



Corporate Banking

top@doc Newsletter

The bill of lading – always good for a surprise. Two case studies from practice relating to the topics “presentation periods” and “issuer”.



The “Uniform Customs and Practice for Documentary Credits UCP 600” regulate in various articles the requirements for a bill of lading respectively a multimodal transport document and how these documents are to be issued. Nevertheless, practice shows that uncertainties often arise in this connection. Details in the corresponding credit terms or in the bill of lading itself, which may appear at first sight totally uncontentious, often lead to discussions. In these cases, the beneficiary and the nominated bank are not sure whether the issuing bank shares their point of view in evaluating the documents or whether the documents will, after all, be refused. Therefore, we would like to present two cases taken from day-to-day business.

Case study 1: Presentation period

In our case study, Careful Bank issued a credit in favour of WellDone Ltd. that contained, inter alia, the following terms:

Date and Place of Expiry: May 31st, 2016 in Germany

Latest Date of Shipment: April 5th, 2016

Documents required: Full set of 3/3 clean on board ocean bill of lading made out to order of issuing bank, marked freight prepaid, notify the applicant.

Field 48–Period for Presentation: “All documents must be presented within the validity of the credit”.

On March 29th, WellDone Ltd. presents for drawings under the credit to its principal banker, Free and Easy Bank, a

corresponding set of documents that contains, inter alia, the required bill of lading. It shows as shipping date March 1st, 2016. Free and Easy Bank, where the credit is available by negotiation, examines the documents and regards them as compliant with the credit terms. It negotiates and passes the documents on to Careful Bank. A short time later, Careful Bank informs Free and Easy Bank that it refuses to take up the documents. The reason given is the following:

“Late presentation of documents.”

Free and Easy Bank replies promptly that it does not accept this discrepancy. The documents were presented within the validity of the credit and since the credit is available with Free and Easy Bank, presentation was in due time.

However, Careful Bank insists on the refusal of the documents and states in a subsequent SWIFT message:

“Documents were not presented at your counters within 21 days after shipment date according to UCP 600, art. 14 c.”

Despite this explanatory note, Free and Easy Bank is not willing to accept the discrepancy and persists that the documents were presented in time and are therefore compliant with the credit. They believe that the requirement of UCP 600, art. 14 c, according to which documents must not be presented later than 21 days after the shipment date, applies only to cases where the respective credit contains no contrary provisions.

In this case, however, the credit makes a clear-cut statement with respect to the documents' presentation period: According to the provisions in field 48, the documents must be presented within the validity of the credit – no reference is made to a period of 21 days after the shipment date.

Who is right then? Have the documents been presented in time or are we dealing in fact with a case of "late presentation"?

In this matter, Commerzbank holds the view that the documents were presented in time and the discrepancy "late presentation" stated by Careful Bank is not justified. The credit expressly states a period for the presentation of documents ("... within the validity of the credit"), deviating from the presentation period stipulated in UCP 600, art. 14 c. Hence, the UCP requirement (period of 21 days) was altered and cancelled by the individual credit terms.

Incidentally, the International Chamber of Commerce (ICC), Paris, shares Commerzbank's viewpoint.

Case study 2: Issuer versus signatory versus carrier versus freight forwarder

WellDone Ltd. presents a bill of lading at the counters of Free and Easy Bank for drawing under an export credit issued by Careful Bank. This document contains, inter alia, the following particulars:

Carriers name: Proper Shipping SPA, Italy

Beneath there is a field containing the following:

Signature (carrier)

or, for the carrier

..... (as master)

Bright Day Ltd.

..... (as agents)

At the top right in the bill of lading, there is the imprint of the logo with the lettering "Emperor Lines".

According to the terms of the credit the following is required: "Full set of 3/3 original 'liner' bill of lading. Forwarders bill of lading not acceptable".

Free and Easy Bank has meanwhile become somewhat confused by the frequent non-acceptance of documents

they receive from Careful Bank. Can the bill of lading be taken up in this form? What does the passage "Forwarders bill of lading not acceptable" actually mean? Is a bill of lading acceptable that has not been signed by the carrier, but by his "agent"? And is there perhaps a problem since the transport document presented shows in its heading apart from the carrier and his agent, also a third party, namely "Emperor Lines"?

Free and Easy Bank can in complete peace of mind take up the bill of lading presented by WellDone Ltd. – the above statements are both in line with the terms of the credit and the requirements laid down in the UCP 600.

In accordance with the UCP 600, art. 14 I, the bill of lading may be issued by any person other than the carrier "Proper Shipping SPA, Italy". The precondition for this is that the document meets the requirements of the UCP 600, art. 20 according to which the name of the carrier must be indicated. Moreover, the bill of lading must be signed by this carrier or by a named agent on behalf of the carrier. Both requirements have been met in the document presented.

The credit condition "Forwarders bill of lading not acceptable" is completely superfluous and does not represent any added value for the credit. It will only confuse the parties to the transaction. Indication of a third party –Emperor Lines– in the document's heading does not do any harm.

Do you have any questions or suggestions regarding top@doc?

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“The same again this year...”

What was originally meant to be a little one off “Christmas jest” has been so well received by top@doc’s readers that it has grown into a tradition. Therefore, also this year there is a top@doc’s recommendation from the Christmas bakery. This time for enticing gingerbread.

Recipe for Gingerbread

Ingredients:

<i>125 g peeled almond</i>	<i>1 to 2 drops of lemon flavour</i>
<i>75 g candied orange peel</i>	<i>Just a trace of baking powder</i>
<i>2 eggs</i>	<i>100 g ground hazelnuts</i>
<i>350 g icing sugar</i>	<i>40 baking wafers</i>
<i>1 sachet of bourbon vanilla sugar</i>	<i>(diameter 4 cm)</i>
<i>just a trace of ground cloves</i>	<i>75 g chopped dark chocolate</i>
<i>1 half a vial of rum flavouring</i>	<i>10 g coconut oil</i>

Chop the almonds and the candied orange peel finely and separately beat the eggs until creamy. Then stir in 200 g of the icing sugar and the vanilla sugar. Add the ground cloves and the rum and lemon flavour. Mix in the almonds and baking powder. Add the candied orange peel and as much of the hazelnuts as required to make the dough spreadable.

Pre-heat the oven to 150 degrees (fan oven 130 degrees). Place in each case one tea-spoonful of dough on a baking wafer and put it on a baking tray covered with baking parchment. Bake for 25 to 30 minutes, then leave them to cool down.

Mix 150 g sifted icing sugar and water into a thick and smooth icing. Melt the chocolate and the coconut oil over a hot bowl of water. Coat half of each ginger bread with the dark chocolate, the other half with white icing.

The staff of Commerzbank Transaction Services and Financial Institutions as well as the staff in the documentary business units wish you a joyous holiday season and a happy and healthy New Year!