



## *Legal nature of documentary credit in Algerian legislation*

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### *Abstract ;*

*The documentary credit agreement plays its role in facilitating international foreign trade operations, particularly maritime trade, in addition to the credit process obtained from the issuing bank, and taking into account the multiplicity of actors in the documentary credit process, since this mechanism is governed by international rules that are considered a model to be followed for the adoption of national texts in the context of the implementation of contracts. types, and the system of united international rules and customs, thus constitutes the status of documentary credit as a means of ensuring the performance of obligations arising from the contract of international commercial transactions.*

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## 1. *Introduction*

The international sale contract takes place between two distant parties, i.e. the seller and the buyer are from two different countries, so neither the delivery of the sale nor the receipt of the price takes place directly through handling, but the delivery of the goods is usually through the delivery of documents that represent the possession of this goods, so the delivery of documents is the delivery of the goods and then the price is due, which is These documents are in the bill of lading delivered by the marine carrier who undertakes the transportation of the goods to the buyer's country, and this document is accompanied by other documents required by the buyer for the purposes of import conditions and export documents from third parties attesting to the good implementation of the seller's obligations, such as the insurance document for the goods, certificates of quantity, weight or quality, the invoice and the like.

The seller requires the buyer in the international sales contract to pay the price in return for presenting the documents stipulated in the sales contract, and then the bank opens a credit for the seller and with certain conditions, hence the name that linked the credit to the documents, so it was called the documentary credit, which has become playing an important role, as it is a mechanism to facilitate cross-border trade, so many legal provisions and texts have been devoted to it, whether at the domestic or international level, as this mechanism has enacted international rules that are considered a

model to be followed in the enactment of national texts within the framework of the implementation of model contracts, and thus it has become a system of unified international rules and norms The basic system of Documentary Credit was formed as a means to ensure the fulfillment of obligations arising from the contract of international commercial transactions.

The importance of the subject appears in the role played by the Documentary Credit Contract through its facilitation of foreign commercial operations, especially the maritime one, in addition to the credit process that is obtained from the bank that issued the credit, and given the multiplicity of those involved in the Documentary Credit process from an exporter seller and an importer buyer, between them is a bank, and there may be multiple banks to complete the process. The relations are intertwined between all of these to create mutual obligations, with which it is difficult to determine the legal nature of documentary credit, especially in the absence of an agreement between jurisprudence, judiciary and legislation on a unified concept that includes and prevents documentary credit. Hence, the problem was raised in the following question:

What is the legal nature given by the Algerian legislator to the documentary credit? In order to address the situation, we decided to rely on the descriptive and analytical approach to reach the legal adaptation of the documentary credit, and this was done in two sections:

The first topic: the concept of documentary credit.

The second topic: adapting the legal relations that arise between the parties of documentary credit.

Let us finally reach the results of defining the legal nature with a suggestion of how to apply it in Algeria, depending on the international rules specified for that.

## **2. The concept of documentary credit**

Documentary credit is one of the most important advanced international payment methods through which international trade transactions can be financed, as it is characterized by advantages that enable it to overcome many risks and problems related to international trade exchange, and since any subject needs to define its framework and general concept to enable those who are familiar with the subject to understand it. Accordingly, in this first topic, we will present the definition of documentary credit, its characteristics, the principles on which it is based, its legal nature, its forms, the most important functions it performs and its parties.

### **2.1 The definition of documentary credit**

There are several definitions of documentary credit, depending on the authority from which the definition is issued. The definition differs if it is issued by legislators (first), by jurists (second), and by the judiciary (third).

#### **2.1.1 The legislative definition of documentary credit**

It is meant by that definition, which is in the form of legal formulas and by which the laws open their provisions. Article 2 of

The Unified Rules and Customs for Documentary Credits (Bulletin, 1993) has specified that they are arrangements, whatever their name or description, in which the bank undertakes to open the credit based on the request and instructions of its client (the applicant for the opening of the credit), including His interest requires him to pay to the order of a third party (the beneficiary) or to authorize another bank or to accept and pay such withdrawal or withdrawals in exchange for a document or documents stipulated, provided that these documents are fully in conformity with the terms of credit.

As for the Algerian legislator, he did not organize the documentary credit by special laws and did not define it, and referred to it only in Article 69 of the Complementary Finance Law of 2009 as (the compulsory payment of imports is made only by way of the documentary credit) (Order number 01-09).

#### **2.1.2. The jurisprudential definition of documentary credit**

Algerian jurisprudence tended to define it, similar to the majority of the jurists of countries. Professor Taher Latrash defined it as that process by which the importer's bank accepts to replace the importer in the obligation to pay its imports in favor of the foreign exporter through the bank he represents in exchange for receiving documents or documents that indicate that The exporter has already sent the contracted commodity. (Iatrache, 2003).

As defined by the Egyptian jurisprudence by Professor Imad El-Sherbiny, it is a pledge issued by the bank

at the request of the customer (called the one who orders the opening of the credit) in favor of a third party (the beneficiary, who is often the foreign seller) to pay the amount of credit (which represents the amount of the transaction) to the seller or to accept the bills of exchange drawn by the latter. Within the specified period, and according to the agreed terms, the most important of which is the bank obtaining the documents for the goods. (echirbini, 2003)

### **2.1.3. Judicial definition of documentary credit**

The judiciary followed the approach of jurists and commercial legal scholars in explaining the features of documentary credit in the rulings issued by it, and the tracker of judicial rulings on the subject of documentary credit lawsuits focused on aspects in defining them away from comprehensiveness, which is the independence of contractual relations from each other, and this we find in what was decided by the Syrian Court of Cassation in Its definition of letters of credit, as it came in one of its decisions that the documentary credit establishes a direct relationship between the bank and the beneficiary, obliging the bank to pay the value of the credit to him, or to accept the papers issued by others, and he has no right to revoke his commitment. (civil, 1970)

## **2.2 The characteristics and functions of documentary credit Body text**

### **2.2.1. The characteristics**

1- Documentary credit is a commercial business : it is a financial and banking

credit, and therefore commercial (59-75, 1975), and as a dependent process for the customer, who is usually a merchant, i.e. an importer of goods that guarantees the exporter to pay for it, that is, it is an external banking process that facilitates the implementation of import and export contracts.

2- Documentary credit is a three-party process: in order to complete the documentary credit, 3 parties must intervene, namely the bank, the buyer and the seller, and these parties have independent legal relations, so the seller and the buyer have a previous relationship that arises from the sales contract, and a relationship of opening credit arises between the buyer and the bank, after which a third relationship arises Between the bank and the seller by sending him the letter of credit. This is not done except as an effect of the documentary credit. (dowidar, 2003)

3-The documentary credit is carried out by matching the wills of the two parties: where the application was submitted in writing, generally by filling out a form or form specially prepared by the bank and it is accepted or rejected by the bank and takes place as soon as the wills of the two parties match, and it can be proven by all methods of proof as a general rule. Their interest is that it be written in view of the many conditions and statements upon which the opening and implementation of the credit depends. (Yamelki, w.y)

4- A documentary credit establishes a mutual obligation for the contracting parties: the bank is obligated to open the credit and implement it for the benefit of

the seller, and the buyer is obligated to return the price paid in his favor along with the expenses with his receipt of the goods, in addition to the commissions and benefits that the bank is entitled to when the buyer uses the credit. (Yamelki, w.y)

### **2.2.2. Functions**

The basic function of documentary credit is the banking function in the field of international trade, where both the seller and the buyer fear that the other party will not implement its obligation, and therefore the bank intervened in order to facilitate the conduct of these obligations by achieving safety and reassurance for each of them and avoiding raising disputes between them. The document is as follows:

1- Documentary credit as a fulfillment tool : Given the distance separating the exporter and importer in international trade contracts, the seller is not ready to ship the goods before receiving the price, while the buyer is not interests are paid to the beneficiary in exchange for certain documents that the bank and its customer agree on the terms of, and the bank guarantees that in the letter of credit (Abdennabi, 2011), and the buyer is assured of the arrival of the agreed goods if he pays for them by handing him the documents proving the shipment of the goods with the agreed specifications.

2- Documentary credit as a credit tool: the seller can show the letter of credit to his dealers in order to obtain the trust of them, and thus the dealers are assured of their rights in the event that the seller is provided with what he needs in implementation of the deal, so the

documentary credit represents a kind of advances with a guarantee of a distinct type. (Awad, 1993)

As for the buyer, through possession of the documents, he can dispose of them by selling or mortgaging even before the goods reach him, and thus the credit allows the importer to obtain the necessary facilities to market his goods in preparation for the payment of their price, in addition to the facilities granted to him, which exempt him from paying the full value of the goods, and he obtains The required credit is of two types of credits: the credit of acceptance and the credit of deferred payment.

### **3. Adapting the legal relations that arise between the parties of documentary credit**

Documentary credit is a banking service that results in legal effects arising from the relations of the parties, and the role of documentary credit appears in the field of international trade, where the two parties to the sale contract are located in two different countries and do not require their prior knowledge of each other, which leads each of them to be suspicious of the other party's implementation of its obligation, here the role of Documentary credit, where the bank intervenes to ensure that all parties implement their obligations and achieve the security necessary to implement the credit contract.

#### **3.1- The parties to the documentary credit**

Regarding the documentary credit parties, according to the definitions issued by jurisprudence, Law, or the judiciary,



they are three parties if it is not a supporting credit, and in many cases the credit consists of four parties if it is supportive, which results in usual parties and unusual parties that we will discuss in the following :

### 3.1.1. *The usual parties in a documentary credit*

1. The applicant for opening the credit: he is also called the importer, as he applies to a local bank asking for the opening of the credit to complete the commercial transaction that took place between him and the seller and reviews the documents necessary to complete the procedures for opening the credit (which the bank determines) and after completing all the required documents based on the Performa invoice, the buyer asks The bank opened the documentary credit in favor of the seller for a specific amount and a specific period in terms of type, quantity, price.....etc.

According to the credit, several obligations will arise on the client or the author of the credit, including: (ghouneim, 2003)

- Giving clear and complete instructions to the bank for the purpose of opening or amending the credit at a later time, and specifying the exact documents against which the payment, acceptance or trading process takes place;

Submission of all documents, approvals and permits necessary to establish the accreditation;

- Fulfilling the value of the cash cover of the credit, whether in part or in full ;

- Fulfilling the value of commissions and expenses related to the opening of credit ;

- Fulfilling any other financial burdens that the Bank may incur in order to implement its instructions;

Acceptance and withdrawal of shipping documents arriving in conformity with the terms of credit;

- Compensating the bank for all consequences resulting from the bank's compliance with foreign laws and customs in the seller's country.

2. The beneficiary of the documentary credit: it is the party that receives the value of the goods or requires it to be paid to an entity and is notified by banks operating in his country or directly to him, and he must abide by the terms of the credit, and among these conditions: (Achawarbi, 2001)

- Upon receiving the credit from the reporting bank, it must review its terms to determine the extent to which it can be complied with and implemented, and to review its client ;

- Commitment to honesty and honesty in preparing the required documents ;

- Commitment to the literal implementation of the terms of approval and submission of the required documents on the specified dates ;

- In advance payment credits, the beneficiary must return the value of the payment that he received, if he does not comply with the implementation of the terms of credit and on the specified dates ;

Shipment of goods or performance of services represented by the shipping documents of credit.

3. The bank opening the credit (issuing bank) : It is the buyer's bank and is located in the country of the latter. It is the one that opens the documentary credit, or it is the bank that issues the letter of credit in favor of the beneficiary at the request of his client. Documentary, as soon as it is received, according to the terms of payment specified in the credit. (Achawarbi, 2001)

The bank's acceptance of opening the documentary credit generates a number of obligations that take into account the rights of both the bank and the credit applicant, and the most important of these obligations are:

Execute the client's instructions for opening credit with accuracy, speed, and honesty;

- That the instructions for opening or amending the credit be accurate with regard to specifying the documents against which payment, acceptance or negotiation will take place ;

- Examine the shipping documents that respond to the strength of credit with accuracy and what preserves the rights of its customers,

- Good selection of his correspondents who are entrusted with the implementation of documentary credit.

Paying the full value of the shipping documents corresponding to the credit, and any other financial burdens associated with them, to the correspondent chosen by him and entrusted with the payment of the value of these documents ;

- Accurate implementation of the instructions of his correspondents regarding the method of paying the value

of the documents, or how to dispose of the documents themselves;

- The bank opening the credit shall be responsible before the bank that made the payment, acceptance or negotiation for any loss of interest as a result of the bank not obtaining its dues at the first match with the concerned bank to meet its payments according to the case indicated in the credit or to be agreed upon as the case may be. (ph, 1993) Commitment to hand over the documents to his client who ordered the opening of the credit, as long as the latter fulfills all his obligations.

- Obligation to return the cover (reimburse) if the approval ends without use.

- To decide within a reasonable period not exceeding 7 working days with banks, starting from the second day of receipt

Shipping documents, once he accepts or rejects these documents. (article number 13 ph , 2007)

### **3.1.2. Unusual parties in the documentary credit**

The documentary credit appeared based on the distance between the seller and the buyer in order to reconcile the divergent needs between the seller and the buyer, with the help of a mediator they trust, which is the bank, but there are other parties that may participate in the documentary credit and it is not necessary that It is part of the documentary credit parties, but it is included within the documentary credit parties, and this changes from one letter of credit to another and according to the contract concluded between the seller and the buyer.

1. The bank notifying the credit (advising bank): it is the bank that informs the beneficiary of the credit without adding its reinforcement, according to the terms of the credit, and it does not have any responsibility when informing the received credit to the beneficiary unless it is The credit is reinforced, and then the reporting (advising) bank becomes obligated, just like the bank opening the credit. (Kilani, 2008)

The Uniform Customs and Practice of Documentary Credits (Bulletin No. 600 of 2007 in Article 2 of it) were defined as : “The advising bank means the bank that advises the credit at the request of the issuing bank.” It is generally located in the seller’s country and is chosen by the bank that opened the credit.

By resorting to Unified Principles and Customs, we find that Article 07 of it states the following:

1/ It is permissible to notify the credit from another bank (the advising bank), and it must exert the necessary care to examine the apparent validity of the credit that it notifies, and if it considers not to notify it, then it must notify the issuing bank without delay.

2/ If the advising bank was unable to verify the apparent validity of the credit, it must, without delay, notify the issuing bank that it was unable to verify the validity of the credit, but if it informs the beneficiary that it was unable to verify the authenticity of the credit.

In accordance with Article 12 of the Unified Principles and Customs, it is given to the bank required to implement the instructions, and if they are not clear for notification, by sending an initial

notice to the beneficiary for information only and without any responsibility, and in all cases he must inform the bank issuing the credit of the measures taken and ask him to provide him with the necessary information on the other hand, the latter must provide him with the necessary information without delay, and then the notification, reinforcement, or amendment cannot take place unless the bank receives complete and clear instructions, indicating whether he is then able to implement these instructions.

2. Confirming bank :

It is a bank that adds its commitment and reinforces it based on the instructions of the issuing bank, so it becomes committed to the letter of credit as if it were its source, and in this case the beneficiary is in a position of strength, especially if the confirming bank is located in his country. (Abdennabi, 2011)

3. Bank negotiating documents:

It is the bank that checks the documents according to the terms of the credit, pays their value to the beneficiary, then sends the documents to the conquering bank after it withdraws the value of the credit from the covering (reimbursing ) bank, and it can withdraw it from another bank if the credit is not restricted, provided that the latter withdraws the value of the documents from the covering bank and pays Its value is given to the beneficiary after ensuring that it conforms to the terms and conditions of the credit. (Amooshe, 1996)

4. The covering or paying bank (reimbursing bank):

It is the bank that pays the value of the documents to the beneficiary bank on



behalf of the bank that opened the credit, and the latter reserves its right to claim the bank that opened the credit for the value of what it paid.

Bulletin 600 of 2007 indicated that fulfillment (Honour) means :

A- to pay at sight, if the credit is available by payment by sight.

B- to incur a deferred payment undertaking and pay at maturity if the credit is available by deferred payment.

C- to accept a bill of exchange (draft) drawn by the beneficiary and payi at maturity if the credit is available by acceptance. (Article 2 from The Uniform Customs and Practice for Documentary Cridits, 2007)

### ***3.2- The theories adopted in interpreting the legal relationship between the parties of documentary credit***

There arises a final irrevocable obligation from the bank for the benefit of the seller and a direct right for the seller to obtain the implementation of the credit, and there have been many theories in explaining this legal relationship.

#### ***3.2.1. The contractual theories***

Where the agreement between the customer and the bank was adapted as agency (first), the stipulation in the interest of others (second), the relationship between the bank and the beneficiary as the guarantee (third), and the bank acceptance (fourth) or between the three parties, the bank, the customer and the beneficiary, as the deputation (fifth).

1. Agency contract: The bank's obligation to pay the price of the goods to the seller is due to the provisions of the agency in the general rules (Article number 571

from the ordinance 58-75 containing Civil Law ). The bank is considered an agent on behalf of its customer who commands the payment of the cash consideration to the seller. This contract results from the request submitted by the customer to the bank. The bank pays to the seller on behalf of its customer by implementing the terms of the letter of credit, which is he works for the account of his client in his capacity as his agent, and the bank cannot refrain from executing his obligation in front of the beneficiary because it is executing an agency that affects the interest of others (the beneficiary) and it is forbidden for the principal to withdraw -from it without the consent of the beneficiary.

2-The stipulation in the interest of others: This theory recognizes that when opening credit, an implicit condition is in favor of others (beneficiary) ; the undertaking bank pay the amount of credit based on the instructions of the stipulator (the ordering customer) (Masri, 2005)

This condition creates a direct relationship between the bank and the seller, independent of the relationship between the seller and buyer.

3-Guarantee contract: This theory held that the bank's obligation to guarantee the buyer towards the seller in the amount of the agreed price is a guarantee contract. (Article 644 from the Civil Law ) And the French Court of Cassation held that the bank that opened the credit is irrevocable and is considered a guarantor of the buyer in fulfilling (honoring) the price of the goods to the seller (french cassation dated in january26th, 1926), as it is not possible to take this conditioning of the credit that

is irrevocable, because the obligation of the guarantor is subordinate to the obligation of the original debtor, and then the guarantor has the right to invoke all the aspects that he invokes. With regard to the debtor, as for the irrevocable credit, the bank is committed to a new relationship with the beneficiary, independent of the sales contract between the seller and the buyer.

4- Exchange acceptance: This idea arises as soon as the bank accepts to send the letter of credit; it is considered an acceptance of the seller in order to withdraw the bill of exchange. On the bank and presented to him to place his acceptance on it in return for obtaining the corresponding documents, as it is not valid in cases of executing the credit through immediate payment (Youssef, 1988).

5-Delegation: The deputation contract is concluded between the debtor and a foreign person for the documentary credit contract. It is agreed under this contract that the foreign person pays the debt either with the debtor or in his place. The creditor who delegates him, and the foreigner who delegates.

It should be noted that this theory is criticized as it is based on an assumption that does not exist, as there is a sale contract followed by a credit contract, and each contract is independent of the other through its parties and legal effects, although the requirement of this theory is to preserve the right of the beneficiary towards the bank as an abstract obligation that is not affected by any dialogue that lies it affects the original relationship between the bank and the customer (Bouzidi, 2022).

### **3.2.2. Other theories**

1- The unilateral will theory: This theory was accepted by most jurists, considering that the unilateral will is an independent source of commitment and the basis of this commitment is the bank's commitment towards the beneficiary through the letter of credit with his unilateral will, a firm and final commitment to financing this commercial transaction, and in return it is established through this source right of the beneficiary at the will of the bank alone.

But this will is not free, as it arises according to the binding force of the same documentary credit contract that arose between the customer and the bank. The bank cannot withdraw from its commitment as long as it is final and conclusive (Masri, 2005).

Supporters of this opinion base their saying, that the position of the bank in this case is similar to the position of the one promising a prize, which is that both of them undertake independently to perform a certain performance if the other performs another work, which is to submit documents, which corresponds to the prize offered by the bank in exchange for the work that deserves the prize (Assanhori, 1951).

However, this opinion is criticized because the promise of the prize is addressed to the public through public means, and if the will is directed to a specific person, it comes out as a promise of the prize, and the rules of the offer apply to it, so acceptance must be associated with it and then it becomes a contract for a single will. This proposition took two analysis.

The first : The individual will is not a general source of obligation, but rather is a source in the cases stipulated by the law, and thus the law does not accept that the individual will be a source of obligation.

Secondly : The idea of a single will does not apply with the documentary credit process, due to the multiplicity of relationships arising from it, such as the letter of credit, and the basic relationship arising from it, which is represented in the documentary credit contract between the customer and the bank.

2.The realistic approach : it is clear from the study of the aforementioned theories that the accreditation process is not entirely subject to any one of them. The bank towards the beneficiary directly and independently is considered a special kind of obligations and lies in the bank's function as a place of trust in the hearts of the contracting parties, as the foreign seller is comfortable receiving the price of the goods when he receives the letter of credit because of the independence of the bank's commitment in the face of the will of the buyer. After obtaining the documents and making sure that they comply with the customer's instructions (Youssef, 1988).

#### 4. CONCLUSION

Through the foregoing in the research, we concluded that the documentary credit is a commercial contract of netting, binding on both sides, consensual, which takes place as soon as the will matches. It is a banking process issued by the bank and it is called the bank that opens the credit, and this is based on a request from the buyer, the importing client, and it is

called the one who ordered the opening of the credit in favor of the seller, the exporter, the beneficiary of the credit, and each party undertakes a set of obligations for the purpose of implementing the credit, It thus constitutes a form of bank credit, as the bank undertakes to pay on behalf of the customer after receiving the documents that represent the goods in several ways, represented in execution by payment, execution by acceptance, execution by deduction, and then the bank returns to the customer to recover what he paid.

#### Results :

1- The essence of the contractual relationship in the documentary credit contract is the principle of independence, where the documentary credit is considered independent of the contracts concluded within its framework, and on the other hand, we find the principle of apparent conformity to the documents, where dealing in the framework of this process is with documents only and not with goods ;

2-The parties to the documentary credit are represented by the ordering customer, the bank and the beneficiary, and the banks play the role of mediator through their implementation of international commercial exchanges in the form of documentary credit;

3-Banks are committed to investigation and accuracy in implementing the documentary credit, as they are forced to adopt the principle of literal implementation of the conditions stated in the documentary credit ;

There is a commensurate relationship between the importance of documentary

credit and the development of international trade relations or exchanges, given that documentary credit has found a solution to the process of financing foreign trade, as well as supporting trust and confidence between its parties ;

4-The documentary credit is characterized by flexibility, which makes it compatible with the various commercial situations and with all that the will of the parties dealing with it is directed to. The agreement concluded between them is the basis of the documentary credit, and its wide use in various countries of the world;

In the end, we see that the documentary credit contract, in view of its rules and provisions, is a contract of a special nature, and constitutes a special legal system that is distinguished from other contractual systems, and **we suggest** that it be regulated by special rules and texts that are not covered by civil or commercial law, which is what other countries have done, especially since it includes relations and parties of an international nature, so the best solution is to subject it to the rules of international norms that are currently in force through Bulletin 500 amended by Bulletin 600 titled Unified Customs and Practice of Documentary Credit entered into force in 2007 and these rules are not binding on their release, but are subject to the will of the parties to reduce disputes, especially those related to the law applicable to it in general and to its parties and its content in particular.

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See article number 12 ph d, from Uniform Customs and Practice for the Documentary credits for the year 1993.

See article number 13 ph b, from Uniform Customs and Practice for the Documentary credits for the year 1993, we point out that the period specified for banks is 5 days instead of 7 days, according to the Unified customs of 2007.

Article 2 from The Uniform Customs and Practice for Documentary Credits' of the year 2007.

Article number 571 from the ordinance 58-75 containing Civil Law identification the agency contract.

Article 644 from the Civil Law identifying the guarantee contract.

See French cassation dated in january 26th, 1926, quoted from