

# New York Standby & Guarantee Forum October 25, 2018

Varying the UCP for Standbys &  
Independent Guarantees:  
What should be varied or excluded?

Presented by:  
Paul M. Roder, Esq.

## UCP600 Article 1 (Application of UCP):

“The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 ("UCP") are rules that apply to any documentary credit ("credit") (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit.”

## UCP600 Article 3 (Interpretations):

“Branches of a bank in different countries are considered to be separate banks.”

## Compare to UCC Section 5-116(b):

“...For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under this subsection.”

## Compare to ISP98 Rule 2.02:

“For the purposes of these Rules, an issuer’s branch, agency, or other office acting or undertaking to act under a standby in a capacity other than as issuer is obligated in that capacity only and shall be treated as a different person.”

## UCP600 Article 14(b) (Standard for Examination of Documents)

“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.”

## UCP600 Article 14(d) (Standard for Examination of Documents):

“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.”

*See also the reference to Article 14(d) in Article 14(f).*

## Compare ISP98 Rule 4.03:

“An issuer or nominated person is required to examine documents for inconsistency with each other only to the extent provided in the standby.”



## UCP600 Article 17(e) (Original Documents and Copies):

“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.”

## Compare to ISP98 Rule 4.15(e):

- “e. If multiples of the same document are requested, only one must be an original unless:
- i. ‘duplicate originals’ or ‘multiple originals’ are requested in which case all must be originals; or
  - ii. ‘two copies’, ‘two-fold’, or the like are requested in which case either originals or copies may be presented.”

## UCP600 Article 29(c) (Extension of Expiry Date or Last Day for Presentation):

“a. If the expiry date of a credit or the last day for presentation falls on a day when the bank to which presentation is to be made is closed for reasons other than those referred to in article 36, the expiry date or the last day for presentation, as the case may be, will be extended to the first following banking day.

b. ...

c. The latest date for shipment will not be extended as a result of sub-article 29 (a).”

## Compare to ISP98 Rule 3.13(a):

“If the last day for presentation stated in a standby (whether stated to be the expiration date or the date by which documents must be received) is not a business day of the issuer or nominated person where presentation is to be made, then presentation made there on the first following business day shall be deemed timely.”

## UCP600 Article 31 (Partial Drawings or Shipments):

“a. *Partial drawings or shipments are allowed....*”

## Compare to ISP98 Rule 3.08:

- a. A presentation may be made for less than the full amount available ('partial drawing').
- b. More than one presentation ('multiple presentations') may be made.
- c. The statement 'partial drawings prohibited' or a similar expression means that a presentation must be for the full amount available.
- d. The statement 'multiple drawings prohibited' or a similar expression means that only one presentation may be made and honoured but that it may be for less than the full amount available....”

## UCP600 Article 32 (Instalment Drawings or Shipments):

“If a drawing or shipment by instalments within given periods is stipulated in the credit and any instalment is not drawn or shipped within the period allowed for that instalment, the credit ceases to be available for that and any subsequent instalment.”

*Note that ICC Opinion TA 729 states that this article does apply to standbys.*

## Compare to ISP98 Rule 3.07:

- “a. Making a non-complying presentation, withdrawing a presentation, or failing to make any one of a number of scheduled or permitted presentations does not waive or otherwise prejudice the right to make another timely presentation or a timely representation whether or not the standby prohibits partial or multiple drawings or presentations.
- b. Wrongful dishonour of a complying presentation does not constitute dishonour of any other presentation under a standby or repudiation of the standby.
- c. Honour of a non-complying presentation, with or without notice of its non-compliance, does not waive requirements of a standby for other presentations.”



## UCP600 Article 35 (Disclaimer on Transmission and Translation):

“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....”

## UCP600 Article 36 (Force Majeure):

“A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.

A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.”

## Compare to ISP98 Rule 3.14(a):

“If on the last business day for presentation the place for presentation stated in a standby is for any reason closed and presentation is not timely made because of the closure, then the last day for presentation is automatically extended to the day occurring thirty calendar days after the place for presentation re-opens for business, unless the standby otherwise provides....”

## UCP600 Article 38 (Transferable Credits):

“a. A bank is under no obligation to transfer a credit except to the extent and in the manner expressly consented to by that bank.

b. For the purpose of this article: Transferable credit means a credit that specifically states it is ‘transferable’. A transferable credit may be made available in whole or in part to another beneficiary (‘second beneficiary’) at the request of the beneficiary (‘first beneficiary’).

c. ...

d. A credit may be transferred in part to more than one second beneficiary provided partial drawings or shipments are allowed. A transferred credit cannot be transferred at the request of a second beneficiary to any subsequent beneficiary. The first beneficiary is not considered to be a subsequent beneficiary....”

## Compare to ISP98 Rule 6.02:

- “a. A standby is not transferable unless it so states.
- b. A standby that states that it is transferable without further provision means that drawing rights:
- i. may be transferred in their entirety more than once;
  - ii. may not be partially transferred; and
  - iii. may not be transferred unless the issuer (including the confirmer) or another person specifically nominated in the standby agrees to and effects the transfer requested by the beneficiary.”

## Thank You. Questions?

- Contact:
- Paul M. Roder, Esq.
- 212.554.7752 | [proder@mosessinger.com](mailto:proder@mosessinger.com)

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