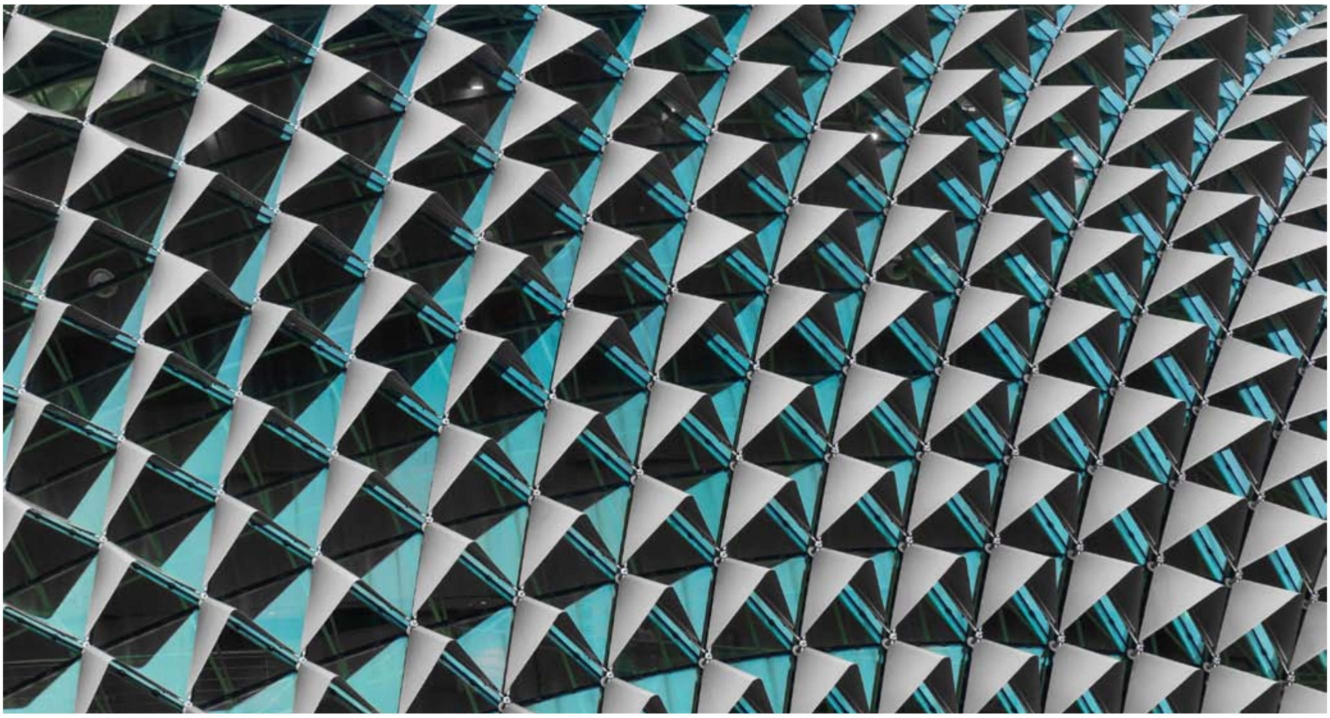
Guarantees and Surety Bonds



Every guarantee/surety bond must be carefully examined to determine its legal significance and viability.

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Guarantees and Surety Bonds

By issuing a guarantee/surety bond, the bank acts as the guarantor for an obligation owed by the debtor. What these two instruments have in common is the bank's promise to stand in for the payment of a debt or performance of a service should the debtor fail to fulfill his or her contractual obligations. With this promise, the bank undertakes to pay a maximum specified amount when the conditions of the guarantee/surety bond are met.

As well as issuing guarantees and surety bonds, Credit Suisse also offers advice for guarantees from third-party banks. As part of this service, Credit Suisse assesses the authenticity of the guarantee and advises the beneficiary (recipient of the guarantee) of any points that are unclear.

A guarantee or surety bond may only be issued if the client has been granted a line of credit. The bank may require adequate collateral.

Some countries still require their own country or bank-specific guarantee wording. The contacts in our guarantee department would be happy to answer any specific queries you may have concerning individual countries.

Direct Guarantee

The bank issues the guarantee directly to the beneficiary. The guarantee is sent to the beneficiary directly by the bank, via its principal or via a third-party bank, which passes it to the beneficiary without assuming any liability of its own.

Indirect Guarantee

If the beneficiary will only accept the guarantee from a specified bank, the applicant's bank requests the beneficiary's bank to issue a guarantee on the basis that the applicant's bank will assume full counter-liability.

Difference between a Guarantee and a Surety Bond

Guarantee

A guarantee is a distinct promise to pay and is not dependent on the principal obligation. The guarantor (the bank) may not raise any objections or defenses based on the underlying transaction. This means the guarantor pays upon the first written demand (claim) on the part of the beneficiary, i.e. on presentation of the confirmation specified in the guarantee text and any required documents.

The standard wording used by banks in individual cases either comply with the local legal framework or the policies of the International Chamber of Commerce (ICC). The extent to which any policies apply depends on the acceptance of the beneficiary, who decides in what manner, based on which law, and following which policies a guarantee or standby letter of credit in his or her favor is accepted.

Uniform Rules for Demand Guarantees (URDG 758)

The URDG 758, which are a revised version of the URDG 458, came into force on July 1, 2010. Their wording is based on the internationally recognized Uniform Customs and Practice for Documentary Credits (UCP 600) issued by the ICC. For the URDG 758 to apply they must be explicitly agreed to in connection with guarantees.

A widely used and noteworthy form of guarantee is the standby letter of credit introduced by banks in the US to satisfy US banking law. In the same way as a guarantee, the standby letter of credit functions as a guarantee independently of the contract concluded between the seller and the buyer. In a manner of speaking, it is the counterpart to the European bank guarantee. The standby letter of credit secures all claims that are normally secured by a guarantee.

International Standby Practices (ISP 98)

The ISP 98 were developed by the ICC specifically for standby letters of credit. Before the ISP 98 took effect in 1998, standby letters of credit were issued subject to the Uniform Customs and Practice for Documentary Credits (UCP 600). For the ISP 98 to apply they must be explicitly agreed to in connection with standby letters of credit

Uniform Customs and Practice for Documentary Credits (UCP 600)

As global policies, the UCP 600 apply to all documentary credits. If applicable, they also govern all standby letters of credit, although this requires that the UCP are explicitly agreed on when issuing the standby letter of credit.

Surety Bond

A surety bond, pursuant to Art. 492 ff of the Swiss Code of Obligations, generally serves the sole purpose of protecting the claims of Swiss creditors. The surety bond is completely dependent on the principal debt relationship (accessoriness). The principal debtor may submit a written objection to the bank regarding the principal debt, stating the reasons for non-payment. The bank, in turn, is obliged to notify the beneficiary (creditor) of any entitlement to appeal on the part of the principal debtor (SCO, Art. 502). In practice, this means that a bank acting as a surety will generally meet a claim from the creditor only if expressly authorized to do so by the principal.

Distinction in Practice

If accessoriness is evident, it is a surety bond. In the absence of accessoriness, a guarantee has been agreed. In contrast to a surety, the guarantor may not raise any objections or defenses based on another debt obligation.

Types of Guarantees

Bid Bond

Bid bonds are frequently demanded in connection with public invitations to tender. The purpose of the bid bond is to prevent companies from tendering bids but not accepting or executing the contract once it has been awarded to them. The buyer wishes to safeguard against the submission of frivolous or unqualified tenders.

To make a claim under this guarantee, the beneficiary is generally required to declare in writing that the bidder did not sign the relevant agreement within the defined time frame after being awarded the contract, and/or did not provide the required performance bond.

Performance Bond

The performance bond serves as collateral for any costs incurred by the buyer if services or goods are not provided promptly or as contractually agreed.

To make a claim under this guarantee, the beneficiary is generally required to declare in writing that the seller did not fulfill his or her contractual obligations properly or on time.

Advance Payment Guarantee

The advance payment guarantee serves as collateral for the reimbursement of an advance payment made by the buyer in the event the seller does not supply the ordered goods at all or as contractually agreed.

To make a claim under this guarantee, the beneficiary is generally required to declare in writing that the seller did not fulfill his or her contractual obligations properly.

Warranty Bond

The warranty bond serves as collateral to ensure that ordered goods are delivered as promised/agreed.

To make a claim under this guarantee, the beneficiary is generally required to declare in writing that the exporter did not fulfill his or her warranty obligations as contractually agreed.

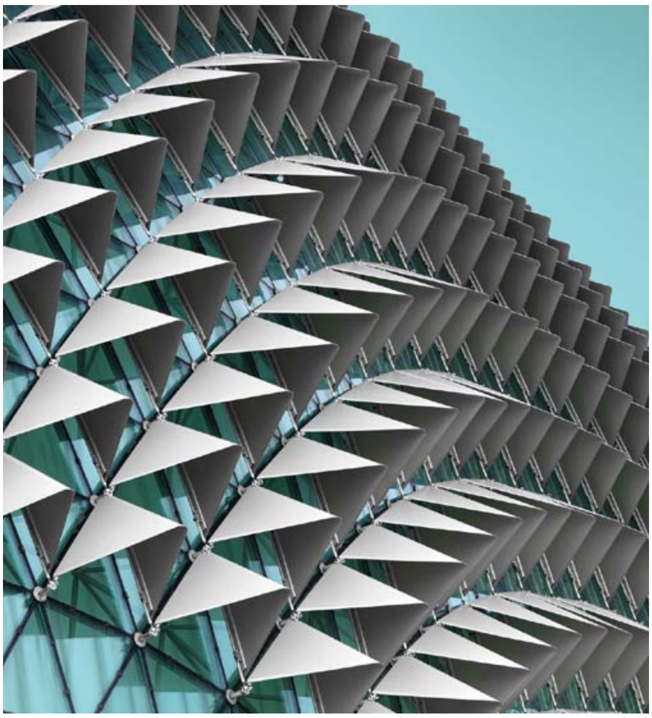
Letter of Indemnity (LOI)

Transportation documents known as bills of lading can be lost or delayed in the mail. However, a carrier may be liable for damages if it delivers a consignment before receiving the original bill of lading. The damages covered by the guarantee can arise if the presenter of the bills of lading demands that goods be handed over that have already been delivered to a third party in return for the provision of a bank guarantee. This can lead to court, legal, and other costs. Parties generally agree that the guarantee covers between 100% and 200% of the value of the goods, thus securing the carrier against any costs.

Depending on the wording of the individual guarantee, asserting a claim generally requires that the beneficiary issue a written statement that the amount required by the guarantee serves to cover costs and/or claims for damages that have arisen as a result of the delivery of goods without presenting the original bills of lading.

Payment Guarantee

The purpose of the payment guarantee is to assure the seller that the purchase price will be paid on the agreed date. A payment guarantee can be issued as an alternative to a letter of credit. However, it must be remembered that a payment guarantee does not offer the buyer the same level of security as a documentary credit. The documents required under a bank guarantee are merely checked against the details given in the guarantee itself, and not to the same extent as with a letter of credit.



To make a claim under this guarantee, the beneficiary is generally required to declare in writing that he or she has fulfilled all of his or her contractual obligations but not received any payment as of the due date.

Credit Security Bond

The credit security bond serves as collateral for the repayment of a loan. A loan is often made subject to the provision of collateral by the borrower him or herself or a third party.

The beneficiary can generally assert claims under this guarantee by declaring in writing that the borrower has not repaid the loan upon maturity.

Rental Guarantee

The rental guarantee serves as collateral for payments in connection with a rental agreement. It is either limited to the payment of rent installments or covers all payments owed in connection with the rental arrangement (e.g. repair costs following the termination of the rental arrangement).

To make a claim under this guarantee, the beneficiary is generally required to declare in writing that the tenant did not fulfill his or her contractual obligations under the rental agreement properly or at all.

Confirmed Payment Order

A confirmed payment order is an irrevocable obligation on the part of the bank to pay the beneficiary (i.e. the creditor) a specific amount on a specific date on behalf of the client.

Types of Surety Bonds

VAT Surety Bond

The Swiss Federal Tax Administration requires a security in connection with the registration of Swiss branches of non-Swiss companies. This can be done by setting up a cash deposit, providing securities or issuing a joint and several surety bond.

Customs Guarantee

Customs guarantees serve to ensure payment of customs duties, and are issued in favor of the customs authorities. They take effect when goods are temporarily imported into a country. Claims can be asserted if it cannot be demonstrated that either the goods were re-exported within the specified time frame or that the customs duties that fell due were paid.

Surety Bond for Carnets for the Temporary Admission of Goods

In accordance with international customs treaties, the chamber of commerce can issue carnets for the temporary admission of goods for import to a third country, for example for exhibition purposes. The collateral that may be required can take the form of a cash deposit or a joint and several guarantee issued by a Swiss bank. This type of surety bond is issued in favour of the chamber of commerce.

Building Contractor's Guarantee

According to the standards of the Swiss Society of Engineers and Architects (SIA), the constructor can withhold 10% of the invoiced amount for potential services under warranty to be performed by the contractor. A corresponding bank guarantee is issued to the constructor in order to give the contractor full disposal over the invoiced amount. The surety bond allows the constructor to pay the total invoiced amount. Building contractor's guarantees are usually limited to two years from the date on which they are issued, or valid until completion of the work.

Bill of Exchange Guarantee

A bill of exchange guarantee is an obligation that is entered into simply by signing the front or adding an explicit comment to the reverse of the bill of exchange or on a separate piece of paper. A comment must be added to the signature to the effect that the bill of exchange guarantee is provided in favor of the drawee. Otherwise, the guarantee is considered to be in favor of the party issuing the bill of exchange in accordance with Art. 1021 SCO. The guarantor becomes jointly liable with the drawee. Thus, if the drawee fails to pay the bill of exchange at maturity, the guarantor can immediately be sued for the debt.

As guarantor, the bank undertakes to promptly pay a bill of exchange in favor of the specified party. The standard condition is that the bill of exchange must be payable at the guarantor bank.

Commissions and Charges

Commissions are charged for services rendered in order to offset credit and settlement risks, and to cover the cost of capital. The commission and expenses billed by the correspondent bank, if any, may also be charged.

A reduced commission rate applies if the principal itself can provide acceptable collateral (e.g. cash collateral, fiduciary investments, securities).

Standard conditions for bank guarantees[1]

Bank guarantees on behalf of corporate and private clients

Minimum per quarter or fraction thereof for all guarantees	CHF 100
Minimum per guarantee	CHF 300

	Collateralised	No collateral
All types of guarantees except credit security guarantees	0.15% per quarter	0.30% per quarter
Credit security guarantees	0.20% per quarter	0.35% per quarter

Bank guarantees on behalf of banks

Advising (without obligation on the part of Credit Suisse)	0.10%, min. CHF 200, max. CHF 1,500
Issuance (based on a counter-guarantee)	Depending on the actual risk profile of the issuing bank in the respective country min. CHF 400 per transaction

Additional commissions and charges

Amendment	CHF 100
Claim handling Time and effort	CHF 200 per hour, min. CHF 300
Payment	CHF 200
Payment of commissions and charges of correspondent banks	CHF 25 per payment
Query/Tracer	CHF 50
Postage and telecommunication	Actual costs, min. CHF 25
Special handling e.g. Structuring and Advisory – time and effort	CHF 200 per hour, min. CHF 100

All commissions and charges are due on performance of the service.

Prices in effect from January 1, 2013
Prices and services are both subject to change.
1 The term "bank guarantee" refers to sureties, undertakings and guarantees payable on first demand, and Standby Letters of Credit.
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* Telephone calls can be recorded