

Using ODR to Settle Disputes in International Payments by Letter of Credit



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ABSTRACT: In this article, the authors will summarize and analyze issues related to the method of payment by letter credit (L/C), disputes that may arise between the parties during the implementation process and legal regulations on resolving such disputes by Online Alternative Disputes Resolution (ODR). The article also points out the advantages and disadvantages of the method of resolving disputes related to L/C by ODR. From there, the authors make assessments and recommendations so that the parties using L/C can resolve disputes effectively by ODR to maintain and develop business relationships in the future.

KEYWORDS: Dispute resolution, ODR, International payment, L/C.

1. INTRODUCTION

In recent years, international trade has been vibrant and strongly developed along with the activities of the global supply chain. As a result, the international payment method by letter credit (L/C) has also become popular in international trade transactions. However, in the process of using L/C, many problems and disputes have arisen between the parties (buyer, seller and bank). The problem is to quickly resolve those disputes between the parties participating in L/C so that business activities can continue in the future, so that the parties can continue to maintain business relationships and protect reputation, brand and business secrets. The ODR (including commercial mediation and arbitration) meets those requirements and is increasingly preferred by disputing parties because of its superiority. Therefore, this article will present a specific and detailed description of L/C and ODR to create a document providing complete and comprehensive information for businessmen, enterprises and other managers to refer to in the process of carrying out commercial business activities and resolving disputes. From there, build a sustainable economic development and a happy civilized society.

2. LITERATURE REVIEW

2.1 Letter of Credit

2.1.1 Definition

The letter credit payment method is a payment method that is very commonly applied in international payments. According to Article 2 of the Uniform Customs and Practice for Letter Credits (UCP 500, 1993), "a letter credit payment method is a form of payment in which the issuing bank opens a credit at the request and instruction of the customer, or on its own behalf, to perform the following acts: (i) make payment to the third party - the beneficiary or the person who executes the payment of the bill of exchange to the drawer, (ii) authorize the bank to accept and pay the bill of exchange, (iii) allow the bank to discount the documents specified in the letter of credit on the condition that they comply with all the terms and conditions of the letter of credit".

Letter of credit (L/C) is a means of payment in letter credit payment. It is a legal document in which the bank commits to pay the seller according to the provisions agreed upon by the parties in the payment of letter credit.

2.1.2 Legal relationship of parties participating in letter credit

Parties participating in letter credit include: the credit opener (buyer), the beneficiary (seller), the L/C opening bank and related banks such as the advising bank, the confirming bank.

In letter credit payment, the buyer must open a credit for the seller to enjoy. Therefore, the buyer's obligation is to contact a bank to open a credit for the seller to enjoy. The time of opening the credit must be consistent with the term of the import-export contract.

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When signing an import-export contract, if the parties agree that opening a letter of credit is a condition for the import-export contract to be valid, then the buyer's opening of the L/C is the legal basis for the validity of the import-export contract. If the parties agree that opening the L/C is a term of the contract, then the buyer must be responsible for opening the L/C in accordance with the provisions of the contract. In case the buyer does not open an L/C, the seller can sue the buyer for breach of contract. To fulfill its obligations to the seller, the buyer must open an L/C at a bank and pay the bank the L/C opening service fee and provide sufficient money to the bank to make payment to the seller according to the import-export contract. However, a letter credit is an independent transaction from the import-export contract between the buyer and the seller, so the bank is not bound by that contract but only has rights and obligations according to the L/C letter credit contract. Therefore, the bank must check the documents according to the requirements of the L/C.

2.1.3 Types of letters of credit

In international payments, there are the following types of L/C:

- (i) Revocable L/C: is a type of letter of credit that the bank that opens the L/C or the buyer can amend it without notifying the seller. Whether the letter of credit is revocable or not must be clearly stated in the L/C (Article 6, UCP500).
- (ii) Irrevocable L/C: is a type of letter of credit that cannot be amended. For this type of L/C, the word "irrevocable" is written on the L/C (Article 6, UCP500).
- (iii) Confirmed irrevocable L/C: is a type of letter of credit that is confirmed by a bank to guarantee payment upon request of the bank that opens the L/C
- (iv) Transferable L/C: is a type of letter of credit used by a bank to transfer money to one or more people at the order of the first beneficiary.
- (v) Back-to-back L/C: is a type of letter of credit that, after receiving the L/C, the seller can mortgage to open another L/C for the beneficiary with content similar to the original L/C that the seller has enjoyed.

2.1.4 Letter credit payment process

The steps in the Letter credit payment process include:

- Step 1. The parties sign the import-export contract
- Step 2. The buyer opens an L/C at an issuing bank (usually this bank is in the buyer's country) for the seller to enjoy.
- Step 3. The issuing bank opens the L/C and sends a letter of credit to the advising bank
- Step 4. The advising bank (usually headquartered in the seller's country) sends the notifying documents to the seller
- Step 5. After agreeing, the seller sends the goods to the buyer (through the carrier), and at the same time sends the set of documents to the notifying bank
- Step 6. The notifying bank sends the money to the seller when it has received all the documents in accordance with the L/C regulations to receive the goods.
- Step 7. The notifying bank sends the set of documents to the L/C opening bank
- Step 8. The L/C opening bank pays the money to the notifying bank and sends the set of documents to the buyer
- Step 9. The buyer receives the set of documents from the L/C opening bank and pays the money to the L/C opening bank
- Step 10. The buyer presents the set of documents to the carrier to receive the goods.

Thus, the payment method by L/C is implemented through the 10-step process above. In that process, the bank plays a very important role, ensuring that the seller will receive the money and the buyer will receive the goods if the parties comply with the agreements committed in the international trade contracts.

2.1.5 Common disputes in international payment by L/C

Disputes related to presented documents are disputes arising from the failure to meet two basic requirements applied under Article 13a UCP500, which are that the documents must appear on their surface in accordance with the conditions of the credit and must not contradict each other. These are disputes such as: (i) disputes due to the preparation of documents that do not comply with the conditions specified in the L/C; (ii) disputes arising from inconsistent understanding of non-letter conditions (conditions that do not require accompanying documents and the bank is not responsible for checking the implementation of those conditions).

Disputes related to the responsibilities of the parties involved in the letter credit method (L/C): disputes due to the buyer violating the obligations related to the L/C (not opening the L/C, opening the L/C late, ...), disputes due to the seller violating the obligations related to the L/C (the set of documents presented by the seller is not consistent with the L/C, the seller cannot prepare a suitable set of payment documents because it has accepted a set of L/C with terms that the buyer has controlled, ...); disputes due to the banks violating the obligations related to the L/C (the bank issuing the L/C does not open the L/C as required in the L/C application, the bank has announced an L/C that lacks apparent authenticity, ...)

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2.2 Online Alternative Disputes Resolution (ODR)

2.2.1 Definition

Online dispute resolution (ODR) is a method commonly used to handle complaints and conflicts of rights and interests arising from online or offline e-commerce transactions, whereby instead of applying traditional legal procedures, the parties can use Internet technology and websites in many different ways, such as through email, video conferencing, etc. Therefore, this method can be implemented entirely on the Internet.

2.2.2 The characters of ODR

- i. Firstly, ODR is widely understood as a combination of ADR (alternative dispute resolution, out of Court) and Internet technology. This gives ODR flexibility, in which the elements that make it up support and complement each other. The use of ADR therefore may not require the direct presence of the parties involved in dispute resolution, at the same time, ODR is also more suitable for alternative methods when compared to the traditional method which is complicated and somewhat rigid.
- ii. Secondly, ODR is a solution that is not limited within the framework of a country. The convenience of technology and the flexibility and voluntary nature of ADRs make it possible to resolve e-commerce disputes between subjects across national borders. For that reason, to promote ODR, countries must further accelerate the integration process, especially increasing accession to international treaties and commitments as well as internalizing the provisions of international law on e-commerce as well as resolving e-commerce disputes.
- iii. Third, the implementation of ODR requires the presence of electronic technology. This tool can be understood as the Internet or devices that connect information, store and transmit data and connect to the Internet or internal networks. The national online portal connected to the website of the e-commerce service provider is the most popular form of receiving and processing requests to resolve disputes and complaints between customers and suppliers.
- iv. Fourth, organizations providing ODR exist in many diverse forms. Accordingly, they can be professional ODR organizations providing mediation, arbitration services; can be websites providing online shopping services; or traders set up their own websites and attach their own dispute resolution clauses.
- v. From the above characteristics, it can be seen that compared to traditional dispute resolution methods, ODR has certain advantages and limitations. In terms of advantages, this is a quick, flexible and effective dispute resolution method. In particular, due to being implemented partly or entirely via the Internet, with the help of technology, ODR also minimizes geographical and border barriers, helping parties save costs, limit the complicated procedures and sequences of some traditional methods, and speed up the resolution of disputes. In addition, ODR helps to consolidate and build a healthy and developing e-commerce business environment, accordingly, on some e-commerce websites, buyers can completely complain and denounce fraudulent and deceptive behavior of sellers. Disputes in the e-commerce environment are mostly small disputes, so ODR is also a method to help protect the interests of the disputing parties (especially consumers) when traditional methods are not always used. Therefore, this is the optimal solution applied in special circumstances such as the Covid-19 epidemic. Regarding limitations, ODR is a new method of dispute resolution, so it is inevitable that it is unfamiliar and not yet popular with the parties involved in the dispute. The parties still tend to trust other methods due to doubts about the effectiveness of ODR, especially in cases where one party lacks goodwill, or some issues are not yet clearly defined or have specific guarantees, such as the value of electronic evidence. In addition, the use of AI technology or the issue of personal information security in the dispute resolution process is not a simple matter, requiring the parties to have a certain level of understanding and proficiency. Without understanding, parties can be manipulated, have their personal information stolen via cyberspace, and business secrets or other related issues exposed.

2.2.3 Overview of the online dispute resolution (ODR) method

According to the Technical Note on ODR, the ODR procedure includes 03 stages (negotiation; facilitated settlement; final stage) as following details:

- i. Negotiation phase: When the plaintiff (claimant) submits a request on the ODR system, the ODR system administrator notifies the defendant (respondent) about the plaintiff's request and responds to the plaintiff. The initial negotiation can be supported by a technology (possibly AI), the parties can negotiate directly on the ODR system platform.
- ii. Resolution support phase: If negotiations are unsuccessful, the ODR system administrator appoints a mediator to assist the parties in negotiating to reach an agreement.
- iii. Final stage: If stage 2 is unsuccessful, the next step in the process is for the ODR system administrator or mediator to notify the parties of the next step, which can be resolved by arbitration or court.

Dispute resolution in the e-commerce is specifically stipulated in Article 317 to Art. 319 of the 2005 Commerce Law. Following that, disputes arising in e-trading activities and the e-commerce in Vietnam can be resolved through negotiation, mediation

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/mediation, arbitration or court settlement. Thus, in this provisions of the 2005 commerce law, it is mentioned that resolving disputes between parties in the e-commerce can be done through alternatives dispute resolution – ADR such as negotiation, mediation or arbitration via internet methods (ODR).

Negotiation

Negotiation is when disputing parties discuss, exchange, fight, compromise and agree to reach a consensus on conflict resolution. This is an informal form of dispute resolution, voluntarily applied by the parties. By choosing to negotiate, the parties save time and costs - extremely important factors for any entity participating in the e-trading. Resolution by negotiation is often applied to simple disputes, the value of which is not large.

Mediation

Mediation is a form of dispute resolution in which the parties agree to choose a solution to end the conflict with the support of a third person acting as a mediator.

Article 37.8 of the E-trading Law stipulates that the e-commerce party can use mediator if requested by the disputing Parties for disputes arising from e-trading transactions. This regulation shows that many other disputes arising in the e-trading can be conciliated by other conciliators. For example, disputes arising during the process of investment consulting, underwriting, and investment fund management or e-trading portfolio management, disputes arising during the process of e-trading depository.

Like other countries, the stock exchange markets in Vietnam established a mediation committee and issued documents regulating the order and procedures for mediation to create favorable conditions for the dispute resolution process.

The mediation board includes the head of the mediation board who is the director or deputy director of the e-trading trading center, representatives of the market surveillance department, related functional departments and representatives of the same member e-trading companies, number of other members at the request of the head of the mediation committee.

The mediation process includes the following four basic steps:

- Step 1: Receive the request for mediation. The party requesting mediation sends the mediation request and necessary documents to the center. Within 07 working days from the date of receipt, the center must send a copy of the application to the defendant.
- Step 2: Prepare for mediation. Within 15 days, the defendant must send a written response accepting or not accepting the settlement. In case the defendant accepts mediation, the center director signs a decision to establish a mediation committee. The mediation board shall convene directly or request the parties to explain in writing, provide evidence and other documents, issue a decision to suspend mediation in certain cases, and set a time and location mediation session takes place, send mediation summons to the parties at least 15 days before the mediation date.
- Step 3: Conduct mediation under the chairmanship of the head of the mediation committee.
- Step 4: The mediation ends with the mediation committee preparing a record of successful mediation or unsuccessful mediation record based on the results of the mediation session. The implementation of mediation results depends entirely on the voluntary will of the parties.

Arbitration

Dispute resolution by arbitration is a form of dispute resolution through the activities of an arbitrator (as an independent third party) to end conflicts between disputing parties through making an award of decision has binding effect on the parties. Arbitration is commonly used to resolve disputes on the e-trading in particular and business disputes are always resolved at the root by a final award, binding decision while time and cost are not high, procedures are simple and not rigid. However, when choosing arbitration, the parties naturally lose the right to sue the dispute in court.

As a general rule, the arbitrator has the authority to resolve a dispute when that dispute arises in commercial activities. That dispute arises between business organizations and individuals in the course of performing one or more acts commercial, and before or after a dispute arises, the parties have an arbitration agreement. Resolving disputes in the e-trading at commercial arbitration must follow the legal procedures.

Because specialized laws do not have separate regulations, according to the general provisions of arbitration law, the statute of limitations for initiating lawsuits for disputes on the e-trading in particular and disputes arising in commercial activities in general is two (02) years from the date of the dispute. The law allows parties to choose one of two forms of arbitration to resolve disputes, at arbitration centers or arbitration councils established by the parties.

In case the parties choose an arbitration center, the plaintiff must file a lawsuit with the center clearly stating the name of the selected arbitrator. The arbitration center will send a copy of the complaint along with a list of the center's arbitrators to the defendant within 30 days. If so, the defendant must send the arbitration center a written statement of self-defense and respect for the chosen arbitrator. The two selected arbitrators agreed to choose the third arbitrator as the chairman of the arbitration

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panel. The president of the arbitration center may appoint an arbitrator if at the end of the time limit the defendant does not choose an arbitrator or the two arbitrators cannot agree on the choice of a third arbitrator.

In the case of an arbitration council established by the parties, instead of sending an application to the arbitration center, the plaintiff must send the application to the defendant and the right to appoint an arbitrator to help the parties belongs to the provincial court where the defendant is located application for domicile or residence. The total time from the day of the complaint is submitted to the day of the arbitration council is established is no more than 59 days.

After being appointed, the arbitrators must study the records, verify the facts if necessary. The arbitrators have the right to meet the parties to hear their opinions, request the parties to provide relevant evidence or collect evidence. Arbitrators can still be replaced during the dispute resolution process if there are factors that affect the objectivity of their arbitration work. Actual activities of e-trading in other countries show that the majority of arbitrators who arbitrate disputes in the e-trading belong to arbitration centers established by stock exchanges. Currently, in Vietnam, there is no arbitration center specializing in arbitrating disputes in the e-trading sector.

The opening time of the meeting is decided by the chairman of the arbitration council unless the parties have otherwise agreed. The meeting is not public, the parties can attend directly or authorize representatives, and have the right to invite witnesses and lawyers to protect their legitimate rights and interests. At the same time, during the process of the arbitration council resolving the dispute, the parties have the right to apply to the provincial court where the arbitration council accepts to apply a number of temporary emergency measures when they see that their rights and interests are infringed or are at direct risk of being infringed. The arbitration council makes its decision based on the majority principle and this decision is as enforceable as a judgment issued by a court. Arbitration law specifically encourages parties to conciliate during arbitration proceedings, but there is a clear distinction between the legal value of mediation results in two cases.

In the first case, the parties reconcile with each other. This mediation process can be conducted in parallel and independently of the arbitration process. If mediation is successful, at the request of the parties, the arbitral tribunal will suspend the arbitration proceedings. This is an out-of-litigation mediation, so whether the mediation results will be implemented or not depends entirely on the willingness of the parties.

In the second case, the parties request the arbitration council to conduct mediation. If mediation is successful, the parties request the arbitration council to prepare a record of successful mediation and issue a decision recognizing successful mediation. This decision is final and binding on all parties.

3. FINDINGS AND DISCUSSION

3.1 Experience in resolving e-commerce disputes by ODR in the world

In Singapore

Since 2016, the Singapore International Commercial Court (SICC) has begun to encourage international judges to apply the teleconference model to help parties in dispute resolve issues without having to meet in person. Until the Covid-19 pandemic, Singapore was even more promoted to apply modern technological achievements and artificial intelligence to modernize its court system. SIAC is a one of the famous arbitration center using ODR when solve the international disputes for their clients.

In China

In addition to the usual dispute resolution methods such as negotiation, mediation, arbitration, and court, Article 63 of the 2019 Law on E-Commerce of the People's Republic of China also stipulates that the e-commerce platform operator may establish an online dispute resolution mechanism, formulate and promulgate dispute resolution rules, and conduct fair and objective dispute resolution between the parties on the basis of voluntariness. According to Article 1 of the Regulations of the Supreme People's Court of China on Certain Issues Related to the Trial of Cases by the Internet Court, the Court has the jurisdiction to try civil and administrative cases related to the Internet at first instance, including disputes arising in e-commerce; intellectual property, disputes in cyberspace, etc. Internet courts basically conduct litigation proceedings online, including filing a lawsuit, accepting a lawsuit, serving, conciliating, providing evidence, preparing for trial, adjudicating and announcing the judgment. (Nguyen Thi Hong Anh, 2022).

In Europe

According to Regulation No. 524/2013 of the European Parliament and of the Council of 21 May 2013 on online consumer dispute resolution and amending Regulation (EC) No. 2006/2004 and Directive 2009/22/EC (Consumer ODR Regulation), online dispute resolution (ODR) provides a simple, effective, fast and low-cost out-of-court dispute resolution solution that helps consumers and traders “shop and sell cross-border with confidence” within the European Union (Hoang Thi Hue, 2021). According to this regulation, traders established in the EU when participating in online sales or services should attach an electronic link to the ODR platform on their website. E-commerce sites and online marketplaces are also required to provide these links.

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In the United States

E-commerce sites and sales websites such as Ebay, Amazon, etc. all use the ODR platform to resolve disputes between buyers and sellers, to protect consumers in online transactions, and to avoid fraudulent and unfair behavior in the market. US law also allows parties to establish online mediation and arbitration websites, such as OnlineResolution.com or Mediate.com, with an estimated fee for online mediation of \$50/hour for disputes worth less than \$10,000 and \$100/hour for each party for disputes worth over \$50,000.

3.2 Recommendations to promote ODR methods in Vietnam

In the conditions of the Fourth Industrial Revolution, the ODR method will be a useful solution, facilitating the parties to disputes to resolve quickly, effectively and transparently, while promoting the development of using L/C in international trading. Using L/C payment method in e-commerce in Vietnam is very popular now. To strengthen using ODR in Vietnam, the State needs to have policies to support ODR organizations as well as create a favorable legal corridor for them. The application of the ODR method, specifically as follows:

Firstly, it is necessary to build a mechanism to support the development of ODR organizations in Vietnam and encourage dispute resolution by ODR method to be consistent with world economic integration. When Vietnam joined the World Trade Organization (WTO) and signed new generation free trade agreements (EVFTA, CPTPP), trading with foreign partners became popular, when there was a dispute. If a dispute occurs, there needs to be a cross-border resolution method. Therefore, the ODR method will solve this problem and promote the development of cross-border e-trading, helping buyers and sellers easily interact without territorial limits, easily achieving results. The agreement is based on resolving disputes through negotiation and dialogue rather than confrontation.

Second, perfect the procedural law system and relevant legal documents to create a legal basis for ODR. According to the Report of the Supreme People's Court, in the period 2016 - 2020, the People's Court system resolved 1,842,684, out of a total of 1,894,472 civil, marriage and family cases, business, trade and labor. Cases tend to increase with increasing complexity, while the staff and judges of the entire court sector in general, and of local courts in particular, are lacking in number. Not yet strong in quality. This puts great pressure on the Court sector. In that condition, applying the ODR method will help reduce the large number of cases for the Courts, contributing to improving the quality of the Court's trials. To accomplish this, it is necessary to perfect the system of legal documents on proceedings (civil, administrative, marriage and family, commercial, criminal) to create a legal basis for applying legal documents. Applying the ODR method, at the same time, it is necessary to complete regulations related to ODR in a number of relevant legal documents such as the 2006 Law on Information Technology, the 2015 Law on Cyber Information Security, the 2018 Law on Cyber Security year.

Third, invest in information technology infrastructure, equipment, and techniques for dispute resolution by ODR method. Information technology infrastructure, equipment, and techniques are prerequisites for the ODR model, but they cost a lot. Therefore, the State needs to have a policy to support costs for ODR organizations in Vietnam; Complete national data on population, tax codes, phone codes... to easily authenticate identities and personal and business information between disputing parties.

Fourth, soon issue guiding documents for Clause 1, Article 94 of the 2015 Civil Procedure Code on verification and collection of electronic evidence; identity authentication so that e-trading activities are transparent, ensure the validity of contracts, avoid fraud, and limit contract cancellation or delivery not in accordance with the agreement.

4. CONCLUSION

From the above synthesis and analysis, it can be seen that disputes between parties in the L/C are increasingly occurring. The pressing issue is that the disputing parties need to quickly resolve those disputes to continue the investment and business process on the derivatives market. The use of out-of-court and online dispute resolution methods (ADR combined with ODR) to resolve disputes on the e-trading is the most civilized and effective today and is becoming increasingly popular not only in Vietnam but also around the world. Competent state agencies need to have appropriate support mechanisms to encourage and motivate disputing parties to use more of these dispute resolution methods in the future so that Vietnam's economy can develop sustainable in the context of ever-deepening international economic integration.

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