

ISBP 821 Review

ICC Global Banking Commission

9 April 2024



Working Group “ground rules”

- Suggestions must be based upon a revised requirement from the market, or a gap that has been identified
- Do not try to fix something that is “not broken” - if a process is working, then no business rationale to change
- Changing text for the sake of it will create more questions and problems than is necessary
- Style of wording must be consistent with existing text
- Ensure clarity and avoid ambiguity which may lead to misinterpretation
- Address issues relating to electronic documents and digitalisation of trade – how and where to incorporate?
- Consider “non-bankers” involved in document preparation and examination

Review findings

- Over 85 potential issues were originally identified
- However, several suggestions were deemed as out of scope or not relevant
- Only 43 issues remain to be considered for potential inclusion within an updated or revised ISBP

High-level results

ISBP 821 Section	Number of issues
Preliminary Considerations	5
General Principles	6
Drafts	3
Invoices	3
Multimodal Transport	3
Bill of Lading	3
Non-negotiable Sea Waybill	3
Charter Party Bill of Lading	None
Air Transport	1
Road, rail, or inland waterway	1
Insurance	None
Certificate of Origin	1
Packing List	1
Weight List	None
Beneficiary's Certificate	None
Certificates	None
General topics	1
Digital issues	4
National Committee consideration	8

Possible new Preliminary Considerations 1/2

- Sanctions
 - Whilst not directly pertinent to document examination, sanctions clauses do have a tangential impact on the examination process.
- Excessive detail
 - Ensures alignment with the “Guidance Notes for Documentary Credit Formats”.
- “Discrepancy” precedent
 - Precedents cannot be created because, whilst circumstances may be superficially the same on the documentation level, each transaction (i.e., each credit or drawing thereunder) is separate from each of its predecessors and is considered independent.

Possible new Preliminary Considerations 2/2

- UCP 600 sub-article "read in context with"
 - Means that the requirements of the documentary credit, the structure and purpose of the document itself, and international standard banking practice need to be assessed, understood and be taken into consideration in determining compliance of a document.
- Ambiguous or conflicting terms and conditions
 - The existing text already states that the issuing bank should ensure that any credit or amendment it issues is not ambiguous or conflicting in its terms and conditions; however, further clarification is to be considered, plus extension to the confirming bank.

Possible new General Principles 1/3

- Define “all documents”
 - All documents required by the credit except drafts. A draft is an unconditional order in writing and not a document.
- Meaning of “without delay”
 - Reference in the UCP 600 to “without delay” means that the concerned bank must complete an action as soon as practicable for that activity and with due consideration to any given circumstance(s).

Possible new General Principles 2/3

- Non-documentary conditions
 - The applicant and beneficiary should carefully consider the content of any non-documentary conditions. Where a non-documentary condition is incorporated into a documentary credit, banks and the beneficiary should pay attention to UCP 600 sub-articles 14 (d) and 14 (h).
- Direct presentation
 - Obligation and undertaking.
- “Detailed”
 - When used in the context of qualifying a document, e.g., “detailed Packing List” or “detailed Weight List”, it has no meaning and is to be disregarded.

Possible new General Principles 3/3

- ISBP paragraph A31 (b): Consider deletion of the word “manually”.
 - In addition, address the consideration that the paragraph does not apply to the situation where the credit requires a photocopy of an original document, and the original document is required to be signed; in such case should the photocopy show that the original document was signed?

Drafts

- Guidance Paper “Use of Drafts under Documentary Credits”
 - Recommend usage of a sight draft to be curtailed.
 - Recommend “deferred payment” as alternative to “drafts”.
- Two drafts / one credit
 - Disregard as a repetition of details.
- Endorsement “if necessary”
 - Early draft versions of ISBP 745 stated, “A draft need not be endorsed.”
 - Other alternatives include replacing “if necessary” with “unless required by local law” or “unless expressly required by the credit.”

Invoices

- Title of invoice
 - Terms “invoice” and “commercial invoice” are, for the purpose of documentary credits and UCP 600, interchangeable.
- Free of charge
 - Unless specifically allowed by the credit, any items which are stated to be free of charge are not allowed. This includes additional quantities of goods, services or performance as required by the credit or samples and advertising material.
- Incoterms 2020
 - Paragraph C9, replace Incoterms 2010.

Multimodal Transport

- On board notation
 - Align paragraph D7 more fully with content of ISBP paragraphs E6 (b), (c) & (d).
- Transport by air
 - Expand section D to cater for the relevant air transport practice when the main leg of the transport is by air.
- ISBP 821 paragraph E8 (b) notation evidencing that the port of discharge is that stated under “Place of final destination” or words of similar effect.”
 - To be considered for update.

Bill of Lading

- Application of UCP 600 article 19
 - Determine if paragraph D1 (c) is also (perhaps primarily) relevant for a Bill of Lading.
- Cities mentioned as airports
 - Recommended to be aligned with ICC Opinion TA937 in respect of airports mentioned (only) as cities.
- ISBP paragraph D17
 - Consider clear clarification that when a credit requires a (multimodal) bill of lading consigned “to order” of a named entity, whether a bill of lading issued “to order” or to order of another entity and then endorsed to the order of that entity stated in the credit is acceptable.

Non-negotiable Sea Waybill

- Application of UCP 600 article 19
 - Determine if paragraph D1 (c) is also (perhaps primarily) relevant for a NNSWB.
- Originality/pdf
 - Can paragraph F10 be expanded to cover more acceptable scenarios without contradicting UCP 600 sub-article 21 (a) (iv).
- Cities mentioned as airports
 - Recommended to be aligned with ICC Opinion TA937 in respect of airports mentioned (only) as cities.

Charter Party Bill of Lading

- None
 - No comments.

Air Transport

- Cities mentioned as airports
 - Align with ICC Opinion TA937 in respect of airports mentioned (only) as cities.

Road, Rail or Inland Waterway

- No current practice for Inland Waterway transport documents
 - To be re-appraised.

Insurance

- None
 - No comments.

Certificate of Origin

- Country of producer
 - Align with ICC Opinion R816/TA772.

Packing List

- Content
 - Clarify possible “conflict” issue, and issue of “in bulk”.

Weight List

- None
 - No comments.

Beneficiary's Certificate

- None
 - No comments.

Certificates

- None
 - No comments.

Digital Issues 1/2

- ISBP 821 Preliminary Considerations (i) & (ii) include specific reference to *UCP 600*.
- ISBP 745 introduction states that the included practices highlight how *UCP 600* is to be interpreted and applied.
- At this stage, there is no reference to *eUCP*.
 - **However, the digital implications can no longer be ignored.**
 - **Accordingly, an approach for “digital” in, or separate to, ISBP must be agreed.**

Digital Issues

2/2

- Format of electronic documents
 - Align with eUCP Version 2.1 article e3.
- Meaning of electronic documents
 - Align with eUCP Version 2.1 sub-article e7 (c).
- Email presentation and file attachments
 - Align with Digital Commercialisation Briefing Paper No. 1.
- Presentation of paper documents only
 - Consider clear statement in either Preliminary Considerations or General principles that whenever the credit is subject to UCP 600, as opposed to eUCP, presentation of paper documents is required.

National Committee consideration 1/3

- Encourage the usage of Multimodal transport documents
 - Explore if feasible to encourage and increase the usage of the Multimodal transport documents.
- On board notations
 - Consider if Sections D, E, F & G should be updated to reflect the practices in respect of “on board” notations (and any other relevant issues) and include a relevant reference to the “On Board” Guidance Paper.
- Numbering of transport documents
 - Suggested that a paragraph in each applicable section of ISBP address this issue.

National Committee consideration 2/3

- Addition of endorsements to negotiable documents
 - Whilst not strictly an issue to be covered by the existing scope of ISBP 821 (i.e., examination of documents), this should be addressed in some format.
- Extend or Pay
 - Possible alignment with ISDGP.

National Committee consideration 3/3

- Additional implications added by a bank
 - Alignment with ISDGP paragraph 143.
- Covering letter statements
 - Alignment with ICC Opinion R537/TA77.
- Document mailing
 - Although the presentation of documents is not strictly within the current scope of ISBP 821, to be deliberated if such inclusion is warranted.

General Issue 1/2

- Distribution of, and guidance in the content of, the ISBP.
 - **A fresh dialogue on this issue must be established as it is not an issue to be directly addressed by an ISBP revision.**
 - **Online accessibility, digital availability, distribution, pricing, regular updates, training programs, workshops, seminars, webinars, partnerships, promotion, awareness campaigns, apps, social media, community engagement, forums, discussion groups, etc.**

General Issue 2/2

- A separate “education project” will be established to address these issues.
- Further details will be provided once a decision has been made on the future of ISBP 821.
 - Chair: Dave Meynell
 - Vice-Chair: Pavel Andrlé
 - Working Group: TA Briefing Team
 - “Sounding Board”: ICC National Committees
 - ICC Liaison: Tomasch Kubiak

Next Steps

Three options :

- **maintain the current version of ISBP 821, or,**
- **initiate a limited revision of the 43 identified issues, or,**
- **move forward with a full, formal revision process.**

A key decision is whether only 43 possible issues are sufficient to constitute a valid business case for a full revision of ISBP 821 and the associated cost, resource and time requirements – for comparative purpose ISBP 745 included several hundred changes!

[As a reference point, ISBP 645 → ISBP 745 took nearly 3 years, whereas a limited revision of the current identified 43 issues would likely be completed in 12-15 months]

Request for feedback will be sent after Plenary - deadline for National Committee response: 28 June 2024

Feedback?

QUESTIONS AND DISCUSSION