Master thesis:

IMPACT OF THE DOCTRINE OF STRICT COMPLIANCE ON A LETTER OF CREDIT TRANSACTION

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1. ABSTRACT

Letters of credit are an important finance instrument for international trade. They are especially significant in cross-border transactions where traders do not know each other. Despite the attractiveness of the process, by choosing letters of credit, international traders often have trouble. In particular, they find it difficult to meet the level of documentary compliance demanded by many banks. In turn, this increases the risk of non-payment for goods or services invested in and could have a profound impact on international trade patterns. For example, several recent surveys report that about half of first presentations in letter of credit transactions end up rejected by a bank. Clearly, this suggests that the governing rules are not clear enough as to how strictly the doctrine is to apply. In addition, courts all over the world have not cured the deficiencies in the application of the rules. In fact, they themselves have added to the confusion by creating a myriad of controversial judicial standards that apply to similar mistakes in the presented documentation.

This thesis is an investigation into these issues. In so doing, it attempts to find out what could reduce the inconsistent interpretations of the doctrine of strict compliance and thus enhance the attractiveness of the letter of credit. The analysis covers all parties involved in the letter of credit process, and pays particular attention to those cases involving misspellings, discrepant descriptions of goods in commercial invoices, ambiguous or impossible letter of credit terms, and inaccurate data in presented documents. Among other things, the thesis reveals that courts have applied six different standards to the matter of misspellings alone. As a result, banks have applied the strict compliance rule very rigorously to protect their own interests in case litigation would ensue. The flipside is sellers left with the risk of not being paid. The question arises whether this is reasonable given that only trivial mistakes may be a vitiating factor in the letter of credit transaction.
2. INTRODUCTION

Letters of credit, often described as “the life blood of international commerce”\(^1\), are a payment method developed to facilitate international trade. They are especially preferred over other means of payment\(^2\) mostly for one-shot cross-border transactions where traders do not know each other, or in the opening stages of a potential long-term relationship, before relational constraints become effective\(^3\). In other words, letters of credit are used as a payment method for international trade where the seller and the overseas buyer have no or very short history of cooperation, they still do not know what to expect from each other and, most importantly, they do not trust in each other.

Despite the fact that letters of credit are an important vehicle for companies to expand and grow internationally, by using this payment method, international traders often experience difficulties to achieve the high documentary compliance required by many banks. This, in turn, puts at risk the trader’s chances for a payment. In fact, numerous surveys carried out in the United Kingdom suggest that the rejection rate of first time presentations in letter of credit transactions is between 50-60\%. Estimates are that in 2000 the UK lost 113 million GBP through non-compliant documents being presented under letters of credit\(^4\). In the USA, initial letter of credit failure rates are reported 77\% in Saint Louis, 75\% in San Francisco, and for four banks in New York, 40\%, 55\%, 70\% and 50\%\(^5\). DC-PRO 2005 LC Market Intelligence Survey reports average discrepancy rates at 52\% and 56\% for import and export letters of credit respectively.\(^6\)

The high rejection rates accompanied with numerous controversial court rulings concerning the doctrine of strict compliance indicate that the existing document examination standard is a serious bottleneck in a letter of credit transaction. In the course of time, courts have created and applied many different standards to very similar deficiencies in the presentations. Professor E.P. Ellinger has described the situation as follows: “the standard of compliance of documents tendered under letters of credit reflects the approach of judges, which is based on the indigenous legal culture in which they operate rather than on

\(^{2}\) Ranging form the most favourable to the seller to the most favourable to the buyer, payment options for international trade include payment in advance, letter of credit, documentary collection and open account.
international banking practice. Consequently, the meaning of the phrase “strict compliance” varies from place to place. In some systems, it predicates a robotic approach, which treats the examination of documents as a proofreading exercise. In others, “strict compliance” is understood in a less stringent sense. A document – or set of documents – is treated as regular and hence as acceptable notwithstanding misprints and meaningless departures, if, from a commercial point of view, the court finds that the document or set achieves its object⁷”. In consequence, banks have applied the strict compliance rule in its strictest sense to protect their financial interests in case they would be sued. The sellers, on the other hand, because of this situation risk losing their money for insignificant mistakes in their tendered documentation.

2.1. Aim of the thesis

The aim of this thesis is to find out whether there is a need to improve the rules in regard the documentary compliance. If so, whether it would be possible to elaborate an optimal document examination standard which would be clearly and unambiguously defined to ensure its consistent interpretation by all parties involved in a letter of credit transaction. The standard should ensure the necessary level of protection for banks, reduce the seller’s risk of not being paid for trivial mistakes and, most importantly, it should facilitate an not hinder the main function of the letter of credit – to make international trade easier.

As the strict compliance standard is not just one isolated rule, but a set of many rules that regulate each document required by the credit and their content, the limits of this thesis are too narrow to cover all areas of a letter of credit transaction. This thesis is an attempt to improve the doctrine of strict compliance as far it concerns misspellings or typographical errors in presented documents, deviations in the goods description in commercial invoices, strict compliance under impossible or ambiguous credit terms, and incorrect data in the presented documents.

2.2. Sources and methodology

The sources of information contain primary and secondary sources.

One of the primary sources is the Uniform Customs and Practice for Documentary Credits (UCP) which is a set of voluntary rules regulating letters of credit as well as the doctrine of strict compliance. The present 2007 revision of the rules - the UCP 600, has been

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into force since 1 July 2007 when it replaced its predecessor – the UCP 500\(^8\). The International Chamber of Commerce (ICC) has estimated that, despite the fact that the UCP rules have only recommending nature, about 95% of credits worldwide are issued subject to the UCP\(^9\), therefore also the analysis performed in this thesis is based on the UCP, unless otherwise expressly provided.

Other primary sources comprise court decisions associated to the UCP rules and letter of credit surveys.

The secondary sources involve text books and review articles describing, explaining and evaluating the applicable rules and related court decisions.

The methodology used in the thesis involves analysis of the UCP rules, related case law as well as associated literature reflecting the views of experts.

### 2.3. Structure

After the introduction, there is a background chapter about the letter of credit process, legal principles and parties involved. Then there are two parts to the main bulk of the thesis. The first part investigates what rights and duties banks have under the doctrine of strict compliance and whether their requirements of the existing strict compliance rule are proportional to the protection banks actually need. The second part deals with the most commonly disputed letter of credit discrepancies – misspellings, discrepant goods description in invoices, ambiguous or impossible letter of credit terms and incorrect data in presented documents (cases of discrepant dates). The analysis of relevant case law reveals the sources of inconsistent court rulings in regard the strict compliance rule and provides the basis for making recommendations on how to improve the doctrine. The thesis is finalized by conclusions.

\(^8\) 1993 Revision of the UCP.
3. BACKGROUND INFORMATION

3.1. Letter of credit process and parties involved

The definition of the letter of credit can be found in Article 2 of the UCP 600: “Credit means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation.” Put it differently, a letter of credit means a payment undertaking given by the issuing bank on behalf of the applicant to pay a beneficiary (usually through the advising bank) a given amount of money on presentation of specified documents (conforming to terms and conditions set out in the letter of credit) representing the supply of goods within specified time limits and presented at a specified place.

The above provided definitions indicate three main parties in a process where payment under a letter of credit is arranged:

- The applicant – the party on whose request the credit is issued (usually the buyer or importer).  
- The issuing bank – the bank that issues a credit at the request of an applicant or on its own behalf.
- The beneficiary – the party in whose favour a credit is issued (usually the seller or exporter).

Other parties mentioned in the UCP 600 which facilitate the letter of credit process are:

- The advising bank – the bank that advises the credit at the request of the issuing bank.
- The confirming bank – the bank that adds its confirmation to a credit upon the issuing bank’s authorization or request.
- The nominated bank – the bank with which the credit is available or any bank in case of a credit available at any bank.

Where payment under a letter of credit is arranged, the following eight stages can normally be distinguished in the documentary credit cycle (see Figure 1):

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10 Art. 2 of the UCP 600.
11 Ibidem.
12 Ibidem.
13 Ibidem.
14 Ibidem.
15 Ibidem.
1) The exporter and the buyer agree terms in the contract of sale for price, specification, method of transportation, who pays the freight, insurance and that payment shall be made under a letter of credit.

2) The buyer instructs a bank at his place of business to open a letter of credit for the exporter on the terms specified by the buyer in his instructions to the issuing bank. The buyer will instruct his bank as to what documents must be presented, time and place for presentment, the description of goods, and other conditions to be met by the seller. He will also specify an expiry date at which the documents may be presented to the bank for payment. From the bank’s point of view the issuance of a letter of credit is similar to supplying short-term finance. It will apply similar criteria to the application, and may demand collateral, reduction in other lending limits or even a cash advance before agreeing to issue the letter of credit.

3) The issuing bank arranges with a bank at the locality of the exporter to negotiate, accept, or pay the exporter’s draft upon delivery of the transport documents by the seller. This may be done by mail, telex or SWIFT. The advising bank’s main obligation is to authenticate the letter of credit, i.e. use authentication codes or books of signatures to assure the beneficiary that the letter of credit is genuine.

4) The advising bank informs the exporter that it will negotiate, accept or pay his draft upon delivery of the transport documents. The advising bank may do so either without its own engagement or it may confirm the credit opened by the issuing bank. At this stage the beneficiary should check that the credit’s terms and conditions match the commercial agreement and can be complied with. If anything in the credit will cause the beneficiary a problem, the applicant must be contacted immediately and an amendment requested.

\[16\] Elaborated by the author of this thesis.
5) The beneficiary (seller) ships the goods, and then assembles the required documentation.

6) The beneficiary checks that all these documents conform to all the terms and conditions laid down in the letter of credit.

7) The beneficiary presents the documents (usually) to a local bank. This bank checks the documents and, if they are in order, pays the beneficiary according to method of payment agreed between seller and buyer.

8) The documents are sent to the issuing bank. If they are in order, the issuing bank will debit the applicant, remit the funds to the beneficiary’s bank and pass the documents to the applicant so the goods can be claimed from the carrier.

3.2. Legal principles

The law relating to letters of credit is founded on two principles – the independence principle and the doctrine of strict compliance (governed by Articles 4(a) and 14(a) of the UCP 600, respectively).

3.2.1. Independence principle

According to the independence principle, the credit is separate from and independent of the underlying contract of sale or any other transaction. A bank which operates a credit is in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. It follows, that if the seller presents the required documents, the bank must pay regardless of disputes between the seller and the buyer in the underlying sale transaction and/or the buyer’s financial inability to reimburse the bank for letter of credit payments and charges. Even in case the delivered goods do not conform to the underlying contract, the buyer cannot request a court to enjoin the bank from paying. The letter of credit transaction is thus a paper transaction.

The only case in which, exceptionally, the bank should refuse to pay under the credit occurs if it is proved to its satisfaction that the documents, though apparently in order on their face, are fraudulent and that beneficiary was involved in the fraud. This is usually referred to

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18 Art. 4(a) of the UCP 600.
as the “fraud exception”. The fraud exception permits a court to consider evidence other than the terms and conditions of the credit. In order for the fraud exception to apply, there must be unambiguous proof that the fraud has been committed and that the beneficiary was aware of it.

### 3.2.2. Doctrine of strict compliance

The legal principle that the bank is entitled to reject documents which do not strictly conform to the terms of the credit is conveniently referred to as the *doctrine of strict compliance*. The doctrine ensures the buyer that the bank will only make the payment if the documents received comply strictly with the terms and conditions of the credit as stipulated by the buyer, and the seller knows that payment will be received even if the buyer would not pay voluntarily for some reason, provided the terms and conditions of the credit are strictly complied with. Accordingly, a letter of credit exists to ensure payment to the seller, however, if the seller fails to understand and/or follow the rules that determine whether their documents comply, the entire payment is put at risk after the goods have been shipped.

While it is facile to recite the words “strict compliance”, the crucial question that has long dogged all parties involved in a letter of credit transaction is how strictly exactly the documents must conform to the terms of the credit.

According to the UCP 600 “*a complying presentation* means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice”. This new definition, although still very vague, compared to the old one, has brought one important change for the document examination standard. Article 13(a) of the 1993 revision of the UCP stated that “compliance of the stipulated documents on their face with the terms and conditions of the credit should be determined by international standard banking practice as reflected in these Articles”. Accordingly, if the practices were not embedded in the UCP, courts did not consider them relevant, and no expert testimony was permitted on what was the standard banking practice beyond the extent to which other articles of the UCP reflected it. Some courts rejected reliance on widely respected customary sources of strict compliance and others refused to rely on respected banking manuals.

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22 Art. 2 of the UCP 600.
It must be noted that until 2003 it was not completely clear what exactly was meant with the expression “international standard banking practice”. Then the ICC published its first International Standard Banking Practice (ISBP) for the examination of documents under documentary credits\(^{25}\) which documented international standard banking practices for the examination of documents under the UCP and explained how the UCP rules were to be applied. However, the wording of the Article 13(a) of the UCP 500 prevented any further improvement of the document examination standard.

Now, according to the UCP 600 definition of a complying presentation, if the UCP and the ISBP cannot provide a sufficient answer as to how strictly exactly the document at issue should comply with the credit, banks can rely on the standards of strictness of international standard banking practice.

4. RIGHTS AND DUTIES OF BANKS CONCERNING THE STRICT COMPLIANCE RULE

4.1. Document examination

According to the UCP 600, when in a letter of credit transaction documents are presented to the bank\(^{26}\), it must examine the presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of the UCP rules and international banking practice.\(^{27}\) It must be done in a maximum of five banking days following the day of presentation, and this period is not curtailed or otherwise affected by the occurrence on or after the date of presentation of any expiry date or last day of presentation\(^{28}\).

4.1.1. Meaning of the expression “appear on their face”

The expression to examine documents as they “appear on their face” was explained by the ICC as follows: “…the decision as to whether the documents do or do not comply with the terms and conditions of the credit and are consistent with one another is based exclusively upon the banker’s examination of the document, and not upon someone else’s understanding. In other words, there is a method for examination of documents under the documentary credit which is peculiar to bankers. This method attempts to find whether certain statements, terms or conditions appear on the document. The phrase “on their face” is not to be interpreted as meaning either the “face” or the “reverse” of the document.\(^{29}\)” This view was complemented in Southland Rubber Co Ltd v Bank of China\(^{30}\) where it was held that “…the obligation placed upon the bank is not an unqualified obligation to determine whether the documents are correct but to determine whether they “appear, on their face” to comply with the terms of the credit. In fulfilling this function, a bank is not required to look at each set of documents presented for payment with microscopic scrutiny or as if it is embarking on a fault finding mission. Equally so a bank is not required to engage itself in a speculation or guessing exercise either\(^{31}\)”.

\(^{26}\) A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank. For the convenience, also further in the text, these three banks will be referred to simply as a „bank‟.

\(^{27}\) Art. 2 and 14(a) of the UCP 600.

\(^{28}\) Art. 14(b) of the UCP 600.


\(^{30}\) [1997] HKLRD 1300.

4.1.2. Strict documentary compliance required by buyers

The reason underlying the strict compliance rule is that the confirming bank, nominated bank or advising bank, if any, is a special agent of the issuing bank and the latter is the special agent of the buyer. If an agent with limited authority acts outside that authority, 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.\(^{32}\)

The complexity of international trade means that the banks as agents of the buyer are not able to understand and appreciate all technical terms (some of which are interchangeable) or the technical differences between goods of similar functions or nature. While the seller and buyer may be able to reconcile their differences in the use of interchangeable terms or descriptions, it is not appropriate to expect a bank to undertake the task of determining whether goods with different denominations are actually the same, or whether different descriptions of the goods are in fact the same.\(^{33}\) Therefore, as Professor Dolan puts it: “the reason for the strict rule is to protect the issuer from having to know the commercial impact of a discrepancy in the documents. Under the strict rule, a bank document examiner does not need to judge whether dried grapes are the same raisins and does not need to know that “C.R.S.” stands for coromandel ground nuts\(^{34}\).” Similarly, if a document tendered under a letter of credit would contain discrepancies that actually may not affect the value or the condition of the goods, and may appear a mere technical question, anyway banks would be expected to reject such document unless otherwise instructed by the applicant. Banks deal in finance, not in goods and normally have no expert knowledge of the usages and practices of the particular trade\(^{35}\); therefore they are expected to follow strictly the instructions given by the buyer while exercising the obligation to examine the presented documents.

It must also be kept in mind that in a falling market buyers are easily tempted to reject documents which the bank accepted, on the ground that they do not strictly conform to the terms of the credit\(^{36,37}\), thus, to avoid the potential risk of not being remunerated by the credit applicant, banks need to act very carefully.

\(^{36}\) Ibidem.
\(^{37}\) See, i.e., Philadelphia Gear Corp. v. Central Bank, 717 F.2d 230, 236 (5th Cir. 1983).
4.1.3. Strict documentary compliance required by courts

The court defined role of banks under a letter of credit transaction is well described by famous Viscount Sumner’s words: “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 authorised 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. The bank’s branch abroad, 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.\[38\].

Case law on the banks’ role in the document examination process is summed up by Sir John Donaldson M.R.\[39\] in the following passage:

- **Commercial Banking Co. of Sydney Ltd v. Jalsard Pty. Ltd.**\[40\]: … the banker is not concerned with why the buyer has called for particular documents.

- **Equitable Trust Co. of New York v. Dawson Partners Ltd.**\[41\]: there is no room for documents which are almost the same, or which will do just as well, as those specified.

- **Commercial Banking Co. of Sydney Ltd v. Jalsard Pty. Ltd.**\[42\]: whilst the bank is entitled to put a reasonable construction upon any ambiguity in its mandate, if the mandate is clear there must be strict compliance with that mandate.

- **Golodetz & Co. Inc. v. Czarnikow-Rionda Co. Inc.**\[43\]: a tender of documents which properly read and understood calls for further inquiry or is such as to invite litigation is a bad tender.\[44\]

In the course of time, some courts have tried to mitigate the overly strict documentary compliance standard by stating, for example, that banks, when examining the tendered documents, should not insist on the rigid and meticulous fulfilment of the precise wording in all cases.\[45\]. One court has said that because of the wide variations in language found in both – the credit and presented documentation, it is impossible to be dogmatic or even to generalize, therefore, each case should to be considered on its merits, and the bank’s obligation may

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\[41\] (1926) 27 Ll.L.Rep. 49.
\[45\] See, e.g. Hing Yip Hing Fat Co Ltd v Daiwa Bank Ltd [1991] 2 H.K.L.R. 35.
obviously be most difficult to fulfil\textsuperscript{46}. Still, in most cases, courts have insisted on strict or even mirror compliance, as illustrated by the \textit{Seaconsar Far East Ltd v Bank Markazi Jomhouri Islami Iran}\textsuperscript{47} case. There the credit stipulated that each tendered document should state the name of the buyer and give the letter of credit number. One of the presented documents did not fulfil this requirement which constituted a sufficient ground for the bank to reject the tender. Although the seller contended that the omissions were trivial in nature, the court held that since the credit number and buyer’s name were specifically required by the credit the bank was in fact entitled to reject the documents.\textsuperscript{48}

Notwithstanding the fact that the UCP rules along with the ISBP\textsuperscript{49} have tried to loosen the doctrine of strict compliance in each new revision, the margin allowed to banks in interpreting the documents has been and still is very narrow. As a result, the fear of being victimized by “a court-inspired, overly strict standard of compliance\textsuperscript{50}” has forced banks to take the highest possible precautions and to insist on strict compliance, which in turn has caused the high rejection rates of presentations. To play it safe, banks must abide the judicial versions of strictness. As a consequence, as long as the mirror image judicial versions of strict compliance prevail, safety will require that all discrepancies be treated as major.\textsuperscript{51}

\subsection*{4.1.4. Liability limitations}

The liability of banks is limited, though. Article 35 of the UCP 600 inter alia contains the following disclaimer on effectiveness of documents: “a bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person\textsuperscript{52}”. Accordingly, the bank is not required to concern itself with anything but to ensure that, if the payment is made, then it is made against a presentation that complies with the terms and conditions of the letter

\textsuperscript{46} Hing Yip Hing Fat Co Ltd v Daiwa Bank Ltd [1991] 2 H.K.L.R. 35, at 44.
\textsuperscript{51} Ibidem, at 17.
\textsuperscript{52} Art. 34 of the UCP 600.
of credit. Even if the legal value of the presented documents appears questionable, documents in the required form may have commercial value for the buyer and “it is not for the bank to reason why”.  

4.2. Conditionality of the banks’ right to require strict documentary compliance

If the credit instructions are clear enough and the beneficiary has tendered a complying presentation, the bank must honour (or negotiate). However, if the tendered documents do not comply strictly with the terms of the letter of credit, the bank needs to decide what to do. Banks have been given latitude when deciding which discrepancies could be fixed and solved by communication among the bank, applicant and beneficiary and which could not. The possible courses of action include asking the applicant for the waiver of the identified discrepancies, to reject the presentation and refuse to honour or negotiate, or to pay against indemnity in respect of any loss or damage resulting from the defect in documentation or under reserve which means that the beneficiary would be bound to repay the money to the bank on demand if the documents would be rejected by the issuing bank or the applicant. The last two options were mentioned in the UCP500 but were not defined therein. The new UCP 600 has not even incorporated them. Most probably they are not considered popular or important and, therefore, will not be further discussed here.

As to the waiver and rejection notice, it needs to be emphasised, that similarly as exporters are required to comply strictly with the terms and conditions of the letter of credit in order to receive payment, banks must comply strictly with the provisions of the UCP when deciding what action to take when the presentation is non-compliant or they might lose their right to claim that the presentation is discrepant. A careful exporter presenting non-compliant documents should recognize that it may still have claims against the bank if the bank messes up and fails to timely and properly communicate its decision to dishonour the letter of credit.

55 Art 15 of the UCP 600.
56 Art. 16(a) of the UCP 600.
57 UCP500 Art. 14(f).
4.2.1. Approaching the applicant for a waiver

Firstly, and also what seems to be a general banking practice, the bank may in its sole judgement approach the applicant for a waiver of discrepancies which however does not extend the five banking day period given for the bank to determine if the presentation is complying. This option gives the purchaser an opportunity to waive discrepancies, thus promoting efficiency in a field where as many as half of the demands for payment under letters of credit are discrepant.

The independence principle, the cornerstone of letter of credit law, requires that the issuer makes an independent determination as to the apparent facial conformity of the presented documents with the terms and conditions of the letter of credit. The issuing bank may approach the applicant for a waiver, but it may not allow the applicant to examine the documents. Some issuing banks, however, do release documents to the applicant for checking, probably, with a purpose to reduce the workload of the banks and to avoid potential challenge from the applicant that the bank has failed to identify certain discrepancies, however, such practice might deprive the bank from its right of rejection. Whether or not the presenter requests that the applicant be approached for a waiver, the approach should not be made until the bank has identified apparent documentary discrepancies. The judge in Bankers Trust Co v State Bank of India case made it clear that any release of documents to the applicant could only be for the purpose of facilitating the applicant’s decision on whether to waive the discrepancies already identified by the issuing bank. This is because the bank and not the applicant, who might be unwilling to pay for some reason, should decide whether to reject the documents or not. Consequently, if the beneficiary had a cogent evidence to prove that the issuing bank had actually released the documents to the applicant for checking in order to find additional discrepancies, there would be a good chance for the beneficiary to obtain payment under the letter of credit, irrespective of discrepancies.

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59 Art. 16(b) of the UCP 600.
60 Art. 14(b) of the UCP 600.
67 Ibidem, at 85.
Interestingly, the UCP allows the bank to seek the applicant’s waiver, but it does not require the bank to follow the applicant’s decision. However, as the judge in *Bombay Industries Inc. v. Bank of New York* 68 has put it, a bank which ignores, without justification, its applicant’s waiver violates the seller - beneficiary’s reliance on the bank’s neutrality 69.

### 4.2.2. Rejection of the presentation

The second option for the bank in case of a discrepant presentation is to refuse to honour or negotiate. This would also be the course of action in case the applicant would communicate a refusal to waive the discrepancies, or if the issuer would decide not to waive even if the applicant would. If this is the case, the bank must give a single notice to that effect to the presenter 70. The rejection procedure prescribed in the UCP 600 is considered a corollary of the strict documentary compliance. It provides that if a bank to which the documents are tendered fails to adhere to the procedure involved or seeks to retain the custody of the documents, is deemed to have accepted the set 71.

Article 16(c) of the UCP 600 sets out the requirements regarding the contents of the rejection notice. Firstly, the notice must state that the bank is refusing to honour or negotiate 72. Secondly, it must specify each of the discrepancies in respect of which the bank has made the decision to reject 73. The bank must list literally “all” discrepancies, failing which it will not have a second chance to supplement or amend the relevant notice 74. The bank which does not state all the discrepancies upon which it subsequently seeks to rely, has failed to act in accordance with the Article 16(c)(ii) of the UCP 600 and is therefore precluded from later raising those extra discrepancies as grounds for rejection 75. For example, in *Bankers Trust Co v State Bank of India* 76 the first rejection telex which stated: “The purpose of this telex is to alert you that we do not find documents value USD 10,335,536 as being in compliance with letter of credit terms. Full details of discrepancies will follow by separate telex”, constituted the only chance that the issuing bank had to issue the rejection notice, and it did not contain the sentence that the bank is refusing to honour or negotiate, nor it listed all discrepancies being the basis for the rejection. Therefore the subsequent telex could not

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68 1995 WL 735310.
69 Ibidem.
70 Art. 16(c) of the UCP 600.
72 Art 16(c)(i) of the UCP 600.
73 Art 16(c)(ii) of the UCP 600.
remedy the deficiency of the first telex. As a result the bank was precluded from rejecting documents, irrespective of discrepancies.\textsuperscript{77} Also in \textit{Voest-Alpine Trading USA Corp. v Bank of China}\textsuperscript{78}, even though the presentation contained several discrepancies, the court found the bank’s notice of dishonour deficient and directed the bank to pay because the notice failed to state that the bank was rejecting the documents and refusing to honour the letter of credit. The notice should have stated the bank’s decision to reject the drawing. The bank’s omission was compounded by its statement that it would contact the applicant to determine whether the applicant would waive the discrepancies in the documents. This held open the possibility that the bank would accept the drawing upon the applicant’s waiver of the discrepancies and showed that the bank had not refused the documents and rejected the drawing. The bank had sent out a second rejection notice, however, it did so after the period of time allowed for banks to examine documents. Accordingly, the court held that the bank must pay notwithstanding the discrepancies in the presentation.\textsuperscript{79}

Finally, because, once the presented documents are rejected, they belong to the presenter. Therefore, the notice must state whether the bank is holding the documents pending further instructions from the presenter\textsuperscript{80}, it is acting in accordance with instructions previously received from the presenter\textsuperscript{81}, it is returning the documents\textsuperscript{82}, or the issuing bank is holding the documents until it receives a waiver from the applicant and agrees to accept it, or receives further instructions from the presenter prior to agreeing to accept waiver\textsuperscript{83}. The last option has been recently introduced by the UCP 600 to remedy the previous shortcoming often responsible for a rejection notice to be found discrepant\textsuperscript{84}.

The rejection notice must be given by telecommunication or, if this is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation\textsuperscript{85}. Banks are also allowed to reject the documents orally “if a senior official of the beneficiary (or the remitting bank, as the case may be), under whose aegis the documents were presented, is present at the bank to receive notice\textsuperscript{86}.” However, sending the rejection notice by mail or courier, if it could be done by telecommunication, would be in breach of this

\textsuperscript{77} King Tak FUNG (2004) \textit{Leading Court Cases on Letters of Credit}, ICC Publication 658, at 82.
\textsuperscript{78} 167 F. Supp. 2d 940 (S.D. Tex. 2000), aff’d, 288 F.3d 262 (5th Cir. 2002).
\textsuperscript{80} Art. 16(c)(iii)(a) of the UCP 600.
\textsuperscript{81} Art.16(c)(iii)(d) of the UCP 600.
\textsuperscript{82} Art.16(c)(iii)(c) of the UCP 600.
\textsuperscript{83} Art. 16(c)(iii)(b) of the UCP 600.
\textsuperscript{85} Art. 16(d) of the UCP 600.
\textsuperscript{86} Seaconsar (Far East) Ltd v Bank Markazi Jomhouri Islami Iran (Documentary Credits), [1999] 1 Lloyd’s Rep. 36, at 36.
rule\textsuperscript{87}, since it would fail to inform the beneficiary about the grounds of rejection as soon as possible and without a delay\textsuperscript{88}.

The rationale behind the rejection notice requirements is that if the bank decides to reject the documents and sends a proper rejection notice, the beneficiary or negotiating bank gets to know it as soon as possible and can dispose of or correct the documents as soon as they can\textsuperscript{89}. They also know exactly the grounds on which the bank has rejected the documents, so they can decide whether such grounds are valid or unjustified\textsuperscript{90}. The information on the whereabouts of the documents is necessary so that the beneficiary or the negotiating bank, being the owner of the rejected documents, can dispose of the documents accordingly\textsuperscript{91}. Therefore, it must be emphasised again that it is absolutely critical for the bank to issue a proper rejection notice, otherwise the beneficiary’s or negotiating bank’s interests could be jeopardized, and the bank could be precluded from claiming that the documents are discrepant\textsuperscript{92}.

Predominantly, courts have treated the rejection procedure prescribed by the UCP rules with the same degree of rigidity as the strict documentary compliance doctrine. Notices which do not manifest a clear intention to reject have been treated as faulty. So have notices in which the bank indicates that it proposes to hold on to the documents\textsuperscript{93}.

4.3. Discussion

The whole process which starts after the beneficiary has presented the documents and the bank has taken up the presentation for examination is illustrated by the Figure 1. During the allowed five days the bank has to take many decisions. Firstly, the bank needs to decide whether the presentation is strictly complying. In this process banks are expected to adhere strictly to the instructions given by the applicant because they normally have no expert knowledge of the particular trade they are financing.

\textsuperscript{87} i.e., see Bayerische Vereubsbank v. Bank of Pakistan [1997] 1 Lloyd’s Rep 59.
\textsuperscript{88} King Tak FUNG (2004) Leading Court Cases on Letters of Credit, ICC Publication 658, at 91.
\textsuperscript{89} Ibidem, at 113.
\textsuperscript{90} Ibidem.
\textsuperscript{91} Ibidem, at 114.
\textsuperscript{92} Art. 16(f) of the UCP 600.
Secondly, if, the presentation is complying, the bank must honour. However, if, during the document examination, the bank has any doubts as to the conformity of the presentation, it needs to define all deficiencies and either approach the applicant for a waiver or issue a rejection notice. The bank needs to act fast within the time limits allowed and in strict compliance with the UCP rules. The seeking for a waiver procedure does not permit any violation of the independence principle, with the purpose to safeguard the main properties of the letter of credit as a swift payment. The rationale behind the rejection notice procedure is that the beneficiary or negotiating bank gets to know the discrepancies as soon as possible and can dispose of or correct the documents as soon as they can. Failure to strictly follow the prescribed procedures might deprive the bank from its right for remuneration and to claim that the presentation has been discrepant. Put it differently, in case a litigation would ensue, the bank’s right to require the strict compliance from the beneficiary would become a subject to

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94 Elaborated by the author of this thesis.
its own strict compliance with the UCP prescribed document examination, rejection and seeking for waiver procedures. This is considered a corollary of the strict documentary compliance required from the beneficiaries.

The most important findings of this chapter imply that that the overly high documentary compliance standard required by banks is there mostly for two reasons:

- The bank is an agent of the credit applicant – the principal. If the bank honours a discrepant presentation, it risks losing its right for reimbursement from the applicant.
- Courts in litigations concerning discrepancies in presented documents under letters of credit tend to apply the strict compliance rule in its strictest sense.

This means that banks require the documentary compliance as strict as it is required by the applicants and courts, because the UCP rules do not provide a safe guide in this matter. To protect their own interests, banks better require mirror compliance from the beneficiary than accept documents with some deviations from the letter of credit terms. This, in turn, has resulted in the high rejection rates of the first presentations.

One would argue that, if the document examination obligation would be delegated to a third party which would be competent in the particular trade, the need for the strict compliance and, accordingly, the problem of the high rejection rates of first presentations would disappear. However, it is necessary to remember the very object of a letter of credit – to provide a near fool–proof method of placing money in its beneficiary’s hands when he complies with the terms of the credit. The independence of the letter of credit from the underlying commercial transaction facilitates payment under the credit upon a mere facial examination of the documents; it thus makes the letter of credit a unique commercial device which assures prompt payment. Moving the document examination obligation to a third competent in the trade party would destroy this unique property of a letter of credit, as it would require considerable time to find relevant experts, it would be very cost consumptive, and also the document examiner would have to look behind the presented documents to find out whether the discrepancy might have an impact on the substance of the transaction or not.

To conclude, the findings of this chapter emphasize the need for clear and unambiguous rules in regard the required documentary compliance in a letter of credit transaction. Well defined requirements of the compliance would allow to lessen the impact of the historically created overly strict judicial standards, as it has actually been intended by each new revision of the UCP rules, and provide a good basis for new case law. Clear rules would

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96 Ibidem.
help beneficiaries to achieve better documentary compliance, and also banks could perform the document examination on more sound and secure basis.
5. DIFFERENT INTERPRETATIONS OF THE DOCTRINE OF STRICT COMPLIANCE

The court’s ability to determine which discrepancies between the documents produced and the letter of credit constitute grounds for a bank to reject the documents and refuse payment is fundamentally important to international letter of credit law. However, there is one inherent danger involved with judicial examination of documentary compliance: it forces courts to consider myriad options, not the least of which is what factors to rely on when evaluating strict documentary compliance. The UCP rules as well as any other rules have not provided any objective factors to date.

Although “most courts appear to adopt a strict compliance standard” when interpreting the UCP rules, some courts have interpreted the standard as “allowing deviations that do not cause ostensible harm”.

The approach of strict compliance has been criticised often because it allows bad faith behaviour contrary to the expectations of the honest beneficiary. For example, one commentator has noted that by simply using a mirror-image interpretation, courts would inevitably create opportunities for bad faith issuing banks to refuse payment based upon minor, and perhaps inconsequential, discrepancies such as missing commas or asterisks. Moreover, “[t]o validate such bad faith practices in the name of strict compliance tips the contractual balance sharply in favour of applicants and against beneficiaries. It also creates serious distrust, not only between the beneficiary and applicant, but also among the correspondent banks, acting as advising, confirming, negotiating, paying or reimbursing banks.”

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98 Ibidem, at 154.
However, there are also arguments in favour of the doctrine of strict compliance. The advantage of the strict compliance rule to the applicant is most obvious in letter of credit transaction because the primary concern of the applicant – buyer is that the seller has shipped what was bargained for before the buyer becomes obligated to pay. The presentation of complying documents does not totally guarantee that the seller has complied with the terms of the underlying contract, but it goes a long way to assure the buyer that the seller has shipped what was agreed.104

Substantial compliance, the chief rival to strict compliance, is a judicially created standard designed to promote equity for the beneficiary in a letter of credit transaction.105 As Professor Boris Kozolchyk argues: because “discrepancies are the rule and perfect tenders are the exception”, issuing banks should act as trusted financers and not as “finders of reasons for non-payment106”. “The bank also ought to be charged with knowledge of the commercial impact that the absence of a given document or requirement may have upon the terms of the credit”.107

However, not everyone supports the substantial compliance standard. One commentator has stated that the substantial compliance standard threatens the certainty factor for issuing banks and forces them to determine ahead of time whether documents are close enough to the terms of the letter of credit, which inherently violates a fundamental tenet of letter of credit law.108

This chapter is devoted to highlight the problem of inconsistent court rulings in regard the doctrine of strict compliance. The aim of this chapter is to discover gaps in the UCP rules concerning the strict compliance rule which is the main reason for different interpretation of the doctrine by courts. Sometimes courts have applied different standards to similar problems resulting in inconsistent decisions. However, sometimes they have applied different standards resulting in similar outcomes. Thorough case by case analysis will discover the problematic

107 Ibidem, at 11.
areas and provide basis for drawing conclusions on what should be done in order to improve the consistency in court rulings in regard how strictly exactly the tendered documents should comply with the letter of credit terms.

**5.1. Typing errors and misspellings**

In every letter of credit transaction, firstly, the buyer fills in his bank application form for the opening the letter of credit, and then the bank drafts the credit according to the instructions and in line with legal requirements and the bank’s policies. Unfortunately, because of the human factor involved, both of those stages are prone to misspellings or typographical errors. The same applies to documents issued by the seller or even the third parties to be tendered under the letter of credit in order to receive payment. Such an omission or mistake caused by a typographical error, however, may possibly be considered fatal to the beneficiary’s entitlement under the credit if the omission or error is in connection with something which the credit specifically requires.109

The UCP rules, by themselves, do not regulate misspellings or typing errors in the presented documents. For the first time this issue was addressed in 2003 only when the ICC Banking Commission published the ISBP110 for the examination of documents under documentary credits. The respective paragraph 25 of the 2007 revision of the ISBP111 provides that: “a misspelling or typing error that does not affect the meaning of a word or the sentence in which it occurs does not make a document discrepant. For example, a description of the merchandise as “mashine” instead of “machine”, “fountan pen” instead of “fountain pen” or “modle” instead of “model” would not make the document discrepant. However, a description as “model 123” instead of “model 321” would not be regarded as a typing error and would constitute a discrepancy”.

Till the publication of the ISBP it was left completely in the discretion of courts to decide which misspelling or typing error constituted a discrepancy and which did not. Over time, courts have developed their own standards how to decide which discrepancy renders the presented documents non-compliant and which does not. Unfortunately, these have been different standards which have often brought different court rulings, if applied to similar typing mistakes. However, these have also been different standards which have brought

111 Paragraph 28 of the 2003 revision of the ISBP was saying the same.
similar case outcomes. Therefore, it is necessary to find out whether it could be only one optimal standard to avoid these inconsistencies, and what would it be.

5.1.1. Misspellings constituting a discrepancy

In **Beyene v. Irving Trust Co. (New York, USA, 1985)**[^112], the New York’s benchmark for strict compliance, the beneficiary sued the confirming bank for its failure to pay under a letter of credit.[^113]

The letter of credit specified that a bill of lading was to be issued to “Mohammed Sofan” (the applicant), but the tendered bill of lading listed the party to be notified by the shipping company as “Mohammed Soran”.[^114]

The court stated that “literal compliance is generally essential so as not to impose an obligation upon the bank that it did not undertake and so as not to jeopardize the bank’s right to indemnity from its customer”[^115]. It found that the misspelling at issue was a material discrepancy that entitled the confirming bank to refuse to honour the letter of credit. The decision was based on the following two reasons:

1) This was not a case where the name intended was unmistakably clear despite what is obviously a typographical error, as might be the case if, for example, “Smith” were misspelled “Smithh”. Nor had the beneficiary claimed that in the Middle East “Soran” would obviously be recognized as an inadvertent misspelling of the surname “Sofan”.

2) “Sofan” was not a name that was inconsequential to the document, for Sofan was the person to whom the shipper was to give notice of the arrival of the goods, and the misspelling of his name could well have resulted in his non-receipt of the goods and his justifiable refusal to reimburse Irving Trust Co. for the credit.[^116]

Accordingly, in this case the court has developed two standards:

1) Whether or not the misspelling is obvious? If it is possible to prove that the typographical mistake is obvious, as if “Smith” were misspelled as “Smithh”, then the bank should not be entitled to reject the document.

2) Whether or not the misspelling is inconsequential? In case the misspelling is not obvious, but it could not possibly have any undesirable effect on parties involved in the letter of credit transaction, it should not justify dishonour.

In all other cases the literal compliance should prevail.

[^112]: 762F.2d 4, C.A.2 (N.Y.), 1985; This case was decided under New York law.
[^113]: Ibidem, at 5.
[^114]: Ibidem, at 6.
[^116]: Ibidem, at 6,7.
Interestingly, if this case were decided today, the outcome would probably be the same, however, on other grounds. Article 14(j) of the new UCP 600 contains a clear requirement concerning transport documents to be presented under a letter of credit: “… when the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document … they must be as stated in the credit”.

Also in the light of the ISBP\textsuperscript{117} the misspelling at issue would most probably constitute a discrepancy, because “Mohammed Soran” and “Mohammed Sofan” could be two different persons.

In \textit{Bank of Cochin Ltd. v. Manufacturers Hanover Trust Co. (New York, USA, 1985)}\textsuperscript{118} the issuing bank brought an action against confirming bank for wrongful honour of letter of credit on a basis of several discrepancies in the presented document one of them being that the confirming bank had negotiated documents for St. Lucia Enterprises but that the letter of credit was established for St. Lucia Enterprises Ltd. Another alleged discrepancy was that the St. Lucia Enterprises Ltd’s cable to the insurance company showed a wrong insurance covernote number 4291 instead of 429711.\textsuperscript{119}

In fact, the documentation submitted to the confirming bank was fraudulent in every regard, no goods were ever shipped to the buyer, the fraudulent seller had vanished, and the court just had to decide whose shoulders should bear the scam.\textsuperscript{120}

The court applied the second \textit{Beyene’s}\textsuperscript{121} standard “whether or not the misspelling was inconsequential” to the both alleged mistakes and held that although there did not appear to be any difference between St. Lucia Enterprises and St. Lucia Enterprises Ltd, it was not clear that the “intended” party was paid. The difference in names could also possibly be indicia of unreliability or forgery.\textsuperscript{122}

In regard the cable with the wrong insurance covernote number, the court emphasised that its intention was to give notice to the insurance company of the shipment by quoting the proper covernote, and the failure to do so was not inconsequential as the mistake could have resulted in insurance company’s justifiable refusal to honour the insurance policy.\textsuperscript{123}

\begin{footnotesize}
\begin{enumerate}
\item Ibidem, at 1536.
\item Ibidem, at 1534 and 1536.
\item 762F.2d 4, C.A.2 (N.Y.), 1985.
\item 612 F.Supp. 1533, D.C.N.Y., 1985, at 1541.
\item Ibidem.
\end{enumerate}
\end{footnotesize}
In the light of the ISBP\textsuperscript{124} the two alleged mistakes most probably would also make the documents discrepant as both of them could affect the meaning of the word.

In \textit{Pasir Gudang Edible Oils Sdn Bhd v. the Bank of New York (New York, USA, 1999)}\textsuperscript{125} the court has applied the “whether or not the mistake was inconsequential” standard, too.

Here the letter of credit contained two spellings of the port of destination – Ilyichevsk and Iliychevsk, and stated that the port was in Ukraine. The presented bills of lading showed a third spelling, Ilychevsk, and did not include the location of the port.\textsuperscript{126}

Pasir Gudang Edible Oils Sdn Bhd (Pasir) argued, among other things, that: the discrepancy was a mere misspelling and that all three spellings were used to designate the same port (Pasir also submitted the result of an internet search to that effect). However, the Bank of New York submitted the results of a search of a geographic website that showed different sites with names similar to the ones that appear in the documents and the letter of credit. Two sites in Ukraine and one each in Azerbaijan, Kazakhstan and Uzbekistan were named Ilichevsk. The bank argued that to have approved the documents would have been to risk the chance that the cargo had been delivered to a port not mentioned in the letter of credit. The court agreed that this discrepancy justified dishonour on the grounds that the Bank of New York could not have been expected to determine from the face of the documents and the letter of credit that the different versions of the port’s name referred to the same port.\textsuperscript{127}

Article 20(iii) of the UCP 600 requires that the presented bill of lading must appear to “indicate shipment from the port of loading to the port of discharge stated in the credit”. Paragraph 99 of the ISBP\textsuperscript{128} puts it a little bit differently: that “the port of discharge, as required by the credit”, should appear in the appropriate field of the bill of lading, which could mean that the port name should be stated precisely as in the credit, but it is not unambiguously clear.

Under the paragraph 25 of the ISBP\textsuperscript{129}, however, this misspelling could affect the meaning of the word and therefore render the documents discrepant.

\textsuperscript{126} King Tak Fung (2004) Leading Court Cases on Letters of Credit, ICC Publication 658, at 32.
\textsuperscript{127} Ibidem, at 33.
\textsuperscript{128} ICC (2007) International Standard Banking Practice for the examination of documents under documentary credits, 2007 Revision for UCP 600, ICC Publication No. 681E.
\textsuperscript{129} Ibidem.
Also one of the leading letter of credit commentators, King Tak Fung, has noted that this court decision is probably right as it is of critical importance that the goods be sent to the designated port. However, if the bills of lading had used one of the two spellings indicated in the letter of credit, it would have been extremely difficult for the issuing bank to argue that the documents were discrepant, as the issuing bank had failed to specify which spelling was correct.\[130\]

In *Hanil Bank v. PT. Bank Negara Indonesia (Persero) (New York, USA, 2000)*\[131\] the applicant asked Bank Negara Indonesia (Persero) (“BNI”) to issue a letter of credit for the benefit of “Sung Jun Electronics Co., Ltd.” (“Sung Jun”). BNI issued the credit, but misspelled the name of the beneficiary as “Sung Jin Electronics Co. Ltd.” (“Sung Jin”).\[132\]

Sung Jun negotiated the credit to Hanil Bank (“Hanil”). When Hanil submitted the documents to BNI, the latter refused to pay on basis of four discrepancies, the most critical being the listing of Sung Jin as the beneficiary on the letter of credit and the listing of Sung Jun as the beneficiary on the documents tendered.\[133\]

The court found the misspelling in the present case similar to that in *Beyene v Irving Trust Co.*\[134\] and noted that Hanil likewise did not claim that “Sung Jin” would be obviously recognized as a misspelling of “Sun Jun”.\[135\]

Hanil contended that the strict compliance rule did not permit the issuing bank to dishonour the letter of credit because the misspelling could not have misled or prejudiced the issuing bank in any way, and BNI should have known that the intended beneficiary was Sung Jun, not Sung Jin, based on the application letter in BNI’s own file.\[136\] However, the court referred to Article 13(a) of the UCP500\[137\] and stated that in considering whether to pay, “the bank looks solely at the letter and documentation the beneficiary presents to determine whether the documentation meets the requirements in the letter”.\[138\] Accordingly, BNI

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\[132\] Ibidem, at 1.
\[133\] Ibidem.
\[136\] Ibidem, at 4 and 5.
\[137\] Art. 13(a) of the UCP 500: “Banks must examine all documents stipulated in the credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the credit. Compliance of the stipulated documents on their face with 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 other will be considered as not appearing on their face to be in compliance with the terms and conditions of the credit”.
properly rejected payment on the ground that the documents improperly identified the beneficiary on the letter of credit.\textsuperscript{139}

So, firstly, the court applied the first Beyene's\textsuperscript{140} standard – whether or not the misspelling was obvious, and found that there was no evidence that it could be obvious.

Then, however, instead of applying the “whether or not the mistake was inconsequential” standard, the court applied the plain language of the UCP requiring banks to look at nothing except presented documents and the credit. The name of the beneficiary in the presented documents obviously was not as stated in the credit and, therefore, the issuing bank was entitled to refuse.

The problem of the non-compliant beneficiary’s name in the presented documents is similar to that in the above discussed Bank of Cochin Ltd. v. Manufacturers Hanover Trust Co.\textsuperscript{141} case. Even the court decisions are similar. However, the applied standards are different: the Bank of Cochin court sought for possible consequences caused by the mistake, but the Hanil court based its decision on the UCP and required mirror compliance to the letter of credit.

Whether or not this discrepancy could affect the meaning of the words under the paragraph 25 of the ISBP\textsuperscript{142} and therefore render the presented documents discrepant, is a question to be answered by some other court. However, in this case, when the mistake was the issuers fault, a negative answer would seem only fair.

Kyle Roane has blamed the Hanil court for reliance on case law rather than on the UCP rules, which, in his opinion, obstructs rather than facilitates determinations of documentary compliance based on standard banking practices. Roane has also blamed the court for refusing to allow expert testimony regarding whether the misspelling of the beneficiary’s name was an obvious error in the parties’ countries of origin – Korea and Indonesia. If the misspelling or error would be found obvious, then it would not justify the issuing bank’s dishonour.\textsuperscript{143}

\begin{itemize}
  \item \textsuperscript{139} Ibidem, at 1.
  \item \textsuperscript{140} 762F.2d 4, C.A.2 (N.Y.), 1985.
  \item \textsuperscript{142} ICC (2007) International Standard Banking Practice for the examination of documents under documentary credits, 2007 Revision for UCP 600, ICC Publication No. 681E.
\end{itemize}
In *South Korean Hyosung Corp. v. China Everbright Bank (Xiameng Branch) (China, 2003)*\(^{144}\) the credit stipulated the manufacturer’s name as KOMHO CHEMICALS CO., LTD, but the presented packing bill/weight bill stated it as KUMHO CHEMICALS, INC. The issuing bank *inter alia* claimed that the name of the manufacturer on the packing bill/weight bill is not consistent with the letter of credit and refused to pay.\(^{145}\)

The court stated that INC in the name of the manufacturer might lead to another meaning than CO., LTD, therefore, regarded it as a discrepancy under the UCP 500 article 13(a).\(^{146}\)

Here we have a problem very similar to that in *Bank of Cochin Ltd. v. Manufacturers Hanover Trust Co.*\(^{147}\), the court has applied Art. 13(a) of the UCP 500 exactly as in *Hanil Bank v. PT. Bank Negara Indonesia (Persero)*\(^{148}\), however in a different way. Instead of requiring mirror-compliance to the credit terms, here the court has applied the ISBP\(^{149}\) test “whether the misspelling could lead to another meaning”. As it could, the bank was entitled to reject.

### 5.1.2. Misspellings not constituting a discrepancy

In *Hing Yip Hing Fat Co Ltd v. The Daiwa Bank Ltd (1991, Hong Kong)*\(^{150}\) the applicant for the letter of credit was “Cheergoal Industries Limited”, but the bill of exchange was drawn on “Cheergoal Industrial Limited”. Also the advice of discrepancies issued by Daiwa Bank Ltd. showed the applicant as “Cheergoal Industrial Ltd” with the same address indicated in the letter of credit. In this case the court held that the use of the word “Industrial” was an obvious typographical error from the word “Industries” and was not a discrepancy upon which the bank could rely.

In regard the strict compliance rule, the judge referred to Gutteridge’s “The Law of Bankers Commercial Credits”\(^{151}\): “[Strict compliance] does not extend to the dotting of i’s and crossing of t’s or to obvious typographical errors either in the credit or the documents. Because of the wide variations in language to be found in both, it is impossible to be dogmatic

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\(^{145}\) Ibidem, at 446.

\(^{146}\) Ibidem, at 447.


\(^{151}\) (7th ed.) 1984 at p. 120.
or even to generalize. Each case is to be considered on its merits, and the bank’s obligation may obviously be most difficult to fulfil”.152

The court made the decision based on the following points:

1) The error was minor and it was the sort of mistake that could easily occur in a society where English was not the first language of 98% of the population.

2) Daiwa Bank Ltd new exactly whom to contact and its staff took out the Cheergoal Industries Limited’s card, which showed the same address. He phoned the number on the card and spoke to the manager, who said he would wait until he received a written advice.

3) Daiwa Bank Ltd repeated this error in their advice of discrepancies.153

The judge continued: “I accept the passage above-quoted from Gutteridge which makes good sense and does no unnecessary violence to Lord Summer’s strictures of compliance… I believe that my conclusion on the “Industrial” argument accords with justice and common sense154.”

In the light of the above discussed cases, here the court has applied the first Beyene’s155 standard “whether or not the misspelling was obvious”, and the bank employee’s testimony that he was not mislead by the mistake together with the fact that the bank repeated the mistake in its advice of discrepancies constituted sufficient evidence that the misspelling was indeed obvious and, therefore, did not render the documents discrepant. If similar testimony would have taken place, i.e., before the Beyene156 and Hanil157 courts, probably their outcome would be different, too.

King Tak Fung has commented that in this case the Hong Kong court has chosen to adopt a commercial approach instead of technical approach. Since the Daiwa Bank was not misled by the typo, it was held that such typo could not be a ground for rejection.158

However, Feliks W H Chan was worried about this decision and said that “the court may not easily regard a typographical error as “trivial” on every occasion, bearing in mind that the banks are not expected to test the materiality of the information or particulars required under the credit”.159

153 Ibidem, at 44, 45.
154 Ibidem, at 45.
156 Ibidem.
It could be argued that also under the paragraph 25 of the ISBP\textsuperscript{160} the mistake would make the presented documents discrepant as it could affect the meaning of the words. “Cheergoal Industries Limited” and “Cheergoal Industrial Limited” could actually be two different corporate entities.

In \textit{E \& H Partners v. Broadway National Bank (New York, USA, 1998)}\textsuperscript{161} the beneficiary brought action against the issuing bank for wrongful dishonour of a letter of credit. One of the alleged discrepancies was an error in a beneficiary’s cover letter demanding payment where E \& H Partners mistakenly referred to the letter of credit as “1547424” instead of “1537424”, the correct designating number.\textsuperscript{162}

The court held that “even under the strict compliance standard a variance may be allowable if there is no possibility that the document could mislead the paying bank to its detriment”\textsuperscript{163}. The judge quoted Dolan saying that “the reason for the strict rule is to protect the issuer from having to know the commercial impact of a discrepancy in the documents”.\textsuperscript{164} It further added that requirements which help the bank identify the letter of credit, such as legends and designating cover letter numbers, are for the issuer’s benefit, and errors pertaining to these requirements do not call upon the reviewing bank officer to exercise discretion on a commercial matter, only to exercise discretion as a banker.\textsuperscript{165} As Broadway National Bank admitted that the erroneous number did not cause confusion, the court found the error to be insignificant and thus not violative of the strict compliance rule.\textsuperscript{166}

Another alleged discrepancy concerned a 30 day notice to the applicant that it intends to collect upon the letter of credit.\textsuperscript{167} The bank asserted that the beneficiary had addressed the letter to the wrong zip code – the zip code listed on the letter was “10001”, but the correct zip code was “10010”.\textsuperscript{168} However, the beneficiary submitted an affidavit by a retired letter carrier with 36 year career in the United States Postal Service stating that there was “no doubt” that the letter would have been delivered to the correct address despite the erroneous zip code. Also the process of ascertaining the correct zip code would not result in a significant

\textsuperscript{160} ICC (2007) International Standard Banking Practice for the examination of documents under documentary credits, 2007 Revision for UCP 600, ICC Publication No. 681E.
\textsuperscript{162} Ibidem, at 283.
\textsuperscript{163} Ibidem, at 283, 284.
\textsuperscript{164} Ibidem, at 284.
\textsuperscript{165} Ibidem.
\textsuperscript{166} Ibidem.
\textsuperscript{167} Ibidem, at 281.
\textsuperscript{168} Ibidem.
delay in the letter’s delivery – most likely, a delay of one day.\textsuperscript{169} Nevertheless, the bank contended that the letter was never received by the applicant because of the wrong zip code.\textsuperscript{170}

On balance, the court found that E & H Partners’ evidence was more persuasive because the bank had not presented any evidence that the letter was sent to a wrong address. Moreover, if the bank desired a particular mode of delivery, or concrete proof that the notice had been received by the applicant, it was incumbent upon the bank to specify such requirements when it drafted the letter of credit.\textsuperscript{171}

In regard the discrepancy in the letter of credit number, the court used the same justification as in the \textit{Hing Yip Hing Fat Co Ltd v. The Daiwa Bank Ltd}\textsuperscript{172} case – if there was no way that the bank could be misled by the mistake, i.e., the misspelling was obvious, the discrepant document should be found complying. Under the ISBP\textsuperscript{173} most likely, however, the mistake would constitute a discrepancy justifying a refusal because it could affect the meaning of the word – in this case the letter of credit number, as it could be some other letter of credit issued by the same bank.

As for the wrong zip code on the letter addressed to the applicant, on the one hand, there is a discrepancy on the face of the document, but, on the other hand, such a mistake is so very common and, as proved in the case, it would not probably result in non-delivery or significant delay in delivery of the letter. Therefore here the court supposedly was right in its decision.

The new UCP 600 now has a provision concerning the address of the applicant appearing in any stipulated document. Article 14(j) says that, except the address and contact details of the applicant appear as part of the consignee or notify party details on a transport document, the address needs not be the same as that stated in the credit or in any other stipulated document, but must be within the same country as the respective addresses mentioned in the credit. If to relate this provision to the wrong zip code, nobody disputed the fact that the address required in the credit and that written on the letter was in the New York, United States, so, probably, also today this discrepancy would not justify dishonour.

\textsuperscript{169} Ibidem.
\textsuperscript{170} Ibidem, at 281, 282.
\textsuperscript{171} Ibidem, at 282.
\textsuperscript{172} [1991] 2 HKLR 35, High Court, 1991.
Voest-Alpine Trading USA Co. v. Bank of China (Texas, 2000)\textsuperscript{174} case was decided in the same month as the Hanil Bank v. PT. Bank Negara Indonesia (Persero)\textsuperscript{175} case. However, this court has interpreted the strict compliance standard differently.

Here the letter of credit was issued by the Bank of China in favour of Voest-Alpine Trading USA Corporation (“Voest-Alpine”). In addition to numerous other typographical errors in the issued letter of credit, Voest-Alpine's name was listed as “Voest-Alpine USA Trading Corp.” instead of “Voest-Alpine Trading USA Corp” and the destination port was also misspelled in one place as “Zhangjiagng,” instead of “Zhangjiagang”.\textsuperscript{176}

When Voest-Alpine tendered documents to the Bank if China, it refused to honour and claimed, among other things, that the beneficiary’s name differed from the name listed in the letter of credit, the letter of credit number in the beneficiary’s certified copy of the fax was incorrect, and the destination was not listed correctly in the certificate of origin and the beneficiary’s certificate.\textsuperscript{177}

By the time the product was ready to ship, its market price had dropped significantly from the original contract price, therefore the buyer refused to waive the discrepancies.\textsuperscript{178}

In its reasoning the court highlighted the problem of different interpretation of the strict compliance rule and considered three kinds of interpretations on what standard banks should employ in examining letter of credit document presentations for compliance:

1) Mirror image compliance standard\textsuperscript{179} which was found problematic by this court because it absolved the bank reviewing the documents of any responsibility to use common sense to determine if the documents, on their face, were related to the transaction or even to review an entire document in the context of the others presented to the bank.\textsuperscript{180}

2) Strict compliance standard which supports rejection only where the discrepancies are such that would create risks for the issuer if the bank were to accept the presentation documents.\textsuperscript{181}

\textsuperscript{175} 2000 WL 254007 (S.D.N.Y.), 2000.
\textsuperscript{177} Ibidem, at 943.
\textsuperscript{178} Ibidem, at 942, 943.
\textsuperscript{179} See Banco General Runinahui, S.A. v. Citibank Int'l, 97 F.3d 480, 483 (11th Cir.1996)( “[T]he fact that a defect is a mere technicality’ does not matter”) (quoting Kerr-McGee Chem. Corp. v. FDIC, 872 F.2d 971, 973 (11th Cir.1989)); Alaska Textile Co. v. Chase Manhattan Bank, 982 F.2d 813, 816 (2d Cir.1992) (Noting that document that are nearly the same as those required by the letter of credit are unacceptable for presentation in a letter of credit transaction), 167 F.Supp.2d 940, at 946.
\textsuperscript{181} See Flagship Cruises Ltd., v. New England Merchants Nat'l Bank of Boston, 569 F.2d 699, 705 (1st Cir.1978) (“We do not see these rulings as retreats from rigorous insistence on compliance with letter of credit requirements. They merely recognize that variance between documents specified and documents submitted is not fatal if there is no possibility that the documents could mislead the paying bank to its detriment”); Crist v. J. Henry Schroder Bank & Trust Co., 693 F.Supp. 1429, 1433 (S.D.N.Y.1988)(where a party who has succeeded by operation of law to the rights of the beneficiary of a letter of credit, refusal was improper, even though the
3) Strict compliance standard, without much support in case law, which supports rejection only if the discrepancies would create risks for the applicant.\textsuperscript{182, 183}

Nevertheless, the court considered the second and third approaches unwieldy, too, as they employed a determination-of-harm standard which would improperly require the bank to evaluate risks that it might suffer or that might be suffered by the applicant and could undermine the independence principle of the letter of credit by forcing the bank to look beyond the face of the presentation documents.\textsuperscript{184}

Finally, the court found that a moderate, more appropriate standard laid within the UCP itself and the opinions issued by the ICC Banking Commission\textsuperscript{185} which said the following: “one of the Banking Commission opinions defined the term “consistency” between the letter of credit and the documents presented to the issuing bank to mean that “the whole of the documents must obviously relate to the same transaction, that is to say, that each should bear a relation (link) with the others on its face ...”. The Banking Commission rejected the notion that “all of the documents should be exactly consistent in their wording”.\textsuperscript{186}

The court concluded that: “a common sense, case-by-case approach would permit minor deviations of a typographical nature because such a letter-for-letter correspondence between the letter of credit and the presentation documents is virtually impossible. While the end result of such an analysis may bear a strong resemblance to the relaxed strict compliance standard, the actual calculus used by the issuing bank is not the risk it or the applicant faces but rather, whether the documents bear a rational link to one another. In this way, the issuing bank is required to examine a particular document in light of all documents presented and use common sense but is not required to evaluate risks or go beyond the face of the documents”.\textsuperscript{187} Accordingly, the court proceeded to analyze the Bank of China’s listed discrepancies under this standard.

terms of the credit provided for payment only to the beneficiary); Bank of Cochin, Ltd. v. Manufacturers Hanover Trust Co., 612 F.Supp. 1533, 1541 (S.D.N.Y.1985)(even under the strict compliance standard, a variance is permitted between the documents specified in a letter of credit and the documents presented thereunder where “there is no possibility that the documents could mislead the paying bank to its detriment”), 167 F.Supp.2d 940, at 946, 947
\textsuperscript{182} See ICC, Comm’n On Banking Technique And Practice, Publication NO. 511, UCP 500 & 400 Compared 39 (Charles del Busto ed.1994) (discussion of a standard that would permit “deviations that do not cause ostensible harm” to the applicant); see also Breathless Assoc. v. First Savings & Loan Assoc., 654 F.Supp. 832, 836 (N.D.Tex.1986)(noting, under the strict compliance standard, “[a] discrepancy ... should not warrant dishonor unless it reflects an increased likelihood of defective performance or fraud on the part of the beneficiary”), 167 F.Supp.2d 940, at 947.
\textsuperscript{184} Ibidem, at 947.
\textsuperscript{185} Ibidem.
\textsuperscript{187} Ibidem.
First, the beneficiary’s name in the presentation documents, Voest-Alpine Trading USA, differed from the letter of credit, which listed the beneficiary as Voest-Alpine USA Trading. In regard this contended discrepancy, the court found that all the documents Voest-Alpine presented obviously related to this transaction, the addresses corresponded to that listed in the letter of credit and, moreover, the cover letter containing the documents presented as part of the letter of credit drawing identified the beneficiary as Voest-Alpine Trading U.S.A Corp., therefore the court refused to reject the documents. It further explained that the inversion (in contrast to a misspelling or omission\(^{189}\)) of the geographic locator did not signify a different corporate entity, however, if it did, the discrepancy would have justified a refusal to honour.\(^{190}\)

Here, similarly as in *Hanil Bank v. PT. Bank Negara Indonesia (Persero)*\(^{191}\), the issuing bank issued a credit with a wrong beneficiary’s name, but the tendered documents contained a correct name. The *Hanil*\(^{192}\) court looked solely at the disputed name in the credit and the tendered documents and decided that such a discrepancy justified the dishonour, however, this court found the documents complying because they bore a rational link with each other and the transaction concerned.

Second, the letter of credit number was listed as “LC95231033/95” on the copy of fax instead of “LC9521033/95” as in the letter of credit. The court held that the bank could have easily looked to any other document to verify the letter of credit number, or looked to the balance of the information within the document and found that the document as a whole bears an obvious relationship to the transaction. Therefore this discrepancy could not be a sufficient ground for dishonour.\(^{193}\)

Although here, similarly as in *E & H Partners v. Broadway National Bank*\(^{194}\), the court found that a discrepant letter of credit number on a tendered document did not render the presentation nonconforming, the reasons for such a decision for both courts were different. While the *E & H Partners*\(^{195}\) court applied the quite subjective “whether or not the bank could have been misled by the mistake” standard, this court sought for a rational link between the discrepant document and other presented documents. As it could be established, the document was in compliance with the credit, despite the mistake.

\(^{189}\) In contrast to i.e. Beyene v. Irving Trust Co., 762 F.2d 4 (2d Cir.1985)(listing beneficiary as “Soran” rather than “Sofan” was sufficient basis for refusal); Bank of Cochin, Ltd. v. Manufacturers Hanover Trust Co., 612 F.Supp. 1533 (S.D.N.Y.1985)(omitting “Ltd.” from corporate name justified rejection).


\(^{192}\) Ibidem.


\(^{195}\) Ibidem.
The third mistake was that the wrongly spelled destination port. The presented certificate of origin spelled the destination port Zhangjiagang as “Zhangjiagng” missing an “a” as it was misspelled once in the letter of credit, making it consistent. The beneficiary's certificate, however, spelled it “Zhanjiagng,” missing a “g” in addition to the “a”, a third spelling that did not appear in the letter of credit. The court said that there was no port in China called “Zhangjiagng” or “Zhanjiagng”, and “Gng” is a combination of letters not found in Romanized Chinese, whereas “gang” means “port” in Chinese. The other information contained in the document was correct, such as the letter of credit number and the contract number, and the document as a whole bore an obvious relationship with the transaction. Therefore, the misspelling of the destination was not found a sufficient basis for dishonour of the letter of credit where the rest of the document had demonstrated linkage to the transaction on its face.\(^\text{196}\)

To remind, the destination port was misspelled also in the above discussed _Pasir Gudang Edible Oils Sdn Bhd v. the Bank of New York\(^\text{197}\)_ case, where the court held that such a mistake justified dishonour because it was not inconsequential. In contrast to that case, here the contended documents were not transport documents which probably could make the difference … or not because the courts in their rulings did not distinguish among the types of the presented documents.

Essentially, the _Voest-Alpine_ court has adopted a common-sense approach that requires banks to examine “whether the whole of the documents obviously relate to the transaction on their face”.\(^\text{198}\) It has rejected the nitpicking approach to reviewing documents presented as part of a letter of credit drawing and disregarded minor discrepancies by looking at all of the information contained in each document to find that the documents as a whole bore an obvious relationship with the underlying transaction.\(^\text{199}\)

Importantly, also the new UCP 600 is in favour of the common sense approach developed by the _Voest Alpine_ court. While the Articles 13(a) and 14(b) of the UCP 500 required banks to examine all documents stipulated in the credit to ascertain whether or not they appear to be in compliance wit the credit, the respective Article 14(a) of the new UCP 600 puts the requirement a little bit differently: now banks must examine the documents to

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determine whether or not they constitute a complying presentation. Article 14(d) further explains that “data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical, but must not conflict with data in that document, any other stipulated document or the credit”. Accordingly, now, except specific requirements in regard specific documents, the UCP rules are more in favour of the idea that the whole presentation must comply, instead of each presented document.

Also within the letter of credit community in the United States, the leading figures favour the common sense approach taken by the Voest Alpine court and consider the Hanil and Beyene approaches overly formalistic.

In *South Korean Hyosung Corp. v. China Everbright Bank (Xiameng Branch) (China, 2003)* the issuing bank among other discrepancies claimed that the spelling of the name of the issuer on the presented documents is wrong as it was BANK instead of BNAK.

The court stated that according to international standard banking practice, a typing error shall not be regarded as a discrepancy. In this case, “bank” is wrongfully typed as “bnak” which is a typical typo.

This decision completely accords with the paragraph 25 of the ISBP which says that such a misspelling as “modle” instead of “model” would not make the document discrepant.

In *NEC Hong Kong Ltd v. Industrial and Commercial Bank of China & Another (Hong Kong, 2006)* the seller of computers, NEC Hong Kong Ltd (NEC) sued Industrial and Commercial Bank of China (ICBC) for wrongful dishonour under two letters of credit.

In the transaction concerned, the goods were to be collected by an entity called “Fortune System”. Cargo receipts bore the tile “FORTUNE SYSTEM” at their head and at the foot appeared a “signature chop” consisting of a square logo, Chinese characters with
thereunder the English appellation “FORTUNE SYSTEM”, and underneath a signature “D. Wong” on a dotted line over the words “GENERAL MANAGER”.206

The dispute focused upon the word “SYSTEM” in the chop, because quite obviously in each of these instances the word previously had been “SYSTEMS”, and somebody had “tippexed” out the “S” at the end of the word. ICBC argued that these alterations were made without authentication and therefore the documents were discrepant and the bank was right in refusing the payment.207

The court, however, held in favour of NEC that “the existence of an “S” within the name, even if unexcised, was no more than an immaterial error which of itself, even if uncorrected, would not have rendered the documents discrepant208.”

The Bank of Cochin Ltd.209 court probably would disagree with this decision on grounds that the mistake is not inconsequential as the goods might have been collected by some other corporate entity and that the deviation could also be an indication of unreliability or forgery. However, the Voest Alpine210 court with its common sense approach would most likely agree as the mistake could be cured by reference to the title of the cargo receipts bearing the correct name of the corporate entity at their head.

5.1.3. Discussion

The analysis performed in this subchapter shows that to misspellings and typographical errors alone courts have applied six different standards of documents examination to decide whether the presented documents comply strictly with the letter of credit or not.

The applied standards were:

1) Whether the misspelling obvious? Misspellings in person or company names in two instances were found not obvious, in three – obvious and, thus, complying.

2) Whether the misspelling inconsequential? Misspelled name of a notify party in a bill of lading and misspelled port’s name in another bill of lading were not inconsequential and therefore rendered the documents nonconforming. Also wrong insurance cover note number and a company name missing “ltd” were found not inconsequential and therefore non-complying. Wrong zip-code on a letter was found inconsequential and complying.

206 Ibidem, at 661.
207 Ibidem, at 661.
208 Ibidem, at 663, 664.
3) Whether the document on its face demonstrates a rational linkage to the transaction? A misspelled port name on a document other than transport document, a misspelled letter of credit number and company name on presented documents did not make the presentation discrepant because each of those documents demonstrated a rational linkage to the transaction.

4) Whether the bank was misled by the mistake? A misspelled company name and wrong letter of credit number could not mislead the bank and, therefore, the documents were complying.

5) Article 13(a) of the UCP 500 as requiring mirror compliance. A misspelled name of the beneficiary on the presented documents rendered the presentation discrepant.

6) Article 13(a) of the UCP 500, whether the mistake could affect the meaning of the name? Abbreviation designating the type of the company “ltd”, instead of “inc” could affect the meaning of the name and therefore rendered the document discrepant.

The analysis performed in this subchapter shows that for the determination whether the misspelling or typing error in the presented documents constitutes a discrepancy or not, courts only in rare cases have applied the UCP rules. According to the cases analysed in this work, those were just two cases, and in both instances the courts have interpreted the rule differently.

In most cases, the courts have elaborated and applied their own judicially created standards. Unfortunately, those have been too many different standards and none of them provided a clear and unambiguous enough standard to ensure its uniform interpretation. The six above listed document examination standards have been applied to all kinds of misspellings and typographical mistakes in different variations.

Article 14 (a) of the UCP 600 requiring the presented documents to appear on their face to constitute a complying presentation does not appear to be a clear and ambiguous standard. Also, as the analysis of the case law, performed in this subchapter, shows, the ISBP\textsuperscript{211} which says that the misspellings and typing errors do not constitute a discrepancy only if they do not affect the meaning of the word or the sentence in which they occur, is not of much help in majority of situations.

Based on these findings, the following observations and recommendations can be done:

In cases where transport documents have been involved the courts have usually required mirror image compliance. This can be observed in both - Beyene\(^{212}\) and Pasir Gudang Edible Oils\(^{213}\) cases.

The Beyene’s\(^{214}\) decision is now favoured by Article 14(j) of the new UCP 600 which requires the address and contact details of the applicant which appear as part of the consignee or notify party details on a transport document to be as stated in the credit. However, it is not so clear in regard the port names. If the UCP 600\(^{215}\) or ISBP\(^{216}\) would clearly require that port names in transport documents must be stated precisely as in the credit, it would help to avoid any further inconsistent court rulings.

A requirement to state precisely as in the credit such important information as the insurance policy number and other clearly defined information in clearly defined documents would introduce much more clarity.

In cases where the presented documents contain a company name with omitted or changed abbreviation of the type of the company (i.e. ltd. or inc.) as in Bank of Cochin Ltd.\(^{217}\) and South Korean Hyosung Corp.\(^{218}\) courts have not allowed any deviations. The both cases were decided without reference to the ISBP, however, if such a discrepancy would be disputed before the court today, the ISBP\(^{219}\) test “whether the misspelling could lead to another meaning” would probably grant the same decision that such a discrepancy would be a sufficient ground for rejection. However, for the sake of clarity, an additional requirement in the ISBP, stating that any deviations in abbreviations or names that designate the type of the company, i.e. inc. or ltd. or limited, would constitute a discrepancy, would be helpful. For example, omission of “ltd” in the end of a company name or “ltd” replaced by “inc” would constitute a discrepancy.

\(^{215}\) Article 20(iii) of the UCP 600.
In Hing Yip Hing Fat Co Ltd\textsuperscript{220}, Hanil\textsuperscript{221}, Voest-Alpine\textsuperscript{222}, South Korean Hyosung Corp.\textsuperscript{223} and NEC Hong Kong Ltd\textsuperscript{224} cases courts had to decide whether misspelled company names could render the presentation discrepant. As seen above, here the courts have applied most various standards. Also the ISBP in this matter is of little help because a decision whether a misspelling of one letter in a name could affect its meaning would be more subjective than objective. However, the Voest-Alpine\textsuperscript{225} or common sense standard “whether the documents bear a rational link to one another” which is now supported also by the Article 14(a) UCP 600 requirement that the whole presentation, instead of each presented document, must comply seems to be the most rational and fair one which could help to reduce any further inconsistencies in court rulings in similar matters.

The common sense approach could also be the most optimal standard for misspelled numbers as in E & H Partners\textsuperscript{226} and Bank of Cochin Ltd.\textsuperscript{227} cases and misspelled port names in documents other than transport documents as in Voest-Alpine\textsuperscript{228}.

5.2. Deviations in the description of goods in commercial invoices

Commercial invoices normally accompany every sales of goods transaction. Therefore, clear rules in regard the content of the invoices are of utmost importance. Unfortunately, incorrect goods description is one of the top ten discrepancies leading to rejection of letters of credit\textsuperscript{229} which indicates that there might be something wrong with the rules.

The description of goods in commercial invoices is regulated by Article 18(c) of the UCP 600 which states that “the description of goods, services or performance in a commercial invoice must correspond with that appearing in the credit”.\textsuperscript{230} The ISBP\textsuperscript{231} adds that in a commercial invoice “there is no need for a mirror image. For example, details of the goods

\textsuperscript{221}2000 WL 254007 (S.D.N.Y.), 2000.
\textsuperscript{224}[2006] HKLRD 645, Court of First Instance, 2006.
\textsuperscript{230}Art. 37(c) of the UCP 500 is saying basically the same.
\textsuperscript{231}ICC (2007) International Standard Banking Practice for the Examination of Documents under Documentary Credits, 2007 revision for UCP 600, ICC Publication No. 681 E.
may be stated in a number of areas within the invoice which, when collated together, represent a description of the goods corresponding to that in the credit.\textsuperscript{232} However, as it was mentioned before, the ISBP was published for the first time in 2003 only which means that till that time the only guideline for the courts in this matter was the predecessors of the Article 18(c) of the UCP 600.

Unfortunately, the requirement that the goods description in the invoice must correspond with that in the credit has not been unambiguous enough. As it will be seen later in this subchapter, although some courts have been satisfied with substantial compliance, most courts have interpreted the rule as requiring strict or even identical compliance to the letter of credit.

One commentator has stated that banks do not expect the description to be laid out exactly as shown on the letter of credit, but the data elements contained in the invoice must be a match to the letter of credit. In other words, the sequence or the order of the details is immaterial, but they must comply.\textsuperscript{233} Whether this is true or not, will be revealed by the case by case analysis performed further in this subchapter.

The aim of this subchapter is to find out what should be done to reduce the inconsistent court rulings in regard the goods description in commercial invoices.

5.2.1. Strict compliance cases

In \textit{Bank Melli Iran v. Barclays Bank (Dominion, Colonial & Overseas) (UK, 1951)}\textsuperscript{234} the action was brought by the issuing bank alleging that payments under an irrevocable confirmed letter of credit, covering a purchase of 100 new Chevrolet trucks, had been made against discrepant documents, and claiming a declaration that the confirming bank was not entitled to debit the issuing bank with sums paid under the letter of credit.\textsuperscript{235}

The payment was authorised against documents which included a commercial invoice evidencing shipment of 100 new Chevrolet trucks.\textsuperscript{236} However, the tendered invoice referred to the Chevrolet trucks as “in new condition”.\textsuperscript{237}

The court held that according to the doctrine of strict compliance the goods description in the commercial invoice – “in new condition” was not the same as “new”, and, therefore, the documents against which the payment was made were not in accordance with the issuing

\textsuperscript{232} Ibidem, para 58, at 35; para 62 of the ISBP of 2003 was saying the same.


\textsuperscript{234} [1951] 2 Lloyd’s Rep. 367. This case was decided under English law.

\textsuperscript{235} Ibidem, at 372.

\textsuperscript{236} Ibidem, at 374.

\textsuperscript{237} Ibidem, at 374, 375.
The court also noted that the description might have a special trade meaning in relation to motor vehicles, but it did not elaborate on this issue, just concluded that it was sufficient to say that descriptions “new” and “in new condition” were not the same.239

The lesson to be learned from this case is that the issuers of commercial invoices should better copy the goods description from the letter of credit to the invoice, as even the smallest deviations in the wording of the goods description in the court’s eyes can constitute sufficient grounds for justifying dishonour.

In Courtaulds North America, Inc. v. North Carolina Nat. Bank (North Carolina, USA, 1970)240 a letter of credit required an invoice in triplicate stating (inter alia) that it covers “100% Acrylic Yarn”, but the tendered invoices stated that the goods were “Imported Acrylic Yarn” which was the reason why the bank refused to pay.241

The court had to decide whether the documents tendered were in conformity with the terms of the letter of credit and, accordingly, whether the issuing bank had rightfully refused to honour the beneficiary’s draft. It based its decision on the strict compliance standard defined in Equitable Trust Company of New York v. Dawson Partners, Ltd.242 and held: “Free of ineptness in wording the letter of credit dictated that each invoice express on its face that it covered 100% acrylic yarn. Nothing less is shown to be tolerated in the trade. No substitution and no equivalent, through interpretation or logic, will serve243.”

The fact that the tendered invoices were accompanied by packinglists which disclosed on their faces that the packages contained “cartons marked: -100% acrylic”, in the court’s opinion, could not remedy the discrepant description because of a distinction made in the UCP between the “invoice” and the “remaining documents” and because of a custom and practice of a banking trade to treat a document as an invoice which clearly is marked on its face as “invoice”.244 Accordingly, the court entered judgement for the issuing bank on the ground that documents tendered under the credit did not strictly conform to the credit terms.

This court decision matches the Bank Melli Iran245 ruling in requiring the strict compliance. However, this court goes a little bit further and adds two more requirements or maybe clarifications: that similar trade terms, which might be well understood between the trading parties, will not be tolerated in the goods description, and that deficiencies in the

238 Ibidem.
239 Ibidem, at 375.
240 528 F.2d 802, C.A.N.C. 1975.
241 Ibidem, at 803.
242 [1927] 27 L.L.Rep. 49, at 52 see also supra at 12.
243 528 F.2d 802, C.A.N.C. 1975, at 806.
244 Ibidem, at 806.
goods description in commercial invoices cannot be cured by reference to other accompanying documents.

In *Kydon Compania Naviera S.A. v. National Westminster Bank Ltd. and Others, (The “Lena”) (UK, 1980)* the action was brought by the seller Kydon Compania Naviera S.A. in respect of the alleged wrongful failure to pay for the sale of a Greek vessel Lena under a letter of credit issued by the Janata Bank and confirmed by the National Westminster Bank Ltd. The payment was available against several documents evidencing shipment of one Greek flag Motor vessel “LENA”, built January 1951 of about 11250 tons gross register 6857 tons nett register and about 5790 long tons light displacement “as built”, with all equipment outfit and gear belonging to her on board, as per Memorandum of Agreement dated the 2nd July, 1974. For additional conditions and instructions, among other things, there was a requirement for signed invoices in triplicate certifying that the vessel is as per Memorandum of Agreement dated 2nd July 1974.

The tendered invoices read: … We hereby certify that the m.t. “LENA” registered under the Greek Flag under official number 3723 of 11,123.89 tons gross and 6,297.41 tons net is as per Memorandum of Agreement dated 2nd July 1974 concluded between [etc.].

Accordingly, the tendered invoice contained different gross and net tonnage, the year of the construction was not stated, the light displacement tonnage “as built” was not stated, and the invoice did not mention that all equipment outfit and gear belonging to the vessel were on board.

This credit was subject to the UCP 222 (1962 Revision), and its Article 30, similarly as Article 18(c) of the UCP 600, was saying that the description of the goods in the commercial invoice must correspond with the description in the credit.

Mr. Justice PARKER 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. It is important that this principle should be strictly adhered to. … Departure from the principle would involve banks in just those sorts of

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247 Ibidem, at 70.
248 Ibidem.
249 Ibidem, at 71.
uncertainties which it is essential for the proper operation of the credit system should be avoided\textsuperscript{250}.

In regard the certification in the commercial invoice that the vessel was as per Memorandum of Agreement, the court ruled that it was just fulfilling the additional specific requirement of the letter of credit. The obligation was still to provide an invoice in accordance with the terms of the UCP. If specific items of description are included in the credit they must also be included in the invoice. The certification may no doubt incorporate this and a lot more detail besides, but all of these are nothing to do with the bank which was therefore entitled to reject the documents on the ground of defects in the invoices.\textsuperscript{251}

Similarly as in \textit{Courtaulds North America, Inc.}\textsuperscript{252}, also here the court has emphasised the importance to follow closely the words of the credit in the goods description in commercial invoices. Banks look solely at the tendered documents and credit, and they cannot be expected to know the particularities of the trade for which the letter of credit is issued, therefore, no usage of mutually replaceable and between seller and buyer understandable trade or technical terms is permitted. Moreover, the invoice must contain all specific items of the description included in the credit, and no reference to other documents can fill the gaps.

In \textit{Sunlight Distribution, Inc. v. Bank of Communications (New York, USA, 1995)}\textsuperscript{253} the bank denied payment because of several discrepancies, including differences between the description of goods on the commercial invoice and in the letter of credit.\textsuperscript{254}

The letter of credit required a description of the goods as follows: “MOTOROLA 8900X-2 (ETACS) PORTABLE RADIO TELEPHONE, 2600 UNITS”.\textsuperscript{255}

The beneficiary presented two invoices neither of which conformed to the description. The both invoices contained the required goods description, but they also had the following additional terms included: a prefix S3410A, and terms “SNN404A BATTERY BLACK HI-CAP”, “SNN4216A PROGRAMMING BATTERY FOR 8900X-2”, and “SNN4216A BATT TEST A/P SAM”, none of which were contained in the letter of credit.\textsuperscript{256}

This case was subject to the UCP 400 (1983 revision), and the relevant Article 41(c), similarly as the Article 18(c) of the UCP 600, was saying that the goods description in the commercial invoice must correspond with that in the letter of credit.

\begin{flushright}
\textsuperscript{250}Ibidem, at 76.
\textsuperscript{251} Ibidem, at 76.
\textsuperscript{252} 528 F.2d 802, C.A.N.C. 1975.
\textsuperscript{254} Ibidem, at 1.
\textsuperscript{255} Ibidem, at 2.
\textsuperscript{256} Ibidem.
\end{flushright}
The court chose to apply Dolan’s interpretation of the Article 41(c) of the UCP 400: “it is a well – established principle of letter of credit law that the description of the goods in the commercial invoice must mirror the description in the credit itself. … While other documents need merely describe shipments “in general terms not inconsistent with the description of the goods in the credit,” the invoice description must - much more stringently - “correspond” with that of the credit.”

In regard the beneficiary, the court said that “the careful beneficiary insists that the description in the credit accord with what he knows to be his invoice practices. He instructs his credit department to draw invoices with the credit in hand, lifting the description of the goods from the letter verbatim.”

In the court’s opinion “the principle of “careful examination” does not require that the issuing bank reconcile clear discrepancies. A recipient of the required documents is instructed as to the precise documentation that should be accepted. Anything beyond the slightest, most unmistakable deviations is simply not acceptable.

It must also be remembered that, “the issuer is not required to go beyond a facial examination of the tendered documents in determining whether payment is warranted. Strict compliance must be most rigidly applied when a beneficiary could not reasonably expect a recipient to understand intricate terminology. Where the description of the goods in the credit contains technical terms, matters which a banker cannot be expected to know or understand, there will be less leeway for any deviation in the description of the goods in the invoice. [Therefore] anything beyond the slightest, most unmistakable deviations is simply not acceptable.”

To conclude, here the court has held explicitly that the goods description in the invoices must mirror the description required by the letter of credit, and this is especially so where the description of the goods in the credit contains technical terms, which bankers cannot be expected to know.

For the present case it meant that, notwithstanding the fact that the presented invoices contained the required goods description, the additional language – the prefix and other extra technical terms, not contained in the letter of credit, constituted not acceptable deviation and, therefore, rendered the invoices not conforming to the terms of the letter of credit.

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257 Ibidem.
258 Ibidem, at 3.
259 Ibidem.
260 Ibidem.
In *Rudy T. Oei and M.J.F.M. Kools, d/b/a Kools de Visser v. Citibank, N.A. and Citibank International (New York, USA, 1997)*\(^{261}\) the applicant brought suit against the issuing and advising banks for their alleged wrongful honour of the letter of credit, etc.\(^{262}\)

The credit required an original and four copies of the commercial invoice for merchandise described as “LEVI JEANS 501-0191, NEW, ORIGINALS, MADE IN USA LABELS”, but the banks paid against an original invoice that included “LEVI 501-0191, NEW, ORIGINALS, MADE IN USA LABELS” on one line, with the word “JEANS” typed right above the word “LEVI”. However, the copies of the invoice did not contain the word “JEANS” at all.\(^{263}\)

Similarly as the *Sunlight Distribution, Inc.*\(^{264}\) court also this court relied on Dolan’s interpretation of the Article 41(c) of the UCP 400 (1983 revision) that the goods description in the invoice must mirror the description in the letter of credit, and held that “this discrepancy was significant because a letter of credit transaction is intended to ensure receipt of the correct goods and therefore an exact description of the goods in the invoice is required. A misdescription of those goods – especially when a word as important as “JEANS” is left out – may signal a shipment of incorrect goods.\(^{265}\) Therefore, the applicant was right on this issue.

This case again gives a strong signal to the issuers of commercial invoices that the goods description in the invoice must follow strictly the wording of the credit. An omitted word, which in the court’s opinion is material in the goods description at issue, can render the presented invoice discrepant.

It must also be remembered that if the credit requires copies of a document, they must be exact replicas of the original, otherwise the presentation will not be compliant, as in this case.

### 5.2.2. Substantial compliance cases

In *Luen Hop Hong (a firm) v. the Bank of East Asia Ltd. (Hong Kong, 1973)*\(^{266}\) the issued documentary credits described the goods as “second-hand Gardner 8L 3 Diesel Engines, with Gardner Model 3 UC 3:1 reduction marine gearboxes”, but the presented invoices omitted the word “Model” in the description of the engines. The issuing bank

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\(^{262}\) Ibidem, at 492.

\(^{263}\) Ibidem, at 505.


\(^{266}\) [1973] HKLR 521, FC.
honoured the presentation, but the applicant refused to remunerate the bank on grounds that the description of goods in the commercial invoices did not comply with the credit.\textsuperscript{267}

The letter of credit was subject to the UCP 222 (1962 Edition). The applicant argued that the wording of Article 30 required the description of goods in the commercial invoice to be “identical with” the description in the credits.\textsuperscript{268} However, the court held that the Article is to be interpreted as requiring the description of the goods in the invoices to correspond in all material particulars with the description in the credit and the presence or absence of the word “model” with respect to the engine numbers made no difference.\textsuperscript{269}

There might be a case where the omission of the word “model” would be fatal, but in this case there can be no doubt at all that the notation “3UC” was a model number, just as was the preceding notation “8L3”, before which the word “model” was inserted in none of the documents.\textsuperscript{270} Therefore, the bank was right in honouring the presentation.

Here we see a similar problem to that in \textit{Rudy T. Oei}\textsuperscript{271} case – a word is omitted from the goods description in the invoice. The \textit{Rudy T. Oei}\textsuperscript{272} court interpreted the UCP rules as requiring a mirror compliance and accordingly held that the deviation was fatal, but the \textit{Luen Hop Hong} court interpreted the same UCP rule as requiring the goods description in the invoice to “correspond in all material particulars with the description in the credit” and found the presentation complying.

Taking into account the background of the both cases the \textit{Luen Hop Hong} standard seems more reasonable and fair in regard the beneficiary.

In \textit{Astro Exito Navegacion S.A. v. Chase Manhattan Bank N.A., (The “Messiniaki Tolmi”) (UK, 1985)}\textsuperscript{273} the action was brought by the seller, Astro Exito Navegacion S.A., claiming against the confirming bank, Chase Manhattan Bank N.A., for their refusal to pay under a letter of credit and their rejection of the documents presented to them in respect of the sale of a vessel Messiniaki Tolmi. The defendants declined to pay inter alia on the ground that the commercial invoices presented did not conform to the letter of credit.\textsuperscript{274}

The letter of credit required to present documents evidencing shipment of “… a Greek flag motor tanker, Messiniaki Tolmi ex Berger Pilot of about 20,150 long tonnes

\begin{footnotes}
\item[267] Ibidem, at 521.
\item[268] Ibidem, at 522.
\item[269] Ibidem, at 525.
\item[270] Ibidem, at 527, 528.
\item[272] Ibidem.
\item[273] [1986] 1 Lloyd's Rep. 455, QBD (Commercial Court), Affirmed by Astro Exito Navegacion SA v Chase Manhattan Bank NA (The Messiniaki Tolmi), [1988] 2 Lloyd's Rep. 217 (CA (Civ Div)).
\item[274] Ibidem, at 455.
\end{footnotes}
displacement with one bronze working propeller, one spare tail end shaft to arrive under own power at Kaohsiung, Taiwan, on or before September 30th 1980 as is and always safely afloat and substantially intact as per memorandum of agreement dated July 2nd 1980”.

It was alleged that the description of the goods in the commercial invoices did not correspond with the description in the credit as was required by the credit and/or Article 32(c) of the UCP 290 in that the following words were omitted from the invoices description: “Ex Berger Pilot to arrive under own power at Kaohsiung, Taiwan, on or before 30th September 1980, as is but always safely afloat and substantially intact as per memorandum of agreement dated 2nd July 1980”.

In regard the fact that the commercial invoice made a reference to the “previous” (instead of “ex”) name of the vessel, namely Berger Pilot, the judge held that the expressions “ex Berger Pilot” and “previous name Berger Pilot” meant the same.

Mr. Justice LEGGATT also concluded that the other language of whose omission complaint was made was not part of the goods description, so that its omission did not affect the validity of the invoice.

The court explained that Article 32(c) of the UCP 290 “suggests that correspondence in description requires all the elements in the description to be present, although the article does not say that the description in the invoice must be the same as that in the credit”.

This dictum undeniably suggests a somewhat slightly more relaxed attitude to correspondence required by the UCP than that of Parker J in Kydon Compania Naviera S.A. Parker J ruled that “if specific items of description are included in the credit they must also be included in the invoice”, but Mr. Justice LEGGATT is saying that this might not be necessary.

In Glencore International AG & Anor v. Bank of China (UK, 1996) the presentation was rejected by the bank on the grounds that the tendered invoices stated as a part of the description of goods that the origin of the shipped goods was “any western brand – Indonesia (Inalum Brand)”, instead of “any western brand” as required by the letter of

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275 Ibidem, at 458.
276 Article 32(c) of the UCP 290 is saying the same as Article 18(c) of the UCP 600.
278 Ibidem, at 458.
279 Ibidem.
No objection, however, was taken to the certificates of origin which also made plain the Indonesian origin of goods.\(^{285}\)

The Commercial Court, against whose decision this case was an appeal, held that the additional words “Indonesia (Inalum Brand)” could have a special trade meaning which the bank should not be expected to be aware of, and, therefore, the invoice failed to comply with the terms of the letter of credit, and the bank was entitled to reject.

However, case was appealed and the Court of Appeal was of different opinion. The judge said: “it is … plain that the origin specified in the credit (“any western brand”) is expressed in a very broad generic way. A banker would require no knowledge of the aluminium trade to appreciate that there could be more than one brand falling within the genus. … We cannot for our part accept that the additional words “Indonesia (Inalum brand)” were such as … to call for further inquiry or are such as to invite litigation. It seems to us quite plain on the face of the document that the additional words were to indicate the precise brand of the goods, it being implicit that that brand fell within the broad generic description which was all that was required. The additional words could not, on any possible reading of the documents, have been intended to indicate that the goods did not or might not fall within the description “any western brand”.\(^{286}\)

The Court of Appeal felt fortified by and referred to a publication, discussing the UCP rules in regard the description of goods in commercial invoices, which said the following:

“Certain National Committees recommended that the word “correspond” be replaced with “identical” in respect to the description of the goods appearing in the commercial invoice versus that of the credit. The Working Group felt that the word “identical” was too restrictive and would place an undue burden on all the parties to the documentary credit and increase the number of discrepant invoices presented. At times additional information is supplied in the description of the merchandise appearing in the commercial invoice. This additional information may not be considered detrimental or inconsistent with the requirements in the credit and therefore it is acceptable”.\(^{287}\)

The Court of Appeal did not find the additional information detrimental to or in any way inconsistent with the requirement in the credit and, accordingly, reversed the Commercial Court’s decision and held that the invoice was in compliance with the credit requirements.\(^{288}\)

Obviously, this court ruling contradicts with the above discussed *Sunlight Distribution, Inc.*\(^{289}\) case where the court held that the goods description in the invoices must

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284 Ibidem, at 98.
285 Ibidem, at 99, 100.
286 Ibidem, at 119, 120.
287 Ibidem, at 120.
288 Ibidem.
289 Ibidem.
mirror the description required by the letter of credit, and this is especially so where the
description of the goods in the credit contains technical terms, which bankers cannot be
expected to know. This is also how the Commercial Court initially decided the *Glencore* case.

However, as one commentator has noted, although at first sight this case would appear
to be an example of the court being liberal with the invoice, this would be a misreading
because the court is applying strictly the precise provisions of the UCP.290

### 5.2.3. Discussion

Roberto Bergami has said that the wording of Article 18(c) of the UCP 600 does not
allow a flexible approach. When the bank, in accordance to the requirements of Article 18(c),
applies the doctrine of strict compliance, discrepancies may not be difficult to uncover, and
this is what contributes to the high rejection rate of first presentations referred to earlier. If the
application of the doctrine of strict compliance were relaxed, then it may be argued that
documentary compliance rates might increase. Given that every transaction is accompanied
by an invoice, then this is an important consideration.291

The wording of the UCP provision regulating the goods description in the invoices has
not changed over time. Only the ISBP has introduced some more guidelines since 2003. The
most important novelty of the ISBP is that “there is no requirement for a mirror image292“. According to that, now we know that the *Sunlight Distribution, Inc.*293 and *Rudy T. Oei*294
courts’ interpretations of the UCP as requiring the description of the goods in commercial
invoices to mirror the description in the credit were not right. However, in regard the other
court applied standards the ISBP is silent.

The cases discussed in this subchapter have revealed that notwithstanding the
inflexible nature of the Article 18(c) of the UCP, nevertheless, courts have managed to create
and apply several different standards to deviations in the goods description in commercial
invoices.

The *Bank Melli Iran*295, *Courtaulds North America, Inc.*296, *Kydon Compania Naviera S.A.*297, *Sunlight Distribution, Inc.*298 and *Rudy T. Oei*299 courts were in favour of the opinion

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that it is very important to follow closely the words of the credit in the goods description in commercial invoices.

The Courtaulds North America, Inc.\textsuperscript{300} court added to that opinion that no similar trade terms, which might be well understood between the trading parties, are permitted in the goods description, and that deficiencies in the goods description in commercial invoices cannot be cured by reference to any other accompanying documents.

In regard the trade terms, there is now a requirement included also in the ISBP which says “if a trade term is part of the goods description in the credit, or stated in connection with the amount, the invoice must state the trade term specified, and if the description provides the source of the trade term, the same source must be identified\textsuperscript{301}.”

The judge in Kydon Compania Naviera S.A.\textsuperscript{302} ruled that “if specific items of description are included in the credit they must also be included in the invoice\textsuperscript{303},” but the judge in Astro Exito Navegacion S.A.\textsuperscript{304} held that the UCP does not say that the description in the invoice must be the same as that in the credit and that the correspondence in description requires only all the elements in the description to be present, not every detail contained in the credit.

In both - Rudy T. Oei\textsuperscript{305} and Luen Hop Hong\textsuperscript{306} cases there was a word omitted from the goods description in the invoice. The Rudy T. Oei\textsuperscript{307} court considered it a fatal deviation, but the Luen Hop Hong\textsuperscript{308} court held that the omitted word was not a material detail of the goods description and therefore did not make the presented document discrepant.

The Sunlight Distribution, Inc.\textsuperscript{309} court ruled that additional words, not stated in the letter of credit, but included in the goods description in the invoice, constituted not acceptable deviation. This was especially so, if the additional words were trade or technical terms which banks could not be expected to be aware of. However, the judge in Glencore International AG\textsuperscript{310} case held that additional words in goods description in commercial invoices which were

\begin{footnotesize}
\begin{itemize}
  \item [296] 528 F.2d 802, C.A.N.C. 1975.
  \item [297] [1981] 1 Lloyd's Rep. 68, QBD (Commercial Court).
  \item [300] 528 F.2d 802, C.A.N.C. 1975.
  \item [302] [1981] 1 Lloyd's Rep. 68, QBD (Commercial Court).
  \item [303] Ibidem, at 76.
  \item [304] [1986] 1 Lloyd's Rep. 455, QBD (Commercial Court), Affirmed by Astro Exit Navegacion SA v Chase Manhattan Bank NA (The Messiniaki Tolmi), [1988] 2 Lloyd's Rep. 217 (CA (Civ Div)).
  \item [306] [1973] HKLR 521, FC.
  \item [308] [1973] HKLR 521, FC.
  \item [310] [1996] C.L.C. 95.
\end{itemize}
\end{footnotesize}
there to indicate the precise brand of the goods and which were not detrimental to or in any way inconsistent with the letter of credit did not render the invoice nonconforming.

Now when the inconsistencies in the court rulings in regard the goods description in commercial invoices are identified, it is possible to draw some conclusions on what should be done in order to improve the situation.

Firstly, to avoid this problem proactively, the applicant at the time of writing the credit application, the bank at the time of drafting the credit and the beneficiary at the time of checking and accepting the credit should do everything possible to keep the description of the goods in the credit as simple as possible. Enough detail for basic identification would be enough.

Secondly, the issuer of the invoice should copy the goods description from the letter of credit to the invoice, as even the smallest deviations in the wording of the goods description in the court’s eyes could constitute sufficient grounds for justifying dishonour. Such a mistake can be detrimental not only to the beneficiary, but also to the bank which has accepted such defective invoice.

Thirdly, if to sup up all the best from the cases discussed in this subchapter with the aim to clarify the rules and reduce any further inconsistencies in court decisions, the ISBP under the title “Description of the Goods, Services or Performance and other General Issues Related to Invoices” should contain the following additional provisions:

- If specific items of description are included in the credit, they must also be included in the invoice311.
- Additional words in goods description in commercial invoices which are there to indicate the precise brand of the goods and which are not detrimental to or in any way inconsistent with the letter of credit would not constitute discrepancy312.
- Omitted words from the goods description in the invoice would not constitute discrepancy if the rest of the description corresponds with the description in the credit in all material particulars313.
- Any deficiencies in the description in the invoice cannot be cured by reference to any other accompanying document314.

313 Luen Hop Hong, [1973] HKLR 521, FC, at 525.
5.3. **Strict compliance under ambiguous or impossible terms of the credit**

Many presentations of documents under letter of credit transactions are rejected because credits have been incorrectly issued. Banks issue letters of credit based on credit applications from their customers. Sometimes it happens that the applicant mistakenly includes an ambiguous credit term in the credit application, but sometimes banks mistakenly change something in credit requirements and, thus, make them ambiguous or impossible. Before accepting the issued credit, the beneficiary has a chance to review the letter of credit and to ask for amendments, if necessary. However, not every beneficiary is careful and accurate enough to pay attention to every single detail in the credit. As a result they might unintentionally accept a letter of credit containing ambiguous or impossible to fulfil terms and make it impossible for themselves to strictly comply with the credit.

The previous revision of the UCP, the UCP 500, contained two articles in regard the instructions to issue / amend credits and incomplete or unclear credit instructions which required the instructions to be complete and precise and discouraged usage of excessive detail. However, the new UCP 600 does not have any provisions concerning this issue, and also the ISBP is silent.

Because of the lack of the rules, courts have developed their own standards - some courts have been in favour of the idea that ambiguous or impossible credit terms should be resolved against the beneficiary, but others have blamed the issuer.

The aim of this subchapter is to find out in which circumstances courts have chosen to resolve the issue against the beneficiary or the issuer, and, based on the findings, to conclude whether there is a need for clear rules and what should they be.

5.3.1. **Cases resolved against the beneficiary or nominated bank**

In *Matter of Coral Petroleum, Inc. (Texas, USA, 1989)* the buyer, Coral Petroleum, Inc (Coral), made a mistake in letter of credit instructions in designating the type of oil required in the shipper’s transfer listing. “WTNM SO or SR” refers to sour oil, while the oil the seller, Tradax Petroleum America, Inc. (Tradax), was to provide, West Texas Intermediate, is sweet oil. When the issuer, French American Banking Corp. (FABC), without knowledge of the meaning of the technical designations included, prepared the letter of credit precisely in compliance with Coral’s request and sent it to Tradax for its approval, Tradax

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316 Articles 5 and 12 of the UCP 500.

317 878 F.2d 830, C.A.5 (Tex.),1989; this case was decided under New York law.
failed to catch the mistake. In May 1983, Tradax shipped the oil to Coral. In attempting to
draw on the credit, the beneficiary failed to present documents which complied precisely with
those terms and therefore was refused.\textsuperscript{318}

Tradax claimed that the letter of credit contained an internal inconsistency which
rendered the document ambiguous, and therefore it should have been construed against
FABC.\textsuperscript{319}

The court did not agree and, rather, thought that the letter of credit requirements were
quite explicit and therefore there was nothing to construe.\textsuperscript{320}

Because of the lack of relevant case law, the court relied on J.F. Dolan’s words that
“the strict-compliance rule has the intended salutary effect of requiring the beneficiary to
review the credit to be certain that he can comply with it. That inquiry, which permits the
beneficiary to verify that the credit complies with the underlying contract, also permits him to
make timely requests for amendments and to withhold shipment or other performance if the
credit does not comply with the underlying transaction or is impossible for him to satisfy. It is
more efficient to require the beneficiary to conduct that review of the credit before the fact of
performance than after it, and the beneficiary that performs without seeing or examining the
credit should pay the piper”.\textsuperscript{321}

Accordingly, the court held that the bank was entitled to reject, and this was especially
ture in a case such as this one, where the impossibility arose from the use of technical or trade
terms and where the bank had performed exactly as requested by its customer.\textsuperscript{322}

To sum up, in this case the applicant made the mistake in the credit instructions, the
bank issued the credit exactly as required by the applicant, the beneficiary failed to discover
the mistake and accepted the letter of credit. At the time of presentation, the bank did not
accept the presented documents because they did not comply strictly with the letter of credit
and was upheld by the court.

Similar factual background was in \textit{Mutual Export Corporation v. Westpac Banking
Corporation (New York, USA, 1993)}\textsuperscript{323} where the applicant sent a request to its bank to issue
a letter of credit together with a draft form of the credit which contained a provision: “This
letter of credit expires on [45 days after the later of the last possible day on which Kumul

\textsuperscript{318} Ibidem, at 831.
\textsuperscript{319} Ibidem, at 833.
\textsuperscript{320} Ibidem.
\textsuperscript{321} Ibidem.
\textsuperscript{322} Ibidem.
\textsuperscript{323} 983 F.2d 420, C.A.2 (N.Y.), 1993.
Express or Lakatoi Express\(^{324}\) charter may terminate]. The bank approved the request and undertook “to issue the credit in the draft form provided by your company, or as mutually agreed upon between your company and bank” in favour of Mutual Export Corporation (Mutual). However, at the time of approval, the draft letter of credit was modified by somebody so that the bracketed termination date information was crossed out and a hand-written date of June 30, 1986 was put in its place. Nevertheless, the final form of the credit was approved by all parties, and none of them ever indicated to the bank that the expiration date was erroneous.

On October 3, 1989 Mutual attempted to draw on the letter of credit, but the bank responded that the credit had expired and refused to pay. Mutual filed this action claiming that the bank had provided a letter of credit with a wrong termination date.\(^{325}\)

The court stated that “the law in disputes such as this one is clear: the beneficiary must inspect the letter of credit and is responsible for any negligent failure to discover that the credit does not achieve the desired commercial ends\(^{326}\).” “Mutual had ample opportunity to examine the letter of credit but failed to require that the expiry date be changed or even to seek extension … [w]e can find no reason to shift responsibility for Mutual’s error to Westpac [Banking Corporation] that is consistent with the law and purpose of letter of credit.”\(^{327}\)

Similarly as in the *Matter of Coral Petroleum, Inc.*\(^{328}\), also here the court thought that the ambiguous credit terms were the beneficiary’s negligence and therefore his inability to comply strictly with the letter of credit was also his own fault. However, it must be noted that contrary the *Matter of Coral Petroleum, Inc.*\(^{329}\) case, here changes in the credit term occurred while the bank drafted the credit.

In *Hanil Bank v. PT. Bank Negara Indonesia (Persero) (New York, USA, 2000)*\(^{330}\) Bank Negara Indonesia (Persero) (“BNI”) issued a letter of credit with misspelled name of the beneficiary “Sung Jin Electronics Co. Ltd.” (“Sung Jin”), instead of “Sung Jun Electronics Co., Ltd.” (“Sung Jun”). As in the two previous cases, the beneficiary failed to request any amendment of the letter of credit to change the name.\(^{331}\)

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\(^{324}\) Two container vessels.

\(^{325}\) 983 F.2d 420, C.A.2 (N.Y.), 1993, at 422.

\(^{326}\) Ibidem, at 423.

\(^{327}\) Ibidem, at 423, 424.

\(^{328}\) 878 F.2d 830, C.A.5 (Tex.), 1989, at 833.

\(^{329}\) Ibidem.


\(^{331}\) Ibidem, at 1.
Sung Jun negotiated the credit to Hanil Bank (“Hanil”). However, when Hanil submitted the documents to BNI, the latter refused to pay, inter alia, because of the discrepant beneficiary’s name on the presented documents.\(^{332}\)

The court held that there was no internal inconsistency or ambiguity in the letter of credit at issue.\(^{333}\) It also referred to *Mutual Export Corporation v. Westpac Banking Corporation*\(^{334}\) court decision and concluded that BNI properly rejected payment on the ground that the documents improperly identified the beneficiary.\(^{335}\)

Here it was clearly the issuing bank who made the mistake in the credit instructions, but, nevertheless the Hanil bank was held liable for accepting documents with a discrepant beneficiary’s name. If Hanil bank would notice the discrepancy before accepting the documents, it would be the beneficiary who would have to bear the costs.

### 5.3.2. Cases resolved against the issuing bank

In *E & H Partners v. Broadway National Bank (New York, USA, 1998)*\(^{336}\) one of the required documents under the letter of credit was a notification letter to the applicant from the beneficiary stating “any invoice(s) to be drawn”.\(^{337}\) The beneficiary, however, tendered a letter simply referring to “invoices totalling in excess of $500,000,000”. The issuing bank argued that the presented letter was deficient because it failed to describe which invoices were past due.\(^{338}\)

The court stated that “the corollary to the strict compliance rule is that the terms and conditions of the letter of credit must be explicit\(^{339}\) As it was once held in *Marino Industries Corp. v. Chase Manhattan Bank, N.A.*\(^{340}\), “since the beneficiary must comply strictly with the requirements of the letter, it must know precisely and unequivocally what those requirements are\(^{341}\).”

The court found that both interpretations of the condition to state “any invoice(s) to be drawn” were quite reasonable, and, therefore held that the credit by itself was not in conformity with the Article 5(a) of the UCP 500 and the case law.

\(^{332}\) Ibidem.
\(^{333}\) Ibidem, at 5.
\(^{337}\) Ibidem, at 278.
\(^{338}\) Ibidem, at 282.
\(^{339}\) Ibidem, at 280.
The court based its decision on *Venizelos, S. A. v. Chase Manhattan Bank*\textsuperscript{342} court’s dictum that “if ambiguity exists, the words are taken as strongly against the issuer as a reasonable reading will justify” and, accordingly, held that the tendered notification letter complied with the letter of credit. The court further explained that this decision is not endorsing the replacement of the strict compliance standard with a “reasonableness” one. Rather, it is simply reiterating that ambiguities in the instructions in a letter of credit will be resolved, if reasonableness allows, against the issuing bank.\textsuperscript{343}

The main points in this case were that here the bank issued a credit with a term which could be interpreted in more than one way. The court resolved the issue against the issuing bank and held that the beneficiary’s presentation strictly complied with the requirements of the letter of credit.

In *Ocean Rig ASA v. Safra National Bank of New York (New York, USA, 1999)*\textsuperscript{344} one of the alleged discrepancies was the conformity of a signature validation in a presented document with the requirements of the signature validation clause in the letter of credit. The clause specified the beneficiary’s principals qualified to sign the document, the minimum number of signatures, and the requirements for the validation of those signatures.\textsuperscript{345}

The clause agreed by the letter of credit parties read as follows: “[S]uch signatures to be notarized by a Public Notary in Oslo, Norway, and legalized by way of Apostille, or by the relevant Norwegian authorities and by the Embassy or Consulate of the United States of America in Oslo, Norway”.\textsuperscript{346}

The beneficiary asserted that the clause provided for alternative means of validation: that the signatures could be legalized either by Apostille, or by the Norwegian and U.S. consulates. However, the bank urged that the clause imposed dual requirements, that the signatures had to be legalized: 1) either by Apostille or by the Norwegian consulate; and 2) by the U.S. consulate. The presented document was legalized by Apostille only, and the bank rejected it.\textsuperscript{347}

The court found that strict construction weighed in favour of the beneficiary and the correctness of the document. Nonetheless, the court acknowledged that the bank’s construction would be supported were the clause punctuated differently. The question was: “It

\footnotesize
\textsuperscript{342} 425 F.2d 461, C.A.N.Y. 1970, at 466.
\textsuperscript{345} Ibidem, at 202.
\textsuperscript{346} Ibidem.
\textsuperscript{347} Ibidem, at 203.
has been noted that a comma is a “very small hook” on which to hang a decision. Is this hook too small to support judgement against [the bank]?

The court referred to several courts’ decisions in the past and found that they were tolerating only meaningless differences – “errors that do not call upon the reviewing bank officer to exercise discretion on a commercial matter, but only to exercise discretion as a banker or errors that do not compel an inquiry into the underlying commercial transaction, … [so as to] allow the bank to act quickly, freeing it of the obligation to inquire into the underlying contracts and dealings between parties”.

However, here, in the court’s opinion, the punctuation difference clearly was not meaningless. Here, the bank had drafted the clause in a way that introduced the ambiguity.

Further, the court adopted the Venizelos, S. A. v. Chase Manhattan Bank standard of construction against the issuer bank in cases of error and ambiguity in a letter of credit. It also noted that in Venizelos, the court asserted that if, within the strict compliance standard, a letter of credit “is fairly capable of a construction that will make it valid and enforceable, that construction will be given” and that, as between two interpretations, an interpretation should be rejected if it renders the document “impossible” or “meaningless”. It was further found, that the issuing bank’s interpretation of the signature legalization would render meaningless the parties’ agreement to the letter of credit, as the legalization by the U.S. consulate was not available to the beneficiary according to a U.N. treaty to which the U.S. and Norway were signatories. Moreover, the legalization of signatures on a letter of credit did not concern any trade usages or customs, but the business of the bank. Therefore, based on all these findings, the court resolved the issue against the issuing bank.

To sum up, in this case the bank issued a credit with a requirement that could be interpreted in more than one way, one of which made the document impossible. Contrary to the bank’s interpretation of the credit term, the beneficiary’s interpretation was reasonable and did not affect the validity of the letter of credit, therefore, the court held that the beneficiary’s presentation was in strict compliance with the credit and the bank had to pay.

348 Ibidem.
349 Ibidem, at 199.
350 Ibidem, at 204.
355 Ibidem, at 204, 205.
356 Ibidem, at 204.
5.3.3. Discussion

This subchapter has well illustrated that a letter of credit with ambiguous or impossible terms such as a misspelled name of a party involved in the transaction, wrong description of a merchandize, wrong date or even a comma put in a wrong place of a sentence, unfortunately, can turn out to be fatal for one of the parties involved in the letter of credit transaction.

To avoid the problem, banks should strongly recommend their customers – credit applicants, to be as brief, clear and unambiguous as possible in their credit instructions, so as banks could issue brief, clear and unambiguous letters of credit.

If, however, ambiguity has occurred and documents are presented under impossible or ambiguous credit terms, it is necessary to know that neither the UCP nor the ISBP regulates the problem and, unfortunately, also courts have not agreed on one judicial standard applicable to ambiguous credit terms.

The courts in Matter of Coral Petroleum, Inc. (1989)\textsuperscript{357} and Mutual Export Corporation (1993)\textsuperscript{358} cases thought that the beneficiary must review the credit before accepting it and is responsible for any failure to do so. According to these court rulings, if the beneficiary has accepted an ambiguous or impossible credit, in principle, he has lost his chance to present a complying presentation. The Hanil (2000)\textsuperscript{359} court has applied the same rule to the nominated bank which had accepted discrepant documents which were discrepant just because the letter of credit contained a misspelled beneficiary’s name.

The E & H Partners (1998)\textsuperscript{360} and Ocean Rig ASA (1999)\textsuperscript{361} courts, however, were of a different opinion. They thought that since the beneficiary must comply strictly with the requirements of the letter, it must know precisely and unequivocally what those requirements are. Therefore, if there is an error or ambiguity in the letter of credit, the words are taken as strongly against the issuing bank as a reasonable reading will justify. The Ocean Rig ASA (1999)\textsuperscript{362} court also added that if, within the strict compliance standard, a letter of credit is fairly capable of a construction that will make it valid and enforceable, that construction will be given.

Accordingly, if documents were presented under impossible or ambiguous credit terms, arguably, both – the beneficiary and the issuing bank, would have a 50% chance to win

\begin{flushleft}
\textsuperscript{357} 878 F.2d 830, C.A.5 (Tex.),1989.
\textsuperscript{358} 983 F.2d 420, C.A.2 (N.Y.), 1993.
\textsuperscript{361} 72 F.Supp.2d 193, S.D.N.Y., 1999.
\textsuperscript{362} Ibidem.
\end{flushleft}
the case because none of the courts have managed to define clear enough rules to introduce enough clarity in this matter.

Some of the courts in the above analysed cases have paid attention to the type of the mistake which has made the credit ambiguous, but this consideration has never been decisive. If to take a closer look at the errors and ambiguities in the letter of credit in the discussed cases, the mistakes could be divided in the following two groups:

- Discrepancies between the terms of the sales contract and provisions stipulated in the credit (like in Matter of Coral Petroleum, Inc. (1989)363).
- General mistakes, such as misspellings (like in Hanil (2000)364), changed terms of the credit (like in Mutual Export Corporation (1993)365), ambiguously defined credit requirements (like in E & H Partners (1998)366 and Ocean Rig ASA (1999)367), etc.

These two groups of mistakes could arguably be a good basis for creation of a new standard applicable to cases where documents are presented under an impossible or ambiguous letter of credit.

The most likely source of the first group of mistakes in letters of credit is the applicant. Banks usually are not familiar with the underlying sales transaction and, therefore, should not be expected to notice and cure these kinds of mistakes. Here it should be the beneficiary’s responsibility to check the letter of credit whether it achieves the desired commercial ends or not before accepting it. Therefore, where the ambiguous or impossible credit terms have arisen from the use of technical or trade terms, the case should be resolved against the beneficiary.

The most likely source for the general mistakes could be both – the applicant and the issuer. The issuing bank has enough human sources and relevant departments to ensure that such mistakes do not happen. Also in case the applicant has made a general mistake in the credit instructions, the issuing bank should notice the mistake, query it with the applicant and cure it.

As to any misunderstandings about the applicant’s credit instructions which could result in ambiguous or impossible credit terms, the bank should require the applicant to submit any desirable changes in a written form and issue credits exactly as per the written instructions.

As beneficiaries are required to present strictly complying presentations in order to receive payment under letters of credit, so issuing banks should issue letters of credit with

clear, precise and unambiguous credit terms. Therefore, where the ambiguous or impossible credit terms have arisen from general mistakes, the case should be decided against the issuing bank.

5.4. Discrepant dates

Incorrect data in presented documents is one of the most frequent discrepancies leading to rejection of letters of credit. Besides the misspellings already analyzed previously in this paper, it can be any information on the set of documents which is not in conformity with the letter of credit, i.e., discrepant dates.

Article 14(d) of the UCP 600 in this matter says that “data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit”.

This subchapter will analyze two court cases where the beneficiary has submitted a document dated or referring to a date inconsistent with that required by the letter of credit. Interestingly, however, each court has applied a totally different strict compliance standard to the case. Let’s see which of those standards have brought better results, and could it be just one optimal standard in the future to eliminate any confusion for parties involved in a letter of credit transaction.

In *Voest-Alpine International Corporation v. Chase Manhattan Bank, N.A. (New York, USA, 1982)* the beneficiary brought an action to recover amounts allegedly due under two letters of credit issued by Bank of Baroda and confirmed by the defendant Chase Manhattan Bank, N.A. (“Chase”).

The letters of credit as issued and amended required that the drafts submitted by the beneficiary be accompanied by (i) on-board bills of lading evidencing current shipment dated no later than January 31, 1981; (ii) certificates of inspection indicating the date of the shipment; and (iii) weight certificates issued by an independent inspector.

The presented bills of lading were dated January 31, 1981 and stated that the goods were on board the ship on that date. However, the weight certificates and certificates of

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370 Ibidem, at 302.
371 Ibidem.
inspection stated that the goods had been loaded aboard the vessel between February 2 and February 6, 1981,\textsuperscript{372} which was why the bank denied payment\textsuperscript{373}.

The court resolved the case based on Article 7 of the UCP 290 (1974 Revision), the predecessor of Article 14(d) of the UCP 600, which provided in part that documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit\textsuperscript{374}.

Accordingly, the court held that regardless of when the goods were in fact loaded aboard the motor vessel, there can be no doubt that the documents required for presentation were inconsistent on their face and, therefore, Chase was entitled to conclude that the presented documents did not conform to the letters of credit and to deny payment\textsuperscript{375}.

In the light of the rephrased Article 14(d) of the UCP 600 which now requires data in the document “not conflict” (instead of “to be consistent”) with other presented documents and the credit, the case would probably be decided the same way in nowadays.

In\textit{Breathless Associates v. First Savings & Loan Association of Burkburnett (Texas, USA, 1986)}\textsuperscript{376}, however, the court has applied a different standard to a similar issue.

Here one of the two disputed letters of credit, among other things, provided that payment would be made on presentment of a promissory note, dated April 28, 1983. However, the beneficiary presented the promissory note dated April 29, 1983 which was one of the grounds why the bank refused to pay\textsuperscript{377}.

Sander DJ considered that the best approach to this issue would be to consider the purposes of the strict compliance requirement and ask whether the discrepancy at hand implicates those purposes: “manifestly, the requirement has two purposes: to limit the obligations of the issuer to examination of documents while at the same time affording the customer the greatest possible assurance that the beneficiary will not be paid (nor the customer be liable for reimbursement) unless and until the beneficiary has performed its obligations – for example, shipment by a certain date – under the underlying contract of sale. A discrepancy therefore should not warrant dishonour unless it reflects an increased likelihood of defective performance or fraud on the part of the beneficiary. In deciding this

\textsuperscript{372} Ibidem.
\textsuperscript{373} Ibidem, at 304.
\textsuperscript{374} Ibidem.
\textsuperscript{375} Ibidem.
\textsuperscript{377} Ibidem, at 834.
question a court should consider only what may reasonably be inferred from the face of the documents.\textsuperscript{378}

The court compared this case with the above discussed \textit{Voest-Alpine International Corporation v. Chase Manhattan Bank, N.A.}\textsuperscript{379} and contended that the discrepant dates in the latter case clearly evidenced possible untimeliness of shipment by the beneficiary and that it could reasonably be inferred from the face of the documents that the shipment by a certain date was an important, bargained–for aspect of the beneficiary’s performance. In contrast, the date of execution of the promissory note in the present case could have no relevance whatever to performance by the beneficiary, and, moreover, it could reasonably be inferred from the nature of the transaction as shown by the documents that the date of execution of the promissory note was not an important term to either party.\textsuperscript{380}

The judge believed that his approach might be used in majority of strict compliance cases: “although the approach would seem to impose the burden of additional inquiry on issuers, the inquiry need be undertaken only when a discrepancy exists, and the approach adheres to the policy of limiting issuer’s obligations to examination of documents and avoids requiring them to investigate the parties’ intent or other matters not reasonably inferable from the documents alone.\textsuperscript{381}”\textsuperscript{382}

By using this approach, therefore, the court concluded that the presented promissory note complied with the letter of credit.\textsuperscript{383}

Essentially, here the court has introduced a totally different standard to those discussed previously in this work: as far as it may be reasonably inferred from the face of the documents, a discrepancy should not warrant dishonour unless it reflects an increased likelihood of defective performance or fraud on the part of the beneficiary.

If the court would have applied the plain language of Article 7 of the UCP 290 (1974 Revision), which besides requiring the presented documents to be consistent with each other (which is not applicable in this case), also required that banks must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit, the case might have had a different outcome.

The letter of credit expressly required the promissory note be dated April 28, 1983 and the beneficiary, by accepting the letter of credit, had agreed to comply with all its

\begin{itemize}
\item \textsuperscript{378} Ibidem, at 837.
\item \textsuperscript{380} 654 F.Supp. 832, N.D.Tex., 1986, at 837.
\item \textsuperscript{381} Ibidem.
\item \textsuperscript{382} In this court’s opinion, i.e., the approach, where a court decides whether or not a discrepancy would justify dishonour, based on whether or not the issuer might be misled to its detriment by the discrepancy, asks the document checker to go beyond of the letter and documents alone, 654 F.Supp. 832, N.D.Tex.,1986, at 836, 837.\textsuperscript{383}
\item \textsuperscript{383} 654 F.Supp. 832, N.D.Tex., 1986, at 837.
\end{itemize}
requirements. Thus, a presentation of a document dated April 29, 1983, instead of April 28, 1983, most probably would not be in accordance with the terms and conditions of the credit.

Also the wording of the new Article 14(d) of the UCP 600, requiring data in the document not to conflict with the terms and conditions of the credit, would render the presentation discrepant, if the case were decided according to the new rules.

If to compare the strict compliance standard created by the Breathless Associates\textsuperscript{384} court and the new Article 14(d) of the UCP 600, it must be said that the first, nevertheless, puts an additional burden on the bank in case of a discrepancy to decide whether it could be an indication for a defective performance or fraud on the part of the beneficiary, or not. However, the Article 14(d) provides a clear and unambiguous enough standard: whether the data in the document conflict with the credit or other presented documents?" If the answer is negative, the presentation is complying. This standard seems to be simple and clear enough to be able to reduce any uncertainty for parties involved in a letter of credit transaction and also reduce inconsistent court rulings if litigation, nevertheless, would emerge.

6. CONCLUSIONS

6.1. Findings of the research

The research of this thesis has revealed that it is of vital importance for international traders and letter of credit users to redefine the strict compliance rule of the UCP in order to reduce the present unpredictability and increased transaction costs. There is an urgent need for an optimal document examination standard which would ensure its consistent interpretation by all parties involved, provide the necessary level of protection for banks, reduce the seller’s risk of not being paid for insignificant mistakes and at the same time would facilitate international trade.

The analysis of banks’ rights and duties under the doctrine of strict compliance, performed in the fourth chapter of the thesis, shows that banks require the documentary compliance as strict as it is required by the applicants and courts, because the UCP rules do not provide a safe guide in this matter. To protect their own interests, banks better require overly strict compliance from the beneficiary than accept documents with some deviations from the letter of credit terms. This, in turn, has resulted in the situation where about half of the first presentations of letter of credit transactions are rejected by banks.

The aim of the fifth chapter of the thesis was to discover sources of the nonconforming interpretations of the doctrine of strict compliance and to recommend necessary adjustments for the UCP in order to eliminate the shortcomings. The chapter dealt with commonly disputed problems under the doctrine of strict compliance – misspellings and typographical errors, deviations in the description of the goods in commercial invoices, strict compliance under impossible or ambiguous credit terms, and discrepant data in presented document, i.e., wrong dates. The analysis of relevant court cases in the light of the previous and present revisions of the UCP rules, the ISBP, and opinions of the letters of credit commentators, allowed for the following conclusions and suggestions:

- In case of misspellings or typographical errors in presented documents, the analysis of relevant case law has revealed that courts have applied six different standards to decide whether the error has rendered the document discrepant or not. These standards have been applied in different variations to different types of documents and different types of misspellings.

- The situation is already improved by the new Article 14(j) of the UCP 600 which requires the address and contact details of the applicant which appear as part of the consignee or notify party details on a transport document to be as stated in the credit. Similar
requirements in regard other important information in transport documents, i.e., port names, to be as stated in the credit, would be helpful.

- More clarity would be brought also by a rule stating that any deviations in abbreviations or names that designate the type of the company, i.e. inc. or ltd. or limited, would constitute a discrepancy. For example, omission of “ltd” in the end of a company name or “ltd” replaced by “inc” would constitute a discrepancy.
- As to other misspellings, the Voest-Alpine\textsuperscript{385} common sense standard, discussed in the subchapter 5.1., “if the document on its face demonstrates a rational linkage to the credit and other tendered documents, then it is in compliance with the credit” seems to be the optimal solution. In fact, it is now supported also by the Article 14(a) UCP 600 which requires that the whole presentation, instead of each presented document, must comply with the credit.
- Given that every transaction is accompanied by an invoice, it is very important to achieve consistent interpretation of the strict compliance rule concerning the description of the goods. The introduction of the ISBP in 2003 has eliminated one of the most popular misinterpretations of the rule as a requirement for a mirror image.
- The performed analysis of relevant case law indicates that the majority of courts have been in favour of the opinion that it is very important to follow closely the words of the credit in the goods description in commercial invoices. This is especially so when trade and technical terms are part of the goods description in the credit.
- To fight the problem of a discrepant goods description in commercial invoices proactively, the applicant at the time of writing the credit application, the bank at the time of drafting the credit and the beneficiary at the time of checking and accepting the credit should do everything possible to keep the description of the goods in the credit as simple as possible. Enough detail for basic identification would be enough.
- The beneficiary should better copy the goods description from the letter of credit to the invoice, as even the smallest deviations in the wording of the goods description in the court’s eyes could constitute sufficient grounds for justifying dishonour.
- To clarify the rules and reduce any further inconsistencies in their interpretation, the ISBP under the title “Description of the Goods, Services or Performance and other General Issues Related to Invoices” should contain the following additional provisions:
  - If specific items of description are included in the credit, they must also be included in the invoice.

Additional words in goods description in commercial invoices which are there to indicate the precise brand of the goods and which are not detrimental to or in any way inconsistent with the letter of credit would not constitute discrepancy.

Omitted words from the goods description in the invoice would not constitute discrepancy, if the rest of the description would correspond with the description in the credit in all material particulars.

Any deficiencies in the description in the invoice cannot be cured by reference to any other accompanying document.

To avoid the problem of impossible or ambiguous credit terms proactively, banks should insist that their customers – credit applicants, were as brief, clear and unambiguous as possible in their credit instructions, so as banks could issue brief, clear and unambiguous letters of credit.

If, however, ambiguity has occurred and documents are presented under impossible or ambiguous credit terms, a clear and unambiguous standard is needed to solve the situation. The solutions offered by this work would be the introduction of the following set of rules:

Where ambiguous or impossible credit terms have arisen from the use of technical or trade terms, the case will be resolved against the beneficiary.

Where the ambiguous or impossible credit terms have arisen from general mistakes (i.e. misspellings, changed terms of the credit, ambiguously defined credit requirements), the case should be decided against the issuing bank.

UCP provisions regulating incorrect data in presented documents also have been subject to different interpretations. Analysis of two cases where the presented documents contained a discrepant date showed that where there was an unambiguous rule regulating the issue, the court applied it, however, where the rule was ambiguous the court chose to develop its own standard. The Article 14(d) of the new UCP 600 is one of the examples where the rule has been improved and now provide a clear and unambiguous standard how to determine whether the data in the document are conforming to the credit or not.

6.2. Implications for the future

Each of the offered adjustments to the UCP and ISBP, as far it concerns the required documentary compliance, have been elaborated with the aim to ensure the necessary protection for banks, so as not to force them to look behind the presented documents and to allow them act fast. The advised rules are defined as narrowly as possible to avoid multiple interpretations. They clearly define documents and information where strict compliance is
required, and allows for the common-sense approach in other not-defined areas. Maybe some of the recommended adjustments have put an additional burden on the beneficiary to be more careful and precise in the document preparation process, but this is the price to pay for a fast and prompt payment for international trade. In dealing with letters of credit beneficiaries must know the rules of the game in order to succeed.

As to other, unnoticed and unconsidered by this thesis shortcomings of the document examination standard, and surely there are some, it is left to courts to develop a new body of case law over the new rules and shape the document examination standard further toward solving the strict compliance problem.
7. LITERATURE LIST

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