

# Trade & Transport Alert

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## New rules for documentary credits

Documentary letters of credit are widely used by those involved in international trade to secure payment and delivery of goods. The rules governing such credits have recently been amended to provide more certainty for the parties to the transaction as well as the banks involved in the documentary credits.

On 1 July 2007, a new version of the Uniform Customs and Practice for Documentary Credits (UCP) came into force. Called UCP 600, the new rules differ from the previous version of the rules, UCP 500, in the following ways.

### Examination of documents

Article 14 UCP 600 contains substantial changes from the previous Article 13 UCP 500. It clarifies the position of banks in relation to the standard for examination of documents. Rather than being given a "reasonable time not exceeding 7 banking days" to examine the documents as was the case with UCP 500, each bank now has "a maximum of 5 banking days". Article 14 of the UCP 600 also makes clear that this time period is

not affected if, during the period the documents are being examined, the credit expires or the last day for presentation passes (see Article 14(b)).

Further, Article 14(c) provides that where the documents include a transport document those documents must be presented no later than 21 calendar days after shipment.

Most importantly, Article 14(d) provides that:

"Data in a document when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit."

### In brief

- The UCP 600 came into force on 1 July 2007.
- There are a number of differences between UCP 600 and UCP 500.
- The new rules attempt to provide certainty for parties involved in international trade.

This provision is an attempt to reduce the burden on banks created by the traditional doctrine of strict compliance. However, industry commentators have stated that this Article simply reflects the standard practice that had developed under UCP 500 to limit the instances of rejected documents.

### Negotiation

The UCP 600 now protects the common practice of negotiation of credits by banks. This development is a response to the decision of the English Court of Appeal in *Banco Santander SA v Banque Paribas* in 2000.



In that case, Banque Paribas had issued a 180 day deferred payment credit. Banco Santander was the confirming bank. Banco Santander negotiated the credit by paying the beneficiary an amount less than the credit before the 180 days had passed with the intention of claiming the full amount of the credit from Banque Paribas when the 180 days had passed. After Banco Santander had negotiated the credit, it was discovered that the documents presented by the beneficiary were forged. Banque Paribas refused to reimburse Banco Santander.

The English Court of Appeal found that Banco Santander, as confirming bank:

- was only authorised to pay the beneficiary the credit amount 180 days after the documents were presented; and
- had no authority to pre-pay the credit and thus was not entitled to reimbursement from Banque Paribas.

Under UCP 600 negotiation of a deferred payment credit is now expressly allowed (see Articles 7, 8, 12 and 15).

## Transport documents

The provisions regarding transport documents have been simplified, two examples of which are:

- There is no longer a specific reference to transport documents issued by freight forwarders – such documents are now covered by the standard provisions dealing with bills of lading, sea waybills and the like (see Articles 19 to 25).
- In relation to multimodal or combined transport documents, Article 26 UCP 500 used to require that such documents be signed and authenticated by the carrier, “multimodal transport operator”, the master or their respective agents – by Article 19 UCP 600 the “multimodal transport operator” is now considered to be a “carrier” for the purposes of the rules.

## Freight

Article 33 UCP 500 makes specific reference to the fact that if a credit required the transport document to indicate that freight had been pre-paid, then a document indicating prepayment was required. UCP 600 is silent on this issue.

However, there is no doubt that banks will still be required to ensure that the documents comply with the credit. Thus, if a credit requires a transport document to state “freight prepaid” then the banks will require this in order for the documents to comply with the credit.

## Lost documents

Article 35 UCP 600 is a new provision, which requires issuing banks or confirming banks to honour the credit once a nominated bank has determined that the documents are compliant, even if they get lost in transit between the nominated bank and the issuing or confirming bank.

The UCP 600 has now been in force for over 3 months and industry representatives advise that most banks have had no problem adapting to the new rules.

Dimity Maybury, Sydney, Senior Associate  
Tel +61 2 9258 5731  
dimity.maybury@bdw.com

### BDW Contacts

BDW 24 hour Contact: + 612 9258 5987

Sydney	Peter McQueen	+612 9258 5887	Brisbane	Ernest van Buuren	+617 3259 7119
	Alex Baykitch	+612 9258 6752	Perth	Anthony Willinge	+618 9366 8165
Melbourne	Graydon Dowd	+613 9679 3049	Canberra	Matthew Roser	+612 6234 4094

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