

The doctrine of strict compliance and some recent cases

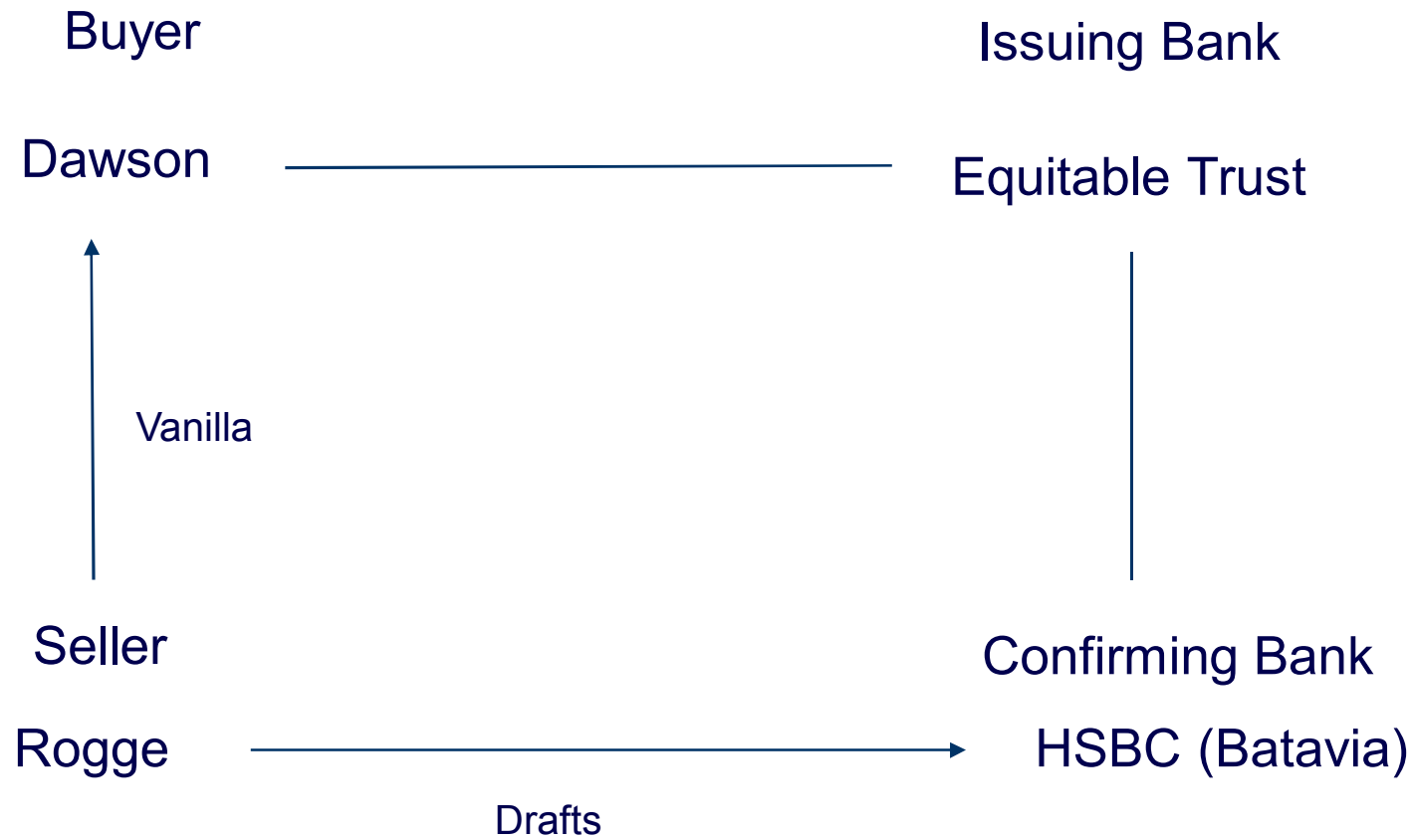
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The doctrine of strict compliance

"It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk. The documents tendered were not exactly the documents which the defendants had promised to take up, and prima facie they were right in refusing to take them."

- Equitable Trust Company of New York v Dawson Partners Ltd [1927] 2 Lloyd's Rep 49,52 per Viscount Sumner

Equitable Trust v Dawson Partners



Equitable Trust v Dawson Partners

- Instructions to Equitable Trust required a certificate to “be issued by experts who are sworn brokers”.
- Transmitted by HSBC to seller as a certificate to be issued by an expert.
- Buyer presented a certificate of one expert.
- In fact consignment was “old iron, bits of wood and an odd bit of vanilla or two”.
- Held Equitable Trust could not recover from Dawson Partners – the letter of credit was not what they had asked Equitable Trust to issue.

Is the doctrine of strict compliance justifiable?

"This doctrine can and sometimes does result in injustice, when the bank's customer urges the bank to refuse payment on grounds of non compliance without any honest reason for doing so. It could, I suppose, be said to redress the balance somewhat, since if the documents do comply the bank must pay whatever the true facts. I would not regard that as sufficient justification for the doctrine. But it is, as I have said, very well established: and it enables banks to issue letters of credit for a modest charge and acknowledge that they will not have to take decisions of substance as to whether the documents presented are sufficient".

- Per Staughton LJ in *I.E. Contractors Ltd v Lloyd's Bank Ltd* and another [1990] 2 Lloyd's Rep 496,500

Exceptions to the principle of strict compliance - trivial discrepancies

- Typing the Buyer's telex number as 931310 instead of 981310 – held to be trivial.
- Credit issued in favour of Pan Associated Ltd when the documents tendered in the name of Pan Associated Pte Limited - held not to be trivial.
- Notify party named as Mohammed Soran when the credit required Mohammed Sofan - held not to be trivial.
- Draft survey report issued by "Griffith Inspectorate"; report in fact issued by Daniel C Griffith (Holland) BV described as a member of the Inspectorate group - held to be trivial.

An element of judgment?

"...the requirement of strict compliance is not equivalent to a test of exact literal compliance in all circumstances and as regards all documents. To some extent, therefore, the banker must exercise his own judgment whether the requirement is satisfied by the documents presented to him."

- Per Evans LJ in *Kredietbank Antwerp v Midland Bank and others* [1999] All ER (Comm) 80 at para [12]

Examples in the current version of ISBP are

- paragraph A1 (abbreviations)
- paragraph A23 (misspellings or typing errors) and
- paragraph A39 (title of documents and combined documents).

- *"The rule [is] that where the Bank's instructions from his customer are ambiguous or unclear he commits no breach of his contract with the buyer if he has construed them in a reasonable sense, even though upon the closer consideration which can be given to questions of construction in an action in a court of law, it is possible to say that some other meaning is to be preferred."* Per Lord Diplock in *Commercial Banking Co of Sydney Ltd v Jabsard Pty Ltd* [1973] AC 279 at 284.
- Protects an issuing bank from a claim from its customer for having paid out on a reasonable (even if mistaken) construction of the terms of the credit if the terms of the credit are ambiguous. A similar principle applies as between a nominated bank and the issuing bank. *Credit Agricole Indosuez v Muslim Commercial Bank* [2000] 1 Lloyd's Reports 275.
- Is it a defence to a bank to a claim by a beneficiary or a nominated bank for payment for a refusal to pay to say that the terms of the credit were ambiguous?

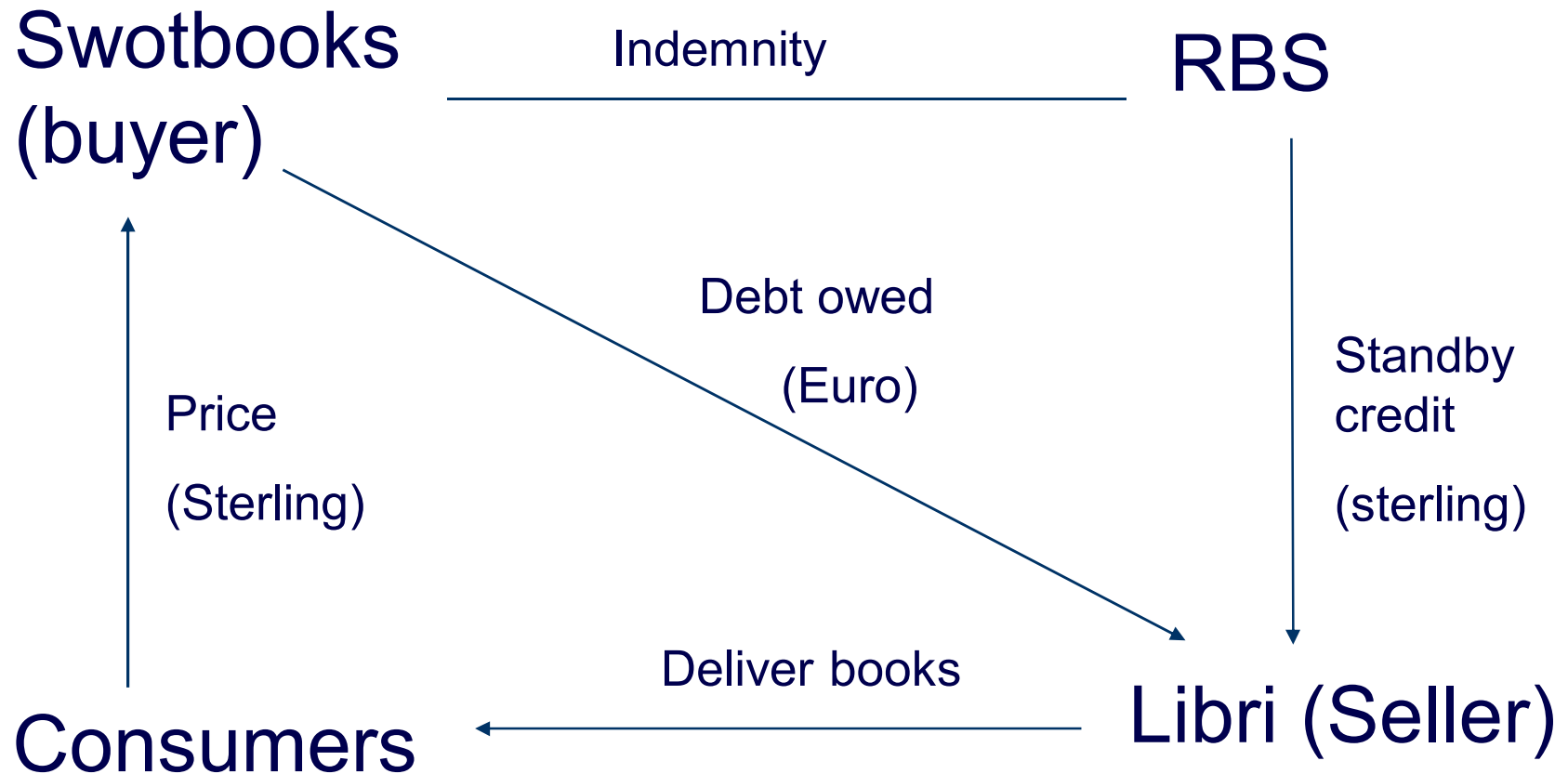
Recent cases - Fortis Bank v Indian Overseas Bank [2010] 1 Lloyd's Rep 227

- The credit required a beneficiary's consolidated certificate stating:
*"That the negotiating bank has been advised to dispatch original shipping documents only by air courier service to the LC opening Bank **"at our cost"** (emphasis added).*
- The document actually presented contained the following:
*"We hereby certify the following:
....that the negotiating Bank has been advised to dispatch original shipping documents only by air courier to the LC opening bank at **issuing bank's cost"** (emphasis added)*
- This certificate did not comply with what the letter of credit required and the discrepancy could not be regarded as trivial. It is a classic case of a document specifically required by a credit.
- The Court rejected a number of other discrepancies relied on by the issuing bank on the ground that the provisions of the letter of credit in question were ambiguous.

Recent cases - Société Generale SA V Saad Trading and Another [2011] All ER (D) 32 (Oct)

- Field 72 in the letter of credit provided as follows:
"72 Sender to Receiver Information. All documents are to be forward [sic] to Société Generale ... Paris... by courier"
- Held that this imposed a requirement upon the confirming bank to forward to the issuing bank drafts drawn by the beneficiary on the confirming bank and that failure to do so was a breach of the doctrine of strict compliance.
- This finding did not matter because for other reasons Société Generale could recover from the applicant the sums paid by it to reimburse the confirming bank.
- A draft drawn under the credit on the confirming bank, once accepted, belongs to the beneficiary. It may or may not be discounted by the confirming bank but at that stage it has no further part to play in the letter of credit. The doctrine of strict compliance simply is not relevant.

Recent Cases – Swotbooks.com Ltd v Royal Bank of Scotland Plc [2011] EWHC 2025 (QB)



Terms of standby credit

- Governed by UCP 500.
- Payable on presentation of inter alia:
 - “(b) certified true and correct copy invoice evidencing the value of the goods delivered*
 - (c) certified true and correct copy transport document”*

Documents accepted by RBS

- An invoice showing the total Euro sum due with a figure for the sum converted into sterling at 15 April 2009.
- As a transport document, a letter from DHL referring to packets of books which had been consigned by DHL which were set out in an attached packing list.
- On 28 May 2009 RBS made payment in the sum of £231,000 to Libri having deducted this sum from the Claimant's security account on the previous day.

Discrepancies – the invoice

- The liquidator claimed that all the prices of the books and the total were denominated in Euros and that all that Libri has done was to apply an exchange rate as at 15 April 2009 to arrive at the sterling total shown in the invoice. Reference was made to the ISBP applicable to UCP 500 which states:

"An invoice must evidence the value of the goods shipped. Unit price(s), if any and currency shown in the invoice must agree with that shown in the credit".

- Held the reason for requiring the invoice is to provide evidence of what sum is due to the beneficiary. There was no basis for accepting the exchange rate or the date it was applied.
- Hence the invoice was discrepant.

Discrepancies - the transport documents

- Although the credit did not specify the type of transport document required and although UCP 500 does not contain a generic description of "transport document" the nature and type of document is well established.
- Articles 23 to 30 makes specific provision for well known types of transport document such as bills of lading and air transport documents. Article 29 makes specific provision for documents issued by a courier. There was no doubt the reference to transport document in the credit is a reference to these types of documents and that RBS should have required such a document or documents under the credit. The DHL document was not contemporaneous and did not provide evidence from DHL of the consignment of any goods to the order of the Claimant at any time. It was also not a courier service document.
- Hence the transport document was discrepant.

Additional requirements – Article 14(d) UCP 600

- Article 14(d) provides that the data in a document, when read in context with the credit, the document itself and international standard banking practice, need not be identical to, but must not conflict with, data in that document, any other stipulated document or the credit itself.
- Introduces requirement to check for consistency in the data in documents.
- Previous rule (Article 13(a) UCP 500) required only that documents should not conflict with each other.
- Requirement is not expressly limited to data which is relevant to the credit.
- Paragraph A26 of ISBP – non documentary conditions and conflicts of data.

Other issues occupying UK trade finance industry

- Difficulties of demonstrating compliance with anti-money laundering and counter-terrorism financing obligations
- De-risking – many participants exiting the market altogether or at least coverage of significant geographical areas
- Impact of Russian sectoral sanctions