Comments to Draft Opinions 784 and 786 – April 2013

784

We do not agree with the analysis and conclusion for scenario a, b, c & d for the following reasons:

There is no requirement in UCP 600 for an insurance document to state the number of originals it has been issued in. The document need not state how many originals have been issued unless the credit requires presentation of a full set. If the credit requires presentation of two originals without indicating that they must be the full set, there is no requirement for the document to state how many originals were issued so long as two originals are presented.

We are of the view that “one original and one duplicate" is not the same as "one original and one copy." In this case presentation of one original and once copy will not be acceptable.

We are also of the view that a document marked duplicate should be treated as an original document unless there is specific indication in the document which suggests otherwise.

We agree with the analysis and conclusion provided for scenario e. (**1**)

1. Under Scenario B (the credit requires 'Insurance policy in original and duplicate') one important possibility is missing: will the 'duplicate' be considered as original or as copy if the insurance document states that it is issued 'in 1 original and 1 duplicate'. We often see this wording and suppose that insurers in practice intend that duplicates are originals. Generally it is of great importance to be in the position to determine whether an insurance document is an original or a copy, as the originals of these documents represent, similar to B/Ls, a certain value.
As also under a B/L nobody would consider that a 'Triplicate' represents a copy, there should be a special regulation for these documents, taking into consideration common practice.

2. Under Scenario E (the credit requires 'Full Set Insurance policy') there is a contradiction to analysis under Scenario A.
If we are allowed to accept 1 Original without indication of numbers of originals issued as the only original issued, then you also have to accept it as full set if same is required under L/C. It is implied that no further original of this insurance document has been issued and therefore 1 Original represents the full set. (**2**)

Since we have the impression that this is a hypothetical question, we consider this more as an educational query. However scenario A conclusion n° 2 is not complying with UCP600 art. 28.b / ISBP § 29. (**3**)

Disagree. Comment:
Scenario A: The credit is silent as to number of originals
ICC analyzed that if an insurance document does not indicate it is issued in more than one original, then only one original is required. However, it is not clear and

illogical that two original insurance documents presented without indication of number of originals will be not acceptable, whilst one original without indication of number of originals will be acceptable. UCP600 Art.28 b may be challenged.

Scenario B: The credit requires “Insurance policy in original and duplicate”

1. Document checkers need not know for insurance document whether it is practice or not that a “duplicate” is an original.
2. The requirement for “Insurance policy in original and duplicate” in the credit is ambiguous, and therefore will be construed against the issuing bank.
3. If a presentation consists of an insurance document marked “original” and one marked “duplicate”, the former will be considered an original, but the latter will not only based on the marking of “duplicate”, but also based on other aspects according to UCP600 Art.17 and the ICC Policy Statement document 470/871(Rev) titled “The Determination of an “Original” Document in the Context of UCP500 sub-Art. 20(b)”. If it is determined that it is an original, it means the presentation includes two originals, and subject to UCP600 Art.28 (although it should be challenged as mentioned above in paragraph a), regardless of the construction of the credit requirement, the insurance documents must state they are issued in two originals. If it is determined that it is a copy other than an original, it means the presentation includes one original and one copy, according to UCO600 Art.28 (although it should be challenged as mentioned above in paragraph a), and with a construction of the credit requirement against the issuing bank, the presentation is acceptable without indication on the documents of number of originals issued.
4. Because it is quite difficulty for LC practitioners to understand the intention of insurance document’s issuer whether to treat the document marked “duplicate” as “original” unless so indicated thereon, they are unable to determine whether the insurance document must state the number of originals. As a document checker, we are not responsible for conjecture the intention of its issuer to treat the two documents as a full set of originals. Hence, we suggest that after the wording “and when it is the intention of its issuer to treat the two documents as a full set of originals”, the following is to be inserted or replaced with: “and the document itself expresses such intention by stating that either the ‘original’ or ‘duplicate’ may be presented in the event of a claim’ and so on.” The same should be applied to point no.2 under scenario C

Scenario C. The credit requires “Insurance policy in duplicate”

1. According to ISBP681 Para.17e, at least one original and the one copy insurance policy shall be presented.
2. If two originals are presented, subject to UCP600 Art.28(although it should be challenged as mentioned above in paragraph a), the documents presented must state they are presented in two originals. If one original and one copy are presented, the original one need not state number of originals issued.
3. If the conclusion of 2 is correct, it will lead to an illogical and ridiculous result that two originals without indication of number of originals issued are not acceptable, but one original also without indication of number of originals issued is acceptable. This unreasonable result just evidences the unreasonableness of

UCP600 Art. 28b. After all, it is not reasonable that insurance document may **not** indicate the number of original when one original required or presented but insurance document **must** indicate the number of originals when two or more originals required or presented.

Scenario E: the credit requires “Full set of Insurance policy”

Same to Scenario C.

Neither does ISBP publication 681 or the new ISBP under revision mentions that insurance document must indicate number of originals in the cases under discussion. So whether the insurance document must indicate the number of originals should be only depend on the credit requirement.

However, if ICC adopts the stance that, in the cases mentioned, number of originals must be indicated in the insurance policy, we suggest that the ISBP under revision also reflects the same position.

In conclusion, if the insurance document is presented in more than one original and does not indicate the originals issued, then all those originals presented may be considered as full set. We suggest amend the point 2 under the scenario A through E to be: “If an insurance document is presented in more than one original, it will be acceptable as presented.” (**4**)

We disagree with the analysis and conclusion.

Neither UCP, nor international standard banking practice expect insurance document to state the number of originals issued. It is only required by UCP 600 that all originals are presented, if the document itself indicates to have been issued in more than one original (sub-art. 28 (b)).
We hence cannot see any substantiation for statements in Scenario A, question 2, Scenario B (both questions), Scenario C (both questions), Scenario D, and Scenario E (both questions).
Moreover, analysis related to Scenario E appears to conflict with Scenario A, answer to question 1.

Firstly, with respect to "full set" issue of Scenario E, it should be stated that int'l standard banking practice requires that "full set of originals" be presented generally for all documents (with some exceptions expressly stated in UCP or allowed by ISBP 681). See ISBP 681 para 29. Moreover, this requirement is expressly stressed for insurance document by virtue of UCP 600 sub-art. 28 (b).

A/1 states that "If an insurance document does not indicate that it is issued in more than one original, then only one original is required." Thus it may be concluded that in this case the document is compliant even if it does not state the number of originals issued.

However, E states that "In order to assess whether or not a full set ... has been presented, it is necessary that the document indicate how many originals make up the full set."

Bearing on mind the general requirement for "full set" is inherent in UCP and int'l standard banking practice (see above), the credit need not contain an express requirement for "full set", "full set" being required anyway.

Hence the wording of Scenario E conclusion (suggesting that whenever "full set" is required, "it is necessary that the document indicate how many originals have been issued") conflicts with conclusion to Scenario A, question 1 (stating that if only one original is presented, it need not state the number of originals issued).

To avoid any misunderstanding, we wish to state that absent such express requirement of the credit, in our opinion an insurance document **need not** state the number of originals issued under any circumstances. Even though we feel that the wording of analysis and conclusion referring to Scenario A, question 1 should be re-phrased to state that "..., then presentation of only one original is sufficient", instead of "..., then only one original is required". (**5**)

Scenario A:
We do not agree with the analysis and conclusion.
UCP 600 article 28(b) reads

"When the insurance document indicates that it has been issued in more than one original, all originals must be presented."

This provision is not a requirement that the insurance document is to indicate in how many originals it has been issued, neither where one original is presented, nor where more than one original is presented.

In our view, the number of originals presented is deemed to be all the originals if the document does not indicate in how many originals it has been issued.

Scenario B and C:
In the analysis and conclusion to scenario "B" and "C" it is stated that: "when it is the intention of its issuer to treat the two documents as a full set of originals, the document must state that it is issued in two originals."

In practical terms, the document examiner does not know the intention of the issuer, and in our view this is not relevant. We suggest that deleted.

What is important for the two scenarios is that UCP 600 article 17 (e) applies. I.e. a presentation of

- One original and (at least) one copy, OR
- Two (or more) originals

will be accepted.

Scenario D:

First of all where the documentary credit requires an insurance document to be issued in two originals, then at least two originals must be presented according to ISBP, Publication 681, paragraph 28.
Secondly this is not a requirement for the presented document to indicate the number originals issued. (**6**)

Scenario E
If the credit requires presentation of a “Full Set” of Insurance document, we consider that presentation of one Original Insurance Document without any marking in how many originals it has been issued, is acceptable. (**7**)

We agree to conclusions related to scenario A, C, D and E.
We disagree to conclusion related to scenario B: last line of para. answering query 1 and 2 the following should be added: “…sub-article 17 (e), and does not fulfill the L/C requirements “insurance policy in original and duplicate.” (**8**)

We understand that the answer in Analysis and Conclusion to Scenario A applies to Scenario E as well. We suggest to merge them. (**9**)

We do not agree with the Analysis & Conclusion given for Scenario A – 2. that
Quote
‘if an insurance document is presented in more than one original, it should indicate the number of originals that have been issued’
Unquote
as this is not in line with art 28 (b) of the UCP600 and since the Analysis & Conclusion even referred to this article we did not expect this outcome at all.

The UCP does not require for an insurance document to mention the numbers of originals issued. If only one insurance document is presented without an indication of the numbers of originals issued, the principle assumption is that there is only one original. Why not follow the same principle assumption if there are more than one original presented without an indication on the document itself about the numbers of originals issued ?

The same, in our opinion incorrect, conclusion is given throughout the Analysis & Conclusion of this query, like in Scenario C 1. and 2. , Scenario D and Scenario E 1) & 2) Whereas in regard to Scenario E “a full set” is in fact the same as the requirement of article 28b. So also this LC requirement does not make it necessary to mention the numbers of originals issued. (**10**)

We do not agree that an insurance document MUST state how many originals it is issued in. If it is stated, then all originals must be presented. If we receive two originals without the statement on how many originals there are, we would take it as it was issued in two originals. We, as banks, cannot decide how an insurance document should be issued. With B/Ls it is different, as it is standard practice to insert the number of originals issued. This is not the case with insurance documents, and the UCP600 does not require it to be stated - as confirmed in the analysis. We do not agree that a bank may refuse an insurance document presented in two originals, barely because it does not state in how many originals it was issued. (**11**)

We would like to change an answer to Scenario E concerning the situation when the credit requires "Full set Insurance policy" in "ANALYSIS AND CONCLUSION" wherein we want to answer "NO" on the first question whether the insurance document must show in how many originals it has been issued, when a presentation consists of an insurance policy in one original.

As you mentioned in the beginning of "ANALYSIS AND CONCLUSION" UCP 600 does not require an insurance document to indicate the number of originals of that document that has been issued. Respectively if only one original insurance policy presented without indicating in how many originals it is issued, it is clear that it is issued in one original and this one original constitutes "Full set".

Besides, we should point out that the question itself is not formulated properly. The expression "Full set" mainly refers to transport documents. (**12**)

When the credit requires a full set of insurance policy, it is necessary that the document indicates the number of originals issued if the document is presented more than once. If only one or sole original is presented, it is not necessary for the document to indicate the number of originals issued. (**13**)

For Scenario D:

Change the analysis and conclusion as follows:

If a credit requires presentation of an insurance policy in two originals, the presentation must consist of at least two originals.
The document must state the number of originals and when the document states it has been issued more than two originals i.e. three or more, all originals must be presented.

For Scenario E:

This part of the analysis and conclusion should be removed.
In order to assess whether or not a full set of insurance policy(ies) has been presented, it is necessary that the document indicate how many originals make up the full set.

and the following text may be added;

When only one original insurance document has been presented and absent any indication on the document as to the number of originals that have been issued, the presentation will be considered to constitute a "full set". (**14**)

It is our view that this appears to be an educational/theoretical question. If it is a purely educational question this should be dealt with in an educational opinion (as per our comment above), and we would appreciate clarification on this. (**15**)

Scenarios B and C: In scenarios B and C, the opinion should not speak of acting in accordance with "the intention of the issuer" (should state "issuer of the insurance document") as a document examiner has no way of determining the issuer's intentions.
Scenario E: We disagree with the conclusion in scenario E. We do not believe when an L/C calls for a "full set" of insurance documents it means that the documents presented have to indicate how many originals there are, while if L/C simply calls for an insurance document without using the term "full set," no such indication of the number of originals is needed. It appears therefore the conclusion is inconsistent. (**16**)

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Agree. We suggest to add a recommendation that L/C should clearly specify on which weight basis price calculation has to be based in case any other weight than net weight has to be used. (**1**)

We agree to the conclusion, but find the reference to UCP 600 article 30 (b) irrelevant. The question is not whether the quantity shipped is within the permitted range, but rather if the gross weight, net weight or the commercial weight is to be used in the price calculation.

We suggest the reference to UCP 600 article 30 (b) to be removed from the analysis. (**2**)

We would like to draw your attention on the fact that in the case under investigation, according to our understanding, there was mainly an issue of different type of weighting and not a matter of tolerance of plus or minus five percent as per sub-article 14 (d).

On that basis the commercial invoice should not have been considered as acceptable in terms of the quantity invoiced and the calculation of the invoice amount.

Last but not least, the fact that the documents in conflict were both issued by the same person, i.e. the buyer, should also be taken into account for the conclusion of the Analysis. (**3**)

We disagree with the conclusion.
We are of the strong opinion that it is common practice that unless otherwise stated in the credit, invoicing is based on the net weight of the shipped goods; this is also in line with ISBP Publication 681 paragraph 59 ("an invoice must reflect what has actually been <u>shipped</u>") and 60 ("an invoice must evidence <u>the value of the goods shipped</u>") (emphasis added).