

Banker's Guarantee Issuance

What is Banker's Guarantee?

A Banker's Guarantee (BG) is a definite undertaking by the bank (guarantor) to pay the beneficiary a certain sum of money within a specified period if the applicant (principal) fails to fulfill his contractual or other obligations of an underlying transaction. It is normally used to secure either a financial or performance obligation of the principal.

BG can be issued to both local and overseas beneficiary either in the form of hardcopy or transmitted via SWIFT message MT760 or MT799. For BG that is issued in favour of an overseas beneficiary, it may be communicated to the beneficiary as follows:-

- BG is transmitted to an appointed correspondent bank by authenticated SWIFT (MT760 or MT799), requesting the bank to advise the beneficiary and/or add its own confirmation; or
- Request a correspondent bank to issue a counter guarantee in favour of the beneficiary on behalf of the Bank and in accordance with a specific format.

Guidelines for Issuing Banker's Guarantee

A Banker's Guarantee should bear all the six following characteristics:-

1. Cap on Maximum Liability

To protect the interests of both the principal and the guarantor, there must be a cap on liability up to the maximum guaranteed sum.

2. Contain a Definite Expiry Date

A Banker's Guarantee should have a definite expiry date unless it is issued in connection with a court case, which is renewable on yearly basis until disposal of the suit unless it is in a standard format pre-approved by The Association of Banks in Singapore (ABS).

Absence of a definite expiry date would create uncertain duration of liability for both the principal and the guarantor.

3. Definite Claim Period

Banker's Guarantee should have a definite claim period (or under ABS Guidelines of not more than three months after Expiry date), indicating the latest date that a claim can be submitted. Absence of a definite claim period would subject the principal and guarantor to a claim of up to six years.

4. Payment on Demand

A Banker's Guarantee shall effect payment on demand by the beneficiary giving a written statement that the principal has failed to perform his obligations. Such written statement will be the sole condition for the guarantor to pay under the guarantee. The guarantor will not take additional steps to

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determine any facts or documents relating to the underlying contract or to verify appropriateness of the claim.

5. Prohibition against Assignment

A Banker's Guarantee shall not be assignable due to the following reasons:-

- To avoid the bank losing its right of set-off vis-à-vis the beneficiary
- To avoid the bank paying to the wrong party
- To reduce administrative uncertainties if there are multiple assignments made

If a Banker's Guarantee is silent on assignment, it can be assigned by the beneficiary. In view of the above-mentioned prohibition, BG issued is usually on a non-assignable basis.

6. Governing Law & Jurisdiction

Singapore law should be stated as the governing law of the BG issued by banks in Singapore, and the beneficiary should submit to the jurisdiction of the Singapore courts. It would be expensive and time consuming if an action is brought against the bank in a foreign jurisdiction and under foreign law.

Types of Banker's Guarantee

There are two main types of Banker's Guarantee:-

1. Financial Guarantee

Financial Guarantee is issued in-lieu-of cash deposit that the principal may need to place with the beneficiary for an underlying transaction. If the principal fails to meet his financial obligation, the beneficiary may claim on the guarantee.

Examples of Financial Guarantee are:-

Maid Guarantee

A Maid Guarantee is issued to the Authority for foreign maids coming to Singapore for employment as a domestic maid. It guarantees the well being of the maid during her stay in Singapore.

Advance Payment Guarantee

An Advance Payment Guarantee enables a buyer to recover an advance payment made under a contract or order if the supplier fails to fulfill his contractual obligations.

Remisier Guarantee

A Remisier Guarantee is issued to the Authority for remisier trading purposes.

Student Pass

A Student Pass is meant to allow foreigners to pursue full-time study in Singapore. A BG is required for the Student Pass application.

Social Visit Pass

A Social Visit Pass is required for those persons who intend to make a short trip to Singapore. It usually has a 2-4 week validity period and may be further extended for another three months. A BG is required for the Social Visit Pass application.

2. Performance Guarantee

Performance guarantee is issued to protect against the principal's non-performance over his contractual obligations.

Examples of Performance Guarantee are:-

Bid Bond

A Bid Bond is a bond that is required of a contractor submitting a bid for a project. If the contractor then refuses to undertake the contract after he has been awarded the contract, the bid bond assures that the developer can recover his liquidated damages between his bid and next higher bid. Bid Bond ensures that a contractor will make serious bids and live up to his obligations.

Performance Bond

A Performance Guarantee is to guarantee against the failure of the principal to meet his obligations in a contract or completing a project. Performance Bonds are commonly used in the construction and development of real estate properties to protect the value of the work against unforeseen events such as the bankruptcy of the contractor.

Warranty/Maintenance Bond

A Warranty/Maintenance Bond is to protect against design defects or poor workmanship, and to guarantee that facility constructed would be regularly and adequately maintained throughout the warranty or maintenance period.