Introduction of Bank Guarantee:

Bank Guarantee is an indemnity letter in which the bank commits itself in writing to be legally bound to pay a certain sum if its party fails to perform or if any other form of default occurs.

A bank guarantee is a pledge on the part of a bank to make someone's debt good in the event that he or she cannot pay it. Bank guarantees are essentially like agreements to stand as cosigner on a transaction; in the event that the original party cannot follow through, the bank can be called upon to provide the payment. Many banks offer bank guarantees as a service to their customers for the purpose of facilitating large business operations and deals, and this particular banking tool is primarily used by big customers such as corporations and governments.

From the perspective of a seller in such transactions, a bank guarantee is a letter of surety. It means that if the buyer takes possession and fails to pay, the seller can still recover the payment, from the buyer's bank. Bank guarantees may be used in situations where large amounts of financing are needed and it is not possible to obtain a loan from one location, as for example when the World Bank provides a bank guarantee for a development project, and for deals on a smaller scale.

These guarantees are not handed out freely. Before a bank guarantee will be issued, the bank conducts a thorough investigation. Banks have no interest in taking on obligations for debts which they will probably have to pay, and thus people who are serious credit risks cannot obtain a bank guarantee. The bank also pays for this service. Fees vary, depending on the bank, and may be based on a percentage of the overall amount being guaranteed.

The bank guarantee is one among many instruments which organizations can use to obtain and secure financing in order to expand, complete projects, and perform other tasks. It is not necessarily the best option, however. Before pursuing a bank guarantee, people should sit down with financial advisors to discuss the array of options available to them and to determine which would be most appropriate. Having a bank guarantee is also no substitute for lacking the ability to cover the financing for a project.

The request for bank guarantees in support of contractual obligations has become common practice in the market and different forms of guarantees have evolved to cater for the diverse types of commercial and financial transactions. A bank guarantee is a promise made by a bank on behalf of certain clients to pay the clients' debts if they are unable to. The bank will only provide this guarantee if their client has sufficient assets to provide security, e.g. property or cash investments. A bank guarantee allows you to offer customers, suppliers and other third parties a guarantee of payment to secure a contract or leasing arrangement without tying up your working capital or affecting your other business activities. A bank guarantee may suit your business if you need to promise payment to a third party, (e.g.: to secure a business contract or leasing arrangement) or if you are in an industry such as property development, building, contracting or retailing.

Meaning of Bank Guarantee:

A bank guarantee is a written contract given by a bank on the behalf of a customer. By issuing this guarantee, a bank takes responsibility for payment of a sum of money in case, if it is not paid by the customer on whose behalf the guarantee has been issued. In return, a bank gets some commission for issuing the guarantee.

Anyone can apply for a bank guarantee, if his or her company has obligations towards a third party for which funds need to be blocked in order to guarantee that his or her company fulfill its obligations (for example carrying out certain works, payment of a debt, etc.). In case of any changes or cancellation during the transaction process, a bank guarantee remains valid until the customer dully releases the bank from its liability. In the situations, where a customer fails to pay the money, the bank must pay the amount within three working days. This payment can also be refused by the bank, if the claim is found to be unlawful.

Bank Guarantee means a comfort, which is being given by issuing bank, to a party (Beneficiary in whose favor the guarantee is issued) of losses or damages if the Client (on whose behalf the guarantee is being issued) fails to complete or conform to the terms of agreement. By issuing the guarantee, the issuing bank is assuring payment of the certain amount of money (as specified in the bank guarantee) to the beneficiary in case of nonperformance of a certain contract according to the terms and conditions contained in the same.

By furnishing the Bank Guarantee, the buyer binds itself with the seller that it has an implied commitment to fulfill the terms and conditions of the agreed contract. If it fails to comply with the same, the bank will honor it. The party to whom the BG is given cannot go to its bank and en-cash. It is just a comfort that if we do business with some unknown party, we might not be on loss as we are not aware honesty, sincerity and authenticity of that party.

The guarantees are not issued just in trades; it also given to government authorities for bidding of land, some project say hydropower or mines etc. For example when a company bid for a mines (ore or coal), it need to furnish the guarantee to the local authorities in which state it is going to bid. Also suppose someone needs bid for road project, it is requires to furnish the guarantee to the government authorities or the main contractor in case the company wish to work as sun-contractor.

Bank Guarantees are issued for some purpose and for a tenure which automatically get revoked on fulfillment of such purpose and/or completion of such specified period or vice versa. For example a bank guarantee might be revoked by the seller (beneficiary) when the buyer fails to pay the seller for the goods supplied. In such a situation, the bank pays the beneficiary to the extent of the amount of Bank Guarantee. Similarly, on the other side if the Seller fails to deliver the goods or complete the terms of agreement, the bank guarantee may be cancelled by the buyer. CA. Manoj Kumar Gupta

Issuance of Bank guarantee is a secured transaction as the client needs to mortgage the properties and cash in the form of FDR for issuing of same. The bank will not give guarantee without securing itself. BG is shown as contingent liability in the notes of account in balance sheet.

A guarantee from a lending institution ensuring that the liabilities of a debtor will be met. In other words, if the debtor fails to settle a debt, the bank will cover it. A bank guarantee will usually state that the bank or financial institution will pay on demand from time to time up to the maximum amount of the bank guarantee. The bank guarantee remains active until the entire amount guaranteed has either been paid or is no longer needed.

Definition of Bank Guarantee:

The bank obliges itself towards the receiver of the guarantee (the Beneficiary) with the guarantee, that in case the ordering customer (the Applicant) does not fulfill the obligation in the period of validity of the guarantee, it shall settle the liability if the terms of the guarantee have been fulfilled. The guarantees which are issued on behalf of residents are issued in local currency (MKD), whereas guarantees which are issued on behalf of non-residents can be issued in all the currencies that the bank operates with. The amount and the validity (maturity) of the guarantee are determined from the submitted documentation. The payment of the guarantee is performed upon the first request of the beneficiary (if that has been stated in the text of the guarantee) and upon presentation of the documents stated in the text of the guarantee. If the terms have been fulfilled, then payment is performed immediately (in the period of 5 working days) before any non-compliance is settled.

A bank guarantee is established by the bank's written declaration in a letter of guarantee. It states that the bank will satisfy creditors up to a monetary amount defined in the contents of the letter of guarantee in the case that a third party (i.e. the debtor) fails to pay its defined liability or in the case of certain other terms and conditions stipulated in the letter of guarantee.

- Legal provision as per Sections 313 to 322 of the Commercial Code
- Uniform Rules for Demand Guarantees (International Chamber of Commerce Publication No. 458)

Bank Guarantee is an irrevocable obligation in the form of written undertaking of a Bank to pay an agreed sum, in case of default by a third party in fulfilling their obligations under the terms of the Bank Guarantee. Customer approaches the Bank for guaranteed surety. The Bank agrees to discharge the customer's liability in case of defaults. The Bank gives the guarantee under the concept of *Kafalah* . Bank Guarantee is not a financing instruments but merely a guarantee.

a) The concept of Al-Kafalah refers to guarantee in regard to two categories:

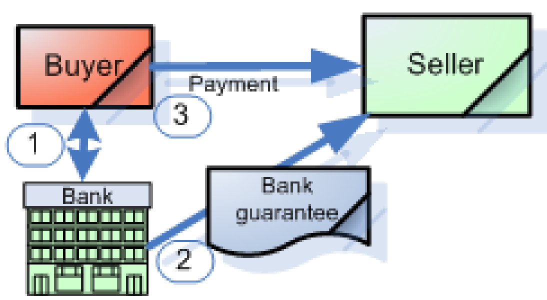
- <u>Guarantee in regard to goods:</u> Refers to the guarantee provided by a person to the owner of a goods who had placed or deposited his goods with a third person, whereby any subsequent claim by the owner for his goods must be met by the guarantor and the third person.

- Guarantee on a person: Refers to the guarantee provided by a person (1st party) to the 2nd Party whereby the 1st Party guarantees joint-responsibility with the 3 rd Party.

b) Bank Guarantee may be issued in respect of ‘Performance of a task':

The bank guarantee allows you to give a "normal" payment term to your customer while being assured of the payment. The cost depends on the bank. It is generally calculated with a rate around 1% per year.

The bank guarantee for the domestic trade and the letter of credit stand by for the international trade are particularly suitable in the context of regular orders received with the same client. Beware of restrictive covenants used by some banks which degrade the level of guarantee.



Request a bank guarantee to its client allows to realize the quality of his relationship with his bank. If she refuses this confirms the financial difficulties of your customer because it shows that it is not supported by its own bank. Offer to your customer to pay yourself all or part of the costs of the bank guarantee. Your customer will appreciate this offer which will limit the feeling of mistrust sometimes induced by a demand of bank guarantee.

The bank guarantee is one among many instruments which organizations can use to obtain and secure financing in order to expand, complete projects, and perform other tasks. It is not necessarily the best option, however. Before pursuing a bank guarantee, people should sit down with financial advisors to discuss the array of options available to them and to determine which would be most appropriate. A bank guarantee is to assure that financing will be available for a project should one of the parties involved become insolvent.

Guarantees:

A guarantee is a written undertaking issued by a bank in favor of the receiver of the goods or services, whereby it pledges to make certain payments on behalf of its client, if the latter fails to make a payment or to carry out specific functions in terms of the commercial contract. The bank's commitment is legally independent of the underlying commercial contract.

A guarantee (bond or surety ship, as it is sometimes called) supports commercial contracts by providing trading partners with the flexibility to reduce credit and performance risk. It is a supplementary agreement or form of collateral or security relating to a specific transaction, for example:

• A seller may not be able to assess a buyer's ability to pay for goods or a service rendered and wants protection against non-payment.

• The buyer questions the seller's financial capability, resources and ability to perform under the commercial contract and needs protection against non-performance.

Definition of Guarantee:

A guarantee is an undertaking given by a person/bank to be answerable for the debt, default or miscarriage of another person/bank. It is also defined as a contract to perform the promise or discharge the liability of a third person in a case of his default. A guarantee may be specific or continuing. When the guarantee is specific, the guarantor is answerable for a particular loan only. In case the guarantee is continuing, the guarantor shall promise to pay whole or part of transactions carried out by the debtor.

Procedure for Bank Guarantees:

- Contact your bank advisor or visit your nearest bank branch office, where you will be provided with basic information, including the Guarantee Issuance Instruction form.
- Along with the Guarantee Issuance Instruction form, you will need to submit additional supporting documents to permit:
  - evaluating the economic risk of the client
  - issuing a guarantee (such as a contract for work, terms of reference documents, etc.)
- A bank guarantee must be secured

Bank guarantees can be obtained from most major banks by approaching an officer of the bank and requesting a bank guarantee. You will need to be a client of the bank, and you will be required to provide collateral to cover the full amount of the bank guarantee. Once you commit sufficient collateral, your bank will then issue a bank guarantee on your behalf to the beneficiary of your choice.

Procedure for Bank Guarantees are very simple and are not governed by any particular legal regulations. However, to obtained the bank guarantee one need to have a current account in the bank. Guarantees can be issued by a bank through its authorized dealers as per notifications mentioned in the FEMA 8/2000 date 3rd May 2000. Only in case of revocation of guarantee involving US $ 5000/ or more to be reported to Reserve Bank of India along with the details of the claim received.

Common uses for bank guarantees:

- Large construction projects commonly require bank guarantees from contractors.
- Builders may accept bank guarantees in place of cash payments up-front.
- May be required to secure a business contract or a leasing arrangement.
- May be used as a bond issued to a landlord for security against damage or unpaid rent.

It helps to have a third party's vetting for your business. When running a business, you might come across a situation that your client may ask you to provide a financial guarantee from a third party. In such circumstances, approach your bank and ask it to stand as a guarantor on your behalf. This concept is known as bank guarantee (BG).

This is usually seen when a small company is dealing with much larger entity or even a government across border. Let us take an example of a company XYZ bags a project from, say, the Government of Ethiopia to build 200 power transmission towers. In this case, companies all over the world would have applied. The selection would be made on the basis of lowest cost and track record as submitted in the proposal form. However, the government has limited ability to assess all companies for financial stability and credit worthiness. To ensure the project is done satisfactorily and on time, the government puts a condition that company XYZ will have to furnish a guarantee given by one or more banks.

In banking nomenclature, company XYZ is an applicant, its bank is the issuing bank and the Government of Ethiopia is the beneficiary. Usually, the BG is for a specified amount, which is a percentage of the total money required for the contract. Obviously, the bank will not just issue such guarantee with its own due diligence. The bank does its own thorough analysis of the financial well being of company XYZ to assess the amount of guarantee it can issue. After all, the bank is at a risk too, in case the client defaults. This amount is called a limit.

Here too there is a catch. The bank will issue guarantee provided the company has not exceeded its overall limit for BGs. And if the Government of Ethiopia is not satisfied with the performance of the contract at a later date, it can invoke the BG. In this situation, the bank will have to immediately release the amount of the BG to the government. BGs can be broadly classified into Performance and Financial BGs. As the name suggests, Performance BGs are the ones by which the issuing bank, also known as the Guarantor, guarantees the ability of the applicant to perform a contract, to the satisfaction of the beneficiary.

It will help you to select the right type of guarantee (bid bond, advance payment guarantee, performance bond, payment guarantee, etc.) and prepare the wording of the guarantee while respecting the needs of your business partners as well as the rules and accepted practice applicable in the respective country.

In addition to issuing guarantees and counter guarantees, and to their advising, we offer issuing of guarantees upon the instruction of your business partner's bank, while always taking into account the terms of the respective guarantee and in accordance with the credit rating and territory of the issuing bank. It offer intermediation in fulfilling guarantees issued in behalf of our clients by a foreign or other local bank and also issue guarantee commitments.

Capacity to contract:

The person or firms who are able to make contracts may stand as surety for loans.

- Minors and persons of unsound mind are not eligible to enter into contract of guarantee.
- Married women have capacity to contract only against their separate estates. The bank however should avoid accepting guarantee of married women.

The contract of guarantee contains an abstract promise to perform and is a separate obligation independent of the underlying transaction. The guarantee is used to secure the performance of a specific obligation, irrespective of whether the performance is owed or not.

<u>Parties to a Bank Guarantee:</u>

A "contract of guarantee" is a contract to perform the promise or discharge of liability of a third person in case of his default.

- <u>The Beneficiary:</u> The person in whose favor the guarantee has been issued, who requires security against the risk of the principal's non-performance or default under the primary contractual obligation. The beneficiary is the person who has authority to draw on the bank guarantee in the event that the bank's client fails to make payment. The beneficiary is named specifically on the bank guarantee, and can claim the full value of the bank guarantee at such time as he or she makes proper claim that they not received payment for the provision of goods or services. The person in whose favor guarantee is given is called the "credit or beneficiary".

- <u>The Applicant:</u> Applies for the issue of a guarantee which covers a particular performance by him. The applicant can expect to be informed in writing why and how he is in breach of contract.

- <u>The Guarantor:</u> The bank or party that issues the guarantee on behalf of the applicant. The guarantor is usually the applicant's bank which is situated in the same country as the applicant.

- <u>Issuing Bank:</u> The issuing bank is the bank which is providing the guarantee to the beneficiary, on behalf of their client. The issuing bank is legally required to make full payment on the bank guarantee if the conditions laid out in the bank guarantee are met.
- <u>Bank Guarantee Usage:</u> Bank guarantees can be used in a variety of ways to cover different trading scenarios. The following are three types of guarantee usage which range from being so common as to be standard practice in international sugar trading, to being relatively rare.

- The persons who gives the guarantee is called "surety"

- The person on whose on behalf the guarantee is given is called the "principal debtor"

- The primary liability to pay the debts falls on the original debtor. The guarantor will pay only the principal debtor fails to pay whole or part of agreed debt.
- The guarantor is answerable for the loan if the debtor defaults. Guarantor has no interest in the contract between principal Creditor and principal debtor.

- **Several participants appear in the process of bank guarantee:**
  - ✓ Ordering customer of the guarantee
  - ✓ Beneficiary of the guarantee
  - ✓ Bank of the ordering customer
  - ✓ Bank of the beneficiary (optional)
  - ✓ Intermediary bank (optional)
  - ✓ Confirming bank (optional)

Advantages of bank guarantees:

- The cost of servicing guarantees is significantly less than the cost of bank lending.
- You can independently plan purchases and payment with suppliers, provided your liabilities do not exceed the value of the bank guarantee.
- The expansion of your company's foreign trade operations opens new international markets and enlarges your circle of foreign partners.
- Improve your reputation as a reliable partner by using guarantees to demonstrate your ability to meet payments.
- Bank guarantees provide favorable conditions on which to work with your suppliers receive or extend payment deferments from manufacturers, increase the procurement volume of goods and receive additional discounts for purchased products.
- Your customers or suppliers have the security of a guarantee by a bank in lieu of your paying them from your cash reserves immediately.
- Not tying up all your money in one project allows you to take advantage of other business opportunities as they arise.
- Your cash is freed up for other investment or growth opportunities.
- A bank guarantee is a reliable security instrument in both international and domestic trade.
- Cost savings.
- Positive impact on your company's cash flow.
- It provides security for various types of risk:
  - Limitation of risk related to your business partner's potential insolvency or unwillingness to pay limitation of risk related to breach of contractual obligations.
  - Security for risks even beyond the realm of trade and services (e.g. provision of "ready cash" in case of judicial bail, auction security and the like)
- Bank guarantee can be used to reduce many business transactions risks.
- It's a reliable security instrument in both international and domestic trade.
- Many genuine business requirements like obtaining goods, purchasing machinery can be fulfilled even when the enterprise does not have enough money.
- Enables to use bank's creditworthiness to facilitate many genuine business transactions.
- It provides immediate funds to the business in the form of payment guarantees.

- It gives you ample time to make your payments in case of deferred payment guarantees.
- It is a quality security instrument which ensures a healthy business transaction and provides better negotiable terms and conditions to the buyer and seller.

For governments:

- Catalyzes private financing in infrastructure.
- Provides access to capital markets.
- Facilities privatizations and public private partnerships (PPPs).
- Reduces government risk exposure by passing commercial risk to the private sector.
- Improves impact of private sector participation on tariffsand Encourage co-financing.
- Increases the rate of private financing for key sectors such as infrastructure.
- Provides access to capital markets as well as commercial banks.
- Reduces cost of private financing to affordable levels.
- Facilitates privatizations and public private partnerships.
- Reduces government risk exposure by passing commercial risk to the private sector.

For the private sector:

- Reduce risk of private transactions in emerging countries.
- Mitigates risk that the private sector does not control.
- Opens new markets.
- Lowers the cost of financing.
- Improves project sustainability.

Business Benefits:

Create stronger business relationships - give your customers and suppliers the security of knowing that payment has been guaranteed by one of the world's strongest financial institutions.

- Free up your cash for other investment or growth opportunities
- Take advantage of business opportunities right away - we can provide a cash-covered guarantee as soon as the next business day, sometimes sooner*
- Earn extra revenue. For cash-covered bank guarantees, you can earn interest on money you would otherwise have paid as a deposit to the third party.

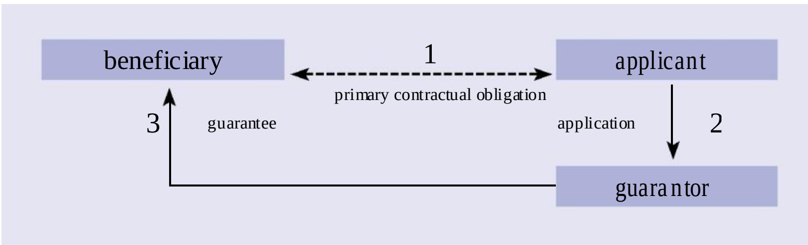
Asset options:

It can provide security for a bank guarantee from a full range of assets including cash and commercial, residential or rural property. For cash-covered guarantees you can choose from a number of investment accounts, including Term Deposits, to earn interest on your secured cash. Contact us for more information on the account options available to you.

Types of Bank Guarantees:

➢ **Direct guarantees:**

A guarantee issued by the bank and handed to the beneficiary is known as a direct guarantee. It is issued by the applicant's bank (issuing bank) directly to the guarantee's beneficiary without concerning a correspondent bank. This type of guarantee is less expensive and is also subject to the law of the country in which the guarantee is issued unless otherwise it is mentioned in the guarantee documents.



1. Primary contractual obligation: The applicant agrees to provide a product/service to the beneficiary who, in turn wants security, usually in the form of a guarantee, that the underlying transaction will be completed.

2. Application for a guarantee: The principal furnishes the information required and signs an agreement with Standard Bank, which describes the terms and conditions under which offshore guarantees are issued. The bank conducts a credit assessment of the principal and verifies compliance with the exchange control regulations.

3. Issuance of the guarantee: In terms of the applicant’s instructions, the offshore guarantee is issued in favor of and sent directly to the beneficiary. Usually it is done through the intermediary of a bank in the beneficiary’s country, who can verify the authenticity of the instrument.

In a direct guarantee, a bank directly guarantees someone, usually for a set amount and within a set period of time. The guarantee may also be generated for a specific transaction. Indirect guarantees are issued by one bank on behalf of another's customer, as for example when a foreign bank stands surety for someone by arrangement through that person's domestic and primary bank.

The bank will issue a direct guarantee specifically in behalf of the beneficiary, thus establishing an immediate legal relationship between the guarantor bank and the beneficiary. A direct guarantee is advantageous for you, both because you save some of your costs (as neither guarantee commission nor fees are charged for another bank abroad) and, even more importantly, because the guarantee is governed by Czech law unless otherwise expressly agreed in the text of the guarantee

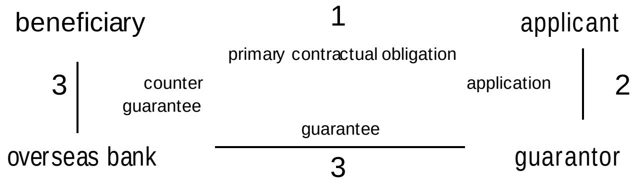
Direct guarantees are used primarily in domestic business. However, an accessory security in the form of a surety is often enough. This is issued directly to the beneficiary in the same way as a direct guarantee. Guarantees apply whenever the bank's undertaking to provide security is not contingent on 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. A direct guarantee occurs when the client instructs the bank to issue a guarantee directly in favor of the beneficiary.

Reasons for expiry:

1. **Ordinary expiry:** If the beneficiary has not made a claim by the date specified in the expiry clause of the guarantee document, the guarantee will expire. This applies irrespective of whether the guarantee document was returned to the bank or not.
2. **Payment of guarantee amount:** In the event of the definitive and final settlement of the guarantee amount due to a claim by the beneficiary, the guarantee will expire.
3. **Premature cancellation:** Formal discharge by the beneficiary.

➢ **<u>Indirect guarantee:</u>**

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 guarantee to the bank nominated by the beneficiary who, in turn, will issue a counter 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.



1. **Primary contractual obligation:** The applicant agrees to provide a product/service to the beneficiary who, in turn wants security, usually in the form of a guarantee, that the underlying transaction will be completed.
2. **Application for a Guarantee:** The principal furnishes the information required and signs an agreement with Standard Bank, which describes the terms and conditions under which guarantees are issued. The bank conducts a credit assessment of the principal and verifies compliance with the exchange control regulations.
3. **Issuance of the Guarantee:** In terms of the applicant's instructions, the offshore guarantee is issued in favor of and sent directly to the beneficiary's bank. The bank, in turn, issues its own guarantee in favor of and sends it to the beneficiary.

With an indirect guarantee, a second bank is involved, which is basically a representative of the issuing bank in the country to which beneficiary belongs. This involvement of a second bank is done on the demand of the beneficiary. This type of bank guarantee is more time consuming and expensive too. Indirect guarantees are mainly issued in connection with export business – in particular when government agencies or public entities are the beneficiaries.

In addition, many countries do not accept foreign banks as guarantors due to legal provisions or other form requirements (e.g. Middle-Eastern countries). In the case of an indirect guarantee, another bank is involved. The principal's bank will issue an indirect guarantee (a counter guarantee) made in behalf of the other bank, based upon which the latter will issue its guarantee in behalf of the beneficiary.

In case the other bank's guarantee is eventually used by the beneficiary, a counter-guarantee serves to provide security to the other bank that is based upon an irrevocable abstract commitment by the bank to pay a defined amount upon the first written demand of the other bank in case of performance under the guarantee. Indirect guarantees are mostly used in special territories (such as Arab countries), where local regulations prevent acceptance of guarantees issued by foreign banks.

With an indirect guarantee, a second bank is involved. This bank (usually a foreign bank with head office in the beneficiary's country of domicile) is requested by the initiating (Swiss) bank to issue a guarantee in return for the latter's counter-liability and counter-guarantee. In this case, the initiating (Swiss) bank will cover the guaranteeing (foreign) bank against the risk of any losses which it may incur in the event that a claim is made under the guarantee. It formally pledges to pay the amounts claimed under the guarantee upon first demand by the guaranteeing bank.

Reasons for expiry

1. **Expiry date:** Expiry of the bank guarantee issued by the guaranteeing (foreign) bank to the beneficiary. Expiry of the counter-liability and counter-guarantee of the initiating (Swiss) bank in favor of the guaranteeing foreign bank (15 to 30 days following the expiry date).
2. **Expiry of counter-liability and -guarantee:** Some countries do not allow time-limits for counter-guarantees from the initiating bank. In this case, the obligations of the initiating (Swiss) bank do not expire until the bank is discharged definitively and in full by the guaranteeing (foreign) bank.
3. **Payment of Guarantee amount:** If a claim is made under the guarantee by the guaranteeing bank or the end-beneficiary, it will expire when the guarantee amount has been definitively paid by the principal's bank.

- **<u>Payment Guarantees:</u>**

This type of bank guarantee is used to secure the responsibilities to pay goods and services. If the beneficiary has fulfilled his contractual obligations after delivering the goods or services but the debtor fails to make the payment, then after written declaration the beneficiary can easily obtain his money from the guaranteeing bank. This is used as security for payment obligations. It is also referred to as a Standby Letter of Credit.

A payment guarantee is simply an assurance provided by the buyer to the seller that payment will be made upon shipping of goods. This is the most common form of bank guarantee usage in the global sugar trading industry, and buyers can except most sellers to request a bank guarantee for the purpose of securing payment in the case of the buyer defaulting on the contract.

Depending on the terms of demand for payment guarantees can be divided into conditional and unconditional:

- **Conditional Guarantee**- guarantee, on which guarantor bank, in case of violation by principal of its liability, secured by guarantee, pays funds to beneficiary on the basis of beneficiary's demand and in case of its fulfilling of appropriate terms or presentation of documents, indicated in the guarantee.
- **Unconditional Guarantee**- guarantee, on which guarantor bank, in case of violation by principal of its liability, secured by guarantee, pays funds to beneficiary on its first demand without presentation of any other documents or fulfilling of any terms.

As long as a third party will agree to guarantee the repayment of the loan, a measure that reduces the risk assumed by the lender, the loan has a better chance of being approved. Depending on the circumstances, the payment guarantee may take on several different forms. In some cases, the agreement is recorded in a formal letter of guarantee that is issued by the third party and addressed to the lender. A guarantee of this type may be utilized in a number of situations, including deals where goods are imported or exported. The advance payment guarantee is also used with domestic transactions, such as the purchase of heavy equipment, construction projects, or even large lots of retail goods.

- **<u>Tender Guarantee or Bid bonds:</u>**

A bid bond or tender guarantee is a safety mechanism that discourages companies from submitting a tender only to:

- Withdraw from the tender before its expiry
- Attempt to amend the tender
- Refuse to sign the contract when awarded to them
- Fail to furnish the required performance bond or other guarantees.

These guarantees are also called penalty bonds because the successful tendered foregoes the amount of the guarantee should he default. Bid bonds are also used as surety that the tendering company has the finances and the capabilities to undertake the contract. The validity of the bond extends from date of issue to the signing of the contract or issuance of the performance guarantee. Once the tender has been awarded, the bonds of the unsuccessful bidders are returned for cancellation.

- Often called for in support of contract tenders, particularly in international trade situations.
- Provides the beneficiary with a financial remedy if the applicant fails to fulfill any of the tender conditions.
- Normally submitted with the other documents called for in the invitation to tender and remain valid during the period of tender, plus a grace period to allow the beneficiary to make demand.

These are issued by the bank to avoid the deposit of the earnest money by its customers when they tender for contract. The amount is usually 1% to 20% of the contract value and the duration is for very short period until the bids are opened and the contract awarded. Once the bank issue the bid bond, it is usually committed to supporting the project by issuing further guarantees such as performance bonds etc. This is usually issued for an amount equal to between 1 and 2 percent of the contract value. It gives the employer compensation for additional costs if the party submitting the tender does not take up the contract and it must be awarded to another party.

This guarantee is issued to government, semi-government or private bodies in lieu a certain sum to be deposited with them as ‘Earnest Money' when they call for tenders. Tender Guarantee/Bid Bond is required as an indication of good faith that the tendered is serious in tendering for the contract. This is normally issued in support of a tender in international trade. It provides the beneficiary with a financial remedy, if the applicant fails to fulfill any of the tender conditions.

- **Advance payment Guarantees:**

These guarantees protect a beneficiary who makes an advance or progress payment to the applicant. A refund of progress payment is guaranteed if the applicant does not fulfill the terms of the contract. The Bank issues this guarantee to government bodies that have granted the contract to the customer (the contractor).

It allows the government to gives advances payment to the contractor in order to carry out government projects according to the terms and conditions of the contract. This mode of guarantee is used where the applicant calls for the provision of a sum of money at an early stage of the contract and can recover the amount paid in advance, or a part thereof, if the applicant fails to fulfill the agreement.

These are issued where a customer receives an advance payment in respect of the work to be performed or goods to be supplied under a contract undertaken by him and the bank as a guarantor, undertakes to repay the amount or the goods not supplied according to contract. Interest free cash payment is usually made to the client by the principal to support the start up operation of the contract against the issue of the bank guarantee.

This enables the employer to get a refund of advance payments made in the event of default by the contractor. It is issued for the full amount of the advance payment, but may contain reduction clauses, which enable a reduction in the maximum amount upon evidence of progressive performance. May provide for pro rata reductions to the guarantee amount on presentation of certain documents or on a specified date or dates. Duration will depend on the underlying contract, but many run up to the anticipated date of the final delivery, plus a grace period to allow the beneficiary to make demand in the event of non-performance of the obligations covered by the guarantee.

If the seller has requested an advance payment, then the buyer can request a bank guarantee to cover the advance payment in the event that the seller fails to fulfill its obligations as stipulated in the contract. This is rarely needed in sugar trading, as payment is usually made by a letter of credit, under which payment is only made to the seller in the event that the conditions of the contract are fulfilled.

- **Performance Guarantee:**

The seller issues a Performance Bank Guarantee to ensure or give concrete commitment to the buyer through its bank. This method ensures the buyer the timely execution of an agreement to have the goods exported or delivered or services performed. In case the seller defaults on execution of the terms agreed upon the Performance Bank Guarantee ensures the buyer the payment of the guarantee amount by the issuing bank. Generally the performance Bank guarantee is 10 percent of the total assignment or project value.

Example: Guarantee to government department for bidding the projects, guarantee to contractors and seller in normal course of business.

These types of guarantees are issued in respect of performance of a contract or obligation. In such guarantees- in the event of non-performance or short performance of the obligation, bank will be called upon to make good the monetary lose arising out of non-fulfillment of the guarantee obligation. The bank cannot perform the contract itself but by this Bank Guarantee the bank undertakes to reimburse the loss incurred by the beneficiary due to non-performance. The amount of loss to be reimbursed is ascertained at the time of default. The purpose of this Bank Guarantee is to fix the liability in the eventuality of default by the customer. Normally issued for an amount equal to between 5 and 10 percent of the contact value, this guarantee assures payment to the employer in the event that the contractor fails to fulfill contract obligations.

- **<u>Performance Bond Guarantee:</u>**

When a contract has been awarded, a performance bond is usually required, which guarantees the performance under the contract from commencement to completion. The bank issuing the performance bond undertakes to pay a specified sum of money to the beneficiary if the applicant does not fulfill the contractual obligations.

Depending on the nature of the contract, it may be to the applicant's advantage to have separate performance bonds for each stage of the contract. The validity period extends to the completion of the contract. A performance bond guarantee is a bank guarantee which is issued by the seller and given to the buyer. If the seller fails to meet the terms of the contract, then the buyer is entitled to claim payment on the bank guarantee, which is normally around ten percent of the total value stipulated on the contract. It is standard practice for the seller to issue the buyer a performance bond guarantee.

These are issued by a bank on behalf of its customer who has entered into a contract to supply goods or perform other services and the guarantee compensation in term of money in the event of non performance of such contract. This is one of the most common types of bank guarantee which is used to secure the completion of the contractual responsibilities of delivery of goods and act as security of penalty payment by the Supplier in case of non delivery of goods. Most common form of guarantee, used in a variety of situations.

Normally required at the time of commencement of the contract and will extend over the duration of the contract, plus a grace period to allow the beneficiary to make demand in the event of non-performance of the obligations covered by the guarantee.

- **Warranty Bonds/Maintenance Bonds:**

This type of guarantee is designed to protect the beneficiary by covering the cost of any defect or malfunction which might manifest itself after the completion of the project. The guarantee remains in force for the duration of the maintenance and warranty period as specified in the contract between the beneficiary and the applicant.

These are issued at the end of construction period remain outstanding until the end of maintenance period. This is usually one year. The purpose of this bond is to prevent the contractor from leaving the construction site after the construction is completed and the last progress payment received. This ensures that the contactor does not abandon the contract after completion of the construction phase, but continues to honor any maintenance obligations as per the original agreement.

- **Overdraft Guarantees/banking facilities:**

An overdraft guarantee is issued to secure banking facilities granted by a foreign bank to an offshore subsidiary of a South African company requiring working capital or general banking facilities.

- **Lending-related Guarantees:**

A lending-related guarantee is an undertaking by the bank to fulfill a specified monetary obligation in the event of default by the offshore subsidiary of a South African company on whose behalf the guarantee is made. For example, it could guarantee the repayment of a foreign loan taken out by an overseas office of a South African concern.

- **Shipping Guarantees:**

This is undertaken by a bank to indemnify the shipping company against any liability that arises as a result of releasing imported goods to the consignee without the documents of the title (bill of lading). The indemnity could incorporate the cost of the goods, freight charges, legal costs and more.

A shipping guarantee enables the consignee to obtain release of the goods from the shippers, so as to avoid inconvenience and financial loss such as demurrage charges, where goods arrive before the documentation. A shipping guarantee remains in force until the original bill of lading is produced.

- **Airways releases:**

A customer requires an airway release so that the cargo or parcel superintendent at the airport can release air freighted goods consigned to the importer. The same conditions apply as for a shipping guarantee, except that it can be cancelled upon proof of payment of the import.

- **Negotiating Guarantees:**

When negotiating contracts involving guarantees, you are urged to liaise with the nearest International Trade Services office, which can advise you on the type of guarantee to meet your specific needs and to assist you with the wording of the guarantee.

Bear in mind that guarantees are subject to credit assessment and in a number of cases, exchange control regulations. In order to avoid unnecessary delays, contact your branch manager, commercial manager or account executive timorously. Apart from offshore guarantees, the bank also issues a variety of local guarantees such as property guarantees, surety bonds and letters of undertaking.

- **Security Guarantee:**

It is issued on behalf of the successful tendered in favor of the principal. The contract requires the contractor to provide the principal with a deposit for a nominal sum of the contract value in lieu of which a performance guarantee provided by the bank is acceptable. This will act as an assurance that the contractor will fulfill his obligation.

- **Financial Guarantee:**

Financial Bank Guarantee is a bond which is not cancelable and ensures the payment of the interest and repayment of the principal amount as per the schedule agreed upon by both the borrower and the lender. A guarantor to this debt security is liable to pay off the liability in case the first party or the issuer of the Financial Bank Guarantee fails to make the payment.

Example: Suppose the company has taken loan from bank/financial institution which are being guaranteed by another company and/or the personal guarantee of the promoter-director and/or the guarantee given by the property owner. Again in case of buyers credit the bank guarantees of payment in case the client fails to good the payment.

These are guarantees given by the bank to financial institutions (e.g. IDBP) and companies (the creditors or beneficiary) undertaking to pay the debts of its customer (the principal debtors) in the event of the default by the customer. This type of Bank Guarantee is issued by the bank and furnished by the bank's customer in lieu of earnest money or the security to be deposited with the beneficiary of the Bank Guarantee for the performance of a contract. These guarantees are given in lieu of purely monetary obligation e.g. the obligation of contractor make earnest money deposit/guarantees give to sale-tax department etc.

- **Loan Repayment Guarantees:**

  This type of guarantee is given by a bank to the creditor to pay the amount of loan body and interests in case of no fulfillment by the borrower.

- **B/L Letter of Indemnity:**

  This is also called a letter of indemnity and is a type of guarantee from the bank making sure that any kind of loss of goods will not be suffered by the carrier.

- **Rental Guarantee:**

  This type of bank guarantee is given under a rental contract. Rental guarantee is either limited to rental payments only or includes all payments due under the rental contract including cost of repair on termination of the rental contract.

- **Credit Card Guarantee:**

  Credit card guarantee is issued by the credit card companies to its customer as a guarantee that the merchant will be paid on transactions regardless of whether the consumer pays their credit.

- **Shipping Guarantee:**

Addressed to shipping companies requiring the issue of delivery orders in the absence of original bill of lading. This enables the buyer to obtain release of the goods from the carrier, despite the bills of lading being lost or delayed.

- **Equipment Bond:**

These are issued where the customer receives and uses equipment made available to him by the employer. The customer progressively requires a theoretical ownership interest through the presentation of progress certificate which include the depreciation allowance. This represents advance payment in kind by the employer who is assured that equipment will be effectively used on the work site.

- **Transportation Bond:**

These bonds are issued where the customer has undertaken to transport capital equipment (imported by the employer for the project) from the harbor to the worksite.

- **Retention Money bond (RMBs):**

These are issued to avoid retention of money (usually)ten percent)by the employer from each progress payment due to the customer Construct but also to operate more importantly, to operate successfully during a previously agreed period of time. In order to cover hither to untraceable mistakes or faults in the completed construction work, until usually one following final completion o\f the project.

Most major projects call for stage payments as work progresses. Often the employer retains a percentage of the payment (retention money), as cover for any hidden defects in the completed work. A retention money guarantee allows for immediate release of retention money to the contractor. The employer can get a refund of retention money released, in the event of default by the contractor.

Contracts may allow the beneficiary to retain a proportion of the contract value once substantial completion of the contract has taken place and the beneficiary may be prepared to release this retention money to the applicant against the presentation of a guarantee. Duration of the guarantee depends on the underlying contract terms and may extend for a period after completion of the contract.

Under the primary contract the beneficiary is permitted to retain a certain percentage of the payment due to the principal as a safeguard against latent defects. In order to secure the release of these retention monies, the applicant will apply for a retention guarantee. Nevertheless, it does assure reimbursement to the beneficiary in the event of the applicant's non-performance after completion of the contract. Retention bonds aid applicants experiencing cash flow problems.

- **Working Capital Replenishment Bond(WCRG):**

These are issued by the bank in favor the employer who advances funds to the contractor to bridge financial payment delays on receivable due by himself.

- **Custom Bond:**

These are often requested to be issued in connection with imported equipment which are subsequently re-exported upon completion of the project. By giving such a bond, exemption is obtained from paying import duties and sale tax to the custom authorities of the country involved.

This type of guarantee is only issued to the Custom Department. For instance, a forwarding agent is required to furnish to the Custom Department a custom bond to guarantee the good behavior of its employees. Also included under this category is the guarantee in respect of temporary importation of goods into Malaysia . Certain goods are imported as samples or for temporary use. Common transit regime/Community transit regime transactions outside the transit regime,

- **Customs Guarantee:**

Contractors often need to import equipment temporarily to carry out a contract. Import duty would normally be payable, but the customs authorities will grant exemption if the contractor undertakes to re-export the equipment on completion of the contract. The contractor then has to provide the customs authority with this guarantee, which prevents the contractor from selling the goods instead of re-exporting them.

- **Deferred Payment Guarantees:**

The bank at request of customer issues such Bank Guarantee when he purchases goods or machineries from a creditor on the terms of payment after a specified time in lump sum or in installments. The creditor requires such deferred payment terms to be guaranteed by the bankers of the principal debtor. Such a Bank Guarantee contain an undertaking by the banker that that deferred payment shall be made by the principal debtor, failing which the banker shall pay the amount to the creditor. These types of guarantees normally arise in the case of purchases of machinery or such capital equipment by industries or other party/ies. The manufacturer or its agent applies the machinery against cash payment say 10% to 15% & obtains accepted bills for the balance amount by purchaser's banker for deferred period say 3 to 5 years. Issued on behalf of an importer customer to cover deferred payment terms agreed upon between him and the supplier of plant and machinery.

- **Facility Guarantee:**

This is normally not trade related. Its purpose is to provide security to another bank to advance money to an individual or company. It is often used when a company does not have any credit record and wishes to expand offshore. Enables an applicant to secure banking facilities for a subsidiary/associate company, or personal account, in other countries.

- **Civil Aviation Authority and Association of British Travel Agents Bonds:**

  Required by applicants in the travel industry to enable participation in the ATOL and ABTA schemes, which offer holiday protection to travelers. Valid for 18 months, normally renewable every year; to allow for an annual license plus a six month grace period for claims if the license is revoked or not renewed. Various guarantee formats are available from both authorities.

- **Demand Guarantee:**

  A type of protection that one party in a transaction can impose on another party in the event that the second party does not perform according to predefined specifications. In the event that the second party does not perform as promised, the first party will receive a predefined amount of compensation by the guarantor, which the second party will be required to repay.

- **Credit Guarantee/Supply Guarantee:**

  This guarantee is issued to a supplier who extended his credit facility to our customer for the purchase of goods on credit and therefore, it acts as a security deposit.

- **Guarantee for Exemption of Custom Duties:**

This guarantee is used for import action of goods into Malaysia on temporary basis goods are exempted from import duties provided they are re-exported. The Custom Department requires a bank guarantee to ensure that the goods are re-exported on time failing which a claim will be made under the bank guarantee.

- **Guarantee for Honoring of Cheque:**

This type of guarantee is issued to government departments to ensure that such issuance cheque would be good for payment upon presentation.

- **Confirmed Guarantee:**

It is cross between direct and indirect types of bank guarantee. This type of bank guarantee is issued directly by a bank after which it is send to a foreign bank for confirmations. The foreign banks confirm the original documents and thereby assume the responsibility.

- **Loan Repayment Guarantees:**

This type of guarantee is given by a bank to the creditor to pay the amount of loan body and interests in case of no fulfillment by the borrower.

- **B/L Letter of Indemnity:**

This is also called a letter of indemnity and is a type of guarantee from the bank making sure that any kind of loss of goods will not be suffered by the carrier.

- **Rental Guarantee:**

This type of bank guarantee is given under a rental contract. Rental guarantee is either limited to rental payments only or includes all payments due under the rental contract including cost of repair on termination of the rental contract.

- **Specific Guarantee:**

The guarantor's liability to a particular transaction between the debtor and the bank is limited to a specific sum.

- **Continuing Guarantees of a Limited Amount:**

The guarantor guarantees the debtor's liability to the bank for a specified sum, thus limiting his own liability. If possible, banks usually obtain a continuing guarantee.

- **Court Guarantee:**

Given to a party involved in legal proceedings, to secure the payment of costs should these be awarded against the applicant as part of the judgment. Normally valid until a final judgment has been made and will not quote a specific expiry date.

- **VAT Bonds/Duty Deferment Bonds:**

Provided to HM Customs and Excise and allows the applicant to import goods from outside of the EU without the immediate payment of duty/tax, which is then settled on a monthly basis by Direct Debit. Liability under the guarantee is 200% of the face value and remains valid until HM Customs confirm to HSBC Bank that no liability is outstanding, following the giving of a notice termination. HM Customs provide their own paperwork for this type of guarantee.

- **Payment/Trade Debt Guarantee:**

Often used to cover the non-payment of a debt(s) arising under a transaction or over a period of time. Provides financial security to the beneficiary should the applicant fail to make payment for the goods or services supplied. Such guarantees will invariably run up to the final scheduled date of payment, plus a grace period to allow the beneficiary to make demand in the event of non-payment.

- **Loan Note Guarantee:**

Provided to secure the payment of loan notes or other commercial paper, in cases of company take over's/buyouts. Normally valid for a number of years, depending on the terms of the company sale agreement.

- **Bank Guarantee Bond:**

It is still possible for the investor to earn the anticipated return, but it is much more likely that what he or she will ultimately receive is a figure closer to that guaranteed minimum return. When considering the purchase of a guarantee bond, savvy investors will play close attention to the amount of guaranteed return, and determine if that amount is sufficient to warrant the purchase. The bank guarantee is one among many instruments which organizations can use to obtain and secure financing in order to expand, complete projects, and perform other tasks. It is not necessarily the best option, however. Before pursuing a bank guarantee, people should sit down with financial advisors to discuss the array of options available to them and to determine which would be most appropriate.

- **Lease Bank Guarantee:**

  The bank guarantee is one among many instruments which organizations can use to obtain and secure financing in order to expand, complete projects, and perform other tasks. It is not necessarily the best option, however. Before pursuing a bank guarantee, people should sit down with financial advisors to discuss the array of options available to them and to determine which would be more appropriate. A bank guarantee is to assure that financing will be available for a project should one of the parties involved become insolvent.

  A company that experiences seasonal peaks and valleys in the demand for their products is a good candidate for a bank term loan. With a demonstrable performance record, it is easy to establish a bank term loan that will come due during the period when a high volume of revenue is received.

  Occasionally, offers to lease a bank guarantee are made available in various venues. This can be a tempting offer for someone who is having trouble coming up with the collateral to secure a bank guarantee directly from their own bank, but please do avoid the temptation, as these types of offers invariably involve fraud somewhere along the way, and are always completely useless when push comes to shove. The typical spiel goes that for a fraction of the cost of a real bank guarantee, you can lease someone else's'. You put up the funds in advance, and then in theory, you have the use of the bank guarantee. Unfortunately, that's not what happens. The bank guarantee being leased may be a forged document, or it could be the real thing. Even if it is the real deal, it is effectively useless because you cannot draw on it without the permission of the person who leased it to you. Almost 100% of the time that permission is not given, and you are out a large sum of money whilst the person who offered the lease in the first place gets away scot free.

- **Bank Guarantee Buyers :**

It means that if the buyer takes possession and fails to pay, the seller can still recover the payment, from the buyer's bank. Bank guarantees may be used in situations where large amounts of financing are needed and it is not possible to obtain a loan from one location, as for example when the World Bank provides a bank guarantee for a development project, and for deals on a smaller scale. A bank guarantee is to assure that financing will be available for a project should one of the parties involved become insolvent.

- **Discounted bank Guarantee:**

So you need a bank guarantee to secure a load of sugar, but you don't have millions of dollars in collateral to put up. It seems like all is lost, and then somebody offers you a one million dollar bank guarantee, and all you have to do is pay $600,000. Sounds like a bargain, right? Wrong. There is no such thing as a legally discounted bank guarantee. Normally this type of bank guarantee fraud is part of an investment scam, but sugar buyers can occasionally be caught up with the same people who are trying to exploit unwary would be investors.

- **Payment guarantees:**
  - For payments
  - For rent
  - For excise taxes
  - For tolls
  - For loan payments

➢ **<u>Non-payment guarantees:</u>**

- For bids (bid bond)
- For contract performance (for proper performance of work)
- For retention (for securing a warranty period)
- For returning an advance payment
- Bond in behalf of the State Agricultural Intervention Fund

<u>Formal verification of Bank Guarantee:</u>

In making a claim under a bank guarantee, the beneficiary is exercising his or her right to demand payment of the guarantee amount (or part thereof). The bank checks whether the claim has been made in accordance with the conditions of the guarantee.

- **Signature check:** In general, guarantees contain a clause (identification clause) whereby the beneficiary's bank has to confirm his or her signature in the event of a claim. This procedure ensures that the claim is only signed by a person or persons authorized to do so.

- **Form of claim:** The claim generally has to be submitted in written form. The conditions of the guarantee often permit claims to be made via encrypted telex or SWIFT communications.

- **Time-limit of claim:** The claim must be received in the specified form, at the latest on the expiry date, by the branch of the bank stipulated in the guarantee. The beneficiary is responsible for the mailing risk and any other delays (force majeure).

- **<u>Special aspects:</u>**

The beneficiary of the guarantee can normally assign his or her conditional claim for payment to a third party, or assignee (assignment of the proceeds but not the drawing right). Things to note:

✓ The assignee does not automatically receive the right to invoke the guarantee. Only the beneficiary specified by name in the guarantee document can claim under the guarantee.

- ✓ Any change in the beneficiary of the guarantee requires the agreement of all parties involved, i.e. the existing beneficiary, the UBS client and the guaranteeing bank.
- ✓ In contrast to the law concerning sureties, the assignment of the guaranteed claim arising from the underlying transaction does not result in the simultaneous transfer of the conditional guarantee claim.

Notification of a bank guarantee:

Guarantees can, for identification and transmission purposes, be notified to the beneficiary via a third-party bank, normally in the beneficiary's country of domicile. This is primarily done electronically via SWIFT or encrypted telex. The notifying bank does not enter into any direct guarantee obligations.

Legal Requirements of bank guarantee:

Bank guarantee is issued by the authorized dealers under their obligated authorities notified vide FEMA 8/ 2000 dt 3rd May 2000. Only in case of revocation of guarantee involving US $ 5000 or more need to be reported to Reserve Bank of India (RBI).

Regulations for issuance of Bank Guarantees:

The Bank guarantees can be subject of: Uniform Rules for Demand Guarantees (URDG) International Chamber of Commerce (ICC) Publication 458, domestic or foreign low that regulates the issues connected with bank guarantee or with no rules implemented in the guarantee text.

Costs of a bank guarantee:

The charges imposed by the bank are risk related and include an establishment fee, a telegraphic or postage fee and a risk related charge payable quarterly in advance until the guarantee is cancelled.

The overseas bank generally levies charges if it is to advise, negotiate or issue the guarantee in its own name. The applicant and beneficiary need to decide who will be liable for the payment of the charges. The applicant is responsible for all charges if the beneficiary refuses to accept some or all of the charges.

Risks:

- **Legal consequences:** The laws of some countries allow claims to be submitted after the expiry date of the guarantee in which case you are liable until it is formally cancelled.
- **Alterations:** Guarantees are subject to amendment and cancellation but in both cases, agreement from all parties is required.
- **Payments under guarantees:** Payment under guarantees is called for at the sole discretion of the beneficiary, who submits a written claim stating that the applicant has failed to meet the obligations under the contract. The claim, together with supporting documents, if applicable, is presented to the guarantor (bank). Upon receipt of a claim that meets the requirements of the guarantee, the bank will pay the beneficiary immediately.
- **Amendments/ cancellations:** A guarantee is irrevocable and can only be cancelled or amended when all parties are in agreement.

Risk for the Bank:

1. The bank under takes great risk by advancing loans on sureties. The guarantor may lose his property during the period of loan contract. If the debtor fails to pay the debt, the bank cannot recover the amount from the two parties.
2. In case the debtor fails to repay the loan, the bank may not be able to get back the money even by suing the debtor and the guarantor. The case may fail on technical grounds.
3. If at any time the bank has to change the constitution or it has to amalgamate with other banks, the guarantee is terminated unless otherwise stated.

- **Precautions:** Greater need for analysis of financial standing and for ascertaining the performance ability of the customer.
- **Mark up:** Mark up at the rate of 4% per annum out of which 2.50% is paid to SBP by the commercial bank. Mark up is charged at the time of realization/adjustment of the finance and for finance on half yearly basis.

Transfer of a Bank Guarantee:

It is possible for the beneficiary of a bank guarantee to assign some or all of the proceeds of a bank guarantee to another party. However it is not possible for the beneficiary to assign drawing rights to another party. In other words, the beneficiary can inform the issuing bank that they would like the proceeds of the bank guarantee to go to another party, but the other party cannot then draw on the bank guarantee themselves, rather the beneficiary will have to instruct the bank to pay the proceeds of the bank guarantee to the assigned entity. In order to transfer the proceeds of a bank guarantee, the written permission of the issuing bank and the beneficiary is required.

Bank Guarantees Traded On The Public Market:

Bank guarantees are not traded on public market. If you see a bank guarantee being traded on the public market, then that bank guarantee is a fraudulent forgery not worth the paper it is printed on. Bank guarantees are private agreements between a bank, its client, and a beneficiary – they are not traceable items. Obtaining a bank guarantee means approaching your bank, requesting a bank guarantee, and putting up sufficient collateral to secure it. Any other means of obtaining a bank guarantee are illegal and fraudulent, except for very rare circumstances which are connected with business financing and insurance, and have nothing to do with sugar trading whatsoever.

Bank Guarantee Pitfalls:

These are some common pitfalls which can easily cause problems when applying for or accepting bank guarantees.

- Correct Beneficiary Details – It sounds easy enough to get right, but if the details on the bank guarantee do not match the beneficiary's actual details, then the bank guarantee may be void.
- Correct Date – Bank guarantees only come into effect at a certain date, and they also have expiry dates. Ensure that there is a reasonable period of time in which you can draw on the bank guarantee, if you are receiving one, or that the seller will have enough time to draw on the bank guarantee, if you are sending one.

- <u>Correct Contract Details</u> – The contract which the bank guarantee refers to will be referenced in the bank guarantee. Ensure that the details provided on the bank guarantee match the contract. Essentially, you must check and double check that all details listed on the bank guarantee are correct, otherwise the bank guarantee could have no value whatsoever.

<u>Preventing Bank Guarantee Fraud:</u>

The prospect of bank guarantee fraud is a scary one, because it potentially involves the loss of millions of dollars. However, the good news is that you can keep yourself safe by following some common sense procedures when it comes time to obtaining a bank guarantee, or accepting one. First, a warning. If you are given a bank guarantee that you suspect is false, it is not a good idea to take it to a bank to have it checked. Doing so is rather akin to walking into a police station with a suitcase full of cocaine to ask them if it is the real thing. Many people have been arrested in banks after simply trying to authenticate fraudulent bank guarantees. If you suspect there is a problem with a bank guarantee, have your attorney deal with the issue.

<u>Bank Guarantees From Minor Offshore Banks:</u>

If a seller is trying to offer you a performance bond bank guarantee from Bob's Bank in the Seychelles, politely decline to do business with that seller. Bank guarantees should always be issued by a top 25 world bank. The problem with smaller banks is that they cannot always be held liable if they fail to uphold their guarantees, and major banks in the USA may actually be unable to do business with them even if they are above board, due to provisions in the patriot act.

<u>Spotting a Fraudulent Bank Guarantee:</u>

If you are seeking a bank guarantee for the purposes of securing a shipment of sugar, then a fraudulent bank guarantee is one which you obtained in any fashion other than approaching your bank, putting up the necessary collateral, and obtaining a bank guarantee directly from them. If you are accepting a bank guarantee from a seller as a performance bond, make sure that it is well scrutinized by your lawyer.

Margin money & bank charges:

Bank Guarantees are issued against some margin money or at 100% margin which is keep in the form of FDR. Suppose a company need to furnish one time guarantee to some government authority, it will create a FDR (100% margin) and request the bank to issue the BG against such FDR. Now suppose it is regular for the company to furnish the BG to authorities, contractors, in trade etc, it is suggested to request to bank to fix a limit subject to regular review. Branch moves the proposal subject to the required collaterals as per bank guidelines and term & conditions. The company needs to give the margin money which depends on the approval of sanctioning authority. The margin money normally ranges from 10% to 25% of the BG.

For example in case of real estate company which need to furnish the guarantees regularly to the local authorities for taking license for development of every new residential and commercial projects. They normally have the limits with the banks which block the limit to the extent of BG amount and put up the margin in the form of FDR.

Bank charge some commission for this BG service which is again subject to bank guidelines and approval of sanctioning authority. The commission in linked to the tenure of the BG. Some bank charge the entire commission at the time of issue of BG whether it may 1 year or 5 year. Hence it is normally suggested that at the time of approval, request should be made that commission should be charged on quarterly basis. There is one more thing which we should aware that bank charge commission on quarter to quarter basis i.e. if the BG cancelled after 3 months 5 days, the bank will charge commission for six months instead of 3 months 5 days. Some bank charge commission for six months or one year instead of quarter basis. But we can request for quarter basis charges at the time of moving the request.

Important Guidelines on Guarantees and Co-acceptances:

1. Guidelines (General)

- Bank Guarantees (BG) comprise both performance guarantees (PG) and financial guarantees (FG) and are structured according to the terms of agreement viz., security, maturity and purpose.
- Banks should confine themselves to the issuance of FG and exercise due caution with regard to PG business.
- Bank guarantees should not normally extend beyond 10 years. Banks may issue guarantees (BG) for periods beyond 10 years taking into account the impact of very long duration guarantees on their Asset Liability Management and in tune with their policy on issuance of guarantees beyond 10 years as approved by the Board.

2. Other Guidelines

2.1 Norms for unsecured advances & guarantees

- Banks' Boards have been given the freedom to fix their own policies on their unsecured exposures including unsecured guarantees.
- Unsecured exposure is where the realizable value of the tangible security, as assessed by bank/approved valuers/RBI inspecting officers, is not more than 10% ab-initio, of the outstanding exposure (funded and non-funded exposure including underwriting and similar commitments).
- The rights, licenses, authorizations, etc. are not reckoned as tangible security whereas annuities under Build-operate-transfer (BOT) projects and toll collection rights where there exists provision to compensate the project sponsor if a certain level of traffic is not achieved can be treated as tangible security.

2.2 Precautions for issuing guarantees

- Avoid giving unsecured guarantees in large amounts for medium and long-term periods and such commitments to particular groups of customers and/or trades.
- For individual constituent, unsecured guarantees should be limited to a reasonable proportion of the bank's total unsecured guarantees and constituent's equity. The BG exposure on behalf of any individual constituent or group is subject to the prescribed exposure norms.
- Not to encourage parties to over-extend their commitments as the BG contains inherent risks.

- Banks can give deferred payment guarantees on an unsecured basis for modest amounts to first class customers in exceptional cases.

2.3 Precautions for Averting Frauds

- While issuing FGs, banks should satisfy about customer's ability/capacity to reimburse the bank in case it is required to honor the commitments under the FG.
- In case of PG, banks should exercise due caution and satisfy themselves that the customer has the necessary experience, capacity and means to perform the obligations under the contract, and is not likely to commit any default.
- Banks should refrain from issuing BGs on behalf of customers who do not enjoy credit facilities with them other than customers of co-operative banks against counter guarantee of the co-op. bank which have sound credit appraisal and monitoring systems as well as robust Know Your Customer (KYC) regime.

2.4 Ghosh Committee Recommendations (Shri A. Ghosh, the then Dy. Governor,RBI)

- BGs should be issued in serially numbered security forms;
- While forwarding the BGs to the beneficiaries, caution them to verify the genuineness of the guarantee with the issuing bank.

2.5 Internal Control Systems

- BGs for Rs. 0.50 Lakh and above are to be signed by two officials jointly. A lower cut-off point, depending upon the size and category of branches, may be prescribed by banks, where considered necessary.
- Allow deviation from the two signatures discipline should be only in exceptional circumstances. In such cases there should be a system for subjecting such instruments to special scrutiny by the auditors or inspectors at the time of internal inspection of branches.

2.6 Guarantees on behalf of Banks' Directors

- In view of the possibility of contingent liability becoming a funded liability in case of invocation, Banks should, while extending non-fund based facilities such as BGs, etc. to the directors or the constituents in which they are interested, ensure that:

  a) Adequate and effective arrangements are in place to honor the commitments out of their own resources by the part on whose behalf guarantee was issued, and

  b) The bank will not be called upon to grant any loan or advance to meet the liability, consequent upon the invocation of guarantee.

2.7 Bank Guarantee Scheme of Government of India

- BGs are to be issued in the Model Form of Bank Guarantee Bond and in favour of Govt. departments in the name of President of India and any correspondence thereafter should be exchanged with the concerned departments only.
- In respect of BGs favouring the Director General of Supplies and Disposal (DGSD), the following aspects to be kept in view:-

a) In order to expedite the process of verification of genuineness of the BGs, name, designation and code numbers of the signatory should be incorporated under their signature therein;

b) The beneficiary of the bank guarantee should also be advised invariably to obtain the confirmation of the concerned banks about the genuineness of the guarantee issued by them as a measure of safety.

c) The initial period of the bank guarantee issued by banks as a means of security DGSD would be for a period of six months beyond the original delivery period with suitable clause providing automatic extension of the validity period by 6 months. Bank may obtain suitable undertaking from the customer at the time of establishing the guarantee to avoid any possible complication later.

d) Like the tender form floated by DGSD, the Public Notice issued by the Customs Department stipulates, inter alia, that all BGs furnished by an importer should contain a self renewal clause inbuilt in the guarantee itself. Hence, BGs issued in favour of DGSD and Customs Houses should invariably contain suitable clause for automatic extension of the guarantee period etc.

2.8 Guarantees on Behalf of Share and Stock Brokers/ Commodity Brokers

- Banks can issue BGs on behalf of share and stock brokers in favor of Stock Exchanges towards security deposit, margin requirements as per Stock Exchange Regulations.
- BGs can also be issued on behalf of commodity brokers in favor of national level commodity exchanges viz. National Commodity & Derivatives Exchange (NCDEX), Multi Commodity Exchange of India Limited (MCX) and National Multi-Commodity Exchange of India Limited (NMCEIL), in lieu of margin requirements as per the Commodity Exchange Regulations.
- Banks are required to obtain a minimum margin of 50% (out of which cash margin to be 25%) while issuing such guarantees in both the above cases and to observe usual and

necessary safeguards including the exposure ceilings.

- Obtaining Personal guarantees of directors: Obtaining the personal guarantees of directors by banks for credits facilities, etc. granted to corporate, public or private, should be only when the same is absolutely warranted and should not taken as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks are required to follow the guidelines as under:

a) Obtaining the guarantee not considered necessary

- In case of public limited companies, the lending institutions are satisfied about the management, economic viability, stake in the concern, financial position, cash generation, etc., obtaining of personal guarantee of directors may be dispensed with. For widely owned public limited companies with first class rating and satisfying the said conditions, guarantees may not be insisted upon even if the advances are unsecured.
- Personal guarantee of professional directors in public or public companies under professional management need not be insisted upon in case they are connected with the management solely by virtue of their professional/technical qualifications without significant stake in the company concerned, etc.

b) Personal guarantees considered helpful

- In respect of closely held private or public companies where shares are held by a person or persons, or a group (not being professionals), obtaining the personal guarantee of principal members is considered as helpful for facilities granted by banks with the exception in respect of companies where, by court or statutory order, the management of the company is vested in a person or persons as director/s or by any other name, who are not required to be elected by the shareholders.
- In order to ensure the continuity of the management or to mitigate any negative impact due to acquiring the control of the company by different group, personal guarantee of directors may be insisted upon even if the company is not a closely held one. Even where personal guarantees are waived, it may be necessary to obtain an undertaking from the borrowing company that no change in the management would be made without the consent of the lending institution.
- Banks may insist for personal guarantee of directors of public limited companies other than those rated first class and the advance is on unsecured basis and those financial position

and/or cash generation capacity is not so satisfactory.

- Other circumstances such as:-

a) Delay in creation of charge on assets of the company to cover the interim period between the disbursement of loan and creation of charge on asset;

b) In case of subsidiary companies whose financial condition is not considered satisfactory;

c) Interlocking of funds between the company and other concerns owned or managed by a group; etc. personal guarantee of directors/parent Company may be insisted upon.

<u>Worth of the guarantors, payment of guarantee commission, etc</u>.

- Banks should ensure that no consideration whether by way of commission, brokerage fees or any other form would be paid by the company to the directors directly or indirectly for obtaining their personal guarantee. Suitable undertaking to this effect has to be obtained from the company as well as guarantors.
- In exceptional cases, payment of remuneration may be permitted where the unit is not doing well and the existing guarantors are no longer connected with the management but continuance of the guarantee is essential because the new management's guarantee is either not available or is found inadequate.

d) Personal guarantee in case of sick units:

- Banks, may in their discretion, obtain guarantee from directors (excluding the nominee directors) and other managerial personnel in their individual capacities so as to instill greater accountability and responsibility on their part and prompt the managements to conduct the running of the assisted units on sounds and healthy lines and to ensure financial discipline.

e) Guarantees of state governments:

- Bank may insist personal guarantees of directors in respect of finance to State Government undertakings/projects on merits only in circumstances absolutely necessary after thorough examination of the circumstances of each case and not as a matter of course.

3. <u>Guarantees governed by regulations under Foreign Exchange Management (Guarantee) Regulations</u>

3.1 <u>Bid bonds and performance bonds or guarantees for exports</u>

- Banks (AD) are authorized to issue performance bonds or guarantee in favor of overseas buyers towards bona fide exports.

- Prior RBI approval is required to be obtained by banks for issue of performance bonds/ guarantees in respect of caution-listed exporters. Due diligence is to be carried out to satisfy bona fides of the applicant, capacity to perform the contract and reasonableness of the value of the bid/ guarantee and they in line with normal practice in international trade, and that the terms of the contract are in conformity with the Foreign Exchange Management Regulations.
- Banks can also issue counter guarantee in favor of their branches/ correspondents abroad in cover of guarantees required to be issued by the latter on behalf of Indian exporters, in cases where guarantees of only local banks are acceptable to overseas buyers in accordance with local laws/ regulations.
- Banks are required to honor the bonds/guarantees in case of invocation and make payments accordingly to non-resident beneficiaries.

3.2 Bank Guarantees (BG)

Banks are authorized to issue BGs in certain cases as under:-

a) Foreign Airlines/IATA

Banks (AD-1) are authorized to issue BGs on behalf of Indian agents of foreign airline companies who are members of International Air Transport Association (IATA), in favor of foreign airline companies/IATA, towards their ticketing business, being a standard requirement.

b) Service Importers

Banks can issue guarantee in genuine cases subject to verification of details for amount not exceeding USD 0.50 Mn. or its equivalent in favor of a non-resident service provider, on behalf of a resident customer who is a service importer. Suitable approval from Ministry of Finance, GOI, is required to be obtained for issue of BGs for an amount exceeding USD 0.10 Mn. or its equivalent in respect of Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments.

c) Bank Guarantee-Commodity Hedging

Subject to terms and conditions as may be stipulated by RBI, Banks can issue guarantee or standby Letter of Credit on behalf of a domestic party towards the margin payable by him/her covering hedging of his commodity exposures in overseas markets.

- Invocation of Guarantee: Banks are required to honor any invocation of the guarantee and send a detailed report to RBI, Foreign Exchange Department, External Payment Division

(EPD), Mumbai, explaining the circumstances leading to the invocation of the guarantee.

d) Other stipulations

- Banks, in order to boost export, adopt flexible approach by earmarking of assets/ credit limits, drawing power, while issuing bid bonds and performance guarantees for export purposes. Banks may safeguard their interests by obtaining an Export Performance Guarantee of ECGC, wherever considered necessary.
- ECGC would provide 90% cover for bid bonds, provided the banks give an undertaking not to insist on cash margins. Cash margin should invariably be stipulated where ECGC cover is not available for whatever reasons.
- Banks may consider sanctioning separate limits for issue of bid bonds. Within the limits so sanctioned, bid bonds against individual contracts may be issued, subject to usual considerations.

3.3 Unconditional Guarantees in favour of Overseas Employers/ Importers on behalf of Indian Exporters

Banks can also issue unconditional guarantees in favour of overseas employers/importers on behalf of Indian Exporters. While issuing such BGs, Banks should incorporate suitable clauses in the agreement, that when the guarantee is invoked, the bank would be entitled to make payment, notwithstanding any dispute between the exporter and the importer. This is to avoid possible non-acceptance of guarantees by Indian banks which would hamper the country's export promotion effort.

3.4 Precautions in case of Project Exports

- The sponsor banks should examine the project proposals thoroughly with regard to the capacity of the contractor/ sub-contractors, protective clauses in the contracts, adequacy of security, credit ratings of the overseas sub-contractors, if any, etc. irrespective of whether 'In Principle' package approvals at post bid stages for high value overseas projects exports by the Working Group evolved is in place.
- Due diligence should be undertaken prior to issuance to taking any commitments under such projects. While bid bonds and performance guarantees cannot be avoided, such guarantees should not be executed as a matter of course, merely because of the participation of Exim Bank and availability of counter-guarantee of ECGC.

3.5Guarantees for Export Advance

While issuing guarantees favoring overseas buyers on behalf of exporters, banks are required to ensure that no violation of FEMA regulations takes place and banks are not exposed to various risks. It will be important for the banks to carry out due diligence and verify the track record of such exporters to assess their ability to execute such export orders. Banks should also ensure that the export advances received by the exporters are in compliance with the regulations/ directions issued under the Foreign Exchange Management Act, 1999.

3.6Other Guarantees regulated by Foreign Exchange Management Rules

Issue of the following types of guarantees is governed by the Foreign Exchange Management Regulations:

a) Minor Guarantees

- Banks are authorized to issue BGs freely on behalf of their customers and overseas branches and correspondents in the ordinary course of business in respect of missing or defective documents, authenticity of signatures and for other similar purposes.

b) Bank Guarantees - Import under Foreign Loans/Credits

- While Banks/FIs are not permitted to issue guarantees/ standby letters of credit or letters of comfort in favor of overseas lenders relating to External Commercial Borrowing (ECB)generally, such requests from SMEs and those from textile companies for modernization or expansion of the textile units are considered on merits by RBI under Approval Route.

Trade credits for imports into India

Issue of Guarantees – Delegation of Powers

- Banks can issue BGs/Letter of Undertaking (LoU)/ Letter of Comfort (LoC) in favor of the overseas supplier, bank and financial institution up to USD 20 Mn. per import transaction for a period up to one year for import of all non-capital goods permissible under the Foreign Trade Policy (except gold) and up to three years for import of capital goods, subject to prudential norms issued by the Reserve Bank from time to time. The period of such guarantees/LoUs/LoCs has to be co-terminus with the period of credit, reckoned from the date of shipment.
- Loans abroad against securities provided in India: Banks can give guarantee in respect of any debt, obligations or other liability incurred by a person resident outside India, among others, where such debt, obligation or liability is owed to a person resident in India in connection

with a bona fide trade transaction, provided that the guarantee is covered by a counter guarantee of a bank of international repute resident abroad.

c) Guarantees for Non-Residents

- Banks (AD) can also issue guarantees on behalf of their overseas branches or correspondents in respect of the trade/debt transactions entered into by NRI customers of those entities with residents in India provided the same are counter guaranteed by the overseas branches/banks.
- While issuing such guarantees banks can also stipulate if they so desire a condition that the payment of the guarantee amount in case of invocation would be made only after receipt of the money from the overseas bank.
- Banks may make rupee payments to the resident beneficiaries immediately when the guarantee is invoked and, simultaneously, arrange to obtain the reimbursement from the overseas bank concerned, which had issued the counter-guarantee. In case of any non-receipt of claim from overseas banks, the same should be reported to RBI indicating the steps taken by the bank to recover the amount under the guarantee.
- Banks may issue guarantees in favor of overseas organizations issuing travelers cheques in respect of blank travelers cheques stocked for sale by them or on behalf of their constituents who are full-fledged money changers holding valid licenses from RBI, subject to suitable counter-guarantee being obtained from the latter.
- Overseas Investment - Guarantee on behalf of Wholly Owned Subsidiaries (WOSs)/Joint Ventures (JVs) abroad: Overseas Investment should be within the present ceiling of 400% of the net worth of the Indian Party as on the date of the last audited balance sheet. Indian Party can offer any form of guarantee provided that:
- All financial commitments including all forms of guarantees are within the overall ceiling of 400% of net worth prescribed for overseas investment.
- No guarantee should be 'open ended' i.e. the amount and period of the guarantee should be specified upfront. In the case of performance guarantee, time specified for the completion of the contract shall be the validity period of the related performance guarantee;
- In case the ceiling of 400% of net worth exceeds due to invocation of guarantee, the Indian Party shall seek the prior approval of the Reserve Bank before remitting funds from India, on account for such invocation.
- Issuance of corporate guarantees (including performance guarantee) is required to be

reported to RBI, etc.

4. <u>Restrictions on issuance on guarantees</u>

- Banks should not execute guarantees covering inter-company deposits/loans thereby guaranteeing refund of deposits/loans accepted by NBFC/firms from other NBFC/firms.
- Guarantees should not be issued for the purpose of indirectly enabling the placement of deposits with NBFCs. These stipulations will apply to all types of deposits/ loans irrespective of their source, e.g. deposits/ loans received by non-banking companies from trusts and other institutions.

<u>4.1 Banks can issue guarantees favoring other banks/ FIs/ other lending agencies for the loans extended by the latter as per a board approved policy.</u>

- The guarantee shall be extended only in respect of borrower constituents and to enable them to avail of additional credit facility from other banks/FIs/lending agencies. It is to be treated as an additional exposure on them and the same will attract appropriate risk weight as per extant guidelines.
- The guaranteeing bank should assume a funded exposure of at least 10% of the exposure guaranteed.
- Banks should not extend guarantees or letters of comfort in favor of overseas lenders including those assignable to overseas lenders.
- Banks should not issue guarantees or equivalent commitments for issuance of bonds or debt instruments of any kind by corporate entities;

<u>Exceptions</u>

- Banks sometimes, on account of temporary liquidity constraints unable to participate in rehabilitation packages of sick/weak industrial units, provide guarantees in favor of the banks which take up their additional share. Such guarantees will remain extant until such time that the banks providing additional finance against guarantees are re-compensated.
- In respect of infrastructure projects, banks may issue guarantees favoring other lending institutions, provided the bank issuing the guarantee takes a funded share in the project at least to the extent of 5 percent of the project cost and undertakes normal credit appraisal, monitoring and follow up of the project.
- Guarantees /co-acceptance facility provided by buyer's bank under Sellers Line of Credit (since renamed as Direct Discounting Scheme)

- Guarantees, on behalf of private borrowers who are unable to offer clear and marketable title to property, issued in favor of HUDCO/ State Housing Boards and similar bodies/ organizations for the loans granted, provided banks are otherwise satisfied with the capacity of the borrowers to adequately service such loans.
- Guarantees issued by banks on behalf of their constituents, favoring Development Agencies/ Boards like Indian Renewable Energy Development Agency, National Horticulture Board, etc., for obtaining soft loans and/or other forms of development assistance.

5. <u>Payment of invoked guarantees</u>

- Banks should laid down appropriate procedure for effecting payment to beneficiaries in case of invocation of the guarantee without delay and demur on the pretext that legal advice or approval of higher authorities is being obtained. Any delay on the part of the banks in honoring the guarantees when invoked would erode the value of the guarantees as also the sanctity of the scheme of guarantee and image of the banks/ tarnish the image of the banking system.
- Banks should appraise the proposal with due diligence, as in the case of fund based limits, prior to issuance of the guarantees so as to ensure that the persons on whose behalf the guarantees are issued will be in a position to perform their obligations in the case of performance guarantees and honour their commitments out of their own resources, as and when needed, in the case of financial guarantees.
- In the interest of the smooth working of the Bank Guarantee Scheme, it is essential to ensure that there is no discontentment on the part of the Government departments regarding its working.
- Any decision not to honour the obligation under the guarantee invoked may be taken after careful consideration, at a fairly senior level, and only in the circumstances where the bank is satisfied that any such payment to the beneficiary would not be deemed a rightful payment in accordance with the terms and conditions of the guarantee under the Indian Contract Act.
- For any non-payment of guarantee in time, staff accountability should be fixed and stern disciplinary action including award of major penalty such as dismissal, should be taken against the delinquent officials at all levels, etc.

- Non-compliance of the instructions in regard to honouring commitments under invoked guarantees will be viewed by Reserve Bank very seriously and Reserve Bank will be constrained to take deterrent action against the banks.

6. <u>Co-acceptance of bills</u>

Under this facility banks accept commercial usance bills drawn on their constituents which would enable the latter to enjoy credit which otherwise the seller will not be willing to extend. In this facility the banks add the strength of their name and no finance is envisaged. RBI has directed banks to take suitable safeguards while extending such facilities, a few of which are as under:-

- Co-acceptance facility should be extended only to borrower constituents upon ascertaining the need thereof and banks should ensure that only genuine trade bills are co-accepted and goods covered by the bills co-accepted are actually received in the stock account of the constituents;
- Verify the accompanying invoices to see that there would not be any over valuation of stocks;
- No co-acceptance to house bills/ accommodation bills drawn by group concerns on one another.

Besides the above safeguards:

- Banks are precluded from co-accepting bills drawn under Buyers Line of Credit Schemes introduced by IDBI Bank Ltd. and all India financial institutions like SIDBI, Power Finance Corporation Ltd. (PFC), etc. Similarly, banks should not co-accept bills drawn by NBFCs and not to extend co-acceptance on behalf of their buyers/constituents under the SIDBI Scheme.
- Banks are permitted to co-accept bills drawn under the Sellers Line of Credit Schemes (since renamed as Direct Discounting Scheme) operated by IDBI and all India financial institutions for Bill Discounting operated by IDBI and all India financial institutions like SIDBI, PFC, etc. without any limit, subject to the buyer’s capability to pay, and compliance with the exposure norms prescribed by the bank for individual/ group borrowers.
- Co-acceptance of bill drawn under their own LC by bank defeats the purpose of issuing LC as the bill so co-accepted becomes an independent document and the special rules applicable to commercial credits do not apply to such a bill and the same is exclusively governed by the

law relating to Bills of Exchange, i.e. the Negotiable Instruments Act. The negotiating bank of such a bill is not under any obligation to check the particulars of the bill with reference to the terms of the L/C.

- The discounting banks should, therefore, ascertain from the co-accepting bank the reason for such co-acceptance and upon satisfying themselves of the genuineness of such transactions, they may consider discounting such bills.

Bank Guarantee Scheme of Government of India

1. The Bank Guarantee Scheme formulated by the Government of India for the issuance of bank guarantees in favor of Central Government Departments, in lieu of security deposits, etc. by contractors, has been modified from time to time. Under the scheme, it is open to Government Departments to accept freely guarantees, etc. from all scheduled commercial banks.
2. Banks should adopt the Model Form of Bank Guarantee Bond given in Annex 1**.** The Government of India have advised all the Government departments/ Public Sector Undertakings, etc. to accept bank guarantees in the Model Bond and to ensure that alterations/additions to the clauses whenever considered necessary are not one-sided and are made in agreement with the guaranteeing bank. Banks should mention in the guarantee bonds and their correspondence with the various State Governments, the names of the beneficiary departments and the purposes for which the guarantees are executed. This is necessary to facilitate prompt identification of the guarantees with the concerned departments. In regard to the guarantees furnished by the banks in favor of Government Departments in the name of the President of India, any correspondence thereon should be exchanged with the concerned ministries/ departments and not with the President of India. In respect of guarantees issued in favor of Directorate General of Supplies and Disposal, the following aspects should be kept in view:

i. In order to speed up the process of verification of the genuineness of the bank guarantee, the name, designation and code numbers of the officer/officers signing the guarantees should be incorporated under the signature(s) of officials signing the bank guarantee.

ii. The beneficiary of the bank guarantee should also be advised to invariably obtain the confirmation of the concerned banks about the genuineness of the guarantee issued by them as a measure of safety.

iii. The initial period of the bank guarantee issued by banks as a means of security in Directorate General of Supplies and Disposal contract administration would be for a period of six months beyond the original delivery period. Banks may incorporate a suitable clause in their bank guarantee, providing automatic extension of the validity period of the guarantee by 6 months, and also obtain suitable undertaking from the customer at the time of establishing the guarantee to avoid any possible complication later.

iv. A clause would be incorporated by Directorate General of Supplies and Disposal (DGS&D) in the tender forms of Directorate General of Supplies and Disposal 229 (Instruction to the tenderness) to the effect that whenever a firm fails to supply the stores within the delivery period of the contract wherein bank guarantee has been furnished, the request for extension for delivery period will automatically be taken as an agreement for getting the bank guarantee extended. Banks should make similar provisions in the bank guarantees for automatic extension of the guarantee period.

v. The Public Notice issued by the Customs Department stipulates, inter alia, that all bank guarantees furnished by an importer should contain a self-renewal clause inbuilt in the guarantee itself. As the stipulation in the Public Notice issued by the Customs Department is akin to the notice in the tender form floated by the DGS&D, the provision for automatic extension of the guarantee period in the bank guarantees issued to DGS&D, as at sub-paragraph (iv) above, should also be made applicable to bank guarantees issued favoring the Customs Houses.

vi. The bank guarantee, as a means of security in the Directorate General of Supplies and Disposal contract administration and extension letters thereof, would be on non-judicial stamp paper.

Issue of Bank Guarantee

In terms of Regulation 4 of the Foreign Exchange Management (Guarantees) Regulations, 2000 notified by Notification no. FEMA.8/2000-RB dated May 3, 2000, AD banks are allowed to give guarantees in certain cases, as stated therein.

(i) Issue of Bank Guarantee in favor of Foreign Airlines/IATA

Indian agents of foreign airline companies who are members of International Air Transport Association (IATA), are required to furnish bank guarantees in favor of foreign airline companies/IATA, in connection with their ticketing business. As this is a standard requirement in this business, Authorized Dealer banks in their ordinary course of business can issue guarantees in favor of the foreign airline companies/IATA on behalf of Indian agents of foreign airline companies, who are members of IATA, in connection with their ticketing business.

(ii) Issue of Bank Guarantee on behalf of Service Importers

With a view to further liberalize the procedure (other than in respect of a Public Sector Company or a Department / Undertaking of the Government of India / State Governments) for import of services, it has been decided to increase the limit for issue of guarantee by AD Category-I Banks from USD 100,000 to USD 500,000. Accordingly, AD Category-I banks are now permitted to issue guarantee for amount not exceeding USD 500,000 or its equivalent in favor of a non-resident service provider, on behalf of a resident customer who is a service importer, provided:

(a) The AD Category-I bank is satisfied about the bonafides of the transaction;

(b) The AD Category-I bank ensures submission of documentary evidence for import of services in the normal course; and

(c) The guarantee is to secure a direct contractual liability arising out of a contract between a resident and a non-resident.

In the case of a Public Sector Company or a Department/ Undertaking of the Government of India/ State Governments, approval from the Ministry of Finance, Government of India for issue of guarantee for an amount exceeding USD 100,000 (USD One hundred thousand) or its equivalent would be required.

(iii) Issue of Bank Guarantee-Commodity hedging

An Authorized Dealer Category I bank in India may give guarantee or standby Letter of Credit in respect of an obligation incurred by a person resident in India and owed to a person resident outside India in connection with payment of margin money in respect of approved commodity hedging transaction of such person residing in India subject to terms and conditions as may be stipulated by the Reserve Bank from time to time. Banks are advised to refer to the Master Circular on " Risk Management & Inter Bank Dealings" dated July 1, 2009 for the conditions and guidelines based on which a standby letter of credit /bank guarantee under the facility may be issued by Authorized Dealer Category I banks.

(iv) Invocation of guarantee

In case of invocation of the guarantee, the authorized dealer bank should send a detailed report to the Chief General Manager-in-Charge, Foreign Exchange Department, External Payments Division(EPD), Reserve Bank of India, Central Office, Mumbai 400 001, explaining the circumstances leading to the invocation of the guarantee.

Bank Guarantees on Behalf of Share and Stock Brokers/ Commodity Brokers:

Banks may issue guarantees on behalf of share and stock brokers in favor of stock exchanges in lieu of security deposit to the extent it is acceptable in the form of bank guarantee as laid down by stock exchanges. Banks may also issue guarantees in lieu of margin requirements as per stock exchange regulations. Banks have further been advised that they should obtain a minimum margin of 50 percent while issuing such guarantees. A minimum cash margin of 25 per cent (within the above margin of 50 per cent) should be maintained in respect of such guarantees issued by banks. The above minimum margin of 50 percent and minimum cash margin requirement of 25 percent (within the margin of 50 percent) will also apply to guarantees issued by banks on behalf of commodity brokers in favor of the national level commodity exchanges, viz., National Commodity & Derivatives Exchange (NCDEX), Multi Commodity Exchange of India Limited (MCX) and National Multi-Commodity Exchange of India Limited (NMCEIL), in lieu of margin requirements as per the commodity exchange regulations. Banks should assess the requirement of each applicant borrower and observe usual and necessary safeguards including the exposure ceilings.

Guidelines relating to obtaining of personal guarantees of directors and other managerial personnel of borrowing concerns:

Personal guarantees of directors: Banks should take personal guarantees of directors for the credit facilities, etc. granted to corporate, public or private, only, when absolutely warranted after a careful examination of the circumstances of the case and not, as a matter of course. In order to identify the circumstances under which the guarantee may or may not be considered necessary, banks should be guided by the following broad considerations:

A. Where guarantees need not be considered necessary:

I. Ordinarily, in the case of public limited companies, when the lending institutions are satisfied about the management, its stake in the concern, economic viability of the proposal and the financial position and capacity for cash generation, no personal guarantee need be insisted upon. In fact, in the case of widely owned public limited companies, which may be rated as first class and satisfying the above conditions, guarantees may not be necessary even if the advances are unsecured. Also, in the case of companies, whether private or public, which are under professional management, guarantees may not be insisted upon from persons who are connected with the management solely by virtue of their professional/technical qualifications and not consequent upon any significant shareholding in the company concerned.

II. Where the lending institutions are not so convinced about the aspects of loan proposals mentioned above, they should seek to stipulate conditions to make the proposals acceptable without such guarantees. In some cases, more stringent forms of financial discipline like restrictions on distribution of dividends, further expansion, aggregate borrowings, creation of further charge on assets and stipulation of maintenance of minimum net working capital may be necessary. Also, the parity between owned funds and capital investment and the overall debt-equity ratio may have to be taken into account.

B. Where guarantees may be considered helpful:

I. Personal guarantees of directors may be helpful in respect of companies, whether private or public, where shares are held closely by a person or connected persons or a group (not being professionals or Government), irrespective of other factors, such as financial condition, security available, etc. The exception being in respect of companies where, by court or statutory order, the management of the company is vested in a person or persons, whether called directors or by any other name, who are not required to be elected by the shareholders. Where personal guarantee is considered necessary, the guarantee should preferably be that of the principal members of the group holding shares in the borrowing company rather than that of the director/managerial personnel functioning as director or in any managerial capacity.

II. Even if a company is not closely held, there may be justification for a personal guarantee of directors to ensure continuity of management. Thus, a lending institution could make a loan to a company whose management is considered good. Subsequently, a different group could acquire control of the company, which could lead the lending institution to have well-founded fears that the management has changed for the worse and that the funds lent to the company are in jeopardy. One way by which lending institutions could protect themselves in such circumstances is to obtain guarantees of the directors and thus ensure either the continuity of the management or that the changes in management take place with their knowledge. Even where personal guarantees are waived, it may be necessary to obtain an undertaking from the borrowing company that no change in the management would be made without the consent of the lending institution. Similarly, during the formative stages of a company, it may be in the interest of the company, as well as the lending institution, to obtain guarantees to ensure continuity of management.

III. Personal guarantees of directors may be helpful with regard to public limited companies other than those which may be rated as first class, where the advance is on an unsecured basis.
IV. There may be public limited companies, whose financial position and/or capacity for cash generation is not satisfactory even though the relevant advances are secured. In such cases, personal guarantees are useful.
V. Cases where there is likely to be considerable delay in the creation of a charge on assets, guarantee may be taken, where deemed necessary, to cover the interim period between the disbursement of loan and the creation of the charge on assets.
VI. The guarantee of parent companies may be obtained in the case of subsidiaries whose own financial condition is not considered satisfactory.
VII. Personal guarantees are relevant where the balance sheet or financial statement of a company discloses interlocking of funds between the company and other concerns owned or managed by a group.

C. Worth of the guarantors, payment of guarantee commission, etc.:

Where personal guarantees of directors are warranted, they should bear reasonable proportion to the estimated worth of the person. The system of obtaining guarantees should not be used by the directors and other managerial personnel as a source of income from the company. Banks should obtain an undertaking from the borrowing company as well as the guarantors that no consideration whether by way of commission, brokerage fees or any other form, would be paid by the former or received by the latter, directly or indirectly. This requirement should be incorporated in the bank's terms and conditions for sanctioning of credit limits. During the periodic inspections, the bank's inspectors should verify that this stipulation has been complied with. There may, however, be exceptional cases where payment of remuneration may be permitted e.g. where assisted concerns are not doing well and the existing guarantors are no longer connected with the management but continuance of their guarantees is considered essential because the new management's guarantee is either not available or is found inadequate and payment of remuneration to guarantors by way of guarantee commission is allowed.

D. Personal guarantees in the case of sick units:

As the personal guarantees of promoters/ directors generally instill greater accountability and responsibility on their part and prompt the managements to conduct the running of the assisted units on sound and healthy lines and to ensure financial discipline, banks, may in their discretion, obtain guarantees from directors (excluding the nominee directors) and other managerial personnel in their individual capacities. In case, for any reasons, a guarantee is not considered expedient by the bank at the time of sanctioning the advance, an undertaking should be obtained from the individual directors and a covenant should invariably be incorporated in the loan agreement that in case the borrowing unit show cash losses or adverse current ratio or diversion of fund, the directors would be under an obligation to execute guarantees in their individual capacities, if required by the banks. Banks may also obtain guarantees at their discretion from the parent/holding company when credit facilities are extended to borrowing units in the same Group.

Guarantees of State Government

The guidelines laid down in paragraph 2.2.9 above, for taking personal guarantees of directors and other managerial personnel, should also be followed in respect of proposal of State Government undertakings/projects and guarantees may not be insisted upon unless absolutely warranted. In other words, banks could obtain guarantees of State Governments on merits and only in circumstances absolutely necessary after thorough examination of the circumstances of each case, and not as matter of course.

Guarantees governed by regulations issued under Foreign Exchange Management (Guarantees) Regulations

Bid bonds and performance bonds or guarantees for exports

I. In terms of Notification No.FEMA.8/2000-RB dated May 3, 2000, Authorized Dealer banks have the permission to give performance bond or guarantee in favor of overseas buyers on account of bona fide exports from India.

II. Prior approval of RBI should be obtained by the Authorized Dealer banks for issue of performance bonds/ guarantees in respect of caution-listed exporters. Before issuing any such guarantees, they should satisfy themselves with the bona fides of the applicant and his capacity to perform the contract and also that the value of the bid/ guarantee as a percentage of the value of the contract/ tender is reasonable and according to the normal practice in international trade, and that the terms of the contract are in accordance with the Foreign Exchange Management regulations.

III. Authorized Dealer banks, should also, subject to what has been stated above, issue counter-guarantees in favor of their branches/ correspondents abroad in cover of guarantees required to be issued by the latter on behalf of Indian exporters, in cases where guarantees of only resident banks are acceptable to overseas buyers in accordance with local laws/ regulations.

IV. If and when the bond/ guarantee is invoked, Authorized Dealer banks may make payments due there under to non-resident beneficiaries.

Bank guarantees - Import under foreign loans/credits

Banks / Financial Institutions are not permitted to issue guarantees/ standby letters of credit or letters of comfort in favor of overseas lenders relating to External Commercial Borrowing (ECB). Applications for providing guarantees/ standby letters of credit or letters of comfort by banks relating to ECB in the case of SMEs will be considered by the Reserve Bank on merit under the Approval Route, subject to prudential norms. Applications by banks for issue of guarantees, standby letters of credit, letters of undertaking or letter of comfort in respect of ECB by textile companies for modernization or expansion of the textile units, after the phasing out of Multi Fiber Agreements, will be considered by Reserve Bank under the Approval Route subject to prudential norms.

Restrictions on guarantees of inter-company deposits/loans:

Banks should not execute guarantees covering inter-company deposits/loans thereby guaranteeing refund of deposits/loans accepted by NBFC/firms from other NBFC/firms.

1. Restriction on guarantees for placement of funds with NBFCs: These instructions would cover all types of deposits/ loans irrespective of their source, including deposits/loans received by NBFCs from trusts and other institutions. Guarantees should not be issued for the purpose of indirectly enabling the placement of deposits with NBFCs.
2. Restrictions on Inter-Institutional Guarantees: Banks should not execute guarantees covering inter-company deposits/ loans. Guarantees should not, also, be issued for the purpose of indirectly enabling the placement of deposits with non-banking institutions. This stipulation will apply to all types of deposits/loans irrespective of their source, e.g. deposits/ loans received by non-banking companies from trusts and other institutions.

Different between Bank Guarantee and Letter of Credit:

A bank guarantee and a letter of credit are similar in many ways but they're two different things. Letters of credit ensure that a transaction proceeds as planned, while bank guarantees reduce the loss if the transaction doesn't go as planned. A letter of credit is an obligation taken on by a bank to make a payment once certain criteria are met. Once these terms are completed and confirmed, the bank will transfer the funds. This ensures the payment will be made as long as the services are performed. A bank guarantee, like a line of credit, guarantees a sum of money to a beneficiary. Unlike a line of credit, the sum is only paid if the opposing party does not fulfill the stipulated obligations under the contract. This can be used to essentially insure a buyer or seller from loss or damage due to nonperformance by the other party in a contract.

For example: a letter of credit could be used in the delivery of goods or the completion of a service. The seller may request that the buyer obtain a letter of credit before the transaction occurs. The buyer would purchase this letter of credit from a bank and forward it to the seller's bank. This letter would substitute the bank's credit for that of its client, ensuring correct and timely payment.

A bank guarantee might be used when a buyer obtains goods from a seller then runs into cash flow difficulties and can't pay the seller. The bank guarantee would pay an agreed-upon sum to the seller. Similarly, if the supplier was unable to provide the goods, the bank would then pay the purchaser the agreed-upon sum. Essentially, the bank guarantee acts as a safety measure for the opposing party in the transaction. A bank guarantee is frequently confused with letter of credit (LC), which is similar in many ways but not the same thing. The basic difference between the two is that of the parties involved. In a bank guarantee, three parties are involved; the bank, the person to whom the guarantee is given and the person on whose behalf the bank is giving guarantee. In case of a letter of credit, there are normally four parties involved; issuing bank, advising bank, the applicant (importer) and the beneficiary (exporter).

Also, as a bank guarantee only becomes active when the customer fails to pay the necessary amount where as in case of letters of credit, the issuing bank does not wait for the buyer to default, and for the seller to invoke the undertaking.

Difference between bank guarantee and usual Guarantee:

Following are some points of difference between a bank guarantee and a usual guarantee:

1. A usual guarantee is governed by Sec. 126 of the Indian Contract Act, 1872. A bank guarantee is not directly governed by Sec. 126.
2. An ordinary guarantee is a tri-partite (3 parties) agreement involving the surety, the debtor and the creditor. But a bank guarantee is a contract involving two parties i.e. the bank and the beneficiary.
3. In an ordinary guarantee, the contract between the surety and the creditor arises as a subsidiary to the contract between the creditor and the principal debtor. The bank guarantee is independent of the main contract.
4. In an ordinary guarantee, the inter se disputes between the debtor and the creditor have a material effect upon the surety's liability. However, the bank guarantee is independent of the disputes, arising ex contract (arising out of the contract).
5. An ordinary guarantee does not have any time limit before which the debt has to be claimed. Bank guarantees generally have a specific time within which they are functional.

Assessment of Limit:

Bank Guarantee is a non-fund based limit hence an assessment like working capital limit is not done. The purpose, amount and tenure of the guarantee are defined at the time of request.

The information is gathered by the bank in the following:

Nature & amount of limit sanctioned Outstanding as on …………..

Name of the beneficiary / is in whose favor guarantees to be issued

Nature of the guarantee limit required i.e. performance/ financial/ Bid Bond etc.

Margin proposed Security

Justification for the proposed limit

Note: the above format is not standard. It may vary bank to bank.

Bank asks for the copy of contracts in hand for which the company requires the bank guarantee. For example in case of real estate projects the company gives a list of the projects and the tentative amount and tenure of the bank guarantees. In case the company need to bid for some project say road projects, mines etc, it need to give the proof that it is going to bid for the same and that much amount is require to furnish in the form of Bank Guarantee. Normally Offer Document is furnished before the bank which shows the amount, tenure and terms and conditions. Bank pays a normal interest on the margin money which is being kept in the form of FDR. The FDR is released at the time of cancelation/revocation of bank guarantee along with interest.

The bank guarantees are issued in the format which is prescribed by the authority/party in whose favor the guarantee need to be issued. When the guarantees are issued in favor of government authorities, it is suggested that each word and line should be in the form as prescribed otherwise chances of cancellation of same very high.

Bank Guarantee Performa for Furnishing Performance Security:

In consideration for the President of India (hereinafter called "the Government") having agreed to exempt.................(hereinafter called "the said Contractor(s)" from the demand, under the terms and conditions of an Agreement dated.................made between..........and.... of Performance Security for the due fulfillment of the said Contractor(s) of the terms and conditions contained in the said Agreement, on production of Bank Guarantee for Rs...............(Rupees................. (Indicated the name of the Bank) Bank") at the request of............... contractor(s) do hereby undertake to pay to the Government an amount not exceeding Rs................. against any loss or damage caused to or suffered would be caused to or suffered by the Government by reason of any breach of the said Contractor(s) of any of the terms or conditions contained in the said Agreement.

We....................do hereby undertake to pay the amount due and payable under this Guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach by the said contractor(s) of any of the terms or conditions contained in the said Agreement or by reason of the contractor(s)'s failure to perform the said Agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs....

We undertake to pay the Government any money so demanded notwithstanding any dispute or disputes raised by the contractor(s)/supplier(s) in any suit or proceeding pending before any Court or Tribunal relating thereto liability under this present being absolute and unequivocal. The payment so made by us under this Bond shall be a valid discharge of our liability for payment there under and the contractor(s)/supplier(s) shall have no claim against us for making such payment.

We ...further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said Agreement and that it shall continue to be enforceable till all the dues of the Government under or by virtue of the said Agreement have been fully paid and its claim satisfied or discharged or till......... that the terms and conditions of the said Agreement have been fully and properly carried out by the said Contractor(s) and accordingly discharges this Guarantee. Unless a demand or claim under this Guarantee is made on us in writing on or before the... guarantee thereafter.

We ...further agree with the Government that the Government shall have the fullest liberty without our consent and without affecting in any manner our obligations hereunder to vary any of the terms and conditions of the said Agreement or to extend time of performance by the said Contractor(s) from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the said Contractor(s)and to forbear or enforce any of the terms and conditions relating to the said Agreement and we shall not be relieved from our liability by reason of any such variation, or extension being granted to the said Contractor(s) or for any forbearance, act or omission on the part of the Government or any indulgence by the Government to the said Contractor(s) or by any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect of so relieving us.

Notwithstanding anything contained herein above our liability under the guarantee is restricted to Rs._____ and shall remain in force until________. Unless a claim or suit under this guarantee is filled with us on or before_______.

ALL OUR RIGHTS UNDER THE GUARANTEE SHALL BE FORFEITED and the Bank shall be relieved and discharged from all liabilities therein. This Guarantee will not be discharged due to the change in the constitution of the Bank or the Contractor(s)/supplier(s).

We,....................lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Government in writing.

Dated the..........date of......1999/2000 for............................ (indicate the name of Bank)

Signature......................

Name of the Officer................. (in Block Capitals)

Designation of Code No. ....

Name of the Bank and Branch.........

Sealed & Signed by The Bank

This Deed of Guarantee executed by the __________ (bank name) a Scheduled Bank within the meaning of the Reserve Bank of India Act and carrying out banking business including guarantee business at Mumbai and other places having its head office at _____________ (hereinafter referred to as "the Bank") in favor of Life Insurance Corporation of India, having its IT department of Central Office at the 2 400054 and formed under the act of the Parliament LIC act, 1956 (hereinafter referred to as "the Corporation") for an amount not exceeding Rs._______ __/- (Rupees _________only) at the request of "Vendor Name" (hereinafter referred to as the "Vendor"). This Guarantee is issued subject to the condition that the liability of the Bank under this Guarantee is limited to a maximum of Rs. ___________/- (Rupees _________only) and the Guarantee shall remain in force up to _________ and cannot be invoked, otherwise than by a written demand or claim under this guarantee served on the Bank on or before ___________ by the Corporation. Whereas (Vendors name) having its head office at (address), has undertaken to supply Computer goods as per the terms and conditions of purchase mentioned in the Tender document dated _________ And whereas the Bank ____ (name and address) has agreed to give on behalf of the vendor a Guarantee : Therefore, we hereby affirm that we Guarantee and are responsible to you on behalf of the Vendor, up to a total amount of Rs.________ _/- (Rupees _______only) and we undertake to pay you, upon your first written demand declaring the Vendor to be in default under the terms the Contract, and without cavil or argument, any sum or sums as specified by you within the limit of Rs.____ __/-. (Rupees ________only) as aforesaid, without your need to prove or to show grounds or reasons for your demand of the sum specified therein. This Guarantee shall not be affected by any change in the Constitution of the Bank. Our liability under this guarantee is restricted to a sum of ______ Rs.____/- (Rupees ______only). The Bank Guarantee will be valid for a period up to ______(up to and including _________) This bank guarantee will subsist till express instructions from the Corporation to release the same are not received even after a lapse of period of validity which will in any case not exceed a period of 6 months from the end of validity date. The Corporation need not prove or show grounds or reasons for the demand of a part or the full amount of guarantee. A written claim or demand for payment under this Bank Guarantee is the only condition precedent for payment of part/full sum under the guarantee to the Corporation.

Dated At This Day Of…

ICICI Bank Guarantee:

ICICI Banks Bank Guarantees are available to you against minimal requirements and in the shortest possible time. ICICI Banks Bank Guarantees are also available in foreign currency for approved purposes as defined under FEMA.

The ICICI Bank Edge

- Maximum tenor of guarantee 18 months
- Valid for a maximum of 10 years
- Competitively priced

ICICI Bank also issues Bank Guarantees against 25% cash margin and 100% collateral security in the form of residential property or liquid securities. Bank guarantees in foreign currency are available against credit limits or 100% cash margin.

Guarantees

While entering into a large-scale business transaction or carrying out a high-value project, a company is required to submit a Bank Guarantee. In an increasingly challenging business environment, a bank guarantee is an effective way of securing performance and payment. We provide first-class bank guarantee services and in this way also assure your clients of your strong commitment. Some of the variants of guarantees offered include:

- Performance Guarantees
- Financial Guarantees
- Bid Bond Guarantees
- Advance Payment Guarantees
- Deferred Payment Guarantees

Guidelines for Bank Guarantees:

Permitted Banks:

1. Bank Guarantees issued by Banks covered under the following categories should only be accepted under the contracts:
    - State Bank of India or its subsidiaries.

- Any Indian nationalized Bank.
- IDBI or ICICI / ICICI Bank / Export Import Bank/AXIS/HDFC/YES.
- A Foreign Bank (issued by a branch outside India) with a counter guarantee from SBI or its subsidiaries or any Indian Nationalized Bank.
- Any Scheduled Commercial Bank approved by RBI having a net worth of not less than Rs. 200 crores as per the latest Annual Report of the Bank. In the case of a Foreign Bank, the net worth in respect of the Indian operations shall only be taken into account.
- The bank guarantee issued by Haryana State Apex Cooperation Bank.

2. The acceptance of the guarantee shall also be subject to the following conditions:

- The bank guarantee issued by any other a Cooperative Bank shall not be accepted.
- The bank guarantee issued by a Bank specifically debarred / black listed for non cooperation in the past in respect of verification of BG or any other reason. The bank for non-cooperation will be identified and action as approved by Govt. shall be implemented by Deptt.

<u>Format of Bank Guarantees:</u>

The bank guarantee(s) to be submitted by the contractors and consultants against performance security / advance payments and for various other purposes shall be as per the prescribed formats. It shall be ensured that

- The bank guarantee(s) contains the name, designation, code number of officer(s) signing the guarantee(s),
- The covering letter of the Bank guarantee from the Bank contains the address and other details (including telephone no.) of the Controlling Office of the branch of the Bank issuing the bank guarantee. [Please see that controlling offices of the banks are at regional level and hence each bank has very few controlling offices].

<u>Bank Guarantee verification:</u>

Process of verification of bank guarantees shall start immediately on receipt of the Bank Guarantee. The verification shall be got done by making reference through post and/ or by sending officers/ official to the office from where the verification is to be made. The Executive Engineer shall decide the mode of verification of Bank Guarantee. The bank guarantees shall be verified from the controlling offices of the banks also who have issued the bank guarantees.

When postal mode is used, only registered post or speed post shall be used. Couriers shall not be used.

- The controlling office of the Bank should be advised to confirm the issuance of the Bank Guarantee(s) specifically quoting the letter of PWD on the printed official letterhead of the Bank indicating address and other details (including telephone nos.) etc. of the Bank and the name, designation and code number of the officer(s) confirming the issuance of the Bank Guarantee.
- When confirmation is obtained through sending responsible officer/ official, he should personally obtain the confirmation from the controlling office of the issuing Branch of the Bank and submit his report and the documents received to the Executive Engineer.
- When Verification is got done by sending a person, in case of bank guarantees of value more 20 lacs, the person sent for verification shall not be of a level below DAO.

Earnest Money:

- Bank Guarantee received for bid securities purposes shall also be got verified immediately on receipt and opening of financial bids. However, the Bank Guarantee shall be only verified through postal mode. The Bank Guarantee of the lowest bidder shall be additionally verified by sending a official in case this Bank Guarantee is of value more than Rs.10.00 lacs. The earnest money Bank Guarantee of bidders other then lowest bidder, shall be released only after verification of the Bank Guarantee so as to deter bidder from giving fake Bank Guarantee.
- Award of work will be done after due process of verification of bank guarantee. Payments contingent upon receipt of bank guarantees shall also be released after verification of the bank guarantees. In case of toll collection, no toll collection should be allowed till Bank Guarantee are verified except for the period for which money has been received.

Maintenance and Release of Bank Guarantees:

All Bank Guarantees shall be maintained in the appropriate field divisions, irrespective of the nominated officer being a Superintending Engineer or Chief Engineer or Engineer-in-Chief or Commissioner and Secretary to the Government. Whenever any field division is closed or work is transferred to other division, the Bank Guarantees shall be transferred to the new division. It shall be the responsibility of the Executive Engineer concerned or any other officer/ official specifically authorized in writing by the EE to monitor the validity of the BGs. The Deputy Superintendent shall also entail assistance of the Second Accounts Clerk in maintaining records of the bank guarantees.

It shall be the responsibility of the EE and his officials specially authorized in writing to monitor the validity of the BGs A register shall be maintained for this purpose in the division to ensure extension of the validity of the BGs in terms of the contract or encashment of bank guarantee or release of bank guarantee depending upon the situation. BGs shall be released only on specific orders of EE in terms of the contract. He shall obtain orders of the competent authority, if EE is not competent to make a decision, before releasing the bank Guarantees.

Corrupt or Fraudulent Practices:

The Employer will reject a proposal for award if it determines that the Bidder recommended for the award has engaged in corrupt or fraudulent practices in competing for the contract in question. Further, the Employer will declare the firm ineligible, either indefinitely or for stated period of time, for being awarded a contract with PWD (B&R) if it, at any time, determines that the firm has engaged in corrupt or fraudulent practices in competing for the contract.

Guarantee Bond

To

The President of India

Dear Sirs,

GUARANTEE NO.:

AMOUNT OF GUARANTEE : Rs. 12,500/-

GUARANTEE COVER : 16/03/2000 to 15/03/2001

LAST DATE FOR LODGEMENT OF CLAIM : 15/05/2001

This Deed of Guarantee executed by the ICICI Bank having its Central Office at S.C.O, 9-10-11, Sector 9-D, Madhya Marg, Chandigarh-160 017, and amongst other places (hereinafter referred to as "the Bank") in favor of the President of India (hereinafter referred to as "the Beneficiary") for an amount not exceeding Rs. 13000/- (Rupees thirteen thousand only) at the request of M/s IGSP Technology Center Private Limited (hereinafter referred to as the "Contractor").

The Guarantee is issued subject to the condition that the liability of the bank under this Guarantee is limited to a maximum of Rs. 13000/- (Rupees thirteen thousand only) and the Guarantee shall remain in full force up to 15/03/2001 and cannot be invoked otherwise than by a written demand claim under this guarantee served on the bank on or before 15/05/2001.

In consideration of the President of India (hereinafter called "the Government") having agreed to exempt M/s IGSP Technology Center Private Limited (hereinafter referred to as "the said Contractor") from the demand, under the terms and conditions of an agreement namely B-17 Bond to be made between the Government of India and M/s IGSP Technology Center Private Limited for Rs. 13000/- (Rupees thirteen thousand only) (hereinafter called "the said Agreement") of agreement, on production of Bank Guarantee for Rs. 13000/- (Rupees thirteen thousand only). We, the ICICI BANK, Branch Madhya marg, Chandigarh, (hereinafter referred referred to as "the Bank") at the request of the said Contractor, do hereby undertake to pay to the Government amount not exceeding Rs. 13000/- (Rupees thirteen thousand only) against any loss or damage caused or suffered or would be caused to or suffered by the Government by reason of breach by the said Contractor of any of the terms and conditions contained in the said agreement.

We, the ICICI BANK, Branch, Madhya marg, Chandigarh, do hereby undertake to pay the amounts due and payable under this Guarantee without any demur, merely on a demand from the Government stating that the amount claimed is due by way of loss or damage caused to or would be caused to or suffered by the Government by reason of breach of by the said Contractor of any of the terms or conditions contained in the said agreement or by reason of the Contractor's failure to perform the said agreement. Any such demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this Guarantee. However, our liability under this guarantee shall be restricted to an amount not exceeding Rs 13000/- (Rupees thirteen thousand only).

We undertake to pay to the Government any money so demanded notwithstanding any dispute or disputes raised by the Contractor in any suit or proceeding before any Court or Tribunal relating thereto our liability under this present being absolute and unequivocal. The payment made by us under this Bond shall be valid discharge of our liability for payment there under and the Contractor shall have no claim against us for making such payment.

We the ICICI BANK, Branch, Madhya marg, Chandigarh, further agree that the Guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement and it shall continue to be enforceable till all the dues of the Government under or by virtue of the agreement have been fully paid and its claim satisfied or discharged or till the office of the Asst. Commissioner of Central Excise, __________Range, Chandigarh, Ministry of Finance, Dept. of Revenue certified that the terms and conditions of the said agreement have been fully and properly carried out by the said Contractor and accordingly, discharges this Guarantee. Unless and demand or claim under this Guarantee is made on us on or before we shall be discharged from all the liability under this Guarantee thereafter.

We, the ICICI BANK, Branch Madhya Marg, Chandigarh, further agree with the Government that the Government shall have the fullest liberty without consent and without affecting in any manner our obligation hereunder to vary any of the terms and conditions of the said agreement or to extend time of performance of the said Contractor from time to time or to postpone for any time or from time to time any of the powers exercisable by the Government against the such contractor and to forbear or enforce any of the terms and conditions relating to the said agreement and we shall not be relieved from our liability by reason of any such variation or extension being granted to such Contractor or for any forbearance, act or commission of the part of the Government or any indulgence by the Government to the said contractor or for any such matter or thing whatsoever which under the law relating to sureties would, but for this provision, have effect so relieving us.

This Guarantee will not be discharged due to the change in the constitutions of the Bank or the Contractor. We, ICICI BANK, Branch Madhya marg, Chandigarh, lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Government in writing. In the event of any dispute or difference between the parties hereto, such difference or dispute shall be resolved amicably by mutual consultation or through the good officers of empowered agencies of the Government. If such resolution is not possible, then the unresolved difference or dispute shall be referred to arbitration of an arbitrator to be nominated by Secretary, Dept. of Legal Affairs ("Law Secretary") in terms of the Office Memo # 55/3/1/75-CF dated the 19.12.1975 issued by the Cabinet Secretariat (Dept. of Cabinet Affairs) as modified from time to time. The Arbitration Act of 1940 (10 of 1940) shall not be applicable to the arbitration under this clause. The award of the arbitrator shall be binding upon the parties to the dispute. Provided, however, any party aggrieved by such awards may make a further reference for setting aside or for the revision of such awards to the Law Secretary whose decision shall bind the parties finally and conclusively.

Notwithstanding anything contained herein the Bank's liability under this Guarantee shall be restricted to Rs. 13000/- (Rupees thirteen thousand only) and the Guarantee shall remain in force only up to 15/03/2001 after which date the bank shall be discharged from all liabilities under this Guarantee.

Dated at Chandigarh this ____ day of March 2000.

Corporate Guarantee for ISDA

THIS DEED OF GUARANTEE executed at______on this ___day of Two Thousand and ______ by ____,a company within the meaning of the Companies Act, 1956 and having its Registered Office at ___________________ (hereinafter referred to as "the Guarantor", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and permitted assigns) in favor of ICICI BANK LIMITED, a public company incorporated under the Companies Act, 1956 and a banking company within the meaning of the Banking Regulation Act, 1949, having its registered office at Landmark, Race Course Circle, Vadodara 390 007 and its corporate office at ICICI Bank Towers, Bandra Kurla Complex, Mumbai 400 051(hereinafter referred to as "ICICI Bank", which expression shall, unless it be repugnant to the subject or context thereof, include its successors and assigns).

W H E R E A S

(1) The Guarantor has requested ICICI Bank to enter into ISDA Master Agreement with

____________ Limited, a Company within the meaning of the Companies Act, 1956, and having its Registered Office at _____________ (hereinafter referred to as "the Company") dated __________ (such ISDA Master Agreement, as amended or modified from time to time, together with each Confirmation exchanged between the parties pursuant thereto, hereinafter the "ISDA Agreement"), for entering into Foreign Exchange derivative Transactions.

(2) At the request of the Guarantor ICICI Bank has agreed to enter into the ISDA Agreement and subsequent transactions for the said purpose.

Now this Deed Witnesseth as follows:

In consideration of the ICICI Bank agreeing to enter into the ISDA Agreement, the Guarantor hereby unconditionally, absolutely and irrevocably guarantees to and agrees with ICICI Bank as follows:

1. ICICI Bank shall have the sole discretion to enter into the transactions at such time, on such conditions and in such manner as ICICI Bank may decide as per the terms of the ISDA Agreement.
2. The Company shall duly and punctually pay all the amounts payable to ICICI Bank in terms of the ISDA Agreement, including, in case of default, interest on any amount due, when and as the same shall become due and payable, whether on the scheduled payment dates, at maturity, upon declaration of termination or otherwise, according to the terms thereof, together with all interest, liquidated damages, costs, expenses, and other monies including any increase as a result of devaluation/ revaluation/ fluctuation in the rates of exchange of the foreign currencies and perform and comply with all the other terms, conditions and covenants contained in the ISDA Agreement.
3. In the event of any default on the part of the Company in payment of any of the moneys referred above or in the event of any default on the part of the Company to comply with or perform any of its obligations as per the terms, conditions and covenants contained in the ISDA Agreement, the Guarantor shall, upon demand, forthwith pay to ICICI Bank or cause such payment to be made to ICICI Bank, without demur all the amounts payable by the Company under the ISDA Agreement.

4. The Guarantor shall also indemnify and keep ICICI Bank indemnified against all losses, damages, costs, claims and expenses whatsoever which ICICI Bank may suffer, pay or incur by reason of or in connection with any such default on the part of the Company including legal proceedings taken against the Company and/or the Guarantor for recovery of the moneys referred to in Clause 2 above.
5. The Guarantor hereby agrees that, without the concurrence of the Guarantor, the Company and ICICI Bank shall be at liberty to vary, alter or modify the terms and conditions of the ISDA Agreement executed between the Company and ICICI Bank and in particular to defer, postpone or revise the payment of the amounts and other monies payable by the Company to ICICI Bank under ISDA Agreement.
6. The Guarantor hereby agrees that his obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the ISDA Agreement; the absence of any action to enforce the same; any waiver or consent by the Company concerning any provisions thereof; the rendering of any judgment against the Company or any action to enforce the same; or any other circumstances that might otherwise constitute a legal or equitable discharge of the Guarantor or a defense of a Guarantor. The Guarantor covenants that this guarantee will not be discharged except by complete payment of the amounts payable under the ISDA Agreement.
7. ICICI Bank shall be at liberty to require the performance by the Guarantor of his obligations hereunder to the same extent in all respects as if the Guarantor had at all times been solely liable to perform the said obligations and was the principal debtor to ICICI Bank.
8. The Guarantor hereby declares and agrees that he has not received and shall not, without the prior consent in writing of ICICI Bank receive any security or commission from the Company for giving this guarantee so long any monies remain due and payable by the Company to ICICI Bank under the ISDA Agreement.
9. The Guarantor shall not in the event of the liquidation of the Company prove in competition with ICICI Bank in the liquidation proceedings.
10. A certificate in writing signed by a duly authorized official of ICICI Bank shall be conclusive evidence against the Guarantor of the amount for the time being due to ICICI

Bank from the Company in any action or proceeding brought on this Guarantee against the Guarantor.

11. This Guarantee shall not be wholly or partially satisfied or exhausted by any payments made to or settled with ICICI Bank by the Company and shall be valid and binding on the Guarantor and operative until all payments in full of all moneys due to ICICI Bank under the ISDA Agreement from time to time.
12. This Guarantee shall be irrevocable and the obligations of the Guarantor hereunder shall not be conditional on the receipt of any prior notice by the Guarantor or by the Company and the demand or notice by ICICI Bank as provided in Clause 17 hereof shall be sufficient notice to or demand on the Guarantor.
13. The liability of the Guarantor under this Guarantee shall not be affected by
    - Any change in the constitution or winding up of the Company or any absorption, merger or amalgamation of the Company with any other company, corporation or concern; or
    - Any change in the management of the Company or takeover of the management of the Company by Central or State Government or by any other authority; or
    - Acquisition or nationalization of the Company and/or of any of its undertaking(s) pursuant to any law; or
    - Any change in the constitution of ICICI Bank.
14. This Guarantee shall be a continuing one and shall remain in full force and effect till such time the Company pays in full all monies due under the ISDA Agreement together with all interest, liquidated damages, costs, expenses and other monies including any increase as a result of devaluation/ revaluation/ fluctuation in the rates of foreign currencies involved that may from time to time become due and payable and remain unpaid to ICICI Bank under the ISDA Agreement.
15. The Guarantor hereby represents and warrants that:

    (a) is duly organized and validly existing under the laws of India and has power to own its assets, conduct its business as presently conducted and to enter into, and perform its obligations under this Guarantee;

    (b) The Guarantor has done all acts, conditions and things required to be done, fulfilled or performed, and all authorisations required or essential for the execution of this Guarantee or for the performance of the Guarantors' obligations in terms of and under this Guarantee have been done, fulfilled, obtained, effected and performed and are in full force and effect and no such authorisation has been, or is threatened to be, revoked or cancelled;

(c) This Guarantee has been duly and validly executed by the Guarantor and this Guarantee constitutes legal, valid and binding obligations of the Guarantor;

(d) The entry into, delivery and performance by the Guarantor of, and the transactions contemplated by, this Guarantee do not and will not conflict: (i) with any law; (ii) with the constitutional documents, if any, of the Guarantor; or (iii) with any document which is binding upon the Guarantor or on any of his assets;

(e) All amounts payable by the Guarantor under this Guarantee will be made free and clear of and without deduction / withholding for or on account of any tax or levy and without any set off;

(f)(i) The execution or entering into by the Guarantor of this Guarantee constitute, and performance of his obligations under this Guarantee will constitute, private and commercial acts done and performed for private and commercial purposes; (ii)The Guarantor is not, will not be entitled to, and will not claim immunity for himself or any of his assets from suit, execution, attachment or other legal process in any proceedings in relation to this Guarantee;

(g) The Guarantors' confirmation on governing law as provided in this Guarantee, is legal, valid and binding on the Guarantor;

(h) No litigation, arbitration, administrative or other proceedings are pending or threatened against the Guarantor or his assets, which, if adversely determined, might have a material adverse effect on the enforceability, performance with its obligations under this Guarantee;

(i) (i) All information communicated to or supplied by or on behalf of the Guarantor to the Bank from time to time in a form and manner acceptable to the Bank, are true and fair / true, correct and complete in all respects as on the date on which it was communicated or supplied; (ii) Nothing has occurred since the date of communication or supply of any information to the Bank which renders such information untrue or misleading in any respect.

16. Any demand for payment or notice under this Guarantee shall be sufficiently given if sent by post to or left at the last known address of the Guarantor or his successors or assigns legal representatives, as the case may be, such demand or notice is to be made or given, and shall be assumed to have reached the addressee in the course of post, if given by post, and no period of limitation shall commence to run in favour of the Guarantor until after demand for payment in writing shall have been made or given as aforesaid and in proving such notice when sent by post it shall be sufficiently proved that the envelope containing the notice was posted and a certificate by any of the officers of ICICI Bank that to the best of his knowledge and belief, the envelope containing the said notice was so posted shall be conclusive as against the Guarantor, even though it was returned unserved on account of refusal of the Guarantor or otherwise.
17. This Guarantee shall be governed by and construed in accordance with the laws of India.
18. The Guarantor agree that any legal action or proceedings arising out of this Guarantee shall be brought in the courts or tribunals at Mumbai in India and irrevocably submit themselves to the jurisdiction of such courts and tribunals. ICICI Bank may, however, in its absolute discretion commence any legal action or proceedings arising out of this Guarantee in any other court, tribunal or other appropriate forum, and the Guarantor hereby consents to that jurisdiction.
19. Any provision of this Guarantee, which is prohibited or unenforceable in any jurisdiction, shall, as to such jurisdiction, be ineffective to the extent of prohibition or unenforceability but shall not invalidate the remaining provisions of this Guarantee or affect such provision in any other jurisdiction.
20. The Guarantor hereby agrees, confirms and undertakes that:

    (1) ICICI Bank shall, as it may deem appropriate and necessary, be entitled to disclose all or any:

    (i) Information and data relating to the Guarantor;

    (ii) Information or data relating to this Guarantee or any other guarantee(s) furnished by the Guarantor in favor of ICICI Bank;

(iii) obligations assumed / to be assumed by the Guarantor in relation to this Guarantee or any other guarantee furnished by the Guarantor for any other facility granted / to be granted by ICICI Bank;

(iv) Default, if any, committed by the Guarantor in discharge of the aforesaid obligations, To any agency/credit bureau ("the Agency") authorized in this behalf by Reserve Bank of India ("RBI");

(2) The Agency so authorized may use, process the aforesaid information and data disclosed by ICICI Bank in the manner as deemed fit by them;

(3) The Agency so authorized may furnish for consideration, the processed information and data or products thereof prepared by them, to banks / financial institutions and other credit grantors or registered users, as may be specified by RBI in this behalf;

(4) The information and data furnished by the Guarantor to ICICI Bank from time to time shall be true and correct.

IN WITNESS WHEREOF the Guarantor has hereunto set his hands on the day and year first hereinabove written.

Signed and Delivered by the)

Within named shri)

Signed and Delivered by the)

Within named shri)

Essar Energy to Provide $1bn Bank Guarantee for Shell's Stanlow Refinery

MUMBAI: Essar Energy will provide a bank guarantee of $1 billion to close the offer it made to acquire Shell's Stanlow refinery in the UK, according to a person who is part of ongoing negotiations with banks. This bank guarantee would be over and above the $350 million that Essar Energy agreed to offer for the assets of Stanlow refinery.

"The company (Essar) will finalize the bankers who will furnish the guarantee in the next three to four months," said the person who requested anonymity as the transaction is still underway. Typically, the purchase price of a functional refinery consists of the asset cost plus an amount for working capital which includes inventory. The value of the inventory, in the case of a refinery, is determined at the close of the deal to reflect the latest price of crude.

On February 18, Essar Energy made the offer to buy Shell's 272,000 barrel-a-day refinery and the associated local marketing businesses for a total expected consideration of about $1.3 billion. Essar Energy's deal value of $1.13 billion includes $780 million for the inventory with the UK refinery. Shell agreed in principle to the offer made by Essar Energy and has granted exclusivity to the offer until April 1, 2011.

"Crude and processed products have to be valued on the completion of the acquisition, based on prevailing market prices. As of now it has been estimated to be around $780 million," said an Essar spokesman. Under the terms of the asset purchase agreement, Essar will make the payment in two stages: $175 million payable on completion of the acquisition and a deferred payment of $175 million plus interest after a year of acquisition. In addition, Essar will have to make a separate payment for the crude oil, refined products other inventory with Stanlow.

Essar Oil UK and Shell will enter into agreements where Essar will buy crude and feedstock exclusively from Shell for a five-year period at spot prices for Stanlow refinery, and Shell will buy refined products for its retail and other businesses from Stanlow for durations of up to 10 years.

List of Circulars consolidated by the Master Circular on Guarantees and Co-acceptances

Sl. No.	Circular No.	Date	Subject
1.	A.P. (DIR Series) Circular No. 69	27.05.2011	Overseas Direct Investment - Liberalization / Rationalization
2	Mail-Box Clarification	19.05.2011	Issue of Bank Guarantee (BG) / Letter of Credit (LC) by Commercial Banks to constituents of Co-operative Banks
3	DBOD.BP.BC.96/08.12.014/2009-10	23.04.2010	Prudential Norms on Advances to Infrastructure Sector
4	DBOD.No.Dir.BC.136/13.03.00/2008-09	29.05.2009	Issue of Guarantees by Banks
5	DBOD.No.BP.BC.127/21.04.009/2008-09	22.04.2009	Extension of Guarantee - Maturity Beyond Ten Years
6	Mail-Box Clarification	15.04.2009	Bank Guarantee with Auto Renewal Clause
7	Mail-Box Clarification	27.05.2008	Signing of Bank Guarantee
8	DBOD.No.Dir.BC.72/13.03.00/2006-07	03.04.2007	Guarantees for Export Advance
9	DBOD.No.Dir.BC.51/13.03.00/2006-07	09.01.2007	Banks' Exposure to Commodity Markets – Margin Requirements
10	AP(DIR Series)Circular No.13	17.11.2006	Issue of Bank Guarantee on behalf of Service Importers
11	DBOD.No.Dir.BC.35/13.07.10/2006-07	11.10.2006	Guarantees and Co-acceptances
12	A.P.(DIR Series) Circular No.29	27.03.2006	Overseas Investment – Liberalization

13	FEMA Notification No. 8/2000-RB	03-05-2000	Foreign Exchange Management (Guarantees) Regulations, 2000
14	A.P.(DIR Series) Circular No.24	01.11.2004	Trade Credits for Imports into India-Issue of Guarantees-Delegation of Powers
15	A.P. (DIR Series) Circular No.17	16.10.2004	Issue of Bank Guarantee in favor of Foreign Airlines/IATA
16	FED Master Circular No.8/2004-05	01.07.2004	Master Circular – Export of Goods and Services
17	FED Master Circular No.7/2004-05	01.07.2004	Master Circular – Import of Goods and Services
18	DBOD.BP.BC.No.97/21.04.141/2003-04	17.06.2004	Annual Policy Statement for the year 2004-05 - Prudential Guidelines on Unsecured Exposures
19	IECD.No.17/08.12.01/2002-03	05.04.2003	Guarantees and Co-acceptances
20	DBOD.No.BP.BC.47/21.04.141/2002	13.12.2002	Limit of Unsecured Guarantees and Advances
21	DBOD.No.BP.BC.39/21.04.141/2002-03	06.11.02	Exemption of Advances granted to Self Help Groups (SHGs) against Group Guarantee from the Limit of Unsecured Guarantees and Advances
22	DBOD.No.BP.BC.90/21.04.141/2001-02	18.04.02	Exclusion of Credit Card Outstanding from the Norms relating to Unsecured Advances and Guarantees
23	IECD No 16/08.12.01/2001-02	20.02.02	Financing of Infrastructure Projects
24	DBOD.BP.BC.119/21.04137/2000-02	11.05.01	Bank Financing of Equities and Investment in Shares – Revised Guidelines
25	DBOD.No.BP.BC.78/21.04.009/99	04.08.99	Bank Guarantees
26	IECD.No.26/08.12.01/98-99	23.04.99	Financing of Infrastructure Projects

27	DBOD.No.BP.BC.16/21.04.009/97	28.02.97	Payment under Bank Guarantees - Immediate Settlement of Cases
28	DBOD.No.Dir.BC.90/13.07.05/98	28.08.98	Bank Finance Against Shares and Debentures - Master Circular
29	IECD.No.21/08.12.01/96-97	21.02.97	Bill Discounting Scheme/ Rediscounting Schemes Operated by Power Finance Corporation Ltd. (PFC)
30	IECD.No.37/08.12.01/94-95	23.02.95	Issue of Bank Guarantees in favor of Financial Institutions
31	IECD.No.21/08.12.01/94-95	01.11.94	Bill Discounting Schemes Operated by Small Industries Development Bank of India (SIDBI)
32	DBOD.No.BP.BC.194/21.04.009/ 93	22.11.93	Payment under Bank Guarantees - Immediate Settlement of Cases
33	DBOD.No.BC.185/21.04.009-93	21.10.93	Bank Guarantee - Delay in Obtaining Certified Copies of Judgments
34	DBOD.No.BC.20/17.04.001/92	25.08.92	Committee to Enquire into Various Aspects Relating to Frauds and Malpractices in Banks
35	DBOD.No.BP.BC.53/C.473-91	27.11.91	Payment under Bank Guarantees - Immediate Settlement of Cases
36	DBOD.No.Dir.BC.35/C.96 (Z)-90	22.10.90	Bank Guarantee Scheme
37	IECD.No.PMD.BC.12/C.446 (C&P)-90/91	21.09.90	Co-acceptance/Issuance of Guarantee Favoring Financial Institutions - Buyers' Line of Credit Scheme (BLCS)
38	DBOD.No.Dir.BC.11/C.96-89	09.08.89	Bank Guarantee Scheme
39	DBOD.No.BP.BC.124/C.473-89	31.05.89	Payment under Bank Guarantees - Immediate Settlement of Cases
40	DBOD.No.Inf.BC.73/C.109(H)-89	15.02.89	Bank Guarantee Scheme
41	IECD.No.PMS.207/C.446 (C&P)-	29.06.88	Advances on Consortium Basis - Co-ordination

	87/88		Between Banks and All-India Financial Institutions in Dealing with New Investment
42	IECD.No.EFD.197/822-WGM-MOD-88	30.01.88	Project Exports – Grant of Credit Facilities to Indian Contractors
43	DBOD.No.BP.BC.71/C.473-87	10.12.87	Payment under Bank Guarantees - Immediate Settlement of Cases
44	DBOD.No.BP.BC.11/C.473-87	10.02.87	Payment of Invoked Guarantees
45	DBOD.SIC.BC.5A/C.739 (A-1)-87	29.01.87	Co-acceptance of Bills Drawn under Letters of Credit by Banks
46	DBOD.No.BP.BC.130/C.473-86	15.11.86	Bank Guarantee
47	DBOD.No.Inf.BC.45/C.109(H)-86	09.04.86	Bank Guarantee Scheme
48	DBOD.NO.BP.BC.28/C.469(W)-86	07.03.86	Safeguards for Issue of Banks Instruments, etc.
49	DBOD.No.BP.BC.18/C.473-86	24.02.86	Bank Guarantee
50	IECD.No.PMS.129/C.446 (PL)-85	11.10.85	CAS - IDBI Bills Rediscounting Scheme
51	DBOD.NO.BP.BC.111/C.469(W)-85	02.09.85	Safeguards for Issue of Banks Instruments, etc.
52	DBOD.No.Leg.BC.77/C.235C-85	05.07.85	Section 20 of the Banking Regulation Act, 1949
53	DBOD.No.Dir.BC.25/C.96-84	26.03.84	Guarantee of Inter-company Deposits/Loans by Commercial Banks
54	IECD.No.CAD.82/C.446(HF-P)-84	02.02.84	Guarantee Furnished by Banks in favor of HUDCO in respect of Loans to State Housing Boards and similar Bodies
55	DBOD.No.GC.SIC.BC.97/C.408 (A)-83	26.11.83	Opening of Letters of Credit Issue of Guarantees and Co-acceptance of Bills by Banks
56	DBOD.No.Dir.BC.44/C.96-83	30.05.83	Guarantee of Inter-company Deposits/Loans by Commercial Banks

57	DBOD.No.BP.678/C.473-83	11.01.83	Bank Guarantee
58	DBOD.No.Clg.BC.91/C.109(H)-82	30.09.82	Bank Guarantee Scheme
59	ICD.No.CAD.18/C.446-82	10.02.82	Bank Guarantee - Honoring of
60	DBOD.No.Inf.BC.103/C.109-80	11.09.80	Bank Guarantee Scheme
61	DBOD.No.Clg.BC.21/C.109(H)-80	08.02.80	Bank Guarantee Scheme
62	DBOD.No.Dir.BC.122/C.107(N)-78	20.09.78	Guarantee of Inter-company Deposits/Loans by Commercial Banks
63	DBOD.No.Clg.BC.1/C.109-78	02.01.78	Bank Guarantee Scheme
64	DBOD.No.ECC.BC.77/C.297L(1-A)-77	07.06.77	Unconditional Guarantee Issued by Indian Banks in favor of Overseas Employers/ Importers on Behalf of Indian Exporters
65	DBOD.No.ECC.BC.89/C.297L(1-D)-76	04.08.76	Bid Bonds and Performance Guarantees
66	DBOD.No.Fol.BC.9/C.249-76	20.01.76	Co-acceptance of Bills/Guarantees by Commercial Banks on Inter-company Deposits/ Loans
67	DBOD.No.GCS.BC.25/C.107(N)-74	01.04.74	Guarantee of Inter-company Deposits/Loans by Commercial Banks
68	DBOD.No.Sch.BC.88/C.96(S)-72	10.10.72	Unsecured Advances Guaranteed by Credit Guarantee Corporation of India Ltd--
69	DBOD.No.BM.BC.81/C.297(P)-72	14.09.72	Bid Bonds and Performance Guarantees
70	DBOD.No.Sch.BC.68/C.109-72	31.07.72	Bank Guarantee Scheme
71	DBOD.No.Sch.BC.27/C.96(S)-72	24.03.72	Continuance of Exemption in respect of Inland D/A Bills for the purpose of Norm relating to Unsecured Advances/Guarantees
72	DBOD.No.Sch.BC.1610/C.96(S)-70	23.10.70	Unsecured Advances and Guarantees
73	Nat 2002/c.473-70	29.7.70	Guidelines under which guarantees may or

			may not be considered
74	DBOD.No.Sch.BC.1051/C.96(S)-69	01.07.69	Unsecured Advances made to Exporters on Consignment Basis to be Excluded for the Purpose of Norm
75	DBOD.No.Sch.BC.1001/C.96Z-69	23.06.69	Bank Guarantees
76	DBOD.No.Sch.BC.2381/C.96(Z)-68	14.08.68	Bank Guarantees
77	DBOD.No.Sch.BC.2342/C.96S-68	08.08.68	Advances against Book Debts
78	DBOD.No.Sch.BC.481/C.96S-68	30.03.68	Unsecured Advances
79	DBOD.No.Sch.BC.421/C.96(S)-68	19.03.68	Unsecured Advances - Advances against Supply Bills Drawn on Central/State Governments
80	DBOD.No.Sch.BC.359/C.96S-68	07.03.68	Unsecured Advances - Inland D/A Bills having a Usance of 90 Days
81	DBOD.No.Sch.BC.68/C.96(S)-68	12.01.68	Unsecured Advances - Guidelines
82	DBOD.No.Sch.BC.1850/C.96Z-67	07.12.67	Bank Guarantees
83	DBOD.No.Sch.BC.1794/C.96Z-67	29.11.67	Bank Guarantees
84	DBOD.No.Sch.BC.1693/C.96S-67	08.11.67	Advances against Shares and Unsecured Advances - Guidelines
85	DBOD.No.Sch.BC.1296/C.96Z-67	21.08.67	Bank Guarantees
86	DBOD.No.Sch.BC.1069/C.96Z-67	11.07.67	Guarantee Business of Banks - Guidelines - Clarification
87	DBOD.No.Sch.BC.666/C.96Z-67	03.05.67	Guidelines and Norms for Guarantee Business Undertaken by Banks

Bank Guarantee Format

This guarantee is issued by ___________(bank), a body corporate constituted under the __________Act 19__, having its Head Office at______________________(hereinafter referred to as the "Bank" which term shall wherever the context so permits, includes its successors and assigns) in favor of ASSAM TRADE PROMOTION ORGANISATION, a company established under the Companies Act, 1956 and having its registered office at NH-37, Betkuchi, Guwahati-781 035, in the District of Kamrup (M), Assam (hereinafter referred to as "ATPO" which expression shall include its successors and assigns),

WHEREAS

1. Mr./Ms. ______________s/o /d/o / w/o _________, residing at ____________and having his/her office at_____________ (Complete Address), (hereinafter referred to as the "Organizer", which expression shall include his/her successors and assigns) / or M/s________________, a partnership firm registered under the Indian Partnership Act, 1932 and having their office at ________ (Complete Address), (hereinafter referred to as the "Organizer", which expression shall include their successors and assigns) / or M/s _______________Limited, incorporated as a company under the Companies Act, 1956 and having its registered office at_____________ (Complete Address), (hereinafter referred to as the "Organizer", which expression shall include its successors and assigns) is/are an applicant / Event Managers/ Organizer (s) to hold events at Maniram Dewan Trade Centre (MDTC) (allowed to hold event by ATPO).
2. One of the conditions of Organizer to hold events at MDTC is that the organizer maintains with ATPO security deposit in the form of Bank Guarantees, of a value not less than Rs.___________ (Rupees ___________only) as prescribed by ATPO.
3. At the request of the organizers, ATPO has agreed to accept a bank guarantee in lieu of security deposit in the form of Bank Guarantees in favor of Assam Trade Promotion Organization from an approved commercial bank for an equivalent amount of Rs.______________ (Rupees _________________only).
4. The organizer has requested the Bank to furnish to ATPO a guarantee for Rs.___________ (Rupees _______________only).

Now in Consideration of the Foregoing,

1. We, the _____________ (Name of Bank) having a branch at ________________ ________ (Complete Address of Branch) at the request and desire of the Member do hereby irrevocably and unconditionally guarantee to pay a sum of Rs.___________, (Rupees ________only) to ATPO as a security for due performance and fulfillment by the organizer of his/her/its engagements, commitments, operations, obligations or liabilities as a organizer for holding events at MDTC including any sums due by the organizer to ATPO or any other party as decided by ATPO arising out of or incidental to any contracts made, executed, undertaken, carried on or entered into or purported so to be, by the organizer. The Bank agrees and confirms that the said guarantee shall be available as a security for fulfilling all or any obligation or liability of the organizer as directed and decided by ATPO, with no reference to the organizer.

2. The Bank hereby agrees that if in the opinion of ATPO, the organizer has been or may become unable to meet, satisfy, discharge or fulfill any obligations, liability or commitments or any part thereof to ATPO, or its Clearing and Settlement mechanism /arrangement or to any other party as decided by ATPO, then without prejudice to the rights of ATPO under its Rules, Bye-laws or Regulations or otherwise, ATPO may at any time thereafter and without giving any notice to the organizer invoke this guarantee to meet the aforesaid obligations, liabilities or commitments of the organizer.

3. The Bank undertakes that it shall, on first demand of ATPO, without any demur, protest or contestation and without any reference to the organizer and notwithstanding any contestation by the organizer, pay to ATPO such sums no exceeding Rs__________ (Rupees _________only) as may be demanded by ATPO. The decision of ATPO as to the obligations or liabilities or commitments of the Member and the amount claimed shall be final and binding on the Bank, and any demand made on the Bank shall be conclusive as regards the amount due and payable by the Bank under this guarantee.

4. The guarantee shall remain operative in respect of each of the obligations, liabilities or commitments of the organizer severally and may be enforced as such in the discretion of ATPO, as if each of the obligations, liabilities or commitments had been separately guaranteed by the Bank. The guarantee shall not be considered as cancelled or in any way affected on any demand being raised by ATPO but shall continue and remain in operation in respect of all subsequent obligations, liabilities or commitments of the organizer during their event periods. However the

maximum aggregate liability of the Bank during the validity of the guarantee shall be restricted to an aggregate sum of Rs.___________ (Rupees ________ only).

5. The validity of this guarantee shall not be affected in any manner whatsoever if ATPO takes any action against the organizer including DECLARATION OF DEFAULT, SUSPENSION or EXPULSION of the organizer.

6. The Bank undertakes to pay to ATPO, the amount hereby guaranteed within 24 hours of being served with a written notice requiring the payment of the amount either by hand delivery or by Registered Post or by Speed Post.

7. Notwithstanding anything mentioned herein above, the liability of the Bank under this guarantee shall not exceed Rs. ______ (Rupees ______only) and it shall be valid for a period of 12 months i.e. up to ________.

8. The bank is liable to pay the guaranteed amount only if ATPO serves upon the Bank a written claim or demand on or before _____ .

Executed this ___________day of _________ at__________ (place).

FOR ________________ (BANK)______________(BRANCH)

AUTHORIZED SIGNATORIES

SEAL OF THE BANK

Note: The bank guarantee of an approved commercial bank must submit by the organizer for holding events at MDTC for more than 3 day consecutively with an estimated billing amount more than Rs.50,000/- . For estimated guaranteed amount the organizer may contact the ATPO.

1. Bank Guarantee should be stamped in Non-Judicial stamp paper of appropriate value.

2. The following is required to be typed on the Stamp Paper as the First Page and duly signed:

This Non-Judicial Stamp paper of Rs. ____ forms part and parcel of this Bank Guarantee number _______________ dated _________ issued in favor of Assam Trade Promotion Organization by us for M/s/Mr/Ms._________________.

FOR _____________ (BANK)______________ (BRANCH)

AUTHORIZED SIGNATORIES

SEAL OF THE BANK

All the blanks in the format are required to be duly filled by the issuing bank along with their stamp and signature against each blank. Each page of the bank guarantee should bear the bank guarantee number and should be signed by authorized signatory of the bank.

No. 02-07-01-CTE-30
Government of India
Central Vigilance Commission
****

Satarkata Bhawan, Block 'A',
GPO Complex, INA,
New Delhi-110023.

<u>OFFICE MEMORANDUM</u>
Circular No. 01/01/08

31 DEC 2007

Sub. : Acceptance of Bank Guarantees.

A number of instances have come to the notice of the Commission where forged / fake bank guarantees have been submitted by the contractors/ suppliers. Organizations concerned have also not made any effective attempt to verify the genuineness / authenticity of these bank guarantees at the time of submission.

2. In this background, all organizations are advised to streamline the system of acceptance of bank guarantees from contractors/suppliers to eliminate the possibility of acceptance of any forged/fake bank guarantees.

3. The guidelines on this subject issued by Canara Bank provides for an elaborate procedure, which may be found helpful for the organizations in eliminating the possibility of acceptance of forged/fake bank guarantees. The guidelines issued by Canara Bank provides that -

> "The original guarantee should be sent to the beneficiary directly under Registered Post (A.D.). However, in exceptional cases, where the guarantee is handed over to the customer for any genuine reasons, the branch should immediately send by Registered Post (A.D.) an unstamped duplicate copy of the guarantee directly to the beneficiary with a covering letter requesting them to compare with the original received from their customer and confirm that it is in order. The A.D. card should be kept with the loan papers of the relevant guarantee.
>
> At times, branches may receive letters from beneficiaries, viz., Central/State Governments, public sector undertakings, requiring bank's confirmation for having issued the guarantee. Branches must send the confirmation letter to the concerned authorities promptly without fail."

4. Therefore, all organizations are advised to evolve the procedure for acceptance of BGs, which is compatible with the guidelines of Banks/Reserve Bank of India. The steps to be ensured should include-

i) Copy of proper prescribed format on which BGs are accepted from the contractors should be enclosed with the tender document and it should be verified verbatim on receipt with original document.

ii) It should be insisted upon the contractors, suppliers etc. that BGs to be submitted by them should be sent to the organization directly by the issuing bank under Registered Post (A.D.).

iii) In exceptional cases, where the BGs are received through the contractors, suppliers etc., the issuing branch should be requested to immediately send by Registered Post (A.D.) an unstamped duplicate copy of the guarantee directly to the organisation with a covering letter to compare with the original BGs and confirm that it is in order.

iv) As an additional measure of abundant precaution, all BGs should be independently verified by the organizations.

v) In the organisation/unit, one officer should be specifically designated with responsibility for verification, timely renewal and timely encashment of BGs.

5. Keeping above in view, the organizations may frame their own detailed guidelines to ensure that BGs are genuine and encashable.

6. Receipt of the above guidelines should be acknowledged.

P. Varma

(Smt. Padamaja Varma)
Chief Technical Examiner

To

All Chief Vigilance Officers

Bank Guarantee Overview:

Bank guarantee is one of the security instruments which can be utilized to reduce the risks or to recover the losses or damages involve in many business transactions to buyer and seller since it's a guarantee from a bank, where it agrees to pay if the client, on whose behalf the guarantee has been issued fails to pay. Moreover Many genuine requirements of the business can also be fulfilled with bank guarantee like purchase of machinery, obtaining goods, buy equipments or draw down loans, even when money is not available in the business, on the assurance of the bank in the form of bank guarantee. Since it is a written declaration from a bank which guarantees to satisfy a creditor’s (beneficiary's) claim for a certain financial amount for a third party based upon some conditions specified.

A bank guarantee can be obtained in the form of Advance payment guarantee, Warranty obligations guarantee, Tender guarantee, Payment guarantee, Credit guarantee, Custom bonds etc. Primarily Financial guarantee (ensures the payment of the interest as well as the principle amount if earlier specified conditions between buyer and seller are not met) and Performance guarantee (ensures the payment if timely execution of an agreement to have goods exported or delivered or services performed has not taken place as per the earlier specified conditions between buyer and seller) are issued frequently by the banks.

Unlike the Letter of Credit, the Bank Guarantee is comfort to the buyer or seller for recovering the losses or damages, if the CLIENT, on whose behalf the guarantee is issued, fails to complete or conform to the terms of agreement. By issuing this guarantee, the issuing bank is assuring payment of the certain amount of money to the beneficiary in case of non-performance of a certain contract according to the terms and conditions contained in the same.

A bank guarantee might be revoked by the seller (beneficiary) when the buyer fails to pay the seller for the goods supplied. In such a situation, the bank pays the beneficiary to the extent of the amount of Bank Guarantee. Similarly, on the other side if the Seller fails to deliver the goods or complete the terms of agreement, the bank guarantee may be cancelled by the buyer. This instrument or method is often used in Selling, Buying or Service Providing contracts across countries and / or where both the parties have no established business relationships. Bank Guarantee is non fund based limit.