



## RESEARCH ARTICLE

## Law Applicable to Documentary Credits A Case Study of Jordan

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ARTICLE INFO	ABSTRACT
Received: Nov 17, 2024 Accepted: Jan 30, 2025	This research examines Law Applicable to Documentary Credits a Case Study of Jordan, highlighting important legislative shortcomings and providing recommendations for improvement. The objectives of the study include defining documentary credits, analyzing their role in international trade, determining the current legal framework in Jordan, and identifying legislative and practical challenges. The study uses a qualitative research design, review of Jordanian legal texts, international standards such as UCP 600 and ISP98, and relevant case law to provide an in-depth analysis of the issues at hand. The findings highlight significant gaps between Jordanian law and international standards, leading to increased risks and reduced confidence in documentary credits. This inadequacy in the legal framework has resulted in a decline in their usage and reduced investment by financial institutions. The research concludes that Jordan must reform its legal framework, particularly by revising Article 122 of the Jordanian Commercial Law to explicitly address documentary credits and align them with international norms. Such amendments are crucial to ensuring effective regulation of documentary credits in the context of international trade contracts.
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## INTRODUCTION

Documentary credits, fundamental to international trade finance, are essential in enabling cross-border transactions by offering a secure framework for payment and performance assurances. The principle of autonomy intrinsic to documentary credits guarantees that the credit functions independently from the underlying sales contract. This principle is designed to safeguard the parties involved by ensuring that disputes arising from the sales contract do not impact the payment mechanism established by the documentary credit.

Documentary credits is one of the important tools in the scope of financing foreign trade operations, including import and export, which are carried out through banks, which would give guarantee and stability and encourage the international trade process due to the confidence of the importer and exporter by banks in the implementation of documentary credits (Pullen, 2019).

Documentary credit, also known as a letter of credit (LC) or bankers' commercial credit, or letter of undertaking (LoU), is a payment mechanism used in international trade to provide an economic guarantee from a creditworthy bank to an exporter of goods (Jack, 2001).

Letters of credit are used extensively in the financing of international trade, when the reliability of contracting parties cannot be readily and easily determined. Its economic effect is to introduce a bank as an underwriter that assumes the counterparty risk of the buyer paying the seller for goods (UN, 2018).

By utilizing a documentary credit, the buyer, in turn, is assured that the cargo value is to be paid if the seller provides evidence showing the discharging of the obligations assigned to him in the sale contract (Al-Amaren, Ismail, Nor, & Indriyani, 2020).

On the other hand, sellers get their money after the compliant documents are presented even though the bank's obligation towards the seller is unconditional as long as there is no clear evidence of fraud. While, on the other hand, in case of fraud, bank's has the right to withhold the sellers from receiving the value of the shipped goods, or further, withhold confirming or negotiating banks from honouring the payments to fraudulent sellers when there is a fraud committed in the transaction under the knowledge of the seller (Meral, 2012).

Fraud is a significant risk that might face both Jordanian buyers and banks involved in credit transactions, as fraud is described, by some, as a 'cancer in international trade' (Dalhuisen, 2004).

Therefore, an intermediary bank (issuing, conforming, or negotiating) in the documentary credit transaction may refuse to honour the payment when there is clear evidence of fraud committed by the seller (Monteiro, 2007).

The Second article of the unified principles and rules for documentary credits issued by the International Chamber of Commerce defined the documentary credit as *"any arrangement, whatever its name or description, and so that it is subject to revocation and constitutes a firm undertaking from the bank that issued the credit to fulfil its obligation in exchange for an identical presentation"* (UCC, 2007).

Given the parties to the relationship in the documentary credit through the previous definitions, they are: the beneficiary seller (supplier) and the importer (buyer), the customer requesting the opening of the credit, the bank issuing the letter of credit, The correspondent (confirming) bank, and the principle of independence is adopted in the documentary credit, and once the rights of the beneficiary are determined in the credit Documentary as mentioned in the letter of guarantee, the bank has a direct and independent obligation towards the beneficiary as soon as the letter of credit is issued to him, and this commitment becomes final as soon as the beneficiary becomes aware (Article 4 UCP 600).

Because the principle of independence is the basis on which the contractual relationship between the parties to the documentary credit contract is based, the legal relations that arise between the parties to the documentary credit are independent of the other, so it is not permissible for the beneficiary to exploit the existing relationship between the buyer requesting the credit and the bank that opened the credit, and on the other hand, it is not permissible The bank may take advantage of the existing relationship between the buyer and the seller, which is represented in the sale contract (the base contract) that was the reason for opening the credit.

The documentary credit and the base contract are two separate contracts that are independent of each other. Therefore, the base contract is invalidated by fraud, and the relationship between the bank and the seller is also affected by such invalidity.

Despite the importance of documentary credits in facilitating trade, there is a lack of comprehensive analysis on:

1. Legal Framework: How Jordanian laws governing documentary credits compare with international standards and practices.
2. Practical Application: The challenges and issues faced by practitioners and businesses in applying these laws in real-world scenarios.

3. Judicial Interpretation: How Jordanian courts interpret and enforce documentary credit agreements, especially in cases involving disputes or fraud.

The research will be structured as follows:

- The first topic: Understanding Documentary Credits: Definition and Significance.
- The second topic: The Applicable Legal Framework for Documentary Credits in Jordan.
- The third topic: Legislative Shortcomings in the Application of Documentary Credits within Jordanian Law.

### **Problem of the Study**

The problem addressed in this study lies in the legislative shortcomings within Jordan's Commercial Law, particularly regarding its treatment of banking operations and documentary credits. Article 122 of the Jordanian Commercial Law No. 12 of 1966 refers to banking operations not specifically mentioned in the law as subject to the general provisions of the Jordanian Civil Law, rather than aligning with international standards governing documentary credits, such as the Uniform Customs and Practice for Documentary Credits (UCP 600) and the International Standby Practices (ISP98). This approach treats documentary credits—vital instruments in international trade—as ordinary contracts, overlooking the unique risks they involve, such as fraud in documents. This misalignment creates uncertainties and challenges for businesses and financial institutions, highlighting the need for the Jordanian legislature to revise its legal framework to better align with global standards and effectively address the complexities of documentary credit transactions.

### **METHODOLOGY OF THE STUDY**

The research methodology for the study "Law Applicable to Documentary Credits: A Case Study of Jordan" is based on analyzing the current legal texts related to documentary credits within Jordanian legislation, such as the Jordanian Commercial Law No. 12 of 1966 and the Jordanian Civil Code, alongside international standards like the UCP 600 and ISP98 that govern documentary credits in international trade. The methodology involves comparing these legal provisions with international practices to identify any gaps or discrepancies between Jordanian law and global standards. Additionally, the study includes practical case studies from Jordan to illustrate how these laws are applied in real-world situations and the legal and commercial challenges they present. Through this approach, the research aims to provide a comprehensive assessment of Jordan's legal framework concerning documentary credits and emphasizes the need to align local laws with international norms.

This study will adopt a qualitative research design to conduct a detailed analysis of the law applicable to documentary credits in Jordan. The qualitative approach is suitable for exploring the complexities of legal frameworks, judicial interpretations, and the practical challenges within the Jordanian context. The methodology includes reviewing and analyzing relevant legal texts, statutes, and regulations such as the Jordanian Commercial Code and applicable banking laws. Additionally, international standards like the Uniform Customs and Practice for Documentary Credits (UCP 600) and International Standby Practices (ISP98) will be examined to identify areas of comparison with Jordanian law. Key judicial cases and decisions involving documentary credits will also be analyzed to understand how the Jordanian judiciary interprets and applies these laws. This comprehensive approach combines legal analysis, practical insights, and comparative research to effectively address the research problem.

### **Understanding Documentary Credits: Definition and Significance**

The Letter of Credit (LC) plays a pivotal role in international trade, particularly when the transactions are bank-financed. A significant number of international trade agreements incorporate the LC mechanism as the preferred method for resolving disputes and settling obligations between parties. The LC is instrumental in facilitating payment settlements and the clearance of international transactions, offering substantial benefits to both sellers and buyers, especially in situations where written terms are unclear or absent. Given that the LC is governed by standardized rules established

by the International Chamber of Commerce (ICC), these provisions are generally considered binding unless the parties explicitly agree to alternative arrangements (Al-Kilani, 2014).

The definition of documentary credit according to the UCP 600 Article 2 states: (UCP 600 Article 2)

*"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".*

"Honour" means:

- a) To pay a sight if the credit is available by sight payment
- b) To incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment
- c) To accept a bill of exchange ('draft') drawn by the beneficiary and pay at maturity if the credit is available by acceptance".

The term UCP means the Uniform Customs and Practice promulgated by the International Chamber of Commerce. It is usually called the ICC Uniform Customs and Practice for Documentary Credits. They are set of rules used to facilitate the flow of international trade when protectionism and nationalism posed serious threats to the world trading system. UCP600 is the sixth revision of rules since its establishment in 1933.

Documentary credit is interchangeably known as Letters of Credit or Banker's documentary credit. It is one of the oldest and accepted legal instruments used for financing international trade (Alavi, 2016).

As a matter of fact, this instrument is widely appreciated which resulted to be considered as the *"Life Blood of Commerce"*.

Documentary credit is derived from the French term "Accréditif," which signifies the authority to perform a specific action. This term itself originates from the Latin word "Accreditivus," which is closely associated with the concept of trust. The evolution of these terms underscores the foundational principle of trust that underpins the function and reliability of documentary credit in commercial transactions (Garcia, 2009).

The use of documentary credit in international trade can be traced back to ancient civilizations, including Egypt and Babylon. Archaeological findings from Babylon, dating as far back as 3000 B.C., reveal the existence of promissory notes that served as guarantees for the payment of specified sums, along with interest, at predetermined dates. Similarly, in ancient Greece, banks issued documentary credit to their correspondents, facilitating the transportation of goods like spices, and allowing for the settlement of accounts in exchange for payment. These early practices laid the foundation for the modern use of documentary credit in global commerce (Trimble, 1948). During the medieval period, merchants faced significant risks associated with transporting gold and valuable items on their business journeys. To mitigate these security concerns, they began utilizing documentary credits as a means of resolving key challenges related to payment and the safekeeping of assets. Documentary credits provided a secure and reliable alternative, allowing merchants to engage in transactions without the need to physically transport large sums of money or precious goods, thus enhancing the safety and efficiency of international trade.

Due to the risks associated with carrying cash while traveling, merchants would exchange their cash for documentary credit at a bank, which allowed them to access funds at a designated location through another bank. This system provided a safer and more efficient method for transferring money across regions. The Medici Bank, during the late 1300s in Italy and Bruges, is one notable example of utilizing documentary credit in international trade, as highlighted by De Roover. This practice facilitated secure financial transactions and helped lay the groundwork for the modern banking and trade systems (De Roover, 1942).

The latest version of Uniform Customs and Practices for documentary credit (UCP 600) defines Letters of Credit as:

*“An arrangement however named or described, that is irrevocable and thereby constitutes and definite undertaking of the issuing bank to honor the complying presentation that is in accordance with terms and conditions of the credit, the applicable provisions of this rule and international standard banking practice”* (Article 2, UCP 600).

Article 2 of UCP 600 defines "complying presentation" as a presentation that adheres to the terms and conditions of the Letter of Credit, the relevant provisions of the UCP rules, and established international standard banking practices. In other words, a complying presentation must fully align with the specific requirements outlined in the credit, as well as the accepted norms governing documentary credit transactions on a global scale. This ensures that the documents presented for payment are consistent with the agreed-upon terms, facilitating smooth processing of the transaction (Article 2, UCP 600).

Documentary credit is a written instrument issued by one party, typically the account party, to another party, instructing that a Letter of Credit be granted to the person in whose favor it is addressed—the beneficiary—by a bank or financial institution. This instrument serves as a formal request for the issuance of the credit, which guarantees payment or performance under specified terms, thereby facilitating international trade transactions (Lipton, 2000).

The extensive mercantile history of documentary credit involves the practical use of credit arrangements that trace back to the second half of the 19th century. One of the earliest landmark legal cases concerning documentary credit is *Rose v. Von Mierop and Hopkins* (12), which is often cited as a foundational case in the judicial review of documentary credit principles and practices. This case helped establish key legal precedents in the interpretation and enforcement of documentary credit transactions (McCurdy, 1992).

For the purpose of understanding certain terminologies, the UCP 600 according to Article 2 has defined (Article 2, UCP 600):

*“Advising bank- means the bank that advises about the credit at the request of the issuing bank.*

*Beneficiary means the party in whose favor a credit is issued.*

*Confirming bank means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request.*

*Issuing bank means the bank that issues a credit at the request of an applicant or on its own behalf”.*

The letter of credit is an obligation that has characteristics as follows (Al-Kilani, 2014):

1. A commercial obligation, that is, it is subject to the provisions of the Commercial Law.
2. A unilateral obligation, that is, the bank is bound by its unilateral will to the obligation arising from it to fulfill the beneficiary without the beneficiary having any obligation to confront the bank.
- 3- The bank's obligation expires with the expiry of the period whose end is the end of the bank's obligation, which means if the beneficiary is not fulfilled and does not withdraw the value of the credit within the limited period, the beneficiary does not have a right to its value.

The bank's commitment under a Letter of Credit (LC) is characterized as pure, original, and independent. This means that the bank's obligation arising from the LC is separate from the underlying transaction or agreement that led to the issuance of the credit. The validity of the bank's obligation is unaffected by the legality or validity of the underlying transaction. Consequently, the bank's responsibility to the beneficiary is independent of the sale contract or any other agreement linked to the credit. Moreover, the bank's obligation in a documentary credit is self-contained and does not depend on other obligations arising from the same credit, ensuring that the bank's duty to the beneficiary stands alone.

Given the parties to the relationship in the documentary credit through the previous definitions, they are: the beneficiary seller (supplier) and the importer (buyer), the customer requesting the opening of the credit, the bank issuing the letter of credit, The correspondent (confirming) bank, and the principle of independence is adopted in the documentary credit, and once the rights of the beneficiary are determined in the credit Documentary as mentioned in the letter of guarantee, the bank has a direct and independent obligation towards the beneficiary as soon as the letter of credit is issued to him, and this commitment becomes final as soon as the beneficiary becomes aware (UCP 600, Article 4). Because the principle of independence is the basis on which the contractual relationship between the parties to the documentary credit contract is based, the legal relations that arise between the parties to the documentary credit are independent of the other, so it is not permissible for the beneficiary to exploit the existing relationship between the buyer requesting the credit and the bank that opened the credit, and on the other hand, it is not permissible The bank may take advantage of the existing relationship between the buyer and the seller, which is represented in the sale contract (the base contract) that was the reason for opening the credit.

Jordanian judiciary applies the fraud rule as an exception to the independence principle. What is also applied in the Jordanian courts is that the rule of independence is not absolute. While there is an exception to the independence principle, that is when the process involves fraud. The documentary credit and the base contract are two separate contracts that are independent of each other. Therefore, the base contract is invalidated by fraud, and the relationship between the bank and the seller is also affected by such invalidity

Articles 4 and 5 of the International Rules and Customs for Documentary Credits (UCP 600) outline the specific scope of the bank's responsibilities in relation to documentary credits. According to Article 4, the bank's commitment is limited to ensuring the apparent conformity of the documents presented under the credit, without any obligation to verify the actual conformity of the documents to the goods specified in the underlying contract, such as the international sales contract. Furthermore, Article 5 clarifies that "Banks deal with documents and do not deal with goods, services, or performance to which the documents may be related." This underscores that the bank's role is confined to verifying the documents' apparent compliance with the terms of the credit, and it is not responsible for assessing the underlying goods or services associated with those documents (ICC, 2007).

### **The Applicable Legal Framework for Documentary Credits in Jordan**

The Jordanian Trade Law No. (12) for the year 1996 did not address the definition of documentary credit, and the texts of the Jordanian Trade Law did not contain provisions related to letters of credit in any form, which is a matter taken from the Jordanian legislator at a time when the trade movement in Jordan is active at the national and international levels. Rather, it was only concerned with the general provisions in the financial appropriation in Articles "118-121" (Jordanian Trade Law No. 12, 1966, Articles 118-121). Here, a distinction must be made between a financial credit and a letter of credit, as Article 118 stipulates: *"In contracts for opening financial letters of credit, the credit opener is obliged to put some matters at the disposal of an authorized person, and he has the right to deal with them in one payment or successive payments according to his needs during a date."*

Article (121/1) of the Jordanian Trade Law stipulates that: "If the bank credit is allocated in fulfillment of the interest of others and the bank endorses this credit to the one who is entitled to it, then it may not be retracted or amended without the consent of that third party, and the bank becomes directly and finally obligated towards it to accept the intended papers and payments (Article 121/1 of the same law). Moreover, the second paragraph of the same article stipulates that (Article 121/2 of the same law): *"The bank has the right to recover the amounts it paid or the expenses it incurred to implement what was entrusted to it with the agreed upon interest or the legal interest if it was not an agreement, starting from the day of payment"*.

The researcher concludes that letters of credit were found without a legislative text regulating them in Jordanian law, although the Jordanian legislator had referred to them, but in an unspecified manner, a matter that led the judiciary to rely on international and local banking norms in this

regard. As for jurisprudence, there were many definitions of LC, but they were distinguished from each other in highlighting a different feature from the other, including what is known as letter of credit: *"An undertaking issued by the bank at the request of the customer or the order-giver for the benefit of the third party exporter, and the beneficiary is obligated to pay or accept drawn bills of exchange. It shall be paid by this beneficiary under certain conditions contained in this undertaking and secured by a pledge of possession on the documents representing the exported goods"* (Al-Baroudi, 1968).

The researcher finds that this definition focused on showing the importance of documents in preserving the right of the bank in return for its obligation towards the beneficiary to pay the value of the shipped goods. The letter of credit is also defined as: *"a contract under which the bank (the initiator) undertakes to open the credit upon the request of the order to open the credit in favor of another person who is the beneficiary to guarantee documents representing goods prepared for transportation or movable"* (Musa, 2011).

Moreover, another opinion went to the extent of stating that the letter of credit is: *"The credit that the bank opens at the request of another person known as the orderer, whatever the method of its implementation, whether by accepting the bill of exchange or deducting it, or by paying an amount in favor of a customer to this orderer and secured by the possession of documents representing goods on the road or prepared for dispatch."* (Awad, 1983).

A letter of credit has also been defined as: *"A contract under which and upon the request of one of its parties, which is the orderer, the bank that issued the credit undertakes personally and irrevocably before a person from a third party directly or through the intervention of a bank in the country of this third party to pay a specified amount or to issue a draft drawn on it, a specified amount in return for submitting to him, within a specified period, certain documents in the letter of undertaking issued by him to the beneficiary, and the customer to whom the credit was opened is obligated to rid the bank of the effects of this operation"* (Al-Kilani, 2014).

Although, the Jordanian Commercial Act has not encompassed documentary credits in its numerous folds, Jordanian case law has addressed several aspects of these financial instruments. For example, the Jordanian Court of Cassation has defined documentary credits in its decision number 152/75 of the year 1976. (Jordanian Court of Cassation, 1976) To this the Court of Cassation provided that:

*"A documentary credit is a promise ensuing from a bank upon the request of the applicant (buyer) and by which the bank is obliged to pay the goods' price to the beneficiary (seller) under some conditions".*

Like other Arabian Middle Eastern countries, the autonomy principle, which dictates that the letter of credit is independent from the contract in association with which it has been issued, has been expressly stressed in the many different cases heard by the Jordanian courts. For instance, the Court of Cassation decision number 1554/1999, of the year 1999, provided that:

*"The obligation of the bank under the letter of credit is independent from the sale of goods contract on which it was based."* (Adaleh Centre for Legal Information Publications, 2009).

Yet, what is distinct about the Jordanian judiciary in this regard is that it has dealt with the fraud problem. This section is not meant to discuss the different relationships and principles which ensue from a letter of credit, but it is meant to highlight the way the Jordanian courts have dealt with the fraud problem. Hence, letters of credit documentary fraud, the scope of the fraud, the standard of the fraud and the injunctions' relief are analysed in this section.

So far, this particular issue, fraud in the documents, has not been tested before the Jordanian courts. This could be attributed to the fact that no case disputing such a matter has come before the Jordanian courts. Where neither legislation nor case law offer a solution before the Arabian Middle Eastern courts, these courts have frequently referred to the jurisprudence in order to decide a dispute which has been pleaded before them. Hence, it would be useful to find out what the Arabian Middle Eastern jurisprudence holds for such a matter. It is interesting to know that only one Arabian Middle Eastern

letters of credit book has been relied on extensively by the Jordanian courts in deciding issues which arise in this regard.(Awad, 1989)

In this book Awad states that:

*“The submission of false documents is considered as fraud. Such kind of fraud should prevent accepting the documents and executing the letter of credit. And if the beneficiary has a solid right in triggering the letter of credit payment by the submission of the required documents, such a fact is conditioned to situations where the beneficiary submits genuine and truthful documents in the appropriate time specified in the letter of credit”.*

It is noteworthy to see that Awad has found that to make a conforming presentation the beneficiary has to submit genuine and truthful documents and nothing less. Notably, Awad has criticised the English House of Lords decision in the *United City Merchants* case (*United City Merchants (Investments) Ltd v Royal Bank of Canada*, 1983). The learned author has found that the formulation which the House of Lords has pursued is problematic.(Awad, 1989, pp. 311-312) Awad found that this formulation, which would not allow banks to refuse false documents unless the bank can ascertain that the beneficiary himself has intentionally participated in falsifying the documents or at least that such falsification has been done under his knowledge, works to the detriment of banks and the autonomy principle. Moreover, while he has acknowledged that the UCP exempts and protects banks from any responsibility regarding the documents' genuineness or falsification in situations where such falsity is difficult to discover, he assured that this should not be the case where such falsity is apparent to the banks. In contrast to the English conventional view in this regard, in Awad's view the fact that the document is false in any respect, whether fraudulent or not, would give the bank the right to refuse the beneficiary's submitted documents.

Thaher (1997) identify difficulties faced by Jordanian banks with regards to import letters of credit (L/C). His study show that Jordanian banks face the following six difficulties: Not receiving all documents, receipt of uncertified documents, documents being unmatchable with L/C provisions, receipt of documents after the expiration date of L/C, customers limited experience with L/C, and customers' ignorance of international uniform principles and practices for L/C. Finally, the results show that no significant relationships exists between the difficulties of L/C and each of the bank's size, age and size of L/C.

Thaher, (1999) identify problems of import letters of credit (L/C) faced by Jordanian importers. Other minor objectives of Thaher (1999) include identification of problems of (L/C) faced by individual importers as well as companies, especially in the service sector, durable goods sector, and nondurable goods sector. To achieve these objectives, a questionnaire was developed and distributed to sixteen banks. A final objective was to test the statistical differences between individual importers and companies as well as differences between different importing sectors with regards to problems of import (L/C). To achieve these objectives, a questionnaire was developed and distributed to 130 importers; however, only 106 questionnaires were returned and found valid for statistical analysis. The results of the study indicate that Jordanian importers face ten problems, among which are; the arrival of goods before documents, not receiving all documents, a high insurance premium, fluctuation in currency prices, and others. The results further show that individual importers of nondurable goods sectors. Finally, the results indicate that individual importers in the service sector face more problems than company importers in the same sector.

Next, a study by Thaher and Abdul – Jalil (2006) attempted to identify problems of export letters of credit (L/C) from the point of view of Jordanian exporters. Other minor objectives include testing significant differences in the responses of Jordanian exporters related to business type and business experience. Also, the correlation among the different groups of problems was tested. To achieve the above-mentioned objectives, a questionnaire was designed and distributed to 180 exporters, and 142 were returned valid for statistical analysis, i.e. the percentage of return for the questionnaires was 78.9%. The necessary statistical tests were performed with a 95% confidence level. The results of the study indicated that exporters face 27 problems out of the 30 problems that were studied. Among these problems were: the negative effect of the unstable political conditions in the area as



well as the traffic jam in the Aqaba seaport, which leads bills of loading not being issued on time. Moreover, the results showed significant differences, with regards to five problems only, among different types of exporters, as well as significant differences with another five problems among exporters of different experience. Finally, the results indicated the existence of positive correlations among most categories of studied problems.

### **An example of a case heard by the Jordanian courts regarding fraud in documentary credit**

- Resolution No. 1215 of 2005 issued by the Jordanian Court of Cassation regarding fraud in the documentary credit by the seller

verdict No. 1215 of 2005 - Court of Cassation in its legal capacity Issued on 05-29-2005

#### **Principle**

Exemption fulfilment, financial credit, fraud, contract/agreement (D. 87), mixed contract (D. 169), refusal (D. 203), banks and banks, closure of an establishment (D. 112)

1. It is useful to benefit from Article 169/2 of the Code of Civil Procedure, as it allows the convicted person to appeal the ruling if it relies on reasons other than the reasons on which the claim is based, or on one of these reasons.
2. It is agreed upon in Fqih and jurisprudence that documentary credits require the bank issuing the credit to its client to examine the documents delivered to it by the beneficiary in implementation of the credit, monitor them in the event of his absence, and adhere to them. Instructions to the customer and to ensure that these documents comply with the conditions of accreditation and do not extend to examining the goods. However, Fiqh and jurisprudence have held that for a documentary credit to be considered a strong guarantee for its beneficiary (the seller), things must proceed in their normal course, meaning that the credit be a settlement of an honest commercial transaction, meaning that the seller's behavior does not involve fraud (see Documentary Credits by Dr. Ali Jamal al-Din Awad, p. 108, 9) . If the documents appear to be in order and in reality, all of them do not match the reality according to the will of the seller or with his knowledge, then the bank must reject the documents, and the bank is also permitted to refrain from executing its undertaking if the details of the documents do not match the truth and this was done by fraud or with the knowledge of the seller. The judiciary held that although the documentary credit and the sale are two independent contracts, each of which creates different obligations, and that failure to implement one of them does not affect the other contract, the matter is different in the case of fraud because fraud spoils the bank's relationship with the seller. Whereas the Court of Appeal, in its capacity as a trial court and with its discretionary authority in weighing and weighting the evidence provided to it by the provisions of Articles 33 and 34 of the Evidence Law, is without oversight from the Court of Cassation in this substantive issue as long as the conclusion it has reached has something to support it in the evidence of the case. - was convinced that the first defendant (the distinguished one) had prior knowledge of the goods subject to the opening of the credit, the subject of the purchase order and its conditions, and was aware of the supplier, Marlbo Company, which had committed to supplying 500 tons of tetraethyl lead (T.E.L.), and that the plaintiff, at the beginning of the fifth month of the year 2001, after receiving the goods, had Al-Mumayaz was informed of the occurrence of fraud and deception by the seller, and it was confirmed to her through technical reports issued by the official authorities in Iraq Which was later confirmed by laboratories at the Royal Scientific Society. Since the payment due for the value of the credit was on 6/13/2001, the (distinguished) bank had to stop disbursing the value of the credit not do so, it would be responsible for its mistake in an amount equal to the amount paid, in line with what jurisprudence and jurisprudence have stated in such a case, which agrees with Logic reason and justice. Failure to notify the discriminator of the decision to stop disbursing the value of the credit issued by the Court of Appeal does not justify the discriminator to pay the value of the credit as long as he knew with certainty of the incident of fraud and deception approximately one month before paying the value of the credit. despite its knowledge of fraud and deception by the seller has nothing to do with the relationship between the Iraqi party and the plaintiff. The

responsibility of the distinguished party becomes present even if the plaintiff does not pay. Assuming that the plaintiff is aware of the waiver, this waiver must not affect, in any way, the basic conditions stated in the request to open the credit for which the credit was opened, which is the subject of the purchase order, that the goods be tetraethyl lead (T.E).

### **Legislative Shortcomings in the Application of Documentary Credits within Jordanian Law**

The Jordanian Trade Law No. 12 of 1996 does not define documentary credits nor include specific provisions related to letters of credit. This omission is notable given the active trade environment in Jordan, both nationally and internationally. Instead, the law only addresses general financial provisions in Articles 118-121. It is crucial to differentiate between financial credit and documentary credit; Article 118 outlines obligations related to financial credit but does not cover documentary credit.

Under Article 122 of the Jordanian Commercial Law, banking operations not explicitly mentioned are governed by general civil law principles. This indicates that the Jordanian legislator viewed documentary credit contracts under the same framework as other contracts, applying general rules rather than international standards for documentary credits. This approach overlooks the international nature of documentary credit contracts, which necessitate specific rules to address unique issues such as document fraud. The Jordanian legal framework would benefit from aligning with international norms like the Uniform Customs and Practice for Documentary Credits (UCP 600) and the International Standby Practices (ISP98) to mitigate these challenges.

Article 121/1 of the Jordanian Trade Law specifies that if a bank credit benefits a third party and is endorsed to that party, it cannot be altered without the third party's consent. The bank is obligated to accept the papers and payments as intended. Additionally, the second paragraph of the same article allows the bank to recover amounts or expenses incurred starting from the payment date. However, this article refers to financial credit rather than documentary credit, indicating a gap in addressing documentary credits specifically.

The researcher concludes that, despite references to letters of credit, there is no clear legislative framework for them in Jordanian law. This gap has led the judiciary to rely on international and local banking norms. Various definitions of letters of credit exist in jurisprudence, highlighting different aspects of their function. For example, one definition describes it as a bank's commitment, made at the request of a customer, to pay a third party under specified conditions, secured by documents representing exported goods. Another defines it as a contract where the bank undertakes to open credit upon request to guarantee documents related to goods. Other definitions emphasize the irrevocable nature of the bank's commitment and the requirement for specific documents to be submitted within a designated period.

### **DISCUSSION**

The main issue highlighted is that the Jordanian Commercial Law (No. 12 of 1966) does not adequately address documentary credits, a crucial instrument in international trade. While the law touches on banking operations, it fails to recognize the specific nature of documentary credits, especially in relation to international conventions such as the UCP 600 and ISP98. The law's failure to distinguish documentary credits from general contracts results in potential risks, such as fraud in documents, and creates uncertainties for businesses and financial institutions. The researcher emphasizes the need for legislative reform to align with global standards, providing clarity and protection for those involved in documentary credit transactions.

According to Article 122, banking operations not explicitly covered by the law are subjected to general civil law principles. This results in the treatment of documentary credits under generic contract law, which overlooks specific issues like fraud in documents.

The study shows that Jordanian case law has relied on international and local banking norms in the absence of clear legislative guidance. For instance, the Jordanian Court of Cassation has ruled that a

documentary credit is an independent promise made by a bank, distinct from the underlying sale contract.

Although Jordanian law does not specifically address fraud in documentary credits, the courts have dealt with cases of fraud in the documents. One notable case (Resolution No. 1215 of 2005) dealt with fraud by the seller and clarified that if fraudulent documents are submitted, the bank must reject them. This highlights the court's reliance on principles of fairness and commercial justice.

Awad's work is often referenced in Jordanian courts, and he argues that false documents should always be rejected by the bank, regardless of whether the falsification was done with the beneficiary's knowledge. This view contrasts with the English House of Lords' decision in the *United City Merchants* case, where banks could refuse fraudulent documents only if the beneficiary was directly involved in the fraud.

The study also examines the practical challenges faced by Jordanian banks and importers in handling documentary credits. Jordanian banks encounter difficulties such as not receiving all the required documents, receiving uncertified documents, or documents that do not align with the terms of the credit. These issues are further complicated by limited customer knowledge of international practices and the complexities associated with Letters of Credit (L/C) transactions. Importers in Jordan, on the other hand, face problems including the arrival of goods before the corresponding documents, receiving incomplete or inaccurate documents, and dealing with currency fluctuations and high insurance premiums. Importers in certain sectors, particularly those dealing with nondurable goods, tend to experience more challenges than others.

The research reveals significant legislative shortcomings in the Jordanian legal framework concerning documentary credits. Article 122 of the Jordanian Commercial Law No. 12 of 1966 directs that banking operations not explicitly mentioned are governed by general civil law principles. This broad application of civil law fails to address the specific needs and complexities of documentary credits, which are vital instruments in international trade. The discrepancy between Jordanian legal provisions and international standards—such as those established by the Uniform Customs and Practice for Documentary Credits (UCP 600) and the International Standby Practices (ISP98)—has led to increased risks, including fraud, and decreased confidence in these instruments. The inadequacy of the current legal framework has contributed to a decline in the use of documentary credits and reduced investment by banks in this area.

## CONCLUSION

The Jordanian Trade Law No. 12 of 1996 does not adequately address documentary credits, creating a legal void that impacts the effectiveness of trade operations involving letters of credit. While the law provides general financial provisions, it falls short in offering specific guidance for documentary credits, which are crucial in international trade. This gap necessitates a reform of Jordanian legislation to explicitly include provisions for documentary credits and align with international standards such as UCP 600 and ISP98. Adopting these measures will enhance legal clarity, reduce disputes, and improve operational efficiency for businesses and financial institutions engaged in international trade. Addressing these legislative shortcomings is crucial for fostering a more robust and reliable trading environment in Jordan.

To strengthen the legal framework surrounding documentary credits in Jordan, it is crucial to introduce specific provisions within the Jordanian Trade Law, offering clear definitions and guidelines that align with international standards. This legislative reform would enhance the legal clarity and provide a more comprehensive framework for such financial instruments. Additionally, Jordan should consider adopting internationally recognized standards, such as the Uniform Customs and Practice for Documentary Credits (UCP 600) and the International Standby Practices (ISP98). By integrating these norms, Jordan can effectively address common challenges associated with documentary credits, including issues related to document fraud and discrepancies, while ensuring its legal system aligns with global practices.

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