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Department of Policy and Business Practices

Ms Nynne Norman-Scheuer
Deputy Secretary General
ICC Denmark
c/o Danish Chamber of Commerce
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1217 Copenhagen K

9 December 2014

Subject: Document 470/TA.811rev

Dear Ms Norman-Scheuer,

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

QUOTE

Bank A issued a Documentary Credit in favour of beneficiary B in Country D. The credit was advised through Bank P, which was also the nominated bank in Country D. Bank P advised the credit to beneficiary B without adding confirmation and without any commitment or obligation to beneficiary B.

The beneficiary presented documents to Bank P which, subsequent to examination of the presented documents, notified the beneficiary of a number of discrepancies. As per agreement with the beneficiary, Bank P forwarded the discrepant documents to the issuing bank, without citing or listing or notifying any discrepancies observed by them from their examination of the documents.

Bank P in their letter to the beneficiary listed the discrepancies observed by them, stating that they would revert with payment once received from the issuing bank.

The issuing bank refused documents on the basis of a single discrepancy, i.e. a difference existed in the PO number between the invoice and packing list. The issuing bank's discrepancy notification stated: the invoice showed "PO # SOL140430-01" and the packing list showed "PO #SOL140".

It should be noted that the credit had not stipulated any requirement that the PO number was to be mentioned in any of the documents called for by the credit.

This 'discrepancy' was not mentioned by Bank P during their examination of documents and hence had not been included in the list of discrepancies notified by them to the beneficiary.

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The issuing Bank returned the documents to Bank P as per the provisions of UCP 600 sub-article 16 (e).

Based on the above scenario, our questions are:

1. Is the discrepancy quoted by the issuing bank a valid discrepancy; i.e. is the issuing bank obligated to honour the presentation.

2. To what extent is the advising/nominated bank obligated on the basis that the presentation is refused citing a discrepancy not identified – and communicated to the beneficiary – by them.

ANALYSIS

The method of handling and forwarding the discrepant documents to the issuing bank as per agreement with the beneficiary suggests that Bank P had:

a) forwarded the documents to the issuing bank without acting on its nomination and without stipulating any discrepancies,
b) handled the documents on behalf of the beneficiary in line with UCP 600 sub-article 12 (c) and
c) had informed the beneficiary that payment would be subject to receipt of same from issuing bank, suggesting that if the issuing bank did not pay, then Bank P would also not pay.

The credit did not stipulate a PO number nor any requirement for mentioning the PO number in any of the documents. On this basis, it is quite feasible that both PO numbers are valid. In accordance with UCP 600 sub-article 14 (d), data in one document must not conflict with data in any other stipulated document. Based on the information given in the query a conflict between the two PO numbers cannot be determined.

CONCLUSION

1. The discrepancy quoted by the issuing bank was not valid and hence they are obligated to honour the presentation in accordance with UCP 600 sub-article 7 (a).
2. The advising/nominated bank was not obligated to honour the documents as they had not agreed to act as nominated bank.

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

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