INTERNATIONAL CHAMBER OF COMMERCE
The world business organization
Department of Policy and Business Practices

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Dear Ms Mark,

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

QUOTE

We have been receiving refusal notices from issuing banks stating: "photocopy of document presented instead of original."

Documents were created via an electronic platform that allows the beneficiary to complete the details online, generate a pdf file for download, and then print the document for signature by the beneficiary. The electronic platform is now very common between corporates and trade service providers, i.e. shipping company, forwarding company, insurance company and chamber of commerce. Corporates will input all details to the system connected to the service providers and print documents such as bill of lading, AWB, insurance document or certificate of origin from its own terminal once the application is approved by the service providers. The printout is an original document in the industries, as it could not be printed again once it is printed.

In the past, documents were printed in colour and no problems were encountered in presentation to the issuing bank. Recently, the documents were printed in black and white instead.

From our perspective as a nominated bank, this is the same document and should not be considered as a photocopy; the only difference being that it is now in black and white instead of colour. The colour of the printed document should not be a deciding factor of the originality of the documents. Due to this alleged discrepancy, we are being charged discrepancy fees.

ISBP 745 and UCP 600 do not have guidance on accepting documents in black and white or colour as original.

Here is my question:

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1. Is it justifiable for the issuing bank to refuse to accept a black and white document as original simply because it is not printed in colour?
2. Can a bank decide that a document is a photocopy because it is printed in black and white? Likewise, can a bank reject a colour printed document as original because the bank has observed with sufficient grounds to tell that it is a colour photocopy? (e.g. rubberstamp appears pixelated; manually signed signature has no pen mark trail on the reverse of the document, etc.)

UNQUOTE

ANALYSIS

This query relates to practices surrounding presentation of electronically produced documentation under a credit subject to UCP 600.

The query states that the documents have been presented in paper format and not by means of an electronic record. Accordingly, in order to determine the originality of the document, UCP 600 article 17 is applicable. Banks are not concerned with the process of generating paper documents. A document checker examines the paper document as presented whether it appears on its face to be compliant.

UCP 600 sub-article 17 (b) states that a bank shall treat as an original any document bearing an apparently original signature, mark, stamp, or label of the issuer of the document, unless the document itself indicates that it is not an original. In this particular query, the documents apparently bear an original signature and do not indicate that they are not originals.

The colour of the document, which is neither defined nor described in the credit, is not a criterion to determine the compliance of the document. UCP 600 sub-article 17 (c) (ii) describes that a bank will also accept a document as an original if it appears to be on the document issuer's original stationery (which may or may not be in colour). It does not determine that printouts in black and white are to be treated as copies.

Article 17 UCP 600 describes attributes that make a document appear to be an original. However, it does not describe the attributes of copy documents primarily because, with current technology, it can be difficult to distinguish between a copy and an original. Accordingly, any document that does not fall in either of the categories of sub-articles 17 (b) and (c) is considered to be a copy. The examples stated in this query are subjective. A bank which determines that a presented document does not fit into either of the abovementioned sub-articles would have grounds to refuse the documents on the basis of not being original.

CONCLUSION

1. No, provided it can be determined as an original in accordance with UCP 600 article 17.
2. There are no specific guidelines and criteria set forth under UCP 600 to identify a photocopy from an original printout, irrespective of whether it is in black and white or in colour, although the original pre-printed stationery of both the shipping companies and insurance companies could normally be differentiated from a photocopy.

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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.

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

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