



**International Chamber of Commerce**

*The world business organization*

Policy statement

**Position Papers n° 1, 2, 3, 4 on UCP 500**  
**Uniform Customs and Practice for Documentary Credits**  
**Commission on Banking Technique and Practice, 1 September 1994**

**Foreword**

**UCP 500 - Correcting some misinterpretations**

The ICC Commission on Banking Technique and Practice notes with regret, and concern, that following the coming into effect of the 'Uniform Customs and Practice for Documentary Credits' - UCP 500 - various banks have been applying unilateral and incorrect interpretations to certain of its Articles. By prejudicing the proper and correct application of the UCP 500 rules, the effect has been to seriously interfere with the use of the documentary letter of credit issued in accordance with the UCP, as the means for effective and secure settlement of trade transactions on a worldwide basis.

For the first time, this latest revision of the banking rules specifically included mention of certain long-standing and customary banking practices but, in some cases, their mention has been read, quite incorrectly, as indicating changes in practice. We of the Banking Commission are greatly concerned that the misinterpretations and misapplications of the particular Articles of UCP 500 involved, adversely effect not only the banks along the transaction chain, but also their customers whether applicants or beneficiaries under the Credits and, at the same time, carriers and freight forwarders who may also be involved in ensuring the correctness of documentation to comply with the particular documentary letter of credit.

In the special circumstances, the Banking Commission has authorised the issuance of the attached 'Position Papers' to emphasise the need to correctly interpret and apply UCP 500 subArticle 9(d)(iii) - Amendments; sub-Article 10(b)(ii) - Negotiation; sub-Article 13(c) - Non-documentary conditions; and the related sub-Articles of Articles 23, 24, 25, 26, 27, 28, 29 and 30 - Transport Documents. Failure to interpret the sub-Articles as indicated, in future, should be seen as in violation of the principles of UCP 500.

Consequently, the Banking Commission strongly urges that ICC National Committees, and associated organisations, distribute the Position Papers as widely as possible to help in ensuring the future smooth running of the documentary credit issued under the protection of UCP 500, which has been disturbed unnecessarily as indicated above. The point is, of course, made that the Position Papers do not amend the sub-Articles of UCP 500 in any way but merely indicate the correct interpretation of particular sub-Articles.

*Charles del Busto*  
*Chairman, ICC Commission on Banking Technique and Practice*  
*(1994)*

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**POSITION PAPER N° 1**  
*UCP 500 sub-Article 9(d)(iii)*

**International Chamber of Commerce**

38 Cours Albert 1er, 75008 Paris, France  
Tel +33 (0)1 49 53 28 28 Fax +33 (0)1 49 53 29 42  
E-mail [icc@iccwbo.org](mailto:icc@iccwbo.org) Website [www.iccwbo.org](http://www.iccwbo.org)

## **Amendments**

The Banking Commission strongly disagrees with the wrong practice adopted by:

a) certain Issuing Banks, of issuing irrevocable documentary credits, or amendments to irrevocable documentary credits, incorporating a provision to the effect that any amendment will become automatically effective unless formally rejected by the beneficiary within a specified period of time, or by a specified date:

b) certain Advising Banks, of adding a provision of the nature set out in (a) above when advising an irrevocable documentary credit, or an amendment to an irrevocable documentary credit.

The essence of an irrevocable documentary credit is clearly set out in the sub-Article 9(d)(i) statement that: 'an irrevocable credit can neither be amended nor cancelled without the agreement of the Issuing Bank, the Confirming Bank, if any, and the Beneficiary'.

The practices referred to above are seen as changing the irrevocable nature of the documentary credit irrevocable undertaking.

Moreover, the presumption that a beneficiary's silence amounts to his acceptance of an amendment is contrary to national law in many countries. An attempt of the nature referred to above to over-rule sub-Article 9(d)(iii) may therefore lack legal effect.

Banks are wrong in assuming that sub-Article 9(d)(iii) involves a change of policy. It merely states the position which existed prior to the introduction of UCP 500, and indicates the alternative ways in which the beneficiary may choose to signify his acceptance and avail himself of an amendment to an irrevocable documentary credit which has been offered to him by the Issuing Bank and, where appropriate, by the Confirming Bank - or whereby he may indicate his rejection of such amendment.

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## **POSITION PAPER N° 2**

*UCP 500 sub-Article 10(b)(ii)*

### **Negotiation**

The Banking Commission notes with regret that, notwithstanding the clear definition contained in the above sub-Article, a number of banks fail to understand the meaning of the term 'negotiation' in connection with the availability of a documentary credit.

The term 'negotiation' is defined in sub-Article 10(b)(ii) as 'the giving of value for Draft(s) and/or document(s) by the bank authorised to negotiate'. The Banking Commission wishes to clarify that for the purposes of UCP 500, the phrase 'giving of value' in sub-Article 10(b)(ii) may be interpreted as either 'making immediate payment' (e.g. by cash, by cheque, by remittance through a Clearing System or by credit to an account) or 'undertaking an obligation to make payment' (other than giving a deferred payment undertaking or accepting a draft).

The view has also been expressed that where a documentary credit is stated to be available by 'negotiation', it is essential for the beneficiary to seek and/or secure 'negotiation' from the Nominated Bank if he wishes to avail himself of the documentary credit.

The Banking Commission disagrees with this view, which it emphasises is in conflict with both the provisions and intent of sub-Articles 9(a)(iv) and (b)(iv) and 10(c), where the relative

undertakings of the Issuing Bank and the Confirming Bank (if any), as well as the position of the Nominated Bank, are clearly stated.

Failure by the beneficiary to seek and /or secure 'negotiation' from the Nominated Bank under a documentary credit which allows negotiation, does not affect the undertakings of the Issuing Bank and/or the Confirming Bank (if any), nor does it constitute non-compliance with the documentary credit terms, provided that conforming documents are presented by the beneficiary within the validity of the documentary credit and the sub-Article 43(a) period of time where appropriate, to a Nominated Bank or direct to the Confirming Bank (if any) or to the Issuing Bank.

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### POSITION PAPER N° 3

*UCP 500 sub-Article 13(c)*

#### Non-documentary conditions

The provisions of this sub-Article have the specific purpose of eradicating the totally wrong practice of incorporating non-documentary condition(s) into documentary credits.

Such practice defeats the underlying principle of the documentary credit itself and directly contradicts the wording of Articles 2 - 'Meaning of Credit'; 4 - 'Documents V Goods/Services/Performances; 5(b) - 'Instructions to Issue/Amend Credits'; and 13(a) - 'Standard for Examination of Documents', all of which clearly indicate that payment, acceptance or negotiation under a documentary credit is to be effected against documents stipulated in the documentary credit.

The Banking Commission therefore expresses its strong disapproval of the fact that notwithstanding the provisions of sub-Article 13(c), certain banks continue to issue documentary credits and amendments thereto which contain a non-documentary condition(s).

Furthermore, it is evident that such wrong practice is causing severe problems to all parties involved in documentary credit transactions.

The Banking Commission wishes to remind banks, therefore, that where a documentary credit or amendment thereto contains one or more conditions and does not state the document(s) to be presented to evidence compliance therewith, sub-Article 13(c) clearly provides that banks will deem such a condition(s) as not stated and will disregard it (them).

Accordingly, banks will accept as a valid tender under the documentary credit stipulated documents which appear to be in accordance with all other terms and conditions of the documentary credit.

Sometimes, however, a condition appears in a documentary credit which can be clearly linked to a document stipulated in that documentary credit. Such a condition is not then deemed to be a non-documentary condition. For example, if a condition in the documentary credit states that the goods are to be of German origin and no Certificate of Origin is called for, the reference to 'German origin' would be deemed to be a non-documentary condition and disregarded in accordance with UCP 500 sub-Article 13(c). If, however, the same documentary credit stipulated a Certificate of Origin, then there would not be a non-documentary condition as the Certificate of Origin would have to evidence the German origin. (See also ICC Publication n° 511, 'UCP 500 and 400 Compared - page 42.)



It should therefore be clear that banks should include any appropriate 'condition(s)' in the detail of the document(s) stipulated, or state expressly the document which is to evidence compliance with a specific 'condition(s)'.

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**POSITION PAPER N° 4**  
**UCP 500 - Transport documents articles.**

*Article 23*  
**Marine/Ocean bill of lading**

*Article 24*  
**Non-negotiable sea waybill**

In view of the controversy surrounding some individual interpretations of sub-paragraph (a)(i) of these Articles, the Banking Commission wishes to clarify the position by setting out requirements as under:

1. The name of the carrier must appear as such on the front of the document.  
The expression 'the front of the document' means the side showing the details of the goods, vessel and voyage, and the expression 'the back of the document' means the side showing the details of the contract of carriage.  
NOTE - Sub-paragraph (a)(v) of these UCP Articles states that banks will not examine the contents of the terms and conditions of carriage.

Banks will therefore reject documents which fail to comply with the requirement set out in '1' above, i.e. which fail to indicate the name of the carrier on the front of the document, even though the identify of the carrier may be indicated on the back of the document.

2. Where the document is signed by the carrier, it is not necessary for the word 'carrier' to appear again in the signature box when it has already been used on the front of the document to identify the party acting as carrier.
3. Where the document is signed by an agent for (or 'on behalf of') the carrier, the agent must be named and must indicate the principal for (or 'on behalf of') whom he is signing, in one of the following ways:

(a) when the word 'carrier' has not been used on the front of the document to identify the party acting as carrier, e.g.

ABC Co. Ltd.  
as agent for (or 'on behalf of')  
XYZ Shipping, carrier  
(signature)

(b) when the word 'carrier' has been used on the front of the document to identify the party acting as carrier, either, e.g.

ABC Co. Ltd.  
as agent for (or 'on behalf of')  
XYZ Shipping, carrier  
(signature)

or ABC Co. Ltd.  
as agent for (or 'on behalf of')



**XYZ Shipping**  
**(signature)**  
or  
**ABC Co. Ltd.**  
as agent for (or 'on behalf of')  
the above named carrier  
**(signature)**  
or  
**ABC Co. Ltd.**  
as agent for (or 'on behalf of') the carrier  
**(signature)**

4. It is not necessary for the name of the Master to be quoted when the document is signed by the Master. When the document is signed by an agent for (or 'on behalf of') the Master, the agent must be named and must quote the name of the Master for (or 'on behalf of') whom he is signing, e.g.  
**ABC Co. Ltd.**  
as agent for (or 'on behalf of') John Doe, Master,  
**(signature)**

*Article 25*

**Charter party bill of lading**

In respect of this Article there has not been found need for interpretative comment.

This is the type of document most likely to be signed by the Master, or for (or 'on behalf of') the Master. The requirement '4' above in respect of Articles 23 and 24 also applies to Article 25.

*Article 26*

**Multimodal transport document**

The requirements detailed in respect of Articles 23 and 24 above also apply to Article 26, but it should be noted that:

Many major multimodal transport operators (MTOs) use a multi-purpose format document, titled, for example:

'Bill of Lading for Combined Transport Shipment or Port-to-Port Shipment', or

'Non-Negotiable Sea Waybill for Combined Transport Shipment or Port-to-Port Shipment'

A document issued with either title above is also acceptable under Article 26, provided that the data content on the front of the document satisfies the requirement in the documentary credit for multimodal transport and for a negotiable document or for a non-negotiable document as the case may be.

A multimodal transport document may possibly show the word 'carrier' and not the words 'multimodal transport operator' - this is acceptable under the 'carrier or multimodal transport operator' wording of Article 26.

*Article 27*

**Air transport document**

*Article 28*

**Road, rail or inland waterway transport documents**



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*Article 29*

**Courier and post receipts**

**In respect of these Articles there has not been found need for interpretative comment.**

*Article 30*

**Transport documents issued by freight forwarders**

**In addition to satisfying the requirements of Article 30 the transport document stipulated must, of course, also satisfy the requirements of Articles 23/28 according to the mode of carriage.**

**Position Papers n° 1, 2, 3, 4**

**September 1, 1994**