



Article

The Comparative Study of International Conventional Frauds in Bank Guarantees

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Abstract: Bank guarantees are essential financial instruments used throughout the world to mitigate risks associated with cross-border trade and investment, including performance, payment and compliance. However, due to their complexity, bank guarantees are vulnerable to sophisticated forms of fraud including document forgery, misrepresentation as legitimate guarantees and misuse of the terms of bank guarantees. A review of trends in alleged banking fraud since 2020 in India indicates a decline in the number of alleged frauds reported by both public and private sector banks. This decline is attributed to an increased focus on measures to prevent fraud, such as independent oversight of loans, increased emphasis on legal actions to support fraud prosecution. While the volume of reported frauds from both public and private banks are similar, private banks have an increased volume of reported book manipulation and property conversion related alleged frauds compared to public banks. The research paper succinctly shines a spotlight on several ‘landmark’ decisions with similar exceptions to international frauds associated with Bank Guarantees in India, USA, UK, Singapore, and Australia through a comparative study of said countries, demonstrating that while there are common exceptions to fraud that each has in the form of Forgery, Misrepresentation, there are also subtle differences in the jurisdiction of the laws established by each court. This has allowed to establish a pattern of vulnerabilities regarding Bank Guarantees that exist globally, with the recommendations of applicable and consistent safeguards including the implementation of stricter ‘due diligence’ and ‘cross-border’ cooperation Between jurisdictions to maintain the integrity and confidence in the international financial system.

Keywords: bank guarantees, forgery, financial fraud, credit insurance.

INTRODUCTION

In international financial transactions, bank guarantees are significant means of protection for a variety of transactions and contracts. Bank guarantees are commonly used for the purpose of security of performance, payment, or service and enhance confidence between global parties. However, as transactions and the associated fraud threats become increasingly sophisticated in nature, fraud schemes are equally sophisticated to exploit the system. International conventional frauds in bank guarantees present a significant threat to the integrity of the system because they compromise the inherent protection offered in a bank guarantee.

A bank guarantee is basically an undertaking from a

bank to pay the liability of a debtor if that debtor does not meet its contractual obligations. This undertaking is typically drafted in the form of a written document and seeks to engender wider comfort between principals who otherwise would be loath to transact owing to perceived risks. Bank guarantees abound in international trade transactions, building contracts, and other large-scale financial outflow arenas. Bank guarantees provide comfort to the beneficiaries that they shall be remunerated or obtain performance accordingly and thus ease out smoother and better protected international transactions.

Despite the role of the bank guarantees to maintain trust and security, the former remain susceptible to numerous frauds. The frauds common in the case

typically involve fraudulent practices that exploit the inherent trust in the financial instrument. The frauds typically fall into numerous classes including document forgery, fraudulent misrepresentations, and abuse of the words used in the guarantee.

Document forgery is also one of the most common frauds involving bank guarantees. The fraudsters generally forge or tamper with the documents of guarantees to create a semblance of validity. By imitating the appearance and content of original guarantees, fraudsters delude the beneficiaries that they have a genuine guarantee from a reputable bank. The fraudulent documents could be very sophisticated and generally require the services of a trained forensic expert to detect. The impact of document forgery may be serious and entails extreme financial losses for the persons involved and discredit the banking organizations.

Fraudulent misrepresentation refers to instances where a fraudulent party has misrepresented its intentions or capabilities for the purpose of obtaining a bank guarantee (e.g., a company might allege alleged compliance with given standards, or falsely possess a validated contract in order to obtain a guarantee they otherwise do not qualify for). After the guarantee is issued, the fraudulent party then defaults without making payment and the beneficiary is unable to make a claim without facing legal hurdles, while the bank is bound to make a payment it should not have to make. Fraud of this nature is usually difficult to prevent because it involves elaborate schemes created specifically to exploit the inaccuracies in the verification process designed to issue guarantees on behalf of the financial institution. Another common form of fraud is abusive use of guarantee terms. This happens when fraudsters are able to take advantage of ambiguities or inconsistencies within the guarantee's terms and conditions. Fraudsters may, for example, change the terms to extend the duration of a guarantee or amend the terms to expand the scope of coverage for their own benefit. At times, fraudsters may also use guarantees in ways that were really not intended. This may include using guarantees to benefit parties outside the intent of the guarantee itself. In all of these instances, abusive use of guarantees only serves to diminish the value of the guarantee itself, and can lead to substantial economic personal losses for parties involved.

Impacts of common frauds on banking guarantees extend beyond just an immediate financial loss. The frauds can erode confidence in a financial institution, disrupt international trade, and undermine the financial system as a whole. The implications of such frauds most often have the effect of reinforcing security and regulation in efforts to inhibit future

examples. Banks and regulating entities may introduce stricter verification processes, develop fraud detection technology further, and push for greater openness in the granting and management of warranties.

Even as bank guarantees offer paramount functions to international finance, they remain vulnerable to fraud. Classical frauds involving the guarantees pose serious risks to financial stability and integrity. Understanding the nature of the frauds and the use of robust preventive measures ensures the security of the efficacy and integrity of bank guarantees. With the dynamisms that exist in financial dealings, the same applies to the measures to combat fraud so that the benefit that accrues from the usage of bank guarantees need not place the security of global financial systems in jeopardy. The use of bank guarantees is extensive, and the volume of transactions that utilize or are backed by bank guarantees continues to grow. It is reasonable to assume that most of today's major transactions around the world rely upon some form of Bank Guarantee. In addition, within the borders of numerous countries Bank Guarantees are used for various commercial transactions. The rapid growth in the use of Bank Guarantees reflects the versatility in their application, as they can act as a back-up to virtually any transaction or business activity, regardless of whether that transaction is financial in nature, or has nothing to do with finance at all. Most of the major industries utilize them for purposes such as protection against default when purchasing/exchanging products or services, obtaining financing; obtaining land; acquiring companies, licensing their proprietary technology; securing a bank loan or lease; to offer protection against loss due to bankruptcy; or other types of business and financial transactions. Bank Guarantees can also serve to provide protection to both parties involved in any transaction associated with a Bank Guarantee. The resilience of the Indian banking sector is reflected in their escape from the global financial crisis of 2008; that too purely on the strength of the prudential norms. In spite of following the strict prudential norms, the banking industry suffers enormous fraudulent activities. This can be the biggest challenge and worry for the banks and the policy makers alike. Moreover, there is the biggest concern for the banks is to handle with those fraudulent matters since it is a wide range of modus operandis. As regulated by the Reserve Bank of India, which has helped shield the Indian banking system from the global financial crisis in 2008. Although the environment is now more regulated, the banking industry is still plagued by fraudulent behavior and is the biggest concern for banks and the policymakers at the Reserve Bank of India (RBI). Additionally, there are big challenges that banks have to face with fraud

due to the variety of modus operandis that fraudsters have along with technology. Furthermore, even if the malpractice does not result in a financial loss, it would seriously tarnish the reputation and credibility of the financial system.

With this study, we analyzed many types of frauds and its operating modality, interviews with bank employees showed that there were some deficiencies in banks' operational risk management. There are many controls imposed by banking regulatory authorities for minimizing fraud, for example, appointment of internal auditors, bolstering corporate governance, but these fraud numbers keep increasing year on year. Banks will need to assess other opportunities for gaining greater scrutiny into corporate advances for minimizing frauds for instance potential early warning signals to be enhanced such as monitoring the borrower's social media account, a PAN card-based platform must be developed by the Reserve Bank of India (RBI) for maintaining the monetary records of the borrowers which can be accessed and shared by lenders. There were other suggested preventive measures such as proposed nodal officer concept for the purposes of reporting and oversight of fraudulent activities, scrutiny of bank employees' accounts, ensuring the end use of the loan proceeds, accepting and routinely conducting stock audits

Increasing the ethics and working conditions of employees with high integrity standards is an effective way of reducing fraudulent activities within companies. In addition, this presents enough assurance for future investors, shareholders, and customers looking at the company for their related ventures.

Every financial firm is a fraud-tempted, and every firm should have an internal fraud investigator to investigate issues exclusively so that fraud prevention can become an ongoing effort. Every firm must create a pristine ethical environment in an effort to reduce fraudulent activity (Biegelman and Bartow, 2012).

Currently, the world economy is struggling to report financial fraud; it has become a brighter spot for forensic accounting in finance-related fields. In a study conducted in Nigeria involving various industries & organizations, it was determined that there is considerable consensus among all parties indicating the effectiveness of forensic accounting tools as a fraud-prevention control measure and a sound internal control mechanism. Fraudulent acts in the banking sector of India have continued for years despite such concerted regulatory and supervisory initiatives, and it has now become a hindrance to the significant growth of our financial sector because

there appears little chance of recovery as noted by Gartnertype.

The Present Scenario

There must be monetary policies laid down by the government that have exhibits of social ends. In the matter of issuance of letter of credit, many loopholes exist in implementation of banking laws and financial laws. The present case of Nirav Modi has shocked the nation by questioning the performance of the RBI as a central bank and as a watchdog. Following are main issues addressed by the researcher :

- Political and legal risks in international transactions;
- Transactions with Enemy alien/barred by law;
- Credit risk and credit insurance;
- Legality of the transactions.

It is important to remember that the banking laws and monetary policies to be legislated should possess such factors which shall in application be flexible and practical for society rather than become extinct.

Each and every financial institution is vulnerable to fraud, and every institution should employ an internal fraud examiner to address incidents only so that fraud deterrent efforts can be continuous. It is incumbent on each institution to foster a flawless ethical culture with a view to decreasing incidents of fraud. At the moment, the world economy is making great strides in reporting financial fraud; it is the silver lining for forensic accounting in finance-based realms. A broad study conducted in Nigeria with various sectors and entities concluded there is considerable consensus from all stakeholders toward the finding that forensic accounting instruments can be utilized as a fraud deterrent control mechanism, and an effective internal control mechanism (Modugu and Anyaduba, 2013, 1-5).

Frauds in the banking sector of India have been ongoing even with such widespread regulatory and supervisory efforts, and now it has emerged as an impediment to the considerable development of our financial institution because there is almost no chance of recovery, as indicated by Gartnertype.

Beyond what has been aforementioned, an extensive set of measures has been taken during the last five years, by the Reserve Bank of India and the government, to prevent frauds in banks. The last few decades, there have been many disturbing stories via all forms of media (i.e. print, TV and online) about financial criminals absconding overseas and ignoring their obligations to their victims and the justice system. More high-profile cases of significant fraud have occurred including the approximately Rs 9,000 crores taken by liquor baron Vijay Mallya and over Rs

13,000 crores taken by both NiravModi and MehulChoksi, who also fled the country. Such evidence from these and other financial crimes demonstrated that current civil and criminal laws did not contain necessary provisions to properly gain compliance nor administer appropriate sanctions to punish and deter financial crime. Because of the lack of enforceability through existing criminal laws, the Indian government felt a need to create a new, more streamlined, efficient and rapid process to create strong disincentives for financial criminals seeking to evade prosecution. Therefore, to protect the rights as well as the interest of the government and to bolster the investors' confidence and the Indian economy, the Fugitive Economic Offenders Act 2018 was enacted to enable and facilitate the return of fugitive financial criminals to India to be held accountable through the application of statutory law. The Fugitive Economic Offenders Act identifies a person fleeing prosecution / refusing to come back from abroad because they are wanted by Indian law enforcement as having a pending / solid arrest warrant for a designated crime.

The description of benami property set out in the rules of the Prohibition of Benami Property Transactions Act 1988 forms part of the definition of a fugitive economic offender. In addition to being a fugitive offender, the fugitive must be suspected of having financial assets in India; therefore the investigation must provide property details and information as to where the fugitive's assets may be, along with evidence that the fugitive has left India. To declare an alleged Fugitive Economic Offenders, investigating authorities will make a request for the special court to make such a declaration based on submitted evidence. Applications for declaration should be made through the Director or Deputy Director of the investigating authority. Like most other types of property, authorities have considerable authority to conduct surveys, searches and seizures of property in relation to claims of benami property ownership via their investigating officers and the courts. Surveys may be conducted under section 7 of the FEO Act compelling the owner or any officers, agents or employees of the owner to assist with verification of records of crime proceeds. Unlawful searches may occur under section 8 of the Act against properties suspected to contain assets or documents which would qualify as benami property and allow for breaking locks and/or seizure of property in accordance with judicial order.

Under section 4 of the the Fugitive Economic Offenders Act, the person suspected of being an FEO must report to the FEO Special Court within a period of six weeks after the notice has been served. If they fail to report to the court, that person will be presumed to be a fugitive from the law and the court

will take further action against the person under section 10 of the the Fugitive Economic Offenders Act .After the Fugitive Economic Offenders Special Court hearing, the Special Court will declare the suspected FEO to be a fugitive Offender.

Judicial Pronouncements of Different Countries

a) Australia

This is consistent with the approach adopted in Australian Competition and Consumer Commission v. Samton Holdings PvtLtd . By the Full Court of the Federal Court of Australia. The Full court identified five categories of case in which the court will intervene on the ground of unconscionable conduct. It said, that under the rubric of unconscionable conduct the court will:

- 1) Set aside a contract or disposition that is being knowingly exploited by one party for the special disadvantage of another. The special disadvantage may be constitutional, deriving from factors such as age, illness, poverty, inexperience, or lack of education; or it may be situational, arising from particular features of a relationship between actors in a transaction, such as emotional dependence of one on the other;
- 2) Set aside as against third parties a transaction entered into due to the defective comprehension of one party, the influence of another, and the absence of any independent explanation given to the complaining party;
- 3) Prevent a party from exercising a legal right in a manner so unconscionably differing from a representation that the other party has relied upon to his or her detriment
- 4) Relief from forfeiture and penalty
- 5) Recent contracts entered into under the influence of unilateral mistake

b) Singapore

These are a few of the well-established grounds for intervention. However, the court in Samton observed that the list need not be exhaustive. The paper discusses that how then does the Samton list apply in the context of an injunction being sought against demand or payment under a letter of credit?

In Alex Focas Pty versus Skodaexport Co Ltd , given before the decisions of the high court and the federal court relating to the extent of unconscionable conduct, Bat. J, in the Supreme Court of Victoria, has taken a wide major view as to what might constitute unconscionable conduct under section 51AA. He referred inter alia to Stern versus McArthur, which stated fraud, mistake, accident, or surprise do not exhaust the scope of unconscionable conduct. The general notion is, that which has long been identified as an underlying principle of equity's traditional jurisdiction to grant relief against unconscionable conduct, namely: A person should not be permitted to

use or insist upon his legal right to take advantage of another, special vulnerability, or misadventure for the unjust enrichment of himself.

In essence, it was the position that Singapore Courts generally subscribed to the orthodox non-interventionist position of English law by holding that the fraud exception is the sole exception to the principle of autonomy. If the beneficiary called in circumstances where there was no fraud the bank must pay even if doing so would be unfair to the account party. In an attempt to curb the increase in abusive calls on demand guarantees, the Singapore courts floated the idea of an unconscionability exception in the first half of the 1990s. The Singapore Court of Appeal on its own accord gave express recognition to unconscionability as a distinct exception to the independence principle on demand guarantees in the latter half of the 1990s. For instance, in the construction contracts, the contractor was required to prepare a performance Bond for a sum equaling 10% of the contract price. The bond was subsequently obtained. However, as the contract price was revised downwards, the bond amount was not reduced. Once a dispute letter arose between the parties, the employer attempted to call on the bond. The court granted an injunction restraining the call even though.

In *GHL pte Ltd v Unitrack Building Construction Pte Ltd*, for example, construction contracts required the contractor to prepare a performance Bond in the sum of 10% of the price of contract. The Bond was obtained. The contract price was subsequently revised downwards but there was no effort to reduce the bond amount. A dispute letter rose between the parties and the employer attempted to call on the Bond. An injunction was granted by the court restraining the call even though there was no fraud. The Court of Appeal held that it would be unconscionable for an employer to call on a bond that was 10% of the original price when in the meantime the price is revised downwards. In wanting to invoke the court's interference on the ground of unconscionable conduct, the Singapore Court of Appeal made it known that it was consciously and deliberately making a departure from the position of English law, which gave court intervention only on the ground of fraud. The existence of the separate unconscionability exception was later given further confirmation by the same court in *Samwoh Asphalt Premix PTE LTD v Sum Cheong Piling PTE Ltd*, where it was held that in Singapore unconscionability on the ground of bene... The ability of a separate unconscionability exception was later confirmed by the same court in *Samwoh Asphalt Premix PTE LTD v Sum Cheong Piling PTE Ltd*, where it was stated that in Singapore unconscionability on the ground of the beneficiary in calling for the payment on a

performance guarantee is separate and distinct ground from fraud for seeking injunctive relief.

In the *Dauphin Offshore* case, the Singapore Court of Appeal thought it impossible to define unconscionability but gave some examples of demands which were found to be unconscionable. This included a case where the beneficiary tried to make a demand based on breach of contract where the breach was induced by the fault of the beneficiary himself. In another case of *Min Thai Holdings Pte Ltd v Sunlabel Pte Ltd*, the whole contract was for the supply of white rice from China. There was no supply arising out of a severe flood that Channel had never experienced in the last 100 years. The buyer, also the beneficiary of the demand guarantee, was informed of the flooding and the suppliers claim that this was covered by a force majeure clause in the contract. It was held that in those circumstances the buyers demand for payment under the guarantee was unconscionable, and an injunction was granted restraining the beneficiary from demanding or receiving payment under the guarantee.

Another example of unconscionable conduct occurs where the amount demanded is excessive. It is said to be unconscionable on the ground of demand if the beneficiary makes a demand for an amount which clearly exceeds the amount of the loss that has been suffered. Another situation can arise where the demand may be excessive and is therefore unconscionable; this is where, in the underlying contract, the maximum amount of the performance bond is specified as a percentage of the contract price, and after a bond for that amount has been provided, the contract price has later been revised downwards without a corresponding reduction in the amount of the bond. In such circumstances, the Singapore Courts usually take the view that the parties would contemplate that the amount of the performance bond would be correspondingly reduced unless there was an express agreement to the contrary. In these cases, it has been held that the beneficiary demanding payment under the bond in the original amount as opposed to the revised amount would be unconscionable. Where a performance bond is issued to secure, in effect, or liquidated damages clause, a demand for the amount stipulated is not to be stigmatized as unconscionable simply because the beneficiary's loss was less or has suffered no loss.

c) Malaysia

The Malaysian courts have followed the hands-off approach of English Law by adopting the position that fraud is the only exception to the principle of independence of letter of credit and demand guarantees. It was recognized that this position of the law made it easy for unscrupulous beneficiary to exploit an account Party by means of an abusive call.

Malaysian courts have taken the English law's so-called hands-off approach, holding that fraud is the only exception to independence of a letter of credit and demand guarantee. It was acknowledged that this legal position would enable some unscrupulous beneficiaries to abuse an account party through a wrongful call.

Post-recognition of the unconscionability exception in Singapore, some High Court judges in Malaysia started to follow the Singapore approach by accepting an unconscionability exception. The notable instance is in *Radio General Trading Co. SdnBhd v. Wayss Freytag (Malaysia) SdnBhd*, wherein an injunction was granted notwithstanding the absence of fraud, on the basis that the demand was plainly inequitable. It was promptly rejected in subsequent cases, including the decision in *LEC Contractors (M) SdnBhd v. Castle Inn SdnBhd* by the Malaysian Court of Appeal, where it was affirmed that the only exception is that of fraud. The court, after referring to English authors, made it clear that in order to justify any injunction to stave off payment, there must be clear evidence of fraud, bad faith, or unconscionable conduct by .bad faith or unconscionable conduct by itself is not fraud. With this decision the rising tide in favor of a unconscionability exception in Malaysia was reversed. More distantly the High Court Judges have returned to the traditional position that frog is the only exception and have dismissed application to restrain a demand for payment on the ground of unconscionability.

Some High Court Judges have still not been dismissed for acknowledging an unconscionability exception. One instance from a recent period is the consumption of waste-based food. An injunction restraining payment was granted by the judge who denied an interim injunction on grounds of unjustification, while the application was still in progress. Because the judge considered the unconscionability principle a sound one and found it persuasive, an injunction was granted as well. This is due to this reason. According to him, the reason he declined was because a judge had found him ineligible to challenge the interview injunction. He stated that there are advantages in the claimant's case, citing the court of Appeal and advocating for the evaluation of unconscionability in both the federal and court systems. Take note that our legal principles must be allowed to evolve by your higher courts, enabling our laws to blend with those of other Commonwealth jurisdictions.".

France

The case of *Sztejn v. Henry Schroder Banking Corporation* is an example of an attempt to bar a transaction. Although it appears from Justice

Shientag's statement that an intention to defraud existed in the case underlying the fraud exception, we cannot reach that conclusion without further evidence. In *Sztejn* the seller shipped worthless cowhair rather than the 1,200 agreed-upon bristles; therefore, in this case, it must be assumed by the court that the seller intended to defraud the buyer. Justice Shientag has assumed the intent to defraud based on evidence supporting the seller's actions, specifically sending 'rubbish' rather than bristles. According to Sarna, "the impression ... in the reasoning of Justice Shientag is that material fraud is a sufficient justification for dishonor". Lord Diplock, who is reported to have followed Justice Shientag in the *United City Merchant* case, did not apply Justice Shientag's test correctly. Although Justice Shientag described the seller's conduct in that case as intentional, the facts of *Sztejn* demonstrate that the degree of fraud should meet a standard of objective fraud before any of the fraud exceptions will apply. In comparison, the *Discount Record* case appeared to replicate the facts of the *Sztejn* case; however, the conclusion of the court was reached differently by Megarry J. in the *Discount Record* case. In the case of *Discount*, Justice Megarry stated that parties raising a breach of contract case could only have recourse to the usual litigation pathways, and the courts would not grant an injunction to prevent payment of a documentary credit. A different interpretation could damage the security and faith that has been established with respect to payment methods. Justice Megarry also stated that if a serious enough cause was placed before the court, a different outcome would be reached and the courts would balance the interests of the parties involved. It would have been a better approach if he illustrated clearly that the facts of *Discount* qualified the fraud exception but because of other above-mentioned reasons he found it necessary to refrain from granting the requested injunction.

However, it is submitted that Justice Megarry adopted a somewhat defeatist view. The majority of items shipped in compliance with the documentary credit agreement in the *Discount* case were garbage or worthless. It was evident that Justice Megarry did not view those factors as being sufficient to warrant an application of the fraud exception.

Justice Megarry's reasons for denying the injunction appeared to be based on the existence of a confirming bank situated in France that had previously accepted for discount the beneficiary's bills of exchange and had therefore acquired the status of a holder in due course.

In *Banque Indosuez v Ste Entrepouse*, a discount party who was bidding to construct a gas pipeline in Bangladesh instructed a bank to issue a guarantee to

the employer. The bank bound itself to pay the beneficiary in case the account party withdrew during a time specified or, after notice of acceptance for the purpose of concluding the agreement having been received, failed or refused to perform the agreement. The account party won the agreement, but the employer wished to introduce new terms involving the right to withdraw and they weren't indicated in the original tender notice. Unhappy with the new terms, the account party ended negotiations and the beneficiary claimed on the guarantee. The account party gave the bank all the information about the behavior of the beneficiary. However, the bank honored its payment to the beneficiary and claimed reimbursement from the account party. The Cour de Cassation upheld the judgment of the appeal court that the bank, being in apparent knowledge of the facts, should have refused payment as the demand was clearly abusive for it to be premised on the account party's refusal to adopt terms not specified in the original tender.

e) USA

The Uniform Commercial Code of the United States makes no exception for the unconscionable act or the act of bad faith other than the exception of fraud and forgery provided in Article 5-109. This means that an account party shall not be able to seek injunctive relief from a beneficiary except the beneficiary's action is an act of fraud or forgery, even if it may be found to be unreasonable or acted on in bad faith.

In the matter of *Mid America Tire v PTZ Trading Ltd Import and Export Agents*, the majority held that there was no material fraud on the beneficiary's part. Dissenting Judge Valen J nonetheless argued that fraud was induced on the beneficiary's part for failure to act in good faith, diligence, reasonableness, and care. Nevertheless, this interpretation overreaches the meaning of fraud just a tad. Failure to be reasonable, careful, diligent, or lacking in good faith is not fraud. An improper behavior need not be fitted into the legal category called fraud. That being the case, however, if the court had the discretion to entertain an exception on the ground of absence of good faith or unconscionable conduct, then failure of good faith on the beneficiary's part in the said instance would suffice to grant injunctive relief.

f) UN Convention

United Nation convention on Independent guarantees and standby letter of credit includes bad faith amount exceptions to the issuers obligation to pay. Bad faith is addressed as an exception to the duty of the issuer to pay in the United Nations Convention on Independent Guarantees and Standby Letters of Credit. In Article 15(3), the Convention provides that in making demand for payment the beneficiary shall be deemed to have certified that the demand is not

being made in bad faith and that none of the cases set forth in subparagraphs (a), (b), and (c) of paragraph 1 of Article 19 exists. Article 19(1) provides for refusal to pay even if any of the circumstances listed in subparagraphs (a) to (c) is involved. Subparagraph (c) relates to instances where, having regard to the nature and object of the undertaking, the claim is not on a substantial basis.

Considering that UCP has been established as a set of regulations mainly associated with documentary credit relationships, as well as the lengthy history America has had with guarantees, U.S. based Institute for International Banking Law and Practice has developed a specific set of regulations for standby letters of credit which was supported by ICC. The ISP98 regulations came into effect in 1999 and were drafted in a manner similar to that of UCP and URDG based on their similar differences described previously with respect to these two sets of regulations. However, ISP98 provides specifically that it has no defenses to honor a standby letter(s) based upon claims of fraud, abuse or other allegations.¹⁹⁰ This type of scenario whereby a demand is not on a substantial basis is analogous to instances in some jurisdictions where the conduct of the beneficiary who makes the demand is considered to be unconscionable or an abuse of rights. However, the language of Article 19(1)(c), and the specific illustrations found in Article 19(2), do not carry the same level of generality and flexibility as a catch-all exception like unconscionable conduct. The United Nations Convention on Independent Guarantees and Stand-by Letters of Credit was developed by the UNCITRAL. The UN General Assembly officially adopted the Convention dealing with independent guarantees by way of Resolution 50/48 dated 11 December 1995. The Convention went into effect on 1 January 2000 and so far, only eight countries have adopted and implemented the UNICITRAL Convention and that much of the time the UNICITRAL Convention aids users who want to engage in independent guarantees and that the Convention seeks to reflect some of the basic concepts and principles associated with independent guarantees. The Convention provides consistency across various jurisdictions so users of independent guarantees will know what the basic rules will be no matter where the independent guarantee is issued, eliminating any inconsistencies that exist in the terms used to describe independent guarantees. Although it could be applied to documentary credits, its main focus is independent guarantees. What sets the Convention apart from previously issued rules is that it is explicit in addressing fraud issues related to independent guarantees through a broad range of provisions. It has been argued that the UN Convention provided a "middle ground" on the fraud issue, wherein it neither left a void in the law as was done by the UCP,

URDG, and ISP98, nor imposed an excessive burden on the parties as was done by the URGG. It has also been argued that the manner in which this issue has been treated serves as an accurate gauge of the level of international cooperation and agreement regarding independent guarantees.

CONCLUSION

Bank guarantees in the global financial landscape play a crucial role in facilitating timely and predictable transactions across international frontiers. Meant to provide a guarantee of performance, payment, or compliance, the instruments play a crucial role in the reduction of risk and the establishment of confidence in cross-border investment and trade. Even so, with the sophisticated nature of financial transactions comes the sophistication of the techniques of the fraudster aimed at deriving benefit from systemic vulnerability. The prevalent frauds found in bank guarantees pose a significant danger to the integrity and trustworthiness of critical financial obligations. These frauds occur in instances of forgery, misrepresentation and misuse of guarantee terms, show a wide variety and range of ways to commit fraud. The forgery of documents might include producing forged guarantees that are 'similar', if not identical, to the original guarantees that may or may not take a fair amount of ingenuity or intelligence to identify. This type of scheme can create the potential for liability in staggering amounts which, without considering damages and disruptions to the integrity of those individuals involved, and the banking institutions they are associated with, can ruin cross-border commerce because of the impacts to reputation, security, and liability. Misrepresentation may include hijacking a company's authentic identity or legitimate contractual agreement to seek illegitimate profit or gain from guarantees, that existed from initial honest/legitimate terms of the guarantees. These tend to be the most difficult to defend against, because these acts would also rely on corrupt assessments by the banks in ascertaining proof of authenticity or legitimacy. The inappropriate utilization of the terms embedded in bank guarantees could involve substantial misrepresentations or ambiguities in the exculpatory or fundamental terms embedded in bank guarantees. Their implications extend far beyond the merely economic costs of the frauds. Fraud erodes trust in institutions, hinders cross-border trade, and calls into question the future sustainability of the finance system. The widespread momentum of fraud could also mean that there would be additional supervision or regulatory initiatives crafted to constrain other fraud behavior. This means some enhanced and independent verification, new fraud detection technology, and an expanded simple holistic view of bank guarantee coverage and sufficiency will all need to be contemplated in the risk

mitigates.

The investigation concluded that the fraudulent activities reported by public sector banks and private sector banks have been reduced in trend amount since 2020, as this time period coincided with actionable organized fraud prevention approaches including the solidification of proposal independence from the end-use of certain loan proceeds and establishing strong legal ownership in making legal actions against fraudulent individuals. When deemed to cheating & forgery and fraudulent encashment types of nature with bank fraud, banks were not significantly different in amount or average between public and private sector banks. It was expressed that reasonable amounts of reports for fraudulent encashment & aka manipulation of books of account & more conversion of property and for cheating & forgery was similar. Also, unnecessary hiring of additional staff to what the bank is entitled, to their scientific and business target stated, as staff were also expressed to be established as part staff hired by their top managements solely binding the potential future occurrences of bank fraud, path for international conventional bank fraud requires multifaceted action in all directions.

To begin with, banks and financial institutions should deploy funds in the form of automated fraud detection systems which will have an extensive due diligence process in order to eliminate as much as reasonably possible the risk of fraud. The due diligence process should ensure the authenticity of documents, review the credit worthiness of the contract parties and be concise and clear on the terms of the guarantee. Similarly, international cooperation and information sharing between financial institutions and regulatory authorities can work in collaboration to combat cross border frauds and take appropriate preventive efforts.

Secondly, ongoing training and awareness can provide financial industry professionals and stakeholders with the knowledge and tool to identify and respond to suspected frauds in relation to the bank guarantee process. Ongoing training and awareness build the culture around prudence and honesty which make the financial industry more effective in protecting the value of bank guarantees, and sustaining the trust required for cross border financing. The current study examined trends in bank fraud through a literature review and existing trends analysis in relation to public & private sector banks in India. However, it intends to further investigate frauds by nature as there appears to be no reporting in this space, and review the trends over the last 12 years as well. Our banking institutions should focus on customer selection of their on-boarding processes given that there appears to be several complaints

reported in the private sector banks under the categories of fraudulent encashment & manipulation of books of accounts / conversion of property and cheating & forgery, more so than in the case of public sector banks. Additionally, driving towards achieving optimal recruitment and defined scientific business targets to enable trending status will reduce their tendency towards fraudulent acts into the future.

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