



RESEARCH ARTICLE

Bank's Duty in Examining Documents of Documentary Credit

Dr. Asmaa Saad Elhadedy^{1*}, Dr. Hani Mounes Awad²

^{1,2} Department of Law, College of Business Administration, Northern Border University, Arar, Kingdom of Saudi Arabia

ARTICLE INFO

ABSTRACT

Received: Oct 17, 2024

Accepted: Dec 1, 2024

Keywords

Documentary Credits
Bank's Duty in Examining Documents
Bank's Responsibility

***Corresponding Author**

asmaa.hussien@nbu.edu.sa

The study aims to identify and analyze the rules governing the banks' implementation of documentary credits through a descriptive and analytical approach. The provisions governing the bank's implementation of documentary credits in Egyptian Commercial Law and the Uniform Customs and Practice for Documentary Credits (UCP) are analyzed. The study reaches several findings, including that the bank's implementation rules are concluded in six rules: limiting the examination to the required documents, the bank ensuring the documents submitted during the credit validity, the submitted documents shall conform to the requirements of the credit, the bank shall examine the documents within a reasonable period, the due diligence provided by the bank during the examination of the documents, the bank shall verify the identity of the party submitting the documents. The study recommends that legislators follow up on developments resulting from international trade in documentary credits. The provision of Egyptian Law on accepting Uniform Customs and Practice represents a legislative basis for accepting any amendment or development in the rules governing documentary credits.

INTRODUCTION

One of the most important tools that support freedom of trade between countries is providing financial tools compatible with that freedom so that those involved in international trade can transact across borders using safe means. The intervention of banks plays a critical role in enhancing the movement of international trade, as it serves as an intermediary trusted by all parties involved in international trade. Therefore, the bank intervenes as an intermediary in fulfilling the parties' obligations in international trade operations through documentary credits, which are financial tools providing all parties involved in international trade with the required security. It provides security for the seller by ensuring that the value of the goods sold is in the hands of a neutral party, the bank, and not in the hands of the buyer. The documentary credits also provide security for the buyer by ensuring that the seller gives up possession of the goods and they are on their way to the buyer. Furthermore, it is an advantage for the bank, as it receives a fee due to the service provided to the client who ordered the opening of the documentary credit. In addition, the bank's responsibility for the credit is limited only to receiving the documents requested by the buyer from the seller and verifying that they conform to the buyer's instructions.

As a result of the great importance of documentary credits in international trade transactions, and due to the issues arising from the difference in the law applicable to international transactions, the international community is moving towards unifying the legal rules applicable to documentary credits, in the form of the UCP for Documentary Credits, the latest edition of which was Edition No. 600 of 2007. In addition to the previous edition of 1993, these rules play a critical role in unifying the legal rules applicable to documentary credits.

STUDY PROBLEM:

The main problem of the study lies in identifying the rules governing the bank's implementation of the documentary credits because for the bank to be free from responsibility towards the ordering client and the beneficiary of the documentary credit, the limits that the bank shall adhere to when implementing the documentary credit shall be drawn up.

STUDY METHODOLOGY:

The descriptive analytical approach is used, as the descriptive approach is followed to identify the rules that the bank shall adhere to in implementing the documentary credits, with an analysis of the provisions of the Egyptian Commercial Law and the UCP, whether in Edition No. 500 or 600.

DISCUSSION

1- Provisions Governing Bank's Duty in Examining Documents

The bank's duty to examine documents is governed by specific principles related to its function and the significance attributed to documents and their examination in the context of the bank's performance of its obligations and the function and significance of documentary credits in general, as they serve as a means of payment and a guarantee for the parties to the underlying transaction (seller and buyer—supplier and importer). While the function and significance of documentary credits are evident in domestic and regional commercial transactions, their significance becomes even more pronounced in the realm of international transactions. Consequently, the Egyptian legislator has established the governing rules for documentary credits to regulate regional relationships involving such instruments. The Egyptian law, particularly the provisions of the Commercial Law No. 17 of 1999, shall apply to international transactions where the choice of law clause mandates the application of Egyptian law. However, given the significant international role of documentary credits, as previously discussed, this role and significance have prompted the international community to seek uniform rules that can be applied to documentary credits without resorting to the provisions of national laws, due to the substantial differences between domestic or regional transactions and international transactions. Consequently, the International Chamber of Commerce (ICC) dedicated efforts to standardize documentary credits' rules. This resulted in several editions of these rules, the most recent being the Uniform Customs and Practice for Documentary Credits (UCP) of 2007.

1.1 Egyptian Commercial Law No. 17 of 1999:

The Egyptian legislator addresses documentary credits in the Commercial Law No. 17 of 1999, specifically through Articles (341 to 350). However, the legislator has not limited the regulation of documentary credits to these articles. To address any gaps or deficiencies in the new legislation (Ibrahim, A. 2008), a general provision is included in Article 341/3 that states "The rules prescribed in bank usage and practices standardizing the documentary credits issued from the International Chamber of Commerce shall apply where no special text in this division is prescribed in respect thereof." I believe that the reason the legislator included this provision in such a general form is the paramount importance of documentary credits in international trade. Without documentary credits and guarantee they provide to both parties to the underlying transaction, a significant portion of international sales would not have been possible, and the level of international trade we experience today would not have been achieved.

The legislator, in the new Commercial Law, has addressed several obligations imposed on the executing bank, foremost among them being its duty to examine the documents. This duty holds particular and critical importance in the execution of documentary credits, as it often directly impacts the bank's liability to the client. Such liability typically arises from the bank's failure to properly examine the documents submitted by the beneficiary and the level of due diligence the bank is required to exercise during the document examination process. The legislator stipulates in Article 342 that "The bank opening the credit shall implement the conditions of fulfillment, bank acceptance, and discount, as agreed upon in the credit opening contract, of the documents are conforming to the credit opening conditions." Based on this provision, the legislator has made the bank's obligation conditional upon the fulfillment of a suspensive condition; the obligation becomes effective only

when the condition is met. In this case, the condition is that the documents submitted by the seller shall comply with the terms of the letter of credit. Accordingly, it becomes clear that the bank can only verify the compliance of the documents with the terms of the credit by examining the documents submitted to it. Thus, as one researcher explains, the legislator has placed an obligation on the issuing bank or the executing bank. This obligation is imposed by law; therefore, the bank is legally required to fulfill it (Ibrahim, A. 2008). If the bank responsible for examining the documents finds that they do not conform to the ordering client's instructions as stated in the letter of credit opening and decides to reject them, the legislator requires the bank to notify the client of the rejection, along with an explanation of the reasons for the rejection, as stipulated in Article 347/2. The obligation imposed by the legislator on the bank to state the reasons for its rejection is of paramount importance. Through this, it is possible to determine the extent of the bank's liability and whether the bank acted arbitrarily in rejecting the documents. This rejection by the bank means that the letter of credit, which is a key component of the underlying contract, will not be fulfilled. As a result, the seller is entitled to seek compensation from the buyer for failing to meet their contractual obligations as stipulated in the underlying agreement between them.

Moreover, the legislator addresses the liability of the document-examining bank in Article 345/1, which stipulates that the bank shall not be liable if the documents appear ostensibly to comply with the instructions received from the client.

1.2. Uniform Customs and Practices of 2007:

The international community has sought to unify the rules governing and regulating documentary credits to avoid conflicts between national laws regarding an instrument that is increasingly proving to be the true driver of international trade through the trust it instills in both parties to the transaction. In response to this international demand, the ICC in Paris has been working to unify the rules governing documentary credits. This effort has resulted in several editions of these principles, reflecting developments in the international market, with the latest being the UCP 600 of 2007. One researcher, in a study on the bank's obligation to examine documents under letters of credit in international trade contracts and its associated liabilities, notes that UCP 500, for the first time, explicitly expresses the concept of an abstract obligation (Rodrigo, T. 2011) in Article 3. The abstract obligation referred to in Article 3 is a concept that has long prevailed in independent banking operations, particularly concerning documentary credits. This concept posits the independence of the documentary credit from the underlying contract, meaning that neither party to the documentary credit can rely on defenses arising from the underlying contract, for which the documentary credit is considered a performance. This is similar to an arbitration clause, which is independent of the contract in which it is included and is not affected by the nullity or termination of the underlying contract. Once a documentary credit has been established, the ordering client may not suspend its operation by invoking any issues that might arise in the relationship between the ordering client and the seller (beneficiary of the letter of credit). It is consistently stipulated that the ordering client shall not object to the bank fulfilling the payment under the letter of credit. The clause is frequently stated as: "Pay to [Beneficiary's Name], without any objection from us." In analyzing this clause, one jurist states that (Yen Low, H. 2010) (Hsu, C. H. 2006) the applicant has waived all rights to oppose the executing bank. However, an examination of judicial and arbitral decisions reveals that courts and arbitral tribunals have established certain exceptions to the principle of independence, such as in cases of fraud committed by the beneficiary to claim the proceeds of the credit or in cases of arbitrary actions on the part of the beneficiary (Aladwan, Z. 2023).

The UCP affirms in Article 5 that banks engage in documentary credits based on documents only, and not based on goods, services, or other performances that may be related to those documents (UCP 500, Article 4). Furthermore, UCP 600, pursuant to Article 14, obliges examining banks to examine all documents required by the ordering client with reasonable care within five banking days following the day of receipt of the documents. The criterion for determining whether the documents are conformity is that they appear on their face to be per the terms and conditions of the credit. This period stipulated in Article 9 of the UCP differs slightly from the seven days stipulated in the 1993 UCP. As for the 1987 UCP, some argued that the period within which the bank shall examine the documents ranged from two to six banking days.

It is noteworthy that Article 14 addresses the bank's responsibility for examining the documents and assessing their apparent compliance with the terms and conditions of the letter of credit. Under this provision, the bank's responsibility is measured according to the international standard of banking practice, as reflected in these rules. This standard was introduced in Article 13 of 1993UCP 500. One researcher has questioned the extent to which Egyptian banks accept this international standard of banking practice (Ibrahim, A. 2008).

However, an examination of the Commercial Law No. 17 of 1999 reveals an answer to this question. Article 341/3 previously indicated that the Egyptian legislator has provided a general provision addressing all deficiencies by stating: "The rules prescribed in bank usage and practices standardizing the documentary credits issued from the International Chamber of Commerce shall apply where no special text in this division is prescribed in respect thereof." Therefore, if any dispute arises as to whether Egyptian banks can adopt the new standard introduced by the Uniform Customs and Practice, and the dispute is brought before an Egyptian court or arbitral tribunal, and Egyptian law is the applicable law, then it is the Egyptian legislator itself that has permitted and authorized the application of the Uniform Customs and Practice. In such a case, there is no room for judicial interpretation in the face of an explicit provision of the law.

2- Principles Governing the Examination of Documents

The bank shall inform the beneficiary of the terms and characteristics of the documentary credits through a document called a *Letter of Credit*. The bank is responsible for executing the instructions and orders of its client, the buyer who requested the letter of credit, and has the right to amend these instructions as long as the bank has not yet communicated them to the beneficiary seller for whom the credit is issued. However, if the bank has already notified the beneficiary, the bank cannot implement any amendments from its client (Gewolb, R. J. 1966). Nevertheless, the bank may amend the terms of the documentary credits in one specific case: when, during its examination of the documents, it finds a defect, such as incomplete or missing documents. In this case, the bank shall notify the ordering client of the defect before paying the value of the credit. If the ordering client approves the documents in their presented form, this approval is considered an amendment to the documentary credits contract.

The bank shall receive the documents within the period specified in the letter of credit. The bank shall not permit to acceptance of documents presented after this date, as the ordering client has the right to withdraw the credit cover, which remains under the bank's control throughout the validity of the credit and cannot be utilized by the ordering client during this time. The bank is required to examine the documents within a reasonable period not exceeding Five banking business days following the date of receipt. The bank does not have the authority to assess the significance of the documents required to be presented under the instructions of the letter of credit, as this assessment is exclusively within the purview of the buyer (Yen Low, H. 2010). The bank shall exercise a certain degree of care when examining documents. The Uniform Customs and Practice for Documentary Credits issued in 2007 expressed in Article 14/(a) the necessity for the care to be that of the standard of care of an ordinary professional person. In this regard, the care in version 600 is similar to version 500. As for the Uniform Customs issued in 1983, they were more lenient regarding the bank's due diligence, according to Article 15 of the Uniform Customs in 1983, the care standard was that of the standard of care of an ordinary person (Alavi, H. 2017) not that of the standard ordinary professional person.

2.1. Limiting the Examination to the Required Documents:

The execution of the documentary credits contract imposes obligations on all parties involved. Among these obligations is the ordering client's duty to specify the required documents. It is no exaggeration to state that this obligation is one of the most critical responsibilities placed upon the ordering client. The bank relies on the client's specification of the required documents to commence the implementation of the documentary credits, and the beneficiary uses this specification as a basis to begin obtaining the documents. This effort by the beneficiary is motivated by the desire to fulfill their obligations and secure the payment for the sold goods. Moreover, the number of required documents shall not be excessive. Practically, it is observed that the ordering client often requests a large number of documents, some of which are redundant or serve no practical purpose. This

excessive documentation can lead to anxiety and a lack of trust, both from the perspective of the beneficiary exporters and the banks. Therefore, the selection of documents shall be appropriate to each transaction, avoiding both excess and insufficiency (Rodrigo, T. 2011).

This principle means that the bank is prohibited, during the examination process, from considering anything beyond the documents presented to determine their compliance with the letter of credit. The bank focuses solely on the documents under examination and the terms of the letter of credit sent to the beneficiary seller, comparing the two to ascertain whether they match. The bank then determines compliance based on this comparison (Ibrahim, A. 2008). The French Court of Cassation rules that a bank executing a letter of credit cannot be held liable if the goods do not conform to the documents, as long as the presented documents comply with the instructions in the letter of credit—unless there is fraud by the seller and the bank is aware of it (Cour de Cassation, *Chambre commerciale*, du 17 décembre 1974, 73-13.239).

Consequently, the bank does not consider the terms of the sales contract when examining the documents, as the parties to the letter of credit rely exclusively on the documents, not the goods or services related to the documents. Letters of credit are independent by nature from the sales contracts or other contracts for which they are issued. Banks are not bound by these contracts and are only concerned with the documents specified in the letter of credit, as determined by the ordering client. The bank's task in examination is limited to the documents mentioned in the terms of the letter of credit, adhering strictly to the wording without interpretation, excess, or avoidance of harm. The bank is also not obligated to conduct any investigations beyond these documents, as it is only required, under the UCP, to assess their validity and sufficiency. This assessment is conducted superficially, without delving deeply into the examination of the documents (Aladwan, Z. 2023). It is worth noting that, although rare, the ordering client's instructions may not specify the required documents. In such cases, the bank issues the letter of credit including the documents customarily required in a CIF sale, namely the bill of lading, the commercial invoice, and the insurance policy. The bank shall disburse the value of the credit upon the beneficiary's presentation of these three documents and verification of their validity (Gewolb, R. J. 1966).

The rationale behind establishing the principle of limiting the examination to the documents specified in the letter of credit lies in the independence between the documentary credits contract and the underlying relationship. This independence stems from the fact that the seller's legal position as the beneficiary of the credit differs from its position as a seller under the sales contract. The beneficiary does not hold the status of a seller within the context of the letter of credit. Furthermore, the bank is not a party to the sales contract and is not obligated to verify compliance with its terms, even if the bank is aware of these terms (Kim, Y. E. 2017).

2.2. Bank's Obligation to Verify Documents Presented Within Credit Validity:

It is well-known that documentary credits are issued for a specific period with a defined start and end date. Within this period, the required documents must be presented. If the beneficiary delays presenting the documents within credit validity, the bank shall reject their receipt. This is considered a renewal of the letter of credit rather than an extension, as the assumption herein is that the validity period of the letter of credit has expired. In such cases, the ordering client shall renew the letter of documentary credits. However, if the examination period is six days, and the ordering client agrees to extend the period for a similar duration, with the extension occurring, for example, on the fifth day of the original validity period, this constitutes an extension of the documentary credits. Article 6(e) of the UCP states "A presentation under a letter of credit must be made by or on behalf of the beneficiary on or before the expiry date."

The validity period of the letter of credit begins from the date specified for its commencement. If the issuing bank requests a correspondent bank to confirm or notify the letter of credit without specifying the starting date for its validity, the correspondent bank proceeds with notifying or confirming the credit, and the validity period is calculated from the date of confirmation or notification. As a rule, documents presented before the opening of the letter of credit are considered inadmissible for payment. For the payment to be made under the credit, the ordering client shall issue a payment order to the bank. In such cases, the bank may proceed with paying the beneficiary (Ibrahim, A. 2008). In general, the validity period shall not be excessively long to avoid causing harm

to the concerned parties due to the rapid fluctuations in the prices of imported goods. This is particularly critical as we are dealing with international trade contracts. The examination shall be completed within five days, as stipulated in Article 14 of 2007 UCP.

Article 14(c) of UCP, if no specific date is stipulated for the beneficiary to present the documents, the bank may reject the documents if they are submitted no later than 21 calendar days from their issuance date. However, in any case, the documents must not be presented after the expiry of the letter of credit. If the credit terms include the phrase "At the Earliest Possible Time" which is discouraged by the UCP, it should be interpreted as requiring the documents to be presented within 30 days from the date of opening the credit (LEE, J. S. 2021).

2.3. The bank shall examine the documents within a reasonable period.

The beneficiary seller of the Documentary Credit shall deliver the documents requested by the ordering client in the Documentary Credit. The receiving bank shall examine these documents or perform this role, whether it is the issuing bank, the advising bank, or the confirming bank. Since The bank's duty to examine the documents submitted by the beneficiary is among the most important obligations entrusted to it, in fact, it is rightly considered the most significant obligation placed upon it, this is due to the reasons previously mentioned, as the examination of documents by the beneficiary directly results in the execution of the credit. If the bank confirms the validity of these documents, it shall pay the beneficiary the value of the credit. If the bank refuses to receive these documents due to their inaccuracy and inconsistency with the client's instructions, this refusal ends the Documentary Credit. If the bank's refusal is due to an abuse of this right, the bank is liable to both the client and the beneficiary.

Consequently, given that the bank's duty to examine the documents is the most important and serious of its obligations, this process shall be completed within a reasonable period, as stipulated in the Uniform Customs and Practices (UCP). If this period is excessively prolonged, fluctuations in international market prices may occur during this period, leading to huge losses for both parties. The rationale for emphasizing the need to avoid excessive delays in the period specified for the bank to examine the documents and verify their validity or fictitiousness should not be overstated (Ibrahim, A. 2008).

Trade in general, and international trade in particular, relies on speed and credit. This cannot be achieved unless banks fulfill their obligation to examine documents within a reasonable period. Banks shall take the initiative to carry out the examination process immediately upon receiving the documents. If the bank shall return to its client to resolve the acceptance or rejection of a particular document, it shall be carried out promptly (Benos, E., & Zikes, F. 2016).

This raises the question: What constitutes a reasonable period within which the bank shall complete the examination? The provisions of the Uniform Customs and Practices of 1983 do not precisely define this period. All it mentioned here is that the issuing bank should have a reasonable period to examine the documents and to decide whether to accept or reject them (Ibrahim, A. 2008).

In the absence of a text in the Uniform Customs and Practices specifying this period, the question has been raised about what is meant by a reasonable period and what factors should be considered in determining whether the time taken by the bank to conduct the examination exceeded what is reasonable.

In response to this question, some jurists have said that this period ranges from two working days to six banking working days, depending on the circumstances of each case (Chapman Jr, C. J. 1985).

A survey conducted in 1982/ 1983 (Ibrahim, A. 2008) on the practices of banks in this regard shows a consensus among banks that, when issuing banks process letters of credit and decide to reject documents, they do so within three or five days at most. The factors mentioned by the banks that are taken into consideration when determining a reasonable period include:

1. Amount of credit
2. Number of required documents
3. Extent of overlap or complexity of the document data

4. Language of documents
5. The period remaining until the goods reach their final destination
6. If the ordering client accuses the beneficiary of committing an act involving fraud or deception.
7. The size of the transaction subject matter of the credit

It is worth noting that the bank shall not examine and accept documents submitted outside banking working hours. If the credit expires on March 30 and the beneficiary submits his documents at 8 pm of that day, the bank shall not accept them, even though the validity of the credit does not expire until midnight of March 30 (Deak, N. L. 1980).

In light of the divergence of opinions, lack of uniformity, and differences between legal doctrine and banking practices, a new version of the Uniform Customs and Practices for Documentary Credits was issued in 1993, ten years after the previous version in 1983. This new version aims to define the reasonable period for examining documents.

In light of the divergence of opinions, lack of uniformity, and differences between legal doctrine and banking practices, a new version of the Uniform Customs and Practice for Documentary Credits was issued in 1993, ten years after the previous version in 1983. This new version aimed to define the reasonable period for examining documents. Article 13(b) stipulates: "The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly." However, Article 14(b) in a later amendment reduced the period for document examination to five banking days. The revised provision states: "b. A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank each have a maximum of five banking days following the day of presentation to determine if a presentation is compliant."

Therefore, Article 13(b) of the Uniform Customs and Practices of 1993 has resolved the aforementioned dispute, leaving no room for interpretation on this matter. By specifying that the reasonable period for examining documents shall not exceed seven banking days, starting from the day following the receipt of the documents, this rule applies equally to the issuing bank, the confirming bank, and the advising bank (Ibrahim, A. 2008). Furthermore, Article 14(b) has reduced the document examination period, reflecting the need to prioritize speed in international trade transactions.

2.4. The care required by the bank when examining documents:

Article 14(a) of the Uniform Customs and Practices of 2007 stipulates that, Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the Credit.

The examination referred to in this article means a careful examination of the details, i.e. the in-depth examination expected from a professional and specialized bank. Therefore, the provision states that the examination shall be conducted with care "to ascertain" compliance. The purpose of the examination is to reassure the bank and make sure that the documents are identical. This ascertainment can only be achieved through an in-depth review, allowing the bank to confirm that, on their face, the documents comply with the terms of the credit. The phrase "on their face" refers to the documents themselves, not the examination process (Yen Low, H. 2010).

If the bank's examination of the document constitutes an obligation on its part, what is the amount or extent of due diligence in the examination process?

Article 14(a) defines the level of due diligence required by the bank as "reasonable care". However, determining the degree of accuracy expected from the bank during the document examination process depends on the nature of its obligation in this regard. Is it an obligation to achieve a result, or an obligation to exert reasonable care? The difference between these two types of obligations is significant. In the obligation to achieve a result, it is not sufficient for the debtor to act with the

diligence of a normal person; the intended result of the obligation shall be achieved. Failure to achieve this result constitutes a breach of the obligation, regardless of the effort made. For the obligation to exercise reasonable care, it is sufficient for the debtor to act with the care of a normal person or, in some cases, with the diligence of a prudent person (Rodrigo, T. 2011). The question that arises here is: Is the bank's duty to examine documents an obligation to achieve a result, or merely an obligation to exercise reasonable care?

Some researchers and jurists argue that assessing the due diligence required of a bank when examining the submitted documents should be viewed from the perspective of both material and qualitative conformity. The first aspect includes the bank's duty to verify the completeness of the documents specified by the applicant, ensure compliance with the formal requirements, and confirm the absence of any contradictions. In this context, the bank's duty is considered an obligation to achieve a result, as the bank's role here is only material work. The qualitative conformity includes the bank verifying the validity of the documents, ensuring they were issued by the entity to which they are attributed, and confirming their freedom from forgery. In this case, the bank's duty is considered an obligation to exercise the diligence of a prudent person (Ibrahim, A. 2008).

2.5. The bank shall verify the identity of the party submitting the documents:

The bank shall verify the identity of the party submitting the documents and request the execution of the credit in their favor. This requirement stems from the inherently personal nature of a Documentary Credit, which is intended to benefit a specific individual. If it is discovered that the settlement was made in favor of a party not entitled to it, the bank shall be liable for the damage that results from that in the face of the real beneficiary and in the face of the buyer who requests compensation for the damage he suffered as a result of this settlement (Ibrahim, A. 2008).

3- Limits of the bank's duty to examine documents:

This section of the study discusses the limits that define the bank's duty to examine documents. It will show the boundaries that the examining bank shall observe and consider whether the bank has the right or authority to deviate from these limits, such as through interpretation, inference, or deduction, or whether it is strictly bound by the principle of literal compliance with the client's instructions, often referred to as the standard of strict conformity.

3.1 The Ordering Client's Instructions Included in the Documentary Credit:

The bank's duty to examine documents is the most important commitment in Documentary Credits, as it covers the bank's duty to the Ordering Client and the Beneficiary. It can be said that the bank's duty to examine documents is the most critical mission undertaken by the bank in executing the Documentary Credit. This mission serves as the primary and sole guarantee of the Ordering Client to the Beneficiary. This mission is also the only way to ensure the safety of the goods subject to the Documentary Credit, as the Ordering Client will not be able to inspect the goods until after they arrive, which will occur after the Documentary Credits has been examined. Payment is made based on the documents submitted by the Beneficiary. The bank's payment is made solely upon reviewing the documents and ensuring their compliance with the stipulated requirements, without verifying the conformity of the documents to the goods, as affirmed by the Egyptian Court of Cassation (Egypt, Court of Cassation, Cassation 738/45 6-3-1989).

Accordingly, in fulfilling this precise commitment, the bank limits its mission to the apparent examination of the documents themselves, as stipulated in Article 14(a), without resorting to any external elements, and to the documents related to the Documentary Credit only, without any elements derived from the basic relationship between the Seller and the Buyer. This is one of the aspects of the independence of the Documentary Credits from the underlying contractual relationship.

The bank shall commit to the principle of strict compliance with all the Client's terms by ensuring full conformity between the stipulated conditions and the documents submitted by the Beneficiary. This can only be achieved through a superficial examination of the documents. The bank is not required to conduct any additional investigations to verify the authenticity of the documents submitted to it.

Therefore, the Ordering Client may not reject the documents for reasons unrelated to their apparent substance (Ibrahim, A. 2008).

In order to achieve the principle of complete conformity, the Applicant for opening the credit is committed to providing the clearest possible instructions for the credit. Banks maintain a unified format for requests to open the credit to minimize the possibility of ambiguity in the instructions. If a discrepancy or ambiguity arises in the terms of the credit, the bank exercises reasonable care in interpreting unclear instructions and applies the standard of full conformity. However, if the instructions are ambiguous, the issuing bank is not considered to have breached its duty if it acts based on a reasonable interpretation of the ambiguous terms or accepts a document that falls within the broad description used (Ibrahim, A. 2008).

Based on the above, we conclude that the bank's duties to examine is confined to the wording of the Documentary Credit and the documents submitted, without recourses to any external elements. There is no room for interpretation, assumptions, implied meanings, or considerations of whether harm has occurred.

3.2. The Principle of Strict Compliance and Its Applications:

Here we review some of the judicial rulings that have upheld the principle of strict compliance: The Egyptian Court of Cassation addressed the principle of strict compliance in its rulings, stating that the court's ruling was based on the irrevocable Documentary Credit system, which is independent of the sales contract between the Seller and the Buyer. The bank that opened the credit is obligated to pay its value if the documents submitted to it are completely identical to the terms outlined in the Documentary Credit. The bank has no authority to assess, interpret, or infer beyond the explicit terms of the credit. Furthermore, the bank cannot independently amend the terms of the credit without the approval of its client. Accordingly, if the Beneficiary submits the shipping documents to the bank, the bank verifies their conformity with the terms stipulated in the Documentary Credit. If the bank does not raise objections within a reasonable period sufficient for examination, this is considered acceptance of documents as submitted, thereby obligating the bank to pay the credit value (Egypt, Court of Cassation, Cassation 372/48 18-2-1985).

In one case, the facts revolved around an Ordering Client requesting the issuing bank to require the Beneficiary, through the Documentary Credit, to include "sugar" only in the bill of lading. The bank rejected this and refused to pay the credit amount. The court supported the bank's position, emphasizing that the bank is bound strictly by the specifications provided by its client in the credit contract. The bank has no concern with the terms of the sales contract between the Client and the Beneficiary (Ibrahim, A. 2008).

Accordingly, the bank may not be accountable or deemed liable based on the basis of elements outside the documents specified by the Client in the terms of the credit.

This exact expression and compliance of the terms of the Documentary Credit provides the highest level of security for both parties involved in the transaction (Ibrahim, A. 2008).

CONCLUSION

International banking transactions require banks to have specific payment methods that are consistent with their international nature. Therefore, Documentary Credit appeared in the banking sector to provide legal and banking security for parties involved in international trade. Whereas the Documentary Credit is truly an essential pillar in international transactions. Given its critical importance on the international stage, this study focuses specifically on the bank's duty to examine documents in the context of letters of credit.

The Study addresses the bank's duties to examine documents, which is the most critical liability of the bank in Documentary Credit. It analyzed the provisions governing the bank's duty under the new Egyptian Commercial Law No. 17 of 1999, as well as the Uniform Customs and Practice for Documentary Credits (UCP 600) issued in 2007, which is the latest publication of the International Chamber of Commerce in Paris for Documentary Credit, officially titled *Règles et Usances Uniformes relatives aux Crédits Documentaires* and bearing the reference No. 600.

In a second section, we addressed the principles governing the bank's duties to examine documents, which are as follows:

1. Limiting the examination to the required documents
2. The bank shall ensure that the documents are submitted during the credit validity.
3. The documents submitted shall fully comply with the terms specified in credit.
4. The bank shall examine the documents within a reasonable period.
5. The bank shall exercise the appropriate level of care when examining the documents.
6. The bank shall verify the identity of the person submitting the documents.

We clarified the limits of the bank's duties to examine documents, which are governed by the principle of strict compliance with the instructions provided by the Ordering Client to open the credit. The bank has no discretionary authority to implement the credit, as its role is automatic in implementing the instructions of the Ordering Client. We also reviewed some applications in the judiciary that establish the principle of strict compliance in the context of letters of credit.

1. The concept of conformity, which governs the bank's duties when examining documents, is one of the ambiguous obligations, whether at the national or international legislative level (Uniform Customs and Practice).
2. Greater attention shall be given to determining the details that arise during implementing a Documentary Credit to avoid disputes and delaying the settlement of Documentary Credits. This attention shall be given by the international community and its bodies, as we shall acknowledge that trade in general and international trade in particular have become a driving force and a cornerstone of the global economy.
3. National legislators must keep pace with modern trends arising from international practices in the commercial sector in general and the banking sector in particular. No matter how perceptive a legislator may be, they cannot foresee all the developments that will arise in practice. Furthermore, there is a more serious reason for national legislators to keep pace with the global frameworks in organizing international commercial transactions, the remarkable development that controls those dealing in international trade, which significantly influences the trends of international organizations and bodies.

Acknowledgment

The author extends their appreciation to the Deanship of Scientific Research at Northern Border University, Arar, KSA for funding this research work through the project number NBU-FFR-2024-2754-02.

REFERENCE:-

- Alavi, H. (2017). Risk management techniques and their application to documentary discrepancy in letter of credit transaction. *European Journal of Economic Studies*, 6(1), 4-17.
- Aladwan, Z. (2023). Legal basis for the fraud exception in letters of credit under English Law. *Journal of Financial Crime*, 30(2), 594-600.
- Benos, E., & Zikes, F. (2016). Liquidity determinants in the UK gilt market.
- Chapman Jr, C. J. (1985). The 1983 Revisions to the Uniform Customs and Practice for Documentary Credits. *Com. LJ*, 90, 13.
- Deak, N. L. (1980). Letters of credit (documentary credit). *NYL Sch. J. Int'l & Comp. L.*, 2, 229.
- Gewolb, R. J. (1966). The Law Applicable to International Letters of Credit. *Vill. L. Rev.*, 11, 742.
- Hsu, C. H. (2006). The Independence of Demand Guarantees, Performance Bonds and Standby Letters of Credit. *NTU L. Rev.*, 1, 1.
- Ibrahim, Ali., (2008), The bank's obligation to examine documents for documentary credits in international trade contracts and its responsibility, Dar Elnahda ElArabia
- Kim, Y. E. (2017). The Duty of Banks to Examine the Documents of Letters of Credit in View of Korean Courts. *Kangwon Natl. Univ. Kangwon Law Review*, 50, 529-554.
- Koxolchyk, B. (1984). The 1983 UCP Revision, Trade Practices and Court Decisions: A Plea for A Closer Relationship. *Can. Bus. LJ*, 9, 214.

- LEE, J. S. (2021). A study on documentary letter of credit transaction based on import & export procedure. *East Asian Journal of Business Economics (EAJBE)*, 9(3), 15-28.
- Rodrigo, T. (2011). UCP 500 to 600: a forward movement. *eLaw J.*, 18, 1.
- Yen Low, H. (2010). UCP 600: the new rules on documentary compliance. *International Journal of Law and Management*, 52(3), 193-210.