

# UCP 600: Successfully Navigating Post-implementation Issues

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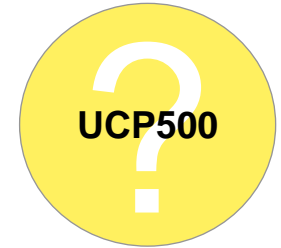
# 1. Post-Implementation Issues

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# Post-Implementation Issues

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## General Provisions and Definitions



### QUERY #1: UCP 500

## Should a Commercial LC be issued or confirmed after July 1st, 2007 subject to UCP 500?

- Individual banks decision
- Risks for operating under two different revisions:
  - Failure to indicate the correct revision in the LC
  - Document examination under the incorrect revision of UCP
- Recommendation:
  - Subject to UCP 600 as soon as possible

# Post-Implementation Issues

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## General Provisions and Definitions



### QUERY #2: UCP & STANDBYS

#### Should we issue and/or confirm a Standby LC subject to UCP instead of ISP98?

- Individual banks decision
- Recommendation:
  - Strongly recommend that ISP 98 be used.
  - ISP 98 was established specifically for Standby LCs and reflects generally accepted practice, custom and usage of Standby LCs

# Post-Implementation Issues

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## General Provisions and Definitions

### QUERY #4: NEGOTIATION MEANING

**When a bank is nominated as a negotiation bank and receives reimbursement instructions to claim on a reimbursing bank—upon negotiation of documents, can such bank claim and wait receipt of funds to pay beneficiary?**

- Basic principal of “negotiation”:
  - The purchase by the nominated bank of drafts (drawn on another bank) and/or documents by advancing or agreeing to advance funds against complying presentation
- By utilizing funds already received from the issuing bank, nominated bank is honoring by payment, not negotiation
- Negotiation LC must not include any reference to claiming reimbursement from a reimbursing bank or, in deed any reference to the debiting issuing bank’s account with the nominated bank (ICC Opinion TA569)

# Post-Implementation Issues

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## Liabilities & Responsibilities

### QUERY #6: ADVISING

#### **How should we process LC with incomplete or unclear instructions under UCP 600 that would have been notified under Article 12 of UCP 500?**

- Individual banks decision whether or not to advise such LC
- Recommendation:
  - To advise the LC notifying the beneficiary of the issues for which we have reverted to the issuing bank and that until such time as those issues are resolved to our satisfaction, if documents are presented, we will forward to the issuing bank without examination

# Post-Implementation Issues

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## Liabilities & Responsibilities

### QUERY #7: ADVISING

**In Article 9 of UCP 600 what is meant by the NEW provision that the advice accurately reflects the LC terms and conditions?**

- Sending all relevant details of the LC to the beneficiary

#### L/C

- Available with: Any Bank
  - By: Negotiation
- Reimburse: Claim at sight on Bank XYZ, New York Branch

#### Advice

- Available with: **Advising Bank**
  - By: Negotiation
- Reimburse: **Advising Bank holds special reimbursement instruction**

# Post-Implementation Issues

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## Liabilities & Responsibilities

### QUERY #8: NOMINATION

**Despite the Banco Santander vs. BNP Paribas case, should a bank prepay and/or discount a deferred payment undertaking incurred by itself for customers in view of NEW Article 12b of UCP 600?**

- Individual banks decision
- Sub-Article 12,b

### L/C

- Available with Citibank N.A. by deferred payment at 90 days after date of shipment
- Recommendation:
  - Will book these items on a case by case basis as approved by Trade Product and the relationship team

### Citibank N.A. is authorized to:

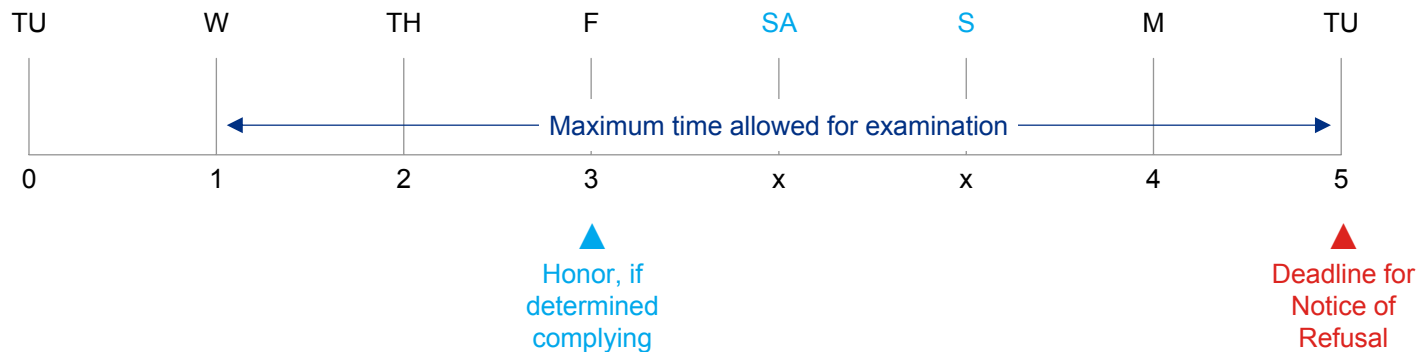
- Incur a Deferred Payment Undertaking (“DPU”); and
- “Prepay” its DPU (i.e., early payment before maturity)

# Post-Implementation Issues

## Examination of Documents

### QUERY #10: STANDARD FOR EXAMINATION OF DOCUMENTS

**Under sub-Article 14b of UCP 600, is it acceptable not to effect payment until the 5th banking day regardless when we determine the presentation complies with the LC?**



- Honor as per number of days delay as an integral part of the LC

# Post-Implementation Issues

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## Examination of Documents

### QUERY #11: STANDARD FOR EXAMINATION OF DOCUMENTS

#### In sub-article 14f what does “fulfill the function” mean?

Example: L/C calls for Inspection Certificate

<p><i>Inspection Certificate</i></p> <p><b><i>Goods are certified to be of Singapore origin.</i></b></p> <p><i>Signed</i> _____</p> <p><i>Dated</i> _____</p>	<p><b><i>Goods have been inspected and are certified to be in order.</i></b></p> <p><i>Signed</i> _____</p> <p><i>Dated</i> _____</p>
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# Post-Implementation Issues

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## Examination of Documents

### QUERY #12: STANDARD FOR DOCUMENT EXAMINATION

**Should a non-documentary condition be disregarded even if it can be linked to a required document?**

**“The vessel cannot be more than 20 years old.”**

**“Goods must be of USA origin.”**

**“Containers must be FCL.”**

- Should to the extent possible avoid issuing and/or confirming LCs with non-documentary conditions
- Non-documentary conditions will be ignored to the extent that no evidence (document) is required for compliance
- If a stipulated document contains data that is in
- Conflict with that condition, then the document is not in compliance under Article 14,d

# Post-Implementation Issues

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## Examination of Documents

### QUERY #13: DISCREPANT DOCUMENTS, WAIVER AND NOTICE

**Under Article 16 of UCP 600, why is the following NEW option included for a Notice of Refusal? “The issuing bank is holding documents until it receives waiver from applicant and agrees to accept it, or receives further instructions from presenter prior to agreeing to accept the waiver.”**

- To avoid the inclusion of the following in the LC terms:
  - “In the event that documents presented hereunder are determined to be discrepant, we may seek a waiver of such discrepancies from the applicant. Should such a waiver be obtained, we may release the documents and effect settlement, notwithstanding any prior communication to the presenter that we are holding documents at the presenter's disposal, unless we have been instructed otherwise by the presenter prior to our release of documents.”

# Post-Implementation Issues

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## Disclaimers

### QUERY #14: LOST DOCUMENTS

**Under Article 35 of UCP 600, where the documents are lost in transit between the nominated bank and the issuing bank which bank is responsible?**

- Provided the nominated bank has acted on its nomination by examining the documents and determining compliance (whether or not they have honored or negotiated) and sent the documents to the issuing bank in the manner that may be described in the credit, the issuing bank is bound to honor if the documents did comply
- The issuing bank, however, will be entitled to request copies of the documents so that they may ascertain that the documents did comply at the time they were presented to the nominated bank

## 2. Modification and Exclusion of UCP Articles

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# Modification and Exclusion of UCP Articles

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## Background

1. LCs originating primarily from Middle East, but some other regions as well
2. Many exclusions or modifications are for wording or clauses that existed under UCP 500
3. Sometimes several exclusion clauses in same LC
4. Special wording may imply (not expressly state) exclusion or modification
5. Unintended consequences, e.g., one or more parties declining to accept LC due to perceived unacceptable risks

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #1:

LC Language: “Article 10f is excluded.”

Purpose of Article 10f: LC terms and conditions remain in force until the beneficiary communicates acceptance of the amendment.

### Consequences of Excluding/Modifying:

1. Inconsistent with irrevocable character of LC.
2. ICC Opinions establish that silence does not constitute agreement.

Note: Article 10f is not intended to prohibit a provision in an amendment that would effectively cause an amendment to expire after a certain period of time if not accepted, or a provision within the LC that makes a proposed amendment automatically effective.

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #3:

LC Language: “Article 28i is not applicable.”

Purpose of Article 28i: An insurance document may contain reference to any exclusion article.

### Consequences of Excluding/Modifying:

May result in an unworkable LC for the beneficiary as the insurance industry advised the UCP 600 drafting group that all insurance documents would be required by the re-insurance market to contain exclusion clauses, e.g., terrorism.

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #4:

LC Language: “Article 35 Paragraph 2 is excluded.”

Purpose of Article 35, Parag 2: Cover mailing risk

### Consequences of Excluding/Modifying:

Nominated Bank may refuse to honor or negotiate as its interests are not being protected in the event it elects to act under nomination.

Beneficiary may refuse to accept the LC as its interest are not being protected in the event complying documents are presented to the nominated bank.

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #6:

LC Language: “Article 38,k is not applicable”

Purpose of Article 38,k: Purpose of this sub-article is for the transferring bank to obtain substitution of documents from the first beneficiary.

### Consequences of Excluding/Modifying:

Unless the LC is transferred in its entirety and no substitution of documents is required, transferring bank should not accept this exclusion.

Transferring is to maintain control of the flow of the documents.

# Modification and Exclusion of UCP Articles

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## Avoiding Unintended Consequences

### How to avoid unintended consequences?

1. UCP needs to be considered as an integral whole
2. Determine consequences of excluding/modifying any UCP provision
3. May not suffice to state article is excluded ... address voids
4. Need sufficient details to avoid ambiguity as to interpretation or application

### 3. Using ISBP 681 to Facilitate Payment

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# Using ISBP 681 to Facilitate Payment

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## Type of ICC publication

- Updated (not revision) ISBP 681 effective July 1st, 2007 with UCP 600
- Official Publication of the ICC Banking Commission
- Not “Guidelines” or “Rules”
- Types of ICC Publications:
  - A: Rules (UCP, URR, URC, URDG, etc.)
  - B: Decisions
  - C: Approved by the Banking Commission
  - D: Work not submitted for approval

# Using ISBP 681 to Facilitate Payment

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## ISBP 645 vs. ISBP 681

- Style
- Terminology
- Referencing UCP 600 articles
- Removing paragraphs of former ISBP—now in UCP 600
- Making technical adjustments in grammar, punctuation, etc.
- Revising sections of the ISBP no longer valid in the new UCP

Full revision not expected for few years ...

# Using ISBP 681 to Facilitate Payment

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## Structure

Total of 185 paragraphs (not “articles”—to avoid confusion with UCP articles):

- Introduction
- Preliminary Considerations
- General Principles
- Specific Documents

# Using ISBP 681 to Facilitate Payment

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## Understanding Proper Usage

- Does not amend UCP
- Explains how UCP practices are applied by documentary practitioners.
- Consistent with UCP and Opinions and Decisions of the ICC Banking Commission
- Laws in some countries may compel a different practice

# Using ISBP 681 to Facilitate Payment

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## Understanding Proper Usage

- Reflects ISBP for **all parties** to a documentary credit
- Examples are for purpose of illustration and not exhaustive
- Take into account LC that **expressly** or **implicitly** excludes or modifies or affects UCP
- ISBP 681 incorporation in LC is **discouraged**

# Using ISBP 681 to Facilitate Payment

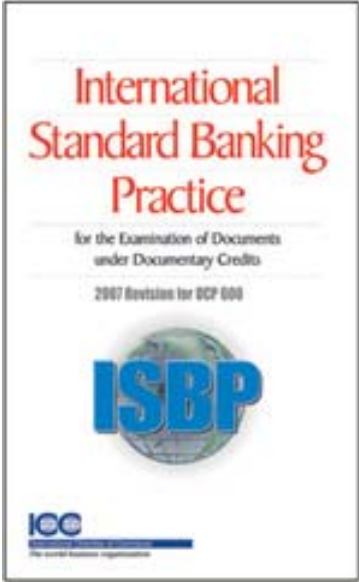
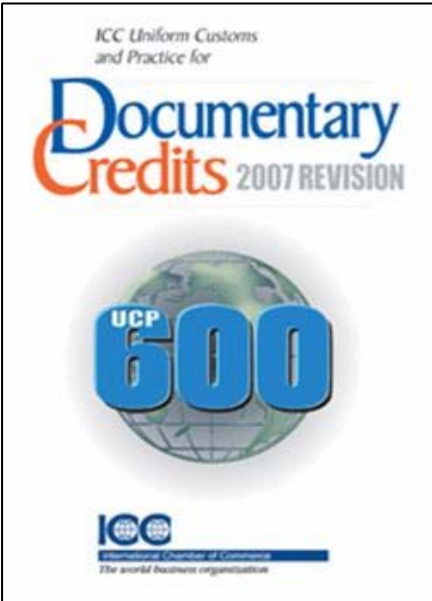
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## Benefits

- Reduces
  - LC drafting
  - Disputes
  - Discrepancies
  - Litigation
  - Costs
- Expedites
  - Payments to beneficiaries
  - Documents to applicants (reducing demurrage)
- Improves viability of the LC as a method of facilitating payment

# Prepared for Change

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# Appendix

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# Post-Implementation Issues

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## General Provisions and Definitions



### QUERY #3: UCP & STANDBYS

**If issue and/or confirm a Standby LC subject to UCP, should we incorporate special language or delete articles that do not apply?**

- Recommendation:
  - To avoid possible dispute, articles not applicable should be removed. (Example: Articles 32, 36)

# Post-Implementation Issues

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## General Provisions and Definitions

### QUERY #5: CREDITS vs. CONTRACTS

**How should we handle a LC with provision that “goods description as per pro forma invoice attached which becomes an integral part of the L/C”?**

- Such provision means presentation must also comply with the terms and conditions of the entire pro forma invoice (banks should not be involved)
- Recommendation:
  - Reject to participate in such LC
  - Incorporate the relevant portion of the pro forma invoice, such as goods description in LC
  - Indicate in the LC clearly the relevant portion of the pro forma invoice applicable to the LC

# Post-Implementation Issues

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## Liabilities & Responsibilities

### QUERY #9: BANK-TO-BANK REIMBURSEMENTS

#### Why would an issuing bank issue a LC subject to the conditions of Article 13b instead of URR 525?

- Should issue LC subject to URR 525  
(Field 40E: UCPURR LATEST VERSION)
- If not:
  - Issuing bank should indicate in its Reimbursement Authorization it is subject to Article 13,b
  - May not be acceptable to the Reimbursing Bank

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #2:

LC Language: “Article 14f is excluded.”

Purpose of Article 14f: A document issued by any party or data content will be accepted provided LC stipulated the issuer of the document and the data content.

### Consequences of Excluding/Modifying:

Without any further comment, the intention is unclear as to the purpose of the exclusion. How is the nominated bank supposed to review the documents? Is the exclusion implying that banks cannot accept documents as presented even though the issuing bank's credit was deficient in the name of the issuer or its data content?

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #3:

LC Language: “Article 14I is excluded.”

Purpose of Article 14I: A document may be issued by any party provided that the transport document meets the requirement of the respective articles.

### Consequences of Excluding/Modifying:

Intention is unclear as to the permitted issuer of the transport document and the impact in relation to signing of the document, e.g., even with this exclusion a freight forwarder issuing a transport document and signing as carrier would be acceptable.

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #5:

LC Language: “Article 36 is excluded.”

Purpose of Article 36: Credit expires during events beyond its control.

### Consequences of Excluding/Modifying:

Without any further comment, it is unclear for what period after resumption of business that the issuing bank is liable.

Issuing bank may have to keep the LC open for an inordinate period of time.

# Modification and Exclusion of UCP Articles

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## Examples of Unintended Consequences

### EXAMPLE #7:

**LC Language:** Various clauses, requirements, conditions not expressly excluding or modifying UCP articles

**Purpose:** Modify UCP

**Consequences of Excluding/Modifying:**

Beware ... may introduce ambiguity to clearly interpreting and applying UCP

# Using ISBP 681 to Facilitate Payment

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## Defining International Standard Banking Practice

### Reference to 'international standard banking practice' in UCP 600:

- UCP 600 Article 2—definition of “Complying presentation” includes reference to ‘international standard banking practice’
- Prior to ISBP publication, ‘international standard banking practice’ and basis for determining was not always clear

# Using ISBP 681 to Facilitate Payment

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## Correctly Applying UCP

Establishes correct practices for reference by:

- Existing LC practitioners/users
- New users applicants, beneficiaries, banks, carriers, forwarders, insurance companies, et al.

# Any Questions?

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[www.tradelearning@citi.com](mailto:www.tradelearning@citi.com)

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