Legal System of Bank Guarantee Letter: Between International Agreements and the Absence of Syrian National Legislation

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Abstract:

The bank letter of guarantee is one of the most important pillars of banking work at the present time, as it is a legal innovation for a modern means within the framework of protecting trust and credit in the field of commercial work at the local and international levels. This study has dealt with the details of the nature of that letter, by stating what is meant by it and the goals for which it was legislated to achieve, as well as distinguishing between its different types and determining the legal nature that characterizes it, in addition to detailing the legal problems that the creation of such a guarantee was a reason for falling into, especially in terms of its independence as a legal system from the legal system of the basic contracts for which the letter itself exists in order to enhance guarantees for its implementation, which leads to the emergence of a network of legal relations that involve mutual obligations that may appear to the observer to be overlapping obligations in reality despite the independence of their sources. Therefore, the study has dealt with the details of those relations and the obligations resulting from each of them, in addition to addressing the cases of expiry of the bank letter of guarantee.

Keywords: *Letter of guarantee, Bank, Customer, Beneficiary, Tenders, Auctions.*

Introduction:

The banking sector has witnessed significant and rapid development, leading to a departure from traditional lending practices that simply involve providing a borrower with a specific sum. Banks have assumed the role of facilitating transactions for their clients, enabling them to enter into contracts they would not otherwise undertake, nor would they be able to persuade other parties to do so, without the bank's intervention as a guarantor or intermediary. The purpose of bank intervention in such transactions is to gain the trust that such involvement fosters among the parties involved.

When the bank's intervention takes the form of a letter of guarantee, it constitutes indirect lending. While this indirect lending can potentially transform into actual lending if the client defaults on their obligation to the beneficiary, this latter scenario is practically unlikely. Therefore, these transactions are considered indirect lending. Therefore, the letter of guarantee is in fact a departure from the traditional means that traders usually rely on in the field of commerce, as it is an independent legal system that stands on its own and is not linked to the basic contract for which the letter was created as a guarantee for its implementation.

The Problematic Nature of the Study:

Legal issues arise concerning the study of bank guarantees, specifically regarding their suitability as an alternative to traditional guarantees and their compatibility with the general principles of contracting as stipulated in general legal rules.

Furthermore, the independence of the guarantee from the underlying contract makes it difficult to balance the various reciprocal interests and obligations within both the guarantee and the underlying contract between the parties involved. This, in turn, makes it challenging to define and define the level of credit each party will enjoy in relation to the credit they will extend to the other party.

Adding to these problematic points is the absence of specific legal provisions regulating the use of guarantees in relevant Syrian legislation.

Study Objectives:

If the bank guarantee is justified by the need to protect commercial credit, then these same necessities compel researchers of the legal framework governing guarantees to delve into all the concepts inherent in this framework. Therefore, the aim of this study is to explore the nature of the guarantee and determine its legal character by defining its concept, outlining its characteristics and the conditions for its legal validity, examining its legal implications, and detailing the legal position of each of its parties and the parties to the underlying contract in relation to the other parties.

Methodology:
This study employs a descriptive-analytical approach, reviewing national and international legal texts that regulate letters of guarantee. Through inductive reasoning and analysis, we derive detailed provisions regarding letters of guarantee, following this outline:

Section 1: The Nature of a Bank Letter of Guarantee
Subsection 1: Definition and Types of a Letter of Guarantee
Subsection 2: Characteristics of a Bank Letter of Guarantee
Subsection 3: The Legal Nature of a Bank Letter of Guarantee

Section 2: Execution of a Letter of Guarantee
Subsection 1: Effects Arising from a Letter of Guarantee
Subsection 2: Expiration of a Letter of Guarantee

Section 1 - The Nature of a Bank Guarantee

Given that it is one of the most important services banks provide to their clients, and considering its reliance on commercial transactions as a guarantee, both locally and internationally, it is essential to understand its nature. This will be addressed here by detailing its definition and types in the first subsection, outlining its unique characteristics in the second subsection, and examining its legal nature in the third subsection.

Subsection 1 - Defining the Bank Guarantee and Its Types

The relatively recent adoption of the bank guarantee system has led to differing definitions, which have yet to result in a consensus among scholars or legislators. Despite its widespread use in commercial transactions, defining it still requires further discussion and refinement. Therefore, we will attempt—in what follows—to first define the bank guarantee and then explore its types.

Sub-Subsection 1 - Definition of a Letter of Guarantee:

The definition of a letter of guarantee is multifaceted. Some definitions are found at the national level in domestic legislation, others at the international level in international agreements and treaties regulating international trade, and still others in legal scholarship.

The Egyptian legislator defined a letter of guarantee in the Egyptian Commercial Law No. (17) of 1999 as: "A written undertaking issued by a bank at the request of a person called the orderer to pay a specific or determinable sum to another person called the beneficiary if requested to do so within the period specified in the letter, without regard to any objection[1]".

The UAE legislator defined it as: "An undertaking issued by the guarantor bank at the request of its client to pay a specific or determinable sum to another person without restriction or condition, unless the letter of guarantee is conditional, if requested to do so within the period specified in the letter. The purpose for which it was issued is clearly stated in the letter of guarantee."[2]

The Iraqi legislator also defined a letter of guarantee as: "A commitment issued by a bank at the request of one of its clients to pay a specific or determinable sum to another person without restriction or condition if requested to do so within the period specified in the letter. The letter also specifies the purpose for which it was issued[3]".

The Syrian legislator, however, did not provide a definition for a letter of guarantee, nor did it address it when regulating banking operations in the Commercial Law No. (33) of 2007, nor in the Private Banks Establishment Law No. (28) of 2001. Nevertheless, this does not preclude the permissibility of issuing a letter of guarantee, as the aforementioned letter essentially carries an intention similar to that of a suretyship contract, which the Syrian legislator defined as: "A contract by which a person guarantees the performance of an obligation by undertaking to the creditor to fulfill this obligation if the debtor himself fails to do so."[4]

In this regard, we see no impediment to applying the definition of guarantee found in the Civil Code to bank guarantees in terms of their purpose, not their legal nature. This is because the bank acts as a guarantor, even if this role does not have the literal meaning intended within the framework of a guarantee. Guaranteeing commercial debts has become one of the most common banking activities practiced by banks today, given the high level of reliability and security it offers.

Further supporting this view is the Syrian legislator's provision in the Commercial Code that the provisions of the Civil Code apply when the Commercial Code does not regulate a particular matter. Specifically, the Code states: "If this law is silent on a matter, the provisions of the Civil Code shall apply to commercial matters."[5]

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[1]Paragraph (a) of Article (355) of the Egyptian Commercial Law No. (17) of 1999.
[2] Article (414) of the UAE Commercial Transactions Law issued by Federal Decree Law No. (50) of 2022.
[3] Article (287) of the Iraqi Commercial Law No. (30) of 1984.
[4] Article (738) of the Syrian Civil Code No. (84) of 1948.
[5] Article (2) of the Syrian Commercial Law No. (33) of 2007.

At the international level, the Uniform Rules for Letters of Guarantee No. 458 of 1992 define a letter of guarantee as follows:
(A letter of guarantee on demand means any guarantee, instrument, or undertaking to pay, whatever its name or description, issued by a bank, insurance company, or any other entity or person (the guarantor), in which they undertake in writing to pay a specified sum of money upon presentation of evidence consistent with the terms of the guarantee, based on a written demand for payment and any other document or documents such as engineer's certificates, a court judgment, or an arbitration award, as stipulated in the guarantee).[1]
It is worth noting that the Uniform Rules issued by the International Chamber of Commerce in Paris apply to letters of guarantee in one of the following two cases[2]:
1- There is an express agreement to adopt these rules.

2- There is a banking custom that dictates the application of these rules. If such a custom exists, the judge shall apply it ex officio.
The United Nations Commission on International Trade Law (UNCITRAL) defined a letter of guarantee as follows: "For the purposes of this Convention, a letter of guarantee is an undertaking by a bank, other institution, or other person to pay the beneficiary a specified or determinable sum upon simple or documentary demand, in accordance with the terms of the undertaking or any documentary conditions that indicate or suggest the right to payment due to a breach of an obligation, or due to some other unforeseen event, or in payment of a borrowed or indebted sum, or in payment of any debt due from the principal[3]".
Generally, legal scholars in the field of commerce almost unanimously define a letter of guarantee as: "A written undertaking issued by a bank at the request of its client, in which it undertakes, in favor of that client—towards a third party, the beneficiary—to pay a specified sum if the beneficiary demands it within a period specified in the letter."[4]
Based on the aforementioned definitions, and by examining the content and essence of a bank guarantee letter, we can summarize its

[1] Article (2) of Booklet No. (458) issued by the International Chamber of Commerce in Paris 1999, which includes the uniform rules for bank guarantee letters.
[2] Article (1) of Booklet No. (458) issued by the International Chamber of Commerce in Paris 1999, which includes the Uniform Rules for Bank Guarantee Letters.
[3] Paragraph (1) of Article (2) of the United Nations Convention on International Trade Law (UNCITRAL) of 1995.
[4] Awad, Ali Gamal El-Din, (2000), Bank Guarantee Letters in the Egyptian Judiciary According to the New Commercial Law and International Rules, Dar Al-Nahda Al-Arabiya, Cairo, p. 5

definition as: “A final written undertaking issued by a bank at the request of a client called the applicant, in favor of another person called the beneficiary, as a guarantee for the execution of a specific obligation, within a specific period, in return for a commission, on the basis of which the bank undertakes to pay the beneficiary, upon first request or upon the occurrence of a conditional event, a specific or determinable amount during the period of validity of the letter, without regard to any objection from the client or any other party”.

Sub-Subsection 2 - Types of Letters of Guarantee:

Credit is one of the most important requirements for banking operations. The expansion of economic and commercial activities has necessitated the pursuit of financing, which in turn requires fostering trust among stakeholders. Therefore, bank letters of guarantee have played a crucial role in strengthening confidence in the financing sector. These letters have diversified to an almost limitless extent, reflecting the variety of commercial and economic transactions. However, this diversity does not negate the fact that all forms and types of letters of guarantee aim to achieve the same goal: providing and strengthening trust among stakeholders[1].

Generally, the types of guarantees vary depending on the perspective from which they are viewed. Among the most prominent classifications of letters of guarantee are those based on their purpose, coverage, and the issuing authority, which we will discuss as follows:

First - Types of Letters of Guarantee Based on Purpose:

Letters of guarantee vary depending on their purpose or objective. It should be noted that a letter may be issued for a single, specific purpose, or it may be issued for multiple purposes simultaneously. Therefore, it is necessary to examine the most important types of these letters based on their purpose, as follows:

1- Customs Letter of Guarantee:

All countries impose customs duties on both exported and imported goods to achieve several objectives, the most important of which are to bolster public revenues and encourage local production in specific sectors by increasing customs duties on foreign imports in similar sectors. The need for a letter of guarantee arises in this context, given the nature of some goods that require expedited clearance and transport to the local or international market. In such cases,

[1] - Al-Bashir, Uday, (2019), The Bank Guarantee Letter and its Adaptation in Islamic Banking Jurisprudence, article dated 3/9/2019, on the website: https://inter-droitetaffaires.com

safeguarding the rights of the state treasury may necessitate the use of a letter of guarantee.[1]

2- Tender and Auction Guarantee Letters:

A guarantee letter is issued in tenders and auctions at the request of the tendering entity or the auction organizer. This strengthens their guarantee to secure their rights in case the bidder fails to fulfill their obligations.

The guarantee in tenders and auctions takes two forms. The first is called the preliminary guarantee letter, which is attached to the bid submitted in the tender or auction. This letter confirms the bidder's good faith and seriousness, and their intention not to withdraw. If the bid or tender is awarded to the winning bidder, they must proceed to the second form of guarantee in this context, which is the final guarantee letter.[2] If the conditions of the original contract are not met, the party for whom the guarantee was issued to protect their rights has the right to claim the value of the guarantee letter from the issuing bank.

Second - Types of Letters of Guarantee Based on Coverage:

Letters of guarantee are divided according to this criterion into covered and uncovered letters, as detailed below:

1- Covered Letters of Guarantee:

These are letters in which the issuing bank requires its client to pay the value of the letter of guarantee, i.e., the guaranteed amount in full or in part. This depends on the bank's confidence in the client, based on a credit assessment. The full or partial amount of the guarantee is deposited into a special account called the "Letter of Guarantee Reserve".

2- Uncovered Letters of Guarantee:

These are letters in which the issuing bank does not require the client to submit any bid, as in the case of a large, reputable company.

Third - Types of Letters of Guarantee Based on the Issuing Bank's Domicile:

Letters of guarantee are divided, according to the issuing bank's domicile, into domestic and foreign letters of guarantee:

[1] Al-Shoubaki, Talal Ali Suleiman, (2015), The Impact of Fraud on the Obligation of the Bank Issuing the Letter of Guarantee, Master's Thesis, Faculty of Law, Middle East University, p. 26

[2] Surkhoh, Yaqoub Yousef, (1993), Bank Guarantee Letter in Kuwaiti Commercial Law, Journal of Law, Volume (17), Issue (3), p. 18.

1- Domestic Letters of Guarantee:
These are issued by local banks operating within the same country. A domestic letter of guarantee is issued by a local bank in favor of the beneficiary at the request of the principal, both of whom reside in the same country.[1]
2**- Foreign (External) Letters of Guarantee:**
These are letters of guarantee that involve a non-resident party, whether a natural or legal person. Consequently, the contractual relationship is not limited to its internal elements but includes an external party. This process typically occurs when the issuer of the letter of guarantee is located in a country other than the beneficiary's country, and the contract between them stipulates the issuance of a letter of guarantee for a specific amount. In this case, the issuer approaches their bank (in the foreign country) and requests it to issue a letter of guarantee in favor of the beneficiary in the issuer's country.
Because the creditworthiness of this bank is unknown to the party requesting the guarantee, and due to the distance, difficulties, and differing laws in both countries, the beneficiary requests that the issuing bank be located in their own country, not the issuer's. Therefore, the client's foreign bank requests a local bank in the beneficiary's country to participate, so that the foreign bank issues a letter of guarantee in the client's name. In this situation, it is not apparent to an observer that the letter of guarantee issued by the local bank in favor of the beneficiary is actually issued by the foreign bank in favor of the local bank (the counter-letter of guarantee). In turn, the local bank issues a letter of guarantee in the name of the client in favor of the beneficiary against or with the guarantee of (the counter-letter of guarantee) issued in favor of the local bank by the foreign bank in the beneficiary’s country, where the terms of the second letter of guarantee issued in the name of the client are almost identical to the terms of the counter-letter of guarantee, except that an increase in the period may cause an increase in the value of the guarantee.
Subsection 2 – Characteristics of a bank guarantee (its conditions):
Banking custom and judicial precedent have established a set of essential characteristics or conditions that must be met for a guarantee to be considered valid. These characteristics or conditions can be summarized as follows:

[1] They cried out to him, Yaqub Yusuf, the previous reference, p. 69.

First – The independence of the bank's obligation:

The bank's obligation within the framework of a guarantee is considered a fulfilled undertaking.[1] The independence of the bank's obligation within this framework means the separation or independence of the bank's obligation from any relationship other than the bank's relationship with the beneficiary of the guarantee. When the bank issues a guarantee in favor of its client's creditor, it undertakes an undertaking unrelated to the circumstances of the client's obligation. Its undertaking is disconnected from how the debtor client fulfills their obligation, such that it does not guarantee the client's proper performance of their obligation to their creditors. The bank does not monitor this performance, nor does it undertake to fulfill the debtor client's obligation on their behalf. Furthermore, its undertaking does not modify its commitment to pay compensation to the beneficiary creditor for the client's failure or poor performance of their obligation, nor does it pay any outstanding debt. Otherwise, the bank would intervene. It is simply a guarantee for the debtor according to the provisions of civil law.

Therefore, a letter of guarantee is based on the principle of the bank's obligation being independent of:

1- The relationship between the guaranteeing bank and its client (the instructing bank): The bank is obligated to pay upon the beneficiary's first demand, regardless of any objection from the instructing client, even if the instructing client issues a non-payment order. In other words, the bank cannot use any flaw in its relationship with its client as an excuse for not paying a specific amount, which is considered a personal debt that it must pay to the beneficiary upon demand. According to the Uniform Rules for Letters of Guarantee, guarantees are by their nature separate from the contract or contracts or tender conditions upon which they are based. Guarantors are not bound in any way by this contract or these contracts or tender conditions, even if they are referenced in the guarantee. Rather, the guarantor, within the scope of any guarantee, is obligated to pay the amount or amounts stipulated in the guarantee upon submission of a written payment request and any other documents specified in the guarantee that, at first glance, appear to conform to the terms of the guarantee.[2]

[1] Akoush, Siham, (2018), The independence of the international bank guarantee letter from the underlying contract, Journal of Human Sciences, Volume (29), Issue (2), Page 346.
[2] Awad, Ali Jamal Al-Din, previous reference, p. 141.

2- The Client-Beneficiary Relationship:

In a letter of guarantee, the bank's obligation is not contingent upon the debtor's (client's) obligation in terms of its validity or invalidity. The bank cannot be released from its obligation based on the original contract between the client and the beneficiary, even if the original contract is canceled, invalidated, or rescinded. While the bank's obligation to the beneficiary is issued in execution of the contract concluded between the bank and its client, the bank's relationship with the beneficiary is separate and independent from its relationship with its client, governed solely by the letter of guarantee. The bank is bound by it unilaterally and definitively upon its issuance and notification to the beneficiary. From that moment, the beneficiary's right is established. The bank is not considered an agent of the payer; its obligation is independent and original, arising solely from the letter of guarantee. What the client provides to the bank to cover the letter is merely an execution and security of the relationship between them, and the beneficiary has no involvement in it.

The bank's payment is considered valid if the beneficiary's claim is received during the validity period of the letter of guarantee. The bank then has the right to recourse against its client for the amount paid, even if payment is made after the letter's expiry date. This is because the determining factor is the date the claim for payment is received, regardless of the payment date itself. If the client believes they do not owe the beneficiary, or that their debt does not justify the amount the beneficiary will receive from the letter, the client's recourse is to take legal action against the beneficiary based on their contractual relationship, not to issue an order to the bank to stop payment.

Since the bank's relationship with the beneficiary is governed solely by the letter of guarantee, it defines the bank's obligations and the terms under which it pays. The bank is bound only by the terms of the letter.

If a letter of guarantee was agreed upon with specific conditions, but is issued with different conditions, the bank's obligation is based on the terms stipulated in the letter, not on any conditions agreed upon between the beneficiary or the bank. The bank may raise defenses against the beneficiary of the letter of guarantee based on their personal relationship, such as when the bank has a debt owed by the beneficiary and the beneficiary requests payment of the letter, in which case the value is credited to the bank's account and a reverse entry is made.

The bank may also refuse payment to the beneficiary due to fraud committed by him, However, for such refusal to occur, two conditions must be met:

1- The fraud must be conclusively proven before a judge.

2- The fraud must violate the terms and conditions of the letter of guarantee.

A letter of guarantee is independent; therefore, it is insufficient to prove fraud in the underlying contract. In such a case, the bank is obligated to refuse payment, otherwise he will be held accountable to the one who gave the order.

Second – The Self-Sufficiency of the Letter of Guarantee:

This is a condition for a letter issued by a bank to be considered a letter of guarantee in the strict sense. It means that the content, amount, or due date of the obligation stipulated therein should not depend on any element external to the letter. The function of a letter of guarantee is to replace cash; therefore, it must be self-sufficient to fulfill this function.

Accordingly, the courts deny the validity of a letter of guarantee if it fails to perform its function independently, due to its lack of self-sufficiency. This is because the due date of the stipulated amount is linked to an event external to the letter, even if that event is the non-performance of the contract referenced therein.

Third – The Undertaking in a Letter of Guarantee is Due Immediately Upon Issuance: The principle is that the due date is immediate, a characteristic essential to the function of a letter of guarantee. This is because the creditor who accepts and agrees to it in place of immediate cash requires that their right be due immediately upon issuance of the letter. However, this does not preclude the letter's execution from being contingent upon an event pertaining to the beneficiary.

According to the Uniform Rules for Letters of Guarantee, all guarantees are effective immediately unless expressly stipulated in the letter that they take effect from a later date or are subject to a specific condition[1].

Fourth – The Personal Nature of the Letter of Guarantee:

The beneficiary's right to make a claim under the letter of guarantee is non-waivable unless expressly stipulated in the guarantee agreement or any amendment thereto. However, this does not affect the

[1] Article (6) of Booklet No. (458) issued by the International Chamber of Commerce in Paris 1999, which includes the uniform rules for bank guarantee letters.

beneficiary's right to assign any amounts that may accrue to them or become their right under the guarantee.

Furthermore, the beneficiary's right under the letter of guarantee is a personal right, meaning that they alone have the authority to use it. Consequently:

1- The beneficiary may not assign the letter of guarantee.

2- It may not be transferred or transferred from the principal to another principal or from the beneficiary to a third party. If the beneficiary dies, their heirs assume their position. If the company's legal form changes in a way that alters its legal personality, the guarantee cannot be enforced by the bank unless the parties have agreed in the letter of guarantee to address such events beforehand.

3- The bank undertakes to pay a specific person, namely the party contracting with the bank's client who requested the letter of guarantee.

4- The letter of guarantee is personal and cannot be transferred. It is not a negotiable instrument; that is, it cannot be endorsed to a third party or discounted at the bank, although the bank may be authorized to collect it.

5- The letter of guarantee is personal and cannot be assigned in any way, not even as a consequence of assigning the original contractual element. This is because it represents a direct personal relationship and has no intrinsic value. Therefore, its holder has no right simply by virtue of possession, and the bank may only pay its value to the beneficiary or their agent. Furthermore, the bank will refuse payment if the claimant is not the beneficiary, even if they hold the letter of guarantee.

6- The beneficiary's creditors may not exercise their right on their behalf, nor may they compel the beneficiary to exercise it, nor may they seize its value held by the bank before the beneficiary's request. It is merely a promise or obligation on the bank's part and cannot be seized.[1] Upon the beneficiary's request, a right is established for them against the bank, and their creditors may then seize it[2].

Subsection 3 – The legal nature of a bank guarantee letter:

To understand the nature of a bank's obligation in a guarantee letter, it is first necessary to distinguish it from the nature of the obligation in a surety contract. This is because the basis of a bank guarantee is the ordinary surety contract regulated by civil law. If the specific

[1] Al-Otaibi, Bader Saad, (2020), The legal regulation of letters of guarantee in the field of public tenders, Journal of the International College of Law, Eighth Year, Issue (2), Serial Number (30), p. 135.

[2] Article (4) of Booklet No. (458) issued by the International Chamber of Commerce in Paris 1999, which includes the uniform rules for bank guarantee letters.

conditions established by banking custom and settled by judicial precedent are not met in the guarantee, then the provisions of surety in civil law must be applied.

As mentioned previously in the definition of a guarantee letter, a surety contract is a contract whereby a person guarantees the performance of an obligation by undertaking to the creditor to fulfill this obligation if the debtor himself fails to do so. If the guaranteed obligation is not the payment of a sum of money, then the guarantor guarantees, in the event of the debtor's default, any compensation that may be awarded against the original debtor. In contrast, a guarantee letter is a specific undertaking by the guarantor, resulting from his unilateral commitment to pay a sum of money upon the beneficiary's request; it is not a contract.

Furthermore, the guarantor's obligation in a guarantee is a personal obligation specific to the guarantor, existing alongside the debtor's obligation, but independent of it. This means that its fate may differ from that of the guaranteed party's obligation, as it may be void without invalidating or extinguishing the debtor's obligation.

Nevertheless, it is dependent, meaning it is subordinate to the original debtor's obligation, its existence and validity linked to it, its maximum limit determined by it, and its due date and extinction following it. Therefore, a guarantee is only valid if the guarantor's obligation is valid.

The guarantor may raise against the creditor all defenses available to the debtor that relate to the debt. If the debt has been extinguished for any reason, the guarantor cannot be required to pay it, even if the debtor does not assert the extinguishment of the debt, or even if the debtor waives this assertion. This is the core difference between a guarantee and a letter of guarantee, which is fundamentally based on the principle of the bank's independent obligation.

Opinions differ regarding the nature of the relationship between the guaranteeing bank and the beneficiary, a relationship that arises from the bank's letter of guarantee. Some consider the bank's obligation a unilateral contract binding only on the bank, based on the agreement between the bank and the beneficiary. The bank's obligation is fulfilled by sending the letter of guarantee to the beneficiary, and its formation requires acceptance from the beneficiary. This acceptance is not subject to any specific form but is inferred from the beneficiary's silence upon receiving and being aware of the letter of guarantee and their failure to object to any of its elements. This constitutes implicit acceptance.

However, the prevailing opinion considers the bank's obligation arising from the letter of guarantee to the beneficiary to be an obligation arising from its unilateral will. The reasoning behind this is that the beneficiary's acceptance of the letter is not required; the bank's obligation becomes absolute and final as soon as it issues the letter of guarantee and it reaches the beneficiary's attention.

This does not mean that the beneficiary's acceptance is required for the offer issued by the bank to be valid. Rather, the requirement that the beneficiary be aware of the offer establishes the beneficiary's right to the guarantee. The bank can retract its offer as long as the letter of guarantee has not reached the beneficiary. Once the letter reaches the beneficiary, the beneficiary then has a final right against the bank.

It is important to note in this regard that a bank guarantee is considered a commercial act, at least from the bank's perspective, since the issuer is a bank. Banking activities are inherently commercial, even if performed only once, and even if for the benefit of a non-merchant[1].

Section 2 - Execution of the Letter of Guarantee

If a letter of guarantee is issued correctly from a legal standpoint, several legal consequences ensue, and consequently, numerous legal relationships arise. To elaborate on these consequences, it is necessary to address their content in detail by examining each of these relationships in the first subsection, and to discuss the termination of the guarantee in the second subsection.

Subsection 1 - Effects Arising from the Letter of Guarantee

After the conclusion of the original contract between the beneficiary and the client, and after agreement on all essential matters, the client (the instructing party) approaches the bank requesting it to issue a bank guarantee in favor of the instructing party in the original contract. The guarantor is not obligated to issue the letter of guarantee unless it has agreed to do so. Therefore, the bank has the discretion to issue this undertaking and has the right to refuse the client's request, unless it has previously committed to doing so to the client under a contract concluded between them.[2]

In the absence of such a contract, the client enters into a contract with the guarantor, whereby the guarantor undertakes to issue the

[1] Yamalki, Akram, (2009), Commercial Papers and Banking Operations, Edition (1), Dar Al Thaqafa for Publishing and Distribution, Amman, p. 326.

[2] Article (7) of Booklet No. (458) issued by the International Chamber of Commerce in Paris 1999, which includes the uniform rules for bank guarantee letters.

guarantee. This contract, which governs the client's relationship with the bank, is called a "credit-secured" contract. In this contract, the client's request constitutes an offer requiring acceptance from the bank. Upon their acceptance, obligations arise for both parties. It should be noted that this relationship is subject to the principle of freedom of contract unless it violates a legal obligation.

First - The Bank's Obligations to the Client:

1- Providing Advice and Guidance to the Client: This means informing the client of all the risks associated with this type of obligation and drawing their attention to the difference between it and a guarantee. The bank's failure to fulfill this obligation constitutes a breach of duty, giving the client the right to demand the annulment of the bank's obligation based on its silence, which constitutes fraud[1].

It is worth noting in this regard that the obligation to provide advice may be narrow or broad depending on the nature of the individual, the type of service requested, and the specific circumstances.

2- The obligation to issue the bank guarantee: This is in accordance with the agreement concluded with its client and within the specified timeframe. If the bank becomes unable to execute the instructions of the principal or the issuing party, these instructions become invalid, and the client must be notified without delay, and a new instruction must be issued without delay.

3- The obligation to notify the client before payment: This obligation has generated considerable debate, as the bank's obligation is independent, and the requirement to notify the client does not negate this independence. However, both the UNCITRAL Convention and the Uniform Rules for Letters of Guarantee (458) of 1992 stipulate the necessity of notifying the principal if the beneficiary demands payment.

4- The obligation to refrain from payment in cases of fraud or arbitrary demands:

In this context, the bank is held accountable as a responsible professional. This requires conclusive evidence of fraud on the part of the bank, and the fraud must pertain to the conditions for executing the letter of guarantee, not the underlying relationship. For example, a beneficiary's assertion that the transaction will not be executed, when this is clearly false and was a condition of the letter, and the bank possesses evidence of its falsity.

5- The obligation to return the bid in case of non-compliance.

[1] Muhammad, Badr Zakaria Bayoumi, (2019), The nature and parties of bank guarantee letters and the procedures and conditions for issuing them, The Legal Journal, Issue (2537-0758), p. 3628.

6- Examination of the documents required by the letter of guarantee: This constitutes an obligation to ensure the documents conform to the conditions specified in the letter of guarantee, and an obligation to exercise due diligence to ensure the documents are free from fraud or forgery (the diligence of an experienced banker.)

Second - The client's obligations to the bank:

The letter of guarantee creates obligations for the client towards the bank. These obligations can be summarized as follows:

1- The obligation to cover the letter of guarantee:

This obligation depends on the bank's stance towards the client and the (bid of guarantee).

2- Obligation to Pay Commissions and Interest:

Commissions are due as soon as contracts are signed between the client and the bank, even before the bank fulfills its obligations to the beneficiary and before issuing the letter of guarantee. This is because they are considered payment for the banking service provided by the bank and are calculated according to the period during which the letter of guarantee remains valid. The bank has the right to refuse to issue the letter of guarantee until the commission is paid. However, if the bank has already sent it to the beneficiary, it cannot retract it based on non-payment of the commission, as it has become legally bound by it.

The bank must also pay the agreed-upon interest, according to custom or the legal rate, starting from the time the amount is paid to the beneficiary. If the beneficiary does not claim the value of the letter, the bank is not entitled to any interest, even if it issued the letter without collateral and froze the funds, based on the principle of bearing the risks of the profession.

Sometimes, the beneficiary may place a lien on the letter of guarantee, despite having the right to claim its value, to avoid accruing interest on the amount if they are not entitled to it. If the beneficiary claims the guaranteed amount and receives it unjustly, the client (the issuing party) resorts to the courts based on their original relationship. If the court rules that the beneficiary is not entitled to the letter of guarantee, they are obligated to return the amount plus accrued interest from the date of receipt and pay compensation if any damages were caused.

In other cases, when the beneficiary demands payment from the bank, and the client is unable to instruct the bank to stop payment, they obtain a court order to seize the value of the letter of guarantee held by the bank until a final judgment is issued regarding the dispute. In such a case, the bank is obligated to execute the judgment and refrain from payment, without being liable to the beneficiary for this.

3- The client's obligation not to object to payment:

This obligation stems from their relationship with the beneficiary, as the bank's obligation is independent of it. The client is obligated not to object to or obstruct the bank's payment if the beneficiary's claim is valid. However, the client may object to the bank's conduct in paying the beneficiary if the bank violates a condition of the letter of guarantee or fails to provide any of the required documents.

4- The obligation to pay the value of the letter of guarantee unless the guarantor violates the terms of the letter of guarantee, which specifies how the guarantee obligation will be fulfilled.

Thirdly - The bank's relationship with the beneficiary:

The bank's obligation to provide the guarantee arises from its relationship with the applicant,[1] but its obligation to pay the beneficiary arises from the letter of guarantee.

Subsection 2 – Expiration of the Letter of Guarantee

A letter of guarantee expires upon fulfillment of the conditions specified in the letter by the beneficiary. It also expires if no claim is made, before the expiry date, or before the occurrence of the event that would trigger its expiry.

The bank's obligation automatically lapses upon the lapse of this period without a claim, meaning the bank is released and the collateral provided by the client is released. The return of the letter itself to the bank is not required for its release, as the letter has no intrinsic value.

A letter of guarantee also expires before its stipulated term by release, meaning it expires if the beneficiary waives their right to it. This requires either returning the letter to the bank or the beneficiary releasing the bank in writing from their obligation under the letter of guarantee, regardless of whether it has been returned.

If no term is specified for the letter, but an event is mentioned that would trigger its expiry, and the occurrence of that event is not proven, then the letter of guarantee expires by prescription. Finally, a letter of guarantee can lapse due to impossibility of performance. Impossibility of performance refers to the inability of the client to fulfill their obligation to the beneficiary, which was the reason for issuing the letter of guarantee. The impossibility of fulfilling the client's

[1] Omar, Suleiman Ramadan Muhammad, (2009), The Legal System of Bank Guarantee Letters, Edition (1), Dar Al-Fikr Al-Jami'i, Alexandria, p. 321.

obligation to the beneficiary does not affect the bank's obligation under an unconditional letter of guarantee issued by the bank. If this impossibility is due to the debtor's negligence, the beneficiary has the right to claim the value of the letter of guarantee[1].

However, if the impossibility is due to an external cause beyond the debtor's control, or to an act of the creditor, its effect on the bank's obligation under the letter of guarantee differs depending on whether the letter is conditional or unconditional. In the case of a conditional letter of guarantee, the bank's obligation lapses due to the impossibility of the client's obligation, because the condition upon which the letter is contingent becomes impossible to fulfill due to the external cause or the creditor's act. In the case of an unconditional letter of guarantee, the bank's obligation is not affected by the impossibility of performance, whether it is due to an external cause or the creditor's act.

Conclusion:

Thus, this modest study has addressed the legal framework governing bank guarantees and discussed the problematic details of their application in commercial transactions. As previously mentioned, the bank guarantee is a form of guarantee that emerged within commercial custom but has not yet received the necessary legislative regulation at the national level in general, and specifically within Syrian commercial legislation. The study concluded with several results that can serve as a basis for numerous proposals, as follows:

First - Results:

-The Syrian legislator has not stipulated regulations governing bank guarantees, either within the Commercial Code or within specific commercial legislation.

-Arab commercial legislation, in general, has not included detailed provisions regulating the use of letters of guarantee, despite providing a definition that legally permits their use. While this may be justified by the reliance of Arab legislators on international agreements regulating letters of guarantee and on prevailing customs in this regard, such reliance is not applicable to the Syrian legal context. The investment and commercial environment in Syria, particularly concerning banking transactions, has been stagnant for over a decade, making it desperately in need of clarity and a legal framework to foster confidence among investors and clients.

[1] Alam El-Din, Mohi El-Din Ismail, (2001), Encyclopedia of Banking Operations, Part One, Golden Eagle Printing, Cairo, p. 819.

-Although similar in concept to other legal systems, letters of guarantee possess a distinct legal nature as a banking guarantee, primarily established by custom.
- Letters of guarantee are based on the principle of the independence of the obligations within their framework and the underlying contract from one another.

Second – Recommendations

- The Syrian legislature must undertake the task of developing a detailed legal framework governing letters of guarantee in accordance with local and international trade regulations. This is especially crucial as the country is poised to enter a reconstruction phase and launch investments, the legal environment of which cannot be fully realized without comprehensive legislation regulating banking transactions, including letters of guarantee.

- Any future Syrian law regulating the legal provisions of bank letters of guarantee should include a clear and detailed description of the obligations arising from the issuance of such a letter for each party.
- To avoid any legislative vacuum, the Syrian legislature should refer to relevant international agreements in all matters not covered by national legislation governing letters of guarantee.

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