

## STRICT COMPLIANCE OF DOCUMENTS IN LETTERS OF CREDIT (LCs) TRANSACTION: A NEW DIMENSION

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### Abstract

The issue of strict compliance of documents in LCs is a never ending story. It started with the narrow approach that the documents tendered by the seller should strictly comply with buyer's requirement under the LCs. Under this approach, the doctrine of strict compliance must be followed strictly to the extent that the documents must not contain any discrepancies, even minor typographical errors which do not really affect the underlying contract. Minor discrepancies such as wrongly spelt name of a beneficiary, incorrect description of the goods sold, wrong measurement of the quantity of the goods were considered as non-compliance which later served as sufficient grounds for the bank to reject the seller's presentation of documents. As pointed out by Lord Sumner in *Equitable Trust v. Dawson Partners*,<sup>2</sup> 'There is no room for the documents which are almost the same or which will do just as well.' This statement denotes that the documents should strictly comply with the terms of the credit and any documents which contain discrepancies should be rejected. Thus, compliance of documents ascertains the success of the LCs transaction. However, today, the approach taken by judges seems to be much broader and is open to a more liberal interpretation.

This paper discusses the issues of standard of compliance of documents required under the LCs transaction. It also examines whether the literal approach of strict compliance as highlighted by Lord Sumner is still favourable. In relation to this, discussion will be based on case law where the established legal principles from relevant decided cases will be explored. Focus also will be emphasized on other related issues to the compliance of the documents such as provisions under the *Uniform Custom and Practice for Documentary Credit 500*.<sup>3</sup>

### Introduction

Under the LCs transaction, the seller should present to the bank those documents required by the buyer under the credit. The documents presented must be strictly compliance with the terms of the credit. Otherwise, the seller will not be entitled to the payment under LCs. In practice, among those documents which normally requested by the buyer are the shipping documents such as a commercial invoice, bill of lading and certificate of insurance. The bank only has a duty to examine on the face of the documents alone and pay the seller on compliance of the documents presented.

### Doctrine of Strict Compliance

The short definition of strict compliance was developed in 1927 by Lord Sumner in the case of *Equitable Trust v Dawson Partners*,<sup>4</sup> where as Lord

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<sup>2</sup> (1926) 25 LIL Rep 90.

<sup>3</sup> 1993 Revision, ICC Publication No. 500; hereinafter, referred to as UCP 500.

<sup>4</sup> (1926) 25 LIL Rep 90.

Sumner had stressed that in LCs transaction seller need to present those documents required by buyer under the credit and there is no room for the documents which are almost the same. Thus, documents which are nearly similar to those required by the credit and bear the same function could not be accepted as substitution and should be rejected.

The rule of 'de minimis non curat lex' does not apply in LCs transactions. This was decided by Lord McNair in the case of case *Moraline (London) Ltd. v. ED F man*.<sup>5</sup> The seller tendered a bill of lading which stated 4,997 begs as contrary to the buyer's instruction which mentioned for 5000 begs. The buyer then rejected the goods. The court held that the buyer was entitled to do so irrespective of how minuscule and inconsequential the discrepancies were.

The view that documents must be identical among themselves was accepted since 1955 in the case of *Midland Bank v Seymour*.<sup>6</sup> Under "Description, quantity and Price" the buyer entered "Hong Kong duck feathers - 85% clean; 12 bales each weighing about 190lb; 5 s per 1b." the bill of lading did not contain the entire description, though an entire description was possible when all the documents tendered were read together. The bank accepted the documents. The buyer, when sued for reimbursement by the issuing bank put forward the defense that the documents tendered did not conform to the credit, since the bill of lading did not give a description, quantity and price of the goods. The court held that the buyer had not clearly stated the bill of lading should contain all these details, and the bank had adopted a reasonable meaning.

The bank obliged to check the documents based on their face only. If on their face of the documents, they are complied with the terms of the credit, the bank obliges to make payment. This means that the bank has no duty to check whether the documents are the original one required by the buyer. The bank also has no duty to investigate the genuine of the signature and to go far beyond what has literally stated in the content of the documents.

### **Purpose and Reasons for Strict Compliance**

The purpose of the strict compliance rule is evidently to protect the customer.<sup>7</sup> The bank's discretion to review the documents tendered is restricted in order to reduce the possibility that the unscrupulous beneficiary may be masking fraud or non-performance in the underlying transaction.<sup>8</sup>

The rationale behind this rule was also explained by Schmitthoff that the issuing bank

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<sup>5</sup> (1954) 2 Lloyd's Rep 52.

<sup>6</sup> [1955] 2 Lloyd's Rep 526.

<sup>7</sup> Lazar Sarna (1986) *Letters of credit, The Law and Current Practice*:2<sup>nd</sup> Edition: The Carswell Company Limited, at p. 73,74.

<sup>8</sup> *ibid*.

“is a special agent of the buyer. If an agent with limited authority acts outside 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.”<sup>9</sup> Thus, by analogy, the bank could not in any situations exceed their mandate authorized by the buyer that is only to pay on the compliance of the seller’s documents. If instead of knowing that the documents tendered by seller contained discrepancies, the bank still made a payment, they will have to bear the risk and will not be reimbursed by the seller.

Other rationale to uphold the application of strict compliance in LCs transaction is based on the principle that banks are not expert regarding goods and industries. The bank is not expected to know every aspects of commercial terminology in trade. In fact, the bank in almost cases relating to LCs transactions even do not know what kind of goods are seller and buyer are trading on. This is consistent with the principle expressed in article 15 of the UCP 500 that the bank is looking only for apparent conformity and is not required to look beyond the face of the documents.

Through the doctrine of strict compliance, the buyer will be protected and guaranteed that he will be delivered the goods as ordered and only has to reimburse the bank on compliance of seller’s documents. On the other hand, by virtue of the principle, the bank has also no obligation to judge the possible discrepancies of a document, and is saved from scrutinizing the underlying agreement.

#### Strict Compliance in Case Law

The principle of strict compliance has long been recognised by the judiciary. With reference to certain relevant cases, the following cases stand here as illustrations to the principle.

One of the most frequently cited cases is the *Equitable Trust Co of New York v. Dawson Partners*.<sup>10</sup> The case involved the sale and purchase of vanilla between the defendant and a seller in Batavia (now Jakarta). The defendant arranged with the plaintiff to open a credit in favour of the seller and to make payment available on presentation of a complete set of shipping documents and a certificate of quality to be issued “by experts who are sworn brokers”. Due to some ambiguities of the telegraphic code used by the issuing bank, the advising bank in Batavia informed the seller that the required certificate was to be issued “by expert who is sworn broker”. The shipment was made and payment was effected to the seller by the bank based on the tendered documents, including one experts certification.

Later it was revealed that the seller was fraudulent and that the shipment was mainly rubbish containing less than 1 % of the contracted goods. The House of

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<sup>9</sup> Schmitthoff's *Export Trade* (2000) *The Law and Practice of International Trade*:10th ed:London, p.172.

<sup>10</sup> [1927] 27 Lloyd's L Rep 49

Lords held that the bank was not entitled to get reimbursement from the buyer, as "one of the conditions on which the defendant undertook to reimburse the plaintiff - namely that there should be ... a certificate of quality to be issued by experts - has not been complied with"<sup>11</sup>.

Lord Sumner stated, that

"it is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorized to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines."<sup>12</sup>

This repeats the statement of the court made in the earlier case of *English, Scottish and Australian Bank Ltd v. Bank of South Africa*,<sup>13</sup> that;

'it is elementary to say that a person who ships in reliance on the LCs 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 LCs unless those drafts with the accompanying documents are in strict accord with the credit as opened'.

Another famous case is of *J.H. Rayner & Co Ltd v. Hambros's Bank Ltd*.<sup>14</sup>

The case involved an English seller that sold groundnuts to a Danish buyer. An irrevocable credit required sight drafts to be accompanied by bills of lading for "Coromandel groundnuts". The sellers tendered bills of lading "machine-shelled groundnuts kernels" which were universally understood in the trade to be identical to "Coromandel groundnuts". The bank refused payment, the seller sued and failed. McKinnon LJ observed that it was no good that the words in the bill of lading were "almost the same, or they will do just as well." The Court of Appeal held that the bank had rightly refused payment under the credit on the ground that the documents tendered did not comply precisely with the terms of the credit. The bank is not obliged to have knowledge of this. The documents were not the same and as against the seller, the bank was entitled to refuse payment. Justice Goddard further explained that even if the bank had knowledge of this trade practice, it made the promise of paying against a bill of lading describing the goods in a particular way. Therefore, it was only obliged to effect payment if the bill of lading stated the required goods description.<sup>15</sup>

Similar facts occurred in the *Bank of Italy v. Merchants National Bank*,<sup>16</sup> where the court found that the term 'dried grape' is not the same as 'raisin.' Thus, the court held that the documents contained discrepancy even though the two different terms were referred to the same goods and in reality the two goods are actually the same.

<sup>11</sup> *Ibid* at 52.

<sup>12</sup> *Ibid* at 52.

<sup>13</sup> [1922] 13 Lloyd's Rep 21, at p. 24.

<sup>14</sup> [1943] 1 KB. 37.

<sup>15</sup> *Ibid*.

<sup>16</sup> 236, N.Y. 106, 140 N.E. 211 (1923).

In *Bank Melli Iran v. Barclays Bank (Dominion, Colonial and Overseas)*<sup>17</sup> the case involved the sale and purchase of Chevrolet trucks. Payment was made against two LCs issued by Bank Melli and confirmed by Barclays Bank, one of which called for a delivery order, insurance policy, invoice and a US Government undertaking confirming that the trucks are new. The other called for an "on board" bill of lading and an insurance certificate. The confirming bank made payment to the beneficiary and transferred the documents to the issuing bank. The issuing bank, however, rejected the documents and refused to reimburse the confirming bank on the ground of discrepant documents. The plaintiff alleged that the delivery order was not for "new" trucks but for "new-good" trucks; the invoice was not for "new" but for "in good condition" trucks. And the bill of lading was marked "said to contain lorries". The Counsel stating that "the documents upon which a bank could pay must correspond strictly with the documents as defined in the mandate"<sup>18</sup> held that the confirming bank was not entitled to reimbursement by the issuing bank.

The *Lena*<sup>19</sup> case from the 1980s is an authentic example. The LCs asked for the presentation of a commercial invoice, specifying its content. The documents tendered by the beneficiary were rejected by the bank on discrepancies of the invoice.

The Court held that:

"Unless otherwise specified in the credit, the beneficiary must follow the words of the credit and this is so even where he uses an expression, which, although different from the words of the credit, has, as between buyers and sellers, the same meaning as such words."<sup>20</sup>

In the more recent case of *Chailease Finance Corporation v. Credit Agricole Indosuez*<sup>21</sup> the defendant bank issued a LCs of credit in favour of the plaintiff as beneficiary. The credit was for an amount of US \$ 556,750 - covering "vessel MV "Mandarin" sale agreement dated July 31, 1998 for delivery in Taipei during August 17-20, 1998 ... available ... against presentation of the following documents: among others... a bill of sale... and a copy of acceptance of sale." The seller presented the documents, including a bill of sale dated August 21 and an acceptance of sale stating that delivery had taken place on August 21.

The bank rejected the documents because "date of delivery of the vessel was stated in the bill of sale and the signed acceptance of sale to be 21 August 1998 when the LCs stated that the vessel was for delivery...August 17-20 1998".<sup>22</sup> The court found that the delivery date was not part of the goods

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<sup>17</sup> [1951] 2 Lloyd's Rep 367

<sup>18</sup> *Ibid*, at 368.

<sup>19</sup> *Kydon Compania Naviera S.A. v. National Westminster Bank Ltd* [1981] 1 Lloyd's Rep 68, . Andreas Karl, *Letters of Credit and The Doctrine of Strict Compliance*, Available [on-line]: <http://www.juridicum.su.se/transport/forskning/Uppsatser/EssayKarl.pdf>

<sup>20</sup> *Kydon Compania Naviera S.A.*, at 76; Andreas Karl, *ibid*.

<sup>21</sup> [2000] 1 Lloyd's Rep. 348; Andreas Karl, *ibid*.

<sup>22</sup> *Ibid*, at 351; Andreas Karl, *ibid*.

description thus the documents complied with the requirements of the credit. It stated that:

"the LCs does not state that the documents and in particular, the acceptance of sale and bill of sale, have to show that the vessel has been delivered within any range of dates, in particular the period August 17-20. .... If it had been intended that the bank was obliged to pay only against documents showing that delivery of the vessel had been affected by a particular date, that could readily have been provided for."<sup>23</sup>

### Strict Compliance in the UCP 500

The Principle of Strict Compliance is embodied in the UCP 500. Through the provisions of the relevant articles, this principle emphasizes the duty of the bank to examine the documents and pay only if they complied with the credits, otherwise, the bank may refuse to take up the documents.

Article 13 (a) states that banks must examine all document 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 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.

Pursuant to this doctrine, the issuing bank is not, a guarantor of the document's conformity, its duty is discharged by the exercise of reasonable care to ascertain that the documents comply on their face with the terms of the credit.<sup>24</sup>

Article 14(b) provides that upon receipt of the documents tendered by the beneficiary, the bank must determined on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and condition of the credit. Should there be any discrepancies; the bank must reject those documents.

Out of all the above mentioned articles, the principle of strict compliance is relaxed a little by the virtue of article 37(c). The provision of this article ruled that the description of the goods must correspond with the description of the credit, but in all other documents, the goods may be described in general terms not inconsistent with the description of the credit. In addition, article 39 also allowed in credit amount, quantity and unit price. Unless the credit stipulates that the quantity of goods specified must not exceeded or reduced, a tolerance of five per cent more or less is permitted (i.e

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<sup>23</sup> Ibid at 358; Andreas Karl, *ibid*.

<sup>24</sup> In *Bass & Selve Bank v Bank of Australiasia* (1904) 90 LT 618, the court held that it was for the buyer to prove lack of care on the part of the bank; Andreas Karl, *ibid*.

'10,000 tonnes' allows 9,500 tonnes to 10,500 tonnes).<sup>25</sup> This does not apply where the credit stipulates the quantity in terms of a stated number of packing units or individual items (i.e 5,000 boxes...)<sup>26</sup> if the words 'about', 'approximately', 'circa' or similar expression is used in connection with the quantity, this gives a tolerances of 10 per cent.<sup>27</sup>

### Strict Compliance: A New Dimension

Debate had been highlighted among the judges through the case law regarding the standard of compliance applied in examining documents. Traditional approach spelt out in the case of JH Rayner demonstrated that the documents must be literally complied with the terms of credit. Any typo errors will amount to discrepancies which later give the buyer the right of rejection. The seller has no choice except to adapt with this basic principle and followed strictly what has been demanded by the buyer.

Comparison and observation has been made based on recent case law especially from US who evidenced that this approach becomes more liberal. Courts have deal with the issues of compliance of documents with more tolerances. With reference to Malaysian scenarios, study had demonstrated the leniency of the application of this doctrine among the bankers. Effort towards a more liberal and broader approach also has been examined by the ICC drafting group for the UCP 600.

### Case Law

As mentioned above, nowadays recent case law had displayed that the strict compliance doctrine become broader. In obvious cases courts, especially in the United States, Canada and the Far-East, are ready to bend the rule of strict compliance to a standard of substantial compliance if it makes more sense in the specific case. The judges tend to decide the case based on the merits of each case. Only in cases where the discrepancies prejudiced the transaction will the court decide to withhold the payment. The discrepancy which can be considered as minor or immaterial and did not affect the entire transaction is not a barrier to the payment under LCs. Thus, whether payment will prevail in the case of discrepancies of documents may depend on the nature of discrepancies.

In Canada, through the case of *Bank of Nova Scotia v. Angelica-Whitewear Ltd.*<sup>28</sup> the court emphasized that 'there must be some latitude for minor variations or discrepancies which are not sufficiently material to justify a refusal of payment'.

<sup>25</sup> Judith (2001) *Law of International Trade*: Old Bailey Press: 3<sup>rd</sup> edition.

<sup>26</sup> Article 39(b), UCP 500, Judith, *ibid*.

<sup>27</sup> Article 39(a), UCO 500, Judith, *ibid*.

<sup>28</sup> (1987) 1 S.C.R. 59, 1987 Can LII 78, S.C.C.

Similarly, in China case of *Bank of China (Fujian Branch) v Bank of East Asia*<sup>29</sup> the court held that strict compliance does not mean slavish conformity to the terms of the LCs and the LCs is a means to make payment rather than a means to refuse payment.

In *Korea First Bank v. Korean Export Insurance Corp.*,<sup>30</sup> the court stated that 'when there exists a little difference in words and phrases which is slight but the bank, if taking reasonable care, can understand that it does not cause the grave difference and does not harm the terms and conditions of the LCs at all from its face, it must be regarded as in accordance with the terms and conditions of the LCs.'

Through the case of *C.I de Bananeros De Uruba S.A v Citibank, N.A*<sup>31</sup>, the court noted that under New York Law, the beneficiary must establish that it has strictly complied with the terms of the LCs, which means that the documents must comply precisely with the requirements of the LCs. The court recited the adage that documents that are nearly the same will not suffice. It also concluded that the strict compliance requirement applies with equal force where the LCs is subject to the UCP under the UCP 500, article 13(a) inconsistency rule. This decision however has been criticized as the court equated the UCP standard of compliance with the judicial standard of 'strict compliance', failing to recognize that the UCP nowhere mentions 'strict' in relation to compliance and at several points tolerates a rather loose relationship between documents and the LCs.

In *Carter Petroleum Products Inc. v. Brotherhood Bank and Trust Co.*<sup>32</sup> the credit named the applicant as "Highway 210, LLC". The draft presented by the beneficiary listed the name of the applicant as "Highway 210 Texaco Travel Plaza, LLC". The bank rejected the presentation alleging, among others, that the draft did not strictly comply with the requirements of the credit. The court did not accept this reasoning and ruled against the bank. It emphasized, that "although the draft request submitted by Carter was not in complete conformity with the LCs issued by the bank, it did contain all the necessary information requested by the LCs.... Moreover, the bank could not have been misled by the nonconformity."<sup>33</sup>

The court in another case, *Adaro Indonesia v Rabobank*,<sup>34</sup> also concluded that obvious mistyping of the beneficiary's address does not itself make the document discrepant.

<sup>29</sup> Civil Judgment, (2002) Min Jing Zhong Zi No. 126; Fujian High People's Court, China.

<sup>30</sup> (2000) DA 63691, Supreme Court, 3rd Div. 2002, Korea.

<sup>31</sup> Index No. 602314/1999 (N.Y. Sup. Ct, 12 April 2000) [USA]. Excerpts from *The Annual Survey of Letter of Credit Law & Practice, Vol. 2000 & 2001, Cases: Summaries*. Available [on-line]: [www.iiblp.org/what\\_is\\_survey.asp](http://www.iiblp.org/what_is_survey.asp).

<sup>32</sup> 97 P.3d 505 (Kan. Ct. App. 2004), Available [on-line]: <http://www.kscourts.org/kscases/ctapp/2004/20040917/90998.htm>.

<sup>33</sup> *Ibid.*

<sup>34</sup> [2002] 3 SLR 258.

In the recent case of *All American Semiconductor Inc. v. Wells Fargo Bank, Minnesota N.A.*<sup>35</sup> the bank issued a LCs payable to the plaintiff against, among other documents, sight drafts accompanied by a statement made by the beneficiary and the relevant invoices. The beneficiary tendered a statement on a company letter head that named the company only as "All American" and included an address in Miami, and invoices containing the name and purchase order of the buyer and "All American Semiconductor Inc" as the invoicing party. The bank rejected the presentation alleging that the statement discrepantly stated the beneficiary's name and at the referred address two "All American" companies resided. The court observed that the statement alone might have justified dishonour but the documentary presentation, taken as a whole, unambiguously identified the beneficiary, thus the presentation was complying.

In *Middlesex Bank v Mark Equipment Corp.*,<sup>36</sup> while acknowledging the applicability of the strict compliance standard under UCC 5-108,<sup>37</sup> the court cited the prior case, *Exotic Traders Far East Buying Office v Exotic Trading USA, Inc.*,<sup>38</sup> and stated that an issuing bank "may not reject a demand for payment on the basis of a hyper technical reading of a LC."

A recent decision by US Supreme Court in *Continental Casualty Co. v. South Trust Bank, N.A.*<sup>39</sup> demonstrated the reality of the US Court's firm approach to a more substantial standard of compliance. In this case, the court highlighted that strict compliance does not necessarily mean exact compliance whereas if the discrepancies are not fatal, the presentation must not be rejected due to non-compliance.

Similar approach has been relied in a local case, *Bhojwani and Anor. v. Chung Khiaw Bank Ltd.*<sup>40</sup> Young Pung How J has stated clearly in that even though strict compliance is a fundamental principle in LCs, it cannot be applied in all situations, it will depend on merits of the case.. This statement denotes that the principle of strict compliance allowed tolerances in certain minor discrepancies.

<sup>35</sup> 105 Fed.Appx. 886 (8th Cir. 2004). Available [on-line]:[datum.studyget.com/sh/200608/20060815\\_29188.shtml](http://datum.studyget.com/sh/200608/20060815_29188.shtml)

<sup>36</sup> WL 446035 (Mass. Suoer. Ct. Feb. 14, 2005); Carter H. Klien (2006) *Letter of Credit Development*, Available [on-line]: [http://www.jenner.com/files/tbl\\_s18News%5CRelatedDocuments147%5C2050%5CKlein\\_Letter\\_of\\_Credit\\_Law\\_Developments\\_2006.pdf](http://www.jenner.com/files/tbl_s18News%5CRelatedDocuments147%5C2050%5CKlein_Letter_of_Credit_Law_Developments_2006.pdf)

<sup>37</sup> Uniform Commercial Code, i.e. *the uniform acts that has been promulgated in attempts to harmonize the law of sales and other commercial transactions in 49 states (all except Louisiana) within the United States of America.*

<sup>38</sup> 717 F. Supp. 14, 16(D. Mass. 1989); Carter H. Klien (2006) *Letter of Credit Development*, *supra*.

<sup>39</sup> Frank Snyder, "Strict Compliance" Doesn't Mean "Exact Compliance" [2006] Ala. LEXIS 1 (Jan. 6, 2006), Available [on-line]: <http://www.typepad.com/t/trackback/4215435>.

<sup>40</sup> [1990] 3 MLJ 260.

## UCP 600

The difficulties relating to the issue of which discrepancies give rise to rejection had been recognized by the drafters of the UCP 500.<sup>41</sup> Furthermore, it was frustrated that the UCP 500 had failed to provide a functional standard to reduce the 'proliferation' of litigation.<sup>42</sup> Thus, it was predicted that as a result of the continuing uncertainty, the litigation had continued and will continue, at least until the emergence of the UCP 600.<sup>43</sup>

At the recent meeting of the UK Export Forum, Gray Collyer, head of the ICC drafting group, gave a progress report on the drafting of the long-awaited UCP 600.<sup>44</sup> In relation of inconsistency within the document dataset remains difficult to resolve. There is a general recognition that many minor variations between the data elements in documents should, when put in their context, not constitute discrepancies.<sup>45</sup> Two alternatives offered, first, data in documents required for presentation when read in context itself, the credit and the international banking standards, need not be identical but must not conflict with data in that document, any other required document, or the credit. Second, data in documents required for presentation when read in context itself, the credit and international banking standards, need not be identical but, must not conflict with data in that document or the credit. The difference in the second alternatives is eliminating conflicts between different documents, the most frequent grounds for dishonour of draws presented under commercial LCs.

### *Banker's Practice in Malaysia*

The application of this doctrine is also less severe in Malaysia. The banks with regards to this issue agree on various tolerances. This can be proved as there were only a few cases brought before the court (relating the issue of strict compliance) whereas the rest have been settled outside the court. Research<sup>46</sup> found that the seller has always be given a reasonable period to rectify the discrepancies and in most cases the seller will not left frustrated without getting any payment. This might be the case when the discrepancies were not too serious as they could defeat the whole transaction. The bank also will be compromise more if the seller is their regular customer.

<sup>41</sup> Richard Morris, *Discrepancies: Has UCP 500 Wrought Any Improvement?* At Issue. at p. 65; Available [on-line]: <http://sunzi1.lib.hku.hk/hkjo/view/15/1502320.pdf>

<sup>42</sup> *Ibid.*

<sup>43</sup> *Ibid.*

<sup>44</sup> Carter H. Klein, *supra*.

<sup>45</sup> *Ibid.*

<sup>46</sup> Rosmawani & Khuzaimah, [2003], *The Application of Principle of Autonomy and Doctrine of Strict Compliance in Letter of Credit: A Survey on Malaysian Banks*, funded by the Faculty grant, Universiti Utara Malaysia.

## Conclusion

The area of documentary discrepancies in LCs transactions has produced a fascinating struggle between form and substance.<sup>47</sup> Neither UCP 500 nor definite case law did provide or discuss the kind of variations, or discrepancies to justify a refusal to pay. On one hand, case law had necessitated a literal compliance but, on the other hand, there are also tendency in the rest of cases whereby this approach has seemed to be ignored<sup>48</sup> and substantial approach has been prevailed.

Thus, the required standard of compliance is still opened to conflict<sup>49</sup> and is left to the court to decide based on the merits of the case.<sup>50</sup> Proponents of the substantial compliance claimed that the strict literal approach would defeat the whole purpose of LCs by setting aside the transaction due to minor errors which does not really affect the underlying transaction. On the other hand, proponents of the strict compliance standard contend that to accept a substantial compliance would lead to welcome uncertainty of all parties and to loss reliance in LCs.<sup>51</sup> Notwithstanding this divergence, there was a proposal which suggested that the principle of strict compliance not to be handled strictly so as to deny the facilitation of the LCs and block the smooth flow of international trade.

Therefore, the literal approach or strict approach of compliance seemed to be still favourable but its application should also consider various tolerances so as not defeat the facilities provided by the LCs.<sup>52</sup> In other words, liberal approach in this sense implies wide literal approach but not among to substantial compliance. In this point, the evergreen words of Gutteridge, Megrah and Cooke will still be the best clear and precise clarification to be relied upon that the statement by Lord Sumner in *Equitable Trust* case does not extend to the dotting of i's and crossing of t's or to obvious typographical errors either in the credits and the documents. Due to the wide variations in language

<sup>47</sup> Richard Morris, *supra*; Recent survey (2003) in UK by SITPRO indicates that rejection rate at first presentation against LCs lies in the range between 50-60%. See also, International Business Committee TACC (1998). A finding shows that 99% of letter of credit difficulties are caused by discrepancies of the documents; .

<sup>48</sup> *Ibid.*

<sup>49</sup> Rosmawani Che Hashim, *Doctrine of Strict Compliance in Letter of Credit (LC): Substantial or Literal Compliance?* [2005] 4 Malayan Law Journal, at p. 1xxiii.

<sup>50</sup> *Ibid.*; see also, Felix WH Chan, *Documentary Credit Under UCP: A Fault Finding Mission or a Mere Guessing Exercise?* at p. 19, Available [on-line] <http://sunzi1.lib.hku.hk/hkjo/view/14/1400252.pdf>.

<sup>51</sup> Andreas Karl; See also, Erika Arban, *The Doctrine of Strict Compliance in Italian Legal System*, Arizona Journal of International and Comparative Law, Vol. 23, No. 1, 2005, at p. 84, Available [on-line]: [www.law.arizona.edu/journals/ajicl/AJICL2006/vol231/LLM%20Note%20-%20Arban.pdf](http://www.law.arizona.edu/journals/ajicl/AJICL2006/vol231/LLM%20Note%20-%20Arban.pdf); See also, Dr. Mohamed Ibrahim M Adam, *The Problem Relating To The Interpretation of Strict Compliance Rule In Lettres of Credits Practice*, May 13, 2006, Available [on-line]: [http://www.dradamlawoffice.com/pdf/the\\_problems.pdf](http://www.dradamlawoffice.com/pdf/the_problems.pdf)

<sup>52</sup> See also, Felix WH Chan, *supra*, at p. 19.

to be found both, it is impossible to be dogmatic or even to generalize. Each case is to be considered on its merits.

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