

ICC Uniform Rules for Collections - A Commentary

URC 522

ADUANEIRAS
INFORMAÇÃO SEM FRONTEIRAS



International Chamber of Commerce
The World Business Organisation

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PREFACE

The ICC Banking Commission initiated a review of Uniform Rules for Collections, in keeping with its policy of listening to views of international practitioners, and others, in order to ensure that ICC rules remain consistent with changing international practices.

The revision process involved the review of some 2,500 comments from over 30 countries during the last two years.

The revised rules, which were unanimously approved by the ICC Banking Commission in May 1995, are detailed in ICC publication N° 522.

Many issues, such as Electronic Data Interchange (EDI) and direct collections, to name but a few, were raised by National Committees and others, and although full discussions took place, it was not found timely to draft specific rules to cover these issues.

Nevertheless, the Working Party felt that it was important to record such issues, and this publication covers the comprehensive commentary drafted for this purpose.

The commentary adopts the language and tone of discussion and is not in the more precise language of the rules, as the Working Party was very anxious to preserve informality in order to promote a better understanding, not only of the rules, but of the issues raised and the discussions that ensued.

There is also a comparative index showing the evolution of the revised rules.

The Working Party would like to express its sincere thanks to ICC National Committees and the members of the Banking Commission for their helpful and constructive comments and their continuous participation in the revision.

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The undersigned had the pleasure of chairing the Working Party.

As Chairman, I extend my deep appreciation to the ICC National Committees, the Banking Commission and the individual members of the Working Party. It was through the generous contribution of their time and the sharing of their knowledge that this revision was accomplished so successfully. I also wish to record my gratitude to the ICC for its selfless commitment to this work.



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INTRODUCTION

For the first time, this publication combines the text of the updated ICC Uniform Rules for Collections with some comments on each Article, the latter reflecting the views expressed by the Working Party in the course of its discussions during the work of revising URC 322.

Primarily, these comments are intended to give further guidance on practical issues found during the handling of collections, while at the same time providing an insight into the line of thought running through the discussions of the Working Party.

At the same time, however, given the increasing role of collections in international trade, it is hoped that the Commentary will assist training personnel, both in the banks and in the commercial and other disciplines involved, to use more of a common approach in their training work to the ultimate benefit of the handling of collections overall.

Nevertheless, it is made clear that the Commentary is not intended to replace the Rules themselves nor to change the latter in any way.

The classification under which each Article is placed is for reference as to intent and purpose. It is not to be construed as being other than solely for benefit of guidance and there should be no legal imputation.

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A. General provisions and definitions

Rule

ARTICLE 1 APPLICATION OF URC 522

- a. The Uniform Rules for Collections, 1995 Revision, ICC Publication N° 522, shall apply to all collections as defined in Article 2 where such rules are incorporated into the text of the “collection instruction” referred to in Article 4 and are binding on all parties thereto unless otherwise expressly agreed or contrary to the provisions of a national, state or local law and/or regulation which cannot be departed from.
- b. Banks shall have no obligation to handle either a collection or any collection instruction or subsequent related instructions.
- c. If a bank elects, for any reason, not to handle a collection or any related instructions received by it, it must advise the party from whom it received the collection or the instructions by telecommunication or, if that is not possible, by other expeditious means, without delay.

Commentary

As indicated, these Rules apply where they are shown to be incorporated into the text of the Collection Instruction.

Banks understand the distinction between a collection which is made up of the actual documents themselves and the instruction from the party who originates the collection. Every collection must be accompanied by such a collection instruction and the application of these Rules must be shown on that document.

In order that all parties are aware of the possibility that these Rules and collection instructions can be overridden by requirements of individual countries, it was felt that the Rules should make reference to national, state and/or local law.

Sub-Article 1(b) is stated as simply and as unambiguously as possible, to dispel any impression that because a collection and any instruction related to a collection is received, an obligation is automatically imposed on the recipient of the collection or instruction. This is not so, as clearly indicated by sub-Article 1(b).

Sub-Article 1(c) makes it obligatory for the Bank that receives the collection to advise the sender if it is unable either to handle a collection as a whole or to handle any instruction. Failure to carry out this obligation may jeopardise the position of the Bank subsequently and, therefore, this requirement must not be forgotten. It is important to stress that once the Bank advises that it is unable to handle the collection or cannot carry out an instruction, it may at its discretion return the documents to the sender without any further action.

Rule

ARTICLE 2 DEFINITION OF COLLECTION

For the purposes of these Articles:

- a. "Collection" means the handling by banks of documents as defined in sub-Article 2(b), in accordance with instructions received, in order to:
 - i. obtain payment and/or acceptance,
or
 - ii. deliver documents against payment and/or against acceptance,
or
 - iii. deliver documents on other terms and conditions.
- b. "Documents" means financial documents and/or commercial documents:
 - i. "Financial documents" means bills of exchange, promissory notes, cheques, or other similar instruments used for obtaining the payment of money;
 - ii. "Commercial documents" means invoices, transport documents, documents of title or other similar documents, or any other documents whatsoever, not being financial documents.
- c. "Clean collection" means collection of financial documents not accompanied by commercial documents.
- d. "Documentary collection" means collection of:
 - i. Financial documents accompanied by commercial documents;

- ii. Commercial documents not accompanied by financial documents.

Commentary

The presentation of sub-Article 2(a) is designed to show clearly the various steps in the collection process.

It is to be noted that the definition indicates clearly that collections covered by these Rules are those that are handled by Banks.

This includes those items where the seller/the principal uses a collection form from his bank as the basis of the collection instruction to send the documents to the buyer's bank, while at the same time a copy of the collection form is sent to his own bank. The collection form is a bank form and must indicate that:

a. the collection is subject to URC Rules N° 522;

and

b. the collection is to be treated by the collecting bank as though it was received from the remitting bank.

The WP was unanimous in its view that specific Rules could not be included for other items, i.e. those not routed through Banks, as there would be no recognised disciplines within which to work.

Cheque collections could be included, under sub-Article 2(c), but as practices differed from country to country (and even from location to location within some countries) it was not feasible to draft separate Articles to cover them.

EDI Collections. There is considerable uncertainty on a number of matters in connection with Electronic Data Interchange, and as those include legal issues, it was not considered feasible to attempt to write rules to cover such items at this time.

Rule

ARTICLE 3 PARTIES TO A COLLECTION

- a. For the purposes of these Articles the "parties thereto" are:
 - i. the "principal" who is the party entrusting the handling of a collection to a bank;

- ii. the “remitting bank” which is the bank to which the principal has entrusted the handling of a collection;
 - iii. the “collecting bank” which is any bank, other than the remitting bank, involved in processing the collection;
 - iv. the “presenting bank” which is the collecting bank making presentation to the drawee.
- b. The “drawee” is the one to whom presentation is to be made in accordance with the collection instruction.

Commentary

The following points should be noted:

In view of the fact that the “principal” has been included as one of the parties it was agreed that a separate definition for the “drawer” is not really necessary.

It has been noted that in sub-Article 3(a), the definition of collecting bank appears to exclude the remitting bank. This is not necessarily so, since in local collections the remitting bank may also be the collecting bank; therefore a practical and pragmatic approach should be adopted in this respect in order to facilitate the collection operation.

Although the drawee eventually may become involved in the collection operation he is not one of the initial parties and, accordingly, the definition of the drawee is shown separately from the definitions of the other parties.