

The Rule of Autonomy in the Letter of Credit Process; A Comparative Analysis of the Fraud-Exception Rule

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Abstract

Trade within and among nations represents a significant essence of state and individual affairs in the international arena. The development of international trade, facilitated by globalization, yields for new measures for the purpose of coping with the developing trade related aspects and Letter of Credit can be regarded as one such instrument. Principle of autonomy can be identified as the underlying principle that inspires sellers and buyers to utilize the letter of credit process for their transactions to strengthen their confidence by incorporating banking institutions for certain functions. However, since the principal contract is treated as a contract that is distinct from the letter of credit arrangement it raises issues as per when payments can be dishonoured. Furthermore, it further raises a question as to whether payments should be made irrespective of the prevalent issues in performing the obligations that are depicted in the principal contract. Therefore, inspired by the qualitative approach, the research focused on the instances where the letter of credit process can be interfered by courts of law and thereby challenge the autonomy of the process by referring to primary and secondary data sources along with an analysis which inquires the conflicts that may arise due to intervention by courts in such affairs. The available sources that exemplify the exceptions for the principle of autonomy in the letter of credit processed notes a restrictive approach while attempting to protect the sanctity of the process by minimizing unnecessary intervention by courts. The reasons for such approach that is utilized by courts in checking and balancing the issues there exist between parties to the letter of credit process further suggests the conservative ideology that portrays the importance of preserving the reason for which the letter of credit process was introduced.

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Introduction

Letter of Credit (LOC) can be regarded as one of the most important commercial oriented constructs which fosters trade among international borders as well as within national borders. It is one of the most commonly used instruments international trade (IT) and its value in trade far from easy to quantify.¹ The importance of LCs is further exemplified when its prominence in IT is given consideration as LCs are referred to as the “life blood of international Commerce” by courts and scholars.² Such perception on LCs clearly throws light on the importance of its role in the commercial world. As a response to the excessive use and acceptability of LCs the Uniform Customs and Practice for Documentary Credits (UCP 600), issued by the International Chamber of Commerce (ICC), was introduced for the purpose of laying down a platform under which contracting parties, according to their discretion as per Article 1, can perform international transactions with precision and maximum effectiveness³.

1 Roberto Bergami, “The Link Between Incoterms 2000 and Letter of Credit Documentation Requirement and Payment Risk” (2006) 1 Journal of Business Systems, Governance and Ethics.

2 Carole Murray, David Holloway and Daren Timson-Hunt, *Schmitthoff's Export Trade: The Law and Practice of International Trade*. (Sweet & Maxwell 2012).

3 Thanuja Rodrigo, “UCP 500 to 600: A Forward Movement” (2011) 18 Murdoch University Law Review 1

The arrangement of LCs is seen as an independent agreement exclusive from the contract of sale that is entered into by the buyer and the seller.⁴ Therefore, the obligations that stems from LCs towards the parties are distinct from that of the primary contract that is the contract of sale ⁵. Additionally, as a result of the separation that is made between the LC and the primary contract of sale questions arise as per the deficiencies in the performance of the primary obligations by the sellers and buyers can affect the LC process. Furthermore, if the LC process can be affected as a result of any such deficiency, how the courts can intervene also appears as an area that should be considered to deduce a clear-cut idea as per the practical implications on the independence or autonomy of the LC process. Therefore, with reference to the aforementioned facts, the purpose of the analysis henceforth will be to briefly identify the autonomy that is guaranteed to transactions involving LCs through considering its legal acceptability in light of UCP 600 and the United Nations Convention on Independent Guarantees and Stand-By Letters of Credit (UNCIG) along with selected jurisdictions.

4 John Lowry and Loukas Mistelis, *Commercial Law: Perspectives & Practice* (Butterworth/LexisNexis 2006).

5 Ross Buckley and Xiang Gao, "Development of the Fraud Rule in Letter of Credit Law: The Journey So Far and the Road Ahead." (2002) 23 *University of Pennsylvania Journal of International Economic Law* 663
<<https://scholarship.law.upenn.edu/jil/vol23/iss4/2/>> accessed March 15, 2020.

Analysis

Introduction to the Transactions Involving LCs LCs can be identified as an engagement by an issuing party, including a bank or a person but usually a banking institute, to pay a certain amount of money to a beneficiary after the required documentation is duly presented as per the agreement.⁶ Therefore, LCs can be perceived as a mechanism that assures the effective performance of the obligations that exist between the buyer and the seller due to a pre-entered contract of sale, mainly making the payments. For instance, in terms of IT, the common concern faced by a buyer would be having to make payments for goods before he/she/it gets possession of the goods and in certain instances without assurance as per goods. Similarly, in terms of the seller the concern will be non-payment for the goods by the buyer after the possession of the goods is transferred to the buyer.⁷ Hence, as claimed in the former sections of this analysis, it is reasonable to suggest that the importance of LCs is derived mainly through its ability to provide assurance over such concerns, which is also the main purpose behind it.⁸ There are different types of LCs and the basic common

6 Dianne Dann, "Confirming Bank Liability in Letter of Credit Transactions:

Whose Bank Is It Anyway?" (1983) 51 Fordham Law Review

<<https://ir.lawnet.fordham.edu/flr/vol51/iss6/2/>> accessed March 15, 2020.

7 Jennifer Shin, 'Key Issues with International Payments' (*Score.org*, 2013)

<<https://www.score.org/blog/key-issues-international-payments>> accessed 3 October 2020

8 Lakshman Marasinghe, *Principles of International Trade Law* (VijithaYapa Pub 2013).

mechanism pertaining to LCs can be explained as follows.

The LC process initiates as a result of a contract of sale entered into under the common law of contracts, referred to as the underlying contract, by a seller/ beneficiary/ exporter and a buyer/ applicant/ importer on agreed conditions and warranties⁹. Secondly, a contract will be formulated regarding the LC between the buyer and with the issuing bank/opening bank. The issuing bank can also be regarded as the buyer's bank under whose instructions the bank will initiate the LC process.¹⁰ The buyer should also specify the law governing the LC, which is usually the UCP 600.¹¹ Provided that the credit has been approved by the issuing bank, the issuing bank will be notifying the advising bank, most of the time it acts as the nominating bank as well, about the credit which will thereby communicated to the seller. The advising bank is the seller's bank. In terms of any issue regarding the credibility between the banks, a confirming bank can also be introduced to the process as a guarantor. After the seller is notified of the credit arrangement the goods will be dispatched and the documents relating to transportation will be forwarded by

9 Roberto Bergami, "UCP 600 Rules – Changing Letter of Credit Business for International Traders?" (2009) 1 *International Journal of Economics and Business Research* 191.

10 Noah D, 'Methods of Payment in International Trade: Letters of Credit' (*Shippingsolutions.com*, 2019)
<<https://www.shippingsolutions.com/blog/methods-of-payment-in-international-trade-letters-of-credit>> accessed 6 August 2020

11 Lisa Pietrzak, "Sloping in The Right Direction: A First Look at the UCP 600 and the New Standards as Applied to Voestalpine." (2007) 7 *The Asper Review of International Business and Trade Law* 179.

the seller to the nominating bank/the advising bank.

If the documents are up to the standard the payment will be made to the seller by the confirming bank. The documents will then be transferred by the advising bank to the issuing bank for acceptance and will demand for a reimbursement. When the nominated bank/advising bank makes the payment it becomes qualified to be reimbursed under Article 16 of UCP 600. After the documents are monitored the issuing bank will transfer the documents to the buyer and demand for the payment. This denotes that the process of LCs is based on documentary compliance to a significant degree. Such factor provides the basis, as enshrined in the introduction, for the research as per whether the LC process can be influenced by the lack of performance depicted in the primary obligations under the contract of sale.

Anyhow, before the due date, the applicant will make the payment which then will be transferred to the advising/nominated bank signifying the conclusion of the process. When the said transactions are considered, it is clear that there are multiple contracts within the process involving the LC.¹²Therefore, it is quite essential to identify and evaluate the liability of the banks, issuing and advisory, in terms of certain discrepancies or stigma there

12 KAGAN J, 'What You Should Know About Letters of Credit' (*Investopedia*, 2020) <<https://www.investopedia.com/terms/l/letterofcredit.asp>> accessed 3 January 2021

may exist between the sellers and buyers. To throw light on the matter, Article 4 of the UCP 600 should be considered.

A reasonable person may assume that the banks involved in the LC process may be held accountable for any dispute that arises between the seller and the buyer from the underlying contract of sale. Anyhow, the wording of Article 4 of UCP 600, supported by Article 5, clearly and succinctly enumerates that a LC is a separate transaction from the original contract of sale that it may be based on and the banks are bound only by the terms of the LC. Furthermore, it is also stated in Article 4 that a beneficiary in a LC transaction cannot benefit from the contractual obligations there exist between banks or between the issuing bank and the applicant for credit/buyer. Article 4 further encourages the issuing bank to discourage the applicant from incorporating the contract of sale or a related document as a fundamental component of the credit/LC application. The same rationale is supported by the UNCIG Article 3. Such tendency to demarcate the contract of sale from the credit agreement by the UCP 600 clearly throws light on different perspectives, mainly the principle of independence/autonomy.¹³

The Principle of Autonomy and Related Arguments The principle of independence/autonomy suggests that parties, including the issuing bank, advising/nominating bank and

13 Brooke Wunnicke, Diane B Wunnicke and Paul S Turner, *Standby and Commercial Letters of Credit* (Aspen Law & Business 2000).

the buyer, has to honour the credit agreement as agreed when the documentation requirements are strictly satisfied by the seller irrespective of certain disputes the buyer may have over the underlying contract of sale.¹⁴ Therefore, the buyer may not have any ability to occlude the payments being made to the seller due to any existent disagreement with regard to the contract of sale with the seller. Therefore, the buyer will not be capable of dishonouring the credit agreement for any reason unless otherwise there is a discrepancy in the documentation as per the precedent laid down by *Ward Petroleum Corporation v. Federal Deposit Insurance Corporation*¹⁵ Even though it may seem unequitable, the principle of autonomy provides the accountability that LCs should have especially in international business transactions where the sellers and buyers do not meet physically. For instance, if applicants/buyers are allowed to hold payments for certain discrepancies there may exist in the contract of sale the assurance provided by LCs, such as reliability and accountability, will be lost, hence, might develop negative repercussions over IT relations.¹⁶ Therefore, it is reasonable to assume an inference suggesting that the autonomous nature of LCs tends to be the main factor that

14 HamedAlavi, "Exceptions to Principle of Autonomy in Documentary Letters of Credit; a Comparative View" (2016) 10 Actual Problems of Economics and Law

<https://www.researchgate.net/publication/311163752_Exceptions_to_principle_of_autonomy_in_documentary_letters_of_credit_a_comparative_view> accessed March 15, 2020.

15 *Ward Petroleum Corporation v Federal Deposit Insurance Corporation* (United States Court of Appeals).

16 John F Dolan, *The Law of Letters of Credit : Commercial and Standby Credits* (AS Pratt & Sons 2007).

caters the requirements of successful transnational and national trade.

However, the question remains as per whether giving effect to such autonomy is acceptable as there are surrounding circumstances where payments will be made without considering some of the material elements of the contract of sale. However, on the other hand, permitting the courts to intervene and make amends and modifications in the LC process can render the LC process less reliable and subsequently less desirable in the viewpoints of buyers and sellers. Additionally, functions that are facilitated by LCs such as commercial functions which assures reimbursements solely based on documents¹⁷ and financing functions by allowing applicants to finance transactions in reliable ways will also be jeopardized need there be constant checks and balances through the intervention of the courts. Therefore, evaluating the legal implications in terms of when and where the underlying rationale of autonomy in LC transactions can be challenged through the intervention of law is a priority in the field of national and international business transactions. In support of the said premise, it should be noted that irrespective of the positives of the principle of autonomy in LCs, it should be noted that a number of drawbacks can also be detected in LC involved transactions specifically when fraud is involved. Such circumstances justify the motivation behind imposing restrictions on absolute

17 Gerard McCormack and A Ward, "Subrogation and Bankers' Autonomous Undertakings" (2000) 116 Law Quarterly Review.

autonomy for the LC process as the ‘Principle of Autonomy’ shields the beneficiary/seller from any attempt of non- payment by the applicant/ buyer the same assurance can lead to a wide variety of malpractices.¹⁸ For instance, a payment driven beneficiary may submit accurate documents without respecting the terms and conditions of the contract of sale and still secure payments. Such tendencies yield for exceptions to the rule of autonomy, especially through UCP 600, and the discussion henceforth thus will be directed towards various exceptions that are applicable to the rule of autonomy with special emphasis diverse legal instruments and literature.

Exceptions to the Rule of Autonomy

Fraud can be regarded as an exceptional circumstance where the rule of autonomy pertaining to LCs can be challenged. In cases involving fraud, the courts are entrusted with the duty to choose between respecting the principle of autonomy or allowing an injunction, which is a court order that compels or restricts a person from engaging in a course of conduct, against the payment being facilitated. In doing so, due regard will be given to aspects such as public policy, statutes and rights of different interested parties.¹⁹ An injunction, according to the writer’s perspective is one of the most desirable legal instruments

18 John MacLeod, “Nelson Enonchong, The Independence Principle of Letters of Credit and Demand Guarantees” (2013) 7 *Law and Financial Markets Review* 167.

19 R Garcia, “Autonomy Principle of the Letter of Credit” (2009) 72 *Mexican Law Review*.

that can be properly used to prevent the banks from making the payments to the beneficiary in a LC transaction under exceptional circumstances. Anyhow, even though fraud is expressly regarded as an exception to the principle of autonomy concerning LCs there is no clear-cut standard as per how and when it should be applied and the extent to which it should be applied.²⁰

One of the most notable case laws in terms of the application of the fraud exception rule is the *Sztejn* case²¹ which laid down the basic principles of the fraud exception rule. According to the case, the principle of autonomy can only be influenced when there is a fraud involved, which is also provable and not a mere allegation. In addition to the aforementioned condition, it was further stated in the case that the fraud exception rule will not be applicable to a holder in due course who is a legal or a natural person who accepts a negotiable instrument without doubts regarding its legal validity. However, in order to gain a proper insight as per of how the fraud exception rule is put into practice, the following cases concerning English Law should be duly considered.

20 Xiang Gao, L.L.M, *The Fraud Rule in the Law of Letters of Credit: A Comparative Study* (Kluwer Law International 2003).

21 “*Sztejn v. J. Henry Schroder Banking Corp.* | Case Brief for Law School | LexisNexis”(Community)<<https://www.lexisnexis.com/community/casebrief/p/casebrief-sztejn-v-jhenry-schroder>

What is the Underlying Rational of the Fraud Exception Rule?

According to Gao the fraud exception rule in terms of LCs can serve diverse purposes.²²For instance, it has the capability to prevent fraudulent beneficiaries/sellers with malice intentions from being entitled to payments irrespective of the performance of their preliminary contractual-obligations. Therefore, it is reasonable to conclude that the fraud exception rule can fill a legal gap or a loophole there exists in the process of LCs by making parties accountable for fraudulent conduct. If there is no such obligation in terms of accountability or responsibility with regard to the conduct of the sellers other than the obligation to provide correct and accurate documentation, such process can become a leeway for the perpetrators to harm the buyers and thereby the IT system as a whole. Furthermore, allowing parties in transactions to be accountable only in terms of documentation and not on the other material aspects within a transaction may have negative implications on the public policy as well. Therefore, in uplifting public policy as well, the fraud exception rule also serves as a barrier against perpetrators who might attempt to use LCs as a shield to be entitled for payments by providing proper documents without physically performing the obligations for which the payment is made. Moreover, the fraud exception rule has the ability to increase and maintain the commercial utility of LCs by guaranteeing an equal degree of responsibilities

²² Ibid

and accountability to both the applicants and beneficiaries in a LC agreement. For instance, the reliability on LCs by applicants may not be satisfactory if the applicants are compelled to accept making payments even the principal contract with the beneficiaries is severely breached. On the other hand, the requirement of proper documentation and the ability to refuse payments under the ground of fraud provides security to the banks involved within the process as well. Therefore, the functions of the rule, as mentioned within the current discussion, can be regarded as wide and decisive in formulating a strong platform that fosters IT even though a direct challenge is imposed on the 'Principle of Autonomy'.

Position of the United Kingdom (UK) Law on the Fraud Exception Rule

One of first initiatives undertaken by the English Courts in terms of the fraud exception rule was enshrined in the case of *Discount Records Ltd v. Barclays Bank Ltd and another*.²³ The case facts indicate a dispute or disagreement between the buyer/applicant and the seller/beneficiary in terms of the goods that were subjected to the transaction in their respective contract of sale. Therefore, the buyer has requested the bank not to make payments as per the credit agreement which was initially rejected by the bank.

Subsequently, the buyer-initiated court proceedings seeking for an injunction to prevent the payment being

²³ *Discount Records Ltd v Barclays Bank Ltd and Barclays Bank International Ltd* (1975) 1 (Chancery Division).

made to the seller under the basis that the seller has committed fraud by not providing the goods on agreed terms.

However, the courts, while denying the application of the buyer/plaintiff stated that the case was based on allegations which were not grave enough for an injunction to be granted. Furthermore, the courts also exemplified that even the payment is made to the seller by the bank it will not jeopardize the rights of the buyer as the buyer, in case a wrong is committed by the bank, has the ability to institute a case against the bank to recover any damages suffered. The case therefore clearly enumerates the strict standard that is used by courts in exercising its power to intervene in the LC process in light of the fraud exemption rule. Therefore, the case clearly implies that a mere allegation alone will not be sufficient in order for the court to justify intervention, the evidence that supports the claim of the plaintiff should be sufficient.

Additionally, it should further be noted that the aforementioned case exemplifies the court's attitude of granting injunctions when there are absolutely no other alternative remedies available.²⁴ Furthermore, a secondary implication that is provided through the judgment is the complication that the banks will have to face if the buyer establishes an issue in the underlying contract relating to the LC arrangement which could question the act of

24 Autor: Yanan Zhang, *Approaches to Resolving the International Documentary Letters of Credit Fraud Issue* (University of Eastern Finland 2011).

making the payments. In such a circumstance the buyer may exercise rights over the bank by demanding damages for losses occurred through courts.

However, in cases where the seller is not paid by the bank according to the LC arrangement the seller may also initiate proceedings against the bank for not honouring the LC arrangement as per *The Society of Lloyd's v. Canadian Imperial Bank of Commerce and Others*.²⁵ Therefore, it is reasonable to conclude that the applicability of the principle of autonomy with regard to the case under consideration is significant and such attitude adopted by courts can have both negative and positive repercussions depending on the case and the precedents that are laid down by the courts.

For instance, if buyers are allowed to obtain injunctions preventing payments being made by the bank to the seller the underlying reliability of LCs will deteriorate which will subsequently derogate free trade and IT. On the other hand, if the banks are given absolute discretion over making payments only by adhering to documentation related standards it may lead to a floodgate of cases initiated by buyers in terms issues pertaining to their principal contract of sales. Moreover, complications may further occur when the seller/beneficiary has involved a third party to the LC agreement as well.

For instance, in the case of *Banco Santander S. A. v.*

25 (1993) 2 (Queen's Bench Division (Commercial Court)).

*Banque Pariba*²⁶ the confirming bank has sued the issuing bank for reimbursement as per the LC due to an error detected in the documentation after the seller already got the LC discounted from the confirming bank. As a result of the inconsistencies, the conforming bank was not reimbursed by the issuing bank, which consequently led to the case. The court in this case, considering the facts, held that the conforming bank has no right to be reimbursed as the bank was required to act according to the LC and wait till maturity to make the payment. Therefore, with regard to the said facts, it should be identified that there is a need to balance multiple extremes as far as the LC process is involved and the judiciary should properly act as the facilitator of such equilibrium. Similarly, the following case laws can also be evaluated to obtain a clear perspective on the standards adopted by courts under different circumstances concerning fraud within the purview of transactions involving LC agreements while challenging its autonomy.

The case of *United City Merchants (Investment) Limited v Royal Bank of Canada*²⁷ is a notable case in terms of fraud involved in a LC agreement. The noteworthy factor which makes the present case important is because the case was initiated based on fraudulent conduct that was neither committed by the parties to the sale contract nor by the banks. It was a misstatement by an agent of the

²⁶ *Banco Santander SA v Banque Paribas* (England and Wales Court of Appeal (Civil Division)).

²⁷ *United City Merchants (Investment) Limited v Royal Bank of Canada* (House of Lords).

seller/beneficiary who had prepared documentation relevant for the transportation of goods that led to the dispute. In the bill of lading, the agent had purposefully indicated a wrong date and a wrong port (from where the goods were dispatched) which breached the terms enshrined in the LC. The course of conduct by the agent had raised questions in terms of the documentation which resulted in payments being dishonoured. The courts in this regard, even though there is clear intention of malice and fraud, stressed that since the seller had no knowledge on the acts committed by the agent, what has happened cannot be interpreted into the fraud exception rule.

A reasonable person, when the cases cited herein are considered, may form an opinion that the autonomy rule has a stringent application in terms of LCs, especially with reference to the UK. However, when the United States of America (USA) is considered, a similar perspective is visible. For instance, in the case of *Maurice O'Meara Co. v. National Park Bank*²⁸ the defence of the issuing bank for dishonouring the payment was that the goods transported were not of the required quality, which was rejected by the Appeal Courts of New York. However, Justice Cardozo dissented by indicating the negative implications of imposing barriers on the issuing bank against the payments when there is clear knowledge about the inconsistencies in the underlying obligations. In simple

²⁸ *Maurice O'Meara Co v National Park Bank of New York* (1925) 146 (Court of Appeals of New York).

terms, Justice Cardozo was of the view that the agreement for credit also has a connection with the goods under the transaction and “To this general statement of principle as to the contractual obligations of the confirming bank to the seller, there is one established exception, that is, where the seller, for the purpose of drawing on the credit, fraudulently presents to the confirming bank documents that contain, expressly or by implication, material representations of fact that to his knowledge are untrue. Although there does not appear among the English authorities any case in which this exception has been applied, it is well established in the American cases of which the leading or ‘landmark’ case is *Sztejn v J. Henry Schroder Banking Corporation*²⁹ The exception for fraud on the part of the beneficiary seeking to avail himself of the credit is a clear application of the maxim *ex turpicausa non orituractio* or, if plain English is to be preferred, ‘fraud unravels all’. The courts will not allow their process to be used by a dishonest person to carry out a fraud.” if the bank has knowledge on a clear inconsistency it should have the discretion to dishonour the payment. The rationale behind invalidating the exercise of such discretion, as per the writer’s perspective, will direct the bank to a difficult position, which is not in the best interest of IT.

The aforementioned case law should not be considered as

29 [1941] 31 N.Y.S. 2d 631.

the legal authority which specifies the standard in terms of the fraud exception rule in USA. For instance, the *Sztejn* case which invoked the fraud exception rule, as discussed earlier, can be cited. The aforementioned cases have been cited in many jurisdictions including UK. There is no conflict in terms of the rationale behind the concept of autonomy in LC transactions as discussed within the former parts of this discussion. However, the exceptions, as per the writer's view, are the principles that can add more clarity and credibility to the process involving LCs to an acceptable degree. Whether UCP 600 has been able to perform such rule is quite problematic as per the discussion thus far.

Incorporating a strict rule with clear instances where such rule can be invoked by the courts appears to be a reliable choice when the principle of autonomy in LCs is considered. However, it is also understood that imposing strict rules with specific interpretations may hinder the capabilities of the judiciary to cope with unique circumstances. Anyhow, the need to reach a balance in terms of how and when the principle of autonomy applicable for LCs requires specific guidelines by the principal laws that lays down the legal framework on LCs.

A Comparison with the UNCIG The UNCIG also addresses the process involving LCs and remains as a choice under which parties could get into LC arrangements. The notable aspect of UNCIG compared to UCP 600 is Articles 19 and 20, which

contains specific and expressed exceptions for payments through clear grounds. The UNCIG takes a step forward by specifying the possible remedies that should be provided by courts under exceptional circumstances regarding the performance of obligations by parties to the LC agreement. For the purpose of the analysis, an example can be cited as follows. Under Article 19³⁰, it is stated,

- (1) If it is manifest and clear that:
 - (a) Any document is not genuine or has been falsified;
 - (b) No payment is due on the basis asserted in the demand and the supporting documents; or
 - (c) Judging by the type and purpose of the undertaking, the demand has no conceivable basis, the guarantor/issuer, acting in good faith, has a right, as against the beneficiary, to withhold payment.

For the purposes of subparagraph (c) of paragraph (1) of this article, the following are types of situations in which a demand has no conceivable basis:

- (a) The contingency or risk against which the undertaking was designed to secure the beneficiary has undoubtedly not materialized;
- (b) The underlying obligation of the principal/applicant has been declared invalid by a court or arbitral tribunal, unless the undertaking indicates that such contingency falls

³⁰ Article 19 of the UNCIG

within the risk to be covered by the undertaking;

(c) The underlying obligation has undoubtedly been fulfilled to the satisfaction of the beneficiary;

(d) Fulfilment of the underlying obligation

among other instances, that payments should not be made in favour of the beneficiary;

- I. When the documents are not in order,
- II. If the demand for the payment is not covered by the undertaking/contractual obligations,
- III. If the claim for payments has no conceivable basis.

The conceivable basis, according to the UNCIG is described in Subsection 2. For instance, a claim by the beneficiary to make payments in an instance where the underlying obligation has been duly performed by the other party/buyer is regarded as an exception against the rule of autonomy. In such a case, if payments are demanded by the beneficiary, under the ambit of Article 20³¹, a provisional order can be obtained against the payment to prevent payments being made to the seller.

Conclusion

UCP 600 is applicable to the LC transaction and the standards in terms of performance related duties are only applicable to the parties involved. Any circumstance that

³¹ Article 20 of the UNCIG

is not tackled by the UCP 600 can still be dealt with alternative legal remedies to a certain extent³². However, such exception does not suggest the fact that UCP 600 is a successful legal instrument covering all aspects concerned with LC arrangements. Anyhow, as enshrined in the discussion, autonomy is provided to LCs for many reasons and if UCP 600 is seen in terms of such an angle, it is more than successful.³³

Therefore, a proper legislation, as per the writer, should not be too open ended or too restrictive. For instance, Article 4 of UCP 600 is very specific in terms of not considering the underlying contract with regard to the credit arrangement but leaves much room for courts to interpret the Article in different ways under different circumstances which can often lead to different outcomes. The cited cases itself denotes such difficulties to a reasonable degree. UNCIG on the other hand is also quite specific but covers more essential areas as opposed to the restrictive pattern of drafting enshrined in the UCP 600. However, it is not desirable to conclude UCP 600 as a failed law as it effectively lays a platform for persons to get into reliable transactions. Anyhow, the writer is of the opinion that there are certain grounds under which UCP 600 can improve in terms of autonomy.

32 MG Bridge, *Benjamin's Sale of Goods* (Sweet & Maxwell 2018).

33 Hang Yen Low, "UCP 600: The New Rules on Documentary Compliance" (2010) 52 *International Journal of Law and Management* 193
<https://www.researchgate.net/publication/49913137_UCP_600_the_new_rules_on_documentary_compliance> accessed March 15, 2020.