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Payment Methods in International Trade from Georgian Law Perspective

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Abstract

This article examines the legal structure and function of payment methods in international trade, focusing on their role as mechanisms of risk allocation and aiming to provide an overview of this topic from Georgian law perspective. It argues that instruments such as letters of credit, documentary collections and open account transactions operate not only as mere commercial tools but also as legal architectures. While Georgian law formally, and in author's view, to some extent insufficiently, incorporates international trade finance standards through the Civil Code and recognition of international commercial practices, this area still remains underdeveloped in doctrinal articulation and judicial interpretation. Along with using of other scientific methods, this article, above all, by means of comparative analysis with the European Union law, doctrines and practices of EU countries and the framework of the EU–Georgia Deep and Comprehensive Free Trade Area (DCFTA), aims to demonstrate that Georgia's trade finance system exhibits certain structural dependence on external norms. Accordingly, it concludes with proposing some doctrinal and institutional reforms with the goal of strengthening legal certainty and enhancing judicial engagement with trade finance principles.

Keywords: International Trade Finance; Letters of Credit; Cash in Advance; Documentary Collections; Open Account; Consignment; Georgian Law;

EU–Georgia DCFTA; Autonomy Principle; Strict Compliance, Fraud Exception

Introduction

Currently, the legal framework regulating the international trade finance in Georgia is rather limited. Based on global experience, we may say that payment methods in international trade represent technical financial arrangements designed to facilitate cross-border transactions. Such a description, however, may understate their legal and institutional significance. In reality, these mechanisms function as structured systems of risk allocation, determining how uncertainty is distributed among exporters, importers, and financial intermediaries.[1] Far from being neutral instruments, they embody normative choices about trust, enforcement, and the allocation of commercial risk in an inherently uncertain environment.[2]

In author's opinion, the principal payment methods affecting Georgia and widely used in international trade are: 1) Cash in Advance; 2. Letters of Credit; 3. Documentary Collections; 4. Open Accounts; and 5. and Consignment. Each of such methods reflects a distinct legal configuration of rights and obligations. At one end of the spectrum, Cash in Advance places the entirety of the risk on the importer, requiring payment before shipment. At the other, Open Account and its variation, Consignment, imply transactions where the risk burden shifts to the exporter, who delivers goods before receiving payment. Between these extremes lie intermediary mechanisms such as Documentary Collections and, most notably, Letters of Credit, which redistribute risk through the involvement of financial institutions.[3]

This article argues that the legal regulation of payment methods, in international trade, especially in Georgia, cannot be understood solely in functional or commercial terms. Rather, it must be analysed as a body of doctrine that reflects a balance between competing objectives: efficiency, certainty, and justice.[4] The autonomy principle widely used in this area, for instance, promotes predictability by insulating the bank's obligation from disputes arising under the underlying contract of sale. Yet this very insulation creates the risk that payment may be made in circumstances

[1] Compare: ÖNÜR ASLAN A., INTERNATIONAL PAYMENT METHOD SELECTION IN IMPORT-EXPORT MANAGEMENT IN ECONOMIC UNCERTAINTY PERIODS: ANALYSIS WITHIN THE SCOPE OF MCDM, Journal of Administrative Sciences, Volume: 24, No: 60, 530. https://doi.org/10.35408/comuybd.1811323.

[2] Compare: Goode R., Commercial Law (4th edn, Penguin 2010), 962.

[3] Compare: Carr I., Stone P., International Trade Law (5th edn, Routledge 2018) 412.

[4] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 960-965.

involving fraud or non-performance, thereby necessitating the development of corrective doctrines such as the fraud exception.[5]

One of the objectives of this paper is evaluation of the relevance of these instruments in the context of Georgian law. Over the past couple of decades, Georgia has undertaken significant legal and economic reforms aimed at integrating its economy into the global trading system. Central to this process has been the conclusion of the Deep and Comprehensive Free Trade Area (DCFTA) with the European Union,[6] which seeks to promote regulatory convergence and enhance market access. While Georgian legislation formally incorporates international trade finance standards—most notably through the Civil Code and the recognition of international commercial practices—its doctrinal development remains limited.

From author's point of view, currently effective Georgian legislation tends to "doctrinal externalisation" of the topic, whereby international norms are applied but not fully internalised within domestic jurisprudence.[7] This creates the risk that the courts will rely on general principles of contract law rather than developing specialised doctrines tailored to trade finance instruments. This creates a hybrid legal environment that may undermine legal certainty and limit the effectiveness of payment mechanisms in complex commercial transactions.

Payment Methods as Legal Structures of Risk in International Practice

Each of various payment methods employed in international trade reflects a deliberate calibration of competing interests, particularly the exporter's need for payment security and the importer's need for assurance regarding performance.[8] To illustrate the aforementioned - for exporters, any sale is factually a gift until payment is received and therefore, exporters want to receive payment as soon as possible, preferably as soon as an order is placed or before the goods are sent to the importer. At the same time, for importers, any payment is a donation until the goods are received and, hence, the importers want to receive the goods as soon as possible but to delay

[5] Compare: Hwaidi M., Four uncertainties around the fraud exception in documentary letters of credit under English law (The Journal of International Maritime Law), January 2018, 43-44. https://www.researchgate.net/publication/336702812_Four_uncertainties_around_the_fraud_exception_in_documentary_letters_of_credit_under_English_law_The_Journal_of_International_Maritime_Law.

[6] ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (signed 27 June 2014, entered into force 1 July 2016). https://eur-lex.europa.eu/eli/agree_internation/2014/494/2018-06-01.

[7] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 952-955.

[8] Compare: Carr I., Stone P., International Trade Law (5th edn, Routledge 2018) 412.

payment as long as possible, preferably until after the goods are resold, in order to generate enough income to pay the exporter.[9]

In this sense, payment methods in international trade may be described as hybrid legal constructs, combining contractual autonomy with institutional regulation. Their effectiveness depends not only on their formal structure but also on the legal environment in which they operate, including the capacity of courts to interpret complex commercial instruments and to resolve disputes in a predictable and coherent manner.

The various payment methods employed in international trade are best understood not merely as commercial practices, but as legal structures designed to allocate and manage risk between contracting parties.[10] Since not all of the following payment methods are defined and regulated under Georgian law, for the purposes of below sub-sections we will rely primiraly on international doctrines and practices simultaneously superficially describing the existing local statutory framework, which is the subject to a more detailed discussion in the next section 3.

A. Cash in Advance

With Cash in Advance payment terms, an exporter can avoid credit risk because payment is received before the ownership of the goods is transferred, in other words, under this arrangement, the importer is required to make payment prior to shipment, thereby assuming the entirety of the transactional risk.[11] For international sales, wire transfers and credit cards are the most commonly used Cash in Advance options available to exporters.[12] With the advancement of the Internet, escrow services[13] are becoming another Cash in Advance option for small export transactions.[14]

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[9] Compare: Gabisonia Z., Banking Law, 2nd revised and expanded edition, Tbilisi, "World of Lawyers", 2017, 265-293.

[10] Compare: Jarzemskis A., Jarzemskiene I., The Upgraded Complex of Payment Methods Following Expansion of Contract Manufacturing in International Trade. Journal of Business and Economic Development. Vol. 8, No. 1, 2023, 13-14. doi: 10.11648/j.jbed.20230801.13

[11] Methods of Payment, Official Website of the United States government, https://www.trade.gov/methods-payment.

[12] Ibid.

[13] "Escrow service – a service according to which the escrow agent undertakes to transfer the funds provided by the payer to the escrow agent within the scope of the escrow service to the recipient, who is a party to the escrow agreement, upon the occurrence of the conditions provided for in the escrow agreement, and in the event of non-fulfillment of the conditions provided for in the escrow agreement or upon the expiration of the escrow service - to the payer, in accordance with the escrow agreement."- Article 2, Order of the President of the National Bank of Georgia No. 24/04 "On Approval of Instructions on Opening Accounts in Banking Institutions", 07/04/2011.

[14] Methods of Payment, Official Website of the United States government, https://www.trade.gov/methods-payment.

However, while this method offers maximum protection to the exporter, requiring payment in advance is the least attractive option for the buyer, because it creates unfavorable cash flow.[15] Foreign buyers are also concerned that the goods may not be sent if payment is made in advance. Thus, exporters who insist on this payment method as their sole manner of doing business may lose to competitors who offer more attractive payment terms. Consequently, Cash in Advance represents the most straightforward allocation of risk, making this instrument often commercially impractical, particularly in competitive markets where buyers possess greater bargaining power. Moreover, it raises concerns regarding possible opportunistic behaviour, as the importer bears the risk of non-delivery or delivery of non-conforming goods.[16]

From perspective of Georgian law, Cash in Advance seems to be lawful and fully permitted type of transaction. However, it is not regulated as a trade finance instrument and its legal background is based on rather general provisions of local Civil Code.[17] In particular, pursuant to these articles, Cash in Advance is "…a sum of money paid by one party to a contract to the other party as the sign that the contract has been concluded," it "shall be credited against the performance owed, and if it is not credited, then it shall be returned after performance of the obligation." These wordings along with a couple of sentences regulating counting of Cash in Advance in the scope of compensation for damages,[18] are obvoiously insufficient to establish a clear legal framework for such a significant payment method in international trade.

B. Letters of Credit

Among the instruments considered in this paper, the Letters of Credit occupy a central position in international trade finance. Its defining feature is the interposition of a bank that undertakes to pay the exporter upon presentation of specified documents, thereby substituting the creditworthiness of the bank for that of the buyer. This structure enhances transactional security and facilitates trade between parties operating in different legal and economic environments. At the same time, it gives rise to

[15] Ibid.
[16] Compare: Bridge M., The Law of International Sale of Goods (3rd edn, OUP 2013) 210–212.
[17] Civil Code of Georgia, Articles 421-422, 06/27/1997.
[18] Ibid., Article 423.

complex legal doctrines, including the autonomy principle and the rule of strict compliance, which govern the operation of documentary credits.[19]

Technically, a Letter of Credit is a document issued by a third party that guarantees payment for goods or services when the seller provides acceptable documentation.[20] Letters of Credit are usually issued by banks or other financial institutions, but some creditworthy financial services companies, like insurance companies or mutual funds, might issue letters of credit under certain circumstances.[21]

A Letter of Credit generally has three participants: the beneficiary (the person or company who will be paid), the buyer of the goods or services (sometimes called the applicant), and the issuing bank (the institution issuing the letter of credit).[22] The beneficiary may request payment to an advising bank, which is a bank where the beneficiary is a client, rather than directly to the beneficiary: this might be done, for example, if the advising bank financed the transaction for the beneficiary until payment was received.[23]

The Letter of Credit, represents a rather sophisticated legal instrument. Due to the fact that it introduces a third-party financial institution—typically a bank—that undertakes an independent obligation to pay the beneficiary upon presentation of conforming documents, this structure significantly alters the allocation of risk.[24] The exporter is protected against the risk of buyer default, while the importer gains assurance that payment will only be made upon presentation of specified documents, usually evidencing shipment.[25]

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[19] Compare: Ferrero S., SOME CONSIDERATIONS ON THE DOCTRINE OF STRICT COMPLIANCE AND THE AUTONOMY PRINCIPLE IN DOCUMENTARY CREDIT, 4 BusinessJus 25 (2013), 2.

[20] Compare: Crozet, M., Demir, B., & Javorcik, B. (2022). International trade and letters of credit: A doubleedged sword in times of crises. IMF Economic Review, 70(2), 190–192. https://doi.org/10.1057/s41308-021-00155-3.

[21] Compare: Scotiabank, INTERNATIONAL TRADE FINANCE SERVICES, DOCUMENTARY LETTERS OF CREDIT, A PRACTICAL GUIDE, 9671811(10/99), https://instruction2.mtsac.edu/rjagodka/Importing_Information/Letter_Of_Credit_Guide.pdf.

[22] Compare: Jarzemskis A., Jarzemskiene I., The Upgraded Complex of Payment Methods Following Expansion of Contract Manufacturing in International Trade. Journal of Business and Economic Development. Vol. 8, No. 1, 2023, 14-15. doi: 10.11648/j.jbed.20230801.13.

[23] Ibid.

[24] Compare: Scotiabank, INTERNATIONAL TRADE FINANCE SERVICES, DOCUMENTARY LETTERS OF CREDIT, A PRACTICAL GUIDE, 9671811(10/99), 2-3, https://instruction2.mtsac.edu/rjagodka/Importing_Information/Letter_Of_Credit_Guide.pdf

[25] Compare: International Chamber of Commerce, Uniform Customs and Practice for Documentary Credits (UCP 600, 2007) articles 2, 4. http://static.elmercurio.cl/Documentos/Campo/2011/09/06/2011090611422.pdf.

From a legal standpoint, the Letter of Credit operates through a network of interrelated but independent contractual relationships.[26] These include the underlying contract of sale, the agreement between the applicant (importer) and the issuing bank, and the bank's undertaking to the beneficiary (exporter).[27] The independence of these relationships is a defining feature of the instrument and underpins its effectiveness in international trade.[28]

Importantly, the payment mechanisms of the Letter of Credit do not operate in a legal vacuum. Apart from being briefly regulated through articles 876 and 878 of Georgian Civil Code, they are embedded within a broader framework of international commercial norms and domestic legal systems. Instruments such as the Uniform Customs and Practice for Documentary Credits (UCP 600) issued by the International Chamber of Commerce provide standardized rules that govern the operation of Letters of Credit,[29] while domestic courts play a crucial role in interpreting and enforcing these rules.

There are number of types of the Letters of Credit which may be distinguished through their technical features as well as distinct legal structure. I believe some of these instruments deserve specific mentioning in this paper:

- import/export Letters of Credit are used in international trade. The same Letter of Credit would be termed an import Letter of Credit by the importer and an export Letter of Credit by the exporter. In most cases the importer is the buyer and the exporter is the beneficiary;[30]
- revocable Letter of Credit can be changed at any time by either the buyer or the issuing bank with no notification to the beneficiary. The most recent version of the UCP, UCP 600, did away with this form of Letter of Credit for any transaction under their jurisdiction. Conversely, the irrevocable Letter of Credit only allows change or

[26] Compare: Scotiabank, INTERNATIONAL TRADE FINANCE SERVICES, DOCUMENTARY LETTERS OF CREDIT, A PRACTICAL GUIDE, 9671811(10/99), 2-3, https://instruction2.mtsac.edu/rjagodka/Importing_Information/Letter_Of_Credit_Guide.pdf

[27] Ibid.

[28] Compare: McKendrick E., Goode on Commercial Law (5th edn, Penguin 2016) 1045–1048.

[29] Compare: International Chamber of Commerce, Uniform Customs and Practice for Documentary Credits (UCP 600, 2007. http://static.elmercurio.cl/Documentos/Campo/2011/09/06/2011090611422.pdf.

[30] Compare: Scotiabank, INTERNATIONAL TRADE FINANCE SERVICES, DOCUMENTARY LETTERS OF CREDIT, A PRACTICAL GUIDE, 9671811(10/99), 3, https://instruction2.mtsac.edu/rjagodka/Importing_Information/Letter_Of_Credit_Guide.pdf

cancellation of the Letter of Credit by the issuing bank after application by the buyer and approval by the beneficiary;[31]

- confirmed Letter of Credit is one where a second bank agrees to pay the Letter of Credit at the request of the issuing bank. As the reader might guess, an unconfirmed Letter of Credit is guaranteed only by the issuing bank;[32]
- transferrable Letters of Credit are commonly used when the beneficiary is simply an intermediary for the real supplier(s) of the goods and services or is one of a group of suppliers.[33] It allows the named beneficiary to present its own documentation but transfer all or part of the payment to the actual supplier(s). An un-transferrable Letter of Credit does not allow transfer of payments to third parties;
- at sight Letter of Credit is payable as soon as documentation has been presented and verified, or payment may be deferred (also called a usance Letter of Credit) until a certain time period has passed or the buyer has had the opportunity to inspect or even sell the related goods;[34]
- red clause Letter of Credit allows the beneficiary to receive partial payment before shipping the products or performing the services.[35] Originally these terms were written in red ink, hence the name. In practical use, issuing banks will rarely offer these terms unless the beneficiary is very creditworthy or an advising bank agrees to refund the money if the shipment is not made;
- back-to-back Letter of Credit is used in a trade involving an intermediary, such as a trading house. It is actually made up of two Letter of Credit, one issued by the buyer's bank to the intermediary and the other issued by the intermediary's bank to the seller.[36]

As you may see, even within the category of Letters of Credit the allocation of risk differs between the parties depending which of the above-mentioned instruments is used. In light of the Letters of Credit, it is noteworthy that this payment method relies on several core principles, namely:

[31] Compare: Ibid., 2.
[32] Compare: Ibid.
[33] Compare: Ibid., 4.
[34] Compare: Ibid., 2.
[35] Compare: Ibid., 4.
[36] Compare: Ibid., 4.

I. The Autonomy Principle

The autonomy principle is often described as the defining feature of documentary credit law,[37] however, such a characterization obscures its underlying normative complexity. Rather than a purely technical rule, autonomy reflects a deliberate prioritization of transactional efficiency over substantive justice.[38]

By insulating the bank's obligation from disputes arising under the underlying contract of sale, the principle ensures that payment flows remain predictable and insulated from commercial conflict.[39] Yet this same insulation creates the potential for abuse, particularly in cases involving fraudulent documentation or non-conforming goods.[40]

In jurisdictions such as Georgia, where judicial engagement with trade finance doctrine remains limited, the autonomy principle risks being applied mechanically rather than interpretatively.[41] The fact that the Letter of Credit is independent from underlying sales agreement or any other contract is widely recognized locally, above all, due to regulation of this topic in the UCP 600.[42] This raises concerns regarding the capacity of local courts to respond effectively to exceptional circumstances, particularly those involving allegations of fraud.

II. Strict Compliance

The doctrine of strict compliance requires that documents presented under a Letter of Credit conform exactly to the terms of the credit.[43]

While this promotes certainty, it can produce harsh results where minor discrepancies lead to refusal of payment. Hence, the doctrine has been criticised for its potential rigidity.[44] Theoretically, even typographical errors or trivial inconsistencies—may result in rejection of remittance, even where the underlying transaction has been properly performed.[45] This has led some commentators to advocate for a more flexible standard, often described as

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[37] Compare: Ibid., 5.
[38] Compare: Carr I., Stone P., International Trade Law (5th edn, Routledge 2018) 430-433.
[39] Compare: Ferrero S., Some considerations on the doctrine of strict compliance and the autonomy principle in documentary credit, 4 BusinessJus, 25 (2013), 3-4.
[40] Compare: Ibid.
[41] Compare: Gabisonia Z., Banking Law, 2nd revised and expanded edition, Tbilisi, "World of Lawyers", 2017, 292-293.
[42] Compare: Zambakhidze T., Commentary on Article 876 of the Civil Code of Georgia, 6, http://gccc.tsu.ge.
[43] Compare: Ferrero S., Some considerations on the doctrine of strict compliance and the autonomy principle in documentary credit, 4 BusinessJus, 25 (2013), 1-3.
[44] Compare: Ibid.
[45] Compare: Bridge M., The Law of International Sale of Goods (3rd edn, OUP 2013) 225–227.

"substantial compliance."[46] However, in author's opinion, such an approach risks undermining the certainty that strict compliance is designed to achieve.

The review of rather scarce Georgian sources in relation to this topic, we may conclude that at least on doctrinal level, the strict compliance, although not statutorily regulated, should be also applied locally.[47]

III. The Fraud Exception

The fraud exception represents the principal limitation on the autonomy principle. It allows courts to intervene and restrain payment under a Letter of Credit where there is clear evidence of fraud on the part of the beneficiary.[48] Unlike other contractual disputes, which are excluded by the autonomy principle, fraud is considered sufficiently serious to justify judicial interference.[49]

The scope of the fraud exception, however, remains contested. Courts worldwide have generally adopted a cautious approach, requiring a high standard of proof and limiting intervention to cases of egregious misconduct.[50] This reflects a concern that excessive judicial interference could undermine the reliability of Letter of Credit and disrupt international trade.

From a doctrinal perspective, the fraud exception highlights the inherent tension within documentary credit law. While the autonomy principle seeks to exclude considerations of fairness in favour of certainty, the fraud exception reintroduces such considerations in exceptional circumstances.[51] The challenge lies in maintaining an appropriate balance between these competing objectives.

In the Georgian legal context, the absence of explicit statutory recognition of the fraud exception places greater emphasis on judicial interpretation. This underscores the need for a more developed jurisprudence capable of engaging with the complexities of international trade finance.

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[46] Compare: Devitt, M.R. and Sannicandro, L.A. (2017). Substantial Compliance vs. Strict Compliance. In Qualified Appraisals and Qualified Appraisers (eds M.R. Devitt and L.A. Sannicandro). https://doi.org/10.1002/9781119449379.ch4

[47] Compare: Gabisonia Z., Banking Law, 2nd revised and expanded edition, Tbilisi, "World of Lawyers", 2017, 287-288.

[48] Compare: United City Merchants (Investments) Ltd v Royal Bank of Canada [1983] 1 AC 168 (HL).

[49] Compare: Hwaidi M., Four uncertainties around the fraud exception in documentary letters of credit under English law (The Journal of International Maritime Law), January 2018, 43-44. https://www.researchgate.net/publication/336702812_Four_uncertainties_around_the_fraud_exception_in_documentary_letters_of_credit_under_English_law_The_Journal_of_International_Maritime_Law.

[50] Compare: Ibid.

[51] Compare: Ibid.

C. Documentary Collections

Among payment methods in international trade there are also those intermediary mechanisms available that seek to balance the risks more equitably. Documentary Collections, are mostly governed by internationally recognised rules such as the Uniform Rules for Collections (URC 522),[52] a set of international banking standards published by the International Chamber of Commerce (ICC) for handling Documentary Collections. They provide a uniform framework to streamline transactions like Documents against Payment (D/P) or Acceptance (D/A),[53] ensuring clarity in obligations and reducing risks for sellers (exporters) and buyers (importers involve banks acting as intermediaries in the exchange of documents and payment). However, unlike Letters of Credit, banks in collection transactions do not assume any payment obligation.[54] Their role is limited to facilitating the transfer of documents against payment or acceptance, leaving the underlying credit risk largely with the parties.

In other words, Documentary Collections is a process in which both the buyer's and seller's banks act as facilitators of the trade. The seller submits documents needed by the buyer, such as the bill of lading, which is necessary for the transfer of title to the goods, to its bank.[55] The seller's bank will then send these documents to the buyer's bank along with payment instructions.[56] The documents are only released in exchange for payment, which is remitted immediately or at a specified date in the future. With Documentary Collections, also known as bills of exchange, the seller is basically handing over the responsibility of payment collection to his bank.

Article 877 of the Civil Code of Georgia provides for a rather vague and inadequate definition of Documentary Collections – "…the credit institution authorized for the collection operation (the bank) shall undertake to issue negotiable securities on the order of the customer (principal), in exchange for acceptance and/or, where necessary, in exchange for payment by the payer" and along with subsequent article 878 (which permits applying

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[52] International Chamber of Commerce, Uniform Rules for Collections (URC 522), https://aloqabank.uz/upload/medialibrary/6f9/w3msrb5nhqe4b3kni0y2exy8hh9ip6r6/URC522.pdf.

[53] ÖNÜR ASLAN A., INTERNATIONAL PAYMENT METHOD SELECTION IN IMPORT-EXPORT MANAGEMENT IN ECONOMIC UNCERTAINTY PERIODS: ANALYSIS WITHIN THE SCOPE OF MCDM, Journal of Administrative Sciences, Volume: 24, 534-535, No: 60, 530. https://doi.org/10.35408/comuybd.1811323.

[54] Compare: Zambakhidze T., Commentary on Article 877 of the Civil Code of Georgia, 3, http://gccc.tsu.ge.

[55] Compare: Jarzemskis A., Jarzemskiene I., The Upgraded Complex of Payment Methods Following Expansion of Contract Manufacturing in International Trade. Journal of Business and Economic Development. Vol. 8, No. 1, 2023, 15-16. doi: 10.11648/j.jbed.20230801.13

[56] Compare: Ibid.

international transaction practices for the Letters of Credit and Documentary Collections), seems to create a very incomprehensive legal framework for this payment method.

D. Open Account

An open account transaction is a sale where the goods are shipped and delivered before payment is due, which in international sales is typically in 30, 60 or 90 days.[57] This is one of the most advantageous options to the importer in terms of cash flow and cost, but it is consequently one of the highest risk options for an exporter.

Open Account and its variation, Consignment, should be placed at the opposite end of the spectrum vis-à-vis the Cash in Advance, since the exporter delivers goods prior to receiving payment. These arrangements are typically reserved for established commercial relationships characterised by a high degree of trust. From a legal perspective, it effectively transforms the exporter into an unsecured creditor, exposing it to significant risks of non-payment, particularly in cross-border contexts where enforcement mechanisms may be uncertain or costly.[58]

Because of intense competition in export markets, foreign buyers often press exporters for open account terms since the extension of credit by the seller to the buyer is more common abroad. Therefore, exporters who are reluctant to extend credit may lose a sale to their competitors. Exporters can offer competitive open account terms and seek extra protection using export credit insurance.

The Civil Code of Georgia as well as other applicable pieces of local statutory regulations do not contain norms directly referring to Open Accounts. Provisions of the Civil Code referring to current accounts[59] (articles 906-910), should not be confused with the essence of Open Accounts.

E. Consignment

Consignment in international trade is a variation of Open Account in which payment is sent to the exporter only after the goods have been sold by the foreign distributor to the end customer.[60] An international Consignment

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[57] Methods of Payment, Official Website of the United States government, https://www.trade.gov/methods-payment.

[58] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 954-956.

[59] "Under a current account agreement, the parties undertake to credit the claims and payments arising out of their business relations to an account and deem them intact until the account is closed." - Civil Code of Georgia, Article 906, 06/27/1997.

[60] Methods of Payment, Official Website of the United States government, https://www.trade.gov/methods-payment.

transaction is based on a contractual arrangement in which the foreign distributor receives, manages, and sells the goods for the exporter who retains title to the goods until they are sold.[61]

Obviously, exporting on Consignment is very risky as the exporter is not guaranteed any payment and its goods are in a foreign country in the hands of an independent distributor or agent. Consignment helps exporters become more competitive on the basis of better availability and faster delivery of goods. Selling on Consignment can also help exporters reduce the direct costs of storing and managing inventory.[62]

The key to success in exporting on Consignment is to partner with a reputable and trustworthy foreign distributor or a third-party logistics provider. Appropriate insurance should be in place to cover consigned goods in transit or in possession of a foreign distributor as well as to mitigate the risk of non-payment.[63]

Similar to the related Open Accounts method of payment, neither Georgian legislation nor local legal doctrine or court practice seems to refer to Consignment as a tool for international trade.

Currently Effective Status in Georgia

The Civil Code of Georgia within its Articles 876–878 contains specific provisions governing international trade instruments, primarily, documentary credit transactions. These provisions define the legal nature of documentary credits and establish the obligations of banks in relation to payment upon presentation of documents.

Article 876 recognises the documentary Letters of Credit as an independent legal arrangement under which a bank undertakes to make payment to a beneficiary upon compliance with specified conditions. While the provision reflects the core structure of documentary credit transactions, it does not explicitly articulate the autonomy principle. Instead, the independence of the bank's obligation seems to be inferred from the functional separation between the credit and the underlying contract.

Article 877 addresses Documents Collection operations, providing a legal framework for transactions in which banks act as intermediaries in the exchange of documents against payment or acceptance. However, the provision stops short of defining the precise legal responsibilities of banks in cases of default or documentary irregularity.

Most significantly, Article 878 provides that international commercial practices may apply to such transactions unless otherwise agreed by the parties. This clause effectively incorporates instruments such as the

[61] Ibid.
[62] Ibid.
[63] Ibid.

Uniform Customs and Practice for Documentary Credits (UCP 600) as well as the Uniform Rules for Collections (URC 522) into Georgian law through such reference. While this approach ensures flexibility and alignment with global standards, it also creates a degree of normative indeterminacy, as the applicable rules may vary depending on the contractual terms adopted by the parties.

From a doctrinal perspective, the reliance on general clauses rather than detailed statutory provisions reflects a broader characteristic of Georgian private law: its preference for principle-based regulation over rule-based specificity.[64] While this approach allows for adaptability, it also places a considerable burden on courts to interpret and apply complex commercial doctrines.

The role of the judiciary is therefore critical in shaping the practical application of trade finance law. However, the existing body of Georgian case law reveals a notable absence of sustained doctrinal engagement with instruments such as Letters of Credit.[65] Georgian jurisprudence does not systematically articulate these doctrines or develop them as part of a coherent legal framework. Instead, to the best of author's knowledge, they are applied implicitly, often without reference to their theoretical foundations or comparative context.

This approach has several implications. First, it limits the predictability of judicial outcomes, as parties cannot rely on a well-established body of precedent. Second, it reinforces dependence on international rules and foreign case law, which may not always align with domestic legal principles.[66] Third, it constrains the development of a specialised body of commercial jurisprudence capable of addressing the complexities of modern trade finance.

A further limitation lies in the scarcity of reported decisions involving high-value international trade disputes. This reflects both the scale of the Georgian economy and the tendency of commercial parties to resolve disputes through arbitration or private settlement. While such practices are common in international trade, they reduce the opportunities for courts to engage with and develop trade finance doctrine.

From a comparative perspective, the Georgian legal framework can be characterised as formally aligned but substantively underdeveloped. The

[64] Compare: Korkelia K., Georgian Private Law (Tbilisi University Press 2015) 210–215.

[65] The only remarkable judicial act referring to this payment method which I was able to discover is a court ruling issued by Tbilisi Court of Appeals on 1 May 2008 (N 2b 2057-07), which among other topics, specifies that in order to open a deposited type of a Letter of Credit, the whole amount shall be transferred to a respective bank in advance (author's note).

[66] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 969-971.

incorporation of international commercial practices through Article 878 ensures compatibility with global standards, yet the absence of detailed statutory provisions and robust case law leaves key doctrinal questions unresolved.

In particular, the lack of explicit recognition of the autonomy principle and the fraud exception creates uncertainty regarding the limits of banking obligations and the scope of judicial intervention. This may discourage the use of sophisticated trade finance instruments in transactions involving Georgian parties, particularly where legal risk is a significant consideration.[67]Accordingly, the development of Georgian trade finance law requires not only legislative refinement but also greater judicial engagement with the underlying doctrines. Without such development, the legal system risks remaining dependent on external norms, thereby limiting its capacity to support the continued expansion of international trade.

This dependency has two principal consequences. First, it undermines the autonomy of the domestic legal system, as key doctrinal questions are effectively resolved outside the national jurisprudential framework. Second, it introduces uncertainty, as the interpretation of international rules may vary across jurisdictions and may not always be readily accessible or consistent.

In contrast to jurisdictions where courts actively engage with and develop trade finance doctrines, Georgian courts tend to apply these rules in a functional but untheorised manner. As a result, legal outcomes may be correct in practice, yet lack the conceptual clarity necessary to guide future cases.

The Georgian Civil Code reflects a broader tradition of principle-based private law, emphasising general clauses such as good faith, fairness, and contractual freedom. While this approach offers flexibility, it might not be ideally suited to the regulation of highly technical instruments such as Letters of Credit.

In author's opinion, among other significant categories, trade finance law depends on precision, predictability, and uniformity. Doctrines such as strict compliance and autonomy require clear articulation and consistent application. When these doctrines are subsumed under general contractual principles, their distinctive features may be diluted, leading to inconsistent or unpredictable outcomes.

This tension highlights a structural limitation within the Georgian legal framework: the reliance on general principles in areas that demand specialised rules. Without more detailed doctrinal development, the legal

[67] Compare: Bridge M., The Law of International Sale of Goods (3rd edn, OUP 2013) 228–230.

system may struggle to accommodate the complexities of modern international trade.[68]

A further limitation lies in the institutional capacity of the judiciary. The effective operation of trade finance law requires not only appropriate legal rules but also judges with the expertise to interpret and apply them in complex commercial contexts.

In Georgia, the scarcity of specialised commercial courts and the limited volume of reported trade finance cases restrict opportunities for doctrinal development.[69] This creates a self-reinforcing cycle: the lack of case law limits judicial experience, which in turn constrains the development of further jurisprudence.[70]

Moreover, the increasing complexity of international trade transactions, often involving multiple jurisdictions, currencies, and regulatory regimes, places additional demands on legal institutions. Without targeted investment in judicial training and specialisation, the capacity of courts to handle such disputes effectively may remain limited.

The EU–Georgia DCFTA: Legal Integration and Its Implications for Trade Finance

The Deep and Comprehensive Free Trade Area (DCFTA) established under the EU–Georgia Association Agreement represents a central pillar of Georgia's economic integration into the European legal and commercial space. While the DCFTA is primarily concerned with trade liberalisation and regulatory convergence, its implications extend beyond tariff reduction and market access. In particular, it reshapes the legal and institutional environment within which international payment methods operate, thereby indirectly influencing the structure and usage of trade finance instruments.[71]

At its core, the DCFTA seeks to align Georgian legislation with key areas of European Union law, including commercial regulation, competition law, financial services, and dispute resolution mechanisms.[72] This process of approximation is intended to enhance legal certainty, reduce transaction costs, and facilitate cross-border trade.

Although the DCFTA does not explicitly regulate payment methods such as Letters of Credit or Documentary Collections, its broader impact on

[68] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 960-965.
[69] Compare: Bridge M., The Law of International Sale of Goods (3rd edn, OUP 2013) 228–230.
[70] Compare: Ibid., Articles 228-230.
[71] Compare: ASSOCIATION AGREEMENT between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part (signed 27 June 2014, entered into force 1 July 2016), Title IV. https://eur-lex.europa.eu/eli/agree_internation/2014/494/2018-06-01.
[72] Ibid., Articles 406-430.

the legal environment is significant. By promoting transparency, predictability, and the rule of law, it strengthens the institutional foundations necessary for the effective functioning of trade finance mechanisms.

From a comparative perspective, this reflects the EU's broader approach to market integration, which emphasises framework regulation rather than instrument-specific rules. Instead of directly governing contractual mechanisms, EU law shapes the conditions under which such mechanisms operate, thereby influencing commercial behaviour indirectly.

Despite its benefits, the DCFTA also gives rise to certain structural tensions. The move toward Open Account trading, while economically efficient, may expose exporters, particularly small and medium-sized enterprises which are especially vulnerable in developing economies such as Georgia, to increased risks of non-payment. This is principally relevant in contexts where enforcement mechanisms, although improving, remain less robust than in fully integrated EU markets.

Moreover, the indirect nature of DCFTA regulation means that critical aspects of trade finance law—such as the autonomy principle and fraud exception—remain governed by domestic law and international commercial rules rather than harmonised EU standards. This creates a fragmented legal landscape, in which parties must navigate multiple layers of regulation.

From a policy perspective, the abovementioned raises important questions regarding the balance between flexibility and legal certainty. While the absence of rigid regulation allows for adaptability, it may also result in inconsistencies and legal uncertainty, particularly in jurisdictions with less developed jurisprudence.[73]

For Georgia, the DCFTA presents both an opportunity and a challenge. On the one hand, it provides a framework for legal modernisation and integration into the European economic system. On the other hand, it exposes the limitations of the existing legal infrastructure, particularly in relation to complex commercial instruments.

The transition toward trust-based payment methods requires a corresponding strengthening of domestic legal institutions, including courts, enforcement mechanisms, and regulatory bodies. Without such development, the benefits of increased trade may be undermined by heightened legal risk.[74]

Furthermore, the DCFTA seems to highlight the need for greater doctrinal clarity within Georgian law. As trade volumes increase and transactions become more sophisticated, the absence of well-defined legal

[73] Compare: McKendrick E., Goode on Commercial Law (5th edn, Penguin 2016) 1048–1050.

[74] Compare: Korkelia K., Georgian Private Law (Tbilisi University Press 2015) 215–220.

principles governing trade finance may hinder the effective resolution of disputes.

Ultimately, the DCFTA does not replace traditional trade finance instruments but reconfigures the environment in which they operate. Letters of Credit and Documentary Collections remain essential in high-risk transactions, even as their relative importance declines in more stable trading relationships.

The key challenge for Georgian law is therefore not to abandon these instruments, but to ensure that the legal framework governing them is sufficiently robust to support their continued use where necessary. This requires a combination of legislative refinement, judicial development, and institutional strengthening.

A comparative analysis of trade finance law in the European Union and Georgia reveals a fundamental divergence not in formal legal alignment, but in the depth of doctrinal development and institutional capacity. While both systems recognise and apply international trade finance instruments, particularly Letters of Credit, the manner in which these instruments are interpreted and enforced differs significantly.[75]

The DCFTA and broader processes of economic integration indirectly encourage a shift toward more flexible and less formal payment methods, particularly Open Account transactions. While this trend reflects increased trust and reduced transaction costs, it also carries certain risks. In highly developed legal systems, Open Account trading is supported by robust enforcement mechanisms and reliable legal institutions.[76] In emerging systems such as Georgia's, however, the same level of institutional support may not yet be fully established. The result is a potential mismatch between economic practice and legal capacity, whereby parties adopt less secure payment methods without adequate legal safeguards.

This raises the possibility of what may be termed premature informalisation: the transition to trust-based trading practices before the necessary institutional foundations are in place. Such a development may hypothetically expose exporters to increased risks of non-payment and undermine confidence in the legal system.

Doctrinal Development in European Union Jurisdictions vis-à-vis Georgian Practice

Although the European Union has not harmonised the law of Letters of Credit or other payment methods at the supranational level, its member states—particularly those within the common law tradition, have developed a

[75] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 952-955.
[76] Compare: Carr I., Stone P., International Trade Law (5th edn, Routledge 2018), 440-444.

sophisticated and coherent body of jurisprudence governing trade finance instruments.[77] Courts in common law jurisdictions have played a central role in articulating and refining key doctrines, including the autonomy principle, strict compliance, and the fraud exception.[78]

In these jurisdictions, judicial decisions do not merely apply established rules but actively engage with the underlying rationale of trade finance law. For example, courts have consistently emphasised the commercial necessity of the autonomy principle while simultaneously delineating its limits through a carefully calibrated fraud exception.[79] This has resulted in a nuanced and predictable legal framework, capable of addressing complex disputes involving multiple parties and cross-border elements.

Moreover, EU legal systems benefit from a high degree of institutional specialisation. Commercial courts, experienced judges, and well-developed procedural mechanisms contribute to the consistent and efficient resolution of trade finance disputes. This institutional environment reinforces the effectiveness of doctrinal rules and enhances the overall reliability of the legal system.

By contrast, the Georgian legal framework exhibits a form of formal convergence without substantive doctrinal development. As discussed above, the Civil Code incorporates international commercial practices and provides a basic legal structure for documentary credit transactions. However, it does not articulate the underlying doctrines with the same level of precision or sophistication found in more developed jurisdictions.

To the best of author's knowledge, Georgian courts tend to approach trade finance topics through the lens of general contract law, focusing on issues such as performance, interpretation, and good faith. While these principles are undoubtedly relevant, they do not capture the specific legal characteristics of instruments such as Letters of Credit, which operate according to distinct doctrinal rules.

This reliance on general principles results in a form of doctrinal substitution, whereby complex trade finance concepts are implicitly addressed without being explicitly recognised or developed. As a consequence, the legal framework lacks the clarity and predictability necessary for high-value international transactions.

A further point of divergence lies in the degree of reliance on external legal sources. In both EU and Georgian contexts, international instruments such as the Uniform Customs and Practice for Documentary Credits (UCP

[77] Compare: Ferrero S., Some considerations on the doctrine of strict compliance and the autonomy principle in documentary credit, 4 BusinessJus, 25 (2013), 2.
[78] Compare: Ibid.
[79] Compare: Ibid., 3-5.

600) play a central role. However, the manner in which these rules are integrated differs significantly.

In EU jurisdictions, UCP 600 operates within a broader and well-developed legal framework, supported by extensive case law and doctrinal analysis. Courts interpret and apply these rules in light of established legal principles, thereby ensuring consistency and coherence.[80]

In Georgia, by contrast, the incorporation of international rules through general statutory provisions—such as Article 878 of the Civil Code—creates a more fragmented legal environment. The absence of detailed domestic jurisprudence means that international rules often function as primary sources of law rather than supplementary guidance, increasing dependence on foreign legal interpretations.

The differences outlined above have important practical consequences. In EU jurisdictions, the combination of doctrinal clarity and institutional capacity provides a high degree of legal certainty, encouraging the use of sophisticated trade finance instruments. Parties can rely on predictable judicial outcomes and well-established legal principles.

In Georgia, the relative lack of doctrinal development may discourage the use of complex instruments such as Letters of Credit, particularly in transactions involving significant financial risk. Instead, parties may either rely on simpler payment methods or seek to structure transactions under foreign legal systems with more developed jurisprudence.[81]

This dynamic has broader implications for economic development. A legal system that lacks the capacity to support advanced financial instruments may face limitations in attracting international investment and facilitating high-value trade.

The comparison between EU and Georgian approaches highlights a crucial insight: formal legal alignment is not sufficient to ensure functional equivalence. While Georgia has successfully adopted many of the formal elements of international trade finance law, it has not yet developed the institutional and doctrinal infrastructure necessary to support their effective operation.

Bridging this gap requires more than legislative reform. It necessitates a shift toward active doctrinal engagement, including the development of case law, judicial expertise, and academic analysis. Only through such processes can the Georgian legal system move from formal convergence to substantive integration within the global trade finance framework.

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[80] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 960-965.

[81] Compare: Bridge M., The Law of International Sale of Goods (3rd edn, OUP 2013) 230–233.

Conclusions and Recommendations

The analysis suggests that the central challenge for Georgian trade finance law is not the absence of rules, but the absence of doctrinal internalisation. International standards have been adopted, but not fully absorbed into the domestic legal framework.

Addressing this challenge requires a shift in focus from formal alignment to substantive development. This includes:

- the articulation of key doctrines within domestic law;
- the development of consistent judicial reasoning;
- the integration of international rules into a coherent national framework.

Such a process would enhance legal certainty, reduce dependence on external norms, and strengthen the capacity of the legal system to support complex commercial transactions.[82]

Ultimately, the effectiveness of trade finance law depends not only on the existence of rules, but on the institutional and doctrinal environment in which those rules operate. Georgia has made substantial progress in aligning its legal framework with international standards, yet further development is required to ensure that this alignment translates into practical effectiveness.

The transition from formal convergence to substantive integration represents the next stage in the evolution of Georgian trade finance law—and a necessary condition for its continued participation in the global trading system.

This paper should have identified a central tension within the Georgian trade finance framework: while the system is formally aligned with international standards, it lacks the doctrinal depth and institutional capacity necessary for their effective operation. Addressing this gap requires a set of targeted reforms that go beyond mere legislative alignment and focus on substantive legal development, institutional strengthening, and doctrinal clarity.

A primary area for reform lies in the explicit codification of key trade finance doctrines, particularly within the Civil Code of Georgia. While current provisions recognise documentary credit transactions, they do not clearly articulate foundational principles such as the autonomy of the credit or the scope of the fraud exception.

Legislative reform should therefore:

- explicitly recognise the independence of the bank's obligation;
- define the conditions under which payment may be refused;
- codify a clear and narrowly tailored fraud exception.

[82] Compare: Goode R., Commercial Law (4th edn, Penguin 2010) 960-965.

Such codification would not only enhance legal certainty but also provide a stable foundation for judicial interpretation. Importantly, these provisions should be aligned with internationally recognised standards, including the Uniform Customs and Practice for Documentary Credits (UCP 600), while adapting them to the domestic legal context.

The doctrine of strict compliance obviously plays a central role in documentary credit law,[83] yet its application within Georgian jurisprudence remains implicit and underdeveloped. This creates uncertainty for both banks and commercial parties, particularly in cases involving minor documentary discrepancies.

Hence, I believe the reform efforts should aim to:

- define the threshold for compliance (strict compliance vs substantial compliance);
- provide guidance on the treatment of minor inconsistencies;
- establish uniform standards for document examination by banks.

Such clarification would reduce disputes, improve transactional efficiency, and align Georgian practice with established international norms.

Legislative reform alone is insufficient without corresponding improvements in institutional capacity. The complexity of trade finance law requires judges with specialised knowledge and experience in commercial and financial matters.

Accordingly, reforms may include:

- targeted training programmes for judges in trade finance law;
- increased use of expert testimony in complex cases;
- even very complex and drastic measures for Georgia's legal system such as the establishment of specialised commercial or financial courts might be considered.

These reforms would enhance the quality and consistency of judicial decision-making, contributing to the development of a coherent body of case law.

A further priority is the active development of domestic jurisprudence and academic analysis in the field of trade finance. Courts should be encouraged to engage more explicitly with doctrinal issues, including the autonomy principle and fraud exception, rather than resolving disputes solely through general contract law. At the same time, academic institutions and legal scholars have a role to play in:

- analysing emerging case law;
- developing doctrinal frameworks;
- contributing to legislative reform.

[83] Compare: Devitt, M.R. and Sannicandro, L.A. (2017). Substantial Compliance vs. Strict Compliance. In Qualified Appraisals and Qualified Appraisers (eds M.R. Devitt and L.A. Sannicandro). https://doi.org/10.1002/9781119449379.ch4

The interaction between courts and scholars is essential for the maturation of any legal system, particularly in technically complex areas such as trade finance.

While the DCFTA provides a framework for regulatory convergence, its potential in the field of trade finance remains underutilised. Georgia should adopt a more strategic approach to integration, focusing not only on formal alignment but also on functional compatibility with EU legal practices.

This may involve:

- adopting best practices from EU jurisdictions;
- enhancing cooperation with European financial institutions;
- aligning procedural rules for dispute resolution.

Such measures would facilitate cross-border transactions and strengthen Georgia's position within the European economic space.

Finally, reform efforts must address the evolving landscape of international trade, in which traditional instruments such as Letters of Credit coexist with more flexible arrangements such as Open Account trading.

Rather than favouring one model over the other, Georgian law should aim to:

- support the continued use of secure instruments in high-risk transactions;
- ensure adequate legal protection for Open Account transactions;
- promote risk-awareness among commercial actors.

This balanced approach would allow the legal system to accommodate both traditional and emerging forms of trade finance.

Taken together, these reform proposals above reflect a broader objective: the transition from formal alignment to substantive legal maturity. By codifying key doctrines, strengthening judicial capacity, and fostering doctrinal development, Georgia can move toward a more coherent and effective trade finance framework.

Such a transformation is not merely technical but strategic. A robust and predictable legal system is a critical component of economic development, enabling participation in global markets and supporting the growth of international trade.

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