INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

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Subject: Document 470/TA.807rev

Dear Mrs Geriş,

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

QUOTE

Can the issuing bank claim that the reimbursement was subject to URR 725, despite the credit did not so indicate at the time of issuance, and whether the confirming bank was entitled to claim delay interest.

Nominated Bank V in country T added its confirmation to a credit issued by Bank K in country SK. The credit was, according to field 40E, only subject to UCP 600. URR 725 was not mentioned in the credit.

Field 78 of the credit stated as follows: "*We authorize you to claim reimbursement from Bank HK for your payment under this credit value one working day after your tested swift MT 754 advice confirming that conform documents have been presented and forwarded to us.*"

Documents were presented to Bank V on 8th February 2013. After examination of documents and determination that the documents were in strict conformity with the credit terms, Bank V forwarded the documents and sent a MT754 message to Bank K on 13th February 2013. Bank V claimed reimbursement also on 13th February 2013 by MT742 from Bank HK with value date 15th February 2013, being one working day after nominated bank's MT754 to the issuing bank. (Bank HK was closed for an official holiday from 10th to 13th February 2013).

On 15th February 2013 Bank V as confirming bank made payment of the value of documents to the beneficiary. But the reimbursement was provided by the reimbursing bank on 19th February 2013, only after several tracer messages sent both to the issuing and reimbursing banks.

The confirming bank has acted according to UCP 600 article 8 and claimed its interest loss from the Bank K according to UCP 600 sub-article 13 (b) (iii) considering that the reimbursement under the credit was subject to UCP 600 and not to URR 725.

The issuing bank, by its swift message dated 20th February 2013 has rejected confirming bank's interest claim stating that such claim is groundless due to URR 725 article 11, and that the reimbursing bank was closed for a national holiday till 13th February 2013 so that the reimbursement claim received outside banking hours was deemed to be received on the next following banking day i.e. 14th February 2013.

The issuing bank has further commented that according to URR 725 article 11, 'a reimbursing bank shall have a maximum of three banking days following the day of receipt of the reimbursement claim to process the claim.' It has also claimed that the reimbursing bank has credited confirming bank's account on 18th February 2013, although the confirmation of credit MT910 message was received by the confirming bank V on 19th February 2013 with value date 19th February 2013.

The issuing bank has also stated in its rejection that the reimbursement is considered to be subject to URR 725, when there is no credit term clearly stating that URR 725 should be ignored.

We would appreciate your opinion on whether the issuing bank's remarks are justifiable.

ANALYSIS

According to UCP 600 sub-article 13 (b) reimbursement under a credit that does not state that reimbursement is subject to ICC rules for bank-to-bank reimbursements is subject solely to UCP 600 sub-articles 13 (b) and (c). The issuing bank is wrong in assuming that a credit must explicitly exclude URR 725 in order for UCP sub-articles 13 (b) and (c) to apply. According to UCP 600 sub-article 13 (a), the issuing bank is responsible for indicating in the documentary credit that it is subject to URR 725 in order for URR 725 to apply. According to UCP 600 sub-article 13 (b) (iii) an issuing bank is responsible for any loss of interest if reimbursement is not provided by the reimbursing bank on first demand.

The credit stated the following requirements for the reimbursement on Bank HK:
"Nominated bank may claim reimbursement value one working day after their MT754 sent to the issuing bank."

The issuing bank does not dispute fulfillment of this requirement by the confirming bank.

UCP600 does not cover the role of a reimbursing bank other than stating that the issuing bank is responsible for any loss of interest, together with any expenses incurred, if such bank does not act in accordance with the reimbursement authorisation. Whether or not delayed payment constitutes a breach of the instruction given by the issuing bank to the reimbursement bank is outside the scope of UCP and is of no concern to the confirming bank.

According to UCP 600 sub-article 13 (b) (iii) an issuing bank is responsible for any loss of interest if reimbursement is not provided on first demand.

CONCLUSION

The issuing bank's interpretation regarding the applicability of URR 725 to the credit is not correct. The credit did not indicate that the reimbursement was subject to URR 725 and therefore reimbursement was subject to UCP 600 sub-articles 13 (b) and (c).

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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Banking Commission