

Corporate Banking

top@doc Newsletter

Exclusion of liability for “Disclaimer on Transmission” – what effects do such credit conditions have?



Credit conditions sometimes stipulate that copy documents must be presented to the issuing bank in the event that the credit documents are lost in transit to the issuing bank. In connection with this, the issuing bank often reserves the right to refuse payment of the countervalue of the documents if it finds the documents to be non-compliant with the credit. The current issue of top@doc deals with the effects of these conditions on the other parties involved in the credit. An example illustrates how Commerzbank assesses such a credit condition.

The export company WellDone Ltd. receives the draft of a credit in advance from its business partner, Slobby Import Ltd., and is asked to confirm its agreement to the credit conditions. Examination of the credit text at WellDone Ltd. reveals the following passage which the principal banker of Slobby Import Ltd., Careful Bank, obviously uses as standard in its letters of credit:

“If the nominated bank has forwarded the credit documents to us and these documents become lost in transit, the nominated bank is required to send us copies of all documents presented under the credit. We are entitled to examine the copies of the documents and to determine whether they comply with the credit terms and to refuse reimbursement to the nominated bank if we come to the conclusion that the

documents do not comply with the credit terms.”

What is Careful Bank trying to achieve with this wording? Does this credit condition mean that, in the event of the documents becoming lost in the post in transit to the bank, the bank limits its liability and does not meet the payment obligation which it incurred upon issuance of the credit?

WellDone Ltd. contacts its principal banker, Free and Easy Bank, asking for an explanation. In addition, WellDone Ltd. would like to know if Free and Easy Bank is prepared to add its confirmation to this credit – despite the clause which is incomprehensible to WellDone Ltd.

We don't know Free and Easy Bank's reply. You can find out here how Commerzbank would have responded to the enquiry of WellDone Ltd. and whether it would be prepared to hedge the payment claim of WellDone Ltd. by also adding its confirmation to such a credit:

Commerzbank assumes this to mean that Careful Bank is trying to limit the mailing risk which it has to bear. Pursuant to UCP 600, art. 35, paragraph 2, the issuing bank must honour if the nominated bank determines that the presentation is compliant with the credit, forwards the documents to the issuing bank and the documents are lost in transit between the

nominated bank and the issuing bank. Here, Careful Bank obviously wishes to ensure that, in this case, it at least receives copies of the presented documents.

This means that the nominated bank is obliged to prepare copies of the presented documents – both sides – and make these documents available to Careful Bank on demand. It does not receive reimbursement until Careful Bank takes up the copies of the documents. In this respect, art. 35, paragraph 2 of the UCP 600 is de facto waived. However, in Commerzbank's view this does not constitute less favourable treatment of the nominated bank since the issuing bank also has a right of examination upon receipt of the original documents. Against this background, Commerzbank is prepared to confirm also under letters of credit which exclude art. 35, paragraph 2 of the UCP 600, as in the case described by way of example.

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

- Your comments, opinions or queries are of utmost interest. Feel free to contact us any time. Please click [here](#) to access our contact form where you can address any issues you may have.
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- Our specialists for Cash Management and International Business will be pleased to answer any questions you may have on this issue or other documentary business topics.
- For more information on our foreign business services and products please visit our website <http://www.commerzbank.com/documentarybusiness>.

“The same again this year...”

And now it’s that time again – Christmas is just around the corner! This year, top@doc is sweetening the run-up to Christmas for you once more with a baking recipe. This time it’s for irresistible

Christmas Brownies

(makes 18)

Ingredients:

200 g butter	4 eggs
175 g sugar	10 drops of vanilla flavouring
150 g brown sugar	200 g flour
250 g dark chocolate	4 tablespoons of cocoa powder
2 tablespoons of agave syrup	(baking cocoa)
(or any other clear syrup)	1 teaspoon of baking powder

Slightly grease a rectangular baking tin with 40 cm sides and line the base with baking paper. Heat the butter, sugar, chocolate and syrup slowly in a saucepan, stirring until they turn into a soft mass. Remove the pan from the heat and allow the mass to cool well.

Now mix the eggs and the vanilla flavouring and fold in the cooled chocolate mass.

Sieve the flour, cocoa and baking powder into the bowl and mix thoroughly. Fill the dough into the baking tin and bake in the preheated oven (top and bottom heat) at 180°C for approx. 25 minutes. The surface should be crispy; the edges should separate from the rim. Inside the cake is still moist.

Let the dough in the tin cool completely, cut it into squares – and make a present of them ... or enjoy them yourself!

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!