

USERS GUIDE to the eUCP

Uniform Customs and Practice for Documentary Credits (UCP 600) Supplement for Electronic Presentations (“eUCP”) Version 2.0

A complex, abstract network graphic composed of numerous small, semi-transparent blue and white circles connected by thin lines, creating a sense of a global or interconnected system. It serves as a background for the title text.

eUCP
Version 2.0

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1. INTRODUCTION

The new ICC eRules (eUCP Version 2.0 & eURC Version 1.0) came into force on 1 July 2019, and two publications were made available by the ICC Banking Commission:

- An article-by-article analysis of eUCP version 2.0 and eURC version 1.0 to guide practitioners on the new rules. This guidance provides an in-depth explanation for each rule, as well as an outline of the preparation and drafting process.¹
- Further guidance in respect of handling of the eRules, based on the underlying principles in the UCP and URC and standard practice currently existing for eCommerce transactions.²

An additional guidance paper was released on 7 April 2020 which provided technical guidance to the market on issues of force majeure, elements to consider in modifying ICC rules for specific trade finance instruments, and common scenarios experiences in the delivery of documents during the public health measures undertaken in response to COVID-19.³

Within the above paper, it was confirmed that ICC would continue to promote the broader use of the eUCP Version 2.0. It further clarified that for existing credits subject to UCP 600, if all parties intend to change from paper documents to electronic records, they may do so by agreeing an amendment of the credit from UCP 600 to eUCP Version 2.0. Scanned documents will fall within the definition of an ‘electronic record’ in eUCP Version 2.0 but would need to meet the requirements for authentication as mentioned in eUCP sub-article e6.

On 23 April 2020, ICC issued a collection of rapid response measures by trade finance banks to keep trade finance and trade flowing in the face of COVID-19.⁴

This paper highlighted that, among other common adjustments to workflows during the pandemic, adoption of eUCP Version 2.0 and eURC Version 1.0 as operating models had been growing. Organisations have been configuring internal processes for greater use of these rules. The fact that both sets of rules covered digital formats was seen to be of great advantage.

As mentioned above, owing to the global pandemic, these rules have received increased interest throughout 2020. There is a growing realisation by practitioners that paper documents are causing delays and disruption.

¹ <https://iccwbo.org/media-wall/news-speeches/icc-banking-commission-releases-new-erules-use-electronic-documents/>

² <https://iccwbo.org/publication/supplement-to-the-commentary-on-eucp-version-2-0-and-eurc-version-1-0-erules/>

³ <https://iccwbo.org/publication/guidance-paper-on-the-impact-of-covid-19-on-trade-finance-transactions-issued-subject-to-icc-rules/>

⁴ <https://iccwbo.org/media-wall/news-speeches/how-banks-are-going-digital-to-manage-covid-19/>

2. BENEFITS

In June 2017, the ICC Banking Commission launched the “[Digitalisation in Trade Finance Working Group](#)”. The aim of the Group is to identify strategies to overcome the constraints of digitalising trade finance—such as a reliance on paper-based practices, a lack of recognition of the legal status of electronic documents, uncertainty over standards, and a general lack of clear legal and regulatory frameworks. The Working Group is the coordinating body on all work by the ICC Banking Commission related to digitalisation of Trade Finance with a mandate to identify ways to overcome the abovementioned obstacles. Main objectives include:

- > ICC Digital Rules and Practices;
- > Accelerating Digital Adoption.

It was recognised in the introduction to the initial ICC Guide to the eUCP (ICC Publication no. 639) that the likely end of the evolution to electronic presentations will be automated compliance checking systems in the documentary credit field. Recent developments in Artificial Intelligence (“AI”), Machine Learning (“ML”) and smart Optical Character Recognition (“OCR”) are increasingly becoming driving forces behind automation in trade finance. Under the auspices of the Digitalisation Working Group, a sub-stream is producing a set of clear guidelines on how trade finance document checking can be automated using new technologies.

With regard to the eUCP, the content of the ICC eRules is continually monitored in order to ensure applicability. These rules provide many benefits in advancing documentary credits and collections in a digital environment and ensuring the continued relevance of these valuable instruments in mitigating trade risk.

Existing ICC rules, such as UCP 600 and URC 522, while being invaluable in a paper world, provide limited protection when applied to electronic transactions. It is inevitable that traditional trade instruments will, over time, inexorably move towards a mixed ecosystem of paper and digital, and, ultimately, to electronic records alone. In this respect, it is important to recognise that the new rules provide many benefits in advancing traditional trade solutions in a digital environment:



Figure 1: Benefits of eUCP Version 2.0

3. PREPARATION FOR USAGE OF THE eUCP

Appropriate preparations have been plainly outlined in the eRules Guidance Paper, but it is worthwhile again summarising the main points:

Operations

Covered in more depth under ‘Operational Issues’, page 7, but should still be noted that all staff who will handle presentations under eUCP credits must be properly trained in the eUCP, as well as being cognisant of internal technology changes related to the processing of electronic records. Underlying knowledge of UCP 600 is essential, while an in-depth awareness of ISBP 745 is strongly recommended.

Technology

Essential that internal data processing systems can handle the relevant formats for electronic records, authenticate messages, and execute electronic signatures. In view of the fact that the rules are technology neutral, it is up to the parties concerned to decide the most appropriate method of processing.

Legal

As far as is known, no conflict exists between the eUCP and eCommerce laws. This is most certainly the case with UNCITRAL (United Nations Commission on International Trade Law) Model Laws including, most importantly, the Model Law on Electronic Transferable Records and the Model Law on Electronic Signatures. It should be noted that when there is a mandatory requirement under local electronic commerce law for a higher degree of authenticity than would be required under the eUCP, local electronic commerce law may impose additional requirements on an electronic presentation. It is important that a review of customer agreements be undertaken in order to ensure that issues such as formats for electronic records, authentication, and electronic signature requirements are covered. The ICC Banking Commission, on the recommendation of the Legal Committee, appointed Clyde & Co., to conduct a survey on the legal status of eBL’s, whether in the form of an electronic record or in paper format when converted from an electronic record.⁵

Risk Management

While it is assumed that most internal policies will already cater for digitalisation, it may be useful to review handling guidelines in order to account for changes in processing practices for eUCP credits, as well as any additional risks deemed relevant to transaction processing.

Although the eUCP is based on the time-tested principles of the UCP and documentary credit practice, the presentation of electronic records raises new considerations for documentary credit processing. Whenever new processes are introduced into an operations environment, it is necessary to look closely at the impact. Banks will need to undertake a thorough analysis of the impact on operational risk related to the presentation of electronic records and create new procedures and risk guidelines for these practices. Organisations may additionally wish to consider a specific strategy for approaching customers as to their interest and preparedness for eUCP credits. Moving towards a digital environment will result in cost and efficiency savings on all sides, while also introducing a competitive advantage.

⁵ <https://iccwbo.org/publication/legal-status-electronic-bills-lading/>

Fraud

Documentary credit practitioners have long been aware of potential fraudulent transactions and presentations under credits. However, while fraud in documents has been a concern, it is not an overwhelming problem for the industry. With the additional requirements for authentication of electronic records, combined with modern technology related to digital signatures and message authentication, these issues should diminish. It would be far more difficult to have fraud in specific electronic records presented under an eUCP credit than in today's paper world, provided that adequate authentication practices are used. That is not to say that fraud can be eliminated from credit transactions simply by the use of electronic presentation, but only that the possibilities for fraud become more limited.

The International Group of P&I Clubs ("IG") provides liability cover for 90% of the world's ocean-going tonnage. It is therefore at the forefront of approving eBL providers for use by its members. The IG have identified the following potential cyber risks⁶:

- > a failure to have an efficient and effective corporate cyber risk policy that is regularly updated;
- > a failure to maintain and to upgrade IT systems when such may be necessary;
- > a failure to install up-to-date anti-virus software on the computers;
- > a failure to provide employees with essential cyber risks training;
- > a failure to keep passwords, private keys and unique identifier codes confidential;
- > a mis-use by authorised employees of the company's IT systems and the eBL platforms for malicious or criminal purposes;
- > breaches of the duty of confidentiality owed to other users of the eBL platform and/ or to third parties.

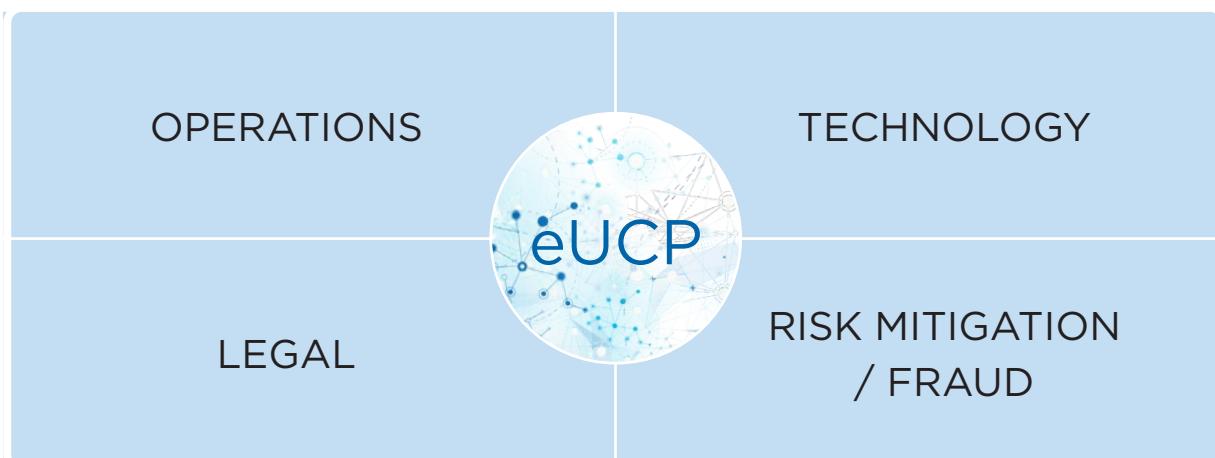


Figure 2: Impact of eUCP

⁶ <https://www.ukpandi.com/news-and-resources/legal-content/legal-articles/electronic-bills-of-lading---an-update-part-ii/>

4. OPERATIONAL ISSUES

In order to support further advancement of the eRules, it is considered timely to provide additional operational guidance. Similar approaches can be considered for the eURC version 1.0, but those rules are not the attention of this particular user guide.

The focus of the eUCP is concentrated upon the presentation of electronic records, alone or in combination with paper documents, and not to issuance of an eUCP credit. This decision was based on the fact that documentary credits had, for many years, already been issued electronically. In addition, there was concern that any rules surrounding issuance could encumber present and evolving practices of electronic issuance, while additionally endangering the technological neutrality of the rules. The principles on which the rules have been based are the underlying principles in the UCP and standard practice currently existing for eCommerce transactions. As such, most of these principles are reflected in the definitions contained in eUCP Article e3.

However, in order to gain optimal benefit, it is still important to take into account the implications of the eUCP when issuing a documentary credit that will provide for presentation of electronic records, solely or in combination with traditional paper documents. Not doing so would potentially negate many benefits.

Such consideration needs to be addressed at the very outset of a transaction. As with the paper environment, the issuance of a documentary credit is not always straightforward, nor can it necessarily be pursued in a regular or repetitive manner. The process often requires attention to detail and, critically, an emphasis on content that is unambiguous and cannot be subject to more than one interpretation.



Figure 3: Key ICC publications

Sales Contract and Request for Issuance of a Documentary Credit

As with credits solely subject to UCP 600, an applicant must ensure that any request for the issuance of a credit expressly clarify and determine the appropriate documentary requirements as agreed with the beneficiary. The documentation must also provide a suitable level of assurance as to the quality, standard and/or type of goods being purchased, thereby enabling a trouble-free importation of the goods.

As reflected in the ICC guidance notes for documentary credit formats (refer Section 7 below), the applicant and beneficiary should carefully consider the documents required for presentation, by whom they are to be issued, their data content and the time frame in which they are to be presented. Documentary credits must not include wording that is ambiguous or subject to more than one interpretation, nor should they state conditions for which fulfilment cannot be ascertained from the face of a document. Only documents that are necessary (e.g. for customs clearance purposes) should be required by the credit.⁷

With regard to an eUCP credit, an applicant needs to take into account a number of additional considerations. The fundamental requirement, from which all else will evolve, is to jointly agree with the beneficiary of the credit that presentation of electronic records will be permitted, and to determine which documents can be handled in this way. It is necessary, during this dialogue, that the beneficiary provide reassurance that it can present any required electronic records, and that such records will be in an acceptable format. It should be noted that, prior to finalising the format, it needs to be determined that such format is also acceptable to the issuing and nominated banks.

The format of an electronic record is key to the entire process. As stated in eUCP article e5, an eUCP credit must indicate the format of each required electronic record and, if the format is not indicated, it may be presented in any format. It can be seen, therefore, that if a format is not stated, then the relevant banks (and ultimately the applicant and beneficiary) take on any resultant risk. In view of the fact that data processing systems are unlikely to be able to access all formats, it is essential that any data received is readable by the relevant data processing system(s). The importance of a format lies in the ability of a data processing system to process data. If the format is not one that is recognised by the data processing system, the output is meaningless and said to be ‘unreadable’.

Incidentally, questions relating to format have virtually no analogy to credits calling for paper documents under UCP 600, except possibly with respect to the language in which documents are written. In order to develop a new system for processing electronic records, it is necessary that the desired format be known to the presenter and nominated banks in order to avoid confusion and disputes. As a result, eUCP article e5 (Format) and sub-article e7 (c) (Examination) place the onus of stating a required format on the issuing bank and permits the presenter to present an electronic record in any format if none is specified in the eUCP credit.

Accordingly, when considering format, the below points must be taken into account:

- > Format(s) of the electronic records to be agreed up-front by all parties to the transaction.
- > Must be comprehensible to the presenter.
- > Capable of being accepted and processed by the specific data processing systems in use for the transaction(s).
- > Identify, with sufficient specificity, the format (protocol) by which the data in an electronic record is to be arranged.
- > Formats are commonly issued in versions—unless a specific version is stated, any version of that format is acceptable.
- > The indication of a version of a format would be assumed to include any prior version of that format but not any subsequent version.

⁷ <https://iccwbo.org/publication/guidance-notes-for-documentary-credit-formats/>

- If a prior version of a format is not acceptable, the transaction should so state.
- It is possible that the transaction may specify different formats for various documents—in such circumstances, the electronic record must be presented in the format specified for it.

If an eUCP credit does not stipulate the required format, and documents are presented in any format, this could potentially result in a situation wherein, while the issuing bank or any confirming bank would be unable to access the electronic records, they would still be liable to honour. Any ability to dishonour on the basis that a bank is unable to read the format in which data is presented would, under eUCP sub-article e7 (c) (Examination), not be feasible in such circumstances. It is essential to ascertain that the electronic records presented are, if so required, sufficient to clear any goods and are acceptable to relevant customs authorities.

The applicant must also determine if its bank is prepared to issue a credit subject to the eUCP, and that required electronic records are in formats that are mutually compatible. The applicant should review any changes relating to eUCP credits in their counter-indemnity agreement with the issuing bank.

As highlighted above, before agreeing to accept a credit subject to the eUCP, a beneficiary should have in place an agreement with the applicant in respect of the electronic records to be submitted and the format for such records. By default, they must be records that the beneficiary (or issuing party) is capable of producing in the requisite format, and that the nominated bank is capable of accepting in the specified format. The beneficiary should assure itself that any requirements for authentication of such electronic records, or addition of electronic signatures, can be fulfilled. If it is not able to comply with any requirement for presentation of electronic records, the beneficiary should request the applicant to arrange for the credit application to be altered accordingly.

Authentication is that process of screening incoming data as to identity, source, and error that is preliminary to it being deemed to have been presented. In the digital world, there is a greater deal of focus on the authentication of data. Although used extensively throughout the eUCP, it is deliberate that ‘authentication’ is not defined. The basis for this approach is the conviction that any purported definition would either unnecessarily duplicate the definition of ‘electronic record’ or, even worse, provide a specific link to existing technology.

The term ‘authenticate’ is used in the eUCP in two different senses:

- In eUCP sub-article e3 (b) (iii) (Electronic record), it means identifying the person sending a message and the source of the message.
- In eUCP sub-article e3 (b) (iv) (Electronic signature), it means associating the person authenticating with the content of the message authenticated.

The eUCP requires a level of authentication of electronic records that differs from that required for paper documents. In neither case, however, is the bank required to look beyond the face of what is presented to ascertain the facts that are represented.

The nature of an electronic presentation requires a different manner of screening as to the apparent authenticity of the document. In the paper milieu, an examiner would look at the document on its face. Only if it were apparently irregular in a manner that was beyond doubt would the examiner be justified in questioning its authenticity. Even then, the examiner would not be justified in refusing it on the basis that it appeared to be false unless it was, in fact, proven to be false, fraudulent, or forged.

In an electronic environment, the processing system performs a screening function that filters electronic records with respect to the apparent sender and with respect to whether the message is received in its entirety and integrity. The nature of this authentication is intimately linked to the nature of an electronic record and is covered in more detail in connection with the definition of ‘electronic record’ under eUCP sub-article e3 (b) (iii) (Definitions). eUCP sub-article e6 (f) provides that when an electronic record cannot be authenticated, it ‘is deemed not to have been presented.’ Indeed, in most such situations, the documentary credit department will not even be

aware that a presentation has been attempted because the transmission will not be able to get beyond the bank's authentication systems.

Current and evolving technology allows for numerous commercially reasonable techniques in order to authenticate an electronic record while applying the criteria in eUCP sub-article e3 (b) (iii). The parties to the credit must decide the level and amount of security to be used in authenticating a message. The UNCITRAL Model Law on Electronic Commerce provides an excellent guide to this process. Various national laws may also impose specific requirements for an electronic record to be authenticated.

Below are the key considerations for authentication:

- > Parties to the transaction must agree the level and amount of security used to authenticate a message.
- > Capable of being authenticated as to the apparent identity of a sender of an electronic record.
- > Capable of being authenticated as to the apparent source of the data contained in an electronic record.
- > Capable of being authenticated with respect to the complete and unaltered character of an electronic record.
- > Take note of any applicable national laws, which may impose specific requirements for an electronic record to be authenticated.
- > The eUCP are technology neutral and do not mandate any specific technology: any applicable technology is to be agreed by the parties involved in a specific transaction.

Issuance of a Documentary Credit

An issuing bank has a responsibility to work with its clients in order to ensure that the issued documentary credit fully meets the needs of each applicant in terms of specifying the appropriate documentary requirements that will enable the smooth importation of the goods, and provide a suitable level of assurance, as to the quality, standard and/or type of goods being purchased; while ensuring that the documentary credit is in accordance with the bank's internal policies, procedures and regulatory guidelines to which it must adhere.

It is incumbent upon the issuing bank to determine the workability of an applicant's instructions. This is particularly vital for credits that will be issued subject to the eUCP. Not only does the issuing bank need to determine and validate that the instructions are workable, it must additionally ensure that the bank itself is in a position to handle the credit.

Nominated Bank

Depending on its role in an eUCP credit, a nominated bank (advising, confirming, other nominated bank) should ensure it is prepared to act in the nominated capacity under an eUCP credit.

An advising bank has no obligation to review a documentary credit or amendment to determine that its terms and conditions appear to be workable. A policy or decision to review all or some of the terms and conditions of a documentary credit is for each advising bank to make.

It should be noted that even though a bank may advise a documentary credit, it has no obligation to examine documents (assuming that it is also a nominated bank), and when it does, there is no obligation for it to honour or negotiate a complying presentation.

However, in respect of an eUCP credit, it is strongly recommended that, at the minimum, an advising bank clarifies that, should it decide to do so, it is in a position to process any required electronic records.

A confirming bank accepts the documentary risk in the examination of documents. If the confirming bank determines that the documents comply it must honour or negotiate, notwithstanding any subsequent view of the issuing bank that the documents do not represent a complying

presentation. As such, it is crucial that a confirming bank satisfy itself that it is in a position to deal with all aspects of eUCP credits.

In particular, it is important to review the credit to ensure that the bank can meet any eUCP requirements.

Amendments

With respect to the treatment of documentary credit amendments in the digital world, evolving practice will decide the most valid approach. At this stage, the handling of amendments is defaulted to UCP 600. The position in UCP 600 is that amendments must be accepted or rejected.

A single ISBP for UCP and eUCP

In the long run, this will be optimal, and such a publication will provide immense guidance to practitioners. As practice evolves, this will, inevitably, lead to drafting of such a publication.

5. SWIFT

MT700

Sub-article 1 (b) of eUCP version 2.0 requires that, for the rules to be applicable, the text of a documentary credit should expressly indicate that it is subject to the eUCP.

While all MT700 fields must be considered for applicability when handling a transaction subject to the eUCP, the following should have an additional emphasis:

- Field 40E (Applicable Rules—mandatory field)—Indicates the rule(s) that will apply to the documentary credit. For an eUCP credit, it must indicate “eUCP LATEST VERSION”, or “eUCPURR LATEST VERSION”.
- Field 46A (Documents Required—optional field)—Unless it is unavoidable, all documentary requirements should be accommodated in this field. If a specific document has been agreed in the form of an electronic record, the appropriate information must be stated. As such, this field should mention, for a necessary electronic record, any specific requirements for the format and authentication of such record.

The documentary credit application form of most banks will incorporate a selection of the main types of documents that are presented under a documentary credit. For example, invoices, various forms of transport documents, insurance documents, packing lists, weight lists, etc. Where feasible, electronic alternatives should be considered.

Neither UCP 600 nor eUCP version 2.0 indicate which documents must be presented under a documentary credit or which documents are to be presented in certain circumstances. This is left to the applicant and beneficiary to determine. However, an issuing bank may insist on certain documents being presented from a local regulatory perspective or due to its own internal policy.

Field 46A—Main UCP/eUCP considerations

UCP 600 article 3 indicates that terms such as “first class”, “well known”, qualified”, “independent”, “official”, “competent” or “local” should not be used to describe the issuer of a document. If a documentary requirement is so phrased, it will mean any issuer except the beneficiary is acceptable.

UCP 600 provides specific rules in respect of the content and signing requirements for commercial invoices (article 18), transport documents (articles 19-25) and insurance documents (article 28).

UCP 600 sub-article 14 (f) states that if a documentary credit does not indicate the issuer or data content of a document other than an invoice, transport or insurance document, the document will be accepted as presented provided that it fulfils its function and otherwise complies with sub-article 14 (d), i.e., there is no conflict of data between documents. It is in the interests of an applicant that each documentary requirement provides, at the very least, the data that should appear thereon.

When documents such as inspection or analysis certificates are to be presented, specific wording should be given as to the quality or standard to which the inspection or analysis is to be completed and determined. Terms such as “detailed” preceding the name of a document should be avoided, and the documentary credit should indicate the detail that is expected to be shown.

UCP 600 sub-article 28 (f) (ii) requires, unless the documentary credit states otherwise, that the amount of insurance coverage is to be at least 110% of the CIF or CIP value of the goods. It is good practice for the documentary credit to indicate the amount of insurance coverage that is required and not rely on the text in this sub-article.

SWIFT Solution for Digital Exchange of Trade Documents

SWIFT platforms (namely FileAct and MT 759) assist Banks and SWIFT connected Corporates in exchanging Trade documentation electronically, quickly, safely, and reliably.⁸

- > FileAct allows Banks and Corporates to exchange documents in any format
- > MT759 helps the community to both notify of, and link, the documents associated with the Documentary Credit

It is recommended by participating banks that banks looking to adopt FileAct as a digital channel to promote the digitisation of documents under documentary credits, take notice of the eUCP and the associated ICC article by article analysis.⁹

⁸ <https://www.swift.com/news-events/webinars/helping-keep-trade-moving-during-exceptional-times>

⁹ <https://iccwbo.org/media-wall/news-speeches/icc-banking-commission-releases-new-erules-use-electronic-documents/>

6. eUCP ARTICLES

	UCP 600	eUCP Version 2.0
Definitions	Where not defined or amended in the eUCP, definitions given in UCP 600 will continue to apply	Where terms are also used in UCP 600, definitions are updated for application to an electronic record
Scope	Paper documents (and electronic records if strictly defined, although UCP 600 only provides limited protection)	Electronic records alone or in combination with paper documents
Application	UCP 600	UCP 600 & eUCP Version 2.0
Relationship	UCP 600	In event of conflict, eUCP prevails
Presentation of only paper documents	UCP 600	UCP 600
Documents examined on their face	Review of data within a document in order to determine that a presentation complies with international standard banking practice and the principles contained in UCP	Electronic records are examined only for the data received and not the reality that such data represents
Document	The term suggests format in a paper medium: unless specifically allowed under the terms and conditions of a UCP 600 credit, it is expected that all presentations under such a credit be in a paper format	Adds the term 'electronic record' to the meaning
Place for presentation	The place where the documentary credit is available	Extends the phrase to include an electronic address
Data Processing System	Not necessarily used	A computerised or an electronic or any other automated means used to process and manipulate data, initiate an action or respond to data messages or performances in whole or in part
Electronic signature	Not specifically defined: article 3 highlights that 'a document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol, or any other mechanical or electronic method of authentication'	Data attached to an electronic record with the intent of identifying the signer and authenticating the record

	UCP 600	eUCP Version 2.0
Format	Unless specifically stated otherwise, expected to be paper	The protocol by which data is organised, the version of that format, or the shorthand name by which that protocol is recognised and described
Paper document	Unless otherwise stipulated, assumption is that all ‘documents’ are in a paper medium: however, as is often the case with UCP 600, this fundamental assumption is not stated expressly and, instead, the term ‘document’ is used	Refers to a document in a paper medium, the type of document which is expected to be presented under UCP 600
Authentication	The process by which the validity of the representations and the paper documents containing them are ascertained: under UCP 600, the level of authentication of paper documents is facial	Identifying the person sending a message and the source of the message, and associating the person authenticating with the content of the message authenticated
Goods, Services or Performance	Banks deal with documents and not with goods, services or performance to which the documents may relate	Also addresses electronic records
Notice of completeness	Not applicable	Presentation does not take place until the presenter provides a notice of completeness to the nominated bank, confirming bank, if any, or to the issuing bank
Time for examination	Once presentation is made to an issuing or confirming bank, the time for examination commences	Electronic records may be presented separately and, even if paper documents are presented in one lot, they must be coordinated with the electronic records: the time for the examination of documents does not commence until the notice of completeness is received
Period for examination	Maximum of five banking days following the day of presentation to determine if a presentation is complying	Remains applicable
Approach by the issuing bank to the applicant in order to seek a waiver of discrepancies	UCP 600 sub-article 16 (b) (Discrepant Documents, Waiver and Notice)	Remains applicable
Notice process for discrepant documents	UCP 600 sub-article 16 (b) (Discrepant Documents, Waiver and Notice)	Remains applicable

	UCP 600	eUCP Version 2.0
Disposition of documents in event no instructions received subsequent to notice of refusal	Paper documents can be held or returned	Return any paper documents and ‘may dispose of the electronic records in any manner deemed appropriate without any responsibility’
Originals and copies	UCP 600 sub-articles 17 (b) and (c)	Any requirement for an original is satisfied by the presentation of one electronic record: in the event of a requirement for multiple copies, the condition will be fulfilled by presentation of one electronic record
Date of issuance	Requirement for a document to be dated is with respect to the identification of certain dates on transport and insurance documents. In addition, there are expectations that other documents, such as statements or certifications, must contain a date. ISBP 745 goes into more detail as to documentary requirements under UCP 600. Credits may also contain a specific requirement that a document be dated	Effectively dates electronic records, with the result that all such records must be dated: if there is to be any other way of determining the date of issuance then this will be for the eUCP credit itself to determine
Date of shipment or dispatch or taking in charge or a date the goods were accepted for carriage	Contains elaborate rules for determining the date of shipment or dispatch that are individualised according to the type of transport document involved	Date of shipment is the date in the electronic transport record indicating shipment or dispatch or taking in charge or the goods were accepted for carriage. If there is no date indicating shipment or dispatch or taking in charge or goods accepted for carriage, the date of shipment or dispatch is the date of issuance of the electronic transport record unless there is a notation evidencing shipment or dispatch or taking in charge or goods accepted for carriage

	UCP 600	eUCP Version 2.0
Data corruption	No rule for paper documents that are lost or rendered unreadable by a bank after they have been received; most banks have procedures in place that minimise the consequences of such loss and there is no perceived need for such a rule. These procedures involve refusing payment based on discrepancies in the documents that are presented, requesting a substitute document, or indemnifying the applicant for any harm that may result from the lost document	Provides a method by which corrupted data may be re-presented; based on the assumption that all electronic records are replaceable
Disclaimers	Contains several disclaimers that are also relevant to an eUCP credit	Additionally, disclaims banks' liability for any divergence from the realities represented in authenticated electronic records
Force Majeure	States the force majeure events for which a bank assumes no liability or responsibility	Extended to cover the inability of a bank to access a data processing system, or a failure of equipment, software or communications network

Figure 4: Quick comparison

PRELIMINARY CONSIDERATIONS

The precedent for including 'Preliminary Considerations' was established in ISBP, and with the preamble to DOCDEX. The preliminary considerations are listed on a separate page to the rules in order to provide a distinction between the two.

Mode of Presentation

The mode of presentation to a bank for examination and the mode for delivery of that presentation to the applicant, once honour has occurred, are outside the scope of the rules. Accordingly, this is applicable for the mode of presentation:

- > to the nominated bank, confirming bank, if any, or the issuing bank, by or on behalf of the beneficiary.
- > to the applicant, by the issuing bank.

UCP 600 Definitions

Definitions given in UCP 600 continue to be applicable.

Examination of Electronic Records

In order for banks to examine any electronic records, they must ensure that they have in place both the technological and operational capabilities to do so.

ARTICLE E1—SCOPE OF eUCP

The formal title is ‘Scope of the Uniform Customs and Practice for Documentary Credits (UCP 600) Supplement for Electronic Presentations (“eUCP”). Because of the length of the title, the shorthand acronym “eUCP” is appended.

This abbreviated form employs the usual prefix that is applied to electronic commerce while emphasising the connection with the Uniform Customs and Practice.

Although no specific form of reference to the eUCP is mandated (in fact any reference that clearly indicates the eUCP would be adequate), it is recommended that the term “eUCP” be used for reasons of transparency and clarity.

Supplement to UCP 600

Although the rules do not include a definition of the word ‘supplement’, the intent is that, in practice, they function by reference to UCP 600, and do not stand as a set of self-contained rules, such as ISP98 or URDG 758. The eUCP contains only those requirements deemed necessary to expand or modify UCP 600 in order to facilitate the presentation of electronic records. Accordingly, it is an absolute necessity to read any eUCP article in combination with the analogous UCP 600 article. The rules will only apply when an electronic record is involved which can be as part of a presentation consisting solely of electronic records, or as part of a mixed presentation with paper documents.

Application

The eUCP applies when a documentary credit indicates that it is subject to the eUCP. As such, it is expected that an appropriate reference to applicability be apparent.

Version number

The eUCP is issued in versions, with the current version being Version 2.0. As a matter of good practice, it is always recommended that an eUCP credit indicate the applicable version, rather than leave it open to possible misinterpretation. Should a version number not be stated, the credit would be subject to the latest version in effect on the date the eUCP credit is issued. Additionally, in the event that a credit is made subject to the eUCP by means of an amendment, and such amendment has been accepted by all relevant parties, the credit would then be subject to the latest version of the eUCP in effect on the date of such amendment.

Amendment to eUCP from UCP 600

The eUCP makes allowances for a situation wherein a credit subject to UCP 600 may be amended to be subject to eUCP in order to allow for the presentation of electronic records. This can be handled as easily as an issuing bank making a simple statement that the condition of a credit being subject to UCP 600 is now replaced by subjectivity to eUCP Version 2.0. However, any such amendment requires careful scrutiny of the credit before being issued. In view of the fact that the credit was originally issued subject to UCP 600, then it is consequential that the terms and conditions of the credit were originally mandated upon the presentation of paper documents. As such, the introduction of electronic records requires close assessment in order to ensure there are no potential negative impacts towards the applicant and the parties under the credit.

Location of the Issuing Bank

It is normal practice that, under UCP 600, a physical location for presentation will be stated within in the credit. While ‘place of presentation’ is not formally defined in UCP 600, it means the place where the beneficiary is required or permitted to present documents in order to satisfy the

required conditions of the issuer or confirmor's documentary credit obligation. UCP 600 states that the place of the bank with which the credit is available is the place for presentation. Although not expressly stated, a physical address is implied. The eUCP defines 'place for presentation' as an electronic address. Where an eUCP credit requires or permits presentation of electronic records, their place of presentation will typically be to an electronic address and not a physical one. As such, and in order to allow banks to ensure compliance with applicable regulatory and sanctions issues, it is essential that an eUCP credit also indicate the necessary physical location(s). This also applies for mixed paper/electronic presentations.

Note regarding Confirmation

The concept of 'confirmation' applies for eUCP credits, as it does for UCP 600 credits. However, an additional reflection for any confirming bank to consider with eUCP credits is that they must take cognisance of any related format and data processing requirements. Inability to comply with such requirements could potentially negate the ability for a bank to be involved in an eUCP credit in the capacity of a confirming bank.

ARTICLE E2—RELATIONSHIP OF eUCP TO UCP

The interdependence between the eUCP and UCP 600 is clearly indicated in eUCP article 1 (Scope of the Uniform Customs and Practice for Documentary Credits (UCP 600) Supplement for Electronic Presentations (“eUCP”)).

As a consequence of this correlation, eUCP article e2 goes on to clarify how such interdependence will work in practice

Automatically subject to UCP 600

There is no need to expressly incorporate UCP 600 within an eUCP credit. Such credits are automatically subject to UCP 600 meaning that the content of UCP 600 article 1 (Application of UCP) additionally relates to an eUCP credit. However, the provisions of eUCP will prevail in the event of any ‘conflict’ with UCP 600. While there is no actual need to provide specific reference in an eUCP credit to UCP 600, it may well be considered as good practice and prudent to provide such reference, e.g. by stating that an eUCP credit is ‘also subject to UCP 600’. This would provide transparency to all parties concerned and ensure that there is no doubt of the continued relevance of UCP 600. The eUCP would not apply, despite reference to the eUCP in the terms and conditions of a credit, when only paper documents are presented without any electronic records. The eUCP can only apply to presentations containing one or more electronic records. By default, if solely paper documents are presented, only UCP 600 will apply.

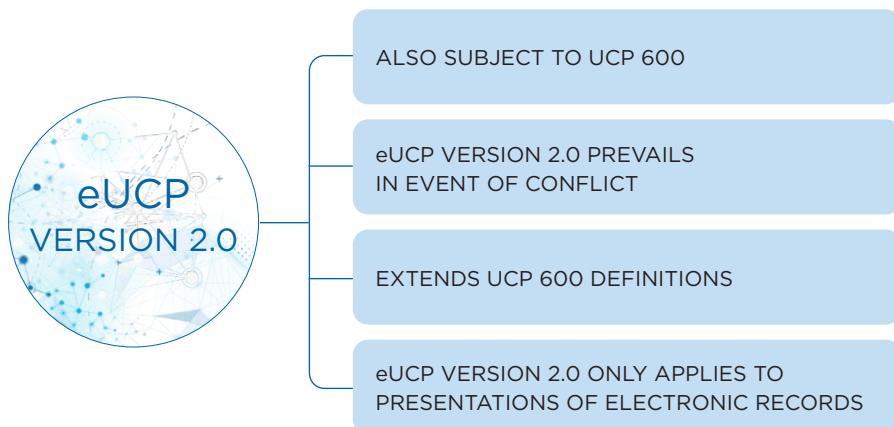


Figure 5: Relationship of eUCP to UCP

ARTICLE E3—DEFINITIONS

Embraces a number of terms used in the eUCP. Reference is made to terms that also appear in UCP 600, but have a different meaning when applied to an electronic record presented under an eUCP credit. These include ‘appear on their face’, ‘document’, ‘place for presentation’, ‘presenter’, ‘sign’, and ‘superimposed, notation or stamped’. Owing to the interdependence between UCP 600 and eUCP, it was clear that these UCP 600 terms required ‘re-definition’ under the eUCP in order to remain applicable. In addition, reference is made to terms used solely in the eUCP. These include ‘data corruption’, ‘data processing system’, ‘electronic record’, ‘electronic signature’, ‘format’, ‘paper document’, ‘received’, and ‘re-present or re-presented’.

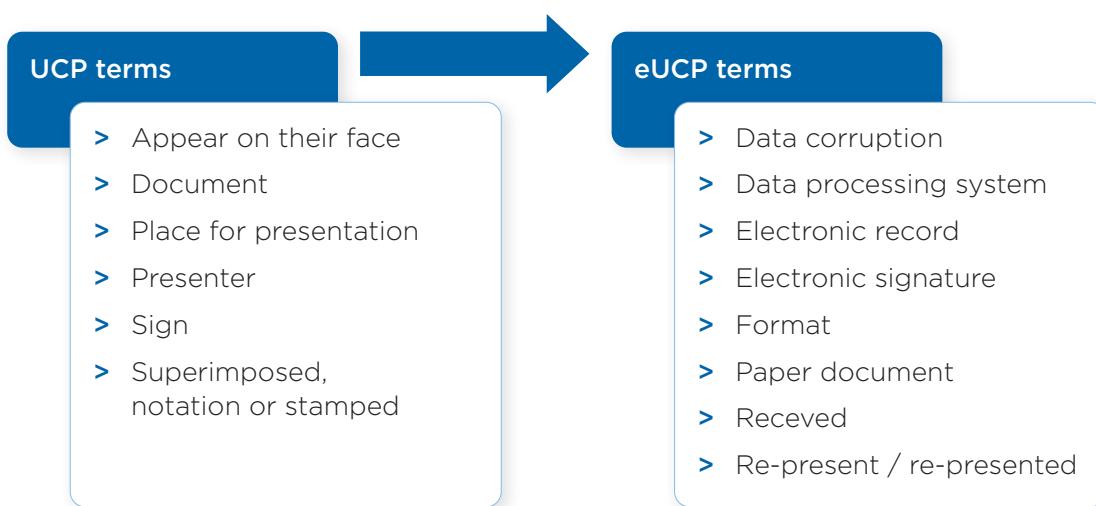


Figure 6: Article e3 Definitions

Impact of Electronic Commerce law

Not only are many of the terms that are defined in eUCP article e3 used in electronic commerce, they have also come to be used and even defined in the law relating to it. With respect to the law, as well as electronic commerce generally, there has been no intention to develop new doctrine or concepts. Any innovations in the definitions in the eUCP derive from the unique nature of the documentary credit. The eUCP definitions are modelled on the United Nations Commission on International Trade Law Model Law on Electronic Commerce (UNCITRAL MLEC). In most cases, the law of electronic commerce reflects modern commercial law in permitting private rules to utilise particular definitions internally. Where the same term has differing meanings or where the same concept is given two different names—one in the law and a different one in a private rule—there is more likely to be confusion than conflict in applying local law. The confusion would result where local law embraces one definition but defers to the eUCP and permits use of a different definition internally in applying that practice. For example, the term ‘document’ may have a different meaning under local electronic commerce law than in the eUCP. When applying local electronic commerce law, its own definition must be used, whereas in interpreting and applying the eUCP, the eUCP definition must be used. The only area identified to date as one for possible confusion regarding conflict between the eUCP and local electronic commerce law relates to the degree of authenticity required for electronic records and the meaning to be attached to a requirement for an electronic signature. Where there is a mandatory requirement under local electronic commerce law for a higher degree of authenticity than would be required under the eUCP, local electronic commerce law may impose additional requirements on an electronic presentation.

“APPEAR ON THEIR FACE”

As with paper documents, electronic records are examined only for the data received and not the reality that such data represents. Although the eUCP allows banks to examine electronic records accessible via an external system, such examination is still limited to the data provided at that site or system and not of the underlying reality represented. Examination of data is related to the content that is required in order to determine compliance with the terms and conditions of the credit. The format of a computerised program used to view an electronic record may hide certain data and only display the data that it is programmed to reveal. It is possible that elements of this suppressed data may necessitate examination for some purposes and not others. As an example, it may be expected that certain header and footer tags will be reviewed in the process of authenticating the transmission or in ascertaining the data sent or received. In order to avoid difficulties, a bank should give careful thought to the format in which the data is required to be presented and what data will be displayed by processing systems which will be sufficient to assure it that an examiner has all of the data that is relevant to an examination of the electronic record.

“DOCUMENT”

The eUCP adds the term ‘electronic record’ to the meaning of ‘document’ as used in UCP 600. It is important that the impact of applicable local electronic commerce law always be taken into account. However, as mentioned above, based upon the fact that the eUCP definitions are modelled on the UNCITRAL MLEC, it is understood that there will be no particular conflict with the eUCP definition of ‘document’. In the preparation of the MLEC, consideration was given to the possibility of dealing with impediments to the use of electronic commerce posed by such requirements in national laws by way of an extension of the scope of such notions as ‘writing’, ‘signature’ and ‘original’, with a view to encompassing computer-based techniques.

“DOCUMENT”—‘FUNCTIONAL EQUIVALENT’

The MLEC thus relies on a new approach, sometimes referred to as the ‘functional equivalent approach’, which is based on an analysis of the purposes and functions of the traditional paper-based requirement with a view to determining how those purposes or functions could be fulfilled through electronic commerce techniques. For example, among the functions served by a paper document are the following: to provide that a document would be legible by all; to provide that a document would remain unaltered over time; to allow for the reproduction of a document so that each party would hold a copy of the same data; to allow for the authentication of data by means of a signature; and to provide that a document would be in a form acceptable to public authorities and courts. It should be noted that in respect of all of the above-mentioned functions of paper, electronic records can provide the same level of security as paper and, in most cases, a much higher degree of reliability and speed, especially with respect to the identification of the source and content of the data, provided that a number of technical and legal requirements are met. However, the adoption of the functional-equivalent approach should not result in imposing on users of electronic commerce more stringent standards of security (and any related costs) than in a paper-based environment. A data message, in and of itself, cannot be regarded as an equivalent of a paper document in that it is of a different nature and does not necessarily perform all conceivable functions of a paper document. That is why the MLEC adopted a flexible standard, taking into account the various layers of existing requirements in a paper-based environment: when adopting the ‘functional-equivalent’ approach, attention was given to the existing hierarchy of form requirements, which provides distinct levels of reliability, traceability and unalterability with respect to paper-based documents. For example, the requirement that data be presented in written form (which constitutes a ‘threshold requirement’) is not to be confused with more stringent requirements such as ‘signed writing’, ‘signed original’ or ‘authenticated legal act’. The MLEC does not attempt to define a computer-based equivalent to any kind of paper document. Instead, it singles out basic functions of paper-based form requirements, with a view to providing criteria which, once they are met by data messages, enable such data messages to enjoy the same level of legal recognition as corresponding paper documents performing the same function.

“PLACE FOR PRESENTATION”

The eUCP extends the phrase ‘place for presentation’ in UCP 600 to include an electronic address when referring to the place of presentation of an electronic record under an eUCP credit. For purposes of transparency and clarity, as well as certainty, the UCP expressly refers to an electronic address. Where the credit requires or permits presentation of electronic records, their place of presentation will typically be to an electronic address and not a physical one. However, the credit may require that the electronic record be contained on a portable storage medium, in which case the electronic record may be presented to a physical address. Although there is no specific definition within the eUCP, the term ‘electronic address’ signifies the precise electronic location or proprietary system to which an electronic record can be sent. It could include, inter alia, a URL, an email address, or an address on a dedicated system.

“PLACE FOR PRESENTATION”—ELECTRONIC ADDRESS

While, at this stage, there are no recommended minimum standards surrounding ‘electronic address’, the below should be taken into account:

- Needs to identify the precise electronic location or a proprietary system to which an electronic record can be presented. This can include, but is not restricted to, a URL, an email address, or an address on a dedicated system.
- Should be stated in the terms of the eUCP credit.
- A bank may be open for business but is unable to receive an electronic presentation. To lessen the impact of such electronic closure, banks should have back-up systems in place and may wish to indicate alternative electronic addresses for specific transactions.

“PRESENTER”

As stated in the ‘Commentary on UCP 600’ (ICC Publication No. 680), the term ‘presenter’ was introduced into UCP 600 to better define the party that actually makes a presentation of documents to the bank and to reference the party that presents the documents. This is equally applicable to the eUCP.

“SIGN”

The eUCP adds ‘electronic signature’ to the meaning of the term ‘sign’ or its variants as used in UCP 600 or in the credit in connection with an electronic record presented under the eUCP. A signature identifies the person assuming responsibility for the document and indicates some form of assent to its content. Signatures are regarded as adding assurance of authenticity to a document and of the veracity of the representations contained in it. By signing a document, the person signing is personally engaged to some extent in a moral, if not a legal, sense, in what the document represents. It is expected that certain documents will be signed notwithstanding the absence of a specific requirement in the credit. While UCP 600 does not specifically define the meaning of a signature, UCP 600 article 3 (Interpretations) highlights that ‘a document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol, or any other mechanical or electronic method of authentication.’ In contrast, the eUCP does define an **electronic** signature as ‘a data process attached to or logically associated with an electronic record and executed or adopted by a person in order to identify that person and to indicate that person’s authentication of the electronic record.’ In order to have validity under local law, it is often necessary for certain paper documents to be signed. Some laws also define terms such as ‘sign’ and ‘signature’. This has advanced further in recent times with the formulation of electronic commerce laws, which now address electronic records and their method of authentication. As such, and in order to remain in line with existing law, most electronic commerce laws include definitions for terms such as ‘sign’ and ‘signature’. It is important to note that the eUCP takes a technology-agnostic view with respect to the type of technology that may be used in this respect.

“SUPERIMPOSED”, “NOTATION”, OR “STAMPED”

The eUCP uses the terms ‘superimposed’, ‘notation’, and ‘stamped’ to describe the addition of information to an electronic record after it has been created. The rules highlight that the terms only have meaning when their supplementary nature is apparent in the relevant electronic record.

“DATA CORRUPTION”

Data can be corrupted after having been received from the presenter or in transmission. As a result, there could be a degree of unease regarding the possibility of the loss of data by a bank after an electronic record has been presented. Any problem with the record prior to receipt is the responsibility of the presenter whose obligation is to present the data to the place of presentation in the format required by the credit.

“DATA PROCESSING SYSTEM”

The term ‘Data processing system’ means a computerised or an electronic or any other automated means used to process and manipulate data, initiate an action or respond to data messages or performances in whole or in part. The rules do not provide guidelines on required data processing systems and focus principally on the electronic presentation of documents. As with all ICC rules, they cannot mandate which platforms/systems are acceptable; the rules must remain neutral in this respect.

DATA PROCESSING SYSTEM”—MINIMUM REQUIREMENTS

While, at this stage, there are no recommended minimum standards surrounding data processing systems, the below may be useful as a guide:

- Any bank that engages in an eUCP transaction is responsible for maintaining a data processing system. This responsibility is a fundamental precondition for using the eUCP in order to ensure relevance.
- Represents a computerised or an electronic or any other automated means that is used to process and manipulate data, initiate an action or respond to data messages or performances in whole or in part.
- Capable of processing electronic records in the format agreed by all parties to a transaction.
- Capable of receiving, identifying, authenticating, and responding to electronic records.
- Capable of performing minimal functions of authentication that are considered commercially acceptable.

“ELECTRONIC RECORD”

In electronic commerce, data is grouped together into a unit. Although these units are often provided with designations such as ‘messages’, ‘files’ and ‘documents’, the term ‘electronic record’ has emerged as a common label to identify a grouping of data in one message, file, or document and to distinguish it from a paper document. A digital record is one that exists in digitised form only, whereas an electronic record may also encompass a copy of an original document that is stored in electronic form, e.g. a scanned copy. The eUCP definition of ‘electronic record’ does appear to include a digitised record (‘data created...by electronic means’) but is broader than that. Under an eUCP credit, documents can consist of both paper documents and electronic records but must consist of at least one electronic record. Although there is no definition of ‘electronic’ in the eUCP, such term would, by its nature, exclude paper documents. It is essential to also note that by using the generic term ‘electronic’, the rules avoid linkage with any specific technology or platform, thereby ensuring that the rules remain technology-agnostic. The term ‘electronic’ has generally been distinguished from imaging, which involves a different process. However, in modern times, the distinctions have become blurred. It was once thought that scanned images could not be electronic records both for technological reasons and because there was an original

paper document that generated the scanned image. With technological advances, it is possible to generate a scanned image on a computer and send it to another computer as an image. As a result, it is impossible to categorically determine whether or not a scanned image is an electronic record. If the issuing bank specifies the format of required or permitted electronic records, the problem will be avoided. Such a specification is especially important when document examination is automated since it would be difficult to use a system to determine all of the required data elements from an image. If it does not do so, the presenter would probably be justified in presenting required electronic records by means of scanned images and it would remain with the issuing bank to convince a court that they were not electronic records. Provided a document is presented in the format stipulated in the eUCP credit, such document constitutes an electronic record. If the issuing bank states a specific format for a document to be presented under an eUCP credit and it is not a paper document, the document should be regarded as an electronic record for purposes of interpreting the eUCP.

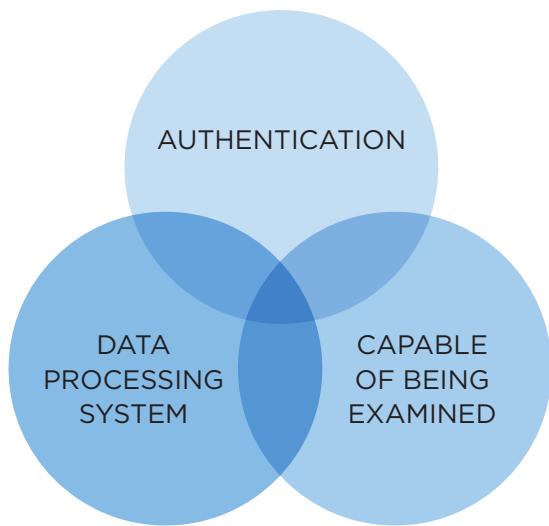


Figure 7: Requirements for an Electronic Record

“ELECTRONIC RECORD”—AUTHENTICATION

Authentication in the paper world is the process by which the validity of the representations and the paper documents containing them are ascertained. There are, necessarily, various levels of authentication. In documentary credit practice, the level of authentication of paper documents is facial. The documents are examined on their face. If it is apparent on their face that they are patently false, the bank can refuse to honour on that basis, provided that it is able to prove that they are false, forged, or fraudulent. In the digital world, there is a greater deal of focus on the authentication of data. Although used extensively throughout eUCP, it is deliberate that ‘authentication’ is not defined. The basis for this approach is the conviction that any purported definition would either unnecessarily duplicate the definition of ‘electronic record’ or, even worse, provide a specific link to existing technology. Authentication is that process of screening incoming data as to identity, source, and error that is preliminary to it being deemed to have been presented. Current and evolving technology allows for numerous commercially reasonable techniques in order to authenticate an electronic record while applying the criteria in the eUCP definition of an electronic record. The parties to the credit must decide the level and amount of security to be used in authenticating a message. Various national laws may also impose specific requirements for an electronic record to be authenticated.

“ELECTRONIC RECORD”—CAPABLE OF BEING EXAMINED

The eUCP requires that, in order to qualify as an electronic record for purposes of the eUCP, data must be capable of being examined. This requirement is intrinsically linked with the requirement in eUCP article e5 (Format) that the issuing bank specify the required format. If it does so, then

data sent in that particular format is automatically assumed to be capable of being examined. Accordingly, the requirement that data be capable of being examined is only relevant when the issuing bank does not actually specify a format. In such circumstance, the presenter may send the data in any format, but must still ensure that it be capable of being examined. The presenter would not be able to claim that the presentation was effective if what was sent could not be read.

“ELECTRONIC RECORD”—DATA PROCESSING SYSTEM

Although banks are not obligated to issue or act on credits subject to the eUCP, they are required to maintain a data processing system for the receipt, authentication, and identification of electronic records. Such a system need not be state of the art, but it should be capable of performing those minimal functions of authentication considered commercially acceptable. Given the rapid pace of technological development, maintaining such standard will require regular review, analysis, and investment as techniques evolve. In any event, it is assumed that this is a natural process for any bank involved in international trade.

UNIVERSAL TIME COORDINATED

During the course of the drafting of the rules, it was considered whether or not the eUCP should incorporate the concept of UTC, as referred to in the Uniform Rules for Bank Payment Obligations (URBPO), in order to define the latest time that electronic records could be presented to a bank. However, there was no definitive majority response. As such, an issuer would be well advised to state the time for the ‘close of business’ in an eUCP credit. In view of the fact that practice is still evolving in this field, it was recommended that the UTC concept would not, at this stage, be included within the eUCP rules. Should it be deemed necessary, the concept could be included in a future version of eUCP.

“ELECTRONIC SIGNATURE”

The eUCP defines ‘electronic signature’ as data attached to an electronic record with the intent of identifying the signer and authenticating the record. As provided in the rules, signatures on required documents perform two separate functions in documentary credit practice: indicating the identity of the person signing and authenticating the document itself and the information contained in it. An electronic signature in an electronic record can take place by indication of the name of the signer, a code, key, or acceptable digital signatures, and public key cryptography given in a manner that appears to be intended to authenticate.

While the method of authenticating the document differs when it is electronic, ‘signing’ an electronic message serves the same functions as does signing a paper document. Current and evolving technology allows for numerous commercially reasonable techniques for digital signatures. The eUCP does not contain any substantive requirement that an electronic record contain an electronic signature. The only reference to ‘electronic signature’ is contained in the explanation of ‘sign’ in eUCP sub-article e3 (a) (v), which indicates that the term as it appears in UCP 600 also includes an electronic signature. UCP 600 article 3 highlights that ‘a document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol, or any other mechanical or electronic method of authentication’; this also applies to the eUCP. The reference to ‘electronic signature’ will impact those documents that require signing under UCP 600, documentary credit practice, or the terms of the credit. The eUCP requires that the data consisting of the electronic signature be attached to the electronic record or closely associated with it. In most cases the electronic signature is enclosed in the envelope of the message or embedded within the electronic record itself. It must be associated with the message in such a manner as to indicate the identity of the signer. The reference in eUCP to the association or connection of the data with the electronic record in order to identify the signer and authenticate the record and its content goes only to the appearance of connectedness that can be implied from examining the electronic record on its face and not to the actual intention of the signer.

“ELECTRONIC SIGNATURE”—LOCAL LAW

Local law may contain requirements that certain documents be signed in order to be effective. Such law often defines the terms ‘sign’ or ‘signature’. One facet of the evolution of electronic commerce has been the extension of such laws to embrace electronic documents and to permit such documents to be authenticated in a manner that links with the nature of the document. As a result, many electronic commerce laws contain a definition of these terms. Caution should be exercised in references to electronic signatures in law and practice to distinguish between a relatively simple ‘electronic signature’ and one with added precautions. The latter has commonly been called a ‘digital signature’ for purposes of differentiation. When local law adopts the more restrictive notion of a digital signature, it may impose a requirement on an electronic signature not definitively contained in UCP 600, eUCP Version 2.0, or the credit itself. Where the law is not that of the issuing bank, UCP 600 sub-article 37 (d) (Disclaimer for Acts of an Instructed Party) shifts any risk to the applicant. Unless the credit specifically provides, the use of the term ‘electronic signature’ in the eUCP does not signify the requirement that any signature be by means of digital signature.

“ELECTRONIC SIGNATURE”—MINIMUM REQUIREMENTS

While, at this stage, there are no recommended minimum standards surrounding electronic signatures, the below may be useful as a guide:

- Capable of identifying the sender of an electronic record and indicating that person’s authentication of the electronic record.
- Capable of associating the sender of an electronic record with the content of the electronic record.
- The definition for ‘electronic signature’ in the eUCP is intended to be technology neutral and not to endorse any specific technology: the technology is to be separately agreed by the parties involved in a specific transaction.
- Take into account the function of signature requirements in a given statutory and regulatory environment.
- Determine the sophistication of the data processing system used by each of the parties.
- Ensure compliance with trade customs and practice.
- Ensure compliance with any relevant authentication procedures set forth by intermediaries.
- The degree of acceptance or non-acceptance of the method of identification in the relevant industry or field both at the time the method was agreed upon and at the time when the data message was communicated.

“FORMAT”

The eUCP defines ‘format’, a concept vital to the examination of electronic records. At the time of writing, there is no uniform or standard system by which data is organised, nor does there exist a common protocol by which data can be read or identified by data processing systems. As a result, it is only readable if the data processing system is able to recognise the manner in which the data is organised, or its format. Not every data processing system can recognise every format into which data can be organised. Moreover, with the fast pace of technological development, many systems of organisation are regularly issued in successive versions. It is typical that the later versions are able to read earlier ones but that earlier ones are not able to read later ones.

The term ‘format’ is used in several senses. It can mean the protocol by which data is organised, the version of that format, or the shorthand name by which that protocol is recognised and described. There is no precise distinction between these approaches, and the manner in which it is intended they be used can normally be identified from the context in which they are used. Under the eUCP, the burden is on the issuing bank to indicate, with sufficient specificity, the format in which it desires data in the electronic record to be arranged.

The importance of a format lies in the ability of a data processing system to process data. If the format is not one that is recognised by the data processing system, the output is meaningless and said to be 'unreadable'. This term implies that the data processing system cannot properly format the data in a manner that would provide meaning to a reader.

“PAPER DOCUMENT”

The eUCP refers to a document in a paper medium, the type of document which is expected to be presented under UCP 600. By broadening the meaning of the term ‘document’ as it is used in UCP 600 and in eUCP, it became necessary to identify another term that permitted the distinction between paper and electronic records for the eUCP. The term ‘paper document’ was chosen because it aptly and simply describes the traditional medium in which data was inscribed. Printout from a computer, if presented, would be a paper document, whereas the presentation of a portable storage medium would not be. Consequently, the explanation of the sense in which the term ‘paper’ is used resorts to a reference to the ‘paper form’ in which the term was used and understood.

“RECEIVED”

This eUCP sub-article defines ‘received’ when used with respect to an electronic record. Receipt is critical in documentary credit presentations. Documents are not presented until they are received. It is possible to speak in terms of the receipt of a particular document or of a presentation.

In respect of paper documents when they are presented in one lot, the two notions occur simultaneously. With respect to the presentation of paper, a paper document is ‘received’ when it comes into the control of the bank. This step can occur when it is delivered to a person or to the mailroom. Once the document comes into the bank’s control, presentation has taken place and the bank assumes the risk of loss of the document. Delivery of an electronic record will commonly be made electronically to the bank’s data processing system, so that the element of passing into the bank’s control is still present. There is however an additional element, namely that in order to meet the requirements of presentation, the electronic record can be authenticated. There is an additional difference between receipt under presentation under UCP 600 and the eUCP, namely that the receipt of a paper document required by the credit constitutes presentation under the UCP 600, whereas receipt of a document, whether a paper document or electronic record, does not constitute presentation until the notice of completeness is received under the eUCP. Computer systems will, on occasion, automatically send out an acknowledgment to the sender that a message has entered the system. Such an acknowledgment does not necessarily imply that the electronic record has been received in the technical sense used in the eUCP since authentication may not have occurred at that time. In the event of a dispute about whether an electronic record was received, it could be a factor for which the significance would have to be assessed under local law.

“RE-PRESENT” OR ‘RE-PRESENTED”

The terms ‘re-present’ or ‘re-presented’ mean to substitute or replace an electronic record already presented. eUCP article e12 (Data Corruption of an Electronic Record) uses the term ‘re-presented’. In this context, the term means to substitute or replace—at the request of a nominated bank—an electronic record already presented. The term is also used in documentary credit practice to characterise the action of the presenter in making a subsequent presentation to cure a discrepant prior presentation. The two actions should not be confused. Under the eUCP, the re-presentation is merely the replacement of a document already presented and its effect relates back to when it was originally presented; whereas when a non-conforming presentation is being cured by re-presentation, it takes effect as of the time of receipt of the re-presentation.

ARTICLE E4—ELECTRONIC RECORDS AND PAPER DOCUMENTS V. GOODS, SERVICES OR PERFORMANCE

This article was not included in previous versions of the eUCP. The format ‘v’ is used in order to maintain consistency with existing rules such as UCP 600 and URBPO 745.

The structure of this article is aligned in order to follow the construction of UCP 600 article 5 (Documents v. Goods, Services or Performance) which does not address electronic records.

ARTICLE E5—FORMAT

An eUCP credit must indicate the format of each electronic record. If the format of an electronic record is not indicated

Format means the method by which a data processing system organises and reads data. eUCP sub-article e3 (b) (v) (Definitions) defines the term ‘format’ as ‘the data organisation in which the electronic record is expressed or to which it refers’. eUCP article e5 requires that the format of an electronic record be specified in a eUCP credit and states the consequences if not so indicated. In view of the fact that data processing systems are unable to recognise each and every format into which data may be organised, it is important that any data be in a format that is readable by the relevant data processing system.

As a result, it is essential that any eUCP credit (or relevant amendment) indicate the required format. The eUCP is technology neutral and does not specify the use of any particular format. The format is to be stated in the eUCP credit in a manner that is comprehensible to the presenter. With the ever-evolving change in technological development, many systems of organisation are regularly issued in successive versions. It is quite conceivable that an eUCP credit may indicate diverse formats for several documents. If the credit does not specify a format for a particular document, then such document may be presented in any format.

As mentioned above, it is essential that any related eUCP credit (or relevant amendment) indicate the required format. Should it not do so, then the presenter can present in any format. Such a circumstance may result in a situation wherein, while the issuing bank or any confirming bank would be unable to access the electronic records, they would still be liable to honour. Any ability to dishonour on the basis that a bank is unable to read the format in which data is presented would, under eUCP sub-article e7 (c) (Examination), not be feasible in such circumstances. The sanction embodied in eUCP article e5 and sub-article e7 (c) (Examination) is not applicable to the presentation of data in a format that is not readable at all. Under eUCP sub-article e3 (b) (iii) (Electronic record), any data that has been presented in such circumstances is not an electronic record that, *inter alia*, must be capable of being examined for compliance.

ARTICLE E6—PRESENTATION

The eUCP does not contain a definition of 'presentation'.

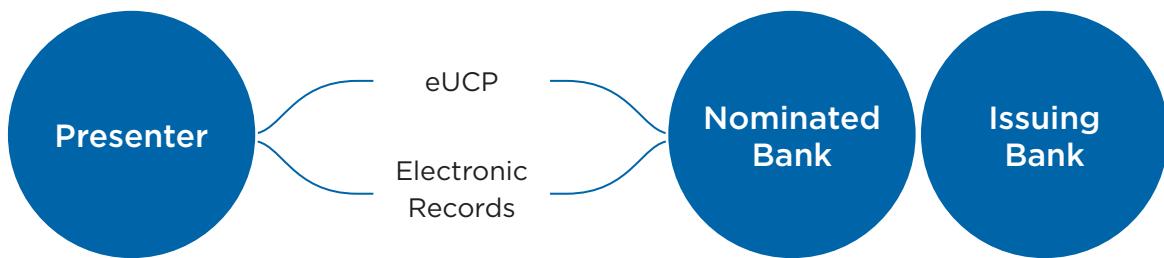


Figure 8: Presentation

Meaning

When applied to UCP 600, 'presentation' means either the delivery of documents under a credit to the issuing bank or nominated bank or the documents so delivered. If presentation occurs on or prior to the expiry date of the credit, it is timely. If not, neither the issuing bank nor any confirmor banks have any obligation under the credit. Presentation may also impact other deadlines such as the requirement of UCP 600 sub-article 14 (c) (Standard for Examination of Documents) for transport documents to be presented within 21 calendar days after the date of shipment.

Single mailing

Although UCP 600 articles 14 (Standard for Examination of Documents) and 16 (Discrepant Documents, Waiver and Notice) do not expressly require that documents be presented in one lot, banks commonly expect presentation to be in one single mailing.

Place of presentation

The eUCP repeats the requirement of UCP 600 sub-article 6 (d) (Availability, Expiry Date and Place for Presentation) that a credit must state the place for presentation. The eUCP also distinguishes between the place where electronic records and paper documents are to be presented. As under UCP 600, it is implied that a paper document would be presented to a physical address.

Electronic Record

The place for presentation of an electronic record would, in general, be an electronic address. However, there are situations where an electronic record could be sent to a physical address. For example, the data could be saved on a portable storage medium and mailed. The data is in the form of an electronic record but it is presented to a physical address.

No indication of a place for presentation

In the rare event that a credit fails to indicate a place for presentation, neither UCP 600 nor eUCP indicate the subsequent consequences. In the paper world, the presenter would be entitled to make presentation to the address of the issuing bank stated in the credit or to any place at which the issuing bank or any confirming bank does business. It is normal practice that, under UCP 600, a physical location will be stated within the credit. The eUCP defines 'place for presentation' as an electronic address of a data processing system. As such, in order to ensure compliance with regulatory and sanctions issues, it is essential that an eUCP credit also indicate a physical location. Mailing a portable storage medium in the proper format to a physical address may also suffice.

Closure of place for presentation

The eUCP sub-article does not address the situation where the electronic address has ceased to be functional even though the bank is able to receive electronic messages. In such a case, the provisions of eUCP sub-article e6 (e) regarding closure for electronic business would apply.

Direct presentation to issuing bank

The eUCP does not address the question of whether or not the presenter may present an electronic record and paper documents directly to the issuer or confirmor even if a different place for presentation is given in the eUCP credit. Absent any express provision, there is no basis for changing the practice under UCP 600 permitting the presenter the option of making presentation directly to any bank that is obligated under the credit. As a practical matter, however, the presenter may not have an electronic address to which presentation may be made unless it is stated in the credit.

Non-receipt of presentation

As is the case with paper documents under UCP 600, the risk of non-receipt ultimately remains with the beneficiary. The issuing bank or any confirming banks obligation is predicated on the timely presentation of complying documents. It would be good practice for beneficiaries to monitor presentations of electronic records, particularly when utilising another party for full or partial presentation of the electronic records.

Separate presentation of electronic records

The eUCP expressly provides that electronic records may be presented separately, reflecting the realities of electronic transmission. Even if the same sender sends electronic records at approximately the same time, it does not follow that they will be received simultaneously unless they are combined into one file. Moreover, the issuing bank and applicant may prefer certain electronic records to be sent directly by the third party that creates them. As a result, a transmission receipt of documents under an eUCP credit will commonly be fragmentary. Electronic records will also be presented separately from any paper documents required or permitted by the eUCP credit.

Paper documents under an eUCP credit

Although the eUCP allows for separate presentation of electronic records, this does not apply to presentation of paper documents under an eUCP credit. Under such circumstances, UCP 600 would apply to the paper component. When paper documents are to be presented in one lot, the issuing bank would probably expect the same transmission of paper documents under an eUCP credit as under a UCP credit. However, it should be borne in mind that there is less reason to insist on transmission of paper documents in one lot under the eUCP, owing to the fact that the time for examination will not commence until the notice of completeness has been received. An issuing bank that does not wish to receive separate paper presentations under an eUCP credit should consider specifying in the eUCP credit that the presentation of any paper documents must be in one lot.

Banking Hours

UCP 600 Article 33 (Hours of Presentation) provides that a bank 'has no obligation to accept a presentation outside of its banking hours'. This provision is understood to mean that a presentation received after the hours in which the relevant department is open is received the next banking day, unless the bank elects to treat it otherwise. Although electronic records can be received 24 hours a day, seven days a week, this rule still remains in force. As a practical matter, only the notice of completeness will be affected. While the presenter is obligated to make presentation before the close of business on the expiry date, an issuer would be well advised to state the time for the close of business (e.g. "Before 1600 hours GMT on the expiry date") in the eUCP credit so as to avoid any misunderstanding due to differing expectations.

Document medium not stated

When an eUCP credit states the name of a document without stating whether it should be in a paper or an electronic medium (or format), and requires at least one other electronic record, giving no other indication that other required documents are to be in a paper medium, the eUCP provides no express rule but presumes that, were an electronic record required, it would be stated. This presumption is based on the common UCP 600 practice of specifying an electronic record where one is required and simply indicating the name of the document where a traditional paper document is expected, assuming that a document will be in a paper medium unless otherwise stated. Therefore, if an eUCP credit indicates that specific documents are to be presented as electronic records but is silent about other documents, those documents must be presented in a paper medium. This assumption that paper is a default medium in an eUCP credit is, however, rebuttable where there is ambiguity. For example, if the eUCP credit specifies that several documents are to be paper documents and several other documents are to be electronic records, but does not provide any actual indication as to the medium of the document at issue, that document could be presented either as a paper document or an electronic record.

Notice of Completeness

Many banks are not prepared to monitor the receipt of paper documents presented separately under UCP 600 credits because of the costs and risks involved. The processing necessary to make eUCP credits economically viable makes such intensive monitoring of separate documents even less feasible. To solve this problem in the eUCP, the burden of determining whether presentation is completed is shifted to the presenter and, by default, ultimately to the beneficiary. It states that the presentation has not taken place until the presenter provides a notice of completeness. When the notice of completeness is received, the reasonable time within which to examine documents begins to run. Strictly speaking, it is incorrect to say that the presenter is 'required' to present a notice of completeness under the eUCP. It is no more 'required' to do so than it is required to present any document or record. However, its entitlement to honour is conditioned on presentation of the notice.

The eUCP states that the notice of completeness must signify that the presentation is complete and 'identify the eUCP credit to which it relates'. It allows the notice of completeness to be provided either by electronic record or paper document unless the credit otherwise provides. Even if the credit requires that the notice of completeness be given as an electronic record, the rules provide that it may be presented as a paper document in the event that the bank to which presentation is to be made is unable to receive an electronic presentation and the only remaining item to be presented is the notice. Although not mandated by the eUCP, it would be good practice for a presenter to expressly label any such document as a notice of completeness, therein stating that the specified presentation under a referenced credit is now complete. In addition, while it is not necessary for an eUCP credit to expressly include a requirement for a notice of completeness, it would constitute good practice if issuing banks stated within the credit that a notice of completeness must be given when the presentation is complete and that examination will not begin until that point. In accordance with eUCP, the lack of a notice of completeness deems that presentation has not been made.

Non-requirement for notice of completeness

As evidenced in the eUCP, it is implied that the requirement for a notice of completeness only applies to the presentation by a presenter to the nominated bank, confirming bank, if any, or to the issuing bank. It is the responsibility of the presenter, and ultimately the beneficiary, to ensure a complete presentation and to evidence such completeness by presenting the required notice. Any subsequent presentation by a nominated bank to a confirming or issuing bank is automatically considered to be complete and does not require a notice of completeness.

Identification of the credit

The eUCP requires that each separate presentation identify the eUCP credit under which it is presented. Even though it imposes a requirement that is not contained in the terms of the credit and would not normally be present in the document itself, this provision is necessary in order to avoid any potential confusion. It should be noted that the eUCP does not require each paper document to identify the credit under which it is presented, only that a presentation do so. As a result, in the event of several paper documents being presented in one lot, it would be acceptable if the cover letter indicated the credit under which the documents are presented. Similarly, if electronic records are batched together and sent in an electronic envelope, the credit may be identified in the message envelope. It should also be noted that the eUCP does not require identification of the credit in any particular manner, such as by its number. Such a shorthand means of identification would naturally be the easiest means of identifying the credit. It could also, however, be identified by other means. For example, giving the confirmation number and the name of the issuer and the amount and date of the credit may enable identification even without the credit number. The crux is whether or not the bank would be able to identify the credit based upon the information provided in the normal course of its operations. When a bank cannot link an electronic record to the credit to which it relates without further information from the presenter, the eUCP provides that it 'may be treated as not received'. Although the bank is not required by the eUCP under such circumstances to ask the presenter to identify the credit, it is very likely to do so, and would constitute good practice. Such a query must solely be for information purposes and does not constitute an attempted notice of refusal for purposes of UCP 600 sub-article 16 (d) (Discrepant Documents, Waiver and Notice).

Electronic closure

When a bank to which presentation of one or more electronic records is to be made is open for business but is unable to receive an electronic presentation, the eUCP provides that certain deadlines 'shall be extended to the next banking day on which such bank is able to receive an electronic record'. To lessen the possibility of such electronic closure, banks should have back-up systems in place and may wish to indicate alternative electronic addresses. It should be noted that the eUCP electronic closure rule does not apply to situations in which the bank to which presentation is to be made is physically closed for business nor does it apply to presentation of paper documents. In such situations, the rules of UCP 600 apply. If the place for presentation is closed in the ordinary course of business and not due to a **force majeure** event, UCP 600 article 29 (Extension of Expiry Date or Last Day for Presentation) would apply and the expiry date and the last date after the date of shipment will be extended to the first following banking day. However, if the place for presentation is closed due to a **force majeure** event, as indicated in UCP 600 article 36 (Force Majeure), there will be no extension. Under UCP 600, this risk is borne by the beneficiary. The eUCP rules regarding extension would not apply to presentation of paper documents under an eUCP credit even if the electronic address for presentation is unable to receive electronic records. As a result, the inability of the bank to receive an electronic record on a deadline will not excuse the presentation of a paper document if the place for presentation of the paper document is open for business. If it is not, an excuse must be found in UCP 600 and not in the eUCP. On the other hand, even if the bank is closed in the ordinary course of business or due to a **force majeure** event, its electronic place of presentation may be able to receive presentations. In such a case, the presentation would be timely.

Covering schedule statement

In line with the principles of UCP 600 sub-article 29 (b) (Extension of Expiry Date or Last Day for Presentation), the eUCP provides that, in the event of an extension under sub-article e6 (e) (i), the nominated bank must provide the issuing bank or confirming bank, if any, with a statement on its covering schedule that the presentation of electronic records was made within the time limits extended in accordance with that sub-article.

Remaining electronic record notice of completion

As stated in eUCP, in a situation where the only electronic record remaining to be presented is the notice of completion, such notice may be given by telecommunication or by paper document and will be deemed timely, provided that it is sent before the bank is able to receive an electronic record.

Deadlines

eUCP article e6 (e) does not apply to all deadlines. As with UCP 600 article 29 (Extension of Expiry Date or Last Day for Presentation), it applies only to the expiry date in the credit and to the last date of the period of time after the date of shipment for the presentation of documents.

ARTICLE E7—EXAMINATION

This article addresses several issues concerning the examination of electronic or mixed presentations under the eUCP, including the examination of electronic records contained on external systems, the implications of the nomination of correspondent banks, and the inability of a bank to examine an electronic record presented in a required or permitted format.

Time

Under UCP 600, once presentation is made to an issuing or confirming bank, the time for examination commences. Presentation can also be used to refer to the presentation of an individual document or documents, but less than all those required by the credit; and is so used in the eUCP. Under the eUCP, electronic records may be presented separately and, even if paper documents are presented in one lot, they must be coordinated with the electronic records. To monitor these documents and give notice within five days of the first document presented would create an onerous burden on banks, increase the costs and risks, and frustrate mass processing of electronic records. As a result, eUCP sub-article e6 (c) (Presentation) changes the point at which presentation occurs. It requires that the presenter notify the bank that presentation is complete by giving a notice of completeness. Accordingly, the time for the examination of documents under the eUCP does not commence until the notice of completeness is received as eUCP sub-article e7 (a) (i) provides. eUCP sub-article e7 (a) (ii) highlights that if the time for presentation of documents or the notice of completeness is extended (as provided in sub-article e6 (e) (i)), the time for examination commences on the next banking day following the day on which the bank to which presentation is to be made is able to receive the notice of completeness at the place for presentation. Similarly, under UCP 600 article 29 (Extension of Expiry Date or Last Day for Presentation), there is an extension of the time for presentation in certain circumstances and it is assumed that examination would commence at the end of the extension period.

External systems

eUCP sub-article e7 (b) relates to external sources of documentary information. It:

- alerts banks using the eUCP that there can, in the ordinary course of examination under the eUCP, be a reference to an external source;
- provides that such a reference is not unusual and requires no special permission in an eUCP credit;
- implies that a bank must examine the external source indicated in a document in order to examine the presentation properly; and,
- indicates the consequences of the failure of the indicated source to provide access or the necessary information.

As outlined in the former 'ICC Guide to the eUCP' (ICC Publication No. 639), bankers trained in the UCP system may be hesitant to access external systems in examining documents because they have been trained to believe that references to external systems are contrary to documentary credit practice. Reference to an external system touches on the independent nature of the documentary credit undertaking which is intimately linked to the propositions that the credit transaction is separate from the underlying transaction that gives rise to it, that the parties are not concerned about performances, and that it is improper for a bank to base its refusal to honour on factors external to the documents presented as they appear on their face. The conflict, however, is apparent rather than real. Despite appearances, references to external systems under the eUCP do not compromise the principles that underlie the doctrine of independence. As is indicated in eUCP article e13 (Additional Disclaimer of Liability for Presentation of Electronic Records under eUCP), an examination of an electronic record under the eUCP is an examination of the data as it appears.

The notion does, however, introduce a new dimension to the understanding of independence. References to external systems are not departures from the doctrine of independence because the examination would still be of the data contained in this external system in the same manner as if it had been presented directly and not of the realities represented. While the external system may contain some features that improve the linkage between the representations given in the electronic records presented and the realities that they represent, the examination will take what is stated in this source on its face without regard to its origin. What is still being examined is a representation rather than a reality.

External systems—Neutrality

The eUCP does not indicate which external systems may be used other than a reference to ‘a hyperlink to an external system or a presentation indicates that the electronic record may be examined by reference to an external system’. This approach supports the need for the rules to be technology-neutral. eUCP sub-article e7 (b) (i) highlights that when there is a reference to an external system in documents presented under an eUCP credit, the data at that source becomes the electronic record that is to be examined.

External systems—Accurate information

It should be noted that the reference to this external system may either be by paper document or electronic record. In view of the fact that an examiner must be in a position to access any external system indicated in a presentation in order to examine the documents, a presenter must provide accurate information about location and any necessary access information. eUCP sub-article e7 (b) (ii) warns that failure to ‘provide access to the required electronic record at the time of examination shall constitute a discrepancy’ A failure to provide access can occur in two ways: it can result from the failure of the external system to operate or from the refusal of an operating system to allow the examiner to access the required data. Although the eUCP does not specifically state that providing improper access to information would constitute a discrepancy, this result is implied by the use of the phrase ‘failure of the external system to provide access.’ Assertion of either of these failures as a discrepancy raises issues of proof that must be carefully considered. The failure, of course, must not be due to inabilities of the bank’s own systems. The only exception to this approach is stated in sub-article e7 (d) (ii).

Compliance

Under an eUCP credit, a bank examines presented documents for compliance with the terms and conditions of a credit. Compliance under UCP 600 sub-article 14 (d) (Standard for Examination of Documents) does not require literal or mirror image compliance for most data in documents. Even the description of the goods need only ‘correspond’ as stated in UCP 600 sub-article 18 (c) (Commercial Invoice). This principle also applies to the data in an electronic record. However, data clearly intended to be machine-read, such as external source addresses or access codes, is different. An error, even in the placing of a full stop or another keystroke, may be fatal in seeking a URL or other electronic address. The issuing bank is not required to guess as to where the error in such data might be.

Exclusion or modification of sub-article e7 (b)

It is possible that a bank may not want to access an external system in the course of examination, and will accordingly request exclusion or modification of eUCP sub-article e7 (b). However, it is doubtful that doing so would actually make a reference to an external system non-conforming unless the credit actually contained a term specifically prohibiting such reference. It is far more appropriate if, before considering such a tactic, banks take cognisance of the benefits of using external systems. Such systems not only increase the reliability of an electronic presentation, but also potentially reduce the risk of fraud in the underlying transaction. Usage of such systems can be positive for all parties involved in a transaction. If, however, a bank has a concern with regard

to the limitation of its own systems to access certain types of external data, then it would be far more beneficial to provide any required specifications regarding the format of any external system, or the limitation of submission of electronic records by external systems, rather than a formal exclusion.

Format

eUCP sub-article e7 (c), by placing the risk of failure to specify a format on the issuing bank, follows from eUCP article e5 (Format) which provides that an eUCP credit ‘must indicate the format of each electronic record’. Article e5 assumes that the issuing bank will designate a format that a bank is able to access. Sub-article e7 (c) so provides, indicating that the failure to indicate a format, or indication of a format that cannot be accessed is not a basis for refusal of the electronic record. This sub-article underlines the importance of giving due consideration in advance to the format to be required in the credit.

Nominated banks and authentication

The eUCP provides that an ‘electronic record’ must be capable of being authenticated as to the apparent identity of a sender and the apparent source of the data contained within it and as to whether it has been received in complete and unaltered form. The rules further provide that an electronic record that cannot be authenticated ‘is deemed not to have been presented’. If a nominated bank forwards an electronic record, the issuing bank may be unable to authenticate it from its original source. It must, in that case, rely on the bank that has first received the electronic record to authenticate it. Electronic records sent by a bank, whether or not it is acting on its nomination to honour or negotiate, to the issuing bank should also be authenticated between these two parties. The rules provide that the forwarding of electronic records by a nominated bank, whether or not it is acting on its nomination to honour or negotiate, ‘signifies that it has satisfied itself as to the apparent authenticity of the electronic records’.

This provision does not change the rule of UCP 600 sub-article 12 (a) (Nomination), which provides that mere nomination does not constitute any undertaking by the nominated bank ‘except when expressly agreed to by that nominated bank and so communicated to the beneficiary’. Under the eUCP, however, if a nominated bank elects to forward the documents, its action does have the limited significance of indicating that the documents have been checked for apparent authenticity. The eUCP does not address the liability of the bank for failure to check the authenticity. Whether a nominated bank wishes to accept this responsibility must be considered. Should the nominated bank decide not to forward the electronic records and any paper documents, and instead either return them to the presenter or indicate that it is holding them, the time at which the notice of completeness was presented to the nominated bank will nonetheless be deemed the time of presentation for purposes of determining compliance with any deadlines in the UCP, eUCP, or the credit.

Examining information transmitted with an electronic record

The transmission of an electronic record may also include information that is not immediately apparent or visible on a screen. Described as ‘message-related information’, these can be the equivalent of a message envelope containing such items as headers and trailers, transmission path, and information related to the message authentication. Such information may also indicate a history of changes that have been made to the data. For purposes of examining the data contained in the electronic record, the appearance of changes to the electronic record would not be a basis for refusal. The examination must be based on the data contained in the electronic record in the final form in which it has been transmitted and not on preparatory steps.

On the other hand, the bank may have other reasons to examine message-related information in the course of an examination. It may do so in order to determine the date that the electronic record was sent under eUCP article e10 (Date of Issuance), the person to whom to return the electronic record under UCP 600 sub-article 16 (c) (iii) (c) (Discrepant Documents, Waiver and

Notice), and/or the address of the sender or information related to authentication. Having to resort to message-related information does not violate the independence of the credit, because it does not involve examination of underlying facts related to the underlying transaction.

Other provisions in the eUCP impacting examination

The eUCP contains other provisions that may have an impact on the examination of electronic records and documents presented. These include:

> Inability to authenticate an electronic record or electronic notice of completeness

While the issuer may know that an unauthenticated electronic notice of completeness or other electronic record has been sent, it is more likely that the relevant department will not even receive the document. If it did not receive an authenticated notice of completeness, the bank would have no obligation to commence examination under eUCP sub-article e6 (c) (iii). Even if it did receive an unauthenticated notice, the bank would not have received a proper notice. If a bank receives a notice of completeness but a required electronic record has not been authenticated, the discrepancy would be an 'unauthenticated record' if the relevant department knows of it or, if it does not, a missing required document. If an electronic record has not been authenticated, the bank has no obligation to examine it further, and should it contain other discrepancies, is not precluded from raising them if it should later be re-presented and authenticated. It would benefit the presenter to be sure that its communication 'system' is able to accurately identify messages that are not received in an acceptable form.

> Failure to identify the eUCP credit

If the issuing bank can identify the credit under which an electronic record or paper document is sent, it cannot claim that the presentation has not been received. On the other hand, it may choose to send a reply message to the presenter of the document asking to which credit the document relates, although such a reply is not required by the eUCP. The message is not to be construed as a notice of refusal or an acknowledgment or receipt of the referenced document for purposes of examination under the eUCP credit.

> Expiry or other deadline extended

When eUCP sub-article e6 (e) (Presentation) operates to extend a deadline with respect to an electronic record, a bank may not claim that the credit has expired or that the presentation is defective for that reason.

> Wrong mode of notice of completeness

When the credit requires that a notice of completeness be presented as an electronic record, the presentation of the notice as a paper document may not be a discrepancy and may not be defective even if received after the expiration of the credit if eUCP sub-article e6 (e) (Presentation) is applicable. Where the issuer is unable to receive the transmitted electronic record, sub-article e6 (e) (iii) permits the presenter to give the notice of completeness in a paper mode. This rule would apply even if the credit specified that the notice must be in an electronic record—unless the credit also expressly excludes this provision of sub-article e6 (e). The sub-article also provides that the paper substitute is timely if sent by the presenter (as opposed to being received by the bank) before the presenter should know that the bank's systems are again operative.

> Originals or copies

A claim that one of a set of originals or copies is missing would not be a valid basis for dishonour under eUCP article e9 (Originals and Copies).

> Dates

An issuing bank would need to refer to eUCP article e10 (Date of Issuance) with respect to undated electronic records if their date of issuance was required or significant under UCP 600, the credit, or international standard banking practice.

> Dates of shipment on transport documents

An issuing bank would need to refer to eUCP article e11 (Transport) with respect to transport documents that do not indicate a date of shipment or dispatch or that bear a notation.

> Notations to transport records

When there is a notation to a transport record, an issuer would need to refer to eUCP article e11 (Transport) in addition to the applicable transport article of UCP 600.

Time for examination

The eUCP does not contain a specific rule referencing the time within which examination of documents must occur. UCP 600 articles 14 (Standard for Examination of Documents) and 16 (Discrepant Documents, Waiver and Notice) remain applicable with respect to the time for examination. Under these articles, the bank has a maximum of five banking days following the day of presentation to determine if a presentation is complying.

Compliance determined by a nominated bank

The eUCP addresses a possible situation in which a nominated bank can access a specified hyperlink or external system, but the issuing bank or confirming bank is unable to access the same hyperlink or external system. In such circumstances, and when a nominated bank has determined that a presentation is complying and makes presentation of the electronic records to the issuing bank or confirming bank, an issuing bank or confirming bank must honour or negotiate, or reimburse that nominated bank, even when a specified hyperlink or external system does not allow the issuing bank or confirming bank to examine one or more electronic records that have been made available between the nominated bank and the issuing bank or confirming bank, or between the confirming bank and the issuing bank.

The rules provide a correlation with UCP 600 article 35 (Disclaimer on Transmission and Translation). In both UCP 600 and the eUCP, the inference is that if a presentation is considered to be complying by a nominated bank, but is not accessible to the issuing or confirming bank, then the issuing or confirming bank must still honour, negotiate or reimburse. UCP 600 article 35 does not expound upon the course of action to be pursued in the event of documents being lost in transit nor does it explain how to negate such a risk. This is a matter of practice, not for the rules to clarify, and is consequently left for the parties concerned to agree an appropriate approach. The same applies to an 'electronic record' scenario in a credit subject to the eUCP. The underlying fact is that one party must bear the consequences and, in order to be consistent with UCP 600, it is considered that this is the correct approach both in intent and understanding.

As is the case with UCP 600 article 35 (Disclaimer on Transmission and Translation), there is a need to establish the rights of a presenter that has presented a compliant presentation, but something goes awry after that presentation has been made. As with UCP 600 article 35, in view of the fact that the issuing bank is obligated to honour a complying presentation, it is immaterial whether or not a nominated bank has honoured or negotiated. Unlike a presentation under the UCP, where copies of presented documents may be held with the nominated bank or obtainable from the presenter, this is not necessarily the case for electronic records. The wording of eUCP sub-article e7 (d) (ii) is reflecting a position if the issuing bank (or confirming bank) cannot access one or more electronic records. In practice, such events should be rare. However, it should also be noted that an issuing bank, when issuing its eUCP credit, should be aware of the entities that will be issuing or making available electronic records for review and usage by an applicant. With this in mind, the issuing bank should be satisfying itself as to the platform, form of hyperlink or external system where the electronic records will be made available. If there is any doubt, the bank should not issue the eUCP credit in the form requested by the applicant.

ARTICLE E8—NOTICE OF REFUSAL

The eUCP does not contain any specific rules concerning an approach by the issuing bank to the applicant in order to seek a waiver of discrepancies. In this respect, UCP 600 sub-article 16 (b) (Discrepant Documents, Waiver and Notice) continues to apply. Furthermore, the notice process as outlined in UCP 600 sub-articles 16 (c) and (d) (Discrepant Documents, Waiver and Notice) remains applicable.

Additional reasons for refusal under the eUCP

In addition to the reasons for refusing a presentation under the terms of the credit and UCP 600, the eUCP provides potential further reasons for refusing to honour a presentation. Where applicable, these could include:

- > **Wrong format (document unreadable)**
- > The electronic record was not presented in the format required by the credit under eUCP article e5 (Format).
- > **Electronic record not authenticated**
- > The electronic record was not authenticated under eUCP sub-article e6 (f) (Presentation).
- > **External source/hyperlink not accessible (identifying the source)**
- > The external source referenced in the presentation was not accessible, except as provided in sub- article e7 (d) (ii).

Disposition of documents

The return of electronic records creates a problem unparalleled in the paper world. With paper, there exists a unique piece of paper that can be held or returned. In the world of electronic records, the data remains with the bank even after it has been returned. Moreover, the electronic record is not unique because the presenter also has the data in its system even though it has been presented and, additionally, the beneficiary is likely to have it even though the data may have been sent by a third person presenter. These considerations are compounded when the data is contained on an external system. As a result, there is not likely to be any unique value attached to the electronic record and less reason to place any emphasis on its return or to reinforce these rules with the threat of preclusion. To accommodate these differences, the eUCP provides that the bank need not hold or archive these records indefinitely. Unless the presenter provides other instructions within 30 calendar days from the date that the notice of refusal is given, the bank shall return any paper documents and ‘may dispose of the electronic records in any manner deemed appropriate without any responsibility’. This rule places the onus of communicating instructions regarding the treatment of electronic records on the presenter.

Deadline

This article departs from the approach of UCP 600 article 16 (Discrepant Documents, Waiver and Notice) in that UCP 600 does not provide an express deadline for action, although banks are free under UCP 600 to return paper documents at any time where sub-article 16 (c) (iii) (a) or (b) has been used as the status for the documents. As a result, it would be good practice, although not absolutely necessary, for a bank to include in its notice of refusal a statement with regard to eUCP article e8 and its policy with regard to the disposition of documents. Such a statement could provide that: *“Pursuant to eUCP article e8, we will return all electronic records to the electronic address, and will delete all records from our systems other than those related to the failure to comply, without responsibility on our part unless you provide us with instructions to the contrary within 30 calendar days from the date of this notice.”*

Under UCP 600, the ‘presenter’ will normally be one entity, either the beneficiary or its agent or

a nominated bank. Unless the issuing bank permits separate presentations of paper documents under the eUCP, there will only be one presenter of paper documents under the eUCP as well. However, with respect to electronic records, there may be multiple presenters. The eUCP does not require that the electronic records be returned at all, and if the issuing bank elects to return them after non-receipt of disposal instructions, the bank, at its option, may return them either to the presenter or to the beneficiary. If the beneficiary wishes to have the electronic records returned to a specific person other than the presenter, it should ensure it is so stated in any notice of completeness or in a timely response to the notice of refusal.

Disposal of data

Decisions on the appropriate method of disposal of electronic records may be contingent upon the data itself and the circumstances. As used in this article, 'dispose of' does not necessarily denote 'destroy' or 'delete'. In fact, such terms may not actually be feasible with an electronic record. In formulating its policy regarding the disposition of electronic records, a bank should take into account matters of proof in the event that its decision to refuse payment is challenged. Where a bank has dishonoured, it would be well advised to retain proof of the non-conformity of the presentation. Much like the paper environment where banks usually keep copies of paper documents, banks may also choose to archive the electronic records received.

ARTICLE E9—ORIGINALS AND COPIES

Documentary credit practice pays particular attention to the originality of documents owing to the premise that originality is a source of assurance as to the legitimacy and validity of a document in a paper-based system.

Issues have occasionally arisen under UCP 600 regarding whether or not documents are originals or copies and whether presentation of either or both is required. The notion of an original is intrinsically linked to the concept of paper. The doctrine of uniqueness in an original document was addressed in an ICC Decision titled ‘The determination of an ‘Original’ document in the context of UCP 500 sub-Article 20 (b)’. This decision was used as the basis for the revision of UCP 500 sub-article 20 (b). UCP 600 sub-articles 17 (b) and (c) reflect the incorporation of the essential positions of the Decision into UCP 600.

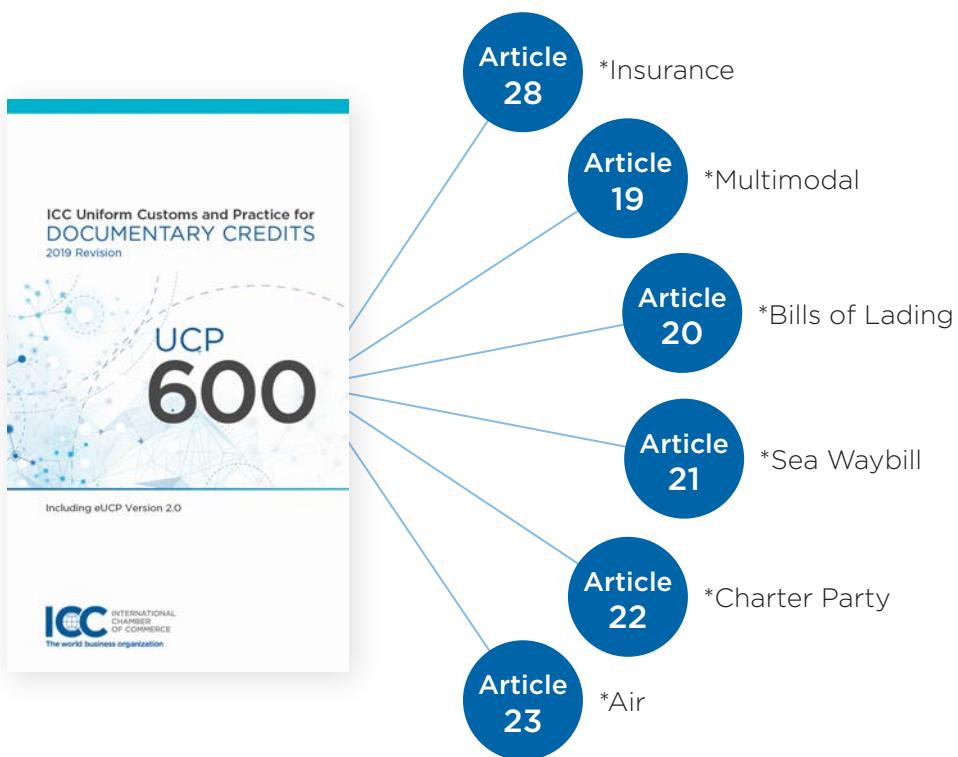


Figure 9: Originals to be presented

UCP 600 only specifies that an original must be presented with respect to insurance documents in UCP 600 article 28 (Insurance Document and Coverage) and with respect to transport documents in UCP 600 article 19 (Transport Document Covering at Least Two Different Modes of Transport), article 20 (Bills of Lading), article 21 (Non-Negotiable Sea Waybill), article 22 (Charter Party Bill of Lading), and article 23 (Air Transport Document). Nevertheless, it is the expectation of the documentary credit community that at least one of every document presented will be an original unless otherwise provided in the terms and conditions of the credit. eUCP article e9 facilitates the transition of these concepts into electronic presentations and interprets requirements for originals or copies when used with respect to electronic records. Within electronic commerce, the notion of originality has virtually no meaning.

Presumption of originality

Considering that many underlying transactions still require originals, total elimination of the concept makes no sense and would only add confusion. As such, this article has taken the route of functional equivalency, meaning that any requirement for an original is satisfied by the presentation of one electronic record.

Full Set

As stated above, within electronic commerce, the notion of originality has virtually no meaning. The same consideration, for obvious reasons, applies to the concept of a full set of bills of lading. Within electronic commerce, such an approach is outmoded and archaic. Under this article, any such requirement in an eUCP credit would be satisfied by the presentation of one required electronic record unless the credit expressly provided otherwise with sufficient specificity to indicate what was actually needed.

Requirement for copies

It is well known that the requirement in many credits for multiple copies of certain documents is not always necessary and may have no actual business rationale. Should an eUCP credit include such a requirement, the condition will be fulfilled by presentation of one electronic record.

ARTICLE E10—DATE OF ISSUANCE

This article provides a default rule that an electronic record must evidence the date of issuance.

Significance of dates

Dates are one means by which the representations and validity of documents are linked to the reality that they represent. The date of a document represents the date that the document is issued, effective, or both. Dates are significant for customs, taxation, determination of ownership, liability, insurance, transportation, and many other reasons. While usually not apparent to the banks involved in the credit, dates may also have significance to the commercial parties in the transaction.

Role of dates in documentary credit practice

Dates also play an important part in the credit examination process. The only express requirement in UCP 600 that a document be dated is with respect to the identification of certain dates on transport and insurance documents. In addition, there are expectations that other documents, such as statements or certifications, must contain a date. ISBP 745 goes into more detail as to documentary requirements under UCP 600. Credits may also contain a specific requirement that a document be dated.

Implications for eUCP

The wording in this article effectively dates electronic records, with the result that all such records must be dated under the eUCP. If there is to be any other way of determining the date of issuance then this will be for the eUCP credit itself to determine.

ARTICLE E11—TRANSPORT

The date of shipment or dispatch or taking in charge or accepted for carriage is critical in the examination of documents under documentary credits, because it may be necessary to use such date to determine whether or not the presentation of the document is within 21 days or the number of days indicated in the credit, and because it may be necessary to determine whether shipment or dispatch has taken place by the latest date indicated in the credit. UCP 600 contains elaborate rules for determining the date of shipment or dispatch that are individualised according to the type of transport document involved.

Date of shipment

This article addresses how to determine the date of shipment or dispatch when it is contained in a transport document transmitted in the form of an electronic record. ‘Taking in charge’ and ‘goods accepted for carriage’ have been added for compatibility with UCP 600. It provides that the date of shipment is the date in the electronic transport record indicating shipment or dispatch or taking in charge or the goods were accepted for carriage. If there is no date indicating shipment or dispatch or taking in charge or goods accepted for carriage, the date of shipment or dispatch is the date of issuance of the electronic transport record unless there is a notation evidencing shipment or dispatch or taking in charge or goods accepted for carriage.

Notation

The practice of carriers with respect to electronic records is still evolving in line with technological advances, including the addition of a notation after issuance. In such an arrangement, there is a parallel to the paper practice of notations indicating shipment after the actual issuance of the electronic record. In such circumstances, this article provides that the date of the notation will be deemed to be the date of shipment or dispatch or taking in charge or goods accepted for carriage. It is envisioned, in most cases, that a notation used in an electronic record will either be an addition to the electronic record itself, or a separate electronic record attached to the electronic record indicating shipment. In these cases, data contained in these notations indicating a different date of shipment from the original record would be the date used in examination of the electronic records. In many cases, however, given the state of technology for transport-related documents, the issuer of the document can simply update the record prior to its transmission to the bank, and there would be no need for an additional notation. This article also indicates that there is no need for a notation of shipment or dispatch or taking in charge or goods accepted for carriage to be signed or authenticated separately from the authentication of the transport record itself. The transmission and authentication of the transmission is sufficient indication of the authenticity. This rule follows the UCP 600 transport articles 19-25. Other provisions of UCP 600 relating to on board notations would continue to be applicable to an eUCP credit. Because the electronic notation may simply be an indication of additional data, this data may not appear in one place on the transport record as it would were a notation stamped on a paper document.

ARTICLE E12—DATA CORRUPTION OF AN ELECTRONIC RECORD

There is no rule in UCP 600 for paper documents that are lost or rendered unreadable by a bank after they have been received. Because most banks have procedures in place that minimise the consequences of such loss, there is no perceived need for such a rule. These procedures involve refusing payment based on discrepancies in the documents that are present, requesting a substitute document, or indemnifying the applicant for any harm that may result from the lost document. While this works in the paper world owing to an understanding of the risks, there is not yet a similar comprehension in the electronic world.

This article offers a method by which corrupted data may be re-presented. A similarity can be recognised with the paper world, in that it is not unusual to approach the presenter for substitute paper documents. The process outlined by this article should prove beneficial to all parties, bearing in mind that it supports an efficient data substitution method. The advantage of the article is that it operates without regard to fault or negligence and avoids entirely the difficult questions of liability and proof inherent in such concepts. As a result, it balances the interests of the bank and the presenter while extending the obligation of the bank and imposing a limited additional duty on the presenter in order to achieve a practical and relatively straightforward solution to an otherwise potentially burdensome problem. It is worth noting that the provisions of this article are a matter of recommendation and optional only. This approach need not necessarily be utilised by a bank, and a bank remains free to take any other or additional measures they may consider to be necessary in order to mitigate any perceived losses due to the corruption of data while the record is within its control. If a bank elects to exercise its rights under this article, it must deliver a request to the presenter and give notice to any other bank that is obligated under the credit. In addition, it should notify the beneficiary if the presenter is not the beneficiary. The notice to the presenter suspends the time for examination, which resumes when the bank receives the substituted data. The replacement of the data is not a new presentation and any deadlines are calculated from the original presentation date, which will have taken place on the receipt of the notice of completeness. This article is based on the assumption that all electronic records are replaceable.

After Presentation

It must be clearly noted that this article only applies to the data corruption of an electronic record subsequent to presentation. Should a problem exist with an electronic record before presentation, this can only be the responsibility of the presenter to fix.

Corruption

The eUCP does not define 'corruption'. The term is intended to encompass any distortion or loss of data that renders the electronic record as it was presented unreadable in whole or part due to the data having become scrambled in an unrecoverable manner.

Electronic Records

Although the eUCP permits mixed presentations of paper documents and electronic records, this article obviously relates only to electronic records and not the loss or destruction of paper documents.

Nominated Banks

By its terms, this article is available to any bank nominated in an eUCP credit. However, in the event that a bank other than the issuing or confirming bank invokes the approach, the article

requires that notice of the request for a substituted document be given to the issuing bank and any confirming bank. Although a nominated bank is not obligated to examine documents or to act pursuant to its nomination under UCP 600 sub-article 12 (a) (Nomination), the election to invoke this eUCP article would signify an election to so act and require that the bank examine the documents under the rules of UCP 600 and act according to its nomination should they comply. Otherwise, the nominated bank will be responsible to the presenter for the lost data.

Re-presented

This article uses the term 're-presented'. As stated in eUCP sub-article 3 (b) (viii) this term means 'to substitute or replace an electronic record already presented.' The term is also used in documentary credit practice to characterise the action of the beneficiary in making a subsequent presentation to cure a discrepancy in a prior presentation. The two actions should not be confused. Under the eUCP, the re-presentation is merely the replacement of a document already presented and its impact relates back to when it was originally presented; whereas when a non-conforming presentation is being cured by re-presentation, it takes effect as of the time of receipt of the re-presentation. This article indicates that the request for replacement is to be sent to the presenter of the electronic record. In order to reflect good practice, it would also be optimal, in cases where the presenter is not the beneficiary, for notice to also be given to the beneficiary. This may help to accelerate matters to the benefit of all.

Method for re-presentation request

Although this article does not expressly state when or how the request for re-presentation be made, good practice in light of UCP 600 sub-article 16 (d) (Discrepant Documents, Waiver and Notice) would suggest that the request be made in the same manner as a notice of refusal, namely by telecommunication if available, and, if not, by other expeditious means and without delay once the corruption is discovered.

Time for examination

Invocation of this article suspends the time for examination and giving any notice of refusal under UCP 600 articles 14 (Standard for Examination of Documents) and 16 (Discrepant Documents, Waiver and Notice). Although the corruption of the data occurred when the electronic record was in the control of the bank, a request for replacement under this article has severe consequences for the beneficiary if the record is not replaced. The article provides that the failure to replace data within 30 calendar days after a request has been made is deemed to be a failure to present the electronic record. Because of the seriousness of this consequence for the beneficiary, the time period is sufficiently reasonable to permit replacement, and banks should be cautious about reducing this period, which may raise questions about its reasonableness.

ARTICLE E13—ADDITIONAL DISCLAIMER OF LIABILITY FOR PRESENTATION OF ELECTRONIC RECORDS UNDER eUCP

A disclaimer is a device by which risk is shifted from one entity to another. Where the disclaimer reflects the reasonable expectations of an industry, it is typically enforceable under applicable local law, even where it is stated in rules of practice as opposed to a bilateral contract. Due to the limited role of banks in documentary credit practice, disclaimers have been used to limit their liability from the actions or omissions of others. Disclaimers have sometimes been asserted to excuse the responsibility of a bank for its own negligence. While modern commercial law allows parties to allocate the risk of negligence up to, but not including, so-called gross negligence or wilful disregard for the consequences of one's action or omission, most systems of local law require more specific and detailed provisions than those contained in UCP 600 to achieve this result. The liabilities disclaimed in the eUCP and UCP 600 are the result of external systemic or third-party actions, inactions, or risk.

eUCP disclaimer

This article disclaims banks' liability for any divergence from the realities represented in authenticated electronic records. Its effect is cumulative with those of UCP 600 Articles 34 (Disclaimer on Effectiveness of Documents), 35 (Disclaimer on Transmission and Translation), and 37 (Disclaimer for Acts of an Instructed Party), and emphasises the continued applicability of the independence principle reflected in various articles of UCP 600 with respect to electronic presentations under the eUCP.

Data processing system

This article refers 'to the use of a data processing system for the receipt, authentication, and identification of electronic records.' This means 'a computerised or an electronic or any other automated means used to process and manipulate data, initiate an action or respond to data messages or performances in whole or in part.' Any bank that engages in an eUCP transaction is responsible for maintaining a data processing system. This responsibility is a fundamental precondition for using the eUCP. A bank cannot excuse itself from responsibility for the failure to authenticate electronic records due to errors or inadequacies in its systems where those systems are not of the standard required to process such electronic records. This formulation also imposes on banks that engage in processing electronic documentary credits the burden of upgrading their systems to keep them current. This article does not require a level of authentication that is extraordinary even if it were technically feasible. While some banks may choose to develop and market such systems, such a feature is a value-added aspect of their service and not a basis for the standard by which authentication is to be measured. The standard of the article is only designed to assure that the system used is not outmoded. The liabilities disclaimed in the eUCP and UCP 600 are the result of external systemic or third-party actions, inactions, or risk. Reflecting the content of URBPO 750 article 14 (Unavailability of a Transaction Matching Application), eUCP sub-article e13 (b) indicates that a bank **does** take on liability and responsibility for the unavailability of its own data processing system.

ARTICLE E14—FORCE MAJEURE

eUCP version 1.1 did not include a “Force Majeure” article. The term ‘force majeure’ is French in origin, literally meaning ‘greater force’. It refers to unexpected events, outside the control of the parties to an agreement, which prevent performance of part or all of the required contractual obligations.

Applicability to eUCP

The concept of force majeure is the same as in UCP 600, but is extended to cover the inability of a bank to access a data processing system, or a failure of equipment, software or communications network.

7. DOCUMENTARY CREDIT FORMAT

A recent initiative by the ICC Banking Commission providing guidance notes for documentary credit formats complements handling of credits requiring either or both of paper documents and electronic records.¹⁰

The paper provides recommendations in respect of the optimal approach required in order to achieve a straightforward, uncomplicated documentary credit format. In addition to aiding automation, a simple documentary credit is a value-added option in well-established relationships between an applicant and a beneficiary.

As mentioned in the guidance notes, an applicant and a beneficiary should carefully consider the documents required for presentation, by whom they are to be issued, their data content, and the time frame in which they are to be presented. Documentary credits must not include wording that is ambiguous or subject to more than one interpretation, nor should they state conditions for which fulfilment cannot be ascertained from the face of a document. Only documents that are necessary (e.g. for customs clearance purposes) should be required by the credit.

As an additional point, the ICC guidance paper on the use of drafts should also be considered.¹¹ The paper recommended that the [longstanding] habit of requiring a draft for a documentary credit available at sight be curtailed, particularly sight drafts drawn on an issuing bank, confirming bank, or a bank nominated to pay.

¹⁰ <https://iccwbo.org/publication/guidance-notes-for-documentary-credit-formats/>

¹¹ <https://iccwbo.org/publication/additional-material-to-the-guidance-paper-on-the-use-of-drafts/>

8. STRICT COMPLIANCE

The question of 'strict compliance' has often been raised with regard to documents presented under documentary credits and a significant number of ICC Opinions and DOCDEX decisions have dealt with this issue.¹²

NOTES ON THE PRINCIPLE OF STRICT COMPLIANCE

ISSUES PAPER

Prepared by the Executive Committee of the ICC Banking Commission

Relevant ICC Rules and Practices / DOCDEX Decisions and ICC Official Opinions

Legal Perspective: Interpretation in the Courts

Expert Perspective: Reference Books

Conclusion: Is There a Defined Approach?

24 MAY 2016

Figure 10: ICC Strict Compliance Paper

Underlying the question are various related ICC rules and practices, including UCP 600 and ISBP 745. The below are not all-inclusive and particular attention must be paid to all of the General Principles of ISBP 745:

UCP 600 sub-article 14 (a): A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.

UCP 600 sub-article 14 (d): 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.

UCP 600 sub-article 14 (e): In documents other than the commercial invoice, the description of the goods, services or performance, if stated, may be in general terms not conflicting with their description in the credit.

UCP 600 sub-article 14 (f): If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfil the function of the required document and otherwise complies with sub-article 14 (d).

UCP 600 sub-article 14 (j): When the addresses of the beneficiary and the applicant appear in any stipulated document, they need not be the same as those stated in the credit or in any other stipulated document, but must be within the same country as the respective addresses

¹² https://iccwbo.org/publication/icc-banking-commission-executive-committee-issues-paper_notes-on-the-principle-of-strict-compliance/

mentioned in the credit. Contact details (telefax, telephone, email and the like) stated as part of the beneficiary and the applicant address will be disregarded. However, when the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document subject to articles 19, 20, 21, 22, 23, 24 or 25, they must be as stated in the credit.

ISBP 745 Paragraph A23: A misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant. For example, a description of the goods shown as “mashine” instead of “machine”, “fountan pen” instead of “fountain pen” or “modle” instead of “model” would not be regarded as a conflict of data under UCP 600 sub- article 14 (d). However, a description shown as, for example, “model 123” instead of “model 321” will be regarded as a conflict of data under that sub-article.

The introduction to UCP 600 states:

“During the revision process, notice was taken of the considerable work that had been completed in creating the International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP), ICC Publication 645. This publication has evolved into a necessary companion to the UCP for determining compliance of documents with the terms of letters of credit.”

ISBP, particularly the latest version ISBP 745, has made a significant impact in lessening the exactitude of the doctrine of strict compliance. In fact, it is arguable whether or not strict compliance even exists any more. A review of the General Principles section of ISBP 745 highlights numerous aspects of the document examination process that reduce the need for a literal application.

All of the above are equally applicable in respect of eUCP Version 2.0.

9. FULL TEXT OF eUCP

A link to the full text can be found at <https://iccwbo.org/media-wall/news-speeches/icc-banking-commission-releases-new-erules-use-electronic-documents/>

The new eRules, which came into effect on 1 July 2019, provide rules for banks operating in today's increasingly digital trade finance system.

The eRules will be continually monitored and updated to reflect future technological developments and trends that emerge in trade finance. By embracing a paperless future, this safeguards the applicability of traditional trade solutions in a digital environment.

ICC will ensure that the eRules remain relevant and applicable to banks and other trade finance institutions.

10. FURTHER READING

- > ICC Commentary on eUCP VERSION 2.0 and eURC VERSION 1.0, Article-by-Article Analysis
- > ICC Supplement to the Commentary on eUCP Version 2.0 and eURC Version 1.0 (eRules)
- > Electronic Documents in Maritime Trade, Law and Practice, Second Edition, Miriam Goldby
- > Best Practice Guide for SWIFT FileAct in Traditional Trade Finance (5th version)
- > Jack: Documentary Credits, Fourth Edition (Chapter 14 Electronic Credits), Ali Malek QC and David Quest
- > Commentary on UCP 600, Article-by-Article Analysis
- > The Complete UCP: Texts, Rules and History 1920-2007
- > Electronic Records in Letters of Credit, Dr Alan Davidson
- > Official ICC Opinion R596 / TA561rev
- > ICC Academy: Documentary Credits: Rules, Guidelines and Terminology
- > International Banker: Digitalisation and Trade Finance: What's Next?
- > ICC Global Survey on Trade Finance 2020

ABOUT THE INTERNATIONAL CHAMBER OF COMMERCE (ICC)

The International Chamber of Commerce (ICC) is the institutional representative of more than 45 million companies in over 100 countries. ICC's core mission is to make business work for everyone, every day, everywhere. Through a unique mix of advocacy, solutions and standard setting, we promote international trade, responsible business conduct and a global approach to regulation, in addition to providing market-leading dispute resolution services. Our members include many of the world's leading companies, SMEs, business associations and local chambers of commerce.



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Users Guide to the eUCP

ICC Publication No. KS100E

ICC Knowledge 2 Go: 2go.iccwbo.org