

Bills of exchange in a letter of credit

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Application of bills of exchange in documentary credits (letters of credit, LC) has been confronting with many disputes given different opinions and interpretations of bills of exchange ordinance under various legal jurisdictions, which has resulted in a controversy to abolish bills of exchange in LC transactions. To combine functions and legal aspects of bills of exchange into the practice of documentary credits, this article emphasizes the importance of bills of exchange in LC practice, articulates the functions of bills of exchange in the procedure of LC business from the perspectives of qualified payment prompter as well as the verification of payment amount and the determination of maturity date & payee, and concludes that bills of exchange plays a critical settlement role by means of prompt payment in documentary credits. As suggested by the Opinions of International Chamber of Commerce (ICC) Banking Committee and the practice of blank bills of exchange this article explains further the right to examine the bills of exchange and to dishonor discrepant bills of exchange by an issuing bank or a confirming bank or a nominated bank, however, the beneficiary has the right to correct or alter discrepant bills of exchange due to the payment undertaking by the issuing bank or the confirming bank. Since bills of exchange is a financial instrument instead of a commercial document, this correction or alteration by the beneficiary to the bills of exchange should not be subject to the limitations by presentation period and expiry date stipulated by the terms and conditions in the documentary credits. This essay suggests conclusively that the Paragraph B14 for amounts and Paragraph B16 for correction and alteration in ISBP745 should be revised to provide consistent examination standards to solve the problems of conflicting opinions of the bills of exchange under various jurisdictions.

Keywords: documentary credits, bills of exchange, issuing bank, beneficiary, document, prompt payment, examination standards.

1. Introduction

Bills of exchange (“draft”) under laws in UK, USA, France, Germany, China, etc., is a written order issued by one person (the drawer) to another (the drawee) to unconditionally pay at sight or on a specified date which can be determined, a certain amount to the payee or the holder. The bills of exchange representing the right to pay, is a financial instrument with a specific format and contents required by the bills of exchange laws. Usage of bills of exchange is gradually acceptable by the market and also is beneficial to the development of commodity sector, which is an important instrument for settlement of creditor-debtor relationship. Its settlement, credit (Zhao 1995, 22) and negotiable functions (Wang 2003, 3) help us to save our transactional cost, and improve trade efficiency.

2. Basic research

2.1. Disputes over the use of bills of exchange in documentary credits

Stipulated by the Art. 6 (b) of the “Uniform Customs and Practice for Documentary Credits” (International Chamber of Commerce Publication no. 600) (hereinafter — UCP600) there are four types of documentary credits (letters of credit, LC, or LCs) which are sight payment, deferred payment, acceptance or negotiation¹. Although only an acceptance LC requires a draft², the use of bills of exchange in sight payment LC and negotiation LC is also very common.

When LC requires bills of exchange, there are two types of legal relationships among the issuing bank, the nominated bank and the beneficiary under the LC and the bills of exchange, which are not completely the same. The judicial practices in the LC transactions and the bills of exchange operations are different. The examination standards for the bills of exchange by international standard banking practice (hereinafter — ISBP745)³ in LC operations such as amounts & corrections are not consistent with relevant provisions of the laws for the bills of exchange, particularly on the regulated format and the contents under various legal jurisdictions. Those differences are originated from two significant disputes under the use of bills of exchange in LC transactions, which led to some bankers and practitioners suggested to cancel the use of bills of exchange under LC.

2.1.1. Applicable law

For disputes among the issuing bank, the nominated bank and the beneficiary in LCs due to fraud, whether the court should apply the LC law or the law of bills of exchange is questionable. The Art. 4 (a) and Art. 5 of UCP600 respectively specify that LCs are separated from the sales contract on which it may be based⁴, and banks only deal with documents and not with goods, services or performance to which the documents may relate⁵. When frauds occur due to documentary fraud or underlying collective fraud, by appealing to the court, judicial decision may relieve the LC applicant or the issuing bank who could make use of the rule for Fraud Exception to suspend the payment to a nominated/negotiating bank or the beneficiary when complying documents are presented, even though with the rule of Exemption for Fraud Exception the issuing bank still need to pay a holder in due course who has no knowledge of the underlying fraud claimed.

¹ Article 6: “b.信用证必须规定其是以即期付款、延期付款、承兑还是议付的方式兑用” (中国国际商会. ICC跟单信用证统一惯例 (UCP600). 北京: 中国民主法制出版社2006年版, 第11页. [China International Chamber of Commerce. 2006. *UCP 600 ICC Uniform Customs and Practice for Documentary Credits*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 11.]).

² Ibid. Art. 2, p. 5.

³ 中国国际商会/国际商会中国国家委员会组织翻译. 关于审核UCP600下单据的国际标准银行实务 (ISBP). 北京: 中国民主法制出版社2013年版, 第3页. [China International Chamber of Commerce Organization Translation. 2013. *International Standard Banking Practice (ISBP) on auditing documents under UCP600*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 3.]

⁴ 中国国际商会. ICC跟单信用证统一惯例 (UCP600). 北京: 中国民主法制出版社2006年版, 第9页. [China International Chamber of Commerce. 2006. *UCP 600 ICC Uniform Customs and Practice for Documentary Credits*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 9.]

⁵ Ibid. Art. 5, p. 11.

To the contrary of LC obligations under UCP600, the bills of exchange have a definite non-causal nature which means the issuance, endorsement, presentation, acceptance, payment, guarantee, etc., are separated with each other. The laws and judicial practice for bills of exchange have clear requirements which can clarify easily the rights and obligations of a holder in due course and a holder for value. For example, when a holder in due course is established, this holder is not obliged to provide evidence of the actual basis to claim for the payment of the bills of exchange. Other parties who assume the debt to be defended against a holder in due course are not allowed on a basis of underlying cause. This is an important legal concept and a basic principle which is widely acceptable under bills of exchange laws in China and foreign countries. Some arguments may arise as to the disputes of absoluteness and relativity over non-causal nature of bills of exchange, there is no doubt that insisting on a non-causal nature could ultimately play a pivotal role for the realization of negotiable function of the bills of exchange, and legal interests among the parties under the bills of exchange could be effectively protected.

The protection for a holder in due course, by applying the laws for bills of exchange for the non-causal nature prevails over independence principle in LCs under UCP600. Other disputes arising from bills of exchange in a LC transaction, the court also very likely to apply the relevant bills of exchange ordinance instead of LC regulations and law, which could occur uncertainties to the issuing bank, the nominated bank as well as the beneficiary. For in *Maran Road v. Austin Taylor* (1975) 1. Lloyd's Rep. 156, Judge Ackner believed that there was no disagreement with a negotiation relationship of bills of exchange, but there was disagreement with the relationship between acceptance and payment. This bill was accepted and paid in the United Kingdom, so the Judge concluded that its applicable law should be English law (Jin, Jian 2004, 116–117).

2.1.2. Examination standards for bills of exchange under LCs

Banks shall examine bills of exchange issued by the beneficiary in accordance with the terms and conditions of a LC, relevant provisions of UCP600 and international standard banking practice to confirm its compliance⁶. Paragraph B of ISBP745 specifies examination standards for bills of exchange, which are not completely consistent with relevant regulations of bills of exchange laws in various legal jurisdictions. It has caused some confusions in the examination of the bills of exchange under LCs.

As a financial instrument with a specific format and contents, it requires strictly by law, the nature of bills of exchange such as issuance, endorsement, acceptance, guarantee, etc., must be carried out in a statutory manner, and contents on the draft are clearly stipulated by the relevant bills of exchange ordinance, which are not allowed unilaterally alter or change by the parties under bills of exchange. For example, as the research by a Chinese scholar (Wang 2003, 50), with respect to the amount of a bill of exchange, the “Geneva Uniform Bill of Exchange Law” stipulates that the amount of a draft shall be expressed in both figures and words. If there is a discrepancy, the amount in words shall prevail. In Australian, the earlier bill law stipulated that when the uppercase amount on the bill was inconsistent with the lowercase amount, the uppercase would prevail, while the revised

⁶ 中国国际商会. ICC跟单信用证统一惯例 (UCP600). 北京:中国民主法制出版社2006年版, 第3页。[China International Chamber of Commerce. 2006. *UCP 600 ICC Uniform Customs and Practice for Documentary Credits*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 3.]

bill law enforced in 1986 that when the amount in words was inconsistent with the figures, the smallest or smaller amount shall prevail. The US law stipulates three basic principles for bills of exchange amount inconsistency, firstly, the written words shall prevail, secondly, when the amount in written words is ambiguous or there is an ambiguity in recognition, and the amount in figures is clearly distinguishable, the amount in figures shall be used, thirdly, there are handwriting, typewriting and printing to indicate the amount, when these three methods co-exist and contradictory to each other, the handwriting effect is the first priority, the typewriting is the second, and the printing is the last. The “Negotiable Instruments Law” in China clearly stipulates that in the case of inconsistencies between the amounts indicated in words and figures, the bills of exchange has no legal effect.

However, the Para. B14 of ISBP745 stipulates: “The amount in words is to accurately reflect the amount in figures when both are shown, and indicate the currency as stated in the credit. When the amount in words and figures are in conflict, the amount in words is to be examined as the amount demanded”⁷, which is obviously in contradiction with relevant provisions of the bill laws mentioned above. With respect to the correction of the draft, the Para. B16 of ISBP745 stipulates: “Any correction of data on a draft is to appear to have been authenticated with the addition of the signature or initials of the beneficiary”⁸, while the bills of exchange law in China stipulates that the bills of exchange is legally invalid when the changes are made to data and contents of the draft, such as the amount, date, and name of the payee.

Regarding the amount, the tenor of the payment and the name of the drawee, some judicial precedent LC cases also reflected the disputes over the examination standards for bills of exchange and for shipping documents such as commercial invoices, bills of lading and insurance documents. Some judges also concluded that the draft is not the document required by the LC⁹.

⁷ 中国国际商会/国际商会中国国家委员会组织翻译. 关于审核UCP600下单据的国际标准银行实务 (ISBP). 北京: 中国民主法制出版社2013年版, 第25页。[China International Chamber of Commerce Organization Translation. 2013. *International Standard Banking Practice (ISBP) on auditing documents under UCP600*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 25.]

⁸ ISBP745 B16: “汇票上记载内容的任何更正, 须看似已由受益人加注签字或小签予以正式” (中国国际贸易商会. ICC跟单信用证统一惯例 (UCP600). 北京: 中国民主法制出版社2006年版, 第25页。[China International Chamber of Commerce. 2006. *UCP 600 ICC Uniform Customs and Practice for Documentary Credits*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 25.]

⁹ The appellant (the original defendant) a Calyon Bank Sana Branch and the appellee Sichuan Import and Export Co., Ltd, Letter of Credit Dispute, Manuscript (2007) Shanghai Civil Four (Commerce) Final No. 41, in the case of “the appellant (the original defendant) the Calyon Bank Sana Branch and the appellee Sichuan Import and Export Co., Ltd, Letter of Credit Dispute”, in the second instance court pointed out that in the judgment, because the bill of exchange is not a document required by the LC in dispute for the submission of shipping documents, so this does not constitute a discrepancy. See: 上诉人 (原审被告) 东方汇理银行萨那分行与被上诉人四川川投进出口有限公司信用证纠纷案, (2007) 沪高民四 (商) 终字第41号. Accessed December 13, 2022. [https://www.pkulaw.com/pfn/a25051f3312b07f3b2378ae6a7d87c8fa73bdc572cc6c411bdfb.html?keyword=\(2007\)沪高民四\(商\)终字第41号&way=listView anchor-documentno](https://www.pkulaw.com/pfn/a25051f3312b07f3b2378ae6a7d87c8fa73bdc572cc6c411bdfb.html?keyword=(2007)沪高民四(商)终字第41号&way=listView anchor-documentno).

The appellant bank of South Korea’s Small and Medium-sized Enterprises Co., Ltd with the appellee Qingdao Huatian Vehicle Co., Ltd (hereinafter referred to as Huatian Company), the original defendant bank of South Korea’s Small and Medium-sized Enterprise Co., Ltd, Tianjin branch (hereinafter referred to as “Tianjin branch”) the LC, Shandong Province High People’s Court of the People’s Republic of China Civil Judgment (2005) Lu Civil Four No. 71, Shandong Qingdao Intermediate People’s Court Preliminary Four No. 75 (2005) Qin Civil Judgment, in this case, the first-instance court concluded that draft documents and requirements in conformity with LC is different. The court of second instance pointed out in the judgment that the draft is not

2.2. The practice of bills of exchange in LCs

In LC transactions of sight payment and negotiation, the issuing bank will examine the documents within the time limit specified by UCP600 and make timely payment for complying presentation, the issuing bank will keep the bills of exchange without presenting it to the LC applicant along with other documents as required by the LC issuing bank. For usance LCs under acceptance and negotiation, the issuing bank examines the documents within five banking days¹⁰ after receiving the documents tendered by the beneficiary, and accepts timely the relevant bills of exchange issued by the beneficiary. If the documents meet the terms and conditions of the LC, the issuing bank will keep bills of exchange accepted in its file and deliver stipulated documents to the LC applicant on time, LC applicant can take delivery of goods without delay to avoid any demurrage charges. Acceptance is an institutional arrangement for bills of exchange, which is essential with specific legal aspects. Such legal aspects under legitimate considerations provide legal framework for various parties to be followed under bills of exchange (Sun 2004, 191). Under bills of exchange laws, such kind of acceptance should be made in a written format which requires an acceptor to indicate the word of 'acceptance', the date of acceptance with the signature on the bills of exchange. In LC practice, the issuing bank would not accept a bill of exchange through such written format, instead just send a SWIFT message by MT799 format to a nominated bank or the presenting bank to accept the bills of exchange, which is recognized and supported by the opinions of the Banking Committee of the International Chamber of Commerce and judicial precedents¹¹. The issuing bank would neither give the bills of exchange to the LC applicant, nor return it to the beneficiary, this bills of exchange accepted by the issuing bank will only be kept by the LC issuing bank.

the document required under the letter of credit. The draft is the document presented by the beneficiary to the bank for payment, and is the settlement voucher for the beneficiary to receive the payment under the letter of credit from the paying bank. See: 上诉人韩国中小企业银行因与被上诉人青岛华天车辆有限公司（以下简称华天公司）、原审被告韩国中小企业银行有限公司天津分行（以下简称天津分行）信用证纠纷案，中华人民共和国山东省高级人民法院民事判决书(2005)鲁民四终字第71号，山东省青岛市中级人民法院(2005)青民四初字第75号民事判决书。 Accessed December 13, 2022. [https://www.pkulaw.com/pfnl/a25051f3312b07f325fae79cd812589793e7738bceac2b68bdfb.html?keyword=\(2005\)鲁民四终字第71号&way=listView#anchor-documentno](https://www.pkulaw.com/pfnl/a25051f3312b07f325fae79cd812589793e7738bceac2b68bdfb.html?keyword=(2005)鲁民四终字第71号&way=listView#anchor-documentno).

¹⁰ 中国国际商会. ICC跟单信用证统一惯例 (UCP600). 北京:中国民主法制出版社2006年版, 第27页。 [China International Chamber of Commerce. 2006. *UCP 600 ICC Uniform Customs and Practice for Documentary Credits*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 27.]

¹¹ Central Committee of Agricultural Cooperation Group of Korea sued Ermei Mountain Sichuan Import and Export Corporation, Agricultural bank of China Chengdu Branch, Letter of Credit Dispute and the original trial defendant, Xinhua Trading Company, (civil judgment by the Supreme People's Court (2001) No. 28), in which the court ruled that it should confirm that the SWIFT message sent by Agricultural Bank of Sichuan accepted three bills of exchange under Letters of Credit No. 210 and 212. See: 韩国农业协同组合中央会诉四川峨眉山进出口公司、中国农业银行成都市总府支行信用证纠纷案及原审被告新湖商社国际货物买卖信用证付款纠纷案，最高人民法院民事判决书(2001)民四终字第28号。 Accessed December 13, 2022. [https://www.pkulaw.com/pfnl/a25051f3312b07f345c34b4982faaa5a176e8ef64bf42439bdfb.html?keyword=\(2001\)民四终字第28号&way=listView#anchor-documentno](https://www.pkulaw.com/pfnl/a25051f3312b07f345c34b4982faaa5a176e8ef64bf42439bdfb.html?keyword=(2001)民四终字第28号&way=listView#anchor-documentno); Kobe Sub-branch of Bank of East Sea in Japan v. Letter of Credit dispute of Agricultural Bank of China Nanjing Branch (Nanjing Intermediate People's Court (1999) No. 106), in this case the court held that the message via SWIFT by Agricultural Bank of China Nanjing branch on February 10, 98 to Bank of East Sea shall be understood as a draft of acceptance submitted by the plaintiff. See: 日本东海银行神户支店诉中国农业银行南京市分行信用证付款纠纷案，南京市中级人民法院(1999)宁经初字第106号。 Accessed December 13, 2022. [https://www.pkulaw.com/pfnl/a25051f3312b07f3d2df6ebdfec9aee7dc85df7bcc324740bdfb.html?keyword=\(1999\)宁经初字第106号&way=listView#anchor-documentno](https://www.pkulaw.com/pfnl/a25051f3312b07f3d2df6ebdfec9aee7dc85df7bcc324740bdfb.html?keyword=(1999)宁经初字第106号&way=listView#anchor-documentno).

2.3. *The function of bills of exchange in LCs*

The practice of the bills of exchange in documentary credit transactions shows that the draft presented by the beneficiary which performs mainly the function of the settlement for payment, it is not the same as the bills of exchange in legal sense. According to the official comments on Art. 5–102 of “Uniform Commercial Code” (hereinafter — UCC) (Wang 1998, 12) in the United States, the bills of exchange regulated in Art. 5-102 is different from the bills of exchange stipulated in Art. 3, because documentary bills of exchange in Art. 5–102 is not negotiable and cannot be treated as bills of exchange in Art. 3. Such comment is open to debate. Although the bills of exchange in LC transactions only reflects the settlement function for payment, it is by nature the same bills of exchange as which governed by the bills of exchange laws in various countries, and it plays an important role of prompt payment in the LC mechanism.

2.3.1. *The Importance of prompt payment in LC transactions*

There are three characteristics in honoring LC payment: 1) the undertaking is made by the issuing bank or confirming bank; 2) the payment amount is the amount stipulated by the LC; 3) not to consider the contractual relationship with the LC applicant whilst the issuing bank or confirming bank fulfills the payment obligation as primary undertaking/commitment. Prompt payment is very essential and important in honoring the LC under UCP600.

The holder of the draft must make appropriate prompt payment, otherwise the holder will lose the right of recourse against the drawer, endorser, etc. As the research by a Chinese scholar prompt payment must be made in order to make any endorser liable, and is crucial to make any drawer, acceptor of bills of exchange paid by a bank, otherwise related corresponding responsibility can be relieved. Prompt payment is a necessary institutional requirement for bills of exchange, the drawer and endorser shall not bear any responsibility if prompt payment is not formally made (Xu 1992, 128). The bills of exchange law in China also makes it clear the provisions on the time limit and route of prompt payment for sight and usance drafts. As such, the use of bills of exchange as the carrier of prompt payment is beneficial to relevant parties under LC practice.

Upon receipt of a prompt payment, the issuing bank or confirming bank shall determine within five banking days whether the presentation is consistent with the terms and conditions of the LC. If the bills of exchange and documents are discrepant, the issuing bank or confirming bank should give promptly a separate notice of refusal as required by UCP600¹². When the bills of exchange and documents are complying documents being presented with proper payment instructions by the beneficiary or the nominated bank, the issuing bank or confirming bank should honor in time, or accept or confirm the payment within reasonable time and make payment on a specified maturity date.

¹² 中国国际商会. ICC跟单信用证统一惯例 (UCP600). 北京:中国民主法制出版社2006年版, 第35页。[China International Chamber of Commerce. 2006. *UCP 600 ICC Uniform Customs and Practice for Documentary Credits*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 35.]

2.3.2. The payment prompter in LC transactions

The nominated bank usually delivers bills of exchange along with commercial documents such as invoices, bills of lading, and insurance documents, etc. as required by the LC terms to the issuing bank or confirming bank by courier in order to get payment. The prompter in LC transactions, is generally the nominated bank under the following two circumstances.

2.3.3. Collect payment entrusted by the beneficiary

When the beneficiary endorses the bills of exchange to a nominated bank, which is not to transfer the rights under the bills of exchange, but to enable the endorser, i. e., the nominated bank, to exercise on behalf of the beneficiary who entrusted the rights under the bills of exchange to collect payment from the issuing bank or confirming bank. In civil law this relationship being established by the endorsement is an agent of relationship between the beneficiary and the nominated bank. As an entrusted party, the nominated bank can: 1) exercise all its rights under the bills of exchange, i. e., the right to request payment and recourse; 2) be a qualified endorser under the bills of exchange to the third party for the purpose of collecting payment in the interest of the beneficiary even when the endorsement for other benefit is not allowed. With the endorsement for payment collection, the beneficiary is an actual payee, i. e., a creditor of the bills of exchange. Their rights under the bills of exchange are not transferred to a nominated bank except for collecting agent. When the debtor raises their defense under the bills of exchange, it is against directly the beneficiary when the nominated bank exercises its rights for payment.

2.3.4. Collect payment by a nominated bank

Under authorization by the issuing bank, the beneficiary should endorse the bills of exchange to confer their rights to the nominated bank when the nominated bank is intended to pay or negotiate the complying documents presented under the LC. Under such circumstance, the nominated bank is the actual payee who is also the creditor of the bills of exchange, and has the same rights as the beneficiary.

2.3.5. Effectiveness of prompt payment under LC

When LC nominated bank makes prompt payment under the bills of exchange, there are three characteristics as manifested following.

2.3.6. Verification of payment amount

In LC practice, the LC amount as evidenced from the documents by LC requirements, the actual amount being claimed by the beneficiary are not always consistent given advance payment, partial drawings or shipments, instalment payments and tolerance in the LC amount. With prompt payment under the bills of exchange, the issuing bank or confirming bank can clearly determine the payment amount of the complying presentation.

2.3.7. Determination of maturity date

The Para. B of ISBP745 clarifies how to determine various maturity dates arise from the bills of exchange¹³. As a carrier of prompt payment, the bills of exchange are more helpful for the issuing bank or the confirming bank to determine clearly a maturity date for payment under different scenarios.

2.3.7.1. After shipping date

For instance, when LC is available for 90 days after date of shipment under bills of exchange, the maturity date for the payment can be determined as following:

— in the case of the cargo being unloaded from the vessel A to B at the place of transshipment, the date of shipment at the place of loading rather than the place of transshipment shown on the transport document shall be used to determine the maturity date of the bills of exchange;

— when partial shipments are allowed and the goods are loaded on the same vessel at different ports of shipment, the transport document will indicate more than one onboard date, the latest onboard date shall be regarded as a basis for determining the maturity date of the bills of exchange;

— when partial shipments are allowed and the goods are loaded on different vessels at various ports whilst more than one set of transport documents are issued, the latest shipment date will be treated as a basis to determine the maturity date.

2.3.7.2. After sight payment

If LC is available for 90 days after sight and called for bills of exchange, when discrepant documents are presented by the beneficiary, there are three scenarios to determine the maturity date of after sight payment:

— the date of receipt of the documents by the issuing bank, provided no refusal notice under UCP600 Art. 16 being sent by the issuing bank;

— when the issuing bank exercises its right to send out refusal notice under UCP600 Art. 16, the date of acceptance by the issuing bank after the waiver from the LC applicant;

— when the confirming bank as nominated by the LC has sent out the refusal notice timely to the issuing bank, the date of acceptance by the issuing bank will be applied for determination of the maturity date.

2.3.8. Determination of payee

By checking the endorsement on bills of exchange, the issuing bank can determine an actual payee under LC transaction, the established contractual relationship and the risks involved. After endorsement to the nominated bank for collection of payment the beneficiary borne the risk of the issuing bank as an agent under established contractual relationship. Upon payment or negotiation by the nominated bank, the beneficiary endorses the bills of

¹³ 中国国际商会/国际商会中国国家委员会组织翻译. 关于审核UCP600下单据的国际标准银行实务(ISBP). 北京: 中国民主法制出版社2013年版, 第21-23页。[China International Chamber of Commerce Organization Translation. 2013. *International Standard Banking Practice (ISBP) on auditing documents under UCP600*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 21-23.]

exchange to transfer the right to the nominated bank as payee. Under UCP600 Art. 12, both LC issuing bank and nominated bank will take up its owned risk by agreeing this nomination.

2.4. Recommendations for handling of bills of exchange in LC

2.4.1. The issuing bank's right to dishonor discrepant bills of exchange

When LC calls for bills of exchange as the negotiable instrument, conferred by its definition under unconditional payment order with definite amount, date of payment, etc., it is suggested not only be complying with the applicable laws for bills of exchange in different jurisdictions, but also consistently meets the requirements of the LC. Under UCP600 and international standard banking practice (ISBP) the issuing bank has the right to refuse the bills of exchange which are discrepant.

In the Opinion R698 of the Banking Committee of the International Chamber of Commerce¹⁴, when the LC required the beneficiary to deliver documents including commercial invoices, ocean bills of lading, certificates of origin, certificates of sample analysis and certificates of quantity inspection, and the LC clearly stipulated in additional conditions “All documents must contain contract No. and LC No.” The issuing bank has the right to dishonor discrepant bills of exchange which did not indicate contract No. upon examination of documents being presented by the beneficiary.

Even when the nominated bank retorted that ‘the bill of exchange at sight issued by the beneficiary to the issuing bank as a payer’ is a negotiable financial instrument, which should not be included in the documents required by the heading of the “Document Requirements” in the LC. The conclusion by the Banking Committee in this Opinion is that the absence of this contract No. on this bill of exchange cannot be a reason for refusal without justifying clearly why this draft was a complying presentation, which was also far-fetching.

When LC called for “Shipping Documents”, it can be understood as “all documents except bills of exchange”¹⁵. However, when ‘all documents’ required by the LC, obviously it included the bill of exchange notwithstanding such requirements was not stating in the heading of “Document Requirements” under LC format. When the beneficiary accepts a LC and performs its shipment obligation and delivers documents to the issuing bank or the nominated bank as required by the LC, it is a binding commitment between the issuing bank and the beneficiary. The contents on face of bills of exchange must not only comply with the bills law, but also to meet all the LC requirements.

2.4.2. The issuing bank and confirming bank's undertaking to bills of exchange

A draft paid by the issuing bank is a financial instrument which neither be handed over to the LC applicant nor to any other third party. Perhaps, missing some data or contents on the bills of exchange as required by the bills law or the LC is commercially not ideal even when beneficiary is acted in good faith. Unlike fraudulent bill, alteration or

¹⁴ Opinion R698: (Collyer, Katz 2009, 156–157).

¹⁵ 中国国际商会/国际商会中国国家委员会组织翻译. 关于审核UCP600下单据的国际标准银行实务(ISBP). 北京: 中国民主法制出版社2013年版, 第13页. [China International Chamber of Commerce Organization Translation. 2013. *International Standard Banking Practice (ISBP) on auditing documents under UCP600*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ., p. 13.]

mutilations, similar to the practice of blank bills of exchange which are gradually recognized by the bills law in Germany, UK, USA, and China with the same legal effectiveness due to its economic rationality and efficiency, the beneficiary has the right to amend the bills of exchange to make out new bills of exchange at the counter of LC issuing bank or confirming bank.

Under LC transactions, bills of exchange issued by the beneficiary is merely a payment order to the issuing bank or the confirming bank, also a carrier of prompt payment after endorsement which also reflects the settlement function. Without subject to the LC expiry date and presentation period the beneficiary's timely authorization to make up new bills of exchange, to replace the discrepant one at the counter of LC issuing bank or confirming bank should be acceptable, and the LC commitment from the issuing bank or the confirmation bank remains intact.

2.4.3. Suggestions for ISBP745 revision

Bills of exchange required by the issuing bank is a financial instrument that is different from commercial documents such as commercial invoices, marine ocean bills of lading, insurance policies, certificates of origin and certificates of quality, etc., its contents may not only meet the LC requirements and the relevant articles of UCP600 as well as ISBP, but also should consistent with the applicable laws for bills of exchange. The Para. B14 for the amount and the Para. B16 for the correction in ISBP745 should be revised to comply with relevant laws and regulations for bills of exchange under various jurisdictions to avoid further ambiguities in handling bills of exchange under LC operations.

3. Conclusions

Bills of exchange that is a financial document plays a key role of payment prompter in LC transactions, which is beneficial for the paying bank to verify the amount of payment, to calculate the maturity dates, and to determine the payee. It is acceptable that the issuing bank requires the beneficiary to tender the bills of exchange together with commercial documents such as invoices, bills of lading, inspection certificate, etc.

The issuing bank undertakes to make payment to the beneficiary against complying presentation and has the right to decline discrepant bills of exchange, however, the beneficiary's right to correct or alter discrepant bills of exchange should not be subject to the presentation period and expiry date stipulated by the LC. Meantime, it is necessary to revise Para. B14 & Para. B16 in ISBP745 in order to solve technical problems in the examination of bills of exchange in LC business.

References

- Collyer, Gary, Ron Katz. 2009. *Collection of Opinions 2005–2008 of Banking Committee of International Chamber of Commerce (ICC Publication No. 697)*. Beijing, Zhong guo min zhu fa zhi chu ban she Publ. (In Chinese)
- Jin, Saibo, Li Jian. 2004. *Letter of Credit Law*. Beijing, Fa lv chu ban she Publ. (In Chinese)
- Sun, Yingzheng. 2004. *Theoretical and empirical analysis of Negotiable Instrument Law*. Beijing, Ren min fa

- yuan chu ban she Publ. (In Chinese)
- Wang, Jingyu. 1998. *United States Uniform Commercial Code (Letter of Credit Chapter)*. Beijing, Zhong guo fa zhi chu ban she Publ. (In Chinese)
- Wang, Shihu. 2003. *Comparative study on the legal system of negotiable instruments*. Beijing, Fa lv chu ban she Publ. (In Chinese)
- Xu, Rongxing. 1992. *Bills practice and law*. Kyoto, Nan jing, Nan jing da xue chu ban she Publ. (In Chinese)
- Zhao, Xinhua. 1995. *Negotiable instruments law*. Chang chun, Ji lin ren min chu ban she Publ. (In Chinese)

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