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Sunday March 25, 2007

[Back](#)

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**China: Letter of Credit Disputes**

**Deacons**  
Published June 19, 2006 - Hong Kong

**China: Letter of Credit Disputes**

The Supreme People's Court promulgated the Regulations of the Supreme People's Court on Several Issues in the Hearing of Cases Involving Disputes over Letters of Credit on 14 November 2005. The Regulations entered into effect on 1 January 2006 and provide clearer guidance not only on how PRC courts should deal with cases involving disputes over letters of credit ("LC disputes") but also on the general operation of letters of credit ("LCs") in China.

Applicable regulations  
The Regulations define LC disputes as disputes arising from the opening, notification, amendment, cancellation, confirmation, negotiation and acceptance of LCs. When the parties in an LC dispute have agreed that the relevant international practices or other regulations are applicable, then the people's court shall respect the parties' agreement. If the parties have not reached such an agreement, the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce and other relevant international practices shall be applicable.

Acceptance of LC disputes  
The Regulations specify that after the LC issuing bank has committed to pay or accept an LC or to perform other obligations under an LC, as long as there is prima facie conformity between the bills and the clauses of the LC and amongst the bills themselves, the issuing bank is required to perform its payment obligation within the time limit specified in the LC. Even if there is a prima facie discrepancy between the bills and the clauses of the LC and amongst the bills themselves, they will still be deemed to conform to each other if the discrepancy does not lead to any ambiguity. The people's court will not support an LC dispute based on the claim that there is a dispute regarding the underlying transaction between the applicant and the beneficiary of the LC, except in the case of LC fraud.

Inspection  
An LC issuing bank has the right and obligation to inspect the bills. It may decide on its own whether there is a prima facie conformity or whether to accept any non-conformity between the bills and the clauses of the LC and amongst the bills themselves. When an LC issuing bank notices a discrepancy, it may decide on its own whether to seek contact with the LC applicant to confirm whether the applicant is ready to accept the discrepancies. Irrespective of the LC applicant's decision to accept the discrepancies or not, the LC issuing bank has the final say in the matter. If an LC issuing bank clearly indicates to the beneficiary that it accepts the discrepancies, it shall bear liability to pay.

Other provisions  
The Regulations define the circumstances which constitute LC fraud, the rights of the parties to an LC and the guidelines that PRC courts must follow in the case of LC fraud.

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