

Expert commentary

Is it time to revise the ISBP?

by Gary Collyer

It doesn't seem that long ago that the ICC Banking Commission approved UCP 600 and the updated version of ISBP, ICC Publication No. 681. However, it is nearly three years now since these documents were approved and two years since UCP 600 and ISBP No. 681 were implemented. Therefore, you may ask, why would anyone be considering the revision of a publication when only two years have passed since its coming into effect?

That is a good question and one that I hope to answer in the remainder of this article. To those that attended the ICC Banking Commission meeting in Dubai in March 2009, the question of revising ISBP will be old news. I made the announcement at that meeting that I would be proposing to start the revision of ISBP at the forthcoming Banking Commission meeting on 23/24 November in Brussels.

By way of history, it should be noted that once UCP 600 had been drafted and approved, there was a necessity to review the content of ISBP Publication No. 645 to ensure that the rules of the new UCP and the practices described in the ISBP remained in line with each other. The result was that the new ISBP, Publication No. 681, contained only 185 paragraphs compared with 200 in Publication No. 645. The reduction in paragraphs resulted from the movement of practices that the UCP Drafting Group deemed to be more befitting of rules from the ISBP to UCP 600, and also the deletion of practices that were effectively reversed by the new rules in UCP 600. One example of the latter was the wording in UCP 600 sub-article 23 (a) (iii) concerning a notation of the flight number and date being deemed to be the date of shipment as opposed to the content of paragraph 151 of ISBP Publication No. 645, which said that unless called for in the credit, the details in the notation would be disregarded. The same applies to paragraph 186 of ISBP 645, which prohibited exclusion clauses from appearing on an insurance document, and the content of UCP 600 sub-article 28 (i) and ISBP No. 681 paragraph 173 that allow exclusions to appear.

Due to the short period of time between the approval of the UCP 600 and its implementation, it was not possible to conduct a complete review and revision of the ISBP. In effect, ISBP No. 681 was an updated version issued for use on or after 1 July 2007 (the implementation date for UCP 600) in the expectation that it would meet the requirements for document examination for credits subject to the revised UCP. Remember that as of 1 July 2007 there was no practice for document examination under UCP 600. When ISBP publication 645 was approved in 2002, there had been eight years of experience under UCP 500.

Experience

We are now at the point where we have had two years experience examining documents under UCP 600, and it will probably take around 1-2 years to complete a revision of ISBP No. 681. People have commented that this is only a money-making exercise for ICC and asked whether we really need a revision. In the current financial climate, I can understand those concerns, but I would disagree. The revision is necessary because a revised ISBP can offer far more than ISBP 681 does today. Currently, in ISBP No. 681, there are 37 general

“examination” principles. I defy anyone to claim there are no more that deserve equal status within the ISBP and to which banks, beneficiaries and other document issuers should adhere. The remainder of the present ISBP 681 covers drafts, five transport documents, invoices, insurance documents and certificates of origin.

Given that one would only expect to see one transport document per presentation, are we really saying that each presentation only has five documents or that only five documents have issues that warrant inclusion in the ISBP? Admittedly, we have some more straightforward documents such as packing lists, weight lists, beneficiary certificates, etc., but these too can have issues that will result in different examination practices being applied. What about the more detailed documents such as inspection certificates, analysis certificates and health or phytosanitary certificates?

I have told many people that I am not concerned if a revised ISBP will be 100 or 200 pages long. A document examiner only need refer to the section applicable to the document being examined at that time. The problem is that today we do not have that extensive coverage. I have seen too many cases recently in which banks have refused documents for reasons that have no foundation but where the beneficiary or nominated bank has had no ICC Opinion or ISBP paragraph to refer to, since the document(s) or the issue in question has not been covered by either.

Corporates

A common misconception, particularly from some corporates, is that the ISBP is intended for banks. They look at the title “International Standard Banking Practice for the Examination of Documents under Documentary Credits – 2007 Revision for UCP 600” and focus on the word “examination”. Examination, they contend, is something that banks do, not corporates. However, if corporate staff can understand how banks will examine their documents, they can prepare the documents in a way that will make them acceptable under the credit. Discrepancies rates are still far too high, and a more comprehensive ISBP is one way we can help reduce that level.

In addition to adding more documents to those already covered, the new publication, in my view, should also be extended to cover practices that relate to variants of documentary credits, i.e., transferable credits, revolving and reinstatement credits, instalment credits, assignment of proceeds and even back-to-back credits.

I believe we have an opportunity to create a publication that will have an even more significant impact than the first two publications of ISBP. The decision to proceed lies with the membership of the ICC Banking Commission.

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