**CASE LAW NO. 13/2017/AL**

*This case law was adopted by the Judicial Council of the Supreme People’s Court on 14 December 2017 and promulgated under Decision No. 299/QD-CA dated 28 December 2017 by the Chief Justice of the Supreme People’s Court.*

## Source of the case law:

Cassation Decision No. 17/2016/KDTM-GDT dated 10 November 2016 of the Judicial Council of the Supreme People’s Court on commercial *case “Dispute on contract for sale of goods”* in Ho Chi Minh City between single member limited liability company A being the plaintiff (where Mr. Nguyen Duy T is the authorized representative) against Company B being the defendant; the persons with related rights and obligations are Joint Stock Commercial Bank E (where Mr. Hua Anh K is the authorized representative) and Bank N (where Ms. Nguyen Thi V is the authorized representative).

## Location of contents of the case law:

Paragraphs 34 and 36 of the section *“Findings of the Court”*.

## Overview of the case law:

### Background of the case law:

An international contract for sale of goods contains the payment method by letter of credit (L/C) of which performance is agreed to apply international trade practices (Uniform Customs and Practice for Documentary Credits 2007 (UCP 600) of the International Chamber of Commerce) and in compliance with the law of Vietnam. The international contract for sale of goods being the basis for the L/C is cancelled.

### Legal resolution:

In this case, the court shall determine that the letter of credit (L/C) is still valid regardless of the fact that the international contract for sale of goods being the basis for the letter of credit (L/C) is cancelled.

## Applicable provisions of laws relating to the case law:

* Article 3 of the Civil Code 2005 (Article 5 of the Civil Code 2015 correspondingly);
* Decision No. 226/2002/QD-NHNN dated 26 March 2002 of the State Bank on the issuance of the regulation on payment activities through payment service supplies”,
* The 6th amendment of the Uniform Customs and Practice for Documentary Credits (UCP 600) of the International Chamber of Commerce.

## Key words of the case law:

*“Letter of credit”, “L/C”, “UCP 600”, “International trade practices”, “Contract for sale of goods”, “International contract for sale of goods”, “cancelled contract”.*

## CONTENTS OF THE CASE

According to the Statement of Claims dated 15 September 2011, Amended and Supplemented Statement of Claims dated 22 September 2011 and during the proceedings, the plaintiff, being represented by Ms. Mai Thi Tuyet N – the duly authorized representative of Single Member Limited Liability Company A, made its submission as follows:

On 7 June 2011, Single Member Limited Liability Company A (hereinafter referred to as the *“Buyer”* or *“Company A”*) and Company B (hereinafter referred to as the “*Seller”*) entered into an international contract for sale of goods No. FARCOM/RCN/IVC/036/2011 dated 7 June 2011 (hereinafter referred to as the *“Sales Contract of 7 June 2011”*). Pursuant to the Sales Contract of 7 June 2011, the Buyer shall purchase Ivory Coast raw cashew nuts with the quantity of 1,000 metric tons x USD1,385.50/ton following the deferred payment of 98% L/C to be paid within 90 days from the delivery date in the bill of lading (B/L) in accordance with the following specifications:

* Outturn: 47 lbs/80kg and (right to refuse delivery of goods if the outturn is below 45 lbs/80kg.
* Nut count: maximum of 205 /kg. Refuse if 220 nuts/kg.
* Maximum moisture is 10%. Refuse if moisture is over 12%.

Quantity and quality of the goods shall be inspected by Vinacontrol at the time of delivery in the port of destination being Ho Chi Minh City.

Payment method by deferred payment letter of credit (L/C) within 90 days, on 7 July 2011, the Buyer had requested the Joint-stock Commercial Bank E - Branch D to issue deferred payment L/C No. 1801ILUEIB110002 (hereinafter referred to as *“L/C No. 1801”*) for the Buyer to complete procedures for the purchase of goods from the Seller.

After the delivery, pursuant to Article 8 of the Contract, the Buyer had inspected the quantity and quality of the goods at the port of discharge being the Cat Lai Port of Ho Chi Minh City under the supervision of Vinacontrol. The Buyer however discovered that the quality of the Seller’s delivered goods did not achieve the quality specifications. Specifically, according to Vinacontrol’s certificates No. 11G04HN05957-01 and No. 11G04HN05939-01 both dated 31 August 2011 inspecting the quantity, quality and status of the goods, the inspection results indicated that the average outturn of the cashew nuts for the two cuttings of the cashew nut samples was 37.615 lbs/80kg (this ratio is too low compared to the refusal condition, by almost 10 lbs). With this commercial fraud, the Buyer, on many occasions, attempted to contact the Seller to resolve the outstanding problems concerning the quality of the imported cashew nuts but received no responses from the Seller.

Therefore, on 15 September 2011, the Buyer submitted a Statement of Claims to Ho Chi Minh City’s People’s Court to request the court to compel the Seller to receive the return of the shipment of 1,000 tons of the cashew nuts because the out-turn was within the conditions for refusal of the goods under the Contract, being under 45 lbs. He Buyer disagreed to pay the purchase price, and also requested the court to apply a provisional measure to compel Joint-stock Commercial Bank E to temporarily suspend payment to the Seller of the amount of USD1,313,308.85 under L/C No. 1801 pursuant to the Buyer’s payment commitment until the court has ruled otherwise.

On 12 August 2013, the Buyer paid the advance court fee for the additional claims being the requests for cancellation of the Sales Contract of 7 June 2011 and L/C No. 1801.

At the first-instance court hearing, the plaintiff requested that the court:

1. Cancel Sales Contract of 7 June 2011.
2. Compel the Seller to receive the return of the entire shipment of the delivered goods at the Buyer’s address at Hamlet C2, National Highway 1A, C Commune, L Town, Dong Nai Province immediately after the judgement comes into effect. After 30 days from the date on which the judgment is effective, if the Seller fails to receive the return the delivered goods, the enforcement agency is entitled to sell the aforementioned goods to return the space to the Buyer.
3. Cancel the payment obligation of the Buyer under L/C No. 1801 and request Joint- stock Commercial Bank E immediately return the escrow deposit of USD1,313,308.85 to the plaintiff.
4. Maintain its Decision on application of the provisional measure No. 101/2011/QD- BPKCTT dated 23 September 2011 until the judgment becomes effective. Concurrently, grant the Buyer the right to receive the return of the security amount of VND1,500,000,000 at Bank T - Branch P under the court’s decision when the judgment becomes effective.

The defendant being Company B (the Seller), with head office in a foreign country and was properly served by the court through the Ministry of Justice of Vietnam in accordance with regulations of the Civil Procedure Code, Law on Mutual Legal Assistance 2007 and Joint- Circular No. 15/2011/TTLT-BTP-BNG-TANDTC dated 15 September 2011, but the Seller was still absent and did not answer.

The person with related rights and obligations being Joint-stock Commercial Bank E presented:

At the Buyer’s request, on 7 July 2011, Joint-stock Commercial Bank E - Branch D issued L/C No. 1801 with the following contents:

- L/C value: USD1,357,790

* Purpose: import of 1,000 metric tons of raw cashew nuts from Ivory Coast;
* Beneficiary bank: Bank N, Singapore
* Beneficiary: Company B.
* Deferred payment L/C pursuant to UCP 600, with confirmed terms.
* Security measure: third-party guarantee; secured asset; passbook savings card.
* Payment due dates: 29 September 2011 (USD961,813.66) and 17 October 2011 (USD351,495.19).

After having received the valid set of documents, the Buyer signed to acknowledge that it had received full value and on time under the L/C. Based on the Buyer’s confirmation, Joint- stock Commercial Bank E - Branch D endorsing the draft.

Based on the confirmation of the L/C, according to the status of the set of documents, Bank N negotiated without recourse to the Seller with respect to the 03 sets of documents, valued at USD1,313,308.85 on the dates of 25 July, 28 July and 8 August 2011.

According to the contents of issued L/C, the L/C is governed by and applies the *“Uniform Customs and Practice for Documentary Credits”*, with the most recent version (currently UCP 600). According to UCP 600, Joint-stock Commercial Bank E being the issuing bank shall commit to pay based on the sets of documents and payment commitments, which also means that the Buyer had made the payment to the Seller. Based on the valid set of documents and acceptance of payment by the Buyer, Joint-stock Commercial Bank E endorsed the draft. Bank N had negotiated without recourse to the Seller with respect to the 03 sets of documents of the said L/C.

Joint-stock Commercial Bank E did not agree with the plaintiff’s requests that the court cancel L/C No. 1801 and compel Joint-stock Commercial Bank E to immediately return the escrow deposit of USD1,313,308.85 to the plaintiff. Joint-stock Commercial Bank E requested that the court set aside the Decision on application of the provisional measure No. 101/2011/QD-BPKCTT dated 23 September 2011 in order for Joint-stock Commercial Bank E to pay Bank N in accordance with the agreement in the L/C.

*The person with related rights and obligations being Bank N presented that:*

According to Sales Contract of 7 June 2011 and L/C No. 1801, Bank N (Singapore branch) is the bank nominated by the Seller to implement the payment under the L/C issued by Joint- stock Commercial Bank E.

In accordance with UCP 600, Bank N had negotiated the complying presentation by the Seller and paid the value under the letter of credit to the Seller on 25 July 2011, 28 July 2011 and 8 August 2011. Therefore, Bank N had lawfully obtained L/C No. 1801 together with relevant documents and became the direct beneficiary of all and any payment under this letter of credit. After the set of documents was presented in accordance with the provisions of the letter of credit, Joint-stock Commercial Bank E had confirmed and accepted the full set of documents and committed to pay Bank N on 29 September 2011 and 17 October 2011. However, the payment was not made due to the fact that the Buyer had requested and the court had applied the provisional measure under Decision No. 101/2011/QĐ-BPKCTT dated 23 September 2011.

Bank N requested the court to immediately set aside Decision on applying the provisional measure No. 101/2011/QD-BPKCTT dated 23 September 2011 and requested that the Buyer compensate for losses suffered by Bank N due to the unlawful request for applying

the provisional measure, causing Bank N to not be able to receive the payment under the letter of credit from Joint-stock Commercial Bank E. The compensation requested by Bank N is the interest amount that Bank N was paying on basis of the total payable amount in accordance with the 03 sets of documents duly presented to Joint-stock Commercial Bank E corresponding to the overdue period being from the due date as committed by Joint-stock Commercial Bank E (29 September 2011) to the date on which Bank N submitted its application to join the proceedings of this case and based on the interbank interest rate at the time of the application (3.8%/12 months). The total damages that Bank N requested the Buyer to pay was USD33,270.49 which was equivalent to VND694,188,744.

According to First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014, the People’s Court of Ho Chi Minh City ruled to:

*“1. Cancel the contract for sale of goods No. FARCOM/RCN/IVC/036/2011 dated 7 June 2011 between the Seller being Company B and the Buyer being Single Member Limited Liability Company A.*

*Compel Company B to receive the return of the entire shipment of Ivory Coast raw cashew nuts with the quantity of 1,000 metric tons delivered under the Sales Contract No. FARCOM/RCN/IVC/036/2011 which were being stored at: warehouse of Single Member Limited Liability Company A, Hamlet C2, National Highway 1A, C Commune, L Town, Dong Nai Province. After 30 days from the date on which the judgment becomes effective, if Company B fails to receive the return of the said shipment, the judgment enforcement agency is entitled to sell the shipment in accordance with the law and return the space to Single Member Limited Liability Company A.*

1. *Deferred payment L/C No. 1801ILUEIB110002 issued by Joint-stock Commercial Bank E - Branch D on 7 July 2011 was no longer valid. Joint-stock Commercial Bank E is not obliged to pay Bank N under deferred payment L/C No. 1801ILUEIB110002 issued by Joint-stock Commercial Bank E - Branch D on 7 July 2011.*

*Compel Joint-stock Commercial Bank E to return to Single Member Limited Liability Company A the secured assets for the payment under the L/C being the escrow deposit of USD1,313,308.85.*

1. *Maintain the effectiveness of the provisional measure under Decision No. 101/2011/QD- BPKCTT dated 23 September 2011 by the People’s Court of Ho Chi Minh City and the security measure under Decision No. 100/2011/QD-BPBD dated 23 September 2011 of the People’s Court of Ho Chi Minh City until the judgment becomes effective. Single Member Limited Liability A is entitled to receive the entire amount of VND1,500,000,000 (one billion five hundred million Dong) deposited in the escrow account No. 1022130.3441.012 at Bank T - Branch P in which Single Member Limited Liability Company A deposited the money under Decision on performance of the security measure No. 100/2011/QD-BPBD dated 23 September 2011 by the People’s Court of Ho Chi Minh City when the judgment becomes effective.*
2. *Not to accept Bank N’s request for compensation of losses for an amount of USD33,270.49, equivalent to VND694,188,774 from Single Member Limited Liability Company A”.*

In addition, the judgment also deals with the court fee, overdue interest and time limit for appeal.

On 21 April 2014, Joint-stock Commercial Bank E submitted an appeal against the entire aforesaid first-instance commercial judgment.

According to Decision on suspension of the appellate hearing No. 29/2015/QDPT-KDTM dated 26 August 2015, the Superior People’s Court in Ho Chi Minh City ruled:

1. To suspend the appellate hearing over the Commercial Case No. 40/2014/TLKDTM- PT dated 18 August 2014 on “Dispute on contract for sale of goods”.
2. First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014 of the People’s Court of Ho Chi Minh City takes effect as from 26 August 2015.

In addition, the court ruled on the court fees.

On 10 September 2015, Joint-stock Commercial Bank E submitted a request to the Chief Justice of the Supreme People’s Court for consideration of the aforementioned first- instance commercial judgment and Decision on suspension of the appellate hearing under the cassation procedures.

In Decision No. 11/2016/KN-KDTM dated 7 March 2016, the Chief Justice of the Supreme People’s Court protested against Decision on suspension of the appellate hearing over the Commercial Case No. 29/2015/QDPT-KDTM dated 26 August 2015 by the Superior People’s Court in Ho Chi Minh City; requested the Judicial Council of the Supreme People’s Court to conduct the cassation procedures to set aside Decision on suspension of the appellate hearing No. 29/2015/QDPT-KDTM dated 26 August 2015 by the Superior People’s Court in Ho Chi Minh City and First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014 of the People’s Court of Ho Chi Minh City; transfer the case file to the People’s Court of Ho Chi Minh City re-conduct the first-instance procedures in accordance with the law.

At the cassation hearing, the representative of the Supreme People’s Procuracy requested that the Judicial Council of the Supreme People’s Court accept the protest of the Chief Justice of the Supreme People’s Court.

## FINDINGS OF THE COURT

1. On 7 June 2011, Single Member Limited Liability Company A (the Buyer) and Company B (the Seller) entered into Sales Contract of 7 June 2011, wherein the Buyer buys 1,000 metric tons of raw cashew nuts under 98% deferred payment L/C within 90 days from the date of delivery specified in the bill of lading.
2. To perform the aforesaid contract, Company A made a request and deposited an amount of USD1,313,308.85 in order for Joint-stock Commercial Bank E to issue L/C No. 1801.
3. When the goods were transported to the port of destination in Ho Chi Minh City, the Buyer had requested Vinacontrol of Ho Chi Minh City to inspect the quantity and quality of the goods as in accordance with Article 8 and Article 11 of the Contract.
4. Pursuant to Vinacontrol’s certificate on inspection of the quality and quantity of the goods dated 31 August 2011, the ratio of out-turn of the cashew nuts for the two cuttings was determined as follow: first cutting was 38.2 lbs/80kg; second cutting was 37.03 lbs/80kg.
5. Since the out-turn ratio of the cashew nuts was much lower than the agreed ratio in the Contract, the Buyer raised a complaint to the Seller via email but the Seller did not cooperate to resolve the problem. As a consequence, the Buyer initiated a lawsuit to request cancellation of the Sales Contract of 7 June 2011, return of the entire shipment to the Seller and cancellation of the payment obligations under L/C No. 1801 issued by Joint- stock Commercial Bank E on 7 July 2011 and requested Joint-stock Commercial Bank E return the escrow deposit of USD1,313,308.85 securing the payment obligation under L/C No. 1801 of 7 July 2011.
6. Based on the documents and evidence in the case file, it is seen that: the form and contents of the Sales Contract of 7 June 2011 do not violate the provisions of law and are in accordance with the Articles, Clauses, Section 2 concerning the rights and obligations of the parties to contracts for sales of goods as provided for in the Commercial Law 2005; under Article 15 of the Contract, both parties agreed to apply the laws of Vietnam to govern any disputes arising therefrom.
7. With respect to the dispute settlement, the first-instance court had duly complied with the judicial entrustment procedures in summonsing the defendant (the Seller), notifying the defendant of the plaintiff’s claims; concurrently, requested the defendant to send its written opinions on the claims. Although the defendant had duly received these summons and notice, it submitted no objections to the plaintiff’s claims.
8. Pursuant to Vinacontrol’s certificates presented by the Buyer, there is basis to determine that the Seller was at fault in delivering non-conforming goods as agreed in the Sales Contract of 7 June 2011. Therefore, in accordance with Article 15 of the Commercial Law, the Buyer has the right to refuse to take delivery of the goods. On the other hand, after having received Vinacontrol’s inspection certificates, the Buyer had made complaints about the quality of the goods but the Seller did not cooperate to resolve the problem. Since the Seller failed to deliver goods confirming to the quality as agreed in the contract, the Buyer could not achieve the purpose for which it had entered into the Contract. Therefore, there is basis to determine that the Seller had committed a fundamental breach of the Contract. Accordingly, the first-instance court ruling to cancel the Contract has basis and in accordance with Article 3.13 and Article 312 of the Commercial Law. However, when resolving with the legal consequences of cancellation of the Contract, the first-instance court did not resolve the issue of compelling the Seller to return the money received (if any) and to compensate the Buyer for damages, which is not correctly resolving the case.
9. With regard to the settlement of request for cancellation of L/C No. 1801:
10. Pursuant to the application for issuance of deferred payment L/C of the Buyer, Joint- stock Commercial Bank E - Branch D opened L/C No. 1801 on 7 July 2011, of which the details are as follows:
11. - Value of the L/C: USD1,357,790;
12. - Form of the documents: irrevocable;
13. - Purpose: purchase of 1,000 metric tons of raw cashew nuts from Ivory Coast;
14. - Beneficiary bank: Bank N, Singapore;
15. - Beneficiary: Company B;
16. - Requesting party: Company A;
17. - Applicable rules: most recent version of UCP.
18. After that, Joint-stock Commercial Bank E received the 03 sets of documents requesting payment from Bank N with the total requested amount of USD1,313,308.85, specifically:
19. On 25 July 2011: set of documents regarding USD961,813.66, due date of 29 September 2011;
20. On 29 July 2011: set of documents regarding USD312,517.11, due date of 17 October 2011;
21. On 9 August 2011: set of documents regarding USD38,978.08, due date of 17 October 2011;
22. After receiving the sets of documents being compliant with the conditions under the L/C, Joint-stock Commercial Bank E sent official letter and sets of documents to the Buyer and obtained the Buyer’s confirmation that “*Having received complete documents and committed to timely making the full payment”*; on that basis, Joint-stock Commercial Bank E notified Bank N by telegraphy of its acceptance of paying Bank N for the bill of exchanges on the due dates specified in the aforesaid 03 sets of documents.
23. In accordance with Vietnamese laws on payment for documents, it is found that:
24. Article 3.4 of the Law on Credit Institutions 2010 provides that: *“Organizations and individuals engaged in banking operations are entitled to reach agreement on the application of commercial practices, including: International commercial practices provided by the International Chamber of Commerce; Other commercial practices which are not contrary to the law of Vietnam”*.
25. Article 16.1 of Decision No. 226/2002/QD-NHNN dated 26 March 2002 of the State Bank on “Regulation on payment activities through payment service suppliers” provides that: *“Letter of credit is a conditional written commitment opened by banks at the request of a payment service user (the applicant for opening the letter of credit) to:*
26. *To pay or authorize other banks to pay immediately at the instruction of the payee upon receipt of a set of presented documents complying with the conditions of letter of credit; or accept to pay or authorize other banks to pay at the instruction of the payee at a specific time in future upon receipt of a set of presented documents complying with the conditions of letter of credit”*.
27. Article 19.1 of the aforementioned Decision 226 provides: *“Payment by letter of credit: The opening, issuance, amendment, notification, confirmation, examination of documents, payment and rights, obligations, etc. of related parties in payment by letter of credit shall be implemented in accordance with general principles on documentary credits issued by the International Chamber of Commerce (ICC), which participating parties agreed and in accordance with Vietnamese laws”*.
28. On the other hand, in the Buyer’s application for issuance of the L/C, it is agreed that: the applicable rule is the most recent version of UCP. Pursuant to the sixth amendment of the Uniform Customs and Practice for Documentary Credits 2007 of the International Chamber of Commerce (UCP 600):
29. “*Credit means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation”.* (Article 2).
30. *“A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfil any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary”.* (Article 4).

[31 ] *“Banks deal with documents but not with goods, services or performances to which the documents may relate”.* (Article 5).

1. *“An issuing bank is irrevocably bound to honour as of the time it issues the credit”.*

(Article 7).

1. *“When an issuing bank determines that a presentation is complying, it must honour”*. (Article 15a).
2. Therefore, pursuant to the Buyer’s application for opening the L/C and the content of the issued L/C, L/C No. 1801 is a separate transaction from the Sales Contract dated 7 June 2011; it is issued and governed under UCP 600. According to UCP 600, Joint Stock Commercial Bank E being the issuing bank must make payment when it determines that the presented set of documents are compliant at the Bank.
3. Regarding the set of documents of the L/C mentioned above: The set of documents includes Certificate of weight and quality issued by an independent assessor (no requirement that the goods must be inspected beforehand at the port of destination by any inspection organizations). In the set of presented documents, there is a Certificate of weight and quality issued by a foreign assessor, which is in compliance with the conditions of the

L/C; concurrently, the Buyer had endorsed the set of documents and committed to making payment in full and on time; the fact that the first-instance court, however, relied on the inspection results of Vinacontrol in Ho Chi Minh City (at the port of destination) to conclude that the set of documents was not compliant is contrary to the terms and conditions set forth in the L/C and the Buyer’s commitments.

1. During the dispute resolution, Bank N asserted that it had negotiated the valid documents and made payment to the Seller on the dates of 25 July 2011, 28 July 2011 and 8 August 2011, and presented the notices of negotiation on import invoices to prove that the payment to the Seller was successfully made. Beside those documents, Bank N, however, could not present any other documents and evidence proving that it had made the payment to the Seller. Therefore, in this case, the first-instance court should have collected the documents and evidence in full to determine whether Bank N had made the payment to the Seller. If it had, how much did it pay to the Seller? In the case that Bank N had made the payment to the Seller under L/C No. 1801, Joint-stock Commercial Bank E resolve pursuant to the request of Bank N. Since those issues had not been resolved, the first-instance court' ruling that the payment method by L/C No. 1801 is an integral part of Sales Contract dated 7 June 2011 and thus, when the contract is cancelled in its entirety, the parties thereto are not obliged to continue performing their obligations under the contract, and L/C No. 1081 is no longer valid for payment and Joint Stock Commercial Bank E has no obligation to make the payment to Bank E under the said L/C, and compelling Joint Stock Commercial Bank E to pay the Buyer the deposit of USD1,313,308.85 do not have sufficient basis and are incorrect with respect to the provisions in UCP 600.
2. After the first-instance hearing, Joint-stock Commercial Bank E submitted an appeal the aforesaid judgement in its entirety. The appellate court issued the Decision to conduct a hearing and issue summons to the involved parties to appear in the court hearings on the dates of 25 September 2014, 27 October 2014, 31 October 2014 and 16 April 2015, but those hearings were all postponed due to various reasons such as: absence of the parties, absence of the representatives of the People’s Procuracy, more time was required for judicial entrustment …
3. In Decision No. 09/2015/QDPT-KDTM dated 29 May 2015, the Appellate Court of the Supreme People’s Court in Ho Chi Minh City ruled to suspend the appellate hearing to carry out the judicial entrustment procedures to summons Company B to participate in the appellate hearing.
4. In Decision (unnumbered) dated 10 August 2015, the Superior People’s Court in Ho Chi Minh City ruled to conduct appellate hearing on 26 August 2015.
5. On 19 August 2015, Joint-stock Commercial Bank E received the Summons to appear in the aforementioned hearing; on 24 August 2015 Joint-stock Commercial Bank E submitted a petition to postpone the hearing for the reason that the authorized representative of Joint-stock Commercial Bank E being Mr. Hua Anh K was on a business trip. At the hearing of 26 August 2015, the appellate court did not accept the petition to postpone the hearing of Mr. K and reasoned that Joint-stock Commercial Bank E (the appellant) had been duly summonsed for the second time but was absent, thus it rendered a decision to suspend the appellate hearing.
6. The Superior People’s Court in Ho Chi Minh City issuing the aforesaid Decision on suspension of the appellate hearing is not compliant with the law, because Article 13.2 of Resolution No. 06/2012/NQ-HDTP dated 03 December 2012 of the Judicial Council of the Supreme People’s Court provides that: *“In case there is a decision on temporary suspension of the appellate hearing of a civil case, the time limit for hearing preparation ends on the date of such decision on temporary suspension. The time limit for appellate hearing preparation re-commences from the date on which the appellate court continues the appellate hearing when the reason for such temporary suspension ceases”.* As such, since there was a decision on temporary suspension of the dispute settlement as mentioned above, when the appellate court continued the appellate procedures, the time limit for the appellate hearing re-commenced from the date on which the appellate court issued the Decision to conduct a hearing (i.e. 10 August 2015). Therefore, the appellant (Joint-stock Commercial Bank E) was absent at the appellate hearing of 26 August 2015, which is considered as the appellant being duly summonsed by the court and absent for the first time. Regardless of whether or not there was a proper reason, the court should have postponed the court hearing pursuant to Article 266 of the amended and supplement Civil Procedure Code 2011 and Article 16 of Resolution No. 06/2012/NQ-HDTP dated 3 December 2012 of the Judicial Council of the Supreme People’s Court. However, the appellate court asserting that Joint-stock Commercial Bank E was absent without any force majeure reasons when it was summonsed for the second time and thus ruled to suspend the appellate hearing was a serious violation of the civil proceedings, which adversely affected the lawful rights and interests of the involved parties.

In light of the aforementioned reasons, pursuant to Article 337.2, Article 343.3 and Article 345 of the Civil Procedure Code.

## RULES

1. To accept Protest Decision No. 11/2016/KN-KDTM dated 7 March 2016 of the Chief Justice of the Supreme People’s Court.
2. To set aside Decision on suspension of the appellate hearing No. 29/2015/QDPT- KDTM dated 26 August 2015 of the Superior People’s Court in Ho Chi Minh City and First-instance Commercial Judgment No. 356/2014/KDTM-ST dated 7 April 2014 of the People’s Court of Ho Chi Minh City.
3. To transfer the case to the People’s Court of Ho Chi Minh City to re-conduct first- instance procedures.

## CONTENTS OF THE CASE LAW

*“[34] Therefore, pursuant to the Buyer’s application for opening the L/C and the content of the issued L/C, L/C No. 1801 is a separate transaction from the Sales Contract dated 7 June 2011; it is issued and governed under UCP 600. According to UCP 600, Joint-stock Commercial Bank E being the issuing bank must make payment when it determines that the set of presented documents are compliant at the Bank.*

*[36]… the first-instance court ruling that the payment method by L/C No. 1801 is an integral part of Sales Contract dated 7 June 2011 and thus, when the contract is cancelled in its entirety, the parties thereto are not obliged to continue performing their obligations under the contract, and L/C No. 1081 is no longer valid for payment and Joint-stock Commercial Bank E has no obligation to make the payment to Bank E under the said L/C, and compelling Joint Stock Commercial Bank E to pay the Buyer the deposit of USD1,313,308.85 does not have sufficient basis and is incorrect with respect to the provisions in UCP 600”.*