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### Wide scope of international frauds

International frauds are now growing at an alarming rate due to popularity of the Internet. They can be classified into many categories, such as HYIP (High Yield Investment Programmes), unclaimed estates, dormant bank accounts, deposit frauds, lucky draws, long distance calls, black USD currency notes at discount and the like. As readers of Compass are mainly involved in import and export trade, I would like to narrow down the scope to letter of credit (L/C) frauds.

## 如何防範國際信用證詐騙案？

## How to Avoid International Letter of Credit Frauds?

如要控制風險，收款人應盡量向通知銀行索取確認書，以核實信用證的真偽。

From risk management point of view, it is highly recommended for a beneficiary to obtain confirmation in writing from the advising bank for the authenticity of the L/C.

### 國際詐騙活動範圍廣泛

隨著互聯網的普及，國際詐騙活動日益嚴重，當中包括高回報投資計劃、待領遺產、不活躍銀行帳戶、存款詐騙、抽獎、長途電話、黑市優惠兌換美金等形形式式的犯罪手法。由於《訊息》的讀者主要從事進出口貿易，本文特集中討論信用證(L/C)詐騙案。

### How to avoid fake L/C?

Today, due to popularity of the SWIFT (Society for Worldwide Interbank Financial Telecommunication) standard messages, that are low cost, easy to use, fast, highly reliable and very secured (so far not yet broken by any hacker), nearly all L/Cs are issued by SWIFT standard messages. Only the senior management of banks has the authority to authorise sending of SWIFT messages. Hence L/Cs issued or otherwise advised by SWIFT messages should all be genuine. Even on rare occasions, a few "fake" L/Cs were in fact issued by senior managers in banks, due

## 如何防範假信用證？

現時，由於環球銀行金融電訊協會(SWIFT)的訊息服務費用低廉、方便快捷而且安全可靠，至今仍未有黑客能夠破解其系統，因此幾乎所有信用證都是以SWIFT標準格式發出。SWIFT訊息必須由銀行的高級管理人員授權發出，因此以SWIFT訊息發出或通知的信用證理應真確。過往，曾有數宗由銀行高層發出「假」信用證的個案，縱然當中涉及某些因素，但由於是經銀行授權人士發出，因此根據本港法例仍具效力，開證銀行無論如何必須承擔有關法律責任。

## 透過SWIFT發出的信用證最為安全

因此，如持有由銀行發出並經授權經理「簽署」的信用證(實際上以SWIFT訊息發出的信用證不會顯示任何簽名，但開證銀行的內部文件應載有授權高級經理的簽名)，只要有關呈報文件並無錯誤，該信用證應為有效的付款承諾。

要防範假信用證，最重要是堅持採用SWIFT信用證。雖然進出口商本身不可使用SWIFT系統，而通知銀行亦非透過SWIFT訊息向收款人發出信用證，但收款的進出口商可向通知銀行核實「有關信用證正本是否由開證銀行透過SWIFT訊息傳送至通知銀行」。

to one or other reasons, they should be considered still valid by local law because they were issued by authorised persons in the banks. The issuing banks must take up the legal responsibility.

## L/Cs issued by SWIFT are most safe

Hence if we are holding an L/C issued by an issuing bank, "signed" by an authorised manager (in fact we do not see any signature on the L/C advised by a SWIFT message but the internal documents in the issuing bank should show the signature of the senior manager who authorises such issue), it should be a valid payment undertaking, provided that the presented documents have no discrepancy.

The first step to avoid fake L/C is to insist on SWIFT advised L/C. We may check with the advising bank to verify "whether the original L/C is in fact transmitted by a SWIFT message from the issuing bank to the advising bank", although the L/C from the advising bank to a beneficiary is not by a SWIFT message (simply because SWIFT is not available to importers and exporters).



根據筆者擔任多國信用證騙案專家證人所見，大部分假信用證都是以空郵、傳真或電報發出。無論規管信用證的統一規則UCP 500或銀行法例和規例均無明文規定信用證必須透過SWIFT訊息發出，因此信用證可以任何方式發出。然而，SWIFT訊息已十分普及，因此倘遇到以其他方式發出的信用證，實應審慎處理，以免受騙。根據UCP 500第7(a)條的規定，通知銀行有責任核實信用證「表面上」是否真確。否則，根據第7(b)條，通知銀行有責任即時通知收款人，表示無法確定有關信用證表面是否真確。然而，有關真確性只限於「表面」，並不代表「實際」或「事實」上屬真確。通知銀行亦受第15條保障，毋須就有關信用證的真偽或法律效力承擔任何責任。



From my experience in dealing with L/C fraud litigation as an expert witness in many countries, most fake L/Cs are issued either by airmail, fax or telex. Since there is no provision in either the uniform rules governing L/C, the UCP 500, or any banking legislations and regulations, to restrict an L/C to be issued only by SWIFT messages, it follows that L/C can be issued by any means. Due to the popularity of SWIFT messages, L/Cs issued by other means should be treated with caution to avoid frauds. Under UCP 500 Article 7 (a) the advising bank has a duty to check for the "apparent" authenticity of the L/C. Otherwise the advising bank has an obligation under Article 7 (b) to notify the beneficiary without delay its inability to obtain apparent authenticity of the L/C so advised. But the level of authenticity is only up to the so-called "apparent" level. It does not mean "real" or "factual" authenticity. The advising bank is also protected by Article 15 not to be liable or responsible for the genuineness, falsification or legal effect of the L/C so advised.

## 核實以空郵、傳真或電報發出的信用證

如要控制風險，收款人應盡量向通知銀行索取確認書，以核實信用證的真偽。倘若通知銀行認為已根據第7(b)條作出合理審慎的核實程序而拒絕發出確認書，收款人則可能需要支付額外費用。信用證市場競爭激烈，通知銀行必須小心控制成本，以求從低廉的通知費中取得微利。因此，通知銀行或會要求收取額外費用。

對中小企而言，銀行的額外費用或會加重他們的成本。縱使如此，中小企亦應核實信用證的真確性，否則有違香港傳統營商智慧，可謂：「慳咗粒糖，唔見間廠！」。

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## Check for authenticity of L/C advised by airmail, fax or telex

Hence, from risk management point of view, it is highly recommended for a beneficiary to obtain confirmation in writing from the advising bank for the authenticity of the L/C, sometimes by payment of additional charges, if the advising bank considers that it has exercised reasonable care as required under Article 7 (b) and refuses to do anything else. We have to understand that the L/C market is highly competitive and the advising bank must control its cost carefully in order to safeguard its slim profit margin out of the thin advising fees received. Therefore, the advising bank might ask for service charge for doing additional work.

For an SME, the service charge might put extra burden on its operating costs. Even so, it is still worthwhile to check the authenticity of the L/C. Otherwise, this is against the Hong Kong business wisdom, best illustrated by the famous saying "To save a candy, one may lose a factory!".

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