

## Effective Fraud in the Documentary Transactions

Hossein Valipoori <sup>1,2</sup>

<sup>1</sup> Department of Law, Kermanshah Science and Research Branch, Islamic Azad University, Kermanshah, Iran

<sup>2</sup> Department of Law, Kermanshah Branch, Islamic Azad University, Kermanshah, Iran

Received: Dec. 2014 & Published: Feb. 2015

**Abstract:** Fraud is one of the debatable topics in the law's field and it applies where a legal rule or a right or ill will is enforced and the application of that rule or the right is harmful to interests and rights of another person or the rights of society as a whole. One of the general principles that the documentary credit and bank guarantees are based on, is independence of legal entities. Thus that the banks involved in a documentary credit and bank guarantees, principally do not interfere in disputes concerning the original and primary contract between the parties, and this matter is accepted as a norm. But in this case, there is one exception and that exception is a fraud which is invoked only in very limited circumstances. In cases where the credit of an issuing bank, is irrevocable and also where the advising bank added its confirmation to it. In case of fraud they should refuse responsible implementation of commitment for the beneficiary. Given that on documentary credits and bank guarantees, banks act on the basis of documents and not goods, therefore we can say that the nature of fraud documents should be the determining factor in applying the rule of fraud, not the nature of the fraudulent. This article attempts to explain the theoretical concepts, the relation between the autonomy of documentary credits and bank guarantees, and the nature of applying fraud rule.

**Keywords:** fraud, effective fraud, documentary credits, bank guarantees

### Preface

The exact time of fraud issue in documentary credits and bank guarantees' law is not an easy job, but the idea that fraud, overturns and transforms the ordinary rules of documentary transactions, is an old theory. Historical records show that the rule of investigation into fraud was not very developed until the 1920s. In other words, claims in the early twentieth century, though some referred to fraud, but none of those claims were examined on the basis of fraud. Introduction to evolution of fraud in documentary transactions was achieved by study of claims in the courts. The rule of fraud allows the issuing authority of credit, to stop the payments in the case of fraud. Therefore the rule of fraud has a significant impact on obligations rising from documentary credit and bank warrantee. In fact, these types of payment methods which are used to facilitate and expedite international trade, can occur as a pretext for various types of counterfeiting and

fraud. The principle of autonomy is the most important principle governing the transaction documents. The principle of independence of documentary credits and bank guarantees means that the banks involved in operations, principally does not interfere in disputes about the basis contact of sales or other contracts between the parties. There is only one exception and that exception is a fraud. This article answers to the question that to what extent the application of fraud rule is related with the independence of documentary credits' principle and bank guarantees?

### 1. Theoretical foundations

#### 1.1 . Documentary credits

Credit in general sense of the word Demonstrate trust and confidence, but in strictest sense, such as a loan that a person borrows to someone else and the borrower's obligation is to repay the amount received in the future. In other words,

someone who is still valid, can obtain the needed amount from another person and instead be committed that in the future or in the deadline or deadlines which are determined in the contract, will return the amount to its owner (Hosseini Hashemi, 2007).

The main sources of receiving credits are banks and credit institutions. These institutions act as an intermediary between the owner of savings accounts and loan applicants and by using their customers' deposits, act on giving credits and earn considerable income instead.

Documentary credit<sup>1</sup> which is also known as letter of credit is an international payment instrument that has been defined through various aspects:

Some say "Documentary credits are documents whereby a bank will be responsible for paying money to the beneficiary through providing certain documents while the customer requested it." (Guttering and Megara, 2005).

This definition gave a general image of the documentary credits, while highlighted the document with specific function also. This definition does not mention the parties involved in payment system, so it does not seem a comprehensive definition.

Some Have defined Documentary credits as "the declaration issued by a bank according to the customer's request which includes the commitment of the credit issuing bank, and as a result, the beneficiary can receive the mentioned amount from the issuing bank, upon presentation of documents cited in letter of credit." (Hoagland, 1986). This definition has considered the Documentary credit as a statement from the bank without any reference to the nature of the client request.

In another definition documentary credits were considered "as an agreement with bankers whereby the banks undertake payment or acceptance of the bills issued by the customer in exchange for delivered invoices and shipping documents. Whenever banks include details of the agreement in a document, the document is called a documentary credit, or briefly, a credit." (Packman, 1971).

UCP600<sup>2</sup> has defined documentary credits as "any arrangement, with any name or description, containing the definitive and irreversible obligation of the issuing bank to accept payment documents in accordance with the terms of credit".<sup>3</sup>

In fact UCP defines documentary credits as arrangements to any name and any description, and has granted the analysis of the legal nature of documentary credit to the domestic law. Initiative act of International Chamber of Commerce in gathering opinions and describing this established right by the word "arrangements"<sup>4</sup> in order to collect votes, is interesting (Bolhassani, 1996).

According to the definitions above, and regardless of the various terms and definitions used, Letter of credit can be defined considering the function and role it plays as "a contract at the request of the applicant which the credit issuing bank, grants a credit to the benefit of the Beneficiary and thereby committed to pay his credit in accordance with the terms and explanations of the documentary credit from beneficiary. Of course provided that if the period of credit was not been expired." In fact two main elements are involved in Letter of credit. One is concerning the obligation of credits' payment by the Bank and another is condition for the fulfillment of these commitments which is presentation of documents in accordance with the terms of the Credit from the beneficiary; And the words used in the documentary credit ("Credit" and "Documents"), indicates this matter clearly.

## 1.2. Bank Guarantees

Guaranty literally means to accept, to compliance, to undertake another loan and to pledge that whenever something was lost should be replaced or should pay its price (Amid, 1997). Guaranty in the legal sense means "a

<sup>2</sup> Uniform Customs and Practice for Documentary Credits

<sup>3</sup> UCP 600 Art 2: "Credit means any arrangements however named or described, that is irrevocable and there by constitutes a definite under taking of the issuing bank to honor a complying presentation.

<sup>4</sup> Arrangements

<sup>1</sup> Letter of Credit (L/C)

contract concluding a person undertaking financial obligations of someone else.”

The committed is known as the grantor, the other party is the beneficiary and the third party is called the exporter or the principal debtor (Jafari Langrodi, 2001). However other meanings is given to it, such as its general sense, including the bail contract and remittances in civil law and also its meaning in public international law and in relations between states, therefore we avoid their interpretation and elaboration. But Guarantee is used in " the liability " terms and nowadays is being used in the sense of commitment, such as bank guarantees, warranties, notarized warranty and personal guarantee meaning bail, guarantee liabilities (= contract guaranty). » (Jafari Langrodi, 2002). A guarantee is a regular or formal written in any kind that suggests contractual liability or obligation in any way. Guarantee in terms of the origin of the issue is basically divided into two types: bank guarantees and personal guarantees. Bank guarantee, is a guarantee that the drawee bank (legal entity) is committed to it; on the other hand a personal Guarantee, is a guarantee that an individual is assumed for it not a legal entity. However in the latter case if the individual (guarantor) gives his property as collateral, the Guarantee referred to as property guarantee (Jafari Langrodi, 2002). It should be noted that in connection with the definition of the "Guarantee" the French word and "Guarantee" in English language, and its literal meaning in Farsi which means "responsibility" is said: "The word means weaknesses and a significant sale collateral and a paper on which the sale collateral was written where the amount of the price and its time were mentioned too and often were used for pays and assuming pays means that I guarantying prices. Responsibility means commitment and guarantee. " (Jafari Langrodi, 2002).

In banking law the definition of guaranty is defined as separate and independent obligations that in case of lack of commitment on the committer in a contract, bank must guarantee payment as an irrevocable commitment to pay beneficiary which the bank guarantee contract is completely independent from the original debt.

In some terms, guarantee contract is a separate and independent document from of the original contract Which in fact guaranties with the reservation of guarantor by the request of applicant and the interests of stakeholders that the carrying amount, On-demand or on a specified date, is payable to the beneficiary (Akhlaiqi, 1989).

American law defines the guarantee as: " Guarantee is a commitment made by a person in order to respond to the debt or performance of contracts or obligations of some another person who was primarily responsible for the payment of debt or performance of the contract." (Masoudi, 2003).

Therefore, we can define the guarantee as: (Pierce, 1993) "bank guarantee is an Irrevocable potential liability or incidental or ancillary to the main contract, (Yang and Buckley, 2006). as a written document which is issued by a third party who financially be able to pay the banks or insurance companies or any other person or entity to applicant or to the command and responsibility of banks, insurance companies or other institutions and individuals guarantees and for the interests of beneficiary to pay a certain amount of cash to the beneficiary and to ensure that the implementation of the contract is independent from the basic contract. " <sup>1</sup>

If the original committed does not act to its obligations under the contract, in cases which the guarantee is not contingent, beneficiary can Unconditionally demand payment from the drawee bank, Without the need to prove a violation of the commit and the bank is obliged to act on demand and comply with the first request <sup>2</sup> and only with the appearance of documents in accordance with the terms of guarantee or any other certificates conform to the Guarantee conditions.

### 1.3. The concept of fraud

<sup>1</sup> ICC Uniform Rules for Demand Guarantees (URDG 458) publication CCIN 458, ICC Publishing S.A, International Chamber of Commerce, the world business organization, 1992, Article 2(a)

<sup>2</sup> Ibid, Article 2 (b)

Fraud is a concept which deals with many areas of law; generally, the term is used when a legal rule or a right, be implemented with bad intentions and in the application of that, rule of law or the rights of another person or the rights and interests of the whole community gets hurt. Generally we can say that letters of credit and bank guarantees ensures the payment of the beneficiary held by a financial or monetary institution such as a bank.

When the beneficiary raises funds for one of these tools, to justify the non-payment of credit or to protest against the payments that have been made, often a fraud is cited.

In ordinary relationship between the parties of commercial credit funds when the goods are sent and the terms of the Guarantee contract, applicant has failed to perform its contractual obligations and have a violation, the credit can be claimed, but like any other contract, it is possible that the beneficiary, inadmissibly request the fulfillment of the obligations by the other party's.

Fraud is the only exception that everyone agrees on that, although there are disagreements about the concept and criteria of fraud. Fraud actually shows the truth of matters untrue. In fact, recognizing of what constitutes fraud and how to determine it causes the disagreements in the meaning of fraud.

The commercial letter of credit philosophy is based on the absolute and independent payment guarantee of the vendor's price, provided that the vendor documentation is in accordance with the terms of the credit's offer (Yang and Buckley, 2006). Also the purpose of issuing guarantee of supply risks is claims and damages that roots in the original contract. So as soon as the risks and reasons for the issuance of the guarantee were made, this document is no longer accessible; but in case it was receipt, it is refundable (Mohebi, 2000). "The courts try to create a balance between the advantages and benefits of the letter of credits and preventing the application from illegal result which can cause in actions that could make the beneficiary fraudulent." This balance is achieved by applying the fraud exception.

Exception of fraud is based on the principle of "removal of cheating from everything"<sup>1</sup>. Therefore the bank's obligations to pay is not established when fraudulent documents are provided by the beneficiary. When the beneficiary is not entitled to payment and demands it, the right has been violated; at this time the concept of fraud against the principle is indicated. Consequently, the fraud involves an abuse of right.

Fraud rule is part of the international public order<sup>2</sup> and can be considered as reflection of the commercial law's principles. Since this rule is a part of the public order, the parties cannot avoid applying of fraud's rule, just because it is noted in the contract that this rule does not apply (Kurkela, 2008). Therefore, if the parties have stipulated in their contract that fraud rule does not apply, given that this is a matter of public order, (if possible fraud), the fraud rule applies.<sup>3</sup> In other words, an agreement cannot be made in contrary to jus cogens. This exception comes when influences break the principle of independence, enters into the heart of payment and request payment obligations of the documentary transactions; Although such exception is required to restrict the activities of dishonest person, But the scope of this exception must be carefully specified and limited so it doesn't prevent the commercial efficiency and profitability of this financial instruments. Thus, while the existence of such regulation is necessary, its scope should be carefully drawn in order to not preventing this tool from commercial performance.

#### 1.4. Effective fraud

One of the general principles that the documentary credit and bank guarantees are based on, is independence of legal entities. Thus that the banks involved in a documentary credit and bank guarantees, principally do not interfere

---

<sup>1</sup> Fraus Omnia Corruptit

<sup>2</sup> International public order

<sup>3</sup> Article 10 of the Civil Law "private contracts toward those who have signed it. While not opposed to the law, is valid. "

in disputes concerning the original and primary contract between the parties. But in this case, there is one exception and that exception is a fraud which is invoked only in very limited circumstances. In cases that it is possible to successfully raise the exception in fights, bank meaning the issuing bank, if the credit is irrevocable and advising bank, if its confirmations were added to it, should refuse the obligations which the beneficiary is responsible for, this means that the implementation of this obligation if the correct documents are submitted before the expiry of the validity period, under the terms of credit attempts to pay, accept or trade.

Unlike the case of non-compliance, here we are confronted with a situation that the documents appear to be right, but these documents or providing of them is mixed fraud. This fraud is usually related to the documents. These documents may refer to them in connection with the goods, forged or non-real, but it seems that these documents are correct. Fraud's claim arises usually by the purchaser. He will try to prevent the bank from paying credit or prevent the seller from adding bills. The buyer may claim that the seller replaced the goods comply with the contract and sent worthless goods or generally did not send goods or those of bill of lading have been forged or fraudulently are not conforming to the truth. In the sense that to the bill of lading's date is listed first to show the promised date, while actually goods has been sent after the moratorium.

The Bank is not required to verify directly whether the alleged fraud can be proven or not. Bank may take a passive approach and evaluate the reason that buyer brings. If the investigation goes to court, the question of whether fraud is relevant to the decision or not is based on the facts known at the time the court, and the bank awareness at earlier stages toward this fraud does not matter.

To verify whether the fraud exception is acceptable or not, three cases must be distinguished from each other.

First, there is only a claim by the buyer informed the Bank that fraud has occurred. This claim may be based on suspicion, even strong suspicion. Or maybe bank stimulated such a doubt without the buyer's influence. If more than this is not clear, bank must pay the credit (Shmitov, 2011).

(DOI: [dx.doi.org/14.9831/1444-8939.2015/3-2/MAGNT.38](https://dx.doi.org/14.9831/1444-8939.2015/3-2/MAGNT.38))

Second, it is to be persuaded that the bank clearly demonstrates that the fraud has been achieved. There is a clear proof for the Bank which implies for example that documents or some of them were counterfeit or forged, but there is no reason provided for the bank to be certain that the beneficiary (seller) has been aware of the fraud. It is possible that fraud is carried out by a third party. Like transportation's broker or dealer who wanted to hide that the goods have been sent out of time and the fact that the beneficiary had no knowledge of the fraud. It can be assumed even in mentioned case this rule applies that "fraud, eliminates all things (of legal action)" But it is not.

Third, the bank has a positive reason that the fraud was conducted and beneficiaries were aware of this fraud. If the proven facts satisfy the bank, the bank should act on its contractual obligations under the credit. Such a case arises when, for example, the beneficiary (seller) himself provides documents those terms of his knowledge of are non-compliance with the truth, or when another person attempts to provide those documents with his knowledge or connivance.

Another example is when the vendor, offers documents that shows goods were sent to buyer, but seller withdrawn the goods from the carrier and the buyer knows that the goods will not arrive.

Basically, the courts must consider the facts that are proven to be clear and unambiguous as the basis of alleged fraud's exception, but with the excessive rigor to prove fraud, makes it impossible for the courts to apply principles of this exception to the principle of independence of the transaction documents (Shmitov, 2011).

## **2. Legal effects of fraud in documentary credits**

### **2.1. Fraud in documentary credit**

One of the general principles that the documentary credit and bank guarantees are based on, is independence of legal entities. Thus that the banks involved in a documentary credit and bank guarantees, principally do not interfere in disputes concerning the original and primary

contract between the parties, and this matter is accepted as a norm. But in this case, there is one exception and that exception is a fraud which is invoked only in very limited circumstances. In cases where the credit of an issuing bank, is irrevocable and also where the advising bank added its confirmation to it. In case of fraud they should refuse responsible implementation of commitment for the beneficiary.

In the Documentary credit, banks do not have obligation to detect and determine the authenticity of the credit documents. If documents are specious, banks are required to pay the credit because banks are solely responsible for the implementation of the documentation provided with the credit terms. The buyer is obliged to clearly define considered documents and before any payment, provide it to the broker bank. In this case the buyer must plan what documents he need for this purpose, because all of the documents are dependent on the contract of buy or sell. These documents should be documents which are specified in the contract when are required to be presented on the basis of the bank. The bank would not be possible to check the authenticity of documents, whether real or fake ones(Mehrbani, 1992).

Although the principles and the need to deliver contracts governing the parties of contractual obligations of the documentary credit and particularly in the importance of the principles of international trade is indisputable but this facts should be noted that when a contracting party committing fraud, provides documentation, originally violated a Kept Promise and dishonesty in the performance of a signed contract, inevitably undermined the necessity of contracts and the other party cannot be expected to adhere to its obligations in committing fraud.

It can be said that in referring to the rules of fraud that although there is a possibility of documents to appear exactly provided in accordance with the terms of the credit but if it turns out to be fraudulent payments can be stopped conditionally if the provider of documents or the claimant doesn't belong in the group of supported.

Fraud rule allows the credit issuing or court to check the facts that appear within the corresponding documents and in case are fake stop paying.

(DOI: [dx.doi.org/14.9831/1444-8939.2015/3-2/MAGNT.38](https://dx.doi.org/14.9831/1444-8939.2015/3-2/MAGNT.38))

Philosophy of documentary credit is to provide an absolute guarantee of payment for the seller conditionally if the seller presents and submits right documents; therefore, fraud rule has a significant influence on obligation arising from documentary credit and hence is considered the most controversial and the most obscure topic in the field documentary credits laws.

## 2.2. Fraud in bank grantees'

URDG regulations has not certain rules in the this regard, the problem is due to the provisions of the Chamber of Commerce to resolve operational issues arising from the issuance and invoking of the guarantee, and therefore mostly states procedures and methods to solve the problems of businessmen and bankers in practice and not legal rules needed for the judges.

Fraud is not the procedures governing on performance of a guarantee; Instead it's made of substantive law governing guarantee .Further, the regulations of the Chamber of Commerce are not binding and are debatable and therefore will be in contrast with the mandatory regulations; because these provisions in the final analysis are considered as a condition of the contract and are valid in that range.

In contrast, the United Nations Convention (URDG) that due to its nature and essence, is identical or equivalent to local regulations (and in the some countries beyond the domestic law), has expressed certain rules in the particular. Article 19 of the Convention as an exception to the obligation to pay, has stated the following:

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.

2. 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 within the risk to be covered by the undertaking;

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

(d) Fulfillment of the underlying obligation has clearly been prevented by willful misconduct of the beneficiary;

(e) In the case of a demand under a counter-guarantee, the beneficiary of the counter-guarantee has made payment in bad faith as guarantor/issuer of the undertaking to which the counter guarantee relates.

In the circumstances set out in subparagraphs (a), (b) and (c) of paragraph 1 of this article, the principal/applicant is entitled to provisional court measures.

Like documentary credits, here too we can identify two types of fraud. One is fraud in documents (providing fraudulent documents) and the other is fraud in the transaction. In the first assumption, unrealistic and fraudulent documents are provided. And In the second assume, the appearance of documents is right, but does not meet the basic facts. Fraud in bank guarantee in most cases however are comprehensible and understandable and in the fact's light of the original contract. To facilitate reference and use of a bank guarantee as a useful tool and in order to ensure effective implementation of commitments, rather than relying on the occurrence and taking offense is limited to the violation. But we should not forget the even in this assumption, the purpose and function of a bank guarantee should not be forgotten and it means that means that this

document can only be guaranteed at the time infringement of applicant of payable contractual obligations. Although the law governing guarantees, especially the principles of independence is preventing full attention to this matter but fraud in bank guarantee will be different before and after the payment. Before paying, exporter can go to court to establish a temporary prohibiting order of the payment guarantee education. While after the pay, problem of unfair and unlawful demanding and property arises in vain. The exporter should be against interest litigation based on legal principles and get what he unjustly received(Masoudi,2012).

### 2.3. Duties and rights of the Bank

According to the principle of law and independence of documentary credit trade by banks when faced with a demand payment is obliged to pay the beneficiary's credentials without any regard to the contract status, but if fraud detection exists at the time of credits' payment, bank is obliged to withhold payment, and shall reject the request of beneficiary.

If the bank forgets its duty and ignores the applicant's responsibility it causes it's responsibly upon the applicant and loses its right to reimbursement of the amount paid under the contract. Responsibility and commitment of the bank is due to the obligations through applicants. The bank is necessary to have the goodwill and care and precision(Bertrams, 2007).

If fraud is proven, the beneficiary must not request the bank to pay credit and, and the bank has the right to prevent from payments. In fact, no one has the right or is committed to protecting individuals from fraudulent practices and provides them with assistance.<sup>33</sup> so if the bank was aware of the fraud is obliged to refuse payment; otherwise no responsibility concerns the bank. When the beneficiary claims credit from a letter of credit, he must provide the required documents in accordance with the provisions.

The Bank must review the documents within a normal and reasonable time, the duration of this conventional process, depends on some factors such as urgency or complexity or it's

professionally, stating documents and opposition of applicant's to the payment based on claim of fraud, and the likelihood of fraudulent documents and the need for urgency in the matter, by the time of vessel carrying goods arrival, etc. Time may vary according to these issues. Usually two or three days are sufficient for banks to review the documents that are provided in the credentials. The English banking considered the standard procedure length five or six days, and for exceptional cases eight working days is considered. URDG758 has determined 5 days duration, from the day of documents' submission to the bank to review them. If the bank decides to refuse the documents, it must identify inconsistencies in the Declaration of rejection. The reason is that if the beneficiary can resolve defects before the expiration of validity, there must be a deadline for the elimination of defects(Nielsen and Nielsen,2009).

Also when there is a discrepancy between the documents, the bank must refuse to pay credit and reject payment and it should give a warning about the fact that there are differences between the documents to provider of documents. This notice must be presented within seven business days after receiving the documents to the provider and if the issuing does not succeed in giving that notice, non-payment may be illegal. However, if the payment is due to fraud, forgery or if a claim has been made after the deadline of credential validation, the bank can reject the payment without giving any notice(Dunn et al,2001). If they decided to take the credit payment, a warning must be given credit to the applicant that the beneficiary has claim the credit; the main purpose of this notice is to inform the applicant that the beneficiary claim accreditation payment. Consequently of the claim, the applicant is asked for refund of the amount paid by the bank to the beneficiary.

We must distinguish between the situation before and after the payment in this case, In fact in the case before payment, the principle is that if there was a reason for fraud, bank should refrain from paying. In this case, the purpose of the litigation against the Bank's mandate is to prevent and prohibit the payment. If fraud is proven, it prevents the bank from payment. But

in the case of after payment, the principle is that if the fraud of beneficiary is obvious, the bank is responsible. This situation corresponds to the time that the bank has already paid the beneficiary and demanded repayment from the applicants however the bank must have refused payment of credit to the beneficiary(Dunn et al,2001).

The rule is that when fraud is uncovered bank should refuse to pay, but that does not mean that the bank is obliged to study request of the beneficiary. The applicant is responsible for entitling a clear proof of the existence of fraud in demand for payment. In the case of a claim raised by one party against the other, bank has no duty to inquire.

If the applicant claims that the application is fraudulent, he needs to provide a irrefutable and undeniable reason to the bank and should not simply claim a fraud and expects the bank to examine whether the allegations are true or not. Bank only has a duty to act in good faith. This condition is a mental condition and criteria. In relation of the applicant and the bank, if the bank determines that the evidence is insufficient and can be paid, the bank is entitled to reimbursement(Dunn et al,2001).

What caused the bank responsibility for the applicant is bank knowledge of the fraud when payment was made to the beneficiary and the proposition to hold the bank should be established and documented.

But it should be noted that the existence of sufficient information about fraud is impossible or very difficult for the bank, unless the applicant has provided sufficient and convincing evidence before the payment. Bertram has stated that "fraud must be clear and unambiguous. Bank should accept fraud with caution. In other words, the applicant should not leave the bank in any doubt about the offense of the beneficiary and his wrong request." (Dunn et al,2001). This is an extreme measure that the applicant does not have any chance to win. The courts are very reluctant to give sentences against the banks; because the banks are unable to prove the existence of fraud. If bank acted conventional and reasonably there is no responsibility for it.

The Bank is committed to refrain from paying only when fraud is proven. In other circumstances, the bank has a discretionary power to accept or reject the documents, if comply in good faith.

### 3. Conclusion

According to orientation of the law governing trades, Effective fraud is an objective fraud reflected in the realm of documents; therefore, in such criminal fraud, fraud is undoubtedly effective. The bank should refuse to pay credentials and fraud must be stated in the document. Thus other frauds are ineffective in payments. Fraud can prevent the payment if the fraud is clear to the bank or be issued to non-payment by a court judgment or interim injunction. But if the fraud is not obvious or it was confirmed but the bank has not notice and pay credit and later the fraud was revealed, affected can recourse to a competent court and case the plan; In occurrence of each relative case such as fraud of the document, commodities, etc. to claim his rights.

If the bank attempted to pay credit with awareness of fraud, is not entitled of repayment or credit payment from applicant. It is necessary that provided proofs for fraud are clear and without any doubt; So that the reason can be simply deduced for fraud. In some cases, according to court procedure and rules governing the transaction documents, to apply the rule of fraud, it is necessary to prove the fraudulent intent and the material object. In proving of the material element of fraud, the applicant must prove what he claims and its legal consequences. And the fraudulent intent is consisted of two standards: purpose standard and personal standard. The measure purpose considers a person's normal behavior and in contrast of a purpose standard, which is a personal standard, prove of fraudulent intent by beneficiary is necessary. It seems, according to its internal intention, proving them is too difficult. Thus the existence of fraudulent intent is not necessary to prove the fraud. UNCITRAL Convention and the Uniform provisions of the USA trade have adopted the same idea.

### References

1. Hosseini Hashemi SB. fundamental principles of banking. Investment bank publications. First Edition Tehran, (2007).
2. Guttering HC and Megara M. The Law of Bankers Commercial Credits. United kingdom London, (2005).
3. Hoagland. Collection. Contract Guarantee, Bank of Montreal. the Federation Press Canada, (1986).
4. Packman R. Guide to the Business world. Business and Economic. London, (1971).
5. Bolhassani A. foreign orders (legal analysis). monthly transport characteristics. (1996).
6. Amid H. Amid Dictionary. Amir Kabir Publications. p. 873, (1997).
7. Jafari Langrodi MJ. terminology of Law. Ganje Danesh publication, P. 418-424, 481. (2001).
8. Jafari Langrodi MJ. *expanded terminology of Law*. published by the Library of Ganje Danesh, V.3, P. 2421- 2420. (2002).
9. Akhlaqi B. discussion of bank guarantee. Journal of the Bar of Justice. No. 148-149 (1989).
10. Masoudi AR. bank guarantee in Iranian law and international trade. Institute of Legal Studies and Research of Shahre Danesh, p. 30, (2003).
11. Pierce A. Demand Guarantees In International Trade. London Sweet & Maxwell publications , P. 8. (1993).
12. Yang, Gao X and Buckley Ros Pi . legal nature and unique letters of credit. letters of credit and sources of origin, translated by Mashallah bana Niasari, Law Journal, a publication of the Center for Legal and Parliamentary Affairs Vice President of International Law. No. 35, p. 306, (2006).

13. Mohebi M. bank guarantees in the procedure of arbitration tribunal claims - United States Law Journal presidential office. **No. 20**, P.106. (2000).
14. Kurkela MS. Letters of Credit and Bank Guarantees under International Trade Law. Oxford University. p. 173-181, (2008).
15. Shmitov K. Law of International Trade. translation by Dr. Behrooz Akhlaghi and others, Press Publications. **V.2**, pp. 676-677, 678-680. (2011).
16. Mehrbani R. management of foreign documents. Alborz Publications:Tehran, p. 137, (1992) .
17. Masoudi AR. bank guarantee In the Iranian law and international trade. Publications Shahre Danesh: Tehran, p. 191-192, (2012) .
18. Bertrams R. Bank Guarantees in international trade. 3rded. Kluwer law. P. 304. (2007).
19. Nielsen J and Nielsen N. Standby Letters of Credit and the ISP 98: A European Perspective, Available at <http://letterofcreditforum.com/node/11>, p 14. (2009).
20. Dunn J and Knoll J and Dempsey M. Letter or Credit in Construction Projects. p 2-4, 306, 399. (2001).
21. Mazini M. and Mohajerani Tehrani MH. international banking operations 2, the Institute of Banking, Central Bank of the Islamic Republic of Iran. (1997).