

## **Banking Commission**

### **Consolidated draft Opinions of the Banking Commission, April 2024**

Attached are the following Opinions as distributed in February 2024

**470/TA935rev**

**470/TA940**

Mr. Bryan Lee  
Assistant Director  
The Association of Banks  
in Singapore  
10 Shenton Way  
MAS Building  
Singapore 079120

13 February 2024

**Document 470/TA.935rev**

Dear Mr. Lee,

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

**QUOTE**

One of our member banks has raised an issue about a Letter of Credit (LC) and we would appreciate ICC's opinion on whether a discrepancy raised by the issuing bank was indeed a discrepancy.

The LC in question was confirmed by our member bank. Details of the shipment, as stated in the MT700, were as follows:

**MT700**

44F: Port of Discharge

CAT LAI PORT, HOCHIMINH CITY, VIETNAM

Documents presented by the beneficiary were deemed to be compliant by our member bank, after it conducted its examination. It then went on to negotiate the documents without recourse. Among the documents presented was a bill of lading which indicated:

Port of Discharge: HOCHIMINH CITY, VIETNAM

Place of Delivery: CAT LAI PORT, HOCHIMINH CITY, VIETNAM

The issuing bank has raised the following discrepancy:

BILL OF LADING SHOWING 'CAT LAI PORT' AS PLACE OF DELIVERY I/O AS PORT OF DISCHARGE WITHOUT NOTATION EVIDENCING PORT OF DISCHARGE IS 'CAT LAI PORT'

We believe the issuing bank is referring to the following clause in ISBP 745 Paragraph E8:

- a. The named port of discharge, as required by the credit, should appear in the port of discharge field within a bill of lading.
- b. However, the named port of discharge may be stated in the field headed "Place of final destination" or words of similar effect provided there is a notation evidencing that the port of discharge is that stated under "Place of final destination" or words of similar effect. For example, when a credit requires shipment to be effected to Felixstowe, but Felixstowe is shown as the place of final destination instead of the port of discharge, this may be evidenced by a notation stating "Port of discharge: Felixstowe".

Notwithstanding that an examination of documents is conducted based on the data appearing on the face of the document, our member bank has ascertained that the goods were indeed discharged at Cat Lai Port, based on its tracking. This information has been shared with the issuing bank, but it has maintained its stance, saying that there are multiple ports in Ho Chi Minh City, and they could not assume that the port of discharge was Cat Lai Port.

We would appreciate it if the ICC Banking Commission could provide its opinion on whether the discrepancy alleged by the issuing bank is valid.

## **UNQUOTE**

## **ANALYSIS**

It is assumed (based on the wording of the refusal message from the issuing bank) that the documentary credit required presentation of a bill of lading and that UCP 600 article 20 applies to the examination of the document. The full transport route is not reflected in the query, but SWIFT field 44F (Port of Discharge) of the MT700 indicates "CAT LAI PORT, HOCHIMINH CITY, VIETNAM".

The presented bill of lading stated "HOCHIMINH CITY, VIETNAM" in the port of discharge field and "CAT LAI PORT, HOCHIMINH CITY, VIETNAM" in the place of delivery field.

UCP 600 sub-article 20 (a) (iii) states that the bill of lading must “indicate shipment from the port of loading to the port of discharge stated in the credit.”

This is qualified in ISBP 821 (as well as ISBP 745) paragraph E8 (b) which allows for the named port of discharge to be stated in the field headed “Place of final destination” or words of similar effect. This is, however, on the condition that “there is a notation evidencing that the port of discharge is that stated under “Place of final destination” or words of similar effect.”

ISBP 821 paragraph E8 (b) goes on to provide an example of such notation, i.e., “For example, when a credit requires shipment to be effected to Felixstowe, but Felixstowe is shown as the place of final destination instead of the port of discharge, this may be evidenced by a notation stating “Port of discharge: Felixstowe””.

The field description on the bill of lading “Place of Delivery” is to be considered the same as “Place of Final Destination” as clarified by the phrase “words of similar effect” in ISBP 821 paragraph E8 (b). In order to be compliant with the credit and ISBP 821 paragraphs E8 (a) and (b), the Place of Delivery field in the bill of lading should have stated “Port of Discharge Cat Lai Port, HoChiMinh City”. Alternatively, the Place of Delivery field should have remained blank with a notation added to the body of the bill of lading indicating “Port of Discharge: Cat Lai Port, HoChiMinh City.”

The confirming bank points out that it “has ascertained that the goods were indeed discharged at Cat Lai Port, based on its tracking”.

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.”

Consequently, the tracking mentioned by the confirming bank cannot be considered as part of the examination of the bill of lading which is based on the document alone.

## **CONCLUSION**

The discrepancy raised by the issuing bank is valid.

**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,

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

Tomasz Kubiak  
Policy Manager Banking Commission  
International Chamber of Commerce

Ms. Christina E. Seierup  
ICC Denmark Trade Finance Forum  
Chair,  
ICC Denmark  
Slotsholmsgade 1  
DK-1217 København K  
Denmark

1 February 2024

**Document 470/TA.940**

Dear Ms. Seierup,

Thank you for your query regarding URDG 758. Please find below the opinion of the ICC Banking Commission Technical Advisers.

**QUOTE**

A demand guarantee was issued based upon a counter-guarantee. The (local) demand guarantee (issued in January 2023) included, among others, the following requirement:

*“... WE HEREBY ISSUE OUR GUARANTEE NO. [guarantee number] FOR THE AMOUNT OF [guarantee amount] IN RESPECT OF PAYMENT GUARANTEE AGAINST UNPAID INVOICES OF [goods covered by the guarantee] ISSUED IN THE NAME OF [name and address of applicant] BY [name of the beneficiary AND HAVE EXCEEDED 90 DAYS FROM THE INVOICE DATE.”*

The beneficiary presented a demand to the guarantor clearly stating that it was a demand under the relevant guarantee. No reference was made to a Standby L/C on the demand. The demand was rejected by the guarantor citing the following discrepancies:

- *1. The invoice copies are dated in 2018*  
[Comment: The invoice copies were dated prior to issuance of the guarantee. There was no requirement in the guarantee as to when the invoice copies should be dated].
- *2. The invoice copies refer to a guarantee number that is different from the guarantee under which the demand is made*  
[Comment: In the “buyer field” in the invoice a guarantee number was mentioned that

was different from the guarantee under which the demand was made. The guarantee number mentioned in the invoice was also different from the number of the counter-guarantee.

The buyer field is completed as follows:

'NAME'

'STREET AND NUMBER'

Our Guarantee ref 'NUMBER'

'STREET'

'COUNTRY']

- 3. *The invoice copies mention "payment terms: Standby L/C 90 days from B/L". According to the guarantee it should have been "90 days from invoice date".*  
[Comment: Please see above quote from the guarantee. The guarantee issued was labelled as a "guarantee" and not a "Standby L/C.]

Based on the above, we kindly ask the view of the ICC Banking Commission if the raised discrepancies are valid.

## UNQUOTE

## ANALYSIS

A demand guarantee was issued subject to URDG 758 to support an underlying sales agreement stating that a drawing can be made should invoices fall past due in excess of 90 days from the invoice date. Though it is not clear from this query whether a copy(ies) of the invoice was to accompany the demand, it is assumed that this was a requirement of the demand guarantee.

With regard to the first discrepancy, wherein it was stated that the invoice copies were dated prior to the demand guarantee's issuance date, there is no discrepancy. URDG sub-article 15 (d) states: "Neither the demand nor the supporting statement may be dated before the date when the beneficiary is entitled to present a demand. **Any other document may be dated before that date.** (emphasis added) Neither the demand, nor the supporting statement, nor any other document may be dated later than the date of its presentation."

Unless specifically prohibited by a demand guarantee, an invoice copy can be dated earlier than the issuance date of such demand guarantee. When issuing a demand guarantee covering a past due invoice(s) there should be an expectation that the invoice(s) could be dated earlier than a demand guarantee's issuance date.

If there is a need to limit the time period allowed for the date of an invoice, then a demand guarantee should be specific as to such time period.

Regarding the second discrepancy, the statement under the buyer's name on the invoice stated: "Our Guarantee ref 'NUMBER'". This number did not match the demand guarantee or counter-guarantee number. However, since the issuer of the invoice was the beneficiary, and the statement indicated that it was "our guarantee ref.", then there is no conflict. URDG sub-article 19 (b) states that data in a document required by the guarantee shall be examined in context with that document, the guarantee and these rules and that data need not be identical to, but shall not conflict with, data in that document, any other required document or the guarantee. The assignment of a reference number for internal use by the beneficiary does not cause a conflict. Similar to an advising party assigning a reference number to any demand guarantee it receives, so can a beneficiary.

In respect of the third discrepancy, the fact that the copy invoice mentioned "Standby L/C" is of no relevance to the handling of this transaction and whether or not the actual demand was to be honoured. The question raised is whether the invoice mentioning "Standby L/C 90 days from B/L" is acceptable when the guarantee terms refer to 90 days from the invoice date. Unless otherwise stated in the guarantee, and provided the demand itself is in accordance with the terms and condition of the guarantee, then the additional information on the invoice referring to a Standby L/C does not cause a conflict. In any event, the demand made no mention of a Standby L/C and had been issued in accordance with the terms and conditions of the guarantee.

## **CONCLUSION**

The demand was compliant.

**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.**



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Yours Sincerely,

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Tomasch Kubiak  
Policy Manager Banking Commission  
International Chamber of Commerce