



Banking Commission

Final consolidated Opinions of the Banking Commission, January 2024

Attached are the following Opinions as distributed in November 2023

Note that **470/TA935** will be revised and presented again during the April 2024 accordingly to the members decision taken during the 22 January 2024 session.

470/TA936 rev

470/TA937

470/TA938 rev

470/TA939 rev

Mr. Utpal Kant
ICC India
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India

25 January 2024

Document 470/TA.936rev

Dear Mr. Kant,

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

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 “CFR” did replace the term “C&F” 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.

CONCLUSION

There is no discrepancy.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under “QUOTE” above.

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(s).

Yours Sincerely,



Tomasz Kubiak
Policy Manager Banking Commission
International Chamber of Commerce

Ms. Christina E. Seierup
ICC Denmark Trade Finance Forum
Chair,
ICC Denmark
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Denmark

25 January 2024

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.

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.

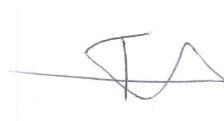
The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under "QUOTE" above.

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Yours Sincerely,

A handwritten signature in black ink, appearing to be 'TK', written over a light blue horizontal line.

Tomasz Kubiak
Policy Manager Banking Commission
International Chamber of Commerce

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25 January 2024

Document 470/TA.938rev

Dear Ms. Jacquier,

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

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”

5. 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.

6. 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.

7. 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.

8. 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).

9. 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. Accordingly, where there is a need for a third advising bank, it should be apparent to that third advising bank, from the MT710/711 received by it, who is the issuing bank, the advising bank and the second 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 its part, and referencing that its 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 its 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 its 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 its part, referencing that its 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.

Whilst the UCP 600 rules do not provide a meaning of “authenticity”, international standard banking practice in the context of determining authenticity would encompass verification that the message was sent from the named entity.

Under the terms and conditions of the credit received from Bank B, it is clear that Bank C would have assumed that it was 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 transaction 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

- a) 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.
- b) 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.
- c) Yes. In satisfying itself as to the apparent authenticity of a credit, an advising bank should be satisfied that the sending bank exists. Mere reference to UCP 600 sub-article 9 (f) with no explanatory comment is not sufficient.
- d) Yes. 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 credit it received from Bank A. Bank B did not inform Bank C of the existence of Bank Z, thereby denying Bank C of information relating to the routing of the credit which may have had a bearing on whether or not Bank C would be willing to advise the credit to the beneficiary.
- e) Yes. 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 it was unable to authenticate the advice of the credit it had received.
- f) Such an approach represents bad banking practice. Bank B was required to handle the credit in accordance with UCP sub-article 9 (b) thereby ensuring that the advice accurately reflected the terms and conditions of the credit or amendment received; by omitting details of a first advising bank, the advice

cannot be accurate. Furthermore, mere reference to UCP 600 sub-article 9 (f) with no explanatory comment is not sufficient and neither of the actions provided by sub-article 9 (f) appear to have been fulfilled.

The final determination of banks' liabilities, in view of the above, remains a matter of applicable law.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under "QUOTE" above.

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,

A handwritten signature in black ink, appearing to be 'TK', written over a light blue horizontal line.

Tomasz Kubiak
Policy Manager Banking Commission
International Chamber of Commerce

Mr. Buddy Baker
International Banking Advisor
United States Council
for International Business
1212, Avenue of the Americas
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United States of America

25 January 2024

Document 470/TA.939rev

Dear Mr. Baker,

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

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 specific details in fields 42C and 42a, and the requirement in field 46A or 47A is to be disregarded.

As stated in ISBP 821 Preliminary Consideration v), an issuing bank should ensure that any credit it issues is not ambiguous nor conflicting in its terms and conditions.

CONCLUSION

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

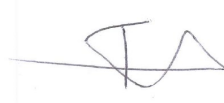
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Yours Sincerely,

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Tomasz Kubiak
Policy Manager Banking Commission
International Chamber of Commerce