

CDCS and CSDG 6.5 PDU Points granted

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**Hot & New
Program**

**New Independent Guarantee Law of China
ISP98, UCP 600, URDG 758, HK & PRC Law Governed
Payment Undertakings Compared**

**A practical guide for
Bankers – Risk, Product, Legal, Compliance, Operations and Marketing
Lawyers, Financial Controllers, Compliance, Credit Control & Shipping Managers**

Background:

1. The Supreme People's Court of China promulgated a new judicial interpretation on independent guarantees on **1 December 2016** to complement the "One Belt, One Road" strategy.
2. This long-awaited document would eliminate some uncertainties about guarantees issued by banks in the PRC giving the parties **more options in structuring deals and products such as "内保外贷"**.
3. This practical workshop will highlight the key differences between a standby letter of credit ("LC") and a demand guarantee and the **different operation procedures under the International Standby Practices ("ISP98"), the Uniform Customs and Practice for Documentary Credits ("UCP 600"), the Uniform Rules for Demand Guarantees ("URDG 758"), Hong Kong and PRC law governed payment undertakings.**

Highlights:

A. ISP98, UCP 600, URDG 758, Hong Kong & PRC law governed payment undertakings compared

1. What is an independent guarantee under PRC law? Is it purely documentary in nature? How would you choose between a standby LC and a demand guarantee and conduct the Trade-based AML due diligence check on such payment instruments?
2. What are the key issues that you need to consider if the PRC party insists on adopting PRC law in its payment undertaking?
3. Can a PRC law governed independent guarantee be subject to ISP98 or URDG 758? Would such practice provide better protection to the parties?
4. A comparison between ISP98, UCP 600, URDG 758, PRC and Hong Kong law governed payment undertakings on the following issues:
 - Documents examination standards and time limits
 - Application of the "extend or pay" concept
 - Transferability of bank guarantees and standby LCs
 - Requirements and procedures for the assignment of proceeds
 - Default position if the payment instrument is silent on the governing law and jurisdiction

5. Is a guarantee or standby LC null and void automatically after expiry? Is it a must to get back the instrument in order to discharge the payment obligations of the issuer?
6. Under what circumstances may a PRC court prohibit the issuer from effecting payment even if the documents presented under a guarantee or standby LC are compliant?
7. What are the consequences if the applicant of a stop payment order fails to institute legal proceedings against the beneficiary 30 days after the issuance of the stop payment order?
8. Each participant will receive **an article by article table comparing the differences between ISP98, UCP 600 and URDG 758 AND another table showing the key differences between the Judicial Interpretation on Demand Guarantees and Commercial LCs** promulgated by the Supreme People's Court of China on 1 December 2016 and 1 January 2006 respectively.

B. Case studies

1. What is the impact of the new law on guarantee/standby LC reissuance i.e. a guarantee/standby LC issued in a foreign jurisdiction is supported by a counter guarantee/standby LC issued by a bank in the PRC? How can you mitigate the potential legal conflict and ensure that a judgment obtained in Hong Kong can be directly enforced in the PRC without re-litigation?
2. The beneficiary presented a complying presentation but the applicant alleged that the beneficiary is not entitled to lodge a claim pursuant to the underlying contract. Does this commonly raised argument constitute fraud and entitle the applicant to apply for a stop payment order?

C. HKMA guarantee management and corporate loan circulars

Although the circulars have been in place for a number of years, it appears that there are different interpretation and practices adopted by the banking industry and the regulators in obtaining foreign legal opinions. The facilitator will recap the controversial issues and proper practice and to share with you time- and cost-effective approach in obtaining foreign legal opinions.

Speaker:

Mr. King Tak FUNG (e-mail: kt.fung@shlegal.com)

- Partner of Stephenson Harwood specializing in Banking and International Trade Law and Practice
- Vice chairman and Technical Advisor to the ICC-HK Trade-based AML Sub-committee
- 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 DOCDEX panel expert
- 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)

Mr. Fung has handled a number of guarantee disputes in both China and overseas and has designed a programme in assisting various financial institutions in obtaining foreign legal opinions efficiently and effectively. Mr. Fung has conducted over 650 legal, banking and international trade workshops around the world. Over 65,000 judges, lawyers, bankers and business executives have attended his highly interactive workshops which have attracted excellent feedback.

Logistics:

- Date:** 18 March, 2017 (Saturday)
Time: 9:00 am – 5:00 pm
Venue: The Langham Hong Kong,
Ballroom, 2/F., 8 Peking Road, Tsimshatsui, Kowloon, HK
Language: **Cantonese** with English Workbook
Co-organizers: 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 organisation at no extra charge, subject to the prior consent of ICC-HK and P.E.E.R..
Seat Confirmation: Seat confirmation is based on receipt of payment on a first come, first served basis
Enquiry: Contact Ms. Kokko KO at 2973 0060 and email: publn@icchkcbc.org

Registration fees:

- ❖ *Fee includes course attendance, materials, lunch and refreshments.*
- ❖ *You will enjoy early bird discount if you register and pay on or before **8 March, 2017.***

- ◇ **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*)

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 techniques, this book addresses 99 highly controversial trade finance issues and analyses 55 landmark court cases and unpublished banking cases. This book contains a total of 12 chapters including PRC LC Law & Practice, Fraud & Injunctions and **Standby LCs – UCP 600 and ISP98 Compared.**

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

REGISTRATION FORM

New Independent Guarantee Law of China – ISP98, UCP600, URDG 758, HK & PRC Law Governed Payment Undertakings Compared

Date:	18 March, 2017 (Saturday, Cantonese session)
Time:	9:00am – 5:00pm
Venue:	The Langham Hong Kong, Ballroom, 2/F., 8 Peking Road, Tsimshatsui, Kowloon, HK
Points:	CDCS, CSDG 6.5 PDU's points granted 6.5 Law Society CPD points granted

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Enquiry:
Ms Kokko Ko at
Tel: 2973 0060

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- Registration Fee:**
- *Fee include course attendance, materials, refreshments and cocktail reception.*
 - *You will enjoy early bird discount if register and pay on or before **8 March, 2017.***

- | | |
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| ➤ HK\$4,600/person (early bird for public) | ➤ HK\$ 4,200/person (early bird for 3 participants + for ICC-HK member) |
| ➤ HK\$4,400/person (early bird for ICC-HK member) | ➤ HK\$ 3,900/person (early bird for 10 participants +) |

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