

PRACTICAL BANKING ENGLISH READINGS

银行业务实用英语读本

主编 李 芬

- ☐ Dialogue on Banking Business
- ☒ Negotiable Instruments
- ☐ Letter of Credit and Collection
- ☐ Bank Guarantee
- ☐ Basic Terms of Loan Agreement

中国财政经济出版社

前 言

在非现金结算条件下,票据被广泛地用于国际支付与结算,成为贸易、信用、融资等不可缺少的工具。为便于广大金融工作者及其他从事与票据有关的工作人员更系统、全面地了解票据方面的英文文句、开立格式及其他有关知识,我们特根据银行办理票据业务的实践编著了这本书。

本书不仅以中英文对照的形式介绍了汇票、支票和本票各自的定义、格式、特点和分类等,还针对汇票、支票和本票的不同特点进行了详细的比较,并在重点提示部分对有些知识做了进一步的介绍,希望能有助于读者对票据及其相关知识的理解。

最近,我国通过并颁布了《中华人民共和国票据法》,这将切实解决目前票据方面存在的一些问题,本书在写作中借鉴了其中的部分条款,也参照了在国际上影响较大的《英国票据法》、《日内瓦统一汇票、本票法》和《统一支票法》,并摘录了部分条目,供广大读者参考。

编 者

1995年12月

高级顾问:

张德宝 张燕玲

英文指导:

陈士彬 俞大猷

编委:

李 芬 邓 勇

马克明 樊 巍

陈和言 肖英男

CONTENTS 目录

1. Negotiable Instruments	
流通票据	(1)
2. Bills of Exchange	
汇票	(17)
3. Drafts Under Letters of Credit	
信用证项下的汇票	(31)
4. Acceptance and Discounting of Bills	
汇票的承兑与贴现	(43)
5. Cheques	
支票	(62)
6. Certified and Crossed Cheques	
保付支票与划线支票	(74)
7. Traveller's Cheques	
旅行支票	(88)
8. Promissory Notes	
本票	(101)
9. Comparison among Bills of Exchange, Cheques and Promissory Notes	
汇票、支票和本票之间的比较	(115)
10. Letters about Negotiable Instruments	
关于票据的信函	(131)
附录：中华人民共和国票据法	(149)

1. Negotiable Instruments

A negotiable instrument is an unconditional promise or order in writing signed by the maker or the drawer to pay a sum certain in money. Negotiable instruments play a prominent part in our day-to-day commercial transactions, both because they afford a convenient means of payment or financing and because they can be transferred readily from person to person. As commerce and trade developed and expanded a hundredfold, negotiable instruments, namely, bills of exchange, cheques and promissory notes have become indispensable to the functioning of business.

I. Characteristics of a negotiable instrument

(1) A negotiable instrument and the right embodied therein are capable of being transferred by delivery, either with or without endorsement depending whether the instrument is in favour of order or bearer. An instrument thus transferred is said to be negotiated without informing the drawer or drawee.

(2) The person to whom a negotiable instrument is negotiated can sue on it in his own name. He has the full right to the instrument.

(3) The person to whom a current and apparently regular negotiable instrument has been negotiated and who takes it in good faith and for value, obtains a good title to it, even though his transferor

had title defect.

(4) The forms of transfer for a negotiable instrument are as follows:

If the instrument is payable simply to bearer, it may be negotiated to another person by mere delivery. If the instrument is payable to a named person or order, it may be negotiated to another person by endorsement and delivery.

I . Functions of a negotiable instrument

(1) As a credit instrument

A negotiable instrument has no value itself. It is a payment certificate in writing under credit standing. The drawer issues an instrument for credit payment, and the drawee or acceptor promises to perform the payment duty.

(2) As a payment instrument

Under non-cash settlements, payment instruments must be used in settling international transactions. So negotiable instruments are widely used in international payments and settlements.

(3) As a negotiable instrument

As a negotiable instrument, it may be negotiated to another person either by mere delivery or by endorsement and delivery. All property embodied therein passes free from the transferor to the transferee, provided the latter takes the instrument in good faith and for value.

(4) As a financing instrument

If an usance bill is already accepted by the drawee but not yet fallen due, it can be sold in the money market. The holder can obtain cash in advance through discounting bills.

II . Parties to a negotiable instrument

There are three primary parties to a bill of exchange and a cheque, which are drawer, drawee and payee. To a promissory note, there are only two, maker and payee.

(1)Drawer

A drawer is the person who draws a bill of exchange or a cheque upon the drawee for the payment of a certain amount of money. (In the case of a promissory note, the person who issues the instrument is called the maker.) He will redeem and pay the instrument in the event that the drawee dishonours it by non-acceptance or by non-payment. The drawer is primarily liable to the holder of the instrument before acceptance.

(2)Drawee

A drawee is the person upon whom a bill of exchange or a cheque is drawn. He is the person who will honour the instrument by acceptance and by subsequent payment if it is a time bill or by immediate payment if it is payable at sight or on demand. The drawee cannot be compelled to pay or to accept the instrument because he is unable to prevent any person to whom he owes no debt from drawing upon him. The drawee of a time bill becomes liable for its payment only if and when he accepts it.

(3)Payee

A payee is the person to whose order the drawee is to make payment or the person to whom the money is to be paid. If a time bill has been dishonoured by non-acceptance or a sight bill by non-payment, the payee has the right of recourse against the drawer and is entitled to claim payment from the latter. The payee is the creditor to the instrument.

Other parties to a negotiable instrument :

(4) Acceptor

If and when the drawee agrees and assents to the order in writing addressed to him on a bill of exchange by signing his name on its face, indicating that he will pay on due date, the drawee will become an acceptor. The acceptor is primarily liable, and then the drawer becomes secondarily liable after it is accepted by the drawee.

(5) Endorser

When a payee or a holder signs his name on the back of an instrument for the purpose of transferring it to another person, he is called an endorser. He is liable to his subsequent endorser, his endorsee or any subsequent holder of the instrument. His obligations are the same as those of the drawer.

(6) Endorsee

An endorsee is the person to whom an instrument is endorsed. He is the holder of an instrument which has been transferred by an endorser. If and when the endorsee endorses the instrument again to any other person, then he becomes a second endorser or a third as the case may be.

(7) Acceptor for honour

An acceptor for honour is the person who himself is not a party liable on a bill of exchange but with the consent of the holder may intervene and accept the bill *supra protest*, for the honour of any party liable thereon and for the honour of the person for whose account the bill is drawn.

(8) Guarantor

A guarantor is the person who guarantees the acceptance and the payment of an instrument though he is not a party liable thereon. The obligations of the guarantor are the same as those of the

guaranteed.

(9)Holder

A holder is the possessor of an instrument, namely the payee, endorsee or bearer. He may sue, if need be, on the instrument in his own name. A person who possesses an instrument by forgery or by theft is not a holder but a wrongful possessor.

(10)Holder for value

A holder for value is the person who possesses an instrument for which value has been given by himself or by some other person.

(11)Holder in due course

A holder in due course is the person who is in possession of an instrument that is (a)complete and regular on its face, (b)taken before maturity without notice of its previous dishonour, (c)taken in good faith and for value and (d)taken without notice of any defect in the title of the person negotiating it. He is also called a bona fide holder, who may claim payment from all parties liable on the instrument.

参考译文:

流 通 票 据

流通票据是由出票人签发的、无条件支付一定金额的书面命令或承诺。由于票据可以作为一种便利的支付和融资工具,又可以灵活地交付转让,因此在日常的商品交易中起着显著的作用。随着商业和贸易的迅速发展与扩张,流通票据,即汇票、支票和本票,已成为商业活动中必不可少的工具。

一、流通票据的特点

(1)流通票据及其代表的权利可以通过交付而转让,是否需要背书取决于票据是指示性抬头还是来人抬头。票据的这种流通转让不需通知出票人和付款人。

(2)票据的受让人可以用自己的名义对票据的当事人起诉,他拥有票据的全部权利。

(3)经转让而接受了一张表面合规的票据的受票人,如果他是善意持票人并付过对价,那么他将拥有优先的票据权利,而不受转让人权利缺陷的影响。

(4)流通票据的转让方式是,来人抬头的票据只需交付就可转让,指示性抬头的票据需经背书和交付才能转让。

二、流通票据的作用

(1)信用作用

票据本身没有内在价值,它是建立在信用基础上的书面支付凭证。出票人在票据上立下书面的支付信用保证,付款人或承兑人允诺按照票面规定履行付款义务。

(2)支付作用

在非现金结算条件下,必须使用一定的支付工具,用以结清国际间的债权债务。流通票据就被广泛用于国际支付和结算。

(3)流通作用

流通票据可以通过交付和背书或仅凭交付而转让。如果受让人是善意持票人并付过对价,票据所代表的一切权利可自由地由转让人转给受让人。

(4)融资作用

如果远期票据经付款人承兑但未到期,可以到资金市场出售。持票人通过票据贴现可提前得到资金。

三、票据的关系人

汇票和支票有三个基本关系人：出票人、付款人和收款人；本票只有二个基本关系人，即制票人和收款人。

(1)出票人

出票人是开立票据指示付款人付款的人(本票中叫制票人)。如果付款人拒绝承兑或拒绝付款，出票人将偿付票款。在票据承兑之前，出票人是持票人的主债务人。

(2)付款人

付款人是汇票和支票中根据出票人命令支付票款的人。如果是远期汇票，他将承担承兑与到期付款责任。如果是即期票据，他需见票立即付款。付款人不能被迫付款或承兑票据，以防出票人无故向付款人滥发票据。远期汇票的付款人一旦承兑票据，将承担付款责任。

(3)收款人

收款人是收取票款的人。如果远期票据被拒绝承兑或即期票据被拒付，收款人有权向出票人追索票款，收款人是票据的债权人。

票据的其他关系人：

(4)承兑人

如果付款人在票据上签名同意执行出票人发给他的支付命令，承担到期付款的责任，付款人就成为承兑人。付款人承兑票据后，承兑人成为主债务人，出票人成为从债务人。

(5)背书人

如果收款人或持票人为将票据转给他人，在票据背面签字，他就叫做背书人。他对其后手、被背书人和以后的持票人负有责任。他的责任与出票人一样。

(6)被背书人

被背书人是票据的受让人，他是背书人所转让的票据的持票

人。若被背书人在票据上再加背书而转让,他就成为第二背书人,第三背书人,依此类推。

(7)参加承兑人

参加承兑人本身不是票据的债务人,但是经持票人同意当付款人拒绝承兑时可以参加承兑,以维护票据各债务人和付款人的信誉。

(8)保证人

保证人不是票据规定的债务人,他保证票据的承兑与付款,经过保证后保证人与被保证人负同样责任。

(9)持票人

持票人是指票据的占有人,即票据的收款人、被背书人或持票人。如必要,他可以他自己的名义起诉票据的当事人。以欺诈或偷窃获得票据的人是非法所有人,不是持票人。

(10)付对价持票人

付对价持票人是指取得票据时,本人或他人付出一定代价的人。

(11)正当持票人

正当持票人是指善意地付了对价,取得一张表面完整、符合规范的、不过期的票据的人。他未发现该票据曾被退票,也未发现其前手在权利方面有任何缺陷。他也称善意持票人,可要求票据的所有债务人付款。

Essential Words 基本词汇

prominent [ˈprɒmɪnənt] adj.	突出的,显著的,重要的
transfer [ˈtrænsfə:] vt. & vi.	转让,过户,转帐
hundredfold [ˈhʌndrɪdfəʊld] adj. & adv.	一百倍
indispensable [ˌɪndɪsˈpensəbl] adj.	必不可少的,必需的
characteristic [ˌkærɪktəˈrɪstɪk] n.	特性,特征,特色

endorsement [in'dɔ:smənt] n.

sue [sju:] vt. & vi.

delivery [di'livəri] n.

financing [fi'næsiŋ] n.

essential [i'senʃəl] adj.

liable [ˈlaɪəbl] adj.

claim [kleim] vt.

negotiable instrument

in writing

day-to-day

in good faith

on demand (at sight)

bill of exchange

promissory note

be liable to

for value

right of recourse

背书, 签名

控告, 提出诉讼

交付, 转让

融资

基本的, 必要的

有(法律)责任的, 有义务的

索取, 索赔, 索偿

流通票据

书面的

日常的

善意地, 真诚地

即期

汇票

本票

有责任的, 有义务的

付过对价的

追索权

Key Points 重点提示

(1) negotiable instrument 流通票据

票据有广义狭义之分。广义的票据是指商业上的物权凭证, 根据这个定义, 凡赋予持有人一定权利的各种凭证, 如提单 (bill of lading)、存单 (deposit certificate)、股票 (stock)、债券 (bonds) 等都属于票据; 狭义的票据仅指以支付一定的金额为目的的、用于债权债务的清偿和结算的凭证。本文所讲的流通票据主要是指汇票 (bill of exchange)、本票 (promissory note) 和支票 (cheque) 这些可经过交付 (delivery) 或背书 (indorsement) 而转让的票据。

票据的流通和转让，最初都是依据惯例进行的。由于各国和各地区的惯例不一致，造成票据流通和转让的混乱，这限制了票据使用范围，并容易引起各种纠纷。从十七世纪开始，英国等国家开始出现成文的票据法，但是很不完善和系统，直到十九世纪以后，各国的票据法经过不断的完善和修正，逐渐形成了完善的票据制度。如英国于1882年制订了《汇票法》。以后，许多国家订立了票据法，但体例不一。1930年，法国等26个国家在日内瓦签订了《汇票和本票统一法公约》等三个公约。1931年又在日内瓦续订《支票统一法公约》等三个公约，从而形成以法、德两大派系为代表的大陆法系。英、美等国票据法自成系统，迄今未加入公约，形成以英美为代表的英美法系。大陆法系的规定较严，强调票据的要件及款式和抽象的票据关系。而英美法系的规定则较自由，以票据为契约，强调约因(consideration)。

由于各国的票据法和惯例存有差异，当国际性的票据涉及不同国家的法律时，要按票据法法律冲突原则处理。英美和大陆两大法系对法律冲突的规定类似，基本上按行为地法处理。例如票据款式的合法性受出票地法管辖；票据出票、承兑、背书受出票、承兑、背书地法管辖；提示承兑或提示付款受提示地法管辖；一国出票在另一国付款的票据，到期付款日受付款地法管辖等等。

(2)for value 付过对价

对价是指票据双方当事人认可的取得票据的代价，如货物、劳务、资金等。经转让而接受票据的持票人，看他是否付过对价，决定他对票据有着不同的权利。持票人所付的对价，不一定与票据金额完全相等。有时取得票据，虽未付过对价，如继承、赠与，但其前手确曾付过对价者，也称为付对价持票人(holder for value)。

(3)as a credit instrument 票据的信用作用

票据不同于现金,更不同于商品,它只是一种以支付一定金额的款项为目的的权利凭证,本身并不包含任何价值。但它之所以被接受和流通,乃是因为票据建立在双方的信用基础之上。票据作为结算工具而被债权人接受以前,实际的债权债务已经发生,票据只不过在债权债务发生后用来清算这一关系而已。可见,票据实际上代表着债权人对债务人提供的信用。

(4) as a financing instrument 票据的融资作用

这一作用主要是指持票人可将未到期的票据通过票据贴现(discount)来得到资金。目前国际票据市场的业务很大一部分是未到期票据(instrument undue)的交换与买卖,随着该项业务的发展,票据的融资作用将得到更大程度的发挥。

(5) primary parties 基本关系人

票据的关系人就是享有票据权利、承担票据义务的人。票据的关系人分为基本关系人和非基本关系人两种,其区别标准是他们是否随出票行为而出现。基本关系人是指票据一经发出就存在的关系人,如汇票、支票中的出票人(drawer)、收款人(payee)、付款人(drawee),本票中的制票人(maker)、收款人(payee);非基本关系人是指票据发出之后通过其他票据行为而加入票据关系中来的人,如各种票据中的背书人(endorser)、被背书人(endorsee)、保证人(guarantor),汇票中的承兑人(acceptor)、参加承兑人(acceptor for honour)等。

(6) the right of recourse 追索权

追索权是票据遭拒付后对持票人产生的一项权利,持票人在某种条件下有权要求其前手(prior endorser)偿还票据的票面金额、损失的利息及有关的费用。

持票人行使追索权，须符合一定的条件，如必须在合理期限内提示票据，按要求作成拒付通知(notice of dishonour)、拒绝证书(protest)等等。

追索的顺序可以沿背书的顺序逆向地、逐一地进行追索，也可以同时向所有的前手追索。但是持票人一般仅向票据的主债务人亦即出票人进行追索。出票人偿付追索的金额后，可以向付款人要求偿付他对追索者付出的全部金额，如果付款人仍然拒付，他可以向法院起诉。

追索本身也必须在有效时间内进行。根据英国的《票据法》，追索权的保留期限是自债权成立之日起6年之内有效。过此期限，票据中所有债务人的责任自行消失。因此持票人不能追索。而《日内瓦统一法》则规定，持票人必须从作成拒绝证书之日起一年内行使追索有效。如果是被追索人在清偿汇票金额及有关费用以后取得的追索权，则只是从清偿之日起6个月内有效。我国票据法规定，持票人对前手的追索权，自被拒绝承兑或者被拒绝付款之日起6个月内有效。

被追索者偿付给追索者票面金额及有关费用后，他有权要求追索者出具收据。被追索者从此取得了持票人的权利。他可以在票据上涂销自己的背书和签名，同时，也可以向他的前手进一步追索。

(7)endorser 背书人

背书人既然在票据上背书签字，就要对票据负责，对其后手(subsequent endorser)承担付款或承兑的保证责任。如果背书人想要免除自己的责任，可于背书时在票据上加注“不得追索”字样，例如“Pay to the order of John Smith without recourse to me.”这样票据拒付，持票人追索时，只能跳开这一背书人，向其前手追索。对此种票据，被背书人应考虑背书人的前手是否可

靠。如所有背书人都写上“不得追索”字样,出票人将成为唯一的负责人,这样的票据很难流通。

(8) acceptor and acceptor for honour 承兑人与参加承兑人

承兑人与参加承兑人都是汇票中的非基本关系人,本票与支票中没有。在一定的意义上讲,二者都是票据的债务人,其区别在于:

① 承兑人是票据的主债务人,负担支付义务;参加承兑人不是票据主债务人,仅在付款人拒绝付款时,负付款义务。

② 参加承兑人仅对被参加人及其后手负责,承兑人须对票据上的所有权利人负责。

③ 承兑人付款后,票据上的权利即告消失,而参加承兑人付款后,对承兑人、被参加人及其前手,仍取得持票人的权利。

④ 参加承兑人承兑的金额,须为票据金额的全部,而承兑人承兑的金额,经持票人同意可以是票据金额的一部分。

(9) guarantor 保证人

保证人一般是非票据债务人,出票人、背书人、承兑人、参加承兑人均可作为被保证人(guarantee)。保证人为承兑人保证时,应负付款之责;为出票人、背书人保证时,应负担保承兑及担保付款之责。一般情况下都是对票据全部金额付款加以保证。

保证人做出保证行为时,可向被保证人收取一定的押金或担保品,保证人在偿付票款后可以行使持票人的权利,即对承兑人、被保证人及其前手行使追索权。票据被保证以后,增强了付款信誉,促使票据更易于转让流通。