

THE PROBLEM OF SEIZING DOCUMENTARY CREDITS

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Abstract :

This study deals with the problem of attachment in the documentary credit by showing the legal relations arising from the documentary credit and governed by the principle of independence of the relationships arising from it by providing sufficient guarantees to the parties to the multiple legal relations arising from the documentary credit and seizing the amount of the credit or the cover of credit existing at the banks involved in Accreditation implementation.

The research problem is represented in the extent of the possibility of seizing the amount of credit by the buyer (the commanding person) or on the credit provision (the cover of credit) by the seller (the beneficiary) due to the failure to address the standard rules and customs for documentary credits issued by the International Chamber of Commerce in Bulletin No. (600) for the year (2007) to the problem of attachment and its mechanism, which means that national laws related to seizure in the field of documentary credit will be applied, especially the rules of seizure of what the debtor has with others.

As a result of the study, the researcher reached several results and recommendations, the most prominent of which is that the basic principle is that it is not possible to seize the amounts of credit or the supplies of credit in the hands of the issuing bank or the bank that opens the credit, as long as these sums entered into the bank's responsibility. Proving the debt of the other party in the interest of the seizure applicant.

The study recommended that the courts adopt a criterion for the ability to seize the amount of the credit or the consideration for the credit that the stopping condition for the seller's entitlement to the amount of the credit has been met upon submitting the corresponding documents. As for the buyer, he should have been entitled to recover the amount of the credit from the bank for not implementing the credit for any reason whatsoever.

Keywords : documentary credits , problem of seizing .

The problem of seizing documentary credits

Documentary credit is considered a credit process of great economic importance in the scope of international trade as a guaranteed way to settle the obligations resulting from international trade contracts that secure the conflicting interests of their parties, as the documentary credit facilitates the payment of the amounts that are incurred by importers to the exporters in implementation of import operations, especially international sales contracts. . Among the most important guarantees provided by a documentary credit is the independence of the relationships arising from it; It is well known that documentary credit in its simple form is a process that includes three parties, namely the matter (the buyer) who concludes an open contract of credit with the second party, which is the bank that opens the credit, and which entails several obligations, the most prominent of which is the issuance of a letter of credit in favor of a third party called the beneficiary (seller), and that is a settlement For the obligation of commanding (the buyer) towards the seller to pay the price resulting from the international sales contract (the base contract), the documentary credit process may be completed by other parties such as the notifying bank and the supporting bank if the beneficiary stipulated that in the base contract.

According to the foregoing, documentary credit is a complex process from more than one party and more than one legal relationship, and the most important characteristic of these legal relationships arising from it despite their interdependence and overlap is that they are independent from each other, and this independence gives the documentary credit its special feature that distinguishes it from other banking credit means, thus achieving the goal For which he was found (1). It is to assure the seller of receiving the price upon handing over the documents that represent possession of the goods to the bank and the buyer's reassurance that his right to obtain the goods will be guaranteed to receive the documents representing the goods through the bank upon the payment of the credit amount.

Despite the special importance of the documentary credit in international trade and the global economy, but it is a system that is not without complexity due to the multiplicity of its parties and the intertwining of the legal relations

arising from it, and although the principle of the independence of legal relations arising from the documentary credit provides adequate guarantees, however, several disputes and disputes may arise between its parties due to Conflict of interests and goals.

Among the most prominent legal problems that may hinder the documentary credit process is the seizure of either the amount of credit or the supply of credit (credit cover) by the parties to the legal relations arising in connection with the documentary credit process or by their creditors.

Although the standard international rules and norms for documentary credits issued by the International Chamber of Commerce in Bulletin No. (600) of (2007) and the previous bulletins did not address the issue of seizure and did not deal with anything but the independence of relations in Article (four) of the bulletin, the seizure order has become abandoned. To the legal provisions governing the seizure of all kinds, whether precautionary or executive, and in particular the rules for seizing the debtor's money with others.

This reservation mentioned above may take place as indicated by the seller or by the buyer or by their creditors, and it collides with difficulties in its impression due to the characteristic of the documentary credit in terms of the privacy of guaranteeing the rights of the credit parties on the one hand and the independence of the banks' commitment towards the conqueror customer on the one hand and the beneficiary of the letter of credit from On the other hand.

Based on the foregoing, we will deal in this research with a study of the specificity of the independence of relations in documentary credit and seizure in it (the first topic) and the possibility of seizure by the commander and the beneficiary in the documentary credit in (the second topic).

The first topic

The privacy of the independence of the relationships in the documentary credit and the reservation in it Investigating the specificity of the attachment rules in the documentary credit requires that we first address the most important principle on which the documentary credit is based, which is the principle of independence of relations arising from the documentary credit. Therefore, in this section, we will address the specificity of each principle of independence of relations arising from the documentary credit on the one hand (in the first requirement), and the specificity of the seizure rules in the documentary credit (the second requirement).

The first requirement

Independence of the relationships arising from the documentary credit

In the form of the principle of the independence of the relationships arising from the documentary credit as the backbone of the credit because it achieves the desired benefit from the accreditation in the implementation of the commercial transaction that resulted in the origin of the credit, which was enshrined in paragraph (a) of Article (4) of the Unified Principles and Usages for Documentary Credits Bulletin (600) for the year (2007) issued On the authority of the International Chamber of Commerce, which stipulates that ((accreditation by its nature is a process independent of the sale contract or other contracts on which it may be based. Banks in any case are not specified or bound by such a contract even if the accreditation includes any reference in any way to that contract, and based on it) The bank's undertaking to fulfill, trade or perform any other obligation under the approval shall not be subject to any claim or arguments of the issuing applicant resulting from his relationship with the issuing bank or the beneficiary ...)). In order to clarify the aspects of independence between these relationships, the independence of each relationship from the other must be dealt with in detail in the following sections:

The first branch: the independence of the credit opening contract from the foundation contract.

An international sale contract is not without the condition of settling the price by opening a documentary credit, as it obligates the buyer to open a credit in the amount agreed upon in payment of the price sold, and if the buyer does that, a legal relationship arose between him and the bank that opened the credit independent of his relationship with the seller and the base contract (the sale contract) , Governed by the contract of opening the credit concluded between them so that the rights of the obligations of the commander (the buyer) and the bank opening the credit are determined in accordance with this contract and not the base contract concluded between the buyer and the seller, even if the contract of opening the credit was concluded in implementation of the buyer's obligation arising from the initial sale contract (2).

However, the commitment of the commanding person (the buyer) to conclude a contract of credit must be stripped of the reason for its origin, which is the base contract until independence between the two contracts is achieved, so the base contract is independent from the contract of opening the credit first in terms of the cause. Although the reason for the establishment of the opening of the approval contract is the base contract, the reason for the foundation contract originating is due to the relationship prior to its conclusion between the buyer (the commanding person) and the beneficiary (the seller) and that lies in the desire of each of them to conclude an international trade deal (3).

The contract of opening the credit is also independent from the base contract in terms of the parties, so the two parties to the base contract are the seller and the buyer, while the parties to the contract of opening the credit are the one who commanded and the bank opened the credit. The basis is the buyer and his legal position in the approval contract towards the issuing customer bank.

In addition to the independence of the two contracts in terms of the parties, both of them are also independent in terms of the subject matter of the obligation, so the subject of the obligation of the commander (the buyer) in the base contract is the obligation to open a documentary credit to pay the price of the goods to be delivered, while the subject of the commitment of the commander (the buyer) in the contract of opening the credit is the obligation to pay a cover (Supplies) credit and commitment to pay commission, expenses and expenses As for the obligations of the conqueror bank, it is the obligation to issue a letter of credit to the beneficiary, examine the documents, and then deliver these documents to the ordering customer.

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The second branch: the dual independence of the letter of credit

Before issuing the letter of credit in favor of the seller, the bank's obligation to issue the letter remains limited to the relationship that brings it together with the matter. The seller does not have the right to force the bank to implement the contract of opening the credit and issue a letter of credit in his favor under the base contract, but after the bank issues the letter of credit, the beneficiary (the seller) has the right to the bank. Arises. This is what was stipulated in Article (7) of Circular No. (600) for the year (2007), saying ((the issuing bank is irretrievably obligated to fulfill the obligation since the time it was issued for credit)).

Accordingly, the bank's obligation arises as soon as it issues the letter of credit, and the right of the beneficiary (the seller) arises as soon as the letter of credit reaches his party, and thus the bank has fulfilled its obligation towards the one who ordered the issuance of the letter, and at the same time the person who ordered the order has fulfilled his obligation towards the seller to open a settlement credit for the price.

The commitment of the bank after the issuance of the letter of credit and to the beneficiary is original, exchange, direct, personal, and final that he cannot withdraw from it, and most importantly, it is independent and merely from all relationships arising from the documentary credit, especially the foundation contract and the contract of opening the credit, and this independence is legal independence because these operations are in fact interrelated, but this is The link should not affect individuals' rights to accredit (4).

The third branch: the independence of the contract for the provision of banking service

He may open the credit and issue the letter and inform the beneficiary of one bank that takes care of all of that, and it may not be in the beneficiary's country that the same bank is in the country of the commanding person, so reality imposes the necessity that there should be another bank (correspondent) or source of credit next to the conqueror bank, and the commander may stipulate, based on Upon the seller's request in the base contract, the conquering bank must reinforce the exchange credit with the presence of a reinforcing bank that is responsible to the beneficiary alongside the issuing bank to fulfill the amount of the credit.

This contractual relationship that the conqueror bank enters into with another bank for the implementation of the credit is a contractual relationship with the provision of banking service, and this last relationship is independent of the other operations arising from the accreditation in terms of the parties, the place, the cause and the responsibility for breaching any of these relationships, and in all cases the beneficiary is not entitled To benefit from the existing contractual relationships between banks (5).

In the opinion of the researcher, the text of Article (4 / A) of the bulletin states that the contracts for the provision of banking service are independent from the letter of credit in terms of the inability of the beneficiary to protest a payment derived from those contracts between banks, or to protest by one of the banks with a payment derived from its relationship with another bank in confronting the beneficiary until he contacts the recipient. From the obligation he has towards him.

Despite the realization of the principle of the independence of relations arising from the documentary credit to achieve the desired purpose of its existence, some exceptions are met by it, which are fraud that spoils everything and coordinates independence in relations, and this will be exposed later.

The second requirement

Its privacy rules reservation in the documentary credit

The seizure is an effective legal method developed by the legislator with the aim of enabling the creditor to preserve the money of a debtor so that the owner of the money refrains from disposing of it either waiting for the outcome of the lawsuit or either to sell it and realize its price according to the type of seizure so that the creditor can fulfill his debt, and the conditions and justifications stipulated in the Code of Procedures must be met. Civil and implementation law to impose seizure and enforcement on it

Accordingly, the seizure is either precautionary or an executive seizure, and it may fall on funds in the hands of the debtor or on the debtor's money with others, and since our study relates to the problem of seizing the rights of one of the parties to the documentary credit process of the rights of another party with a third party that is the issuing bank or the conqueror bank Therefore, we had to study the rules of seizing what the debtor had with others, respectively.

The first branch: what is to seize the debtor's money with others

Investigating what is the debtor's money seizure with others requires dealing with its definition, conditions and legal nature.

First: its definition:

It often happens that the creditor becomes aware that the debtor has a right owed by a third person related to movable money or that he has movable money in his possession (his depository) and sees in seizing these funds an easier, surer and sometimes only way to fulfill his right, and the Jordanian legislator has dealt with this type of seizure and allocated for it Articles 31-43 of the Execution Law, and this attachment is permitted even if the debts owed by others and requested to be seized are deferred or pending on a condition, so that the creditor can demand his right from the seized money or from its price after selling it if it is a commodity.

Accordingly, the confiscation of the debtor's money with others has been defined as: ((the attachment that the creditor places on the rights of his debtor or his movables that are in the custody of others, i.e. As a prelude to requiring the seizer's right from the confiscated money or from its price after selling it)) (6).

Through this definition, we find that this type of seizure leads to double fulfillment, as by it the right of the creditor with the debtor and the right of the latter with others are waived.

Second: Conditions for seizing the debtor's money with others

The conditions of the debtor's money with third parties include the scope of its application in terms of its parties, the right for which it is seized, and the funds that are returned to the seizure.

1- Its parties, unlike the other types of seizures, the seizure of the debtor's money with third parties includes, in principle, three parties:

a. The distrainer creditor: It is every creditor who is confiscated, whether he is a regular creditor, mortgagee or concessionaire, and this right to seizure belongs to the creditor personally or to his public or private successor or his representative or agent.

B. Confiscated: It is every person who owes the confiscator and owns the money or rights of others, or a creditor of this third, and it is required that the distrainee be responsible for the debt and the owner of the funds that are to be seized and are with others, or a creditor of the confiscator at the time of attachment, whether this debt is due or deferred or Commenting on a condition.

With regard to this study, the distrainer or the seized is either the seller (the beneficiary) or the buyer (the commander).

C. The garnishee: It is a person who owes the garnishee, that is, to the original debtor to the creditor, who has nothing to do with the dispute between the distrainer and the distrained, and since it is required for the garnishee to be a debtor, the seizure is therefore not accepted if this is not the case.

Any person who maintains his independence and personality with respect to the debtor is considered by others if this third person has authority between the debtor and the object or money required to be seized, so that the debtor cannot contact the object or money seized except through this person and with regard to our study on documentary credit this is The attachee has either the bank that issued the credit or the bank that opened the credit.

2- Conditions for the right to be seized:

In order for the debtor's money to be seized with third parties, the conditions of attaching the attachment must be met in the right of the distrainer creditor, that is, the creditor's right to the confiscated's owe is due to be paid and not dependent on a condition.

As for the right of the garnishee in the custody of the garnished with him, it is not required that it be due to be paid if it is a debt, but it is sufficient for it to be fixed in terms of its existence, and there is no need for it to be a certain amount, but it is sufficient for it to be temporarily assessable and to be assessed by the judge. However, if the

attachment is executory, then the creditor's right to the distrainee must be payable and fixed by an executive document.

3- Funds to be seized:

In our study, this seizure deals with the creditors' right that the debtor has in the custody of others (the bank) or the material movables that are in the possession of this third party. The seizure may address a certain right of the debtor in the custody of others or all of his rights in his owed.

If the seizure is made on a specific right, then it is required that the legal event establishing the right has arisen before the seizure decision, because if it had not arisen before that, the seizure will not take place due to the lack of its place, as if the beneficiary had not yet submitted the required documents to the bank to establish his right in the amount of the credit and the bank's pension. However, the place of the funds requested to be seized may be material movables in the possession of others and their ownership belongs to the distrained debtor, and in this case these movables must be owned by the debtor at the time of confiscation, and it is required that the reason for the existence of this money with others is the right of the debtor in the latter's responsibility (The seizure) that is, there is a legal obligation to submit it.(7)

Third: The legal nature of seizing the debtor's money with others:

The creditor's right to seize the money of his debtor with others is a self-standing right and independent of his right to use the rights of the debtor, and it is directly subdivided from the right of general guarantee on the basis that all the debtor's funds are guaranteed to meet his debts, whether these funds are in his possession or in the hands of others (8).

Nevertheless, it must be emphasized that some jurisprudence considered this seizure as a form of the creditor's use of the debtor's rights, and others considered it a precautionary seizure, beginning and ending in execution (9). In fact, and according to what the comparative jurisprudence has established, the seizure of the debtor's money with others may be considered a special type of seizure that has its own status and its own provisions, and the two types are related to both preventive and executive seizure. That is why it was called in the French language the name of arresting seizure, as it prevents both the debtor and the garnishee from disposing of the seized money pending the implementation requirements (10).

The second branch: reservation procedures:

The procedures for seizing the debtor's money with third parties are to request the attachment and notify it to the garnishee and the distrainee, which will have legal effects after the issuance of this decision and its notification. These points will be dealt with successively:

First: Request for reservation with others:

The seizure request is submitted according to the type of seizure, whether it is precautionary or executive, and if the seizure is precautionary, it is submitted to the competent court, which is either the judge of urgent matters or to the court competent for the origin of the dispute, and then the court issues its decision to place the precautionary attachment with the obligation to pay bail and challenge its decision in accordance with the general rules related to precautionary seizure.

Whereas if the seizure is executory, then the executive seizure decision is issued by a decision of the head of execution based on the executive document that is in the hands of the creditor requesting the attachment, then the execution head issues the decision to seize the debtor's funds that are in the possession of others after making sure that the debtor's funds are noticed by others with whom he has seized and the head of execution decides. By notifying the seizure decision to the garnishee and the garnishee in preparation for implementing the seizure decision.

Second: Notification of the seizure decision:

Notification of the decision to seize the debtor's funds that are with third parties, whether the decision is issued by the competent court or by the head of execution, requires that this decision be communicated to both the garnishee (the debtor's debtor) and the confiscated person (the debtor / the executioner against him).

1- Notifying the seizure decision to the garnishee:

The seizure decision shall be notified to the garnishee by a letter that includes a copy of the decision of the chief executioner or the court issuing the decision and a statement of the origin of the amount seized for him, its benefits and expenses, and the purpose of that is to inform the garnishee of what he must pay to the distrainer or deposit it with the competent judicial authority issuing the decision to confiscate, and it must also include Prohibiting the garnishee and preventing him from paying what is in his possession to the distrainee, and the garnishee must be informed according to this letter of the obligation to submit a report on what he owes within seven days from the day following the notification of the seizure (11).

2- Notification of the seizure decision to the confiscated (debtor):

After notifying the garnishee, the distrained person shall be notified of the decision to impose the seizure of his money held by the garnishee by sending a letter to the garnishee that includes a statement of the seizure, its date, the seizure decision document that is based on it, the decision of the head of execution or the court who decided the seizure and the amount reserved for it, and the purpose of Informing the garnishee, enabling him to object to the decision if he wants to lift the seizure, or informing him of the reason that calls for the garnishee to refrain from fulfilling the obligation incurred by him, and he shall not be required to fulfill it without success (12).

3- Effects of the seizure decision and its notification:

The issuance of a decision to seize the debtor's money with third parties has several effects, which are the following points:

a. The garnishee's refusal to pay the debt to the garnished:

That is, freezing the seized money and placing it under the control of the judiciary or keeping it until requested by the chief of execution, and he may also deposit it directly with the execution department before his request by the head of execution and upon deposit, the seizure moves from a seizure with others to a seizure on the amounts deposited with the competent judicial authority .

B. Aging parts:

The seizure of the debtor's money with others shall result in the severance of the prescription, in accordance with the general rules stipulating that the seizure is deemed as a categorical prescription because it is considered an act indicating the creditor's keenness to preserve his right that is already in the custody of the distrainee. Also, the debtor's money withholding with others in relation to the distrained's debt to the garnishee, because the distrainer creditor claims the right of the distrainee's debt and maintains it in the face of the garnishee (13).

C. The obligation to submit a report from the garnishee of what he owes:

The garnishee, in accordance with the provisions of the Jordanian Execution Law (14), must submit a declaration of what he owes to the judicial authority issuing the seizure decision (with the enforcement department) within 7 days starting from the next day from the date of notification of the seizure decision, and this acknowledgment must include the amount of the debt, its reason and the reasons for its termination If it has expired, and if he does not owe a debt, then he must indicate in this report that he is not in debt to the distrainee.

Even if it is not judicial, this acknowledgment shall have several effects, including that the place of confiscation is determined by it, so the seizure is considered to be a response to what the garnishee has acknowledged, and the right of the distrainee to his debt or to the funds that the garnishee has acknowledged.

But if the content of the report is negative, such as if the garnishee mentions in the report his non-indebtedness to the garnishee, the seizure lapses due to lack of place, and in this case the distrainer creditor can dispute with the garnishee about the validity of the data contained in his report with an original case called the dispute suit in the report and it is submitted to the court that placed the attachment or To the originally competent court to consider the dispute related to the place of attachment.

After the researcher explained the specificity of the debtor's seizure with third parties, which is the basis on which to seize the documentary credit, we will try in the second section to explain the possibility of this seizure and in accordance with the rules for seizing the debtor's money with the aforementioned third parties.

The second topic

The extent of the possibility of reservation in the documentary credit

The documentary credit achieves the function for which it was found, which is to assure the seller that the price of his goods will be paid through the issuing bank's commitment to pay the amount of the credit on the one hand and to assure the buyer that the documents that represent the goods will be received and in the event that he does not receive the documents, he will recover the amount of the credit cover that he presented to the bank that opened the credit. But what if one of the parties did not happen or expected that he would not get what he envisaged in the base contract (i.e. the commercial deal) of a financial or economic interest? Can he, as a guarantee of his rights arising under the base contract, request seizure of his debtor's money or (the other party's money) from his financial rights with one of the banks involved in the documentary credit process?

This question leads us to the question of the possibility of seizing the amount of credit from the buyer's methods on the one hand, as well as the extent of the possibility of reservation by the seller on the consideration of the credit provided by the buyer to the bank who opened the credit.

Accordingly, the researcher in this section will deal with the seizure by the seller (the first requirement) and the seizure by the buyer (the second requirement).

The first requirement**Reservation by seller (beneficiary)**

The principle is that there is no justification for the seller to seize the buyer's money under the bank's hand of the money, i.e. what the buyer has provided to the bank in terms of cover for use in the implementation of the credit, as it suffices him to submit the documents required under the letter of credit to the issuing bank to obtain the amount of the credit immediately and without the need for any other action .

But it may happen that the seller has properly implemented the sales contract and shipped the goods, but he is unable to meet the amount of credit from the bank because the conditions stipulated in the letter of credit are not met, such as if the validity period of the letter of credit has expired, then the goods have reached the buyer and sent the documents by his own means. The documents have become in the buyer's possession, such as if the seller hastens to ship the goods in implementation of the sale contract before the bank completes the matching process and examines the documents, or in the event of lost documents or the occurrence of force majeure that prevents the documents from being presented during the validity period of the letter of credit, and in terms of the result, the goods become the property of the buyer, then the seller can demand the price of this commodity from the buyer, and here this seller, as a creditor to the buyer under the base contract, can seize under the bank's hand the cover of credit that the buyer provided to the bank for the purposes of implementing his commitment to the beneficiary (the seller). Here the researcher asks whether the seller (the beneficiary) can request this. Reservation?

Given the importance of documentary credits in developing and enhancing stability in international trade, most jurisprudence and the judiciary exclude permitting the attachment of the credit cover, but in response to the above questions, according to the general rules, there is no objection to the law from the right of the seller, the beneficiary, to seize the debtor's money (The buyer) is in the hands of the bank and of course that is conditional on the seized money being the right of the buyer in the custody of the bank, so that the buyer has provided the bank with an amount to implement the credit (the credit cover), then the bank owes the buyer, and then the creditor of the buyer (the seller) may seize under the bank's hand on this right that the buyer owes the bank in accordance with the rules for seizing the debtor's money with others. If the bank has a right to claim this amount that he possesses, the arrangement shall be submitted to the distrainer creditor (15).

The basic principle is that when the bank receives the cover of credit, it owns it and it becomes part of its liability, because although the bank's role is limited when opening the credit, it issues a letter of credit and pledges to pay the seller who benefits from it and puts at the disposal of this seller the required monetary amounts on the condition that the credit is executed and the documents are presented, but this amount He entered into the bank's responsibility and owned it, and therefore it could not be subject to seizure by the seller or from the seller's creditors. He could not seize these amounts except for the creditors of the bank itself because the amount entered into his financial responsibility and in the general guarantee of the bank's creditors. A creditor to the bank and not as a creditor of the buyer.

The question that the researcher raises at this stage of the study is what if the buyer did not have any right in the bank's custody, as if the bank agreed to open the documentary credit without obtaining in advance the cover of credit from the buyer's command ???

Can the creditor seller seize the amount of the credit specified in the letter of credit ??

The reality is that when the bank issued the letter of credit without obtaining the amount of credit, and when it will pay the amount of credit in implementation of the letter of credit, this amount is left from the bank's responsibility alone and to begin with, and the bank does not owe it to the client who did not provide the credit cover, but he owes the amount of credit to the seller only until He fulfilled the conditions of the letter of credit, and accordingly, it is not possible to imagine that the seller has seized the bank on the amount of credit unless he fulfilled his obligation to deliver documents in conformity with the terms of the letter of credit to the bank as the beneficiary of the letter of credit and as a creditor to the bank with the amount of credit and after he fulfilled his obligation to provide the documents. But before submitting the documents, this seller (the beneficiary) or other creditors of the buyer are not entitled to seize the amount of the credit in a debt they owe to the buyer, because this amount is the exclusive property of the bank and because the latter did not receive the credit cover in the first place.

In the event that several banks intervene in the implementation of the documentary credit, if there is a correspondent bank and a bank in charge of implementation, then the bank in charge of implementation becomes personally obligated towards the beneficiary.

Consequently, the seizure must fall under the hands of this obligated bank, but if the interfering bank is merely an agent or correspondent, then the seizure cannot be made in its hands, and then the seizure can be made under the hands of the bank who has opened the credit because it is the debtor of the amount of the credit. As a result, the seizure must be made by the seller in the hands of the bank, who is personally obligated in front of the buyer to implement the seller.

It must be noted that if the documentary credit is subject to revocation even though this is rare in practice - the amount of the credit or the cover of the credit can be seized according to the aforementioned conditions as long as the credit is not canceled or withdrawn. But if the credit is canceled, the reservation cannot be placed on the amount of the credit by the seller. Unless the seller requests to seize the credit provision at the conquering bank before returning the amount to the ordering buyer in accordance with the rules for seizing the debtor's money with third parties and on the condition that the credibility of the seller with the seller towards the buyer is achieved according to the base contract and not according to the documentary credit contract.

The French jurisprudence had previously recognized the permissibility of seizing the amount of credit provided by the buyer to the bank in a case in which the bank accepted the documents through a conditional settlement in which the seller submitted a letter of guarantee to the bank, but the documents were rejected by the buyer because of irregularities in them, which forced the reporter to return the amount The credit that he received from the bank, recovered the documents, and the seller hastened to sue the buyer and demand him in accordance with the basic contract and obtained a ruling in his favor to seize the amount of the credit present in the hands of the bank in charge of implementation, which the buyer had submitted to the bank to execute the credit (16).

And in a judicial precedent registered to the Dutch court, in which the Amsterdam Court of Appeal ruled that the seizure was valid by the seller who presented the documents and fulfilled his right and then seized the goods.

The case is that a Frenchman "bought potatoes from a Dutch seller, and opened for him through a French bank a definitive credit executed by the Bank of Amsterdam. The French bank asked the Bank of Amsterdam to recover what it paid to the beneficiary from another bank in Amsterdam, and it was also agreed that the credit would be subject to standard international rules. The seller shipped the goods and delivered them to the railway in Amsterdam and obtained a copy of a letter or a transport ticket, then he obtained a court order to seize this goods conservatively at the railway to ensure that the debt was repaid to him by the buyer arising from another previous process, and then he reached to present a copy of the shipping papers To the bank that endorsed the credit, and collect the price from it.

During this period, the buyer suffered financial difficulties that ended with judicial liquidation, so the French bank rushed and asked the Dutch bank that supported the credit not to pay the seller, that is, not to implement the credit, but this bank did not comply but rather paid, so the French bank sued him based on the following: That the credit The documentary aims to guarantee to the seller the receipt of the price and avoid the risk of the buyer's insolvency and aims to ensure the seller receives the price and avoid the risk of the buyer's insolvency or failure to fulfill it, as well as to guarantee the buyer the arrival and delivery of the goods to him, and therefore the seller in fact did not fulfill his obligation as he tried to collect a debt for him outside Regarding the transaction from the price of the goods after shipment, because if the goods are seized after receiving their price after submitting the documents, it strips these documents of all their value because they no longer enable the holder to dispose of the goods or receive them - but the Dutch bank responded by saying that the documents The one that was presented to him was in good shape and complete, and he has a definite and unconditional obligation to pay when presented to him. It is true that the French bank offered him not to pay the seller, provided that he guarantees all the damages resulting from that, but he did not accept this offer, which if it occurred Its cause was illegal.

The Amsterdam Court ruled that the seller - like any other creditor - has the right to seize the goods after he fulfills his obligation to ship (Amsterdam First Instance ruling on 5/17/1961), and applied the provision of Article 5 of the international rules which stipulates that the conditions of credit may not be modified without consent The concerned parties, and he said that it is equal for the seizure to take place by a party or from a third party because the standard rules do not disrupt or deprive any party from adhering to his rights recognized by the law, and the first article of these rules requires the independence of accreditation from sale and from other relationships .

On appeal, the French bank maintained two arguments: the first is that the documents after the seizure have no longer have a real value, and the second is that the seller acted unnecessarily in good faith imposed by the purpose of the documentary credit, which is to settle the sale by paying the price and receiving the goods - so the Court of Appeal decided to reject his claim, and said that The seller has delivered the goods - as he presented the documents representing them, and he was entitled to that price according to the open credit and the sale contract, and the documents cannot be considered worthless or do not match the reality as they indicate that the goods have been delivered in implementation of a sale contract, and thus they have entered the buyer's responsibility, and not from The unified rules deprive the seller of exercising his rights against the money of the buyer's debt, including the seizure of his money, and it cannot be attributed to the seller of bad faith, as it has been proven that the seizure that he signed is not for real debt collection.

The bank that accepts documents only accepts them because they represent possession of a commodity even if it is seized, and the buyer is obligated to receive it and pays the sum for which it is seized.

Based on the aforementioned jurisprudence, the seller has the right, like any other creditor of the buyer, to seize the buyer's money from funds in the hands of the bank according to the rules of seizing the debtor's money with others. The creditors of the seller (the beneficiary) have the right to seize the amount of the credit owed to their debtor from the bank's liability after submitting the corresponding documents in accordance with the provisions of seizing the debtor's money with third parties without prejudice to the privacy and function of the documentary credit and the principle of the independence of the letter of credit from other legal relationships.

By reviewing the position of the Jordanian Court of Cassation in this regard, it became clear to us that it had previously approved in its ruling the seizure of the two precautionary credits by the beneficiary, which means that the court decided in the beginning that it is permissible to impose seizure and take precautionary measures on the consideration for the approval (Jordanian Court of Cassation Decision No. 172/1982 issued Dated 9/15/1982).

The Jordanian Court of Cassation also confirmed in its decision No. 2330/2004 dated October 6, 2004, by saying: ((It was evident from the reasons of the decision that the judge of urgent matters refused to seize the consideration for the appropriation required of the assignee by the beneficiary in order to prejudice the request with the original right of the order Which was overturned by the Court of Cassation)).

The researcher notes that the position of the Jordanian Court of Cassation is consistent with the decision of the French and Dutch courts that it is permissible to place the seizure on the consideration for the documentary credit, noting that in both cases the applicant for the seizure was the beneficiary (the seller).

It must be noted that some legislations, including the Lebanese one, prevent the seizure, as the law on bank secrecy promulgated in 1956 stipulated and cut off the controversy regarding the issue of seizing bank accounts, as Article 4 of this law prohibits the seizure of funds deposited with banks except with a written permission by their owners, which means It is not permissible to seize bank accounts, including documentary credit, without the written permission of the account holder (17).

The researcher believes that this interpretation of the Lebanese legislator's position is at odds with the seizure rules and is fair in collecting the rights of creditors of bank account holders, in particular the owner of the amount of credit with the bank, and helps debtors to evade fulfilling their obligations towards their creditors, suppliers, for example.

The second requirement

Reservation by the buyer (commanding person)

We presented that once the credit is opened by the bank and the letter of credit has been issued to the beneficiary, the beneficiary is entitled to present the documents required from him under the letter of credit to collect the amount, but the documents submitted to the bank may be incorrect and based on fraud and it may come to the knowledge of the commanding buyer that a fraud committed by the seller (the beneficiary) in Preparing the goods or the required documents. Does the buyer have the right to resort to the court to prevent the amount of the credit being disbursed in favor of the seller (the beneficiary) before the approval is executed? Does this contradict with the independence of the bank's commitment to the source of the letter from the legal relations outside the scope of its obligation under the letter of credit?

In order to answer these questions, we must specify the judicial means through which the commander (the buyer) can prevent the amount of the credit being disbursed in favor of the beneficiary, which is to seize the amount of credit at the bank executing the credit according to what the payment of the credit amount is to be paid immediately or later, as well as the matter in it if the reservation request was Before or after submitting the documents to the beneficiary to the bank.

The first branch: reservation before submitting documents:

When the bank issues its commitment to pay the amount of the credit according to the letter of credit, its commitment is dependent on the requirement to present documents in conformity with the letter of credit. Therefore, the bank's pledge to fulfill is pending a suspended condition, which is the presentation of documents during the validity period of the letter. The principal is that the buyer has the right to seize the debtor's potential rights as long as the attachment is It is possible that a conditional right falls on it, and it is recognized that the seller's right to collect the amount of the credit is conditional on his fulfillment of the terms of the letter of credit. Nevertheless, the credit is an absolute safety for the seller, and therefore the seizure permission under the hands of the bank by the buyer is inconsistent with the job for which the documentary credit was found as a means For safety and reassurance in international trade.

Some jurisprudence believes that the seizure authorization by the buyer does not conflict with the final and morphological character of the letter of credit and the bank's commitment from its source as long as the confiscation

is only with the intervention of the judge and his order when the seller has abused the implementation of the sale contract and the buyer who requested the seizure is a creditor of the seller's beneficiary (18).

Another opinion goes to say that the seizure authorization on the part of the buyer is on the right of the beneficiary (seller) before submitting or accepting the documents, enabling the buyer to suspend the implementation of the credit he ordered to open and disrupt the final character of the credit, which corrupts the entire documentary credit system (19).

However, the French judiciary was the first to approve the seizure of the amount of the documentary credit by the buyer before submitting the documents. The Paris Court of Appeal decided in its ruling of this seizure in a case whose facts are summarized that the goods arrived before the seller presented the documents and required his right from the issuing bank, so the buyer found it different On the terms of the sale contract and proved this in the face of the seller and seized conservatively on the seller's right to the amount of the credit at the hands of the issuing bank. The seller's right is as if he returned in the final credit that the seller was assured of, but the court responded by saying that the seller's breach of his commitment is fixed and therefore the buyer against this seller has a right in principle to compensation, so he has as any creditor if he seizes the potential right of his debtor (the seller), under the hands of the issuing bank according to the rules Seize the debtor's money with others (20).

The Jordanian Court of Cassation took the same step that the French judiciary went to when it recognized the right of the commanding officer (the opening of the credit) to seize the amount of the credit after his termination of the sale contract with the seller's beneficiary based on the decision of the Amman Court of First Instance of Discrimination Jordanian Resolution No. 2340/2015 issued on 11/4 / 2015.

According to the researcher, according to the general rules related to the creditor's right to seize the money he owed with others, whether it is movable money or debts, even if it is deferred or suspended on a condition. Therefore, there is no legal objection to the buyer from seizing the seller's right to the bank for a debt owed by the seller's debt, whether his debt arises from The base contract or another debt not related to the base contract, since the documentary credit in itself does not prevent the ordering buyer who became a creditor to the seller due to his poor implementation of the sale contract (the base contract) from taking all precautionary measures, especially the request to place a precautionary attachment on the seller's right with the issuing bank. That the seizure can be made against a right that exists as well as a potential right that exists in its basis, which is the right to the amount of the credit which is confirmed by the seller's submission of documents corresponding to the letter of credit.

The second branch: reservation after submitting and accepting documents:

If the seller (the beneficiary) presents the documents according to the letter of credit and these documents are in conformity with the letter of credit, then his right to the amount of the credit has been established by the bank and therefore the seizure of this amount differs in it if its payment is immediate or deferred.

First: In the case of immediate payment: After the bank accepts the documents matching the letter of credit

He is obligated to fulfill his commitment to pay the amount of the credit, so what should the bank do? Do you implement the credit and pay the amount? Despite the issuance of a court ruling withholding the amount, and the violation of the judicial decision results in a financial claim and a criminal penalty, or will he withdraw his pledge and submit to the judgment of the judiciary and breach his peremptory obligation towards the beneficiary?

In practice, banks usually resort to implementing the credit to protect their reputation and the credibility of their commitments on the basis that their commitment to the credit is an independent commitment from other relationships of the beneficiary, and the banks claim that this money is the bank's money and not the beneficiary's money. No, but more than that, and based on the rules of seizing the debtor's money with third parties, banks can pay the amount of credit to the beneficiary when it is working for them, and the bank submits a report to the judicial authority issuing the seizure decision stating that he paid or paid the amount of the credit to the confiscated person (the beneficiary) before informing him of the seizure decision. And he no longer owes him any amount, especially if the amount was transferred from the bank account to the beneficiary's account with another bank.

In the opinion of the researcher, the bank should implement the decision to withhold the amount of the credit in compliance with the orders of the judiciary because the money is in reality for the beneficiary (the seller) and it is subject to seizure for the benefit of the beneficiary's creditors, including the buyer, and the argument that the money belongs to the buyer or the bank does not agree with good faith and is nothing but evasion from the implementation of the ruling judicial.

Second: In the case of term payment:

By this, the researcher intends to seize the right of the beneficiary in the amount of the credit after the implementation of the credit, but before fulfilling the amount, as the payment is postponed, and this is when the bank's commitment to implementation is to place its acceptance on a withdrawal document issued by the seller (the beneficiary) on the bank and in such a case, the beneficiary's right to The amount of the credit is added for a specific period, which is the maturity date of the withdrawal bond accepted by the bank.

In fact, the buyer cannot seize in the hands of the bank that executed the credit by placing his acceptance on the commercial paper, so that he will become a creditor to recover what he may pay on the due date to the conquering bank, whether the executing bank that placed its acceptance is the source of the letter of credit or was a bank in support of or insisting on the credit. It does not find a place for it with the supporting bank because the credit has already been implemented with acceptance, nor with the conquering bank because it is owed to the supporting bank and is not owed to the seller beneficiary (the distrainer). And because the withdrawal bond is usually traded after its acceptance and is transferred to other bearers who benefit from the principle of clearing the payments, or that the bond has been deducted with another bank and the private bank has become the owner of the amount fixed in it and as a result, this reservation is not productive in all the aforementioned cases.

The third branch: the impact of seizure

If the seizure occurred on the amount of the credit in the hands of the source of the letter, whether it was a precautionary seizure or an executive seizure, and whether the seizure was signed at the request of the buyer or upon the request of his creditors after the seller's fraud was proven and the right to compensate the buyer had arisen before the bank performed his obligation to pay, then the distrained bank must submit a report to the court issuing the precautionary seizure decision or to the enforcement department stating the amount owed by him for the benefit of a confiscated one, and often when the seizure is executory, banks resort to depositing the amount for which the seizure is enforceable and fixed for their liabilities in the execution department fund to avoid entering into judicial disputes that are indispensable.

Nevertheless, it must be noted that if the bank refuses to submit its report to the competent judicial authority within seven days or refuses to deposit the amount in the court's fund or the enforcement department, the court may seize its own funds and within the limits of the amount of the credit that was the cause of the seizure even if the bank's liability is occupied with less of this amount; For example, if the bank has provided the beneficiary with advance payments for submitting documents and implementing the approval.

Conclusion

At the end of this study, in which the researcher dealt with the problem of seizing the amount of the documentary credit and the supply of this documentary credit in the hands of the issuing bank or the bank opening the credit, the researcher reached the following results and recommendations:

First: Results:

- 1- The standard international rules and norms for documentary credits issued by the International Chamber of Commerce in Bulletin No. (600) of (2007) did not regulate the rules for seizure in the field of documentary credit.
- 2- In the field of attachment of documentary credits, the national seizure rules are applied, in particular, the rules for seizing what the debtor has with third parties, whether it is a precautionary or executive seizure, given the specificity of these rules on the one hand and the multiplicity of parties to the legal relations arising from the documentary credit on the other hand.
- 3- The principle is that the independence of the relationships arising from the documentary credit found a guarantee for the parties to the commercial transaction in achieving their conflicting interests.
- 4- The basic principle is that the amount of the documentary credit may not be seized in the hands of the bank issuing the letter of credit before submitting the documents, however, the judicial jurisprudence allowed this as long as the creditor's right of the distrained debtor has arisen with the bank's liability, especially if it submits identical documents.
- 5- The principle is that the seller (the beneficiary) may not attach the cover of credit submitted by the buyer (the commanding person) to the bank that opens the credit, given that the latter owns this amount in order to carry out his commitment under the letter of credit.

Second: Recommendations

The researcher recommends the following:

- 1- Due to the conflict of national jurisprudence in taking the seizure sometimes and refusing to seize other times, this calls for organizing the seizure rules in the amendments to the bulletin that will be issued by the International Chamber of Commerce and which regulate the rules and customs directed to documentary credits, including the position of the national judiciary of countries when the seizure is carried out in the process of carrying out the process Documentary credit.
- 2- We recommend that the courts adopt a criterion for the possibility of seizure on the amount of the credit or against the credit, that the precondition for the seller's entitlement to the amount of the credit was met upon

submitting the corresponding documents. As for the buyer, he should have been entitled to recover the amount of the credit from the bank for not implementing the credit for any reason whatsoever.

3- We hope for the national judiciary to narrow the scope of the seizure in the area of documentary credits between the hands of banks, whether on the amount of credit or on the supply of credit, by refusing the seizure if the seized has not become the owner of the seized money in my hands in order to avoid any obstruction in the implementation of the credit Documentary and thus impede commercial exchange and the implementation of commercial deals at the international level.

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