

**Provisional Attachment on the Documentary Letters of Credit: A  
Comparative Study Saudi and Emirati Law**

Hani Mounes Awad<sup>1</sup>, Abdullah Mushkus Almutairi<sup>2</sup>,  
Asmaa Saad Elhadedy<sup>3</sup>, & Mohamed Mounes Awad<sup>4</sup>

**Abstract**

The study aims to study the provisional attachment of documentary letters of credit to prevent the beneficiary from liquidating the value of the credit as the beneficiary used fraudulent methods without which he would not have been able to obtain the value of the credit. The study follows the descriptive analytical comparative approach. It will discuss the legislative and judicial efforts related to the provisional attachment of documentary letters of credit. This will lead us to the comparative approach to comparing what is stated in Emirati and Saudi law and the judgments. The study concludes several findings, including that documentary letters of credit are an unquestionable means of success in international trade operations, especially since they discuss the problems of geographical distance between the seller and the buyer. However, fraudulent behaviors by sellers (beneficiaries of the documentary letters of credit) disrupt the dominance of documentary letters of credit as the most important means of payment in international trade transactions. The study concludes with several recommendations, namely: the necessity of adopting the Uniform Customs and Practice (UCP) for Documentary Letters of Credit as a rule to eliminate instances of fraud in its transactions.

**Keywords:** Provisional attachment, documentary letters of credit, uniform rules and customs for documentary letters of credit, Independence of the Underlying Relationship, fraud.

**Introduction**

The lack of self-sufficiency in imports in some countries led to covering the shortage through international demand and the increase in the international trade movement led to the search for payment methods that are compatible with the difference in the location of both the seller and the buyer, through a trusted intermediary between the parties, which is the bank, through documentary letters of credit. There is no doubt that documentary letters of credit are an important element in achieving the principle of security for its parties. Moreover, international trends

---

<sup>1</sup> Associate Professor, Department of Law, College of Business Administration, Northern Border University, Arar, Kingdom of Saudi Arabia. Email; [Hani.hammad@nbu.edu.sa](mailto:Hani.hammad@nbu.edu.sa) , ORCID: <https://orcid.org/0000-0001-5661-3920>

<sup>2</sup> Assistant Professor, Department of Law, College of Business Administration, Northern Border University, Arar, Kingdom of Saudi Arabia. Email; [Abdullah.almuteri@nbu.edu.sa](mailto:Abdullah.almuteri@nbu.edu.sa) , ORCID: <https://orcid.org/0009-0006-4945-9842>

<sup>3</sup> Assistant Professor, Department of Law, College of Business Administration, Northern Border University, Arar, Kingdom of Saudi Arabia. Email: [asmaa.hussien@nbu.edu.sa](mailto:asmaa.hussien@nbu.edu.sa) ORCID: <https://orcid.org/0009-0001-5560-6873>

<sup>4</sup> Professor, College of Arts, Humanities & Social Sciences, University of Sharjah. Email; [Mawad@sharjah.ac.ae](mailto:Mawad@sharjah.ac.ae) , ORCID: <https://orcid.org/0000-0003-0945-4183>

aimed to enhance confidence in it and remove any obstacles that could disrupt the goal for which documentary letters of credit were made, to cover the financial liabilities of the parties to international trade transactions. (Nathanson, 2004) The uniform rules and customs for documentary letters of credit established a principle that is considered the essence and secret of the strength of documentary letters of credit, which is the principle of the independence of credit from the underlying relationship. This principle means that it is not permissible to delay the fulfillment of the value of the documentary letters of credit based on reasons that arose in the relationship between the seller and the buyer, because the documentary letters of credit are a relationship between the ordering customer (buyer) and the bank. The relativity of this relationship between the parties makes it completely different from the relationship between the seller and the buyer (Harfield, 1974).

However, deviant and undisciplined human behaviors have turned documentary letters of credit from a blessing into a curse. Through the practices of the beneficiaries of documentary letters of credit (Stoufflet, 2001). Some beneficiaries have tended to exploit the rule of independence to obtain the value of documentary letters of credit without justification. Indeed, the presence of the bank as a party between the seller and the buyer obliges it to match the documents that the beneficiary will submit and ensure that they are identical to the documents requested by the ordering customer at the opening of the letter of credit. However, beneficiaries seek fraudulent methods to claim the value of the credit without justification and use either forgery or fraud to do so, as fraud spoils everything.

As the bank is an intermediary in the documentary letters of credit that were made for the benefit of the beneficiary, and the bank's undertaking to the beneficiary to pay the value of the documentary letters of credit once the beneficiary submits the documents specified in the opening of the letter of credit, the bank's undertaking towards the beneficiary is a definitive undertaking suspended on one condition, which is the conformity of the documents submitted by it with the documents mentioned in the opening of the letter of credit. Therefore, the bank will not respond to the customer's request not to pay the value of the documentary letters of credit because, as previously explained, the bank's undertaking is final and direct in the bank's possession (UCP 600, art 5).

Therefore, the ordering customer resorts to the method of provisional attachment under the hands of the bank on the amount of the documentary letters of credit, so that the bank is prevented from paying the beneficiary until the court decides the dispute between the seller and the buyer.

### **Study Problem**

The study problem is represented in the reasons and means for suspending the delay of the documentary letters of credit based on the request of the beneficiary of the credit, because the beneficiary fraudulently claimed the amount of this credit. The problem is further complicated by the basis on which the documentary letters of credit are based, which is its independence from the underlying relationship. How can this delay be suspended, and what are the underlying means that can be followed before the judiciary suspends this delay to secure the interests of the customer against the beneficiary?

### **Study Methodology**

The study proposal will be implemented based on the comparative analytical approach, whereby the provisional attachment of the value of the documentary letters of credit will be exposed, which prevents the beneficiary from obtaining this amount and leads to the bank's seizure by court order of the amount of the credit until the dispute is resolved. This, in turn, leads us to the comparative approach, whereby we compare what is stated in Saudi and Emirati law provisions regulating the process of provisional attachment of the value of the documentary letters of credit, in addition to the practices of the Emirati and Saudi judiciary, which the study cannot achieve its objectives except by following up on the court judgments and clarifying the cases of provisional attachment of the documentary letters of credit.

### **Study objectives**

The study aims to determine the scope of the bank's commitment to pay the amount of the documentary letter of credit, in addition to the exceptions that prevent the bank from this disbursement, and what is the method that the ordering customer must use to stop the beneficiary's demand to pay the amount of the documentary letter of credit.

### **Literature Review**

#### **a. Definition of Documentary Letters of Credit**

A documentary letter of credit is defined as a contract by which a bank undertakes to open a credit upon the request of one of its customers called the order, in favor of another person called the beneficiary, with the guarantee of documents representing goods transported or prepared for transport (Appanna, 2008). Some define a documentary letter of credit contract as (Britz, 2014) a contract between the bank and the customer, whereby the bank undertakes to place at the disposal of a third party called the beneficiary a specific amount that he will obtain upon delivering to the bank the documents related to the capacity signed with the customer and which match the terms of the letter of credit issued by the bank.

A documentary letter of credit assumes the existence of a previous relationship between the ordering customer and the third party (beneficiary of the credit), which is often an international relationship for which the credit was opened to perform the obligations arising from it. It is clear from the previous definition of

a documentary letter of credit that it seems more useful if the parties to the original relationship, namely the ordering customer and the third party with whom he deals (beneficiary), reside in two different countries, which is a characteristic of foreign trade operations.

Given the practical importance of documentary letters of credit in implementing international trade contracts, the International Chamber of Commerce adopted the Uniform Rules for Documentary Credit. These rules apply to banks that join them, whether this joining is collective through the approval of an entire banking system of a country to abide by them, or it is an individual joined by each bank separately, such as in the case of Saudi Arabia, due to the lack of legal regulation of documentary letters of credit in Saudi Arabia. Therefore, banking customs in Saudi Arabia have traditionally considered uniform rules and customs an integral part of its contracts with customers requesting to open documentary letters of credit.<sup>5</sup> It is worth noting that the trend of Saudi legislation towards not codifying the rules of documentary letters of credit has its support. For example, we find the Egyptian legislator in the Egyptian Commercial Law No. 17 of 1999, after regulating the provisions of documentary letter of credit in Articles 341 to 350, stipulates in the third paragraph of Article 341 that "The rules prescribed in bank usage and practices standardizing the documentary credits issued from the International Chamber of Commerce shall apply where no special text in this division is prescribed in respect thereof" Thus, the Egyptian legislator has adopted the Uniform Rules for Documentary Credits issued by the International Chamber of Commerce.

#### **b. General Principle Governing Documentary Letter of Credit Relationships**

Letters of credit and demand guarantees provide a beneficiary with the right to payment from a financial intermediary, such as a bank, when a party requests payment under one of these means. The beneficiary of such a letter of credit or demand guarantee is entitled to payment by simply making a simple request or submitting documents that match those stated in the issuing letter (Stoufflet, 2001).

The strength of letters of credit lies in the principle of independence, according to which documentary letter-of-credit relationships are completely independent of each other. In the normal form of a documentary letters of credit, three relationships arise: the first between the seller and the buyer, the second between the ordering customer (buyer) and the bank, and the third between the beneficiary (seller) and the bank (Youssef, 1998). Based on the principle of

---

<sup>5</sup> For example: -

Alrajhi Bank:-

[https://www.alrajhibank.com.sa/-/media/Project/AlrajhiPWS/Shared/Home/Business/Trade/Trade/AR/Application\\_for\\_Musharaka\\_letter\\_Of\\_Credit.pdf](https://www.alrajhibank.com.sa/-/media/Project/AlrajhiPWS/Shared/Home/Business/Trade/Trade/AR/Application_for_Musharaka_letter_Of_Credit.pdf)

The Saudi Investment Bank:-

<https://www.saib.com.sa/sites/default/files/2023-11/C.12.027.04-Application-For-An-Irrevocable-Documentary-Credit.pdf>

independence, each of the three relationships is completely independent of the other relationships, and thus none of these relationships can be disrupted because of an issue in another relationship. Therefore, buyers cannot do anything that would disrupt the fulfillment of the documentary letters of credit based on a problem between the buyer and the seller because it is an independent relationship from the relationship between the buyer (ordering customer) and the bank. The bank shall uphold the credit and cannot, under any circumstances, because in the Uniform Customs and Practices for Documentary Credits UCP 600[1], Article 4 states: "A credit by its nature is a separate transaction from the sale or other contract on which it may be based..." (UCP 600, art 4). This approach is further reinforced in Article 5: "Banks deal with documents and not with the goods, services or performance to which the documents may relate." (The UCP 600, art 5) Therefore, documentary letters of credit are independent and unconditional obligations except for the submission of compatible documents (Nathanson, 2004).

Saudi Arabia does not have a law regulating documentary letters of credit, so banks rely primarily on the rules and customs of the uniform, in addition to the banking disputes committees, which are liable for resolving all banking disputes in Saudi Arabia. On the other hand, we find that the second paragraph of Article 417 Commercial Transactions Law, which applies to documentary letters of credit, establishes this principle, as it stipulates that the documentary credit contract is considered independent of the contract for which it was opened, and the bank remains a foreigner to this contract.

Accordingly, the Saudi Committee of Banking Disputes, ruled that the letter of guarantee represents a direct obligation between the issuing bank and the beneficiary, independent of the original relationship between the ordering customer and the beneficiary, under which the bank is committed to its content during its validity period. If the confiscation request was prior to receiving the goods subject to the credit and the guarantee was unconditional, and the confiscation was carried out correctly at the time of the validity of the guarantee, the relationship between the bank and the beneficiary of the guarantee shall be terminated upon fulfillment and the bank shall have the right to refer to the ordering customer. Any fraud claimed by the bank or customer ordering that the beneficiary of the guarantee has recovered the value of the advance payment guarantee twice shall be considered confiscation of the letter of guarantee and its expiry shall be related to the relationship that links the ordering customer to the beneficiary. The ordering customer may refer to the beneficiary regarding the relationship between them before the judicial authority is competent to consider the dispute (Saudi Banking Disputes, 47-1421). (Saudi Banking Disputes, 28-1424). (Saudi Banking Disputes, 33-1423).

In the same context, the Dubai Supreme Court ruled that the bank's obligation in the letter of guarantee is independent of the obligation of the secured debtor, and the independence of the obligation of the bank issuing the guarantee means its separation from any other relationship other than the relationship of the bank with

the beneficiary. In other words, it means that the obligation of the bank issuing the guarantee is not subordinate to the debtor's obligation in terms of its validity and nullity because the bank is always bound by the letter, regardless of the position of the secured account holder, whatever the fate of the contract between the bank and the secured account holder and the fate of the relationship between the secured account holder and the beneficiary of the letter, the bank shall not refuse payment to the beneficiary for a reason due to the relationship of the issuing bank with the secured account holder or to the relationship of the secured account holder with the beneficiary (Dubai, Cassation Number 148/1990).

It is clear from the previous applications that we have mentioned previously that the judiciary is settled on the non-interference of documentary letter-of-credit relationships with each other, as each relationship is independent of other relationships. This is confirmed by the resolution of the Saudi Committee of Banking Disputes No. (47/1421) previously referred to when it confirmed in its resolution at the time that it saw that the request of the ordering customer to the bank is part of the relationship between the ordering customer and the beneficiary, therefore it rejected the request and directed the customer to refer to the beneficiary regarding the relationship between them before the judicial authority competent to consider the dispute.

**c. Limitations of the Bank's Commitment to Its Relationship with Ordering Customers:**

Article 5 of the Uniform Customs and Practices provides that "Banks deal with documents and not with the goods, services or performance to which the documents may relate." (UCP 600, art 5) Therefore, documentary letters of credit are independent and unconditional obligations except for presenting compatible documents (Nathanson, 2004). Thus, the limits of the relationship between the ordering customer and the bank are limited to the documents specified by the ordering customer in the letter of credit, as Article 436 of the UAE Commercial Transactions Law provides that "The bank shall verify the existence of the required documents and that their substance completely fulfills the conditions of the letter of credit, and consistent with each other", which means that banks deal with the written offer and not the facts (Harfield, 1974). This was confirmed by the judgments of the Dubai Supreme Court, which ruled that "As such, the documents presented to the bank must strictly conform to the terms of the credit, and they are considered compliant if they meet the stipulated conditions outlined in the credit agreement." (Dubai, Cassation Number 675/2021) (Dubai, Cassation Number 279/2013) (Emirates Federal Supreme Court, Cassation Number 772 /24K).

The same meaning was confirmed by the decisions of the Saudi Banking Disputes Committee, which ruled that the issuing bank shall verify the extent to which the documents conform to the form stipulated in the credit. Its effect. The bank's obligation to pay the value of the credit to the beneficiary once conformity is proven, regardless of the condition of the goods subject to the credit (Saudi Banking Disputes, 44-1416) (Saudi Banking Disputes, 307-1416). One of the

committee's decisions (Saudi Banking Disputes, 1-1415) also stated that the issuing bank is obligated to examine the documents submitted to it and conform them to the conditions specified by the customer in the credit. The conformity shall be complete and literal to the terms of the credit. Failure to do so will entail the bank's liability.

From the above, it becomes clear that the bank is only a recipient and examiner of the documents associated with the credit which the customer specified in the letter of opening the credit, and the bank notified the beneficiary of the credit's association with it. The bank's role cannot go beyond that, as it does not examine the goods to ensure that the documents conform to reality and that they - i.e., the documents - represent the goods to which they are attached. The bank's role is limited to examining the documents and verifying their conformity with the terms of opening the credit (Saudi Banking Disputes, 170-1413).

Therefore, some have argued that, even if the sellers send garbage, the truth of the sent items does not appear until they arrive, after the money has been paid to the sellers (Godier, 2000), due to the delay caused by geographical distance (Demir, 2002), and because the documentary letters of credit are based on examining the documents, once the documents match the letter of credit, the bank will disburse the amount of the credit (Lee, 2008), especially since the Unified Rules and Customs do not hold the bank responsible except if the amount of the credit is disbursed based on documents that are contrary to what is stated in the letter of credit (Lee, 2008).

**d. Exceptions to the Independence of Documentary Letters of Credit from the Underlying Relationship:**

Documentary letters of credit are widely used in international trade as a means of financing and payment. Although they are supposed to facilitate the international trade process by transferring the payment risk from the advanced buyer to the payment guarantee provided by the bank, the bank's sole reliance on the presentation of documents that comply with the requirements of the letter of credit and the absolute application of the principle of independence would make it vulnerable to the risk of fraud (Harfield, 1974).

Courts have always preferred not to interfere in the documentary letters of credit process, given the importance of this principle in letters of credit (Amaefule, 2012), as they believe that banks shall respect credit in all circumstances to ensure the flexibility of international trade (Youssef, 1998).

Fraud is one of the oldest and most well-known phenomena in the business world; for as long as commercial systems have existed, people have attempted to manipulate them (International Maritime Bureau, 2005).

Based on the need to find an exception to the principle of the independence of documentary letters of credit from the underlying relationship established by Unified Rules and Customs for the Service of International Trade (Mann, 2000), the courts have created the fraud exception. According to it, if there is a claim of fraud by buyers, banks should consider and evaluate it. If buyers can provide sufficient evidence of material or proven fraud, banks may not pay sellers (McLaughlin,

1988). If buyers cannot do so, banks have discretion regarding payment. At this stage, the buyer shall be able to obtain a court order to prevent the seller from withdrawing funds from his account. However, if banks pay for documents and later in court it is found that there is fraud in the documents or the transaction, this bank will be able to prove that there is no sufficient evidence to indicate fraud (Smith, 1983). As a result, banks may risk losing their customer, the buyer. If banks choose not to pay and in court, buyers are unable to obtain a judicial order, their international reputation will be seriously damaged (Buckley, Gao, 2002).

The text of Paragraph 2 of Article 417<sup>6</sup> shows that the legislator grants the judiciary the authority to order or judgment to refuse to disburse/stop disbursing the guaranteed amount, provided that the ordering customer (buyer) bases his request to stop disbursement on serious reasons. Two observations are noted in the text of Paragraph 2: the first is that it is considered a real exception to the principle of the independence of the documentary letters of credit from the underlying relationship, as Paragraph 1 of the article explicitly addresses the inadmissibility of stopping disbursement to the beneficiary by the bank based on reasons arising from the relationship of the ordering customer with the bank or the relationship of the ordering customer with the beneficiary. The second observation is that the text of Article 417 is considered a general rule that applies to all bank guarantees. Although the text of Article 417 was included in the bank guarantee, as stated in one of the judgments of the Dubai Supreme Court that it used the text within the framework of documentary letters of credit, (Dubai, Cassation Number 515/2014).

The Saudi Banking Disputes Committee has established the same principle, in that fraud on the part of the beneficiary prevents the beneficiary from confiscation (liquidation) the guarantee, as one of its judgments (Saudi Banking Disputes, 216-1421) Therefore, based on the previous applications, it becomes clear that fraud and deception lead to the destruction of the principle of the independence of the documentary letters of credit from the underlying relationship (Mann,2000), and this is very logical because the rule of fraud spoils everything that prevails over any other legal principle.

#### **e. Types of Exceptions that Disrupt the Principle of Independence of a Documentary Letter of Credit from the Underlying Relationship**

Letters of credit and demand guarantee the beneficiary a right to payment from a financial intermediary, such as a bank. When a party presents a demand for payment under one of these arrangements, the "fraud exception" is often used to

---

<sup>6</sup> Article 417 of the UAE Commercial Transactions Law states that:

1. A bank may not refuse payment to the beneficiary for a reason attributed to the bank's relationship with the person making the order or the relationship of the latter with the beneficiary.
2. Notwithstanding the provisions of Clause (1) above, the bank may refrain from payment to the beneficiary where an enforceable order or court judgment is rendered to impose seizure on the guarantee amount with the bank. In such case, for such order or judgment to be rendered, the person making the order shall rely on his claim on serious and confirmed grounds.

justify non-payment on a letter of credit or demand guarantee or to object to a payment already made (Stoufflet, 2001). Fraud has been considered the most controversial and confusing field because it goes to the heart of documentary letters of credit by requiring the bank to look at the facts behind the conforming offer and stop payment in cases of fraudulent transactions (Buckley and Gao, 2002). Fraud in documentary letters of credit transactions has become increasingly sophisticated and new fraudulent schemes are constantly being developed (Mukundan, 2008). Jurist Stoufflet (Stoufflet, 2001) argues that fraud in the context of documentary credits, letters of credit, and guarantees should not be viewed as a moral issue but rather as a technical one. Under this formulation, it is difficult to understand why fraud in the underlying obligation should not affect the beneficiary's right to payment.

There are two main problems related to fraud in the documentary letters of credit field. First, there is no internationally accepted legal system to combat the risk of fraud in letter of credit transactions, which is covered by national rules. Second, researchers have not comprehensively explored the means to prevent fraud in the letter of credit transactions. The increasing number of fraud cases in international letters of credit transactions has led to the recognition of the rule of fraud as the first and most important exception to the principle of independence of letters of credit. While there is no consistent position on the fraud rule in different jurisdictions, on the other hand, the high number of legal cases is likely to undermine the popularity of documentary letters of credit as a major tool in trade finance (Alavi, 2016).

Some writers have identified four types of fraud in letters of credit as the most common ways to defraud account parties in international trade: the first is the forgery of documents by the beneficiary to obtain payment from the issuing bank when there are no goods in practice. The second is the non-conformity of the goods delivered by the beneficiary to the sales contract in terms of quantity and quality. The third is the sale of the same goods to more than one person. The fourth is the issuance of a document (Alavi, 2016). By studying a sample of judicial orders and decisions issued by the Banking Disputes Committee and the UAE judiciary, it becomes clear that the exceptions based on fraud to evade the disbursement of the documentary letters of credit guarantee can be classified into three types, namely fraud, forgery, and facts proven by conclusive evidence, as follows:

#### **i. Fraud**

The Supreme Court in Dubai has ruled that the beneficiary's claim for a documentary letter of credit guarantee based on fraud gives the customer (Applicant) the right to place a provisional attachment on the credit. This ultimately obliges the bank to refrain from paying the guarantee to the beneficiary. In one of the judgments of the Supreme Court in Dubai, the facts of the case (Dubai, Cassation Number 226/2010) summarize that a construction company filed a petition to the judge of urgent matters at the Dubai Court of First Instance against another company requesting the bank to seize the amount of Letter of Credit No. 004591 AILC for

AED 34,000.000 and to prohibit any disbursement to the Defendant or its bank in Turkey until the disposition of a Case. The company entered into a contract with another party to construct and complete a total of 1515 villas. On August 27, 2008, a Subcontract Agreement was concluded with the Company (Defendant). This contract stipulated fixed prices for these units throughout the contract period. The Company (Defendant) implemented the contract and submitted two invoices dated 27/02/2009 and 05/03/2009, according to the unit prices agreed upon in the Subcontract Agreement. Furthermore, it submitted three additional invoices dated 11, 18, and 24 March 2009 at inflated prices and in violation of what was agreed upon between the parties to maintain fixed prices throughout the contract period. This resulted in an increase in the total amounts of those invoices by USD 1,102,476 over the amount stipulated in the contract, which constitutes fraud by the Defendant to withdraw the largest portion of the Letter of Credit amount. A resolution was issued to address the Bank to temporarily suspend paying the three invoices until it returns them to the beneficiary for correction according to the price list included in the supply contract.

In that case, Plaintiff submitted evidence of Defendant's fraud through the price stability provision included in the contract. This allowed for a comparison of the previously issued invoices that were consistent with the contract prices of the disputed invoices, which indicated inflated prices and proved the existence of fraud in the three invoices. Accordingly, the Court decided that the disbursement of the excess amounts in the three disputed invoices relative to the prices specified in the contract shall be suspended, as the Court determined that the fraud was in the excess amounts rather than the entire value of the invoices.

In another case, the facts are summarized (Dubai, Cassation Number 85/2011). That Plaintiff entered into a contract with Defendant on 23/11/2005. The contract included a full description of each piece or machine in the plant, its specifications, and the dates of supply, delivery, and installation from February 2006 until March 2006. It also included the payment terms under a Documentary Letter of Credit from the National Bank of Dubai for 540 days from the date of shipping date. The documentary letters of credit described the goods, and upon receiving the first shipping document, it is indicated from the documents that the goods are complete. However, upon opening the containers, it was discovered that the units specified in Clauses Nos. 7, 8, 9, 10, 11, and 14 of the Contract are missing. The Court ruled on its claim.

In this case, the Plaintiff demonstrated fraud by establishing facts in the documents, which the Court relies on at urgent requests. The fraud is indicated by the discrepancy between what was stated on the purchase invoice and what was delivered to the Plaintiff. Additionally, the defendant's acknowledgment that some items had not been shipped.

In another case (Dubai, Appeal Number 606/2018), the Plaintiff entered a contract with the Defendants to supply and ship four plastic production line machines to the Republic of Sudan, based on quotations from a German Company.

The Defendants issued Invoice No. 112 on 11/02/2013. The Plaintiff filed a Documentary Letter of Credit No. ILC-060313, through the Sahel-Saharan Bank for Investment in Sudan (Issuing Bank) in favor of the First Defendant (Beneficiary). An amount of EUR 1,100,000 was transferred to its account. Thereafter, Defendant issued a commercial invoice for the amount and shipped one machine, which Plaintiff had inspected at the showroom of the German Company (Arburg) from the Port of Jebel Ali to the Port of Sudan. It also paid an amount of EUR 55,000 of its price. The defendants breached their obligations and did not supply the remaining machines, despite their promise to supply all the machines specified in the document.

In that case, the defendant's manager requested the full value of the Documentary Letter of Credit to be liquidated without considering the goods shipped. The Defendant's manager also faked evidence that misled the bank into believing that all the goods had been shipped despite the lengthy duration of the credit, allowing the Defendants to request disbursement of the credit guarantee in payments corresponding to the actual goods shipped. Therefore, the Defendants' resort to fraud by submitting documents from the Company that deceived the bank and resulted in the release of the full value of the credit is considered an error for which the Defendants shall be held accountable. The Court indeed rejected the request to suspend the disbursement, as it was based on unfounded grounds, as the liquidation had already taken place. The Plaintiff had no choice but to refer to the Defendants based on fraud in their obligations under the supply contract (underlying relationship). Therefore, this ruling and the previous ruling emphasize the importance of the time factor in submitting a request to suspend the disbursement.

On the other hand, we find that the Saudi Banking Disputes Committee settled on the same principle, as it went in its general decisions to suspend the beneficiary's disbursement of the documentary credit in the event of fraud, as one of its decisions stated that (Saudi Banking Disputes, 149-1424) "The bank cannot issue a desist letter from the alternative whenever requested during its validity period, except under two conditions: (1) when the applicant makes a correct request for fraud or deception, and (2) when the objectivity of the goal for which you want the guarantee letter is requested." The Banking Disputes Committee also issued a ruling on the conditions for suspending the disbursement of a Documentary Letter of Credit based on fraud committed by the Beneficiary. One of its decisions (Saudi Banking Disputes, 94-1429) stated that "For the beneficiary's claim of fraud to be upheld, this fraud or abuse shall be evident; it is not sufficient for it to be presumed. The party alleging fraud or abuse may not request an investigation, hear witnesses, examine documents, or take any other action to verify the fraud or abuse by the beneficiary; it shall provide ready and conclusive evidence of the beneficiary's fraud. The fraud or abuse that deprives the beneficiary of the guarantee must be committed by the person against whom it is claimed, i.e., the beneficiary."

Analyzing the judicial judgments and resolutions issued by the UAE and Saudi judiciary leads us to the conclusion that to claim fraud as a ground preventing

the Beneficiary of the Documentary Letter of Credit from liquidating this credit, a set of conditions shall be met, which are as follows:

1. The fraud shall be committed by the beneficiary so that it can be used as evidence against him. It is not sufficient that the fraud is committed by someone other than the beneficiary.
2. The Ordering Customer shall provide conclusive evidence of the fraud committed by the beneficiary, as the concept is clear and in good faith, and anyone who claims otherwise shall provide evidence to support its claim. Consistent with this condition, the Ordering Customer may not request judicial assistance to prove the fraud of the Beneficiary. "The researcher considers this logical, as it requests to suspend the disbursement of the Documentary Letter of Credit is always an urgent request, and the absence of evidence contradicts the nature of such an urgent request. The Ordering Customer can request proof of the condition of the goods upon delivery, which may be inconsistent with the purchase invoice and conform with the bill of lading. After proving the condition of the goods, the customer submits a request to the judge for urgent matters to stop the disbursement of the Documentary Letter of Credit. This will be useful - though difficult to achieve - if the beneficiary has not liquidated the guarantee based on its submission of the documents specified in the letter of opening the credit to the bank. If the guarantee is liquidated, the ordering customer shall refer to the beneficiary based on the underlying relationship.

## **ii. Forgery**

The UAE Courts and the Saudi Banking Disputes Committee have settled that forgery is a form of fraud that prevents the Beneficiary from claiming the Documentary Letter of Credit. In a case summarized by the (Emirates Federal Supreme Court, Cassation Number 772 /24K) opening of an irrevocable Documentary Letter of Credit No. 99/51/38574 in favor of the Company (Respondent) regarding the supply of three thousand tons of Indian black tea in four payments according to the terms of the Documentary Letter of Credit. The respondent used the credit by submitting the shipping documents and the inspection certificate issued by Orient International Company to the Claimant for the fourth payment, the value of which was the claimed amount. On May 6, 2000, the Respondent asked the Claimant to add the value of the fourth payment to its account at the Bank of Baroda in India, and the Claimant complied with this request. On July 3, 2000, the National Commercial Bank sent a telegram stating that the Ordering Company objected to the payment of the fourth payment of tea because page No. 2 of the inspection certificate was forged, with a different number and date than the first page. On July 5, 2000, the aforementioned bank sent a letter stating that the inspection certificate issued by Orient International Company for the fourth payment, which holds No. 0400 / FZ / CINAS 0269 0269 and consisted of two pages dated 24/04/2000, means that the Respondent had hidden the second page of the inspection certificate and replaced it with another and that the certificate submitted

by it for the fourth payment was different from the real inspection certificate that it had hidden. Since the Claimant transferred the value of the fourth payment to the Respondent's account based on documents that included fraud, it was necessary to return the value of this payment to the Claimant.

In one of the judgments of the Saudi Supreme Court, the case is summarized that (Saudi Cassation 957-1436) Plaintiff contracted with Defendant to supply iron, on the condition that the value of the supplied quantities be paid by Defendant through a Documentary Letter of Credit that Plaintiff opened with a bank. Plaintiff issued commercial invoices to Defendant based on the quantities of steel supplied. The Plaintiff issued five invoices for what was supplied. However, concerning invoice No. (5) approved by Plaintiff and issued for SAR 52,800 on 09/10/2008, Defendant modified the invoice amount by adding SAR 1,800,000, resulting in a new invoice total of SAR 1,852,800. Then Defendant submitted it to the bank to cash the value of the invoice after the modification. the Court decided to suspend the disbursement of the commercial invoice No. (5) on 09/10/2008, issued by Plaintiff to Defendant, and to notify the bank of the Court's decision and inform Defendant to review the department regarding this.

### **iii. Conclusive Document Proving the Validity of Claim:**

The existence of a conclusive document proving the validity of the customer's claim, which demands the suspension of the documentary letters of credit payment, is one of the reasons classified as fraud. This is because the beneficiary's claim to liquidate the documentary letters of credit despite the presence of a conclusive, indisputable document showing the invalidity of the claim is considered fraud. By examining the rulings of the UAE and Saudi courts, it is evident that they recognize this situation as valid grounds for suspending the payment of documentary letters of credit.

In a case before the Dubai Court of Appeals, the facts are as follows ((Dubai, Appeal Number 1046/2023): Plaintiff, filed case No. 2236/2022, against Defendant. The case is according to the subcontracting agreement executed between the plaintiff and the defendant on 20/05/2021. Defendant, in its capacity as the main contractor, assigned to Plaintiff, as the subcontractor, The Plaintiff fulfilled its agreed-upon obligations in the contract, providing the advance payment guarantee letter No. 123020894982-DG on 21/03/2021, for an amount of AED 1,349,778.10, issued by Standard Chartered Bank, the defendant failed to meet its obligations to the plaintiff. Specifically, it unjustifiably refrained from providing the documentary Letter of Credit that it was required to submit in favor of the plaintiff according to Clause No. (8) of the subcontract, which was necessary for the plaintiff to supply the required equipment for the project. Consequently, the plaintiff obtained an order from the judge on the urgent matter to impose a provisional attachment on the value of the two guarantee letters to Standard Chartered Bank, preventing the bank's employees from releasing the guarantee amount to the defendant.

In another case presented before the Dubai Supreme Court, (Dubai, Cassation Number 249/2001) the facts are, the Appellant company filed a petition against the

respondent company, requesting an order from the judge on the urgent matter at the Dubai Court of First Instance, Case No. 2004/1998, to impose a provisional attachment on the amount subject to documentary letter of credit No. ILTNS on 12/08/1998, was drawn by the Emirates International Bank for an amount of AED 238,507 and 50 fils. In its statement, the Appellant company stated that according to the documentary letter of credit, it had purchased 15,000 kilograms of Indian cashew nuts from the appellee for an amount of AED 238,507 and 50 fils, However, upon the arrival of the goods, it was found that they were damaged and unfit for human consumption. Dubai Municipality prohibited their entry into the country and ordered either their destruction or return to the source. The Appellant requested the bank to stop the payment and refrain from transferring the amount to the respondent, but the bank refused to do so unless a court order was obtained. Consequently, the Appellant submitted this request, and on 15/09/1998, the judge granted the request.

The Saudi Banking Disputes Committee has generally established the beneficiary of a documented letter of credit is not entitled to its full amount if the claim is founded on fraud. One of its principles (Saudi Banking Disputes, 307-1417) states that the relationship arising from a letter of guarantee between the issuing bank and the beneficiary of the guarantee is independent of the relationship between the party requesting the guarantee and the issuing bank, and independent of the relationship between the requesting party and the beneficiary of the guarantee. It is also established that a letter of guarantee creates an original, direct, and unconditional will of the bank to the beneficiary. The bank shall respond to the request for liquidation that is submitted within its validity period, if there is no fraud or deception on the part of the beneficiary and the liquidation is within the scope of the purpose for which the letter was issued, with its text, content, and terms. The letter of guarantee shall expire and become invalid either by fulfilling the beneficiary's claim or by returning it to the issuing bank without fulfillment within its validity period, or by the expiration of the specified validity period without liquidation by the beneficiary.

**f. Legal System for Requesting a Provisional Attachment on a Documentary Letter of Credit:**

As a general rule for provisional attachment in the Kingdom of Saudi Arabia and considering that the guarantee for the documentary letters of credit is held by the bank, the customer requesting the prevention of the beneficiary from liquidating the documentary letters of credit must follow the rules stipulated in the Saudi Enforcement Law, specifically the rules for attaching a debtor's assets held by a third party. Article 27 of the Enforcement Law states that "A creditor of an established due debt may, even without an enforceable judgment, request provisional attachment against debts due to his debtor by third parties even if such debts are deferred or conditional, as well as his funds or movable property in the possession of third parties. The garnishee shall, within 10 days from the date of notification of the attachment, disclose all debts, realties, and properties he owes to the debtor and shall, within 10 days from the date of notification of a valid

attachment order, deposit the same in the court's account or a part thereof sufficient to satisfy the debt."<sup>7</sup>

The requirements for the application of this article, as explained by commentators on the Saudi Enforcement Law, are fourfold, including (Wafi, 2014):

First: Availability of the conditions for urgent protection; since it is one of the applications of urgent protection, it requires the attachment of the debtor's assets with a third party, the availability of the conditions for granting this protection from the existence of danger and irreparable harm.

Second: Establishment of a financial right for the debtor in the possession of a third party; were it not for the existence of this assumption, the attachment of a debtor's assets held by a third party would not be valid. The subject of such an attachment can include any movable assets belonging to the debtor that are held by another party, such as a balance in an account at a bank, deposited goods with another person, or any creditor rights owed by another person.

Third: Emergence of the creditor's right; this presumption expresses the temporary nature of the attachment of the debtor's assets with a third party and balances the conflicting interests of both the claimant and the defendant.

Article 417 of the UAE Commercial Transactions Law states that "(1) A bank may not refuse payment to the beneficiary for a reason attributed to the bank's relationship with the person making the order or the relationship of the latter with the beneficiary. (2) Notwithstanding the provisions of Clause (1) above, the bank may refrain from payment to the beneficiary where an enforceable order or court judgment is rendered to impose seizure on the guarantee amount with the bank. In such case, for such an order or judgment to be rendered, the person making the order shall rely on his claim on serious and confirmed grounds."

According to the aforementioned provision and considering that the guarantee is held by the bank, the procedures for attachment of the debtor's assets held by third parties will be applied under the same conditions previously addressed in Saudi law.

## **Conclusion**

This study investigates one of the most important topics in banking transactions and international trade, the provisional attachment of a documentary letter of credit. It defines what a documentary letter of credit is, its significance in international trade transactions, and examines the various relationships involved. Primarily, the relationship between the buyer and the seller (the underlying relationship), alongside the relationship based on the underlying relationship, between the applicant (buyer) and the bank, and the relationship between the beneficiary (seller) and the bank. The pursuit of liberating payment transactions in international trade from any restrictions that could affect sellers' interests has led to the establishment of a fundamental principle: the independence of the letter of credit

from the underlying relationship. The study addresses this key principle, referred to as the principle of independence, and the limitations of its application by banks. The study also discusses the exceptions to this principle of independence, which may hinder the liquidation of the letter of credit, thereby undermining the fundamental principle that governs letters of credit, namely, preventing any delay in payment under the letter of credit due to issues that may arise in the relationship between the seller and the buyer. Top of Form, Bottom of Form The study categorizes these obstacles to liquidating the letter of credit, identifying fraud as the primary cause. Fraud is further divided into three forms: deception, forgery, and definitive proof of a fact that affects the beneficiary's entitlement to the letter of credit. Additionally, the study addresses the legal system for requesting a precautionary attachment to a letter of credit, clarifying the conditions under which the bank may prevent the beneficiary from accessing the value of the guarantee.

*The study reaches a set of findings, which are:*

- The Documentary Letter of Credit is an indisputable means of success in international trade transactions, particularly as it addresses the challenges posed by the geographical distance between the seller and the buyer. However, fraudulent behaviors by sellers (beneficiaries of the documentary letter of credit) are what hinders its dominance as the most important payment method in international trade transactions.
- The existence of such fraudulent behavior by sellers cannot be eradicated without swift judicial intervention that provides the highest level of protection for the applicant. This can be achieved through legislative tools that empower the applicant and judiciary to urgently suspend the seller's (beneficiary's) entitlement to the amount under the documentary letter of credit.
- All fraudulent methods aim to enable the beneficiary to obtain the letter of credit without being entitled. To achieve this, the beneficiary may resort to forging the documents presented to the bank to convince the bank of their entitlement to the letter of credit amount, or through deception, such as shipping goods entirely different from those for which the letter of credit is established.
- Judicial rulings and orders in both the UAE and Saudi Arabia have established that fraud, forgery, and conclusive evidence proving the beneficiary's lack of entitlement to the value of the credit are all valid reasons to prevent the entitlement to the documentary letter of credit.
- Method of attachment of the debtor's assets held by third parties is a highly effective tool in suspending the disbursement of the documentary letter of credit.

*The study recommends the following:*

- The necessity of adopting the Uniform Customs and Practice (UCP) for Documentary Letters of Credit as a rule to eliminate instances of fraud in its transactions.

- The necessity of activating the role of the banks in combating fraud cases beyond non-conformity between the documents submitted by the beneficiary and those specified in the letter of credit, as banks will refuse liquidation based on non-conformity.
- In cases where the bank suspends payment for reasons other than non-conformity, and the potentiality for the bank's liability to be raised, the customer issuing the order to the bank should be required to provide a guarantee to cover the possibility of the bank being held liable for compensation.

**Acknowledgment**

The author extends their appreciation to the Deanship of Scientific Research at Northern Border University, Arar, KSA for funding this research work through the project number NBU-FFR-2024-2285-01.

**Conflict of interest**

The author declares no conflict of interest.

## References

- Appanna, T. (2008). The Two Important Doctrines Underlying Documentary Letters of Credit and the Fraud Exception. *Pretoria Student L. Rev.*, 2, 31.  
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/pslr2&div=7&id=&page=>
- Amaefule, C. (2012). *The exceptions to the principle of autonomy of documentary credits* (Doctoral dissertation, University of Birmingham).  
<https://etheses.bham.ac.uk/id/eprint/3831/>
- Alavi, H. (2016). Mitigating the risk of fraud in documentary letters of credit. *TalTech Journal of European Studies*, 6(1), 139-156.  
<https://intapi.sciendo.com/pdf/10.1515/bjes-2016-0006>
- Buckley, R. P., & Gao, X. (2002). Development of the fraud rule in letter of credit law: The journey so far and the road ahead. *U. Pa. J. Int'l Econ. L.*, 23, 663.  
<https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1285&context=jil>
- Britz, D. M. (2014). *Mareva-Type Injunctions in Respect of the Proceeds of Documentary Credits* (Master's thesis, University of Johannesburg (South Africa)).  
<https://www.proquest.com/openview/88fe7d0d26cb1ecd72a38fc138caf7ae/1?pq-origsite=gscholar&cbl=2026366&diss=y>
- Demir, Y. (2002). International trade, maritime fraud and documentary credits. *International Trade Law and Regulation*, 8(4), 128-135
- Godier, K. (2000). Electronic trading: new systems emerge. *Documentary Credits Insight*, 6(2).
- Harfield, H. (1974). Bank Credits and Acceptances.
- Lee, R. J. (2008). Strict compliance and the fraud exception: balancing the interests of mercantile traders in the modern law of documentary credits. *Macquarie Journal of Business Law*, 5, 137-169.  
<https://search.informit.org/doi/abs/10.3316/informit.379957270920245>
- Mann, R. J. (2000). The role of letters of credit in payment transactions. *Michigan Law Review*, 98(8), 2494-2536.  
<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2776&context=mlr>
- McLaughlin, G. T. (1988). Letters of credit and illegal contracts: the limits of the independence principle. *Ohio St. LJ*, 49, 1197.  
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/ohslj49&div=58&id=&page=>
- Mukundan, P. (2008). Fraud with L/Cs-latest modi operandi. In Speech of the Executive Director of the ICC commercial crime services and material at the 2nd Annual International Conference on Letters of Credit organized by ICC Austria, Vienna (Vol. 29).

Nathanson, C. P. (2004). Enron, letters of credit and the autonomy principle. *Journal of International Banking and Financial Law*, 19(6), 204-209.

Report provided by the International Maritime Bureau (with annotations). (2005). The 5th Tri-annual IMB Meeting on Piracy and Maritime Security, Kuala Lumpur, Malaysia, 29 and 30 June 2004 Report provided by the International Maritime Bureau (with annotations). *Maritime Studies*, 2005(140), 22-27.

[https://www.tandfonline.com/doi/pdf/10.1080/07266472.2005.10878768?casa\\_token=D6JYxJj0t8YAAAAA:fTYe1hMtjdaPJZKLj9CePrn0dtCCGh0oEocNHta9y9rOsUyAxYON0ccB6eae9w5Q4inWAxo3sj6ODE3M6A](https://www.tandfonline.com/doi/pdf/10.1080/07266472.2005.10878768?casa_token=D6JYxJj0t8YAAAAA:fTYe1hMtjdaPJZKLj9CePrn0dtCCGh0oEocNHta9y9rOsUyAxYON0ccB6eae9w5Q4inWAxo3sj6ODE3M6A)

Smith, G. W. L. (1983). Irrevocable Letters of Credit and Third Party Fraud: The American Accord. *Va. J. Int'l L.*, 24, 55.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/vajint24&div=9&id=&page=>

Stoufflet, J. (2001). Fraud in Documentary Credit, Letter of Credit and Demand Guaranty. *Dick. L. Rev.*, 106, 21.

<https://heinonline.org/HOL/LandingPage?handle=hein.journals/dlr106&div=11&id=&page=>

Wafi, M (2014), *Judicial Enforcement in Saudi Enforcement Law*, Al-Rushd Publication, Riyadh.

Youssef, F. (1998). Documentary risk in commodity trade. In United Nations Conference on Trade and Development.

Dubai Court of Cassation, (1990). Cassation Number 148/1990, hearing date 9-3-1991, page 175, Rule 30.

Dubai Court of Cassation, (2021). Commercial Cassation, Cassation Number 675/2021, hearing date 4-7-2021.

Dubai Court of Cassation, (2013). Commercial Cassation, Cassation Number 279 /2013, hearing date 28-5-2014, page 674, Rule 76

Dubai Court of Cassation, (2014). Commercial Cassation, Cassation Number 515/2014-hearing date 6-3-2016.

Dubai Court of Cassation, (2010). Commercial Cassation, Cassation Number 226/2010-hearing date 4-1-2011, page 94, Rule 12.

Dubai Court of Cassation, (2011). Commercial Cassation, Cassation Number 85/2011-hearing date 7-3-2012.

Dubai Court of Appeal, (2018). Commercial Appeal, Appeal Number 606/2018-hearing date 16-4-2019.

Dubai Court of Appeal, (2023). Commercial Appeal, Appeal Number 1046/2023-hearing date 12-7-2023.

Dubai Court of Cassation, (2011). Cassation Number 249/2001, hearing date 4-11-2011, page 784, Rule 118.

Emirates Federal Supreme Court, (2005). Cassation Number 772 /24K, hearing date 23-10-2005, page 2317, Rule 275

Emirates Federal Supreme Court, (2005). Cassation Number 772 /24K, hearing date 23-10-2005, page 2317, Rule 275

Saudi Banking Disputes Committee, (1421). decision number (47-1421)

Saudi Banking Disputes Committee, (1424).decision number (28-1424)

Saudi Banking Disputes Committee, (1423). decision number (33-1423)

Saudi Banking Disputes Committee, (1416). decision number (44-1416)

Saudi Banking Disputes Committee, (1415). decision number (1-1415)

Saudi Banking Disputes Committee, (1413). decision number (170-1413)

Saudi Banking Disputes Committee, (1421). decision number (216-1421)

Saudi Banking Disputes Committee, (1424). decision number (149-1424)

Saudi Banking Disputes Committee, (1429). decision number (94-1429)

Saudi Banking Disputes Committee, (1416). decision number (307-1416)

Saudi Supreme Court, (1436). Cassation Number 957 /1436, hearing date 26-4-1436, page 1109.