# STRICT COMPLIANCE IN LETTERS OF CREDIT: THE BANKER'S PROTECTION OR BANE?

## Introduction and Definition

Letters of Credit have in the last few decades assumed an increasingly important role in trade financing brought about primarily by the tremendous surge in the volume of international transactions since the set up of the General Agreements on Tariffs and Trade ("GATT") after the Second World War. With further internationalization of trade accelerated by the advances in communication and transportation technology, banks have come to assume a crucial role as intermediaries in the facilitation and consummation of international contracts. This article will focus on the role and function of the doctrine of Strict Compliance, a creature of judicial legislation, presently recognized and embodied in provisions of the Uniform Customs and Practice for Documentary Credits ("UCP") and the American Uniform Commercial Code ("UCC") Article 5. In discussing the role and function played by the doctrine, emphasis will be placed on the treatment by the courts and in general on discrepancies in documents with a short commentary on the rejection procedure under the UCP and the alternatives.

The American approach in moderating the harsh effect of the Strict Compliance Rule will be touched upon followed by a short coverage of Stand-By Credits and Strict Compliance. A brief survey will also be made on recent developments in the field including the call for a 'duty' on the part of the banks to inform unsuspecting clients to certain transactions where the banks may possess relevant information.

Finally some solutions will be proposed together with an appeal for reform in an area that has been neglected for some time. However, the treatment of the above subject theme should not be considered exhaustive although no effort will be spared to convey a broad sweep of the topic for the benefit of those interested.

In approaching the subject, generations of lawyers have echoed the words of Viscount Sumner in *Equitable Trust Company of New York v. Dawson Partners Ltd*[1] wherein his Lordship stated at page 52:

> "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".

[1] [1926] 27 LLR 49.

In the subsequent case of *Gian Singh & Co Ltd v. Banque De L'Indochine*[2], Lord Diplock (at p. 759) had referred to Viscount Sumner's above dictum and stated that it had "[n]ever been questioned or improved upon". This rule has also been affirmed and accepted by Canadian authorities[3] and the American cases adopt a similar approach. In the famous dicta of Viscount Surnner earlier cited, the distinguished judge went on to say:

> "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".

The purpose of the strict compliance rule is evidently to protect the customer, the limitation of discretion on the part of the bank in reviewing the documents tendered reduces the possibility that the unscrupulous beneficiary may be concealing fraud or non-performance in the underlying transaction. The documents must demonstrate that the shipment strictly complies with the underlying transaction as set out in the credit. This determination of conformity is made on a *prima facie* basis and must be arrived at honestly and in good faith. As an illustration, if a certificate signed by experts is required, a certificate signed by a single expert is a bad tender.[4] Again a set is non-conforming if the bill of exchange is drawn on the issuing bank instead of the buyer.[5] It must not be forgotten that the doctrine of strict compliance applies in all the contracts which arise in a documentary credit transaction, that is, the contract between the buyer and the banker, the contract of banker and seller and the relationship of issuing and correspondent banker. The American position postulates different approaches to the strictness of the compliance according to the relationship of the parties.[6]

**Strict or Substantial Compliance- Scope of the Rule**

Is there a divergence between the English and American approaches towards the doctrine? The general application of the doctrine was acknowledged as early as 1926 in the American case of *Camp v. Com Exchange National Bank.*[7] However in a later decision, ie *Far Eastern Textile Ltd v. City National Bank and Trust Co,*[8] a dual standard was expounded by the court which supports strict compliance in

2 [1974] 2 All ER 754
3 See, eg., *David O'Brien Lumber Co Ltd v. Bank of Montreal* [1951] 3 DLR 536.
4 Refer to footnote 1
5 *Kydon Campania Naviera SA v. National Westminister Bank Ltd (The "Lena")* [1981] 1 Lloyd's Rep 68
6 Compare and contrast *Equitable Trust Co of New York v. Dawson Partners* (Buyer and Banker relationship) with *Rayner (JH) & Co Ltd v. Hambro's Bank Ltd* (Seller and Banker relationship)
7 132A, 189,191 (1926)
8 430 F. Supp 193 (SD Ohio 1977)

respect of the contract between banker and seller but postulates substantial compliance in respect of the contract of banker and buyer. In that case, the credit called for a purchase order signed by one Larry Fannin. When the beneficiary submitted a purchase order signed "Larry Fannin by Paul Thomas" the issuer dishonoured. In a suit by the beneficiary for wrongful dishonour, the court rendered summary judgment for the issuer, holding that to require the issuer to investigate the authority of Thomas "subverts the independent nature of the [credit]" (at page 198). A clear case where the court applied a doctrine of substantial compliance would be *First National Bank of Atlanta v. Wynne*[9] which involved a credit that required that the beneficiary submit a draft reciting that it was drawn under the credit and identifying the credit by number. The Wynne draft failed to include such recitation but the court applying the rule in the earlier *Flagship* decision[10] held that no defect is significant if it does not mislead the issuer. The court in the *Wynne* case held that since the beneficiary's cover letter did refer to the credit, the defect did not justify dishonour. A functional rather than a literal approach towards compliance with the documentary credit was adopted but it can be criticised in that such a posture injects too much uncertainty in the bank's duty to examine documents as to interfere with the orderly conduct of such transactions. Further it may be asked whether the courts may be reading too much into the documents thus displacing the intention of the parties as embodied in the documents. From the perspective of the banks, it perhaps demands rather unrealistically a level of competence quite beyond their primarily ministerial role as document examiners. It would seem that the American courts have sacrificed commercial certainty in place of notions of equity and justice which is at any rate a double standard approach. No doubt, it cannot be denied that the grammar, style, language and form used may sometimes vary heavily, although inconsequentially, from the requirements set out in the credit. The honest beneficiary and the nervous buyer may find their transaction grounded because the bank refuses to make payment on grounds of trite textual deviations. Nevertheless, there may be authority for some latitude in the context of minor variations or discrepancies which may be insufficient to justify a refusal of payment. In the case of *Gian Singh & Co Ltd v. Banque De L'Indochine* earlier cited, Lord Diplock appeared to hold that the rule of strict compliance did not cover minor discrepancies which were insufficiently material to justify a refusal of payment when he stated: "The relevance of minor variations ... depends on whether they are sufficiently material to disentitle the issuing bank from saying that in accepting the certificate it did as it was told." Implicit in the above statement may be judicial support for the principle of law de minimis non curat lex although it has been stated in other cases that the rule does not apply to documentary credit transactions.[11]

[9] 26 UCC Rep. 1273 (1979)
[10] *Flagship Cruises, Ltd v. New England Merchants National Bank,* 569 F.2d 699, 701 (1st Cir 1978)
[11] See *Moralice (London) Ltd v. E.D. and F Man* [1954] 2 Lloyd's Rep 526 and *Soproma S.p.a. v. Marine and Animal By-Products Corporation* [1966] 1 Lloyd's Rep. 367, 390.

For transactions governed by the provisions of the UCP, the position is qualified by the applicability of the articles which sanction the acceptance of certain 'irregular' documents. For example, article 43(b) of the UCP sanctions under or overshipment of a quantity of goods within the tolerance admitted by the Article. Further Article 29(c) of the UCP authorizes the bank to pay under the credit in disregard of any printed clauses allowing transhipment in the absence of any expressed prohibition.

**The Position under the Uniform Customs and Practice for Documentary Credits (1983 Revision) ("UCP") and the American Uniform Commercial Code ("UCC") Article 5**

Banks throughout the world today apply an agreed international code to all their letter of credit transactions - the Uniform Customs and Practice for Documentary Credits ("UCP") drawn up by the Renowned International Chamber of Commerce ("ICC") and most recently updated in 1983. The Code provides a detailed set of guidelines for most practical aspects of the credit operation. In particular, under Article 15 the UCP expressly require banks to examine documents with reasonable care to ascertain whether they appear on their face to be in accordance with the terms and conditions of the credit. Should the set of documents be irregular or if the documents are on their face inconsistent with each other, they have to be rejected. Payment, acceptance or negotiation against documents which appear on their face to be in accordance with the terms and conditions of the credit by a bank authorized to do so binds the party giving the authorization to take up the documents and reimburse the bank.[12]

Under the American UCC Article 5-114(1), the issuer must honour a draft or demand for payment which complies with the terms of the relevant credit regardless of whether the goods or documents conform to the underlying sale or other contract between the customer and the beneficiary. In addition under Article 5-109(2), the equivalent of Articles 15 and 17 of the UCP, the issuer must examine documents with care so as to ascertain that on their face they appear to comply with the terms of the credit, but unless otherwise agreed, assumes no liability or responsibility for the genuineness, falsification or effect of any document which appears on such examination to be regular on its face. The UCP also contain detailed requirements for transport and insurance documents and commercial invoices, and provide that other documents are in general to be accepted as presented if the credit does not stipulate what they are to contain or who should issue them. Documents are to be refused only if they cannot be linked or identified with the goods or services in question.[13]

[12] See Articles 15 and 16 of UCP (1983 Revision) and *EuropeanAsian Bank v. Punjab & Sind Bank* [1983] 1 Lloyd's Rep 611 (CA).

[13] See Articles 22-42 of the UCP and *Banque de L'lndochine et de Suez S A v. J H Rayner (MincingLane) Ltd* [1983] 1 Lloyd's Rep 228.

What is the legal status of the UCP? Is it an independent source of law established by mercantile usage, ie part of the *lex mercatoria* or is it a voluntary code of practices binding only if expressly incorporated into a contract? It would appear on balance, that the Code is not a set of independently binding legal rules and article 1 of the Code requiring express reference of the Code supports this view. On the assumption that the UCP would apply in most transactions, what is the legal effect of Articles 15 and 5-109(2) earlier mentioned? Generally, it would appear that the issuing or correspondent bank owes an obligation to the customer to use reasonable care, good faith and a degree of skill expected of bankers in their trade to review documents required by the credit and ultimately tendered for the purpose of determining whether all documents have been presented, whether those documents are the ones described in the credit, and whether on their face those documents contain no discrepancy which would either betray their invalidity, insufficiency or non-conformity with the credit requirement. Judicial support can be found for this proposition. In the case of *British Imex Industries Ltd v. Midland Bank Ltd*[14] Salmon J as he then was stated:

> "I doubt whether (the banks) are under any greater duty ... than to satisfy themselves that the correct documents are presented to them, and that the bills of lading bear no endorsement or clausing which could reasonably mean that there was or might be some defect in the goods or in their packing."

Support can also be found in the provisions of the UCP and the UCC which although requiring from the issuer a certain degree of care in reviewing documents listed for presentation, does not require the issuer to assist the credit applicant in drafting his credit or in determining the range of documents required prior to payment. Once the credit is in place, the issuer cannot substitute its own judgement as to the documentary requirements or contents of the credit. In a Privy Council decision on appeal from Australia, their Lordships overruled the decision of the Australian High Court and held that presentation of a 'certificate of inspection' implied a minimum requirement only that the goods be visually inspected and if any particular method of inspection is required, it had to be stated in the credit.[15]

Banks have attempted to mitigate the harshness of the effect of the absolute or strict compliance doctrine by incorporating sweeping exemption clauses in its contract with the applicant. However articles 17 and 5-109(2) would seem sufficient to cover the banks adequately without falling foul of the Unfair Contract Terms Act, 1977.

**The Different Aspects of Discrepancies in Documents**

It is submitted that courts do recognize a distinction between minor and major

[14] [1957] 2 Lloyd's Rep 591 at 597.
[15] The *Commercial Banking Co of Sydney Ltd* v. *Jalsard Pty Ltd* [1972] 2 Lloyd's Rep 529

variations or discrepancies, the distinction being the degree of materiality sufficient to permit the issuing bank to refuse payment to the beneficiary under the credit. As one well-known author remarked in his work: "Strict Compliance...does not extend to the dotting of i's and the crossing of t's, or to obvious typographical errors either in the credit, or the documents."[16] Minor variations between the credit requirements and the documents tendered may relate to the use of words in the singular rather than the plural, superfluous adjectives descriptive of the goods, and numbers in sets rather than in totals. In deciding whether there is conformity of the documents to the credit, the bank is entitled to limit itself to the content of the documents and not their legal or customary meaning. The banker is neither a lawyer nor a merchant and cannot be expected to make commercial judgments on the effect of documents tendered on the basis of information or knowledge extraneous to the documents. Mayer J in an old American case stated:

> "Assuming the existence of this custom, it will be noted that it relates to a custom between buyer and seller, and, in any event, is somewhat dependent upon the contract between them. It is not a custom in respect of letters of credit where, to repeat, we must always return to the language."[17]

It must also be remembered that under the UCP, the applicant is also under a corresponding duty in requesting the opening of a credit to set out his instructions in as clear a form as possible. Banks are also advised to discourage any attempt to include excessive detail in the credit or any amendment thereto. (See Article 5). The purpose of the standard bank form of application for credit is to narrow the possibility of ambiguity in instructions to the bank. If any ambiguity does arise in the instructions, the bank may apply a reasonable construction to the instructions given and act in a manner which the applicant may or may not favour. However if the ambiguity is patent, then the issuer must have his instructions clarified by the applicant before acting on them.[18] It is now proposed to deal with the various facets of discrepancies in brief.

**Discrepancies in purpose**

Most standard-form bank letters of credit do not contain a statement as to the purpose of the issuance of the credit. The purpose for the issue may be inferred from the nature of the documents required for presentation or by an identifying reference to a purchase order or contract number. Occasionally, in some standard forms, it may be stated that the letter of credit is issued in connection with a certain under-

[16] The late Maurice Megrah in *The Law of Bankers' Commercial Credits* - Gutteridge and Megrah, 6th Edition at p. 90.
[17] *Old Colony Trust Co v. Lawyers' Title & Trust Co,* 297F. 152 at 157 (1924).
[18] *European Asian Bank AG v, Punjab and Sind Bank* (No. 2) [1983] 1 WLR 642 at 656 (Goff LJ).

lying transaction, eg bridge financing, security for issue of a back-to-back credit etc. There is little judicial support for the view that the failure of the beneficiary to use the letter of credit for the purpose intended justifies the issuer in refusing payment on the credit. So long as the beneficiary provides for the documents explicitly set out as a pre-condition to payment upon the credit, the demand for payment must be honoured. The stated purpose for the issuance of the credit can be viewed as an extraneous factor.[19]

**Discrepancies in description of goods**

This is by far one of the most common areas where rejection of documents occurs and most litigation on questions of strict compliance arise from discrepancies in the description of goods shipped. The description of the merchandise is important as it not only provides a means of identification of the goods ordered but also a prima facie indication of the desired quality. At one time, it was believed that every document in the set tendered should contain a full and accurate description of the goods in the words of the documentary credit.[20] This attitude has been somewhat relaxed in later authorities which state that it is in fact sufficient if all the documents, when read together, give a full description of the goods.[21]

Further support for this view is embodied in article 41 (c) of the UCP which deems it sufficient if the description of the goods in the commercial invoice corresponds with the description in the credit. In that event, in the remaining documents the goods may be described in general terms not inconsistent with the description of the goods in the credit.[22] One justification for requiring absolute conformity with respect to the description of the goods lies in the very terms of the mandate or charge to the bank by the customer. As was stated by Goddard L J in a case:

> "It does not matter whether the terms imposed by the person who requires them to open the credit are reasonable, or seem to be reasonable, or unreasonable. Of course, they may be terms which, as between themselves and the beneficiary, they would not be entitled to impose. The bank is not concerned with that. The bank, if it accepts the mandate to open the credit, must do exactly what its customer requires it to do ..."[23]

This was a case where the letter of credit required 'Coromandel Ground Nuts' and the documents tendered described the goods as 'Machine Shelled Ground Nut Kernels'. It was argued that anyone in the trade would have known that the two

[19] See *Pringle-Associated Mortgage Corp v. Southern National Bank Hattiesburg, Mississippi,* 571 F. 2d 871 at 874 (1978, US CA).
[20] *London and Foreign Trading Corporation v. British and North European Bank* (1921) 9 LLR 116.
[21] Midland Bank Ltd v. Seymour [1955] 2 Lloyd's Rep 147 at 152 and *Sopropma Sp A v. Marine and Animal By-Products Corporation, supra.*
[22] *See Kydon Compania Naviera S Av. National Westminister Bank Ltd (The "Lena"), supra.*
[23] *Rayner & Co v. Hambros Bank Ltd* [1943] 1 KB 37 [1942] 2 All ER 694 at 703 (CA) per Goddard L J.

descriptions meant the same thing, but the court declined to accept this, asserting that a bank cannot be expected to have knowledge of the customs and customary terms of every one of the thousand of tenders for whose dealings it may issue credits. A set of documents containing any contradictory statements would constitute a bad tender. In *Bank Melli Iran v. Barclays Bank (Dominion, Colonial and Overseas)*[24], McNair J held that documents evidencing a shipment of '100 new, good, Chevrolet trucks', were not a good tender under a credit calling for '100 new Chevrolet trucks'.

In this connection, it is significant to note that the practice direction to Article 5-109 of the UCC, New York version states that "The usage which controls letter of credit transactions is banking usage, not commercial usage'. Bankers who resort to the notion of substantial rather than strict compliance expose themselves to the risk of second guessing the outcome of judicial proceedings. There is always the danger that a slight discrepancy in weight, description or number although of no apparent banking significance may be of crucial commercial significance. If in doubt, banks are well advised to make provisions for recovery in the event of dishonour by the customer or to seek clarification and approval before payment. However excessive resort to conditional payment under reserve or obtaining an indemnity or seeking time for clarification and consent to the discrepancies may defeat the entire purpose for the issue of the letter of credit mechanism, ie which is to ensure that prompt payment is assured by a reliable paymaster vis-a-vis the beneficiary seller. Such concerns have also been voiced by judicial quarters and the words of Lord Sumner in *Hansson v. Hamel & Horley*[25] illustrate the situation neatly:

> "These documents are to be handled by banks; they have to be taken up or rejected promptly and without any opportunity for prolonged inquiry; they have to be such as can be re-tendered to sub-purchasers, and it is essential that they should so conform to the accustomed shipping document as to be reasonably and readily fit to pass current in commerce"

**Discrepancies as to documents generally**

This would cover situations where the credit calls for certain documents to be tendered and the beneficiary has not entirely fulfilled the requirements. This would cover not just the number and type of documents tendered but also the regularity of the documents concerned. Thus if a full set of bills of lading is called for an only two bills out of a set of three are tendered, it must be rejected.[26] Amore difficult case would be where the credit calls for multiple documents and a composite of the multiple is tendered. Although there is American authority[27] to support the view that a document which fulfils the role of two separate documents would suffice, it

[24] [1951] 2 TLR 1057
[25] [1922] 2 AC 36 at 46
[26] *Donald H Scott & Co Ltd v. Barclays Bank Ltd* [1923] 2 KB 1.
[27] *Richard v. Royal Bank of Canada* 23 F.2d 430 (1928).

is to be doubted. The applicant may have his reasons for requesting separate documents eg a certificate of weight and a separate invoice. However the tender of fractional certificates covering the entire shipment has been held to constitute a good tender.[28] Three basic requirements must be satisfied for the documents tendered to be regular. Firstly, it must be effective and legal eg a bill of lading which became void due to outbreak of war was considered irregular.[29] Secondly, the document must be current and of the type in current usage in the trade. Nonetheless, bankers are not expected to have knowledge of the specific requirements of any trade or be concerned with trade usages. Support for this position is found in Article 22(b) of the UCP where if terms like 'first class', 'well-known', 'qualified' etc are used, banks will accept the documents as presented provided they appear on their face to be in accordance with the other terms and conditions of the credit.

With the advances in printing technology, the UCP has also expanded the scope of 'original' documents which under Article 22(c) has been widened to include copies made by a reprographic system, by means of an automated or computerised system eg. SWIFT or as a carbon copy. Such documents must however be marked as original and if necessary, authenticated. The requirements of compliance with time as regards the period allowed for the presentation of the documents under the credit have also been dealt with by the UCP. (see Articles 45-48).

**Discrepancy in destination**

Although the bill of lading must also conform to the terms of the invoice respecting the destination of shipment, a documentary irregularity should not be relevant if shipment has in fact been received at the destination described in the invoice. In an American case,[30] where the bill of lading called for prepaid shipment to Vancouver while the invoice required shipment to Montreal, it was held that the customer cannot complain of payment in the face of such discrepancy if the evidence demonstrates that further shipment was made from Vancouver to Montreal without freight payment by the customer. Such transhipments have been regulated by the UCP which allows for the above situation under Articles 216 and 29 of the UCP.

**Relevant and Irrelevant Irregularities of documents under the UCP and case decisions**

According to some commentators, there are cases in which the documents tendered by the beneficiary do not correspond to the specification in the credit and are therefore irregular but the irregularity may be disregarded by the bank. Such cases can be divided into three groups, ie. Irregularities irrelevant under the UCP; Irrelevant variations in the documents and Irregularities irrelevant according to court

[28] *Netherlands Trading Society v. Wayne and Haylitt Co* (1952) 36 Hong Kong LR 109.
[29] *Karberg (Arnhold) & Co v. Blythe, Green, Jourdain & Co* (1916)1 KB 495.
[30] Harrison v. Fortlage, 167 US 5-7 (1896).

decisions. In the first type of situation, the UCP contain several provisions which sanction the acceptance of irregular documents and these provisions may be invoked by the beneficiary. For example, the credit may require the shipment of 100 tons of a particular commodity but the beneficiary ships only 97 tons and the latter figure appears in the invoice and the bill of lading. In the absence of any stipulation that the quantity of goods specified must not be reduced, this undershipment is within the tolerance admitted by Article 43(b) of the UCP. As a result, the bank should accept the documents but reduce the amount payable under the credit correspondingly.

Another example is a situation where the credit may expressly prohibit transshipment but the tendered transport document is a bill of lading which on its reverse contains a printed clause allowing transshipment. Article 29(c) of the UCP authorises the bank to pay under the credit in spite of this printed clause. In the second type of situation, it may happen that the descriptions of the goods in the credit and in the invoice do not agree literally but that it is clear that both descriptions relate to the same goods. An example quoted by an author[31] in his article is a case where the credit may stipulate "20cm pipe-cutting machinery" while the invoice relates to "two 20cm pipe cutting machines". In the author's view the bank should accept the invoice despite the slight irregularity. It would make little commercial sense to impose liability upon a banker who has paid against documents which do not comply in form to the credit but do confirm in substance to the commercial requirements of the parties. However should the banks open themselves to liability for the sake of doing justice to one of the parties or even both? Likewise it can also be argued that it makes little sense to permit a banker to pay against documents which generally conform to the letter of credit requirements but do contain discrepancies of great commercial significance to the customer. Notwithstanding the above, it is submitted that in the latter case, the banker is protected by the mandate and should be entitled to be reimbursed by the customer if the documents do on its face conform to the credit. The last situation would be cases where the irregularities were found to be irrelevant by the Courts. Two cases may be referred, both cited in the author's article. In the first,[32] the bank which had confirmed a credit refund to take up the bill of lading on the ground that as a note had been typed on the bill referring to an event, it was a clausedbill which not being clear has to be rejected. The Court of Appeal held that the bill was still a clear one as the note referred to an event which occurred subsequent to the loading of the goods in good order and condition. The second case involved a bill of lading which contained apparently contradictory statements.[33] There the bills of lading tendered by the

[31] See Professor Clive M Schmitthoff' s article in (1987) JBL 94 entitled "Discrepancy of documents in Letters of Credit".
[32] *Golodetz & Co Inc* v. *Czarnikow-Rionda Co Inc, The Galatia* [1980] WLR 495.
[33] *Westpac Banking Corporation v. South Carolina National Bank* [1986] 1 Lloyd's Rep 311.

seller to the advising bank for negotiation stated "received for shipment", but also contained on the face in their tenor a statement that the goods were "Shipped on Board Freight Prepaid". Westpac, the advising bank did not object to the bills of lading and negotiated a bill of exchange drawn on South Carolina National Bank ("SCNB"). The issuing bank (SCNB) rejected the bills of lading on the ground that the bill was insufficiently notated. At a later stage, they raised the argument that both statements were inherently inconsistent. In reversing the decision of the Court of Appeal, the Privy Council saw nothing inconsistent in those bills of lading. In the opinion of Lord Goff it was plain on the face of the bill that the goods had at that time been shipped on board the intended vessel. The conclusion to be drawn from these two decisions is that the Court when construing such documents adopts a legal rather than a commercial test which imply that bankers should examine whether the documents as a matter of substance is one where there is a genuine legally relevant discrepancy. It is submitted that such an approach imposes too onerous a duty upon the bankers. The willingness of the courts to accept extrinsic evidence to the letter of credit documentation respecting the nature of the shipment and the discrepancy would leave the bank in a quandary. If he pays, he cannot be fully assured that he was justified in overlooking a discrepancy which he considered a mere triviality. If he refuses payment, he cannot also be fully assured that he is immune from prosecution for having unjustifiably refused payment on account of a minor discrepancy. The words of Lord Scrutton in *National Bank of Egypt v. Hannevig's Bank*[34] is instructive. In that case, he said:

> "I only say at present that to assume that for one sixteenth per cent of the amount it advances, a bank is carefully bound to read through all bills of lading presented to it in ridiculously minute type and full of exceptions, to read through the policies and exercise a judgment as to whether the legal effect of the bill of lading and the policy is, on the whole, favourable to their clients, is an obligation which I should require to investigate considerably before I accepted it in that unhesitating form..."

## The Discrepancy Procedure under the UCP

### *(a) Notification of discrepancies*

The procedure for notification of discrepancies is laid down in Article 16(d) of the UCP. The issuing bank must return the documents to the bank or the beneficiary from which it received them or hold them at the disposal of that bank or beneficiary. The bank shall also set out the discrepancies in respect of which it refuses the documents. This is to give the presenting bank or the beneficiary an opportunity to rectify them if this is possible before the expiry of the credit. A famous example of

[34] (1919) 3 Legal Decision Affecting Bankers, 213, 214

a second tender which was successful was that in *United City Merchants (Investments) Ltd v. Royal Bank of Canada*[35] where in the judgment of the House of Lords, the bank was bound to accept the second tender of documents which on their face were correct, although the bank knew that the date of the bill of lading was falsified but there was no evidence that the beneficiary was involved. It would also appear that a bank is not prevented from supplementing the ground on which it has rejected the document by adding later other valid grounds.[36] The American authorities apparently take a different view of the matter holding that the person to whom the documents are tendered must raise all his objections to the documents at the time of their rejection and that he is usually precluded from raising further defences at a later stage.[37]

By contrast, it is not permissible for the issuing bank or the applicant for the credit to supplement the stipulations in the mandate by further conditions after the advising bank has confirmed the credit to the beneficiary. This arises from the separate contractual relationship between the confirming bank and the beneficiary.

***(b) Protective mechanisms and its effects***

Between the areas of irrelevant irregularities and genuine discrepancies there stretches a wide area of doubtful cases. Of course, in cases of ambiguity, the safest course for the banks to take is to reject the documents. However from a commercial viewpoint, banks may be reluctant to resort to the above course. Should it decide to make payment, it may do so under three conditions, ie it may ask the beneficiary for an indemnity; it may make payment under reserve or it may make an arrangement for collection under protection of the credit.

(i) Indemnities

The confirming bank may accept the documents on the condition that the beneficiary provides his own indemnity or that of his bank. The indemnity should state in which circumstances the bank may hold the indemnor liable. However this does not mean that the bank is released from its duty to use reasonable care in scrutinizing the documents. Should there be failure to use reasonable care and the beneficiary consequently suffers a loss, the bank is liable to him for breach of that duty.

(ii) Payment under Reserve

The phrase "payment under reserve" is used in the UCP[38] but not defined therein. Such reserve concerns only the relations between the remitting bank and the party

[35] [1983] 1 AC 168.

[36] *Skandinaviska Akliebolaget v. Barclays Bank Limited* (1925) 22 Lloyd's Rep 523.

[37] *Bank of America v. Whitney-Central National Bank,* 291 F929, 937(1923). It seems the rule only applies to objections which are known at the time of rejection. See, *Old ColonyTrust Co v. Lawyers' Title and Trust Co, supra.*

[38] Article 16(f) of the UCP refers to the remitting bank informing the issuing bank "that it has paid, incurred a deferred payment undertaking, accepted or negotiated under reserve or against an indemnity".

towards whom the reserve was made or on whose behalf it was obtained. Such a provision for reservation has a two-fold effect: Firstly it emphasize that the contract between the remitting bank and the seller is independent of the contract between the issuing bank and the seller. Secondly if the issuing bank is notified by the remitting bank of the discrepancies in the seller's documents, the issuing bank is not absolved from its own duty to examine the documents for any discrepancies under the letter of credit. Should the documents be non-conforming it must then take the steps prescribed in Article 16 in respect of the procedure to follow upon rejection.

It was not until the case *of Banque de I'Indochine et de Suez SA v. J H Rayner (Mincing Lane) Ltd* that the phrase "payment under reserve" was the subject of judicial interpretation. The issue in that case was whether if a confirming bank paid "under reserve", it could recover from the beneficiary only if the tendered documents were, in fact, defective or whether it could still recover if the issuing bank or the customer refused to take up the documents for whatever reason with or without justification. Although the issue only arose obliquely in the course of the case as the Court actually found the documents defective owing to absence of linkage, the Court of Appeal held that the bank could recover payment under reserve if the documents were not taken up by the issuing bank even if there were no proved or genuine discrepancies. In applying a commercial test, the Court thought that the confirming bank could not have intended to be involved with the issuing bank over a legal dispute. The appeal judge (Kerr L J) had also held that the bank's demand for repayment was only effective if the issuing bank rejected the documents on the same grounds. However this view is to be doubted as it is against the principle of contract law that a party is not estopped from adding further reasons to a defence of non-performance.

(iii) Collection under protection of credit

This is a totally different arrangement from the normal confirmation arrangement and involves the bank in no binding obligation to take up the documents at all. Any reference to the letter of credit is inserted only to define the details of the collection arrangement such as the documents which have to be tendered by the bank acting on behalf of the seller as a collecting agent. This arrangement may however be governed by the Uniform Rules for Collections, a comprehensive code introduced by the International Chamber of Commerce which cover areas like responsibilities of banks, presentation, payment, acceptance, protest, advice of fate, interest, charges and expenses.

(iv) Amendment to Credits

An amendment to the credit is only possible if the consent of all concerned parties can be obtained. Under Article 10 of the UCP, an irrevocable credit constitutes a definite undertaking of the issuing bank and of any confirming bank to honour the credit if the terms are satisfied. It cannot be amended or cancelled without the agreement of the issuing bank, the confirming bank and the beneficiary (Article 10(d)). Similarly, under the American UCC Article 5-106, an irrevocable credit can

be modified or revoked with regard to the customer (the credit applicant) only with his consent, and with regard to the beneficiary, only with the beneficiary's consent. As already stated earlier, such an arrangement defeats the entire purpose of a letter of credit mechanism which is to ensure the beneficiary seller a prompt and reliable paymaster.

**Tampering the Effects of the Strict Compliance Rule**

The four exceptions to the strict compliance rule ie course of dealing, course of performance, estoppel and waiver do not so much create exceptions to the rule as to impose outside limits upon it. These exceptions have had more success in American jurisdictions than in English courts. It is not proposed to enter into a detailed treatment of the exceptions which is more properly a subject of another article as the purpose is only to highlight the so called exceptions. Such exceptions if overstated can only harm the certainty of documentary credit examination.

**Waiver of discrepancies**

As earlier mentioned, the English courts have always taken the stand that the issuing bank is not precluded from raising defences or objections to the documents presented under the letter of credit at a subsequent stage. It is arguable that Article 16(e) of the UCP supports the American view as it stipulates that if the issuing bank fails to act in accordance with (c) and (d) of the said Article and/or fails to hold the documents at the disposal of, or to return them to the presenter, then it is precluded from claiming that the documents are not in accordance with the terms and conditions of the credit. This would seem to imply that failure to do so would give rise to an estoppel or waiver barring the issuing bank from raising the discrepancies. In some cases, waiver may also be inferred from the bank's conduct.[39] It cannot be denied that the English courts have also demonstrated a willingness to apply the concept of waiver or estoppel where the circumstances warrant.

Two examples would suffice although decided in a different context. The first case was that of *W J Alan&Co Ltd v. El Nasr Export and Import Co*[40] where it was found that the seller's failure to raise any objection when the buyer furnished a confirmed credit expressed in sterling instead of Kenyan currency and their operating on the credit constituted waiver of their right to payment by means of a letter of credit in Kenyan currency. In the other case, ie *European Asian Bank AG v. Punjab & Sind Bank (No. 2),*[41] although the Court held that the credit created was a straight and not a negotiation credit as a result of which the plaintiff being a negotiating bank could not directly enforce the credit for payment it was also held that the defendant bank's conduct in advising on the acceptance of the documents as tendered estopped them from contesting the plaintiff bank's right to negotiate. This decision

[39] *Floating Dock Ltd v. Hong Kong and Shanghai Banking Corporation* [1986] 1 Lloyd's Rep 65.
[40] [1972] 2 QB 189.
[41] [1983] 1 WLR 642.

comes perilously close to constituting estoppel as a sword and not a shield which was thought to be the position since the decision in *Combe v. Combe*. A recent decision on waiver in this context would be the judgment of Gatehouse J in *Co-operative Centrale Raiffeisen-Boerenteen-Bank B A v. The Sumitomo Bank Ltd* (The Financial Times, January 16,1987 [judgment of December 11, 1986]). The facts in this case were that a group of Dutch exporters sold a quantity of natural butter to an Egyptian State Corporation. Pursuant to the contract of sale, the buyers instructed their bank in Cairo (the issuing bank) to open an irrevocable letter of credit in favour of the sellers for 90 per cent of the consignment value against presentation of the shipping documents, the remaining 10 per cent was payable within 60 days of discharge. The defendant Bank (Sumitomo) in London confirmed the credit. The credit was payable by a nominated bank in the Netherlands (Co-operative Centrale, the plaintiff bank). The credit was subject to the then 1974 Revision of the UCP (Document No. 290).

The sellers tendered defective documents to the nominated bank and were notified of the discrepancies. The nominated bank then forwarded the documents to the confirming bank in London, which also found discrepancies. However the nominated bank requested the confirming bank to pay, and stated: "We assume full responsibility for discrepancies... so please effect payment". The confirming bank thereupon paid the 90 per cent credit and forwarded the documents to the issuing bank in Cairo, notifying the discrepancies. But it paid "under reserve" and raised a loan in favour of the issuing bank for the amount paid in order to cover itself. More than 14 days passed before the issuing bank replied. It then sent the confirming bank a telex which was not a notice of rejection. The issuing bank finally accepted the documents after the acceptance dates of the credit were altered. This resulted in a loss of interest incurred as a result of the delay of five weeks between the payment of the credit by the confirming bank and the final acceptance of the documents by the issuing bank. The amount involved was a sum of $73,000 which the confirming bank claimed to set off against the remaining ten percent of the price and the nominated bank contended that this was not admissible and that the loss or interest had to be borne by the defendants as confirming bank.

Gatehouse J held correctly that a payment "under reserve" by the confirming bank to the beneficiary was a matter entirely between themselves but it did not relieve the issuing bank from its obligation imposed by Article 8(e) of the 1974 Revision (now Article 16(d) of the 1983 Revision). This was to without delay notify the bank from which the documents were received of their rejection and informing that the documents were at their disposal or to return them. The breach of the issuing bank's obligation to the confirming bank necessarily resulted in a breach of the matching, though implied, obligation of the confirming bank to the beneficiary to pay or to return the documents.

The learned judge observed that: "where discrepant documents are in the end accepted, the discrepancies are waived and the position is just as if there had been

no discrepancies in the first place." As a result the interest loss suffered by the confirming bank was not within the scope of the undertaking of the nominated bank to be fully responsible for "discrepancies". It arose from the issuing bank's breach of its obligations to the confirming bank to decide promptly whether to accept or reject the documents and the consequential breach of obligations of the confirming bank to the nominated bank. Judgment was given for the plaintiffs, ie the confirming bank was not entitled to set off the loss of $73,000 against the payment of the remaining ten per cent of the price. On appeal by the confirming bank, the decision of Gatehouse J was partly reversed. The Court of Appeal held that the confirming bank was entitled to deduct part of the interest forgone as the initial delay was due solely to the failure of the beneficiary to tender conforming documents. However the subsequent delay was due to the issuing bank in not accepting the new conforming documents in reasonable time which was not the responsibility of the beneficiary bank. This does not prevent the confirming bank from claiming reimbursement of the subsequent interest forgone which it would be entitled in a separate action (see, also, Article 11 (a) of the UCP)

In this connection, the UCP has not been entirely helpful as it has been observed by some writers that a clear inconsistency exists between Articles 15 and 10 of the UCP (1983 Revision). In the latter, the terms and conditions of the credit have to be complied with which is a question of fact while in the former, they only have to do so on their face. This is not necessarily the same thing and the problem would have to be resolved in future litigation or clarified by subsequent amendments to the UCP.

Finally it should be noted that when the advising bank has not rejected the documents (or not resorted to a protective mechanism) either because it has accepted them or has not rejected them within a reasonable time, and then fails to meet its obligations under the credit, it may be liable to pay damages to the beneficiary (see *Ozalid Group (Export) Ltd v. African Continental Bank Ltd).*

As to what constitutes a reasonable time under article 16(c) for the banks to examine the documents and decide whether to take up or return the documents, it is ultimately a question of fact depending on the banking procedure at the place at which the bank carries on business and the nature of the transaction. Professor Ellinger has suggested in his article[42] that a provision listing the factors to be taken into account in determining what constituted a reasonable time for the examination of documents could have been introduced. In addition, a presumption can be inserted that the retention of documents for a period in excess of a stated number of days would be considered excessive unless proved otherwise. These suggestions

[42] Ellinger, "The Uniform Customs - their Nature and the 1983 Revision" [1984] LMCLQ 578 at p. 594.

could be incorporated in the next revision to the UCP.

**Stand-By Credits and Strict Compliance**

The stand-by letter of credit has its inception in the United States where it was developed as an alternative to a first demand guarantee which American Banks were not allowed to issue.[43] It has also gained international prominence as a protective device against a seller or supplier's default or defective performance. Payment would be due on the buyer's (beneficiary's) first demand, attesting the supplier's default or defective performance.

Likewise as in the case of documentary letters of credit, the payment of a stand-by credit is also subject to the tender of a fully complying set of documents by the beneficiary. However unlike documentary credits where certain documents may need to be prepared by third parties, in the context of stand-by credits as most of the documents are frequently prepared by the beneficiary himself, compliance is more a formality than in the case of documentary credits. In the drafting of the default certificate or the execution of the bill of lading, no specialized skill is required and most of the terms required may be extracted from the letter of credit itself.

An important consequence of incorporating the UCP into the stand-by credit transaction is that the issuing bank becomes subject to the requirement of strict compliance by the Code.[44] Similarly the bank's undertaking under the stand-by credit is as independent of the underlying transaction as in an ordinary documentary credit. However two general exceptions to the applicability of Strict Compliance go some way in mitigating the occasional harshness of the doctrine. The first exception may be described as the "fair construction rule". What it essentially means is that the Courts construe the terms of the credit so as to give the instruments business efficacy.[45] The second doctrine which may sometimes avail a beneficiary who has failed to comply with the terms of a letter of credit is the well-known waiver or estoppel principle. This doctrine is based on the assertion that the issuing bank should not be allowed to raise at the trial a defence based on deficiencies which the bank did not bring to the beneficiary's attention when the documents were rejected. Its applicability has also been extended to stand-by credits especially in American cases.[46]

[43] Under 12 USC; para 24, 7th power, American Banks are not allowed to issue guarantees. The provision can be traced back to (1875) Rev. Stat. 5136

[44] See Article 2 of the UCP and *Key Appliance Inc v. First National City Bank,* 359 *NYS 2nd 886 (1974).*

[45] The comparable rule in respect of documentary credits is for the instrument to be construed as a whole. For an illustration of the "fair construction rule" see *Dynamics Corporation of America case* 365 F. Supp, 991 (1973) and *Fair Pavilions Inc v. First National City Bank 24* AD 2nd 109, 264 NYS 2d (1965) revd 19 NY 2d 512, 227 NE 2d 839 (1967).

[46] For an example, see *Barclays Bank DCO v. Mercantile National Bank 339 F Supp 457, 460 (1972) affd 481F 2d 1224.*

**Recent developments in the field**

It would be interesting to note that in recent cases, the Courts especially those in the United Kingdom and the Commonwealth jurisdiction have shown a tendency to assert a more rigorous application of the strict compliance rule. This trend may be evident from a number of cases decided in recent years.

In the decision of the Canadian Supreme Court in *The Bank of Nova Scotia v. Angelica-White Ltd and Angelica Corporation,* the facts in brief were that the appellant bank had effected payment under a letter of credit it had opened on behalf of the respondent. The respondent had alleged that the bank had no right to make such payment in respect of one of the drafts submitted since an invoice comprising one of the documents under the letter of credit had been fraudulently inflated and this fact had been brought to the attention of the bank. The court concluded that although fraud was an exception to the general principle of the autonomy of the credit, it did not apply in the case of an innocent beneficiary applying the House of Lords decision in *United City Merchants.* However the Court held against the bank as they should not have paid against the draft when the bills of lading failed to provide for "carriage freight prepaid to Montreal" as required by the terms of the letter of credit. It was also not necessary for the applicant to show that he was prejudiced by a particular documentary non-compliance with the terms and conditions of the credit (see the *Guaranty Trust case).* And the fact that the respondent subsequently accepted the goods under protest so as to minimise its loss did not preclude the respondent from claiming reimbursement in respect of the sum wrongfully debited from its account.

In the second case decided by the Court of Appeal in England, ie *Astro Exito Navegacion S A v. The Chase Manhattan Bank National Association and Overseas Chinese Commercial Banking Corp,*[47] the question was whether the 1st defendant, Chase Manhattan Bank National Association were entitled to refuse payment against certain documents tendered by the plaintiffs under a confirmed documentary letter of credit opened by the second defendant. The judge held in favour of the bank and the plaintiffs appealed to the Court of Appeal. The issue was whether clause 6(b) of the letter of credit which called for a Gas-Free Certificate "which certificate to be approved by the Taiwan Authorities" contemplated endorsement of such approval on the certificate, ie to be supported by documentary proof. Counsel for the appellant had agreed that there was nothing in the letter of credit which called explicitly for documentary evidence in support of the certificate and if such was required, the mere fact of approval was sufficient. The Court of Appeal in following the previous case of *Banque Indo-Chine v. J H Rayner* dismissed the appeal holding that as a matter of construction of the letter of credit,

[47] [1986] 1 LLR 455

the fact of approval had to be evidenced by a contemporary document on the certificate itself. It went on to add that the fact (if it be a fact) that such documentary evidence may have been hard or even impossible to get is neither here nor there.

The last decision of interest in this article is one where the court dealt with the application of the principle of collateral estoppel which in this case operated against the issuing bank. In *Paramount Export Co v. Asia Trust Bank Ltd* a decision of the United States Court of Appeal of California, First Appellate District, Division One, the court had to consider the scope of Article 8 of the UCP (1974 Revision) now Article 16 of the UCP (1983 Revision). The appellant's contention was that even if it did not fully comply with the terms and conditions of the letter of credit or is estopped from so asserting, respondent's failure to comply with Article 8 of the Uniform Customs and Practice for Documentary Credits (UCP 1974 Revision) precludes respondent from establishing such non-compliance.

It was the reasoned opinion of the court that Article 8 of the UCP was enacted to obviate the harshness of the 'strict compliance' rule by requiring issuing banks to follow an equally rigid practice which permits the beneficiary to rectify documentary errors before harm has been suffered by any party to the commercial transaction. On the facts of the case, the court found that the respondent had breached its duty in failing to return the defective documentation to the appellant for his correction.

Quoting the dissenting judgment in an earlier case ie *Philadelphia Gear Corp v. Central Bank* (5th Cir 1983) 717 F 2d 230, the court in rather colourful language observed: "Letters of credit are near-mechanical forms of payment designed to facilitate commercial exchange. The terms of letters of credit and applicable laws choreograph an elaborate dance. As long as the steps are followed, payment also follows. There is no need to make inquiries into the underlying transaction, the parties need merely pirouette down the path prescribed by the letter and applicable statutes. Facial compliance is the watchword. The procedures relating to dishonouring a draft are equally choreographed. One of the important turns in that dance is providing the beneficiary an opportunity to correct a defective draft. ICC Pub 290, Articles 8(e) and (f) delineates two steps in this turn: an issuing bank must return the defective draft and give specific notice of the defects. These two steps are crucial to allowing an innocent beneficiary an opportunity to cure an inadvertent error in a draft. The court concluded that in this case the respondent being the last "dancer" had failed to properly "pirouette down the path" prescribed by UCP Article 8, subdivisions (e) and (f) and held that they were estopped from asserting that the appellant did not comply with the terms and conditions of the letter of credit. It can thus be seen that the doctrine of strict compliance is a double-edged sword that protects both the beneficiary seller and the issuing or confirming bank.

**Is there a duty on the Banks to inform?**

Are the banks presently under any fiduciary obligation to its credit applicants to advise them on a letter of credit documentation? Most if not all banks would

formally disclaim any duty to educate their customers on the documentary requirements in the credit. Notwithstanding the above, in practice, banks do spend time in reviewing the nature of the credit, its mechanism and function with their customer. The purpose would appear to be two-fold. First, it is in the interest of the bank to have the credit operation carried to completion and failure to properly advise the customer of the bank may lead to non-payment or the issuance of a revised credit. Secondly, if the applicant is a long-standing customer of the bank, the failure of the bank to adequately advise the customer on the best means of drafting the credit will certainly alienate him and his valuable business in the event that the credit transaction should prove abortive.

There has been little litigation reported which deals with the degree of skill and care required of the bank in dealing with its customer at the time of the application for the credit. There is an understandable judicial tendency to treat all merchants alike whether or not they have ever before entered into a letter of credit transaction. Moreover, there is fear that the role of the banker as neutral paymaster would be severely compromised if the Courts were to indirectly penalize him for failing to properly counsel his credit applicant against a fraud which subsequently arises and does not appear from the face of the document (eg. see the case *of Midland Bank Ltd v. Seymour,* earlier cited). However, a review of a few decisions eg *Buchanan v. C.I.B.C.,*[48] *McBean v. Bank ofN.S.*[49] and the recent decision of the Supreme Court of Canada in *National Bank of Canada (Successor of Canada National Bank) v. Soucisse*[50] do amount to a preliminary indication that the Courts may in the future apply more rigid standards to bankers in their dealings with applicants for credits especially when they know prior to the issuance of the credit that the beneficiary is unreliable or unlikely to fulfil the underlying transaction. In holding in favour of the credit applicant in this case, the Court had derived inspiration from English decision especially the judgment of the Court of Appeal in *Lloyds Bank Ltd v. Bundy.*[51] It remains to be seen in which direction the case law develops but it is submitted that the bank should incur a liability to the applicant for damages if the bank refuses to accede to a specific request of the applicant to detail the nature and content of the documentary requirements and later pays against documents which conceal a defective shipment.

**The Legal vs Commercial Tests**

In his article in the Journal of Business Law, the author, Professor Schmitthoff, had observed a dichotomy in the legal and commercial approach. In the case of irrelevant inaccuracies in the documents, the courts had applied a legal test while in

[48] 23 BCLR 324 (CA).
[49] (1981) 15 BLR 296 (Ont. HC).
[50] Unreported.
[51] [1974] 3 All ER 757 at 770 (CA) - see the judgment of Sir Eric Sachs.

the interpretation of the clause "under reserve" a commercial view is preferred. He went on to say that applying the commercial view does not necessarily result in a more liberal or flexible outcome. It was however concluded that in the final analysis, the courts declined to be tied down to any particular formulation when dealing with the multifarious nature of discrepancy of documents. Instead a case by case *ad hoc* approach is adopted where the facts of each case are decisive. The search for a general principle would surely result in a fruitless exercise.

**The need for Reform - The Importance of Standardization of Documents**

Research carried out by Midland bank in conjunction with SITPRO[52] (The Simplification of International Trade Procedures Board) of 1,215 sets of documents presented over a random three-week period in 1983 revealed a frighteningly high failure rate of first presentation. In 1983, the rate was 49.0% while in 1986, it was 51.4%. What is to be done to ameliorate the situation and reduce the apparently high rejection rate? Schmitthoff in his article suggests two answers. Firstly, this is a matter of education, ie the beneficiary must learn to understand the bank's point of view and realize that the rejection of non-conforming documents by banks is not the result of petty bureaucratic reasons but a wish to avoid personal liability. Secondly, the failure rate can be much reduced if the documents tendered to the bank can be standardized on a global scale. This would require co-operation by the banks and trade associations on a multi-lateral basis possibly even with the assistance of the United Nations Trade Organisations (UNCITRAL) and the ICC in the promulgation of an international set of acceptable standard documents along the same lines as the UCP.

**Conclusion**

From the foregoing, it can be seen that the doctrine of Strict Compliance can be a double-edged sword, ie it can be used as an effective protection for bankers against fraudulent practices and other errors of human conduct, conversely it can also be used to penalize bankers who do not conform to the reasonable standards expected of them in their role as intermediaries in the documentary credit process.

WINSTON CHEW CHOON TECK*

[52] SITPRO is an independent organisation sponsored by the British Overseas Trade Board (BOTB). The results of its research are set out in a document entitled "Letters of Credit Management and Control" and published by SITPRO.

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