BANK GUARANTEE

INTRODUCTION

Guarantee is an irrevocable, independent and unconditional commitment by a bank to pay a specified sum of money to the beneficiary in case the applicant fails to perform its commitments according to the underlying relationship.

It is a security given by the bank's irrevocable, unconditional signed commitment in order to protect the beneficiary against the applicant's default and to cover possible performance and financial risks arising from business transactions in the domestic as well as international markets.

Bank guarantee service can support and secure your business by demonstrating your financial credibility and ability to meet contractual obligations by supplying goods or services as agreed under the underlying relationship.

This service, depending on different range of clients, their businesses and transactions, subjects of underlying contracts, and contractual agreements and obligations, is vastly different.

Apart from offshore guarantees, the bank also issues a variety of local guarantees.

THE ROLE OF BANK GUARANTEES IN INTERNATIONAL TRADE TRANSACTIONS

Bank guarantees play a vital role in international trade and other business transactions. They are used in almost every phase of the transaction between the buyer and the seller.

Some situations require that a third party (often a bank) guarantees to pay a sum of money to one party if the counterparty defaults, for example if the counterparty fails to deliver a project within the agreed time lines. As such, the guarantee transfers the creditworthiness of the applicant/instructing party of the guarantee to the bank (the guarantor).

It is important to understand that what the guarantor guarantees is to pay an amount of money to the beneficiary, not to complete the project, fix the machine, and deliver the goods or whatever else may be the subject of the guarantee. In fact, the guarantor does not guarantee that the applicant/instructing party will fulfill its obligation; it only commits itself to pay, in whole or in part, the amount stated in the guarantee.

BENEFITS, FEATURES AND ASSOCIATED RISKS OF A BANK GUARANTEE

BENEFITS

- Extra confidence and more flexibility in international trade competitions, on negotiating contract terms and conditions
- Our decades of experience and extensive expertise, makes safe position for you in global emerging markets
- Help tender for business that may otherwise have been out of reach
- The bank undertakes to pay a certain sum of money in whole or in part, in one or in several drawings, the amount stated in the guarantee, should you fail to honor your commitments
- Reduction of the risks linked to performance and/or payment of your local or international transactions

KEY FEATURES

- Guarantees can usually be issued in the buyer's currency or any other convertible currency specified by the beneficiary and possible for the bank (by applying internationally accepted exchange rates.)
- Bank guarantees do not involve disbursements on your part, and they offer you terms and conditions that you could not obtain acting alone
- The bank will not, and is not liable to deliver the goods or to assume responsibility for carrying out a project under the related contract
- Language of the guarantee shall be in Persian or English per your request
- Guarantee shall be issued on the guarantor letterhead or via SWIFT message (in case of counter-guarantees or request for advise of direct guarantees)

ASSOCIATED RISKS

As our customer, you stand to benefit from the extensive expertise that we have acquired over many years of experience in the international guarantee business. By consulting with us, and so giving us an opportunity to exert some influence on the text of the guarantee, you can better manage or even minimize the risks that could arise from the text of a guarantee and any additional clauses (including clauses relating to interest, currency, applicable law, etc.).

In a special advisory meeting, we will bring your attention to any special terms and conditions of foreign banks or specific countries, as well as the associated risks, to the extent they are known to us.

Caution! *Once specific texts have been recognized as integral parts of contracts or documentary credits, it will be practically impossible to make any changes to them without all parties' compromise.*

ESSENTIAL CONTENT OF A GUARANTEE

The principal elements of a guarantee are the following:

- A preamble describing the underlying relationship to which the guarantee refers (including, in particular, the names and addresses of the business partners of the underlying transaction, the type of underlying transaction, the contract number and/or date of signature, and the type of guarantee to be issued).
- The irrevocable and unconditional undertaking of the bank to pay a sum of money up to the amount of the guarantee, upon the first written demand of the beneficiary, accompanied by a declaration to the effect that the event giving rise to the guarantee claim, as defined in the terms of the guarantee, has occurred.
- A clause that clearly limits the duration of the guarantee to a certain date/event, by which any claim must have been received by the bank; or in exceptional cases, a clause to the effect that the duration of the guarantee is indefinite.

In addition to the above-mentioned principle elements, the text of the guarantee may also include other clauses, depending on the type of guarantee and the requirements of the underlying transaction. These may include clauses concerning the effective date of the guarantee and/or a clause that serves to reduce the amount of the guarantee.

CLASSIFICATION

THE MOST FREQUENTLY USED TYPES OF GUARANTEES

TENDER BANK GUARANTEE (BID BOND)

Secure any claims by the party inviting tenders in cases of early withdrawal, modification of the tender bid, or in the event where the tender is accepted, but the bidder refuses to sign the contract or to provide a performance guarantee as requested in the invite. The guaranteed amount is normally 5 % of the value of the bid.

ADVANCE PAYMENT BANK GUARANTEE

Secure any claims in relation to return of advance payment where the contract provides for advance payment to be made to the applicant, and the applicant fails to fulfill its obligations on delivery of goods or services. Advance payment is normally 10-20% of the contractual sum and an advance payment guarantee will secure the whole payment.

We recommend that any advance payment guarantee contains a clause securing that the advance payment are received on the applicants account before any claim or payment can be made under the guarantee.

PERFORMANCE BANK GUARANTEE

Secure that the applicant fulfill its obligations to perform or deliver in accordance with the terms of the underlying contract. The guaranteed amount is normally 10 % of the contractual value, but may differ from 5% -20%.

It compensates the losses for the buyer in the event of non-performance of the performance obligations in the contract. The guarantee is valid from the signing of the contract until the delivery.

The exporter gives a warranty guarantee (also known as maintenance guarantee or retention money bond) when the delivery or the performance has been effected. The guarantee compensates the losses for the buyer if the exporter fails to reimburse the possible deficiencies or defects within the guarantee period.

PAYMENT GUARANTEE

Payment Guarantee provides the beneficiary with financial security should the applicant fail to make payment for the goods/ services or facilities supplied. A payment guarantee is normally given for the full contractual amount, or the remaining amount in case of partial payment through an advanced payment.

WARRANTY GUARANTEE

Secure fulfillment of any contractual obligations the applicant may have in the time after delivery of goods and services. It may be malfunctions of goods or contractual service agreements. The value of such guarantee is normally 5-20% of the contract value.

DIFFERENT FORMS OF BANK GUARANTEES - SPECIFIED BY WAY OF ISSUANCE

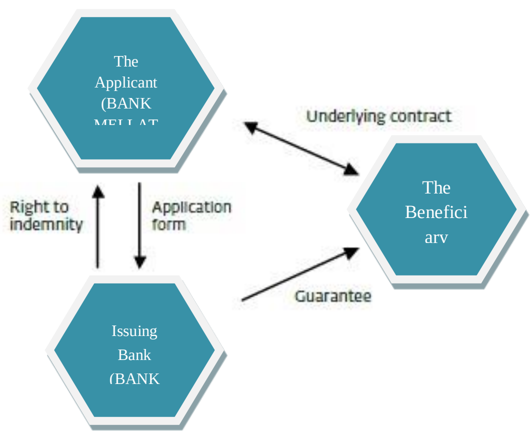
DIRECT GUARANTEES AND INDIRECT GUARANTEES

In different circumstances whether you are involved in- as an importer or an exporter - bank guarantees can be generally issued in two styles:

Direct Guarantees

A guarantee issued by the applicant's bank (issuing bank) directly to the guarantee's beneficiary without involving a correspondent bank.

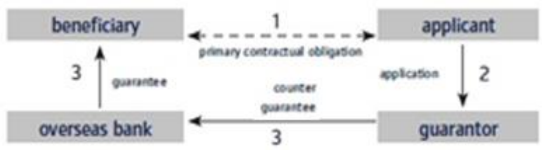
Direct guarantees are used primarily in domestic business. However, an accessory security in the form of a surety is often enough. This is issued directly to the beneficiary in the same way as a direct guarantee. Guarantees apply whenever the bank's undertaking to provide security is not contingent on the existence, validity and enforceability of the principal obligation. For this reason guarantees are frequently opted for in cross-border transactions, because the beneficiary is able to assert his or her claims rapidly due to the abstract legal nature of the guarantee. Guarantees have the added advantage of being easier to adapt to foreign legal systems and practices, because there are no form requirements. Due to cost and risk considerations, direct guarantees are increasingly being used in foreign business as well.



Indirect Guarantees

Indirect or multiple guarantees come into play when the beneficiary wants a guarantee issued by a local bank in his own country. This comes about when the beneficiary is concerned about the standing of the issuing bank and/or the standing of the applicant's country. The applicant's bank arranges the issue of the **counter-guarantee** to the bank nominated by the beneficiary who, in turn, will issue a letter of guarantee (guarantee) to the beneficiary. This also happens when the beneficiary requires the guarantee to be governed by the laws of his country. The applicant must make sure of his legal position prior to issuing the guarantee. Occasionally an indirect guarantee may be stipulated as a condition in the underlying contract. In this arrangement the bank originally issuing the guarantee (the instructing bank) instructs a local bank to issue the guarantee in favor of the beneficiary in return for a counter-guarantee. Under these circumstances, the instructing bank is obligated to hold the local bank free from all risks and responsibility in case of claim under the guarantee.

A **counter-guarantee** may be defined as: an undertaking given by the counter-guarantor to another party which names that party as the beneficiary to procure the issue by that other party of a local guarantee to be issued to the beneficiary in the underlying contract/relationship. It is important to note that they are two separate and distinct guarantees and that each provides payment upon the presentation of a complying demand.



Different Types of Bank Guarantees - Specified by Purpose

Bank guarantees are flexible and can be structured to cover a variety of needs; it can also be useful to group them according to their purpose into two categories:

Guarantees for Import Trade

A guarantee securing the payment of the purchase price is one of the most common guarantees associated with import trade. When the foreign seller gives the importer payment time after the delivery, the collateral is usually arranged either as a separate guarantee concerning a single transaction, as an Aval, i.e. a guarantee for a bill of exchange accepted by the importer, or as an overdraft facility guarantee limit. Bank guarantee for a bill of exchange, also known as Aval, is an international guarantee term.

Guarantees for Export Trade

An export guarantee is a guarantee in which the seller/exporter serves as applicant/instructing party of the guarantee. Export and import bank guarantees according to their subjects and purposes can issue in different types of bid/tender guarantee, Performance guarantee, Payment guarantee and other types of guarantees some of them mentioned before..

OTHER RELATED SERVICES that supports your business

- Our free consulting service for our clients by our extensive expertise and branch network
- Providing tailor-made solutions and individual service of checking, commenting and drafting guarantee conditions

CLAIMS AND DEMANDS

In most cases and circumstances, upon receipt of a complying demand from a beneficiary by the supplier, informing the bank that the customer failed to complete their contractual obligations, the demand under a guarantee; requires confirmation from the beneficiary (authenticated by their bankers) that the seller has not complied with the underlying contract and the sum of money, now claimed, is due to the beneficiary.

Some guarantees may also call for independently produced documents to be presented with the demand for payment.

It is important to note that if a claim is submitted under a guarantee, the Bank will not become involved in any contractual disputes between the seller and the buyer.

CONTACT US

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