Opinion 943, question no. 2

Re. question no. 2: We do not have any comments on the Analysis or Conclusion itself because we agree with those, i.e. we agree that the assumption in the beneficiary’s query is not correct, but we have some suggestions for minor re-wordings under Analysis and Conclusion (yellow marked):

*quote*

**2. Is the following assumption correct**: In case the LC is stating available with a named nominated bank, a document examination is only required if the named nominated bank is explicitly requested by the beneficiary to honour or negotiate?

**ANALYSIS**

For the purpose of question 2, according to UCP 600 sub-article 12 (a), “[u]nless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary.”

As such there is no obligation on a bank that is nominated to honour or negotiate, and that is not a confirming bank, to examine the documents.

It is therefore correct, there was no obligation on the advising bank to examine the documents.

*unquote*

Comment:

What is correct? Assumption? Since the question no. 2 was "Is the following assumption correct", the answer cannot be "It is therefore correct..." because the assumption is not correct. Therefore, this sentence should be either deleted or re-worded to be:

"The assumption is therefore not correct as there is no obligation on the advising bank to examine the documents (unless it is a confirming bank or has otherwise agreed with the beneficiary to honor or negotiate).”

*quote*

**CONCLUSION**

2. No. However, unless the nominated bank is a confirming bank or has otherwise agreed with the beneficiary to honour or negotiate, there is no obligation on that bank to examine the documents, either of their own volition or as a result of a request from the beneficiary.

*unquote*

Comment:

The word "However" seems out of place in that sentence. The sentence following "No." should not start with "However" or similar, as the new sentence only adds clarification to the conclusion which is "No", so there is no room to any “However”.

Therefore, in order to avoid any doubt, the Conclusion should be simply stated as:

CONCLUSION

2. No. Unless the nominated bank is a confirming bank or has otherwise agreed with the beneficiary to honour or negotiate, there is no obligation on that bank to examine the documents, either of their own volition or as a result of a request from the beneficiary.