
UCP600: New Rules for Letters of Credit

FCIB

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Changes That Will Impact Exporters

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Atradius Trade Credit Insurance

Headquartered in the Netherlands, Atradius is the second largest credit insurer in the world, with offices in 40 countries and covering over \$450 billion in world trade each year. The company insures businesses and their bankers against the commercial and country risks of non-payment of accounts receivable and trade-related loans and offers a number of products varying from credit insurance to collections. Atradius has credit information on more than 45 million companies world-wide and makes 10,000 credit limit decisions every day.

More information can be found at www.atradius.com.

Why Revise UCP500?

- **The UCP gets revised about every 10 years to incorporate changes in practice**
 - UCP500 became effective in 1994
 - “Patches” have included 4 Position Papers, 2 Decisions, 1 Policy Statement, several DocDex cases, about 500 Opinions, and the International Standard Banking Practice (ISBP), with 200 interpretations
- **High discrepancy rate**
 - 80% (validated in a Michigan State study)
- **High level of inquiries pertaining to 7 articles:**
 - Article 9 Liability of Issuing and Confirming Banks
 - Article 13 Standard for Examination of Documents
 - Article 14 Discrepant Documents & Notice
 - Article 21 Unspecified Issuers or Contents of Documents
 - Article 23 Marine/Ocean Bills of Lading
 - Article 37 Commercial Invoices
 - Article 48 Transferable Credits
- **Law suits**
 - Original documents (Article 20(b))
 - Improper refusal (Articles 13(b) & 14(d) & (e))
 - Fraud and deferred payment L/Cs (Article 9(a)(ii) & (b)(ii))
- **New disclaimers emerging in bills of lading**

Revision Process

- Begun in 2003
- Drafting Committee with 9 members
- Consulting Group with 41 members (from 26 countries)
- National Committees
- 15 drafts
- 5000 comments
- 7 reviews by the full ICC Banking Commission

**Final draft unanimously approved at the
ICC Banking Commission meeting on October 25, 2006
with an effective date of July 1, 2007**

Major Changes

- **“Reasonable time” and “without delay” have been deleted and banks are simply allowed 5 days to examine documents and assert any discrepancies (new Articles 14(b) & 16(d))**
- **New rule regarding when addresses of applicant and beneficiary must be as in the L/C (new Article 14(j))**
- **Issuing bank allowed to refuse documents and then release them upon obtaining waiver of discrepancies (new Article 16(c)(iii))**

5-Day Rule

UCP600 Articles 14(b) & 16(d):

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 or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.

...

The notice [of refusal of documents] required in sub-article 16(c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation.

UCP500 Articles 13(b) & 14(d)(i):

The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.

...

If the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, decides to refuse the documents, it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay but no later than the close of the seventh banking day following the day of receipt of the documents.

Addresses of Applicant and Beneficiary

UCP600 Article 14(j):

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. Contact details (telefax, telephone, email and the like) stated as part of the beneficiary's and the applicant's address 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 subject to articles 19, 20, 21, 22, 23, 24 or 25, they must be as stated in the credit.

UCP500 Article 37 (in part):

Unless other stipulated in the Credit, commercial invoices;

- i. must appear on their face to be issued by the Beneficiary named in the Credit (except as provided in Article 48), *and*
- ii. must be made out in the name of the Applicant (except as provided in sub-Article 48(h))...

Holding Documents for Waiver of Discrepancies

UCP600 Article 16(c):

When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state:

- i. that the bank is refusing to honour or negotiate; and
- ii. each discrepancy in respect of which the bank refuses to honour or negotiate; and
- 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 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; 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.

UCP500 Article 14(d) (in part):

- i. If the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, decides to refuse the documents, it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay but no later than the close of the seventh banking day following the day of receipt of the documents. Such notice shall be given to the bank from which it received the documents, or to the Beneficiary, if it received the documents directly from him.
- ii. Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.

Subtle Changes

- **Style: Now includes a definitions section; defined terms not capitalized; interpretations section replaces many of the old “Miscellaneous Provisions”**
- **Nomination authorizes discount (deferred payments) (new Article 12(b))**
- **Consistency requirement restated (new Article 14(d))**
- **Additional language about lost documents (new Article 35)**
- **Multimodal transport documents: shipment from & to try to conform to new SWIFT standard (new Article 19)**
- **“Bill of lading” now means port-to-port (new Article 20)**

Authorization to Discount

UCP600 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.

UCP500 Article 10(d):

By nominating another bank, or by allowing for negotiation by any bank, or by authorizing or requesting another bank to add its confirmation, the Issuing Bank authorizes such bank to pay, accept Draft(s) or negotiate as the case may be, against documents which appear on their face to be in compliance with the terms and conditions of the Credit and undertakes to reimburse such bank in accordance with the provisions of these Articles.

Consistency Requirement

UCP600 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.

UCP500 Article 21:

When documents other than transport documents, insurance documents and commercial invoices are called for, the Credit should stipulate by whom such documents are to be issued and their wording or data content. If the Credit does not so stipulate, banks will accept such documents as presented, provided that their data content is not inconsistent with any other stipulated document presented.

Lost Documents

UCP600 Article 35 (in part):

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, 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.

UCP500 Article 16 (in part):

Banks assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in the transmission of any telecommunication.

Multimodal Transport Shipment Points

UCP600 Article 19(a) (in part):

A transport document covering at least two different modes of transport (multimodal or combined transport document), however named, must appear to:

...

- iii. indicate the place of dispatch, taking in charge or shipment and the place of final destination stated in the credit, even if:
 - a. the transport document states, in addition, a different place of dispatch, taking in charge or shipment or place of final destination...

UCP500 Article 26(a) (in part):

If a Credit calls for a transport document covering at least two different modes of transport (multimodal transport), banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

- iii. a. indicates the place of taking in charge stipulated in the Credit which may be different from the port, airport or place of loading, and the place of final destination stipulated in the Credit which may be different from the port, airport or place of discharge...

Bill of Lading = Port-to-Port

UCP600 Article 20(a) (in part):

A bill of lading, however named, must appear to:

...

ii. indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:

- pre-printed wording, or
- an on board notation indicating the date on which the goods have been shipped on board.

...

iii. indicate shipment from the port of loading to the port of discharge stated in the credit.

UCP500 Article 23(a) (in part):

If a Credit calls for a bill of lading covering a port-to-port shipment, banks will, unless otherwise stipulated in the Credit, accept a document, however named, which:

...

ii. indicates that the goods have been loaded on board, or shipped on a named vessel.

Loading on board or shipment on a named vessel may be indicated by pre-printed wording on the bill of lading that the goods have been loaded on board a named vessel or shipped on a named vessel, in which case the date of issuance of the bill of lading will be deemed to be the date of loading on board and the date of shipment.

In all other cases loading on board a named vessel must be evidenced by a notation on the bill of lading which gives the date on which the goods have been loaded on board, in which case the date of the on board notation will be deemed to be the date of shipment.

Unresolved

- **Bill of lading covering shipment from a port to a place (new Article 19 or 20?)**
- **Statements on a bill of lading calling into question the delivery of the goods against surrender of a B/L (clean but “unmerchantable”)**
- **Discrepant documents presented under a transfer credit (new Article 38)**
- **Documents created using laser printers & scanned signatures (new Articles 17(b) & (c), 28(a))**
- **“One copy of” vs. “in one copy” (new Article 17(d) & (e)--but wait to see revised ISBP)**
- **Deemed acceptance of amendments (new Article 10(c))**
- **How the procedure for lost documents will actually work (new Article 35)**

Original Documents

UCP600 Article 17(b) & (c):

- b. A bank shall treat as an original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not an original.
- c. Unless a document indicates otherwise, a bank will also accept a document as original if it:
 - i. appears to be written, typed, perforated or stamped by the document issuer's hand; or
 - ii. appears to be on the document issuer's original stationery; or
 - iii. states that it is original, unless the statement appears not to apply to the document presented.

UCP600 Article 28 (in part):

- a. An insurance document, such as an insurance policy, an insurance certificate or a declaration under an open cover, must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies.

One Copy

UCP600 Article 17:

- d. If a credit requires presentation of copies of documents, presentation of either originals or copies is permitted.
- e. If a credit requires presentation of multiple documents by using terms such as "in duplicate", "in two fold" or "in two copies", this will be satisfied by the presentation of at least one original and the remaining number in copies, except when the document itself indicates otherwise.

**In the current ISBP, “one copy of” means a copy
while “in one copy” means an original**

Deemed Acceptance of Amendments

UCP600 Article 10(c):

The terms and conditions of the original credit (or a credit incorporating previously accepted amendments) will remain in force for the beneficiary until the beneficiary communicates its acceptance of the amendment to the bank that advised such amendment. The beneficiary should give notification of acceptance or rejection of an amendment. If the beneficiary fails to give such notification, a presentation that complies with the credit and to any not yet accepted amendment will be deemed to be notification of acceptance by the beneficiary of such amendment. As of that moment the credit will be amended.

Recommendation: Indicate which amendments you have accepted and which you have rejected, and that you have taken no action, one way or the other, regarding any other amendments

Lost Documents

UCP600 Article 35 (in part):

A bank assumes no liability or responsibility for the consequences arising out of delay, loss in transit, mutilation or other errors arising in the transmission of any messages or delivery of letters or documents, when such messages, letters or documents are transmitted or sent according to the requirements stated in the credit, or when the bank may have taken the initiative in the choice of the delivery service in the absence of such instructions in the credit.

If a nominated bank determines that a presentation is complying and forwards the documents to the issuing bank or confirming bank, whether or not the nominated bank has honoured or negotiated, 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.

Expected to be discussed in the Commentary

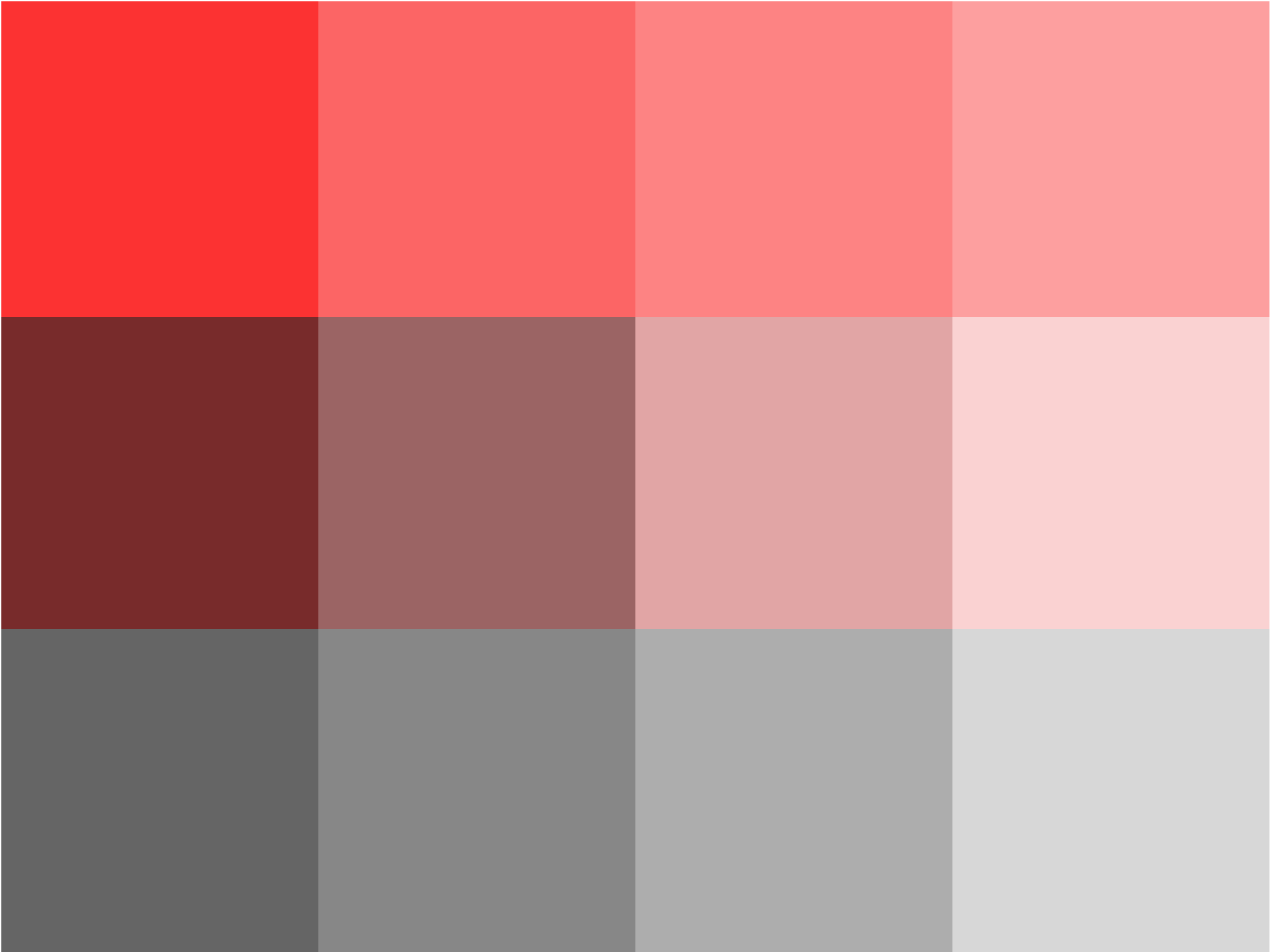
Discussed but Unchanged

- Inclusion of standbys “to the extent applicable” (new Article 1)
- Closure of a bank due to *force majeure* (new Article 36)
- Documents “on their face” (new Article 14)
- Negotiation (with expanded definition) (new Article 2)

Still to Come

- Revised ISBP
- (Unofficial) Commentary

The above, and the UCP600 (with revised eUCP), are available from the International Chamber of Commerce through their website at iccbooksusa.com



Quiz Yourself

View in Slide Show mode to avoid seeing the answers until you click the mouse

Pop Quiz

1. Which is the best description of what the UCP is?

- a) A set of general guidelines that each party to a letter of credit may comply with if they choose.
- b) A set of rules that a bank may include in a letter of credit they issue if they wish to but which all parties must adhere to if so included.
- c) A law that governs all letter of credit.
- d) The bar code that appears on the packaging of most consumer products.

b

Pop Quiz

2. When the UCP600 becomes effective, what happens to letters of credit that were issued subject to the UCP500?

- a) The issuing bank gets to decide whether to change the applicable rules to the UCP600. This is done by sending a notice that is binding on the beneficiary upon receipt.**
- b) They each continue to be subject to the UCP500 unless the beneficiary accepts an amendment making it subject to the UCP600.**
- c) They automatically become subject to the UCP600 on the effective date.**
- d) Due to expiration of the UCP500, letters of credit subject to the UCP500 become subject to no rules and any documents presented will be handled on an “approval basis.”**

b

Pop Quiz

- 3. What happens if a confirming bank fails to examine documents before the end of the 5th banking day following presentation?**
- a) The confirmation ceases to exist and the bank must forward the documents to the issuing bank for payment.**
 - b) If the documents have no discrepancies, the confirming bank may owe past due interest for “wrongful dishonor,” but, if the documents have discrepancies, nothing much happens since their obligation is only to honor compliant documents.**
 - c) The bank must send a notice of refusal stating the reasons they were unable to examine the documents within the 5-day timeframe.**
 - d) They become obligated to pay even if the documents contain discrepancies.**

d

Pop Quiz

4. Your company makes a sale where goods will be shipped from your warehouse in Chicago to the buyer's factory in Beijing. What should you do if you receive a UCP600 letter of credit calling for Clean on Board Ocean Bills of Lading covering shipment from Chicago to Beijing?
- a) Ship the goods from the port of Chicago through the Great Lakes in order to get an ocean bill of lading.
 - b) Hire an overland carrier (truck or rail) to get the goods from Chicago to a West Coast port where you can get an ocean bill of lading.
 - c) Ship using a multimodal transport operator who will pick the goods up in Chicago and contract to deliver them to Beijing, but get them to mark the multimodal transport document "clean on board" with the names of the port of loading and the vessel once the goods have been loaded on an ocean vessel.
 - d) It's not possible to get an ocean bill of lading showing shipment from Chicago to Beijing. Get the letter of credit amended to call for a multimodal transport document.

d

Pop Quiz

5. If a UCP600 letter of credit calls for presentation of a multimodal transport document, which of the following is true?

- a) The multimodal transport document must be marked “clean on board.”**
- b) The letter of credit must specify a place of dispatch, a port of loading, a port of discharge, and a final destination.**
- c) The letter of credit must specify a place of dispatch and a final destination but must *not* specify a port of loading or a port of discharge.**
- d) None of the above.**

d

Pop Quiz

6. Which of the following is true?

- a) Under UCP600, banks no longer have to worry about documents being consistent with each other.
- b) Bills of lading with language that calls into question the delivery of goods against surrender of an original bill of lading were acceptable under UCP500 but not under UCP600.
- c) When talking about letters of credit, the expression “banks examine documents on their face” means that banks examine the front of documents but not the back.
- d) Under UCP600, an issuing bank is permitted to refuse documents but then change their minds and rescind their refusal.

d

Pop Quiz

- 7. A letter of credit is issued calling for shipment from Long Beach, CA, partial shipments allowed. An amendment is made changing the port of loading to Los Angeles, CA but curtailing the latest shipping date by a month. Which of the following is true?**
- a) The beneficiary must now ship from Los Angeles.**
 - b) The beneficiary may continue to ship from Long Beach, but, if they do so, it will be deemed to constitute rejection of the amendment.**
 - c) If the beneficiary may now ship from Los Angeles, but, if they do so, it will be deemed that they have accepted the amendment, including the earlier deadline for shipments.**
 - d) The beneficiary may accept the change in ports and reject the change in the latest shipping date as long as they do so expressly either before or upon presentation of documents.**

C

Pop Quiz

- 8. Under UCP600, if a bank is closed for unplanned reasons (*force majeure*), what happens to letters of credit that expire before the bank reopens?**
- a) All of the below.**
 - b) The bank will pay for compliant documents that were presented before the day the bank closed even though they were not examined until after the bank reopened.**
 - c) The bank will accept presentation of documents within 30 calendar days after they reopen as long as they are all dated prior to the expiration dates of the respective letters of credit.**
 - d) If the beneficiary presented documents X days before the day the bank closed, they will be allowed 5-X days after the bank reopens to correct discrepancies.**

b

Pop Quiz

9. About what percentage of letter of credit documents have discrepancies when first presented?

- a) 10%
- b) 20%
- c) 50%
- d) 80%

d

Pop Quiz

10. You are checking documents under a UCP600 letter of credit in favor of Kent Company, Inc., 123 Clark Street, Smallville, Illinois 60099 Phone: (708) 555-9876. Invoices bear one of the following addresses. Which of the following is acceptable?

**a) Kent Corporation
123 Clark Street
Smallville, IL 60099**

**b) Kent Company, Incorporated
789 Lois Lane
Metropolis, NY
USA**

**c) Kent Company, Inc.
P.O. Box 999
London, UK
Phone: +1-708-555-9876**

**d) Kent Company, Inc.
123 Clark Street
Smallville, IL 60600
Phone: (312) 555-4321**

b and d

Pop Quiz

11. When an issuing bank decides to refuse documents due to discrepancies under a letter of credit they made subject to UCP600, which of the following are they required to do?

- a) Contact the applicant and see whether they can get a waiver of the discrepancies.**
- b) Notify the presenter of the documents of every discrepancy on which they are basing refusal.**
- c) Notify the presenter either that they are holding the documents at the disposal of the presenter or that they are returning them.**
- d) Send notice of refusal “immediately” upon deciding to refuse the documents.**

b

Pop Quiz

12. In which of the following situations is an issuing bank obligated to pay when documents have been lost under a letter of credit subject to the UCP500?

- a) When documents were lost in transit between the beneficiary and the bank the documents were being sent to and the beneficiary has a courier receipt.**
- b) When documents were lost at the bank the beneficiary sent them to on their way from the Mail Room to the Letter of Credit Department.**
- c) When documents were examined by the bank the beneficiary sent them to and found to be compliant but then lost before being mailed out.**
- d) When documents were found to be compliant by the bank the beneficiary presented them to but then lost in transit on their way to the issuing bank.**

None of the above (trick question)

Pop Quiz

13. A letter of credit is issued subject to the UCP600 in the amount of USD1,000,000.00. An amendment is made reducing the amount to USD900,000. The beneficiary presents documents covering a partial shipment valued at USD500,000 while the amendment is in the mail to them. Which of the following is true?

- a) The beneficiary is deemed to have accepted the reduction.**
- b) The beneficiary is deemed to have rejected the reduction.**
- c) The amendment is not effective until the beneficiary receives it.**
- d) The beneficiary's documents are discrepant since they have not indicated whether the amendment has been accepted or rejected.**

a