

## UCP 600 – Year one - A happy birthday?

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*It takes a long time to grow young*  
**Pablo Picasso**

### Introduction

Normally there would be great limits to what one can expect from a year old. However July 1 the Letter of Credit community celebrates a one year birthday – and right from date of birth – in fact 8 months before that<sup>2</sup> – huge expectations were expressed. The name of the baby is “UCP 600” – who has now been “in force” for one year.



Topic for this article is UCP 600 – the “*ICC Uniform Customs and Practice for Documentary Credits – 2007 revision*”; looking at what was expected – what actually happened – providing insights into marked reactions – and finally a bold attempt to predict what the future holds in store for the UCP 600.

### The Revision process

No doubt the UCP 500 revision was a huge task. For example the drafting group received more than 5000 comments to the released drafts<sup>3</sup> - and every single word was changed.

Interesting though it is hard to pinpoint exactly why the revision was started – and why it grew the way it did. Fact is that it started as a “technical revision” – as if to say that some (few) specific issues need be fixed. Ms. Nicole Keller (Member of the UCP 600 drafting group) has suggested that one reason that it grew from a technical revision into a more fundamental revision was that fixing one thing in the UCP 500 would also affect other articles<sup>4</sup>. From the drafters it was not altogether clear (or perhaps not clearly communicated), what was the aim, but that was surely not the case listening to the market: The new UCP should be “*perfect*” no less than that. From the second the revision started every corner of the LC community provided their view on what a perfect UCP should include. Perhaps that was one of the reasons why the UCP drafting group addressed a number of “key issues” to be considered by the ICC National Committees.

### The key issues and the changes



The key issues (12 in total) were presented by the UCP Drafting group after the meeting in the ICC Banking Commission in Dublin June 2005.

It is quite interesting to follow how those did in fact turn out. Here is an overview:

#### “On its face”

Should the term "on its face" be removed from the UCP? The majority of the ICC National Committees – said that it should be removed.

The result was that it was removed from all articles – *except* UCP 600 sub-article 14(a) – i.e. the provision setting the standard for document examination. So the principle still applies.

#### Reasonable time

Should the words "reasonable time" be removed to describe the period of time available to determine if documents comply? The result was to remove the term – and it was replaced with “maximum of five banking days”. It has been discussed if this does in fact include a “hidden” reasonable time rule. This has not yet been tested – e.g. in a court of law.

#### Parties

Should the rules use the term “parties” or “banks” (“issuer” or “issuing bank”)? The vote was in favor of banks (as in UCP 500).

#### ISBP

How should the relationship between ISBP and UCP be? Result was that nothing was changed from UCP 500.

#### Deferred payments

Should UCP 600 include a provision authorizing nominated banks to prepay deferred payments? The result was new provisions in UCP 600 – most significant outlined in sub-article 12(b)<sup>5</sup> but also reflected in sub articles 7(c)<sup>6</sup> and 8(c)<sup>7</sup>.

#### UCP 500 article 28<sup>8</sup>

Should UCP 500 article 28 should be split in three articles or remain as one. The result was to keep it as one – as was the case in UCP 500.

#### UCP 500 article 30<sup>9</sup>

Should UCP 500 article 30 be deleted? The vote was to delete – as considered redundant. In the final phase sub-article 14(l) – was added to the UCP 600; a similar article also by many considered redundant.

#### Capitalized terms

Should defined terms be capitalized? As it turned out – they are not. This does not indicate any material change.

#### New articles

Should any “new” articles be added? Some were suggested – none were included.

#### Insurance

Local insurance companies were to be contacted for comments to the insurance articles. The result of this is uncertain.

From the above it is fair to conclude – that the “key issues” do not represent significant changes to the UCP 600 – apart from the issue of deferred payment credits.

As such the UCP includes the following types of changes:

- *Material Changes – that can more or less be boiled down to:*
  - The inclusion that a nominated bank is authorized to prepay or purchase a draft accepted or a deferred payment undertaking<sup>10</sup>.
  - The address and contact details of applicants and beneficiaries<sup>11</sup>.
  - Number of days for determining if a presentation is complying<sup>12</sup>.
  - The status of refused documents<sup>13</sup>.

- Some adjustments to the transport documents, e.g.
  - The name of the master need not be shown where an agent is signing for or on behalf the master.
  - That a charterer (or its agent) can sign a charter party bill of lading<sup>14</sup>.
- An insurance document may show reference to an exclusion clause<sup>15</sup>.
- *Structural Changes, e.g.*
  - The language is easier to read.
  - New articles “definitions” and “interpretations”<sup>16</sup>.
  - Removal of redundant phrases like “unless otherwise stated in the credit”
- *Existing practice incorporated; from ISBP and ICC Opinions, e.g.:*
  - Documents lost in transit<sup>17</sup>.
  - Original documents and copies<sup>18</sup>.

### **The market and the UCP**

There was really no telling how the market would react to the UCP 600. Basically there were two types of reactions – that seems as different as day and night. One was the *practical usage* – i.e. the daily handling of LC operations. The other was discussions on a more academic level carried out by the LC commentators and LC experts.

#### The practical usage

Prior to the implementation date – banks needed to make adjustments to their IT systems – e.g. to be able to handle the two new ways to express the status of refused documents<sup>19</sup>.

Besides that the overall impression is that the main (only??) change was that “500” was changed to “600”: The bank officers handling

LCs acted (almost) exactly the same way 1 July as they had done 30 June – barely even noticing which set of rules the LC was issued subject to. This of course differs between banks and regions – most likely depending of the effort and focus the respective bank has placed in implementing the UCP 600. Bottom line is that the primary focus has been the material changes mentioned above – that more or less can be counted on one hand.

Concluding from the practical point of view; the UCP 600 includes only few changes – and the implementation has been smooth and easy.

#### The academic discussion points

Following the international LC commentators the impression is quite different from what you find at the LC officers. A number of “troublesome issues” have been on the agenda. Mostly related to interpretation of specific articles, but also regarding a trend that has troubled many banks: LCs excluding certain articles in the UCP 600.

First on some of the main discussions on interpretations of UCP 600 provisions:

*Bills of lading indicating a place of receipt prior to the port of loading indicated by the LC*

One issue heavily debated arises from the changes made from UCP 500 sub-article 23(a)(ii) to UCP 600 sub-article 20(a)(ii). The wording in UCP 500 provided specific requirements for the “on board notation” when a bill of lading presented under an LC indicated a place of receipt prior to the port of loading stated in the LC. The new rule contained in the UCP 600 is less detailed and simply says: “... *indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit ...*”.

Many LC experts saw the new wording as a change in practice, so for example where the place of receipt in the bill of lading is clearly an inland place, it would not require any additional on board notation. Still the issue is not fully resolved – but it seems that no change in practice was intended.

#### *Non documentary conditions*

Comparing the UCP 500 to the UCP 600 on non documentary conditions (i.e. a condition without stipulating the document to indicate compliance with the condition) – one will note practically no difference<sup>20</sup>. The practice under UCP 500 was “interpreted” in the ICC Position Paper No. 3<sup>21</sup>, but that does not apply under UCP 600<sup>22</sup>. Consequently it is discussed – if practice has changed. It seems that it has – but it is not all clear yet.

Then to the issue of “*exclusions*” – a topic dealt with in many discussions and articles. Recently in DCInsight<sup>23</sup> where Nicole Keller argues that “*exclusion clauses may be a side effect of transparency*” – i.e. that the UCP 600 “*provide transparency on what are the liabilities and rights of the parties to a documentary credit*”. The affect is that liabilities become so clear that banks (or perhaps rather the *lawyers* of the bank) may want to exclude those. Whatever the reason – most “popular” articles excluded are:

#### *Sub-articles 12(b) and 7(c)*

Nominated banks authorization to prepay or purchase before maturity.

#### *Sub-article 14(k)*

The shipper of the goods need not be the beneficiary of the credit

#### *Sub-article 14(l)*

That a transport document may be issued by any party – as long as it meets the requirements of the transport articles.

#### *Article 35 (2<sup>nd</sup> paragraph)*

That the risk of LC complying documents lost in transit between nominated and issuing bank lies with the issuing bank.

Concluding from the academic discussions; UCP 600 has opened up for a number of discussions, uncertainties and not fully clear changes.

#### **On the future**



Aiming to the future one must expect (hope) that the majority of uncertainties are leveled out. It requires that the ICC Banking Commission is capable of providing clear statements – outlining the intended practice. One must also expect new issues to arise. One issue likely to be debated is the new standard for document examination. UCP 500<sup>24</sup>:

*“...Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit...”*

The equivalent UCP 600 wording reads<sup>25</sup>:

*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.*

(This issue is a good example of the distance between the practical oriented LC officers and the academic oriented professional commentators. The majority of LC officers do not have English as their first language – and for those such discussion is simply too academic. To quote an example given to me recently: *“if you are writing "black" in one document and "white" in another, then it is both "in conflict" and "inconsistent"”*)

It is also expected that some provisions will be tested in court – and that such will be the basis for discussions – even change in practice.

At some point in time after the above has loosened up, it should at least be considered if the ISBP<sup>26</sup> are to be revised as well – in order to reflect the new practices initiated by the UCP 600.

### **Conclusion**

Revising and implementing the UCP 600 was a huge task for the entire LC community. The value of this “investment” highly depends on what one focuses on: For some (e.g. the LC officers handling the LCs) it may well be business as usual, while for others (e.g. LC commentators) it may be a jungle of new uncertain practice.

It is arguable how many real changes the UCP 600 includes: On one hand each and every word has been changed, on the other one can

argue that there is but a handful of material changes.

What remains is that the cost of this has been enormous – based on the amount of time spend by people all over the world – and money for e.g. training, IT updates and purchase of brochures (UCP 600 and ISBP), and it is simply unclear what benefits it has brought / will bring the LC community.

There is however one benefit – or perhaps “opportunity” that is often forgotten when discussing the UCP 600 implementation: The revision provided the perfect opportunity for the LC banks to come into the picture again. It was a “once in a decade” opportunity to approach the customers and “remind” them of the benefits of the LC instrument. If that opportunity was taken – is another matter – but it was there for sure.

When reading the above evaluating the pros and cons, one should accept that the UCP 600 is here – and the entire LC community has an interest in its success. Therefore one hope above all is that the energy spent by the LC community in discussing these rules is based on a foundation of constructiveness and good will for clarity and unambiguous practices.

It may well be that the child is only one year old – and great may things are expected from it – but it has many parents – and the responsibility for raising the UCP 600 in a good and mature way lies with those parents.

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<sup>2</sup> 25 October 2006 it was unanimously approved by the ICC Banking Commission.

<sup>3</sup> Gary Collyers foreword to "*Insights into UCP 600 – Collected Articles from DCI 2003 to 2008*". ICC publication No. 682.

<sup>4</sup> DCInsight Vol. 9 No.3 July – September 2003 "*The Insight interview: Nicole Keller. The shape of the new UCP*"

<sup>5</sup> Nomination

<sup>6</sup> Issuing Bank Undertaking

<sup>7</sup> Confirming Bank Undertaking

<sup>8</sup> Road, Rail or Inland waterway Transport Documents

<sup>9</sup> Transport Documents issued by Freight Forwarders

<sup>10</sup> UCP 600 sub-article 12(b).

<sup>11</sup> UCP 600 sub-article 14(j).

<sup>12</sup> UCP 600 sub-article 14(b).

<sup>13</sup> UCP 600 sub-articles 16(c)(i)(b+d).

<sup>14</sup> UCP 600 sub-article 22(a)(i).

<sup>15</sup> UCP 600 sub-article 28(i).

<sup>16</sup> UCP 600 articles 2 and 3.

<sup>17</sup> UCP 600 article 35, paragraph 2

<sup>18</sup> ICC policy statement: The determination of an "Original" document in the context of UCP 500 sub-Article 20(b)"

<sup>19</sup> UCP 600 sub-article 16(c)(i)(b+d).

<sup>20</sup> The UCP 600 rule is reflected in sub-article 14(h).

<sup>21</sup> Part of "*Position Papers n° 1, 2, 3, 4 on UCP 500 Uniform Customs and Practice for Documentary Credits*" issued by Commission on Banking Technique and Practice, 1 September 1994"

<sup>22</sup> Introduction to the UCP 600,

<sup>23</sup> "More on those troublesome exclusion clauses", DCInsight Vol. 14 No.2 April - June 2008

<sup>24</sup> From UCP 500 sub-article 13(a).

<sup>25</sup> UCP 600 sub-article 14(d).

<sup>26</sup> International Standard Banking Practice (ISBP) for the examination of documents under Documentary Credits – 2007 Revision for UCP 600, ICC Brochure 681.