COMPARATIVE ANALYSIS ON ENFORCEMENT OF BANK GUARANTEES AND STAND BY LETTER OF CREDIT UNDER INDIAN AND ENGLISH LAWS

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ABSTRACT

In the era of globalization, international trade is growing rapidly. In most international trade, both Bank Guarantee and Stand by Letter of Credit are both considered as an instrument of providing a guarantee to the parties which enter into trade with each other nationally and internationally. In today's scenario they provide security to the parties and enable them to do trade freely and with security. In the international economic and trade exchanges, the trading parties often require a variety of guarantees to ensure the performance of debt, such as trading in the tender bid security, performance guarantees, advance payment guarantee facilities of trade, quality or maintenance guarantee, the international technology trade of payment guarantees, these guarantees by guarantee or standby letter of credit can be realized in the form. The British and Indian Laws relating to Bank Guarantee and Standby Letter of Credit differ from each other as both countries have their own concepts relating to both the instruments of guarantee. Both the instruments are somewhat similar to each other but at the same time they differ in the kind and extent of protection provided by them. The instruments are designed to reduce the risk taken by each party.

Keywords: Bank Guarantee, Stand by Letter of Credit, Instruments, Trade, Security.

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INTRODUCTION

Bank Guarantees and LCs are financial instruments often used in inland or international trade when suppliers or vendors do not have established business relationships with their counterparts. The difference between the two instruments is the position of the bank relative to the buyer and seller of goods or services.

A Bank Guarantee (more properly called a Banker's Guarantee) is a banking arrangement whereby a bank substitutes its creditworthiness for that of its customer. The most common type of BG is performance-related, in which a bank tells the beneficiary if the customer does not do this or that, the bank will pay. A common example is a BG issued to a shipping company for the release of goods without the Bills of Lading. The other type is to substitute for a cash payment, an example being a BG issued to a utilities company to guarantee an account in lieu of a cash deposit, or in lieu of a cash deposit to support a tender.

Unlike an L/C which is intended to be paid, a BG is a contingent obligation. "Contingent" means "depending on the happening of an event, which may or may not occur" and 99% of the time it is not paid because the event does not happen. The term Standby Letter of Credit (SBLC or SLC) was invented by U.S. banks because under the Glass-Steagal Act banks in the U.S. were not allowed to issue Bank(er's) Guarantees so they got round the law by formatting their BGs like Letters of Credit and called them Standby L/Cs. The word "standby" means the same as "contingent" – available when called upon, like reserve footballers sitting on the bench waiting to be called if needed.

Everyday, banks big and small issue BGs on behalf of their customers for a variety of mundane purposes. A BG is never issued for the bank's own account, always on behalf of its customers, and the final liability falls on the customers.

Less common are BGs issued for financial reasons. An example is, say, an MNC in one country wishes to borrow from a bank for its subsidiary in another country. The MNC can ask their bank to issue a BG to the subsidiary's bank guaranteeing the loan. Again the BG will only be paid in case of default by the borrower.

The terms SBLC and BG are interchangeable, both do the same work and both serve the same purpose. All the above examples can be issued either in the form of a BG or a SBLC. The

difference between a BG and a SBLC is legal, a BG is a simple obligation subject to civil law whereas a SBLC is issued subject to UCP 500 and ISP 98, both well-accepted banking protocols. Both SBLCs and BGs can be issued and sent by Swift, telex, courier, mail, messenger or pigeon. The mode of transmission does not matter.

It is therefore clear that both SBLCs and BGs are not tradable securities nor are they negotiable instruments for the simple reason that they are issued for a specific purpose covering an underlying obligation and this purpose and underlying obligation cannot be transferred to anyone.

A letter of credit is a bank's DIRECT undertaking to the supplier (called the beneficiary) to pay. When a letter of credit is in use, the issuing bank does not wait for the buyer to default, and for the seller to invoke the undertaking.

In contrast, a guarantee is a written contract stating that IN THE EVENT the primary party (the buyer) is unable or unwilling to pay its dues to the supplier the bank, as guarantor to the transaction the BG issuer would pay (the client's debt) to the supplier.

In other words, a bank guarantee is an undertaking of a bank on behalf of its customer. But this comes into play ONLY WHEN the principal party (the buyer) has failed to pay its supplier. (Do note this key point.)

Essentially, the bank becomes a co-signer for its customer's purchases.

Hence, in a BG the initial claim is still settled primarily (i.e., first) against the bank's client, and not the bank itself. Should the client default, ONLY THEN would the bank (which has issued the BG) agree to pay for it's client's debts on behalf of its client. This is a type of contingent guarantee.

A bank guarantee, therefore, is more risky for the merchant and less risky for the bank. But this is not the case with a letter of credit (LC).

With a bank guarantee, if a client defaults the bank assumes liability. With a letter of credit, liability rests solely with the issuing bank (this being the key difference and the key advantage in an LC) which then must collect the money from its client.

Therefore, the principal character of an LC is that it is a potential claim against the bank, rather than a bank's client. An LC substitutes the bank's credit for its client's. The seller's risk is mitigated from the risk that the buyer will not pay to the risk that the BANK will be unable to pay, which is unlikely.

A letter of credit is less risky for the merchant, but more risky for a bank, though banks accept full liability in both cases.

Bank Guarantee

Section 126 of Indian Contract Act, 1872 defines a “Contract of Guarantee” could be a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who provides the guarantee is named the “surety”; the person in respect of whose default the guarantee is given is named the “principal debtor”, and therefore the person to whom the guarantee is given is named the “beneficiary”.

A bank guarantee is commonly a contract quite independent and distinct of the underlying contract the performance of which it seeks to secure and to that extent it gives rise to a cause of action separate from that of the underlying contract. A bank guarantee for all purposes, should be taken to be a credit note issued by the bank in favor of the person in whose favor the bank guarantees has been issued, and it should be encashable just like a credit note ordinarily unless the intention of the parties is otherwise.

A bank guarantee is an independent contract and has to work out independently of the disputes arising out of the work between the parties. Wherever a transaction between the same parties is contained in more than one document, they must be read and interpreted together and they have the same legal effect for all purposes as if they're one document.

If there is substantial compliance with the terms of the guarantee in the notice that would be sufficient if there be no defect in understanding the nature and purpose of such notice by the bank, the bank is bound to honor its commitment under the guarantee.

It is thus well-established that the bank guarantee is an autonomous contract and imposes an absolute obligation on the bank to fulfill the terms and the payment in the bank guarantee becomes due on the happening of a contingency on the occurrence of which the guarantee becomes enforceable.

If the terms of the bank guarantee are unconditional, the bank has to pay without a demur. The payment of the bank guarantee cannot be made subject to the terms and counter-claims arising out of main contract between the parties. If a bank guarantee stipulates that the payment shall be

made notwithstanding any dispute between the parties, the bank would be obliged to do so. To find out whether a bank guarantee is conditional or unconditional it is the document guarantee which has to be scanned.

It has been held by the Supreme Court in United Commercial Bank v. Bank of India[1], that the Bank after issuing or confirming a bank guarantee is not concerned with the underlying contract between the banker and the party in whose favor the bank guarantee is issued at the instance of the contractor. It imposes an absolute guarantee.

Enforcement of Bank Guarantee

The proposition of law in respect of the encashment of a Bank Guarantee is well established. There are two types of Performance Guarantees. The first one is absolute

i.e. unconditional and is encashable on the very demand of the beneficiary and the demand according to the terms of the Guarantee is conclusive. In such types of Guarantees the Beneficiary is the Sole Judge or Arbiter as to whether there is any breach of underlying or primary contract on the part of the other party and as to how much amount is due to the former.

The other type i.e. conditional where the Guarantee is not encashable without proof of breach of underlying contract.

However, in both types of Guarantees, the Bank issuing the performance Guarantee is not concerned with the underlying contract. The duties in such Guarantees are created by the document itself which in other words is independent and autonomous and is not concerned with the underlying contract unless the Guarantee itself says that it will be enforceable on the proof of breach of the primary underlying contract. The aforesaid approach has been confirmed by the Supreme Court in Hindustan Steel Workers Const Ltd. v G.S. Atwal & Co. (Engineers) Pvt. Ltd.,[2] wherein the Apex Court observed : "where a Bank unconditionally agreed to pay to party to whom Guarantee was given to pay on demand sums specified therein and amount specified was to be paid without demur and without requiring the beneficiary to invoke legal remedy and there was a specific provision that beneficiary was to be sole judge as to whether party furnishing Guarantee has committed breach of contract and as to what extent of loss and damages and

[1] 1981 AIR 1426, 1981 SCR (3) 300
[2] AIR 1996 SC 131

decision of the beneficiary as to amount was final and binding, the order of Court restraining beneficiary from enforcing Guarantee till disposal of proceedings pending before Arbitrator as to disputes between beneficiary and party furnishing Guarantee is illegal and without jurisdiction".

The principle is that commercial trading must go on the solemn Guarantee either by the letter of credit or by Bank Guarantee irrespective of any dispute between contacting parties whether or not the goods or services are up to contract".

In United Commercial Bank v Bank of India[3] the Supreme Court has enunciated only one exception in the following words: "Except possibly in clear cases of fraud of which the Banks have notice, the Courts will leave the merchants to settle their dispute under the contract by litigating or arbitration as available to them or stipulated in the contract".

In Larsen & Toubro Ltd. v Maharashtra State Electricity Board,[4] the Supreme Court, while confirming the same approach, has observed that injunction against enforcement of Bank Guarantee can be granted by a Court only the event of fraud of irretrievable injustice.

English and Indian Law

In England, according to the statues of fraud, a contract of guarantee must be in writing, whereas in India, a contract of guarantee can be oral as well as written Barkat-un-nisa v. Mahbub Ali.[5]

The leaned Judges of the Division Bench of the High Court had considered the arguments advanced by the parties in the light of the decided case law and summarized the legal position at the end of their judgment as:

"A contract of Guarantee is tripartite where three persons viz., the principal debtor, the beneficiary and the surety, are involved.

It is not necessary that the beneficiary must first seek remedy against the principal debtor before proceeding against the surety."

"Where loss in terms of money can be determined, the party claiming compensation must prove the loss suffered by him" Nagpur Nagarik Sahakari Bank Ltd. v UOI.[6]

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[3] AIR 1981 SC 1426
[4] AIR 1996 SC 334
[5] (1920) 42 All 70
[6] 1981(1) ALT 235: (1984) 55 Comp Cas 677 (AP)

In a Judgment dated 23-4-1990, Justice Mahinder Narain, Judge of the Delhi High Court in the case Nangia Construction India Pvt. Ltd v. National Buildings Construction Corporation Ltd.[7] has stated that in England there is no statutory law governing bank guarantees, in India it exists, and, therefore, to that extent the pronouncement of English courts which are based upon common law, would not apply and the pronouncement of Indian courts per force need to be based upon and accord with the statutory law. According to his Lordship, statutory provisions regarding guarantees are to be found in sections 124 to 147 of the Indian Contract Act, 1872. Indian Contract Act, 1872, is law within the meaning of Article 13 of the Constitution of India, specifically section 126 of the Indian Contract Act, 1872, deals with guarantees.

The effect of these two distinctions between the English and Indian Law would be that whereas the English courts may be right in saying that the contract of bank guarantee is an "independent contract" between two bankers owing to banking practices; by operation of statutory law, it is not permissible to the courts in India to say that the contract of bank guarantee is an "independent contract" vis-à-vis a banker and a beneficiary.

In view of Punjab National Bank Ltd. v. Shri Vikram cotton Mills Lt.,[8] a bank guarantee is enforceable upon default. If two persons postulate that one of them furnish a bank guarantee then the bank guarantee cannot be independent of the principal contract. There is a difference between a bank guarantee executed under section 126 if the Indian Contract Act, 1872 in India and a bank guarantee issued by bankers in England which are not controlled by any similar statutory provisions. Thus the court held that the bank guarantee is not an independent contract in view of the above case.

The Supreme Court has said, is that the principles that govern issuance of injunction vis-à-vis letter of credit and bank guarantee are similar and that payment under letter of credit and payment under bank guarantee should not be restrained by courts, except on special circumstances, like where fraud is committed and where special equities exists, which would make it appropriate to issue injunction. The court also held that whether a bank guarantee is, or is not an independent transaction will necessarily depend upon its terms.

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[7] (1990) BC 51: 41 (1990) DLT 359: (1992) 73 Comp Cas 701

[8] AIR 1970 SC 1973: (1970) SCC 60: 40 Comp Cas 927

Stand By Letter of Credit

In the era of globalization, international trade is growing rapidly. In most international trade, letter of credits are regularly used as method of payment. “Letter of credit” means an instrument under which the issuer (usually a bank), at a customer's request, agrees to honor a draft or other demand for payment made by a third party (the beneficiary), as long as the draft or demand complies with specified conditions, and regardless of whether any underlying agreement between the customer and the beneficiary is satisfied. In international sales transaction, a contract for the sale of goods is usually executed in conjunction with a banker's documentary credit to secure the prompt payment of the contract price. The arrangement to pay through banker's documentary credit is called letter of credit.

The standard letter of credit is not very common in purely domestic transaction as a form of payment. The cost and the lengthy process make the letter of credit an unattractive form of payment for domestic transaction. In contrast, the popularity of letter of credit, as a tool of payment in international business transactions, increased because it is relatively safe and speedy method of payment in lake of unified law.

The letter of credit promotes international trade by assuring sellers that they will receive prompt payment for goods they ship overseas to unknown buyers. In international trade neither seller nor buyer knows credibility of each other. How buyer, when placing order of goods over the seas, be assured that the goods is according to his need and how seller, when shipping goods over the seas, be assured that he will get payment in such contract the question is who will perform his obligation of contract first - should buyer pay first or should seller ships the goods first. Here the role of financial institutions and banks comes to focus. Usually information about credibility of financial institution and banks are easily available across the world. So instead of relying on credibility of contracting party, it is safer to rely on credibility of foreign banks and financial institutions.

When the letter of credit is used as a form of payment, in international business transaction, minimum three different agreements are involved.

1. One transaction is between the party applying for the letter of credit (the Applicant) and the party who under the terms of the letter of credit is entitled to have its complying presentation honored (the Beneficiary). In that transaction, the Applicant agrees, among other thing and subject to the terms and conditions of the agreement between the Applicant and the Beneficiary, to pay money (or to deliver an item of value) to the Beneficiary. The addition of a letter of credit clause to the transaction does not alter the contractual rights and duties of party lay down under the contract.
2. Another transaction is between the Applicant and the financial institution or bank (the Issuing Bank). Under the agreement between the Applicant and the Issuing Bank, the Applicant applies to the Issuing Bank for a letter of credit described therein and agrees to reimburse the Issuing Bank for amounts paid by the Issuing Bank to the Beneficiary pursuant to the terms of that credit.
3. The third transaction is the letter of credit itself, which is issued by the Issuing Bank to the Beneficiary at the request or for the account of the Applicant (or, in case of a financial institution, to itself or for its own account) in order to support the agreement of the Applicant and the Beneficiary as referred to in first transaction above. It may be possible that issuing banks is different than confirming bank or reimbursing bank which actually pay money to the Beneficiary. A letter of credit constitutes a definite undertaking of the Issuing Bank to pay the Beneficiary the specific amount, provided that the required documents are presented to the Issuing Bank or Confirming bank or the bank nominated in the credit by the Issuing Bank (the Nominated Bank) and that the terms and conditions of the credit are complied.
4. If contract is for confirm letter of credit then the fourth transaction often exists between the Beneficiary and the confirming bank. Under this agreement the confirming bank undertakes to pay the specific amount to the Beneficiary, provided that the required documents are presented according to the terms and conditions. In that case the third transaction stated above will be changed into agreement between two financial institutions or banks, in which the Issuing bank will agree to pay the Confirming bank, the specific amount, provided that the required documents are presented to the Issuing Bank and that satisfy the terms and condition of the credits.

Enforcement of SBLC

The choice of law applicable to a credit may be of critical importance to both applicants and beneficiaries, particularly when questions of fraud or forgery arise. Some jurisdictions — generally not significant commercial law jurisdictions — have perhaps been overly free in responding favorably to applicant claims that a purported draw is fraudulent. England, on the other hand, has for the most part been reluctant to allow fraud or forgery claims to interfere with the independence principle.

Uniform Commercial Code[9] (UCC) 5-116(a) contains a very flexible choice of law provision: the parties are free to choose any law at all as the governing law of the credit by identifying the governing law in the credit instrument or in a suitably authenticated or signed agreement among the affected parties. It also expressly provides that the chosen jurisdiction "need not bear any relation to the transaction."

This rule deserves careful thought in the context of an international transaction if a possible party to any litigation concerning the credit may reside (and may try to bring suit) in a jurisdiction in which the UCC 5-116 choice of law provision could be viewed as being against local public policy. Thought is also required if a party to the transaction wants to choose the laws of a non-UCC jurisdiction, because most jurisdictions do not have a separate body of letter of credit law with either the breadth or depth of Article 5. First, the results of litigation under the laws of such a jurisdiction will probably be less predictable. Second, because Article 5 contains provisions relating to the rights of applicants vis-à-vis the issuer as well as the rights of beneficiaries vis-à-vis the issuer, the applicant and the issuer will each want to think carefully about the potential consequences of using any law. Third, if the governing law is not Article 5, inconsistencies between the terms of Uniform Customs and Practice[10] (UCP) 600 or ISP98 on the one hand, and the requirements of governing law, on the other hand, may be resolved across the board in favor of the governing law, in complete contrast to the subordinate status of Article 5 under UCC 5-116(c)(3). For example, ISP98 Rule 3.10 excuses an issuer from any duty to notify the applicant of a draw under a credit, but German law may require such a notification. If the parties fail to specify a choice of law, UCC 5-116(b) provides that the

[9] Hereinafter referred as UCC
[10] Hereinafter referred as UCP

liability of an issuer, a nominated person (e.g., a confirming bank) or an advising bank "is governed by the law of the jurisdiction in which [such] person is located," and that for the purposes of determining jurisdiction and choice of law, each branch of a bank is to be viewed as a separate juridical entity.

UCP 600 and ISP98 do not have default choice of law rules, which is appropriate, as each of them represents a commercial agreement on terms and conditions of a contractual relationship rather than a body of law. Each of them, however, attempts to shield an issuer from economic harm if the credit is structured to be subject to, or is determined by a court to be subject to, the laws of a jurisdiction other than the jurisdiction in which the issuer is located. UCP 600 Art 37(d) requires the applicant to indemnify the issuer against all obligations and responsibilities imposed by foreign laws and usages."ISP98 Rule 1.08(d) provides that "an issuer is not responsible for…observance of law or practice other than that chosen in the standby or applicable at the place of issuance," and International Standby Practices 1998[11] (ISP98) Rule 8.01(b) (i) requires the applicant to indemnify the issuer against all claims arising out of "the imposition of law or practice other than that chosen in the standby or applicable at the place of issuance." In considering the choice of law implications for the prospective liability (and in determining the actual liability) of parties to a credit, it is also necessary to keep in mind UCP 600 Art 3, which states that branches of a bank in different jurisdictions are considered to be separate entities, and ISP98 Rule 2.02, which states that if a branch, agency or other office of a bank is acting under a credit in a capacity other than issuer, then it is deemed a different person from the issuer, without regard to the jurisdiction in which it is located. While these are not in themselves choice of law clauses, they will undoubtedly be used to complicate any choice of law questions that may arise in litigation concerning a credit involving multiple parties.

Finally, drafters may occasionally be told by letter of credit technicians who are not lawyers that a letter of credit does not require a governing law clause if it incorporates UCP 600 or ISP98. This is a bad idea, because UCP 600 and ISP98 are not complete. If the letter of credit is subject only to UCP 600 or ISP98, without a governing law clause, and litigation arises relating to matters not spelled out in the applicable set of rules (such as the rights of an applicant and an issuer when a presentation appears to be tainted by fraud or forgery, the applicable statute of limitations, the scope of remedies, or, in the case of UCP 600, transfers of credits by operation

[11] Hereinafter referred as ISP98

of law or assignments of proceeds), a court will need to determine and apply an appropriate body of law. In summary, the drafter of a credit representing the applicant or the beneficiary should ensure that a sensible choice of law is made, reflect that choice in the documentation of the credit, and make sure that the courts of the jurisdiction in which each potentially adverse party is located (as that may be determined under the law chosen) will give effect to that choice of law.

Comparative Analysis between Bank Guarantee and Standby Letter of Credit

Guarantees and Standby as an international settlement and an important form of security in international finance, international lease and international trade and economic cooperation is widely used. As between the two increasingly close. Even some people confuse the two. In fact, both the basic similarities between the Departments, there are many differences, an accurate grasp of the similarities and differences between the two and help in practical work to promote the correct use of their conduct of international trade, will help protect the legitimate interests of the parties concerned. Therefore, the comparison between the two is as follows. First, the guarantees and standby letters of credit resemblance-

A. Of the definition and the basis common law the parties

   Guarantees and standby letters of credit, although the specific expression in the definition are different, but in general, they are strong by a bank or other non-bank financial institutions under the contract should be a transaction the parties (the applicant) at the request or direction, the other party to the transaction (beneficiary) a set of written documents, commitments submitted on the surface consistent with its statement of claim in writing terms, or other documents may be specified. Guarantees and standby letters of credit, the same parties, generally including the applicant, the guarantor or the issuing bank (both in the same position), the beneficiary. The legal relationship between the three, the applicant and the guarantor or the issuing bank, but between the contractual relationship between rights and obligations between the two is to open the application or

the issuing bank guarantee and the beneficiary legal relations is based on letter of guarantee or standby letter of credit shall prevail.

B. The application of common

Guarantees and standby letters of credit are guarantees of international settlement and an important form of international economic and trade exchanges can play the same role, to achieve the same purpose. In the international economic and trade exchanges, the trading parties often require a variety of guarantees to ensure the performance of debt, such as trading in the tender bid security, performance guarantees, advance payment guarantee facilities of trade, quality or maintenance guarantee, the international technology trade of payment guarantees, these guarantees by guarantee or standby letter of credit can be realized in the form. Standby letter of credit from the production perspective, it is used as an alternative to guarantee a result, therefore, the purpose that it guarantees a consistent nature and place. Development of the practice is true.

C. The nature of the common

Bonds in the international trade practice, most of demand guarantees, it has absorbed the characteristics of letters of credit, more and more closer to the letter of credit, so that demand guarantees and standby letters of credit becoming more similar in nature. Features: first, the guarantor bank or issuing bank guarantee or payment obligations are primary, although the guarantee or standby letter of credit guarantees from the use is to play the role, that is, when the applicant fails to perform when the debt beneficiaries present their letter of guarantee or standby letter of credit to obtain compensation, if the applicant has fulfilled its debts, the beneficiaries would not be necessary to use (standby letters of credit is so named after); second, although they are based on the applicant and the basis of the beneficiary entered into the contract to open, but once opened, are independent of the underlying contract; Third, they are pure transaction documents, the guarantor or the issuing bank to the beneficiary's claim is based on the guarantee or standby credit the terms and provisions of the permit documents, the payment voucher only. Therefore, some people bond known as the “guarantee credit”

Second, the guarantee and standby letters of credit differs from

A. guarantee the independence of a guarantee from the properties of the sub guarantees and standby letters of credit guarantee no such distinction as a kind of human security, it opened its foundation upon which the contract is the relationship between is independent from the property or the other? Accordingly, the bond in nature and the independence of the bond guarantee from the property divided. The guarantee is from the traditional property, contract, letter of guarantee is the foundation of a subsidiary of contract, the With the force of law based on the existence of the contract, change, loss, secondary sponsor is the responsibility of payment are the responsibility of the applicant only if the bond defaults, and do not bear the liability, to ensure personnel bear the liability, to ensure shall bear the liability under the Guarantee. Whether the breach of the applicant, is the basis of the contract according to requirements and actual performance to make judgments, but this judge is obviously not a simple matter, often can be resolved through arbitration or litigation in which the merits. So when the place from the property claims under the Guarantee, the guarantor according to the terms of the underlying contract and the actual performance to determine whether or not to pay. States to guarantee domestic transactions using essentially dependent nature of the guarantee.

   Guarantee of independence is different, even though it's the basis of the contract is based on the opening, but once opened, it has an independent effect, is self-contained document, the Guarantor held by the beneficiary of the claims are paid only according to the undertaking itself Terms and Conditions.

   Generally required to guarantee the independence of the guarantor's responsibility is clear irrevocable, unconditional and of a demand for. Bonds once issued, without the beneficiary, cannot modify or discharge it assumed the obligations under the Guarantee; bond depends only on the debts under the guarantee itself, rather than on transactions other than bond , the bank received a claim the beneficiary shall be paid immediately after the specified amount. The guarantee is to guarantee the independence of the typical representatives.

   Guarantee of independence after World War II to meet the needs of the contemporary

development of international trade, banking and business practices by the development of gradually established, and become the mainstream and trend of international security, the main reason is: First, from the properties of BG claim occurs when the bank guarantee shall inquire into the true performance of the underlying contract, which is its personnel and technical expertise can match, and will therefore be involved in the contract dispute and even litigation. Banks for their own interests, not willing to complex contract dispute involved in the bank's interests and reputation damaged, and tends to use the independence of the guarantee. And the bank guarantee in dealing with business, are increasingly dealing with the introduction of the principle of the credit business, but even some of the bonds as guarantee credit. Second, the independence of the interests of the beneficiaries can guarantee more secure and more easy to implement, for various reasons the applicant to avoid the guarantee if the Force Majeure, the contract can not be so against the request of its claim to avoid default to prosecute a lot of money spent, effort and defects such as protracted litigation, to ensure that their interests are not compromised by a contract dispute.

Standby letters of credit as a form of letter of credit, not divided from the property and independence, it has the credit of the "independence, self-sufficiency, pure transaction documents" feature, whichever is the beneficiary of the letter of credit issuing Bank credit is only to determine whether the terms and conditions of payment, and has nothing to do with the basic contract.

B. Guarantees and standby letters of credit applicable to the different legal norms and international practice. As countries of the legal norms of guarantees is not the same, so far, cannot have a national banking and bond trading community widely recognized international practice. Guarantee the independence of the international trade practice, although there are a wide range of applications, but most countries in the law of its nature has not been clearly defined, which to some extent, hindered the development of the undertaking.

Conclusion

Both Bank Guarantee and Stand by Letter of Credit are both considered as an instrument of providing a guarantee to the parties which enter into trade with each other nationally and internationally. It helps in increasing trade and economic cooperation between domestic and international companies.

Both the instruments help in increasing trade relations between different countries. They provide security to the parties and enable them to do trade freely and with security. Bank Guarantee and Stand by Letter of Credit are somewhat same in nature but still have a lot of differences.

Where Bank Guarantee is governed by the Indian Contract Act the Stand by Letter of Credit is governed by ISP 98 – (International Standby Practices) published by International Chamber of Commerce to govern the standby letters of credit and can be issued under U.C.P.600 (Uniform Customs and Practice).

In both the instruments there are three parties as common, the debtor, Surety and the beneficiary. These financial instruments are often used in trade financing when suppliers, or vendors, are purchasing and selling goods to and from overseas customers with whom they don't have established business relationships. The instruments are designed to reduce the risk taken by each party.

The improvement of the relations and communication with the bank clients may be realized through the organization of professional seminars, announcing publications, Internet presentations and other forms of education in the field of banking. A high level of transparency in the bank business, informing clients and their constant education should induce more usage of bank guarantees as a significant means of security in contemporary circulation.

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