

Key Issues on Demand Guarantees

Introduction

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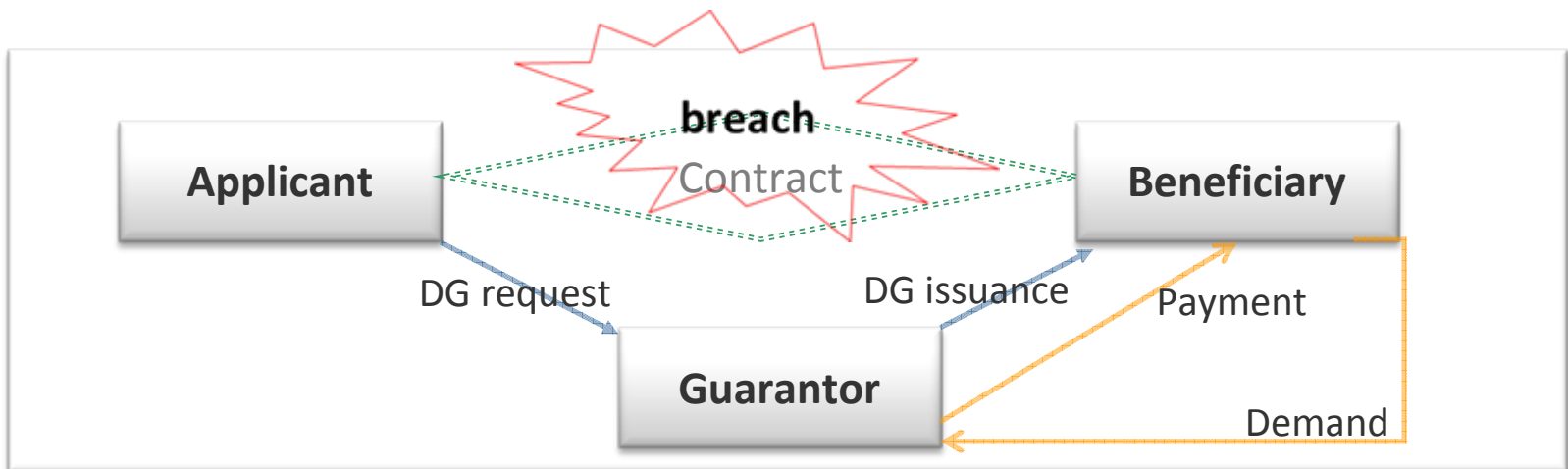
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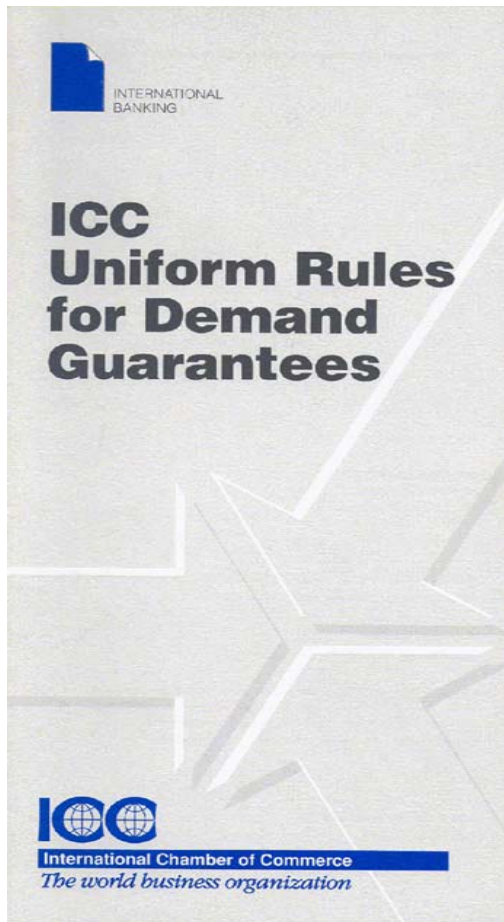
Demand Guarantee (DG), often known as First Demand Guarantee, has many similarities with the Letter of Credit (LC). It is:

- issued by Guarantor (usually a bank), on behalf of applicant and assuming his responsibility, to pay to beneficiary under a complying demand;
- an independent and irrevocable payment undertaking (however, in DG, represents, most of the times, a secondary payment undertaking);
- separate from the underlying contract obligations (opposed to the concept of Contract Guarantees/Bonds).



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The “old” URDG 458, published in 1992, was the first successful attempt to create rules for Demand Guarantees



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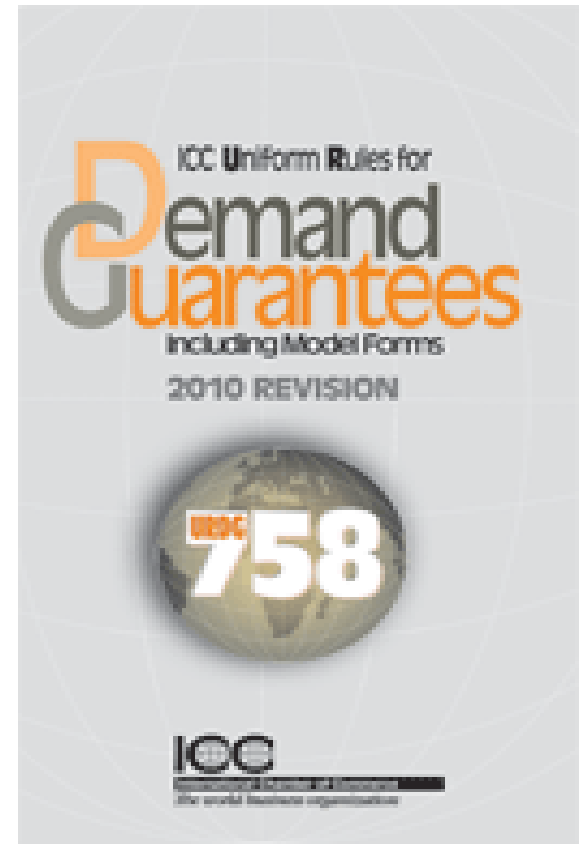
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However, over the years, improvement and innovation became necessary.

So, in 2010 the “new” URDG 758, including Model Forms, were published.

More:

- accurate;
- efficient;
- understandable;
- ...



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Despite the publication of the URDG and unlike the LCs, DGs are often issued without being subject to the Uniform Rules but only to local laws;

Anyway, the URDG, if applicable, and despite representing banking practice and not law, rarely come in conflict with local laws and/or are overruled by those laws.

If URDG are applied, and under complying demands, payments must be effected and any conflict must be resolved between the applicant and the beneficiary under the underlying contract.

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- Portuguese law has no legislation for DGs, however, are considered in the jurisprudence and doctrine (as in LCs court injunctions may be issued);
- in Portugal and taking CGD example, approx. 45% of the DG are issued under the URDG and the remaining under the Portuguese Legislation;
- on the other hand, approx. 75% of the received DG are subject to the URDG 758.

The application of 758 URDG to the Demand Guarantees should be encouraged and during this panel we will understand why.

Thank you



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