PRINCIPLE OF AUTONOMY IN LETTER OF CREDIT: MALAYSIAN PRACTICE

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ABSTRACT

The term letter of credit (LC) is not uncommon in international trade as it is the most frequent method of payment used by seller and buyer in their sales contract. LC serves its significant role by facilitating payment between buyer and seller from different countries, who are always prejudiced towards each other on the issue of payment, especially when the deal involves a huge amount of money. By using LC, the seller and buyer will be represented by their own bankers whose function is to issue an LC for the buyer and pay on presentation of seller’s documents which are strictly compliant to LC requirement. It is well-known that LC is governed by the principle of autonomy or also referred to as the principle of independence which indicates LC, being a contract of payment is totally separated from the underlying sales contract. The bank concerns with documents only and does not concern with the goods. LC transaction is governed by the Uniform Custom and Practice for Documentary Credit, known as the UCP which provides the rules relating to LC matters and is adopted in almost all LC transactions. This paper discusses the nature and background and significance of principle of autonomy in LC transaction. Furthermore, it elaborates the provisions of principle of autonomy in the UCP 600. To certain extent, comparisons between relevant articles in the UCP 500 and 600 are highlighted. Next, discussion focuses on relevant case-law where the principle of autonomy was upheld in LC transaction. Furthermore, it discusses the principle of autonomy as practiced by Malaysian bankers, in comparison between the applications of this principle in conventional and Islamic LC in Malaysia. The finding found that Malaysian bankers are fully subscribed to the principle of autonomy as outlined by the UCP 600.

INTRODUCTION

Letter of credit (LC) refers to “a letter that is written by a bank, at the request of a buyer of merchandise, directed to the seller, as a means of assuring the seller that he will be paid.”

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