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Department of Policy and Business Practices

Mr Pawel Pniewski
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c/o Polish Bank Association
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Subject: Document 470/TA.806rev

Dear Mr Pniewski,

Thank you for your query regarding UCP 600. Please find below the opinion of the ICC Banking Commission Technical Advisers and Officers.

QUOTE

Credits issued by banks available with any bank by negotiation (freely negotiable), drafts drawn on the issuing bank at a tenor at sight. The credit contains the following condition:

+PRESENTING- NEGOTIATING BANK MUST CONFIRM ON THE REMITTANCE LETTER/ COVERING SCHEDULE THAT THE AMOUNT OF THE DRAWING HAS BEEN ENDORSED ON THE REVERSE OF THE CREDIT.

A problem has arisen in that some banks present documents to the issuing bank with no notification whatsoever regarding the endorsement of the amount drawn on the reverse of the credit. Moreover, no response is received to enquiries sent to the presenting bank.

1. How should the issuing bank proceed with the documents presented, provided they constitute the complying presentation except for missing notification on endorsement?
2. What happens in cases when the issuing bank had reimbursed the negotiating bank for the value of documents and later receives the same documents from another negotiating bank(s)? Is the issuing bank obliged to honour? If not, then on what grounds can the documents be rejected and reimbursement refused?
3. What is the liability or responsibility of the negotiating bank?

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4. What steps should be taken by the issuing bank when the presenting bank gives no response to enquiries and in the meantime the goods have already arrived in the port of unloading? Should it release documents to the applicant, to avoid demurrage and detention costs, indicating to the applicant the implication of the missing notification on endorsement of the amount drawn, or should it proceed in another way, and if so, what is the action to be taken and on what legal grounds?

ANALYSIS

The Analysis is made under the assumption that both banks presenting documents have negotiated in good faith.

UCP 600 sub-article 7 (a) states: “Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour…”

UCP 600 article 2 states: “Complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.”

An issuing bank can refuse to honour or negotiate only if it determines that a presentation is non-complying.

Inclusion of a condition in a freely negotiable credit to endorse the reverse of the credit with the amount of the drawing dates back to when credits were primarily issued in paper format. The intention of such a clause was to prevent beneficiaries undertaking fraudulent actions by presenting documents to more than one bank.

Nowadays most credits are sent via SWIFT and the beneficiary will only receive a copy of the SWIFT message. In view of the fact that such copy can then be reproduced in multiple copies, there is little to gain by the negotiating bank endorsing the reverse of the copy. It would, of course, be feasible for the covering advice from the advising bank to be endorsed. The credit wording should refrain from including such statements as quoted in case of issuance by SWIFT.

However, bearing in mind that many banks now send electronic advices to the beneficiary, there is often no physical document in existence that can be actually endorsed on the reverse.

The instruction given to the nominated bank does not constitute a requirement to be fulfilled in order to make a complying presentation. This applies whether or not such a requirement could actually be fulfilled (i.e. in case of a credit issued in paper format requiring a negotiating bank to endorse any presentation on the reverse of the credit).

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CONCLUSION

1. The issuing bank must honour or reimburse in accordance with UCP 600 sub-article 7 (a) and (c) and there is no need for a notification on endorsement.

2. The issuing bank is obliged to honour provided the presentation complies with the terms and conditions of the credit. It is suggested that the issuing bank liaises with both the first negotiating bank and the bank which claims the second reimbursement in order to inform them about the situation.

   Such a scenario is out of the scope of UCP 600 and will need to be resolved by mediation, arbitration or ultimately litigation.

3. A nominated bank which has not confirmed the credit is under no obligation to honour or negotiate. However, a nominated bank should endeavour to comply with the instructions of the issuing bank. In circumstances when this is not possible, it is good banking practice to notify the issuing bank of any inability to comply with a specific instruction.

4. The issuing bank should honour or reimburse in accordance with UCP 600 sub-article 7 (a) and (c). Legal grounds are a matter for local law.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under "QUOTE" above.

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 Advisers 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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