ICC INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

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Dear Mr Riis- Jørgensen,

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 to the handling of demands under counter guarantees issued subject to URDG 758 and standby letters of credit issued subject to UCP 600 and ISP98.

The role of our member bank is either:

- To act as counter guarantor (for guarantees), i.e. requesting the guarantor to issue their local guarantee in favour of the beneficiary. The counter guarantee is issued subject to URDG 758.

- To act as issuer/issuing bank (for standby letters of credit), i.e. requesting another bank to confirm the standby letter of credit. The standby letter of credit is issued subject to either UCP 600 or ISP98.

The applicant has experienced that the time elapsed between a demand being made under the local guarantee or standby letter of credit until a counter-demand is made under the counter guarantee or /standby letter of credit can be fairly lengthy.

On that basis we kindly request the view of the ICC Banking Commission as to which rules and international standard practice apply to:

a) The appropriate time for the guarantor to make a demand under a counter guarantee from the time a complying demand is made under the local guarantee.

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b) The appropriate time for a confirmer/confirming bank to make a demand under a standby letter of credit against the issuer/issuing bank from the time a complying demand is made to the confirmer/confirming bank.

UNQUOTE

ANALYSIS

The query refers to the time lapse between the time of the lodging of a demand with the local guarantor/confirming bank and the time when the local guarantor/confirming bank's demand is made under the counter guarantee/standby letter of credit.

As per standard banking practice, the bank instructing another bank to issue a guarantee against their counter-guarantee would normally specify the claim/demand handling procedure within the instrument. Similarly a bank issuing a standby credit and instructing another bank to add their confirmation would also specify reimbursement instructions for the confirming bank. In most cases, the counter-guarantor or issuing bank would specify a time period for them to honour a demand or reimburse a claim made by the guarantor or confirming bank but not always a time period for the demand or reimbursement claim to be made by the guarantor or confirming bank. It would be in the interest of a guarantor or confirming bank to receive compensation from the issuing bank as soon as possible.

Under URDG 758 article 22, the guarantor shall without delay transmit a copy of any complying demand to the counter-guarantor for transmission to the instructing party.

Under UCP 600 sub-article 15 (b), when a confirming bank determines that a presentation is complying, it must forward the documents to the issuing bank.
Under ISP98 sub-article 3.04 (a), in order to comply, a presentation must be made at the place indicated in the standby. In addition, sub-article 3.05 (a) states that a presentation is timely if made at any time after issuance and before expiry on the expiration date, which is applicable to both the presentation to be made to the local guarantor/confirming bank and also to their demand/claim on the instructing guarantor/standby issuing bank.
There is nothing in existing ICC rules that specifies an exact time period by which complying demands must be made in the circumstances described above.

CONCLUSION

In accordance with international standard banking practice, it is considered usual practice for a complying demand to be made 'without delay'.

This is not a phrase that is defined within ICC rules but, under international standard banking practice, is understood to mean 'promptly'.

In the majority of circumstances, an action that is performed after a period of later than

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three business days would not be considered to be 'without delay'.

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

Emily O'Connor,
Senior Policy Manager
Banking Commission