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**DOCUMENTARY CREDITS IN INTERNATIONAL COMMERCIAL
TRANSACTIONS WITH SPECIAL FOCUS ON THE “FRAUD RULE”**

Ph.D thesis abstract

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I. SUBJECT AND RESEARCH OBJECTIVES

In international commercial relationships – particularly in international sales - goods often have to travel long distances making cash transactions uncommon.

One of the main characteristics of international commerce is that delivery of goods and payment are separated in time and space, which involves certain risks for both seller and buyer. The seller faces the risk of non-payment after shipment of goods has taken place, with a possible result of losing not only the purchase price but incurring additional costs, such as the cost of transport or storage fees. On the other hand, effecting payment to the seller upon shipment without being able to find out whether the goods are as per contract carries significant risk for the buyer.

In order to eliminate or at least to minimise the risk of non-delivery and non-payment, as well as the difficulties arising from the conflicting legislations, currency and culture, merchants have created different methods and various instruments to finance international trade.

One of the most widely used methods of payment is the letter of credit. It has been developed to reconcile the various economic interests of the parties.

By agreeing to payment by a letter of credit the seller and the buyer invite a third trusted party – usually a bank - into their relationship. Upon the buyer's request the bank (the issuing bank) opens a letter of credit in favour of the seller. By issuing the letter of credit the bank undertakes to effect payment to the seller provided that complying documents specified in the letter of credit are tendered and all requirements of the credit are fulfilled. The transaction may involve the service of other banks, acting as agents of the issuing bank, simply advising the letter of credit to the seller or undertaking a separate obligation to pay to the seller.

The obligation of the bank to effect payment is independent from the underlying contract between the seller and the buyer (principle of independence). The payment is conditional to the presentation of documents, strictly complying with the conditions of the credit (principle of strict compliance).

Letters of credit play a significant role in financing international trade, and have gained great importance. They have been described as “the life blood of international commerce”¹⁰ and have been referred to as “quintessential international instruments”¹¹.

¹⁰*R.D. Harbottle (Mercantile) Ltd v. National Westminster Bank Ltd* [1978] Q.B. 146 at 155

¹¹ Report of the Task Force on the Study of U.C.C. Article 5, *An Examination of U.C.C. Article 5 (Letters of Credit)*, presented to the Letter of Credit Subcommittee of the Uniform Commercial Code Committee of the American Bar Association's Business Law Section and the U.S. Council on International Banking, Inc., reprinted in 45 *Business Law* (1990) 1521 at 1532

The law of letters of credit has emerged mainly from the customs of bankers dealing with importers, exporters, freight forwarders, shipping and insurance companies.

Today, these customs are embodied in a Code drafted by the International Chamber of Commerce titled “Uniform Customs and Practice for Documentary Credits” (UCP).

The provisions of the UCP are incorporated globally into standard letters of credit agreements in an attempt to provide a measure of uniformity in cross-border transactions. The latest revision of UCP, referred to as UCP 500, came into effect more than a decade ago, on the 1st of January, 1994. Since then, international business transactions have gone through rapid changes, especially in the field of maritime transport, insurance, trade law, and other sophisticated technologies, to which letter of credit law has had to adapt.

The driving forces behind writing this doctoral thesis are the followings:

The *first objective* is to introduce the operation of the letter of credit in the light of the UCP 500.

Although letter of credit is a common method of payment in international trade the Hungarian legal literature has given little attention to this financial instrument. The latest work analysing the rules of the letter of credit operation was written in relation to the UCP 400. The present thesis aims to fulfil this gap.

Furthermore, the thesis is particularly timely as the ICC is currently revising the UCP 500. Hence, apart from examining the rules of the UCP 500, the thesis drives attention to its imperfections and ambiguities.

The thesis analyses 63 cases in detail. Cases were chosen with consideration the necessity to introduce foreign cases that have not appeared in the Hungarian legal literature at all, or only at the level of reference.

The *second objective* of the thesis is to analyze the “fraud rule”. The “fraud rule” enables the court to disregard the cardinal principles of letter of credit law and consider the facts behind the face of conforming documents in order to disrupt the payment to the beneficiary when the transaction is fraudulent.

The primary source of letter of credit law, the UCP 500, does not address the “fraud rule” leaving its regulation to national laws. The thesis analyses and compares two common law (American and English) and two civil law (Hungarian and Greek) jurisdictions.

When selecting the American and English regulations consideration has been given to the fact that these legislations contain the most sophisticated system of rules on the fraud exception.

In the United States Article 5-109 of the Uniform Commercial Code regulates the “fraud rule” enabling both the bank to refuse payment when certain conditions are met and the applicant (buyer) to turn to the court for injunction.

In contrast, there is no statutory equivalent of the “fraud rule” in the United Kingdom. It has developed in the case law.

In Hungary letters of credit are currently governed by Article 26 of Decree No. 9/2001 (MK 147) of the National Bank of Hungary, which subjects letters of credit to the UCP. However, there are no specific regulations on the fraud exception, which therefore falls under the provisions of the Civil Code.

Up until the last enlargement Greece was the only member of the European Union, which had statutory provisions on documentary credits, thus providing a consideration to analyse its rules.

II. THE RESEARCH METHOD

The core of the research is the UCP 500. Considering the fact that its provisions are adhered to worldwide by banks in more than 160 countries it forms the primary source of letter of credit law. However, its development has been highly influenced by the banking practice, case law and other documents of international organisations, the analysis of which is also essential.

Therefore, the thesis introduces the relevant documents published by the International Chamber of Commerce and the United Nations, as well as the provisions of the Uniform Commercial Code, the American and English case law, Hungarian and Greek cases, furthermore articles and monographs in English, German, Hungarian and Greek.

This thesis compiles the results of several years of research. In Hungary the available literature is rather limited which made it inevitable to conduct researches abroad.

The collection of data started in the United States while being a visiting student in the Emory School of Law, Atlanta (GA). The research was further extended in the National and Kapodistrian University of Athens, Greece within the framework of a scholarship received from the Republic of Greece.

DC-PRO Focus, the most comprehensive store of on-line letter of credit information, including cases, official opinions of the International Chamber of Commerce and numerous articles from the last ten years, has proven to be an invaluable help in exploring the subject area. Material amounting to thousands of pages was compiled, carefully categorised and analysed.

In October 2005, the author participated in the Paris meeting of the Banking Commission of the International Chamber of Commerce authorised to carry out the revision of the UCP 500. This allowed me to observe the birth of a new code and to receive first hand information on the opinion of lawyers and bankers from the USA, Canada, Ireland, Germany, Greece, the Czech Republic and China.

To overcome a strictly theoretical treatment of the subject the heads of letter of credit department of Hungarian and other foreign banks were interviewed to explore the day-to-day operation of this financial instrument from the perspective of the banker.

III. BRIEF SUMMARY OF THE THESIS, SCIENTIFIC RESULTS

Brief summary of the thesis

The subject of the thesis is the international letter of credit, thus the domestic use of letters of credit is not contemplated. It is comprised of nine chapters. The thesis is written in English language.

Chapter I. gives a short introduction to the history of letters of credit. It is structured taking into account that looking into the commercial background of the letter of credit and conducting a brief survey on its historical origins is the starting point to understand the operation of this legal instrument.

Some scholars believe that the origins of letters of credit go back to ancient Egypt and Babylon, which had an adequate system of banking. The thesis provides introspection to the historical objects considered to be the earliest proofs of letters of credit, such as a clay promissory note of Babylon dating from 3000 B.C., exhibited in the University Museum of Philadelphia, USA.

With the collapse of the Roman Empire the role of the banks as well as the great extent of commerce between trading nations diminished, resulting in the decline of the use of international payment instruments. It was not until the 12th and early 13th century that banks in Genoa, Venice, Florence and other European cities were re-established. At this time merchants had to face two major problems: (a) travelling with gold was very dangerous; and (b) commerce generated currency that was not sufficient to satisfy the needs of traders.

In an attempt to overcome these difficulties the use of bills of exchange and letters of credit started to increase again. In their early history these payment instruments operated in a very similar way, and letters of credit were used to supplement the bills of exchange.

By the end of the 18th century letters of credit were common financial instruments both in the continental Europe and in England. The widespread use of letters of credit was the result of the termination of the trade monopoly exercised by private firms (e.g. the East India Companies) and the appearance of the liner shipping. Earlier, the big trading companies utilised their own ships to transport their goods manned with their own representative who was entitled to collect the purchase price. The development of liner shipping and the opening of monopoly barriers resulted in the divergence of seller and buyer in time and space. When payment and

delivery was no longer handled by the seller and the buyer personally, the involvement of a third party, a bank, became necessary.

By the 19th century British banks had a virtual monopoly on the issuance of letters of credit. This was due to the fact that in world trade the Pound Sterling was the most accepted currency and the bankers of London gained a pre-eminent position in the field of international finance.

World War I. broke the well-established and trusted trading links that had existed between the merchants worldwide. In order to keep on trading merchants were forced to establish new links with firms often unknown or not trusted. These circumstances were favourable for the extensive use of letters of credit which invited a trustworthy paymaster, a bank, into the merchants' relationship. By the 1950's letters of credit had earned a predominant position in domestic commerce of the United States and were also widely used in international transactions.

Since World War II., the use of letters of credit in world trade remains steadfast. Although from time to time the emergence of alternative means of trade finance overshadows the use of the letter of credit, it has "proven to be a flexible instrument, which can be readily attempted to the needs of changing conditions in international trade"¹².

Chapter II. examines the sources of letter of credit law. The law of letters of credit has emerged mainly from the customs of bankers. As pointed out earlier, the International Chamber of Commerce has collected these customs in the "Uniform Customs and Practice for Documentary Credits" (UCP).

The UCP has been in existence for more than 70 years. The ICC in its 1929 congress held in Amsterdam proposed the first initiative on the standardization of letter of credit law. At this time the draft code received little support; in fact it was only approved by banks in France and Belgium.

After a thorough revision, the ICC adopted the UCP at the Vienna Conference in 1933. This version was adhered to by a number of European banks and also some banks in the United States, however, the financial institutes of one of the leading trading countries, the United Kingdom and most of the Commonwealth countries refused to adopt it.

In 1951 a new version of the UCP was drafted in order to keep up with the changes that occurred in international trade. This version enjoyed wider acceptance, not only in Europe and the United States, but also with several banks in Africa and Asia.

In 1962 the Code was revised again in order to adapt to the needs of the United Kingdom and the Commonwealth countries.

¹² Rolf Eberth, E.P.Ellinger, *Deferred Payment Credits: A Comparative Analysis of Their Special Problem*, Journal of Maritime Law and Commerce, Vol. 14 No.3 July (1983) 387 at 388

Further revisions took place in 1974 with the assistance of the UNCITRAL and later in 1983, resulting in the approval of the code by banks in more than 160 countries.

In 1989, the Commission on Banking Technique and Practice of the ICC authorised the further revision of the UCP. This revision intended ‘to address new developments in the transport industry and new technological applications’ as well as ‘to improve the functioning of the UCP’¹³.

The new Revision was adopted at the ICC’s Mexico Conference in 1993 and came into effect on the 1st of January, 1994. This latest version of the UCP was published as ICC Publication No. 500 (hereinafter referred to as UCP 500) and represents a further contribution to the facilitation of international trade and an improvement in the functionality of the rules.

The UCP is neither an international convention, nor a law. It is not an international convention as it does not create a formal agreement between states nor is it law, as the ICC, being a non-governmental organization, does not possess legislative authority.

The UCP is a “compilation of internationally accepted banking customs and practice regarding the letter of credit. It is the most successful harmonizing measure in the history of international commerce, which has removed a plethora of technical problems that would have undermined the smooth operation of letter and credit.”¹⁴

Article 1 of the UCP states that its applicability is subject to the parties’ agreement. It emphasizes, that:

“The Uniform Customs and Practice for Documentary Credits, 1993 Revision, ICC Publication NO. 500, shall apply to all Documentary Credits (including to the extent to which they may be applicable, Standby Letter(s) of Credit) where they are incorporated into the text of the Credit. They are binding on all parties thereto, unless otherwise expressly stipulated in the Credit.”

Although the UCP is considered to be the primary source of law, other regulations have influenced highly its development. Therefore, this thesis introduces other rules published by the International Chamber of Commerce relevant to the subject area, such as the eUCP, ISBP, URR 525 and the ISP98.

A summary of the provisions of the United Nations Convention on Independent Guarantees and Standby Letters of Credit is also given. The convention was drafted by the UNCITRAL in an effort to harmonise the rules on guarantees and standby letters of credit.

¹³ Ibid.

¹⁴ Xiang Gao, *The fraud rule in the law of Letters of Credit* (2002) The Hague, p. 18

Due to its highly international character, few countries have attempted to codify letter of credit law on a national level. One exception is the United States of America, where a separate chapter in the Uniform Commercial Code has been devoted to letters of credit, gaining the well-desired attention of researchers.

Case law undoubtedly forms a prominent part of letter of credit law. The conclusions deriving from the cases are far-reaching and they require careful consideration. Consequently, cases and court decisions from different jurisdictions are given in all chapters of the thesis in order to provide a broader analysis of the relevant questions.

Letters of credit come in various forms and types. While **Chapter III**, primarily focuses on documentary credits, for the sake of completeness, it also discusses the other basic form: the standby letter of credit.

The documentary credit is the traditional form of letter of credit. Its main purpose is to effect payment upon presentation of documents that evidence the performance of the seller and also enable the buyer to receive the goods.

But – as practice has shown - letters of credit can be used in different ways as well. Standby letters of credit intend to protect the beneficiary in the event of a non-performance or not proper performance of the other party to the underlying contract, thus they operate similarly to guarantees. Standby letters of credit were developed in the United States in the 1950s, where, according to federal law, the issuance of guarantees by national banks was prohibited. As a solution to the growing need from the business side to ensure payment or performance the American banks created the standby letter of credit, as a substitute to guarantees.

The Chapter also introduces the different types of letters of credit and highlights their commercial purpose and usage. According to the UCP the credit must state whether it is available by

- *sight payment*, meaning payment by the bank against documents upon presentation
- *deferred payment*, where the beneficiary shall receive payment at some future date (maturity date), specified in the credit
- *acceptance*, under which the issuing bank undertakes to pay a draft drawn by the beneficiary.
- *negotiation*, where the bank will endorse and negotiate the draft or documents, with certain deductions of discount or interest and commission.

The credit shall further state whether it is revocable or irrevocable. A *revocable* letter of credit gives the applicant maximum flexibility, as it can be amended, revoked or cancelled without the beneficiary’s consent and even without prior notice to the beneficiary.

An *irrevocable* letter of credit, on the other hand, constitutes a definite undertaking of the issuing bank to pay, negotiate and accept drafts and/or documents, provided that the stipulated documents are presented and that the terms and conditions are met.

While “irrevocability” and “revocability” refer to the obligation of the issuing bank towards the beneficiary, the feature of a credit as “confirmed” or “unconfirmed” is related to the undertaking of an other bank invited into the transaction by the issuing bank.

Upon the authorization or request of the issuing bank, a bank may *confirm* a letter of credit, which constitutes a definite undertaking of the confirming bank, in addition to that of the issuing bank, towards the beneficiary to pay, accept draft or to negotiate.

On the other hand, a letter of credit is *unconfirmed* if the bank merely acts without further responsibility towards the beneficiary, thus operating as an advising bank or nominated bank.

International commerce has created the following special forms of letters of credit:

- *Revolving Credit*, which is used in transactions where a continuous relationship exists between the exporter and the importer and the amount is renewed periodically without renewing the terms and conditions of the credit.
- *Red Clause Documentary Credit*, which received its name from a special condition inserted into the text of the credit, which was originally written by red ink. Under this special condition the confirming bank or any other nominated banks are authorized by the applicant to make advances to the beneficiary before presentation of documents. The amount of the advances is specified in the credit.
- *Transferable Documentary Credit*, under which the beneficiary can transfer its rights to a third party.
- *Back-to-Back Documentary Credit*, which is used in transactions where a seller, who entered into a contract of sale of certain goods has to purchase those goods from his supplier and no transferable credit is used in the transaction.

A letter of credit transaction involves four independent, but interdependent relationships. These are the relationship between:

- a) the Buyer and the Seller
The letter of credit transaction is usually based on an underlying (sales) contract between the seller and the buyer. In this contract the parties provide for payment by a letter of credit, which obliges the buyer to open a credit in favour of the seller. It also obliges the seller to obtain payment

from the bank upon the letter of credit and refrain from demanding payment directly from the buyer.

- b) the Buyer (Applicant) and the Issuing Bank
In order to fulfil its contractual obligations the buyer (acting as the applicant) has to open a letter of credit at the issuing bank in favour of the seller (the beneficiary of the letter of credit). Thus, the buyer gives instructions to the issuing bank in his application, clarifying the terms and conditions under which the bank shall effect payment.
By accepting the terms and conditions submitted in the application form the issuing bank enters into a contractual relationship with the buyer. Under this contract the bank undertakes to issue the letter of credit and to effect payment to the beneficiary upon presentation of documents strictly in compliance with the terms and conditions of the credit.
- c) the Seller (Beneficiary) and the Issuing Bank/Confirming Bank
By issuing the letter of credit the bank enters into a relationship with the beneficiary, the ground of which is a definite undertaking of the bank to effect payment upon presentation of documents strictly complying with the terms and conditions of the credit.
By confirming a letter of credit a legal relationship is formed between the confirming bank and the beneficiary. It is understood that the obligation and liability of the confirming bank is separate from that of the issuing bank.
- d) the Issuing Bank and the Correspondent Bank
Several letter of credit transactions involve banks other than the issuing bank. If correspondent banks are invited into the transaction, a contractual relationship is established between the issuing bank and the correspondent bank.
Their agreement governs the role of the correspondent bank, the rights and liabilities of the parties, the terms and conditions of the reimbursement of the correspondent bank for payment made under the credit, as well as all the instructions of the issuing bank.

Understanding the operation of letters of credit require thorough analysis of these relationships, as well as of the role of the parties. This is provided in **Chapter IV.**, alongside with the rights and obligations of the parties to the transaction.

Documentary credits received their name based on the understanding that banks deal with documents not with goods. **Chapter V.** gives a detailed description of the various documents accompanying the documentary sale.

The documentary requirements set out in the credit form the cornerstone of the documentary credit transaction. The type and number of documents that the

beneficiary has to present to the bank in order to receive payment are specified by the applicant. This enables the applicant-buyer to set the highest level of security that he deems necessary in the particular transaction to ensure that the seller will fulfil its contractual obligations.

On the other hand, the beneficiary-seller is assured that in case he tenders the proper documents with the required content and in the correct number he will receive payment from the bank, regardless of the financial status of the buyer.

Compared to the previous versions the UCP 500 has expanded the provisions concerning documents, especially those relating to the transport documents, and distinguishes between the followings:

- Transport Documents (Marine/Ocean Bill of Lading; Non-negotiable Sea Waybill; Charter Party Bill of Lading; Multimodal Transport Document; Air Transport Document; Road, Rail or Inland Waterway Transport Document; Courier and Post Receipts; Transport Documents issued by freight Forwarders)
- Insurance Documents
- Commercial Invoice
- Other Documents

The thesis gives an in-depth analysis of their requirements as to form and content in the light of the provisions of the UCP 500, and looks at the general requirements of the examination of documents.

The law of letters of credit is founded on two cardinal principles: the Principle of Strict Compliance and the Principle of Independence. As described in **Chapter VI**, the Principle of Strict Compliance allows the bank to reject payment to the seller if the documents tendered do not strictly comply with the terms and conditions of the letter of credit. This principle gives protection to the buyer. It guarantees that the buyer will have to reimburse the issuing bank only against documents it has specified in the letter of credit triggering the obligation.

The Principle of Strict Compliance is closely related to the bank's obligation to examine the documents. The standard of examination as well as its duration is regulated by the UCP 500 and is explained in the thesis.

The Principle of Independence requires the bank to honour its obligations to the seller regardless of any disputes between the seller and the buyer concerning the underlying contract. This means that the buyer cannot stop the payment simply alleging that the seller failed to fulfil its contractual obligations. As emphasized by Article 4 of the UCP 500 all parties concerned in the credit operation deal with documents and not with goods, services and/or other performances to which the documents may relate. Thus, the beneficiary does not have to prove that he fulfilled

his duties under the underlying contract. He simply has to provide documents facially conforming to the terms of the credit.

This principle is incorporated into the UCP and has long been recognised by case law.

However, "as is the case with any rule that paints human conduct with a broad brush"¹⁵, a rigid application of the principle may produce harsh results, running against the original purpose of the letter of credit. This is the case when fraud is involved in the transaction.

The classic example is when the seller obtains a forged document facially conforming to the terms of the credit and receives payment from the bank. However, there is no real performance behind these documents. Upon arrival, the buyer discovers that the goods do not meet the requirements of the underlying contract, they are actually worthless rubbish. By the time he takes legal actions the seller has already disappeared. In this case buyers often turn to the bank alleging that they wrongfully effected payment. Banks however claim that their role is merely to finance the commercial sale and they cannot take responsibility for the quality or the existence of the goods traded.

The Principle of Independence therefore requires special consideration. Permitting the buyer to stop the payment mechanism every time when he simply alleges that the goods do not conform to the underlying contract would destroy the utility of letters of credit. On the other hand, allowing the seller to receive payment from the bank upon presentation of false or forged documents would be equally unjustifiable.

To avoid injustice an exception has been created to the Principle of Independence; the so called "fraud exception" or, as otherwise referred to, the "fraud rule".

The "fraud rule" is discussed in **Chapter VII**. The "fraud rule" is considered to be the "most controversial and confused area"¹⁶ of the law governing letters of credit. It is an unusual rule that allows the court to consider the facts behind the face of conforming documents and to disrupt the payment of a letter of credit when fraud is involved in the transaction.

Fraud in documentary credits can take various forms. The fraudulent party can be the beneficiary, the applicant, both of them in co-operation, or a third party issuing a document. The thesis focuses primarily on the beneficiary fraud as the one that is most common in international transactions.

¹⁵ GETZ, H.A., *Enjoining the International Standby letter of Credit: The Iranian Letter of Credit Cases*, 21 Harvard International Law Journal (1980) 189 at 204

¹⁶ Comment, *Fraud in the Transaction: Enjoining Letters of Credit during the Iranian Revolution*, 93 Harvard Law Review (1980) 992, 995

The “fraud rule” is addressed through the analysis of selected common law (US, UK) and civil law (Hungary, Greece) jurisdictions and the United Nations Convention on Independent Guarantees and Standby Letters of Credit.

A historical perspective is followed throughout the introduction of the development of the “fraud rule” by studying cases from as early as 1756 until recently. The palette of cases includes the thorough analysis of the landmark American case of *Sztejn v. Henry Schroeder Banking Corporation et al*¹⁷, as well as the well-known and often cited English case of *United City Merchants (Investments) Ltd v. Royal Bank of Canada*¹⁸.

National courts have approached the fraud rule in different ways and have required different standards of fraud in order to justify the disruption of the normal course of the documentary credit operation.

In the United States the operation of letters of credit is governed by Article 5 of the Uniform Commercial Code. The question of fraud is dealt with Revised Article 5-109 under the heading of “Fraud and Forgery”, allowing the issuing bank refuse to honour the presentation and the applicant turn to court for enjoining the issuing bank from honouring the presentation. However, the examination of the underlying transaction by the court violates the principle of independence; therefore, the standard of an injunctive relief granted by the court is high. The four conditions that have to be met, namely, that:

- the injunctive relief is not prohibited under the applicable law;
- the interested parties who may be adversely affected by the injunction are adequately protected against loss they may suffer;
- all of the conditions to entitle a person to the relief under the law have been met; and
- the applicant is more likely than not to succeed under its claim and the person demanding honour does not qualify for protection under Article 5-109.

This latter requirement shows that the UCC protects the innocent parties (such as a nominated person who has given value in good faith, a confirmer, a holder in due course of the beneficiary’s draft after acceptance, or an assignee) who have taken the beneficiary’s documents without knowing that the documents were forged or fraudulent.

The fraud rule, although not in statutory provisions but in the case law, is also recognized by the English courts. Under English law, in case of presentation of facially conforming documents, payment can be refused invoking the fraud rule, if

- there is a clear evidence of the fraud,
- the bank has knowledge of the evidence of fraud,

- the bank’s awareness of the fraud was “timely”, and
- the beneficiary is involved or has knowledge of the fraud.

In Hungary letters of credit are currently governed by Article 26 of Decree No. 9/2001 (MK 147) of the National Bank of Hungary on Payment and Clearing Transactions, which is in effect since the 19th of March, 2004. Since there are no specific regulations on fraud, it falls under general contract law. Case law shows that Hungarian courts approach the fraud exemption similarly to the English courts and accept it only in a very narrow sense and under strict conditions.

Documentary credit transactions in Greece are governed by Articles 25 to 34 of the Regulation of 17 July/13 August 1923 on Special Provisions for Stock Corporations. However, since Greek banks collectively adhere to the UCP the Regulation has lost its relevance. Greek law acknowledges the independence principle, although it is not explicitly stated in the referred regulation, nor does it implicitly derive from its wording. The independence principle is embodied in general contract law.

The fraud exception is not codified either. In case of fraud in order to enjoin the bank from effecting payment to a fraudulent beneficiary, Greek courts usually refer to violation of contract law principles and general ethics

Although fraud in the letter of credit transaction is an everyday reality the UCP is silent on this matter. The thesis discloses the basic reasoning why drafters of the UCP have been unwilling to tackle this problem and offers possible solutions with the non-disguised aim of supporting the inclusion of the “fraud rule” into the Code. The analysis presented in this Chapter on the divergent approaches of the selected jurisdictions to the fraud rule shows that the same facts may result in different outcomes, when the case is decided by an English or American judge. This works against standardization and harmonization and does not facilitate international trade.

International regulations are not static. They have a past, a present and a future. **Chapter VIII.** focuses on the future of the UCP, bringing the thesis to completeness. It is divided into two sections. Section One is devoted to the analysis of the eUCP, a set of supplementary regulations allowing letters of credit to enter the electronic age. By introducing the concept of “mixed presentation” that permits electronic or part-electronic (using both paper documents and electronic records) presentation of documents, it represents an important step towards the era of paperless commerce in which the vast majority of the presentation of the documents will be made electronically.

Although the reception of the UCP 500 has been favourable, since its entry into force in 1994 several ambiguous provisions, misunderstandings and inconsistencies have been revealed by the banking and trading community, as well as by lawyers

¹⁷ [1941] 31 NYS 2d 631

¹⁸ [1979] 1 Lloyd’s Rep. 267, [1981] 1 Lloyd’s Rep. 604, [1983] AC 168.

and courts. Section Two brings the attention to the current revision of the UCP 500, pointing out the most critical points of the discussion on the future Code.

Chapter IX. provides a general summary.

Scientific result

Analysing the operation of letters of credit

The thesis gives an in-depth analysis of the operation of letters of credit. It introduces the sources of letter of credit law, the different types of credit, the rights and obligations of the parties to this complex relationship as well as the cardinal principles of the letter of credit operation. It shall be noted that the UCP 500 has not been analysed earlier in details in the Hungarian legal literature.

Beside the analysis of the codified rules the thesis introduces 63 relevant cases which may provide guidance to banking practitioners as well as to courts.

Analysing the “fraud rule”

The thesis is the first in the Hungarian legal literature that gives a thorough analysis of the “fraud rule” from a comparative perspective. It introduces the first appearance of the “fraud rule” as well as its development from the late 1700s until today. This is followed by the examination of the criterion of evoking the “fraud rule” in the four jurisdictions referred above and in the UN convention.

The thesis demonstrates that the “fraud rule” is applied upon different standards in the selected jurisdictions, which may lead to contradicting results. Thus, it drives the attention to the necessity of regulating the “fraud rule” at an international level.

The future of the UCP

International commerce is experiencing a rapid change to which international regulations have to adapt. The last chapter of the thesis reveals the imperfection of the UCP 500 and the inevitability of amending certain provisions. In addition to explaining the revision process’ roadmap, it also introduces the proposals concerning the amendment of the most debated provisions.

IV. SCIENTIFIC PUBLICATIONS OF THE AUTHOR

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A függetlenség elve és annak korlátai az akkreditív jogviszonyban, Magyar Jog LIII.évfolyam 5.szám, 2006

Az akkreditívre vonatkozó nemzetközi szabályozás fejlődése, különös tekintettel a UCP jelenlegi revíziójára, accepted for publication by Magyar Jog, 2006

UCP- The Unusual Customs and Practice, accepted for publication by LC Monitor, 2006

A journey of a thousand miles - The development of the UCP, accepted for publication by the Revue Hellenic de Droit International, 2006