International Chamber of Commerce
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Policy and Business Practices

Mr. Pavel Andrle
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Banking Commission ICC CR
Thunovska 12,
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Czech Republic

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Subject: Document 470/TA.713

Dear Mr. Andrle,

Thank you for your query regarding URC 522. Please find below the opinion of the officers of the Banking Commission.

QUOTE

We are repeatedly acting as a remitting bank under documentary collections "documents against acceptance" drawn by the same drawer, on the same drawee, and being subject to URC 522. The collections are sent through Bank B, Country G acting both as collecting and presenting bank. Regarding payment of charges, the collection instructions expressly state the following:

"Your charges and settlement charges of all banks involved are for drawee's account. These charges may not be waived, if refused, do not deliver documents."

The collection instructions also contain the following clause:
"Please confirm acceptance of the bill by authenticated swift as soon as it is accepted."
Following acceptance tracer repeating the request ("Pls inform us by return if a/m bills of exchange were accepted.") we received acceptance by MT412 SWIFT.

Upon payment, the proceeds were subject to deduction of 'SWIFT charge' GBP 15.00 (each collection). We demanded that collecting bank refund the SWIFT charge, reminding them that the collection instruction expressly stated that all their charges were for account of drawee and they were not allowed to waive these charges. Collecting bank replied as follows: "You stated all our charges for drawee which we have. GBP 15.00 is your charge, as you requested a SWIFT reply when acceptance actioned. This incurred a charge of GBP 15.00 for the SWIFT. We will not be refunding this." We replied that our collection was subject to URC 522 and under sub-article 26 (c) (ii) "The collecting bank must send without delay advice of acceptance to the bank from which the collection instruction was received." We argued consequently that sending acceptance advice is a standard of collection processing under URC 522 and that we requested nothing beyond a requirement that is already contained in URC 522. We insisted that all charges under our collection were for drawee's account and were not allowed to be waived, hence all charges connected with standard processing of the collection must be claimed from drawee, the deduction was not authorised and the amount must be returned. The collecting bank replied, inter-alia that "Under URC 522 this charge is for your account, not the drawee, we will therefore not be refunding the charges and our files remain closed." URC 522 sub-article 26 (c) does not expressly require that these advices be sent by SWIFT, however, we expressly requested SWIFT advice because we must consider this to be the most convenient, efficient and cheapest advising method in this case.

We would like to seek your opinion on the following question:

Was the collecting bank entitled to deduct their "SWIFT charge", although all charges were for account of the drawee and were not allowed to be waived, i.e. is the request for SWIFT advice of acceptance to be considered as a request by a remitting bank for an "additional" service chargeable to the remitting bank, although URC 522 expressly state that collecting bank must send advice of acceptance? This question would also apply to payment advice – under URC 522 sub-article 26 (c) (i) where the collecting bank is also required to send a payment advice.

ANALYSIS

Sub-article 21 (b) states "Where the collection instruction expressly states that charges and/or expenses may not be waived and the drawee refuses to pay such charges and/or expenses, the presenting bank will not deliver documents and will not be responsible for any consequences arising out of any delay in the delivery of the document(s). When payment of collection charges and/or expenses has been refused the presenting bank must inform by telecommunication or, if that is not possible, by other expeditious means without delay the bank from which the collection instruction was received."

Sub-article 26 (c) (1) reads "The collecting bank must send without delay advice of payment to the bank from which the collection instruction was received, detailing the amount or amounts collected, charges and/or disbursements and/or expenses deducted, where appropriate, and method of disposal of the funds." and sub-article 26 (c) (2) "The collecting bank must send without delay advice of acceptance to the bank from which the collection instruction was received."

CONCLUSION

An advice of payment or acceptance of a collection is required to be sent according to sub-articles 26 (c) (1) or (2) of the rules. In most circumstances, the sending of this advice by SWIFT is the most common, efficient and cost effective manner.

Given the instructions to the collecting / presenting bank in relation to the charges, and the express indication that if refused documents were not to be released, the collecting / presenting bank has a choice to charge the SWIFT fee to the drawee or advise the remitting bank that the charges are refused and that the documents remain with the collecting / presenting bank pending further instructions.

Having released the documents to the importer, the collecting / presenting bank has indicated their willingness to comply with the instructions in the collection schedule and the rules contained in URC 522.

The SWIFT charge of GBP15.00 should not have been deducted from the proceeds.

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,

Thierry Senechal
Policy Manager
Banking Commission