
28, 2017 .

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„Uniform
Customs and Practice for Documentary Credits (UCP 600)“,

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Summary

The thesis work deals with the most popular and interesting banking service agreement in modern banking legislation - international documentary letter of credit and its legal nature.

It is well known, that documentary letter of credit is the safest and the most attractive form of payment in international trade, as it allows involved parties to receive additional payment guarantees when they sign trade contract, hence both sides feel secure. Therefore, both theoretical and practical study of documentary letters of credit have great importance of Georgian reality.

The main problem that prevents wide development of the use of commercial letter of credit agreements in Georgia is lack of legal regulation. Its applicability and legislative regulations spread beyond the boundaries of a particular country. That is why, the article 878 of Civil Code of Georgia (patterns of international circulation), clearly indicates that, unless otherwise agreed, rights and obligations of the parties shall be determined by common practice set by international circulation of documentary letters of credit. This automatically creates a need to study the nature of international legal aspects of documentary letters of credit, which is discussed in details in previous thesis.

The first chapter of the paper concerns the essence of the documentary letter of credit, which deals with conception of mechanism and its definition according to the Civil Code and International practice. According to current international legislative norms of using letters of credit and common practice, documentary letter of credit is an obligation of issuing bank on behalf of the buyer/applicant to pay out certain agreed sum to the seller/beneficiary, within specified time after all agreed conditions are met. The basis for payment are the documents that must be drawn up in compliance with conditions of letter of credit, which the seller presents at the bank.

The main regulatory document on international documentary letters of credit is, the so-called „Uniform Customs and Practice for Documentary Credits (UCP 600)“, which is discussed in details. Document was published by the International Chamber of Commerce and sets international standards and rules of use of international documentary letters of credit. In modern trade relations, payment via letters of credit is used for the majority of transactions, while banks and users of letter of credit issued by them, always point out UCP for its regulation. Given the nature of UCP, it is considered to be a set of recommendations, however, when the parties mention UCP as regulatory

document for letters of credit in their deal, it becomes a obligatory document. Therefore, we can conclude that it serves as recommendation-obligatory document.

The first chapter also deals with parties involved in letter of credit, their rights and obligations and relationships between them. Relationships related to letter of credit are rather complex process, involving buyer of goods - the

reject inadequate documents and will not pay the beneficiary. The second and also important principle is the principle of autonomy/independence of the letter of credit. It is a fundamental principle of the documentary letter of credit, which implies its independent nature, apart of any other agreements signed between parties. Relations and agreements based on letter of credit are independent of trade or any other type of deal between buyer and seller and on the basis of which the letter of credit was issued. Accordingly, banks and other parties that are involved in the overall process are obliged to operate within the boundaries of letter of credit, and to make payments if all the conditions are met, even though there may be disagreements between two sides arising from trade agreement. The paper reveals the most important international legal practices covering many problematic aspects, which have served as a basis for the development of above-mentioned principles in connection to documentary letters of credit, due to

Georgia, who are involved in international trade and which will protect them from many trade risks.

And second, legal regulation of documentary letters of credit in Georgia is poor and incomplete, which in its turn makes the legal basis of using letters of credit incomprehensible for the parties.

As a result of multilateral study of international practice and legal regulation of documentary letter of credit, the main problems associated with existing regulation in Georgia, for both definition and context aspects, have been detected and analyzed in detail. The paper contains concrete recommendations to deal with these problems and offers various aspects of creating additional regulations in Georgia, that are in line with modern international standards for legal aspects of documentary letter of credit.

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⁹ 2014, 330.

¹⁰ Roy Goode, Herbert Kronke, Ewan McKendrick, Transnational Commercial Law, second edition, oxford university press, oxford, UK, 2015, 329.

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¹² Martin Davies, David V.Snyder, International Tr

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²⁶ Roy Goode, Herbert Kronke, Ewan McKendrick, *Transnational Commercial Law*, second edition, oxford university press, oxford, UK, 2015, 328.

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³² Ali Malek QC, David Quest, Jack: Documentary Credits, Tottel Publishing, Fourth Edition, Great Britain, 2009, 136.

³³ Uniform Customs and Practice for Documentary Credits (UCP 600), issued by International Chamber of Commerce, Article 9.

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⁴⁴ Commentary on UCP600, Artifice-by-Article Analysis by the UCP 600 drafting group, ICC publication, Paris, France, 2007, 38.

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⁴⁷ Matti S. Kurkela, *Letters of Credit and Bank Guarantees under International Trade Law*, Oxford University Press, New York, USA, 2008, 165.

⁴⁸ Uniform Customs and Practice for Documentary Credits (UCP 600), issued by International Chamber of Commerce, Article 16 (c)

: (reimbursement agreements)

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⁵¹ Lutz-Christian Wolff, *The Law of Cross-Border Business Transactions*, Kluwer Law International, Netherlands, 2013, 172.

⁵²

credits, ICC publication #525 -1995)

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⁵⁶ Charles Chatterjee, *Legal Aspects of Trade Finance*, London, UK, Routledge-Haines House, 2006, 7

⁵⁷

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Confirmed and Unconfirmed Credits

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Mimosa Ltd v Oriental Cerdit LTD

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Sight credits -

Deferred Payment Credits -

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⁶⁵ Martin Davies, David V.Snyder, International Transaction in Goods, USA, Oxford University Press, 2014, 314.

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⁷² Paul Todd, Bills of Lading and Banker's Documentary Credits, Fourth Edition, London, UK, 2007, 46.

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⁷⁵ Nelson Enonchong, *The Independence Principle of Letters of Credit and Demand Guarantees*, Oxford University Press, oxford, UK, 2011, 20.

⁷⁶ .2004 . . 425

⁷⁷ Ali Malek QC, David Quest, Jack: *Documentary Credits*, Tottel Publishing, Fourht Edition, Great Britain, 2009, 34.

Standby Letter of Credit:

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⁸¹ Chow Schoenbaum, International Business Transactions, Problems Cases and Materials, Aspen Publishers, New Yourk, USA, 2005, 303.

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Practices (ISP98), published by the Institute of International Banking Law & Practice in 1998),

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(negotiable bill)

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⁹⁹ Paul Todd, Bills of Lading and Banker's Documentary Credits, Fourth Edition, London, UK, 2007, 61.

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¹⁰⁹ V.Gerard Comizio, International Banking Law, USA ST.Paul, 2016, 29.

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(Overseas Union Bank Ltd v Chua Teng Hwee)

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Singapore),
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¹²⁹ Burton V. McCullough, Letters of Credit, LexisNexis, San Francisco, USA, 2007, 4-290.

(Guaranty Trust Co v Van den Berghs Ltd)

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- Autonomy/Indipendence of Letter of Credit

¹³⁴ Ralph H. Folosm, Michael Wallace Gordon, John A. Spanogle Jr., Peter L. Fitzgerald, International Business Transactions, American Casebook Series, Thomson/West, St. Paul, USA,

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(Power Curber

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¹³⁶ Roy Goode, Herbert Kronke, Ewan Mckendrick, Transnational Commercial Law, Text, Cases and Materials, oxford university press, New York, USA, 2007, 368.

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(English case of United City Merchants v Royal Bank of
Canada) 1975 , (Glass Fibres and Equipment LTD)

(Vitreorefuerzos SA)

Continental SA) (Banco
Canada) - (Royal Bank of

(United City Merchants),

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¹⁴⁶ Peter Ellinger, Dora Neo, *The Law and Practice of Documentary Letters of Credit*, hart publishing, Portland, USA, 2010, 142.

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¹⁴⁸ : (Sztejn)

¹⁴⁷ Peter Ellinger, Dora Neo, *The Law and Practice of Documentary Letters of Credit*, hart publishing, Portland, USA, 2010, 145.

¹⁴⁸ Xiang Gao, *The Fraud Rule in the Law of Letter of Credit*, Kluwer law international, the Hague, the Netherlands, 2002, 39.

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(United Nations Convention on Contracts for the
International Sale of Goods, signed in Vienna in 1980). 79

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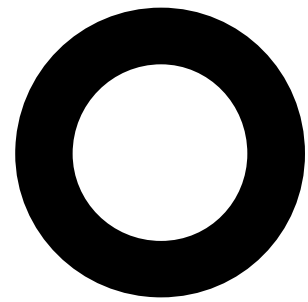
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¹⁶² Charles Proctor, *The Law and Practice of International Banking*, second edition, oxford university press, Oxford, UK, 2015, 502.

¹⁶³ Jan Dalhuisen, *Dalhuisen on International Commercial, Fiancianl and Trade Law*, USA, Portland, Oregon, 2004, 469.

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¹⁶⁵ Chow Schoenbaum, *International Business Transactions, Problems Cases and Materials*, Aspen Publishers, New York, USA, 2005, 63.

¹⁶⁶ Ralph H.Folsom, Michael Wallace Gordon, Michael P. Van Alstine, Michael D. Ramsey, *International Business Transactions, Contracting Across Borders*, twelfth edition, West Academic Publishing, St. Paul, USA, 2015, 42.

¹⁶⁷ Clayton P.Gillette, *International Sales Law*, Edward Elgar Publishing, Cheltenham, UK, 2016,33.

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(negotiable bill of lading),

(non negotiable bill of lading),

(consignee).

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(sight draft).

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3. FORESTAL MIMOSA LTD. v. ORIENTAL CREDIT LTD.[1986] 1 Lloyd's Rep. 329,COURT OF APPEAL, Before Lord Justice Croom-Johnson, Lord Justice Balcombe and Sir John Megaw;
4. BANCO SANTANDER SA V BAYFERN LTD AND OTHERS: COMC 29 JUN 1999;
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6. Oei v. CITIBANK, NA, 957 F. Supp. 492 (S.D.N.Y. 1997), U.S. District Court for the Southern District of New York - 957 F. Supp. 492 (S.D.N.Y. 1997), March 20, 1997;
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8. J. H. RAYNER & CO., LTD., AND THE OILSEEDS TRADING COMPANY, LTD. v. HAMBROS BANK LIMITED, (1942) 73 Ll.L.Rep. 32, KING'S BENCH