Policy and Business Practices

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Ankara,
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Subject: Document 470/TA.730 (replaces educational query of the same number)

Dear Mrs. Geriş,

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

QUOTE

We have been seeing the following clauses on insurance documents. Please advise acceptability of these clauses according to UCP 600 article 28.

Clause 1 complete text of the insurance document has been created and printed on plain paper and signed:

"PREMIUM PAYMENTS AND POLICY ANNULMENT CLAUSE:

Unless otherwise agreed, the insurer's obligation shall in no way commence unless the premium is paid or the down payment is made, regardless of whether the policy is delivered or not.

In cases when it's agreed that the first instalment (down payment) or all of the premium is paid by the policy holder by credit card rather than in cash upon his/her consent and request, and that a delay payment by credit card is granted to the policy holder, the liability of the insurer commences upon the withdrawal of the first instalment (down payment) or all of the premium from the credit card on the pre-agreed day. The payment place is any [Bank T Branch], [Company A, the insurance company] or the agency which represented [Company A] in the establishment of insurance contract. Premium payment is realized in cash either against bank advice or receipt. Nevertheless, the payment can be made by giving credit card instruction to the agency or also by using [Bank T's] interactive transactions invoice instructions method. The payments [that] are made to places which are out of the places listed above or methods out of th[os]e listed above does not eliminate premium obligation. The insured shall be deemed to be in default in case he/she fails to pay the insurance premium or in cases when the parties agree to have the premium paid in instalments, down payment or any one of the instalments, having their final due dates stipulated on the policy until the due date. In case the insured is in default by failing to pay the premium, then the provisions of the Obligations Code shall become applicable and the contract shall be annulled at once without any further notice in compliance with paragraph 3 of article 107 of Obligations Code."

There is no marking of premium paid on the policy.

Clause 2 which is pre-printed on the insurance document:

"We, ABC INSURANCE hereby agree, in consideration of the payment to us by or on behalf of the assured of the premium as arranged, to insure against loss, damage, liability or expense to the extent and in the manner herein provided."

There is no marking of premium paid on the policy.

Clause 3 complete text of the insurance document has been created and printed on plain headed paper of the insurance company and signed:

"In case of any claim payment through this policy, the assured (insured party) agrees to pay the additional premium arising from the difference between the foreign exchange rates, on the claim payment day and on the policy issuance day." The terms of the credit are CIF.

ANALYSIS

Article 28 makes no reference to the payment of insurance premium. The position taken by the UCP is that the insurance document would not have been issued unless the premium had been paid or arrangements satisfactory to the insurance company, underwriter or their agent or proxy, had been made.

It is not the responsibility of banks to review pre-printed text on an insurance document that may be considered to be terms and conditions to determine compliance.

Clause 1 – The entire document has been created and printed at the same time. It is therefore difficult for a document examiner to distinguish between standard clauses and clauses that are specific to the coverage for this transaction. This may require the document examiner to review the whole document to ascertain compliance with the credit. Having identified the issue relating to the premium, the bank cannot ignore the effect of the clause.

Clause 2 - The referenced clause is pre-printed on to the document and should be considered as a general statement from the insurance company. The wording does not indicate that the premium has not been paid.

Clause 3 – The referenced clause is pre-printed on to the document and should be considered as a general statement from the insurance company. The clause does not indicate that an additional premium will be payable. In any event, sub-article 28 (j) allows for an insurance document to indicate that the cover is subject to a franchise or excess (deductible). Any request for additional premium would have the same effect.

CONCLUSION

Clause 1 – The document is discrepant as the insurance is conditional on the payment of the premium and no such indication has been made on the document. The fact that the insurance document has been issued with the wording referred to, would seem to indicate that at the time of issuance the premium had not been paid.

Clause 2 – The document is acceptable.

Clause 3 – The document is acceptable.

The opinion(s) rendered on this query reflect the opinion(s) of the ICC Banking Commission's officers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion(s) 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.

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
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Banking Commission