

The Utah Banker

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not the problem

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New Rules Available to Govern Commercial Letters of Credit

By Brian D. Cunningham

So Many Choices - UCP 600, UCP 500 and ISP 98

After more than three years in the making, on July 1, 2007 the Uniform Customs and Practices for Documentary Credits (2007 Revision), International Chamber of Commerce Publication No. 600 ("UCP 600") became effective. UCP 600 is a comprehensive set of rules published by the International Chamber of Commerce which may be adopted by issuers and beneficiaries of letters of credit to supplement and even supersede the rules set forth in Article 5 of the Utah Uniform Commercial Code. UCP 600 replaces the former Uniform Customs and Practices for Documentary Credits (1993 Revision), International Chamber of Commerce Publication No. 500 ("UCP 500"). Accordingly, banks and bankers need to review and understand the new rules of UCP 600 and modify their current policies and procedures accordingly.

A letter of credit subject to UCP 500 will not automatically be subject to UCP 600 unless the credit is amended to provide for application of the UCP 600 rules. Thus, care should be taken by banks to ensure that they understand which version of the UCP governs a particular credit and that the parties comply with the terms thereof.

UCP 600, which is intended to govern trade and other direct-pay letters of credit, differs significantly from the International Standby Practices (1998), International Chamber of Commerce Publication No. 590 ("ISP 98"), which is an alternative set of ICC rules intended to govern standby letters of credit.

UCP 600 Changes from UCP 500

The revisions incorporated into UCP 600 are intended to provide for a concise, yet more comprehensive set of rules, with 38 articles rather than the 49 articles of UCP 500. Some of the key revisions include:

- Section 5-108 of the Utah Uniform Commercial Code provides that an issuer has a reasonable time, not to exceed seven business days, to examine documents and either pay or reject

a draw on a credit. UCP 500 similarly provided for a "reasonable time" not to exceed 7 days for examining and determining compliance of documents. Under the new UCP 600 rules, banks have exactly five banking days to examine documents and assert any discrepancies.

Banks and bankers need to review and understand the new rules of UCP 600 and modify their current policies and procedures accordingly.

- When a bank refuses to honor a requested drawing, it must give a single notice to the presenter setting forth (a) that the bank is refusing to honor, (b) the specific discrepancy causing the bank's refusal to honor, and (c) that the bank is either (i) holding the documents pending further instructions from the presenter; (ii) holding the documents until it receives a waiver from the applicant and agrees to accept it or receives further instructions from the presenter prior to agreeing to accept a waiver; (iii) returning the documents; or (iv) acting in accordance with instructions previously received from the presenter.
- New rules for determining enforceability of issuer-proposed amendments to letters of credit. While an issuer-proposed amendment will not generally be enforceable until the beneficiary communicates its acceptance to the issuer, a beneficiary that fails to either accept or reject an amendment runs substantial risks. If the beneficiary has failed to give notice that it rejects an amendment, a presentation by the beneficiary on the credit will be deemed to be notification of acceptance of any unrejected amendments by the beneficiary.
- New sections on "definitions" and "interpretations" have been added to clarify the meaning of ambiguous terms and to replace

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many “Miscellaneous Provisions” in UCP 500. For example, the Definitions now contain terms such as “honor” and “negotiation.”

- A new provision concerning addresses of the beneficiary and the applicant and when such addresses in documents must be the same addresses as stated in the credit.
- An expanded discussion of “original documents” and a more liberal “consistency” requirement than UCP 500. UCP 600 now provides that data appearing in a document, when read in context with each of (a) the credit, (b) the document itself and (c) international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other identified document or the credit. UCP 500 had simply provided that documents stipulated in the credit must not be inconsistent.

UCP Compared to ISP 98

Just as direct-pay letters of credit differ substantially from standby letters of credit, UCP 600 differs significantly from ISP 98. Principal differences include:

- ISP 98 provides for payment or rejection within a reasonable time similar to UCP 500 (now shortened to five calendar days in UCP 600), but ISP 98 also establishes a three calendar day safe harbor within which notice of dishonor is deemed to be reasonable and a seven calendar day outside date for such reasonable period.
- Under ISP 98, a letter of credit may be transferred in its entirety more than once, partial transfers are prohibited, and a bank may establish conditions for a transfer. Under UCP 600, a credit may not be transferred more than once, but partial transfers are allowed, and UCP 600 does not expressly permit an issuer to establish conditions to transfer.

- A bank is expressly permitted to sell participations and disclose information about the applicant to potential participants.
- A failure by the beneficiary to make a scheduled presentment does not waive the right to make other timely presentments. Also, unlike UCP 600, presentments may include inconsistent documents.
- If the issuing bank is closed on the last business day for presentment, the last day for presentment is automatically extended to 30 calendar days after the bank re-opens. Further, banks are given the unilateral authority to designate an alternate place of presentment.
- The bank does not have an obligation to verify the identity of the party making a presentment. Also, the bank may waive the requirement for presentment of the original credit if it has been lost, stolen or destroyed.
- Unlike UCP 600, if a requested drawing is refused, the dishonoring bank is not required to give notice of the disposition of presentment documents. On rejection, a statement of discrepancies need not be detailed, etc.



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