

The Law of Letters of Credit in China

**Commentary and Materials
on the Chinese Supreme People's
Court's Judicial Interpretations
of Letters of Credit**



By Jin Saibo

**THE LAW OF LETTERS OF CREDIT
IN CHINA**

**COMMENTARY AND MATERIALS
ON THE CHINESE SUPREME PEOPLE'S COURT'S
JUDICIAL INTERPRETATIONS OF LETTERS OF CREDIT**

By Jin Saibo

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FOREWORD

Letters of Credit (LCs) are an important means of financing in international trade, and the international customs, practices and relevant laws governing them hold an important position in modern commercial law. Over the past 100 years, case law and statutes on LCs have seen great development through the wisdom and efforts of the legal and banking circles of many countries. The International Chamber of Commerce (ICC) and its national committees, drawing on the latest banking techniques and developments in international trade, work to periodically revise and update the *Uniform Customs and Practice for Documentary Credits* (UCP), making the UCP a crystallization of the significant efforts of global trade and financial circles. These commendable efforts have played an indispensable role in the flourishing of global trade, especially in the development of international standard banking practices and laws. The achievements of ICC and its national committees in developing and promoting international rules of trade and finance despite the shrinking volume of international trade following the global financial crisis are significant and have attracted the attention of the World Trade Organization (WTO). This underlies the recent cooperation between the WTO and ICC in the development of trade and trade finance. Confronted with the financial crisis, the Basel Committee on Banking Supervision has also called for stronger ties with ICC to be better informed in its formulation of relevant rules and to strike a better balance between its missions of improving banking supervision and promoting global trade.

LC business is mainly subject to the UCP published by ICC. Although the *Uniform Commercial Code* (UCC) of the United States has an article on the use of LCs that is very influential, national laws relating to LCs are rarely employed globally. In its efforts to develop international trade and banking cooperation and align itself with international standard banking practices, especially the legalization of LCs, China has followed a specific path of development. Even though China has not yet enacted any LC law by the People's Congress, over the past 20 years, the Supreme People's Court has promulgated a series of judicial interpretations, provisions, and meeting minutes which combine to form the legal authority on LCs in China. In this regard, the judges of the Supreme People's Court, Fourth Civil Division, which hears numerous foreign-related civil and commercial cases, have contributed their wisdom and efforts to the drafting and revision of Chinese LC Rules: *The Provisions on Several Issues Concerning the Trial of Disputes over Letters of Credit* (the *LC Judicial Interpretations*). These rules summarize the judges' experience in foreign-related cases involving LC disputes since China's reform and opening-up in 1978 and successfully integrate international customs into China's legal system, providing a legal basis for LC business in China.

Dr Jin Saibo, the author of this book, and I co-authored *The Laws of Letters of Credit* (Law Press, 2004) which, with up to 1,500 pages, took us a total of eight years to finish. The cases and materials that Dr Jin compiled after the publication of the book was also an important source of reference for the *LC Judicial Interpretations* of the Supreme People's Court. The diligence and dedication with which Dr Jin collects materials for academic research and writes papers and books on letters of credit, demand guarantees and financial laws not only deeply impresses me but also wins the admiration and appreciation in the financial and legal circles. For these reasons, he has been invited by the Supreme People's Court on many occasions to provide his professional opinions in the drafting and revision of the *LC Judicial Interpretations*. It is my pleasure and honour to see that *The Laws of Letters of Credit*, as well as other mass materials collected by Dr Jin Saibo have been considered by the Supreme People's Court in the drafting of the *LC Judicial Interpretations*.

The present work, with its detailed comments, is a great help for understanding and applying the *LC Judicial Interpretations*. The in-depth explanations and critical analyses it provides from the unique perspective of a legal practitioner and scholar on the law and practice of LC I think, will not only be of particular value to trade and banking professionals but also provide an excellent reference to legal practitioners on how to understand and apply the *Judicial Interpretations*.

I am pleased to write the foreword for this book.

Li Jian*

General Counsel of the Export-Import Bank of China

April 16, 2012

*Li Jian, 1980-1984 Peking University, Law School (LLB), 1984-2001 The Economic Division (the Second Division) of the Supreme People's Court, 1988-1989 NYU School of Law (the Visiting Scholar), 1995-1998 Peking University, Law School (Master of Economic Law), 2001-2002 the University of Arizona (LLM), 2002-2005 the University of Toronto (SJD Candidate), 2006-2008 Commerce & Finance Law Offices (Partner), 2008 to now, the Export-Import Bank of China (the General Counsel). During his work in the Supreme People's Court, he has ever acted as the Deputy Chief Judge of the Division and presided over the Session of the cases with foreign elements. He was one of the earliest drafters of the *LC Judicial Interpretations*, and had led the drafting groups to draft several judicial interpretations and formal documents pertaining to Letters of Credit.

AUTHOR'S PREFACE

On October 24, 2005, *The Provisions of the Supreme People's Court on Several Issues Concerning the Trial of Cases of Disputes over Letters of Credit* (the *LC Judicial Interpretations*) were finally adopted at the 1368th Meeting of the Adjudicatory Committee of the Supreme People's Court. It represents the eight years of effort by four successive judges since 1997, during which drafts of the *LC Judicial Interpretations* went through several amendments. The *LC Judicial Interpretations* were published on December 9, 2005 and became effective on January 1, 2006. Throughout the drafting, I participated in discussions on the modification of several official drafts, and I was officially invited twice as one of the experts by the Supreme People's Court to provide oral and written opinions on certain drafts. I was also officially invited to make a presentation on letters of credit in a training programme organized by the Supreme People's Court and sponsored by the United Nations Development Programme (UNDP) for judges from more than one hundred Chinese courts with jurisdiction over foreign-related cases. I have also given lectures on case analysis of LCs at the invitation of the high courts of Beijing, Shanghai, Tianjin, Zhejiang, Fujian, Guangdong and Inner Mongolia respectively. Over the last eight years, in order to better assist the drafting and amending of the *LC Judicial Interpretations*, I provided all the materials I collected, including case reports of foreign countries and Chinese courts, books, papers and various publications in relation to LCs published by ICC and the IIBLP in English or in Chinese to several judges of the Supreme People's Court in charge of the drafting and amending, and almost all judges (at that time) of the Fourth Civil Division of the Supreme People's Court. All these efforts have been rewarded with heartfelt appreciation from judges of the Fourth Civil Division of the Supreme People's Court. In my professional practice, I found that banks, legal professionals and the judges adjudicating LC cases felt doubtful about the meaning and applicability of the *LC Judicial Interpretations*. So, I believe it is worthwhile for me to comment on the *LC Judicial Interpretations* by referring to various drafts as well as arguments and opinions put forward during the drafting. I hope the comments will be of some help for law professionals and bankers in understanding and applying the *LC Judicial Interpretations*.

I would like to further point out that, based on the judgments and rulings delivered by Chinese courts in recent years, especially during the financial crisis between 2008 and 2010, the *LC Judicial Interpretations* have stood the test and have proved to be sufficient and effective since their implementation. Chinese courts are fully capable of making correct, reasonable, and sound judgments over LC cases on the basis of international practices and the *LC Judicial Interpretations*.

Though I started to work on this book in 2006 when the *LC Judicial Interpretations* first took effect, I continued collecting materials until October 20, 2011, including relevant reports published by the Supreme People's Court and judgments delivered by Chinese courts. The comments in this book are based on the materials

and information available to me, which have not been verified by judges of the Supreme People's Court in charge of drafting of the *LC Judicial Interpretations*, the responsibility for any possible mistakes in this book is therefore mine.

Here I would like to extend my sincere gratitude to the following people who have offered me support in the past years:

Mr. Li Jian, former Deputy Presiding Judge of the Economic Division of the Supreme People's Court and currently the General Counsel of the Export-Import Bank of China; Professor Gao Xiang, former judge of the Fourth Civil Division of the Supreme People's Court and currently a professor and a tutor of PhD. candidates of China University of Political Science and Law; Professor Wang Jun, currently the Dean of the School of Law and tutor of PhD candidates at the University of International Business and Economics (UIBE); Professor Wang Chenguang, former Dean of the School of Law and tutor of PhD candidates at Tsinghua University; and Professor Boris Kozolchyk, the founder and the president of the National Law Centre for Inter-American Free Trade (NLCIFT) and Evo de Concini Professor at the University of Arizona, whom I followed as a visiting scholar at the NLCIFT of the University of Arizona; Professor James Byrne, President of IIBLP; Mr. Soh Chee Seng, Technical Consultant on Trade Finance Issues to the Association of Banks in Singapore (ABS) and a member of the UCP600 Drafting Group. Without the patient guidance and elaborate instruction over the past fifteen years by these excellent teachers and friends, this book would not have been possible.

I am also grateful to my translation team, which consists of Liang Jiang, Zeng Jun, Pan Qi, Xie Jin, Wang Sen, Yin Luyuan, Li Shasha, Song Jingyue, Ma Ju, Pan Fangfang, Li Fengyang and Wei Li, who are graduates of UIBE. The final English version was reviewed by my colleagues, Partner Ma Jie, Partner Feng Jing and Assistant Attorney Li Qishi of Beijing Commerce & Finance Law Offices. The senior partner, Mr. Li Hongji also gave many opinions on the modification of the book. Due to their efforts, the book is ready to be published in both Chinese and English, which makes it possible to share the information regarding the practice and laws of LCs, bank guarantees and trade finance in China with professionals all over the world.

I also want to express my sincere gratitude to Professor Boris Kozolchyk of the University of Arizona, the founder of the National Law Centre for Inter-American Free Trade (NLCIFT), and his assistant Mr. David Ruiz. Mr. Ruiz spent several weeks of labourious work scrutinizing the English translation and proposed several pertinent amendments; Professor Kozolchyk also reviewed the entire book and commented on each of the changes and added a good number of his own. I think Professor Boris Kozolchyk would allow me to quote from his email, which spoke my true intention in translating the book into English:

"I think the book is a very significant contribution to not only Chinese LC law but also its understanding around the world. The reason it took us all this time to finish it is because we and I in particular did not want that the value of the book to be diminished by language that the readers could not understand or thought meant nothing."