

Bank Guarantees

Your Protection against Non-Performance
and Non-Payment



Bank guarantees

In their trade dealings, buyers and sellers often face similar problems. A seller might find it difficult to assess the buyer's willingness and ability to pay, while the buyer might not be sure that the seller genuinely intends to perform its side of the contract or has the necessary financial and technical resources to do so. Just as the buyer needs protection against non-performance, so the seller will want to minimize or insure against the risk of non-payment. Documentary credits are generally used in such cases. Further information on this type of payment instrument can be found in our brochure titled "Documentary Credits – Documentary Collections, Greater Security in International Trading." Yet various other forms of bank guarantees are available.

The term "bank guarantee" has no precise definition, particularly in international law. Some use the term exclusively to describe a transaction in which one party makes an independent guarantee commitment in respect of another party's liabilities, regardless of the latter's form and enforceability. Others describe as guarantees all transactions in which security is offered – from letters of comfort (which often are morally binding at most) to surety bonds and abstract payment undertakings. The custom in international trade is to have undertakings that are payable on first demand and that are legally separate from the underlying transaction.

The common element in all these arrangements is that the guarantor undertakes to be answerable for the payment of a debt or the fulfillment of an obligation in the event of default by the party that is primarily responsible for it. Thus the basic function of a bank guarantee is to provide security.

The main difference between a bank guarantee and a documentary credit is that the latter also functions as a means of payment.

Bank guarantees are governed almost exclusively by the law of the country of domicile of the bank that issues the guarantee to the beneficiary. This means that the legal position must be studied in each case. Specialists at Swiss banks keep themselves informed of developments in the countries served by Swiss exporters and will be happy to provide information on specific problems. The following presentation is based primarily on Swiss law and practice.

Every declaration that is designated a "bank guarantee" must be examined carefully to ascertain its legal significance and implications. A particularly clear distinction must be made between a surety bond and an abstract payment undertaking.

The specialists at the Credit Suisse Trade Finance Service Center will be pleased to advise you about how the various instruments can be used, as well as the benefits they offer your business.

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A. Overview and Basis in Law

In practice, we distinguish between the following different forms of bank guarantee (also referred to as “sureties”):

Accessory obligations

- surety bonds (governed by the Swiss Code of Obligations [SCO])
 - simple suretyship (SCO 495)
 - joint and several suretyship (SCO 496).

Nonaccessorial (abstract) obligations

- guarantees
- promise to pay (conditional or unconditional order confirmations)
- standby letters of credit, according to the rules laid down in
 - International Standby Practices (ISP98), or
 - Uniform Customs and Practice for Documentary Credits (UCP).

All of these forms may be used as protection against either nonperformance or nonpayment. While the specific structure of surety bonds and order confirmations under Swiss law means that they can hardly ever be used internationally, the other instruments can be used around the world, subject to country-specific customs.

1. Surety Bonds

Surety bonds are governed in law by Art. 492 et seq. of the SCO. They establish an accessory obligation to the creditor, i.e. one that relies on the existence of the primary debtor's obligation and is limited to the substance and scope of that obligation. As such, the bond becomes void if the underlying debt is extinguished for any reason (e.g. through payment). In the event of a claim, the guarantor must use all of the defenses against the creditor that are available to the primary debtor, provided they do not relate to the latter's insolvency (Art. 502, para. 1 SCO).

In practice, Swiss legislation means that a bank acting as a guarantor will generally meet a claim from the creditor only if expressly authorized to do so by the principal.

Where a guarantee beneficiary is unable to accept the guarantee liability in its favor from what it considers to be a foreign bank, the common international device of an indirect guarantee can be used instead. As a rule, the confirmation or countersignature of a guarantee by another bank should be avoided.

Banks around the world tend to stipulate their own wording in accordance with local practices and the local legal background. In 1992, the International Chamber of Commerce (ICC) in Paris issued new regulations titled “ICC Uniform Rules for Demand Guarantees” (URDG) in an attempt to harmonize these different wordings and customs (see Section 3 below and Appendix).

Standby letters of credit were created in response to banking legislation in the US. Where used, they qualify as a guarantee. They were originally governed only by UCP, but the new ISP98 guidelines issued by the ICC specifically for standby letters of credit have been used increasingly since January 1, 1999 (see Section 5 below and Appendix).

In the case of “simple suretyship” (Art. 495 SCO), the guarantor is obliged to make payment only if the primary debtor becomes insolvent or has been granted a period of time in which to restructure their debts (the law also lists a number of less important cases). In practice, simple suretyship is rare. Only in the case of “joint and several suretyship” can the guarantor be claimed against prior to the primary debtor (Art. 496 SCO). Surety bonds are used almost exclusively for securing the claims of domestic creditors (see Figure 2, page 7).

2. Guarantees

Guarantees (see Figure 1) create a nonaccessorial, abstract obligation to the beneficiary. Unlike suretyship, they are not governed by explicit provisions in law. According to current opinion and practice, guarantees are rooted in the following legal provisions:

- contract against a third party (Art. 111 SCO)
- an assumed order (Art. 466 et seq. SCO).

The distinction between a surety bond and a guarantee depends on whether or not the obligation is accessorial. If it is, it constitutes a surety bond; otherwise it is a guarantee (see ruling by the Swiss Federal Supreme Court [Bundesgerichtsentscheid, BGE] 113 II 437 [1987]).

The guarantor remains liable even if the underlying obligation is extinguished for any reason. The guarantor must pay upon demand, without making any objection or invoking any defense. On receiving a claim, the guarantor can therefore merely check that it has been validly made, i.e. that the formal conditions laid down in the wording of the guarantee have been met. The guarantor will not examine the material justification for the claim. If the formal conditions as set out in the guarantee are satisfied, the guarantor is obliged to make payment, regardless of whether or not the principal believes the payment is due.

This form of guarantee places the beneficiary in a very strong legal position. The beneficiary can demand immediate payment, and the guarantor and principal have no right to raise any objec-

tions or present any defense on the strength of the underlying transaction. Thus the beneficiary is relieved not only of the risk of the principal becoming insolvent but also of the risk of having to enforce a claim through the courts. As in the case of documentary credits, the rule is “pay first, sue later.”

The extract in Figure 1 clearly shows that when a claim is made under this type of guarantee, the principal is powerless to obstruct it.

Figure 1

We, Credit Suisse, CH-8070 Zurich, Switzerland, hereby irrevocably guarantee that we shall pay you, upon first request, irrespective of the validity and legal effect of the aforementioned agreement and waiving any objections or defense arising from the same, any amount up to a maximum of

CHF 50,000.00 (fifty thousand Swiss francs)

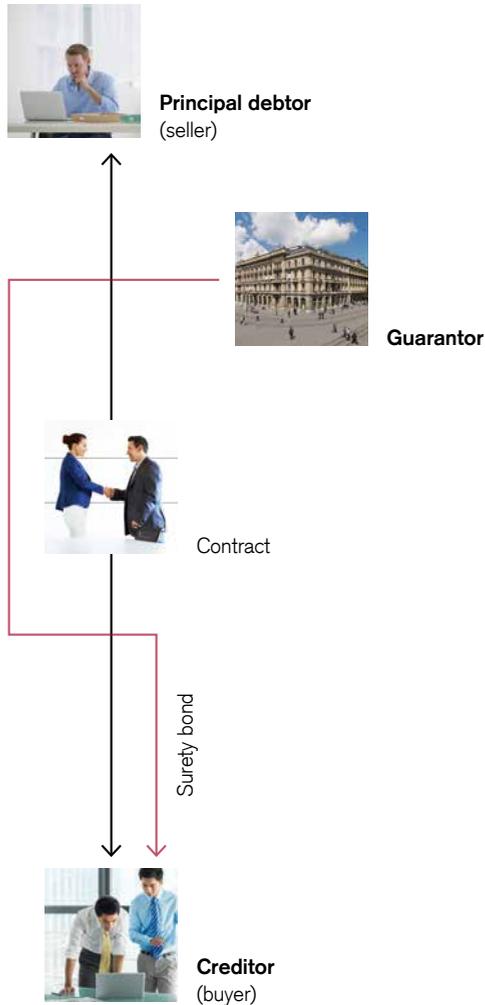
The following section describes only the various forms of bank guarantees that dominate transactions with foreign countries.

Surety Bond/Guarantee (Figure 2)

Surety bond

The guarantor's obligation goes only as far as that of the principal debtor. As a rule, the guarantor does not make payment unless proof is provided that the principal debtor has failed to fulfill the terms of the contract with the creditor.

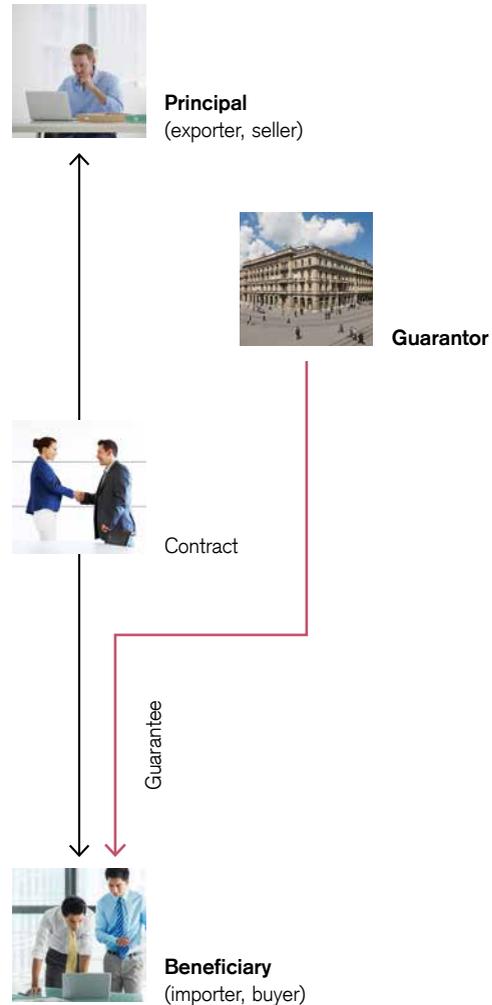
The process for a surety bond to ensure performance:



Guarantee

The guarantor's obligation is independent of the existence or continuation of a contractual relationship between the principal and the beneficiary.

The process for a guarantee to ensure performance:



3. ICC Uniform Rules for Demand Guarantees

In 1992, the International Chamber of Commerce (ICC) in Paris issued a new set of regulations titled “ICC Uniform Rules for Demand Guarantees” (ICC Publication no. 458). The new rules are the product of a joint working group of representatives of the Commission on International Commercial Practice and the Commission on Banking Technique and Practice. The rules cover all types of guarantees and other payment undertakings under the terms of which the guarantor is obliged to make payment on presentation of a written demand and any other documents specified in the guarantee. While still applicable, the previous “ICC Uniform Rules for Contract Guarantees” (ICC Publication no. 325) published in 1978 failed to gain general acceptance owing to confusion about the scope of their application. The regulations issued in 1992 largely correspond to current international practice and also take appropriate account of the interests of the various parties involved.

Demand guarantees may be subjected to the new rules by including a simple statement to this effect in the guarantee agreement. To qualify as a demand guarantee, the guarantee document must not stipulate any conditions for payment other than the presentation of a written demand and any other speci-

fied documents. In particular, the guarantor must not be required to decide whether or not the beneficiary and principal have fulfilled their contractual obligations. Restrictions on entry into force – such as the receipt of a down payment – may nonetheless be imposed.

The rules are intended to balance the interests of the beneficiary with the principal's wish for protection against unjustified claims. The beneficiary wishes to protect itself against the risk that the principal will not fulfill its contractual obligations. A demand guarantee provides quick, easy access to a guaranteed sum of money if these obligations are not met. However, for the sake of equity and fair dealing, the rules contain a provision to the effect that any demand should be accompanied by a statement by the beneficiary explaining in what respect the principal is in default. This is intended as a safeguard against unfair calling. It should be emphasized that the rules do not in any way prejudice national legislation with respect to fraudulent claims.

The rules are currently being revised. URDG 458 and our sample text based on the rules are provided in the Appendix.

4. Conditional and Unconditional Order Confirmations (“Promise to Pay”)

As is the case with a documentary credit or a demand guarantee, under Art. 468 SCO an order confirmation constitutes a nonaccessorial payment undertaking. A client (“instructing party”) issues an order to a bank (“instructed party”) either to pay a fixed sum to a beneficiary (“recipient”) on a certain date (unconditional order) or to make a payment to the beneficiary after certain conditions have been fulfilled (conditional order). Examples of such conditions include the submission of docu-

ments or declarations by the beneficiary or by third parties. Similar to a documentary credit, an order is therefore an indirect form of payment.

However, the order does not place the bank under any obligation until it has declared to the beneficiary that it accepts the order without reservation. Once this declaration of acceptance has been made, the undertaking may not be further changed or canceled without the consent of the beneficiary.

5. Standby Letters of Credit

Standby letters of credit originated in the U.S., where old banking legislation forbade commercial banks to issue contingent liabilities in the form of guarantees (bonds) from the late 1930s onward. Documentary credits were therefore used for this purpose. Subject to the Uniform Customs and Practice for Documentary Credits (UCP), they were then modified into standby letters of credit. Standby letters of credit are guarantee-like instruments to secure a claim and may, in principle, apply anywhere that a guarantee would be used. For example, they may be used to guarantee the following types of performance and payment:

- payment of term bills of exchange
- repayment of bank loans and advance payments
- payment for goods delivered
- contract fulfillment of all types, etc.

Like guarantees, standby letters of credit are payable on demand and no defense against the claim is permitted. As such, they constitute abstract commitments that are independent of the underlying transaction. To trigger payment, the documents stipulated in the wording of the standby letter of credit must be submitted in accordance with the applicable regulations.

Alongside UCP, ISP98 (International Standby Practices) has been in force since January 1, 1999. This set of rules was developed and approved specifically for standby letters of credit by the International Chamber of Commerce (ICC). In practice, use of ISP98 is now becoming increasingly widespread (see Appendix).

B. Effects of Bank Guarantees

The guarantor bank is not obliged to supply goods or perform work on the principal's behalf. It will not, for instance, build an airport itself if its client fails to do so, neither will it manufacture or supply looms or chemicals if its client falls behind with deliveries. The bank's commitment is solely a financial one, as its obligation as a guarantor is limited to the payment of a sum of money as a substitute for performance that has not been rendered.

How, then, does a bank guarantee provide protection against nonperformance? In three ways:

Legitimation:

A bank guarantee testifies to the principal's ability to carry out the contract. Since the issuance of a guarantee constitutes an irrevocable payment undertaking, a bank will not enter into such

a commitment without first thoroughly examining the principal's financial status and technical capability.

Motivation:

The principal stands to lose the guarantee amount if it fails to fulfill the contract terms. This is a strong incentive to complete the contract, even if the transaction has lost its appeal in the meantime.

Compensation:

If the principal fails to fulfill its obligations, the buyer is entitled to demand payment of the guarantee sum, which will compensate fully or partly for the financial consequences of the breach of contract.

C. Issuance of a Bank Guarantee

Bank guarantees are “tailor-made” transactions. A Swiss exporter who is asked to provide a guarantee would therefore be well advised to discuss the matter first with a specialist who knows about the various national regulations and practices in different importing countries. In many cases, it is the beneficiary who decides whether the instrument to be used should be a guarantee or a standby letter of credit. The specialist will then draft a guarantee that reflects the particular circumstances of the transaction and submit it to the client for approval. At the same time, the client will be asked to sign a letter of indemnity which states *inter alia* that the bank may charge the client’s account if a claim is made under the guarantee.

The bank will draft the guarantee in such a way as to protect the principal’s interests within the framework determined by the wishes of the beneficiary and the relevant regulations in the beneficiary’s country. The maximum liability (including principal, interest, charges, etc.) must be stated. It is also very important to specify a precise expiry date. Other provisions cover the procedure for making any claim.

Depending on the instructions communicated by the principal (exporter, seller) at the request of the importer (beneficiary), the Swiss bank will either issue the guarantee itself (direct guarantee) or instruct a correspondent bank in the importer’s country to do so on its behalf (indirect guarantee). (See flow chart in Figure 3, page 14.)

A direct guarantee gives the principal more scope to influence the wording of the guarantee in accordance with its particular requirements.

Even so, the second approach is more often adopted because many beneficiaries prefer to have an undertaking from a bank in their own country. Claims under the guarantee can then be made to the correspondent bank, and this has a number of practical and legal advantages. For instance, there is less risk of the beneficiary’s claim being “lost in the mail,” and payment cannot be obstructed by exchange controls or restrictions on the transfer of funds. Moreover, this approach circumvents possible legal uncertainties in the exporter’s country with regard to the enforcement of claims under the guarantee.

Guarantee Order

Name _____ _____	Fax: _____
Telephone: _____	CREDIT SUISSE Trade Finance Service Center, Guarantees
Fax: _____	_____
Our ref.: (hereinafter: the "Applicant")	_____

ORDER to issue a Bank Guarantee/Bank Surety Bond (hereinafter "Bank Guarantee")

(written confirmation to follow by regular mail if sent by fax or e-mail)

- The Applicant instructs Credit Suisse (hereinafter the "Bank") to issue a Bank Guarantee on the basis of the information provided below:
 The Applicant confirms the existing order to issue a Bank Guarantee on the basis of the information provided below:

Currency and amount:	CHF _____
Valid until:	<input type="checkbox"/> Unlimited
In favor of: _____ (the "Beneficiary")	
Primary Debtor: (if different from the Applicant)	_____
With regard to: (underlying transaction)	_____
Form of guarantee: <input type="checkbox"/> Bank guarantee <input type="checkbox"/> Standby letter of credit under ISP98 <input type="checkbox"/> Standby letter of credit under UCP 600 <input type="checkbox"/> Guarantee under URDG (ICC458)	<input type="checkbox"/> Joint and several surety <input type="checkbox"/> Simple surety <input type="checkbox"/> Confirmed payment order <input type="checkbox"/> _____
Wording: <input type="checkbox"/> As per enclosed draft	<input type="checkbox"/> As determined by the Bank
Purpose of guarantee: <input type="checkbox"/> Advance payment <input type="checkbox"/> Bid/tender <input type="checkbox"/> Performance <input type="checkbox"/> Warranty <input type="checkbox"/> Payment default <input type="checkbox"/> Other: _____	Language: <input type="checkbox"/> German <input type="checkbox"/> English <input type="checkbox"/> French <input type="checkbox"/> Italian
The Bank Guarantee should be sent to: <input type="checkbox"/> Applicant <input type="checkbox"/> Beneficiary <input type="checkbox"/> A (foreign) bank for advising to the Beneficiary, without commitment (see address). <input type="checkbox"/> Other: _____ (see address)	Address: _____ _____ _____
<input type="checkbox"/> Order to a third-party bank to issue a bank guarantee on the basis of the above information.	Name and address of third-party bank (leave blank if not part of the instruction): _____ _____
Remarks (e.g. special conditions, other information)	_____ _____
Debit account:	_____

This guarantee order is subject to the "Terms and Conditions for the Issue of Bank Guarantees/Bank Surety Bonds" including in particular, the provisions concerning indemnity obligations and cash or other collateral.

Place, date _____ Name of Applicant _____

(Signature[s])

Guarantee Order

Terms and Conditions for the Issue of Bank Guarantees/Bank Surety Bonds (hereinafter "Bank Guarantees")

1. The Applicant undertakes to indemnify Credit Suisse (the "Bank") in full for any and all obligations and expenses incurred in connection with this order to issue a Bank Guarantee ("Guarantee Order"). It further undertakes to reimburse the Bank at its first demand any amount as may be claimed by the beneficiary under the Bank Guarantee, as well as any and all expenses and costs that the Bank may incur, in particular in pursuing and defending its rights.
2. The Applicant must pay the Bank a commission for the duration of the Bank Guarantee. The amount of such commission is governed by the respective standard conditions for bank guarantees that are published on the internet and available at the Bank. The effective commission will be communicated by the Bank along with its confirmation that the order has been fulfilled. The level of commission may be adjusted by the Bank at any time should there be any change in its assessment of the attendant risks.

The Bank is authorized to debit the account stated in the order to cover all of its claims in connection with the Guarantee Order. In the event that there are insufficient funds on such account, the Bank may also debit any other of the Applicant's accounts with the Bank.

3. The Bank reserves the right to refuse to issue a Bank Guarantee without stating its reasons for doing so. The Bank is then entitled to withdraw from the order before the Bank Guarantee is issued, or to reject an application for an extension of the Bank Guarantee.
4. If the credit lines with regard to the issued Bank Guarantee are terminated, if a Bank Guarantee is issued for an unlimited period or if it is issued for a period of more than one year, the Bank is entitled at any time to request the Applicant to release it from its current contingent liabilities within 10 days (e.g. by discharge).

If the Bank cannot or can only be partially released from the liability within the above deadline or if a release of the Bank in full is shown to be impossible from the outset, the Applicant is obliged to pay the total countervalue of the outstanding contingent liabilities in the relevant currency and amount into the accounts designated by the Bank (including accounts newly opened for this purpose) or to provide other collateral acceptable to the Bank, at the Bank's first demand, to the preclusion of any protests or objections. Upon payment into these accounts, the corresponding account credit shall be deemed to have been pledged to the Bank by the Applicant as collateral against any recourse based on the existing contingent liabilities.

5. Where a Bank Guarantee is issued via a third-party bank abroad, the Applicant acknowledges that
 - (i) Bank Guarantees are often subject to the respective foreign legislation and the Bank is not able to check entitlements to claim under foreign national law;
 - (ii) The Bank will charge on to the Applicant any and all commissions that the Bank itself is charged by the foreign bank; and
 - (iii) The third-party bank may demand the issue of a counter-guarantee, the wording of which is usually determined by the third-party bank's own requirements.
6. The bank is authorized to transfer or assign all or part of its rights and obligations under the Bank Guarantee, with all collateral and ancillary rights, to a third party in Switzerland or abroad, in particular for the purposes of securitization, sub-participating, or obtaining insurance cover, and to provide the third party with all data and information associated with the Bank Guarantee.
7. The Bank's General Conditions apply to this Guarantee Order.
8. The exclusive place of jurisdiction for any legal proceedings resulting from this Guarantee Order is Zurich or – if different – the location specified in the Bank's address. The Bank reserves the right to take legal action against the Applicant before any other competent court in Switzerland or abroad.

D. Content of a Bank Guarantee Payable on Demand

In most countries, guarantee agreements are not governed by specific legal provisions. This provides a degree of latitude in formulating and structuring them. The sample wordings given below nonetheless show that, in practice, they always contain the following sections:

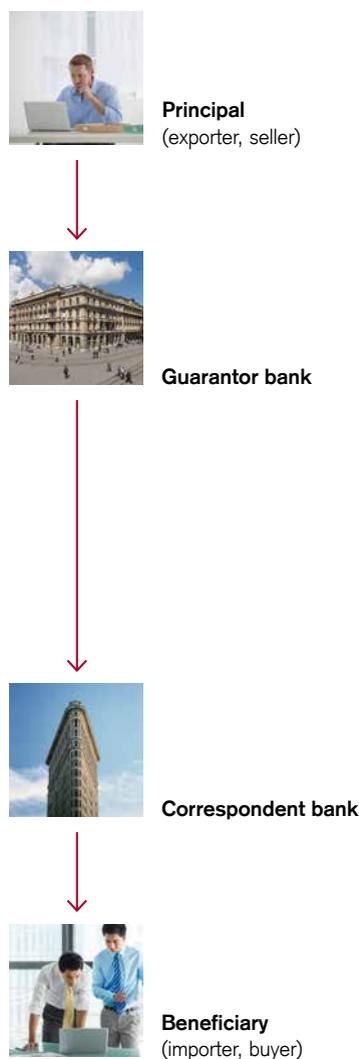
- introduction
- declaration of undertaking
- identification
- validity and expiry clause
- any provisions governing entry into force and reductions
- applicable law and place of jurisdiction.

The parties involved in a bank guarantee (Figure 3)

Direct guarantee (to ensure performance)



Indirect guarantee (to ensure performance)



E. Claiming under a Bank Guarantee

In most cases, the beneficiary is unlikely to need to make a claim under the guarantee. The agreed performance is duly rendered or the payment that is owed is remitted, and the guarantee expires either at the end of its term, or the bank is discharged

from its liability before this date following a written declaration from the beneficiary, who will often return the guarantee for cancellation at the same time.

1. Justified Claims

If the beneficiary considers that the supplier/buyer is in breach of its contractual obligations, the beneficiary may make a claim under the guarantee.

In many cases, a simple written statement by the beneficiary that the amount of the guarantee is now due will oblige the guarantor bank or its correspondent bank to make payment immediately. The only conditions are that the claim must be made without reservation, within the period of validity of the guarantee, and in accordance with the guarantee terms.

If the guarantor bank has entrusted the issuance of the guarantee to a correspondent bank in the beneficiary's country, the claim will be made in that country. The correspondent bank will

honor the claim immediately and then be reimbursed by the guarantor bank on the basis of the counter-guarantee contained in the guarantor bank's original request. The correspondent bank alone decides whether or not the claim complies with the terms of the guarantee.

The guarantor bank will also honor its payment obligations immediately and then charge the amount concerned to the principal. The legal foundation for this procedure is given by the indemnity declaration included in the Terms and Conditions for the Issue of Bank Guarantees/Bank Surety Bonds signed by the client.

2. Unjustified Claims

The essence of a bank guarantee is its abstract character. Thus any attempt to delay honoring a guarantee by raising objections or defenses that relate to the underlying relationship between the principal, the guarantor bank, and the beneficiary would result in claims for damages against the bank, and might lead to a substantial and lasting loss of confidence.

However, the obligation to waive all rights of objection can be overruled on the grounds of the "good faith" principle. In such cases the bank can – indeed must – refuse payment if it learns that the transaction on which the guarantee is based is illegal or immoral.

Otherwise, there are very strict limits to the bank's ability to refuse payment in cases where the claim is formally in order. It can do so only if it is very obvious that the claim constitutes an abuse of the law (Art. 2, para. 2, SCO).

Long experience has shown that unfounded claims are extremely rare. Even when they do occur, the matter can normally be cleared up by negotiation, and the money is then refunded.

The Swiss Export Risk Insurance (SERV) scheme enables Swiss exporters to insure themselves against certain risks that arise in this connection.

If a loss suffered as a consequence of an unfounded claim is not covered by insurance and if no amicable settlement can be reached, the principal's only means of recovering the money is to take legal action, which can often be lengthy and expensive. The situation is complicated by the fact that non-European beneficiaries often insist that the guarantee be issued by a bank in their own country.

F. Main Types of Guarantees

The types of guarantees most commonly used in international business are described below:

1. Tender Bond (Bid Bond)

Tender bonds are designed to deter companies from making a tender and then rejecting the contract when it is awarded to them because they have lost interest in the transaction in the meantime.

The buyer wishes to safeguard against the submission of inadequately thought-out or unqualified tenders. With a tender bond, a buyer can avoid the cost and delay of putting the contract out to tender again. This type of bond is thus frequently demanded in connection with international public invitations to tender.

Period of validity:

Until the signing of the contract or the issue of a performance bond (usually three to six months).

Amount:

1–5% of the tender price.

A tender bond can be claimed against if the bidder

- withdraws the tender before it expires
- is not prepared to accept the order (i.e. to sign the contract of sale or works)
- cannot or will not provide the necessary performance guarantee.

(An example of a tender bond is provided in Figure 4 on the facing page.)

Example: Tender Bond (Figure 4)

(Name/Address of Beneficiary)

TENDER BOND no. _____

On _____, in response to your tender no. _____ dated _____, _____ (the "Bidder") submitted their bid no. _____ for _____ in the amount of _____. The terms and conditions of your tender prescribed the provision of a tender bond.

We, Credit Suisse, _____ (address), hereby irrevocably guarantee that we shall pay you, upon first request, irrespective of the validity and legal effect of the aforementioned bid and waiving any objections or defense arising from the same, any amount up to a maximum of

_____ (in words: _____)

upon presentation of your duly signed demand for payment including a declaration from you that _____ (Bidder)

- a) withdrew their bid before it expired and without your agreement, or
- b) did not sign the contract based on the bid presented by you by the prescribed deadline, or
- c) after signing the contract, failed to provide the performance bond specified in the terms and conditions of the tender by the prescribed deadline.

Each payment made under this guarantee will have the effect of reducing our liability.

Your written demand for payment is to be presented to us via one of our correspondent banks, with confirmation from the latter that the signature(s) on the payment demand match the sample signature(s) lodged with it.

A claim may also be lodged via a duly encrypted SWIFT from one of our correspondent banks, provided it reproduces the complete wording of your demand for payment, and includes confirmation from the bank that it has forwarded the original demand for payment to us by regular mail or courier, and that the signature(s) on this original document match the specimen signature(s) lodged with it.

Our guarantee is valid until _____ and will lapse automatically and entirely if no claims have been made against it by this date, irrespective of whether or not this date is a bank working day. Claims under the guarantee are deemed to have been lodged once we have received the demand for payment or the SWIFT at the above address.

This guarantee shall be governed by and construed in accordance with substantive Swiss law (i.e. excluding conflict-of-laws rules and regulations). Any conflict arising out of or in connection with this guarantee shall be subject to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich, with reserve of appeal to the Swiss Federal Court.

CREDIT SUISSE

2. Performance and Warranty Bonds

Performance bonds are designed to ensure that goods are delivered or services rendered in accordance with the terms of the contract and at the agreed time. Warranty bonds generally secure the buyer's contractual warranty claims.

However, the guarantor bank is in no way bound to see to it that a delivery is made properly or, for example, that a machine functions correctly. Both performance and warranty bonds essentially reinforce the contractual relationship between buyer and seller. The supplier's liability toward the guarantor bank will generally ensure that it does its utmost to deliver the goods or render the services in accordance with the contract.

Amount and period of validity:

a) Performance bond

Generally 10% of the value of the contract, usually running until the object of the contract has been fulfilled or until proof of proper operation in accordance with the contract of works is supplied (e.g. installation and acceptance test for a machine, completed start-up of a plant).

b) Warranty bond

Generally 5% of the value of the contract, usually running for 1–2 years from the commissioning date, for certain types of plants up to five years.

Two points require special attention in connection with the period of validity of a performance bond:

Definite time limits:

If it is not possible to state an exact date of expiry, the contract of sale or works should precisely define the point in time at which the performance bond will cease to be valid. Vague expressions such as "until satisfactory operation" should be treated with caution.

Extension:

If a contract has not been completed by the time the performance bond expires, the principal can have the validity period of the bond extended. Should the principal fail to do so, in many cases the beneficiary will itself request an extension from the guarantor bank. In most cases, this request will also state that the guarantee sum will have to be paid if the extension is not granted. The principal therefore often has no choice but to agree to the extension.

A claim may be made under a performance bond on the grounds of defects or delays or because the contractor has become financially incapable of performing the entire contract (insolvency, bankruptcy).

(An example of a performance bond is provided in Figure 5 on the facing page; an example of a warranty bond is provided in Figure 6, page 20.)

Example: Performance Bond (Figure 5)

(Name/Address of Beneficiary)

PERFORMANCE BOND no. _____

On _____ you concluded contract no. _____ with _____ (hereinafter the "Seller") _____ with regard to _____ for a total amount of _____. According to the contract, the Seller must provide a performance bond.

We, Credit Suisse, _____ (address), hereby irrevocably guarantee that we shall pay you, upon first request, irrespective of the validity and legal effect of the aforementioned contract and waiving any objections or defense arising from the same, any amount up to a maximum of

_____ (in words: _____)

upon presentation of your duly signed demand for payment including a declaration that

- a) the Seller has either fully or partially failed to comply with its contractual obligations and
- b) that you have received no payment from the Seller upon maturity for the amount provided for by this guarantee.

Each payment made under this guarantee will have the effect of reducing our liability.

Your written demand for payment is to be presented to us via one of our correspondent banks, with confirmation from the latter that the signature(s) on the payment demand match the sample signature(s) lodged with it.

A claim may also be lodged via a duly encrypted SWIFT from one of our correspondent banks, provided it reproduces the complete wording of your demand for payment, and includes confirmation from the bank that it has forwarded the original demand for payment to us by regular mail or courier, and that the signature(s) on this original document match the specimen signature(s) lodged with it.

Our guarantee is valid until _____ and will lapse automatically and entirely if no claims have been made against it by this date, irrespective of whether or not this date is a bank working day. Claims under the guarantee are deemed to have been lodged once we have received the demand for payment or the SWIFT at the above address.

This guarantee shall be governed by and construed in accordance with substantive Swiss law (i.e. excluding conflict-of-laws rules and regulations). Any conflict arising out of or in connection with this guarantee shall be subject to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich, with reserve of appeal to the Swiss Federal Court.

CREDIT SUISSE

Example: Warranty Bond (Figure 6)

(Name/Address of Beneficiary)

WARRANTY BOND no. _____

On _____ you concluded contract no. _____ with _____ (hereinafter the "Seller") _____ with regard to _____ for a total amount of _____. According to the contract, the Seller must provide a warranty bond.

We, Credit Suisse, _____ (address), hereby irrevocably guarantee that we shall pay you, upon first request, irrespective of the validity and legal effect of the aforementioned contract and waiving any objections or defense arising from the same, any amount up to a maximum of

_____ (in words: _____)

upon presentation of your duly signed demand for payment including a declaration that

- a) the Seller has either fully or partially failed to comply with its contractual warranty obligations and
- b) that you have received no payment from the Seller upon maturity for the amount provided for by this guarantee.

Each payment made under this guarantee will have the effect of reducing our liability.

Your written demand for payment is to be presented to us via one of our correspondent banks, with confirmation from the latter that the signature(s) on the payment demand match the sample signature(s) lodged with it.

A claim may also be lodged via a duly encrypted SWIFT from one of our correspondent banks, provided it reproduces the complete wording of your demand for payment, and includes confirmation from the bank that it has forwarded the original demand for payment to us by regular mail or courier, and that the signature(s) on this original document match the specimen signature(s) lodged with it.

Our guarantee is valid until _____ and will lapse automatically and entirely if no claims have been made against it by this date, irrespective of whether or not this date is a bank working day. Claims under the guarantee are deemed to have been lodged once we have received the demand for payment or the SWIFT at the above address.

This guarantee shall be governed by and construed in accordance with substantive Swiss law (i.e. excluding conflict of laws rules and regulations). Any conflict arising out of or in connection with this guarantee shall be subject to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich, with reserve of appeal to the Swiss Federal Court.

CREDIT SUISSE

3. Advance Payment Guarantee

The basic purpose of an advance payment guarantee is to ensure that an advance payment is used by the supplier in accordance with the intentions of the contract concluded between the supplier and the buyer.

The purpose of an advance payment is to provide the supplier with funds to purchase the necessary materials and components, bring machinery to the construction site, hire labor or make other preparations for the performance of the contract. Under an advance payment guarantee, the advance payment must be refunded if the seller fails to fulfill its obligations.

Period of validity:

An advance payment guarantee should expire when the contract is performed. The period of validity is usually between six months and one year.

Amount:

Initially the amount of the guarantee is equal to the amount of the advance payment; often the amount is subsequently reduced as the work progresses or the goods are delivered.

Two very important features of advance payment guarantees should be noted:

Entry into force:

In order to exclude the possibility of improper claims, the timing of the entry into force should be fixed in consultation with the guarantor bank. The terms used must be unambiguous and such that the bank can definitely ascertain whether or not its obligation has become effective.

Example:

"This guarantee does not enter into force until we have received the advance payment amount of CHF 100,000.00 in favor of XYZ."

Reduction:

Advance payment guarantees often involve a mechanism whereby the guarantee amount is automatically reduced over time. This procedure is especially appropriate if partial deliveries have been agreed and the advance payment guarantee applies to a specific portion of the entire contract value. The rate of reduction is based on the rate of progress in fulfilling the contract. The commission charges also become correspondingly smaller as the guarantee amount is reduced. Performance can be evidenced by documents (e.g. copies of transport documents) or by appropriate drawings under a documentary letter of credit.

The simplest option is to agree a fixed degression over time, e.g. "The guarantee amount is reduced by 25% of the initial amount at each of the following points in time: 6, 12, 18, and 24 months after the guarantee enters into force."

Often the reduction is based on progress actually made, e.g. "The amount of this guarantee will be reduced automatically by 15% of the value of each partial shipment following unconditional acceptance of the documents specified in documentary credit no. 111222; the guarantee shall become void upon full utilization of the documentary credit."

(An example of an advance payment guarantee is provided in Figure 7, page 22.)

Example: Advance Payment Guarantee (Figure 7)

(Name/Address of Beneficiary)

ADVANCE PAYMENT GUARANTEE no. _____

On _____ you concluded contract no. _____ with _____ (hereinafter the "Seller") _____ with regard to _____ for a total amount of _____. In accordance with this contract, you are required to make an advance payment in the amount of _____ (____ % of the total amount).

Your claim for restitution in the case of nondelivery, or delivery of the goods in a manner that does not comply with the agreement, is to be secured by means of a bank guarantee.

We, Credit Suisse, _____ (address), hereby irrevocably guarantee that we shall pay you, upon first request, irrespective of the validity and legal effect of the aforementioned contract and waiving any objections or defense arising from the same, any amount up to a maximum of

_____ (in words: _____)

upon presentation of your duly signed demand for payment including a declaration that

- a) the Seller has either fully or partially failed to comply with its contractual obligations and
- b) that you have received no payment from the Seller upon maturity for the amount provided for by this guarantee.

Each payment made under this guarantee will have the effect of reducing our liability.

Your written demand for payment is to be presented to us via one of our correspondent banks, with confirmation from the latter that the signature(s) on the payment demand match the sample signature(s) lodged with it.

A claim may also be lodged via a duly encrypted SWIFT from one of our correspondent banks, provided it reproduces the complete wording of your demand for payment, and includes confirmation from the bank that it has forwarded the original demand for payment to us by regular mail or courier, and that the signature(s) on this original document match the specimen signature(s) lodged with it.

Our guarantee is valid until _____ and will lapse automatically and entirely if no claims have been made against it by this date, irrespective of whether or not this date is a bank working day. Claims under the guarantee are deemed to have been lodged once we have received the demand for payment or the SWIFT at the above address.

This guarantee does not enter into force until we have received the advance payment amount of _____ in favor of the Seller, account no. _____.

The amount of this guarantee will be reduced automatically in proportion to the invoice value of deliveries/partial deliveries made, upon provision to us of copies of invoices and shipping documentation, and which are binding proof of delivery for this guarantee.

This guarantee shall be governed by and construed in accordance with substantive Swiss law (i.e. excluding conflict-of-laws rules and regulations). Any conflict arising out of or in connection with this guarantee shall be subject to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich, with reserve of appeal to the Swiss Federal Court.

CREDIT SUISSE

G. Other Types of Guarantees

As already mentioned, bank guarantees can serve many different needs for security. They can be used to secure not only performance but also payments.

These bank guarantees in the broader sense may take the form of guarantees, standby letters of credit, or surety bonds. Many of them exist in practice in all these formats. What matters is not what the document is called but its material content (for distinctions, please see page 5 et seq.).

The types of guarantees frequently encountered in international operations are described in brief below:

1. Letter of Indemnity for Missing Bills of Lading

Bills of lading (either individual bills or the full set) or other documents 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.

It will nonetheless be prepared to make delivery if a bank will issue a guarantee ("letter of indemnity") in the carrier's favor for 100–200% of the value of the goods. The carrier will then be covered for any loss if there is a claim for damages.

2. Customs Guarantee

Customs guarantees provide security for possible customs duties. They are frequently used when goods are imported into a country temporarily. A claim can be made against the guarantee if, within the prescribed time limit, neither are the goods re-exported nor the due customs duties paid.

3. Bill of Exchange Guarantee ("Aval")

Instead of issuing an aval on the bill of exchange itself, the bank as the guarantor of the bill of exchange undertakes to pay the bill of exchange to the beneficiary if it is not honored by the drawee.

To lodge a claim against the guarantee, the correctly protested dishonored bill must be submitted to the guarantor bank.

4. Credit Security Guarantee

A loan is often made subject to the provision of security by the borrower him/herself or a third party. A bank guarantee is one of the means by which the lender can ensure the loan will be repaid.

5. Contract Bond

This type of guarantee secures payments under contracts of all types, such as leases, credit card agreements, and contracts concerning contractual penalties.

6. Legal Costs Guarantee

This covers the costs of legal proceedings, whether payable to the courts or to other parties.

7. Confiscation Guarantee

If a debtor's assets are seized, the debtor can recover control over them by offering a distraint guarantee (e.g. a joint and several guarantee with a bank). The debtor's power of disposal over the assets is then restored.

8. Payment Guarantee

A payment guarantee protects the exporter's right to be paid the purchase price by the buyer. Such guarantees can also be based on a loan or some other liability. Their purpose is simply to secure payment; thus they differ from the traditional form of bank guarantee, which serves to secure performance generally.

(An example of a payment guarantee is provided in Figure 8, page 24.)

Example: Payment Guarantee (Figure 8)

(Name/Address of Beneficiary)

PAYMENT GUARANTEE no. _____

On _____ you concluded contract no. _____ with _____ (hereinafter the "Purchaser") _____ with regard to _____. The Purchaser's payment obligation is to be secured by means of a bank guarantee.

We, Credit Suisse, _____ (address), hereby irrevocably guarantee that we shall pay you, upon first request, irrespective of the validity and legal effect of the aforementioned contract and waiving any objections or defense arising from the same, any amount up to a maximum of

_____ (in words: _____)

upon presentation of your duly signed demand for payment including a declaration from you that you

- a) have supplied the object of the aforementioned contract to the Purchaser in compliance with the contract, and
- b) have received no payment from the Purchaser upon maturity for the amount provided for by this guarantee.

Each payment made under this guarantee will have the effect of reducing our liability.

Your written demand for payment is to be presented to us via one of our correspondent banks, with confirmation from the latter that the signature(s) on the payment demand match the sample signature(s) lodged with it.

A claim may also be lodged via a duly encrypted SWIFT from one of our correspondent banks, provided it reproduces the complete wording of your demand for payment, and includes confirmation from the bank that it has forwarded the original demand for payment to us by regular mail or courier, and that the signature(s) on this original document match the specimen signature(s) lodged with it.

Our guarantee is valid until _____ and will lapse automatically and entirely if no claims have been made against it by this date, irrespective of whether or not this date is a bank working day. Claims under the guarantee are deemed to have been lodged once we have received the demand for payment or the SWIFT at the above address.

This guarantee shall be governed by and construed in accordance with substantive Swiss law (i.e. excluding conflict-of-laws rules and regulations). Any conflict arising out of or in connection with this guarantee shall be subject to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich, with reserve of appeal to the Swiss Federal Court.

CREDIT SUISSE

H. Consortium Operations

When a project is carried out by a consortium, the lead company in the consortium frequently applies for a “front guarantee” to cover the whole project. This company, or its bank, then safeguards its own position by requesting that the members of the consortium provide their own bank guarantees (“supporting guarantees”) for portions of the total guarantee amount.

The size of these supporting guarantees is usually based on each member’s share in the total transaction. The supporting guarantees must be formulated in such a way that the lead company or its bank can have immediate recourse to them in the case of a claim.

In the example shown (Figure 9) a company domiciled in London (“General Contractors Ltd.”) is leading a consortium project in Indonesia. It has instructed its bank (“Corporate Bank Ltd.”) to issue a guarantee, and this bank in turn has requested a member of the consortium (“Felix Muster Ltd.”) to provide a supporting guarantee for part of this amount from its own bank (“Credit Suisse”).

Example: Supporting Guarantee (Figure 9)

Corporate Bank Ltd.
London

PAYMENT UNDERTAKING No. 111222

We refer to the Performance Bond No. 999877 which you have issued on behalf of Hospital Contractors Ltd., London for CHF 1,000,000.00, valid until December 20, 2010, in favor of Surgical Unit, General Hospital, Jakarta, Indonesia. Felix Muster AG, 8045 Zurich, Switzerland, is acting as a subcontractor for the supply of various materials. The subcontractor's liability in the Performance Bond has to be secured by a bank guarantee in the extent of 15%.

We, Credit Suisse, 8070 Zurich, Switzerland hereby irrevocably undertake to pay you on your first demand, irrespective of the validity and the legal effects of the Performance Bond and the underlying transaction and waiving all rights of objection and defense arising therefrom, any amount up to

CHF 150,000.00 (one hundred and fifty thousand Swiss Francs)

upon receipt by us of your written request for payment, by duly signed letter or authenticated SWIFT, containing your declaration that

- a) you have been called upon for payment under your above mentioned Performance Bond No. 999877 in compliance with its terms, and
- b) the amount claimed from us hereunder represents 15% (fifteen percent) of the amount payable by you under your Performance Bond.

The amount of this Payment Undertaking will be reduced by any payment effected by us hereunder.

Our Payment Undertaking is valid until _____ and expires automatically and in full if the claim has not been made on or before that date, regardless of such date being a bank working day or not. The claim will be considered as having been made once we are in possession of your request for payment.

This Payment Undertaking shall be governed by and construed in accordance with substantive Swiss law (i.e. excluding conflict of laws rules and regulations). Any conflict arising out of or in connection with this Payment Undertaking shall be subject to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich, with reserve of appeal to the Swiss Federal Court.

CREDIT SUISSE

I. International Standby Practices (ISP98)

As already mentioned in the section above concerning standby letters of credit (see page 9), the ISP guidelines were developed in the US. They are intended to eliminate the general legal uncertainty that exists about the independency of the guarantee or the standby letter of credit from the underlying commercial contract.

The overall document, originally developed solely for the American market, was presented to the International Chamber of Commerce (ICC) in 1997 so that it could obtain worldwide recognition and be adopted by the member countries. This finally succeeded in 1998.

ISP98 consists of ten rules, which in turn contain up to 14 articles each. They set out highly detailed guidelines and procedures.

Many provisions that are missing from the other regulations adopted by the ICC, but which never led to any real legal problems, are expressly dealt with here. For example, ISP98 stipulates that the legal enforceability of the obligation incumbent on the issuer of the standby letter of credit does not depend on the right or the possibility of the issuer receiving payment from the

principal (rule 1.06 c. i.). Another provision, which appears in normal documentary credits but which the guidelines do not specifically mention, is the option of offering the beneficiary assets instead of a sum of money (rule 2.01 e. ii.). Unlike the situation under normal bank guarantees, the practices clearly explain the implications of demands for the issuer to pay or else extend the guarantee, as are often made. The beneficiary of the standby letter of credit will accept an extension if this is issued, and thus automatically retracts its payment demand (rule 3.09 b. i. and ii.).

Another important provision states that, should the bank be closed for any reason (strike, unrest, etc.), the last day for presenting documents is postponed automatically to the 30th calendar day after reopening (unless of course, the standby letter of credit stipulates otherwise). This type of option is not automatically available with the other instruments.

The highly detailed ISP98 regulations are reproduced in the Appendix.

(An example of a standby letter of credit ISP98 is provided in Figure 10, page 28.)

Abbildung: Standby Letter of Credit ISP98 (Abb. 10)

From:
CREDIT SUISSE

(issuing bank)

To:

(advising bank)

Date: _____

Please advise:

(beneficiary)

we issue our irrevocable Standby Letter of Credit No. _____ in their favor for account of:

(applicant/accountee)

for up to an aggregate of _____
available with:

(e.g. issuing bank)

by payment

partial drawings: permitted.

Documents required:

Beneficiary's written and duly signed confirmation stating:

(e.g.) "_____, has failed to deliver all or part of the ordered _____ or not delivered them as specified in the Sale Agreement dated _____ for the supply of _____ at a total price of _____, and that the amount claimed under the Standby Letter of Credit No _____ of _____ (name of issuing bank) has become due by _____ (applicant/accountee) for payment to _____ (beneficiary), and remained unpaid."

All banking charges in Switzerland are for account of the applicant, those outside Switzerland are for account of the beneficiary.

Expiration date: _____

at the counters of the issuing bank.

Issuing bank:

This Standby Letter of Credit sets forth the terms of our undertaking and such undertaking shall not in any way be modified, amended or amplified by reference to any document(s), contract(s) or agreement(s) referred to herein or in which this Standby Letter of Credit is referred to or to which this Standby Letter of Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document(s), instrument(s), contract(s) or agreement(s).

We hereby engage with beneficiary that presentation made in compliance with the terms of this Standby Letter of Credit will be duly honored by us if presented at this office on or before _____

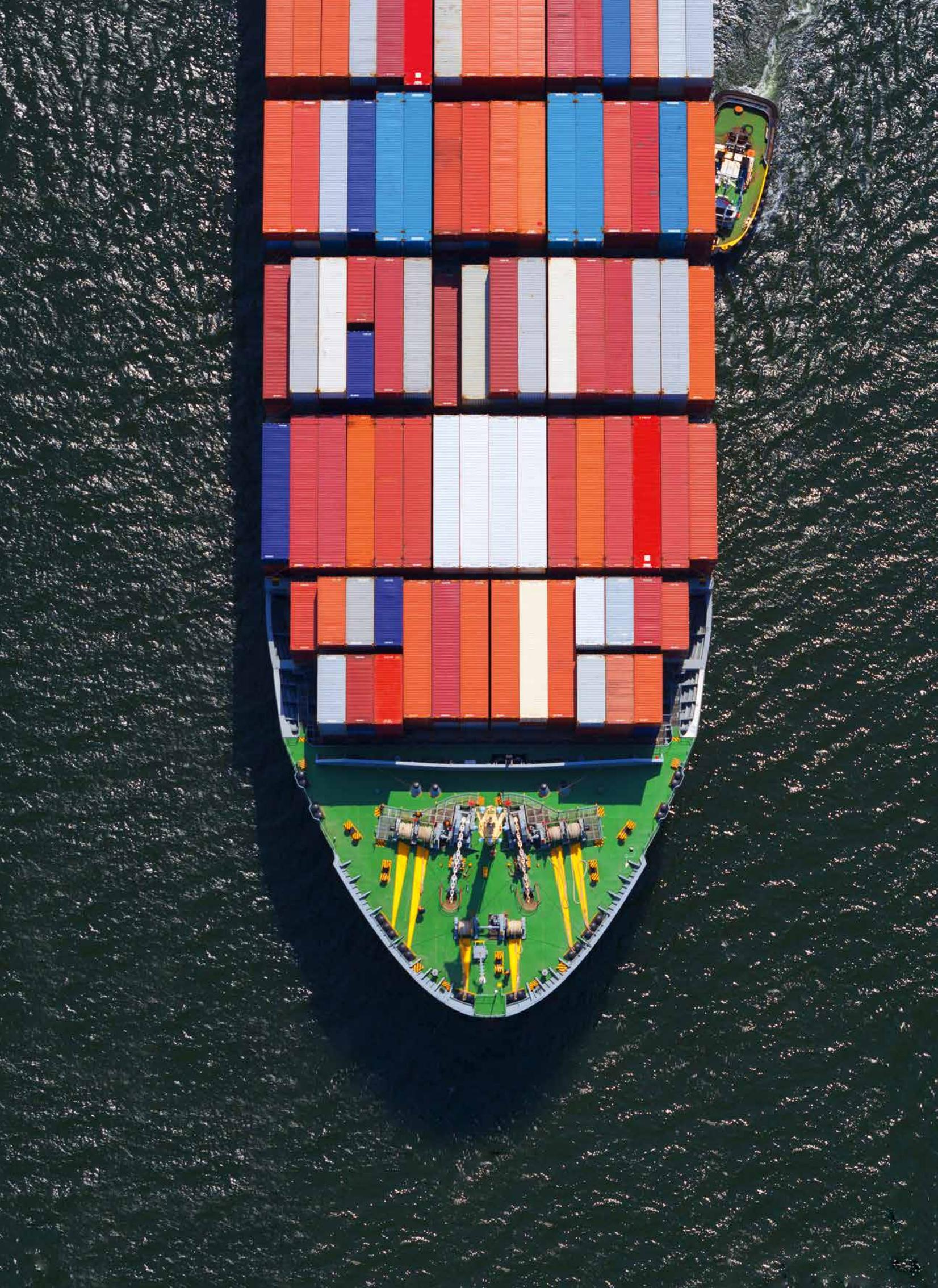
This undertaking is issued subject to the International Standby Practices 1998 (ISP98), ICC brochure 590, [and to the extent not inconsistent therewith, shall be governed by and construed in accordance with substantive Swiss law (i.e. excluding conflict of laws rules and regulations). Any conflict arising out of or in connection with this payment obligation shall be subject to the exclusive jurisdiction of the Commercial Court of the Canton of Zurich, with reserve of appeal to the Swiss Federal Court.]

CREDIT SUISSE

K. Costs

The bank charges its client a commission to cover the credit default and settlement risks it assumes, the work it performs for the client, and the costs to the bank of backing all of the aforementioned instruments with its own capital. This commission is generally charged every three months from the issue of the guarantee, but it may be charged in full in advance – in agreement with the client – if the amount of the liability is relatively small. In addition, the commissions and any charges levied by the correspondent bank may also be charged to the client/principal.

A reduced rate of commission applies if the principal itself can provide collateral (e.g. securities).



L. Glossary

A

accessorial obligation	A guarantee represents an accessorial obligation to the creditor. This means that it is dependent on the existence and contents of the principal debtor's obligations, and is limited to the scope of these obligations. The result of this is that the guarantee lapses if the debt ceases to exist for any reason (e.g. payment). In addition, the guarantor must counter any claims made by the creditor for claims from the principal debtor (Art. 2, Swiss Code of Obligations [SCO]).
advance payment guarantee	Payment guarantee intended to ensure that the supplier uses the advance payment in accordance with the contract between the buyer and the supplier. The advance payment should provide the supplier with the means to purchase, for example, essential equipment or components, or to make other types of preparations, in order to fulfill the order. In general, the advance payment guarantee should contain a reduction clause, which automatically reduces the amount in proportion to the value of the (partial) delivery(ies). The entry into force of the advance payment guarantee should be linked to the receipt of the advance payment.
amount of the guarantee	In a guarantee transaction, the maximum liability limit (including capital, interest, expenses, etc.)
annual payment, annuity	Annual allocation for repayment of interest and a set amount of capital debt; for annuities not subject to an annual change, the capital repayment increases by the amount of the reduction in interest on the capital to be repaid (cumulative repayment).
assign	The beneficiary of the letter of credit may assign the rights to the credit proceeds, in part or in whole, to a third party.
assignment	The transfer of a right, especially to an amount receivable, from the creditor to a third party.
ATA carnet	For the temporary admission of goods into a third country, as occurs during trade fairs, for instance, the chamber of commerce issues ATA carnets in accordance with the International Customs Convention.

B

bank guarantee	An autonomous obligation that is independent of the principal debt relationship. The guarantor (the bank) cannot object to the underlying transaction, i.e. the guarantor pays upon the first written demand (recourse) of the beneficiary against presentation of confirmation as specified in the guarantee text and any required documents.
beneficiary under a guarantee	Addressee of the guarantee. Only the beneficiary may make use of the guarantee.
bid bond	Under a bid bond, a party, usually a bank, guarantees on the order of the seller to pay part of the bid price in the event that the seller, having had his/her bid accepted by the buyer, is not willing or able to conclude a corresponding delivery or performance contract. The aim of a bid bond is to prevent a company from submitting a bid and then not accepting subsequent instructions because the deal is no longer of any interest. Bid bonds offer buyers security against nonserious and unqualified bidders. They are often mandatory in the case of public invitations to tender.
bill debtor	Of a check: the named bank on whom the check (or order to pay) is drawn. Of a bank draft: the bank named in the order to pay. Of a bill of exchange: the named person to whom the bill is addressed and who is expected to accept it and to pay it when it matures. Collection: The drawee is the person to whom the documents must be presented, in line with collection instructions. Bills of exchange: The drawee is the person who is obliged to pay.
bill guarantor	The bill guarantor accepts joint and several liability with the drawee, which means that the bill guarantor may be prosecuted if the drawee does not fulfill his/her payment obligation when the bill matures.
bill of exchange discounting	The discount of a bill of exchange allows the holder to commute the bill's claim to the holder's bank before the bill matures. In return, the holder must pay interest, known as the discount. Drafts, accepted bills, and promissory notes may all be discounted. The credit is covered by the signatures on the delivered bill, and all signatories are liable to the bank for the discounted claim as stipulated by the applicable bill of exchange law. If the bank foregoes its right to recourse on discounting, this is known as forfeiting.

C

claim	If the beneficiary of the guarantee considers that the supplier has breached the supplier's contractual obligations, the former may utilize the guarantee. Claims must be made during the period of validity and in strict accordance with the guarantee conditions.
commercial invoice	The invoice records the financial claim of the beneficiary (exporter) against the customer (importer). In addition to a commercial invoice, a customs invoice is often required as evidence of the value of the goods for their import clearance.
compensation effect of a bank guarantee	If the obligations of the party requesting the guarantee are not met, the beneficiary is entitled to demand the payment of the guarantee sum. This will compensate the beneficiary, partially or entirely, for the financial consequences of the breached agreement.
confirmed payment order "promise to pay"	An irrevocable obligation on the part of the bank to pay a specific sum at a specific time to the beneficiary (creditor) on behalf of the customer.

contingent liability, contingent exposure	Conditional liability which only becomes effective if specified conditions arise. The contingent liabilities of a bank are not included in its balance sheet, but are noted as a separate entry in the balance sheet appendix.
credit agreement	An agreement, in which the bank grants a customer a loan or a credit limit.
credit card guarantee	A bank guarantee required in certain circumstances by a credit card company from the applicant before issuing a credit card.
credit security guarantee	Credit or loan guarantees are often linked to specific types of collateral, to be lodged by beneficiaries of credit, or borrowers themselves, or by a third party. A bank guarantee is one of the possible means by which creditors can ensure loan or credit repayment (precondition: The lending and guaranteeing banks must not be the same).
customs guarantee	Provides security against unpaid customs duties. It is often used when goods are imported temporarily into a country. A claim may be made if there is no evidence that the goods have been re-exported within the specified period and the resultant customs duties have not been paid.
D	
direct guarantee	The bank issues the guarantee directly to the beneficiary. The bank sends the guarantee to the beneficiary, either directly, via the customer, or via another bank which forwards the guarantee to the beneficiary without incurring any obligation on its part toward the beneficiary. A direct guarantee gives the principal more scope for exerting influence on the guarantee text in accordance with his special requirements.
draft (bill of exchange)	Under Swiss law, a bill of exchange is an unconditional order to pay a certain amount of money (Art. 1, Swiss Code of Obligations [SCO]). This order, in terms of a promise to pay, may be directed at the issuer itself (promissory note) or at a debtor (draft). Pursuant to Art. 1, SCO, the following eight requirements must be included in the draft bill of exchange: 1. The term "bill of exchange" in the text of the document and expressed in the language employed in drawing it up; 2. The unconditional order to pay a certain amount of money; 3. The name of the person who is to pay (drawee); 4. The date of expiry; 5. The place where payment is to be made; 6. The name of the person to whom payment is to be made; 7. The date and place of issue of the bill of exchange; 8. The signature of the issuer.
E	
evergreen clause	Some standby letters of credit have a validity of, for example, one year but are intended to be valid for an indefinite period, contrary to the Uniform Customs and Practice for Documentary Credits (UCP). To deal with this inconsistency, an evergreen clause is inserted into the letter of credit. This clause states that the letter of credit will be automatically extended by an additional period unless the opening bank (letter of credit bank) informs the beneficiary within the notice period (normally 60 days before expiration of the corresponding term) of cancellation of the letter of credit.
export credit agency, ECA	A state-owned export credit insurer whose purpose is to promote exports. Export promotion is based on covering export risks such as political risks, transfer risks, del credere risks, and production risks.
ex works, EXW	Contractual term of delivery (commercial term) pursuant to Incoterms 2000. Ex works (... named place) means that the seller's delivery obligations have been fulfilled when the goods are made available to the buyer on the seller's premises (i.e. workshop, production plant, warehouse, etc.), without the goods being cleared for export and loaded into a carrier. The buyer bears all costs and risks related to transportation of the goods.
F	
final acceptance certificate, FAC	A term that is often used in connection with the construction of plant or complex machinery. In most cases partial amounts are withheld by the buyer and made payable against certificates (PAC = provisional acceptance certificate, FAC = final acceptance certificate). To some extent this method of payment is a risk to the supplier, since the supplier is dependent on the buyer's willingness to issue these certificates.
forwarder's certificate of receipt, FCR	A document issued by a forwarding agency confirming receipt of the goods for shipment/dispatch and of their dispatch instructions. The Uniform Customs and Practice for documentary credits (UCP) does not apply to the FCR, and the certificate is not recognized as a valid transport document.

G

general contractor	The lead manager of a working partnership/consortium.
guarantee	Three-party agreement, involving a promise by one party (the guarantor) to fulfill the obligation of a person owing a debt if that person fails to perform. The guarantee (also spelled "guaranty") is a contingent liability of the guarantor.
guarantee covering ATA carnet	For the temporary admission of goods into a third country, as occurs during trade fairs, for instance, the chamber of commerce issues ATA carnets in accordance with the International Customs Convention. The amount of cover required for each individual case is payable as a cash deposit or may be secured by a joint and several bank guarantee.
guarantee utilization	If the beneficiary of the guarantee considers that the supplier has breached the supplier's contractual obligations, the former may claim under the guarantee. Claims must be made during the period of validity and in strict accordance with the guarantee conditions.
guarantor	A person who binds himself/herself by an agreement with a banker or other creditor to be responsible for paying the debt of another person if the latter fails to pay when the debt is due.
guarantor bank	The bank that issues the guarantee.

I

indirect guarantee	Depending on the principal's instructions (which will usually be made at the request of the importer/beneficiary), the bank of the client will either issue the guarantee itself (direct guarantee) or entrust the task to a correspondent bank in the importer's country (indirect guarantee).
International Commercial Terms, Incoterms	Incoterms 2000, International Chamber of Commerce (ICC) Publication no. 560 have been in force since January 1, 2000. The terms are based around the following four points: 1. Delivery (the time at which the seller is obliged to deliver the goods and to where); 2. Documents (who has to deliver which documents or corresponding electronic notification); 3. Risks (who bears the risk for loss of or damage to the goods); 4. Cost (who pays what).
International Standby Practices, ISP98	These guidelines apply exclusively to standby letters of credit (guarantee-type instruments), provided that an instrument of this type is expressly subject to these guidelines. If the guaranteed service is not provided, the beneficiary may invoke the bank's duty to pay by delivering the declaration stipulated in the standby letter of credit, together with any further documents. Standby letters of credit are mainly in use in countries such as the US, where guarantees are not always accepted. Outside the US, standby letters of credit are usually subject to the Uniform Customs and Practice for Documentary Credits (UCP), International Chamber of Commerce (ICC) Publication no. 600.
invoice	The invoice records the financial claim of the beneficiary (exporter) against the customer (importer). In addition to a commercial invoice, a customs invoice is often required as evidence of the value of the goods for their import clearance.
irrevocable letter of credit	Fixed obligation to pay on the part of the opening bank, provided that the conditions in the letter of credit have been fulfilled. Unlike a revocable letter of credit, an irrevocable letter of credit cannot be amended or called by the customer without the agreement of the beneficiary and all liable banks. Should the beneficiary wish to amend or cancel individual conditions in the letter of credit, the beneficiary must request the customer to give appropriate instructions to the opening bank.

J

joint and several guarantee	The surety may only be sued by the principal debtor if the surety bond is joint and several (Art. 6, Swiss Code of Obligations).
joint guarantee	A joint guarantee exists if the guarantor may be required to perform under the guarantee prior to the principal debtor and before the realization of the pledges provided the principal debtor is in default, has been sent a notice of default that has proven unsuccessful, and is evidently insolvent.

L

legitimation effect of a bank guarantee	A bank guarantee is a document certifying that the client requesting the guarantee is capable of making the payment as specified. As this guarantee entails an irrevocable obligation on the part of the bank to pay in the event of nonpayment by the client, the bank will only issue the guarantee if and when it is satisfied with the technical and financial standing of its client.
letter of indemnity, LOI	Individual bills of lading or the full set may go missing or be delayed in the post. Carriers may be liable for damages if they deliver the consignment without having first received the original bill of lading. The carrier may be persuaded to deliver the goods to the recipient without presentation of the original documents in return for a bank guarantee in the carrier's favor for 100–200% of the value of the goods.

M

motivating effect of a bank guarantee	Customers risk losing the guarantee sum if they do not fulfill the contract requirements. This gives them a strong incentive to deliver the agreed goods/services even if the transaction is no longer of interest to them.
--	---

N

nonutilization commission	A commission charged by the bank for approved but nonutilized credit. It consists of compensation for the liquidity required of the bank for the payment of advances.
notification of a guarantee	Guarantees may be transferred via a bank (correspondent bank) within the country of the beneficiary to the beneficiary for the purpose of checking the signatures of the issuing bank or the authenticity of any message or document sent by telecommunication systems (without any obligation on the part of the correspondent bank).

P

payment guarantee, payment default guarantee	Instrument which provides security for claims pertaining to goods to be delivered, for example. If the debtor fails to make payment when due despite the fulfillment of the beneficiary's contractual obligations to deliver goods and/or perform a service, a corresponding written declaration is generally sufficient for the guarantor bank to carry out its obligation to pay.
performance bond	The performance bond provides security for any costs that may be incurred by the bond beneficiary if a delivery or service is not rendered according to contract and/or on time.
protest	A formal declaration in writing made by a notary, or other person lawfully acting as notary, attesting the dishonor of a bill of exchange or promissory note.
provisional acceptance certificate, PAC	Used in connection with the construction of plant or complex machinery. In most cases partial amounts are withheld by the buyer and made payable against certificates (PAC = provisional acceptance certificate, FAC = final acceptance certificate). To some extent this method of payment is a risk to the supplier, since the supplier is dependent on the buyer's willingness to issue these certificates.
public tender	An invitation to contractors or equipment suppliers, through a bidding process, to submit a proposal on a specific project to be realized or product or service to be furnished.

R

recourse	The right of the payee or holder of a bill of exchange that is dishonored at its maturity to demand payment from the other parties, such as the drawer or an endorser, unless these parties have written the words "without recourse" or "sans recours" against their signatures.
rental guarantee	Guaranteeing payment under a rental contract. It is either limited to the payment of rent only or it includes all payments due as part of the rental (e.g. repair costs on termination of the rental).

S

standby letter of credit, SBLC	Standby letters of credit are instruments similar to guarantees in that, due to their documentary nature, they fall under the Uniform Customs and Practice for Documentary Credits (UCP). Stand-by letters of credit may also be issued under the International Standby Practices (ISP98). If the guaranteed service is not provided, the beneficiary may invoke the bank's duty to pay by submitting a declaration stating that the letter of credit customer has failed to meet his/her obligations, together with any further documents.
structured trade finance, STF	Structured trade finance describes the financing of cross-border trade and service flows. Borrowers are companies that are active in international trade as producers, processors, or merchants of physical commodities/goods. Production/processing or delivery risk, known as the performance risk, is involved. Future, self-liquidating trading transactions from assigned trade agreements or agreements still to be assigned underlie each financing arrangement and can be used to repay the facility.
subunderwriting guarantee	It is often the lead organization in a consortium or the prime contractor that issues the request for a bank guarantee. The customer or the customer's bank is protected through the receipt of bank (subunderwriting) guarantees for partial amounts from the members of the consortium or from the subcontractors. The amount of these subunderwriting guarantees is, in most cases, based on the respective commitments of the various parties in the entire transaction. The subunderwriting guarantees must be formulated in such a way that the customer or customer's bank has, in case of a claim, direct recourse to the main guarantee.
syndicated credit, syndicated loan	Credit or loan which is collectively guaranteed by different banks, with one bank acting as lead manager.

T

tender bond	Or bid bond. Under a bid bond, a party, usually a bank, guarantees on the order of the seller to pay part of the bid price in the event that the seller, having had his/her bid accepted by the buyer, is not willing or able to conclude a corresponding delivery or performance contract. The aim of a bid bond is to prevent a company from submitting a bid and then not accepting subsequent instructions because the deal is no longer of any interest. Bid bonds offer buyers security against nonserious and unqualified bidders. They are often mandatory in the case of public invitations to tender.
transactional trade finance	Short-term commodity financing. The goods serve as collateral. The sales proceeds are used to repay the loan (self-liquidating).
transmission of a bank guarantee	Guarantees may be transferred via a bank (correspondent bank) within the country of the beneficiary to the beneficiary for the purpose of checking the signatures of the issuing bank or the authenticity of any message or document sent by telecommunication systems (without any obligation on the part of the correspondent bank).

U

Uniform Rules for Demand Guarantees	These guidelines apply (when specified in the guarantees in question) to all guarantees and payment liabilities in which the guarantor is required to issue payment against presentation of a written request or other designated document, e.g. proof that, and to what extent, the customer has breached his/her obligation. These guidelines do not apply to accessorial obligations.
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V

value-added tax guarantee, VAT guarantee	The Swiss Federal Tax Association requires collateral for the registration of Swiss branches of foreign companies. This may take the form of a cash deposit, the depositing of securities, or a joint and several guarantee.
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CREDIT SUISSE (Switzerland) Ltd.

P.O. Box

CH-8070 Zurich

credit-suisse.com

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