

Corporate Banking

top@doc Newsletter

Documentary credit conditions for which no evidence is required – how to deal with them?



Clearly, the “Uniform Customs and Practice for Documentary Credits UCP 600” is quite explicit on this point – or perhaps not? Does it possibly make a difference where in the text of the credit such a condition appears?

There is a clear-cut statement in article 14 h of the UCP 600 according to which banks will disregard a credit condition that does not stipulate the document to indicate compliance with such condition. Thus, the question as to how to deal with such conditions seems quickly and conclusively resolvable. Nevertheless, depending on the individual credit structure, the interpretation of such conditions may well pose problems. top@doc’s case study will provide guidance in this matter. WellDone Ltd. receives a credit issued in its favour by CarefulBank that includes in field 46 A “documents required”, inter alia, the following wording:

“Preshipment inspection of the goods regarding quality, quantity, marking and packing will be carried out by Nitpicker Inspection Co. or their authorized agent.”

For drawings under the credit, WellDone Ltd. presents the corresponding credit documents to its principal banker, Free and Easy Bank. The bank examines the documents, finds them compliant with the credit and takes them up in its

capacity as nominated bank. According to the credit terms, it passes the set of documents on to CarefulBank and debits this bank’s account with the countervalue of the documents.

Shortly afterwards, Free and Easy Bank is informed by CarefulBank in a SWIFT message that the documents presented do not comply with the credit terms and that the documents’ countervalue should immediately be re-credited to CarefulBank’s account. The reason given for non-acceptance of the documents is the fact that no evidence of preshipment inspection was submitted.

Free and Easy Bank responds promptly: Although it is mentioned in the credit that a preshipment inspection is to be carried out, corresponding evidence – e.g. an inspection certificate – is not explicitly requested. Therefore, the presentation of such a document is not necessary and such opinion is fully in line with article 14 h of the “Uniform Customs and Practice for Documentary Credits UCP 600”.

This article states that if a credit contains a condition without stipulating the document which indicates compliance with this condition, banks will deem such condition as not stated and disregard it. As a result, documentary evidence that preshipment inspection was carried out is not necessary, and the documents are compliant with the credit.

CarefulBank's reply is not long in coming: Although the credit condition in question is not mentioned under the "additional conditions" in field 47 A of the credit, but in field 46 A under the heading "documents required". For this reason, there can be no doubt that presentation of a respective document is required.

Who is right here?

Commerzbank shares the view adopted by Free and Easy Bank. The requirement set out in article 14 h of UCP 600 is not linked to a specific point in the credit at which a condition, which does not stipulate documentary evidence, has to be entered so that a respective document need in fact not be submitted. On the contrary, article 14 h refers to the credit in its entirety: no matter at what point the clause in question appears – it will not be observed.

Please find below the exact wording of article 14 h of the UCP 600. "If a credit contains a condition without stipulating the document to indicate compliance with the condition, banks will deem such condition as not stated and will disregard it."

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