

## Abstract

Anticipatory Breach of Contract is a legal concept which arises when a party who has promised to render performance under a contract thereafter has stated or indicated to the other party that he/she cannot or will not perform such obligation when it becomes due. In this instance, the honest party shall be protected. Each country has its own law which provides protection of rights and the concurrent effects of anticipatory breach of contract differently. Such principles appear in the Sections 71-73 of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG).

The study and analysis of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG) show that the principles are based on reservation of the binding agreement and encouragement of the parties to act accordingly. This is generally known as “favor contractus” which is one of the main objectives of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG). Under Sections 71-73 indicate that if a party anticipates a breach of contract, such party shall suspend the performance of his/her obligation. This can occur under various circumstances. The main objectives of these sections are to provide remedies and to make the agreement still in force. Under Section 71, the failure of one party to perform its obligation constitutes a fundamental breach of contract, the other party may suspend the performance of his/her obligation. Section 72 allows the suspended party to terminate the agreement if such anticipatory breach of contract by the other party constitutes a fundamental element.

Section 73 provides general provisions between buyers and sellers under the anticipatory breach of fundamental contract in term of installments. In case of an installment contract, if the failure of one party to perform any of his/her obligations, the other party may declare the contract avoided with respect to that installment. Nevertheless, if one party's failure to perform any of his/her obligation in respect of any installment gives the other party good grounds to conclude that a fundamental breach will occur with respect to future installments, he/she may declare the contract avoided for the future.

The study of courts' judgment in the member countries reveals that there are many problems in term of the anticipatory breach of contract under Sections 71-73 regarding the understanding of legal provisions, the interpretation of the parties, arbitration and courts. The narrow or broad interpretations of legal provision by courts and arbitration in each member country are differently made in their own ways.

There is no provision regarding the anticipatory breach of contract under Civil and Commercial Code in Thailand. Despite the lack of clarification, other adjacent legal provisions in terms of selling and buying, period and contract will be applied. Both the entrepreneurs and small business owners, therefore, cannot not realize whether the Thai laws provide protection under the anticipatory breach of contract as shown in the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG). Instead of having its own legal provision in terms of international sales of goods in future,

Thailand shall enter into the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG) which is widely admitted and well-known. The adoption of the uniform rules of the United Nations Convention on Contracts for the International Sale of Goods, 1980 (CISG) as part of our law, without any amendment, would facilitate us not to take different legal provisions into account. Such adoption is mostly used by the member countries.