

**6.5 CDCS, CSDG PDUs Points granted;
Law Society CPD Points being applied for**

**Hot & New
Program**

The Latest Court Cases on LC Fraud & Injunction in China
- A complete rebuke of flawed arguments & malpractices
Landmark Open Account & Credit Insurance Fraud Cases
- How fraudsters manipulate loopholes

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

Background:

1. A group of fraudsters in China created a massive LC scam deceiving two banks in Hong Kong for tens of millions of US dollars. **One bank took part in the legal proceedings in China while the other sued the issuing banks for non-payments in the Hong Kong courts.**
2. This workshop will provide an insightful analysis on the practical considerations and the pros and cons of the two approaches above. **The appeal decisions of the Chinese courts completely rejected and rebuked the flawed arguments and malpractices that had existed in previous Chinese legal proceedings.**
3. One recent judgment handed down by the Supreme People's Court ("SPC") in December 2017, which overrules two lower courts' decisions, highlights **the Chinese courts' latest legal position in respect of the issuance of counter-guarantees/standby LCs in favour of overseas banks.**
4. In early 2018, two suspected fraud cases happened in China and Mauritius respectively. **The wording and built-in traps of these two totally unrelated export LCs were almost identical.** It is likely that extensive LC scams have been set up by fraudsters in different countries.
5. **A number of fraudsters have successfully identified and manipulated the loopholes of open account trade and credit insurance through the creation of phantom transactions.** It is time for the financing banks and credit insurers to prevent and mitigate the relevant risks.

Highlights:

A. Fraud & injunction cases

1. **The pros and cons of taking legal actions in China and Hong Kong:**
 - Which court has jurisdiction over the case?
 - Does the issuing bank have a presence in Hong Kong? If not, how can the writ be served and the Hong Kong judgment be enforced in China without re-litigation?
 - How can we ensure that the bank will get a fair trial in terms of discovery, cross examination of witnesses, admission of evidence and recovery of legal costs, etc.?

2. **The Chinese courts have clarified the following critical legal concepts under Chinese law:**
 - **What is negotiation** – can a bank negotiate the documents after sending them to the issuing bank?
 - **What is an LC acceptance** – does a SWIFT message issued by the issuing bank confirming the maturity date of payment constitute a valid acceptance?
 - **What is "negotiation in good faith" under Chinese law** – special references were made to buyers and sellers which are connected parties located in China, export documents which were presented from China to Hong Kong for negotiation under LCs issued by banks in China and the behaviour of the financing banks' officers in handling the account set-up and trade transactions. The ANZ case adjudicated by the SPC on "good faith negotiation" in 2009 will also be analysed and compared against in this workshop.

3. **The SPC's latest legal position on:**
 - The distinction between underlying contract disputes and fraudulent drawings under an independent guarantee.
 - Conflicts of law between the Chinese and foreign courts' decisions on counter and local guarantees issued in two different countries.
 - Application of the fraud exception and independence principles under the SPC's judicial interpretation on demand guarantees.

B. Fraudulent LC scams

- This workshop will provide a detailed analysis on the **structure of the scams, LC wording and the built-in traps of acceptance messages.**
- How can a financing bank ascertain whether the issuer is a shell bank?

C. Open account & credit insurance fraud cases

1. The seller and buyer collaborated in creating a series of fraudulent trading transactions. The general rule is that the financing bank does not get a better title than the seller if the seller has not shipped any goods to the buyer. **The Hong Kong court, however, ruled in favour of a financing bank because it took extra steps in protecting its interests.**

2. A credit insured just acted as a conduit in applying for a credit policy. It then lent its name to another company which manipulated the whole process behind the scenes. **Is the insurer obligated to honour the default claims? Can trade-based anti-money laundering ("TBAML") measures mitigate such risks?**

3. A credit insurance claim usually happens months after the delivery of the goods. **Although the insurer suspected that no goods were ever delivered, all the documents required for a credit insurance claim were presented by the insured.** How can the credit insurer verify the genuineness of the transactions and mitigate the relevant risks?

Speakers:

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

- Partner of Stephenson Harwood specialising in Banking and International Trade Law and Practice
- Vice chairman and Technical Advisor to the ICC-HK TBAML Sub-committee
- Arbitrator on Credit Insurance Disputes
- 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
- 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
- Member of the Academy of Experts on Banking and Structured Trade Finance
- 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)

Guest speakers:

Mr Jingliang SUN (e-mail: jl.sun@tzlf.net)

- Partner of TZ & Co. Law Firm specialising in International Trade, Shipping Litigation and Arbitration
- Mr Sun has successfully lifted dozens of LC injunction cases together with KT in Chinese courts in the last 10 years
- Mr Sun is the Chinese law advisor in respect of the Hong Kong legal proceedings mentioned above and has extensive experience in dealing with Chinese judges

Mr Ivan NG (e-mail: ivan.ng@shlegal.com)

- Partner of Stephenson Harwood specialising in Banking and Commercial Litigation and Arbitration
- The first LC case submitted to the Hong Kong Court of Final Appeal was handled by Ivan and KT
- Ivan was the mastermind of the Hong Kong legal proceedings mentioned above
- Ivan is highly experienced in various arbitration cases including fraudulent credit insurance claims

Most of the cases covered by this workshop were personally handled by KT, Ivan and/or Mr Sun. Accordingly, they are in the best position to share with the audience the macro strategies as well as the detailed management of the cases in both the Chinese and Hong Kong courts.

Logistics:

- Date:** 21 April, 2018 (Saturday)
Time: 9:00 am – 5:00 pm
Venue: Junior Ballroom, Level 3, Royal Plaza Hotel, 193 Prince Edward Road West, Kowloon, HK
Medium: Cantonese with an English Workbook
Organisers: ICC – Hong Kong and P.E.E.R. Consultancy Ltd.
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.
Seat reservation: Only upon receipt of payment on a first come, first served basis.
Enquiry: Contact Ms. Edith Lee at [Tel: 29730060](tel:29730060) or e-mail to: publn@icchkcbc.org

Registration fees:

- ❖ *Fee includes course attendance, working papers, lunch and refreshments.*
- ❖ *You will enjoy early bird discount if you register and pay on or before **31 March, 2018.***

- ❖ **HK\$ 5,200/person** (regular)
- ❖ **HK\$ 4,700/person** ("early-bird" for public)
- ❖ **HK\$ 4,600/person** ("early-bird" for ICC-HK members)
- ❖ **HK\$ 22,000/group** ("early-bird" for a group of 5 persons from the same company, **HK\$4,400** for each extra registrant in the same company)
- ❖ **HK\$ 21,500/group** ("early-bird" for a group of 5 persons from ICC-HK members, **HK\$4,300** for each extra registrant in the same company)
- ❖ **HK\$ 39,500/group** ("early-bird" for a group of 10 persons from the same company, **HK\$3,950** 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**. 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.