Legal article

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A bank guarantee has been called: must the bank pay, and how can the applicant stop payment or recover the money, under the Civil and Commercial Code, URDG 758 and the Thai Supreme Court cases

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> This article is general legal information, not a legal opinion on any specific matter. Each matter must be assessed on its own facts and evidence. The latest online version is at https://eksiamtradeinvestlaw.com/en/insights/bank-guarantee-call/

Key points

- Bank guarantees in Thailand come in two forms with very different results. A conditional guarantee is tied to the debtor's actual breach and is governed by the suretyship provisions of the Civil and Commercial Code. Under a demand guarantee the bank must pay on receipt of a written demand without proof of breach, and the Supreme Court upheld the validity of that form in Judgment No. 8131/2561 (2018).
- The beneficiary must make its demand within the validity period of the guarantee and in the manner it prescribes. A term requiring the claim to be notified within the validity period is enforceable and is not a shortening of the prescription period, under Supreme Court Judgment No. 1451/2524 (1981). Under a guarantee subject to URDG 758, the bank has five business days to examine the demand and must reject by a single notice.

- A bank that pays in accordance with the conditions of the guarantee performs its obligation in good faith. The applicant must reimburse the bank under the application, and then recovers the money from a beneficiary that was not entitled to it as undue enrichment under section 406, according to Supreme Court Judgment No. 8012/2568 (2025).
- Asking a court to stop the bank from paying is difficult under a demand guarantee. Under a conditional guarantee, where the underlying contract refers disputes to arbitration, the Supreme Court upheld an order prohibiting the bank from paying until the award, in Judgment No. 3263/2554 (2011).

Which law governs a bank guarantee in Thailand

A bank guarantee is a contract of suretyship under section 680 of the Civil and Commercial Code, by which the surety binds itself to the creditor to perform when the debtor fails to perform. The parties may, however, agree that the bank will pay immediately on receipt of a written demand without proof of breach, because no provision prohibits it and it is not impossible, under Supreme Court Judgment No. 8131/2561 (2018). The ICC's URDG 758 apply only when the guarantee states that it is subject to them.

A bank guarantee transaction has three layers of contract, like a letter of credit. The first is the underlying contract (the contract of employment, the sale contract or any other contract that the guarantee secures) between the bank's customer and its counterparty. The second is the application (also called the counter-indemnity, the contract between the customer as applicant and the bank, which sets the fees, the security and the duty to reimburse what the bank pays). The third is the guarantee itself, the bank's undertaking to the beneficiary (the counterparty entitled to claim payment under the guarantee). When the beneficiary is abroad, a Thai bank usually issues a counter-guarantee (a guarantee issued by one bank to another so that the second bank issues its own guarantee to the beneficiary in its country), which adds a further layer of relationships.

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The Civil and Commercial Code has no provision specific to bank guarantees. The provisions that apply are those of Title 11, Suretyship, beginning with the definition in section 680.[1]

> Civil and Commercial Code, section 680 (the firm's translation)
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> "Suretyship is a contract by which a third person, called the surety, binds himself to a creditor to satisfy an obligation in the event that the debtor fails to perform it.
>
> A contract of suretyship is not enforceable by action unless there is some written evidence signed by the surety."

The words "in the event that the debtor fails to perform it" make suretyship under the Code a secondary obligation (an obligation that arises only when the principal debtor defaults). The surety therefore has the debtor's defenses under section 694 and is released when the debtor's obligation is extinguished under section 698. Most bank guarantees in international trade, however, are drafted to remove this character: the bank pays on receipt of a written demand stating that the debtor is in breach, whether or not that is true. Whether such an agreement is valid under Thai law was answered clearly by the Supreme Court in Judgment No. 8131/2561 (2018).[2]

> Supreme Court Judgment No. 8131/2561 (2018)
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> A Thai contractor entered into a contract with an overseas employer that required the performance guarantee to be unconditional and irrevocable, with the bank paying immediately on receipt of a written demand that the contractor had failed to perform. A Thai bank issued the guarantee through its Doha branch in the wording the employer required. When the employer made its demand, the bank paid and then sued the contractor and the contractor's guarantors for reimbursement. The Supreme Court held that the condition for payment was to be considered only from the receipt of the written demand, without considering whether the contractor was in breach. Such an agreement is the ordinary practice of financial institutions in international trade; although it differs from the suretyship provisions of the Civil and Commercial Code, no provision prohibits it, it is not impossible, and an application in which the contractor waived any objection to payment was not an unfair contract term.

The judgment lays down three rules that businesses should remember. First, a demand guarantee (also called an on-demand bond, a guarantee under which the bank pays on receipt of a demand in the prescribed form without proof of breach) is valid under Thai law. Second, the

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Supreme Court relied on the practice of financial institutions in international trade, which is consistent with section 368, under which a contract is interpreted according to the intention of the parties in good faith, having regard to ordinary usage.[29] Third, an applicant that signs an application waiving any objection to payment is bound by it, even if it later contends that it was not in breach of the underlying contract.

The suretyship provisions of the Civil and Commercial Code were substantially amended by the Act Amending the Civil and Commercial Code (No. 20) B.E. 2557 (2014) and (No. 21) B.E. 2558 (2015) to protect sureties who are natural persons. The amendments affect bank guarantees in two ways. First, section 681, paragraph two, requires a suretyship for a future obligation to state the purpose, the nature of the obligation, the maximum amount and the period within which the obligation is to be incurred, and paragraph three limits the surety's liability to the obligation or contract specified.[3] A bank guarantee that clearly identifies the underlying contract, the amount and the expiry date already complies with this provision. Second, section 681/1, paragraph one, makes void any agreement that the surety is liable as a joint debtor, but paragraph two, added in 2015, exempts sureties that are juristic persons.[4]

> Civil and Commercial Code, section 681/1 (the firm's translation)
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> "Any agreement that makes the surety liable in the same manner as a joint debtor, or as a joint debtor, is void.
>
> Paragraph one does not apply where the surety is a juristic person that consents to bind itself to be liable in the same manner as a joint debtor or as a joint debtor; in that case the surety that is a juristic person has no rights under sections 688, 689 and 690."

A bank is a juristic person. A bank guarantee under which the bank is liable as a joint debtor is therefore valid, and the bank cannot require the creditor to proceed first against the debtor under sections 688 to 690. At the same time, section 685/1 makes void any agreement that differs from section 681, paragraphs one to three, section 686, section 694, section 698 and section 699.[5] A question the firm is often asked is whether a demand guarantee, which removes the debtor's defenses under section 694, conflicts with section 685/1. The summary of Judgment No. 8131/2561 (2018) does not say whether the guarantee in that case was issued before or after the amendment, and the Supreme Court reasoned only that no provision

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prohibits such an agreement. In the author's view the rule still applies to guarantees issued after the amendment, because a demand guarantee is not an agreement that “differs from” section 694 in the sense of stripping a surety of a right the law seeks to protect; it is a different kind of undertaking, which the bank chooses to give knowingly and for a fee, and the purpose of the amendment was to protect sureties who are natural persons, not financial institutions, as the exceptions in section 681/1, paragraph two, and section 700, paragraph three, show. The author has not, however, found a Supreme Court judgment deciding this point directly for a guarantee issued after 2015. Drafters should therefore use wording that makes clear that the bank undertakes to pay on demand as a primary obligation of its own, not merely that the debtor's defenses are waived.

A further layer of rules is the Uniform Rules for Demand Guarantees (URDG 758, the ICC's rules, which apply when the guarantee states that it is subject to them), which do for guarantees what UCP 600 does for letters of credit. Article 5 lays down the independence principle, under which the guarantee is separate from the underlying contract and from the application, and article 19 requires the guarantor to examine the demand on the basis of the documents alone.[6] Guarantees that Thai banks issue to domestic beneficiaries usually do not refer to the URDG, but counter-guarantees issued to foreign banks and guarantees in international projects usually do. Reading the first page of the guarantee to see whether it refers to URDG 758 is therefore the first step in the analysis of every matter.

The two forms of guarantee: conditional and on demand

Under a conditional guarantee the right of claim arises only when the debtor is actually in breach; the Supreme Court treats it as part of the underlying contract and may prohibit the bank from paying until an arbitral award, under Judgment No. 3263/2554 (2011). Under a demand guarantee the bank pays on receipt of a demand in the prescribed form, and the English courts presume that an instrument issued by a bank in a cross-border transaction with an undertaking to pay on demand is of the latter kind.

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This distinction decides almost everything about the outcome, but the title of the document does not reveal it. A guarantee that uses the word “unconditional” may be conditional in substance if the next sentence requires the bank to pay “in the event that the contractor causes damage,” because that wording ties the bank's duty to actual damage. The Supreme Court met wording of this kind in Judgment No. 3263/2554 (2011).[7]

> Supreme Court Judgment No. 3263/2554 (2011)
>
> The contract of employment required the contractor to deposit security in cash or as a bank guarantee, and referred disputes to arbitration. The guarantee stated that the bank would pay the employer's claim in the event that the contractor caused damage, had to pay a penalty or failed to perform its obligations under the contract. When each party terminated the contract alleging that the other was in breach, the Supreme Court held that the contract of suretyship was part of the contract of employment, that the right of claim against the bank arose only when the contractor actually caused damage or was in breach, that whether the employer could forfeit the security depended on the arbitral award, and that the court could therefore issue an order prohibiting the guarantor bank from paying the employer in the meantime.

Placing Judgment No. 3263/2554 (2011) beside Judgment No. 8131/2561 (2018) shows that the different results come from the wording of the guarantees, not from conflicting legal principles. In the first case the bank's duty was tied to actual breach, so the court held that the body with authority to decide the dispute must decide first. In the second the bank's duty was tied only to receipt of the written demand, so the court let the bank pay and left the parties to fight over the underlying contract separately. A beneficiary that wants its money quickly wants the second form; an applicant that wants the dispute decided before it loses money wants the first; and the bank wants a form under which it can examine documents without deciding facts.

The English courts have developed tools for reading such wording that Thai courts may usefully compare. In Marubeni Hong Kong v Mongolian Government, the English Court of Appeal held that a letter from the Mongolian Ministry of Finance using the words “unconditionally pledges” and “simple demand” was still a true guarantee, because it required payment only of amounts unpaid “when the same becomes due” and the issuer was not a bank; the absence of banking-instrument wording in a transaction outside the banking context created a strong presumption against reading it as a demand guarantee.[8] Seven years later, in Wuhan Guoyu Logistics v

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Emporiki Bank of Greece, the Court of Appeal reversed the trial judge and held that a payment guarantee for shipbuilding installments, issued by a Greek bank to a Chinese shipbuilder, was a demand guarantee, applying the presumption in Paget's Law of Banking that an instrument relating to a transaction between parties in different jurisdictions, issued by a bank, containing an undertaking to pay "on demand" and containing no clause limiting a guarantor's defenses "will almost always be construed as a demand guarantee."[9]

That presumption matches the reasoning of the Thai Supreme Court in Judgment No. 8131/2561 (2018), which relied on the practice of financial institutions in international trade. The author therefore proposes the following reading rule for guarantees issued by Thai banks. If the guarantee provides for payment on receipt of a written demand stating that the debtor is in breach, without any other evidence, and contains a waiver of objections or states that the bank is liable as a principal debtor, treat it as a demand guarantee. If the guarantee provides for payment "in the event that" the debtor causes damage or is in breach, without stating that the beneficiary's demand is sufficient evidence, treat it as conditional, following Judgment No. 3263/2554 (2011). Many guarantees in the standard forms of Thai government agencies fall in between: they use the word "unconditional" but tie payment to damage. A drafter who wants a certain result should choose wording that fits one form or the other.

Making a call: in time, in the prescribed form, and what the bank must do within five business days

The beneficiary must deliver its written demand to the bank within the validity period of the guarantee and in the prescribed form. A term requiring the claim to be notified within the validity period is enforceable under Supreme Court Judgment No. 1451/2524 (1981). Under a guarantee subject to URDG 758, the demand must state in what respect the debtor is in breach, the bank has five business days to examine it, and a rejection must be made by a single notice listing every discrepancy.

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The mistake that most easily costs a beneficiary its rights is a late demand. Almost every guarantee has an expiry date, and many also require the beneficiary to notify its claim to the bank in writing by that date or within a period after it. The Supreme Court has treated such terms as valid since Judgment No. 1451/2524 (1981).[10]

> Supreme Court Judgment No. 1451/2524 (1981)
>
> The contract of suretyship provided that the creditor had to notify the surety of the claim for which the surety was to be liable within the validity period of the suretyship before the creditor could exercise its right of claim. The Supreme Court held that this term was a separate matter from prescription and was not an agreement shortening the prescription period, and that it was therefore enforceable. As the creditor sued without having submitted its claim within the period, the surety was not liable.

In practice this means that the expiry date of the guarantee is the deadline for delivering the demand, not the deadline for suing. A beneficiary that delivers its demand within the validity period may still sue the bank within the ten-year prescription period, but a beneficiary that lets the guarantee expire without a demand loses its rights against the bank even if the debtor is clearly in breach. When a project is running late and the expiry date is near, the beneficiary should make an “extend or pay” demand (a demand that the bank extend the validity of the guarantee or otherwise pay immediately), which URDG 758 article 23 recognizes, allowing the bank to suspend payment for up to thirty calendar days so that the parties can negotiate.[11]

The form of the demand matters no less than its timing. A demand guarantee usually requires the demand to be in writing, signed by the beneficiary's authorized signatory, delivered to the bank at the branch specified, and to state in what respect the debtor is in breach. URDG 758 article 15 (a) makes that last statement mandatory unless the guarantee excludes it. A beneficiary that sends only a letter saying “we call on the guarantee” without identifying the breach risks rejection on documentary grounds, and if the guarantee expires before a new demand is delivered it loses everything. Conversely, a bank that receives a demand has five business days to examine it under article 20, and if it considers the demand non-complying it must send a single notice of rejection listing every discrepancy within the same period under article 24. A bank that does not do so is precluded from claiming that the demand does not comply. This is the same mechanism as UCP 600 article 16, which the firm explains on its page

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Letters of credit: discrepant documents and refusal to pay, and the advice given there to exporters whose documents are refused applies equally to beneficiaries under guarantees: check the notice of rejection before correcting the documents.

For a conditional guarantee that does not refer to the URDG, the governing provision is section 686, which since the 2014 amendment requires the creditor to give written notice to the surety within sixty days from the date of the debtor's default.[12]

> Civil and Commercial Code, section 686, paragraphs one and two (the firm's translation)
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> "When the debtor is in default, the creditor must give written notice to the surety within sixty days from the date of default, and in no case may the creditor call on the surety to perform before the notice reaches the surety; this does not bar the surety from performing when the obligation falls due.
>
> If the creditor fails to give notice within the period in paragraph one, the surety is released from liability for interest, damages and the charges incidental to the obligation that arise after that period has expired."

The consequence of failing to give notice within sixty days is not a complete release, but a release from the interest, damages and incidental charges that arise after the period expires; the principal amount guaranteed can still be claimed, and section 685/1 makes void any agreement that differs from section 686. A beneficiary under a conditional guarantee therefore faces two overlapping deadlines, sixty days from the debtor's default under the statute and the expiry date under the guarantee, and must meet both.

The bank has already paid: what the applicant should do

A bank that pays in accordance with the conditions of the guarantee performs its obligation in good faith and has a right of recourse against the applicant under the application and section 693. An applicant that later proves it was not in breach recovers the money from the beneficiary as undue enrichment under section 406, according to Supreme Court Judgment No. 8012/2568 (2025), not from the bank.

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The “pay now, argue later” principle means for the applicant that the money leaves its account before the dispute under the underlying contract is decided. Judgment No. 8012/2568 (2025) explains the path of the money after that more completely than any other judgment the author has found.[13]

> Supreme Court Judgment No. 8012/2568 (2025)
>
> A contractor deposited two bank guarantees with the employer as security for the performance of a construction contract. The only condition for payment was that the bank receive written notice from the employer that the contractor had breached the contract by failing to pay the penalty. The employer terminated the contract and made a written demand; the bank paid the full amount of THB 3,900,000 and debited the contractor's deposit account. The Supreme Court in an earlier case later found that the contractor was not in breach. In this case the Supreme Court held that the bank's payment on the conditions agreed was performance in good faith, that the employer had received the money without legal ground and as undue enrichment, and that the contractor, whose account the bank had already debited, was the person prejudiced and entitled to recover the money from the employer under section 406.

> Civil and Commercial Code, section 406 (the firm's translation)
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> “Any person who, through an act performed by another person for the discharge of an obligation, or in any other way, obtains something to the prejudice of that other person without legal ground, must return it to that person. An acknowledgment that an obligation exists or does not exist is also deemed to be an act performed for the discharge of an obligation.
>
> This provision applies also where something has been obtained on a ground that has not come into existence, or that has ceased to exist before the thing was obtained.”

The judgment teaches four lessons. First, the bank is not the right defendant. When the bank pays in accordance with the conditions of the guarantee, it performs its obligation in good faith under section 5 and has a right of recourse under the application and section 693.[15] An action against the bank for paying when it should not have will succeed only if the applicant proves that the demand did not comply with the guarantee, for example because it was delivered after expiry, signed by a person without authority, or lacked the statement the guarantee required. Second, the right defendant is the beneficiary that received the money without being entitled to it; the cause of action is undue enrichment, and section 406, paragraph two, covers the case

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where the ground for receiving the money ceased to exist afterwards, as when a court later decides that the contractor was not in breach.[14] Third, the Supreme Court treated the contractor as the person “prejudiced” from the day the bank debited its account to satisfy the guarantee; the right to recover therefore arises once the applicant has reimbursed the bank. Fourth, the money paid under the guarantee is separate from the unpaid contract price claimed in the action on the underlying contract, so a judgment in that action does not automatically cover it; the contractor must sue to recover it in a separate action or include the claim in the same action from the outset.

As for the bank's rights after payment, section 693 gives a surety that has performed a right of recourse against the debtor for the principal, interest and damages, and subrogates it to the creditor's rights. Judgment No. 6950/2551 (2008) confirmed the subrogation of a guarantor bank under section 693, paragraph two, read with section 229 (3), in a case where the bank paid customs duty on behalf of an importer.[16] In practice banks rarely need this provision, because the application requires the applicant to reimburse immediately with default interest and allows the bank to debit deposit accounts or enforce its security, as appears in Judgment No. 8012/2568 (2025) and in Judgment No. 8131/2561 (2018), where the contractor's personal guarantors and the mortgaged property were pursued as well. An executive who signs a personal guarantee for a company's guarantee facility should therefore understand that his liability arises the moment the bank pays, not when the company loses the case on the underlying contract.

From the other side, a beneficiary without a valid claim must not only return the money it received but also return guarantees it has not yet called. Judgment No. 1792/2565 (2022) held that where the contract of employment was terminated without the contractor being liable to the employer, the employer could not use the guarantees to call on the bank and had only the duty to return them to the contractor.[17] A claim for the return of the guarantees should therefore be a standard prayer for relief whenever a contractor sues an employer, because as long as the guarantee remains in the employer's hands the contractor's credit line with its bank stays blocked and the fees keep running.

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Asking a court to stop the bank from paying: the fraud exception and what Thai courts accept

Under a demand guarantee, the English courts restrain a bank from paying only where there is clear fraud of which the bank has notice; the Singapore courts add unconscionability; and United States law sets four conditions in UCC § 5-109. The Thai Supreme Court has not laid down a fraud exception for bank guarantees directly, but for a conditional guarantee where the dispute must go to arbitration, the court may prohibit payment in the meantime under Judgment No. 3263/2554 (2011).

When a court may stop a bank from paying is the question that determines the value of bank guarantees as a whole. If courts stop payment easily, foreign beneficiaries will not accept guarantees from Thai banks, and Thai businesses will have to deposit cash instead. The English courts recognized this as early as Edward Owen Engineering v Barclays Bank International, in which Lord Denning held that a performance guarantee stands on a similar footing to a letter of credit, that the bank must pay according to its guarantee on demand without proof or conditions, and that the only exception is clear fraud of which the bank has notice.[18] The facts of that case are instructive: the Libyan buyer was itself the party that had failed to open the letter of credit required by the contract, yet the court still declined to restrain the bank, because the dispute over who was in breach was a matter between the parties, not for the bank.

The United States has codified the exception in UCC § 5-109 for standby letters of credit (letters of credit used in place of guarantees in the United States), providing that a court may enjoin the issuer from paying only where the forgery or fraud is material, the applicant is more likely than not to succeed, and the persons who may be adversely affected are adequately protected, while protecting those who have already given value in good faith, such as a confirming bank.[19] Singapore goes further. In BS Mount Sophia v Join-Aim, the Singapore Court of Appeal confirmed that unconscionability is a ground distinct from fraud and upheld an injunction restraining a developer from calling a contractor's performance bond until the arbitral award, on a strong prima facie case drawn from the whole of the circumstances.[20] The Singapore approach has been

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criticized for reducing the certainty of guarantees, but it reflects the reality that in construction contracts employers often use guarantees as bargaining tools rather than as security for actual loss.[31]

For Thailand, the author has not found in this search a Supreme Court judgment that lays down a fraud exception for demand guarantees directly. The closest judgment comes from the law of letters of credit, Judgment No. 6793/2543 (2000), which held that an order attaching the funds and prohibiting the bank from paying must be considered with the greatest care, because it affects the credibility of banks in international trade.[21] Read together with Judgment No. 8131/2561 (2018), which accepted that the bank must pay without considering whether the debtor is in breach, the author's view is that Thai courts are more likely to follow the English line than the Singapore line: payment may be restrained only on clear evidence that the demand is a fraud by the beneficiary itself, for example a demand made in the knowledge that the underlying contract was terminated without loss and has been fully settled, or a demand bearing a forged signature. An argument that the debtor was not actually in breach, however strong, is not enough, because that is precisely the dispute that this form of guarantee is designed to have decided after payment.

A conditional guarantee is a different matter. Judgment No. 3263/2554 (2011) shows that where the beneficiary's right arises only on the debtor's actual breach, and the underlying contract makes an arbitral tribunal the body that decides who is in breach, the court may grant interim relief prohibiting the beneficiary from receiving and the bank from paying until the award (the related provisions listed by the Supreme Court's search system are sections 11 and 16 of the Arbitration Act B.E. 2545 (2002)). An applicant holding this form of guarantee therefore has a tool that the holder of a demand guarantee lacks: it can apply to the court for interim relief and commence arbitration as soon as it receives the notice of termination, before the beneficiary delivers its demand to the bank.

The last matter under this heading is forged guarantees. A beneficiary that receives a guarantee should verify its authenticity with the issuing bank directly before starting work or delivering goods. Judgment No. 6404/2560 (2017) convicted of fraud a contractor who presented to an employer a guarantee that the bank had not issued, and held the offense complete even though

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the contractor later performed the work.[22] But a conviction does not give the employer the money under the guarantee, because the bank was never bound. Verification with the bank through the channel the bank prescribes, not through contact details supplied by the person presenting the guarantee, is the cheapest way to prevent every loss described on this page.

The bank's defenses, and the effect of extensions of time, reductions of the debt and amendments to the underlying contract

A bank that has issued a conditional guarantee may raise the debtor's defenses against the beneficiary under section 694, and is released when the debtor's obligation is extinguished under section 698, when the creditor grants the debtor an extension of time under section 700, or when the creditor causes the bank to lose its right of subrogation under section 697. A financial institution may, however, consent in advance to extensions under section 700, paragraph three. A demand guarantee removes almost all of these defenses.

Where the guarantee is conditional, the bank is in every respect a surety under the Code, and the applicant benefits indirectly from the bank's defenses. The first defense is in section 694.[23]

> Civil and Commercial Code, section 694 (the firm's translation)
>
> “In addition to the defenses that the surety has against the creditor, the surety may also raise all the defenses that the debtor has against the creditor.”

The bank may therefore contend that the contractor was not in breach, that there was no loss or a smaller loss than claimed, or that the employer was itself in breach, and section 685/1 prohibits any agreement differing from this section. In practice, however, banks do not wish to enter their customers' disputes; most pay once the demand matches the wording of the guarantee and leave the customer to recover from the beneficiary. An applicant that wants the bank to raise defenses must therefore deliver its evidence and a letter of reservation to the bank before the five business days expire, or apply to the court along the lines of Judgment No. 3263/2554 (2011). A telephone call asking the bank to hold off has no legal effect.

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The second defense is the right under sections 688 to 690 to require the creditor to proceed first against the debtor, against the debtor's property, or against other security.[24] Almost every bank guarantee removes this right by making the bank liable as a joint debtor, which section 681/1, paragraph two, permits for juristic persons; the beneficiary can therefore claim from the bank at once without first suing the debtor. The third defense is an extension of time under section 700, to which employers in international construction projects should pay particular attention.[25]

> Civil and Commercial Code, section 700 (the firm's translation)
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> "Where the suretyship is for an obligation to be performed at a definite time and the creditor grants the debtor an extension of time, the surety is released, unless the surety has agreed to the extension.
>
> An agreement made by the surety in advance, before the creditor grants the extension, which has the effect of consenting to the extension, is unenforceable.
>
> Paragraph two does not apply where the surety is a financial institution or gives suretyship for remuneration in the ordinary course of business."

The section has three layers. Paragraph one releases the surety when the creditor grants the debtor an extension without the surety's agreement. Paragraph two, from the 2014 amendment, makes an advance consent unenforceable. Paragraph three, added in 2015, exempts financial institutions and professional sureties from paragraph two. The result is that a bank guarantee stating that the bank consents to the beneficiary extending time to the debtor without notice to the bank remains enforceable, and the bank is not released when the employer extends the time for completion; but if the guarantee contains no such wording and the employer extends the completion date without the bank's consent, the bank is released under paragraph one. This is why banks issue an amendment to the guarantee every time the underlying contract is extended, and why employers should obtain that amendment before approving the extension, not after. In addition, section 691, as amended in 2015, provides that an agreement made after the debtor's default extending the time for performance is not an extension of time under section 700, so an extension before default and one after default have different effects.

The remaining defenses are section 697, where the creditor causes the surety to lose its subrogation to other security; section 698, where the debtor's obligation is extinguished; and section 701, where the surety tenders performance and the creditor refuses it.[26] All of these

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defenses have very limited application to demand guarantees, because the bank's undertaking under that form is not tied to the debtor's obligation. A bank issuing such a guarantee protects itself by an application that requires the customer to reimburse it in every case, and by strict examination of the wording of the demand, not by the suretyship provisions of the Code.

Prescription, jurisdiction and governing law

A claim under a bank guarantee has no specific prescription period and is therefore subject to the ten-year period in section 193/30, running from the day the right could be enforced, but the demand itself must be delivered within the validity period of the guarantee, which is much shorter. Cases on guarantees issued to secure international sales, services or carriage fall within the jurisdiction of the Intellectual Property and International Trade Court, and a guarantee subject to URDG 758 is governed by the law and the courts of the country of the issuing branch unless it provides otherwise.

The prescription period for a claim under a guarantee is often confused with the time limit for delivering the demand. Judgment No. 1451/2524 (1981) separated the two: the time limit for the demand is a condition of the right, while prescription concerns the bringing of an action. As the Civil and Commercial Code prescribes no specific period for contracts of suretyship, the ten-year period in section 193/30 applies.[27] Judgment No. 6950/2551 (2008) applied a ten-year period to the Customs Department's right to call on a guarantor bank, citing section 193/31, the provision for the State's claims for taxes and duties; a private beneficiary falls under section 193/30 with the same ten-year result. As for the bank's right of recourse against the applicant under the application, it is not the claim of a person performing work for remuneration under section 193/34 (7), on the reasoning the Supreme Court adopted for an issuing bank under a letter of credit in Judgment No. 266/2546 (2003), which the firm explains on its letter of credit page. In the author's view the same reasoning applies to guarantees, but no judgment deciding the point for guarantees directly has been found.

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Jurisdiction depends on the underlying contract. Section 7 (5) of the Act on the Establishment of and Procedure for the Intellectual Property and International Trade Court gives that court jurisdiction over civil cases concerning the international sale of goods, the international provision of services, international carriage and other related juristic acts, and (6) extends it to guarantees relating to such activities.[28]

> Act on the Establishment of and Procedure for the Intellectual Property and International Trade Court B.E. 2539 (1996), section 7 (5) and (6) (the firm's translation)
>
> "(5) civil cases concerning the international sale or exchange of goods or financial instruments, the international provision of services, international carriage, insurance and other related juristic acts;
>
> (6) civil cases concerning letters of credit issued in connection with the activities in (5), the remittance of money into or out of the Kingdom, trust receipts, and guarantees relating to such activities;"

A guarantee issued by a Thai bank to secure a construction contract abroad, an international sale of goods or an international contract of carriage is therefore a juristic act related to the activities in (5), and the bank's recourse action against the contractor in Judgment No. 8131/2561 (2018) was a case on a guarantee issued for a contract of employment abroad. A guarantee issued for a purely domestic contract falls within the jurisdiction of the ordinary civil courts, as Judgment No. 8012/2568 (2025), which began in the Thonburi Civil Court, shows. Choosing the wrong court costs months in transferring the case, so the point should be checked before the demand letter is sent.

In the international dimension, URDG 758 articles 34 and 35 provide that the guarantee is governed by the law, and subject to the courts, of the country of the guarantor's branch that issued it, unless the guarantee provides otherwise. A guarantee issued by a Thai bank through a foreign branch, such as the Doha branch in Judgment No. 8131/2561 (2018), may therefore be governed by the law of that country in the relationship with the beneficiary, while the application between the Thai customer and the Thai bank is governed by Thai law. The United Nations Convention on Independent Guarantees and Stand-by Letters of Credit of 1995 has only eight

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States parties, and Thailand is not among them.[30] Where the guarantee is silent, the law governing an international guarantee must still be determined case by case under the Act on Conflict of Laws B.E. 2481 (1938).

Comparative law: England, Singapore, the United States and Thailand

All four systems accept that a demand guarantee is an independent undertaking that the bank must honor on receipt of a demand in the prescribed form. The difference lies in the exceptions: England accepts only clear fraud, Singapore adds unconscionability, the United States has set out the conditions in UCC § 5-109, and Thailand has upheld the validity of this form of guarantee but has no Supreme Court judgment on the exception directly, and still applies the suretyship provisions of the Code to conditional guarantees.

Comparing the four systems, Thailand differs from the other three in having both forms of guarantee in the market at once without a clear line in the wording. Many Thai government agencies and employers use a form that ties payment to loss, which the Supreme Court treated as part of the underlying contract in Judgment No. 3263/2554 (2011), while foreign employers use the demand form upheld in Judgment No. 8131/2561 (2018). The English courts solved this problem with the presumption in Wuhan Guoyu, which gives weight to a bank issuer and a cross-border transaction.[9] In the author's view the Thai courts should adopt that presumption as a tool of interpretation under section 368, because it fits the reasoning on the ordinary usage of financial institutions that the Supreme Court already applies, and it would let drafters predict the result.

The second difference is the legal basis of the exception. England relies on case law since Edward Owen,[18] the United States on statute,[19] and Singapore on case law that has widened the exception.[20] Thailand has different tools: section 5, which requires rights to be exercised in good faith, and section 406, which allows recovery of undue enrichment. In the author's view the path the Supreme Court chose in Judgment No. 8012/2568 (2025), letting the bank pay first and the applicant recover from the beneficiary as undue enrichment, is a middle way between the English and Singapore lines, because it preserves the certainty of the guarantee at the payment stage and corrects unfairness after payment instead. Its limitation is the risk that a foreign

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beneficiary has no assets in Thailand against which to enforce, which is why an applicant in an overseas project should assess the enforcement of a judgment or award in the beneficiary's country before providing the guarantee.

Law and economics, and legal philosophy: why the bank pays first and argues later

A bank guarantee shifts the cost of assessing and monitoring the debtor to the party that can do it most cheaply, the bank that already holds the customer's credit information. The pay-now-argue-later principle is a rule, in the sense used in law and economics, that removes the cost of proof from the payment stage and determines which party must bear the risk of litigating while the dispute is pending.

Avery Katz analyzes the guaranty contract as a way of managing asymmetric information (a situation in which one party knows its own risk better than the other) and moral hazard (the incentive to take more risk when someone else bears the loss). A surety that is close to the debtor and can assess or control the debtor's conduct more cheaply than the creditor takes on that task in return for a fee.[32] A bank is the surety that fits this model best, because it already holds the customer's accounts, credit history and security. A foreign employer that does not know a Thai contractor agrees to contract when a bank guarantee is provided, because the bank has assessed the contractor on its behalf and accepted a risk the employer cannot assess.

The pay-now-argue-later principle is a rule in the sense used by Louis Kaplow, who distinguishes rules, whose content is fixed in advance, from standards, which leave the decision to the person applying the law afterwards. Rules are cheap to apply and suit conduct that recurs in large numbers.[33] If a bank had to decide before paying whether the debtor was actually in breach, it would need experts in construction, carriage or commodity sales for every transaction; that cost would come back as higher fees, and the beneficiary would not get the certainty it wants. The demand guarantee therefore sets a rule: the bank examines documents only, the applicant bears the risk of an unjustified demand, and the courts correct the unfairness after payment. The

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conditional guarantee chooses a standard instead, requiring the adjudicator to assess first whether there was a breach, which gives less certainty but better protection against unjustified demands.

In terms of legal philosophy, the question is who should hold the money while the dispute is undecided, and who should be the plaintiff. A system in which the bank pays first makes the applicant the plaintiff, who must prove that it was not in breach and that the beneficiary was not entitled to the money; a system that examines first makes the beneficiary the plaintiff, who must prove the breach. Neither system is just in itself. The choice is a matter of risk allocation that the parties agree and price. A contractor that agrees to provide a demand guarantee wins work that a contractor that refuses does not; the price is becoming the plaintiff when a dispute arises. The unfairness the law should correct is therefore not that the bank pays, but that a beneficiary uses the bank's undertaking knowing that it has no right to do so, which section 5, section 406 and the fraud exception each address from a different angle.

What applicants and beneficiaries should do

Applicants should know from the day of issue which form their guarantee takes, negotiate for the demand to require a statement and supporting documents, track the expiry date so as to ask for the guarantee back, and on being called send a letter of reservation to the bank at once while preparing the recovery action. Beneficiaries should verify authenticity with the bank, make their demand in the prescribed form and before expiry, and obtain an amendment from the bank every time the underlying contract is extended.

For applicants. First, read the draft guarantee required by the counterparty before signing the underlying contract, and know whether a demand guarantee or a conditional guarantee is being provided. Second, negotiate for the demand to require a statement identifying the breach, as in URDG 758 article 15, and if possible a copy of a notice previously sent to the applicant; this does not make the guarantee conditional, but it makes an unfounded demand harder and leaves evidence for the recovery action. Third, set the expiry date as early as the counterparty will accept, and record it so as to ask for the guarantee back or have the bank cancel the facility as soon as it falls due. Fourth, on receiving a copy of the demand or learning that a demand has

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been made, send a letter of reservation to the bank the same day, stating that the applicant is not in breach, asking the bank to examine the demand strictly against the wording of the guarantee, and reserving the right to recover from the beneficiary. Fifth, if the guarantee is conditional and the underlying contract contains an arbitration agreement, apply for interim relief along the lines of Judgment No. 3263/2554 (2011) before the bank pays. Sixth, if the bank has paid, prepare the recovery action against the beneficiary along the lines of Judgment No. 8012/2568 (2025), and include a claim for the return of any other guarantees not yet called, following Judgment No. 1792/2565 (2022).

For beneficiaries. First, verify the authenticity of the guarantee with the issuing bank through the bank's own channels. Second, make the demand before the expiry date, in a letter signed by an authorized signatory, delivered to the branch specified, and containing the statement of breach the guarantee requires, following Judgment No. 1451/2524 (1981). Third, under a conditional guarantee, give written notice to the bank within sixty days of the debtor's default under section 686. Fourth, every time the underlying contract is extended, obtain an amendment to the guarantee from the bank before approving the extension, or the bank may be released under section 700, paragraph one. Fifth, when expiry is near but the dispute is unresolved, make an extend-or-pay demand. Sixth, demand only the amount that is justified, because a knowingly excessive demand must be returned as undue enrichment with interest, and in other legal systems may lead to the whole call being restrained.

Related matters on which the firm also advises include reviewing the underlying contract and its security terms before signature, on our page International contract review, and the bank's mechanism for examining documents and giving notice of refusal, on our page Letters of credit: discrepant documents and refusal to pay.

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Review of guarantees, demands and bank guarantee disputes

The firm reviews draft guarantees and applications before signature, prepares demands and letters of reservation, tests the validity of a demand or a notice of rejection against the wording of the guarantee and URDG 758, applies for interim relief, and conducts actions to recover money paid under guarantees in the Intellectual Property and International Trade Court or the civil courts.

1. Review of the draft guarantee before the underlying contract is signed, identifying whether it is a demand or a conditional guarantee and proposing wording for the demand, the expiry date and extensions of time.
2. Review of the application to the bank: the scope of reimbursement, debiting of accounts, security, and the liability of directors as personal guarantors.
3. Preparation of demands for beneficiaries, in the prescribed form and in time, including extend-or-pay demands.
4. Letters of reservation and applications for interim relief for applicants whose guarantees have been called, including commencing arbitration under the underlying contract.
5. Review of the bank's payment or rejection, comparing the demand with the wording of the guarantee and URDG 758 articles 15, 20 and 24.
6. Recovery actions for undue enrichment against beneficiaries, actions for the return of guarantees, and defenses in recourse actions brought by banks.

A 45-minute consultation on one matter costs THB 4,900. It suits a party that has just received a demand or a notice from its bank and wants to know the same day whether the bank must pay, what can be done before the bank pays, and from whom the money can be recovered. For the review of draft guarantees, applications for interim relief and litigation, the firm quotes a fee in writing according to scope before work begins.

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Questions before instructing us

Questions that contractors, exporters, importers and finance teams typically ask when a bank guarantee is called, when they must make a demand under a counterparty's guarantee, and before instructing the firm.

My bank guarantee has been called. Must the bank pay immediately?

It depends on the wording. If the guarantee requires the bank to pay on receipt of a written demand that the debtor is in breach, without proof, the bank must pay when the demand complies and is delivered within the validity period, under Supreme Court Judgment No. 8131/2561 (2018). If the guarantee provides for payment in the event that the debtor causes damage or is in breach, the right of claim arises only on actual breach, and a court may prohibit payment in the meantime where the dispute must go to arbitration, under Judgment No. 3263/2554 (2011).

Can the applicant ask a court to stop the bank from paying?

Under a demand guarantee, only with great difficulty. Foreign courts allow it only on clear fraud by the beneficiary, and the Thai Supreme Court holds that an order prohibiting a bank from paying under a trade instrument must be considered with the greatest care. Under a conditional guarantee where the underlying contract contains an arbitration agreement, an application for interim relief under section 16 of the Arbitration Act B.E. 2545 (2002) is available, following Judgment No. 3263/2554 (2011).

The bank has paid although we were not in breach. From whom do we recover the money?

From the beneficiary, as undue enrichment under section 406, not from the bank, because a bank that pays in accordance with the conditions of the guarantee performs its obligation in good faith, under Supreme Court Judgment No. 8012/2568 (2025). If the beneficiary still holds other guarantees, their return can be claimed under Judgment No. 1792/2565 (2022).

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The guarantee has expired. Can the beneficiary still sue the bank?

If the beneficiary delivered its written demand within the validity period, it may still sue within the ten-year prescription period under section 193/30. If it did not, the bank is not liable, because a term requiring the claim to be notified within the validity period is enforceable and is not a shortening of the prescription period, under Supreme Court Judgment No. 1451/2524 (1981).

The employer extended the contractor's completion date. Is the guarantor bank released?

Under a conditional guarantee, the bank is released under section 700, paragraph one, if it did not agree to the extension. But a bank, as a financial institution, may consent in advance in the guarantee under section 700, paragraph three, and an extension granted after the debtor's default is not an extension of time under section 691. The employer should obtain an amendment to the guarantee from the bank before approving every extension.

How are fees for reviewing a guarantee and a demand charged?

They start with a 45-minute consultation on one matter at THB 4,900. For the review of draft guarantees, applications for interim relief and litigation, the firm quotes a fee in writing according to scope before work begins.

Who does the work

Bank guarantee and international finance matters are the responsibility of Eksiam Chaisorn, Legal Consultant, founder and Managing Director of Eksiam & Partners Co., Ltd., who advises on international trade law, including international banking and finance, international construction and procurement contracts, and the resolution of trade disputes.

Education relevant to this work: Master's level, Master of Laws (LL.M.) program, International Trade Law, Faculty of Law, Thammasat University; Master's level, Master of Laws (LL.M.) program, International Law (International Investment Law), Faculty of Law, Chulalongkorn University; and Master's level, Master of Laws (LL.M.) program, Financial and Tax Law, Faculty of Law, Chulalongkorn University. Full profile and qualifications

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Notes

1. Civil and Commercial Code, section 680, Thai text: “อันว่าค้ำประกันนั้น คือสัญญาซึ่งบุคคลภายนอกคนหนึ่ง เรียกว่าผู้ค้ำประกัน ผูกพันตนต่อเจ้าหนี้คนหนึ่งเพื่อชำระหนี้ในเมื่อลูกหนี้ไม่ชำระหนี้นั้น อนึ่ง สัญญาค้ำประกันนั้น ถ้ามิได้มีหลักฐานเป็นหนังสืออย่างใดอย่างหนึ่งลงลายมือชื่อผู้ค้ำประกันเป็นสำคัญ ท่านว่าจะฟ้องร้องให้บังคับคดีหาได้ไม่” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.)

2. Supreme Court Judgment No. 8131/2561 (2018). A Thai bank issued a performance guarantee through its Doha branch to an overseas employer at the request of a Thai contractor. The guarantee stated that the bank “agrees to undertake and guarantee … unconditionally and without any right of defense or counterclaim” and that payment was to be made “immediately” on receipt of the written demand (the firm's translation). The Supreme Court held that the condition for payment “is to be considered only from the receipt of the written demand, without considering whether defendant 1 is liable for breach of the contract of employment toward the employer.” That an employer requires such a guarantee and a bank issues it “is the ordinary practice of financial institutions in international trade.” Such an agreement, “although it has the character of allowing the issuing bank to be called on to pay easily, which differs from the provisions of the Civil and Commercial Code on suretyship, is not prohibited by any provision of the Civil and Commercial Code and is not impossible.” The application under which the contractor allowed the bank to pay immediately without prior notice, waived any objection and undertook to reimburse the bank was therefore not an unfair contract term under section 4 of the Unfair Contract Terms Act B.E. 2540 (1997). (Thai text read on deka.supremecourt.or.th, October 17, 2026; summary and translation by the firm.)

3. Civil and Commercial Code, section 681, Thai text: “อันค้ำประกันนั้นจะมีได้แต่เฉพาะเพื่อหนี้อันสมบูรณ์ หนี้ในอนาคตหรือหนี้มีเงื่อนไขจะประกันไว้เพื่อเหตุการณ์ซึ่งหนี้นั้นอาจเป็นผลได้จริงก็ประกันได้ แต่ต้องระบุวัตถุประสงค์ในการก่อหนี้รายที่ค้ำประกัน ลักษณะของมูลหนี้ จำนวนเงินสูงสุดที่ค้ำประกัน และระยะเวลาในการก่อหนี้ที่จะค้ำประกัน เว้นแต่เป็นการค้ำประกันเพื่อกิจการเนื่องกันไปหลายคราวตามมาตรา 699 จะไม่ระบุระยะเวลาดังกล่าวก็ได้ สัญญาค้ำประกันต้องระบุหนี้หรือสัญญาที่ค้ำประกันไว้โดยชัดแจ้ง และผู้ค้ำประกันย่อมรับผิดเฉพาะหนี้หรือสัญญาที่ระบุไว้เท่านั้น หนี้อันเกิดแต่สัญญาซึ่งไม่ผูกพันลูกหนี้เพราะทำด้วยความสำคัญผิดหรือเพราะเป็นผู้ไร้ความสามารถนั้นก็อาจจะมีประกันอย่างสมบูรณ์ได้ ถ้าหากว่าผู้ค้ำประกันรู้เหตุสำคัญผิดหรือไร้ความสามารถนั้นในขณะที่เข้าทำสัญญาผูกพันตน” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.), Section 681 as amended by the Act Amending the Civil and Commercial Code (No. 20) B.E. 2557 (2014).

4. Civil and Commercial Code, section 681/1, Thai text: “ข้อตกลงใดที่กำหนดให้ผู้ค้ำประกันต้องรับผิดอย่างเดียวกับลูกหนี้ร่วมหรือในฐานะเป็นลูกหนี้ร่วม ข้อตกลงนั้นเป็นโมฆะ ความในวรรคหนึ่ง มิให้ใช้บังคับแก่กรณีผู้ค้ำประกันซึ่งเป็นนิติบุคคลและยินยอมเข้าผูกพันตนเพื่อรับผิดอย่างลูกหนี้ร่วมหรือในฐานะเป็นลูกหนี้ร่วม ในกรณีเช่นนั้นผู้ค้ำประกันซึ่งเป็นนิติบุคคลนั้นย่อมไม่มีสิทธิดังที่บัญญัติไว้ในมาตรา 688 มาตรา 689 และมาตรา 690” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.), Paragraph one added by the Act Amending the Civil and Commercial Code (No. 20) B.E. 2557 (2014); paragraph two added by the Act Amending the Civil and Commercial Code (No. 21) B.E. 2558 (2015).

5. Civil and Commercial Code, section 685/1, Thai text: “บรรดาข้อตกลงเกี่ยวกับการค้ำประกันที่แตกต่างไปจากมาตรา 681 วรรคหนึ่ง วรรคสอง และวรรคสาม มาตรา 686 มาตรา 694 มาตรา 698 และมาตรา 699 เป็นโมฆะ” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.), As amended by the Act Amending the Civil and Commercial Code (No. 21) B.E. 2558 (2015).

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6. Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758 (URDG 758), International Chamber of Commerce, in force since July 1, 2010. The text is ICC copyright; this note summarizes the substance of the articles cited and does not quote them (2go.iccwbo.org, read October 17, 2026)., Article 5: a guarantee is independent of the underlying relationship and of the application; the guarantor is not concerned with or bound by those relationships even if the guarantee refers to them., Article 19: the guarantor determines, on the basis of a presentation alone, whether it appears on its face to be a complying presentation.

7. Supreme Court Judgment No. 3263/2554 (2011). A bank guarantee deposited as security for the performance of a contract of employment "is a contract that arose under the conditions of the contract of employment, which is the principal contract, and the contract of suretyship must be regarded as part of the contract of employment" (the firm's translation). Where the guarantee stated that the bank would pay in the event that the contractor caused damage, had to pay a penalty or failed to perform its obligations under the contract, the right of claim against the bank arose only when such an event occurred. As each party alleged that the other was in breach and the contract required disputes to be referred to arbitration, whether the employer could forfeit the security depended on the award, and the court could therefore issue an order prohibiting the guarantor bank from paying the employer until the arbitral tribunal had ruled. (Related provisions as listed by the court's database: Civil Procedure Code section 142, Civil and Commercial Code section 587, and Arbitration Act B.E. 2545 (2002) sections 11 and 16.) (Thai text read on deka.supremecourt.or.th, October 17, 2026; summary and translation by the firm.)

8. Marubeni Hong Kong and South China Ltd v Mongolian Government [2005] EWCA Civ 395 (April 13, 2005), Carnwath LJ (Waller LJ and Sir Martin Nourse concurring). A letter from the Mongolian Ministry of Finance using the words "unconditionally pledges" and "simple demand," but requiring payment only of amounts unpaid "when the same becomes due," created a secondary obligation dependent on the buyer's default and was therefore a true guarantee, not a demand guarantee (paragraphs 30-34). The court said the document "is not a banking instrument," and that the absence of banking-instrument language in a transaction outside the banking context "creates in my view a strong presumption against" construing it as a demand guarantee (caselaw.nationalarchives.gov.uk, read October 17, 2026).

9. Wuhan Guoyu Logistics Group Co Ltd v Emporiki Bank of Greece SA [2012] EWCA Civ 1629 (December 7, 2012), Longmore LJ (Rimer LJ and Tomlinson LJ concurring). A payment guarantee for the second installment under a shipbuilding contract, issued by a bank to the shipbuilder, clause 4 of which required payment on first written demand after the buyer had been in default for twenty days. The Court of Appeal reversed the trial judge and held it to be a demand guarantee, applying the presumption in Paget's Law of Banking, 11th edition (paragraphs 26-33), that an instrument which "(i) relates to an underlying transaction between the parties in different jurisdictions, (ii) is issued by a bank, (iii) contains an undertaking to pay 'on demand' ... and (iv) does not contain clauses excluding or limiting the defences available to a guarantor, it will almost always be construed as a demand guarantee" (caselaw.nationalarchives.gov.uk, read October 17, 2026).

10. Supreme Court Judgment No. 1451/2524 (1981). A term of the contract of suretyship requiring the creditor to notify the surety of its claim "within the period of validity of the contract of suretyship before it may exercise its right of claim under the contract of suretyship is a separate matter from the exercise of the right of claim under the contract of suretyship and is not an agreement shortening the period of prescription for bringing an action; the agreement is therefore enforceable" (the firm's translation). As the creditor sued without having submitted its claim within the period, the surety was not liable. (Related provisions as listed by the court's database: Civil and Commercial Code sections 170, 191, 204, 680 and 686, by the section numbers then in force.) (Thai text read on deka.supremecourt.or.th, October 17, 2026; summary and translation by the firm.)

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11. Uniform Rules for Demand Guarantees, 2010 Revision, ICC Publication No. 758 (URDG 758), International Chamber of Commerce, in force since July 1, 2010. The text is ICC copyright; this note summarizes the substance of the articles cited and does not quote them (2go.iccwbo.org, read October 17, 2026)., Article 15 (a): a demand must be supported by such other documents as the guarantee specifies and, in any event, by a statement by the beneficiary indicating in what respect the applicant is in breach of its obligations under the underlying relationship, unless the guarantee excludes that statement., Article 20: the guarantor has five business days following the day of presentation to examine the demand, and must pay when the demand complies., Article 23: on an "extend or pay" demand the guarantor may suspend payment for up to thirty calendar days to allow the parties to negotiate., Article 24: when the guarantor determines that a demand is not complying, it must send a single notice of rejection listing every discrepancy within five business days following the day of presentation, failing which it is precluded from claiming that the demand does not comply., Article 25: the guarantee terminates on expiry or on the expiry event; and article 26: where presentation is prevented by force majeure on the expiry date, the guarantee is extended for thirty calendar days., The substance of articles 15, 23 and 24 was checked against the analysis published by the law firm Reed Smith (reedsmith.com, read October 17, 2026).

12. Civil and Commercial Code, section 686, Thai text: "เมื่อลูกหนี้ผิดนัด ให้เจ้าหนี้มีหนังสือบอกกล่าวไปยังผู้ค้ำประกันภายในหกสิบวันนับแต่วันที่ลูกหนี้ผิดนัด และไม่ว่ากรณีจะเป็นประการใดเจ้าหนี้จะเรียกให้ผู้ค้ำประกันชำระหนี้ก่อนที่หนังสือบอกกล่าวจะไปถึงผู้ค้ำประกันมิได้ แต่ไม่ตัดสิทธิผู้ค้ำประกันที่จะชำระหนี้เมื่อหนี้ถึงกำหนดชำระ ในกรณีที่เจ้าหนี้มิได้มีหนังสือบอกกล่าวภายในกำหนดเวลาตามวรรคหนึ่ง ให้ผู้ค้ำประกันหลุดพ้นจากความรับผิดในดอกเบี้ยและค่าสินไหมทดแทน ตลอดจนค่าภาระติดพันอันเป็นอุปกรณ์แห่งหนี้รายนั้นบรรดาที่เกิดขึ้นภายหลังจากพ้นกำหนดเวลาตามวรรคหนึ่ง เมื่อเจ้าหนี้มีสิทธิเรียกให้ผู้ค้ำประกันชำระหนี้หรือผู้ค้ำประกันมีสิทธิชำระหนี้ได้ตามวรรคหนึ่ง ผู้ค้ำประกันอาจชำระหนี้ทั้งหมดหรือใช้สิทธิชำระหนี้ตามเงื่อนไขและวิธีการในการชำระหนี้ที่ลูกหนี้มีอยู่กับเจ้าหนี้ก่อนการผิดนัดชำระหนี้ ทั้งนี้ เฉพาะในส่วนที่ตนต้องรับผิดก็ได้ และให้นำความในมาตรา 701 วรรคสอง มาใช้บังคับโดยอนุโลม ในระหว่างที่ผู้ค้ำประกันชำระหนี้ตามเงื่อนไขและวิธีการในการชำระหนี้ของลูกหนี้ตามวรรคสาม เจ้าหนี้จะเรียกดอกเบี้ยเพิ่มขึ้นเพราะเหตุที่ลูกหนี้ผิดนัดในระหว่างนั้นมิได้ การชำระหนี้ของผู้ค้ำประกันตามมาตรานี้ ไม่กระทบกระเทือนสิทธิของผู้ค้ำประกันตามมาตรา 693" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.), As amended by the Act Amending the Civil and Commercial Code (No. 20) B.E. 2557 (2014).

13. Supreme Court Judgment No. 8012/2568 (2025). A contractor deposited two bank guarantees with the employer as security for the performance of a construction contract. The guarantees "contained only the condition for payment that defendant 2 receives written notice from defendant 1 that plaintiff 1 has breached the contract by failing to pay the penalty to defendant 1" (the firm's translation). When the employer made a written demand, the bank paid the full amount of THB 3,900,000. The Supreme Court held that "performance of the obligation on the conditions agreed was therefore performance in good faith." Although the Supreme Court in the earlier case later found that the contractor was not in breach, the employer's receipt of the money under the guarantees "was therefore a receipt without legal ground, and is undue enrichment that the recipient must return," and since the bank had debited the contractor's deposit account to satisfy the debt under the guarantees, the contractor was the person prejudiced, entitled to recover the money from the employer under section 406 of the Civil and Commercial Code. (Thai text read on deka.supremecourt.or.th, October 17, 2026; summary and translation by the firm.)

14. Civil and Commercial Code, section 406, Thai text: "บุคคลใดได้มาซึ่งทรัพย์สิ่งใดเพราะการที่บุคคลอีกคนหนึ่งกระทำเพื่อชำระหนี้ก็ดี หรือได้มาด้วยประการอื่นก็ดี โดยปราศจากมูลอันจะอ้างกฎหมายได้ และเป็นทางให้บุคคลอีกคนหนึ่งนั้นเสียเปรียบไซร้ ท่านว่าบุคคลนั้นจำต้องคืนทรัพย์ให้แก่เขา อนึ่ง การรับสภาพหนี้สินว่ามีอยู่หรือหาไม่นั้น ท่านก็ให้ถือว่าเป็นการกระทำเพื่อชำระหนี้ด้วย บทบัญญัติอันนี้ท่านให้ใช้บังคับตลอดถึงกรณีที่ได้ทรัพย์มาเพราะเหตุอย่างใดอย่างหนึ่งซึ่งมิได้มีได้เป็นขึ้น หรือเป็นเหตุที่ได้สิ้นสุดไปเสียก่อนแล้วนั้นด้วย" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.)

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15. Civil and Commercial Code, section 693, Thai text: “ผู้ค้ำประกันซึ่งได้ชำระหนี้แล้ว ย่อมมีสิทธิที่จะไล่เบี้ยเอาจากลูกหนี้ เพื่อต้นเงินกับดอกเบี้ยและเพื่อการที่ต้องสูญหายหรือเสียหายไปอย่างใด ๆ เพราะการค้ำประกันนั้น อนึ่ง ผู้ค้ำประกันย่อมเข้ารับช่วงสิทธิของเจ้าหนี้บรรดามีเหนือลูกหนี้ด้วย” (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.)

16. Supreme Court Judgment No. 6950/2551 (2008). The guarantor bank paid the Customs Department under its contract of suretyship, and the obligation for duty and surcharge was partly extinguished. The bank was subrogated to the rights of the creditor under section 693, paragraph two, read with section 229 (3) of the Civil and Commercial Code, and since the customs legislation prescribes no period for calling on a guarantor bank to pay, the State's claim was subject to the ten-year period under section 193/31. (Source as listed by the court's database: the Thai Bar.) (Thai text read on deka.supremecourt.or.th, October 17, 2026; summary and translation by the firm.)

17. Supreme Court Judgment No. 1792/2565 (2022). Where the parties did not treat the time for delivery of the work as of the essence, the employer could terminate the contract only after giving notice to perform within a reasonable period under section 387. As the contract was terminated without the contractor being liable to the employer, “the defendant therefore cannot use the two guarantees to call on the bank to be liable under the guarantees, and the defendant has only the duty to return the two guarantees to the two plaintiffs” (the firm's translation). (Related provisions as listed by the court's database: Civil and Commercial Code section 387 and section 391, paragraphs one and three.) (Thai text read on deka.supremecourt.or.th, October 17, 2026; summary and translation by the firm.)

18. Edward Owen Engineering Ltd v Barclays Bank International Ltd [1978] QB 159 (CA), Lord Denning MR, Browne LJ and Geoffrey Lane LJ. An English seller agreed to supply and erect greenhouses for a Libyan state agency. Barclays issued a performance guarantee for 10 percent of the contract price through the Libyan Umma Bank. When the buyer made a demand although it had not opened the letter of credit required by the contract, the Court of Appeal refused to restrain the bank from paying. Lord Denning said that a performance guarantee “stands on a similar footing to a letter of credit” and that “The bank must pay according to its guarantee, on demand, if so stipulated, without proof or conditions. The only exception is when there is a clear fraud of which the bank has notice” (page 171) (trans-lex.org, read October 17, 2026).

19. Uniform Commercial Code § 5-109 (Fraud and Forgery)., (a): where a presentation appears on its face strictly to comply but a required document is forged or materially fraudulent, or honor would facilitate a material fraud by the beneficiary on the issuer or applicant, the issuer must still honor the presentation of a person who gave value in good faith and without notice of the fraud, such as a confirmer that has paid; in other cases an issuer acting in good faith may honor or dishonor., (b): a court may enjoin the issuer from honoring only if it finds four conditions, including that the applicant “is more likely than not to succeed” on its claim of forgery or material fraud, and that persons who may be adversely affected are adequately protected. The section applies to standby letters of credit, which perform the function of demand guarantees in the United States (law.cornell.edu, read October 17, 2026).

20. BS Mount Sophia Pte Ltd v Join-Aim Pte Ltd [2012] SGCA 28 (May 9, 2012), Chao Hick Tin JA, Andrew Phang Boon Leong JA and V K Rajah JA. A developer made a partial call on a contractor's performance bond for liquidated damages for delay. The Singapore Court of Appeal upheld an injunction restraining the call until the arbitral tribunal had ruled, holding that “Unconscionability is a distinct and separate ground from fraud” (paragraph 23) and that “It is settled law that unconscionability, as distinct from fraud, is a ground upon which the court can grant an injunction” (paragraph 18); the applicant must show a strong prima facie case on the whole of the circumstances (elitigation.sg, read October 17, 2026).

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21. Supreme Court Judgment No. 6793/2543 (2000), decided on a letter of credit: the issuing bank "has the duty only to examine the documents for correctness and completeness under the conditions before paying under the letter of credit" (the firm's translation); a failure to pay without a reason acceptable in international trade would damage the credibility of the bank, and an order attaching the funds and prohibiting the issuing bank from paying "must therefore be considered with the greatest care" (Thai text read on deka.supremecourt.or.th, October 16, 2026; summary and translation by the firm.)

22. Supreme Court Judgment No. 6404/2560 (2017). The defendant presented to a hospital, as employer, a bank guarantee stating that the bank "agrees to bind itself unconditionally to give an irrevocable guarantee in the same manner as a principal debtor" (the firm's translation), when in fact the bank had not issued it. The employer, believing it, entered into the contract and paid the contract price. The Supreme Court held this to be the offense of fraud, and that the defendant's later performance of the work did not undo an offense already completed. (Thai text read on deka.supremecourt.or.th, October 17, 2026; summary and translation by the firm.)

23. Civil and Commercial Code, section 694, Thai text: "นอกจากข้อต่อสู้ซึ่งผู้ค้ำประกันมีต่อเจ้าหนี้นั้น ท่านว่าผู้ค้ำประกันยังอาจยกข้อต่อสู้ทั้งหลายซึ่งลูกหนี้มีต่อเจ้าหนี้ขึ้นต่อสู้ได้ด้วย" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.)

24. Civil and Commercial Code, section 688, Thai text: "เมื่อเจ้าหนี้ทวงให้ผู้ค้ำประกันชำระหนี้ ผู้ค้ำประกันจะขอให้เรียกลูกหนี้ชำระก่อนก็ได้ เว้นแต่ลูกหนี้จะถูกศาลพิพากษาให้เป็นคนล้มละลายเสียแล้ว หรือไม่ปรากฏว่าลูกหนี้ไปอยู่แห่งใดในพระราชอาณาเขต" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.), Section 689, Thai text: "ถึงแม้จะได้เรียกให้ลูกหนี้ชำระหนี้ดังกล่าวมาในมาตราก่อนนั้นแล้วก็ตาม ถ้าผู้ค้ำประกันพิสูจน์ได้ว่าลูกหนี้นั้นมีทางที่จะชำระหนี้ได้ และการที่จะบังคับให้ลูกหนี้ชำระหนี้นั้นจะไม่เป็นการยากไซร้ ท่านว่าเจ้าหนี้จะต้องบังคับการชำระหนี้รายนั้นเอาจากทรัพย์สินของลูกหนี้ก่อน", Section 690, Thai text: "ถ้าเจ้าหนี้มีทรัพย์ของลูกหนี้ยึดถือไว้เป็นประกันไซร้ เมื่อผู้ค้ำประกันร้องขอท่านว่าเจ้าหนี้จะต้องให้ชำระหนี้เอาจากทรัพย์ซึ่งเป็นประกันนั้นก่อน" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.)

25. Civil and Commercial Code, section 700, Thai text: "ถ้าค้ำประกันหนี้อันจะต้องชำระ ณ เวลามีกำหนดแน่นอนและเจ้าหนี้ยอมผ่อนเวลาให้แก่ลูกหนี้ ผู้ค้ำประกันย่อมหลุดพ้นจากความรับผิด เว้นแต่ผู้ค้ำประกันจะได้ตกลงด้วยในการผ่อนเวลานั้น ข้อตกลงที่ผู้ค้ำประกันทำไว้ล่วงหน้าก่อนเจ้าหนี้ผ่อนเวลาอันมีผลเป็นการยินยอมให้เจ้าหนี้ผ่อนเวลา ข้อตกลงนั้นใช้บังคับมิได้ ความในวรรคสอง มิให้ใช้บังคับแก่กรณีผู้ค้ำประกันซึ่งเป็นสถาบันการเงินหรือค้ำประกันเพื่อสินจ้างเป็นปกติธุระ" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.), Paragraphs one and two as amended by the Act Amending the Civil and Commercial Code (No. 20) B.E. 2557 (2014); paragraph three added by the Act Amending the Civil and Commercial Code (No. 21) B.E. 2558 (2015).

26. Civil and Commercial Code, section 697, Thai text: "ถ้าเพราะการกระทำอย่างใดอย่างหนึ่งของเจ้าหนี้เอง เป็นเหตุให้ผู้ค้ำประกันไม่อาจเข้ารับช่วงได้ทั้งหมดหรือแต่บางส่วนในสิทธิก็ดี จำนองก็ดี จำนำก็ดี และบุริมสิทธิอันได้ให้ไว้แก่เจ้าหนี้แต่ก่อนหรือในขณะทำสัญญาค้ำประกันเพื่อชำระหนี้นั้น ท่านว่าผู้ค้ำประกันย่อมหลุดพ้นจากความรับผิดเพียงเท่าที่ตนต้องเสียหายเพราะการนั้น" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.), Section 698, Thai text: "อันผู้ค้ำประกันย่อมหลุดพ้นจากความรับผิด ในขณะเมื่อหนี้ของลูกหนี้ระงับสิ้นไปไม่ว่าเพราะเหตุใด ๆ", Section 701, Thai text: "ผู้ค้ำ

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ประกันจะขอชำระหนี้แก่เจ้าหนี้ตั้งแต่เมื่อถึงกำหนดชำระก็ได้ ถ้าเจ้าหนี้ไม่ยอมรับชำระหนี้ ผู้ค้ำประกันก็เป็นอันหลุดพ้นจากความรับผิด" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.)

27. Civil and Commercial Code, section 193/30, Thai text: "อายุความนั้น ถ้าประมวลกฎหมายนี้หรือกฎหมายอื่นมิได้บัญญัติไว้โดยเฉพาะให้มีกำหนดสิบปี" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 16, 2026. The English wording in the article is the firm's translation; there is no official English text.)

28. Act on the Establishment of and Procedure for the Intellectual Property and International Trade Court B.E. 2539 (1996), section 7: "The Intellectual Property and International Trade Court has jurisdiction to try and adjudicate the following cases: ... (5) civil cases concerning the international sale or exchange of goods or financial instruments, the international provision of services, international carriage, insurance and other related juristic acts; (6) civil cases concerning letters of credit issued in connection with the activities in (5), the remittance of money into or out of the Kingdom, trust receipts, and guarantees relating to such activities; ..." Thai text: "(5) คดีแพ่งเกี่ยวกับการซื้อขาย แลกเปลี่ยนสินค้า หรือตราสารการเงินระหว่างประเทศ หรือการให้บริการระหว่างประเทศ การขนส่งระหว่างประเทศ การประกันภัยและนิติกรรมอื่นที่เกี่ยวเนื่อง (6) คดีแพ่งเกี่ยวกับเลตเตอร์ออฟเครดิตที่ออกเกี่ยวเนื่องกับกิจกรรมตาม (5) การส่งเงินเข้ามา ใน ราชอาณาจักร หรือ ส่งออก ไป นอกราชอาณาจักร ทรัสต์ รี ซีท รวมทั้ง การ ประกัน เกี่ยวกับ กิจการ ดังกล่าว" (Thai wording checked against two published sources, identical in every word, and against the jurisdiction page of the Central Intellectual Property and International Trade Court, ipitc.coj.go.th, read October 16, 2026. English wording is the firm's translation.)

29. Civil and Commercial Code, section 368, Thai text: "สัญญานั้นท่านให้ตีความไปตามความประสงค์ในทางสุจริต โดยพิเคราะห์ถึง ปกติ ประเพณี ด้วย" (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 16, 2026. The English wording in the article is the firm's translation; there is no official English text.), Section 5, Thai text: "ในการใช้สิทธิแห่งตนก็ดี ในการชำระหนี้ก็ดี บุคคลทุกคนต้องกระทำโดยสุจริต"; in English, In the exercise of rights and in the performance of obligations, every person must act in good faith. (Thai text from the Office of the Council of State revised edition, searchlaw.ocs.go.th, read October 17, 2026. The English wording in the article is the firm's translation; there is no official English text.)

30. United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (New York, 1995), United Nations Commission on International Trade Law (UNCITRAL), in force since January 1, 2000. The UNCITRAL status page lists eight States parties (Belarus, Ecuador, El Salvador, Gabon, Kuwait, Liberia, Panama and Tunisia); the United States has signed but not ratified, and Thailand is not a party (uncitral.un.org, read October 17, 2026).

31. Michelle Kelly-Louw and Rowan Lupton, "Emergence of Illegality in the Underlying Contract as an Exception to the Independence Principle of Demand Guarantees," Comparative and International Law Journal of Southern Africa 53(3) (2021), doi:10.25159/2522-3062/8077 (bibliographic data checked against Crossref). The article surveys the exceptions to the independence principle in English, Singapore and South African law.

32. Avery Wiener Katz, "An Economic Analysis of the Guaranty Contract," The University of Chicago Law Review 66(1) (1999) 47, doi:10.2307/1600386 (bibliographic data checked against Crossref).

33. Louis Kaplow, "Rules versus Standards: An Economic Analysis," Duke Law Journal 42(3) (1992) 557, doi: 10.2307/1372840 (bibliographic data checked against Crossref).

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