

The method of payment in international trade law with a look in dealers' methodology

O método de pagamento no direito internacional do comércio com um olhar na metodologia dos negociantes

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Abstract:

In today's world, there is no country without international trade and the growing global trade reflects the importance and need of all countries for global exchanges. In this regard, the issue of international payments is emerging as one of the most important stages in a commercial transaction, and failure to know enough about the payment methods and the lack of knowledge about the risks of each of these methods can make an international businessman face big problems and sometimes become bankrupt for this reason. Therefore, we need to explain this method to Iranian businessmen by explaining various payment methods in international trade, so that they can choose the best possible method during this period of time. After reviewing the various methods and paying attention to the interests of each, given the fact that the opening the letters of credit in Iran is subject to sanctions, it is possible to consider the method of payment by stockholders as a more desirable option or do mutual trade, thereby preventing possible damages.

Keywords: International trade, letters of credit, draft, exchange, mutual trade

Resumo

Abstrato:

No mundo de hoje, não há país sem comércio internacional e o crescente comércio global reflete a importância e a necessidade de todos os países para trocas globais. Nesse sentido, a questão dos pagamentos internacionais está emergindo como uma das etapas mais importantes de uma transação comercial, e a falta de conhecimento suficiente sobre os métodos de pagamento e a falta de conhecimento sobre os riscos de cada um desses métodos podem fazer com que um empresário internacional venha a enfrentar grandes problemas e, às vezes, falir por esse motivo. Portanto, precisamos explicar esse método

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aos empresários iranianos, explicando vários métodos de pagamento no comércio internacional, para que eles possam escolher o melhor método possível durante esse período de tempo. Após analisar os vários métodos e prestar atenção aos interesses de cada um, dado que a abertura das cartas de crédito no Irã está sujeita a sanções, é possível considerar o método de pagamento pelos acionistas como uma opção mais desejável ou fazer acordos mútuos de comércio, evitando possíveis danos.

Palavras-chave: comércio internacional, cartas de crédito, minuta, troca, comércio mútuo

1. 1. Introduction

Given the current state of trade in Iran and the fact that all traders in the international trade are not aware of all their rights, international traders occasionally experience major failures in the international arena and sometimes in the less developed provinces of the country. In the last decade, in the northern Khorasan Province as a new province, approximately twenty people in trade with the countries of Central Asia and some in trade with European countries failed to receive their money after sending goods, and for this reason, they were unable to settle their debts within the country and they have gone bankrupt. "Some other manufacturers have also brought in some kind of domestic trade, in order to survive international trade, by selling their goods to transport companies (truckers), and guarantee them that, beyond national boundaries, there is a certain customer of a commodity and they take carriers to a potential customer, and by selling goods to them and receiving a payment, do a kind of international trade, that this method has a lot of risks and basically conflicts with professional trade." This unknowingness causes irreparable damages to business, which should be compensated in some ways. Consequently, writing a thesis in this area and explaining all payment methods is necessary for the needs of the community. In this thesis, it was tried to fully describe all methods of payment, such as the use of letters of credit and its types, as well as the documents of collection (draft), which are common practices in international trade. A brief discussion is provided about e-commerce, which is currently used for lower-level trade, and the purchase of international markets, which nowadays leads to benefit from the so-called luggage business.

2. 1. Problem statement

Lawyers, including judges, usually have an inaccurate picture of the legal nature of documentary letters of credit. For this misunderstanding of the legal nature of the payment instrument, two reasons can be cited: The first reason is that in legal terms, documentary letter of credit is complex and unknown. On the other hand, documentary letters of credit are like contracts, and they have the characteristics and

effects of a contract. And, on the other hand, the principles governing the contracts are not fully compatible with this tool. The second reason is that, in practice, in the field of documentary credits, a small number of judges and lawyers specialize. So, the first time a lawyer or judge confronts with documentary letters of credits in his profession is when he is faced with a case in this regard.

Today, banks play a very important role in facilitating domestic and international business transactions. Specifically, in the international trade scene, it can be argued that there is less international transaction or contract that can be concluded and implemented without the intervention and assistance of the banks. The invention and use of various banking tools, such as documentary letters of credit and bank guarantees, has solved many of the problems caused by distance and lack of direct contact between international traders.

2. 2. Documentary letter of credit and its concept

Due to the clarity of the payment framework of documentary letter of credit, most commercial financing methods are implemented through this method of payment. In today's world of commerce, despite the encouragement of businessmen to use simpler methods such as the method of collection draft or open account method, as well as the existence and limitations and complexities of the method of documentary letter of credit, it is safe to say that a large volume of import and export of many countries is carried out in the form of a method of credit.

2. 2. 1. The whole process of documentary letter of credit method

The method of documentary letter of credit is used in this way that in the process of exchanging document related to goods and its payment, the relevant banks enter the business cycle and make trust and assist in the payment of the documents. It is worth noting that the role of buyer and seller banks in the method of documentary letter of credit is far beyond the role of these banks in the method of collection draft. In fact, in the method of documentary letter of credit, relevant banks, in particular, the buyer bank, somehow, outline the whole process.

Documentary letter of credit is a form of payment, in which, with the intervention of banks, as reliable and international figures, the exchange of documents and money is more reliable.

2. 2. 2. The definition of documentary letter of credit

"A definitive commitment by the issuing bank (buyer bank) to pay the sight (cash) or deferred payment (usance) document to the seller, if the seller submits the documents in accordance with the terms stated in the specified deadline".

In plain language, documentary credit is a conditional obligation by a bank to another bank.

In specialized language, the letter of credit is the written commitment of the issuing bank, which, according to the request of the buyer of the goods, is provided to the seller / beneficiary by the advising bank, so that in accordance with the payment instruction, at the specified due date of the credit, subject to the complete observance of the instruction. In summary, the credit is the conditional obligation of the issuing bank to pay the debt to the credit beneficiary. In other words, the documentary letter of credit is the commitment of the issuing bank to pay or accept payment (in the future) against the beneficiary of credit, provided that the beneficiary of credit complies with the terms and conditions contained in the instrument of credit and provides the prescribed documents in due time.

1. 3. Documentary letters of credit can be divided in various ways.

A. The types of documentary letters of credit in terms of time and payment period:

- 1- Sight documentary credit
- 2 – Seller’s usance letters of credit
- 3 – Deferred payment letter of credit
- 4 – Acceptance usance letter of credit
- 5 – Buyer’s usance letter of credit
- 6 – External refinance
- 7 – Refinance (internal usance)

B - Documentary letter of credit in terms of how to pay:

- 1 – Revolving documentary credit
- 2 – Negotiable documentary credit
- 3 - Installment documentary credit
- 4 – Red clause documentary credit
- 5 – Green clause documentary credit

C – The types of documentary credit in intermediary trading methods:

- 1 – Transferable and non-transferable documentary credit
- 2 – Back to back documentary credit

D – The types of documentary credit in terms of confirmation and double assurance:

- 1 - Confirmed and unconfirmed documentary credits
- 2 – Standby documentary credit

E – Other types of documentary credit:

- 1 – Revocable and irrevocable documentary credit
- 2 – Operative and non-operative documentary credit

It is important for the seller to know how he will receive the credit he claims. There are four possibilities in this regard. Credit may be used through sight payment, deferred payment, acceptance or its transfer. In the credit itself, it should be determined which of these four methods is chosen by the parties, and this should be resolved in advance in the contract on which the credit is based.

1. 4. Electronic payment

The start date for the electronic payment can be considered in 1918, when federal banks in the United States transferred funds through telegraph. Electronic payment is the payment (money) against the goods and services in the e-commerce.

What is e-commerce?

E-commerce is performing all commercial activities, using computer communication networks, in particular, the Internet.

E-commerce is a paperless business; by e-commerce, the exchange of information on purchase and sales and the information necessary for the transportation of goods will be done with less effort and banking exchanged will be further accelerated.

In the 19th century for the first time, trades were made by telephone. In the mid-20th century, first credit cards were introduced, and in the 1960s, the computer networks of e-mail and bank automated funds were used. The emergence of the Internet in 1989 and the widespread use of personal computers in 1990 were among the most important factors in the development of e-commerce.

Given that today in the advanced countries of the world and in the extensive electronic markets, such as eBay, Amazon and etc. electronic payment has entered the international trade arena, but in most cases, the exchange rate of money in this method is lower than other methods. So we decided to review this payment method as well.

2. 4. The advantages and disadvantages of e-commerce

- Advantages:

- 1 - Increased sales
- 2 - Increasing the living standards of the people
- 3 - Increased revenue
- 4 - Increased investment

3.4- Disadvantages:

- 1 - Reduced production rate

2 - Reducing the production of bankrupt companies

3 - Unknown effect on human social relationships

4-4- The methods of payment in commerce

4- 4-1- Electronic money

Electronic money is one of the electronic payment mechanisms used for anonymous trades and has led to the expansion of e-commerce. No material payment tools, such as paper money and coins, are involved in the electronic money mechanism. When tendency towards credit card was increased as payment mechanism and Internet payment systems were accepted by communities, electronic money was designed as another form of electronic payment for electronic transactions. Today, in many cases, cash has been replaced by electronic money.

Other payment mechanisms, such as smart cards and even electronic checks, can be classified as a forms of electronic money.

The Mark Twain Bank in the United States was among the banks that began issuing electronic money. This kind of payment mechanism involves purchasing credits from a bank with a certain value used for e-commerce. Many traders and consumers are choosing to pay electronic money in their trades because losses in this type of payment mechanism have decreased. People who cannot access credit cards for lack of adequate credit can use electronic money. When a person purchases a commodity with paper money, the businessman usually does not ask about his identity (even if someone purchases commodities such as alcohol, tobacco, arms, etc.). The trend towards electronic internet- anonymous transactions in the United States relative to Europe is negligible. Of course, it's worth noting that Europeans were the first consumers to use these types of deals. In Europe, most consumers tend to use this type of payment in online transactions.

The authenticity and indisposition of electronic money must be verified, in this case there should be a confirmatory system that will do so, like the paper money that has the serial number. When someone purchases a product, they will withdraw the electronic money from their personal account at the bank holding the account. It does not matter that the payment for a product is digital. Payment is the main component of any business. In fact, doing any deal without paying is not perfect.

Payment can be called a trading power supply. Prompt and secure payment in e-commerce is one of the main issues.

Payment methods	2006 (%)	2010 (%)	2012 (%)
Credit cards	24.06	26.09	23.01
Credit checks	45.7	32.8	21.6
Digital money	19.5	18.5	16.7

Table - Electronic payment methods in the years 2006, 2010, 2012 and their percentage

4-4-2- Problems with electronic payment methods

Today, there are different methods for electronic payments, but each of these methods can be used for specific applications in a specific environment. For example, the most used electronic payment method is the use of credit cards. Although the use of these cards is very common, but since this method of payment is not primarily designed for electronic payment, it has many problems (including poor authentication, failure to verify the payer's authorities, denial of one of the parties, the seller's access to the buyer's personal information, the absence of anonymity of the buyer, the possibility of simple fraud, non-globalization (due to the dependence on the financial system and certain rights)). To solve these problems there are two popular solutions: SSL (Secure Sochat Layer) and SET (Secure Electronic Transaction). The detailed description of these protocols is beyond the scope of this article, but the use of these protocols does not solve all the problems. For example, using SSL does not solve the above problems, because in SSL only the server is authenticated, and SSL encryption only protects data over the transmission.

But SSL with all the shortcomings is still better than SET. SSL has a lot of cost, needs software for the vendor, is time consuming and difficult to use. It's not standard, it's not publicly accepted, it's not implemented in browsers and its benefits are for financial and credit institutions only, but its costs must also be paid by sellers that are not interesting to them. Other payment methods also have problems.

In addition, the use of a credit card in Iran also has another big problems, which, assuming that the above problems are solved, still will prevent the use of it in Iran. Also, in terms of business culture, the buyer does not trust the vendor to give him his credit card details so that he can withdraw it.

5-1- The effect of the relationship between mutual trade and economic development

In contrast to the theory of "trade as the engine of economic growth," a group of economists believes that international trade not only does not generate economic growth it also inhibits economic growth. Among these critical theories, one can refer to Perbisesh and Singer's ideas. The two argue that the increasing deterioration of foreign exchange trading and the balance of foreign payments of developing

countries resulting from foreign trade is considered a major factor in reducing their economic growth and development.

A large number of economists continue to regard international trade as the engine of economic growth in a country. Among these economists, we can mention Gottfried Hobberler; he writes:

"My comprehensive conclusion about foreign trade is that international trade has contributed greatly to the economic development of underdeveloped countries in the 19th and 20th centuries. As a result, it can be expected that in this analogy, it will contribute to the economic growth of the current developing countries. "

In addition, mutual trade has a direct impact on important variables such as foreign revenues, production enhancements, keeping balance in payments balance, and stabilizing or increasing in revenues.

This business practice has indirect benefits and effects, which can be summarized as follows:

1. Doing mutual trade, in particular, of type of by-back transactions
 2. The indirect effect of mutual trade on healthy economic competition
- 5-2- Document negotiation without recourse

Document negotiation without recourse is one way of financing, in which a trader purchases definite and non-contingent obligations and liabilities and future maturities related to the supply of goods without recourse.

In this transaction, the exporter transfers the right to claim the money of goods and services, which have been sold to the importer under the contract, in exchange for a cash, without recourse, to the negotiating bank.

The bank assumes the collection of claims of the exporter in its own favor and accepts the full risk of non-payment by the importer.

The exporter, with the assignment of its claims to the bank, is excluded from financial involvement in the transaction with the buyer and is only responsible for the accuracy and quality of the project implementation.

Main documents in a transaction usually include promissory note, bill of exchange, and office debt or deferred payment letter of credit.

The promissory notes are issued by the buyer (importer) and payable to the order of seller (exporter) and are endorsed by seller and payable to the order of the negotiating bank. Bills of exchange are also issued by the seller (exporter) payable to the order of himself for the buyer (importer) and are accepted by the buyer and are endorsed in the favor of negotiating bank. The method of guaranteeing the

promissory notes and bills of exchange by a first-rate bank is that the original of those notes is endorsed and also the name of the buyer (importer) is inserted on them.

6. Conclusion

Looking at the global arena and naming the earth as a world village, we will find that international trade is one of the requirements of human life in the present age. Therefore, attention to this is one of the major concerns of the great scholars of economics and law in different countries, and this cannot be ignored.

Payment in the international trade arena is the most important part of a contract, and if traders in all countries have full knowledge of this subject, they will face less problems in international trade. So, different methods of payment in international trade should be examined and their advantages and disadvantages should be introduced to the community.

In international trade, various methods of payment are used, which should be considered, depending on the infrastructure and the existing restrictions of the countries, in order to be able to determine, from various ways, a way that is in the interest of that society and to direct the society towards that.

In a normal society, which has no limitations, and all the infrastructure of payment in international trade is ideally suited, the method of payment by documentary credits can be chosen as the best practice, because the parties' risks are reduced to a reasonable level.

In using the collection method, care must be taken to be used in buying more than sales, and in order to reduce the cost of issuing in international trade, we as a buyer must give a time draft not confirmed by the bank and, when the draft is going to benefit us, we will try our best to get a confirmed cash draft.

The use of certain types of documentary letters of credit in international trade is not recommended. This is because, firstly, they will eliminate the credentials of a businessman, and secondly, they will also have high costs. Revocable documentary credits are a clear example of this, in which the two sides of a business buckle with a lot of risks until the final minutes.

To be more confident, an international businessman should be careful to indicate in his sales contracts that the issued credit should be approved and the costs of this should be borne by the issuer. But in international purchases, he should not explain the above mentioned case, so as not to guide the seller's mind to it, because not mentioning the above case, it itself means unverified credit.

In countries that are not in a good level in terms of new payment methods in international trade, and it is not possible to use documentary credits for them, they should have a special look at their money changers and take the necessary measures to empower them.

Electronic payment may also be considered as one of the payments of the present day, because it eliminates the role of intermediaries as much as possible, but it should not be ignored that this is not a new way, and it is virtually the same as the previous payment method, which is faced with a lot of risks.

Mutual trade is mentioned for the first time in this article as a payment method and this is due to the fact that there is no price and the object of sale and is like the exchange of nominate contracts in our country, and both the delivered goods and received goods can be considered as the transaction price.

In general, the point that matters is that it is not easy to predict the prospect of future development of global trade, and in particular the trade of developing countries with the rest of the world. What is important in global trade and reveals the importance of mutual trade more and more for developing countries is that development of countries and individuals depends on the development of every country and every one, because more than ever, the future of all human beings depends on each other, and all studies and observations indicate that this interdependence will increase in the coming decades.

In the financial structure, the link between trade and exchange to each other and the requirements arising from the new conditions, the contradiction of Islamic teachings with rioters has led to a religious justification of the activities of the inventors, and has even promoted them to the highest social levels, and in Islam's view, this profession has been emphasized.

In the financial structure, the link between trade and exchange and the requirements arising from the new conditions have changed the contradiction of Islamic teachings with usury to the justification of the activity of money changers and even increased them to the highest social levels and in Islam's view, this profession has been emphasized.

References:

- The Holy Qur'an
- Ebrahimi, M. H. 1997. The Money of Exchange Bank, the Publication of Islamic Advertising Office.
- International Chamber of Commerce. 2008. Uniform Customs & Practice for Documentary Credits (UCP 600), translated by Mohammad Saleh Zooghi, Second Edition, Tehran: Publication of the Iranian Committee of the International Chamber of Commerce.
- Ettehadieh, M. 1998. Here is Tehran. The History of Iran.
- Eric, B. 1927. The Finance of International Trade, translated by Mohammad Reza Farsiani, Paz Publication.
- Ashrafzadeh, H and Tarom Saries, M. 1988. The Collection of acquaintance with commercial-economic definitions and terms, Institute of Trade Studies and Research.
- Asghar Zade, A. 1995. Introduction to mutual trade, Tehran: Institute for Trade Studies and Research.

- Amini, T. 2001. Documents from Contemporary Zoroastrians of Iran, Tehran: The National Archives of Iran.
- Bar, R. 1988. Islamic Economics, Translation by Manouchehr Farhang, Tehran: Soroush Publication.
- Bastani, P. Without the Date of Publication. The Types of Documentary letters of Credit and Collection drafts, The Journal of Electrical Industry.
- Beheshti, M. H. 1990. Uses in Islam, Tehran: Islamic Culture Publishing Office.
- Beyzaee, S. I. 2006. Money, Currency, Banking and Monetary and Financial Policies, Tehran: Noor--Elm.
- Wolt, L. Trade without money. Translated by Seyyed Mohammad Hossein Adeli, Tehran, Rasa Institute of Cultural Services.
- Tashakkori Bafghi, A.A. 1950. The Broker Letter of Jamshidian trading company in Rasht to Shah Bahram in Tehran. Specialized archival documents.
- Durant, W. 1991. History of Civilization, Tehran.
- Diyanat, A. 1988. Historical Culture of Measurements and Values, Tabriz: Nima Publication.
- Rivar, J. 1990. The History of Bank and Banking, Translated by Shirin Hashtroudi, Tehran: Islamic Revolution Publications and Education Organization.
- Shajari, H. 1973. Currency Theory, Rasht: Sepehr Publication (Rasht Business School).
- Shirovi, A. H. International Trade Law, Tehran: SAMT Publication.
- Farrahi, Y. 2010. Money, Currency and Banking, Scientific Editor: Iraj Tootoonchian, Tehran: Commercial Publishing Company.
- Floor, W. 1986. Surveys of Iranian social history in the Qajar era, translated by Abolqasem Sari, Toos Publishing.
- Ghadiri ASI, B. 1985. Monetary Theories, Tehran University Press.
- Garebaghian, M. 1992. Growth and Development Economics, Tehran: Nay Publishing.
- Kasakovsky.1976. Memoirs of Colonel Kasakovsky, translated by Abbasgholi Jali, Simorgh books.
- Kazemi, Ali. Without Publication Date. Documentary letters of Credit in Commercial Operations. Economic Instruments Journal, No. 22.
- Schmidtov, K. 2012. International trade law, translated under the supervision of Behrooz Akhlaghi, Tehran: SAMT.
- Kowsari, S. 2011. Comprehensive Performance of Exchange Industry, Tehran: Rowshan.
- Golriz, H. and Majedi, A. 1989. Money and Bank from theory to policy making, the Publication of Banking Education Center and Central Bank of the Islamic Republic of Iran.
- Golriz, H.1988. The descriptive dictionary of the vocabularies and terminology of the economic sciences.

- Gobineau, C. 1986. Three years in Iran. Translated by Zabih Allah Mansouri, Tehran: Farrokhi.
- Motahhari, M. 1978. Uses, Bank and Insurance, Qom: Sadra.
- Mahdavi, A. and Afshar I. 2001. Yazd in the documents of Amin al-Zarab / Iranian Culture /

Latin references:

De miramon. Jacques. 1982. Counter trade, a modernized barter system, 114 OECED observer, January

Baker & Cunningham. 1983. Counter trade and trade law, journal of comparative business and capital market law,

Kumara primarg commodities.1984. Counter trade and cooperation among developing countries
lgublganaujosavia

Gold steam counter trade: as top gap solution to foreigner change short a Jeff dealer serve bank of new work network 1984

Gray, price, instability hits expansion, financial times, February11, 1986

European Asian Bank AG v. Punjab & Sind Bank (No. 2) [1983]

Francis,dick,the counter hand book , combridge woodhud- Faulkner,1987

W.L.R.642.See E.P. Ellinger,"Discount of Letter of Credit," [1984]

Recueil Dalloz Sirey 1987, 9ecashier– chronique Michel Vasseur in

Forestall Mimosa Ltd. V. Oriental Credit Bank Ltd. [1986]

Mackiewicz, meissa, international trade certificate promoted by bank of boston the American bank, erdecember21 1984

John c. griffin, and William rouse ,counter trade as a third word debelopment starategy,third word quarterly ,yanuary1986

Gerhand maier , costs and venefits of international barter ,interconomics ,may-june 1988,pp.116-120

Ellinger. E.P.I Letters Of Credit in Norbert Horn (ed) The Of Law Of Intenational Trade Finance. Kluwer Law and Taxation Publishers. Deventer. 1989

European Asian Bank AG v. Punjab & Sind Bank (No. 2) [1983] 1 W.L.R

E.P. Ellinger,"Discount of Letter of Credit,"[1984] J.B.L.

European Asian Bank AG v. Punjab and Sind Bank (No. 2) [1981] 1 W.L.R.

Michel vasseur in recueil dalloz sirey 1987 9e cashier chronique

Nordskog v.National Bank (1922)10 L.I.L.R

Forestal Mimosa Ltd.v. Oriental Credit Bank Ltd. [1986] 1 W.L.R

Ian Stach Ltd v. Baker Bosley Ltd [1958] 2 Q.B/130; W.J. Alan & Co. Ltd.v. EL Nasr Export and Import Co.(1972) 2 Q.B. 189.Ets Soules & cie v. International Trade Developmevt Ltd.(1979)

Rep. 122.129 European Asian Bank AG v. Punjab and Sind Bank (No. 2) [1981]
Rep.651, 129; [1983] 1 W.L.R. 642, 649 (C.A.):Bank Negara Indonesia 1946v.Lariza (Singapore) Pte. Ltd
[1988] A.C. 583.See also R.M. Goode,in [1981] J.B.L/ 150; C.M. Schmitthoff, "The Transferable Credit" in
[1988]
Cohn v. Boulken(1920)36 T.L.R..
Dicey and Morris on The Conflict of Laws (11th ed.1987)Vol. 2
Barclays Bank inter national Ltd. V. Levin Brothers Ltd (1977) Q.B.
Calico printers association ltd.v. Barclays bank (1930) 36 com. cas.9
In nova knit ltd. V kammgarn spinnerei gmbh (1977) 1 w.l. r 10
Credito italiano v.m.birnhak& Sons Ltd. (1967) 1 Lioyds Rep 11
Leigh and Sillival Ltd. V. Aliakmon shipping Co. Ltd. {1985} Q.B.350 (C.A.)
affd. {1986} A.C. 785(H.L.)
Banks will not examine documents in order to obtain instructions (URC 522, Article 4, a.ii)
[LR99] David Lucking-Reiley: Auctions on the E-Commerce – Concepts and Technologies – WS02/03 ©
Hupe, Matthes, Schmidt 2002
TEKES, teknologiakatsaus 111/2001, uudentietotekniikan vaikutukset liiketoimintaan 111/2001(referenced
29.3.2006

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