

ICC DOCDEX RULES

ICC Rules for **Documentary Instruments Dispute Resolution Expertise**

First revision

In effect from 15 March 2002



International Chamber of Commerce

The world business organization

For more information about the
DOCDEX system, go to the web site at
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Foreword

ICC's DOCDEX rules, first approved in 1997, were aimed at providing an alternative dispute resolution system for parties using the ICC rules, presently called UCP 500, in letter of credit transactions. Rather than turning to the courts, which can take years to decide disputes, or to other forms of dispute resolution, the parties using DOCDEX can count on a reasonably priced decision that will normally be rendered by an ICC panel of experts within thirty to sixty days.

Over the years, changes have been made to the DOCDEX process. In 2002, the rules were extended to cover cases dealing with the ICC Uniform Rules for Collections (URC 522) and the ICC Uniform Rules for Demand Guarantees (URDG 458). This considerably expanded the range of users who can benefit from the DOCDEX process. In addition, the decision to raise from \$100,000 to \$500,000 the threshold value of transactions requiring a higher fee for a DOCDEX decision clearly rendered the rules more attractive.

A new impetus for using DOCDEX will surely be created when the successor to UCP 500, now being developed, comes into force. New sets of rules inevitably raise questions of interpretation that may be the cause of disputes, and parties will have an interest in having these quickly resolved.

Since the inception of DOCDEX, ICC expert panels have decided more than fifty DOCDEX cases. After relatively modest beginnings, the use of the process has picked up considerably in recent years, as the rules have gained increased visibility and as more users have come to appreciate the advantages of an objective, rapid and efficient process. DOCDEX is now firmly established and has taken its place among the various choices open to parties who seek clarity and precision in resolving their disputes.



Guy Sebban
ICC Secretary General

ICC Rules for Documentary Instruments Dispute Resolution Expertise

Article 1: Dispute Resolution Service

1.1 These rules concern a service called Documentary Instruments Dispute Resolution Expertise (DOCDEX) which is available in connection with any dispute related to:

- a documentary credit incorporating the ICC Uniform Customs and Practice for Documentary Credits (UCP), and the application of the UCP and/or of the ICC Uniform Rules for Bank-to-Bank Reimbursement under Documentary Credits (URR),
- a collection incorporating the ICC Uniform Rules for Collections (URC), and the application of the URC,
- a demand guarantee incorporating the ICC Uniform Rules for Demand Guarantees (URDG), and the application of the URDG.

Its objective is to provide an independent, impartial and prompt expert decision (DOCDEX Decision) on how the dispute should be resolved on the basis of the terms and conditions of the documentary credit, the collection instruction, or the demand guarantee and the applicable ICC Rules, be it the UCP, the URR, the URC or the URDG (ICC Rules).

Any reference to DOCDEX will be deemed to apply to the latest version of the DOCDEX Rules and the applicable version of the ICC Rules, unless otherwise stipulated in the documentary credit, the collection instruction or the demand guarantee.

- 1.2** DOCDEX is made available by the International Chamber of Commerce (ICC) through its International Centre for Expertise (Centre) under the auspices of the ICC Commission on Banking Technique and Practice (Banking Commission).
- 1.3** When a dispute is submitted to the Centre in accordance with these rules, the Centre shall appoint three experts from a list of experts maintained by the Banking Commission. These three experts (Appointed Experts) shall make a decision which, after consultation with the Technical Adviser of the Banking Commission, shall be issued by the Centre as a DOCDEX Decision in accordance with these rules. The DOCDEX Decision is not intended to conform with any legal requirements of an arbitration award.
- 1.4** Unless otherwise agreed, a DOCDEX Decision shall not be binding upon the parties.
- 1.5** In the DOCDEX procedure the communication with the Centre shall be conducted exclusively in writing, i.e. by communication received in a form that provides a complete record thereof, via teletransmission or other expeditious means.

Article 2: Request

- 2.1** The Initiator shall apply for a DOCDEX Decision by submission of a request (Request). The Initiator may be one of the parties to the dispute applying individually, or more or all parties to the dispute submitting jointly a single Request. The Request, including all documents annexed thereto, shall be supplied to the Centre in Paris, France, in four copies.

- 2.2** A Request shall be concise and contain all necessary information clearly presented, in particular the following:
- 2.2.1** full name and address of the Initiator, clearly stating such Initiator's function(s) in connection with the documentary credit, the collection, or the demand guarantee, and
 - 2.2.2** full name and address of any other party to the dispute (Respondent), clearly stating such Respondent's function(s) in connection with the documentary credit, the collection, or the demand guarantee, where the Request is not submitted jointly by all parties to the dispute, and
 - 2.2.3** a statement of the Initiator formally requesting a DOCDEX Decision in accordance with the ICC DOCDEX Rules, ICC Publication No. 811, and
 - 2.2.4** a summary of the dispute and of the Initiator's claims, clearly identifying all issues related to the documentary credit, the collection, or the demand guarantee and the applicable ICC Rules to be determined, and
 - 2.2.5** copies of the documentary credit, the collection instruction, or the demand guarantee in dispute, all amendments thereto, and all documents deemed necessary to establish the relevant circumstances, and
 - 2.2.6** a statement by the Initiator that a copy of such Request, including all documents annexed thereto, has been sent to each Respondent named in the Request.
- 2.3** The Request must be accompanied by the payment of the Standard Fee as per the Appendix hereto. No Request shall be processed unless accompanied by the requisite payment.

Article 3: Answer

- 3.1** The Respondent may submit an Answer to the Initiator's Request. The Respondent may be one or more of the parties to the dispute named in the Request as Respondent, each submitting an individual Answer or submitting jointly a single Answer. The Answer must be received by the Centre within the period stipulated in the Centre's Acknowledgement of the Request (see Article 5). The Answer, including all documents annexed thereto, shall be supplied to the Centre in Paris, France, in four copies.
- 3.2** An Answer shall be concise and contain all necessary information clearly presented, in particular the following:
- 3.2.1** name and address of the Initiator, and
 - 3.2.2** date of the relevant Request, and
 - 3.2.3** a statement of the Respondent formally requesting a DOCDEX Decision in accordance with the ICC DOCDEX Rules, ICC Publication No. 811, and
 - 3.2.4** a summary of the Respondent's claims, clearly referring to all issues related to the documentary credit, the collection, or the demand guarantee and the applicable ICC Rules to be determined, and
 - 3.2.5** copies of all additional documents deemed necessary to establish the relevant circumstances, and
 - 3.2.6** a statement of the Respondent that a copy of such Answer, including all documents annexed thereto, has been sent in writing to the Initiator and to the other Respondent named in the Request.
- 3.3** If the Respondent does not provide a statement pursuant to Article 3.2.3, then the final DOCDEX Decision will not be made available to him.

Article 4: Supplements

- 4.1** Request, Answers and Supplements shall be final as received.
- 4.2** The Centre may ask the Initiator and Respondent, by way of an Invitation, to submit specific supplementary information, including copies of documents, relevant to the DOCDEX Decision (Supplement).
- 4.3** Supplements must be received by the Centre in four copies within the period stipulated in the Invitation. The Supplement shall be concise and contain all necessary information clearly presented and include copies of relevant documents. It shall also contain:
- 4.3.1** date and reference as stated in the Invitation, and
 - 4.3.2** name and address of the issuer of such Supplement, and
 - 4.3.3** a statement of the issuer of such Supplement that a copy of the Supplement, including all documents annexed thereto, has been sent to the Initiator or Respondent.
- 4.4** Supplements shall only be submitted to the Centre upon and in accordance with an Invitation issued by the Centre.

Article 5: Acknowledgements and Rejections

- 5.1** The Centre shall confirm the receipt of Requests, Answers and Supplements to the Initiator and Respondent (Acknowledgement).
- 5.2** The Centre will stipulate a reasonable period of time within which each Answer or Supplement must be received by the Centre. The stipulated time should not exceed 30 days after the date of the Acknowledgement of the receipt of a Request or 14 days after the date of an Invitation to submit a Supplement.

- 5.3** Any Answer or Supplement received by the Centre after expiry of the period of time specified in the relevant Acknowledgement or Invitation, or any communication not solicited by the Centre, shall be disregarded.
- 5.4** By advice to the Initiator and Respondent, the Centre may reject at any time, before or after its Acknowledgement, any Request, Answer or Supplement, in whole or part,
- 5.4.1** where the Centre or Appointed Experts deem any issue to be determined to be unrelated to the applicable ICC Rules, or
 - 5.4.2** which in other respects, in particular regarding form and/or substance, does not fulfil the requirements of these rules, or
 - 5.4.3** in respect of which the Standard Fee has not been received by the Centre within 14 days after the date of the Request.
- 5.5** Periods of time specified in these rules or in any Acknowledgement or Invitation referring to days shall be deemed to refer to consecutive calendar days and shall start to run on the day following the date of issuance stated in the relevant Acknowledgement or Invitation. If the last day of the relevant period of time is, or any fixed day falls on, a non-business day in Paris, France, then the period of time shall expire at the end of the first following business day in Paris.

Article 6: Appointment of Experts

- 6.1** The Banking Commission will maintain internal lists of experts having profound experience and knowledge of the applicable ICC Rules.
- 6.2** Upon receipt of a Request, the Centre shall appoint three independent experts from the list. Each Appointed Expert shall declare his independence of the parties indicated in the Request. The Centre shall designate one of the three Appointed Experts to act as their Chair.

- 6.3** An Appointed Expert shall at all times keep strictly confidential all information and documents related to any DOCDEX case.
- 6.4** Where an Appointed Expert deems that he is unable to carry out his functions, he shall immediately give notice of termination to the Centre. Where the Centre deems that an Appointed Expert is unable to carry out his functions, it shall immediately give notice of termination to such Appointed Expert. In either case, such Appointed Expert shall immediately return to the Centre the Request, Answer(s) and Supplement(s) received, including all documents annexed thereto, and the Centre shall inform the other Appointed Experts of such termination.
- 6.5** The Centre shall, without delay, replace an Appointed Expert whose appointment is prematurely terminated pursuant to Article 6.4 of these rules and the Centre shall inform the other Appointed Experts accordingly.

Article 7: Appointed Experts' Procedure

- 7.1** The Centre shall submit to the Appointed Experts the Request, Answer(s) and Supplement(s) received in connection therewith.
- 7.2** The Appointed Experts shall render their decision impartially and exclusively on the basis of the Request, Answer(s) and Supplement(s) thereto, and the documentary credit and the UCP and/or URR, or the collection and the URC, or the demand guarantee and the URDG.
- 7.3** Where it is deemed necessary by the Appointed Experts, their Chair may ask the Centre to invite the Initiator and Respondent, pursuant to Article 4 of these rules, to provide additional information and/or copies of documents.

- 7.4** Within 30 days after they have received all information and documents deemed by them to be necessary and appropriate to the issues to be determined, and provided that the Additional Fee as mentioned in Article 10.1 is paid, the Appointed Experts shall draft a decision and their Chair shall submit the decision to the Centre.
- 7.5** Neither the Initiator nor the Respondent shall
- seek an oral hearing in front of the Appointed Experts,
 - request ICC to reveal the name of any Appointed Expert,
 - seek to have an Appointed Expert or officer of the Banking Commission called as witness, expert or in any similar function to an arbitral tribunal or a court of law hearing the dispute in connection with which such Appointed Expert or officer of the Banking Commission participated by rendering a DOCDEX Decision.

Article 8: DOCDEX Decision

- 8.1** Upon receipt of the decision of the Appointed Experts, the Centre shall consult with the Technical Adviser of the Banking Commission or his nominated delegate, to ascertain that the DOCDEX Decision will be in line with the applicable ICC Rules and their interpretation by the Banking Commission. Amendments suggested by the Technical Adviser (or his delegate) shall be subject to the consent of the majority of the Appointed Experts.
- 8.2** Subject to Article 10.2 of these rules, the Centre will issue and make available the DOCDEX Decision without delay to
- 8.2.1** the Initiator and
 - 8.2.2** the Respondent who has requested, pursuant to Article 3.2.3, a DOCDEX Decision in accordance with the ICC DOCDEX Rules, ICC Publication No. 811.

- 8.3** The DOCDEX Decision shall be issued by the Centre in the English language, unless the Appointed Experts decide otherwise, and shall contain, *inter alia*, the following:
- 8.3.1** names of the Initiator and Respondent, and
 - 8.3.2** summary of the representations relevant to the issues determined, and
 - 8.3.3** determination of the issues and the decisions taken with succinctly stated reasons therefor, and
 - 8.3.4** date of issuance and signature for and on behalf of the Centre.
- 8.4** The DOCDEX Decision shall be deemed to be made at Paris, France, and on the date of its issuance by the Centre.

Article 9: Deposit and publication of the DOCDEX Decision

- 9.1** An original of each DOCDEX Decision shall be deposited with the Centre and shall be kept there for 10 years.
- 9.2** ICC may publish any DOCDEX Decision, provided always the identities of the parties to the dispute are not disclosed.

Article 10: Costs of DOCDEX

- 10.1** The costs of the DOCDEX service shall be the Standard Fee set out in the Appendix. The Standard Fee shall not be recoverable. In exceptional circumstances, an Additional Fee may be payable which shall be fixed by the Centre at its discretion, taking into account the complexity of the issue and subject to the ceiling set out in the Appendix under 'Additional Fee'. Such Additional Fee shall be invoiced to the Initiator within a reasonable time, at the latest within

45 days after the date of the Acknowledgement of the Request. The Centre will fix a time limit for the payment of the Additional Fee. The Centre may stay the procedure at any time, and instruct the Appointed Experts to suspend their work on the case, until the Additional Fee is paid by the Initiator. No Additional Fee will be charged where the amount of the letter of credit, the collection, or the demand guarantee in dispute does not exceed the minimum amount stated in the Appendix.

- 10.2** The DOCDEX Decision shall not be issued until the Centre has received the Additional Fee, if invoiced.

Article 11: General

- 11.1** In all matters not expressly provided for in these rules, the Centre, experts, Appointed Experts, officers, officials and employees of ICC shall adhere to strict confidentiality and shall act in the spirit of these rules.
- 11.2** Appointed Experts, officers, officials and employees of ICC assume no liability or responsibility for the consequences arising out of delay and/or loss in transit of any message(s), letter(s) or document(s), or for delay, mutilation or other error(s) arising in the transmission of any telecommunication, or for errors in translation and/or interpretation of technical terms.
- 11.3** Appointed Experts, officers, officials and employees of ICC assume no liability or responsibility for the discharge or purported discharge of their functions in connection with any DOCDEX Decision, unless the act or omission is shown not to have been in good faith.

Appendix to the ICC Rules for Documentary Instruments Dispute Resolution Expertise

1. Standard Fee

The Standard Fee, which includes administrative expenses and expert fees, is US\$ 5000.

2. Additional Fee

Pursuant to Article 10.1 of these Rules the Centre may, if the amount of the letter of credit, of the collection, or of the demand guarantee exceeds US\$ 500 000, charge an Additional Fee of up to 100% of the Standard Fee.

3. Payment

Any payment made towards such fees shall be made in United States dollars to the International Chamber of Commerce in Paris, clearly marked with the reference of DOCDEX

- by bank transfer to
UBS SA
35, Rue des Noirettes
P.O. Box 2600
CH-1211 Geneva 2
Switzerland
Account No.: 240-224534.61R
Swift code: UBSWCHZH12A
IBAN: CH06 0024 0240 2245 3461 R
- or
- by cheque payable to the International Chamber of Commerce, or
- by Visa card stating

Expiry date

Visa card number

Name on card

Signature

Date



4. Transmission

Any such payment shall be accompanied by an advice in writing to:

International Chamber of Commerce
International Centre for Expertise
38, Cours Albert 1er
F-75008 Paris France
Fax: +33 1 49 53 29 29
E-mail: docdex@iccwbo.org

stating the following data:

Name:

Business title:

Company:

Address:

.....

Code/postal code:

Date of Request:

5. General

This Appendix is subject to change without notice. Please enquire with the International Chamber of Commerce as to the applicable version of this Appendix.

ICC at a Glance

ICC is the world business organization, a representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world.

The fundamental mission of ICC is to promote trade and investment across frontiers and help business corporations meet the challenges and opportunities of globalization. Its conviction that trade is a powerful force for peace and prosperity dates from the organization's origins early in the last century. The small group of far-sighted business leaders who founded ICC called themselves "the merchants of peace".

Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of the fabric of international trade.

ICC also provides essential services, foremost among them the ICC International Court of Arbitration, the world's leading arbitral institution. Another service is the World Chambers Federation, ICC's worldwide network of chambers of commerce, fostering interaction and exchange of chamber best practice.

Within a year of the creation of the United Nations, ICC was granted consultative status at the highest level with the UN and its specialized agencies.

Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. These include financial services, information technologies, telecommunications, marketing ethics, the environment, transportation, competition law and intellectual property, among others.

ICC was founded in 1919. Today it groups thousands of member companies and associations from over 130 countries. National committees work with their members to address the concerns of business in their countries and convey to their governments the business views formulated by ICC.

*More information on ICC and ICC publications
is available at:*

www.iccwbo.org
www.iccbooks.com

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