Some Aspects of Bank (Independent) Guarantees According to National Legislation and Private International Law

PAATA KHOTENASHVILI*

1. Introduction

One important bank service is the issuance of bank guarantees. The independent and abstract nature of bank guarantees, their express uniformity and multitude in bank transactions, as well as the ever increasing number of banks of various countries participating in these transactions creates a basis to unify their legal systems. Although the laws of many countries contain provisions regulating bank guarantees, the rules of private international law are widely used as they are established in international commerce and acknowledged by the business sector. Particular mention should be made of the International Chamber of Commerce Publication No. 325 (1978) – Uniform Rules for Contract Guarantees (hereinafter URCG) and Publication No. 458 (1992) – Uniform Rules for Demand Guarantees (hereinafter URDG), as well as the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit (hereinafter the UN Convention), elaborated by the United Nations Commission on International Trade Law (hereinafter UNCITRAL). Bank guarantees are the products of international commerce, their origin and development is related with international commerce and its bank services. Thus this instrument should not be analysed only in terms of national laws. Such an analysis would be inadequate because the parties of the relations arising out of bank guarantees in most cases are located in different countries and their relations are regulated by the provisions of private international law.

According to Georgian law, a bank guarantee is considered as one of the instruments of securing an obligation. In this respect civil law has been familiar with a guarantee for a long time. Georgian laws of the Soviet period also acknowledged it as such. According to the Principles of Civil Law of the USSR, the Civil Codes of the Soviet Republics, including Georgia, the institute of guarantees was an accessorial collateral instrument. Pursuant to Article 205 of the Civil Code of Georgia of 1964, the guarantee was actually a variety of suretyship (Article 197). The only difference was that only a superior body to the organisation concerned could become a guarantor in property relations, while any person could have been a surety.[1]

The new Civil Code of Georgia entirely changed the interrelation between suretyship and guarantee and in contrast to accessorial guarantee institute introduced a totally different institute of bank guarantees.

* Head of the Legal Department of the National Bank of Georgia.
[1] Civil Code of Georgian SSR of 1964, Article 205.

2. Origin and Development of Bank Guarantees

Independent bank guarantee or stand-by letter of credit (as it is known in the law and banking of the US and some other countries) originated in the nineteen sixties. It first appeared on the US market but according to bankers' information it acquired a significant position in the international banking only at the beginning of the nineteen seventies. The accumulation of considerable capital enabled oil-producing countries to enter into a large number of contracts with western countries with a view to the development of infrastructure – in industrial, agrarian, and social fields, as well as national security. The origin and the development of independent bank guarantees (and particularly of demand guarantees) at an initial stage is related with this event.[2]

Bank guarantees are widespread and the scope of their usage is ever increasing.[3] It could be said that no major international economic transaction is conducted without at least some kind of bank guarantee. Apart from this, they are widely used on international markets. Such a swift growth is related with the possibility of using (independent) bank guarantees as a collateral of purely financial (loan, overdraft, issuance of bonds, insurance, etc.) and non-financial (sales, construction, rent) contracts.

Together with the growth of the volume and amount of transactions and the quantity of investments, the risk factor acquires greater awareness and importance in the international trade. Letters of credit and collateral acceptance of drafts by banks are widely used as means of risk mitigation. Bank practice has been familiar with such instruments for a long period. However, matters become complicated when it comes to the fulfilment of non-monetary obligations. Such traditional means of risk mitigation, as accessorial guarantees or suretyship are not advantageous for a creditor, as an accessorial guarantor is authorised to use all the arguments and counterclaims that are available for a principal debtor. For a creditor this means the involvement in court proceedings that is associated with a great risk and inconvenience. Even banks avoid being the accessorial guarantors, as they might be involved in disputes between parties. Furthermore, these guarantees do not explicitly stipulate bank liability.

To avoid such complications, commercial practice developed independent bank guarantees, which are mainly issued by reliable and sustainable institutions such as banks. This new phenomenon is much like a letter of credit. The American variant of a guarantee – a stand-by letter of credit derives from a letter of credit, which is often used as a payment instrument in sales contracts. These are sometimes called a "commercial letter of credit" or a "documentary credit". Modern guarantees have much in common with the principles of letters of credit, including the principle of payment of the sum only in the case of fulfilment of the terms and conditions of a guarantee (which often is of documentary nature). However, if terms and conditions of guarantee are fulfilled, the bank is not authorised to lodge a counterclaim based on the principal contract.

[2] *Bertrams*, Bank Guarantees in International Trade, The Hague (Kluwer), 1996 (2. ed.), 1.
[3] *Rowe*, Guarantees, Stand-by Letters of Credit and other Securities, London, 1987, 31.

Unlike a letter of credit, which is a payment instrument, the purpose of a guarantee is security. It secures financial compensation in the case of default of an obligation by a debtor. [4]

Independent guarantee allows for various mechanisms of payment. The most widespread is a demand guarantee, which is also called a "non-conditional guarantee". It entitles the beneficiary to receive compensation without proving the default by a debtor to fulfil an obligation. However, the parties may agree on a guarantee payable only when a creditor presents the documents issued by third parties, which proves the default by a debtor to fulfil an obligation.[5]

3. Legal Nature of a Bank (Independent) Guarantee

Georgian legislation regulates bank guarantees in Part 5 of Chapter 21 of the Civil Code (Articles 879-890). The title of the Part is "The Bank Guarantee". This part is based on the rules of customary law recognised by international commercial practice. It seems that the approximation of national laws with international rules is an objective necessity as it is of utmost importance for foreign economic relations, for the operation of foreign companies on the territory of Georgia. However, Georgian legal provisions on bank guarantees differ somewhat from international rules.

The new Civil Code of Georgia states: "By virtue of a bank guarantee, a bank or other credit institution or insurance company (guarantor) undertakes, at the request of another person (principal), a written obligation to pay a monetary amount to the principal's creditor (beneficiary) in accordance with the undertaken obligation and upon the written demand of the principal".[6]

Pursuant to the definition parties to relations arising out of a bank guarantee are: a beneficiary, a principal and a guarantor. According to another opinion on this matter the parties to a bank guarantee are a guarantor and a principal.[7] A beneficiary is a creditor of principal obligation, while a principal is a principal debtor. Additionally, one should keep in mind that this is not the case of a tripartite contract. For the operation of a bank guarantee institute, it is necessary that the following two basic actions to be carried out successively:

1. Making a guarantee contract between a principal and a guarantor, which as a rule is a bilateral transaction subject to payment. This contract is often called a contract on "issuance of a guarantee".
2. The issuance of a letter of guarantee by a beneficiary. This is a unilateral transaction and results in a unilateral obligation of a guarantor.

[4] *Bertrams*, Bank Guarantees in International Trade, Hague, Kluwer Law International, 1996 (2. ed.), 2.
[5] *Erpileva*, International Bank Law, Moscow, Forum, 1998, 93-94.
[6] Civil Code of Georgia of 1997, Article 879.

It is important not to mix a bank guarantee transaction (which is a totally different and independent type of transaction) and a bank guarantee operation, which, as mentioned above consists of two transactions.

Remuneration for the issuance a guarantee is paid by a principal, at whose request a letter of guarantee is issued. This could be performed both at the issuance of a letter of guarantee and the fulfilment of an obligation by a guarantor. However in practice the first case prevails.

According to the definition of a bank guarantee (Civil Code of Georgia, Article 879, Civil Code of Russian Federation, Article 362), a guarantee is a unilateral obligation of a bank (or some other person), i.e., a unilateral transaction. Such an understanding of a bank guarantee is based on Article 2 (a) of URDG, under which a demand guarantee means any guarantee, bond or other payment undertaking, however named or described, by a bank, insurance company or other body or person given in writing for the payment of money on presentation in conformity with the terms of the undertaking of a written demand for payment. Thus, a bank guarantee should be considered as a unilateral transaction, which expresses the will of a single person (in this case of a guarantor).

However, some scholars consider that according to national laws and the rules of the private international law (URDG), a bank guarantee is a contract between a guarantor and a beneficiary. This means that it is a multilateral transaction as far as a contract may express the will of at least two parties. Additionally, a written obligation of a guarantor is considered to be an offer and silence of a beneficiary – an acceptance.[8]

However, such a position is not compatible either with national laws or the rules of private international law, because silence is acknowledged as an acceptance only when a beneficiary of a proposal already has a business relation with an offeror (Civil Code of Georgia, Article 335, Civil Code of Russian Federation, Article 371, URDG, Article 5, UN Convention, article 7). If it is presumed that a bank guarantee is a contract, then this rule should be considered as erroneous and unlawful, inasmuch as according to a general rule a contract may be terminated on the grounds of a mutual decision of the parties or a court judgement. Hence, it will not be correct to consider the silence of a beneficiary as an acceptance. One should probably draw the conclusion that his will is of no importance for the generation of a guarantor's obligation. This presumption could be backed by the fact, that according to Article 7.2 of the UN Convention, a bank guarantee is irrevocable and binding for fulfilment from the date of issue and does not require the acceptance of a beneficiary and it may not even be received by a beneficiary. "Once issued (is sent to a beneficiary) the undertaking is available for payment in accordance

[7] *Shengelia* in: *Akhvlediani/Chanturia/Jorbenadze/Khetsuriani/Ninidze/Shengelia/Zoidze* (ed.), Comments on the Civil Code of Georgia, Book 4, vol. 2, 2001, 216.
[8] *Erpileva*, International Bank Law, Moscow (Forum), 1998, 90.

with its terms and is irrevocable".[9] Hence, a guarantee is to be considered as a unilateral obligation of a guarantor, which arises through entering a unilateral transaction by the former – through the issuance of a bank guarantee.

The issuance of a bank guarantee by a guarantor in favour of a beneficiary is the fulfilment of the guarantor's obligation, which derives from a contract on the issuance of a bank guarantee made earlier between the latter and the principal. Accordingly, the basis for making a guarantee transaction (for issuance a guarantee) for a guarantor is a counter gratification, obtained from the principal on the basis of a guarantee agreement made between them. Consequently, a guarantee contract is a casuistic transaction. In case of default by a principal to pay a guarantor the respective compensation, the latter shall be entitled not to issue a guarantee. However, if this guarantee has already been issued it remains in force irrespective of whether the guarantor obtained a counter-gratification from the principal or not. This is conditioned by the fact that a bank guarantee is an obligation not with regard to the party to a guarantee contract (a principal), but with regard to a third person – a beneficiary. Thus the non-existence or disappearance of the grounds does not result in the voidance of a bank guarantee, once it has been issued.

The object of a bank guarantee is the payment of a guarantee sum by a guarantor in favour of a beneficiary in accordance with the payment demand made by the latter within a specified term. Therefore, despite the obligations, imposed upon a principal under a principal agreement (transfer of a thing, performance of a work) the guarantor's obligation is always of a monetary nature. Such requirements are provided for by both Georgian (Article 879) and Russian (Article 368) Civil Codes, also by Article 2(a) of URDG. The URCG regulated this issue in a different manner, under Article 2(b) of which a guarantor may undertake to make payment of a stated sum of money, or to arrange for the performance of the contract.

In accordance with Article 879 of the Civil Code of Georgia only a bank, other credit institution or an insurance company may act in the capacity of a guarantor. No other person is entitled to be a guarantor in relations arising out of bank guarantees. Russian laws uphold the same attitude.[10] It should be mentioned, that according to the rules of private international law and national laws of some countries, the issuance of bank guarantees is not the prerogative of specially authorised persons (banks, other credit institutions or insurance companies). Under URDG (Article 2) a bank guarantee may be issued by a bank, insurance company or other body or person. Nearly the same is repeated in Article 2 of the UN Convention, according to which "a bank or other institution or person" may act as a guarantor. The Convention does not limit the group of persons who may act in the capacity of guarantor, although it is presumed that this issue is the prerogative of national legislation.[11]

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[9] Explanatory note by the UNCITRAL Secretariat on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1997, Para. 25.
[10] Civil Code of Russian Federation of 1994, Article 368.
[11] Explanatory note by the UNCITRAL Secretariat on the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, 1997, Para. 23.

4. Bank (Independent) Guarantee Terminology

To understand the essence of bank or independent guarantees, it is necessary to have clear idea about the terms and definitions that are used in relation with this instrument in various legal sources – in national laws and in private international law.

Legal scholars are unanimous in the view that the notion of guarantees is erroneous and obscure both in terms of terminology and concept and that actually there is no uniform definition of guarantees.[12]. The reason for this, in their opinion, is that the civil law of various countries is based on different concepts and a variety of terms are used to denominate a guarantee (guarantee, stand-by letter of credit, performance bond). Furthermore, the legal practice of some countries (particularly of the common law countries) makes a difference between the notions of "a guarantee" and "a letter of guarantee" and acknowledges "a guarantee" as a primary obligation to pay a certain sum, issued for securing the principal contract, while "a letter of guarantee" is a secondary obligation. Given the legal effect and deriving legal consequences, western lawyers often point to the similarity of bank guarantee, surety and insurance agreements.[13]

Some scholars consider, that the introduction of Anglo-American banking terminology by continental law has aggravated the current situation. The term "guarantee" may mean both an accessorial and an independent instrument of collateral. A bank guarantee (independent means of collateral) was generated by practice and the concept of its use was unknown in law. Practice created the accessorial means of collateral – suretyship. Irrespective of this, the term "guarantee" is still used in certain countries and international bank relations when referring to the accessorial collateral. The same practice was peculiar for post-Soviet Georgia – banks frequently issued so-called "guarantees", that had accessorial nature and were very close to a suretyship.[14]

American Law and practice is more explicit and better regulated in this respect. The term "guarantee" stands for an obligation, which has a co-extensive and accessorial nature with regard to the principal debtor's obligation. Due to this reason American practice introduced a new term "a stand-by letter of credit", which stands for an independent collateral instrument. This is equivalent to a continental guarantee.

English practice and law makes no difference between these concepts in principle. The term "guarantee" traditionally means the accessorial (i.e. conditional) type of collateral

[12] *Horn/Wymerseeh*, Bank-Guarantees, Stand-by Letters of Credit and Performance Bonds in International Trade – in: *Horn* (ed), The Law of International Trade and Finance, Boston, 1989, 459-460, also *Bertrams*, Bank Guarantees in International Trade, Hague, Kluwer Law International, 1996 (second edition), 3.
[13] *Jamen/Lakur,* Trade Law, Moscow, 1993, 216-217.
[14] Temporary Bylaws of the National Bank of Georgia of 25 May, 1994 On the Issuance and Registration of Guarantees Related with Loans by the Banking Institutions.

and as a rule is co-extensive with and dependent upon the amount of the principal obligation. The term "suretyship", which clearly and explicitly means an accessorial means of collateral, became an obsolete instrument and is seldom used. Currently, the term "guarantee" has a neutral connotation and its specific nature as a collateral instrument reveals itself differently given the specific circumstances of this construction. The term "letter of credit" is also used for independent guarantees. In many countries there is a lot of ambiguity and uncertainty with regard to terminology and conception of guarantees.[15]

As a result of this ambiguity various terms are used to denominate an independent obligation. In English and American law the obligation of an independent guarantor is often called "primary" as opposed to the "secondary" obligation of a surety. Some other terms are also used: "autonomous", "irrevocable", "abstract", and "unconditional". Sometimes it is specified in instrument conditions, that "a guarantor is to pay the debt as his own". But it should be said that these terms are rather confusing and inadequate, not to say incorrect. Furthermore it is not correct to assert that an independent guarantee is always paid on demand, although such guarantees definitely prevail among independent guarantees. However, there are some other payment mechanisms as well, for instance, the payment upon the presentation of a document issued by a third person, of a court decisions or arbitrage award.

5. Scope of Application of a Bank (Independent) Guarantee

Article 88 of the Civil Code of Georgia states that a bank guarantee is effective from the date of its issuance. Such a requirement is compatible with the nature and purpose of a guarantee as the submission of a valid guarantee often makes a necessary precondition for a principal contract to come in force. Thus, the parties' interests make a bank guarantee effective as soon as possible is quite logical and the legislator took account of this interest as well. It is worth mentioning, that this provision of the code is of a dispositional nature and the parties may abandon it on the grounds of a mutual agreement. According to this article a guarantee may enter in force from a later date provided it is explicitly stated in the text of the obligation.

These provisions are concurrent with the rules of private international law. A bank guarantee is a product of international commerce and national law received the rules of private international law and not vice versa. Pursuant to Article 6 of URDG a guarantee enters into effect from the date of its issuance if not otherwise specified. However, a guarantee may specify a later date for its entry into effect.

For some guarantees a precondition for their entry into effect is a receipt by a beneficiary, although this only concerns the entry into effect and is no way related with the legal nature

[15] *Bertrams,* Bank Guarantees in International Trade, The Hague (Kluwer), 1996 (2. ed.), 3.

of a guarantee, i.e. its validity (existence of an obligation).[16] It is important, that according to some authors a bank guarantee enters into effect from the date of its signature. Receipt by a beneficiary is of no importance.[17]

A bank guarantee is issued for a certain period, which is indicated in the obligation. This term could be set by specifying a certain date, when a bank guarantee will become invalid, or through the indication of its validity period (e.g. a month) starting from the date of its issuance. As a rule the term is specified in months. The beneficiary's demand should be submitted within this period, which is not subject to restoration and failure to recourse to it are grounds for the secession of an obligation.[18]

A bank guarantee term may also be stipulated by some event, which should be indicated in the guarantee itself.[19]

The Georgian Civil Code does not contain any imperative requirement that a guarantee must specify the term through the indication of a calendar date or a period of time, which is calculated in days, months or years,[20] also of an event, which will occur, unlike the Civil Code of Russian Federation. Furthermore the term may be run from some event,[21] while the origin of a demand or an obligation may be dependent on some action.[22] A bank guarantee, which stipulates a certain event as a precondition for its termination, should be considered as a transaction made on the condition of termination (Article 97), that is quite acceptable in Georgian law. Articles 879-890 of the Civil Code of Georgia do not contain any requirement on the voidance of a guarantee when there is no indication of some calendar date or period of time. According to Article 889 the expiration of the term of a guarantee makes a precondition for its termination, but arguably a guarantee term may be stipulated through occurrence of some event or fulfilment of some action.[23] Such guarantees are very frequent in practice.

Private international law allows for the indication of the term of a guarantee though the stipulation of fulfilment of some action or occurrence of some event. Article 3.6 of URDG states that a bank guarantee should stipulate the expiry date and/or expiry event of the guarantee. Article 12(b) of the UN Convention states that the expiry of the term of an undertaking (a bank guarantee) may depend on the occurrence of an act or event, if such occurrence of an act or event is certified through the presentation of a document or by the beneficiary. Fulfilment of a principal undertaking (agreement) is the event, which, logically, could be certified by a creditor or beneficiary or the presentation of a respec-

[16] *Oleinik*, Principles of Banking Law, course of lectures, Moscow (Jurist), 1997, 363.
[17] ibid, 364.
[18] *Sergeev/Tolstoi*, Civil Law, Moscow (Prospekt), part 1, 583.
[19] Uniform Rules for Demand Guarantees, ICC pub. N458, Article 3, also the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit, Article 12.b.
[20] Civil Code of Georgia of 1997, Articles 121-127.
[21] ibid, Article 122.
[22] ibid, Article 131.
[23] ibid. Article 97.

tive document. In our opinion, the approach of private international law should be considered as correct in this respect, as far as a bank guarantee is the product of international commerce and consequently, this field of law is based on greater experience and practice.

If a guarantee is valid until the fulfilment of a principal agreement, it is of utmost importance to stipulate directly by the text of the guarantee submission which document certifies this fact. Apart from the latter being the requirement of the principle of documentary nature of guarantees, it prevents ambiguity, which may be caused by different opinions of the principal and the beneficiary concerning the fulfilment and non-fulfilment of a contract.

The guarantee term is a period within which the beneficiary's right to demand is effective. It is of a preventative nature and cannot be restored by a court in the case of a failure to use it. As far as a claim for payment under a guarantee should be submitted to a guarantor within the guarantee term, it is important to stipulate its expiry date. According to Article 4 of URCG the validity term of a tender guarantee (type of guarantee, which secures the payment within the limits of a stated sum of money to the party inviting tenders, in the case of default by the principal in the obligations resulting from the submission of the tender) is six months from the date of issuance of the guarantee, unless otherwise stipulated by the latter. For a performance guarantee (an undertaking to arrange for performance of the contract by a party to it) is six months from the date specified in the contract for delivery or one month after the expiry of any maintenance period. For a repayment guarantee (undertaking securing the repayment of any advance payment), it totals six months from the date specified in the contract for delivery or completion of any work.

Objective reasons originating in relation to a commercial transaction may give rise to the necessity to extend the validity period of a bank guarantee. In the case of an indirect guarantee the precondition for the extension of such a guarantee is the consent of the bank-guarantor and the bank-issuer. According to Article 26 of URDG if the beneficiary requests an extension of the validity of the guarantee as an alternative to a demand for payment the guarantor shall without delay so inform the principal and permit the principal and the beneficiary to reach agreement on granting of such extension and for the principal to arrange for such extension to be issued. Unless an extension is granted, and the beneficiary insists on payment of the guarantee, the guarantor is obliged to pay the beneficiary. This to a certain extent reflects the danger related with demand guarantees, as far as an unfair beneficiary may use it to exert pressure over the principal, because the bank is liable to pay the sum due to the principle of independence of guarantees. The principal may find himself in a grave position.

It is important to clear the issue of transferability of a bank guarantee. Article 883 of the Civil Code of Georgia states that "the beneficiary's claim against the guarantor arising out of the bank guarantee may not be transferred to another person unless otherwise stipu-

lated in the guarantee". Georgian lawyers consider, that the introduction of this restriction against the beneficiary is conditioned by the specific nature of a bank guarantee[24] (according to general rule a creditor is authorised to assign the right of demand to other persons). When the beneficiary acquires the right of demand, he acquires the status of a creditor. He is entitled to claim the fulfilment of the obligation from the guarantor that the principal failed to fulfil. However, unlike an ordinary creditor, a creditor-beneficiary is not entitled to assign the right of demand to some other person. It is understood that a guarantor may not agree to the assignment of fulfilment of a principal's obligation to another person and what is more, a bank guarantee serves the purpose of fulfilment of principal obligation existing between certain persons. Consequently, the beneficiary's claim against the guarantor could be assigned to another person only when the bank guarantee so provides.[25]

Such an interpretation should be considered as correct. It, stresses that a bank guarantee is first of all a collateral instrument. It serves the purpose of securing a specific obligation that is mentioned in the letter of guarantee and consequently the possibility of its free transfer to other persons would not be compatible with its purposes and legal nature. However, this legal provision is of a dispositional nature and the parties enjoy the right to stipulate the possibility of assignment of the beneficiary's demand to another person. In practice it could be done in case of a change of creditor in the principal obligation. In this event, it is possible to make a change in the letter of guarantee upon the agreement between the parties to the guarantee relationships. Private international law provides for similar rules. According to Article 4 of URDG the beneficiary's right to make a demand under a guarantee is not assignable, unless expressly stated in the guarantee or in an amendment thereto. Article 9 of the UN Convention also states that the beneficiary's right to demand payment may be transferred only if authorised in the undertaking (guarantee) and only to the extent and the manner authorised in the undertaking.

The stability of a bank guarantee is of particular importance for the normal operation of this institute, i.e. how secure is the beneficiary with regard to pre-term termination of the validity term of a bank guarantee given some subjective or objective reasons.

According to Article 882 of the Civil Code of Georgia the bank guarantee may not be retracted by the guarantor unless otherwise stipulated in the guarantee. The Civil Code of Russian Federation provides similar requirements (Article 371).

The principle of irrevocability of a bank guarantee is equally applicable with international bank guarantees. According to Article 7.4 of the UN Convention "An undertaking (a guarantee) is irrevocable upon issuance, unless stipulates, that it is revocable". As regards the International Chamber of Commerce, Article 5 of the URDG underlines the irrevocability of

[24] *Shengelia* in: *Akhvlediani/Chanturia/Jorbenadze/Khetsuriani/Ninidze/Shengelia/Zoidze* (ed.), Comments on the Civil Code of Georgia, Book 4, vol. 2, 2001, 220.
[25] Ibid.

a bank guarantee. According to this article: “All Guarantees and Counter-Guarantees are irrevocable unless otherwise indicated”.

Both private international law and national laws allow for exemption from this principle, when it is expressly indicated in a letter of guarantee. Such an exemption is quite natural as the irrevocability of a bank guarantee first of all serves the protection of interests of a beneficiary, while the guarantee terms and conditions are established and the text of the guarantee is made with due consideration of the interests of the beneficiary, in accordance with the instructions given to the guarantor by the principal on the grounds of the agreement between the guarantor and the principal. If the beneficiary is in default of the guarantee terms and conditions, he may merely reject the guarantee. This generally results in the annulment of the principal contract. Thus, if the beneficiary receives the guarantee and it states, that a bank guarantee is revocable – this is concurrent with the will of the beneficiary, the guarantor and the principal.

For the establishment of the exact scope of application of a bank guarantee it is necessary to know the grounds for its termination. According to the Civil Code of Georgia the guarantor’s obligations to the beneficiary is terminated:
a) By payment of the amount for which the guarantee was issued;
b) Upon expiration of the period of time for which it was issued;
c) Upon the beneficiary’s renunciation of his rights arising out of the guarantee and the return of the guarantee to the guarantor.[26]

Georgian scholars argue that the law sets out the cases of termination of already arisen obligations to the beneficiary. This is payment of the guarantee sum to the beneficiary, the expiration of guarantee term and the beneficiary’s renunciation of his rights in favour of the guarantor. In this last case a guarantee obligation is terminated on the grounds of a beneficiary’s will. The consent of a guarantor is not necessary. Thus the beneficiary is to express his will regarding the termination of the guarantee obligation in writing. In other cases, the guarantor’s obligation to the beneficiary is not terminated. Termination of a guarantee obligation is not the grounds for the termination of the principal obligation as it is of independent nature.[27]

Article 11.1 of the Convention sets forth the following grounds for the termination of a guarantee undertaking: beneficiary’s statement of release from liability; agreement of the beneficiary and the guarantor on the expiration of the obligation; expiration of the pre-agreed validity period of the obligation. The beneficiary and the guarantor may also agree upon the necessity of the return of document embodying the obligation. However the retention of any such document after the occurrence of one of these events shall not preserve any rights of the beneficiary under the obligation.[28]

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[26] Civil Code of Georgia of 1977, Article 889.
[27] *Shengelia* in: *Akhvlediani/Chanturia/Jorbenadze/Khetsuriani/Ninidze/Shengelia/Zoidze* (ed.), Comments on the Civil Code of Georgia, Book 4, vol. 2, 2001, 226.
[28] UN Convention, Article 11.2

Pursuant to UN Convention if the undertaking does not state an expiry date in a calendar date, period of time, act or event, the undertaking shall cease to be valid when six years have elapsed from the date of issuance thereof.[29] For some authors the return of the guarantee document is the necessary precondition for the termination of an obligation.[30]

Under the URDG a bank guarantee shall be terminated when the maximum amount payable under a guarantee has been paid on demand (Article 18), or upon the expiry of the time (calendar date) specified in a guarantee or upon presentation to the guarantor of the document(s) specified for the purpose of expiry, e.g. in the case of occurrence of an expiry date, or expiry event (Article 22). The guarantee shall also be cancelled on the presentation to the guarantor of the guarantee itself or the beneficiary's written statement on release from liability under guarantee (Article 23).

The provisions of both private international law and national laws oblige a guarantor to notify the principal on the cancellation of a guarantee obligation, and whenever needed the issuer of the guarantee as well, who will notify the principal.

6. Conclusion

Private international law and national laws regulate many important aspects of bank guarantee in a similar, if not identical manner. This, of course, is a positive phenomenon, as bank guarantees are important instruments of international commerce. Their different regulation by national laws and private international law would complicate their efficient use. Account should be taken of the fact, that Georgia's involvement in international commerce and bank relations is increasing and the study of international legal framework of this field and its comparison with domestic legislation is undoubtedly important.

[29] Ibid, Article 12 (c).
[30] *Oleinik*, Principles of Bank Law, course of lectures, Moscow (Jurist), 1997, 363.