

The Conceptual Framework for Disabling Payment in International Trade Under the Jordanian Legal System

Emad Mohammad Al-Amaren*, Sultan Ibrahim Aletein **

Abstract

The past few years have witnessed a widespread movement of goods between parties in different states by utilizing letters of credit. Letter of credit has continued to play a massive role in expanding international trade since it is considered the most secure and stable banking service through which banks can finance foreign trade operations such as import and export. Although a letter of credit is regarded as a guarantee for the buyer and seller according to the Uniform Custom and Practice (UCP 600). Still, if the parties have to face some circumstances, they can withhold their obligation or even breach the L/C contract. This study aims to identify the reason behind stopping the payment for the beneficiary in the L/C. Through a qualitative and doctrinal legal approach, this study analyses the organization of UCP 600 regarding the compliance standards and the fraud exception. It also examines, via interviews with Jordanian bankers, academicians, and judges, the perceptions of the exception for stopping the payment in L/C transactions. The findings reveal that the Jordanian judiciary does not take avoidance and nullity of the underlying contract, conscionability, recklessness, contractual restrictions, and illegality as exceptions to the independence principle in the letter of credit.

Keywords

Letter of Credit; International Trade; Jordanian Legal System

Introduction

The life blood of international Trade is a statement which has been used by many scholars to describe the importance of the letter of credit (Alavi, 2017). Letters of credit are among most popular trade finance instruments used in international trade. They

* Faculty of Law, Amman Arab University

** Faculty of Law, Amman Arab University

Correspondence: Emad Mohammad Al-Amaren, Assistant Professor, Faculty of Law, Amman Arab University, Jordan. E-mail: e.alamaren@aau.edu.jo

look after the interests of both exporter and importer, so they are considered to be the most effective and safest approach to secure payment in international trade (Hao & Xiao, 2013).

In international trade terminology, the letter of credit term is frequently used. (Al Rabei, 2017) It is considered one of the most common payment methods sellers and buyers use in international business transactions. (Rosmawani, et.al., 2012) Generally, the letter of credit transaction involves three parties; first, the applicant requests the bank to issue the credit. Second, the beneficiary obtains the payment after submitting the requested documents stipulated on credit to the issuing or confirming bank. (Al Amaren et al, 2020) Finally, the issuing bank issues the credit upon the applicant's request and then pays the value of the goods to the beneficiary (Alawamleh, 2013).

If Jordanian buyers choose to use letter of credit in international trade, they receive assurances that the value of the cargo will not be paid unless the seller shows evidence of discharging the obligations assigned to him under the contract of sale. On the other hand, sellers get their money after the presentation of compliance documents (Bouguerra and Bellaouar, 2015). However, there are many barriers that hinder the right implementation of letter of credit relating to economy. The reason behind this is due to the modernity of the letter of credit itself and the weakness of national and international laws to govern the subject of credit contracts, as the subject of the risks and legal remedy is a new method to create legal awareness in Jordan, and comprises many issues, such as letter of credit fraud.

Letter of credit has many positive elements that enhance its position in international trade as a payment method for settling obligations incurred by merchants (Al Amaren et al, 2020). Perhaps the essential advantage is that the bank cannot revoke its obligation under the letter of credit when the credit reached the beneficiary's knowledge (Al Kilānī, 2008). From this moment, the credits are considered Irrevocable, and the bank must fulfil this by paying the beneficiary his cargo value. However, some exceptions may allow the bank to breach this obligation. This research will highlight the most common exceptions: fraud, avoidance and nullity of the underlying contract, non-compliance document, unconscionability, contractual restrictions, recklessness, and illegality. This study aims to identify the reason behind stopping the payment for the beneficiary in the letter of credit. Through a qualitative and doctrinal legal approach, this study analyses the organization of UCP 600 regarding the compliance standards and the fraud exception. It also examines, via interviews with Jordanian bankers, academicians, and judges, the perceptions of the exception for stopping the payment in L/C transactions.

Method

A qualitative and doctrinal legal method is adopted through a descriptive and content analysis approach to examine the reasons behind stopping payment in the letter of credit. Furthermore, this paper has used a case approach by analyzing the Jordanian court's approach towards this matter (Al Amaren et al, 2020). Further, to reach a comprehensive understanding regarding the reasons behind stopping payment in the letter of credit, interviews were conducted with judges and bankers from Jordan to

understand the standard followed to withhold payment under the Jordanian legal system.

Discussion

Disabling the Payment in Letter of Credit

Explores the reason behind withholding payment to the beneficiary without breaching any of the principles that govern the letter of credit. The reasons can be fraud, avoidance, nullity of the underlying contract, non-compliance of documents, conscionability, contractual restrictions, recklessness, and illegality.

a. Disabling the Payment Due to Fraud

Due to the vast number of fraud cases related to the letter of credit, the worldwide traders looked for a legal remedy as an exception to the autonomy doctrine in the UCP. Until finally, courts have established one exception, called the 'fraud exception' (Al Amaren et al, 2021). According to fraud exception, if there is a fraud claim from an account party, and he/she provides clear and material evidence of fraud, banks can stop the payment to sellers. But, if buyers cannot provide clear and material evidence of fraud, banks have to pay. On a similar occasion, the Jordanian buyer must obtain an injunction from the competent court to withhold the bank from honoring the presentation (Meral, 2012).

Fraud exception plays a significant role in limiting the fraudsters in the letter of credit transaction. The fraud rule exception can change the characteristics of the bank's obligation in the letter of credit (Xiang & Buckley, 2003). The scope and standard of fraud exception should be carefully bounded to secure the letter of credit's efficacy.

Article 34 of the UCP 600 stated the following; "A bank assumes no liability or responsibility for the form, sufficiency, accuracy, genuineness, falsification or legal effect of any document, or the general or particular conditions stipulated in a document or superimposed thereon; nor does it assume any liability or responsibility for the description, quantity, weight, quality, condition, packing, delivery, value or existence of the goods, services or other performance represented by any document, or for the good faith or acts or omissions, solvency, performance or standing of the consignor, the carrier, the forwarder, the consignee or the insurer of the goods or any other person (Uniform Custom and Practice", No. 600, 2007).

Arab Banks provided that: Arab banks and all Jordanian and international banks deal with documents and not with goods. For example, suppose the bank receives the required documents in the required number, such as the insurance policy, the bill of lading, the certificate of origin, the commercial invoice, the rest of the documents according to the agreement, and the documents are valid. In that case, the bank will pay and will not pay any attention to the goods' compliance (Taani, 2019).

By analyzing the Jordanian practice above and according to the principle governing letter of credit, banks in the letter of credit transaction are not liable for the fabrication of documents or the goods that the documents represent. If Jordanian banks found that documents comply with the credit apparently. In that case, the Jordanian banks have to

pay the credit amount to the beneficiary without considering any limitations of the underlying sale contract. The bank must check the documents only without paying any attention to the actual goods which the documents represent. From the researcher's perspective, the complete separation between the goods and documents representing them constitutes a connatural disadvantage of the independence principle in the letter of credit.

In the United States, the uniform commercial code has regulated the fraud exception under the letter of credit in articles 5-109 (Uniform Commercial Code, Article 5-109). In addition, the rule of fraud exception is codified on the UNCITRAL convention for a standby letter of credit and independent guarantee in articles 15, 19, 20 (UNCITRAL convention for standby letter of credit and independent guarantee, 1996).

Sztejn v J Henry Schroder Banking Corporation (*Sztejn v. J. Henry Schroder Banking Corp*, 1941) was the first case that discussed the fraud rule under the letter of credit in the United States. That case significantly affected the establishment of the fraud exception rule in letters of credit worldwide. The *Sztejn v J Henry Schroder Banking Corporation* is the primary resource behind the uniform commercial code codification in 1962. Furthermore, *Sztejn v J Henry Schroder Banking Corporation* still constitutes a reference for fraud in the letter of credit cases in the United States and worldwide. (Alavi, 2016, 4) Ross Buckley and Gao Xiang stated that the *Sztejn v J Henry Schroder Banking Corporation* case has “shaped the fraud rule in all jurisdictions” (Buckley & Xiang, 2014).

Two types of fraud can tackle down the beneficiary's payment process: material fraud and intellectual fraud. On the one hand, material fraud is applied in circumstances where documents are formed or created by a fraudulent seller, and they contain a bogus or unofficial signature; or where the fraudulent seller materially reforms some aspects of a genuine document or finally where the seller does not have the power to obtain such documents. In these cases, the documents are said to be in lack authenticity. Thus, for example, if the submitted document has a false shipment date, it will be classified as a fraud in documents (Gaëlle, 2012).

The researchers conclude from the above discussion that material fraud occurs when the fraudulent person intentionally alters the documents by his work or by asking someone else to do that and under his knowledge. On the other hand, intellectual fraud is applied in circumstances where the submitted documents comply with the terms and conditions of the credit apparently, but they do not represent the truth. (Amaefule, 2012). This means that intellectual fraud occurs when the documents seem right apparently, but they include unreal information about the goods.

Therefore, the Jordanian court of cassation has stated that. Simultaneously, the documents required by the letter of credit are intact in both facial and technical aspects. They are forged because they include unreal information about the contract for oil material. If the letter of credit and the underlying sale contract are two autonomous contracts, this would not be the case anymore for fraud. Fraud invalidates the sale contract, and this would extend to the bank's relationship with the seller (The Jordanian Court of Cassation's decision number 1215/2005).

Ahli Bank of Jordan stated that: "If there is evidence of fraud and the court decision supports it, the bank stops payment" (Salahat, 2019).

About the position of fraud rule as an exception in the Jordanian judiciary, Judge *Zaid Sanosi* stated that: "The rule of independence is recognized in most court decisions about the letter of credit in the Jordanian judiciary system" (*Sanosi*, 2019).

The Jordanian judiciary applies the fraud rule as an exception to the independence principle by analyzing the previous comments. What is also applied in the Jordanian court is that the rule of independence is not absolute. Still, there is an exception to it; that is when the process involves fraud. Letter of credit and the base contract are two contracts that are independent of each other. Therefore, fraud invalidates the base contract, and this invalidity also affects the relationship between the bank and the seller.

b. Avoidance and Nullity of the Underlying Contract

The bank's obligation in letter of credit is independent of the underlying sale contract according to article 4 of the UCP 600. However, in practice, many disputes arise when the applicant requests the bank to withhold the beneficiary payment based on reasons stemming from the sale contract. Therefore, it is worth studying the effect of a breach or the invalidity of the underlying contract on the bank's obligation from a practical aspect.

The void contract is an unlawful agreement in its roots or description or one of its elements, or by the formation that the law has imposed to be established, where that contract has no legal force or effect (Owaidi, 2012). Furthermore, nullity has been defined as an action or procedure in a case that the other party may deal with as if it does not happen or has no legal force or effect (Mohano, 2016, 40).

Since the judiciary has agreed that the seller's right in the letter of credit is not connected with the performance of the underlying sale contract, the bank is still obligated to implement the credit and pay the price of the shipped goods, even if the un-implementation of the sale contract is due to the seller's fault (Awad, 1989).

The question that arises now is, what if the sale contract does not occur or is terminated retroactively or is null or void for violating the public order? Does this affect the bank's commitment under the letter of credit context?

According to the UN Convention on Independent Guarantees and Standby Letters of Credit of 1996, the bank has the right to refuse to honor the payment if the sale contract is declared invalid by a court or arbitral tribunal (UNCITRAL convention for standby letter of credit and independent guarantee, 1996).

The reason to justify the bank's refusal to honor the payment based on the sale contract's void or nullity is since the bank would defiantly lose an important guarantee because of the nullity that occurred in the sale contract. This argument has been criticized since the sale's nullity does not deny that the documents submitted to the bank represent the goods, and the bank has the right to pledge the goods because it possessed the documents. It is also said that there is a need to distinguish between the legal link and the real or actual ties between the two contracts. The letter of credit

contract is legally independent of the contract of sale, but it is related to it (Awad,1989, 154).

Both contracts aim at settling the debt of the price, so both contracts must have the same fate. This view ignores the fact that the purpose of the credit is to settle the debt of the price and give the seller his guarantee, which the separation of the two contracts can only achieve (Awad,1989, 154). Therefore, the jurisprudence argues that a sale contract's invalidity does not lead to the bank's refusal to credit unless the judicial decision decides that.

Nevertheless, two remarks must be considered; First, the bank's obligation in the letter of credit is mainly reliant on the presentation of complying documents by the seller. Nevertheless, in practice, if the sale contract between the buyer and seller is declared invalid, then the seller will not ship the goods to the buyer and, further, will not submit any documents to the bank (Gaëlle, 2012).

Secondly, on an occasion where such a presentation has taken place, and the bank is aware of the sale contract's invalidity, the bank could apply the fraud exception in this context, and the beneficiary has no meaningful right to expect honour. Therefore, there is no basis to support his claim to honour. However, on some occasions, if such a claim is not fraudulent, banks can still grant an injunction regarding the declaration of the contract's invalidity (Gaëlle, 2012, 16). Nevertheless, banks may sometimes refuse to withhold payment even though it has been informed of the nullity of the underlying contract. Thus, banks are out of the underlying sale contract arguments based on Article 4 of the UCP 600 (Uniform Custom and Practice", No. 600, 2007).

It is noteworthy that the buyer does not lose his judicial rights in suing the beneficiary due to the sale contract's lack of performance. It is still possible for the buyer to ask for compensation for damages, performance of the contract, or breaching the sale contract. Nevertheless, in some cases in which insolvency, fraudulent disappearance, or even if the seller acts in bad faith, it may be difficult for the buyer to get his money back. It is therefore recommended that the bank is banned from paying the beneficiary on this basis. This is the easiest way to protect the buyer's interests, (Gaëlle, 2012, 15) even if it contradicts the letter of credit mechanism.

c. Non-Compliance Document

One of the main reasons to stop the payment in the letter of credit without breaching the autonomy principle is the lack of conformity of the documents with the credit's terms and conditions (Gaëlle, 2012). The bank is obliged to make payment only if a complying presentation is made. Therefore, banks are entitled to refuse payment in case of non-conformity of documents without breaching the independence principle of letters of credit (Oubidāt & al-Khashrūm, 2009).

Housing Bank for Trade and Finance provided that: If the bank examines the documents on their face and finds that documents do not comply with the credit terms and conditions, the documents will be rejected (Al Fakih, 2019).

Capital Bank stated that: If the documents are correct, the bank makes no further investigations (Khrais, 2019).

Jordan Islamic Bank added: If the documents do not match the credit terms and conditions, the bank will refuse to pay based on the strict compliance principle (Hindawi, 2019).

In this context, Jordanian banks follow UCP 600. First, the bank must refuse payment to the seller. Otherwise, it would breach the obligation assigned to it under the agreement of credit issuance, and then, there would be no reimbursement from the applicant after the bank makes payment to the seller.

About the opinion of the Jordanian judiciary regarding bank's right to refuse payment in case of non-compliance documents, Judge Mohammed Al Amareen commented the following:

If the bank found the submitted documents do not comply with credit terms and conditions, it must refuse the documents as part of its job and does not need to justify this rejection (Al Amareen, 2019).

In other words, if documents are presented to the bank and appear in compliance with the credit terms and conditions, while it is counterfeit documents, the bank cannot decide whether this is fraud or not because it is not within the jurisdiction of the bank, but rather the jurisdiction of the court. Therefore, according to the court's decision, the bank will pay or not.

Judge *Saeed Ajlouni* added: The submission of mismatched documents is sufficient for the bank's refusal to pay and not accept the documents (Ajlouni, 2019).

It is obvious from the Jordanian banks and judiciary comments that they recognize the submission of non-compliance documents as a reason to stop payment in the letter of credit.

d. Unconscionability

In the law of letters of credit context, the fraud exception is the only recognized exception to the independence doctrine and has received international acceptance. But there are other exceptions: illegality, nullity, unconscionability, and recklessness, without a uniform international situation towards their recognition (Alavi, 2016).

Unconscionability represents situations where the seller requests the bank's payment with bad faith and unfairness. On such occasions, the competent court would prevent the bank from making payment (Ioanna, 2018). The absence of good faith in payment requested by the seller is the main scope of the unconscionability exception. No fraud or non-compliance documents are involved.

Unconscionability exception alongside the fraud exception provides more protection to the traders who utilize letter of credit as the payment method in their business transitions. Through the letter of credit process, a bad faith beneficiary tries to take advantage of the letter of credit mechanism on some occasions. Thus, fraud exceptions can be applied on such occasions due to the absolute lack of a right to pay the beneficiary. The scope for applying the unconscionability exception is the standby letter of credit, performance bond, and demand guarantee (Alavi, 2016).

e. Contractual Restrictions

As it has already been stated before, the independence and strict compliance principles have continued to play a critical role in the letter of credit. The independence principle indicates that the letter of credit agreement is separated from the sale contract (Uniform Custom and Practice", No. 600, 2007). Simultaneously, the principle of strict compliance indicates that the beneficiary's right to withdraw the value of the goods is connected with presenting compliant documents to the bank (Alavi, 2016).

On some occasions, due to the lack of trust towards the seller or the fear of facing beneficiary's fraud, taking into consideration the limited possibility to withhold the bank from honouring the payment when compliant documents are presented, the account party or even banks sometimes might look for other alternative approaches to protect themselves from any unexpected events which may cause a massive loss for them (Alavi, 2016).

As a solution for the previous concerns, and even though the beneficiary has unconditional right to receive the payment after the submission of compliant documents under the letter of credit, the beneficiary agrees in the underlying contract that he/she would not receive the payment from the banks unless he/she matches the specific terms stipulated in the sale contract or any other agreement with the applicant (Amaefule, 2012). Thus, for example, when the beneficiary agrees with the applicant, he/she has to obtain written consent from the applicant to receive the value of the shipped goods (Alavi, 2016).

The question that arises now is what makes the seller accept such a restrictive clause. Many reasons might justify the acceptance of the beneficiary to such restrictive clause, such as (Alavi, 2016, 72);

- 1) The buyer has higher bargaining power.
- 2) The seller needs to build trust with the buyer for more future transactions.
- 3) Acceptance of such a restrictive clause is better than bearing the burden and the counter guarantee's cost.

Even though such a clause contradicts the independence principle stipulated in article 4 of the UCP 600, it provides enormous protection for the international traders in general and Jordanian applicants, mainly when suspicion of fraud arises.

f. Recklessness

The recklessness exception is similar to the nullity exception. However, the exception's scope can cover the situation in which the beneficiary submits non-genuine or void documents recklessly and carelessly (Ioanna, 2018, 46). On such occasions, the bank has the right to stop the payment to the seller because he/she has simplified the presentation of forged or void documents (Gaëlle, 2012, 46). This rule is an extension of the fraud exception, as a reckless act by the beneficiary is adapted as a fraud in the letter of credit context. A recklessness exception would be applied when the beneficiary submitted documents without considering the validity of these documents. Therefore, the bank has the right to hold the payment due to the presentation of forged documents.

g. Illegality

Illegality is the last exception to the independent principle of letter of credits, discussed in a current research paper. In addition to previous exceptions, illegality is further formed as an independent non fraud exception to autonomy. The question now is whether the illegality of the underlying contract can entitle the bank with the right to withhold the payment (Gaëlle, 2012, 54). According to the illegality exception, banks are not obliged to honor the presentation if the competent court declared that the underlying contract is illegal (Alavi, 2016, 133).

There are several reasons for the underlying contract to be considered illegal, such as (Alavi, 2016):

- 1) Exceeding the limits of the credits.
- 2) Breaching the exchange control regulation.
- 3) Violating the government restriction on payment to particular individuals or states.

According to Islamic Shari'ah guidelines, the goods must be *ḥalāl* and legal by nature and origin, (Othman, et al., 2010) since Allah says in *Ṣūrat al-Mā'idah* verse (77): "Eat of that which Allah hath bestowed on you as *ḥalāl* and good and keep your duty to Allah whom you are believers."

In the Islamic letter of credit, all parties must know that it is permissible to deal with *ḥalāl* goods. In contrast, this requirement is not relevant in conventional banks. It represents one of the cornerstones under the Islamic trade guidelines (Othman, et al., 2010).

After the researcher has explained above, it is time to ask whether the Jordanian judiciary takes new exceptions to the independence principle, such as avoidance and nullity of the underlying contract, unconscionability, recklessness, contractual restrictions, and illegality or not. Judge *Saeed Ajlouni* stated that;

These exceptions are unnecessary. The rule of fraud as an exception to the principle of independence is enough because it includes avoidance and nullity of the underlying contract, unconscionability, recklessness, contractual restrictions, and illegality (*Ajlouni*, 2019).

Judge *Zaid Sanosi* added: The only exception to the rule of independence in the Jordanian courts is fraud. However, the avoidance and nullity of the underlying contract, unconscionability, recklessness, contractual restrictions, and illegality can be involved within the circle of fraud (*Sanosi*, 2019).

Based on the discussion above, the Jordanian judiciary does not take avoidance and nullity of the underlying contract, unconscionability, recklessness, contractual restrictions, and illegality as exceptions to the independence principle in the letter of credit.

Conclusion

By examining the reasons to withhold the payment in the letter of credit transaction, the researchers have found that fraud, avoidance, nullity of the underlying contract, non-compliance documents, unconscionability, contractual restrictions, recklessness, and illegality are the main reasons behind stopping payment worldwide. In contrast, in Jordan, the only applied reason to stop payment in the letter of credit transaction according to the researcher's information through the court cases and interviews, and literature in this topic is fraud and non-compliance of documents. The researchers recommend the Jordanian courts to expand the exception scope of the independence principle in which it covers the avoidance, nullity of the underlying contract, conscionability, contractual restrictions, recklessness, and illegality, and that to give the parties involved in the letter of credit transaction more protection and to further harmonize the Jordanian courts practice with the worldwide court's practice.

References

- Al Amaren, Emad and Ismail, Che and Nor, Mohd and Indriyani, Rachma. "Documentary Letter of Credit in Conventional and Islamic Banks in Jordan." *International Journal of Multidisciplinary Sciences and Advanced Technology* 1, no. 4 (2020), 1-15. <https://www.ijmsat.com/archives/ijmsat-volume-1-issue-4>
- Al Amaren, Emad Mohammad, Che Thalbi Bt Md Ismail, and Mohd Zakhiri bin Md Nor. "The Fraud Rules in the Letter of Credit under Jordanian Legal System." *Sriwijaya Law Review* 5.2 (2021): 218-235. <http://journal.fh.unsri.ac.id/index.php/sriwijalayalawreview/article/view/1058>
- Al Amaren, Emad and Ismail, Che and Nor, Mohd. "Risks and Remedy in Islamic and Conventional Letter of Credit: Jordanian Practices." *International Journal of Islamic Economics* 2, no.1 (2020), pp. 54-68. <https://ojs.metrouniv.ac.id/index.php/IJIE/article/download/2065/1699>
- Al Rabei, Ali Mahmoud Abdallah. "Perception of Jordanian Banks Employees on the Relationship between Accounting Information Quality (AIQ) and Documentary Credits." *International Journal of Applied Business and Economic Research* 15, no.19 (2017):409-419.
- Al Amaren, Emad Mohammad, et al. An introduction to the legal research method: To clear the blurred image on how students understand the method of the legal science research. *International Journal of Multidisciplinary Sciences and Advanced Technology*, 2020, 1.9: 50-55.
- Alavi, Hamed. "Contractual Restrictions on Right of Beneficiary to Draw on A Letter of Credit; Possible Exception to Principle of Autonomy." *International and Comparative Law Review* 16, No.2 (2016): 67-86. <https://www.ceeol.com/search/article-detail?id=605523>
- Alavi, Hamed. "Exceptions to Principle of Autonomy in Documentary Letters of Credit; a Comparative View." *Actual Problems of Economics and Law* 10, no.3

- (2016):123-150.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/apel2016&div=58&id=&page=>
- Alavi, Hamed. "Illegality as an Exception to Principle of Autonomy in Documentary Letters of Credit; A Comparative Approach." *Korea University Law Review* 20, no.3 (2016): 3-21. <http://www.papersearch.net/thesis/article.asp?key=3483759>
- Alavi, Hamed. "Remedies to Fraud in Documentary Letters of Credit: A Comparative Perspective." *EU agrarian Law* 5. no.1 (2016): 1-13.
<https://www.sciendo.com/article/10.1515/eual-2016-0001>
- Alawamleh, Kamal. "Documentary Credits, and Independent Guarantees: A Critique of the 'Fraud Exception' Position in English and Jordanian Law." Ph.D. diss., University of Central Lancashire, 2013.
<https://core.ac.uk/download/pdf/19576168.pdf>
- Amaefule, Chumah. "The exceptions to the principle of autonomy of documentary credits." Ph.D. Diss. The University of Birmingham. 2012.
<http://etheses.bham.ac.uk/id/eprint/3831/1/Amaefule12PhD.pdf>
- Awad, Ali Jamāl Addin. *al-i'timādāt al-mustanadiyah*. Cairo-Egypt: Dār Al-Nahḍah Al-'arabiyah, Print 2, 1989.
- Buckley, Ross, and Gao, Xiang. "Development of the Fraud Rule in Documentary Credit Law: The Journey So Far and the Road Ahead." *University of Pennsylvania Journal of International Law* 23, no 4 (2002): 663-712.
<http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1285&context=jil>
- Buckley, Ross. "The 1993 Revision of the Uniform Customs and Practice for Documentary Credits". *Journal of Banking & Finance Law & Practice* 28, no.2 (1995): 265-313. <http://www.papersearch.net/thesis/article.asp?key=3483759>
- Gaëlle, Eloy. "Letters of credit: Under which Circumstances the Bank May Withhold Payment." Master Thesis, University of Gent, 2012.
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/gwirl28&div=13&id=&page=>
- Hashim, Rosmawani Che; Othman, Ahmad Azam and Akhtarzaite. "Principle of Autonomy in Letter of Credit: Malaysian Practice." *IIUM Law Journal* 19, no.2 (2011): 201-242. http://irep.iium.edu.my/38349/1/9-36-1-PB_drazam.pdf
- Ioanna, Tolia. "Recognized Exceptions to the Autonomy Principle in Documentary Letters of Credit: A Global Analysis". Master thesis., International Hellenic university Thessaloniki - Greece, 2018.
<https://repository.ihu.edu.gr/xmlui/bitstream/handle/11544/29198/Tolia%20Diss.pdf?sequence=1>
- Meral, Nevin. "The Fraud Exception in Documentary Credits: A Global Analysis." *Ankara B. Rev* 5. no. 2 (2012).41-76.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/ankar5&div=19&id=&page=>

Othman, Ahmad Azam; Hashim, Rosmawani Che and Abdul Aziz, Akhtarzaite. "An Overview of Shari'ah Issues Regarding the Application of The Islamic Documentary Credit Practice in Malaysia." ISRA International Journal of Islamic Finance 2, no. 2 (2010): 37-66. <http://irep.iium.edu.my/3011/>

Oubidât, Mû'yd, and al-Khashrûm, 'bdallah. "Makhâṭir al-i'timād al-mustanadī". al-Manārah Magazine 15, no. 2 (2009): 157-182. <https://web2.aabu.edu.jo/nara/manar/suportFile/1525.doc>

Owaidi, Ahmed Ali. "zamn buṭlān āl'qd fī alqānūn almadanī alaurdunī." Mut'ah for research and studies, the series of humanity since 27, no.4 (2012): 259-275. https://xwww.mutah.edu.jo/darj/12_27_4_1.pdf

Xiang, Gao and Buckley, Ross. "A Comparative Analysis of The Standard of Fraud Required Under the Fraud Rule in Letter of Credit Law". Duke Journal of Comparative & International Law 13, no.2 (2003): 293-336. <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1148&context=djcil>

Al Kīlānī, Maḥmūd. mawsū'ġ ā'māl albunūk, al-'amaliyāt alms̄rifīyah. Amman, Jordan: Dār al-Thaqāfah, 2008.

Laws & Regulations

United Nations, "United Nations Convention on Independent Guarantees and Standby Letters of Credit." (1996)

International Chamber of Commerce, Documentary Credits Regulations "Uniform Custom and Practice," No. 600 (2007).

Interview

Ahmed Diab Hindawi, Director of Foreign Department at Jordan Islamic Bank, Interview by author, Irbid-Jordan, August 30, 2019

Judge Saeed Ajlouni, An Active Judge in the Court of First instance (Irbid- Jordan) Interview by author, Irbid-Jordan, August 14, 2019.

Judge Zaid Sanosi, An Active Judge in a court of appeal (Irbid- Jordan) Interview by author, Irbid-Jordan, August 12, 2019.

Judge Mohammed Al Amareen, An Active Judge in a court of appeal (Irbid- Jordan). Interview by author, Irbid-Jordan, August 13, 2019.

Maha Khrais, The Supervisor officer in Documentary credit department in Capital Bank Interview by author, Irbid-Jordan, August 25, 2019.

Mohammed Taani, An officer in the Documentary credit department in Arab Bank.
Interview by author, Amman-Jordan, August 16, 2019

Sabbah Jamil Salahat, Director of Commercial services operation department at Jordan Ahli Bank. Interview by author, Amman- Jordan, September 8, 2019.

Taha Al Fakih, Branch Manager, The Housing Bank for Trade and Finance, 30 Street - Irbid. Interview by author, Irbid-Jordan, August 28, 2019.

Appendix

Interviews have been conducted during the period between August - November 2020. five banks and three Jordanian Judges have been interviewed. A thank goes to these respondents who gave the researcher lengthy periods out of their busy days to help this work reach completion.

Questions No.1; Conventional & Islamic Banks Questions (Arabic & English)

1. Is there continuous handling of letters of credit?	هل هنالك استخدام مستمر للاعتماد المستندي من قبل البنك؟
2. Has the use of the letter of credit decreased or increased in the last five years?	هل قلت نسبة استخدام الاعتماد المستندي ام زادت في اخر 5 سنوات؟
3. Is the latter of credit the main tool for financing imports and exports?	هل يعتبر الاداة الأساسية لتمويل عمليات الاستيراد والتصدير؟
4. Does the absence of a legal provision in Jordan affect the banks' handling of documentary credits?	هل أثر غياب النص القانوني في الأردن على تعامل البنوك بالاعتمادات المستندية؟
5. Is the absence of the legal text positive or negative?	هل غياب النص القانوني امر إيجابي او سلبي؟
6. What is the bank's position on the Standard Rules on Documentary Credits?	ما هو موقف البنك من القواعد الموحدة بشأن الاعتمادات المستندية؟
7. Has Uniform assets and customs established clear criteria for checking and matching documents?	هل وضعت القواعد الموحدة بشأن الاعتمادات المستندية معايير واضحة لفحص المستندات ومطابقتها؟
8. Do the Standard Rules mitigate the risk of compliance and the risk of letter of credit in general?	هل قللت القواعد الموحدة من خطر التطابق ومخاطر خطاب الاعتماد بشكل عام؟
9. Does the Bank comply with strict compliance or apply substantial compliance?	هل يمتثل البنك للامتثال الصارم أم يطبق الامتثال الفعلي؟
10. How does the bank balance between the principle of virtual inspection and the principle of independence	كيف يقوم البنك بالموافقة بين مبدأ الفحص الظاهري ومبدأ الاستقلالية؟
11. What is the relationship between the buyer and the bank?	ما هي العلاقة بين المشتري والبنك؟

12. Does the Bank advise his customer about modifying his application?	هل ينصح البنك عميله بتعديل طلبه؟
13. Does the bank investigate the client's financial situation before granting him documentary credit, or satisfy with the guarantees provided?	هل يستفسر البنك عن العميل قبل منحه الاعتماد المستندي ام يكتفي بالضمانات المقدمة؟
14. What if the bank is aware of fraud in the documents? Or non-compliance in documents?	ماذا لو كان البنك على علم بالاحتيال في المستندات؟ أو عدم الامتثال في الوثائق؟
15. What is the bank's position from customer's warnings not to pay because of a mistake in the goods?	ما موقف البنك من تحذيرات العميل بعدم الدفع بسبب خطأ في البضاعة؟
16. What is the bank's position from the dispute between the seller and the buyer about the goods?	ما هو موقف البنك من النزاع بين البائع والمشتري حول البضائع؟
17. What are the bank's conditions to stop payment?	ما هي شروط البنك لوقف الدفع؟
18. What is the solution for the risk of the goods?	كيف يمكن التغلب على مشكلة البضاعة؟
19. Does the bank recognize the fraud rule as an exception for payment or as avoidance or illegality of the underlying contract?	هل يؤخذ البنك بقاعدة الاحتيال كاستثناء على الدفع؟ او فسخ او بطلات العقد الاساسي؟
20. What are the types of fraud that face the banks?	ما أنواع الاحتيال التي تواجه البنوك؟
21. What are the reasons behind fraud in your perspective?	ما هي الأسباب الحقيقية حول الاحتيال من وجهة نظرك؟
22. Does codifying the fraud reduce the fraud risk?	هل من وجهة نظرك تقنين قاعدة الاحتيال من شأنه التخفيف من هذه الخطر؟

Questions No.2; Jordanian Judges Questions (Arabic & English)

Q 1: Is fraud an exception to the rule of independence in the documentary credit?	س1: هل يعتبر الاحتيال استثناء على قاعدة الاستقلالية في الاعتماد المستندي في الأردن؟
Q 2: Does the Jordanian judge follow the provisions of the Jordanian civil law about fraud?	س2: هل يتبع القاضي الاردني النصوص الواردة في القانون المدني الاردني حول الاحتيال؟
Q 3: Is it necessary to rely on fraud to reject non-conforming documents or does submitting non-conforming or wrong documents allows the bank not to pay?	س3: هل يجب الركون الى الاحتيال لرفض المستندات غير المطابقة ام ان تقديم مستندات غير مطابقة او خاطئة يسمح للبنك عدم الدفع؟
Q 4: Is intent a prerequisite of the rule of fraud in Jordan?	س4: هل تعتبر النية شرط اساسي من شروط قاعدة الاحتيال في الأردن؟
Q 5: What is the fraud seen by the judge mechanism to stop payment. Is it fraud in documents or fraud in the base contract or both?	س5: ما هو الاحتيال الذي ينظر اليه القاضي لوقف الدفع. اهو احتيال في المستندات ام احتيال في عقد الاساس او كلاهما؟

Q 6: What are the conditions for granting a judicial order to stop payment, and does the presence of a good faith factor affect the judge's decision?	س6: ما هي حالات وشروط منح امر قضائي بوقف الدفع وهل يؤثر وجود عامل حسن النية في قرار القاضي؟
Q 7: Should the Standard Customs Bulletin contain a fraud rule?	س7: هل يجب ان تتضمن نشرة الاعراف الموحدة قاعدة الاحتيال؟
Q 8: Is the absence of the legal text negative or positive?	س8: هل غياب النص القانوني هو امر ايجابي او سلبي؟
Q 9: What are the criteria in the Jordanian judiciary regarding the nature of the fraud rule?	س9: ما هي المعايير المتبعة في القضاء الاردني حول طبيعة قاعدة الاحتيال؟
Q 10: Does the Jordanian judiciary take new exceptions to the rule of fraud such as nullity, negligence or lack of awareness?	س10: هل يأخذ القضاء الاردني بالاستثناءات الجديدة على الاستقلالية كقاعدة البطلان او الاهمال او عدم الوعي؟
Q 11: What are the solutions proposed by the judge to alleviate the problems of documentary credit?	س11: ما الحلول المقترحة من قبل القاضي للتخفيف من مشاكل الاعتماد المستندي؟