seek and find shelter under the doctrine of strict compliance and could not be justified.

DOCDEX Decision No. 221

An issuing bank raised a discrepancy that description of goods on the bill of lading contained a typographical error. The negotiating bank contended that the goods description was not in general terms inconsistent with the credit. The issuing bank still refused on the grounds that strict compliance was required. Furthermore, they provided an “Expert’s Report” which alluded to fraud, negligence, full compliance, additional discrepancies and a number of other issues.

It was concluded that it was extremely unlikely that a typographical error of the nature of that included in the bill of lading (the misspelling of the word “clutch” as “clutoh”) would have any material bearing and documents should be considered as compliant. With regard to the

“Expert’s Report”, banks deal in documents and other external factors should not be considered in the absence of exceptional circumstances, e.g. when a bank is aware, at the relevant time, of fraudulent activities.

It was also noted that the compliance standard under UCP 500 Article 13 was to “be determined by international standard banking practice” and that there was no reference in UCP 500 to the “strict compliance” standard.

DOCDEX Decision No. 249

An issuing bank amended a credit by adding the following condition: “Typographical and/or spelling errors, not be considered as discrepancies except in value, unit price, goods description and quantity. But for bills of lading, certificates of origin and all certificates issued by S.G.S. or beneficiary is prohibited showing any typing error.” The issuing bank, on the grounds of a number of typographical errors, rejected a subsequent presentation of documents.

It was decided that the discrepancies raised by the issuing bank were fully valid because the strict and clear wording of the amendment did not leave room for any different interpretation and conduct by the issuing bank.

The analysis included the statement that as the amendment entailed a precise condition for the document checking to be inserted into the credit, with the consequences that the documents—if the amendment was accepted by the beneficiary—were to be checked in strict compliance with the terms of the amendment, which became a formal and fully effective credit condition.

DOCDEX Decision No. 337

An issuing bank refused two sets of documents presented under a credit due to a number of discrepancies including incorrect CIF value on invoice and packing list. It was concluded that none of the discrepancies was valid and that the issuing bank was obliged to reimburse the nominated bank.

In the analysis, it was stated that both the invoice and the packing list were in strict compliance with the credit.

Official Opinion R197

According to the terms of the credit, a “certificate duly signed by the captain’s vessel stating the cleanness of the tank steamer” had been requested. The document received ‘for approval’ was an inspection report.

It was concluded that since a report instead of a certificate was presented, there was justification for claiming a discrepancy under the doctrine of strict compliance.

Official Opinion R277

The issue was whether a misspelling of the beneficiary’s name as shipper on the bill of lading and the applicant’s as notify party would constitute a discrepancy under UCP 500 Article 21. It was concluded that the discrepancies were not valid.

However, a statement was made that in a doctrine of strict compliance, such discrepancies could provide banks with reasons for rejection.

Official Opinion R289

An issuing bank refused documents on the basis that the railway bills did not show the credit number. The analysis stated that it had been the previous opinion of the ICC that the requirement for a credit number was only to assist in tracing documents should they go astray. Since the issuing bank received the documents, the absence of the reference number, which in itself neither added nor detracted from the purpose of the document, was seen as an irrelevance and not valid grounds for rejection.

In the conclusion it was mentioned that the ICC had on numerous occasions stated that it disapproved of such a discrepancy, especially where transport documents were concerned, and once again reiterated this view. However, a comment was added that this might be a matter for local law, particularly where the law observed a standard of strict compliance.

Whilst not directly referencing the term “strict compliance”, it is worthwhile mentioning some more recent relevant Official Opinions.

Official Opinion R408

A beneficiary certificate contained a typographical error when stating the name of the vessel. This was considered as additional information not required by the credit and therefore not a discrepancy.

Official Opinion R559/TA548rev

A container number, although not required by the credit, was included on a commercial invoice. This number included one incorrect figure. This was considered as a typographical error and not a discrepancy.

Official Opinion R757/TA708rev

A contract number was quoted twice on a commercial invoice, one of which included an additional character. This was seen as superfluous and did not render the document discrepant.

Official Opinion TA.810rev

A copy of a shipment advice was to be sent to an insurance company. The invoice amount on the shipment advice was quoted incorrectly and was an obvious typographical error. However, because the advice did not fulfil its function by providing correct information for insurance purposes, it was considered as a discrepancy.

Official Opinion TA.811rev

Documents were refused due to differing purchase order numbers being quoted on the invoice and packing list. It was opined that, in view of the fact that the credit did not stipulate a purchase order number, both numbers could actually be valid. Accordingly a conflict of data could not be determined and the documents were compliant.

Official Opinion TA.815rev4

An invoice was presented referring to the designated currency as “\$”. This was considered by the issuing bank to be a discrepancy on the grounds that the actual currency was not specified. UCP and ISBP specify that an invoice must be in the same currency as the credit. It was decided that provided a beneficiary is not in a country other than the USA that uses “\$” to describe or reflect its base currency and, on the basis that there was no data in the invoice or any other document implying that “\$” referred to a currency other than “USD”, then the invoice complied and the discrepancy was invalid.

Official Opinion TA.817rev

The credit required the bill of lading to show shipment effected in FCL container. The presented bill of lading stated CY/CY and not FCL, which was mentioned as a discrepancy by the issuing bank and disputed by the nominated bank. Ultimately it was considered that a document examiner should not be expected to understand such terms. As such, the document is considered to be discrepant, as it did not make express reference to a FCL shipment.

Official Opinion TA.818rev

Documents were presented including an invoice that, whilst it did not specifically identify the applicant as such, included the correct full name and address of the applicant under a header “Customer”. The issuing bank raised a discrepancy that there was no indication of the applicant on the invoice i.e., implying that the invoice should have a header “applicant”. As stated in the analysis, there was nothing in either UCP 600 or ISBP 745 that required the name and address of the applicant to appear in a specific place within an invoice. Provided the name of the applicant appeared somewhere on the invoice, it was compliant with UCP 600 sub-article 18 (a) (ii).

Official Opinion TA.828rev

A certificate of origin referred to the attached packing list / weight memo as “rev03”: the presented packing list / weight memo stated “rev04”. It was concluded that in view of the fact each individual document complied with the terms and conditions of the credit and that the credit itself included no requirement for a particular revision number to be stated, then no discrepancy could be identified. It must be noted that this decision is predicated upon the conclusion that the wording “rev” must be an abbreviation for the word “revision”.

Official Opinion TA.833rev

An issuing bank refused documents on the basis that all documents showed a net weight greater than the gross weight, which they considered to be illogical. The reasoning provided by the nominated bank was that the weight in question was actually ADMT (air dry weight), which can be greater than the gross weight due to included moisture. The Opinion highlighted that although this is information not likely to be known by a document examiner, use of the words “net weight” in conjunction with “ADMT” weight did not make the documents discrepant.

Official Opinion TA.837rev

An issuing bank refused documents presented under a credit on the basis that within the name of the applicant the abbreviation “Ind” had been used to represent “Industries”. This, in its opinion, was not acceptable. Although ISBP 745, paragraph A1, lists a number of acceptable abbreviations, this is not all-inclusive, and other types of abbreviation can be acceptable. From the perspective of this specific query, the use of the word “Ind” was not viewed as a discrepancy.

Legal perspective: interpretation in the courts

Whilst it can certainly be argued that the overall prevailing viewpoint from the courts has been that ascertaining the correctness of tendered documents must be on the basis of “strict compliance”, exceptions do exist.

The definitive legal statement came from Lord Sumner in *Equitable Trust Company of New York v Dawson Partners Ltd. (1927)*. This has been a reference point for many courts ever since: the following paragraph is an abstract from the ruling:

It is both common ground and common sense that in credit transactions, the accepting bank can only claim reimbursement if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. The bank cannot take upon itself to decide what documents will do well enough and what will not. If it departs from the conditions laid down in the credit, it acts at its own risk. The documents tendered were not exactly the documents which the defendants had promised to take up, and prima facie they were right in refusing to take them.

In actual fact this was an endorsement of an earlier ruling by Bailhache J., in *English, Scottish & Australia Bank Ltd, v. Bank of South Africa (1922)*.

It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened.

An additional early ruling also appeared to support the doctrine of strict compliance in *Skandinaviska Aktieolaget v Barclays Bank Ltd (1925)*.

The documents ought to be completely in order.

In more recent times, this was strongly supported by *Philadelphia Gear Corporation v Central Bank (1983)*.

The rejection of strict compliance as a doctrine would vitiate the economic value of a credit transaction; for not only would the issuer be compelled to assume the risks of the underlying contract’s non-performance, it would be required to assume the additional risks of judicial realignment of its obligations under the credit.

Strong support to this rationale was provided in *United Bank Ltd. v Banque Nationale de Paris (1992)*.

On these authorities it seems reasonably clear that any discrepancy, other than obviously typographical errors, will entitle either the negotiating or the issuing bank to reject. It is tempting to say that whether a bank is entitled to reject must surely depend on whether the discrepancy is really material. But why should a bank assume the responsibility of determining the question of materiality and take the risk of it, if it goes wrong. As is so clearly stated in the UCP, documentary credit transactions are concerned with documents.

This was again sustained in *Seaconsar Far East Ltd. v. Bank Markazi Jomhuri Islaim Iran (1993)*.

I cannot regard as trivial something which, whatever may be the reason, the credit specifically requires.

It was stated in *Glencore International AG v Bank of China [1996]* that,

The duty of the issuing bank is, and is only, to make payment against documents which comply strictly with the terms of the credit.

With regard to minimal differences, it was expounded in *Moralice (London) Ltd v E.D. and F. Man (1954)* that the principle of “*de minimis non curat lex*” (i.e. the rule of “insignificance”) does not apply to the presentation of documents under documentary credits.

It is probably true to say that when a contract provides that payment shall be by means of presentation of documents against an irrevocable credit, that necessarily involves, not only, in the contract between the confirming bank and the seller, but that the documents must be such as will strictly comply with the terms of the credit.

Nonetheless, some courts have shown a willingness to move towards a doctrine of substantial compliance, as can be seen in *Gian Singh & Co. Ltd. v. Banque de l'Indochine (1974)*.

In the ordinary case, visual inspection of the actual documents presented is all that is called for. The relevance of minor variations depends on whether they are sufficiently material to disentitle the issuing bank from saying that in accepting the certificate it did as it was told.

This was further addressed in *Banque de l'Indochine et de Suez SA v. J. H. Rayner (Mincing Lane) Ltd. (1982)*.

Lord Sumner's statement in *Equitable Trust Company of New York v Dawson Partners Ltd. (1927)* cannot be taken as requiring rigid meticulous fulfilment of precise wording in all cases. Some margin must and can be allowed.

Additional support for this approach can be seen in *Bank of Nova Scotia v. Angelica-Whitewear Ltd. (1985)*.

The rule of strict documentary compliance requires not only that the tendered documents appear on their face, upon reasonably careful examination, to conform to the terms and conditions of the letter of credit but that they also appear to be consistent with one another, particularly in the sense that they refer to the same shipment of goods. The rule of strict documentary compliance does not extend to minor variations or discrepancies that are not sufficiently material to justify a refusal of payment.

This case went to appeal and the following comments were made:

While the English and Canadian courts have not adopted a rule of substantial documentary compliance there has apparently been recognition that there must be some latitude for minor variations or discrepancies that are not sufficiently material to justify a refusal of payment.

In line with this attitude, it was stated in *Astro Exitto Navegacion SA v. Chase Manhattan Bank NA (1986)*:

Minuscule difference does not by any stretch of imagination render the documents inconsistent with one another.

In the case *Kredietbank Antwerp v. Midland Bank plc (1998)*, two separate judges mentioned a standard lower than strict compliance.

The requirement of strict compliance is not equivalent to the test of exact literal compliance in all circumstances and as regard all documents. To some extent, therefore, the banker must exercise his own judgment whether the requirement is satisfied by the documents presented to him.

Where the credit requirements are ambiguous, it is permissible and essential for a banker to adopt a reasonable interpretation of those requirements. It is in this sense that a banker's approach to document verification should be functional rather than literal or rigid.

Expert perspective: reference books

Professor Boris Kozolchyk highlighted an interesting perspective in *DCInsight*, Vol. 5 No. 4 (1999). He mentioned that during the lifetime of UCP 400, there was a steep upward trend in the number of reported appellate cases which was due in part to the American propensity to litigate and to the increasing number of letter of credit cases taken on by plaintiffs' lawyers on a "contingent fee" basis. These lawyers were prepared to accept cases on a contingency fee basis only because the concept of "strict compliance" was judicially interpreted in accordance with the "mirror image" principle as meaning that no discrepancy was insignificant, and because this situation ensured that it was easy for judges, jurors and banks to find discrepancies presented under credits. He pointed out that UCP 500 helped reverse this trend because it made strict compliance an increasingly objective determination based on international standard banking practice, which most courts have interpreted as the standard banking practice that prevails in the nation or region involved. As standard practice began replacing legal counsel's or court opinions concerning which document complied, many of the same attorneys who used to take documentary credit cases on a contingency basis refused to do so.

Furthermore, Professor Kozolchyk, in *"Strict Compliance and the Reasonable Document Checker"* (1990), a precursor to the ICC International Standard Banking Practice publication, made reference to a court-inspired, overly strict standard of compliance.

In *DCInsight* Vol. 8 No.3 (2002), John F. Dolan stated that high discrepancy rate figures had prompted some to question the letter of credit law's strict compliance rule. If beneficiaries could not comply with the strict rule in more than half the cases, these critics asked, has the strict compliance rule become a device that commercial banks use to pay when the applicant wants the goods and to dishonour when he does not want them? The critics proposed that the law fashion an exception to the strict compliance rule that would deny an issuer the right to dishonour discrepant documents when the real reason for the dishonour lay, not in the discrepancies, but in the weakness of the issuer's reimbursement claim. His response to this issue stressed that proper analysis of the discrepancy rate data suggested that the critics' question was off the mark and that the better question was to ask: "Given the fact that they cannot or do not comply with documentary conditions, why do sellers ask buyers to post letters of credit?"

In his article in *DCInsight* Vol. 6 No. 2 (2002), Paul Todd argued that there was a more fundamental reason for caution when considering relaxation of strict compliance. The international sales that are the underlying basis of many documentary credits are merely parts of a wider transaction, as multiple re-sales while the goods are at sea are commonplace. Since it is impossible to inspect the goods while they are at sea, even a buyer (who unlike a bank may well be presumed to have expertise in the goods themselves) can only form a judgment on the basis of inspection of documents.

Ali Malek QC and David Quest, in the previously mentioned textbook *'Jack: Documentary Credits'* (2009) have argued that there is reluctance by judges to take the principle of strict compliance to

absurd lengths: when it can be plainly seen that the divergence is of no possible importance, the court may look for a way round, or ignore it where it is almost imperceptible.

In Gutteredge and Megrah's *'Law of Bankers' Commercial Credits'* (2001), they highlight that strict compliance does not extend to the dotting of i's and the crossing of t's, or to obvious typographical errors either in the credit, or the documents. It is impossible to generalise and each case has to be considered on its own merits.

"The Law of Letters of Credit and Bank Guarantees" (2003) by Agasha Mugasha points out that it is generally accepted that the standard provided for by the UCP does not reject the traditional strict compliance standard as exemplified by *Equitable Trust Co of New York v Dawson Partners Ltd*.

Rather, it gives banks more discretion in deciding whether the documents comply or not and mandates the courts not to take a mechanistic approach.

In *"New problems of Strict Compliance in Letters of Credit"* (1988), Professor EP Ellinger observed that practical experience with the examination of documents carried out each day by banks all over the world backed the argument that strict compliance had become a somewhat unrealistic doctrine.

Ebenezer Adodo in *"Letters of Credit: The Law and Practice of Compliance"* (2014) mentions that the strict documentary compliance rule applies to the documents tendered by an issuing bank to an applicant as it does to those tendered by a beneficiary to an issuing or nominated bank, and by a nominated bank to an issuing bank. He reflects that literal, mirror image application of the rule of strict documentary compliance has drawn fierce criticism over the years. In particular, it has been felt that the courts "approach effectively turns banks" checking of documents for conformity under a credit into an extremely exacting proofreading exercise.

In *"UCP 600: An Analytical Commentary"* (2010) by Professor James Byrne, it is stated that the UCP has never used the notion of "strict compliance": it is a legal conception that, in the common law, is applied to the fulfilment of express conditions and certain other contractual obligations. The principle is that an express conditional obligation must be strictly fulfilled but that where the condition is implied it can be substantially fulfilled by a performance that is substantially the same.

Conclusion: is there a defined approach?

We cannot find the answer in UCP; as pointed out by Professor James Byrne, UCP has never included a definition of this term; it is a legal principle derived from contract law that has been applied by courts to documentary credits. The fact that UCP remains silent means that interpretation has been left to the courts.

So, should we look at strict compliance or substantial compliance? Or is it appropriate to take the "middle" way as mentioned by Gutteredge and Megrah; specifically "it is impossible to generalise and each case has to be considered on its own virtues".

Whilst this does not provide us with perfect guidance, it does actually reflect the fact that the conclusions in many past ICC Official Opinions have not always been based on the exact same rationale, for the simple reason that there is no one answer. Each case can only be decided upon the presented facts and depending on context.

The introduction to UCP 600 stated:

During the revision process, notice was taken of the considerable work that had been completed in creating the International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP), ICC Publication 645. This publication has evolved into a necessary companion to the UCP for **determining compliance of documents** with the terms of letters of credit.

ISBP, particularly the latest version ISBP 745, has made a significant impact in lessening the exactitude of the doctrine of strict compliance. In fact, it is arguable whether or not strict compliance even exists any more. A review of the General Principles section of ISBP 745 highlights numerous aspects of the document examination process that reduce the need for a literal application.

Obviously there still exists certain situations that do not readily conform to established ICC rules. A recent ICC Draft Opinion, TA832, graphically exemplifies the difference of opinion that can still exist between practitioners. However, opinions such as these can be used as indicators of international standard banking practice for future editions of ISBP.

In conclusion, I see no merit in attempting a definition of this multifaceted subject. Developments in the past have proved that, as time goes by, it is customs and practice that will provide the required clarity. And once such customs and practice have become commonplace, they will form part of a future revision of ISBP.

Additional Material Relating to the Guidance Paper— the Use of Drafts Under Documentary Credits

A major outcome of the UCP consultation on the revision of UCP 600¹ related to the statement that a greater understanding of documentary credit practices was required in the market. As such, it was agreed that more comprehensive guidance should be provided.

One aspect of the consultation revealed that a number of ICC National Committees and practitioners questioned the need for drafts to be presented under documentary credits.

With this in mind, ICC tasked David Meynell, Senior Technical Advisor, with drafting a Guidance Paper to reflect the issues.

¹ Document 470/1272 dated 15 June 2017

Introduction

The following are relevant extracts from the explanatory notes that accompanied the UCP 600 consultation:

Comment:

Market feedback from a number of trade practitioners questioned the on-going requirement for drafts in a documentary credit transaction.² Furthermore, it was stated that sight drafts do not provide any benefit.

Response:

A draft under a letter of credit is, ultimately, a redundant instrument, particularly a sight draft. Removing drafts from UCP would leave the definition of 'honour' as simply 'at sight' or 'deferred payment'. However, the problem likely to be faced in this regard is that drafts, combined with documentary credits, still have enormous support from certain parts of the world. It should also not be forgotten that, whether or not drafts are required, this is not a UCP issue. Excluding drafts from the UCP would not stop this practice.

Further explanation:

It is the case that almost every bank's application form, whether in paper form or on-line, will contain a pre-set requirement for the presentation of a draft. Whether a draft is required or not is within the hands of every issuing bank and does not need a change to the UCP to achieve it. Merely deleting drafts from UCP will not stop their usage.

Statistical Data:

The latest statistics provided by SWIFT for the ICC's 2018 Global Survey³ indicate that 73.2% of credits issued by MT700 were available by negotiation in 2017 (these would, potentially, have all been accompanied by a draft—however, it is likely that a proportion did not) and 7.09% by acceptance (when a draft is required). Out-dated practices mean that drafts remain an essential aspect of bank's processes in certain regions.

Recommendation:

It is considered vital that UCP's unique characteristic of global acceptance is maintained and suggestions for non-optional changes that only benefit particular business or geographic segments of the user base are opposed. Guidance, not deletion, is the appropriate response to the issue of drafts under documentary credit transactions.

² Numerous practitioners have raised this issue over the last couple of years including at the ICC National Committee 'Networking Forum' in Rome on 8 November 2016 and the ICC National Committee 'Sharing Session' in Paris on 23 November 2016.

³ <https://iccwbo.org/publication/global-survey-2018-securing-future-growth/>

Analysis

A Guidance Paper to be drafted, outlining past and current usage of drafts in relation to documentary credits.

Emphasise that drafts serve no useful commercial purpose for credits available at sight.

As stated in UCP 600 article 2, for negotiation to occur under a documentary credit available by negotiation, a draft is optional.

Banks need to review their application forms for documentary credits, whether in paper format or online.

Former Practice—Origins

It is clear that the practice of requiring drafts under documentary credits was more commonplace in the past. As an example, the *Colombia Law Review*⁴ contained a chapter on Documentary Letters of Credit,⁵ in which frequent reference is made to a letter of credit authorising the drawing of drafts on the issuing bank and undertaking that drafts so drawn would be honoured.

At that time, all documentary credits required a draft and an appropriate clause would be included within the terms and conditions of the credit.⁶

Extension of such practice to more modern times is the perfect example of a scenario that Bernard Wheble⁷ used to call ‘the inertia of tradition’, i.e. we have always done it this way and, therefore, see no need to change.

The first version of the UCP published in 1933⁸ stated in Article 9: ‘*When an irrevocable credit is opened in the form of a Commercial Letter of Credit, the Letter of Credit itself must include notification of the opening of an irrevocable credit and constitute the definite engagement by the issuing Bank towards the beneficiary and holder in good faith to honour all drafts issued by virtue of and in conformity with the clauses and conditions contained in the document.*’

Article 5 of UCP 151⁹ stated: ‘*Irrevocable credits are definite undertakings by an Issuing Bank and constitute the engagement of that Bank to the beneficiary or as the case may be, to the beneficiary and bona fide holders of drafts drawn thereunder that the provisions for payment, acceptance or negotiation contained in the credit, will be duly fulfilled provided that the documents or as the case may be, the documents and the drafts drawn thereunder comply with the terms and conditions of the credit.*’

This would appear to be the first indication that drafts were no longer ‘mandatory’ and this wording continued into UCP 222¹⁰, Article 3.

UCP 290¹¹ contained the following articles:

⁴ Volume XXII No. 4 dated April 1922

⁵ https://www.jstor.org/stable/1111302?seq=1#page_scan_tab_contents

⁶ For example: *We hereby agree with bona fide holders that all drafts issued by virtue of this credit and in accordance with the above stipulated terms shall meet with due honour upon presentation at the office of (the issuing bank) if drawn and negotiated on or before (the agreed date).*

⁷ CBE and former Honorary Chairman of the ICC Commission on Banking Technique and Practice

⁸ UCP 82

⁹ The 1951 revision

¹⁰ The 1962 revision

¹¹ The 1974 revision

General Provisions and Definitions:

'For the purposes of such provisions, definitions and articles the expressions "documentary credit(s)" and "credit(s)" used therein mean any arrangement, however named or described, whereby a bank (the issuing bank), acting at the request and in accordance with the instructions of a customer (the applicant for the credit),

1. *is to make payment to or to the order of a third party (the beneficiary), or is to pay, accept or negotiate bills of exchange (drafts) drawn by the beneficiary, or*
2. *authorises such payments to be made or such drafts to be paid, accepted or negotiated by another bank, against stipulated documents, provided that the terms and conditions of the credit are complied with.'*

Article 3:

- a) *'An irrevocable credit constitutes a definite undertaking of the issuing bank, provided that the terms and conditions of the credit are complied with:*
 - iii. *to pay, or that payment will be made, if the credit provides for payment, whether against a draft or not ;*
 - iv. *to accept drafts if the credit provides for acceptance by the issuing bank or to be responsible for their acceptance and payment at maturity if the credit provides for the acceptance of drafts drawn on the applicant for the credit or any other drawee specified in the credit ;*
 - v. *to purchase/negotiate, without recourse to drawers and/or bona fide holders, drafts drawn by the beneficiary, at sight or at a tenor, on the applicant for the credit or on any other drawee specified in the credit, or to provide for purchase/negotiation by another bank, if the credit provides for purchase/negotiation.*
- b) *An irrevocable credit may be advised to a beneficiary through another bank (the advising bank) without engagement on the part of that bank, but when an issuing bank authorises or requests another bank to confirm its irrevocable credit and the latter does so, such confirmation constitutes a definite undertaking of the confirming bank in addition to the undertaking of the issuing bank, provided that the terms and conditions of the credit are complied with:*
 - i. *to pay, if the credit is payable at its own counters, whether against a draft or not, or that payment will be made if the credit provides for payment elsewhere ;*
 - ii. *to accept drafts if the credit provides for acceptance by the confirming bank, at its own counters, or to be responsible for their acceptance and payment at maturity if the credit provides for the acceptance of drafts drawn on the applicant for the credit or any other drawee specified in the credit ;*
 - iii. *to purchase/negotiate, without recourse to drawers and/or bona fide holders, drafts drawn by the beneficiary, at sight or at a tenor, on the issuing bank, or on the applicant for the credit or on any other drawee specified in the credit, if the credit provides for purchase/negotiation.'*

Clear differentiation had now been created to clarify that payment could be made **with or without** drafts. If drafts were required, they were to be paid, accepted or purchased / negotiated.

UCP 400¹² introduced the term 'deferred payment undertaking', a settlement method by which drafts would not be required.

As with UCP 290, UCP 400 again clarified that payment could be made with or without drafts.

¹² The 1982 revision

Article 2: *'For the purposes of these articles, the expressions "documentary credit(s)" and "standby letter(s) of credit" used herein (hereinafter referred to as "credit(s)"), mean any arrangement, however named or described, whereby a bank (the issuing bank), acting at the request and on the instructions of a customer (the applicant for the credit),*

1. *is to make a payment to or to the order of a third party (the beneficiary), or is to pay or accept bills of exchange (drafts) drawn by the beneficiary,*

or

2. *authorises another bank to effect such payment, or to pay, accept or negotiate such bills of exchange (drafts),*

against stipulated documents, provided that the terms and conditions of the credit are complied with.'

The content of UCP 400 Article 10 would be very familiar to current practitioners in that it listed the various methods of settlement:

- Sight
- Deferred Payment
- Acceptance of drafts
- Negotiation against drafts

UCP 500¹³ included similar provisos, albeit with minor drafting changes. The major change, in respect of drafts, was to clearly state the obligation of the confirming bank in addition to that of the issuing bank.

An accompanying publication entitled *'Standard Documentary Credit Forms for the UCP 500'*¹⁴ provided examples of standard application forms for documentary credits. With respect to drafts, the Guidance Notes stated:

- A sight payment credit may require presentation of documents without any drafts. The 'box' calling for a draft should only be X-marked if the applicant's instructions stipulate a draft. (*An additional comment was made that, at times, because of stamp duties, it is necessary in certain countries to issue credits available by sight payment without calling for drafts.*)
- A deferred payment credit will call for documents to be presented but not for any drafts.
- If the credit is to be available by acceptance, the applicant should call for drafts.
- A credit may authorise another bank to negotiate with or without the credit calling for drafts. In a negotiation credit, the 'box' calling for a draft should only be X-marked if the applicant's instructions stipulate a draft.
- For freely negotiable credits, if drafts are to be required, the drafts may be stipulated to be drawn on the issuing bank or, if the credit is to be confirmed, on the confirming bank.
- The Beneficiary's Draft 'box' must be X-marked if either of the following 'boxes' has been X-marked: 'available by acceptance' or 'available by negotiation (with drafts)'.

As can be seen, apart from acceptance credits, drafts are not considered to be mandatory for any method of settlement.

¹³ The 1993 revision

¹⁴ ICC Publication no. 516

The existing rules, UCP 600¹⁵, clarify that nominated banks are authorised to accept or incur a deferred payment undertaking and that the nominated bank is authorised to prepay or purchase such a deferred payment undertaking.¹⁶

Analysis

The UCP rules have evolved over the years, with drafts no longer a mandatory requirement apart from within acceptance credits, unless required for a specific commercial, regulatory or legal reason. Furthermore, the rules now allow financing via prepayment of a deferred payment undertaking.

Current ICC Rules and Practice

*UCP 600*¹⁷

Article 2—definition of ‘Honour’: c. to accept a bill of exchange (“draft”) drawn by the beneficiary and pay at maturity if the credit is available by acceptance.

Article 2—definition of ‘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.

Sub-article 6 (c)—A credit must not be issued available by a draft drawn on the applicant.

Sub-article 7 (a) (iv) Issuing Bank Undertaking—acceptance with a nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity;

Sub-article 8 (a) (i) (d) Confirming Bank Undertaking—acceptance with another nominated bank and that nominated bank does not accept a draft drawn on it or, having accepted a draft drawn on it, does not pay at maturity;

Sub-article 12 (b)—By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorises that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.

Sub-article 38 (h)—The first beneficiary has the right to substitute its own invoice and draft, if any, for those of a second beneficiary for an amount not in excess of that stipulated in the credit, and upon such substitution the first beneficiary can draw under the credit for the difference, if any, between its invoice and the invoice of a second beneficiary.

Sub-article 38 (i)—If the first beneficiary is to present its own invoice and draft, if any, but fails to do so on first demand, or if the invoices presented by the first beneficiary create discrepancies that did not exist in the presentation made by the second beneficiary and the first beneficiary fails to correct them on first demand, the transferring bank has the right to present the documents as received from the second beneficiary to the issuing bank, without further responsibility to the first beneficiary.

¹⁵ The 2007 revision

¹⁶ Sub-article 12 (b)

¹⁷ ICC Uniform Customs and Practice for Documentary Credits, 2007 Revision

*ISBP 745*¹⁸

A7 (a) (i)—any correction of data in a document issued by the beneficiary, with the exception of drafts (see paragraph B16), need not be authenticated.

A11 (a)—Even when a credit does not expressly so require: (i) drafts are to indicate a date of issuance.

A11 (b)—A requirement that a document, other than a draft ..., be dated will be satisfied by the indication of a date of issuance ...

A19 (a)—“shipping documents”—all documents required by the credit, except drafts, teletransmission reports and courier receipts, postal receipts or certificates of posting evidencing the sending of documents.

B1—a draft, when required, is to be drawn on the bank stated in the credit.

Analysis

Neither the rules, nor the defined practice, mandate for the usage of drafts unless specifically called for under a documentary credit.

ICC Official Opinions

ICC Opinions and DOCDEX¹⁹ refer to the usage of drafts when required by the terms and conditions of the credit.

TA703rev

For the purposes of a clause such as “all documents must be issued in English”, a draft is not to be considered as one of those required documents unless the credit requires the presentation of a draft drawn on the applicant under “documents required”. A draft is to be examined to the extent required by the terms and conditions of the credit, the UCP and applicable local law.

TA480 rev

It is recognised that where sight drafts are to be drawn on the issuing bank, the requirement for the presentation of such draft is often crucial for the issuing bank to obtain payment from the applicant.

R205

If an issuing bank insists on issuing a credit calling for drafts on the applicant, such drafts will be considered as an additional document. This means that the draft on the applicant will be construed as being an “accommodating draft” for the use by the issuing bank and not as the “instrument” that would control payment obligations of the issuing bank under the documentary credit. It will not be treated as the primary bill of exchange demanding payment or acceptance, but just as any other document for accommodation by the issuing bank in its relationship with the applicant outside the documentary credit mandate.

¹⁸ ICC International Standard Banking Practice for the Examination of Documents under UCP 600, 2013

¹⁹ ICC Rules for Documentary Instruments Dispute Resolution Expertise, 2015

TA661rev

If a draft is drawn on the issuing bank, it is for the issuing bank to accept the draft. If the draft is drawn on the issuing bank, the credit should be available with the nominated bank by negotiation and not by acceptance.

R256

The issue of whether or not the bank physically placed its acceptance on the draft is one of internal banking practices, in conjunction with any local or internationally recognised bills of exchange laws and is not an issue for the ICC or UCP. The issuing bank's obligation, according to sub-Article 9(a), is to "accept drafts" and to pay on the due date. There may be occasions where the negotiating bank requires the drafts to be accepted and returned, and, in these cases, the issuing bank may be expected to do so. This, however, is not relevant in this case, and, in any event, does not reduce the obligations of the Issuing Bank to pay.

Upon the facts provided, the issuing bank has an obligation to effect settlement to the negotiating bank at maturity. Any dispute as to the requirement and manner of "physical" acceptance is between the importer and the issuing bank based upon local banking practices and law.

DOCDEX Decision No. 215

Draft made out in the name of Bank I&C, Country C. No inconsistency between the word 'and' and '&'—no discrepancy.

DOCDEX Decision No. 226

The draft presented by the beneficiary, and taken up by the Initiator, indicated the following amount in figures: "USD 447,160.59" and indicated the following amount in letters: "USD four hundred forty seventy thousand one hundred sixty 59/100". The Respondent pointed out the difference between the amount in figures and the amount in letters and accordingly rejected the draft as non-conforming. The draft should be considered as conforming to the terms of the documentary credit.

Analysis

Neither ICC Opinions, nor the DOCDEX Decisions, mandate for the usage of drafts unless specifically called for under a documentary credit.

Legal Perspective: Interpretation in the Courts

It should be noted that courts have observed that even though a sight draft may have no legal effect and serve no useful commercial purpose, it still has to be tendered if called for in a documentary credit.²⁰

However, there is no mandatory requirement for a draft if one is not called for by the credit. Courts are likely to reflect customs and practice as stated within UCP and ISBP.

A Federal Court in the US has ruled that "the words 'drafts at . . . at sight' in Field 42C of a letter of credit mean that a sight draft must be presented to obtain payment under a letter of credit.

²⁰ Kydon Compania Naviera SA v National Westminster Bank Ltd (The "Lena") 1981

Because a draft is required, the presentation of a single draft and multiple invoices constitutes a single presentment, which must be honored or dishonored as a whole.”²¹

Analysis

Courts do not mandate for the usage of drafts unless specifically called for under a documentary credit.

Expert Perspective: Reference Texts

As mentioned in one of the most authoritative textbooks on documentary credits, “Jack: Documentary Credits”,²² in some transactions where the credit calls for a draft, the draft may seem of little importance as, for example, where a sight draft drawn on the issuing or confirming bank is required. Even so, in these circumstances the draft must still comply with any specific requirements of the credit and the bank may not waive those requirements even if inserted for its own benefit. However, the text also suggests that bills of exchange should not be included among the documents required by a credit without reason.

In his book, “Negotiation in Letter of Credit Practice and Law: The Evolution of the Doctrine”,²³ Professor James E. Byrne highlights that from playing a central role in the letter of credit process, the draft or bill of exchange has become incidental and atrophied, and goes on to state that with respect to banks nominated in the letter of credit to “negotiate,” negotiation can occur without there being a draft or bill of exchange.

Various articles on the subject were published in the former ICC publication, DCInsight, over the years.

Reinhard Langerich²⁴ questioned why bills of exchange are used today, when the documentary credit is so well known and is accepted as a separate instrument for payment and finance. He pointed out that sight drafts are superfluous and have no value, whilst usance drafts drawn on the issuing bank are not returned to the beneficiary, but held by the issuing bank and paid at maturity.

Kim Sindberg²⁵ highlighted that the problems with a draft are related to the fact that it is one payment instrument on top of another and that, in most cases, there is no real need for a draft. His suggestion was to discourage the use of drafts in credits and to only call for them when there is a real commercial need (bearing in mind that documents can be negotiated without drafts).

Bob Ronai²⁶ expounded similar views, stating that the draft is a misunderstood and totally misused concept, which has no place in the vast majority of credits. As stated by others, he views the draft as superfluous, highlighting that comparable benefit can be obtained from a deferred payment credit.

Rupnarayan Bose expressed an alternative viewpoint²⁷ and asked why a section of users are opposed to drafts, especially where documentary credits are concerned. He has also provided

²¹ Cites: Lower Court—*SewChez Int'l Ltd. v. CIT Group*, No. CV 07-1211 SVW (JWJx), (C.D. Cal. Sept. 19, 2007) [USA]
Appellate Court—*SewChez Int'l Ltd. v. CIT Group*, 2009 US App. Lexis 25005 (9th Cir. Nov. 13, 2009) [USA]

²² Jack: Documentary Credits, Fourth Edition, Ali Malek QC & David Quest, 2009

²³ <http://www.tijl.org/content/journal/42/num3/Byrne561.pdf>

²⁴ DCInsight Vol. 7 No. 3, July-September 2001

²⁵ DCInsight Vol. 16 No. 2, April-June 2010

²⁶ DCInsight Vol. 20 No. 1, January-March 2014

²⁷ DCInsight Vol. 19 No. 4, October-December 2013

comments in a number of blogs, the most recent in which he expounds that the abolition of drafts from documentary credit operations cannot be effective if our mind-set does not change.²⁸

A detailed article, published by David Meynell and Gary Collyer,²⁹ is reproduced below. “A draft is a common feature of a documentary credit. However, it is very often a cause of discrepancies due to incorrect or inadequate data being shown. For example, the absence of key information, such as a date relating to the date of shipment, or date of a document or an event from which a maturity date may be determined from the face of the draft, is an area where a discrepancy is commonly identified.

It is the issuing bank, and not the applicant, that usually specifies a requirement for a draft by the pre-printed wording on its documentary credit application form (paper or online).

There are no specific rules concerning the form and issuance of a draft. However, in order to be considered a bill of exchange (or, more commonly, a draft), the presented document must conform to the following definition: “A bill of exchange is an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to or to the order of a specified person, or to bearer.”³⁰

When a draft is required as evidence of the amount due under a documentary credit, it must be drawn on a bank. A credit may indicate this requirement by stating the actual name of a bank, or it may indicate the applicable (drawee) bank by the role that it is performing, i.e., “Issuing Bank”, “Nominated Bank”, etc.

With the exception of a documentary credit that is available by acceptance, each bank should ask itself as to whether a draft is as relevant today as it was, say, 5 or 10 years ago. This is especially so when a documentary credit is available by payment or by negotiation on a sight basis, and as we try to move away from paper based transactions.

In fact, it is arguable whether a draft should ever be required under a documentary credit. Maybe the credit itself should provide the risk mitigation, financial undertaking and settlement conditions? We are aware of a growing number of advocates around the world supporting this position. UCP 600 incorporates rules defining the undertaking of the issuing and confirming bank to honour. Why utilise a credit available by acceptance when there is a perfectly acceptable alternative in making the credit available by deferred payment?”

Such argument was expanded further in a blog published by Meynell and Collyer in April 2017:³¹

“The problem likely to be faced with the removal of drafts is that drafts, combined with documentary credits, still have enormous support from certain parts of the world. It should also not be forgotten that, whether or not drafts are required, this is not a UCP issue. It is the case that almost every bank’s application form, whether in paper form or on-line, will contain a pre-set requirement for the presentation of a draft. Whether a draft is required is within the hands of every issuing bank and does not need a change to the UCP to achieve it. Merely deleting drafts from UCP will not stop their usage.

As mentioned by one ICC National Committee, it is considered vital that UCP’s unique characteristic of global acceptance is maintained and suggestions for non-optional changes that only benefit particular business or geographic segments of the user base are opposed. We could

²⁸ <https://rnbose.blogspot.co.uk/2016/04/whats-draft-got-to-do-with-it1.html>

²⁹ <https://www.tradefinance.training/blog/articles/drafts-under-documentary-credits-still-relevant/>

³⁰ Bills of Exchange Act 1882 (UK)

³¹ <https://www.tradefinance.training/blog/articles/drafts-ucp-700/>

not agree more with this comment; changes need to focus on the entire market and not solely on particular elements.

This is not to say that we agree with the usage of drafts in documentary credits. In the main, we believe that they are a redundant requirement that is superfluous to actual needs. In essence, guidance as to the appropriate usage of drafts is the applicable response to this issue.”

Analysis

Unless required for a specific commercial, regulatory or legal reason, the presentation of drafts should not be required by a credit.

Negotiation can occur without a draft or bill of exchange.

Discourage the use of drafts in credits and to only call for them when there is a real commercial need.

Drafts are superfluous and, for usance transactions, comparable benefit can be obtained from a deferred payment credit.

Drafts are a frequent, unnecessary, cause of discrepancies. Drafts are not as relevant as they were in the past.

Merely deleting reference to drafts in the UCP will not stop their usage—as a first step, guidance is required.

Changes cannot be made that would only benefit particular business or geographic segments of the user base.

Prepayment of Deferred Payment LC's³²

Prepayment of Deferred Payment Undertaking

- Under UCP 500, due to the 'Banco Santander v. Banque Paribas' court case in 2000, it had become unclear as to whether nominated banks were in a position to prepay deferred payment Letters of Credit and still receive reimbursement in the event of fraud.
- The court interpreted UCP 500 Articles 9, 10, and 14 as authorising the confirmer to pay at maturity, but not to prepay or discount the deferred obligation that it was obligated to incur and did incur against presentation of credit complying documents.
- This was subsequently addressed in UCP 600 by stating that the nomination of a bank included authorising a bank to prepay or purchase (included in Article 7 Issuing Bank Undertaking and Article 8 Confirming Bank Undertaking).
- And in UCP 600 Article 12 Nomination: By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorises that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.
- Provides protection for a nominated bank under credits when payment has been effected to the beneficiary, with added language to clarify the issuing bank's responsibility to a nominated bank under a credit with deferred payment terms whether or not the nominated bank has effected payment to the beneficiary prior to maturity date.

³² Article by David Meynell, November 2013

New York Court August 2010

- Fortis Bank (Nederland) N.V. v. Abu Dhabi Islamic Bank (ADIB)—in essence, reverses the ‘Santander’ decision.
- LC confirmed by ADIB and subsequently advised by Fortis to beneficiary.
 - 360 day deferred payment period.
 - Fortis apparently prepaid beneficiary.
 - At maturity, ADIB refused to pay due to fraud.
- The defence from ADIB relied on the pre-mentioned ‘Santander’ decision in which a confirming bank that incurred and then discounted its own deferred payment undertaking was held to bear the risk of beneficiary fraud established thereafter, but before the maturity date. The UK court basically decided that nominated banks were not permitted to prepay deferred payment LCs under UCP 500.
- Under the New York case, UCP 600 applied and article 12 allows prepayment.
- The New York court therefore decided that the ‘Santander’ decision had no bearing.
- In conclusion, the nominated bank had a right to reimbursement.
- A decision that should be applauded as the right way forward.

As stated in Jack,³³ the UCP 600 now considerably ameliorates the risks for a bank, which discounts its own deferred payment obligation by early payment.

Analysis

UCP 600 supports prepayment of a deferred payment undertaking and it is extremely unlikely that any court would oppose the rules.

Conclusion and Recommendations

Ordinarily, a UCP 600 documentary credit need not require a draft to be presented together with the stipulated documents. Accordingly:

1. It is recommended that the [longstanding] habit of requiring a draft for a documentary credit available at sight be curtailed, particularly sight drafts drawn on an issuing bank, confirming bank, or a bank nominated to pay.
2. UCP 600 article 2 allows for negotiation to occur under a documentary credit available by negotiation with or without a presentation of a draft. It is recommended that the habit of requiring a sight draft for a documentary credit available by negotiation be reviewed and that negotiating banks be encouraged to rely, not on negotiable instruments’ law, but instead on specific agreements with beneficiaries evidencing negotiation and their respective recourse and other rights and remedies.
3. UCP 600 article 12 (b) supports the prepayment of a deferred payment undertaking. As such, it is recommended that banks issue usance documentary credits available by deferred payment as an alternative to availability by acceptance of a draft, unless there is specific commercial, regulatory or legal reason to create a bankers’ acceptance.
4. All banks should review their UCP 600 documentary credit forms, whether in paper format and/or online, to indicate that a draft is not a standard requirement of the issuing bank and to indicate their requirements for a non-negotiable form of demand.

³³ Jack: Documentary Credits, Fourth Edition—Ali Malek QC & David Quest, 2009

It is recommended that banks arrange for this Guidance Paper to be distributed throughout their network, and particularly to their legal departments. It can also be circulated to clients and, if considered appropriate, to courts and regulatory authorities. Sharing this Guidance Paper on a wider basis will help ensure amelioration of any problems.

Practitioner feedback can be found in the Annex below.

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Documentary Credit World, Counterpoint: more evidence why practices, not UCP 600 rules, are the problem—David Meynell, January 2018

LinkedIn—Trade Finance Group & others, 2018

Guidance Notes for Documentary Credit Formats

Republished in January 2023

This paper highlights that a simple documentary credit is a value-added option in well-established relationships between an applicant and a beneficiary. As such, it provides guidance in respect of the optimal approach required in order to achieve a straightforward, uncomplicated documentary credit format.

International Standard Banking Practice

As stated in ISBP 745 Preliminary Considerations (iv), many of the problems that arise at the document examination stage could be avoided or resolved by the respective parties through careful attention to detail in the credit or amendment application and issuance of the credit or any amendment thereto. Numerous ICC Opinions over the years have highlighted the difficulties and complications that can arise from poorly or badly drafted credits. Additionally, credits which contain excessive details and/or have included terms which only belong in an underlying agreement/contract have caused unintended consequences and payment delays.

Terms and Conditions

The applicant and beneficiary should carefully consider the documents required for presentation, by whom they are to be issued, their data content and the time frame in which they are to be presented. Documentary credits must not include wording that is ambiguous or subject to more than one interpretation, nor should they state conditions for which fulfilment cannot be ascertained from the face of a document. Only documents that are necessary (e.g. for customs clearance purposes) should be required by the credit.

SWIFT MT700 Field recommendations

Swift MT700 field	Comment and Guidance
:40A: Form of documentary credit Irrevocable / transferable / standby	UCP 600 no longer covers revocable credits. As such, it is expected that the term 'irrevocable' will always be relevant. Additional need for 'transferable' and/or 'standby' will derive from the buyer/seller agreement.
:20: documentary credit number [documentary credit number]	Issuing Bank unique reference number.
:31C: Date of issue Yymmdd	Date that the issuing bank considers the documentary credit to have been issued.
:40E: Applicable rules UCP latest version or EUCP latest version or UCPURR latest version	Consideration should be given as to whether the eUCP can apply for all or part of the presentation of the documents. In this respect, refer to eUCP version 2.0 and accompanying analysis at https://cdn.iccwbo.org/content/uploads/sites/3/2019/07/icc-commentary-on-eucp-2-0-and-eurc-1-0-article-by-article-analysis.pdf
:31D: Date and place of expiry Yymmdd [place / country]	Ensure that this field complements field 41D. Recommended that expiry be in the country of the beneficiary.
:50: Applicant [name and address of applicant]	It is recommended to avoid, when possible, inserting additional contact details such as telephone number and e-mail address - these will already be known between the applicant and the beneficiary.

<p>:59: Beneficiary [name and address of beneficiary]</p>	<p>It is recommended to avoid, when possible, inserting additional contact details such as telephone number and e-mail address - these will already be known between the applicant and the beneficiary.</p>
<p>:32B: Currency code, amount [currency and amount]</p>	<p>The amount inserted in this field should represent that which is due to the beneficiary upon one or more complying presentations being made under the documentary credit.</p>
<p>:39A: Percentage credit amount tolerance</p>	<p>Optional field – take note of UCP 600 article 30</p>
<p>:41D: Available with [name of nominated bank] By payment or By def (deferred) payment or By negotiation</p>	<p>This field should correspond with data appearing in field 31D.</p> <p>As stated in the ICC Guidance Paper on the use of drafts – https://iccwbo.org/publication/guidance-paper-use-drafts-bills-exchange-documentary-credits-executive-summary/ - it is recommended that the habit of requiring a draft for a documentary credit available at sight be curtailed, particularly sight drafts drawn on an issuing bank, confirming bank, or a bank nominated to pay, unless required for a specific commercial, regulatory or legal reason.</p> <p>Furthermore, it is recommended that banks issue usance documentary credits available by deferred payment as an alternative to availability by acceptance of a draft, unless there is a specific commercial, regulatory or legal reason to create a banker’s acceptance.</p>
<p>:43P: Partial shipments</p>	<p>Optional field – UCP 600 sub-article 31 (a) highlights that partial shipments (or drawings) are permitted. Therefore, this field need not be completed if any number of partial shipments are allowed. There is now the option of a new code word ‘CONDITIONAL’. In the event “CONDITIONAL” is used, specific details will need to be added in field 47A.</p>
<p>:43T: Transshipment</p>	<p>Optional field - when a multimodal transport document is to be presented, the credit must not prohibit transshipment. There is now the option of a new code word ‘CONDITIONAL’. In the event “CONDITIONAL” is used, specific details will need to be added in field 47A.</p>
<p>:44C: Latest date of shipment Yymmdd</p>	<p>Optional field but recommended - ensure that the latest date of shipment corresponds with the presentation period and date of expiry (field 31D): latest date of shipment + presentation period (21 days) = expiry date understanding that if this is not calculated properly, the presentation period may be curtailed as all presentations must be made on or before the expiry date.</p>

<p>:45A: Description of goods [brief description of goods and the agreed trade terms]</p>	<p>Optional field but recommended - keep the goods description as short and concise as possible.</p> <p>Lengthy details actually provide little or no protection to an applicant in relation to the goods that will be received as banks do not verify the goods in any manner.</p>
<p>:46A: Documents required (description of any documents required)</p>	<p>Optional field but recommended</p> <p>Limit to only those documents that are absolutely essential. Remember that banks deal with documents and not with goods, services or performance to which the documents may relate. Any issues with goods, services or performance are outside the scope of UCP 600.</p> <p>Ensure the document descriptions are as simple as possible whilst still meeting any necessary contractual requirements.</p> <p>For documents specifically mentioned in UCP 600 and/or ISBP 745, it is only necessary to state requirements that are not already mentioned in UCP 600/ISBP 745. <i>For example, do not state “Full set clean on-board original multimodal bill of lading” – but simply “multimodal bill of lading”.</i></p> <p>For documents specifically mentioned in UCP 600 and/or ISBP 745, avoid adding further requirements that modify or exclude articles or paragraphs. <i>For example, do not require that the invoice must be “signed” unless that is absolutely necessary.</i></p> <p>For documents not specifically mentioned in UCP 600 and/or ISBP 745, provide the name of the issuing entity and describe, in clear and precise wording, the required content.</p> <p>If feasible, it is recommended that documentary requirements be limited to an invoice and transport document. Any additional documents should be sent directly by the seller to the buyer, outside of the LC.</p>
<p>:47A: Additional conditions (conditions that will apply to the credit but do not relate to the description of the goods and/or services or to the content of a document)</p>	<p>Optional field – all documentary requirements should be accommodated in field 46A.</p> <p>Only add additional conditions when absolutely necessary and avoid including requirements that modify or exclude articles and paragraphs in UCP 600 or ISBP 745 respectively.</p> <p>Avoid adding generic requirements that are to apply to all presented documents. <i>For example, “all documents to indicate credit number and date, and name of issuing bank”.</i></p>
<p>:71D: Charges</p>	<p>Optional field but recommended – in circumstances when issuing bank charges are for account of the beneficiary,</p>

[responsibility for charges]	there should also be an indication of the actual cost or formula to be used in order to calculate the charges that are to be collected.
:49: Confirmation instructions [add confirmation instructions]	A requirement that confirmation is to be added will usually be made by the beneficiary in its sale contract, proforma invoice or other form of agreement.
<p>:78: Instructions to the paying/accepting/negotiating bank</p> <p>Upon receipt of a complying presentation please reimburse yourself on [reimbursing bank]. The reimbursement is subject to urr 725</p> <p>or</p> <p>Upon receipt of a complying presentation please debit our account with you.</p>	<p>Optional field indicating information that is specific to the bank that is being asked to honour or negotiate (if one is stated) e.g., reimbursement conditions (when there is no reimbursing bank mentioned in Field 53a), details for the forwarding of the documents to the issuing bank, etc.</p> <p>It is advised that, whenever possible, funds be made directly available to the nominated bank (if one is stated). The two clauses mentioned on the left are examples that can be redrafted to fit the actual circumstances.</p>

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