

## **Chapter: 1**

### **Introduction**

## **1.1: Background**

Documentary credit (also letter of credit, or more formally documentary letter of credit), which was created in trade and business several hundred years ago, is a well known safe financial method for international trade finance and settlement provides the required necessary protection for both trade partners against the seller's non-delivery risk and buyer's non-payment risk. Letters of credit, often described as "the life blood of international commerce", are a Payment method developed to facilitate international trade. They are especially preferred over other means of payment mostly for one - shot cross - border transactions where traders do not know each other, or in the opening stages of a potential long term relationship, before relational constraints become effective(Mann&Gillette,2000). In other words, letters of credit are used as a payment method for international trade where the seller and the overseas buyer have no or very short history of cooperation, they still do not know what to expect from each other and, most importantly, they do not trust each other.

Despite the fact that letters of credit are an important vehicle for companies to expand and grow internationally, by using this payment method, international traders often experience difficulties to achieve the high documentary compliance required by many banks. This, in turn, puts at risk the trader's chances for a payment and goods quality as well. In fact, numerous surveys carried out in the United Kingdom suggest that the rejection rate of first time presentations in letter of credit transactions is between 50-60%. Estimates are that in 2000 the UK lost 113 million GBP through non-compliant documents being presented under letters of credit (SITPRO, 2003). In the USA, initial letter of credit failure rates are reported 77% in Saint Louis, 75% in San Francisco, and for four banks in New York, 40%, 55%, 70% and 50%<sup>5</sup>. DC-PRO 2005 LC Market Intelligence Survey reports average discrepancy rates at 52% and 56% for import and export letters of credit respectively (DC-PRO, 2005).

The high rejection rates accompanied with numerous controversial court rulings concerning the doctrine of strict compliance indicate that the existing document examination standard is a serious bottleneck in a letter of credit transaction. In the course of time, courts have created and applied many different standards to very similar deficiencies in the presentations. Professor E.P. Ellinger has described the situation as follows: "the standard of compliance of documents tendered under letters of credit reflects the approach of judges, which is based on the indigenous legal culture in which they operate rather than on international banking practice. Consequently, the meaning of

the phrase “strict compliance” varies from place to place. In some systems, it predicates a robotic approach, which treats the examination of documents as a proofreading exercise. In others, “strict compliance” is understood in a less stringent sense. A document – or set of documents – is treated as regular and hence as acceptable notwithstanding misprints and meaningless departures, if from a commercial point of view, the court finds that the document or set achieves its objectives "(Ellinger,2006). In consequence, banks have applied the strict compliance rule in its strictest sense to protect their financial interests in case they would be sued, and, by so doing banks at the same time provide importers great protection against non conforming goods, and consequently safeguarding the national interests in terms of the necessary consumers' protection. The sellers, on the other hand, because of this situation risk losing their money for insignificant mistakes in their tendered documentation.

It is important to note that letters of credit are issued always subject to UCP 600 (Uniform Customs and Practice for Documentary Credit). As defined, UCP is not law. It is a set of private rules that contracting parties choose to incorporate into the relevant contracts. The UCP can only apply to a letter of credit transaction by express inclusion and such inclusion must incorporate the applicable revision, e.g. UCP 600. That is to say for instance "this letter of credit is subject to UCP 600". The mechanism by which the letter of credit works is quite complex and gives rise to a number of contracts derived from, but separate to the contract of sale. This study aims to examine the role of the letter of credit in improving the consumers' safety.

### **1.2: Significance of the Study:**

Although the extensive literature together with the previous studies reviewed and cited in this study, have addressed the question of the letter of credit, but all of them have tackled it from different perspective. So, this study has come to address the question of the letter of credit but from Consumers' Safety perspective, as a contribution to fill-in the gap in this respect.

This research can be helpful to both academic field and practitioner bankers, so that the results of this work will not just be an extraction of facts, but will give them information with which they can better improve their practices and procedures in respect of shipping documents examination.

### **1.3: The Problem Statement:**

Despite the dramatic increase in the number of professional practitioner bankers during the current decade and the significant developments in respect of laws and rules governing the documentary letter of credit procedures and operations, Consumer's Safety in respect of Imported Goods is still a questionable issue. The researcher contented that finding ways to reduce Discrepant Documents Waiver rates could potentially result in increased level of Consumers' Safety in respect of Imported Goods.

### **1.4: Research objectives:**

As the strict compliance standard is not just one isolated rule, but a set of many rules that regulate the Letter of Credit performance as a powerful instrument that help improve Consumer's Safety in respect of Imported Goods. This thesis is an attempt to improve the doctrine of strict compliance application as far as it concerns UCP 600, Central Bank Regulations and Product Liability as well.

The focus is on improving the Consumers' Safety in respect of the imported goods as dependent variable. So the researcher's goal is to understand and describe the dependent variable, and explain its variability.

#### ***The specific objectives:***

1. To identify and explain the impact of article 16(b) of UCP 600 (*sub article that permits discrepant documents waiver*) on Consumers' Safety in respect of imported goods.
2. To identify the impact of the Banking Measures and Regulations on the Consumers' Safety in respect of imported goods.
3. To understand and describe the impact of Product Liability Principle on Consumers' Safety in respect of imported goods.

### **1.5: Research Questions**

This study tries to investigate current situation where Low Quality Imported Goods are brought under letters of credits affects the Consumer's Safety. So, this study attempts to answer the following questions:

1. To what extent sub article 16 (b) of UCP 600 influence Consumer's Safety in respect of imported goods under the Letter of Credit?
2. To what extent, Banking Regulations affects Consumer's Safety in respect of imported goods under the Letter of Credit?
3. How does Product Liability Doctrine influence Consumer's Safety in respect of imported goods under the Letter of Credit?

## **1.6: Variables of the study:**

1.6.1: Consumers' Safety in respect of imported goods, the dependent variable, also known as the criterion variable which is of primary interest to this study, so that; the researcher's goal is to understand and describe and explain its variability. Through the analysis of the dependent variable and finding what factors influence it, it is possible to find answers or solutions to the problem, for this purpose, this study is interested in quantifying and measuring the dependent variable.

1.6.2: The Letter of Credit, The independent variable (also known as the predictor variable) and the situational factors defined in the theoretical framework that affects the Consumers' Safety in respect of the imported goods under the letter of credit, and include the following:

- a. UCP 600.
- b. Banking Regulations.
- c. Product liability.

## **1.7: Research Hypothesizes**

From the general Perspective, the utilization of the documentary letter of credit as a secure method of payment in international trade, expected to provide the necessary protection to both sellers and buyers, consequently, this is likely seems to be affected by the fact that the nature of the current developments underlies the most recent provisions of the UCP 600 ('Uniform Customs & Practice for Documentary Credits'), which have led in turn to a lot of challenges in this respect.

Accordingly; concerned parties are required to exercise the reasonable prudence and due diligence in order to achieve the best utilization of the documentary letter of credit as a powerful payment mechanism that helps improve the Consumers' Safety in respect of imported goods.

In this respect this study tries to test the validity of the flowing hypotheses:

### **Hypothesis 1:**

There is a negative relationship between sub article 16 (b) of UCP 600 (*Uniform Customs and Practice of Documentary Credit*) and Consumers' Safety in respect of imported goods under the Letter of Credit.

**Hypothesis 2:**

Banking import's Regulations in Sudan affect Consumers' Safety in respect of Imported Goods under the Letter of Credit.

**Hypothesis 3:**

Product Liability Doctrine has an Impact on Consumers' Safety in respect of Imported Goods under the Letter of Credit.

**Hypotheses 4:**

Letter of credit procedures has an Impact on Consumers' Safety in respect of Imported Goods.

**1.8: The research design (Research Methodology and methods).**

In order to test the validity of the above mentioned hypotheses that the four factors influence the Consumers' Safety in respect of imported goods under the Letter of Credit, descriptive methodology was adopted where data collection and analysis can be explained as follows:

**1.8.1: Survey Methods:**

Structured Questionnaire Surveys as a quantitative methodology was adopted; the reason is that the questionnaire survey is one of the most widely used research methodologies in the social sciences and other applied fields (Babbie 1990; Neuman 2006). Thereby; Likert - 5 Scale was adopted and administered to respondents. On this scale, score of 5 or 4 indicates that the point is perceived to be essential, while the a score of 3 or 2 indicates that the point is perceived to be fairly important, but not essential, while score of 1 indicates that the point could be disregarded for being not important, at the same time in order to obtain score for these questions, the mean score was calculated out of the total number of the total of questionnaires those were distributed to the respondents.

The questionnaire has been self-administered by hand to hand to respondents, the final version of the Questionnaire has been pilot tested to determine the appropriateness and relevance of the Questions in the instrument by five prominent professors.

**1.8.2: Sampling:**

The sampling here is confined to specific types of Bankers who can provide the required information in respect of Letter of Credit, because they are the only ones who have it, and conform to some criteria set by the researcher. Consequently; the Sample Subjects were defined as Practitioner Bankers in the field of Documentary

Letter of Credit, who had been selected as experts who are conveniently available for their involvement in the letter of credit business and their sufficient academic and professional knowledge and deep practical experience that place them in the best position to provide the information required to test the validity of the developed hypotheses and drive out findings those had determined and developed prescribed practical course of action that may help to improve the Consumers' Safety in respect of imported goods under the letter of credit.

In this research, the target population has been defined as a listing of 90 Practitioner Bankers in the field of Documentary Letter of Credit at Khartoum City, from which the minimum purposive judgment sample size has been drawn, For the reason that it was the only viable sampling method for obtaining the type of information that is required from very specific pockets of people who alone possess the needed facts and can give the information sought.

The calculation of minimum sample size for this research was based on formula that introduced by Luck, Taylor and Robin (Luck et al., 1987) as follow:  $n = \frac{N}{(1+N(e)^2)}$

N= (the total number of practitioners in the field of letter of credit in Khartoum City).

e = the standard error (0.05).

$$\text{Thus: } n = \frac{90}{(1+90(e)^2)} = 73$$

With the sample size calculated, **73**.

Then 75 questionnaires were distributed among target group of practitioner bankers, whereas (69) questionnaires were received back by retrieving rate reached 92% stated as follows:

The researcher has undertaken the study and engaged in surveying the Study's Sample Subjects in order to investigate the Letter of Credit's Effectiveness as a Powerful Instrument for improving the Consumers' Safety in respect of imported goods under UCP600, the prevailing Banking Regulations and Product Liability Act.

### **1.9: Scope and limitations of the study:**

Although the researcher is one of those practitioners and academicians, who by his occupational background was very familiar to the field of the study, but still there were some aspects of situational factors in respect of letter of credit not being investigated and the analysis of the independent variable in respect of documents examination was not cover the International Standard Banking Practice (ISBP).

### **1.10: Research Structure:**

The research body has been structured to covered four chapters according to the following sequence.

#### **Chapter 1: Introduction:**

This part of the research covered a comprehensive background about the foreign trade finance activities in theory and in practice in respect of the documentary letter of credits as international mode of settlement. The research problem, its importance, its objectives, the methodology and research plan.

#### **Chapter 2: Literature Review and Theoretical Framework:**

This chapter covers and examines the research variables that could operate in the situation and how the relationships among these can be established, furthermore, the theoretical framework has been developed for research as a conceptual model of how this research has theorized or make logical sense of the relationships among the several factors that have been identified as important to the problem. According to Sekaran, (2003)," the theoretical framework discusses the interrelationships among the variables that are deemed to be integral to the dynamics of the situation being investigated.

It covers the prime forces affect the letter of credit transaction like the International Sale Contract as the base upon which the Letter of Credit founded, the privity of contract theory which explain the roles and responsibilities of the parties thereto, the Uniform Customs and Practice for Documentary Credits, Strict Compliance Principle, and The Doctrine Autonomy as well as the theory of Al- maqasid Al- Shariah which dictates the moral and divine aspects of the Islamic banking practice.

#### **Chapter 3: Issuing the Documentary Letter of Credit Theory and Practice.**

This chapter covers the letter of credit process step by step, from the very beginning up to settlement, the way documentary letter of credit as method of payment is opened, involving parties' obligations and the examination of the documents tendered under the letter of credit according to article 14 Standard for Examination of Documents, article 15 Complying Presentation and article 16

Discrepant Documents, Waiver and Notice and the adopted banking practice in this respect in the Republic of Sudan and to what extent it is consistent with the appropriate practice described in the light of the UCP 600.

#### **Chapter 4: Applied Field of the Study.**

This Chapter is an analytical chapter where the Letter of Credit impact on Consumers' Safety in respect of Imported Goods has been examined as a case study of Sudanese Banking practice. Moreover, it attempts to test the significance of the stated hypotheses. This section includes the steps and procedures that have been followed in this study including questionnaire design, the description of the research sample and population sample, and perform significance tests of the questionnaire to check the validity of statistical methods by which the data analyzed and get the results. This chapter includes three parts. Part one consists of procedures of applied study and part two consists of analysis of the data. Part three test the significance of the stated hypotheses.

In conclusion findings have been come out, with hope, those maybe of significant contribution, to be applicable in terms of practical recommendations.

#### **1.11: Previous Studies:**

Kraovska (2008), in his thesis entitled "The Impact of the Doctrine of Strict Compliance on a Letter of Credit Transaction", aimed to find out whether there is a need to improve the rules regarding the documentary compliance. If so, whether it would be possible to elaborate an optimal document examination standard which would be clearly and unambiguously defined to ensure its consistent interpretation by all parties involved in a letter of credit transaction. The methodology used in the thesis involves analysis of the UCP rules, related case law as well as associated literature reflecting the views of experts. The research of this thesis has revealed that it is of vital importance for international traders and letter of credit users to redefine the strict compliance rule of the UCP in order to reduce the present unpredictability and increased transaction costs. The study found that; "There is an urgent need for an optimal document examination standard which would ensure its consistent interpretation by all parties involved, provide the necessary level of protection for banks, reduce the seller's risk of not being paid for insignificant mistakes and at the same time would facilitate international trade".

Accordingly; this study tries to tackle the issue from the importer's stand point of view, that is to say; the necessary protection to the importer in terms of imported goods quality.

Roberto Bergami (2011), in his study entitled "Risk Management in Australian Manufacturing Exports": the Case of Letters of Credit, aimed to fill the gap in the current literature relevant to business processes under Letter of Credit transactions resulting in high discrepancy rates and potential financial loss. It appears that this area has not been well researched generally, and in particular, as stated before, this investigation has not been previously undertaken in Australia. The methodology used for this research was to distribute written questionnaire surveys to exporters, banks and service providers in Australia, as there is little secondary data available in the public domain on the matters considered in this thesis, the primary approach is based on the survey questionnaires, distributed by mail out during 2005-2006. The study found that; "There is evidence form this research that the Letter of Credit is used by Australian manufacturing exporters as a risk management tool to mitigate payment default by foreign buyers".

According to (Baker, 2000; Metha, 1999). The issue of documentary discrepancies has received attention in journals; however the focus has been general in nature with summarized steps attempting to provide ideas for solutions through simple checklists. At the same time as descriptive literature is abundant, there appears to be a world-wide lack of theoretical literature in documentary discrepancies research.

These comments suggest that notwithstanding the previous work, there is an opportunity for more research to make deeper the understanding of the seller-bank-buyer inter-relationships that are set up under a L/C transaction. Furthermore all of those studies have tackled the issue from the exporter's risk of not being paid by the importer and the available protection under the Independence Principle., so this study has come to bridge the gap and tackle the issue from the importer's risk of not conforming goods and the available protection under the Strict Compliance Doctrine of the letter of credit.

## **Chapter: 2**

### **Literature Review and Theoretical Framework**

## **2.1: Introduction:**

In this chapter this study tries to review the conversant literature in respect of the conceptual literature concerning the concepts and theories, and the empirical literature consisting of studies made earlier which are similar to the one proposed. According to (Sekaran, 2003), who believes that; "literature review will ensure that no important variable that has in the past been found repeatedly to have had an impact on the problem is ignored. It is possible that some of the critical variables are never brought out in the interviews, either because the interviewees cannot articulate them or are unaware of their impact, or because the variables seem so obvious to the interviewees that they are not specifically stated. So, if there are variables that are not identified during the interviews, but influence the problem critically, then research done without considering them would be an exercise in futility. In such a case, the true reason for the problem would remain unidentified even at the end of the research. To avoid such possibilities the researcher needs to explore all the important research work relating to the particular problem area. Sometimes as she stated (ibid), it might happen that the investigator spends considerable time and effort to "discover" something that has already been thoroughly researched. A literature review would prevent such a waste of resources in reinventing the wheel. Finally, a good literature survey thus provides the foundation for developing a comprehensive theoretical framework from which hypotheses can be developed for testing.

As stated earlier, the purpose of the literature survey is to identify and highlight the important variables, and to document the significant findings from earlier research that will serve as the foundation on which the theoretical framework for the current investigation can be built and the hypotheses developed. Such documentation is important to convince the reader that; the researcher is knowledgeable about the problem area and has done the preliminary homework that is necessary to conduct the research, and the theoretical framework will be structured on work already done and will add to the solid foundation of existing knowledge. Accordingly; the basic outcome of this review will be the knowledge as to what data and other materials are available for operational purposes which will enable the study to specify:

1. Its own research problem in a meaningful context.
2. Identify the research question, and.
3. Build on previous researches to offer the basis to get to the next steps of theoretical framework by Piecing together the information obtained from the

interviews and the literature, that helps develop a theory of possible factors that may be influencing the imported goods' quality. That is to say, a theoretical framework of the factors that could account for the problem under investigation, and hypotheses development.

International trade transactions relate to the exportation of goods or services from one country to another. These transactions are referred to "as export and import transactions" (Schmittoff, 2012). The conduct of export transactions can be divided into two categories: transactions founded on the contract for the international sale of goods and those having as their object the supply of services abroad, such as the construction of works and installations in another country." (ibid). Accordingly; International trade has been recognized as an important determinant of economic growth. Trade improves a country's access to goods, services, technology and even knowledge among others. It fosters entrepreneurial activity, thereby creating jobs and demand for credit or trade finance. Access to trade finance is vital for every country as it helps in the exchange of goods and services in the international market. According to World Trade Organization (WTO), trade finance supports nearly 90% of international trade, making it vital to economic prosperity. There are numerous areas where trade finance can help business and the underlying trade flows within the trade passageways. Trade finance helps to facilitate exports and imports and ultimately economic growth. It provides the liquidity support from the financing perspective within the trade transaction itself. It can manage risks whether it is counterparty risks or country risks. Credit risk can be shared with another party through various types of trade instruments ranging from risk participation with a bank to using export credit agencies or multilateral credit agencies to provide credit risk mitigation facilities.

This chapter will briefly review the existing body of conversant literature around the considerable number of related previous studies conducted in the area of documentary letters of credit as instrument of cross-boarders commercial transactions settlement and finance as the major independent factor that influence the Consumers' Safety, as well as theories, principles and concepts those underlying this field of knowledge. So the aim of this chapter is to help addressees acquire a sound understanding of the relevant theoretical and practical concepts, coupled with an ability to apply these principles in a given practical situation.

### **2.1.1: Literature Review:**

The researcher is eager to see that this part of the study will be more purposeful analysis and argument as well as of remarkable assistance to those who have an interest in understanding international trade payments, finance, risk and support services provided for exporters and importers as well. Thereby, in order to achieve the stated objectives of this chapter and fully understand the very complicated nature of the documentary letters of credit and be able enough to manage the conflicted interests of trade partners thereto, which in turn affects the quality of imported goods in terms of Consumers' Safety, we have to explore and reveal the huge existing literature in the wide spread area of Documentary Letter of Credit, in an attempt to show how efficient documentary letter of credit is as a tool of finance and settlement could be used by all parties concerned in order to utilize its risk limiting functions that improves the quality of imported goods in terms of Consumers' Safety as dependent variable, in the light of UCP 600 , prevailing Legislations and related Banking Regulations as major determinants those influence the Documentary Letter of Credit as independent variable in this study.

Due to researcher's proficiency and past reasonable experience in banking practice in the area of international trade finance, who earlier in his career, experienced documentary credit transactions from a practitioner banker's perspective as a trade finance expert. so, it has been proved to him that: "The related literature in the field of international trade finance theory and practice has shown a great significance of the proper understanding and application of the Uniform Customs and Practice for Documentary Credits (ICC) Publication No. 600 as rules those govern and protect all parties involved in the letter of credit transaction "in improving the quality of imported goods when the letter of credit is established subject to it, and thereby this absolutely affects Consumers' Safety as well.

As the UCP 600 makes reference to other sets of rules, those are also commented on, as part of the discussion in this chapter. And that is what exactly the study attempts to undertake.

International trade finance relates directly to overseas business transactions. It is generally accepted according to what stated by many practitioners , that international trade transactions carry essentially more risk than domestic trade transactions, for the

reason of differences and variations in culture, business processes, regulations as well as legal landscape surrounding letters of credit , those differences and non uniformities in areas of concern to the global business community can threaten the settled expectations and practices of those engaging in cross borders' transactions dependent upon such instruments. So, the study of legislations related to the issue of Consumers' Safety will be revealed in order to explain to what extent the prevalent of such legislations could improve the Consumers' Safety under the Documentary Letter of Credit Operations. Furthermore; the Banking Regulations governing the Documentary Letter of Credit processes will be revealed as well to see how the proper articulation of those could influence the issue of Consumers' Safety under the Documentary Letter of Credit.

Accordingly, the financing of international trade presents remarkable problems because the parties to the transaction reside in different countries and are therefore not able to know and/or ascertain not only the financial standing of the other party but also of each other's reputation in his home country. This difficulty makes it imprudent of the seller to part with his goods without a reliable arrangement for payment and the buyer to pay for the goods without assurance of delivery of the goods (Tiplady, 1990). In other words, in the global marketplace, when trade partners agree to transact; merchandise has to be exchanged for payment, then it is of great importance for exporters to be assured of payment and to free capital invested in merchandise during shipping, and for the importer, on the other hand; to be guaranteed that the delivery of the bought goods as contracted will take place, and the ability to defer payment for future predetermined date are of principal concern as well. In respect of these conflicted interests, Guttman, (1990) as cited in Johns and Blodgett (2003), argued that a persistent risk, at the level of individual commercial transactions, occurs between parties who do not know each other well enough to trust each other, so the typical argument would sound something like, "I'll ship the goods as soon as your payment arrives," versus "I'll effect payment as soon as your goods arrive." Thereby, and according to the associated risk of failure to perform correctly, or not perform at all as well as the risk of nonpayment, so; neither party in this scenario wants to commit resources or incur an opportunity cost, unless the risk of loss due to the other party's failure to perform has been reduced to an acceptable level. Therefore, each party in transaction for the international sale of goods needs some assurance that the other party will perform as agreed. That is what seem to be agreed upon by some

commentators in this respect, for example, Bergami (2007), have stated that 'it is important for traders to ensure that payment is received for goods dispatched and that the goods received and paid for comply with the terms and conditions of the contract of sale'. Accordingly this study, consider this is truly like what stated in the strict compliance and autonomy principles; those underlie the major characteristics of the letter of credit as method of payment therefore this chapter will refers to the Strict Compliance Principle and the Independence Principle as well; as situational factors and discusses the interrelationships among them and the Study Variables that are deemed to be integral to the dynamics of the situation being investigated..

So, as it has been found that; the Documentary Letter of Credit is usually used to provide this guarantee, which perfectly satisfies the requirements of the methods of payment under international sale contracts, that it has to a considerable extent prevented the occurrence of these problems or at least mitigate them. So under this notion and in the instance of such growing concern over the issue of documentary credit as powerful instrument of payment in international trade transaction, the influential role of Banking Regulations underlies the Letter of Credits has to be questioned with special emphasize on the impact of sub article 16(b). Particularly, in the light of Principles of prudence and common sense, UCP (600) and the related ICC codes which are often taken as standard rules for the handling of letters of credit as well as reference for verdict by courts should any dispute arise within the documentary credit transaction, so this study comes to reveal, analyze, investigate and evaluate the banking practice in respect of deciding the discrepant documents tendered under the letter of credit under UCP 600 and it's expected impact in respect of imported goods' quality.

To answer the question of 'are those rules and principle, with special emphasize on the "strict compliance principle" applied and fully adhered to'? And to what extent the application of letter of credit prevent the occurrence of the potential international trade risk and improving the quality of imported goods in accordance with a contract of sale.

Accordingly; this study tries to examine emerging threats to Consumers' Safety and the effectiveness with which Letters of Credit could perform their risk mitigating function. Thereby; the building of the conceptual model of how the researcher theorizes or makes logical sense of the relationships among the several factors that have been identified as important to the problem e.g. Principles, doctrines, theories

and regulations underlying these relations, will be explained and described in order to clear the nature and direction of the relationships; and this in turn provides the logical base for developing testable hypotheses.

## **2.2.: Letters of Credit as method of payment and security:**

In this part of this chapter the Letter of Credit as an Independent Variable will be discussed, while explaining the interrelationships between it and the underlying principles and the governing body of laws and regulations, and critically examining their influential roles as situational factors.

Today, letter of credit is the most frequent payment method in the international trade and has been described by English judges as “the life blood of international commerce” (D’arcy / Murray / Cleave, 2000). Since this payment method provides a relative degree of protection for both sellers and buyers. According to the previous studies, it has been estimated that the value of letter of credit business is over 1 trillion USD per annum.

Documentary letter of credit is also known as letters of credit or bankers commercial credit. The financing of international trade presents unusual problems because the parties to the transaction reside in different countries and are therefore not able to know and or ascertain not only the financial standing of the other party but also of each other’s reputation in his home country. This difficulty makes it imprudent of the seller to part with his goods without a reliable arrangement for payment and the buyer to pay for the goods without assurance of delivery of the goods, (Schmittoff, 2012). The use of letters of credit as a method of financing international sale contracts has to a considerable extent prevented these problems.

The use of letters of credit as security became necessary. Individuals and companies had found themselves dealing with partners of whom they knew little, who were located in distant countries often with insecure political and economic situations. Therefore the principal and most important task of stable documentary transactions was to provide security to the parties with respect to the fulfillment of their mutual contractual obligations of delivering the contracted goods and effecting payment as agreed to, accordingly through this study the researcher tries to investigate the banking practice in this area to realize; whether or not the documentary letter of credit in practice achieve this goal.

International trade involves a flow of goods from sellers to buyers and at the same time a flow of payment from the buyers to the sellers across international borders, in

accordance with a contract of sale. The parties in international trade are aware that such payment may be influenced by various issues, such as trust between the commercial parties, their need for finance and, possibly, by governmental trade and exchange control regulations. There are various methods of settling international trade transactions and one of the most common methods of payment, especially in Sudan, is the Documentary letter of Credit.

International trade is one of the areas where bankers make credit available to customers to discharge obligations in connection with their businesses. In relation to imports and exports of goods, the modern system of international commercial banking enables advances to be made to customers upon the security of the goods. It has been rightly claimed that "the enormous volume of sales of produced goods by vendor in one country to a purchaser in another has led to the creation of an equally great financial system intervening between vendor and purchaser, and designed to enable commercial transactions to be carried out with the greatest money convenience to both parties. This system of financing can be accommodated in a payment mechanism known as documentary credit", (Smith, 2001). That is what this study agrees with to the extent that the emergence of new markets, the continuing need to hedge against risk in certain geographical locations and the growing use of letters of credit as an alternative source of working capital finance as well as mean of international trade transactions settlement, ensures that they retain an important role in international trade finance globally as well as in the Republic of Sudan.

Usually in international trade business, the trade cycle commonly begins with an agreement to trade between buyers and sellers. When a sale's contract should be written to cover the terms and conditions of sale, trading partners should consider several factors before arriving at the terms of sale, because the arrangement for payment relies to a great degree as stated above, on the relationship between the trading partners, and on the degree of trust placed upon each other. That is to say for instance, in some cases, the level of trust between importer and exporter is based on a close knowledge gained through a long history of successful transactions, where the use of instruments such as advance payment , open trade account and to some extent documentary collections , While in others, that trust is enhanced by the role of the commercial banking sector as intermediary to the transaction and for the careful documentation of the title, movement and possession of the underlying goods. Letters of credit in this sense comes to facilitate commercial transactions by shifting the

transaction risk from the trading partners in to a trusted independent third party by engaging the buyer's bank, hereinafter refer to as : ( The Issuing bank) to undertake payment against tendered documents under the letter of credit provided that, they constitute complying presentation, and by so doing the issuing bank under the letter of credit can provide the required protection for both of trade partners. Accordingly this study tries to investigate and test the assumed hypotheses in this respect in the light of the criticized and reviewed literature in the area of the letter of credit, to prove whether or not commercial banking sector practice provide that protection. Therefore; according to what stated in article, 2, (UCP 600), the standard against which issuing banks discharge their obligation under the letter of credit towards trade partners is complying presentation as it has been defined in terms of "a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of the rules and international standard banking practice". It must be noted that the use of Letters of Credit is a common feature of import and export trade where buyers and sellers are able to enter into across the border contractual sale transactions. Letters of Credit are the most frequently used method of payment for international trade rather than the other modes of international payments. They are the mechanisms where a bank (Issuing Bank - IB) upon the request and instructions of his customer (the buyer or applicant of the L/C), makes payment to a third party (the seller or the beneficiary) on presentation of specified documents (Dolan, 2001). In a simplified manner “Letters of credit are issued by banks upon the instructions of the customer to meet the payment obligation of the customer” (Schwank, 1999). The two basic types of letters of credit are commercial and standby, (Rosener, 2005). The commercial letter of credit serves as a means of payment to a beneficiary when the underlying transaction is properly performed, and the standby letter of credit serves as a means of payment to the beneficiary when the underlying transaction is not properly performed. The commercial letter of credit is used in domestic and international sales of goods and services transactions in which the seller relies on the creditability of a bank (the “issuing bank”), and the ease by which payment is received, to provide payment for its goods rather than that of the purchaser. Simply stated, upon delivery of the goods, the issuing bank makes payment to the seller under the terms of the letter of credit, and the purchaser reimburses the issuing bank. (ibid) .The standby letter of credit is used in commercial transactions where the issuing bank is engaged to honor a demand for payment of a specified sum of money in accordance with the terms of the standby

letter of credit. In such transactions, typically the trigger for the payment demand relates to the occurrence of a default under the terms of the underlying transaction documents. (ibid). Documentary letters of credit are in essence a banker's assurance of payment upon presentation of specified documents, this is really what stated by, (Goode, 1995). The usual characteristic of banker's commercial credits is that the buyer arranges with his bank (issuing bank) to pay the seller. For example, a Sudanese importer of automobiles may enter into a contract to import automobiles from exporter in Japan. The Japanese exporter will normally require that the importer should arrange payment through a Bank in Japan (the confirming Bank). The Sudanese importer (buyer) is required to arrange with a Bank in Sudan (issuing bank) to effect payment by letter of credit through a bank in the seller's country (advising /confirming bank); according to article 2 - UCP600 "Confirming bank means the bank that adds its confirmation to a credit upon the issuing bank's authorization or request." So that the exporter is assured of payment under the sales contract. In practice, the payment is made on behalf of the buyer by a Bank and the Bank will be reimbursed by the buyer for whom it had acted. The international sale of goods is now usually arranged by confirmed letters of credit. The buyer (applicant) calls his banker for a letter of credit arrangement in favor of the seller (The beneficiary). This credit is a promise by the issuing bank to effect payment to the seller against complying shipping documents. Then the seller, when he tenders the documents, gets paid the contracted price. The conditions of the credit must be strictly fulfilled otherwise the seller would not be entitled to draw drafts on it, consequently in this respect this study also tries to investigate the area of imports where regulations and measures adopted by the Central Bank of Sudan in order to make it clear; whether or not the prevailing measures, procedures and policies concerning imports were empowered enough to satisfy the requirements of providing the necessary protection available under the letter of credit in the light of UCP 600 in terms of official documents to be tendered, (such as third party inspection certificate ),in order to prove that the imported goods had been inspected before and on shipment and found in conformity to the stated terms and conditions of the letter of credit. Thereby in this sense the letter of credit represents a written undertaking given by a bank on behalf of the customer to pay the exporter an amount of money (the price) within a specified time frame provided that the exporter complies strictly with its terms and conditions stated therein as referred to under the strict compliance principle 'which will be treated later in this chapter '.

That is to say Payment will depend fully on the exporter presenting documents that have to conform to the terms laid down in the letter of credit. The customer's aim is that he should get the goods that he has ordered, and the exporter's aim is to receive payment for them. This study strongly believes that, the related huge literature in this field of knowledge has indicated the rapidly increasing awareness of international trade transaction's ever changing complicated environment, this awareness covering the different aspects of international business, in the areas of sales contracts, documentation, anticipated levels of transaction risk on the part of trading partners with special emphasis on that risk faced by the importer due at least to the exporter's poor performance associated with the delivery and quality of transacted goods as well as the fraud risk in the light of the related legal landscape underlying those aspects. In spite of this growing awareness and increasing knowledge. International commercial transactions require efficient risk management, where transport of goods reaches over frontiers and delivery and payment are separated in time and space both seller and buyer have to face certain risks. The seller faces the risk of change in the buyer's financial standing after shipment of goods has taken place, which may lead to delay in receiving the purchase price or to non-payment. On the other hand, effecting payment to the seller upon shipment without being able to find out whether the goods are as per contract carries significant risk for the buyer. In order to eliminate or at least to minimize the risk of non-delivery and non-payment, as well as the difficulties arising from the conflicting legislations, currency and culture, merchants have created different methods and various instruments to finance international trade. Trading partners have to manage their conflicted interrelated interests across the banking channels and under the lights of the underlying governing rules and regulations.

One of the most widely used methods of payment is the letter of credit; it has been developed to reconcile the various economic interests of the involved parties. Generally speaking, a letter of credit is a safer way of obtaining payment than relying on an open account payment or collection terms; the essential point is that the payment undertaking is moved from the customer (importer) to a bank (the issuing bank), it is commonly thought that this represents a more secure source of payment.

Several studies have pointed out that; certain Payment for goods and the strict compliance of the contracted goods in an international sales transaction is significant, because the smoothness of payment as well as the merchandise strict compliance to some extent indicates the successfulness of the whole transaction. But payment and

delivery as experienced by cross borders' business community is the most difficult problem in an international sales transaction rather than that in a domestic sales transaction. It has been shown according to a recent study that international sales transaction has its own characteristics according to (Zhang, 2011), he stated that trade partners are usually situated in different countries, where different legal regimes are adopted. Usually, importers and exporters have different conflicted interests in international trade transactions. That is what referred to by, (Mian, 2010)," as when, an international sale transaction is considered, the seller does not want to be committed to give up control and/or possession over the goods unless he is certain to be paid on fulfilling his terms of the contract such as quality, quantity and the timing of delivery of the goods. Similarly, the buyer wants to pay the price only when he has take delivery of the contracted goods as agreed upon or at least when they are out of the possession and control of the seller", that means in other words, exporters would like to ensure that they will get payment for the shipped goods promptly once the goods are delivered, whereas the importers would like to make sure that exporters have shipped the goods as per the sale's contract before payment took place. So, the essential point is that; the letter of credit represents a conditional payment undertaking issued by a bank rather than that of the customer. Thereby the bank's independent obligation to pay most likely represents a better credit risk than the customer's obligation to pay, in a sense that the bank should have an interest in maintaining its good name for meeting its obligations. It is likely, therefore, to pay the beneficiary in accordance with the terms of the letter of credit. Therefore; what a letter of credit provides, in short, is risk mitigation facility, that is to say; it does not remove risk, but it offers a more secure means of payment, in most cases, rather than relying on the applicant's promise to pay. It does not guarantee that beneficiary will be paid. It is not a guarantee of payment. Receipt of the advice that a letter of credit has been issued in beneficiary's favor is merely a stage in the process, but not the time for heaving a sigh of relief that all is well.

In view of this conflict of interests the banker's documentary letters of credit comes into existence as an independent mechanism to provide this assurance of payment and to provide the necessary protection to the community (consumers) to ensure the required product strict compliance in terms of safety, fitness for the purpose and without manufacturing defects. So, in the light of this notion, as a responsible third party to international trade transaction, the commercial banking system filling a vital

gap that may result from lack of experience, geographic distance and market unfamiliarity. So, banks engagement comes to rescue the trading parties, to restore confidence and to promote international business satisfaction as well, and that is really what leads to the emergence of letters of credit as powerful secured method of payment and settlement in international trade finance and business.

### **2 .2.1: Fundamentals of Letters of Credit:**

In its guide to Letters of Credit TD Bank Financial Group (2008), Stated that “letters of credit have been a cornerstone of international trade dating back to the early 1900s”. It comes into existence once the seller and buyer agreed to use LC as a mechanism of payment in their underlying sale contract. And they continue to play a critical role in the international business community today.

Documentary credit (also letter of credit, or more formally documentary letter of credit), was created in trade and business several hundred years ago, and for centuries commercial letters of credit have been used by exporters and importers throughout the world to finance the cross borders exchange of goods .that is to say ; Commercial letters of credit are an important banking service designed to meet the financing and business needs of both buyers and sellers as well as to serve consumers interests in respect of the transacted goods quality. As a well known financial method of payment, L/C has a long history in international trade, and the payment through it is very widely accepted all over the world to the extents that , it have been described “as the lifeblood of international commerce” (D'Arcy, Murray & Cleave 2000). Recent estimates place letter of credit transactions in excess of USD 1 trillion per annum (Klein 2006), making this method of payment significant indeed. whatever it might be called, it is still a commercial document issued by a bank or financial institution in normal course of business which carries a payment and compliance guarantee obligation in case of adverse situation arises, and as described in The BExA Guide to Letters of Credit (Hill,2003) "it is still the staple of the export trade. In its absence it is difficult to imagine the world of international trade having developed as it has. It is the mechanism by which, to this day, enormous values of international trade are paid for. Over time it has developed from a simple payment mechanism to a basis for financing contracts and into an alternative to contract guarantees and bonds". So It is described as an important instrument to the extent that it facilitates and secures the transactions guaranteeing to the party in whose favor the LC is opened that if any adverse situation arises and its client failed to make the payment, then the issuing

bank will pay subject to the strict compliance of terms and conditions stated in the contract of sale, in this notion the documentary letter of credit, has come to alleviate many of the problems relating to payment and shipment quality as one of the most effective methods of international trade transaction settlement, in a sense that it takes care of the interests of both the seller and the buyer. L/C is issued in a way that the seller can obtain payment from a bank within his jurisdiction. The buyer applies for the L/C in such a manner where payment is promised on presentation of certain documents, the contents of which validate that the goods being delivered to the buyer are goods that comply with the terms and conditions of the underlying sales contract, so by specifying the documents that the exporter must tender, the importer retains some control over the goods. For example, inspection certificate can be requested to prove that the quality of the shipped goods is acceptable. The seller needs only to comply with the documentary conditions as specified in the credit, and is thereafter assured of payment.

Letters of credit exist in two basic forms: commercial (or documentary) Letters of credit and standby letters of credit (Dolan, 2007). According to Wood, (2008), the distinction between them is based primarily on the business purpose served and not on the applicable legal principles or form. He stated that the Commercial letters of credit, which in concept date back hundreds of years, are used primarily to ensure payment of the purchase price for goods moving in international trade — a buyer arranges a letter of credit in favor of a seller, who can draw on the letter of credit by delivering evidence that the goods have been shipped (such as a carrier bill of lading, an independent inspection report covering the goods, and evidence of insurance of the shipment). By contrast, standby letters of credit, which have come into use in the last forty years or so, are used primarily to provide third-party credit support for specific financial obligations of persons (such as the obligation of a contractor to make liquidated damage payments if a completed project underperforms). The term “credit” is used in this article to refer generically to any type of letter of credit, while commercial letters of credit are referred to as “commercial credits” or “trade credits” and standby letters of credit are referred to as “standbys” or “standby credits.”

The letter of credit is defined according to (Davies&Keams,1992), as a letter or other authenticated communication addressed by one bank (at the request of its customer) to another bank requesting the bank to whom it addressed to make payments to (or advance payment to) or accept or negotiate bills of a third person

(known as the beneficiary) either against stipulated documents or upon condition that all other terms and conditions of the credit are complied with or upon the performance (or non-performance in the case of stand –by credits) or any other act by the said beneficiary. While (Watson, 1990), stated that the documentary letter of credit can be simply defined as conditional guarantee of payment made by a bank to a named beneficiary, guaranteeing that payment will be made provided that the terms and conditions of the letter of credit are met. A letter of credit in this sense is considered to be abiding promise of payment made by a bank on behalf of a customer and for the benefit of a third party against strictly complying documents. The purpose of a letter of credit is to substantiate customer's commitment to a contract with a third party. Documentary letters of credit are designed to facilitate commercial transactions by giving some degree of comfort to buyers and sellers of goods, that shipment of the goods and payment of the price, respectively, will be forthcoming.

L/C is governed by Uniform Customs and Practice for Documentary Credits, 2007 (UCP 600), which is in its sixth revision, incorporated by the International Chamber of Commerce (ICC). UCP was first published in 1933. UCP is not a law rather than a set of rules and customs governing L/C transactions. UCP was produced to ensure that the rights of traders and banks under the L/C contract are governed by a single set of rules and customs, rather than through the various domestic laws which would otherwise apply. UCP is almost universally accepted and applied as a set of rules governing L/C transactions. Smith & Butler (2007). Argued that; “The UCP 600 has moved firmly away from revocable credits. There is no equivalent of the old Article 6 in UCP 500 which expressly gave buyers the choice of applying for a revocable credit. Article 2 now defines a credit as “any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honor or negotiate a complying presentation.” Moreover, Article 3, headed “Interpretations”, states that a credit is irrevocable even if there is no indication to that effect. Finally, Article 10 makes it clear that a credit cannot be cancelled or amended without the agreement of all parties thereto by stating that :“Except as otherwise provided by article 38,” a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary ”, therefore this study expect according to what stated in the above mentioned article that; "the banking practice in the case of any subsequent amendment to the letter of credit have to come in accordance with the central bank

measures and regulations those require the issuing bank's full adherence to the stated imports standards when giving their approval to the amendments required by applicant to the letter of credit , in order to exercise close control over the actions of importers and exporters . These three Articles further consolidate the preference of the UCP for irrevocable credits: what had been in the UCP 500 an expressed assumption has now become a tacit, and therefore stronger – default position favoring the interests of sellers as beneficiaries”. Since , the issuing bank elects to stand on the applicant's shoes and this act gives rise to the phenomenon known as 'credit substitution', in a sense that the applicant’s obligations to pay is substituted by the issuing bank independent definite obligation to pay, upon the strict compliance of the beneficiary to tender the required compliant documents, Moreover, Smith & Butler (2007), do believe that; “two points of caution need, however, to be made. First, while the UCP 600 clearly favor irrevocable over revocable credits, there is no similar assumption in favor of confirmed credits. From a seller’s perspective, of course, a confirmed credit brings the advantages of “a definite undertaking of the confirming bank, in addition to that of the issuing bank”: “confirmation” is thus defined in Article 2 without assuming that all credits will be confirmed where they do not say otherwise. Consequently, as before, if a seller wants to impose upon his buyer an obligation to organize the opening of a confirmed letter of credit, he must impose such an obligation in the sale contract (e.g. “Payment by irrevocable letter of credit to be confirmed by first class bank acceptable to the Sellers”) and, when he receives the letter of credit, to make sure that it has been confirmed by an acceptable confirming bank. Secondly, going back to revocable credits, although the UCP 600 have clearly, in the manner we have described, turn sharply in favor of irrevocable credits, the new Rules have not made it impossible for revocable credits to be opened. It must be remembered that Article 1 of the UCP 600 states that:" The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 ("UCP") are rules that apply to any documentary credit ("credit") (including, to the extent to which they may be applicable, any standby letter of credit) when the text of the credit expressly indicates that it is subject to these rules. They are binding on all parties thereto unless expressly modified or excluded by the credit". To the extent that according to the researcher's believes will allows parties to the credit (and the parties who first generate the credit are, of course, the buyer as applicant and the issuing bank) to modify or exclude any part of the Rules, those may considered not to serve

their interests. It is consequently still possible for a buyer to apply for the opening of a revocable credit and there is nothing in the UCP 600 which makes that credit inoperable. To the researcher's believes , It remains prudent, therefore, for sellers to continue to stipulate in their sale contracts that the buyer will open an irrevocable letter of credit – and, of course, to make sure when the credit arrives that it incorporates UCP 600 or expressly describes itself as irrevocable, as well as the issuing bank have to act according to the national interests and not accept any amendment that may serves the applicant's limited interests when discrepant documents are presented. So; in this respect the study attempt to investigate the role of the Central Bank of Sudan in this respect.

A letter of credit involves three parties: the applicant for the letter of credit (the bank's customer—typically the buyer of goods described in the letter of credit); UCP 600, article 2 defines an 'applicant' as 'the party on whose request the credit is issued .According to ( ifs School of Finance 2013), "it should be noted that although an applicant is responsible for completing an application form to issue, or to amend, a documentary credit, it is not a party to a documentary credit. The use of the term party in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit. It is to reflect the concept that 'applicant' can mean an entity other than the bank's actual customer". In this connection it should be noted that: The interaction between an applicant and its bank, prior to the issuance of a documentary credit, is outside the scope of UCP 600. Following the issuance of a documentary credit, an applicant may subsequently request an amendment to its terms and conditions or provide a waiver of discrepancies that have been identified by the issuing bank. An issuing bank is under no obligation to accept or take note of such request or waiver. The main responsibility of an applicant is to complete a documentary credit application form made available by its bank. Each bank will maintain its own style of application form, although the individual fields will usually follow the structure of a SWIFT MT700 message. The main purpose of a documentary credit is to pay for an applicant's purchase, not to police or administer the underlying sales contract or pro forma. The beneficiary of the letter of credits (the party to be paid—typically the seller of the goods); Beneficiary means the party in whose favor a credit is issued. (UCP 600 - Article 2, 2007). And the issuing bank, Issuing bank means the bank that issues a credit at the request of an applicant or on its own behalf. (UCP 600 - Article 2, 2007). The legal relationships concerns those

parties are governed and regulated by related laws and jurisdictions, but it is as stated and referred to in UCP 600 - Article 4, a." A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honor, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defenses by the applicant resulting from its relationships with the issuing bank or the beneficiary. A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank". This provision gives the credit its autonomous nature and this is one of its major attractions. Article 5, further confirms this position. It states that in credit operations, all parties' concerned, deal in documents and not in goods, services and or performances in which the documents may relate. Thus, by virtue of Articles 4 & 5, a binding contract, independent of the contract of sale, comes into being once the seller (beneficiary) is notified of the credit by either the issuing bank or the advising bank. The seller acts on the strength of such notification to either demand payment or to make arrangement for the financing of his transaction with another beneficiary. If there is no autonomy, it will be difficult to act on it since its realisation may be adversely affected by the contract of sale as illustrated by case. In *Hamzeh Malass & Sons vs. British Imex Industries Ltd.*, ( W.L.R 100, 1958) the plaintiffs contracted to buy some quantities of reinforced steel rods from the defendants. Payment was to be made by banker's credit payable in two instalments. The letters of credit were opened. Upon receipt of the 1<sup>st</sup> instalment, the plaintiffs sought an injunction to stop the defendants from collecting the second instalment on the ground that the goods delivered were defective. The action failed. The Court said that: "the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of goods which imposes upon the banker an absolute obligation to pay, irrespective of any dispute there may be between the parties as to whether the goods are up to contract or not." In *Bolivinter Oil S.A vs. Chased Manhattan Bank & ors* ( Lloyds Rep 251;1984) the Court of Appeal once again highlighted forcefully the autonomous nature of letters of credit when it stated: "the unique value of such a letter, bond or guarantee is that the beneficiary can be completely satisfied that whatever disputes may thereafter arise between him and the bank's customer in relation to the performance or indeed the

existence of the underlying contract, the bank is personally undertaking to pay him provided that the specified conditions are met.”

Note that a letter of credit is not a negotiable instrument like the bill of exchange because it is not transferable by mere delivery or by endorsement and delivery. This is because by its nature, the liability of the advising bank or the issuing bank, as the case may be, is in favour of the seller alone and is not freely transferable.

### **2.2.2: Contractual relationships in letter of credit transaction.**

In this chapter, contract theory is employed to explain different legal relationships in documentary letters of credit transactions, in order to define and explain the mutual obligations and rights of all parties thereto, as well as of their significant practical importance in determining the payment obligations of involving banks. According to (Bergami, 2007); who describes the letter of credit as " a very complex transaction, as its issue gives rise to a number of contracts that operate independently of the sales contract". Which are considered to be at least four interrelated contractual relationships which constitute four separate and distinct bilateral contracts. Later, (Fung, 2008); stated that "the above contracts are separate from and independent of each other in law. Accordingly, this demonstrates in one hand the privacy of contract doctrine which dictates that only persons who are parties to a contract are entitled to take action to enforce it. A person who stands to gain a benefit from the contract (a third party) is not entitled to take any enforcement action if he or she is denied the promised benefit (Schmittoff, 2002). For example: A promises B, for consideration moving from B, to pay C \$ 100. Here A and B are parties to the contract due to the privacy to the contract ‘A and B can sue each other if there is a breach by the other. C is not a party to the contract and cannot sue A, if A fails to pay C the sum of \$ 100’. That is to say the letter of credit is contract just between the Issuing Bank and the Beneficiary ,according to which the former has to effect payment against the latter complying presentation , and the Applicant has no power to order the Issuing Bank to stop payment ,even though he is the party on whose behave the letter of credit has been issued .Accordingly the Banking Practice has to not encourage any attempt by the Applicant in this respect, for instance :Issuing Banks , in the case of not complying presentation., usually act according to the Applicant instructions in respect of the tendered discrepant documents, and that is considered according to the privacy of the contract doctrine is not an appropriate practice. So that may leads to let the doors open to poor and low quality International Trade Transaction in terms of not

satisfactory below standard Imports and consequently squandering of the national scarce foreign currency. According to Schmittoff (2012), "it must be pointed out that while the parties are free to regulate their transactions as they see fit, this freedom is restrained once the transaction has effects outside the parties' contractual sphere, their micro-cosmos. In the "outside world" freedom of contract may be restrained by public policy considerations and/or relevant mandatory rules". So, the Banking Practice in this respect has to enhance and improve the efficiency of the International Trade Transaction in terms of quality and best resource utilization. According to Schmittoff (ibid), who stated that; when looking at the doctrine of consideration we observed the rule that consideration must move from a promisee, or, in other words, that only a person who has provided consideration can enforce a promise. In the above example one could have argued that C could not sue on the basis that C had not provided any consideration for A's promise to pay C the sum of \$ 100. This raises the question of whether there is a distinction between the privacy and consideration rules. This question has generated considerable discussion in academic circles and there is a division of opinion between those who say the rules are in fact one rule differently expressed and those who argue that the two rules are distinct. Anyhow; that is what referred to in Article 4(a) "A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. An issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like. " this is what many Issuing Banks do by reference to the description of goods in the documentary letter of credit, by stating that " the description of the goods as per proforma invoice, No.... Dated..... ". So, the aim of this section is to highlight the contractual relationships between the parties in an L/C operation and to illustrate the concepts and principles related to the letter of credit transaction.

Consequently, the undertaking of a bank to honour, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defenses by the applicant resulting from its relationships with the issuing bank or the beneficiary. A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank. "And on the other hand, the L/C autonomy principle". Articles 4 and 5 of UCP 600 expressly state the well-established principle that a credit by its nature is a separate transaction from the sale or other

contract on which it may be based, and banks deal with documents and not with goods, services or performance to which the documents may relate. This means, if any dispute existed between the seller and the buyer, it would not direct effect to the commercial credit transaction and the Issuing Bank as well as the Confirming Bank if any obligation to honour complying presentation is in no way effected by those disputes. So, the aim of this section is to highlight the contractual relationships between the parties in an L/C operation and to illustrate the concepts and principles related to the letter of credit transaction.

#### **2.2.2.1: The Underlying Sales Contract**

According to the principle of freedom of contract, freely negotiated contracts form the core of all international economic relations. (Viejobueno 1993), thereby he considered that: " Contract law fosters voluntary exchange by enforcing mutually understood agreements and imposing sanctions on the party who fails to perform". Apart from regulating social behavior, it is also said that the law promotes the efficient allocation of resources. Many of the doctrines and institutions of the law can be explained as efforts to promote such an allocation. According to (Posner, 2003) Economic efficiency requires a choice of "entitlements" or interests "which would lead to an allocation of resources that could not be improved on in the sense that a further change would not so improve the condition of those who gained by it that they could compensate those who lost from it and still be better off than before." Efficiency therefore entails the allocation of resources in such a way that value is maximized.

In terms of the economic analysis of the law theory, Posner,( 2003) believed that "contracting parties are considered to be "utility" or "value maximizers"; that is to say, they are assumed to act rationally with the view of advancing their economic interests , and thereby Contracts which maximize value are efficient transactions. If transaction costs are low, the transaction is deemed to be economically efficient." So, Posner, do believe that:" by minimizing transaction costs, efficient legal rules will maximize value and allocate resources efficiently. Low transaction costs will directly promote voluntary exchange".

According to Posner, also, "the law of contract has five economic functions. Firstly, to prevent opportunism; in terms of 'the law may impose costs for opportunistic behavior where a party contemplates monopolistic behavior. Secondly, to interpolate

efficient terms; thirdly, to prevent avoidable mistakes; fourthly, to allocate risk to the superior risk bearer; and fifthly, to reduce the costs of resolving contract disputes".

When, as in the case of international sales, Posner argued that:"the exchange of goods for money does not take place simultaneously, risks increase and the contract's ability to maximize value decreases, because non-instantaneous or extended transactions create uncertainty and the risk that the costs and benefits of the exchange will turn out to be different from what the parties expected. International sales law therefore has to be directed towards facilitating a contract that will maximize value and minimize transaction costs.

Due to the highly competitive nature of international trade and the high financial stakes involved, it is important that the legal implications and consequences of such transactions are clear and free from uncertainty. International trade is an economic endeavor which with a view to being profitable, requires that transactions takes Place in the shortest possible time, at the least expense and with the elimination of misunderstanding, uncertainty and legal disputes to greatest possible extent. According to (Eiselen, 1999).International sales law must therefore provide a high level of certainty and predictability to allow parties to structure their business transactions properly, Parties should not only be certain that their agreement will be legally binding, but also that they understand how those agreements will be interpreted if challenged. According to (Walt, 1999), a legal rule should be able to generate clarity; not only for the parties to the contract but also as regards a judge or arbitrator who has to apply the rule to settle a dispute, as well as third parties like commercial banks to the extent to which they involved according to this study stand point of view. If a legal rule can minimize the risks of misunderstanding and uncertainty and provide predictability on the outcome of a dispute, it lowers transaction costs and improves the overall efficiency of the International Trade transaction.

Like most commercial law statutes, The United Kingdom Sale of Goods Act 1979, whose ancestor the Sale of Goods Act, 1893 is the father of sale of goods acts throughout the English-speaking world, defines contract of sale at sect. 2(1) as follows: "A contract of sale of goods is a contract by which the seller transfers or agrees to transfer the property in goods to the buyer for a money consideration, called the price."

A distinction is then made between a “sale” and “an agreement to sell.” The Sale of Goods Act 1979 reads: 2(4) “Where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale. 2(5) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell. 2(6) an agreement to sell becomes a sale when the time elapses or the conditions are fulfilled subject to which the property in the goods is to be transferred.” This means that in addition to the ordinary elements of a contract, two other element, goods and money consideration, must also be present in a contract of sale of goods. The above definition also indicates two situations namely. a) A contract of sale, in which the property in the goods is transferred from the seller to the buyer. b) An agreement to sell, in which the transfer of the property takes place ‘in future’ (at a future time), or a fulfillment of certain conditions. A contract for the sale of goods yet to be manufactured is an agreement to sell because the property in the goods cannot pass until they are manufactured and ascertained. According to Subsections (4) and (5) give different names to two transactions: (4) where under a contract of sale the property in the goods is transferred from the seller to the buyer the contract is called a sale. (5) Where under a contract of sale the transfer of the property in the goods is to take place at a future time or subject to some condition later to be fulfilled the contract is called an agreement to sell, (Atiyah, 1980). A contract of sale is not only the contract whereby goods are transferred for a price but may also be the agreement to transfer goods for a price at some later time or under some particular term or condition. Thus both “sale” and the “agreement to sell” are contracts of sale. The distinction between them however is important because in “sale”, title to the goods and risk in the goods can pass upon making the contract, while in the “agreement to sell”, title and risk pass at some later time’ and this will be tackled later when the issue discussed under Incoterms 2010.

### **2.2.2. 2: The Basic Principle**

It is a basic principle of the law of sale that the terms of the contract, including the moment when title and risk pass from the seller to the buyer, depend first and foremost on the intention of the parties found in the agreement itself. Consequently, it is only when the agreement is silent that the applicable law of sale supplies the missing terms.

## **1. Intention**

To create a contract, the parties to it must intend their promises to be contractually binding. Evidence of intention is present in the words and actions of a person. A contract that fails for lack of intention to create legal relations will arise most often in the context of a familial or friendly relationship, where one might enter into an agreement or an arrangement without intending it to be subject to judicial enforcement.

## **2. Capacity**

Only people of suitable age, intelligence, and ability can enter an enforceable contract. This element is particularly important in transactions conducted by persons less than 19 years of age.

## **3. Agreement**

An agreement requires both an offer and acceptance of that offer. An offer must communicate the material terms of the agreement: price, quantity, quality, and subject matter. At common law, advertising is usually classified as only an invitation to consumers to make an offer. However, this position has been altered somewhat by statute, most notably by the Business Practices and Consumer Protection Act, (S.B.C. 2004) Acceptance is the communication of agreement to all of the essential terms of an offer. A response to an offer that materially alters the terms is not acceptance. Rather, it is considered a counter-offer. Once an offer has been accepted, for the most part the contract cannot be altered or cancelled without mutual agreement.

## **4. Consideration**

The law of contracts enforces exchanges, not gifts. Consideration is what the parties agree to exchange. There must be consideration given by both contracting parties. Almost anything that provides the other party with a benefit can be good consideration, including a performance of a task, or even a promise not to do something. Consumer transactions usually satisfy these requirements, with money being consideration for goods or services. If a client's relationship is not contractual, consider tort law or other remedies. If the other party has unjustly received a benefit from the client in the absence of a contract, the law of restitution may apply.

### **2.2.2. 3: Sale and other Transactions.**

Sale of Goods is distinguishable from other commercial transactions but similar to them in context. Some of these transactions are:

1. Sale and Exchange

The consideration required under section 1(1) of the Act must be money whereas an exchange involves a transfer of goods for other goods. A contract of exchange simply means the giving of goods to the person in exchange for the other persons goods-barter. In other words, money, which is a prerequisite for a contract of sale, is not involved in a contract of exchange. When there is an exchange the property in the goods passes.

## **2. Sale and Bailment**

A bailment is a transaction under which goods are delivered by one party (the bailor) to another (the bailee), on certain specified terms, which generally provide that the bailee is to have possession of the goods and subsequently redeliver them to the bailor in accordance with his instruction. The property in the goods is not intended to and does not pass on delivery, and in fact remains with the bailor, though it may sometimes be the intention of the parties that it should pass in due course, as in the case of ordinary hire purchase contract. In sale, on the other hand, there is usually an indication that the property in the goods would pass to the other party in the transaction. In other words in a contract of sale for bailment there is no transfer of property in the goods from the bailor to the bailee, whereas in the case of sale, the property in the goods should be transferred from the seller to the buyer.

## **3. Sale and Hire Purchase:**

Generally, contracts of hire purchase resemble contract of sale very closely, and indeed in practically all cases of hire-purchase, the ultimate sale of the goods is the real object of the transaction. The distinction between them is very clear and extremely important at this initial stage. A contract of sale involves two parties, the buyer and the seller, whereas a hire purchase transaction invariably involves three parties to it, namely, the seller, of the goods who sells them to finance a company, which in turn leaves the goods on hire purchase terms to the hirer (who may not become the buyer). Under a hire purchase transaction, (as it shall be seen later) the hirer,(who may or may not become the buyer) has possession of the goods and is entitled to their use, although he is not the owner.

## **4. Sale and Gift:**

A gift is an immediate, voluntary and gratuitous transfer of any property from one person to another. In other words, it is a transfer of property without any consideration. It is, not binding. Sometimes, problems arise with regard to transactions in which what is regarded as “free” gift is offered as a condition of

entering into some other transaction. The creation of a contract for the sale of goods is a matter governed by the general principles of contract as they exist either under common law or as modified by statutory provisions.

It follows therefore, that a proper grounding on the basic principles of contract is a condition precedent to the appreciation of the principles governing the creation of the contract of sale of goods.

#### **2.2.2.4: International Sales Contract:**

The most basic agreement in international trade is the sales contract concluded between a seller and a buyer. All other agreements and procedures commonly used in international trade result from the performance of this contract or agreement. Accordingly the two essential terms of a sales contract are the seller's undertaking to provide the goods to a buyer in the manner agreed to and that buyer's undertaking to pay the agreed price in return upon satisfying the complying presentation requirements, this essential characteristic and its consequences will be covered in further detail throughout this chapter. In the context of an export sale, the first of these usually involves the conclusion of a contract with a carrier to transport the goods from the country of the seller to that of the buyer. The buyer's undertaking makes it necessary for it to arrange payment through the banking system, modes of payment will be discussed later throughout this study.

In practice, a sales contract will contain more detail than the quantity of goods and the sale price. It will usually also cover related items such as the time period for delivery, the method of payment and the manner in which the goods are to be delivered, usually by reference to a trade terms (or an ICC Incoterms). Some contracts will also specify which country's law will apply and which court or arbitration system has jurisdiction to hear any claims in the event of a dispute. In most cases, sales contracts are governed, at least in part, by the laws of the country of one of the parties involved. The seller and buyer may themselves agree which law is to apply by including a specific provision in the sales contract. Accordingly, if there is no such agreement or provision then a judge or arbitrator, in the case of a dispute, may first have to determine the governing law. In these circumstances, a judge or arbitrator will often decide to apply the law of the country most connected with the contract, which may be the country to which the goods are being delivered. The use of trade terms (Incoterms, determines the point at which delivery is deemed to have occurred. For example, a seller fulfils its delivery obligation when the goods are loaded on board a

ship at the named port of loading under both CIF (cost, insurance and freight) and FOB (free on board) Incoterms (ibid).

Rather than use a sales contract, a seller will often send the buyer a pro forma invoice containing the details of the goods and their unit prices, before the transaction is concluded. Similarly, a buyer may send the seller a purchase order confirming its commitment to purchase certain goods at an agreed price and on specific terms (ifs, 2013).

As required, under the general law governing capacity to enter into a valid contract, both parties to a Sale of Goods contract must have the required capacity to enter into the contract, there must be an intention by the parties to a contract for the sale of goods to create a valid and binding contract which affects their legal relationship. Therefore, an agreement that is binding in honour only will not be a contract of sale of goods like every other contract. A contract of sale of goods is made by the express or implied acceptance by one party of an express or implied offer made to him by the other party. The contractual rules as to offer and acceptance, invitation to treat, correspondence of offer and acceptance, the time an acceptance takes effect, mode of communication of offer, and acceptance are applicable to contracts of sale of goods. The principles governing the doctrine of consideration also apply to contract of sale of goods, except that the consideration for the contract of sale of goods must have some money contents which is called the price. It should be noted that, where goods are conveyed without consideration, it amounts to a gift. Such transfer of goods will however be enforceable if the agreement is under seal.

The sales contract in international trade is a written agreement covering the terms and conditions by which the exporter will tender the required documents to the importer under the letter of credit. The sale contract by so doing creates the business relationship between the seller and the buyer, and specifies that payment is subject to a letter of credit. Because the L/C is an instrument of payment issued by the buyer's bank (the issuing bank), the buyer (applicant) will need to request his bank to set up this payment arrangement in favor of the seller (beneficiary) and this gives rise to the next contract (the letter of credit). As in any commercial transaction, the sales contract, to which there is mutual agreement between the importer and the exporter, details the terms of the sale of goods. Scheller (2008) indicates that how a thorough and detailed sales contract can minimize the fears which frequently arise due to distance and lack of familiarity between the exporter and the importer. From the

exporter's viewpoint, he stated that: the contract should stipulate the manner and time frame in which he will be paid for the merchandise. The importer, on the other hand, seeks an assurance that he will receive merchandise of the quantity and quality agreed to, and that he will be responsible for effecting payment only upon the exporter's fulfillment of the stated obligations. According to the (Sale of Goods Act, 1895) where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description stated in the letter of credit; furthermore, where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality, Provided that if the buyer has examined the goods, there shall be no implied condition as regards defects which such examination ought to have revealed; the situation that gives rise to doctrine of strict compliance by which the beneficiary have to strictly comply with the terms and conditions of the letter of credit and present documents satisfying the complying presentation requirements that referred to in UCP600, and that is really, what this study is trying to explain and highlights in order to show the greater protection that could be received by both exporter and importer by entering into a well designed sales contract which clearly states the amount and currency of payment, , shipping arrangements, insurance protection, terms of delivery, necessary documentation and stating the extent to which the documentary letter of credit under UCP 600 ,could be utilized as method of payment as well as a risk mitigation device . When a price is agreed upon, both parties to a transaction should understand what the price includes. In addition to the cost of the goods, there should be agreement on who will be responsible for the shipping and insurance costs, and contracted under the appropriate Incoterms (the issue will be discussed later through this chapter).

The underlying sale contract creates the business relationship between the seller and the buyer, and this gives rise to the next contract. , so; it must determine and state the credit requirements in details such as the type of the credit, whether it is irrevocable, confirmed or unconfirmed. In addition, according to the principle of the autonomous, those contracts, which have been made under the commercial credit transaction, are independent from underlying contract and also separate transaction of each other. This means, if any dispute existed between the seller and the buyer, it would not directly affect the commercial credit transaction.

Basically, the contract between the buyer and seller is the fundamental contract from which all contracts stem as referred to above. The seller's right to request a letter of credit, and the nature of the credit to which he is entitled, depends on the terms of the contract of sale. On the other hand, the buyer must ensure that the letter of credit issued to the seller is that agreed by the contract. Execution of this obligation is a condition precedent to the seller's duty to perform his delivery obligations. For example if the letter of credit stipulates a bill of lading as one of the shipping documents when the contract permits seller to tender a delivery order, the letter of credit will be defective and can be rejected by the seller ( Goode,2007). If a nonconforming letter of credit is tendered and rejected, the buyer may cure the defect by secure the issue of a new and conformed letter of credit if still within the time limit (validity). However, if he fails to do so or is out of time (expired), he commits a repudiatory breach, which entitles the seller to treat the contract as discharged and to recover damages from him. It may also be noted that if the seller elects to waive the breach and accept a nonconforming letter of credit, he loses his right to complain of breach. In this regard,( Amaefule,2011) argued that; no question of damages as for breach of warranty arises; by waiving the breach, the seller assents to the letter of credit in the form in which it is issued. It should be noted that a term in the contract of sale providing for payment by letters of credit is for the interest of both parties. Hence, the seller is not ordinarily entitled to demand payment in any other way nor to sue for the price during the pendency of the credit or complain of non-payment by the buyer during this period. The letter of credit, like the bill of exchange, is considered to be taken as conditional payment unless otherwise agreed, and during the lifetime of the credit, the seller's right to sue for the price is suspended. If the credit is honored, that constitutes payment under the contract of sale. If it is dishonored, the seller's right to sue the buyer for the price or for damages revives. (Ellinger, 1977). In the same level, the buyer is generally not entitled to call for the tender of documents in a manner inconsistent with the letter of credit arrangements prescribed by the contract of sale. So, if pursuant to that contract (or a later arrangement or understanding by the parties) the letter of credit issued to the seller calls for the tender of document to the advising bank, the seller is not obliged to tender the documents directly to the buyer or to the issuing bank or to anyone other than the advising bank (Goode, 2004).As to the time of the opening of the credit, subject to any express provisions in the contract which gives the parties the liberty to contract according to their own terms, the letter

of credit has to be opened within reasonable time, according to (Goode, 2004), a reasonable time calculated back from the date of the shipment, not calculated forward from the date of conclusion of the contract, taking the first date of shipment as the starting point, the buyer has, it is thought, to open the credit a sufficient time in advance of that event to enable the seller to know before he sends the goods to the docks that his payment will be secured by the credit for which it is stipulated. The duration of credit or the date of expiration is a very vital statement in the letter of credit. In the absence of such a statement, the implication is merely that the credit continues for a reasonable time, a somewhat unclear concept that leaves the seller in a state of uncertainty as to whether he is covered for the full shipment period and as to the latest date by which a tender of document is acceptable. The UCP 600 re-emphasized the crucial nature of this statement in letter of credit. Article 6(d) (i) provides: 'A credit must state an expiry date for presentation. An expiry date stated for honor or negotiation will be deemed to be an expiry date for presentation' The UCP further contains detailed provisions for the ascertainment of the expiry date and its extension should it fall on a day when the bank is closed (Art.29), (a) or in case of interruption of the bank's business. (UCP 600, Art.36,)

Finally, in terms of rejection of the goods, the acceptance of documents under a letter of credit does not preclude the buyer from subsequently rejecting the goods themselves if on arrival they are found not to conform to the contract of sale. Here, the buyer's right to reject defective or nonconforming goods is not affected by the fact that the defect or nonconformity was apparent on the face of the documents accepted by the issuing bank. One rational explanation for this is that in accepting the documents, the paying or confirming bank acts as principal, not as the buyer's agent. Hence, it would seem that the buyer is entitled to reject even for defect apparent on the face of the documents, which he would not be entitled to do if the documents had been accepted by him or his agent. The nature of the buyer's obligation in relation to his duty to open the Credit as condition precedent. A letter of credit arrangement occurs when the buyer and seller agree in the sale contract that the payment should be effected by establishing a letter of credit. According to (Benjamin, 1997), "by incorporating this particular clause, the buyer is under a duty to arrange for the opening of a credit in the seller's favor. This obligation is not necessarily a condition precedent to the performance of all the seller's duties, but it is often a condition precedent to his duty to deliver the goods". For instance, according to (Dodds and

Jones Ltd, 1952) in a case where a sale of copra was concerned, there was a requirement for a provisional invoice, which was a condition precedent to the buyers' obligation of opening the credit. Upon the seller's failure to provide such a provisional invoice, it was held that "The buyers' obligation to provide a letter of credit did not arise until a provisional invoice was tendered by sellers and proper notice given by him as to the form of credit he required". Therefore, it was evident from the judgment that as both the seller and the buyer had initially agreed, under the sale contract, that the seller would provide the buyer with a provisional invoice, and then it followed that this would be a condition precedent to the buyer's obligation to secure the opening of a confirmed credit. It is usual, within the well-established principle of letters of credit, that it is the duty of the buyer to open a letter of credit, as required by the sale contract. If the contract terms are themselves incomplete, and irresolvable by reference to custom, the supposed duty to cooperate would be no more than an agreement to agree, which is not a workable contractual term. Moreover, "the scope of the proposed duty in any given case would be impossible to define with the degree of accuracy necessary for a workable term. In the case of *Giddens v. Anglo-African Produce Ltd.*, an action was brought by the purchasers against the sellers for damages for non-fulfillment of the contracts of sale. The sellers claimed that the credit required by the sales contract had not been opened. Thus, the condition precedent for their performance had not arisen. Bailhache J., in delivering judgment for the sellers said: "Here is a contract which calls for an established credit and in purported satisfaction of what this contract calls for what they get is this: 'Negotiations of drafts under these credits are subject to the bank's convenience. All drafts hereunder are negotiated with recourse against yourselves.' How that can be called an established credit in any sense of the word absolutely passes my comprehension", (Ibid). That is to say upon failure of the buyers to open the credit in accordance with the requirements of sales contract, the seller were not obliged to perform at all. So, the legal position of such a stipulation "that a credit should be provided" Sometimes it is a condition precedent to the formation of a contract, that is, it is a condition which must be fulfilled before any contract is concluded at all. In those cases the stipulation 'subject to the opening of a credit' is rather like a stipulation 'subject to contract'. If no credit is provided, there is no contract between the parties. In other cases a contract is concluded and the stipulation for a credit is a condition which is an essential term of the contract. In these cases the provision of the credit is a condition precedent, not to the formation of

the contract, but to the obligation of the seller to deliver the goods. If the buyer fails to provide the credit, the seller can treat himself as discharged from any further performance of the contract and can sue the buyer for damages for not providing the credit. The sale contract imposes a duty on the buyer to open a documentary credit in the seller's favor, and as a result the letter of credit contract is established by the virtue of the sales agreement between buyer and seller. Although the letter of credit contract, is a result of the contract between the buyer and seller (the sale contract) they are totally independent and entirely considered as a matter between the beneficiary and the issuing bank as stated under UCP 600 - Article 4, ( a). "Credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honor, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defenses by the applicant resulting from its relationships with the issuing bank or the beneficiary. A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank". That is to say; the letter of credit is considered and treated as completely separated contract from the underlying sale contract. Whereby the issuing bank is under obligation to honor and negotiate only against complying documents tendered by the beneficiary, and this will be discussed later, according to the independence principle of the letter of credit, by so doing ,it is clear enough that the letter of credit comes in to existence just to provide security to the beneficiary to replace that which was represented by the shipping documents, which he gives up in exchange for the credit, and that is really what referred to under UCP 600 - Article 5 .that " Banks deal with documents and not with goods, services or performance to which the documents may relate", in other words, without regard to beneficiary's performance under the sale contract. Although the letter of credit under this situation provides the beneficiary with necessary assurance and protection against the applicant potential default risk, this will definitely leads to what considered by this study, as a situation where increases the perceived levels of beneficiary's bad performance or nonperformance risk ,which may be faced by the importer (The applicant) by the virtue of independence principle, and , as what will be discussed later , and to what extent that the issuing bank is under a duty to provide the necessary protection to the letter of credit's applicant under what stated by the strict compliance principle.

### **2.2.2.5: Obligations under the sale contract**

Under s.27 of the English Sale of Goods Act 1979, "It is the duty of the seller to, deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale". In this respect Atiyah (2012), argued that: "the duty of the seller to deliver is a somewhat ambiguous concept, for (leaving aside the fact that it is not generally the duty of the seller to 'deliver' them in the popular sense of dispatching the goods to the buyer, but the duty of the buyer to take them) it covers three entirely different possibilities.

In the first place, there may be a duty to deliver to the buyer goods in which the property has already passed. Here the duty is specific and, subject to the question of payment, it is a duty which will be broken should the seller fail to deliver those particular goods. If the property has already passed, there can be no question of the seller substituting some other goods without the consent of the buyer. Here the seller must deliver those particular goods and no others will do.

In the second place, the seller's duty to deliver may be a duty to procure and supply to the buyer goods in accordance with the contract, but without any particular goods being designated to which the duty of the delivery attaches. Thus a contract for the sale of purely generic goods does in one sense put upon the seller the duty of delivering 'the goods', but there is no duty to deliver any particular lot of goods. Until such a duty arises, therefore, the seller is perfectly free to deliver any particular quantity of goods answering the contract description. If, for example, the seller should procure goods answering the contract description, intending to use those in performance of the contract, but later changes his mind and sells them to someone else, the buyer cannot complain that the seller has broken his duty to deliver. Nor can the buyer obtain a decree of specific performance in such a case.

But there is a third possibility mid-way between the first two. It may be that the seller is under a personal duty to deliver particular lot goods although the property has not yet passed to the buyer. This is always so in the case of an agreement to sell specific goods, and clearly the seller cannot resell those goods without being guilty of breach of contract.

It should next be noted the legal meaning of the 'delivery' is very different from the popular meaning. In law, delivery means the 'voluntary transfer of possession', which is a different thing from the dispatch of the goods. There is, indeed, no general rule requiring the seller to dispatch the goods to the buyer, under s.29; whether it is for the

buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties.

Apart from any such contract, express or implied, the place of delivery is the seller's place of business, if he has one, and if not, his residence; except that, if the contract is for the sale of specific goods, which to the knowledge of the parties when the contract is made are in some other place, then that place is the place of delivery.

### **1. Duty to deliver the right Quality:**

According to Atiyah (2012), the implied terms as to quality and fitness in ss.13-15 of the 1893 English sale of Goods Act represented an important step in the abandonment of the original common law rule of caveat emptor. Furthermore, he stated that; the three primary terms laid down in the sale of goods Act 1979 now appear in s.13, s.14(2) and s.14(3), and their combined effect is to give buyers a substantial degree of protection against the risk of the goods proving to have defects of quality or fitness for purpose. Indeed, it is now unrealistic to treat the basic principle of the law as caveat emptor rather than caveat venditor. Now let us precisely examine the particular provisions which are governing the implied terms regarding the description, quality and fitness for the purpose.

Section 13 of sale of goods Act stipulates a condition that in a sale by description the goods sold must correspond with the description. Section 14(2) sets out that it is a condition that the goods sold under a contract of sale must be of satisfactory quality. It is provided under section 14(2B) of sale of goods Act that one of the criteria satisfying the necessary quality under the Act is that the goods must be fit for the purpose for which such goods are generally bought.

### **2. Duty to deliver goods corresponds with the description:**

The seller is under a duty to supply goods according to the agreed description as stated in the sale contract. According to Article (58) ISBP 745; the description of the goods, services or performance in the invoice must correspond with the description in the credit. There is no requirement for a mirror image. For example, details of the goods may be stated in a number of areas within the invoice which, when collated together, represents a description of the goods corresponding to that in the credit, also Article (59), states that; The description of goods, services or performance in an invoice must reflect what has actually been shipped or provided. For example, where there are two types of goods shown in the credit, such as 10 trucks and 5 tractors, an

invoice that reflects only shipment of 4 trucks would be acceptable provided the credit does not prohibit partial shipment. An invoice showing the entire goods description as stated in the credit, then stating what has actually been shipped is also acceptable. In *Varley v Whipp* the court held that when the buyer buys the goods only on description without physically seeing them, it constitutes a sale by description. In this case the seller had advertised a reaping machine a year ago describing it as a new one and buyer bought it unseen. On the delivery, the buyer discovered it to be an old machine and sought to reject it. The court concluded that it was a sale by description and the goods sold was not corresponding with its description which entitled the buyer to reject the goods (Atiyah, 2012). Accordingly, and based on this verdict the issuing bank in the case of discrepant documents tendered under the letter of credit it is an appropriate course of action and good practice if the issuing bank rejecting the discrepant documents rather than waiving them to the applicant to decide on them .

In terms of inspected goods“ the court in the case of *Beale v Taylor* as cited in Atiyah, the court observed the circumstances where the buyer had examined the vehicle before purchasing it but could not identify the defects. The seller in the advertisement had described the car as “1961, Herald Convertible” but later it was identified that the car had been joint together in two halves one half was the described model and the other half was an earlier version. It was held that even though the buyer had examined the car before purchase it was a sale by description.

As set out under section 13(3) of the sale of goods Act 1979 if the buyer selected the goods from a display of goods it will not be a bar to consider such a sale as of description. Thus, a usual sales transaction in a shop or supermarket can be regarded as sale by description. This was observed by Wright LJ in the case of *Grant v Australian Knitting Mills* who held that “there is a sale by description even though the buyer is buying something displayed before him on the counter: a thing is sold by description, though it is specific, so long as it is sold not merely as specific thing, but as a thing corresponding to a description ,e.g. woolen undergarments, a hot-water bottle, a second- hand reaping machine, to select a few oblivious illustrations,(ibid).

### **3. Duty to supply goods of satisfactory quality:**

The seller is under a duty to supply goods of satisfactory quality “The Sale and Supply of Goods Act 1994 implemented recommendations in the Law Commission Final Report, Sale and Supply of Goods (1987). Subsections 14(2) to (2C) replaced the previous subsection (2) thereby substituting “satisfactory quality” for the old

expression “merchantable quality” and introducing the revised definition in subsections 14(2A) and 14 (2B). This refers to the goods’ fitness for the purposes for which such goods is commonly supplied.” In the case of *Rogers's v Parish (Scarborough) Ltd*, as cited in Atiyah sale of goods, another panel of the court of appeal adopted a completely deferent approach to the question. The court here insisted that the then fairly recent definition (complete as at page 150 Atiyah)

So, in order to assure the required qualities that satisfy the accepted standards imports regulations have to obligate applicants as well as issuing bank to not start banking procedures unless Certificate of Quality and Certificate of Inspection are required as letter of credit condition. Then by so doing the central bank would improve the banking practice by adopting such measures that facilitate imports quality control as one of his moral commitments.

Furthermore; in this respect, the United Nations Convention on Contracts for the International Sale of Goods, it clearly stated the mutual obligations of contacting parties; as follows:

### **2.2.3: United Nations Convention on Contracts for the International Sale of Goods (CISG):**

There have been a number of attempts to introduce an international law for export sales. The latest is the 1980 United Nations Convention on Contracts for the International Sale of Goods (hereinafter referred to as ‘CISG’ or ‘Convention’). It provides a standardized set of legal rules for import and export transactions. As of March 2013, 79 countries had ratified the Convention.

The United Nations Convention on Contracts for the International Sale of Goods provides a uniform text of law for international sales of goods. The Convention was prepared by the United Nations Commission on International Trade Law (UNCITRAL, 1980). Bearing in mind the broad objectives in the resolutions adopted by the sixth special session of the General Assembly of the United Nations on the establishment of a New International Economic Order, Considering that the development of international trade on the basis of equality and mutual benefit is an important element in promoting friendly relations among States, Being of the opinion that the adoption of uniform rules which govern contracts for the international sale of goods and take into account the different social, economic and legal systems would contribute to the removal of legal barriers in international trade and promote the development of international trade,([www.uncitral.org](http://www.uncitral.org)) .

With regards to the Sphere of application Article 1, stated that: The Convention applies to contracts of sale of goods between parties whose places of business are in different States and either both of those States are Contracting States or the rules of private international law lead to the law of a Contracting State. A few States have availed themselves of the authorization in article 95 to declare that they would apply the Convention only in the former and not in the latter of these two situations. As the Convention becomes more widely adopted, the practical significance of such a declaration will diminish. Finally, the Convention may also apply as the law applicable to the contract if so chosen by the parties. In that case, the operation of the Convention will be subject to any limits on contractual stipulations set by the otherwise applicable law. Furthermore , Article 3 excluded the under mentioned contracts from the application of this convention, that is to say; the Convention contains a list of types of sales that are excluded from the Convention, either because of the purpose of the sale (goods bought for personal, family or household use), the nature of the sale (sale by auction, on execution or otherwise by law) or the nature of the goods (stocks, shares, investment securities, negotiable instruments, money, ships, vessels, hovercraft, aircraft or electricity). In many States some or all of such sales are governed by special rules reflecting their special nature. Article 4 stated that this convention governs only the formation of the contract of sale and the rights and obligations of the seller and the buyer arising from such a contract. In particular, except as otherwise expressly provided in this Convention. On the other hand , Article 6 refers to the basic principle of contractual freedom in the international sale of goods is recognized by the provision that permits the parties to exclude the application of this Convention or derogate from or vary the effect of any of its provisions. This exclusion will occur, for example, if parties choose the law of a non-contracting State or the substantive domestic law of a contracting State as the law applicable to the contract. Derogation from the Convention will occur whenever a provision in the contract provides a different rule from that found in the Convention. Furthermore; This Convention for the unification of the law governing the international sale of goods will better fulfill its purpose if it is interpreted in a consistent manner in all legal systems. Great care was taken in its preparation to make it as clear and easy to understand as possible. Nevertheless, disputes will arise as to its meaning and application. When this occurs, all parties, including domestic courts and arbitral tribunals, are admonished to observe its international character and to promote

uniformity in its application and the observance of good faith in international trade. In particular, when a question concerning a matter governed by this Convention is not expressly settled in it, the question is to be settled in conformity with the general principles on which the Convention is based. Only in the absence of such principles should the matter be settled in conformity with the law applicable by virtue of the rules of private international law.

### **2.2.3.1: Obligations under United Nations Convention on Sale Contracts**

#### **1. Obligations of the seller:**

The general obligations of the seller are to deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to when, where and how the seller must perform these obligations. The Convention provides a number of rules that implement the seller's obligations in respect of the quality of the goods. In general, the seller must deliver goods that are of the quantity; quality and description required by the contract and that are contained or packaged in the manner required by the contract. One set of rules of particular importance in international sales of goods involves the seller's obligation to deliver goods that are free from any right or claim of a third party, including rights based on industrial property or other intellectual property. In connection with the seller's obligations in regard to the quality of the goods, the Convention contains provisions on the buyer's obligation to inspect the goods. He must give notice of any lack of conformity with the contract within a reasonable time after he has discovered it or ought to have discovered it and at the latest two years from the date on which the goods were actually handed over to the buyer, unless this time limit is inconsistent with a contractual period of guarantee.

#### **2. Obligations of the buyer under the sale contract:**

The general obligations of the buyer are to pay the price for the goods and take delivery of them as required by the contract and the Convention. The Convention provides supplementary rules for use in the absence of contractual agreement as to how the price is to be determined and where and when the buyer should perform his obligations to pay the price.

#### **3. Remedies for breach of contract**

The remedies of the buyer for breach of contract by the seller are set forth in connection with the obligations of the seller and the remedies of the seller are set forth

in connection with the obligations of the buyer. This makes it easier to use and understand the Convention. The general pattern of remedies is the same in both cases. If all the required conditions are fulfilled, the aggrieved party may require performance of the other party's obligations, claim damages or avoid the contract. The buyer also has the right to reduce the price where the goods delivered do not conform to the contract. Among the more important limitations on the right of an aggrieved party to claim a remedy is the concept of fundamental breach. For a breach of contract to be fundamental, it must result in such detriment to the other party as substantially to deprive him of what he is entitled to expect under the contract, unless the result was neither foreseen by the party in breach nor foreseeable by a reasonable person of the same kind in the same circumstances. A buyer can require the delivery of substitute goods only if the goods delivered were not in conformity with the contract and the lack of conformity constituted a fundamental breach of contract. The existence of a fundamental breach is one of the two circumstances that justifies a declaration of avoidance of a contract by the aggrieved party; the other circumstance being that, in the case of non-delivery of the goods by the seller or non-payment of the price or failure to take delivery by the buyer, the party in breach fails to perform within a reasonable period of time fixed by the aggrieved party. Other remedies may be restricted by special circumstances. For example, if the goods do not conform to the contract, the buyer may require the seller to remedy the lack of conformity by repair, unless this is unreasonable having regard to all the circumstances. A party cannot recover damages that he could have mitigated by taking the proper measures. A party may be exempted from paying damages by virtue of an impediment beyond his control.

### **2.2.3.2: UNIDROIT Principles of International Commercial Contracts.**

The UNIDROIT Principles of International Commercial Contracts, on the other hand, offer a reasonably foreseeable legal framework for most issues of a general nature, normally not envisioned in the contract itself. In fact, the UNIDROIT Principles offer adequate solutions to the majority of contractual problems of a more general nature; i.e. formation of contract, validity, performance, non-performance, damages etc. (Hart 2003). It should be noted however, that the exclusion of national laws are limited with the mandatory rules in national laws. In any event, consideration shall be given to mandatory provisions of the law of the relevant country which would be applicable even if the contract is governed by a foreign law.

Not all mandatory national provisions shall be taken into consideration. The mandatory rules will be taken into account to the extent that they embody principles which are universally recognized and provided their application appears reasonable in the context of international trade (ibid).

#### **2.2.4: ICC Model Contracts:**

Although the applicable law may provide the necessary solutions when parties have not expressly agreed on certain issues in their contract, this is sometimes undesirable or the applicable law is not sufficiently precise to solve the matter (Ramberg, 2011). It is therefore necessary to deal with these issues in the individual contract or by reference to a standard form contract. ICC provides assistance to the parties in this respect by means of various standard forms. The Model Contracts are prepared upon a decision of the Commission on Commercial Law and Practice (“CLP Commission”) by different Task Forces formed by the members appointed by the National Committees (“NCs”).

The purpose of the Model Contracts is to replace the choice between differing national legislations, which are often not adapted to the needs of international trade, by a detailed set of contractual provisions. According to Houtte, (2002), these contractual provisions are not based on any specific national law but incorporate the prevailing practice in international trade as well as the principles generally recognized by the domestic laws. The most outstanding feature of the ICC Model Contracts is that they are not drafted to be imposed by one of the parties to the other party in a manner to restrict the freedom of will principle. Thus, they must be distinguished from contracts of adherence where one of the parties is economically and socially more powerful and manipulating the other party to its detriment.

In the context of the international sale of goods, the ICC Model International Sale Contract (the “ICC Sale Form”) is particularly important. Section A of the ICC Sale Form invites the parties to select appropriate solutions themselves. First of all, it is essential to identify the parties and to specify the goods, the price and how the buyer should pay. It is also essential to choose the appropriate term for the delivery of the goods. It is here that, for the first time, we see a distinction between terms appropriate for the delivery of manufactured goods as opposed to commodities. It is this distinction between the various categories that now appears in the Incoterms® 2010 rules. Payment conditions can be chosen by ticking the appropriate boxes for payment on open account, payment in advance, documentary collection or the use of a

documentary credit. The various documents required for a documentary credit are also specified. Section B of the ICC Sale Form lists general conditions with respect to liability for non-conforming goods and the consequences of late delivery (payment of liquidated damages and termination when the maximum amount has been reached). There is also a provision relating to default interest in case of delayed payment. The interest rate refers to the average bank lending rate to prime borrowers with an increment of 2%. In some cases, a party may fail to perform its obligation under a contract. If this failure is due to a certain type of event, it is not reasonable to hold that party liable for its failure to perform. Such events appear under the heading Force Majeure. Even though parties are able to settle their disputes amicably in most cases, there is a need to provide for the unfortunate event in which they fail to do so. Consequently, there is a provision in Section B referring to arbitration according to the ICC Arbitration Rules. The parties may depart from the provisions in Section B by completing boxes in Section A. They may wish to insert a particular cancellation date, given the difficulty of determining when cancellation of the contract is possible under the applicable law. In addition, they may wish to depart from the provisions on termination in the case of the late delivery or non-conformity of the goods in Section B. Alternatively, they may wish to provide for a form of compensation other than liquidated damages, for instance a fixed amount, in the case of delay. The general conditions in Section B provide for a deadline for the institution of an action against the seller for non-conformity of the goods, namely a period of two years from the date of the arrival of the goods. In the specific conditions of Section A, however, the parties may wish to provide for another time period.

With respect to choice of law, the parties may specify in Section A that a domestic sale of goods act should apply instead of the CISG or that the CISG should be supplemented by the law of a specific country or by generally recognized principles of law, such as the UNIDROIT Principles of International Commercial Contracts. They may also choose a form of arbitration other than arbitration according to the ICC Arbitration Rules or litigation before a court of law rather than arbitration.

Schmittoff described a Model Contract as a form “the terms of which have been formulated in advance by an international agency in harmony with international commercial practice or usage, and which has been accepted by the contracting parties after having been adjusted to the requirements of the transaction in hand” It should be noted, however, that the Model Contracts do not form any independent statutory

regulation applicable by themselves; they need to be incorporated to the contracts by the will of parties. Thus, they are binding as contractual terms and conditions

The ICC Sale Form thus contains highly flexible and important guidelines for parties that wish to draft a contract. They may use the ICC Sale Form “as is” and complete it in the above-mentioned manner or they may use it as a model when drafting their own individual contract. In this context, it should be noted that the ICC Sale Form is designed for the sale of manufactured goods intended for resale, in cases where substitute goods are normally available if the goods delivered do not conform to the relevant specifications. Thus, the ICC Sale Form may be inappropriate in cases where the goods are manufactured specifically for the buyer as end-user. In any event, with the introduction of the ICC Sale Form, ICC has provided a useful service to the international trading community.

## **1. Provisions of the ICC Model Contracts:**

### **i. Common Provisions**

There are some common provisions which are included in most of the Model Contracts. The effect of previous agreements between the parties, modifications, nullity, and prohibition of assignment, no waiver, and notices may be listed as examples to such common provisions.

### **ii. Good Faith Provision**

All of the Model Contracts provide for a “Good Faith and Fair Dealing” provision. This provision is sometimes criticized because it says what is obvious. However, the researcher supporting this clause since it makes clear and reminds to the parties that “good faith” is the essence of all international commercial transactions. Accordingly, the parties acknowledge the obligation to act in accordance with good faith and fair dealing in carrying out their obligations arising out of the contract. It is expressly prescribed that the provisions of the contract and the statements of the parties shall be interpreted in good faith.

### **iii. Force Majeure**

The ICC Model International Franchising Contract and the ICC Model International Sales Contract contain a force majeure clause largely inspired by the Force Majeure clause of the ICC in force at the date of preparation of the models.

### **iv. Resolution of Disputes Clause**

In the ICC Model International Sale Contract and the ICC Model Occasional Intermediary Contract, the parties are invited to choose between any arbitration and

court litigation. The ICC arbitration clause is also the “default solution” which applies automatically if the parties do not make any choice. This is clearly stated in the “automatic inclusion under the present contract” clause, (ibid).

The preference for ICC arbitration in the Model Contracts is justified by three reasons:

- a. The ICC arbitration is an institutional arbitration. This prevents many possible conflicts as to procedural rules, especially the arbitration request and the method of choice of arbitrators. It also helps the parties to deal with the secretarial issues.
- b. The need for a uniform settlement of uniform contractual rules. Since the model form is a set of uniform contractual rules, it is appropriate that possible disputes be solved by a uniform resolution system organized on an international level. From this point of view the best solution appears to be international commercial arbitration which offers a more neutral approach by overcoming the option between the domestic courts of one or the other party. For the sake of uniformity, the choice of ICC arbitration shall be the best option considering that there are already more than 14.000 resolved cases where many aspects of problems related to different Model Contracts have been dealt with.
- c. Arbitration is highly recommended in the case that general principles of law (*lex mercatoria*) is chosen as applicable law, since such choice of law is under the risk of not being understood or accepted by domestic courts.

## **2. Applicable Law**

The ICC Model Contracts are not based on any specific national law but incorporate the prevailing practice in international trade as well as the principles generally recognized by the domestic laws. Consequently, they have been based on the assumption that they should be governed not only by a specific national law, but only by the provisions of the contracts and the principles of law generally recognized in international trade. Thus, the Model Contracts encourage the parties to refer the questions relating to the Contract which are not expressly or implicitly settled by the provisions contained in the Contract to the principles of law generally recognized in international trade as applicable to that specific contract (also so called “*lex mercatoria*”), the relevant trade usages, and the UNIDROIT Principles of International

Commercial Contracts, with the exclusion of national laws. The aim of this solution is to ensure that the provisions of the model contracts can be applied in a uniform way to the parties of different countries, without giving one party the advantage and the other party the disadvantage, of applying one party's national law.

#### **2.2.5: Governing law of the contract:**

In most cases, sales contracts are governed, at least in part, by the laws of the country of one of the parties involved. The seller and buyer may themselves agree which law is to apply by including a specific provision in the sales contract. If there is no such agreement or provision then a judge or arbitrator, in the case of a dispute, may first have to determine the governing law. In these circumstances, a judge or arbitrator will often decide to apply the law of the country most connected with the contract, which may be the country to which the goods are being delivered. The use of trade terms, Incoterms determines the point at which delivery is deemed to have occurred. For example, a seller fulfils its delivery obligation when the goods are loaded on board a ship at the named port of loading under both CIF (cost, insurance and freight) and FOB (free on board) Incoterms (ifs, 2013).

#### **2.2.6: Incoterms:**

An international trade transaction requires not only a contract of sale but also additional contracts. In the first place, the goods will have to be moved from the seller's location to the location selected by the buyer. Therefore, it is necessary to arrange and pay for their transport. This means that three parties are now involved: the seller, the buyer and the carrier. This can lead to complications. One of the main purposes of the Incoterms rules is to define the different roles of the parties in relation to the contract of carriage, (Ramburg, 2011).

Under the terms starting with the letter C or D, it is for the seller to conclude the contract with the carrier. In contrast, under the terms starting with the letter E or F, it is for the buyer to do so. When the seller contracts for carriage, it is important to ensure that the buyer is able to receive the goods from the carrier at destination. This is particularly important with respect to shipment contracts. The buyer must then receive a document from the seller – such as a bill of lading – that will enable him to receive the goods from the carrier by tendering an original of the document in return for the goods. If the seller has concluded a contract of carriage under one of the D terms, he must be in control of the goods during the entire transit to the place where they are to be delivered to the buyer. It is the seller's obligation to ensure that the

goods can be delivered to the buyer at the indicated place of destination. If something goes wrong during the carriage, the seller bears the risk. This is different in situations involving terms starting with the letter C, where the seller merely has to arrange and pay for the carriage. If something goes wrong during the carriage, the risk is on the buyer. It is common for the seller to want to escape the risk of loss of or damage to the goods while they are in transit, even in cases where he undertakes to deliver the goods at destination. This is not only a matter of insurance. The fact that the seller may be protected by insurance in the case of loss of or damage to the goods in transit does not relieve him of his obligation under the contract of sale to deliver the goods to the buyer. If the goods have been lost, it is for the seller to provide substitute goods wherever possible. If this is impossible, he may escape liability under the applicable law or according to the individual contract terms. The standard expression “no arrival, no sale” signifies that the parties are relieved from the contract of sale if the goods fail to arrive at their destination. Nevertheless, it is better not to use such expressions but to clearly specify the consequences in the individual contract of sale or by using standard form contracts with elaborate relief clauses that apply in specified circumstances. ICC has provided solutions in its 2003 Force Majeure and Hardship Clause (ICC Pub. No. 650). With respect to the buyer’s obligations, it is important to use appropriate services by commercial banks for payment. When the parties have established a continuing relationship, the seller normally trusts the buyer and sells the goods on open credit. In other cases, it is important for sellers to protect themselves. They can do so by various means. Either party may, of course, arrange for bank guarantees to be opened in its favour, so that money can be collected from the guarantee in the case of nonperformance. The most important type of guarantee that is provided in a standard form is described in the ICC Uniform Rules for Demand Guarantees (URDG 758). It is possible to call upon this type of guarantee by means of a so-called simple demand. There are various options to reduce the danger of an abuse of the guarantee (“unfair calling”). In cases where the parties do not know each other well from previous dealings, it is quite common that the buyer is required to open a documentary credit with the seller as beneficiary. ICC has for a long time provided rules for such documentary credits, which are currently known as UCP 600. It is particularly important for the seller to present the correct documents in order to get paid. These documents are specified by the buyer in the instructions to the bank opening the credit. It is therefore essential that the seller is given sufficient time to

check whether these instructions conform to the terms of the contract of sale. If they do not, the buyer has committed a breach of contract that, at worst, entitles the seller to cancel the contract. The seller must take care to ensure that the documents presented to the bank comply with the buyer's instructions. If they do not, the seller has committed a breach of contract that, at worst, entitles the issuing bank not to pay under the letter of credit.

With respect to the terms of the contract of carriage, the Incoterms rules merely state that the seller should provide "the usual transport document". The liability of carriers for loss of or damage to the goods in transit is rather limited. They are not liable for so-called "nautical fault" (errors in the navigation or management of the ship). This exception was abolished by the 1978 UN Convention on the Carriage of Goods by Sea, also known as the Hamburg Rules. However, these rules have only entered into force on a limited scale. A new convention, also known as the Rotterdam Rules, was concluded in September 2009, but it remains to be seen whether it will come into force. In addition to this rather lenient liability regime, maritime carriers are entitled to limit their liability to specific amounts, which may sometimes prove insufficient for compensating shippers and consignees for their losses. The seller or buyer, as the case may be, is usually protected by cargo insurance, which under the Incoterms rules CIF or CIP is arranged and paid for by the seller with the buyer as beneficiary. CIF and CIP only require the seller to provide insurance with minimum cover, the reason being that the insurance terms in so-called "string sales" involving commodities must be standardized to take account of the fact that the insurance requirements of prospective buyers down the string are not known. However, the buyer may ask for additional cover, which will be provided by the seller if procurable. When paying the insured party, the cargo insurer obtains the right to hold the carrier liable under a so-called letter of subrogation, whereby the insured party assigns his right to claim damages from the carrier to the insurer. The carrier's liability is covered by liability insurance. In practice, the loss of or damage to the goods in transit therefore results in a battle between these various types of insurers.

#### **2.2.6.1: Transfer of Risk in the Contract of Sale:**

To understand the various rights and responsibilities of the shipper, the consignee, the cargo owner and the carrier it is necessary to understand when title to goods passes under a contract of sale and in particular when risk in the goods passes. According to Schmittoff (2012), who believes that;" in practice there is no difficulty

in determining whether the contract of sale has as its objectives the exportation of goods from the country because of the terms of transaction, such as the arrangements made for the transport of the goods to destination, and the fact that the buyer resides abroad. So; Schmittoff also considers a great variety of transactions as export transactions and the rights and duties of the parties will vary according to the arrangements they have made regarding the place of delivery, the transportation of the goods and the method of payment of the purchase price". Mercantile custom accordingly has developed a number of trade terms and described methods of performance of export transactions. The examination of those terms in this chapter will attempt to indicate the diversity and the practical use of the chosen means of performance.

The transfer of risk in the contract of sale is a question of great practical significance because of its potential for harsh consequences, as a consequence of attracting so much attention, different theories about it have been developed and it is clear that there is more than one approach to the problem. According to (Flambouras, 2001). "In an 'ideal' contract of sale the parties conclude the contract and simultaneously perform their contractual obligations. However, in international transactions where the seller and buyer are situated in different states and the object of the sale is often of great value, between the time a contract is formed (quite often by exchange of ( E-mails) and the time the buyer receives the goods, many unfortunate events may occur that affect the goods. These events may occur during loading at the seller's premises, in a vessel during ocean transit, during inland transit, or during unloading at the destination". To make it as clear as possible, Trade terms reflect mercantile customs and usages which developed over a long time in order to simplify the trade in goods that are transported from one place to the other. They regulate the delivery obligations of the seller and buyer as well as associated obligations such as the passing of risk. Trade terms negate the need for detailed contract clauses and appear in abbreviated form in contracts of sale. Although they provide a uniform expression of mercantile custom in a particular location or trade, the understanding of trade terms tend to differ from country to country, region to region or from one branch of trade to the next. To avoid confusion and difficulties in applying trade terms, International Chamber of Commerce (ICC), introduced the ICC Incoterms as an effort to standardize trade term definitions at the hand of the most consistent mercantile customs and practices. An international set of trade terms, known as Incoterms

(International Commercial Terms), has been adopted by most countries and clearly identifies the responsibilities and risks of both the buyer and seller, including while the merchandise is in transit. As we know letter of credit is an important finance instrument for international trade. These instruments are particularly useful in trade where the transactional values and trading risks are high. Essentially the letter of credit is a substitute for a buyer's risk with that of his bank, as it underwrites the transaction. Exporters experience difficulties in achieving documentary compliance to the bank's satisfaction and therefore run the risk of not being paid. Compliance is based on the accuracy and form of data content on documents required by the letter of credit. The more huge and complex the documentary requirements, the higher the non-compliance risk. This section explores the link between international delivery terms and documentary requirements of the letter of credit, and the extent to which proper application of trade terms could help increase the efficiency of the letter of credit performance as method of international trade transaction's risk mitigation device, as it known, international trade transaction requires not only a contract of sale but also additional contracts as referred to that by Ramberg (2010). "In the first place, the goods will have to be moved from the seller's location to the location selected by the buyer. Therefore, it is necessary to arrange and pay for their transport, this means that three parties are now involved; the seller, the buyer and the carrier. This can lead to complications." One of the main purposes of the Incoterms rules is to define the different roles of the parties in relation to the contract of carriage. To understand the various rights and responsibilities of the shipper, the consignee, the cargo owner and the carrier it is necessary to understand when title to goods passes under a contract of sale and in particular when risk in the goods passes. The law of sale is complex and to give a full explanation requires infinite detail besides necessitating a return to the basic rules of contract. A full explanation of the law of sale is not intended here; rather a simple outline is presented of that part of the law of sale which will assist in determining who has rights against the carrier when a loss occurs. "Preliminary data from an industry survey suggests that exporters are contracting on international delivery terms that may leave them unnecessarily exposed to non-payment risks. Although further investigation is required to determine whether alternate delivery terms would diminish the exporter's risk, preliminary results indicate that it is possible to reduce payment risk by the strategic use of international delivery terms" (Bergami, 2003). One of the central clauses in an international contract of sale is the

trade term. It is truly exceptional for an international sales contract not to include a trade term (Ramberg, 1997), and rightly so, because every contract of sale should include one (Jimenez, 1999). A trade term is a short term - e.g. FOB - that encompasses a catalogue of delivery obligations to be performed by either the seller or the buyer. Thus, traders do not have to include extensive agreements on these obligations in their contracts. At first sight, both parties know who is in charge of, and who bears the risks during and the costs of transport, insurance, documents and formalities. The tradition of incorporating trade terms started in Great Britain in the nineteenth century (Sassoon, 1981). Although this practice encouraged the harmonization and standardization of international trade practices, differences in the interpretation of trade terms in various countries and branches of industry put a spoke in the wheels. There was no legal certainty regarding the true content of what was agreed upon in the contract of sale by reference to a trade term, that explains why the International Chamber of Commerce (ICC), which has been publishing codifications of international trade practices since foundation, proposed a set of uniform interpretation rules of trade terms in the publication of the International Commercial Terms or Incoterms in 1936. As of then, traders could refer to the interpretation provided by the Incoterms when inserting a trade term in their contract of sale. By now, the Incoterms are used all over the world and have become the international standard for the interpretation of trade terms. And this was what described by (Bergami, 2003). As one of the fundamental considerations in any international contract for the sale of goods is the delivery of the cargo to an agreed place and this is where the Incoterms play a vital role, therefore it is necessary to emphasize that the Incoterms rules are only rules for the interpretation of terms of delivery and not other terms of the contract of sale (Ramberg, 2000). This explains why, apart from seller's fundamental obligation to make the goods available for the buyer or to hand them over for carriage or deliver them at destination, and apart from the buyer's obligation to take delivery; the Incoterms rules deal only with obligations in connection therewith, such as the obligation to give notice, provide documents, procure insurance, and pack the goods properly and clear them for export. Devised by the ICC, Incoterms are a short form for International Commercial Terms. Issued for the first time in 1936 as mentioned above, because the Incoterms needed to be adapted to the evolving commercial and logistical practices, they were revised in 1953, 1967, 1976, 1980, 1990 and 2000.

On the first of January 2011, The Incoterms 2010, formally called Incoterms 2010 rules, entered into force, (for full list of Incoterms 2010, see Appendix ii). Throughout the past revisions, new terms have been introduced and other terms have disappeared. The Incoterms 2010 introduced two new terms (DAT and DAP), and eliminated four previous terms (DEQ, DES, DDU and DAF), to end up with standard interpretation rules for eleven trade terms, each one with different rights, duties, obligations and responsibilities on the trading parties. The choice of Incoterms therefore controls the amount of risk exposure each parties has. According to Ramberg, (ibid). As stated before a number of subsidiary contracts result from the usage of Incoterms and these are described as the (Possible subsidiary contracts required under contract performance) such as:

- Contract for local carriage (e.g. from export works to point of export).
- Export customs clearance and related documentation.
- Contract of international carriage.
- Contract of international insurance.
- Import clearance.

Therefore Contract for domestic delivery in country of import depending on the term chosen, the seller, or buyer, will be responsible for all, or only some of the above, the exporter will need to deliver according to the Incoterms chosen, and this will be reflected in the documentary L/C requirement. These terms are not an international convention, and therefore their incorporation into international contracts is voluntary .So, this study in this part of the underlying chapter, intends to examine the underlying rationale behind this advice. Furthermore, it intends to figure out the appropriate criteria that might be applied to choose the right Incoterms.

To determine the efficiency of Incoterms as a form of standardization in international sales law, the study examines their characteristics, legal nature as well as their limited scope of regulation. That is because, in the international context, diversity in the meaning and interpretation of trade terms can lead to misunderstandings between merchants who do not share the same commercial background. If there is no clarity or certainty on the content of a trade term, the harmonization function of mercantile custom is lost. This can give rise to disputes as well as to expensive and time-consuming litigation. What is required is a form of trade term standardization whereby the meaning of trade terms is harmonized or standardized with reference to mercantile customs and practices which are known and

applied internationally. The ICC Incoterms endeavor to fulfill such a standardization function. Incoterms represent a codification of international mercantile customs and usages, which have been formulated in an effort to provide a standardized interpretation for trade terms. According to Ramberg, (ibid) who stated that;" However, it is very difficult to find consistent commercial practice in different countries and trades, for example practices in the loading of ships under the FOB term and the unloading from ships under CFR and CIF terms. Because commercial practice is not the same everywhere, Incoterms can merely reflect the most common or dominant practice". In the absence of sufficient precision, Incoterms often have to be supplemented by the governing law of the contract or through customs and trade usages prevalent in a particular trade or port or even through a previous course of dealing between the parties to the contract. Although Incoterms purport to standardize trade term definitions, but according to "Ramberg" they are still perceived as having particular shortcomings. Incoterms have a limited scope of regulation. They do not regulate all the aspects of a sales contract and apply only to the primary obligations of delivery and related issues, such as risk, insurance, documentation and matters incidental to the export and import of goods. Incoterms, therefore, have to function in conjunction with other stipulations of the contract or the governing law to regulate the contractual rights and obligations of the parties to the contract in full. It is generally accepted that Incoterms will only be applicable when incorporated into the contract of sale. Incoterms primarily deal with the delivery obligations of the parties. Hence, in a given situation it is possible that aspects concerning delivery and risk allocation could be regulated by both Incoterms and the governing law of the contract, such as the United Nations Convention on the International Sale of Goods (CISG). Incoterms 2010 provide harmonized interpretation rules for eleven common trade terms. From these eleven common terms, a trader has to choose the Incoterms that is most appropriate for the specific transaction he wishes to engage in. The International Chamber of Commerce (ICC) encourages the use of 'multimodal' terms (FCA, CPT, CIP, etc.) instead of the 'maritime' Incoterms (FAS, FOB, CFR and CIF). According to the ICC, maritime terms are not appropriate, and thus should not be used in container trade, as the seller does not 'deliver' the container on board the vessel, but most often hands over the goods to the carrier at an inland point or terminal. Furthermore, this chapter intends to provide support for traders, proposing criteria that might be applied to choose the right Incoterms. It will thereby take into

consideration how the transport mode influences and sometimes even imposes the choice for a particular term. Thereby; Understanding different Incoterms rules is key element in international trade transaction. The Incoterms rules are key commercial tools developed and maintained by International Chamber of Commerce (ICC). They govern the responsibilities between buyers and sellers under the contract of sale and determine how costs and risks are allocated. Insurance responsibilities and customs formalities are also covered by Incoterms. (O'Connor 2008.)

#### **2.2.6.2: Clarity in advance avoid misunderstanding later**

The mention of "Incoterms 2010" in a contract determines the obligations of both parties, and contributes to eliminate causes of disagreement, thereby care has to be taken as far as possible and contracting partners have to be very specific when they use Incoterms in the Sales Contract or Purchase Order, they should identify the appropriate Incoterms rule [e.g. FCA, CPT, etc.], state "Incoterms 2010" and specify the place or port as precisely as possible. . They should always be used. Incoterms only apply legally when both parties to the contract agree. Therefore, the contract should expressly include the words: "ICC INCOTERMS 2010". However, Incoterms do not deal with the transfer of property rights, or the transfer of title to the goods. The contract of sale between the parties will cover this. The minimum responsibility for suppliers is "Ex works", where the supplier has few obligations other than to make the goods available at the warehouse/factory gate. The maximum responsibility for suppliers is "DDP" as he will then be responsible to manage the whole movement from point A to point Z. However, it should be noted that the appropriate INCOTERM must be used according to the mode of transport. In conclusion, contracting parties have to bear in mind that all contracts should always specify the preferential Federation INCOTERM followed by "ICC 2010 INCOTERMS". By doing this they will avoid lots of problems and possible confusion.

#### **2.2.6.3: Trade Terms**

After a supplier has been selected, preparing and conducting negotiations with this supplier come about in order to reach an agreement on the price and payment arrangements and any relevant conditions before writing up the contract of sale. Specific commercial and legal terms and conditions will vary from contract to contract. Differences can be caused by, for instance, purchasing policy, company culture, market situation or product characteristics. (Weele, 2010). Terms of delivery and terms of payment are key elements in contract agreement. That gives rise to the

need for the letter of credit; usually letter of credit clauses in a letter of credit agreement are essentially based on an underlying international sales contract. Therefore, the whole sales contract, especially contracting clauses on the various documents should be drafted as clearly as possible. It would be preferable if the various required documents including bill of lading, insurance policy, commercial invoice, inspection certification, certificate of origin and other possible documents are stipulated clearly in the sales contract. If contingent conditions in the future are possible to predict and are stipulated in the sales contracts, then, both parties need to pay as much attention to the terms of sale as to the sales price. So; it must be noted that; one of the central clauses in an international contract of sale is the trade term. It is truly exceptional for an international sales contract not to include a trade term (Ramberg, 1997), and rightly so, because every contract of sale should include one (Jimenez, 1999). A trade term is a short term - e.g. FOB - that encompasses a catalogue of delivery obligations to be performed by either the seller or the buyer. Thus, traders do not have to include extensive agreements on these obligations in their contracts. At first sight, both parties know who is in charge of, and who bears the risks during and the costs of transport, insurance, documents and formalities. This facilitates a trader's life. The tradition of incorporating trade terms started in Great Britain in the nineteenth century (Sassoon, 1981). Although this practice encouraged the harmonization and standardization of international trade practices, differences in the interpretation of trade terms in various countries and branches of industry put a spoke in the wheels. There was no legal certainty regarding the true content of what was agreed upon in the contract of sale by reference to a trade term. That explains why the International Chamber of Commerce (ICC), which has been publishing codifications of international trade practices since foundation, proposed a set of uniform interpretation rules of trade terms in the publication of the International Commercial Terms or Incoterms in 1936. As of then, traders could refer to the interpretation provided by the Incoterms when inserting a trade term in their contract of sale, INCOTERMS 2010 also attempt to better take into account the roles cargo security and electronic data interchange now play in international trade.. By now, the Incoterms are used all over the world and have become the international standard for the interpretation of trade terms.

According to Ramberg (ibid), who believes that; Incoterms 2010 provide harmonized interpretation rules for eleven common trade terms. From these eleven

common terms, a trader has to choose the Incoterms that is most appropriate for the specific transaction he wishes to engage in. The International Chamber of Commerce (ICC) encourages the use of 'multimodal' terms (FCA, CPT, CIP, etc.) instead of the 'maritime' Incoterms (FAS, FOB, CFR and CIF). According to the ICC, maritime terms are not appropriate, and thus should not be used in container trade, as the seller does not 'deliver' the container on board the vessel, but most often hands over the goods to the carrier at an inland point or terminal. Furthermore, this chapter intends to provide support for traders, proposing criteria that might be applied to choose the right Incoterms. It will thereby take into consideration how the transport mode influences and sometimes even imposes the choice for a particular term. Understanding different Incoterms rules is key element in international trade transaction. The Incoterms rules are key commercial tools developed and maintained by International Chamber of Commerce (ICC). They govern the responsibilities between buyers and sellers under the contract of sale and determine how costs and risks are allocated. Insurance responsibilities and customs formalities are also covered by Incoterms. (O'Connor 2008.)

### **2.3: The Letter of Credit Contract:**

#### **2.3.1: The Contract between the Buyer and the Issuing Bank**

The most basic agreement in international trade as it was referred to before be the sales contract concluded between the seller and the buyer. This is often referred to as a sales agreement, an export contract or a foreign sales agreement. For the purpose of consistency, this study refers to as stated before "sales contract". All other agreements and procedures commonly used in international trade result from the performance of this contract or agreement. For example, the two essential terms of a sales contract are the seller's undertaking to provide the goods to the buyer and that buyer's undertaking to pay the agreed price in return. In the context of an export sale, the first of these usually involves the conclusion of a contract with a carrier to transport the goods from the country of the seller to that of the buyer and accordingly provide shipping documents. The buyer's undertaking makes it necessary for it to arrange payment through the banking system. Accordingly is a buyer's responsibility to request the issuance of a documentary credit. The time when it should be opened should be detailed in the sales contract. If no date is indicated, a documentary credit should be issued so as to be in the hands of the beneficiary prior to the earliest date of any specified shipment date. Beneficiaries often use documentary credits opened in their

favour as the basis for obtaining bank finance. This finance may be necessary to enable them to ship the goods. As a result, the beneficiary is under no obligation to do anything until the documentary credit is issued. The payment mechanisms commonly used in cross-border trade transactions, including documentary credits, are briefly examined and compared later in the following chapter. Other procedures related to the export sale and the payment operation sometimes include government requirements, such as customs procedures and exchange control regulations.

An applicant and beneficiary will need to agree on the type, nature, terms and conditions of a documentary credit. Most problems with the execution of documentary credits occur because the two parties have not completely agreed on these points. In many cases, the two parties may think they have reached agreement, but their interpretations of that agreement are different. This is recognized in International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP), 2013 revision, ICC Publication No. 745, Preliminary Considerations, paragraph IV." Many of the problems that arise at the document examination stage could be avoided or resolved by the respective parties through careful attention to detail in the credit or amendment application and issuance of the credit or any amendment thereto. The applicant and beneficiary should carefully consider the documents required for presentation, by which they are to be issued, their data content and the time frame in which they are to be presented". That what also stated in the UCP600, Article 14(f)" If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfill the function of the required document and otherwise complies with sub-article 14 (d). Furthermore an applicant and beneficiary should agree, at least, upon the answers to the following questions relating to the issuance of a documentary credit.

Is it to be available by sight payment, deferred payment, acceptance or negotiation?

What is the currency and amount?

What is the validity (or expiry) date?

What are the last date for shipment and the period for presentation of documents?

Are partial shipments or drawings to be allowed or prohibited, and is transshipment to be allowed or prohibited?

How are the goods, if required, to be described?

What is the transport document and which Incoterms is applicable?

What are the other required documents?

Are there any special terms and conditions, and are there documents to be presented to evidence compliance with such terms and conditions?

Who will pay the respective bank charges under the credit?

Is it to be confirmed or not?

According to what stated above, the contract of sale creates a business relationship between the buyer (applicant) and the issuing bank (buyer's bank). The applicant is seeking his bank (issuing bank) to establish a conditional guarantee of payment in favor of the beneficiary (seller) in fulfilling his payment obligation to the seller under the sale contract, that is to say by agreeing to buy goods from the seller, the buyer undertakes to pay for them on delivery or as otherwise agreed in the sales contract. This payment obligation forms part of the sales contract itself as condition precedent to the obligations of the beneficiary in the sale contract. Whereby the Issuing Bank undertakes conditional payment to the letter of credit's Beneficiary, as stated in article 2 UCP 600, "Credit means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation". Accordingly the letter of credit as a contract is created, Under its terms and conditions, the bank is underwriting the credit risk of the applicant by providing an undertaking to pay the beneficiary, subject to certain conditions specified in the L/C, thereby this study tries to answer the question of the current banking practice in international trade finance in terms of providing the necessary protection to the importers and safeguarding the national trading interest, national economy and the consumer's protection as well, and to what extent the banking practice in the Republic of Sudan exercises its right of rejection to discrepant shipping documents in relation to imports transaction and contributes positively in the improvement of the imports quality through well designed documentary letter of credit under the UCP 600.

Here, under the sale contract the buyer in order to execute his obligations, the buyer requests his own bankers to establish a documentary letter of credit in favor of the seller. Accordingly; it should be noted that; although the involvement of the buyer is vital in both the opening and alteration of the credit in order to fulfill his obligations under the sale contract, but that situation will not give the applicant any right to be consulted in the matter of payment under the letter of credits, due to the autonomy of

the letter of credit according to article 4(a);" A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defaces by the applicant resulting from its relationships with the issuing bank or the beneficiary. A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank", and for the reason that the applicant is not a party in the letter of credit contract according to the doctrine of privity of contract which lays down that ; "a contract does not confer rights on someone who is not a party to the contract ("third party rule")", thereby; the applicant even though he is the person upon whose instructions the letter of credit has been established, but he is not a party in the letter of credit. Article 10(a), UCP confirms this where reference to the amendment of the letter of credit is necessary" Except as otherwise provided by article 38 , a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary". Without any reference to the applicant. Furthermore, based on the principle of (Nemo dat qot non habet, that is to say "no one can give that which he has not"), why does the applicant be approached for waiver in the case of discrepant documents. So the relationship between the issuing bank and the buyer is not more than that of a banker and customer which has been described according to the law of banking as contractual relationship to provide international payment service in terms of documentary letter of credit in favour of the seller (the beneficiary), according to his customer's mandate, by so doing the Issuing Bank is under a duty to be fully adhered to his customer's mandate to establish the under motioned letter of credit only (law of banking, 1990). The buyer completes an application form provided by the issuing bank. The terms of the contract are set out in details in the Issuing Bank's standard form of application, which normally incorporates the UCP 600. According to Smith & Butler (2008), Instructions need to be clear without being too detailed. The more cluttering detail in the letter of credit, the more likely it will become a mechanism for delaying rather than facilitating payment. Furthermore; they have stated that; the UCP 500 had contained, in Article 5, helpful advice to buyers when applying for the opening of a letter of credit: to give complete and precise instructions to the issuing bank, to avoid excessive detail in those instructions, and to avoid

opening one credit by referring to instructions given in an earlier one. There is now no equivalent of Article 5 in the UCP 600. According to ISBP745 (2); "the applicant bears the risk of any ambiguity in its instructions to issue or amend a credit. Unless expressly stated otherwise, a request to issue or amend a credit authorizes an issuing bank to supplement or develop the terms in a manner necessary or desirable to permit the use of the credit" for the reason that Many of the problems that arise at the examination stage could be avoided or resolved by careful attention to detail in the underlying transaction, the credit application and issuance of the credit. Also, a credit should not require presentation of documents that are to be issued or countersigned by the applicant. If a credit is issued including such terms, the beneficiary must either seek amendment or comply with them and bear the risk of failure to do so. ISBP745 (4).

In English practice, this contract is usually a unilateral contract in which the buyer's submission of the application constitutes an offer which the issuing bank accepts by conduct in issuing the letter of credit, (McKendrick, 2009). The letter of credit contract is created by virtue of the sales agreement between buyer and seller. Its purpose is to provide security to the seller to replace that which was represented by the shipping documents, which he gives up in exchange for the credit. Although the sale contract imposes a duty on the buyer to open a documentary credit in the seller's favor, the letter of credit contract is entirely a matter between the seller and the banker (Schmittoff, 2012). However, as will be discussed later, the involvement of the buyer is vital in both the opening and alteration of the credit. Although the contract between the buyer and seller is the cause of the letter of credit contract, they are totally independent. The issuing bank owes the usual duties of a banker strictly to observe the terms of the mandate and to act in other respects with reasonable care and skill in relation to the credit, except so far as these duties are effectively qualified by the contract. In particular, the issuing bank is responsible for ensuring that the letter of credit issued to the seller complies strictly with the instructions contained in the application form for the credit and that payment, acceptance or negotiation is effected only on presentation of documents which fully in compliance with the terms and conditions of the letter of credit according to complying presentation doctrine declared in article (2) UCP 600. According to Goode, (2004) who/ argued that; "It need not be over-emphasized that the letters of credit issued by the issuing bank to the seller constitutes an independent engagement in which the issuing bank acts as

principal, not as the agent of the buyer". It simply follows from the above that the buyer is not entitled to give instructions to the issuing bank to withhold payment or to deviate from the terms of the credit. According to Mckendrick, (ibid) "the issuing bank is both entitled and obliged to ignore any such instructions so long as the documents are presented within the period of the credit and accordingly comply with its provisions. Also, if the credit is not honored, the issuing bank is obliged to indemnify the buyer against any liability he may incur from the seller. On the contrary, where the issuing bank makes payment without authority against non-complying presentation, the buyer, though not entitled to reject conforming goods from the seller, may as between himself and the issuing bank decline to adopt the transaction, on account of breach of mandate". In this case, the issuing bank cannot debit the buyer with the price paid or with remuneration for its services, while the buyer for his part is taken to have rejected (abandoned) the goods to the issuing bank, in whom they will then vest,( Goode,2004) . In addition, the buyer may claim damages for any loss reasonably foreseeable by the issuing bank as likely to flow from the breach, the buyer as an alternative to rejecting the documents may waive the breach or accept the documents without prejudice to his right to damage for any resulting loss. Here the buyer will be deemed to have waived any nonconformity if he obtains delivery of the goods from the carrier without production of the bill of lading, (Goode and Mills, 2009) as cited in (Amaefule, 2011).

As the issuing bank is assuming the credit risk of the applicant, a commercial risk assessment on the applicant will be performed and if the bank agrees, the application will be accepted and the L/C issued. It should be noted that it is common practice for banks to avail themselves of security from the applicant prior to issuing the L/C. Depending on the results of the commercial risk assessment, the applicant may need to provide 100% security to the issuing bank, or a lesser amount, as the case may be. The form by which the security is provided is a matter decided between the bank and the applicant, and is not limited to cash amounts only. Where the buyer fails to open a credit as stipulated, the seller is entitled to claim damages for breach of that stipulation, which qualifies as a condition.

### **2.3.2: The letter of credit and reimbursement contract.**

Payment for goods in a sales transaction is important, because the smoothness of payment somewhat indicates the successfulness of the whole transaction. However, payment is a more difficult problem in an international sales transaction than that in a

domestic sales transaction. It is easy to see that an international sales transaction has its own international character. The parties are usually situated in different countries, where different legal rules might apply. Normally, buyers and sellers have different interests in international sales transactions. The sellers would like to ensure that they will get paid for the sold goods once the goods are delivered, whereas the buyers want to make sure that sellers have shipped the goods that were specified in the sales contract before making payment, (Hans, 2002).

This contract gives rise to the payment undertaking in the favour of the beneficiary against compliant documents only in terms of letter of credit as defined according to article 2 UCP 600 as "Credit means any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation", that is to say; the documentary letter of credit ("L/C") is an instrument issued by a bank, at the request of an applicant, in which that bank promises to pay a specified amount of money (the value of the goods) to the named beneficiary upon his presentation of documents as stipulated in the credit. . The contract between the issuing bank and the beneficiary; however, this is a conditional undertaking. The issuing bank "guarantees payment to the exporter if all documents are presented in exact conformity with the terms of the letter of credit so the Issuing Bank promise to pay reduces the commercial risk incurred by the seller. Because the seller cannot receive payment until he presents the required documents and because these documents provide evidence that the desired goods have been shipped, the buyer receives some (but not total) assurance that the seller will comply with the agreed upon terms of sale before being paid. (Nelson, 2000). But Walter, as cited in the Guide to documentary payments ABN AMRO Bank," It is crucial to understand that a letter of credit is neither an unconditional guarantee of payment to the seller nor a means of assuring the buyer that goods paid for will be satisfactory rather, payment will be rendered if and only if the documents required by the letter of credit precisely comply with the terms and conditions of the credit".

As banks are neither a party to the contract nor do they deal in the trading of goods, the requirements of the L/C are documentary as stated in article 5 UCP 600 "that Banks deal with documents and not with goods" and according to the independence principle referred to in article 4 UCP 600. That is, the issuing bank will pay the beneficiary as long as the specified documents, with particular data contents, are provided by the beneficiary within the stipulated time frames of the L/C. Thereby;

anyone selling on a letter-of-credit basis should read very carefully each one received to be certain the terms and conditions can and will be complied with. Discrepancies can delay or even preclude payment. And anyone buying on a letter-of-credit basis needs to understand that payment will be affected despite any disputes with the seller over compliance with the underlying contract just as long as the documents meet the letter of credit requirements. As L/Cs are typically channeled through the banking system, and not sent direct from the issuing bank to the beneficiary – a practice developed to reduce possible fraudulent activities the issuing bank enters into another contract.

As in any international commercial transaction, the sales contract, to which there is mutual agreement between the importer and the exporter, details the terms of the sale of goods. In this respect Scheller (2008) argues that how a thorough and detailed sales contract can minimize the fears which frequently arise due to distance and lack of familiarity between the exporter and the importer. From the exporter's viewpoint, he stated that: the contract should stipulate the manner and time frame in which he will be paid for the merchandise. The importer, on the other hand, seeks an assurance that he will receive merchandise of the quantity and quality agreed to, and that he will be responsible for effecting payment only upon the exporter's fulfillment of the stated obligations, measured in terms of compliant documents as defined in article 2 UCP600, " Complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice". The situation that gives rise to doctrine of strict compliance by which the beneficiary have to strictly comply with the terms and conditions of the letter of credit and present documents satisfying the complying presentation requirements, and that is really, what this study is trying to explain and highlight in order to show the greater protection that could be received by both exporter and importer by entering into a well designed sales contract which clearly states the amount and currency of payment, , shipping arrangements, insurance protection, terms of delivery, necessary documentation and stating the extent to which the documentary letter of credit under UCP 600 ,could be utilized as method of payment as well as risk mitigation device .

The sale contract imposes a duty on the buyer to open a documentary credit in the seller's favor, and as a result the letter of credit contract is established by the virtue of the sales agreement between buyer and seller. Although the letter of credit contract, is

a result of the contract between the buyer and seller (the sale contract) they are totally independent and entirely considered as a matter between the beneficiary and the issuing bank as stated under UCP 600 - Article 4, ( a). That the letter of credit is said to be considered and treated as completely separated contract from the underlying sale contract. whereby the issuing bank is under obligation to honor and negotiate only against complying documents tendered by the beneficiary, and this will be discussed intensively, according to the independence principle of the letter of credit, by so doing ,it is clear enough that the letter of credit comes in to existence just to provide security to the beneficiary to replace that which was represented by the shipping documents, which he gives up in exchange for the credit, and that is really what referred to under UCP 600 - Article 5 .that " Banks deal with documents and not with goods, services or performance to which the documents may relate", in other words, without regard to beneficiary's performance under the sale contract. Although the letter of credit under this situation provides the beneficiary with necessary assurance and protection against the applicant potential default risk, this will definitely leads to what considered by this study, as a situation where increases the perceived levels of beneficiary's bad performance or nonperformance risk ,which may be faced by the importer (The applicant) by the virtue of independence principle, and , as will be discussed later , and to what extent is the issuing bank is under a duty to provide the necessary protection to the letter of credit's applicant under what stated by the strict compliance principle.

The terms and conditions governing L/C transactions are almost always to be found in Uniform Customs and practice for Documentary Credits (UCP) issued by the International Chamber of Commerce - Commission on Banking Technique and Practice (Banking Commission)

According to the ICC Uniform Customs and Practice for Documentary Credits (commonly called "UCP") publication No: 600, (2007). Article 1 of the UCP 600 has introduced a significant change to the applicability of the rules. Now the UCP 600 Articles are considered "rules". Accordingly, when the letter of credit expressly states that it is governed by the UCP 600 the contracting parties are bound by the rules set out in the UCP 600 and may exclude or modify its application by express wording to that effect in the credit document. Thus this provision will reinforce the legal status of the UCP 600. Defines credit in Article (2) as "any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the

issuing bank to honor a complying presentation.” This simple definition is an improvement on the earlier definition and uses new terms such as honor and complying presentation. Article 2 also provides the meaning of Complying presentation, which is defined as “a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice” (International Chamber of Commerce, 2006, p.17). We know now that credits are going to be irrevocable and Article 3 strengthens it by stating that a credit is irrevocable even if there is no indication to that effect so the question of revoking a credit as under UCP 500 does not arise any more. Thereby “Credit means any arrangement, however named or described, that is irrevocable and then constitutes a definite undertaking of the issuing bank to honor a complying presentation”. So, LC’s are irrevocable, i.e., neither be amended nor canceled without prior agreement of the beneficiary, the applicant, the issuing bank and the confirming bank, if any . As stated in its guide to Letters of Credit TD Bank Financial Group (2008). In commercial practice Letter of Credit, simply could be defined as a written instrument issued by a bank at the request of its customer, the Importer (Buyer), whereby the bank promises to pay the Exporter (Beneficiary) for goods or services, provided that the Exporter presents all documents called for, exactly as stipulated in the Letter of Credit, and meet all other terms and conditions set out in the Letter of Credit. By doing so, the issuing bank elects to stand on his customer’s shoes, the step that constitute a definite undertaking , and at that moment it substitutes the applicant undertaking with its own .Thereby this document is most important in case both the parties doing business first time. For the reason that it enables parties thereto, to conduct an overseas business transaction without any or very low risk, as bank gives a safety assurance to both parties involved with the transaction. So letter of credit can be considered as an instrument that reconciles the interests of the seller and the buyer, thus providing security to both of them. Ronald J. Mann, among others, has argued that Common justifications for the use of the letter of credit fail to explain its widespread use .Mann, (1999). stated that the classic explanation , claims that the letter of credit provides an effective assurance of payment from a financially responsible third party, .that is to say, a reputable bank is unlikely to default on its obligation to pay the seller, and the seller knows that it has an absolute right to payment once it ships the goods — but conditioned only on the seller’s presentation to

the bank of the specified documents (typically the invoice, a packing list, an insurance certificate, and a transport document such as a bill of lading).

A key principle underlying Letters of Credit is that banks those handling letters of credit, deal only in documents and not in goods. The UCP 600 has not altered the long established 'principle of independence', that is, the separation of the L/C from the underlying contract, insofar as banking operations are concerned, and this is reflected in Article 4. Article 5 also reinforced that separation by specifying that "banks deal with document and not with goods, service or performance to which the document may relate" (International Chamber of Commerce, 2006, p.20). . Any dispute with regard to quantity or quality of merchandise bears no relation to the bank's responsibility to examine documents as presented under the letter of credit, and to make their decision as to the acceptability of the documents only based upon those documents versus the letter of credit terms and conditions. That is to say, the decision to pay under a Letter of Credit is entirely on whether the documents presented to the bank constitutes complying presentation this expression in Article 2 is really revision of what UCP 500 says "in compliance with the terms and conditions of the credit". The alternative formulation "complying presentation" is defined to mean a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of (UCP-600) rules and international standard banking practice (ISBP 745). So it would appear to be that, the responsibility of the Issuing bank has been clarified by Article 7(b) of the UCP 600. "An issuing bank is irrevocably bound to honour as of the time it issues the credit". That is what in this respect considered by Bergami, R. (2009) as an improvement over the comparable Article 7 of the UCP 500 that merely required the bank to show reasonable care in checking the apparent authenticity of the credit. Because it would be unreasonable for the banks to physically check all merchandise shipped under Letters of Credit to ensure merchandise has been shipped exactly as per each Letter of Credit. Accordingly, the integrity of both the Exporter and Importer are very important in a Letter of Credit transaction. Thus, the seller that obtains a letter of credit can rest assured that he will be paid even if the buyer would not pay voluntarily. But usually, according to bankers and lawyers familiar with the industry, they regularly claimed that sellers in general do not present documents that conform to the requirements of the letter of credit. Among other things, documents might be missing, late, or fail to precisely match the details about the shipment provided in the letter of credit, that is to say that it is

largely untrue as matter of fact and practice at one important and critical point: the seller's possession of an absolute right to payment, but it is strictly conditioned on their compliance with requirements of the letter of credit. So, an appropriate due diligence should be exercised by both parties. In this respect, Smith and Butler (2007). Shows that there are three points at which a seller of goods needs to pay particular attention to the letter of credit through which he expects to get paid by his buyer: (i) When he concludes the contract of sale (ii) When he receives his letter of credit from the advising or confirming bank; and (iii) When he tenders the shipping documents for payment. Traders as they stated have to focus very intently on the letter of credit at points [ii] and [iii]. Because they think that every seller knows that whether he gets paid promptly is going to depend on whether he can tender documents which conform to the letter of credit point [iii]. Likewise, every seller knows that whether he will be able to tender such documents is going to depend on how difficult the documentary requirements of the letter of credit are point [ii]. It is obviously in the buyer's interest to make those requirements as stringent as possible and whether or not he can do so will depend on what the seller and the buyer have agreed in their sale contract about the letter of credit or about the tender of documents for payment and this is the point frequently ignored at the early stage of the negotiation of the sale contract. It is consequently in the seller's interests to have clear terms in his sale contract about the type of letter of credit which the buyer can apply for and about the documents which the letter of credit will require for prompt payment. In effect, the seller will get the letter of credit he bargains for in the sale contract.

The seller needs to carefully and promptly check the letter of credit after it is received, so as to leave sufficient time if any amendment is necessary and to avoid the failure of not having the conforming documents. There are two main aspects requiring attention when the letter of credit is checked. Firstly, the seller needs to check the validity of the letter of credit itself, including the credibility of the issuing bank, the terms of honoring payment, and the appropriateness of period of validity. Secondly, the seller needs to check whether the letter of credit terms comply with the clauses of the sales contract. Once the seller identifies soft clauses in the letter of credit, the seller must immediately require the applicant to amend; at the same time, the seller sets forth the time limit for the buyer to amend or provide other guarantees, and clearly points out that the buyer should extend the validity of the letter of credit due to

the delay of amendment. If the buyer refuses to amend the letter of credit afterwards, the seller may claim that the contract is terminated and can require the buyer to provide a valid guarantee, and further preserves the right to claim for compensation as the buyer breaks the sales contract due to the failure of opening the letter of credit. It is important to understand, however that the documents of trade do not provide full protection against all transaction risks as well as against fraud. The importer, therefore, should carefully evaluate the exporter's reputation and have a clear understanding of the requirements detailed in the sales contract. A letter of credit is not an absolute guarantee of payment but rather a payment mechanism which can reduce the risk of not getting paid or the risk of not confirming goods. Any misspelling or discrepancy in the letter of credit incurs delays and additional costs to the transaction, or can also be used as an excuse for non-payment. Common discrepancies in a letter of credit can be as simple as an incorrectly stated name of the beneficiary to a late shipment date which makes the letter of credit invalid to the seller. It should be remembered that, in a letter of credit transaction, conforming documents imply payment. What is and what is not a discrepancy is determined by the UCP articles, and the terms of the letter of credit. Discrepancies are also determined through practice and experience. Lack of training and improper understanding of letters of credit administration can lead to problems and rejections. Training is a key component in achieving greater efficiency in completing letters of credit properly. Accuracy in properly completing a letter of credit is a vital requirement to avoid problems and corrections, thus saving time and money (improving cash flow and enhancing profitability). Checking procedures need to be carried out at a very early stage of the transaction. When checking documents, the issuing bank will check the documents against the terms and Conditions of the letter of credit. If any discrepancy is noted, according to the current banking practice the buyer will be notified as soon as possible and will be given the opportunity to decide whether or not to accept the documents despite the discrepancies. If the documents are accepted by the buyer, the issuing bank will then notify the seller's bank that the letter of credit will be honored despite the discrepancies. In this respect, this study, believe that; this banking practice is not proper and not serve the national interests as well as provide the necessary consumer's protection . On the other hand, if the documents are rejected, then the issuing bank will issue a notice of rejection to the seller's bank within five banking days from the date the issuing bank received the documents.

## **2.4: The underlying principles about Letter of Credit**

As payment instrument, letter of credit has become widely used in international trade. Letter of credit takes care of the interests of both the exporter and importer, so it is considered to be the most effective and safest method to secure the payment in an international trade transaction. The legal basis of letter of credit is UCP 600, which is published by ICC. As the international convention for the letter-of-credit transaction, UCP 600 holds the most important doctrines for the using of letter of credit, the two principles are: Principle of independence and strict compliance. In the real practice, according to Hao&Xiao, (2013). Who consider these two principles are the lucky charm that can secure the payment for both exporter and importer, but also the main source that can cause the risks for a letter-of-credit transaction. The law underlies the letter of credit system, is founded on two basic fundamental principles; deep-rooted in the UCP, which are central to the structure and operation of letters of credit – The most important doctrines in the law of letters of credit, are the “Autonomy” and “Strict Compliance” as stated before. It is worthy to be noted that UCP 600 has introduced certain positive changes to the substance and style of the provisions governing these fundamental principles. They are governed by Articles 4(a) and 14(a) of the UCP 600, respectively, The UCP provides relevant provisions relating to documents presented by the seller under LC transaction. The application of letters of credit as instruments of payment in international trade transactions lies in substituting an often unreliable promise of an unknown buyer with very certain promise from one or more banks, the complexity of a letter of credit arises from the fact that it protect not only the issuing bank and the applicant under the doctrine of strict compliance, but also the beneficiary under the autonomy principle. In this chapter, the two fundamental principles of letters of credit will then be critically examined to demonstrate the way in which the letter of credit governs and protects the involved parties' conflicted interests. Letters of credit currently operate under the Uniform Customs and Practice for Documentary Credits. The UCP 600 assigns banks to only check the conformity of documents on their face and determine on the bases of the documents alone whether or not the tendered documents constitute complying presentation under the Strict Compliance Principle according to article 14(a), and to pay against the presentation in spite of what happens in the underlying contract under the Autonomy Principle according to article 4(a).

#### **2.4. 1: Principle of Autonomy (Article 4 and 5)**

In international trade transactions there are usually more parties involved than the seller and the buyer. The seller usually has to obtain goods from a supplier in order to fulfill its obligations under the contract concluded with the buyer. The seller may not have enough funds to make payment to the supplier thus another party's involvement is necessary. The funds usually come through a letter of credit, which require the active participation of at least one, but in the majority of the cases two or more banks. This financing mechanism would break down, if the buyer could "freeze" the payment upon a dispute with the seller. To safeguard and facilitate the smooth operation of this financing mechanism banking practice established the principle of independence in relation to letter of credit transactions. The principle of independence, or as otherwise referred to the "autonomy principle", is the cornerstone of the law relating to letters of credit. According to Byrne, (1995), who argued that; it refers to the understanding that the credit is independent of and separate from the underlying contract between the seller and the buyer, and also from the agreement between the applicant and the issuer. As Byrne points out, the "issuer must honor its obligation to the beneficiary under the letter of credit, irrespective of any disputes or claims relating to either the underlying transaction or the application agreement, unless fraud is established in the transaction" this will be discussed later in this chapter under Fraud Exception, the only situation under which Issuing Bank is not under obligation to honor the complying presentation. According to Hao&Xiao (2013), they stated that "the payment obligation of issuing bank to beneficiary (exporter) is separated from the performance of beneficiary based on the sales contract. As long as beneficiary presents the compliant set of documents, issuing bank should accept even though beneficiary disobeyed the sales contract that made with the applicant (importer).further more they indicated that , The payment obligation of issuing bank is also independent of the underlying the contract between applicant and bank. For example, applicant goes bankruptcy after the bank issues letter of credit. Although applicant cannot pay the money, issuing bank still cannot reject the payment obligation. Issuing bank has to pay when beneficiary presents the set of documents in strict compliance. Accordingly they stated that, "the rule, that letter of credit is independent out of the sales contract between the importer and exporter, is based on two reasons. Firstly, legislation, convention and judicatory case confirm the

regulation that issuing bank is not responsible for the performance of sales contract. Because issuing bank is not the party of sales contract. Issuing bank cannot control the contract content, or choose who should be the beneficiary of credit, the matter conforms the privity principle. Secondly, besides knowing the clauses of letter of credit and set of documents, if the issuing bank tries to evaluate the performance situation and the dispute between the contract parties, it is not the precept of letter of credit, which means letter of credit will lose its sales value as the safest instrument of international settlement". In England leading judges referred to the letter of credit as "the life blood of international commerce" (Byrne, 1995). A typical example is the Bhoja Trader as stated by Ellinger, (1982) who refers to the Case, where Judge Donaldson stated, that: "irrevocable letters of credit and bank guarantees given in circumstances such that they are the equivalent of an irrevocable letter of credit have been said to be the life blood of commerce. That is to say banks are under obligation to pay against complying presentation, unless fraud is involved, the Courts intervene and thereby disturb the mercantile practice of treating rights there under as being the equivalent of cash in hand." This legal principle has long been recognized under English law. Thus far, a lot of literature has supported the application of this principle which has been referred to as the foundation of the letter of credit. Thus, the independent nature that gives the letter of credit its 'life' and stands among others as the most important payment instrument in international trade. Moreover, it has been described as equivalent to "cash in hand." The principle of independence of the documentary letter of credits, means that the payment undertaking contained in a documentary credit is separate from, and in the ordinary way independent of, the underlying sale contract giving birth to it; what the issuing bank is concerned with is whether or not the tendered documents, comply with the terms and conditions of the letter of credit, rather than with the disputes arising from the underlying sale contract. The independence principle of the letter of credit is clear and is accepted worldwide. According to the autonomy principle, a letter of credit transaction is separate from and independent of the underlying contract of sale or other transactions involved. Articles 4 and 5 of (UCP 600), expressly states the well-established principle that a credit by its nature is a separate transaction from the sale or other contract on which it may be based, and banks deal with documents and not with goods, services or performance to which the documents may relates. According Bergami (2009) who stated that;"In the UCP 600, principle of autonomy has been defined in the following manner,

Positively, under Article 4, which provides that, letter of credit, by its nature, is a separate transaction from the underlying contract; and Negatively, under Article 5, which provides that banks deal with documents, not with goods, services, performance to which the documents may relate. Principle of autonomy is one of the fundamental principles of letter of credit. Hence, the previous UCP editions had been also touched on this principle. Comparing with the UCP 500, we could observe that the current edition has preferred to expand the positive aspect of the principle. This aspect has been also called as the independence principle. The transaction of letter of credit consists of a complex of contracts and these contracts are independent from each other, (ibid). Independent separation from the underlying contract is logical because the banks are not the parties of this contract, (ibid). To highlight the need for this separation, the UCP 600 has sought to reinforce this principle by addition of sub-article (b) that the issuing bank is obliged to discourage any attempt by the applicant to include, as an integral part of the letter of credit, copies of underlying contract, proforma invoice and the like (Article 4(b) of UCP 600). On the other hand, UCP 600 has used the word “banks” instead of the words “in credit operations all parties concerned” in UCP 500. By this way, According Bergami the negative aspect of the principle has reached a clearer definition and the role of the banks in the transaction has been reinforced, (ibid). As a result of the independence principle, the banks do not deal with the goods, services or performance regarding the underlying contract. In the case of *Power Curber International Ltd. v. National Bank of Kuwait* the distributors in Kuwait bought machinery from Power Curber, an American company carrying on business in North Carolina. The National Bank of Kuwait issued an irrevocable letter of credit, instructing the Bank of America in Miami to advise the credit to the sellers through a bank in Charlotte, North Carolina. The machinery was duly delivered but the Kuwaiti buyers raised a large counterclaim against the sellers in the courts of Kuwait and obtained from them a provisional attachment order which prevented the bank, which was willing to honour the irrevocable credit, from paying under it. The seller sued the bank, which had registered address in London, in the English courts and a judgment against the bank was given. Later, the Court of Appeal upheld this decision. It was held that the order of the court in Kuwait did not affect the obligation of the bank (Schmittoff, 2012). In such a case the courts have normally refused to issue a freezing injunction (Mareva injunction), (ibid). Moreover, the courts will normally refuse to issue a freezing injunction preventing a bank from paying under

the credit. However the courts are prepared in a propitiate cases to issue such an order against the beneficiary, attaching the proceeds which he has received from the bank under the credit. Lord Denning said in one case: "the injunction does not prevent payment under a letter of credit or under a bank guarantee, but it may apply to the proceeds as and when received by the defendant." On the other hand, it has been held that a bank may set off a claim for liquidated damages which has accrued to it against its own letter of credit liability to the beneficiary in a case in which the claim for liquidated damages arose directly out of the same banking transaction to which the letter of credit related. So, according to Schmittoff, "by the virtue of its autonomous character, the letter of credit is approximated, to some extent, to the bill of exchange". As he stated care should be taken and this statement should not be misunderstood. The concept of a holder in due course doesn't apply to letter of credit. Further, a letter of credit is not negotiable; if it is made transferrable, it can be transferred only once. This development was noted by Lord Denning M.R. in *Power Curber International Ltd v National Bank of Kuwait* as mentioned above, as cited in Schmittoff (2012), when he said: "it is vital that every bank which issues a letter of credit should honour its obligations. The bank is in no way concerned any dispute that the buyer may have with the seller. The buyer may say that the goods are not up to contract. Nevertheless the bank must honour its obligations. The buyer may say that he has a cross-claim in a large amount. Still the bank must honour its obligations. a letter of credit is like a bill of exchange given for the price of the goods. It ranks as cash and must be honored. Thus, the letter of credit is not affected by any problems and disputes related to the contracts or dissatisfactions between the exporter and buyer. These provisions give the letter of credit its autonomous nature and this is one of its major attractions. Thus, by virtue of Articles 4 & 5, UCP 600; a binding contract, independent of the contract of sale, comes into existence once the seller (beneficiary) is notified of the credit by either the issuing bank or the advising bank. Thereby the beneficiary acts on the strength of such notification to either demand payment or to make arrangement for the financing of his transaction with another beneficiary. Documentary credit is a separate transaction and is completely independent of any underlying contracts (UCP600 art.4). Thus, banks do not need to be concerned whether the beneficiary has performed his obligation under the underlying contract or not, even if there is a breach in the underlying contract arisen from tender of defective goods or delayed delivery, banks cannot stop payment. As long as documents tendered show a compliance of the

terms of the L/C, banks are obliged to pay. This is because all parties in documentary credit transaction deal only in documents, and not in goods or services (UCP 600 art, 5). The buyer may sue the seller, under the sales contract if there is a breach, but for a breach in underlying sales contract payment obligation of the L/C cannot be dishonored. In *Hamzeh Malas & Sons v British Imex Industries Ltd*, 1958, two Letters of Credit were opened to facilitate the purchase of steel rods. First L/C was paid while the buyer sought injunction to stop the payment of the second L/C on the basis that goods are defective. The court of law held that since documents tendered appear to be conforming, payment cannot be stopped alleging that goods are defective. Buyers often turn to the courts alleging that goods do not match contract description and seek an injunction to stop the issuing bank from paying the beneficiary; but courts are unwilling to grant such injunctions (Carr, 1999). The reason for that is courts do not want to consider the breach of underlying sales contract to stop the payment under the Letter of Credit. Because L/C is an independent transaction, and if buyers are allowed to intervene with the payment obligation of the bank for a defect in the sales contract, it would seriously damage international trade. The certainty of payment to the seller, who enters into the contract of sale believing that he would be paid through irrevocable credit, could then be destroyed. That is to say; if there is no autonomy, it will be difficult to act on it since its realization may be adversely affected by the contract of sale. Thereby the main and only agreement that is arranged between the exporter and the bank is the letter of credit. Under a letter of credit, the bank is only concerned with one problem: to check whether the documents presented by the seller comply with those specified in the letter of credit. for the reason that of the autonomy of a letter of credit, the buyer's bank is therefore absolutely bound to honor the letter of credit by paying the exporter upon presentation of proper documents, notwithstanding any dissatisfaction from the buyer in relation to the sales contract or any dispute between the buyer and seller. The buyer's protest about the export cannot suspend payment of the letter of credit. This was the case with one exporter's bank; it successfully sued a buyer's bank for dishonoring drafts against a letter of credit because of complaints about the quality of the exported goods. so, the purpose of employing documentary credits in international commerce is to let the beneficiary have prompt and certain payment from a known solvent issuer (the issuing bank), It is a prompt way of Obtaining payment in that the beneficiary can have funds in hand if his tendered documents are apparently

constitutes complying presentation. The payment is certain partly because the credit of the known solvent issuer is substituted for that of the overseas account party, and partly because the payment is triggered by a complying documents rather than performance under sale contract, (art: 4&5) UCP600. therefore, the bank's payment undertaking is not subject to the sale contract or condition of the goods but is based on compliance of the seller's documents. Thus, basically, if the documents are compliant with the LC requirements, the bank's duty to honor them becomes absolute and nothing can prevent the bank from making payment. Accordingly the opening of a confirmed letter of credit constitutes a bargain between the banker and the seller of the goods which imposes upon the issuing and confirming bank an absolute obligation to pay, irrespective of any dispute there may be between the parties as to whether the goods are up to contract or not. The only case where a bank may refuse payment is in case of fraud or forgery in the transaction, referred to as "fraud exception".

#### **2.4.2: The Fraud Exception**

The Autonomy Principle in documentary credits according to Mera (2012), sometimes creates unwanted results like the system protecting fraudsters. As the UCP does not include any exception to this principle, who argues that; the common law courts have found a solution to this problem under the Fraud Exception Rule.

Letters of credit currently operate under the Uniform Customs and Practice for Documentary Credits (UCP 600). The UCP 600 assigns banks to only check the conformity of documents on their face under the Strict Compliance Principle and to pay against the presentation regardless of what happens in the underlying contract under the Autonomy Principle. However, the Autonomy Principle according to Araz, (2002) sometimes, may cause unfair results as it may state that banks should not be involved in the underlying contracts even when the seller acts in bad faith. Because, the ease of obtaining payment may motivate sellers to make fraudulent documents. So, an unintended result could be that the system might appear to protect fraudster sellers. Therefore, there emerged a gap in the system, which was the legal protection for buyers against fraudsters. The cure was found to that problem by common law courts. An American court originated an exception to the Autonomy Principle, known as the 'Fraud Exception'. The exception entitles buyers either to restrain sellers from drawing the credit or to restrain banks from making payments to sellers. After a while,

other common law countries approved the reasoning of the court in that case and the application of the Fraud Exception became a widespread phenomenon, being a rule in its own right rather than merely an exception to the Autonomy Principle (Schmittoff, 2012).

The unique value of the documentary letter of credit is that the beneficiary can be completely satisfied that whatever disputes may thereafter arise between him and the bank's customer in relation to the performance or indeed the existence of the underlying contract, the bank is personally undertaking to pay him provided that the specified conditions are met. Accordingly there is only one exception to the autonomy of Letters of Credit that is the fraud exception.

Fraud exception is “where the seller for the purpose of drawing on the credit, fraudulently present to the conforming bank documents that contain, expressly or by implication, material representation of fact that to his knowledge are untrue”(ibid) . To consider the incidence of fraud, the evidence of fraud needs to be clear both as to reveal the fraud and to the bank's knowledge (United Trading Corporation SA and Murray Clayton LTD vs. Allied Arab Bank Ltd, 1985). The fraud has to be committed by the beneficiary. If the beneficiary did not commit the fraud, rather a third party did it of which he (beneficiary) knew nothing, banks are obliged to pay. It was argued in United City Merchants (Investments) Ltd and others vs. Royal Bank of Canada, Vitrorefueros S.A. and Banco Continental S.A., 1983, that forgery committed by the loading brokers who are agents of the beneficiary leads to a nullity for documents to be honored. The court rejected the argument and held that there is no nullity defense in the fraud exception of documentary credit, and banks need to pay if there is no evidence that the beneficiary has committed the fraud or for which he had knowledge.

#### **2.4.3: The strict compliance doctrine**

A prevalent theory is that the (the strict compliance of the UCP 600) contributes more to the consumers' safety and protection in respect of imported goods and thereby provide the necessary consumer's protection, this principle can be adopted, however only if, practitioner banker know how to harness the powerful magic of the UCP 600 and the strict compliance principle

Accordingly, the consumers' safety and protection in respect of imported goods is the dependent variable which is positively influenced by the Letter of credit under the Uniform Customs and Practice (UCP 600), the independent variable.

It has been found that; there is a positive relationship between the letter of credit under the UCP 600 system and the consumers' safety and protection in respect of imported goods, that is when practitioner bankers follow the procedures laid down in the Uniform Customs and Practice (UCP 600) they are able and will be efficient enough to exploit the letter of credit in a manner that leads to high consumers' safety and protection in respect of imported goods. Although this relationship can be said to hold true generally for all letters of credit, it is nevertheless contingent on the inclination or urge of the practitioner banker to be strictly adhered to UCP 600 every time a new letter of credit to be established.

However, to harness the potential, the Practitioner Bankers must know how to fully utilize the powerful articles of the UCP 600 in order to improve the consumers' safety and protection in respect of imported goods. If not, the magic will not be tapped. In other words, the effective utilization of the Letter of credit under UCP 600 in improving the consumers' safety and protection in respect of imported goods is contingent on the will and skills of the practitioner bankers in acting as catalysts. The letter of credit efficiently utilized by well trained practitioner bankers then becomes the independent variable which account to the variance in the consumers' safety and protection in respect of imported goods. So, the degree of perceived effectiveness of the letter of credit under the UCP 600 in terms of the situational factors influence on the dependent variable and independent variable relationship.

One of the fundamental principles governing the letter of credit operation is the principle of strict compliance. The principle requires the seller to present the necessary documents in accordance with L\C requirements; in order to claim payment for the goods sold. The principle of strict compliance is defined according to (Davidson, 2001), as the legal principle that entitles the bank to reject documents which did not strictly comply with the terms of letter of credit.

Principle of strict compliance is significant to sustain the smooth flow of L\C procedure. L\C accelerates payment to a seller as well as guarantees delivery of goods that fulfill contract description to a buyer. However, the issue of standard of compliance causes delays in payment and vitiates the credibility of L\C as a method of payment in international trade. Once discrepancies exist in seller's documents, the documents will be considered as non-compliance and all undertakings are suspended. Consequently, a seller will not receive payment and a buyer will not be able to claim the goods at port of delivery. This section addresses issues relating to the required

standard of compliance from perspective of the UCP 600 and ISBP. The issue of strict compliance comes into existence during the process of documents examination in letter of credit transactions; this will be tackled later on in this study. The bank is the party responsible in determining whether or not the presentation complies with L\C requirements based on the Uniform Custom and Practice for Documentary Credit (UCP 600) and ISBP. The former is the primary rules which govern L\C transactions whereas the latter serves as guidelines for the standard interpretation within which the bank must exercise its reasonable judgment in ascertaining the documentary compliance.

Article 14 does in the UCP 600 what the old Article 13 did in the UCP 500 lays down the basic principles for the examination of documents and establishes the basic responsibility of the banks to examine documents tendered under letters of credit. Article 14(a) imposes on the banks a duty to examine documents in order “to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation” as stated in article 2 UCP600" Complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice". Basically the presented documents must be in accordance with the terms and conditions of the letter of credit, Based on the contract between applicant (importer) and issuing bank, the bank has the obligation to observe the borders of the order given to it and fulfils the request by observing the principle of strict compliance. Issuing bank keeps the rejection right when it meets the documents that not satisfying this principle.

Letters of credit as we have seen were an important finance instrument for international trade. They are especially significant in cross-border transactions where traders do not know each other. In spite of the attractiveness of the tool, by choosing letters of credit as a mean of settlement, international traders often have some complexities. In particular, they find it very complicated to meet the level of documentary compliance required by involving banks. In turn, this increases the risk of non-payment for goods or services invested in and could have a great impact on international trade patterns. For example, several recent surveys as stated by (Kraovska, 2008) reports “that about half of first presentations in letter of credit transactions end up rejected by a bank”. Clearly, this suggests that the governing rules are not clear enough as to how strictly the doctrine is to apply. In addition, courts all

over the world have not cured the deficiencies in the application of the rules. In fact, they themselves have added to the confusion by creating a myriad of controversial judicial standards that apply to similar mistakes in the presented documentation.

The legal principle that the bank is entitled to reject documents which do not strictly conform to the terms of the credit is conveniently referred to as the doctrine of strict compliance. The doctrine ensures the buyer that the bank will only make the payment if the documents received comply strictly with the terms and conditions of the credit as stipulated by the buyer mandate to the Issuing Bank, and the seller knows that payment will be received even if the buyer would not pay voluntarily for some reason, provided the terms and conditions of the credit are strictly complied with. Accordingly, a letter of credit exists to ensure payment to the seller; however, if the seller fails to understand and or follow the rules that determine whether their documents comply, the entire payment is put at risk after the goods have been shipped. While it is too easy to recite the words "strict compliance", the crucial question that has long dogged all parties involved in a letter of credit transaction is how strictly exactly the documents must conform to the terms of the credit. According to the UCP 600 "a complying presentation means a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice" ( Art. 2 of the UCP 600). This new definition, although still very vague, compared to the old one, has brought one important change for the document examination standard. Article 14(a) of the 2007 revision of the UCP stated that." A nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation" "compliance of the stipulated documents on their face with the terms and conditions of the credit should be determined by international standard banking practice as reflected in these Articles". Accordingly, if the practices were not embedded in the UCP, courts did not consider them relevant, and no expert testimony was permitted on what was the standard banking practice beyond the extent to which other articles of the UCP reflected it, Buckley (1995). Some courts rejected reliance on widely respected customary sources of strict compliance and others refused to rely on respected banking manuals. Kozolchyk, (U.C.C. Article 5). It must be noted that until 2003 it was not completely

clear what exactly was meant with the expression “international standard banking practice”. Then the ICC published its first International Standard Banking Practice (ISBP) for the examination of documents under documentary credits, ICC Publication No. 645. (2003) .which documented international standard banking practices for the examination of documents under the UCP and explained how the UCP rules were to be applied. However, the wording of the Article 13(a) of the UCP 500 prevented any further improvement of the document examination standard. Now, according to the UCP 600 definition of a complying presentation, if the UCP and the ISBP cannot provide a sufficient answer as to how strictly exactly the document at issue should comply with the credit, banks can rely on the standards of strictness of international standard banking practice.

The strict compliance doctrine, which accords with the first autonomy principle of the letter of credit, means that the beneficiary must strictly comply with the documentary requirements laid down in the letter of credit. In brief, the letter of credit has its documentation character, and the two fundamental principles of it allow letter of credit payment in international trade to operate in an efficient manner. In an international letter of credit transaction, a letter of credit usually involves four different and independent contracts between different parties. Some scholars for example, Jack (1993). Have accepted the idea of the letter of credit as a contract between the bank and the beneficiary, although several theories have been advanced to explain the judicial basis of the letter of credit itself. Penn, (1987). In fact, the requirement of strict compliance is emphasized by Article 18(c) with reference to the description of the goods in a commercial invoice. It states: "The description of the goods, services or performance in a commercial invoice must correspond with that appearing in the credit" which definitely stated what strict compliance principle referred to. In order to claim payment, the seller should present to the confirming bank, documents which strictly complied with LC requirement. Any discrepancies in seller's documentary presentation may triggers non-compliance and the seller does not entitle to receive payment.

In order to honor payments in LC transactions, the bank adopts principle of strict compliance where the documents tendered by the seller must appear to be in strict compliance with the LC requirements. Any error, ambiguity or discrepancy in the seller's documents will discharge the bank from its undertaking to pay. Argument on this principle, LC becomes a distinctive method of payment as payment is based on

compliance of documents presented by the seller instead of compliance of goods delivered by the buyer under the underlying sale contract. Due to this peculiar characteristic, LC is treated as a special contract and is totally separated from the contract of sale. Generally, the contract summarized under letter of credit is that the payment must be based on the basis of strict compliance with the terms and conditions of letter of credit. According to this principle, the exporter must respect the written terms of the letter of credit. If any discrepancy or inconstancy occurs between the documents presented by the exporter and what is actually specified in the letter of credit, the bank can refuse payment. Therefore, with a letter of credit, the buyer has the protection of the bank strictly controlling the documents, and the seller has the protection of getting paid if all documents comply with the letter of credit. But the problem is how strict compliance should be. According to Penn (ibid), some courts insist upon literal compliance, so that a misspelled name or typographical errors may be a divergence to refuse payment. Others accept payment upon substantial compliance with documentary requirements. However, one should keep in mind that the bank may insist on strict compliance with all the requirements of the letter of credit, and therefore the beneficiary must be able to provide prompt documentation. As the seller has very limited defense to protect himself, he should check with his bank whenever he has any doubts in interpreting unclear items in the letter of credit.

#### **2.4. 4: The rational of application:**

According to Sarna (1986), the rationale of the principle of strict compliance is evidently to protect the customer that is the buyer. Due to the impossibility to witness the existence of physical goods, the document is the only security for the buyer to prove that his goods have been properly delivered as mutually agreed. Furthermore the principle of strict compliance aims to protect the buyer who has neither the opportunity to examine the physical goods nor to supervise the process of loading the goods in the seller's country due to geographical distance. Therefore, the documents are the only security for the buyer. The documents prove that the goods have been properly delivered in accordance with the description in the sale contract. At the same time; the principle of strict compliance also benefits the seller by providing fast payment. The seller does not have to wait until the goods shipped safely reach the buyer before claiming payment. The seller can claim payment for the goods sold by presenting to the bank the documents required by the buyer once the goods have been shipped to the buyer. Thus, it is essential that the seller's documents contain a true

description of the goods; otherwise the buyer has a right to instruct the bank to reject the documents, which are deemed to be non-compliant. Apart from the buyer and seller, the bank also benefits from the application of the principle of strict compliance in letter of credit. The bank will be protected against any legal repercussion as long as the payment to the seller was made upon strict compliance of seller's documents. This is irrespective of the condition of the goods received by the buyer. Since banks usually have limited expertise in goods or industries, they are not expected to know every aspect of commercial terminology in trade, for instance, "coromandel groundnuts" is another trade name for "machineshelled groundnuts kernel" (Rayner, 1948). The bank could not, in any situation, exceed its mandate authorized by the said guidelines, that is, to only effect payment upon compliance of the seller's documents. If the bank pays although knowing of the discrepancies, the bank will have to bear the risk of wrongful honor and will have no recourse against the payment made. The reason underlying the strict compliance rule is that the confirming bank, nominated bank or advising bank, if any, is a special agent of the issuing bank and the latter is the special agent of the buyer. If an agent with limited authority acts outside that authority, the principal is entitled to disown the act of the agent, who cannot recover from him and has to bear the commercial risk of the transaction. Murray and Cleave (2000). The complexity of international trade means that the banks as agents of the buyer are not able to understand and appreciate all technical terms (some of which are interchangeable) or the technical differences between goods of similar functions or nature. While the seller and buyer may be able to reconcile their differences in the use of interchangeable terms or descriptions, it is not appropriate to expect a bank to undertake the task of determining whether goods with different denominations are actually the same, or whether different descriptions of the goods are in fact the same, Bailey (2003). Therefore, as Professor Dolan puts it: "the reason for the strict rule is to protect the issuer from having to know the commercial impact of a discrepancy in the documents. Under the strict rule, a bank document examiner does not need to judge whether dried grapes are the same raisins and does not need to know that "C.R.S." stands for coromandel ground nuts" (Dolan, 1989). Similarly, if a document tendered under a letter of credit would contain discrepancies that actually may not affect the value or the condition of the goods, and may appear a mere technical question, anyway banks would be expected to reject such document unless otherwise instructed by the applicant. Banks deal in finance, not in goods and normally have no

expert knowledge of the usages and practices of the particular trade. Murray and Cleave (2000). Therefore they are expected to follow strictly the instructions given by the buyer while exercising the obligation to examine the presented documents. It must also be kept in mind that in a falling market buyers are easily tempted to reject documents which the bank accepted, on the ground that they do not strictly conform to the terms of the credit, thus, to avoid the potential risk of not being remunerated by the credit applicant, banks need to act very carefully.

The doctrine was first established in 1927 by English courts with the well-known words of Lord Sumner in *Equitable Trust Company of New York v Dawson Partners Ltd* (Schmittoff,2012) as;"There is no room for documents which are almost the same, or which will do just as well... if the bank does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk, Lord Sumner's argument was based on the fact that the banks know nothing regarding the underlying transaction they financed thus they cannot distinguish between which document will do well enough and which will not. He also emphasized that if banks were to be concerned with the underlying transaction as well, it would be unlikely for business practice to proceed.

Which documents are to be disregarded and which ones are to be accepted remains as a tentative ground for a bank, to which UCP 600 provides little guidance that is ambiguous. Thus, lack of certainty gave rise to different court interpretations in different jurisdictions.

The court defined role of banks under a letter of credit transaction as stated above, is well described by famous Viscount Sumner's words: "It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorized to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transactions financed, cannot take upon itself to decide what will do well enough and what will not. Accordingly; If it does as it is told, it is safe; if it declines to do anything else, it is safe; if it departs from the conditions laid down, it acts at its own risk ,and that is what stated by Art.16(b). according to Schmittoff(2012), Case law on the banks' role in the document examination process is summed up by Sir John Donaldson, in the following passage: Commercial Banking

Co. of Sydney Ltd v. Jalsard Pty. Ltd.: ... the banker is not concerned with why the buyer has called for particular documents. · Equitable Trust Co. of New York v. Dawson Partners Ltd. there is no room for documents which are almost the same, or which will do just as well, as those specified. · Commercial Banking Co. of Sydney Ltd v. Jalsard Pty. Ltd.: whilst the bank is entitled to put a reasonable construction upon any ambiguity in its mandate, if the mandate is clear there must be strict compliance with that mandate. · Golodetz & Co. Inc. v. Czarnikow-Rionda Co. Inc a tender of documents which properly read and understood calls for further inquiry or is such as to invite litigation is a bad tender. In the course of time, some courts have tried to mitigate the overly strict documentary compliance standard by stating, for example, that banks, when examining the tendered documents, should not insist on the rigid and meticulous fulfillment of the precise wording in all cases. One court has said that because of the wide variations in language found in both – the credit and presented documentation, it is impossible to be dogmatic or even to generalize; therefore, each case should to be considered on its merits (ibid).

### **2.5: The Governing Law of Documentary Letter of Credit:**

It will rarely be necessary to ascertain the law governing a letter of credit because, as has been seen , banks in most countries operate credits under the Uniforms Customs and Practice of Documentary Credits, and that uniformity exclude the possibility of a conflict of laws with respect to most legal problems, Schmittoff, (2012). The UCP itself doesn't contain any provisions concerning the conflict of laws .and if it is necessary to determine the law governing a letter of credit and the credit itself doesn't contain a choice of law clause, and then this has traditionally been determined in accordance with general principles governing choice of law. Article 3 of the Rome Convention provides that a contract is to be governed by the law chosen by the parties, where the ascertainment of the applicable law is to be determined by reference to the articles of Rome Convention, the choice must be expressed or demonstrated with reasonable certainty by the terms of the contract or the circumstances of the As between the importer and the issuing bank, the characteristic performance is likely to be that of the bank and the governing law of the country in which the bank carries on business and has issued the credit.

As between the issuing bank and the beneficiary, this contract will generally be governed by the law of the place in which the beneficiary is to present the documents in order to obtain payment. When this letter of credit is confirmed, this creates an

independent contract between the beneficiary and the bank which confirms the credit. As cited in Schmittoff (2012), in a leading common law case," an irrevocable letter of credit was opened by Spanish bank in favour of an oil rig company incorporated in Panama but operating from Huston, Texas. The credit was advised by New York bank but was not confirmed by it. The beneficiary sued the issuing bank in the English courts and the preliminary question arose whether the contract between the beneficiary and the issuing bank was governed by the Spanish law (the law of the issuing bank) or by the New York law (the law of the advising bank). Applying the common law test, Ackner J. decided in favour of New York law on the ground that this was the law with which the transaction had its closet and most real connection". He observed:"...I am satisfied that ...very great inconvenience would arise, if the law of the issuing bank were to be considered as the proper law. The advising bank would have constantly to be seeking to apply a whole variety of foreign laws (if a deferent view were adopted) Case, where the parties have not chosen a law to govern the contract, article .4(1) preserves the general position at common law. At common law the law applicable was the law of the country with which the credit has its closet and most real connection, generally the place of presentation and examination of documents stipulated under the credit and where the payment was to be made by or on behave the issuing bank. (ibid).according to Schmittoff, in this situation it should be born in mind that the credit involves several contractual relationships and that these relationships are not all governed by the same applicable law.

Under the Rome Convention, the characteristic performance would appear to be that of the issuing bank. By the virtue of art.4 (2), the governing law would, accordingly, be that of the country in which the principal place of business or the place of business of the bank is situated.

The relationship between the issuing bank and the advising bank causes the greatest difficulty. In these inter-bank transactions general conditions of business or a course of dealing may allow some conclusions, as to a choice of law by the parties, but in the absence of such indication, the common law position was that the contract was considered as having the closet and most real connection with country the branch of the bank at which payment was to be made was situated.

In Bank of credit &Commerce Hong Kong Ltd (in liquidation) v Sonali Bank it was the defendant's connection that the law of Bangladesh was the proper law governing seven claims for reimbursement under five letters of credit.

The plaintiffs were the confirming bank in all but one case and in all cases the beneficiary presented documents to and was paid by the plaintiffs in Hong Kong. Applying the common law test, Cresswell J. held that the law governing the contracts between BCC HK and Sonali was in each case the law of Hong Kong because (a) it was common ground that in each case BCCHK(in Hong Kong ) would add its confirmation to the credit ;(b) when it confirms the credit, BCCHK was incurring an obligation in addition to that of Sonali ;(c) in requesting BCCHK to add its confirmation, Sonali authorized BCCHK to negotiate against documents which appeared on their face to be in compliance with terms and conditions of the letter of credit and undertook to reimburse BCCHK; (d) having confirmed the credit, BCCHK was obliged to negotiate the documents; and (e) the credits contemplated that negotiation of documents presented by or on behalf the Hong Kong beneficiary would take place in Hong Kong(which is what happened, with payment made by BCCHK to the beneficiary).

The aim of this section is, to define the concept of trade custom, usage and practice and taking into account the historical aspect and the current statistics of application thereof, to analyze their general value for the international trade. Specific attention will be given to the analysis of the Uniform Customs and Practice for Documentary Credits (hereinafter – the “UCP”) as one of the most successful examples of privately developed rules, which are nowadays used almost worldwide (Plaske 2009).

In order to achieve the above-mentioned goal, this section will be structured in several parts. The first will be dedicated to the interpretation of the concepts of trade customs, usages and practices and to the definition of their practical value for international trade. The second will deal with the application and the general value of the most recent version of the UCP - UCP 600 - with special consideration being dedicated to the analysis of the amendments introduced to this most recent revision of the UCP rules. In addition, as there is a permanent need to improve the legal framework in order to solve and get rid of the challenging issues arising in practice in connection with the application of certain legal rules, the third of this section will be dedicated to the analysis of such problematical issues arising in connection with the application of the UCP 600 and in the field of the documentary credits in general. Finally, all the significant findings and the anticipated solutions to the identified problematical issues, if any, will be summed up in the conclusions of this study as general.

The concepts of trade customs, usages and practices

According to Schmittoff (2012), the definitions whether some behavioral pattern is a trade custom or a trade usage, a difference sometimes crucial, as many national legal systems regard the customs as a source of law, whereas the 'usages are not a formal source of law but are devices of contract construction, The legal doctrine suggests different interpretations of the concept of the trade custom, or custom in trade. For example, such a custom can be regarded as a generally accepted rule prevailing in the area of the trade on the basis of the long-term, systematic and uniform regulation of the specific factual relationships (Strovskiy, 1999). In English law for a certain rule of behavior to be considered a custom it 'should be Constant, voluntary, certain, consistent and reasonable'

On the other hand, "English law tends to view the Trade usages as the 'factual patterns of behavior that are generally followed, are quite certain and have been in existence for some time. American law, on the contrary, does not differentiate the concept of trade custom from that of trade usage and, consequently, Article 1-303 (c) of the UCC provides that "usage of trade" is to be understood as 'any practice or method of dealing having such regularity of observance in a place, vocation, or trade as to justify an expectation that it will be observed with respect to the transaction in question'. According to Article 1-303 (d) of the UCC, the role of the usages of trade is quite important as they might be referred to in order to ascertain 'the meaning of the parties' agreement, may give particular meaning to specific terms of the agreement, and may supplement or qualify the terms of the agreement'.

Finally, Trade practice can be rather generally defined as an established course of actions of the parties to a certain contract which has been developed between them throughout their previous relationships (dealings), and which, although not directly fixed in any document, is implied in the absence of any objection thereto,(Shmittoff,2012).

With reference to the legal nature of trade practices and the concerns with regard to their practical application, Ramberg stated that; another minor issue should be mentioned, namely, the one concerning the terminology. While there are not as many theoretical problems with regard to defining the concept of the trade practice, the representatives of the business community especially, in the light of the court practice analyzed above, should be aware that some courses of actions or particular behavior shall not be regarded as practices only because they are so referred to in certain

sources. Thus, for instance, an introductory note to Incoterms 2010 (which itself, as was previously mentioned, is regarded by many researches to be a codification of trade usages) contained an explanation with regard to the use of EXW term stating that there exists ‘a fairly consistent commercial practice that the seller assists the buyer in connection with the loading of the goods on to the buyer’s collecting vehicle .... However, under EXW the seller has no obligation to assist.

In this respect it is also interesting to refer to the International Standard Banking Practice for the Examination of Documents under Documentary Credits (hereinafter - the “ISBP”) - the ICC’s publication of the “rules” / practices which are aimed at supplementing practitioners’ knowledge on how to apply the UCP’s provisions. While being referred to as the “practice”, the legal nature of the ISBP, though, is not so easy to define (the practical value of ISBP, on the other hand, is incontestable and will be assessed later in this chapter in a close relation to the UCP’s applicability). Thus, for instance, a reference to the “practice” as being “standard” (serving, therefore, to emphasize the uniformity of its application) and the fact that the UCP ‘incorporates international standard banking practice (which also indicates that the ISBP is widely known and applicable in the transactions between the different participants within the industry) contradict to the definition of the trade practice which was analyzed above. The above-mentioned characteristics give reason to think of ISBP as being closer in its nature to the codification of the trade usages. However, it can, perhaps, be argued that previously (when ISBP was not incorporated into the UCP) when banks applied certain courses of actions to the transactions between themselves, such sequences of actions transformed into practices in the legal sense of the word, and when those practices were gathered into an unofficial codification - ISBP - they simply retained the name of the “practice” implying the non-binding and supplementary nature of the rules contained therein. All in all, while the issue of the ISBP’s legal nature may prove somewhat controversial, these several examples, however, once again draw attention to the ambiguities existing with regard to establishing whether some conduct constitutes a trade practice or not.

### **2. 5.1: Uniform Customs and Practice for Documentary Credits (UCP)**

In order to obtain global understanding and a common interpretation and application of documentary credits, [ICC: International Chamber of Commerce] developed and published its first version of the Uniform Customs and Practice for Documentary Credits (more commonly known as UCP) in 1933 (ICC publication

UCP 82). Subsequent revisions occurred in 1951 (UCP 151), 1962 (UCP 222), 1974 (UCP 290), 1983 (UCP 400), 1993 (UCP 500) and 2007 (UCP 600).

UCP 600 is the current version and came into effect on 1 July 2007. (For full list of UCP 600. These rules are complemented by: ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR 725); ICC Supplement to the Uniform Customs and Practice for Documentary Credits for Electronic Presentation (eUCP); and International Standard Banking Practice for the Examination of Documents under Documentary Credits (ISBP).

### **2. 5.2: Application and practical value of UCP 600 for international trade**

The international trade transactions have always been associated with certain risks and distrust between the parties, especially in the course of their first-time dealings - caused by the distance and, subsequently, unfamiliarity of the parties with each other, as well as differences in their trade practices (Houtte, 2002). It is no wonder that the Letters of Credit 'remain the predominant settlement product'. However, in order to function properly and uniformly, every financial tool has to be subject to a set of limpid and precise rules (perhaps, established on a "supranational" level). In case with the documentary credits, it is the UCP that acquired the above-mentioned role.

The terms and conditions governing L/C transactions are almost always to be found in Uniform Customs and practice for Documentary Credits (UCP) issued by the International Chamber of Commerce - Commission on Banking Technique and Practice (Banking Commission). According to the ICC sixth revision of the rules since they were first circulated in 1933, Uniform Customs and Practice for Documentary Credits (commonly called "UCP") publication No: 600, (2007).there are several significant differences exist between UCP 600 the current applicable rules and UCP500, the rules that had been in implementation before the UCP 600, the number of articles reduced from 49 to 39 in UCP 600.In order to reach a standard meaning of terms used in the rules and prevent unnecessary repetitions two new articles have been added to the UCP 600. These newly added articles are Article 2 "Definitions" and Article 3 "Interpretations". These articles bring more clarity and precision in the rules; a definitive description of negotiation as "purchase" of drafts of documents; new provisions, which allow for the discounting of deferred payment credits; The replacement of the phrase "reasonable time" for acceptance or refusal of documents by a maximum period of five banking days. Currently majority of letters

of credit issued everyday is subject to latest version of the UCP. This widely acceptance is the key sign that shows the importance of the UCP, which are the most successful private rules for trade ever developed.

Article 1 of the UCP 600 has introduced a significant change to the applicability of the rules. Now the UCP 600 Articles are considered “rules”. Accordingly, when the letter of credit expressly states that it is governed by the UCP 600 the contracting parties are governed by the rules set out in the UCP 600 and may exclude or modify its application by express wording to that effect in the credit document. Thus this provision will reinforce the legal status of the UCP 600. In English law according to Schmittoff, (2012) don’t have the force of law or the status of a trade customs and, in accordance with art 1; apply only if the parties have incorporated them into their contract, and consequently English courts are familiar with the provisions of the UCP and have frequently interpreted them. In certain states of the United States of America, the provisions of the Uniform Commercial Codes on letters of credits are replaced by the UCP where the parties have agreed to apply them or where they are customarily applicable. In countries which have national banking associations the general standard conditions applied by the members of this association often incorporate the UCP. If the automated international transfer system SWIFT is used by banks in letter of credit transaction, the UCP apply to the contractual relations between the banks and between them and SWIFT. The above mentioned rules, defines the letter of credit in Article 2 as “any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honor a complying presentation.” care must be taken in this respect, banks are under obligation to honour or negotiate only against complying presentation, and there is no room for applicant's waiver under these rules. This simple definition is an improvement on the earlier definition and uses new terms such as honor and complying presentation. Article 2 also provides the meaning of Complying presentation, which is defined as “a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice” (International Chamber of Commerce, 2006). We know now that credits are going to be irrevocable, and Article 3 strengthens it by stating that a credit is irrevocable even if there is no indication to that effect so the question of revoking a credit as under UCP 500 does not arise any more. Thereby “Credit means any arrangement, however named or described, that is irrevocable and then constitutes

a definite undertaking of the issuing bank to honor a complying presentation". So, LC's are irrevocable, i.e., neither be amended nor canceled without prior agreement of the beneficiary, the applicant, the issuing bank and the confirming bank, if any . As stated in its guide to Letters of Credit TD Bank Financial Group (2008). In commercial practice Letter of Credit, simply could be defined as a written instrument issued by a bank at the request of its customer, the Importer (Buyer), whereby the bank promises to pay the Exporter (Beneficiary) for goods or services, provided that the Exporter presents all documents called for, exactly as stipulated in the Letter of Credit, and meet all other terms and conditions set out in the Letter of Credit. By so doing , the issuing bank elects to stand on his customer's shoes, the step that constitute a definite undertaking , and at that moment the Issuing Bank substitutes the applicant undertaking with its own . Thereby this document is most important in case both the parties doing business first time, for the reason that it enables parties thereto, to conduct an overseas business transaction without any or very low risk, as bank gives a safety assurance to both parties involved with the transaction. So letter of credit can be considered as an instrument that reconciles the interests of the seller and the buyer, thus providing security to both of them. Ronald J. Mann, among others, has argued that Common justifications for the use of the letter of credit fail to explain its widespread use. (Mann 1999). He stated that the classic explanation , claims that the letter of credit provides an effective assurance of payment from a financially responsible third party, .that is to say, a reputable bank is unlikely to default on its obligation to pay the seller, and the seller knows that it has an absolute right to payment once it ships the goods according to what stated in the letter of credit, but conditioned only on the seller's presentation to the bank of the specified documents (typically the invoice, a packing list, an insurance certificate, and a transport document such as a bill of lading).

A key principle underlying Letters of Credit is that banks those handling letters of credit, deal only in documents and not in goods. The UCP 600 has not altered the long established 'principle of independence', that is, the separation of the L/C from the underlying contract, insofar as banking operations are concerned, and this is reflected in Article 4. Article 5 also reinforced that separation by specifying that "banks deal with document and not with goods, service or performance to which the document may relate" (International Chamber of Commerce, 2006). Any dispute with regard to quantity or quality of merchandise bears no relation to the bank's responsibility to

examine documents as presented under the letter of credit, and to make their decision as to the acceptability of the documents only based upon those documents versus the letter of credit terms and conditions, exactly as stated in article 14(a)" Nominated bank acting on its nomination, a confirming bank, if any, and the issuing bank must examine a presentation to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation", That is to say, the decision to pay under a Letter of Credit is entirely on whether the documents presented to the bank constitutes complying presentation, according to article 15(a)" a. When an issuing bank determines that a presentation is complying, it must honour". This expression in Article 2 is really revision of what UCP 500 says "in compliance with the terms and conditions of the credit". The alternative formulation "complying presentation" is defined to mean a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of (UCP-600) rules and international standard banking practice (ISBP 745). So it would appear to be that, the responsibility of the advising bank has been clarified by Article 9(b) of the UCP 600. "By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received." (International Chamber of Commerce, 2006). That is what in this respect considered by Bergami, (2009) as an improvement over the comparable Article 7 of the UCP 500 that merely required the bank to show reasonable care in checking the apparent authenticity of the credit. Because it would be unreasonable for the banks to physically check all merchandise shipped under Letters of Credit to ensure merchandise has been shipped exactly as per each Letter of Credit. Accordingly, the integrity of both the Exporter and Importer are very important in a Letter of Credit transaction. Thus, the seller that obtains a letter of credit can rest assured that it will be paid even if the buyer would not pay voluntarily. But usually, according to bankers and lawyers' familiar with the industry, they regularly claimed that sellers in general do not present documents that conform to the requirements of the letter of credit. Among other things, documents might be missing, late, or fail to precisely match the details about the shipment provided in the letter of credit, that is to say that it is largely untrue as matter of fact and practice at one important and critical point: the seller's possession of an absolute right to payment, but it is strictly conditioned on their compliance with requirements of the letter of

credit. So, an appropriate due diligence should be exercised by both parties. In this respect, Smith and Butler (2007), Showed that; there are three points at which a seller of goods needs to pay particular attention to the letter of credit through which he expects to get paid by his buyer: (i) When he concludes the contract of sale (ii) When he receives his letter of credit from the advising or confirming bank; and (iii) When he tenders the shipping documents for payment. Traders as they stated have to focus very intently on the letter of credit at points [ii] and [iii]. Because they think that every seller knows that whether he gets paid promptly is going to depend on whether he can tender documents which conform to the letter of credit point [iii]. Likewise, every seller knows that whether he will be able to tender such documents is going to depend on how difficult the documentary requirements of the letter of credit are point [ii]. It is obviously in the buyer's interest to make those requirements as tough as possible and whether or not he can do so will depend on what the seller and the buyer have agreed in their sale contract about the letter of credit or about the tender of documents for payment and this is the point frequently ignored at the early stage of the negotiation of the sale contract. It is consequently in the seller's interests to have clear terms in his sale contract about the type of letter of credit which the buyer can apply for and about the documents which the letter of credit will require for prompt payment. In effect, the seller will get the letter of credit he bargains for in the sale contract. The seller needs to carefully and promptly check the letter of credit after it is received, so as to leave sufficient time if any amendment is necessary and to avoid the failure of not having the conforming documents. Accordingly, there are two main aspects requiring attention when the letter of credit is checked. Firstly, the seller needs to check the validity of the letter of credit itself, including the credibility of the issuing bank, the terms of honoring payment, and the appropriateness of period of validity. Secondly, the seller needs to check whether the letter of credit terms comply with the clauses of the sales contract. Once the seller identifies soft clauses in the letter of credit, the seller must immediately require the applicant to amend; at the same time, the seller sets forth the time limit for the buyer to amend or provide other guarantees, and clearly points out that the buyer should extend the validity of the letter of credit due to the delay of amendment. If the buyer refuses to amend the letter of credit afterwards, the seller may claim that the contract is terminated and can require the buyer to provide a valid guarantee, and further preserves the right to claim for compensation as the buyer breaches the sales contract due to the failure of opening the

letter of credit. It is important to understand, however that the documents of trade do not provide full protection against all transaction risks as well as against fraud. The importer, therefore, should carefully evaluate the exporter's reputation and have a clear understanding of the requirements detailed in the sales contract. A letter of credit is not an absolute guarantee of payment but rather a payment mechanism which can reduce the risk of not getting paid. Any misspelling or discrepancy in the letter of credit incurs delays and additional costs to the transaction, or can also be used as an excuse for non-payment. Common discrepancies in a letter of credit can be as simple as an incorrectly stated name of the beneficiary to a late shipment date which makes the letter of credit invalid to the seller. It should be remembered that, in a letter of credit transaction, conforming documents imply payment. What is and what is not a discrepancy is determined by the UCP articles, and the terms of the letter of credit. Discrepancies are also determined through practice and experience. Lack of training and improper understanding of letters of credit administration can lead to problems and rejections. Training is a key component in achieving greater efficiency in completing letters of credit properly. Accuracy in properly completing a letter of credit is a vital requirement to avoid problems and corrections, thus saving time and money (improving cash flow and enhancing profitability). Checking procedures need to be carried out at a very early stage of the transaction. When checking documents, the issuing bank will check the documents against the terms and Conditions of the letter of credit. If any discrepancy is noted, the Issuing Bank is not under obligation to honor or to negotiate, this is according to the letter of as a contract between the Issuing Bank and the beneficiary, thereby; in accordance to article 4(a), which confirms that: "credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of the bank to honour, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defenses by the applicant resulting from its relationships with the issuing bank or the beneficiary" .Accordingly the Issuing Bank have to be fully adhered to the letter of credit contract as a conditional payment instrument, and there is no room for sole judgment according to which, the Issuing Bank avail it's self of the spongy exception under article 16(b) , which states that : " When an issuing bank determines that a presentation does not comply, it may in its sole judgment approach the applicant for a waiver of the

discrepancies. By so doing this sub- article gives the Applicant the right to decide whether or not the discrepant documents could be accepted, despite the type of discrepancies however, the letter of credit is a contract between the Issuing Bank and the Beneficiary only and the Applicant is not a party thereto as stated in the privity of contract doctrine which dictates that;" only persons who are parties to a contract are entitled to take action to enforce it. A person who stands to gain a benefit from the contract (a third party) is not entitled to take any enforcement action if he or she is denied the promised benefit". Accordingly; the doctrine of privity in the common law of contract provides that a contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it (Wikipedia). On the other hand, due to the common law principle of" Nemo dat quod non habet" In effect a person cannot give a better title than the one he/she has. That is to say;"no one gives what he doesn't have". so by Nemo dat the applicant hasn't the right to waive discrepant documents under the letter of credit. Accordingly, if Applicant is allowed to intervene with the payment obligation of the bank for a defect in the documents, it would seriously damage international trade and Banking Practice as well, therefore it should be noted that; Under a letter of credit, the bank is only concerned with one problem: to check whether the documents presented by the seller comply with those specified in the letter of credit. for the reason that of the autonomy of a letter of credit, the buyer's bank is therefore absolutely bound to honor the letter of credit by paying the exporter upon presentation of proper documents only, notwithstanding any dissatisfaction from the buyer in relation to the seller. Therefore, the bank's payment undertaking is not subject to the sale contract or condition of the goods but is based on compliance of the seller's documents. Thus, basically, if the documents are discrepant or not in conformity with the LC requirements, therefore, the Issuing bank as stated before is under amoral and legal obligation to effect payment only against complying documents. So, the question appears to this study to be, is how the Applicant to be notified and approached in the light of article 16(b) in a matter beyond the scope of his contractual relationship with the Issuing Bank. This study tries to find out to what extent this banking practice in the case of discrepant document will negatively affects the quality of imports, and on the other hand, what would be the case when the tendered discrepant documents underlies the imported goods have a very sever impacts and endangers the environmental and human safety as well as the national interests. Although manufacturers and sellers (Importers) have a duty to take

precautions and provide satisfactory goods, the consumers can still obtain products that are unavoidably unsafe, with reference to the European Union Guidelines for import controls in the area of product safety and compliance Article 1(2) Regulation establishes that the EU market surveillance framework will ensure " a high level of protection of public interests, such as health and safety in general, health and safety at the workplace, the protection of consumers, protection of the environment and security". This objective must be satisfied by all products made available on the EU market, independently of whether they were produced in the EU or in a third country. The Regulation therefore also provides a framework for controls on products from third countries (taxud-unit-b1@ec.europa.eu). According to Al-maqasid AL-Shariah, On the other hand, (the issue will be discussed later in this chapter), Ibn Ashur, as cited in (Abu Hurayra, 2015) Maqasid al-Shariah ensures that Islamic banks (or any financial institution and/or manufacturing/industrial firm) could contribute to the promotion of human welfare, prevent corruption, and enhance the social and economic stability. Hence, for a proper realization of Maqasid al-Shariah, Islamic banking and finance must ensure that all transactions comply with Shariah; not only in terms of legal technicalities and forms but more importantly in terms of the economic substance of these transactions which is grounded on the objectives outlined by Shariah (Abozaid, Abdulazeem, 2010). So, this study in this chapter tries to draw attention to the application of Maqasid Al-Shariah in all of the current Banking Transactions ,so the Baking Practice in this respect will be analyzed and evaluated based on their conformity with the Maqasid Al-Shariah , And what will be the appropriate course of action that will be adopted by the Central Bank of Sudan (CBOS) in order to exercise greater conformity with Maqasid Al-Shariah in terms of additional measures to restrict this unlimited flexibility in Sub-Article 16(b), and exercise close control over imports through the letter of credit. So the CBOS have to specify the nature of discrepancies in terms of those could be waived to the letter of credit Applicant according to the public interest concepts defined in the lights of the product liability and Al-Maqasid Al-Shariah principles.

## **2.6: Product Liability:**

Product liability is the liability of the producer of a product which, owing to a defect, causes injury, damage or loss to ultimate user, the defect may consist in the quality-or rather lack of it-of the product itself, but may also be due to insufficiency in

the instructions for use or in the failure to give adequate warning of a dangerous propensity of the product. (Schmittoff, 2012).

Damage means "death or personal injury or any loss of or damage to any property (including land)"but there is no liability for loss or damage to property which is not intended for private use, occupation or consumption or so many intended by the person suffering loss or damage, nor is there liability for the defective product itself or any component part, (Consumer Protection Act 1987) as cited in Schmittoff, 2012. On the other hand, the European Community Directive on Product Liability, consider the following are liable:

1. The producer of the product.
2. The person who, by putting his brand name on the product, has held himself out to be the producer.
3. The importer into a Member State of the EC; or
4. A supplier, who when asked by the claimant within a reasonable period to identify any of those in 1-3 above, fails to give this information within a reasonable time.

It was an offence, under s.10 of Consumer Protection Act 1987, to supply any consumer goods which failed to comply with the general safety requirements, (Schmittoff, 2012).

According to Hill and Kathleen (2005), in the United States, some consumers have called the rapid growth of product liability litigation as an effective tool for consumer protection, the law has changed from caveat emptor ("let the buyer beware"), to strict liability for manufacturing defects that make a product unreasonably dangerous."Strict liability involves extending the responsibility of the vendor or manufacturer to all individuals who might be injured by the product, even in the absence of fault. Injured guests, bystanders, or others with no direct relationship to the product may sue for damages caused by the product. An injured party must prove that the item was defective, the defect approximately caused the injury, and the defect rendered the product unreasonably dangerous", (ibid). The history of the law of product liability is largely a history of the erosion of the doctrine of privity, which states that an injured person can sue the negligent person only if he or she was a party to the transaction with the injured person. In other words, a defendant's duty of reasonable care arose only from the contract, and only a party to that contract could sue for its breach. This meant that a negligent manufacturer who sold a product to a

retailer, who in turn sold it to the plaintiff, was effectively protected from liability. The plaintiff was usually without a remedy in tort because it was the manufacturer and not the retailer whose negligence caused the harm. Accordingly, the Issuing Bank by, approaching the Applicant for waiver under abovementioned sub-Art.16 (b), could be liable for negligence as party to the Letter of credit contract as well. Thereby, the Issuing Bank have to exercise reasonable care where necessary in order to avoid to be sued for breach of the letter of credit contract, so the Issuing Bank have to be fully adhered to the documents' strict compliance requirements and not discharging it's payment obligations without satisfying the complying presentation requirements as stated in UCP 600 - Article 2 .

According to Hill and Kathleen (ibid), The rule of strict liability applied in product liability makes a seller responsible for all defective items that unreasonably threaten the personal safety of a consumer or the consumer's property. The vendor is liable if he or she regularly engaged in the business of selling such products, which reach the consumer without any substantial changes having been made in their condition. The vendor is liable even if he or she exercised care in handling the product and if the consumer bought the product somewhere else and had no direct dealings with the vendor. Furthermore, they consider it as a critical issue in a product liability court case is whether the product contains a defect, which is an imperfection that renders a product unsafe for its intended use. Design defects exist when a whole class of products is inadequately planned in such a way as to pose unreasonable hazards to consumers. For example, an automobile manufacturer's design of a vehicle with the fuel tank placed in such a position that it will explode upon low-speed impact can be classified as defective. In that case, products manufactured in conformity with the intended design would be defective. A production defect arises when a product is improperly assembled. For example, frames of automobiles that are improperly welded to the body at the assembly plant would be classified as a production defect. In addition, they stated that, something other than the product itself can cause it to be defective. For example, caustic chemicals should be packaged in appropriate containers. Improper labeling instructions or warnings on a product or its container also make a product defective. Dangerous products should carry warning labels that explain how they should be used, under what circumstances they are likely to cause harm, and what steps can be taken in an emergency involving the product. So the

involving Banks have to identify all discrepancies even those related to the packing and labeling the goods.

## **2.7: Al-Maqasid Al-Shariah:**

### **2.7.1: Introduction:**

Islamic banking and finance is one of the fastest growing industries in the world today. Surveys reveal that it is growing at a phenomenal rate of 20 percent worldwide – a truly impressive performance. Muslims as well as non Muslims are increasingly coming to invest in Islamic banks and financial institutions (Haque, 2005). In the last decade, the empirical literature in the area of Islamic Banking has been focused on product and development as well as the viability of Islamic Banking in the current financial intermediation process. It has been found that here is a lack of research work in the area of Letter of Credit from Islamic perspective.

With the increasing role the Islamic banks are playing in Sudan, it is, therefore, of significant importance to highlight briefly the history of Islamic Banking System in Sudan.

In Sudan, Islamic banking began with the establishment of Faisal Islamic Bank of Sudan in 1978. By the mid-1980s, several other Islamic banking institutions were established including the Sudanese Islamic Bank and Investment Company, Al Baraka Islamic Bank, .these banks were very active and successful in attracting Muslims desirous of obeying the Islamic teachings against all types of interest-based transactions.

### **2.7.2: The Moral Aspect in Islamic Banking**

‘Maqasid al-Shariah’ are principles that provide answers to the above questions and similar questions about the Islamic law. Maqasid includes the wisdoms behind rulings, such as ‘enhancing social welfare,’ which is one of the wisdoms behind charity, and ‘developing consciousness of God,’ which is one of the wisdoms behind fasting. Maqasid are also good ends that the laws aim to achieve by blocking, or opening, certain means. Thus, the Maqasid of ‘preserving people’s minds and souls’ explain the total and strict Islamic ban on alcohol and intoxicants. Maqasid are also the group of divine intents and moral concepts upon which the Islamic law is based, such as, justice, human dignity, free will, magnanimity, facilitation, and social cooperation. Thus, they represent the link between the Islamic law and today’s notions of human rights, development, and civility (Auda, 2007). In general Al-

Shariah is predicated on the benefits of the individual and that of the community, and its laws are designed so as to protect these benefits and facilitate improvement and perfection of the conditions of human life on earth. Al- Qur'an Al-Kareem stated this when it figure out the most important purpose of the Prophethood of Muhammad (peace be on him) in such terms as: “We have not sent you but a mercy to the world” (Al-anbia, 107). (الأنبياء, 107) ( وَمَا أَرْسَلْنَاكَ إِلَّا رَحْمَةً لِّلْعَالَمِينَ ). The principal objective of compassion (rahmah) in the foregoing verse (Ayah) is then confirmed by other provisions in Al- Qur'an Al-Kareem and the Sunnah those seek to establish justice, and alleviate hardship. Justice itself is a demonstration of God's mercy as well as an objective of the Shariah in its own right. Compassion (rahmah) is manifested in the realization of benefit (Maslaha) which Al-ulama' have generally considered to be the all-pervasive value and objective of the Shariah and is to all intents and purposes synonymous with rahmah.

According to "Ibn Ashur Treatise" on Al-Maqasid Al-Shariah (an English translation of the original Arabic) was published in complete form in 2006 by, The International Institute of Islamic Thought (IIIT). In the work Shaikh Muhammad al-Tahir Ibn Ashur proposes Al-Maqasid as a methodology for the renewal of the theory of the Islamic law, which has not undergone any serious development since the era of the great imams.

The Shariah general rules and specific proofs indicate that the all-purpose principle of Islamic legislation is to preserve the social order of communities and insure their health. Explicit textual proofs confirm that the overall objective of the Shariah is to remove corruption in all kinds of human activity. This study focus on the specific aspects of reform pertaining to the public affairs of Muslims in the rules and laws regulating civil and social dealings. These are known in Islamic jurisprudence as the realization of what is good and useful (Maslaha) and discharge of the evil and harmful (Mafsadah).

According to Ibn Ashur (ibid), Maslaha means maximum righteousness and goodness and an attribute of the act whereby righteousness and goodness takes place in public or in private. It is also useful and beneficial for the public or individuals. Mafsadah is the opposite of Maslaha, an attribute of the act whereby corruption or harm happens to the public or to individuals. Public interest pertains to collective obligations that can strengthen the Ummah and the Islamic society. Private interest benefits individuals and is concerned with the righteousness and goodness of

individuals' acts to benefit society. Part of the Qur'anic legislation and most of that of the Sunnah are concerned with this category of Maslaha (Interest).

Islam, which is continuation and completion of the monotheistic religions, provides a law of do and don't called Al-Shariah Al-eslamiah. All of the Scholars, who studied and examined it, observed that essentially all dos and don'ts that are in Shariah are for the protection and continuity of human society. They found that these rules are there for the protection of the main five aspects or dimensions of human being: Protection of self (or life); Protection of faith; Protection of wealth; Protection of intellect; and Protection of progeny. According to Imam Al-gazali as cited in Yousif Al-aalim (1998), Al-maqasid Al-Shariah is all about "daf al mafasid" (removal of degrading factors and constraints) and "jalb al masaleh" (the attainment and enhancement of benefits), accordingly; he found that : Maqasid Al-Shariah was established on the protection of the Self, Faith, Wealth, Intellect and Progeny, that is to say; for example, protection of self (or life) can include among others protection against: Unhealthy living conditions and by the removal of such Banking measures and procedures those adversely affects the human being Health , Quality of life, Feeling of contentment , Moderation in consumption and Healthy habits. This opens up the question of minimum protection and then also enhancement of the dimension and likelihood of its sustainability at the achieved level. All these aspects are desirable. Since Shariah provides some basic protections, therefore anything that strengthens and enhances those protections is also desirable. So, whatever procedure that not preserves any one of the abovementioned five major aspects of human being is "Mafsadah", and thereby; its removal is a major religious duty of the Central Bank of Sudan. Accordingly, the researcher in this study can establish that the banking practice in the case of discrepant documents' Waiver, definitely, will lead to "Mafsadah" where the Issuing Bank can act according to flexible article 16(b) of UCP600, and approach the Applicant who in turn is not a party in the letter of credit contract for a waiver of catastrophic discrepancies.

## **2.8: The role of the Banking sector in Product safety and compliance.**

Increasing demand for products and services based on Islamic principles has led to the growth of Shariah compliant banking. Thereby, adopting and implementing ethical banking procedures and measures based on the Maqasid Al-Shariah, in solving problems of discrepancy in the Letter of Credit Discrepancies in documents is one of the problems those have to be addressed by the Islamic Bank. It has been said that

discrepancies are found in more than 75% of presentations. In view of this and the very severe consequences in terms of defective goods due to payment against discrepant documents, we have to look at lessening the severity with which discrepancies could affect the safety and health of the society. According to the Strict Compliance Principle Banks are allowed to effect payment under the letter of credit transaction only against strictly complying documents and due to the moral and divine commitment to protect and preserve the public interest rather than to waive discrepant documents to the applicant who suppose to act according to Islamic teaching and defends the public interest rather than his short terms interests (Dunyueeah) instead of his long terms interests in (Al-aakherah) Holy Quran stated that : (البقرة 86) (أُولَئِكَ الَّذِينَ اشْتَرُوا الْحَيَاةَ الدُّنْيَا بِالْآخِرَةِ فَلَا يَخَفُ عَنْهُمْ الْعَذَابُ وَلَا هُمْ يُنصَرُونَ) The importer on the other hand is anxious for his goods and in most cases waives the discrepancies and accepts the documents with discrepancies provided that the discrepancies do not hinder him from obtaining possession of the goods in despite of the damage may be caused to the human community instead. The question is: under what circumstances should the Issuing Bank is permitted to discharge his payment obligation according to article 16(b). The study recommends that discrepancies have to be approached from the standpoint of their seriousness and that minor discrepancies are distinguished from major discrepancies. This must be done in the context of a fair and reasonable evaluation to the harm the discrepant documents do to the human society rather than business transaction.

The guiding principle must in all case be, it is unjust to seek applicant waiver without taking the public interest in consideration. This is the case, as very often happens, where banks usually do for discrepant documents, even where it has negative effect on the human health and safety. It would be of great significant in this stage the implementation of Maqasid Al- Shariah in order to address and resolve the problem. Accordingly, Regulators have to give principal importance to the protection of the five main aspects of human being; Self, Faith, Wealth, Intellect and Progeny, in order to ensure a high level of protection of public interests, such as health and safety in general, the protection of consumers; protection of the environment. This objective must be satisfied by all products made available on the Sudanese markets. Independently of whether they were produced in the Sudan or through international trade transactions, in terms of imports from overseas markets, with special emphasize on all activities carried out and measures taken by public authorities to be articulated

so as to ensure strict products compliance in line with the requirements set out in the relevant Community harmonization legislation and do not endanger health, safety or any other aspect of public interest protection; Such measures and regulations therefore also must provide a framework for controls on products from overseas countries , this implies the need for a more pro-active approach towards controls of imported goods against product safety requirements. It requires the enforcement authorities to carry out appropriate checks on the characteristics of products on an adequate scale, from the moment of shipment before the actual entry into the Sudan, and before the products is released for free circulation. Thereby; the central bank of Sudan as one of the authorities in charge of the external border controls, have to develop very sound procedures and measures according to the prevailing International Trade Legislations, in order to improve the current Banking Practice in the area where International Trade Finance in need . This requires the elaboration of a common approach for controls by the Central Bank of Sudan regarding in particular the obligations of the Issuing Bank concerning .

- i. Pre-shipment inspection.
- ii. Shipping documents strict compliance practices.

Accordingly Issuing Banks not to be allowed to establish an Imports' letter of credit without satisfying "Third party Inspection Certificate " as prime condition, and to be tendered according to what stated in UCP 600-Art 14(f)" If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfill the function of the required document and otherwise complies with sub-article 14 (d) . On the other hand the Issuing Bank have to be obliged not to discharge its payment obligation against discrepant documents despite the provision of Art, 16(b) that read as "When an issuing bank determines that a presentation does not comply, it may in its sole judgment approach the applicant for a waiver of the discrepancies. the procedure which enable the Central Bank to ensure safety and compliance to exercise close control over products entering the Sudanese markets provided by letter of credit subject to UCP600, with special reference to the basic principles for the examination of documents where the application of Article 14 is necessary. Such measures will provide Bankers with complete and comprehensive instructions in order to facilitate product safety and compliance in the lights of the Al-maqasid Al-Shariah, and never

involve themselves in environmentally unfriendly imports procedures that are known to harm innocent lives or to provide finance arrangements to companies those are known to have bad safety records.

## **2.9: Conclusion**

This chapter addresses the important role of International Trade and the role of banking channels in safeguarding the mutual interests of all parties involved in overseas trade transaction, it is also examines the basic issues relating to documentary credit and its importance in international trade finance. In analyzing the nature of the instrument (documentary credit), the fundamental role of the autonomy doctrine was highlighted as well as some of International Chamber of Commerce codifications, the rules those govern documentary credits practice. The current perception with respect to the significant role the autonomy doctrine and the strict compliance principle play in documentary letter of credit transaction.

Commentaries continue to highlight the existence of risk of rebellious goods under discrepant documents. The objective of the thesis is to critically examine the Banking Practice under the documentary letter of credit in the light of these principles and the governing laws as well. The research pursues the primary and specific research goal of addressing the question as to how satisfactory the application of these rules might provide the necessary protection to all parties involved in the letter of credit transaction.

Also the issue of Islamic Banking Finance in the light of the divine and moral aspect as stated under Al maqasid Al Shariah principles those have come to preserve human's minds and souls and restore the benefits of the individuals as well as of the community. Furthermore; the role of the banking sector in respect of product liability has been dealt with. The letter of credit transaction had been covered in order to highlight the leading role of the banking system in respect of fighting the very catastrophic phenomenon.

On the other hand this chapter paved the way to the coming chapter which tackles the issue of the documentary letter of credit in theory and practice.

## **Chapter: 3**

### **Documentary Letter of Credit Theory and Practice**

## **Introduction**

It is generally accepted that the cross borders trade transactions by its nature carry inherently more risk due to many uncontrollable factors such as; the differences in legal and monetary systems, trading parties' trade customs and practices as well as the adopted procedures and regulations. In this respect, Bergami (2007) pointed out that; it is therefore important for traders to ensure that payment is received for goods dispatched and that the goods received and paid for complying with the contract of sale, accordingly this study stands on what has been stated by Bergami to set a model for settlement under the documentary letter of credit serving the Importing Country Interests as one of the possible solutions to the problem of the quality of the imported goods. However, there are other effective ways of managing these risks has been for traders to rely on under the letter of credit as a payment method.

The purpose of this chapter is to explain how financial obligations under international trade, in respect of exports and imports, are settled through the banking channels. The content is of direct practical relevance to both domestic firms that just import and export and to multinational firms that trade with related and unrelated entities. The method of payment determines how payment is going to be made, i.e. the obligations that rest with buyer and seller in relation to monetary settlement. However, the method of payment also determines directly or indirectly the role the banks will have in that settlement. Accordingly methods of payment will be tackled under the following subtitles:

### **3.1: Payment in International Trade:**

In any international trade transaction, credit is provided either by the supplier (exporter), the buyer (importer), one or more financial institutions, or any combination of these. The supplier may have sufficient cash flows to finance the entire trade cycle, beginning with the production of the product until payment is eventually made by the buyer. This form of credit is known as the supplier credit. In some cases, the supplier may require bank financing to boost his cash flow. On the other hand the supplier, may not desire to provide financing, in which case the buyer will have to finance the transaction himself, either internally or externally, through his bank. Banks on both sides of the transaction can thus play integral role in trade financing (Madura, 2007).

### 3.2: Methods of payment and terms of payment

These two expressions are sometimes used synonymously, but in this study they have been kept separate. ‘Methods of payment’ represents the defined form of how the payment shall be made, i.e. on open account payment terms through a bank transfer, or through documentary collection or letter of credit. ‘Terms of payment’ defines the obligations of both commercial parties in relation to the payment, detailing not only the form of payment and when and where this payment shall be made by the buyer, but also the obligations of the seller; not only to deliver according to the contract, but also, for example, to arrange stipulated guarantees or other undertakings prior to or after delivery. As this chapter deals with the different methods of payment, this distinction should be kept in mind.

#### 3.2.1: Methods of Payments in international trade

To succeed in today’s global marketplace, exporters must offer their customers attractive sales terms supported by the appropriate payment method to win sales against foreign competitors. As getting paid in full and on time is the primary goal for each export sale, an appropriate payment method must be chosen carefully to minimize the payment risk while also accommodating the needs of the buyer.

As shown in (table 3.1) according to Western (2007), there are five primary methods of payment for international transactions.

(Table 3.1).Types of Methods of Payment and the associated Risk

Method	Usual Time of Payment	Goods available to Buyer	Risk to Exporter	Risk to Importer
Prepayment	Before payment	After shipment	None	Relies completely on exporter to ship goods as ordered
Letter of Credit	When shipment is made	After payment	Very little or none, depending on credit terms	Assured shipment made, but relies on exporter to ship goods described in documents
Sight Draft, Documents against Payment	On presentation of draft to buyer	After payment	If draft unpaid must dispose of goods	Same as above unless importer can inspect goods before payment
Time Draft, Documents against acceptance	On maturity of drafts	Before payment	Relies on buyer to pay drafts	Same as above
Consignment	At time of sale by buyer	Before payment	Allows importer sell inventory before paying exporter	None; improves cash flow of buyer
Open account	As agreed	Before payment	Relies completely on buyer to pay account as agreed	None

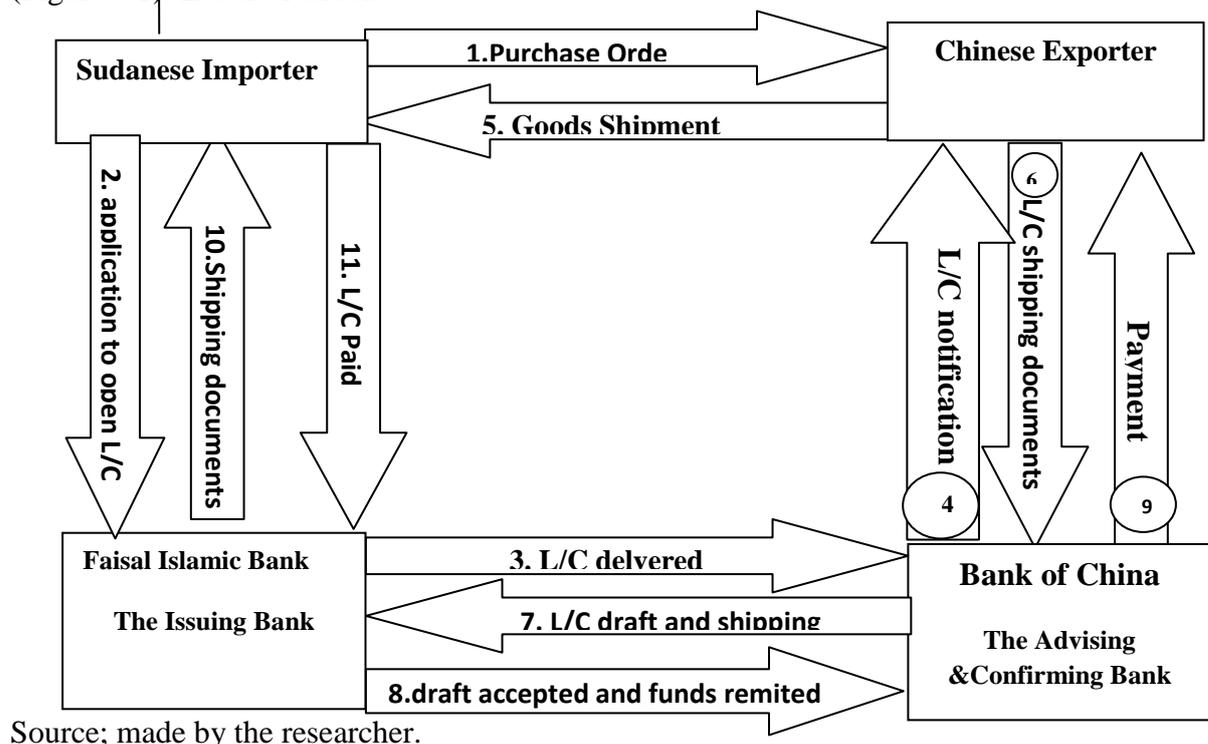
Source: Madura, International Financial Management, Abridged8(e), Mason, OH: Thomson South-Western, 2007

### 3.2.1.1: Payment-in-Advance

Payment in advance, or advance payment, refers to a situation in which the seller requests payment from the buyer before he will ship the goods. The seller only ships out the goods to the buyer after receiving the payment. With the payment in advance payment method, the exporter can avoid credit risk or the risk of nonpayment, since payment is received prior to the transfer of ownership of the goods. Wire transfers and credit cards are the most commonly used cash-in-advance options available to exporters. However, requiring payment in advance is the least attractive option for the buyer, as this method tends to create cash flow problems, and unless the seller sees no other option or the buyer has other vendors to choose from, it often is not a competitive option. In addition, foreign buyers are often concerned that the goods may not be sent if payment is made in advance. Exporters that insist on this method of payment as their sole method of doing business may find themselves losing out to competitors who may be willing to offer more attractive payment terms. (U.S. department of Commerce, 2007). It should be noted that; payment in advance is adopted in Sudan as the Central Bank of Sudan policy, where livestock exporting contracts are concluded with overseas buyers.

### 3.2.1.2: Letters of Credit

(Figure 3.1): Letter of Credit.



According to the above illustration,

1. Buyer negotiates the price and the other transaction terms and conditions and place purchase order.
2. Buyer (Applicant) approaches his bank (the issuing bank- Faisal Islamic Bank) applying for the letter of credit to be opened in favour of the seller.
3. Issuing bank communicate the issued L/C to Bank of China (Advising Bank) to advise the seller (Beneficiary).
4. Bank of China notifies the seller (Beneficiary) and sending him the L/C.
5. Beneficiary ship the goods as soon as he get sure that L/C is issued in conformity with the sale contract.
6. Beneficiary tenders shipping documents satisfying complying presentation requirements for payment.
7. Documents and draft tendered to the issuing bank for reimbursement once satisfying complying presentation requirements as stated in art.( 2) of UCP 600.
8. Draft accepted and funds remitted by the issuing bank in discharge of its obligations according to art. (7) Of UCP 600.
9. The nominated bank pay beneficiary under the letter of credit.
10. Applicant gets full title to the shipping documents and seeks release of the goods.
11. Applicant paid according to letter of credit availability.

Accordingly; Letters of credit (LCs) are among the most secure instruments available to international traders. An LC is a commitment by a bank on behalf of the buyer (importer) that payment will be made to the beneficiary (exporter) provided that the terms and conditions have been met, as verified through the presentation of all required documents , (U.S.department of Commerce, 2007), according to what stated under the complied presentation principle of article 2 UCP 600.

The buyer pays its bank to render this service. An LC is useful when reliable credit information about a foreign buyer is difficult to obtain, but sellers are satisfied with the creditworthiness of their buyer's foreign bank. This method also protects the buyer, since no payment obligation arises until the documents proving that the goods have been shipped or delivered as promised are presented, that what has been referred to under the strict compliance principle, which this study has explained before within

the literature review. However, since LC has many opportunities for discrepancies, they should be prepared by well-trained experts or the function may need to be outsourced. Discrepant documents, literally not having an “I-dotted and T-crossed,” can negate payment, (ibid).

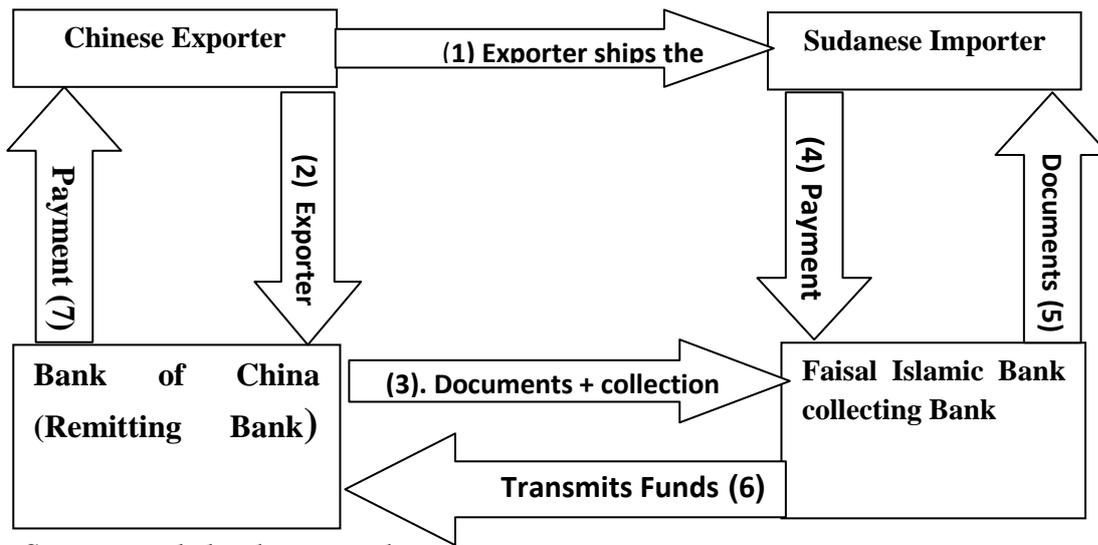
### **3.2.1.3: Documentary Collections**

A documentary collection (D/C) is a transaction whereby the exporter entrusts the collection of payment to the remitting bank (exporter’s bank), which sends documents to a collecting bank (importer’s bank), along with instructions for payment (collection instructions). Funds are received from the importer and remitted to the exporter through the banks involved in the collection in exchange for those documents. D/Cs involve the use of a draft that requires the importer to pay the face amount either on sight (document against payment—D/P) or on a specified date in the future (document against acceptance—D/A). The draft lists instructions that specify the documents required for the transfer of title to the goods. Although banks do act as facilitators for their clients under collections, documentary collections offer no verification process and limited recourse in the event of nonpayment. Drafts are generally less expensive than letters of credit (LCs), (U.S. department of Commerce, 2007).

#### **i. Documents against Payment (D/P) Collection**

Under a D/P collection, the exporter ships the goods, and then gives the documents to his bank, which will forward them to the importer’s collecting bank, along with instructions on how to collect the money from the importer. In this arrangement, the collecting bank releases the documents to the importer only on payment for the goods. Upon receipt of payment, the collecting bank transmits the funds to the remitting bank for payment to the exporter, (ibid).

(Figure 3.2) :Documents against Payments.

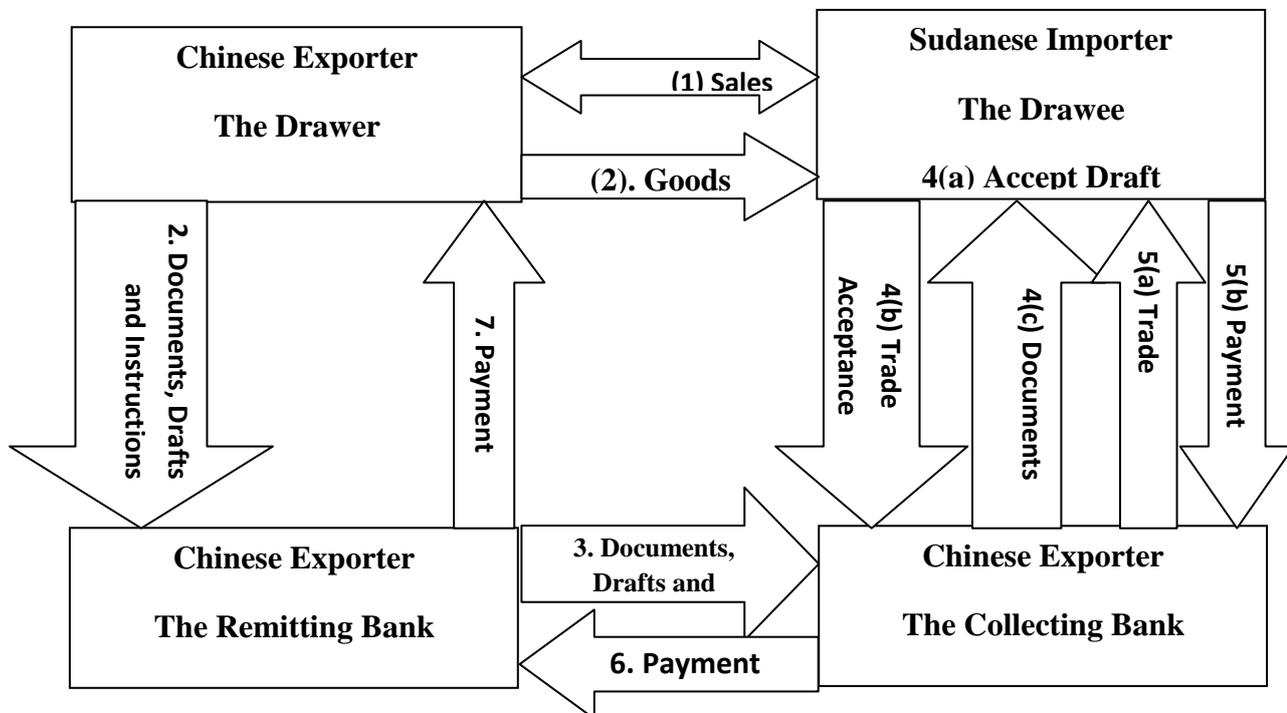


Source; made by the researcher.

- **Time of Payment:** After shipment, but before documents are released
- **Transfer of Goods:** After payment is made on sight
- **Exporter Risk:** If draft is unpaid, goods may need to be disposed.

ii. Documents against Acceptance (D/A) Collection:

(Figure 3.3): Documents against Acceptance (D/A)



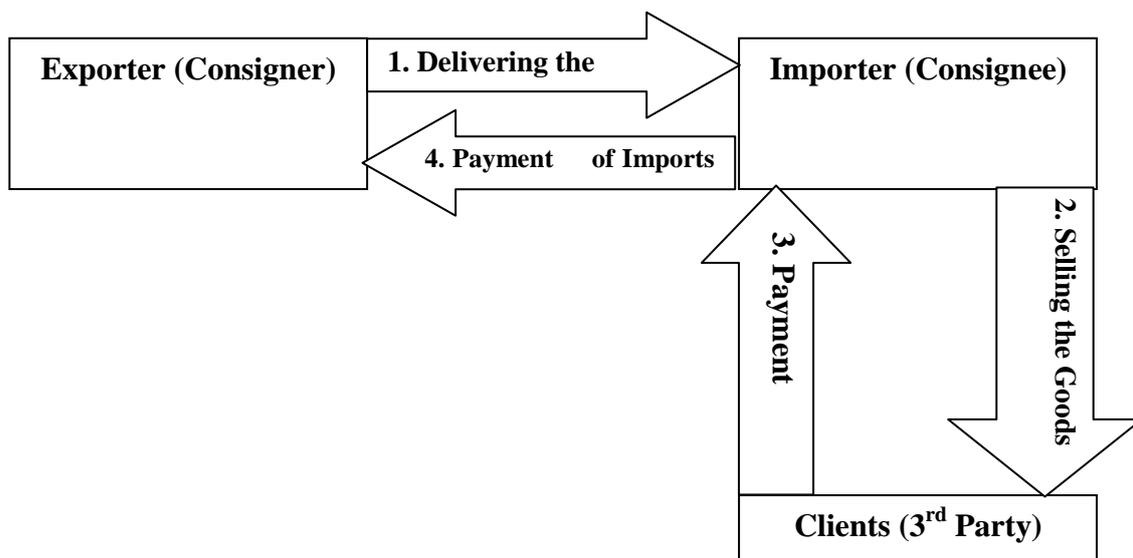
Source: made by the researcher.

Under a D/A collection, the exporter extends credit to the importer by using a time draft. In this case, the documents are released to the importer to receive the goods upon acceptance of the time draft. By accepting the draft, the importer becomes legally obligated to pay at a future date. At maturity, the collecting bank contacts the importer for payment. Upon receipt of payment, the collecting bank transmits the funds to the remitting bank for payment to the exporter, (U.S.department of Commerce, 2007).

- **Time of Payment:** On maturity of draft at a specified future date
- **Transfer of Goods:** Before payment, but upon acceptance of draft
- **Exporter Risk:** Has no control of goods and may not get paid at due date.

#### 3.2.1.4: Consignment Sales

(Figure 3.4): Consignment Sales.

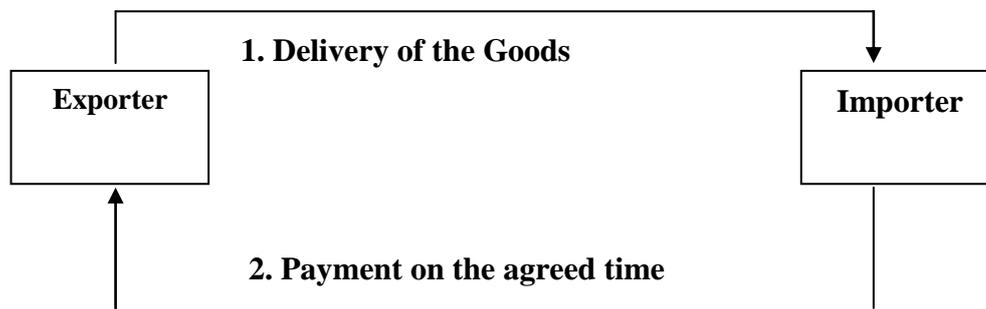


Source: made by the researcher.

The seller ships the merchandise to a foreign distributor who will sell the goods. Once the goods are sold, the distributor will send the seller the payment (seller do retain title to the goods until they are sold). The seller should check the reputation and credit rating of the foreign distributor before sending any merchandise.

### 3.2.1.5: Open trade Account

(Figure 3.5) Open trade Account



Source: made by the researcher.

In an open account transaction, the seller ships the goods together with the necessary documents to the buyer before the payment is made and without any form of guarantee. When the goods have been dispatched, the seller also sends the buyer an invoice asking for payment within the agreed credit terms, for example, 60 days from the invoice date.

An open account transaction means that the goods are shipped and delivered before payment is due, usually in 30 to 90 days. Obviously, this is the most advantageous option to the importer in cash flow and cost terms, but it is consequently the highest risk option for an exporter.

Because of the intense competition for export markets, foreign buyers often press exporters for open account terms. In addition, the extension of credit by the seller to the buyer is more common abroad. Therefore, exporters who are reluctant to extend credit may face the possibility of the loss of the sale to their competitors. However, while this method of payment will definitely enhance export competitiveness, exporters should thoroughly examine the political, economic, and commercial risks, as well as cultural influences to ensure that payment will be received in full and on time. It is possible to substantially mitigate the risk of nonpayment associated with open account trade by using such trade finance techniques as export credit insurance and factoring. Exporters may also wish to seek export working capital financing to ensure that they have access to financing for both the production for export and for any credit while waiting to be paid, (U.S. department of Commerce, 2007).

### **3.3: The Documentary Letter of Credit**

Trade finance has been described as the bread-and-butter operation of international lending. Indeed, trade finance is the great grand-daddy of international banking, the prime instrument of trade finance is the Letter of Credit (Hughes and MacDonald 2002). The letter of credit, also called documentary credits or bankers commercial credits, are the most common method of payment for goods in the international trade. Letters of credit have been described in English courts as "the life blood of international commerce" (D'Arcy, Murray & Cleave 2000) and generally speaking judges have been reluctant to interfere with established mercantile practices related to such transactions. Donaldson LJ., with the concurrence of Ackner L.J., said: irrevocable letters of credit and bank guarantees given in circumstances such as that they are equivalent to an irrevocable letter of credit have been said to be the life blood of commerce. Thrombosis will occur if, unless fraud is involved, the courts intervene and thereby disturb the mercantile practice of treating rights hereunder as being equivalent to cash (Schmittohh, 2012).the documentary character of this type of bankers' credit, as used in international trade, can't be overemphasized. The paying bank is prepared to pay the exporter because it holds the documents as collateral security and, if necessary, can have recourse to the issuing bank, which in turn can have recourse to the buyer as instructing customer. Where the transport documents consist of bills of lading, the bank always ask for the delivery of a full set of original bills; otherwise a fraudulent shipper would be able to obtain payment under the letter of credit on one of them and advances from other bankers on the security of the other originals constituting the set.

The importance of letters of credit in trade finance transactions is evidenced by its global acceptance, with an estimated usage in excess of USD 1 trillion per annum (Klein 2006). Nowadays they are accepted in over 197 countries and can be issued by any international bank. Many countries require imports to be made on Letters of Credit if they are over a fixed dollar amount. According to recent estimations by US Department of Commerce, 14% of world trade was paid for by letters of credit.

"A letter of credit is a complex, practical instrument whose governing principles have developed over time as a result of customary banking practice"(Kingman-Brundage & Schulz 1986). The various contracts and parties involved in the transaction, and the tedious nature of documentary compliance demanded by the

banks, are what make this method of payment complex. The cost of operating with a letter of credit is comparatively higher than other methods of payment. Typically banks charge an establishment fee based on a percentage of the total value of the letter of credit (that varies from bank to bank and country to country), and this fee is payable by the applicant (importer). The exporter (beneficiary) carries the burden of documentary compliance and this comes at a cost, due to the high failure rates experienced globally by exporters in failing to meet bankers' requirements for documentary compliance. The International Chamber of Commerce (ICC) estimates that there is up to a 70% documentary discrepancy rate in letter of credit transactions (ICC Thailand 2002) and that in the UK alone, this has been estimated to cost business £113 million per annum (SITPRO Ltd. 2003, p. 2). The cost and complexity of letter of credit transactions therefore make them ideally suited to transactions that are comparatively high-risk and high-value, and this is likely to mean that the potential financial losses may be significant. The issue of documentary compliance will be considered later in this study.

### **3.3.0: Historical Background (the origins of a documentary credit)**

Numerous academic works have been dedicated to the subject of the letters of credit, Indeed, letters of credit are seen as essential to the smooth transaction of commerce in almost every century; their history can be traced back to 3000 BC, during the era of ancient Babylon, Botosh (2000). They are often described as a special contract, with the applicant, the beneficiary and the issuing bank as the main parties; Historians have been able to trace the use of letters of credit back as early as ancient Egypt and Babylon. According to Trimble, (1984)"In ancient times, the temples of Babylon and Egypt performed banking functions and utilized documents which conform to the current negotiable instruments. Indeed, there is a promissory note inscribed on clay from Babylon, of about 3000 BC, which specifies a repayment date for principal and interest. Moreover, in the middle of the 12<sup>th</sup> century, banks were formed in some European cities such as Genoa and Venice. Also, elsewhere in Europe, the receipts used in business transactions which called for payments by a church treasury were clearly negotiable and absolutely transferable. In the 13<sup>th</sup> century, letters of credit were found in the Mogul Empire in China. Subsequently, they were brought into general use by the Jews and the Lombard when they were used as a device to facilitate the transfer of funds among distant merchants, Ominsky,

(1995). In the 14th century, the merchants-bankers of Venice, Genoa, Florence, and other commercial cities in Europe started using letters of credit, Trimble, (1984). Long before the 17<sup>th</sup> century, banking systems and dealing in negotiable instruments were established. In this early, ancient era, it seems to be difficult to distinguish between letters of credit and bills of exchange because of their similarities (ibid). However, it can be concluded that "a business letter requesting a person to pay money, or make his credit available, to a third person, on the credit of the writer or against payment by him, is a letter of credit", (ibid). However, it was not until the eighteenth and nineteenth centuries that the term 'letter of credit' became widely used and recognized. (Ifs School of Finance 2013). The origins of the documentary credit began with a letter provide by a bank to a correspondent or agent. Upon production of that letter, credit was provided to a named client in the form of money. From the 1840s, documentary credits began to serve as a means of facilitating payment for foreign trade transactions. It may well be that, as a result of personal contacts made during their travels; merchants were able to arrange for goods to be sent from overseas, (ibid).

According to (School of Finance). One of the oldest available examples of a traveler's-type letter of credit can be found in the archives of the US Library of Congress. It was issued in Washington on 4 July 1803 and signed by the then President of the United States, Thomas Jefferson. It was provided to explorers Captain Meriwether Lewis and Captain William Clark as they departed on their famous expedition through the western part of the United States.

### **3.3.1: The modern developments of letter of credit contracts and banking practice**

The history of the codification of the modern letter of credit is an evidence to the developments that have taken place in the past seventy-eight years. The first attempt to codify letter of credit practice can be traced back to 1929 when the ICC, following an earlier American initiative, introduced its 'Uniform Regulations for Commercial Documentary Credits' (Wheble 1971).

In 1933 the International Chamber of Commerce (ICC) issued the 'Uniform Customs and Practice for Commercial Documentary Credits' and this set of rules "received formal acceptance in some 40 countries" (ibid). Since then the rules have been regularly updated in 1974, 1983 (UCP 400) and 1993 (UCP 500) to arrive at the current 2007 Revision, commonly referred to as the UCP 600.

### **3.3.2: The Operational Concept of the documentary credit**

In very simple terms, a documentary credit is an irrevocable undertaking issued by a bank whereby it undertakes to make payment to the named beneficiary provided the documents stipulated in the documentary credit are presented and all of its terms and conditions are complied with. In simple terms, a letter of credit is a bank undertaking of payment separate from the sales or other contracts on which it is based. It is a way of reducing the payment risks associated with the movement of goods. Expressed more fully, it is a written undertaking by a bank (issuing bank) given to the seller (beneficiary) at the request, and in accordance with the buyer's (applicant) instructions to effect payment — that is by making a payment, or by accepting or negotiating bills of exchange (drafts) — up to a stated amount, against stipulated documents and within a prescribed time limit.

Documentary credit can be regarded as a bank undertaking to pay a sum of money to the person in whose favour the credit is issued, or to accept or purchase a bill of exchange drawn or held by that person. However, this "undertaking is usually conditional on the presentation of certain specified documents to the bank showing that the goods described in the credit have been dispatched to the buyer". Arora, (1995), Barclays Bank's version states that a documentary credit is a written undertaking given by a bank on behalf of the importer to pay the exporter an amount of money within a specified time provided the exporter presents documents which conform to the terms laid down in the letter of credit.

A documentary credit is a document issued by a bank which acts as an irrevocable guarantee of payment to a beneficiary. The payment is to be realized once specific terms and conditions of the documentary credit are satisfied, that is to say; the beneficiary tenders conforming documents to the issuing or negotiating bank, by so doing the beneficiary exchanging the applicant uncertain credit for the issuing bank or confirming bank certain credit if any. In such the case, the bank is obliged to pay irrespective of any instructions of the applicant to the contrary according to the letter of credit autonomy, and this illustrates the irrevocable character of the letter of credit. By stating that: "A credit is irrevocable even if there is no indication to that effect". In other words, the point of the documentary credit is that the obligation to pay is shifted from the applicant to the issuing bank, that is to say the issuing bank stands on his customer's shoes. Nowadays, letters of credit are used almost exclusively in international trade transactions is of significant value, for executing deals between a

supplier in one country and a wholesale customer in another, which is because of their relatively high cost. Specific types of LCs referred to as Standby letters of credit are also used in land development projects as a guarantee that approved public facilities (streets, sidewalks, storm water ponds, etc.) will be duly built.

According to (Watson, 1990), who viewed the documentary letter of credit as a conditional guarantee if payment made by a bank to a named beneficiary guaranteeing that payment will be made, provided that terms and conditions of the credit are met. These terms will state that the beneficiary must submit the specified documents, usually to a stated bank and by a certain date. Furthermore; Davies & Kearns(1992),define the letter of credit as "the letter of credit is a letter or other authenticated communication addressed by one bank(at the request of its customer ) to another bank requesting the bank to whom it addressed to affect payment to(or advance payment to) or accept or negotiate bills of exchange(drafts)o or to the order of a third person(known as the beneficiary) either against stipulated documents or upon condition that the other terms and conditions of the credit are complied with or upon the performance(or non-performance in the case of Stand-by letter of credits)of any other act by the said beneficiary.

UCC, article 5-103(a), defines " `letter of credit' as: "(a) "Credit" or "letter of credit" means an engagement by a bank or other person made at the request of a customer and of a kind within the scope of this Article (Section 5- 102) that the issuer will honour drafts or other demands for payment upon compliance with the conditions specified in the credit.

A credit may be either revocable or irrevocable. The engagement may be either an agreement to honour or a statement that the bank or other person is authorized to honour. "It is essential to understand that the essence of the letter of credit transaction is its documentary character, i. e. where the goods are represented by a bill of lading, a letter of credit is a document which functions as a means of financing the transaction. According to Schmittoff (2012), Lord Wright described the letter of credit as a bridge between the period of the shipment and the time of obtaining payment against documents.

According to the abovementioned different views, the documentary letter of credit as a payment method involves the participation of the banking institutions. In the area of expertise literature where the documentary letter of credit may be considered as an autonomous bank guarantee, Patulea, & Turianu (1994). The character of bank

guarantee is expressed by the fact that the creditor (the beneficiary of the letter of credit), besides the debtor of the main legal relations, also has the irrevocable obligation of payment undertaken by the issuing bank of the letter of credit. At the same time, as we shall see later, the letter of credit may be confirmed by the confirming bank, which means an extra obligation of payment incumbent to the confirming bank. Therefore, it is possible that, by issuing the letter of credit, besides the debtor's obligation undertaken within the main relationship, the creditor may obtain the obligation of payment from the issuing bank or, where appropriate, the confirming bank. Undoubtedly, by this method is provided a guarantee for cashing the money by the beneficiary creditor. The main regulation of the documentary letters of credit is the Publication no. 600 regarding the uniform rules and practice of the letters of credit provided by the International Chamber of Commerce - Paris (UCP-600).

In most banks throughout the world, documentary letter of credits are governed by UCP 600. A comprehensive definition of documentary credit is to be found in the UCP 600, article 2 where it defines the term. "Credit" as 'any arrangement, however named or described, that is irrevocable and thereby constitutes a definite undertaking of the issuing bank to honour a complying presentation. The same article defines the term "complying presentation" as 'a presentation that is in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice.

From the regulations reproduced above results the notion and the main characteristics of the letter of credit. Pursuant to the stated regulations, we define the letter of credit as being the instrument by which the issuing bank, at the request and after the instructions of a customer, called Applicant, makes a payment to a person, called beneficiary, or upon his/her order, or accepts and pays bills drawn by the beneficiary, or authorizes another bank to make the payment or to accept and pay the drawn promissory notes.

### **3.3.3: The nature of the documentary letter of credit**

According to article 4 of the Publication 600, the letters of credit, by their nature, are transactions distinct of the sale contracts or other agreements that underpin them and the banks are not in any way concerned or bound by such contracts, even if the letter of credit makes any reference to such contracts. This is really reflect the legal characteristic of the letter of credit as independent contract governs and regulates

performance of parties thereto; the issuing bank, the confirming bank if any and the beneficiary, so this independency as stated in the independence principle is providing the beneficiary the necessary protection against the applicant credit risk against compliant shipping documents only. Furthermore; and based on article 2, the letter of credit constitutes definite undertaking of the issuing bank to honor complying presentation according to what stated under this article in terms of the complying presentation meaning as referred to under the principle of strict compliance which provides the necessary protection to the applicant under the documentary letter of credit in condition that payment is subject only against complying presentation, accordingly this study believe that will mitigate the risk of the beneficiary's bad or non-performance at all, so the issuing bank in order to provide this protection to the applicant, it has to be fully adhered to the requirements of the strict compliance principle , consequently this will be investigated through this study to make sure that the banking practice is placing great emphasize on this issue .

Accordingly; this study assumes that the banking practice in Sudan not place a pretty much importance in respect of the strict application of this principle. From the regulations reproduced above; result the main features of the letter of credit. The documentary letter of credit is a method of payment, irrevocable, autonomous, institutionalized and subject to the submission of documentation.

#### **3.3.3.1: The documentary letter of credit is an irrevocable method of payment**

The irrevocable character of the letter of credit results from the definition given by the Publication 600 which qualifies it as an irrevocable commitment. The irrevocable character of the letter of credit is also resumed in the regulation of article 3 of the Publication where it expressly provides that the letter of credit is irrevocable even if there is no mention in this regard. The irrevocable character means that the letter of credit, once drawn up and put into the banking circulation by the issuing bank cannot be withdrawn or revoked anymore. In other words, the letter of credit once placed into the banking circulation has to be paid by the issuing bank, respectively by the confirming bank if the letter of credit is confirmed. The irrevocable character of the letter of credit is clearly expressed in the content of article 10 of the Publication 600 which states that a letter of credit cannot be amended or canceled without the approval of the issuing bank, of the confirming bank and of the beneficiary. The fact that the letter of credit cannot be revoked gives a supplementary guarantee to the beneficiary

creditor as regards the payment, that is why, as we pointed out above, the letter of credit is considered as a guarantee of payment, too.

### **3.3.3.2: The documentary letter of credit is an autonomous method of payment**

The autonomous character means that the documentary letter of credit creates liabilities independent of the basic relationship between the applicant and the beneficiary. This character arises from the provisions of article 4 of the Publication no. 600 according to which the letters of credit are transactions distinct of the sale contracts or other agreements that may underpin them. During the carrying out of the documentary letter of credit the applicant cannot discuss issues or raise exceptions arising from the contractual relationship under which the letter of credit was opened. The autonomous character of the letter of credit is extended on the existing contractual relationship between the participating banks and the applicant and the issuing bank, meaning that such relations are not related to the payment by letter of credit. More specifically, the obligations undertaken by the participating banks in the carrying out of a letter of credit may not be the subject of the applicant's complaints resulted from his relationship with the issuing bank or with the beneficiary. As well, a beneficiary cannot benefits, under any circumstances, by the existing contractual relations between the banks or between the applicant and the issuing bank. In order to maintain the autonomous character of the letter of credit, the issuing bank is bound to discourage and eliminate any attempt of the applicant to include, as integral part of the letter of credit, copies of the afferent contract, of the invoice and other documents of this kind (article 4 of the Publication).

### **3.3.3.3: The documentary letter of credit is an institutionalized method of payment**

The institutionalized character of the documentary letter of credit means that this method of payment requires the participation of at least two credit institutions, the issuing bank and the beneficiary's bank. As we shall see below, along with the issuing bank and the beneficiary's bank, in a letter of credit also may be involved the confirming bank and the advising bank. The quality of advising bank and, respectively, the confirming bank may be owned even by the beneficiary's bank or by another nominated bank. A letter of credit cannot be carried out without the participation of the credit institutions; other legal entities can contribute, but in

operations subsidiary to the letter of credit, such as shipping agencies which authenticate the shipping documents.

#### **3.3.3.4: Letter of credit is a method of payment subject to the submission of documentation**

The documentary character of the letter of credit is foreseen by article 5 of the Publication which provides that the banks operate with documents, not with goods, services or performance mentioned in such documents. The documentary letter of credit is opened upon request and following the instructions of the applicant negotiated with the issuing bank which makes the payment of the letter of credit to be conditioned by the tendering of the documents mentioned in the letter of credit. Any documentary letter of credit makes the payment of the indicated sum to be conditioned by the presentation, made by the beneficiary or by the bank nominated for that transaction, of the following documents: shipping documents (transport contract, shipping contract, air transportation documents, way bill etc.), insurance contracts and trade invoices. The letter of credit may provide the obligation to submit other documents, such as: quality certificates, certificates of guarantee, of origin, of goods etc. The name of the letter of credit comes from the fact that it represents the mechanism which makes the payment of the amounts to be conditioned by the drawing up and submission of some documents by the beneficiary creditor of the letter of credit.

#### **3.4.: Basic Types of commercial Letters of Credit**

There are four basic features of letters of credit, each of which has two options. These are described below. Each letter of credit has a combination of each of the three features. It is important for the beneficiary to know in what manner he will be able to obtain payment. The UCP allows for the following options: the credit may be available by:

- a) Sight payment;
- b) Deferred payment;
- c) Acceptance; or
- d) Negotiation.

The parties to the underlying agreement should agree on which of the above mentioned method they wish to use and the applicant should open the letter of credit

accordingly. Moreover, the UCP 600 requires that the credit itself indicates whether it is available by sight payment, by deferred payment, by acceptance or by negotiation.

- i. Sight payment means payment against documents. The authorized bank shall pay the beneficiary upon presentation of documents, provided that the terms and conditions of the credit are fully complied with. For checking the documents the banks are given a specific period of time.
- ii. Under an acceptance credit “the issuing bank undertakes to pay a non documentary bill drawn by the beneficiary”, (Ellinger, 1982). It is a “bilateral transaction in which the letter of credit is opened by the issuing bank at the applicant’s request and in the beneficiary’s favour”. Article 7(iv), clarifies the liabilities of the issuing bank under an acceptance credit. It states that the issuing bank is obliged to accept drafts drawn by the beneficiary on the issuing bank and to pay them at maturity. If the nominated bank refuses to accept the draft or accepts the draft but does not pay at maturity, the beneficiary is entitled to require payment from the issuing bank.
- iii. By deferred payment the beneficiary shall receive payment at some future date (maturity date), specified by the credit. A deferred payment credit may, for example, provide for payment 90 days after the date of shipment (date of issuance of the bill of lading) or 15 days after presentation of documents. On submission of the documents that meet the conditions of the credit, the beneficiary is given a written statement by the authorized bank that payment will be made on the due date. If the beneficiary wishes to receive payment before this maturity date, he can resort to negotiating the letter of credit, normally at a discount. Under a deferred payment letter of credit, the applicant does not pay until a future date determined in accordance with the terms of the letter of credit. No drafts are called for, which avoids “stamp duties” charged by some countries on bills of exchange (drafts). One reason an exporter might extend credit terms to an importer could be the competitiveness of the market and the need for the exporter to finance the importer if the exporter is to make the sale.
- iv. The credit may also be a Negotiation credit. The UCP 600 defines negotiation as “means the purchase by the nominated bank of drafts (drawn on a bank other than the nominated bank) and/or documents under a complying presentation, by advancing or agreeing to advance funds to the beneficiary on

or before the banking day on which reimbursement is due to the nominated bank. This bank is called the negotiating bank, which will endorse and negotiate the draft or documents, with certain deductions of discount or interest and commission.

#### **3.4.1: Revocable and irrevocable credits**

A distinction has to be drawn between revocable and irrevocable credits. The feature of “revocability” or “irrevocability” of a credit refers to the undertaking of the issuing bank. A revocable letters of credit gives the applicant maximum flexibility, whereas it gives less security to the beneficiary. It can be amended, revoked or cancelled without the beneficiary’s consent and even without prior notice to the beneficiary (Busto, 1995).

An irrevocable letter of credit, on the other hand, constitutes a definite undertaking of the issuing bank to pay and accept drafts and/or documents, provided that the stipulated documents are presented and that the terms and conditions are complied with, (Article 3 of the UCP 600)." A credit is irrevocable even if there is no indication to that effect". Consequently, an irrevocable credit gives greater assurance to the beneficiary as to the payment by the bank, since it cannot be modified or cancelled without the express consent of the beneficiary.

In the absence of such indication the credit is presumed to be irrevocable. The majority of the legal systems with statutory provisions on documentary credits address the issue of revocability and irrevocability. Most statutes treat documentary credits irrevocable if the credit does not specifically indicate it. There are however countries, where the presumption of revocability prevails. In practice, revocable credits are not often accepted as method of payment. The more widely used form is the irrevocable credit, which may be confirmed or unconfirmed.

#### **3.4.2: Confirmed and unconfirmed credits**

Whereas “irrevocability” or “revocability” refers to the obligation of the issuing bank towards the beneficiary, the feature of a credit as “confirmed” or “unconfirmed” is related to the undertaking of another bank invited into the transaction by the issuing bank. In many transactions the issuing bank communicates the letter of credit through another bank that may act as an advising or a confirming bank.

### **3.4.2.1: Confirmed Letters of credit**

Upon the authorization or request of the issuing bank, a correspondent bank may confirm a letter of credit, which constitutes a definite undertaking of the confirming bank, in addition to that of the issuing bank, towards the beneficiary to pay, accept draft or to negotiate . Needless to say, that in conformity with the principles of a letter of credit transaction, the obligation of the confirming bank can be evoked upon presentation of documents stipulated by and being in full compliance with the terms and conditions of the credit, on or before the expiry date. An irrevocable, confirmed letter of credit “gives the beneficiary a double assurance of payment, since it represents both the undertaking of the issuing bank and the undertaking of the confirming bank”, (Busto, 1997).

In *Hamzeh Malas & Sons v. British Imex Industries Ltd.* (Schmittoff, 2012). The case gives a good illustration of the nature of a confirmed credit. In this case the Jordanian plaintiffs entered into a contract to purchase a larger quantity of reinforced steel rods by the defendant, a British firm. The payment was to be effected through two letters of credit (as the shipment was to be made in two installments). The plaintiffs opened the letters of credit in favour of the defendants, confirmed by the Midland Bank Ltd., in London. The first letter of credit was duly realized on shipment of the first installment. However, later some dispute arose in respect to the first installment, which the buyer complained not to meet the contracted quality. Thus, he applied for a court injunction in order to restrain the seller from recovering any money under the second letter of credit. The court refused to grant the injunction and observed that: “... it seems to be plain enough that the opening of a confirmed Letter of Credit constitutes a bargain between the banker and the vendor of the goods, which imposes upon the banker an absolute obligation to pay, irrespective of any dispute there may be between the parties as to whether the goods are up to contract or not. An elaborate commercial system has been built up on the footing that bankers’ confirmed credits are of that character, and, in my judgment, it would be wrong for this court in the present case to interfere with that established practice. There is this to be remembered, too. A vendor of goods selling against a confirmed letter of credit is selling under the assurance that nothing will prevent him from receiving the price”, (ibid).

A confirmed letter of credit usually includes the following – or similar - text: “As requested by the Issuing Bank, we hereby add our confirmation to the Credit in accordance with the stipulations under UCP 600 Article 8.

The confirmation of the confirming bank may be “silent” (Caprioli, 1996), or may be a so called “seller’s confirmation”. A silent confirmation is the undertaking of the confirming bank without the express authorization of the issuing bank. This undertaking does not represent a “confirmation” within the meaning of the UCP, it is rather a separate agreement between the beneficiary and the “confirming” bank under which the said bank is obliged to purchase or discount the draft. “The confirming bank will have no rights against the issuing bank arising from its (silent) confirmation. Thus, unless it is entitled to be reimbursed because it is nominated by the credit as the paying bank, if its confirmation leads it to have to pay on the credit, it will not have a right of reimbursement”, (Jack, 1991).

In *Mees Pierson NV v. Bay Pacific (S) Pte Ltd* (Singapore, 2000). Case from 2000 is a good example of the silent confirmation. The case involved a sale and purchase of 1,870 metric tons of Indian wheat flour. Payment was to be effected by a letter of credit, issued by the Industrial and Commercial Bank of Vietnam. The issuing bank requested the plaintiff to advise the letter of credit to the respondent beneficiary, which the plaintiff did adding also its confirmation without authorization (thus the plaintiff bank became a “silent” confirmer). The “silent” confirming bank effected payment upon presentation of documents, which later turned out to be forged. When he forwarded the documents to the issuing bank, the issuing bank rejected them.

First the “silent” confirming bank sued the issuing bank for wrongful dishonor, but the claim was dismissed. Then the “silent” confirming bank sued the beneficiary alleging that the beneficiary had knowingly presented forged documents. This claim was also dismissed because the plaintiff could not prove that the beneficiary had been involved or had been aware of the fraudulent act.

In case of a “seller’s confirmation” the seller requests the confirmation of the credit in order to obtain an additional security that it will receive payment. Although this issue is not covered by the UCP 600 it seems to be a common practice. Since the confirmation is not requested and authorized by the issuing bank the confirmer acts at its own risk.

### **3.4.2.2: Unconfirmed Letter of Credits**

A letter of credit is unconfirmed, if the bank merely acts as an agent of the issuing bank without assuming any responsibility towards the beneficiary, thus acting as an advising bank. An advising bank does not confirm the credit; its obligation is to take reasonable care to check the apparent authenticity of the credit.

An unconfirmed letter of credit usually states the following or words of similar intent: "This notification and the enclosed advice are sent to you without any engagement on our part".

As Schmittoff points it out, although unconfirmed letters of credit are cheaper they do not "localize the performance of the contract of sale in the seller's country" (Schmittoff, 2012). The nature of an unconfirmed letter of credit may be well illustrated by the *Cape Asbestos Co v. Lloyd's Bank* (ibid), the case, in which importers in Warsaw entered into a contract with the Asbestos Company for the sale of asbestos sheets. As the sales contract provided by payment through a letter of credit, the buyer opened a credit at the Lloyd's Bank in favour of the seller. The defendant bank advised the credit to the plaintiff adding a clause that stated, "This is merely an advice of opening of the above mentioned credit and is not a confirmation of the same". The shipment happened in installments. Upon sending the first installment the plaintiff presented the draft which was duly accepted by the bank. After shipping the second installment the plaintiff presented a draft again, which, at this time, was refused by the bank, due to the fact that in the meantime the credit had been cancelled by the importer. Although the bank did not notify the plaintiff about the cancellation of the credit, it was held that "the bank was entitled to refuse the acceptance of the draft for the remainder". In this respect Schmittoff stated that: based on the above mentioned, in case when the parties are dealing with unconfirmed credits it is wise to insert at least a "notice clause" into the credit, which obliges the bank to notify the beneficiary about the cancellation of the credit.

### **3.4.3: Special types of letters of credits**

So far a description has been provided of the basic types of letters of credit used to cover the shipment of goods. In addition to these basic types, there are various specialized formats which meet particular sets of circumstances.

### **3.4.3.1: Red Clause and Green Clause Documentary Credits**

A red clause letter of credit incorporates a clause, traditionally written in red, which authorizes the bank acting as the negotiating or paying bank to pay the beneficiary in advance of shipment. This enables the purchase and accumulation of goods from a number of different suppliers, and the arrangement of shipment in accordance with the letter of credit terms. Such advances will be deducted from the amount due to be paid when the documents called for are presented under the letter of credit. If the beneficiary fails to ship the goods or cannot do so before the expiry date of the letter of credit, the issuing bank is bound to reimburse the negotiating or paying bank, recovering its payment from the applicant. Variations of such credits may also require that any advances be secured by temporary warehouse receipts until shipment is affected. Beneficiaries of red clause letters of credit are invariably brokers/agents of buyers in a particular field.

The Red Clause Documentary Credit received its name from a special condition inserted into the text of the credit, which was originally written by red ink. Under this special condition the confirming bank or any other nominated banks are authorized by the applicant to make advances to the beneficiary before presentation of documents. The amount of the advances is specified in the credit. Harfield explains it as follows: "The Red Clause is a device which originated in the China trade, where the seller was most frequently an agent of the buyer, in the fur trade, for example, the persons in China who dealt with American buyers were, in the main, either buyers' representatives or traders who went into the hinterland and bought raw furs, a little here and a little there, assembled them...they dealt, too, with persons who wanted cash on the barrelhead before they parted with the furs. Accordingly, opening banks began to practice of endorsing on their credits in red ink a clause authorizing the confirming or negotiating bank to pay the beneficiary against the drafts alone, coupled with his simple promise to provide the documents in the future. (Harfield, 1948). Thus, the Red Clause Documentary Credit is used where the buyer is willing to finance the transaction before the actual shipping of goods. In practice, for instance a wool importer in England may agree with a wool shipper in Australia to purchase wool. However, the wool shipper may not have the necessary fund to pay the actual suppliers. Thus, the English importer may be willing to pre-finance the transaction by enabling the Australian shipper to obtain funds in advance. In this case the bank

would honour the shipper's drafts to a certain amount, specified by the wool importer, upon presentation of the stipulated documents. When the wool is shipped the shipper would deliver the transport documents to the bank and receive the purchase price less the amount obtained by way of advance. However, if the shipper fails to ship the wool the bank has the right to claim reimbursement from the applicant for the advances made and all the related costs, such as interest. A typical wording of the red clause may be as follows: "This red clause documentary credit allows a pre-payment of USD 100,000 against presentation of:

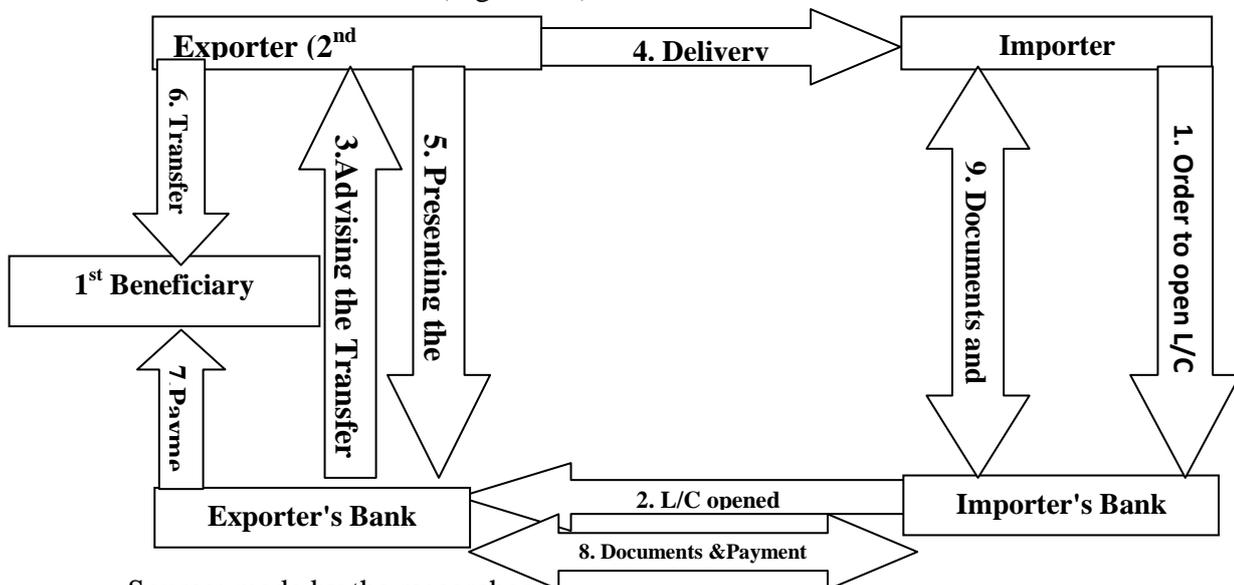
- Beneficiary's simple receipt and
- Beneficiary's written undertaking to present the shipping documents within the credit validity".

The Green Clause Documentary Credit is a "refinement" of the Red Clause Credit. This also entitles the seller to receive advances before shipment but only on the condition that the goods are warehoused in the name of the nominated bank. The advance payment is made against presentation of the warehouse receipt, (Jack, 1991).

### 3.4.3.2: Transferable Letter of Credit

Letters of credit are usually opened in favour of the beneficiary named in the credit. It means that only the named person can tender the documents and can require payment from the bank. However, in today's complex business relationships it is not exceptional that the beneficiary seeks to transfer its rights under the credit to a third party, the second beneficiary(s).

(Figure 3.6) Transferable Letter of Credit.



Source: made by the researcher

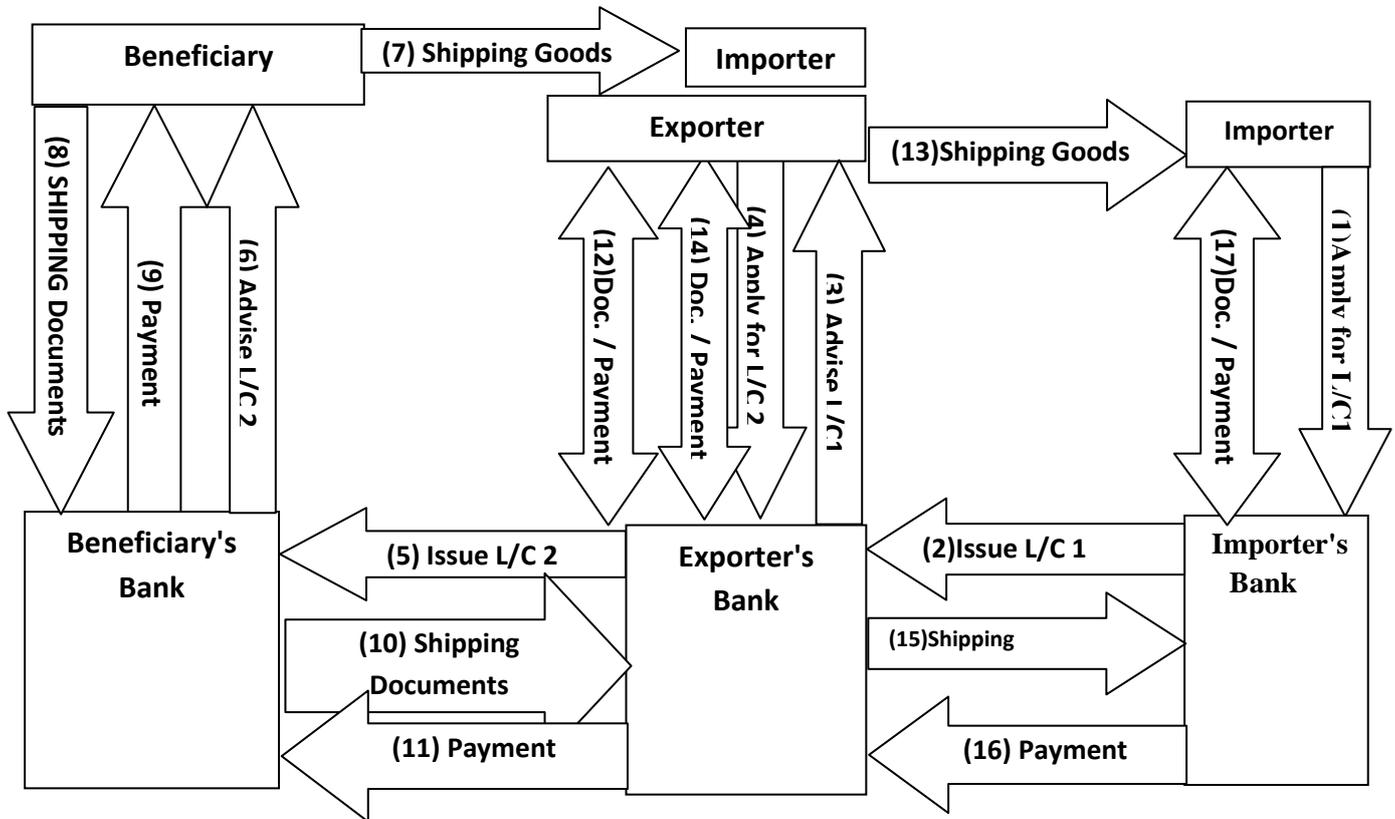
### **Transfer of the credit**

Often the seller is not the manufacturer of the goods being subject of the sales contract. He may only act as a middleman obtaining goods from a third party (the manufacturer) and selling them to the buyer at a higher price. In this case the seller may use a transferable credit to pay the third party (usually referred to as the Second Beneficiary) selling to him. The researcher consider that; this type of the letter of credit, provides the overseas seller the Issuing Bank's financial creditability, that enable the seller(a middleman), to pay the real manufacturer of the goods being subject of the sales contract. That is to say; the Issuing Bank and Importer as well provides the middleman their financial credit worthiness. .

By making a credit transferable the seller assigns his right to perform under the documentary credit to a third person. This third person “steps into the credit and in advanced is assured payment out of funds made available by the ultimate buyer, provided that the conditions of the original credit are complied with” (Schmittoff, 2000). It is also possible that the seller who is buying from more than one supplier transfers only a certain part of the credit to each supplier. Therefore; and according to this study, the first beneficiary (the middle man) uses the transferrable letter of credit to pay the second beneficiary who will be shouldered with the delivery obligation under the letter of credit and quit the letter of credit transaction, leaving both the applicant and the issuing bank to face the second beneficiary, of whom they know nothing.

### 3.4.3.3: Back-to-Back Letter of Credit

(Figure 3.7): Back-to-back” Letter of Credit



Source:made by ther esearcher

A Back-to-Back Documentary Credit is used in transactions where a seller, who entered into a contract of sale of certain goods, has to purchase those goods from his supplier and no transferable credit is used in the transaction.

In this case two separate documentary credits are involved: a documentary credit opened by the buyer in favour of the seller and another documentary credit opened by the seller in favour of the supplier on the security of the first credit. “The original credit, and the second opened in favour of the supplier, will be in identical terms apart from the price” (Todd, 1990).

The operation of a Back-to-Back Credit was explained by Judge Devlin in the case of *Ian Stach Ltd v. Baker Bosley Ltd*: “Where, as in the present case, there is a string of merchants’ contracts between the manufacturer ... and the ultimate user, the normal mechanism for carrying out the various contracts is the familiar one which was intended to be used in this case: the ultimate user, under the terms of his contract of sale, opens a transferable, divisible credit in favour of his seller for his purchase

price: his seller in turn transfers so much of the credit as corresponds to his own purchase price to his seller or, more probably, if his own contract with another merchant [the Supplier] also calls for a transferable, divisible credit, procures his own banker to issue a back-to-back credit – that is to say, he lodges the credit in his favour with his own banker, who in his turn issues a transferable, divisible credit for the amount of the purchase to his own seller; and so on, through the string of merchants, until the banker of the last merchant in the string issues the credit in favour of the actual manufacturer. ... The reason why they issue fresh credits is that in banking practice a transferable credit is regarded as transferable once only, and, also as is obvious in this sort of trade, it is desired, naturally enough, by any merchant in the string to conceal from his buyer and his seller who his own customer is". (ibid).

Although not recorded on a letter of credit, “back-to-back” is a term used in transactions involving two irrevocable letters of credit. Such transactions originate when a seller receives a letter of credit covering goods which must be obtained from a third party that in turn requires a letter of credit. The “second” issuing bank looks to the first issuing bank for reimbursement after paying under the second letter of credit. The difference between back-to-back letters of credit and transferable letters of credit is such that in a transferable letter of credit, the rights under the existing letter of credit are transferred. In a back-to-back transaction, different letters of credit are actually issued. Because technical problems can arise in back-to-back transactions, banks tend to discourage their use.

#### **3.4.3.4: Revolving Letter of Credit**

Revolving credits are used in transactions where there is a continuous relationship between the exporter and the importer and the amount is renewed periodically without renewing the terms and conditions of the credit.

In *Nordskog & Co. v. National Bank (Loyds Bank)* the joint general manager of Lloyd’s Bank explained the operation of the revolving credit as follows: “A revolving credit technically means a credit for a certain sum at any one time outstanding, which is automatically renewed by putting on at the bottom what has been taken off the top. If you have a revolving credit for £50,000 open for three months, to be operated on by drafts at 30 days sight as drafts are drawn, they temporarily reduce the amount of the credit below the £50,000. As these drafts run off and are presented and paid they are added again to the top of the credit and restore it again to the £50,000.”

According to Busto, (2002), a revolving credit can be cumulative or non-cumulative. The term “cumulative” in relation to a revolving credit means that “any sum not utilized during the first period carries over and may be utilized during a subsequent period”. In more practical words, if a revolving credit is opened for a fixed period of 6 months with an amount up to \$10,000 per months and the beneficiary draws only \$5,000 in the first month, then the remaining \$5,000 will be available for him during the next month along with the \$10,000, that is to say \$15,000 all together.

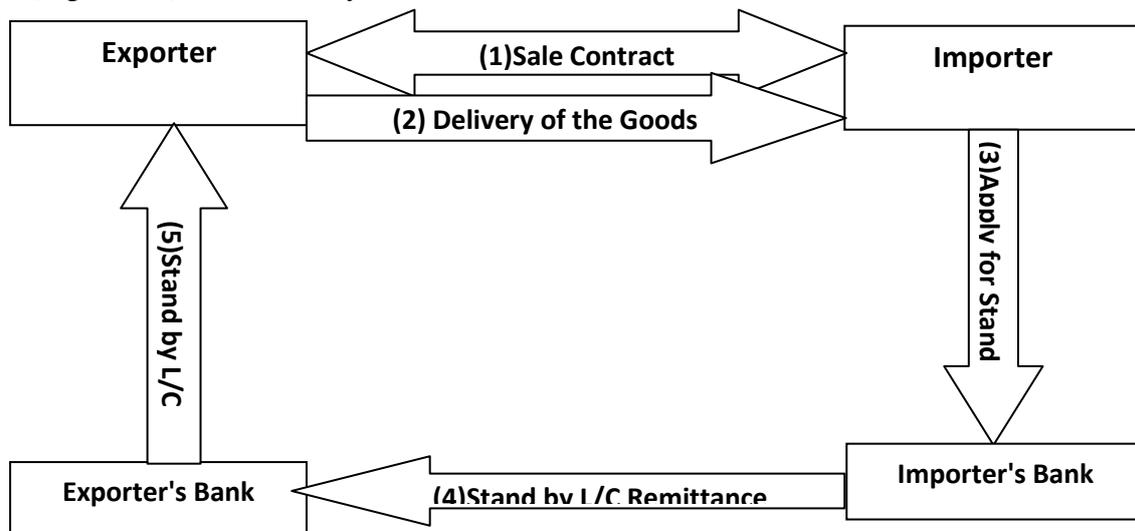
If the revolving credit is non-cumulative, then any amount not drawn in a specific period of time ceases to be available. In our hypothesis, if the beneficiary draws only \$5,000 in the first month, the remaining \$5,000 will not be available for him during the next month, when he will be able to drawn up to \$10,000 again. The credit may be revolving not only in relation to time, but in relation to value as well. This latter means, that the letter of credit is automatically reinstated when the value of the credit is exhausted. Although revolving credits are mentioned in all textbooks, in practice they appear to be rare. (Todd, 1990).

### 3.4.4: Other types of Letter of Credit:

The letters of credit described thus far cover the movement of goods from one destination to another. There are other types of letters of credit which are not specifically related to the movement of goods. The principal one is as follows:

#### 3.4.4.1: The Standby Letter of Credit

(Figure 3.8): The Standby Letter of Credit



Source:made by the researcher

Standby letters of credit were initially developed because banks in the USA had limited legal authority to issue guarantees. Today, except under limited circumstances, the restriction on the issuance of guarantees no longer exists. Standby letters of credit are not legally distinct from demand guarantees, which also require the presentation of stipulated documents and compliance with the terms and conditions of the guarantee. The distinction lies in practice and terminology. Standby letters of credit are used to underwrite a wide variety of commercial and financial operations. A standby letter of credit acts as a guarantee if there is a failure to perform a contractual undertaking, such as the obligation of a buyer to pay or that of a seller to deliver. It has the same basic form as a commercial documentary credit. However, the intention is often that the beneficiary in whose favour a standby letter of credit is issued draws only in case of default on the transaction to which the standby letter of credit relates (Ifs School of Finance 2013). Standby letters of credit may apply in general to transactions which are based on the concept of default by the applicant in performance of a contract or obligation. In the event of default, the beneficiary is permitted to draw under the letter of credit. Standby letters of credit may be used as a substitute for performance guarantees, or issued to guarantee loans granted by one firm to another, thereby securing payment to the creditor in the event the other party fails to repay its obligation on the due date. Even if the applicant claims to have performed, the bank issuing the letter of credit is obliged to make payment provided the beneficiary produces complying documents, usually a sight draft, and a written demand for payment.

#### **3. 4.4.1: Types of standby letter of credit**

Standby letters of credit can be extremely flexible and are therefore a suitable product in a wide range of payment scenarios. The following list provides a description of the types most commonly used:

1. **Performance standby:** supports an obligation to perform other than to pay money and includes an obligation to pay for losses arising from a default of the applicant in completion of the underlying transaction.
2. **Advance payment standby:** supports an obligation to account for an advance payment made by the beneficiary to the applicant.
3. **Bid-bond or tender-bond standby:** supports an obligation of the applicant to execute a contract if it is awarded a bid.

4. **Counter standby:** supports the issuance of a separate standby letter of credit or other undertaking by the beneficiary of the counter standby.
5. **Financial standby:** supports an obligation to pay money, including any instrument evidencing an obligation to repay borrowed money.
6. **Insurance standby:** supports an insurance or reinsurance obligation of the applicant.
7. **Commercial standby:** supports the obligations of an applicant to pay for goods or services in the event of non-payment by other methods.
8. **Direct-pay standby:** is intended to be the primary means of payment, and may or may not be linked to a default in performance or payment.

#### 3.4.4.2: The Islamic application of letter of credit (Murabaha L\C)

It is well known that Islamic finance is based upon the prohibition of interest, but that is not the only reason for rejecting part of the conventional range of financial instruments, there are also others. There is a fair dose of ‘thou shalt not’ in all this, but Islamic economics, of which Islamic finance is the most developed branch, or perhaps the only reasonably developed branch, is made up of more than injunctions to refrain from a number of activities or to steer clear of certain financial instruments,(Visser, 2009). Various Islamic trade finance products are available in the market since then, including the following:

**Table .3.2: Islamic Trade Finance Products.**

<b>IMPORT FINANCING</b>	<b>EXPORT FINANCING</b>
• Documentary Credit	• Inward Letter of Credit
• Wakalah	• Islamic Factoring
• Murabaha	• Islamic Bankers Acceptance
• Musharakah	• Islamic Credit Export Financing
• Shipping Guarantee	• Islamic Export Credit Re-financing
• Murabaha Working Capital	(pre-shipment)
• Islamic Bankers Acceptance	• Islamic Export Credit Re-financing
• Foreign Inward Bills for collection (FIBC-i)	(post-shipment)
• Domestic inward Bills for collection (DIBC-i)	• Accepted Bills-i
	• Foreign Outward Bills for Collection- i
	• Domestic Outward Bills for Collection-i
	•Debt Trading Working Capital Financing

Source: IMF WEO April 2013, KFHR

#### **3.4.4.2.1: Why Islamic finance?**

The use of financial instruments that obey specific Islamic requirements. The movement for an Islamic economy and an Islamic financial system in particular, is rooted in the experience of Muslims in what they, or at least some of them, felt in the past was an unfriendly non-Muslim environment. A new impetus was given with the rise in oil wealth in a number of Muslim countries after the 1973–74 oil crisis and the success of Malaysia as a fast grower, both of which may have contributed to a formerly unknown level of self-confidence that made it possible for Muslim governments and firms to develop new financial instruments in close cooperation with Western firms, without the feelings of resentment that underlay the first attempts to Islamize the economy. The history of the movement for Islamic finance, and Islamic economics in general, is sketched and the chapter ends with highlighting the diversity of views among Muslims on this matter, (Visser, 2009).

#### **3.4.4.2.2: Islamic application of documentary letter of credit**

Letters of credit play a crucial role in international trade and have been described as the lifeblood of international commerce. Issued by banks, transacted through banks and largely funded by banks, the banking sector across the world is directly involved in financing international trade through letters of credit.

In view of its importance, it is vital to study its nature and to obtain a clear understanding of the way it operates as will be treated according to this study in the light of Sudanese banking practice in terms of the Murabaha L\C, and then to look at it from the viewpoint of the Shariah and to what extent the Sudanese experience in this respect suffer so many shortcomings in terms of so many challenges and risk faced by the issuing bank. Only in this manner can we formulate letters of credit and adopt operational methods that are consistent with the principles of Islamic trade and finance at the lowest levels of risk.

A treatment of letters of credit that is useful and one that will attract all concerned parties must address the current scenario of international trade. Importers, exporters and intermediaries must be assured that the solutions proposed are viable.

study in this respect treats the issue of letters of credit on the light of International Chambers of Commerce Publication 600 2007 Revision on Documentary Credits, generally referred to as UCP 600, and where necessary explanations on provisions in the UCP 600 found in the International Standard Banking Practice (ISBP).

The introduction of Islamic concepts into and the modification of letters of credit to meet the requirements of the Islamic trade and finance will enhance the efficacy of letters of credit and strengthen its position in international trade.

For Muslims the central role of letters of credit in international trade makes it imperative that it should both conceptually and operationally accord with Shariah principles. The letter of credit has evolved through trade practices that over time have secured the force of law and there had been no attempts in its formative stages to introduce Shariah values into its content and implementation. It is the object of this study to establish in clear terms the appropriate practice of letters of credit, in the light of the underlying principles and to look at it from the Shariah standpoint and to suggest changes to current practice that have to be undertaken to bring letters of credit within the sphere of the Shariah and consistent with the Islamic value system.

### **3.5: Documentary Letter of Credit Risk**

Many of the trends outlined above involve heightened risks for exporters. From their point of view, security of payment has therefore become increasingly important. At the same time, they are encountering a greater awareness of risk among their buyers. They often have to provide far-reaching guarantees of their willingness and ability to meet contractual commitments. Otherwise they will not even be considered for the contract.

This even applies to importers, whose impeccable payment record used to be regarded as sufficient security. Their suppliers want assurances of their willingness and ability to meet their financial obligations. Suppliers' insistence on security of payment can result in complicated formalities that conflict with the importer's desire to receive the goods in perfect condition and without delay.

**Table. 3.3:** Risks Relating to the Contracting Party:

Risks Relating to the Contracting Party (Fig. 1)	Risks Relating to the Contracting Party (Fig. 1)	Risks Relating to the Contracting Party (Fig. 1)
Credit risk	Buyer unable or unwilling to pay	Exporter unable or unwilling to refund advance payments
Manufacturing or performance risk	Importer cancels or unilaterally modifies the order	Exporter unable to execute the contract for technical or financial reasons Exporter unwilling to perform under the contract

Source: made by the researcher.

**Table.3.4:** Risks Relating to the Economic and /or Political Situation in the Country of the Table Contracting Party or in Other Countries

Type of Risk	Cause of Loss to the Exporter	to the Importer
Political risk	Importer prevented by political events or official actions (war, revolution, import bans, confiscation, etc.) from carrying out his side of the contract	Exporter prevented by political events or official actions (war, revolution, embargoes, etc.) from carrying out his side of the contract
Transfer risk	Governments or other public sector entities refuse or are unable to make payment in the agreed currency (moratorium)	Guarantee payments or refunds of advance payments rendered impossible
Exchange risk	Contract currency depreciates against exporter's currency	Contract currency depreciates against importer's currency

Source: made by the researcher.

### 3.5.1: Protection against Risks

The risks involved in international trade have to be carefully assessed. This is no easy matter, especially in the case of major contracts that run over several years, e.g. large-scale construction projects or contracts for the purchase of industrial machinery with long manufacturing times. Banks have vast practical experience in this field and can therefore make an important contribution to the smooth execution of international transactions, whether these are straightforward or more complex. When planning and negotiating big projects, it is therefore advisable to call in a competent bank at an early stage. If the buyer and seller are both Swiss, each party can usually be reasonably sure that the other will meet its obligations. It is an easy matter to check up

on the other party's creditworthiness and business reputation. Moreover, any legal proceedings or debt collection measures will come within the jurisdiction of the courts and authorities of the country concerned. Domestic transactions are therefore normally settled on "open account", i.e. the seller presents his invoice only after the goods or services have been supplied. When doing business with less well-known foreign firms, a contract of sale does not always provide the same sound and reliable basis as it does in the domestic market. In fact, the security provided by a simple contractual undertaking on the part of a foreign company can only be considered adequate if the parties have a long-standing business relationship or a strong common interest (e.g. financial ties). Stable political, economic and legal conditions in the foreign country are also a necessary prerequisite. Otherwise, both parties will want additional security.

The buyer's and seller's ability to insist on effective security arrangements will depend largely on the two parties' respective negotiating strength. This depends in turn on their relative market positions.

For example, a confirmed irrevocable documentary credit provides the seller with an assurance that he will be paid promptly against presentation of the correct documents. The advantages for the buyer, however, are less clear. Indeed, from his point of view, a documentary credit has a number of disadvantages:

- He usually bears the cost of the documentary credit.
- He is obliged to make payment as soon as the correct documents are presented to his bank, whereas the seller is at liberty to present the documents or not and is therefore free of any obligation until the moment he avails himself of the credit.
- A documentary credit ensures that payment will be made only against the stipulated documents, but it offers no guarantee that the goods will be delivered or the service rendered in accordance with the terms of the contract.

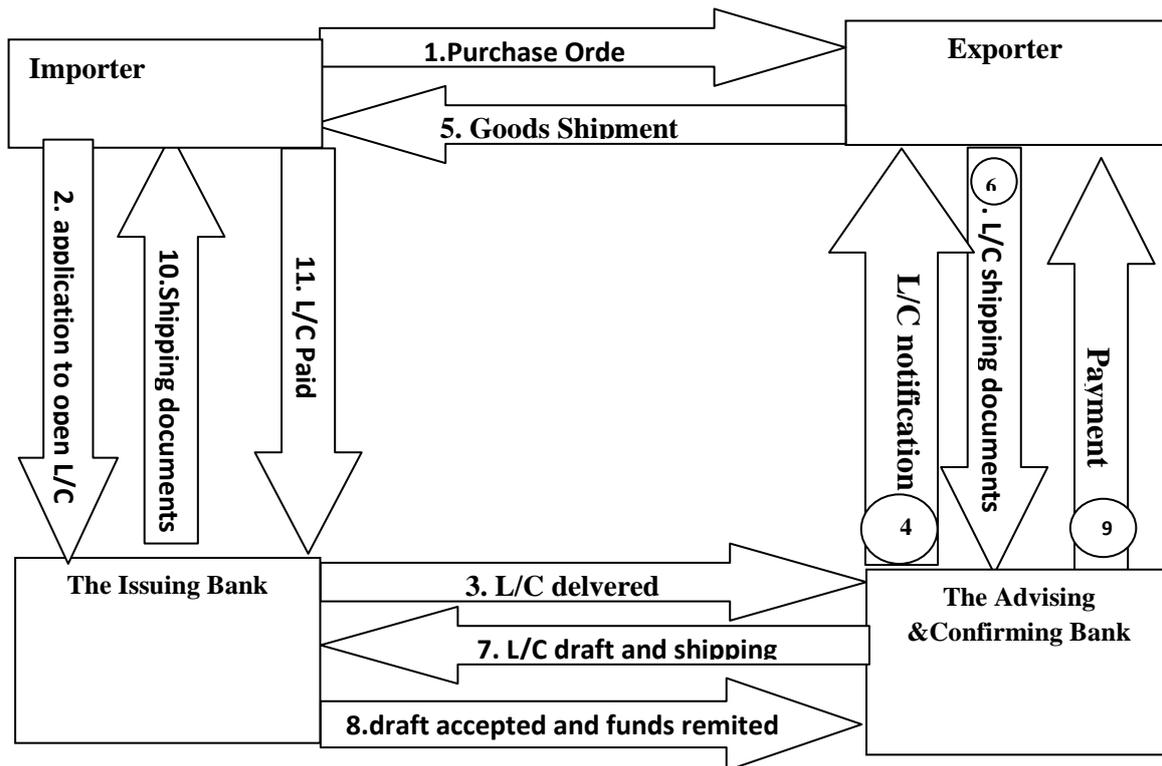
A buyer is therefore unlikely to apply for a documentary credit on his own initiative. As a rule, he will only agree to this method of payment if the seller demands it and if there is no other equally good supplier who does not. This is what happens in a seller's market and it is in practice a rare occurrence. In this kind of market, sellers do not need to worry about finding buyers, which means that they are in a strong position (e.g. a monopoly). They can therefore demand maximum security of payment (e.g. a documentary credit opened by the buyer). The buyer's need for

security depends on the conditions of contract relating to the seller's obligations. If he is the sole buyer and can choose between a number of suppliers, he will be able to obtain the security he wishes in almost every case. This is the situation in a pure buyer's market. In this kind of market, the buyer is in a strong position and can therefore demand the highest possible security (e.g. a bank guarantee from the seller). The banks offer a wide range of instruments designed to meet the differing security needs of buyers and sellers. Each case has to be examined on its merits in order to ascertain which instruments are necessary and appropriate. In practice, some sort of balance is usually struck between the interests of the two parties. Instruments for protecting the interests of buyers and sellers can then be used in combination; the following two sections summarize the principal services offered by the banks in this connection.

### **3.6: STEPS IN AN IMPORT LETTER OF CREDIT TRANSACTION**

This chapter explores the relationship between the applicant (buyer) and the issuing bank (buyer's bank) when the applicant applies to open a documentary credit. It explains the responsibility of the applicant when submitting a documentary credit application. It also details the responsibility of an issuing bank to examine the application carefully before preparing and issuing the documentary credit. Although it is possible for an issuing bank to act for both the applicant and beneficiary, this is not common. Even when an issuing bank does act for both parties, there are a number of different functions played by the bank in a documentary credit. This chapter identifies these roles and explains the relationships between different banks, known as correspondent banks, performing these roles. The issuing bank may utilize the services of a correspondent bank in the country in which the beneficiary is located. The nature of the relationship of the issuing bank with such a correspondent bank depends upon the services or functions that the issuing bank wishes the correspondent bank to perform and the agreement of such a bank to perform accordingly:

(Figure: 3.9) Basic Letter of Credit transaction



Source: made by the researcher

### 3.6.1: Step-by-step description of a typical Letter of Credit transaction:

The following is a step-by-step description of a typical Letter of Credit transaction:

1. An Importer (Buyer) and Exporter (Seller) agree on a purchase and sale of goods where payment is made by Letter of Credit.
2. The Importer completes an application requesting its bank (Issuing Bank) to issue a Letter of Credit in favour of the Exporter. Note that the Importer must have a line of credit with the Issuing Bank in order to request that a Letter of Credit be issued.
3. The Issuing Bank issues the Letter of Credit and sends it to the Advising Bank by telecommunication or registered mail in accordance with the Importer's instructions. A request may be included for the Advising Bank to add its. The Advising Bank is typically located in the country where the Exporter carries on business and may be the Exporter's bank but it does not have been.
4. The Advising Bank will verify the Letter of Credit for authenticity and send a copy to the Exporter.

5. The Exporter examines the Letter of Credit to ensure:
  - a. It corresponds to the terms and conditions in the purchase and sale agreement;
  - b. Documents stipulated in the Letter of Credit can be produced; and
  - c. The terms and conditions of the Letter of Credit may be fulfilled.
6. If the Exporter is unable to comply with any term or condition of the Letter of Credit or if the Letter of Credit differs from the purchase and sale agreement, the Exporter should immediately notify the Importer and request an amendment to the Letter of Credit.
7. When all parties agree to the amendments, they are incorporated into the terms of the Letter of Credit and advised to the Exporter through the Advising Bank. It is recommended that the Exporter does not make any shipments against the Letter of Credit until the required amendments have been received.
8. The Exporter arranges for shipment of the goods, prepares and/or obtains the documents specified in the Letter of Credit and makes demand under the Letter of Credit by presenting the documents within the stated period and before the expiry date to the “available with” Bank. This may be the Advising/Confirming Bank. That bank checks the documents against the Letter of Credit and forwards them to the Issuing Bank. The drawing is negotiated, paid or accepted as the case may be.
9. The Issuing Bank examines the documents to ensure they comply with the Letter of Credit terms and conditions. The Issuing Bank obtains payment from the Importer for payment already made to the “available with” or the Confirming Bank.
10. Documents are delivered to the Importers to allow them to take possession of the goods from the transport company. The trade cycle is complete as the Importer has received its goods and the Exporter has obtained payment.

In this phase the importer arrange for import process by contacting the exporter and negotiates the imported goods in terms of specifications, description, packing,

shipment, quantities, quality, price and method of payment as well as terms and conditions.

### **3.6.2: The Sales Contract**

The sales contract is the formal agreement between the buyer and seller specifying the terms of sale that both parties have agreed upon. The contract should include: a description of the goods; the amount; the unit price; the terms of delivery; the time allowed for shipment and presentation of documents; the currency; and the method of payment. According to Benjamin (1997), letter of credit arrangement occurs when the buyer and seller agree in the sale contract that the payment should be effected by opening a credit. By incorporating this particular clause, the buyer is under a duty to procure the opening of a credit in the seller's favour. This obligation is not necessarily a condition precedent to the performance of all the seller's duties, but it is often a condition precedent to his duty to deliver the goods.

### **3.6.3: Application and Agreement**

The bank's letter of credit application and agreement forms, when executed, constitute a payment and reimbursement contract between the issuing bank and its customer. It is also the customer's instruction to the issuing bank. The letter of credit must be issued exactly in accordance with the customer's instructions; therefore, it is important that the application be completed fully and accurately, so as to avoid the inconvenience of having to have the letter of credit amended. The agreement constitutes an undertaking by the customer to reimburse the issuing bank for drawings paid in accordance with the terms of the letter of credit, and normally takes the form of an authorization to debit the customer's account.

### **3.6.4: Issuance of the Letter of Credit**

The issuing bank prepares the letter of credit as specified in the application and forwards it by teletransmission or airmail to the advising bank, (a branch or correspondent of the issuing bank).

The letter of credit usually issued subject to the Uniform Customs & Practice for Documentary Credits UCP 600. In this respect article 1, states that: UCP600 applies to any letter of credit where it is specifically included in the text of the letter of credit.

The rules are binding on all parties unless expressly modified or excluded by the letter of credit.

Care has to be taken where the UCP 600 are incorporated into the letter of credit, it is still open to the applicant, i.e. typically the buyer, to exclude the application of any part of the UCP 600. Thus, for example, Article 20(d) requires a bank simply to disregard clauses in a bill of lading which give the carrier a liberty to transship the goods. If a buyer of goods wishes specifically to exclude the tender of bills of lading containing such a liberty, it is open to the buyer when applying for a letter of credit (assuming he has agreed as much in the purchase contract) specifically to exclude the application of Article 20(d): Article 1 makes the UCP 600 where incorporated “binding on all parties thereto *unless expressly modified or excluded by the credit.*” There has been an important stylistic change in this regard. Whereas the UCP 500 repeatedly reminded bankers and users that the practices set out in the Rules were subject to contrary stipulation in the credit, the new Rules now make the point only once, in Article 1, with the intention that the liberty to deviate from the Rules applies throughout. This is a point worth remembering when seller and buyer negotiate in the contract of sale the terms upon which the buyer must open a letter of credit.

It should be noted that the introduction of a new provision in art.12(b), which provides: “By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.” This provision is designed to apply in the situation where the nominated bank which has incurred a deferred payment undertaking discounts its obligation before maturity and subsequently a fraud by the beneficiary is uncovered. As it explicitly authorizes the nominated bank to prepay a deferred payment undertaking, the effect is that the issuing bank is not relieved of its obligation to reimburse the nominated bank even if the fraud comes to light before maturity.

With reference to the abovementioned article the banking practice in the Republic of Sudan is governed by the central Bank of Sudan regulations which in this respect obligates the issuing bank to not issue letters of credits without reference to the fact that the letter of credit issued subject to UCP 600.

It should be noted that the issuing bank undertaking is definite and conditional in terms of what stated under article 7: "Provided that the correct documents are presented the issuing bank must honour the letter of credit if a nominated bank (i.e. the bank with which the letter of credit is available, see Article 12 below) does not do so. In fact, the issuing bank is irrevocably bound to honour the letter of credit at the time it is issued (hence 'irrevocable' letter of credit). Further, the issuing bank is obliged to reimburse the nominated bank; this is separate from its obligation to the beneficiary.

The issuing bank instructs the advising bank as to whether or not to add its confirmation, as per their customer's instructions. The issuing bank has to bear in mind that the letter of credit is definite independent obligation According to what stated under article 4." The letter of credit is a separate transaction from the contract of sale to which it relates. The banks will not be concerned with performance of the contract of sale and the performance of their undertakings will not be subject to claims by the customer regarding the contract of sale". Furthermore; in the letter of credit transaction the concerned parties have to take in consideration also what stated under article 5 that: "Banks deal with documents and not with goods, services and/or other performances to which the documents may relate".

In the context of giving effect to the obligations of the documentary Credit, **UCP 600**, article 6 makes the following provisions. Sub-article 6(b) requires an issuing bank to indicate how the documentary credit is to be available to the beneficiary, while Sub-article 6(a) requires the issuing bank to indicate which bank the documentary credit will be made available with.

In the case of a confirmed documentary credit, the credit would normally be available with the confirming bank, which would also be a nominated bank. Although a documentary credit may be confirmed by one bank, it may be available to the beneficiary at a bank other than the confirming bank – i.e. at another nominated bank – either by specific nomination or by the documentary credit being available for honour or negotiation with any bank.

On the other hand. Sub-article 6(d) provides that documents must be presented to the nominated bank, which may be: the confirming bank; or a specifically nominated bank; or any bank, if no nominated bank is indicated and the documentary credit is

stated to be available with any bank. It should be noted that documents may also be presented direct to the issuing bank.

A nominated bank that has not added its confirmation to the documentary credit does not have to accept the nomination of the issuing bank and the mere nomination does not in itself impose an obligation. A nominated bank should communicate to the beneficiary when it agrees to act in this capacity. The receipt by the nominated bank of documents, its examination or its forwarding of those documents does not, in itself, obligate the bank in the absence of any agreement with the beneficiary. This is covered by UCP 600, sub-articles 12(a) and (c).

The obligation of the issuing bank to the nominated bank that acts in this capacity is set out in UCP 600, sub-article 7(c). The issuing bank's obligation is to undertake 'to reimburse a nominated bank that has honored or negotiated a complying presentation and forwarded the documents to the issuing bank'. The obligations in the relationship between the issuing bank and nominated bank are summarized as follows:

1. The issuing bank must indicate the following details in the documentary credit:
  - The type of settlement (UCP 600, sub-article 6(b));
  - The bank to which the beneficiary can look for the obligations of the documentary credit to be fulfilled (UCP 600, sub-article 6(a));
2. Must reimburse any nominated bank that honored or negotiated a complying presentation under the documentary credit (UCP 600, sub-article 7(c)) and pay any charges that are not recovered by an advising bank, confirming bank or nominated bank (UCP 600, sub-article 37(c)).

In the event that a bank agrees to act as nominated bank, it should:

- examine all documents received in terms of UCP 600, sub-article 14(a) and other related articles of UCP 600;
- Handle discrepant documents in terms of UCP 600, article 16 and other related articles of UCP 600.

### **3.7: Documents usually required under a letter of credit.**

The Uniform Rules for Collections, 1995 Revision, ICC Publication No. 522, article 2 (b) defines documents as: "Documents" means financial documents and/or commercial documents:

1. "Financial documents" means bills of exchange, promissory notes, cheques, or other similar instruments used for obtaining the payment of money;
2. "Commercial documents" means invoices, transport documents, documents of title or other similar documents, or any other documents whatsoever, not being financial documents.

There is no limit to the number and variety of documents which letters of credit may stipulate. The following is a list of documents most commonly seen in a letter of credit transaction. Each document is described in brief with a check-list for preparing the document. As already stated, the beneficiary should, on first being advised of the letter of credit, examine it carefully and be satisfied that all the documentary requirements can be complied with. Unless the documentary requirements can be strictly complied with, the beneficiary may not receive payment from the issuing bank. If there are any requirements that cannot be complied with, the beneficiary should immediately request the applicant to arrange for an appropriate amendment to the letter of credit, those documents are going to be dealt with as follows:

#### **3.7.1: Prime Documents**

Those are the major documents in international trade, and they have to be tendered as instructed and ordered according to the letter of credit in order to measure the extent to which the beneficiary fulfilling the letter of credits terms and conditions.

### 3.7.1.1: Draft/ foreign bill of exchange

(Figure 3.10) Draft/ Foreign bill of exchange

\$ <b><u>1,000,000.00</u></b>	Dated this <b>Fifteenth</b> day of September <b>2015</b>
At: <b><u>Ninety (90) Days after Sight</u></b>	
Pay to the order of: <b><u>Sudanese Cotton Traders Ltd</u></b>	
The amount of:	<b><u>One Million Dollars (United States currency)</u></b>
<b><u>Drawn under International Bank Letters Of Credit # 155</u></b> <span style="float: right;"><b><u>Value</u></b></span>	
<b><u>received and charge the same account of</u></b>	
To: <b>International Bank China.</b>	<b><u>Sudanese Cotton Traders Ltd</u></b>

Source: made by the researcher.

A draft is a bill of exchange and a legally enforceable instrument which may be regarded as the formal evidence of debt under a letter of credit. Drafts drawn at sight are payable by the drawee on presentation. Term (Usance) drafts, after acceptance by the drawee, are payable on their indicated due date.

### 3.7.1.2: Commercial Invoice

(Figure 3.11) Commercial Invoice.

Commercial Invoice				
Vendor/ Exporter	Invoice No.		Date of Shipment:	
	Letter of Credit No		AWB/BL Number:	
	Currency.		Country of Origin:	
	Conditions of Sale / Terms of Sale:			
Consignee			Importer	
Transportation Via: From:	Total number of packages: Total net weight: Total gross weight:			
Description of Goods	Qty.	Weight	Unit Price	Total Value
Name:	Signature:		Date:	

Source: made by the researcher..

The commercial invoice is an itemized account issued by the beneficiary and addressed to the applicant, and must be supplied in the number of copies specified in the letter of credit.

According to article 18, the Commercial Invoice has the following:

- Must appear to have been issued by the beneficiary,
- Must be made out in the name of the applicant,
- Must be in the same currency as the letter of credit, and
- Need not be signed.

The description of the goods or services must correspond with that appearing in the letter of credit.

**3.7.1.3: Bill of Lading.**

(Figure 3.12) Bill of Lading.

Shipping Company Name								
Date:		<b>Bill of Lading</b>			Page.....			
Shipped from:				Bill of Lading No:				
Name;								
Address:								
City/State								
SID#		C&F						
		<input type="checkbox"/>						
Shipped to:				Carrier Name:				
				Seal No(s):				
Third Party Freight Charges Bill To:				SCAC:				
Name;				Pro number:				
Address:				BAR CODE SPACE				
City/State								
Special Instructions:				Freight Charge Terms:				
				Pre Paid    Collect    3 <sup>rd</sup> Party.....				
				Master Bill of Lading: with attached				
				<input type="checkbox"/> underlying Bills of Lading				
				(Check Box)				
CUSTOMER ORDER INFORMATION								
CUSTOMER ORDER NUMBER		# PKGS	WEIGHT	PALLET/SLIP CIRCLE ONE	ADDITIONAL SHIPPER INFO			
<b>GRAND TOTAL</b>								
CARRIER INFORMATION								
HANDLING UNIT		PACKAGE		WEIGHT	H.M. (X)	COMMODITY DESCRIPTION	LTL ONLY	
QTY	TYPE	QTY	TYPE				NMFC #	CLASS
						<b>GRAND TOTAL</b>		
Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property as follows:						COD Amount: \$ _____		
NOTE Liability Limitation for loss or damage in this shipment may be applicable. See 49 U.S.C. § 14706(c)(1)(A) and (B).								

Source: made by the researcher.

A bill of lading is a receipt issued by a carrier for goods to be transported to a named destination, which details the terms and conditions of transit. In the case of goods shipped by sea, it is the document of title which controls the physical custody of the goods. A bill of lading is a document of entitlement to the goods and a transport document issued by the carrier (or his agent) or the master of the vessel (or his agent) evidencing a contract for the carriage of goods from one port to another.

For it to be accepted by the banks it must be strictly in accordance with the terms of the letter of credit and:

- Contain the terms of carriage
- Indicate that the goods have been loaded on board a named vessel
- Indicate the port of loading
- Indicate the port of discharge
- Be presented in full (generally 3 out of 3 originals) and include the number of non-negotiable copies called for by the letter of credit
- Indicate the name of the carrier
- Not carry a notation regarding damage
- Be signed by, The carrier or the carrier's agent or the master or the master's agent, (If the letter of credit specifies who is to sign the bill of lading the documents will not be accepted by the bank – and the exporter will not be paid – unless the bill of lading carries that signature).

The most common discrepancies relating to bills of lading tend to be:

- The bill of lading does not either state that the issuer is the carrier or clearly name the carrier
- Consignee's name not as specified on the letter of credit
- Party to be notified of arrival of goods not as specified on the letter of credit
- Port of loading not as specified on the letter of credit

- Port of discharge not as specified on the letter of credit
- Transshipment allowed when prohibited by the letter of credit (except where containerized)
- Transshipment allowed and the bill of lading does not cover the entire route
- Merchandise description is inconsistent with the letter of credit A bill of lading will be regarded as discrepant and thus not complying with the requirements of the letter of credit if:
  - there is no 'on board' notation (that is, the goods are loaded on board) when required
  - The 'on board' notation is not dated when required to be dated
  - The 'on board' notation is dated after the last shipment date allowed
- There is no evidence freight has been paid, when required
- The goods are shown to be shipped 'on deck' (unless allowed by the letter of credit)
- There is a clause or notation that expressly declares a defective condition of the goods or their packaging i.e. an unclean bill of lading
- A full set of signed originals is not presented where required.

According to article 20, in the Bill of Lading even if the letter of credit prohibits transshipment, banks will accept a bill of lading which indicates that transshipment will take place as long as the relevant cargo is shipped in a container, a trailer or LASH barge as evidenced by the bill of lading, provided that the entire ocean carriage is covered by the same bill of lading. In respect of the state of the goods article 27 clearly indicated that; banks will only accept a clean transport document i.e. one that does not contain any reference to a defective condition of the goods or their packaging. Word 'clean' does not need to appear, even if the letter of credit requires the transport document to be 'clean on board'.

### 3.7.1.3.1: Types of bill of lading

There are two different types of bill of lading:

- **Straight Bill of lading** is one that names a specific consignee to whom goods are to be delivered. It is a non-negotiable document.
- **Order Bill of Lading** is one that is written “to order” or to order of a named party making the instrument negotiable by endorsement. Letters of credit usually call for an order bill of lading blank endorsed; meaning the holder of the bill of lading has title to the goods. The banking practice in order to exercise close control over the applicant and also to safeguard its interests under the letter of credit, banks usually calls for full set of on board bill of lading marked freight prepaid to the order of the issuing bank notify buyers. Given that each bill of lading must be either “straight” or “order”, the following is a list of more common types of bill of lading:
  - **Ocean Bill of Lading** is one issued by an ocean carrier in sets, usually three signed originals comprising a complete set, any one of which gives title to the goods. Ocean bills of lading may be issued in “straight” or “order” form.
  - **Short Form Bill of Lading** is one issued by a carrier which does not indicate all the conditions of the contract of carriage. This is acceptable unless otherwise specified in the letter of credit.
  - **Charter Party Bill of Lading** is one which shippers may, when large or bulk cargoes are concerned, lease the carrying vessel for a stated time or specific voyage under a charter party contract with the owner. Goods carried are then covered under a form of bill of lading issued by the charterer and indicate as being shipped, subject to the term and conditions of the charter party. Charter party bills of lading are not acceptable unless specifically authorized by the letter of credit.
- **3.7.1.4: Air Waybill:**

An air waybill is a receipt issued by an air carrier indicating receipt of goods to be transported by air and showing goods consigned to a named party. Being a non-negotiable receipt it is not a document of title.



For it to be accepted by the banks it must:

- Contain the terms of carriage
- Indicate that the goods are accepted for carriage
- Indicate the airport of departure
- Indicate the airport of destination.
- Indicate the name of the carrier
- Indicate the actual date of issue (this date will be taken as the date of shipment unless an actual date of shipment is noted)
- Be signed by the carrier or the carrier's agent

#### **3.7.1.5: Insurance Policy or Certificate:**

Under the terms of a CIF contract, the beneficiary is obliged to arrange insurance and furnish the buyer with the appropriate insurance policy or certificate. The extent of coverage and risks should be agreed upon between the buyer and seller in their initial negotiations and be set out in the sales contract. Since the topic of marine insurance is extremely specialized and with conditions varying from country to country, the services of a competent marine insurance broker are useful and well advised.

#### **3.7.2: Other Documents.**

Article 14 defines the other documents as stated under this sub article (f), " If a credit requires presentation of a document other than a transport document, insurance document or commercial invoice, without stipulating by whom the document is to be issued or its data content, banks will accept the document as presented if its content appears to fulfill the function of the required document and otherwise complies with sub-article 14 (d). Thereby, all documents required under the letter of credit other than those referred to as " Prime documents" considered to be accordingly, other documents. Thereby, the understood lesson out of this article is that: in order to exercise close control in respect of imported goods, the content of those documents when they are required under the documentary letter of credit they have to be required

according to the provisions of this article, otherwise this may open doors wide for unpleasant surprises.

One of the stated aims of this study is to investigate to what extent the banking practice in the Republic of Sudan when requesting these documents, acts according to this article,

### 3.7.2.1: Certificate of Origin:

(Figure 3.14) Certificate of Origin.

<b>1. Goods consigned from:</b> <b>Exporter's Business Name and Address, Country</b> ..... ..... .....			<b>Reference No:</b>   <b>Issued in .....</b> <b>Country</b>		
<b>2. Goods consigned to :</b> <b>Consignee's Business Name and Address, Country</b> ..... ..... .....					
<b>3. Means of Transport and Route</b> <b>(as far as known)</b> .....			<b>4. For Official Use</b>		
<b>5. Tariff Item No.</b>	<b>6. Marks , Number of Packages</b>	<b>7. Description of Goods</b>	<b>8. Origin Certificate</b>	<b>9. Gross W.</b>	<b>10. No. &amp; Date of Invoice</b>
<b>11. Declaration by the Exporter:</b> <b>The undersigned hereby declares that the above details are correct that all the goods were produced in.....</b> <b>(Country).</b> <b>And that they comply with the origin requirements specified for those goods exported to..... (Importing Country).</b> <b>Place and Date .....</b> / / . <b>Signature of Authorized Signatory.</b>			<b>12. Certificate:</b> <b>It is hereby certified that on the basis of control carried out, that the declaration by the exporter is correct.</b>  ..... <b>Place and Date .....</b> <b>Signature and Stamp of Certifying Authority</b> .....		

Source: made by the researcher.

As the name suggests, a certificate of origin certifies as to the country of origin of the goods described and should comply with any stipulations in the letter of credit as to originating country and by whom the certificate is to be issued. The certificate should be consistent with and identified with the other shipping documents by shipping marks and numbers, and must be signed.

The banking practice in the Republic of Sudan adopting these measures, in order to exercise close control over trade from abroad exactly in terms of full adherence to the trading policies, which sometime prohibit trading with enemy countries or in fulfillment of political commitments towards regional organizations' boycott i.e. (the trade agreement in the light of the Arab State League, in order to prove that the imported goods are not of enemy's origin), or as may be the case to encourage trading between members states within specific economic domain or sphere as a matter of trading policy serving the national interests of the member states thereto, and in order to get benefit from the custom incentives provided accordingly.

### **3.7.2.2: Inspection Certificate**

When a letter of credit calls for an inspection certificate it will usually specify by whom the certificate is to be issued; otherwise, the same general comments as in the case of the certificate of origin apply. As a preventative measure against fraud or as a means of protecting the buyer against the possibility of receiving substandard or unwanted goods, survey or inspection certificates issued by a reputable third party may be deemed prudent. Such certificates indicate that the goods have been examined on shipment and found to be as ordered.

This study consider this document as one of the very essential documents to be tendered under the letter of credit, that helps the importing authorities such as the Central Bank of Sudan to exercise close control in respect of quality assurance of the imported goods. One of the stated aims of this study is to investigate to what extent the banking practice in the Republic of Sudan requesting this document within the documents to be tendered under the documentary letter of credit or not, and if it so doing, to extent do it acts according to the provisions of article 14(f).

### **3.7.2.3. Packing List**

A packing list is usually requested by the buyer to assist in identifying the contents of each package or container. It must show the shipping marks and number of each package. It is not usually required to be signed.

### **3.8: Advising the Letter of Credit**

This section covers the role of the correspondent bank as advising bank only – i.e. if it simply advises the documentary credit to the beneficiary. In this role, the advice of the advising bank to the beneficiary will make it clear that it undertakes no obligation on its own account. In other words, the advising bank is not responsible for any honour or negotiation. In addition, when the documentary credit states that it will only be honored at the counters of the issuing bank, the advising bank may additionally indicate that any presentation will be forwarded directly to the issuing bank without examination. In effect, the advising bank is simply acting to transmit documents.

#### **3.8.1: The relationship between the issuing bank and the advising bank**

UCP 600, sub-article 9: states that:

- a. A credit and any amendment may be advised to a beneficiary through an advising bank. An advising bank that is not a confirming bank advises the credit and any amendment without any undertaking to honour or negotiate.
- b. By advising the credit or amendment, the advising bank signifies that it has satisfied itself as to the apparent authenticity of the credit or amendment and that the advice accurately reflects the terms and conditions of the credit or amendment received.

That is to say; sub-articles 9(b) and (c) require the advising bank and the second advising bank, if any, to satisfy themselves as to the apparent authenticity of the documentary credit, amendment or advice. These sub-articles also state that the sending of an advice of the documentary credit or amendment signifies that it accurately reflects the terms and conditions of the documentary credit or amendment received. This position is in line with ISP 98, rule 2.05. which states that:

- a. Unless an advice states otherwise, it signifies that:
  - i. The advisor has checked the apparent authenticity of the advised message in accordance with standard letter of credit practice; and
  - ii. The advice accurately reflects what has been received.

- b. A person who is requested to advise a standby and decides not to do so should notify the requesting party.
- c. An advising bank may utilize the services of another bank (second advising bank”) to advise the credit and any amendment to the beneficiary. By advising the credit or amendment, the second advising bank signifies that it has satisfied itself as to the apparent authenticity of the advice it has received and that the advice accurately reflects the terms and conditions of the credit or amendment received.
- d. A bank utilizing the services of an advising bank or second advising bank to advise a credit must use the same bank to advise any amendment thereto.
- e. If a bank is requested to advise a credit or amendment but elects not to do so, it must so inform, without delay, the bank from which the credit, amendment or advice has been received. Note has to be mentioned in respect of; **sub-article 9(e)** allows an advising bank to choose not to advise a documentary credit. An advising bank is entirely free to make up its own mind, but should it elect not to advise the documentary credit, it must inform the issuing bank without delay. UCP 600 does not require the bank to inform the issuing bank of the reasons for such action. If the advising bank chooses (‘elects’) to advise the documentary credit, it has a duty to satisfy itself as to its ‘apparent’ authenticity. The word ‘apparent’ draws attention to the fact that the duty is confined to the usual checks – i.e. in accordance with bank policy and international standard banking practice – and does not extend to absolute verification of authenticity. The usual checks are as follows:
- In a paper documentary credit, the signatures of the officials signing the documentary credit must appear to correspond with specimens held.
  - In a documentary credit received by teletransmission, the test key should be authenticated and evidenced on the file copy.

Note that SWIFT-issued documentary credits are automatically authenticated between the issuing bank and advising bank if sent using MT700, 710, 720 or 799, and need no further checks. If the apparent authenticity cannot be established, the advising bank must act in terms of UCP 600, sub-article 9(f).

- f. If a bank is requested to advise a credit or amendment but cannot satisfy itself as to the apparent authenticity of the credit, the amendment or the advice, it must so inform, without delay, the bank from which the instructions appear to have been received. If the advising bank or second advising bank elects nonetheless to advise the credit or amendment, it must inform the beneficiary or second advising bank that it has not been able to satisfy itself as to the apparent authenticity of the credit, the amendment or the advice.

The advising bank forwards the letter of credit to the beneficiary (seller) stating that no commitment is conveyed on its part. However, if the advising bank has been asked to confirm the letter of credit and agrees to do so, it will incorporate a clause undertaking to honour the beneficiary's drafts, provided the documents evidence that all terms and conditions of the letter of credit have been complied with. Article 8 states the obligations of the confirming bank "A confirming bank has similar obligations to the beneficiary and to another nominated bank. If a bank is authorized or requested by the issuing bank to confirm a letter of credit but is not prepared to do so it must inform the issuing bank without delay and may advise the letter of credit without adding its confirmation".

The beneficiary has to check the letter of credit carefully in order to make sure that the letter of credit is in complete conformity with the sale contract. Otherwise beneficiary has to call the applicant for the necessary amendments to be effected immediately and without delay within the validity of the letter of credit.

Article 10: stated that a letter of credit cannot be amended or cancelled without the agreement of the issuing bank (and confirming bank, if any) and the beneficiary. The terms of the original letter of credit will remain in force until you communicate your acceptance of an amendment to the advising bank. If the beneficiary presents documents which comply with the letter of credit and any not yet accepted amendment he will be then assumed accepting the amendment. Partial acceptance of an amendment is not allowed and would be regarded as rejection of the amendment. Beneficiary must accept or reject an advice of amendments in whole; he cannot, for example, accept items 1 and 3 but reject item 2. A provision in an amendment saying that it will become effective unless rejected within a certain time limit would be disregarded. However, a clause in the original letter of credit to the effect that any

amendments issued shall become effective if not rejected within x days might be a way around this. Beneficiary would be wise to reject such a clause in a letter of credit.

### **3.8.1.1: Risks to the advising bank**

The advising bank undertakes no obligation to honour or negotiate and, therefore, it incurs no credit risk by advising the documentary credit. As previously mentioned, the advising bank's sole obligation, if it accepts the issuing bank's instructions, is to satisfy itself as to the apparent authenticity of the documentary credit or amendment and advise it to the beneficiary.

An advising bank must take care to ensure it only advises a documentary credit that is apparently authentic, by carrying out the checks outlined above. If not, an advising bank might find itself liable to a beneficiary that has suffered a loss due to the documentary credit being fraudulent. The advising bank also is to ensure that it advises the credit substantially in the form in which it was received. For example, the advising bank or second advising bank is to ensure that the details received, by way of content of the documentary credit and the number of pages of that documentary credit, are forwarded to the beneficiary. Information that is considered strictly bank-to-bank information need not form part of the advice to the beneficiary unless it may be appropriate to another nominated bank, where the documentary credit is available with any bank.

### **3.8.2: Relationship between issuing bank and nominated bank**

The relationship between the issuing bank and a nominated bank is governed by UCP 600, articles 6, 7 and 12.

With reference to article 12: Nomination

- a. Unless a nominated bank is the confirming bank, an authorization to honour or negotiate does not impose any obligation on that nominated bank to honour or negotiate, except when expressly agreed to by that nominated bank and so communicated to the beneficiary.
- b. By nominating a bank to accept a draft or incur a deferred payment undertaking, an issuing bank authorizes that nominated bank to prepay or purchase a draft accepted or a deferred payment undertaking incurred by that nominated bank.

That is to say the early payment of deferred payment undertakings (discounting) by a nominated bank is now expressly recognized and permitted (Article 12b). The Issuing bank must reimburse the nominated bank on maturity (Article 7c) whether or not the nominated bank has paid early. This fills a gap in UCP 500 which failed to acknowledge discounting, this situation leading to discussion in cases concerning whether discounting was permitted under UCP 500. The overall effect is to move risks of something going wrong (e.g. fraud) from the discounting bank back to the applicant for the credit during the deferred payment period.

In this respect this study draws attention of the banking practitioners in the Republic of Sudan to the 2007 current revision of the Uniform Customs and Practice for Documentary Credits concerning this sub article, and to what extent it constitutes very risky situation to the issuing bank and tries to investigate the current banking practice in this respect and how do issuing banks react to this situation?.

This provision is designed to apply in the situation where the nominated bank which has incurred a deferred payment undertaking discounts its obligation before maturity and subsequently a fraud by the beneficiary is uncovered. As it explicitly authorizes the nominated bank to prepay a deferred payment undertaking, the effect is that the issuing bank is not relieved of its obligation to reimburse the nominated bank even if the fraud comes to light before maturity.

In this respect, Isaacs & Barnett (2007) argued that: This provision has been widely welcomed as facilitating trade finance for the beneficiary who wishes to shore up its cash by obtaining a discounted payment of credit. This article, however, casts doubt whether the introduction of art.12 (b) should be seen as a step in the right direction. The reason is that, as detailed below, it has effectively eliminated a useful option of risk allocation.

Prior to the introduction of art.12(b) by the UCP 600, the issuing bank could assert a fraud by the beneficiary as a defense to a claim for reimbursement by the nominated bank where the latter has discounted its obligation under a deferred payment undertaking without the knowledge of the fraud. This is because the nominated bank under a deferred payment credit, by definition, has the issuing bank's authority to incur a deferred payment undertaking and to pay at maturity but, without a further

explicit authorization as conferred under art.12 (b) of the UCP 600; it does not have a requisite mandate to pay before maturity.

In this respect this study tries to prove that: The introduction of art.12 (b) by the UCP 600, with the result that the risk of fraud now lies with the issuing bank or ultimately the applicant. Consequently, if the issuing bank or the applicant is to avoid the risk of fraud, it would be necessary to insert in their letter of credit a clause excluding the application of art.12 (b). Article 1 makes the UCP 600 where incorporated “binding on all parties thereto *unless expressly modified or excluded by the credit.*”

It would be safe to say generally that as between a rule which makes a useful option readily available and a rule which has to be excluded in order to make room for a useful option, the former is superior for its better usability. In the present context, the exclusion of art.12 (b) would not only be cumbersome but also difficult in practice. The reason is that under the underlying contract with the applicant, unless there is any special agreement, the applicant would be obliged to procure a letter of credit on usual terms. A credit excluding provisions of the UCP may not be regarded as such. Nor would it be easy to obtain the beneficiary’s agreement to exclude art.12 (b) since the purpose of such exclusion is none other than the avoidance of the risk of fraud by the beneficiary, a point the applicant would not wish to raise to the beneficiary when it is negotiating to conclude an underlying deal.

- c. Receipt or examination and forwarding of documents by a nominated bank that is not a confirming bank does not make that nominated bank liable to honour or negotiate, nor does it constitute honour or negotiation.

### **3.8.3: The relationship between issuing bank and confirming bank**

The relationship between the issuing bank and the confirming bank is defined in UCP 600, articles 7, 8 and 10. There are a number of key elements in these articles in respect of the relationship between the issuing bank and the confirming bank.

Irrevocability – the fact that the obligations of both the issuing bank and the confirming bank are irrevocable is reiterated not only in UCP 600, article 7 (issuing bank undertaking) and article 8 (confirming bank undertaking) but also in UCP 600, sub-article 10 (a).

- Without recourse obligation – the fact that payment made by both the issuing bank and confirming bank is without recourse is evidenced in UCP 600, sub-article 7(a) – ‘the issuing bank must honour’ – and UCP 600, sub-article 8(a)(i) – ‘the confirming bank must honour’ – and (ii) – ‘the confirming bank must negotiate, without recourse, if the credit is available by negotiation with the confirming bank’.
- Confirmation: a separate undertaking – by confirming a documentary credit, the confirming bank gives an undertaking to the beneficiary separate from that of the issuing bank. There is a separate and independent contract between the confirming bank and the beneficiary.
- Presentation of documents by the beneficiary – in UCP 600, Sub-article 7(a), the issuing bank’s undertaking applies if the documents are presented to the nominated bank or to the issuing bank. If the confirming bank is the nominated bank and the beneficiary makes a complying presentation to the confirming bank, the issuing bank cannot refuse a claim made by the beneficiary in respect of that presentation if it is not honored or negotiated by the confirming bank, on the basis that presentation had not been made to the issuing bank within the validity of the credit.

The presentation of documents is within the control of the beneficiary and the last sentence of UCP 600, sub-article 6(d)(i) emphasizes this: ‘An expiry date stated for honour or negotiation will be deemed to be an expiry date for presentation.’ In addition, the use of the word ‘or’ in the text of UCP 600, sub-article 7(a) makes it unnecessary for a separate presentation to be made to the issuing bank if the confirming bank is the nominated bank. In UCP 600, sub-article 8(a), the confirming bank’s undertaking is to apply if documents are presented to the confirming bank or to another nominated bank.

Further to the above, the following should be noted:

- Unless the documentary credit indicates otherwise, the confirming bank cannot refuse a claim by a beneficiary in respect of a presentation made in compliance with the documentary credit and not paid by the nominated bank, on the basis that presentation has not been made to the confirming bank within the validity of the documentary credit.

- If the confirming bank is bypassed in the presentation of documents, and such presentation is required because it is also the nominated bank, or if the terms of the documentary credit or the terms of the confirmation advice to the beneficiary require such presentation, the confirmation may not be effective.

Sometimes the location of the confirming bank may be different from the locations of both the issuing bank and the beneficiary and another nominated bank.

The obligations of the issuing bank and confirming bank

These are outlined in UCP 600, articles 7 and 8 respectively, and follow the same pattern, because the liabilities and obligation of the two banks to third parties is identical. Special note should be made of the obligation to honour if there has been dishonor by a nominated bank.

Not prepared to confirm – UCP 600, sub-article 8(d) indicates the action to be taken if a bank that is authorized or requested by the issuing bank to confirm is not prepared to do so. While there is an obligation to inform the issuing bank, there is no requirement to indicate the reason for refusal. In these circumstances, the bank requested to confirm may advise the documentary credit without confirmation.

There are a number of reasons why a bank may not be prepared to add its confirmation. Some of the more common ones are as follows:

- The limit available to the bank under its own guidelines for the risk of the issuing bank (i.e. issuing bank risk) may already have been reached.
- A similar limit in respect of the country in which the issuing bank is located may have been reached.
- The terms and conditions of the documentary credit may not be acceptable to the bank.
- Confirmation of amendments – just as a bank requested to confirm is not obligated to do so, a bank that has confirmed a documentary credit is not required to confirm any or all subsequent amendments, and this aspect is made clear in UCP 600 sub-article 10(b).

Some of the circumstances in which a confirming bank may refuse to add its confirmation to an amendment include the following:

- Although the original amount of the documentary credit was within the issuing bank and country limits, the amendment may involve an increase that would exceed such limits.
- The amendment itself may extend the risk to a third country if, for example, the amendment were to permit shipment from such a third country, especially if the confirming bank had reasons for concern regarding any associated risk.
- The terms and conditions of the amendment may not be acceptable to the bank.

### **3.8.3.1: Obligations of issuing bank and confirming bank**

In the relationship between the issuing bank and the confirming bank, the obligations may be summarized as follows:

#### **3.8.3.1.1: Issuing bank**

- Before requesting a bank to confirm, the issuing bank may wish to examine the standing of the proposed confirming bank, and its own experience and relationship with it.
- In certain banking relationships, the confirming bank may provide the issuing bank with a facility letter indicating a limit on confirmation of documentary credits issued. In such circumstances, the issuing bank must ensure that the request to confirm falls within the prescribed limit.
- Wherever possible, the issuing bank should advise the documentary credit (and any amendments) through the confirming bank and make it available at the counters of the confirming bank.
- If it is not possible to advise the documentary credit through the confirming bank, the documentary credit must indicate a place for presentation of documents.
- The issuing bank must indicate how and by whom the confirming bank's charges are to be paid.

- If the documentary credit is available at the counters of another bank, copies of the documentary credit and any amendments should be made available to the confirming bank.
- The issuing bank must refer all requests for waivers of discrepancies to the applicant (where the issuing bank is willing to accept their waiver) and must respond promptly.
- The issuing bank must examine documents received in terms of UCP 600, sub-article 14(a) and other related articles of UCP 600.
- The issuing bank must honour its undertaking in respect of a complying presentation promptly in terms of UCP 600, sub-article 15(a).
- The issuing bank must handle discrepant documents in terms of UCP 600, article 16 and other related articles of UCP 600.

#### **3.8.3.1.2: Confirming bank**

- The confirming bank must examine the terms and conditions of the documentary credit and advise the issuing bank promptly if it is:
  - Unwilling to confirm the documentary credit;
  - Willing to confirm the documentary credit, subject to changes it considers necessary to make it workable.
- Having agreed to confirm, it must advise the beneficiary promptly of this and specifically indicate:
  - The exact manner in which the documentary credit is available;
  - Where documents are to be presented by the beneficiary; and
  - The scope of the wording of the confirmation, especially where there is another nominated bank or banks involved.
- It may refer any requests from the beneficiary for the waiver of discrepancies to the issuing bank.
- It must examine all documents received in terms of UCP 600, sub-article 14(a) and other related articles of UCP 600.

- It must handle discrepant documents in terms of UCP 600, article 16 and other related articles of UCP 600.

Upon determination of a complying presentation, it must honour or negotiate promptly in terms of UCP 600, sub-article 15(b). UCP 600, sub-article 15(b) When a confirming bank determines that a presentation is complying, it must honour or negotiate and forward the documents to the issuing bank.

#### **3.8.3.1.2: Risks to confirming bank**

The confirming bank undertakes to make payment to the beneficiary, provided that a complying presentation is made and the terms of its confirmation are complied with. The confirming bank's main risk is that, once it has paid the beneficiary, it may not be able to obtain reimbursement from the issuing bank because of:

- insolvency of the issuing bank; or
- refusal of the issuing bank to reimburse because of a dispute as to whether or not payment should have been made under the documentary credit – for example, due to discrepancies in documents; or
- Government restrictions on foreign exchange transfers or import restrictions preventing the issuing bank from transferring funds.

#### **3.8.4: Relationship between issuing bank and reimbursing bank**

The reimbursing bank is the bank that, at the request of the issuing bank, is authorized to reimburse, or accept and pay time drafts under a documentary credit in accordance with UCP 600, article 13, or the ICC Uniform Rules for Bank-to-Bank Reimbursements under Documentary Credits (URR 725).

In this respect, UCP 600, article 13: Bank-to-bank reimbursement arrangements

- a. If a credit states that reimbursement is to be obtained by a nominated bank (“claiming bank”) claiming on another party (“reimbursing bank”), the credit must state if the reimbursement is subject to the ICC rules for bank-to-bank reimbursements in effect on the date of issuance of the credit.

- b. If a credit does not state that reimbursement is subject to the ICC rules for bank-to bank reimbursements, the following apply:
- i. An issuing bank must provide a reimbursing bank with a reimbursement authorization that conforms to the availability stated in the credit. The reimbursement authorization should not be subject to an expiry date.
  - ii. A claiming bank shall not be required to supply a reimbursing bank with a certificate of compliance with the terms and conditions of the credit.
  - iii. An issuing bank will be responsible for any loss of interest, together with any expenses incurred, if reimbursement is not provided on first demand by a reimbursing bank in accordance with the terms and conditions of the credit.
  - iv. A reimbursing bank's charges are for the account of the issuing bank. However, if the charges are for the account of the beneficiary, it is the responsibility of an issuing bank to so indicate in the credit and in the reimbursement authorization. If a reimbursing bank's charges are for the account of the beneficiary, they shall be deducted from the amount due to a claiming bank when reimbursement is made. If no reimbursement is made, the reimbursing bank's charges remain the obligation of the issuing bank.
- c. An issuing bank is not relieved of any of its obligations to provide reimbursement if reimbursement is not made by a reimbursing bank on first demand.

Reimbursing banks act upon the instruction and authority of the issuing bank and any difficulties a claiming bank has in respect of non-payment, late payment or interest charges should be referred to the issuing bank.

#### **3.8.4.1: Risks to the reimbursing bank**

A reimbursing bank is entitled to be reimbursed by the issuing bank, having reimbursed the claiming bank against a claim as specified in the issuing bank's instructions. However, it has no obligation to reimburse the claiming bank unless it has issued a reimbursement undertaking. The main risk to the reimbursing bank is that, once it has paid the claiming bank's claim, it may not be able to obtain

reimbursement from the issuing bank (for the same reasons as a confirming bank may not obtain reimbursement from an issuing bank).

### **3.8.5: Advising the Documentary letter of credit**

The beneficiary will receive formal advice of the documentary credit from an advising bank (note that an issuing bank could send an advice of a documentary credit direct to the beneficiary). Although this formal advice will come from a bank, the applicant and beneficiary will also maintain a relationship.

On receipt of the documentary credit, the beneficiary should examine it carefully to ensure that they can obtain all of the stipulated documents and comply with all of its terms and conditions; the beneficiary should also check that it has been issued in accordance with the sales contract or other agreement. Many of the difficulties faced in documentary credit operations arise from the beneficiary failing to scrutinize the documentary credit on receipt and paying attention to these issues.

If the documentary credit is not issued in a form that is acceptable to the beneficiary, the beneficiary should contact the applicant and request one or more amendments that will put the terms and conditions into an acceptable form. Apart from a duty to examine the documentary credit upon receipt and to request any necessary amendments, the beneficiary is required to make shipment or perform in accordance with the documentary credit, and to obtain and present the stipulated documents. Even if an effective agreement and a workable documentary credit are in place, it is possible for discrepancies to arise when the beneficiary is preparing the presentation. In such an event, the beneficiary may wish to contact the applicant to inform the latter of the discrepancies in order to see whether the applicant would provide a waiver of the discrepancies.

#### **3.8.5.1: The relationship between the beneficiary and the advising bank or second advising bank.**

The advising bank or second advising bank advises the documentary credit to the beneficiary, and its liability to the issuing bank is in accordance with UCP 600, article 9. An advising bank or second advising bank that receives incomplete or unclear instructions may provide a preliminary notification to the beneficiary for information

purposes only and without any responsibility. The advising bank or second advising bank should expressly indicate in its letter enclosing the documentary credit that:

- it undertakes no liability and gives no undertaking in respect of honour or negotiation under the documentary credit;
- When documents are presented, it may merely pass them on to the issuing bank if so required by the beneficiary.

The beneficiary has a right to expect to receive the documentary credit and any amendment in the terms that they are received by the advising bank or second advising bank according to what stated under UCP 600, sub-articles 9(b) and (c)).

If, after examining the documentary credit, the beneficiary has questions about it, they would be well advised to contact the advising bank or second advising bank for advice and assistance. The advising bank or second advising bank may be willing to provide its expertise at this stage. Any advice that an advising bank or second advising bank gives to the beneficiary is given entirely at its own discretion and responsibility. The beneficiary, in consultation with the advising bank or second advising bank, may decide that amendments are required (perhaps because circumstances have changed since the sales contract or agreement was made).

The beneficiary should contact the applicant for any amendment to the documentary credit. The issuing bank should then route the amendment in exactly the same way as for the documentary credit. It should be noted here the important role of the issuing in safeguarding the national and the individual interests of the applicant as well.

Any amendments will be passed to the beneficiary without engagement or obligation on the part of the advising bank or second advising bank. It has no obligation to perform any function other than advising the documentary credit and amendment thereto, as prescribed by the relevant UCP 600 articles.

### **3.8.5.2: Communication between applicant and beneficiary following advice of the documentary credit**

Following advice of the documentary credit, the applicant may receive the following types of communication from the beneficiary:

- A request for amendment if the beneficiary has noticed terms included in the documentary credit that are different from, or additional to, those agreed, particularly if it may prove difficult for the beneficiary to comply with such terms;
- A request for amendment if there has been a change to the terms of the underlying sales contract;

Notification that a presentation contains discrepancies, seeking the applicant's assistance in giving timely waiver instructions to the issuing bank. If the applicant agrees with the beneficiary's request, it should respond in one of two ways. It can ask the issuing bank to issue the required amendment or it can provide the issuing bank with confirmation that the stated discrepancies are acceptable for that presentation. However, if the applicant does not agree with the beneficiary's request, it is still helpful for the applicant and beneficiary to communicate with each other and to resolve the points at issue in a constructive and amicable manner. Note that the negotiating strength moves from the beneficiary to the applicant once goods have been shipped and the terms of the documentary credit have not been met.

The beneficiary should consider carefully any request from the applicant that the transport document stipulated in the documentary credit show the applicant as consignee, especially in the case of air dispatch. If the beneficiary agrees to such a request, it would not be possible for the beneficiary, in the event of non-payment due to discrepancies in the presented documents, to attempt to hold the issuing bank or any other party in any way responsible for the delivery of goods to the applicant as consignee.

### **3.8.5.3: Relationship between beneficiary and nominated / confirming bank**

A nominated bank and / or confirming bank should advise the beneficiary precisely what responsibilities it undertakes towards it in giving effect to the documentary credit.

A nominated bank / confirming bank should be careful in discussing with the beneficiary discrepancies or the possibility of discrepancies arising and how they may be resolved, prior to a formal presentation of documents. If a nominated bank / confirming bank do engage in such discussions, there is a danger that it may be precluded from refusing documents at the time of presentation. This may be on the grounds that the beneficiary was led to believe from discussions that the particular discrepancy upon which the documents are refused had been resolved' or was acceptable.

A nominated bank / confirming bank should also:

- examine documents in terms of UCP 600, article 14 and other related articles of UCP 600;
- handle discrepant documents in terms of UCP 600, article 16 and other related articles of UCP 600;
- Advise the beneficiary of the outcome within the time limits shown in UCP 600, articles 14 and 16, and in the case of an oral refusal, dispatch a telex / facsimile / written confirmation at the same time. While it is acknowledged that UCP 600 does not specifically require such confirmation, it will protect the bank making the refusal in the event of a dispute over what was actually said in the conversation.

If a nominated bank / confirming bank refuses a presentation and notice has been given to the beneficiary in terms of UCP 600, sub-article 16(c), further instructions may be required from the beneficiary with regard to disposal of documents. The detailed responsibilities and procedures adopted by a nominated bank / confirming bank when examining documents are shown in Chapter 9. While most beneficiaries take the trouble to examine the documents carefully against the documentary credit,

others make presentation of the documents in a manner that can suggest a lack of care.

The beneficiary is responsible for ensuring that:

- all stipulated documents have been gathered for presentation under the terms required by the documentary credit, and signed and endorsed as required;
- the presentation letter indicates
  - Instructions as to how discrepant documents should be dealt with;
  - Where and how payment should be effected;
  - A named contact, with details of telephone extensions, facsimile numbers, etc;

A complete presentation is made and that the bank to which the presentation is made has clear instructions as to how the presentation should be handled.

#### **3.8.5.4: Relationship between the beneficiary and the issuing bank**

The undertaking of the issuing bank is addressed to the beneficiary and is the basis of the documentary credit. UCP 600, sub-articles 6(a) and 7(a) permit the presentation of documents by the beneficiary directly to the issuing bank. Indeed, the beneficiary and the issuing bank are the only two necessary parties to any documentary credit.

##### **3.8.5.4.1: Risks to the beneficiary**

###### **i. Failure to comply with documentary credit conditions**

A documentary credit is a substantial safeguard of payment for the beneficiary. The main risk for the beneficiary is that a nominated bank or issuing bank will refuse the documents as they do not comply with the terms and conditions of the documentary credit.

A beneficiary can minimize this risk by reading the documentary credit carefully as soon as it is received. It should then immediately request an amendment if any of the terms and conditions appears to vary from the sales contract or agreement, or if the beneficiary would find it difficult to satisfy any of the stated conditions. Any amendment should be received before the goods are shipped, or the service or performance is supplied. If the beneficiary ships goods before receipt of a requested

amendment, it faces the risk that, if the issuance of the amendment is delayed, it may not be able to make a complying presentation.

**ii. Failure of, or delays in payment from, the issuing bank**

In the case of an irrevocable, but unconfirmed, documentary credit, the beneficiary incurs the risk of failure of the issuing bank together with the country risk relating to the country in which the issuing bank is located. This poses a problem in cases in which the country concerned lacks adequate foreign exchange reserves. If the issuing bank becomes insolvent, the undertaking contained in the documentary credit is placed in jeopardy. The beneficiary may instead need to rely on payment for the goods being received direct from the applicant. In the case of country risk, payment may be prevented or delayed by incidents such as balance of payments difficulties affecting the country of the issuing bank or by government restrictions on transfer of funds outside the country. The beneficiary can mitigate these risks by obtaining a confirmation of the documentary credit by a bank in its own country, or a country whose risk it deems acceptable.

**3.8.6: Shipment of Goods phase.**

Upon receiving the letter of credit, the beneficiary should examine it carefully and be satisfied that all the terms and conditions can be complied with. If this is not possible, the beneficiary should request the applicant to arrange an amendment to the letter of credit. Once completely satisfied, the beneficiary will then be in a position to assemble and ship the goods.

An issuing bank of a documentary credit gives an undertaking that it will honour a complying presentation made under that credit. A presentation will be made by, or on behalf of, the beneficiary. An issuing bank assumes the risk of insolvency of the applicant and is responsible for the recovery of any funds from the applicant in respect of any payment to a beneficiary or a nominated bank.

In order to cover these risks, an issuing bank may take security from the applicant, for example, in the form of cash deposit (Cash Margin according to the stated issuing bank policy or in line with the central bank regulations, for example Sudanese banks are required to satisfy the Central Bank of Sudan measures in this respect ). More often, though, it will seek to take comfort from any security obtained from the

transport documents tendered under the documentary credit. Some transport documents, such as bills of lading, can provide transfer of title or confer ownership of the goods to the bank. In these circumstances, the issuing bank may have the means of obtaining possession of the goods for resale (in terms of the condition always issuing banks required when issuing letters of credit under required shipping documents to be issued as follows "Full set of clean on board Bill of Lading to the order of the issuing bank notify buyers marked freight prepaid" in order to mitigate the risk of not being reimbursed in the event of a default by the applicant. When an issuing bank cannot obtain title to the goods, it may try to exercise some other measure of control over the goods in transit.

This section identifies the key characteristics of transport documents. It also focuses on title to the goods, the negotiability of the transport document, whether a bank can exercise control over the goods, and how the carrier delivers those goods. As well as transport documents, documentary credits can also require the presentation of the following documents:

- **Insurance documents** – providing cover against risk to the goods during their carriage from the beneficiary's premises / country of export to the country of import / applicant's premises.
- **Financial documents** – determining the amount to be drawn under a documentary credit by way of honour or negotiation.
- **Commercial documents** – identifying and describing the goods as stipulated in the documentary credit.
- **Official documents** – evidencing compliance with the requirements of the country of export or the country of import.

The underlying characteristics of these documents are outlined in this part of the study.

Finally, the beneficiary is required to arrange for the documents required under the documentary credit to be presented to the nominated bank or the issuing bank. This chapter concludes with an explanation of this presentation process and explains how discrepant documents should be treated by a nominated bank or confirming bank.

### **3.8.6.1: Preparation of transport documents**

Beneficiary is under a duty to deliver the goods as stated under the documentary letter of credit, so in order to be paid, the beneficiary have to fulfill his obligation to deliver the goods. That requiring the beneficiary to conclude contract of carriage with the agreed to carrier and present the specified B/L providing that shipment has taken place according to the terms and conditions of the letter of credit.

The cycle of a transport document comprises three important stages:

1. Understanding the transport document required under the documentary credit;
2. Creating the required transport document; and
3. Managing the handling of a transport document from creation through to delivery of goods.

### **3.8.6.2: Understanding the transport document required under the documentary credit**

From the point of view of both the beneficiary and the concerned banks, this is by far the most important stage of the cycle. It is essential that a beneficiary understand the precise nature of the transport document required under the documentary credit. In order to achieve this understanding it must carefully read the wording of the transport document requirement in the documentary credit. The beneficiary should then refer to the agreement, sale contract or pro forma invoice agreed with the applicant and ensure that the document required under the documentary credit matches that which has been agreed. If necessary, the beneficiary should clarify any apparent discrepancy with the applicant and seek an amendment to the documentary credit. If clarification or amendment is not possible, the beneficiary should consult its forwarding agent or the proposed carrier. It can also be useful to refer to the advising bank, because the advising bank may be willing to seek clarification from the issuing bank. If issues are resolved in this way, there is less chance of documents being unnecessarily refused by any of the banks. The freight may often be payable by the applicant, in which case the carrier is the applicant's agent. However, the beneficiary's views must also be

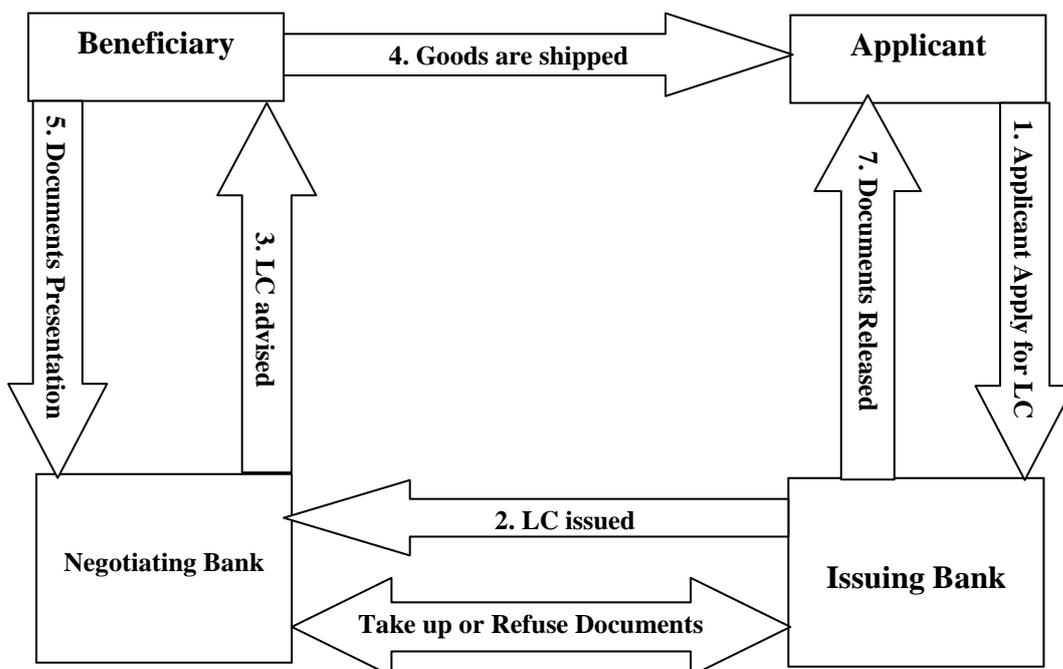
considered in the creation of the document, because the carrier must submit the transport document to it.

### 3.8.6. 3: Creating the required transport document

In the case of carriage of goods by sea, traditionally when the mate of the vessel, on behalf of the master, received the goods, a mate's receipt was issued. This document provides evidence of the receipt on behalf of the vessel. It also shows that the goods have been received in good order and condition. The document will also indicate the number of packages, marks and numbers, and the name of the shipper. When a forwarding agent or carrier completes the documentation for the bills of lading, just before or at the time the vessel is due to sail, the bills of lading are signed and delivered in exchange for the mate's receipt. In the case of other transport documents, there is rarely, if ever, an intermediate stage and air transport, road, rail, inland waterway, courier, and parcel post transport documents are issued in exchange for the goods.

### 3.8.6.4: Managing the handling of a transport document from creation through to delivery of goods

(Figure 3.15) Transport document flow:



Source: made by the researcher.

For example, the flow of documents for a bill of lading is from the carrier to the beneficiary (shipper/seller) and then to the nominated bank. After handling a presentation, which would include the bill of lading, in terms of its nomination (such nomination may include the examination of those documents against the documentary credit), the nominated bank forwards them to the issuing bank. The issuing bank examines the documents against the documentary credit and, in the case of conforming documents, honors in accordance with the terms and conditions of the documentary credit. The applicant receives the documents in exchange for reimbursement or in terms of any alternative arrangement made with the issuing bank.

### **3.8.7: Presentation of Documents by Beneficiary**

The beneficiary prepares an invoice in the number of copies required, with the description of goods shown exactly as stipulated in the letter of credit. The beneficiary obtains the bill of lading and/or other transport documents from the carrier and prepares and/or obtains all other documents required by the letter of credit. These are attached to the draft, drawn on the bank indicated and at the term stipulated in the letter of credit, and are presented to the advising/confirming/negotiating bank.

#### **3.8.7.1: Mode of presentation**

The vast majority of presentations under documentary credits are still paper-based. Over time, it is likely that there will be an increasing number of mixed presentations, comprising part paper, part electronic documentation, or entirely electronic presentations.

#### **3.8.7.2: Presentation and UCP 600**

UCP 600 articles and sub-articles 6, 14(c), 29 and 33 collectively refer to where and when documents are to be presented in order to meet the requirements of a documentary credit. (This section relates to paper-based presentations. Electronic presentations are covered by eUCP.) UCP 600, article 29: Extension of expiry date or last day for presentation

- a. If the expiry date of a credit or the last day for presentation falls on a day when the bank to which presentation is to be made is closed for reasons other than those

referred to in article 36, the expiry date or the last day for presentation, as the case may be, will be extended to the first following banking day.

- b. If presentation is made on the first following banking day, a nominated bank must provide the issuing bank or confirming bank with a statement on its covering schedule that the presentation was made within the time limits extended in accordance with sub-article 29 (a).
- c. The latest date for shipment will not be extended as a result of sub-article 29 (a)

UCP 600, article 33: Hours of presentation A bank has no obligation to accept a presentation outside of its banking hours. When documents have been presented, there are a number of key points that will be considered by a document examiner. The first question is whether all documents have been presented to the correct location. In a documentary credit available by payment acceptance, deferred payment or negotiation with a named nominated bank, this is usually the counter of that nominated bank. In a documentary credit available with any bank, this may be stated more generally – for example, as any bank in the city or the country in which the beneficiary is located. In either case, the beneficiary may also present documents directly to the issuing bank. If a documentary credit is available only with the issuing bank, the place for presentation of documents is the location of the issuing bank. Secondly, have all the documents been presented on, or before, the expiry date of the documentary credit? Technically, an expired documentary credit is not a discrepancy, but a non-existent documentary credit. To facilitate the documentary credit and as an accommodation to the presenter, however, most banks treat ‘credit expired’ as a discrepancy and advise the presenter accordingly. Thirdly is the question, have all documents been presented no later than the stated presentation period or the default period stated in UCP 600, sub-article 14(c)? If one or more original transport documents form part of the presentation, they must also be presented within the latest presentation date after shipment, as stipulated in the documentary credit or the default 21 calendar day period if the documentary credit is silent on the subject.

Three further points concerning presentation are as follows:

If the expiry date stipulated in the documentary credit or the latest date for presentation falls on a day when the bank is not open to perform an act subject to

UCP 600, such date or dates are automatically extended to the next banking day. This does not apply in the case of force majeure, which is explained in UCP 600, article 36. Force majeure A bank assumes no liability or responsibility for the consequences arising out of the interruption of its business by Acts of God, riots, civil commotions, insurrections, wars, acts of terrorism, or by any strikes or lockouts or any other causes beyond its control. A bank will not, upon resumption of its business, honour or negotiate under a credit that expired during such interruption of its business.

- If documents have been presented on an extended expiry date as per article 29, the covering schedule of the nominated bank should be marked with a statement to this effect.
- A bank is under no obligation to accept a presentation made after its published banking hours. If a bank accepts such a presentation, care should be taken to ensure that there is an understanding as to the presentation date for the purposes of UCP 600. A document examiner should note that a bank may indicate shorter hours than the banking hours available at a particular centre for the presentation of documents and, accordingly, the presentation schedules must be examined for any evidence of compliance with such limitation.

### **3.8.7.3: Discrepant documents**

In most cases, a beneficiary will present documents that they believe comply with the terms of the documentary credit. Documents will be examined by a document examiner at the nominated bank (who may be a confirming bank), before they are forwarded to the issuing bank. The examination process is considered in detail later on, If discrepancies are found in the documents, the nominated bank will follow the process outlined below. If the beneficiary knowingly presents discrepant documents, they should request an amendment from the applicant in advance to try and rectify some or all of the discrepancies. If this is agreed, the issuing bank will forward its amendment to the nominated bank. The document examiner should ignore any statements from the presenter that discrepancies have been approved unless the issuing bank has forwarded its agreement or issued an amendment that covers the discrepancies observed.

If, after examination, the document examiner decides to give notice of refusal to the beneficiary (if the beneficiary has presented the documents, otherwise to the presenter), this can be done orally, over the telephone or by telex, facsimile or, as a last resort, by letter. If the notice is given over the telephone, it is best practice to confirm the content of the refusal in writing. It is important that the bank's document examination record or the documentary credit file is annotated with details of dates, time and methods of notification. Copies of the notification should form part of these records. If presentation has been made by a bank, the notice of refusal should be sent to them without delay via SWIFT message. If this is not possible, the refusal notice may be sent by other telecommunication or expeditious means.

i. Discussions with beneficiaries

Because the documents belong to the beneficiary, a document examiner must not initiate any further action or handling without their agreement. In particular, the issuing bank must not be advised of discrepancies because the beneficiary may well be able to correct them. Alternatively, the beneficiary may wish to contact the applicant directly. Any prior contact with the issuing bank may jeopardize the beneficiary's position.

The following are examples of responses often given by beneficiaries to document examiners advising discrepancies:

- they have contacted the applicant, who confirms that discrepancies are minor and should not be treated as reasons for refusal;
- their interpretation of the terms of the documentary credit is the correct one and the document examiner's view is incorrect;
- Carriers, insurers or their agents confirm the stipulations of the documentary credit have been met, even though the relative document does not provide such evidence.

The document examiner is responsible for reminding the beneficiary of the guiding principles as outlined earlier. After preliminary discussions, a document examiner and beneficiary may agree that one or a combination of the following would offer the best commercial course of action.

- The beneficiary may submit corrected documents, if possible.
- The beneficiary may request necessary amendments to the documentary credit.
- The beneficiary may agree that a message be sent to the issuing bank for permission to pay despite discrepancies as originally determined or as amended in terms of the first two bullet points above.
- A document examiner, on behalf of their bank and in terms of such bank's internal guidelines, may accept a beneficiary indemnity (with or without the counter-guarantee from the beneficiary's bankers) in respect of discrepancies as originally determined or as amended in terms of the first two bullet points above. Note that some documentary credits do not allow payment against a beneficiary indemnity or under reserve.
- The beneficiary may instruct the document examiner to dispatch documents to the issuing bank for settlement. The beneficiary's agreement to any of the above courses of action must be clearly annotated on the bank's document examination record and should be confirmed in writing.

ii. Correction of documents by beneficiaries

A document examiner may prefer to return for correction only the discrepant documents. If the beneficiary agrees to this, it may be easier for a document examiner to examine the re-presented documents with those originally presented and that are compliant. If the beneficiary takes away all of the documents as originally presented, a document examiner's task may become a little more difficult when the fresh presentation is made, because all documents will need to be re-examined.

A document examiner must treat the return of the corrected documents, on their own or as part of the whole set of documents, as a new presentation.

Document examiners should be aware that a fresh presentation made in these circumstances often cause more difficulties than checking a new presentation. There is an inherent tendency to make assumptions in respect of documents that did not require correction and document examiners must avoid this. Frequently, the uncorrected documents create fresh discrepancies, such as late presentation or credit expired.

iii. Obtaining the issuing bank's authority to accept discrepancies

A document examiner must ensure that the sending of the message has the authorization of the beneficiary. On receipt of the necessary authorization from the issuing bank, the documents should be honored or negotiated and forwarded to the issuing bank. The forwarded documents should include a notation on the covering schedule that the documents have been taken up 'notwithstanding the stated discrepancies, as authorized by the issuing bank in its message dated xx'.

iv. Receiving instructions from a beneficiary to dispatch documents to an issuing bank for honour

Because the documents belong to the beneficiary, a notice of refusal should specifically state that the documents are held pending their further instructions. Accordingly, any instructions from the beneficiary to forward documents to the issuing bank must be followed carefully. A document examiner must ensure that the documents are dispatched to the issuing bank under the provisions of UCP and no reference must be made to documents being sent on collection terms or in trust. The covering schedule enclosing the documents must not be headed in a manner to give an indication of a documentary collection or state that the presentation is subject to the rules for documentary collections (the Uniform Rules for Collections, Publication No. 522). The relevant date for presentation is the date of presentation of the last document(s) required to make a set of compliant documents. It is in the interests of a document examiner to record accurately details of discussions with a beneficiary on the bank's document examination record, including dates and times.

v. Dispatch of documents to an issuing bank

A document examiner must read the instructions in the documentary credit and dispatch documents in accordance with such instructions, including any choice of Courier Company.

vi. Handling of documents pending settlement

The terms of a refusal notice may indicate that the documents are held pending the beneficiary's further instruction or in accordance with instructions previously received. Accordingly, the beneficiary should continue to be kept advised of any developments with the issuing bank or to seek further instructions in the absence of any authority to honour or negotiate being received from the issuing bank. A

document examiner should follow the operational guidelines in their bank regarding the handling of outstanding items.

### **3.9: Settlement**

In simple terms, if a presentation has been examined and found to be complying, or if a waiver of discrepancies has been obtained from an applicant and is acceptable to the issuing bank, settlement should be made to the presenter without delay and in accordance with the availability conditions expressed in the documentary credit. Whether or not a nominated bank or a confirming bank accepts the issuing bank's advice of acceptance of discrepancies will determine which bank will make such settlement to the beneficiary.

#### **3.9.1: Bankers' Liability Strict Compliance Rule:**

The examination of documents is a very sensitive task on the banks. The documents may be inaccurate but the more common problem is that they are not in compliance with the terms and conditions of the letter of credit, in other words, the liability of confirming or issuing banks under a letter of credit is to pay the beneficiary the sum due, provided that the documents tendered under the letter of credit are typically the documents that identify (i) the goods (such as commercial invoice (Article 18 of the UCP 600), (ii) transport and title (most notably bills of lading (Article 19 - 24 of the UCP 600), (iii) insurance cover (insurance policies/certificates (Article 28 of the UCP 600), (iv) weight, temperature, origin, quality . accordingly; if a bank pays upon having accepted discrepant documents, it may be unable for it to obtain reimbursement from its own customer, which in fact makes the checking function key in determining the bank's exposure. Main principles that govern the banks' liability in paying in connection with the checking of documents may well be drawn from the case law, the UCP and trade practice.

In international transactions, the duty to examine the documents is normally delegated to a nominated bank appointed by the issuing bank. It does not, however, discharge the issuing bank from its duty in this regard vis-à-vis the buyer of the credit, accordingly, it should be born in mind that; the contract between the Issuing Bank and the buyer; under which the issuing bank agrees to issue the credit and, through the correspondent bank to notify the credit to the seller and make payment to the seller

against presentation of complying shipping documents and the buyer agrees to reimburse the confirming bank for payments made under the credit against complying presentation only. In this respect UCP 600, stated that; in documentary credits, payment is effectuated on the presentation of confirming documents. The power of negotiation of documents offered by the Issuing Bank in his letter of credit will be subject to the condition that documents are drawn by the seller in strict conformity with the terms of the letters of credit.

It is one of the fundamental principles of the Documentary Credits that under the Strict Compliance doctrine, that the bank is entitled to reject the documents, which do not conform strictly to the credit terms, art.7 (a)."Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour. Under the Uniform Customs and Practice a bank is dealing in finance and not in goods. It is obvious that a bank has no expert knowledge of the practices and usages in trade.

Hereby, it should be noted that; the role of the issuing bank under the letter of credit, is to extend credit to the importer, in favor of the exporter as beneficiary. Thereby, in order to pay under the letter of credit, the issuing bank reviews the documents presented for compliance according to that of art: (2) of UCO 600. And, if it is in compliance, makes payment, (Scheller, 2008). Accordingly; it should be noted that, banks deal with documents and not with goods, services or performance to which the documents may relate (article 4, UCP600). Consequently; In order to obtain payment from the Issuing Bank, the Beneficiary must provide the bank with documents, banks can themselves use to obtain payment from the Applicant. Up front, the Applicant agrees with the Issuing Bank what this documentation will be and signs a legal agreement in terms of the application form with the bank to reimburse the Issuing Bank if and when they receive this documentation.

Issuing Bank Undertaking according to article (7)" Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour " also art.15 (a), put it clear that; issuing bank undertaking is that, " When an issuing bank determines that a presentation is complying, it must honour". That is to say; there is no room for payment against discrepant documents, so regulators in order to protect consumers in

respect of imported goods, must obligate Issuing Banks not to release discrepant documents against applicant's waiver.

### **3.9. 2: Documents Examination.**

This process should really start as soon as the documents are received by the Issuing Bank in order to be examined for accuracy. According to (Smith & Butler, 2007), "focus should be drawn at those Articles which establish the criteria against which the banks will examine documents tendered under letters of credit governed by UCP 600, with special emphasis on the basic principles of tender and rejection and at the requirements for the tender of particular shipping documents under the UCP 600, which, from a seller's perspective as beneficiary, are the most important in the sense that they establish the criteria against which his entitlement to payment will be judged; what documents will or will not pass muster with the banks when he tenders them for payment. (Smith & Butler, 2007).

Accordingly; in order to judge the validity of the tendered presentation, the checker of documents has to adopt the definition of "Complying Presentation" stated in article (2) of UCP 600 "the presentation in accordance with the terms and conditions of the credit, the applicable provisions of these rules and international standard banking practice". Where the UCP 600 are incorporated, this simply means that the contract between, say, the beneficiary and the confirming bank or that between the buyer and the issuing bank contains the terms of the UCP 600,(ibid).

In this respect, Smith & Butler, who said that; attention should be drawn at these Articles under the following three headings?

- (a) The basic principles for the examination of documents – Article 14
- (b) Original documents and their issuers – Articles 14 and 17
- (c) Particular documents.

### **3.9.2.1: The basic principles for the examination of documents – Article 14**

According to Smith & Butler, (2007). Article 14 in the UCP 600 establishes the basic responsibility of the banks to examine documents tendered under letters of credit. Accordingly emphasis should be concentrating here on three aspects of this duty which have in some way been altered by them:

- (i) The basic duty to examine the documents on their face – Article 14(a)
- (ii) The time allowed to the banks to examine the documents – Article 14(b)
- (iii) Linkage/consistency between the documents tendered – Article 14 (d) and (e).

### **3.9.2.2: The basic duty to examine the documents on their face – Article 14(a):**

Article 14(a) imposes on the banks a duty to examine documents in order “to determine, on the basis of the documents alone, whether or not the documents appear on their face to constitute a complying presentation”. According to Smith & Butler, (2007), two points need to be made in respect of Article 14(a). First, the phrase “with reasonable care”, which was used in the old Article 13(a) of the UCP 500, has been omitted. It is not anticipated; however, that this omission will lead to any substantive difference in the way this duty will be construed by the banks in the exercise of their duty to examine the documents. For instance, given that the duty always was – and remains – to ascertain whether the documents appear to conform, it must follow that the banks are under a duty to exercise reasonable care rather than any stricter duty of examination. Secondly, the duty is to examine “whether or not the documents appear on their face” to comply. The important thing for users, particularly buyers, to remember is that banks are still bound and entitled to rely only on what the documents say rather than on whether what they say is in fact accurate. ( Smith & Butler,2007).

### **3.9.2.3: The time allowed to the banks to examine the documents**

– Articles 14(b) and 16(d) this is clearly a vitally important Article for all sellers. The old Article 13(b) of the UCP 500 gave each bank involved in the credit a “reasonable time, not to exceed seven banking days following the day of receipt of the documents” to examine the documents. Acceptance or rejection of the document was therefore required within this period. Different constructions in different Courts of how many days under seven constituted a “reasonable time” led an overwhelming

majority of ICC National Committees to recommend the deletion of this phrase and to give each bank a fixed maximum number of days in which to examine the documents. The period chosen from a number of suggested options was five banking days following the day of presentation: see Articles 14(b) and 16(d) of the UCP 600. The old formulation of “reasonable time” led to a number of disputes, a whole range of factors which needed to be considered and very significant uncertainty. (Smith & Butler, 2007).

The new “maximum of five banking days” is therefore has been adopted, although note that a “banking day” is now defined in Article 2 not as simply a day the bank is open, but “regularly open at the place at which an act subject to these rules is to be performed.

### **3.9.3: When a Bank pays under a documentary credit**

Article 15 of UCP 600 provides as follows:

- a. When an issuing bank determines that a presentation is complying, it must honour.
- b. When a confirming bank determines that a presentation is complying, it must honour or negotiate and forward the documents to the issuing bank.
- c. When a nominated bank determines that a presentation is complying and honors or negotiates, it must forward the documents to the confirming bank or issuing bank.

According to the British Sale of Goods Act, 1895," where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description stated in the letter of credit; furthermore, where goods are bought by description from a seller who deals in goods of that description (whether he be the manufacturer or not), there is an implied condition that the goods shall be of merchantable quality". Consequently; it should be noted that; the issuing, when underwriting payment under the letter of credit, a binding contract, independent of the contract of sale, comes into existence by virtue of Articles 4 & 5, once the seller (beneficiary) is notified of the credit by either the issuing bank or the advising bank, which imposes upon the banker an absolute obligation to pay, irrespective of any dispute there may be between the parties as to whether the goods are up to contract or not. But, it should be noted that; the issuing bank or the confirming bank if

any, undertaking to effect payment is against complying presentation only as stated under abovementioned art.15(a),(b) and(c) of UCP 600. Thereby; complying presentation constitutes a condition precedent that must be strictly fulfilled otherwise the Exporter would not be entitled to draw drafts on it. Consequently; the issuing bank is not authorized to discharge its payment obligation against discrepant documents in despite of art.16 (b) by the virtue of the doctrine of strict liability which designated to preserve the importer and the importing country's right in goods of satisfactory quality as it has been agreed to

According to Schmittoff (2012),"it must be pointed out that while the parties are free to regulate their transactions as they see fit, this freedom is restrained once the transaction has effects outside the parties' contractual sphere, their micro-cosmos. In the "outside world" freedom of contract may be restrained by public policy considerations and/or relevant mandatory rules". So, the Banking Practice in this respect has to enhance and improve the efficiency of the International Trade Transaction in terms of quality and best resource utilization. Accordingly; in terms of the economic analysis of the law theory, Posner,( 2003) believed that "contracting parties are considered to be "utility" or "value maximizers"; that is to say, they are assumed to act rationally with the view of advancing their economic interests , and thereby Contracts which maximize value are efficient transactions. If transaction costs are low, the transaction is deemed to be economically efficient, so the letter of credit contract is deemed to be by virtue of Strict Compliance Doctrine.

### **3.9.3.1: Discrepancies: Non-Compliance**

Discrepant documents are documents tendered by the exporter in support of a request for payment under the letter of credit, that are deemed to have failed to meet complying presentation requirements as set out in article (2) of UCP 600. Certain discrepancies are considered significant, others trivial in nature. For instance, Late Shipment is significant; a minor typographical error in certain documents is likely to be considered trivial, but even minor discrepancies can delay or prevent payment. Discrepancies can, in worse-case scenarios, have the effect of completely eliminating the protection provided to the exporter under an L/C, since the banks can either refuse payment on the basis of the discrepancies, or the importer, given an opportunity to waive the discrepancies, may refuse to do so, There have been cases where importers

have instructed their bankers to “find a discrepancy” as a means of refusing Shipment (as when the price of the items purchased has dropped significantly and can be secured elsewhere, at lower cost), or may not be given the privilege to waive the discrepancies at all where, imported goods under discrepant documents may be not of merchantable quality .

### **3.9.3.2: Obtaining Waiver of Discrepancies**

Given that the goods are likely at destination by the time the document verification process is complete, the exporter may be forced to provide a significant discount, or secure another buyer for the goods—likely at a loss, and having incurred unanticipated expense to store the goods at the port of destination while identifying an alternate buyer. Banks are meant to make determinations about documents on an independent basis, but many will consult with their respective clients—exporters offered the opportunity to “correct” discrepancies where feasible, and importers in some cases asked by the Issuing Bank to verify the documents before the bank provides a response to the Advising Bank. It can be important to understand the approach of banks relative to document verification and the handling of discrepancies: certain banks take a “black letter approach” and will point out every discrepancy identified, no matter how trivial, while others take a more commercially-oriented view, and acknowledge only material discrepancies.

After examining the documents, the negotiating bank will notify the exporter of any discrepancies found and work with the exporter to "make the necessary corrections". If the exporter's documents cannot be corrected to the extent that fully complies with the credit terms and conditions, it should be noted that, the exporter himself knows that he has lost a key factor of the letter of credit "the issuing bank's commitment to honor". But, according to article 16(b) of UCP 600 the exporter still has a variety of alternatives available to collect payment. The beneficiary could contact the applicant to make him agrees to induce payment despite the discrepancies, that have been determined. The issuing bank is under no obligation to accept the waiver of the applicant according to art. 16(a) and 16 (b) which can be read respectively as follows:

**a.** When nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate.

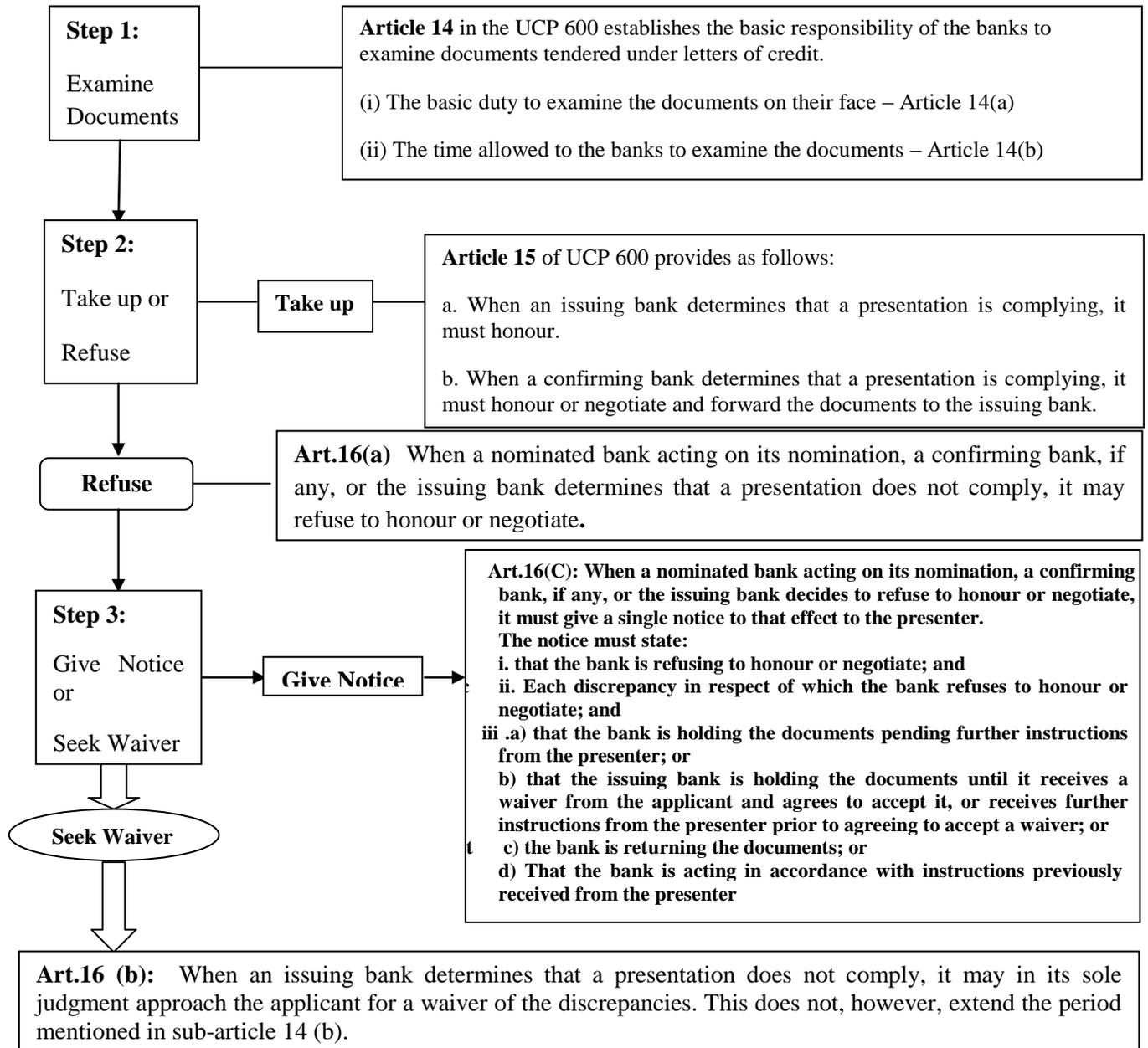
**b.** When an issuing bank determines that a presentation does not comply, it may in its sole judgment approach the applicant for a waiver of the discrepancies. This does not, however, extend the period mentioned in sub-article 14 (b).

It is clear enough, as stated under the abovementioned sub articles that the issuing bank is under no obligation to honor discrepant presentation, so the question is why does issuing bank elect to approach the applicant for a waiver of the discrepancies, however, the applicant is not party to the letter of credit contract, One rational explanation for this is that in rejecting the documents, the paying or confirming bank acts as principal, not as the buyer's agent. On the other hand the waiver, this is, in essence, an amendment to the credit and in this respect, Article 10 makes it clear enough that a credit cannot be cancelled or amended without the agreement of all parties thereto by stating that:"Except as otherwise provided by article 38," a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary ", so it should be understood that the applicant is not party to the letter of credit contract. Accordingly, as stated before, this demonstrates in one hand the privacy of contract doctrine which dictates that only persons who are parties to a contract are entitled to take action to enforce it. (Schmittoff, 2012). Thereby, there is no reason to explain why the issuing bank elects to approach the applicant to waive the determined discrepancies.

### 3.9.4: Documents Examination Model:

**3.9.4.1:** The procedure to be followed in documents examination according to (UCP 600) is outlined in (figure 3.16)

Figure: (3.16): Documents examination model under UCP600



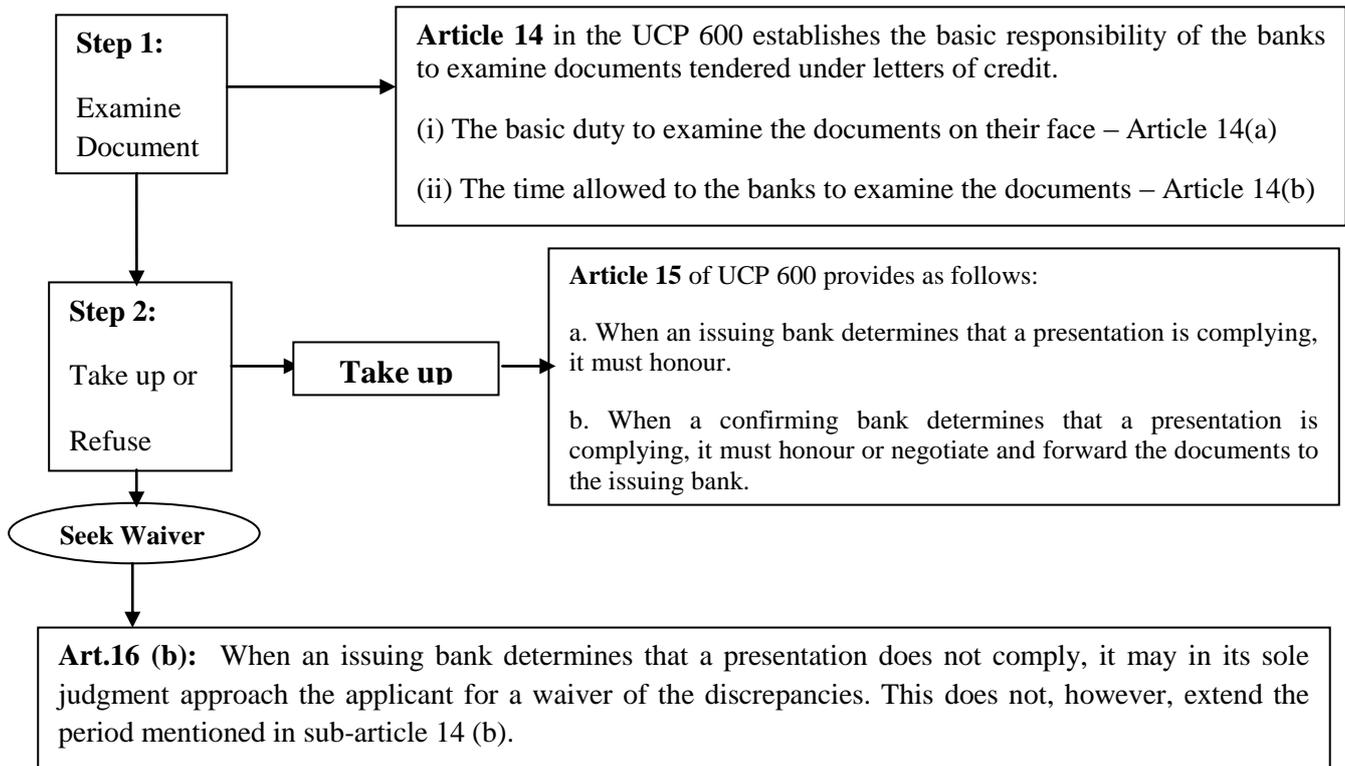
Source: made by the researcher.

The figure above illustrates the recommended Banking Practice by UCP 600 with special notice to **Art.16. (b):** when documents presented not comply, which always

expose the importing country to be dumped with goods of not satisfactory quality that may threaten consumer's safety.

**3.9.4.2:** The procedure adopted and has been followed in documents examination according to (UCP 600) in Sudan is outlined in figure 3.17.

Figure: (3.17): Documents Examination Model according to Banking Practice in

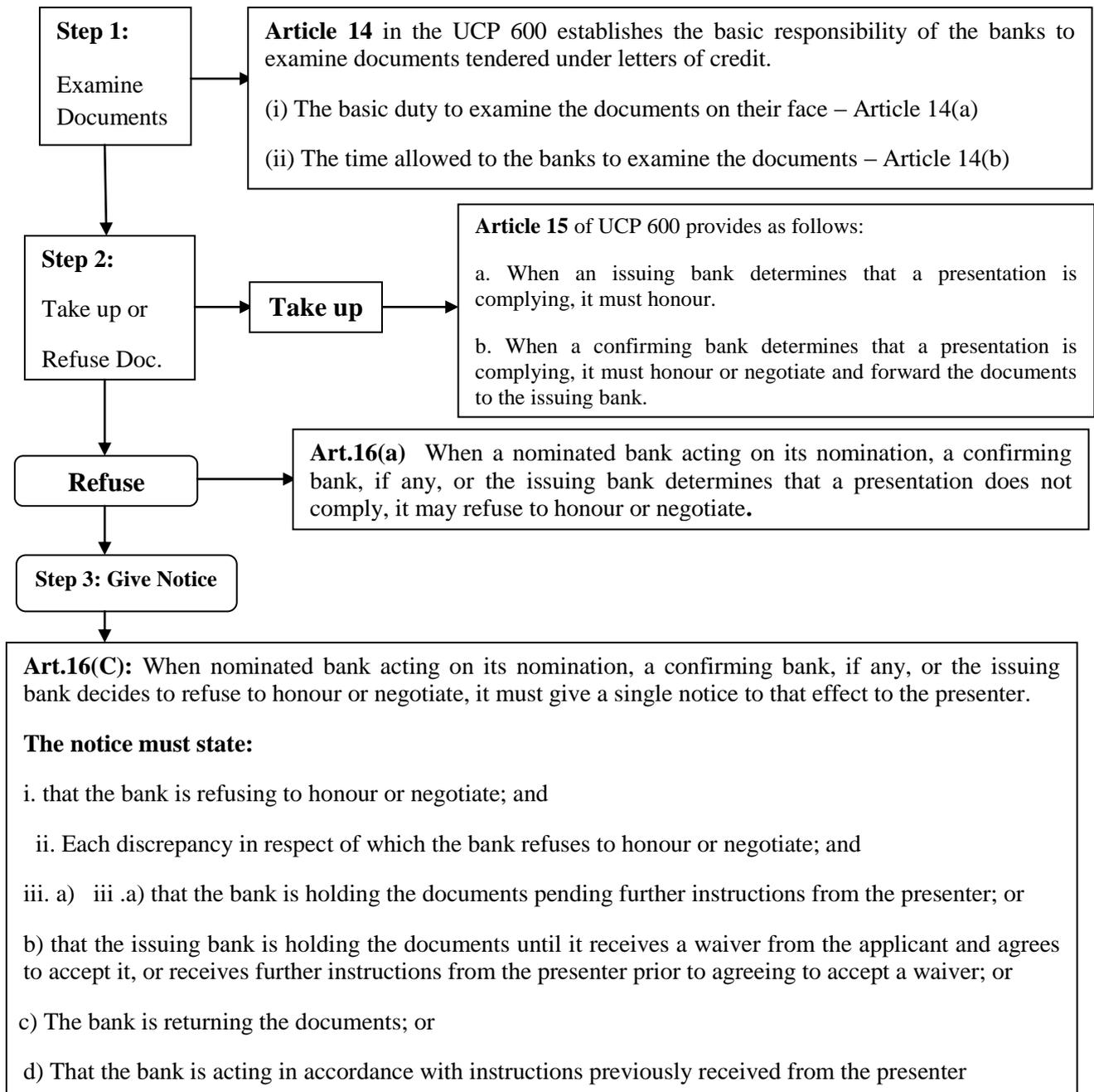


Source: made by the researcher.

The figure above illustrates the Banking Practice in Sudan when discrepant documents are presented, where **Issuing Bank** rely on **Art. 16(b)**, the procedure that serves the trade partners' own interest rather than public and national interests which always expose the importing country to be dumped with goods of not satisfactory quality that may threaten consumer's safety.

**3.9.4.3:** The procedure to be followed in documents examination according to (UCP 600) as recommended by this study is outlined in figure 3.18

(Figure: 3.18): Documents Examination Model recommended by this study.



Source: made by the researcher.

The figure above illustrates the appropriate Banking Practice recommended by this study when discrepant documents are presented under the letter of credit, which

provides the importing country the necessary measures those preserve the required Consumer's Safety and national interest.

### **3.10: Conclusion:**

Letters of credit (L/Cs) are the most popular instrument for credit managers. They provide a fairly simple way to place credit risk with a bank that may be in a better position to evaluate and assume the credit risk of a particular buyer. In order to obtain payment from the bank, the Beneficiary must provide the bank with documentation the bank can themselves use to obtain payment from the Applicant. Up front, the Applicant agrees with the Issuing Bank what this documentation will be and signs a legal agreement with the Issuing Bank to reimburse the bank if and when they receive this documentation as detailed under the letter of credit. These documents should reflect the agreement between the buyer and seller as to what goods were to be shipped; how, when, and where they were to be shipped; and who was to cover transportation and insurance costs. Nonetheless, creating this documentation and presenting it to the bank for payment seems like a hassle to most exporters. And no wonder, once you realize that 60 to 80% of the documents presented to the banks do not comply with the letter of credit requirements (Baker, 2000).

Keep in mind that banks deal only in documents and have no business getting involved in the underlying contract between the exporter and the buyer (Art.5). The bank's reimbursement from the buyer depends on the documents complying.

Consequently; based on it is clear duty, the Issuing Bank must refuse to pay the discrepant presentation and inform the Presenting Bank it refuses the documents and hold the same or return them back to the presenter. Here it should be noted that the Issuing Bank duty is to pay the complying documents only according to it is strict liability under Art.7" Provided that the stipulated documents are presented to the nominated bank or to the issuing bank and that they constitute a complying presentation, the issuing bank must honour " also art.15 (a), put it clear that; issuing bank undertaking is that, " When an issuing bank determines that a presentation is complying, it must honour". Irrespective of what called for under Art.16 (b).

**Chapter: 4**  
**Applied Field of the Study**

#### **4: Introduction:**

This Chapter is an analytical chapter where the Letter of Credit impact on Consumers' Safety in respect of Imported Goods has been examined as case study of Sudanese Banking practice in this respect. Moreover, it attempts to test the significance of the stated hypotheses.

This section includes the steps and procedures that have been followed in this study including questionnaire design, the description of the research sample and population sample, and perform significance tests of the questionnaire to check the validity of statistical methods by which the data analyzed and derive out the results.

This chapter includes three parts. Part one consists of procedures of applied study and part two consists of analysis the data. Part three test the significance of the stated hypotheses.

#### **4.1: Population and Sample of the Study:**

##### **4.1.1: Population of the Study:**

In this research, the target population has been defined as a listing of 90 Practitioner Bankers in the field of Documentary Letter of Credit at Khartoum City, from which the minimum purposive judgment sample size has been drawn, For the reason that it was the only viable sampling method for obtaining the type of information that is required from very specific pockets of people who alone possess the needed facts and can give the information sought.

##### **4.1.2: Sample of the Study:**

According to Elder (2009), purposive sampling refers to "selection of units in personal judgment as "population of interest", rather than randomization".

Accordingly; the sampling here was confined to specific types of Bankers who can provide the desired information in respect of Letter of Credit. Consequently; the Sample Subjects were defined as Practitioner Bankers in the field of Documentary Letter of Credit, who had been selected as experts who were conveniently available for their involvement in the letter of credit business and their sufficient academic and professional knowledge and deep practical experience that place them in the best position to provide the information required to test the validity of the developed hypotheses and drive out findings those had determined and developed prescribed practical course of action that may help to improve the Consumers' Safety in respect

of imported goods under the letter of credit.

Thereby; the sample was selected intentionally and is one of non – probability sample chosen by the researcher to obtain the information from the specific vocabulary of the population under the study.

The calculation of minimum sample size for this research was based on formula that introduced by Luck, Taylor and Robin (Luck et al., 1987) as follow:  $n =$

$$\frac{N}{(1+N(e)^2)}$$

Where:

N= (the total number of practitioners in the field of letter of credit in Khartoum City).

e = the standard error (0.05).

$$\text{Thus: } n = \frac{90}{(1+90(e)^2)} = 73$$

With the sample size calculated, **73**.

Then 75 questionnaires were distributed among target group of practitioner bankers of the following banks: Faisal Islamic Bank, Al Salam Bank, Al Nelain Bank, Jazera Sudanese Jordanian Bank, Albaraka Bank, Alashamal Islamic Bank, Sudanese Islamic Bank, Omdurman Al watani Bank, Tadamon Islamic Bank and Al Neil Bank. 69 questionnaires were retrieved representing 92% stated as follows:

Table 4.1  
Questionnaires Distributed & Returned

Issue	Number	Percentages%
Questionnaires were returned responded to.	69	92%
Questionnaires were not returned back	6	8%
Total	75	100%

Source: Prepared by the researcher from the data obtained from the questionnaire, 2016.

#### 4.1.3: Characteristics of the Sample of the Study:

It consists of the following characteristics:

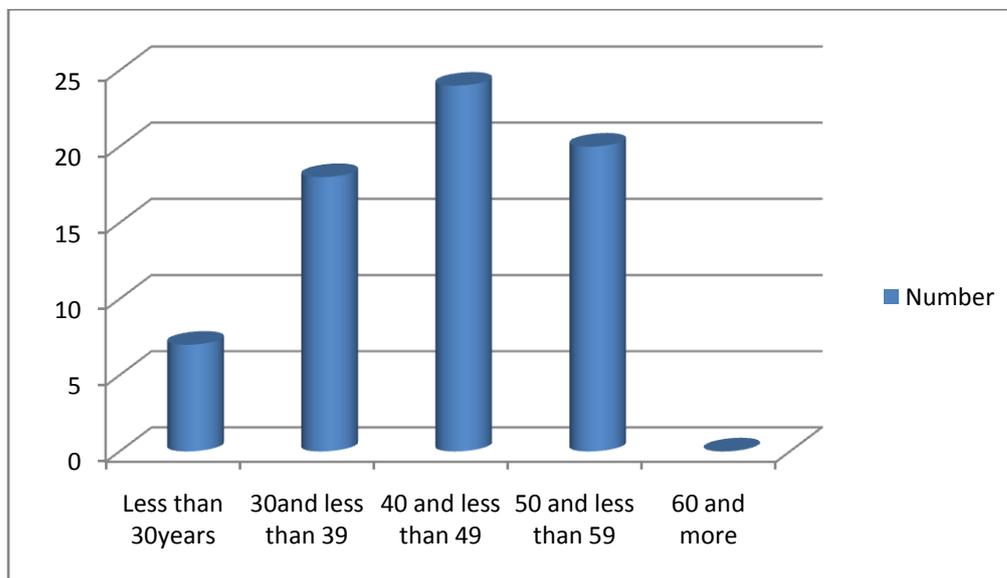
1- Distribution of the sample according to age:

Frequency Distribution of the Sample according to age (Table 4.2)

Issue	Number	Percentages
Less than 30years	7	10.1
30and less than 39	18	26.1
40 and less than 49	24	34.8
50 and less than 59	20	29
60 and more	0	0
Total	69	100%

Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

Frequency Distribution of the Sample according to age (Figure 4.1)



Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

As we seen from the table 4.2 that the majority of the sample are aged (40 and less than 49) and they are (34.8) % of the sample, while the proportion of sample

aged (50 and less than 59) (29) % and the sample aged (30 and less than 39) are only (26.1) % of the sample.

## 2- Distribution of the sample according to academic qualifications

**Table**

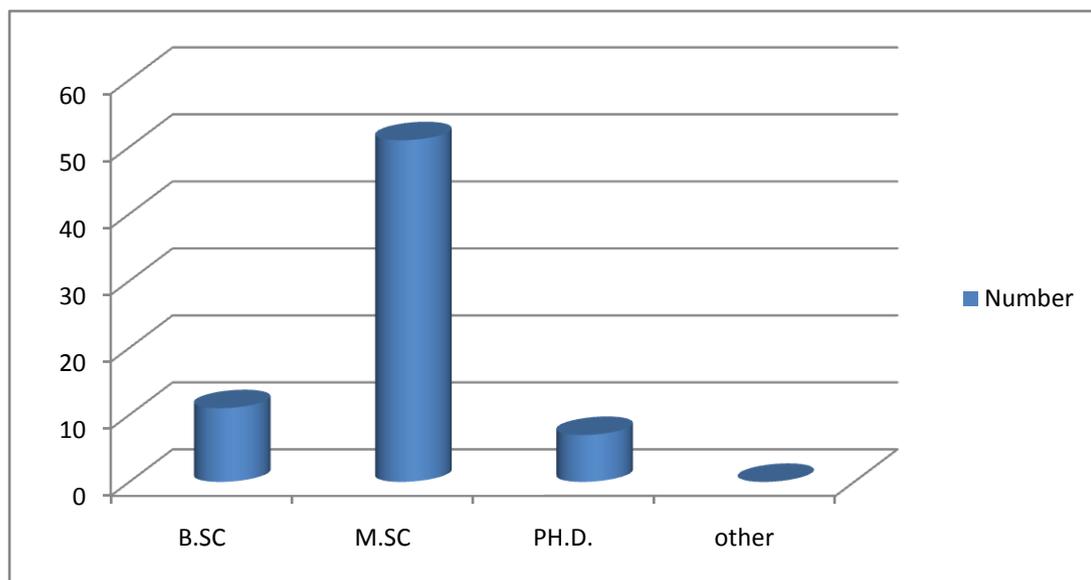
### 4.3

Frequency Distribution of the Sample according to education

Education	Number	Percentage
B.SC	11	15.9
M.SC	51	73.9
PH.D.	7	10.2
Other	0	0
Total	69	100%

Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

Frequency Distribution of the Sample according to education (Figure 4.2)



Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

As seen from the table (4.3) that the majority of the sample are post graduates (Master, PHD) and they are (84.1) %, where the graduates members of the sample (B.SC) are (15.9) %.

### 3- Distribution of the sample according to their specialization.

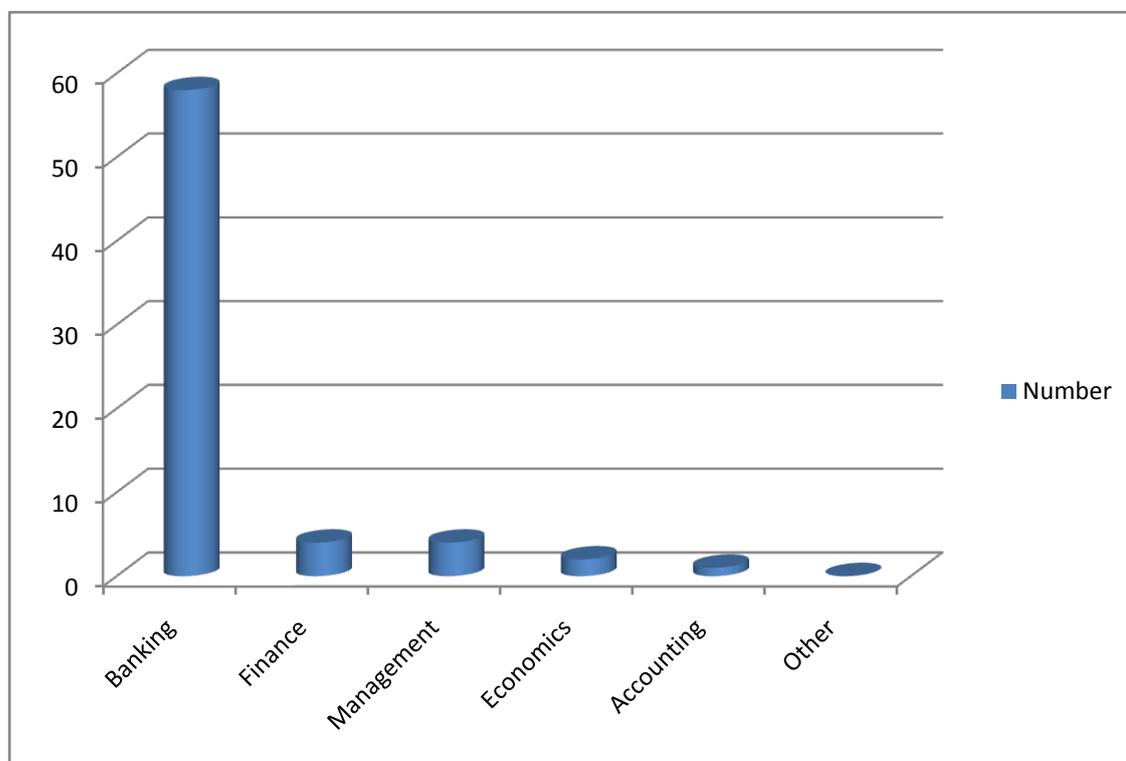
**Table 4.4**

Frequency Distribution of the Sample according to their specialization.

Scientific major	Number	Percentage
Banking	58	84.1
Finance	4	5.8
Management	4	5.8
Economics	2	2.9
Accounting	1	1.4
Other	0	0
Total	69	100%

Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

Frequency Distribution of the Sample according to their specialization (Figure 4.3).



Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

As seen from the table (4.4) that the majority of the sample the Scientific major is (Banking and Finance) and they are (89.9.)

#### 4- Distribution of the sample according to job title

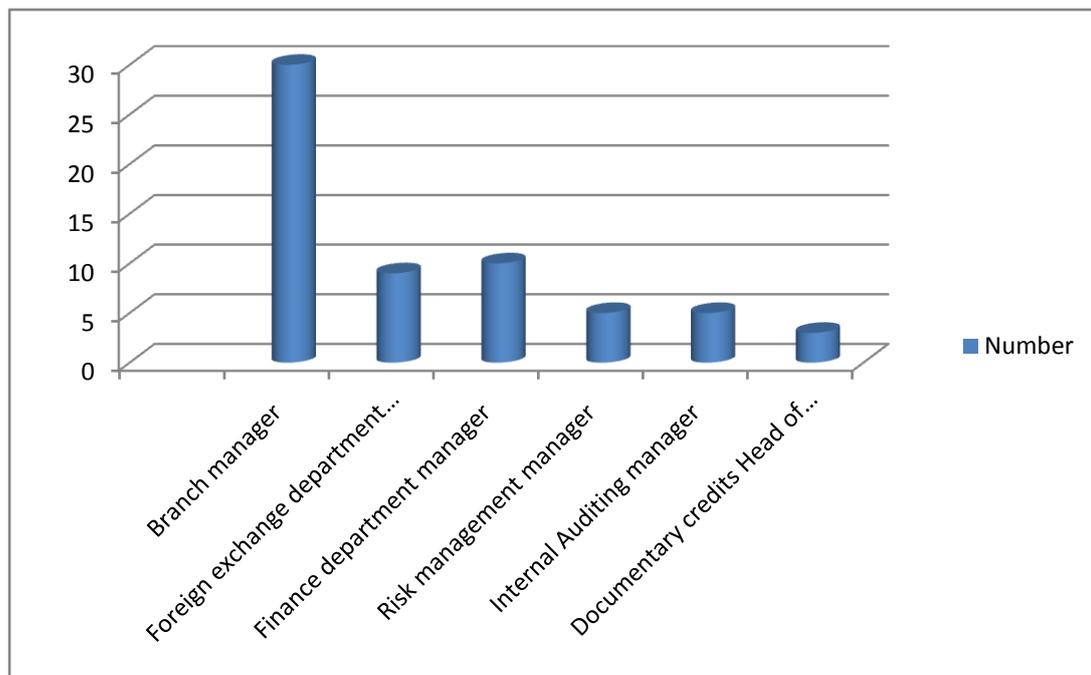
**Table4.5**

Frequency Distribution of the Sample according to job title.

job title	Number	Percentage
Branch manager	30	43.5
Foreign exchange department manager	9	13
Finance department manager	10	4.5
Risk management manager	5	7.2
Internal Auditing manager	5	7.2
Documentary credits Head of Department	3	4.3
Other	7	10.1
Total	69	100%

Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

Frequency Distribution of the Sample according to job title (Figure 4.4)



Source: prepared by the Researcher from the data obtained from the questionnaire,

2016.

As seen from the table (4.5) that the majority of the sample the job title are (Branch manager) and they are (43.5) %.

### 5- Distribution of the sample according to Professional qualification

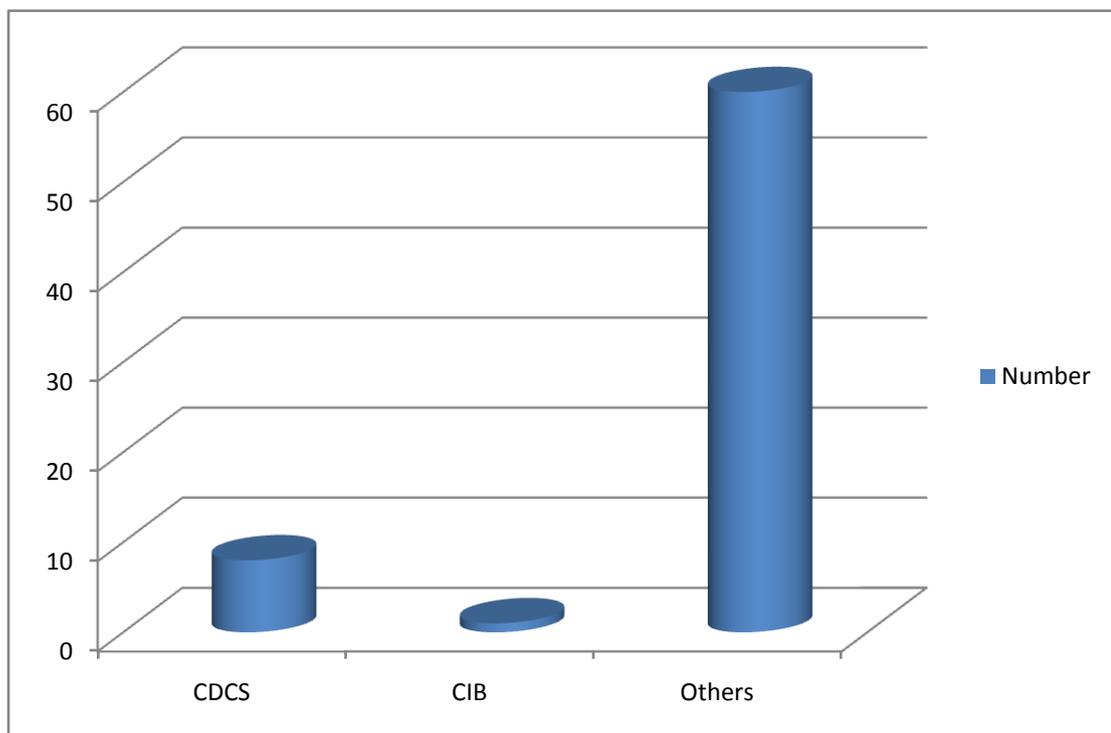
**Table 4.6**

Frequency Distribution of the Sample according to Professional qualification

Professional qualification	Number	Percentage
CDCS (Certified Documentary Credit Specialist)	8	11.6
CIB (Chartered Institute of Bankers)	1	1.4
Others include (CMA,ACCA,CFA,CFM)	60	87
Total	69	100%

Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

Frequency Distribution of the Sample according to Professional qualification (Figure 4.5)



Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

As seen from the table (4.6) that the majority of the sample the Professional

qualification is (Others) and they are (87) %.

## 6- Distribution of the Sample According to Experience

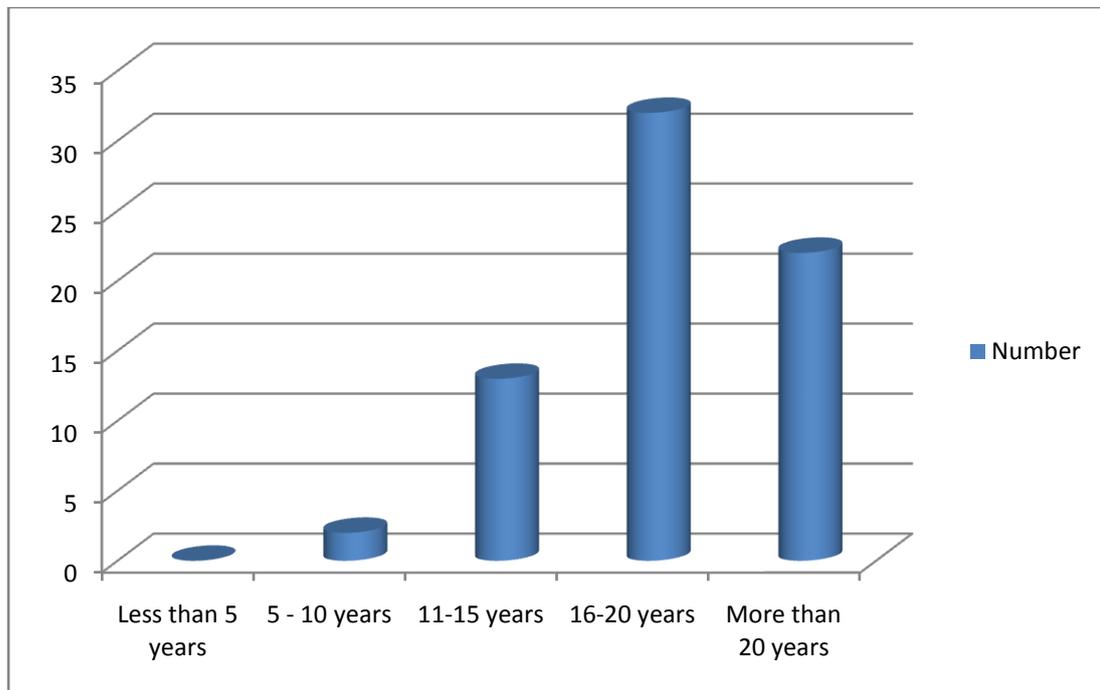
**Table 4.7**

Frequency Distribution According to Experience.

Years of Experience	Number	Percentage
Less than 5 years	0	0
5 - 10 years	2	2.9
11-15 years	13	18.8
16-20 years	32	46.4
More than 20 years	22	31.9
Total	69	100%

Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

Frequency Distribution According to Experience (Figure 4.6).



Source: prepared by the Researcher from the data obtained from the questionnaire, 2016.

As we seen from table 4.7 the majority of the sample is 16-20 years and they reached (46.4) % of the sample. The proportion of the samples between (11 years

& less than 15) 18.8%. Sample with experience of (More than 20 years) are 31.9% of the sample.

#### **4. 2: The Study tools:**

This study based on the questionnaire as a key tool to obtain the data necessary for the subject of the study. In order to achieve the purpose of the questionnaire, it has been constructed in to two parts: (See Appendix 1).

4.2.1: data of members of the sample.

It is the descriptive and personal data of:

1. Age:
2. Academic qualifications:
3. Scientific major
4. Job title:
5. Professional qualification
6. Experience.

#### **4.2.2: The basic phrases through which it recognized the study hypotheses.**

This part includes (34) phrases which represent axes according to the following:

- i.The first axis (Measuring the impact of article 16(b) of UCP 600); It consists of (9) phrases.
- ii.The second axis (Measuring the impact of the Banking Measures and Regulation (It consists of (9) phrases).
- iii.The third axis (Measuring the impact of Product Liability Principle). It consists of (10) phrases.
- iv.The forth axis (Measuring the potential effect on Consumers' Safety). It consists of (6) phrases.

#### **4. 3: The Scale of the study:**

It is also measured the degree of potential responses by Likert Scale Pentathlon. In the distribution of weight to the respondents" answers which is distributed from the top weight give (5) degrees and represents the answer (strongly agree) to its lower weight given (1) degree and represents the answer (strongly disagree) and in between three weights. The purpose for that is to allow respondents to choose the exact answer to the discretion of the respondents.

Table 4.8 shows the degree to approve a measure.

**Table 4.8**

The degree to approve a measure

Approved Degree	Relative weight	%	Statistical Significance
Strongly Agree	5	Greater than 80%	Very high degree of Approval
Agree	4	70 – 80%	high degree of Approval
Neutral	3	50 – 69%	Medium
Disagree	2	20 – 49%	Low approval
Strongly	1	Less than 20%	Nonexistent degree of approval

Source: Prepared by the researcher from the data obtained from the questionnaire,

To correct the measure used in the study the following technique was adopted:

The total score of the scale is the sum of individual scores of the phrases (5 + 4 + 3 + 2 + 1) = 15/3 = 5, which represents the centre premise of the study, and hence if the mean deviation of the phrase exceeds the centre premise, it means that the respondents approve the phrase.

#### **4.4: Evaluation of Measurement Tool:**

However, before we start analyzing the data to test hypotheses, some preliminary steps need to be completed. These help to ensure that the data are reasonably good and of assured quality for further analysis (Sekaran, 2003).

Truth or validity of the measurement tool is defined as the performance ability to measure what was designed for and based on correct measurement theory dealing with free tool of measurement errors, whether random or systematic. The study in the first phase based on evaluating the appropriateness of the measures used in the measurement of the study phrases using consistency and honesty tests to exclude non – moral term of study metrics and verify that the phrases that have been used to measure the concept of certain actually measure this concept and warded other dimensions and features of these tests its ability to provide a set of metrics that determine the applicability of the data to the model that has been detected and the exclusion of any other alternative models can explain the relationship between the scale phrases based on the response of the study sample vocabulary. In the following paragraph the researcher presents the results of analysis of the measures used in the study:

#### **4.4.1: The validity of the Scale Contents Test:**

The study was presented in the form of a questionnaire to a group of arbitrators and experts (five professors), to express their views about the study tool and validity of the statement to represent the hypotheses, also they were asked to amend, improve and add what they see suitable for the purpose of measuring the sincerity of the study.

Accordingly; all their observations and adjustments that they have suggested were taken in consideration when designing the questionnaire in its final form (see Appendix C).

#### **4.4.2: The Consistency and reliability Test of the internal Standard Used in the Study:**

Stability means: the stability of the scale and not contradiction with itself, any measure that gives the same results as a possible equal to the parameter value if reapplied to the same sample. Therefore, it leads to the same results or compatible in every time it is re measurement results.

The greater the degree of consistency and reliability of the tool the more confidence in it. Alpha Cronbach's Coefficient was used to ensure the internal consistency of the scales.

The researcher has been using Alpha Cronbach's coefficient, which takes values ranging from zero to one, if there is no reliability in the data, the parameter value is equal to zero and on the contrary, if there is complete reliability in the data, the parameter value is equal to one. i.e., the greater alpha Cronbach's coefficient that means increasing the creditability of the data from the sample results. The value less than 0.60, that means low internal consistency. Tables from 4.9 to 4.12 shows the results of measurements of the reliability study analysis indicating Cronbach's coefficient value.

The First Axis: Measuring the impact of article 16(b) of UCP 600.

**Table: 4.9**

Cronbach's Test to Measure the Results of the First Axis Phrase.

Phrases	Cronbach's Alpha
The irrevocable character of the letter of credit means that the letter of credit once drawn up and put into circulation cannot be withdrawn or revoked anymore; even if when sub article 16(b) call for acceptance of discrepant documents .	0.87
Documents tendered under the letter of credit, must prove strict conformity to the sale of goods contract irrespective of sub article 16(b).	0.88
Phrases	Cronbach's Alpha
The letter of credit is irrevocable and thereby constitutes definite undertaking of the issuing bank to honor complying presentation only, in despite of sub article 16(b).	0.86
By tendering discrepant documents. In such the case, Issuing Bank is under no obligation to approach the applicant for a waiver of the discrepancies according to sub article 16(b).	0.90
By approaching the Applicant for a waiver of the discrepant documents in response to sub article 16(b); the Issuing Bank draw the import transaction away far from the letter of credit contract domain.	0.88
The discretion to approach applicant for a waiver of the discrepant documents under sub article 16(b), must be restricted even if all parties to the letter of credit were all ready agreed to.	0.87
The use of the term 'party' in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit and thereby must not be approached for a waiver of the discrepant documents irrespective of sub article 16(b).	0.86
In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract.	0.88

The acceptance of discrepant documents under sub article 16(b), most likely will lead to the prevalence of defective goods.	0.87
Total	0.89

Source: Prepared by the researcher of the results of the statistical analysis, 2016

From the table 4.9 the results of reliability tests showed that Cronbach's values for all phases of the first axis is greater than 60% this means very high degree of internal consistency for all phrases and the Cronbach's values is (0.89). which is high stability so, we can say that the standards adopted by the study to measure the first axis phrase (Measuring the impact of article 16(b) of UCP 600) has internal stability for their words so, we can rely on these answers to achieve the objectives of the study and analyze the results.

The Second Axis: Measuring the impact of the Banking Measures and Regulations

**Table: 4.10**

Cronbach's Test to Measure the Results of the Second Axis Phrases

Phrases	Cronbach's Alpha
Banking import's Regulations in Sudan pay no attention to the negative flexibility under UCP 600 in respect of waiving discrepant documents, and by so doing the letter of credit will cease to perform as the most efficient international method of payment in safeguarding the Trading Partners Interests.	0.91
Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's rights.	0.91
Banking import's Regulations in Sudan allow Issuing Bank to approach Applicant for the waiver of discrepant documents and by so doing not serving the public interest.	0.90
Banking import's Regulations in Sudan permits the acceptance of discrepant documents and by so doing serving the overseas Exporter's interests on the account of Importing Country's Interests.	0.91
Banking import's Regulations in Sudan by accepting discrepant documents help facilitate the release of goods that are not in strict conformity with letter of credit terms and conditions.	0.92

Banking import's Regulations in Sudan obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the intended purpose.	0.91
Banking import's Regulations in Sudan not obligate Applicant to include presentation of certificate providing that proper labeling instructions and warnings were satisfied according to sub article 14(f), therefore; by so doing, this will cause environmental hazard.	0.92
Banking import's Regulations in Sudan not obligate the Applicant to present Performa invoice authorized by the concerned Government Technical Department in respect of all imported goods under the letter of credit and by so doing a great deal of blew standard imported goods will dump Sudanese Markets.	0.91
Banking import's Regulations in Sudan not obligate the Applicant to authenticate any amendment in respect of imported goods' specifications, and by so doing this will serve the interests of dishonest trade partners under the letter of credit transaction.	0.90
Total	0.90

Source: Prepared by the researcher of the results of the statistical analysis, 2016.

From the table 4.10 the result of reliability tests that Conrnbach''s values for all phases of the second axis are greater than 60%. Dealing with these values the availability of a very high degree of internal consistency for all phrases and the Cronbach's values is 0.90, which has high stability. So, we can say that the standards adopted by the study to measure the second axis (Measuring the impact of the Banking Measures and Regulations ) has internal stability for their words, so we can rely on these answer to analyze the results.

The third Axis: Measuring the impact of Product Liability Principle

**Table 4.11**

Cronbach's Test to Measure the Results of the third Axis Phrases

Phrases	Cronbach's Alpha
The rule of strict liability applied in product liability makes a seller responsible for all defective goods.	0.95
The existence of rule of Strict liability for manufacturing defects will make a product unreasonably dangerous.	0.94
The prevalence of effective product liability litigation could act as an effective tool for improving shipping documents strict compliance.	0.96
The global rising concerns in respect of product liability, make it necessary for policy makers to legislations in this respect	0.95
The prevalence of effective product liability legislations assures imported goods' consistency to the society's requirements.	0.94
Phrases	Cronbach's Alpha
The prevalence of effective product liability will mitigate the risk of defective products due to improper labeling instructions or warnings on product or its container.	0.96
The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract.	0.95
The prevalence of effective product liability legislations, support Issuing Bank's commitment in lieu of due diligence and reasonable care.	0.96
The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.	0.95
The prevalence of effective product liability legislations, improve the letter of credit efficiency	0.97
Total	0.96

Source: Prepared by the researcher of the results of the statistical analysis, 2016.

From the table 4.11 the result of reliability tests that Cronbach's values for all phrases of the third axis are greater than 60%. Dealing with these values the availability of a very high degree of internal consistency for all phrases and the Cronbach's values is 0.96, which has high stability. So, we can say that the standards adopted by the study to measure the third axis (Measuring the impact of Product Liability Principle) has internal stability for their words, so we can rely on these answer to analyze the results.

Fourth Axis: Measuring the potential effect on Consumers' Safety

**Table 4.12**

Cronbach's Test to Measure the Results of the fourth Axis Phrases.

<b>Phrases</b>	<b>Cronbach's Alpha</b>
Consumers have the right of Protection from products and services that are hazardous to their health; accordingly the imported goods have to provide this protection.	0.90
Consumers have the right to be provided information that ensures all products are accurate and truthful; but Imported Goods to Sudan usually not calling for documents certifying that proper labeling instructions or warnings on product or its container had been satisfied, accordingly, this definitely undermine this right .	0.91`
Although Consumers have the right to request money or other benefits as fair compensation for a company's mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the Consumer's Safety.	0.93
Although Consumers have the right to live and work in an environment that does not endanger their health. But, the absence of proper imports regulations in Sudan endangers environment.	0.89
Although Consumers have the fundamental right of access to healthy food, healthy water and safety shelter, but the prevalence of defective imported goods undermine it.	0.91
The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods.	0.92
Total	0.92

Source: Prepared by the researcher of the results of the statistical analysis, 2016.

From the table 4.12 the result of reliability tests that Cronbach's values for all

phrases of the 4. Axis is greater than 60%. Dealing with these values the availability of a very high degree of internal consistency for all phrases and the Cronbach's values is 0.92, which has high stability. So, we can say that the standards adopted by the study to measure the 4. Axis (Measuring the potential effect on Consumers' Safety) has internal stability for their words, so we can rely on these answers to analyze the results.

#### **4.5: Analytical Statistics Tools used in the Study:**

To analyze the results and to test the hypotheses of the study, the researcher used the following tools:

a) Reliability Test for the questions of the questionnaire by using:

(i) Virtual Honesty Test:

To ensure that the phrases were measured the specific meaning exactly based on the response of the sample of the study.

(ii) Cronbach's Alpha:

It was used to measure the internal Stability for the phrases of the questionnaire.

b) Descriptive Statistics Methods:

To describe the characters of the sample of the study using the following tools:-

(i) Frequency Distribution for the Phrases of the Questionnaire: to

Recognize the frequency distribution for the result of the sample.

(ii) The Weighted Mean: it is used to describe the opinions of the sample about the hypotheses of the study as it is one of the measures of central tendency.

(iii) Standard Deviation: it is used to measure the dispersion in the result to the arithmetic mean.

c). simple Liner Regression was used to test the hypotheses.

#### **4.6: Analysis of the basic data for the study:**

This part includes the analysis of the basic data for the study to discuss the hypotheses according to the following steps:

a. Relative frequency Distribution for the answers for phrases of the Questionnaire:

This step is done through summary of the data in tables to illustrate every factor in figures and percentages for the phrases of the study.

b. Analytical Statistics for the phrases of the Study:

It is done through estimation of the Mean Deviation and Standard Deviation for all axis of the study to show the direction of the study.

Hypothesis 1:

There is a relationship between sub article 16 (b) of UCP 600 and Consumers' Safety in respect of imported goods under the Letter of Credit.

Firstly: frequency Distribution for the answers for phrases of the Questionnaire:

Table No. (4 .13)

The Frequency Distribution for The Wording: Measuring the impact of article 16(b) of UCP 600.

Statement	Strongly Agree		Agree		Neutral		Disagree		Strongly disagree	
	F	P %	F	P%	F	P%	F	P%	F	P%
1/The irrevocable character of the letter of credit means that the letter of credit once drawn up and put into circulation cannot be withdrawn or revoked anymore; even if when sub article 16(b) call for acceptance of discrepant documents .	52	75.4	11	15.9	2	2.9	2	2.9	2	2.9
2/Documents tendered under the letter of credit must prove strict conformity to the sale of goods contract irrespective of sub article 16(b).	51	73.9	9	13	2	2.9	4	5.8	3	4.3
3/The letter of credit is irrevocable and thereby constitutes definite undertaking of the issuing	53	76.8	9	13	2	2.9	3	4.3	2	2.9

bank to honor complying presentation only, in despite of sub article 16(b).										
4/By tendering discrepant documents. In such the case, Issuing Bank is under no obligation to approach the applicant for a waiver of the discrepancies according to sub article 16(b).	47	68.1	16	23.2	2	2.9	1	1.4	3	4.3
5/By approaching the Applicant for a waiver of the discrepant documents in response to sub article 16(b); the Issuing Bank draw the import transaction away far from the letter of credit contract domain.	58	84.1	4	5.8	3	4.3	2	2.9	2	2.9
6/The discretion to approach applicant for a waiver of the discrepant documents under sub article 16(b), must be restricted even if all parties to the letter of credit were all ready agreed to.	57	82.6	8	11.6	2	2.9	1	1.4	1	1.4
7/The use of the term 'party' in the definition of applicant is not intended to	55	79.7	7	10.1	2	2.9	3	4.3	2	2.9

<b>imply that an applicant is a party to a documentary credit and thereby must not be approached for a waiver of the discrepant documents irrespective of sub article 16(b).</b>										
<b>8/In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract.</b>	<b>59</b>	<b>85.5</b>	<b>4</b>	<b>5.8</b>	<b>2</b>	<b>2.9</b>	<b>2</b>	<b>2.9</b>	<b>2</b>	<b>2.9</b>
<b>9/The acceptance of discrepant documents under sub article 16(b), most likely will lead to the prevalence of defective goods.</b>	<b>56</b>	<b>81.2</b>	<b>6</b>	<b>8.7</b>	<b>3</b>	<b>4.3</b>	<b>2</b>	<b>2.9</b>	<b>2</b>	<b>2.9</b>

Source: prepared by the researcher, 2016.

From the table 4.13, we can see as follows:

- 1- The majority of the sample agree that (The irrevocable character of the letter of credit means that the letter of credit once drawn up and put into circulation cannot be withdrawn or revoked anymore; even if when sub article 16(b) call for acceptance of discrepant documents) where the proportion is 91.3% while the percentage of non – conformists to that 5.9%, and those who did not show specific answers have accounted 2.9%.
- 2- The majority of respondents agree that (Documents tendered under the letter of credit,

must prove strict conformity to the sale of goods contract irrespective of sub article 16(b.) where the proportion is 86.9% while the percentage of non – conformists to that 10.1%, and those who did not show specific answer have accounted 2.9%.

3. The majority of respondent agree that (.The letter of credit is irrevocable and thereby constitutes definite undertaking of the issuing bank to honor complying presentation only, in despite of sub article 16(b).), where the proportion is 89.8% while the percentage of non – conformists to that 7.2%, and those who did not show specific answers have accounted 2.9%.

4. The majority of the sample agrees that (By tendering discrepant documents. In such the case, Issuing Bank is under no obligation to approach the applicant for a waiver of the discrepancies according to sub article 16(b).) Where the proportion is 91.3% while the percentage of non – conformists to that 5.7%, and those who did not show specific answers have accounted 2.9%.

5. The majority of the sample agree that (By approaching the Applicant for a waiver of the discrepant documents in response to sub article 16(b);) where the proportion is 89.9% while the percentage of non – conformists to that 5.9%, and those who did not show specific answers have accounted 4.3% .

6. The majority of the sample agree that (The discretion to approach applicant for a waiver of the discrepant documents under sub article 16(b), must be restricted even if all parties to the letter of credit were all ready agreed to..) where the proportion is 94.2% while the percentage of non – conformists to that 2.8%, and those who did not show specific answers have accounted 2.9%.

7. The majority of the sample agree that (The use of the term ‘party’ in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit and thereby must not be approached for a waiver of the discrepant documents irrespective of sub article 16(b).) where the proportion is 89.8% while the percentage of non – conformists to that 7.2%, and those who did not show specific answers have accounted 2.9%.

8. The majority of the sample agree that (In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract) where the proportion is 91.3% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 2.9%.

9. The majority of the sample agree that (The acceptance of discrepant documents under sub article 16(b), most likely will lead to the prevalence of defective goods) where the proportion is 89.9% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 4.3%.

Secondly: Analytical Statistics for the phrases of the first Hypothesis where we calculate the arithmetic mean and standard deviation for each phrase and we compare the arithmetic mean for a phrase with the middle premise of the study. We approve the phrase if the arithmetic mean is greater than the middle premise of the term (3), and we realized disapproval if the arithmetic mean less than the middle premise.

Table: 4.14 show the standard deviation of the phrases and arrange them according to their answers.

Table 4.14

Descriptive statistics for the Phrases of the (first Hypothesis)

<b>The Phrase</b>	<b>Standard Deviation</b>	<b>Average</b>	<b>Relative</b>	<b>Disagree of Approval</b>	<b>Arrangement</b>
<b>1/The irrevocable character of the letter of credit means that the letter of credit once drawn up and put into circulation cannot be withdrawn or revoked anymore; even if when sub article 16(b) call for acceptance of discrepant documents .</b>	<b>0.914</b>	<b>4.58</b>	<b>%91.6</b>	<b>Very high</b>	<b>5</b>
<b>2/Documents tendered under the letter of credit, must prove strict conformity to the sale of goods contract irrespective of sub article 16(b).</b>	<b>1.09</b>	<b>4.46</b>	<b>%89.2</b>	<b>Very high</b>	<b>9</b>
<b>3/The letter of credit is irrevocable and thereby constitutes definite undertaking of the issuing bank to honor complying presentation only, in despite of sub article 16(b).</b>	<b>0.962</b>	<b>4.56</b>	<b>%91.2</b>	<b>Very high</b>	<b>6</b>
<b>4/By tendering discrepant documents. In such the case, Issuing Bank is under no obligation to approach the applicant for a waiver of the discrepancies according to sub article 16(b).</b>	<b>0.964</b>	<b>4.49</b>	<b>%89.8</b>	<b>Very high</b>	<b>8</b>

5/By approaching the Applicant for a waiver of the discrepant documents in response to sub article 16(b); the Issuing Bank draw the import transaction away far from the letter of credit contract domain.	0.920	4.65	%93.0	Very high	2
6/The discretion to approach applicant for a waiver of the discrepant documents under sub article 16(b), must be restricted even if all parties to the letter of credit were all ready agreed to.	0.725	4.52	%90.4	Very high	7
7/The use of the term 'party' in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit and thereby must not be approached for a waiver of the discrepant documents irrespective of sub article 16(b).	0.959	4.58	%91.6	Very high	5
8/In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract.	0.899	4.68	%93.6	Very high	1
9/The acceptance of discrepant documents under sub article 16(b), most likely will lead to the prevalence of defective goods.	0.958	4.61	%92.2	Very high	3
<b>Total</b>	<b>0.932</b>	<b>4.57</b>	<b>91.4%</b>	<b>Very high</b>	

Source: Prepared by the researcher, 2016.

From the table 4.14, we can recognize the follows:-

1-All the statements of the first axis are averaged over the middle premise (3).

2-The most important phrase is the phrase “In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract.”, where the average of respondent’s answers is (4.68) with a standard deviation (0.899) and relative importance (93.6%).

3- The less term of approval is the phrase “Documents tendered under the letter of credit, must prove strict conformity to the sale of goods contract irrespective of sub article 16(b).”, with an average (4.46) and a standard deviation (1.09) and relative importance (89.2%).

4- The average of all phrases (4.57) with a standard deviation (0.932) and relative importance (%91.4). This shows that the majority of respondents agree with a high proportion of all phrases that measure the (impact of article 16(b) of UCP 600).

### Thirdly: Chi – Square Test

To test the presence of statistically significant differences between the number of approvers, neutrals, and non – approvers to the results of the above test was used (Chi – Squared) to denote the differences. The following table illustrates phrases that measure the axis of the (first hypothesis).

**Table 4:15**

Chi – Square Test for the Significance of the Difference Phrases of the first hypothesis

The Phrase	Value of Chi Squared	Degree of Freedom	Tabular value	Significance level	Result
1/The irrevocable character of the letter of credit means that the letter of credit once drawn up and put into circulation cannot be withdrawn or revoked anymore; even if when sub article 16(b) call for acceptance of discrepant documents .	136.5	4	9.48	0.000	Acceptance
2/Documents tendered under the letter of credit must prove strict conformity to the sale of goods contract irrespective of sub article 16(b).	127.4	4	9.48	0.000	Acceptance
3/The letter of credit is irrevocable and thereby constitutes definite undertaking of the issuing bank to honor complying presentation only, in despite of sub article 16(b).	141.6	4	9.48	0.000	Acceptance
4/By tendering discrepant documents. In such the case, Issuing Bank is under no obligation to approach the applicant for a waiver of the discrepancies according to sub article 16(b).	110.6	4	9.48	0.000	Acceptance
5/By approaching the Applicant for a waiver of the discrepant documents in response to sub article 16(b); the Issuing Bank draw the import transaction away far from the letter of credit contract domain.	177.1	4	9.48	0.000	Acceptance

6/The discretion to approach applicant for a waiver of the discrepant documents under sub article 16(b), must be restricted even if all parties to the letter of credit were all ready agreed to.	171.5	4	9.48	0.000	Acceptance
7/The use of the term ‘party’ in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit and thereby must not be approached for a waiver of the discrepant documents irrespective of sub article 16(b).	154.9	4	9.48	0.000	Acceptance
8/In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract.	185.2	4	9.48	0.000	Acceptance
9/The acceptance of discrepant documents under sub article 16(b), most likely will lead to the prevalence of defective goods.	162.1	4	9.48	0.000	Acceptance
<b>Total</b>	<b>151.8</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	<b>Acceptance</b>

Source: Prepared by the researcher, 2016

From the table (4.15), we can recognize the following:-

1. The Chi – Squared value for the first phrase (136.5) is greater than Tabular value (9.48). Thus, it indicates that there are significant differences between the averages of the phrase (4.59) and central premise of the study (3) and in favor high degree of approvers on the phrase (The irrevocable character of the letter of credit means that the letter of credit once drawn up and put into circulation cannot be withdrawn or revoked anymore; even if when sub article 16(b) call for acceptance of discrepant documents).
2. The Chi – Squared value for the second phrase (127.4) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.46) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Documents tendered under the letter of credit, must prove strict conformity to the sale of goods contract irrespective of sub article 16(b).).
3. The Chi – Squared value for the third phrase (141.6) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the

average of the phrase (4.56) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The letter of credit is irrevocable and thereby constitutes definite undertaking of the issuing bank to honor complying presentation only, in despite of sub article 16(b).)

4. The Chi – Squared value for the fourth phrase (110.6) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.49) and central premise of the study (3) and in favor very high degree of approvers on the phrase (By tendering discrepant documents. In such the case, Issuing Bank is under no obligation to approach the applicant for a waiver of the discrepancies according to sub article 16(b).).

5. The Chi – Squared value for the fifth phrase (177.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.65) and central premise of the study (3) and in favor very high degree of approvers on the phrase (By approaching the Applicant for a waiver of the discrepant documents in response to sub article 16(b); the Issuing Bank draw the import transaction away far from the letter of credit).

6. The Chi – Squared value for the sixth phrase (171.5) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.52) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The discretion to approach applicant for a waiver of the discrepant documents under sub article 16(b), must be restricted even if all parties to the letter of credit were all ready agreed to).

7. The Chi – Squared value for the seventh phrase (154.9) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.58) and centralpremise of the study (3) and in favor very high degree of approvers on the phrase (The use of the term ‘party’ in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit and thereby must not be approached for a waiver of the discrepant documents irrespective of sub article 16(b).).

8. The Chi – Squared value for the eighth phrase (185.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the

average of the phrase (4.68) and central premise of the study (3) and in favor very high degree of approvers on the phrase (In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract)

9 .The Chi – Squared value for the ninth phrase (162.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.61) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The acceptance of discrepant documents under sub article 16(b), most likely will lead to the prevalence of defective goods.).

10. The Chi – Squared value for total phrases (151.8) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.57) and central premise of the study (3) and in favor very high degree of approvers on the (second hypothesis).

We conclude that the first hypothesis of the study, which stipulates: (There is a relationship between sub article 16 (b) of UCP 600 and Consumers' Safety in respect of imported goods under the Letter of Credit). Is an acceptable hypothesis of all phrases.

**Hypothesis 2:**

Banking import's Regulations in Sudan affect Consumers' Safety in respect Imported Goods under the Letter of Credit

Firstly: frequency Distribution for the answers for phrases of the Questionnaire:

**Table No 4.16**

The Frequency Distribution for the Wording:

Measuring the impact of the Banking Measures and Regulations

Statement	Strongly Agree		Agree		Neutral		Disagree		Strongly disagree	
	F	P %	F	P%	F	P%	F	P%	F	P%
1/Banking import's Regulations in Sudan pay no attention to the negative flexibility under UCP 600	57	82.6	6	8.7	2	2.9	2	2.9	2	2.9

in respect of waiving discrepant documents, and by so doing the letter of credit will cease to perform as the most efficient international method of payment in safeguarding the Trading Partners Interests.										
2/Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's rights.	57	82.6	5	7.2	2	2.9	3	4.3	2	2.9
3/Banking import's Regulations in Sudan allow Issuing Bank to approach Applicant for the waiver of discrepant documents and by so doing not serving the public interest.	58	84.1	5	7.2	2	2.9	2	2.9	2	2.9
4/Banking import's Regulations in Sudan permits the acceptance of discrepant documents and by so doing serving the overseas Exporter's interests on the account of Importing Country's Interests.	62	89.9	2	2.9	1	1.4	2	2.9	2	2.9
5/ Banking import's Regulations in Sudan by accepting discrepant documents help facilitate the release of goods that are not in strict conformity with letter of credit terms and conditions.	60	87	3	4.3	3	4.3	2	2.9	1	1.4
6/ Banking import's Regulations in Sudan obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the intended purpose.	62	89.9	2	2.9	3	4.3	2	2.9	0	0
7/Banking import's Regulations in	60	87	4	5.8	3	4.3	2	2.9	0	0

Sudan not obligate Applicant to include presentation of certificate providing that proper labeling instructions and warnings were satisfied according to sub article 14(f), therefore; by so doing, this will cause environmental hazard.										
8/Banking import's Regulations in Sudan not obligate the Applicant to present Performa invoice authorized by the concerned Government Technical Department in respect of all imported goods under the letter of credit and by so doing a great deal of blew standard imported goods will dump Sudanese Markets.	59	85.5	3	4.3	3	4.3	3	4.3	1	1.4
9/Banking import's Regulations in Sudan not obligate the Applicant to authenticate any amendment in respect of imported goods' specifications, and by so doing this will serve the interests of dishonest trade partners under the letter of credit transaction.	57	82.6	5	7.5	3	4.3	3	4.3	1	1.4

Source: prepared by the researcher, 2016.

From the table 4.16, we can see as follows:

1. The majority of the sample agree that (Banking import's Regulations in Sudan pay no attention to the negative flexibility under UCP 600 in respect of waiving discrepant documents, and by so doing the letter of credit will cease to perform as the most efficient international method of payment in safeguarding the Trading Partners Interests where the proportion is 91.3% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 2.9%.
2. The majority of respondents agree that (Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's rights) where the

proportion is 89.8% while the percentage of non – conformists to that 7.2%, and those who did not show specific answer have accounted 2.9%.

3. The majority of respondent agree that (Banking import's Regulations in Sudan allow Issuing Bank to approach Applicant for the waiver of discrepant documents and by so doing not serving the public interest.), where the proportion is 91.3% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 2.9%.

4. The majority of the sample agree that (Banking import's Regulations in Sudan permits the acceptance of discrepant documents and by so doing serving the overseas Exporter's interests on the account of Importing Country's Interests.) where the proportion is 92.8% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 1.4% .

5. The majority of the sample agree that (Banking import's Regulations in Sudan by accepting discrepant documents help facilitate the release of goods that are not in strict conformity with letter of credit terms and conditions.) where the proportion is 91.3% while the percentage of non – conformists to that 4.3%, and those who did not show specific answers have accounted 4.3%.

6.The majority of the sample agree that (Banking import's Regulations in Sudan obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the intended purpose.)where the proportion is 92.8% while the percentage of non – conformists to that 2.9%, and those who did not show specific answers have accounted 4.3% .

7. The majority of the sample agree that (Banking import's Regulations in Sudan not obligate Applicant to include presentation of certificate providing that proper labeling instructions and warnings were satisfied according to sub article 14(f), therefore; by so doing, this will cause environmental hazard.) where the proportion is 92.8% while the percentage of non – conformists to that 2.9%, and those who did not show specific answers have accounted 4.3%.

8. The majority of the sample agree that (Banking import's Regulations in Sudan not obligate the Applicant to present Performa invoice authorized by the concerned Government Technical Department in respect of all imported goods under the letter of credit and by so doing a great deal of blew standard imported goods will dump

Sudanese Markets.) where the proportion is 89.8% while the percentage of non – conformists to that 5.7%, and those who did not show specific answers have accounted 4.3%.

9. The majority of the sample agree that (Banking import's Regulations in Sudan not obligate the Applicant to authenticate any amendment in respect of imported goods' specifications, and by so doing this will serve the interests of dishonest trade partners under the letter of credit transaction) where the proportion is 89.8% while the percentage of non – conformists to that 5.7%, and those who did not show specific answers have accounted 4.3%.

Secondly: Analytical Statistics for the phrases of the Study:

Where we calculate the arithmetic mean and standard deviation for each phrase in and we compare the arithmetic mean for a phrase with the middle premise of the study. We approve the phrase if the arithmetic mean is greater than the middle premise of the term (3), and we realized disapproval if the arithmetic mean less than the middle premise. Table 6.17 shows the standard deviation of the phrases and arranges them according to their answers.

Table 4.17

Descriptive statistics for the Phrases of the (second hypothesis)

The Phrase	Standard Deviation	Average	Relative	Disagree of Approval	Arrangement
1/Banking import's Regulations in Sudan pay no attention to the negative flexibility under UCP 600 in respect of waiving discrepant documents, and by so doing the letter of credit will cease to perform as the most efficient international method of payment in safeguarding the Trading Partners Interests.	0.904	4.66	%93.2	Very high	7
2/Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's rights.	0.956	4.62	%92.4	Very high	9
3/Banking import's Regulations in Sudan allow Issuing Bank to approach Applicant for the waiver of discrepant documents and by so doing not serving the	0.902	4.67	%93.4	Very high	6

public interest.					
4/Banking import's Regulations in Sudan permits the acceptance of discrepant documents and by so doing serving the overseas Exporter's interests on the account of Importing Country's Interests.	0.769	4.77	%95.4	Very high	2
5/ Banking import's Regulations in Sudan by accepting discrepant documents help facilitate the release of goods that are not in strict conformity with letter of credit terms and conditions.	0.802	4.72	%94.4	Very high	4
6/ Banking import's Regulations in Sudan obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the intended purpose.	0.854	4.80	%96.0	Very high	1
7/Banking import's Regulations in Sudan not obligate Applicant to include presentation of certificate providing that proper labeling instructions and warnings were satisfied according to sub article 14(f), therefore; by so doing, this will cause environmental hazard.	0.667	4.76	%95.2	Very high	3
8/Banking import's Regulations in Sudan not obligate the Applicant to present Performa invoice authorized by the concerned Government Technical Department in respect of all imported goods under the letter of credit and by so doing a great deal of blew standard imported goods will dump Sudanese Markets.	0.866	4.68	%93.6	Very high	5
9/Banking import's Regulations in Sudan not obligate the Applicant to authenticate any amendment in respect of imported goods' specifications, and by so doing this will serve the interests of dishonest trade partners under the letter of credit transaction.	0.871	4.65	%93.0	Very high	8
<b>Total</b>	<b>0.843</b>	<b>4.71</b>	<b>94.2%</b>	<b>Very high</b>	

Source: Prepared by the researcher, 2016.

From the table 4.17, we can recognize the follows:-

- 1-All the statements of second axis are averaged over the middle premise (3).
- 2-The most important phrase is the phrase “Banking import's Regulations in Sudan

obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the intended purpose”, where the average of respondent’s answers is (4.80) with a standard deviation (0.845) and relative importance (96%).

3- The less term of approval is the phrase “Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's rights”, with an average (4.62) and a standard deviation (0.956) and relative importance (92.4%).

4/The average of all phrases (4.71) with a standard deviation (0.843) and relative importance (%).This shows that the majority of respondents agree with a high proportion of all phrases that measure the (94.2%) .

Thirdly: Chi – Square Test:

To test the presence of statistically significant differences between the number of approvers, neutrals, and non – approvers to the results of the above test was used (Chi – Squared) to denote the differences. The following table illustrates phrases that measure the axis of the (second hypothesis).

Table (4.18)

Chi – Square Test for the Significance of the Difference Phrases of the second hypothesis

<b>The Phrase</b>	<b>Value of Chi Squared</b>	<b>Degree of Freedom</b>	<b>Tabular value</b>	<b>Significance level</b>	<b>Result</b>
<b>1/Banking import's Regulations in Sudan pay no attention to the negative flexibility under UCP 600 in respect of waiving discrepant documents, and by so doing the letter of credit will cease to perform as the most efficient international method of payment in safeguarding</b>	<b>169.6</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance

<b>2/Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's</b>	<b>169.4</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance
<b>3/Banking import's Regulations in Sudan allow Issuing Bank to approach Applicant for the waiver of discrepant documents and by so doing not serving the public interest.</b>	<b>177.4</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance
<b>4/Banking import's Regulations in Sudan permit the acceptance of discrepant documents and by so doing serving the overseas Exporter's interests on the account of Importing Country's</b>	<b>210.4</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance
<b>5/ Banking import's Regulations in Sudan by accepting discrepant documents help facilitate the release of goods that are not in strict conformity with letter of credit terms and</b>	<b>193.5</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance
<b>6/ Banking import's Regulations in Sudan obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the</b>	<b>154.8</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance
<b>7/Banking import's Regulations in Sudan not obligate Applicant to include presentation of certificate providing that proper labeling instructions and warnings were satisfied according to sub article 14(f), therefore; by so doing, this will cause environmental hazard.</b>	<b>141.3</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance
<b>8/Banking import's Regulations in Sudan not obligate the Applicant to present Performa invoice authorized by the concerned Government Technical Department in respect of all imported goods under the letter of credit and by so doing a great deal of blew standard imported goods will dump Sudanese</b>	<b>185.2</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance

<b>9/Banking import's Regulations in Sudan not obligate the Applicant to authenticate any amendment in respect of imported goods' specifications, and by so doing this will serve the interests of dishonest trade partners under the letter</b>	<b>169.6</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance
<b>Total</b>	<b>157.2</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	Acceptance

Source: Prepared by the researcher, 2016.

From the table (4/18), we can recognize the following:-

1. The Chi – Squared value for the first phrase (169.9) is greater than Tabular value (9.48). Thus, it indicates that there are significant differences between the averages of the phrase (4.65) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan pay no attention to the negative flexibility under UCP 600 in respect of waiving discrepant documents, and by so doing the letter of credit will cease to perform as the most efficient international method of payment in safeguarding the Trading Partners Interests.).

2. The Chi – Squared value for the second phrase (169.4) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.62) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's rights).

3. The Chi – Squared value for the third phrase (177.4) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.67) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan allow Issuing Bank to approach Applicant for the waiver of discrepant documents and by so doing not serving the public interest.)

4. The Chi – Squared value for the fourth phrase (210.4) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.77) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan

permits the acceptance of discrepant documents and by so doing serving the overseas Exporter's interests on the account of Importing Country's).

5. The Chi – Squared value for the fifth phrase (193.5) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.72) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan by accepting discrepant documents help facilitate the release of goods that are not in strict conformity with letter of credit terms and conditions.).

6. The Chi – Squared value for the sixth phrase (154.8) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.80) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the intended purpose).

7. The Chi – Squared value for the eighth phrase (141.3) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.76) and centralpremise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan not obligate Applicant to include presentation of certificate providing that proper labeling instructions and warnings were satisfied according to sub article 14(f), therefore; by so doing, this will cause environmental hazard).

8. The Chi – Squared value for the eighth phrase (185.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.68) and central premise of the study (3) and in favor of very high degree of approvers on the phrase (Banking import's Regulations in Sudan not obligate the Applicant to present Performa invoice authorized by the concerned Government Technical Department in respect of all imported goods under the letter of credit and by so doing a great deal of blew standard imported goods will dump Sudanese Markets)

9 .The Chi – Squared value for the seventh phrase (169.6) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.65) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Banking import's Regulations in Sudan not obligate the Applicant to authenticate any amendment in respect of imported goods' specifications, and by so doing this will serve the interests of dishonest trade partners under the letter of credit transaction).

10. The Chi – Squared value for total phrases (157.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.71) and central premise of the study (3) and in favor very high degree of approvers on the (second hypothesis).

We conclude that the second hypothesis of the study, which stipulates: (Banking import's Regulations in Sudan affect Consumers' Safety in respect of Imported Goods under the Letter of Credit). Is an acceptable hypothesis of all phrases.

**Hypothesis 3:**

Product Liability Doctrine has an Impact on Consumers' Safety in respect of Imported Goods under the Letter of Credit.

Firstly: frequency Distribution for the answers for phrases of the Questionnaire:

**Table No. 4.19**

The Frequency Distribution for The Wording: Measuring the impact of Product Liability Principle

Statement	Strongly Agree		Agree		Neutral		Disagree		Strongly disagree	
	F	P %	F	P%	F	P%	F	P%	F	P%
1/The rule of strict liability applied in product liability makes a seller responsible for all defective goods.	57	82.6	5	7.2	3	4.3	3	4.3	1	1.4
2/The existence of rule of Strict liability for manufacturing defects will make a product unreasonably dangerous.	59	85.5	3	4.3	3	4.3	3	4.3	1	1.4

3/The prevalence of effective product liability litigation could act as an effective tool for improving shipping documents strict compliance.	57	82.6	5	7.2	3	4.3	4	5/8	0	0
4/The global rising concerns in respect of product liability, make it necessary for policy makers to legislations in this respect	58	89.1	3	4.3	3	4.3	3	4.3	2	2.9
5/The prevalence of effective product liability legislations assures imported goods' consistency to the society's requirements.	59	85.5	3	4.3	3	4.3	2	2.9	2	2.9
6/ The prevalence of effective product liability will mitigate the risk of defective products due to improper labeling instructions or warnings on product or its container.	59	85.5	3	4.3	3	4.3	2	2.9	2	2.9
7/ The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract.	56	81.2	5	7.2	3	4.3	2	2.9	3	4.3
8/ The prevalence of effective product liability legislations, support Issuing Bank's commitment in lieu of due diligence and reasonable care.	59	85.5	2	2.9	3	4.3	2	2.9	3	4.3
9/ The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.	58	89.1	3	4.3	3	4.3	3	4.3	2	2.9
10/ The prevalence of effective product liability legislations, improve the letter of credit efficiency.	62	89/8	3	4.3	3	4.3	1	1.4	0	0

Source: prepared by the researcher, 2016.

From the table 4.19, we can see as follows:

1. The majority of the sample agree that (The rule of strict liability applied in product liability makes a seller responsible for all defective goods) where the proportion is 89.8% while the percentage of non – conformists to that 5.7%, and those who did not show specific answers have accounted 4.3%.
2. The majority of respondents agree that (The existence of rule of Strict liability for manufacturing defects will make a product unreasonably dangerous) where the proportion is 89.8% while the percentage of non – conformists to that 5.7%, and those who did not show specific answer have accounted 4.3%.
3. The majority of respondent agree that (The prevalence of effective product liability litigation could act as an effective tool for improving shipping documents strict compliance ), where the proportion is 89.8% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 4.3%.
4. The majority of the sample agree that (The global rising concerns in respect of product liability, make it necessary for policy makers to legislations in this respect) where the proportion is 93.4% while the percentage of non – conformists to that 7.2%, and those who did not show specific answers have accounted 4.3%.
5. The majority of the sample agree that (The prevalence of effective product liability legislations assures imported goods' consistency to the society's requirements) where the proportion is 89.8% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 4.3%.
6. The majority of the sample agree that (The prevalence of effective product liability will mitigate the risk of defective products due to improper labeling instructions or warnings on product or its container.) where the proportion is 89.8% while the percentage of non – conformists to that 5.8%, and those who did not show specific answers have accounted 4.3% .
7. The majority of the sample agree that The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract where the proportion is 88.4% while the percentage of non – conformists to that 7.2%, and those who did not show specific answers have accounted 4.3% .
8. The majority of the sample agree that (The prevalence of effective product liability legislations, support Issuing Bank's commitment in lieu of due diligence and

reasonable care) where the proportion is 88.4% while the percentage of non – conformists to that 7.2%, and those who did not show specific answers have accounted 4.3%.

9. The majority of the sample agree that (The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.) where the proportion is 88.4% while the percentage of non – conformists to that 7.2%, and those who did not show specific answers have accounted 4.3%.

10. The majority of the sample agree that (The prevalence of effective product liability legislations, improve the letter of credit efficiency) where the proportion is 94.1% while the percentage of non – conformists to that 1.4%, and those who did not show specific answers have accounted 4.3%.

Secondly: Analytical Statistics for the phrases of the third Hypothesis:

Where we calculate the arithmetic mean and standard deviation for each phrase in and we compare the arithmetic mean for a phrase with the middle premise of the study. We approve the phrase if the arithmetic mean is greater than the middle premise of the term (3), and we realized disapproval if the arithmetic mean less than the middle premise. Table4.16 shows the standard deviation of the phrases and arranges them according to their answers.

Table 4.20

Descriptive statistics for the Phrases of the third Hypothesis:

<b>The Phrase</b>	<b>Standard Deviation</b>	<b>Average</b>	<b>Relative</b>	<b>Disagree of Approval</b>	<b>Arrangement</b>
<b>1/The rule of strict liability applied in product liability makes a seller responsible for all defective goods.</b>	<b>0.871</b>	<b>4.65</b>	<b>%93.0</b>	<b>Very high</b>	<b>6</b>
<b>2/The existence of rule of Strict liability for manufacturing defects will make a product unreasonably dangerous.</b>	<b>0.865</b>	<b>4.68</b>	<b>%93.6</b>	<b>Very high</b>	<b>3</b>
<b>3/The prevalence of effective product liability litigation could act as an effective tool for improving shipping documents strict compliance.</b>	<b>0.816</b>	<b>4.66</b>	<b>%93.2</b>	<b>Very high</b>	<b>5</b>

4/The global rising concerns in respect of product liability, make it necessary for policy makers to legislations in this respect	0.971	4.62	%92.4	Very high	8
5/The prevalence of effective product liability legislations assures imported goods' consistency to the society's requirements.	0.918	4.67	%93.4	Very high	4
6/ The prevalence of effective product liability will mitigate the risk of defective products due to improper labeling instructions or warnings on product or its container.	0.917	4.68	%93.6	Very high	3
7/The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract.	1.02	4.58	%91.6	Very high	10
8/The prevalence of effective product liability legislations, support Issuing Bank's commitment in lieu of due diligence and reasonable care.	1.01	4.63	%92.6	Very high	7
9/The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.	0.971	4.61	%92.2	Very high	9
10/ The prevalence of effective product liability legislations, improve the letter of credit efficiency.	0.567	4.82	%96.4	Very high	1
<b>Total</b>	<b>0.892</b>	<b>4.66</b>	<b>93.2%</b>	<b>Very high</b>	

Source: Prepared by the researcher, 2016.

From the table 4.20, we can recognize the follows:-

- 1-All the statements of the third axis are averaged over the middle premise (3).
- 2-The most important phrase is the phrase “The prevalence of effective product liability legislations, improve the letter of credit efficiency”, where the average of respondent’s answers is (4.82) with a standard deviation (0.567) and relative importance (96.4%).
- 3- The less term of approval is the phrase “The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract”, with an average (4.58) and a standard deviation (1.02) and relative importance (91.6%).

4- The average of all phrases (4.66) with a standard deviation (0.892) and relative importance (%93.2). This shows that the majority of respondents agree with a high proportion of all phrases that measure the (impact of Product Liability Principle).

Thirdly: Chi – Square Test:

To test the presence of statistically significant differences between the number of approvers, neutrals, and non – approvers to the results of the above test was used (Chi – Squared) to denote the differences. The following table illustrates phrases that measure the axis of the (third hypothesis).

**Table: 4.21**

Chi – Square Test for the Significance of the Difference Phrases of the third hypothesis

The Phrase	Value of Chi Squared	Degree of Freedom	Tabular value	Significance level	Result
1/The rule of strict liability applied in product liability makes a seller responsible for all defective goods.	169.1	4	9.48	0.000	Acceptance
2/The existence of rule of Strict liability for manufacturing defects will make a product unreasonably dangerous.	185.2	4	9.48	0.000	Acceptance
3/ The prevalence of effective product liability litigation could act as an effective tool for improving shipping documents strict compliance.	122.2	4	9.48	0.000	Acceptance
4 /The global rising concerns in respect of product liability, make it necessary for policy makers to legislations in this respect.	177.1	4	9.48	0.000	Acceptance
5/The prevalence of effective product liability legislations assures imported goods' consistency to the society's requirements.	185.1	4	9.48	0.000	Acceptance
6. The prevalence of effective product liability will mitigate the risk of defective products due to improper labeling instructions or warnings on product or its container.	185.2	4	9.48	0.000	Acceptance
7. The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract.	161.6	4	9.48	0.000	Acceptance
8. The prevalence of effective product liability legislations,	185.1	4	9.48	0.000	Acceptance

support Issuing Bank's commitment in lieu of due diligence and reasonable care.					
9/ The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.	177.1	4	9.48	0.000	Acceptance
10. The prevalence of effective product liability legislations, improve the letter of credit efficiency.	154.9	4	9.48	0.000	Acceptance
<b>Total</b>	<b>170.2</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	<b>Acceptance</b>

Source: Prepared by the researcher, 2016.

From the table (4.21), we can recognize the following:-

1. The Chi – Squared value for the first phrase (169.1) is greater than Tabular value (9.48). Thus, it indicates that there are significant differences between the averages of the phrase (4.65) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The rule of strict liability applied in product liability makes a seller responsible for all defective goods).
2. The Chi – Squared value for the second phrase (185.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.68) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The existence of rule of Strict liability for manufacturing defects will make a product unreasonably dangerous).
3. The Chi – Squared value for the third phrase (122.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.66) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The prevalence of effective product liability litigation could act as an effective tool for improving shipping documents strict compliance)
4. The Chi – Squared value for the fourth phrase (177.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.62) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The global rising concerns in respect of product liability, make it necessary for policy makers to legislations in this respect).

5. The Chi – Squared value for the fifth phrase (185.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.67) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The prevalence of effective product liability will mitigate the risk of defective products due to improper labeling instructions or warnings on product or its container).
6. The Chi – Squared value for the sixth phrase (185.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.68) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The prevalence of effective product liability will mitigate the risk of defective products due to improper labeling instructions or warnings on product or its container).
7. The Chi – Squared value for the seventh phrase (161.6) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.58) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract).
8. The Chi – Squared value for the eighth phrase (185.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.63) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The prevalence of effective product liability legislations, support Issuing Bank's commitment in lieu of due diligence and reasonable care)
9. The Chi – Squared value for the ninth phrase (177.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.61) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.).

10 .The Chi – Squared value for the tenth phrase (154.9) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.82) and central premise of the study (3) and in favor very high degree of approvers on the phrase (The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.).

11. The Chi – Squared value for total phrases (170.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.66) and central premise of the study (3) and in favor very high degree of approvers on the (third hypothesis).

We conclude that the third hypothesis of the study, which stipulates: (Product Liability Doctrine has an Impact on Consumers' Safety in respect of Imported Goods under the Letter of Credit). Is an acceptable hypothesis of all phrases.

**Hypothesis 4:**

Letter of credit procedures has an Impact on Consumers' Safety in respect of Imported Goods.

Firstly: frequency Distribution for the answers for phrases of the Questionnaire:

**Table No: 4.22**

The Frequency Distribution for The Wording: Measuring the potential effect on Consumers' Safety.

Statement	Strongly Agree		Agree		Neutral		Disagree		Strongly disagree	
	F	P %	F	P%	F	P%	F	P%	F	P%
1/Consumers have the right of Protection from products and services that are hazardous to their health; accordingly the imported goods have to provide this protection.	61	88.4	3	4.3	3	4.3	3	4.3	0	0
2/ Consumers have the right to be provided information that ensures all products are accurate and truthful; but Imported Goods to Sudan usually not	57	82.6	4	5.8	3	4.3	3	4.3	2	2.9

calling for documents certifying that proper labeling instructions or warnings on product or its container had been satisfied, accordingly, this definitely undermine this right .										
3/Although Consumers have the right to request money or other benefits as fair compensation for a company's mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the Consumer's Safety.	54	78.3	6	8.7	3	4.3	3	4.3	3	4.3
4/ Although Consumers have the right to live and work in an environment that does not endanger their health. But, the absence of proper imports regulations in Sudan endangers environment.	57	82.6	4	5.8	3	4.3	2	2.9	3	4.3
5/ Although Consumers have the fundamental right of access to healthy food, healthy water and safety shelter, but the prevalence of defective imported goods undermine it.	58	84.1	4	5.8	3	4.3	3	4.3	1	1.4
6/The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods.	59	85.5	3	4.3	3	4.3	3	4.3	1	1.4

Source: prepared by the researcher, 2016

From the table 4.22, we can see as follows:

1-The majority of the sample agree that (Consumers have the right of Protection from products and services that are hazardous to their health; accordingly the imported goods have to provide this protection) where the proportion is 92.7% while the percentage of non – conformists to that 4.3%, and those who did not show specific answers have accounted 2.9%.

2- The majority of respondents agree that (Consumers have the right to be provided information that ensures all products are accurate and truthful; but Imported Goods to Sudan usually not calling for documents certifying that proper labeling instructions or

warnings on product or its container had been satisfied, accordingly, this definitely undermine this right .) where the proportion is 88.4% while the percentage of non – conformists to that 7.2%, and those who did not show specific answer have accounted 9.3%.

3. The majority of respondent agree that (.Although Consumers have the right to request money or other benefits as fair compensation for a company’s mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the), where the proportion is 87% while the percentage of non – conformists to that 8.6%, and those who did not show specific answers have accounted 4.3%.

4. The majority of the sample agrees that (Although Consumers have the right to live and work in an environment that does not endanger their health. But, the absence of proper imports regulations in Sudan endangers environment) where the proportion is 88.4% while the percentage of non – conformists to that 7.2%, and those who did not show specific answers have accounted 4.3%.

5. The majority of the sample agree that (Although Consumers have the fundamental right of access to healthy food, healthy water and safety shelter, but the prevalence of defective imported goods undermine it) where the proportion is 89.9% while the percentage of non – conformists to that 5.7%, and those who did not show specific answers have accounted 4.3% .

6. The majority of the sample agree that (The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods)

Where the proportion is 89.8% while the percentage of non – conformists to that 5.7%, and those who did not show specific answers have accounted 4.3%.

Regression was used to test the hypothesis.

Secondly: Analytical Statistics for the phrases of the fourth Hypothesis:

Where we calculate the arithmetic mean and standard deviation for each phrase in and we compare the arithmetic mean for a phrase with the middle premise of the study. We approve the phrase if the arithmetic mean is greater than the middle premise of the term (3), and we realized disapproval if the arithmetic mean less than the middle premise.

Table 4.23 shows the standard deviation of the phrases and arranges them according to their answers.

**Table 4.23**

Descriptive statistics for the Phrases of the (fourth Hypothesis)

<b>The Phrase</b>	<b>Standard Deviation</b>	<b>Average</b>	<b>Relative</b>	<b>Disagree of Approval</b>	<b>Arrangement</b>
<b>1/Consumers have the right of Protection from products and services that are hazardous to their health; accordingly the imported goods have to provide this protection.</b>	<b>1.01</b>	<b>4.65</b>	<b>%93.0</b>	<b>Very high</b>	<b>3</b>
<b>2/ Consumers have the right to be provided information that ensures all products are accurate and truthful; but Imported Goods to Sudan usually not calling for documents certifying that proper labeling instructions or warnings on product or its container had been satisfied, accordingly, this definitely undermine this right .</b>	<b>0.973</b>	<b>4.60</b>	<b>%92.0</b>	<b>Very high</b>	<b>4</b>
<b>3/Although Consumers have the right to request money or other benefits as fair compensation for a company's mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the Consumer's Safety.</b>	<b>1.06</b>	<b>4.52</b>	<b>%90.4</b>	<b>Very high</b>	<b>6</b>
<b>4/ Although Consumers have the right to live and work in an environment that does not endanger their health. But, the absence of proper imports regulations in Sudan endangers environment.</b>	<b>1.01</b>	<b>4.59</b>	<b>%91.8</b>	<b>Very high</b>	<b>5</b>
<b>5/ Although Consumers have the fundamental right of access to healthy food, healthy water and safety shelter, but the prevalence of defective imported goods undermine it.</b>	<b>0.868</b>	<b>4.67</b>	<b>%93.4</b>	<b>Very high</b>	<b>2</b>
<b>6/The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods.</b>	<b>0.865</b>	<b>4.68</b>	<b>%93.6</b>	<b>Very high</b>	<b>1</b>
<b>Total</b>	<b>0.964</b>	<b>4.62</b>	<b>92.4</b>	<b>Very high</b>	

Source: Prepared by the researcher, 2016.

From the table 4.23, we can recognize the follows:-

- 1-All the statements of the first axis are averaged over the middle premise (3).
- 2-The most important phrase is the phrase “The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods”, where the average of respondent’s answers is (4.68) with a standard deviation (0.865) and relative importance (93.6%).
- 3- The less term of approval is the phrase “Although Consumers have the right to request money or other benefits as fair compensation for a company’s mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the Consumer's Safety”, with an average (4.52) and a standard deviation (1.06) and relative importance (90.4%).
- 4- The average of all phrases (4.62) with a standard deviation (0.964) and relative importance (%92.4).This shows that the majority of respondents agree with a high proportion of all phrases that measure the (potential effect on Consumers' Safety).

Thirdly: Chi – Square Test

To test the presence of statistically significant differences between the number of approvers, neutrals, and non – approvers to the results of the above test was used (Chi – Squared) to denote the differences. The following table illustrates phrases that measure the axis of the (fourth hypothesis).

**Table (4.24)**

Chi – Square Test for the Significance of the Difference Phrases of the fourth hypothesis

The Phrase	Value of Chi Squared	Degree of Freedom	Tabular value	Significance level	Result
1 /Consumers have the right of Protection from products and services that are hazardous to their health; accordingly the imported goods have to provide this protection.	147.9	4	9.48	0.000	Acceptance

2/ Consumers have the right to be provided information that ensures all products are accurate and truthful; but Imported Goods to Sudan usually not calling for documents certifying that proper labeling instructions or warnings on product or its container had been satisfied, accordingly, this definitely undermine this right .	169.1	4	9.48	0.000	Acceptance
3/Although Consumers have the right to request money or other benefits as fair compensation for a company's mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the Consumer's Safety.	146.8	4	9.48	0.000	Acceptance
4/ Although Consumers have the right to live and work in an environment that does not endanger their health. But, the absence of proper imports regulations in Sudan endangers environment.	169.1	4	9.48	0.000	Acceptance
5/ Although Consumers have the fundamental right of access to healthy food, healthy water and safety shelter, but the prevalence of defective imported goods undermine it.	177.3	4	9.48	0.000	Acceptance
6/The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods.	185.2	4	9.48	0.000	Acceptance
<b>Total</b>	<b>141.4</b>	<b>4</b>	<b>9.48</b>	<b>0.000</b>	<b>Acceptance</b>

Source: Prepared by the researcher, 2016.

From the table (4.24), we can recognize the following:-

1. The Chi – Squared value for the first phrase (147.9) is greater than Tabular value (9.48). Thus, it indicates that there are significant differences between the averages of the phrase (4.65) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Consumers have the right of Protection from products and services that are hazardous to their health; accordingly the imported goods have to provide this protection).
2. The Chi – Squared value for the second phrase (169.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.60) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Consumers have the right to be provided

information that ensures all products are accurate and truthful; but Imported Goods to Sudan usually not calling for documents certifying that proper labeling instructions or warnings on product or its container had been satisfied, accordingly, this definitely undermine this right).

3. The Chi – Squared value for the phrase (146.8) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.52) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Although Consumers have the right to request money or other benefits as fair compensation for a company’s mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the Consumer's Safety)

4. The Chi – Squared value for the fourth phrase (169.1) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.59) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Although Consumers have the right to live and work in an environment that does not endanger their health. But, the absence of proper imports regulations in Sudan endangers environment).

5. The Chi – Squared value for the fifth phrase (177.3) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.67) and central premise of the study (3) and in favor very high degree of approvers on the phrase (Although Consumers have the fundamental right of access to healthy food, healthy water and safety shelter, but the prevalence of defective imported goods undermine it).

6. The Chi – Squared value for the sixth phrase (185.2) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.68) and central premise of the study (2) and in favor very high degree of approvers on the phrase (The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods.).

7. The Chi – Squared value for total phrases (141.4) is greater than the Tabular value (9.48). Thus, it indicates that there are significant differences between the average of the phrase (4.62) and central premise of the study (3) and in favor very high degree

of approvers on the (second hypothesis).

We conclude that the fourth hypothesis of the study, which stipulates: "Letter of credit procedures has an Impact on Consumers' Safety in respect of Imported Goods". Is an acceptable hypothesis of all phrases.

#### **4.7: Discussion:**

The referred provisions have been greatly debated among banking practitioners and legal scholars. In the following the researcher will analyze the possibility based on the supposed scenario where discrepancies are found by the Issuing Bank and the beneficiary does not wish to withdraw the documents tendered in search of applicant's instructions under sub article 16(b). Paul Todd as cited in Tóth (2006) emphasizes that "banks are entitled to consult with the applicant, and are allowed time to do so, but only where they have found discrepancies entitling them to reject, and their purpose is to see if the applicants are prepared to waive the discrepancies". (Bernard Wheble) took the opposite view. He concluded that by authorizing the bank to approach the applicant, in its sole judgment, for a waiver of discrepancies, the true nature of the documentary credit – which is to be an instrument of payment, rather than of non-payment – is not supported (ibid). Tóth (2006) stated that; In April 2002 the ICC Banking Commission issued a paper on discrepant documents and the right process to send a notice of rejection. The paper envisages the following steps for banks to follow when receiving the documents. The first step is to review the documents. The second step is to decide whether the documents presented appear on their face to comply with the terms and conditions of the credit. If the documents are found to be not complying, the bank may – as a third step - approach the applicant for a waiver of discrepancies or decide to refuse the documents. It must be emphasized here, that although the bank is not obliged to turn to the applicant and seek his instructions, in the majority of the cases this is the general banking practice. "For these reasons, as well as those given more briefly by Longmore J., in my judgment the beneficiary was not entitled to require the applicant to waive discrepant documents in order to receive payment under the letter of credit opened by them due to the privity of the contract rule. It follows that the beneficiary failed to comply with the letter of credit terms and conditions and, he was thereby in breach of contract for which the issuing bank

is entitled to reject documents.

The potential debate concerns whether article 16(b) has an impact on letter of credit contract power or not. It should be noted that; although the involvement of the buyer is vital in both the opening and alteration of the credit in order to fulfill his obligations under the sale contract, but that situation will not give the applicant any right to be consulted in the matter of payment under the letter of credits", and for the reason that the applicant is not a party in the letter of credit contract according to the doctrine of privity of contract which lays down that; "a contract does not confer rights on someone who is not a party to the contract ("third party rule"), thereby; the applicant even though he is the person upon whose instructions the letter of credit has been established, but he is not a party in the letter of credit. Article 10(a), UCP confirms this where reference to the amendment of the letter of credit is necessary" Except as otherwise provided by article 38, a credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank, if any, and the beneficiary". Many commentators had argued that the letter of credit is a method of payment created to facilitate international trade transaction and promote cross borders' transaction how international trade can grow and improve in the light of the strict application of document's compliant system. At first, this argument might seem despite the apparent appeal of such arguments; According to Doyle and Bernard (1996) there has been a debate among commentators whether sub article 16(b) places the beneficiary "at the mercy of the applicant" when allowing the bank to turn to the applicant for a waiver of discrepancies found in the documents. Michael Doyle argues that by allowing the buyer - and not an "impartial paymaster" - to be the "arbiter" of the documents, it may cause the letter of credit mechanism collapse. Although most bankers are less concerned about such strictness than one might guess, the researcher argue that; strict compliance empower the letter of credit mechanism and often paves ways to restore consumers' protection and safety in terms of imported goods apart from trade partners personal trade interests. The banking Commission of the ICC clarified that when the bank rejects the documents it must act according to sub article 16(a): "When nominated bank acting on its nomination, a confirming bank, if any, or the issuing bank determines that a presentation does not comply, it may refuse to honour or negotiate" and must follow the procedure described under

sub article 16(c):" it must give a single notice to that effect to the presenter." The notice must state:

- i. that the bank is refusing to honour or negotiate; and
- ii. Each discrepancy in respect of which the bank refuses to honour or negotiate; and that the bank is returning the documents to the presenter. The notice required in sub-article 16 (c) must be given by telecommunication or, if that is not possible, by other expeditious means no later than the close of the fifth banking day following the day of presentation according to Article 16 (d) or otherwise it shall be precluded from claiming that the documents do not constitute a complying presentation, Article 16(f).

Commentators argue that if the notice of rejection has to be communicated to the presenter "no later than the close of the fifth banking day following the day of presentation", there is "no time to inquire the applicant whether it will accept the documents or not"(Dolanm, 2003). According to Opinion of the ICC Banking Commission R329 – 1998-1999; "Issuing Bank who sends a rejection notice without stating any discrepancies (which may be due to an administrative mistake), it is bound to honour the presentation even if valid discrepancies exist.

#### **4.8: Conclusions:**

The important thing for bankers particularly issuing bank, to remember is that the issuing bank is still bound and entitled on the light of the letter of credit autonomy to rely only on what documents say rather than on whether what applicant say in respect of documents. Consequently, it would be understood that; the objective of approaching the applicant according to this article is the 'giving the beneficiary the right to be paid irrespective of discrepant documents'.although; this is said to be one of the smart concepts in the UCP that may cause the letter of credit mechanism restored, but to my understanding the concept is structured in such a way as to allow the beneficiary to be paid irrespective of breaching the letter of credit contract. On the one hand we have to ask those who argue the contrary view, how do we expect applicant who is not a party to the letter of credit contract to give what he has not got?.So, we have to understand on the other hand that once issuing bank waived discrepant documents the documentary letter of credit has lost its attractiveness as a powerful method of payment provide necessary protection to the importer according to strict

compliance principle and the privity of contract rule.

Accordingly; the prevailing banking practice in Sudan has led to a misuse of this article by allowing drafts or documents to be honored even though it constitute obvious breach of letter of credit contract and act contra to the (Nemo dat rule). This practice is one which appears to contradict the intent of UCP rules, the privity of contract and the strict compliance principle as well. Under this situation, if payment is made by the virtue of sub article (16) there is no real benefit for the issuing bank and there is also no real protection on behalf of it, since it has to assume the risks that are inherent to the transfer of rights of the letter of credit according to product liability doctrine which assume the issuing bank liable by so doing.

The researcher considering that the concept and standard practice of approaching applicant by the virtue of article 16(b) was well stated but has been misused and distorted by commercial or banking practices in Sudan, what has obviously led to harm consumer's safety.

#### **4. 8.1: Results:**

The study has shown that; the average of all phrases was (4.57) with a standard deviation (0.932) and relative importance (%91.4).This proves that the majority of respondents agree with a high proportion of all phrases that measure the (impact of sub article 16 (b) of UCP 600 on Consumers' Safety in respect of imported goods under the Letter of Credit. Then we conclude that all hypothesis of the study, were acceptable hypothesizes and the following results were concluded:

- The first hypothesis of the study, which stipulates: (There is a negative relationship between sub article 16 (b) of UCP 600 and Consumers' Safety in respect of imported goods under the Letter of Credit). Is an acceptable hypothesis of all phrases.
- Issuing bank undertaking according to sub article 15(a): is that: to honor only when a presentation is complying Irrespective of what called for under Art.16 (b).
- The current flexibility granted under sub article 16(b) in terms of seeking applicant's waiver in the way it has been used by the parties involved

dismantle the letter of credit as a powerful payment instrument in international trade transaction .

- Sub-article:16(b), by allowing discrepant documents to be honored no doubt it constitute obvious breach of letter of credit contract and act contra to the (Nemo dat rule).
- Applicant is not a party in the letter of credit contract according to the doctrine of privity of contract which lays down that; "a contract does not confer rights on someone who is not a party to the contract ("third party rule"),.
- Approaching applicant by the virtue of article 16(b) was well stated but has been misused and distorted by commercial or banking practices, what has obviously led to harm consumer's safety in respect of imported goods
- The second hypothesis of the study, which stipulates: (Banking import's Regulations in Sudan affect Consumers' Safety in respect of Imported Goods under the Letter of Credit). Is an acceptable hypothesis of all phrases.
- The absence of banking regulations and measures governing the handling of discrepant documents under the letter of credit transaction encourage dishonest trade partners to dump the national markets with defective harmful goods.
- The absence of consumers' protection legislations enforcing commercial banking system to consider the issue of green imports and human aspect of trade.
- The third hypothesis of the study, which stipulates: (Product Liability Doctrine has an Impact on Consumers' Safety in respect of Imported Goods under the Letter of Credit). Is an acceptable hypothesis of all phrases.
- The absence of product liability of the trade partners and the letter of credit issuers undermine consumers and environment safety.
- The fourth hypothesis of the study, which stipulates: "Letter of credit procedures has an Impact on Consumers' Safety in respect of Imported Goods". Is an acceptable hypothesis of all phrases.

- The reputable theory is of the strict compliance of the UCP 600, contributes more to the consumers' safety and protection in respect of imported goods.
- Discrepancies in Beneficiary's Presentation could constitute a breach of the letter of credit contract and Beneficiary does not entitle to receive payment.
- Letter of Credit becomes a distinctive method of payment as payment is based on compliance of documents presented by the seller instead of compliance of goods delivered by the buyer under the underlying sale contract.

#### **4.8.2: Recommendations:**

The study has proposed the following recommendations:

- Issuing Bank in order to restore the letter of credit effectiveness, it would be of great importance if it adopts the Strict Compliance Doctrine as standard documents examination practice as prescribed by article: (2).
- When the issuing bank determines that a presentation does not comply, it would be of significant proactive protective decision to refuse to honour discrepant presentation.
- The prescribed model of documents examination illustrated by figure 3.3, (See appendix 4), which developed from the results of the study as an appropriate documents examination procedures makes a significant contribution to the banking practices in Sudan in this respect for the reason that it improve the letter of credit efficiency as protective power to provide the necessary consumers' safety in respect of imported goods. So, it would be of great usefulness that this empirical model to be adopted by the Central Bank of Sudan as guide line for banks when deciding payment under letter of credit.
- Since the recommended empirical model by this study confirms to what stated in article 16(a) of UCP 600. So it would be useful to invite the Central Bank of Sudan to regulate the prevailing banking practice in this respect by adopting the essence of this model in terms of new banking measures excluding the application of sub article 16(b) by virtue of article 1 that allowed exclusion and modification of UCP articles.

- It would be of significant importance if Consumers' Protection Act is drafted to safeguard and preserve consumers and environmental rights in respect of imported goods.
- It would be of great practical value to introduce consumers' protection legislations those obligate concerned bodies in respect of the letter of credit transaction to consider the element of consumers' safety and environmental issues.
- It would be of significant contribution if product liability under letter of credit transaction been adopted in respect of concerned parties.
- It would be useful if standardization department introduce legislation dictates that; Third Party Inspection Certificate (SGS or VERO VERTAS) satisfying Customs Department clearance requirements must be presented according to sub article 14(f) as letter of credit terms and conditions.
- The empirical findings of this study have policy implications for banking practice and consumers' protection in this respect particularly in Sudan. However; in general, there is no complete research study which provides miraculous solutions for all questions, in this respect. Therefore; the investigation of the letter of credit effectiveness in terms of Consumers' Safety in this study gives rise to other research questions. Thus; it would be useful to propose further research work in this field that deserves to be deeply investigated.

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## List of Appendices

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**Appendix 1**  
**The Questionnaire**

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

**Sudan University of Science & Technology**

**College of Post Graduates**

**Questionnaire designed in fulfillment of the requirement of a PhD thesis in banking**

**Entitled**

**The Letter of Credit as Powerful Instrument for Improving the Consumers'  
Safety in respect of Imported Goods**

**Supervisor**

**Prof. Khalid Hassan Elbeely**

**Prepared by:**

**Abuzer Abbas Alhaj Abdullah**

**Questionnaire No :(                    ).**

**November 2015**

**Dear Participant,**

This questionnaire is designed in fulfillment of the requirement of a PhD thesis in banking entitled the Letter of Credit as Powerful Instrument for Improving the Consumers' Safety in respect of Imported Goods.

In order to study the aspects of the documentary letter of credit and the interrelationships between the study variables and the situational factors those affects the consumers' safety in respect of the imported goods.

The information you provide will help us better understand the quality of imported goods under the letter of credit issued subject to UCP 600. Because *you* are the one who can give us a correct picture of how *you* experience the letter of credit as a method of payment in International Trade Finance, I request you to respond to the questions frankly and honestly. Your response will be kept *strictly confidential*. Only members of the research team will have access to the information you give. In order to ensure the utmost privacy, the numbers, or the completed questionnaire will not be made available to anyone other than the research team.

Thank you very much for your time and cooperation. I greatly appreciate your organization and your help in furthering this research endeavor.

Best regards.

**Abuzer Abbas Al-Haj Abdullah**

**PhD, Student.**

**Tel: 0912186024**

## SECTION ONE: ABOUT YOURSELF

Please Mark (✓) the boxes representing the most appropriate responses for you in respect of the following items.

### ✓ Age:

- Less than thirty years.
- 30 – 39 years.
- 40 – 49 years.
- 50 – 59 years
- 60 years and above.

### ✓ Academic qualifications:

- B.Sc.
- M.Sc.
- Ph.D.
- Other

### ✓ Specialization:

- Banking.
- Finance.
- Management.
- Economics.
- Accounting.
- Other.

### ✓ Job title:

- Branch manager.
- Foreign exchange department manager.
- Finance department manager.
- Risk management manager.
- Internal Auditing manager.
- Documentary credits Head of Department.
- Other.

✓ **Professional qualification:**

- CDCS.
- CIB.
- Others.

✓ **Experience :**

- Less than 5 years.
- 5-10 years.
- 11-15 years.
- 16-20 years.
- More than 20 years.



5.	By approaching the Applicant for a waiver of the discrepant documents in response to sub article 16(b); the Issuing Bank draw the import transaction away far from the letter of credit contract domain.					
6.	The discretion to approach applicant for a waiver of the discrepant documents under sub article 16(b), must be restricted even if all parties to the letter of credit were all ready agreed to.					
7.	The use of the term ‘party’ in the definition of applicant is not intended to imply that an applicant is a party to a documentary credit and thereby must not be approached for a waiver of the discrepant documents irrespective of sub article 16(b).					
8.	In situation where the Applicant was given the right to waive discrepant documents under sub article 16(b), this will definitely let the doors opened wide to acceptance of documents which are not in conformity with the sale contract.					
9.	The acceptance of discrepant documents under sub article 16(b), most likely will lead to the prevalence of defective goods.					

**Hypotheses 2:**

**Banking import's Regulations in Sudan affect Consumers' Safety in respect of Imported Goods under the Letter of Credit.**

**2. Measuring the impact of the Banking Measures and Regulations.**

To what extent would you agree with the following statements						
No	Statement	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree
	العبارة	أوافق بشدة	أوافق	محايد	لاأوافق	لاأوافق بشدة
1.	Banking import's Regulations in Sudan pay no attention to the negative flexibility under UCP 600 in respect of waiving discrepant documents, and by so doing the letter of credit will cease to perform as the most efficient international method of payment in safeguarding the Trading Partners Interests.					
2.	Banking import's Regulations in Sudan stated that; letters of credit must be issued subject to UCP 600; accordingly any inappropriate application will undermine the consumer's rights.					
3.	Banking import's Regulations in Sudan allow Issuing Bank to approach Applicant for the waiver of discrepant documents and by so doing not serving the public interest.					
4.	Banking import's Regulations in Sudan permits the acceptance of discrepant documents and by so doing serving the overseas Exporter's interests on the account of Importing Country's Interests.					

5.	Banking import's Regulations in Sudan by accepting discrepant documents help facilitate the release of goods that are not in strict conformity with letter of credit terms and conditions.					
6.	Banking import's Regulations in Sudan obligate Applicant to require presentation of third party inspection certificate as a letter of credit condition, but without acting according to sub article 14(f), by so doing dishonest trade partners can tender documents that not serve the intended purpose.					
7.	Banking import's Regulations in Sudan not obligate Applicant to include presentation of certificate providing that proper labeling instructions and warnings were satisfied according to sub article 14(f), therefore; by so doing, this will cause environmental hazard.					
8.	Banking import's Regulations in Sudan not obligate the Applicant to present proforma invoice authorized by the concerned Government Technical Department in respect of all imported goods under the letter of credit and by so doing a great deal of blew standard imported goods will dump Sudanese Markets.					
9.	Banking import's Regulations in Sudan not obligate the Applicant to authenticate any amendment in respect of imported goods' specifications, and by so doing this will serve the interests of dishonest trade partners under the letter of credit transaction.					



7.	The adherence strict liability applied in product liability makes the Issuing Bank responsible for all defective goods due to breaching the letter of credit contract.					
8.	The prevalence of effective product liability legislations, support Issuing Bank's commitment in lieu of due diligence and reasonable care.					
9.	The prevalence of effective product liability legislations and the moral and divine commitment as well; oblige the Issuing Bank to preserve the public interests rather than the Applicant's self interests in terms of discrepant documents release.					
10.	The prevalence of effective product liability legislations, improve the letter of credit efficiency.					

#### Hypotheses 4:

Letter of credit procedures has an Impact on Consumers' Safety in respect of Imported Goods .

Measuring the potential effect on Consumers' Safety.

To what extent would you agree with the following statements						
No	Statement	Strongly agree	Agree	Neither agree or disagree	Disagree	Strongly disagree
	العـــــــــــــــــبارة	أوافق بشدة	أوافق	محايد	لاأوافق	لاأوافق بشدة
1.	Consumers have the right of Protection from products and services that are hazardous to their health; accordingly the imported goods have to provide this protection.					
2.	Consumers have the right to be provided information that ensures all products are accurate and truthful; but Imported Goods to Sudan usually not calling for documents certifying that proper labeling instructions or warnings on product or its container had been satisfied, accordingly, this definitely undermine this right .					
3.	Although Consumers have the right to request money or other benefits as fair compensation for a company's mistake or anybody involved in importation of defective goods, but the absence of such legislations will negatively impact the Consumer's Safety.					
4.	Although Consumers have the right to live and work in an environment that does not endanger their health. But, the absence of proper imports regulations in Sudan endangers environment.					

5.	Although Consumers have the fundamental right of access to healthy food, healthy water and safety shelter, but the prevalence of defective imported goods undermine it.					
6.	The absence of Consumers' protection Acts in Sudan deprive Consumers from the essential rights of access to friendly imported goods.					

**I sincerely appreciate your time and cooperation. Please check to make sure that you have not skipped any questions inadvertently, and then drop the questionnaire in the locked box, clearly marked for the purpose, at the entrance of your department.**

**Thank you!**

**Appendix 2**  
**Documents Examination Model**

(Figure: 3.18)

