

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 / Defferred Payment / Negotiation and to be freely available with any bank.

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

CASE STUDY 2

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

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

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?

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

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

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?

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?

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?

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.

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?

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?

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?

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.

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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?

Cade 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.

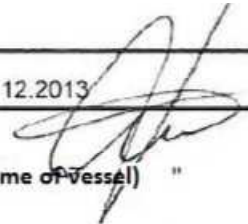
Bank A issued a notice of refusal on the third day following presentation stating one discrepancy: "Original Standby LC Not Presented".

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?

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	Signature 
3 / THREE	MASTER MASTER OF "MA" (Name of vessel) "
	CAPT (Name of captain) "
	On behalf of Owner

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.

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 ?

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”..

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)