

## AN INTERESTING DECISION BY HONG KONG HIGH COURT

Total Energy Asia Limited Vs Standard Chartered Bank (Hong Kong) Limited

The Standard Chartered Bank (Hong Kong) Ltd had added their confirmation to a Credit issued by an Indian Bank. The beneficiary is Total Energy Asia Ltd and the Credit requests a full set of original charter party Bill of Lading on FOB terms. The Total Energy Asia had presented the documents through another Bank. The documents were discrepant. The Total Energy had instructed the confirming bank not to send out the discrepant documents until the Issuing Bank waived all discrepancies. After two presentations, the documents were still discrepant. The Confirming Bank had listed out the discrepancies and faxed it to the presenting bank. The fax message did not stipulate the words "reject" or "refuse". On the same day the Confirming Bank called up the Presenting Bank and verbally informed the presenting bank that they were rejecting the documents and asked whether to do cable negotiation or send the documents to issuing bank on Collection Basis as requested by the issuing bank. Despite the acceptance of discrepancy notice by the presenting bank, the beneficiary Total Energy Asia Ltd decided to sue the confirming bank on the ground that the rejection notice sent out by the confirming bank by fax is defective, as the notice did not stipulate the words "reject" or "refuse".

It was several years later, and by that time the two concerned employees who had communicated by telephone had left their respective banks and not available for evidence.