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The role of the letter of indemnity in transaction cargo by sea

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Abstract
The National legislation and international treaties concentrate on the reservations of cargo during shipment, which permit both parties of the contract of transportation to release the responsibility of one party from one side, and maintain the rights of the second party on other side, whether reservations follows cargo or its owner, so that the data contained in the bill of lading represents an argumentation against its contracting parties, so the carrier usually resorts to include conditions related to the possibility of excluding him from liability. These legislations and agreements permit the carrier to include reservations on the shipped cargo, if he does not have sufficient means to verify cargo investigation in the required manner, and we find that the other party, the shipper, needs to issue a clean bill of lading free of any reservation in order to be able to sell and trade the cargo on the way and acceptance by banks of this type of bills of lading reflects the apparent and good condition of the cargo upon shipment, as the two parties resort to signing a maritime letter of indemnity in which all reservations are stated on the cargo, and also attached by the banking guarantee letter to prove delivery of cargo to the consignee, unless the documentary credit stipulates the conditions or annotations of the amendments which are acceptable for delivery of the cargo.

Keywords: indemnity, warranty, guarantee, maritime, transport, contract, documentary, credit

Introduction

Transportation is one of the most important forms of commercial exploitation of the marine environment [1], In general, transportation of cargo [2] is the backbone of the trading fortunes, transportation cargo by sea is the main way to execute international commodity exchanges, which explains the legislative interest in regulating its provisions nationally and internationally [3]. The relationship between the service provider represented by the carrier [4] and the beneficiary of the shipper [5] is governed by the transport contract [6]. Hence, we find that the responsibility of the marine carrier [7] receives wide attention through the

(1) Commercial exploitation is the result of the commercial environment as a result of the development of commercial life over time, the meeting of the East with the West, and the spread of trade throughout the world. He created the idea of the open market and entered the era of international trade, resulting in rules of a special nature called the rules of commercial law, which in turn differ from the rules of civil law, as the first is organized. Commercial transactions apply to a specific class of individuals, and we do not forget that the maritime domain is closely related to commercial life, as maritime trade is based on the close relationship between them, so commercial exploitation is clearly involved in the regulation of the marine environment.

(2) The transportation of cargo by sea is one of the most important types of transport and one of the oldest means known to man, especially in open areas on water bodies, and maritime transport has helped man conduct many of his life matters, especially in contemporary life, and the use of this sector of transport has reduced the burden on other transport sectors The main purpose of the process of transporting cargo by sea is to deliver them completely and instantly to the destination, which requires that the data related to the cargo provided by the shipper be correct and complete to be included in the bill of lading free of defects, which requires verification of their correctness by examining them upon receipt from the shipper However, this process requires time and effort that may lead to a delay in the arrival of the ship at the specified time, so it is practically common for the shipper to write a statement of the cargo related to the cargo signed by everything related to the cargo called the letter of indemnity and on the other side the carrier signs the bill of lading with the phrase according to What has been said of the shipper, or that the cargo are not approved by the carrier, to absolve himself from liability and reduce his obligations within the limits of reservations made.

(3) It will focus of the research paper will be on the Egyptian Maritime Commercial Law, Law No. (8) for the year 1990D, and the international agreement represented in Brussels International convention of 1924 AD regarding the unification of some rules related to shipping bills, as well as the United Nations Convention on the Maritime Transport of Cargo Hamburg for the year 1978, as well as the United Nations Convention on Contracts International transport of cargo for the year 2008, wholly or partly by sea, known as Rotterdam in relation to the place of its signature in the city of Rotterdam in 2011, which has not yet entered into international force, as it regulates door-to-door transport operations that include a maritime part, noting that the United Nations Law Commission In its 54-55 session for the years 2001-2002, the International Commercial Trade Organization embarked on preparing an international legislative instrument that regulates door-to-door transfers that include a maritime part.

(4) The carrier is defined in the text of Article 1 of the United Nations Convention on the Carriage of Cargo by sea for the year 18 as "every person who has entered into a contract or entered into in his name a contract with a shipper for the transport of cargo by sea."

(5) The second paragraph of Article 1 of the Hamburg Convention of 1978 came to the concept of the shipper as “every person who entered into a contract with the carrier or entered into in his name or on his behalf with the carrier a contract to transport cargo by sea, or every person who delivers the cargo to the carrier or actually receives the cargo in his name or on behalf of Reported to the carrier under the maritime transport contract".

(6) The Egyptian legislator in the maritime commercial law (No.8 Year 1990) the contract of maritime transportation as means: a contract oblige the carrier to carry the cargo or persons by sea against wage, while the United Nations Agreement of maritime transportation of cargo in year 1978 identified the terminology of the maritime transportation as it meant "a contract whereas the carrier is obliged to transport cargo by sea from a port to other against wage, unless for the purposes of this agreement, and this contract includes a transportation by sea as other method of maritime transportation, unless in limits of transportation by sea according to article No. 355/305 of 2012 Q7 QA session 20.03. 2013 Commercial, set of legal provisions and principles issued On the Court of Cassation from the Civil, Commercial and Administrative Circles, Seventh Judicial Year 2013, Part Two, p. 597.

(7)There is no doubt that the determination of the principle of responsibility for the maritime carrier is extremely important to the maritime transport projects and its issues, whether at the level of national legislation or from the reality of the interest of the international community in the formulation of international agreements that enact this principle as one of its most important legal topics. Review regarding: the stability of all legal systems

provisions that regulate it, which reflects for us the interest of the legislator to achieve reconciliation and balance between encouraging marine investments [8] and protecting shippers.

In the context of this research paper, we highlight on the reservations that are made on the cargo during shipment, which allow the parties to the transport contract to vacate one of them on the one hand, and to preserve the rights of the second party on the other hand, whether preservation entails the cargo or its owner, because the data contained in the Bill of Lading (BL) is an argument because it is usually the carrier that includes conditions in it regarding the possibility of excluding him from liability. Likewise, the other party, the shipper, needs to issue a clean bill of lading free of any reservation in order to be able to sell and trade the cargo on the way, and the bank's acceptance of this type of bond reflects the apparent and good condition of the cargo upon shipment. A bank guarantee letter with him to prove receipt of the cargo to the consignee.

Accordingly, we will divide the study into three requirements, the first of which is devoted to the essence of letters of indemnity, the second to the legal nature of what, and the third to the principle of relativity of the impact of the letter of indemnity on the problems of late arrival of the bill of lading.

First Requirement

What is a letter of indemnity?

Among the essential data that must be provided in the shipping instrument are the number, type, quantity and nature of the cargo [9], which necessitates the existence of certain means used by the carrier to avoid the delay that may befall the cargo during shipment and to preserve time from the delay that may be a reason for imposing liability on him. It is customary for the carrier to record in the bill of lading the statement provided by the shipper with regard to the cargo without - that is, the carrier - verifying its authenticity and a reservation on his part in the bill of lading stating that the declaration on the cargo is not approved by him, or that the cargo are unknown in weight, amount, condition or value.

This is confirmed by Article 205/1 of the Egyptian Maritime Trade Law that "the shipper shall provide in writing the data relating to the cargo upon delivery to the carrier, and these data shall be recorded in the bill of lading. Regular means of verifying them, and stating the reasons for reserving the data entry in the bill of lading.

But we do not forget that this procedure [10] must be done rapidly to avoid any malfunctions that may befall the ship on the platform until this verification is accomplished, so the shipper seeks to express and write all the data on the cargo subject of shipment, the carrier may make any reservations [11] regarding them, which may be a reason for imposing liability on him, as he thus relinquishes his responsibility for these reservations at the time they are delivered to the addressee at the port of discharge. It is customary for the carrier to record in the bill of lading the statement that the shipper provides to him regarding the cargo without "the carrier" verifying its authenticity and a reservation on his part in the bill of lading stating that the declaration regarding the cargo is not approved by him, or that the cargo are of unknown weight or Amount, condition, or value.

That requires us to divide the requirement into two main branches, the first of which is devoted to defining the letter and the second is the function that the letter of guarantee performs.

First branch

The legal concept of the letter of indemnity

There is no doubt that the reservations that are included in the bill of lading cause many inconveniences for the shipper and make dealing with the shipped cargo represented in the bill of lading difficult and impossible.

This is because the bill of lading is the cornerstone of a documentary credit and its statements must conform to the terms of the letter of credit [12]. If the bill of lading includes

and international maritime jurisprudence on Liability of Marine Carrier International Legal Materials, Volume X, No. 4 July 1975, P.304.

(8) We find that maritime investments challenge a wide range of commercial traffic, as maritime investment has undergone a remarkable development since the organization of regular shipping lines for the transport of cargo and international trade movement, with the intensification of competition between suppliers and the emergence of air navigation reduced transport fares. So there has become a great demand for maritime transport, especially with globalization and the pursuit of reducing the effects of international borders, which required the presence of shipping companies with huge capital established in the form of joint-stock companies and forming unions with the intention of unifying the conditions of transport and putting an end to competition between them with a minimum set of transport prices. Thus, the private sector has an important role in the field of maritime investment, and the truth is that maritime investment does not take a single form represented in the activity of maritime transport of cargo that takes place between the supplier (whether he is the owner of the ship or its charterer) and the owner of the cargo, but there are many other investment activities that It takes place within the seas, such as the activity of transporting individuals overseas, and the marine insurance activity that focuses on the ship itself on the one hand, and on the cargo that are transported by sea on the other hand, and on the individuals who are transported on the ship from one port to another on the third side, and the activity Related to fishing vessels, marine tourism, marine lending and mortgage activity.

(9) Article 200 of the Egyptian Maritime Trade Law specified that in the bill of lading it be mentioned in particular: the characteristics of the cargo as recorded by the shipper, and in particular their nature, number of packages, their weight or size, or the distinctive marks placed on them and their apparent condition, including in the case of the containers placed in them. Because the bill of lading is the receipt issued by the carrier or the captain of his receipt of the cargo on board the ship, as the 18th Hamburg Convention defined it as "a document proving the conclusion of a contract of transport and receipt of the cargo or shipment to the carrier, and under which the carrier undertakes to deliver the cargo in exchange for retrieving the document." This undertaking arises from The existence of a text in the document requiring delivery of the cargo to the order of a named person, or under the permission or the bearer, and it is on the shipper to provide this statement, and if it is included in the bill of lading, this is evidence that the carrier has received the cargo in the proven condition, including the bill of lading.

(10) Making reservations take the form of a letter of indemnity: Letters of indemnity as a Reservation, which is every letter or agreement whereby the shipper guarantees compensation to the carrier for damages that result from the issuance of a bill of lading free of any reservation on the data contained therein. So, he should not invoke it with third parties who do not know at the time of obtaining the bond that these data are incorrect. The issue of reservations contained in the bill of lading was the subject of discrepancy between the various international agreements, due to the legal value of the bond in its representation of the cargo and its consideration of the bank as a credit instrument for the payment of the wages of the cargo subject of the sale contract.

(11) Stwart c. Boyd, Andrew 8. Burriws & David Foxton.Scruttonon. Charterparties & Bills of Lading 21st edition, 2008, P.120.

(12) The legal concept of a letter of credit emerges in that it is the contract whereby the bank undertakes to open a credit at the request of one of its clients (the client name) in favor of another person called (the beneficiary with the guarantee of documents representing movable or prepared cargo for transport and that the documentary credit contract is independent of the contract to which it is issued. The credit was opened because of it, and the

some reservations while what is required in the letter of credit is a clean bill of lading free of any reservation, then the bank must refuse to pay the price to the seller shipper [13].

In order to avoid these difficulties and to enable the shipper, the seller of the cargo, to obtain the price of the cargo, work has often been made for the shipper to agree with the carrier to issue a clean bill of lading free of reservations [14]. In exchange, the shipper provides the carrier with a letter of indemnity or confirms the reservations that the carrier wanted to include in the bill of lading.

Letters of indemnities define: These are papers in which the carrier identifies the reservations [15] that the carrier requested to be included in the bill of lading but were not included in it in response to the carrier's desire and according to these letters, the shipper undertakes to guarantee the consequences of non-conformity of the cargo upon delivery to the data contained in the bill of lading, if the carrier is subject to a claim by a third party for compensation, in return for the carrier handing him the bill of lading clean free of these reservations. It makes it easier for the shipper to deal with the cargo on the bill of lading and to obtain credit according to it from banks, in addition to the benefit of these papers in facilitating maritime transport operations that require speed in their conduct [16].

Such reservations, the validity of which were decided by the judiciary, mean that the data relating to the cargo contained in the bill of lading would be sacrificed and have no authority in evidence. This in addition to undermining the decrease of the proof of bill of lading and greatly diminishing its credit value, exempting the carrier from liability for disability or damage if the consignee was unable to establish evidence that the shipmaster received the cargo as shown in the bill of lading [17].

Therefore, the Brussels Convention [18] and the Hamburg Convention [19] provided for the desire to limit the inclusion of these reservations and balance between the interests of the carrier and the shipper on the invalidity of these reservations and their permissibility only in two cases:

First: That the carrier has serious reasons to doubt the correctness of the data on the cargo, as in the case of placing a quantity of the cargo on the quay that does not match what the shipper provided in the bill of lading.

Second: If he does not have the reasonable means to verify them, and that the carrier must include the reservation on the data entry and the reasons for it in the bill of lading, which is achieved when the shipper presents the cargo shortly before leaving the ship, except for that, the reservations entered by the carrier are invalid and have no effect. The Maritime Trade Law was taken in Article 1/250 of it with these provisions.

The carrier shall state the serious reasons that led him to doubt about the data provided by the shipper, or what prevented him from verifying their authenticity, and upon him the burden of proving this fall. If he fails to prove this, he does not pay any attention to the reservations below him in the bill of lading [20]. The Rotterdam Convention [21] also authorized the carrier, along with the two previous agreements, to make reservations on the data related to the cargo and to make reservations about the data provided by the shipper regarding the description of the cargo, the

bank remains a foreigner for this contract, and the importance of documentary credit appears in particular in the field of international trade. Where the resort to opening the documentary, credit justifies the legal relationship between two persons with whom an international sales contract is established. With regard to documentary credit, the bank is obligated directly and definitively in the face of the beneficiary, and it is independent of the bank's relationship with the customer who orders the contract to open the documentary credit. If it is revoked or canceled, the bank may not refrain from fulfilling its obligation vis-à-vis the beneficiary from the time the letter of credit is addressed to the seller. But there is a reservation which is the revocable documentary credit. The bank, in this case, can return its pledge at any time, but if it remains on its pledge, there will be no effect on the contract to open the documentary credit on its commitment to the seller. Review about that Dr. Hany Dowidar, Commercial Contracts and Banking Operations, New University House, Alexandria, 2010, p. 292.

(13) See Dr. Mustafa Kamal Taha, The Problem of Letter of indemnity in Maritime Transport, published in legal journal, Year Eight, 1959, pp. 33-49, where he touched upon the bank's refusal to pay the price to the seller shipper.

(14) A clean bill of lading means any case of any reservation is that the bond in which the shipper agrees with the carrier to be issued free of reservations that hinder the circulation of the bond, in which he mentions all the data related to the cargo approved by the carrier so that the shipper can easily trade the bill of lading". Refer in detail to this: Dr. Ali Al-Baroudi, Principles of Maritime Law, Knowledge Facility, Alexandria, 1983, p. 146; Dr.Muhammad Bahjat Qayed, Brief on Maritime Law, Dar Al-Nahda Al-Arabiya, Cairo, Fourth Edition, 2012, p. 140.

(15) Marine Letters of Guarantee: Marine Letter of Indemnity: Innovation and the shippers' thought to work with it as a way to get rid of the reservations that appear in the bill of lading and its endorsement hinders the transfer of ownership and weakens its proof of evidence.

(16) Credit: Credit Concept is defined as the confidence that a bank or financial institution places on a person, whether natural or moral, by granting him an amount of money to use for a specific purpose, within an agreed period of time and under certain conditions in exchange for an agreed-upon material return or an agreed interest. Financial institutions and banks grant these loans with guarantees that enable these institutions to recover their loans in the event that the customer stops paying. Bank loans are defined as those services provided to clients, according to which individuals, institutions and establishments in the community are provided with the necessary funds, provided that the debtor undertakes to pay those funds, their interest, commissions and expenses in one payment or in installments on specific dates. This relationship is strengthened by providing a set of guarantees that guarantee the bank to recover its money in the event that the customer stops paying without any losses, and this meaning includes what is called credit facilities and contains the concept of credit.

(17) Dr. Mustafa Kamal Taha, Maritime Law, The New University House, Alexandria, 2002, Item 349

(18) See the text of Article 3/3 of the 1924 Brussels Bond convention.

(19) See the text of Article 1/16 of the United Nations Convention on the Carriage of Cargo by Sea - Hamburg 1978.

(20) This is what the Egyptian Court of Cassation decided in its judgment issued on 24.01.1967, in its ruling that if the third paragraph of the Treaty of Bills of Lading required the carrier to receive the cargo and take them in their custody, he must deliver to the shipper at his request the bill of lading that includes with his usual data the data that it has included in the clauses (A, B, C) from that period, as it stated the following: "Nevertheless, the carrier, the captain, or the transporter's agent is not obligated to record in the bills of lading or to record in them marks, numbers, quantities, or our weight if there is a serious reason for him to suspect that they do not match the cargo actually delivered to him, Or when he does not have sufficient means to verify them, the effect of this is that the reservation entered by the carrier in the bill of lading as evidence of his ignorance of the contents of the cargo delivered to him or of the correctness of the data on it in the bill of lading is not considered. He shall not be considered in paying his responsibility for the loss of the cargo delivered to him, unless he has serious reasons to doubt the correctness of the shipper's data or he does not have sufficient means to verify this. The onus is on the carrier to prove the seriousness of the causes of this suspicion or the insufficient means to verify the correctness of that data. If he is unable to prove this, then this reservation should not be relied upon (Appeal No. 305 for the year 32 BC, the set of cassation rulings Q24 Q, Section 2, 616) and the same content is also in its judgment issued on 17.4.1973, Appeal No. 145 of the year 38 BC, the set of cassation provisions Q4 2 BC, V2, p. 919.

(21) See the text of Article (40) of the Rotterdam Convention of 2008.

necessary marks indicating them, the number of packages or pieces, or the quantity and weight of the cargo. Consequently, for the transfer to be valid, it is required for the carrier to be aware of the certainty of the incorrectness of the data, and he did not have sufficient means to verify the validity of the data.

In order for these reservations to be correct and to be able to waste the argumentation of the bill of lading in regard to what was exposed to it, it must be limited in the sense that it is not general and must be fixed in the two copies of the bill of lading or at least in the copy delivered to the shipper [22]. Nevertheless, the shipper shall be responsible before the carrier for compensation for the damage that results from incorrect data provided by him on the cargo even if he assigns the bill of lading to a third party.

The ability to delete the argumentation of the bill of lading in proof means a decrease of its credit value [23], which means the difficulty to sell cargo on road, so the shipper recourse to the letter of indemnity as a written undertaking issued by him to face of the carrier, and compensation him against his responsibility due to the incorrectness of the data contained in the bill of lading (BL) in exchange for issuing a clean bill of lading. Also, in order to guarantee selling the cargo to third party and borrowing against the guarantee of shipped cargo, because the lending bank does not know the exact amount of the guarantee.

Second Branch

The legal function of the letter of indemnity

Letters of indemnity, even they have argumentation between its both parties (the carrier & the shipper), however, it is not permissible to protest in front of the bearer of the bill of lading if it is someone other than the shipper [24], so the holder of the bond has right to recourse to the carrier with responsibility without right of the latter to protest against him with the letter of indemnity [25], and the carrier may in turn refer to the shipper for the compensation paid to the consignee, based on the letter of indemnity [26].

The outcomes of these reservations if fulfilled their accurate conditions, is to decrease of the validity of the bill of lading (BL) regarding scope of reservation (weight, number, quantity or condition of cargo) and to establish an evidence in favor of the carrier, and whereas the deficit or damage occurred to the cargo before shipment. It is a simple presumption for the consignee who disproves it by all means of proof [27].

Legal scholars, whether in Egypt or France [28], is divided about it, as a part of null and vein in all cases, however, letters of indemnity are null, unless they are intended to be fraudulent, or when the shipper has issued the letter of indemnity knowing that his data on the cargo are incorrect and not conform to reality and the master accepts it and is aware of this.

Judiciary of cassation in Egypt states the validity of letters of indemnity and are considered an evidence for the both contractual parties alone, and that it is not permissible to invoke against others who hold bills of lading, and the Court of Cassation lends this consideration after defining the letters of indemnity [29].

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(22) See the extended RODIERE®: Trait General de Druit Maritime, (introduction - L 'Armement 465: Paris). Referred to by Dr. Kamal Hamdy, Maritime Law, Knowledge Facility, Alexandria, 2008, p. 20.

(23) It is noted that reservations do not exempt the carrier from liability, but rather create a simple presumption in his favor that the loss or damage to the cargo took place prior to shipment, thus transferring the burden of proof to the shipper or the consignee.

(24) The consignee to whom the bond was issued in his name or to his order is considered a third party in the provision of Article 207/2 of the Egyptian Maritime Trade Law, unless he is the shipper himself. Thus, it is not permissible to invoke the letter of indemnity before the consignee, who was not aware of its existence at the time he obtained the bill of lading and became a legitimate bearer of it. An exception to this is only if the shipper and the consignee are concentrated in one person. Refer in detail to this - Dr. Hany Dowidar, Transportation Law, New University House, Alexandria, 2014, p. 220.

(25) Because its authority is limited to the relationship between the carrier and the shipper, and its effect does not extend to others, and with regard to the letter of indemnity involving fraud, it does not produce an effect even between its two parties because of the illegality of the reason based on it. As part of the legal sholars believes that if letters of indemnity involve fraud, the judiciary does not hesitate to rule that they are invalid and that they do not produce any effect on them between the two parties because of the lack of legitimacy of the reason, including the violation of morality and honesty. It follows that the carrier's claim against the shipper established over the letter of indemnity is rejected based on the principle that no person may invoke fraud on his part. See regarding this: Dr. Muhammad Na`im, Encyclopedia of Public International Law - Maritime Law, Middle East Cultural Center, Lebanon, Part 5, 2005, p. 266.

(26) The text of Article 207/2 of the Maritime Trade Law is a legalization of this jurisdiction, regarding the consignee - if he is in good faith - from third parties in order to benefit from the protection established by the text (see the explanatory note - Article 174) This is provided that the consignee is not the shipper himself, who will undoubtedly be aware of the matter as long as he himself is the source of the letter of indemnity.

(27) By referring to the text of Article 241 of the Egyptian Maritime Trade Law in its second paragraph, we find that the intention of the carrier or his deputy is supposed to cause damage if the bill of lading is issued free of reservations, with the presence of what is required to be mentioned in the document with the intention of harming others in good faith. And we have seen before that the shipper is the one who delivers the data related to the cargo to the carrier, who in turn records them in the bill of lading, and the carrier may make reservations about its record if he has reasons to reserve the data on the bill of lading. The marine carrier may issue a clean bill of lading, i.e. free of reservations, in exchange for obtaining from the shipper a letter of indemnity. However, the speech is not invoked in the face of others in good faith. But when it has been proven that the issuance of a clean bill of lading was intended to harm a bona fide third party, who is ignorant of the incorrectness of the data contained in the bill of lading at the time of obtaining it, the responsibility of the marine carrier is unlimited in the face of others.

(28) See Dr. Ahmed Hosni, Maritime Transport Contract, Al Maaref Establishment, Alexandria, 1998, Article 146; Also see Dr. Wajdi Hatoum, Maritime Law in Light of Law and International Treaties, The Modern Foundation for the Book, First Edition, 2011, p. 41. Where he referred to the extent to which the French legislator was exposed in the text of Article 20 of Law 18 of 1966 relating to ship lease contracts and maritime transport to the letter of indemnity in his definition of the letter of indemnity that they "All the papers and agreements under which the shipper undertakes to indemnify the carrier when the latter or his representative has accepted the receipt of the bill of lading without reservations. These agreements are considered null and void for others, until they can be adhered to in the face of the shipper, and if the reservation that was voluntarily omitted concerns Of a defect in the cargo that the carrier knows or should have known, he cannot adhere to this defect in order to get rid of his liability and does not benefit from the limitation of liability stipulated in Article 28 of the same law.

(29) The following states: "Letters of indemnity are papers in which the shipper proves the reservations that the carrier requested to be included in the bill of lading, but were not included in it in response to the shipper's desire". Under these letters, the shipper undertakes to indemnity all the consequences that result from the cargo not matching upon delivery to the data contained in the bill of lading, if The carrier is exposed to a claim by third parties for compensation in exchange for handing over to him a clean bill of lading free of these reservations, so that the shipper is facilitated to deal with the cargo with the bill of lading and, accordingly, to obtain credit from banks. In addition to the usefulness of these papers in facilitating the process of maritime transport that requires speed in its conduct, these letters are considered as evidence for the two contracting parties alone - the shipper and the carrier - and it is not permissible to protest against any other bearer of shipping bills, and they do not violate the Egyptian law which allows the relationship between the carrier and the shipper to prove The opposite of what was stated in the bill of lading. In addition, and

The burden of proving the seriousness of the reasons for doubt in the validity of the data or the lack of regular means to verify their authenticity will be under the responsibility of the carrier, and the court has the sole discretion to assess what is stated in this regard.

And if he fails to present it, the reservation recorded in the bill of lading shall not be taken into consideration and which accordingly loses any legal effect [30].

The absence of reservations or their receipt that does not fulfill the conditions of their validity means that in the face of the bearer of the bill of lading there is a clear presumption that the data contained in the bill of lading relating to the cargo are correct, even if this presumption in the relationship between the carrier and the shipper is purely simple presumption [31].

And after Article 3/3 of the Brussels Treaty enumerated the data to be included in the bill of lading, it added at its end: Nevertheless, the carrier, the agent of the carrier, or the shipmaster is not obligated to indicate in the bills of lading or to record in them marks, number, quantity or weight if he has a serious reason that leads him to suspect that they do not conform to the cargo actually delivered to him or when he does not have sufficient means to verify them.

Hence, we find that the carrier has the right to refrain from including data related to the cargo, their number, quantity, or weight in the event that the two aforementioned conditions are met, so that in other than the two previous cases the conditions of ignorance of weight and the like are considered null and void. Article 2/3 of the Brussels Treaty which states that (every condition, contract or agreement in a transport contract includes exemption of the carrier or ship from responsibilities for the loss or damage to the cargo arising from negligence, error or default in the duties or obligations stipulated in this article. Or it includes reducing this liability [32] in a manner contrary to what is stipulated in this article is considered null and absolute nullity, and does not have any effect, and every condition that includes assignment to the carrier of the rights arising from insurance or any other similar condition to it is considered an exemption for the carrier from Liability [33].

The two treaties have limited the two cases in which the carrier may register reservations in the bill of lading relating to the data provided by the shipper on the marks, number, quantity or weight of the cargo, however, the condition of the cargo and their outlook are excluded from the scope of reservations.

As well as Article 3/3, Paragraph (c) of the same above-mentioned treaty also stipulated the same matter by stating that the bill of lading delivered by the carrier to the shipper must include a statement of "the condition and outlook of cargo", and the text does not permit any reservation regarding this statement.

This means that the treaty prohibits the condition of ignorance in relation to the condition and outlook of cargo, and he isn't permitted to mention that in the bill of lading while outlook of cargo is unknown, and if he mentioned such a condition, it will be absolutely null and void according to Article 8/3 of the Brussels convention.

Second Requirement

Legal nature of letter of indemnity

We have already mentioned in the first requirement of the research that when the carrier hasn't sufficient time or necessary abilities to inspect cargo and verify their weight, size and nature, hence, the law permits him to make reservations when writing the data related to the cargo in the bill of lading. However, the law restricted the carrier's right to make these reservations; Excessive reservations in the bill of lading would weaken its evidence in addition to raising doubts about the data it contains, and the Egyptian legislator has placed two restrictions on the carrier when placing his reservations, namely: There are serious reasons to doubt the veracity of the statement and the necessity to mention the reasons for reservation in the bond.

The mentioned reservation in the bill of lading does not only play its role in undermining the evidence of the bond, but also detracts from its credit value and its ability to trade, so the shipper cannot dispose of the cargo or borrow under it, and to avoid this harmful situation, the shipper agrees with the carrier to give him a bill of lading free of any reservation called (clean bill of lading) in exchange for giving him a "letter of indemnity ". In it he shall state the reservations he deems fit, and the shipper undertakes to guarantee to the carrier the consequences resulting from the non-conformity of the cargo upon delivery with the data recorded in the bill of lading.

Likewise, the carrier may include these reservations in the bill of lading in accordance with the principle of freedom of contract, and by it the evidentiary power of these data is generated, so the beneficiary tries to present to the bank a bill of lading free of reservations that often provoke judicial disputes between the contracting parties. Through it, the quantity, type, weight or quantity of cargo is verified [34].

Accordingly, we will indicate the difference between letters of indemnity and letters of guarantees issued from banks regarding the international commercial transactions and representing in the operations of import, export, and

according to what happened in the court's judiciary, it also violates the bill of lading treaty signed in Brussels as long as it is intended to refute the evidence derived from the bill of lading in the relationship between the carrier and the shipper and did not include an agreement to exempt the carrier from liability and was not tainted when issued with intent Deluding others and introducing fraud on them when trading the bill of lading. Egyptian Civil Cassation - 27.12.176 x 27 p. 1814, 1975/22 x 26 p. 1247, 22.03.1966 x 17 p. 627. Also see the research of Dr. Mahmoud Samir Al-Sharqawi, Letters of indemnity in accordance with the Treaty of Lading Bonds, and his comment on a judgment issued by the Court of Cassation on March 22, 1966 in Appeal No. 320, year 31 BC, a paper published in the Law and Economy District, Issue 1, March 1968, Thirty-Eighth Year, General Authority for Books and Scientific Devices, Cairo University Press, 1968, p. 1 of the paper, p. 11 of the magazine. A collection of provisions of Cassation for the year 17 BC, p. 627.

(30) Egyptian Civil cassation ruling - session 2.2.1987 - Al-Kaan No. 1026 x 51 BC, 17.04.1973 x 24 p. 616, 24.01.1967 x 18 p. 176, 11.02.1960 x 11 p. 137. These provisions are referred to by Dr. Kamal Hamdi, previous reference, p. 43. Also see Dr. Jalal Wafa'i Muhammadin, The New Maritime Trade Law, The New University House, Alexandria, 1997, p. 175. He stresses that the reasons for the reservation regarding the data entry in the bill of lading are mentioned.

(31) Rodier the lengthy, referred to by Dr. Kamal Hamdi, previous reference, item 466.

(32) See the definition of force majeure in detail: Force majeure, supreme power Hopkinz P, 30. This is one of the reasons for pushing the responsibility on the shoulders of the marine carrier: Force majeure and the sudden accident represent one thing. Refer to their study in an explanatory manner: Abdul Razzaq Al-Sanhouri, Mediator in Tidal Law, Dar Al-Nahda Al-Arabiya, Cairo, 12, Item 586

(33) Egyptian cassation ruling - Appeal No. 1026 x 51, session 09.02.1987, Technical Office Group, Sq. 38, Issue 1, pg. 219.

(34) Review about this: Dr. Faisal Adnan, the consequences of the marine carrier's reservations on the cargo data in the bill of lading, research published in the Journal of Legal Sciences, College of Law, University of Baghdad, No. 2, 2018, p. 439

maritime sale, and indication the degree of need to take benefits of them together, especially in field of maritime commerce.

First Branch

Discrepancy between letters of warranty

There is a big difference arises between the marine letters of indemnity issued by the shipper to release the responsibility of the carrier to face the consignee, against the detected defaults in cargo that it was necessary to be registered in the bill of lading, but due to the circumstances of the maritime sales and to ensure their circulation, the so-called maritime letter of indemnity arise. Under which the shipper undertakes to ensure all the consequences that result from the cargo not being matched upon delivery with the data contained in the bill of lading, and to avoid the carrier being exposed to the claim of what is contained in it by third parties for compensation, in return for handing him a clean bill of lading free of these reservations, as well as its role in facilitating maritime transport operations that require speed in conducting them. However, we mentioned that its authority is limited to its contracting parties and its impact does not extend to others, and thus it does not violate the provisions of the Egyptian Maritime Trade Law or international treaties issued in its regard [35]. And what is meant by the bank guarantee letter [36], which is a written undertaking issued by the bank at the request of a person called (beneficiary) who clients the payment of a certain amount or is subject to assignment to another person called (the beneficiary) if he is asked to do so during the period specified in the letter without regard for any opposition [37].

This letter of guarantee is one of the forms of credit operations [38] issued by banks and arising from the mere signature of the bank [39]. Because it guarantees the beneficiary to enjoy the benefits that it brings to him by paying a cash sum from the bank's treasury [40]. The bank may offer its credit to its customers in the form of a loan granted by the bank [41] (4) to its customers, along with the processes of opening credit for them and accepting the discount of commercial papers. This letter aims to compensate the beneficiary for the damages incurred by him because of the order not implementing his contractual obligations or because of its poor implementation.

However, the aforementioned bank credit may take another form, represented by the issuance of a letter of guarantee, whereby the bank undertakes, in confronting the beneficiary, to pay a monetary amount, whether it is specified or subject to assignment without restriction or condition upon its request from the beneficiary and within a specified period. It may also be stated in the letter of guarantee the purpose of its issuance, such as the purchase of cargo and their circulation, as happens in marine sales, whether we are selling CIF or FOB [42]. The bank does not have the right to verify the validity of the terms of the transport contract in the bill of lading, but it must ensure that the cargo has been proven by receiving a receipt from the carrier signed on it indicating his shipment of the cargo subject of the letter [43].

(35) For example: The Brussels Treaty of Freight Bonds 1924 and the United Nations Convention on Contracts for the International Carriage of Cargo Wholly or Partly by Sea 2008.

(36) Bank Guarantee Letter: Letter of Guarantee, named for the bank guarantee letter for its issuance by the bank, and the Egyptian legislator has organized the rules for the provisions of the letter of guarantee in Articles 200 to 360 of the Egyptian Trade Law (Law 17 of the year 1999). It goes without saying that the Egyptian legislator codified banking norms In force between banks and their clients in the field of letters of guarantee, which explains the subjection of the letters of guarantee prior to the issuance of this law, its provisions because it does not differ from the prevailing norms, and we should not forget that issuing letters of guarantee is considered a commercial act in the process, whether in the face of the bank or the customer, even if He was a person who was not a merchant, so even though he represented a commitment from the bank to pay a cash amount at the first claim, it is not a payment instrument like a check. It is not a commercial paper like other commercial papers, as it is considered a guarantee tool of a special nature that represents one of the forms of bank operations.

(37) See: the text of Article 355 of the Egyptian Trade Law (Law 17 of the year 1999).

(38) We can define the term credit operations as the commitment of a party to another party to lend or debt, meaning that the bank creditor gives the borrower debtor a period of time, when the borrower's debtor is obligated to pay the value of the debt in addition to the interest previously agreed between the two parties.

(39) Among the forms the bank interferes by lending its signature the collateral, acceptance and bank guarantee. Refer to this matter: Dr. Samiha Al-Qalyoubi, The Mediator in Explaining the Egyptian Trade Law, Dar Al-Nahda Al-Arabiya, Cairo, Fifth Edition, 2007, p. 844.

(40) We provide clarification regarding this matter as it follows that the beneficiary may not waive his right stated in the letter of indemnity except after obtaining the bank approval and provided that the bank is authorized by the client to grant him this approval, so the bank may not refrain from paying the beneficiary for a reason related to the bank's relationship with the matter or to Relationship of command to recipient.

(41) In the field of finance, loans, which define the meaning of borrowing, are considered as a means of using the expected future purchasing power at the present time before it is actually acquired. Some legislations and commercial institutions use the loan as part of their comprehensive corporate financing strategy. Review that in detail: Joseph Swanson and Peter Marshall, Houlihan Lokey and Lyndon Norley, Kirkland & Ellis International LLP (2008). A Practitioner's Guide to Corporate Restructuring page 5. City & Financial Publishing, 1st edition ISBN: 978-1-905121-31-1- Site visited on October 18, 2020.

(42) Marine Sales: These are the sales whereas their subject goods-cargo to be transported by sea and here we have two contracts, a contract of sale and a contract of maritime transport, and considered a special type cargo sale that being transported by sea across from a port to others, it is a process of exporting according to the buyer across from execution contract of transport cargo by sea to be delivered to the buyer and is divided into two types, sale called CIF, means (Cost Insurance Freight) and FOB means (Free on board) and sale at arrival and including sale on ship by a specific ship and none specific shop, refer to: Dr. Tharwat Habib, a study of law in international law with interest of international sale, a published research in centers of researches and studies, Print of Cairo University, Cairo 1974, Page 51, also Dr. Ahmed Hosni, maritime sale a study of international commercial contracts CIF and FOB, Education facility, Alexandria, 1983, Page 7.

(43) One of the most important obligations on the bank is to check documents and make sure that the bill of lading is clean, as only a clean bill of lading that is free of defects or reservations is accepted. Reservations mean the conditions added by the carrier, which explicitly state the defective condition or the method of packaging the cargo, and the phrase "clean" does not appear in the transport document even if the conditions of approval require that. In this regard, review the Unified Rules for Documentary Credits No. (600) in its Article No. (27), provided that if the reservations are general and not specific, they have no value, and the bank does not consider them in the sense that they have no effect and the bill of lading is clean, and the bank does not have an audit Risks covered in the insurance policy, refer to this: d. Samiha Al-Qalioubi, previous reference, pp. 834-835.

Second Branch

The role of the letter of indemnity as a remedy for delivery [44] on arrival

One of the most important features of the maritime bill of lading is its representation of the cargo that are the subject of transport, so the length of the time period of the sea voyage is no longer an obstacle to the circulation of the cargo, as the ownership of the cargo is transferred by endorsement of the transfer of ownership and it is in the possession of the carrier, provided that the bill of lading is promissory or for its bearer [45]. It allows delivery of the bill of lading to the buyer in place of delivery of the cargo themselves.

So that the cargo is merged into the bill of lading and the bearer is considered as the holder of the cargo, as he expresses the cargo with the data it contains, and from this, it becomes clear to us that the person of the consignee can be changed during the transport without the carrier's knowledge or notification of that. He is in possession of a copy of the bill of lading because he is the owner of the right to receive it [46], however, in practice, it has encountered difficulties in implementation that may lead to replacing the bond with another that governs the relevant relationship, so the role of the letter of guarantee emerges as a treatment for judgmental delivery upon the arrival of the cargo.

If the French judiciary [47] permitted the carrier to deliver the cargo without receiving the bill of lading, if this delivery was done in implementation of an agreement between the carrier and the shipper, so that the latter accepts it. The French jurisprudence [48] also in absence of such agreement, the consent of the shipper can be obtained upon arrival to make delivery without a marine bill of lading. We find the same provision in the Rotterdam Convention of 2009 that if the bill of lading is negotiable, the carrier can deliver the cargo without a bill of lading if the shipper instructs him. The carrier, by following these instructions in specific cases, can waive his obligation to deliver to the consignee and be compensated by the shipper for his liability in facing the legitimate bearer of the bill of lading.

We find the same ruling in Roterrdam Convention year 2008, if the record of shipping is valid for trading, the carrier can deliver cargo without record of shipping, if received instructions by carrier, the carrier will follow these instructions in specific cases and can be discharged from his liability to handle to the sender and is compensated by the carrier from his responsibility to face the legal holder of the record [49], whether the agreement faces imposing the arrival of cargo to the hand of the receiver before arrival of the record of shipping, and this related to the complexity of the banking operations to open the documentary credit [50] and the carrier will be in a problem to wait the arrival of shipment

record and the related law and the arise material losses due to the late arrival of the ship [51] and his exposure to the pressure of the consignee as a result of damage and loss to the latter because of his association with dates for the delivery of the cargo or their operation in addition to his incurring storage expenses) [52], or surrender to the consignee's urgency and the delivery of the cargo in

(44) It is now internationally recognized as a judgmental delivery it means (whether by free delivery without receiving the transport wages). Where he receives electronic bill of lading through computers, and even disposes of the cargo according to it through assignment or endorsement, without seeing the notables of the cargo, but the judiciary and part of the jurisprudence-legal schooler with the provisions of the Hamburg Convention and the Rotterdam rules see that the contract of carriage does not end unless the cargo are actually delivered to the holder of the right to it; This is to prevent any controversy arising in the future in this regard, and to stabilize commercial conditions.

(45) The bill of lading or the ordering the bill of lading is the harm of the bill of lading or of an order (as the bill of lading is for the order or for permission if the shipper order or the order sent to him is issued. That is, the name is specified in it preceded by the word for an order or permission, and this is what happens pursuant to the resulting ease of trading the bill. The word permission or order must be explicitly stated in the bill of lading so that it can be traded by endorsement, so that the cargo can be transferred for appearance to it). It is predominant in the practical field, so its circulation is by way of endorsement transferring ownership and appearance to it if the endorsement is for permission or the order is to endorse the permission bond or another person's order, and the same is like any commercial or civil paper bearing the condition of permission. The mere signature of the bearer on the back of the bill is considered an endorsement that transfers ownership, and the provisions of the Commercial and Commercial Papers Law shall apply to this endorsement. Endorsement of the bill of lading entails the transfer of ownership of the cargo to the endorser, and then he has the right to demand that the master deliver it to him upon arrival, just as the master refuses to deliver the cargo to others. If the conditions of endorsement required by law are fulfilled, the possession of the cargo is transferred to the endorser, and the latter acquires the status of the consignee vis-à-vis the shipping carrier, and the latter may not contest his capacity or refrain from delivering the cargo to him. It is not permissible for the carrier or the shipmaster to invoke the defenses that he has before the endorser before the shipper. As the rule of the inadmissibility of invoking the defenses against the bill fide holder applies to the transfer of the bill of lading by endorsement, as is the case with commercial papers, refer to the Egyptian commercial cassation, hearing session 25/12/1978, Year 29 Judicial, Page 2023 related to all mentioned above. However the bill of lading is for its holder as it is the bill which is free from the condition of permission or doesn't hold the consignee name, however, if the bill of lading includes the permission condition, without including the beneficiary name of this condition, it shall be deemed a bill of lading for it holder, then it will be traded by delivery. The bill of lading may be to his holder at that time, its ownership is transferred upon delivery, and the cargo will be delivered to the name of the owner of bill of lading at arrival, unless, the bill of lading shall be favor of his holder due to the robbery may be arise to his holder, and its usage is rare in normal life.

(46) Regarding the basis of the consignee's right to receive the cargo, we find that the text of Article 1/218 of the Egyptian Maritime commercial Law affirmed that "the shipper is the one who is obligated to pay the transportation fee", and if the fare is due upon arrival, he is also obligated to pay it who has the right to receive the cargo if Before receiving it, this link entitles the consignee to the right to file a lawsuit directly against the carrier, and on the contrary, the carrier has the right to initiate lawsuits arising from the contract against him. Consider the jurisprudential dispute raised regarding the interpretation of the basis of the link between the recipient and the carrier, and the jurisprudential opinions expressed in this regard: Dr. Kamal Hamady, previous reference, pp. 450 to 451.

(47) French cassation ruling, hearing June 19, 2008.

(48) Hugues Kenfack-op. cite, P.1240

(49) The context of item (47) of the Roterrdam convention states that in case issuing a record of transport valid for trading or registration electronic transport valid for trading, the holder of the transport record of trading may claim to deliver goods from the carrier after arrival to the destination, and the carrier will deliver the cargo to the possessor in this case at time and the above mentioned place in the context item 43 of the same agreement.

(50) Reference to the internal regulations at banks, we find that the judgment has approved the right of the bank to execute at none conformation of the documents, also the independency of the liability of the bank arise from the documentary credit contract for any external relation even this a relation of sale or transport or insurance, while otherwise may be agreed frankly, refer to the analysis of Dr. Samiha Al Kailoni, prior reference, pages from 430 to 435.

(51) Refer to the degree of the accomplishment o the responsibility of carrier against the delay of cargo arrival Dr. Kamal Hamdi, prior reference, page 445, and after that, Dr. Hani Dowdier, prior reference, from page 231 to page 250, also Dr. Mahmoud Sameer Al Sharqawi, maritime law, Ara Nahda House, Cairo 2012, page 303 and awards.

(52) See the research of: Dr. Lili Gammaz, letter of indemnity for the absence of a bill of lading - a practical mechanism with legal alternatives -, a research published in the Algerian Journal of Maritime and Transport Law, No. 6, pp. 14-15.

violation of the provisions of the transport contract [53]. However, in practice and in reality, the consignee has the right to issue an Egyptian letter of guarantee signed by the bank, so that the bank is obligated to cover the deficit of the recipient, the recipient of the cargo, to cover the deficit of the debtor receiving the cargo, and thus raise the issue of the legal nature of letters of guarantee. Incoming cargo, in exchange for the carrier delivering the cargo to him without the presence of the bill of lading and based on the bank pledge to pay him upon his request and without stopping on any other procedure any sums that the carrier has committed to as a result of this violating delivery, as the letter of guarantee is a copy of the bank guarantee.

Third Requirement

The relative impact of the letter of indemnity

After delivering the cargo to the consignee who is the last holder of the bill of lading, whether by free delivery without receiving the transport wages or legal delivery [54], which is a termination of the contract of transportation cargo by sea, the carrier may be subjected, realistically or practically, to not delivering the cargo to the consignee due to the absence of the bill of lading, so the non-delivery problem will arise. The bank guarantee letter is the subject of the bond due to the signature of the consignee that he is the owner of the right to receive the cargo. This practical situation makes it necessary for us to highlight the discrepancy between the letter of guarantee and the maritime transport contract as well as between it and the documentary credit because of their similarities that will be clear to us through the presentation in the following two sections.

First Branch

The independence of the letter of indemnity from the maritime transport contract

At the beginning, we would like to note the nature of the maritime transport contract before proceeding to achieve the discrepancy between it and the letters of indemnity and guarantee.

The maritime transport contract commits the carrier to carry out the transportation of the desired transported things, and both parties, the carrier and the shipper, who known as the owner of the cargo, and the capacity of transportation is variable according to the scope of contract, and when the transported are persons, it will be called persons transportation contract, and when the transported are things, it will be called cargo transportation contract, accordingly, the jurists defined it as a contract whereby the carrier (who was the owner, supplier, or charterer of the ship) is obligated to transport cargo by sea for the account of another person who is the shipper in return for a specified fee [55]. It is also known as the contract whereby the carrier carries certain cargo from one port to another in exchange for a fee that the second party, the shipper, is obligated to pay [56]. This contract is considered one of the most important issues dealt with by maritime law and international agreements.

As for the independence of the contract from letters of indemnity and letters of guarantee, we find that the letter of bank guarantee is an independent agreement from the transport contract; because the obligation that the bank has in facing the beneficiary carrier to pay the value of the letter as soon as it is claimed is a genuine obligation and separate from every relationship other than the bank relationship by the recipient -the carrier- as the source of each differs [57]. Consequently, the bank is not permitted to refuse payment to the carrier beneficiary because of the relationship of the bank with the customer receiving the cargo or with the recipient, because the bank may not become accustomed to the payments derived from the transport contract. This is what the Egyptian Court of Cassation ruled in its ruling that "the decision in this court's judiciary is that the letter of guarantee is issued in implementation of the contract concluded between the bank and its customer, but the bank's relationship with the beneficiary for whom the letter of guarantee was issued is a relationship separate from his relationship with the customer governed by the letter of guarantee alone, and its terms It defines the bank's commitment and the terms on which it pays" [58]. Based on that, the French Court of Cassation ruled in a ruling for them that "the non-eligibility or non-permissibility of the guarantor bank's invocation of the invalidity of the contract establishing the guarantee by mere request vis-à-vis the beneficiary, on the basis that the commitment of the guarantor bank did not arise from a sponsorship contract but rather resulted from a guarantee upon the request. It results in the bank not being able to take advantage of the defenses that the matter was to pay against the beneficiary, especially those related to non-implementation of the contract that binds them [59].

From this ruling, we can point out that the letter of bank guarantee is independent of the maritime transport contract, but this independence is not complete due to their economic association with each other, and this is what was mentioned in the Egyptian jurisprudence [60]. Although the letter of guarantee is separate from the customer's debt and legally independent from it, it is nevertheless linked to it from an economic point of view as it issues the service of the customer's relationship with his creditor. The customer aims

(53) Maritime Law Magzaine, v. Holland AM2006, AMC2772. P1243.

(54) The shipmaster must verify the identity of the person to whom the cargo are to be received, as he remains responsible if he delivers the cargo to a person who is later in receipt of them, and if the cargo arrived before the arrival of the bill of lading or the aforementioned document was lost, then the carrier may deliver the cargo to the consignee If the latter submits a shipping letter of guarantee issued by a bank for the value of the cargo or any evidence proving even on the surface that he has the right to receive the cargo, if the latter submits a shipping letter of guarantee issued by a bank for the value of the cargo or any evidence proving even on the surface that he has the right to receive the cargo,

(55) Dr. Kamal Hamdy, Stevedoring Contract in Maritime Transport, Al Ma'arif Facility, Alexandria, 2002, p. 5.

(56) The Brussels Treaty of 1924 defined that the contract of carriage applies only to contracts of carriage fixed by a bill of lading or by any other proven means that are a bond for the transport of cargo by sea, while the Hamburg Convention of 1978 defined it as a contract whereby the carrier undertakes to transport cargo by sea from one port to another for a fee. As for the Rotradem Rules of the year 2009, the definition differed according to the different texts contained in international treaties and national legislation regarding the Rotterdam rules. I defined it as "a contract in which the carrier undertakes to transport cargo from one place to another in exchange for a transportation fee, and the contract must stipulate transportation by sea, and it may be stipulated. To transport by other means of transport in addition to maritime transport".

(57) Dr. Ramadan Suleiman, The Legal System for Bank Guarantee Letters, Dar Al Fikr University, Alexandria, 2002, p. 5

(58) An Egyptian civil cassation hearing Appeal No. 7304 for Judicial Year 63, Session 06/27/1994, Technical Office Group, Year 45, p. 1125.

(59) French Cassation Decision, hearing of 20 December 1982, published in CABRILLAC.RTD.Com p. 446

(60) Dr. Ali Gamal El-Din Awad, Banking Operations from and Legal Destination, Dar Al-Nahda Al-Arabiya, Cairo, 1979, p. 571.

to obtain the trust of this creditor who is not satisfied with any other guarantee except this form of the guarantee.

Second Branch

The independence of the letter of indemnity from the documentary credit

Whether the documentary credit [61] or the letter of guarantee, both of them are bank transactions that play an important role in financing trade when the parties in the transactions have not established a business relationship. They are used in international trade between buyers and sellers who lack well-established business relationships or are unfamiliar with each other's business laws or customs.

Legal scholars has stabilized [62] settled on the independence of the banking relationship between the bank as a legislator of credit and the beneficiary from it from the sales relationship that originates in the sale contract, and that independence in contractual relations preserves the relationships arising from the obligations arising from it for each party, but the independence of the documentary credit is not absolute, but rather what It is against the law and rights are acquired through it.

In spite of the similarity between the documentary credit and the letter of bank guarantee, there is a difference between them that emerges in that the letter of guarantee, as we have previously explained, is issued to clients to ensure the seriousness of entering into tenders. As for the documentary credit, it is a written commitment issued by a bank called the issuing bank, based on

The buyer's request the applicant or the matter in favor of the beneficial seller. Under it, the bank is obligated to fulfill within a specified amount within a certain period whenever the seller submits the commodity documents in compliance with the instructions of the credit conditions. The documentary credit is used to finance foreign trade [63].

However, some may not differentiate between them [64] due to their emergence in the light of international norms, so the banking custom invented [65] documentary credit as a guaranteed way to serve international trade for the purpose of settling purchases and sales with the guarantee of documents that represent cargo. This is to give confidence to both the exporter and the importer by guaranteeing their rights in the sale contract, and banks have been entered into that process as a mediator between the seller and the buyer, but the bank cannot, in the documentary credit, cling to the defenses derived from the base contract or the contract of opening the credit, because the aim of the latter is to settle sales contracts The contract between the exporter and the importer [66], and its goal is to ensure that the seller gets the price on the one hand and to ensure that the buyer obtains the cargo on the other hand. On the other hand, according to what is stipulated in the contract, the existence of the bank and its verification of the conformity of the documents submitted by the beneficiary of the credit for the payment of the value of the cargo, and their entitlement depends on the beneficiary's submission of the documents indicated in the credit and on the specified date [67].

As for the letter of guarantee, the bank's relationship with the beneficiary is separate from the bank's relationship with the commanding customer. As the bank is obligated, as soon as it issues the letter and reaches the beneficiary, to fulfill its value on his behalf or a claim from the latter [68], so its goal is to compensate the beneficiary for the damages that he suffers as a result of the commander's failure to implement his contractual obligations or his poor implementation of it [69].

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(61) The first project presented by the International Chamber of Commerce to realize the idea of documentary credit was at the Amsterdam Conference for the Science of 1929, but it was supported by only two countries, (the countries: Belgium and France are beginning to implement the idea of the Standard Rules for Banks Regulating the Use of Documentary Credits), and in its seventh conference held in Vienna for the year 1933 The chamber submitted the same project after the necessary amendments were introduced to it. These rules were approved after being amended by all countries participating in the chamber except the United Kingdom, which approved them in 1963, and Egypt joined the International Chamber of Commerce for the year 1958. These norms and rules became an integral part of the legislation Egyptian commercial law was not exposed before the issuance of BC. 17 of the year 1999 of the new trade law, subject to documentary credit, but dealt with it in Articles 341 to 354. The rules contained in the unified customs of documentary approval issued by the International Chamber of Commerce shall apply unless there is a special text in respect of it in the provisions of the aforementioned law, (the rules for documentary credits issued in Bulletin No. (600)/ 2007 for the International Chamber of Commerce).

(62) With regard to documentary credit, the bank is obligated directly and definitively in the face of the beneficiary, and it is independent of the bank's relationship with the customer who orders the contract to open the documentary credit. If it is nullified or revoked, the bank may not refrain from fulfilling its obligation vis-à-vis the beneficiary from the time the letter of credit is addressed to the seller. But there is a reservation, which is the revocable documentary credit, as the bank can in this case return its pledge at any time, but if it remains on its pledge, there will be no effect on the contract to open the documentary credit on its commitment to the seller. See: Dr. Hani Dowidar, Commercial Contracts and Banking Operations, ibid., P. 292.

(63) It should be noted that the shipping document is one of the most used documents and documents in documentary credits, as the bill of lading is the most common image because it is considered a title deed that is presented from a the issuing bank to an intermediary bank to prove the shipment of the cargo or prove the receipt of the cargo by the shipping carrier by the exporter (the beneficiary) and include the information. Such as the number of parcels, description, weight, and information of the sender and the consignor, so the bank must verify the bills of lading and their types.

(64) Dr. Mustafa Kamal Taha, Commercial Law, Al-Halabi Human Rights Publications, Lebanon, 2001, p. 655.

(65) Letter of bank guarantee and documentary credit the innovation of banking custom as a result of the practical need for commercial transactions and sales with the aim of facilitating international commercial transactions and protecting different parties.

(66) In the event of a dispute related to documentary credits, the standard rules and customs for documentary credits No. (600) issued by the International Chamber of Commerce (ICC) are to provide the parties to the dispute regarding the implementation of the documentary credit process. To the decision of an independent, impartial, and impartial expert to settle disputes that apply the Uniform Customs & Practice for Documentary Credits (UCPs) as well as those that apply the Uniform Rules for Demand Guarantees (URDG) and also the Uniform Rules for Bank Settlements among themselves - Uniform Rules for Bank - to - Bank (Reimbursements) URR, as the parties resort to it due to its speed, simplicity and reasonable cost, so a procedure that does not take about 60 days from the date of submitting the arbitration request and the first introduction of these rules was in the year 12 aims to provide an alternative system for settling disputes between the parties using the rules of the International Chamber of Commerce related to the credit operations Documentary see: ICC DOCDEX RULES, Article 1.

(67) Dr. Ali Al-Baroudi, Contracts and Banking Operations, Dar Al-Fikr University, Alexandria, 2001, p. 165.

(68) See Dr. Ali Gamal Al-Din Awad, Bank Letters of Guarantee, Dar Al-Nahda Al-Arabiya, Cairo, 1991, p. 81, as his Excellency believes that in the letter of guarantee the bank is obligated to pay immediately upon the first claim of the beneficiary or upon presentation of a document referred to in the letter, and proof of fraud is when it becomes evident The bank may not match the documents submitted by the beneficiary from the credit, or when it becomes evident to the bank that they have been forged.

(69) Dr. Mustafa Kamal Taha, ibid, P. 665.

Conclusion (outcomes and recommendations)

Conclusion

The issue of the included reservations in the marine bill of lading, was the scope of discrepancies between the various international agreements, and this is because of the legal value represents by the bill of lading in representing the cargo on one side, and on the other side, an instrument of credit to the bank for the purpose to pay an amount or fee of the cargo, the scope of contract sale. Therefore, our study is based on highlighting the discrepancy between the letters of indemnity and guarantee and its role as a remedy for the free delivery of the cargo without receiving the cargo value upon arrival in place of the bill of lading that implies ending the transport process. The study was divided into three main requirements, the first one was allocated to identify the nature of letters, whether in terms of concept or legal function. The second one is to explain the special legal nature of this type of letters, and due to its independence from the transport contract and documentary credits in the third and final requirement.

Outcomes

1. The argument of the letter of indemnity is limited to those who hold it and does not extend to third party.
2. The issue of reservations contained in the bill of lading was the subject of a discrepancy between the reference international agreements in this regard, and it was related to the legal value of the bill of lading in its representation of the cargo and being considered a credit instrument for the bank in order to pay its value and the transportation fee.
3. Marine letters of indemnity which are the innovation and thinking of shippers, and they have been used as a way to get rid of the reservations that appear in the bond and hinder its endorsement.
4. Reservations should be correct and specific, to enjoy the strength to waste the argumentation of the bill of lading in the proof and replace it with letters.
5. The existence of the economic link despite the independence of the transport contract from the letter of indemnity results in the use of the letter in proof and delivery.
6. The banking custom created letters of guarantee and documentary credits as a guaranteed way to serve international trade for settling purchases and sales with the guarantee of documents representing cargo.
7. It is not permissible for the bank to benefit from the payments that were to be made against the beneficiary, especially those related to non-implementation of the contract that binds them.
8. The importance of documentary credit appears in particular in the field of international trade, as it justifies resorting to opening the documentary credit and establishing a legal relationship between two persons between whom an international sales contract is established.
9. The entitlement of documentary credits depends on the beneficiary submitting the documents shown in the credit and on the specified date.

Recommendation

1. We hope from the Egyptian legislator to identify the latest points of updates included in Rotterdam Agreement, and activate them with the texts of maritime legislation, as it is the most modern maritime convention.
2. The necessity of making use of the Rotterdam rules in development national legislation for countries which wish to update their maritime legislation.
3. We advise the legal people to Intensify efforts in deepening the study of letters of indemnity and guarantee due to their practical importance.

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