INTERNATIONAL CHAMBER OF COMMERCE
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Department of Policy and Business Practices

Mrs. Nynne Norman Scheuer
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ICC Denmark
Börsen
1217 Copenhagen K
Denmark

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Dear Mrs. Scheuer,

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

QUOTE

A documentary credit, issued subject to UCP 600, was available with the nominated (not confirming) bank by acceptance at 30 days sight.

The beneficiary made a presentation to the nominated bank on 3 April 2017 [Monday] with a request in its covering schedule for the nominated bank to discount the draft, if possible. The nominated bank examined the documents and did not identify any discrepancies. However, the nominated bank did not act upon its nomination to accept the draft and, instead, agreed with the beneficiary to forward the documents to the issuing bank for its approval and acceptance, and to discount, if the nominated bank agreed, following an advice of acceptance from the
issuing bank. The nominated bank intended to act on its nomination, and accept the draft, when the issuing bank provided its advice of acceptance of the documents. However, it did not promise to do so, and did not mention this in the covering schedule to the issuing bank.

The issuing bank received the presentation on 9 April 2017 [Sunday].

Subsequently, the issuing bank noted a valid discrepancy and sent a notice of refusal (by SWIFT message MT734) in a timely manner (according to UCP 600 sub-articles 16 (c) and 16 (d)), with field 77B (Disposal of Documents) indicating “notify”.

On 12 April, the issuing bank accepted a waiver from the applicant and determined the maturity date as 12 May 2017 [calculated from the day following acceptance of the waiver by the issuing bank].

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The nominated bank did not agree with the maturity date and insisted it should be 3 May 2017; i.e., calculated from the day following receipt of documents by the nominated bank.

The nominated bank made reference to ISBP 745 paragraphs B5 (b) (i) and (iii), basically

saying that since it did not send a notice of refusal ISBP 745 paragraph B5 (b) (iii) does not apply, but ISBP 745 paragraph B5 (b) (i) does; meaning that the maturity date will be 30 days after the day of presentation to the nominated bank.

Kindly clarify how the maturity date should be calculated in this scenario.

UNQUOTE

ANALYSIS

As noted above, the nominated bank did not act upon its nomination despite finding the documents to be compliant and the draft being drawn on it. They did notify the beneficiary of its refusal to honour the presentation and, based upon the beneficiary's agreement, the documents were sent to the issuing bank for honour.

However, the issuing bank noted a discrepancy and issued its notice of refusal to the nominated bank. The issuing bank subsequently honoured the presentation, upon accepting the applicant's waiver.

ISBP 745 paragraph B5 (b) outlines the normal scenarios relating to the calculation of the maturity date in the case of a non-complying presentation when a draft is drawn at xx days sight:

- Paragraph B5 (b) (ii) only applies when the drawee bank is the issuing bank.
- Paragraph B5 (b) (iii) only applies when the drawee bank is a bank other than the issuing bank and it has provided a notice of refusal.

Neither of the above applies to this query.

The remaining scenario, as outlined in ISBP 745 paragraph B5 (b) (i), states that when the drawee bank has not provided a notice of refusal, the maturity date will be 60 days after the day of presentation to it.

However, unless the nominated bank's covering schedule stated otherwise, the issuing bank would be unaware of:

a) the date on which the nominated bank received the presentation; and
b) the fact that discrepancies were not noted by the nominated bank.

The fact that the nominated bank examined the documents, and did not note a valid discrepancy, cannot provide a valid rationale for the issuing bank to later change the maturity date that they established.

Accordingly, from the perspective of the issuing bank and based upon the information received, the maturity date can only be calculated as 12 May 2017.

CONCLUSION

The correct maturity date is 12 May 2017, as calculated by the issuing bank upon its acceptance of the applicant's waiver of the discrepancies..

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,

Olivier Paul
Head of Policy, Banking Commission

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