

Conflict and Explanation About the Use of Negotiable Instrument Law of China for the Documentary Letter of Credit Draft

LIU Linlin^{[a],*}; FEI Yanying^[b]

^[a]Doctor of Laws, Lecturer & Master Tutor. School of Public Administration and Law, Dalian University of Technology, Dalian, China.

Research area: Legal research of negotiable instrument law.

^[b]Doctor of Laws, Professor & Doctoral Tutor. School of Public Administration and Law, Dalian University of Technology, Dalian, China.

Research areas: Civil and commercial law; intellectual property rights.

*Corresponding author.

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Abstract

The documentary letter of credit draft, first of all, depends on compulsory procedure of bill of exchange, legal status of sides during negotiating bank registration, unconditional payment and endorsement with signature and stamp; it also depends on other questions and conflicts, occurred with the use of UCP600. The applicable of the documentary letter of credit draft suffered from negotiable instrument law in China and the international convention on the law. Through the analysis of bill legal interpretation rules and international law practice, the documentary letter of credit draft not only matches the bill of exchange, but also plays the role of bill of exchange with unconditional payment. This provides the logic basis for the documentary letter of credit draft to apply negotiable instrument law in China and forward the legal interpretation to resolve the conflict.

Key words: The documentary letter of credit draft; Compulsory procedure; Negotiation bank; Unconditional payment; Endorsement

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INTRODUCTION

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In comparison with simple bill of exchange, the documentary letter of credit draft is more difficult in the case of legal relations. The necessity consists not only in matching with fixed regulations of negotiable instrument law in China, but also in matching with fixed regulations of documentary letter of credit, more else with limits of international legal practice. The contradiction and conflict between domestic law and international practice must be bound to hinder the documentary letter of credit draft to the international settlement. The types of conflict about the use of Negotiable Instrument Law of China for the Documentary Letter of Credit Draft have been analyzed in this paper. The explanation of the conflict and the application of the Negotiable Instrument Law of China have been presented, which would help China establish new rule of the Documentary Letter of Credit Draft and ensure the International Settlements smoothly.
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1. ORIGIN AND LEGAL STRUCTURE OF THE DOCUMENTARY LETTER OF CREDIT DRAFT

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In comparison with domestic trade, foreign trade has more risks. Usually exporters are not ready to supply the product before the payment, and importers hope to get product first and only after that to pay. To balance the trust between customer and seller two different types of payment appeared in international trade: documentary letter of credit and bill of exchange. The
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range of trade with use of documentary letter of credit takes 90% of world trade range. During calculating through documentary letter of credit more often bill of exchange is used. The documentary letter of credit draft is a financial document, made up in strictly organized form. This document includes unconditional order from exporter to importer about the payment, noted in the bill, to third party or bill presenter. In XII century exporters, dealing with international trade, faced the problem about long distance goods payment. The necessity to fulfill big amounts payment operations and risk of larceny became preconditions of appearing bill of exchange. Bill of exchange of early period is a bill, in which the creditor obliges the borrower to pay the defined amount of money to remitter (third party). During presentation of the bill by third party borrower can make a choice or immediately accomplish the bill payment, or accept this bill. Bill of Exchange, accepted by mediator or bank, has the most trust degree. On bills which didn't pass acceptance, payment guaranty can be given by drawer (of a bill) or endorser, this type of bill also has a high trust degree. The first bills of early period were used only among traders, firms and banks with powerful credit trust. There were non-payment cases with few of the bills, cases of delay and not full payment cases also used to have place. For accomplishing purchasing capacity guaranty on the bill issued to drawer, before presenting the bill, it's necessary to get the guaranty from the payer, in this case the payer should agree to the payment of this bill. Through step-by-step reforms such type of guaranty has reached the level of modern documentary letter of credit system.

The use of the documentary letter of credit consisted in coordination and structuring functions of the bill of exchange, and the documentary letter of credit was an incitement of development of a turnover of the bill. The main reason for use of the draft which has been written out on the basis of the documentary letter of credit consists that the transaction on the documentary letter of credit, referring to provisions of the bill right, can promote financing of beneficiaries. On the basis of the accepted bill the beneficiary can receive the capital necessary for it in the market valuable boom or can receive a sum of money by means of transfer of the bill according to the endorsement. Payment can be achieved only by prevention of a delay of the acceptance. The bill of exchange which has been written out on the basis of the documentary letter of credit, can obtain the banker's acceptance then the beneficiary isn't obliged to adhere to provisions on payment terms that does such documentary letter of credit to be more flexible. At the same time, for completion of commercial transactions on a long distance for payment the draft according to the documentary letter of credit factors of trust and professional skills of the third party increase. The profit of the negotiable banks, the banks acceptors, the bill offices, the confirming banks and others which provide the beneficiary financial means, is guaranteed on the basis of provisions of the bill right.

Whether it is necessary to apply at calculations the bill of exchange depending on a method of payment of the documentary letter of credit, it is possible to consider the documentary letter of credit with the following forms of payment: by installments, current payments, acceptance, contractual payment. The documentary letter of credit with the delayed payment belongs to the usance documentary letter of credit. The bank opening the documentary letter of credit, accurately establishes provisions regarding the acceptance, and also guarantees payment within due time. The documentary letter of credit on the current payments means that the beneficiary after obtaining the relevant documents can demand from authorized bank issue of the documentary letter of credit on immediate payment. The acceptance documentary letter of credit also belongs to the usance documentary letter of credit. Through bank issuer or other authorized bank the obligation under the acceptance, and also payment in the specified time is fulfilled. The beneficiary can receive the receipt on goods payment before the expiration. General provisions of the documentary letter of credit on contractual payment are carried out through bank issuer or the bank account acting as the creditor. The beneficiary buys from this bank on contractual payment the document based on the documentary letter of credit, or demands indemnification according to the issued documentary letter of credit. In other words, the documentary letter of credit with the delayed payment doesn't need the draft, such documentary letter of credit also call "non-draft credit", the exporter also doesn't have need to write out not accepted bill for bank, only it is necessary that in the documentary letter of credit all regulations on the acceptance, formulated by bank were observed, payment is guaranteed before the expiration of the specified term, till this time the exporter can't receive the document on goods payment. At the urgent documentary letter of credit the bill of exchange can be applied, besides the bill of exchange surely use at the acceptance documentary letter of credit and the documentary letter of credit with contractual payment. The bill of exchange issued on the basis of the documentary letter of credit, is the blank consignment, and also can be carried to the documentary bill of exchange, the documentary bill of exchange demands application of the consignment note and other accompanying documents.

2. THE DIFFERENCE BETWEEN THE DOCUMENTARY LETTER OF CREDIT DRAFT AND THE BILL OF EXCHANGE

As the documentary letter of credit draft, belongs to documents on commission of currency transactions, it is possible to claim that it is the instrument of commission of payment. The documentary letter of credit draft possesses other than the simple draft specifics. In the bill right of the People's Republic of China for the draft general provisions

are defined only, besides existence of special type of the documentary letter of credit draft isn't taken into account. Whether really bill of exchange described in the bill right, differs from the documentary letter of credit draft? How the rights of the draft are connected with the rights of the documentary letter of credit among themselves? Whether there are specifics of implementation of the rights according to the documentary letter of credit draft? To find full answers to the questions stated above, it is necessary to define an accurate difference between the simple draft and the draft, based on the documentary letter of credit. According to general views, the documentary letter of credit drafts, and the bill of exchange described in the bill right are similar. If the documentary bill of exchange carried to the documentary letter of credit, corresponded to the draft defined by the bill right, in this case such bill of exchange could be separated from the documentary letter of credit. According to the accepted indications of the Supreme Court of the People's Republic of China, in the conditions of the usance documentary letter of credit bank of China has to accept the bill of exchange. Bank of China bears responsibility for unconditional payment of the bill according to the documentary letter of credit. After the acceptance this bill of exchange enters the sphere of the circulation of securities separately from the documentary letter of credit. In the Anglo-American right, rather this precedent, mainly it is accepted to put an equal-sign between the draft, based on the documentary letter of credit, and the draft described in the bill right. Concepts about the draft, specified in the fifth and third point of article 5102 of the Trade Code of the USA differ. According to the fifth point the document which isn't negotiability, can be called as the draft, and however at all doesn't correspond to the draft specified in the third point. The way equal completely can provoke the conflicts between the international legal practice and domestic law.

Based on legal structure of the documentary letter of credit draft, the documentary letter of credit draft differs from the bill of exchange in negotiable instrument law in China. The documentary letter of credit draft have significant differences.

2.1 Differences Between the Parties

Usually the parties according to the usual draft treat: the collector (recipient), the payer, the guarantor (guarantor), the acceptor (the person, undertaken to meet a bill), the endorsee (in what advantage becomes a transfer inscription on the bill or the check) and other participants. In the documentary letter of credit draft, the drawer, being the beneficiary, also acts as the creditor, the recipient and the seller under the main contract. Since way of receiving means in the documentary letter of credit is the return bill therefore the creditor according to the prime contract, by means of issue of the draft, charges to the employee of correspondent bank to show on external debts a method of

payment, calculation, transfer and a turn of a certain sum of money. In the documentary letter of credit draft, the recipient usually acts as the beneficiary or correspondent bank, the payer – as bank issuer, during registration of the documentary letter of credit isn't present need that the applicant acted in a position of the payer on the draft. If in the documentary letter of credit still the applicant was a payer according to the draft, the bank would consider such bill as the additional document. The purpose of this method – to focus attention on primary obligation of bank issuer to carry out payment, a condition of this payment is defined with compliance of documents, disregarding thus approval of the applicant.

2.2 Differences About the Cause Relations to Issue Bills

The causal relationship of the usual draft is based on the basic contract between the parties on transfer of the bill. The reason of registration of the draft the beneficiary is based not only on the basic trade contract between the buyer and the seller, and more on the organization of drawing of the documentary letter of credit the buyer to the seller. The beneficiary defines the issue of the draft according to the documentary letter of credit, instead of the main contract; the translated bill carries out the payment function, coordinating with the documentary letter of credit. Conditions of issue of the documentary letter of credit draft are manifestation of a causal relationship with the draft. The beneficiary has to provide a complete set of the documents corresponding to the documentary letter of credit, and also issue the translated bill, for the purpose of implementation of payment by authorized bank, bank purchase at the beneficiary of this set of documents and for the purpose of property buying according to the documentary letter of credit. In this regard, purchase and sale of documents between bank and the beneficiary is a fundamental causal relationship of the draft which has been written out by the beneficiary.

2.3 Differences About the Funds Relations to Issue Bills

The interrelation of money in the usual draft represents legal relationship on the established payment between the drawer and the payer, or other obliged person. The interrelation of money in the documentary letter of credit draft means that the applicant by drawing up the statement assumes obligations under all listed points of the bill, namely the payment obligation on the bill. The relations of the payment order occur between the applicant opening the documentary letter of credit, and bank issuer. The drawer, based on in advance made plan, writes out the bill meeting standards of the documentary letter of credit. The drawer is the authorized officer issuing the bill while the principal is the person which has assumed the payment obligation on the bill.

2.4 Differences About the Appointment Relations to Issue Bills

The relations under the agreement on issue of the simple draft are an act in the field of securities between the person issuing the bill, and other participants, namely achievement of the agreement on delivery or transfer of the bill. The agreement on the bill is and there is a contract of the civil and commercial law which contents is transfer of the bill and other questions, related. To participants of the relations under the agreement on issue of the documentary letter of credit draft, belong: applicant, bank issuer and beneficiary. The bank issuer, based on the statement, makes out the documentary letter of credit, approves demands for issue of the bill, made by the applicant. The applicant not only has to specify regulations on issue of the draft, but also according to these provisions to assume the payment obligation according to the draft. The beneficiary accepts the documentary letter of credit; it means that the beneficiary approves this agreement. When the agreement on issue of the bill is issued, the beneficiary, based on the specified conditions, issues the translated bill, and the bank issuer accepts it according to points specified by the applicant.

3. CONFLICT OF LAWS OF THE NEGOTIABLE INSTRUMENT LAW IN CHINA ABOUT APPLICATION OF THE DOCUMENTARY LETTER OF CREDIT DRAFT

Due to the particularity of the structure of documentary letter of credit draft itself, a set of the questions arising with application of the negotiable instrument law of China, and the other questions connected mainly with characteristic signs of the bill, positions of participants, the bill delivery-acceptance certificate.

3.1 Conflict on Requisite in Form of the Draft

The translated bill based on the documentary letter of credit, using a draft form, enters a turn. The form of the bill is the guaranteed sample for a draft turn. Only at obligatory observance of all points in the draft it is possible to achieve its validity. The theory about the bill right is based on bill registration. Having passed strict requirements for registration, legal relations of the parties and their duty are defined. All acts on issue of the bill are important acts on its registration. In relation to each act there are samples established by the law. The act of issue of the bill can enter validity only in the presence of a legal form. In practice of the documentary letter of credit the existing translated bill surely corresponds to installations of the bill right.

However basic provisions of the documentary letter of credit are base for provisions of the documents based on

it. Documents on transactions on the documentary letter of credit possess special exclusiveness. For mitigation of requirements for registration of the documentary letter of credit draft, it is necessary that the translated bill had the main requisites, and also I corresponded to the documentary letter of credit and other accompanying documents, then there will be no need of strict check of efficiency under the established laws of the negotiable instrument of China. Under the 22nd article of the bill right of the negotiable instrument of China the established rules on bill date of issue surely have to be registered, without indication of these provisions the translated bill loses the validity. ICC CHINA (Branch of the International chamber of commerce in China) believes that the translated bill belongs to the receipts based on the documentary letter of credit, according to international payments “document” is the general concept concerning “goods” which includes both commercial, and bank documents. Operations with the documentary letter of credit are documentary operations; the bank can’t accept and resolve the issues which don’t have relations to documentation. If the translated bill isn’t the document, there is no need for application of the Uniform Customs and Practice for Documentary Credits (UCP600). The translated bill based on the documentary letter of credit, creates contradictions in paperwork according to the documentary letter of credit and in installations of negotiable instrument law of China, and also aggravates confusion of bank operations in practice of the documentary letter of credit.

3.2 The Conflicts About the Party’s Status of Draft in Negotiable Bank

In provisions of the documentary letter of credit concerning the draft usually there are no special rules for the collector, in this case the collector acts as negotiating bank. However, whether is the negotiating bank the lawful holder of the bill, whether he can get a guarantee the driver’s license for the bill? The concept of the holder of the bill, specified in UCP500 doesn’t remain in UCP600 that indicates the need of taking measures for the relations between participants of the documentary letter of credit in the negotiable instrument law of China.

In the Anglo-American theory about the bill right the holder of the bill is called as the conscientious holder of the bill. The endorsee does a transfer inscription, registration of the face of the draft comes to the end, and the bill can be received to a certain term. The endorsee doesn’t know when the payer can refuse the bill, also doesn’t know about a lack of the rights of the assignor (the person making the act of transferring of the rights). The endorsee gets the bill with good intentions, besides pays compensation to the assignor. The endorsee at once becomes the full-fledged owner of this bill under the law. The lawful holder of the bill possesses the right not to take into account of the participants deprived of some rights,

also has the right to oblige other faces on the bill and to assign to them the payment obligation. In the theory about the bill right of regarding lawful holder of the bill it is possible to see that the translated bill is issued to the drawer or other person appointed by it, also can be given out to the drawer or other person appointed by it. However the collector of the draft can't become the conscientious holder of the bill because the translated bill is issued, instead of is transferred to it. In 2000 in Singapore the reason of judicial incident was that the beneficiary got under suspicion in fraud. The court passed the decision that the negotiating bank, including itself the holder of the bill, has to claim itself for bank issuer to pay a certain sum on the bill. The court also recognized that the negotiating bank acts as the collector, instead of an endorsee therefore has no opportunity to take a position of the lawful holder. The above-mentioned example refers to views of English judicial system, the turn of the bill occurs by payment or by endorsement payment. Only an endorsee and the bearer can take the position of the holder, instead of the collector. Therefore if the negotiating bank will take a position of the lawful holder, the recipient of the draft won't be able to pay it on request of bank but only will be able to pay it for own requirement. Even being the appointed beneficiary the person, it is necessary to transfer the endorsement to negotiating bank. In a situation when the negotiating bank forged documents, the court took out the order. The translated bill based on the documentary letter of credit, in this case receives legal protection of the state.

3.3 The Conflicts About the Draft's Unconditional Payment and Payment Deadline

In the negotiable instrument law of China it is defined that in the draft there are no terms of payment, after issue of the draft it is necessary to make a payment immediately. Therefore, the translated bill based on the documentary letter of credit, has to meet standards of unconditional payment. However payment according to the documentary letter of credit has a certain uncertainty, it depends on compliance of documents. At full-fledged compliance of documents the bank on additional conditions guarantees payment, only in this case it is possible to demand payment. In the Trade code of the USA in the 3105th point of the 3rd article (about reverse documents) there are accurately formulated resolutions. According to issue of the documentary letter of credit of additional conditions isn't available, however the separate situation happens to the documentary letter of credit draft. In spite of the fact that the translated bill based on the documentary letter of credit, completely meets standards of the bill right, from a functional position this bill differs from the simple draft. In a question of payment translated bill it is impossible to apply norms of the negotiable instrument law of China.

In Article 41 of the negotiable instrument law of China it is spoken: "The payer in relation to the accepted draft has to receive itself it in the next 3 days, or be

refused in the acceptance". In the Bill right of Japan and in "The Geneva convention on the Uniform law on the translated and promissory note" it is established that the payer can demand that the bill again was shown it next day after the first presentation. Nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank shall each have a maximum of five banking days following the day of presentation to determine if a presentation is complying. This period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day for presentation. If to be based on norms of the negotiable instrument law of China about the documentary letter of credit draft, the bank during rather short period of time needs to pass the decision that gives the chance to check the documents relating to the documentary letter of credit, otherwise, the bill will be considered as the invalid.

3.4 The Conflicts About the Draft Rules of Endorsement

In the negotiable instrument law of China, to that the beneficiary charges to the collector to carry out necessarily payment through bank; the collector has to charge to bank to make a transfer inscription or directly to transfer the right for the bill. However in practice of the documentary letter of credit the translated bill, urgent upon presentation of, doesn't demand a transfer inscription from the collector, there is only one point – inferiority of the circulation of the draft. The beneficiary releases the urgent translated bill by means of confirming bank to the payer, through own correspondent bank reminds confirming bank to execute a certain sum of money. However the beneficiary does a transfer inscription in translated the bill confirming bank in case of the unsigned draft can refuse payment, having specified the reason of documentary discrepancy. The international chamber of commerce recognizes that this translated bill is the draft, urgent upon presentation of where the confirming bank acts as the payer. The translated bill only serves as the instrument of receiving a sum of money the beneficiary from the payer. After completion of operation the confirming bank needs to keep only the translated bill in archive of documents, from the beneficiary the transfer inscription isn't required.

UCP600 didn't have the rules of endorsement of negotiable, leaves it to the national regulation of adjustment, during application of the documentary letter of credit draft; the translated bill shouldn't rely on the bill right, doing a transfer inscription, only in this case the draft turn is possible. After changes and innovations of electronic technology in UCP600 the translated bill based on the documentary letter of credit, having taken place SWIFT system, it can be accepted, paid, independently certified, thus there is no need for a transfer inscription. More than 95% of bank operations are made through SWIFT system, it is much less than the operations connected with acceptance, signature and printing of the

draft. The bill leans on a turnover of electronic documents of the acceptance of a transfer inscription; the translated bill has no need to make a turn through bank issuer.

4. THE DOCUMENTARY LETTER OF CREDIT DRAFT'S LEGAL INTERPRETATION ABOUT THE APPLICATION OF THE NEGOTIABLE INSTRUMENT LAW OF CHINA

The international chamber of commerce notes that legal relations of the documentary letter of credit draft belong to category of the right of reverse documents of all states. Range "the unified rules according to the documentary letter of credit" already left out of the limits. On July 1, 2007 the UCP600 standard was realized, set in the motion ISBP, EUCP, SWIFT and other international amendments to the established practice. Despite the absence of in the international legal practice of a binding force, it was succeeded to achieve authorization of the legislation and jurisprudence of various states, and also step-by-step introduction in internally legislation of all countries. Therefore the question of application of the documentary letter of credit draft was radically resolved. In the bill right of the People's Republic of China there was a need of connection of UCP600 with the bill legislation, besides there was a need of interpretation in the field of coordination of conflicts about the application of the negotiable instrument law of China concerning the documentary letter of credit draft.

4.1 Legal Interpretation About the Conflicts of Draft to Type

In provisions of the documentary letter of credit there are no provided rules that the translated bill has to be signed by the drawer. the 21st UCP500 point says that besides requirements for presentation of the consignment, a guarantee and the trade invoice, in the documentary letter of credit the contents and the issuer according to these documents has to be accurately specified. Obligatory acceptance by bank can happen only provided that there are no contradictions between the transferred document and the document established by the law. In the 14th UCP600 point functions of the transferred documents are accurately determined by satisfaction of requirements of the beneficiary. Documents conforming to requirements also have to conform to legal installations, i.e. requirements of a form of the acceptance of the draft. The new concept corresponding to the consignment note is presented in the 20th UCP600 point; the emphasis on compliance of points of the transferred document (including the translated bill) and the documentary letter of credit, the standard rules and standards of the international banks is placed. This fresh wording laid

the foundation for the subsequent innovations about verification of the documents based on the documentary letter of credit, namely in the international practice of bank standards – "the statement of the international bank norms concerning verification of the commodity documentary letter of credit". But need of compliance to the documentary letter of credit, the international laws concerning it, for example, such as ISBP remains unaddressed. The 37th ISBP681 point concerns accurate rules about the document signature: even if there are no requirements for the documentary letter of credit, because of natural feature of the draft, it is necessary to append the signature. Therefore in the international practice need of the signature and the press is accurately established during a transfer inscription and at issue of the documentary letter of credit draft. These rules on registration of the draft correspond to the negotiable instrument law of China, and also resolve conflict questions of, whether it is worth appending the signature on the documentary letter of credit draft of draft to type.

4.2 Legal Interpretation About the Conflicts of the Status of Negotiating Bank's Parties

Whether the position of negotiating bank among participants of the draft is defined, this question represents special importance. The ambiguity in norms of UCP600 concerning the rights and duties and a position of negotiating bank provoked a set of disputes. The negotiating bank is allocated with powers according to the payment guarantee and preachy the documentary letter of credit bank issuer, based on requirements of the beneficiary according to certain standards of the documentary letter of credit documents undergo testing, after check and confirmation of documents money will be redirected to the beneficiary. Based on standards of the documentary letter of credit, the negotiating bank can claim for money back. From a position of the legal relations, the negotiating bank represents benefit for the beneficiary, and also is his representative. In most cases, the bank issuer and negotiating bank are connected among themselves by the relations by proxy. In the conditions of free circulation of the bill, between bank issuer and negotiating bank of the relations by agreement doesn't occur, and there are fiducially relations and the relations on the bill. After transfer *вкслея* the negotiating bank and bank issuer are connected by legal relations whom develop into the relations of participants according to the documentary letter of credit draft, this act is exposed to regulation of the UCP600 standards and the negotiable instrument law of China. In the conditions of a free turn of the bill, between negotiating bank and the beneficiary there are no contractual relations, however in the conditions of a limited circulation of the bill, character of these legal characteristics depends on researches. At this time the rights and duties between negotiating bank and the beneficiary are defined, obtaining the documentary

letter of credit on it comes to an end. During a bill turn the beneficiary issues the documentary bill of exchange. After payment commission the negotiating bank becomes the holder of the parody bill (the negotiating bank applies to the documentary letter of credit confirmation on issue of the bill then points “without turn to me”). The negotiating bank gets the right of regress in relation to the drawer and previous endorsee. At this time between negotiating bank and the beneficiary (the legal relations specified in the bill right of the People’s Republic of China change the drawer according to the draft). Surely there is a need of following to rules of the vilely right of the People’s Republic of China. The position of negotiating bank among participants of the draft isn’t called in question.

4.3 Legal Interpretation About the Conflicts of Unconditional Payment and the Payment Deadline

Within the specified term on bill payment after the holder notifies on payment, the payer, relying on contents of the draft, fulfills the payment obligation in relation to the holder. For the purpose of a guarantee of this payment in the negotiable instrument law of China it is accurately established that the payer assumes the considered obligation for payment commission in due time. The considered obligation includes two main aspects. On the one hand, it is to check the form of the bill. Having undergone this testing, existence of shortcomings of the rights of the holder of the bill is defined. It includes the verification of the bill itself and the holder’s identity (a continuity of a transfer inscription). On the other hand, the payer also is responsible for verification of documents. The translated bill based on the documentary letter of credit, is used in combination with the documentary letter of credit with a problem of completion of commercial transactions. The payer not only acts as the payer according to the draft, moreover it plays an important role as the payer according to the documentary letter of credit. The payer, based on the provisions UCP600, has to check carefully a complete set of the documents provided by the beneficiary, including documents according to the draft. Only at existence and compliance of documents the payer can make payment according to the draft issued by the holder. There are distinctions in provisions of the documentary letter of credit draft, from the simple draft. Whether payment on such applied bill creates additional conditions on payment? So-called payment on additional conditions means not only payments of par value of the draft, but also other points. Such additional conditions speak about the initial transaction. If according to the sent goods according to some documentary letter of credit doesn’t contain changes in the rights and duties according to the draft, there are no prerequisites for creation of additional terms of payment. Concerning registered points at par value it is necessary to understand that points not corresponding to the content of the rights and duties on

the bill have no validity. Therefore additional conditions on the documentary letter of credit draft, at all aren’t the reason of creation of terms of payment according to the draft. Payment according to the documentary letter of credit draft still is unconditional payment.

UCP600 requests the issuing bank ensuring whether documents conform in the limit examination time of L/C document, the issuing bank promise about payment and acceptance. The examination time of L/C document is longer than the examination time of draft, so the negotiable instrument law of China makes the special rules about the payment deadline of document letter of credit to cooperate with the L/C term examination of documents. We can compared with the American uniform commercial code, the bank get documentary L/C draft of the day decided payment or not before the end of the third day, if the beneficiary express consent, the bank payment can be delayed until receipt of the draft after the end of the third working day of the day.

4.4 Legal Interpretation About the Conflicts of Draft Rules of Endorsement

The negotiability of the documents of credit draft is based on the endorsement of the negotiable instrument law of China. The beneficiary can make an endorsement implement the credit rights of a confirming bank by entrusting a confirming bank receipts. The beneficiary should endorsee to transfer the draft and signage. For the sight documents of credit draft, the interpretation of the international chamber of commerce can solve problems in practice, but the interpretation violates the standard of identifying of draft. The draft doesn’t need negotiable, just as the tool to payment, but it needs the beneficiary fully endorsed to ensure the effectiveness of draft. In this way can solve the risk of suggesting the refusal of payment.

At 2000 international chamber of commerce makes the eUCP1.0 based on the UCP500, the L/C walk into electronic trading mode. This means that the document letter of credit draft can also submit by electronic mode. The electronic data replace paper media have changed the way of traditional endorsement. In China we can accord with the “functional equivalence” and the contract law, electronic signature law to give effective interpretation at the aspect of writing electronic draft, electronic signature, and authentication standard because of the negotiable instrument law of China has not modify relevant contents adjusting electronic draft. In 2009, China promulgated the measures for the management of the electronic commercial draft business. We can accord to the related content to adjust the endorsement rules of document letter of credit draft.

CONCLUSION

The documents of credit draft is the documents of documents of credit, applies the adjustment of UCP600.

As the special settlement tool of documents of credit, has the legal attributes of general draft, the legal relations must be adjusted by the negotiable instrument. As the order, the payment of draft is mandatory, when the draft meet the elements of type. The I/C beneficiary must deliver the draft of consistence documents, and then they can get the payment. This is contradicting with the unconditional payment. The UCP600 has many conflicts with the negotiable instrument law of China. So the international conventions and domestic law need legal explanation and coordination. At last, the domestic law must repair to apply the international conventions. The negotiable instrument law of China lack of special adjustment specifications. Need to pass legislation and judicial interpretation clear documentary letter of credit draft rules of the applicable law, resolving the conflicts of

laws, to ensure circulation and financing, and maintain the rights and interests of the parties.

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