



Banking Commission

Final consolidated Opinions of the Banking Commission, January 2023

Attached are the following Opinions as distributed in January 2023

470/TA928rev

470/TA929rev

Ms. Christina E. Seierup
ICC Denmark Trade Finance Forum Chair,
ICC Denmark
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Denmark

9 February 2023

Document 470/TA.928rev

Dear Ms. Seierup,

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

QUOTE

We are the nominated and confirming bank of a documentary credit which calls for an insurance document.

We refused the presentation made by the beneficiary on the basis that the presented insurance policy “does not appear to have been issued and signed by an insurance company, an underwriter or their agent or proxy”.

Here are the signing characteristics of the presented insurance policy:

- The brand name / logo of the company issuing the document is stated in the top right: “XYZ”.
- The claim settling agent is mentioned in the body of the document “XYZ Country X Insurance Co”.
- The document is signed as follows:
XYZ Europe S.A. Filial I Sverige
[signature and name]
- In the footer of the document, contact information is mentioned, but without any names.

The insurance policy also includes the following pre-printed text “We hereby agree, in consideration of the payment to us by or on behalf of the Assured of the premium agreed, to insure against loss, damage or expenses in the manner hereinafter provided.”

The beneficiary argues that it is not a correct refusal as other banks are accepting this kind of document. Likewise, it is argued that the logo in the top right should be enough to document that they are an insurer as they are a well-known insurance company

Our view is that the insurance policy does not comply with UCP 600 article 28 as it does not appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies.

On the basis of the above, we kindly ask your view as to whether the insurance policy complies with UCP 600.

UNQUOTE

ANALYSIS

The credit, subject to UCP 600, required an insurance document. Accordingly, the presented document was required to comply with UCP 600 article 28 which provides the default requirements for an insurance document and coverage.

Sub-article 28 (a) states: "An insurance document, such as an insurance policy, an insurance certificate or a declaration under an open cover, must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies. Any signature by an agent or proxy must indicate whether the agent or proxy has signed for or on behalf of the insurance company or underwriter".

Additional guidance is provided in ISBP 745 paragraph K2:

- a. An insurance document is to appear to have been issued and signed by an insurance company or underwriter or their agent or proxy. For example, an insurance document issued and signed by "AA Insurance Ltd" appears to have been issued by an insurance company.
- b. When an issuer is identified as "insurer", the insurance document need not indicate that it is an insurance company or underwriter.

UCP 600 sub-article 14 (a) states that a nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear *on their face* to constitute a complying presentation.

By inclusion of the pre-printed text "We hereby agree, in consideration of the payment to us by or on behalf of the Assured of the premium agreed, to insure against loss, damage or expenses in the manner hereinafter provided", coupled with the brand name/logo 'XYZ' and the signature line evidencing that it was signed by a branch of XYZ, the insurance policy appears to have been signed by XYZ as the insurer and, on its face, was compliant.

The presented insurance policy contained the brand name/logo "XYZ" and was signed by XYZ Europe S.A. Filial I Sverige (Note: Filial I Sverige is translated to read as Sweden Branch).

This would appear to indicate that the insurance policy was issued by a branch of the insurer.

When examining an insurance document, one of the tasks is to identify the insurer. In order to do this, it is necessary to read the face of the document in order to ascertain such identification. In respect of this query, the relevant information can be found within the above-mentioned pre-printed text.

It should be noted that this text is a term which should be examined. It is, in fact, an essential element of the process of determining the identity of the insurer. For comparative purposes, a further example of a term or condition to be examined in an insurance document is with regard to the determination of the number of originals that have been issued.

CONCLUSION

The insurance document was not discrepant.

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under "QUOTE" above.

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,

A handwritten signature in blue ink, appearing to be 'TK' with a stylized flourish.

Tomasz Kubiak
Policy Manager Banking Commission
International Chamber of Commerce

Mr. Leon Yip
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United Kingdom

9 February 2023

Document 470/TA.929rev

Dear Mr. Yip,

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

QUOTE

Should a bank accept a bill of lading under a letter of credit subject to UCP 600 (i.e., without the eUCP supplement) if the endorsement stamp(s) on the reverse of the bill of lading are printed images of the endorser's manual signature?

Background:

On 10 March 2022, an electronic bill of lading (**eB/L**) was issued to order (i.e., a bearer eB/L) via an electronic document platform (the "**Platform**") for a shipment from Country A bound for Country C.

The trade string involved a back-to-back letter of credit. Because the relevant parties in the first L/C were all users of the Platform, the first presentation was managed electronically under an eUCP credit. As a result:

- the eB/L was signed and issued on behalf of the carrier and transferred to the shipper on the Platform;
- the shipper attached and eSigned the supporting documents (**eDocs**) required under the terms of the eUCP credit and presented the eDocs to the advising bank;
- the advising bank electronically presented the eDocs to the issuing bank; then
- the issuing bank accepted the documents presented under the eUCP credit (the eDocs were returned to correct discrepancies, but this part of the flow is not relevant for the purpose of this request for an opinion, as ultimately the re-presented eDocs were accepted by the banks under the eUCP credit).

However, as is regularly the case, not all the parties in the trade chain had agreed to use eDocs. In this case, the second L/C was on UCP (not eUCP) terms.

As a result, the issuing bank requested that the eB/L be converted to paper using a specific function within the Platform's application

In accordance with the rules governing the Platform, the eB/L was converted to paper following the procedure set out therein. In particular:

- The issuing bank (being the holder of the original eB/L) made a request to the carrier to convert to paper. When making the request, the advising bank selected how many originals (3) and copies (3) of the bill of lading were required to comply with the terms of the back-to-back UCP L/C (this L/C was on standard terms requiring 3/3 clean on board bills of lading).

- Upon the request being made, the eB/L was automatically put into escrow, preventing any further action being taken on that eB/L.
- Under the provisions of the Platform's application, the carrier was obliged to comply with the demand to convert the eB/L to paper, and to do so, if possible, within 2 business days.
- When accessing the Platform, the carrier had the option either (i) to perform the convert to paper itself; or (ii) to delegate this action to an agent on the carrier's behalf.
- The carrier asked an agent to perform the convert to paper, and therefore the agent received an instruction to access the Platform to perform this task.
- The agent accessed the Platform and downloaded the PDF version of the bill of lading which had been automatically generated and made available to the agent in the agent's inbox. This bill of lading was identical to the eB/L at the time the convert to paper request was made, the only difference being that the carrier's electronic signature on the front of the eB/L had been automatically removed, and the carrier's signature block was blank
- Critically, the shipper's electronic endorsement which appeared on the back of the eB/L was retained on the (new) paper bill. The endorsement was standard in structure i.e., Signed by, followed by the shipper's name and an image signature with the words "To Bearer" beneath this information.
- The agent manually signed 3/3 paper bills of lading on behalf of the carrier and delivered these to the issuing bank on 29 March 2022.
- They were rejected on 30 March 2022, on the basis that the bill of lading was not manually endorsed on the reverse with an ink signature.
- The documents were returned to the shipper to add a wet ink signature on the endorsement stamp, adding delay and inconvenience, and were subsequently accepted by the issuing bank.

Issue:

The use of an image signature for endorsement stamps was based on UCP 600 article 3, which provides that: *"A document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication."*

Convert to paper is a critical mechanism for maximising the adoption of eDocs in international trade. It allows trade participants to utilise eDocs with members of a trade chain who are willing to do so, and to convert to paper before transferring to other participants who are not eDocs enabled.

Critical to users' willingness to use eDocs and convert to paper is the ease of doing so. If convert to paper is a highly complex process, which requires each of the participants in the trade chain to manually recreate their eSignature, it will never be used.

Please note this issue is not unique to this Platform. All providers of eB/L solutions have a convert to paper process and all national and model laws on electronic transferable records (**ETRs**) make provision for the conversion of ETRs to paper-based instruments.

It is therefore critical to understand how the provisions of UCP 600 article 3, relating to mechanical or electronic signatures, should be interpreted as they are and will continue to be relevant, and critical to adoption.

The short question is: Can image signatures be used to endorse a paper bill of lading pursuant to article 3?

When converting bills of lading, which are transferable documents where singularity and uniqueness are important, the signature of the carrier on a paper bill of lading should be a wet ink signature which ensures that it can be identified as the original document. However, the provisions of article 3 should allow the use of image signatures for endorsement stamps on bills of lading, and banks should not reject documents on the basis that they are electronically endorsed.

UNQUOTE

ANALYSIS

This query concerns a presentation under a documentary credit, subject to UCP 600, where the presented bill of lading has been generated via an electronic document platform. The bill of lading was initially only available in electronic form, and the digital content reflected that ownership was transferred by way of endorsement.

For the purpose of presenting the bill of lading under the documentary credit, the bill of lading was converted to paper according to the rules of the electronic document platform and the carrier's agent had manually signed them. The endorsement on the reverse of the bills of lading remained as a representation of an image signature.

The presentation was refused by the issuing bank on the basis that the bills of lading were not manually endorsed on the reverse with an ink signature despite the endorsement being standard in structure i.e., Signed by, followed by the shipper's name and an image signature with the words "To Bearer" beneath this information. It was, therefore, a representation of an image signature (also referred to as a form of facsimile signature) of the shipper's signature that was incorporated into the paper bills of lading.

In this respect, the query referred to UCP 600 article 3 (interpretation of signed) i.e., "A document may be signed by handwriting, facsimile signature, perforated signature, stamp, symbol or any other mechanical or electronic method of authentication."

The UCP 600 contains no rules relating to an endorsement of a transport document. In ISBP 745, "endorsements" are referenced (e.g., in paragraph E13) however, this paragraph does not outline the requirements for an endorsement. The question is whether or not signature within the endorsement is in a form that would be acceptable under UCP 600 article 3.

In the context of this query, the signature is deemed to be a facsimile signature and acceptable under UCP 600 article 3.

CONCLUSION

Yes. The image signature that forms part of the endorsement is in accordance with UCP 600 article 3 (interpretation of signed).

The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission based on the facts under "QUOTE" above.

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.

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Yours Sincerely,

A handwritten signature in dark ink, appearing to be 'TK' followed by a stylized flourish.

Tomasch Kubiak
Policy Manager Banking Commission
International Chamber of Commerce