

FRAUD RULE IN INDEPENDENT GUARANTEES AND STAND-BY LETTERS OF CREDIT UNDER THE UN CONVENTION*

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ABSTRACT

The United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1995 is drafted to accommodate the independent guarantees and stand-by letters of credit used to facilitate international businesses. To overcome the misuse by the beneficiary who makes demand for payment against the guarantor, the Convention contains the provisions on fraud rule in independent guarantees and stand-by letters of credit as an exception to payment..

Thailand is not a party to the Convention. Thailand therefore has no obligations under the Convention. However, the significance of the independent guarantees and stand-by letters of credit in international trade is well recognized when Thai business entities enter into contracts with their foreign business partners and require independent guarantees and stand-by letters of credit as the financial security to ensure performance of the contract.

Independent guarantees and stand-by letters of credit are used by private section i.e. banks and financial institutions in Thailand with no specific law or ordinary usages on the transactions. However, fraud exception to withhold the payment is still not covered by Thailand's domestic laws. This issue would lead the contractual parties additional difficulties when the principle basis of independent guarantees and stand-by letters of credit on the fraud rule is not recognized by Thai courts which are unable to grant a provisional order to withhold the payment due to the unavailability of applicable law issue. The study reveals that currently Thailand does not have any law on the fraud rule as stipulated under the Convention. It would lead the applicant or principal to face with significant difficulty to protect itself from the fraud demand by the beneficiary. Thailand has a draft law to deal with commercial documentary credit contracts but its contents are still unable to cover independent guarantees and stand-by letters of credit especially on the fraud rule.

Keywords: Fraud Rule, Fraud Exception, Independent Guarantees in Thailand, Stand-by Letters of Credit in Thailand, United Nation Convention

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บทคัดย่อ

อนุสัญญาองค์การสหประชาชาติว่าด้วยอินดิเพนเดนซ์การันตีและสแตนด์บายเลตเตอร์ออฟเครดิต ค.ศ. 1995 ได้ถูกยกร่างขึ้นเพื่อรองรับอินดิเพนเดนซ์การันตีและสแตนด์บายเลตเตอร์ออฟเครดิตที่นิยมใช้กันในธุรกิจระหว่างประเทศ และเพื่อมิให้มีการแสวงหาประโยชน์โดยมิชอบจากการที่ผู้รับประกันจ่ายเงินตามอินดิเพนเดนซ์การันตีโดยมิชอบ อนุสัญญาดังกล่าวจึงได้กำหนดหลักเกณฑ์เรื่องข้อบกพร่องในอินดิเพนเดนซ์การันตีและสแตนด์บายเลตเตอร์ออฟเครดิต ในการยกเว้นมิให้ผู้รับประกันจ่ายเงินให้กับผู้รับประกันประโยชน์ในกรณีที่การเรียกให้ชำระเงินนั้นมีองค์ประกอบของการฉ้อโกงอยู่ด้วย

ประเทศไทยนั้นมิได้เข้าเป็นภาคีในอนุสัญญา จึงไม่มีพันธกรณีใดๆ ที่จะต้องปฏิบัติตามหลักเกณฑ์ในอนุสัญญาดังกล่าว แต่ด้วยเหตุที่อินดิเพนเดนซ์การันตีและสแตนด์บายเลตเตอร์ออฟเครดิตมีความสำคัญอย่างยิ่งในการค้าระหว่างประเทศ เนื่องจากคู่สัญญามักใช้เป็นหลักประกันให้ผู้สัญญาอีกฝ่ายปฏิบัติตามสัญญา ประเทศไทยจึงสมควรอย่างยิ่งที่จะมีกฎหมายเกี่ยวกับเรื่องนี้เพื่อรองรับปัญหาของอินดิเพนเดนซ์การันตีและสแตนด์บายเลตเตอร์ออฟเครดิต โดยเฉพาะอย่างยิ่งการให้หลักข้อบกพร่องที่เป็นการยกเว้นการจ่ายเงิน ซึ่งการที่ไม่มีกฎหมายเฉพาะมาปรับใช้กับเรื่องดังกล่าว จะทำให้เกิดความยุ่งยากและไม่แน่นอนในการที่ศาลไทยจะนำกฎหมายไทยมาปรับใช้ในการตัดสินกรณีที่เกี่ยวข้องกับเรื่องนี้

จากการศึกษาค้นคว้าในวิทยานิพนธ์ฉบับนี้ ปรากฏว่าประเทศไทยมิได้มีกฎหมายบัญญัติเกี่ยวกับหลักข้อบกพร่องในอินดิเพนเดนซ์การันตีและสแตนด์บายเลตเตอร์ออฟเครดิต แม้ประเทศไทยจะมีความพยายามในการร่างพระราชบัญญัติสัญญาให้สินเชื่อทางพาณิชย์ที่มีเอกสารประกอบเพื่อรองรับเลตเตอร์ออฟเครดิต แต่เนื้อหาของกฎหมายก็หาได้ครอบคลุมเรื่องการฉ้อโกงในอินดิเพนเดนซ์การันตีและสแตนด์บายเลตเตอร์ออฟเครดิตไม่ อันจะนำไปสู่ปัญหาในการคุ้มครองผู้ขอออกตราสารที่สุจริต จากการที่ผู้รับประกันเรียกให้ผู้รับประกันหรือผู้ออกตราสารชำระเงินให้แก่ตนโดยมิชอบซึ่งเข้าหลักเกณฑ์การฉ้อโกงในอนุสัญญา โดยข้อเสนอแนะจากวิทยานิพนธ์ในการแก้ไขปัญหาคือ (1) เพิ่มคำว่า “อินดิเพนเดนซ์การันตี” เป็นส่วนหนึ่งของนิยามคำว่า “สัญญาให้สินเชื่อทางพาณิชย์” (2) เพิ่มเดมเบทบัญญัติในทำนองที่สันนิษฐานไว้ก่อนว่าผู้รับประกันกระทำการโดยสุจริตและรับรองว่าไม่มีองค์ประกอบของการฉ้อโกงในการเรียกให้ผู้รับประกันชำระให้แก่ตน (3) อธิบายเรื่องหลักการฉ้อโกงอันเป็นเหตุยกเว้นการจ่ายเงินให้ผู้รับประกัน (4) เพิ่มเดมเบทบัญญัติเฉพาะเรื่องการให้สิทธิทางศาลโดยผู้ขอออกตราสาร ในการระงับการจ่ายเงินให้กับผู้รับประกัน

คำสำคัญ: หลักข้อบกพร่อง, ข้อยกเว้นเรื่องข้อบกพร่อง, อินดิเพนเดนซ์การันตีในประเทศไทย, สแตนด์บายเลตเตอร์ออฟเครดิตในประเทศไทย, อนุสัญญาสหประชาชาติ

Introduction

Independent guarantees and stand-by letters of credit provide various mechanisms for making payment. The most attractive element is to allow the guarantee payable upon the first demand namely “unconditional guarantee”. The beneficiary shall be entitled to receive payment from the bank, which is guarantor/issuer without proving that the principal/applicant acting as debtor/exporter, committed default of contract.¹ Such first demand for payment can be abused easily due to the fact that the beneficiary does not need to prove that the contract is breached by the principal/applicant or to prove that the beneficiary suffers from the damage or any other risk. The guarantee was to provide protection of this situation. That is why the guarantor/issuer is liable to make payment to the beneficiary according to such demand with

¹ R Bertrams, Bank Guarantees in international trade, 3rd edition, Kluwer law international, 3 (2004)

required tendered documents. Nevertheless, the unfair or abusive calling is of considerable important problem in international practice as this could be considered as fraud.² Fraud is one of a rigid issue between the beneficiary and bank because it is an exception for the bank to withhold payment although the beneficiary is able to provide the documents according to the credit.³

Most commercial states, having their business with the United States or the European Union, normally become the contracting parties to the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit 1995 (“the Convention”) in order to resolve this specific issues.⁴ Even though the contracting states have joined the Convention, the problematic fact regarding 1) how to manage or deal with the case that the beneficiary call fraudulently for payment by exploiting independence and strict compliance rules to obtain the payment and 2) how to maintain the balance between (a) the purpose of independent guarantee mechanism that the beneficiary expects certainty in the business and (b) fraud rule which is an exception to payment that can protect the principal/applicant who acts *bona fide*⁵ but suffering from the fraudulent act of the beneficiary calling for demand and 3) how do the principal/applicant and the bank (issuer/guarantor) maintain their position or manage its role in relation to beneficiary’s fraudulent calling.

I. Independent Guarantees and Stand-by Letters of Credit under the Convention

The United Nations Convention on Independent Guarantees and Stand-by Letter of Credit (the Convention) was adopted by the United Nations General Assembly on 12 December 1996. The Convention entered into force on 1 January 2000. The Convention incorporates current understanding and compromise positions on the law and practice of independent guarantees and stand-by letter of credit. It applies to independent (autonomous) and international undertakings issued in a state that become a party to the Convention or where the conflict of laws rules lead to the application of the law of a state party to the Convention. Furthermore, an international letter of credit, which does not exactly fall within the definition of “undertaking”, is governed by the Convention if such letter of credit expressly states that it is subject to the Convention. An undertaking falling within the Convention's scope may, however, exclude the application to the Convention.

The Convention describes an independent guarantee (referred to as, e.g. demand, first demand, simple demand, demand guarantee or bank guarantees)⁶ and stand-by letter of credit jointly as “undertaking” (“Undertaking”). An undertaking is issued by a guarantor, which could be a bank or other institutions or even persons, to pay the beneficiary a certain amount upon simple demand or upon demand accompanied by required documents according to the

² Grace Kayembe, *The Fraud Exemption in Bank Guarantee*, (2008), 3

³ Agasha Mugasha, *The Law of Letters of Credit and Bank Guarantees*, The Federation Press, 2003. 123

⁴ Khemjuta Suwanjinda, *Possibility of Thailand's Accession to the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1995* (2012), 83

⁵ *Bona fide* means “good faith”

⁶ UNCITRAL Explanatory Note by UNCITRAL Secretariat on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, w. 8, U.N. Doc. A/CN. 8/431 (July 4, 1996).

terms or documentary conditions of the undertaking.⁷ The condition may indicate that payment is due because principal/applicant is in default in the performance of obligation, or another contingency, or for money borrowed or advanced, or on account of any mature indebtedness undertaken by the principal/applicant of such undertaking.⁸

II. Concept of the Fraud Rule

An undertaking is a device providing certainty to the beneficiary that he will receive payment. It means that there is a balance between certainty of payment for the beneficiary and risk of losing payment by the principal if the transaction is committed by fraud⁹

Fraud harms the basic principles of equity, business and justice. Protecting the bank's obligation of payment under an undertaking without exception, when documents fulfill the terms and conditions, would therefore lead to protection of fraud. To prevent unlawful outcome that may result on fraudulent action from the part of the beneficiary, courts have attempted to form a balance between the commercial utility of bank guarantees and needs of preventing the fraud transaction. Such balance has been achieved through the fraud exception.¹⁰

If the guarantor or issuer discovers the fraud under the Convention that was tendered by the beneficiary, it is entitled to refuse to make payment to the beneficiary. This situation conduces that the beneficiary would have tendered documents that did not strictly comply with the terms of the undertaking if he had been truthful in his representations. However, the fraud which enabling the guarantor/issuer to stop payment must be obvious and evident to the guarantor or issuer without the need of further proof or any investigation on the actual circumstances surrounding the underlying contract. It reflects a balance between all deference of interest in a particular country involving undertaking. In the event that standard is too low, an applicant, who is not willing to make the payment, will easily commit the fraud. It will affect commercial function of an undertaking definitely. On the other hand, if the standard is too strict, this would encourage fraudulent maneuvers on the part of the beneficiary. Therefore, extreme standards of fraud should be avoided as they represent only the interests of the beneficiary or the principal.¹¹

1. Fraud Rule under the Convention

Exception to payment for a demand is generally known as "fraud". Although the word "fraud" is not expressly used in the Convention, it is clear that the exception to payment obligation provided for in Article 19 of the Convention reflects the "fraud" concept. Fraud is considered as an innovative step taken by the Convention since the issue of fraud is not

⁷ Article 2 of the UN Convention

⁸ *Id.*

⁹ J Browne, *The fraud exception to standby letters of credit in Australia : Does it embrace statutory unconscionability?*, vol.11, Bond Law Review. 101 (1996)

¹⁰ Xiang Gao and Buckley, *A comparative analysis of the standard of fraud required under the fraud rule in letter of credit law*, vol 13, 293, (2003)

¹¹ *Id.*

clearly addressed and provided for in other rules of independent guarantees and stand-by letters of credit.

2. Elements of the Fraud Rule under the Convention

Article 19 of the Convention provides three major elements of the fraud rule as the exception to payment as follows;

a) Any Document Is Not Genuine or Has Been Falsified.

In the event that the document required to support the payment under an independent guarantees or stand-by letters of credit is not genuine or has been falsified, it shall be the ground for the guarantor or issuer for holding with payment to the beneficiary.¹²

b) No Payment is Due on the Basis Asserted in the Demand and the Supporting Documents

The demand, regardless of due consideration, therefore shall be considered on a case by case basis because the payment under stand-by letters of credit or independent guarantees is due on multiple basis, such as, on the basis of the fixed date in the demand relating to documents or on the basis of a contingency event e.g. the failure to make payment under the loan by the principal or applicant or defective/non-performance of certain conditions in construction contracts by the principal or applicant as the contractor or on the simple basis of the breach of the underlying contract.¹³

c) The Demand has no Conceivable Basis Judging by the Type and Purpose of the Undertaking.

Article 19 (2) of the Convention especially focuses on the kind of situations under which the demand will be considered as having no conceivable basis. Comparing to the specific grounds for withholding payment stipulated in Article 19 (1) (a) and (b) of the Convention, the ground under Article 10 (1) (c) is much more general in terminology since the Convention does not provide definition or meaning of the term “no conceivable basis”.¹⁴ Nevertheless, Article 19 (2) of the Convention articulates the situation in which a demand has no conceivable basis by providing the purposes of paragraph (1) subparagraph (c) of Article 19. The guarantor or issuer of the undertaking becomes the offensive party to look into the underlying transaction for good cause prior to make such payment in relation to the grounds for withholding payment to the beneficiary under Article 19 (2) (a), (b), (c) and (d) whilst

¹² Article 19 subparagraph (a) of paragraph (1) of the Convention

¹³ Khemjuta Suwanjinda *supra* note 4, at 41.

¹⁴ Michelle Kelly-Louw, *International Measures to Prohibit Fraudulent Calls on Demand Guarantees and Stand-by Letters of Credit*, 1 George Mason Journal of International Commercial Law, at 109.

subparagraph (e) of paragraph (2) of the Article 19 gather the role of the beneficiary and the guarantor or issuer on the notice that payment needs to be justifiably made by good course.¹⁵

3. Filing Application with the Court to Stop Payment

Court measures provided in Article 20 of the Convention, clearly establishes an important judicial mechanism to stop payment to the beneficiary in case where fraud under an independent guarantee or a stand-by letter of credit is established by the guarantor or issuer. The right to seek such provisional court measures is conferred by Article 20 of the Convention upon the principal or applicant or instructing party in the case of counter-guarantee.¹⁶ While the guarantor or issuer has the right to withhold payment to the beneficiary in the event where guarantor or issuer found the identity of fraud element in an undertaking¹⁷, Article 20 provides an ultimate solution to stop or to freeze payment under the undertaking, through provisional court order, against the guarantor or issuer who ignores to exercise the right to withhold payment to the beneficiary. This Article allows the principal or applicant to obtain a court order to block or freeze the payment proceedings under the independent guarantees and stand-by letters of credit if any of them are is with Article 19 of the Convention.¹⁸ Furthermore, Article 19 also creates a standard of proof upon the evidence presented to the court in order to obtain such provisional measures. The standard provided by Article 19 are on the basis that the principal or applicant must be able to present strong evidence immediately leading to the high possibility of fraudulent or abusive circumstance, committed by the beneficiary.¹⁹ In addition, the principal or applicant is further required to convince the court that it would be likely to suffer serious harm in the absence of such provisional measures and the possibility of the court to require a security from the principal or applicant in certain amount to ensure that the beneficiary shall not be suffering from the provisional court measures granted to the principal or applicant claiming false allegation or acting in *mala fide*.²⁰ However, Article 20 of the Convention limits judicial procedure usage by the principal or applicant to prevent the principal or applicant intervene operation of the undertaking, by granting the provisional court measures only in the cases provided for under Article 19 of the Convention. In addition, the Article also allows the court to grant provisional court order to the principal or applicant to withhold payment or freeze its procedure if the relevant undertaking is used for criminal purpose.²¹

III. Fraud Rule under Thai Laws

Regarding this matter, Thailand does not have any direct law or specific provisions on independent guarantees nor letter of credit. In the event of any dispute in relation to documentary credit, focusing on fraud issue of undertakings, is brought before Thai courts

¹⁵ Charles Debattista, *Performance Bonds and Letters of Credit: A Cracked Mirror Image*, Journal Business Law, 298 (1997).

¹⁶ *Id.*

¹⁷ Article 19 of the Convention

¹⁸ Khumjuta Suwanjinda, *supra* note 4, at 44

¹⁹ *Id.*

²⁰ UNCTRAL Explanatory Note, *supra* note 17, comment 50.

²¹ *Id.* comment 51.

whilst Thailand's Civil Procedural Code states that the Judge shall not deny to pass judgment by claiming that no specific law has been enacted to deal with the issue.

As Thailand has no applicable law covering fraud in independent guarantees or stand-by letters of credit, the fraud rule therefore is not recognized by Thai courts. The current applicable statutory laws applying to the undertaking is the autonomy of contract reflected in Section 151 of the CCC, which is allow the principal or applicant to be bound with the guarantor under the terms of the contract for issuing the undertaking whilst the guarantor or issuer is bound with the beneficiary under the contract. The concept of the undertaking is the payment method and the assurance to the creditor (beneficiary) that the bank will make payment for debtor's (principal or issuer) breach of the contract. The purpose of the contract to issue the undertaking, made between the applicant or principal and the issuer or guarantor, is not void because such agreement does not violate public order or good moral under Section 151 of the CCC.²² Nevertheless, as this financial method is a special tool used in international business, it shall be definitely confusing and uncertain to apply the laws in case the dispute in relation to the undertaking arises, which would require specific law to resolve the dispute.

Then this issue needs to be reconsidered in Section 151 of the CCC especially when fraud occurred and the bank has been notified by the principal that the documents submitted by the beneficiary are forged or falsified, thus the guarantor or issuer cannot withhold the payment by invoking the fraud rule due to nowhere in Thai laws designates the fraud rule under the undertaking. The guarantor/issuer, therefore, has to comply with the contractual duty under the agreement between the guarantor or issuer and the beneficiary by making payment under the undertaking. It would be different if the parties were to incorporate the fraud rule as an exception to payment into the contract, or make the Convention apart of the agreement, which will entitle the guarantor or issuer to be able to exercise their contractual right in relation to the fraud rule.

However, Section 16 paragraph two of the Draft simply provides for general situations under which payment under a stand-by letter of credit may be suspended until proven otherwise, or security against damage is placed. Apparently, the wordings used in Section 16, paragraph two, confers broader discretion upon the issuing financial institution, confirmer, authorized, or nominated person, to suspend payment under the stand-by letter of credit than that allowed under Article 19 of the Convention because Section 16, paragraph two, uses the phrase "in case there is a reasonable ground for believing that..." while Article 19 of the Convention uses the phrase "if it is manifest and clear that". It thus can be said that Section 16 of the Draft appears of be more flexible than Article 19 of the Convention in the sense that fraud does not need to be "manifest and clear" as required by Article 19 (1) of the Convention, but is merely based on a "reasonable ground for believing that". This flexibility therefore allows broader discretion for the issuing financial institution, confirmer, authorized, or nominated person, to refuse payment under the stand-by letter of credit. However, in situations where the fraud rule can be invoked to withhold payment to the beneficiary, it appears that the situations under Article 19 of the Convention is broader than those specified

²² Section 151 of the CCC An act is not void on account of its difference from a provision of any law if such law does not relate to public order or good morals.

in Section 16 of the Draft Act. In addition, Article 19 of the Convention does not specify the persons involved in the fraud while Section 16 of the Draft specifies the persons involved in the fraud, who are the beneficiary or employees or agents of the beneficiary and the bank has been aware or notified thereof. By comparison, it appears that in terms of the persons involved in the fraud, which can be interpreted to include persons other than the beneficiary, employees or agents of the beneficiary as specified in Section 16 of the Draft, the latter is more flexible than Article 19 of the Convention in terms of the situations under which the fraud rule can be invoked and of persons involved in the fraud.²³

Right of the Principal/Applicant to Commence Lawsuit to Stop Payment or Withhold its Process in Thailand

The procedural mechanism to stop payment through provisional court measures as provided for in Article 20 of the Convention to strengthen the enforcement of the fraud committed under Article 19 of the Convention, is not found in Thai law or the Draft. Without such procedural mechanism, effective enforcement of the fraud rule to stop payment by a court order is not possible especially when the guarantor or issuer fails to exercise the right to withhold payment under Section 16 of the Draft. Even though the Civil Procedural Code of Thailand authorizes the court to order an injunction, it remains unclear as to whether such injunction covers what is provided for in Article 20 of the Convention. In the case where the guarantor or issuer refuses to withhold payment to the beneficiary under the undertaking, when fraud has been invoked by the applicant or principal, no unilateral application for injunction under Section 254 (2) of the Civil Procedural Code can be filed with the court because there is no right of the principal or applicant being disputed from the consequences of the guarantor or issuer's refusal to withhold payment. Besides, there is no specific statutory law allowing the principal or applicant to pursue his right through the competent court according to Section 55 of the Civil Procedural Code. The provisions of Section 55 cannot to be applied to this matter because the money from the guarantor or issuer does not belong to the applicant or principal. No right of the principal or applicant is affected by the beneficiary's demand for payment accompanied with fraud elements because such is a contractual right between the beneficiary and the guarantor or issuer. Indemnity agreement between the applicant/principal and guarantor/issuer is a separate matter from the consequences of fraudulent demand of the beneficiary. Further, there is no law in Thailand affording the principal or applicant protection under the fraud rule in an undertaking. In conclusion, the provisional court measures as provided in Article 20 of the Convention do not exist under Thai law. The method in the Convention should therefore be adopted in Thai law to ensure the effective enforcement of Section 16 of the draft Documentary Credit Act.

Recommendations

Thailand must ensure that its law deals with independent guarantees and stand-by letters of credit as well as the fraud exception rule, together with the relevant procedural matters. Furthermore, it needs to formulate laws or to improve its existing Draft to accommodate commercial functions of the undertaking and the fraud rule concept under the

²³ Khemjuta Suwanjinda, *supra* note 4, at 81

Convention. Both the concept of the Convention and of existing non-mandatory rules and practices; such as, UCP600, ISP98 and URDG758, should be incorporated in the Draft in order to cover and improve in terms of clarity, the fraud rule in the undertaking under Convention. Contents of the Draft should be revised to be in line with the Convention as follows:.

1. The Draft should clearly cover “independent guarantees” as a part of the definition of the term “commercial documentary credit contract”.

2. The Draft should contain provisions dealing with the presumption under Article 15 (3) of the Convention that the beneficiary shall be deemed to certify that his demand for payment is not in bad faith and none of the fraud elements, stipulated in Article 19 subparagraphs (a), (b) and (c) of paragraph (1) of the Convention, are presented by the beneficiary.

3. Although the existing contents in relation to the fraud rule in the Draft i.e. Section 16, is more flexible than those under Article 19 of the Convention with respect to conditions to invoke the fraud rule, the Draft still should also describe the situations under which the fraud rule can be invoked in order to withhold the payment to the beneficiary, as stipulated under Article 19 of the Convention. The situations of fraudulent demands for payment in Article 19 are broader than those provided for in Section 16 of the Draft. In addition, Section 16 of the Draft should be amended to identify the persons involved in the fraud under the Convention.

4. The Draft should consider the provisions of Article 20 of the Convention with respect to provisional court measures to stop payment to the beneficiary in case where fraud under Article 19 of the Convention has been invoked. This procedural mechanism is quite important because it empowers the court of competent jurisdiction to issue a provisional order to prevent the beneficiary from receiving payment, or an order that the guarantor or issuer to hold the amount under the undertaking, including an order to freeze the proceeds of the undertaking and to block the payment to the beneficiary. Insofar as the undertaking is concerned, this kind of specific procedural mechanism is not found in the Draft or any other law in Thailand. Therefore, for the purpose of effective enforcement of the fraud rule as reflected in Section 16 of the Draft, the procedural mechanism of provisional court order spelt out in Article 20 of the Convention should be adopted by Thai law

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