

Settlement of Documentary Credit Disputes under DOCDEX System

Dr. Noor ALZYLOUD^{1*}, Dr. Mahmoud ISMAIL²

¹Faculty of Law, Philadelphia University, Jordan; E-mail: nalzyoud@philadelphia.edu.jo

² Faculty of Law, Applied Science Private University

Abstracts: This study aims to present the unique product of the International Chamber of Commerce for dispute resolution in the area of trade finance, namely Documentary Instruments Dispute Resolution Expertise (DOCDEX). The ICC Banking Commission, together with ICC International Court of Arbitration, has designed these distinct set of rules for documentary credit issues, specifically adapted to resolve disputes over interpretation and monitoring of documentary credit implementations. The DOCDEX took effect in 1997 and was reviewed with effect from 2002. According to the DOCDEX, the ICC will engage independent experts who will make their decision. This decision will be considered by the ICC Banking Commission's technical adviser to ensure that it is in line with the other opinions of the ICC. The decision will be made on the basis of the material provided by the parties, including their arguments. The study discusses the functioning of the DOCDEX Rules, how a DOCDEX decision is made and what law is applicable on the system. Moreover, attention is devoted to an exploration of the difference between DOCDEX system and arbitration. Lastly, the study found that the DOCDEX decision is not binding on the parties but can even more likely be used as evidence if the dispute is referred to a court or an arbitration tribunal.

Keywords: Credit Disputes, DOCDEX System.

1. INTRODUCTION

The banking sector has greatly contributed to the expansion and facilitation of international trade with its cross-border business models. The most important of these is the facilitation system known as Documentary Credit, which allows international sales between two spatially separated parties; where the goods are delivered through handing over the documents representing the possession of the goods sold, which are the bill of lading, the goods insurance policy, bill of quantity, weight, quality, invoice and other documents. The delivery of documents conforming to the agreed terms replaces the delivery of the goods, the price shall then be due, and the seller, who is the beneficiary of the documentary credit, shall receive the credit from the bank after delivery of the required documents.

During the course of the last 80 years, the international trading has depended on the courts to judge in Documentary Credit disputes. The Documentary Credit is a technical document which necessitates expert supervision, not only as far as banks are involved, but also the users of and contributors to such document, including, for example, importers, exporters, shipping companies and insurance agencies. When dealing with such disputes the courts largely had high respect for the expert opinion. Judges consider international practice in the handling of Documentary Credit issues, as well as on the expressing of the respective Documentary Credit and the appropriate DOCDEX rules.

Nonetheless, some decisions have may be caused complications in the banking and legal fields, and some bad banking practices have initiated a rising number of disputes, most of which do not approach the courts because of the time, effort and cost of resolving the Documentary Credit issues.

Despite the importance of documentary credit in the circulation of international trade and the advancing wheel of the global economy, it is a banking model that is not without complexity, given the multiplicity of legal relations and their interdependence in one transaction, as evidenced by countless patterns of disputes that arise between its parties, which requires a system sophisticated, flexible and vibrant to resolve.

As a result of the slowness of the ordinary judicial procedures and the lengthy duration of court litigation at all levels, an urgent need has emerged to find an effective and fast way to achieve justice and in line with the development of international trade, which is found in arbitration; Its multiple advantages make it the most suitable and appropriate solution for resolving commercial disputes that require speed and confidentiality in order to preserve the parties reputation and relations.

Arbitration undoubtedly has a prominent role in resolving such disputes arising from documentary credit through institutional arbitration centers such as arbitration under the system of the Mediation and Arbitration Center of the Union of Arab Banks and the Arbitration Centre of the International Chamber of Commerce (hereinafter referred to as ICC), which promulgated a special system for the resolution of disputes between parties when using documentary accreditation regulations. The system issued by the International Chamber of Commerce in Paris is called the DOCDEX system.

The DOCDEX rules, which have been revised twice since their first approval, in 2002 and 2015. In 2002 the called rules were extended to assurances and gatherings also joining ICC banking rules. The 2015 revision more extends the rules scope to a broader array of trade finance instruments, including *“transactions or aspects of transactions not covered by existing ICC banking rules, such as trade loans, syndications, negotiable instruments, risk purchase agreements, conflicts of priority and fraud in letters of credit”*. This amendment will enable the adversaries previously left out of the compass of DOCDEX system to benefit from its services. Thus, according to the DOCDEX rules, a party desiring to use DOCDEX services should refer to the ICC and pay the filing fees. If the claim comes within the scope of DOCDEX rules, it will be sent to the respondent who then has 30 days to answer the claim or file a counter-claim. The respondent may not filing an answer. However, then it will be excluded from submission of its arguments.

This study addresses the settlement of documentary credits disputes according to the DOCDEX system by defining this system, reviewing its procedural provisions, demonstrating the law applicable to litigation according to DOCDEX, and finally the authenticity of the decision rendered in respect of this litigation, all of which is regarded as a system of documentary accreditation, affirming that arbitration in documentary credits disputes is not limited to the DOCDEX system, but like other disputes can be brought before courts or any arbitration body, whether institutional or free arbitrator as a public asset.

It should be noted that the disputes that arise between (the requester) and the seller (the beneficiary) from the sale contract (the basic contract) concluded between them fall outside the scope of DOCDEX and therefore may not be raised, and if it is raised, it will not be accepted.

The abbreviation DOCDEX stands for (Documentary Instrument Dispute Resolution Expertise), which means expertise decision for documentary credit dispute settlement, which is the decision issued by the Center of Expertise of the International Chamber of Commerce in Paris, concerned with the settlement of documentary credit disputes. While the rules established to regulate this issue are called (DOCDEX Rules) for the purpose of determining the procedures that enable the disputing parties regarding the implementation of documentary credit to obtain a decision from an independent, honest and impartial dispute settlement expert, (DOCDEX Rules) applies the unified rules and customs for documentary credits, as well as the unified rules for the Letters of Guarantee, the unified rules for Inter-Bank Sett Settlements and the unified rules for collection.

1.1. First Topic: Procedural Rules of the DOCDEX System

DOCDEX is of a mix nature as it has structures of expert willpower and arbitration and such a method for resolving disputes has been defined by many as pioneering. Dispute parties may prefer recourse to the DOCDEX system because of its speed, simplicity, and confidentiality of procedures, reasonable cost, and more specialized and professional provision. For example, the ICC faced a case of dispute when a credit, before being recommended to the second Beneficiary, delivered through a number of banks. Reasons for this were that *“the SWIFT keys were not exchanged between the relevant parties, and that one bank refused to advise a credit issued by a non-bank”*.

ICC decided, under the DOCDEX system, that “there was nothing to prohibit a non-bank from using the SWIFT format and that, on the basis of their acceptance message, Respondent was obligated to honour”.

The system has been developed more than once since its first introduction in (1997) with the aim of expanding the (DOCDEX Rules) and encouraging parties to resort to it through these advantages, which were reinforced by (2002) amendments up to amendments of (May 2015); In accordance with the provisions of Article (8), paragraph (5), of the Rules, the draft resolution is submitted after deliberation between experts appointed for scrutiny during (30) days from the date of receipt of all documents and data necessary to resolve the dispute. The decision shall be deemed to be taken from the date specified therein. The fees are fixed and do not exceed (US \$10,000), as will be clarified later, as the study will review the course of procedures related to the dispute settlement process in accordance with the DOCDEX system.

1.1.1 Submitting the Application

ICC states in DOCDEX decision that *“the Parties positions on the merits are set out in detail in the Parties submissions and witness statements, which the Sole Arbitrator has carefully considered. The Parties positions are summarized as follows: the Claimant claims contractual damages. It states that the purpose of contractual damages is to put the innocent party in the position it would have been in, if the contract had been performed. It further argues that under Singapore law, an innocent party is entitled to damages when the other party has breached the contract”*.

The procedures commence by submitting an electronic application by the applicant/claimant for a decision in accordance with the (DOCDEX Rules) on a form approved for this purpose, annexed hereto all documents and data reinforcing to the applicant's application; Provided that the application and the documents attached thereto are submitted electronically to the Centre with hard copies for each defendant. The first form appended to the (DOCDEX Rules) includes several data, including:

- i. Mandatory information on the extent to which a disputed documentary credit is subject to the uniform rules and customs for documentary credits, and the mandatory extent of the decision to be issued to the parties to the dispute, all through answering yes/no questions.
- ii. Applicant/plaintiff's name, address, e-mail, and the name of his representative, i.e., his attorney.
- iii. Defendant/Respondent's name, address, e-mail, and the name of his representative, i.e., his attorney.
- iv. A summary of the dispute from which its basis, circumstances and conditions are presented in chronological order.
- v. Identification of disputed issues/problems that require resolution in addition to the applicant's requests.
- vi. Acknowledgment of payment of fees.

Article (3), Paragraph (2), of the (DOCDEX Rules) allowed that the applicant/plaintiff to be one or more individual parties to participate in the application. The application in this way constitutes a statement of claim, as is the case before ordinary courts or arbitration in its traditional form, which enshrines the principle of application on which judicial activity is based.

1.1.2. The Response (Defendant's/Respondent's Response)

Once the center receives the electronic copy of the lawsuit, the hard copy of the lawsuit and any documents attached thereto will be sent to the defendant mentioned in the lawsuit to respond to it, and the defendant may submit his response electronically on the form approved for this purpose (the second form) enclosed with all enhancing documents and papers for his response. The defendant may be one or more of the parties named to the lawsuit, so they either file their responses separately or come together in a single response. For example, we find in the ICC DOCDEX decision that *“Respondent asserts that Claimant's claims for breach of fiduciary duty and intentional tortious conduct are subject to New York law by virtue of Article 13 of the Shareholders Agreement; while*

the Claimant argues that, even if this choice of law clause did not extend to the parties' entire relationship, New York law would still apply because Claimant's claims require interpretation of the Shareholders Agreement".

In accordance with the provisions of Article (4/4) of (DOCDEX Rules), the response must be submitted within the period specified by the Center when sending the claim to the defendant, and in any event, this period shall not exceed (30) days starting from the day following the date of sending the claim to the defendant, unless there are exceptional circumstances, where no response submitted after the expiration of this period will be considered.

The second form enclosed to the (DOCDEX Rules), through which the response is provided, includes several data, including:

- i. Mandatory information on the extent to which a disputed documentary credit is subject to the uniform rules, and the mandatory extent of the decision to be issued to the parties to the dispute, all through answering yes/no questions.
- ii. Defendant/Respondent's name, address, e-mail, and the name of his representative, i.e., his attorney.
- iii. Applicant/plaintiff's name, address, e-mail, and the name of his representative, i.e., his attorney.
- iv. Defendant's defense in response to what was stated in the claim of the Applicant / Plaintiff.
- v. Requests of the Defendant/Respondent.

In the event that the Defendant/Respondent fails to submit his response as stated, the proceedings will continue until DOCDEX decision is obtained, so that the plaintiff/applicant does not remain subject to the will and circumstances of the defendant/respondent, because this dispute by its nature requires expediting resolution without prolonging the procedures. However, the question that arises is the mandatory nature of this decision for the defendant in the event that he does not response, which includes an answer to the obligation of this decision issued towards the parties.

1.1.3. The Submission of Supplementary Information and Additional Documentation

The Centre may request the plaintiff or defendant any additional information or documents deemed necessary and relevant to the decision-making process. Such information and documents shall be submitted electronically in accordance with the form adopted for this purpose within (14) days of the request, and the additional information and documentation of the plaintiff/defendant shall be transmitted as appropriate. ICC decision states that *"In accordance with the procedural orders which we have issued, the parties have served written submissions and witness statements together with the documents relied upon by them, and have had the opportunity to request further disclosure of documents as necessary".*

In accordance with the provisions of Article (5), Paragraph (3) of the (DOCDEX Rules), no additional information or documentation will be accepted if they are not requested from the Center and will be ignored; However, any party may apply for the submission of any additional information and documents, and if such request is accepted, the applicant must submit such application and documents within the time specified and, on the form, approved for this purpose. The Rules expressly state that any requests, information or documents submitted by third parties shall not be accepted and will be ignored.

1.1.4. Denial of Claim

Article (3/6) of the (DOCDEX Rules) granted the Center the right to reject the claim in whole or in part if it was found that all or some of the claim is not subject to the provisions of the rules of the International Chamber of Commerce (ICC) or the context of the claim as a whole or part thereof is not subject to the (DOCDEX Rules), and refusal shall be made at any time, whether before or after receipt of the claim, in which case all parties shall be notified and refunds of fees paid, as appropriate.

For this purpose, the center may, in the period prior to the appointment of experts, seek guidance from the technical advisor at the Technical Committee for Banking Practices, but after the appointment of experts, the center rejects the claim or any part thereof if the majority of experts informs it that it is outside the scope of the rules.

1.1.5. Composition of the Expert Committee

The center sends a copy of the claim to the technical consultant after verifying the independence of the consultant from the parties to the dispute. The Centre's technical consultant shall provide advice or an indicative opinion on the compliance of the claim with the provisions of the Rules if requested.

The technical consultant shall give an opinion specifying the fields of expertise required by the claim, which shall be available among the experts appointed to resolve the dispute.

Based on the consultant's opinion, the center appoints (3) experts and chooses the president from among them. Noting that the Technical Committee for Banking Practices maintains a roster of experts who have experience and knowledge of international commercial transactions, and accordingly, neither of the parties has the right to select experts.

In accordance with Article (7/5), the expert is required to be impartial and independent of the parties to the dispute, and the nominated expert accepts the assignment in writing and discloses any circumstances that may raise doubts about his or her impartiality and independence. The Center takes this into account when appointing the expert, and this obligation continues on the expert if such circumstances arise during the claim procedures. Bearing in mind that neither the Center nor the consultant or experts may disclose the name of the technical advisor or experts to any of the parties.

Also, the appointed expert shall not have considered or consider any matter linked to or related to the subject matter of the dispute as a judge, arbitrator, consultant, expert or representative of one of the parties or give testimony thereon. For example, ICC decision states that: *"The party-appointed expert does "not consider investment any maintenance or repair realized for preserving the initial state or potentiality of the existing fixed asset"*.

Accordingly, (DOCDEX Rules) imposed on the experts an obligation of disclosure, which amounts to an acknowledgment by each of them that there is no reason that might tarnish their impartiality and independence, such as the existence of a business relationship with one of the parties, and since the parties are not aware of the names of the experts in any way, they will not be able to apply to reject this expert, this is from one side.

On the other side, the knowledge of the expert that the names of the experts are hidden from the parties to the conflict may encourage him to hide the reasons that may affect his impartiality and independence, and thus the wisdom of hiding the names from the parties may not necessarily be materialize.

If the appointed expert is unable to perform the functions entrusted to him, such as an illness that prevents him from discharging his mission, he shall notify the center without delay. In the event that the assigned expert is unable to perform his duties, the Center shall notify the expert of the termination of his assignment, inform the other experts, and appoint a replacement expert from the roster of experts.

In order to maintain confidentiality, the expert whose assignment has been terminated must dispose of any documents obtained from the Center in the appropriate manner approved by the Centre. Confidentiality is respected within DOCDEX, so no names or origin of the parties of the process are disclosed to the general public. At the same time, every DOCDEX Decision is classified and issued without disclosure of the said information.

1.1.6. Consideration of the Dispute

Unless the Center rejects the claim as previously described, the Center shall send the claim, the response and any additional documents and papers to the appointed experts, and any of the appointed experts, through the President, may request the Center to address the plaintiff or the defendant to provide the center with any necessary documents and papers, as previously mentioned.

And if the experts, after consulting all the papers and documents, consider that the claim is outside the scope of the rules, then they are obliged to inform the center to reject it as previously indicated. It should be noted that, regardless of any disagreement between the parties regarding the extent to which the claim is considered within the scope of the rules, the appointed experts shall continue the proceedings and decide to the extent they deem to be within the scope of the relevant rules.

After deliberation among the designated experts, the president prepares a draft resolution and submits the draft to the Center for scrutiny, provided that this takes place within (30) days from the day following the date on which the experts receive all the documents they deem necessary to determine the subject matter of the dispute. The Centre may extend the time limit for the submission of this draft resolution in the event of exceptional circumstances at the request of the President's reasoned request.

It should be noted here that the rules did not stipulate that the extension request be submitted before the expiration of the original period, nor did it indicate whether the period would be extended for one time only or for more than one time, nor did it indicate the amount of the extension period, whether it is the same as the original period, i.e. (30) days or less.

1.1.7. Issuance of the Resolution

Parties to the dispute resort to arbitration under the DOCDEX system to obtain a decision ending the dispute between them, we can observe a Preliminary Issue of ICC decision, where the Arbitral Tribunal comes to the conclusion that *“Respondents have not managed to establish the authenticity of the New Documents; the Arbitral Tribunal has very serious concerns regarding their authenticity. In view of these doubts, an individual analysis of each of the New Documents is not required. As a consequence, the Arbitral Tribunal will not consider the New Documents as evidence”*.

In the beginning, a draft resolution should be prepared in English according to an approved form for this purpose, and upon receipt of this draft, the center immediately sends it to the technical advisor to verify whether it complies with the rules of documentary credits issued by the International Chamber of Commerce (ICC), and the advisor can make proposed amendments on the draft resolution without affecting the decision-making freedom of the designated experts, and he can draw their attention to the substantive points. In any case, the resolution is issued only after it has been adopted by the technical advisor.

The experts issue their resolution on the basis of the lawsuit, response, documents, additional information, terms and conditions of the rules, customs related to the subject matter of the dispute and the international standard practices of trade finance, where the decision is taken unanimously or by the majority of opinions, and this shall be proven in the content of the resolution.

The resolution contains the date, names and addresses of the parties, a summary of the facts of the dispute to be decided, expert analysis of the facts, findings and decisions taken; Whereas the decision is considered taken from the date mentioned therein.

Once the resolution is issued, the Center shall deliver it to the Applicant/Plaintiff and the Defendant/Respondent in the event that the defendant submits his response against the claim in accordance with the provisions of Article (4) of the (DOCDEX Rules) which has been mentioned previously. The Center may publish any decisions of DOCDEX, provided that the names of the parties are not disclosed.

1.1.8. Fees and Expenses

DOCDEX Rules and through (Annex I) determined the administrative fees and expenses for DOCDEX services, which include expert fees at a fixed rate, and if the amount of the contested documentary credit does not exceed (one million US dollars), the fees shall be (5,000 USD) Five thousand US dollars, otherwise (10,000 US D) Ten thousand US dollars will be paid, and this fee will not be refunded unless the center rejects the claim as a whole or any part thereof as previously described.

Additional fees may be paid as assessed by the Center, taking into account the basic documentation relating to the subject matter of the dispute and the complexity and subject matter of the issue; In any case, the value of the surcharges shall not exceed (50) % of the fixed fee referred to above.

The Centre sets a time limit for the payment of additional fees and may direct the designated experts to suspend their work until surcharge is paid, noting that the payment is made through a bank transfer to the account of the International Chamber of Commerce (ICC).

It should be noted that the rules being discussed do not refer to the distribution of the burden of paying these fees and expenses among the parties to the dispute, so the plaintiff pays them and acknowledges this upon submitting his application, as previously stated.

1.2. Second Topic: Applicable Law by Litigation under DOCDEX

The law applicable to litigation under DOCDEX must be determined to define the legal system that governs the litigation procedures initially, and then its subject matter.

1.2.1. The Applicable Law to the Litigation Procedures under DOCDEX

The litigation procedures of DOCDEX and the settlement of the dispute submitted to the Center and the Committee of Experts designated for this purpose are governed by the (DOCDEX Rules) issued by the International Chamber of Commerce. Whereas, the (DOCDEX Rules) and the accompanying forms, which are an integral part, oblige both the Applicant/Plaintiff in his claim and the Defendant/Respondent in his response to submit a statement requesting settlement of the dispute in accordance with the (DOCDEX Rules), so that both the experts and the parties to the dispute are bound by the procedures of (DOCDEX Rules), and without any right for the parties to the dispute to agree on other procedures to be followed by the experts.

The provisions of Article (12), Paragraph (6), demonstrated the impact of amending the DOCDEX Rules on the law applicable to litigation procedures, so that the rules in force at the time of filing the lawsuit apply to the procedures unless there is an agreement between the plaintiff and the defendant requiring any previous version of the Rules such as the (1997) or (2002) issuance.

1.2.2. The Law Applicable to the Subject of DOCDEX's Litigation

The subject of the dispute in "DOCDEX's" litigation is governed by the rules of the International Chamber of Commerce in accordance with their latest edition, and in respect of documentary credits disputes, the subject matter of the dispute is subject to the Uniform Customs and Practices for Documentary Credits (UCP); In confirmation of this, Article (9/3) of the (DOCDEX Rules) stipulates that the designated experts shall issue their resolution on the basis of the claim, the response, documents, additional information, terms and conditions of the rules and customs related to the subject matter of the dispute (The Uniform Customs and Practices for Documentary Credits -UCP) and international standard practices in trade finance.

In addition, upon receipt of the draft resolution, the Center immediately sends it to the technical advisor for verification and to ascertain that it is in accordance with the International Chamber of Commerce Documentary Credits Rules, which also confirms that the subject matter of the dispute is subject to the International Chamber of Commerce Rules in litigation under DOCDEX.

A question will be raised about the applicable law, in the event that the designated experts do not find anything in (the Uniform Rules and Customs) to deal with or regulate the issue of contentious litigation presented to the center, for example, those issues related to the defects of consent, in such a case, it can be said that the substantive rules in law most relevant to the subject of the dispute are sought for application taking into account existing norms, customs and what is customary in dealing between parties. In this regard, reference should be made to Article (12/4) of the (DOCDEX Rules), which states that any issue not provided for in the (DOCDEX Rules) shall be dealt with within the spirit of the Rules by the technical advisor and designated experts.

1.3. Third Topic: The Authenticity of the Resolution Issued in Litigation under DOCDEX

This has led to an interesting development, namely the adoption of the doctrine of stare decisis: the parties and DOCDEX Panels make references and use opinions expressed in previous DOCDEX Decisions. 48 Notably, there is no provision present in the DOCDEX Rules, which expressly allows/disallows the use of stare decisis, so this development is rather a spontaneous one which originated from practice due to wider accessibility of previously rendered DOCDEX Decisions. After such development was spotted by the ICC, it seems that, whilst not specifically addressing the matter, the organization actually encourages the relevant practice.

The base of the authenticity of the resolution issued in litigation under DOCDEX is the parties' agreement, and by referring to the claim and response templates, it was found that a clause was put in place for the parties to accept the resolutions of DOCDEX. Article (2/6) of (DOCDEX Rules) stipulates those resolutions under (DOCDEX Rules) are not binding on the parties unless the parties agree otherwise, i.e. The parties agreed that the resolution would be binding on them and that this agreement would be documented on forms adopted to that end.

Therefore, it was argued that resorting to resolving the dispute in accordance with the DOCDEX system is not arbitration in the literal sense of arbitration, but rather litigation, based on what was stated in Article (2/5), which indicated that all aforementioned procedures are not arbitration procedures and that the decision issued in accordance with (DOCDEX Rules) is not an arbitration award.

Accordingly, in the absence of any agreement between the parties to bind the resolution issued in accordance with the DOCDEX system, it does not possess the authenticity of the decided issue, and is not enforceable duty, and thus any of the parties may resort to the ordinary courts or any arbitration entity.

Either in the case of an agreement between the parties to bind the DOCDEX resolution to them, or in the event of an arbitration agreement in which the parties refer the disputes that have arisen or that may arise between them to DOCDEX system, and the resolution will have an authoritative argument, and enforceable order. The researcher believes that these rules do not negate the authenticity of the DOCDEX resolution, because arbitration is in principle a consensual judiciary based on a contractual nature, and the parties agreed to refer the dispute to this entity to resolve their dispute without resorting to the ordinary courts or any other body.

CONCLUSION

At the end of the study addressing Settlement of Documentary Credit Disputes under DOCDEX System, a set of results were reached as follows:

1. DOCDEX Rules for the settlement of disputes related to documentary credit is characterized by speed, as the final decision on the subject matter of the dispute is reached as a general principle within (30) days from the experts' receipt of the dispute file, and unlike the traditional form adopted in ordinary courts and other arbitral tribunals that require the submission of hard copies, all procedures can be taken electronically, including the filing of documents and the payment of expenses.

2. DOCDEX has a limited range and applies only to disputes in the sectors of banking and trade finance. Thus, its operation is not widespread. Furthermore, due to its precise documentary-based procedure, DOCDEX is not proper where the hearing of witnesses, oral examination or oral submissions are required to resolve dispute.

3. The parties to the dispute may not choose the experts appointed to consider the dispute or know their names after their designation, and although the (DOCDEX Rules) imposed on the experts an obligation of disclosure, which amounts to an acknowledgment by each of them that there is no reason that might distort their impartiality and independence, the fact that the parties are not aware of the names of the experts in any way, will not able any of the parties to submit a request to reject this expert. this is from one side; On the other side, the knowledge of the expert that the names of the experts are hidden from the parties to the conflict may encourage him to hide the reasons that may affect his impartiality and independence, and thus the wisdom of hiding the names from the parties may not necessarily be materialize.

4. The will of the parties to a dispute submitted to litigate under the (DOCDEX Rules) does not play a role in determining the procedural system that experts must follow to adjudicate the dispute.

5. The plaintiff bears the burden of paying the fees and expenses of resorting to the International Chamber of Commerce Arbitration Center to resolve the dispute related to the execution of the Documentary Credit.

End.

REFERENCES

- [1] Abd al-Rahman Adam Othman Al-Jazouli, Settlement of banking disputes through arbitration: a comparative study, PhD thesis, Omdurman Islamic University, Sudan, 2013, page 5.
- [2] Abdul Qadir and Ghalib, Procedures Docudex of the International Court of Arbitration, Journal of the Union of Arab Banks, Issue (391), June-2013, page (40) and Article (5/4) of the DOCDEX rules.
- [3] Abdullah Al-Khashrom and MoayadObeidat: The Risks Resulting from Documentary Credit, Al-Manara Magazine, Issue 2, Volume 15, 2009, page 158.
- [4] AndriiZharikov, Modernization of National Commercial Laws and the Role of International Legal Harmonization, Chapter 2: Cooperation of UNCITRAL and the ICC: New proposal for companies from the belt and road initiative for dispute resolution in trade finance, Victoria University of Wellington, 2019.
- [5] Anthony Connerty, DOCDEX: The ICC's Rules for Documentary Credit Dispute Resolution Expertise, part 2', 1998, 13 (11) Journal of International Banking and Financial Law 523, 529.
- [6] Arafat Al-Munji, Arbitration in Documentary Credits Disputes in Jurisprudence and Comparative Law, first edition, National Center for Legal Publications, Cairo, 2017, page 139.
- [7] Awad Al-Zoubi, Al-Wajeez in the Code of Civil Procedure, without a publishing house, 2020, page 297.
- [8] Kamalu, K. ., & Ibrahim, W. H. B. W. . (2023). Access to Finance and Sustainable Human Development: Does Institutional Quality Matters in Developing Countries?. International Journal of Membrane Science and Technology, 10(3), 33-45. <https://doi.org/10.15379/ijmst.vi.1186>
- [9] DOCDEX CASE NO. 359, <https://jsumundi.com/en/document/decision/pdf/en-docdex-case-no-359-decision-no-359>
- [10] DOCDEX rules: <https://iccwbo.org/dispute-resolution/dispute-resolution-services/adr/docdex/docdex-rules/>
- [11] ICC CASE NO. 13615, <https://jsumundi.com/en/document/decision/pdf/en-icc-case-ndeg-13615-final-award-in-case-13615>
- [12] ICC CASE NO. 13641, <https://jsumundi.com/en/document/decision/pdf/en-icc-case-ndeg-13641-interim-award-in-case-13641>
- [13] ICC CASE NO. 16070, <https://jsumundi.com/en/document/decision/pdf/en-icc-case-ndeg-16070-icc-case-16070-partial-award>
- [14] ICC CASE NO. 16751, <https://jsumundi.com/en/document/decision/pdf/en-icc-case-ndeg-16751-final-award-in-case-16751>
- [15] ICC CASE NO. 17842, <https://jsumundi.com/en/document/decision/pdf/en-icc-case-ndeg-17842-icc-case-17842-final-award>
- [16] Isabella Chung, Developing a Documentary Credit Dispute Resolution System: an ICC Perspective, 1995, 19 (4) Fordham International Law Journal 1349, 1378.
- [17] Mohamed Saleh: Arbitration in disputes of electronic banking operations in Jordanian law, Baltic journal of law & politics, volume 15, number 7, 2022, page 379.
- [18] Ziauddin, I., Khan, M., Jam, F., & Hijazi, S. (2010). The impacts of employees' job stress on organizational commitment. European Journal of Social Sciences, 13(4), 617-622.
- [19] Nicholas Manganaro, About-Face, The New Rules of Strict Compliance under the Uniform Customs and Practice for Documentary Credits (UCP 600)' (2011) 14 International Trade and Business Law Review 273, 289-290.
- [20] The official website of the International Chamber of Commerce: <https://iccwbo.org/dispute-resolution-services/DOCDEX/>
- [21] WaddahNessima, Arbitration in Documentary Credit, PhD thesis, DjilaliLiabis University, 2016, page 68.
- [22] William Park, Arbitration in Banking and Finance, 1998, 17 Annual Review of Banking Law 213, 242.

DOI: <https://doi.org/10.15379/ijmst.v10i3.1865>

This is an open access article licensed under the terms of the Creative Commons Attribution Non-Commercial License (<http://creativecommons.org/licenses/by-nc/3.0/>), which permits unrestricted, non-commercial use, distribution and reproduction in any medium, provided the work is properly cited.