LETTER OF CREDITS AS A SECURE FORM OF PAYMENT FOR INTERNATIONAL SALE TRANSACTIONS.NIGERIA AND UNITED KINGDOM.

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1.0 Introduction

Letter of credit, or more formally documentary letter of credit, was created in trade and business several hundred years ago, it is a well-known financial method for international trade parties nowadays. This method has a long history and has been stated as “the life blood of international

commerce" by English judges[1]. It is considered as an instrument that reconciles the interests of the seller and the buyer, thus providing security both to the buyer and seller. The terms and conditions governing Letters of Credit transactions are almost always to be found in the Uniform Customs and practice for Documentary Credits(UCP)[2] issued by the International Chamber of Commerce (ICC). [3]Letter of credit as a financial method of commercial transaction that takes care of the interests of both the exporter and importer, so it is considered to be the most effective and safest method to secure the payment in an international trade transaction, however it has some of its disadvantages that will be discussed in this paper.

There are three major principles that guide letter of credit, the principle of contract, independence and strict compliance. In the real practice, these principles are the amulets that can secure the payment for both exporter and importer, but also the main source that can cause the risks for a letter-of-credit transaction[4]. According to the autonomy principle, a Letter of credit is separate from and independent of the underlying contract of sale or other transactions involved. In other words, the banks concern themselves only with the documents, but are not concerned with the performance of the underlying contract. As long as the required documents presented by the seller conform to the terms contained in the Letters of credit contract, the bank will make the payment to the seller without considering the actual performance or any disputes regarding the underlying contract between the buyer and seller.[5]

With regards to the doctrine of strict compliance, the banks which operate the letter of credit, act as agents for the buyer who is the principal, if they exceed the instruction given to them by the buyer they have acted without authority and he (the buyer) is not bound to ratify their act. In that event the loss will fall on the bank. Situations like this led to the development of the doctrine of strict compliance under which the correspondent bank will, on principle, refuse documents tendered by the seller which do not correspond strictly with the instruction[6]. The letter of credits

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[1] Yanan Zhang, *Approaches to Resolving the International Documentary Letters of Credit Fraud Issue,*(Publications of the University of Eastern Finland Dissertations in Social Sciences and Business Studies 2011) No 15
[2] Uniform Customs and Practice for Documentary Credits 1993 (UCP 500)
[3] Ibid
[4] Yan Hao & Lin Xiao 'Risk Analysis of Letter of Credit- Based on Principles of ''Independence'' and ''Strict Compliance'' *'International Journal of Business and Social Science;* August 2013, Vol. 4 No. 9
[5] Ibid note 1
[6] M.C Okany *Nigeria Commercial Law,*(Africana-Feb Publishers, Onitsha, 1992)

mechanism ensures that the bank guarantees payment. The security that this gives to the seller would be destroyed if separate undertakings were recognised[7].

This paper seeks to examine Letter of Credits as a secure form of payment for International Sale Transactions

2.0 Definition of Letter of Credit.

Letters of credit are used to provide credit in international payment transactions. A letter of credit is an agreement in which the buyer's bank guarantees to pay the seller's bank at the time goods/services are delivered. Once the buyer and seller agree to do business, the buyer requests for a letter of credit from the issuing bank to ensure that international transaction is secure and guaranteed. Once the seller ships the goods (in accordance to the contract), the issuing bank sends the Letter of credit to the advising bank. Once goods are delivered and a request for payment (with or without documentation – depending on types of letter of credit) is made, the issuing bank pays this amount to the seller's bank. Finally, the issuing bank obtains the payment from the buyer and releases documents so that the buyer can now claim the goods from the carrier [8].They are also useful as a financing mechanism to allow parties holding such credits to produce or obtain commodities to be sold. The critical feature of a letter of credit is its reliability, i.e., its certainty of payment. Hence, parties who might otherwise hesitate to enter into a transaction are encouraged to participate because they can rely upon a secure source of credit and thereby more accurately assess the possible risks in the undertaking[9].

The principle of documentary letters of credit is that the buyer of goods instructs a bank in his country (issuing bank) to open a credit with a bank in the seller's country (the advising bank) in favor of the seller, specifying the documents which the seller has to deliver to the bank if he wished to be paid for his goods. The instructions also specify the date of expiry of the credit. The end result is that the bankers promise the seller that he (the seller) will be paid the price of goods or accept a draft for the value of the goods, against the tender of the specified documents which invariably include bill of lading, insurance policy and invoice[10]. Letters of credit deserve the

[7] Michael Collony *Briefcase on Commercial Law*, (Cavendish Publishing Limited, London, 1998)
[8] Christoper Leon, *Letters of Credit: A Primer*, 1986, Volume 45 , Issue 2, Maryland Law Review< http://digitalcommons.law.umaryland.edu/mlr/vol45/iss2/8> accessed 24 February 2020
[9] Ibid
[10] (n 6)

practitioner's consideration since they may be used as creative solutions to problems that might otherwise prevent a transaction[11]. The use of letters of credit as an international payment mechanism for goods purchased across national and international boarders has always been available. The letter of credit is a form of documentary credit. A documentary credit represents a Bank's assurance of payment against the presentation of detailed documentation by the party required to produce such documents, which is usually the seller.

Letters of credit are used to provide credit in international payment transactions. A letter of credit is an agreement in which the buyer's bank guarantees to pay the seller's bank at the time goods/services are delivered. Once the buyer and seller agree to do business, the buyer requests for a letter of credit from the issuing bank to ensure that international transaction is secure and guaranteed. Once the seller ships the goods (in accordance to the contract), the issuing bank sends the Letter of credit to the advising bank. Once goods are delivered and a request for payment (with or without documentation – depending on types of letter of credit) is made, the issuing bank pays this amount to the seller's bank. Finally, the issuing bank obtains the payment from the buyer and releases documents so that the buyer can now claim the goods from the carrier.

A letter of credit is useful to a seller when reliable and verifiable credit information about a foreign buyer is difficult to obtain, but he is satisfied with the creditworthiness of the buyer's bank. It has become one of the most preferred methods of payment in international sale in Nigeria amongst merchants and Banks[12]. It is essential to note the key principle underlying Letters of Credit is that banks deal only in documents and not in goods. The decision to pay under a Letter of Credit will be based entirely on whether the documents presented to the bank appear on their face to be in accordance with the terms and conditions of the Letter of Credit. It would be prohibitive for the banks to physically check all merchandise shipped under Letters of Credit to ensure merchandise has been shipped exactly as per each Letter of Credit[13].

From the technical review, there are three essential principles when people use letter of credit as the transaction way. These principles are presented for below:

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[11] (n 8)
[12] Adetola Ayanru, 'Letters Of Credit – A Secure Form Of Payment Offered By Nigerian Banks For International Sale Transactions', 2016<https:spaajibade.com>accessed 25 February 2020
[13] Saskatchewan Trade & Export Partnership, https://www.sasktrade.com.- uploads> accessed 25 Feb 2020

2.1 Principle of Contract

The Letter of Credit is a contract between the buyer and seller and as such the law of contract applies. Although, the establishment of a letter of credit between the issuer and the customer is not itself a contract since by statute no consideration is required. However, these parties usually undertake a variety of contractual obligations. The agreement between the issuer and customer will certainly focus upon the customer's reimbursement of the funds extended by the issuer. In addition, the agreement could provide for the customer's payment of a fee for the issuer's service in providing the letter of credit. It may also specify the collateral provided by the customer to the issuer, and address the issuer's ability to accelerate the underlying debt or require the customer to prepay the debt[14]. Opening of the letter of credit might be regarded as a condition precedent to the contract, and failure to open it, is constructed as meaning that no contract is formed, or alternatively it goes to performance so that the buyers failure to open the credit allows the seller to not deliver the goods[15].

2.2 Principle of Autonomy or Independence

The second is the principle of independence, which is clearly indicated in Art. 3 of UCP 500; the principle of autonomy or independence, is expressed in Article 4 of UCP 500 in terms of the parties to credit operations dealing only with documents and not with the goods or services to which the documents relate. Article 3 stresses that the letter of credit contract is 'separate' from the underlying contract, the bank in no way being 'concerned with or bound' by the latter contract. This principle is equally accepted in English law[16].

In the case of *Malas (Hamzeh) & Sons v British Imex Industries* (1958)[17] A contract was made to sell steel rods to buyers in Jordan. They were to be delivered by two instalments and each one was to be paid for by a confirmed letter of credit. The first instalment was delivered and the bank paid. However, the buyers were unhappy with the quality of the goods and sought an injunction to prevent the bank paying on the second letter of credit. It was held that a confirmed letter of credit is a contract between the bank and the seller which imposes upon the bank an absolute duty to pay,

[14] Ibid
[15] Ayanleye A.O, Letter of Credit (Module 3, International Payments revised, 7/7/6)
[16] Sarah Worthinghton, *Commercial Law and Commercial Practice* (Hart Publishing, Oxford, 2003)
[17] 1(1958) 1 Q.B. 542; (1958) 1 All E.R.264

irrespective of any dispute between the buyer and seller. The injunction was refused and bank were ordered to pay the sellers. Per Sellers LJ obiter the court may interfere where there is a fraudulent transaction[18].

Fraud in the underlying transaction is a recognized exception to the independence principle. although the beneficiary of a credit is protected by the doctrine of autonomy—which means that the bank is not entitled to look through the documentary credit contract to the underlying sales transaction—a major uncodified exception to this doctrine arises in cases where the beneficiary is guilty of fraud. The exception is uncodified in the sense that there is no express provision made for it in the Uniform Customs and Practice for Documentary Credits 1993 (UCP 500), which are incorporated in most documentary credit contracts.

2.3 Principle of Strict Compliance

The last but not the least is the principle of strict compliance, which is described in Art.4 of UCP 500.5[19]With regards to the doctrine of strict compliance, the banks which operate the letter of credit, act as agents for the buyer who is the principal, if they exceed the instruction given to them by the buyer they have acted without authority and he is not bound to ratify their act. In that event the loss will fall on the bank. Situations like this led to the development of the doctrine of strict compliance under which the correspondent bank will, on principle, refuse documents tendered by the seller which do not correspond strictly with the instruction[20].

Most courts have held that the documents presented by the beneficiary must satisfy a standard of "strict compliance'' with the transaction given. Any deviation from the specifications set forth in the letter of credit allows the issuer to dishonor its payment obligations[21].

The principle of strict compliance, like the independence principle, ensures that an issuer will not be required to make a factual determination or look to the underlying contract to determine whether the parties' performance is satisfactory." Since the issuer's role is basically a ministerial one and its obligations are defined within the four corners of the letter of credit, issuers are encouraged to participate in such transactions. Likewise, beneficiaries are on notice as to exactly what is required

[18] (n 7)
[19] (n 3)
[20] (n 6)
[21] (n 8)

for compliance. The net result is that certainty of payment is enhanced, which, in turn, supports the commercial viability of letters of credit. Nevertheless, the strict compliance rule is subject to abuse. An issuer may rely on a technical inaccuracy in the documents to avoid payment. The issuer may wish to avoid payment to protect its customer or to protect itself from an insolvent customer[22].

3.0 Types of Letter of Credit

There are four types of Letter of Credit which include revocable, irrevocable, confirmed and unconfirmed. A revocable Letter of Credit can be revoked without the consent of the exporter, meaning that it may be cancelled or changed up to the time the documents are presented. A revocable Letter of Credit affords the ex- porter little protection therefore is rarely used. An irrevocable Letter of Credit cannot be cancelled or changed without the consent of all parties, including the exporter. Unless otherwise stipulated, all Letters of Credit are irrevocable. There is no definition of irrevocable credit in UCP600. However, in the former UCP500, article 921 defines an irrevocable letter of credit as a "definite undertaking by the issuing bank (to make payment to the beneficiary) provided the stipulated documents are presented to the issuing bank and the terms and conditions of the credit are complied with. The issuing bank gives an irrevocable undertaking to the beneficiary. It is an arrangement between the seller and the buyer that the transaction must be paid using letter of credit. Once opened it is valid and cannot be revoked.

3.1 Revocable and Irrevocable

Letters of credit can be revocable. This means that they can be cancelled or amended at any time by the issuing bank without notice to the beneficiary. However, drawings negotiated before notice of cancellation or amendment must be honored by the issuing bank. An irrevocable letter of credit cannot be cancelled without the consent of the beneficiary. A revocable Letter of credit provides a low level of security and is extremely rare in practice; whereas an irrevocable letter of credit guarantees payment by the bank to the seller provided the seller complies with all stipulated conditions and is widely used in international trade. While an irrevocable documentary credit cannot be cancelled or changed unless all parties agree. Therefore, the importer's bank cannot require that a documentary credit be changed, and the bank is obliged to make payment against the documents required under the original documentary credit.

[22] Ibid

A further differentiation is made between Letters of Credit, depending on the payment terms. If payment is to be made when specified documents are presented, this is referred to as a sight Letter of Credit. Alternatively, if payment is to be made at a future date, (i.e. 60 days Bill of Lading date), this is referred to as a term, usance or deferred payment Letter of Credit[23].

3.2 Confirmed or Unconfirmed

An unconfirmed letter of credit carries the obligation of the issuing bank to honour all drawings, provided that the terms and conditions of the letter of credit have been complied with. A confirmed letter of credit also carries the obligation of another bank which is normally located in the beneficiary's country, thereby giving the beneficiary the comfort of dealing with a bank known to him[24]. When requesting a confirmed Letter of Credit, the exporter should first check with his local banks (International Department) to determine whether or not they have the ability or availability to confirm a Letter of Credit issued by the importer's Bank. Once they determine which bank can handle the request (Confirm the Letter of Credit), they will direct the importer to have their bank issue a Confirmed Letter of Credit through the local bank who has indicated their interest in the transaction. With a Confirmed Letter of Credit, another bank, the "Confirming Bank", usually located in the same country as the exporter, will add its "confirmation" to the Letter of Credit. By adding its confirmation, the Confirming Bank undertakes to honour the exporter's claim. Thus when a Letter of Credit is advised to you by your local banker, the bank is telling you that they have authenticated the Letter of Credit, and are passing it on to you, "without responsibility or engagement", i.e. your risk of payment rests with the bank that has issued the Letter of Credit. This is an Unconfirmed Letter of Credit. It may be the case, however, that the Issuing Bank is not considered an acceptable risk and/ or the country where it is located has high political or economic uncertainty. In this situation, the ex- porter may consider requesting a Confirmed Letter of Credit.

4.0 Regulatory Framework for Letter of Credit

The guiding principles for the operation of documentary credits can be found in the International Chamber of Commerce's UCP 600 which is the 6th Revision of the Rules since its first promulgation in 1933. The development of the UCP is the result of a desire to address the

[23] (n 16)
[24] International Trade Finance Services Documentary Letters Of Credit A Practical Guide, https://academia.edu/57115256/pdf accessed 22 Feb 2020

challenges faced in the facilitation of the flow of international trade and also, to address the major developments in the trade and banking world. Its use to a large extent ensures certainty, predictability and a generally acceptable standard by parties involved in international transactions[25].

4.1 Uniform Customs and Practice for Documentary Credits (UCP)

The Uniform Customs and Practice for Documentary Credits is an internationally agreed upon set of rules for all parties involved in all types of letter of credit transactions. The rules, which were adopted by the International Chamber of Commerce in Vienna in 1933, have been revised several times and are used by banks in practically all countries[26].

The Uniform Customs and Practice for Documentary Credits, currently applicable, is a set of rules which, when not in contravention of local laws, are binding on the parties who have adopted them. The authority of UCP lies in its universal acceptance which is acknowledged by a statement on the letter of credit itself[27].

4.1.1 General Principles of UCP

1. Letters of credit are separate transactions from the sales or other contracts on which they may be based, and banks are in no way involved with or bound by such contracts, even if reference to them is included in the letter of credit.
2. In letters of credit transactions, all parties deal with documents and not with the underlying contracts to which the documents may relate.
3. Before payment or acceptance of drafts is effected, banks bear the responsibility for examining the documents to ensure that they appear on their face to be in accordance with the terms and conditions of the letter of credit.
4. Banks bear no responsibility for: the form or genuineness of documents; for the goods described in the documents; or the performance of the seller of the goods[28].

First of all, the UCP 600 has no force of law. Since ICC does not have a legislative competence. This is purports to codify international banking and practices in relation to letter of credits. Thus

[25] (n 12)
[26] Ibid
[27] (n 4)
[28] (n 24)

it does not apply directly. It must be incorporated into letters of credit in order to gain binding (contractual) status. Besides, the UCP 600 is not an international agreement because it does not require any ratification procedure to apply. These rules cannot be described as customary law or trade usage. Since for these both legal sources, an application is precondition[29].

Art.427 in the former UCP 500 rules the regulation for the examination of the documents. The presented documents must be in accordance with the terms and conditions of the letter of credit. Based on the contract between applicant (importer) and issuing bank, the bank has the obligation to observe the borders of the commission given to it and fulfils the request by observing the principle of strict compliance. Issuing bank keeps the rejection right when it meets the documents that disobey this principle.

5.0 Letter of Credit in Nigeria

Nigeria's economy is largely dependent on importation of goods from other parts of the world as a result of various socio-economic factors and right from antiquity, merchants purchased commodities like machinery and raw materials for local manufacturing from international sellers by travelling to these countries with cash to purchase the goods or by drawing out Documentary Bills and other negotiable instruments. These modes of payment, though seemingly convenient and cheaper for the buyer are not without their downsides which may include loss/theft of cash, as well as the risk involved in carrying cash. A letter of credit in the Nigerian context is the assurance a foreign seller receives from a Nigerian Bank that it will be paid for the goods it has made arrangements to have delivered to a Nigerian buyer or a buyer based in Nigeria once it is able to provide genuine evidence for such delivery[30].

Banks are often involved in the operation and use of documentary bills as means of payment where the seller instructs its Bank i.e. "the remitting bank" to deliver the shipping documents or the bill of lading to the buyer's bank i.e."the collecting bank" and ensure collection of the price from the buyer through its Bank. The wide network of banks and the use of correspondent/collecting banks as agents are often used in this regard. The rules will apply if specifically incorporated into the contract between the buyer and the seller. The use of a documentary bill is facilitated by way of a seller who sends same to a buyer before sending the bill of lading for the goods it has shipped to

[29] Ibid
[30] (n 12)

ensure that the buyer accepts the bill and makes payment for the goods before obtaining property to the shipped goods. The documentary bill functions as a request for the payment of the goods and the acceptance of same is an agreement to pay. If the buyer refuses to accept the bill, he is not entitled to the bill of lading and if it retains it without payment, the property in the goods will not pass to it. The disadvantages of this method of international payment grossly outweigh its advantages because there is no privity of contract between the seller and the collecting bank[31].

The use of letters of credit as an international payment mechanism for goods purchased across national and international boarders has always been available but was not very popular amongst Nigerian merchants as a result of the additional costs associated with the use of the service as rendered by Nigerian Banks[32].

However, further to the Central Bank of Nigeria's Policy Guidelines dated November 6th 2014, for the purpose of ensuring stability of the foreign exchange market, limits have been placed on the use of Foreign Exchange to finance import contracts or other purchases. There are also existing laws which limit the amount of Foreign Exchange which can be moved by cash overseas such as Section 2(3) of the Money Laundering Prohibition Act which states that a person must declare an amount above 10,000 dollars meant for payment outside the country to the Nigerian Customs Service Commission[33].

In line with these developments, Banks encourage the use of letters of credit as a payment mechanism for customers who are desirous of purchasing commodities such as raw materials, machinery and other commodities from foreign sellers.

The advantages of trading with letters of credit abound for both buyer and seller. The use of the wide networks of Banks and the safety of transferring funds and documents as well as the security of a guaranteed paymaster are a few of the advantages. Nigerian courts have pronounced on documentary credits as in the case of *Akinsanya v U.B.A*[34]. where the court noted that: "The whole commercial purpose for which the system of confirmed irrevocable

[31] Ibid
[32] Ibid
[33] (n 12)
[34] (1986) NWLR (Pt.35) 273

documentary credits has been developed in international trade is to give to the seller an assured right to be paid before he parts with the control of the goods that does not permit of any dispute as to the performance of the contract of sale being used as a ground for non-payment or reduction or deferment in payment."[35]

Though a letter of credit is a guaranteed form of payment by a Bank, it is important that this assurance emanates from a "healthy" bank without any risk of insolvency. The presentation of forged documents, which is a major disadvantage, will most likely be forestalled if proper investigatory checks are carried out by the dedicated department of the advising and issuing Banks[36].

5.1 Letters of Credit in the United Kingdom

Letters of credit can be traced at least as far back as the twelfth century. Originally, they were two-party arrangements whereby a powerful or wealthy individual issued a letter promising payment in order to induce a merchant to deliver goods or advance money to that individual's servant or agent. They were similarly used between merchants themselves, with the reliability factor supplied by the closeness of the merchant network[37].

In *RD Harbottle (Mercantil) Ltd v National Westminster Bank Ltd*,[38] Justice Kerr of the English Court addressed Letter of Credit as "the Lifeblood of International Commerce". Afterwards many Courts have consistently endorsed letter of credit as the life-blood of commerce. Because, if the flow of the credit transactions stop or is interrupted, the international commerce will come to a grinding halt and will be interrupted. The slightest delay can lead to huge loss due to exchange fluctuations during the period delay. There are instances of huge losses in the international trade by way of exchange fluctuations alone.

Turning now to recent developments concerning forgery and nullity in the law of letters of credit, in England, it is useful to start by rehearsing the relevant obligations of the banks in letter of credit operations, starting with the UCP 500 Rules because of their very frequent application to letter of

[35] (n 12)
[36] Ibid
[37] (n 8)
[38](1976) QB, 146.

credit contracts, pursuant to the intention of the contracting parties. Even as they apply, however, to a letter of credit contract governed by English law, the latter will fill in any gaps in the coverage of UCP 500. To the extent that the rules in UCP 500 are ambiguous then and in this regard, English law may be invoked to clarify the ambiguity. Suppose, however that the International Chamber of Commerce issues an opinion on the meaning of a particular provision. Doubts may be expressed as to the admissibility of this opinion in judicial proceeding but probably the better view is that parties incorporating the Rules do so with any accompanying authoritative opinions issuing from the ICC. However that may be, English procedural rules, and in particular CPR (Civil Procedure Rules) Part 24, will apply in respect of letter of credit proceedings in England[39]

The modern letter of credit has thus introduced a new, third party to the transaction. However, its central purpose remains the same, i.e., it provides a mechanism under which the credit of one party is made available to another, thereby assuring payment and facilitating the underlying transaction[40].The letter of credit has traditionally been associated with international transactions but is being used with increasing frequency in domestic transactions. Although its use dates back centuries, there is limited case law, and little attention is given the subject in an attorney's formal education[41]**.**

Letters of credit are also used in situations where one party seeks to protect itself from another party's unsatisfactory performance or inability to perform. In this role, the letter of credit is referred to as a "guarantee" or "standby" letter of credit and is payable in the same manner as a commercial letter of credit, upon presentation of a draft or other specified documents[42]. As a matter of contract law, the rules of construction apply, but in international trade issues of governing law and jurisdiction become important as construction rules vary between jurisdictions, eg whether the contract is to be interpreted by applying common law rules such as the parole evidence rule or other rules such as whether all the facts and circumstances are to be taken into consideration

6.0 Security Risks associated with Letters of Credit

Commercial transactions and contracts are faced with potential challenges and breaches between the parties involved and the documentary letter of credit may be manipulated by one of the parties,

[39] (n 16)
[40] (n 8)
[41] (n 8)
[42] Ibid

in most cases the importer at the behest of the exporter. By using the crucial principle of letters of credit "strict compliance" of documents and credit, the importer can add some conditions that are hard to achieve, or sets some business trap on purpose. Such as unconfirmed clauses; credit with words mistakes and conflicted clauses on content.

The importer could also ask for the type of documents that are difficult to achieve. Some importers regulate the requests that cannot be fulfilled or controlled by the exporters. Such requests may be: under the terms of FOB & CFR, the exporter can ask the payment only within the return receipt of insurance; or the documents with some specific signature[43]. In other instances, the importers can alter the overdue letters of credit purposely, causing the exporter to be cheated for their goods by this altered credit. Importers change the amount, the date of shipment, and beneficiary's name of the overdue credit.

The exporters themselves are not devoid of some of this manipulative tendencies too, the quality risks, which importers could bear under the term of letters of credit, are that exporters trade importers with the shoddy commodity. From the characteristic of documentary deal under the terms of letter of credit, the importer can get the whole set of documents to pick up the goods only after payment or discount. Before this, the importer cannot know if the exporters provide the commodity with good quality. The importers will stand on the passive side. Moreover, if the importer find the quality problem of the commodity after payment or discount, it is hard to get the protection through the legal way[44].

As for the principle of autonomy, this is expressed in Article 4 of UCP 500 in terms of the parties to credit operations dealing only with documents and not with the goods or services to which the documents relate. Article 3 stresses that the letter of credit contract is 'separate' from the underlying contract, the bank in no way being 'concerned with or bound' by the latter contract. This principle is equally accepted in English law. A bank is no better placed to object to the performance that has been rendered under the underlying contract than is the acceptor of a bill of exchange or maker of a promissory note when payment is sought by a holder in due course[45]. Indeed, Rowlatt J once went further in his desire to demonstrate that the letter of credit contract

[43] (n 4)
[44] (n 4)
[45] (n 16)

was in no way dependent upon the underlying contract. He remarked: '[S]o far from the letter of credit contract being qualified by the contract of sale, the latter must accommodate itself to the letter of credit'[46].If the beneficiary of a letter of credit discounts it, as might happen in the case of a deferred payment credit, then the discounting bank will be treated as an assignee and, like any other assignee, will take subject to equities and defences of a personal character, whether it knew of the facts giving rise to such equities or defences or not.

There is a little risk in a letter of credit as the seller can obtain payment (from the issuing bank) regardless of whether the buyer is able to pay. A letter of credit will also ensure that all standards of quality agreed upon in the letter of credit will be met by the seller

Conclusion

While the Letters of Credit is a secured form of documentary payment in international transactions, it is not devoid of potential problems and security risks which could emanate from the parties involved in the transaction and separately from the bank(s) that act as their agent(s). The documentary letter of credit may be manipulated by one of the parties, in this case the importer at the behest of the exporter. By conforming with the crucial principle of letters of credit strict compliance of documents and credit, the importer could some conditions that are hard to achieve, or set some business trap on purpose. like unconfirmed clauses; credit with words mistakes and conflicted clauses on etc as mentioned above in the paper. The importers can alter the overdue letters of credit purposely, causing the exporter to be cheated for their goods by this altered credit. Importers change the amount, the date of shipment, and beneficiary's name of the and the exporters can trade the importers with shoddy commodity. Although from the characteristic of documentary deal under the terms of letter of credit, the importer can get the whole set of documents to pick up the goods only after payment or discount. Before this, the importer cannot know if the exporters provide the commodity with good quality.

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