

How to deal with HKMA's latest requirements on "Uncommitted Facilities" & "Corporate Loans Risk Management"

A survival kit for

Bankers (Accounts & Finance, Product, Risk, Credit Admin., Relationship, Operations, Legal, Compliance & Audit), Lawyers, Accounting, Finance & Credit Control Managers

Background:

1. The Hong Kong Monetary Authority ("HKMA") recently issued: (i) two FAQs on the interpretation of "**uncommitted credit facilities**" (dated 8 & 29 May 2015); and (ii) one practice note on **corporate loans risk management** (dated March 2015).
2. The FAQs will have a significant impact on most of the Authorised Institutions' ("AI") net cash outflows because credit facilities that were previously regarded as "**uncommitted**" might be treated as "**committed**" under the new interpretation. This workshop will analyse the two FAQs from a legal perspective and offer some new ideas to resolve the AIs' capital reserve concern.
3. The practice note requires AIs engaging in corporate loans in collaboration with off-shore financial institutions to comply with specific regulatory requirements. This workshop will advise the AIs how to obtain foreign legal opinions at the product and jurisdiction levels in the most time- and cost-effective manner.

Highlights:

A. Committed or Uncommitted Facilities?

1. Under the two FAQs, credit facilities which can be cancelled by an AI unilaterally and unconditionally may still be treated as "committed" instead of "uncommitted" facilities. It follows that banks have to make reserve for the undrawn portion of such credit facilities leading to substantial net cash outflows.
2. Analysing HKMA's rationale in details would give AIs some insight on how to mitigate the relevant risks and alleviate the capital constraint.
3. The speakers will share with the attendees how to structure an "uncommitted" credit facility from a legal perspective and their experience in drafting such facilities letters in the past 15 years.

B. Offshore Corporate Loans

1. Which banking products are subject to (or exempted from) the foreign legal opinion requirements? What are plain vanilla trade products?

2. How to obtain foreign legal opinions at product and jurisdiction levels – identification of right counsel, standardizing the opinion contents, vetting of foreign legal opinion and negotiating for a package deal through your instructing solicitor would allow your in-house counsel to focus on more important deals and matters.

Speakers:

1. **Mr King Tak FUNG** (*e-mail: ktfung@eversheds.com*)

- Partner & Head of Banking and Finance, Asia of Eversheds specializing in Banking and International Trade Law and Practice
- Co-chair of the ICC Consulting Group on the latest ISBP revision
- Member of the ICC Consulting Group on Forfaiting and UCP 500 Revision
- Member of the Drafting Group on the revision of the ICC Documentary Instruments Dispute Resolution Expertise (“**DOCDEX**”) Rules and a panel expert of the DOCDEX Rules
- Technical Advisor to the ICC-HK Banking Committee
- Former Vice President and Head of Trade Finance at Bank of America N.A.
- Trade Finance & Banking Expert Witness in Hong Kong and PRC Courts
- Accredited mediator of HK International Arbitration Centre & the HK Law Society
- Author of "UCP 600 - Legal Analysis & Case Studies" (2008) and “Leading Court Cases on Letters of Credit” (2005)

2. **Mr Michael YAU** (*e-mail: michaelyau@eversheds.com*)

- Partner of Eversheds, Hong Kong specializing in Banking and International Trade Law and Practice
- A leading expert in Factoring, A/C Receivables Finance, BPO, Supply Chain Solutions and Forfaiting, Guarantees and Standby L/Cs, Debt Recovery, Inventory Finance, Trade Dispute Resolution, Structured Trade Finance, Security Taking and Enforcement
- Michael has advised over 15 international and Chinese banks on open account trade finance and has drafted both standard and bespoke documentation for them

KT and Michael have extensive experience in advising and drafting both “committed” and truly “uncommitted” credit facilities agreements/letters for dozens of international, PRC and local banks in the region. The elimination of the “offer and acceptance” approach (which is the key concern stated in the two HKMA FAQs) and the replacement of the General Commercial Agreement by a set of standard terms and conditions attached to the banks’ facilities letters have been extremely well received by the market in the past 15 years. Their workshop on “*How to comply with HKMA’s requirements on bank guarantees and SBLCs*” held in 2014 did not only facilitate various banks to comply with the new rules but save substantial time, efforts and costs.

Logistics:

Date:	27 July, 2015 (Monday)
Time:	2:30 pm – 5:30 pm
Venue:	2/F, Pico Tower, 66 Gloucester Road, Wan Chai, HK
Medium:	Cantonese with English Workbook
Organisers:	ICC-Hong Kong (ICC-HK) and P.E.E.R. Consultancy Ltd.(P.E.E.R.)
Cancellation:	There will be no refund for cancellation of booking initiated by the applicant. However, the registration may be transferred to another person from the same company or organization at no extra charge, subject to the prior consent of ICC-HK and P.E.E.R.
Seat Confirmation:	Seat confirmation is based <u>on receipt of payment on a first come, first served basis</u>
Enquiry:	Contact Ms. Kokko Ko at Tel: 2973 0060 or e-mail to: publn@icchkcbc.org

Registration fees:

- ❖ *Fee includes course, working papers and refreshments.*
- ❖ *You will enjoy early bird discount if you register and pay on or before **15 July, 2015.***

- ❖ **HK\$ 2,600**/person (*regular*)
- ❖ **HK\$ 2,400**/person (*“early-bird” for public*)
- ❖ **HK\$ 2,300**/person (*“early-bird” for ICC-HK members*)
- ❖ **HK\$ 2,200**/group (*“early-bird” for a group of 3 persons from the same company, **HK\$2,200** for each extra registrant in the same company*)
- ❖ **HK\$ 2,100**/group (*“early-bird” for a group of 3 persons from ICC-HK members, **HK\$2,100** for each extra registrant in the same company*)
- ❖ **HK\$ 1,900**/group (*“early-bird” for a group of 5 persons from the same company, **HK\$1,900** for each extra registrant in the same company*)

Reference Book: (optional)

"UCP 600 - Legal Analysis and Case Studies" by King Tak FUNG, ICC Publication No.1000C

Unit price at HK\$1,000/copy, special discount for workshop attendees at HK\$900/copy

By way of Q & A technique, this book addresses 99 highly controversial trade finance issues and analyses 55 landmark court and banking cases, including the key legal principles on assignment of proceeds.

The majority of these unpublished cases involved KT in his capacity as a banking or as a legal practitioner and cannot be found in any other source or commentary.