



Trade Finance Newsletter #8

The Fall 2020 ICC Opinions are out

This Trade Finance Newsletter provides an overview of the ICC Opinions approved by the ICC Banking Commission Fall 2020.



Information:

An ICC Opinion is a formal Opinion given by the Banking Commission of the ICC (International Chamber of Commerce), based on a specific question (termed “Query”).

The ICC Opinions are therefore the official interpretation of the relevant rules (UCP 600, URDG 758 etc.) and are considered international standard banking practice, and guide Trade Finance customers and staff on how to apply the ICC rules.

The Banking Commission of the International Chamber of Commerce (ICC), usually meet twice each year with a full agenda. One of the key items on the agenda is to discuss and approve the latest Draft ICC Opinions. The ICC has a fixed process for handling the Draft Opinions. At the end of the process is the ICC meeting, where the Draft ICC Opinions are discussed – and approved. This fall the intention was to have the meeting in Cyprus. However, due to covid-19 the meeting was held on-line. For the purpose of the ICC Opinions, the consequence was that those were not discussed at the meeting. Instead, more thorough written feedback was given to the ICC National Committees from the ICC Technical Advisors on every comment made. Following that, a new round of comments were allowed, and on the basis of that, the Final ICC Opinions were circulated 2 December 2020.

The below provides an overview of the ICC Opinions approved by the ICC Banking Commission Fall 2020:

TA903rev: Addendum to AWB

The query relates to a documentary credit requiring a Clean Airway Bill (AWB).

The AWB set was printed on 2 separate sheets (both printed single sided – and unnumbered). On the “first” page was the AWB itself (signed). The second page contained the terms and conditions of carriage (Not stamped or signed).

The “first” page of the AWB included the following wording:

“It is agreed that the goods described herein are accepted in apparent good order and conditions (except as noted) for carriage subject to the conditions of contract on the addendum hereof. All goods may be carried by any other means including road or any other carrier unless instructions are given hereon by the shipper. Shipper agrees that the shipment may be carried via intermediate stopping places as deemed appropriate by carrier.”

The presentation was refused citing the following discrepancy:

“AWB: Not show contain terms and conditions of carriage.”

The question raised is if this is a valid refusal.

The answer from the ICC, is that although an “addendum” is not specifically mentioned in ISBP 745, addendums fit within the definition of “another source” (as referred in UCP 600 article 23 (a)(vi)).

On that basis, there is no discrepancy.

TA904rev: Do previous waivers of discrepancies create a precedent?

The main question asked in the query, relates to a situation where a bank – since 2012 – has issued 376 documentary credits (subject to UCP 600), available by sight payment all involving the same beneficiary and applicant.

The presentations under the documentary credits all had the same discrepancies, which was (as it seemed) routinely accepted by the issuing bank.

However, the issuing bank refused to honour documents presented under the remaining 9 documentary credits due to similar discrepancies.

The question asked is if the fact that the issuing bank accepted an applicant waiver of discrepancies in a presentation (or in this case more than 300 presentations), means that the issuing bank is bound to continually apply the waiver of discrepancies on a different documentary credit with an identical beneficiary? The answer from the ICC is that previous waivers of discrepancies do not create a precedent under UCP 600.

TA906rev: Applicants accounts are frozen

The query relates to a documentary credit available by deferred payment with a value of EUR735,000.

At maturity the issuing bank did not pay to the confirming bank, but rather informed the confirming bank that “...we inform you that we cannot proceed to the payment value date 30/08/2019 because the accounts are frozen.” As it turned out the applicant was involved in a bankruptcy procedure and a special administrator had been nominated for a temporary management.

This situation lead to a number of questions circling around whether or not the acts from the issuing bank have acted in bad practice.

The answer from the ICC is that the approach of the issuing bank is not in line with international standard banking practice. If a bank is unable to handle documents presented under a documentary credit due to a justice decision or similar, it should inform the presenter without delay.

TA907rev: Payment restriction to pay guarantee demands

The query involves a counter guarantee and a guarantee, where the guarantor paid out to the beneficiary on the basis of a complying demand. Subsequently the counter guarantor did not reimburse the guarantor with the information that there is in place a payment restriction from the authorities.

This situation lead to a question as to whether the counter guarantor acted according to the scope of the URDG 758?

The answer from the ICC is that if the payment restriction does not specifically prohibit the counter guarantor from paying a complying demand then it remains obligated to pay. Likewise, if the payment restriction does prohibit the counter guarantor from paying, it should seek the lifting of the restriction so that it may pay.

TA908rev: Insurance clause

The query relates to an insurance policy (as required by the documentary credit) presented that included the following clause:

“This insurance policy has been issued on 19.05.2020 for the insurance period starting on 02 May 2020. The end of the insurance cover in accordance with the insurance terms c100/2015. Warranted free from known and / or reported losses on or before 19.05.2020.”

This clause lead to a refusal and the issuing bank argued that the wording “[w]arranted free from known and / or reported losses on or before 19.05.2020” is a claims restricting clause and is an explicit violation of UCP 600 sub-article 28 (e).

The ICC opined that from the wording of the clause, it is clear that the insurance period commences on 2 May 2020. As a consequence cover is effective from 2 May 2020.

The refusal of the issuing bank is not valid.

The above is an overview of the ICC Opinions approved by the ICC Banking Commission Fall 2020. I hope this is helpful to you, and will help avoid discrepancies and refusals. In any case, if you have Trade Finance related questions, do not hesitate to reach out to your local Trade Finance department.

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