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Dear Ms Ho,

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

QUOTE

We have received, from an issuing bank in Country H, a LC with the following conditions:
31D: DATE 160621 PLACE IN BENEFICIARY'S COUNTRY (Country S)
50: APPLICANT (Country H)
59: BENEFICIARY (Country S)
41D: WITH ANY BANK BY NEGOTIATION
42C: 30 DAYS AFTER SHIPMENT DATE
48: PRESENTATION PERIOD [BLANK]
78: …… FULL SET OF REQUIRED DOCUMENTS MUST BE RECEIVED BY CREDIT ISSUING BANK [WITH AN ADDRESS IN COUNTRY H] WITHIN 21 CALENDAR DAYS AFTER THE DATE OF SHIPMENT. OTHERWISE, IT WILL BE REGARDED AS DISCREPANCY.

The information contained in field 78 i.e., 'Instructions to the Paying/Accepting/Negotiating Bank', would not normally be forwarded to the beneficiary and this was not discussed with the beneficiary.

We, the beneficiary's banker in Country S, received a complying presentation from the beneficiary. The documents were presented to us on the 18th calendar day after the shipment date and within the validity of the LC.

The issuing bank refused the documents with the following discrepancies:

1. Late presentation – documents not received by us within 21 calendar days after the shipment date;
2. LC expired – we received documents after expiry date in Country H.

We disagree with the discrepancies cited by the issuing bank as the beneficiary has presented the documents as required in the LC, to us, a nominated bank under the LC, within the presentation period as well as within the validity of the LC.
Here are our questions with regard to the above discrepancies.

1. Is it late presentation, as the beneficiary has presented the documents within 18 calendar days to us, a nominated negotiating bank in Country S?
2. Have the documents been presented within the validity of the LC as we, as a nominated negotiating bank, received the complying presentation one week before the expiry date?

UNQUOTE

ANALYSIS

According to the SWIFT user handbook, field 78 is to specify the instructions from the issuing bank to the paying, accepting or negotiating bank. As a result, any instructions or conditions inserted in this field are not applicable to a beneficiary. It therefore follows that an issuing bank should not include instructions or conditions in field 78 of an MT700 for which it requires or expects compliance by a beneficiary, and it will bear any consequences for doing so.

As far as a beneficiary is concerned, it is field 48 that should indicate the period permitted for it to present documents for payment, acceptance or negotiation. If this field is not completed, the presentation period will be the default period of 21 calendar days after the date of shipment, but in any event not later than the expiry date of the credit, as indicated in UCP 600 sub-article 14 (c) and the SWIFT user handbook. In this particular transaction, field 48 was blank and the beneficiary presented documents to a nominated bank within 21 calendar days after the date of shipment, and prior to the expiry date of the credit.

It would appear that the issuing bank intended to allow expiry to occur in the country of the beneficiary but require the documents to be received by the issuing bank within 21 calendar days after the date of shipment. However, as mentioned, conditions relating to the presentation period, which is a function to be managed by the beneficiary, should not appear in field 78. With this particular structure in mind, and on a more general note, banks should desist from issuing credits that are available by honour or negotiation with one or more nominated banks, located in one or more countries, and expiring in that or those countries, but require documents to be presented or received at the counters of the issuing bank within a specified period.

The basis for the UCP, in article 6, and international standard banking practice is that the expiry place and place for availability are the same. In this way, a beneficiary knows that it can present its documents to the bank with whom the credit is available (or any bank, where the credit is available with any bank) within the stated expiry date and applicable presentation period.

On a separate issue, the query suggests that field 78 is usually omitted from the copy of the credit accompanying the advising bank's advice that is sent to a beneficiary. This statement is not always correct, as most banks send or forward a copy of the entire MT700 to the beneficiary. Additionally, and as is relevant in this case, inclusion of field 78 is clearly necessary when a credit is available with "any bank" as this field may contain information that is relevant to a bank other than the advising bank that accepts the nomination to negotiate.

CONCLUSION

1. Whether or not there is late presentation

For the reasons stated under Analysis, the presentation was made within the presentation period defined by sub-article 14 (c). The discrepancy of "Late presentation – documents not received by us within 21 days after the shipment date" is not valid.

2. Whether or not the documents were presented within credit validity

The documents were presented to the nominated bank within the expiry date of the credit, at the place stated for expiry i.e., country S. The discrepancy of "LC expired – we received documents after expiry date in country H" is not 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.

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Yours sincerely,

David Bischof,
Senior Policy Manager, Banking Commission

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