

Documentary Credit

WORLD

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■ UN LC CONVENTION

Dr. Alan Davidson continues his analysis of the United Nations Convention on Independent Guarantees and Standby Letters of Credit by examining the Convention's approach to the fraud exception regarding these instruments. By its nature, the term "fraud" is highly problematic. It means different things for different jurisdictions. For this reason, the Convention avoids the term. Instead, it opts for categories of conduct and standards for obtaining court remedies. After a review of examples of where a fraud standard has been mandated outside the Convention, Davidson then turns to the Convention and breaks down important elements of Article 19 (Exception to the payment obligation) and Article 20 (Provisional court measures).



ICC OPINION TA638^{REV} (UCP600) SPRING 2009

Summary of ICC Opinion:

Q1: re UCP600 Articles 14(L), 19, 20, 21, 22, 23, 24, 25

- Where B/L is issued on carrier's form but signed by agent, issuer is carrier and signer is agent.
- Issuance of transport document and its signing are "not linked" in that it can appear to be issued by carrier and signed by agent.
- Exclusion of UCP600 Article 14(L) would not affect acceptability of B/L that was issued and signed in accordance with applicable transport document.
- UCP600 Article 4(L) does not apply to transport document that is issued by carrier or on its letterhead.

Q2: re UCP600 Articles 28(h) & 28(i)

- Exclusion of UCP600 Articles 28(h) & 28(i) would require that there be no exclusion clauses on the face of the insurance document.
- Exclusion of UCP600 Article 28(h) & (i) would probably produce an unworkable credit since few insurance policies are issued without exclusions.

Q3: re UCP600 Articles 16(c)(iii) and 16(d)

- Exclusion of the UCP600 provisions for dealing with discrepancies and providing adequate notice accomplishes little unless there are alternate instructions since the options are somewhat limited or the transmittal letter provides the same options as are contained in the rule.
- Suggesting that the issuer need not necessarily follow instructions contained in a transmittal letter with respect to seeking applicant approval.

Q4: re UCP600 Article 14(f) and 14(k)

- Exclusion of UCP600 Article 14(f) without providing alternative provisions as to how other documents should be examined leaves bank without direction as to standard of compliance. While the Opinion clearly attempts to discourage the exclusion of the rule, the standard in such a situation would be that documents not addressed by the credit or the rules would comply as long as they appeared to be the required document. Such a provision would provide less protection to the applicant than would the UCP rule being excluded.

- Exclusion of UCP600 Article 14(k) signifies that the beneficiary must be indicated as the shipper or consignor on a transport document.

Q5: re UCP600 Article 10(c)

- Suggesting that the terms of UCP600 Article 10(c) address the issue where the presentation is ambiguous. Comment: It is unclear how the text of UCP600 Article 10(c) addresses an ambiguous presentation other than to suggest that it is to be deemed to have accepted the amendment.

- Where presentation is not impacted by amendment that has not been accepted, beneficiary has not accepted amendment. This Opinion significantly qualifies the express text of UCP600 Article 10(c) but is the correct interpretation since a credit cannot be amended without beneficiary consent which can only be implied from the unambiguous conduct of the beneficiary.

Observations:

Deletion of UCP600 Article 14(L). UCP600 Article 14(L) (Standard for Examination of Documents) is, to say the least, an odd provision. It was intended to silence the freight forwarders who long and lobbied for a provision akin to the sanction of a FIATA transport document in the manner provided by UCP400. Instead, UCP600 Article 14(L) provides that anyone can act as an agent for the carrier provided that the transport document otherwise complies with the terms of the relevant UCP600 transport document article which, among other things would require disclosure of the agency status of the agent and of the name of the principal/carrier.

Since this result would obtain whether or not UCP600 contained Subarticle 14(L), some LC specialists worry that there is something more at work than a surplus article that clarifies that anyone including a freight forwarder can act as a disclosed agent in connection with the issuance of a UCP600 transport document. Of perhaps they worry that freight forwarders will make the claim that their rights and cause have been vindicated. In any event, there have been reports of the deletion of this subarticle and they have reached the ICC Banking Commission by way of an inquiry.

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