Finance for Development

Banking Commission

Mr. Buddy Baker
International Banking Advisor
United States Council
for International Business
1212, Avenue of the Americas
New York, NY 10036
United States of America

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Dear Mr. Baker,

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

QUOTE

We received a letter of credit subject to the UCP 600 that we advised and confirmed as instructed. It was available with us by negotiation with 90 days sight time drafts drawn on the issuing bank.

Among the documents required, the credit stipulated “Full set of original Insurance Policy/Certificate in assignable form and endorsed in blank, covering Institute Cargo Clause A for at least 110PCT of invoice value, showing “Claim payable in [Country] in invoice currency” and stating total number of original insurance policy/certificate issued.”

The beneficiary made presentation to us, as the confirming and negotiating bank. We considered the presentation to be credit conforming, and negotiated. The insurance certificate states in pre-printed text, “Claims must be advised with 3 months from the date of discovery of loss/damage.”

After sending all the required documents to the issuing bank, we received an MT756 (Advice of Reimbursement) on 29 May 2020 and within the MT756 the issuing bank indicated that it had honoured despite the discrepancy “Insurance Cert: showing ‘Claims must be advised within 3 months from the date of discovery of loss/damage’”

We responded that we did not agree with the discrepancy called, as it did not state an expiry date for claims.

The issuing bank responded:
PLEASE BE ADVISED THAT OUR RAISED DISCREPANCY IS TOTALLY VALID ACCORDING TO ISBP745 PARAGRAPH K9. KINDLY NOTICE THAT THE STATEMENT ON INSURANCE CERTIFICATE CONTAINS A PERIOD "WITHIN 3 MONTHS FROM ..." I.E INDICATING AN EXPIRY DATE FOR

PRESENTATION OF ANY CLAIMS THEREUNDER.

We further responded:

RE YR BANK'S MT799 DATED JUNE 05, 2020 REGARDING OUR DIFFERENT VIEW POINTS ON A DOCUMENTARY DISCREPANCY.

I ASK FOR UNDERSTANDING AS WE CONTINUE TO ADDRESS OUR DIFFERENCE IN AN EFFORT TO BETTER EXPLAIN OUR POSITION.

THE INSURANCE DOCUMENTS PRESENTED UNDER YOUR LETTER OF CREDIT HAS A CLAUSE THAT STATES "CLAIMS MUST BE ADVISED WITHIN 3 MONTHS FROM THE DATE OF DISCOVERY OF LOSS /DAMAGE"

YOUR BANK QUOTES ISBP 745 K9 WHICH STATES AN INSURANCE DOCUMENT IS NOT TO INDICATE AN EXPIRY DATE FOR THE PRESENTATION OF ANY CLAIMS HEREUNDER.

WE DO NOT INTERPRET THAT THE INSURANCE DOCUMENT PRESENTED HAS INDICATED AN EXPIRY DATE FOR PRESENTATION OF A CLAIM. HAD THE INSURANCE DOCUMENT STATED THAT PRESENTATION FOR ANY CLAIMS EXPIRED ON A GIVEN DATE THEN WE AGREE K9 WOULD HAVE APPLIED.

THE DOCUMENT PRESENTED ONLY INDICATES THAT ONCE DAMAGE HAS BEEN FOUND THE CLAIM MUST BE ADVISED WITHIN 3 MONTHS. NEVER DOES IT STATE THAT PRESENTATION OF A CLAIM EXPIRES ON A SPECIFIED DATE BUT ONLY APPLIES A REASONABLE GUIDELINE THAT ONCE DAMAGE IS FOUND THE CLAIM NEEDS TO BE ADVISED WITHIN A 3 MONTH PERIOD.

WE ASK YOUR GOOD BANK TO PLEASE RECONSIDER YOUR POSITION SO THAT WE CAN ENSURE THE BENEFICIARY IS NOT PUT AT RISK IN THE FUTURE.

The last response received from the issuing bank:

OUR VIEW IS THAT THE STATEMENT "CLAIMS MUST BE ADVISED WITHIN 3 MONTHS FROM THE DATE OF DISCOVERY OF LOSS/DAMAGE" EQUATES TO THE INDICATING OF AN EXPIRY DATE FOR PRESENTATION OF ANY CLAIMS UNDER THE INSURANCE DOCUMENT. THOUGH THERE IS NO EXPIRY DATE INDICATED, SUCH DATE CAN STILL BE ESTABLISHED BASED ON THE DATE ON WHICH THE LOSS/DAMAGE HAD BEEN FOUND. WE THEREFORE DO NOT KNOW WHETHER ANY CLAIM IF NOT ADVISED BEFORE THAT DATE WILL BE PAID BY THE INSURER.

Please provide your opinion on the case described, and the following questions:

1. Would a statement on an insurance certificate referring to when a claim must be advised, after loss or damage is discovered, equate to an expiry date for the presentation of any claim?
2. If the answer to question one is yes, then should the ISBP language **prevent** an insurance company from requiring claims be filed within a specified period after loss or damage is discovered?
3. Is it reasonable to imply that having confirmed loss or damage that a party should have an **indeterminate** amount of time to inform of the loss or damage to the party they are seeking compensation?

If requested to issue a letter of credit without an expiry date for a presentation, we would all most likely decline to issue the letter of credit. We find it misleading that we would expect an insurance company to be liable indefinitely when we would not accept the same situation as a bank.

UNQUOTE

ANALYSIS

The credit required, amongst other documents, presentation of "Full set of original Insurance Policy/Certificate in assignable form and endorsed in blank, covering Institute Cargo Clause A for at least 110PCT of invoice value, showing "Claim payable in [Country] in invoice currency" and stating total number of original insurance policy/certificate issued."

The beneficiary presented the required documents to the nominated bank which negotiated the presentation. The presented insurance certificate, in the pre-printed text, indicated that "Claims must be advised with 3 months from the date of discovery of loss / damage."

Following receipt of documents by the issuing bank, the issuing bank indicated that it had honoured despite the following discrepancy, "Insurance Cert: showing 'Claims must be advised within 3 months from the date of discovery of loss/damage".

The issuing bank, defending the discrepancy, made reference to ISBP 745 paragraph K9 which states: "An insurance document is not to indicate an expiry date for the presentation of any claims thereunder."

The nominated bank did not agree with the discrepancy, indicating that they did not interpret the wording in the insurance certificate as indicating an expiry date for presentation for any claims, merely that once loss/damage has been discovered, claims must be advised within 3 months from the date of discovery of loss/damage.

It should be noted that the premise for ISBP 745 paragraph K9 is the existence of an expiry date in the insurance document after which claims cannot be made. For the case at hand, this is not the situation. Instead, there is a time limit for advising the discovery of loss / damage by which any claim must be made. This does not equate to an expiry date for the claim itself.

Also, the statement in the insurance certificate appears as pre-printed text indicating that it is part of the general terms and conditions which, in accordance with ISBP 745 paragraph K22, are not to be examined by banks.

Accordingly, this text cannot be used as a reason to refuse the document.

The issue as to whether or not it is reasonable to imply that, having confirmed loss or damage, a party should have an indeterminate amount of time to inform of the loss or damage is out of scope for the purpose of the UCP 600, hence is not one to opine on in an Official Banking Commission Opinion.

Summarising the above, the text is not in scope for ISBP 745 paragraph K9 and such wording is also to be considered as part of the general terms and conditions. For these reasons, the discrepancy quoted is not valid.

CONCLUSION

1. No, this particular statement is not subject to the practice described in ISBP 745 paragraph K9 and is also part of the general terms and conditions of the insurance certificate which are not to be examined by banks.
2. Not applicable since the answer to question 1 is “no”.
3. This question is out of scope for the purpose of the UCP 600.

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,

Andrew Wilson
Permanent Observer to the United Nations
Interim Director, Financefor Development
International Chamber of Commerce