

Letter of Credit Disputes from an Arbitration Perspective

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ABSTRACT

In a recent study, it might not be possible to refer letter of credit fraud cases to arbitration instead of litigation. Alavi's research suggested that there could be some obstacles, such as obtaining banks' response and cooperation; the different and high standards of proof of fraud required; and the difficulty in obtaining an injunction. His study answered a question proposed by Blodgett and Mayer as to whether arbitration would ever take place in letter of credit disputes. This short research paper will answer this question, but from a different angle: whether arbitration will provide more appropriate judgments (award) than litigation regarding letter of credit disputes. This question arises from the writer's observation that, in the past twenty years, different judgments have been issued for similar disputes.

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1. Introduction

The legal umbrella provides contractual parties with more than one method of solving such disputes. One method is arbitration, which is a legal solution that many jurisdictions provide, in which a neutral party is assigned to act as a 'referee' in the dispute and to issue a judgment.¹

There are a number of merits of arbitration, including the flexibility in its mechanism and the issuing of a final judgment, known as an 'award'.² That is to say, arbitration is preferred due to the speediness of arbitration procedures compared to litigation, which also involves seeking expert testimony.³ Indeed, it is rare for letter of credit cases to be

¹ Nigel Blackaby, Constantine Partasides QC, Alan Redfern and Martin Hunter, *Redfern and Hunter on International Arbitration* (6th edition, Oxford University Press 2015) 1.104

² *Ibid* 1.104

³ Margaret Moses, *The Principles and Practice of International Commercial Arbitration* (3rd edition, Cambridge University Press 2017) 3; See also Ilias Bantekas, *An Introduction to International Arbitration* (Cambridge University Press 2015) 18; See also Nigel Blackaby, (n 1) 1.94

referred to arbitration.⁴ In litigation, different judgments have been provided by national courts for similar letter of credit disputes. For example, in *Glencore International AG & Anor v. Bank of China*,⁵ the bank refused to honour the credit due to differences in the description of goods. The tendered documents showed part of the description as ‘any western brand – Indonesia (Inalum Brand)’, instead of ‘any western brand’ as required.⁶

The first court – the Commercial Court – upheld the bank’s decision.⁷ On appeal, the court disagreed with the first court’s decision and considered these extra words aimed to determine the origin of the goods, where they give a broad meaning.⁸ Therefore, such differences would not bind the bank to dishonour the credit.⁹ In contrast, in *Sunlight Distribution Inc. v. Bank of Communications*,¹⁰ the presented document included an extra phrase in the description, but the court took a different view. In this case, a letter of credit was issued for the sale of: ‘MOTOROLA 8900X-2 (ETACS) Portable Radio Telephone, 2600 UNITS’.¹¹ However, the bank rejected payment to the beneficiary due to the wrong description of goods, which had an extra prefix of ‘S34 10A’ as well as additional descriptions including ‘SNN404A Battery Black HICAP,’ ‘SNN4216A Programming Battery For 8900X-2’ and ‘SNN4216A BATT TEST A/P SAM’.¹² The court ruled in favour of the issuing bank subject to Article 41(c) from the UCP 400 rules.¹³

A similar inconsistent judgment for the same matter of dispute was seen in *Hing Yip Hing Fat Co Ltd v. The Daiwa Bank Ltd*¹⁴. In this case, the bank refused to honour the credit due to an error in the applicant’s name, where it referred to ‘Cheergoal **Industries** Limited’, but the bill of exchange it was drawn as ‘Cheergoal **Industrial** Limited’.¹⁵ In hearings, the court reversed the bank’s decision and held that such an error was not a discrepancy upon which the bank could rely.¹⁶ In contrast, in *Bank of Cochin Ltd. V. Manufacturers Hanover Trust Co.*,¹⁷ where the issuing bank brought an action against the confirming bank for wrongful honour of a letter of credit on the basis of several discrepancies in the presented document, among other discrepancies, there was an error in the applicant’s name. The tendered documents appeared with the applicant name as *St. Lucia Enterprises* while the name specified in the credit was *St. Lucia Enterprises Ltd*¹⁸ (the abbreviation ‘Ltd’ was omitted). In this regard, the court held that the difference in names was a discrepancy, which bound the bank to reject the presented documents.

⁴ Hamed Alavi, ‘Arbitration and LC Fraud Disputes: A Comparative Approach’ [2016] 8(2) *Russian Journal of Comparative Law* 59, 61, see also Mark S. Blodgett & Donald O. Mayer, ‘International Letter of Credit: Arbitral Alternatives to Litigating Fraud’ [1998] 35 *American Business Law Journal* 443, 446

⁵ [1996] C.L.C. 95

⁶ *Glencore International AG & Anor v. Bank of China* [1996] C.L.C. 95 at 95

⁷ *Ibid* at 101

⁸ *Ibid* at 120

⁹ *Ibid* at 121

¹⁰ WL 46636 (S.D.N.Y. 1995)

¹¹ *Ibid* at 1

¹² *Ibid* at 2

¹³ *Ibid* at 3

¹⁴ 2 HKLR 35, High Court (1991)

¹⁵ *Hing Yip Hing Fat Co Ltd v. The Daiwa Bank Ltd*, 2 HKLR 35, 36 High Court (1991)

¹⁶ *Ibid* at 39

¹⁷ 612 F. Supp. 1533 (D.C.N.Y. 1985)

¹⁸ *Ibid* at 1541

The above-mentioned cases are examples and not restricted to the issue of inconsistent judgments. In fact, it is believed that there is an increasing number of inconsistent court decisions in regard to banking disputes, which will call for opening and welcoming banking disputes to arbitration.¹⁹ Using these points, the study will examine whether arbitration is a more appropriate method for dispute resolution under letters of credit instead of litigation or, from different angle, whether the litigation judgments of letter of credit disputes would be the same if the said dispute was resolved (judged) through arbitration.

In order to use arbitration, the disputers must agree – in a declaration – to resolve their dispute by arbitration; this is known as an ‘arbitration agreement’.²⁰ More importantly, the said dispute must be arbitrable, meaning that the subject of the dispute and matters are capable of settlement through arbitration.²¹ However, the question of whether letter of credit disputes are arbitrable is not well established in the law.²² It can be said that arbitrability is not a clearly defined notion as there is no general international rule with regard to which disputes are arbitrable and which are not;²³ however, there is an agreement on the possibility of referring letter of credit disputes to an arbitral tribunal.²⁴ From this fact it can be implicitly understood that letter of credit disputes are arbitrable.

Generally speaking, arbitration agreements are at the heart of arbitration, and parties refer to such agreements in their initial contract under an ‘arbitration clause’ which will apply if a dispute should arise.²⁵ In order for an arbitration agreement to be effected, certain elements must be designated. These elements include, among others, the seat of arbitration, parties’ details and addresses, the procedural law to be applied, whether ad hoc or institutional arbitration is required, and the subject matter of the dispute.²⁶

Although there are many differences between litigation and arbitration, as in the producers and legal environment, what is necessary for this paper is the applicable law with regard to the substance of the disputes and the arbitral tribunal criteria. This paper will only focus on two elements, namely the applicable law and the arbitral tribunal. This restriction is due to the important role these two elements play in resolving a dispute without undermining other elements. Referring to these two elements allows for comparison of the outcome (judgment) of the dispute with the outcome of a litigation.

¹⁹ Inka Hanefeld, ‘Arbitration in Banking and Finance’ [2012] 9 New York University Journal of Law & Business 917, 926

²⁰ Simon Greenberg, Christopher Kee, J. Romesh Weeramantry, *International Commercial Arbitration: in Asia-Pacific Perspective* (Cambridge University Press 2012) 22

²¹ This definition is established under the English law. Another definition for arbitrary is the possibility to deal with dispute through arbitration. See in general Jean-François Poudret, & Sébastien Besson, Translated by Berti, Stephen & Ponti, Annette, *Comparative Law of International Arbitration* (2nd edition, Sweet & Maxwell 2007) 28, see also Bantekas (n 6) 29, See also Blackaby (n 1) 1.64 & 2.124 see also Alavi (n 4) 62

²² Alavi (n 4) 62

²³ Bantekas (n 6) 29

²⁴ Alavi (n 4) 62

²⁵ Hong-Lin Yu, *Commercial Arbitration: The Scottish and International Perspectives* (Edinburgh University Press 2011) 40

²⁶ Greenberg (n 24) 189

2. The Applicable Law

As a starting point, in most cases, parties are required to decide the seat of arbitration. This determination is because of the effect of the freedom enjoyed under arbitration according to the 'autonomy principle'.²⁷ The principle of party autonomy provides the parties with the right to choose the applicable law, the number of arbitrators (the tribunal), place of arbitration, and the arbitral procedures. Article 21(1) of the International Chamber of Commerce (ICC) Arbitration Rules affirms the freedom of the parties to choose their applicable law, stating, 'the parties shall be free to agree upon the rules of the law to be applied by the arbitral tribunal to the merits of the dispute'.²⁸

This decision plays an important role in arbitration because, in most cases, the laws of that jurisdiction are applied by the arbitral tribunal.²⁹ However, in some cases the disputing parties can choose to apply a different law from a jurisdiction other than the seat of arbitration.³⁰ That is to say, the applicable law under arbitration can be either the same law of the place of arbitration or a different law. For example, assume that the disputants designated Brazil as their seat of arbitration and Dutch legislation as their applicable law for their dispute, bearing in mind that, under letters of credit, the issuer's domicile will be responsible for determining which jurisdiction will be considered as the applicable law in case of any dispute. From this point, it is clear that disputants have no freedom to choose the applicable law for their dispute, and there is also a possibility that the disputants might not be aware of such legislation.

Generally speaking, letter of credit disputes are governed under the Uniform Customs and Practice for documentary credits (the UCP 600) and the International Standard Banking Practice (ISBP 2013). In addition to the national law of the issuer, these two instruments will be applied in regard to letter of credit disputes. In one letter of credit case that was resolved via arbitration, the dispute was about fraud. In this case, the defendant bank (Spanish bank) issued a letter of credit upon the request of a Spanish importer in favour of a Thai exporter. The credit was confirmed by a Thai bank and the first payment was executed by the issuing bank. However, the second payment was rejected as result of the beneficiary's fraud and presentation of a forged document. On the basis of UCP (1974 version), the award established that the defendant bank was not obliged to honour the fraudulent presentation by the beneficiary.³¹ This case could be the initiative to resolve letter of credit disputes through arbitration.

Yet, it is questionable whether a judgment will be the same if a dispute was considered from two different legislations. In the *Sztjen*³² case, the American court ruled that there was a fraud in the goods and, as a result, held that the bank is not bound to honour the credit.³³ The justification for the American court is that the fraud exception rule under US jurisdiction includes fraud in both goods and documents.³⁴ In contrast, the fraud

²⁷ Yu (n 29) 67, see also Blackaby (n 1) 3.97

²⁸ ICC Rules of Arbitration 2017

²⁹ Greenberg (n 24) 22

³⁰ *Ibid* 60

³¹ ICC Award No. 3031, in 1977, Digest of ICC - International Court of Arbitration Awards ICC, Award Abstract and Commentary, JDI 1978, pp. 999-1004, cited via Alavi (n 4) 62

³² *Sztejn v J Henry Schroder Banking Corp* 177 Misc. 719, 31 NYS (2d) 631 (1941)

³³ *Ibid* at 634

³⁴ Section 5-114(2) of the Uniform Commercial Code 1958 states that 'Unless otherwise agreed, when documents appear on their face to comply with the terms of a credit but a required document does not, in fact, conform to the warranties made ... or is forged, there is **fraud in the transaction**...'. See *Sztejn v J Henry*

exception rule under English jurisdiction is restricted only to fraud in the documents.³⁵ From this, it is clear that the judgment will not be the same for the said dispute if it was resolved under jurisdictions other than the US. However, if the said dispute was judged through arbitration, the judgment would, without doubt, be different according to the designated applicable law. That is to say, referring the dispute to arbitration is complicated when the applicable law might be in favour of one party. Therefore, the designation of the applicable law is very important; both parties need to choose carefully which jurisdiction is preferred to settle their dispute.

In one case, there was a dispute in regard to the name that appeared in the presented documents required under the credit. In the *Voest-Alpine Trading USA Co. v. Bank of China*,³⁶ the rejection was on the ground of a syntax error in the presented documents: *Voest-Alpine's* name was listed as 'Voest-Alpine **USA Trading Corp.**' instead of 'Voest-Alpine **Trading USA Corp.**'³⁷ (the term 'USA' was written before the term 'Trading'). The court reasoned that the 'documents did not appear to come from a beneficiary other than that named in the credit; accordingly, the name inversion was insufficient to justify dishonour'.³⁸ In contrast, a Singaporean court stated that a presentation of documents bearing the beneficiary's name as '*Pan Associated Pte Ltd*' as opposed to '*Pan Associated Ltd*' in the letter of credit would justify the dishonour.³⁹ From these cases, two different judgments were issued from different jurisdictions although the same issue was involved in the presented documents, namely error in the presented name. The question (point) here is whether the judgment would be the same if the *Voest-Alpine Trading USA Co.*⁴⁰ was considered in a jurisdiction other than the US. It seems possible. That is to say, it is a complicated law, where different principles and different interpretations will play their role; hence, choosing which jurisdiction will be applied is worthy of serious consideration.

3. The Arbitral Tribunal

According to party autonomy, disputants have the right to designate their arbitrator and thus form the arbitral tribunal.⁴¹ This privilege would be an advantage where, unlike litigation, the parties each freely designate their preferred arbitrator. This right is well established in the law: Article 12 of the ICC Arbitration Rules stipulates that the parties are free to determine (choose) their arbitrator.⁴² Although the parties are free to choose their tribunal, they should choose their arbitrator carefully. The arbitrator

Schroder Banking Corp, 177 Misc. 719, 31 NYS (2d) 631, 634 (1941), see also *United Bank Ltd. v Cambridge Sporting Goods Corp*, 392 N.Y.S. 2d. 265, 268 (1976), see also *Intraworld Industries, INC v Girard Trust Bank*, 336 A 2d 316, 324 (Pa. 1975)

³⁵ *United City Merchants v Royal Bank of Canada* [1983] 1 AC 168 at 183, see also *Discount Records Ltd v Barclays Bank Ltd* [1975] 1 Lloyd's Rep. 444 at 449,450 see Michael Bridge, *The International Sale of Goods* (4th edition, Oxford University Press 2017) chapter 6, see also Michael Bridge, *Benjamin's Sale of Goods* (10th edition, Sweet & Maxwell 2017) chapters 23-24, see also Michael Bridge, 'Documents and Contractual Congruence in international Trade' in Sarah Worthington (ed), *Commercial Law and Commercial Practice* (Hart Publishing, Oxford 2003) 229

³⁶ 167 F. Supp. 2d 940 (S.D. Tex. 2000)

³⁷ *Voest-Alpine Trading USA Co. v. Bank of China*, 167 F. Supp. 2d 940, 943 (S.D. Tex. 2000)

³⁸ *Voest-Alpine Trading USA Co. v. Bank of China*, 167 F. Supp. 2d 940, 948 (S.D. Tex. 2000)

³⁹ *United Bank Ltd v Banque Nationale de Paris* [1992] 2 SLR 64 at 65

⁴⁰ *Voest-Alpine Trading USA Co. v. Bank of China*, 167 F. Supp. 2d 940 (S.D. Tex. 2000)

⁴¹ Blackaby (n 1) 1.71, see also Yu (n 29) 67

⁴² ICC Rules of Arbitration 2017, Article 12 states: '3) Where the parties have agreed that the dispute shall be resolved by a sole arbitrator, they may, by agreement, nominate the sole arbitrator for confirmation. 4) Where the parties have agreed that the dispute shall be resolved by three arbitrators, each party shall nominate in the Request and the Answer, respectively, one arbitrator for confirmation.'

should be well experienced in arbitration, the substance of the dispute and other legal environments.⁴³ That is to say, arbitrators' reputation and experience is very important when considering the designation of the tribunal as it is said, 'arbitration is as good as the arbitrator'.⁴⁴

In most arbitration systems, any neutral party can be nominated to act as an arbitrator. The only general requirement is that such an individual enjoys a legal capacity.⁴⁵ Contrary to litigation, the arbitrator should not be a judge. Arbitrators can, amongst others, be lawyers, professionals, scholars, experts,⁴⁶ meaning the arbitrator can be chosen from any expertise field and it is not necessary for an arbitrator to be a lawyer. Therefore, in the case of a letter of credit dispute, bank staff and banking experts can be chosen as an arbitrator.

Arguably, banks do not welcome the idea of resolving letter of credit disputes through arbitration as they are afraid that the arbitral tribunal might lack sufficient knowledge of international banking practice.⁴⁷ From my point of view, this concern might not be convincing any more due to the freedom that disputant parties enjoy in designating the arbitral tribunal. Therefore, it is possible, and recommended, to designate banking experts in the tribunal which will, indeed, be a positive guide when resolving letter of credit disputes. In a recent report by the ICC revealed a rise in arbitration cases in the banking and finance sector between 2008 and 2010 from 7.2% to 15%.⁴⁸ This could be due to the use of experienced arbitrators who are familiar with the banking world.⁴⁹ On this basis, banking experts should have the opportunity to be chosen in the dispute, which could have increased the popularity of arbitration in the banking and finance sector in recent years. There is no doubt that, over time, judges have become more expert in banking standards regarding letter of credit disputes. Therefore, the argument that they lack sufficient knowledge of banking standards will not be welcomed in the future.

In short, freedom of designation means that the quality and experience of the arbitral tribunal might be more appropriate than judges. It is believed that arbitrators could come from a different culture and legal environment, meaning that, if the tribunal consists of three or more arbitrators, they might be from different nationalities, which will provide the award with more credibility. Such variety in the legal environment could be beneficial for disputes as it will lead to greater knowledge and expertise in this regard.

⁴³ Blackaby (n 1) 4.16

⁴⁴ Yves Derains and Laurent Levy (eds) *Is Arbitration Only as Good as the Arbitrator? Status, Powers and Role of the Arbitrator* (ICC Institute of World Business Law 2011)

⁴⁵ Blackaby (n 1) 4.49

⁴⁶ Ibid 4.16 see also Yu (n 29) 106

⁴⁷ Stefano Cirielli, 'Arbitration, Financial Markets and Banking Disputes' [2003] 14 *Amirian Review of International Arbitration* 243, 263, see also James Byrne, et al. (1996), Special Section, Seminar Proceeding, 'Disputes Involving Letters of Credit', 7 *World Arbitration & Mediation Report* 185, 190, see also Alavi (n 4) 60

⁴⁸ ICC International Court of Arbitration Bulletin Vol. 20 No. 1 (2009), p. 5 and ICC International Court of Arbitration Bulletin Vol. 22 No. 1 (2011), p. 5, see also Dispute Resolution Statistics - Finra, <<https://www.finra.org/arbitration-and-mediation/dispute-resolution-statistics>> last visited 28th November 2018

⁴⁹ Hanefeld (n 23) 923-926 see also Cirielli (n 51) 266, see also Alavi (n 4) 62

4. DOCDEX panel: is this arbitration?

In late 1990s, the ICC introduced documentary instruments dispute resolution expertise (DOCDEX) in order to resolve letter of credit disputes with the help of an expert-based panel.⁵⁰ The main idea behind the introduction of DOCDEX was to use an independent expert decision panel to resolve disputes based on the content of ICC rules and the financial instrument's contract.⁵¹ The DOCDEX process can start with a request from one party to the dispute or all involved parties.⁵² On the basis of documents submitted by the parties, a panel of three experts will make a decision which should be reviewed by the technical adviser of the ICC Banking Commission.⁵³

That is to say, the DOCDEX panel and procedures could be similar to arbitration. Referring the parties' dispute to an expert in order to decide is the same as referring to arbitral tribunal. Notably, the International Institute of Banking Law and Practice in the United States established the International Centre for Letter of Credit Arbitration in 1996, although the institution was an unsuccessful experience.⁵⁴ However, these two entities can be useful in increasing the popularity of arbitration in letter of credit disputes.

Although one could argue that a DOCDEX panel is similar to arbitration, disputants do not have the right to choose their panel, which is designated through the DOCDEX process itself.⁵⁵ Unlike institutional arbitration,⁵⁶ the Banking Commission maintains a list of experts, known as 'the List',⁵⁷ wherein the designation of the experts is solely the Banking Commission's duty.⁵⁸ In my opinion, this sole duty has merit as choosing the experts through the Banking Commission will save time and ensure the quality of the experts. In contrast, the freedom of choice by the disputants can be risky as the parties could fail to choose an appropriate and well-known arbitrator. This failing could adversely affect the quality of the award. Unfortunately, the DOCDEX decision is not binding on the disputants.⁵⁹ Unlike arbitration, disputant parties do not have the right to enforce and follow up the issued decision. This unenforceable principle might be seen as weakening point for the DOCDEX panel option and not favoured by the parties. However, it could be argued that this unenforceability is because such a panel is only concerned with discrepancies disputes and other grounds or disputes in the letters of credit area.⁶⁰ Regardless of the matters that are covered through DOCDEX,⁶¹ the question here is whether such a panel could be one of the options available for

⁵⁰ DOCDEX, ICC Publication No. 811, 2002

⁵¹ *Ibid*, Article 1.1

⁵² *Ibid*, Article 3.1

⁵³ *Ibid*, Article 7.1, 7.2, 7.3

⁵⁴ Jean-Pierre Mattout, 'On Injunctions, The Draft Standby Rules and First Demand Guarantees', [1997] 3 (4) DCI (ICC) 11

⁵⁵ DOCDEX, Article 7.1

⁵⁶ Institutional Arbitration is the second type of arbitration where parties will refer the duty of designation the arbitral tribunal to an institution. See Bantekas (n 6) 26, see also Moses (n 6) chapter 6

⁵⁷ DOCDEX, Article 7.1

⁵⁸ *ibid*, Article 7.1

⁵⁹ Alavi (n 4) 67

⁶⁰ *Ibid* 67, see also Anthony Connerty, 'Documentary Credits: A Dispute Resolution System from the ICC', [1999] 14 (3) *Journal of International Banking Law* 65-71

⁶¹ Article 2 from the DOCDEX states that: 'The Rules are available for any dispute which the Centre, in consultation with the Technical Adviser and subject to Articles 2(2) and 2(3) of the Rules, may agree to administer and which relates to: a documentary credit, a standby letter of credit, a bank-to-bank reimbursement, a collection, a demand guarantee or counter-guarantee, a forfaiting transaction, a bank payment obligation (BPO), or any other trade finance-related instrument, undertaking or agreement.'

letter of credit disputes besides litigation. In other words, will this panel, in the future, be preferred for letter of credit disputes?

As mentioned above, the unenforceability of the decision and limiting such scope, in practice, to disputes regarding discrepancies are the reasons that might discourage letter of credit parties from referring to the DOCDEX panel. However, the experienced panel and the low cost of the claim⁶² could encourage parties to refer to such a panel. Therefore, it is possible to conclude that a DOCDEX panel is more suitable for technical issues in international letters of credit. A DOCDEX panel can be described as semi-arbitration due to the similarity between the procedures and the nature of designation of the panel.

5. Conclusion

This short paper highlighted the impact of resolving letter of credit disputes under arbitration. Through comparison between litigation principles and arbitration principles, the paper found that there could be some advantage in referring letter of credit disputes to arbitration instead of litigation. However, this does not mean that arbitration will issue more appropriate judgments than litigation. Applicable law and the arbitral tribunal were the cornerstone of this paper due to the fact that disputants enjoy more freedom to choose the applicable law for the dispute subject in addition to the right to constitute the tribunal, contrary to litigation where disputants have no right to do so.

Although letters of credit are governed under the UCP and the ISBP, which are applied in most jurisdictions, there will be different interpretations for them. This will definitely lead to a variety of judgements for the same dispute. In contrast, parties under arbitration are free to choose the applicable law to be applied for their dispute. However, one could overstate the advantages of arbitration by arguing this. Such freedom might be dangerous, especially if the parties are not familiar with the chosen jurisdiction. This is also a risk in litigation, yet the said jurisdiction in litigation might be one of the disputant's.

In turn, the freedom to choose the arbitral tribunal can be seen as an advantage for the disputants. This merit emerges from the wide criteria available when choosing an arbitrator. As discussed earlier, an arbitrator need not to be judge. That is to say, any individual can be an arbitrator, including lawyers, scholars, professionals and experts. These examples would no doubt be preferred, especially for a letter of credit dispute, as they have more knowledge and expertise in letters of credit law than judges. Therefore, if there is an advantage in referring letter of credit disputes to arbitration, such advantage will be in the quality of the issued award. In short, it might be possible to conclude that arbitration would be useful to resolve letter of credit disputes; nonetheless, many risks would confront the involved parties.

In this regard, the introduction of the DOCDEX panel can be seen as a less risky example of arbitration. This panel is concerned, in principle, with solving letter of credit disputes. Nonetheless, the decisions issued by such a panel are not binding. Such lack of enforceability, as outlined in this paper, might discourage parties from choosing this option. However, if such disadvantages changed in the future, DOCDEX could play a significant role in arbitration of letter of credit disputes.

⁶² DOCDEX, Article 10

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