



Research Article

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Availability of Compliance Status in the Documentary Credit Opening Contract: A Study on the Jordanian Legislations

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Abstract

The letter of credit (L/C) contract is one of a range of banking operations through which banks can finance foreign trade. The contract provides security and stability to the trade because of the trust and credit it gives, since the buyer may be in one country and the seller in another, so as to assure each other that the other party fulfills its obligation. However, is this contract can be considered as a compliance contract so the relations between parties is a submissive weak-strong relationship? This necessarily entails examining the availability of legal protection to prevent the abuse of a strong party. Hence, this paper aims to examine the availability of compliance status in the documentary credit opening contract and focuses on the Jordanian legislations as a case study. The comparative analytical approach is executed in this study. The findings reveal that the L/C contract is influenced by the concept of compliance, however the L/C contract can be adjusted by the client, in accordance with the rules and provisions of this credit.

Keywords: contract, letter of credit (L/C) contract, adhesion

1. Introduction

Compliance status in contracting emerged as a result of economic development and the large production of goods and services on the one hand, and industrial and technological progress on the other. This development affected the contractual principles upon which Islamic jurisprudence and law were established, and which formed under the principle of the willpower. This principle formulated the mechanisms and effects of contractual freedom in a manner consistent with the prevailing philosophy in those centuries that came after the intransigence in the procedures by Roman law.

Hence, the consumer has no choice but to accept or refuse, as these consumers completely comply with the contract without checking or discussing the terms and conditions. This situation led

to an imbalance of the principle of contractual equality, which was clearly reflected in the emergence of arbitrariness conditions and cases of compliance in contracts. Consequently, new doctrines, such as socialism, emerged aiming to limit the principle of willpower and counter imbalance in the conclusion of contracts. They also worked to prevent the consumer's subjection to absolute control of companies' owners, and acquiescence in accepting their contracts which are indispensable to all consumers.

Opening credit is simple and creates a direct relationship between the client and the bank. The client, the merchant, uses these amounts to fulfil his obligations towards his creditors. Hence, the bank is not involved in these relations between its client and other parties. Credit could be through documents. In this type of contract, the bank is committed not to facing the contracting client, but to the beneficiary by placing a cash amount at his disposal.

The documentary credit helps more in international business and foreign trade when contracting parties live in two different countries. In this kind of business, the contracting parties know each other only through correspondence. Therefore, the documentary credit contract enhances the trust and confidence between them.

2. Significance of the Study

The importance of this research is highlighted below. Theoretically, the enormous industrial and technological development resulted in the development of contract formulas with conditions which limit the rights of the customer and the lack of writings, at the national level, that investigate and examine the bank's responsibility in the documentary credit contract. Moreover, the Jordanian Trade Law (No. 12 of 1966) and its amendments did not contain sufficient provisions for the documentary credit contract.

Practical, this study would encourage merchants and banks in dealing with documentary credit, which is considered one of the most important and most widespread operations in the foreign commercial transactions, especially with the progress and prosperity resulting from the development of land, sea and air transport. Furthermore, the development of communication means between countries which led to an increase in the volume of cross-border trade exchanges due to the benefits this process brings in, whether for the bank, the bank's client or the beneficiary.

3. Research Problem

The documentary credit contract is a contract that is previously issued; therefore, a question arises whether a customer of the bank has the ability to discuss the form and conditions of this contract or not? Thus, is there a flaw in the principle of contractual equality between its parties? This research aims to investigate the availability of the compliance status because banking operations generally depend on confidence and speed, so banks prepare and print contracts, including the documentary credit, in advance with terms and conditions that have been carefully formulated in the interest of the bank. As, the Jordanian law did not include sufficient provisions for documentary credit, the paper examines this topic in light of the international standard rules and customs related to this type of accreditation.

3.1 Research Objectives

The research aims to: (1) specify the meaning of compliance status in contracts; (2) identify the documentary and its main provisions; and (3) examine the availability of compliance status in the documentary credit opening contract.

3.2 Research Methodology

To achieve the objectives of the study, the analytical method is executed in this research. The jurisprudence views are discussed in detail, analysed and compared with the relevant legal texts and the unified rules and norms of documentary credits.

3.3 Structure of the Paper

The research is divided into four parts. The first part discusses the compliance status and its relationship to arbitrary terms in the contract. The second one examines the documentary credit contract while the third part investigates the legal nature of the documentary credit opening contract. The last part is the findings and conclusion.

4. Compliance Status and its Relationship to Arbitrary Terms in the Contract

Identifying the meaning of the compliance concept precisely has a major impact in determining the contractual transactions that are subject to the protection decided by the legislator. Some challenges may face such identification including the understanding of the emergence stages of this form of contract and its relationship to the principle of the willpower.

In order to explain the concept of compliance in its civil framework, the definition and characteristics of compliance are discussed in the Islamic jurisprudence, law and the judiciary. Subsequently, the paper examines the concept of arbitrariness and its effect in forming a modern concept of compliance.

4.1 Compliance: Meaning and Characteristics

The 'compliance' signifies complacency and acquiescence, however a confusion and ambiguity prevailed in the legal jurisprudence regarding the definition of 'compliance contract'. Therefore, a number of jurists have attempted to define compliance contract from different aspects, some of them focus on reviewing the contracting mechanism while others highlight the characteristics or advantages of the contract. These confusion and ambiguity are because of the unclear nature of the contract.

Dr. Al-Sanhouri has preceded many jurists in defining compliance by saying: 'it is a contract in which acceptance is merely submission to what the supplier dictates. Acceptance is not based on discussion and negotiation, as the consumer has no choice either to accept or to leave'. (Al-Sanhouri, p. 230)

Al-Sanhuri's definition here specifies the mechanism for the compliance contracts as merely an acceptance to pre-established conditions set in advance by the supplier, while the other party can only accept or reject without negotiations.

By that he was not aiming at setting a definition for the contract as much as he wants to shed light on the key characteristic of such contracting which is the acceptance of the contract without discussion or negotiations.

Although acceptance and its mechanism are main elements in composing the compliance contract, there are other essential elements that have not been highlighted in Al-Sanhouri's definition.

This contract dictates the conditions on the consumer and does not allow any kind of negotiation, whether the subject of the contract is necessary goods or services monopolized legally or practically by the supplier. Even though the abovementioned definition has clarified the essential elements of the compliance contract, but it does not address the subject of the conditions and their importance in this type of contract.

Moreover, the legal definition of the compliance contract was not far from the position of

jurisprudence, but is still more neutral and does not specify the details of the contract. The definition of the compliance contract in laws states only the contracting mechanism leading to compliance and focus on the acceptance that produces such contract characterized by the status of compliance, as stipulated in Article 104) Of the Jordanian Civil Code: 'Acceptance to compliance contracts is limited to merely recognizing the conditions stipulated by the supplier without discussion'.

On the other hand, the judiciary does not provide its own definition of compliance contracts and applied what the legal texts has stated. It confirms that compliance is realistic and legal case due to the Supreme Court of Justice (Court of Cassation) judging that it is considered a reason that prevents accepting the administrative invitation.

This is evident in the way the contract is presented and the conditions that are included. These conditions are either to be accepted or rejected if he has the freedom and bargaining with the other party in the contract, and therefore the will of one of the parties will prevail. Whereas the will is the basis of the binding force in the contract, which determines the contents of the contract and the conditions and obligations set for all its parties; Contractual obligations do not usually arise unless the will has worked to create it according to what has been agreed upon and within the limits and the extent to which that will go. Whereas the general rule, '*Pacta sunt servanda*', contracts that are described as compliance are an exception to that rule because the will is independent in accepting or rejecting the contract, as well as determining the party with whom the contract is concluded also has the freedom to define the terms and content of the contract. Theoretically, in compliance contracts, the weak party 'the compliant' can either agree or refuse the contract, however in reality he is obliged to contract due to his need for the goods (or services) subject to the contract because the goods (or services) he requests are essential necessities of life, subsequently he is obliged to accept the conditions that are specified by the offeror/supplier even if some of these conditions are not in his interest but he cannot discuss or amend them (Abu State, 1954, p. 10).

The basic principle in contracts is that the contracting is done based on the consent of the contracting parties. However, this principle was affected in light of economic changes and technological progress that led to disparities in financial positions between the parties to the legal relationship, which enabled one party to impose his conditions on the others with no real chance to discuss or amend them. This, in turn, leads to the unification of the models and patterns of some commodity and service contracts, which led to the fact that some of those who enjoy economic superiority and technical competence imposed certain formulas for some contracts in full and in advance, and this is the range of standard contracts or what is known as compliance contracts (Al-Dayem, 2008, P. 34).

Through the foregoing, the compliance contract can be defined as: 'a contract whose content is defined, wholly or partly, in general before the contractual period (Kamel, 1995, p. 124). The progress of contemporary legal principles has developed a modern concept of a compliance contract. For traditional principles, a contract to be described as a compliance contract, requires a monopoly of goods (or services) by its providers, and that those goods (or services) are necessary for the customer or consumer (the consumer according to the legal concept) (Abdul Basit, 1996, p. 15). Therefore, he is subject to the terms of the contract imposed by the supplier of goods / service provider without having the right to discuss or amend the conditions. However, the compliance contract in the modern concept is no longer limited to those contracts in which one of the parties is a monopolist of a necessary good (or service), but it has expanded to include every case in which the terms of the contract are prepared by one of the parties in advance (Radhi, p. 381), as long as the other party (the consumer) is not able to discuss and amend them.

The compliance contract is typically concluded with all consumers who are interested in this goods or services that it provides. Therefore modern legal principles have reduced the conditions that are required in such contract to have only one condition, which is the strong party to the contract that prepares the terms of the contract in advance determines the obligations and rights, and imposes them on the other contracting parties who have no choice but to sign the contract without having the right to discuss or amend it. Therefore, it can be said that contract is characterized as compliance

contract if having the following:

- The contract is for one of the essential goods (or services) that the consumer cannot dispense without, such as water and electricity supply.
- The supplier/provider of this commodity has a legal or actual monopoly that it cannot be obtained from anyone else, or that there is no real competition for him to provide this commodity.
- The offer from the supplier/provider of the commodity to the public is a general, unified affirmation, on the same terms as all people, and not specific to a specific person.

4.2 Characteristics of the Compliance Contract

The compliance contract is distinguished from others by a set of characteristics that can be concluded from the basic elements that represent the compliance contract by jurists or in the judicial rulings. Even though the consumer can take or leave in the compliance contract, he is forced to conclude the contract whatever its conditions are. Consequently, consent is available here, however, it is a special kind of consent, because he has no choice other than acceptance, therefore it is more likely to be a compulsion rather than a consent. However, this kind of compulsion is not that compulsion known in the defects of consent, but rather it is due to special circumstances related to economic factors more than to psychological factors, and we will not separate into the general characteristics of it being consensual contracts. The compliance contract is not devoid of this principle, and although the conditions included in the contract are arbitrary, and do not accept any discussion or negotiation, the status of consent is available in the contract regardless of its details and its parts. Although the compliance contract is often prepared and written in advance, the basis of the contractual obligation in it is consensual, as it is a contract of netting, which is a contract binding on both sides (a mutual contract).

There are characteristics that distinguish it from other contracts, some of which relate to the contracting mechanism and composition of the contract, while others relate to the specific technical aspects of the location of the contract and its implications.

These characteristics, of their importance, they draw the special features of the compliance contract that set the dividing line between it and the rest of the contractual mechanisms, and can be described as follows:

4.2.1 General and Permanent Obligation

One of the characteristics of compliance contracts is that the obligation is general to the public, and unspecified to a person. It is directed to every person who has the capacity to accept; and the compliant is not meant personally. This is not considered a breach of the special conditions contained in some compliance contracts in return, which make it based on personal consideration, but the obligation remains general for everyone who meets those conditions or the required characteristics. The obligation is considered final, and the compliant cannot dispose of it until the expiry of the time period was set.

4.2.2 Economic or Technical Superiority of the Obligatory

One of the most important characteristics that distinguish the compliance contract and which the commentary unanimously agreed is that the obligor enjoys a distinguished economic position that allows him to impose the terms of the contract on the acquiescent other party. This superiority has various manifestations such as:

- The obligor may be a real monopoly of the goods (or services) like some producers and manufacturers.
- It could be a legal monopoly such as the providers of the mobile phone companies,

transportation contracts or banking operations.

- Alternatively, the monopoly could be due to the limited competition for the goods or service provided, as in banking operations in countries where the banking business is restricted by the conditions, controls and regulations of their dealings, which makes the opportunities to obtain credit facilities and advanced banking services restricted to a specific group of banks.

4.2.3 *The Subject of Compliance Contracts*

The subject of the compliance contract should be the essential goods (or services) that the compliant party does not dispense with, and certainly that this necessity is relative and may vary in societies, therefore what may be essential in a society may not be essential in another society.

4.2.4 *Compliance Contracts are issued with Pre-Prepared Format*

Issuing contracts in advance is a natural result of the fact that the offer is directed to the public and the emergence of the terms of the contract in pre-prepared contractual forms is an evolution in contractual format.

4.2.5 *Acceptance of the Compliance Contract*

Acceptance of the compliance contract shall be by Complying with the Contract without discussion or negotiations. Thus, the acceptance by the compliant party makes it binding on the contract and its consequences. Therefore, the acceptance in the compliance contracts is not a real consent but under the pressure of the necessity that led the weak party to the contract, and therefore his overall consent is present theoretically, but it is imposed on him.

4.2.6 *The Compliance Contract includes Arbitrary Terms*

As indicated above, regarding the fact that the contract is prepared in advance, that it includes the conditions to achieve the interest of the supplier/provider. The availability of arbitrary conditions is one of the most important characteristics of compliance contracts. Without these conditions, even if the other conditions are fulfilled, the contract does not have to be compliance. It is true that compliance contracts are a type of contracting characterized by 'compulsory consent', but also the conditions of such contract should be arbitrary to call it a compliance contract. Arbitrary conditions that affect the weak party is the main and distinctive characteristic of compliance contracts. Therefore, not all prepared and ready contracts are compliance contract if their conditions are not arbitrary.

5. **Arbitrariness and its Effect on forming the Modern Concept of Compliance Contracts**

The arbitrariness in imposing the conditions is the distinctive feature of the compliance contracts. A contract that includes arbitrary terms is the one that can be described as a 'compliance contract' and requires legal protection for weak parties. For better understanding of the link between imposing arbitrary conditions and the compliance contract, the following part elaborates it in details.

As mentioned earlier, the availability of arbitrary conditions in consumer contracts makes them compliance contracts even if the provider is not monopolized. This recent trend in expanding the concept of compliance contracts is consistent with the basic idea of this research in considering the contracts offered by banks to consumers - in many of them - are compliance contracts because of the arbitrary terms included in as this paper will highlight. Banking operations, in theory, cannot be categorized as monopolies banks as there is more than one option for the consumer. Moreover, when banks allow some clients to negotiate certain terms and conditions of the contract, it does not mean

that the contracts are not compliance if the conditions are arbitrary against the consumer, and require the intervention of the judiciary to protect the weak party (Mohamed, 2019, p. 424).

5.1 *What is the Documentary Credit Contract?*

Documentary credit is a method of financing used in international business operations that entails the establishment of a certain legal relationship between the customer of the bank (the buyer) and the beneficiary (the seller). Each contracting party is in a different country and each of them fears that the other party does not fulfilled his commitments (Al-Maamari, 2015, p. 124). Therefore, the intervention of a bank, to facilitate the implementation of these commitments, provides the necessary guarantee and assurance for both parties. It also prevents any dispute between the contracting parties once they meet the conditions and procedures necessary to open and implement the documentary credit (Maoj, 2008, p. 5). It should be noted that the buyer's commitment to open the documentary credit is not an additional commitment, added to the buyer's commitments, but rather a commitment to pay the price, but by the documentary credit. Therefore, it becomes the payment method if the contracting parties agree to this.

Consequently, the buyer's obligation is still the same which is to pay the price to the seller and has no other choice. It is not an obligation of choice and the documentary credit is not an alternative so the debtor's liability to the buyer does not discharge by opening the documentary credit until the bank settles the payments. Hence, opening the documentary credit, by the buyer, even if it is final, is not considered a final fulfillment of his obligation. However, the seller does not claim it directly as long as the credit is valid. If the documentary credit fails, not because of the seller, the buyer must pay the price based on the sales contract.

The buyer does not pay the seller's claim for the price on the pretext that he paid the credit to the bank, because the aim of the documentary credit is to pay the price to the seller.

The documentary credit and its types will be examined in the following paragraphs.

5.2 *Concept of Documentary Credit*

The Jordanian Trade Law does not provide a definition for the documentary credit, however rather it is referred to in Article 121 as:

- 1- If the bank credit is allocated to fulfil the interest of others and the bank endorses this credit, then it is not permissible to reverse it or amend it without the consent of that third party, and it becomes obligated to it directly and finally to accept the intended documents and payments.
- 2- The bank has the right to restore the amounts/expenses they paid or spent to save what they were assigned to with the agreed interest, or with the legal interest if there is no agreement, starting from the day of payment.

This is mentioned after the provisions of Articles 118-121 of the contracts for opening the credit (financial), which leads to the belief that this reference does not only belong to these contracts. The legislator uses the term 'bank credit' which includes both the financial and documentary credit.

Consequently, this law was devoid of any other provision of documentary credit; therefore, it had to be generally subject to the unified rules and customs that applied what was the practice of banking in general (Yamalki, 2009, p. 319).

Remarkably, the Jordanian Trade Law does not provide a definition of documentary credit and did not address the regulation of accreditation while the commercial movement is active in Jordan, internally and externally, and the documentary credit has become apparent and used widely. It is also noticed that this article appeared in the context of the Trade Law for financial accreditation and the text does not include the well-known designation of accreditation which is documentary credit.

Since the text does not include the bank's commitment to accept papers presented to it by the other beneficiary, based on an agreement between the bank and its customer, who is the one who

orders this credit. Such text cannot deal with such credit, which remains without a legislative base. This means that the law relies on banking customs in this regard, because the civil law does not include rules for the documentary credit contract. Hence, the documentary credit contract, in light of this general commercial text, remains an unnamed commercial banking contract that derives its provisions from the international standard norms for this type of credit, which The International Chamber of Commerce set at its conference held in Vienna in 1933, and amended in 1951. It was modified at the conference held in Lisbon in 1962 and 1974. On April 3, 1993 the executive body of the International Chamber of Commerce approved the amendments and entered into force on 1/1/1994. It is known as the Uniform customs and practice for documentary credits (UCP600) which entered into force on 1/7/2007 and reduced the number of articles from (49) to (39) and provided some definitions and interpretations for some phrases to be more specific and clear, such as refusing or accepting documents 'within five working days' instead of within 'reasonable time' (Musa, 2011, p. 238). These rules and principles are distinguished by the following:

1. They are interpreted rules referred to when the contract is silent.
2. It provides freedom for national courts to interpret.
3. Commercial contracts that are the reason for concluding documentary credit contracts are not subject to these customs. Those contracts are independent of documentary credit contracts, and that national trade laws have also adopted this principle. This is expressed in the principle of independence of documentary credit, which brings great benefit to banks, because it is unable to know the laws and customs of each country.
4. Since the rules are international, it is possible to take advantage of the jurisdiction of foreign courts and what is written about it, and is used as a guide in interpretation (Rene, 1959, p153).

Since the documentary credit is a bank pledge, the seller has to ask the bank to fulfil. However, the obligation is conditional to provide the documents, the seller has the right to request fulfilment if he meets the terms of the credit. Therefore, it is not recommended to start shipping the goods until he knows these conditions and makes sure that he is able to implement them.

The standard customs and rules for documentary credits were known first in 1933, and the provisions were organized to help revitalize the international trade movement and its prosperity. The rules had been developing to keep pace with the ongoing changes taking place; therefore, it was reformulated several times in 1951, and then the amendment in 1962, and soon after that they were amended in 1974, and in 1983.

The last amendment was in 1993, and it is called the Uniform Customs and Practice for Documentary Credits (UCP 500), and it was also mentioned in the (UCP 600) of international rules that define documentary credit as: 'Are arrangements by banks for settling international commercial transactions. Provide a form of security for the parties involved. Ensure payment provided that the terms and conditions of the credit have been fulfilled'. It is also defined as: 'is an undertaking from the bank issued on behalf of the buyer to guarantee payment to a seller against presentation of compliant documents under the terms and conditions stipulated in the documentary credit'.

As for the parties to the documentary credit, they are at least three parties: the ordering customer (the importing buyer), the bank (the issuer or the credit opener) and the seller (the beneficiary). Their rights and obligations vary according to the contractual association (Fahima, 2014, p. 32).

5.3 Types of Documentary Credits

There are several categorizations of documentary credits, according to the perspective to which they are perceived. The paper here focuses on the key and most common types of documentary credits in the world of business and international exchanges, as follows.

¹ The Uniform Customs and Practice for Documentary Credits, ICC Publication no. 600 ("UCP").

- (1) Revocable Documentary Credits: This type of contract can be amended or cancelled by the Bank (issuer) at the customer's instructions without prior agreement of the beneficiary (Seller). The Bank will not have any liabilities to the beneficiary after revocation of the documentary credit. This makes this type of documentary credit rarely used (Ahmed, 2003, p. 154).
- (2) Irrevocable Documentary Credits: It is a written undertaking given by an issuing bank. Such an undertaking is considered as irrevocable which means that documentary credits can only be amended or cancelled with the agreement of the beneficiary and, if one is in place, the confirming bank. This contract is not subject to cancellation because the issuer bank cannot retrieve its pledge to pay unless it has the approval of all parties.
- (3) Confirmed Irrevocable Documentary Credits: This type of documentary credit requires not only the undertaking of the issuer bank but also its commitment to accept the debt arising from the export of the goods. Given that this type of credit provides strong guarantees, it is one of the most commonly used contracted (Latarash, 2001, p. 119).

Hence, it is clear that each type is distinguished in its terms and provisions. Therefore, Documentary Credits contract is distinguished from the rest of the contracts, which often have one type, and are governed by rules and conditions of their own.

6. Compliance Status in the Documentary Credit Contract

The availability of the compliance status in the documentary credit contract in the light of Jordanian law will be examined in two sections. The first one examines the legal nature of the documentary credit contract while the second one investigates the concept of compliance in the documentary credit contract.

6.1 *Legal Nature of the Documentary Credit Contract*

In order to identify the legal nature of the documentary credit contract, the paper examines the relevant theories, as follows:

6.1.1 *Agency Theory*

According to this theory, the bank's commitment to the beneficiary to pay the price of the goods is mainly due to the provisions of the agency stated in the general rules in the civil law. Hence, the bank is an agent for its customer who is ordering to pay the cash amount to the beneficiary. This theory implies a kind of ambiguity, as the link between the issuer bank and the ordering customer is a credit contract that has its own characteristics. The contract here provides the customer with a credit facility within certain limits and conditions. Thus, it is distinguished from the agency contract, unless it is expressly agreed between the contracting parties that it is an agency contract (Al-Masry, 2005, p. 19).

On the other hand, the bank's commitment is an absolute and definite to facing the beneficiary by pay the price of the goods. Its commitment is confirmed when a letter of credit is informing that the credit amount has not been paid or reduced. Even though the agency's rules allow the client to issue such instructions to his agent, and all the bank's commitment are to receive the documents that need to be in conformed with the terms of accreditation (Al-Masry, 2005, p. 19). In addition, the bank preserves any defenses that may arise in the basic relationship between this beneficiary and the ordering customer. These are permissible matters according to the general rules of the agency contract; however, it remains deficient as a legal basis to explain the bank's commitment to pay the credit amount to the beneficiary (Escrra, 1952, p9).

6.1.2 Stipulation for a Third Person Theory

The theory of stipulation for a third person (the beneficiary) assumes that the issuer (the bank) pays him the amount of the credit, according to the instructions of the stipulating customer (Al-Farooji, p. 320).

This theory is deficient in several ways, the most important of which is that the legal system of stipulation for the benefit of others allows (third person) to acquire a direct right from a contractual relationship to which he is not a party without imposing any obligations on him (Abdel Rahman, 2006, p. 223).

While benefiting from the provisions of the documentary credit, he is obligated to provide documents conforming to the terms of the credit as a condition of the bank's commitment to pay the amount of the credit to him, which is something that falls outside the legally established limits for the theory of Stipulation for a Third Person (Al- Masry, p. 21).

The theory of Stipulation for the benefit of others allows the undertaker to adhere of all the payments that arise from the contract originally concluded between this undertaker and the stipulator. Therefore, it is permissible to adhere to nullify the original contract, cancel it, or reduce the obligations arising from it according to the emergency conditions theory. All of these effects are not legally permitted to be taken within the framework of the documentary credit, as the bank's commitment is considered independent of all these defects and defenses and the bank fulfills it for the beneficiary regardless of its consideration or its effects.

Hence, the bank here is not considered inherent in its dealings with the beneficiary, but rather it is the agent of the order, and this does not agree with the nature of the bank's commitment in the letter of credit; because it is a direct, final and independent commitment.

In this regard, if the issuer bank of the credit is an agent of the buyer, the bank would have to continue to receive instructions from him, even after informing the beneficiary of the credit. The bank, as an agent, could get rid of its commitment if his client went bankrupt or lost his eligibility, in addition to that, describing a bank as an agent does not explain the situation in which the seller chooses the creditor or enhancer bank. In this theory, the buyer requires the bank to undertake paying a certain amount for a third party (the beneficiary) if a certain condition is fulfilled which is submitting the beneficiary to the documents.

The flaw of this theory is that it does not prevent the issuing bank from adhering to the buyer's payments which are derived from the sales contract, and this contravenes the reality Letter of credit.

6.1.3 Hawala (Money Transfer) Theory

Some believe that the legal nature of the documentary credit contract is based on the transfer theory because the credit amount is a money transferred from the ordering customer to the beneficiary through an implicit transfer contained in the original approval contract.

The concept of this theory is just an assumption and has no basis in reality or law, because hawala is only made with a certified official paper (Stoufflete, 1965, p37). The bank issues a letter of credit to transfer a previous right of the ordering customer (the assigner) to the benefit of the beneficiary (the assignee) of the letter of credit, and this is incorrect because the letter of credit is originally issued in the name of the beneficiary and no one can transfer it except the beneficiary. The issuing bank has no right to adhere to the payments derived from its relationship to the order.

6.1.4 Kafalah Theory

Kafalah contract aims to facilitate international business. In trade, a bank guarantee is issued when the owner of goods discharges the liability for the goods on behalf of a third party. Such guarantees are often used in cases of goods being imported. The exporter knows that the goods will be paid for and can feel free to allow the goods to be uplifted by the importer. The importer may be required to

offer some form of collateral as surety.

As for those who claim that the legal nature of the documentary credit contract is based on the kafalah concept, they assume that the bank's commitment to the beneficiary of the credit contract finds its legal basis in the kafalah system. The bank, issuing the credit, is considered a guarantor of the buyer in his obligation to the seller to pay the price of the goods. This theory, despite its violation of reality and the law in the documentary credit process, one of its results is not consistent with the legal nature of the relationships resulting from this credit, especially the process of invoking payments. It is known in the kafalah system that the guarantor may hold against the creditor all the payments that the original debtor may adhere to in the face of this creditor (Kwesi, 1997, p. 253).

These are all effects that are not taken into account in the documentary credit system in terms of the bank's commitment to the beneficiary. The issuing bank is a guarantor for the buyer to fulfil the payment of the goods to the seller. This meaning is consistent with the guarantee function of the issuing bank, but this function is secondary to its primary function, which is settling accounts. Moreover, the nature of credit system does not agree with this theory, because the bank's commitment in kafalah system shall be terminated by the expiry of the commitment of the order before the beneficiary because the guarantor's commitment is dependent on the debtor's original commitment, and this is not true in the credit.

6.1.5 Delegation Theory

Delegation is a legal act that is agreed upon between the debtor and the creditor that a third person pay the debt instead of the debtor.

Those who support this theory, claim that this concept is a reasonable basis to justify the bank's commitment to pay the the credit stated in the documentary credit contract because the debtor has delegated the bank to pay for the goods to the seller (Nasif, 1993, p. 454). It is clear that this theory is based on an assumption that has no basis in reality and law. There is a base contract, followed by a documentary credit contract, and both are independent of its parties and its legal effects.

This is despite the fact that the requirement of this theory is to preserve the beneficiary's right towards the bank, meaning that the buyer is a creditor in the credit contract, and is debtor according to the sale contract. In this theory, the buyer is the delegator, the bank is the delegated, and the seller is the delegatee. The buyer delegates the bank to whom he is considered a debtor in the credit contract to pay for the delegatee, who is a creditor to the bank according to the letter of credit.

The theory is criticized because it assumes the unit of the buyer's debt for the seller is the same as the bank's debit for the beneficiary and this is not accurate because the first debt is the price of the goods, while the second debt has no such description. It also is criticized because it allows the delegated (the bank) to stick against the delegatee (the seller) with it the payments that the delegator (the buyer) against the delegatee (the seller), and this is not the case in documentary credit.

6.1.6 Single Will Theory

This theory was welcomed by many jurists, given that single will may be considered an independent source of commitment. This could be the base for the bank's commitment towards the beneficiary and paying the credit. This is because the bank directs its single will to the beneficiary, towards whom the letter of credit is directed, and through this letter the bank is fully and definitively committed to financing the price of the deal subject to the contract. The beneficiary's right is created through the movement of this source of commitment with the bank's will alone.

The supporters of this theory claim that the bank's position in documentary credit is like the one who promises a prize, in terms of that his promise is independent and his commitment is considered an abstract commitment.

However, this trend is criticized, because the promise of a prize will be made in public, and if the will (to give the prize) is directed to a specific person(s), it no longer becomes a promise of a

prize, but rather the rules of offer apply to it, and thus it becomes a contract, not a single will (Sans, 1988, p53).

6.1.7 *Binding Promise Theory*

It is issued by the issuing bank and addressed to the beneficiary. This is not true, because the binding promise from both sides is a contract that contains a mutual promise, and the letter of credit is not binding on the beneficiary.

6.1.8 *Debt Renewal Theory*

The theory indicates that when the contracting buyer aims, when entering the documentary credit contract for the benefit of the beneficiary seller, to renew the debt (to the seller) by changing the debtor and replace the bank in paying this debt in return for delivery of the shipping documents related to the goods. This replacement should be done with the consent of the contracting parties, and this It is not accurate, because documentary credit is a guaranteed method to pay the price and not to renew the debt. Moreover, because the renewal of the debt requires the discharge of the original debtor (the buyer) towards the seller, and the original debt is disappeared (unless agreed otherwise), and then the seller cannot refer to the buyer (Diab 1999, p. 213).

6.1.9 *Binding Offer Theory*

The binding offer is defined as the offer issued firmly by someone expressing his will to conclude a specific contract, so that if it is accompanied by acceptance of it, the contract is concluded. It requires the acknowledgement of the one the person addressed to him and it is forfeited by the end of its term or terminated by the issuer. This is applied on the bank here, which is offeror here, and the offer lasts for a certain period, which is the validity period of the credit. One of the flaws of this theory is that if the beneficiary submits violating documents, the bank's commitment does not expire if the credit validity period has not expired yet (Mashaal, 2001, p. 17).

Through the aforementioned theories that attempted to define the legal nature of documentary credit, and the fact that Jordan's trade law - as well as the rest of the laws - did not specify the legal nature of the documentary credit contract, we conclude that these theories failed and were unable to define the legal nature of this contract,

The reasons for the failure of these theories may be due to its attempt to return the documentary credit to one of the general rules of regulation, even though this process and the resulting effects came as a result of the development of business and banking process, therefore there is no place for the interpretation of this contract according to these theories, but it is an independent theory in itself and a special contract with its own terms and conditions.

7. **Concept of Compliance in the Documentary Credit Contract**

The concept of compliance in the documentary credit contract can be examined in light of the theories that were used as a basis for adapting the documentary credit contract. Looking at the provisions of the documentary credit, it becomes clear that this contract is distinguished by its characteristics and terms. There are several theories that attempted to define the legal position of the bank and bank commitments is returned to a specific idea that regulates the binding effect of the contract originally established between the seller and the buyer, or the credit contract concluded mainly between the issuing bank and the ordering customer even though the bank does not have a legal relations with the beneficiary in any of these contracts.

The result of the documentary credit is the bank's commitment in a final and separate way from the sales contract to the beneficiary when he provides documents according to the terms of the

credit, even though the beneficiary is not a party to the letter of credit or to the credit opening contract. Some jurists argue that traditional theories are not sufficient to establish the legal rules for this relationship, because the traditional rules require that contracts do not win rights and do not establish obligations except for their parties only. Among the most prominent legal views that have been weighted in adapting this relationship are two views; the first one assumes that the relations are subject to the theory of stipulation for a third person because the contracting parties are allowed to arrange a right under the contract for others without being a party in it. The second view claims that the relations are subject to the theory of single will because the bank adheres to its own will in front of the beneficiary to implement what the bank stated in the letter of credit once his will is announced and the beneficiary learns about it. On the other hand, there is another view which does not believe in examining the legal nature of documentary credit, instead it attempts to return it to traditional theories because it is one of the banking contracts that have arisen as a result of practical need, and therefore has a distinct legal framework derived from commercial customs and banking operations (Al-Jabr, 1997, 308).

In addition, the legal nature of the documentary credit contract is distinct therefore this type of contract is not necessarily characterized by compliance especially if we consider the possibility of amending a documentary credit contract by its parties; where their powers are equal in amending it and some of them are not distinguished by a special legal position that enables them to amend without reference to the other parties, or by imposing this amendment on the rest of the parties without allowing them to discuss these amendments. After issuing the accreditation by the issuing bank and informing the beneficiary, the requesting issuance of the accreditation can submit a written request to the issuing bank requesting that the accreditation be modified, whether the value, information, or some specific conditions or deadlines. After notifying him of the accreditation, the beneficiary can also, notify the accreditation opener, through the bank the source of the accreditation, of the amendments he wishes to make on the accreditation.

Despite that, there are basic considerations that the bank must adhere to when making any amendment to the documentary credits, and these considerations were not stipulated in the Jordanian Trade Law, but only stipulated in Article (121/1) that: 'If the bank credit is allocated to fulfil the interest of others and the bank endorses this credit, then it is not permissible to reverse it or amend it without the consent of that third party'. Furthermore, article 10 of the Unified International Rules and Norms stipulated it, as follows:

- (1) The accreditation cannot be amended or cancelled without the approval of all the accreditation parties, i.e. the applicant to open the accreditation, the bank issuing the accreditation, the augmented bank (if any), and the beneficiary.
- (2) The bank issuing the credit is obligated to the amendment categorically since the time the amendment was issued by it.
- (3) The augmented bank can add its reinforcement to the amendment or choose to report the amendment without the reinforcement, informing the issuing bank of the accreditation accordingly, and the beneficiary must be notified that his reinforcement was not added to the amendment.
- (4) The conditions and deadlines for the primary accreditation or the amalgamation of the accredited amended previously will remain in effect for the beneficiary until he informs the bank of his acceptance. The beneficiary must give notice of acceptance or rejection of the amendment. If he did not do so but he submitted documents that were identical to the content of the amendment, so this is considered a notice that he accepted this amendment, and since this submission the accreditation is automatically adjusted accordingly.
- (5) The bank that notifies the amendment must inform the sending bank of the amendment of any notification it receives from the beneficiary (acceptance or rejection).
- (6) Partial acceptance of the amendment is not permissible and will be considered as a rejection of the amendment.
- (7) A conditional amendment, which includes that the amendment will be effective unless it is

rejected by the beneficiary during a certain period, will be ignored. The amendment may include a request to increase or decrease the value of the credit, and it may also include an amendment to its terms and conditions. Consequently, as long as the parties to the documentary credit contract do not differentiate in their legal positions, whether in establishment or amendment, this negates the status of compliance in the documentary credit contract, and therefore it is obvious that it is a consensual contract where the parties negotiate in a balanced manner in all its stages.

In addition to the diversity of the forms of documentary credits, the bank customer has a space to choose any type of documentary credits, in order to achieve his goal of opening the credit. This diversity undoubtedly weakens the assumption of compliance in the documentary credit contract, unlike other banking transactions where the customer has to either accept the contract or reject without discussing its terms.

The reason for having a specific formula for each type of credit may be to organize the banking business in a way that achieves its purposes, and if this issue was left unorganized, this may lead to the possibility of the contract deviating from its function through which the bank provides credit according to agreed documents.

When examining the terms of compliance and comparing them with the characteristics of the documentary credit contract, it is clear that there is no imbalance in the contractual balance in the documentary credit. Because achieving the status of compliance is evident in some contracts and banking operations in which the imbalance of contractual balance and undoubtedly leads to the availability of the status of compliance in it.

This imbalance results in an asymmetry between the obligations and rights of the contracting parties, and a weak party is created and will be dominated by a strong party. This imbalance exposes the contractual justice to collapse.

Examining the terms of the documentary credit, it can be said that the status of compliance is weak in the documentary credit contract. This does not excuse the bank, on the other hand, from verifying the authenticity of documents and ensuring that they have not been counterfeited or forged.

This may happen initially when the documents are issued, so that the documents have not been altered or changed, or this forgery may occur at a later stage after issuing the relevant documents such as, the bill of lading, commercial invoices, or the insurance policy.

If it is proven that the documents submitted to the bank were forged, the bank has the right to refuse them, and not to pay the beneficiary based on the forgery obtained by the documents, because it may send goods to the ordering customer other than the agreed order. While some jurists believe that the bank does not have the right to refuse to fulfil the beneficiary, given the independence of the credit contract from the sale contract, or to block the door to ill-intentioned importers who cling to all means to get rid of their obligations. However, there are those jurists who adopt the first view, but on the condition that the importer provide new evidence indicating the source fraud, and that he presents the amount of the credit to the court fund, or that he will be held in custody until the case is resolved (Obaidat, 2015, p. 21).

Based on the abovementioned arguments, the researchers conclude that the documentary credit contract is a private contract, and that it may be affected by the status of compliance but not in full form, which places some of its parties in a weak position that has no choice but to accept the contract or to reject it. However, the parties to the documentary credit can discuss the terms of the contract but as does not convert it into another type of contract, such as a kafalah contract or others.

8. Findings

- (1) The Jordanian Trade Law does not contain sufficient provisions to regulate the documentary credit contract, as there are only some indications to it in Article 121 when talking about opening the credit.

- (2) The attempt of the International Chamber of Commerce to unify the provisions governing documentary credits according to the Unified Customs Guidelines for Documentary Accreditation is a legal basis for the internal legislation of countries regarding the documentary credits, however the largest role is played by the commercial and banking custom that is known between writers and the judiciary as more important than legislations because of the quick response and keeping pace with fast-paced developments.
- (3) The availability of arbitrary conditions in compliance contracts is one of the most important characteristics and features, without them the contract may not be labelled as a compliance contract.
- (4) Monopoly, the essential element in the traditional concept of compliance, is not intended for itself but rather because it imbalances the contractual relations which enables some parties to impose conditions on the other parties. Therefore, the main element is the imposing of conditions, regardless the imposing is a result of the monopoly of goods and services or as a result of something else.
- (5) The documentary credit contract is established by negotiation of several parties, and they can amend it in the same way. This weakens the status of compliance in the documentary credit contract.
- (6) Multiple forms of documentary credit give the customer and the beneficiary multiple options; therefore, they can choose the appropriate type to achieve their purpose of opening the documentary credit, and this also weakens the status of compliance in the documentary credit contract.
- (7) The conditions contained in the documentary credit contract, which the bank usually sets are procedural conditions intended to regulate the process of opening the documentary credit and preserving the rights of its parties only, and are thus far from being compliance conditions.
- (8) There is no violation of the contractual equivalence principle between the parties of the documentary credit. The bank, even though it is the one that opens the credit, only opens it according to the terms and instructions of the client (the applicant for credit) and does not impose any conditions that affect his right to that. Therefore, it cannot be said that there is a legal hegemony of the bank over the customer or beneficiary, and the bank cannot obtain excessive advantage and economic exploitation of the customer's need.
- (9) The customer does not have to commit to a particular bank. He can open the documentary credit at any bank, and according to any formula and types that have been mentioned earlier in the types of documentary credit, and thus he is not compliant in order to open the credit to the beneficiary.
- (10) It can be said that the principle of the independence of relationships according to the documentary credit is the main pillar that helped to separate all the documents in circulation from the contractual arrangements that they include.

Moreover, separating each contractual arrangement from the preceding and following acting in order to overcome the duplication of the legal positions of the parties of the documentary credit. No contracting party can complain against another one with the payments derived from another legal behaviour that the latter was not a party to, as we have seen that the seller's right remains on the bank. Regardless of any nullity or annulment that may affect the sales contract or credit contract.

9. Conclusion

Documentary credit is one of the most significant means of payment in international trade, as it provides great facilities for dealers between importers and exporters, especially in international business between traders from different countries. The bank intervenes in this process as a neutral party and monitors the implementation of the obligations arising from Parties to a contractual relationship. This helps to reduce the risks that traders may be exposed to in the field of international

exchange, especially importers. The paper has examined the documentary credit and the compliance in light of Jordanian law, standard international norms and rules. The main findings and recommendations of the paper include.

10. Recommendations

- (1) Issuing legislation related to modern banking transactions or making amendments to specialized legislation such as the Trade Law, the Banking Law and others, in order to regulate modern banking contracts, including the documentary credit contract, because of its importance for business and traders locally and internationally;
- (2) Addressing the legislative deficiencies in defining the legal concept of documentary credit and identifying its legal nature, by defining what is meant by documentary credit and defining its legal nature;
- (3) Defining the arbitrary condition in the law, especially in modern transactions and contracts, including banking transactions, particularly the documentary credit contract; and
- (4) Enhancing the balance between the parties of the documentary credit contract by identifying legal provisions and instructions that cover all its parties and achieve their interests in a balanced way.

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