

Bank Guarantees

Ali Ariana¹, Mahabbat Damirchiyeva²

¹Employee of Bank Mellat, East Azarbaijan Province, Tabriz, Iran

²Republic of Azarbaijan, Baku State University, Civil Procedure, Ecology and Labor Law Chair, Professor, PHD

ABSTRACT

Guarantees the Iran law the bank in recent decades has been and for the first time in Britain and America, and gradually gained popularity due to increasing international trade and the development of communication has spread around the world. In the beginning this law, lawyers and the courts in particular it considers the same Obligation law and try to analyze and explain the bank guarantee in the form of "contract of guaranty" that this case raised and sentences are clearly observed be, But by comparing this new legal institutions like banking, it is clear that the differences between the "Bank Obligation" with "Contractual Obligation" discusses civil law and commercial law - despite some similarities - there's so important gives a bank guarantee in the form of a guaranty contract is interpreted and regulations and its own characteristics. Although no usury laws in our country's banking operations, allow the issuing bank has on this important legislation, but unfortunately there is not. It should also be said that the principles of this document to a bank that is subject to the guide lines of the International chamber of commerce ICC has been published in numerous publications and have been accepted by the Iranian banking system. The most important feature of bank guarantees, independent of these documents is the basic contract and therefore the contract between faults parties on this document is not a reliable bank. Legal nature of bank guarantee has to be said that the bank guarantees such contracts. Generally, when the issue of bank guarantees guaranteed damage resulting from failure to meet obligations under the contract, the contract subject to the General Rules and Article 10 of the Civil Code or guarantee Feeds commitment is to the benefit of third-party.

KEYWORDS: bank guarantee, bank guaranty, guaranty contract

INTRODUCTION

In today's world where everything is located in a rapidly changing and amazing advances in communications and technology and Blitz opportunity to stop and think does not. Various diameters that are interconnected and interdependent in the East and West, so that the economic, political and cultural exchanges, requirements and demands of their specific features. (Amiri,2001) The increasing development of social and economic relations, and the number and variety of contracts and transactions, especially the more complex process of importing and exporting between countries and governments and merchants, made it clear that the possibility of concluding all transactions and agreements and cash traditionally very unlikely, unrealistic, unreasonable and perhaps possible, to appear. (Katuzyan,1999) on the other hand, for the purchase of goods or services, a detailed assessment of the technical and financial capacity and capability and also for vendor evaluation, vendor or service provider's financial strength and credit the buyer is often not easy. So the great advantage of credit contracts and unmatched role in increasing the utility to various reasons and motives, risks and potential hazards, such as fraud and insolvency debtors or events come willingly or not, these deals are always lurking In every society, lawmakers try to control and reduce these risks (particularly for the trade creditor) through special legislation. (Hedayati,1999) That is why the law years and bank discusser medias and a new species of the foundation ensured that the "sovereign guarantees" are known. This guarantees first became popular in America and England and then because of increased global trade relations and promote increased communication between countries, across borders and continents and spread around the world. It functions welling the last few decades the bank has been used in various contracts. Obligation "is stated without reference to this point, and that is fine example of the bank guarantee and the case Responsibility Executive and its applications isor has its own rules and regulations are different? (Byrne&Burman,1996) International, trying to rip the main character and special qualities and have the kind of guarantee.

Research Methodology

The research method in this paper is a method library. Also try to go to the sources in this field is written, Unfortunately due to new and imported subject of this phenomenon, considerable resources were not available and its banks are the main reference bank instrument can be used and issued some guidelines on how to monitor the issuing of the bank achieved warranty and no one has to look at nature, or banks, no bank guarantee. Several provisions in this regard has also been issued by the courts of the country has been causing loss of rights holders

*Corresponding Author: Ali Ariana, Employee of Bank Mellat, East Azarbaijan Province, Tabriz, Iran.

E-mail: Aliar1373@yahoo.com Tel: (+98)411-5566955

or bank guarantee. But regarding my work experience and your bank, and initial studies in this area did however a hypothesis, thesis formed the backbone of the framework in the form of a bank guarantee, Responsibility within and beyond cannot be this new legal analysis and interpretation of the traditional rules and regulations to get to it. The guaranties had its own legal entity and analysis and interpretation of rules and regulations cannot guaranty despite some similarities with the guaranty contract, specifications and features and has its own rules and regulations.

Conclusions and recommendations

In the present paper we define a more complete description of the bank guarantee to the holder of the qualities and characteristics of the bank guarantee is a more comprehensive offer and knew that by virtue of paragraph 15 of Article 2 of the Law on Usury Free Banking Operations, adopted Persian date Shahrivar 28 months of 1362 and regulations issued by the bank guarantee or endorse the Money and Credit Council approved on 10 December 1340 (the reform D), the issuing bank is perfectly legal and there is no legal problem.

In order to clarify the legal nature warranty, we found that the term "Obligation" in term so bank guarantees and apply the theme words and themelessissuingregulationsincases1 and 7, in this regard, especially at the beginning of this there was novelty in our law. In this regard, some experts and authorities tried to justify it in terms of analysis and have concluded Responsibility.

Shiite clerics in Iran to follow the civil law do citrine of obligation quotes responsibility has accepted the contract (Article698) The Collateral Debt Obligation as not looks, satisfaction of the Obligation, and the population does not know if the original debtor (Article 691) and finally suspended, but the suspension does not guaranty the obligation to make payment immediately sees forms (Article 699).Anymore Another Obligation of contracts in civil law can be summarized as the following can be mentioned:

- Responsibility, contract surety and creditor Rezaei and agree that due to the direct transmission of religion is guaranteed.
- Obligation, the swap agreement and guarantee commitments and falling demand from the theme them crushed, instead it is placed.
- Responsibility is the obligation of the guarantor to pay the bond and pillars represents the theme of religion.
- Contract Obligation or the words "sponsor obligations" is incidental to, and based on the theme of religion will form the creditor.
- Obligation of contracts that are not traded neglect.
- Obligation contract is required.

Responsibility provisions in the commerce Act contract attach obligation is based on theory, so that the conditions of article 402 of the treaty obligation attach as an accepted principle in article 403 of the partnership Responsibility has predicted. Responsibility contract incidental and necessary trade law (Article 408).

But in many respects to the terms and conditions of bank guaranty, the guaranty contract rules and standards in civil and commercial laws are different and distinct, a fact that has not been dealt with properly and to appreciate its importance. Responsibility contract important distinctions bank guarantee in civil law include:

- 1 - The purpose of the guaranty contract, helping the helpless and destitute debtors are not guarantees and collateral to creditors, the bank guarantee as collateral, demanding creditors more than anything to be used.
- 2 - Obligation contract signed between the sponsor and the theme is crushed and placed does not play a role in the conclusion that even if the opposition theme, theme of the bank guarantee is issued at the request of the will to meaning Les has no impact on the health conditions of the population content is legal.
- 3 - Obligation to guarantee the contract transferred is the theme of religion and the religious movement of the ink Obligation to transfer useful if the bank guarantee is not religion.
- 4 - Based on the rules of civil law, religious guaranty that it is not created yet, the wrong religion, the obligation must be located so as to guarantee a fixed principal debtor, but the most fundamental issue of bank guarantee.
- 5 - Bank guarantee against obligation of contracts, not a permissive rule of banking and commercial transactions is assumed to be a result of the issuing bank, the bank's profitability is even considered.

The difference between a bank guarantee and contract law, business contract considered to be specifically noted the following:

- 1 - Trade Law, Responsibility to attach obligation (simple or partnership) is predicted, while the bank guaranty obligation quote has more affinity.
- 2 - Responsibility of the Trade Act also requires that contract exist as long as the original debt obligations as guarantor will continue.
- 3 - Obligation to be incidental to the cause of the Commercial Code, the fall in debt obligations or guaranteed obligations of the principal obligation is void. But the quality of the bank guarantee and conditions so that the issuing bank guaranty, the obligations of the Bank are independent of the base contract and warranty expiration, even if the obligations or liabilities or a decrease fallout theme, and unaffected the bank guarantee is still continuing.

The difference is determined by the rules in the form of bank guarantees and contractual Obligation beyond the traditional rules.

The plan views about the legal nature of warranty and they reached the conclusion that the contracts ban guaranty.

French legal procedure and other rules and regulations at the international level by the International Chamber of Commerce (ICC), including the "uniform rules of contractual warranty (URDG)" and "uniform rules of credit (UCPD)" published in the International Chamber of Commerce Publication No. 500. common types of warranties are on the banks of the Tender guarantees, performance guarantees or performance obligations under the contract, payment guarantee, warranty bail refund deductions whatsoever, warranties, duties and General warranty.

Special features include a bank letter of guarantee:

1 - The principle of the independence of the bank guarantees that errors due to the unpredictable nature of the base.

2 - Being an unconditional bank guarantee.

3 - Limited bank guarantee valid for a period of time specified in the text.

4 - Limit the amount of bank guarantees and commitments contained in the warranty obligations of the theme from based contracts.

5 - Non-bank transfer of the warranty conditions stated in the warranty.

Respect the authorities have a duty to pursue the matter further delayed by the House Islamic Council approves special rules soon witness the honorable and important document our business.

This led to wastage of over warranty rights of the parties (especially the bank guarantee) and lack of access to legal confusion in the courts, not provided.

On the other hand, the banks, the emphasis is purely practical features warranty and unfortunately due to lack of transparency and legal remedies for lack of better words, violation of the right for the banks is the rights suits. It wishes with more planning and training for banks in respect of bank guarantees issued legal problems end.

REFERENCES

- Akvan, Ebrahim. (2007). Vote bank guarantee and the United States Court of Arbitration, The Master of Private Law, Faculty of Law martyr Beheshti University in Tehran.
- Amiri-Arslan. (2000). legal analysis, bank guarantees, Privacy Master's thesis, Institute of Banking.
- Amiri, Arslan. (2001). article, bank guarantees, Journal of Bank Sepah, numbers 19 - 26.
- Hedayati, doctor Ali Asghar Safari., Ali Asghar, Kelleher - H, Jan. Mahmoud. (1999). the domestic banking, Institute of Banking, Sixth Edition.
- James E. Byrne and Harold Burman. (1996). Introductory Note, 35 International Legal materials.
- Kashani - doctor Mahmoud. (2005). Proceedings of the bank guarantees, rights martyr Beheshti University, Tehran, Journal of Legal Studies, No. 16 and 17.
- Kashani, doctor Seyed Mahmud. (2007). Leaflets Civil Rights - 7, Part II (collateral debt), Institute of Banking.
- Katouzian, doctor Naser. (1999). Civil rights - contracts Azny - Dean collateral, certain contracts -4, publish, third edition.
- Pashazadh - doctor Hassan. (2005). Works contract for the rights of third persons in India and Britain, the Privacy doctoral thesis, Islamic Azad University.
- Piruzfar, Akbar. (2001). Article, bank guarantees, ISI Publications, No. 16, pp. 42-38 Journal of Economics database.
- Vahidi Fomani, Seyed Mohammad. (2007). Performance analysis WARRANTIES National Reserve during the First Five Year Development Program Master's thesis privacy.