



联合国国际贸易法委员会
第三十三届会议
2000年6月12日至7月7日，纽约

契约保证单统一规则

秘书长的报告

1. 委员会在其 1999 年第三十二届会议上，根据秘书长的一项报告¹，审议了国际商会秘书长提请委员会赞同《契约保证单统一规则》的一项请求（1999 年 4 月 27 日的请求信函转载于附件一）。然而，由于该报告公布较晚，一些代表团未能来得及进行磋商，委员会认为不得不将审议赞同一事推迟到 2000 年第三十三届会议。
2. 现将国际商会作为第 524 号出版物的《契约保证单统一规则》原英文本转载于附件三。国际商会编写的法文和西班牙文译文转载于本文件各文本的附件三。国际商会还编写了保加利亚文、芬兰文、冰岛文、朝文、意大利文、日文和葡萄牙文的译文。
3. 关于编写本规则的原因，规则在前言中说：
“由于保险行业需要一套统一的规则，用以在国际上适用于确立附属性质的义务的契约保证单，国际商会保险委员会负责起草了国际商会契约保证单统一规则。”
4. 为进一步提供该规则的背景资料，现将该国际商会出版物的导言及一般说明转载于附件二。

¹ A/CN.9/459/Add.1。本说明大量转载 A/CN.9/459/Add.1，因为在委员会第三十二届会议上，仅提供了《契约保证单统一规则》英文和法文本。

附件一

国际商会秘书长

Maria Livanos Cattai 女士的来函

如你所知，几年前，国际商会出版了一套《契约保证单统一规则》(URCB)。我写此信的目的在于提请贸易法委员会对这些规则给予正式的认可及赞同。国际商会另外还提请世界银行、欧洲联盟及美洲开发银行给予同样的赞同。

URCB 所涉及的是有条件的担保，即所谓附加保单，与为其履行而作保的基本合同直接相关。

URCB 现已有多种语文的文本(其中包括英文、西班牙文、法文、意大利文、冰岛文、日文、中文和朝鲜文)。日本政府、国际咨询工程师联合会、电气工程师协会、国际信贷保险协会、国际法语区承包人协会和泛美担保协会等组织均已采纳 URCB，作为其所属成员开立保单的推荐标准。

采用 URCB 作为一种全球的保单规范将使各种形式的担保得到必要的统一性，从而有助于促进国际贸易。我们坚信，这种新的规范形式将使整个企业界受益匪浅。由公共机构给予承认将有助于私人契约的订立，有利于全世界的出口及订约自由。

附件二

国际商会契约保证单统一规则

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国际商会

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导言

这一套统一规则是由国际商会的—工作组起草的，工作组的成员包括保险委员会及建筑工程行业的代表，着眼于在全世界范围应用于契约保证单，此种保证单确立附加性质的义务，由保险方或担保人承担赔偿责任，并以承包人(在这套规则中界定为要保人)经查明属实的违约事件为条件，其所涉的合同即为有关保单的保险标的。因此，后面列出的这套规则的适用范围是，—各方意图在于使担保人的义务取决于要保人按照有关合同所应承担的责任。

属于下面载列的国际商会规则所规范的保证单，其作用在于使每一项担保的受益人得到履行或执行合同义务的保证，在要保人不履行合同义务或违约时按规定向受益人支付—笔款项。此种保证单意图以其财务限度为条件，保证合同中规定的义务得到履行或执行，或保证在发生违约时，受益人可收回所应得到的款项，不论要保人是否丧失偿付能力，或要保人由于任何其他原因而无法清偿其债务。因此，如已开立了这些规则所涉及的有效保单，受益人将得到附加保证：担保人承担附加义务，保证任何主管法院或仲裁庭的判决或裁决可得到执行。

这一套编号为 524 的规则，其所涉保单的—各方的关系不同于国际商会编号为 458 的《见索即付担保统一规则》(即付担保规则)之下发生的关系。如果目的是使受益人得到保证，保证要保人按照有关合同的规定履行义务，但只有在发生了查明属实的、对于该项合同的违约情况时才引起担保人的赔偿责任，则应当选择采用这套《规则》。

—般说明

这套《规则》目的在于提供—种清楚而简明的办法，用以规范保证单所涉义务的性质及求偿程序。由于《规则》管辖范围内的保单的性质是，—各方的义务直接涉及而且取决于—各方按另一合同规定所引起的义务，因此，《规则》并不详尽规定跟单要求，也不详细涉及不公平索偿问题。在出现关于担保人赔偿责任的争端时，《规则》中设想此种争端应参照合同的规定来解决。担保人和要保人均受到保护，因只有在违约事件查明属实的情况下才会引起赔偿责任。受益人方面也得到保证，在要保人万—不执行任何判决或裁决时，将由担保人设法执行。

下面列出的编号为 524 的《契约保证单统一规则》在—各方按照其详细规定明文载入保单之内时即予适用。这一套新规则的成功推行，取决于其得到国际企业界的广泛采用。国际商会推荐采用这些新《规则》，期望有助于确保此种保单在其操作及执行中形成—贯惯例。

附件三

ICC UNIFORM RULES FOR CONTRACT BONDS

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adopted by the ICC Executive Board on 23 April 1993,
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Article 1

Scope and application

- (a) These Rules shall be known as the "Uniform Rules for Contract Bonds" and shall apply to any Bond which states that these Rules shall apply, or otherwise incorporates these Rules by reference and, for such purposes, it shall suffice that the Bond incorporates a reference to these Rules and the publication number.
- (b) If there shall be any conflict in the construction or operation of the obligations of any parties under a Bond between the provisions of these Rules and such Bond, or mandatory provisions of the Applicable Law regulating the same, the provisions of the Bond or, as the case may be, the mandatory provisions of the Applicable Law shall prevail.

Article 2

Definitions

In these Rules, words or expressions shall bear the meanings set out below and be construed accordingly

Advance Payment Bond

A Bond given by the Guarantor in favour of the Beneficiary to secure the repayment of any sum or sums advanced by the Beneficiary to the Principal under or for the purposes of the Contract, where such sum or sums is or are advanced before the carrying out of works, the performance of services or the supply or provision of any goods pursuant to such Contract.

Beneficiary

The party in whose favour a Bond is issued or provided.

Bond

Any bond, guarantee or other instrument in writing issued or executed by the Guarantor in favour of the Beneficiary pursuant to which the Guarantor undertakes on Default, either :

- (i) to pay or satisfy any claim or entitlement to payment of damages, compensation or other financial relief up to the Bond Amount; or
- (ii) to pay or satisfy such claim or entitlement up to the Bond Amount or at the Guarantor's option to perform or execute the Contract or any Contractual Obligation.

In either case where the liability of the Guarantor shall be accessory to the liability of the Principal under the Contract or such Contractual Obligation and such expression shall without limitation include Advance Payment Bonds, Maintenance Bonds, Performance Bonds, Retention Bonds and Tender Bonds.

Bond Amount

The sum inserted in the Bond as the maximum aggregate liability of the Guarantor as amended, varied or reduced from time to time or, following the payment of any amount in satisfaction or partial satisfaction of a claim under any Bond, such lesser sum as shall be calculated by deducting from the sum inserted in the Bond the amount of any such payment.

Contract

Any written agreement between the Principal and the Beneficiary for the carrying out of works, the performance of services or the supply or provision of any goods.

Contractual Obligation

Any duty, obligation or requirement imposed by a clause, paragraph, section, term, condition, provision or stipulation contained in or forming part of a Contract or tender.

Default

Any breach, default or failure to perform any Contractual Obligation which shall give rise to a claim for performance, damages, compensation or other financial remedy by the Beneficiary and which is established pursuant to paragraph j of Article 7.

Expiry Date

Either (a) the date fixed or the date of the event on which the obligations of the Guarantor under the Bond are expressed to expire or (b) if no such date is stipulated, the date determined in accordance with Article 4.

Guarantor

Any Person who shall issue or execute a Bond on behalf of a Principal.

Maintenance Bond

A Bond to secure Contractual Obligations relating to the maintenance of works or goods following the physical completion or the provision thereof, pursuant to a Contract.

Performance Bond

A Bond to secure the performance of any Contract or Contractual Obligation.

Person

Any company, corporation, firm, association, body, individual or any legal entity whatsoever.

Principal

Any Person who (i) either (a) submits a tender for the purpose of entering into a Contract with the Beneficiary or (b) enters into a Contract with the Beneficiary and (ii) assumes primary liability for all Contractual Obligations thereunder.

Retention Bond

A Bond to secure the payment of any sum or sums paid or released to the Principal by the Beneficiary before the date for payment or release thereof contained in the Contract.

Tender Bond

A Bond in respect of a tender to secure the payment of any loss or damage suffered or incurred by the Beneficiary arising out of the failure by the Principal to enter into a Contract or provide a Performance Bond or other Bond pursuant to such tender.

Writing and Written

Shall include any authenticated tele-transmissions or tested electronic data interchange ("EDI") message equivalent thereto.

Article 3**Form of bond and liability of the guarantor to the beneficiary**

(a) The Bond should stipulate :

- (i) The Principal.
- (ii) The Beneficiary.
- (iii) The Guarantor.
- (iv) The Contract.
- (v) Where the Bond does not extend to the whole of the Contract, the precise Contractual Obligation or Obligations to which the Bond relates.
- (vi) The Bond Amount.
- (vii) Any provisions for the reduction of the Bond Amount.
- (viii) The date when the Bond becomes effective (defined in these rules as the "Effective Date").
- (ix) Whether the Guarantor shall be entitled at its option to perform or execute the Contract or any Contractual Obligation.
- (x) The Expiry Date.
- (xi) The names, addresses, telex and/or telefax numbers and contact references of the Beneficiary, the Guarantor and the Principal.
- (xii) Whether sub-paragraph i of Article 7j is to apply and the name of the third party to be nominated thereunder for the purpose of Article 7 below (claims procedure).
- (xiii) How disputes or differences between the Beneficiary, the Principal and the Guarantor in relation to the Bond are to be settled.

- (b) The liability of the Guarantor to the Beneficiary under the Bond is accessory to the liability of the Principal to the Beneficiary under the Contract and shall arise upon Default. The Contract is deemed to be incorporated into and form part of the Bond. The liability of the Guarantor shall not exceed the Bond Amount.
- (c) Save for any reduction of the Bond Amount under the terms of the Bond or the Contract and subject to Article 4, the liability of the Guarantor shall not be reduced or discharged by reason of any partial performance of the Contract or any Contractual Obligation.
- (d) All defences, remedies, cross claims, counter-claims and other rights or entitlements to relief which the Principal may have against the Beneficiary under the Contract, or which may otherwise be available to the Principal in respect of the subject matter thereof, shall be available to the Guarantor in respect of any Default in addition to and without limiting any defence under or arising out of the Bond.

Article 4

Release and discharge of guarantor

- (a) Subject to any contrary provision in the Bond and the provisions of paragraph b of this Article 4, the Expiry Date shall be six months from the latest date for the performance of the Contract or the relevant Contractual Obligations thereunder, as the case may be.
- (b) Subject to any contrary provision of the Bond, the Expiry Date for the purposes of an Advance Payment Bond, a Maintenance Bond, a Retention Bond and a Tender Bond shall be as follows:
 - (i) In the case of an Advance Payment Bond, the date on which the Principal shall have carried out works, supplied goods or services or otherwise performed Contractual Obligations having a value as certified or otherwise determined pursuant to the Contract equal to or exceeding the Bond Amount.
 - (ii) In the case of a Maintenance Bond, six months after either the date stipulated by the Contract or, if no date has been specified for the termination of the Principal's maintenance obligations, the last day of the applicable warranty period or defects liability period under the Contract.
 - (iii) In the case of a Retention Bond, six months after the date stipulated by the Contract for the payment, repayment or release of any retention monies.
 - (iv) In the case of a Tender Bond, six months after the latest date set out in the tender documents or conditions for the submission of tenders.
- (c) Where the Expiry Date falls on a day which is not a Business Day, the Expiry Date shall be the first following Business Day. For the purpose of these Rules "Business Day" shall mean any day on which the offices of the Guarantor shall ordinarily be open for business.
- (d) A Bond shall terminate and, without prejudice to any term, provision, agreement or stipulation of the Bond, any other agreement or the Applicable Law providing for earlier release or discharge, the liability of the Guarantor shall be discharged absolutely and the Guarantor shall be released upon the Expiry Date whether or not the Bond shall be returned to the Guarantor, save in respect of any claim served in accordance with Article 7.

- (e) Notwithstanding the provisions of paragraph d of this Article 4, the Bond may be cancelled at any time by the return of the Bond itself to the Guarantor or by the service upon and delivery or transmission to the Guarantor of a release in writing duly signed by an authorised representative of the Beneficiary, whether or not accompanied by the Bond and/or any amendment or amendments thereto.
- (f) The Guarantor shall promptly inform the Principal of any payment made under or pursuant to the Bond and of the cancellation, release or discharge thereof or any reduction in the Bond Amount where the same shall not already have been communicated.

Article 5

Return of the bond

The Bond shall immediately after release or discharge under these Rules be returned to the Guarantor, and the retention or possession of the Bond following such release or discharge shall not of itself operate to confer any right or entitlement thereunder upon the Beneficiary.

Article 6

Amendments and variations to and of the contract and the bond and extensions of time

- (a) The Bond shall, subject to the Bond Amount and the Expiry Date, apply to the Contract as amended or varied by the Principal and the Beneficiary from time to time.
- (b) A Tender Bond shall be valid only in respect of the works and contract particulars set out or described in the tender documents at the Effective Date, and shall not apply beyond the Expiry Date or in any case where there shall be any substantial or material variation of or amendment to the original tender after the Effective Date, unless the Guarantor shall confirm, in the same manner as set out in paragraph c of this Article 6, that the Tender Bond so applies or the Expiry Date has been extended.
- (c) Any amendment to a Bond, including without limitation the increase of the Bond Amount or the alteration of the Expiry Date, shall be in writing duly signed or executed by authorised representatives of each of the Beneficiary, the Principal and the Guarantor.

Article 7

Submission of claims and claims procedure

- (a) A claim under a Bond shall be in writing and shall be served upon the Guarantor on or before the Expiry Date and by no later than the close of the Business Day at the Guarantor's principal place of business set out in the Bond, on the Expiry Date.
- (b) A claim submitted by authenticated tele-transmission, EDI, telex or other means of telefax facsimile or electronic transmission shall be deemed to be received on the arrival of such transmission.

- (c) A claim delivered to the Guarantor's principal place of business set out in the Bond shall, subject to proof of delivery, be deemed to be served on the date of such delivery.
- (d) A claim served or transmitted by post shall, subject to satisfactory proof of delivery by the Beneficiary, be deemed to be served upon actual receipt thereof by the Guarantor.
- (e) The Beneficiary shall, when giving notice of any claim by telefax or other tele-transmission or EDI, also send a copy of such claim by post.
- (f) Any claim shall state brief details of the Contract to identify the same, state that there has been a breach or default and set out the circumstances of such breach or default and any request for payment, performance or execution.
- (g) Upon receipt of a claim from the Beneficiary, the Guarantor shall send notice in writing to the Principal of such claim as soon as reasonably practicable and before either (a) making any payment in satisfaction or partial satisfaction of the same or (b) performing the Contract or any part thereof pursuant to a Contractual Obligation.
- (h) The Beneficiary shall, upon written request by the Guarantor, supply to the Guarantor such further information as the Guarantor may reasonably request to enable it to consider the claim, and shall provide copies of any correspondence or other documents relating to the Contract or the performance of any Contractual Obligations and allow the Guarantor, its employees, agents or representatives to inspect any works, goods or services carried out or supplied by the Principal.
- (i) A claim shall not be honoured unless
 - (i) A Default has occurred ; and
 - (ii) The claim has been made and served in accordance with the provisions of paragraphs a-f of Article 7 on or before the Expiry Date.
- (j) Notwithstanding any dispute or difference between the Principal and the Beneficiary in relation to the performance of the Contract or any Contractual Obligation, a Default shall be deemed to be established for the purposes of these Rules :
 - (i) upon issue of a certificate of Default by a third party (who may without limitation be an independent architect or engineer or a Pre-Arbitral referee of the ICC) if the Bond so provides and the service of such certificate or a certified copy thereof upon the Guarantor, or
 - (ii) if the Bond does not provide for the issue of a certificate by a third party, upon the issue of a certificate of Default by the Guarantor, or
 - (iii) by the final judgment, order or award of a court or tribunal of competent jurisdiction, and the issue of a certificate of Default under paragraph (i) or (ii) shall not restrict the rights of the parties to seek or require the determination of any dispute or difference arising under the Contract or the Bond or the review of any certificate of Default or payment made pursuant thereto by a court or tribunal of competent jurisdiction.
- (k) A copy of any certificate of Default issued under j (i) or (ii) shall be given by the Guarantor to the Principal and the Beneficiary forthwith.

- (l) The Guarantor shall consider any claim expeditiously and, if such claim is rejected, shall immediately give notice thereof to the Beneficiary by authenticated tele-transmission or other telefax, facsimile transmission, telex, cable or EDI, confirming the same by letter, setting out the grounds for such refusal including any defences or other matters raised under paragraph d of Article 3.

Article 8

Jurisdiction and settlement of disputes

- (a) The Applicable Law shall be the law of the country selected by the parties to govern the operation of the Bond and, in the absence of any express choice of law, shall be the law governing the Contract and any dispute or difference arising under these Rules in relation to a Bond shall be determined in accordance with the Applicable Law.
- (b) All disputes arising between the Beneficiary, the Principal and the Guarantor or any of them in relation to a Bond governed by these Rules shall, unless otherwise agreed, be finally settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.
- (c) If the Bond shall exclude the operation of the arbitration provisions of this Article 8, any dispute between the parties to the Bond shall be determined by the courts of the country nominated in the Bond, or, if there is no such nomination, the competent court of the Guarantor's principal place of business or, at the option of the Beneficiary, the competent court of the country in which the branch of the Guarantor which issued the Bond is situated.

* * *