

## **Fraud as a Reason for Seizure of documentary of Credit (LC)**

A research Conducted by

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### **Abstract**

This study dealt with fraud as one of the reasons for seizure of letter of credit (LC). The researcher used the descriptive approach by describing fraud, its forms, conditions and means of proof, and the analytical approach by analyzing the legal texts contained in the Jordanian Trade Law and the unified norms.

This study has reached several results, the most important of which is the principle of banking independence, which is intended to examine documents that conform to the international contract with the terms of the letter of credit, without the obligation to examine the extent of their conformity with the goods or contracts associated with them, which allowed some people to commit cheating and fraud to harm the rights. This led to harm to the beneficiaries and banks.

Seizure is one of the most important means that prevents the implementation of the letter of credit (LC) in case of cheating, fraud and other illegal acts, and temporary measures that precede the filing of a right case. This study made several recommendations, the most important of which is the establishment of independent rules regarding the seizure of the LC, taking into account the privacy of this type of seizure.

**Keywords:** Fraud, LC, independence, seizure, bank, merchandise.

### **Introduction**

Letter credit is one of the most important, accurate and most complex banking business, as it is considered an important means of financing international foreign trade, especially in international sales settlement operations. Letters of credits are considered the operations in which banks play a major role in financing internal and external trade and bank guarantees.

They play the role of financing because they are safer and more reliable. And because the documentary credit is an important means of payment on the international scale, it is able to overcome many of the problems and risks associated with international trade exchange, as it contributes to financing international trade deals through documentary credits and contribute effectively to the growth of this exchange because of the role it

plays in reducing its risks, and building trust between its parties.)<sup>1</sup>(One of the most important principles provided by LC is the principle of banking independence, which is intended to examine documents that conform to the international contract with the terms of the documentary credit without an obligation to examine their conformity with the goods or contracts associated with them, which led to some people using fraudulent methods in order to obtain value LC without right. This has led to harm to beneficiaries and banks.)<sup>2</sup>(The independence relationship arising from the LC process, including the relationship between the bank issuing the credit and the beneficiary may be invested by some people in an illegal practice, perhaps the most common among them is fraud practice, which is intended to deceive on the part of the beneficiary in carrying out his obligations, where the implementation becomes defective with the intention of harming the buyer. Seizure is considered one of the most important means that prevents the implementation of the LC in case of fraud and other illegal acts. It is also considered one of the temporary measures that precede the filing of a right case, as the right holder fears losing his right, whether by smuggling or exchanging funds. And here we are talking about the resort of the right holder, whether the customer or the buyer and others, to take the seizure procedure to prevent the implementation of the LC in case of fraud. Therefore, the researcher will study the concept of LC in the first topic, then the concept of fraud in LC in the second requirement, and fraud as a reason for seizing the LC in the third topic.)<sup>3</sup>

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<sup>1</sup>Abdel Hadi, Khaled Ghaleb Suleiman (2008), Legal problems arising from the implementation of the enhanced letter of credit in the light of the unified international norms for letter of credits, Master's Thesis, College of Graduate Studies, Amman Arab University for Graduate Studies, Jordan, p. 14.

<sup>2</sup>Bassiouni Abdel Ella 2017 Fraud in Documentary Credits and Methods of Protection from it Issue 17 Part Two Egyptian Periodicals p. 270

<sup>3</sup>Muhammad, Alaa, 2018 The Bank's Obligation to Pay the Value of the Documentary Credit to Confront the Order When the Beneficiary Deceives Journal of Basra Studies, p.149

**Problem of the Study:**

The problem of the study lies in the extent to which fraud is considered as one of the reasons for seizing the LC, the position of the unified legislation, principles and customs of it, and the extent to which they are in line with it.

**Questions of the Study:**

1. What is meant by letter of credit (LC) and what is its function and importance?
2. What is fraud in letters of credits?
3. What are the forms of fraud in credits deferred?
4. What are the conditions for fraud in letters of credit, and what are the means of proof?
5. To what extent is fraud considered one of the reasons for seizing the value of the letter of credit?
6. What is the position of the legislation and unified customs regarding fraud?

**Objectives of the study:**

This study aims to:

1. Understand the concept of letter of credit.
2. Understand the importance and functions of letter of credit.
3. Identify the concept of fraud in letter of credit, its form and conditions.
- 4- Know the means of proving fraud in letter of credit.

**Significance of the study:**

1. The scientific importance of the study comes from its raising of a very important topic, which is fraud as one of the reasons for seizure of LC, by providing a framework of knowledge that enriches the Jordanian legal library on the systematic approach to the subject of seizure of LC and the problems it raises.
2. The results of the study raise legislative problems that may form the nucleus of future research on this subject, and may also contribute to the development of future legislation on addressing the subject.
3. The study sheds light on the treatments of Jordanian and comparative legislation concerning the issue of fraud as one of the reasons for seizure of LC and clarifies the areas of error in that treatment, and then provides the legislator with a rich background that can be used in dealing with the subject and its implications.
4. The study explains to all workers in the field of international trade and investors the dangers in the field of legal dealings in international sales, the use of letters of credits as a guarantor, and how to follow the procedures to preserve their rights.

### **Methodology of the study:**

The present study depends on the analytical legal approach that focuses on analyzing legal perceptions, schools of jurisprudence, international judicial rulings and the position of comparative national legislation on fraud as one of the reasons for seizure of LC and the analysis of the implications of that, whether towards the parties to the relationship or towards the independence of the LC contract.

### **Topic one: The Concept of Letter of Credit (LC):**

Letters of credit emerged as a means of facilitating the implementation of an international sale where an intermediary body (the bank) is trusted by both the seller and the buyer to assist in the execution of sales contracts.)<sup>4</sup>(Jordanian banks, like other Arab and international banks, work on financing foreign trade through a set of tools that are considered the main support for foreign trade operations, strengthening foreign exchanges and encouraging sectors of economic activity. One of the most important of those tools used in financing is the letter of credit, which is the most trustful in this field, and the exporter and importer use it as a credit tool to finance their commercial operations. In this context, the bank uses it as a guarantee tool that it provides to serve its customers, whether to guarantee the seller's or the beneficiary's right to obtain the value of his sales in a period after shipment and before receiving it from the buyer. It also guarantees the buyer the right to obtain the goods in accordance with the agreed terms and not to pay until after making sure that the shipment was carried out in the required manner, thus achieving the double benefit for both. Accordingly, this topic will be addressed through the following sections:

### **Section one: Definition of the letter of credit (LC)**

The Jordanian Trade Law No. (12) for the year 1996 did not address the definition of documentary credit, and the texts of the Jordanian Trade Law did not contain provisions related to letters of credit in any form, which is a matter taken from the Jordanian legislator at a time when the trade movement in Jordan is active at the national and international levels. Rather, it was only concerned with the general provisions in the financial appropriation in Articles (118-121)<sup>5</sup>. Here, a distinction must be made between a financial credit and a letter of credit, as Article 118 stipulates: "In contracts for opening financial letters of credit, the credit opener is obliged to put some matters at the disposal of an authorized person, and he has the right to deal with them in one payment or successive payments according to his needs during a date."

Article (121/1) of the Jordanian Trade Law stipulates that: "If the bank credit is allocated in fulfillment of the interest of others and the bank endorses this credit to the one who is entitled to it, then it may not be retracted or amended without the consent of that third party, and the bank becomes directly and finally obligated towards it to accept the intended papers and payments. )<sup>6</sup>(Moreover, the second

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<sup>4</sup>Abdel-Rahman, Mohamed Ahmed (2005), *The New Trade Law*, Dar Al-Nahda Al-Arabiya, Cairo, pp. 129 and beyond.

<sup>5</sup>See: Texts of Articles (118-121) of the Jordanian Trade Law No. 12 of 1966.

<sup>6</sup>See: the text of Article (121/1) of the same law.

paragraph of the same article stipulates that <sup>7</sup>: “The bank has the right to recover the amounts it paid or the expenses it incurred to implement what was entrusted to it with the agreed upon interest or the legal interest if it was not an agreement, starting from the day of payment ”.

Looking at the above text, the researcher notes that what is meant by the LC is the financial credit, as it did not directly mention the term letter of credit, and that the text that came within the texts dealing with financial credit does not make it a base on which to know and work with the letter of credit. The researcher concludes that letters of credit were found without a legislative text regulating them in Jordanian law, although the Jordanian legislator had referred to them, but in an unspecified manner, a matter that led the judiciary to rely on international and local banking norms in this regard. As for jurisprudence, there were many definitions of LC, but they were distinguished from each other in highlighting a different feature from the other, including what is known as letter of credit: “An undertaking issued by the bank at the request of the customer or the order-giver for the benefit of the third party exporter, and the beneficiary is obligated to pay or accept drawn bills of exchange. It shall be paid by this beneficiary under certain conditions contained in this undertaking and secured by a pledge of possession on the documents representing the exported goods”.<sup>8</sup> The researcher finds that this definition focused on showing the importance of documents in preserving the right of the bank in return for its obligation towards the beneficiary to pay the value of the shipped goods. The letter of credit is also defined as: “a contract under which the bank (the initiator) undertakes to open the credit upon the request of the order to open the credit in favor of another person who is the beneficiary to guarantee documents representing goods prepared for transportation or movable”.<sup>9</sup> Moreover, another opinion went to the extent of stating that the letter of credit is: “The credit that the bank opens at the request of another person known as the orderer, whatever the method of its implementation, whether by accepting the bill of exchange or deducting it, or by paying an amount in favor of a customer to this orderer and secured by the possession of documents representing goods on the road or prepared for dispatch.”<sup>10</sup> A letter of credit has also been defined as: “A contract under which and upon the request of one of its parties, which is the orderer, the bank that issued the credit undertakes personally and irrevocably before a person from a third party directly or through the intervention of a bank in the country of this third party to pay a specified amount or to issue a draft drawn on it, a specified amount in return for submitting to him, within a specified period, certain documents in the letter of undertaking issued by him to the beneficiary, and the customer to whom the credit was opened is obligated to rid the bank of the effects of this operation”.<sup>11</sup>

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<sup>7</sup> See: the text of Article (121/2) of the same law.

<sup>8</sup> Al-Baroudi, Ali (1968). *Contracts and Operations, Commercial Banks*, Manshet al-Maaref, Alexandria, p. 372.

<sup>9</sup> Musa, Talib Hassan (2011). *Commercial Papers and Banking Operations*, previous reference, p. 240.

<sup>10</sup> Awad, Ali Jamal Al-Din (1983). *Letters of credits, a study of the comparative judiciary and its rules*, Dar Al-Nahda Al-Arabiya, Cairo, p. 258.

<sup>11</sup> Al-Kilani, Mahmoud (2014), *Commercial and Banking Encyclopedia, Volume Four, Bank Operations, Comparative Study*, 3rd Edition, House of Culture for Publishing and Distribution, Amman, p. 164.

Through the previous definitions, it becomes clear that the letter credit has three parties<sup>12</sup>:

1. The applicant for opening the letter of credit: This refers to the customer (the buyer), and he is often an importer of the commodity from a foreign country, and known as the orderer, since he orders the bank to open the letter of credit with the conditions and data he specifies in his request.<sup>13</sup>

2. The beneficiary of the documentary credit: he is the seller, and he is often an exporter of the commodity to the country of the importer, so named because the documentary credit is issued in his favour.

3. The bank that opens the credit: It is the one who opens the LC to the customer according to his request, and undertakes to the beneficiary to pay its value in return for submitting the documents, whether directly through it, or through another intermediary bank in the source country, called the external bank, or the correspondent bank, and obligations under this contract arise between the parties.<sup>14</sup> The relationship between the customer (the orderer) and the beneficiary (the seller) arises as a result of the sales contract concluded between them if it is agreed between the two parties that the payment of the price will be by opening a letter of credit in accordance with the agreed terms. If one of the parties fails to perform his obligation, the other party may terminate the contract and demand compensation from him. On the other hand, the relationship between the customer (the orderer) and the bank that opened the credit, arises as a result of the contract of opening the letter of credit concluded between them. The bank is obligated to inform the beneficiary of the open credit for his benefit and its conditions, the documents requested by the customer, and pay the value of the credit to the beneficiary if he submits the documents in accordance with the terms and specifications set by the customer<sup>15</sup>.

Therefore, the researcher tries to define a letter of credit as: (a contract that entails a written commitment from the bank to fulfill when the documents conform to the conditions set forth in the instructions based on the importer's request in favor of the exporter). This definition is the closest to the truth, as it brings together all the parties to the relationship in the LC contract (client - beneficiary - bank), and it also shows that the contract is a written contract documented by the bank, and includes the element of documents. That is, the contract requires the submission of documents proving ownership of the goods, their specifications, terms of export and instructions for paying the value of the credit, including (letter of guarantee - bill of exchange - bill of sale - bill of lading - insurance document - certificate of origin of the goods). It also includes the dominant copy of the credit.

### **The second section: Characteristics of a letter of credit**

The letter of credit is an obligation that has characteristics as follows:

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<sup>12</sup>Musa, Talib Hassan (2011). Commercial papers and banking operations, previous reference, p. 239.

<sup>13</sup>Ahmed, Abdul-Fadil Muhammad (2017), Bank Operations, previous reference, p. 148.

<sup>14</sup>Baatash, Laila (2014). The impact of fraud in the base contract on the implementation of documentary credit, Ph.D. thesis, Faculty of Law and Political Science, University of Hajj Lakhdar-Batna, Algeria, Introduction, p.t

<sup>15</sup>Al-Taher, Belissaoui Mohamed (2012), Obligations of the Bank in Letters of Credits, previous reference, p. 10.

1. A commercial obligation, that is, it is subject to the provisions of the Commercial Law.
2. A unilateral obligation, that is, the bank is bound by its unilateral will to the obligation arising from it to fulfill the beneficiary without the beneficiary having any obligation to confront the bank.
- 3- The bank's obligation expires with the expiry of the period whose end is the end of the bank's obligation, which means if the beneficiary is not fulfilled and does not withdraw the value of the credit within the limited period, the beneficiary does not have a right to its value <sup>16</sup>. The Bank's commitment to the LC is pure, original and independent. This means that the obligation of the bank arising from the credit is independent of the reason that was the basis of its creation and that it is cut off from it, and the illegality of the reason does not affect the validity of the bank's obligation. It follows that the bank's obligation towards the beneficiary is independent of the sale contract. On the other hand, it is an obligation that does not follow other obligations resulting from it because it is self-contained and is not based on another obligation. That is, the bank's obligation in the documentary credit in the face of the beneficiary is independent of other obligations that resulted on the occasion of the same credit.

### **The third section: Functions of letters of credit**

A letter of credit fulfills functions and objectives that all revolve around facilitating international business transactions. This credit, as a tool that achieves financing business operations, means adding the bank's credit as a credit to the customer, and in a way that increases the buyer's confidence that the goods he purchased will be shipped under documents delivered to him to review the ports.

Thus, the LC provides a means of guarantee for both parties to the contract, in addition to enabling the beneficiary to finance his business operations when he gets the price immediately and once the documents are submitted. It also achieves a commercial benefit based on the fact that the exporter confirms to the seller that the value of the goods will be paid to him when he responds to the terms of credit, and the importer (the buyer) assures that the payment will not be made before verifying that the seller has sent the goods according to the documents <sup>17</sup>. Also, the buyer obtains banking facilities as per the letter of credit, while this credit provides cash to the seller, who can use it in other commercial operations.

### **The fourth section: The importance of LC**

LC plays an important role in the field of international trade, especially when this trade is financed by banks, because most international trade contracts include the settlement of relations between their parties using the LC method as a model method of settlement. The LC is also of great importance for the settlement of payments and the liquidation of international transactions through it. This appears with the benefits that accrue to the seller and the buyer when the written rules between them are not sufficiently addressed, or when the rules are not written. Since the LC is subject to written rules

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<sup>16</sup>Kilani, previous reference, p. 111

<sup>17</sup>Kilani, previous reference, p. 116.

formulated by the Chamber of International Commerce, the custom has settled it binding unless the parties agree not to follow it<sup>18</sup>.

### **Topic two: The concept of fraud in LC**

LC has been found as one of the banking operations through which banks can finance foreign trade operations, including import and export, and it gives trade a kind of safety and stability. The banks have organized this process through letters of credits through which the bank can play a key role in which the buyer is assured of receiving his goods at the specified time and place. At the same time, the seller is assured of receiving the price of his goods as soon as the bank delivers those documents required in the letter of credit <sup>(19)</sup>. The LC has several principles, the most important of which is the provision of protection to its parties, including the principle of banking independence, which is intended to examine documents that conform to the international contract with the terms contained in the LC without an obligation to examine the extent of their conformity with the goods or contracts associated with them. This led some people to use fraudulent methods in order to obtain the value of the LC without right, which caused harm to the beneficiaries and banks. Therefore, the researcher will address this topic through the following branches:

#### **Section one: Definition of fraud in letters of credits**

The term fraud in the field of LC means any act carried out by the beneficiary that is intended to benefit from obtaining the credit by fraud. Fraud must be issued by the beneficiary himself, and does not include fraud issued by third parties <sup>20</sup>(or intended to use fraudulent methods and means from the contracting parties or from the other party)<sup>21</sup>. It is also the beneficiary's use of the credit with the aim of harming the customer, which leads to the deviation of the mechanism of those bank guarantees from their main purpose and in contravention of the principle of good faith. <sup>22</sup>

#### **The second section: the means of cheating**

In order for fraud to be invoked and for the amount of the LC to be seized, it cannot be invoked except after conclusive evidence of the fact of its existence is established in order to avoid any fraudulent claims from some bad faith buyers. Therefore, it is not sufficient to claim the existence of fraud. Rather, fraud must be proven by unquestionable evidence<sup>23</sup>. Fraud is proven in the field of letters of

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<sup>18</sup>Kilani, previous reference, p. 121

<sup>19</sup>Al-Taher, Belissaoui Muhammad (2012), *Obligations of the Bank in Documentary Credits*, 1st Edition, Al-Halabi Human Rights Publications, Beirut, pp. 5-pg.6.

<sup>20</sup>Ali Jamal Al-Din Awad, previous reference, p. 126

<sup>21</sup>Bassiouni Abdel-Elah fraud in documentary credits and methods of protection from it p. 272

<sup>22</sup>Hamdi Mustafa, Cheating from the beneficiary in the bank letters of the guarantor and its impact on the bank's commitment in accordance with the UNCITRAL Agreement 1995, research published in *Sharia and Law*, UAE University, No. 50 (pg. 38)

<sup>23</sup>Bassiouni Abdel-Elah, previous reference, pg. 290



credits by all methods of proof in accordance with the principle of freedom of proof in commercial materials and freedom of proof of the pillars upon which commercial operations are based, and it is permissible to prove commercial operations by all methods without wasting time and without formal complications. Fraud in goods after their arrival is proven by judicial experience. As for fraud in the field of documents, it is proven by, for example, that the report proves the document's inaccuracy, or the fraud is proven by comparing the documents with some of them, through a record of proof of status or inspection or knowing the document's inaccuracy and invalidity. However, this proof must be done prior to the implementation of the credit and the due date of payment of its value. The evidence must be clear before the credit is executed, i.e. before the credit amount is due, and before payment or before the final stage of the credit implementation if it is implemented in stages.

### **The third section: Forms of fraud in LC**

#### **1- Fraud in documents:**

Here, documents that are apparently sound and conform to the terms of the letter of credit are presented, but they are made with clear distrust, as it is known that the documents do not in fact match the reality and the goal, and this deceives the bank to obtain the amount of credit, and in this case the bank has the right to refrain from paying the amount of credit and if the buyer has proven that the bank, beyond any doubt, has deceived the beneficiary, so the bank must refrain from paying the value of the credit, since fraud harms the interests of the parties to the LC contract and also works to breach the trust on which business is based, especially banking business <sup>24</sup>. An example of the bank's rejection of documents in the event of a contradiction is if it appears in the bill of lading that the goods have been shipped from a specific port in that the certificate of origin refers to another port, and in such a case the documents must be rejected <sup>25</sup>

#### **2- Fraud in merchandise**

Fraud in the goods subject of the contract is considered one of the most common forms of fraud in LC when the buyer is surprised by goods other than those agreed upon, or do not conform to the conforming specifications other than the credit, or in the shortage of goods, or their weight. The beneficiary may deliberately submit documents that appear to be in conformity with the terms of credit, but in fact there are defects, or that the goods were shipped from a particular port, while the certificate of origin states that it was shipped from another port <sup>26</sup>. Examples of this also include the absence of the goods described in the documents, so the goods in the containers are empty, or the goods are of poor quality other than those described by the documents, or the goods described by the

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<sup>24</sup>Bassiouni Abdel-Elah, previous reference, pg. 281

<sup>25</sup>Hosni, Ahmed, Maritime Sales, Mansha'at al-Maaref Alexandria, 1983 p. 389

<sup>26</sup>Hosni, Ahmed, previous reference, p. 389

documents have a wrong description, or the submitted bill of lading includes the presence of the type of merchandise is completely different from the merchandise actually shipped<sup>27</sup>.

#### **The fourth section: Conditions for Fraud in LC**

- 1- The fraud must be apparent and proven with evidence that cannot be discussed. It must be clear and cannot be discussed by the competent court. It must not be an illusion or belief on the part of the purchaser <sup>28</sup>.
- 2- The fraud must be from the one who is invoked against it; the beneficiary, and it must be confirmed because it is not presumed in good faith, but rather it must be submitted to the court with conclusive evidence <sup>29</sup>.
- 3- Fraud must be related only to a valid LC, so that fraud is considered as a reason for seizing the LC with complete terms and conditions, and therefore fraud is not considered in the field of LC if the credit is invalid, expired, or has not yet begun to be effective <sup>30</sup>

#### **Topic three: Seizure as a consequence of fraud in the LC**

Seizure is one of the temporary measures that precede the filing of a right case, as the right holder fears losing his right to the debtor, whether by smuggling or changing money. And here we are talking about the resort of the right holder, whether the customer is the ordering customer or the buyer and others, to take the seizure procedure to prevent the implementation of the LC in case of fraud and other illegal acts. By filing an action to establish the right that is considered complementary to the seizure, otherwise the seizure will be void <sup>31</sup>.

Seizure is an important means of temporary judicial protection that is decided to ward off the danger that the creditor expects on the general guarantee of his right. Therefore, seizure acquires its importance due to its effects in the practical reality in litigation, in order to ensure that the rights of litigants are preserved and fulfilled. The seizure is an important tool used by the seizure requester to influence the financial position of his indebted, and it may also be a malicious tool to harm the debtor if the creditor uses it in distrust<sup>32</sup>. Therefore, various legislations have taken care of regulating seizure and setting controls for it to ensure achieving its objectives and not misusing it. The Jordanian legislator has taken precautionary seizure as a preventive means to ward off the danger to the right of the creditor who is threatened with loss, and regulated it in the Civil Procedure Code No. 24 of 1988

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<sup>27</sup>Baatash Laila, previous reference, p. 76

<sup>28</sup>Ali Jamal Al-Din Awad, previous reference, p. 361

<sup>29</sup>Bassiouni Abdel-Elah, previous reference, pg. 289

<sup>30</sup>Ali Jamal Al-Din Awad, previous reference, p. 353

<sup>31</sup>Musa, Talib Hassan (2011). Commercial papers and banking operations, previous reference, p. 247.

<sup>32</sup>Taher, Belissaoui Mohamed (2012), Obligations of the Bank in Documentary Credits, previous reference, p. 245.

and its amendments, especially in Articles (141-152) of it, as well as in the Jordanian Execution Law of 2007 and its amendments.

Due to the importance of implementation to ward off danger, the legislation has drawn it up for two considerations: expediting giving the creditor his right and facilitating the means to fulfill it with simple, quick and low-cost procedures, and protecting the debtor from the abuse and greed of the creditor and being kind to him. Therefore, seizure is one of the urgent procedures that are issued in order to prevent the debtor from disposing of the money for fear of losing rights. The independence relationship arising from the LC process, including the relationship between the bank issuing the credit and the beneficiary, may be invested by some in an illegal practice. Perhaps at the forefront of these practices is fraud, which is intended to cheat on the part of the beneficiary in carrying out his obligations, so the implementation is defective with the intention of harming the buyer (client), and at the same time obtaining the value of the accreditation. There is also fraud in the documents, contrary to reality, by changing their truth or the content of their data, or by tampering with their contents during the moment of their issuance or at a later stage<sup>33</sup>. It is worth noting here that the unified assets and customs did not address the case of fraud in the credit, but it tried to correct it or prevent it and benefit from it by examining the documents by the bank. The American judiciary dealt with this through the first cases that included the case of fraud in the LC, which is the "Sztejn" case. Where the buyer demanded to prevent the bank from paying the amount of credit on the grounds that the seller committed fraud, the court granted him that. The court indicated that the principle of independence of the bank's obligation arising from the letter of credit should not extend to protect the unscrupulous seller<sup>34</sup>. However, in the Shaffer case, the court relied on the fact of fraud in the documents required under the letter of credit and indicated that despite the principle of independence and that the bank is not obligated to ascertain what the documents presented to it represent, the bank refrains from fulfilling the beneficiary in order to prevent abuse of the principle of independence, and that When the "Mid-America" case was presented to the Supreme Court, the court ruled that fraud in the base contract extends to the bank's relationship with the beneficiary and deprives the latter from obtaining the value of the credit, in order to prevent any fraudulent behavior from benefiting from the fruit of his behavior<sup>35</sup>. Contrary to what was done by the American judiciary, the English judiciary did not expand on considering fraud as a compelling reason for the bank's failure to pay the value of the credit, but it was limited to the case of clear and obvious fraud that is shown in the documents<sup>36</sup>. There are cases that allow the bank to refrain from fulfillment against documents that may appear to be identical, but in fact they contain obvious defects such as fraud and fabrication. These defects not only allow the bank

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<sup>33</sup>Al-Ghamdi, Abdul-Hadi Muhammad (2016). Content and scope of the commitment of the bank issuing the documentary credit to examine documents in accordance with the unified rules and norms (Bulletin 600) and in the light of the comparative judiciary (English and American), International Journal of Law, College of Law, King Abdulaziz University, Riyadh, p. 23 and beyond.

(34) *Sztejn v. J. Henry Schroder Banking Corp* 31 N.Y.S.2d 63, sup. ct. N.Y.CTY.1941.

(35) *Mid-America Tire, Inc. v. PTZ Trading Ltd.* 768 N.E.2d 619 (Ohio 2002).

(36) Yanan Zhang ˆ Approaches to Resolving the International Documentary Letters of Credit Fraud Issue (Publics. Univ. E. Finland. Dissertations in Soc. Sci. & Bus. Stud. No. 15 (2011); Nevin Meral ˆ The Fraud Exception in Documentary Credits: a Global Analysis ˆ 5 Ankara B. Rev. 39 ˆ 40 (2012).

to refrain, but also give the court the power to issue an order to prevent the fulfillment of these documents.

**Among the most important of these cases are the following:**

1. That the submitted documents do not respond to the guarantees imposed by law: Among these guarantees that must be available when transferring or internationalizing any document of ownership are estimated in Article (7) of the Uniform American Commercial Law, including that the document is real, and it doesn't include any fact that may affect its validity or value, that the circulation is correct and fully enforceable with respect to the quality of the subject of the bond and the goods it represents. The second case is that one of the documents required under the documentary credit and submitted by the beneficiary is fake, while the third case if one of the documents required by the credit and submitted is tainted by fraud, and the fourth case if there is fraud in the transaction. And when the Egyptian judiciary addressed this matter, we found that the articles indicated that and they are (341: 350) of those cases, where Article (347) stipulates that: 1- The bank must verify that the documents comply with the instructions of the person ordering the opening of the credit, 2- If the bank rejects these it shall immediately notify the issuer of the refusal, stating his reasons<sup>37</sup>. Then Article (348) stipulated that: (1- The bank shall not be liable if the documents appear to be in conformity with the instructions received from the orderer, 2- The bank shall not bear any obligation related to the goods for which the credit was opened). Commenting on the explanatory note on the article, it said that if the documents are sound, then there is no responsibility on the bank if the merchandise is incomplete or defective<sup>38</sup>. Also, the Rules issued by the International Chamber of Commerce No. 500 stipulated in Article (3) that<sup>39</sup>: Credits are by their nature independent transactions from sales and other contracts that may be the basis for them. Banks are not concerned with or bound by these contracts, even if a reference is mentioned in the credit. Accordingly, the obligation of the bank to pay or accept withdrawals or internationalize or carry out any other obligation in accordance with the credit may be the subject of arguments or defenses submitted by the customer, the matter arising from his relations with the ordering bank or with the beneficiary. These texts have become part of the Egyptian legislation that guides them. The Egyptian law is devoid of an explicit text that establishes an exception on the basis of the independence of the documentary credit in the event of fraud. The rule stipulates that the bank does not ask about elaborate forgery because its examination is superficial. As for the open fraud, which is easy to detect by the apparent examination of documents. The bank must reject the forged document because it does not comply with the conditions for opening the credit, and if it accepts that, it will be responsible and cannot revert to the customer, ordering what he paid as the value of the documentary credit<sup>40</sup>. The Egyptian jurisprudence distinguishes in the context of fraud, which gives the bank the right to refuse the value of the credit, between several forms, the most important of which is that the documents submitted by the beneficiary are forged, as if they are attributed to a certain authority or statements that do not agree at all with the truth, as if the bill of lading includes a different

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<sup>37</sup>See: the text of Article (347) of the Egyptian Commercial Law.

<sup>38</sup>See: the text of Article (348) of the Egyptian Commercial Law No. 17 of 1999.

<sup>39</sup>See: the text of Article (3) of the Standard Rules and Customs No. 500.

<sup>40</sup>Abdel Hamid, Reda El-Sayed (2002), Arbitration in the Bank Guarantee and the Letter of Bank Guarantee, Dar Al-Nahda Al-Arabiya, Cairo, p. 303.

type of merchandise. The Egyptian jurisprudence distinguishes in the context of fraud, which gives the bank the right to refuse the value of the credit, between several forms, the most important of which is that the documents submitted by the beneficiary are forged, as if they are attributed to a certain authority or statements that do not agree at all with the truth, as if the bill of lading includes a different type of merchandise<sup>(41)</sup>.

### **Conclusion:**

By the end of our research in which we dealt with fraud as one of the reasons for seizing a letter of credit, there is a set of results and recommendations as follows:

### **Results:**

- 1- LC is a means to facilitate the implementation of international sales, as it is able to overcome many of the problems and risks associated with international trade exchange, as financing international trade deals through letters of credit contribute effectively to the growth of this exchange because of the role it plays in reducing its risks and building confidence between parties.
- 2- The principle of banking independence means examining documents that conform to the international contract with the conditions contained in the LC, without an obligation to examine their conformity with the goods or contracts associated with them, which led some people to use fraudulent methods in order to obtain the value of the LC without the right of the matter, which caused harm to beneficiaries and banks.
- 3- Seizure is one of the most important means that prevents the implementation of the LC in case of fraud and other illegal acts, and among the temporary measures that precede the filing of a right case if the right holder, whether the customer is the ordering or the buyer and others, resort to a mechanism to prevent the implementation of the LC in case of fraud.
- 4- In order for fraud to be invoked as one of the reasons for seizing the amount of the LC, the protest must not be made except after conclusive evidence of the fact of its existence is available in order to avoid any fraudulent claims from some distrustful buyers. It is suspicious, and the fraud must have originated from the one invoked against it, and it must be related to a valid LC.
- 5- Fraud may occur in the goods subject of the contract, such as if they are other than those agreed upon, or do not conform to the conforming specifications other than credit, or lack of goods, or their weight. Fraud may occur in documents by presenting documents that are apparently sound and conform to the terms of the letter of credit, but they are done in clear distrust, as they do not, in fact, match reality and the aim is to deceive the bank to obtain the amount of credit.
- 6- The Jordanian legislator did not set independent rules with regard to seizure of LC and did not take into account the specificity of this type of seizure.

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<sup>41</sup>Baatash, Laila (2014), The effect of fraud in the foundation contract on the implementation of the documentary credit, previous reference, p. 69.

### **Recommendations:**

- 1- The researcher recommends the necessity of setting independent rules with regard to seizure of LC, taking into account the specificity of this type of seizure.
- 2- The researcher recommends the Jordanian legislator to keep pace with the progress and development of the banking business and meet its needs by enacting a special legislation regulating all issues related to letters of credit, deriving its provisions from the texts of the principles and usages of letters of credits(600) and the general provisions of the Civil Code.
- 3- The researcher recommends the necessity of viewing fraud as one of the reasons for seizure of LC.
- 4- The researcher recommends the necessity of stipulating the conditions of fraud as one of the reasons for seizure, and that this should not be left to the discretion of the judiciary.

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