LETTERS OF CREDIT AND
„THE DOCTRINE OF STRICT COMPLIANCE“

- THESIS -

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CONTENTS

LITERATURE.........................................................................................................................4

THESIS.................................................................................................................................. 10

A. INTRODUCTION.................................................................................................................. 10

I. The history of world trade................................................................................................. 10
II. Globalization ................................................................................................................... 11
III. The financial dimension ................................................................................................. 11

B. LETTERS OF CREDIT......................................................................................................... 12

I. Risks to cover in world trade............................................................................................ 12

1. Economic risks................................................................................................................ 12
2. Political risks.................................................................................................................. 12
3. Currency risks................................................................................................................ 13
4. Transport risks................................................................................................................ 13

II. Letters of credit as risk-minimisation instruments............................................................. 13

1. Definition of letter of credit and the UCP 500................................................................. 13
2. Kinds of letters of credit................................................................................................... 14
   a.) The kind of promise given by the bank, art. 6 UCP 500.............................................. 14
   a.a.) Revocable letters of credit, art. 8 UCP 500............................................................. 14
   b.) Irrevocable letters of credit, art. 9a UCP 500............................................................ 14
   b.a.) The way of using the letter of credit, art. 2 I-III and art. 9a I-IV UCP 500.............. 14
   b.a.a.) Sight payment- and deferred payment- letters of credit, art. 2 I, 9a I, II UCP 500..... 14
   b.a.b.) Acceptance letters of credit, art. 9a III a., b. UCP 500........................................ 14
   b.a.c.) Negotiable letters of credit, art. 9a IV, b IV UCP 500.......................................... 14
   d.) Possibility to transfer the letter of credit.................................................................... 15
   d.a.) Unconfirmed letter of credit.................................................................................. 15
   d.b.) Confirmed letter of credit, art. 9b UCP 500........................................................... 15
   e.) Possibility to revolve the letter of credit...................................................................... 15
3. Process of a letter of credit transaction............................................................................ 15
4. Functions of a letter of credit.......................................................................................... 16
   a.) Payment function...................................................................................................... 16
   b.) Credit function.......................................................................................................... 16
   c.) Security function........................................................................................................ 16

III. Qualification of letters of credit in law............................................................................ 17

1. The contract between issuing bank and applicant.......................................................... 17
   a.) Contract for the benefit of a third party, § 328 I BGB.................................................. 17
   b.) Instruction contract according to §§ 783 and following BGB..................................... 18
   c.) Instruction in a wider sense, analogue application of §§ 783 and following BGB....... 18
   d.) Work contract with the character of an agency agreement, §§ 631, 675 BGB............ 18
2. Contracts between the bank and the beneficiary.............................................................. 18
   a.) Legal relationship between issuing bank and beneficiary, § 780 I BGB..................... 18
   b.) Legal relationship between advising bank and beneficiary, art. 7 UCP 500................. 20
   c.) Legal relationship between nominated bank and beneficiary, art. 9a UCP 500............. 20
   d.) Legal relationship between confirming bank and beneficiary, art. 9b UCP 500, § 780 I BGB .............................................................. 20
3. The legal relationships between banks............................................................................. 20
4. Legal relationship between applicant and second banks ........................................ 21

IV. Doctrines concerning letters of credit ................................................................. 21
1. Doctrine of separability, art. 3 a of UCP 500 ......................................................... 21
2. Doctrine of strict compliance .............................................................................. 21

C. THE DOCTRINE OF STRICT COMPLIANCE .................................................... 21
I. Definition ............................................................................................................. 21
II. Examination of the documents, art. 13, 14 and 15, art. 20-38 of UCP 500 .......... 22
III. Legal background of strict compliance of the bank, § 665 BGB ....................... 23
IV. Reasons for strict compliance ........................................................................... 23

D. PROBLEMS CONCERNING THE DOCTRINE OF STRICT COMPLIANCE .... 23
I. First problem: different interpretation of strict compliance ................................ 23
   1. Literal compliance ............................................................................................. 23
      a.) strict literal compliance ............................................................................... 24
      b.) wide literal compliance .............................................................................. 24
   2. Substantial compliance .................................................................................... 24
   3. Allowed tolerances according to UCP 500, art. 37 c and 39 ......................... 25
   4. Importer’s, exporter’s and banker’s point of view ........................................... 26
   5. Strict compliance regarding commercial invoices, art. 37 UCP 500 .............. 26
   7. Result .............................................................................................................. 27

II. Second problem: The fraud exception ............................................................... 28
   1. Fraud as exception of the doctrine of strict compliance ................................. 28
   2. First situation: fraudulent documents which appear fraudulent on their face .... 29
      a.) Right of the bank to reject because of suspicion ....................................... 29
      b.) Right of the bank to reject because of customers instructions ............... 30
      c.) Right and obligation of the bank to reject because of sure knowledge ...... 30
   4. Resume .......................................................................................................... 31

III. Third problem: Liability of banks in case of non-consideration of strict compliance rules .......................................................... 32
   1. General liability, art. 17 of UCP 500 ................................................................. 32
   2. Liability of issuing banks .................................................................................. 32
      a.) Liability for own behaviour ....................................................................... 32
      aa.) Claims of the applicant .......................................................................... 32
      bb.) Claims of the beneficiary ....................................................................... 33
      cc.) Claims of third banks ............................................................................. 33
      b.) Liability for the behaviour of third banks, art. 18 of UCP 500 ............... 33
   3. Liability of advising banks .............................................................................. 33
   4. Liability of nominated banks ........................................................................... 34
   5. Liability of confirming banks .......................................................................... 34

Resume and outlook ................................................................................................ 34

CONFIRMATION AND SIGNATURE .................................................................... 36
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THESIS

A. INTRODUCTION
This thesis give a historical introduction in foreign trade and letters of credit. The reasons for using letters of credit will be shown. The legal relationships of the concerned parties will be analysed. The doctrine of strict compliance will be explained. Then problems will be worked out: the different interpretation of strict compliance, the fraudulent exception and questions of liability if the doctrine of strict compliance was not carefully used. The thesis bases on German law, but tries, whenever useful, to compare with law of other countries and / or International law. At the end of the thesis a critical outlook will follow.

I. The history of world trade
Trade between different people has been since humanity exists.\(^1\) In the whole antiquity, from the greek-persian until the roman-hellenistic epoque, trade had an emphasized economic signification. Trade goods had been precious metal, timber, textiles, wine, oil, pottery and spices.\(^2\) The oldest known trade contract between different empires, Egypt and Babylon, dated 2500 B.C., the oldest conserved trade contract between Roman Empire and Karthago was concluded 507/508 B.C.\(^3\) In both developed civilizations of the antiquity, ancient Greece and Rome, banking was already practised for credit purposes.\(^4\) After the fall of Roman Empire, trade between different people lost its importance, but even in early middle ages rules existed how to treat foreign traders\(^5\), so trade always existed. In late middle ages (11th-14th century), there have been three big economic territories: the Hanse who dominated trade in the states around the North- and the Baltic Sea, the trade with East Asia (China and India) which was dominated first by Arabic and later Turkish trademen and the trade around the Mediterranean Sea which was dominated by cities in Italy. In this time, trade was not expression of state controlled economic activities, but based on the independent activities of private traders.\(^6\) So for the first time, trade have been private and took place around the world. The roots of world trade were formed. At the end of middle-ages, the cities of Hanse and in the Mediterranean area were thrusted aside by sovereign states governed by princes, who formed the first closed economic- and customs-territories as units of modern political economies.\(^7\) In the époque of mercantilism, foreign trade was again dominated by states instead of private persons.\(^8\) In modern times colonialism and industrialisation have been the most influencing factors. Protectionism of states and liberalisation of trade often changed.\(^9\) But the foundation of colonies and the building of a merchant fleet leaded to an expansion of foreign trade and of exchange of goods and money between states which demanded finance. In 1913, England was the dominant nation in trade, followed by Germany.\(^10\) The first world war breached the period of expansion in foreign trade, but at the same time financial instruments like documentary credits became important because an exporter at war time could not rely on payment of an importer.\(^11\) The time between the two world wars had been one of the darkest époques regarding international economic relationships: industrial production in Europe fell about 25%, the European trade fell about 50%. A prospering American economy and an European economy damaged by the imbalance of currency markets leaded to protectionism. There was no coordination of international economic policy. With the great depression 1929, governments tried to find common solutions, but failed. The 1920ies and 30ies of 20\(^{th}\) century can be seen as disastrous economic prelude of Second World War.\(^12\) This war leaded to a collapse of foreign trade and between the war parties.\(^13\) But trade can be an alternative to war, remembering the words from Hull: “If goods do not pass

\(^{1}\) Weiß / Hermann (Welthandelsrecht) nr. 17.
\(^{2}\) Weiß / Hermann (Welthandelsrecht) nr. 78.
\(^{3}\) Weiß / Hermann (Welthandelsrecht) nr. 79.
\(^{4}\) Rooy (Documentary credits) page 3.
\(^{5}\) Weiß / Hermann (Welthandelsrecht) nr. 80.
\(^{6}\) Weiß / Hermann (Welthandelsrecht) nr. 81.
\(^{7}\) Weiß / Hermann (Welthandelsrecht) nr. 82.
\(^{8}\) Weiß / Hermann (Welthandelsrecht) nr. 83.
\(^{9}\) Hagenmüller (Bankbetrieb) page 297.
\(^{10}\) Hagenmüller (Bankbetrieb) page 299.
\(^{11}\) Weiß / Hermann (Welthandelsrecht) nr. 88.
\(^{12}\) Hagermüller (Bankbetrieb) page 302.
frontiers, armies will”. World trade became a new dimension after the second World War with GATT 1947 as customs- and trade convention, based on the knowledge that trade policy and the world-economic discrepancies caused by it had been one of the reasons for the second World War. Even the aim of an international trade organisation failed in 1950, GATT 1947 became a mainframe for international trade in the western world and leaded to a multilateral trade-system. After the Cold War, the WTO was founded in 1995, which completed the multilateral trade-system by inclusion of services and intellectual property.

II. Globalization
The catchword “globalization” is in public discussion often used for the closed link between the national economies. Since beginning of 1990ies, “globalization” is also used for the general increase of economic interdependence which is caused by liberalisation of trade in goods, services and capital markets and by improvement of worldwide transport-infrastructure and revolution in communication- and information technologies, but no general definition exists. Important for globalization is the integration of capital markets and of trade of goods, which today is in an advanced stadium. Globalization started with colonization and the process went faster with invention and development of communication and transport. A normative background has been reached with the elimination of trade barriers, caused by GATT, and the creation of an international currency system in our times. The victory of constitutional and democratic states and market economy have been catalysts of globalization process. 70% of world trade is between industrialised states. But policy in the époque of globalization also tries to fight against poverty and to find a global structure policy for active creation of globalization. The future will show if policy will fail or have success, but it is still today quite clear that therefore trade with developing countries will increase. So the share of developing countries in global merchandise exports and imports jumped by six and five percentage points in the years 1990 – 2001; exports from those countries reached 30% of all exports, imports reached 26% of the whole world imports; also the trade between developing countries increased by 12% a year, twice as fast as global commerce generally.

III. The financial dimension
Since antiquity, trade also had a financial dimension: in old Greece, bankers called the “trapezities” managed a highly developed bank business which was linked with the growth of overseas trade in this time; later public banks were established by cities in old Greece and managed by public officials. In Roman Empire, so called “argentarii” were concerned with all kind of banking matters. In middle-ages, the Medicis founded their famous banking house in Florence and introduced a predecessor instrument of the bill of exchange. In time of crisis, financial instruments like documentary credits became important, even when most trade collapsed. After the First World War, foreign trade no longer based on moral of the contract parties and good faith, but requested financial instruments. At this time, letters of credit offered the chance to continue the pre-war foreign trade, but on a secure basis instead of good faith. “Globalization” today and the increasing of trade with developing countries requests useful financial instruments. In year 2000, worldwide trade in goods reached a volume of 1,415 trillion US-dollars. This trade demands financing of about 700 billion US-dollars for imports and

15 Weiβ / Hermann (Welthandelsrecht) nr. 90.
16 Herdegen (Internationales Wirtschaftsrecht) nr. 53.
17 Weiβ / Hermann (Welthandelsrecht) nr. 17.
18 Herdegen (Internationales Wirtschaftsrecht) nr. 53.
19 Herdegen (Internationales Wirtschaftsrecht) nr. 53.
20 Weiβ / Hermann (Welthandelsrecht) nr. 17.
21 Hauchler / Messner / Muscheler (Globale Trends) S. 401.
22 Sutherland (Outlook for World Trade) page 31.
23 Rooy (Documentary credits) page 4.
24 Rooy (Documentary credits) page 5.
25 Rooy (Documentary credits) page 6-7.
26 Hagenmüller (Bankbetrieb) page 299.
27 Hagenmüller (Bankbetrieb) page 300.
28 Vanderhoeght (Dokumentenakkreditiv) page 11.
29 Weiβ / Hermann (Welthandelsrecht) nr. 17.
exports. There are various ways of paying: if the exporter is in a strong position and unsure about the buyer’s credit worthiness, he can stipulate payment wholly or partially in advance; other possibilities are payment of the price on shipment or giving a credit to the buyer. Whether or not a credit is given, the seller may want to reinforce his position by exacting payment undertakings from a third party, usually a bank. The documentary credit hereby is “the life blood of international commerce”, the most frequently method to pay for goods in international trade. It was introduced in the 19th century by merchants, not by bankers, and was in its beginnings a kind of traveller cheque which made it possible to draw money elsewhere than at the place of issue. Today, it is also a very expensive way of making payments, although they are less expensive in some countries than in others. A normal bank commission for confirming a documentary credit may be 0.5% or more of the sum; regarding for example a moderate cargo of crude oil on an amount of 20,000,000 US-dollars, 100,000 US-dollars are paid only for the confirmation of an irrevocable letter of credit.

B. LETTERS OF CREDIT

The question arises why contract parties are willing to pay so much money for bank commissions instead of paying directly to the other contract party. To give an answer to this question, it is first necessary to take a look at the risks of worldwide trade today.

I. Risks to cover in world trade

“The truth is that risk is a derivative, and essentially negative, concept – an elliptical way of saying that either or both of the primary obligations of one party shall be enforceable, and that those of the other party shall be deemed to have been discharged, even though the normally prerequisite conditions have not been satisfied.” Business outside of the home country bears greater risks than inside: wide distance, different law and business practices, different currencies, different political systems and communication problems caused by different languages and technical standards are typical problems in international business. If contracts are ruled by foreign law, it is often hard to estimate the legal situation of the foreign contract party. Another problem is the performance of the contract: matching payment with physical delivery is not possible, therefore also no control. To take a party to court can be difficult because of foreign language, foreign law, foreign process law or the need of a foreign solicitor. There are mainly four risks to face when trading worldwide: economic risks, political risks, payment risks and transport risks.

1. Economic risks

Economic risks results from a lack of quality, solvency or credit-worthiness of a contract party. Exporter’s risks are the manufacturing risk, that means that the importer could get insolvent or breaches the contract while producing the goods; the risk that the importer do not take the goods delivered, and the delcredere risk, which means that the importer do not pay, for example because of delay or unwillingness or incapability to pay. In a wider sense, economic exporter risks are includes the risk of bankruptcy of the importer, the risk of arbitrary cancellation of the contract, the risk of compositions / arbitration or the risk that an execution does not compensate a payment claim. But there are also importer’s risks: the order risk, that means that the exporter cannot deliver promised goods, and the delivery risk, which means that the exporter fails in performance caused by delay or lacks in kind, quality or quantity of the goods.

2. Political risks

Political risks, also called “state risks”, are caused by measures of governments or authorities or are results of war, rebellion or revolution. These risks can concern goods, which can be confiscated, expropriated, destroyed or damaged, or can concern assets or payments caused by

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30 Houtte (Law of International Trade) nr. 8.01.
31 Goode (Commercial Law), page 960.
32 Houtte (Law of International Trade) nr. 8.02.
33 Rooy (Documentary credits) pages 7-8.
34 Ventris (Banker’s documentary credits) page 140.
35 Sealy, cited by Goode (Commercial Law) page 249.
36 according to German Law: Zug-um-Zug Geschäft, §§ 274, 320, 322 BGB.
38 Grill / Perczynski (Wirtschaftslehre des Kreditwesens) page 440.
39 Huber / Schäfer (Dokumentengeschäft) page 30.
40 Grill / Perczynski (Wirtschaftslehre des Kreditwesens) page 440.
confiscation, prohibition of payment, a moratorium or restrictions of conversion or transfer of money. Perhaps each party wants to perform, but caused by such political circumstances that is impossible. In some cases, for example war, the whole contract is regarded as being frustrated if one of the parties acquiring the status of an enemy. Or the performance can be disturbed by war. A contract can also regarded as frustrated if legislation of one country after conclusion of it prohibits its performance by placing an embargo. An important and usual risk is the risk of a moratory: a state prohibit payments because of the incapability of the state to pay.

3. Currency risks

Currency risks are caused by floating exchange rates of the home currencies of each party and generally include the danger of losses. The exporter who signs a contract which includes payment in foreign currency bears the risk that he receives less money than he has calculated. The importer who has to pay in foreign currency bears the risk that he has to pay more money for buying foreign currency than he has calculated. Such currency risks can be caused by economical and / or political reasons. Another risk occurs if the currency of a state is not convertible or payments in this currency are not allowed. Even this is more a political risk, caused by measures of a state, it can also include a currency risk if the payment was said to be made in this currency.

4. Transport risks

Im- and Exports include a transport risk: goods can get lost or damaged on the transport way. The question arises from which point on the importer has to bear a risk and has to pay even he never received goods. Another problem occurs if the property in the goods has passed, but the buyer justifiably rejects the goods: it is then not always clear who has to bear the risk of any loss, damage or deterioration of the goods if they must be stored or transported back.

II. Letters of credit as risk-minimisation instruments

Letters of credit can be used for risk-minimisation of some, but not all of the above mentioned risks.

1. Definition of letter of credit and the UCP 500

Letters of credit, also called documentary credits or bankers commercial credits, are the most common method of payment for goods in export trade. There is no characteristic difference between the continental-european documentary credit and the anglo-american letter of credit; the only particularity is that the letter of credit is to be used by drafts which are to be presented with the stipulated documents, so from the beneficiaries view it is just a modality. Both terms are used synonymous. In International Trade, the UCP 500 of the International Chamber of Commerce are used as rules for letters-of-credit-transactions. According to art. 1 of UCP 500, they shall apply to all documentary credits where they are incorporated in the text of the credit. In Germany, there are different opinions about the character of the UCP 500. It was discussed that the UCP are own rules in the sense of an autonomous world trade law (lex mercatoria) and therefore law “sui generis”. But the UCP 500 cannot be law “sui generis” because the ICC is no organisation which has legislative power. Another view saw the UCP as common law between traders in the sense of § 346 German Handelsgesetzbuch which would lead to an application of UCP without a written form. It was argued that if it is not common law, then it is still an international, uniform trade custom and according to the same § 346 HGB also applicable without written form. But

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41 Grill / Perczynski ( Wirtschaftslehre des Kreditwesens ) page 440.
42 Benjamin ( Sale of Goods ) nr. 6-032.
43 Benjamin ( Sale of Goods ) nr. 6-036.
44 Huber / Schäfer ( Dokumentengeschäft ) page 31.
45 Grill / Perczynski ( Wirtschaftslehre des Kreditwesens ) page 440.
46 Huber / Schäfer ( Dokumentengeschäft ) page 31.
47 Grill / Perczynski ( Wirtschaftslehre des Kreditwesens ) page 440.
48 compare Benjamin ( Sale of Goods ) nr. 6-008.
49 Schmitthoff ( Export Law ) nr. 11-001.
50 Eisemann / Eberth ( Dokumentenakkreditiv im Internationalen Handelsverkehr ) page 70.
51 Adrian / Heidorn ( Bankbetrieb ) page 572.
52 Schönle ( Rechtsnatur der ERA ), in: NJW 1968, nr. 16, pages 726 – 731; here: page 726.
54 Westphalen ( Rechtsprobleme der Exportfinanzierung ) page 227.
55 in the following text abbreviated as „HGB“.
56 Westphalen ( AGB-rechtliche Erwägungen zu den ERA 1993 ), named journal, page 453.
UCP 500 cannot be common law because it was changed several times. It is still today questionable if the whole or some rules of the UCP are trade customs, but many changes of the UCP and the domination of the intentions of the parties contradicts. The UCP 500 are qualified as standard contract clauses by all means, so between the bank and the customer of the bank their application is quite clear. In other countries the UCP 500 are mentioned in the contract what makes them applicable. The UCP are accepted in mostly all countries. According to art. 2 of the ICC Uniform Customs and Practice for Documentary Credits (UCP 500), documentary credit means any arrangement, however named or described, whereby a bank (the issuing bank) acting at the request and on the instructions of a customer (the applicant) or on its own behalf is to make a payment to or the order of a third party (the beneficiary), is to accept drafts or bills of exchange drawn by the beneficiary or authorises another bank to effect such payment or to accept, or authorises another bank to negotiate against stipulated document(s), provided that the terms and conditions of the credit are complied with. The essence of a documentary credit is the representation of goods by the bill of lading, that means that possession of the bill of lading thus equals entitle to the goods, covered by this bill of lading; a transfer of the bill of lading means transfer of the ownership of the goods.

2. Kinds of letters of credit

There are different kinds of letters of credit.

a.) The kind of promise given by the bank, art. 6 UCP 500

One criteria is the kind of promise given by the bank. A letter of credit can be revocable or irrevocable, what it must clearly indicate, art. 6 a, b UCP 500.

aa.) Revocable letters of credit, art. 8 UCP 500

Art. 8 a UCP 500 stipulates that a revocable credit can be amended or cancelled at any moment without notice to the beneficiary. It is not binding for the issuing bank. Because of the lack of reliance on payment it is rarely used. Only an irrevocable credit offers a binding abstract promise to pay and therefore security for the exporter.

bb.) Irrevocable letters of credit, art. 9 a UCP 500

According to art. 9 a, an irrevocable credit constitutes a definite undertaking of the issuing bank to honour it in the way described in art. 9 a I-III. It cannot be revoked and it is binding after opening, therefore the beneficiary can rely on payment if he fulfils the stipulations of the letter of credit and delivers clean documents.

b.) The way of using the letter of credit, art. 2 I-III and art. 9 a I-IV UCP 500

The second criteria is the method of using a letter of credit.

aa.) Sight payment- and deferred payment- letters of credit, art. 2 I, 9 a I, II UCP 500

The first possibility is that a payment (art. 2 I) is promised in the letter of credit. If a sight payment is promised (art. 2 I, 9 a I UCP 500), the bank pays immediately after receiving the documents. Under a deferred payment (art. 2 I, 9 a II UCP 500) credit payment is not made on presentation of the documents, but after expiry of a stated period from presentation while the documents are released immediately to the importer.

bb.) Acceptance letters of credit, art. 9 a III a., b. UCP 500

The second possibility is that the issuing bank (art. 9 a III a UCP 500) or another drawee bank (art. 9 a III b UCP 500) accept drafts and pay them on maturity. In that case, the exporter allows the importer to respite the payment against acceptance of a draft as security. The exporter draws the draft and the issuing bank accept it.

cc.) Negotiable letters of credit, art. 9 a IV, b IV UCP 500

The third possibility is that a letter of credit is negotiable and the issuing bank must pay drawers and bona fide holders, art. 9 a IV UCP 500. According to art. 9 b IV UCP 500, a negotiable letter of credit is also possible with a confirming bank. Art. 10 b II UCP 500 gives a definition of

57 compare Baumbach / Hopt (HGB) (11) ERA nr. 1.
58 Westphalen (AGB-rechtliche Erwägungen zu den ERA 1993), named journal, page 453.
59 Schönle (Rechtsnatur der ERA), named journal, page 729.
60 Rooy (Documentary credits) page 11.
61 Houtte (Law of International Trade) nr. 8.03.
62 Grill / Perczynski (Wirtschaftslehre des Kreditwesens) page 473.
63 Grill / Perczynski (Wirtschaftslehre des Kreditwesens) page 472.
64 Goode (Commercial Law) page 972.
65 Adrian / Heidorn (Bankbetrieb) page 577.
negotiation: negotiation means the giving of value for drafts and/or documents by the bank authorised to negotiate. The exporter presents drafts which show the issuing or a confirming bank as drawee. One of these banks or a third bank which is authorised to negotiate buy these drafts together with the documents at a discount; if there are third banks involved, they can debit the issuing bank because this bank before negotiation promised to pay against handing-over of the documents and the bills of exchange.\(^{66}\)

c.) **Number of banks who promise to honour, art. 2 II-III, 9 b I-IV UCP 500**
The third criteria is the number of banks involved which promise to honour documents.

aa.) **Unconfirmed Letter of credit**
If a letter of credit is unconfirmed, only the issuing bank promises the beneficiary to honour documents if he fulfils all terms and conditions of the letter of credit.\(^{67}\)

bb.) **Confirmed letter of credit, art. 9 b UCP 500**
According to art. 9 b UCP 500, a confirmation of an irrevocable credit by a confirming bank upon the authorisation or request of the issuing bank constitutes a definite undertaking of the confirming bank in addition to that of the issuing bank, to honour documents which comply the terms and conditions of the credit according to art. 9 b I-IV. The advantage for the beneficiary is that he has got a paymaster in his own country and receives the full benefits which a documentary credit in this form can provide.\(^{68}\)

d.) **Possibility to transfer the letter of credit, art. 48 UCP 500**
The fourth criteria is the possibility to transfer the letter of credit. According to art. 48 a UCP 500, a transferable credit is a credit under which the first beneficiary may request the bank authorised to honour the documents to make the credit available in whole or in part to one or more second beneficiaries. Art. 48 b UCP 500 rules that only credits which are expressly designated as “transferable” by the issuing bank can be transferred. Unless otherwise stated, a letter of credit can be transferred once only (art. 48 g UCP 500).

e.) **Possibility to revolve the letter of credit**
There are no rules about the revolving letter of credit in the UCP 500.\(^{69}\) But instead of a credit being for a fixed amount or for a fixed time, it may revolve around value and time. Such a revolving letter of credit allows the beneficiary to present documents as often as he wishes during the credit period so long as the overall limit specified is not exceeded.\(^{70}\)

3. **Process of a letter-of-credit-transaction**
Basis of every letter of credit - transaction is a sale or delivery contract between an importer / seller and an exporter / buyer which contains the payment of money and a letter-of-credit-clause. The letter-of-credit-clause usually requires deliverance of documents after opening of an irrevocable letter of credit.\(^{71}\) According to art. 2, there are four parties in a letter of credit – transaction: the applicant (bank customer), the issuing bank, the beneficiary and another bank which is authorised from the first bank. Such another bank can be an advising bank (art. 7) or a confirming bank (art. 9). The importer (applicant) negotiate with his bank (issuing bank) which opens a letter of credit with the exporter as beneficiary.\(^{72}\) The importer has to arrange for a letter of credit in time, amount and according with the contract of sale conditions.\(^{73}\) The issuing bank opens the letter of credit by giving promise to arrange payment under special conditions which must be fulfilled and gives notice to the exporter.\(^{74}\) Three further constellations are possible: an advising bank in the exporter’s country can be commissioned by the issuing bank to give that notice; also such a bank or a third bank can be commissioned to arrange the payment (nominated bank, art. 9 UCP 500) or to confirm the letter of credit (confirming bank, art. 9 UCP 500) by giving an own promise to pay against the documents.\(^{75}\) The exporter has to send the goods according to the contract of sale and must deliver in time clean documents which are

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\(^{66}\) Teismann pages 613-614.

\(^{67}\) Adrian / Heidorn (Bankbetrieb) page 578.

\(^{68}\) Jack (Documentary Credits) nr. 2.16.

\(^{69}\) Hagenmüller (Bankbetrieb) page 323.

\(^{70}\) Goode (Commercial Law) pages 983-984.

\(^{71}\) Claussen / Erne (Bank- und Börsenrecht) § 7 nr. 72.

\(^{72}\) Claussen / Erne (Bank- und Börsenrecht) § 7 nr. 72.

\(^{73}\) Adrian / Heidorn (Bankbetrieb) page 574.

\(^{74}\) Zahn / Ehrlich / Neumann (Zahlung / Zahlungssicherung im Aussenhandel) page 34, nr. 2/5.

\(^{75}\) Westphalen (Rechtsprobleme der Exportfinanzierung) page 233.
requested and specified in the letter of credit. If the exporter fulfils the assumption, the issuing bank pays to him. Therefore, the issuing bank examines the documents; if it pays to the beneficiary, it debits the applicant (importer) and hand over the documents to him. The handing-over of the paper in some cases like the bill of lading replaces the handing-over of the goods. (German Law: §§ 929 I BGB, 363 II HGB) If there is a confirming bank or a nominated bank, it examines the documents, pays the sum and debits then the issuing bank.

4. Functions of a letter of credit

A letter of credit fulfils functions: the payment-, the security and the credit function.

a.) Payment function

The letter of credit is used for payment: the exporter’s advantage is that he can receive quick payment after handing-over of the documents and need not to wait until arrival of the goods. A letter of credit is no legal tender like money or a bill of exchange, but helps to arrange payments through legal tender. According to § 364 II BGB, it is possible that a debtor and a creditor accept another performance additionally to the original performance which also would fulfil the original performance if it was done. A letter of credit is such a secondary performance, that means that the seller can claim additionally payment from the sale contract, but first must try to get compensated of the letter of credit. The fulfilment of the contract is done with payment of the amount promised in the letter of credit. At this time, not only the promise to pay of the letter of credit is fulfilled, also the claim of the basic contract no longer exists.

b.) Credit function

The documentary credit, even it contents the word credit, is no credit in the sense of law, but still today in times of strict separation in law exists an important economic connection between letters of credit and credit transactions. Both, importer and exporter possibly needs financing for buying or producing goods, and both can be debtors or creditors to each other regarding the terms and conditions for payment. But also the banks which are involved in the letter-of-credit-transaction can be creditors next to the letter of credit. The issuing bank could finance the price of the goods and receive the money back after sale of the goods in the home market of the importer. The bank of the exporter on the other side could finance the production of the goods in the expectancy that it receives the money back after handing-over of the documents. A documentary credit makes it easier for banks to finance goods. In the case of an acceptance - letter of credit when a draft was signed by the issuing bank, the exporter can also sell this bill of exchange at a discount to a bank and receive immediately money instead of waiting. He need not to finance over a long period.

c.) Security function

If there is no reliance between exporter and importer, if they do not know each other, the seller requires security for payment: It is hard possible to claim the payment in the state of the importer. A letter of credit is called “child of distrust between seller and buyer”. It secures the change of the performances of buyer and seller: The importer can be sure that the exporter only receives a payment if he proofs his delivery in accordance with the contract through handing-over of documents to the bank; the exporter on the other side can be sure that he receives payment if he handed over the documents. The contract parties are secured against solvency risks of the other side because the letter of credit makes it possible to match payment with delivery what else would

76 Adrian / Heidorn (Bankbetrieb) page 575.
77 Sandkühler (Bankrecht) page 85.
78 Adrian / Heidorn (Bankbetrieb) page 575.
79 Zahn / Ehrlich / Neumann (Zahlung / Zahlungssicherung im Aussenhandel) page 175-176, nr. 2/310.
80 Claussen / Erne (Bank- und Börsenrecht) § 7 nr. 82-83.
81 Ulrich (Rechtsprobleme / Dokumentenakkreditiv) page 13.
82 Teismann page 613-614.
83 Schneider (Akkreditive / Auslanszahlungsverkehr) page 28.
85 Westphalen (Rechtsprobleme der Exportfinanzierung) page 279.
86 Ulrich (Rechtsprobleme / Dokumentenakkreditiv) page 23.
87 Ulrich (Rechtsprobleme / Dokumentenakkreditiv) page 24.
88 Ulrich (Rechtsprobleme / Dokumentenakkreditiv) page 25.
89 Adrian / Heidorn (Bankbetrieb) page 577.
90 Claussen / Erne (Bank- und Börsenrecht) § 7 nr. 71.
91 Ulrich (Rechtsprobleme des Dokumentenakkreditivs) page 13.
be impossible.\textsuperscript{92} There is nearly no economic risk for the exporter. The stipulated documents can be a security for financing banks because the goods are at their disposal.\textsuperscript{93} In the case of an acceptance credit, the exporter can not only rely on the reputation of the bank and its promise to pay;\textsuperscript{94} a bill of exchange is also independent from other contracts and offers therefore and because of its binding to strict forms and rules security.\textsuperscript{95} The bank, it it financed goods for the importer, receives by the documents the shipped goods as security.\textsuperscript{96} If a letter of credit lapses because of wrong documents or documents not presented in time, the seller could still insist on payment because of the sale contract. A letter of credit is a second performance additionally, but not instead, of the first one.\textsuperscript{97} Some political risks for the exporter can be avoided by an irrevocable, confirmed letter of credit.\textsuperscript{98} Measures of government like a moratorium or restrictions in conversion of currency in the importer’s country do not cause losses to the exporter if he can claim payment from a bank in his own state. Currency risks caused by governmental measures can be reduced if the letter of credit is issued in a free floatable currency. But of course letters of credit cannot avoid of all risks: transport risks can be covered by special transport insurance,\textsuperscript{99} currency risks resulting from floats can be avoided with special bank transactions on the currency market like derivative currency transactions, for example swaps or currency options.\textsuperscript{100} Also it is possible to fix the currency rate in the contract.\textsuperscript{101} One of the main risks a letter of credit cannot avoid is that a fraudulent seller delivers documents which appear clean, but delivers rubbish or goods not in accordance with the contract.

\textbf{IV. Qualification of letters of credit in law}

To understand the relations between the involved parties in a letter of credit transaction, it is necessary to analyse the legal relationships between them. Even the letter of credit is the classical financial instrument of payment in foreign trade, there is no explicit law which rules it in Germany, like in the most other countries.\textsuperscript{102}

\textbf{1. The contract between issuing bank and applicant}

The first contract to be analysed is between the issuing bank and the applicant. German Law is applicable if the contract parties (bank and applicant) have chosen German Law (art. 27 I s. 1 EGBGB); if no law is chosen, according to art. 28 I s. 1 EGBGB the law of that state is applicable with which the contract has got its closest link. Art. 28 II s. 1 EGBGB declares that the closest link is normally with the state where the person who fulfils the characteristic performance of the contract has got its residence. The characteristic performance in a letter-of-credit-contract, opening it and transacting, is fulfilled by the issuing bank. But problems can occur if the applicant contracts with a branch of a german bank abroad; in that case foreign law can be applicable.\textsuperscript{103} The letter-of-credit-contract is the most discussed one concerning legal relationships in letters of credit. The kind of contract is relevant to specify the rights of the parties, for example if a bank can refuse to pay or not or if the applicant is allowed to give instructions.

\textbf{a.) Contract for the benefit of a third party, § 328 I BGB}

A first view in literature determine the contract between bank and applicant as a contract between two parties with a third person as beneficiary, § 328 I BGB. § 328 I BGB requires that such a beneficiary directly receives a claim when the contract is concluded. According to that opinion, such a direct and in doubt irrevocable claim is given to the beneficiary at the time of concluding of the contract.\textsuperscript{104} But that opinion ignores art. 3 a,b of UCP 500 which rules that letters of credit are seperate transactions and that a beneficiary is not allowed to avail himself of the contractual relationships between the banks or bank and applicant: The claim of the beneficiary against the

\textsuperscript{92} Horn (Internationale Zahlungen / Akkreditiv) page 10.
\textsuperscript{93} Teichmann page 617.
\textsuperscript{94} Grill / Perczynski (Wirtschaftslehre des Kreditwesens) page 473.
\textsuperscript{95} Adrian / Heidorn (Bankbetrieb) page 174.
\textsuperscript{96} Liesecke (Stellung der kreditgebenden Bank), in: Festschrift für Fischer, pages 397-418; here: page 406.
\textsuperscript{97} Westphalen (Rechtsprobleme der Exportfinanzierung) pages 279-280.
\textsuperscript{98} Huber / Schäfer (Dokumentengeschäft) page 32.
\textsuperscript{99} Grill / Perczynski (Wirtschaftslehre des Kreditwesens) page 440.
\textsuperscript{100} compare, for example, Grill / Perczynski (Wirtschaftslehre des Kreditwesens) pages 495-499.
\textsuperscript{101} Zahn / Ehrlich / Neumann (Zahlung / Zahlungssicherung im Aussenhandel) nr. 2/51.
\textsuperscript{102} Witt-Wegmann (Störungen Dokumentenakkreditiv), in: Jus 1975, nr. 3, pages 137-143; here: page 138.
\textsuperscript{103} Zahn / Ehrlich / Neumann (Zahlung / Zahlungssicherung im Aussenhandel) nr. 2 / 35.
\textsuperscript{104} Wolff (Akkreditiv), in: JW 1922, nr. 11, pages 770-775; here: page 772.
issuing bank is established after the letter of credit is advised to him.\textsuperscript{105} Also, in the case of a contract for the benefit of the third party, it is possible that the party which must perform to the third beneficiary can refuse to do so if the contract between that party and the other party is, for example, not legal enforceable or contestable; in such case there would be no security for the beneficiary.\textsuperscript{106}

b.) Instruction contract according to §§ 783 and following BGB
Another opinion wants to prove that such a contract is an instruction contract according to §§ 783 BGB and following paragraphs.\textsuperscript{107} But § 783 I BGB requires that somebody hands over a document in which the other person is instructed to pay money. A letter of credit does not request such a hand-over, therefore the assumptions of § 783 I BGB are not fulfilled.

c.) Instruction in wider sense, analogue application of §§ 783 and following BGB
A third opinion wants to use the instruction rules by analogue application.\textsuperscript{108} One reason therefore is that the BGB based on the freedom of contracting and that there is no exclusion of contracts which are not ruled by the rules of BGB. Therefore it is, for example, possible to use commission rules ( §§ 662 and following in BGB ) which only request an oral contract for the same effect. But that difference between oral commission with the same effect and instruction which requests a document was not foreseeable when BGB was introduced, therefore it should also be possible to make oral instructions without documents.\textsuperscript{109} §§ 787-790 should be applicable\textsuperscript{110} This opinion leads to unacceptable results: even instruction and letter of credit are both simultaneous performances concerning the payment, because the performance for the benefit of the beneficiary is at the same time the performance of the contract with the instructor,\textsuperscript{111} the obligation to pay is not enough secured against ceded claims: it is possible that the applicant cedes claims he has ( not ) got against the beneficiary and the bank in such a case refuse to pay the letter of credit by setting off against the beneficiary; in that case the abstract character of the promise to pay would be destroyed.\textsuperscript{112} An instruction does not oblige the instructed person to pay, but only allows to pay so that a bank would not be obliged to accept the instruction.\textsuperscript{113} It appears unsatisfactory to consider a letter of credit as instruction.

d.) Work contract with character of an agency agreement, §§ 631, 675 BGB
Today’s jurisdiction considers the contract between issuing bank and applicant as work contract according to § 631 BGB, which has the character of an agency agreement ( § 675 BGB ).\textsuperscript{114} § 675 sentence 1 BGB rules that some paragraphs of the order contract ( §§ 663, 665-670, 672-674 BGB ) are applicable if a work contract or an employment contract is of that kind that an agency for money is promised. Work contracts are, according to § 631 I BGB, contracts in which the contractor is obliged to establish the promised work and the orderer is obliged to pay for it. § 631 II BGB rules that object can be production or change of an object, but also another result caused by work or service. In the case of a letter of credit, the result is the agency of the bank, which is ordered to open and transact the letter of credit.\textsuperscript{115} So next to §§ 631 and 675, §§ 663, 665-670 and 672-674 BGB are applicable. That will be of great importance analysing the right of the issuing bank to refuse payments and the conflicts with the doctrine of strict compliance.

2. Contracts between banks and the beneficiary
Second to be analysed are contracts between banks and the beneficiary.

a.) Legal relationship between issuing bank and beneficiary, § 780 I BGB
In foreign law, it is argued that a letter of credit and the promise to pay should not be pressed into the framework of traditional ( contract ) law. It is argued that such a characterisation produces theories with defects; those defects show the undesirability of trying to force the commercial

\textsuperscript{105} Peters ( Rechtsprobleme Akkreditivgeschäft ), in: WM 1978, nr. 38, pages 1030-1038; here: page 1034 .

\textsuperscript{106} Peters ( Rechtsprobleme im Akkreditivgeschäft ) page 1034 .

\textsuperscript{107} compare, for example: Capelle ( Akkreditivgeschäft ) pages 19-26 .

\textsuperscript{108} Capelle ( Akkreditivgeschäft ) page 19; Ulmer ( Akkreditiv / Anweisung ) page 308-312 .

\textsuperscript{109} Capelle ( Akkreditivgeschäft ) page 19-20 .

\textsuperscript{110} Capelle ( Akkreditivgeschäft ) page 21 .

\textsuperscript{111} Canary ( Bankvertragsrecht ) nr. 920 .

\textsuperscript{112} Peters ( Rechtsprobleme Akkreditivgeschäft ) page 1034 .

\textsuperscript{113} Borggrefe ( Akkreditiv und Grundverhältnis ) page 24; Plett / Welling ( Rechtsstellung der Parteien ), in: DB 1987, nr. 18, pages 925-927; here: 925 .

\textsuperscript{114} Claussen / Erne ( Bank- und Börsenrecht ) nr. 77; BGH, in: WM 1958, page 1542 .

\textsuperscript{115} Hartmann ( Durchsetzbarkeit des Begünstigtenanspruches ) page 26 .
instruments “into a strait jacket of traditional rules of law”. The letter of credit should be treated as a law sui generis instrument embodying a promise which by mercantile usage is enforceable without consideration, as a new type of mercantile currency embodying an abstract promise of payment, which possesses a high immunity from attack on the ground of breach of duty.\textsuperscript{116}

But such an opinion must be denied for the same reasons which argued against the qualification of UCP 500 as lex mercatoria, sui generis or trade custom: whether the ICC nor the banks themselves have legislative power which in a democracy must remain with the state. It reflects an anglo-american view of the contracts and ignores that there are states with codified civil law which contains rules. § 780 I BGB rules the abstract promise to fulfil a performance: such a contract which promise a performance in that kind that the promise itself should establish the obligation to perform. The bank obliges itself to pay the amount of the letter of credit to the beneficiary if stipulated documents are presented. That promise is abstract from the underlying sale contract and from the agency agreement.\textsuperscript{117} The UCP 500 contains no rules when the letter of credit is opened, therefore national law in that question is applicable.\textsuperscript{118} § 780 I therefore requires a contract, which demands offer and acceptance ( \textsuperscript{\textsection 145, 147 BGB} ). § 130 BGB rules the effectiveness of declaratory acts towards those absent. According to § 130 I s. 1 BGB, the declaratory act, here: the offer, which is to be made to another one, will be effective from that moment on when it reaches the other person. According to § 151 s. 1 BGB, a contract is concluded by acceptance, but without the need of a declaration of acceptance to the offerer, if such a declaration is not to be excepted because of trade custom or because the other party waived such a declaration. Therefore the beneficiary normally accepts the contract by not contradicting it.\textsuperscript{119} According to § 131 I s. 2 BGB, a declaration does not become effective if the other party revokes it before or at the moment when the declaration reaches the other person. So a bank can revoke in the short time between sending and receiving.\textsuperscript{120} In foreign laws, there are sometimes other opinions / jurisdiction concerning the question how and when the obligation of the bank to pay is established: for example, it is said in other countries that the obligation to pay is established in the moment of sending the letter of opening, or that the promise to pay is not a contract, but is established by the bank´s declaration to pay and that there is only the need that it is received by the beneficiary. The time of effectiveness of the promise to pay is relevant for answering the question until what moment a bank may revoke its promise.\textsuperscript{121} Therefore, the parties should be aware of the law which is applicable. Another problem concerns the law applicable if a nominated bank examines the documents and pays in the name of the issuing bank: according to some views, not the law of the state of the issuing bank, but the law of the state of the nominated bank should be applicable concerning the legal relationship between beneficiary and issuing bank. Several reasons are given: the nominated bank would be obliged to fulfil the characteristic performance\textsuperscript{122} which is at the place of the nominated bank.\textsuperscript{123} But that ignores the rules of § 269 I BGB: in case that a place of performance is not specified and not possible to conclude from the circumstances or from nature of the relationship, then a performance is to fulfil at the place where the debtor resided when the relationship originated. § 269 II rules that if the debts originated in a business place and such a place is different from the place of residence, then the place of the branch replaces the place of residence. § 270 I rules the payment of money: if there are doubts, the debtor has to send the money at own risk and costs to the creditor at his place of residence. Therefore, the place of performance is not changed by nominating a bank.\textsuperscript{124} The nominated bank fulfils the characteristic performance, but not autonomous. Debtor is just the issuing bank, the nominated bank is only assistant in fulfilling the performance. The applicable law is that of the state of the issuing bank.\textsuperscript{125}

\textsuperscript{116} compare summary in: Goode ( Commercial Law ) page 987 .
\textsuperscript{117} Zahn / Ehrlich / Neumann ( Zahlung / Zahlungssicherung im Aussenhandel ) nr. 2/150 .
\textsuperscript{118} Zahn / Ehrlich / Neumann ( Zahlung / Zahlungssicherung im Aussenhandel ) nr. 2/151 .
\textsuperscript{119} Zahn / Ehrlich / Neumann ( Zahlung / Zahlungssicherung im Aussenhandel ) nr. 2/151 .
\textsuperscript{120} Zahn / Ehrlich / Neumann ( Zahlung / Zahlungssicherung im Aussenhandel ) nr. 2/152 .
\textsuperscript{121} Zahn / Ehrlich / Neumann ( Zahlung / Zahlungssicherung im Aussenhandel ) nr. 2/153 .
\textsuperscript{122} Westphalen ( Rechtsprobleme der Exportfinanzierung ) page 299 .
\textsuperscript{123} Schlegelberger / Gessler ( HGB ) Anh. § 365 nr. 151 .
\textsuperscript{124} Canaris ( Bankvertragsrecht ) nr. 979 .
\textsuperscript{125} Westphalen ( Rechtsprobleme der Exportfinanzierung ) page 299-300; Canaris ( Bankvertragsrecht ) nr. 979 .
b.) Legal relationship between advising bank and beneficiary, art. 7 UCP 500
Art. 7 UCP 500 offers the possibility that an advising bank advises the letter of credit to the beneficiary without engagement of itself. Such an advising bank does not promise to pay, but only informs the beneficiary without concluding a contract with him.\footnote{126} Canaris (Bankvertragsrecht) nr. 971.

c.) Legal relationship between nominated bank and beneficiary, art. 9 a UCP 500
According to Art. 9 a UCP 500, it is possible that a bank is nominated by the issuing bank. No contract exists between a nominated bank and the beneficiary.\footnote{127} The nominated bank examines the documents in the name and for commission of the issuing bank.\footnote{128}

d.) Legal relationship between confirming bank and beneficiary, art. 9 b UCP 500, § 780 I BGB
Art. 9 b of UCP 500 see the possibility that another bank confirms the letter of credit. Such a confirmation constitutes a definite undertaking to pay, additionally to the promise to pay of the issuing bank. Both banks are joint and several liable for the amount. If German law is applicable, the confirmation of a letter of credit is an abstract promise to pay according to § 780 I BGB.\footnote{129}

3. The legal relationships between banks
The legal relationships between the banks can be relevant to answer questions of liability.

a.) Contract between issuing bank and advising bank, art. 7 UCP 500, § 675 BGB
If a bank takes over the obligation to advise a letter of credit to the beneficiary, it concludes an agency agreement with the issuing bank, according to § 675 I BGB: § 362 HGB rules that if a businessman which business consists in agency of other people’s business receives an offer of a person with whom he has got business connections, he is obliged to answer without delay; silence is in such a case an acceptance. The part of art. 7 a UCP 500 which rules the obligation to inform the issuing bank if the requested bank does not want to advise is without importance in German Law because § 362 HGB leads to the same effect. By concluding such a contract, the issuing bank is obliged to pay commission, the advising bank is obliged to advise.\footnote{130}

b.) Contract between issuing bank and nominated bank, art. 9 a UCP 500 / § 675 BGB
According to art. 9 a of UCP 500, the issuing bank can nominate another bank. If a bank is nominated, it takes over the obligation to examine the documents, but not the obligation to pay itself. It examines and pays in the name and for commission of the issuing bank.\footnote{131} If there is no choice of law in the contract between issuing bank and nominated bank, it is questionable which law is applicable for that contract. A separate view is necessary: if no law is chosen, the contract between issuing bank and nominated bank is ruled, according to art. 28 II EGBGB and International Law by the law of the nominated bank. But the law applicable in the relationship between beneficiary and such a bank stays, as above explained, the law of the issuing bank because the nominated bank examines for commission and in the name of the issuing bank.\footnote{132} If German Law is applicable between issuing and nominated bank, the concluded contract is an agency agreement according to § 675 I BGB because the nominated bank takes over the obligation to examine the documents and pay in the name and for commission of the issuing bank; that bank is obliged to pay commission.\footnote{133} § 164 s. 1 BGB contains rules for the power of attorney: a declaration which is made in the name of another person, covered by power of attorney of this person, become effective for and against the person who is represented. According to § 167 I BGB, the power of attorney is given by declaring it to the authorized person. It is possible, according to the rules of §§ 133 and 157 BGB for interpretation of will declarations, that power of attorney is given by determined conduct.\footnote{134} By nominating a bank for payment, a power of attorney is given to such a nominated bank to examine the documents for the issuing bank and to decide about payment or refuse to pay.\footnote{135}

\footnote{126} Canaris (Bankvertragsrecht) nr. 971.
\footnote{127} Canaris (Bankvertragsrecht) nr. 979.
\footnote{128} Westphalen (Rechtsprobleme der Exportfinanzierung) page 298-299.
\footnote{129} Zahn / Ehrlich / Neumann (Zahlung/Zahlungssicherung im Aussenhandel) nr. 2 / 187.
\footnote{130} Canaris (Bankvertragsrecht) nr. 972.
\footnote{131} Westphalen (Rechtsprobleme der Exportfinanzierung) pages 298-299.
\footnote{132} Westphalen (Rechtsprobleme der Exportfinanzierung) page 299.
\footnote{133} Canaris (Bankvertragsrecht) nr. 972.
\footnote{134} Palandt (BGB) § 167 nr. 1.
\footnote{135} Zahn / Ehrlich / Neumann (Zahlung/Zahlungssicherung im Aussenhandel) nr. 2/184.
c.) Contract between issuing bank and confirming bank, art. 9 b UCP 500 / § 675 BGB
Art. 9 b UCP 500 rules the case that a second bank confirms the letter of credit. Therefore, the issuing bank asks for confirmation and the second bank, usually in the land of the exporter, confirms it or is, in the case that it does not confirm it, obliged to inform the issuing bank immediately, art. 9 c of UCP 500. The contract which is concluded between issuing bank and confirming bank is an agency agreement, § 675 BGB.

4. Legal relationship between applicant and second banks
There are no contracts between the applicant and second banks (advising, nominated or confirming banks). So the applicant has got no right to give instructions to these banks.

V. Doctrines concerning letters of credit
There are two doctrines which are important in letter-of-credit-transactions: the doctrine of separability and the doctrine of strict compliance.

1. Doctrine of separability, art. 3 a of UCP 500
Art. 3 a of UCP 500 declares that credits are by their nature separate transactions from the sales or other contract(s) on which they may be based; banks therefore are in no way concerned with or bound by such contracts, even if any reference is included in the credit. The undertaking of a bank to honour under the credit is therefore not subject to claims or defences by the applicant resulting from his relationships with the issuing bank or the beneficiary. One of the primary functions of the letter of credit is to create an abstract payment obligation independent of the underlying contract of sale and the contract between applicant and bank; therefore the conditions of the bank’s duty to pay are exclusively to be found in the terms of the letter of credit and the right and the duty to make payment do not in any way depend on the performance of the seller’s obligations under the contract of sale. The reason for this doctrine is that the bank should not become a kind of arbitrator to resolve disputes between seller and buyer which would lead to extensive delays of payment and would make the letter of credit unattractive as service. It is essential that the doctrine is scupulously observed, else the continuance of the documentary credit system as the primary means of payment in international trade would be in danger. When examining the documents, the bank do not examine the quality and quantity of goods. To judge what the documents contain or if the documents are economically plausible is not possible for the bank resulting from a lack of knowledge. Art. 4 of UCP 500 explicitly forbids the bank to do so.

2. Doctrine of strict compliance
Art. 4 of UCP 500 rules that in credit operations, all parties concerned deal with documents, and not with goods, services and / or other performances to which the documents may relate. The examination of the documents is based on the doctrine of strict compliance of the documents, that means that the presented documents must be in accordance with the terms and conditions of the letter of credit.

C. THE DOCTRINE OF STRICT COMPLIANCE
According to the contract between applicant and issuing bank, the bank is obliged to observe the borders of the commission given to it and fulfils that request by observe the doctrine of strict compliance. But the doctrine of strict compliance prevails in all the contracts which occur in a letter of credit transaction: the contract between buyer and banker, the contract between banker and seller and between issuing and correspondent banks.

1. Definition
“There is no room for documents which are almost the same, or which will do just as well... if the bank 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 own risk.”. This short definition of strict compliance was  

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136 Eisemann / Eberth (Dokumentenakkreditiv im Internationalen Handelsverkehr) page 82.
137 Canaris (Bankvertragsrecht) nr. 977.
138 Ramberg (International Commercial Transactions) pages 142; 144.
139 Goode (Commercial Law) page 987.
140 Ramberg (International Commercial Transactions) page 142.
141 Jack (Documentary Credits) nr. 1.40.
142 Westphalen (Rechtsprobleme der Exportfinanzierung) pages 240-241.
143 Zahn / Ehrlich / Nerumann (Zahlung/Zahlungssicherung im Aussenhandel) nr. 2/241.
144 Westphalen (Rechtsprobleme der Exportfinanzierung) page 241.
145 Benjamin (Sale of Goods) nr. 23-154.
developed in 1927 by an English court.\textsuperscript{146} The rule “de minimis non curat lex” (rule of insignificance) does not apply in letter of credit transactions.\textsuperscript{147} Although the bank’s duty is limited to check the documents “on their face”, they have to fulfil that obligation strictly so that the buyer can enjoy the protection of the documents which he has instructed the bank to collect.\textsuperscript{148} On their face means that a bank need not ask itself whether the documents may perhaps be false, or whether the goods declared to have been shipped have in fact been shipped, or whether the document may have become worthless after the moment at which it was issued: The actual situation does not concern the bank, except in some cases like, for example, deceit.\textsuperscript{149}

II. Examination of the documents, art. 13, 14 and 15, art. 20-38 of UCP 500

The principle of strict compliance is ruled by articles 13 and 15 of the UCP 500.\textsuperscript{150} Art. 13 a obliges the bank to 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. Art. 13 a rules that compliance of the stipulated documents on their face with the terms and conditions of the credit shall be determined by international standard banking practise as reflected in the articles of UCP 500. Therefore documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance. That standard is applicable only for stipulated documents; documents which are not stipulated will not be examined and shall be returned to presenter or be passed without responsibility, art. 13 a UCP 500. Articles 13 b and c contains formal assumptions: according to art. 13 b, banks shall have reasonable time for examination, not to exceed seven banking days following the day of receipt of the documents, and for determination whether to take up the documents or to refuse payment. According to art. 13 c, banks will deem conditions as not stated and disregard them if a credit contains such conditions without stating the documents to be presented. Art. 15 UCP 500 contains a disclaimer on the effectiveness of documents which will be regarded later. Art. 14 a of UCP 500 contains rules for reimbursing a named bank. Art. 14 b is very important: banks, which can be the issuing bank, the nominated bank or the confirming bank, must determine of the documents alone whether or not they appear on their face to be in compliance with the terms or not. If they appear not to be in compliance, banks may refuse to take up the documents. The bank hereby has got a latitude when judging, which it need because not every error leads to a rejection and many problems can be solved by communication between bank, applicant and beneficiary. But the bank is obliged to decide on its own.\textsuperscript{151} If the issuing bank determines documents to be not in compliance, it may in its sole judgement approach the applicant for a waiver of the discrepancies, art. 14 c. Art. 14 d contains the obligation of issuing, nominated or confirming bank to give notice with reasons and the obligation of the remitting bank to pay back refund with interests. Art. 14 e rules that if the issuing or a confirming bank fail to act in accordance with the provisions or fail to hold the documents at the disposal of or return them to the presenter, they shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the credit. Art. 14 f clear up that if the remitting bank paid under reserve or against a guarantee, that only concerns the relation between such bank and the beneficiary. The issuing bank and a confirming bank are not relieved from any of their obligations or provisions of article 14. The articles 20-38 contain rules for the interpretation of documents: general rules (art. 20-21 UCP 500), different kinds of bills of lading (art. 23-25), multimodal transport document (art. 26), air transport document (art. 27), road-, rail- or inland waterway transport documents (art. 28), courier- and post receipts (art. 29), transport documents issued by freight forwarders (art. 30), „on deck“, „shipper’s load and count“, name of consignor (art. 31), the criteria for clean documents (art. 32), freight payable / prepaid transport documents (art. 33), insurance documents (art. 34-36), commercial invoice (art. 37) and other documents (art. 38). Most of these rules are applicable unless otherwise stipulated in the letter of credit. Banker’s examination consists of three steps: the completeness of the stipulated documents, the compliance on their face and if they are in accordance with each other and the terms and conditions of the

\textsuperscript{146} cited in Ramberg (International commercial transactions) page 144.
\textsuperscript{147} Jack (Documentary Credits) nr. 8.22.
\textsuperscript{148} Ramberg (International commercial transactions) page 144.
\textsuperscript{149} Rooy (Documentary credits) page 121.
\textsuperscript{150} Claussen / Erne (Bank- und Börsenrecht) § 7 nr. 78.
\textsuperscript{151} Eisemann / Eberth (Dokumentenakkreditiv im Internationalen Handelsverkehr) page 159-160.
Documents are complete if all stipulated documents are presented and if each document contains the stipulated number of duplicates. The compliance "on their face" means that there must not be obvious falsifications and errors. The documents are in accordance with each other if they do not contain contradictions.

III. Legal background of strict compliance for the bank, § 665 BGB

The legal background of strict compliance results, additionally to the UCP 500, from the contract between bank and applicant: as above mentioned, a work contract with character of an agency agreement in which the applicant stipulates documents and terms and conditions which must be fulfilled by the beneficiary and controlled by the bank. § 665 BGB is applicable. If a payment depends on assumptions to be fulfilled by third persons, the bank has to control those assumptions in a strict formal way. According to § 665 s. 1 BGB, the commissioner is entitled to diverge from directions given by the employer if he may assume from the circumstances that the employer would approve of the deviation if he knew the facts. But according to § 665 s. 2, the commissioner must give notice to the employer and must wait for a decision first before he deverges, except waiting would cause danger. This rule in BGB tries to manage the tension between the interests of the employer and the independence the commissioner needs to be able to fulfil his obligation. That means that in principle the commissioner is bound to what the employer requires and in case of doubts he must ask. In letters of credit, the bank is obliged to fulfil strictly the demands resulting from its contract with the applicant.

IV. Reasons for strict compliance

Banks are no experts regarding goods and industries; they do not have the knowledge to judge about goods and they cannot overview the terms and conditions between the applicant and the beneficiary. Therefore exists the danger that even discrepancies that appear insignificant cause big damages to the beneficiary. A survey in the 1980s found out that there have been discrepancies in over 60% of the presentations of documents. But even if discrepancies are rampant and many of them can be easily remedied or waived by bankers decision and customers agreement, it is still necessary for the banks to protect themselves and their customers. Even art. 15 of UCP 500 contains a disclaimer for many risks, banks can be liable for losses and damages: if a bank do not fulfil its obligation to examine the documents in a correct way, it is not possible that it can refer to the disclaimer.

D. PROBLEMS CONCERNING THE DOCTRINE OF STRICT COMPLIANCE

There are several problems concerning the doctrine of strict compliance. In this thesis, three problems should be discussed: first: different interpretation and extend of strict compliance; second: the fraud exception and third: the liability of banks if they do not pay attention to strict compliance.

I. First problem: different interpretation of strict compliance

The first problem is that strict compliance is interpreted by courts and in different countries. 

1. Literal compliance

Literal compliance generally means that the terms and conditions of the letter of credit must be fulfilled "literal" letter by letter. The bank is obliged to act within the frontiers of the given, formal and precise banking commission because the underlying sale contract between applicant and beneficiary lies outside knowledge and judgement of the bank. Where a bank receives the documents with a request for payment, it pays at its peril against documents which do not comply exactly with the terms of the credit.
a.) strict literal compliance
A first opinion interprets strict compliance in a strict literal sense: The bank has discharged its duties when it “has ascertained that, within the scope of the documents, all the necessary “i’s” are dotted and all the “t’s” are crossed, but on the other side it is not the bank’s concern if the appearance of compliance masks, some fraudulent dealing.” Banks acting as they should under the doctrine of strict compliance may sometimes be criticized by their customers for being too ambitious when pointing out discrepancies of no or little relevance, but this would be an unavoidable consequence which follows from the nature of the service. In most cases, it would be possible that the bank can ask the customer for approval; if there is no time for communication, a bank can still pay under reserve which would make it possible for the bank to claim reimbursement in case of a relevant discrepancy. To examine the documents “on their face” (art. 13 a UCP 500) would have the meaning that banks are obliged to a formal examination of obvious discrepancies, but not to control if there are material discrepancies. Even a hyphen can lead to different interpretations: the german appeal court BGH had to determine if “documents a-d” means, according to the english or italian way of writing, “a and d”, or means, according to the way of other nations, “a up to d” (a,b,c,d). So even the smallest discrepancy would not be tolerable because the bank cannot judge if such a small discrepancy can lead to enormous damages.

b.) wide literal compliance
Another opinion demands a wider compliance: where it can be shown that the supposed discrepancy results from a patent error, it would be unrealistic to treat the entire tender as invalid by reason only of a technical slip or mistake. To treat any typographical error or patent mistake as a discrepancy would convert the commercial transaction covered by the letter of credit into a proof reading exercise. The kind and relevance of the mistake is therefore decisive, but not only if there is a mistake which is perhaps irrelevant for all parties. A discrepancy may not affect the value or merchantibility of the goods, and may thus appear merely technical. In such a case, a bank would nonetheless be obliged to found the documents acceptable. If a bank was obliged to ask the customer for approval even in obvious cases, a situation could occur where the customer tries to exploit the situation by requesting a discount of the price or other benefits from the seller. But a discrepancy must not be an emergency exit for buyers who regret their decision to buy. Therefore the bank must decide. In cases of obvious typographical or irrelevant errors it should be obliged to take up the documents.

2. Substantial compliance
Substantial compliance means that a letter of credit need not to fulfil all demands in absolute strict sense, but only nearly. Substantial compliance is a definition which was mainly used in the United States of America in some cases. A more liberal approach has been adopted there, in that “where a letter of credit is substantially complied with every reasonable effort should be made by the courts to uphold its validity particularly where the objections are technical in nature and made only in an effort to escape from the legal effect of business bargain.” Such an approach, however, only appears to be aimed at overcoming purely technical difficulties and would not apply to substantive defects. But judgement in USA shows that there are also exceptions which

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164 Ramberg ( International Commercial Transactions ) page 144.
165 Ramberg ( International Commercial Transactions ) page 144.
166 Eisemann / Eberth ( Dokumentenakkreditiv im Internationalen Handelsverkehr ) page 154.
167 BGH = official abbreviation for „Bundesgerichtshof“
170 Benjamin ( Sale of Goods ) nr. 23-156.
171 Eberth ( Rechtsfragen / Vorbehaltszahlung / Akkreditivgeschäft ) page 1303.
172 Jack ( Documentary Credits ) nr. 8.20.
173 Ramberg ( International Commercial Transactions ) page 144.
176 Folsom / Gordon / Spanogle ( International Business Transactions ) page 162.
seems to be substantial and not only formal or technical: so the court of appeals argued in the case “Banco Espanol de Credito vs. State Street Bank § Trust” that not only haec verba not only control absolutely ( ... ), but some courts now cast their eyes on a wider scene than only one document. The court of appeal declared that it was mindful of the admonition of legal scholars that the integrity of international transactions ( i.e. rigid adherence to material matters ) must somehow strike a balance with the requirement of their fluidity ( i.e., a reasonable flexibility as to ancillary matters ) if the objective of increased dealings to the mutual satisfaction of all interested parties is to be enhanced.177 Such argumentation in judgement tries to adapt the fact that many documents contains errors ( for example in 40-50% of all letters of credits of Swiss banks and in 2/3 of all letters of credits of banks in London in 1983 contained errors ) and that in most cases, the beneficiary cannot influence the issue of documents. The beneficiary can issue the commercial invoice in strict accordance with the terms and conditions of the letters of credit, but the possibility to control and observe all the documents from third parties like bill of ladings, transport documents or insurance documents is missing.178 In German law, there have been tendencies at the end of 1950s that in a letter of credit small discrepancies should be allowed if a reasonable judgement of the presented documents leads to the sure result that the purpose of the terms and conditions of the letter of credit will be reached,179 what demands not only a formal, but also in parts material examination of the documents. In another case, a bank should have been obliged to ask for information about the width of an expert investigation before payment because essential criteria were written in quotation marks and the applicant found the documents as not sufficient.180 A third case of the 1950s demanded from the bank to interpret the terms of the credit. A “good-control-certificate” was demanded, but in the country of the beneficiary was no authority which could have issued such a certificate. Therefore the letter of credit should have interpreted so that in this case a “certificate of inspection” of a company would have been sufficient.181 In our times, German courts take as basis of their decisions that the letter of credit, as every contract, is bound of the principle of good faith ( §§ 133, 157 BGB ).182 That means that the bank must take up documents if discrepancies are as insignificant and irrelevant as regarding the principle of good faith, a rejection would not be justified.183 Opinions which plead for substantial compliance takes into consideration that nearly no bank automatically refuses payment if documents are not in compliance with the terms. In many cases a refusal to pay would not be in accordance with the economic interests of both parties, applicant and beneficiary.184

3. **Allowed tolerances according to UCP 500, art. 37 c and 39 of UCP 500**

UCP 500 itself allows tolerances in some cases, which can indicate for both, literal and substantial compliance: persons who plead for literal compliance will argue that in describing allowed tolerances, the UCP 500 gave strict rules in which cases they are allowed and therefore all cases which are not ruled are not allowed. Followers of substantial compliance will argue that the allowed tolerances indicate that UCP 500 rules do not handle all the things strictly formal and therefore also material aspects must be regarded when decision is to be made. Art. 37 c of UCP 500 rules that the description of the goods must correspond with the description in the credit, but in all other documents, the goods may be described in general terms not inconsistent with the description of the goods in the credit. Art. 39 rules allowances in credit amount, quantity and unit price. Art. 39 a rules that the words “about”, approximately”, “circa” or similar expressions which are used in connection of the amount of the credit or the quantity or the unit price are to be construed as allowing a difference not to exceed 10% more or 10% less than the amount or the quantity or the unit price to which they refer. But even there are no words, art 39 b rules that, unless a credit stipulates that the quantity of the goods specified must not be exceeded or reduced, a tolerance of 5% more or 5% less will be permissible if the amount of the drawings does not exceed the amount of the credit. This tolerance does not apply when the credit stipulates the

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178 Eberth ( Rechtsfragen / Vorbehaltszahlung / Akkreditivgeschäft ) page 1302 .
179 Eberth ( Rechtsfragen / Vorbehaltszahlung / Akkreditivgeschäft ) page 1302 .
182 Koller ( Dokumentenstrenge / Treu und Glauben ) page 294 .
183 Lücke ( Dokumentennakreditiv / Deutschland / Frankreich / Schweiz ) page 89 .
184 Eberth ( Rechtsfragen / Vorbehaltszahlung / Akkreditivgeschäft ) page 1303 .
quantity in terms of a stated number of packing units or individual items. Art. 39 c allows 5% less in the amount of the drawing in case of forbidden partial shipments if the goods were shipped in full and a unit price was not reduced.

4. **Importer´s, exporter´s and banker´s point of view**

If the problem of interpretation of strict compliance is regarded from importer´s, exporter´s and banker´s view, it will lead to different results. The interest of the exporter can be easily determined: he wants to receive payment against the documents, even there are (relevant) mistakes. So an exporter will plead for the substantial compliance which offers more tolerances to him. A bank is interested to receive its charges and commissions without or with little risk. On the other hand, it must keep its reputation which can hardly be reached if every irrelevant mistake will lead to an obligation to refuse payment. So the interest of a bank is to make decisions on its own. For it, the literal compliance in a wider sense offers the best possibilities: obvious typographical errors do not lead to an obligation to refuse; on the other hand it can refuse payment in cases of doubt and is not obliged to examine the documents materially or finds itself as an arbitrator between applicant and beneficiary with the risk that it pays, but is not reimbursed and must lead a process. Regarding the importer, it is not easy to say what interpretation of strict compliance he would prefer. Of course, he would not prefer the substantial compliance because it would lead to additional risks for him if his stipulations were not exactly fulfilled and the bank took up the documents in the belief that they are substantial equal. In such a case, a huge process risk would occur for him if he refused to pay the bank. But also it is not quite clear if the strict literal compliance offers more flexibility for him: the chance to give instructions to the bank if there are typographical or irrelevant errors makes it possible to exploit the situation and claim new negotiations about the price with the beneficiary. On the other side, a situation can occur when a bank has got own interests like financing the goods by credit: in such a situation, exporter and importer perhaps both want the sale contract to be fulfilled even there is an irrelevant error, but the bank refuses to pay because for example, the interest rates for a credit have been raised or because the credit-worthiness have been changed. So it is more secure for the importer if strict compliance is interpreted as wide literal compliance.

5. **Strict compliance regarding commercial invoices, art. 37 UCP 500**

The commercial invoice is in most cases the only document which the beneficiary issues itself. It is the primary document in that it sets out what the goods are in respect of which presentation is been made and it states the price which is being claimed in respect of them. It is the document in which the seller declares that he has sold to the buyer, what he has sold and at what price he has sold; also it is the commonest document in international trade because nearly no documentary credit does not stipulate an invoice. According to art. 37 a, a commercial invoice must, unless otherwise stipulated in the letter of credit, appear on their face to be issued by the beneficiary named in the credit, must be made out in the name of the applicant and need not to be signed. According to art. 37 c, the goods must correspond with the description in the letter of credit. First, all discrepancies which are not in accordance with art. 37 I UCP 500 are relevant. Second, a deviation in the description of the goods in the invoice may indicate that the seller recognises that they are not the ones called for in the credit. But if the words in an invoice correspond with the credit, depends in many cases on the interpretation of strict compliance. So it is said that “must correspond” do not mean that they must precisely be the same, but there should be no differences in the descriptive words themselves. The safe course is to follow the wording of the credit precisely. In the case “Kydon Compania Naviera SA vs National Westminster Bank Ltd., The Lena” a ship named Lena was sold and the letter of credit contained very many details like net and gross weight, year of construction, equipment etc. and contained a link to a memorandum of the sale contract where all those specifications occured again. In the commercial invoice, the weight was different, the year of construction was not mentioned, the equipment was not stated etc. Even additionally a certificate was stipulated and the shipped was named and the invoice and the sale contracts contained clear links, the invoice was held insufficient. To avoid complications, it is
important that the description of the goods is clearly identifiable as the description of the credit and that it is kept simple. In evaluating the description of the goods the bank must tread a slippery path between logic on the one side and caution on the other. If, for example, “new trucks” are requested, an invoice which was worded “trucks in new condition” is insufficient: also if in the underlying case “Bank Melli Iran v. Barclays Bank” Barclays Bank accepted the documents and the trucks before have never been used (so they have been “new” according to the sale contract), events led to a process and the trucks stood outside in the open for a winter and began to rust. The court held that “new” had a different meaning that “in new condition”. Another case demonstrates that the interpretation of strict compliance is important and banks do not have the knowledge to judge: in a case where the credit stipulated “Java White Sugar”, the bank paid against an invoice which described the goods as “White Java Sugar”. This was by no means the same and the bank suffered a loss. This example shows that for someone without knowledge, it is very hard to distinguish a typographical error in the sense of wide literal compliance or words which appears to have the same meaning in the sense of substantial compliance from relevant mistakes. In another case, a bank refused to pay against an invoice which described “250 bags Fair Average coffee and 250 bags superior unwashed coffee” because the letter of credit stipulated “250 bags superior unwashed coffee and 250 bags Fair Average coffee.” Such a suspicious inverted order had been a very unsound reason, but it shows that a banker must find a small passage and the only reward which awaits him is 1/100 of the amount of the credit.

If the amount in the commercial invoice is higher than that in the letter of credit, the bank is, according to art. 37 b, allowed, but not obliged to reject the documents. But if it accepts the documents, it must not pay a higher amount than the amount in the letter of credit.

In that case, its decision will be binding upon all parties, art. 37 b. But also in cases of higher amounts, strict compliance plays its role: even art. 37 b seems to give a choice to the banks, it is found that in reaching a decision the bank will have to consider what is reasonable: with a credit amount of 50,000 USD, an excess of one dollar will generally not justify a refusal, but 1,000 USD will.

6. Strict compliance regarding documents of third non-contract parties

The requirements which the other documents issued by third parties, which are not contract parties of the sale contract or involved in the letter-of-credit transaction, must fulfill, can be found in art. 20-38 of UCP 500, as above mentioned. The beneficiary should pay attention to that third parties like insurance companies, transporters, freight forwarders etc. issue clean documents without mistakes which fulfill the demands. When presenting these documents, the beneficiary and not the third parties must face the consequences if there are mistakes. So it is in his own interest to check every document before and correct mistakes in advance. It is to be considered that perhaps expressions which can be understood easily by the beneficiary can be interpreted else by the bank. In case “J.H. Rayner and company ltd. V. Hambro’s Bank ltd., Hambro’s bank opened a letter of credit which stipulated a bill of lading covering about 1400 tons of Coromandel groundnuts. The issued bill of ladings described the goods as “O.T.C. C.R.S. and in the body of the bill as “machine-shelled groundnut kernels”. An expert would have found out that both expressions exactly mean the same, but the bank refused to pay and won the appeal process because the issuer of the bill of lading did not pay attention to strict compliance. The case was in 1940 when there have been no art. 37 c of UCP 500 which allows general description of the goods except in the invoice, and when there have been no discussion about substantial compliance which would lead in this case to another decision. But even today it would be questionable if such a bill of lading was taken up by banks.

7. Result

As solution of the problem of interpretation of strict compliance, it must be said that the substantial compliance is to be rejected: the demand that the principle of strict compliance should

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190 Jack (Documentary Credits) nr. 8.48.
191 Rooy (Documentary Credits) page 132.
192 Rooy (Documentary Credit) page 132.
193 Rooy (Documentary Credits) page 132.
194 Rooy (Documentary Credits) page 132.
195 Canaris (Bankvertragsrecht) nr. 1001.
196 Rooy (Documentary Credits) page 133.
be handled not so strict and that banks, when examining the documents, also should regard the aspect if they are conforming with the wished transaction of the sale contract, ignores the ability and knowledge of banks. \(^{198}\) A bank cannot examine the material aspects of documents, also that would ignore its function to arrange payment. \(^{199}\) Even the demands of strict compliance should not be exceeded so that a situation occur in which the facilitation of the letter of credit reaches the opposite and block the international trade, opinions who wants to soften the strict compliance must be opposed: Only the observance of strict compliance guarantees a maximum of security to all concerned parties. \(^{200}\) To accept a substantial compliance would lead to uncertainty of all parties and to a loss of reliance in letters of credit. A strict literal compliance has got the disadvantage that a customer can exploit the situation. Also it is accepted that a bank need not to follow the customer’s instructions if it has got an own interest in the compliance of the documents, for example if it financed the goods. \(^{201}\) That would lead to inequality and to new conflicts between customer and bank. Even between 40-60\% of all letter of credit transactions contain errors, it is rarely in practice that banks automatically reject all those documents. Often, the errors are irrelevant and it is not in the economic interest of all parties to refuse a payment. \(^{202}\) Therefore, a wide literal compliance seems to fulfil the demands of all parties best. Even cases can occur where it is not easy or even impossible to separate irrelevant from relevant mistakes ( like in the Java White Sugar / White Java Sugar case ), there remains a risk with the banks who examine documents and of course with the importer and the exporter. Problematic hereby is if the knowledge of the bank or the knowledge of an expert should take as the scope of the judgement. The question arises if a bank is obliged to collect further information from third persons. Also problematic is if the time of decision ( ex ante ) is relevant or if an ex-post consideration is useful. \(^{203}\) As mentioned, the information should be that of the bank without knowledge from third persons or experts, as it would be necessary for substantial compliance. The relevant time should be the time of examination, not an ex-post consideration like in the case of Java White Sugar / White Java Sugar. It should not be the risk of the bank if an exporter is fraudulent and tries to mask his fraud with a typographical error. For the bank, it was not foreseeable that Java White Sugar is something else than White Java Sugar. For a court, it is easier to judge ex post. The banks need space to make decisions and they have other instruments of security: they can pay under reservation or demand a guarantee of the exporter’s bank to receive the money back if the documents are unclean. \(^{204}\) But of course, a risk always remains. As result can be said: the interpretation of strict compliance as wide literal compliance is useful for all parties concerned in the letter of credit transaction. The horizon must be that of the bank in the moment of examination. \(^{205}\) If there are doubts if the interest of the applicant is secured in that moment, no one can demand that a bank ignores that and accept the documents. \(^{206}\)

II. Second problem: The fraud exception

The second problem is the fraud exception. The seller can commit a fraud, for example, by combining the role of supplier and transporter and perpetrate the fraud during the transport. Another possibility is that goods and transport only exist on the paper to obtain payment or that the beneficiary supplied rubbish instead of the goods. But it is not only the seller who can be fraudulent: fraud in connection with documentary credits can take various forms: even it is in generally the seller, it can also be the transporter who is fraudulent and the beneficiary can be a stranger to the fraud. \(^{207}\)

1. Fraud as exception of the doctrine of strict compliance

Fraud will justify a bank in not paying a beneficiary under a credit. The BGH decided that a bank can make objections and refuse payment only in cases where the desire of the beneficiary to receive payment would be an inadmissible assertion of that right. Such an inadmissible assertion of

\(^{198}\) Zahn / Ehrlich / Neumann ( Zahlung / Zahlungssicherung im Außenhandel ) nr. 2/242 .

\(^{199}\) Westphalen ( Rechtsprobleme der Exportfinanzierung ) page 241.

\(^{200}\) Eberth ( Rechtsfragen / Vorbehaltszahlung / Akkreditivgeschäft ) page 1302.

\(^{201}\) Liesecke ( Neue Rechtsprechung zum Dokumentenakkreditiv ) page 465.

\(^{202}\) Eberth ( Rechtsfragen / Vorbehaltszahlung / Akkreditivgeschäft ) page 1303.

\(^{203}\) Koller ( Dokumentenstrenge / Treu und Glauben ) page 294.

\(^{204}\) compare: Eberth ( Rechtsfragen / Vorbehaltszahlung / Akkreditivgeschäft ) page 1303.

\(^{205}\) Eisemann / Eberth ( Dokumentenakkreditiv im Internationalen Handelsverkehr ) page 154.

\(^{206}\) Liesecke( Neue Rechtsprechung zum Dokumentenakkreditiv ) page 464.

\(^{207}\) Ventris ( Banker’s Documentary Credits ) page 142.
right exists if the beneficiary uses the letter of credit even it is obvious for everybody or at least clear evidential that a claim to receive payment from the underlying contract do not exist.\textsuperscript{208} The House of Lords established: “The exception for fraud on the part of the beneficiary seeking to avail himself of the credit is a clear application of the maxim ex turpi causa non oritur actio or, if plain English is to be preferred, ‘fraud unravels all’. The courts will not allow their process to be used by a dishonest person to carry out a fraud.”\textsuperscript{209} The fraud exception means that the principle of the independence of the bank’s obligation under the letter of credit be extended to protect the unscrupulous seller in cases where the seller’s fraud has been called to the bank’s attention.\textsuperscript{210} An exception is made in the sense that the court take into account evidence, that is, evidence apart from the terms of the credit and the documents themselves, which is put before it with the intention of establishing fraud. Therefore, such an evidence can relate to the goods themselves, to documents presented or to the knowledge of the party presenting the documents which are fraudulent.\textsuperscript{211}

2. First situation: fraudulent documents which appear fraudulent on their face

A first situation can occur where a fraud should be committed, but also the documents appear on their face to be fraudulent or inconsistent. The Uniform Customs do not attempt to set out the position where documents which are presented under a letter of credit are forged or otherwise fraudulent because of the uncertainty of the position in municipal laws or differences herein. The intention of the UCP 500 is to leave questions of fraud to the relevant municipal law and not to deny the existence of a fraud exception.\textsuperscript{212} But in obvious cases where there is not only fraud, but also documents which are not in compliance, the situation is easy to handle by refusing payment. In that case, there is not even an exception to strict compliance because the rules of UCP 500 are here sufficient to secure importer and bank.

3. Second situation: fraudulent documents which do not appear fraudulent on their face

But also a second situation is possible where a fraud should be committed and the documents appear on their face to be in compliance with the terms of the letter of credit.

a.) Right of the bank to reject because of suspicion

In such a case, the question arises if a bank can reject the documents even they seem to be in compliance on their face. Such a suspicion can arise if the buyer tells the bank about goods which are not in accordance with the sale contract or if other clues indicate a fraud. In a leading case in Germany, audio cassettes were bought from a Japanese company in Hong Kong, but when a first part of the delivery arrived by air, some cassettes were wet and additionally, when inspected by experts in Germany, the suspicion arised that the cassettes and their trademark were falsified and that they were not produced by the company shown on the package. The letter of credit was divisible. The bank paid against the documents even it had suspicion that the contract of sale was not fulfilled correctly. The BGH found the documents in compliance with the terms of the credit and held that the bank was obliged to pay. The reasons for that decision have been that the bank was not allowed to refer itself on the sale contract when refusing payment and that a letter of credit contract between applicant and bank should gave security to the seller to receive payment independent from objections concerning the sale contract. Claims from the sale contract would therefore not touch the credit’s obligation to pay and must be claimed from the buyer additionally. An inverted process situation would occur: First to pay, second to process.\textsuperscript{213} Courts and literature opinions adjudge the right to refuse payment if the desire to receive payment was an abuse of right. But a strict scope should be considered. The BGH found that lacks of quality of the goods, even if they are weighty, are not enough to assume such an abuse. Instead, the goods which should fulfil the sale contract must obviously be completely insufficient to fulfil the contract of sale or such insufficiency must clear to be proofed. That demand would not be fulfilled in this case because instead of an obviously insufficiency of the goods the case only shows a strong suspicion of non-performance of the sale contract. To consider a refusal to pay because of suspicion as just could cause the danger that objections will be the rule and the abstract promise to pay the

\textsuperscript{209} Cranston (Principles of banking law) page 423 .
\textsuperscript{210} Rooy (Documentary Credits) page 116 .
\textsuperscript{211} Jack (Documentary Credits) nr. 9.3 .
\textsuperscript{212} Jack (Documentary Credits) nr. 9.4 .
\textsuperscript{213} concerning the inverted process situation: Canaris (Bankvertragsrecht) nr. 1016 .
exception. A strong suspicion that the contract of sale is not fulfilled correctly is therefore no authorization for the bank to refuse payment of the letter of credit to the beneficiary.\textsuperscript{214} If it was sufficient to take a fraud asserted by the beneficiary as ground for avoiding an obligation to pay, the security offered by documentary credit in international commerce would be seriously undermined.\textsuperscript{215} Also it must be considered that the abstract promise to pay and the strict compliance should only be softened very carefully and reserved.\textsuperscript{216} Therefore it is correct that a suspicion cannot lead to a refusal to pay.

\section*{b.) Right of the bank to reject because of customers instructions}

Also a situation may occur in which the bank itself is not suspicious, but in which the customer informs the bank that the exporter commits a fraud, for example by shipping rubbish or by conspiracy behaviour together with the shipper. The question arises if the bank can reject the documents or even must reject the documents or if it is obliged to pay. As mentioned above, the bank is bound by the instructions giving to it when contracting with the applicant, § 665 s. 2 BGB (see C III) is applicable and allows deviations only in cases of emergency.\textsuperscript{217} But the right to give instructions is limited to the agency agreement in which the buyer gave its instructions, or to cases where the bank asks the buyer (without any obligation to do so) and therefore shows that it will respect the opinion of the buyer, for example in cases where discrepancies have occurred and the bank asks the buyer if he nevertheless wants to honour the documents. The buyer has not got the right to give further instructions after opening of the letter of credit; a new instruction requires the agreement of the bank because of the concluded contract.\textsuperscript{218} The question arises if a customer can be testimony in a process and therefore the bank receive a clear evidence of fraud if the applicant asserts a fraud. The statement of the buyer is generally no sufficient evidence because he can be testimony in a formal sense, but is economically party and possesses only little credibility because of his own interest in the judgement.\textsuperscript{219} So according to German Law, the assert of the buyer is to be disregarded by the bank after opening of the credit. An American court decided in the “Angelica-Whitewear case”, in which “Angelica” argued that she told the bank of a fraud before payment. The bank ignored that warning and paid. The bank won the case, but the court gave as reason that Angelica had not given sufficient notice to the bank of the fraud: such notice must be such to make the fraud clear or obvious to the bank.\textsuperscript{220} So it can be said that information of the customer or clear or obvious evidences are not to be disregarded by banks, but the decision to reject or to take up is made by the bank alone. If it ignores a clear evidence of fraud, this can lead to a liability of the bank. But this question must be separated from the question if the customer has got the right to instruct the bank to refuse payment, which must be denied.

\section*{c.) Right and obligation of the bank to reject because of sure knowledge}

A bank is not only authorised, but obliged to reject documents if it surely knows that a fraud should be committed.\textsuperscript{221} The fraud has to be proven.\textsuperscript{222} It is not enough to claim a fraud, only a proof can help to determine it. That proof must be furnished by the bank responsible for the examination of the documents.\textsuperscript{223} A fraud can be assumed if the beneficiary knows or if it is evident for him that he has no claim of the sale contract and if he exploits the letter of credit to receive an advantage which obviously does not belong to him.\textsuperscript{224} It is necessary that a fraud can be proofed obviously or effective.\textsuperscript{225} But if the bank can object that the desire to receive payment is an abuse of right of the beneficiary, it is obliged to refuse payment because of the right of the applicant to give instructions resulting from the agency agreement and its obligations to secure the customer.\textsuperscript{226} The bank must make a difficult decision whether an evidence is clear or obvious or not. This can lead to a situation where, as maybe in most cases, an applicant tells the bank

\begin{footnotes}
\item[215] Rooy ( Documentary Credits ) page 118 .
\item[216] Ulrich ( Rechtsprobleme / Dokumentenakkreditiv ) page 122 .
\item[217] Westphalen ( Rechtsprobleme der Exportfinanzierung ) page 238 .
\item[218] Zahn / Ehrlich / Neumann ( Zahlung / Zahlungssicherung im Außenhandel ) nr. 2/386 .
\item[219] Canaris ( Bankvertragsrecht ) nr. 1017 .
\item[221] Ulrich ( Rechtsprobleme des Dokumentenakkreditivs ) page 124 .
\item[222] Rooy ( Documentary Credits ) page 118 .
\item[223] Rooy ( Documentary Credits ) page 119 .
\item[224] Canaris ( Bankvertragsrecht ) nr. 1016 .
\item[225] Canaris ( Bankvertragsrecht ) nr. 1017 .
\item[226] Canaris ( Bankvertragsrecht ) nr 1024 .
\end{footnotes}
about a fraud and the bank have to decide whether it pays and perhaps loses to right to get reimbursed or to refuse payment and risk a process with the beneficiary. As above mentioned, the customer is not allowed to forbid the bank the payment. A bank may reluctantly agree to do so or may refuse, and if acting in good faith may proceed to pay out without displacing its absolute right to be reimbursed by the buyer. If the buyer think the evidence of fraud is sufficiently strong, he can proceed by means of an action for an injunction to enjoin the bank from paying. Also he may refuse to pay the reimbursement to the bank. In a process, the bank’s good faith in paying out despite the warnings could be called into question: as long as the buyer could establish both the fraud or the forgery complained of and notice to the bank, he might have a good defense against the bank’s action for reimbursement. In the American leading case “Sztejn v J Henry Schroder Banking Corpn.”, the applicant had told the bank that rubbish had been shipped before it paid or signed drafts. The courts held that the bank was not allowed to pay in such situation because it was not “forced to pay the draft accompanied by documents covering a transaction which it has reason to believe is fraudulent.” But also in this case, it must have been a question of evidence if the asserts of the customer were relevant. But even in cases of sure knowledge a bank is not always allowed to reject documents: in the case “The American Accord” goods should have loaded on the vessel “American Accord” in London within a fixed time. The bank rejected the documents, even the bill of lading showed that the goods were loaded in London in time because of her knowledge that the goods were shipped in Felixstowe one day later. Even the bank surely knew that the bill of lading was therefore fraudulent, it was not allowed to reject the documents because the fraud was not committed by the beneficiary and therefore could not be held against him. The situation would have been another if a correct bill of lading with the correct date and place have been issued and the beneficiary would have falsified it, or if the bill of lading would have been falsified by the shipper for the beneficiary or if he would have acted even he knew that the bill of lading was falsified.

4. Resume
As a resume, it can be said that banks are not allowed to refuse a payment because of own suspicion or suspicion or instructions by the applicant. The bank has to make a difficult decision if a customer shows evidences. But in that case, the general process rule of clear or obvious evidence should also determine ex ante if the bank was right in rejecting or paying against the documents. In cases of doubts if an evidence was clear or obvious, for example if there was just a suspicion or the bank has just heart of third parties that there could be a fraud, the bank has to fulfil its abstract promise to pay. Only the sure knowledge or an obvious or clear evidence allows the bank to refuse a payment. Criteria for the bank should be if the evidence is sufficient to win the process which often follows after the refusal. The court decision that frauds committed by third parties without knowledge of the beneficiary cannot held against him even a bank has sure knowledge is to be criticized: good faith and lack of notice should not entitle the seller / beneficiary to force the bank to pay out against documents which the bank has good reason to believe to be forged or fraudulent; allowing a seller to enforce payment in such a situation would be to allow him to escape the responsibility placed on him in an international trade transaction. The security and the reliance in letters of credit will be lowered and if such decisions are made often, it will be unattractive for banks to bear the risks of third party frauds. The judge could be interpreted as an invention to fraudulent shippers to issue documents as stipulated in a credit without knowledge of the beneficiary, but showing wrong facts and then steal the goods and let the bank pay for it.

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227 Folsom / Gordon / Spanogle ( International Business Transactions ) page 212.
228 Jack ( Documentary Credits ) page 19-20.
230 Canaris ( Bankvertragsrecht ) nr. 1017.
III. Third problem: Liability of banks in case of non-consideration of strict compliance rules

The third problem analyses how banks are liable if they did not pay attention to strict compliance.

1. General liability, art. 15-17 of UCP 500

Art. 15-17 of UCP 500 contains general rules concerning the liability of banks. Art. 17 of UCP 500 rules that banks assume no liability for force majeure, which appear not relevant regarding problems of strict compliance. Art. 15 contains a disclaimer on effectiveness of documents: banks assume no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any documents, or for the general and/or particular conditions stipulated in the documents or superimposed thereon; nor do they assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods represented by the documents, or for the good faith or acts and/or omissions, solvency, performance or standing of the consignors, the carriers, the forwarders, the consignees or the insurers of the goods, or any other person whomsoever. According to art. 16 of UCP 500, banks assume no liability or responsibility for the consequences arising out of delay and/or lost in transit of any message(s), letter(s), document(s) or for delay, mutilation or other error(s) arising in the transmission of any telecommunication. They also assume no liability for error(s) in translation and/or interpretation of technical terms, and reserve the right to transmit credit terms without translating them. So it can be said that the duty of the bank concerning the examination is very strict, but there is no strict liability if banks fail to uncover discrepancies in the documents: they can refuse to pay beneficiaries in the absence of strict compliance, but their own customers cannot hold them to a higher standard than reasonable care, which is determined as standard banking practice as reflected in the UCP itself.232

2. Liability of issuing banks

First to be analysed is the liability of issuing banks.

a.) Liability for own behaviour

First, it is to determine to what extend an issuing bank is liable for own behaviour.

aa.) Claims of the applicant

A first situation could occur in that a bank paid against falsified documents which appeared on their face to be in compliance with the terms. The customer can in this case make the objection that the commission was not fulfilled correctly even it was with reasonable care not possible to discover the falsification. An interpretation of the commission would show the result that only the honouring of genuine documents is covered by it. But in this case, art. 15 is applicable: banks assume no liability for falsification of documents. That the bank do not recognize falsifications is a specific risk in letter of credit transactions and the buyer has to bear it.233 But also a second situation can occur in which a bank paid against documents which could have identified as being falsified with reasonable care. The question arises if art. 15 is also applicable and the bank is not liable. But that would destroy the obligation of art. 13a which rules that the bank must examine the documents with reasonable care if they are in compliance with the terms. Because art. 13a would be senseless if art. 15 was always applicable, art. 15 is only applicable if the obligation to examine was fulfilled correctly. Therefore a bank is liable if it do not examine correctly and it is not possible for it to appeal to the disclaimer of art. 15.234 And a third situation could occur in which the bank take up documents even they are not in strict compliance with the terms of the credit and the applicant suffers a damage. If a bank do not fulfil the terms of the letter of credit correctly as instructed by the applicant, the bank looses its right to claim reimbursement from the customer.235 § 667 BGB rules that the commissioner is obliged to surrender everything to the customer what he receives for the performance of the commission or what he receives through the agency. If the customer has already paid the amount of the letter of credit, the bank has no right to keep it and § 667 BGB gives the applicant a claim to reclaim the money.236 But in case that the

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232 Cranston (Principles of banking law) pages 424-425.
233 Canaris (Bankvertragsrecht) nr. 964.
234 Canaris (Bankvertragsrecht) nr. 965.
235 Canaris (Bankvertragsrecht) nr. 949.
236 Canaris (Bankvertragsrecht) nr 949.
bb.) Claims of the beneficiary
If the issuing bank refuses to pay even the documents fulfil the requirements, the beneficiary can first, according to § 780 I BGB, claim payment from it. § 280 I is also applicable in cases of obligations formed by law.²³⁸ § 280 I s. 1 BGB rules that the creditor of an obligation can claim, if the debtor breaches a duty of the obligation, that damages from the debtor which were caused hereby. § 280 I s. 1 BGB rules that consequential losses are involved in the claim to get compensated.²³⁹ Therefore the beneficiary can claim damages according to §§ 780 I, 280 I.

cc.) Claims of third banks
Also claims of third banks are possible if the bank reject documents which were in compliance on their face. § 670 BGB rules that if the commissioner makes expenditures for the purpose of the execution of the commission which he can find necessary in these circumstances, the customer is obliged to compensate them. Because the amount of the letter of credit is a necessary expenditure, a confirming or a nominated bank can claim reimbursement, § 670 I BGB.²⁴⁰ Additionally, a confirming or a nominated bank can claim damages according to §§ 280 I, 675 I if the issuing bank breach a duty of the agency agreement.

b.) Liability for behaviour of third banks, art. 18 of UCP 500
Another question which arise is if the issuing bank is liable for the behaviour of third banks which it choose to fulfil its contract with the applicant. § 278 s. 1 BGB rules that a debtor is liable for faults by persons he choose to fulfil. A liability could exist if a third bank was assistant of the issuing bank. Because the advising bank fulfils the duty of the issuing bank to give notice to the beneficiary, it is regarded as assistant. Also a nominated bank is assistant because it acts in the name and for commission of the issuing bank. A confirming bank is not an assistant of the issuing bank because the beneficiary receives an abstract independent claim from it.²⁴¹ Art. 18 a of UCP 500 rules that banks utilizing the services of other banks for the purpose of giving effect to the instructions of the applicant do so for the account and for the risk of the applicant. According to art. 18 b, banks assume no liability or responsibility should the instructions they transmit not be carried out, even if they have themselves taken the initiative in the choice of such other banks. Therefore third banks are maybe assistants of the issuing bank, but the issuing bank is not liable even it choose them. Alone liable is the applicant. Because third banks are also assistants of him, he can even be faced with a situation in which he is forced to pay compensations.²⁴²

3. Liability of advising banks, art. 7 of UCP 500
Art. 7 describes that if an advising bank elects to advise a credit, it shall take reasonable care to check the apparent authenticity of the credit which it advises. If the advising bank breaches this duty and advises a letter of credit which is not authentic, it is liable. § 242 rules that the debtor is obliged to fulfil the obligation in accordance with good faith and customs ( of trade ).This leads to an obligation by law without primary obligation to performance which found its reasons in the legal transaction between advising bank and beneficiary. If that obligation is breached, the beneficiary can claim damages from the advising bank.²⁴³ Art. 7 of UCP 500 contains no further rules of liability of an advising bank. But concerning the doctrine of strict compliance, the question arises what happens if damages are caused because the terms and conditions of a letter of credit were not advised correctly. A situation could occur in which the beneficiary rely on the advised information and presents the documents requested from the advising bank, but not from the issuing bank, on the last day before maturity of the letter of credit, so that a second tender would be impossible. If such an error was caused by transmission of the message, art. 16 is applicable and the bank assume no liability. But it could be that the error was caused by negligence of the advising bank itself. Because there are no rules regarding such a liability in UCP

²³⁷ Canaris ( Bankvertragsrecht ) nr 950.
²³⁸ Palandt ( Gesetz zur Modernisierung des Schuldrechts ) § 280 nr. 9.
²³⁹ Dauner-Lieb ( Das Neue Schuldrecht ) § 2 nr. 36.
²⁴⁰ Canaris ( Bankvertragsrecht ) nr 972.
²⁴¹ Canaris ( Bankvertragsrecht ) nr 974.
²⁴² compare: Canaris ( Bankvertragsrecht ) nr. 978-979.
²⁴³ Canaris ( Bankvertragsrecht ) nr. 978; Eisemann / Eberth ( Dokumentenakkreditiv im Internationalen Handelsverkehr ) page 81.
500, persons which suffered losses or damages must try to get compensated by application of civil law. The issuing bank has got an agency agreement with the advising bank. (see B/II/5./c.) Therefore, if the bank advises not as it should do, the issuing bank can claim damages. If German law is applicable, the issuing bank can claim damages according to § 280 I BGB. But the beneficiary and the applicant or a confirming bank do not have any contracts with the advising bank.\textsuperscript{244} The beneficiary can, as above explained, claim damages based on § 242 BGB because of the obligation by law without primary performance.\textsuperscript{245} The same possibility has the applicant: he is not limited to a liquidation by claims transfered by third party to him.\textsuperscript{246} Third non-contract parties, possibly a third bank, can claim damages according to rules about civil wrong. § 823 I ruled that a person which negligent or through deliberate act breaches illegal a right of another person, is obliged to compensate the other person for the damages caused hereby. The damages must be caused by the behaviour of the person (conditio sine qua non) and it must be responsible, that means that his behaviour and not that of another person really causes the damages.\textsuperscript{247} A problem hereby can be the burden of proof and the own behaviour of possibly claimants when they also acted negligent additionally to the advising bank.

\textbf{4. Liability of nominated banks}

If a nominated bank take up falsified documents which it examined with reasonable care and which seemed to be in compliance on their face, it can claim reimbursement from the issuing bank.\textsuperscript{248} If the nominated bank breaches its duty to examine with reasonable care and therefore damages are caused, the nominated bank looses its right to get reimbursed by the issuing bank.\textsuperscript{249} The issuing bank is not allowed to reimburse the applicant because it need not to make expenditures to fulfil the commission.\textsuperscript{250} Such a situation can occur if the bank do not pay attention what terms are given in the credit or if it accepts documents which are fraudulent and appear on their face to be fraudulent. Additionally, the issuing bank can claim damages because of a breach of the agency agreement, §§ 675, 280 I, as explained in case of the advising bank’s liability (see D/III/2.). Concerning the contradiction of articles 13 and 15, the above explained theory is applicable. If the beneficiary suffered a damage (for example because the nominated bank rejected documents even it was not allowed to reject), the situation is the same as in the case of the advising bank: the beneficiary can claim damages because of the obligation by law without primary performance, § 242 BGB.\textsuperscript{251}

\textbf{5. Liability of confirming banks}

Concerning the contradiction of articles 13 and 15, art. 13 must be fulfilled first before application of art. 15’s disclaimer, as above explained. The liability of a confirming bank is nearly the same as in case of the advising and the nominated bank: in case of non-consideration of strict compliance the applicant can claim damages because of § 242 BGB, the issuing bank can claim damages because of the breach of the agency agreement (§§ 675, 280 I BGB).\textsuperscript{252} Additionally, the beneficiary can claim payment if the documents are in accordance with the terms of the credit.\textsuperscript{253} Because between beneficiary and confirming bank a contract was concluded (§ 780 I – abstract promise to pay), the beneficiary can claim damages because of breach of contract (§§ 780 I, 280 I BGB).

\textbf{Resume and outlook}

The analyse of problems concerning the strict compliance lead to the result that still today, about 100 years after letters of credit became a common method to pay, problems exist. One of these problems is the different interpretation of courts in different countries. Especially the considerations of German courts that strict compliance must be interpreted in the frontiers of good faith and that letters of credit must be interpreted as will declarations, where not only the literal

\begin{thebibliography}{99}
\bibitem{244} Canaris (Bankvertragsrecht) nr. 977-978.
\bibitem{245} Canaris (Bankvertragsrecht) nr. 978.
\bibitem{246} Canaris (Bankvertragsrecht) nr. 977.
\bibitem{247} Palandt (BGB) § 249 nr. 54-55.
\bibitem{248} Canaris (Bankvertragsrecht) nr. 973.
\bibitem{249} Canaris (Bankvertragsrecht) nr. 973.
\bibitem{250} Canaris (Bankvertragsrecht) nr. 977.
\bibitem{251} Canaris (Bankvertragsrecht) nr. 979.
\bibitem{252} Canaris (Bankvertragsrecht) nr. 977-978.
\bibitem{253} Canaris (Bankvertragsrecht) nr. 980.
\end{thebibliography}
sense is relevant, but also the will of the parties, must be regarded very careful. Even a wide literal compliance offers possibilities to interpret strict compliance not too formalistic and even most of the court decisions respect the frontier between typographical error and material interpretation, the investigation has shown that cases like Java White Sugar or American Accord exist where these definitions fail. Total security cannot be reached. Concerning the fraud exception, it can be said that the situation for banks is still insufficient because courts often use an ex-post expert knowledge instead of an ex-ante bank knowledge when deciding if banks were allowed to refuse payment or not. Perhaps it would be a useful aim to develop rules in the UCP which show criteria. Of course, one should not forget that banks often must handle documents under pressure: a rejection often damages the reputation, and often the taking up of documents on banker’s risk is, even a damage is caused, cheaper than to risk a process. On the other hand, it can make sense to banks to refuse documents and risk a process because a customer tells about a possible fraud without any further evidence if it is a good customer. But such a view is more an economic view than such of law. Regarding questions of liability, it can be resumed that even if just one law, in this thesis German law, would be applicable, claims are very difficult to determine. In practice, laws of different states are applicable and also questions of evidence and enforceability of judgements arise.

An outlook can be given in two ways: the first, shorter way is to improve the UCP and learn from experience and cases, for example by giving criteria for fraud or not only give disclaimers, but also establish clear rules of liabilities for banks. The second, longer way, is the hope that in a future “globalized world” which continues the way the historical overview at the beginning described some day a uniform law is applicable and a “child of distrust” is not needed any longer.
CONFIRMATION AND SIGNATURE

I, Andreas Karl, hereby confirm that I wrote the thesis on my own and therefore used only the named materials and literature.

Sinsheim, January, 7th, 2004

Andreas Karl