



International Chamber of Commerce

*The world business organization*

Department of Policy and Business Practices

## Banking Commission

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### Opinion Request Procedure

#### Introduction

The Uniform Customs and Practice for Documentary Credits (UCP), developed by ICC, are rules used by letter of credit practitioners the world over. Confronted by numerous, and often, complex problems in establishing documentary compliance and the interpretation of rules and document content, these professionals regularly approach the ICC for guidance.

In response to these requests, the ICC Banking Commission devised the “Official ICC Banking Commission Opinions” to provide expert interpretation and analysis of the rules in given situations.

ICC's Banking Commission Opinions, often cited by courts to assist in dispute resolution, are considered as a major resource for lawyers, bankers, judges, and scholars and other professionals in the industry.

In addition to Official Opinions that are given in respect of transactions subject to UCP, Official Opinions are also given in respect of transactions that are subject to the Uniform Rules for Collections (URC), Uniform Rules for Demand Guarantees (URDG) and Uniform Rules for Bank-to-Bank Reimbursements (URR).

#### Procedure

Requests for official opinions are channelled to the ICC Banking Commission Secretariat via an ICC National Committee based in the location of the initiator or, in the absence of which, a local banking association. Organizations requesting Opinions are not necessarily members of ICC but in any event, member or otherwise, they are required to approach the relevant local ICC Office (National Committee) with a formal request for an Official Opinion from the ICC Banking Commission.

The text of the query, incorporating full details of the issues, is to be produced in a Word Document avoiding, wherever possible, attachment of supplementary copies of documents.

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Specific attention should be made to the structure of the questions that are being asked due to the fact that the response will only focus on the question(s) being posed and not any other issues that may be apparent within the text of the query. Furthermore, all requests for opinions must be in respect of actual issues or transactions and not hypothetical situations.

Once drafted, the query should be forwarded to the local ICC National Committee, who will submit it as an official request for an Opinion to the ICC Secretariat. The query is then handled by the appointed Group of Experts who prepares a response which is known as a Draft Opinion, in collaboration with the Technical Adviser and Officers of the Banking Commission.

This Draft Opinion serves as an “interim response” to the query and is sent within 4-6 weeks to the requesting National Committee for transmission to the initiator.

It should be noted that an interim response will only become recognized as an Official Opinion after it has been presented to the ICC Banking Commission at one of its biannual meetings.

For a Draft Opinion to be presented to the ICC Banking Commission for consideration and approval, the concerned National Committee must send the original query to the Secretariat **no less than 10 weeks** prior to the relevant Banking Commission meeting which takes place either in Spring or Autumn each year. If the 10 week minimum requirement is not met, the Draft Opinion will be held over until the next ICC Banking Commission meeting. As mentioned earlier, the initiator will still receive a Draft Opinion as an interim response, but they will have to wait until the ICC Banking Commission approves it as an Official Opinion at its next meeting.

To further elaborate on the process, not only is the Draft Opinion sent to the initiator, it is also sent to all ICC National Committees for their review prior to the ICC Banking Commission meeting. National Committees may then send any comments they might have on the Draft Opinion to the Secretariat. At the Banking Commission meeting, the Technical Advisor will present the Draft Opinion, highlighting any comments raised by National Committees and seeking approval as drafted or as proposed to be amended. This process is clearly advantageous in producing a document reviewed and approved by the diverse countries represented by National Committees.

### **Conclusion**

Following the meeting, the Final Opinion is re-sent to the initiating National Committee as an Approved Official Opinion. If the Draft Opinion underwent modification following comments by national committees, it will be sent out as a

Revised Official Opinion. The final approved Opinion is also sent to all ICC National Committees and Members, as a numbered, Official ICC Banking Commission Opinion.

A Draft Opinion differs from a final Official Opinion in that the Draft Opinion is presented as the view of the *Officers* of the Banking Commission, whereas the Official Opinion is presented as the view of the *ICC Banking Commission as a whole*.

Periodically, the Official Opinions are reproduced by the ICC and sold as publications that not only provide guidance to the workings of the UCP, URC, URDG and URR, but also serve as guidelines for courts in interpreting the rules.

Once the ICC Banking Commission renders its final approval it should be noted that the Official Opinion that is given is **solely for the benefit of guidance**. No legal imputation should be associated with the reply offered. Neither the ICC nor any of its employees, nor any member of the ICC Banking Commission, including the Chairman, Vice-Chairmen or Technical Adviser shall be liable to any person for any loss or damage arising out of any act or omission in connection with the rendered opinion. Furthermore, if the query relates to a matter under consideration by the courts at the time approval is sought, the ICC Banking Commission will refrain from considering it for adoption as an Official Opinion.

### **Educational Queries**

At the November 2009 Banking Commission meetings – a further category of Opinions was reinstated, known as Educational Opinions. Educational Opinions are produced when the subject has already been treated by the commission in the past. Inquirers may either refer to past Official Opinions on the topic or request an Educational Opinion. This measure was decided upon in order to avoid duplication and to optimize the limited time dedicated to opinion approval at commission meetings.

Unlike the Official Opinions, Educational Opinions are not submitted to the Banking Commission as a whole for approval – they are merely issued by the Officers of the Banking Commission and are sent directly to the initiator as a final response.