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Subject: Document 470/TA.761

Dear Ms Cirav,

Thank you for your query regarding URDG 758. Please find below the opinion of the ICC Banking Commission Group of Experts and Officers.

QUOTE

A counter-guarantee has been received which states in field 40C (Applicable Rules) “NONE”. This means, according to the SWIFT handbook, that the guarantee/counter-guarantee is not subject to ANY RULES.

Field 77C (Details of the Guarantee) incorporates the guarantee wording within quotation marks and indicates therein that the guarantee is subject to URDG 758 with the exception of articles 16, 22 and 35.

The wording of the counter-guarantee that follows the wording of the guarantee in field 77C indicates, however, that it is subject to English law and the jurisdiction is English Courts.

We understand that on the grounds of the code-word "NONE", in field 40C, and the governing law clause of the counter-guarantee in field 77C, that the counter-guarantee is only subject to English law, contrary to the content of URDG 758 sub-article 1 (b). Sub-article 1 (b) will apply unless the counter-guarantee excludes the URDG and it does not require "express" exclusion (contrary to sub-article 15 (c) for instance). The message for the case in hand states in field 40C “NONE”, which is a choice not to submit the counter-guarantee to any rules.

We believe that the guarantee is subject to URDG other than the excluded articles and the counter-guarantee is not subject to URDG, but is governed by English law and jurisdiction.

We further believe that the counter-guarantee would have been subject to URDG 758 under the auspices of sub-article 1 (c) and be governed by English law and jurisdiction had field 40C indicated the code-word OTHR in lieu of NONE, even in the absence of any set of rules or laws which, according to the SWIFT handbook, must be specified in narrative (2nd sub-field) when the code-word OTHR is used.

Please advise whether our opinion is correct or not.

ANALYSIS

URDG 758 sub-article 1 (a) states: The Uniform Rules for Demand Guarantees ("URDG") apply to any demand guarantee or counter-guarantee that expressly indicates it is subject to them. They are binding on all parties to the demand guarantee or counter-guarantee except so far as the demand guarantee or counter-guarantee modifies or excludes them."

URDG 758 sub-article 1 (b). states: "Where, at the request of a counter-guarantor, a demand guarantee is issued subject to the URDG, the counter-guarantee shall also be subject to the URDG, unless the counter-guarantee excludes the URDG. However, a demand guarantee does not become subject to the URDG merely because the counter-guarantee is subject to the URDG."

It should be noted that when the text of a guarantee excludes certain articles of URDG 758, unintended consequences might arise should suitable replacement wording not be given.

CONCLUSION

In accordance with SWIFT messaging rules for the MT 760, if field 40C mentions the codeword "OTHR" it means that the guarantee is subject to another set of rules, which must be specified in narrative (2nd sub field). It is not expected that an MT760 will be received stating the codeword "OTHR" in field 40C without stating another set of rules or law that is applicable to the guarantee. Therefore, use of "OTHR" will not be an express indication that a counter-guarantee or a guarantee is subject to URDG.

The MT 760 mentioned the codeword "None" in field 40C and in field 77C requested that the demand guarantee be issued subject to URDG 758. The text of the counter-guarantee indicated that it is subject to English law and the jurisdiction is English Courts. Therefore, in this case, the counter-guarantee is subject to English law alone and URDG 758 do not apply to it. The demand guarantee, however, will be subject to URDG 758 except for the excluded articles.

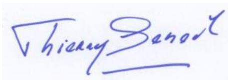
The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Group of Experts and Officers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC

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, Technical Adviser or any of the Group of Experts 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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