

ICC OFFICIAL OPINION HANDLING

PROCEDURE AND TERMS OF REFERENCE

Prepared by the ICC Commission on Banking

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1. Introduction

To provide expertise in handling the technical side of its work, the Banking Commission has established a team of three Technical Advisers (the Technical Advisory Team) whose primary role is to administer the ICC Banking Commission Official Opinions and informal queries sent by ICC uniform rule-users*.

2. Background

Confronted by numerous, and often, complex problems in establishing documentary compliance and the interpretation of rules and document content, banking 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. Official Opinions are given in respect of transactions subject to ICC Rules such as the Uniform Customs and Practice for Documentary Credits (UCP), the Uniform Rules for Collections (URC), Uniform Rules for Demand Guarantees (URDG), Uniform Rules for Bank-to-Bank Reimbursements (URR), Uniform Rules for Forfaiting (URF) and Uniform Rules for Bank Payment Obligation (URBPO).

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.

The Technical Advisory Team administers these Official Opinions and also, in the absence of a local ICC National Committee, answers occasional technical and educational queries received on an informal basis.

3. Terms of Reference for the Technical Advisers

Composition of the group:	3 Technical Advisers (including a Senior Technical Adviser for coordination purposes) handle ICC Banking Commission opinions and other “unofficial” responses to enquiries.
Leadership:	The Technical Advisory Team operates under the leadership of the Banking Commission Executive Committee.
Support:	The Banking Commission Secretariat (the Secretariat) administers the Banking Commission Opinions (receipt of Opinion requests, liaison with ICC National Committees (NC's) and members, timetable, communication with Technical Advisers, etc.). The technical expertise for Official Opinions however, is solely provided by the Technical

Advisers. An editorial adviser is available to assist the Technical Advisers.

- Main responsibilities:**
- Provide expertise and draft Banking Commission Opinions
 - Review each query submitted by ICC NCs with the purpose of proposing a technical interpretation of the relevant ICC rules
 - Send via the Secretariat consolidated Draft Opinions to ICC NCs prior to meetings to give them an opportunity to review and comment
 - Present the Technical Advisers' view (Draft Opinions) to the ICC Banking Commission at its twice yearly meetings
 - Give a PowerPoint presentation of the suggested changes sent by NCs for the delegates to review and agree upon.
 - Provide a final PowerPoint presentation post-meeting reflecting the agreed changes.
 - Upon presentation and approval at the commission meeting, finalize the text of the Opinions as fully adopted by the Banking Commission. Post-meeting, the Final Opinions are consolidated and redistributed to ICC NCs and members. They are eventually published as Collected Opinions publications.
- Term of Office:** 3 years (renewable 1 term at the discretion of the Chair of the Banking Commission).
- Conflict of interest:** Technical Advisers are required to disclose any conflict of interest that may prevent them from undertaking their appointment or for any specific decision in an impartial and objective way. They are prohibited from profiting personally and/or entering into any commercial activity by using the prerogatives attached to their ICC function. The purpose of this policy is to ensure that ICC Banking Commission's integrity and reputation are not compromised.
- Workload:** 12 to 18 Opinion requests are submitted on average for each bi-annual meeting. The purpose of having a group of 3 Technical Advisers is to distribute the workload evenly.

4. Opinion Handling Process

The Banking Commission Opinion handling process is outlined as follows:

- a) Requests for Official Opinions are channeled to the ICC Banking Commission Secretariat (the Secretariat) via an ICC NC based in the location of the initiator or, in the absence of an ICC NC, a local banking association. As of November 2016, requests for Opinions are subject to ICC membership, initiators are required to approach the relevant local ICC office (National Committee) with a formal request for an Official Opinion from the ICC Banking Commission.
- b) Only one topic or issue may be raised in a request for an Opinion, but each request may contain more than one question related specifically to that query. As far as is possible, queries should be kept to a maximum length of 2 pages. If a query is considered as too long, it will either be revised by the Technical Advisers or returned to the submitting National Committee for editing. Where issues cover more than one Letter of Credit, Collection, Guarantee, Reimbursement, Forfait

transaction or BPO, they must be submitted as separate requests unless the facts are identical for each transaction;

- c) 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 will not respond to any other issues that may be apparent within the text of the query. A few points to note:
- Requests for opinions must be actual issues or transactions and **not hypothetical situations**. It is the responsibility of each ICC NC or banking association to ensure that the issue contained in any request does not represent a hypothetical situation or question. The Technical Advisers may seek separate assurances or documentation, before issuing a draft opinion, if they have doubts as to the nature of the query. If the query is deemed to be hypothetical, the Banking Commission will refrain from giving an Opinion.
 - As was previously the practice, there is no longer any requirement for the submitting ICC NC or banking association to provide their own analysis and conclusion to the query, as the resulting structure of the responses was deemed difficult to follow.
 - Required format for submitting a request:
 - The text of the query, incorporating full details of the issues, is to be produced in a **Microsoft Word Document** avoiding, wherever possible, attachment of supplementary copies of documents.
 - An Opinion request should, unless there are special mitigating circumstances, consist of a maximum of two A4 pages, in arial font, size 12. If more than two A4 pages are submitted, the technical advisers will consider whether or not the request, in its presented form, can be considered for an opinion.

For the sake of clarity and to facilitate the comprehension of the sequence of events in a query, rather than identifying the various banks in a query as Bank A or Bank B - the banks should be identified by their roles i.e., issuing bank, advising bank, confirming bank, nominated bank, etc. **ICC NCs and banking associations are requested to take note of this requirement prior to submitting any request for an Opinion.**

- Submission timeline:

For a Draft Opinion to be presented to the ICC Banking Commission for consideration and approval, the original query must be received by the ICC Banking Commission Secretariat **no later than 10 weeks** prior to the relevant Banking Commission meeting where the query is to be considered (either in Spring or Autumn each year).

It is the responsibility of the ICC NC submitting the query to ensure that it is received by the Secretariat within this time frame. If the 10-week minimum requirement is not met, the Draft Opinion will be held over for consideration at the next ICC Banking Commission meeting. It will nonetheless be provided to the initiating ICC NC as an interim response.

Despite the 10 week deadline, to the extent possible ICC NCs must, **in order to avoid a bottleneck at the last minute, send in their requests as early as possible and not build up two or three queries before submission**. The Technical Advisers have a relatively short period of time to process the Draft Opinions before they can be consolidated and sent out for comments.

- d) Upon receipt of the query, the Secretariat will relay the request to the Senior Technical Adviser who will assign it to one of the Technical Advisers to prepare a response that is known as a Draft

Opinion. The Technical Adviser shares the initial draft of the Opinion with the other Technical Advisers for agreement prior to sending it to the Secretariat for distribution to the initiating ICC NC within 4-6 weeks. It is the responsibility of the concerned ICC NC to distribute it to the initiator.

- e) It should be noted that an interim response (Draft Opinion) is not recognized as an Official Opinion until it has been presented to the ICC Banking Commission at one of its biannual meetings. In draft form, the Opinion is considered to be that of the Technical Advisers only.
- f) Prior to each bi-annual Banking Commission meeting the Secretariat will email a consolidation of all draft Opinions to all ICC NCs and members of the Banking Commission for review 8 weeks prior to the Banking Commission meeting. Any comments raised by ICC NCs (not individual members*) must be received by the Secretariat and the Technical Advisers by email **no later than 2 weeks** prior to the Commission meeting. ICC NCs are required to schedule their local meetings accordingly.

** Individual members may forward their comments to their national committee for inclusion in the NC comments sent to the Secretariat.*

ICC NCs are required to submit written comments, even if only to indicate agreement with the analysis and conclusion as given. The absence of any comments from an ICC NC will be considered to be an abstention from the process.

- g) An ICC NC wishing to address any comments relating to a Draft Opinion at a Banking Commission meeting must designate **one** representative to outline any viewpoint(s) of that ICC NC. The representative of an ICC NC may only provide further comment once all National Committees have had an opportunity to speak, unless requested by another ICC NC or by a Technical Adviser to provide further clarification.
- h) The Senior Technical Adviser will present the Draft Opinions at the Commission meeting, highlighting any comments raised by ICC NCs and seek approval of the text “as drafted” or if necessary, “as proposed to be amended”. This process is clearly advantageous in producing a document that has been reviewed and approved by the diverse business communities represented by ICC NCs.
- i) Upon approval at the Commission meeting, the Draft Opinion becomes an Official ICC Banking Commission Opinion.
- j) Following the meeting, the Final Opinion is re-sent to the initiating ICC NC as an approved Official Opinion. If the Draft Opinion underwent modification following comments by ICC NCs, it will be sent out as a Revised Official Opinion. All the final approved Opinions are then consolidated into one document and sent to all ICC NCs and Members.
- k) Once the ICC Banking Commission renders its final approval, it should be noted that the Official Opinion given is **solely for the benefit of guidance**. No legal imputation should be associated with the reply. Neither ICC nor any of its employees, nor any member of the ICC Banking Commission, including the Chairman, Executive Committee or Technical Advisers 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.
- l) Periodically, the Official Opinions are reproduced by the ICC and sold as publications that not only provide guidance to the workings of its rules, but also serve as guidelines for courts in interpreting the rules.

m) Educational Opinions and Informal Queries

Educational Opinions

When an ICC NC or banking association submits a request for Opinion involving a subject that has already been treated by the Banking Commission in the past, an Official Opinion is not provided. Instead, the initiator will receive what is known as an Educational Opinion. This measure was decided upon in order to avoid duplication and to optimize review time during commission meetings. Educational Opinions are not submitted to the Banking Commission as a whole for approval – they are merely issued by the Technical Advisers of the Banking Commission and are sent directly to the initiator as a final response by simple email. Since Educational Opinions are not presented to the commission for review or approval, there are no time frame constraints to consider.

The response from the Technical Advisers will not be given on printed ICC letterhead or bear any reference number within the sequence given to Official Opinions. The Technical Adviser will respond directly to the ICC NC or banking association by simple email, copying the Secretariat.

If the ICC NC or banking association subsequently requires an Official Opinion of the Banking Commission they may make a formal request as outlined above. There is no timeline for Technical Advisers to respond to educational queries although rapid resolution is provided as far as possible.

Informal Queries

These are everyday queries sent directly to the Secretariat by individuals and not by ICC NCs. The Secretariat advises these initiators that the query should be re-sent to their local ICC National Committee or banking association for response. Should the National Committee require aid in responding, they may request it via the Secretariat.

The same liability disclaimer for Official Opinions applies for educational and informal queries.

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The International Chamber of Commerce (ICC)

ICC is the world business organization, whose mission is to promote open trade and investment and help business meet the challenges and opportunities of an increasingly integrated world economy.

With interests spanning every sector of private enterprise, ICC's global network comprises over 6 million companies, chambers of commerce and business associations in more than 130 countries. ICC members work through national committees in their countries to address business concerns and convey ICC views to their respective governments.

ICC conveys international business views and priorities through active engagement with the United Nations, the World Trade Organization, the G20 and other intergovernmental forums.

Close to 3,000 experts drawn from ICC member companies feed their knowledge and experience into crafting the ICC stance on specific business issues.

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