GUARANTEES BY BANKERS

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1 Introduction

The topic of guarantees by bankers is a broad one, having both domestic and international application.

In the domestic context they may be required to support an individual dealing with certain government departments or statutory authorities - they are commonly required, for example, by the Australian Customs Service or the Wheat Board. They may also be sought by customs agents or shipping companies, pending the arrival of bills of lading.

Today, however, I propose to concentrate on the inter-national application of bank guarantees because the role of these guarantees in international commerce is of increasing significance. A particularly interesting and complex set of relationships and processes results when these guarantees are used in conjunction with or instead of documentary letters of credit.

2 International Bank guarantees described

The purpose of international bank guarantees (or, indeed, the standby letters of credit which are sometimes used in their place and about which I will say more) is simply to underwrite the obligations of exporters in respect of projects, in another country, which involve the supply of goods or services or the performance of work. Such a guarantee may be more fully described as an undertaking by a financial institution (or, sometimes, an insurance company) (being "the guarantor") that, in the event of a default by the exporter or supplier (known as "the principal") in his obligations to the importer or buyer (called "the beneficiary"), the guarantor will pay the beneficiary a stated or agreed sum or, in some instances, perform or arrange performance of the principal's obligations.

Within this description there are three parties with unique interests, as well as three distinct legal relationships. As to the parties:

- the beneficiary will always want performance of the obligation owed to him or compensation in the event of a

default and repayment of any advances he may have made subject to completion of his contract with the principal;

- the principal will want to avoid the utilisation of the guarantee where he has already met his obligations, as this will effectively result in a double commitment because he will have been required to secure the giving of the bank guarantee either by a counter-guarantee or indemnity or, perhaps, through an existing security he may have given or he may even have been asked to set aside the proceeds of any documentary letter of credit, established by the beneficiary in the principal's favour, to be called upon in case liability under the bank guarantee is claimed;

- the guarantor bank will want to be able to meet its commitments under the guarantee (and obtain reimbursement from the principal) without becoming involved in or even concerned with any dispute between the beneficiary and the principal in respect of their commercial relationship.

Identification of guarantee relationships The three relationships which may be identified in our description are:

(a) the commercial relationship, which underpins the guarantee, between the buyer and supplier, the importer and exporter or, in the language of guarantee, the beneficiary and principal;

(b) the relationship between the principal and the guarantor bank which would normally be superimposed upon an existing banker-customer relationship;

(c) the relationship between the guarantor and the beneficiary - this relationship may be complicated by the involvement of a second bank. The involvement of a second bank generally comes about because a beneficiary requires the guarantee to be issued or notified or advised by a bank in his own country in order to:

  - minimise any attempt by the principal at blocking the use of the guarantee; and

  - avoid the traditional difficulties of international law in dealing across boundaries and jurisdictions; or

  - comply with local statutory requirements as to form or appropriateness of the issuing bank.

  Where a bank which is local to the beneficiary is asked to advise or notify a guarantee, its role is not unlike that of an advising bank which advises without engagement a documentary letter of credit. However, where a second bank is involved, it is more often the case that a local bank will be required to issue the guarantee, with the principal's bank providing the local bank with an indemnity or counter guarantee.

3 The Uniform Rules for Contract Guarantees [1]

It is this third relationship - between the beneficiary and the guarantor - which is of primary interest to us today. There is some law in the area and an important set of rules - the Uniform Rules for Contract Guarantees - prepared by the International Chamber of Commerce. They attempt to regulate the relationship between beneficiaries and guarantors. The Rules were developed over a twelve year period and came into operation in 1978. In endeavouring to set out the prerequisites for payment under a contract guarantee (the collective expression for the types of guarantees contemplated by the Rules), they concentrate on the beneficiary-guarantor relationship rather than the principal-guarantor relationship which goes to the nature of guarantees. [2]

The three types of guarantees expressly covered by the expression "contract guarantees" in the Uniform Rules are:

- tender bonds;
- performance guarantees; and
- repayment guarantees.

However, by virtue of Article 1 of the Rules they may apply to:

> "any guarantee, bond, indemnity, surety or similar undertaking, however named or described ("guarantee") which states that it is subject to the Uniform Rules ... and are binding upon all parties thereto unless otherwise expressly stated in the guarantee or any amendment thereto."

Thus, from time to time, the Rules may even be utilized in relation to domestic guarantees.

Types of guarantee The types of guarantee for which the rules are especially made - tender bonds, performance and repayment guarantees - are defined in Article 2 of the Rules. The function of a tender or bid bond is to assure the beneficiary (that is the person inviting the tender) of monetary compensation if the principal (the person submitting the tender) fails to meet an obligation arising from the submission of the tender. The difficulty with the definition contained in the Rules would appear to be that it relates only to the original tender and hence it may, from a practical point of view, be too narrow. [3] The object of a performance bond or guarantee is to give the beneficiary recourse to the guarantor in the event that the principal fails to meet his contractual obligations to the beneficiary. Recourse may take the form of either a payment or in the guarantor taking over the principal's obligations - however, a bank will not usually issue a bond which will involve it taking over the principal's obligations; off-shore bonding and surety companies do not show the same reluctance. The aim of the third type of guarantee expressly referred to in the Rules - repayment guarantees - is to protect payments made by the beneficiaries, by assuring repayment of advance payments by a guarantor, in the event of a default by the principal.

4 On-demand and conditional guarantees distinguished

Perhaps the most important distinction is not between the types of bank guarantees used in international commerce but as to how and when payment is made. Australian banks will be loathe to give a guarantee unless it contains:

(a) a statement of the maximum aggregate liability of the guarantor;

(b) provision for termination by the bank at any time (if only as a last resort by payment) to facilitate crystallisation of the customer's liability to the bank, or in the very least, a specific expiry date or term;

(c) no obligation on the guarantor bank other then the payment of money;

(d) a clear statement as to the circumstances under which payment is to be made - such a statement should unequivocally provide that the guarantor need not satisfy itself that there has been a default by the principal in relation to the underlying contract but rather that payment should be made simply on receipt, for example, of a written demand purporting to be signed by the beneficiary.

The Comptroller of Currency in the United States has included similar requirements in a ruling [4a] which applies to standby letters of credit, thereby highlighting the similarities between on-demand guarantees and standby letters of credit and the proper banking practice in relation to them.

The effect of these requirements are two-fold:

(i) to make the bank guarantee, as Devlin J observed, "not a general performance guarantee but only a guarantee of limited performance" [4b] - that is a guarantee of payment of the price;

(ii) that the guarantee must be honoured on-demand.

The distinction between an on-demand and a conventional guarantee is relevant from a legal and a practical banking point of view: a conventional guarantee is conditional upon an event or occurrence to bring about liability; while the only "condition" in an on-demand guarantee is that the demand be made (generally in writing) by the beneficiary and it is this which triggers the liability of the guarantor bank. In at least one critical aspect, then, an on-demand guarantee is rather more like an indemnity than a guarantee - the liability of the guarantor is independent of the underlying commercial relationship or contract and thereby resembles the primary obligation of an indemnity, being payable, without proof or conditions, on first demand, instead of being a secondary, accessory or collateral obligation as in a conventional guarantee. This may, indeed, be reflected in the fact than an increasing number of financial institutions describe their guarantees as "undertakings".

Over recent times the on-demand guarantee has seen increasing use - it is preferred, needless to say, not only by banks but by beneficiaries and, as such, the use of the guarantee will be a matter of negotiation between the beneficiary and the principal in their respective roles as importer and exporter or buyer and supplier. Previously, where a bank was asked to give a guarantee in the conventional sense, it would endeavour to avoid becoming involved in any dispute between the principal and the beneficiary by having liability made conditional upon the presentation of a document which evidenced non-performance or a breach of an obligation - such a document might include a judgment of a court or an award by an arbitrator.

The nature of on-demand bank guarantees has been the subject of some judicial comment. Lord Denning, for example, has said that:

> "[a] bank which gives a performance guarantee must honour that guarantee according to its terms. It is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contracted obligation or not; nor with the question whether the supplier is in default or not. The bank must pay according to its guarantee, on demand, if not stipulated, without proof or conditions. The only exception is where there is a clear fraud of which the bank has notice." [5]

Only in relation to fraud do the cases offer us any real guidance in respect of the abuse of on-demand guarantees.

> "It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by the banks. They are the life blood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain except possibly in clear cases of fraud of which the banks have notice, the courts will leave the merchants to settle their disputes under the contract by litigation or arbitration as available to them or stipulated in the contract." [6a]

But it should be noted that the allegations of fraud are small in number when contrasted with the large numbers of on-demand guarantees and similar instruments issued in the course of international commerce and small in value when compared to the amount of outstanding undertakings. [6b]

5 On-demand guarantees compared to documentary letters of credit

The independent nature of on-demand guarantees is not unlike that of documentary letters of credit and this has, indeed, been noted by a number of judicial commentators. [7] Roskill J for example, in Howe Richardson Scale Co Ltd v Polimex-Cekop [8] noted that:

> "[t] the bank, in principle, is in a position not identical with but very similar to the position of a bank which has opened a confirmed irrevocable letter of credit. Whether

> the obligation arises under a letter of credit or under a guarantee, the obligation of a bank is to perform that which it is required to perform by that particular contract, and that obligation does not in the ordinary way depend on the correct resolution of a dispute as to the sufficiency of performance by the seller to the buyer or by the buyer to the seller as the case may be, under the sale and purchase contract; the bank here is simply concerned to see whether the event has happened upon which its obligation to pay has arisen."

Lord Denning, on the other hand, chose to compare on-demand performance guarantees to promissory notes payable on demand. [9]

The only genuine distinction [10] between on-demand guarantees and documentary letters of credit is that an on-demand guarantee is generally payable against a demand by the beneficiary made in writing while a letter of credit usually requires presentation of specific documents.

6 The use of standby letters of credit in lieu of on demand guarantees

The independent and autonomous nature of a documentary letter of credit must enable it, when issued by an exporter in favour of an importer, to be considered as an alternative to an on-demand guarantee. It is also important to note that in the United States banks are prohibited from becoming sureties or guarantors. [11] The effect of this prohibition is that guarantees issued by United States' banks are ultra vires.

The combined effect of the independent nature of documentary letters of credit and the US prohibition on the granting of guarantees by banks has led to the development, in North America from whence they have spread, of standby letters of credit - an animal which, I am given to understand, many here are familiar with in the context of institutional fund raising and the issue of preference shares.

For those who are not so familiar with these animals [12] it is enough to say that a documentary letter of credit is, as has already been indicated, [13] a letter issued by a bank to a beneficiary at the request of a third party, pursuant to which the issuer must pay the beneficiary an agreed sum or accept or negotiate a draft upon the presentation of documents specified in the letter. Under a standby letter of credit, issued by the equivalent of a guarantor bank at the request of a principal, the beneficiary may draw on the credit merely by presenting a draft and a certificate stating that there has been a default.

Thus, the significant aspect of standby letters of credit, insofar as they provide an alternative to on-demand guarantees, is that they, too, are independent of any underlying commercial relationship - payment is made against the presentation of a certificate of default and a draft and there is no requirement that the bank issuing the standby letter of credit establish whether or not there has been a default of any obligation in the

commercial agreement. Effectively, then, payment under a standby letter of credit is on demand.

While the economic purpose of standby letters of credit and on-demand guarantees is clearly the same there are practical differences. These differences are highlighted by the American decision of Wichita Eagle and Beacon Publishing Co Inc v Pacific National Bank [14] where it was held first that the bank's undertaking was to be terminated if the required building permit was not granted and upon the tender of a specific document evidencing this fact and secondly that a credit payable on the default of a party under a contract to erect a building was a guarantee but it would not have been a guarantee if payment was dependent on the provision of a certificate stating that there had been a default. Based on these findings, the court's conclusion was that the instrument in question related too closely to the underlying agreement between the construction firm and the beneficiary. In Australia it would not appear to matter which of the two forms the bank's undertaking took; the same, of course, cannot be said about the US where the guarantee would be void.

As to the possible legal differences between standby letters of credit and guarantees, perhaps the most significant issue is whether or not the various doctrines relating to guarantees and suretyship - for example, lapse due to extensions of time or variations, subrogation following partial payment and so forth - can be made to apply to standby letters of credit and it would seem that will depend upon the terms of the credit itself.

The bottom line appears to be, at least for our purposes, that the position of the parties - principal, guarantor and beneficiary (but particularly the last two) - are not really different in the circumstances of a standby letter of credit or an on-demand guarantee.

7 On-demand guarantees and standby letters of credit: the Uniform Rules for Contract Guarantees and the Uniform Customs and Practice for Documentary Credits [15]

By far the majority of instruments issued by banks since 1978, which have been in the form of standby letters of credit or on-demand guarantees, have not adopted the Uniform Rules for Contract Guarantees mentioned earlier. [16] This is because, as one writer has expressed it, the Rules "centre the equilibrium on the need to support a claim [with documentation] ... to protect the principal from liability because of unjustified calls on the guarantor by the beneficiary" [17] and there is, thus, a degree of incompatibility between the Rules and the concepts of on-demand guarantees. However, a number of authors [18] have suggested, apparently without challenge, that the Rules can be applied to on-demand guarantees by simply excluding Article 9, the provision dealing with documentation to be produced to support a claim.

To the extent that standby letters of credit are used in lieu of on-demand guarantees the question arises as to whether or not it

is appropriate to issue them subject to the Uniform Customs and Practice for Documentary Credits or UCP. [19] The Uniform Customs and Practice for Documentary Credits, like the Uniform Rules for Contract Guarantees, are issued by the International Chamber of Commerce. Unlike the Uniform Rules, the UCP have a much longer history and have been more widely accepted - the original UCP was produced in 1933, with the current revision, being the fifth, coming into operation on 1 October 1984.

The current revision of the UCP is the first revision which purports to extend to standby letters of credit [20] and, in my view, this is not entirely appropriate because of the different roles assumed by the traditional documentary letters of credit and the standby letter of credit. The function of a traditional documentary letter of credit, issued at the request of an importer in favour of an exporter, is to enable the exporter to obtain payment owing to him from the importer because he, as exporter, has observed his part in the contract between them and this is evidenced by the presentation of the documents stipulated in the credit itself. The function of the standby credit is quite different even though it retains most of the elements of a traditional documentary letters of credit. As we discussed, it is frequently used instead of an on-demand guarantee and, as many of you will be aware, it may be used to secure an advance or the raising of money. A standby letter of credit may also, on occasions, be issued in favour of an exporter in order to ensure that, if payment is not received pursuant to some other pre-arranged form of payment, it will be made under the standby letter of credit.

Fundamentally, then, standby letters of credit are intended to cover instances of non-performance, while traditional documentary letters of credit clearly contemplate situations where there has been performance. Thus, it seems appropriate that standby letters of credit be issued with reference to the rules dealing with non-performance, namely, the Uniform Rules for Contract Guarantees. I would strongly urge the International Chamber of Commerce (with the assistance of the United Nations Commission on International Trade Law or UNCITRAL) to undertake a review of the Uniform Rules. A revision of their applicability to standby letters of credit and on-demand guarantees is long overdue and, should such a revision favourably address this problem of application, I am confident that the Rules will, to the benefit of all, gain greater acceptance.

8 Unfair calling of on-demand guarantees and standby letters of credit

While the incidence of abuse of on-demand guarantees and standby letters of credit is low, [21] principals are often properly anxious that on-demand guarantees or standby letters of credit may be called upon in an arbitrary, unfair or capricious manner. It is of little comfort that the risk of abuse is inherent in these instruments of security which have developed to meet commercial needs and that the risk can be reflected in the contract price; however, a combination of common sense and the lessons learnt from litigation arising out of American encounters with the post-revolutionary Iranian Government [22] make it

possible to suggest some points for principals to bear in mind when negotiating with beneficiaries for the provision of on-demand guarantees or standby letters of credit.

- It sounds simple but it is important to ensure that a contract is in place between the principal and beneficiary before the on-demand guarantee or the standby letter of credit can be called upon. In the Edward Owen case, [23] mentioned earlier, the beneficiary had failed to open the required documentary letter of credit upon which the underlying contract was predicated. And even though the contract had not yet come into existence, the Libyan beneficiary was permitted to call upon the guarantee.

  Further, a principal should ensure, as far as possible, that the security is consistent with the underlying contract and that any certificate of default advises the obligation which is claimed to have been breached or is accompanied by a certificate from a third party or an officer of the beneficiary stating that a condition has not been met. While the guarantor in an on-demand guarantee or standby letter of credit will still not have to ascertain whether there has in fact been a breach of the underlying contract, it may assist in any subsequent proceedings relating to that contract and it may serve as background for an allegation of fraud if the certification is untrue and the calling is unfair.

- A principal should not overlook the use of insurance. The Australian Export Finance and Insurance Corporation ("EFIC") and similar statutory authorities in other countries provide cover against unfair calling of on-demand guarantees and standby letters of credit.

- Just as a guarantor banks will generally require [24] a guarantee issued by them to contain a determinable expiry date, this is also in the best interests of principals who should instruct guarantors having regard to the dates relating to performance in the underlying contract. However:

  - these dates are often extended as a result of beneficiaries threatening to make calls upon guarantees if their lives are not extended; and

  - in a number of countries in the western region of Asia and the Middle East expiry dates in guarantees are invalid by virtue of local law so that, if a bank in the beneficiary's country has issued the instrument with the principal's bank issuing a counter guarantee, liability may still arise after the expiry date.

  In these circumstances, principals should, as far as possible, ensure that guarantees are returned to them upon expiry.

- In relation to on-demand security for performance or repayment a principal should seek to have included, a

provision in respect of pro rata reduction as performance or repayment occurs, in both the underlying contract and the bank guarantee or undertaking. In the alternative, a set of smaller standby letters of credit with staggered expiry dates will also reduce the risk of unfair calling in proportion to performance or repayment.

- Where possible, principals should seek to have any force majeure provisions in the underlying contracts incorporated into the guarantee or standby letter of credit to ensure that there is no doubt as to their release.

- Finally, while it may be viewed as derogating from the on-demand nature of the instrument in question, principals should endeavour to have included in standby letters of credit and guarantees, a requirement that either or both the guarantor and the principal should be given notice of any demand or calling. This would at least enable injunctive proceedings to be considered should the differences of opinion between the beneficiary and the principal be beyond negotiation.

9 Common concerns of guarantors and principals

The four requirements of banks [25] serve as a guide to the dealings between guarantors and principals. The procedure for establishing a guarantee usually takes the following form:

- The required contents of the guarantee should be submitted to the bank by the principal who should lodge requests for issue of guarantees so as to allow sufficient time for perusal of the (draft) guarantee by the bank and the settling of amendments considered necessary by the bank. In practice, sufficient time is rarely allowed with the customer presenting himself and his request at the close of business on the day before the instrument must be despatched. During this time it will also be necessary to establish whether the law of the country of the beneficiary will affect the bank's liability under the guarantee. When a bank is requested by a principal to arrange the issue of a guarantee by one of its foreign correspondents or a bank local to the beneficiary it ensures that the instructions and counter guarantee or indemnity it takes from the principal are identical in terms to the instructions and undertaking it gives to the overseas bank. This is generally achieved by ensuring that the principal acknowledges or advises the form of the guarantee to be issued by annexing a copy of it to his letter of request or, if a copy is not available, repeating the text of the guarantee on an annexure to the letter of request.

- In those instances where the form of the guarantee required by the beneficiary is not known to the guarantor the principal will be requested to produce the form. If the form is known to the foreign bank and not to the principal, the foreign bank should be requested to submit a copy of the form it will issue before the letter of request is given.

- In some countries as has already been noted, [26] the form of the guarantee is established by law and such statutory forms cannot usually be amended to suit the requirements of the parties. In these circumstances, a bank will have no alternative but to make a commercial decision as to whether or not it will issue a guarantee in the statutory form, having regard to all the circumstances of the proposal and what is known about the other jurisdiction.

10 Conclusion

I would like to conclude by reminding you that some of the issues we have been considering here this afternoon are not of recent origin though they are current and topical.

Shakespeare's Shylock was overheard to say to the merchant Antonio and his friend Bassanio, a suitor to Portia:

> "[g]o with me to a notary, seal me there
> Your single bond, and, in a merry sport,
> If you repay me not on such a day,
> In such a place, such sum or sums as are
> Express'd in the condition, let the forfeit
> Be nominated for an equal pound
> Of your fair flesh, to be cut off and taken
> In what part of your body pleaseth me". [27]

Rarely, these days, is Westpac required to give a guarantee (of any sort by any name) over a pound of flesh, though some may venture to say that the consequences are fast approaching this.

Footnotes

[1] ICC Publication No 325.

[2] The reason for this, contained in the Introduction to the Rules themselves at page 9, seems quite plausible. "The relationship between the principal and the guarantor is - with a few exceptions (Articles 7.3, 8.2, 11.2) - not dealt with in the Rules, it being felt that the question of recourse by the guarantor to the principal, and the provision of any collateral security by the guarantor to the principal, and the provision of any collateral security deemed necessary, is a matter less in need of standardisation or guidance than the relationship between the beneficiary and the guarantor."

[3] This is discussed in some detail by R Edwards, "The Role of Bank Guarantees in International Trade" (1982) 56 ALJ 281, 282.

[4a] This ruling is referred to in National Surety Corporation v Midland Bank and Trust Co 408 F Supp 684, fn 15 (1976).

[4b] Sinason-Teicher Inter-American Grain Corporation v Oilcakes and Oilseeds Trading Co Ltd [1954] 1 WLR 935, 941 which was subsequently affirmed by the Court of Appeal in a decision

recorded at [1954] 1 WLR 1924. See also section 3 of these notes - Types of guarantee.

[5] Edward Owen Engineering Ltd v Barclays Bank International Ltd [1978] 1 QB 159, 171.

[6a] Kerr J in Harbottle (RD) (Mercantile) Ltd v National Westminster Bank Ltd [1978] 1 QB 146, 155. The scope of the fraud rule, in relation to both standby letters of credit and on-demand guarantees, is comprehensively discussed by Prof EP Ellinger, "Standby Credits and the Increasing Incidence of Fraud" Practical Legal Problems Affecting Bankers and Finance Companies, Faculty of Law, Monash University, June-July 1980, 27.

[6b] W Freiherr Von Marschall, "Recent Developments in the Field of Standby Letters of Credit, Bank Guarantees and Performance Bonds" Current Problems of International Trade Financing, fn 83: a German bank which issued about 10,000 guarantees in a twelve month period received demands in respect of 64 of these instruments; the principals acknowledged 62 demands to be justified so that only two possible cases of abuse remained.

[7] United City Merchants (Investments) Ltd v Royal Bank of Canada [1981] 1 Lloyd's Rep 604.

[8] [1978] 1 Lloyd's Rep 161.

[9] Note [5] supra, 170.

[10] At least one commentator appears not to consider this distinction genuine: see Prof EP Ellinger, note [6a] supra, 31.

[11] H Harfield, Bank Credits and Acceptances (5th Ed), 157-158.

[12] Much has been written about standby letters of credit, particularly in American law journals, since 1957. Prof Ellinger's article, simply called "Standby Letters of Credit", in (1978) 6 International Business Lawyer 604, is a useful starting point.

[13] See section 5 of these notes - On-demand guarantees compared to documentary letters of credit.

[14] 343 F Supp 332 (1971), reversed by the Ninth Circuit Court of Appeals at 493 F 2d 1285 (1974) and referred to by Prof EP Ellinger, note [6a] supra, 28 and P Wood, Law and Practice of International Finance, 310.

[15] ICC Publication No 400.

[16] See section 3 of these notes, supra.

[17] PJ Parsons, "Commercial Law Note - ICC Rules for Contract Guarantees" (1979) 53 ALJ 224; see also the Introduction to the Rules themselves at page 9.

[18] Id, 225; R Edwards, note [3] supra, 286.

[19] The UCP defines all of the terminology used in handling documentary credits and sets out what is permitted and not permitted within the terms of the credit - it attempts to set out the manner in which documentary credits should be conducted for the mutual benefit and understanding of all the parties involved. By referring to the UCP in the application, made by the buyer, to establish the credit and also the credit itself, it is generally considered that the UCP are, thus, effectively written into the contract and, therefore, that the parties to the credit must act in accordance with the code or practice established by the UCP.

[20] See Articles 1 and 2 of the UCP. Prior to this, it was a matter of some debate as to whether or not the UCP could be applied to standby letters of credit (see R Edwards, note [3] supra, 286), though the Banking Commission of the International Chamber of Commerce had said, in 1977 (Publication No 371 at p 11), that the previous revision of the UCP did apply to them.

[21] Note [6] supra.

[22] This is discussed in some detail by A Loke, "Standby Credits and Performance Bonds: The Lesson from the Iranian Experience" Current Problems in International Trade Financing 283, 289-291 and fn 25; see also R Edwards, note [3] supra, 284-286.

[23] Note [5] supra.

[24] See section 4 of these notes - On-demand and conditional guarantees distinguished.

[25] Identified and discussed at section 4 of these notes supra.

[26] See section 2 of these notes - Identification of guarantee relationships - sub-para (c).

[27] The Merchant of Venice, Act 1 scene iii, lines 139-146.

STRUCTURE OF A TYPICAL BANK GUARANTEE