

Evaluations for Fraud in L/C Transactions, and Counter-Measures

Jae-Sung Lee[†]

Department of International Trade, Dong Eui University, South Korea

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Abstract

Purpose – The letter of credit has been playing a major role to diminish overall risks which exist among concerned parties even though there are differences such as language, culture, law, and distance. This paper reviews essence of the letter of credit and its transaction principles, as well as overall practical questions based on the L/C transaction principle. It also investigates the risk of fraud occurrences in L/C transactions and the importance of fraud prevention and preventive measures in international L/C transactions, including the Fraud Rule, which is a major topic to consider in business transactions.

Design/methodology – It is considered that an importing country's concerned parties and an exporting country's concerned parties face different situations. This study employs the existing framework to identify liability, responsibility, and obligation for all concerned parties across countries. Using a quite direct measurement of principles in the letter of credit, such as principle of independence, principle of abstraction, and principle of strictness and coincidence, we studied these differences.

Findings – Our main findings can be summarized as follow. The paper enhances the efficiency of the L/C payment method to provide fraud generated from L/C transactions, presentation of a theoretical framework about fraud and fraud prevention, which international trading companies should acknowledge in a material way based on fraud risk resulting from taking advantage of L/C transaction principles.

Originality/value – Existing studies focus on fraud accidents in L/C transactions by taking bad advantage of the characteristics of the letter of credit without suggesting risks of fraud. This paper attempts to evaluate and provide preventive measures as a solution for fraud and risky international business in a letter of credit transaction. This area of trade studies is underexplored, both empirically and theoretically, although the issue has long been important to Korean and world community foreign trade.

Keywords: Counter-measure, Estoppel, L/C Fraud, Letter of Credit, Notification of Discrepancy

JEL Classifications: D12, F14, O53

1. Introduction

A letter of credit transaction is essentially an independent transaction from a sale or contract, and there is a risk of fraud as payments are made based on the presentation of documents which match all terms of a letter of credit. In particular, due to the development of containerized multimodal transportation in the international trade of goods, a carrier issues a transport certificate containing an unknown clause of the quantity or contents of the loaded goods to the beneficiary of the credit. Due to this, it is becoming difficult to secure the integrity of the document. Moreover, due to the recent development of information and communication means, and the expanded spread of sophisticated office equipment, the

[†] First and Corresponding author: jslee797@naver.com

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forgery and falsification of documents is becoming easier.

Credit fraud is a fraudulent paper that exploits the characteristics of a letter of credit to provide a beneficiary with a document that is in line with the terms of the credit, but is inconsistent with the facts. In most cases, payments are deceptively requested, such as transaction fraud, which provides products that are inconsistent with a contract. As a result of the fraud, the issue of the repay obligation between the issuing bank and the negotiation bank and the issuing bank to the issuing client arises. There is great potential for disputes related to the right of recourse requested by issuing a bank against an L/C applicant. Despite the fact that it is a fraudulent act insisting only on independence and abstractness in the trade payment settlement, the bank's payment performance is impaired by claiming the consistency of the letter of credit and documents. If this is done, it will encourage unethical and unscrupulous beneficiaries to participate in financial scams. However, in the case of the fraud or deception of a vicious credit beneficiary that abuses the characteristics of independence and abstraction in a credit transaction, it is a scam in British and American law that prevents the bank from holding irrevocable responsibility, which is acknowledged as the fraud rule by early British and American law. According to this principle, the refusal of payment by the issuing bank can result in refusal of payment, even if the document matches the terms of the credit, if it is known that it is due to fraudulent behavior of the beneficiary. However, the principle of fraud is not reflected in the international trade practice, the Uniform Customs and Practice for Documentary Credits (UCP).

As a precedent study on the fraud rule, Dolan's study said that although the court has developed exceptions to credit fraud, it has been argued that the courts should limit fraud requirements (Dolan, 2006), and Neo's study emphasized that the exception clause must be won in the conflict between the principle of independence-abstraction of a letter of credit and the provisions of the fraud exception (Neo, 2004). In a study by Xiang and Buckley, they compared and evaluated fraud examples from the US, UK, Canada, Australia, and UCP (Gao Xiang and Burkley, 2001). In a study by Monteiro and Harle, the principle of independence-abstraction and the application of fraud exceptions were reviewed, and after the common laws of the United Kingdom, the United States, Canada, Australia, Singapore, and New Zealand were evaluated in order to apply the fraud rule, a broad approach like the United States and a consensual approach like the UK were considered (Monteiro and Harle, 2007). On the other hand, per a Korean study, the focus was on the exception of independence and abstraction, international norms (i.e., Choi Seok-Bum, 2017; Kim Dong-Chun, 2019; Kim Dong-Chun and Nam Kyung-Doo, 2018; Kwon Seung-Ha and Park Keun-Sik, 2018; Lee Shin-Kyuo, 2017; Park Suk-Jae, 2019), and the legal principles of Korean law (Kang Jin-Wook, 2017; Park Young-Hyun, 2020; Suk Kwang-Hyeon, 2004). The UCP and the U.S. Uniform Commercial Code (UCC), and legislation and precedents in the United States, United Kingdom, Germany, France, and Korea were reviewed (Chung Chan-Hyung, 2007). A review of U.S. letter of credit case law and UCC-related regulations, and the decision of the Mid-America Tire case by the Ohio Supreme Court (Ahn Kang-Heon, 2005) were also considered. Case studies were reviewed on the controversy and verdict of the Hana Bank vs. Societe Generale Bank case (Lee Dae-Woo, 2002). A review of UCC-related regulations and a review of fraud response (Lee Jong-Won, 2007) was performed. The fraud issue of credit transactions and the remedies for an issuing bank's failure to commit payment was reviewed through the interpretation criteria of Part 5 of the UCC (Kim Gi-Seon, 2005). In this way, studies related to the fraud rule in the L/C transaction are centered based on UCC review and US case law, as well as the case law of other nations.

Even if a letter of credit is issued based on a sales contract or other basic contract, a transaction based on the issued credit is independent from the basic contract, and is not

bound by the basic contract. There is an abstraction that a transaction by letter of credit is not a product transaction, but a document transaction. This is one of the most important characteristics of a documentary letter of credit". The independence abstraction" in a letter of credit transaction. Incoterms Code No. 3 also stipulates that "even though a letter of credit in principal is based on sales contracts and other contracts, the L/C is separated from that kind of contract, and the Bank has no relation to such contract and is not bound by such contract" (UCC, Art. 5-108). Due to the characteristic of independent abstraction in a letter of credit, the credit transaction is made as a document-only transaction, and the transaction is completely independent from the basic contract, such as a sale contract, thereby facilitating the smooth transaction of the credit. The transferee of the bill of exchange can acquire said document with confidence without considering the problems of the sale and sale contract. Even in the principle of abstraction, as long as the documents conform to the terms of the credit, even if it is inconsistent with the sales contract, the credit amount must be paid. In addition, if a document is issued, even if the transport document is a public ticket that does not ship the goods, the document will be consistent as a valid document; if the terms of the credit are met, payment must be made. Therefore, the principle of independence abstraction, which is the essence of the L/C, is a principle that exists for the activation of L/C transactions.

It can also be a limit to an L/C transaction. In other words, a credit transaction is a document transaction. Even if the document is forged, or the credit itself is falsely issued and the document complies with the terms of credit, the L/C amount should be paid. As a countermeasure, the theory formed as a precedent of the British and American courts is the principle of excluding fraudulent transactions: that is, the Fraud Rule. The principle of exclusion of fraudulent transactions (Guest, 1981) is an exception to the principle of independence of irrevocable letters of credit, and the bank that issued the credit has an independent abstract debt separate from the contract between the seller and the buyer, but in the case that a contract is conducted by fraud, it prevents payment responsibility to the bank. The representative case to which this exception rule is applied is the case of *Sztejn V. Henry Schroder Banking Corporation et al.* (1941) in the United States. The principle of excluding fraudulent transactions is that the activation of L/C transactions is important, but fraudulent transaction parties should not be protected. Exceptions apply only if the claimant proves a fraudulent transaction. In this thesis, in the case of Korean precedents, we would like to introduce examples of this Fraud Rule, and to review countermeasures for future business performance.

Meanwhile, by exploiting this principle of independent abstraction for the letter of credit, there are fraudulent claims by sellers (an exporting company, the beneficiary of the letter of credit) that do not ship any contracted goods, issuing a false bill of lading, or falsifying the bill of lading, and seek to receive payment by the letter of credit with only the documents that meet the conditions of the letter of credit. Even in this case, the recognition of only the independent abstraction of the letter of credit and the payment of the credit amount does not meet the purpose of the letter of credit system, and it eventually forces the L/C applicant to an unfair loss, contrary to the notion of justice. Therefore, in the case of such a fraudulent request in an L/C transaction, the credit issuing bank is allowed to refuse payment of the L/C amount as an exception to the independent abstraction of the L/C. Thereby it is a 'Fraud Rule' to protect contractually concerned parties, such as buyers (importer, L/C opening applicant) in an L/C transaction, and to try to prevent fraud in advance. In the case law of continental jurisdiction, if a beneficiary's claim is deceptive, it is recognized as contrary to the principle of good faith, or as an abuse of rights. In international trade, the payment of the proceeds from a sale is mostly made by a letter of credit issued by an opening bank, and the documentary letter of credit is specifically needed to facilitate payment for such transactions.

The independent abstraction of L/C transactions is an important characteristic. However, by making ill use of the independent abstraction of the L/C transaction after a seller (exporter) falsifies, forges, or fakes shipping documents, the seller (exporter) requests the L/C amount to the L/C issuing bank or negotiation bank that recognizes this kind of malicious behavior. They cannot be protected any further by the courtesy of the principle of independent abstraction as they have undertaken a fraudulent business transaction. Therefore, as an exceptional case for the principle of independent abstraction under an L/C transaction, Uniform Commercial Code, Art. 5-109 stipulates a 'Fraud Rule' by regulation. The continental legal system, including Korea, does not stipulate a 'Fraud Rule' by regulation. It is recognized by the principle of good faith, or the law of abuse of rights in a case (*Korean Supreme Court Decision*, 2002). However, the main challenge is how to apply these rules in harmony with the principle of independent abstraction for a letter of credit, as easy recognition of these fraud rules could lead to a contraction of credit transactions.

Therefore, after reviewing the significance and theoretical basis of the 'Fraud Rule', as well as looking at legislation and precedent cases (foreign and domestic), this paper presents the application requirements of the 'Fraud Rule' to avoid fraudulent business without significantly damaging the principle of independent abstraction of the L/C.

2. Criteria for Determining a Fraud Rule in an L/C Transaction

Although the existing documentary letter of credit has been widely used as a payment method in trade transactions, many problems have arisen in the meantime, mainly for traders. Regarding to the payment method in trade, the letter of credit method is decreasing, whereas remittance methods have been increasing since 2000. This is because most are inconvenient or complicated. In the case of a documentary letter of credit, in order for the beneficiary to request payment to the issuing bank, the documents specified in the credit must be prepared. Apart from the terms of the contract of sale, the bank examines the terms of the letter of credit on the basis of documents alone, and decides whether to pay. Therefore, because banks examine and pay only on the basis of documents regardless of the contract of sale due to the independent abstraction and abuse cases such as forgery of the falsification (fraudulent or false) of documents, fraud is sometimes raised as a problem.

This is also due to recent advances in technologies, such as the invention of a technology that facilitates counterfeiting: that is, an elaborate photocopying machine. For fraudulent activities on the beneficiary's side using such sophisticated technology, it is not easy to find not only that a bank handles documents itself but also determines whether the documents are forged or not. Depending on the actual condition, a bank is exempt from indemnification, so once documents that meet the terms of the credit are presented, the bank has no choice but to pay.

Furthermore, a letter of credit is not easily applied to the electronic environment due to its independent abstraction. Because about 70% of the documents presented in L/C transactions have inconsistent clauses, a seller does not receive payment, causing additional delays and costs in resolving such discrepancies. In addition, as a means of local financing, a guaranteed L/C is opened by a bank at the head office in favor of a local bank as a creditor to guarantee the debt of overseas branches. This is limitation of the existing L/C system. Even if forged documents are used, it is the practice in L/C transactions that banks that are not involved in counterfeiting are not held liable. In other words, if an exporter creates forged documents in negotiation (Lee Jae-Sung, 2019) for a bank in the exporting country, and the exporting country's bank requests payment to the issuing bank of the importing country, the issuing

bank must pay the amount. In this case, the importer must repay the price to the issuing bank, and bear the damage. Also, as a change in work type, the existing paper document method was avoided. As work is processed by standardized electronic documents, errors and waste have been reduced. Accordingly, the customs of L/C transactions are also changing with standardized formats and telecommunication letters.

2.1. Review of Precedents

2.1.1. *Application of UCP Article 10, Paragraph b, Subparagraph ii*

The key issue in the case below is whether the plaintiff's purchase of a letter of credit is recognized as a purchase pursuant to the UCP article. The judgment criteria of the Fraud Rule was reviewed based on the main judging aspects: the point of judgment, the reason (the point of the original court), and judge's final conclusion.

a) *Summary of Judgment (Korean Supreme Court Decision, 2013)*

Even if such a credit transaction turns out to be fraudulent due to forgery after the legal negotiation of credit, the negotiation bank shall ask the issuing bank to repay the amount of credit, unless it is recognized that there are sufficient reasons, such the negotiation bank itself was involved as a party to fraud, forgery, was aware of/or suspected fraud, or the documents were forged documents at the time of negotiation or payment. However, in the case that a L/C negotiation by bank was not legal, it cannot be a "negotiation" under the UCP article, even though payment is final. Therefore, if the beneficiary's fraudulent activity is revealed in an L/C transaction, the issuing bank may refuse to pay the L/C for this reason.

b) *Review of Judgment*

For the above major judgment matters, it is possible to examine the core content of the rulings. The main point of the court's judgment to invalidate the request for credit in this case was established due to reasons that cannot be said to be a violation of the concept of takeover and misconduct of Article 14 under UCP. Specifically, even if the defendant was notified of the negotiation of the letter of credit from the plaintiff, the defendant did not raise any objection, by accepting it, the defendant gave up the right to plea against the plaintiff by confirming the payment. In response to the plaintiff's claim that the defendant is obligated to pay the amount according to the law of good faith in light of circumstances that the defendant has given up all the right to plea against the plaintiff for the above reasons. It was judged to the effect by the original court that it is difficult to see that the defendant is obligated to according to the law of good faith and for the above reasons alone.

Original court's judgment is just and it cannot be said that there is a misunderstanding of legal principle and illegality through a misunderstanding of facts. Therefore, it was a verdict of the dismissal of an appeal through the judges' unanimous opinions. International business transactions must be implemented based on mutual trust.

2.1.2. *Application of the Principle of Strict Agreement with Transaction by Documents*

The principle of strict agreement in a the transaction by documents is the validity period of the letter of credit, whether the submitted documents are consistent on the face of the letter of credit, the amount of draft, the amount of the invoice, whether the amount of credit is mutually consistent, the specifications of the product, whether the description of unit price and quantity is consistent, whether installment shipments and transshipments are consistent with the terms of credit, if various documents are consistent, whether insurance documents and the terms of security are consistent with the terms of credit, and whether other terms of

credit are consistent are mainly the concern. The reasons for a bank's refusal to pay mainly include late shipment, late presentation, partial shipment, short shipment, and foul bill of lading. The reason for the strict match is to protect the buyer, who is bound to rely on shipping documents to ensure the authenticity of the object of sale. In order to ensure that only documents in accordance with the conditions of letter of credit are paid, it was originally a principle to protect the buyer.

However, these principles were transformed into a principle that protects the bank from actual disputes between parties by confining the bank's investigation obligation to a formal document review. In this regard, we look at the attitude of the Supreme Court as follows. The meaning that the documents attached to the letter of credit must strictly conform to the terms of credit and the words of the letter of credit is that even if there is minor discrepancy and the bank pays attention to it with reasonable care, it does not cause a difference in the meaning of the wording, and does not undermine the terms of the credit at all, it should be regarded as consistent with the terms of credit. It should depend on whether the difference from the terms is acceptable in light of the international standard banking practices adopted and enacted by the ICC bank committee to make assessment of a documentary letter of credit in Oct. 2002 (*Korean Supreme Court Decision*, 2002). This is interpreted by significantly relaxing the principle of strict conformance, and it can be seen as a principle of modified strict conformance, or the doctrine of substantial compliance (*Korean Supreme Court Decision*, 2002). Thus, the words of a letter of credit must be interpreted universally, objectively, and reasonably (*Korean Supreme Court Decision*, 2011). Even if there is a discrepancy between the documents presented and the terms of the credit, if the discrepancy is very minor, it must be said that payment of the credit amount cannot be refused for this reason. This interpretation is consistent with trust under Continental Law. The fraud rule, which is an exception to the Incoterms, requires an L/C applicant or the court to review the facts behind documents that meet the terms of credit, and prohibit payment of credit in the case of fraud. This is the most controversial and confusing area of law to govern the L/C business.

However, there are three reasons to admit this highly controversial Fraud Rule.

That is, the reasons for the need to acknowledge the Fraud Rule are (i) preventing loopholes in the law, (ii) realizing public policy that regulates fraud, and (iii) maintaining the utility of the letter of credit (Gao Xiang, 2002). When the principle of independent abstraction of credit is applied to business transactions, sometimes, it leads to unjust consequences contrary to the original intention, which occurs in the case of fraud in an underlying transaction. In the case of a credit transaction, a beneficiary that claims payment in the nature of a document-only transaction does not need to prove that he has properly fulfilled his obligations in the basic transaction, and he only needs to present documents that meet the terms and conditions of the credit. In this way, the fact that the documents in the letter of credit are separated from the fact that the beneficiary actually fulfilled his obligations in the basic transaction provides a loophole to immoral beneficiaries that abuse the credit system. Such beneficiaries can run away with someone else's money by presenting falsified or fraudulent documents. It is ideal to prevent loopholes in the credit system with the Fraud Rule. Of course, all unfair fraud cannot be prevented by the Fraud Rule, but unreasonable consequences can be minimized. In developing a Fraud Rule, it not only prevents loopholes in the law on the letter of credit, as seen above, but also realizes the demands of public order and morals.

In activating the use of a letter of credit, it is also very important to prevent fraud and promote public interest. Therefore, a Fraud Rule is part of a sound legal system that seeks to maintain public order and morals by regulating fraud. These demands need to be emphasized more than ever, as recently, the principle of independent abstraction for letters of credit has been abused by fraudsters, causing many crimes. If the law takes a strong stance against these

scams, fraudsters will refrain from engaging in this dishonest behavior. When it comes to letters of credit, fraud is not only against public order and morals, it also poses a serious threat to the commercial utility of credit. The widespread use of letters of credit lies in the fair control of the interests of the parties involved. In other words, the role of an ordinary letter of credit not only allows the beneficiary of a letter of credit to receive payment by the letter of credit with confidence in the event of an inability for an L/C applicant to pay for establishing the letter of credit, it also provides credit and commercial benefits to an L/C applicant.

In addition, a fee is provided to the L/C applicant. However, if one party deceives other interested parties by using loopholes in the credit system to present forged or fraudulent documents, this harms the interests of the other parties and destroys the predetermined balance in the credit system. For example, in a commercial letter of credit, if the seller does not ship, or simply ships trash, and then presents a forged or fraudulent document to the negotiating bank and receives payment by the letter of credit, it harms the L/C applicant establishing the letter of credit. In this case, the buyer may request repayment against the seller for fraud in the basic contract in accordance with the law related to the letter of credit. However, this is generally not desirable. This is because fraudsters escape away before the fraud is discovered. In such a case, the seller's fraudulent act could harm the interests of the L/C applicant.

L/C opening banks frequently open an L/C on the condition that the goods shipped are secured against the payment of the L/C. Therefore, if the goods are not shipped, or trash is shipped, the L/C applicant's security right for the goods is also of no use. As with other trading systems, the use of a letter of credit is based on trust. If the likelihood of abuse for letters of credit is not reduced, or fraud is not prevented and can be repeated, then credit-based trust will disappear and the commercial utility of credit will be extinguished. Therefore, the Fraud Rule, which prevents fraudsters from abusing the L/C system, will promote its use to bona fide users. In this respect, the Fraud Rule contributes to maintaining the commercial utility of the letter of credit. L/C transactions have a principle of independent abstraction, and the principle of the close matching of an L/C and documents. This may facilitate smooth transactions by allowing banks to perform the functions of letters of credit more actively, namely the function of payment guarantee and financial functions. However, those who commit fraud in connection with trade payments shall commit fraud by taking advantage of the practice of respecting the principles of such L/C transactions. It should be considered that the principle of good faith in commercial transactions applies to the handling of documents that lack the normality and status of documents in the conventional sense. We will look at the principles of transactions in the practice of L/C transactions and discuss the fraudulent practices that have taken advantage of them.

Furthermore, in terms of enhancing the value of this paper and supplementing the contents related to the letter of credit, the precedent research papers on the letter of credit of excellent Korean researchers are introduced below. There is a ban on payment as a means of protecting buyers, especially in cases of fraud related to letters of credit, focusing on the U.S. court case law. Such an injunction would have an adverse effect of degrading the function of the L/C if abused, so it should only be cited in inevitable cases (Ahn Kang-Heon, 2005). For enhancing the efficiency of the L/C payment method, a theoretical framework for fraud arising from L/C transactions by presenting the issue of L/C transactions and the risk of fraud in L/C transactions is presented, while at the same time presenting prevention measures for fraud that Korean trading companies should recognize (Dong Taek-Young, 2003). As an exception to the principle of the independent abstraction of the L/C in the course of trading by issuing back-to-back L/C, the principle of fraud focuses on whether L/C-related documents are forged, as well as whether the underlying transaction of import/export sales contracts

includes fraud (Chung Ha-Yun, 2020). The Supreme Court of Korea has also resorted to this doctrine in a leading case on August 29, 1997, 96 Da 43713, the “Shinhan International Case”. It should be noted that if the principle of autonomy is overly emphasized, there is a risk that the beneficiary abuses the principle. On the other hand, if we admit exceptions to the principle too broadly, there is a risk that the applicant abuses the exceptions. Accordingly, exceptions to the principle of autonomy should be allowed only in limited circumstances under strict requirements (Suk Kwang-Hyeon, 2004). Types of trade fraud are evaluated which are highly likely to cause trade fraud. To reduce the possibility of Korean import and export companies from being involved in trade fraud, organization and preventive measures (Choi Jeong-Ho and Lee Jae-Hyun, 2001) are needed. After examining the significance and rationale of the fraud risks first, legislative precedents (foreign and Korean) were reviewed, and the application requirements of Fraud rule, which could exclude fraud without significantly harming the principle of independent abstraction of the L/C, are provided (Chung Chan-Hyung, 2007).

This research reviews the acceptable requirements for the descriptions stated in a bill of lading under documentary credits focused on ICC DOCDEX decisions and ICC opinion. Under such conditions, this paper presents the ways in which practical business can be applied by studying cases of ICC opinion and ICC DOCDEX cases carried out based on rules of bills of lading stated in ISBP 745 E1~E28 and UCP 600 Article 20. Using the results of this study, the number of bills of lading not accepted by banks or applicants under documentary credits will be reduced (Kim Jong-Seok, 2017). The bank refers to the principle that presentation documents shall be subject to payment obligations only for documents consistent with the terms of an L/C. Therefore, the criteria for the consistency of documents in L/C transactions are very important. However, the criteria for determining the consistency of these presentation documents have changed with the revision of the UCP, which can be seen as epochal. Therefore, it is necessary to study the reality of these cyclical criteria and their application. Therefore, in this study, the criteria for concordance with these changed documents in UCP 600 and the comparison with the previous UCP 500, and the practical application and key issues of the harmonization criteria in L/C transactions, are analyzed and presented (Chae Jin-Ik, 2011).

Under the mentioned research, the payment systems of international trade were classified into three groups, Telegraphic Transfer, Collection and L/C, and recent trade fraud cases and payment refusal cases by group were examined. We show, here in this paper, the counter measures against trade fraud and payment refusal comprehensively and individually. Thus, they contribute to the sound establishment and the revitalization of international trade, and prevent trade fraud and payment refusal, which often take place in the international trade field (Kim Chong-Chill and Kim Tae-Hwan, 2007). The volume of trade is rapidly increasing thanks to the rapid growth of the Chinese economy and the reduction of the Chinese tariff rate. Trade disputes and disputes over payment are also surging. Therefore, for the prevention and settlement of disputes, research is needed on legislation and relief on L/C fraud of centered on the parties involved. This study examined methods for legal relief for each party affected by a dispute over a letter of credit transaction between Korea and China (Woo Seong-Koo and Sohn Seong-Mun, 2000).

The payment obligations of an issuing bank to a beneficiary are independent of the performance or the nonperformance of any contract underlying a letter of credit. However, strictly applying the principle of independence and abstraction could produce unfair results by operating unjustly to enrich an unscrupulous beneficiary in the case of fraud. Accordingly, when a beneficiary presents complying documents, the issuing bank is bound to honor the presentation, unless the fraud rule applies. If it does, the issuing bank (issuer) needs not pay

despite the complying presentation of documents by the beneficiary under the Uniform Commercial Code Article 5-109 and case law in America. However, the fraud rule was not addressed in UCP 600. In conclusion, the view in terms of legal principles and court cases is variable and difficult to honor in a case of the application of the independence principle and fraud rule, such as the problems with a timely burden of proof, possibility of granting an injunction in order to protect a bona fide applicant (Kang Won-Jin, 2011). The duty of a manager's care means an obligation for document examination. The principle of the examination of documents and the principle of independence could be adapted. The O/A negotiation bank should handle the document with reasonable care. The bank should strictly examine sales contracts, document types, consistency among documents, and the content of documents with high precision (Lee Oun-Yeong, 2017).

This study aimed to ascertain the main content and characteristics of UCP 600. "The Uniform Customs and Practice for Documentary Credits, 2007 Revision, ICC Publication No. 600 (UCP 600)" were approved by the Banking Commission October 25, 2006. UCP 600 will now come into effect on July 1, giving practitioners more than six months to prepare for the change (Jeon Soon-Hwan, 2006).

2.2. The Act of Applying the Principle of Independence and Abstraction

The independence of a letter of credit is a basic practice in L/C transactions in which a letter of credit is considered separate from a cause contract or other contract between trading parties. It is stipulated that "The Bank has nothing to do with such a contract in the L/C and is free from restraint" (ICC, 1993). Even if the letter of the L/C specifies the date or number of the contract, such as "as per sales note No. - dated-", the Bank has no real obligation to investigate, and it is sufficient to provide a written statement in the text of the document presented to prove such a statement. Also, the abstraction of the letter of credit is that the goods mentioned in the contract of sale are those that have actually arrived at the buyer, and no matter what, the bank decides whether to make a payment with only the documents required by the letter of credit. Incoterms stipulate that 'all parties involved in a L/C transaction are engaged in transactions on paper, not on goods, services and other performance of contracts in which such documents may be related'. It is a natural and reasonable practice for banks to implement payments based solely on the content of the letter of credit and the text of the documents, because the bank lacks the required knowledge of the goods exchanged. As such, it is the payment, acquisition, and purchase banks that most need the protection of independent abstraction in an L/C transaction. The reason for this is that even if these banks make payment, acquisition, or purchase of the beneficiary's trade contract by the requester of the letter of credit, if the L/C applicant is likely to refuse to pay, take over, or repay the bill or document, no matter how safe the letter of credit may be, these banks cannot conduct the exchange financing. The independence and abstraction of the letter of credit protect the issuing bank from the counterclaim of the contract of sale, whereas the beneficiary is obliged to assume the obligation of independence. The doctrine of strict compliance is the legal principle that the bank has the right to refuse documents that are not strictly in accordance with the terms of the letter of credit; in other words, the bank can only make payments for documents that have been found to be in conformity with the wording of the terms of the letter of credit (Schmitthoff, 1990). The subject of dispute is frequent in the case of L/C transactions, and it is a matter of considerable caution and review only when the bank reviews the presented documents with some care. There is a relatively clear standard for this, which is what we call 'strict compliance' and 'reasonable compliance'.

According to Incoterms, in a commercial invoice, the principle of strict compliance is applied when the product details must match those of the goods required on the credit, and

that in all other documents, the goods can be described in general terms that do not contradict the product specifications on the credit. However, it is noteworthy that the product specifications on all documents, other than commercial invoices, can be described to the extent that they do not conflict with the contents of the L/C.

3. The Matter of Letter of Credit Fraud

3.1. Essential Infringement of L/C

Even if the content of a letter of credit are consistent with the documents presented, failure to pay the L/C to protect the importer from the fraud of the beneficiary will result in the infringement of the principle of independent abstraction, a characteristic of L/C transactions, ultimately resulting in the loss of the usefulness of the L/C. On the other hand, if the bank only carries out its promise of payment despite the fact that it is fraudulent, it will only encourage a shameless seller. In the position of the issuing bank, the documents presented to the issuing bank are also used as collateral for the proceeds paid to the beneficiary. Therefore, the bank is at risk of making payments even though the documents presented by the beneficiary are not worth anything due to fraud, which could result in huge losses. If such problems occur frequently, the L/C applicant will be burdened with excessive financial burden due to sufficient collateral (Lee Oun-Yeong, 2017).

3.2. Limitations on L/C the Itself and Document Inspection

The notification bank must take considerable care to verify the authenticity of a letter of credit notified, but it is difficult to verify the authenticity of a letter of credit because it has not been contracted to the issuing bank, and it has not exchanged signature or test keys, or it simply informs the beneficiary of the letter of credit for reference. In particular, in the case the letter of credit arrives by wire, the credibility of the letter of credit itself is even more problematic because it is difficult to ascertain the authenticity of the letter. In fact, it is difficult for the beneficiary grasp the authenticity of the letter of credit itself, or the external credibility of the issuing bank. If the terms of the letter of credit are incomplete or unclear, the documents presented by the beneficiary may be rejected by the issuing bank, or if the letter of credit itself is fraudulent, there is a possibility of a dispute between the beneficiary and the bank over payment performance or repayment.

In addition, it is difficult to recognize if the documents presented by the beneficiary are forged or falsified, as bank only checks the text of the documents in accordance with the principle of independent abstraction to determine the performance of the payments. The bank that purchased the export draft based on the freely negotiable credit is the bona fide holder, so even if it is later proved to be fraudulent, it cannot refuse payment.

In the end, when the issuing bank's exercise of its right to repay the money causes the L/C applicant to suffer a loss of good faith and difficulties in securing bonds for the L/C applicant, the issuing bank cannot rule out the possibility of claiming a liability for the heavy negligence of the negotiating bank, which leads to a dispute between the good faith concerned parties.

3.3. Good Faith Loss due to a Lack of Information

If the presentation of falsified or forged documents is made by the beneficiary or by a third party based on the letter of credit, the difficulty of obtaining information makes it virtually impossible for the relevant bank or customer to detect them immediately. It is also difficult

to determine whether a breach of contract arising from a basic contract between the L/C applicant and the beneficiary constitutes fraud. The standard for granting exceptions to the principle of independence abstraction is not set in the rules of Incoterms. In most cases, the beneficiary is paid before the requester proves fraud, so if he or she disappears, the L/C applicant that issued the letter of credit will suffer a loss of good faith. The application of fraud shall apply to a bona fide holder issued by the L/C that does not receive a refusal to pay from the bank on the grounds of the beneficiary's fraud, but shall apply to the parties that commit fraud. Even if timely information on fraud is received, fraud cannot be stopped without conclusive evidence. Objective physical evidence must be presented in order to claim an injunction or provisional seizure before the letter of credit is applied, or before the letter of credit is paid. The court's ruling that bans payment only if clear evidence is presented supports this (Eberch and Ellinger, 1983). It would be said that identifying credit or illegal activities between parties in advance in the L/C transaction is a basic matter, but it is also a problem in failing to implement them.

3.4. Abuse of Injunctions in Court

If a beneficiary intends to use an L/C for fraud purposes, or if an unauthorized person intends to use an L/C, the L/C applicant will try to prevent the beneficiary from using the L/C at all. In other words, the L/C applicant attempts to seize the claim that the beneficiary has against the L/C issuing bank. An injunction (an injunction is made when a change in the status fails to execute the rights of the parties, or there is a noticeable difficulty in implementing them) can be taken into account when it is intended to demand that the beneficiary waive the use of an L/C that has been performed in advance, and the provisional seizure (provisional seizure may be made to compensate for the forced execution of work or non-work on bonds that can be converted into money or money, and may also be made on claims that have not reached the deadline) is held by the beneficiary, and the recovery is precarious without the seizure. Therefore, an injunction can be ordered if there is a concern, such as a failure to enforce the rights of the applicants such as creditors and debtors, and a provisional seizure can be ordered when there is a claim for provisional seizure, and there is a reason for provisional seizure. In fact, unfortunately, many courts often order an injunction against a letter of credit issuing bank, but they must take provisional action against the beneficiary, not against the bank.

There is a fundamental problem in that the abuse of a ban on such a court can break the principle that document transactions are completely independent of commodity transactions. When possible, destroying an L/C in accordance with the court's action at the intention of the L/C applicant should never be abused.

3.5. Fraud Prevention by Substitute of Payment Method in L/C Transactions

International trade payment methods differentiate the L/C method from non-L/C methods. The L/C method is a bank's conditional payment commitment in which a document coinciding with the L/C conditions is exchanged with payment to a beneficiary. Due to convenience, it has been widely used as a trade payment method.

However, as explained above, in the L/C system itself, the fraud occurrence rate has been increasing gradually. To complement L/C weakness and new financial methods in haste, safe payment collection methods have emerged, such as the forfeiting method, international factoring method, trade card method, electronic payment method, and FNG finance, which are L/C substitute methods to evade financial difficulty and to escape the overall risks on transactions. However, even though these financial techniques cannot resolve L/C related

problems, taking advantage of these financial techniques allow the risk of fraud to be escaped slightly.

3.6. Examples of Fraud

3.6.1. *Importer's Damage by Telegraphic Transfer Payment*

Company M signed an import contract with Company T, which was introduced as a furniture supplier based in Indonesia via e-mail in July 2019, on T/T terms, and remitted an import amount of \$76,000 in November. However, even though the expected arrival date passed, shipping documents did not arrive, so Company M requested the delivery of the goods, but Company T did not respond to the request for delivery of goods nor return the cost. Afterwards, the contact was cut off after receiving notification from Company T that it recently moved to the Paris. Company M used e-mail with Company T to negotiate prices and contracts, but the contact information was only via mobile phone. This is a fraudulent type of transaction without a basic means of contact, such as company address and a phone number, which overlooked the importance of obtaining prior information about the counterpart company. In e-trade, the anonymity of the counterparty is guaranteed, so when a transaction proposal is received, a detailed investigation is inevitably required. There is a need to accurately identify the counterpart company.

3.6.2. *Defects in Shipping Documents*

Company L received an order for men's shoes worth \$37,000 by e-mail from Egyptian Company K in early March 2017 as a payment condition of a letter of credit for women's skirts, shipped the goods, and waited for payment. However, Company L received a notification from the client bank that the shipping documents were returned from the L/C establishment bank due to a defect in the shipping documents. Accordingly, as a result of the investigation by Company L, the buyer, Company K deliberately refused to pay the price after the opening of the L/C due to a financial matter. The goods were manufactured targeting for only the Middle East market, which are unable to be re-imported. Therefore, they were disposed of in the Egyptian market locally at a low price. The base point of determination for whether the bank involved in the L/C transaction was aware of the forgery of the shipping documents, or had sufficient reason to suspect it, is at the time of negotiation in the case of the negotiation bank, and at the time of repayment in the case of the issuing bank. In the case of the negotiation bank that has received the required documents from the exporter, the matters to be noted at the time of examination are whether all documents related to the change in terms of credit are presented among the documents (prevention of cases in which a malicious exporter does not present a change in conditions that are unfavorable to them), if the grade of the product is indicated as "second grade" on the commercial invoice even though there is no grade mark on the credit and even though the unit of the product on the credit are indicated, and whether more or fewer conditions have been applied to the invoice and draft bill. There is a need to check whether they match the signature of each shipping company to detect counterfeit B/Ls.

3.6.3. *Payment for Goods by Bankruptcy Check*

In early 2018, Korean Company G dealt with women's trousers. The trade transaction method of the wholesaler (Company F) that supplied them to large department stores in France was to pay by check when the product shipment was completed. Company G insisted on the L/C or T/T method, but Company F said that they had never made any direct import

and only pay by check. When a dispute arose, it was been agreed to insert an arbitration clause in the contract that followed the arbitration of the Korean Commercial Arbitration Board. By June, the shipment was successful and Company F issued a personal check worth \$50,000. Company F placed an additional order of \$35,000 dollars. The first check was sold to the customer's bank, and after 15 months, the shipment for the second order was completed. The customer bank that negotiated the check and collected said that it turned out to be a default check a month later, and Company G was asked to repay \$50,000 immediately. Eventually, Company G requested arbitration from the Korean Commercial Arbitration Board, but there is no guarantee that the payment will be recovered. As a countermeasure against check fraud, personal checks should not be accepted, even if issued by buyers from developed countries, without prior investigation. Check transactions should to be used only in the case of customers with extensive business accomplishments within the scope of not incurring significant losses in case of an accident.

3.6.4. Damage to Payment by Check

Company L received an order proposal from a Tunisian importer in March 2019, and received a part of the price as advance payment by check. First, some of the checks cashed in order to identify the default. The check sent by the importer was in the United States. The intention was to ship the cargo when the deposit was confirmed, but the transaction was canceled after confirming the following facts through various channels. In other words, in the United States, in the case it is difficult to determine with the naked eye when financial institutions manage checks, payment is done immediately. Therefore, during this period, if it was not signed or issued by the approver, recovery proceeds. In this case, even if the payment is made by both the US and the Bank of Korea, if it is found to be counterfeit in the US, it will be recovered and by convention, Korean banks also respond to this request to recover the payment. Therefore, even if the company that received payment concludes the transaction safely and a payment recovery request is done, the exporting company should pay back the amount. For domestic exporters, there is a high possibility for fraud if the counterparty requests payment by check or post remittance, while importers require advance payment by foreign suppliers. As overseas importers obtain goods or samples in advance without payment, domestic exporters are uncertain about getting money back. The damage can be minimized by checking with the issuing bank or conducting a thorough credit check.

3.6.5. Omission of Inland Transportation Bill of Lading

In August 2018, Company K received a men's suit order worth \$150,000 from a buyer in Stockholm via e-mail. Company K, which had only been trading with L/C transactions, accepted the COD payment method suggested by the buyer for inventory disposal due to the off-peak season. Cargo was shipped to the port of Helsinki and a copy of the B/L was sent to the buyer requesting payment. However, the buyer said that it is necessary for local customs procedures and the additional delivery of a combined B/L for inland transportation to be included. Since then, Company K learned that this buyer, an Indian and Middle Eastern buyer, uses this technique regularly to discount the contract amount.

Eventually, Company K agreed with the buyer to discount 30% of the original contract amount on the condition that the buyer would do all customs procedures on their own.

In the case of small and medium-sized companies in Korea, it is easy to fall into this type of fraud by sticking to transaction accomplishments. Specifically, if the transaction conditions are good, and overseas demand for their products is off-peak or sales are sluggish, it can be used for such fraud.

3.6.6. *Sztejn v. J. Henry Schroder Banking Corporation (1941)*

The L/C issuing bank opened an irrevocable letter of credit for the contracted product, bristles, and the seller shipped a wooden box containing miscellaneous items in place of the bristles and obtained shipping documents consistent with the L/C face content (Lloyd's Rep., 1998). The buyer was aware of the seller's fraudulent behavior and filed an application for the suspension of payment in order to prohibit the issuing bank from accepting transport documents. Judge Gracia said that the seller's fraudulent transaction was confirmed by the bank before the draft and transport documents were presented. If notified, the principle of independence of bank obligations under the credit should not be applied to protect fraudulent sellers, and as an exception to the principle of independence abstraction of credit, fraudulent transactions by forgery of documents are recognized.

3.6.7. *The United States Code Case*

In order to indicate that the bill of lading issued on November 12 was shipped before the expiry date specified in the credit by the ship agent, the date of issuance of the bill of lading was counterfeited to November 11, but the seller did not realize the fraud committed by the ship agent. Regarding this, Judge Monronne referred to the *Sztejn* case and found that the bank had no obligation to pay if the documents were forged, or the seller's request for payment was made fraudulently (Lloyd's Rep., 1998). Nevertheless, the court said that the fraudulent activity in this case cannot be passed on to the seller and the bank did not have the right to reject the document. Specifically, he ruled that the bank should not deny shipping documents because one part of a shipping document does not match a certain fact. In other words, inconsistency itself cannot constitute fraudulent activity.

4. Countermeasures for Fraud

Thus far, cases and problems on fraud related to L/C transactions have been detailed. Here, the necessity of enhancing the fundamental awareness of L/C transactions as a countermeasure against fraud, supplementing L/C unification rules, identifying the credit status of the parties concerned, utilizing the certificate system for goods, and establishing a mutual information system is suggested.

4.1. Increased Awareness of the basic principles of L/C transactions

The independence of the L/C agreement between the bank and the customer in a sale contract is that, regardless of the problem of the cause contract, the bank can demand repayment from the customer if the document is normal, so the L/C transaction is essentially a separate transaction from the sale contract and payment is decided through the text of the document only, as it will protect the bank. If a bank ignores the practice of independent abstraction in a letter of credit transaction and becomes party to a contract of sale, it will simply not be able to handle the distribution of today's volume of cargo within a time limit, and the letter of credit in a trade transaction will disappear. In the previous cases, there were two conflicting sides as there were exceptional cases in which the application of the principle of independent abstraction and the practice of principle of independent abstraction were ignored, but the perception that this is not intended to be applied by reducing the principle of independent abstraction, but to maintain order in transactions and prevent fraudulent transactions through strict application.

4.2. Establishment of the Application Criteria for Fraud in UCP600

Considering the past cases, or the provisions of the L/C in the United States Unification Commercial Code, we recognize a ban on the payment of fraudulent transactions. However, there is no explicit document on the prohibition of payment in the UCP600 rule. It is not intended to neglect the principle of independent abstraction and the document transaction ability of an L/C, but since it is likely to result in aiding shameless beneficiaries of fraudulent activities, it is desirable to supplement the principle to prevent fraud by applying the least amount of independent abstraction in the L/C UCP rules. Like the Megarry judge's ruling in the case of "Discount Records Ltd. V. Barclay's Bank Ltd" and Barclay's International transactions of letters of credit, it is desirable for the court to refrain from intervening frequently in the transactions of letters of credit.

4.3. Identify the Creditworthiness of Business Partners

The importance of checking the credit status of a counterparty in trade transactions is particularly emphasized in that it prevents commercial risk factors in advance. Although it is desirable to meet a good partner in a trade transaction, if a customer is not familiar with the creditworthiness of the other party, the bank, the Korea Credit Guarantee Fund, the Korea Chamber of Commerce and Industry, and the official residence should first determine whether it is a reliable customer. In addition, even a letter of credit issued by a bank cannot be guaranteed for payment if the foreign exchange situation at the issuing bank is poor, political risk is high, or if the bank itself is difficult to manage and has no name. Therefore, it is important to make an effort and to find the credibility of the bank in advance.

4.4. Claim for Non-Life Insurance

The contract sheet should be written in detail and kept for a certain period of time. This is because additional damages must be prepared even after payment is made. The payment method for the trade price is remittance method on a collection basis. In practice, the collection method is widely used, and letters of credit are mainly used. In the case of trade claims or fraud, most exporters only try to explain their position, but it can be found that there are quite a few defects in exporter products. It is difficult to avoid responsibility if a contract is not followed. Regarding the date of issuance, eUCP regards the date of issue as the date of issuance if there is any special statement in the electronic record and the date of transmission if not specified. If shipment date or departure date are not specified on an electronic bill of lading, the issuance date of the document is regarded as the date of shipment and dispatch, and in case the date of shipment or dispatch are kept on notation, the notation date is regarded as the date of shipment and dispatch. When goods arrive at the destination, the buyer receives the goods from the carrier by presenting a circulating bill of lading. In the case of a loss or damage in transit, the buyer may receive insurance payment corresponding to the damages using the delivered insurance documents (*Korean Seoul District Court Decision, 2006*). For future international trade business, all corporations should also subscribe to the export credit guarantee system or export insurance.

4.5. Reviewing the Authenticity of L/Cs and Establishing a Cooperative System

The seller, a beneficiary of the letter of credit, should carefully examine whether the composition of the letter of credit is too complicated, against one party, ambiguous, check the letter of credit for forgery, whether there are any signs of a non-exchange contract, or any

other state's statements, and get advice in advance from experts or trading banks for questionable information. In the event that the credit inquiry predicts uncertainty, or if it is necessary to make a transaction with a local transaction partner that is at risk for payment, it is necessary to have a third bank, other than the letter of credit issuing bank, use the confirmed letter of credit which contains the literature confirming the payment. In addition, through close cooperation and the exchange of information between banks and import and export-related agencies, preventive measures for fraud should be taken, as well as an efficient response between banks or between banks and customers in the event of an incident, and mutually cooperate to minimize losses without missing the time to refuse payment or prevent payment.

4.6. Increasing International Information Exchange

When a letter of credit is opened, the notifying bank in the seller's country is generally a bank that has a business relationship with the establishment bank. The seller must compare and review the conditions required by the credit with the conditions set out in the basic contract. After comparison, if the conditions do not match, seller must contact the buyer. necessary measures, such as the issuance of a letter of credit, or to change or modify the terms of the credit prior to shipment. In addition, if an exception to the principle of independence is recognized, it may be repaid from the opening client when the credit amount is paid without malicious intent by the courtesy of the issuing bank or the confirming bank. In the case of a first transaction or a short-term transaction, it is desirable to request a confirmed L/C with a developed bank or a supreme bank to guarantee the payment. The transmission of electronic records from Nominated Banks means that the apparent authenticity of electronic records has been checked. The issuing bank must also have a duty to verify authenticity. Extension of the document review period due to document alteration cannot be regarded as an extension of the expiration date of the credit. Accordingly, re-submission of documents should be made within the validity period of the credit. This regulation applies only in case of counterfeit of documents, and in the case of forgery or defect of documents, does not apply. In the case of a forgery and defect, a notice of refusal should be made without requiring re-presentation of the document. Securing the reality of these regulations can be done using multilateral information exchanges and by taking advantage of local personnel. It needs to prepare for many risks, including technical and legal issues. At the government level, it is necessary to expand the establishment of an integrated system, such as the DB of shipping documents, as well as the establishment of an infrastructure that can prevent damage, such as strengthening education for related parties and expanding the reporting center for trade fraud.

Furthermore, data must be obtained from time to time through international conferences while appealing to the international community for violations of guidelines, and emphasizing this as an international commercial society issue.

4.7. New Possibilities of Fraud

Unless otherwise specified in the credit, Article 22(C) of UCP regulates that a bank shall accept original documents prepared by photocopying, automatic or computer systems, or as a result of these. However, it stipulates that it is limited to cases where it is marked as the original, and that such documents are found to be accepted if necessary. This provision means that if the transport document is marked as original or has been certified as an original, a copy must also be taken over by the bank. The introduction of this revolutionary practice will facilitate fraudulent transactions by counterfeit documents. As an example of the new

versatility of fraudulent transactions that may already be taking place, a fraudulent buyer that purchases goods on FOB terms can be issued with three original bills of lading after chartering a vessel and shipping the goods. Again, the fraudulent buyer made six copies of the bill of lading and told other buyers in three different countries. The fraudulent buyer can sell the same item three times. Of course, the terms of payment are by different bank's confirmed letters of credit. Therefore, since the provisions of Article 22(C) imply an all-around potential for new fraudulent transactions, appropriate countermeasures should be taken against copies of shipping documents, including bills of lading.

5. Conclusion

Occurrences of fraud are unknown and unpredictable. The COVID-19 crisis has caused the economy to slow, making it difficult to manage businesses and in the event of a company bankruptcy crisis, fraud has become more frequent. It should be recognized that although payment through a letter of credit is universal, the letter of credit itself cannot be an absolute and unconditional means of payment. Because the principle of independent abstraction and strict matching of L/C transactions are respected and the payment is carried out by the practice of document transactions, fraud cases are appearing in international transactions, taking advantage of the fact that only documents consistent with the terms of L/C and written documents can be presented.

Although L/C transactions are used as criteria for interpretation and guidelines for transactions between parties concerned under the Rules for L/C Incoterms, it does not contain fraud issues. Therefore, U.S. Unification Law deals with fraud issues together with past similar court cases, which are creating practices of frequent court interventions for fraud cases in L/C transactions. Therefore, it is desirable to add and supplement content that exceptionally recognizes fraud, although the principle of independent abstraction is important in the unification rules of L/Cs, by taking advantage of the purpose of applying the fraudulent transaction as stipulated in the L/C provisions in the U.S. Unification Commercial Code. This should be taken as a very significant intention to develop L/C transactions without aiding and abetting the international transaction order based on good faith. In fact, the trade industry is very enthusiastic about receiving orders, but it would be negligent in general post-management of whether goods were delivered in accordance with the terms of the shipping company's contract, or whether there was any tampering or forgery in the bill of lading or other documents. Fraud or other trade frauds in connection with trade payments in L/C transactions should not be overlooked by the fact that trading companies, banks, shipping companies, and insurance companies reverse the vulnerability of trade-related companies to work in a complacent manner in trade transactions, and it should be recognized that a close exchange of information and cooperation is required between parties.

The implications are as follows.

First, an L/C issuing bank must more specifically regulate the rights and responsibilities of concerned parties in an L/C application agreement. Namely, as to make sure of optimal rights in a bilateral relationship, it is advisable to prevent commercial disputes and to simplify treatment when commercial disputes occur. Second, courts should be careful when they apply laws and principles applied to issuing banks and beneficiaries toward relations between issuing banks and L/C applicants in the L/C transaction. As it is understandable, it is a general behavior that applicants and issuing banks make contracts in an informal way. Thus, court must admit this. Even though informal contracts are anticipated, laws which regulates L/C transaction as well as distinctiveness of customs must be considered, and the law and customs

which are applied to L/C indiscriminately should not applied to relationship between L/C applicant and the issuing bank (Dolan, 1991). Under the above explanation, L/C transactions are a transfer method from individuals to bank credit to minimize the overall risks of concerned parties due to the dissimilarity of general environments and distance. Additionally, L/Cs have been assessed as the most rational method to control conflicting interests and to make payment hastily, safely, and clearly. However, regardless of transaction principles, such as the principle of independent abstraction, paper transaction principle, and the doctrine of strict compliance, they should be observed strictly, and should be performed sincerely based on the sincerity principle, according to the contract fulfillment of the L/C articles, though commercial accidents occur occasionally and take advantage of the nature of the letter of credit. Recently, due to the deterioration of the overall international trade environment, the development of information telecommunication methods and supply extensions of sophisticated office instruments, contract fulfillment resulting from L/C transaction fraud and deception are increasing. It is not only of fraud but also crime increasing. Document forgery and alteration by beneficiary, different from the past, conducted by concerned parties through conspiracy and collusion are gradually complex and more common. Furthermore, L/C fraud that has occurred in international trade is mainly transportation document related or commodity related. The increase in this fraud results in a malicious idea of ill-gotten profit. It is urgent necessity to investigate the reality of fraud and to set up counter-measures to prevent this kind fraud effectively. Therefore, as this paper reviews precedents and judicial cases about fraud resulting from taking advantage of L/C transaction principles, the paper enhances the efficiency of L/C payment methods to provide fraud causes generated from L/C transactions, the presentation of a theoretical frame on fraud cases and fraud prevention which international business companies should acknowledge.

Furthermore, as L/C transaction fraud is an international crime, international collaboration from related, concerned countries is necessary to prevent crime. Judicial cooperation, especially criminal extradition, is necessary not only for international crime but also domestic crime. In the case a domestic criminal flees to a foreign country, the criminal should be transported to the country where the criminal conducted crime. It would be meaningful to identify causes and appropriate countermeasures that could lead to fraud prevention in order to minimize economic losses and avoid management difficulties. The purpose of this paper was to examine cases of fraud and the problems of fraud in L/C transactions and to seek countermeasures against fraudulent activities.

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