

CASE STUDIES ON DOCUMENTARY CREDITS AND UCP600

CASE STUDY 1

Banks have a practice of calling for the original LC at the time of presentation of documents and endorse any drawings on its reverse.

LC's may be made available by Acceptance / Deffered Payment / Negotiation and to be freely available with any bank.

Is it mandatory to endorse the original LC on its reverse?

Analysis

Most LCs contain a clause indicating such a requirement.

The practice is required by SWIFT standards cat.7, for freely negotiable credits, available with any bank.

Conclusion

What is the problem?

CASE STUDY 2

If a nominated bank does not incur a deffered payment undertaking on presentation of complying documents and forwards them to the Issuing Bank.

Subsequently can it a purchases a deffered payment undertaking from the issuing bank and seek protection under UCP600?

Articles 7c. UCP600

CASE STUDY 3

If a LC is confirmed and is available with the Confirming Bank and the beneficiary chooses to present the document directly to the Issuing Bank and the Issuing Bank wrongfully dishonors.

Should the confirming bank honor the presentation given that the LC has meanwhile expired?

Article 8a. UCP600

CASE STUDY 4

A documentary credit requires all documents must to be issued in English language.

The presentation includes a Certificate of Origin bearing a Stamp / Legalisation done in another language

Is this a discrepancy?

Issued in?

CASE STUDY 5

As per Article 38 of UCP 600, A LC can be transferred to more than one second beneficiary. This can be done preferably when the Partial Shipments are allowed under the LC.

If the first Beneficiary is certain that he would be able to comply with article 31(b) of UCP600 (re partial shipments – submission of multiple BLs on the same voyage), can a LC be transferred to more than one second beneficiary even if the LC states Partial Shipment is prohibited provided

Article 38.d. UCP600

CASE STUDY 6

If the nominated bank does not accept a bill of exchange drawn on them by the beneficiary, can the same bill of exchange be presented to the issuing bank or should they present a fresh bill of exchange drawn on the Issuing Bank

UCP Article 7a (iv)**CASE STUDY 7**

Under the documents required a LC calls for a Bill of Lading.
Bill of Lading submitted with the documents is signed by a forwarder as carrier.

Is it a discrepancy?

Article 20 UCP600**CASE STUDY 8**

L/C requirement: invoices in 3 fold and Legalized by Chamber of Commerce.
Beneficiary submits invoices with only one legalized and others without being legalized.

Is it a discrepancy?

Article 17e. UCP600**CASE STUDY 9**

LC calls for a Beneficiary's certificate stating the expiry date (of the product).
The certificate presented states only the month and the year of expiry.

Is it a discrepancy?

Bankers are expected to have a certain amount of general knowledge and common sense

CASE STUDY 10

The documents required in a transferable LC calls for an Inspection Certificate issued by the First Beneficiary.

At the request of the First Beneficiary LC is transferred to a Second Beneficiary without calling for the Inspection Certificate, which the first beneficiary undertakes to submit along with drafts and invoices to be presented for substitution.

Has the Transferring Bank acted in a prudent manner.

Sub-article 38g of UCP600**CASE STUDY 11**

A LC states the last date for shipment as 09 November 2014 and the expiry as 30 November 2014, is silent on the period of presentation and also states 'Stale Bills of Lading Acceptable'.

Documents presented on 01 October 2014 with the Bill of Lading dated 01 June 2014 refused by the Issuing Bank stating Late Presentation (not presented within 21 days after the BL date as per article 14.c UCP600)..

The negotiating Bank does not agree with the reason for refusal.

Should the Issuing Bank honour?

Rule A19.b ISBP745

Case Study 12

The documentary credit in question issued subject to UCP600 called for shipment from "ANY NORTH EUROPEAN PORT" and the transport document required in field 46a was: "FULL SET OF CLEAN ON BOARD BILL OF LADING".

The Nominated Bank received a bill of lading evidencing shipment from Antwerp, which we found to be within the scope of North Europe, since the geographical area of North Europe was not defined in the Credit.

The Issuing Bank refused the documents arguing that Antwerp is not within the geographical area or range stated in the Credit.

The Issuing Bank further argued that Belgium is in Western Europe and not in Northern Europe and quoted an internet website (www.mapsofworld.com) where we could easily recheck.

Is the discrepancy cited by the issuing bank valid?

Analysis

UCP 600 sub-article 14 (a) states that a bank must examine a presentation on the basis of the documents alone.

It is not a matter for the ICC Banking Commission to define or determine geographical areas or ranges. The requirement in the credit is vague and clearly ambiguous.

In accordance with ISBP 745 Preliminary Considerations paragraph (v), the applicant bears the risk of any ambiguity in its instructions to issue or amend a credit.

Furthermore, an issuing bank should ensure that any credit or amendment it issues is not ambiguous or conflicting in its terms and conditions.

It should not be necessary to refer to external resources in order to determine relevant facts.

Conclusion

The applicant and issuing bank must bear the risk of ambiguity for failing to express specifically how "Any North European Port" is to be defined.

In this case, the document is not discrepant.

Case Study 13

Under a credit issued subject to UCP600 by Bank V in country W available by negotiation and expiring with Bank A in country N, Bank A added its confirmation. Upon presentation of complying documents Bank A negotiated and discounted. Documents were refused by Bank V for the following reason: "Health Certificate to be presented in 1 original and 2 copies but only presented in 1 original plus 1 copy."

Bank A stated that all required originals and copies were presented to them within the time limits foreseen by the credit, but admitted to having made an operational mistake by leaving one copy of the Health Certificate in their file and by only sending 1 original and 1 copy to Bank V.

Bank A requested Bank V to create a second copy on Bank A's account, or to instruct Bank A to courier the missing copy, but Bank V did not provide agreement. In the absence of any instructions, and after the expiry date of the credit, Bank A couriered the missing copy document to Bank V, certifying on their letter that it was presented within the time limits of the credit. Bank V still refused to honour the presentation.

Has the Issuing Bank the right to refuse the documents on the basis of the missing copy of the Health Certificate, in spite of the fact that the missing copy was sent to them after the expiry date, but with the declaration of the negotiating bank that the copy was presented within the time limits foreseen under the LC?

Analysis

The credit was available for negotiation with the Nominated Bank and expired at their counters.

UCP 600 sub-article 6 (d) (ii) states: "The place of the bank with which the credit is available is the place for presentation. The place for presentation under a credit available with any bank is that of any bank. A place for presentation other than that of the issuing bank is in addition to the place of the issuing bank."

UCP 600 article 6 (e) states: "Except as provided in sub-article 29 (a), a presentation by or on behalf of the beneficiary must be made on or before the expiry date."

In accordance with UCP 600 sub-article 7 (c) an Issuing Bank undertakes to reimburse a nominated Bank that has honoured or negotiated a complying presentation and forwarded the documents to the Issuing Bank.

The Issuing Bank did not receive all the required documents and subsequently issued a refusal notice. The Nominated Bank, after an exchange of correspondence with the Issuing Bank, forwarded the missing copy document to the issuing bank certifying that it had been presented within the time limits required by the credit.

Conclusion

The initial cited discrepancy is valid. However, upon receipt by the issuing bank of the missing copy document, and on the basis that it also received a certification from the negotiating bank that the document was presented within the time limits required by the credit, the issuing bank must reimburse the confirming bank.

Cade Study 14

Under a credit issued by Bank V in country V available by negotiation and expiring with Bank A in country N, Bank A added its confirmation. Upon presentation of complying documents Bank A negotiated and discounted. Documents were refused by Bank V for the following reason: "Health Certificate to be presented in 1 original and 2 copies but only presented in 1 original plus 1 copy."

Bank A stated that all required originals and copies were presented to them within the time limits foreseen by the credit, but admitted to having made an operational mistake by leaving one copy of the Health Certificate in their file and by only sending 1 original and 1 copy to Bank V.

Bank A requested Bank V to create a second copy on Bank A's account, or to instruct Bank A to courier the missing copy, but bank V did not provide agreement. In the absence of any instructions, and after the expiry date of the credit, Bank A couriered the missing copy document to Bank V, certifying on their letter that it was presented within the time limits of the credit. Bank V still refused to honour the presentation.

Has the Issuing Bank the right to refuse the documents on the basis of the missing copy of the Health Certificate, in spite of the fact that the missing copy was sent to them after the expiry date, but with the declaration of the negotiating bank that the copy was presented within the time limits foreseen under the LC?

Analysis

Although not indicated in the query, it is assumed that the credit was issued subject to UCP 600. The credit was available for negotiation with the nominated bank and expired at their counters.

UCP 600 sub-article 6 (d) (ii) states: "The place of the bank with which the credit is available is the place for presentation. The place for presentation under a credit available with any bank is that of any bank. A place for presentation other than that of the issuing bank is in addition to the place of the Issuing Bank."

UCP 600 article 6 (e) states: "Except as provided in sub-article 29 (a), a presentation by or on behalf of the beneficiary must be made on or before the expiry date."

In accordance with UCP 600 sub-article 7 (c) an issuing bank undertakes to reimburse a nominated bank that has honoured or negotiated a complying presentation and forwarded the documents to the issuing bank.

The issuing bank did not receive all the required documents and subsequently issued a refusal notice. The nominated bank, after an exchange of correspondence with the issuing bank, forwarded the missing copy document to the issuing bank certifying that it had been presented within the time limits required by the credit.

Conclusion

The initial cited discrepancy is valid. However, upon receipt by the ~~issuing bank~~ of the missing copy document, and on the basis that it also received a certification from the negotiating bank that the document was presented within the time limits required by the credit, the issuing bank must reimburse the confirming bank.

Case Study 15

Bank A (Issuing Bank) in country A issued a standby credit subject to UCP 600 which was advised to the beneficiary in country B by Bank B (Advising Bank).

The beneficiary presented a demand under the credit which arrived at the counters of the Bank A before the expiry date of the credit.

Bank A issued a notice of refusal on the third day following presentation stating one discrepancy: "Original Standby LC Not Presented".

There was no wording in the credit requiring presentation of the original Standby LC.

- 1) Is the discrepancy stated by the Bank A correct?
- 2) Can Bank A raise further discrepancies at a later date in respect of the one presentation made by the beneficiary under the credit?

Analysis

1) The wording of the credit did not require the presentation of the original credit as part of the claim. Unless the credit was issued by mail or in paper format, it is doubtful how the originality of the document could be determined. Accordingly, unless otherwise specifically required within the terms and conditions of a credit, there is no requirement for the original credit to be included in the presentation.

2) UCP 600 sub-article 16 (c) states that when a bank decides to refuse or negotiate, it must give a single notice to that effect to the presenter. UCP 600 clearly does not allow for further discrepancies to be raised that were apparent at the time of the initial presentation, as is referred to within former ICC Opinions R196, R328, R271 and TA764rev.

Conclusion

- 1) The discrepancy is not valid.
- 2) Additional discrepancies are not to be considered, as banks only have one opportunity to raise discrepancies for each presentation.

Cade Study 16

Under a documentary credit subject to UCP 600 the beneficiary of the L/C presented, amongst other documents, a charter party bill of lading (CPBL), made out in accordance with the terms and conditions of the respective L/C, signed and stamped as shown hereafter:

Freight prepaid	Date and place of issue ST. PETERSBURG. 27.12.2013
Number of original Bills 3 / THREE	Signature MASTER OF MA " (Name of vessel) " CAPT (Name of captain)

MS "NAME"
MASTER
On behalf of Owners

According to UCP 600 sub-article 22 (a) (i), a CPBL must appear to be signed by any of the following parties:

- the master,
- the owner,
- the charterer, or
- a named agent for any of the above.

The stamp shows, however, that the master is signing "On behalf of Owners".

As this is a case not contemplated by UCP 600 sub-article 22 (a) (i) like the signing by a carrier or a named agent for the carrier as indicated in Official Opinion 470/TA.775rev., we would like to know the opinion of the ICC Banking Commission to this case, i.e. whether this is an acceptable way of signing or not: If the answer is that it is not acceptable, whether it would be acceptable, if the name of the owner(s) would be stated.

Analysis

UCP 600 sub-article 22 (a) (i) states that a CPBL must appear to be signed by:

- the master or a named agent for or on behalf of the master, or
- the owner or a named agent for or on behalf of the owner, or
- the charterer or a named agent for or on behalf of the charterer.

Furthermore, it states: "Any signature by the master, owner, charterer or agent must be identified as that of the master, owner, charterer or agent."

ISBP 745 paragraph G4 (b) states: "When the master (captain), owner or charterer signs a charter party bill of lading, the signature of the master (captain), owner or charterer is to be identified as "master" ("captain"), "owner" or "charterer".

ICC Opinion 470/TA.775rev does not apply as it relates to a CPBL issued and signed by a carrier or its agent.

The signature on the CPBL is identified as that of the master (captain). The master is signing for and on behalf of the owner.

Conclusion

The document is acceptable.

Cade Study 17

The Documentary Credit issued subject to UCP 600 by an Issuing Bank located in country X on behalf of an applicant also located in country X and confirmed by a Bank located in country Y required in field 46a "documents required" amongst other the following document:

*Quote Bank guarantee from international first class bank payable in country X equivalent to EUR xxxxx [the guarantee indicates an amount] valid till xx.xx.xxxx [the guarantee indicates a fix date].
Unquote*

The bank guarantee presented to the Confirming Bank is issued by a bank located in country Y and states that it is subject to the laws of country Y. The wording of the presented guarantee shows the applicant of the Letter of Credit as beneficiary of the guarantee. The amount and expiry date of the guarantee are in compliance with the requirements stipulated in the Letter of Credit. The payment undertaking of the guarantee is worded as follows:

QUOTE

We, xxx [the guarantee indicates the guaranteeing bank], hereby irrevocably undertake to pay you [the guarantee is addressed and directed to the applicant of the Letter of Credit] without delay on your first written demand for payment an amount up to xxx [the guarantee indicates an amount] provided your demand for payment is simultaneously supported by (...)

UNQUOTE

The wording of the guarantee does neither contain an express indication that it is “payable in country X” nor any express reference to country X being the place of payment.

The Confirming Bank accepted the presented guarantee but the Issuing Bank raised the following discrepancy: “Bank Guarantee from international bank is not payable in country X.”. Please let us have your official opinion whether and if so why the issuing bank was entitled to raise the discrepancy by answering the following questions:

1. Is the guarantee only compliant if it either indicates expressly that it is “payable in country X” or contains an express reference to country X being the place of payment? Or can it be argued that the guarantee meets the requirement “payable in country X” because it is issued in favour of a beneficiary located in country X and as it provides that payment thereunder has to be made to this beneficiary?
2. Would the requirement “payable in country X” be met if the guarantee is made out as described above but is not issued by a bank located in country Y but in country X?
3. Does the stipulated requirement “payable in country X” require the document checker to determine whether the presented guarantee’s place of payment is country X?
4. Could the confirming bank argue validly that the Letter of Credit does not stipulate that the requirement “payable in country X” must be met by an express reference or wording in the guarantee document (e.g. 46a: Bank guarantee from international first class bank indicating that it is “payable in country X” equivalent to (...)) and that this requirement may therefore be deemed as non-documentary and not stated and thus be disregarded according to UCP 600 sub-article 14 (h)
5. Could the confirming bank argue validly that the checking of the document falls with respect to the requirement “payable in country X” under the auspices of UCP 600 sub-article 14 (f) because this requirement is worded in way that does not amount to a stipulation of the document’s data content ?

Analysis

The credit included, in field 46a of the MT700, a requirement for a guarantee to be issued by an international first class bank payable in country X (the country of the credit issuing bank). Apart from amount and expiry date, no other requirements were provided. The credit was confirmed by a bank in country Y (the country of the credit beneficiary).

The actual guarantee that was presented to the confirming bank was issued by a bank in country Y, stating that it was subject to the laws of country Y.

The guarantee contained a statement from the guarantee issuing bank that they irrevocably undertook to pay the guarantee beneficiary (the applicant of the credit) without delay on first written demand for payment. It did not include an explicit statement or reference that the guarantee was payable in country X.

Whilst the Confirming Bank accepted the guarantee as a compliant document under the credit, the Issuing Bank refused on the basis that the guarantee was not payable in country X.

In view of the fact that the beneficiary of the credit was located in country Y, it is not unusual that they would use a bank in their own country to issue the guarantee, as was the case in this query. The guarantee had been issued directly in favour of the beneficiary (the credit applicant) in country X, and not via another bank in country X. It included a condition that payment would be made against first written demand. It does not state a place for presentation. Because the guarantee did not state a place for presentation, demands must be presented at the issuing bank. The issuing bank is located in country Y.

Conclusion

1. The guarantee needed to clearly state that it was payable in country X. In order to achieve this, it would have needed to be payable at the counters of a bank in country X, and not at the counters of the guarantee issuing bank in country Y. The fact that the guarantee was issued directly in favour of the beneficiary (credit applicant) in country X and was payable against first written demand, did not fulfil this requirement.

2. If the guarantee had been issued by a bank in country X, this would have met the requirements of the credit.

3. The place of payment of the guarantee was to be stated as "in country X" or determinable as being within country X.

4. The requirement for the guarantee clearly related to a requirement for an actual document. Consequently, UCP 600 sub-article 14 (h) is not applicable.

5. The condition in the credit "payable in country X" is a specific requirement that must be clearly reflected in the guarantee document if it is to fulfil its function. The discrepancy raised by the issuing bank is valid.

CASE STUDY 18

The relevant LC conditions:

1) (Under documents required): Full set of clean on-board marine bills of lading consigned to order, blank endorsed, notify applicant and marked "freight payable as per charter party"

2) (Under other conditions): Charter Party BL acceptable

The presented BL shows:

a) "freight payable as per charter party"

b) signed by XXX Logistics Co Ltd as agent for carrier YYY Shipping Lines Ltd

c) the reverse page shows the shipper's blank endorsement

d) reverse page also shows typical shipping contract terms & conditions (i.e. not the usual Charter Party BL terms & conditions)

In short, the BL (front and back), other than the freight statement, does not display anything to suggest that it is subject to a charter party contract.

Issuing Bank paid but deducted a discrepancy fee for the waived discrepancy of "Charter Party BL signatory's capacity not as master, owner, charterer or agent for any of the aforesaid". Issuing Bank's position appears to be that, by virtue of the LC's BL freight requirement, the LC is actually calling for a Charter Party BL. And because the BL does show such freight statement, the BL is to be treated as being subject to a charter party contract, and therefore the BL must be signed in accordance with Article 22 (a) (i).

Negotiating Bank of course disagreed and countered that the freight phrase was not enough evidence that the BL was a Charter Party one. It argued that, save for the freight phrase; its terms & conditions (on reverse page) were those of a conventional BL. If it is a conventional BL, then issuing bank's discrepancy is incorrect. It should be instead: "Conventional BL presented but contains an indication that it is subject to a charter party"..

ANALYSIS

The credit required a marine bill of lading marked "freight payable as per charter party". In this respect, the credit was badly worded. The presented bill of lading was marked "freight payable as per charter party".

ISBP 745 paragraph G2 (b) states: "A transport document, however named, indicating expressions such as "freight payable as per charter party dated (with or without mentioning a date)", or "freight payable as per charter party", will be an indication that it is subject to a charter party.

ISBP 745 paragraph G1 states: "When there is a requirement in a credit for the presentation of a charter party bill of lading, or when a credit allows presentation of a charter party bill of lading and a charter party bill of lading is presented, UCP 600 article 22 is to be applied in the examination of that document.

Where a credit simply allows for or requires the presentation of a CPBL, a CPBL issued and signed by a carrier or its agent is discrepant under UCP 600 sub-article 22 (a) (i).

CONCLUSION

The discrepancy raised by the issuing bank, "Charter Party BL signatory's capacity not as master, owner, charterer or agent for any of the aforesaid", is correct.

CASE STUDY 19

L/C available with Advising Bank by payment, however the Advising Bank did not act under our nomination and has sent documents presented by the beneficiary to the Issuing Bank without examining them (in accordance with beneficiary's request). No message was received from the issuing bank, Advising Bank received a MT910 from their correspondent bank informing us of the credit entry on our account and containing information in field 72: /EUR100 deducted as discr.fee/.

The documentary credit included the following clause: 'discrepancy fee of EUR 100.00 will be deducted from the proceeds any drawing if documents are presented with discrepancies'

We have contacted issuing bank arguing that since they had not acted in accordance with UCP 600 sub-article 16 (c) (ii), quoting every single discrepancy they should be precluded from deducting discrepancy fee.

An answer was received that their action has nothing to do with UCP 600 article 16 and that if we want to find out about discrepancies we will have to ask for it. It seems that they are acting in line with the conclusion of a/m Opinion. Nevertheless, we cannot agree with it.

In the opinion of the Issuing Bank and according to UCP600 sub-article 16 (a) an issuing bank determines if a presentation does not comply. By deducting their discrepancy fee they obviously wanted to indicate that the presented documents did not comply.

As per article UCP 600 sub-article 16 (b) issuing bank may in its sole judgment approach the applicant for waiver, but that does not extend period of time mentioned in UCP 600 sub-article 14 (b), nor does it (in our opinion) annul the provisions of UCP 600 sub-articles 16 (c), (d), (e) and (f). Achieving applicant's acceptance of discrepancies does not justify the action of not listing all discrepancies, even when sending message indicating acceptance (such as in MT752).

Advising Bank is of the opinion that if Issuing Bank determines that presented documents contain discrepancies, all discrepancies should be quoted either in separate MT734 or in MT752 within 5 working days. Otherwise they are precluded claiming that documents are discrepant (and accordingly not allowed to deduct discrepancy fee)

ANALYSIS

A presentation of documents had been paid by the issuing bank deducting their discrepancy fee. Prior to payment no notice of refusal has been sent nor had any information on discrepancies been provided by the issuing bank.

When an issuing bank finds discrepancies in documents, it has two options available to it under article 16: to provide a refusal message to the presenter in terms of sub-articles 16 (c) and (d) or, to approach the applicant for a waiver without first providing a notice of refusal (sub-article 16 (b)).

When the option of approaching the applicant for a waiver is chosen, and such waiver is given and accepted by the issuing bank, the practice is for the issuing bank to honour, and such honour will be less any discrepancy fee that was stated in the credit.

When this course of action is taken, the issuing bank should provide the presenter, as part of their payment message or in a separate communication, details of the discrepancies that were observed. The presenter can then choose to dispute the discrepancies, therefore questioning the relevance of the deduction representing the discrepancy fee. If the issuing bank does not provide such an indication, the presenter may seek, and the issuing bank must provide, such details. The actions of the issuing bank, as described in situation D, do not represent preclusion under sub-article 16 (f).

Conclusion:

The Issuing Bank is entitled to a discrepancy fee as outlined in the credit, but it should inform the presenter of the discrepancies that were found, either in the advice of payment or in a separate communication.

The issuing bank is not required to send a notice of refusal to the presenter if it elects to contact the applicant for a waiver and to receive a waiver that is acceptable to it. Sub-article 16 (f) does not apply in these circumstances.

If the covering schedule listed the discrepancies that the presenter had found, the Issuing Bank should either advise the presenter that the documents were taken up despite the discrepancies that had been identified by the presenter, or list the discrepancies for which the issuing bank had sought waiver from the applicant.

It is only when an issuing bank does not indicate the discrepancies that there should be a need for the presenter to seek such details. The default position is that an issuing bank, in order to justify a discrepancy fee, should always indicate the discrepancies by one of the methods described above.

When an issuing bank has approached the applicant for a waiver, and received such waiver and decided to act upon it, it does not need to send a notice of refusal in accordance with UCP 600 sub-article 16 (c) in order to be entitled to deduct a discrepancy fee when it honours a presentation. In such circumstances, UCP 600 sub-article 16 (f) does not apply.

When a bank deducts a discrepancy fee on the basis of a "discrepancy fee clause" in a credit, it is good banking practice to inform the presenter of any discrepancies that were found in the documents, either in the advice of payment or in a separate communication. In the event they fail to do so, this does not preclude them from providing such information subsequently.