Demand Guarantees
Regulation Issues

1. Art 55 of BRRD
2. Basel IV
3. Effect of new sanctions on pending Guarantees: case

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1. Art 55 of BRRD (“bail-in” clause)

BRRD= Bank Resolution and Recovery Directive= EU-Directive (in force in whole EU but now under review) which tries to put the burden of rescueing a failing bank on the shoulders of all creditors & shareholders.

If EU bank comes in trouble the management is replaced by the SRB (Single Resolution Board) which may take all measures incl curtailing or postponing debts. EU-creditors can not avoid this but non-EU creditors are not subject to EU-law => EU imposes EU-banks to insert in all bank-liabilities to non-EU creditors a “bail-in” clause which implies that such creditors have to accept that the SRB can curtail or postpone their rights.

Art 55 of BRRD (“bail-in” clause

- This duty is imposed on ALL liabilities (except deposits) hence also all TF liabilities like outgoing BG, SBLC, Import LC, aval (always if subject to non EU-law)= far reaching !
- As non-EU creditors won’t like such bail-in clause the EU-banks and their customers would come in a weak position compared to non-EU competitors. It would create disputes, delays, missed tenders etc. E.g.bid bond ifo Suez Canal Authority….
- You should insert a bail-in clause in every BG subject to non-EU-law ! However, only few banks comply.

Art 55 of BRRD ("bail-in clause")

- ➔ ICC created a "advocay" WG which informs since 3 years all EU-levels of these unintended consequences of BRRD. Mixed results
- Decision taking process within EU is extremely complicated and slow; combination of compromises lead to unclear or unworkable proposals
- After much efforts the compromise is that EU-banks should request a waiver for art55 by proving it's impractical, not accepted by creditors, unlawful etc and volume of such waived liabilities< 15% of all liabilities

2. Basel IV (CRD) wrt Guarantees

- General: Basel IV curtails the effects of IRB models developed by banks themselves => going back into time… For big banks will the capital requirement increase.
- Basel IV guidelines are now converted into EU Directive CRD
- Basel IV introduced several criteria / minimum levels for liquidity on ST (Liquidity ratios), stable funding on LT (Net Stable Funding ratio) and Leverage Ratios; not only on "on-balance" but now also on "off-balance" contigent liabilities such as Issued L/Cs, outgoing BG or SBLC, confirmation ELC…
- Proposal of EP for Required Stable Funding for TF is as follows:

2. Basel IV (CRD)

Maturity	< 6 months	Between 6 & 12 months	> 12 months
Letters of Credit (L/C)	5%	7.5% - 10%	10%- 15%
Guarantees (GTE)	5%	7.5% -10%	10% - 15%
Export Confirmations	5%	7.5% - 10%	10% - 15%

Basel IV (CRD): stable funding ratios for TF off balance liabilities

- In nearly all countries this is lower (0% to max 5%) than ep proposal and without distinction of maturity => handicap for EU-banks
- In reality: only small % of BG is ever claimed; part is rejected, part is recovered from applicant = net funding requirement = much lower than 5% !
- Today no problem as EU-banks are liquid but this can change rapidly (cfr crisis 2008)
- Our ICC WG is pleading for 5% irrespective of tenor

Regulations: effect of new sanctions on pending BG

- Principles : see previous presentation on sanctions
- However, specific issue for BG's ifo sanctioned parties is how to cope with "extend or pay" demands
- E.g. Commercial Bank of Syria: all our counter-guarantees issued before D are subject to Syrian law and Courts. After sanctioning that bank they lodged: "extend or pay". After discussions with our competent authority we did not get license to extend => what should we do? Is EU sanction applicable ? Are we still bound? May we discharge our applicant?

Regulations: effect of new sanctions on pending BG. Case study.

- We issued a counter-BG ifo a Syrian bank, subsidiary of a Libanese bank for their issuing a BG ifo Syrian Petroleum.
- On D the beneficiary Syrian Petroleum became sanctioned by EU, but not the Syrian bank.
- After some time the BG was claimed by Syrian Petroleum and paid by the Syrian bank (as EU sanction is not applicable in Syria). Syrian bank validly appeals on our BG
- If we would honour our counter-guarantee we would **indirectly** pay to Syrian Petroleum
- How would you solve such situation ?