INTERNATIONAL CHAMBER OF COMMERCE
The world business organization

Department of Policy and Business Practices

Ms Samantha Mark
Singapore Business Federation
10 Hoe Chiang Road, #22-01 Keppel Towers,
Singapore 089315
Singapore

9 February 2016

**Document 470/TA.851**

Dear Ms Mark,

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

**QUOTE**

One of our members has encountered some challenges with an issuing bank and requires guidance on it.

Documentary credit issued via SWIFT with the following terms (among others):
42C/DRAFTS AT: AT SIGHT

46A:
6. APPLICANT'S ACCEPTANCE CERTIFICATE IN ONE ORIGINAL ISSUED AND SIGNED BY APPLICANT.

Beneficiary presented documents as follows:

At SIGHT of this
*SOLE* Bill of Exchange Pay to the order of [redacted]



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

**Customer Information**

Company: Applicant's full name

Address:

City/State/Zip:

Country: All details completed

Contact Name:

Phone: Fax:

Email:

**Acceptance Certification**

I, an authorized customer representative, acknowledge that the above referenced system was installed and demonstrated to operate in accordance with the specifications mutually agreed upon by both parties. We accept the delivery, installation and demonstration of this product as complete and release seller from any further obligation, other than those obligations as specified during the warranty period.

| Customer Authorized Representative | Authorized Representative |
| --- | --- |
| Print Name: Applicant's representative | Print Name: seller |
| Title: | Title: |
| Date: | Date: |
| Signature: Properly signed | Signature: |

(excerpts from acceptance certificate)

Issuing bank sent a refusal notice to presenting bank stating the following discrepancies:

1. A copy of applicants' acceptance certificate presented differ from L/C.
2. The tenor of this L/C is at sight your draft should be indicated at xxx sight instead of at sight.

The refusal was ambiguous, so presenting bank queried further and received the following elaborations: "1. Our L/C 46A item 6 indicated applicants' acceptance certificate in one original issued and signed by applicant. However we didn't find applicant as issuer anyplace and signed this document. 2. According to ISBP Para B2 the tenor stated on a draft is to be in accordance with the terms of the credit. Your presented draft shown at sight, it is ambiguous statement, it could be at sight, it also could be certain days after sight, therefore the discrepancy was existed."

Presenting bank found the refusal invalid. The acceptance certificate clearly showed the applicant's full name, and was structured in such a way that "customer" was identified, and "customer's representative" had signed off the document. The discrepancy as to the tenor was considered frivolous.

Presenting bank reverted to the issuing bank on the discrepancies being invalid, and received a reply as follows: "Please be noticed that the effectiveness of UCP600 has priority over ISBP. Then, please refer to UCP600 article 1, when the text of the credit expressly indicates that it is subject to these rules, they are binding on all parties thereto unless expressly modified or excluded by the credit, therefore the content of credit is the most prior than UCP600 and ISBP. Please pay respect for the content of L/C. If you still has query, please consult the ICC. We closed our file."

It appears that ISBP is misunderstood in the case, and UCP600 is being misused.

The issuing bank had referred us to ICC Banking Commission for guidance. Please advise if they are right in the discrepancies quoted by them.

**UNQUOTE**

**ANALYSIS**

The credit called i.a. for applicant's acceptance certificate without specifying the required content but required it to be issued and signed by applicant. The document presented seems to be a blank form to be completed with details of the "customer" (buyer) and seller, bearing signature of both of the parties mentioned in the form. A document checker cannot determine without a doubt which party "issued" a document in the sense of filling in details, writing or printing a document. According to international standard banking practice a document checker would determine on the basis of a document presented which party **appears to be the issuer**.

The wording within the form suggests the perspective of the buyer rather than the seller. It appears to be a document confirming acceptance of a system by the buyer and reference to release of some obligations of the seller by the buyer, bearing the signatures of both parties the buyer and seller. No indication is made within the text of the query whether the certificate has been printed on stationary of either buyer or seller. The credit did not require an explicit statement as to the party issuing the certificate.

The credit also called for a draft to be issued "at sight", the draft presented stated "sight" as tenor for payment. The issuing bank claimed that the tenor should have been stated as "at xxx sight". In an explanatory message it is further stated that issuing bank considers the tenor stated in the presented draft as ambiguous as it is not clear whether the tenor should be "sight" or "a certain period of days after sight". Issuing bank also refers to ISBP 745 paragraph B2 a. which clarifies that the tenor stated on a draft is to be in accordance with the terms of the credit. The draft presented is in conformity with the clarification of this paragraph of ISBP 745.

According to international standard banking practice the term "sight" used to determine the tenor suffices to fulfil the requirement in a documentary credit for a draft at sight.

The query describes that the presenting bank could not fathom from the initial refusal notice sent by the issuing bank the nature of either of the discrepancies stated. Both of the statements referring to discrepancies are vague and even misleading as to the exact nature of the discrepancy. In order to comply with sub-article 16 (c) UCP600 the description of a discrepancy must be identifiable by the presenter. The distinction between further explanation and additional or deviating discrepancies can be a walk on a fine line.

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

## CONCLUSION

Neither of the discrepancies stated are valid.

**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



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