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Policy and Business Practices

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Subject: Document 470/TA.712

Dear Mr. Aziz,

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

QUOTE

1. Bank E, Country R issued thirteen (13) irrevocable documentary credits, subject to UCP 600, for various amounts totalling USD1,786,207.00 through Bank D, Country G to advise through Bank A, Country P. Bank A was a nominated bank. Despite this request, Bank D forwarded the credits to their Country P Office who advised them directly to the beneficiary.

   Payment terms were deferred payment at 60 days from B/L date, for eleven L/Cs and 90 days from B/L date for the other two.

2. Beneficiary presented 13 sets of shipping documents totaling USD 1,736,609.44 which were forwarded to Bank E who accepted the documents and advised the due dates. Due to non-receipt of funds on the due dates Bank A sent reminders to Bank E by SWIFT and e-mail for which no response was received.

3. In December 2008, in response to a telephone call, Bank E informed Bank A that Country R Central Bank had placed Bank E under Temporary Administration for six months, with effect from October 29, 2008. The above conversation was followed by a SWIFT message dated December 18, 2008 confirming that the Regulator had appointed a State Agency for stabilization of the Bank's financial situation and overseeing the use of credit funds provided by the Central Bank. They also mentioned that the temporary administration was carrying out a revision of outstanding obligations and other banking

activities and a positive decision on all L/C payments will be made shortly in our favor.

4. We strongly believe that Bank E should honour its obligation / liability under the documentary credits and, as such, we made constant and protracted follow-up through reminders by SWIFT messages and letters to Bank E, the Central Bank and the State Agency. We requested them to expedite payment of our export proceeds with good value as per their “Advice of Payment”, reminding them about their “liability” under UCP 600 and not to defer with the future strategy. Bank A received some messages including the following:

   - SWIFT message dated January 29, 2009 from Bank E mentioning that they “have already informed us of the reasons for non-payment on 18.12.08, since then there was no change in the present state of affairs in the bank”.

   - SWIFT message dated February 19, 2009 from the State Agency informing Bank A that the Temporary Administration will perform its duties until April 29, 2009 and thereafter a possible change of shareholder structure is expected in the following 1-2 months. L/C settlements with the concerned applicant were the reasons for the economic losses of Bank E. They advised Bank A that Bank E has suspended all current payments under the L/Cs. However, they assured us of the true intention of the Bank to solve this problem, considering interests of all parties involved. After the changes in investors / new shareholders they will define their future strategy and they might take a decision on settlement of outstanding obligations under the L/Cs. They requested Bank A’s understanding and patience and expressed commitment to a positive resolution of the present situation.

   - SWIFT message dated June 11, 2009 from Bank E informing Bank A of the new management taking over and that they are carrying out a revision of outstanding obligations and claims under L/Cs. They assured Bank A of their “commitment to settle the matter of payments under the L/C’s in Bank A’s favour at the earliest possible date”.

   - Letter dated July 15, 2009 and SWIFT message dated July 16, 2009 from State Agency and Bank E, respectively, with almost the same text. They mentioned that L/Cs opened by the applicant with them were of an ‘unsecured type” without any collateral or liquid pledge, nor did the bank carry out qualitative or quantitative risk assessment of the effected transactions. About half of overdue debt will likely not be repaid. They believe that L/C transactions of the applicant represent a scheme for stealing the bank's money. They reiterated that criminal charges against some ex-managers of the bank were filed with "investigations" also on money laundering and terrorist financing. They concluded that repayment of the bank's obligations under the L/Cs is possible only after the legal review on the concluded transactions is carried out.

5. Bank A totally disagrees with their intention for deferring the payment for an indefinite period due to any mismanagement or unlawful activities in their bank by some ex-managers. Bank A has nothing to do with any default by their customer. As it is purely their internal affair Bank A kept on reminding all concerned parties in Country R of their obligations under UCP 600, but to no avail. It appears that they are trying to avoid their liability by using delaying tactics. On August 27, 2009, the new management and / or stakeholders of Bank E changed the name of the bank and re-named it "Bank P". Needless to mention that Bank E was originally established in 1990 with the same name.

6. Bank A therefore seek your kind assistance in helping us by using your good offices to convince the management / owners of Bank E now renamed as "Bank P" and the Central Bank of Country R to honour their obligations under their documentary credits. They should immediately arrange to remit proceeds, with interest at prevailing rate, losses and out of pocket expenses to Bank A, without further delay.

ANALYSIS

Bank E, now known as Bank P, confirmed that the documents complied with the terms and conditions of the 13 credits and advised the due dates in respect of each drawing made thereunder. As a consequence, Bank E had an obligation to honour on the due dates that were advised to Bank A.

Issues relating to the circumstances under which the credits were issued and the seemingly lack of controls that existed in Bank E, are outside of the scope of UCP but do not detract from the obligations of Bank E that are created within the UCP and, in particular, article 7.

Despite the above, it must be recognized that the involvement of the Central Bank and an appointed State Agency, to oversee the bank's affairs will, as a matter of necessity, postpone or at the very least defer the payments that are due under these credits, pending finalization of their investigation.

CONCLUSION

Bank E issued 13 documentary credits and Bank A apparently acted in good faith in handling those transactions. There is no inference in the query that Bank A were aware of any issues such as those discussed in the query i.e., money laundering and terrorist activity.

Bank E (now Bank P) has an obligation to honour the drawings and it must be hoped that the Central Bank and the State Agency of Country R will do everything in their power to bring this matter to a swift conclusion recognizing the responsibilities that befall an issuing bank under the UCP and the credit itself.

The actions of the applicant and/or the previous management of Bank E should not be an influence or deciding factor over whether Bank A receives the proceeds of the 13 drawings. Bank A should be reimbursed for the drawings, plus delayed payment interest at the prevailing rates. The question of and determination of, losses and out of pocket expenses, will need to be proven and agreed between Bank E (now Bank P) and Bank A.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's officers 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 Adviser 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,

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Banking Commission