FACTA UNIVERSITATIS
Series: **Law and Politics** Vol. 20, N° 2, 2022, pp. 125-133
https://doi.org/10.22190/FULP2202125A

Review Paper

THE INTERPRETATION OF THE PRINCIPLE OF STRICT COMPLIANCE IN LETTERS OF CREDIT IN INTERNATIONAL COMMERCIAL LAW

UDC 347.74:339.72
339.542

Yunus Emre Ay

Antalya Bar Association, Turkey

Abstract. *Letter of Credit (L/C) is a very popular payment method in international trade. The issuing bank has the obligation to make payment if the document stipulated in a Letter of Credit are presented. Under the strict compliance principle, any discrepancy in the documents may be the reason for refusing payment. There are two different approaches to the interpretation of the principle of strict compliance: literal compliance and substantial compliance. In literal compliance, a slightest inaccuracy may be the reason for refusing payment, which is not the case in substantive interpretation. The author provides an overview of these two approaches, with specific reference to relevant case law and relevant provisions of the UCP Rules and ISBP Rules governing this international trade matter. These international rules and diverse case law offer opportunities for a more flexible and balanced approach to the interpretation of strict compliance.*

Key words: *Letter of Credit, principle of strict compliance, literal compliance, substantial compliance*

1. Introduction

In international trade, the buyer and the seller are located in different countries and the goods are transferred from the country of the seller to the country of the buyer. The seller is reluctant to deliver goods without an assurance of payment. The buyer is reluctant to make payment before the delivery of goods without the assurance that he shall get commodities. Contracting parties are part of different legal systems. Moreover, various factors, such as physical distance, between the parties, cultural differences, political risks, and currency exchange restrictions, increase the lack of trust and uncertainty. Thanks to

Received March 18th, 2022 / Accepted May 4th, 2022
Corresponding author: Yunus Emre Ay, LLB, LLM (Prague), Attorney-at- law, Antalya Bar Association, Turkey.
E-mail: yunusemreay0@gmail.com

the documentary letter of credit system, the seller ensures the security of payment since the bank is under a legal obligation to make the specified payment (Low, 2010:2).

A letter of credit (L/C) is a secured payment method which minimizes the risk of non-payment and non-performance of contracts for both parties. It is considered to be the "life-blood" and the "backbone" of international commercial transactions (Gao, 2007: 1067; Khan & Fareed, 2020:99). The UCP 600 Rules for Documentary Credits[1], established by the International Chamber of Commerce (ICC) in 2007, lay down rules on issuing and using documentary letters of credit in international financial transactions.

A letter of credit relationship involves the participation of three parties: the buyer (known as the applicant), the issuing bank, and the seller (known as the beneficiary). There is an underlying contract between the buyer and the seller. This contract may contain a letter of credit clause but the letter of credit is independent from the underlying contract. Acting upon the request of the buyer, the issuing bank opens a letter of credit in favour of the seller (beneficiary), which serves as a guarantee of the buyer's payment. The issuing bank is obliged to pay the seller (beneficiary), provided that the documents stipulated in the letter of credit are properly presented by the seller and strictly comply with the terms and conditions specified in the letter of credit. The required documents (e.g. sales licence, certificate of origin, specification of goods, bill of lading, etc.) are produced to prove the seller's performance under the sales contract (Gao, 2007: 1069). The presented documents are then subjected to strict scrutiny (by the issuing bank), in line with the principle of the strict compliance.

The purpose of this principle is to protect the distant buyer and to ensure (to buyer's satisfaction) that strictly conforming documents prove that the seller has performed his obligation as agreed in the contract of sale (Alavi, 2016: 29). The rationale behind this principle is that the issuing bank is "*a special agent of the buyer. If an agent with limited authority acts outside the that authority (in banking terminology: his mandate) the principal is entitled to disown the act of the agent, who cannot recover from him and has to bear the commercial risk of the transaction*" (Toth, 2006: 88). The second reason for the application of strict compliance is that banks do not have specialist expertise in all industries and, naturally, they do not know how or what goods/services are bought or sold in international transactions. They only deal with conformity of tendered documents and cannot go beyond the face of the documents (Atabaş, 2018: 497-498). Thus, the tender of similar documents is not acceptable under the principle of strict compliance (Carr, 2009: 479). There are two different approaches to interpreting compliance of presented documents with the letter of credit: literal compliance and substantive compliance. In literal compliance, any minor inaccuracy may be the reason for refusing payment, which is detrimental for international trade. Substantive compliance provides a more flexible approach to interpretation (Warnasuriya, 2021: 21).

[1] The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication no. 600 ("the UCP 600 Rules"), the International Chamber of Commerce's (ICC) Commission on Banking Technique and Practice; available at http://static.elmercurio.cl/Documentos/Campo/2011/09/06/2011090611422.pdf

2. LITERAL COMPLIANCE

The doctrine of literal compliance basically means that all documents presented by the beneficiary to the issuing bank shall strictly meet the criteria stipulated in the terms and conditions of the letter of credit. Thus, even the smallest discrepancy may be a sufficient reason for the bank to reject the presented documents for non-conformity with the L/C.

This principle was first formulated in a decision of an English court, in the case *Equitable Trust v Dawson Partners* (1927), where the court stated: "*There is no room for documents which are almost the same, or which will do just as well … The bank which knows nothing officially of the details of the transactions financed cannot take upon itself to decide what will do well enough, and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk*." (Arban, 2005: 83, 84). A similar decision was made in the case *English, Scottish and Australian Bank Ltd v Bank of South Africa (*1922), which stated: "*It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened*." (Kelly-Louw, 2016: 93).

Both statements are an expression of interpretation of the strict compliance principle as literal compliance, involving "the greatest degree of accuracy and clarity" (Kelly-Louw, 2016: 93). There are three reasons justifying this approach: 1) the "ribbon matching" theory of common law contract that has long governed offer and acceptance; 2) providing more certain reimbursement to bankers from the account party without litigation; and 3) providing quick and easy rule to determine compliance of documents (Leary & Ippoliti, 1987: 604-605).

In the aforementioned cases, the doctrine of strict compliance is interpreted literally. There is the "mirror image" rule, which implies that any slight discrepancy in the presented documents is unacceptable. This approach allows an issuing bank to dishonour a documentary letter of credit when presented documents contain even a typographical error (for instance, if "Alex" was spelled "Alexx"). This issue was tackled in the case *Hanil Bank v. PT. Bank Negara Indonesia* (2000). In this case, the District Court for the Southern District of New York ruled that an inconsistency between the spelling of the seller's name in the documentary letter of credit and the presented documents was a valid discrepancy to dishonour the letter of credit. Naturally, this "rigorous and detail-oriented" approach is the most extreme form of interpretation of the principle of strict compliance, which may be too burdensome in some circumstances (Conley, 2001: 978).

Another interesting case is *J.H. Rayner & Co Ltd v. Hambros Bank Ltd*. (1943), concerning a bank's refusal to honour a letter of credit on account of a discrepancy between the presented documents. It was a case involving an English seller who sold groundnuts to a Danish buyer, where an irrevocable letter of credit was accepted as the payment method. The documentary letter of credit, issued by the defendant bank in favour of the plaintiff, included as follows: "*Confirmed credit No. 14597. We beg to inform you that a confirmed credit has been opened with us in favour of yourselves for an amount of up to about £16,975, account of Aarhus Oliefabrik available by drafts on this bank at sight to be accompanied by the following documents – invoice, clean on board bills of lading in complete set …. covering a shipment of about 1400 tons of Coromandel groundnuts in bags."(Toth, 2006 :89)* "*All drafts ... must contain the clause 'Drawn under confirmed credit No. 14597.' We undertake to honour drafts on presentation, if drawn in conformity with the terms of this credit."* (Chow, Schoenbaum, 2015: 242). The plaintiff submitted a bill of lading which described the commodities as "machine-shelled groundnut kernels", including the abbreviation C.R.S. (in the margin) which is in commercial practice used for "Coromandels". The plaintiff also submitted an invoice where the description of goods ("Coromandel groundnuts") complied with the requirement of the documentary letter of credit. The defendant rejected to honour the draft which contained the abbreviation C.R.S. instead of "Coromandels". The Court of Appeal ruled that the defendant bank was entitled to refuse payment on the strict compliance principle (for non-compliance with the L/C) because the issuing bank was not obliged to have knowledge of customary terminology used in trade practices. The Court further explained that, "even if the bank had knowledge of such trade practice, it made the promise of paying against a bill of lading which describes the goods in a particular way. Therefore, it was only obliged to effect payment if the bill of lading stated the required goods."(Toth, 2006: 89-90).

The case *Bank Melli Iran v. Barclays Bank Ltd.(Dominion, Colonial & Overseas) (UK 1951)* involved the sale of 100 new Chevrolet trucks. The action was brought by the issuing bank (Melli) which claimed that payments under an irrevocable confirmed letter of credit had been made against discrepant documents. Under the L/C, the payments were due upon presentation of commercial invoice for shipment of 100 "new Chevrolet trucks", but the invoice (presented by the seller) described the trucks as being "in new condition. The confirming bank (Barclays) accepted these documents but the issuing bank (Melli) refused to make the payments, arguing that there was a non-compliance between the presented documents and the L/C. Relying on the doctrine of strict compliance, the court ruled that the issuing bank was entitled to reject payment because the description "in new condition" contained in the commercial invoice was not the same as the description "new" contained in the confirmed letter of credit (Krazovska, 2008: 44, 45).

The literal compliance interpretation has been criticized for causing high rejection rates because minor discrepancies may hinder the operation of the Letter of Credit as a payment method and thus hinder the flow of international trade the. The critics suggest that the doctrine of strict compliance should not be interpreted as a "blind" (literal) or "mirror image" compliance, which calls for "exceedingly rigorous proof-reading" by banks checking the documents. Instead, interpretation should focus on the type of mistake in the document; a document should be rejected if a discrepancy substantially affects the value or merchantability of goods, or refers to a material mistake (Chigerwe, 2016: 12). Some critics also argue that the literal compliance approach may be subject to abuse; for example, the issuing bank may avoid payment by relying on minor technical inaccuracies in the document (Leon, 1986: 453).

3. Substantial Compliance

As previously noted, the literal interpretation of strict compliance is too rigid. As such, it has been subject to criticism because it may lead to acting in bad faith, which is contrary to the expectations of the honest (conscientious) seller. For this reason, some courts have pursued a different interpretation approach, which is called *substantial compliance*. Under the substantial compliance approach, if the differences between the presented documents are insignificant, this approach offers protection to the beneficiary (seller) (Arban, 2005: 84).

In the case *South Korean Hyosung Corp. v. China Everbright Bank (Xiameng Branch)*, (China, 2003), the issuing bank claimed that there were discrepancies in some documents; one of them was the mistaken spelling of the word "bank" , which was misspelled as "bnak". In accordance with international standard banking practice, the court ruled that a minor technical or typographical error cannot be interpreted as discrepancy when it is obvious that the word was clearly mistyped (Kwaw, 2021: 83-84).

The case *Banco Espanol del Credito v. State Street Bank & Trust Co.* (1967) concerned the sale of clothing and garments. The documentary letter of credit required that the presented documents include a certificate of inspection by relevant Spanish authority, "certifying that the goods are in conformity with the order, that "a ten per cent random sample had been taken "for examination, and that the "whole ...[was] found conforming to the conditions stipulated on the Order-Stock-sheets." As the presented certificate did not comply with the exact terms of the letter of credit, the defendant bank refused to pay on the grounds of non-compliance. However, the court disregarded the discrepancy in the documents, stating that it was unreasonable to expect that the inspector would examine all goods related to the contract of sale; "*since the stock order sheets referred to in the certificate were stock sheets which the parties had already dealt with, that relationship was enough to supplant the original order".* Thus, the court considered that there was substantial compliance of documents with the terms of the letter of credit, while the discrepancy was deemed to be immaterial (Kwaw, 2021: 76).

In theory, the substantial compliance approach has been criticized for providing a wide discretion to banks in compliance control, which may undermine the purpose of the letter of credit. Namely, literal compliance transfers the risk of presenting discrepant documents to the seller, thus entitling the buyer to refuse a document even for a slightest discrepancy; on the other hand, "substantial compliance transfers that risk to the issuing bank, which is then compelled to make an assessment that goes beyond its authorization", thus entitling the buyer to contest the bank's arbitrary evaluation of compliance (Arban, 2005: 84).

4. Regulatory Instruments of the International Chamber of Commerce (ICC)

The International Chamber of Commerce (ICC) developed uniform rules on banking practices and transactions in international trade, such as the Uniform Customs and Practices for Documentary Credits (UCP) and the International Standard Banking Practices (ISBP).

4.1. TheUniform Customs and Practices for Documentary Credits (UCP 600 Rules)

The *Uniform Customs and Practices for Documentary Credits* (UCP Rules) are a set of standard rules and practices governing letters of credit, which are periodically revised. The UCP 600 Rules (2007) are the most recently updated rules on documentary letters of credit.

4.2. Amendments in UCP Rules

Article 13(a) of the UCP 500 Rules (1993 Revision),[2] stipulating the standard for examination of documents, reads as follows:

> "A. *Banks must examine all documents stipulated in the credit with reasonable care to ascertain whether or not they appear on their face to be in compliance with the terms and conditions of the credit. Compliance of the stipulated documents on their face with*

[2] The Uniform Customs and Practices for Documentary Credits, 1993 Revision, (UCP 500 Rules), ICC Publ. 500

the terms and conditions of the credit shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the credit."[3]

Article 14 of UCP 600 Rules (2007 Revision) sets a new standard for examination of documents, which reads as follows:

*"***a.** *A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation.* [...]
d. *Data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit.*"[4]

The revised provisions of the UCP 600 Rules have softened the principle of the strict compliance because they decrease the responsibility of banks. There is no longer reference to "reasonable care" as found in the former UCP 500 Rules, which was deemed to be ambiguous and which imposed more substantial responsibility on the banks to establish whether documents appear on the face to comply with the credit (Low, 2010: 27-28). The concept of "reasonable care" was tackled by the Supreme Court of Korea, which stated as follows: "*The care is the opposite concept of the negligence in Korean jurisprudence. Lack or disregard of care constitutes negligence. However, the reasonable care is not the one as to be determined generally or commonly but is such one as it expected from a reasonable person under the specific circumstances at issue. In other words, the reasonable care can be interpreted as the one a decent and reasonable person would exercise in order to protect himself or herself. It cannot be interpreted as the same as the one to be exercised for one's own property but can be the one to be generally expected from the bank's employee engaging in the matter of Credit (i.e. the fiduciary duty of care.)*." (Kim, 2017: 537).

However, given the fact that Article 14 of the UCP 600 Rules (2007) still obliges the banks to examine the presented documents for compliance, the banks still have to perform this duty with reasonable care in order not to act negligently. Article 14(a) stipulates that the presented documents shall be examined on their own merits, in order to determine "*whether or not the documents appear on their face to constitute a complying presentation."* The term "on the face" does not imply a more stringent duty to strictly examine the documents accuracy (Low, 2010: 28) because Article 14(d) clearly states that the data in documents need not be identical to but they must not conflict with the data in any other present document or the letter of credit. On the whole, the exclusion of the "*reasonable care*" concept has been interpreted as a positive development, aimed at ensuring "*more comprehensive and precise*" provisions in the UCP 600 Rules (Alavi, 2018: 40). The exclusion of this concept has softened the strict compliance principle.

4.3. The International Standard Banking Practice (ISBP Rules)

Although the UCP 500 and UCP 600 Rules do not explicitly refer to the strict compliance doctrine (either literal or substantial compliance), the reference to the "international standard

[3] UCP 500 Rules (1993): Documentary Credits, https://digilander.libero.it/Viniciuss/ucp500.pdf
[4] UCP 600 Rules (2007): http://static.elmercurio.cl/Documentos/Campo/2011/09/06/2011090611422.pdf

banking practice" in Article 14(d) of UCP 600 Rules may be observed as a partial support for the substantial compliance theory (Arban, 2005: 85). The UCP 600 Rules do not regulate typographical errors or misspellings in the tendered documents. This legal issue was first addressed in 2003, when the ICC Banking Commission published *the International Standard Banking Practice (ISBP)* for the Examination of Documents under Documentary Credits (Karim & Islam, 2016: 109). The ISBP Rules have also been revised several times (2007, 2013) to bring them into line with the new UCP 600.

The provision in paragraph 25 of the ISBP Rules (2007 Revision)[5] reads: "A *misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant. For example, a description of the merchandise as "mashine" instead of "machine", "fountan pen" instead of "fountain pen" or "modle" instead of "model" would not make the document discrepant. However, a description as "model 123" instead of "model 321" would not be regarded as a typing error and would constitute a discrepancy.*" Until the publication of the revised ISBP, the interpretation of such errors was left to the national courts. Over time, national courts have developed their own standards to assess the discrepancy of the tendered documents. Naturally, different standards often produced different results even if applied to similar typing or spelling mistakes (Karim &, Islam, 2016: 109-110). In order to avoid these inconsistencies, it is necessary to find a balanced (common-sense) approach to interpreting compliance (Kim, 2017: 58, 178). Some authors suggest that discrepancies may be divided into two groups: "*irrelevant irregularities* with no effect on principle of strict compliance, and *material discrepancies* which violate the principle of strict compliance and result in rejection of payment" by a bank (Alavi, 2016: 31).

The provision in Article 14(d) of the UCP 600 Rules, stating that "*data in a document need not be identical to but must not conflict with data in any other document or a letter of credit*', certainly softens the strict compliance principle in favour of using substantial compliance (Karim & Islam, 2016: 113). Article 18(c) of the UCP 600 Rules also states that "*the description of goods, services or performance in a commercial invoice must correspond with that appearing in the credit*." The provision in paragraph 58 of the ISBP Rules (2007) also specifies that "*The description of the goods, services or performance in the invoice must correspond with the description in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when collated together, represent a description of the goods corresponding to that in the credit.*" While strict compliance now seems to be restricted to substantive data (e.g. specified documents, goods description, agreed amounts), substantial compliance may be used in terms of supporting documents (e.g. collated details of goods, typing and spelling mistakes). In view of the more lenient nature of these provisions, it may be said that the UCP 600 Rules, in conjunction with the ISBP Rules, soften the strict (literal) compliance interpretation principle and provides for equitable and transparent international trade (Karim & Islam, 2016:113).

---

[5] International Standard Banking Practice for the Examination of Documents under Documentary Credits, 2007 Revision for UCP 600, ICC publication no. 681, available at https://sites.google.com/a/tradefinanceguru.net/www/international-rules/isbp

5. Conclusion

In the operation of a documentary letter of credit, strict compliance principle and the bank's notice on the rejection of payment are two sides of the same coin (Adodo, 2005: 118). The refusal decision is based on the interpretation of strict compliance principle. In practice, there are two interpretation approaches: literal compliance and substantial compliance. In literal compliance, even a slightest inaccuracy in the presented documents may be the reason for refusing payment; thus, the compliance risk is fully transferred to the seller. Such a rigid interpretation of required documents compliance with the documentary letter of credit is considered unjustifiable because it generates high rejection rates and hinders international trade. In substantial compliance, interpretation is based on a more flexible approach; if the discrepancies are embodied in minor (technical, typographical) inaccuracies, payment is not refused. Yet, as the burden of compliance assessment rests on the issuing banks, there is a risk that banks may abuse the wide discretionary authorities related to compliance control.

The UCP Rules and the ISBP Rules allow for a departure from the literal compliance by providing a more flexible approach to interpretation. They do not require strict ("mirror image") compliance, and documents with minor defects or inaccuracies are unlikely to be rejected for non-compliance with the letter of credit. In view of more consistent assessment, discrepancies may be classified into two groups: irrelevant irregularities and material discrepancies. On the whole, there seems to be a need for a balanced common-sense approach, which would strike a good balance between the literal compliance interpretation and the substantial compliance interpretation.

References

Adodo, Ebenezer O.I. (2005). *An Appraisal of the Fraud Exception and the Principle of Strict Compliance in Letters of Credit*, National University of Singapore, LLM Thesis, 2005, 119 pages.

Alavi, Hamed (2016). Risk Analysis in Documentary Letter of Credit Operation, *Financial Law Review*, Faculty of Law and Administration, University of Gdañsk, Vol.1, Issue 4, 2016, pp.27-45.

Alavi, Hamed (2018). What Is Compliant Presentation under the Law of Documentary Letters of Credit? A Critical Analysis of Article 14 of the UCP 600, *East-West Studies*, No:9, 2018, pp.35-47.

Arban, Erika (2005). The Doctrine of Strict Compliance in the Italian Legal System, *Arizona Journal of International & Comparative Law*, Vol:23, No:1, 2005, pp.77-104.

Atabaş, Nuşen Pelin Dalgıç (2009). UCP 600 Açısından Bankaların Belgelerle Bağlı Olması Kuralı, *Türkiye Barolar Birliği Dergisi*, Volume:134, Issue: January-February, 2018, pp.487-518.

Carr, Indira (2009). *International Trade Law,* Routledge, 4th Edition, 2009, 738 pages.

Chigerwe, Evelyn (2016). *A Critical Assessment of the Requirements for Documentary Compliance in the Law of Letters of Credit*, University of Johannesburg Faculty of Law, LLM Dissertation, 2016, 32pp.

Conley, Todd (2001). Hanil Bank v. Pt. Bank Negara Indonesia: The Problem with Form over Substance in Documentary Compliance Rules, *Catholic University Law Review*, Vol: 50, Issue: 4, 2001, pp.977-1008.

Chow, Daniel C.K & Schoenbaum, Thomas J. (2015). *International Business Transactions Problems, Cases, and Materials* (3rd ed.), Wolters Kluwer, 2015, p.242

Gao, Xiang (2007). The Fraud Rule in Law of Letters of Credit in the P.R.C., *The International Lawyer*, Vol.41, 2007, pp.1067-1090.

Karim, Ridoan & Islam, Md. Zahidul (2016), Critical Analysis of the Principle of Strict Compliance in Letter of Credit Operation with Relation to the UCP 600, *Journal of Asian and African Social Science and Humanities,* Vol:2, No:3, 2016, pp.105-114.

Kelly-Louw, Michelle (2016). The Doctrine of Strict Compliance in the context of Demand Guarantees, *Comparative and International Law Journal of Southern Africa (CILSA),* Vol: 49, 2016, pp.85-129.

Khan, Naeem Ullah & Fareed, M. Nadeem (2020). Jurisprudential Insight on Principles of Documentary Letter of Credit and Its Impact on International Business Transactions, *Journal of Law and Society*, Vol: LI, No: 76, July 2020, pp.87-102.

Kim, Yong Eui (2017). The Duty of Banks to Examine the Documents of Letters of Credit in View of Korean Courts, *Kangwon Natl. Univ. Kangwon Law Review*, Vol.50, 2017, pp.529-554.

Krazovska, Danute (2008). Impact of the Doctrine of Strict Compliance on a Letter of Credit Transaction, Master Thesis, University of Aarhus School of Business, 2008, 76 pages.

Kwaw, Edmund Ato (2021). Strict or Substantial Compliance in Letters of Credit: Crafting Guidelines for Verifying Documentary Compliance, *E-Journal of Law*, Vol.7 Issue:1, 2021, pp.51-87.

Leary, Fairfax & Ippoliti, Michael (1987). Letters of Credit: Have We Fully Recovered From Three Insolvency Shocks?, *University of Pennsylvania Journal of International Law*, Vol:9, Issue:4, 1987, pp.595-647.

Leon, Christopher (1986). Letters of Credit: a Primer, *Maryland Law Review*, Volume:45, Issue:2, 1986, pp.432-464.

Low, Hang Yen (2010a). *Grounds for Withholding Payment in Documentary Credits*, Ph.D. Thesis, University of Birmingham, 2010, 250 pages. https://core.ac.uk/download/pdf/75551.pdf

Low, Hang Yen (2010b). UCP 600: The New Rules on Documentary Compliance, *International Journal of Law and Management*, Vol:52, Issue:3, 2010, pp. 193-210.

Toth, Zsuzsanna (2006). *Documentary Credits in International Commercial Transactions with Special Focus on the Fraud Rule*, *Pázmány* Peter Catholic University, Faculty of Law and Political Sciences, Ph.D. Thesis, 2006, 180 pages.

Warnasuriya, Chathura (2021). Fraud Unravels All; Do Fraudulent Documents Invalidate A Letter of Credit?, *KDU Law Journal*, Volume:1, Issue:1, 2021, pp.17-31.

Legal documents

The International Standard Banking Practice for the Examination of Documents under Documentary Credits (2007 Revision for UCP 600), ICC publication no. 681; available at https://sites.google.com/a/tradefinanceguru.net/www/international-rules/isbp (accessed on 19.08.2022)

The *Uniform Customs and Practices for Documentary Credits, 1993 Revision*, (the UCP 500 Rules), ICC Publ. 500; available at https://digilander.libero.it/Viniciuss/ucp500.pdf (accessed on 19.08.2022)

The Uniform Customs and Practice for Documentary Credits, 2007 Revision (the UCP 600 Rules), ICC Publication no. 600, the International Chamber of Commerce's (ICC); available at http://static.elmercurio.cl/Documentos/Campo/2011/09/06/2011090611422.pdf (accessed 19.08.2022)

TUMAČENJE NAČELA STRIKTNE SAOBRAZNOSTI KOD AKREDITIVA U MEĐUNARODNOM TRGOVINSKOM PRAVU

Akreditiv je široko prihvaćen instrument plaćanja u međunarodnoj trgovini. Banka koja izdaje akreditiv kao sredstvo plaćanja ili obezbedjenja ima obavezu da izvrši plaćanje korisniku (prodavcu) ukoliko je korisnik uredno dostavio sve tražene dokumente koji su specifikovani u akreditivu. Na osnovu principa striktne saobraznosti, čak i najmanja netačnost ili nepodudarnost u dokumentaciji može biti razlog da banka odbije plaćanje. Postoje dva različita pristupa tumačenju načela striktne saobraznosti: doslovna (striktna) saobraznost i substancijalna (suštinska) saobraznost. U okviru doslovne (striktne) saobraznosti, svaka nepodudarnost u dokumentaciji može biti razlog za odbijanje plaćanja, što nije slučaj kod substancijalne saobraznosti koja nudi fleksibilniji pristup. S obzirom da se odluka o odbijanju plaćanja kod dokumentarnih akreditiva zasniva na tumačenju principa striktne saobraznosti, autor daje prikaz ova dva pristupa, sa osvrtom na relevantnu sudsku praksu i odredbe sadržane u dokumentima Međunarodne privredne komore (ICC) koji regulišu ovu materiju: Jedinstvena pravila i jednoobrazna praksa za dokumantarne akdreditive (Uniform Customs and Practice for Documentary Credits, UCP Rules), i Međunarodna standardna bankarska praksa za pregled dokumenata u skladu sa jedinstvenim pravilima za dokumentarne akreditive (International Standard Banking Practice for Examination of Documents under UCP 600, ISBP Rules). Neka pravila iz ovih dokumenata i međunarodna sudska praksa otvaraju mogućnost za fleksibilniji i izbalansiraniji pristup tumačenju principa striktne saobraznosti.

Ključne reči: *dokumentarni akreditiv, princip striktne saobraznosti, doslovna saobraznost, substancijalna saobraznost.*