

Surety

Parties and how it works

The surety is based on article 492ff. of the Swiss Code of Obligations and serves to secure payment and performance obligations.

Unlike bank guarantees, the payment obligation under a surety is directly dependent on the underlying transaction; this is known as an "accessory relationship." It presupposes a valid principal obligation. So if the principal obligor disputes its obligation (or the extent of it), the bank as guarantor is obliged to raise the main debtor's objections and defenses.

Since non-Swiss contractual partners are unwilling to deal with the specifics of the Swiss Code of Obligations, they hardly ever accept sureties. So it is practically used exclusively for transactions between Swiss contracting partners.

Parties

Three parties are involved in bank sureties:



Principal obligor

It orders the issuance of a surety to secure its obligation.



Obligee

It is the beneficiary and can claim payment from the guarantor if its claim is justified and the principal obligor does not meet its obligation.



Guarantor

In this case, it is a bank. It issues the surety and is jointly or severally liable with the principal obligor.

How it works

Let's take a look at how a domestic surety works:

1. Underlying transaction/principal obligation

The buyer and supplier conclude an agreement over an underlying transaction – for example, a work and services contracts. This gives rise to the principal obligation. To secure performance, the buyer asks the supplier to provide a bank surety.

2. Order

The supplier instructs its bank to issue a surety in the buyer's favor.

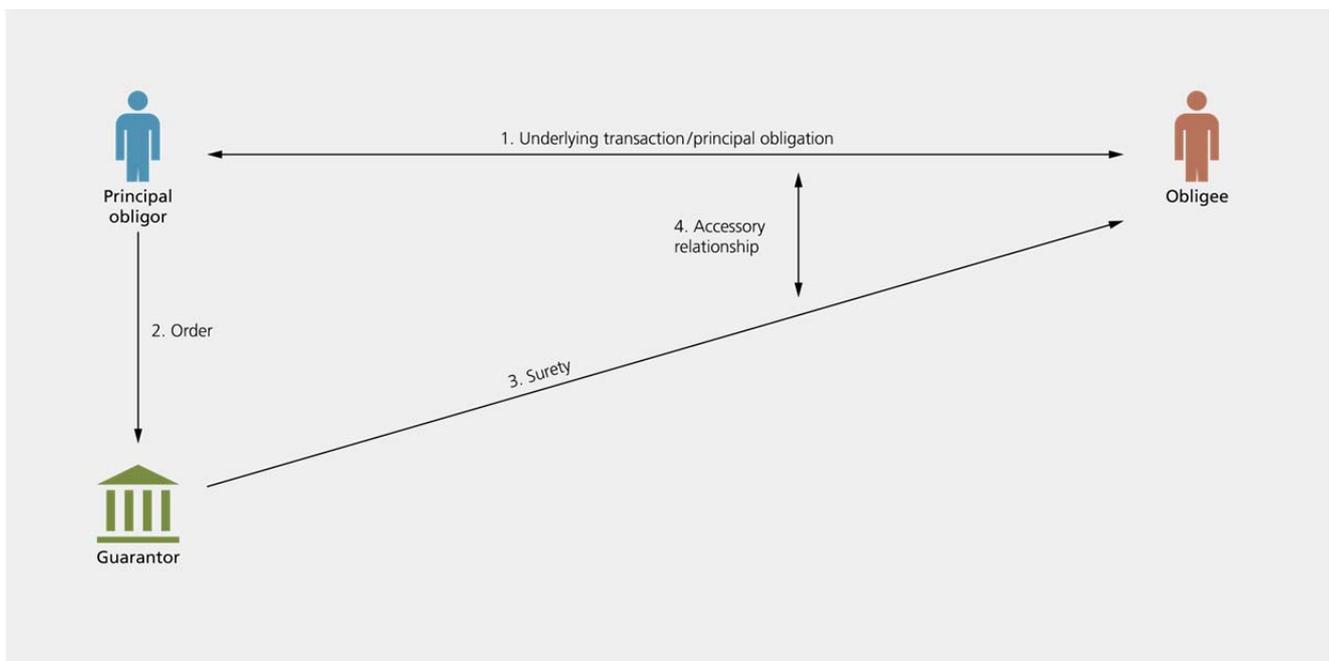
3. Surety

The supplier's bank issues the surety bond in the buyer's favor.

4. Accessory relationship

As the surety is dependent on the underlying transaction, it gives rise to an accessory relationship.

The underlying transaction – the performance – is carried out.



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