

The fraud exception in letters of credit

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The independence of the letter of credit from the underlying sale is the foundation of its value: the seller is paid against compliant documents, whatever disputes may arise about the goods. The principle has one important exception. Where the documents are fraudulent, or where the beneficiary's demand for payment is manifestly abusive, the courts may prevent the bank from paying or the beneficiary from receiving payment. Swiss courts apply the exception restrictively, requiring clear evidence of the abuse and granting provisional measures to block payment only in exceptional cases.¹ For the practitioner, the exception is a remedy of last resort. In most cases of fraud in the trade, the loss has occurred before it is discovered. The recovery then depends on the tracing of assets and on claims against the perpetrators and their accomplices.

1 Notes

1. Commercial Court of the Canton of Zurich, HE230113-O, 25 October 2023, [gerichte-zh.ch](https://www.gerichte-zh.ch): provisional prohibitions of payment under bank guarantees may be ordered only where it appears credible that the demand is manifestly abusive (Art. 2 para. 2 ZGB), with the abuse recognisable to the bank; application is restrictive (citing BGE 138 III 241 E. 3.4, BGE 122 III 321 E. 4a, BGE 122 III 273 E. 3a, ZR 97/1998 No. 92, ZR 111/2012 No. 69); a prohibition was granted in that case because Russia sanctions prevented performance of the underlying obligations. Provisional measures under Art. 261 et seq. ZPO. The decision concerns an independent bank guarantee; no separate decision on documentary credits was checked. ↩

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