

Article by article

- a critical walkthrough the “Commentary on UCP 600”

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Introduction

This document provides article by article comments to the “Commentary on UCP 600”. This may seem odd – as the “Commentary” are already comments! However the purpose of this paper is to highlight the places in the UCP 600 – where the rules has been changed – which results in a potential change in practice – providing an evaluation as to whether practices has in fact changed or not.

The aim is to help bankers understand and apply the UCP 600 correctly.

[Disclaimer: The advice and guidance found in this paper is given without any responsibility or liability on the part of the writer]

Flags:

CH: A change in practice that seem clear and to the point.

CL: A clarification of practice – but not a real change.

CA: A change in practice – that is more or less ambiguous.

Article	Comments	Flag
1	<p>Application of UCP 600 (page 12)</p> <p>The real significant change here is that the so-called SWIFT rule has been removed, which means that no matter how the LC is issued it must “expressly” indicate the set of rules to which it is subject.</p> <p>Advice:</p> <ol style="list-style-type: none"> 1. Issuing banks should always indicate the applicable rules in the LC e.g. by using the relevant SWIFT codes: <ul style="list-style-type: none"> * UCP LATEST VERSION * EUCP LATEST VERSION * UCPURR LATEST VERSION * EUCPURR LATEST VERSION * ISP LATEST VERSION * OTHR <p>Or by clear wording in the LC.</p> <ol style="list-style-type: none"> 2. Advising, nominated and confirming banks should make sure that applicable rules are mentioned when handling the LC. If they are not they should contact the issuing bank. 	CH
2	<p>“Applicant” (page 15)</p> <p>The role of the applicant based on the new definition has been discussed in the LC community. The fact that – as per the definition – the applicant is the party on whose request the LC is issued – and not necessarily the “customer”, has lead some commentators to ask what effect that would have on sub-article 18(a) – saying that the invoice must be made out in the name of the “applicant”. E.g. can it be made out to another party than the one mentioned as “applicant” in the LC. The “Commentary” does not answer this question.</p>	CA

	<p>Advice: If the invoice is to be issued to a party other than the one mention as “applicant” in the LC, the LC should so authorize.</p>	
2	<p>“Negotiation” (page 22) The comments made to “negotiation” do in fact clarify the concept a bit more that the UCP 600 wording, as it says “<i>An agreement to advance funds if and when funds are received from the issuing bank is not “negotiation” under this definition</i>”.</p>	CL
3	<p>Irrevocable (page 26) A credit is now “irrevocable” even if there is no indication to that effect. The tricky part is where an LC under UCP 600 states that it is “revocable” – which rules would then apply? The “Commentary” does not answer this question.</p> <p>Advice: If an LC received states that it is “revocable” without further indication, contact the issuing bank for a clarification.</p>	CH
6	<p>Freely negotiable (page 33) An LC can now be made freely available both by payment, deferred payment, acceptance and negotiation.</p>	CH
6	<p>Availability and place for presentation (page 33) It is now made clear that a credit available with a nominated bank is also available with the issuing bank – and that a place for presentation other than that of the issuing bank is in addition to the place of the issuing bank.</p>	CL
6	<p>Draft drawn on the applicant (page 34) It is made clear that an LC calling for a draft on the applicant would be treated as any other required document – therefore the LC must state the requirements for such document.</p> <p>Advice: Great care should be observed when an LC calls for a draft drawn on the applicant – so that the obligation by the issuing bank is <u>not</u> depending on whether or not the draft is accepted / paid by the applicant.</p>	CL
7	<p>Prepay or purchase (page 37) The obligation of the issuing bank to reimburse a nominated bank that has honoured or negotiated – is not depending on whether the nominated bank has prepaid or purchased. This is an important addition trying to prevent cases like the Banco Santander case. This article has a clear link to article 12 (b).</p>	CH

8	<p>Prepay or purchase (page 43)</p> <p>The obligation of the confirming bank to reimburse a nominated bank that has honoured or negotiated – is not depending on whether the nominated bank has prepaid or purchased. This is an important addition trying to prevent cases like the Banco Santander case. This article has a clear link to article 12 (b).</p>	CH
9	<p>Advising banks obligations (page 46)</p> <p>Article 9 underlines the obligations on the advising bank:</p> <ol style="list-style-type: none"> 1. That the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit, and 2. that the advice accurately reflects the terms and conditions of the credit <p>As for 1. the wording “satisfied itself” is explained further by saying: <i>“the new provision aligns itself more closely with the standard practices of banks as to what they actually do in authenticating a documentary credit or amendment”</i>.</p>	CH
9	<p>Second advising bank (page 46)</p> <p>A new concept introduced in UCP 600 is “<i>second advising bank</i>”. The LC community has discussed what is required for a bank to become a second advising bank; is it the advising bank that asks another bank to advise the LC – or must that “request” come from the issuing bank. How can a second advising bank accept an obligation to the effect “<i>that the advice accurately reflects the terms and conditions of the credit</i>”, when the second advising bank has not seen the original credit – but only the advice from the “advising bank”? The “Commentary” does not provide a definite answer.</p>	CA
10	<p>Amendments into force unless rejected (page 49)</p> <p>UCP 600 includes position paper no. 1 principle that an amendment should not include a statement to the effect that if it is not rejected with a certain period of time then it is accepted. This is duly reflected in the “Commentary”.</p>	CL
12	<p>Nomination = authorization to prepay or purchase (page 53)</p> <p>It is now stated clear and precise that “<i>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</i>” This is an important addition trying to prevent cases like the Banco Santander case. This article has a clear link to sub-articles 7(c) and 8(c),</p>	CH
13	<p>Reimbursements should not be made subject to any expiry date (page 57)</p> <p>The rules are now clear on the point that reimbursements should not be made subject to any expiry date.</p>	CH

14	<p>Obligation of a nominated non-confirming bank (page 62)</p> <p>It is clarified in the “Commentary” that presentation to a nominated non-confirming bank does not (unless agreed to by the bank) obligate that bank – and as a consequence of that the nominated bank is not obligated to observe the following provisions:</p> <ol style="list-style-type: none"> 1. Sub-article 14(a); No obligation to examine the documents 2. Sub-article 14(b); The fact that the nominated bank do not refuse documents within the given time frame (maximum 5 days) does not obligate the bank to honour or negotiate. 	CL
14	<p>Time for examination of documents (page 62)</p> <p>The UCP 500 rule “reasonable time not exceeding seven days” has been replaced with “maximum five banking days”. The LC community has been discussing whether or not this “maximum” includes a “hidden” reasonable time rule.</p> <p>This rule should most likely be read in context with article 15 – complying presentation, which e.g. says that “when” an issuing bank determines that a presentation is complying it must honour. This would mean that at that time (whether after 2 or 3 days) the process of honour or negotiation must begin. I.e. the drafting group makes a distinction between the “maximum 5 banking days” and the time when honour or negotiation must be made. To me this seems as far as one can go.</p> <p>Advice:</p> <ol style="list-style-type: none"> 1. Keep track records of what has been done when. 2. Make sure not to use the “maximum 5 banking days rule” as a guide determining time of payment. 	(CH)
14	<p>Data must not conflict with (page 64)</p> <p>The “Commentary” includes an attempt to describe the new UCP 600 concept that “Data must not be in conflict ...”</p> <p>This concept has been highly debated in the LC community. It remains to be seen how this will be interpreted in practice. The statements given by the Drafting group includes:</p> <ol style="list-style-type: none"> 1. The term is “narrower” than the UCP 500 concept “inconsistent with”. 2. It does not require mirror image of data 3. The result will be a reduction of discrepancies <p>Naturally point 3 above is a statement of hope by the drafting group – and only time will tell if this is correct.</p> <p>It seems that the purpose of the change is clear – and given that no practice exists yet – the explanation goes as far as it can.</p>	(CH)
14	<p>Linkage (page 65)</p> <p>In describing UCP 600 sub-article 14(e) (description of goods in documents other than the commercial invoice) it is stated that:</p> <p><i>“UCP 600 does not refer to, require or imply that linkage is necessary between or among documents”</i></p> <p><u>If</u> this is correct then this is clearly a change in practice. ICC Opinion R251 reads:</p> <p><i>“Unless the credit states otherwise, there is no requirement that a description of goods (full or in general terms) must appear on all documents. However, a bank requires to see some form of «linkage» between the documents presented and/or the letter of credit terms. A goods description, in full or general terms, would be one means of achieving this.”</i></p>	CA

	<p>Advice:</p> <ul style="list-style-type: none"> It would be expected under international standard banking practice that banks will look for some kind of “evidence” in a document that it is in fact related to the specific transaction. Therefore it is advisable to relay this message to beneficiaries in order to avoid problems in this respect. 	
14	<p>Return or forward documents not required under the LC (page 65)</p> <p>Article 14 (g) states that documents presented but not required under the LC may be returned to the presenter. Compared to the equivalent UCP 500 rule it is not stated that document may be forwarded without responsibility.</p> <p>The LC community have been discussing if issuing banks are still allowed to forward documents without responsibility. Some have argued that they are not.</p> <p>The “Commentary” does not provide a definite answer to this question – so it is unclear if practice has changed.</p> <p>Advice:</p> <p>Avoid to the extent possible to forward documents not required under the LC without responsibility.</p>	CA
14	<p>Non-documentary conditions (page 66)</p> <p>Sub-article 14(h) is strange since the content of the article is identical to UCP 500: Conditions stated in the LC not describing which document to reflect the requirement will be deemed not stated and will be disregarded.</p> <p>It is clear however that UCP 600 provides a change in practice – since Position Paper 3 is not applicable under UCP 600.</p> <p>The exact change in practice is however not clear from reading the “Commentary”.</p> <p>The “Commentary” says that “.. <i>the bank should simply treat the condition as if it did not exist and disregard it</i>”</p> <p>Sounds like clear talk; however it goes on by saying that “<i>The data in documents will still be subject review under sub article 14 (d) to ensure that any data is not conflicting</i>”</p> <p>One can only guess as to the reach of that statement?</p> <p>Advice:</p> <ul style="list-style-type: none"> Issuing banks: Always make sure that any LC requirement clearly mentions in which document it should appear. Advising banks: When receiving LC including “non-documentary conditions” revert to the issuing bank for clarification. 	CA
14	<p>Address of the applicant</p> <p>Sub-article 14(j) is new to the UCP. It introduces two new principles – and an exception:</p> <p>Principle 1:</p> <p>When the addresses of the beneficiary and the applicant appear in any stipulated document, they need not be the same as those stated in the credit or in any other stipulated document, but must be within the same country as the respective addresses mentioned in the credit.</p> <p>Principle 2:</p> <p>Contact details (telefax, telephone, email and the like) stated as part of the beneficiary’s and the applicant’s address will be disregarded.</p>	CA

	<p>Exception: However, when the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document subject to articles 19, 20, 21, 22, 23, 24 or 25, they must be as stated in the credit.</p> <p>The above opens a number of questions, like:</p> <ul style="list-style-type: none"> • Is the terms “within the same country” a clear rule – considering e.g. “China versus Hong Kong” or “Great Britain versus England versus United Kingdom”. • What does “as stated in the credit” mean? Compared to “not in conflict” it seems like a very “vigorous” rule. Is spelling mistake acceptable? Would a missing “country code” in a phone number constitutes a discrepancy. <p>The “Commentary” does not answer any of the above.</p> <p>Advice:</p> <ol style="list-style-type: none"> 1. Take care about “countries” 2. When using the applicant in transport documents – make sure to make no mistakes – i.e. preferable use “copy/paste”. 	
15	<p><i>When to honour or negotiate (page 70)</i></p> <p>Article 15 is a new invention – saying the obvious – but missing from UCP 500 – namely <i>when</i> a bank must pay (or more precise honour or negotiate). The principle is that “when” an issuing/confirming bank determines that a presentation is complying it must honour. This would mean that at that time the <i>process</i> of honour of negotiation must begin. I.e. the drafting group makes a distinction between the “maximum 5 banking days” and the time when honour or negotiation must be made. To me this seems as far as one can go.</p> <p>Advice:</p> <ol style="list-style-type: none"> 1. Keep track records of what has been done when. 2. Make sure not to use the “maximum 5 banking days” rule as a guide determining time of payment. 	(CH)
16	<p><i>Maximum 5 banking days (page 72)</i></p> <p>The “Maximum 5 banking days rule” as mentioned in sub-article 14(b) has been build into article 16. See relevant comment above</p>	(CH)
16	<p><i>The process for refusing documents (page 73-74)</i></p> <p>Although wording has changed – the principles are the same. There are however some adjustments worth noting:</p> <ul style="list-style-type: none"> • The “Commentary” says “<i>Note that the requirement to state that the bank is “holding the documents at the disposal of the presenter” is no longer contained in the UCP</i>” What the article now says is “<i>that the bank is holding the documents pending further instructions from the presenter</i>”. It is not clear from the “Commentary” if this signifies a change in practice. 	(CH)

	<ul style="list-style-type: none"> Added is two additional options as to what the bank is doing with the documents: <i>* that the issuing bank is 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;</i> and <i>* that the bank is acting in accordance with instructions previously received from the presenter</i> As for the last one it is not clear from the “Commentary” under which circumstances this one would be relevant. The concept of honour or negotiation under reserve or indemnity is no longer covered in UCP 600. It is not clear from the “Commentary” if this signifies a change in practice. It is now an option for the bank just to return the documents to the presenter. On this issue the “Commentary” indicates that such action will be subject to a discussion with the presenter. <p>Advice:</p> <p>Make sure to adjust IT systems, routines and guidelines to the structure laid out in article 16.</p>	
17	<p><i>Invoices to be signed (page 75)</i></p> <p>Omitted from the UCP is the provision to the effect that “<i>copies need not be signed</i>”. This was later included into the ISBP (2007) – and is now reflected in paragraph 32. This has however resulted in questions regarding various types of LC requirements. One of those are mentioned in one of Gary Collyers newsletters¹ where it is said that:</p> <p><i>An example of this is where a credit requires presentation of a signed invoice in 3 copies. Under sub-article 17 (e) this means at least one original and the remaining number in copies. The beneficiary can create one invoice and sign, then copy it twice or, they could produce three invoices and sign them all thereby creating 3 originals (according to the content of sub-article 17 (b)).</i></p> <p>The question that remains to be answered is if one signed original – and two unsigned copies are presented. Would that be acceptable under the above example? The “Commentary does not provide the answer.</p>	CA
18	<p><i>Invoice must be in the same currency as the LC (page 78)</i></p> <p>An addition to the UCP (adopted from ISBP) is the principle that the invoice must be made out in the same currency as the LC. The “Commentary” provides 3 examples to illustrate this point.</p> <ul style="list-style-type: none"> Invoice is in the same currency as the LC. This is (of course) acceptable Invoice is in the same currency as the LC – showing a local currency equivalent. This is also acceptable. Invoice is in a local currency – showing the LC currency equivalent. This is not acceptable. <p>Advice:</p> <p>If the invoice is to be made out in another currency than that of the LC, make sure to reflect that in the LC.</p>	CL

¹ <http://www.coastlinesolutions.com/news7.htm>

18	<p>Goods description (page 78)</p> <p>The UCP 500 provision regarding goods description has been split into two in UCP 600 – so that the part related to the invoice is in UCP 600 article 18 (it must correspond with that in the LC) – and the part relating to documents other than the invoice is in UCP 600 article 14 (e). There is not change in practice. The comment given in the “Commentary” is regarding the concept “correspond with” – and it is stated that “<i>no reason to change the current interpretation or construction of this sub-article</i>”.</p>	CL
19	<p>New title (page 79)</p> <p>The article have changed title from “<i>Multimodal Transport Document</i>” to “<i>Transport Document Covering at Least Two Different Modes of Transport</i>” The purpose was to find a new title that would reflect the type of document – and not point to a specific document.</p>	CL
19	<p>Master (page 82)</p> <p>The “Commentary” reads “<i>The only exception to the signing requirements occurs when the transport document is signed by an agent for or on behalf of the master. In this event it is not necessary to state the masters name</i>” This would then logically mean that that the name of the master must appear when the master is signing. Professors Jim E. Byrnes book “<i>The Comparison of UCP600 & UCP500</i>” reads (page 166): “<i>UCP600 Article 19(a)(i) does not require that the name of the master be stated</i>”. The conclusion reached by Mr. Byrne seems logic from the UCP 600. If you compare the signing requirements between the articles you will e.g. note the following:</p> <ul style="list-style-type: none"> • 20(a)(i) says: “<i>indicate the NAME of the carrier and be signed by</i>”. • 22(a)(i) says: “<i>be signed by the master ...</i>” <p>From strict reading of the UCP 600, there are no requirements that the “name” of the <i>Master</i> be mentioned in any event. As such the “Commentary” seems clear - but it is contradicting the rules - and one may just wonder how the Banking Commission would vote on this one?</p>	CA
19	<p>Multimodal Transport Operator (page 83)</p> <p>It is no longer an option that a “<i>Multimodal Transport Operator</i>” signs the document.</p>	CH
19	<p>Evidence that date of shipment relates to dispatch, taking in charge or shipment (page 83)</p> <p>The structure of the comments given to each to the UCP 600 transport articles are identical – providing variations where it be relevant to the specific mode to transport / transport document. For example in article 20 (Bill of lading) it must be clear that the on board notation relates to the port required in the LC. The same principle is also adopted in the comments to the multimodal transport document, which reads “<i>.. but also that there is evidence that the date of shipment relates to the dispatch, taking in charge or shipment from the place stated in the documentary credit and not from any other place ...</i>” Taking into account that date of shipment for a multimodal transport document may merely be “the date of issuance of the transport document” – this statement seems rather awkward. It is hard to perceive what practical consequence this statement will have.</p>	CA

20	<p>Master (page 90)</p> <p>The “Commentary” reads <i>“The only exception to the signing requirements occurs when the transport document is signed by an agent for or on behalf of the master. In this event it is not necessary to state the masters name”</i></p> <p>This would then logically mean that that the name of the master must appear when the master is signing.</p> <p>Professors Jim E. Byrnes book <i>“The Comparison of UCP600 & UCP500”</i> reads (page 174): <i>“UCP600 Article 20(a)(i) does not require that the name of the master be stated”</i>.</p> <p>The conclusion reached by Mr. Byrne seems logic from the UCP 600. If you compare the signing requirements between the articles you will e.g. note the following:</p> <ul style="list-style-type: none"> • 20(a)(i) says: <i>“indicate the NAME of the carrier and be signed by”</i>. • 22(a)(i) says: <i>“be signed by the master ...”</i> <p>From strict reading of the UCP 600, there are no requirements that the “name” of the <i>Master</i> be mentioned in any event.</p> <p>As such the “Commentary” seems clear - but it is contradicting the rules - and one may just wonder how the Banking Commission would vote on this one?</p>	CA
20	<p>Place of receipt different from port of loading (page 91)</p> <p>In the LC community it has been discussed whether or not the UCP 600 would be different from UCP 500 in the situation where the transport document would show a place of receipt different from the port of loading as required by the LC.</p> <p>The position given in the “Commentary” (and for that matter in ICC Opinion TA.635rev) point in the direction that practices will be the same as that of UCP 500. It is however unclear if it is 100% identical – or if there are nuances. The “Commentary” dedicates a full page to this topic – whereas it was clearly stated in UCP 500 in only 10 lines (!!)</p> <p>My impression is that the practice laid out by the drafting group is <u>95% identical to that of UCP 500</u>, in that there may be situations where it is totally clear from the transport document that the on board notation relates to the port of loading required by the LC.</p> <p>This is however only an impression, primarily based on answers given at the ICC Banking Commission meeting 24 and 25 October 2007, so no conclusive evidence to that effect is available.</p> <p>Advice: Since practice going forward is not 100% clear, better to apply to the “old” UCP 500 rule on this issue, in order to avoid problems.</p>	CA
21	<p>Master (page 98)</p> <p>The “Commentary” reads <i>“The only exception to the signing requirements occurs when the transport document is signed by an agent for or on behalf of the master. In this event it is not necessary to state the masters name”</i></p> <p>This would then logically mean that that the name of the master must appear when the master is signing.</p> <p>Professors Jim E. Byrnes book <i>“The Comparison of UCP600 & UCP500”</i> reads (page 182): <i>“UCP600 Article 21(a)(i) does not require that the name of the master be stated”</i>.</p> <p>The conclusion reached by Mr. Byrne seems logic from the UCP 600. If you compare the signing requirements between the articles you will e.g. note the following:</p> <ul style="list-style-type: none"> • 20(a)(i) says: <i>“indicate the NAME of the carrier and be signed by”</i>. • 22(a)(i) says: <i>“be signed by the master ...”</i> 	CA

	<p>From strict reading of the UCP 600, there are no requirements that the “name” of the <i>Master</i> be mentioned in any event. As such the “Commentary” seems clear - but it is contradicting the rules - and one may just wonder how the Banking Commission would vote on this one?</p>	
21	<p>Place of receipt different from port of loading (page 91)</p> <p>In the LC community it has been discussed whether or not the UCP 600 would be different from UCP 500 in the situation where the transport document would show a place of receipt different from the port of loading as required by the LC. The position given in the “Commentary” (and for that matter in ICC Opinion TA.635rev) point in the direction that practices will be the same as that of UCP 500. It is however unclear if it is 100% identical – or if there are nuances. The “Commentary” dedicates a full page to this topic – whereas it was clearly stated in UCP 500 in only 10 lines (!! My impression is that the practice laid out by the drafting group is <u>95% identical to that of UCP 500</u>, in that there may be situations where it is totally clear from the transport document that the on board notation relates to the port of loading required by the LC. This is however only an impression, primarily based on answers given at the ICC Banking Commission meeting 24 and 25 October 2007, so no conclusive evidence to that effect is available.</p> <p>Advice: Since practice going forward is not 100% clear, better to apply to the “old” UCP 500 rule on this issue, in order to avoid problems.</p>	CA
22	<p>Charterer (page 105)</p> <p>A Charter party bill of lading may now be signed by a charterer or a named agent for or on behalf the charterer.</p>	CH
22	<p>Master (page 105)</p> <p>The “Commentary” reads “<i>The only exception to the signing requirements occurs when the transport document is signed by an agent for or on behalf of the master. In this event it is not necessary to state the masters name</i>” This would then logically mean that that the name of the master must appear when the master is signing. Professors Jim E. Byrnes book “<i>The Comparison of UCP600 & UCP500</i>” reads (page 189): “<i>UCP600 Article 22(a)(i) does not require that the name of the master be stated</i>”. The conclusion reached by Mr. Byrne seems logic from the UCP 600. If you compare the signing requirements between the articles you will e.g. note the following:</p> <ul style="list-style-type: none"> • 20(a)(i) says: “<i>indicate the NAME of the carrier and be signed by</i>”. • 22(a)(i) says: “<i>be signed by the master ...</i>” <p>From strict reading of the UCP 600, there are no requirements that the “name” of the <i>Master</i> be mentioned in any event. As such the “Commentary” seems clear - but it is contradicting the rules - and one may just wonder how the Banking Commission would vote on this one?</p>	CA
23	<p>Date of shipment (page 111)</p> <p>A material change is that where the air consignment note indicates an actual date of dispatch – that date will be deemed to be date of shipment – regardless if the LC calls for such date.</p>	CH

24	<p>Carrier on railway bill (page 118)</p> <p>When a railway company signs a railway bill it is not needed that it is done “as carrier”.</p>	CH
24	<p>Railway bills marked “Duplicate” (page 118)</p> <p>The UCP 600 includes the rule that a railway bill marked duplicate will be accepted as an original. In the LC community it has been this has been discussed – as some would argue that such phrase be superfluous. The “Commentary” attempts to address this by saying that “<i>International rail waybills in some parts of the world are marked “Duplicate” and are acceptable as original railway bills.</i>”</p> <p>One may still wonder what would be the consequence of this rule. Would e.g. this “Duplicate” indicate that there also exist an “Original” – and would that one be required as well?</p> <p>In any case this rule – as well as the explanations in the “Commentary” opens a number of questions.</p>	CA
26	<p>Charges additional to freight (page 126)</p> <p>UCP 500 sub-article 33(d) reads: <i>Banks will accept transport documents bearing reference by stamp or otherwise to costs additional to the freight, such as costs of, or disbursements incurred in connection with, loading, unloading or similar operations, unless the conditions of the Credit specifically prohibit such reference.</i></p> <p>UCP 600 sub-article 26(c) reads: <i>A transport document may bear a reference, by stamp or otherwise, to charges additional to the freight.</i></p> <p>From a strict reading it seems that UCP 600 widens the scope quite a lot. Under UCP 500 the “type” of cost was mentioned. This is not the case under UCP 600.</p> <p>The “Commentary” does not explicitly address this issue – and it is unclear if this is a material change of practice.</p>	CA
27	<p>“Clean”</p> <p>The “Commentary” repeats the new UCP 600 rule to the effect that the transport document need not show the word “clean” even if the LC requires a clean on board transport document.</p> <p>The Commentary quotes ISBP (2003) paragraph 91 which reads:</p> <p><i>The word “clean” need not appear on a bill of lading even though the credit may require a “clean on board bill of lading” or one marked “clean on board”.</i></p> <p>The “marked” clean on board is not carried through to UCP 600 – but the text seems to indicate that no change in practice has been made here – i.e. that the word clean need no appear on the transport documents if the LC calls for a one “<i>marked clean on board</i>”.</p> <p>There is however no definite statement to that effect in the “Commentary”.</p>	CA
28	<p>Proxy (page 131)</p> <p>The “Commentary” repeats the new UCP 600 rule (based on an ICC opinion) that insurance documents may be signed by a proxy for or on behalf the insurance company or underwriter.</p>	CL

28	<p>Insurance document in duplicate (page 131)</p> <p>The “Commentary” addresses the issue that the word “<u>Duplicate</u>” may have different meanings by saying that “<i>An insurance document stated to be issued “in duplicate” does not necessarily infer that two originals have been created</i>”.</p>	CH
28	<p>Insurance cover (page 132)</p> <p>The “Commentary” repeats the clarified practice that the insurance cover – both regarding amount and geography is to be understood as minimum cover.</p>	CL
29	<p>Bank closed on latest date for presentation / expiry date (page 136)</p> <p>UCP 600 have added the rather precise rule that when the above situation occurs, and documents are presented on the first following banking day, the bank must – in its forwarding schedule make a statement to the effect that time limits are extended in accordance with sub-article 29(a). The LC community has been discussing what would be the consequence of “forgetting” to include this statement in the covering schedule. The “Commentary” provides a clear answer this by saying that “<i>When a nominated bank fails to provide any form of statement and this is questioned by the issuing bank or confirming bank, a subsequent confirmation of compliance with this rule will suffice for the purpose of ascertaining if a complying presentation was made</i>”</p> <p>Advice: Make sure to follow the process laid out in sub-article 29(b) in order to avoid late payment due to misunderstanding as to when presentation was made.</p>	CL
30	<p>“Circa” and “similar expressions” (page 138)</p> <p>The word “circa” have been removed from the list of words indicating an allowed tolerance of 10% This leaves “<i>about</i>” and “<i>approximately</i>”.</p> <p>Advice: If the intention is to allow a tolerance of 10% then either:</p> <ul style="list-style-type: none"> • Be specific in the LC – using relevant SWIFT field 39B, or • Use the words “<i>about</i>” or “<i>approximately</i>” only. 	CH
30	<p>Application of article 30 (c)</p> <p>UCP 600 article 30(c) reads:</p> <p><i>Even when partial shipments are not allowed, a tolerance not to exceed 5% less than the amount of the credit is allowed, 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. This tolerance does not apply when the credit stipulates a specific tolerance or uses the expressions referred to in sub-article 30 (a).</i></p> <p>The LC community has been discussing whether this article would or would not apply to an LC allowing for partial shipments. The confusion arises due to the word “Even” – which will lead (at least) people whose first language is not English to believe that it may in fact apply to an LC allowing for partial shipments. The “Commentary” addresses this issue by saying: “<i>When a credit permits partial shipment, there is no control over how many shipments a beneficiary</i></p>	CA

	<p><i>can make, and therefore the tolerance referred to in this rule may have minimal effect”.</i></p> <p>Professors Jim E. Byrnes book “<i>The Comparison of UCP600 & UCP500</i>” reads (page 226): “<i>UCP600 Article 30(c) specifically refers to a situation where partial shipments are prohibited...</i>”</p> <p>Based on the above it is not sufficiently clear whether this sub-article could in fact be applicable to LCs allowing partial shipments.</p>	
35	<p>Documents lost in transit (page 148-150)</p> <p>Following the implementation of the UCP 600 many LCs would exclude article 35, mainly due to the new (at least to the UCP) rule regarding documents lost in transit.</p> <p>The “Commentary” has fine explanations and recommendations regarding this article.</p> <p>One thing confuses though: The “Commentary” includes the full text of ICC opinion R.548 – on which the UCP 600 provision is based. It concludes that “<i>Whilst this opinion was issued under UCP 500, it has equal application under UCP 600...</i>”</p> <p>This does not seem correct:</p> <p>R.548 reads: <i>On the basis that the letter of credit stipulated a nominated bank to negotiate <u>(and that bank duly acted)</u> or that the credit was freely negotiable, a negotiating bank would be entitled to receive payment from the issuing bank. A negotiating bank is protected by the content of Article 16 in the event that documents are lost in transit.</i></p> <p>UCP 600, article 35 reads: <i>If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, <u>whether or not the nominated bank has honoured or negotiated,</u> an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, 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.</i></p> <p>As appears from the bold and underlined phrases above the premise between R.548 and article 35 is different; in R.548 the bank has “duly acted” – while article 35 applies whether or not the nominated bank has acted.</p> <p>I prefer to accept this as an “over simplification” by the Drafting group – and consider the UCP 600 text clear and to the point.</p> <p>Advice: In case article 35 is excluded from the LC nominated and confirming banks are advised not to assume any responsibility under the LC.</p>	(CH)
38	<p>Including confirmation (page 159)</p> <p>A new rule is that if the “original” LC is confirmed so should also the transferred LC. This creates some questions; e.g. does that pass on the authorization to the transferring bank to confirm the LC – or does it merely mean that the issuing bank is obligated both towards the transferee and the beneficiary. The “Commentary” does not provide a clear answer.</p>	CA
38	<p>Issuing bank may be transferring bank (page 160)</p> <p>It is now included in the UCP that the Issuing bank may be the transferring bank – e.g. in the situation where the bank authorized to transfer does not transfer.</p> <p>This is well explained in the “Commentary”.</p>	CH

38	<p>Amendments (page 160)</p> <p>The UCP 600 tries more flexible than the UCP 500 to handle the issue of amendments in transferable LCs. This is well explained and exemplified in the “Commentary”.</p>	CH
38	<p>Invoice presented by the first beneficiary contains discrepancies (page 162)</p> <p>A new rule to the UCP 600 is that the transferring bank may choose not to use the substituted invoice, if that one creates discrepancies that would not exist in the one issued by the second beneficiary. This is well explained and exemplified in the “Commentary”.</p>	CH

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