***Banking Commission***

**Draft consolidated Opinions of the Banking Commission, January 2024**

Attached are the following Opinions as distributed in November 2023

**470/TA935**

**470/TA936**

**470/TA937**

**470/TA938**

**470/TA939**

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1 September 2023

**Document 470/TA.935**

Dear Sirs,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers.

**QUOTE**

One of our member banks has raised an issue about a Letter of Credit (LC) and we would appreciate ICC’s opinion on whether a discrepancy raised by the issuing bank was indeed a discrepancy.

The LC in question was confirmed by our member bank. Details of the shipment, as stated in the MT700, were as follows:

MT700

44F: Port of Discharge

CAT LAI PORT, HOCHIMINH CITY, VIETNAM

Documents presented by the beneficiary were deemed to be compliant by our member bank, after it conducted its examination. It then went on to negotiate the documents without recourse. Among the documents presented was a bill of lading which indicated:

Port of Discharge: HOCHIMINH CITY, VIETNAM

Place of Delivery: CAT LAI PORT, HOCHIMINH CITY, VIETNAM

The issuing bank has raised the following discrepancy:

BILL OF LADING SHOWING 'CAT LAI PORT' AS PLACE OF DELIVERY I/O AS PORT OF DISCHARGE WITHOUT NOTATION EVIDENCING PORT OF DISCHARGE IS 'CAT LAI PORT'

We believe the issuing bank is referring to the following clause in ISBP 745 Paragraph E8:

1. The named port of discharge, as required by the credit, should appear in the port of discharge field within a bill of lading.
2. However, the named port of discharge may be stated in the field headed “Place of final destination” or words of similar effect provided there is a notation evidencing that the port of discharge is that stated under “Place of final destination” or words of similar effect. For example, when a credit requires shipment to be effected to Felixstowe, but Felixstowe is shown as the place of final destination instead of the port of discharge, this may be evidenced by a notation stating “Port of discharge: Felixstowe”.

Notwithstanding that an examination of documents is conducted based on the data appearing on the face of the document, our member bank has ascertained that the goods were indeed discharged at Cat Lai Port, based on its tracking. This information has been shared with the issuing bank, but it has maintained its stance, saying that there are multiple ports in Ho Chi Minh City, and they could not assume that the port of discharge was Cat Lai Port.

We would appreciate it if the ICC Banking Commission could provide its opinion on whether the discrepancy alleged by the issuing bank is valid.

**UNQUOTE**

**ANALYSIS**

It is assumed (based on the wording of the refusal message from the issuing bank) that the documentary credit required presentation of a bill of lading and that UCP 600 article 20 applies to the examination of the document. The full transport route is not reflected in the query, but SWIFT field 44F (Port of Discharge) of the MT700 indicates “CAT LAI PORT, HOCHIMINH CITY, VIETNAM”.

The presented bill of lading stated “HOCHIMINH CITY, VIETNAM” in the port of discharge field and “CAT LAI PORT, HOCHIMINH CITY, VIETNAM” in the place of delivery field.

UCP 600 sub-article 20 (a) (iii) states that the bill of lading must “indicate shipment from the port of loading to the port of discharge stated in the credit.”

This is qualified in ISBP 821 (as well as ISBP 745) paragraph E8 (b) which allows for the named port of discharge to be stated in the field headed “Place of final destination” or words of similar effect. This is, however, on the condition that “there is a notation evidencing that the port of discharge is that stated under “Place of final destination” or words of similar effect.”

ISBP 821 paragraph E8 (b) goes on to provide an example of such notation, i.e., “For example, when a credit requires shipment to be effected to Felixstowe, but Felixstowe is shown as the place of final destination instead of the port of discharge, this may be evidenced by a notation stating “Port of discharge: Felixstowe””.

For this query, the place of delivery field indicates “CAT LAI PORT, HOCHIMINH CITY, VIETNAM”. The term “CAT LAI **PORT**” [emphasis added] makes it clear that this is a port, and, as such, would obviate the need for a notation evidencing that the port of discharge is that stated under the place of delivery field.

The confirming bank points out that it “has ascertained that the goods were indeed discharged at Cat Lai Port, based on its tracking”.

UCP 600 sub-article 14 (a) states that, “[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.”

Consequently, the tracking mentioned by the confirming bank cannot be considered as part of the examination of the bill of lading which is based on the document alone.

Nevertheless, this comment is irrelevant as the bill of lading complies with UCP 600 sub-article 20 (a) (iii).

**CONCLUSION**

The discrepancy raised by the issuing bank is not valid.

**The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Technical Advisers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.**

**The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.**

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**Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Advisers shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion(s).**

Yours Sincerely,

 Tomasch Kubiak

 Policy Manager Banking Commission

 International Chamber of Commerce

Mr. Utpal Kent

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4 September 2023

**Document 470/TA.936**

Dear Sirs,

Thank you for your query regarding UCP 600 and ISBP 745. Please find below the opinion of the ICC Banking Commission Technical Advisers.

**QUOTE**

One of our export customers received a LC issued by a bank in Country B for USD327,000. The exporter submitted documents under the LC in six tranches, between 29 March 2022 and 16 May 2022.

All the presentations were made within the LC validity and the documents were issued in a similar manner. Out of the six presentations, the first four were honoured by the issuing bank without comment. The fifth presentation was refused for the same reason as indicated below but the refusal notice was sent later than 5 banking days after the day of presentation. We contested the validity of the late refusal notice, and the presentation was honoured 4 months later.

For the sixth presentation, the issuing bank quoted the discrepancy “Trade term not found in invoice. We are holding the documents as per UCP 600 Article 16(iii)b”.

Subsequently, the issuing bank sent a SWIFT message stating that the applicant refused to waive the discrepancy and that the original documents have been returned to us. On taking up the matter with the issuing bank, we were informed that they had quoted the discrepancy in line with ISBP 745 paragraph C8.

The description of the goods in the credit indicated xxx CFR [Port C] with no indication of the application to an Incoterms publication. The presented invoice showed C&F under the unit price and amount, with Port C mentioned as the port of discharge and final destination elsewhere in the invoice.

We have refuted the discrepancy noted by the issuing bank, quoting the following:

* Trade Terms C&F were prevailing in the Incoterms 1980 publication. Subsequently, the same term was modified to CFR, maintaining the same obligations and responsibilities for the seller and buyer.
* From the specific reference to freight charges, it is evident that the invoice was drawn for C&F only. The freight charges paid by the seller, at the loading port, were evident in the bill of lading itself.
* The trade term specified in the credit did not indicate the relevant publication (1980/1990/2000/2010 or 2020) to be applied in this transaction. Hence, the beneficiary chose the equivalent trade term from the 1980 publication. As an issuing bank, they should have ensured that the credit avoided any ambiguity (about the applicable Incoterms publication). We also referred to ISBP 745 preliminary consideration (v).
* The trade term C&F was converted to CFR to avoid the special character “&” in a SWIFT message.
* Acceptance by the issuing bank of the same data (C&F), without raising any rejection of the earlier drawings under the same credit, indicated that the issuing bank had accepted this trade term previously.
* Contention from the issuing bank regarding the invoice not having the trade term cannot be accepted. It states “C&F”.
* We have defended our position, since the issuing bank has honoured the earlier drawings that were presented in a similar manner and they cannot suddenly change their stance in this transaction.

We have taken cognizance of the following clause in ISBP 745 paragraph C3 which reads as follows:

“The description of the goods, services or performance shown on the invoice is to correspond with the description shown in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when read together, represent a description of the goods corresponding to that in the credit.”

Hence, the discrepancy noted by the issuing bank “Trade term not found in invoice” cannot be treated as a discrepancy.

As the issuing bank had honoured and made payment for the earlier drawings, without conveying any discrepancies, it is understood that the issuing bank was well aware of the content of paragraph C3.

ISBP 745 paragraphs C3 to C14 provide clarity concerning “Description of the goods, services or performance and other general issues related to invoices”. In the present case, the trade term was mentioned as part of the description of the goods and, if read together, it corresponds with the description in the credit. Hence, paragraph C3 very much applies here.

We are continuously following up with the issuing bank for payment by quoting the above points. However, the issuing bank has refused to make payment.

Our Bank’s stance: We are of the opinion that the issuing bank is not correct by quoting the said discrepancy.

We seek an ICC opinion as to whether our above stance is correct.

**UNQUOTE**

**ANALYSIS**

As stated in the query, 4 presentations under a documentary credit subject to UCP 600 were received and honoured by the issuing bank. In each presentation, the beneficiary’s invoice indicated “C&F” whereas the credit stated “CFR” (no reference to Incoterms was mentioned).

The fifth presentation was refused by the issuing bank due to: “Trade term not found in invoice”. It can be construed that the presenting bank refuted this discrepancy by informing the issuing bank that the invoice did include the trade term C&F, noting that C&F is the same as CFR and further indicating that the issuing bank’s refusal notice was not valid as it was sent later than the close of the fifth banking day following the day of presentation (UCP 600 sub-article 16 (d)). The presentation was eventually honoured four months after the objection to the refusal notice, which is not in line with international standard banking practice.

The sixth presentation was also refused by the issuing bank, citing the same discrepancy noted above i.e., “Trade term not found in invoice”. The presenting bank again challenged the validity of the discrepancy, for a variety of reasons, including a statement that acceptance by the issuing bank of the same data (C&F), without raising a similar refusal notice for the first four presentations, indicated that the issuing bank had accepted this trade term.

It should be noted that the matter of setting a “precedent” has been raised in previous ICC Opinions.

For example, as noted in Opinion R556 (TA525): “The UCP is silent with regard to documents that have previously been accepted and a subsequent presentation has been rejected, irrespective of whether the documents were found to comply with the credit or were acceptable by virtue of an acceptable waiver being issued by the applicant. As was expressed in opinion R.270 (Issue 2), this matter concerns the question of creation of a precedent. The usual attitude of banks is that such precedents cannot be created, because while circumstances may be superficially the same on the documentation level, each transaction (i.e., each credit or drawing thereunder) is separate from each of its predecessors and is considered independent. Other factors, outside the credit, however, need to be taken into consideration in the event of such a dispute being referred to a court of law.”. As such, all presentations must be treated on a stand-alone basis with no reference to precedent caused by earlier presentations.

 However, with regards to the invoice, the presenting bank is correct in highlighting that “C&F” did replace the term “CFR” in the Incoterms publications because the ampersand sign caused issues with SWIFT/Telex messages. Whilst they are, in essence, the same term, certain industries such as GAFTA still use C&F for grain shipments.

 In any event, the invoice complied with ISBP 745 paragraph C3. The presenting bank could have also referred to UCP 600 sub-article 18 (c) i.e., “The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit”. As noted above, the presented invoice showed C&F under the unit price and amount, with Port C mentioned as the port of discharge and final destination elsewhere in the invoice. This corresponds to the credit requirements.

 Banks should take note of ISBP 821 preliminary consideration (iv) wherein it is stated that the applicant and beneficiary should carefully consider the data content of documents required for presentation. Furthermore, as stated in preliminary consideration (v), an issuing bank should ensure that any credit or amendment is not ambiguous or conflicting in its terms and conditions.

**CONCLUSION**

There is no discrepancy.

**The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Technical Advisers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.**

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Yours Sincerely,

 Tomasch Kubiak

 Policy Manager Banking Commission

 International Chamber of Commerce

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25 October 2023

**Document 470/TA.937**

Dear Ms. Seierup,

Thank you for your query regarding UCP 600 and ISBP 745 [821]. Please find below the opinion of the ICC Banking Commission Technical Advisers.

**QUOTE**

We kindly request your Official Opinion to the below query concerning a documentary credit issued subject to UCP 600.

Amongst other documents, the documentary credit called for an air waybill (AWB).

The requirements in the documentary credit, for the transport route in the AWB, were:

*SWIFT Field 44E (Port of Loading/Airport of Departure): Any Europe Airport*

*SWIFT Field 44F (Port of Discharge/Airport of Destination): Any Panama Airport*

The presented AWB indicated the following information:

*Airport of departure: Amsterdam*

*Airport of destination: Panama, Ciudad DE*

The presentation was forwarded by the nominated bank to the issuing bank. The issuing bank refused the presentation citing the following discrepancy:

*“Air Waybill does not show name of Airport of departure nor Airport of Destination”.*

The refusal was contested by the nominated bank as the AWB, in their view, did show the relevant airports. In Amsterdam there is just one airport i.e., “Amsterdam Airport Schiphol”. Panama, Ciudad DE means Panama City.

However, the issuing bank responded:

“OUR MT734 IS BASED ON THE FACT THAT IN THE AWB IS STATED AS AIRPORT OF DEPARTURE AMSTERDAM INSTEAD OF AMSTERDAM SCHIPHOL AND AS AIRPORT OF DESTINATION READS PANAMA, CIUDAD DE, INSTEAD OF TOCUMEN INTERNATIONAL AIRPORT OR PANAMA PACIFICO INTERNATIONAL AIRPORT, FOR EXAMPLE. REFERENCE IS MADE TO ICC ISBP 745, H11”

Based on the above, we ask the view of the ICC Banking Commission if the discrepancy raised by the issuing bank is valid.

**UNQUOTE**

**ANALYSIS**

UCP 600 sub-article 23 (a) (iv) states that an air transport document must appear to indicate the airport of departure and the airport of destination stated in the credit. This is reinforced in ISBP 821 paragraph H9.

ISBP 821 paragraph H11 states that when a credit indicates a geographical area or range of airports of departure or destination, an air transport document is to indicate the actual airport of departure or destination, which is to be within that geographical area or range of airports. The credit in question stated a geographical area for each airport.

For this query, both the airport of departure and the airport of destination fields in the presented air waybill indicated the name of a city in Europe (Amsterdam) and Panama (Panama Ciudad DE) respectively, but without the name of a specific airport in either city. The question that arises is whether the insertion of the name of a City as the airport of departure and airport of destination complies with the practice described in ISBP 821 paragraph H11.

 The use of the words “actual airport of departure or destination”, in paragraph H11, is to emphasise that when a credit provides a geographical area for the airport of departure and/or destination, it is not acceptable to insert the same wording i.e., the geographical area in the respective fields of the air transport document. The details inserted in the air transport document must reflect compliance with the stated geographical area and the insertion of Amsterdam and Panama Ciudad DE achieves this.

 This position i.e., that in such circumstances it is sufficient to merely state the name of the city in the transport document without any need for the name of a specific (air)port.

has been reflected in the following ICC Opinions:

ICC Opinion R704 (TA628rev) referenced a credit that required shipment from "any port in Korea" to "any port in HoChiMinh City". The presented bill of lading stated "Ulsan port in Korea" as the port of loading and "port in HoChiMinh City, Vietnam" as the port of discharge. It was highlighted that the issuance of the bill of lading was to create wording in line with that which appeared in the credit. Furthermore, ISBP 645 paragraph 83 [the applicable ISBP revision at that time] referred to a geographical area or range, and that reference to "port in HoChiMinh City, Vietnam" was not included within the scope of that paragraph. However, it was concluded that the bill of lading as issued and *one which would have stated just "HoChiMinh City" would have been acceptable* (italics added) under the referenced credit.

 ICC Opinion R801 (TA796rev), whilst dealing with a different issue, concluded that a transport document evidencing shipment from Antwerp complied with a credit requiring shipment from any North European port. Whilst that Opinion referred to a maritime shipment, the relevance to this query is that the port in Antwerp is not named “Antwerp” but is actually “Port of Antwerp-Bruges”. Nevertheless, the transport document was deemed acceptable.

As long as the credit does not require a specific port/airport to be named, then the port/airport fields, on a transport document, reflecting a city in a stated geographical area is sufficient for examination purposes.

As a final note, the air transport document would have been issued in accordance with the normal practice of the issuer and may be the normal practice of the issuer. It is not for the ICC Banking Commission to decide whether or not this is normal market practice.

**CONCLUSION**

The discrepancy is not valid.

**The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Technical Advisers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.**

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Yours Sincerely,

 Tomasch Kubiak

 Policy Manager Banking Commission

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25 October 2023

**Document 470/TA.938**

Dear Ms Jacquier,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers.

**QUOTE**

We would like to request an official ICC Banking Commission Opinion on the qualification and scope of responsibilities of an ‘Advising Bank’ under a Letter of Credit subject to the UCP 600, in particular the interpretation of sub-articles 9 (b), (c) and f.

The relevant facts and specific questions have been set out below in detail.

1. **Bank A** (‘Issuing Bank’) has issued a Letter of Credit (‘**L/C**’) which is subject to the UCP 600. The L/C mentions that the Issuing Bank is domiciled in Country A.
2. The **Applicant** under the L/C is a company established in Country B. The **Beneficiary** under the L/C is a company established in Country C.
3. The L/C has been advised by **Bank B** (Country B) to **Bank C** (Country C) via SWIFT MT 710 (1/2) and MT711 (2/2). Banks B and C were not requested to confirm the L/C.
4. The L/C mentions the following specifications (in so far as relevant):

*“:41D: Available With … By …: ANY BANK IN Country C BY NEGOTIATION*

*:42C: Drafts at … : Sight*

*:42D: Drawee: (Bank A)”*

*“:49H: The Issuer of this LC under F52D has full responsibility for the payment under the LC terms against full presentation. Initial instruction was instructed and initiated to us under reference number: XXXX*

*+ This credit is solely advice without any risk and responsibility on our part. Our advice of this L/C is subject to Art. 9 (f) UCP600.*

*+:72Z: Sender to Receiver Information*

*We relay as instructed strictly w/o any confirmation/liability in our side in regards to this deal or to the contents of this msg. relay to Bank C.*

*+ We do not accept any no responsibility for any error, omission and delays in the transmission.”*

*“:57D: ‘Advise Through’ Bank: (Bank C + place of establishment + Swift Code + IBAN).”*

*“:47A: Additional conditions*

*Instructions of (Bank B)*

*QUOTE*

*+ It is understood that wherever in the text of LC words ‘we’, ‘us’, ‘ourselves’ or words of similar effect, it is construed to mean as issuing bank or from the originator of LC.*

*+ This LC is only advice to our correspondent’s letter of credit and conveys no engagement or responsibility on our part to negotiate the documents”*

1. The MT710 advice of the LC did not mention any other bank involved (except for Bank A, as the Issuing Bank, mentioned under field 52D), nor was the involvement of any other bank communicated by Bank B to Bank C. Bank C (only) advised the L/C to the Beneficiary.
2. The documents required for presentation under the L/C have been presented by the Beneficiary (via Bank C) to Bank A. The documents were credit complying (not refused). Bank A failed to honour its obligations under the L/C.
3. Subsequent investigations revealed that Bank A does not exist. The only company in Country A with the same ‘company name’, which did exist, is no longer active. A brief search on the internet indicates that the website of Bank A appears several times on blacklists of fraudulent websites.
4. Bank B has been held liable by the Beneficiary as well as by Bank C. Bank B has denied liability by stating that it only acted as the ‘Second Advising Bank’, referring to another bank (‘**Bank Z**’) who allegedly first advised the L/C (allegedly sending a SWIFT MT 710 message to Bank B). This information cannot be ascertained from its advice (or from the L/C as advised by Bank B).
5. Bank Z is not mentioned in the L/C, nor has it been mentioned by Bank B in its communication to Bank C (Bank C referred to Bank Z only after having been informed of the involvement by Bank B, which is some time after Bank A failed to honour the L/C).

**Questions**

a) Is the text of the L/C decisive in qualifying the role of an advising bank - First or Second Advising Bank - under the UCP 600? If not, what are the decisive elements in order to qualify the specific role of an advising bank?

b) Can Bank B be qualified as the ‘First Advising Bank’?

c) Assuming that a bank can be qualified as a First Advising Bank: is the First Advising Bank required to verify whether the Issuing Bank in fact even exists in order to avoid fraudulent transactions and/or activities?

d) Taking into consideration the facts as set out above, has Bank B satisfied itself ‘as to the apparent authenticity of the credit’ and/or that the ‘advice accurately reflects the terms and conditions of the credit’?

e) Taking into consideration the facts as set out above, are Bank B in breach of sub-article 9 (b) and/or (f) by not informing Bank C (and/or the Beneficiary) that it has not been able to satisfy the apparent authenticity of the L/C?

f) Assuming that a Second Advising Bank requests another bank (the ‘Third Advising Bank’) to advise a credit, is the Second Advising Bank in breach of sub-article 9 (f) (and/or 9 (b) and/or 9 (c)) if it fails to inform the Third Advising Bank that it only acts as Second Advising Bank (without mentioning the First Advising Bank), and not as First Advising Bank?

**UNQUOTE**

**ANALYSIS**

For ease of reference, the involved parties are listed below:

* Applicant – Country B
* Issuing Bank – Bank A, Country A
* First Advising Bank (alleged) – Bank Z, Country unknown
* Second Advising Bank – Bank B, Country B
* Third Advising Bank – Bank C, Country C
* Beneficiary – Country C

According to the query, the credit was issued by Bank A and then advised by Bank B to Bank C via SWIFT MT710 (1/2) and MT711 (2/2). Banks B and C were not requested to confirm the credit. The credit was made available with any bank in the country of the beneficiary, Country C, by drafts drawn at sight on the issuing bank.

SWIFT message types MT710/711 are intended to be sent by an advising bank, which has received a documentary credit from an issuing bank or a non-bank issuer, to the bank that is to advise the credit to the beneficiary, or to another advising bank. Field 49H of the MT710, which relates to “Special Payment Conditions for Bank Only”, stated that the issuer of the credit under field 52D had full responsibility for the payment under the credit. Field 52D specifies the issuing bank of the credit.

Furthermore, and also in field 49H, Bank B stated that the credit was solely advised without any risk and responsibility on their part, and referencing that their advice of the credit was subject to UCP 600 sub-article 9 (f). The reference to sub-article 9 (f) provides an indication that Bank B was unable to satisfy itself as to the apparent authenticity of the credit (or the advice that it may have received).

In addition, Bank B stated that the details of the credit are relayed as instructed strictly without any confirmation/liability on their side in regard to the deal or to the contents of the message relay to Bank C. Additional instructions were included in field 47A that the credit was only an advice of their correspondent’s credit and conveyed no engagement or responsibility on the part of Bank B to negotiate the documents.

Field 52D mentioned Bank A as the Issuing Bank. Bank B did not communicate the involvement of any other bank to Bank C, and Bank C subsequently advised the credit to the beneficiary on that basis.

The beneficiary presented (apparent) credit complying documents to Bank C and these were submitted direct to the issuing bank by Bank C. As highlighted in the text of the query, it was subsequently discovered that Bank A did not exist. In an ensuing discussion with Bank C, Bank B not only stated that it had acted as a second advising bank, but also provided a previously unknown reference to another bank (in this query, referred to as Bank Z) which allegedly first advised the L/C by sending an MT 710 message to Bank B. It would appear that this information was not conveyed to Bank C by Bank B.

UCP 600 article 2 defines the role of an advising bank as the bank that advises the credit at the request of the issuing bank. The responsibilities of an advising bank are outlined in article 9.

For the purpose of this query, the key sections are sub-articles 9 (b), (c), and (f).

* Sub-article 9 (b) states that by advising a credit, the advising bank, signifies that it has satisfied itself as to the apparent authenticity of the credit and that the advice accurately reflects the terms and conditions of the credit received.
* Sub-article 9 (c) states that an advising bank may utilise the services of another bank (“second advising bank”) to advise the credit to the beneficiary. By advising the credit, the second advising bank signifies that it has satisfied itself as to the apparent authenticity of the advice it has received and that the advice accurately reflects the terms and conditions of the credit received.
* Sub-article 9 (f) states that if a bank is requested to advise a credit but cannot satisfy itself as to the apparent authenticity of the credit (or any advice), it must so inform, without delay, the bank from which the instructions appear to have been received. If the advising bank elects nonetheless to advise the credit, it must inform the (beneficiary or) second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit (or the advice).

Bank B stated that the credit was solely advised without any risk and responsibility on their part, referencing that their advice of the credit was subject to UCP 600 sub-article 9 (f). On the basis of the information received, it cannot be determined whether or not the issuing bank was informed as required by sub-article 9 (f). Additionally, the text in field 49H of the MT710 from Bank B to Bank C should have provided an explicit indication to Bank C that Bank B was unable to satisfy itself as to the apparent authenticity of the credit. Mere reference to sub-article 9 (f) with no explanatory comment is not sufficient.

UCP 600 does not provide an explanation of the meaning of “authenticity”. However, standard international banking practice interprets this as meaning verification of the sender and affirmation that a bank is assured that the credit is authentic.

Under the terms and conditions of the credit received from Bank B, it is clear that Bank C would have assumed that they were taking on the role of a second advising bank. Whether the non-mention by Bank B of Bank Z was deliberate or accidental, the end result was that Bank C had been misled by Bank B. The fact is that Bank B, was the second advising bank as defined by UCP 600 sub-article 9 (c), and did not inform Bank C of the existence of the advising bank, i.e., Bank Z. This resulted in Bank C mistakenly believing itself to be the second advising bank and Bank B the advising bank that received the credit directly from the issuing bank. This contravenes the advising bank's obligation and responsibility to “accurately reflect the terms and conditions of the credit received" as stated in UCP 600 sub-article 9 (c).

It should be observed that there are a number of “red flags” in this credit that should have been raised by Banks B and C, not least the complexity of the transaction caused by so many banks being involved, and that the applicant and issuing bank are not located in the same country.

**CONCLUSION**

1. In view of the fact that the credit was issued subject to UCP 600, then the role of an advising bank is as defined in the rules, which is to advise a credit at the request of an issuing bank. Similarly, the role of a second advising bank is to advise a credit at the request of the advising bank.
2. Yes, on the basis of the information initially received by Bank C. However, subsequent information made it clear that Bank B was actually the second advising bank.
3. If an advising bank cannot satisfy itself as to the apparent authenticity of the credit, it must so inform, without delay, the bank from which such instructions have been received. If the advising bank still decides to advise the credit, then it must inform the beneficiary or second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit.
4. As all the facts were collected, it became clear that Bank B was in fact the second advising bank, having received an advice of the credit from Bank Z. Under sub-article 9 (c), Bank B was required to satisfy itself as to the apparent authenticity of the advice it received from Bank Z. Bank Z would have been responsible for satisfying itself as to the apparent authenticity of the MT700 it received from Bank A.
5. The message from Bank B to Bank C made reference to UCP 600 sub-article 9 (f) but the underlying rationale was not clearly expressed. Bank B should have provided an explicit indication to Bank C that they were unable to authenticate the advice of the credit it had received.
6. Such an approach represents bad banking practice. Bank B should have indicated in its MT710 that it had received an advice of the credit from Bank Z so that Bank C would have an understanding of the routing of the credit as well as a clear indication that Bank B was acting in the role of a second advising bank.

**The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Technical Advisers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.**

**The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.**

**If this query relates to a matter currently under consideration by the courts, the ICC Banking Commission will refrain from considering it for adoption as an opinion.**

**Neither the ICC nor any of its employees, nor any member of the Banking Commission, including the Chairman, Vice-Chairmen or Technical Advisers shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion.**

Yours Sincerely,

 Tomasch Kubiak

 Policy Manager Banking Commission

 International Chamber of Commerce

Mr. Buddy Baker

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25 October 2023

**Document 470/TA.939**

Dear Mr. Baker,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers.

**QUOTE**

We occasionally see commercial letters of credit issued subject to UCP600 and

transmitted using the SWIFT MT700 format in which fields 42C (Drafts at...) and 42a

(Drawee) have been completed and yet, either in the section for Documents Required or that for Additional Conditions, the issuing bank includes a requirement for drafts, specifying the same tenor and drawee.

Certain issuing banks believe that such letters of credit require presentation of two drafts and are asserting this in public forums, like LinkedIn. We believe this is incorrect.

Please provide us with your official opinion regarding letters of credit issued as

described, i.e.,

When, in two different fields of a UCP 600 letter of credit, the letter of credit requires presentation of drafts and the tenor and drawee are the same in both fields, does it mean that two original drafts must be presented, or just one?

**UNQUOTE**

**ANALYSIS**

The question concerns documentary credits that require the presentation of a draft in more than one field of an MT700 (i.e., in field 42C (Drafts at…) and field 42a (Drawee) as well as in field 46A (Documents Required) or field 47A (Additional Conditions)).

 First, it should be noted that the ICC Guidance Paper “The Use of Drafts (Bills of Exchange) under Documentary Credits” recommends that the practice of requiring a

draft for a documentary credit available at sight be discontinued, unless required for a specific commercial, regulatory or legal reason. The Guidance Paper, which can be located at https://iccwbo.org/news-publications/policies-reports/set-of-guidance-papers-on-recommended-principles-and-usages-around-ucp-600/, also recommends that banks issue usance documentary credits available by deferred payment as an alternative to availability by acceptance of a draft, unless there is a specific commercial, regulatory or legal reason to create a banker’s acceptance.

 Second, the requirement for a draft, if needed under a documentary credit, should only appear in the designated fields (42C and 42a) of the MT700, 707, 710 or 720.

If, however, a requirement for a draft is repeated in the designated fields in the MT700 (i.e., field 42C (Drafts at…) and field 42a (Drawee) as well as in field 46A (Documents Required) or field 47A (Additional Conditions,) and includes the same tenor and drawee, this will be regarded as a repetition of the details in fields 42C and 42a, and the requirement in field 46A or 47A is to be disregarded.

**CONCLUSION**

Under the circumstances mentioned in the Query, and expanded upon in the Analysis, only one draft is required for presentation.

**The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission’s Technical Advisers based on the facts under “QUOTE” above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.**

**The reply given is not to be construed as being other than solely for the benefit of guidance and there should be no legal imputation associated with the reply offered.**

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Yours Sincerely,

 Tomasch Kubiak

 Policy Manager Banking Commission

 International Chamber of Commerce