

New UCP 600 entered into force on the first of July 2007

On the first of July 2007 the UCP 600 (Uniform Customs and Practice for Documentary Credits) came into force. This document is the newest version of the UCP, a set of rules first drafted in 1933 by the ICC in Paris as the applicable legal framework under which Letter of Credit (L/C) operate internationally. UCP 600 replaces the former UCP 500 version.

The purpose of the present memorandum is not to make a comprehensive review of the UCP 600 but merely to highlight the changes of relevance to traders.

What has really changed?

- The UCP 600 have been drafted with a view to clarifying the most important issues that were left unclear by the UCP 500. It follows from this that most differences between UCP 500 and UCP 600 are clarifications rather than actual changes.
- Many of the provisions of the UCP deal with the relationship between banks engaged in a particular Letter of Credit transaction. As a result, a majority of changes affect the banks' "internal" relationship and have only an indirect effect on the traders on whose behalf the L/C is operating.
- The major changes introduced by the new UCP 600 which might be of interest to traders, are the following:
 1. Article 1 UCP 600: Unlike UCP 500, **UCP 600** does not apply unless it is expressly mentioned in the text of the L/C.
 2. Article 2 UCP 600: A list of **definitions** includes some substantive elements. One definition changes the choice of UCP to the default type of L/C: The default type of L/C is now the **irrevocable L/C**. Parties wishing another type of L/C need to expressly clarify this (see also Articles 1 and 3 UCP 600)! Not covered by this presumption is the differentiation between a confirmed and an unconfirmed L/C. As no presumption relating to the status of confirmation exists this important choice needs to be expressly



made in the payment clause of the sale and purchase agreement and the L/C.

3. Article 14 UCP 600: This Article describes the **standard for examination of documents** by the banks. It is made clear that the banks will disregard all **non-documentary requirements**. If such a requirement reflects a fact of crucial importance to the buyer, he will have to think of a form of documentation which can certify the compliance with that fact (e.g. the classification of a vessel by production of a classification certificate). The seller in turn will have to be convinced that he is in a position to meet such additional requirement.

For the examination of documents the banks now have a **maximum of five banking days** following the day of presentation, and no longer the “reasonable time not exceeding 7 banking days” (see also Article 16 (d) UCP 600). The deletion of the criterion of “reasonable time ...” might mean that traders have to accept that banks, despite an earlier decision on conformity, could now wait for the fifth day to pay the L/C amount to the seller. Again, this could possibly be an area where the sale and purchase agreement (and the subsequent negotiation with the banks) might provide for another solution, possibly a shorter time for the examination by the banks.

Furthermore, and in order to reduce instances of discrepancies, Article 14 (d) UCP relating to the issue of standard of examination now clarifies that 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 L/C. This replaces the old test of “inconsistencies on the face of the documents” applied by UCP 500. Whether this is a mere clarification or a change of substance will have to be determined by the new practice under UCP 600.

4. Article 18 (a) (iii) UCP 600: Under the new UCP the **commercial invoice** must be made out in the **same currency** as the L/C.
5. Article 20 UCP 600: Bills of lading may now allow **trans-shipment** (e.g. by the use of liberty clauses or even by an express statement that the goods will in fact be trans-shipped), provided that the entire carriage is covered by one and the same bill of lading. Therefore, where trans-shipment is intended to be excluded, a change to this provision must be agreed on in the sale and purchase agreement and the L/C.



6. Article 22 UCP 600: The particular form of a **charter party bill of lading** has now been defined, but at the same time unlike the UCP 500, the new UCP no longer mentions that a charter party bill of lading must be explicitly allowed.

It is not clear whether the payment clause in a sale and purchase agreement (and subsequently the L/C) must still allow such documents expressly or whether now the charter party bill of lading is an acceptable document besides the general bill of lading. Therefore, any parties intending to use or allow such charter party bills of lading in their trade should expressly note this in the L/C.

Need for action?

- Any change of an important parameter in a trade transaction (such as the change from UCP 500 to UCP 600) requires adaptation. As the major changes do not, however, directly affect the trader submitting his trade to the UCP Rules, the need for adaptation is minor.
- Changes are also opportunities: As the UCP 600 clarifies and eases for some principles relating to documentation and their presentation, the traders have gained more flexibility in which they can work under a given L/C.
- As every trade and indeed every trader is unique, the need for adaptation and the values of the new opportunities will be different for each of the participants in international trade.
- This requires a careful reading of UCP 600 in the actual context of the businesses the traders are involved in.
- The existing trade contracts which cover an opening of an L/C under UCP 500 must be checked to safeguard that the actual L/C is opened in conformity with the sale and purchase agreement. It is advisable for traders to confirm the situation with their bank and, if applicable, to apply for a change of wording in the payment clause to allow the L/C to be opened under UCP 600.
- To avoid mistaken references to UCP 500 or to facilitate a smooth transition to yet another version of UCP 600 in the future, sales and purchase agreements might in their L/C – or payment – clause refer to *“L/C subject to UCP in its latest version”*.



- The issues raised above and the possible steps suggested here are obviously very general and should not be relied upon to make a decision in a specific case. They need to be revisited by each trader, preferably in consultation with its bankers and lawyers.

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