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# Impact of the UCP 600 and measures taken by ICC

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Gary Collyer  
Collyer Consulting LLP  
Technical Adviser to ICC



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## Impact of the UCP 600

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Understanding UCP 600 and why UCP 500 was revised:

- To reflect industry changes/practices – Transport, Insurance and Banking (documentary credit).
- Need to review ICC Opinions, Decisions, DOCDEX cases and results of Court actions.
- Need to consider incorporation of URR525, ISP98 and eUCP.



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## Impact of the UCP 600

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### Corporate view of UCP 600:

- Easier to read, follow and apply;
- Clearer rules that leave little room for banks to “manipulate” or interpret to their liking;
- Widespread adoption by banks together with application of the ISBP publication;
- Need for applicant’s to grasp that the UCP 600 does not only benefit the beneficiary;
- The content and structure of UCP 600 should encourage more usage of the documentary credit as a means of payment ;
- An opportune time to review current practices and look for better documentary credit structures;
- Use the impetus of UCP 600 to seek out new buyers and suppliers; and
- A reduction in discrepancy rates has been seen in many countries.

## Impact of the UCP 600

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### Bank view of UCP 600:

- Easier to read, follow and apply;
- Clearer rules that leave little room for issuing banks to “manipulate” or interpret to their liking;
- Widespread adoption by banks together with application of the ISBP publication;
- Increased usage of documentary credits already seen in markets such as Asia and Middle East. For example, China is now number 1 issuer of documentary credits globally and the Middle East is projecting increases in usage of around 15-20% per annum;
- Banks are now promoting documentary credits as an offering whereas in the past it was not a ‘priority’ product;
- An opportune time to review current practices and look for better documentary credit structures and guidelines;
- A reduction in discrepancy rates has been seen in many countries.

## Impact of the UCP 600

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### My view of UCP 600:

- To make the rules easier to read, follow and apply was the number 1 aim;
- Clearer rules that leave little room for banks to “manipulate” or interpret to their liking;
- With the UCP and ISBP publications issued at the same time and directly linked with each other, common standards are being achieved;
- It is an opportune time for Corporates and Banks to review their current practices and look for better documentary credit structures and guidelines;
- A reduction in discrepancy rates has been seen in many countries. However, the rules by themselves will not have a significant impact. Rules cannot stop a beneficiary shipping late, presenting late, etc.
- There has been no need to issue any form of Position Papers as was the case under UCP 500; and
- Most ICC Opinions reviewed to date could have applied equally under UCP 500.

## Impact of the UCP 600

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Prior to the implementation of UCP 600 ICC National Committees recognised the following issues and were requested to vote on various wordings or scenarios:

- “Negotiation” – in or out;
- “On its face”;
- “Reasonable time”;
- “Discounting of deferred payment undertakings”; and
- preferred versions for “Non-documentary conditions” and degree of review for “inconsistency” - or “non-conflicting” as now described in UCP 600.

**\*\*Most of these issues have existed for some time**

## Impact of the UCP 600

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### UCP 600 Article 1 Application of UCP

- Concept of “Modify or Exclude”;
- No reference to “unless otherwise stipulated in the credit” throughout UCP 600;
- UCP applicable when the LC expressly indicates that it is subject to these “rules”; and
- Retention of Standby Letters of Credit.

There is a need to understand the concept of modification and exclusion and when it is appropriate or not.

## Impact of the UCP 600

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### UCP 600 Article 2 Definitions

**Banking Day** a day on which a bank is regularly open at the place at which an act subject to these rules is to be performed.

**Complying Presentation** a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.

Q. What is regularly open?, what about half day opening?

Q. Why not an explicit reference to ISBP publication 681?

## Impact of the UCP 600

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### UCP 600 Article 2

#### Definitions – ICC Opinion TA635 (October 2007)

**Q.** Under article 2, from definitions of 'Banking Day' and Presentation' we understand that presentation is an act to be performed on a day when a bank is regularly open. We also note from sub-article 14 (b) that the examination period commences on the day following the "day of presentation" as opposed to UCP 500's "day of receipt of documents." Therefore it is our understanding that the day of presentation is to be a banking day even if documents are received by a bank's mail receiving unit which may be open on a non-banking day. Are we correct?

- The day of presentation may or may not be a banking day. By accepting a presentation of documents outside the bank's normal banking hours would mean that, in this case, Saturday would count as the day of receipt of the documents for the purposes UCP 600 article 33.

## Impact of the UCP 600

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### UCP 600 Article 2

#### Definitions

#### Honour:

- a. to pay at sight if the credit is available by sight payment.
- b. to incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.
- c. to accept a bill of exchange ("draft") drawn by the beneficiary and pay at maturity if the credit is available by acceptance.



Q. Why use the term "honour"?

Q. Does "Honour" change any of our practices?

## Impact of the UCP 600

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### UCP 600 Article 2 Definitions

#### Negotiation:

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.



- Q. What is agreeing to advance?
- Q. Why no reference to recourse?
- Q. Why "on or before the banking day reimbursement is due ...."?

## Impact of the UCP 600

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### UCP 600 Article 3 Interpretations

- Where applicable, words in the **singular include the plural** and in the **plural include the singular**.
- A **credit is irrevocable** even if there is no indication to that effect.
- Branches of a bank in different countries are considered to be **separate banks**.
- Unless required to be used in a document**, words such as "prompt", "immediately" or "as soon as possible" will be disregarded.
- The words **"from" and "after"** when used to determine a maturity date **exclude the date mentioned**.

## Impact of the UCP 600

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UCP 600 Article 3  
Interpretations – ICC Opinion TA652 (April 2008)

**Q.** A L/C calls for: Certificate of Origin from a local chamber of commerce.

The product is of foreign origin. Does "local chamber of commerce" mean local where the beneficiary is or local where the product originates?"

- The answer to this question lies in the content of an interpretation provided in article 3 of UCP 600. Therein it is stated "Terms such as "first class", "well known", "qualified", "independent", "official", "competent" or "local" used to describe the issuer of a document allow any issuer except the beneficiary to issue that document."

Applying this interpretation in the context of this query, any chamber of commerce may issue the certificate of origin.

## Impact of the UCP 600

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UCP 600 Article 4  
Credits v. Contracts

Addition:

- An issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like.

This does not prohibit the reference to a proforma or contract, only the inclusion as an integral part of the LC. If it is included, what is expected of the bank to review? What if details differ between the contract/proforma and the credit?

## Impact of the UCP 600

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### UCP 600 Article 6

#### Availability, Expiry Date and Place for Presentation

##### Sub-article 6 (a):

A credit must state the bank with which it is available or whether it is available with any bank. A credit available with a nominated bank is also available with the issuing bank.

- Q. Why allow any form of credit to be available with any bank?
- Q. Is it really possible under each type of availability for a credit to be available with any bank?
- Q. Why the change that a credit available with a nominated bank is also available with the issuing bank?

## Impact of the UCP 600

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### UCP 600 Article 6

#### Availability, Expiry Date and Place for Presentation

##### Sub-article 6 (c):

A credit must not be issued available by a draft drawn on the applicant.

##### Sub-article 6 (d) (ii):

A place for presentation other than that of the issuing bank is in addition to the place of the issuing bank.

- Q. Why not allow drafts on the applicant? Why delete reference to the draft being an additional document?
- Q. What does sub-article 6 (d) (ii) mean?



## Impact of the UCP 600

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### UCP 600 Article 6

#### Availability, Expiry Date and Place for Presentation

Understanding the relationship between availability, expiry and place for presentation is a critical factor in the establishment of a LC.

LCs issued available for:

- Payment
- Acceptance
- Deferred payment
- Negotiation
- Presentation

## Impact of the UCP 600

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### UCP 600 Article 7

#### Issuing Bank Undertaking

Sub-article 7 (a):

Provided that the stipulated documents ..... must honour if the credit is available by:

Sub-article 7 (b):

An issuing bank is irrevocably bound to honour as of the time it issues the credit.

- Q. Why does an issuing bank 'honour' and not negotiate?
- Q. Why the wording that the issuing bank is irrevocably bound?
- Q. Effect of "sub-article 7 (c) is excluded".

## Impact of the UCP 600

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### UCP 600 Article 8

#### Confirming Bank Undertaking

##### Sub-article 8 (a):

Provided that the stipulated documents ..... must: (i) honour if the credit is available by ..... (ii) negotiate .....

##### Sub-article 8 (b):

A confirming bank is irrevocably bound to honour or negotiate as of the time it adds its confirmation to the credit.

Q. Why a confirming bank “honours or negotiates”?

Q. Why the wording that the confirming bank is irrevocably bound?

## Impact of the UCP 600

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### UCP 600 Article 9

#### Advising of Credits and Amendments

- Concept of 2<sup>nd</sup> Advising Bank;
- Bank now “satisfies itself” as to the apparent authenticity; and
- Advice of credit or amendment “accurately reflects” the terms and conditions of the credit or amendment received.

Q. Are instructions to confirm addressed to the advising bank and/or the second advising bank that is stated in the LC?

## Impact of the UCP 600

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### UCP 600 Article 10

#### Amendments

##### Sub-article 10 (c):

The terms ..... will remain in force ..... until the beneficiary communicates its acceptance ..... . The beneficiary should give ..... acceptance or rejection of an amendment. If the beneficiary fails ..... a presentation that complies with the credit and ..... not yet accepted amendment will be deemed to be ..... acceptance by the beneficiary ..... .

Q. Why do we still have this provision? It does not work.

Q. Why disallow time limits for acceptance or rejection?

Q. Effect of excluding sub-articles 10 (c) and 10 (f).

## Impact of the UCP 600

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### UCP 600 Article 10

#### Amendments – ICC Opinion TA638 (October 2007)

**Q.** A question has arisen regarding amendments which do not impact a presentation of documents. Example, where under a credit for \$100,000 permitting part shipments, and the issuer amends the credit to reduce it by \$50,000: a beneficiary presenting documents for \$50,000 without stating they have accepted or rejected the amendment – the bank cannot construe beneficiary silence regarding the amendment as acceptance to reduce the credit to zero because the amendment had no impact on the presentation, and therefore beneficiary has neither expressed consent or rejection of the amendment. A beneficiary may not even have received such an amendment, and to construe silence as acceptance when the documents are not impacted by the amendment directly conflicts with the rights of the beneficiary stated in sub-article 10 (a).

## Impact of the UCP 600

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### UCP 600 Article 10

#### Amendments – ICC Opinion TA638 (October 2007) - answer

- The example provided in the query outlines the type of issue that the UCP 600 drafting group sought to clarify by proposing a change in the language that appeared in UCP 500 sub-article 9 (d) (iii), now UCP 600 sub-article 10 (c). By keeping the wording as appeared in UCP 500 sub-article 9 (d) (iii) the nominated bank or issuing bank cannot, in the circumstances shown in the query, make any determination as to whether the beneficiary has accepted the amendment. Even if the nominated bank or issuing bank were to ask the beneficiary as to whether they have accepted the amendment, the beneficiary could refer to the content of sub-article 10 (c) and state that they have yet to make up their mind.

You are correct in saying that a presentation that is not impacted by an as yet unaccepted amendment does not constitute acceptance of the amendment by the beneficiary.

## Impact of the UCP 600

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### UCP 600 Article 12

#### Nomination

#### Sub-article 12 (b):

By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.

- Q. Nominated banks not incurring deferred payment undertakings.
- Q. Requests to issuing banks for 'discount' to occur.
- Q. Issuing banks to pay at maturity only.
- Q. Effect of "sub-article 12 (b) is excluded".

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

##### 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.

- Q. “On their face” – why has this been retained?
- Q. What is the intention behind “check on the basis of the documents alone”?

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

##### Sub-article 14 (b):

A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed .....

- Q. Removal of “reasonable time” but does not maximum give a ‘reasonable time’?
- Q. Why a maximum of 5 banking days?
- Q. Period of 5 banking days not subject to any upcoming event – what does this mean?
- Q. Effect of “sub-article 14 (b) is not applicable”.

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

##### Sub-article 14 (c):

A presentation including one or more original transport documents subject to articles 19, 20, 21, 22, 23, 24 or 25 must be made by or on behalf of the beneficiary not later than 21 calendar days from the date of shipment .....

Q. What about copies of transport documents?

Q. Why 21 calendar days?

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

- (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;
- (e) goods description in documents other than commercial invoice "if stated" to be in general terms;
- (f) where no data content of document given, document must appear to 'fulfil the function' of that document;
- (g) a document not required may be returned;

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

##### 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.

- Q. What is intended by “when read in context”?
- Q. What would constitute a ‘conflict’?
- Q. Why the change from the UCP 500 wording?

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

##### Sub-article 14 (d):

LC calls for shipment of 5000 pairs of Red Shoes

Invoice states 5000 pairs of Red Shoes

Certificate of Origin states 5000 pairs of Shoes

Packing List states Red Shoes packed in 500 cartons

Bill of Lading states Shoes

Data is not identical but is it conflicting?

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

##### Sub-article 14 (f):

If a credit requires presentation of a document other than a ..... , 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).

- Q. In what manner must a document appear to fulfil its function?
- Q. Are document checkers supposed to become experts in documentation?

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents – ICC Opinion TA638 (October 2007)

- Q. We have received a variety of other UCP 600 article deletions such as the deletion of sub-article 14 (f).

##### Questions:

a) When articles such as this are deleted outright and no further LC guidance provided, how should banks interpret this?

b) In this case, does a document title now have to match the title of a document stated in a LC or since no further LC guidance is provided can a nominated bank exercise its own judgment as to whether or not a document complies?



## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents – ICC Opinion TA638 (October 2007)

- Whilst article 1 of UCP 600 allows for modification or exclusion of the rules, if a bank excludes 14 (f) without any further comment, how is a nominated bank expected to review documents for which there is no stated issuer or data content? The rule in sub-article 14 (f) provides a sense of certainty in these circumstances, for a nominated bank in that they may accept a document, as presented, provided the document appears to fulfil the function of the required document. To exclude the rule, without inserting a new condition with regard to the review of such documents, leaves the nominated bank in possibly an untenable situation. Unless each requested document indicates the name of the issuer and provides the required data content, a nominated bank would be well advised to revert to the issuing bank for clarification and reinstatement of sub-article 14 (f). With the exclusion of this rule, it is unclear what judgment a nominated bank could exercise in the (continued)

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents – ICC Opinion TA638 (October 2007)

(continued)

- examination of documents. Removal of the ability to accept a document as presented would leave the nominated bank in the dark as to the process under which the issuing bank will be reviewing the documents.

## Impact of the UCP 600

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### UCP 600 Article 14

Standard for Examination of Documents - **ICC Opinion TA644 (April 2008)**

**Q.** One of our members has an on-going credit business in favour of a particular beneficiary where many 'export' (inward) credits received include a condition stipulating details of transport to and from and latest shipment date but without stipulating the requirement for presentation of a document indicating compliance with the condition. In such circumstances, we would be grateful if you would please confirm that for credits subject to UCP 600, such condition(s) should be treated as non-documentary, deemed as not stated and disregarded irrespective of any other documents stipulated in the Credit or any data that might appear in such documents when presented.

## Impact of the UCP 600

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### UCP 600 Article 14

Standard for Examination of Documents - **ICC Opinion TA644 (April 2008)**

**□** Where it has been agreed to handle such a transaction, details such as the places, ports or airports from which the goods are to be shipped from and to and the latest shipment date may be disregarded for the purpose of determining a complying presentation and need not be stated in any other stipulated document that is presented. However, the data in the other stipulated documents will still be subject to review under sub-article 14 (d) to ensure that any data is not conflicting with the data in the credit. Sub-article 14 (h) allows for the beneficiary and banks to disregard such conditions to the extent that there is no necessity to provide any evidence of compliance. Should the beneficiary, nevertheless, elect to insert such data on any other stipulated document then they must ensure that it does not conflict with the data in the credit. The view of the Banking Commission is that sub-article 14 (h) is not absolute and is qualified by the content of sub-article 14 (d).

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

##### Sub-article 14 (j):

When the addresses ..... appear in any stipulated document, they need not be the same as those stated ..... , but must be within the same country as the respective addresses ..... credit. Contact details ..... 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 ....., they must be as stated in the credit.

Q. Addresses must appear on every document, even if different?

Q. Is any address required at all?

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

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

A transport document may be issued by any party other than a carrier, Owner, master or charterer provided that the transport document meets the requirements of articles 19, 20, 21, 22, 23 or 24 of these rules.

Q. Why has UCP 500 article 30 been deleted and replaced by this shortened version?

Q. Does this mean that a beneficiary could issue a transport document?

Q. Effect of "freight forwarder BL acceptable".

## Impact of the UCP 600

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UCP 600 Article 14

Standard for Examination of Documents – **ICC Opinion TA651 (April 2008)**

**Q.** The XX committee had an extended discussion on the topic of LCs that require a "House Bill of Lading" or conversely call for an "Ocean BL consigned to XX and notify YY and then later indicates that a "House BL acceptable". The discussions centered on the appropriate document examination methods for LCs that contain these clauses.

Our general consensus is that "house" is synonymous with forwarder and as such, any LC containing either of the above clauses is asking a nominated bank to examine the data content of the House BL in accordance with the mandates prescribed in UCP sub-article 14 (f). (continued)

## Impact of the UCP 600

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UCP 600 Article 14

Standard for Examination of Documents – **ICC Opinion TA651 (April 2008)**

(continued)

In the latter example, which allowed either an "Ocean" or a "House" BL, if a forwarder BL (signed and acting only as a forwarder) was presented would the same hold true and it would not be examined in accordance with articles 19-23. If the House BL presented contradicted the consignee or notify party or other information that was specifically requested in the LC's "Ocean Bill of Lading" requirements, can this be cited as a discrepancy?

- Where a credit requires or allows the presentation of a 'House' bill of lading or air waybill, the document must comply with the terms and conditions of the credit and the requirements of the respective transport article, with the exception that the document may be signed by the freight forwarder in their capacity as freight forwarder without naming the carrier.

## Impact of the UCP 600

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### UCP 600 Article 14

#### Standard for Examination of Documents

- Q. Effect of “sub-article 14 (b) is excluded”.
- Q. Effect of “sub-article 14 (e) is not acceptable”.
- Q. Effect of “sub-article 14 (i) is excluded”.
- Q. Effect of “sub-article 14 (j) is not applicable”.
- Q. Effect of “sub-article 14 (k) is excluded”.
- Q. Effect of “sub-article 14 (l) is excluded”.

## Impact of the UCP 600

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### UCP 600 Article 15

#### Complying Presentation

Sub-articles 15 (a), (b) & (c):

When a ..... bank determines that a presentation is complying, it must honour (or negotiate) [and forward the documents to the issuing bank (or confirming bank)].



- Q. “When” = immediate?
- Q. How to determine ‘reasonable time’ to honour or negotiate?

## Impact of the UCP 600

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### UCP 600 Article 16

#### Discrepant Documents, Waiver and Notice

- ❑ Issuing bank may still approach applicant for waiver but available time reduced due to new maximum of 5 banking days;
- ❑ No reference to refusals where indemnity or reserve is given by the beneficiary. This is seen as a private arrangement between a bank and its customer:
- ❑ If a bank has provided a refusal according to (a) or (b) overleaf, and no instructions or waiver received they may return documents;
- ❑ Banks must provide a single notice of refusal;
- ❑ Refusal must state, bank is refusing, applicable discrepancies and one of the following statuses:

## Impact of the UCP 600

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### UCP 600 Article 16

#### Discrepant Documents, Waiver and Notice

Sub-article 16 (c) (iii):

- a) that the bank is holding the documents pending further instructions from the presenter; or
- b) that the issuing bank is holding the documents .... receives a waiver ..... and agrees to accept it, or receives further instructions ..... prior to agreeing to accept a waiver; or
- c) that the bank is returning the documents; or
- d) that the bank is acting in accordance with instructions previously received from the presenter.

Q. Combining of various options?

Q. How would (d) happen?

## Impact of the UCP 600

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### UCP 600 Article 16

Discrepant Documents, Waiver and Notice – **ICC Opinion TA638 (October 2007)**

**Q.** My bank and a number of other US banks have been receiving LC's that delete UCP 600 Article 16 (c) (iii) (d). We find this deletion confusing. We are unsure of the intent of this deletion and unsure if both sections 16 (c) (iii) (all in) and 16 (d) are being deleted or if only section "16 (c) (iii) (d)" is deleted.

Questions:

- a)** If the former and both sections are being deleted then the concern is when and how a notice of discrepancies must reach a nominated bank?
- b)** If the latter then why would an issuing bank refuse to accept instructions a nominated bank has previously sent as they relate to a specific documentary presentation? Your guidance would be greatly appreciated.

## Impact of the UCP 600

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### UCP 600 Article 16

Discrepant Documents, Waiver and Notice – **ICC Opinion TA638 (October 2007)**

- Under sub-article 16 (c), one of the options (a-d) must be utilised in relation to advising the status of the documents. To exclude the whole of sub-article 16 (c) or all of options a-d would require the credit to incorporate alternate conditions in relation to the handling of a refusal notice.

From the wording given in the query, only option (d) of sub-article 16 (c) (iii) has been deleted.

## Impact of the UCP 600

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### UCP 600 Article 16

#### Discrepant Documents, Waiver and Notice

Basic requirements for a refusal notice:

- MT734 – list of discrepancies and status of documents;
- MT799, telephone call, fax advice, email advice etc – indication of refusal, list of discrepancies and status of documents;
  
- Stated discrepancies should be specific to what is actually the reason for refusal i.e., avoid language such as “invoice not as per LC”;
- Status of documents can be by code word in MT734 (Hold, Return, Notify, Previnst) in all other advices they must be stated in full.

## Impact of the UCP 600

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### UCP 600 Article 17

#### Original Documents and Copies

Sub-article 17 (a);

At least one original of each document stipulated in the credit must be presented.

Sub-articles 17 (b) and (c)

Based on concept in ICC Decision of Original Documents

- Q. Why must at least one of each document be an original? This was not part of UCP 500.
- Q. Can a document be accepted as an original without mentioning “original” or bearing a signature?



## Impact of the UCP 600

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### UCP 600 Article 18

#### Commercial Invoice

#### Sub-article 18 (b):

A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may accept a commercial invoice issued for an amount in excess of the amount permitted by the credit, and its decision will be binding .... provided the bank ..... has not honoured or negotiated for an amount in excess of that permitted by the credit.

- Q. Why should a nominated bank that has not confirmed the LC bind an issuing or confirming bank?
- Q. Effect of “sub-article 18 (a) (iv) is excluded”.
- Q. Effect of “sub-article 18 (b) is excluded”.

## Impact of the UCP 600

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### UCP 600 Transport Articles 19-25

- Standard form of words for signing transport documents:
    - i. indicate the name of the carrier and be signed by:
      - the carrier or a named agent for or on behalf of the carrier, or
      - the master or a named agent for or on behalf of the master.
- Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent.
- Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

**NOTE: consistent style for all transport articles**

## Impact of the UCP 600

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UCP 600 Transport Articles 19-25 - ICC Opinion TA636 (October 2007)

**Q.** A marine B/L contains at its heading an entity name reading ABC LOGISTICS LTD in bold print. The document is signed by a named agent as “As Agent for the Carrier of B/L title”. We are in favour of interpreting the quoted words as “As Agent for the Carrier whose name appears at the heading” hence finding the B/L compliant in line with UCP’s signing requirements. Are we correct?

A bill of lading referring to the name of the carrier, in the manner expressed in the query, would meet the requirements of sub-article 20 (a) (i) in indicating the name of the carrier.

## Impact of the UCP 600

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UCP 600 Article 19

Transport Document Covering at Least Two Different Modes of Transport

No reference to Multimodal Transport Operator as a party that may sign.

UCP 600 Articles 20 and 21

Bill of Lading / Non-Negotiable Sea Waybill

Revised wording “indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:”

Document examiners require definitive information that shipped on board notation relates to the vessel and the port.

## Impact of the UCP 600

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UCP 600 Article 19 Transport Document Covering at Least Two Different Modes of Transport – ICC Opinion TA650 (April 2008)

**Q.**

(1) Is the intent of sub-article 19 (a) (ii) that if an on board notation is added to the document that the notation requires a date?

- A dated on board notation is clearly required when the credit so requests. It is also required when the document evidences the first leg of the journey as a sea shipment from the place stated in the credit.

(2) If a date is not required should the bank consider the goods on board as of the date of the transport document?

- Where a transport document is pre-printed shipped on board then the date of issuance would be deemed to be the date of shipment. When the document evidences the first leg of the journey as a sea shipment from the place stated in the credit, there is a need for evidence of the date the goods were shipped on board i.e., pre-printed or by notation.

## Impact of the UCP 600

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UCP 600 Article 19 Transport Document Covering at Least Two Different Modes of Transport – ICC Opinion TA650 (April 2008)

**Q.**

(3) Would the opinion change by the fact that the letter of credit specifically called for an on board notation vs. a letter of credit requirement which strictly called for a Multimodal Transport Document without calling for an on board notation?

- No. See comments under 1 and 2 above.

## Impact of the UCP 600

### UCP 600 articles 20 and 21 - Bill of Lading / Non-Negotiable Sea Waybill

For example:

LC requires shipment from Callao to Felixstowe

Bill of lading shows:

Pre-carriage	[blank]
Place of receipt	Tarma
Ocean vessel	River Sun
Port of loading	Callao
Port of discharge	Felixstowe

BL marked "Shipped on board 15 June 2008" – Is this okay?

## Impact of the UCP 600

### UCP 600 articles 20 and 21 - Bill of Lading / Non-Negotiable Sea Waybill

**Wording seen on many bills of lading:**

SHIPPED, as far as ascertained by reasonable means of checking, in apparent good order and condition unless otherwise stated herein, the total number or quantity of Containers or other packages or units indicated in the box entitled "Carrier's Receipt" for carriage always subject to all Terms and Conditions hereof (INCLUDING ALL THOSE TERMS AND CONDITIONS ON THE REVERSE HEREOF AND THOSE TERMS AND CONDITIONS CONTAINED IN THE CARRIER'S APPLICABLE TARIFF) from the Place of Receipt or the Port of Loading, whichever is applicable, to the Port of Discharge or Place of Delivery, whichever is applicable. When 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. Where the bill of lading is non-negotiable, the Carrier may give delivery of the Goods to the named consignee upon reasonable proof of identity and without requiring surrender of an original bill of lading. Where the bill of lading is negotiable, the Carrier shall not be bound to deliver the Goods to any person other than the holder of the bill of lading.

**Note that the wording states that "shipped" means from the Place of Receipt or the Port of Loading, whichever is applicable.**

## Impact of the UCP 600

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### UCP 600 articles 20 and 21 - Bill of Lading / Non-Negotiable Sea Waybill

For example:

LC requires shipment from Callao to Felixstowe

Bill of lading shows:

Pre-carriage	[blank]
Place of receipt	Callao CY
Ocean vessel	River Sun
Port of loading	Callao
Port of discharge	Felixstowe

BL marked "Shipped on board 15 June 2008" – Is this okay?

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## Impact of the UCP 600

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### UCP 600 articles 20 and 21 - Bill of Lading / Non-Negotiable Sea Waybill

Revised wording:

If the bill of lading [non-negotiable sea waybill] 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 [non-negotiable sea waybill].

## Impact of the UCP 600

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### UCP 600 articles 20 and 21 - Bill of Lading / Non-Negotiable Sea Waybill

For example:

LC requires shipment from Callao to Felixstowe

Bill of lading shows:

Pre-carriage	River Sun
Place of receipt	Callao
Ocean vessel	River Moon
Port of loading	Miami
Port of discharge	Felixstowe

BL marked "Shipped on board 15 June 2008" – Is this okay?

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## Impact of the UCP 600

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### UCP 600 Article 22

#### Charter Party Bill of Lading

- Changed opening "containing an indication it is subject to a charter party";
- New signing capacity – Charterer; and
- Geographical range or region acceptable as port of discharge if stated in credit i.e., "Any European Port".

### UCP 600 Article 23

#### Air Transport Document

- Flight date in a notation will always be taken as the date of shipment whether flight stamp called for or not. No other information on the air waybill be accepted as flight date.

## Impact of the UCP 600

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### UCP 600 Article 23

#### Air Transport Document – ICC Opinion TA636 (October 2007)

**Q.** Paragraph 141 of the ISBP allows using IATA codes for airports instead of writing out their names in full. Can the same be applied for carriers' IATA codes, i.e., the AWB is signed by the agent of the carrier and the carrier is identified as BA, AF, LH or TK in the field "By First Carrier" or anywhere on the AWB defined as carrier by means of said codes?

- Paragraph 141 of ISBP publication 681 allows for the IATA airport codes to be used due to the fact that the three letter codes are widely used and understood by banks globally. However, whilst the two letter code that you have quoted are probably equally known and understood (due to the fact that they belong to some of the major airlines), it is a fact that goods are transported by air by a large number of carriers the majority of which would not be known or be capable of identification by a two letter code.

## Impact of the UCP 600

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### UCP 600 Article 24 - Road, Rail or Inland Waterway Transport Documents – ICC Opinion TA656 (April 2008)

**Q.** During determination of compliance of a presentation under a credit subject to UCP 600 calling for "International Consignment Note – Copy for Shipper" we had conflicting views as follows:

- (a) The presented document must bear the words or marking "Copy for shipper".
- (b) It is acceptable under sub-article 24 (b) (i) since it bears no marking indicating for whom it has been prepared.

- On the basis that the document did not indicate that it was intended for a party or function other than for use by the shipper, the absence of an indication that the document was the one intended to serve as the "copy for shipper" does not create a discrepancy.

## Impact of the UCP 600

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### UCP 600 Transport Articles 19-25

- Q. Effect of “sub-article 20 (a) (iv) is excluded”.
- Q. Effect of “sub-article 20 (c) is excluded”.
- Q. Effect of “sub-article 20 (d) is excluded”.
- Q. Effect of “sub-article 23 (c) is excluded”.

Other transport issues:

- Q. Effect of “Article 26 is excluded”.
- Q. Effect of “sub-article 26 (c) is not applicable”.

## Impact of the UCP 600

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### UCP 600 Article 27

#### Clean Transport Document

General Position: A bank will only accept a clean transport document. The word “clean” need not appear on a transport document.



- Q. What if the credit requires a bill of lading to be “marked” clean on board? ISBP provision in publication 645 (for example, paragraph 91) + UCP 500 language in sub-article 32 (a) versus UCP 600 article 27.



## Impact of the UCP 600

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### UCP 600 Article 28

#### Insurance Document and Coverage

- Signing authority includes reference to a proxy;
- Requirement in credit for insurance covering 110% = minimum;
- Risks to be covered at least between the two places stated in the credit; and
- Insurance documents may contain reference to any exclusion clause.

Q. Effect of "sub-article 28 (i) is not applicable".

## Impact of the UCP 600

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### UCP 600 Article 28

#### Insurance Document and Coverage - ICC Opinion TA638 (October 2007)

**Q.** We are receiving a number of LC's from different banks, largely from Country A and B where issuing banks are deleting reference to UCP 600 sub-articles 28 (h) and (i). We feel that this practice is improper and we have been refusing to advise these LC's. We deem the LC as unworkable. We believe that the issuers should clearly and concisely reference what insurance risks must be covered and/or indicate what risks cannot be excluded.

- By excluding the rule, the issuing bank is further compounding the lack of detail in their credit by prohibiting any exclusions to a risk that most insurance companies do not cover i.e., all risks. In previous opinions, the ICC Banking Commission has expressed the view that an insurance document covering ICC will be considered to be an all risks insurance document. This position also recognizes that ICC (A) does not cover 'all risks'.

## Impact of the UCP 600

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### UCP 600 Article 29

#### Extension of Expiry Date or Last Day for Presentation

##### Sub-article 29 (b):

If presentation is made on the first following banking day ..... a statement on its covering schedule that the presentation was made within the time limits extended in accordance with sub-article 29 (a).

- Q. Some banks in Asia are insisting on the exact language in sub-article 29 (b). Would not “all terms and conditions complied with” or similar, suffice?

## Impact of the UCP 600

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### UCP 600 Article 30

#### Tolerance in Credit Amount, Quantity and Unit Prices

- Use of sub-article 30 (c)?

- Q. Effect of “sub-article 30 (b) is excluded”.

## Impact of the UCP 600

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Tolerances in LCs – example:

- (c) up to 5% less than the amount of the credit provided that the quantity of the goods, if stated in the credit, is shipped in full and a unit price, if stated in the credit, is not reduced or that sub-article 30 (b) is not applicable.

Probably the most difficult to determine as the bank must be able to assess whether all the goods have been shipped. One example would be:

LC shows		Invoice shows	
EXW value	USD5000	EXW value	USD5000
FOB costs	USD 250	FOB costs	USD 200
Freight	USD 500	Freight	USD 450
CFR value	USD5750	CFR value	USD5650

Invoice evidences all goods shipped and that underdrawing is due to over-estimation of FOB and freight costs.

## Impact of the UCP 600

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UCP 600 Article 31  
Partial Drawings or Shipments

- (b) Clarification given that in the case of multiple presentations, on same means of conveyance and same journey, latest date = date of shipment; and
- (b) Clarification where more than one means of conveyance used within the same mode of transport (i.e., 2 trucks) and one or more sets of transport documents presented = partial shipment.

## Impact of the UCP 600

### UCP 600 Article 33

#### Hours of Presentation

A bank has no obligation to accept a presentation outside of its banking hours.



- Q. Reduced banking hours declared.
- Q. SWIFT broadcasts.
- Q. Linked to reduction in banking days for examination.

## Impact of the UCP 600

### UCP 600 Article 35

#### Disclaimer on Transmission and Translation

If a nominated bank determines ..... an issuing bank or confirming bank must honour or negotiate, or reimburse ....., even when the documents have been lost in transit between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.



- Q. Honour without documents?
- Q. Insist on replacement originals?
- Q. Insist on copies being provided?
- Q. Effect of "Article 35 para 2 is excluded".

## Impact of the UCP 600

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UCP 600 Article 35 - Disclaimer on Transmission and Translation – **ICC Opinion TA639 (October 2007)**

Q. Some Asian banks, in Hong Kong and South Korea namely, have issued letters of credit, available with any bank by negotiation, whose terms include a condition stating that:

### QUOTE

The issuing bank shall be entitled to require the nominated bank to send copies of all the documents presented under the credit and which the nominated bank has determined to be a complying presentation, were the documents thus determined to be complying lost in transit after being sent by the nominated bank. The issuing bank should be entitled to examine the copies of the documents to determine if they comply with the terms of the credit (except for the question of originality) and to refuse reimbursement to the nominated bank should the issuing bank determine that the (continued)

## Impact of the UCP 600

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UCP 600 Article 35 - Disclaimer on Transmission and Translation – **ICC Opinion TA639 (October 2007)**

Q. Some Asian banks, in Hong Kong and South Korea namely, have issued letters of credit, available with any bank by negotiation, whose terms include a condition stating that:

### QUOTE (continued)

documents do not comply with the terms of the credit. Article 35, to the extent it is inconsistent with the foregoing is expressly excluded.

□ The clause, as mentioned in the query is highlighting to the nominated bank, the issuing bank's requirements in the (unlikely) event that documents are lost in transit. This option being selected over one requesting the sending of documents in two lots.

## Impact of the UCP 600

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### UCP 600 Article 38

#### Transferable Credits

- (a) states that no bank is under an obligation to transfer;
- (b) provides definitions of

**Transferable credit** means a credit that specifically states it is “transferable”. A transferable credit may be made available in whole or in part to another beneficiary (“second beneficiary”) at the request of the beneficiary (“first beneficiary”);

**Transferring bank** means a nominated bank that transfers the credit or, in a credit available with any bank, a bank that is specifically authorized by the issuing bank to transfer and that transfers the credit. An issuing bank may be a transferring bank; **and**

**Transferred credit** means a credit that has been made available by the transferring bank to a second beneficiary.

## Impact of the UCP 600

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### UCP 600 Article 38

#### Transferable Credits

- (e) No longer a requirement for “irrevocable” instructions regarding amendments;
- (f) If transferred more than once, each transferred credit stands as an individual credit;
- (g) No change to items that can be reduced or curtailed but if original credit is confirmed, so must the transferred credit;
- (i) If first beneficiary fails to substitute or fails to correct substituted documents (where the 2<sup>nd</sup> beneficiary documents complied), 2<sup>nd</sup> beneficiary documents may be utilised; and
- (k) documents must be routed through transferring bank.

Q. Effect of “sub-article 38 (f) is excluded”.

## Impact of the UCP 600

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UCP 600 Article 38

Transferable Credits – ICC Opinion TA632 (October 2007)

**Q.** Can a transferring bank be protected by UCP 600 when they exclude the applicability of sub-article 38 (k) in case of a 100% transfer and no substitution of documents is to occur?

When transferring a credit, the transferring bank is responsible for creating the advice of transfer in favour of the second beneficiary. In the advice of transfer, where there is a 100% transfer, the transferring bank may make a modification of the rule to state that the documents are to be sent direct to the issuing bank. In such circumstances, the transferring bank should inform the issuing bank of this action.

## Impact of the UCP 600

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# Thank You

Contact : Gary Collyer, Collyer Consulting LLP

Email : [gary@collyerconsulting.com](mailto:gary@collyerconsulting.com)