

FRAUD EXCEPTION IN DOCUMENTARY CREDITS UNDER EGYPTIAN AND JORDANIAN LAW

EXCEÇÃO DE FRAUDE NOS CRÉDITOS DOCUMENTÁRIOS SOB O DIREITO EGÍPCIO E JORDANIANO

Article received on: 8/29/2025

Article accepted on: 11/28/2025

Abdallah Saleh Barham Alqudah*

*Faculty of Law, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia
Abdullahbrhm89@gmail.com

Hazlina Shaik Md Noor Alam*

*Faculty of Law, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia
hazlinashaik@ukm.edu.my

Mohd Shahril Nizam Md Radzi*

*Faculty of Law, Universiti Kebangsaan Malaysia, Bangi, Selangor, Malaysia
shahrilnizammr@ukm.edu.my

The authors declare that there is no conflict of interest

Abstract

This study examines the fraud exception in documentary credits under Egyptian and Jordanian law, focusing on its role as a limitation to the principle of autonomy that governs letters of credit. Documentary credits are designed to ensure certainty and efficiency in international trade by obligating banks to deal exclusively with documents rather than the underlying transaction. However, allegations of fraud challenge this principle and raise complex legal and procedural questions. The research aims to analyze the legal foundations, scope, and practical application of the fraud exception in both jurisdictions, highlighting similarities and differences in statutory provisions, judicial approaches, and available remedies. Adopting a qualitative doctrinal methodology supported by comparative legal analysis, the study examines relevant commercial and civil legislation, judicial decisions, and international banking rules, particularly the Uniform Customs and Practice for Documentary Credits (UCP 600). The findings reveal that neither Egyptian nor Jordanian law expressly regulates fraud in documentary credits, leading courts to rely on general principles of fraud, civil law doctrines, and international commercial customs. The study concludes that while both legal systems recognize the necessity of the fraud exception to prevent abuse, the absence of clear statutory regulation results in legal uncertainty. Accordingly, the research proposes interpretive guidelines to enhance legal predictability and

Resumo

Este estudo analisa a exceção de fraude nos créditos documentários à luz do direito egípcio e do direito jordaniano, destacando o seu papel como limitação ao princípio da autonomia que rege as cartas de crédito. Os créditos documentários constituem um instrumento essencial do comércio internacional, ao garantirem segurança e previsibilidade nos pagamentos mediante a estrita observância dos documentos apresentados. Todavia, a alegação de fraude desafia esse princípio e levanta questões jurídicas e processuais complexas. O objetivo da pesquisa é examinar os fundamentos jurídicos, o alcance e a aplicação prática da exceção de fraude em ambos os ordenamentos, evidenciando convergências e divergências legislativas e jurisprudenciais. Adota-se uma metodologia qualitativa de natureza dogmática, apoiada na análise jurídica comparada, com base na legislação comercial e civil pertinente, na jurisprudência e nas regras bancárias internacionais, em especial a Uniform Customs and Practice for Documentary Credits (UCP 600). Os resultados demonstram que nem o direito egípcio nem o jordaniano regulam expressamente a fraude nos créditos documentários, levando os tribunais a recorrer a princípios gerais do direito civil e a costumes comerciais internacionais. Conclui-se que, embora a exceção de fraude seja reconhecida como necessária para evitar abusos, a ausência de regulamentação específica gera incerteza jurídica, exigindo diretrizes interpretativas mais



balance commercial certainty with fraud prevention.

Keywords: Documentary Credits. Egyptian Law. Fraud Exception. Jordanian Law. Comparative Law.

claras para equilibrar a segurança comercial e a prevenção da fraude.

Palavras-chave: *Créditos Documentários. Direito Comparado. Direito Egípcio. Direito Jordaniano. Exceção de Fraude.*

1 INTRODUCTION

Documentary credits serve as a fundamental instrument in international trade, providing a secure mechanism for payment between buyers and sellers. Central to their function is the principle of autonomy, whereby banks deal strictly with documents and not the underlying transaction. However, this autonomy is not absolute; it is curtailed by one crucial exception fraud. Fraud in the context of documentary credits introduces a legal complexity that challenges the balance between the efficiency of international commerce and the integrity of the credit system. While much has been written on the fraud exception in common law jurisdictions, there remains a significant knowledge gap concerning its treatment under Egyptian and Jordanian laws.

Documentary credit is interchangeably known as Letters of Credit or Banker's documentary credit. It is one of the oldest and accepted legal instruments used for financing international trade (Alavi, 2016, p. 5).

The concept of documentary credit is believed to have originated from the French term "accréditif", which translates to "the power to do something." This term is itself derived from the Latin word "accreditus", which is closely linked to the idea of trust. Historically, the use of documentary credits in international trade can be traced as far back as Ancient Egypt and Babylon, where early forms of banking were practiced. Archaeological excavations in Babylon dating to around 3000 B.C. reveal the use of promissory notes, which contained a promise to repay a fixed sum along with interest on a specified date (GARCIA, 2009, p. 72).

Similarly, in ancient Greece, banks issued forms of documentary credit to their correspondents as a means of avoiding the physical transportation of goods such as spices, instead facilitating payments through credit instruments. During the Middle Ages, merchants often faced significant risks in transporting gold and other valuables during trade expeditions. In response, they increasingly relied on documentary credits to address issues of security and payment assurance. Additionally, the lack of a uniform currency

standard across regions posed challenges to cross-border trade, further enhancing the reliance on documentary credit as a trusted financial instrument (TRIMBLE, 1948, p. 1984).

The originality of this research lies in its comparative and interdisciplinary approach. Unlike prior studies focused solely on Western legal perspectives, this work juxtaposes civil law systems influenced by Islamic law with international commercial practices. It also explores the nuanced distinction between fraud in the documents and fraud in the underlying transaction an area where conceptual confusion persists. By engaging with both modern statutory frameworks and classical Islamic legal principles, this research offers a novel contribution to the legal understanding of fraud in international trade finance.

The objective of this study is to critically analyze the legal foundations and practical implications of the fraud exception in documentary credits across Egyptian and Jordanian, legal frameworks. It seeks to clarify the scope of the exception, its application in court decisions, and its alignment with the underlying principles of justice and contractual good faith. Moreover, the research aims to propose legal reforms and interpretive guidelines that can harmonize the treatment of fraud across these jurisdictions, enhancing both legal predictability and commercial trust.

Moreover, the very definition of the fraud exception lacks consistency across legal literature. Gao Xiang describes it as “an extraordinary rule,” emphasizing that it deviates from the fundamental doctrine of independence that characterizes letters of credit. He explains that the fraud exception empowers the issuer or a court to examine the substance behind apparently conforming documents and to withhold payment where fraud is evident (GAO, 2019, p. 30). Schmitthoff, in a similar vein, observes that the fraud rule “permits a court to consider evidence other than the actual terms and conditions of the credit and is founded on the maxim *ex turpi causa non oritur actio*,” underscoring that no legal remedy should arise from a fraudulent act (SCHMITTHOFF, 2012, p. 210). Raymond Jack also frames the fraud exception as “an exception to the rule that the contracts made in connection with credits are autonomous” (MALEK; QUEST; JACK, 2019, p. 145), further reinforcing its role as a rare but critical limitation to the autonomy principle.

This study adopts a qualitative, doctrinal methodology supported by comparative legal analysis. Primary sources include statutory texts, judicial decisions, while secondary sources comprise academic commentaries and legal scholarship. By systematically

comparing the doctrinal foundations and judicial interpretations of the fraud exception, the research evaluates how each system balances the competing interests of documentary strictness and fraud prevention. The analytical framework includes both case study analysis and theoretical exploration, ensuring a comprehensive and context-sensitive examination of the topic.

2 THEORETICAL FRAMEWORK

Fraud within the context of documentary credits encompasses a wide and complex legal concept. In the landmark case *United City Merchants (Investments) Ltd v Royal Bank of Canada*, Lord Diplock offered a foundational definition of documentary fraud. He stated that fraudulent documents, in the context of a letter of credit, are those in which the seller:

“...for the purpose of drawing on the credit, fraudulently presents to the bank documents that contain, expressly or by implication, material representation of fact that to his knowledge are untrue.” (*UNITED CITY MERCHANTS v. ROYAL BANK OF CANADA*, 1983, p. 183).

This definition underscores that fraud arises not merely from technical discrepancies in documentation, but from the deliberate presentation of false information with the intent to deceive the bank or beneficiary. The seller’s knowledge of the falsity is a key component, distinguishing fraudulent behavior from mere negligence or error. Lord Diplock’s articulation remains a cornerstone in the interpretation of fraud exceptions in both common law and comparative legal systems, including Egyptian and Jordanian jurisdictions.

Fraudulent documents under a letter of credit may arise from several forms of misconduct, including misrepresentation, forgery, or the deliberate concealment of material facts. The most common types of fraud encountered in documentary credits include:

1. **Fraud by the Beneficiary:** This occurs when the beneficiary intentionally issues a false document to mislead the bank or the applicant. For example, the beneficiary may present an invoice claiming to cover a shipment of goods—such as grapes—when in fact no such consignment exists or has been delivered. The deception lies in the creation and submission of a document that falsely represents the underlying

transaction (SZTEJN v. HENRY SCHRODER BANKING CORP., 1941, p. 631; DISCOUNT RECORD LTD v. BARCLAYS BANK LTD., 1975, p. 444).

2. **Fraud Involving Third Parties:** Fraud may also be committed through documents obtained from a third party acting in collusion with the beneficiary. In such cases, the documents themselves may appear facially regular but are tainted by fraudulent intent, as they are produced or obtained through a conspiracy designed to deceive the issuing bank or the applicant (BANCO ESPAÑOL DE CRÉDITO v. STATE STREET BANK & TRUST CO., 1969, p. 711).
3. **Forgery by the Beneficiary:** Another serious form of fraud occurs when the beneficiary alters an otherwise valid document. For instance, if a letter of credit requires a bill of lading evidencing the shipment of 10,000 tons of grapes, but only 4,000 tons are actually shipped, the beneficiary may obtain a legitimate bill of lading for the 4,000 tons and then forge or alter it to falsely indicate that the full 10,000 tons have been shipped. This constitutes clear fraud through document falsification (TUKAN TIMBER v. BARCLAYS BANK, 1987, p. 173; ANDINA COFFEE v. NATIONAL WESTMINSTER, 1990, p. 1)

Each of these forms of fraud compromises the integrity of the documentary credit system, which relies heavily on the accuracy and authenticity of presented documents. The detection and legal treatment of such fraud vary depending on the applicable legal system, including the differing approaches found in Egyptian and Jordanian law.

In the context of letters of credit, the concept of the "underlying transaction" can be inherently ambiguous and, at times, misleading (LEACOCK, 1984, p. 920). It is often used to refer to the primary contractual relationship between the buyer and the seller, which gives rise to the issuance of a letter of credit as a means of financing or securing performance (GAO, 2002, p. 112; AUSTIN, 1985, p. 936; GETZ, 1980, p. 208). However, in other instances, the same term is used to describe the legal relationship between the issuing bank and the beneficiary under the credit arrangement itself. This dual usage creates conceptual confusion, particularly when determining the scope of obligations and liabilities within the broader framework of documentary credit law.

A letter of credit transaction typically encompasses three distinct legal relationships: (a) the underlying contract between the applicant and the beneficiary, wherein the issuance of the letter of credit is agreed upon; (b) the application made by the applicant to their issuing bank requesting the opening of a letter of credit; and (c) the

credit arrangement between the issuing bank and the beneficiary, which generally requires the submission of specified documents to claim the stated amount (GAO, 2002, p. 112).

Fraud committed by the beneficiary against the applicant may occur only in transactions (a) and (c), as transaction (b) involves solely the applicant and the issuing bank. Transaction (c), the letter of credit itself, generally requires the presentation of specific documents by the beneficiary. Thus, if the submitted documents are fraudulent, this constitutes fraud within the letter of credit transaction (KIMBALL; SANDERS, 1984, p. 424). Correspondingly, fraud in the credit is typically manifested in the documentation submitted under the credit. Therefore, document fraud is often equated with fraud in the credit itself, as both refer to deceptive acts occurring within the same transactional framework. A seminal example illustrating this type of fraud is the *Sztejn* case (*SZTEJN v. HENRY SCHRODER BANKING CORP.*, 1941, p. 631).

In a classic instance of documentary fraud, worthless cow hair was delivered in place of the contracted bristles. Although the documents appeared regular and compliant on their face, they were ultimately fraudulent due to their misrepresentation of the goods. As one authority observes, such fraud typically concerns the documents themselves, which "may be forged or untrue in relation to the goods to which they refer" (MURRAY; HOLLOWAY; TIMPSON-HUNT, 2007, p. 236).

To determine whether submitted documents are fraudulent, mere examination of the documents is insufficient. It is essential to assess the underlying letter of credit transaction that the documents represent in order to uncover possible fraud. In such circumstances, it is typically difficult for banks to verify allegations of fraud, except in clear instances of what has been termed technical documentary fraud. Unlike independent guarantees where payment is often triggered by a simple demand from the beneficiary without supporting documentation fraud in the form of falsified or misleading documents is a particular concern in the context of documentary letters of credit (*EDWARD OWEN ENGINEERING LTD v. BARCLAYS BANK INTERNATIONAL LTD.*, 1978, p. 171).

Transaction (a), the underlying contract between the applicant and the beneficiary, establishes the commercial basis upon which a letter of credit is utilized to facilitate their transaction. Fraud may arise during the formation of this contract. A leading case illustrating such fraud is *Themehelp Ltd v. West*, in which the plaintiff agreed to purchase shares from the defendant in instalments. To secure the third and most substantial

instalment, the plaintiff issued an independent guarantee in favour of the seller. The contract was negotiated on the understanding that a major customer of the seller's business would continue placing orders under the new ownership. However, the seller, fully aware that this customer had ceased dealings with the company, misrepresented this fact to induce the sale (*THEMEHELP LTD v. WEST*, 1996, p. 84).

Beyond fraud at the formation stage, fraud in the underlying contract may also arise during its performance. A well-known example is the shipment of cow hair in place of the contractually agreed bristles, which constitutes fraudulent performance of the contract terms (*SZTEJN v. HENRY SCHRODER BANKING CORP.*, 1941, p. 631).

Although such instances may initially appear to constitute documentary fraud, this is not always the case. For example, where the underlying contract requires the shipment of vehicles manufactured in 2003, but the letter of credit merely calls for documents confirming shipment without reference to the production year, the seller may ship vehicles from 1999, present compliant documents that omit the manufacturing date, and successfully obtain payment under the credit. In this situation, fraud exists not in the documents or the bank-beneficiary transaction, but rather within the underlying contract between the applicant and the beneficiary (*HOROWITZ*, 2010, p. 26).

To determine whether such contractual fraud exists, one must examine the terms of the applicant-beneficiary agreement itself, as neither the documents nor the credit transaction they represent would reveal such misrepresentation (*KRIMM*, 1986, p. 1095). Because this type of fraud lies beyond the face of the presented documents, banks are generally ill-equipped to detect or assess these allegations, further limiting their ability to intervene in such disputes (*LETTERS OF CREDIT: INJUNCTIONS AS A REMEDY FOR FRAUD*, 1979, p. 510).

While fraud in the underlying contract whether occurring at the formation or performance stage may at times constitute documentary fraud (*SZTEJN v. HENRY SCHRODER BANKING CORP.*, 1941, p. 631), this is not always the case. To preserve clarity and avoid redundancy, it is argued that the concept of "fraud in the underlying transaction" should be understood as referring specifically to fraud committed within the applicant-beneficiary contract, distinct from documentary fraud. Since the documents and the letter of credit transaction (transaction c) are intrinsically linked, separating them conceptually would offer little practical value. Accordingly, fraud involving letters of credit should be classified, in spatial terms, as either (1) fraud in the documents arising

within the credit transaction or (2) fraud in the underlying transaction arising from the foundational contract between the applicant and beneficiary (HOOLEY; SEALY, 2009, p. 866).

3 FINDING AND DISCUSSION

3.1 Fraud in documentary credit under egyptian law

Under Egyptian law, the legal framework for addressing fraud in documentary credits is not extensively detailed in statutory provisions. However, Article 341(3) of the Egyptian Commercial Code No. 17 of 1999 (EGYPT, Commercial Act No. 17/1999, art. 341(3)). stipulates that, in the absence of specific national regulation on the matter, the Uniform Customs and Practice for Documentary Credits (UCP), as issued by the International Chamber of Commerce, shall apply. This legal reference effectively incorporates international banking standards into the domestic legal system, allowing courts to address fraud claims in letters of credit by applying UCP provisions, while also considering general principles of fraud under Egyptian civil and commercial law.

This section demonstrates that, in matters relating to documentary credits and the suspension of payment due to fraud, Egyptian law primarily relies on the provisions of Articles 341 to 350 of the Commercial Code. Where domestic legislation is silent or insufficient, reference is made to international rules and customs governing documentary credits, particularly the Uniform Customs and Practice (UCP) issued by the International Chamber of Commerce in Paris. This approach reflects Egypt's integration of international commercial standards into its national legal framework. (ABDELHAMEED, 2000, p. 240; AL BAROUDI, 1986, p. 394).

Under Egyptian Commercial Law No. 17 of 1999, the provisions most pertinent to documentary credits are found in Articles 347 and 348. Article 347 establishes the bank's duty to verify that the documents presented under a letter of credit conform strictly to the applicant's instructions. Furthermore, if the bank decides to reject the documents, it is legally required to notify the applicant without delay and to provide the reasons for such rejection. This provision reinforces the principle of strict compliance while also ensuring transparency and accountability in the bank's decision-making process.

Article 348 of the Egyptian Commercial Law emphasizes the bank's obligation to adhere strictly to the applicant's instructions, including all specified dates and conditions. The bank must follow these instructions literally, without exercising discretion, interpretation, or judgment. It is required to examine all submitted documents in good faith and with reasonable care, ensuring strict compliance and the absence of inconsistencies. This examination must be conducted within a reasonable timeframe; as undue delay may be construed as acceptance. Accordingly, the bank bears no liability for rejecting documents that fail to comply with the applicant's terms, provided the applicant is notified promptly of such rejection (AL SHOUARBI, 2001, p. 160).

Article 348(1) of the Egyptian Commercial Law embodies two foundational principles governing documentary credit transactions: the principle of strict compliance and the independence principle. According to this provision, the bank is not liable so long as the documents presented strictly conform to the applicant's instructions. Additionally, the bank bears no responsibility for the underlying goods for which the credit was issued. This means that even if the goods are defective or do not match the contractual specifications, the bank is discharged from liability, provided the documentary conditions are met. These principles collectively underscore the autonomous nature of the documentary credit and form the legal basis upon which fraud exceptions may be invoked in exceptional circumstances.

Article 4(a) of the UCP 600 affirms the autonomy of the letter of credit by establishing the principle of independence. It provides that a credit is a separate and distinct transaction from the underlying sale or commercial contract upon which it may be based. Banks are neither concerned with nor bound by such contracts, even when referenced in the credit itself. Accordingly, a bank's obligation to honor or negotiate under the credit is unaffected by disputes or claims arising from the applicant's relationship with the beneficiary or with the issuing bank. This provision reflects the abstract nature of obligations in documentary credits, a principle long recognized in jurisprudence prior to its codification in international rules such as the UCP.

Article 5 of UCP 600 reinforces the core principle that banks deal exclusively with documents and not with the goods, services, or performance to which those documents may relate. This rule, carried over unchanged from UCP 500, upholds the documentary nature of credit transactions. However, when clear evidence of fraud in the underlying merchandise comes to the bank's attention, the strict separation between documents and

goods may be set aside. In such cases, the bank is justified in suspending payment until the fraud claim is resolved through legal channels. The rationale behind this exception lies in the maxim that “fraud unravels all”; a bank knowingly honoring fraudulent documents cannot shield itself behind the documentary principle and remains subject to the fraud rule.

Article 34 of UCP 600 clearly delineates the limits of a bank’s responsibility in documentary credit transactions. It provides that banks assume no liability for the form, accuracy, authenticity, or legal implications of any document presented under the credit. Moreover, banks are not responsible for the condition, quantity, quality, value, or even the existence of the goods, services, or performance referenced in those documents. Nor do they bear responsibility for the actions, omissions, or financial standing of third parties involved, such as carriers, consignors, consignees, or insurers. This provision reinforces the principle that a bank’s obligation is strictly documentary in nature, further insulating it from disputes arising out of the underlying transaction except in cases of manifest fraud.

This Article effectively exempts banks from liability where documentary fraud goes undetected despite reasonable examination. However, if the bank becomes aware of fraud, it is obliged to suspend payment; otherwise, it may be held liable for honoring fraudulent documents. The bank cannot seek reimbursement from the applicant for payments made in reliance on documents the applicant did not know to be fraudulent. It is the applicant’s responsibility to notify the bank of any fraud or forgery prior to payment. Upon such notification, the bank must halt payment and re-examine the documents. This must occur within the standard seven-day examination period; failure to act within this timeframe constitutes acceptance of the documents and a waiver of objections based on forgery or inconsistencies. Crucially, this exemption from liability assumes that the bank exercised due care and good faith in its initial review of the presented documents.

A review of the relevant provisions of the Egyptian Commercial Law (ECL) and the UCP 600 reveals that neither legal framework expressly addresses the issue of fraud in the execution of documentary credits. This legislative silence necessitates reliance on broader legal principles to address fraudulent conduct. In this context, jurisprudence has consistently invoked the general legal maxim that “fraud unravels all” as a foundational doctrine. This principle serves as a judicial tool to override the formal autonomy of

documentary credits where fraud is manifest, ensuring that the integrity of the credit system is not used to facilitate deception (ABDELHAMEED, 2002, p. 134).

Specifically, in instances where fraud leads to the suspension or withholding of payments under documentary credits, Egyptian legal scholars have recognized multiple forms of fraudulent conduct. These include the use of forged documents allegedly issued by official authorities, as well as false declarations within trade documents—such as bills of lading that inaccurately represent the quantity of goods shipped. Such fraudulent acts undermine the reliability of documentary credits and justify the application of exceptions to the principle of strict compliance (ABDELHAMEED, 2002, p. 338).

Under Egyptian law, an applicant seeking to halt the liquidation of a documentary credit may resort to one of three judicial procedures. First, the applicant may petition expedited judicial courts for an injunction to suspend payment. Injunctions, as outlined in civil procedure law, are temporary discretionary measures granted in the absence of a full legal dispute and are more appropriate than traditional lawsuits when immediate legal relief is required (WAJDI; ZAGHLOUL, 1994, p. 346). Second, the applicant may request that the credit's value be detained by the bank, asserting a creditor's right against the beneficiary. Third, a court order may be obtained to entrust the value of the credit to the court's treasury or to instruct the bank to freeze the amount pending further judicial action. These procedures aim to protect the applicant's rights while ensuring compliance with procedural safeguards.

Following the identification of the judicial procedures that may be employed to halt payment of a documentary credit, the legal acceptability of these procedures must be examined in light of two distinct time periods. Prior to the amendment of Section 194 of the Egyptian Civil Procedures Act by Law No. 23 of 1992, jurisprudence was divided. One view held that injunctions could be granted even in the absence of explicit legal text, thereby permitting injunctions to halt payment of documentary credits (ZAGHLOUL, 1997, p. 271). The opposing view argued that the law exhaustively defines when injunctions may be issued, thus precluding such use in documentary credit cases. However, following the 1992 amendment, Section 194 was revised to restrict injunctions to cases explicitly authorized by law. As a result, it is no longer legally possible to seek an injunction whether through a judge of temporary matters or the Cairo Court of Appeal in arbitration cases to suspend or delay payment of a documentary credit. The current

legal position favors the use of expedited lawsuits rather than injunctions in such matters (ABDELHAMEED, 2002, p. 92).

Under Article 325 of the Egyptian Civil Procedures Act, a creditor may request detention of a debtor's assets held by third parties, including banks. In theory, this could apply to documentary credits. However, judicial interpretation particularly a ruling by the Cairo Court of Appeal on November 19, 1997 has limited the effectiveness of this mechanism. The court ruled that letters of guarantee cannot be subject to detention by the applicant, given the independent nature of such instruments and the bank's direct, irrevocable obligation to the beneficiary. Allowing detention would undermine the independence principle and the commercial utility of these instruments (ABDELRAHMAN, 2003, p. 376). However, the court allowed for exceptions in cases of proven fraud, or where the applicant is a third party, not the original applicant of the guarantee. Notably, some comparative legal systems, such as the French judiciary, do permit detention under specific conditions, offering a potential alternative framework (AL SAYED MUSTAFA, 1996, p. 390–400).

Judicial entrustment, as defined under Articles 729 and 730 of the Egyptian Civil Code, allows for disputed assets to be placed under the custody of a neutral third party typically by court order until the rightful owner is determined. While this may appear to offer a solution for handling documentary credits or letters of guarantee, such a procedure is contingent upon meeting four legal conditions: the existence of a dispute over the asset, a demonstrated interest by the applicant, imminent danger in allowing one party to retain control of the asset, and the impartiality of the expedited judge when reviewing the request (AL DANASOURI; OKKAZ, 1986, p. 63). These requirements aim to balance protection of rights with judicial efficiency.

However, practical application reveals limitations, especially concerning the first condition namely, whether the conflict is truly over "money or assets" as understood by law. The Egyptian judiciary has generally excluded cases involving personal obligations or loans from the scope of judicial entrustment. For instance, the Cairo Court of Appeal ruled in 1960 that entrustment is an exceptional protective measure intended to safeguard tangible property or assets, not to enforce repayment of debts or personal commitments (CAIRO COURT OF APPEAL, 1960, p. 459). As such, seeking judicial entrustment for a documentary credit or letter of guarantee may not be legally tenable unless the case

involves a genuine and concrete dispute over property, rather than a simple financial claim.

3.2 Fraud in documentary credit under Jordanian law

The Jordanian Commercial Act does not explicitly address fraud in documentary credit transactions (YAMALKI, 2001, p. 334). The sole relevant provision is found in Section 1/121 of Act No. 12/1966, which stipulates that when a credit is issued as a guarantee for the rights of a third party, any withdrawal or amendment of the credit without that party's authorization is invalid. Accordingly, the bank is obligated to honor the credit and accept the documents presented as compliant. This provision underscores the binding nature of documentary credits but offers limited guidance on handling fraud within such transactions.

Section 2 of the Jordanian Commercial Act establishes that in the absence of explicit provisions within the commercial legislation, the provisions of the Civil Code shall apply to commercial matters. However, the applicability of these civil regulations is contingent upon their conformity with the overarching principles of commercial law. This hierarchy ensures that while the Civil Code fills legislative gaps, the distinctive nature and requirements of commercial transactions are preserved (JORDAN, Commercial Law No. 12/1966, art. 2).

In the absence of explicit provisions within the Jordanian Commercial Law, Section 2 permits the application of Civil Code provisions to commercial matters. Consequently, civil law rules concerning fraud can be invoked to address fraudulent conduct in documentary credit transactions when the commercial law remains silent. This interpretative approach bridges legislative gaps and provides a legal basis for combating fraud in such financial instruments.

Section 3 of the Jordanian Commercial Act empowers judges, in the absence of explicit legal provisions, to rely on judicial precedent, jurisprudence, principles of equity, and commercial customs when resolving commercial disputes (JORDAN, Commercial Law No. 12/1966, art. 3). This grants flexibility in addressing gaps within the commercial law by incorporating established practices and fair principles. Furthermore, Section 122 stipulates that financial matters not specifically regulated under the Commercial Act must be governed by the corresponding provisions of the Civil Code related to the relevant

types of contracts (JORDAN, Commercial Law No. 12/1966, art. 122). Together, these sections provide a comprehensive framework allowing the judiciary to apply civil law doctrines and commercial customs to regulate issues, including those involving documentary credits and potential fraud, where statutory guidance is lacking.

Section 143 of the Jordanian Civil Code (No. 43/1976) defines deceit as the act of one contracting party misleading the other through cunning methods, whether by words or actions, with the intent to compel the deceived party to consent to a contract or agreement that they would not have accepted otherwise. This definition forms a foundational basis for addressing fraudulent behavior in contractual relationships, including those arising within documentary credit transactions.

Section 145 of the Jordanian Civil Code provides that if one contracting party deceives the other and it is proven that the contract resulted in serious harm, the injured party has the right to rescind the contract. This provision reinforces the legal consequences of deceit and offers a remedy to the defrauded party. In the context of documentary credit transactions, it may serve as a legal basis for challenging obligations arising from fraudulent conduct, particularly where the fraud has caused significant financial or contractual prejudice.

Section 148 of the Jordanian Civil Code extends the concept of deceit to include acts committed by third parties. It provides that if the deception originates from someone other than the contracting parties, and the deceived party proves that the other contracting party was aware of the deceit at the time of contracting, the deceived party retains the right to rescind the contract. This provision is particularly relevant in documentary credit transactions involving fraudulent third-party documents. It reinforces the principle that knowledge of fraud regardless of its source can invalidate the legal effects of a contract and serve as grounds for legal recourse.

In light of Sections 2, 3, and 122 of the Jordanian Commercial Act, a judge may refer to the UCP 600 as a supplementary legal source when the Commercial Act does not expressly regulate a particular issue. As a recognized set of international commercial customs and practices, the UCP 600 may be applied after the Civil Code, judicial precedents, jurisprudence, and principles of equity. Accordingly, Jordanian law permits the application of the UCP 600 in regulating documentary credit transactions, unless the parties explicitly agree to exclude its application. This interpretive approach aligns with

the commercial nature of such instruments and promotes consistency with international banking practices.

Under Jordanian law, an applicant seeking to suspend or halt the execution of a documentary credit may resort to expedited judicial procedures grounded in the Civil Procedures Act. Specifically, Section 32 (JORDAN, Civil Procedures Act No. 24/1988, art. 32). authorizes the judge of expedited matters to issue rulings in urgent cases, provided that the “common right” is preserved. Among the circumstances listed are matters requiring resolution within a limited timeframe, including provisional measures such as expedited inspections or protective actions. Although the provision does not explicitly mention documentary credits, its flexible wording allows applicants to petition for injunctive relief where fraud is alleged or immediate harm is feared, thereby providing a legal avenue to suspend credit execution pending further judicial review.

Section 141 of the Jordanian Civil Procedures Law grants creditors the right to petition for discretionary detention of the debtor’s assets whether movable or immovable including funds held by third parties, such as banks. This provisional remedy may be sought prior to or during the proceedings before the judge of expedited matters and may be based on supporting documents, facts, foreign judgments, or arbitral awards (JORDAN, Civil Procedures Act No. 24/1988, art. 141). In the context of documentary credit transactions, this provision offers an important legal tool for applicants who suspect fraud. By invoking this mechanism, the applicant may seek a judicial order to freeze the credit amount held by the bank, thereby preventing disbursement to the beneficiary until the dispute is resolved.

Based on the foregoing legal framework, several judicial mechanisms are available to the applicant seeking to halt a documentary credit. First, the applicant may petition the expedited judiciary for a provisional injunction to suspend payment under the credit, thereby preventing the bank from honoring the beneficiary’s presentation pending resolution of the underlying dispute. Second, the applicant may request the bank to withhold the credit’s monetary value on the basis of a creditor’s right against the issuer. Third, in appropriate cases, the court may appoint a guardian or issue an order instructing the bank to deposit the credit amount with the court treasury. These measures, particularly when fraud is alleged, empower the applicant to seek interim relief such as an injunction or a restraining order against the beneficiary until the substantive dispute is adjudicated.

4 CONCLUSION

This study demonstrates that the fraud exception constitutes a necessary and carefully circumscribed limitation to the autonomy principle governing documentary credits. Through a comparative analysis of Egyptian and Jordanian law, it becomes evident that both legal systems lack explicit statutory regulation addressing fraud in documentary credit transactions. As a result, courts rely on general civil law principles, judicial discretion, and international commercial customs most notably the UCP 600 to resolve disputes involving fraudulent conduct.

The research shows that, despite differences in procedural mechanisms, both jurisdictions acknowledge that documentary autonomy cannot be used as a shield to facilitate fraud. Egyptian law tends to impose stricter limitations on judicial intervention, particularly following amendments restricting injunctive relief, whereas Jordanian law allows greater flexibility through expedited judicial measures and provisional remedies. Nevertheless, in both systems, the absence of clear legislative guidance creates uncertainty for banks and commercial parties alike.

The study concludes that a more coherent legal approach is required to balance the need for certainty in international trade with effective fraud prevention. Clarifying the scope of the fraud exception and standardizing judicial responses would enhance confidence in documentary credit transactions and reduce inconsistent outcomes. Such development would strengthen the integrity of the documentary credit system while preserving its essential commercial function.

REFERENCES

- ABDELHAMEED, Ridha A. *The banking system and banks transactions*. Cairo, 2000.
- ABDELHAMEED, Ridha A. *Arbitration in banking guarantees and letter of guarantees*. Cairo, 2002.
- ABDELRAHMAN, Hatem M. *The independent banking transactions and their executive problems*. Cairo, 2003.
- ALAVI, Hamed. Remedies to fraud in documentary letters of credit: a comparative perspective. *EU Agrarian Law*, v. 5, n. 1, p. 1–13, 2016. DOI: <https://doi.org/10.1515/eual-2016-0001>.
- AL BAROUDI, Ali. *Commercial contracts and bank operations*. Cairo, 1986.

- AL DANASOURI, Izz Eddin; OKKAZ, Hamed. Execution judiciary system. Cairo, 1986.
- AL SHOUARBI, Abdelhameed. Banking transactions. Cairo, 2001.
- AL SAYED MUSTAFA, Adel I. The independence of the bank's obligation in letters of guarantee and documentary credits. Cairo, 1996.
- AUSTIN, L. Letter of credit: gold bullion? *Louisiana Law Review*, v. 45, p. 927–940, 1985.
- BANCO ESPAÑOL DE CRÉDITO v. STATE STREET BANK & TRUST CO. 409 F.2d 711 (1st Cir. 1969).
- EDWARD OWEN ENGINEERING LTD v. BARCLAYS BANK INTERNATIONAL LTD. [1978] 1 QB 169.
- EGYPT. Commercial Code No. 17 of 1999, art. 341(3).
- GAO, Xiang. *The fraud rule in the law of letters of credit*. London: Kluwer Law International, 2002.
- GAO, Xiang. *The fraud rule in the law of letters of credit*. The Hague: Kluwer Law International, 2019.
- GETZ, H. Enjoining the international standby letter of credit: the Iranian letter of credit cases. *Harvard International Law Journal*, v. 21, p. 189–214, 1980.
- HOOLEY, Richard; SEALY, L. S. *Commercial law: text, cases, and materials*. 4. ed. Oxford: Oxford University Press, 2009.
- HOROWITZ, David. *Letters of credit and demand guarantees: defences to payment*. Oxford: Oxford University Press, 2010.
- JORDAN. Commercial Law No. 12 of 1966.
- KIMBALL, George; SANDERS, Bruce. Preventing wrongful payment of guarantee letters of credit: lessons from Iran. *The Business Lawyer*, v. 39, n. 2, p. 417–440, 1984.
- KRIMM, John. U.C.C. – letters of credit and fraud in the transaction. *Tulane Law Review*, v. 60, n. 5, p. 1088–1110, 1986.
- LEACOCK, S. Fraud in international transactions: enjoining payment of letters of credit. *Vanderbilt Journal of Transnational Law*, v. 17, p. 885–920, 1984.
- MALEK, Ali; QUEST, David; JACK, Raymond. *Documentary credits: the law and practice*. London: Tottle, 2019.

- MURRAY, Carole; HOLLOWAY, David; TIMPSON-HUNT, Daren. Schmitthoff's export trade: the law and practice of international trade. 11. ed. London: Sweet & Maxwell, 2007.
- SCHMITTHOFF, Clive M. Schmitthoff's export trade: the law and practice of international trade. 12. ed. London: Sweet & Maxwell, 2012.
- SZTEJN v. HENRY SCHRODER BANKING CORP. 31 N.Y.S.2d 631 (N.Y. Sup. Ct. 1941)
- THEMEHELP LTD v. WEST. [1996] QB 84.
- TRIMBLE, R. F. The law merchant and the letter of credit. Harvard Law Review, v. 61, p. 1982–1986, 1948.
- TUKAN TIMBER v. BARCLAYS BANK. [1987] 1 Lloyd's Rep. 171.
- UNITED CITY MERCHANTS (INVESTMENTS) LTD v. ROYAL BANK OF CANADA. [1983] 1 AC 168.
- WAJDI, Raghieb; ZAGHLOUL, Ahmad M. Studies in civil and commercial procedures law. Cairo, 1994.
- YAMALKI, Akram. Commercial papers under the Geneva Convention and banking transactions under international customs. Cairo, 2001.

Authors' Contribution

All authors contributed equally to the development of this article.

Data availability

All datasets relevant to this study's findings are fully available within the article.

How to cite this article (APA)

Alqudah, A. S. B., Alam, H. S. M. N., & Radz, M. S. N. M. (2026). FRAUD EXCEPTION IN DOCUMENTARY CREDITS UNDER EGYPTIAN AND JORDANIAN LAW. *Veredas Do Direito*, 23(2), e234401. <https://doi.org/10.18623/rvd.v23.n2.4401>