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Policy and Business Practices

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International Chamber of Commerce
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Hong Kong

26 January 2010

Subject: Document 470/TA.718 (UCP 500)(ED)

Dear Ms. Yuen,

Thank you for your query regarding UCP 500. Please find below the view(s) of the officers of the Banking Commission.

QUOTE

<u>Re: Non-payment by issuing bank under a documentary credit at maturity</u>

We would like to seek an official opinion from the ICC regarding a dispute between the issuing bank and the beneficiary under a documentary credit. The brief facts of the case follow.

A bank in Country B issued a documentary credit subject to UCP 500 with a tenor of 120 days sight. The issuing bank accepted to pay at maturity following the presentation of documents, by the beneficiary, through our bank. However, the issuing bank subsequently informed us that the applicant had lodged a suit against it to prevent it from effecting any payment under the documentary credit. After maturity, we repeatedly requested the issuing bank for payment, but in vain. The beneficiary then appointed a lawyer in Country B to follow up. Up to the date hereof, the issuing bank still has not effected payment under the documentary credit, even though we further reported the case to the Central Bank in Country B. In fact, both the issuing bank and the Central Bank have failed to respond to us regarding payment.

Based on the facts above, we should be grateful if ICC could let us have their view on whether the issuing bank is obliged to pay under the documentary credit.

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ANALYSIS & CONCLUSION

Although UCP 500 sub-article 9 (a) states that an irrevocable credit constitutes a definite undertaking of the issuing bank to pay if the credit provides for sight payment; to pay on the maturity date if the credit provides for deferred payment; to accept a draft and pay it at maturity if the credit provides for acceptance; and to pay, without recourse, if the credit provides for negotiation, the bank cannot simply ignore a court order or injunction that has been issued stopping them from honouring under the credit, even if the documents complied and the issuing bank had acknowledged that fact.

This issue is one that has been addressed by the ICC in a number of opinions. The latest of these was TA672 which was issued in respect of a credit subject to UCP 600 but the content of the conclusion will equally apply here.

The conclusion to TA672 included the following "The general principle, as stated in the conclusion to ICC Opinion R.519, is that local law will prevail over the transaction." and "Due to the content of sub-article 12 (b) and sub-article 7 (c), the issuing bank should seek to resist such an injunction in order to preserve the integrity of its credit and the UCP. It must be expected that the issuing bank will seek to have the injunction removed by referring the court to the appropriate articles of UCP 600 and the terms and conditions of the credit. The issuing bank would also be well advised to inform their applicant(s) of the content and effect of sub-article 12 (b) for this and any future transactions. It is the responsibility of the applicant to cover any issues of quality of goods in the documents called for and the data content required to appear on those documents and not to seek redress that affects the right of a nominated bank to receive reimbursement in respect of a complying presentation."

If no response is being received from the issuing bank or the Central Bank of the concerned country, we would suggest that contact be made with the local ICC office to seek their intervention and request they contact the concerned bank with a view to having them take the appropriate action as outlined above and/or respond to the messages that have been sent.

The opinion(s) rendered on this query reflect the view(s) of the ICC Banking Commission's officers based on the facts under "QUOTE" above. They do not necessarily reflect the view(s) of the ICC Banking Commission. This query is considered to be of an educational nature and will not be placed before the next Banking Commission meeting for approval.

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.

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 view(s).

Yours sincerely,

Thierry Senechal
Policy Manager
Banking Commission