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Documentary Credit Problems
and Fraud

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Abstract

Documentary credit is a commitment of a bank to pay the seller of goods or services a certain amount provided he presents documents as evidence for the shipment of goods or the performance of services in accordance with the letter of credit terms and condition.

In Chapter I, we shall discuss the reason behind the creation of documentary credit talking about the risk of non completion, types of documentary credit and the uniform customs and practice for documentary credits.

Banks can intervene to settle international commercial transactions on behalf of buyers and sellers, They provide a form of security to parties involved and ensure payment provided that the terms and conditions of the credit have been fulfilled. In documentary credit operation, four parties are involved: the buyer, the seller, the issuing bank and the advising bank that may be also the confirming bank.

The letters of credit are issued subject to the uniform customs and practice for documentary credit (I.C.C. 400). It is composed of 56 articles that are divided into six topics:

- General provisions and definitions (Articles 1-6)
- Forms and notification of credits (Articles 7-14)
- Liabilities and responsibilities (Articles 15-21)
- Documents (Articles 22-42)
- Miscellaneous provisions (Articles 42-53)
- Transfer (Articles 54-55)

In Chapter II, we shall discuss the problems due to misunderstanding that may be faced by parties involved in

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Introduction

Documentary credit is a very important subject. This importance is due to the tremendous increase in international trade because the value of the merchandise exports and imports by trade partners for the years 1985 and 1991 have risen from 1,821.5 billions U.S. Dollars in 1985 to 3,441.2 billions U.S. Dollars in 1991 as declared by the International Monetary Fund in 1992 in its Direction of Trade Statistics yearbook. It is a service that offers a unique and universally used method of achieving a commercially acceptable compromise between buyers and sellers. In simple terms, "a documentary credit is a conditional bank undertaking of payment."¹

The aim of this paper is to help the buyers, sellers, shipowners, insurers and bankers saving a lot of money in losses from problems that may be faced by them in a documentary credit operation. These problems are of two types. The first type is about misunderstanding problems due to errors and mistakes arising between all parties involved in documentary credit operations. The second type is about fraud, or problems related to bad intention.

In chapter one, we shall start by introducing and defining documentary credit. We shall discuss the reason behind the creation of documentary credit, talking about the risk of non

¹ International Chamber of Commerce, Guide to documentary credit operations, (Paris, I.C.C. publishing S.A. 1985) p. 6.

completion. Then, we shall proceed by examining briefly the various types of documentary credit, the history and the aim of the uniform customs and practice for documentary credits.

In chapter two, we shall discuss the problems due to misunderstanding that may be faced by all parties involved in documentary credit operations. We will mention some examples of problems arising between banks and traders as well as the solutions to avoid these problems. We shall also talk about the commitments and obligations of the banks and the problems that may be faced by them.

Chapter three will deal with trade fraud. Many types of fraud will be discussed in this chapter as well as examples corresponding to each type of fraud. In addition, some precautionary measures shall be mentioned in order to show how to avoid fraud.

Moving forward, chapter four will discuss some cases of documentary fraud with their juridical solutions, as well as the cases that allow the bank or the buyer to refuse the documents presented for negotiation.

Finally, chapter five will conclude and resume the subject with some comments, criticisms and recommendations.

Documentary Credit

Documentary credit is known as "a commitment of a bank to pay the seller of goods or services a certain amount provided he presents stipulated documents evidencing the shipment of goods or the performance of services within a prescribed period of time."²

Hundred years ago, documentary credit and bank guarantees were unnecessary to securing payment, because export goods used to be transported on board ships belonging to large trading companies. The representatives of these companies would sell the merchandise and purchase import goods to be sold directly to buyers.

During the 19th century, government licensed trading monopolies began to disappear, opening the market's doors to businessmen, manufacturers and dealers.

Exporters seek ways to secure payment from importers; and buyers seek way to secure the delivery of merchandise. This could be done through documentary credit.

² Union Bank of Switzerland, guide to documentary transactions in foreign trade, (Switzerland: Union bank of Switzerland, 1985), p. 14.

A. Risk of non completion

Buyer and seller should take into consideration the risks involved in a trade transaction. The seller wants to be certain that the buyer is able to pay the full amount on time; therefore, he should limit the risk of loss by postponing shipment until receipt of payment. The buyer also wants to be certain that the seller is going to deliver on time, the goods, exactly as he ordered; therefore, he should limit the risk of loss by postponing payment until receipt of goods.

The payment could be done before the goods are shipped, at the time the goods are shipped, after the goods are shipped, or after the buyer receives the goods. For the seller, payment before shipment is preferable. Less to his advantage is payment at time of shipment and even less so is payment after shipment. For the buyer, the position is exactly the reverse. But is the seller ready to ship the goods before receiving the price? Is the buyer ready to pay the amount of the goods before receiving them, and before making sure that they are exactly those he ordered?

Well exchange of goods in international trade bears three types of risk of non completion. The risk of non-completion of the seller and the risk of non-completion in payments against documents sent for collection. Therefore, letter of credit was created in order to avoid the risks of non-completion.

Banks can intervene to settle international commercial transactions on behalf of buyers and sellers. They provide a form of security to the parties involved and ensured payment provided that the terms and conditions of the credit have been fulfilled.

The buyer and the seller will understand where they can compromise to resolve the impasse over time and place of payment, after considering several specific risks that may lead to the non completion of the transaction.

1. The Risk of Non-Completion of the Buyer

The exporter is afraid of sending the goods without receiving the amount from the buyer. Therefore, the seller wants the assurance that the buyer is able to pay in full once the merchandise has been shipped, because the seller is afraid of the non-completion of the buyer due to his insolvency, dishonesty, or some other cause. In this case, the risk of loss will fall upon the seller.

2. The Risk of Non-Completion of the Seller

The buyer is afraid of financing goods that he is not going to receive. Therefore, the buyer wants the assurance that the seller is going to ship the exact merchandise, because the buyer of the non-completion of the seller due to his insolvency, dishonesty, or some other cause. The buyer is afraid of paying for the goods and that the seller will not complete his obligations and hence will not send the merchandise. The buyer

does not want to bear the risk of loss due to injury to the merchandise, because if payment is made before shipment, the risk of loss will fall upon him.

3. Payment against Documents for Collection

A documentary collection can be defined as the collection of a sum due from a buyer by a bank against delivery of certain documents. In this case, the collection bank can only release the documents against cash or against acceptance of a draft signed by the buyer. But what if the buyer refuses to honor the documents, the finding of a substitute buyer or the return transport of the merchandise might become an expensive proposition to the seller. Therefore, the use of such method in trade can be recommended if:

- The seller and buyer know each other to be reliable.
- There is no doubt about the buyer's willingness and ability to pay.

In this case, the seller is afraid of shipping the goods and sending the documents for collection, but the buyer will not pay for the goods and hence does not pick up the documents. Therefore, he is afraid of the non-completion of the buyer.

B. Documentary Credit types and operations

There are various types of documentary credits:

A revocable credit is a risky credit to the exporter; it may be amended or canceled by the buyer without informing the seller (Article 9 (a), UCP). Therefore, the seller would then face

the problem of obtaining payment directly from the buyer.

An irrevocable credit can be amended or canceled only with the approval of the issuing bank, the confirming bank and the seller (Article 10 (d), UCP). It gives the seller greater assurance of payment.

A confirmed irrevocable credit gives the seller a double assurance of payment since two banks are adding their undertaking: the issuing bank and a bank in the seller's country (advising bank).³

Usually in documentary credit operations, four parties are involved: the buyer, the seller, the issuing bank or the opening bank and the advising bank that may be also the confirming bank. After concluding a sales contract with the seller providing for payment by documentary credit, the buyer asks the opening bank to issue a letter of credit in favour of the seller. The issuing bank asks his correspondent in the seller's country to advise or confirm the credit. The advising bank, in his turn, informs the seller that the credit has been issued. Once the seller receives the credit and is satisfied with its terms and conditions, he ships the goods, prepares the documents and presents them at the counters of the advising bank. The bank checks the documents; if they meet the requirements of the credit, the bank will pay if the credit was available by sight payment or accept to pay if the credit was available by acceptance of drafts. The advising bank mails the

³ International Chamber of Commerce, guide to documentary credit operations, (Paris: I.C.C. publishing S.A. 1985) p. 10.

documents to the issuing bank who, in his turn, checks them. If the documents meet the credit requirements, the issuing bank released them to the buyer. The issuing bank reimburses in the pre-agreed manner the confirming bank that has paid or accepted the credit. The seller may sometimes present documents that do not meet the credit requirements. In such a case, the advising bank can only act in one of the following ways:

1. Return the documents to the seller to have them amended for resubmission within the validity of the credit and within the period of time after date of issuance specified in the credit.
2. Send the documents for collection.
3. Send a telex or letter to the issuing bank for authority to pay or accept.
4. Accept documents and effect payment under reserves, i.e. retain the right of recourse against the beneficiary of the issuing bank and refuses to provide reimbursement against the documents.

Once we have talked about the risk of non completion and the documentary credit types and operations, we should talk about uniform customs and practice for documentary credits. The aim of uniform customs and practice for documentary credits is to

protect the parties involved in the documentary transactions and search for solution to give each party its right as a result of the transaction.

C. Uniform Customs and practice for Documentary credit (I.C.C. 400)

The letters of credit are issued subject to the Uniform Customs and Practice for Documentary credits; the UCP first drafted by the International Chamber of Commerce in 1930, defines procedures and establishes guidelines to facilitate the handling of letters of credit. However, the UCP should not be thought of as a series of mandates for the practice business. Through the years, its rules have undergone various changes, as custom and practice have changed and as new techniques have been developed. The latest revision emerged from the Commission on Banking technique and Practice of the ICC in 1983, and has been adopted by banking institutions in more than 160 countries.

The documentary credit system at the beginning was not organized as a legal system but as a practical system to simplify the process and to settle foreign contracts and provide security to all parties. But the development of international trade during the years, with the absence of a unified practice, lead to many legal and practical problems.

1. Development of the U.C.P.

After the first and second world war, international trade and ways of transportation have expanded and developed very quickly. The dates mentioned below will show the development of the uniform customs and practice for documentary credit as an instrument for conducting business. "Principles had to be formulated which were to be applicable to international law and set up in the form of brief, concise rules for common usage and practice."⁴

The protection granted by the uniform customs and practice is to enable all parties concerned to run their operations in a way that one party cannot either interpret these regulations or escape from their applications. The uniform customs and practice for documentary credits are the universally recognized set of rules governing letters of credit. These rules are guiding all situations and types of international trade. They are imposed on all parties.

In 1920, a group of American, businessmen and economists, has set up some unified rules for documentary credit. These rules have been applied by some American banking institutions that have printed and distributed them to their correspondents.

⁴ International Chamber of Commerce, guide to documentary credit operations, (Paris, I.C.C. publishing S.A. 1985) p. 42.

In 1923 and 1924, the German and French banks issued successively a list of unified rules for documentary credit. In 1925, Italy, Sweden and Czechoslovakia had cooperated together in issuing unified rules concerning documentary credit. Argentina issued the same rules in 1926, Denmark in 1928 and Netherlands in 1930. These rules helped in approaching the points of view between these countries.

After that, a banking commission met in Washington in 1931 and came out with a unified study called "The uniform customs and practice related to documentary credits." These rules were agreed among all countries which met in the seventh meeting of the International Chamber of Commerce held in Vienna in 1933.

After the Second World War, and due to the large development and expansion in international trade, some amendments were necessary to the uniform customs and practices in order to meet the new need. For these reasons, a group of specialists from the International Chamber of Commerce studied these amendments and came out with a new modified list of rules in the meeting of Montroe in year 1947. Sixty countries met in Portugal, in 1951, and agreed upon applying these new customs of documentary credit.⁵

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محمد ديب، الاعتماد المستندي (دار الشمال للطباعة و النشر ١٩٨٩) ص

Between 20 - 27 April, 1963, in Mexico, 1500 members representing 37 countries agreed upon the new "Uniform Customs and Practices" concerning the documentary credit.

After that, the Uniform Customs and Practices had been modified twice: first, in 1974; and second, in 1983 revision (publication n° 400). It became effective starting 1st October 1984.

The uniform customs and practice for documentary credits has remained indispensable for a long period of time because international trade continues to require accepted rules governing the use of documentary credits.

The uniform customs and practice is composed of 56 articles which are divided into 6 topics:

1. General provisions and definitions (articles 1-6)

These articles state that all documentary credits must express by wording that they are issued subject to uniform customs and practices for documentary credits, 1983 revision, ICC publication 400.

They also define documentary credits, and insist that all parties concerned deal in documents and not in goods or

4. Documents (articles 22-42)

These articles mention that the credits must state precisely the documents against which payment or acceptance is to be made.

- Transport documents
- Insurance documents
- Commercial invoice
- Other documents.

5. Miscellaneous provisions (articles 43-53)

These articles state the terms used on documentary credit concerning:

- Quantity and amount.
- Partial shipment and transshipment.
- Expiry date and presentation date.
- Loading on board, dispatch and taking in charge.
- Date terms.

6. Transfer (articles 54-55)

These articles define the transferable credit, that is a credit under which the beneficiary has the right to make the credit available in whole or in part to one or more other parties.⁶

⁶ I.C.C., U.C.P. for D.C. (I.C.C. 400) (Paris: ICC publishing S.A. 1983) p. (8-38)

Whenever parties choose the uniform customs for documentary credits as the general rule for their business, they will no more be able to avoid them even if it is in their interest to do so. Therefore, the parties involved should take care in order not to fall responsible for any mistake or fraud problem that may take place since that risk can be reduced but not eliminated.

The documentary credit fulfills, to a great extent, the needs for both buyer and seller, with regard to covering the risks entailed. It is an effective way of bringing an element of confidence and security for both parties. These problems which are due to misunderstanding among all parties are discussed in detail in chapter two.

International trade, nowadays, means complex situations that a businessman will not be able to deal with, when a contract goes wrong. An increasing number of international business disputes are resolved every year by the International Chamber of Commerce court of arbitration.

The International Chamber of Commerce is the oldest and most active of the international commercial arbitral institutions with around five thousand claims during its fifty eight year history.

Finally, we should know that "payment against documents cannot give protection against the risk of fraud when dealing with a counter party who is not known, or on whom reports are not satisfactory "know who" can be even, more important than "know how."⁷

⁷ International Chamber of Commerce, guide to documentary credit operations, (Paris: I.C.C. publishing S.A. 1985) p. 5.

Chapter II

Problems arising from Documentary Credit Operations

The documentary credit achieves a commercially acceptable compromise between the conflicting interests of buyer and seller by matching time of payment for the goods with the time of their delivery. It does this, however, by making payment against documents representing the goods rather than against the goods themselves.

Banks, buyers and sellers should observe certain rules of common sense. The buyer's instructions to the issuing banks must be clear, correct, precise and free from excessive detail. The bank cannot be expected to guess what the buyer wants nor can it check complicated and often technical specifications.

The buyer should not call for documents that the seller cannot provide, nor set out conditions that he cannot meet. When it is time to present the documents, the seller should present the required documents exactly as called for by the credit and as quickly as possible - and in any case, within the validity of the credit and within the period of time after date of issuance of shipping documents.

The problems arising from documentary credit operations are of two types:

A. Problems related to documentary Credit Operations

1. Unverifiable conditions in documentary credits

When an application for a credit includes a condition which obviously cannot be verified by the bank in the document called for under the credit, it is convenient and practical for the bank to call the beneficiary to furnish a certificate or statement certifying to the fulfillment of that condition. It is for the seller and not for the bank to say how that condition should be controlled or verified and by whom. Because it is for the seller to decide and to request the opening of the credit.

2. Vague amendments in documentary credits

The amendments to documentary credits must be expressed clearly, because assumptions are dangerous in commercial credit procedure. For example, a documentary credit expressly provided for payment against commercial invoice, insurance policy and a bill of lading to be shipped on a CIF basis. Subsequently, the credit was amended changing the price basis from CIF to C & F.

The seller assumed that the insurance policy is no more required since the price basis was changed from CIF to C & F; therefore,, he presented the documents for payment without including the insurance policy.

This problem happened through a misunderstanding between the buyer and the seller. The shipment was not insured at all. Therefore, the amendment must state also that the insurance policy is deleted and thus no more required.

Another misunderstanding can arise when increasing the amount of credit without indicating what the amount of the increment covers. Because an increase may signify, more goods at the same price, or less goods at a higher price.

Therefore, when making amendments to documentary credits, the responsibility of the bank is to see whether the changes being made tend to contradict other conditions in the documentary credit or not.

3. Unclear conditions in documentary credits

When there is an unclear condition in the documentary credit, the bank should refer to his client, or it will create a problem with the customer. If the customer's application for a commercial letter of credit does not appear to be right, and the bank tempted on its own to make it 'right,' it must know that the customer is always right. An example, about a bank that was asked to open a credit covering a shipment of 'ADZING MACHINES.' The bank thought that there was a misspelling, so it changed the word to 'Adding' and advised the beneficiary accordingly. Later, the beneficiary called to inquire if he had not made a mistake in mentioning 'Adding Machines' as his customer's order called for 'Adzing Machines.'

Another problem may arise when the buyer asks the bank to fill out the application for a documentary credit. Usually, in such cases, the buyer will hand the bank a copy of the order which he placed with the supplier. The order contains all the

details of the transaction and serves to guide the bank in filling out the buyer's application, but not everything in the order will or should go into the credit. Most customers are very careful and will sign only after mature consideration. But some will sign with no more than reading the amount of the credit. An example to this is about a buyer who agreed with the seller on a proforma invoice covering '40 Kegs containing bolts, each bolt 3 inches long, guaranteed to be suitable for carriage at US Dollar 75.00 per Keg, CIF.' The buyer gave the proforma invoice with all details needed and asked the bank to fill up an application for a documentary credit. The bank aims to keep the terms and conditions of credit simple and free of details. So, when the bank opened the letter of credit it omitted from the application and consequently from the credit 'each bolt, 3 inches long, guaranteed to be suitable for carriages.' The buyer signed the application without reading all the details.

The seller makes the mistake of shipping bolts measuring 4 inches instead of 3 inches. The bank did not detect this difference in size in the documents presented because size was not included in the credit. The buyer was obliged to accept the merchandise because he has signed the application. In such a situation, it is just as important for the buyer to consider what is being left out of the application as it is for him to consider what is being put in.

4. Transmitting incomplete information

Banks should be sure about transmitting information.

regarding commercial letter of credit transactions. For example, a buyer asked the issuing bank to cable the advising bank to find out if shipment has been made under a documentary credit which had been opened to cover an importation of rice.

The advising bank did so gladly, and when the seller was asked, he informed the inquiring bank that "10,000 bags of rice were shipped on board the SS. Atlantic," where upon the advising bank cabled the issuing bank as follows: "your credit n° 13 10,000 bags rice shipped steamer ATLANTIC."

The draft and documents were negotiated and the advising bank eventually accepted the draft to mature in 60 days and airmailed the documents to the advising bank. The steamer arrived but the rice was not shipped at all. So, the buyer called the bank to stop payment on the acceptance, claiming the seller committed fraud. When the buyer was told that payment could not be stopped because the documents were correct, he blamed the banks for misleading him. So, what was the problem? And what went wrong? It was the seller who said the rice was shipped and not the bank. But the bank failed to transmit the information referring the seller. Therefore, the bank became the only responsible one because it should have cabled as follows:

'Your credit n° 13, seller states, 10,000 bags rice shipped on board the SS. Atlantic.'

B. Problem related to documents directly

1. Accepting more documents than are required

It is indeed a problem to know what to do with documents which are presented in addition to those called for under commercial letter of credit, specially if the bank is trying to be reasonable, practical and accommodating without running the risk of being hurt. So, if the bank does more or less than it is required to do with respect to the stated terms and conditions of a credit, it is opening the door to trouble. Additional documents could bring on almost as much trouble as too few documents. For example, when a buyer asked the issuing bank to issue a letter of credit in favour of a seller for the amount of U.S. Dollars 20,000 covering sportswear to be imported from Italy. Payment was available by sight payment, C & F Beirut port. Insurance to be effected by buyer, therefore, insurance policy was not required as a document. After shipment had occurred, the seller presented the documents including an insurance policy which he was not drawing for the premium. The buyer had covered his own insurance and when the shipper applied to him directly for settlement of the premium, he asked the bank to pay the premium because, if a bank has been offered additional documents and it is disposed to accept them, these documents must be treated as if they were called for by the credit. The result was that the bank has paid the premium to resolve the issue without debate.

Therefore, in order not to face this problem, the

strict and proper course for banks to follow would be to take only the documents called for by the credit no more, no less. It is important for all parties to the documentary credit to know precisely what documents are required and what are the other terms and conditions in order not to face problems.

2. Alterations and mutilations in documents

Banks must be careful in the examination of documents and watchful of alterations, erasures or mutilations of any kind. Although banks are not responsible for the genuinesses or falsification of documents (article 17 of the UCP - ICC 400), the buyers would have a strong case against any bank that accepted documents in which there were obvious alterations or mutilations which were not initiated on behalf of the carrier.⁸

An example is about a correspondent bank that has honored a draft under a documentary credit and later learned from the issuing bank that the goods on arrival weight far less than represented in the invoice and bill lading.

In this case, the weight given in the bill of lading was raised after the bill of lading was signed and the seller drew for more than he should have. The buyer accused the bank for accepting bills of lading with unauthorized and unapproved alterations.

⁸ International Chamber of Commerce, Uniform Customs and practice for documentary Credits. (Paris: I.C.C. publishing S.A.).

3. There are no 'Unimportant' discrepancies

During the examination of some documents which were attached in a draft presented for negotiation under a letter of credit, the bank stated that the documents were found to contain "various discrepancies." What may have been unusual, in this case, was the distinction drawn between "the principal" discrepancy and all of the other discrepancies. One discrepancy was regarded important, but the others were considered unimportant. The point to make here is this: When it comes to negotiating, paying or accepting drafts drawn under letters of credit, all discrepancies are important; the example to state is the following.

A bank opened a letter of credit by order of a Lebanese trader and in favour of an American supplier. Covering the importation of Brazilian coffee with all necessary information concerning the qualifications of coffee; however, the coffee should be packed in double jute bags, inner used, outer new.

One month later, documents were presented to the correspondent bank and sent to the opening bank with no discrepancies, but the commercial invoice stated that coffee is packed in new double jute bags. The bank accepted the documents, since no principal discrepancies were shown; and according to him, two new bags are better than one new and one used.

When the buyer has been called to take up the documents and pay the amount of the bill, he refused to do so because the

packing was not as he asked for it, and this will cost him a lot of money as he told the bank, later on. Because the coffee is bought and sold on weight basis and the inner bag will absorb the oil coming from the coffee and thus there will be no loss of weight. However, if both bags were new, they will not absorb the oil and a loss of weight will occur causing a big loss to the importer. Therefore, banks should always refer to their clients before accepting documents when it comes to goods qualification, and they should also know that all discrepancies are important.

4. Banks should fulfill their commitments and obligations properly.

When shipment on board a vessel is evidenced by means of a notation on a bill of lading, not only must this notation be signed, but also it must be dated. Here is the case of a credit that called for documents including on board bills of lading dated not later than February 28th and provided for drafts and documents to be presented on or before March 2nd.

The beneficiary presented the documents on March 1st with the bills of lading dated February 28th; and as might be expected, he was in a hurry for his money.

The examination of the documents next day failed to disclose in the bills of lading any evidence that the goods were put aboard the vessel on February 28, the day on which the goods were delivered to the dock. The beneficiary was notified by telephone, and within half an hour, he appeared at the counter of

the bank asking for the bills of lading which he promised to have stamped "on board" and returned promptly.

On closer examination of the returned stamped bills of lading, it was found that the "on board" notation was not dated as it should be under the rules.

When the beneficiary learned of this, he confessed that the goods were not loaded on board the vessel until March one, or two days after the dead line in the credit.

Well, from here, we should know that the most important name in a commercial letter of credit is the name of the bank's customer for whose account the credit was opened. This may be so before the credit is opened; but afterwards, it is the bank's name that stands out as the most important. It is that name that must be considered first and above all others. Next in importance is the name of the beneficiary, even if he is not the bank's depositor. Then, comes the name of the negotiating bank, last is the bank's customer's name; the name that was considered responsible enough in the first place to induce the bank to open the credit.

Sometimes a bank may not care to grant a clean loan to a customer but yet is willing to open a commercial letter of credit to cover an importation of merchandise provided the credit calls for title documents to give the bank security and control over the goods. That is, the credit must call for a full set of clean on board marine bills of lading issued or endorsed to the

order of the bank. This documentary arrangement will give the bank control, but that depends on the following questions:

- a. Is there likely to be a good market locally for the merchandise in case the bank has to sell?
- b. Is the bank aware that when it pays under a commercial letter of credit it pays for documents and not for goods?
- c. Has the bank taken into account the fact that, even though the documents may be in order, the beneficiary may not have shipped what the customer ordered or anything worthwhile at all?
- d. Does it know if the shipper or beneficiary of the credit is reliable and of undoubted credit standing?

Title documents acquired under commercial letters of credit can give the bank control, but securities depend on the answers to the foregoing questions.

If the customer use pressure on the bank to dishonor a beneficiary's draft, for some reason, the bank will tell that the documents will be examined with extraordinary care. The decision is not a choice between two names, the beneficiary's and the customer's, but between fulfilling and not fulfilling its commitment and the obligations which it incurred voluntarily under the credit.

The responsibility of the bank is limited not only by opening a letter of credit or by receiving the documents, but

also by informing the client about the date of arrival of goods and even to keep the merchandise in safe guard, if it could not reach the client. This opinion is that of Beirut civil (tribunal) court mentioned under a judgment issued on 25.10.1988 n° 282/1984. The court, represented by the president Maurice Khawam and the two judges Karkabi and Abou Alwan, has found that there was no "force majeure" in the events happening in Lebanon, at the end of year 1975. Therefore, banks are not released from their commitments toward their clients.⁹

The case was about a letter of credit amounting eight hundred sixty eight thousand Belgium Francs opened by a Lebanese bank in favour of a Belgium Company. The order was given by Mr. Mohamad Nadim DABBAGH. The goods arrived at Beirut Airport on 17.11.1975 and put outside the customs warehouses. The bank claimed trying to call Mr. Dabbagh, but it did not succeed due to bad situation prevailed in the country.

On 27.02.1976, Mr. Dabbagh has been informed about the arrival of the goods, but he refused to sign the draft of receiving until he makes sure that the goods were safe. And after contacting the Middle East Airlines (MEA), he found that the goods were damaged. Mr. Dabbagh refused to pay the amount of money, and the bank raised a claim against him.

The decision of the court was that the bank is

⁹ Al-Bayan Magazine, March 1989, p. 38.

responsible, even if it has proved that it had tried to contact the applicant but could not reach him due to the events occurring in that time. Bank's responsibility did not end up when it received the documents but also in making sure that the goods are safe until it could contact the client. Therefore, the court rejected the case and claimed the responsibility of the bank.¹⁰

¹⁰ Al-Bayan Magazine, March 1989, p. 38.

Chapter III

Trade Fraud and Precautions

Fraud is the major risk that may face both the buyer and the seller, being a problem that may arise due to bad intention.

International Trade Fraud is not new; however, the problems of fraud have become more complex and international as trade has expanded worldwide. Fraud continues to grow damaging world trade as well as the trust between trading partners. Well, "the International Chamber of Commerce has given thought to the current major problem of fraud, while recognizing that fraud originates when a commercial party first contracts with a rogue, and the documentary credit merely pays for the commercial transaction and cannot police it."¹¹

Commercial parties can themselves improve their own trading operations by taking the necessary precautions. They also benefit from the international maritime bureau whose objectives are to prevent fraud, receive information relating to fraudulent practices, suggest avenues of procedure, advise organizations in improving commercial system, conduct investigations into fraud to design and provide educational

¹¹ International Chamber of Commerce, Uniform Customs and practice for documentary credits, (Paris: I.C.C. publishing S.A. 1983) p. 7.

services.

A. Types

There are many types of international fraud, five of which will be discussed with examples:

1. Documentary fraud

Documentary fraud may occur when the seller presents documents which are falsified in order to receive payment. These documents that are required by the buyer include bill of lading, commercial invoice, insurance certificate, certificate of origin, certificate of quality etc...

Therefore, documentary fraud occurs when sellers and buyers deal with each other through documentary credit operations.

Examples of documentary credits fraud with real cases will be discussed thoroughly in chapter four.

2. Charter party fraud

Charter parties are the contracts of carriage signed between the charterers and the shipowners.

The commercial operations and the contractual obligations between the parties involved occur as follows:

The charterer and the shipowner sign a contract known

as charter party. The charterer hires the vessel and pays the cost to the shipowner who, in his turn, releases the bill of lading to the charterer. The cargo owner pays the freight to the charterer who passes on the bill of lading to him. There is no contract between the charterer and the cargo owner. The relation is between the shipowner and the cargo owner who are related with the terms of bill of lading. The performance of voyage and the delivery of cargo is the responsibility of the shipowner.

As long as each party performs his duty, the voyage will be successful and fraud will not occur unless one or two parties default.

The basic types of charter-party fraud occur as follows:

a. Time charter-parties

Vessels are hired on a daily basis and the cost is usually paid in fortnightly instalments in advance.

The first instalment cost is paid by the charterer when the vessel loads the cargoes. The shipowner authorizes the release of freight prepaid bills of lading to the charterers who pass them to the cargo owner in exchange for the freight. The vessel sails from the port of discharge. If the charterer defaults to pay the next costs and if no agreement is reached between the shipowner and the cargo owners, the shipowner will

sell the cargo illegally to cover his costs.

b. Voyage charter-parties

Vessels are hired on a voyage basis and payment to the owners is usually made in advance. The shipowner collects freight from the charterer and releases the bills of lading to the charterer who, in his turn, also collects the freight and delivers the bills of lading to the cargo owners.

However, if the shipowner demands more moneys, the vessel will not proceed to destination if he is not paid. And thus, he will commit an act of fraud.

3. Cargo insurance fraud

Occurs when "insurance of cargoes is far in excess of their true value in order to profit from the insurance proceeds of a loss."¹²

This type of fraud requires a collaboration between both buyers and sellers. The importer purchases cheap goods from Honk Kong and the exporter issues commercial invoice to a much higher value goods to be issued in the importer's country so that goods are purchased on a FOB or C and F basis. The cheap goods are shipped using bill of lading issued by the carrier but showing details of the fictitious cargo. The buyer arranges for the cargoes to be stolen inside the port and he asks for a

¹² International Chamber of Commerce, guide to the prevention of International Trade Fraud, (I.C.C. publishing S.A., 1985) p. 10

surveyor from the insurance company and claims his freight insurance using falsified documents.

4. Arson

• It is the fraudulent burning of a property. It is the destruction or damaging of property through fire by getting rid of a vessel in order to claim against the insurer. The reasons why this method is used are:

- To claim insurance against fire.
- Difficulty to prove that a fire was started inaccidentally.
- Accidental fires are easy to plan and can be done with minimum risk and crew involvement, because fires started in certain part of a vessel and result to a total loss of the vessel.

Here is the case of a Greek vessel that was insured for U.S. Dollars 750,000, loaded a high-value cargo from the Mediterranean to the Persian Gulf in October 1977. During the voyage, the vessel stopped into a port for repairs. The repairing cost was equal to U.S. Dollars 15,000. The shipowner could not pay the bill. The company which had carried out the repairs arrested the vessel and sold it for U.S. dollars 200,000. The new shipowner demanded new freight charges from the cargo owners who had no option but to pay this extra fee. But a fire broke out and destroyed the vessel. The new shipowner claimed for assurance. The Greek authorities arrested the former and new

owners of the ship and four other persons who were on board. The charges included arson and insurance fraud.¹³

5. Scuttling, deviation and cargo threft

♦♦ Scuttling is closely related to Arson, and offers the owners an alternative to dispose of a vessel for the purpose of claiming against insurance. Scuttling could be accompanied with either cargo fraud or deviation and sale of the cargo when the vessel is lost with a high value cargo aboard. Here is an example about scuttling:

A Sweden supertanker called "Salem" built in 1969 has been placed on sale after many years of service. Salem was sold to Oxford Shipping Company of Liberia, in November 1978. In December 1979, the vessel was on the way from Kuwait to Italy with a cargo of 193,000 Tons of crude oil. The vessel deviated from her destination and arrived on December 27th to Durban, in South Africa. Being renamed temporarily "Lema," the vessel pumped 173,000 Tons of her cargo. On leaving Durban, it was renamed Salem and continued her voyage. On the 16th of January, 1980, the ship's fire-alarm sounded followed by an explosion. The master ordered the crew to the lifeboats. They were picked up by a British ship. The master and the chief engineer and three other members were arrested and found guilty on charges of cargo threft and marine fraud against insurers. The vessel was

¹³ International Chamber of Commerce, guide to the prevention of international trade fraud, (I.C.C. publishing S.A., 1985) p. 8.

scuttled to cover up the sale of its cargo.¹⁴

B. Precautionary measures

There is a lot of necessary precautions to be taken by commercial parties in improving their own trading, shipping and payment procedure when dealing with unknown traders, transporters and agents. Traders prefer to deal with companies with established reputation in their field. The small traders do not have the necessary degree of knowledge to protect their own interests.

The precautionary measures to be taken and the different parties involved are:

1. Embassy Commercial section and Chamber of Commerce

Embassy Commercial section and Chamber of Commerce can do much on the educational side to make traders aware of the risks of fraud in trade and transport transactions. They can advise the merchants on reputable organizations capable of issuing a "report on vessel" document.

Chamber of Commerce is responsible for authenticating documents, especially commercial invoices and certificates of origin.

Chamber of Commerce who know or suspect that their

¹⁴ International Chamber of Commerce, guide to the prevention of international trade fraud, (I.C.C. publishing S.A. 1985) p. 12.

authentication on a particular document has been forged should immediately notify this to the responsible authorities in their country as well as to the insurance organizations and banks.

•• When opening a letter of credit, the Lebanese buyer should require two important documents besides the transportation document. These two documents are the commercial invoices and the certificates of origin.

- Commercial invoices in three copies original of which to be certified by the Chamber of Commerce and legalized by the Lebanese Consulate.
- Certificate of origin in two copies certified by the Chamber of Commerce and stating that the origin of the goods is exclusively European.

Therefore, the certification of the Chamber of Commerce and the legalization of the Lebanese Consulate are important to make sure that these two documents are not forged and that the origin of the goods is the one the buyer wanted. And the legalization of the Lebanese Consulate is important to make sure that the signature and certification of the Chamber of Commerce is not forged.

2. Buyers and sellers

The best way for buyers and sellers to prevent their possible involvement in fraud is to collect information about the parties they want to deal with before entering into any

commitment. When dealing with each other for the first time, buyers and sellers should follow these suggestions:

- a. Shipment of goods to be effected by well-known shipping companies with good reputation, even if their costs were more expensive.
- b. The terms of shipment such as FOB, C and F, CIF, exfactory, FAS etc... should be carefully selected and understood.
- c. Small traders are advised to seek the services of reliable forwarding agents.
- d. A pre- inspections of the goods by independent inspectors who are not connected with the buyer or the seller. Therefore, the orderer should require an inspection certificate to be presented by the beneficiary and to be issued by S.G.S. (Société Générale de Surveillance) at time of loading on board stating that the goods are complied with L/C terms.
- e. "A report on vessel" document could be required by orderer to be reported by a third party verifying the presence of the vessel in the port of loading at the bill lading date and the existence of the goods listed in the bill of lading on board.
- f. If chartered vessels are used, traders should insist on chartering via agents of reputable institution.
- g. Insurance should be secured by a well-known organization.
- h. Concerning the method of payment for the goods, the seller preferred that payment to be effected by a bank acceptable to him and to consult him if there is no doubt concerning the possible execution of the documentary credit before

proceeding to arrange for the shipment of goods and preparation of documents. For the buyer, the documentary credit does not provide the same degree of protection.

♦♦ It should insure that he receives the documents he has demanded in his letter of credit. The buyer must know what documents to require. A documentary collection can provide protection to the buyer who will examine the documents before effecting payment. However, documentary collection will not provide protection to the seller.

Fraud causes damages and additional charges to both buyers and sellers, such as:

- Delay in delivery of goods.
- Physical loss or damage to the goods occurring during transshipment.
- Transshipment, storage, new freight charges and transit charges when goods do not arrive directly at the port of destination; for example, 80% of the vessel to Lebanon were discharging at Cyprus and over-charging the Lebanese traders the freight from Cyprus to any Lebanese port during the war.
- Cost of buying back goods after being sold to third parties at a port other than the destination port.
- Total loss of the goods resulting from their disappearance due to fraudulent sale.

3. Freight forwarders

They are very helpful to their customers in helping them choosing maritime companies with good reputation to avoid the risk of fraud.

They know very well the conditions of transport markets, and they have a close relationship with sellers and buyers, as well as with shipowners and charterers.

They are called upon to express their opinion about the quality of services offered by the respective maritime carrier. This means that the freight forwarders, himself, must take the necessary checks before proposing a particular maritime service to his customers.

Freight forwarders must react when they hear any information that could be useful to their customers, such as new developments in shipping services, changes in freight traders and working situations in the ports of loading and discharge.

4. Banks

Banks deal in documents and not in goods, as well as for the all concerned parties.

Banks encounter two types of fraud:

- Presentation of genuine documents but with subsequent fraudulent action by a third party with respect to the goods.
- Presentation of fraudulent documents for inferior goods or

non-existent goods.

When documents appeared to be in accordance with L/C terms, the banks are obliged to pay. They are not required to verify the genuineness of documents. It is up to buyer to specify the documents to be presented by the seller, and he should choose carefully the carrier or forwarding agent in order to reduce the risk of fraud.

Banks are not responsible for investigating for the standing of the beneficiaries. Therefore, buyers should make necessary inquiries before opening a documentary credit in favour of the seller.

5. Vessels owners and charterers

Inquiries are the best way for vessel owners and charterers to avoid involvement in incident of fraud in order to know which parties to deal with. They are recommended to:

- a. Seek advice on time charterers before agreeing to a charter. Thus, only ship brokers with good reputations should be used.
- b. A bank guarantee covering estimated hire to be delivered to owners on signing the charter party. The owners should also check on the financial status of a charterer.
- c. Owners should not give the unknown time-charterers the right to sign bills of lading on the behalf of the master.
- d. The masters should make sure that the cargo mentioned on the

- bill of lading is on board, and that the bill of lading is signed only by authorized people; but he should, when it is possible, exercise his power to sign the bills of lading.
- e. The masters should make sure that the cargo is released against the duly endorsed original bill of lading or against a guarantee issued by a first class bank.

6. Insurers

Buyers and sellers are both protected by the insurance under contract of international trade. The interests of insured and the insurers are alike. Insurers can do a lot to encourage the use of the protection suggested on buyers and sellers. Since that the consignee in a CIF contract is the one who will suffer for non-compliance, it is unrealistic that insurers should impose conditions in the insurance contract.

Insurance companies deprive underwriters from assessing whether or not a vessel carrying insured cargo falls under the category of fraud. Insurers insert a classification clause that restricts the acceptance of a contract where cargoes are carried on vessels of a certain age and type. Sometimes insurance companies required additional premium to be paid by the insured when the vessel's age is over 20 years.¹⁵

¹⁵ International Chamber of Commerce, guide to the prevention of international trade fraud, (Paris: I.C.C. publishing S.A. 1985) p. 15.

Fraud Cases and Examples

Documentary credit is an arrangement done by banks in order to settle international commercial transactions. It provides a form of security for the parties involved, and it ensures payment that is based on documents only and not on merchandise or services. Payment against documents cannot give protection against the risk of fraud when dealing with an unknown counter party. The buyer should, therefore, check on the standing of a previously unknown seller before dealing with him.

The reception of documents should precede the reception of goods, because without the transportation document the buyer is unable to pick up the goods unless he presents a maritime letter of guarantee issued by the bank. However, the risk that prevail here is that once the buyer takes the merchandise he cannot reject the documents if they show discrepancies.

The buyer can refuse the documents if they are not conform to L/C terms and conditions, and he also has to present the causes of rejecting the documents within a reliable time. If the buyer has accepted the documents, he cannot reject them later on unless he proves that the damages caused by the seller could not be found through the study of the documents.

In this chapter, examples will be discussed in order to

mention and cover as possible the types of fraud that could be faced by all parties involved in the documentary credit transactions.

Due to the increase in the number of the incidence of maritime fraud, marine insurance associations have encouraged their members to apply the classifications clauses that are used in most national insurance markets. The special knowledge of insurers have served the shipper well by enabling him to decline a vessel.

CASE N° 1

Two Lebanese traders decided to go into business together, and so they opened a "car spare parts company" in Beirut. They signed a proforma invoice with the representative of the "Turkish Taksim Company" in Lebanon. Payment was to be made by a letter of credit. Therefore, a Lebanese commercial bank issued an irrevocable documentary credit N° 279/10 valid until April 26th, 1989, in Istanbul. The credit was opened for an amount of U.S. Dollars 26,400, --Maximum, FOB any Turkish port. Partial shipments and transshipment were prohibited.

Latest date for shipment was April 16th, 1989. The amount of the letter of credit covered "spare parts for Mercedes cars as per proforma invoice N° 05M dated 8/11/88.

The letter of credit was available at the counters of Yapi Ve Kredi Bankasi - Istanbul by sight payment and against

presentation of the following documents:

1. Commercial invoice in three copies, original of which certified by the Chamber of Commerce and legalized by the Lebanese Consulate and bearing the following mention duly signed by the beneficiary: "We hereby certify that the present invoice is true, that is the only one issued by us for the goods mentioned therein, that mentions their exact value without any deduction, and that the origin of the goods is exclusively Turkish."
2. Full set of clean on Board Marine Bills of lading issued or endorsed to our order (XYZ< Lebanese Commercial Bank, S.A.L., Beirut, Lebanon) marked freight payable at destination notify applicants (M/S car spare parts company, Beirut, Lebanon).
3. Certificate of origin in three copies issued by the Chamber of Commerce attesting that the origin of the goods is exclusively Turkish.
4. An attestation from the steamship company declaring that the carrying vessel is not Israeli, that it does not appear on the blacklist of the Bureau of the Arab boycott against Israel, that it will not call at any Israeli port before unloading in port of discharge.
5. An inspection certificate issued by LLOYD'S stating that goods are conformed to L/C terms and conditions.

The insurance policy is to be covered locally by applicants. Documents to be presented within ten days after the date of issuance of the shipping documents but within the validity of this credit. The bank was authorized to draw on the XYZ bank U.S. Dollars account held with Mantrust New York.

Finally, the letter of credit was subject to the uniform customs and practice for documentary credits, 1983 revision, I.C.C. Brochure 400.

On April 20th, 1989, the seller presented the documents at the counters of the Yapi Ve Kredi Bankasi - Turkey. The Yapi bank found the documents complied with L/C terms and, therefore, effected payment.

In this time, the Lebanese traders discovered that the seller substituted the spare parts of Mercedes cars agreed upon in the proforma invoice N° 05M dated 8.11.88 with different types of spare parts which price could not reach U.S. Dollars 10,000. The two Lebanese traders notified the issuing bank that they have been defrauded asking it to stop payment.

The bank could not stop payment because the documents were found compiled with L/C terms. And thus, the two Lebanese traders lost about U.S. Dollars 15,000.

Well, how to prevent such fraud? And why couldn't the LLOYD's Co. prove the fraud?

First of all, LLOYD's could not prove the fraud because the goods were conformed to the commercial invoice that the seller has presented since he had put the same N° and the same date of the real proforma invoice.

Second, the fraud could be prevented by one simple act, which was the responsibility of the bank to do. The issuing bank should have mailed a copy of the proforma invoice in order to be negotiated with the letter of credit.

Case N° 2

Another example that illustrates a typical case of documentary fraud is about a Cairo-based company that agreed in the autumn of 1981 to purchase a number of second hand vehicles from a Belgium exporter they had known for some time. A contract was signed between the Cairo-based company and a company registered in Liechtenstein being the actual supplier of the vehicles. The buyer went to his Cairo bank and arranged for a letter of credit in the sum of DM. 350,000 to be opened in favour of the Liechtenstein company which had an account with a Zurich bank. Only two documents were specified - The beneficiary's invoice and a clean bill of lading.

After opening the letter of credit, the beneficiary prepared his own invoice and made out a bill of lading on the form of a Middle Eastern Shipping Company which has gone bankrupt nine months previously. The beneficiary had no vehicles nor did he have intention of making such shipment. The documents were

presented to the bank in Zurich and immediate payment was made. The buyer waited for the goods, but they did not arrive. He lost DM. 350,000, and the Belgium exporter disclaimed all responsibility, as he was only a broker.

The Swiss Bank refused to become involved in any criminal complaint, since it had suffered no loss, having been reimbursed by the Egyptian Bank. The Liechtenstein company is registered in the name of a lawyer who is protected by Liechtenstein law from disclosing the name of the true owner.¹⁶

Fraud in the transaction

It is difficult to conceive of a fraud in the letter of credit transaction that does not involve fraud or fraudulent documents. However, Scarsdale National Bank & Trust Co. v. Toronto - Dominion Bank suggests that such a situation may be possible, as in this example.

Case N° 3

A letter of credit provided for payment upon presentation of certificates of completions signed by the buyer showing goods delivered and services performed. The beneficiary could not accomplish the underlying project without additional funds, and when he applied for a loan with Scarsdale National Bank, offering the letter of credit as collateral, Scarsdale refused unless it held the documents required for payment including the

¹⁶ International Chamber of Commerce, guide to the prevention of international trade fraud, Paris: I.C.C. publishing S.A. 1985) p. 6

signed certificates of completion.

The attorney for the beneficiary persuaded the attorney for the buyer to get the signature of the buyer on the certificates which to be held in trust because the beneficiary was afraid that the account party would not sign the required certificates.

The beneficiary with some guile obtained the certificates from his attorney's office while he is on vacation and delivered them to Scarsdale that made the loan to him.

The beneficiary failed to complete the work, Scarsdale presented two drafts for payment together with documents required including the certificate signed by the buyer under the letter of credit. The buyer informed the issuing bank, Toronto Dominion, that he was being defrauded, and the bank refused to pay. Scarsdale sued Toronto - Dominion, and the issuer deposited the proceeds into court.

The certificates signed by the buyer were not forged, and they were not fraudulent. The court held that the procurement of the certificates of completion by the beneficiary from his attorney and the delivery of them to Scarsdale constituted "Fraud in the transaction."¹⁷

¹⁷ Burton V. Mc Cullough, Letters of Credit, (U.S.A.: Mathew Bender and Company Incorporated, 1987) p.5-25.

Here is now an example of fraud committed by the buyer and not the seller as we have seen before.

Case N° 4

A letter of credit was opened by a Lebanese trader in favour of a movies maker company in U.S.A. for the amount of U.S. Dollars 100,000 covering five copies of a cinema movie.

Once the documents arrived at the countries of the issuing bank and found compiled with L/C terms, the buyer convinced the bank to draw one copy of the movie for U.S. Dollars 20,000 and the remaining four copies after a certain period of time.

Well, the buyer took the first copy and did not return to the bank to pay the price of the remaining copies. He has committed Fraud. Because with the one copy he had, he could make copies as much as he wanted. It was the responsibility of the bank, because the real price of the first copy is U.S. Dollars 90,000 and not U.S. Dollars 20,000.

As it is known by the uniform customs and practice for documentary credits issued by the International Chamber of Commerce, concerning a letter of credit available by acceptance of drafts the amount of the credit is not paid to the beneficiary at the time of the delivery of documents. It is paid after a delay of time that starts from the date of presentation of documents or date of shipment.

The buyer will benefit from this delay in order to sell the merchandise and pay the amount of the credit. He can also verify whether the merchandises are conforming the terms and conditions of his order before the payment took place. If the goods are not as he ordered, he could claim fraud and ask the court to immobilize the credit.

If fraud is proved by the buyer before settlement of the credit, the bank can legally refuse to cover the beneficiary whenever it received the proof of this fraud.

A document of title is fraudulent, if it misdescribed the goods covered, and if the seller knows of the misdescription. But a document which misdescribed the goods through error is not a fraudulent document. If a required document is forged, that is bearing a genuine or authorized signature, but as to content it misdescribed the goods covered, the issuing bank may dishonor the demand for payment. It may also dishonor the demand for payment, if the altered documents have been proved by the applicant before settlement of the credit. Fraud justifies the non payment of the amount of the credit to the beneficiary. Therefore, the bank being informed by the applicant about the act of fraud and have received the proof of this fraud can legally refuse to cover the beneficiary.

The letter of credit should state clearly and precisely the documents required; otherwise, problems could arise.

Case N° 5

Here is an example about a claim raised by the advising bank "in prag against the issuing bank in Lebanon." The problem was about an item mentioned in a letter of credit opened by order of Fakhoury Est. and in favour of "Kospool foreign trade corporation" for the amount of Sterling Pound 190,000.00 Abt. covering 2000 Metric Tons of sugar imported from Czechoslovakia C & F Beirut Port. The item was mentioned as follows:

N.B. "Date of sailing and carrying steamer to be nominated by shipper telegraphically to openers."

The goods were shipped, and the documents were presented to the bank in prag, which effected payment and sent the documents to the issuing bank in Beirut. The issuing bank refused to pay because a copy of the telex mentioned in the N.B. is missing.

The advising bank considered that the N.B. is not a required document; and therefore, there is no discrepancy or fraud in the documents.

The final decision was that of the court that has obliged the issuing bank to pay the amount of the credit.

Therefore, and as stated in Article 15 under the uniform customs and practice: "Bank must examine all documents with reasonable care to ascertain that they appear on their face to be in accordance with the terms and conditions of the credit."

Conclusion, Comments and Recommendations

Documentary credits have become a standard means of settling payment all over the world. Banks are used in the letter of credit to reconcile the interest of two parties to a commercial contract. "The documentary credit is an essential implement for conducting world trade today. It fulfills all the requirements for this role provided the conditions regulating its use are state in clear and unambiguous terms."¹⁸

Documentary credits give security to both parties, buyers and sellers, but do not eliminate the risk of fraud as well as problems of misunderstanding that may arise among all parties. How can bankers develop their knowledge in documentary credit so that they help all parties not to fall in any problems?

The International Chamber of Commerce adopted and developed the uniform customs and practice for documentary credits. The International Chamber of Commerce (I.C.C.) is the world business organization. It acts to promote the greater freedom of world trade, to harmonize and facilitate business and trade practices, and to represent the business community at international levels. In order to help the bankers, the ICC created many activities in the fields of banking and

¹⁸ Union Bank of Switzerland, guide to documentary transactions in foreign trade, (Union Bank of Switzerland, 1985), p.14

international commercial arbitration. The ICC banking commission brings together bankers from throughout the world with the aim of:

1. Defining, simplifying and harmonizing the practices and terminology used in international banking.

2. Expressing the views of bankers before relevant international organizations such as the United Nations Commission on International Trade Law (UNCITRAL).

3. Serving as a meeting ground for the bankers of the world to discuss common problems.

As a resume of my work in a bank, in the documentary credit division, I conclude that:

1. Credit officers should have a more extensive knowledge of commercial credits apart from credit risk to back up their commercial credit departments.

2. The trainees should be put to work in commercial credit department at head office for at least six months before assigning them to the commercial credit department at the branch.

3. The crowded working conditions can be more of a risk in commercial credit operations because crowded conditions produce more interference and interruptions.
4. Undivided attention should be given to commercial credit work; therefore, the documentary credit department at a branch should not be required to handle any other type of work.
5. Commercial bank departments need more English speaking people than ordinarily are assigned to this work.
6. Experience has proven that a triangular method of operation, for handling new credits, amendments and documents offers the best and probably the only safe procedure for handling such business properly.

The preparer evaluates and does everything to set up the transaction for the typist, and he does so independently of the checker.

The typist performs that function and passes the material and the finished work on to the checker. The checker approaches the operation without any previous knowledge or contact with the transaction, thus enabling him to appraise and check independently and without having been previously influenced.

How can buyers and sellers develop their knowledge in documentary credit in order not to commit any mistake that may cause problems between them and between banks? And then, each party can defend any risk of fraud that could be committed by other party.

The ICC has developed many institutes to help the buyers and sellers:

1. International Center for Technical Expertise offers to the parties of the trade contracts, the possibility of recourse to independent experts.
2. Institute of International Business Law and Practice organizes regular seminars on international commercial arbitration, conducts research projects etc...
3. Credikit: An audio-visual educational package giving a complete training course in documentary credits for all parties concerned with this important method of payment for international trade transactions.

Another banking instrument for securing performance or payment of the documentary credit is the bank guarantee. In international trade, the buyer demands that the seller's ability to perform be secured; and for this purpose, a bank guarantee is arranged. "A bank guarantee may be defined as the irrevocable obligation of a bank to pay a sum of money in the event of non

performance of a contract by a third party."¹⁹

Under the terms of the guarantee, the bank has to pay on first demand provided that the conditions contained in the guarantee are fulfilled. There are many types of guarantees in international trade, but the most important one is the performance bond.

Finally, from what has been discussed, we conclude that, just as hundred years ago, sellers still hesitate to release their goods before receiving payment and they will remain so, while buyers prefer to have control over the goods before parting with their money, and they will remain so. Because matching payment with physical delivery is rarely possible, the banks have come out with an instrument to secure payment and performance called documentary credit. As any other instrument, documentary credit has faced many problems of misunderstanding and of bad intention mainly the risk of fraud. In order to avoid this risk, it is very important to know with whom to deal rather than how to deal with.

¹⁹ Union Bank of Switzerland, guide to documentary transactions in foreign trade, (Union Bank of Switzerland), p. 80.

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