

Documentary Credit as a Guarantee in International Business and The position of the Iraqi Law

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Abstract:

This paper studies (Documentary Credit as a Guarantee in International Business and the Position of the Iraqi Law). This research is an analytical study. The core of this subject is that due to the growth of the world in the field of the International Trade, and the documentary credit is the most widely used banking instrument in facilitating contemporary international trade transactions. Traders are turning to it to solve the distrust of import and export.

This research is divided into two chapters:

Chapter one deals with the Introduction to the documentary Credit. It includes the definition, advantages, disadvantages of documentary Credit and the types of the Documentary Credit in international trade and explains each of them.

Chapter Two deals with the parties and Documents of Documentary Credit in international Business Transaction.

Key Words: Documentary Credit, International Business Transaction (Importer vs. exporter).

Introduction

The Documentary Credit is banking service, arrangements certain legal effects that bind the client (the buyer) and the beneficiary (the seller) to the satisfaction of the parties where the customer is located in a particular country while the beneficiary resides in another country and each of them fears that the other party will not fulfill its obligations. Therefore, the intervention of one of the banks to facilitate the implementation of those obligations to achieve the necessary security for both parties (Importer and Exporter) and to prevent any dispute between them, as a result, documentary credit is now considered the most effective means of increasing international business transaction, considering the guarantees it gives to the parties. Therefore it plays a very important role in increasing business processes and developing them internationally.

Thus what is the Documentary Credit and what are the types of it? What are the documentaries



and the parties to Documentary Credit? And what is the position of the Iraqi law on documentary credit in international business transaction? The above mentioned questions will be answered throughout this paper.

Importance of the Research

Documentary credit is one of the important tools used to finance foreign trade operations and are carried out by banks. This gives them security and stability due to the confidence of the importer and exporter by banks in the implementation of these documentary credits. The Issuer will receive the value of the exported goods as soon as it fulfills the conditions stated in the documentary credit. Importers also know that the bank will not pay the value of the goods until after confirming the implementation of the agreed terms and conditions in the documentary credit. The importance of documentary credit has grown as a result of the development of international trade relations for the advancement of transport and communications. It is no longer limited to the old means of communication such as mail, telex, fax and automated telephone, but has entered modern communication systems that have contributed to the development of documentary accreditation procedures such as the network which has been implemented in seconds, And the electronic exchange system. It is clear that the existence of the documentary credit guarantees the rights of the importer and exporter. It also guarantees the rights of the bank with the availability of the shipping documents issued in his name or order which enable him to dispose of the goods if the importer fails to pay its value to him.

Objectives of the Research

Documentary Credit is an international banking instrument to finance contracts of a commercial nature between the internal importer and the beneficiary abroad. Therefore, in this research our goal is to introduce the documentary credit to the national and international dealer and banks will deal with documentary credit in Iraq and abroad. The objective of our study is to provide knowledge and information about the assets and rules of documentary accreditation and to develop skills and performance capabilities in a highly efficient manner in the management, organization and control of all stages of documentary credit in terms of the image and how it is opened and the means of implementation and the legal rules governing it

The Problem of the Research

There is not sufficient article to organize documentary credit In Iraqi Trade Law. Another problem is the Lack of full awareness among traders and banks in Iraq about documentary credit. The question is here, how should documentary credit be introduced to all traders and pushes the banks in Iraq and outside Iraq to utilize it?

CHAPTER ONE



INTRODUCTION TO THE DOCUMENTARY CREDIT

A documentary credit is used as one of the means in the international security payment contract to give the seller of goods a guarantee of payment: the buyer arranges for the seller to give the seller a payment if certain conditions are met. It is thus a guarantee. The bank under the documentary credit is a basic obligator, the seller looks at the bank rather than the buyer to pay.

A documentary credit in an international trade goes through negotiations between buyer and seller regarding their trade to find the method of payment. Payment can be made in several different ways: by the buyer to transfer cash with his order; through an open account whereby the buyer pays the payment at an agreed time after receipt of the goods; or by collecting documentary by bank in which case the buyer pays the collecting bank account. The seller in exchange for the shipping documents which in most cases include the title document of the goods. In the above payment methods, the seller completely depends on the buyer's willingness and ability to pay.¹ The seller should ensure that the date of expiry of the documentary of credit and the date of shipment of goods are realistic. Seller should take into account the risk of delays in connection with the production and dispatch of the goods.²

1.1 What is Documentary Credit?

According to the Article 273 (1) of the Iraqi Commercial Law:

*The documentary credit is a contract by which the bank undertakes to open credit upon the customer's (the applicant's) request in favor of the beneficiary which is guaranteed by documents that represent transported goods or goods ready for transportation.*³

So According the Iraqi Commercial Law a documentary credit is a contract where the banking institution (bank) is committed with one of its customers by opening a documentary credit for the benefit of a third party (beneficiary of the credit) against a (guarantee). By referring to the definition of documentary credit contained in Article 273 of the Iraqi Trade Law, we note that the parties to the relationship are:

- Applicant
- Beneficiary
- Issuing bank
- Advising bank
- Confirming Bank.⁴

In terms of practicality and realism the documentary credit is not a contract as mentioned in Iraqi Commercial Law is just a promise given by the bank in favor of the beneficiary. The beneficiary is

1 *Bradgate, Robert, White, Fidelma*, Commercial Law 'Legal Practice Course Guide, 2nd Edition, Oxford University Press, New York, 2008, P. 352.

2 Langerich, Reinhard, Documentary credits in practice, 2nd Edition, Nordea, Glostrup, Denmark, 2009, P. 58.

3 Article 273 Paragraph (1) of the Iraqi Commercial Law, No. 30, 1984.

4 Dr. Ibrahim Jazrawi, Analysis of documentary credits "Applied theory study in Rasheed Bank Baghdad For the period 2004-2006, Journal of Economic and Administrative Sciences, Vol. 31, No. 47, 2007, Iraq, PP. 209-210. (In Arabic)



not bound by the credit and the buyer is not a party to the credit. If it were a “contract”, it would be a unilateral “contract”. The main reason is that a contract is based on offer and acceptance. It is signed by at least two parties who are bound by the contract. A documentary credit is not an agreement between a buyer and a seller and cannot replace the purchase agreement or any other agreement between the parties.⁵

The practical guide established by the International Chamber of Commerce on documentary credit in 1978 states: "Documentary credit in a brief phrase is a conditional bank undertaking to fulfill. In broader terms, a written undertaking by a bank (called the issuer) is delivered to the seller (the beneficiary), at the request of the buyer (the applicant) and in conformity with its instructions within a specified amount during a certain period and in exchange for the required documents."⁶

A documentary credit is a bank's obligation to an exporter to honor drafts and documents presented in conformance with stated conditions. When issuing a documentary credit, a bank substitutes its reputation and credit worthiness, which are well known and respected in the marketplace, for that of the importer. At the request of the importer, a bank issues a documentary credit and assumes an obligation to pay the exporter contingent upon the presentation of stipulated documents within a prescribed period of time. For the exporter the documentary credit adds the degree of security lacking in the documentary collection method of payment. Documentation must be presented in strict compliance with the conditions requested by the importer and detailed in the documentary credit. These terms, usually include a description of the documents the bank is to receive from the exporter in exchange for payment, the timing of the receipt of such documents, whether or not partial shipments will be permitted, the mode of shipment and the expiration date of the documentary credit. As long as these conditions are met, the bank has undertaken the responsibility for payment, regardless of the actions or abilities of the importer. As well the documentary credit is a payment method that offers a unique and universally accepted means of satisfying the goals of both exporters and importers. Like a documentary collection, the documentary credit substitutes the acceptance of documentation for the actual receipt of merchandise, thus expediting payment to the exporter. The importer, on the other hand, may postpone payment until the merchandise is shipped. Unlike a documentary collection, a documentary credit usually involves a draft drawn on the bank, which promises payment to the exporter.⁷

1.2 Advantages and Disadvantages of Using a Documentary Credit.

There are many advantages and disadvantages of using a documentary credit, as we mentioned below:

5 Langerich, Op. Cit., P. 49.

6 Dr. Bashir uday, The legal nature of documentary credit And its adaptation to Islamic banking jurisprudence, College of Law, ibn zuher University, Marrakesh, without publishing year, P.1. (In Arabic).

7 Scheller, Michael, A Guide to International Trade and Letter of Credit. 1st Edition, Sterling National Bank, 2008, P. 12.



1.2.1 Advantages to the Importer

- 1- Importer is assured that the Exporter will be paid the amount of the documentary credit when the conditions have been met.
- 2- Is flexible for the Importer to conversation and put more conditions on the Exporter when payment by documentary Credit is offered.⁸

1.2.2 Disadvantages to the Importer

- 1- It's not including protection to the Importer of inferior quality goods or a lesser quantity of goods.
- 2- It is necessary for the Importer to have a connection with the bank before issuing a documentary Credit. Not having a connection with the bank before issuing a documentary credit sometimes it will be a cause of creating problem in the future.⁹

1.2.3 Advantages to the Exporter

- 1- For the exporter documentary credit in international trade is a secure mean for payment upon fulfillment of contractual obligations.
- 2- A bank is a second source for the buyer for payment the amount of exported goods or services. As well as the Bank undertakes to comply with all terms and conditions set out in the documentary of Credit.
- 3- The documentary Credit through the bank with a good expertise helps to complete international trade transactions successfully. Further the payment for the goods shipped can be remitted to a bank of your choice or to your own bank.¹⁰

1.2.4 Disadvantages to the Exporter

- 1- Prepare commercial documents according with terms which stipulated in the documentary Credit.¹¹
- 2- The exporter may lose goods and money together if other party (importer) uses fraud documentary credit, or get the documentary credit from a clerk who worked in a bank that is going to be bankruptcy.¹²

1.3 Used Typed of Documentary Credit

There are seven commonly used types of documentary credit in international Business transaction. Each has different features and some are more secure than others. The most common types are:

1.3.1 Revocable or Irrevocable Documentary Credit:

In Accordance with the Article 275 (1) of the Iraqi Commercial Law (The documentary Credit may be revocable or irrevocable) and the second paragraph of the article 273 provided that: (The documentary credit is subject to cancellation if there is no other agreement between the parties to

8 TD's North American Global Trade Finance Offices ,A Guide to Letter of Credit 'Import,Export', P. 8.

9 Ibid., p. 8.

10 Scotia Bank,Trade Finance Services Documentary letters of Credit Practice Guide,P. 3.

11 TD's North American Global Trade Finance Offices ,A Guide to Letter of Credit'Import,Export', P. 9.

12 Yan Hao, Ling Xiao, Risk Analysis of Letter of Credit, International Journal of Business and Social Science, Vol. 4 No. 9; August 2013, P. 204.



the relationship otherwise).¹³ And article 3 of the Uniform Customs and Practice for Documentary Credits stated that:

*A credit is irrevocable even if there is no indication to that effect.*¹⁴

If the credit is revocable the bank may revoke its undertaking to the seller at any time before presentation of the shipping documents, and is under no obligation to the seller to notify him of the revocation. It therefore offers the seller little real security since he may ship the goods only to find that the credit has been revoked and he has no right against the bank. But if the credit irrevocable the bank undertaking to the seller cannot be revoke the credit even if the buyer requests revocation, unless there is clear evidence of fraud by the seller.¹⁵ The Uniform Customs and Practice for Documentary Credits (UCP 600) does not contain any provisions and rules on the revocable documentary credit because of the seldom using of the revocable credit in the world.

1.3.2 Unconfirmed or Confirmed Documentary Credit:

the documentary credit is unconfirmed if the issuing bank "which is issuing a credit" if has no branch in the seller's country, it will normally arrange for a bank in that country to act as its agent by notifying the seller that the credit is opened and the seller will then present the shipping documents to that bank. The bank which opens the credit is then known as the 'issuing bank' as mentioned above, whilst the bank which notifies the seller of the opening of the credit is the 'correspondent bank'. Normally the correspondent undertakes non-binding to the seller but merely acts as intermediary between seller and issuing bank; it may even make payment to the seller but does so as agent for the issuing bank. The documentary credit is confirmed where the seller require the buyer to arrange a confirmed credit, in which case the confirming bank not only notifies the seller of the opening of the documentary credit but also confirms the issuing bank's payment undertaking. The seller therefore has the benefit of payment undertaking from both the issuing and confirming banks and has the added security provided by the fact that the latter is in his home jurisdiction. If the confirming bank does make payment then they entitled to be reimbursed by the issuing bank.

A confirming bank will normally only confirm a credit which is irrevocable. A confirming bank will have to be paid for adding its confirmation, so that a confirmed credit will cost the buyer more than an unconfirmed credit and its more suitable than unconfirmed credit for the seller especially in international trade.¹⁶

1.3.3 Transferable and Un-transferable Documentary Credit

In Accordance with the Article 282 of the Iraqi Trade Law:

The documentary credit may not be waived or split unless the bank that has opened it is authorized to pay all or part of it to a person or group of persons other than the first beneficiary

13 Article 275 of the Iraqi Commercial Law, No. 30, 1984.

14 Article 3 of (UCP 600) Uniform Customs and Practice for Documentary Credits, 1 July, 2007.

15 Dr. Ibrahim Jazrawi, Analysis of documentary credits "Applied theory study in Rasheed Bank Baghdad For the period 2004-2006, Journal of Economic and Administrative Sciences, Vol. 31, No. 47, 2007, Iraq, PP. 213.(In Arabic)

16 Bradgate, Op.Cit.,P. 312.



*based on instructions issued by this beneficiary No waiver shall be made unless approved by the Bank and for one time, unless otherwise agreed upon.*¹⁷

A documentary credit is transferable where the seller requires the bank to make the credit available wholly or in part to a third party. The seller may therefore use a transferable credit to make payment to his supplier. A transferable documentary credit allows the seller to transfer his or her rights to third party “parties who may be suppliers of the goods”. But the third party or beneficiaries cannot transfer their rights to another party.¹⁸

A documentary credit is un-transferable where doesn't allow transfer of money to another party. The Second party is the only recipient of the money and cannot further use the documentary credit to pay anyone.¹⁹

1.3.4 Back-to-Back documentary Credit

“Back-to-back” is a term used in transactions involving two irrevocable credits. Such transactions originate when a seller receives a documentary credit covering goods which must be obtained from a third party that in turn requires a documentary credit. The “second” issuing bank looks to the first issuing bank for reimbursement after paying under the second documentary credit.

The difference between back-to-back documentary credit and transferable documentary credit is such that in a transferable documentary credit, the rights under the existing documentary credit are transferred. In a back-to-back transaction, different documentary credit are actually issued. Because technical problems can arise in back-to-back transactions, banks tend to discourage their use.²⁰

1.3.5 Standby Credit

These are secondary payment method in international trade. Standby credit may apply to transactions which are based on the concept of default by the applicant in performance of obligation or contract. Standby documentary credits are used mainly in construction projects as well as export and import business.²¹

1.3.6 Deferred Payment documentary Credit

According to deferred payment credit, the applicant does not pay until a future date determined in accordance with the conditions of the documentary credit. No drafts are called for, which avoids “stamp duties” charged by some states on bills of exchange. One reason an exporter might extend credit conditions to an importer could be the competitiveness of the market and the need for the exporter to finance the importer if the exporter is to make the sale.²²

1.3.7 Revolving Credit

Where two parties doing trade together on a continuing basis the buyer may, rather than opening a new credit for each transaction, arrange a revolving credit under which the bank undertakes to the

17 Article 282 of the Iraqi Commercial Law, No. 30, 1984.

18 Scotia Bank, Trade Finance Services Documentary letters of Credit Practice Guide (without year), P. 4.

19 Types of Letter of Credit, <https://efinancemanagement.com/sources-of-finance/types-of-letter-of-credit-lc.23/7/2017>.

20 Scotia Bank, International Trade Finance Services, Documentary Letters of Credit A Practical Guide, P. 5.

21 Ozgur Eker, Types of Letter of Credit “ Different needs, Different Usage” , www.letterofcredit.biz, 13/8/2017.

22 Scotia Bank, International Trade Finance Services, Documentary Letters of Credit A Practical Guide, P. 5.



seller to pay sums due from time, up to an agreed credit limit. A single revolving documentary credit can cover several transactions between the same buyer and seller.²³

CHAPTER TWO

THE PARTIES AND DOCUMENTS OF DOCUMENTARY CREDIT

The basic relationship that establishes documentary credit is the seller's relationship with the buyer or the contract of sale. The seller does not guarantee that the buyer will deliver the goods and will not pay for them, and the buyer is not sure that the seller will deliver the price and does not supply the goods through the lack of trust between the two sides, banks have created a means that provides confidence to both sides which is a Documentary Credit. In this Chapter will discuss the Parties to the documentary credit, and the documents required to establish the documentary credit.

2.1 The Parties to the Documentary credit

As mentioned before article 273 (1) of the Iraqi Commercial Law stated that:

*The documentary credit is a contract by which the bank undertakes to open credit upon the customer's (the applicant's) request in favor of the beneficiary which is guaranteed by documents that represent transported goods or goods ready for transportation.*²⁴

Under this definition and according article 2 of the (UCP 600) Uniform Customs and Practice for Documentary Credits the parties to the Documentary credit are:

1. **Applicant:** means the party on whose request the credit is issued.²⁵
2. **Issuing bank:** Is the bank which deals with importer and which undertakes to pay the beneficiary the value of the documentary credit submitted in accordance with the terms of the credit, and is undertaking to pay the beneficiary usually through the issuing bank. The bank which issuing the credit shall comply the terms of fulfillment, acceptance and deduction agreed upon in the contract of credit, as long as the documents conform to the data and conditions contained therein.²⁶
3. **Advising bank:** means the bank that advises the credit at the request of the issuing bank.
4. **Confirming bank:** means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request. A bank that adds a pledge to the beneficiary to pay if the beneficiary submits the required documents in credit and complies with the terms of the credit. It is the credit bank that undertakes to pay to the beneficiary and requests the correspondent bank to add to its reliance on credit and that there are advance arrangements between the banks in respect of the enhanced provisions. It is the duty of the Bank to enhance the credit of the documents submitted to it well and pay the value to the beneficiary if he meets the terms of the accreditation.

23 Ibid.,PP. 5-6.

24 Article 273 Paragraph (1) of the Iraqi Commercial Law, No. 30, 1984.

25 Article 2 of (UCP 600) Uniform Customs and Practice for Documentary Credits, 1 July, 2007.

26 Article 274 of the Iraqi Commercial Law, No. 30, 1984.

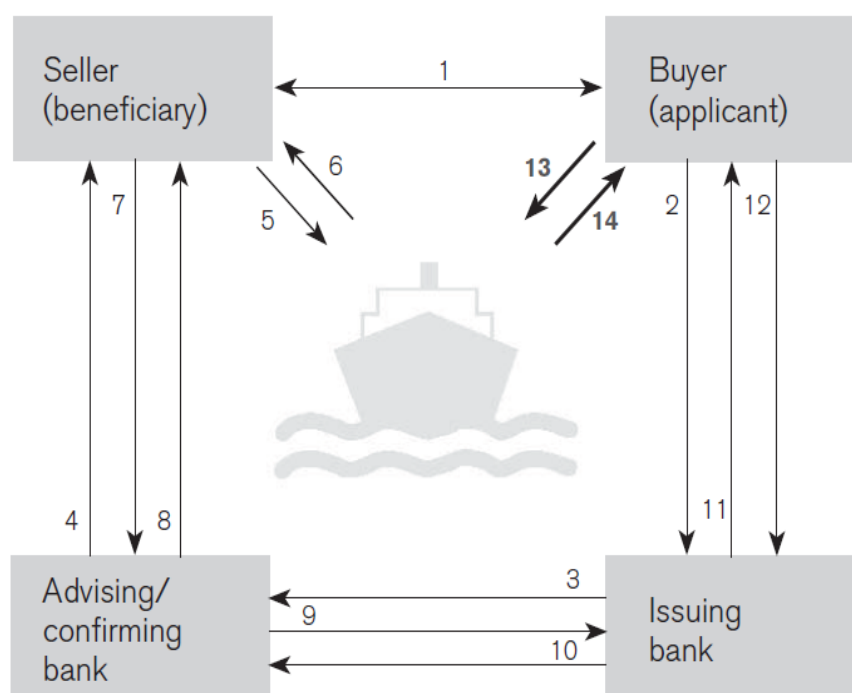


5. Beneficiary: means the party in whose favor a credit is issued. Is the party that has opened the documentary credit in its favor and the beneficiary shall receive the price of the goods if the documents are submitted in accordance with the terms of the credit.²⁷

6. Negotiation bank: means the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on or before the banking day on which reimbursement is due to the nominated bank.

7. Nominated bank means the bank with which the credit is available or any bank in the case of a credit available with any bank.²⁸

8. Paying Bank: The bank named in the documentary credit where drafts are to be paid. It is not necessarily the issuing bank, but often a branch of the issuing bank or its correspondent. Once drafts have been paid or accepted by the paying/ drawer bank, there is no recourse to the drawers.



1. An agreement between the importer (Beneficiary) and exporter (Applicant).
2. Sending application form from the buyer (importer) to the issuing bank.
3. Sending Application form to the Correspondent bank at the seller place.
4. The advising bank will then advise the beneficiary (the seller) of the issuance of the documentary credit.
5. Shipment of the goods.

²⁷ Itab Abdullah, The importance of financing foreign trade through documentary credit “Mater Thesis”, University of Qasdi Merbah, Algeria, 2014, P. 18.

²⁸ Article 2 of (UCP 600) Uniform Customs and Practice for Documentary Credits, 1 July, 2007.



6. The beneficiary receives the transport document from the issuing bank of all the other documents.
7. The beneficiary sends documents to the advising bank.
8. The advising bank (Confirming bank) effects payment to the beneficiary.
9. Sending Documents to the issuing bank.
10. The bank reimburses the nominated bank.
11. The issuing bank sends the documents to the Buyer.
12. Payment by the Buyer (the issuing bank will demand payment for the documents transmitted as agreed
13. The importer (Buyer) Send the transport document to the carrier.
14. The buyer takes over the goods through the customs.²⁹

2.2 The Documents of the Documentary Credit

There is no provision in the Iraqi Commercial Code specifying the documents required to open the documentary credit as it exists in the Uniform Customs and Practice for Documentary Credits which is issued by the International Chamber of Commerce. This is consider as a big legal vacuum in the Iraqi Commercial Law.

In general, the request for documents in the credits depends on the class of goods, the means of shipment and the place of shipment; Article (5) of the Uniform Customs and Practice for Documentary Credits stated that:

Banks deal with documents and not with goods, services or performance to which the documents may relate.

The documents required in documentary credits are following:

1. **Commercial invoice:** The invoice is one of the important documents required in all documentary credits issued by the beneficiary in the credit, indicating the value of the goods sent and the quantity and specifications of these goods.³⁰ Normally, the commercial invoices are to be authenticated by the consulate of the exporting country, Failure to authenticate invoices from a consulate, the importer must pay a fine deducted from the value of the documents upon arrival. In accordance with the Article (18) of the Uniform Customs and Practice for Documentary Credits:

a. A commercial invoice:

- i. must appear to have been issued by the beneficiary
- ii. Must be made out in the name of the applicant
- iii. Must be made out in the same currency as the credit; and
- iv. Need not be signed.

b. A nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank may accept a commercial invoice issued for an amount in excess of the amount permitted by the

²⁹ Längerich, Op. Cit, PP. 28-34.

³⁰ Muhyadin, Ismail alamadin, Documentary Credit, 1st Edition, International Institute of Islamic Thought, 1996, Egyptian, P. 32.



credit, and its decision will be binding upon all parties, provided the bank in question has not honored or negotiated for an amount in excess of that permitted by the credit.

c. The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit.³¹

2. **Certificate of Origin:** The Certificate of Origin shall be required in all credits and issued by the Chamber of Commerce of the beneficiary country. The purpose of this certificate is to know where the imported goods are produced or manufactured. The certificate must be certified with the same certification as in the commercial invoice. It is worth mentioning that the goods imported from different places are subject to different customs rates. Must be ratified by the beneficiary of a competent body (chamber of commerce or industry from the country of origin) that goods shipped of the origin of the national or the origin of the designated, and the ratification of this authorization by the Iraqi Representations abroad or by the body acting as the representative of Iraq in the care of Iraqi interests in the export port in accordance with the customs instructions in force.³²

3. **Bill of Lading:** The bill of lading is required in all credits. The policy type is based on the shipping method. In the case of air shipment, an air waybill is required, and in the case of sea shipment, the sea waybill is required. . . , the bill of lading is one of the important documents in the appropriations. It represents a receipt, a transfer contract and a document of ownership. The policy is issued by the transport company after receipt of the goods to be shipped and the inspection of packages from abroad to ensure the safety of packing. Typically, the banks require a clean bill of lading until it is clear that the carrier has received the goods at the port access. The policy includes the shipping port, the arrival location, the shipping fee and how to pay it?³³ In accordance with the Article (18) of the Uniform Customs and Practice for Documentary Credits a bill of lading, however named, must appear to:

i. indicate the name of the carrier and be signed by:

- The carrier or a named agent for or on behalf of the carrier, or

- The master or a named agent for or on behalf of the master. Any signature by the carrier, master or agent must be identified as that of the carrier, master or agent. Any signature by an agent must indicate whether the agent has signed for or on behalf of the carrier or for or on behalf of the master.

ii. Indicate that the goods have been shipped on board a named vessel at the port of loading stated in the credit by:

- Pre-printed wording, or

- An on board notation indicating the date on which the goods have been shipped on board. The date of issuance of the bill of lading will be deemed to be the date of shipment unless the bill of lading contains an on board notation indicating the date of shipment, in which case the date stated in

31 Article 18 of (UCP 600) Uniform Customs and Practice for Documentary Credits, 1 July, 2007.

32 Dr. Ibrahim Jazrawi, Analysis of documentary credits "Applied theory study in Rasheed Bank Baghdad For the period 2004-2006, Journal of Economic and Administrative Sciences, Vol. 31, No. 47, 2007, Iraq, P. 209. (In Arabic)

33 Muhyadin, Opcit, PP. 30-31.



the on board notation will be deemed to be the date of shipment. If the bill of lading contains the indication "intended vessel" or similar qualification in relation to the name of the vessel, an on board notation indicating the date of shipment and the name of the actual vessel is required.

iii. Indicate shipment from the port of loading to the port of discharge stated in the credit. If the bill of lading does not indicate the port of loading stated in the credit as the port of loading, or if it contains the indication "intended" or similar qualification in relation to the port of loading, an on board notation indicating the port of loading as stated in the credit, the date of shipment and the name of the vessel is required. This provision applies even when loading on board or shipment on a named vessel is indicated by pre-printed wording on the bill of lading.

iv. be the sole original bill of lading or, if issued in more than one original, be the full set as indicated on the bill of lading.

v. contain terms and conditions of carriage or make reference to another source containing the terms and conditions of carriage (short form or blank back bill of lading). Contents of terms and conditions of carriage will not be examined.

vi. Contain no indication that it is subject to a charter party.

b. For the purpose of this article, transshipment means unloading from one vessel and reloading to another vessel during the carriage from the port of loading to the port of discharge stated in the credit.

c.

i. A bill of lading may indicate that the goods will or may be transhipped provided that the entire carriage is covered by one and the same bill of lading.

ii. A bill of lading indicating that transshipment will or may take place is acceptable, even if the credit prohibits transshipment, if the goods have been shipped in a container, trailer or LASH barge as evidenced by the bill of lading.

d. Clauses in a bill of lading stating that the carrier reserves the right to transship will be disregarded.³⁴

Article 20 of the UCP is very detailed. Because of that the bill of lading is a much used document in relating with credits. The goal of giving more details is to provide security for the parties involved as well, including banks that have based their granting of documentary credit on having security in the goods.

4. Certificate of Weight: This certificate is required for credits that depend on weight, such as sugar, rice, tea and the like, and are usually issued by the beneficiary and can be issued by specialized weight institutions. The buyer accepts that the certificate is issued by the beneficiary itself because it usually corresponds to the weight stated in the weight certificate with the weight stated in the text of the bill of lading issued by the carrier.

5. Packing statement: This statement is usually requested when the goods are heterogeneous to know the contents of each package. For example, when you import household items, clothes and

³⁴Article 20 of (UCP 600) Uniform Customs and Practice for Documentary Credits, 1 July, 2007.

shoes in the same shipment, the parcels are given serial numbers. In the packing statement, the numbers and the contents of the packages are indicated. For example, knowing that parcels from 5-15 contain clothing; it makes it easier for government authorities to know the contents of the packages and to impede the proper customs duties without the need to open all parcels. This statement shall normally be issued by the beneficiary only if the condition otherwise requires. And if the goods depend on the size and the size, such as wood, iron and the like, the specifications are usually required from the documents to show the sizes and weight of the goods in terms of length, width, thickness and any other specifications. This statement is usually issued by the beneficiary.³⁵

6. **Inspection certificate:** The inspection certificate is issued for companies specialized in the field of inspection and inspection. These companies inspect the goods and inspect them immediately before shipment. The inspection process should not be carried out in the source stores where they can change the goods after inspection. The inspection is usually done by selecting a random sample of the goods to be shipped. A certificate of inspection shall be included indicating the condition of the goods inspected and their specifications.³⁶

7. **Insurance Document and Coverage:** This certificate is required in the appropriations related to the consumption of foodstuffs such as milk, dairy products or meat from their suitability for human or animal consumption. It is worth noting that food and meat imported from abroad are inspected by the health services in the buyer's country for their validity for human or animal consumption before they are actually put on the market. Other documents are required in the appropriations as needed, such as a certificate of analysis and certification Steaming and agricultural certification and others. Article (28) of the Uniform Customs and Practice for Documentary Credits stated that:

a. An insurance document, such as an insurance policy, an insurance certificate or a declaration under an open cover, must appear to be issued and signed by an insurance company, an underwriter or their agents or their proxies. Any signature by an agent or proxy must indicate whether the agent or proxy has signed for or on behalf of the insurance company or underwriter.

b. When the insurance document indicates that it has been issued in more than one original, all originals must be presented.

c. Cover notes will not be accepted.

d. An insurance policy is acceptable in lieu of an insurance certificate or a declaration under an open cover.

e. The date of the insurance document must be no later than the date of shipment, unless it appears from the insurance document that the cover is effective from a date not later than the date of shipment.

f. Includes:

i. The insurance document must indicate the amount of insurance coverage and be in the same currency as the credit.

35 Langerich, Op. Cit., PP. 173-174.

36 *Ibide.*, PP. 174-175.



ii. A requirement in the credit for insurance coverage to be for a percentage of the value of the goods, of the invoice value or similar is deemed to be the minimum amount of coverage required. If there is no indication in the credit of the insurance coverage required, the amount of insurance coverage must be at least 110% of the CIF or CIP value of the goods. When the CIF or CIP value cannot be determined from the documents, the amount of insurance coverage must be calculated on the basis of the amount for which honor or negotiation is requested or the gross value of the goods as shown on the invoice, whichever is greater.

iii. The insurance document must indicate that risks are covered at least between the place of taking in charge or shipment and the place of discharge or final destination as stated in the credit.

g. A credit should state the type of insurance required and, if any, the additional risks to be covered. An insurance document will be accepted without regard to any risks that are not covered if the credit uses imprecise terms such as "usual risks" or "customary risks".

h. When a credit requires insurance against "all risks" and an insurance document is presented containing any "all risks" notation or clause, whether or not bearing the heading "all risks", the insurance document will be accepted without regard to any risks stated to be excluded.

i. An insurance document may contain reference to any exclusion clause.

j. An insurance document may indicate that the cover is subject to a franchise or excess (deductible).³⁷

As mentioned above, in accordance with the article 28 of UCP the exporter and the importer know the goods and have agreed on the price. The parties should determine the type of insurance that is to be taken out in respect of the specific goods as well. The goals of taking out insurance are to receive compensation in situation the goods do not arrive or damaged. Therefore, the policy holder must ensure that the sum insured is adequate to replace the goods. The sum insured should include the price of the goods, the cost of transport and a new insurance as well as. Sometimes compensation for loss of income and expenses incurred in replacing the goods are also included.³⁸

Conclusion

Nowadays for any dealers or companies entering the international market, documentary credits are an important payment mechanism which helps eliminate certain risks in international business transaction.

This study showed the following conclusions:

- A documentary credit is to give the seller of goods a guarantee of payment, when the buyer arranges for the seller to give the seller a payment if certain conditions are met. It is thus a guarantee. The bank under the documentary credit is a basic obligator, the seller looks at the bank rather than the buyer to pay.

37 Article 28 of (UCP 600) Uniform Customs and Practice for Documentary Credits, 1 July, 2007.

38 Längerich, Op. Cit., PP. 165-166.



- Documentary credit is a payment method that offers a unique and universally accepted means of satisfying the goals of both of the parties (exporters and importers) in international business transaction.

- There is no any rules or provisions in the Iraqi Commercial Law specifying the documents required to open the documentary credit as it exists in the Uniform Customs and Practice for Documentary Credits which is issued by the ICC.

- Documentary Credit is a means of financial means used in banks, and it is charged that a paper issued by the bank at the request of the client, and subjected to the payment of another amount of money in a certain period of time, in exchange for a service or commodity, and the bank is obliged to pay by cash or accept bank papers, Such as: bills of exchange, or checks.

- The bank of the importer (the buyer) provided bank guarantees on terms of payment to the exporter in case the documents submitted by the exporter comply with all the specified conditions.

- The documentary credits are divided into several images according to the angle from which they are viewed. In terms of strength, the bank's commitment is divided into revocable or irrevocable credit, and in terms of their ability to transfer divided into transferable or non-transferable documentary credit...

- There is no any provision and rules in the Iraqi Commercial Law specifying the documents required to open the documentary credit as it exists in the Uniform Customs and Practice for Documentary Credits which is issued by the International Chamber of Commerce.

Recommendations

- Open training courses for traders and banks in Iraq on how to use documentary credit due to the weak legal awareness of most traders and banks in Iraq about use and useful of documentary credit.

- It is recommended that the Iraqi commercial law be amended so that it conforms to the international laws, especially with the (UCP 600) Uniform Customs and Practice for Documentary Credit which consists of 39 articles. However the Iraqi commercial law provided only 10 articles about the documentary credit.

- It is recommended that the government or Legal persons translate Iraqi commercial laws into English Language as the international and global language so that foreign traders are able to understand the content of the law due to the absence of a translation of the Iraqi Commercial Law into English on the Internet and the Legal Libraries in Iraq.

- In Iraq after the fall of Saddam Hussein's regime in 2003, opened the door to international trade with neighboring countries and the world, increased international trade especially import and export trade, documentary credit as a task among traders to continue their trade without fear, we recommend for the banks in Iraq to use documentary credit on a large scale.

- Opening training courses for employees whose working in banks in Iraq in terms of accounting and legal issues about the use of documentary credit by the Iraqi government supervised



by professors of the Faculty of Law and Economics.

- Iraqi Commercial Law defined Documentary of Credit as a contract, in terms of practicality and realism the documentary credit is not a contract as mentioned in Iraqi Commercial Law is just a promise given by the bank in favor of the beneficiary. The beneficiary is not bound by the credit and the buyer is not a party to the credit. If it were a “contract”, it would be a unilateral “contract. It is recommended that the Iraqi legislator amend the definition to (The documentary credit is an unilateral contract by which the bank undertakes....).

REFERENCES

1. Books:

- Dr. Bashir uday, The legal nature of documentary credit And its adaptation to Islamic banking jurisprudence, College of Law, ibn zuher University, Marrakesh, without publishing year, (In Arabic).
- **Bradgate, Robert, White, Fidelma**, Commercial Law ‘Legal Practice Course Guide, 2nd Edition, Oxford University Press, New York,2008.
- Scheller,Michael,A Guide to International Trade and Letter of Credit. 1stEdition, Sterling National Bank,2008.
- Muhyadin, Ismail alamadin, Documentary Credit, 1st Edition, International Institute of Islamic Thought, 1996, Egyptian.
- Yan Hao, Ling Xiao, Risk Analysis of Letter of Credit, International Journal of Business and Social Science, Vol. 4 No. 9; August 2013.
- Itab Abdullah, The importance of financing foreign trade through documentary credit “Mater Thesis”, University of Qasdi Merbah, Algeria, 2014, P. 18.
- Längerich, Reinhard, Documentary credits in practice, 2nd Edition, Nordea, Glostrup, Denmark, 2009.

2. Journal:

- Dr. Ibrahim Jazrawi, Analysis of documentary credits “Applied theory study in Rasheed Bank Baghdad For the period 2004-2006, Journal of Economic and Administrative Sciences, Vol. 31, No. 47, 2007, Iraq, (In Arabic)

3. Laws:

- Iraqi Commercial Law, No. 30, 1984.
- (UCP 600) Uniform Customs and Practice for Documentary Credits, 1 July, 2007.

4. Website:

- <https://efinancemanagement.com/sources-of-finance/types-of-letter-of-credit-lc>. 23/7/2017.
- Ozgur Eker, Types of Letter of Credit “ Different needs, Different Usage” , www.letterofcredit.biz, 13/8/2017.

5. Others:

- TD’s North American Global Trade Finance Offices ,A Guide to Letter of Credit ‘Import,Export’.
- Scotia Bank,Trade Finance Services Documentary letters of Credit Practice Guide.



پوخته

ئەم تووژئىنەوھىيە لەژئىر ناوئىشانى (متمانەپيئدراوى قەوالەى وەكو گرەنتىيەك لە بازرگانى نيو دەولەتيدا و ھەلويستى ياسادانەرى عيراقى لە بارىيەو) تووژئىنەوھىيەكى شيكارىيە. بەھوى ئەو ھەموو پيشكەوتنەنە كە جىھان بە خوئىيەو بىنيوھ دەربارەى بازرگانى نيو دەولەتى بەتايبەتى لە پرووى گرینگى دانى ولاتان بەو جوړە بازرگانىيە و كوردنەوھى دەرگايان بە پرووى بازرگانانى دەروھ، متمانەپيئدراوى قەوالەى بوټە نامرازيكى گرنگ بو ھاوردەكارو ھەناردەكار لە بازرگانى نيو دەولەتيدا بو ئەوھى بتوانن بى ترس و دوودلى كارە بازرگانىيەكانيان راپەرئىن، ھەر ئەو ھۆكارانەش بوټىتە ھوى ئەوھى كە بانكەكان لە جىھاندا بەكارى بەئىنن و لەسەر ئاستى نيو دەولەتى و ناوخوى ولاتاندا ياساى تايبەتى بو دەربكرىت بو ريكخستنى.

ئەم تووژئىنەوھىيە پىك دىت لە دوو بەش:

بەشى يەكەم ھەولى ناساندنى متمانە پيئدراوى قەوالەى ئەدات ھەلدەستىت بە پىناسە كردنى و خستنە پروو لايەنى باشى و خەراپىيەكەى بەنسبەت لايەنەكانى و جوړەكانى متمانەپيئدراوى قەوالەى دەخاتە پروو ھەريەكەيان بە جيا شىدەكاتەو ھەلويستى ياسايان لە بارەيەو دەخاتە پروو.

بەشى دووھم باسى لايەنەكانى بەشداربوو لە متمانەپيئدراوى قەوالەى دەكات ھەريەكە بەجيا لەگەل ئەو دوكۆمىنت پيئدوايستىيانەى كە پيوستن بو بەكارھيئانى متمانەپيئدراوى قەوالەى كە لەلايەن لايەنەكانەو پيشكەش دەكرين و لەلايەن بانكەو ووردبىنى لىدەكرىت و ھەلويستى ياساى لەبارەيانەو شىدەكاتەو و دەيانخاتە پروو.