

**الالتزامات الناتجة عن خطاب الاعتماد المستندي
في ظل تداعيات جائحة فيروس كورونا ١٩
(دراسة مقارنة تطبيقية)**

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بالمملكة العربية السعودية



Obligations Created

**Under Letter Of Credit And Implications It Had
As A Result Of The Corona Virus Pandemic- 19
(An Applied Comparative Study)**

By

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ملخص البحث :

الاعتماد المستندي حديث النشأة، ويضم عدة تعاملات مختلفة، وتكييف كل المعاملات بتكييف واحد فقط، قد يكون خطأ، وإنما يتم تكييف كل معاملة منفردة عن الأخرى، والالتزامات الناتجة عن الاعتمادات المستندية في ظل جائحة فيروس كورونا ١٩، يتجاوزها تطبيق أحد نظريتين معروفتين في القانون، وهما: القوة القاهرة، والظروف الطارئة، وجاء من المحكمة العليا المبدأ القضائي في القرار رقم (٤٥/م) وتاريخ ٨/٥/١٤٤٢هـ، فالالتزامات على العميل الأمر والمستفيد يحكمها العقد، فإن كانت من عقود التوريد ونحوها، وفقاً لما نص عليه المبدأ القضائي، فإنه يمكن تطبيقه وفقاً لشروطه وآلياته، وأما التزام العميل الأمر في مقابلة المصرف، فإنه يحكم هذه العلاقة عقد فتح الاعتماد المستندي المبرم بين الطرفين، والذي يظهر أنه غير مشمول في المبدأ القضائي، وإذا كان مرجع عدم قيام المصرف بواجباته يرجع لأمر خارج عن سيطرته كما في جائحة فيروس كورونا؛ فإنه يمكن تطبيق ما تم النص عليه في الأصول والأعراف الموحدة للاعتمادات المستندية، ولا أرى تطبيق المبدأ

القضائي، وهذا خاص بالقوة القاهرة. أما في الظروف الطارئة فإنه وفقاً لأصول التقاضي المعتمدة شرعاً ونظاماً يمكن الاستئناس بأحكام المبدأ، ومراعاته عند تطبيق النظرية على الالتزام الذي وقع عليه ظرف طارئ لا قوة القاهرة. وعدم قيام المصرف المراسل بالتزاماته بسبب تأثره بجائحة فيروس كورونا، فإنه يتم تطبيق الأحكام الواردة على المصرف ففتح الاعتماد، وكذلك يترتب على المصرف المعزز الذي أضف تأييده للالتزام الأصلي نفس الآثار المترتبة على المصرف ففتح الاعتماد، والتزامات المستفيد تكون في مواجهه المصرف والعميل، ومن خلال ذلك فإن التزامات المستفيد في حالة تأثرها بجائحة فيروس كورونا فإنه يتم تطبيق الأحكام الواردة في حالة العميل الأمر.

الكلمات المفتاحية: التزامات، خطاب، الضمان، تداعيات، جائحة، كورونا.

Obligations Created
Under Letter Of Credit And Implications It Had
As A Result Of The Corona Virus Pandemic- 19
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Abstract:

Documentary credit is a notion that emerged recently, it includes several varied transactions. It might be a grave mistake to condition all transactions in the same manner. Each transaction should rather be conditioned separately. The requirements resulting from the documentary credit under the COVID-19 pandemic.

They are surrounded by the application of one of two established theories in the common law, namely: Force Majeure and unforeseen circumstances. The high court established the judicial principle in decree No. (M/45) dated 8/5/1442. The obligations of the ordering customer and beneficiary are governed by the contract. If they are supply contracts or similar contracts, according to the stipulations of the judicial principle. It can be applied according to its conditions and mechanisms. On the other hand, there are the ordering client's obligations towards the bank. That relationship is governed by a documentary credit opening contract concluded between both parties. It is not included in the judicial principle. If the bank fails to perform its obligations due to a matter out of control as in the case of Covid-19. The stipulations of the unified principles and norms of the documentary credits can be applied. Whereas, the judicial principle was not taken into consideration, since they are related to the force majeure. As for the emergency circumstances, according to the proper legal judicial principles, we can follow the lead of that principle, and consider it when applying the theory on the obligation on which unforeseen circumstances occurred rather than force majeure. In case, the correspondent bank did not perform its obligations as a result of Covid-19 implications, the principles applicable to the bank in which the documentary credit was open shall apply. Similarly, the same applies to the confirming bank that has confirmed the original obligation leads to the same implications born by the bank that opened the documentary credit. The beneficiary obligations are against both the bank and the client. According to the foregoing, the beneficiary's obligations in case they are affected by Covid-19 the principles stipulated for the ordering client are applicable.

Keywords: Obligations, lettercredit, implications, CoronaVirus, Pandemic

Preface

Surely all praise is for Allah. We praise Him, seek His help, and ask His forgiveness. We seek refuge in Him from the evil of our own souls and from the wickedness of our deeds. Whomever He guides then nothing can make him lost, and whomever He makes lost then nothing can guide him. I bear witness that none has the right to be worshipped but Allah, alone, who has no partner, and I bear witness that Muhammad is His servant and Messenger: (you who believe! Be careful of (your duty to) Allah with the care which is due to Him, and do not die unless you are Muslims)⁽¹⁾. (Mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah, through whom you ask one another, and the wombs. Indeed, Allah is ever, over you, an observer)⁽²⁾. believers! Be mindful of Allah, and say what is right. He will bless your deeds for you, and forgive your sins. And whoever obeys Allah and His Messenger, has truly achieved a great triumph)⁽³⁾ To Proceed:

Documentary credit, which is one of the banks' operations, plays an important role in international trade. It is one of the most important tools for reassurance between the seller and the buyer in two countries in contracts that are concluded between them. Banks seek this documentary credit as a source of income, and between the parties, whether the customer, the beneficiary, or the bank, obligations arise that must be fulfilled, but these obligations may be affected by things that are beyond the control of the parties, such as force majeure or unforeseen circumstances, as the case in the pandemic of the COVID-19, which was caused by this pandemic. The effect on the obligations arising from the documentary credit, and when considering the possibility of applying the proper statutory ruling, it was necessary to research the type of obligation and the character of the one who performs it, when a party confronts the other, given that the ruling is not the same for all parties. Thus, I found that studying the obligations resulting from documentary credit and the implications of the Corona Pandemic on these matters. This study uses a causal applied comparative study.

Study significance and justifications:

- 1- Reasons stated in the study preface.
- 2- Desire to enrich the legal, legislative and judicial library with scientific research characterized by causal, comparative, and applied study.
- 3- Desire to research commercial law, especially concerning banking operations.
- 4- Benefiting judges, lawyers, scholars, and those interested in the provisions of this research, and facilitating their job for them by collecting many comparative laws and regulations and judicial rulings related to the subject in one research.
- 5- Desire to inform the organizer of the results and recommendations of this research, according to its findings.

Study problem:

The problem of the study can be summed up in that there are numerous

1 Surah Al Imran, meaning of Verse 102.

2 Surah An-Nisaa, meaning of verse 1

3 Surah Al-Ahzab, meaning of Verses: 70-71.

obligations resulting from the documentary credit, these obligations might be affected by Corona Virus, and confusion occurs between applying the force majeure theory and the theory of unforeseen contingent circumstances. On the other hand, confusion may arise in the application of the correct statutory ruling between the texts relating to documentary credits in the principles and customs, and between the decision of Supreme Court No. (45) Dated 08/08/1442 and the application of legally accepted rules of jurisdiction. Therefore, the research addresses this problem, and the extent to which the correct judgment is applied according to the variance of obligations.

Literature Review :

Via research are perusal of various information sources, the researcher found out that documentary credit, according to the bulletins issued for that concern. By reviewing the works of several studies from several states, however, the research depends on the liabilities and the implications of Coronavirus on these obligations. Given the very specific review and search about who studied that address and according to its division, details, and applications. I see that the new position is according to the legal jurisprudence I concluded. This restriction will be clarified to readers, hoping it will be excused by the reader and will be informative to the legislator, the judge, the lawyer, and those benefiting from the provisions of documentary credit.

Scope of Study:

Spatial scope: The spatial scope for addressing the research topic is the Kingdom of Saudi Arabia.

Substantive scope: Obligations arising from the documentary credit and the implications upon it from the coronavirus pandemic.

Reference Scope: Saudi regulations, comparative laws, and various references that I dealt with explanation and comment, in addition to legal jurisprudential sources, local and comparative judicial rulings, previous research, principles, and decisions related to the subject of the research.

Study Methodology:

First: Study Methodology: the following methodologies were adopted in the following methods:

- 1-**The causal approach:** by following the parts to reach a comprehensive base, by returning each issue or opinion to its root cause.
- 2-**The comparative approach:** by following the comparative approach between the Saudi laws and the comparative legal systems concerning the subject of the study.
- 3-**Applied Approach:** By mentioning the judicial rulings and the issued quasi-judicial committees, and the testimony of the witness thereof if it is not indicated in the text, or placing the judicial ruling as a witness to the issue being studied.

Second: Study Procedures: I will follow the following steps while making the study:

1. Gather scientific materials from their sources.
2. Write the study in a clear and precise scientific style
3. The researcher is mindful of the terms and glossary used in the study.
4. Document and citation authentication from their sources, authenticate the opinions, and ideas. The researcher was keen on giving credit to their owners.
5. Attributing the noble Qur'anic verses, extracting hadiths and antiquities from their sources, with judging them, if any.
6. Adhere to the generally accepted punctuation marks.
7. Mention the judicial applications required by the study, whenever they are found, and put them in the research footnote.
8. Put a conclusion at the end of the research that includes the results of the research and recommendations that were found useful.
9. Put quotation marks ("") when taking verbatim citations, and when there is no literal citation, there is no quotation, and no other phrase is mentioned.
10. The obligation to mention the book's full information when it is mentioned

- for the first time, according to what is written in the book, and when some information is missing the date or place of publication, it means that it is not mentioned on the same book in the first place.
11. Abide by the scientific methodology of the study, and the requirements of the publishing scientific journal.

Study Content:

The research consists of an introduction that included the importance and reasons for choosing the research, the research problem, previous studies, the scope of application, and the research method, then the research section is as follows:

▪ **Preface :**

First requirement: documentary credit definition in the language.

Second requirement: documentary credit definition credit in Islamic jurisprudence.

Third requirement: documentary credit definition credit in law.

Fourth requirement: Images and types of documentary credit.

Fifth requirement: Virus Corona Definition.

▪ **First topic: the contractual relations arising from the documentary credit and its consequences:**

First Requirement: The relation between the customer who ordered the documentary credit (the buyer) to the beneficiary (the seller).

Second Requirement: The relation between the ordering client (the buyer) and the bank where the documentary credit is opened.

Third Requirement: The relation between the bank and the beneficiary (the seller)

▪ **Second Topic: Framing Coronavirus pandemic:**

First requirement: the theory of force majeure and unforeseen circumstances:

The First Section: Force Majeure

The Second Section: unforeseen circumstances

Second Requirement: The position of the Saudi regimes and judiciary on theories of force majeure and unforeseen circumstances:

The first section: the legal texts in the Saudi laws that referred to the two theories.

The second section: Saudi judiciary's position on the theories of force majeure and unforeseen circumstances.

The third section: the position of the unified principles and legal customs of documentary credits from the theories of force majeure and unforeseen circumstances.

▪ **Third Topic: The impact of the Coronavirus pandemic on the obligations in the documentary credit.**

First Requirement: Coronavirus pandemic's impact on the obligations of the customer who opened the documentary credit

Second Requirement: Coronavirus pandemic's impact on the obligations of the bank where the documentary credit is opened.

Third Requirement: Coronavirus pandemic's impact on the obligations of the correspondent and confirming bank.

Fourth Requirement: Coronavirus pandemic impact the beneficiary's obligations.

▪ **Conclusion:** Key findings and recommendations

▪ **List of references.**

Introductory topic

First Requirement: Documentary Credit Definition in Language:

Credit in the language is derived from the phrase "(Gave credit)" which means approved something and established it. Established can also mean building something; giving it its structure. Credit is also derived from "Credibility" meaning approving something and believing in it. People say that something is considered credible, i.e., believed and approved, which means ordered to be enforced⁽¹⁾.

The word Documentary: is derived from the word (Document), documented something means proving something, registering it, and establishing it. It can also refer to evidence and supportive materials accompanying the matter⁽²⁾.

The second requirement: Definition of documentary credit in Islamic jurisprudence:

Documentary credit is of recent origin, and it was not known by this name or by this term among the jurists of Islamic Sharia. Documentary credit has been established to perform a specific function that did not exist in ancient times, but by referring to the books of Islamic jurisprudence, we find the roots of this transaction that can be rooted by referring to the transfer of sponsorship and guarantee. These are the key conditions for that term. Therefore, it is important to identify the linguistic concept of documentary credit based on identifying the meanings of Islamic concepts they indicate, according to the following:

a. Transfer of liability⁽³⁾: It is defined by Hanafi as the Transfer of the debt from one liability to another⁽⁴⁾. The Sahafi define it as the transfer of debt from one liability to another; in reality, it is the sale of debt for another⁽⁵⁾.

(1) Al Mujam Al Wasit, Arabic Language Academy, Dar Al-Da`wah, Bab Al-Ain, Article (Amd), part 2, p. 626.

(2) IBID, P1, P452-453.

(3) Kinz Al Da'akek, Abu Al-Barakat Abdullah bin Ahmed bin Mahmoud Hafez Al-Din Al-Nasafi (deceased: 710 AH), investigation: Professor. Saed Bakdash, Dar Al-Bashaer Al-Islamiyyah, Dar Al-Sarraaj, first edition, 2011, p. 458. Al-Jawhara Al-Munawara, Abu Bakr bin Ali bin Muhammad Al-Hadadi Al-Abadi Al-Zubaidi Al-Yamani Al-Hanafi (died: 800 AH), Al-Khairiya Press, first edition, 1322, Volume 1, p. 296. The sheiks differed in that the transfer is the transfer of the debt from one liability to another or the transfer of the claim. For some it is the transfer of the debt, and for others, it is the transfer of the claim, and the difference is between Abu Yusuf and Muhammad, may God Almighty have mercy on him believed it is the transfer of the debt whereas Abu Mohamed believed it is the transfer of the claim. The main point of difference appears if the assignee absolves the assignor of the debt. According to Abu Yusuf, may God Almighty have mercy on him, it is not valid because the debt was transferred from him to the assignee, and according to Muhammad, may God have mercy on him, it is valid." Lisan Al-Hakam fi Ma'rifat Al-Ahkam, Ahmed bin Muhammad bin Muhammad, Abu Al-Walid, Lisan Al-Din Ibn Al-Shiha Al-Thaqafi Al-Halabi (died: 882 AH), Al-Babi Al-Halabi, Cairo, second edition, 1973 AD, p. 260.

(4) Al-Mukhtasar Fiqh, Muhammad bin Arafa Al-Wargami Al-Tunisi Al-Maliki, Abu Abdullah, (deceased: 803 AH), the investigator: Dr. Hafez Abdul Rahman Muhammad Khair, Khalaf Ahmad Al Habtoor Foundation for Charitable Works, first edition, 1435 AH, vol. 6, p. 488.

(5) Kifayat Al Akhbar Fi Hal Ghayat Al Ekhtisar, Abu Bakr bin Muhammad bin Abdul Mumin bin Hariz bin Maali Al-Husseini Al-Husni, Taqi Al-Din Al-Shafi'i, (deceased: 829), Investigator: Ali Abdul

Finally, Hanbali theologists define it as transferring the debt from the assignor to the assignee⁽¹⁾.

b. Warranty: Hanafi people define it as: "Join the liability to the claiming liability"⁽²⁾. The Maliki theologists define it as the warranty, aning undertaking to do something and become liable for it⁽³⁾. it is also considered joining one liability to another⁽⁴⁾ Hanbali theorists on the other hand define a warranty as an adult's undertaking to bring the warranted object⁽⁵⁾.

c. Assignment of Debt: defined by Hanafi theologists as "Assign your debt to others"⁽⁶⁾ for Malkia it is the "Assignment of a right to another willingly and without coercion conditional to his death"⁽⁷⁾. For Shafi'ia it is: "Delegating someone to perform the things that can be delegated to others during his life"⁽⁸⁾. The Hanbali theologists define it as "a competent person assigns another to perform something on his behalf"⁽⁹⁾.

Some researchers⁽¹⁰⁾, have collected twelve opinions of Islamic jurisprudence regarding the conditioning of credits, and they are as follows: the first opinion: it is a guarantee, the second opinion: it is an agency, the third opinion: it is a transfer, and the fourth opinion: it is several contracts

Hamid Baltaji - Muhammad Wahbi Suleiman, Dar Al-Khair, Damascus, first edition, 1994 AD, p. 264, etc. in: Bidayat al-Muhtaj fi Sharh al-Minhaj, Badr al-Din Abu al-Fadl Muhammad ibn Abi Bakr al-Asadi al-Shafi'i Ibn Qazi Shahba, (deceased: 874), Attn: Anwar ibn Abi Bakr al-Sheikhi al-Daghestani, Dar al-Minhaj for Publishing and Distribution, Jeddah, edition. The first, 1432 AH, vol. 2, p. 214 AH, and added that the transfer has another release, which is: "The contract by which the transfer takes place, and this is the majority of the use of jurists, and it is agreed upon".

- (1) Al-Kafi fi Fiqh of Imam Ahmad, Abu Muhammad Muwaffaq al-Din Abdullah bin Ahmad bin Muhammad bin Qudamah al-Jama'ili al-Maqdisi al-Dimashqi al-Hanbali, (died: 620 AH), Dar al-Kutub al-Ilmiyya, first edition, 1414 AH, vol. 2, p. 123.
- (2) Al-Hidaya fi Sharh Bidayat Al-Muhtadi, Ali bin Abi Bakr bin Abdul Jalil Al-Farghani Al-Marghinani, Abu Al-Hasan Burhan Al-Din, (deceased: 543 AH), investigator: Talal Youssef, House of Revival of Arab Heritage, Beirut, vol. 3, p. 87.
- (3) Al-Mokademat Al-Momahadat, Abu Al-Walid Muhammad bin Ahmed bin Rushd Al-Qurtubi, (deceased: 520 AH), investigation: Dr. Muhammad Hajji, Dar al-Gharb al-Islami, Beirut, first edition, 1408 AH, vol. 2, p. 373.
- (4) Al-Forouk, Abu al-Abbas Shihab al-Din Ahmad ibn Idris ibn Abd al-Rahman al-Maliki, famous for al-Qarafi, (died: 684 AH), World of Books, vol. 3, p. 34.
- (5) Al-Mobde' Fi Sharh Al-Mokne', Ibrahim bin Muhammad bin Abdullah bin Muhammad bin Muflih, (deceased: 884 AH), Dar al-Kutub al-Ilmiyya, Beirut, first edition, 1418 AH, vol. 4, p. 245.
- (6) Mujmae al'amr fi sharh multaqa al'anhur, Ibrahim bin Muhammad bin Ibrahim Al-Halabi Al-Hanafi, (deceased: 956 AH), investigation: Khalil Imran Al-Mansour, Dar Al-Kutub Al-Ilmiyya, Beirut, first edition, 1419 AH, part 1, p. 306.
- (7) al-mukhtasar alfiqhiu, Ibn Arafa, vol. 7, p. 54.
- (8) al'iiqnae fi hali 'alfaz 'abi shujae, Shams Al-Din, Muhammad bin Ahmed Al-Khatib Al-Sherbiny Al-Shafi'i, (deceased: 977 AH), investigation: investigation: Research and Studies Office, Dar Al-Fikr, Dar Al-Fikr, Beirut, vol. 2, p. 319.
- (9) muntahaa al'iiradat, Taqi al-Din Muhammad bin Ahmad al-Futuhi al-Hanbali, known as Ibn al-Najjar, (died: 972 AH), investigation: Abdullah ibn Abd al-Muhsin al-Turki, Al Resala Foundation, first edition, 1419 AH, part 2, p. 517.
- (10) Documentary credits and their rulings in Islamic jurisprudence, Ali bin Freih Al-Uqla, PhD thesis, Higher Institute of the Judiciary, for Judiciary, Imam Muhammad bin Saud Islamic University, 1436 AH, p. 165 and beyond.

combined into one contract, and the fifth opinion: It is necessary to condition each type of credit on its own, the sixth opinion: it is a new transaction and does not need a jurisprudential adjustment, the seventh opinion: it is a sale contract, the eighth opinion: it is a Murabaha, the ninth opinion: conditions it as a loan; and

Tenth Opinion: Adaptation to the theory of abstraction, the eleventh opinion: conditioned according to the theory of transfer of title for the benefit of others, the twelfth opinion: It is a promise of fulfilling a debt⁽¹⁾.

Third Requirement: Definition of documentary credit in law:

The Saudi Law did not define the documentary credit⁽²⁾, This is what many laws have followed by leaving the definition to civil jurisprudence and the judiciary, which is what some comparative laws have followed. However, there are Arab laws that define documentary credit, such as the Egyptian Commercial Law; Where it was stated that a documentary credit is: "a contract under which the bank undertakes to open a credit, at the request of one of its customers, called the orderer, for the benefit of another person, called the beneficiary, to guarantee documents representing movable or prepared goods for transportation"⁽³⁾. Further, Kuwaiti commercial law stipulated that documentary credit is: "A contract whereby the bank undertakes to open a credit at the request of one of its customers (the person ordering the opening of the credit) in favor of another person (the beneficiary) with the guarantee of documents representing movable goods or prepared for transportation"⁽⁴⁾ It is also stated in the UAE Commercial Transactions Law that a documentary credit is: a "contract" a contract whereby the bank opens a credit, at the request of its client (the orderer to open the credit) within the limits of a certain amount and for a certain period in favor of another person (the beneficiary) with the guarantee of documents representing shipped goods or prepared for shipping⁽⁵⁾.

The Omani Commercial Law stipulates that a documentary credit is: "A contract whereby the bank undertakes to open a credit at the request of one of its customers⁶ (the orderer to open the credit) for the benefit of another person (the beneficiary) to guarantee documents representing movable goods or goods that are prepared for transportation."⁽⁷⁾" By perusal of these legal definitions, it becomes clear that they are completely identical in some of them, and are very similar in others, with the unity of the legal provisions.⁽⁸⁾ This is due to the nature of the documentary credit; as it is one of the credit operations that are taken as a regular means of exchanging obligations arising from international trade operations, as the international banking custom has formulated it in a way that guarantees the seller and buyer the proper

(1) All jurisprudence opinions citations have been attributed to those who came up with them, for more information see the previous reference, p. 165 of it, and beyond.

(2) Likewise, the Jordanian Trade Law No. 12 of 1966.

(3) Egyptian Commercial Law, No. 17 of 1999, Paragraph No. (1) of Article No. (341).

(4) Bahraini Trade Law No. 7 of 1987, Paragraph No. (1) of Article No (317).

(5) UAE Commercial Transactions Law No. 18 of 1993, Paragraph No. (1) of Article No. (428).

(6) UAE Commercial Transactions Law, No. 18 for 1993, Paragraph 1 of Article No. (428)

(7) Omani Trade Law, No. 55 of 1990, Article No. 377.

(8) Except for the UAE law, which added in its definition the phrase a certain amount and a certain period.

implementation of their mutual obligations.⁽¹⁾ The Uniform Rules and Customs for Documentary Credits state that credit is “Any arrangement, whatever its name or description, that is irrevocable and, therefore, constitutes a specific undertaking by the issuing bank to fulfill an equal amount to the debt.”⁽²⁾

However, what is contained in the standard rules and usages for documentary credits is not binding, unless it is expressly stated in the credit that it is subject to these rules⁽³⁾.

As for its definition when explaining the law, it is as follows:

A documentary credit is defined as an undertaking issued by the bank upon the request of the customer, called the orderer or the giver of the order, in favor of the issuing third, called the beneficiary, under which the bank is obligated to pay or accept bills of exchange drawn to the beneficiary, under the specific terms and conditions contained in the undertaking, and secured by a deposit to prove the requester’s possession of the documents representing the exported goods⁽⁴⁾.

It is defined as: “a contract under which the bank commits to placing an amount of money at the disposal of a person specified by the contracting customer, and this person (the beneficiary) is in possession of the documents that represent the goods and the documents proving his relationship with the customer ordering the credit, which the bank must verify and obtain to implement his commitment to the documentary credit⁽⁵⁾.”

Further, it is defined as “A contract under which the bank undertakes to open a credit, at the request of one of its clients, and the orderer is called to open the credit in favor of another person, called the beneficiary, with the guarantee of documents representing movable goods or prepared for transportation⁽⁶⁾.”

Another definition states that it is “The credit that the bank opens at the request of a person called (the orderer), whatever the method of its implementation, that is, whether it is by accepting the bill of exchange or by paying, for the benefit of a customer for this order⁽⁷⁾.”

(1) Commercial Contracts and Bank Operations, according to the Legal Regulations of the Kingdom of Saudi Arabia, Prof. Abd al-Rahman al-Sayyid Qurman, Al-Shukry Library, second edition, 2010, pg. 408.

(2) Uniform Rules and Customs for Documentary Credits - Journal No. 600, Arabic version, translation: Lawyer Issa Issa Dalal & Partners Office, Editing and Revising: Ali Mahmoud Attia - Samir Mansour - Muhammad Mahmoud Barjak, Cooperative Press Workers Association, Amman - Jordan, 2007 AD, Article No. (2).

(3) As stated in the first article of it: “The Uniform Rules and Customs for Documentary Credits 2007 Revision, International Chamber of Commerce Publication No. 600 are the rules that apply to any documentary credit (credit) (including, to the extent applicable, a security credit) when the credit expressly states that it is subject to these rules. These Rules are binding on all of its parties unless expressly modified or excluded in the reliance. Standard Origins and Customs for Documentary Credits - Journal No. 600.

(4) Contracts and Banking Operations, Prof. Ali Al-Baroudi, University Press, Alexandria, 2001, p. 394.

(5) Commercial and Banking Encyclopedia, Bank Operations, prof. Mahmoud Al-Kilani: House of Culture for Publishing and Distribution, The Hashemite Kingdom of Jordan, Volume 4, p. 157.

(6) Commercial contracts and bank operations in the Kingdom of Saudi Arabia, Prof. Muhammad Hassan Al-Jabr, King Saud University, Riyadh, 1418 AH, p. 307.

(7) Al-Wajeez in Commercial Law, Prof. Ali Jamal Al-Din Awad, Dar Al-Nahda Al-Arabiya, Cairo, 1982, p.

Documentary credit is also defined as: "a banking technique that takes the form of a document that the bank sends, at the request of its customer, to another bank abroad, and this comes after the sales contract concluded between the importer and the exporter, the aim of which is to pay the value of the transaction concluded between the two parties in favor of the exporter, and thus it is considered as covering the process of buying and selling through a bank mediation to complete the process⁽¹⁾.

A documentary credit is also defined as: "an irrevocable written undertaking issued by the issuing bank, based on the instructions of its client requesting the credit, in favor of the beneficiary to pay or accept documentary bills drawn to him by the beneficiary, and the bank initiating the credit may authorize another bank in the beneficiary's country to take over on his behalf the payment or acceptance of such documentary drafts, against documents provided for in the documentary credit, and provided that they are in full conformity with its terms, and submitted within its term of validity⁽²⁾.

Having perused the judiciary's definition of a documentary credit, it is of paramount significance to mention that the documentary credit is one of the banks' operations, which the Banking Disputes Settlement Committee specializes in, and this committee has the sole jurisdiction⁽³⁾, and it states in the definition of the documentary credit that it has: "A contract under which the bank undertakes to open a letter of credit at the request of one of its clients, and it is called the opening of the credit for the benefit of another person known as the beneficiary, with the guarantee of documents representing movable or prepared goods."⁽⁴⁾

487.

- (1) Legal Mechanisms to Reduce Documentary Credit Risks, Master's Thesis, Khawla Belaroussi, p. 10.
- (2) Electronic Banking Conference, College of Sharia and Law, United Arab Emirates University, held on (9-11 Rabi' Al-Awwal for the year 1434 AH), part 1, p. 20.
- (3) This committee was established by Royal Decree No. 729/8, dated 10/7/1407 AH, at the Saudi Arabian Monetary Agency, consisting of three people with a specialization enabling them to examine the issues between banks and their customers in order to settle disputes and find solutions to them. In the implementation of the agreements signed between them, and accordingly, the Sharia courts and the bodies for settling commercial disputes were obligated not to hear the banking lawsuit that is filed against the banks or by them except with the approval of the Supreme Court. For a trader to file a lawsuit before them from these cases to that committee, then followed by the issuance of the decision of His Excellency the Minister of Finance National Economy No. 3/8975 dated 11/22/1407 AH, approving a list of rules and procedures for the work of the Banking Dispute Settlement Committee. After the issuance of the legal pleadings system, the committee began to apply what was stated in that system and its executive regulations to the extent that is commensurate with its nature. Including, Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles established by it, Saudi Monetary Agency, General Secretariat, Committee for the Settlement of Banking Disputes, First Edition, 1427 AH - 2006 AD, pp. 5-6.
- (4) Resolution No. 133/1410, Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principal No. 71, p. 205, and it was stipulated: "The implication of this is: the accreditation is like any other contract that requires the one based on it to provide evidence of its existence and prove to convene." The Egyptian judiciary stated that: "The documentary credit is a banking commitment conditional to fulfillment issued by the bank that issued the credit at the request of the purchaser, the order and in

By extrapolating the previous definitions of documentary credit, it is clear that documentary credit plays an important role in foreign trade; It provides confidence and credit to merchants in different countries, by ensuring each other's solvency and ability to fulfill their obligations. ⁽¹⁾The seller is assured that the value of the goods will be paid to him, and the buyer is also verified that the bank does not pay the amount to the seller until after making sure that the goods have been sent and checking the documents.⁽²⁾ As for the conditioning of documentary credit, some researchers ⁽³⁾ collected sixteen opinions about the conditioning of legal jurisprudence on the relationship between the bank to the beneficiary in the documentary credit process, these are as follows:

The first opinion: The documentary credit contract is an agency contract, and the second opinion: The documentary credit contract is legally qualified as a surety contract, the third opinion: The documentary credit contract is conditioned upon the representation principle, and the fourth opinion: The documentary credit contract is similar to the contingency theory for the benefit of others, and the fifth opinion: It conditions the documentary credit contract as a binding promise, the sixth opinion: The documentary credit contract is adapted as a transfer contract, the seventh opinion: The letter of documentary credit is a commercial paper, and the eighth opinion: consider it an adaptation of the beneficiary's relationship with the issuing bank on the basis of the binding offer theory, and the ninth opinion: The relationship Between the bank and the beneficiary is based on the theory of debt determination, and the tenth opinion: The adaptation of the beneficiary's relationship with the bank is based on a one-sided binding contract, and the eleventh opinion: The documentary credit contract is adapted as the matching of wills by means of mediation, and the twelfth opinion: adapting the relationship between the bank and the beneficiary in the light of

conformity with his instructions and the conditions he determines and delivered to the beneficiary seller, with the aim of fulfilling the value of the commodity or goods purchased within a specified period within a certain amount within the limits of a certain amount against stipulated documents. Dealing under it between the opening bank and the supporting or confirming bank - if any - and between the issuer and the beneficiary on the documents alone and their integrity and conformity in their entirety and their compliance with the conditions stated in his request without regard to the goods or the special relationship between the seller and the buyer about the contract that governs their relationship and the extent of its validity And its effectiveness and the effects that occur to it, given that opening the credit by its nature is a business independent of sales, purchases and other contracts on which it is based. It determines the obligations of the bank that opened the letter of credit and the rights and duties of both the requester and the beneficiary. The Uniform Rules and Customs for Documentary Credits - Amended Version 1993 International Chamber of Commerce Publication No. 500 Paris - may be supplemented by the texts and principles of the internal law of the Dispute Judge. Egyptian civil cassation, hearing of June 13, 2013, Appeal No. 410 of 67 BC, commercial circuits.

- (1) Commercial contracts and bank operations, Prof. Ali Al-Baroudi, Alexandria University Press, p. 395.
- (2) Encyclopedia of commercial banking, banking operations, d. Mahmoud Al-Kilani, House of Culture for Printing and Publishing, vol. 4, p. 156.
- (3) Documentary credits and their rulings in Islamic jurisprudence, Ali bin Freeh Al-Uqla, p. 354 and beyond.

Morphological acceptance, and the thirteenth opinion: the application of the theory of credit to the relationship between the bank and the beneficiary, and the fourteenth opinion: The documentary credit contract is an indefinite contract, or in other words a commercial contract of a special kind. Fifteenth: How the documentary credit was held on the theory of offer and acceptance, and the sixteenth opinion: The establishment of the bank's commitment in the documentary credit towards the beneficiary is based on the theory of unilateral will⁽¹⁾.

The researcher adopts the belief that documentary credit includes several transactions and the conditioning of all transactions with only one description may be wrong. However, each transaction is rather conditioned separately. Likely, single conditioning cannot be applied to all transactions in the documentary credit.

Fourth Requirement: Types and Forms of Documentary Credit

There are many forms and types of documentary credit, and they differ according to the characteristics and advantages of the bank's undertaking. Due to the large number and diversity of forms of documentary credit, the discussion will be limited to the most important types of documentary credit, as follows:

First: In terms of the strength of the bank's commitment: A documentary credit is divided into a revocable documentary credit and an irrevocable (definitive) documentary credit.

Revocable Documentary Credit: It is the credit in which the bank reserves the right to cancel at any time it wants without accepting any liability, whether from the beneficiary or the ordering customer. In such a case, the bank is not obligated to notify the beneficiary of the cancellation, and accordingly this credit has no legal value. Since it is not binding on the bank, however, its binding effects are applicable to the parties to the contract (the seller and the buyer), as it regulates the method of payment between the contracting parties. However, it is customary for the bank to notify the beneficiary of the cancellation, and this type is resorted to if the trust between the parties to the contract is established.⁽²⁾

As for the irrevocable (definitive) credit: It is the credit that the bank may not retract after the letter of credit reaches the beneficiary, whether the recourse is at the will of the bank or based on the customer's order. Since the bank's commitment towards the beneficiary of the credit is an original obligation, independent of the relationship of the customer with the beneficiary. The initiation of the commitment is from the beneficiary's acceptance of the opened letter of credit sent by the bank issuing the credit. It does not require explicit acceptance, but it is sufficient that there is no objection, so non-objection is a presumption of acceptance. This type of credit is the predominant form of documentary credit⁽³⁾. Further, "the basis for the approval of the amendment to the irrevocable or revocable documentary credit is that it is done by agreement between each of the

(1) All jurisprudence opinions citations have been attributed to those who came up with them, for more information see the previous reference, for more information see the previous reference, p. 354 of it, and what follows.

(2) Contracts and Operations of Commercial Banks, Prof. Ali Al-Baroudi, pg. 398.

(3) Commercial contracts and banking operations according to the legal systems of the Kingdom of Saudi Arabia, Prof. Abd al-Rahman al-Sayyid Farman, p. 415.

requesters for opening the credit, the issuing bank, and the beneficiary”⁽¹⁾.

Second: Documentary credit in terms of implementation: In terms of implementation, documentary credit is divided into two types : First: Supported (confirmed) documentary credit, and the other: Unsupported (unconfirmed) documentary credit.

Supported (Confirmed) Documentary Credit ⁽²⁾: This type is in the case in which the seller is not reassured by the buyer and the bank. Thus, it is stipulated that a second bank intervene to add his pledge to the pledge of the first bank, and the second bank is usually in the country of the seller⁽³⁾ With this endorsement, the relationship becomes direct between the seller (the beneficiary) and the supporting bank.

An unsupported (unconfirmed) documentary credit is: executed by the bank opening the credit, so it issues the letter of opening the credit and sends it to the beneficiary, or it delegates another bank as soon as the opening of the credit is notified to the beneficiary without being obligated confront the beneficiary with any obligation related to the implementation of the documentary credit⁽⁴⁾.

In this type of credit, the bank issuing the credit plays the role of mediator between the bank issuing the credit and the beneficiary, by informing the beneficiary of the instructions and conditions of the open credit in his favor and all subsequent amendments, and accordingly, its role is limited to mediation without arranging any obligation to pay the beneficiary when submitting documents, and it does not entail any responsibility, and thus ends his role unless otherwise agreed upon. Because it did not add its reinforcement to the credit, and the bank obligated to pay in this case is the bank that issued the credit alone⁽⁵⁾.

Third: In terms of transferability of documentary credit:

(A) Transferable Documentary Credit: This type means the agreement between the parties to transfer it from one beneficiary to another, meaning that the beneficiary in the contract opening the credit has the

(1) Resolution No. 88/1414 and Resolution No. 1418 Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 85, p. 210. Resolution No. 28/1424 Banking Disputes, Litigation Procedures before the Banking Dispute Settlement Committee and the principles it established, Principle No. 94, p. 213, which states: “The irrevocable documentary credit results in the bank's commitment to a final and irrevocable obligation by the seller to pay the credit whenever the beneficiary performs his duties stipulated in the contract and regardless of the customer's relationship with the beneficiary, the impact of that. The bank does not have the right to refrain from paying the beneficiary as long as the latter submits complete documents that the bank confirms are correct and conform to the conditions set forth in the letter of credit...”.

(2) “Supporting or confirming bank” means a bank that adds its support (confirmation) to the documentary credit at the request or authorization of the issuing bank,” and support (confirmation) means a specific undertaking by the supporting (confirming) bank , in addition to the undertaking of the issuing bank, to fulfill or negotiate a matching undertaking. Article Two of the Uniform Rules and Customs for Documentary Credits, Bulletin No. 600.

(3) Commercial contracts and banking operations, Prof. Ali Al-Baroudi, pp. 398-399.

(4) Commercial contracts and banking operations according to the legal systems of the Kingdom of Saudi Arabia, Prof. Abd al-Rahman al-Sayyid Qurman, p. 417.

(5) Consolidated Guide to Documentary Credits, p. 19.

right to transfer the credit for the benefit of others, i.e. to another beneficiary⁽¹⁾. Thus, it has a direct right before the bank, so it accepts the bills drawn by this new beneficiary.

What is meant by the transfer of credit is: The beneficiary waives all or part of the credit in favor of a third party who submits documents to the bank and receives the amount from it. This requires the approval of the parties to the credit, even if it does not provide for the right of transfer. This means: The orderer in the non-transferable credit transfers its rights and obligations to a third party which is an assignment of his right arising from the credit and not a transfer of it.⁽²⁾

It should be noted that a transferable documentary credit does not accept assignment unless approved by the bank, and the transfer is only made once unless otherwise agreed upon.

(B) A non-transferable documentary credit: It has the advantage of being limited to the beneficiary alone, who is specified by the customer ordering the bank, to the exclusion of others⁽³⁾.

Fourth: In terms of the accrual time of the credit value⁽⁴⁾:

(a) Fulfilled Documentary Credit: It is the credit in which the value of the goods is paid upon presentation of their shipping documents and their compliance with the terms of the credit.⁽⁵⁾

(b) Deferred documentary credit: It is the credit in which the bank postpones payment, acceptance or discount to a later date on the submission of documents from the beneficiary, and the purpose of this is mostly to provide an opportunity for the customer; to inspect the goods and make sure that they conform to what was agreed upon with the beneficiary, and this reason is not mentioned in the contract of opening the credit or the letter of opening the credit sent to the beneficiary, and the effects of this delay for the beneficiary are not hidden. The buyer has to provide a certain guarantee to obtain his rights that arise from the sales contract⁽⁶⁾.

Fifth requirement: COVID-19 definition:

By referring to the language books and the Arabic literature, we did not find a linguistic meaning for the word, and this is due to the fact that it is not

(1) The mediator in explaining the Egyptian Trade Law, Prof. Samiha Al-Qalyubi, Dar Al-Nahda Al-Arabiya Publishing, Cairo, Fifth Edition, 2007, p. 815.

(2) Resolution No.: 1408/24 Banking Disputes, Litigation Procedures Before the Banking Dispute Settlement Committee and the Principles It Has Decided, Saudi Monetary Agency, General Secretariat, Banking Dispute Settlement Committee, first edition, 1427 AH-2006 AD, p. 200.

(3) Contracts and Operations of Commercial Banks, Prof. Ali Al-Baroudi, pg. 400.

(4) Resolution No. 47/1409, Resolution No. 29/1426, Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principal No. 65, p. 203, which states: The issuing bank shall follow the customer's order to open the credit. It shall fulfill its value to the beneficiary in exchange for receiving documents. The right of the bank to withhold the bills of lading until the order is paid for the amount owed by it. The shipping agent delivers the goods to the buyer without being in possession of its documents. meaning. The obligation of the orderer and the shipping agent to jointly pay the value of the goods subject of the credit to the bank that opened the credit.

(5) Studies in Islamic Economy and Contemporary Transactions, Higher Institute of Islamic Thought, Documentary Credits, Prof. Mohy El-Din Ismail Alam El Din, Cairo, 1996, p. 26.

(6) Commercial Contracts and Bank Operations, Prof. Abd al-Rahman al-Sayyid Farman, p. 409.

of Arabic origin, but rather its origin is derived from an English abbreviation⁽¹⁾
(Corona virus Disease 2019(Covid-19)

Coronaviruses, according to the World Health Organization, are a large and diverse family of viruses that cause illness in both humans and animals. A number of coronaviruses are known to cause respiratory infections in humans that range in severity from the common cold to more severe diseases, particularly such as Middle East Respiratory Syndrome and Severe Acute Respiratory Syndrome (SARS). The recently discovered coronavirus causes COVID-19 disease⁽²⁾.

The disease - Corona Virus Disease (Covid-19) - was defined as an infectious disease transmitted through droplets scattered from the mouth or nose of an infected person when coughing, sneezing or talking, which another person picks up by breathing, and the World Health Organization announced on January 30, 2020 AD that the outbreak of the new Corona virus It constitutes a health emergency of international concern, and according to the International Health Regulations (2005 AD), the virus has become an exceptional event that poses a threat to international health. On March 11, 2020, the World Health Organization announced that the outbreak of the new virus had become a pandemic⁽³⁾.

After the Health Organization announced that the outbreak of the new virus has become a pandemic, countries issued decisions as precautionary measures to confront the virus and limit its spread, starting with preventing studies, banning public gatherings, closing air and land space, preventing travel to countries, preventing movement between regions of one country, and suspending work in state institutions in both the public and private sectors, the imposition of a curfew. Among the sectors affected by this virus is the banking sector, and these measures cannot be expected and cannot be paid, which makes us apply to them the provisions of force majeure, and emergency circumstances according to their impact on the obligations of the parties to the documentary credit.

The requirement is intended to define the Covid-19 virus, as it is defined as: A widespread family known to cause illnesses ranging from the common cold to more severe illnesses such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).⁽⁴⁾.

(1) Law Journal, Kuwait University, Volume 2, Jumada al-Akhirah 1442 AH - January 2021 AD, p. 278.

(2) [https://: www.who.int/emergencies/diseases/novel-virus-2019](https://www.who.int/emergencies/diseases/novel-virus-2019).

(3) Law Journal, Kuwait University, the extent to which force majeure conditions apply to the emerging coronavirus pandemic within the framework of civil contracts, Dr. Hashem al-Sayyid Ahmed Issa, Jumada al-Akhirah 1442 AH - January 2021 AD, vol. 2, p. 591.

(4) Legal Effects of the Coronavirus Pandemic 2019 (Covid 19) on the Contract of Commercial Transport, Dr. Adel bin Abdul Rahman Al-Shamri, Prof. Turki bin Abdul Aziz bin Turki Al Saud, Journal of Human Sciences, University of Hail, research paper accepted for publication, p. 6.

The first topic

Contractual relations arising from documentary credit and their implications

There are several legal relationships between the parties to the documentary credit, including what arises before and prior to the issuance of the documentary letter of credit, which is the relationship of the seller and the buyer in the sales contract, and the relationship of the customer and the bank in the bank account opening contract and in the banking facilities contract. There are legal relationships caused by a documentary credit that arises later. We will simplify the discussion of these relationships between the parties to the documentary credit to determine the legal and jurisprudential adaptation of each relationship, as there is the relationship of the customer ordering the opening of the credit to the beneficiary, the relationship of the customer ordering the opening of the credit to the bank, and the relationship of the bank to the beneficiary.

First requirement: The relationship between the customer ordering the opening of the credit (the buyer) and the beneficiary (the seller):

The client who ordered to open the credit hereinafter referred to as the "Requester": was defined as: The party that the credit was issued upon his request⁽¹⁾.

The beneficiary is the party in whose favor the credit was issued⁽²⁾.

The relationship that arises between the buyer and the seller is governed by the sales contract concluded between them, which usually precedes the opening of the credit, and this contract is independent of the opening of the documentary credit⁽³⁾, which is the relationship that arises between the requester and the beneficiary, in which the sales contract is either a CIF sale contract, which is the price of the goods being cut off, including all costs to reach the port of destination, or the sales contract is FOB, which is the case where the price of the goods shall be limited to their price, up to the port of shipment on board the ship⁽⁴⁾. In these contracts, it is agreed to settle the price by opening a documentary credit that is executed in return for the submission of certain documents, and thus the obligations of the buyer under the sale contract arise by opening the credit in favor of the seller.⁽⁵⁾ The buyer

(1) Article Two of the Uniform Rules and Customs for Documentary Credits, Bulletin No. 600.

(2) Article Two of the Uniform Rules and Customs for Documentary Credits, Bulletin No. 600.

(3) Resolution No. 170/1414 Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 77, p. 208, which states: "The bank that issued the credit is not responsible for whether the documents represent the reality of the goods or not. The bank's obligation to verify the conformity of the documents with the terms of credit. Independence of the credit opening contract from the sales contract. Its effect is the bank's obligation to pay the value to the beneficiary if it is proven that the credit conditions are in compliance. It is matched by the customer's obligation to pay the value of the credit that was paid to the beneficiary without regard to the extent to which the goods conform to the specifications or not.

(4) Legal Responsibility for Documentary Credit Parties an Applied and Comparative Study, Al-Wathiq Atta Al-Mannan Muhammad Ahmed, Master Thesis, Omdurman University, 2006, p. 98.

(5) Contracts and Operations of Commercial Banks, Prof. Ali Al-Baroudi, p. 401.

is obligated to pay the price through the documentary credit, and if he does not take the measures that lead to the opening of the credit in a timely manner, he will be negligent in implementing the contract, and his failure will result in the termination of the contract.

As for the seller, he is obligated to implement the sales contract and send the goods in accordance with the specifications agreed upon in the sales contract, which were stipulated in the letter of documentary credit at the specified time.⁽¹⁾

The agreements made between the seller and the buyer (between the customer and the beneficiary) are separate operations from the documentary credit. If the documentary credit includes any reference or allusion to such contracts, it will remain independent and free from the documentary credit, and this is confirmed by the international standard norms and practices⁽²⁾.

The Second Requirement: Relationship between the ordering customer (buyer) and the issuing bank⁽³⁾

The issuing bank, which is the bank who issued the letter of credit, is defined as: "The bank that issues a credit based on the applicant or on behalf of the bank itself."⁽⁴⁾

This relationship is governed by the contract of opening a documentary credit concluded between the two parties. It is customary for the contract to open a documentary credit to be drawn up according to the unified form at the bank with the possibility of adding data that may differ from one credit to another. Issued by the International Chamber of Commerce, in order to

(1) The banking system in the Kingdom of Saudi Arabia, Prof. Abdul Majeed Muhammad Abbouda, Institute of Management, Riyadh, 1989, p. 234.

(2) Resolution No. 157/1410, Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 72, p. 205, which states: It is decided in accordance with the provisions of Articles 3 and 4 of the Uniform Rules and Customs for Documentary Credits (International Chamber of Commerce Publication Amendment No. (400), that credits are completely independent of the legal relations leading to them and that the parties to the credit do not deal only in documents, and that according to the text of Article 15 of the set of rules, the responsibility of the bank that issued the credit and the limits of its commitment is limited to verifying that the documents appear to be in conformity with what is required in accordance with the terms and conditions of the credit, and according to the text of Article 17 of the set, banks do not bear any liability or responsibility for the form, sufficiency, accuracy or correctness or forgery or legal effect of any documents. Nor does it assume any liability or responsibility for the description, quantity, weight, condition, packing, delivery, value or presence of goods represented by any documents...".

(3) Resolution No. 157/1410, Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 72, p. 206, which states: "... The order requested the issuing bank to submit new or additional documents that were not required in accordance with the terms and conditions of the credit with the claim that the documents required according to the terms and conditions of the credit are insufficient. This request is overruled as long as all the documents required in accordance with the terms and provisions of the credit have been proven to have been submitted in full and it is not permissible to rely on others to pay the value of the documents submitted by the beneficiary.

(4) Article Two of the Uniform Rules and Customs for Documentary Credits, Bulletin No. 600.

expedite the settlement of any dispute that may arise between the two parties in the accreditation contract⁽¹⁾.

The credit contract creates obligations on the customer (the buyer), as well as on the bank, so the buyer is obligated to provide the credit cover and not to return from the contract⁽²⁾ and adherence to the contract. They are obligated to pay the commission to the bank. Hence, the buyer is obligated to receive the documents after informing him from the bank that the documents are at his disposal, and he can receive them after paying their value to the bank⁽³⁾. The buyer is obligated to pay the value of the credit and the expenses, as well as the obligation to issue the letter of credit and inform it to the beneficiary, and the bank is obligated to examine the documents, implement the literal, and with the utmost accuracy of the terms of the letter of credit, and is obligated to deliver the documents to the ordering client⁽⁴⁾. The bank is not obligated to meet the ordering customer about the modifications in the terms of the credit if the order customer received the entire credit documents and signed them and the amendments that occurred to the credit, and no objection was raised by him, and he received the goods⁽⁵⁾.

The third requirement: Relationship between the Bank and the Beneficiary (The Seller)

The bank shall open the credit for a particular beneficiary through conditions agreed upon in the credit. These terms include the credit amount, validity period and commencement date. The bank may not alter or modify the credit conditions if they were fully implemented by the client. The bank shall notify the beneficiary with a letter of credit showing the obligations and rights of the beneficiary. Based on the conditions of the credit opened for his benefit directly or by a bank located in the beneficiary's country. The bank commits not to cancel the letter of credit or modify it for the whole term of the contract. Unless the documentary credit is revocable or subject to modification. Even if some unforeseen circumstances that occurs⁽⁶⁾ to the original contract. The bank shall inspect the documents of the goods.⁽⁶⁾ This is

(1) Commercial contracts and bank operations, Prof. Abd al-Rahman al-Sayyid Qurman, pg. 424.

(2) Resolution No. 157/1410, Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 72, p. 206, which states: "A request to open the credit to refund the value of the insurance (cover) paid for this credit is not consistent with the evidence from the circulation of the documents of this credit, apparently conforming to its conditions and texts, and then deducting its division on the account of the opening bank by the supporting bank."

(3) Summary of Bank Operations From A Legal Perspective, Prof. Ali Jamal Al-Din Awad, p. 175.

(4) Legal responsibility Parties Documentary credit an applied and comparative study, Al-Wathiq Atta Al-Mannan Muhammad Ahmed, p. 36 and beyond.

(5) Resolution No. 1414/210 and Resolution No. 314/1414 Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 78, p. 208.

(6) Resolution No. 92/1412, Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 72, p. 207, which states: "It is decided that banks should examine all documents with reasonable care to ensure that on their surface they appear to comply with the terms of the credit. As for the documents that appear to contain discrepancy, they are considered as if they do not comply with the terms of approval. The discrepancy between the documents justifies its refusal. Resolution No. 1/1415

performed with careful examination, and to ensure that all the data comply with the terms of the credit, and the bank is obligated to pay what the beneficiary is entitled to from the amount of the credit if the documents submitted by the beneficiary are complete, and also completely identical to the terms of the credit, and the bank is not responsible for whether the documents represent the true value of the goods or not, the role of the bank is limited to verifying that the documents comply with the terms of credit⁽¹⁾ Accordingly, the obligation of the beneficiary to provide the goods and the documents required entirely in accordance with the conditions determined by the letter of credit. These documents include the bill of lading, certificate of origin, invoices that include the value of the goods, a certificate of examination and inspection, insurance policy, health, customs and transportation documents, and other documents that are requested. The credit is transferable. The beneficiary is obligated to inform the bank of this within a reasonable period. In the event that the documents are missing,⁽²⁾ the beneficiary is obligated to send what is missing within a certain period.

Banking Disputes, Litigation Procedures before the Banking Dispute Settlement Committee and the principles it established, Principle No. 80, p. 209, which states: "The bank issuing the credit is obligated to check the documents submitted to it and their conformity to the conditions set by the customer in the credit. Conformance must be complete and literal with the accreditation requirements. Any violation entails the responsibility of the bank.

- (1) Resolution No. 170/1414 Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 208, p. which states: "The bank that issued the credit is not responsible for whether the documents represent the reality of the goods or not. The bank's obligation to verify the conformity of the documents with the terms of credit. Independence of the credit opening contract from the sales contract. Its effect is the bank's obligation to pay the value to the beneficiary if it is proven that the credit conditions are in compliance. It is matched by the customer's obligation to pay the value of the credit that was paid to the beneficiary without regard to the extent to which the goods conform to the specifications or not.
- (2) Letters of Documentary Credits, Ali Hussein Salem, Riyadh Management Institute, 1398 H, p. 52. Obligations arising from documentary credit and the extent to which it can be disavowed, Muhammad Saleh Jamal Al-Hadithi, Master's Thesis, Middle East University, 2021, p. 85 and beyond. Resolution No. 237/1414 Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 79, p. 208, which states: The International Chamber of Commerce Bulletin No. 400 of the 1984 Amendment to the Uniform Rules and Customs for Documentary Credits required setting a maximum period for submitting documents. If this period is not specified, the bank may reject the documents submitted more than twenty-one days after the date of issue of the shipping documents. Failure to observe these conditions by the issuing bank will result in the bank being obligated to the value of the goods received after the expiry of the deadline.

Second Topic

COVID-19 Conditioning:

In binding contracts, the contract arranges reciprocal obligations between its parties that must be implemented⁽¹⁾ that the power of will of the parties is the one who decides what contracts are to be agreed upon, and determine the effects of them, according to what is included in the terms to be agreed upon.

The world has witnessed economic turmoil during the Covid-19 pandemic, and the consequent general decisions within countries, including the declared health emergency, and the preventive measures that were taken; in order to limit the spread of the infection, these decisions were affected by important sectors, including: The trade sector, whose main drivers are banks; being one of those affected by the Covid-19 pandemic, the obligations resulting from documentary credits have become affected by the application of one of two well-known theories in the law, namely: Force majeure and emergency circumstances, so it is necessary to know the correct legal qualification that can be applied to the contract.

First requirement: Force majeure and unforeseen circumstances:

Section 1: Force majeure

Definition of force majeure:

The definition of force majeure can be formulated into three categories: Either by applying the definition of force majeure in the form of a general definition, or defining it through an enumeration of its cases - exclusively or for example - or finally combining the advantages of the first two forms by including the condition an enumeration of cases supplemented by a definition⁽²⁾.

Legal jurisprudence goes to a general definition of force majeure. It was considered it in the place of a sudden incident that is unforeseen and unexpected by the people. It cannot be completely overcome, this accident results in a foreign coercive force that prevents the implementation of the obligation and makes it impossible and impractical. The impossibility is either material or legal, so the material impossibility is that which speaks of a material effect that prevents the implementation of commitment, such as natural disasters. As for legal impossibility, it is the impossibility of carrying out the obligation because of a foreign legal reason, and not for a material reason⁽³⁾.

(1) In order for the contract to be binding on both sides, the following is required: First: That there are obligations on each of the contracting parties. Second: These corresponding obligations be the source of the contract. Third: The corresponding obligations arising from the same contract must also be related to each other by reason, that is, to consider of them as a cause for the other. The idea of interdependence between opposite obligations and their impact on binding contracts for both sides, Prof. Muhammad Hanoun Jaafar, Journal of the College of Law for Legal and Political Sciences; sale contract, Prof. Samir Abdel-Sayed Tanago, Al-Wafa Legal Library in Alexandria, first edition, 2009, p. 136.

(2) The principle of the contract, the law of the contractors, and the restrictions contained therein in the International Trade Law, Prof. Narmin Mohamed Mahmoud Sobh, Ph.D. Thesis, Faculty of Law, Ain Shams University, 2002-2003, pp. 435 and beyond.

(3) New international contracts in the field of investment, Prof. Ibrahim Hussein Hosni, The Second

Force majeure is also defined as: An event that occurs after the conclusion of the contract or during the conclusion of the contract that is characterized as an unexpected event that cannot be avoided and is independent of the will of the contracting parties, and leads to an absolute impossibility of implementing the obligations⁽¹⁾.

On the other hand, it becomes clear to us that most of the regulations did not define force majeure, but rather mentioned the forms of the sudden cause. However, Article (1218) of the French Civil Code defines force majeure, as it stipulates that there is force majeure in the contractual field when an accident occurs outside the scope of the contract and out of the control of the debtor, which cannot reasonably be foreseen at the moment of the conclusion of the contract and whose effects cannot be avoided by appropriate measures, and prevents the debtor from performing its obligation. If the impediment is temporary, then the implementation of the obligation is suspended unless the delay that results from it. This does not justify the termination of the contract, if the impediment is absolute and final. The contract is rescinded by the force of law and the contracting party is freed from the implementation of his obligation⁽²⁾.

The application of force majeure theory requires the following:

- 1- The contract must be binding on both sides: In contracts binding on both parties, it is possible to imagine the dissolution of the other party from its obligations through termination, while contracts binding on one party do not envisage termination. Because one party is obligated to the contract, and if he does not perform his obligation before the other party, then the in kind enforcement of the contract shall be required.⁽³⁾
- 2- The performance of the contract is impossible for the debtor party⁽⁴⁾. The

Arab Forum for Contract Drafting Experts, Cairo 9-13 December 2018, p. 16.

(1) International commercial contracts, Prof. Yousry Awad Abdullah Abdul Qadir, pg. 475.

(2) Article 1218 : Il y a force majeure en matière contractuelle lorsqu'un événement échappant au contrôle du débiteurs qui ne pouvait être raisonnablement prévu lors de la conclusion du contrat et dont les effets ne peuvent être évités par des mesures appropriées empêche l'exécution de son obligation par le débiteur.

Si l'empêchement est temporaire, l'exécution d'est suspendue à moins que le retard qui en résulterait ne justifie la résolution du contrat. Si l'empêchement est définitif. Le contrat est résolu de plein droit et les parties sont libérées de leurs obligations dans les conditions prévues aux articles 1351 et 1351-1.

(3) The theory of the contract and the unilateral will, an in-depth and comparative study of Islamic jurisprudence, Prof. Abdel-Fattah Abdel-Baqi, 1984 AD, paragraph 33, part 1, p. 71 and beyond.

(4) Legal jurisprudence differed in defining the meaning of the impossibility of implementation that leads to the exemption of the debtor from contractual liability, and accordingly, there were opinions, including the concept of impossibility in the traditional doctrine, and this doctrine is based on a specific concept of impossibility that leads to the expiration of the obligation, which is that the impossibility that results in the judiciary being obligated must be an absolute and objective impossibility. However, if it is subjective or relative, it does not affect the obligation that remains in the debtor's liability despite that subjective or relative impossibility. The impossibility of implementation and its impact on the contractual commitment, a comparative study, Prof. Hamad Shaker Mahmoud Al-Tai, Master's Thesis, College of Law - University of Babylon, 2002 AD, 1423 AH, p. 12, Summary in Explanation of the Iraqi Civil Law, Dr. Abdul Majeed Al-Hakim, Volume 2, Provisions of Commitment, Al-Ahlia Printing and Publishing Company, Baghdad, 1965, p. 444.

implementation of the contract is not considered impossible if it is possible to implement them, but it was difficult and challenging, even if the loss that affects the debtor is huge and costly. Noting that the impossibility that is reliable is what prevents the possibility of the ordinary man to carry out his obligations. The circumstances shall be impossible to be contradicted objectively using the average man reasonable powers in being keen in such sudden circumstances. It is logic not to take into account the difficulty in enforcement making the obligation too difficult for the indebted party or forms an absolute hardship.⁽¹⁾ In case of impossibility, it must be absolute, meaning that the contract cannot be executed with respect to the debtor or to any third party.

- 3- That the impossibility be attributed to a sudden cause: It is also called the independence of the event from the will of the debtor, and it is achieved if the considered event is a force majeure external to the will of the debtor and which cannot be attributed in any way to him. It is not caused by its occurrence, is not preceded or accompanied by the debtor's error, and does not result from his negligence or negligence⁽²⁾.
- 4- There is no need to give a notice of (insolvency) or issue a court decision or judgment: If it is impossible to carry out the obligation for a reason outside the debtor's control, since in such case the contract is spontaneously terminated without the need for a notice or judicial intervention.⁽³⁾. Because the debtor has no choice in that, the creditor's excuse has no legal effect, and the only way to do that is to terminate the contract.

Second Section: Unforeseen Circumstances

If, unlike the usual, exceptional, general incidents that could not have been foreseen during the conclusion of the contract, and the occurrence of the

As for the concept of impossibility in the modern doctrine: A trend emerged in German comparative legal jurisprudence that sees easing some of the conditions required by the traditional doctrine to achieve a case of impossibility. It considers the state of impossibility that results in the debtor's acquittal, and the termination of the contract is not a condition for it to be an objective and absolute impossibility, but rather that the impossibility is subjective and relative. The impossibility of implementation and its impact on the contractual obligation, Prof. Hamad Shaker Mahmoud Al-Taie, p. 12. As for Impossibility in the conciliatory doctrine: It considers the distinction between commitment to a means and commitment to a result. If the obligations are by a means, the debtor is acquitted when the subjective impossibility is achieved, provided that such party is in no way involved in its occurrence, but if the obligations are a result, the debtor is not acquitted when the subjected impossibility is achieved. But rather requires objective impossibility to be exempted of such absolute objectivity. Impossibility Theory, Dr. Abdel Hai Hegazy, Journal of the Administration of the Egyptian Government's Judiciary, the previous year, second issue, April 1963, p. 173, referred to it: The impossibility of implementation and its impact on the contractual obligation, Prof. Hamad Shaker Mahmoud Al-Taie, p. 13.

- (1) The impossibility of implementation and its impact on the contractual obligation, Prof. Hamad Shaker Mahmoud Al-Taie, p. 80.
- (2) The impact of changing circumstances in international trade contracts, d. Sherif Mohamed Ghannam, 1st Edition, New University Publishing House in Alexandria, 2007, p. 268 and beyond.
- (3) The theory of the contract and the unilateral will, an in-depth and comparative study of Islamic jurisprudence, Prof. Abdel-Fattah Abdel-Baqi, paragraph 316, p. 620; Penalty for breach of contract in civil law in Egyptian and French jurisprudence, Prof. Ahmed Shawki Abdel Rahman 2010, p. 234; Adequate Encyclopedia of Contracts Expiry of the binding force of the contract, Prof. Abdel Hakam Fouda, 1st Edition, Dar Al-Fikr and Law for Publishing and Distribution in Mansoura, 2011, p. 80.

exceptional incident had an impact on the implementation of the contractual obligation, even if this was not impossible, and was stressful for the debtor; so that the existence of the accident results in a heavy loss, it is permissible for the judge, based on the emergency circumstances, and after consideration and the impact on the interests of the parties, to rule that the burdensome obligation be dismissed to a reasonable extent. Any agreement to the contrary is void, and the rooting of the concept of the theory of unforeseen circumstances exists. In the principle of the implied condition, it is as if the contracting party, while concluding the contract, implicitly stipulates that the responsibility for damages be limited to a certain limit that can be expected at the time of the conclusion of the contract and shares the same feeling with which he contracted.⁽¹⁾

Hence it turns out that there are two components of the implicit condition⁽²⁾:

Element 1: Implied matter in the future:

This means that the implied condition is not expressed or agreed upon between the two parties. Rather, it is a psychological matter that each contracting party maintains without having to disclose it, but the course of dealing and custom refer to it. Hence, this condition depends on a future event that does not exist during the contract, but is likely to be in the future, as it may or may not occur.

Element 2: Not inevitable: So that the implied condition must not have any significance at the time of contracting that it will inevitably occur, otherwise it loses its character, and therefore it must be a probabilistic condition.

For the Covid-19 pandemic to be considered an unforeseen circumstance, compliance is required:

1- The contract is deferred:

That is, there is a period between the conclusion of the contract and the implementation of the contractual obligation.

2- General:

The generality of the unforeseen circumstance is intended not to be specific to the debtor only, but rather it must include a group of people. However, it is not intended to include every place in the world or countries, but rather it is sufficient for it to affect a specific area that its impact includes a large number of people⁽³⁾. It might be better to avoid generality.

3- Exceptional⁽⁴⁾:

(1) The theory of emergency conditions between civil law and Islamic jurisprudence, a comparative study, Prof. Muhammad Muhyi al-Din Ibrahim Muhammad Salim, 1991 AD, p. 174.

(2) Theory of Unforeseen Circumstances between civil law and Islamic jurisprudence, Prof. Muhammad Muhyi al-Din Ibrahim Muhammad Salim, p. 180 and beyond.

(3) Theory of Unforeseen Circumstances between civil law and Islamic jurisprudence, Prof. Muhammad Muhyi al-Din Ibrahim Muhammad Salim, p. 349 and beyond.

(4) "It is a prerequisite for an unforeseen circumstances that its nature that it be a general exceptional accident that cannot be foreseen, is out of the ordinary and rarely occurs. The exceptional accident is general if it affects a large number of people. The appellant held in the statement of the grounds of appeal submitted in the hearing of April 30, 1961 that the decrease in the area of the cultivated land from the land of the conflict or its expansion has nothing to do with the Agrarian Reform Law and cannot in itself be considered a general exceptional event that cannot be expected within the intentions of Article 147/2 of the Civil Code, and the Agrarian

This means that it is a rare occurrence, i.e.: It does not usually happen, and exceptionalism is a logical order that fits with the reason for admitting the theory.

4- Being unable to pay:

The unforeseen circumstance must describe the circumstance that the debtor was unable to pay or minimize its effect. Because when the debtor resorts to the theory, this is based on the fact that it was possible to prevent the occurrence of the unforeseen situation or reduce its effects.⁽¹⁾

5- The unforeseen circumstance must be out of the control of the contracting parties, and the causal relationship must be established so that if the emergency circumstance occurred and the debtor wanted it, otherwise it did not occur as a result of his will, it can only be said that the debtor's hand is free of this that happened⁽²⁾.

6- Unpredictability:

Unpredictability is what distinguishes between foreseen and unforeseen events⁽³⁾. The contracting party is required to make as much effort as the usual person in his circumstances, by performing due diligence turning things around and examining the facts of reality in order to identify the apparent signs and what may be hidden behind them of contract events and circumstances at the right moment. But if, despite this, he continues to contract without reservations, then he is mistaken, and the best recompense for his mistake is the failure to apply the provisions of the theory of unforeseen circumstances in his regard.⁽⁴⁾ We mean by the standard of the usual person that we do not ask the contracting party to devote his energy to anticipating the accident to the conduct of an absolutely usual man, but we look at his work and his profession, because of which he concluded his contract. We ask him to be careful according to what a man of the middle of his profession is in his care. It is a matter of loss versus profit balance, and this criterion is based on the calculated budget. Finally we require the contracting party to perform due diligence at the time the contract is signed not after nor before⁽⁵⁾.

Reform Law No. 178 of 1952 did not address its provisions which was issued on September 9, 1952, an order to reduce the area that is cultivated from certain crops, and the contested ruling did not explain the reasons on which it was based, considering the reduction of the area that is planted is a matter of exceptional event, allowing the judiciary to intervene according to the circumstances and after balancing the interests of the two parties to repay the burdensome obligation to a reasonable extent. The judgment is flawed by error in the application of the law and failure in causation." Egyptian Civil Cassation, hearing of May 5, 1970, Appeal No. 532, for the year 35 Judicial Year, Technical Office of the year 21, Rule 128, p. 787.

- (1) Theory of emergency conditions between civil law and Islamic jurisprudence, Prof. Muhammad Muhyi al-Din Ibrahim Muhammad Salim, and beyond.
- (2) and so on: Egyptian Civil Cassation, December 8, 2016 session, Appeal No. 16010, for the year 85 BC, Commercial Departments.
- (3) General foundations of administrative contracts, a comparative study, Prof. Suleiman Muhammad Al-Tamawi, 5th Edition, Ain Shams University Press, 1991, p. 677 and beyond.
- (4) Theory of Unforeseen Circumstances between civil law and Islamic jurisprudence, Prof. Muhammad Muhyi al-Din Ibrahim Muhammad Salim, p. 388 and beyond.
- (5) *ibid*, p. 388 and beyond, it is established in the rulings of the court that the basis of the theory of unforeseen accidents within the provisions of Article 147 of the Egyptian Civil Code is that the accident is exceptional and unexpected at the time of the contract, and the criterion for the

It is worth noting, that when unforeseen circumstances are expected, the provisions of the theory are applied if the contracting party is disappointed in the extent of the effects of this accident, meaning that the accident may be expected by the creditor according to the ordinary normal of things, but when it occurs it exceeds its usual extent.

7- Exceptional incidents make the implementation of the obligation cumbersome, but not impossible: It is the essential difference between unforeseen circumstances and force majeure.

8- **Cumbersome:** It must be a threat to the creditor with a heavy loss, for any loss that is familiar in transactions is not sufficient to take the theory of emergency conditions.⁽¹⁾

9- The judiciary is the only one who works the theory of emergency conditions⁽²⁾.

It is established that the judiciary does not intervene without a request from the contracting party.

The Second Requirement: The position of the Saudi regulations and judiciary

The researcher's take on force majeure and unforeseen circumstances:

Section 1

The legal texts in the Saudi laws that referred to the two theories

When looking at the position of the Saudi regime on the theories of force majeure and unforeseen circumstances, it turns out that the Saudi law is deliberating to develop a system for civil transactions, and there is no system that governs this until the preparation of this research, and the reference now is the provisions of Islamic Sharia, and what Sharia jurists used to derive from the provisions of Sharia. However, the Saudi regulations in particular dealt with the text on the provisions of the two theories in several laws, applying the provisions of what was stated to what has been stipulated, and does not apply to other issues.

Article (24) of the Commercial Court Law states: "The agent, trustee and custodian are obligated to guarantee the delivery of the goods delivered to them within the time limit specified in the consignment list. Each damage results from such delay is warranted unless a force majeure is preventing such party from stopping such delay⁽³⁾."

In Article (22) of the unified customs law of the Arab Gulf Cooperation Council states, the following is stipulated: "Planes leaving or coming to the country are prohibited from taking off or landing at airports where there are

availability of this condition - and according to what happened in the rulings of this court - is a mere criterion that it was unforeseeable for such creditor for such circumstances to occur. The criterion does not discuss whether the unforeseen circumstances was predictable by the average person or if it is a sudden occurrence which is left in such case to the sole discretion of the trial judge as long as it is based on justifiable grounds. Egyptian Civil Cassation, March 4, 2020 session, Appeal No. 4132, for the judicial 89, folio No. 34 p. 275.

(1) Egyptian Civil Code, paragraph (2) of Article (147), and an Egyptian civil cassation, Appeal No. 13121, for the year 89 BC, session 28/8/2020.

(2) Egyptian Civil Code, paragraph (2) of Article (147).

(3) The Saudi Commercial Court Law issued by Royal Decree No. 32, dated 15/1/1350 AH.

no customs offices except in cases of force majeure, and the pilot in this case must notify the nearest customs department or security center of this without delay, and submit it to the customs office A supported report from the customs office that has been notified, unless otherwise stipulated in any other law or decision."⁽¹⁾

Article (18) of the Civil Aviation Law states: Subject to the provisions of the Foreign Investment Law, no foreign operator may transport passengers, goods or mail for a fee or for a consideration between two points located in the territory of the Kingdom. However, the Authority may authorize such a transfer to meet exceptional or special circumstances, or as a transit for an international flight coming from abroad.⁽²⁾

Article (74) stipulates⁽³⁾ From the labor law among the reasons for the termination of services are as follows: The contract of employment shall be terminated in any of the following cases:

.....
5- Force majeure.

.....⁽⁴⁾

Article (136) of the Merchant Maritime Regulation states: "If a force majeure prevented the start of the voyage or its continuity, the sailor assigned to the voyage shall be entitled to a compensation for the days actually spent in the service of the ship, and he may not claim any reward or compensation,". In addition, it was stated in the same law, in Article (149), paragraph (2) as: "The charterer is obligated to repair the ship's damage or replace the damaged parts if the damage was caused by force majeure, or a self-defect in it, or from the normal use of it for the agreed purpose. If the damage in these cases results in the disruption of its use for a period exceeding twenty-four hours, then the fee is not due for the excess period during which it remains idle". Article (162) of the same law stipulates the following: "The fare is not due if the ship perishes, or stops due to a force majeure or by the actions of the lessor or his subordinates.". Then Article (171) of the same law stipulate that: "The charter contract of the ship shall be terminated without compensation to the lessor or lessee if a force majeure makes the voyage impossible, or if trade with the country in which one of the loading or unloading ports is located is prohibited.". Further, Article (174) of the same law states that: "The lease contract shall remain in force without an increase in the fare and without compensation, if force majeure temporarily prevents the ship from traveling or continuing its travel. In this case, the charterer may unload his goods at his expense, and he may then reload them on the ship at his expense as well, and the full fare shall be due from him. Article (176) of the same law subclause (2) stipulates the following: "The lessor shall bear the expenses of transporting the goods to the agreed port, unless the ship's inability to reach it is due to force majeure, in which case the charterer shall bear the expenses." In Article (203) of the same law stipulates that: "The freight is not due if the goods perish due to a force majeure, or the

(1) The unified customs system (law) of the Arab Gulf Cooperation Council states, issued by Royal Decree No. (M/41) dated 3/11/1433.

(2) Civil Aviation Law issued by Royal Decree No. (M / 44) dated 7/18/1426 AH.

(3) The Saudi Labor Law issued by Royal Decree No. 51 dated 23/8/1426.

(4) The Saudi Labor Law issued by Royal Decree No. (51) dated 23/8/1426 AH, this article was amended by Royal Decree No. (M/46) dated 6/5/1436.

carrier's negligence in carrying out the obligations imposed on him by the law or the contract." Likewise in the same law, the provisions of Article 254 in subclause (2) state that: "If the collision occurred due to a force majeure, or there is doubt about its causes, or these reasons are not known, each ship shall bear the damage it sustained, even if the ships between which the collision occurred or one of them were at anchor at the time of the collision." (306), in paragraph (1) stipulating: "The insured party shall be asked about the following - material damage to the insured things due to the occurrence of a marine danger or an accident that is a force majeure if the danger or accident is covered by the insurance..." in Article (166) of the same law it provides for: " The towing ship shall be responsible for the damage to the towed ship, unless it is due to force majeure or an unforeseen circumstances, or the cause is due to the towed ship or an intrinsic defect in it, or the fault of its operator, captains or one of its crew members.⁽¹⁾ .

Article (14) of the E-Commerce Law states: "Unless the service provider and the consumer agree on another period for the delivery or implementation of the subject of the contract, the consumer has the right to terminate the contract if the service provider delays delivery or implementation for a period of more than (fifteen) days from the date of the contract. Conclusion of the contract or on the date agreed upon. He may recover what he paid under the contract in exchange for the product or service or other costs incurred as a result of this delay, unless the delay was due to force majeure. The service provider is obligated to inform the consumer of any expected delays or difficulties that have a material impact on the delivery or implementation of the subject matter of the contract."⁽²⁾ .

Article (30) of the mining investment law stipulates: If a force majeure prevents, impedes or delays the performance of any of the licensee's obligations within the specified time, the resulting delay or delay shall not be considered negligence or omission in the work or performance. In this case, the Ministry may extend the period that was specified for the work that was suspended or disrupted for a period not less than the period of force majeure, or grant the licensee an alternative location for the license whenever possible according to the type of ore and the license.

Force majeure in the provisions of this Article means events that are fundamentally recognized as force majeure resulting from unforeseen circumstances at the time of the issuance of the license, the existence of which is not due to either party, and makes it impossible for the licensee to perform its obligations specified in the license.⁽³⁾ .

Article (74) of the Competition and Government Procurement Law stipulates: "The contract extension and exemption from the fine shall be allowed in the following cases:

....
3. If the delay is due to the government authority or unforeseen circumstances.
"

....
By perusal of the provisions of the Saudi Law, it becomes clear that there

(1) The Merchant Maritime Regulation issued by Royal Decree No. (M/33), dated 5/4/1440 AH.

(2) The Electronic Commerce Law, issued by Royal Decree No. (M/126), dated 17/11/1440 AH.

(3) The Mining Investment Law issued by Royal Decree No. (M/40) dated 10/19/1441 AH.

are no rules regulating force majeure and unforeseen conditions in a law that regulates all cases wherever they are mentioned in the systems, as a general rule, they are invoked, and the texts mentioned can be applied to the cases in which they are mentioned, and upon reflection It is clear that these texts cannot be applied to a documentary credit. The text of its applicability to the documentary credit was not provided, as it was originally governed by the provisions of the unified rules and norms of documentary credits, and the stipulated principles decided by the Banking Dispute Settlement Committee.

The Second Section

Where the Saudi Judiciary stands from my theory

Force majeure and unforeseen circumstances:

It was stated in the previous section that the Saudi regime did not set a general rule governing the two theories of force majeure and unforeseen circumstances on all facts. Therefore, the Supreme Court came to implement its jurisdiction by establishing a judicial principle governing the facts that occur as a result of the Corona virus pandemic, as the text came in Article (13) of the regulation to eliminate it containing: "1- The Supreme Court shall have a general body headed by the president of the court and the membership of all its judges. 2- The General Assembly of the Supreme Court shall: (a) establish general principles in matters relating to the judiciary...."⁽¹⁾.

This includes what was stated in Resolution No. (45/M) and dated 8/5/1442 AH, stipulating the following: Praise be to Allah alone, and blessings and peace be upon our Prophet Muhammad and upon his household and companions: "The General Assembly of the Supreme Court, based on the powers granted to it by the Judicial System issued by Royal Decree No. (M/87), dated 19/9/1428 AH, And after perusal of Royal Order No. (15700), dated 20/3/1442 AH, Addressed to the President of this Court, that stipulated after the introduction to: (We perused the telegram of His Highness the Secretary-General of the Council of Ministers No. (2430 and 1442 AH), which referred to the minutes of the Supreme Coordinating Committee for Crisis Management No. (6/42/p) on 11/2/1442 AH, which includes the committee's opinion on the appropriateness of the conclusions reached by the experts in the panel At the Council of Ministers, Minutes No. (37) on 21/1/1442 AH, which includes the following: (First) The General Authority of the Supreme Court shall consider the adoption of judicial principles regarding aspects related to the (Corona Virus) pandemic, the impact of force majeure and unforeseen circumstances on the obligations and contracts affected by them, and how to estimate those implications, and clarify the court's scope of jurisdiction in amending those obligations and contracts. After perusal, deliberation and with reference to the royal orders related to this matter, and ministerial decisions dealing with the effects of the pandemic, and the relevant regulations, and when the Sharia jurists decided on the issue of pandemics based on the texts of revelation, and since Islamic Sharia is valid and beneficial for all times, place and situation, and since judicial principles achieve stability via unification of jurisprudence, controlling discretion, and enabling the parties to the contract to know the legal ruling, to achieve stability of situations and legal positions, to achieve justice and to

(1) The Saudi Judicial Law issued by Royal Decree No. (M/87), dated 9/19/1428 AH.

ward off harm, and to achieve the goal of continuity of contracts by maintaining their balance between the two parties, and taking into account the public and private interests, and for this reason the Commission decided General of the Supreme Court: First/ The coronavirus pandemic is an unforeseen occurrence if the obligation or contract cannot be implemented except with an unusual loss, and force majeure if implementation becomes impossible. The application of the principle to the affected contracts and obligations requires the following conditions: 1- It must be concluded before the start of the precautionary measures for the pandemic, and its implementation continues after its occurrence. 2- The impact of the pandemic must be direct on the contract and cannot be avoided. 3- The effect of the pandemic on the contract shall be independent without the participation of another reason. 4- The aggrieved party must not have waived his right or been reconciled to it. 5- The effects of the pandemic and its harm shall not be treated by a special system, or by a decision of the competent authority. Second/ The court shall, upon the request of the claimant of damage, after balancing the two parties and considering the surrounding circumstances, amend the contractual obligation that the pandemic has occurred, in a manner that achieves justice, as follows: A- In the rental contracts of real estate and movable property that have been affected by the pandemic, the following provisions shall be applied: 1- If, due to the pandemic, the lessee is unable to benefit from the leased property, in whole or in part, the court shall reduce the rent to the extent that it decreases the usual intended benefit. 2- The landlord shall not have the right to terminate the contract if the tenant is late in paying the rent for the period during which it was not possible to benefit from the unit in whole or in part due to the pandemic. B- In contracting and supply contracts that have been affected by the pandemic, the following provisions shall apply: 1- If the impact of the pandemic is on an increase in the value of materials, or wages of labor or employment, and the like; the court increases the value of the contract, provided that the obligor bears this increase to the extent of the usual usufruct, then what exceeds that is returned to a reasonable extent. Moreover, the obligor has the right to request the termination of the contract when the excess is increased. In the event that the material price hike was a temporary one that is about to disappear; the court suspended the implementation of the obligation for a temporary period. 2- If the impact of the pandemic is on the lack of goods from the market, the court shall reduce the amount it deems sufficient to remove the unusual damage from the obligor. 3- If the impact of the pandemic on the lack of materials from the market is temporary, then the court suspends the obligation for a temporary period, if the obligor is not unusually severely harmed by this suspension, and if he is harmed, he may request rescission, but if it is an absolute absence. That it led to the impossibility of implementing all or part of the contractual obligations. The court, at the request of one of the contracting parties, shall annul the aspects that are impossible to implement. 4- If the subject of the contracting contract is an obligation to perform a work and the pandemic has caused it to be impossible to implement on time. The court suspends the implementation of the obligation for a temporary period. If the obligor suffers an unusual and severe harm by this suspension, he may request annulment. Third, when assessing the effects of the pandemic, the following should be taken into account: 1- The extent to which the contract is affected according to the

activity, determining the percentage of impact - if any and if within the specified time, and verifying that it is an unusually large percentage, provided that consideration is limited to the contract in dispute, and the damage assessment does not exceed the period during which the impact of the pandemic appeared on the contract, and the assessment is made by one or more specialist experts. 2- In rental contracts, the value of the benefit is estimated if it is equal in duration, then it is deducted from the rent according to the period of impossibility of collection, and if it is different according to the seasons, then the named wage is paid in installments according to the value of the benefit. Fourth / Subject to the previous provisions, the court, when considering cases arising from contracts and obligations affected by the pandemic, shall comply with the following: 1- The penalty clause or fines, in whole or in part, as the case may be, or the withdrawal of the project and implementation on the account mentioned in the contracts and obligations, shall not be applied when the (Coronavirus) pandemic is the reason for delaying the implementation of the commitment. 2- If the contract includes a condition of exemption from liability for one of the parties to the contract when the emergency circumstance or force majeure occurs, then that condition has no effect. 3- The party who breached the obligation shall have the burden of proof that the pandemic caused this. 4 - The litigation principles that are considered legal and legal shall apply to obligations and contracts that have been damaged and are not covered by the provisions of this principle. May God bless the Prophet Muhammad, his family and all his Companions, pray for them and keep them safe. (General Assembly of the Supreme Court).

When considering this judicial principle, a question arises: To what extent can it be applied to a documentary credit? It contained some limitations, the most important of which are; it does not apply the principle in the following cases: "The effects of the pandemic and its harm shall not be treated by a special law, or by a decision of the competent authority." Also, the text of the same principle stipulates: "It is applied to obligations and contracts that have suffered damage and are not covered by the provisions of this principle, the principles of proper litigation," which means that the principle does not include all contracts or obligations. The principles of proper litigation and given the different relationships in the documentary credit, some of them can be applied to the principle, and some are not covered by the principle.

Section Three

Standard assets and customs position for documentary credits

The researcher's take on force majeure and unforeseen circumstances:

When examining the principles and customs of documentary credits, it becomes clear that there is a text, but this text is not a regular text in the idiomatic sense, but it is a text in the unified assets and customs of documentary credits, and it bears the power of the regular text in application, as it stipulates: "The effects and harm of the pandemic shall not be treated by a special law, or by a decision of the competent authority." These principles and customs are not a special regulation, but are as the name indicates, if it surpasses such limitations it will definitely fall within the principle when it states: "The litigation principles that are considered legal and legal shall apply to obligations and contracts that have been damaged and are not covered by the provisions of this principle of the proper legal litigation principles'. For a

more accurate idea

we can say that: All the transactions mentioned in the documentary credit investigations are outside the judicial principle, but each process has its own jurisprudential and legal adaptation, which will actually be applied in the next requirement.

To find out the text contained in the Unified Principles and Customs for Documentary Credits, Bulletin (600), it is states that: “The Bank shall not be liable or responsible for the consequences arising from the interruption of its business due to act of God, riots, civil commotions, rebellion, wars, acts of terrorism, any strikes, closures or any other causes beyond its control. After resuming its business, the Bank will not honor or trade any credit that has expired during the interruption of its business due to these events.”⁽¹⁾.

Similar to the Unified Rules and Customs for Documentary Credits, Bulletin (500), where the text came as follows: “Banks shall have no obligation or liability for the consequences arising from the interruption of their business by act of God, riot, civil commotion, insurrection, war, or any other causes beyond their control, or by any strike or incapacitating shutdown, and unless they do not have a special authorization that banks shall not, upon resuming their business, pay, undertake deferred payment, accept any withdrawal, or trade under credits whose validity period has expired during the interruption of the bank’s business.”⁽²⁾.

Similar to the Unified Rules and Customs for Documentary Credits, Bulletin (400), where the text came as follows: “Banks shall not bear any responsibility or liability for the consequences that result from the interruption of their business due to force majeure, sedition, disturbances, rebellion, wars or any other causes beyond their control or due to any disturbances or closures. Unless the banks are expressly authorized, they shall not be bound by the resumption of their business to assume a deferred obligation to pay, or to pay or deduct under credits whose validity period has expired during this interruption of their business.”⁽³⁾.

This is in order to mention the origin of the idea and that it existed before, even if it was expressly stipulated on force majeure. Yet, the concept of the modern text does not depart from the meaning of force majeure. The fact that the text was not explicitly stated before remains and later on the theory of unforeseen circumstances, but it can be applicable to the rule of theory while the implementation of the commitment is not impossible.

Section Three

COVID-19 Implications on obligationin Documentary Credit

First requirement: The impact of the Corona virus pandemic on the obligations of the client ordering the opening of the credit:

The documentary credit contract entails several obligations on the customer (the buyer), which are as follows:

Pay the credit value.

(1) Uniform Rules and Customs for Documentary Credits, Bulletin (600), Article 36.

(2) Uniform Rules and Customs for Documentary Credits, Bulletin (500), Article No. 17.

(3) Uniform Rules and Customs for Documentary Credits, Bulletin (400), Article No. 19.

Execution of the contract and adherence to its instructions.

- Pay the commission to the bank⁽¹⁾. This obligation is due to the bank once the credit is opened, even if the credit is not used by the beneficiary afterwards.⁽²⁾

- Receiving the documents after the bank informs the requester that the documents are at his disposal, and they can be received after paying their value to the bank. Such receipt is necessary whenever it is in conformity with the terms of the letter of credit. If he fails to deliver it after being⁽³⁾ notified of its arrival, and that it is identical, he shall bear all the consequences of this inaction, as if the goods were destroyed, damaged or stolen.⁽⁴⁾

It is evident from these obligations that they are binding on both the beneficiary and the bank, so what is between the ordering customer (the buyer), and the beneficiary is governed by the contract, to implement it and pay the value of the contract. In case it was a supply contract and the like, in accordance with the provisions of Judicial Principle No. (45/m) and the date 8/5/1442 AH, it can be applied according to its terms and mechanisms in that it is considered an unforeseen circumstances if the implementation of the obligation or contract is only an unusual loss, and force majeure if implementation becomes impossible, bearing in mind that the contract is concluded between the two parties before the start of the precautionary measures for the Corona virus pandemic, its performance continues after its occurrence, and that the impact of the pandemic on the contract is direct and cannot be avoided in any way, and that the pandemic is the sole reason leading to that result, so that the impact of the pandemic on the contract is independent without the participation of others, and it is also required that the person who signed the damage has waived His right or agreement with the other party regarding the damage, and the assessment of this is within the jurisdiction of the trial court.

As for the customer's commitment to the matter against the bank, this relationship is governed by the contract of opening the documentary credit concluded between the two parties, which appears to be not included in

(1) The commission differs from the interest, as the commission is due for what the bank pays forward to its customer, as it is due as soon as the credit is opened - even if it is not executed for a reason not attributed to it - that is, as soon as the letter is sent to the beneficiary of the credit. Sometimes the bank requires collecting its commission before sending the letter. Some commentators claim that it is due, even if it is not required to meet the bank's obligation to open the credit and its the bank's right to receive in return for it. The requester submits the documents to the bank, and the customer is not exempted from them unless the bank fails to implement its commitment, such as withdrawing the credit by mistake, or refusing to implement it without a legal justification, so it has to return the commission, which is not due unless the bank has opened a credit in accordance with what the customer requested; because it will have implemented the reason for the commission's entitlement. Documentary credits: A study of the judiciary, comparative jurisprudence, and the international rules of the year 1983, Prof. Ali Jamal Al-Din Awad, Dar Al-Nahda Al-Arabiya, 1993, paragraph 91, p. 121 and beyond.

(2) Documentary credit and electronic commerce in light of international rules and norms and internal legislation, Prof. Mazen Abdel Aziz Faour, 1st Edition, Al-Halabi Human Rights Publications, 2006, p. 185 and beyond.

(3) Summary of Bank Operations from A Legal Perspective, Prof. Ali Jamal Al-Din Awad, p. 175.

(4) Documentary Credits, Studies in Islamic Economics, Higher Institute of Islamic Thought, Prof. Muhyi al-Din Ismail Alam al-Din, p. 37.

Judicial Principle No. (45/m) dated 8/5/1442 AH. Because the principle of what appears from its provisions is that it stipulates rental contracts for real estate and movables, contracting and supply contracts, etc. The documentary credit contracts from the operations of banks that are outside the rental contracts of real estate, movables, contracting and supply. Thus, it has a different nature, and since the principle stipulates that it applies to obligations and contracts that are not covered by the provisions of the proper litigation principles. Upon the will to implement this, it becomes evident that the principle in its stipulations and concept has established general rules that can be used in work, not to take what is obligatory. Because the documentary credit contract is not covered by the application, but rather by reference, and by virtue of it having set a limit through which it is known what is included in the theory of emergency conditions, and what is included in force majeure, and for this reason it was possible to apply its ruling to the customer (the buyer) because of the restrictions that achieve justice.

The Second Requirement: The impact of the Corona virus pandemic on the commitments of the opening credit bank:

The bank that opened the credit⁽¹⁾ shall issue a letter of credit, which is indebted to the beneficiary under the credit. Then, when the bank that issued the documentary credit receives the documents, examines them and finds them in conformity with the conditions of the letter of credit and pays their value to the beneficiary, it must deliver them to the requester. In order to notify him in an official way, and from the date of receipt of this letter by the orderer is considered excused in handing over his documents, and he bears the risk of damage to the goods or paying customs duties for them.⁽²⁾

If the bank refuses to implement this obligation, for example, that the bank did not issue the letter, or issued the letter of credit on terms different from those agreed upon with the customer⁽³⁾ or in case of breach of one of its

(1) Then it becomes clear to us that the first objective of the contract is for the bank to open a credit in favor of the seller, the beneficiary of it. Because it is not bound by the beneficiary, and the beneficiary does not have a right, except by sending this letter and receiving it. Documentary credits for the judiciary, comparative jurisprudence and the 1983 international rules, Prof. Ali Jamal al-Din Awad, paragraph 59, p. 83.

(2) Documentary credits, Prof. Muhyi al-Din Ismail Alam al-Din, pg. 47.

(3) Also, that the bank has never opened the credit, or the notification of it is late, or the conditions established for benefiting from it are narrower than what was agreed upon in the sales contract. If the credit was an amount less than the sale price, or the end date of the credit is close to the date of notification so that it is not sufficient for him to carry out what its obligations resulting from the sale, or the credit is free of the conditions qualifying it to be transferable, even though that is agreed upon in the sale contract. Here the seller has the right to sue the buyer for the failure to arrange the credit as agreed upon in the sale contract. When the seller reaches a judgment on the buyer for compensation, the buyer has the right to sue the bank because it is a natural direct result of the bank's breach of the terms of the credit contract between them. It is fathomable that the buyer will file a lawsuit against the bank asking it to implement the credit contract. Any request for a ruling by forcing the seller to implement. Is an in-kind enforcement claim. This is a rare and impractical behavior because - until the time the judgment becomes enforceable - the sale has been canceled because the seller will not wait. The solution followed in

obligations; the bank becomes responsible for this, and can be sued and required to remedy the damages that resulted from its actions. Except that if the reason for the failure of the bank to perform its duties is that the matter is out of his control as in the Corona virus pandemic. It is possible to apply what has been stipulated in the unified rules and customs for documentary credits, as the text in Article (36) states: "The Bank shall not be liable or responsible for the consequences arising from the interruption of its business due to act of God, riots, civil commotions, rebellion, wars, acts of terrorism, any strikes, closures or any other causes beyond its control. The bank, after resuming its business, will not fulfill it or trade any credit that has expired during the interruption of its business due to these events.⁽¹⁾ The researcher doesn't see the application of Judicial Principle No. (45/AD) dated 8/5/1442 AH appropriate because this provision is not covered by the principle. Taking Article (36) into account in the event that what happened to the bank is a force majeure, resulting in a business interruption, according to what was stipulated, but the article did not cover unforeseen circumstances, where the implementation is not impossible. It can be implemented, but the bank may incur an unusual loss. According to the proper principles of litigation, the provisions of the principle can be used and taken into account when applying the theory to the obligation, which is conditions as an unforeseen circumstance, not force majeure.

Some commentators are of the view that the bank's exemption extends, even if the matter does not reach the level of force majeure⁽²⁾ We are not with that. Whenever the bank is able to carry out its business, it does it and the provisions of the theory of emergency conditions apply to it.

The third requirement: The impact of the Corona Virus pandemic on the obligations of the Correspondent and Consolidator Bank

The correspondent bank may be an amount of the letter of credit to the beneficiary, so its liability rests there. Because it is only responsible for the notification⁽³⁾ If he falls short of the duty to report, his responsibility is held in

practice is for the buyer to take the initiative - when the seller excuses him to open the credit if he had not already opened it, or to correct it if it is in violation of what was agreed upon - the buyer advises the bank and asks him to take the necessary action in accordance with the terms of the contract between them. Then the bank needs to expeditiously open another valid credit that matches the required conditions according to the requirements of another bank. It has the right to demand the judiciary to rescind the contract of the first credit and to compensate it for the expenditures of the second credit. Documentary credits for the judiciary, comparative jurisprudence and the 1983 international rules, Prof. Ali Jamal Al-Din Awad, paragraph 87, p. 118 and beyond.

(1) Uniform Rules and Customs for Documentary Credits, Bulletin (600), Article 36.

(2) Documentary credits: A study of the judiciary, comparative jurisprudence, and the international rules of 1983, Ali Jamal Al-Din Awad, paragraph 339, p. 398.

(3) The role of the bank varies according to different circumstances and the different role required of it. The task of this bank may be according to different circumstances and the different role required of it. The task of this bank may simply be to transfer or deliver the letter of credit to the beneficiary in his country after he certifies that it was actually issued by the issuing bank, and asks about his negligence in that, but the issuing bank is not responsible for it. The role of the intermediary bank here does not exceed that of the postman, as he is merely a messenger, not a deputy. The designation of the bank of the correspondent bank to implement the credit, is added

accordance with this error according to the rules of responsibility. In the event that the reason for the correspondent bank's failure to fulfill its obligations was affected by the Covid-19 pandemic, the provisions that were mentioned are applied to the bank that opened the credit, as well as the consolidating bank that added its support for the commitment. The original has the same effects on the bank that opened the credit.

Fourth Requirement: Impact of the Corona Virus Pandemic on the Beneficiary's Obligations

The beneficiary is obligated to provide the goods and the documents required of him completely in accordance with the conditions determined by the credit. These documents include the bill of lading, certificate of origin, invoices that include the value of the goods, a certificate of examination and inspection, insurance policy, health, customs and transportation documents, and other documents required of him. If the credit is transferable, the beneficiary is committed to notify the bank of this within a reasonable period, but in case the documents are missing⁽¹⁾, the beneficiary is obligated to send what is missing within a certain period⁽¹⁾.

to its agency by informing the credit of an agency of its implementation, so it becomes like an execution window, or a chosen place for executing or crediting the account of the issuing bank "and this is an agency of payment, acceptance, discount, or deferred payment." Here, too, the intermediary bank is not committed to any personal or direct obligation in favor of the beneficiary, as it implements the credit opened by the issuing bank. Documentary credits: A study of the judiciary, comparative jurisprudence, and the international rules of the year 1983, Prof. Ali Jamal Al-Din Awad, paragraph 234, p. 283 and beyond. The question that arises is whether the beneficiary has the right to obligate this bank to implement the credit if it refuses and to be sued for responsibility for the consequences of this refusal. The answer is clear, because the bank did not commit to anything in front of the beneficiary, and is only contracted with the conquering bank, so the beneficiary does not have any direct right to confront them. The bank does not comply - in the documentary credit system - except with an express expression on its part in this sense - and since the bank is the conqueror. Any "buyer's bank" is personally and in an original capacity before the beneficiary and does not have - in the most correct opinion - the capacity of an agent for the matter, as the contract of credit between them is not considered a mere agency, the second bank that is tasked with executing the credit is not considered a sub-agent for the matter, but merely a direct agent for the matter. The bank initiating the credit or a subsidiary that it uses in carrying out its commitment - and a fortiori, if the buyer's bank opens the credit but assigns another bank as soon as the beneficiary is notified that the credit has been opened in his favor and the terms of this credit, that is, the task of the correspondent bank is merely to deliver the letter of credit to the beneficiary, it is to inform or provide briefing in this way, the beneficiary does not have any right from the bank for the amount arising from the notification of the credit. In fact, there is no direct contractual relationship between them, and the beneficiary does not have the right to demand anything from the bank in implementation of the credit, because the notifying bank only made the notification of the agreement that was signed between the customer and the bank that issued the credit. Documentary credits: A study of the judiciary, comparative jurisprudence, and the international rules of the year 1983, Prof. Ali Jamal Al-Din Awad, paragraph 234, pp. 283 and beyond.

(1) Letters of Documentary Credits, Ali Hussein Salem, Riyadh Management Institute, 1398 H, p. 52. Obligations arising from documentary credit and the extent to which it can be disavowed,

The beneficiary does not bear any obligation from the credit, so it is not necessary from the letter or from his relationship with the bank to use the credit. All that results from that is the expiration of his right to credit, and this behavior may result in forming a liability before the buyer on the basis of the sale contract, but with regard to the banks, it does not arrange the seller's exemption unless these banks release their pledge before him.⁽¹⁾

When considering the obligations of the beneficiary (the seller), they are directed towards the bank and the buyer customer), and through this, the obligations of the beneficiary in the event that they are affected by the Corona virus pandemic, what I see is that the provisions mentioned in the case of the ordering customer (the beneficiary) are applied.

Muhammad Saleh Jamal Al-Hadithi, Master's Thesis, Middle East University, 2021, p. 85 and beyond. Resolution No.

237/1414 Banking Disputes, Litigation Procedures before the Committee for the Settlement of Banking Disputes and the Principles It Has Decided, Principle No. 79, p. 208.

(1) Documentary credits: A study of the judiciary, comparative jurisprudence, and the international rules of the year 1983, Prof. Ali Jamal Al-Din Awad, paragraph 139, 161 pp. and beyond.

Conclusion

It contains the most important results and recommendations:

At the conclusion of the study on the obligations arising from the documentary credit and Covid-19 Implications, in which the terminology of the title was examined, and the details of the provisions of force majeure and unforeseen circumstances were illustrated and the extent to which any of them apply to the documentary credit when affected by the Coronavirus pandemic. I stated my opinion on the key issues of the study, I have endeavored as much as humanly possible, while acknowledging my omissions and shortcomings, and that perfection is for God alone, and I remind everyone who reads this research.

With the famous proverb: "I saw that no one writes a book one day except he returns in the future: With edits about changing something here, adding something there, omitting something and so on",⁽¹⁾ Glory be to Him who does not make mistakes, and my hope is that the research will achieve its purpose and benefit from it. Several results and recommendations have emerged to me, which are as follows:

Findings:

- Documentary credit is recent in origin, and it was not known by this name or by this term among the jurists of Islamic law.
- Some researchers have collected twelve opinions about Islamic jurisprudence in the conditioning of documentary credit.
- The Saudi law of documentary credit is not known.
- In the conditioning of the documentary credit, some researchers have collected sixteen sayings in jurisprudence to adapt the relationship of the bank to the beneficiary in the documentary credit process.
- The documentary credit includes several different transactions, and adapting all transactions with only one conditioning, may be wrong, but each transaction is adapted separately from the other. It is likely that a single adaptation cannot be applied to all transactions in the documentary credit.
- Types of documentary credit: In terms of the strength of the bank's commitment : A documentary credit is divided into a revocable documentary credit and an irrevocable (definitive) documentary credit and the documentary credit in terms of enforcement: In terms of implementation, documentary credit is divided into two types : First: The supported (confirmed) documentary credit, and the other: An unsupported (unconfirmed) documentary credit, and in terms of the transferability of a documentary credit: Transferable documentary credit, non-transferable documentary credit, and in terms of time of fulfillment of the value of the credit: Completed documentary credit and deferred documentary credit.

(1) Ajalat Al Imla'a, Abu Ishaq al-Halabi al-Qubaybati al-Shafi'i al-Taji, investigation and study: Prof. Ibrahim bin Hamad Al Rayes Prof. Muhammad bin Abdullah bin Ali Al-Qannas, publisher: Al-Maaref Library for Publishing and Distribution, Riyadh, first edition, 1420 AD, vol.3, p. 5. Al-Qanouji, Abu Al-Tayyib Muhammad Siddiq Khan bin Hassan bin Ali bin Lotf Allah Al-Husseini Al-Bukhari, Abjad Al-Ulum, publisher: Dar Ibn Hazm, first edition, 1423 AH, p. 52.

COVID-19 is defined as:

- a widespread family known to cause illnesses ranging from the common cold to more severe illnesses such as Middle East Respiratory Syndrome (MERS) and Severe Acute Respiratory Syndrome (SARS).
- There are several relationships in documentary credit, namely: The relationship of the customer ordering the opening of the credit to the beneficiary, the relationship of the customer ordering the opening of the credit to the bank, and the relationship of the bank to the beneficiary.
- The obligations resulting from documentary credits have become affected by the application of one of two well-known theories in the law, namely: Force majeure and unforeseen circumstances.
- By perusal of the provisions of the Saudi Law, it becomes clear that there are no rules regulating force majeure and unforeseen conditions in a law that regulates all cases wherever they are mentioned in the systems, as a general rule, they are invoked, and the texts mentioned can be applied to the cases in which they are mentioned, and upon reflection it is clear that these texts cannot be applied to a documentary credit. As the text of its applicability to the documentary credit was not provided, as it was originally governed by the provisions of the unified rules and norms of documentary credits, and the stipulated principles decided by the Banking Dispute Settlement Committee.
- The Supreme Court came to implement its jurisdiction by establishing a judicial principle governing the facts that occur as a result of the coronavirus pandemic, including what was stated in Resolution No. (45/m) dated 8/5/1442 AH.
- In the assets and customs of documentary credits, there is a text on the meaning of force majeure, but this text is not a regular text in the idiomatic sense, but it is a text in the unified assets and customs of documentary credits, and it bears the force of the regular text in application, and it remains that the text was not explicitly previously and later on the theory emergency circumstances, but the rule of theory can be applied while the implementation of the obligation is not impossible.
- Obligations on the ordering customer (the buyer), and the beneficiary is governed by the contract by implementing it and paying the value of the contract. If it is a supply contract and the like, as stipulated in Judicial Principle No. (45 AD) dated 8/5/1442 AH, it can be applied according to its terms and mechanisms.
- The customer's commitment to the matter in the interview with the bank, as this relationship is governed by the contract of opening the documentary credit concluded between the two parties, which appears to be not included in Judicial Principle No. (45/m) dated 8/5/1442 AH.
- If the reason for the bank's failure to perform its duties is due to a matter outside its control, as in the Corona virus pandemic. It is possible to apply what was stipulated in the unified rules and customs for documentary credits, and I do not see the application of judicial principle No. 45/m and dated 8/5/1442 AH, and this is specific to force majeure. As for unforeseen circumstances, according to the principles proper legal principles of litigation, the provisions of the principle can be used, and taken into account when applying the theory to the obligation, which is adapted to an emergency circumstance and not a force majeure.
- The correspondent bank's failure to fulfill its obligations due to being affected by the Coronavirus pandemic, the provisions contained in the bank that opened the credit are applied, and the confirming bank, which added its support for the original obligation, has the same obligations as the bank that opened the credit, the obligations of the beneficiary, which are towards both the bank and the customer. Accordingly, the beneficiary's obligations in case they were affected by Covid-19 Pandemic the same provisions applies as in the case of the requesting customer.

Recommendations:

- I recommend that the nature of force majeure and unforeseen circumstances be stipulated and their provisions should be stated in the civil transaction law, so that it is a general provision to be referred to

when one of the two theories is present in any transaction that is not provided for in any special law.

- I recommend, until the issuance of the Civil Transactions Law, that a judicial principle be established that arranges issues of force majeure and unforeseen circumstances on all contracts, and without limitation to specific contracts.
- I recommend that a worldwide convention setting out the provisions for documentary credit be adopted, and that it be properly ratified by countries for it to be binding and obligatory rather than the standard rules and customs of documentary credits.
- Publication of recent judgments issued by the authority competent to rule on documentary credit disputes, and the publication of new principles, and what has been settled on the work.

In conclusion: We ask Almighty God to make what we wrote in this research a witness for us and not against us, and to make it acceptable, and to bless it, and praise be to God, Lord of the Worlds, and prayers and peace be upon the most honorable prophets and messengers.

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