

国际经济与贸易专业双语系列教材

International
Settlement

国际结算

(双语版)

主 编 徐进亮 张啸晨
副主编 张光道 宣 勇



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本教材为 2016 年度对外经济贸易大学国际经济贸易学院本科教学质量工程立项项目。

前 言

随着我国外经贸事业的进一步发展,国际结算业务日益增多,而国际结算日常工作的主要工作语言就是英语。

我国已经成为世界第一货物贸易大国。中国外贸经营权早已从审批制转为了备案登记制。这就意味着几乎所有的中国企业都可以加入到外经贸队伍中来,纯粹的“内贸企业”几乎不复存在,不懂进出口交易的企业将很难在日益“国际化”的国内市场中生存,具有国际商务知识的人才必将在开放型经济中的中国“走俏”。

国际结算相关的国际惯例在涉外贸易结算中应用非常广泛。除了2007年7月1日实施的《跟单信用证统一惯例(2007年修订本)》(简称UCP 600)以外,近年来国际结算领域有如下最新发展:

1. 国际商会银行委员会于2013年里斯本春季年会上通过了最新的《关于审核跟单信用证项下单据的国际标准银行实务》(International Standard Banking Practice,简称“ISBP745”),以取代2007年版的ISBP681。由此,目前最主要的国际结算方式——信用证的审单规则发生了重大变化。

2. 国际商会制订的《2010年见索即付保函统一规则》(URDG 758)已经于2010年7月1日起正式生效,从而取代实施了长达18年的《1992年见索即付保函统一规则》(URDG 458)。我国关于银行保函业务的司法解释——《最高人民法院关于审理独立保函纠纷案件若干问题的规定(征求意见稿)》也于2013年11月份公布,并正在进一步修订完善中。

3. 兼备托收和信用证优点的BPO(Banking Payment Obligation,银行付款责任)方兴未艾,国际商会为此制订了《银行付款责任统一规则》(Uniform Rules for Banking Payment Obligation,简称“URBPO”),并已于2013年7月1日生效,可以预见BPO这种结算方式的未来发展空间十分广阔。

4. 为统一全球福费廷业务标准,以避免理解混乱和减少风险,国际商会制定了《福费廷业务统一规则》(Uniform Rules for Forfaiting,简称“URF”),并已于2013年生效。

上述国际结算领域的新规则亟待外经贸从业人员准确掌握,灵活运用,以趋利避害。为此,我们编著了《国际结算(双语版)》一书。本书在写作过程中力求新颖性、实用性和准确性,通过大量经典案例阐释有关国际惯例,目的是使广大读者能在短时间内熟练掌握和灵活运用国际结算的专业英文,并能在实际业务中结合自身情况,在各种国际结算方式中作出自己的明智选择。

为便于教师教学和学生学,本教材正文中的绝大部分内容均采用英语,对正文中的难点之处采用中文脚注的形式予以解释,各章的练习题也采用中文。本书是国际商务

人员、法律界人士、涉外金融从业人员、出入境检验检疫系统签证人员和外经贸专业学生的最新教材和必备参考用书。

本书主编为对外经济贸易大学国际经贸学院徐进亮教授（博士生导师），中信银行总行营业部国际业务部张啸晨。副主编为香港信和国际发展有限公司张光道总经理，中国兵工物资集团有限公司有色金属贸易事业部副总监宣勇。

另外，以下人员也参加了本书的部分编写工作：王苑（中国兵工物资集团有限公司）；袁婷婷（交通银行金融服务中心）；徐博远（北京建筑大学）；阎柯宇（青岛大学商学院）。

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Chapter 1

Negotiable Instrument

1.1 Summary of Negotiable Instrument

1.1.1 Definitions of Instruments

The instruments of payment can be divided into two types. In a broad sense, instruments refer to all kinds of securities and commercial certificates, including stocks, warehouse warrants, state treasury bills, bills of lading, invoices, insurance policies, etc. In a narrow sense, the instruments are special securities aiming for payment. If the drawer makes payment by himself, such instrument is known as the promissory note. If a third person other than the drawer is to pay, it is either the bill of exchange or the check. In this chapter, the instruments we discussed belong to the narrow-sense ones. They are also called instruments of payment, including the bill of exchange, promissory note and check.

1.1.2 Functions of Negotiable Instruments

The instruments are widely used because their unique functions and conveniences. To be specific, there are mainly three functions of those instruments:

1. For payment

Under non-cash settlements, the major function of a negotiable instrument is to serve as a substitute for money or asset ownership. For example, the debtor purchases a bill of exchange from a bank and then sends it to the creditor, who would obtain the proceeds upon such bill of exchange from a local bank.

2. For credit

In commercial transaction, one party may sometimes require its counterpart to provide credit in order to facilitate its turnover of capital. For example, the seller and buyer make a deal that the buyer would make payment one month after the seller delivers the goods. The buyer may issue a promissory note with the one month tenor. The buyer's promissory note would substitute his credit thereof. In fact, both the bill of exchange and promissory note have credit functions. The check does not own such function because the check is payable at sight basis.

3. For circulation

Via endorsement, those instruments can be transferred from one person to another. Without cash, such circulation is very convenient. However, it is noted that the instruments themselves are not the currency. The difference between the instruments and currency lies that the instruments depend on the credibility of the relevant parties. They do not own the forced power for circulation while the currency owns. In other words, when the debtor decides to pay the debt via those instruments, it must obtain the consent of the creditor in advance, or the creditor may refuse to accept it. However, it is always acceptable if the debtor uses fiat money to pay the debt.

1.1.3 Features of Negotiable Instruments

Since instruments own some essential features, they are, as special securities, aimed for the purpose of paying money.

1. Negotiability

As a negotiable instrument, it may be transferred to another person either by mere delivery or by endorsement and delivery. When payable to bearer, a negotiable instrument may be transferred by mere delivery. When payable to a named person or order, a negotiable instrument may be transferred by endorsement and delivery. If the payee is restricted to a named person only, an instrument, then loses its capability of being transferred and the payer would only pay to the named payee. In addition, according to the Law of the People's Republic of China on Negotiable Instruments, those instruments must be transferred by endorsement.

2. Non-causative nature

The holder of negotiable instrument may exercise its right as long as the holder presents it to the debtor of the instrument. For instance, when a drawer draws a bill of exchange on a drawee, there must be a commercial funds relationship between the drawer and the drawee. When the payee transfers the bill/draft to a transferee, the transferee will not mind how the instrument is generated. He only concerns that the instrument is a qualified form and contains the essential items required by relevant negotiable instrument law. Even if the underlying relationship behind the instrument is defective, the debtor of negotiable instrument also should be liable. Just because of the non-causative nature, negotiable instrument possesses the feature of negotiability.

3. Requisite in form

A negotiable instrument must contain the prerequisite items and forms required by the law. If it is inconsistent with legally required items and forms, it is not as a valid one. Although different countries have different requirements in terms of the items and forms of a negotiable instrument, they are very similar to a large extent. The parties involved must follow those requirements.

1.1.4 The Legal System of Negotiable Instruments

In order to promote the circulation of negotiable instruments and protect rights and interests of relevant parties involved, most countries have stipulated respective laws on negotiable instruments. There are two main legal systems of negotiable instruments worldwide, namely British and USA legal system and Continental legal system.^①

In China, the Law of the People's Republic of China on Negotiable Instruments (abbreviated as "Law on Negotiable Instruments" hereinafter) was adopted in the 13th meeting of the Eighth National People's Congress on May 10th, 1995. It was implemented on Jan. 1st, 1996 and revised again on Aug. 28th, 2004. There are seven chapters with 111 clauses, including General Provisions, Bills of Exchange, Promissory Notes, Cheques, Application of Law to negotiable Instruments Involving Foreign Elements, Legal Responsibility and Supplementary Provisions. Chapter one elaborates the purpose and task of this law. To be specific, this law is enacted to regulate acts involving negotiable instruments, protect the lawful rights and interests of parties engaged in activities involving negotiable instruments, maintain public and economic order and promote the development of the socialist market economy. Chapter two stipulates the application and scope of the Law on Negotiable Instruments. This Law shall apply to activities that are carried on within the territory of the People's Republic of China. The negotiable instruments as used in the Law mean bills of exchange, promissory notes and cheques.^②

All in all, this Law is of great importance to regulate the activities involving in negotiable instruments. It is also very vital to the overall system of economy and finance. The parties engaged in are supposed to understand it well so as to protect their rights and interests and fulfill their obligations.

① 目前世界上影响较大的票据法有两类，一类是以英国《1882年票据法》为代表的英美法系，另一类是以《日内瓦统一法》为代表的日内瓦统一法系。《日内瓦统一法》是以欧洲大陆国家为主的 26 个国家协议的结果，两个主要文件的全称为：《1930 年汇票和本票统一法公约》，《1931 年支票统一法公约》。英美等国从一开始就拒绝参加日内瓦公约，他们认为，日内瓦公约主要是按照大陆法的传统制定的，与英美法的传统和实践有矛盾，如果参加日内瓦公约，将会影响英美法系各国之间已经实现的统一局面，因而一直拒不接受日内瓦公约。由于这个原故，现在世界上票据法已形成日内瓦统一法系与英美法系并存的局面。

② 第二条是关于票据法的适用范围和票据种类的规定。本条第一款规定的票据法适用范围，包括票据在空间上的适用范围和票据法对人的适用范围。在空间上的适用范围，指票据法在空间上所具有的效力，凡在我国境内所进行的票据活动，都必须遵守本法。对人的适用范围，指根据国家主权原则，凡在中华人民共和国境内从事票据活动的人，都应适用本法。这些人包括中国公民、法人和其他组织，以及在我国境内从事票据活动的外国人、无国籍人、外国法人和其他组织。但是，根据我国民法通则第 142 条第二款的规定，中华人民共和国缔结或参加的国际条约同中华人民共和国的民事法律有不同规定的，适用国际条约的规定，但中华人民共和国声明保留的条款除外。

1.2 Bill of Exchange

Bill of exchange or draft is one of the most important negotiable instruments. Because it reflects the nature and characteristics of negotiable instruments and represents various economic functions such as credit, payment and financing, it is the typical representative of negotiable instruments.

1.2.1 Definition of a Bill of Exchange

According to article 19 of China's Law on Negotiable Instruments, a draft is a bill signed by the drawer, requiring the entrusted payer to make unconditional payment in a fixed amount at the sight of the bill or on a fixed date to the payee or the holder.

A bill of exchange is defined in the Bills of Exchange Act 1882 as "an unconditional order of writing, addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to the order or specified person or to the bearer.

1.2.2 Types of Bills of Exchange

Bills of exchange can be divided into different types according to different standards.

1. Banker's bill and Commercial bill

According to different drawers, the bill of exchange is divided into the bank's bill and commercial bill. China's Law on Negotiable Instruments also stipulates that drafts include bank drafts and commercial drafts.

(1) Banker's draft

The draft issued by a bank is known as a banker's draft. The drawer and drawee are both banks.

(2) Commercial draft

The draft issued by an enterprise other than a bank is known as a commercial draft. The drawee of the commercial draft can be either an enterprise or a bank.

2. Demand draft and time draft

Drafts can be divided into demand drafts and time drafts. Article 25 of China's Law on Negotiable Instruments stipulates that the date of payment may be recorded in one of the following forms: payable at sight; dated payment; payable on a fixed date after draft; payable on a fixed date after sight.

(1) Demand draft

A demand draft is supposed to be paid when it is first seen by the drawee. It can be expressed as payable at sight/ on demand/ on presentation. When a bill specifies no time for

payment or the issuing date and maturity date are the same day, it is also considered as a demand draft.

(2) Time draft

It is a draft payable at a fixed or determinable future time. It will be further classified into

a. “payable at a fixed future time”. Eg, “Pay to ABC COMPANY on Aug 1st, 2015”.

b. “payable at a fixed future time after date”. Eg, “Pay to ABC COMPANY or order at 30 days after date”.

c. “payable at a fixed future time after sight”. Eg, “Pay to ABC COMPANY or order at 30 days after sight”.

d. “payable at a fixed future time after the occurring of a certain event”. Eg, “Pay to ABC COMPANY or order at 30 days after issuing of the B/L”.

3. Foreign-related draft and domestic draft

(1) Foreign-related draft

According to China’s Law on Negotiable Instruments, the term “foreign-related draft” refers to the bill whose draft, endorsement, acceptance, guaranty or payment occur both within and outside the territory of the People’s Republic of China. It further stipulates in article 95 that, in the case when the provisions of the international treaties to which the People’s Republic of China is a signatory party or in which the People’s Republic of China has joined differ from the provisions of this law, the provisions of the international treaties apply, except those articles on which the People’s Republic of China has declared to have reservations.

(2) Domestic draft

Domestic draft means the bill whose draft, endorsement, acceptance, guaranty or payment occur both within the territory of the People’s Republic of China.

4. Restricted order draft, demonstrative order draft and bearer draft

The payee means the person to whom a bill of exchange is payable. A draft may be payable to a named person only, a named person or order, or bearer.

(1) Restricted order draft

It is a draft payable to a specified person only. It is also known as a straight draft. Such a draft is not allowed to make negotiation and it is a non-negotiable instrument. For instance, “Pay Jim only” or “Pay ABC Co., Ltd only, Not Transferable”.

(2) Demonstrative order draft

A bill may be payable to the order of a specified person. For instance, “Pay ABC Co., Ltd or order” or “Pay to the order of ABC Co., Ltd”. Such a bill can be transferred after being endorsed by the specified person.

(3) To bearer

A draft may be payable to bearer without a specified person as the payee. For instance, “Pay bearer” or “Pay to bearer or holder” or “Pay to _____”. This kind of bill can be

transferred freely and no endorsement is required.

It is noted that the bill to bearer can be transferred only via delivery and without endorsement, which makes such a bill extremely convenient to transfer. However, as a double-edged sword, it is very unsafe too. Anyone holding the draft can present and obtain the payment. As a result, it is not an ideal negotiable instrument. In practice, laws in some countries accept such bills, for example, the British and American laws on negotiable instruments. However, laws in many other countries, including China, do not accept such kind of bills and deem them invalid.

5. Clean draft and documentary draft

According to whether other commercial or shipping documents are attached, drafts can be divided into clean drafts and documentary drafts.

(1) Clean draft

A clean draft is one that has no relevant commercial or shipping documents attached and normally used alone in international settlement. Such a draft may be drawn for many purposes, including collection, payment for services, personal remittance, etc.

(2) Documentary draft

A documentary draft is one that should be accompanied by the relevant commercial or shipping documents. The common documents include commercial invoice, transport documents, insurance documents, etc.

1.2.3 Main Contents of a Bill of Exchange

The main contents of a bill vary from each other in different countries. According to China's Law on Negotiable Instruments, a bill must indicate the following contents:

- a. Chinese characters denoting "draft";
- b. words expressing it to be a bill of exchange;

By doing so, it is to facilitate identification of the bill and prevent the counterfeit of the bill.

- c. an unconditional order to pay;

This is one-time unconditional payment which cannot be paid via instalments.

- d. a sum certain in money;

The sum on a negotiable instrument shall be specified in both capital Chinese characters and numerical figures; the two must be exactly the same. Otherwise, the instrument shall be null and void.

- e. name of the drawee;

It is the party who accepts the payment order and makes payment. In international trade, it is usually the importer or the bank.

- f. name of the payee;

- g. date of issue; and

h. signature of the drawer.

A bill of exchange is void if any of the above-mentioned particulars is not specified thereon. Here is a sample of bill of exchange:

BILL OF EXCHANGE

No. _____ Dated: _____
Exchange for (Amount in figure) _____ Place: _____
At _____ Sight of this FIRST Exchange(SECOND of the same tenor and date unpaid), Pay
to the Order of _____ the sum of _____
SAY (Amount in words) _____
Drawn under L/C NO. _____ DATED _____ ISSUED BY _____
To: _____

FOR AND ON BEHALF OF

(Signature)

1.2.4 The Acts of a Bill of Exchange

Generally speaking, the acts of a bill^① include issuing, endorsement, presentation, acceptance, and payment. In some special circumstances, it may also include dishonor, protest and the exercise of right recourse and other possible acts. Most of those acts of a bill are also applied to a promissory note or a cheque.

1.2.4.1 Issuing^②

Article 20 of China's Law on Negotiable Instruments stipulates that "Issuing" means a drawer's signing of a bill of exchange and delivering of it to the payee.

In international settlement, the draft is often issued in duplicate dispatched separately in case of loss during transit. The bills in a set are identical apart from references on their faces, which are usually marked by the words "First" and "Duplicate" respectively. In addition, it is often indicated "Second of exchange being unpaid" in the first exchange and "First of exchange being unpaid" in the second exchange, because the drawee only accepts and effects payment upon either the first exchange or the second change. Once the one is accepted and paid, the other becomes null and void.

① 汇票的票据行为，是以行为人在汇票上进行必备事项的记载、完成签名并交付为要件，以发生或转移票据权利、负担票据债务为目的的法律行为。

② 汇票的出票，指出票人依照票据法，做成汇票并交付与收款人，在出票人和收款人之间发生票据权利义务的票据法律行为，是票据法律关系得以发生的法律事实，且出票行为是其他法律行为的基础。由汇票出票的定义可知，出票行为由“做成票据”与“交付票据”两种行为构成。做成票据是指出票人以创设票据上权利义务关系为目的，依法定格式记载一定事项并签名或盖章；交付票据是指出票人出于自己的本意将做成的票据交给他人占有。汇票为要式证券，票据行为具有法定要件，出票作为基本票据行为，与承兑、背书等附属票据行为有区别。法律上严格规定了出票行为的款式，对出票行为应记载的事项，行为人必须确实遵守，若欠缺一项，出票行为无效，在无效的票据上作其他票据行为，例如背书、承兑、保证或参加承兑，当然也无效。

1.2.4.2 Endorsement

Endorsement means that the payee or endorser of a bill writes down relevant particulars on the back of a negotiable instrument or on an allonge to transfer its rights under the bill to the transferee. In practice, the payee or endorser often signs its name on the back of the bill or the allonge together with the name of the transferee or endorsee. Generally speaking, a negotiable bill may be endorsed more than once. For an endorsee, all endorsers under the bill in prior as well as the drawer are its former parties. For an endorser, all latter endorsees under the bill are known as its subsequent parties. The holder’s rights to the bill shall not exceed those of his former parties thereto. The former party would be liable to the subsequent party that the bill is bound to be accepted and paid.

According to different types of endorsements, they are further divided into special endorsement, blank endorsement and restrictive endorsement.

1. Special endorsement

It is also known as endorsement in full. It is where the transferor adds a direction to pay a particular person in addition to the signature of the endorser.

For example, Pay to the order of Henry Brown.

William White (签字)

The endorsee Henry Brown can further transfer his right under the bill either by special endorsement or blank endorsement.

The following contents are supposed to be included when Endorsement is in full:

- a. Name of endorser as well as its signature and/or stamp. The signature of endorser on the bill means that the endorser would undertake relevant responsibilities under the bill;
- b. Name of endorsee. This is the main difference between special endorsement and blank Endorsement. Because blank endorsement is not accepted under China’s Law on Negotiable Instruments, the name of endorsee is a necessity.^①

In practice, special endorsement ordinarily has two formats, namely “by words” and “by table”.

Endorsement in full (1) (By words)

Pay to Y or order	X	MM-DD-YY	(First endorsement)
Pay to Z or order	Y	MM-DD-YY	(Second endorsement)

① 除以上两种事项之外的其他事项，如背书日期、处所、禁止背书、预备付款人、提示承兑、免除求索权人通知义务等均为任意记载事项。