

Banking Commission

Consolidated draft Opinions of the Banking Commission, November 2024

- **470/TA 947**
- **470/TA 948**

Note that **470/TA 946** was withdrawn by the initiator

Ms. Dana Milena Enss
Policy Manager,
ICC Germany
Wilhelmstraße 43 G
10117 Berlin
Germany

26 July 2024

Document 470/TA.947

Dear Ms. Enss,

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

QUOTE

We, as beneficiary, received an advice of a letter of credit, by SWIFT MT700, in which field 71D (Charges) was empty. The letter of credit was unconfirmed, available and payable with the issuing bank and subject to the UCP 600.

Also, there was no other condition in the LC as to who will bear the charges.

After receipt of payment from the issuing bank, they have deducted approx. USD 54,000. Advising bank asked them about the deduction and the issuing bank sent the following answer:

“AS PER YOUR CONTRACT BETWEEN APPLICANT AND BENEFICIARY, LC OPENING CHARGES HAS BEEN DEDUCTED. HERE LC OPENING CHARGES USD 53974.72, AM[M]ENDMENT CHARGES USD 75. DEDUCTION HAS BEEN MADE ACCORDING TO CONTRACT AND AS PER PREVAILING CIRCULAR OF OUR BANK.”

The underlying contract shows that charges in issuing bank's country are for applicant's account and outside issuing bank's country for beneficiary's account.

Our questions:

1. Do we have to accept the deduction of the issuing bank's charges or is the issuing bank obliged to pay the deducted amount?
2. Are statements in the underlying contract relevant?
3. Which UCP 600 article(s) are of relevance if there is no condition in the credit as to how charges should be allocated?

UNQUOTE

ANALYSIS

Field 71D of the credit was silent as to which party was to bear the charges. There was also no indication that the issuing bank was seeking payment of its issuance fees and the amount thereof.

When honouring, the issuing bank deducted approximately USD54,000 covering their opening and amendment charges.

As rationale for the deduction, the issuing bank stated that the deduction was made: "according to contract and as per prevailing circular of our bank". However, according to the beneficiary, the underlying contract indicated that charges in the country of the issuing bank were for applicant's account, while those outside the country of the issuing bank were for the beneficiary's account.

The subject of charges levied by issuing banks has been covered by previous ICC Opinions R380 (TA92), R656 (TA659), and R741 (TA700rev). The latter includes the following wording: "The subject of charges levied by issuing banks, in the absence of a specific reference in the credit, has been covered by previous ICC Opinions R 380 and R656. The message in both Opinions is quite clear: if the issuing bank wishes to make a deduction from the proceeds in respect of fees due to the issuing bank, then the credit should clearly indicate the amount or percentage of charges that will be deducted. In this way, the beneficiary and the nominated bank will be aware of the level of deductions that may be made from the proceeds of a presentation."

An applicant, being the party on whose request the credit is issued, is the party responsible for issuing bank charges unless otherwise stated in a credit. Accordingly, if the credit does not specify which party should pay the opening charges, the issuing bank should obtain reimbursement from the applicant by default. This is international standard banking practice, aligning with the general principle that the party requesting the service covers the associated charges.

With respect to any references to the underlying contract, UCP 600 sub-article 4 (a) states, "[a] credit by its nature is a separate transaction from the sale or other contract on which it may be based".

Any reference by the issuing bank to the underlying contract is outside of the terms and conditions of the credit. It should also be noted that the underlying contract is a matter for the applicant and the beneficiary, and does not concern the involved banks when handling a credit.

CONCLUSION

1. As the credit did not mention that such charges were for the account of the beneficiary, then the issuing bank is obligated to recover these charges elsewhere.
2. No. A credit is separate from the underlying contract.
3. Reference should be made to the above-mentioned ICC opinions.

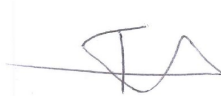
The opinion(s) rendered on this query reflect the opinion of the ICC Banking Commission's Technical Advisers based on the facts under "QUOTE" above. They do not necessarily reflect the opinion of the ICC Banking Commission until the Banking Commission renders its approval or disapproval of these opinion(s) at the next scheduled meeting.

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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,



Tomasch Kubiak
Policy Manager Banking Commission
International Chamber of Commerce

Mr. Pavel Andrlé
Secretary
Banking Commission ICC CR
Thunovska 12,
118 00 Prague 1
Czech Republic

30 August 2024

Document 470/TA.948

Dear Mr. Andrlé,

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

QUOTE

We seek an official opinion of the ICC Banking Commission on the following issues related to a documentary credit subject to UCP 600:

We act as a bank nominated to negotiate under a credit requiring, inter alia, the following:

Drafts at: 90 DAYS FROM INVOICE DATE

Drawee: (Issuing Bank)

Documents Required:

1. BENEFICIARY DRAFT DRAWN ON (ISSUING BANK) AT 90 DAYS FROM INVOICE DATE BEARING THE CLAUSE 'DRAWN UNDER DOCUMENTARY CREDIT NO. (L/C NUMBER, DATE, NAME OF ISSUING BANK) IN 2 COPIES.

and

5. PACKING LIST IN 1 ORIGINAL & 2 COPIES MENTIONING TOTAL QUANTITY OF GOODS AS PER LC AND COMMERCIAL INVOICE AND ALSO SPECIFYING TYPES OF TOTAL PACKING OF GOODS.

No other specific terms were imposed on the draft and packing list (except general requirements such as regarding language, which are not an issue for this query).

We received from the beneficiary documents containing, among others, drafts, issued to the order of the beneficiary, not endorsed by the beneficiary, and two separate packing lists divided into sections headed by a description of the packing type ("Pallet type A", "Special Pal[l]et" and "Pallet type E") and containing details of

individual items contained in that packing unit, including their specific description, quantity and unit of that quantity.

We did not negotiate and forwarded the documents to the issuing bank for payment. Later, we received a SWIFT message refusing our presentation due to four alleged discrepancies, two of which were later rescinded but the issuing bank still insisted on the remaining two:

2. B/E NOT ENDORSED TO (name of the issuing bank).

and

3. ACTUAL PACKING DETAILS NOT MENTIONED IN PACKING LIST.

During a subsequent SWIFT exchange, we insisted on the invalidity of the alleged discrepancies but the issuing bank did not change its standpoint, providing the following arguments (quoted from their SWIFT messages reacting to our rebuttals of the discrepancies):

Firstly, with respect to the draft:

"ISBP 821 PARA B15 CLAUSE CLEARLY STATES 'A DRAFT IS TO BE ENDORSED, IF NECESSARY'. AS THE DRAFT IS ISSUED STATING 'PAY TO THE ORDER OF '(beneficiary)', WHICH MEANS PAYMENT IS REQUIRED AT BENEFICIARY BY BENEFICIARY. HOWEVER, BENEFICIARY HAS RESERVED THE ORDERED BY THE BENEFICIARY ITSELF. IN ADDITION TO ISBP 821 PARA B15 NEGOTIABLE INSTRUMENT ACT 1977 OF OUR COUNTRY ALSO DEFINES THE ENDORSEMENT AS "ENDORSEMENT MEANS THE ACT OF SIGNING ON THE NEGOTIABLE INSTRUMENT FOR THE PURPOSE OF NEGOTIATION, ON THE FACE OR BACK OR ON THE DOCUMENT OR AS SLIP OF PAPER ANNEXED THERETO." HENCE, THE PRESENTED BILL OF EXCHANGE IS NEGOTIABLE INSTRUMENT AND IT IS DRAWN US BY BENEFICIARY STATING PAY TO THE ORDER OF (beneficiary). BENEFICIARY HAS RESERVED THE ORDERED BY THE BENEFICIARY ITSELF. FOR THE SAME, ENDORSEMENT IS REQUIRED FROM BENEFICIARY AS WELL AND WHICH DOES NOT COMPLY ISBP PARA B15 ITSELF."

We contested by stating that there was no express requirement of the credit that the draft be endorsed. No such requirement forms part of the UCP 600 stipulations. ISBP 821, paragraph B15 only states: "A draft is to be endorsed, if necessary." We elaborated on that by saying that the drafts presented are subject to the Czech law. Endorsement under the applicable law only serves the purpose of the draft negotiation, i.e., passing of the payment claim from the endorser to the endorsee. However, the draft under the credit was sent to the issuing bank in the capacity of the drawee, i.e., for payment at maturity, not for its negotiation. Endorsement to the drawee (see the wording of the discrepancy), therefore, makes

no sense under the applicable law. Endorsement to our bank (or order) for negotiation would be the only one that might have made sense. However, as we did not negotiate but merely presented the drafts along with the documents to the Issuing bank for payment, such endorsement was not required.

Secondly, with respect to the packing list:
“AS SPECIFIED IN YOUR MT 999 FOR PACKING DETAILS, THERE IS SEPARATE TOTAL PACKING DETAILS ARE REQUIRED IN LC FIELD 46A(5). WE SEEK TOTAL PACKING OF PALLET A AND PALLET E, WHICH IS CLEARLY REQUIRED IN LC FIELD 46A(5). FURTHER, TOTAL NO OF SPECIAL PALLET PACKED IS ALSO MISSING IN PRESENTED PACKING LIST DOC. NR: 6100043469.”

And

“WE HAVE ALREADY STATED THAT WE SEEK DETAILS OF TOTAL PACKING OF PALLET A , PALLET E AND SO ON, WHICH IS CLEARLY REQUIRED AS PER LC FIELD 46A(5).IN ADDITION TO THAT, IN YOUR PRESENTED PACKING LIST DETAILS OF NO OF PALLETS ARE ALSO NOT SHOWN. SO GIVEN INFORMATION DOES NOT FULFILL OUR REQUIRED FUNCTION AS PACKING LIST.”

We insisted on the fact that, except for the requirement that the packing list specify “types of total packing of goods”, the credit does not contain any specific provision with respect to the packing details beyond UCP 600 and international standard banking practice. Since the presented packing list identified the individual packing units by stating their types (“Pallet type A”, “Special Pal[l]et” and “Pallet type E”) and even individually summarised the content of each packing unit, it sufficiently fulfilled the function of a packing list and fully met the express credit requirements.

Since we are still in disagreement with the issuing bank on these issues, we kindly request an Opinion on whether either of the discrepancies claimed by the issuing Bank are valid.

UNQUOTE

ANALYSIS

The credit was issued subject to UCP 600 and, among others, required: “1. Beneficiary draft drawn on (issuing bank) at 90 days from invoice date bearing the clause 'drawn under documentary credit no. (LC number, date, name of issuing bank) in 2 copies”, and “5. Packing list in 1 original & 2 copies mentioning total quantity of goods as per LC and commercial invoice and also specifying types of total packing of goods”.

Whilst the nominated bank did not act upon its nomination to negotiate, it did act as a presenting bank and forwarded the beneficiary's presentation to the issuing bank. The issuing bank refused the presentation due to four alleged discrepancies. After an exchange of SWIFT messages with the presenting bank, the issuing bank still refused the presentation on the basis of two discrepancies: "B/E not endorsed to (name of the issuing bank)" and "Actual packing details not mentioned in packing list".

Regarding the first discrepancy, the B/E (bill of exchange/draft) was issued to the order of the beneficiary but not endorsed by them. The presenting bank correctly informed the issuing bank that there was no explicit requirement in the credit for the draft to be endorsed. They further highlighted that there is no such requirement in UCP 600, and that ISBP 821 paragraph B15 merely states: "A draft is to be endorsed, **if necessary**" (emphasis added).

It is not international standard banking practice for a draft payable to the beneficiary to be endorsed. There is no explicit need for a beneficiary to endorse a draft because the payment is due to them and they are not requesting a transfer to any third party. According to international standard banking practice, a draft need not be endorsed unless the credit requires it, or in situations where a bank requires it for an ownership change, such as when a draft is payable to order of a beneficiary who endorses it to a nominated bank that properly honours or negotiates it.

Reference should also be made to the ICC Guidance Paper on the use of drafts (bills of exchange) under documentary credits, wherein it is stated that drafts should only be required where there is a specific commercial, regulatory or legal reason for one to be presented or where the beneficiary requires the return of an accepted draft.

With respect to the second discrepancy, the packing list appears to satisfy the credit requirement to mention the total quantity of goods shipped in accordance with the credit and the invoice, and to also specify types of total packing of goods. The issuing bank refusal was made on the basis that actual packing details were not mentioned in the packing list. However, the packing list contains a list of the goods that were loaded onto pallets together with the weights and dimensions of each pallet. In this case, it is clear that the pallets represent the packing method for the goods thus complying with the requirements of the credit.

CONCLUSION

Neither discrepancy was valid.

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Yours Sincerely,

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

Tomasch Kubiak
Policy Manager Banking Commission
International Chamber of Commerce