



Year 2010 Volume 1

**In This Issue**

**Page**

Judicial intervention while making  
payment under Letter of Credit ... 1 - 2

**LAW IN FOCUS**

A Newsletter of  
Rahman's Chamber

© All Rights Reserved.



**Motijheel:**

Alam Tower, 4<sup>th</sup> Floor  
12, DIT Avenue (East)  
Motijheel Commercial Area  
Dhaka-1000.

Ph.:(+8802)7171251

**Mohakhali:**

Tomizuddin Mansion  
3<sup>rd</sup> floor, F-100, School Road  
Mohakhali C/A  
Dhaka-1212.

Ph.:(+8802)8835936

Fax:(+8802)7170815

Email: info@rahmansc.com

Web: www.rahmansc.com

This document is for general  
information only and is not  
legal advice for any purpose.

**Judicial intervention while making payment under a  
Letter of Credit**

**Forrukh Rahman\***

The Letter of credit is a contract for documentary credit executed between the applicant, issuing bank, negotiating bank and beneficiary. The rights and liabilities arising under documentary credit are dependent upon documents only and noting else. L/Cs are regularly made subject to the terms and conditions of the uniform customs and practice for documentary credit (2007 revision) ICC publication No. 600. (Hereinafter referred to as "UCPDC 600"). As per article 5 and 7 of UCPDC 600, where there is no issue of submission of forged and/or fraudulent documents by the beneficiaries of Letter of Credit, the issuing bank is bound to make payment as per agreed payment terms. The said payment has no relation with the goods, services, or performance to which the document may relate and/or relationship with the beneficiary.

On the other hand, the contract for supply of goods is an entirely separate contract. As per article 4 (a) of UCPDC 600, the L/C is a separate contract for documentary credit and has no relation with contract for supply of goods generally executed through a proforma invoice. Back to back L/Cs are often opened by marking a lien on a master/export L/C, where raw materials, accessories etc. are procured through back to back L/C mechanism to manufacture the export goods under the Master L/C. However, the both L/Cs are by nature independent contracts. The master L/C is only used as a security amongst other securities by the issuing Bank by marking a lien on it for the security of payment made under the Bank to Back L/C in case the applicant fails to adjust its outstanding.

It is often observed that in a situation where the exporter fails to export the export items under the master L/C, he/she obtain attachment order/injunction against the payment to be made by the issuing bank under the back to back L/C from the judge's court by misleading the court as to the nature of the aforesaid contracts.

By failing to made payment to the beneficiaries of the Back to Back Letter of credit contract, the Bank violates the terms and condition as stated in the said back to back L/C and UCPDC 600 and is exposes itself to the risk of being prosecuted by the beneficiary and its advising banks. Further, the reputation of the Bank as an issuing bank of L/C is seriously jeopardized.

The above position is well stated in the case named **Gooryonly (BD) Textiles Ltd. vs. Chartkar 54 DLR (AD) 2002** where appellate Division held that "a letter credit is independent and unqualified by the contract of sale or underlying transaction and the autonomy of the same is required to be protected." The judiciary is often misguided as to the contractual position of the parties and judicial intervention is often successfully secured by the exporter of master L/C notwithstanding that the legal position is clearly stated in the above case.

This is often seen as a serious flaw in the commercial transactions of the country involving several countries and parties. The bank often delays in vacating the attachment order/injunction by filing appeal -

- considering that the relevant beneficiary may take the recourse. It is often observed that the beneficiary is often kept in grey and/or is not at all made a party to the said suit for injunction, hence filing appeal by the beneficiary may only cause delay, further damaging the reputation of the Bank. So long the Bank is contractually bound to make payment upon maturity or otherwise, it is the Bank who should initiate appeal to the relevant appellate court and take steps to vacate the attachment order in order to protect its reputation and also to avoid the risk of being prosecuted by the concerned beneficiary.

-----  
\* Barrister-at-Law; Advocate, Supreme Court of Bangladesh

For further information and past volumes, please visit -  
[www.rahmansc.com](http://www.rahmansc.com)

---