

UCP 600

Legal Analysis and Case Studies

by King Tak FUNG

UCP 600 - Legal Analysis and Case Studies

P.E.E.R. Consultancy Ltd.

The Uniform Customs and Practice for Documentary Credits (UCP), ICC's universally accepted rules governing letters of credit, have been recently revised. The latest version of the rules, entitled UCP 600, came into effect on 1 July 2007.

But rules require interpretation. The present volume, **UCP 600 - Legal Analysis and Case Studies**, examines 99 highly controversial issues that will impact on UCP 600 and international trade. Using Q & A techniques, the author has analyzed 55 landmark cases to illustrate the legal principles and the possible pitfalls related to the new UCP. Key sections are devoted to amendments and confirmation, document examination and refusal, insurance documents, transferable and standby UCs, trade finance risks, fraud and injunctions. Special emphasis is given to the latest letter of credit law and practice in the People's Republic of China (PRC).

UCP 600 - Legal Analysis and Case Studies is a comprehensive guide for trade finance practitioners, bankers, lawyers, shippers, managers and anyone involved in letters of credit and international trade.



The author, King Tak FUNG, is a Banking Partner at DLA Piper, the world's largest law firm in terms of the number of lawyers. He was a member of the ICC Consulting Group on the UCP 500 revision, a former Vice President and Head of Trade Finance at Bank of America N.A., an accredited mediator of the Hong Kong International Arbitration Centre and has acted as a banking and trade finance expert in Hong Kong courts. Mr Fung is a frequent speaker and writer on international trade law and practice and is the author of *Leading Court Cases on Letters of Credit*, published in December 2004 by ICC Publishing S.A. Since 1988, more than 30,000 judges, lawyers, bankers and business executives have attended Mr Fung's interactive legal and banking workshops.

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No.600

PREFACE

By Gary COLLYER

Technical Adviser, ICC Commission on Banking Technique and Practice

The process of drafting UCP 600 took some three-and-a-half years followed by some eight months before their final implementation on 1 July 2007. During that time and in the year since the implementation date, a number of books, other publications and brochures have been issued on the rules by various authors and organizations. Whilst each has served its own purpose and target audience, it is unusual to find a publication written by someone who is not only well-known as a lawyer, but who, earlier in his career, experienced documentary credit transactions from a banker's perspective as a trade finance expert.

King-Tak Fung, or K.T., as he is more commonly known, has experienced both sides of the "fence", so to speak, and is ideally placed to write a book that looks at the day-to-day UCP issues, not purely from a legalistic perspective, but also from a practical one, offering advice to bankers, corporates, shipping and logistic organizations and, not least, other lawyers.

When reviewing a number of other publications, I have found they contain a great deal of theory and practical advice, but most authors have shied away from giving pure examples in the shape of case studies. This is probably because practice under UCP 600 had not truly developed at the time they wrote. K.T. has gone against this trend. In addition to taking into account the views expressed in the few UCP 600 Opinions reviewed by the ICC, he has looked at the Opinions given under UCP 500, particularly those that would equally apply under UCP 600.

Having listened to the concerns of practitioners from around the world, K.T. has addressed the more common pitfalls in documentary credit practice, using court cases and case studies as the backbone of his analysis and conclusions, and taking into account various scenarios. He has also tackled issues that have been raised by bankers on a number of occasions, but that were never before the ICC in the form of a request for an Opinion, e.g., in the context of a documentary credit requiring shipment from China, whether China and Hong Kong are considered to be separate banks in the context of article 3 of UCP 600.

Any publication that offers practical advice to users of documentary credits with the aim of resolving persistent problems, enabling banks to have more straight through processing, having importers receive the documents (and goods) in the form they require and allowing exporters to obtain settlement when they expect it should be applauded. This is one of those publications. As K.T. says in his introduction, he is open to receive more comments and updated cases, so we can surely expect further volumes containing this invaluable advice.



June 2008

FOREWORD

By King Tak FUNG

Hong Kong

It is well recognized that UCP 600, a universally accepted set of governing rules on letters of credit, plays an essential role in international trade.

As a member of the ICC Consulting Group on UCP 500 revision, I had the honour and privilege to work with a number of leading L/C experts and to participate in the entire UCP revision process from 2003 to its conclusion in 2007. I believe that sharing this invaluable experience with readers will help them better understand the background and interpretation of the new UCP.

I deliberately set the publication date of this book in July 2008 for two reasons:

1. To celebrate the first anniversary of UCP 600 implementation; and
2. To ensure that I have collected most of the major concerns and queries about UCP 600 from trade finance practitioners in different parts of the world.

Based on my experience in writing the first book, "Leading Court Cases on Letters of Credit", I organized this book around the following principles:

1. **Q & A** – Most readers prefer concise, precise and to-the-point presentations. I therefore used the Q & A technique to examine 99 highly controversial UCP 600 and trade finance issues commonly raised by L/C practitioners. Readers can therefore obtain answers quickly without substantial research.
2. **Cases** – In my view, the best way to interpret and explain rules, legal principles and the application of UCP 600 is through the use of case studies. Accordingly, I have selected 55 classic cases to illustrate proper banking practice and the pitfalls of international trade. Unlike my first book that focuses mainly on court cases, a majority of the cases cited in this book involve real banking practice. In recent years, I have been involved with many of these as a legal practitioner and mediator.
3. **Topics** – There are a total of 12 chapters in the book, covering all of the major topics in UCP 600. To cater for the business sector, I have addressed various issues from a commercial perspective, including "proper usage of Incoterms 2000", "essential terms of a sales contract", "prevention of forged document presentation", etc. Special emphasis has been placed on practical issues such as "control over goods", "comparison between UCP 600 and ISP98 on standby L/Cs", "pitfalls of transferable L/Cs that UCP 600 does not address", "trade finance risks analysis" and "the latest L/C law and practice in the PRC". Hopefully, combining theory and practice in one single volume will provide practical guidance to trade finance practitioners on risk management and will lead to the enhancement of international trade practice.

My hope is that this new book, together with the "Leading Court Cases on Letters of Credit", will provide the reader with a comprehensive and rounded view of letter of credit operations from legal, banking and business points of view.

I look forward to receiving your comments and updated cases from your countries. My e-mail is kingtak.fung@dlapiper.com / fkt@sunitec.com

A handwritten signature in black ink that reads "Fung King Tak". The signature is written in a cursive style with a large initial 'F' and 'T'.

June 2008

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