

## ICC Opinions: More Significant Than Ever?

This was the headline in a recent article appearing in Documentary Credit World. The article went on to say:

“In the first four meetings of the ICC Banking Commission since UCP600 entered into force in July 2007, there have been more ICC Opinions (51) pertaining to UCP600 matters than ICC Opinions (45) relating to UCP 500 topics. Some have asked how there can be so many ICC Opinions addressing aspects of these new rules of practice that have been in existence for less than two years.

Of concern is the question as to what will be the impact of these Opinions, particularly if the pace continues at this rate. Will the abundance of ICC Opinions aid in applying UCP600 or will it weaken its credibility or that of the ICC Banking Commission itself?

One area where ICC Opinions are having a major impact is in the area of transport documents. Approximately, 45% of queries to the ICC Banking Commission have involved transport documents, generating more issued Opinions, by far, than any other document type or practice aspect of UCP600. Of these, the majority relate to on board notations. At the ICC Banking Commission meeting in Dubai in March 2009, it was decided that preparation of an ICC document on the subject would be helpful for all concerned. The document is now in the process of taking shape. It will be published before the next ICC Banking Commission meeting in Brussels. During this November 2009 meeting, it will be presented to the Commission for approval.”

I actually came across this article whilst looking at the mix and profile of the opinions that have been requested since the ICC Banking Commission meeting held on 24/25 October 2007. This meeting was the first following the implementation of UCP 600. In fact, for that meeting and the three that have followed, there have been 63 requests for opinions of which:

4 were withdrawn either before or at the respective Banking Commission meeting;  
9 made reference to UCP 500;  
2 referred to situations under UCP 500 and UCP 600; and  
48 made reference to UCP 600.

I say “made reference to UCP 600” because an analysis of the questions asked indicates that a large number of the opinion requests could have been made in relation to a credit subject to UCP 500 or, even, previous revisions of the UCP. I will expand on this below.

Of the 48 opinion requests referring to UCP 600, 30 or 62.5% originated from 3 ICC national committees. I will not name them here, but they will know who they are! In total, there have been requests from 17 countries – the other 14 have requested either 1 or 2 opinions during the course of the last 2 years.

These 48 requests for opinions can be broken down into the following categories for further analysis. Where an opinion contained more than one subject and one of those involved a transport question, I have classified it as ‘transport’ for the purposes of this exercise:

Transport issues related directly to wording in UCP 600 = 3

Transport issues that could also have been applicable under a UCP 500 credit = 12

On board notation issues (bills of lading and multimodal/combined transport documents) = 5

Remaining issues related directly to UCP 600 = 10

Remaining issues that could also have been applicable under a UCP 500 credit = 18

By this simple review, it can be seen that around 18 of the 48 requests can be directly associated with the wording of UCP 600 or the handling or presentation of documents under a credit subject to UCP 600. Of these 18 requests, one questioned whether a position expressed in an opinion given under UCP 500 would still prevail under UCP 600.

Given the analysis above, I do not feel that the level of opinions requested reflects badly on the rules or the ICC Banking Commission. When looking at a number of the questions that have been posed, I think it often demonstrates a lack of knowledge of the documentary credit product and/or the UCP across all segments i.e., banks, corporates and logistics companies; not necessarily from the initiator of the request but also on the part of the other involved entity. This may be endemic of the cut backs that have been made by organisations over the years and, in particular, with regard to training budgets. I would hasten to add at this juncture that this is not a 'plug' for my company's services (although I am always open to offers!) because this situation has been apparent for some time and from what I am hearing it is not getting any better.

Despite my comments above, the level of opinion requests does remain too high, in my opinion, for the ICC Banking Commission to effectively review, discuss and agree on the respective conclusions. In 1999, the ICC Banking Commission introduced a two-tier response service in the face of extraordinary levels of requests. This two-tier service operated between March 1999 and April 2000. Out of 245 requests for opinions that were received during this time, 114 were responded to in an educational capacity. At that time, we were averaging around 60 requests per Banking Commission meeting and the educational responses were seen as a necessity to ensure that we focussed on the main issues.

During this time, a request in respect of issues that were of such importance that an opinion was justified, were granted the status of an official opinion. Those requests that were considered to be of an educational nature were responded to in the name of the Officers of the Banking Commission and distributed to ICC national committees for information purposes only, but were never discussed at the meetings.

Today, we receive in the region of 15-18 requests per Banking Commission meeting. Whilst only 25% of the number experienced 10 years ago, the number of attendees at ICC meetings has more than doubled and therefore the discussions become longer in an often already overcrowded agenda. A return to a two-tier system of official opinions and educational responses is certainly something that needs to be considered, not because of the numbers that we are receiving but because of the content of some requests and the minor nature of the questions that are being asked.

As of the time of writing this newsletter (beginning of August), the ICC has received 16 requests for opinions to be discussed at the November meeting of the Banking Commission. Using the same criteria as above, the make-up of the requests is as follows:

Transport issues related directly to wording in UCP 600 = 2

Transport issues that could also have been applicable under a UCP 500 credit = 4

On board notation issues (bills of lading and multimodal/combined transport documents) = 0

Remaining issues related directly to UCP 600 = 1

Remaining issues that could also have been applicable under a UCP 500 credit = 9

The requests have originated from 10 countries of which 4 have been submitted by one country – not one of the 3 countries referred to above!

With around 4 weeks to go before the closure date for receiving requests for consideration in November, we can still anticipate that a few more will be received. However, the current trend reflects the history – the minority are specifically linked to the UCP 600.

As mentioned in the article quoted at the top of this newsletter, the UCP 600 Drafting Group are currently putting together a document outlining the circumstances under which an on board notation is required and the components of that notation, in given circumstances. This paper will be distributed to ICC national committees, together with all the other papers for the Banking Commission meeting, towards the end of September.