

UNDERSTANDING THE REJECTION OF PRESENTED DOCUMENTS PERIOD IN UCP 600

Le Thuc Linh BUI*

Abstract

This article covers aspects relating to the documentary rejection period in letters of credit after the examination period in the Uniform Customs and Practice for Documentary Credits. After briefly outlining the primary purposes and functions of letters of credit, the author will discuss the time frame following the bank's determination that the submitted documents do not meet the criteria of the letter of credit, including consulting with the applicant, the window for issuing a rejection, and post-notice obligations of the bank.

Keywords: *Uniform Customs and Practice for Documentary Credit, rejection, a notice of rejection, documents, letters of credit.*

1. Introduction

A letter of credit is a kind of financial mechanism that often serves as a payment guarantee in an international transaction. Initially, the purpose of the letters of credit was to provide a trustworthy payment confirmation from a different financial third party. A third party, generally a bank, distributes the letter of credit. The bank providing this financial instrument is obligated to pay for documents that appear to meet the specifications of the letter of credit. Otherwise, the bank shall refuse to honour the presented documents. Letters of credit have grown in reputation as a reliable financial mechanism by providing sellers with payment certainty and buyers with goods upon delivery.

The documents are the core for the stability and reputation of letters of credit. As a result, after having a certain amount of time to review the provided documents, the bank must decide whether to accept or

dishonour them once it determines that they do not correspond with the letter of credit's conditions. In either case, further bank duties are triggered. In its professional judgement, the bank could contact the applicant for a waiver considering Article 16 of UCP 600. The notification of rejection will be given to the presenter by the bank once the denial has been decided. The transaction of the letter of credit is not yet complete even after the presenter receives the notification of refusal from the bank. A few standards must be fulfilled regarding the formal, contextual, and post-notice obligations of the bank in the rejection period under the regime of UCP 600. These requirements concerning the notice of rejection and post-notice obligations are not usually mentioned and might be violated by the bank in case the presenter is not familiar with the regulations in UCP 600. The presenter should be well informed about the regime of UCP 600 regarding these obligations of the bank so that he can protect himself from being taken advantage of. Article 16 of UCP 600

* Ph.D. candidate, "Géza Marton" Doctoral School of Legal Studies, University of Debrecen; Lecturer, University of Economics and Law - Vietnam National University (e-mail: builethulinh@gmail.com).

specifies 3 types of banks, so any of the three banks may be referred to when one of the banks is mentioned in this context. Naturally, where it is necessary to distinguish between various circumstances, either in the UCP or in reality, the author will also particularly analyse the legal position faced by a certain bank. Consequently, this article will focus on the steps required in practice to reject a documentary presentation under the provision of UCP 600. After briefly introducing the significance of the rejection, the author shall discuss the specific steps when the notice of refusal period runs. The criteria for the formality and substance of the refuse notification shall be carefully reviewed, and the author will address the next steps after receiving the notice of rejection to specify it.

2. The mechanism of letters of credit

2.1. Introduction

Letters of credit are a special type of negotiable instrument used to guarantee one party's performance toward another¹. A probable financial instability of the promisor- the bank- shall issue such an instrument. This letter of credit is considered

the third agreement in a series of transactions. The first agreement is the agreement between the person whom the letter of credit favours, or called the beneficiary, and the bank's customer who asks for the letter of credit. This contract involves a promise from the customer to pay the beneficiary in a sale or a service agreement².

The issuing bank³ and its client enter a second arrangement. The customer⁴ needs to apply to have a letter of credit, which outlines the requirements of such a letter and includes a pledge to refund the issuing bank upon the receipt of acceptable documents. When the beneficiary presents the documents, such documents must meet the requirements listed by the customer in the second contract with the issuer. If the submitted documents are proper, the issuer has to pay, and the customer cannot interrupt this obligation⁵. In other words, the letter of credit is a commitment from the customer to the beneficiary to support the customer's agreement to pay money stipulated in the first contract.

It is significant to note that the issuer of the letter of credit is primarily concerned with the document and whether they meet the letter of credit's conditions. The

¹ UCP 600 Article 3. According to Article 3 of UCP 600, the letter of credit is irrevocable, except there is another requirement. The irrevocable letter of credit is the binding promise of the issuer that once the letter of credit is issued, it requires consent and writing to cancel.

² The modern form of letters of credit are the commercial letters of credit, or documentary credit, and the standby letters of credit, which is considered the most utilized type of credit.

³ According to Article 2 of UCP 600, the issuing bank is the bank, which is required to issue the letter of credit, which can be called the issuer.

⁴ The client of the bank is now called applicant in the letter of credit transaction.

⁵ UCP 600 Article 4 provides:

"a. A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such a contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, negotiate or fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary.

A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank.

b. An issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like."

performance obligations in the underlying contract are not under the basic tenet of letter-of-credit law. The independent principle, one of the key tenets of the letter of credit, serves as the foundation for this special utility. The independent principle, as stated in Article 4 of UCP 600, permits the bank to stay in its area of competence and is neither required nor authorised to be concerned with the actual functioning of the underlying transaction. The letter of credit is designed to make it simpler to get the necessary absolute certainty. It would defeat the purpose of such a payment instrument to compel or engage the issuing bank in any of the numerous performance issues resulting from the underlying contract.

The Uniform of Customs and Practices for Documentary Credits

The Uniform of Customs and Practices for Documentary Credits (hereinafter referred to as "UCP"), which was developed by the International Chamber of Commerce (hereinafter referred to as "ICC"), was an attempt to condense international customs into a set of written international standards for letters of credit. The UCP has undergone several revisions and is regarded as a collection of rules. The UCP gained widespread acceptance beginning in 1983⁶. This 1983 edition put more emphasis on a variety of topics, including the new letter of credit types, and the use of cutting-edge transmission technologies like SWIFT⁷. From this version, UCP presented two types of letters of credit which are standby and

commercial letters of credit. Due to the fact that banks rejected roughly 50% of the paperwork submitted, the UCP was changed once more in 1993 and is known as UCP 500. The newest version, known as UCP 600, is valid through 2007.

The success of UCP may be attributed to its efforts to unify financial standards with those of international commerce and to remove technological obstacles that impede letters of credit from operating efficiently. Today, UCP apply to the majority of letters of credit⁸. Despite being generally acknowledged in many nations throughout the world, the UCP is still not regarded as a legal document⁹.

3. The rejection period of the presented documents

3.1. Significance of the rejection period

In letters of credit, the issuing and the confirming banks have a responsibility to first review the provided documents. This commitment entails several general exams as well as unique requirements. Once "reasonable care" has been taken to evaluate the documents, the banks are compelled to honour or negotiate them. The banks must deliver a single rejected notification by the end of the fifth business day following the presentation if the documents do not meet the criteria in the letter of credit¹⁰. The next

⁶ G. Xiang and R. P. Buckley, *The Unique Jurisprudence of Letter of Credit: Its Origin and Source*, San Diego International Law Journal, vol. 4, 2003, p. 110.

⁷ E. Ellinger, *The Uniform Customs- Their nature and the 1983 Revision*, Lloyd's Mar. & Com. L.Q., 1984, p. 582. SWIFT stands for "Society for Worldwide Interbank Financial Telecommunications".

⁸ G. Xiang and R. P. Buckley, *The Unique Jurisprudence of Letter of Credit: Its Origin and Source*, San Diego International Law Journal, vol. 4, 2003, p. 112.

⁹ E. Ellinger, *The Uniform Customs- Their nature and the 1983 Revision*, Lloyd's Mar. & Com. L.Q., 1984, p. 578.

¹⁰ UCP 600 Article 14 (b) provides:

"b. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying.

obligations regarding the rejection of the bank shall be triggered in the next stage.

Clarifying the particular banks engaged in the duties regarding rejection is important before moving to the next part. The issuer, the confirmer, and the nominated bank are the three different sorts of banks that are referenced in Article 16 of UCP 600. However, if one carefully reads Article 16(b) of UCP 600¹¹, the only bank that requests a pre-refusal waiver referred is the issuing bank. In addition, only the confirming bank and the issuing bank have explicitly been included in Article 16(f) of UCP 600¹². Under many conditions, it appears that the legal parties may change regularly. However, the goal of the author in this article is to discuss all the banks' responsibilities regarding the rejection of discrepant documents. Therefore, it could be any one of the three banks to be referred to when a bank is mentioned.

3.2. Consultation with the applicant

According to a survey by Professor Mann¹³, while the applicant's rate of waiver is high (over 90%), compliance with the documents is fairly poor (as low as 27%). Although most applicants indeed tend to waive the discrepant papers, it is never advisable for the bank to confer with them before asking for a waiver. The issuer may, in professional judgement, ask for a waiver from the applicant in line with Article 16(b)

of UCP 600. It can be seen that only the issuer has the opportunity to request a waiver from the applicant before sending the rejection.

Even if the bank gets a waiver from the applicant, the decision on the presentation will ultimately be made by the bank alone. Although Article 16 (b) of UCP 600 would seem to give the issuer a choice, in reality, Article 16(b) pushes the bank to make its own decisions, which might have a dual effect on the bank. This indicates that during the entire process of requesting the client for a waiver, a bank must examine and decide on a presentation using its sole discretion. The bank is also constrained by the window of opportunity for approaching the applicant, which permits no more than five banking days in the UCP600. In other words, the bank has discretion, but it still needs to fulfil the duties outlined in the UCP.

As long as the bank bases its decision solely on its judgement, it is the right, not the obligation, to request a waiver from the applicant¹⁴. As a result, considering the independent principle in Article 4, the bank is therefore exempt from contacting its client to request the waiver. Even after obtaining a waiver, the bank retains the authority to manage the submission in accordance with its exclusive discretion. The bank is not obligated to follow the waiver, according to the ICC Banking Commission. Obviously, the bank has no obligation to inform the

This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation.”

¹¹ UCP 600 Article 16 (b) provides:

“b. When an issuing bank determines that a presentation does not comply, it may in its sole judgement approach the applicant for a waiver of the discrepancies. This does not, however, extend the period mentioned in sub-article 14 (b).”

¹² UCP 600 Article 16 (f) provides:

“f. If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation.”

¹³ R. J. Mann, *The Role of Letters of Credit in Payment Transactions*, Michigan Law Review, vol. 98, no. 8, 2000, pp. 2503-2504.

¹⁴ *Bankers Trust Co. v. State bank of India* [1991] 2 Lloyd's Rep 443 (CA) 455.

applicant of the deadline or to contact them in any other way¹⁵.

There is a further question to be represented in this circumstance whether the confirming or nominated bank has the right to ask the applicant for a waiver. According to the judge from the case *Total Energy Asia Ltd v. Standard Charter Bank (Hong Kong) Ltd*, the answer is positive. The judgement acknowledged that the only legitimate party to request a waiver from the applicant is the issuer, but the Court went on to admit that there is nothing to prevent the confirming bank, in reality, to find the procurement "of a waiver from the applicant"¹⁶. The only notable difference between the position of a nominated bank¹⁷ and that of an issuing bank is the nominated bank must request to obtain a waiver from both the issuer and the applicant within the permitted time frame. If the nominated bank cannot meet the time limitation requirement, the preclusion rule will be put into effect. The applicant and the issuer must be contacted in five banking days if a nominated bank wishes to request a waiver. Despite the anomalies that the applicant has previously agreed to waive, the issuing bank may nevertheless have the right to reject the presentation¹⁸.

Additionally, the UCP 600 does not specifically forbid the nominated banks from getting in touch with the applicant and requesting the waiver. The nominated banks must also consider the viewpoint of the issuing bank by seeking its advice on

discrepancies if they intend to request a waiver from the applicant. Due to the time restriction requirement, it would be preferable for the nominated banks to just reject the documents¹⁹.

3.3. Time for giving notice of refusal

The beneficiary of the letter of credit has a greater chance of receiving payment by submitting the required documents within a specific period. By meeting its responsibilities on schedule, the bank would be successful in getting reimbursement from its customer. When the bank decides to dishonour a presentation because the documents fail to meet the criteria of the letter of credit, a refusal notification to inform the presenter within a specific period should be served when the bank decides to dishonour such presentation.

Since Article 16(d) of UCP 400, which specified the bank must deliver a refusal notification "without delay" after a decision is made, this practice has been mandated²⁰. According to Article 14(d)(i) of UCP 500²¹, the bank shall notify the customer "without delay but no later than the conclusion of the seventh banking day" once the bank chooses to refuse the documents. The term "without delay" has been removed from Article 16(d) of UCP 600, which now calls for delivering notice of rejection "no later than the closing of the fifth banking day after the day of presentation.". The judgement in *Seaconsar*

¹⁵ Department of Policy and Business Practices, *Examination of Documents, Waiver of Discrepancies and Notice under UCP 500*, 9 April 2002. This document is available online at: <https://iccwbo.org/content/uploads/sites/3/2002/04/Examination-of-Documents-Waiver-of-Discrepancies-and-Notice.pdf>. (Last accessed 14 April 2022).

¹⁶ *Total Energy Asia Ltd v Standard Chartered Bank (Hong Kong) Ltd* [2007] 1 HKLRD 871; [2006] HKCU 2134 [122].

¹⁷ The nominated bank here are the non-nominated bank and the confirming bank.

¹⁸ Due to the independent principle, the applicant's waiver and the nominated bank's opinion are not binding on the issuing bank.

¹⁹ UCP 600 Article 14 (b).

²⁰ UCP 400 Article 16 (d).

²¹ UCP 500 Article 14 provides the outer time limit is seven banking days.

(Far East) Ltd v. Bank Markazi Jomhouri Islami Iran interpreted "without delay" as providing a notice of refusal²². The court's decision in this instance indicated that the documents were dishonoured at or near "the close of business" on Friday, hence it is anticipated that the rejection notification shall be provided on the next banking day, which was Monday. The Court further stated that "It may well be that in other cases the obligation requires notice to be given on the same day as the decision is taken"²³. Even though the notice was delivered on Tuesday, the Court in this instant case unexpectedly stated that the defendant's bank had promptly provided the notice. The plaintiff was unable to demonstrate any unjustifiable reason for the delay between the time of determination and notification, which was the cause. According to others, "without unreasonable delay" was the real standard that the Court backed²⁴. In other words, it indicates that even if a delay is brought on by circumstances outside the bank's control, the bank nonetheless fulfils its commitments promptly.

The notification must be given latest by the end of the fifth banking day after the presentation day, as per Article 16(d) of UCP 600. The timeline for taking the exam and deciding is the same in Articles 14(b)

and Article 16(b) of UCP 600, hence it is advisable that all three articles be studied together²⁵. Adopting this interpretation, the bank must review the given documents, determine whether to accept or reject such submission and deliver the refusal notification if it chooses to do so within five banking days or by the end of the fifth banking day. Otherwise, the bank shall lose its right to reimbursement.

3.4. The notice of rejection

3.4.1. A single notice of rejection

A single notification must be provided to the presenter if the bank chooses to reject the presented documents in accordance with Article 16(c) of UCP 600²⁶. The term "a single notification" is implemented so that the bank can only declare its points of view on each document presentation once. A single notification is crucial to avoid undue confusion and issues caused by many alerts, allowing the beneficiary to quickly remedy the discovered discrepancies and make a fresh presentation.

In case the bank sends several notifications concerning the discrepant documents, only the first notification would

²² This case is considered leading case since UCP 400 and was introduced again in UCP 500 and UCP 600.

²³ *Seaconsar Far East Ltd v Bank Markazi Jomhouri Islami Iran* [1999] 1 Lloyd's Rep 36 (CA).

²⁴ *Rafsanjan Pistachio Producers Cooperative v Bank Leumi (UK) Ltd* [1992] 1 Lloyd's Rep 513 (QB).

²⁵ P. Ellinger and D. Neo, *The Law and Practice of Documentary Letters of Credit*, 1st ed., vol. 1, Hart Publishing, Bloomsbury Publishing, 2010, p. 242.

²⁶ UCP 600 Article 16 (c) provides:

"c. When a nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank decides to refuse to honour or negotiate, it must give a single notice to that effect to the presenter.

The notice must state:

- i. that the bank is refusing to honour or negotiate; and
- ii. each discrepancy in respect of which the bank refuses to honour or negotiate; and
- iii.
 - a) that the bank is holding the documents pending further instructions from the presenter; or
 - b) that the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept a waiver; or
 - c) that the bank is returning the documents; or
 - d) that the bank is acting in accordance with instructions previously received from the presenter."

be valid for the bank to reply to, the other subsequent notifications containing more discrepancies shall not be taken seriously²⁷. Hence, in other words, even when the first notice is ignored or transmitted in error, the second notice cannot replace the first one²⁸. Nonetheless, the second notice is presumably acceptable in case it clarifies the first notice's main points, and the first notification continues to be effective under its original terms²⁹.

It is important to keep in mind that not all notifications sent from a bank concerning the discrepancies in the documents would qualify as refusal notifications under Article 16(c) of UCP 600, and some of them are essentially discrepancy alerts³⁰. It is challenging to precisely identify what should be included in a relevant notification. The Court in the case *Total Energy Asia Ltd v. Standard Chartered Bank (Hong Kong) Ltd* had expressed that the first fax with the list including all errors and a subsequent phone call expressing rejection and disposal of the document was considered a genuine rejection under UCP 500³¹. In view of the specific requirement of Article 16(c) of UCP600 for "a single notification," it is recommended for the bank send a single notice of rejection in order to avoid any risks and conflicts caused by multiple communications³².

3.4.2. The statement of notice of rejection

Within the notice, the bank is required, considering Article 16(c) of UCP 600, to "state that the bank is refusing to honour or negotiate". In contrast to the UCP500, which did not have such a clear criterion, it is an extra step. According to Professor James Byrne, it was enough that the notification clearly stated that the documents were being rejected under Article 14 (d) of UCP 500³³. Instead of reporting the applicant's waiver to the presenter, it is advised that the refusing bank disclose its purpose of denial³⁴. The aim of the refusing bank will be debatable and disputed in the absence of an explicit statement of rejection. For example, in the case *Voest-Alpine Trading USA Corp. v. Bank of China*, the rejection was not openly written in the notice of the bank. In their statement, the bank informed that they were reaching the applicant and the bank was "holding documents at your risks and disposal"³⁵. Due to the open potential that the allegedly incorrect documents may have been approved in the future, this notice was viewed as just "a status report" instead of a legitimate refusal notification³⁶. The aim of rejection must be stated in the notification, even though using the word "refuse" explicitly is not necessary.

²⁷ Department of Policy and Business Practices, Examination of Documents, Waiver of Discrepancies and Notice under UCP 500, 9 April 2002. This document is available online at: <https://iccwbo.org/content/uploads/sites/3/2002/04/Examination-of-Documents-Waiver-of-Discrepancies-and-Notice.pdf>. (Last accessed 14 April 2022).

²⁸ *Cooperative Centrale Raiffeisen-Baerenleenbank BA v Bank of China* [2004] HKC 119 [66].

²⁹ *Kumagai-Zenecon Construction Pte Ltd v Arab Bank Plc* [1997] SGCA 41, [1997] 2 SLR (R) 1020 [29]-[31].

³⁰ *Cooperative Centrale Raiffeisen-Boerenleenbank BA v Sumitomo Bank (The Royan)* [1988] 2 Lloyd's Rep 250 (CA) 254.

³¹ UCP 500 Article 14.

³² UCP 600 Article 16 (c).

³³ J. E. Byrne, *Comparison of UCP 600 & UCP 500*, 1st Edition ed., vol. 1, International Chamber of Commerce, 2007, p. 147.

³⁴ *Bayerische Vereinsbank AG v National Bank of Pakistan* [1997] 1 Lloyd's Rep 59 (QB).

³⁵ *Voest-Alpine Trading USA Corp v Bank of China* 288 F 3rd 262 (5th Cir 2000) 266.

³⁶ *Korea Exchange Bank v Standard Chartered Bank* [2005] SGHC 220, [2006] 1 SLR 565 [12].

3.4.3. Each discrepancy

Within the single notice, considering Article 16(c) of UCP 600, it is required to include “each discrepancy in respect of which the bank refuses to honour or negotiate.”. With the term “each discrepancy”, Article 16(c) wants to emphasize that the bank only has one opportunity to send the notice of rejection³⁷. This regulation supports the provision of “a single notice” that intends to increase the effectiveness of documenting activities while also giving the beneficiary additional opportunity in presenting complying documents. Likewise, the bank shall bear the burden of unlawful rejection regarding originally unjustified inconsistencies. The bank can only be entitled to claim for uncured errors stipulated in the notice of rejection rather than any new flaws which were not indicated in a such single notice.

Even though UCP 600 has not mentioned the identification of the inconsistencies to be listed sufficiently precisely and clearly in the notification of rejection, this responsibility of the bank must be mentioned. This specification is really in line with the intention of the “each discrepancy” provision. Such criterion intends to disclose all discrepancies in the presented documents and allow the presenters to remedy the errors as soon as possible. The Court in the case of *Korea Exchange Bank v. Standard Chartered Bank* held that the claiming of the bank stating that the original certificate A “show inconsistent with other documents” was flawed. The reason behind this ruling was that the notice

of rejection lack of clarity about what needed to be fixed, which caused the presenter confusion³⁸. It might raise the argument that the necessity of “a single notice” will preclude the bank from delivering a follow-up message that clarifies the points which are stated in the initial notice. Hence, the bank must precisely and thoroughly disclose each consistency with precision³⁹.

3.5. The disposal statements

Once the bank forwards the notice of rejection, no matter whatever alternative the bank chooses, it must follow the disposal statement. For instance, the preclusion rule is stated in Article 14(e) of UCP 500 and is to be triggered when the bank “fails to hold the documents at the proposal of or return them to the presenter”⁴⁰. In the instance of *Credit Industriel et Commercial v. China Merchant Bank*, the post-notice responsibility was subjected to the preclusion provision of UCP 500. The issuer nevertheless refused to release the documents because of a security concern even though the presenter had given his “return” instructions. According to the Court's decision, the security consideration was an invalid rationale, and by failing to take the proper step, the issuing bank had breached the disposal statement. The issuer was unable to respond to any apparent inconsistencies as a result⁴¹.

³⁷ UCP 600 Article 16 (c).

³⁸ *Korea Exchange Bank v Standard Chartered Bank* [2005] SGHC 220, [2006] 1 SLR 565 [12].

³⁹ Department of Policy and Business Practices, *Examination of Documents, Waiver of Discrepancies and Notice under UCP 500*, 9 April 2002. This document is available online at: <https://iccwbo.org/content/uploads/sites/3/2002/04/Examination-of-Documents-Waiver-of-Discrepancies-and-Notice.pdf>. (Last accessed 14 April 2022).

⁴⁰ UCP 500 Article 14 (e).

⁴¹ *Credit Industriel et Commercial v China Merchants Bank* [2002] EWHC 973 (Comm).

The preclusion provision in Article 16(f)⁴² of UCP 600 has eliminated several terms to be more concise than Article 14 (e) of UCP 500. Nonetheless, very little in Article 16 of UCP 600 refers to the consequences of the bank neglecting to keep the documents or giving them back to the presenter. Surprisingly, the intentional removal of the terms sparks unwarranted debates and a range of scepticism in academics. The wording of Article 16(f) is quite broad to encompass any deficiency, according to Professor Ellinger, who claims that "the omission could be due to the inclusion of two additional options in Article 16(c)(iii)."⁴³

The Court of case *Fortis Bank and Stencor UK. Limited v Indian Overseas Bank* had clarified the UCP 600's post-notice requirements for the bank. Despite having provided notice of rejection in this instance, the issuing bank failed to promptly arrange for the document return to the presenter in accordance with its disposal statement⁴⁴. Both the First-instance Court and the Court of Appeal came to the conclusion that the issuing bank's subsequent acts or inactions to a "return/hold" notification should be subject to the requirements demonstrated in Article 16 of UCP 600. As a result, the issuer would be prevented from asserting the non-complying documents since it had not acted in accordance with its disposal statements. It is obvious that both courts reached the appropriate judgement, such a conclusion that would meet market expectations and adhere to the spirit of the UCP 600.

Another aspect of the disposal statements which should be mentioned is the timing and method to dispose of. The rejecting bank is advised that in accordance with its disposal statements, it must give the documents back right away or follow any instructions the presenter gives within a certain time span. In the case of *Fortis Bank*, the finding basically recognised the views of experts and applied them to the duties of the bank in UCP 600. According to Hamblen J in Commercial Court, considering Article 16 of UCP 600, the issuing bank was obligated to follow through on its disposal declaration and restore the submitted documents as soon as possible. Hamblen J also described the extent of the post-notice responsibilities in relation to a "return" or "hold" notification⁴⁵. It should be understood that the stage of "the issuing bank is *returning* the document" is not equal to "it is already in the process of doing so". For the same reason, the "hold" notification does not specify that it has established "means for prompt compliance with any future instruction for the return of the documents", it just means that the issuing bank must quickly comply with new orders and provide the documents by effective means⁴⁶.

Additionally, Jonathan Hirst suggested that "in the absence of special extenuating", three banking days is the base practice for the bank to successfully "act with reasonable promptness" in order to balance factors between the "five banking days" of the

⁴² Article 16 (f) of UCP 600 provides: "If an issuing bank or a confirming bank fails to act in accordance with the provisions of this article, it shall be precluded from claiming that the documents do not constitute a complying presentation."

⁴³ P. Ellinger and D. Neo, *The Law and Practice of Documentary Letters of Credit*, 1st ed., vol. 1, Hart Publishing, Bloomsbury Publishing, 2010, p. 245.

⁴⁴ *Fortis Bank v Indian Overseas Bank* [2011] EWCA Civ 58, [2011] 2 All ER (Comm) 288 [55].

⁴⁵ *Fortis Bank v Indian Overseas Bank* [2011] EWCA Civ 58, [2011] 2 All ER (Comm) 288 [55].

⁴⁶ *Fortis Bank v Indian Overseas Bank* [2011] EWCA Civ 58, [2011] 2 All ER (Comm) 288 [55].

bank⁴⁷ and the consequence of restoring the documents to the presenter⁴⁸.

Despite the fact that the *Fortis Bank* case significantly improved the timeliness of the post-notification requirements, it made no mention of how to submit the documents or how to adhere to subsequent directions. In consideration, the methods of returning the documents could be the same as the methods of dispatching documents. In order to fulfil the responsibilities, the issuing bank should use a courier or, if that is not feasible, another quick method. Nonetheless, the bank shall not be liable for the timely and secure delivery of the documents⁴⁹. Force majeure provision in Article 36 of UCP 600 may be invoked by the bank under certain conditions as a justification for events beyond its control⁵⁰.

3.6. Conditions of the returned documents

The profit and safety of both merchants and banks are deeply linked with the condition of the documents that are rejected, for example, the bills of lading which are documents that function as documents of title. Even though the UCP does not directly mention the status of the

returned documents, it is clear that the bank should restore all documents at once and at the very least, in the same status as when they were acquired⁵¹. The presenter's instructions should not, however, serve as a justification for the bank to keep the documents since Article 16(e) of UCP 600 clearly states that when the bank selects a "hold" notice, it implies that the documents can be returned to the presenter at any moment⁵².

It is now debatable whether it is necessary to re-endorse the documents that were rejected. If the refusing bank returns a bill of lading that has previously been endorsed in the favour of the presenter, there is no clear obligation under Article 16 of UCP 600 that it must do so again. The ICC Opinions R214 can be used as a reference for the information pertaining to the circumstances of the returned documents. There was an opinion of the expert in the ICC Opinion R214 that "the confirming bank has no right to object to the procedure followed by the issuing bank, and the confirming bank cannot expect the issuing bank to endorse documents which it has not agreed to take up under the documentary

⁴⁷ The duties of investigation and determination should be distinct from the post-notice obligations, and the time limit should be counted against the time limit in Article 14(b) separately.

⁴⁸ *Fortis Bank v Indian Overseas Bank* [2011] EWCA Civ 58, [2011] 2 All ER (Comm) 288 [55].

⁴⁹ The issuing bank is not required to guarantee that the documents will be delivered in a reasonable amount of time. The bank is just required to select the fastest delivery methods.

⁵⁰ UCP 600 Article 36 provides:

"Force Majeure

A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control.

A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business."

⁵¹ *Credit Industriel et Commercial v China Merchants Bank* [2002] EWHC 973 (Comm). The Banking Commission emphasised that in this particular instance, the bank that personally endorsed the applicant's rejected bill of lading had violated the provisions of Article 16 (c) (iii) of UCP 600 because it was unable to return the rejected documents in the same form as when they were first received.

⁵² *Credit Industriel et Commercial v China Merchants Bank* [2002] EWHC 973 (Comm). The Court states that the authorisation from the applicant was not evidence for the issuer to keep the documents.

credit.”⁵³. Furthermore, the bank is not permitted to alter the rejected documents because they are acknowledged as the presenter's property.

Hamblen J made an effort to differentiate between the facts and the contemporary circumstances in the case of *Fortis Bank*. He accepted that, concerning Opinion R214, the bank cannot claim non-endorsement after receiving the documents⁵⁴, but Hamblen J determined that because the request was made before the documents were returned, the presenter was permitted to get re-endorsed documents in the current instance⁵⁵. Unfortunately, the Court derived this decision from its examination of the specific details of the instant case and did not state that the bank was required to re-endorse the documents that had been rejected in accordance with the presenter's instructions.

3.7. The preclusion rules

Considering Article 16(f) of UCP 600, if the issuing and the confirming bank fail to operate with the regulations in Article 16, they will “be precluded from claiming that the documents do not constitute a complying presentation.”⁵⁶. This regulation means that the banks are only permitted to turn the presented documents down by a single notice, once they fail to comply with this provision, the banks shall lose their right to allege that the submitted documents do not conform to the requirements in the letter of credit. The preclusion rule's application will

require the bank strictly abide by the UCP regulations and provide the presenter additional chances to re-present the corrected documents. The preclusion rule can nonetheless speed up the process of releasing the rejected documents to the presenter even if the differences raised by the bank cannot be resolved⁵⁷. Consequently, from a business standpoint, the preclusion rule with severe repercussions has precisely met the demands of markets, from a business standpoint, the preclusion rule with its severe repercussions has precisely met the demands of markets.

The most contention about the applicability of the preclusion provision is whether the checking period specified in UCP600 Article 14(b) should be taken into consideration under the preclusion rule. According to UCP 600, it appears that the time requirements in Article 16(d) and the period of checking documents in Article 14(b) coexist. Given that all of them have a maximum total of five banking days, it is advised that Article 14(b) be read in conjunction with Articles 16(b) and 16(d). However, the language of the preclusion rule has previously stated that it applies to only the provisions of Article 16.

The regulation relating to time was regulated in only one article under UCP 400⁵⁸, and the preclusion rule under UCP 400 was covered in one article. Then this

⁵³ ICC Banking Commission, *Failure to endorse a bill of lading (ICC Opinion R214)*, ICC Publishing Inc., 1995-2001.

⁵⁴ *Ibidem*.

⁵⁵ *Fortis Bank v Indian Overseas Bank* [2011] EWCA Civ 58, [2011] 2 All ER (Comm) 288 [55].

⁵⁶ UCP 600 Article 16 (f).

⁵⁷ *Fortis Bank v Indian Overseas Bank* [2011] EWCA Civ 58, [2011] 2 All ER (Comm) 288 [55].

⁵⁸ Article 16 (c) of UCP 400 required the bank to review the documents in a reasonable amount of time, and Article 16 (d) of UCP 400 required the bank to promptly notify the presenter by sending a notice of refusal. Both of the aforementioned elements were specifically covered by the preclusion rule in UCP400 Article 16 (e).

problem only surfaced after the UCP500⁵⁹. The lingering impact of the UCP400 was still significant even if the clause pertaining to the period of the evaluation was removed from the application of the UCP500's preclusion rule. The majority of commentators thought that the UCP500's wording was flawed and that the preclusion rule may still be applied in cases of late examination under the terms of another article [23]. The only situation in which this argument could be applied, even if the late examination was covered by the UCP500's preclusion provision, was when it took more than a permissible reasonable period but no longer than seven banking days.

Additionally, nothing was changed or made clearer in the UCP 600; on the contrary, the use of the word "maximum" instead of the phrase "appropriate duration" has made things much murkier. The continuous use of the single pronoun "this article" in Article 16(f) of UCP 600 indicates that the writers of the UCP 600 did not intend to apply the preclusion rule to Article 14 of UCP 600 [16, p. 134]. Additionally, the preclusion rule has less leeway to be applied due to the revised time frame in Article 14(b) of UCP 600. Failing to complete the documentary checking in five banking days would violate the next process for issuing a refusal notification under Article 16(d) of UCP 600, which would automatically trigger the preclusion rule.

In the author's opinion, Article 16(d) of UCP 600 and the preclusion rule's applicability have the same five banking days has confirmed the drafter's objective for a defined term. By isolating the examination period from Article 16 which is subject to the preclusion rule, the UCP may attempt to separate the examination

obligation through the following processes. Therefore, Article 14(b) could not be covered by the preclusion rule in UCP600; nevertheless, it might be argued that if the time restriction in Article 16(d) is violated, the same outcome will be achieved.

4. Conclusion

Due to the independence of the letter of credit, the issuing bank is able to make an independent decision regarding the conformance of the submitted documents without consulting the problems arising from the underlying contract. The bank will determine whether to dishonour or reject the provided documents after the discrepancies in the documents are discovered. The applicant may now be consulted by the bank for granting a waiver. A single notice of denial will then be given within five banking days to the presenter if the bank decides to dishonour the discrepant documents, regardless of whether the applicant issues a waiver. However, the requirements for sending the notice of rejection are strict. The notification must contain all discrepancies and may only be delivered once, and the banks' duties go beyond just delivering the notification. The requirements regarding the notification of rejection and other post-notice obligations of the bank shall be triggered in the next stage and should be considered carefully. These obligations include the disposal of the documents, conditions of returned documents and the preclusion provisions. However, these obligations of the bank are not usually mentioned, hence, the presenter might not know about these obligations. As a consequence, the rights of the presenter might be affected. Hence, the author decides

⁵⁹ The Article 13 (a) of UCP 500 brought forth the requirement for the period of examination; nevertheless, Article 14 (d) of UCP 500 gave the time for delivering the rejection notice, and Article 14 (e) stated the preclusion rule.

to present the specific details of the rejection of the presented document under the regime of UCP 600 in an effort to introduce the specific steps after the bank decides that the documents do not conform with the letter of credit. Furthermore, the author has identified certain benefits and shortcomings with regard to the current UCP 600 regime by

comparing it to earlier UCP amendments and case law. Regarding the theoretical and practical problems surrounding the UCP regulations, the author also sought to provide compliments. The regulations regarding the rejection notice period in the regime of UCP 600 are recognised compared to its predecessors.

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