

Additional Comments Regarding ISBP 2013

(The following information supplements “ISBP 745 One Year Later: LC Specialists Surveyed” by Kent Zimmerman, the featured article in Jul/Aug 2014 issue of *Documentary Credit World*.)

11. *Any comments you would like to add regarding the new ISBP, such as suggesting any provisions you find particularly interesting, or any general thoughts:*

“This whole effort we started as a reasonable document checker guideline to explain and add consistency to bank's interpretations of the UCP "holes and loose end". However the UCP and ISBP have filled in most of these items. I question the need for an ISBP and it has become a UCP600 ver. 2.0. To me it adds confusion.”

“Despite UCP covered guarantee but it is not clear to what extent that this is covered. It may be beneficial to include in ISBP on the articles to be applied when this is used for guarantee or standby LC.”

“Although ISBP745 has been enhanced, there are still some areas not covered. This is understandable, anyway.”

“ISBP745 is a major improvement over ISBP645/681. I hope that the ICC can come up with a mechanism to update it constantly with the six-monthly Opinions. It should be issued more like the software industry does, as a soft copy at a much more reasonable price/subscription, with regular upgrades.”

“1. Negotiation recommended to be removed. 2. Standby should be subject to ISP 98 only and not to UCP 600.”

“The new paragraphs on Beneficiary's Certificate, Weight List and Packing List are Redundant.”

“B8 and C2 stating wording to the effect that when a beneficiary (or second beneficiary) has changed its name, a draft and invoice an may be issued in the name of the new entity provided

Comment: This provision has a too narrow scope as it does not cover other docs by the benef. (if required). It is also limited to change of name and does not cover possibilities of transfer by operations of law as envisaged in ISB98 (an heir, liquidator, etc.). The requirement is too simple by only requiring a statement in the draft or invoice (without requiring legal documents).”

“It's good that this survey is being done.”

“The best idea that I have ever heard is to incorporate the ISBP into the UCP. It only makes sense.”

“ISBP goes beyond what is in UCP and even has terms/conditions that are not even mentioned in UCP. I think they way overshoot their mandate in drafting this. It appears to be a 'wish list' of how the drafters want the word to be rather than an explanation/clarification of terms in UCP. An official commentary to UCP would have sufficed.”

“The general assumption of ISBP 745 is to follow what banking industry is doing, but in fact there are some changes which I hope in future a comparison document on old and new ISBP could be published so that it is clear to everybody what are the changes.”

- a. Some provisions in the new ISBP are OK.
- b. Some of them try to change the rules (UCP600) or try to cure gaps in the UCP (e.g. "Transfer by operation of law" with "Formerly known as...").
- c. The paragraph about non-documentary conditions is a disaster. UCP 14 h) says "disregard", but ISBP A26 says "de facto" something else.
- d. For exporters, of whom most of them are not specialists like we are, one set of rules and practices would be ideal.”

- “1) The new ISBP states in its Preface that it is not an Amendment to the UCP and in two places states that it may not actually apply (in legal issues and in conflicts between applicants and issuing banks), so are they rules or not?
- 2) Rather than issuing and re-issuing ISBPs that conflict with the UCP and are redundant of the UCP (but still fail to address many common problems bankers see), why are we not instead revising the UCP and having all rules in one document again.
- 3) There are many, many other conflicts in this new ISBP with the UCP and how are bankers and customers to know which rules must be followed.
- 4) Too many articles which address situations caused by bank applications and bank/applicant errors. This is not appropriate.
- 5) Several articles make little sense - why should the on board requirements be so bizarre?
- 6) Drafting Group not in countries who are main users of L/C product.”

- a. The paragraphs regarding language (i.e., when LC is silent regarding languages, documents may be in any language) is problematic and some of the banks are still insisting opinions in ISBP681.
- b. The paragraphs regarding negative contents of certificates such as analysis certificate (e.g. not fit for human consumption) is causing bank's worries and are pressing banks and applicants to add more details in goods descriptions and such documents, which is against UCP's principle that excessive details should not be incorporated in LC.
- c. The paragraph regarding draft amount differing between figures and numbers is against local law and such paragraph should be removed.
- d. The new ISBP should not be revised to make LC business more troublesome in areas such as language, certificate contents, draft amount and etc. It's better to remove

paragraphs about drafts to clear doubts about whether drafts should be consider a document required by a credit and to discourage unnecessary requirement of drafts.”

- “a. The paragraphs regarding drafts are absurd. The idea that a bank should scrutinize in any detail a draft, particularly with respect to negotiable instruments law, in plain wrong.
- b. The question of 'linkage' needs to be dealt with clearly.”

For more information about this survey, contact: info@doccreditworld.com