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Policy and Business Practices

Ms. Jenny Yuen
Chairman of the ICC Banking Committee,
International Chamber of Commerce of Hong Kong, China
Unit 1201 Bank Centre
636 Nathan Road
Mongkok, Kowloon
Hong Kong

26 January 2010

Subject: Document 470/TA.717

Dear Ms. Yuen,

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

QUOTE

We are writing to check with ICC HQ whether our opinions in column F of the attachment are correct. As we know, an LC may be available with a particular bank, any bank or the issuing bank. It may expire in the beneficiary's country, at the counters of a particular bank, in the confirming bank's country, at the counters of the confirming bank, in the issuing bank's country or at the counters of the issuing bank. There are many possible scenarios and we are sometimes confused. As issuing bank, confirming bank or nominated bank, we have to understand when exactly the documents must be presented so as not to raise such discrepancies as "LC expired" and/or "Late presentation".

We have drawn up the attached table to cover various scenarios and would appreciate it very much if ICC would indicate whether our opinions in column F are correct or incorrect. We would also appreciate the ICC's opinion as to whether our assumption below is correct or not.

If the documents are lost in transit before being presented to a party in column F, the sender of the documents bears the mailing risk and no party in column F is obligated to negotiate or honour. Is this assumption correct?

ANALYSIS & CONCLUSION

With regard to scenarios 1-23 on the attached, all are agreed with the exception of the following:

1. This would be the issuing bank only.
3. This would be the issuing bank only.
7. This would be the issuing bank only.
9. This would be Bank B or issuing bank.
15. This would be Bank C or issuing bank.
20. This would be subject to the terms of the confirmation.
21. This would be subject to the terms of the confirmation.
22. This would be the confirming bank in USA or issuing bank.
23. This would be any bank in USA or issuing bank.

It must be remembered that a confirming bank can narrow the effect of the confirmation, i.e., the place and timing of its expiry, in its advice of confirmation. This may be particularly so when the credit is available with any bank.

The answer to your assumption lies in the content of article 35. If the sender of the documents is a nominated bank and they determine that the documents are complying, whether or not they have honoured or negotiated, they are protected by article 35 in the event that the documents are lost in transit between them and the issuing or confirming bank. If the sender is not a nominated bank, then the sender will bear the risk of the documents being lost in transit.

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