

CDCS and CSDG granted 6.5 points each

6.5 Law Society CPD Points granted

*New Program*

## The Latest Court Cases on Corporate Guarantees, Bank Guarantees & SBLCs

A survival kit for

**Bankers - Product, Risk, Credit Admin., Relationship, Operations, Legal, Compliance & Audit,  
Regulators, Lawyers, Accountants, Finance, Credit Control, Shipping & Logistics Managers**

### Unique features:

1. Guarantee law involves one of the most complicated areas of law. This **NEW** workshop selects the landmark guarantee and standby L/C (“SBLC”) cases recently adjudicated by the courts in HK, England, China, USA, Canada, Singapore, India and Malaysia.
2. You will be able to master the latest legal developments of these important banking products and substantially enhance your product design, document drafting and risk management after attending this highly interactive and practical workshop.
3. An **EXCELLENT** training program for existing staff and trainees as it provides a comprehensive review of all key legal principles and application of such principles to transaction structuring, negotiation with sophisticated clients and daily banking operations.

### Highlights:

#### **A. Corporate guarantees**

1. Under the latest case law, a guarantee issued by a non-bank institution is presumed to be not a demand guarantee i.e. not independent of the underlying contract. This would seriously affect the security position of banks which receive thousands of corporate guarantees from clients. This workshop will provide practical advice on how to rebut this presumption.

#### **B. On-demand bonds v. accessory guarantees**

1. Notwithstanding the parties have all obtained professional legal advice, the essence of disputes in most of the court cases is whether such guarantees should be interpreted as an on-demand bond or an accessory guarantee of secondary instead of primary payment obligation. The speakers will share with you the drafting pitfalls by summarizing the key legal principles developed in the latest court cases.
2. Independence principle: The buyer promised to pay the balance of the purchase price upon receipt of a bank guarantee but the buyer simply called on the guarantee without effecting the balance payment. May the applicant obtain an injunction enjoining the guarantee payment?
3. Case studies on the drafting of a demand certificate and the best practices from the angle of a beneficiary.

#### **C. Injunctions (counter and performance guarantees / SBLCs)**

1. How to deal with the situation where the English court orders a guarantee issuing bank to effect payment while the Chinese court prohibits the issuing bank from honouring the claim? Under what situations would the English and HK courts recognize a foreign court judgment? How to deal with the conflict of laws issue?

2. Does the fraud exception apply to bank guarantees? Are there any other grounds that may entitle a guarantee or SBLC issuing bank to reject a claim other than fraud?

**D. Fraud mitigation (advance payment guarantees / SBLCs)**

1. How to avoid abusive drawings?
2. What can an issuing bank do if it suspects that the claim far exceeds the actual damages suffered by the beneficiary?
3. What is the legal position of an assignee bank under an advance payment guarantee? Is the assignee bank entitled to payment if the underlying transaction is proved to be a sham?

**E. SBLCs**

1. How did the US courts interpret non-documentary conditions?
2. What are the legal principles that apply to a revolving SBLC with automatic renewal provisions?
3. What are the liabilities of the applicant who is not a party to the underlying transaction? Should the court purely look at the documents presented irrespective of the fact that the applicant has not defaulted under the underlying contract?

**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
- 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 Office specializing in Banking and International Trade Law and Practice
- A leading expert in Factoring and A/C Receivables Finance, Guarantees and SBLCs, Debt Recovery, Inventory Finance, Trade Dispute Resolution, Structured Trade Finance, Security Taking and Enforcement

KT and Michael have advised dozens of international and Chinese banks on guarantees and SBLCs including issuance, standard templates and bespoke prepayment structures. They have conducted over 500 workshops on URDG 758, ISP98 and UCP 600 across Asia, Europe and USA. KT and Michael have successfully lifted dozens of Chinese injunctions in past years and are currently handling a number of L/C injunctions issued by Chinese courts.

## Logistics:

<b>Date:</b>	17 October, 2015 (Saturday)
<b>Time:</b>	8:45 am – 4:45 pm
<b>Venue:</b>	Langham Place Ballroom, Level 7, 555 Shanghai Street, Mongkok, Kowloon, HK
<b>Medium:</b>	Cantonese with English Workbook
<b>Co-organizers:</b>	ICC-Hong Kong (ICC-HK) and P.E.E.R. Consultancy Ltd.(P.E.E.R.)
<b>Cancellation:</b>	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.
<b>Seat Confirmation:</b>	Seat confirmation is based <u>on receipt of payment on a first come, first served basis</u>
<b>Enquiry:</b>	Contact Ms. Kokko Ko at Tel: 2973 0060 or e-mail to: <a href="mailto:publn@icchkcbc.org">publn@icchkcbc.org</a>

## Registration fees:

- ❖ *Fee includes course, working papers, lunch and refreshments.*
- ❖ *You will enjoy early bird discount if you register and pay on or before **2 October, 2015.***
  
- ❖ **HK\$ 4,900**/person (*regular*)
- ❖ **HK\$ 4,600**/person (*“early-bird” for public*)
- ❖ **HK\$ 4,400**/person (*“early-bird” for ICC-HK members*)
- ❖ **HK\$ 13,200**/group (*“early-bird” for a group of 3 persons from the same company, HK\$4,400 for each extra registrant in the same company*)
- ❖ **HK\$ 12,600**/group (*“early-bird” for a group of 3 persons from ICC-HK members, HK\$4,200 for each extra registrant in the same company*)
- ❖ **HK\$ 39,000**/group (*“early-bird” for a group of 10 persons from the same company, HK\$3,900 for each extra registrant in the same company*)
- ❖ **HK\$ 68,000**/group (*“early-bird” for a group of 20 persons from the same company, HK\$3,400 for each extra registrant in the same company, two tables will be reserved for the group*)

## 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 analyzes 55 landmark court cases and unpublished banking cases. This book contains a total of 12 chapters including PRC L/C Law & Practice, Fraud & Injunctions and **Standby L/Cs - UCP 600 and ISP98 Compared.**

The majority of these unpublished cases involved KT himself either as a banker or a legal practitioner which cannot be found in any other source or commentary.

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**Medium :** Cantonese with English workbook  
**CPD:** 6.5 Law Society CPD granted  
**CDCS:** 6.5points granted **CSDG:** 6.5point granted

**REGISTRATION FORM**

**Please return this registration form to: Fax to: 2869 0360, OR, e-mail to [publn@icchkcbc.org](mailto:publn@icchkcbc.org) for seats reservation, enquiry: Ms Kokko Ko at Tel: 2973 0060**

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 ➤ *You will enjoy early bird discount if register and pay on or before **2 October, 2015.***

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