INTERNATIONAL CHAMBER OF COMMERCE

The world business organization

Department of Policy and Business Practices

Ms Nynne Norman Scheuer
ICC Denmark
Börsen
1217 Copenhagen K
Denmark

17 December 2015

Document 470/TA.841rev

Dear Ms Norman Scheuer

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

QUOTE

We kindly ask your official opinion to the following query received from one of our member banks. The query is related a standby letter of credit issued subject to UCP 600 and issued on behalf of the supplier as a security in favour of the buyer covering the supplier's performance obligations under the underlying contract:

The credit, which was advised through a bank which was asked to add their confirmation, included (amongst others) the following requirements:

1. "Payment under this standby letter of credit shall be made by you upon your receipt at your counters of beneficiary's first simple written demand."
2. "Any demand must show beneficiary's written confirmation that 1) the amount thereby claimed is due and payable due to the suppliers failure to fulfill his contractual obligations as well as specifications of the nature of his failure and 2) the beneficiary has formally demanded payment of such amount from the supplier 30 days in advance."
3. "This standby letter of credit is valid at your counters up to 30 June 2015 after which date this standby letter of credit is automatically considered null and void"
4. "Instruction to advising bank/paying bank: Please advise this standby letter of credit to the beneficiary adding your confirmation."
5. "Upon presentation of credit conform documents please claim reimbursement from us value 2 working days after your authenticated SWIFT message to us confirming all credit terms complied with."

Just before expiry of the standby letter of credit the confirming bank send the following message to the issuing bank:

"Beneficiary of your standby letter of credit claimed liquidation full standby letter of credit amount in case you failed to extend its validity until 31.12.2015. Unless your renewal instructions received by us during the current validity period we consider this swift as our valid formal claim for liquidation and for crediting its total amount to our account with [bank name]"

The issuing bank rejected the message by reminding the confirming bank of the requirements for the claim to be made (point 2 above).

We ask kindly the official opinion of the ICC Banking Commission as to the following questions:

1. How should the issuing bank treat such "extend or pay" message from the confirming bank?

2. Upon expiry of the standby letter of credit, given that no extension is made, can the issuing bank remove the standby letter of credit from its books and release the applicant from their obligations, accordingly?

3. Can the issuing bank under any circumstances be obligated to pay on the basis of the "extend or pay" message, given that the applicant does not accept to extend the standby letter of credit?

UNQUOTE

ANALYSIS

'Extend or pay' demands do not usually occur within normal trade-related credits issued in accordance with UCP 600 provisions.

UCP 600 sub-article 8 (a) states that a confirming bank must honour if stipulated documents are presented constituting a complying presentation. According to UCP 600 sub-article 7 (c) an issuing bank must reimburse a confirming bank that honoured a complying presentation.

The credit stipulated that payment would be made by the confirming bank against receipt of beneficiary's first simple written demand and confirmation that: 1) the amount thereby claimed is due and payable due to the suppliers failure to fulfil his contractual obligations as well as specifications of the nature of his failure, and 2) the beneficiary has formally demanded payment of such amount from the supplier 30 days in advance.

The credit provided that the confirming bank claim reimbursement from the issuing bank value 2 working days after their authenticated SWIFT message to the issuing bank confirming all credit terms complied with.

The reimbursement message sent by the confirming bank did not include the statement that all credit terms were complied with. The issuing bank rejected the confirming bank's reimbursement claim reminding them of the reimbursement requirements for the claim to be made (pointing out to the 2 stipulations above).

The reimbursement instructions given by the issuing bank did not depend on receipt of the presentation at its counters.

CONCLUSION

1. Any presentation of a demand will need to fulfill the requirements of the credit as otherwise the claim will be discrepant. The 'extend or pay' message sent by the confirming bank does not comply with the reimbursement instructions given in the credit; the issuing bank is not obliged to reimburse the confirming bank.
2. In the event that the presentation and reimbursement claim remain discrepant, the credit would have expired on 30 June 2015. Removal of the expired standby credit from the issuing bank's books and releasing the applicant from their obligations under the credit will be subject to the internal banking practice, guidelines and local regulation at the issuing bank's location and outside the purview of UCP 600. In any event, once the credit has expired, a demand cannot obligate the issuing bank.
3. In the specific context of this query the 'extend or pay' message sent by the confirming bank does not meet the requirements of the credit. Hence the issuing bank is not obligated to reimburse the claim. Since the query relates to the reimbursement claim and not the presentation, and provided that a complying presentation has been made, it may be possible for the confirming bank to re-lodge a revised and appropriate claim complying with the credit terms, within the validity of the credit. In case a standby L/C allows for an "extend or pay" option, an issuing bank would be bound by UCP 600 and the terms of an "extend or pay" option irrespective of a decision of the applicant.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers 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.

INTERNATIONAL CHAMBER OF COMMERCE
33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org

INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

Department of Policy and Business Practices

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,

Emily

Emily O'Connor,
Senior Policy Manager
Banking Commission

INTERNATIONAL CHAMBER OF COMMERCE
33-43 avenue du Président Wilson, 75116 Paris, France
T +33 (0)1 49 53 28 28 F +33 (0)1 49 53 28 59
E icc@iccwbo.org www.iccwbo.org