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(Policy Research Paper)

Independence Principle under Letter of Credit and the Fraud Exception

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Working Paper
(WP42/2024)



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INDIA
April 2024

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Citation Guideline:

Work in Progress : Do not cite

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NIBM Working Paper No. 42

April 2024

ABSTRACT

In international trade finance, the Letter of credit (LC) has a key role to play in risk mitigation. However, the Letter of credit is a complex instrument, and guidelines from the International Chamber of Commerce (ICC) in the form of Uniform Customs and Practice for Documentary Credits (UCP-600) as well as the ICC dispute resolution process form the basis of the letter of credit transactions. The letter of credit as an instrument of payment is independent of the underlying contract between the buyer and the seller as well as independent of the contractual relationships between banks or between the importer and the importer's bank. Moreover, in determining a complying presentation, banks are expected to examine the documents only on the face of it and not with the actual physical goods to which the documents relate. These two criteria form the basis of the independence principle for the Letter of Credit. While the banks have to adhere to the 'Independence principle' to ensure the effective functioning of the Letter of credit, the same principle can be exploited by fraudsters to defraud the banks involved by submitting fake documents. In this context, the paper examines the fraud exception to the 'independence principle' using a textual analysis of the select legal judgments on the fraud exception in the letter of credit.

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Independence Principle under Letter of Credit and the Fraud Exception

Section I: Introduction

In August 2023, a Singapore court ruled against Winson Oil Trading Pte Ltd - Singapore (henceforth Winson Oil) in a US \$60 million letter of credit¹ (LC) case². The ruling was a relief to the two banks involved (Standard Chartered and OCBC) and heralded by the banking community as a '[significant victory](#)' ([Basquill, 2023](#)). The company, Winson Oil, had sued the two banks as they had refused to 'honour' the presentation on grounds of suspected 'fraud' involving fraudulent documents.

What makes this case significant is that earlier Winson Oil had got a favourable decision from the International Chamber of Commerce, Documentary Instruments Dispute Resolution Expertise (DOCDEX) rules³, the apex body for resolution of dispute related to trade finance instruments. DOCDEX had ruled that the banks were "[obligated to honour the presentation made against documentary credit](#)" (Daga, 2020) and that the "[issue of fraud was outside the scope of UCP 600 and was for the courts to rule on](#)" (Daga, Ibid). The Singapore court's action in effect had ruled against the basic principle of operation of Letters of Credit: the 'independence' principle' which requires banks to honour a presentation for payment under its Letter of credit if it was 'complying'⁴ (ICC UCP 600).

This judgement while giving relief to the banks in questions brings to the forefront the inherent conflict of the 'independence principle' of letter of credit and 'fraud exception' law. Moreover, it also raises the question of the effectiveness of the ICC's DOCDEX in the legal setting. The International Chamber of Commerce, which gives guidelines for issuance and operations of documentary credits, including the letter of credit, relies on the dispute resolution processes, DOCDEX to settle disputes between counterparties in a LC transaction. These are carried out with reference to the rules under which the instrument is issued and rules on the application and interpretation of the same. However, the DOCDEX decisions in principle are non-binding. The decision would be binding only if all the parties involved agreed to be bound by it prior to the raising of the case with DOCDEX ([DOCDEX Rules, Article 2](#)⁵).

¹ A letter of credit (L/C) is an instrument issued by a bank on behalf of the importer (buyer) promising to pay the exporter (beneficiary) upon presentation of complying documents in accordance with terms of the credit.

² Winson Oil Trading Pte Ltd v Oversea-Chinese Banking Corporation and Standard Chartered Bank (Singapore) Limited [2023] SGHC 220 ("Winson v OCBC & SCB")

³ DOCDEX, or Documentary Instruments Dispute Resolution Expertise is aimed at resolving disputes related to trade finance instruments provided International Chamber of Commerce (ICC).

⁴ Complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.

⁵Article 2 of the DOCDEX regulations state that a decision shall not be binding on any Claimant or Respondent unless each Claimant and Respondent agrees that the Decision shall be contractually binding upon them.

Thus, effectively DOCDEX cannot serve as a sole arbitrageur of legal questions involving letters of credit. Does this mean the dispute resolution system available to trade finance practitioners for quick and effective resolution has no legal standing? What would that mean for banks who expect the ICC regulations to serve as a protective umbrella for transactions involving letter of credit and related disputes?

While there have been various judgements on how banks should act when they come across fraudulent transactions, the extant UCP 600 guidelines have not been curated for the purpose of addressing the issue of fraud. UCP guidelines governing the issue and use of the LC are meant to majorly address the commercial sanctity of the letter of credit transaction. The guidelines serve as a basis for issuance of LC by the importer's bank, the advising of LC by correspondents and examination of documents for establishing a 'complying' presentation. Introducing subjectivity or judgement with reference to the authenticity of the transaction and/or documents would encumber the operations of the letter of credit.

In this context, the article examines if there is a contradiction between the LC independence principle and fraud exception law. Section II elaborates on the theoretical underpinnings. Section III underlines methodology and data used. Section IV analyses the interlinkages between the LC independence clause and occurrence of fraud and finally comments on the role of DOCDEX and the way forward.

Section II: Theoretical underpinnings

The letter of credit, as an instrument of trade finance, remains an essential tool for risk mitigation for exporters and importers globally. The main purpose of a letter of credit is to address the inherent risk in trade between two parties who may not know each other or have a trust deficit but exchange goods for money on the promise of the Letter of credit structure issued under ICC UCP 600 regulations⁶.

The letter of credit can be defined as an irrevocable undertaking given by the importer's bank to the exporter to pay the value of goods on receipt of a 'complying' presentation. The word 'complying presentation' basically connotes a 'performance' by the exporter or the evidence that they have shipped the goods in accordance with the terms of LC. This evidence/performance is to be derived by the importer's bank, or Issuing bank, on the basis of the underlying documents submitted by the exporter. This ensures that the exporter can be assured of payment in case they have shipped goods in accordance with the terms of the credit, even if the buyer is unwilling or unable to pay. It also provides comfort to the buyer that the shipment will be examined as per the documentary requirements reducing the risk of fraud.

The evidence is necessarily to be 'documentary evidence' or based on documents presented, because for banks involved in the transaction it is not practical or feasible to check the physical flow of the transaction. (See Appendix A for the structure and flow of a letter of credit). Importantly, these documents must 'appear on their face' (UCP 600

⁶ The Uniform Customs and Practice for Documentary Credits (UCP) are rules given by the ICC on the issuance, use and examination of documents under letters of credit.

Article 14) to constitute a 'complying'⁷ presentation to the bank examining the presentation under the terms and conditions of the LC and the guidelines given by the ICC: UCP 600 & ISBP⁸.

Thus, the letter of credit mechanism is intentionally structured to rely on evidences produced at the bank's counters for its perusal and not make it a party to the physical movement of goods and the resultant supply chain activities. This feature is encapsulated in what is known as the 'Independence Principle' of Letters of credit.

The independence principle of Letter of credit is based on two crucial aspects:

1. The letter of credit as an instrument of payment is independent from the underlying contract between the buyer and the seller as well as independent of the contractual relationships between banks or between the applicant and the issuing bank (Article 4 of UCP 600)
2. In determining a complying presentation, banks are to examine the documents on their face and not the actual physical status of the goods (Article 5 and 14 of UCP 600)

It must be iterated at this point that the intent of UCP regulations is to provide a straight-through, speedy and efficient mechanism for trade settlement. To achieve this objective UCP provisions restricts itself to the documentary aspect of trade while keeping the performance of the underlying contract and the goods out of its scope. When all parties acting in good faith enter into a commercial contract backed by a letter of credit, the Issuing bank is mandated to make payment to the beneficiary on submission of LC-compliant documents. The issuing bank is in no way responsible if some document needed by the applicant has not been presented since it was not part of the LC. The Issuing Bank will merely upon scrutiny on the face of the documents provided decide on LC compliance.

This means if a 'complying presentation' is submitted to the bank, which on the face of it, satisfies the terms and conditions of credit, the bank has to honour. The possibility of the documents being fraudulent puts bankers in a difficult position. [CheHashim & Mahdzan \(2014\)](#) points out that while banks in Malaysia have experienced fraud in LC dealings, as these were issued under the Uniform Customs and Practice (UCP) for Documentary Credits 600, these banks have to adhere to the requirement of honouring obligations even when presented with 'falsified documents that cannot be fully proven'. The dependence on the documents alone for evidence of complying presentation and the application of the independence principle makes the letter of credit susceptible to fraud ([Alavi, 2016](#)).

The documents, as detailed in the Table 1, are unique and issued by various parties who are either part of the physical movement of goods or are required by the letter of credit conditions to certify certain aspects of the goods. The Issuing bank is not expected

⁷ Complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice, Article 2, UCP 600

⁸ The International Chamber of Commerce also provides the International Standard Banking Practices (ISBP) for interpreting the UCP 600 guidelines

to ascertain the authenticity of the documents presented beyond the 'face', i.e. as evidenced by the documents themselves. Two examples can be cited to iterate this point: First, while the UCP guidelines require the submission of one original document (UCP 600 Article 17), UCP article (Article 17) states that if only copies are asked, bank will consider only copies.

Second, while UCP has provision for establishment of authenticity of documents through signatures (UCP 600 Article 2), Article 2 defines signature in a gamut of ways (facsimile, perforated, stamp, symbol, or mark), so that in practice the genuineness of documents is not always easy to establish. The bank is not expected to verify the authenticity of the person issuing the documents (Article 2, and 14) beyond what is stated in the document, say through signature verification and proof of identity, as is usually done in the case of other instruments such as cheques.

In effect, while the banks have to adhere to the 'Independence principle' to ensure the effective functioning of the Letter of credit, the same principle provides loopholes for fraudsters to defraud the Issuing bank by submitting fake documents.

[Table 1]

While there is a provision for dispute resolution under ICC through DOCDEX, the body, like the UCP guidelines is not meant to address the issue of fraud in an LC transaction. The DOCDEX mechanism is majorly meant to address disputes arising from interpretations of UCP guidelines amongst counterparties. DOCDEX decisions are binding on parties who agree to be bound by it before the commencement of the proceedings thus blunting its effectiveness since if there is fraudulent intent on the part of any of the parties to the LC, they could refuse to be bound by such decisions. Though the banks and counterparties use DOCDEX as a more cost effective and timely tool as compared to a long legal battle, on the question of fraud, the DOCDEX mechanism cannot provide redressal.

Section III: Gap in Literature, Data and Methodology

A. Gap in literature:

The understanding of the fraud exception in the letter of credit is important both from the theoretical and practical consideration. On the theoretical level it examines the cornerstone principle of the UCP 600 in light of evidence of fraud and on the practical level it gives suggestions to practitioners on the interpretations of the fraud exception in different jurisdictions and its implications. In fact, the difference in interpretations across jurisdictions is one of the impediments to the smooth transaction of the letter of credit given that it is used across jurisdictions.

Houten (1984) pointed out that a more 'generous' definition of the fraud exception may be helpful to both banks and counterparties, and that the UCP regime lacked the flexibility to address the issue. Particularly for Canada, courts focused on the standard of proof rather than standard of fraud in applying the fraud rule with regard to the documentary credit transactions (Mallaya, 2018). Zhang (2011) examined fraud exception rules in the UNCITRAL Convention at international level, comparing England and China. The paper finds that the approach in China to 'fraud exception' rules is to adapt the adoption of the principle in other countries after a careful study of different models

in other countries, and this method of 'legal transplant' is a common method of reforming law in China. Zhang (Ibid) also points out that while arbitration is possible, several practical difficulties remain and DOCDEX rules remain unsuitable for resolving LC fraud disputes. In Australia the fraud rule, as expounded in the *Olex Focas Pty Ltd. v. Skoda Export Co.*,⁷⁰ Bhatt J case, applied only when it is proved that the banker was aware of the fraud at the time of payment and forged document was presented by the beneficiary (Mallaya, 2018).

For India, there has been very little examination of the issues of fraud exception. As Mallaya (2018) points out the research in India has only focussed on use of LC for mitigating fraud risk by the banks, while its legal implications have remained unexplored. The paper points out that in the Indian context, 'no creative role' was enacted on the said area, as there is a hesitancy to interfere in cases related to letter of credit, in an effort to keep sanctity of the documentary credit as a commercial instrument. There has been also instances of courts recognising fraud as an exception to the 'principle of autonomy' of the letters of credit based on English case laws (Mallaya, Ibid).

Thus, the literature in the global context and Indian context have not significantly questioned the interlinkages between the fraud exception and commercial operation of the LC. We see that an understanding of the major cases globally and in India is required to appreciate the concerns of trade practitioners in this regard. This paper aims to fill this gap in literature with a systematic study of the rulings on fraud exception from various jurisdictions and analysing of the linkages between the fraud exception and the operational working of the letter of credit.

B. Data and Methods:

The data used for the analysis are judgements on fraud exceptions from various jurisdictions, especially United Kingdom, United States, China, Canada and India. The cases are chosen via purposive sampling to ensure the optimal coverage of the fraud exception. The paper uses the methodology of textual analysis of select 'fraud exception' judgements.

Textual analysis is used by researchers to describe and interpret the characteristics of content, structure, and functions of the messages contained in texts. An important consideration for textual analysis is selecting the representativeness of the texts selected. The four major approaches to textual analysis are rhetorical criticism, content analysis, interaction analysis, and performance studies (Frey et al, 1999). We focus here on a qualitative content analysis of legal judgments pertaining to the 'fraud exception' (Mitchell, 2023).

Section IV: Analysis of the interlinkages

The operation of the LC reaches a stumbling block in case of fraud. Frauds in the underlying documents or goods in not addressed by UCP regulations, as they are majorly aimed at facilitating the settlement process. However, fraud in trade is a real occurrence, one that requires a nuanced approach from the banker. Frauds perpetuated by the beneficiary is one of the major types of frauds under LC and may entail modus operandi such as:

1. Generating false/ fraudulent documents and submitting the same to the issuing bank for settlement
2. Wilful shipment of bad quality, no value, and non-conforming goods with the intent of unjustly enriching the beneficiary at the expense of the Issuing bank/ applicant under the pretext of the independence principle of a Letter of credit.

In this section, we examine the cases from the literature on this topic to understand the observations on the fraud exception in relation to the letter of credit. The established laws in international trade (US, UK, Canada) have adopted different approaches in dealing with the understanding of the 'fraud exception' to the autonomy principle in Letter of credit. The question of frauds under letter of credit and the contradictions created by the independence principle have attracted attention from 1941 Sztejn Case (Buckley and Gao, 2014, Aladwan, 2021, Alavi, 2015). In this case, the allegation of the US buyer was that the exporter from India had shipped 'trash' violating the contract. The court, in this case, had ruled that the autonomy principle of the letter of credit should not protect the fraudulent seller, as the bank had knowledge of the fraud before the drafts and documents were presented to it for payment.

The case highlighted that the 'autonomy or independence' principle of the letters of credit can be superseded only in case of fraud and that fraud should be established and merely allegations of fraud cannot be used for the stoppage of payment (Alavi, 2015) Alavi (2015) points out that in United States of America, Documentary Letters of Credit being governed by Article 5 of Uniform Commercial Code (UCC), there is a clear demarcation of the undertaking of the issuer in a documentary letter of credit "from existence, non-existence, performance or non-performance of underlying contract". UCC Article 5-109 guides the fraud exception with regard by setting the standard of proof as "materiality of fraud" and also providing that fraud exception covers fraud in documents as well as underlying contract.

Under English Law, the following cases give interpretations of the fraud exception. In *Hamzeh Malas and Sons v British Imex Industries Ltd* where the plaintiff buyer asked for an injunction on payment based on defective goods in the first instalment, the courts upheld the sanctity of the autonomy principle and rejected the award of the injunction. *Harbottle (RD) (Mercantile) Ltd v National Westminster Bank Ltd* reemphasized the strict approach towards the autonomy principle (Alavi, 2015).

In the case of *Discount Records Ltd. v. Barclays Bank Ltd* (Alavi 2015), a letter of credit was issued by Barclays Bank in favour of the French seller. Post the shipment of goods by the seller, the beneficiary submitted documents to the confirming bank in Paris and received the payment. However, the English buyer found goods as non-complying and "rubbish", determined in the presence of their bank. An injunction was obtained against honouring the presentation based on fraud, with reference to Sztejn case. However, the court ruled against the injunction on the grounds that the fraud was not established and was a 'mere allegation'.

The case *United City Merchants (Investments) Ltd v Royal Bank of Canada* [1983] highlighted another important facet of fraud exception by linking it to the conduct of the seller in 'fraudulently' presenting documents that "contain, expressly or by implication, material representations of fact that to his knowledge are untrue". In this case, the court

by linking the establishment of the fraud to the 'untrue' representations in the documents, implicit and explicit, allows some comfort for banks in establishing the fraud exception through documents.

Aladwan (2021) points out it has generally been established from the cases that if the bank is aware of the fraud before the presentation, they should not accept a fraudulent presentation. If the bank is not aware of the fraud while examination and fraud come to light after payment, the bank is not liable. However, the fraud must be established on the basis of documents alone and not from external sources.

However, while the dependence of banks on documents may be in conformity with what is envisaged under UCP 600, it is extremely difficult for banks to prove that documents are fraudulent, even when they have a strong suspicion of the same or may have been informed by external sources of the same. Thus, while under English Law, the fraud exception is allowed, it requires a clear establishment of the fraud with strong evidence. As with other jurisdictions the fraud exception is not treated so strongly. The cases on fraud exception can thus be summarised as:

- The principle of autonomy espoused by UCP regulations are subject to exception in case of fraud.
- Mere allegation of fraud by itself is not sufficient to stop the Issuing Bank from effecting payment. The fact of fraud has to be established and substantiated.
- Any preventive action has to be taken prior to payment by the Issuing bank. i.e. if the fact of irrefutable fraud in the transaction is brought to the notice of the Issuing bank prior to its effecting payment, then the bank may withhold the same.
- An additional point is that the fact of fraud should be established by the Issuing bank itself, and not from external sources.

This throws up several discussion points:

- In a commercial transaction the person best placed to allege fraud is the applicant.
- In case of sight LC, it is difficult for the applicant to establish the fraud exception, because they cannot access the goods without payment, which means that the banks also cannot withhold payment on this ground.
- The bank by itself would have to establish fraud on the basis of the documents presented evidencing factual misrepresentation, inaccuracies, or evident falsification.
- In either case, the fact of fraud by the beneficiary would affect both the Issuing bank and the applicant. The applicant obviously would have paid for no/ bad goods. The Issuing bank too while opening the LC ensures that the title of goods is in its name and it has a lien on it till reimbursement by the applicant.

Given the above facts which point to the difficulty of establishing a fraud exception in a court of law, it is evident that banks can not merely rely on ICC UCP 600 regulations

to protect itself and their customer's interest. They are also required to handle each transaction with utmost vigilance and care. Blind reliance on the 'independence' principle can harm both the bank and its customers and leave it open to the legal process which is time-consuming and costly. While the letter of credit and the underlying independence principle works well in a majority of the cases, under the question of a fraudulent transaction it fails to function efficiently. Even a body created for dispute resolution falls short of providing a binding and final resolution which then leads the counterparties to legal action.

There are two distinct flows for any trade transaction, one is the flow of goods and the second is the flow of documents. As discussed above, banks are concerned with the documents evidencing the physical flow of goods. Thus, though banks are not involved in the physical aspect of the transaction, it is in their best interest to establish the physical flow of goods by exhaustive and comprehensive documentation evidencing the same.

Though the counterparties and banks have rapidly adopted digital solutions to many aspects of trade, however even today majority of the mandatory documents are still issued in the physical form leading to the related risks of fake documents, fraud, duplication etc. To address this, technologies such as distributed ledger, blockchain, etc can be adopted. Here the transparency and immutability feature of these technologies would ensure that any fraudulent intent is immediately highlighted and addressed.

This would lead to the second aspect of low quality / no quality/ no goods or different goods being shipped. It is here that the banker has to take an additional step and advise the applicant at the time of opening the LC on the best way to ensure the shipment of the right goods. This can be by way of third-party inspection certificates, additional inspection at the time of loading/ unloading and accordingly certified, etc. Here the intent would be to ensure the physical goods conform with the documentary goods. Thus, the banks have to be proactive and cautious and play a balancing role between the 'independence principle' and the 'fraud exception.'

Section V. Conclusion

The letter of credit is an important instrument used by banks and counterparties globally for trade finance, and the issue of LC and its use is governed by the UCP 600 guidelines given by the ICC. The payment to the exporter under a LC depends on the exporter submitting 'complying presentation' showing that they have shipped the goods according to the terms and conditions of the credit. The complying presentation is based on the documents as specified by the letter of credit. The bank is to decide whether the presentation is 'complying' based on the documents alone, as the LC is guided by the credit alone and not the contract underlying the same, which is the basis of the 'Independence principle' of the LC. However, this 'independence principle' fails to protect the banks in case of submission of false or fraudulent documents.

We argue in this article that there is an inherent contradiction between the focus on documents for establishing a 'complying' presentation under LC and the possibility of fraud through documents. This has led to multiple disputes around the world, a select study of which shows that while payments under LC can be stopped applying the fraud exception principle, the establishment of the fraud exception in a court of law is not easy. This underscores the need for banks to be vigilant and scrupulous in issuing of LCs and

handling of documents under LC. Ultimately the applicant/ buyer is the customer of the bank on whom it has taken an exposure and issued the LC, so it is both in the interest of its customer and itself to be vigilant and diligent while handling the transactions.

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Table 1
Important documents under letter of credit and issuer

<i>Name of the documents</i>	<i>UCP Article</i>	<i>Issuer</i>	<i>Potential loopholes and risks</i>
Invoice	Article 18	Beneficiary	Originals not provided, fraudulent invoices, under/over invoicing
Transport documents	Article 20-24	Carrier	Fake/ forged /duplicate documents being submitted. Risk of no goods actually being shipped.
Inspection certificate/ Quality certificate	Article 14	Inspection agency	Fake certificates, risk of non-conforming/ scrap value goods
Certificate of origin	ISBP	Chamber of Commerce	Fake or forged documents. Risk of goods not originating in the beneficiary's country.
Insurance Document	Article 28	Insurer	Fake or forged documents. Risk of shipment and/or good not sufficiently being insured.

Source: Author

Appendix A

Letter of credit mechanism

The process flow for a letter of credit starts with the exporter and importer entering into a contract deciding the terms of payment and other details regarding the commercial transaction. The importer will then apply to its bank, termed as the Issuing bank, to issue a letter of credit in favor of the overseas seller subject to specified terms and conditions. Importer submits the application, along with the contract and agreement to the bank, for whom again issuing an L/C is equivalent to a credit decision as the Issuing Bank is giving a undertaking to pay the beneficiary the agreed value against presentation of complying documents. In fact, it is the credit department of the bank who will sanction the limits for L/C on the basis of which the trade financing cell or international banking division issues the L/C.

After the issuance of the L/C the importer's bank forwards the L/C to its Correspondent Bank, also referred to as the Advising Bank in the exporter's country. It requests the correspondent bank to 'advise' the L/C to the Beneficiary, which involves checking the genuineness of the credit and advising terms and conditions to the exporter. The correspondent bank on receiving the documentary credit from the issuing bank, advises the credit to the beneficiary. The seller/ exporter may however be unsatisfied with/ unaware of the financial status of the issuing bank. In that case, the issuing bank will request a bank in the seller's country or a third country, for 'confirming' the credit. The confirming bank steps into the position of the Issuing bank and gives an undertaking to affect payment, if the Issuing bank fails to do so, on submission of 'complying' documents by exporter. Such a credit will be called as a 'confirmed credit'.

The exporter ships the goods within the specified period and collecting the documents submits the same to the negotiating bank. The negotiating bank may be a specified bank 'nominated' by the issuing bank, implying that credit is available only with that bank. If no particular bank is specified as having credit available with by the L/C, it could be any bank. The advising or confirming bank could themselves serve as a nominated bank. The nomination of a bank by issuing bank, does not comply an obligation on its part to effect payment unless it has confirmed the credit.

On receipt of documents, and examining of the same, if documents are found to be discrepancy free, the negotiating bank will pay a discounted amount to the seller (exporter), also forwarding the documents to the issuing bank, who after examination of the same will affect payment to the exporter's bank. The L/C requires the involvement of the Reimbursing bank which will be instructed by the Issuing bank to affect payment to the exporter's bank. Issuing bank releases documents to importer either with immediate payment (documents against payment) or with importer promising to pay later at an agreed date (documents against acceptance). It is on the basis of these documents that the goods can be collected.

Evidently, the buyer is assured of payment being made only if the goods are shipped and documentary evidence of such shipment is produced by seller. It will also ensure that goods are shipped within a specific period of time as the letter of credit would specifically mention the last date of shipment and presentation of documents, which must be adhered to by the exporter. If the exporter fails to comply with any conditions, the payment would not be affected.