

## Bank Guarantee To Secure Payment Default In Commercial Transaction

The role of Bank Guarantee (*Bank Garansi*) is as a guarantor of a commercial transaction between the contracting parties. If one of the contracting parties, who provide the guarantee, does not carry out its obligations or defaults on the other party, the Bank will pay the guarantee to the beneficiary of the guarantee.

The main legal basis of Bank Guarantee is regulated under Article 1820 until Article 1850 of the Indonesian Civil Code ("ICC"), whereby the type of agreement between the contracting parties and the bank is basically a Guarantee Agreement or Perjanjian Penanggungan or "*borgtocht*".

Article 1 paragraph (3) of the Decree of the Board of Directors of Bank Indonesia Number 23/88/KEP/DIR dated March 18, 1991 ("**SKDBI 23/1991**") provides the definition of Bank Guarantee i.e. "*A guarantee in the form of a bond issued by a bank that results in an obligation to pay to the party receiving the guarantee if the guaranteed party defaults*". Meanwhile, Standby Letter of Credit, which has the similar characteristic of guarantee like Bank Guarantee, is commonly used for any international transaction or any transaction involving foreign bank or entity.

To ensure the Bank Guarantee is issued legally, Article 2 of SKDBI 23/1991 stipulates some terms and conditions to be fulfilled i.e.:

- a. title "Bank Garansi or "Garansi Bank".
- b. Name and address of the guaranteeing bank.
- c. Date of issuance of Bank Guarantee.
- d. Transactions between the guaranteed party and the recipient of the guarantee.
- e. The amount of money guaranteed by the bank.
- f. The date of the validity and expiration date of the Bank Guarantee. It is commonly valid for 12 months.
- g. Affirmation of the deadline for filing a claim. The guarantee recipient may claim the guarantee after the default occurs.

Banks can provide guarantees in rupiah or foreign currencies with the condition that credit receipts from abroad can only be made a maximum of 20% of the capital. Then in the granting of the guarantee, the Bank must hold an assessment of the track record and reputation of the guaranteed party. Other

### LEGAL ARTICLE



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requirements to be considered is the provision of guarantees must comply to the provisions of the Maximum Credit Limit (*Batas Maksimum Pemberian Kredit - BPMK*) and the Minimum Capital Fulfillment Obligation (*Kewajiban Pemenuhan Modal Minimum - KPPM*) as further regulated under OJK Regulations.

In general, Bank Guarantees are issued without any collateral from the applicant, but the Bank may require goods or material collateral from the applicant if the value of the bank guarantee is considerably high. An assessment will thoroughly be carried out by the Bank on the applicant's financial statements and if in a loss situation, the Bank will certainly reject the application.

Further, Bank would also normally waive the provisions of Article 1831 and Article 1832 of the ICC, whereby Bank release its privilege rights to seize and sell the guaranteed party, provided that such party pay some collateral in cash and up front as well as provide collaterals such as house, land, cars or other movable or immovable assets. The amount of collateral would not be lower than the amount of bank guarantee.

Any bank has different type of Bank Guarantee that can be tailored to its needs, however in general, types of Bank Guarantee are as follow:

1. Bid Guarantee (*Garansi Penawaran*), guarantee for participating in bidding or tender scheme.
2. Performance Guarantee (*Garansi Pelaksanaan*), guarantee for securing construction materials and performance.
3. Advance Payment Guarantee (*Garansi Uang Muka*), guarantee for the performance of a contract, such as sale of goods or a construction contract.
4. Payment Guarantee (*Garansi Pembayaran*), guarantee for the payment of commercial transaction such as sale and purchase of goods.
5. Retention Guarantee (*Garansi Pemeliharaan*), to ensure certain party to keep fulfilling the payment commitment after giving advance payment.

In addition to provide a guarantee function for businesses on their transactions, the Bank will also get the benefit such as provisions, administrative fees and interest charged. Thus, the Bank Guarantee is a profitable and beneficial product for all related parties. From the guarantee recipient's perspective, this instrument would reduce the risk of payment default by the contractor or the buyer and the potential dispute between the contracting parties.

Unlike other common Letter of Credit, Bank Guarantee is set to secure the payment default in a commercial transaction, whereby the Bank shall pay the agreed contractual price between the contracting parties, to the guarantee recipient.

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