



### Objectives

#### This chapter will:

- deal with the nature of the guarantee and standby LC
- simply describe the main differences between:
  - a) a primary and independent obligation separated from the contractual obligations of the principal; and
  - b) a secondary and accessory obligation, connected to the underlying trade contract.



### Main categories

#### Guarantee:

- demand guarantees (primary and independent undertakings);
- conditional guarantees (secondary and accessory undertakings);
- standby letters of credit (often used as an alternative to both demand and conditional guarantees, depending on their wording).



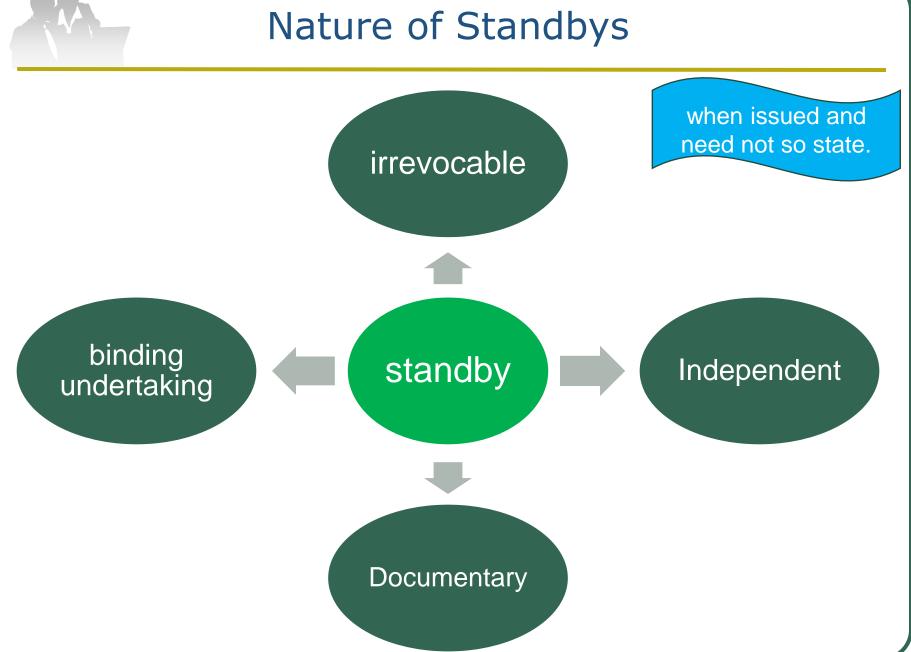
### I. Standby L/C

- 1. Definition
- 2. Parties to Standby L/C
- 3. Types of Standby L/C
- 4. Application of Standby L/C

### 1. Definition (ISP590, 1998)

- 1.01 Scope and application
- (a) These Rules are intended to be applied to standby letters of credit (including performance, financial, and direct pay standby letters of credit).
- (b) A standby letter of credit or other similar undertaking, however named or described, whether for domestic or international use, may be made subject to these Rules by express reference to them.
- (c) An undertaking subject to these Rules may expressly modify or exclude their application.
- (d) An undertaking subject to these Rules is hereinafter referred to as a "standby".







### Nature of Standbys

### (2) Independent

enforceability of an issuer's obligations does not depend on

the issuer's right or ability to obtain reimbursement from the applicant

the beneficiary's right to obtain payment from the applicant;

a reference in the standby to any reimbursement agreement or underlying transaction the issuer's
knowledge of
performance or
breach of any
reimbursement
agreement or
underlying transaction



### Nature of Standbys

presentation of documents

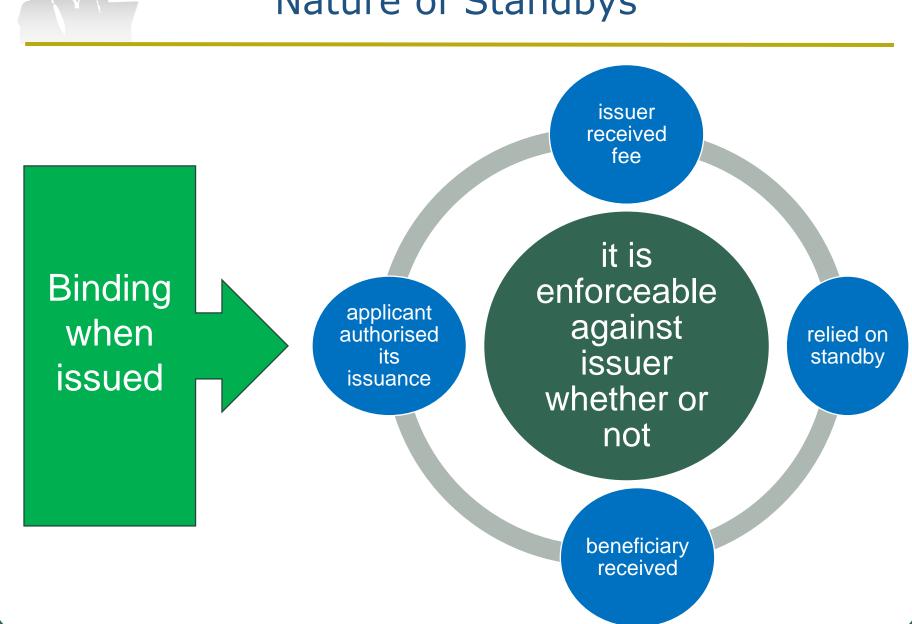


examination of required documents on their face

standby is documentary



### Nature of Standbys





### Principles

#### Independence of the issuer-beneficiary relationship:

An issuer's obligations toward the beneficiary are not affected by the issuer's rights and obligations toward the applicant under any applicable agreement, practice, or law

#### Limits to responsibilities:

- An issuer is not responsible for
  - a) performance or breach of any underlying transaction;
  - b) accuracy, genuineness, or effect of any document presented under the standby
  - c) action or omission of others even if the other person is chosen by the issuer or nominated person; or
  - d) observance of law or practice other than that chosen in the standby or applicable at the place of issuance.

## 2. Parties to Standbys

- \* "Applicant" is a person who applies for issuance of a standby or for whose account it is issued, and includes (i) a person applying in its own name but for the account of another person or (ii) an issuer acting for its own account.
- \* "Beneficiary" is a named person who is entitled to draw under a standby.

# 2. Parties to Standbys

- An issuer undertakes to the beneficiary to honour a presentation that appears on its face to comply with the terms and conditions of the standby in accordance with these Rules supplemented by standard standby practice.
- Advisor is a person who is requested to advise a standby
- "Confirmer" is a person who, upon an issuer's nomination to do so, adds to the issuer's undertaking its own undertaking to honour a standby.



### 3. Types of Standby

- A "Performance Standby" supports an obligation to perform other than to pay money, including for the purpose of covering losses arising from a default of the applicant in completion of the underlying transactions.
- An "Advance Payment Standby" supports an obligation to account for an advance payment made by the beneficiary to the applicant -> Người NK là người thụ hưởng
- ❖ A "Bid Bond/Tender Bond Standby" supports an obligation of the applicant to execute a contract if the applicant is awarded a bid.



### 3. Types of Standby

- A "Counter Standby" supports the issuance of a separate standby or other undertaking by the beneficiary of the counter standby.
- ❖ A "Financial Standby" supports an obligation to pay money, including any instrument evidencing an obligation to repay borrowed money.
- ❖ A "Direct Pay" Standby supports payment when due of an underlying payment obligation typically in connection with a financial standby without regard to a default.



### 3. Types of Standby

- An "Insurance Standby" supports an insurance or reinsurance obligation of the applicant.
- A "Commercial Standby" supports the obligations of an appli-cant to pay for goods or services in the event of non-payment by other methods.



- Standby L/C has all the features of standard L/C following UCP 600. The main difference is it is often used as the instrument of guarantee instead.
- Standby L/C commits to pay for the non-financial contract obligation instead of "obligation" as standard L/C
- ❖ ISP 98 (International Standby Practice) offers a precise and detailed framework for practitioners dealing with standby letters of credit ( as a guarantee)



### Have some special features:

- Commercial documents generally flow outside the letter of credit (between buyer and seller).
- Funds generally flow outside of a letter of credit (between buyer and seller).
- These credits are "Standing By" for a default or nonperformance before they can be drawn on.
- Low value ( usually less than 10% value of contract)



#### **Financial**

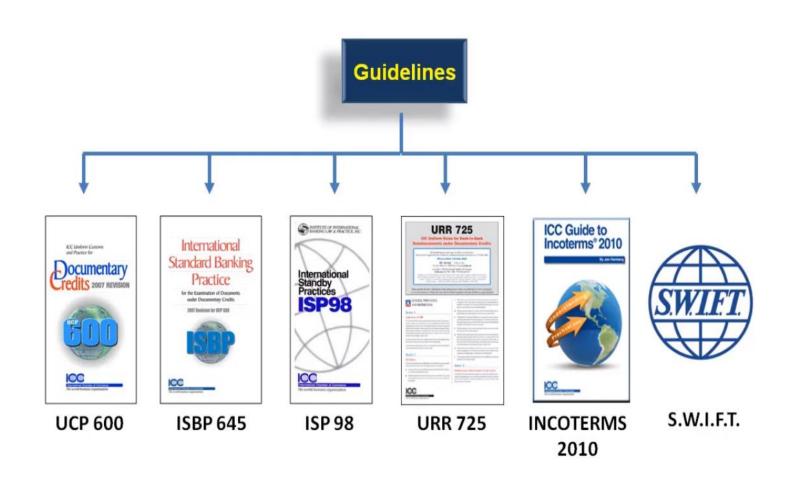
Assures account party's performance of a financial obligation, i.e., to pay an invoice by a certain date.

#### Performance

Assures account party's performance of a non-financial contract obligation, i.e., to deliver products under a contract.



### **GUIDELINES**



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#### Roles in Trade Finance:

- Assures account party's performance of a financial obligation. Irrevocable and independent (UCP 600)
- Is creditability finance: guarantee the advance payment, including fees, bank credit...
- Supervise the implementation of contract:

### Forms on Standby L/C

- Standby L/C for advance payment
- Standby L/C for any fees (insurance)
- Stanby L/C for payment



### II. Bank Guarantee

- 1. Definition
- 2. Features
- 3. Parties to Bank guarantee
- 4. Types of Guarantee
- 5. Application of Bank guarantee



#### 1. Definition

#### ICC URDC 758, 2010:

- **Demand guarantee** or **guarantee** means any signed undertaking, however named or described, providing for payment on presentation of a complying demand.
- Complying demand means a demand that meets the requirements of a complying presentation;
- Complying presentation under a guarantee means a presentation that is in accordance with, *first*, the terms and conditions of that guarantee, *second*, these rules so far as consistent with those terms and conditions and, *third*, in the absence of a relevant provision in the guarantee or these rules, international standard demand guarantee practice;

**Bank Guarantee** 



#### 1. Definition

#### ICC URDG 758, 2010

- demand guarantee or guarantee means any signed undertaking, however named or described, providing for payment on presentation of a complying demand;

 document means a signed or unsigned record of information, in paper or in electronic form, that is capable of being reproduced in tangible form by the person to whom it is presented. In these rules, a document includes a demand and a supporting statement.



#### 1. Definition

#### Section 4 Statute of Frauds 1677

A guarantee is a "written promise by one person to be responsible for the debt, default or miscarriage of another person incurred to a third party".

#### Circular No. 07/2015/TT-NHNN:

Bank guarantee refers to a type of credit whereby the guarantor undertakes to act on behalf of the obligor to fulfill their financial obligations to the obligee in the event the obligor fails to fulfill or insufficiently fulfill their agreed-upon obligations to the obligee; the obligor must take on their debt obligations and repay the guarantor.

#### **Article 4: Issue and effectiveness**

- a. A guarantee is issued when it leaves the control of the guarantor.
- b. A guarantee is irrevocable on issue even if it does not state this.
- c. The beneficiary may present a demand from the time of issue of the guarantee or such later time or event as the guarantee provides.



#### Feature: Irrevocable

- Guarantee amended only with the Beneficiary's consent.
- Guarantor is irrevocably bound by an amendment from its issue, unless and until the Beneficiary rejects that amendment.
- Except where made in accordance with the guarantee, the Beneficiary may reject an amendment of the guarantee at any time until it notifies its acceptance of the amendment or makes a presentation that complies only with the guarantee as amended
- => Guarantor is irrevocably bound by guarantee and amendment until beneficiary stated clearly his acceptance or rejection of amendment.



### 2. Features of Bank Guarantee

### Art.5: Independence of guarantee and counter-guarantee

- a. A guarantee is by its nature independent of the underlying relationship and the application, and the guarantor is in no way concerned with or bound by such relationship.
  - A reference in the guarantee to the underlying relationship for the purpose of identifying it does not change the independent nature of the guarantee.
- b. The undertaking of a guarantor to pay under the guarantee is not subject to claims or defences arising from any relationship other than a relationship between the guarantor and the beneficiary.



#### 2. Features of Bank Guarantee

Article 6: Documents v. goods, services or performance

Guarantors deal with documents and not with goods, services or performance to which the documents may relate



#### Functions of Bank Guarantee

- An instrument of guarantee for the beneficiary
- An instrument to supervise implementation of contract
- An instrument of trade finance by bank creditability



- 1) Applicant (Người yêu cầu bảo lãnh
- 2) Instructing party (Bên chỉ thị)
- 3) Guarantor (Người bảo lãnh)
- 4) Advising party (Bên thông báo)
- 5) Beneficiary (Người thụ hưởng)
- 6) Presenter (Người xuất trình)



- ❖ Applicant: means the party indicated in the guarantee as having its obligation under the underlying relationship supported by the guarantee. The applicant may or may not be the instructing party.
- ❖ Instructing party means the party, other than the counter-guarantor, who gives instructions to issue a guarantee or counter-guarantee and is responsible for indemnifying the guarantor or, in the case of a counterguarantee, the counter-guarantor. The instructing party may or may not be the applicant

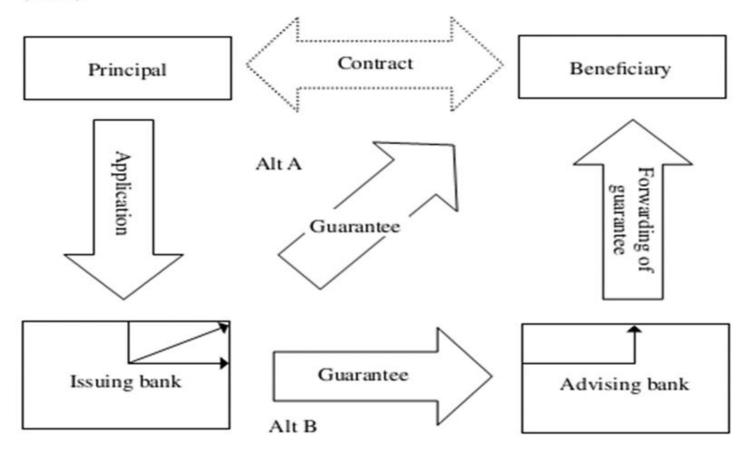


- Guarantor means the party issuing a guarantee, and includes a party acting for its own account
- Advising party means the party that advises the guarantee at the request of guarantor
- Beneficiary means the party in whose favour a guarantee is issued
- ❖ Presenter means a person who makes a presentation as or on behalf of the beneficiary or the applicant, as the case may be.



**Direct Guarantee** 

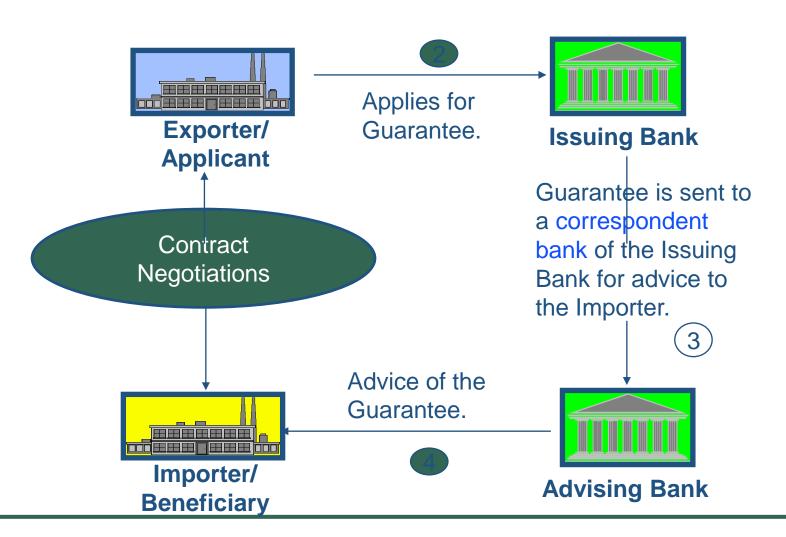
Direct guarantees (Alt A) or guarantees forwarded via an advising bank (Alt B)





### Example of Bank Guarantee

Mechanics: How does a transaction involving a Guarantee work?

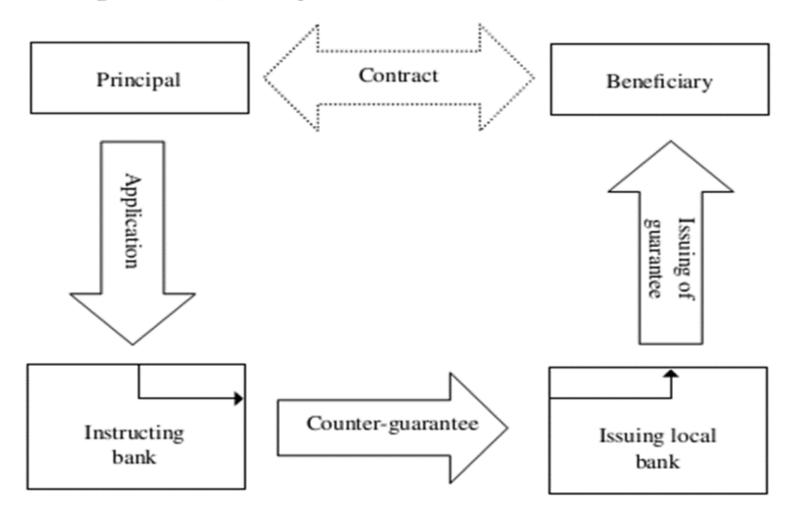


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### 3. Parties to Bank guarantee

**Indirect Guarantee** 

#### Indirect guarantees (issued by local banks)

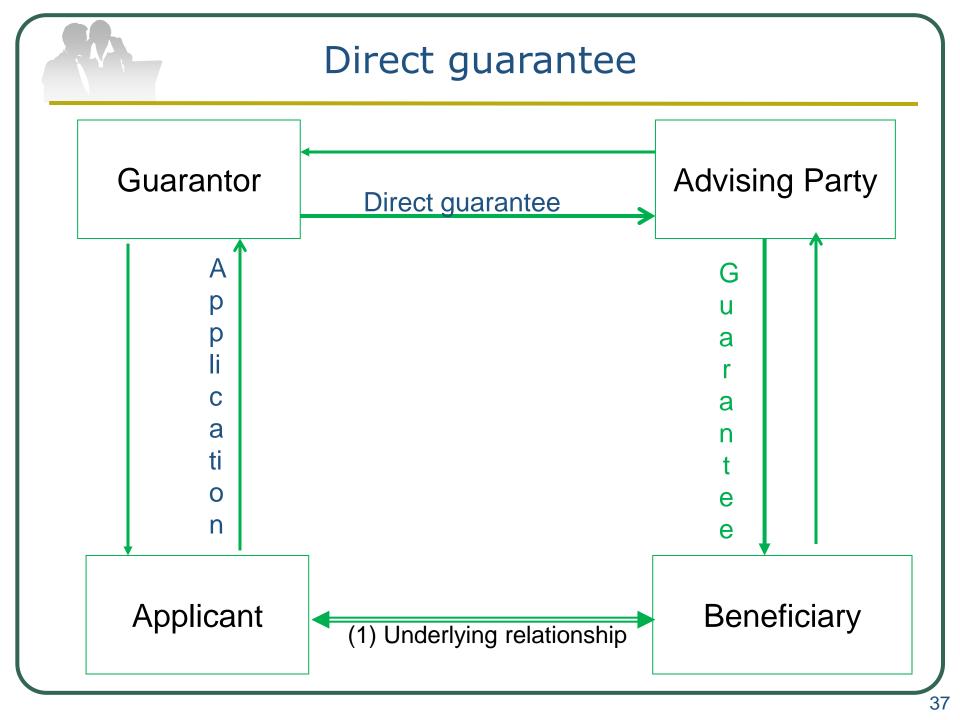


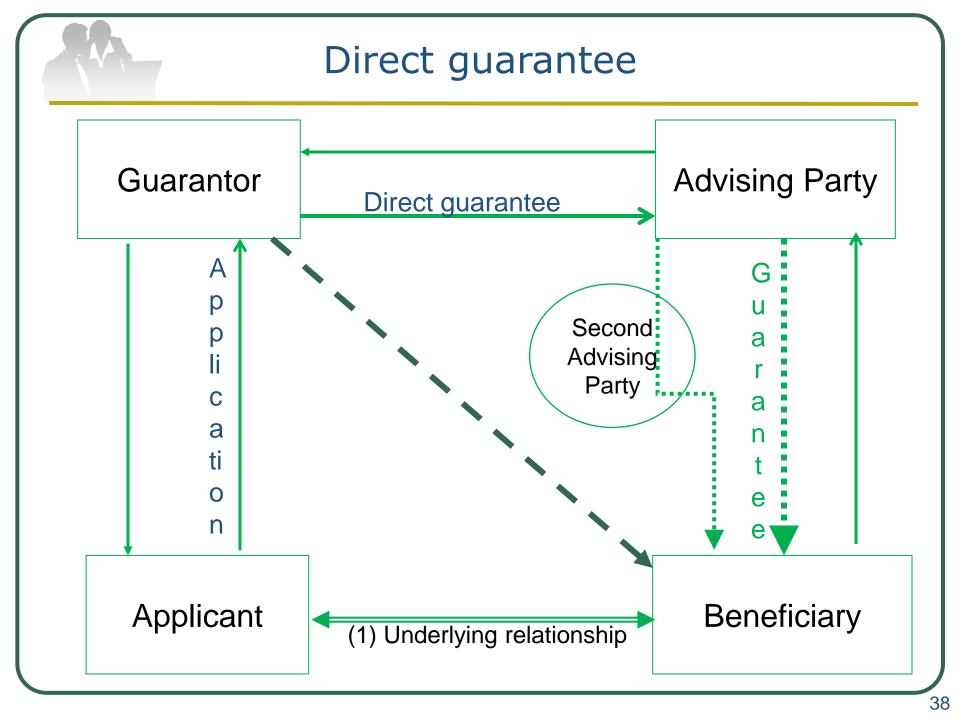


### 4. Types of Bank Guarantee

- 4.1 In terms of mechanism of bank guarantee
- Direct
- Indirect (counter- guarantee)
- 4.2 In terms of condition of payment
- Conditional
- Unconditional
- 4.3 In terms of purpose:

-...





# Indirect guarantee (Counter guarantee) Counter Guarantor Guarantor Counter- guarantee a ti n e Beneficiary Applicant (1) Underlying relationship 39



### In terms of condition of payment

Conditional:

**Unconditional:** 



### In terms of purpose

- Bid Guarantee (Bid Bond, Tender Bond, Tender Guarantee)
- Advance Payment Guarantee (Down Payment Guarantee)
- Performance Bond (Performance Guarantee, Delivery Guarantee)
- Warranty Guarantee (Warranty Bond)
- Retention Money Bond (Retention Money Guarantee)
- Payment Guarantee (Financial Guarantee)
- Credit Guarantee (Credit Line/Facility Guarantee)
- Shipping Guarantee (Indemnity for lost B/L)



### 4. Types of Bank Guarantee

#### Regulation on Bank guarantee

- Lending Guarantee
- Payment guarantee
- Bidding guarantee
- Contract Guarantee
- Quality Guarantee
- Advanced payment Guarantee
- Corresponding guarantee
- Confirmed Guarantee
- Others ( suits to law)



### 5. Application of Bank Guarantee

- 1. The guarantees are easy to take
- 2. The various clauses give the bank the maximum possible protection and powers.
- 3. The guarantor's maximum liability is fixed to the amount quoted on the form.
- 4. All the principal debtor's liabilities are secured.
- 5. The guarantee has a stable value.
- 6. Where supporting security has been taken, the security is a very strong one.
- 7. If the guarantor defaults on his promise, it is a simple matter to pursue recovery through the courts

Disadvantages?



### Applicable rules

#### International rules:

- Uniform Rules for Contract Guarantees, No 325, 1978
- Uniform Rules for Demand Guarantees, No 458, 1992
- Uniform Rules for Demand Guarantees, No 758, 2010

#### National rules:

- Regulation on Bank Guarantee (promulgated pursuant to Decision 26/2006- NHNN)
- Law on Credit institution Vietnam 2010
- Circular No. 07/2015/TT-NHNN on bank guarantee