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Oksana Hnativ
Ivan Franko National University of Lviv,
Lviv State University of Internal Affairs
gnativ.adv@gmail.com

The legal nature of the letter of credit relationship

Streszczenie

Stosunek prawny wynikający z tytułu akredytywy

Pojęcie akredytywy nie jest nowe w prawie cywilnym. Skomplikowany charakter tego zjawiska prawnego doprowadził do odmiennej interpretacji w różnych systemach prawnych oraz ustawodawstwie poszczególnych krajów. Kwestia charakteru prawnego wynikającego z tytułu akredytywy niejednokrotnie była badana w rodzimej i zagranicznej cywilistyce. Jednak to, że zagadnienie prawnego charakteru stosunków wynikających przy otwarciu akredytywy wciąż jest aktualne i wciąż wymaga kompleksowej analizy prawnej, nie budzi wątpliwości. W publikacji „Jednolitych zasady i praktyk dokumentacji akredytywy" (Uniform Customs and Practice for Documentary Credits) z 25 października 2006 r. Nr 600, która weszła w życie 1 lipca 2007 r., akredytywa rozpatrywana jest jako jakakolwiek umowa (jakiekolwiek pismo), która jest nieodwołalna i stanowi konkretne (bezwarunkowe) zobowiązanie banku-emitenta do podjęcia realizacji określonych dokumentów zgodnie z umową akredytyw. Podobnie jak Kodeks Cywilny Ukrainy w artykule 626 omawia treść pojęcia umowy rozumianej jako porozumienie stron, Komisja Bankowa Międzynarodowej Izby Handlowej w nowym wydaniu UCP 600 także podkreśla umowny charakter stosunków wynikających przy otwarciu akredytywy. Poprzednie bowiem wydanie „Jednolitych zasad i praktyk" dotyczące akredytywy dokumentowej, interpretując akredytywę jako jakąkolwiek umowę, zostawiło podstawy do odniesienia akredytywy do jednostronnych czynności prawnych.

Ogólnie biorąc, wszystkie poglądy na temat charakteru prawnego akredytywy można ująć w następujących koncepcjach: umowy zawartej pod warunkiem; umowy komisji; umowy zlecenie; umowy na rzecz osoby trzeciej; umowy poręczenia; zobowiązania specjalnego rodzaju *sui generis*.

Stosunek prawny z tytułu akredytywy wynika tylko wtedy, gdy klient (płatnik) jest w stosunku umowy z bankiem-emitentem, wynikającej z umowy rachunku bankowego. Zawarcie umowy rachunku bankowego jest jedną z przesłanek powstania stosunku prawnego akredytywy. Inną przesłanką powstania akredytywy jest obecność stosunku umownego między płatnikiem a odbiorcą. Umową tą może być umowa sprzedaży, dostawy i inne. Akredytywa ma na celu zapewnienie wykonania zobowiązania pieniężnego, które powstało z umowy między płatnikiem a odbiorcą umowy. Jednak taki stosunek prawny nie wynika automatycznie. Aby otworzyć akredytywę, klient (płatnik) przekazuje do banku-emitenta wymagane oświadczenie, a w przypadku otwarcia akredytywy pokrywanej z góry — także przekazy pieniężne. Natomiast bank-emitent, przyjmując zgłoszenie, decyduje, w jaki sposób będzie realizowana akredytywa, oraz wyznacza innych uczestników akredytywy dokumentowej (bank pośredniczący, który pełni funkcję banku awizującego, bank wykonujący). Przyjęcie wniosku w teorii prawa cywilnego uznawane jest za akceptację, a zatem złożenie wniosku uznawane jest za ofertę.

Akredytywa może być interpretowana jako dwustronna i odpłatna umowa konsensualna. W trakcie rozliczania akredytywy wszystkie podmioty stosunku prawnego mają do czynienia tylko z dokumentami. Jednak celem umocowania tej normy jest usunięcie możliwych subiektywnych okoliczności, które pozwalałyby uczestnikom na nadużywanie ich praw czy też niewywiązywanie się z ich zobowiązań wynikających ze stosunku prawnego z tytułu akredytywy.

Przedmiotem umowy akredytowej jest usługa bankowa, która polega na wypłacie beneficjentowi określonej w warunkach umowy sumy albo wywiązaniu się z innych określonych w ustawodawstwie zobowiązań, pod warunkiem prawidłowo przestrzeganej umowy.

Podsumowując, należy stwierdzić, że stosunek prawny z tytułu akredytywy pod względem natury prawnej jest cywilnym stosunkiem prawnym, który powstaje na mocy samodzielnej umowy o świadczeniu usług bankowych, w szczególności realizacji wypłaty określonej sumy beneficjentowi na podstawie spełnienia określonych warunków zapisanych w dokumentach zawieranych między klientem i bankiem-emitentem.

Słowa kluczowe: akredytywa, umowa, klient, bank emisyjny, beneficjent

Резюме

Правова природа акредитивного правовідношення

Поняття «акредитив» не є новим у цивільному праві. Складність цього правового явища зумовила різне його тлумачення не лише у різних правових системах, а у законодавстві окремих країн. Питання правової природи акредитивного правовідношення неодноразово досліджувалися у вітчизняній та зарубіжній цивілістичній думці. Однак, актуальність визначення правової природи відносин, які виникають при відкритті акредитиву, не викликає сумнівів і потребує подальшого комплексного правового аналізу.

У редакції Уніфікованих правил та звичаїв для документарних акредитивів (Uniform Customsand Practice for Documentary Credits) від 25 жовтня 2006 року № 600, яка почала діяти з 01 липня 2007 року, акредитив розглядається як будь-яка домовленість, як би вона не називалася чи не позначалася, яка є безвідкличною і являє собою конкретне (безумовне) зобов'язання банку-емітента прийняти до виконання

визначені документи відповідно до умов акредитива. Так само, як і Цивільний кодекс України у ст. 626 розкриває зміст поняття договір через домовленість сторін, Банківська комісія Міжнародної торгової палати у новій редакції Уніфікованих правил і звичаїв для документарних акредитивів підкреслила договірний характер відносин, що виникають при відкритті акредитиву. Оскільки попередня редакція, тлумачачи акредитив як будь-яку угоду, залишала підстави для віднесення акредитиву до односторонніх правочинів.

Загалом усі погляди на правову сутність акредитиву можна об'єднати у наступні концепції: договору, укладеного під умовою; договору комісії; договору доручення або мандата; договору на користь третьої особи; договору поруки; особливого виду зобов'язань sui generis.

Акредитивне правовідношення виникає лише у тих випадках, коли особа (платник) перебуває у договірних відносинах з банком-емітентом, які виникли на підставі договору банківського рахунку. Укладення договору банківського рахунку є однією із передумов виникнення акредитивного правовідношення. Другою передумовою виникнення акредитивного правовідношення виступає наявність договірних відносин між платником та одержувачем. Таким договором може бути договір купівлі-продажу, поставки тощо. Акредитивне правовідношення має на меті забезпечити виконання грошового зобов'язання, яке виникло з укладеного між платником та одержувачем договору. Однак, акредитивне правовідношення не виникає автоматично. Для відкриття акредитиву клієнт (платник) подає до банку-емітента заяву, встановленого зразка, а випадку відкриття покритого акредитиву – також платіжні доручення. Натомість банк-емітент приймаючи заяву, визначає спосіб виконання акредитива, а також інших учасників акредитивного правовідношення (авізуючий банк, виконуючий банк). Прийняття заяви розглядається у теорії цивільно права як акцепт, а відповідно подання заяви – оферта.

З прийняття заяви банком-емітентом виконає акредитивне правовідношення, яке не зважаючи на те, що виникає для забезпечення виконання грошового зобов'язання за іншим договором, є не залежним від останнього, а також від відносин між банком та клієнтом (платником) за договором банківського рахунку.

Таким чином, можна охарактеризувати акредитив як двосторонній, відплатний, консенсуальний договір. У процесі виконання розрахунків за акредитивом усі суб'єкти акредитивного правовідношення мають справу лише з документами. Однак, метою закріплення цієї норми є усунення можливих суб'єктивних обставин, які б дозволяли учасникам зловживати своїми правами чи не виконувати обов'язки у межах акредитивного правовідношення.

Предметом акредитивного договору виступає банківська послуга, яка полягає у сплаті коштів бенефіціару (одержувачу) або інших визначених законодавством діях, за умови надання ним визначених умовами акредитиву документів. Підсумовуючи слід зазначити, щодо акредитивне правовідношення за своєю правовою природою є цивільними правовідносинами, які виникають на підставі самостійного договору про надання банківських послуг, зокрема здійснення платежу бенефіціару за умови надання ним визначених документів, який укладається між клієнтом та банком емітентом.

Ключові слова: акредитив, клієнт (платник), банк-емітент, бенефіціар (одержувач)

General remarks

The concept of "letter of credit" is not new in the civil law. The history of the use of letters of credit and precredit forms began in the 17th century[1]. The complexity of this legal phenomenon led to a different interpretation of not only different legal systems but also the legislation of individual countries.

In this regard, the issue of the legal nature of the letter of credit relationship has been repeatedly investigated in domestic and foreign civilian mind. However, the relevance of determining the legal nature of relationships that occur when opening a letter of credit, is unquestionable and requires a further complex legal analysis.

First of all, it should be noted that the concept of letter of credit is contained in several international legal documents. Thus, Art. 2 of the Uniform Customs and Practice for Documentary Credits № 500 defines the letter of credit through the complex of banking transactions carried out on the basis of the transaction (any agreement, no matter how it had been named or labeled) according to which the bank (issuing bank), acting at the request and under the instructions of the client (the applicant) or on his or her behalf: 1) must make a payment to a third party (beneficiary) or his order or to accept and pay bills of exchange (drafts) to the beneficiary, or 2) authorizes another bank to hold such payment or accept and pay bills of exchange (drafts), or 3) authorizes another bank to negotiate the documents provided (subject to the terms and conditions of the credit). However, in the current wording of the rules adopted on October 25, 2006 № 600, which entered into force on 1 July 2007, a letter of credit is considered as any agreement, no matter how it is called or affected, which is irrevocable and is a concrete (unconditional) obligation of the issuing bank acted upon by documents under the terms of the credit. As L.V. Panova rightly observes, not any agreement is deemed a letter of credit under the Uniform Customs and Practice for Documentary Credits, but only the one which has contractual nature[2].

As well as the Civil Code of Ukraine reveals the meaning of the contract by agreement of the parties in Art. 626, the Banking Commission of the International Chamber of Commerce in the new edition of the Uniform Customs and Practice for Documentary Credits underlines the contractual nature of the relationship arising from the letter of credit. Since the previous edition, while interpreting the letter of credit as any deal left the grounds for assigning the letter of credit to unilateral transactions.

[1] O.D. Getmantsev, N.G. Shuklina, *Bankivske pravo Ukrainy*, Kyiv 2007, p. 211.

[2] L.V. Panova, "Raschety po akkreditivu: yuridiko-lingvistichskoe tolkovanie", *Legea si Viata*, April 2014, p. 78.

Academic overviews of the legal nature of the letter of credit

It is worth mentioning that there have been some attempts to justify the concept of unilateral credit transaction in the theory of civil and financial law[3]. The theory of the letter of credit as a unilateral transaction is specific to the English law[4]. However, the expression of two entities — the customer (payer) and the bank is necessary for the emergence of the letter of credit relationship. Most foreign academics also consider the letter of credit as an agreement[5] or obligation of the issuing bank, which has features of the contract[6]. The Uniform Commercial Code of the United States (The Uniform Commercial Code § 5–102) determines the letter of credit as an agreement, not as a one-way transaction.

The determination of the legal nature of the letter of credit relationship in the light of the contractual relationship is the basis for new disputes, in the theory of law as well as in practice. Overall, all views on the legal nature of the letter of credit can be grouped into the following concepts:

1) contract concluded under the condition[7];
2) commission agreement[8];
3) contract of assignment or mandate[9];
4) contract on behalf of the third party[10];
5) contract of guarantee[11];
6) special kind of *sui generis* obligations[12];
7) security in the academic literature[13].

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[3] Y.A. Pavlovich, *Nezavisimye documentarnye obyaztelstva: nauch.-practich. izd*., Moskva 2006, p. 82.

[4] G.H. Treitel, *The Law of Contract*, London 1999, pp. 38, 139–140.

[5] R. Schaffer, F. Agusti, *Beverley Earle International Business Law and Its Environment*, Pre-Press PMG 2009, p. 235.

[6] R.P. Buckley, X. Gao, "The Development of the Fraud Rule in Letter of Credit Law: The Journey So Far and the Road Ahead", *University of Pennsylvania Journal of International Economic Law* 2002, No. 23, p. 664.

[7] L.I. Frey, *Organizatsia I tehnika roboty inostrannyh bankov*, Moskva 1994, p. 138.

[8] M.M. Agarkov, *Osnovy bankovskogo prava; Uchenye o tsennyh bumagah*, Moskva 1994, p. 143.

[9] Gutteridge and Megrah's, *Law of Bankers Commercial Credits*, London 1955, p. 21.

[10] W.E. Mc Curdy, Commercial Letter of Credit, *Harward Law Review* 35, 1921, pp. 539–574.

[11] V.B. Kolesnik, *Pravovye osnovy akkreditivnoy formy beznalichyh raschetov. Pravovye aspekty mejbankovskyh paschetov. Sbornik statey po bankovskomu pravu*, Kyev 1994, pp. 35–37.

[12] Krysenko A.Y., "Ponyattya ta pravova pryroda akredytyvu", *Visnyk Donetskogo natsionalnogo universytetu. Seria: Ekonomika i pravo* 2010, 2(2), p. 634.

[13] C.M. Schmitthoff, "Clive M. Schmitthoff's Select Essays on International Trade Law", BRILL 1988, No. 802, pp. 455–467.

In addition, O. Hershi[14] and N.V. Agafonova[15] studied the letter of credit as a complex of agreements in their academic quests. According to I.A. Bezklubyy, the letter of credit is a complex legal and technical means of settlement under the condition of presentation of documents, consisting of consecutive interconnected system of independent powers, the commission of which involves banking transactions aimed at the implementation of monetary obligations under the main contract for the beneficiary (receiver)[16]. Thus, prof. Bezklubyy actually considers the letter of credit as a banking system, arising from multiple transactions.

The concept of the letter of credit under the legislation of Ukraine

According to Part 1 of Art. 1093 of the Civil Code (hereinafter — CC) of Ukraine in case of payments by the letter of credit bank (the issuing bank) in the name of the client (payer), the applicant of the credit and in accordance with his instructions or on its (bank's) behalf agrees to make a payment under the conditions defined in the letter of credit, or instructs the other (nominated) bank to make the payment on behalf of recipient for money or another person ascertained by him — the beneficiary. Thus, the article indicated does not give a clear answer to the legal nature of relationships that occur when opening a letter of credit. However, the CC of Ukraine is not the only legal act that contains the determination of the credit.

Thus, in the Regulation on the procedure of Documentary credit transactions in the calculations for foreign economic operations conduction by the authorized banks, approved by the National Bank of Ukraine dated 3 December 2013, the letter of credit is considered as a conditional bond provided by the issuing bank on behalf of and with instructions of the person (credit applicant) (and in his name) or on their own behalf, payment for beneficiary or another person determined by him or to accept and pay the beneficiary bills of exchange (drafts) or authorize another bank to hold such payment, or accept and pay bills of exchange (drafts), or authorize another bank to make negotiations (buy or consider bills of exchange (drafts) against stipulated documents subject to the conditions of the credit). However, already in the Instruction on non-cash transactions, approved by the National Bank of Ukraine of January 21, 2004 it is clearly stated that the letter of credit is a contract that contains an obligation of the issuing bank under which the bank in the name of the client (applicant's credit) or on its behalf against documents that comply with the letter of

[14] B. Kozolchyk, "The Legal Nature of the Irrevocable Commercial Letter of Credit", *The American Journal of Comparative Law* 1966, No. 14, p. 400.

[15] N.V. Agafonova, *Pravovyy rejym akredytyvu yak formy bezgotivkovyh rozrahunkiv: Avtoref. dys… kand. yuryd. nauk: 12.00.07*, Kyiv 2002, p. 16.

[16] I.A. Bezklubyy, *Bankivski pravochyny: tsyvilno-pravovi problemy: Monografiya*, Kyiv 2005, p. 283.

credit, shall make payment in favor of the beneficiary or instructs other (nominated) bank to make such a payment.

The essence of the letter of credit relationship

On analyzing all the above mentioned issues it can be concluded that the letter of credit relationship occurs only when a person (payer) is in a contractual relationship arising under the contract of bank account with the issuing bank. Signing the contract of a bank account is one of the prerequisites of the letter of credit relationship.

The existence of contractual relationships between the payer and the recipient acts as another prerequisite of the letter of credit relationship. This agreement may exist in the form of a contract of sale, delivery etc. The letter of contract relationship is intended to ensure execution of the monetary obligation that arose from the agreement between the payer and the recipient of the contract.

The customer is obliged to submit an application that meets the formal as well as contentual requirements. The point is that the terms of the letter of credit defined in it should provide the issuing bank with the possibility to verify and ensure the interests of the parties involved in these relationships. Instead, the issuing bank determines means of implementation of the letter of credit and other letter of credit relationship members (advising bank, the executing bank) by accepting the declaration. Acceptance of the application is considered in the theory of civil law as an acceptance, and therefore the application — as an offer.

Together with an application's acceptance, the issuing bank will execute letters of credit relationship, which is not dependent on the latter, as well as the relationship between the bank and the customer (payer) on the bank account agreement in spite of the fact that it arises to enforce monetary obligations under the other treaty.

In connection with the above mentioned, the letter of credit relationship cannot be regarded as having emerged from a one-sided transaction, as well as accessory obligations. It is a separate credit agreement independent of the other agreements the existence of which is a prerequisite for its conclusion. This feature likens the letter of credit to a guarantee to meet these obligations. However, the latter by its legal nature arises out of the unilateral bank transaction. In addition, the debtor of the obligation secured by a bank guarantee must fulfill it by himself and only if he fails to do so, the creditor may apply to the bank for payment of the amount.

Thus, the letter of credit can be described as a bilateral, onerous, consensual agreement. It seems that there is a false belief that documents are the subject of the letter of credit. Indeed, in the while executing the payments under the letter of credit subjects to letter of credit relationship deal only with documents. However, the aim of this rule consolidation is to eliminate possible subjective circumstances that would allow participants to abuse their rights or not to serve within the letter of credit relationship.

The banking service which consists in paying money to the beneficiary (recipient) or executing other activities specified by law, on condition of granting by him the documents prescribed in the letter of credit, serves as a matter of the letter of credit agreement. In this regard, the letter of credit cannot be considered as a contract in favor of a third party because the obligation by the debtor in favor of the latter is unconditional. However, in the relationship of the letter of credit the issuing bank directly or a nominated bank cannot pay the appropriate amount to the beneficiary in the event of his failure to provide them with appropriate documents. Banking services relate to financial services. According to Art. 1 of the Law of Ukraine "On Financial Services and State Regulation of Financial Markets" of July 12, 2001, the financial service is a financial asset carried out on behalf of third parties at their own expense or at the expense of the people, and in the cases stipulated by law — at the expense of others involved in financial assets for profit or preservation of the real value of financial assets. Obviously, financial services inherently involve actual actions and/or legal ones. This fact eliminates the possibility of assigning credit to commission agreement or contract assignments.

However, filing or failure to file the documents specified in the Credit by a beneficiary cannot be the basis for assignment of credit to the transaction that is committed under the condition. An event should be understood under the circumstance, which can unnecessarily occur. Filing documents by beneficiary depends entirely on his will.

The letter of credit cannot be regarded as a transfer or assignment of the debt since the emergence of the letter of credit does not change the relationship of possible creditor and debtor in the obligation which arose between the payer and the recipient in the contract, pursuant to the liability for which the credit is opened.

The letter of credit agreement has distinctive characteristics which do not allow the possibility of its inclusion in the contract of guarantee concept. Under the contract of guarantee debtor and guarantor to the creditor act as joint and several debtors. However, responsibility for the payer under the contract with the recipient, and the responsibility of the issuing bank is not joint and several, because separate contractual construction is implied.

There have been attempts to consider the letter of credit as security in the academic literature. This theory can be justified primarily by similarity of performance mechanisms of the letter of credit and the bill. However, according to Art. 196 of the Civil Code of Ukraine and Art. 3 of the Law of Ukraine "On Securities and Stock Market" of February 23, 2006, securities in Ukraine are only the documents of the established form with relevant details that are ascribed to this type of property.

However, not only the lack of recognition by the state makes it impossible to assign letters of credit to the securities, its other discrepancy with established characteristics must be taken into consideration as well. In our view, the features of the securities should be classified as:

1) statutory fixing. As has been already noted, this feature is crucial because, unlike transactions that may be provided or not by acts of civil law, but by analogy still generate civil rights and obligations, assignment of the document (in documentary or non-documentary form) to securities must be provided by law. In Ukraine, as in other continental European countries, there has been secured formal approach to the recognition of it as such. In the USA only the identity document of a certain property rights of the individual, not the availability of guidance law, is taken into account in addressing this issue;

2) certification of monetary or other proprietary rights. Certainly, security is characterized by the rights it certifies, especially given the prevalence of a non-documentary form of securities;

3) the relationship between the right to security and the right resulting from security. The legal relationship between the right in the security expressed and the document also shows a substantial legal significance of the document to transfer the right pronounced by it. The existence of this relationship is relevant, irrespective of the form of securities, as the latter is a way of fixing the rights belonging to a specific holder;

4) legitimization (legality verification) the holder's of the security rights is closely connected to the previous feature and provides a way to confirm that a person has rights resulting from the security. Legitimization is mandatory to carry out his or her rights under the security;

5) public credibility — the general rule of public credibility enshrined in p. 2, Art. 198 of the Civil Code of Ukraine. Grounds for refusal of a legitimate issuer to fulfill its obligations to their holder are clearly identified in the legislation of Ukraine, namely Art. 31 of the Law of Ukraine "On Joint Stock Companies" dated 17 September 2008 (restrictions on the payment of dividends);

6) abstractness (autonomy) of the security means that the exercise of the rights on securities is independent of the previous holder of the security rights;

7) standardization of the security content. Security should contain information required by law, regardless of its belonging to the emission or non-emission securities;

8) being in public circulation, and thus the ability to be the subject of civil legal actions;

9) inability to use vindication of non-documentary securities and bearer securities. In our opinion, to protect the rights of the security holder it is required to use the rules of Chapter 83 of the Civil Code of Ukraine (the acquisition, retention of the property without sufficient legal reason), because the term "property" includes not only things or their totality, but proprietary rights and obligations, that is why, it is universal. Vindication can only be applied to things as objects of the material world, and only those that are defined with individual features.

The letter of credit does not identify monetary or proprietary right. In the above mentioned definitions the notion of letter of credit has been revealed through the

prism of the contract or conditional liability. However, the relationship between the payer and the issuing bank cannot assume liability.

The legal definition of a monetary obligation contained in Art. 1 of the Law of Ukraine "On Restoring Debtor's Solvency or Declaring it Bankrupt" on May 14, 1992, according to which the monetary obligation is the obligation of the debtor to pay the creditor a sum of money in accordance with the civil law of the transaction (the contract) and on other grounds in the laws of Ukraine. According to the Supreme Commercial Court of Ukraine (clause 1.1. of the Resolution of the Plenum of the Supreme Commercial Court of Ukraine of December 17, 2013 "On Certain Issues of the Law on Liability for Breach of Monetary Obligations") Money is expressed in monetary terms (local currency in Ukraine or its monetary equivalent in foreign currency) obligation to pay money to the other party, which, accordingly, may require the debtor's performance of his duties (any obligation that consists in including the relationship in which obligation of the debtor to pay money to a creditor corresponds to the creditor's rights to require from the debtor to perform certain actions should be considered as monetary).

However, the substance of the relationships between the payer and the issuing bank is that the latter agrees to open a letter of credit namely to "reserve" funds from which calculations with the recipient (beneficiary) will be carried out. Thus, there is a bond between the payer and the recipient by the contract of sale and more. Conclusively, monetary relationship ensures the implementation of the monetary obligation, and does not replace it. Therefore, the main feature of the securities — certification of monetary or proprietary obligations — is missing in the letter of credit.

While performing a security, the holder must prove his rights. Such confirmation may be provided by presenting a security or an extract from a securities' account if the latter exists in non-documentary form. In the letter of contract relationship the recipient neither has the letter of credit nor provides it to the nominated bank or issuing bank. However, he should provide evidence of execution of his duty to the payer and the executing bank must verify the performance by the recipient of the letter of credit. The letter of credit actually remains in the issuing bank. The letter of credit relationship does not allow substitutions of these relations on the stage of letter of credit implementation.

Public credibility is not applicable to the letter of credit, it is impossible to identify clearly all cases of failure conditions of the letter of credit recipient, as letter of credit conditions are determined by the payer in each case. Accordingly, the absence of the above mentioned excludes such indications of equity securities as standardization of content, being in civil circulation, abstractness.

It should be noted that under Art. 22 of the Law of Ukraine "On Payment Systems and money transfer in Ukraine" dated April 5, 2001 the letter of credit is not in the list of settlement documents. As a settlement document we consider a document which can be used to initiate a transfer from the payer's to the payee's account. It is clear that the letter of credit does not directly initiate a transfer. The issuing bank

"reserves" means to perform the letter of credit or it is performed at the expense of the executing bank, and not directly from the payer's to the recipient's account.

Despite the fact that the Instructions on non-cash payments in Ukraine in the national currency approved by the National Bank of Ukraine on January 21, 2004, provide the letter of credit on the list of payment instruments, the letter of credit should not be attributed to the latter. Payment instrument is a means of some form on paper, electronic or other media used to initiate transfers. These tools include transfer documents (payment documents, documents for transfer of cash, interbank settlement documents clearing requirements, other documents to initiate the transfer) and electronic means of payment (credit cards, mobile payment means). As has been mentioned earlier, the letter of credit is not directly used to initiate the transfer of money.

As for the definition of the letter of credit as a complex of contracts, it should be noted the following: execution of the letter of credit is provided by the presence of several major contractual structures that exist between the payer and the issuing bank, between the issuing bank and the executing bank and between the executing bank and the recipient. Obviously, it concerns the particular contracts of bank accounts that provide cash flow. However, the bank account agreement between the payer and the issuing bank, as has been already mentioned, is a prerequisite for opening letters of credit and bank account agreements between other parties to ensure compliance with the letter of credit.

Conclusions

To sum up, it should be noted that the relationship of the letter of credit is a civil relationship arising under an independent contract to be concluded between the client and the bank issuer of banking services, including payment to the beneficiary, on condition of granting certain documents by him regarding its legal nature. There is no doubt that within the letter of credit relationship banks perform banking operations, which consist in crediting of correspondent accounts, payments, etc., which taken together constitute the content of banking services that are subject to the letter of credit agreement. Therefore, we support the idea to determine the letter of credit as a special kind of *sui generi*s obligations.

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