



**Security in Hull and Machinery Insurance**  
**by Capt.P. Zahalka**

Clause 24 of the DTV-Kaskoklauseln reads as follows:

If the assured is under obligation to provide security for an insured loss, or if the provision of security for such a loss is necessary in order to prevent impending arrest, Underwriters will undertake to issue a guarantee in accordance with the conditions of the policy or to pay the required amount to be deposited.

This clause 24 comprises a clarification and a amplification to § 36 ADS (Allgemeine Deutsche Seeversicherungsbedingungen)

**§ 36 Loss inflicted by legal procedures**

Underwriters are not liable for losses caused by legal decisions or by the enforcement thereof unless they are liable under the insurance terms for the claim against the Assured which was the object of the legal procedure.

For better understanding I quote a part of the comment by Dr. H. J. Enge from his book "Erläuterungen zu den DTV-Kaskoklauseln 1978".

1. Clause 24 obligates the Underwriter to the absorption of particular expenditures of the Assured, which are serving for the prevention of an assumed consequential damage. The precondition however is the commitment of the Assured to render a deposit for a claim, insured in the hull and machinery insurance. As a rule this will follow from legal requirements.
2. The commitment of the Assured will in practice particularly bear on events, which have excited third party claims against the Assured.
3. In these cases, the underwriter assumes a guarantee. If there are multiple underwriters involved, the leading Underwriter may submit this guarantee alone. In individual cases the form of the guarantee will be determined by the applicable national or international, procedural or material legal basis or which form of guarantee may be regarded as necessary.

In practice demands for guarantees will stem from:

a) Salvage cases

After completion of salvage work, particularly if the service has been carried out on the basis of "no cure – no pay" (e.g. Lloyd's open Form) and was successful, the salvor will demand a guarantee, which safeguards the payment of the services provided by him (here also clause 36 of the DTV-Kaskoklauseln is of importance).

b) Third party claims

These are normally collision cases with other ships or with fixed or floating objects. The owner of the damaged object will demand a sufficient guarantee, which secures the costs of the repairs of the suffered damages sufficiently.

**Salvage cases:**

If a salvage has been completed successfully on the basis of a "no cure – no pay" contract, the salvor has an acquired demand for an adequate remuneration. The amount of the remuneration has to be established according to the guidelines of article 13 of the "International Convention On Salvage 1989". Because this process may take some time and the owner of the salvaged vessel will want to bring the vessel back into service without delay, he has an obligation towards the salvor to provide sufficient security. If the owner of the vessel is hull insured subject to German conditions, the German underwriter has to provide the respective security (see above). After the receipt of the deposit or guarantee, the salvor will, relatively serene, look forward to the further development. Should – for whatever reasons – the owner not be able to pay the remuneration, he has ever the possibility to enforce his title into the guarantee. The form of the security to be provided is variable and can be agreed between the parties freely. Has a LoF been agreed and the salvor is not willing to accept security provided by the German leading underwriter, a guarantee of an acceptable bonding company, being registered in the UK, has to be deposited at Lloyd's of London. With the consent of the salvor a Letter of Guarantee issued by the German underwriter will suffice. Normally the guarantee text will be the recommended wording of the ISU (International Salvage Union):

Salvage Guarantee Form I.S.U.1

SALVAGE GUARANTEE FORM I.S.U.1

To:

Dear Sirs,

" ..... " Salvage  
Lloyd's Standard Form of Salvage Agreement dated .....

1. In consideration of your refraining from calling for the completion of security by means of a Guarantee in the form prescribed by the Council of Lloyd's in connection with your claim for remuneration in respect of salvage services rendered to the "....." under the terms of Lloyd's Standard Form of Salvage Agreement "No Cure-No Pay" dated....., we hereby undertake to pay to you on demand any sum or sums, together with interest and costs which may be agreed between you and the Owners of the salvaged property in respect of which this undertaking is given or which may be awarded to you in respect of the said salvaged property by an Arbitrator or Appeal Arbitrator appointed by the Council of Lloyd's under the terms of the said Lloyd's Standard Form of Salvage Agreement "No Cure-No Pay".

2. In the event of an amicable settlement being reached, and in the absence of any agreement as to date of payment and interest accruing thereafter, it is hereby agreed that payment of the settlement monies will be effected within 28 calendar days after the date of such settlement and, in the event of non-payment within that period, we undertake to pay, in addition to the principal sum, interest thereon at the rate of UK Base Rate plus 2 percent per annum from and including the day after the due date for payment specified above until and including the date upon which payment is received and credited for value to your account with ..... Bank, at.....

3. Any monies paid by the undersigned hereunder shall be deemed to have been paid by the undersigned as surety for the party or parties by whom your remuneration shall be payable, provided that, notwithstanding anything hereinbefore contained, the liability of the undersigned as between the undersigned on the one hand and you on the other hand shall be that of a principal debtor and the undersigned shall not be released by time being given or other indulgence shown to the party or parties hereby guaranteed or by any other act, matter or thing whereby the undersigned, if liable as a surety only, would or might have been released.

4. This undertaking shall be governed by and construed in accordance with English Law and we undertake, when called upon to do so, to give irrevocable instructions to English Solicitors to accept service of proceedings issued on your behalf against us in relation to this undertaking

5. Provided always that our liability under this guarantee shall not exceed the sum of US\$ (or applicable currency) ..... inclusive of interest and costs.

6. This undertaking is given in respect of.....

Signed this..... day of ..... 20.....

Authorised signatory of.....

or on the basis of a Lloyd's Guarantee Form:



For a Single Guarantor

**GUARANTEE TO THE COUNCIL OF LLOYD'S AND TO THE CONTRACTORS**

In connection with a

**SALVAGE AGREEMENT ON LLOYD'S FORM**

1. Name of Vessel	
2. Date of Salvage Agreement	(the "Agreement")
3. Remuneration to which this Guarantee relates	Salvage*/Special Compensation under Convention Article 14* * delete as applicable
4. Total liability not to exceed	

Property to which this guarantee relates ("The Property"):

continue overleaf if necessary

In consideration of the Contractors refraining from arresting the property or taking any other action to secure their claim under the Agreement against the property WE, the undersigned guarantors

Name and Addresses of Guarantor	
---------------------------------	--

hereby guarantee the due payment of all sums payable by the owners of the property ("the owners") to the Council of Lloyd's ("the Council") and/or the Contractors in accordance with any arbitration award or appeal award made pursuant to the Agreement, any settlement agreement made between the owners and the Contractors relating to the claim or which may otherwise be due from the owners under the Agreement.

Provided always that our total liability hereunder inclusive of any liability for costs expenses and interest shall in no event exceed in aggregate the amount stated in box 4 above.

Subject as aforesaid we also agree that:

- 1 we shall pay on demand all sums so payable as if we were the principal debtor and a letter of demand signed by any person authorised by the Council specifying the sums to be paid shall be conclusive evidence of the sums so payable by the owners;
- 2 payment will be effected in the currency or currencies in which the owners obligations ought to have been or ought to be discharged;
- 3 this guarantee shall not be affected by any time or other indulgence given to the owners;
- 4 in the event that the total of the sums payable by the owners as aforesaid exceeds the limit stated in box 4 any sum paid by us hereunder shall first be appropriated to discharge the owners liabilities to the Council in respect of fees and expenses including any interest due thereon;
- 5 this guarantee may be enforced in the name of The Corporation of Lloyd's or the Contractors or in their joint names;
- 6 this guarantee shall be governed by and construed according to English law and the courts of England shall have exclusive jurisdiction to adjudicate on any and all claims directly or indirectly relating to this guarantee.

The ..... day of ..... 20 .....

### Third Party Liability

Generally third party liability will be incurred, where damage has been caused culpably to a third party by a collision. The claimant in such a case has a claim for compensation based on legal liability.

Negotiations and/or legal proceedings resulting from such events may be time consuming. Therefore an arrest of the relevant vessel - or as the case may be - of both vessels has to be avoided and guarantees have to be issued and exchanged.

Indeed the demand for a guarantee is directed against the vessel and its owner, the Assured. However because of the policy of insurance, the hull and machinery underwriter will be the executing body

For this area various options of security are conceivable:

Guarantee forms:

- Letter of Undertaking
- Bonds
- Bank Guarantee
- Cash depot

Which guarantee form will be implemented, depends among other things, on the following circumstances:

- 1) Demand of the opponent
- 2) Public profile of the leading insurer
- 3) Creditworthiness / Rating of the leading insurer

In the most simple case the safety desire of a beneficiary will be satisfied with a letter of undertaking (LoU)

A LoU is a written undertaking for payment by the leading hull insurer for the case, that either by way of a court judgement or an amicable agreement, settlement in respect of the amount of indemnity has been reached.

The issuance of such a letter of undertaking is an easy and a hardly time-consuming method for providing security. When understanding has been gained about the amount and the wording of the letter of undertaking (also LoG – Letter of Guarantee or LoI – Letter of Indemnity), the leading insurer will issue the letter for 100% of the amount claimed. Subject to the amount of security, the leading insurer reserves its right to collect internally counter guarantees from all national and international insurer, participating in the policy. Generally there will be no costs.

Such a letter of undertaking can look as follows.

ASG 1

CITY OF LONDON ADMIRALTY SOLICITORS GROUP - STANDARD WORDINGS

ASG 1

City of London Admiralty Solicitors Group

ASG COLLISION UNDERTAKING

To: The owners of the ["AAA"]

c/o Messrs. [X & Co.]

["AAA"] - Collision with ["BBB"] [7 May 2000]

IN CONSIDERATION of your releasing and/or refraining from arresting, or otherwise detaining, or re-arresting at any time hereafter the ["BBB"] or any other vessel or property in the same or associated ownership, management, possession or control for the purpose of obtaining security in respect of your claim arising out of the above collision we hereby undertake to pay you on demand such sum or sums as may be due to you from the owners of the ["BBB"] in respect of your said claim either by agreement between the parties or by final unappealable judgment of the English Courts provided always that our liability hereunder inclusive of interest and costs shall not exceed the sum of [figures and words].

This undertaking shall be governed by English law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the English Courts.

Signed .....

Dated this [ ] day of [ ] 20[ ]

CITY OF LONDON ADMIRALTY SOLICITORS GROUP - STANDARD WORDINGS

**NOTES TO ASG 1  
COLLISION UNDERTAKING**

1. This undertaking (which in many cases will be given by the P&I or hull and machinery underwriters of the vessels involved in the collision) provides security to the recipient in respect of its claims arising from the collision. The form has been designed to be used in conjunction with the ASG Collision Jurisdiction Agreement (ASG 2).
2. Whereas ASG 2 is designed as an agreement between the respective shipowners (usually signed on their behalf by solicitors), ASG 1 is a guarantee given on behalf of one of those shipowners by a third party to the other shipowner.
3. The intention is that ASG 2 is a flexible document capable of easy adaptation to suit the circumstances of a particular case, whereas ASG 1 should not need adaptation.
4. Attention is drawn to the fact that the stated consideration for provision of security has been extended. The beneficiary of the guarantee now agrees to refrain not only from arresting but also from re-arresting. This change arises from 1999 Civil Procedure Rules which by Part 6.7(3) now gives the claimant the right to re-arrest should his original security prove to be insufficient. If the words in parenthesis dealing with re-arrest are not deleted, the claimant may forfeit the right to re-arrest.

Reviewed 02/07

1

The text shown above is a recommendation of the "City of London Admiralty Solicitors Group" which found a broad acceptance in practice.

It must be pointed out, that the "ASG 1 wording" in the present form was composed for the concurrent appliance of the "ASG 2 Jurisdiction Agreement". A "Jurisdiction Agreement" is

necessary in order to establish definitely and unambiguously the law applicable for the collision proceedings.

This agreement reads as follows:

CITY OF LONDON ADMIRALTY SOLICITORS GROUP - STANDARD WORDINGS

ASG 2

City of London Admiralty Solicitors Group

ASG COLLISION JURISDICTION AGREEMENT

["AAA"] Collision with ["BBB"] [7 May 2000]

IT IS HEREBY AGREED between the owners of the above vessels as follows:-

- A. The claim of each party, including the question of limitation of liability, shall be determined exclusively by the English Courts in accordance with English law and practice.
- B. The undersigned will accept service of the other party's proceedings (including any limitation proceedings) on behalf of their respective clients/principals.
- C. Each party will provide security in respect of the other's claim in a form reasonably satisfactory to the other. [Each party agrees to waive its right to re-arrest granted under any statutory enactment of the Arrest Convention 1999.]
- D. The owners of the ["AAA"] hereby warrant that the registered owners of the ["AAA"] at the time of the collision were [insert owners name] of [insert owners registered address] and that the ["AAA"] was not demise chartered out at such time.
- E. The owners of the ["BBB"] hereby warrant that the registered owners of the ["BBB"] at the time of the collision were [insert owners name] of [insert owners registered address] and that the ["BBB"] was not demise chartered out at such time.
- F. This agreement shall be governed by English law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the English Courts.

Signed ..... Signed .....  
 Solicitors Solicitors  
 For and on behalf of the owners of ["AAA"] For and on behalf of the owners of ["BBB"]

Dated this [ ] day of [ ] 20[ ].

CITY OF LONDON ADMIRALTY SOLICITORS GROUP - STANDARD WORDINGS

**NOTES TO ASG 2  
COLLISION JURISDICTION AGREEMENT**

1. This agreement is intended to allow claims arising from a collision to be dealt with by the English High Court by reference to English law, which thus excludes English private international law. In practice such claims will be dealt with by the Admiralty Court which is a specialist court which forms part of the High Court.
2. ASG 2 is designed to be adapted to the particular circumstances of the case: see notes to ASG 1.
3. Normally the form of the security which will be provided in accordance with paragraph C. of this agreement will be an undertaking in the form of the ASG Collision Undertaking (ASG 1).
4. The second sentence of paragraph C is new and should be carefully considered. See Note 4 to the Notes to ASG1.
5. It is important when using this form (as with many of the ASG forms) to ensure that the names inserted as the registered owners of the vessels involved are correct. This may require careful investigation where the vessels have been chartered or where they have changed ownership between the date of the collision and the date on which the undertaking is given.

The following example shows a guarantee text which applies in practice also. A "Jurisdiction Agreement" isn't necessary here, because in the wording it is stipulated clearly that for both cases, the guarantee as such and the collision, a definite understanding has been reached with regard to jurisdiction.

**COLLISION UNDERTAKING**

To: The Owners of the

Dear Sirs,

S.S./M.V. ....  
Collision with .....  
Place .....  
Date .....

In consideration of your releasing and/or refraining from arresting or otherwise detaining the

(A) \_\_\_\_\_

or any other vessel or property in the same or associated ownership, management, possession or control for the purpose of obtaining security in respect of your claim arising from the above collision, we hereby undertake to pay you on demand such sum or sums as may be due to you from the owners of the

(A) \_\_\_\_\_

in respect of your said claim either by agreement between the parties or by final and unappealable judgement of a competent Court provided always that our liability hereunder inclusive of interest and costs shall not exceed the sum of

(B) \_\_\_\_\_

(say in words \_\_\_\_\_)

This undertaking and this collision case shall be governed by (C) \_\_\_\_\_ law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the (C) \_\_\_\_\_ Courts.

The right of the owners of the

(A) \_\_\_\_\_

to limit their liability is not prejudiced, also this undertaking is not construed as any admission of liability.

Signed this .....day of ..... 200 ...

It succeeds not always, to arrange standard texts. Opposing lawyers in different international jurisdictions have their own ideas which have to be taken into account. However in most of the cases where an arrest of a vessel shall be avoided, or shall be released out of an arrest the opposing party will have the stronger arguments.

Has the opposing side doubt on the creditworthiness of the leading insurer, they will not accept the letter of undertaking. In such cases there is need for " other solutions" to be found. The next step on the escalation-ladder would be a Bond.

What is a "Bond"?

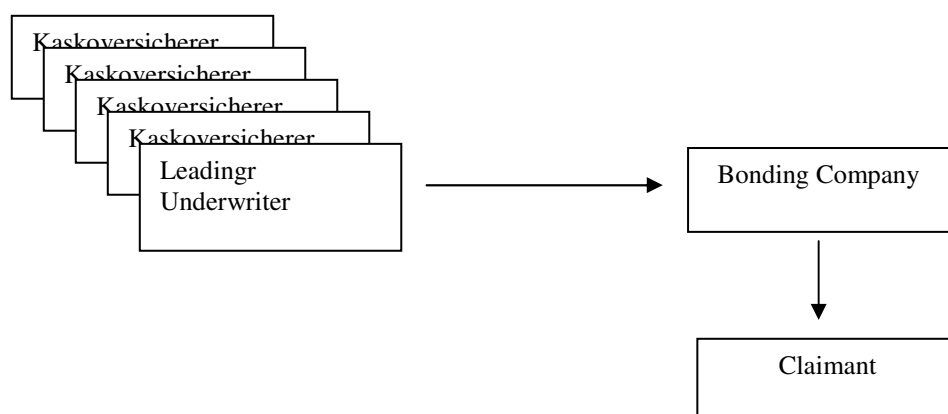
In our case, a Bond is a form of debenture of a company in favour of the claimant. A Bond will be issued by a "Bonding Company" for a certain fee. Such a company can be an insurance company, which is addressing this type of trade and which has to have an adequate good rating. In plain words a Bond is nothing else than a letter of undertaking, which the "Bonding Company" issued in favour of a claimant, after it got satisfactory countersecurity from the relevant hull insurer, the leading insurer or also the backguarantees from each and every insurer participating in the policy.

The "Bonding-Company" charges a fee for its services and this fee normally ranges between 1 and 1,5% p.a.

For this purpose a "Bonding Company", for example, is the internationally working insurance company ACE.

The ACE Group is one of the world's leading global commercial property insurance and reinsurance organizations ACE has operations in more than 50 countries and conducts business with clients from over 140 countries.

ACE has offices worldwide. For our purpose, in the past, we worked together with the office in London. For establishing the contact and clearing the formalities, the assistance of our London average agent has proven helpful.



We are seeing here a letter of undertaking of the Bonding Company ACE in favour of the claimant:



ace europe

ACE European Group Limited  
ACE Building  
100 Leadenhall Street  
London  
EC3A 3BP

+44 (0) 20 7173 7000 tel  
+44 (0) 20 7173 7600 fax  
www.aceintlv.com  
www.aceeurope.com

**ASG COLLISION UNDERTAKING**

To: Z Overseas Industrial Minerals SAE

c/o Messrs. C Solutions Ltd  
Gallery 4  
The Lloyds Building  
London  
EC3V 1LP

**"OXL SULTAN" - Collision with "IBN BATOUTA" 9 March 2009**

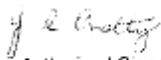
**IN CONSIDERATION** of your releasing and/or refraining from arresting, or otherwise detaining, or re-arresting at any time hereafter the "OXL SULTAN" or any other vessel or property in the same or associated ownership, management, possession or control of the owners and/or bareboat charterers of the "OXL SULTAN" for the purpose of obtaining security in respect of your claim arising out of the above collision we, Ace European Group Limited, hereby undertake to pay you on demand such sum or sums as may be due to you from the owners and/or bareboat charterers of the "OXL SULTAN" in respect of your said claim either by agreement between the parties or by final **unappealable** judgment of the English Courts **provided always** that our liability hereunder inclusive of interest and costs shall not exceed the sum of **US\$400,000** (US Dollars Four hundred thousand)

This letter of undertaking is given without prejudice to any and all legal rights or defences which the owners and/or bareboat charterers may have under the applicable statutes or rules of law.

This undertaking shall be governed by English law and any dispute arising hereunder shall be submitted to the exclusive jurisdiction of the English Courts.

Signed on behalf of ACE European Group Limited this 11<sup>th</sup> day of May 2009.

By:

  
Authorised Signatory



ACE Guarantee No: 48UK504226

In principle nothing else than a letter of undertaking, but issued by a company accepted by the claimant

and here we see the backguarantee or countersecurity of a German hull insurer for his share in the policy in favour of ACE.

**MINERVA**  
VERSICHERUNGS-AKTIENGESELLSCHAFT

*Rückbürgschaften*

MINERVA VAG - Postfach 10 61 47 - 28061 Bremen

*ACE ZOND*

*Lodung*

*lays on*

28199 Bremen  
Herrlichkeit 6  
Telefon: (04 21) 59 8 59-0  
Telefax: (04 21) 59 40 75  
e-mail: minerva@info.de  
Internet: www.minerva-vag.de

Bremer Landesbank  
(B.L.Z. 250 500 00)  
Kto. 1004 888 003

To: ACE European Group Limited

Ihre Zeichen

Ihre Nachricht

Unsere Zeichen / Telefon  
Edgar Skandera  
Tel.: 5 98 59 - 31

30. April 2009

Datum

**Guarantee**

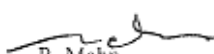
At the request of the Assured and in consideration of your executing and delivering a Guarantee to the owners of the cargo laden on the M/V "IBN BATOUTA" at the time of the collision in question to release or prevent the arrest of the M/V "OXL SULTAN" as a result of an alleged collision on 9<sup>th</sup> March 2009 in the Red Sea, we agree to indemnify you and hold you harmless in respect of any and all loss, damages, claims, costs and expenses which you may incur by reason of your having furnished the aforesaid Guarantee and we do further agree that we shall immediately pay you, upon your demand, the amount of any claim which you may receive under and by reason of having issued the aforesaid Guarantee.

Our aggregate liability in any event shall not exceed **USD 80.000** plus interest and charges.

This agreement shall be governed by English Law, and without prejudice to your right to institute proceedings in any other jurisdiction, the High Court of Justice in London shall have jurisdiction to hear and determine any action brought by you to enforce the provisions hereof. We will instruct English solicitors to accept service of any proceedings commenced by you against us in the High Court of Justice in London.

Bremen, 30<sup>th</sup> April 2009

**MINERVA**  
Versicherungs-Aktiengesellschaft

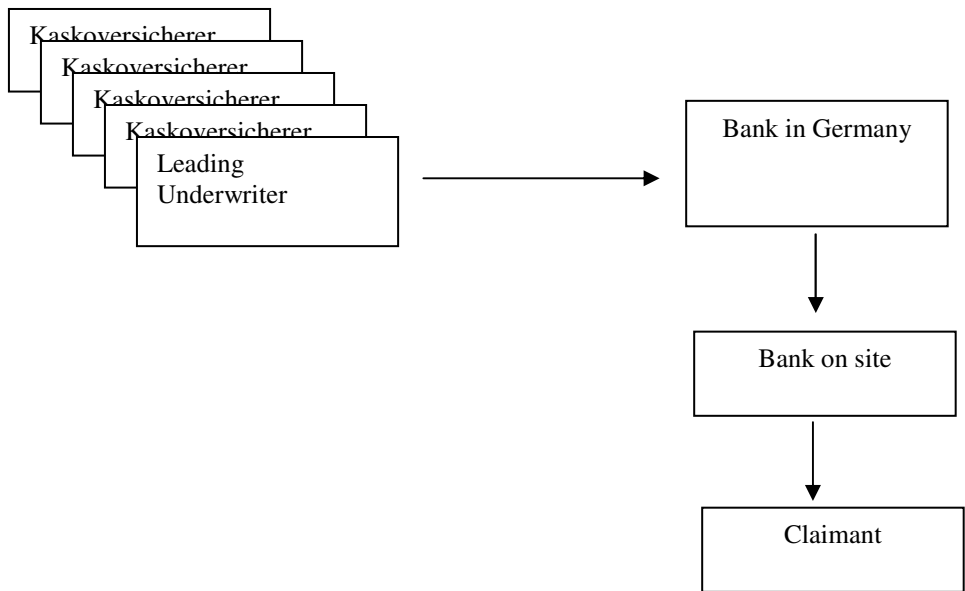
  
R. Mahn  
CEO

  
E. Skandera  
General Manager

**The Bank Guarantee**

In case also an ACE-Bond does not find acceptance and a reason for that to happen might be that the claimant insists on getting a security in his own legal domain into which he can execute at any given time, then a bank guarantee will be the right tool.

As the name suggests, it is the bank which deposits the guarantee, in fact a bank at the place of the event, thus in the jurisdiction of the claimant.



Because of the number of the participants to this procedure alone, it is comprehensible, that a high degree of adjustment is necessary between the parties, to exclude misunderstandings from the outset.

The purposes of the guarantee and the possible payment modalities have to be clear and for all comprehensibly described.

Aggravating comes by, that you have to be concerned with foreign banks and whose internal / local method of operation also takes influence on the form of such a bank guarantee.

Certainly it is not an easy task to get all this in line with the requirements of the claimant especially because the necessary correspondence will have to occur over different time zones.

On principle the guarantor, the hull insurer, always is in a weak position, as in most of the cases the ship of the assured will be already arrested in a port and certainly it will be expected

by the assured, that the hull insurers comply properly with their contractual obligation to issue such a guarantee as fast as possible, to get the ship out of the arrest.

Experience tells that arranging a bank guarantee is a time-consuming measure and a delay of the vessel will have to be accepted by the assured.

The costs for this kind of guarantee is higher, because there are two banks which will charge appropriate dues.

The following example shows the developing process of a bank guarantee, which became necessary for the demand of a salvage remuneration by a Turkish salvor.

After completion of the salvage work, the salvor demanded from the vessel, the cargo on board and the bunker a bank guarantee in the amount of 3.000.000,- US \$.

The wording of the guarantee requested by the salvor was as follows:

**Letter of Guarantee:**

**KIYI EMNIYETI GENEL MUDURLUGU**  
(GENERAL DIRECTORATE OF COASTAL  
SAFETY )

Address: Meclisi Mebusan Cad. No:14 Kat:5  
SALIPAZARI / ISTANBUL

**LETTER OF GUARANTEE**


In consideration of your releasing and refraining from arresting and/ or obtaining any precautionary attachments/ judgements over motor vessel SOUTHGATE with IMO No. 8129917 and/or any other assets owned by the Owners or Managers of the above vessel in respect of the salvage assistance performed by Kıyı Emniyeti Genel Müdürlüğü (General Directorate of Coastal Safety) on 25 December 2007 over SOUTHGATE with IMO No. 8129917 and her cargo and bunker on board and for freight our bank undertakes to pay an amount up to USD 3,000,000.- (threemillion US Dollars) together with the default interest over the highest interest rate applied by The Central Bank of Turkish Republic incurred from the date of the first demand from us to the date of payment as co-guarantor with Messrs Associated Bulk Carriers Ltd., Monrovia, Liberia as Owners of SOUTHGATE with IMO No. 8129917, upon presentation of the final judgement to be issued by the competent court of Turkey or the final award of arbitration tribunal condemning the Owners of the said vessel or upon presentation of amicable settlement of the dispute under which the Owners of the said vessel is liable to pay compensation, to be signed by the authorized persons of the parties.

This final letter of guarantee has been issued definitely and for an unlimited period of time.

Yours sincerely,

This wording was provided to the chosen German bank by the insurer. This bank, after it had agreed in principle to issue such a guarantee, established contact with a Turkish correspondent bank and requested them in turn to issue a guarantee in favour of the salvor on basis of the wording above.


Letter of the German bank to the insurer:

  
 Herrlichkeit 5-4  
 28199 Bremen  
 GERMANY

**COPY**

Bremen, 28. Dezember 2007

Ihre Referenz : m/v 

Sehr geehrter ,

wir danken Ihnen für Ihren heutigen Auftrag, den wir unter nachstehender DOK-Nummer und gemäß Anlagen ausgeführt haben.

Diesem Vertragsabschluss liegen, wie vereinbart, die Ihnen bekannten „Bedingungen für das Avalgeschäft“ zu Grunde, die im übrigen in jeder unserer Geschäftsstellen eingesehen werden können und Ihnen auf Wunsch nochmals zugesandt werden.

Ihr Schreiben vom : 28. Dezember 2007

Unsere Referenz : DOK-600983

Auftraggeber : Sie selbst

Avisierende Bank : Tekstil Bankasi A.S.  
 Buyukdere Cad No. 63  
 34398 Maslak,  
 Istanbul, TURKIYE

Begünstigter : KIYI EMNIYETI GENEL MUDURLUGU  
 General Direct. of Coastal Safety  
 Meclisi Mebusan Cad.No.14  
 Salıpezari / Istanbul TÜRKİE

Betrag : USD 3.000.000,00  
 DREI MILLIONEN UND 0/100

Gültig ab : 28. Dezember 2007

Kommissionen und Spesen :

Die Einbuchung nebst Belastung unserer Gebühren und Spesen erfolgt separat.

Bitte beachten Sie, dass die Garantie, aufgrund der Garantietextvorgaben, mit einer unbefristeten Rückhaftung herausgelegt wurde und somit erst nach Enthaltung der Auslandsbank aus Ihrem Obligo

Larpe + Schwartze KG, GERMANY

20. Dezember 2007

-2-

ausgebucht werden kann.

Wir gehen davon aus, dass für dieses Aval die für die Ausfuhr von Waren geltenden kriegswaffenkontrollrechtlichen bzw. außenwirtschaftlichen Bestimmungen gemäß Paragraph 5C AWV (Länderliste K), als auch die Boykott-Bestimmungen gemäß Paragraph 4A AWV eingehalten wurden.

Ferner verweisen wir auf eine eventuelle Meldepflicht gemäß AWV.

Erteilen Sie uns bitte Ihr Einverständnis mit dem Inhalt und Wortlaut der von uns ausgestellten Verpflichtung durch Rücksendung der rechtsgültig gegengezeichneten Kopie dieser Ausführungsanzeige und Kopie der Garantie.

Für eventuelle Rückfragen wenden Sie sich bitte direkt an:  
Ansgar Spils (Tel. 0421 / 3603 - 300 oder Fax 0421 / 3603 - 9300)

Mit freundlichen Grüßen

BANKHAUS NEEBMEYER  
Aktiengesellschaft

Request of the German bank to the Turkish correspondent bank, to issue a guarantee in the favour of the salvor. The Turkish bank will request from the German bank a counter guarantee in her favour at the same time:

28/12/07-13:22:11 HP4050DOK-3241-000008 8

----- Instance Type and Transmission -----  
 Notification (Transmission) of Original sent to SWIFT (ACK)  
 Network Delivery Status : Network Ack  
 Priority/Delivery : Normal  
 Message Input Reference : 1318 071228NEELDE22AXXX7886439428  
 ----- Message Header -----  
 Swift Input : FIN 760 Garantie  
 Sender : NEELDE22XXX  
 BANKHAUS NEELMEYER AG  
 BREMEN DE  
 Receiver : TEKTRISXXX  
 TEKSTIL BANKASI A.S.  
 ISTANBUL TR  
 MUR : CR-0272138011  
 ----- Message Text -----  
 27: Folge von Ingesamt  
 1/1  
 20: Referenz der Transaktion  
 DOK-600883  
 23: Zusätzliche Identifikation  
 REQUEST  
 30: Datum  
 071228  
 40C: Anwendbare Richtlinien  
 NONE  
 77C: Einzelheiten zu der Garantie  
 URGENT - URGENT - URGENT - URGENT - URGENT  
 ATTN.: MR. HALIT DOEVER / INTERN. RELATIONS GROUP OR  
 MR. FEYZI ERCIN  
 PLEASE ACT IMMEDIATELY. THANKS A LOT.  
 Dear Sirs,  
 We, hereby, request you to issue, under our full responsibility  
 and against our unconditional and irrevocable counter guarantee  
 with the above mentioned number a guarantee for USD 3.000.000,00  
 favouring below mentioned beneficiary as per following text.  
 Applicant :  
 Herrlichkeit 5-6  
 28199 Bremen  
 GERMANY  
 Beneficiary :  
 KIYI EMNIYETI GENEL MUDURLUGU  
 General Direct. of Coastal Safety  
 Meclisi Mebusan Cad.No.14  
 Salipazari / Istanbul TURKKEI  
 Reference : NONREF  
 Amount : USD 3.000.000,00  
 THREE MILLION AND 0/100  
 QUOTE  
 In consideration of your releasing and refraining from arresting  
 and/ or obtaining any precautionary attachments/ judgements over  
 motor vessel [redacted] and/or any other  
 assets owned by the Owners or Managers of the above vessel in  
 respect of the salvage assistance performed by Kiyi Emniyeti  
 Genel Mudurlugu (General Directorate of Coastal Safety) on 25  
 December 2007 over [redacted] and her cargo  
 and bunker on board and for freight our bank undertakes to pay  
 an amount up to USD 3.000.000.- (threemillion US Dollars)  
 together with the default interest over the highest interest rate  
 applied by the Central Bank of Turkish Republic incurred from the  
 date of the first demand from us to the date of payment as co-  
 guarantor with [redacted],  
 upon pre-  
 sentation of the final judgement to be issued by the competent  
 court of Turkey or the final award of arbitration tribunal con-  
 demning the Owners of the said vessel or upon presentation of  
 amicable settlement of the dispute under which the Owners of the  
 said vessel is liable to pay compensation, to be signed by the  
 authorized persons of the parties.  
 This final letter of guarantee has been issued definitely and for  
 an unlimited period of time.  
 Yours faithfully,  
 UNQUOTE

28/12/07-13:22:11

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## Additional conditions and counter guarantee:

- 1) We have learned that the guarantee has to be issued stating following paragraph:  
QUOTE  
This letter of guarantee has to be issued in accordance with the counter guarantee ref: ... dated ... of ... (NAME OF BANK, ADDRESS), which is on the approved banks list issued by the Turkish Republic Prime Ministry (Treasury and Foreign Undersecretary).  
UNQUOTE  
Please add the paragraph accordingly.
- 2) We hereby confirm that we will pay you immediately without any contestation upon receipt of your first claim for non-payment of documents at due date, established either in writing or by cable or telex/SWIFT at your sole option up to the sum of USD 3.000.000,00 this counter guarantee being in support of your guarantee.
- 3) Any payment made hereunder shall be made free and clear of and without deductions for or on account of any present or future taxes, levies, imposts, duties, charges, fees, deductions or withholding of any nature whatsoever and by whosoever imposed.
- 4) Our counter guarantee shall not be discharged or affected by any act or omission by us or any other circumstance which, but for this provision, would be discharged or affect our liability hereunder.
- 5) Our counter guarantee is unlimited in time unless we receive your final and unconditional release thereunder.
- 6) Our counter guarantee is governed by and shall be construed in accordance with the laws and regulations of Turkey.
- 7) We confirm that there are no restrictions for the issuance of this guarantee and for settlement of any claim made thereunder.
- 8) We further confirm that your original guarantee will be collected by applicant's law office by one of the following persons:
  - Ahmet Caglar Coskunsu
  - Burak Gokce Cevus
  - Hande Keskin
  - Meryem Ipeklioglu
  - Seda Yagci
  - Melisa Surucu

Please inform us which person of your bank has to be contacted by applicant's law to collect the original guarantee.

- 9) Cevus + Coskunsu Law Firm  
Siraselviler Caddesi  
No. 49 Kat 4 Daire 10  
Taksim Istanbul  
Phone: +90 212 2455602  
GSM: +90 532 3554851  
Fax: +90 212 2455604  
E-mail: caglar at cevus-coskunsu.com

is authorised to act for and on behalf of the applicant,  
Messrs. Lampe + Schwartz KG, Bremen, GERMANY.  
If any further details regarding the beneficiary are in need please contact Mr. Ahmet Caglar Coskunsu directly.

- 10) We hereby confirm that the original guarantee document has to be issued in Turkish. Please furnish us with two copies of an English translation for our files.

10) Your charges in this connection are for a/c of applicant.

Thank you for your kind assistance.

As a rule the German bank which has issued the guarantee in the first place will demand a respective security from its principal, the Hull and Machinery insurer. A Letter of Guarantee will suffice.

The business was transacted as planned. Once the salvor had obtained the bank guarantee, the vessel was released from the arrest and could continue its voyage. After completion of the settlement negotiation, the agreed salvage remuneration was paid and the salvor returned the original bank guarantee to the Turkish bank. The Turkish bank discharged the German bank from their counter-guarantee and after the settlement of all dues, the case was closed.

Next to formal requirements from the local law there are two issues, which often cause controversy between the parties:

1) The validity of the guarantee

As the claimant generally will not be in a position to estimate the time it will take to come to an agreement in respect of the payable remuneration he will insist on a timely unlimited validity of the guarantee. However Banks and Insurer prefer a timely limited validity in order to keep some “pressure on the kettle” and thus forcing the claimant to swift negotiations. Do not forget – bank guarantees are a costly commodity.

A solution might be to agree on a firm period, say one year as a starter, plus an option to extend the validity for similar periods of time if need be.

2) Conditions for payment

In this context different versions do exist, like in the example above.

*"....our bank undertakes to pay an amount up to US\$ 3.000.000,- together with the default interest over the highest interest rate applied by the Central Bank of Turkish Republic incurred from the date of the first demand from us to the date of payment, upon presentation of the final judgement to be issued by the competent court of Turkey or the final award of arbitration tribunal condemning the owners of the said vessel or upon presentation of amicable settlement of the dispute under which the owners of the said vessel is liable to pay compensation,....."*

This wording is customary and acceptable, as it clearly describes, when and under which circumstances payment is due.

In contrast it will be difficult with the following version:

*"Notwithstanding that the period of the bank guarantee or renewal or renewals thereof is due to expire and the repairs are not carried out the said bank shall without any demur or demand, action or objection, pay to ..... by demand draft or pay order the said amount of ..... And it is further declared that the bank guarantee given herein is an irrevocable one and shall not be revoked by any notice or otherwise."*

This wording clearly shows the irredeemable character of the bank guarantee, it further establishes the right of the claimant to insist on prompt payment of the guaranteed amount from the issuing bank without any notice and further explanation. One is committed to the good will of the claimant. This kind of agreement you will mostly encounter in countries with foreign legal system and one will by experience rarely see any remainders from the guaranteed amounts. One will also unfortunately not be able to defend oneself against such an agreement, as in most if not all of the cases the claimant, at that time of the negotiations, will have the vessel arrested and the assured will insist on the implementation of the conditions of the policy.

### **The Cashdepot**

In seldom cases the claimant demands instead of the bankguarantee a cash depot. At this, the hull insurer will deposit cash or stocks at a bank in a form, where neither the bank, nor the claimant is allowed, to command about it alone. There has to be an understanding between the parties how and when payment will be effected. These conditions will have to be announced to the depository.

In practice, the processing will be handled by the instructed bank in Germany in cooperation with their foreign correspondence bank. The formalities are close to those of a bank guarantee, however with the difference, that here cash and/or stocks are serving as guarantee in the claimant's jurisdiction.

From the view of the insurer this kind of deposit ranks on the very last position, because here real funds are getting locked up.

### **How will the amount of a guarantee be calculated ?**

The following procedure is accepted in practice:

- 1) Estimated expenditure on repair including all accessory charges
- 2) Estimated loss of income
- 3) Surcharge of ca. 30% up to 50% on pos. 1 and 2
- 4) Estimated lawyer- and court fees/costs
- 5) Interest at a market interest rate (e.g. 2 years)

Guarantees are unfortunately often grossly overestimated, however only very limited influence can be executed.

If you on the demanding side, you should have to arrange for clarification in your own camp. If you are on the given side and the danger of arrest exists, or the vessel is already arrested, you have to absorb the toad under protest. Will money be expensed for the guarantee, one can try to obtain a refund for such costs which are related to a possible excess amount of the guarantee.

### **Expenditure of time**

The expenditure of time necessary to put a guarantee in place is variable and is affected by several factors.

These factors can be:

- 1) Amount of the demand
- 2) The kind of the demand, i.e. type of guarantee requested
- 3) The law and jurisdiction requested
- 4) Holidays, weekends overseas
- 5) Communication problems
- 6) or a claimant, who isn't cooperative

P. Zahalka  
10.08.2009