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12 Georges Affaki & Roy Goode, *Guide to ICC Uniform Rules for Demand Guarantees URDG758*, ICC Services Publications No. 702E, 2011, p. 288.

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13 Roeland F. Bertrams, *Bank Guarantees in International Trade* (4th Rev. ed.), Kluwer Law International, 2013, p. 150.

14 Roeland F. Bertrams, *Bank Guarantees in International Trade* (4th Rev. ed.), Kluwer Law International, 2013, p. 151.

15

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16 See *Banque de l'Indochine v. JH Rayner (Mincing Lane)* [1983] QB 711.

17 See *Banque de l'Indochine v. JH Rayner (Mincing Lane)* [1983] QB 711; *Kumagai-Zenecon Construction Pte Ltd. v. Arab Bank Plc* [1997] 3 SLR 770. See also Jingbo Zhang, *Disregarding Non-documentary Conditions in Letters of Credit: Is It as Easy as It Appears to Be?*, *Lloyd's Maritime & Commercial Law Quarterly*, 2018, p. 546–550.

18 See URDG758 Article 11.

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20 See URDG758 Articles 20 (b), 24 (f).

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28 1995 UCC §5–108 (d); ISP98 Rule 5.04.

29 See URDG758 Article 19

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60 2016 304–309

See also James E. Byrne, et al., *UCP 600: An Analytical Commentary*, Institute of International Banking Law & Practice, 2010, p. 754; James E. Byrne, *6B Hawklund UCC Series*, Thomson Reuters 2016, § 5–108:14 Rev. Preclusion rule—Exclusions—Fraud.

31 John F. Dolan, *The Law of Letters of Credit: Commercial and Standby Credits*, LexisNexis AS Pratt, 2018, §6.06 [2] [c] [iii] The Pre-UCP600 Preclusion Rule. See also 1995 UCC § 5–108 (d); *Boston Hides & Furs, Ltd. v. Sumitomo Bank, Ltd.*, 870 F. Supp. 1153 (1994); *Hamilton Bank, NA v. Kookmin Bank*, 245 F. 3d 82 (2nd Cir. 2001); *Amwest Sur. Ins. Co. v. Concord Bank*, 248 F. Supp. 2d 867 (ED Mo. 2003); *ACE American Ins. Co. v. Bank of the Ozarks*, 2014 WL 4953566 (SDNY 2014). But see *Semetex Corp. v. UBAF Arab Am. Bank*, 51 F. 3d 13 (2nd Cir. 1995).



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1995 UCC §5-109 cmt. 1; James Barnes, et al., *The ABCs to UCC Article 5: Letters of Credit*,  
American Bar Association, 1998, p. 56.

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See also James Barnes, et al., *The ABCs to UCC Article 5: Letters of Credit*, American Bar Association, 1998, p. 56. But see *Standard Chartered Bank v. Pakistan National Shipping Corporation* [2001] EWCA Civ. 55 (C. A.).

42 *Hyundai Engineering & Construction Co., Ltd. v. UBAF (Hong Kong) Ltd.* [2012] HKCU 2155.

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53 See URDG758 Article 5 (b).

54 4 2018 777

55 Ole Lando & Hugh Beale, *Principles of European Contract Law: Parts I & II*, Kluwer Law International, 2000, p. 451; Unidroit PICC Article 7.4.9 cmt. 1. 2017

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56 But see Unidroit PICC Article 7.4.9; PECL Article 9:508;

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58 UBAF 2011 12  
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 59 Georges Affaki & Roy Goode, *Guide to ICC Uniform Rules for Demand Guarantees URDG758*, ICC Services Publications No. 702E, 2011, p. 380, 383. URDG758 20 5  
 60 James E. Byrne, et al., *UCP600: An Analytical Commentary*, The Institute of International Banking Law & Practice, 2010, p. 713.  
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66 John F. Dolan, *The Role of Attorney's Fees in Letter of Credit Litigation*, 133 *Banking Law Journal* 555 (2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2974301](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2974301) (last visited 14 September 2020).

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## Damages for Independent Guarantee Wrongful Dishonor: Perspective from Bank of China v. UBAF

WANG Jingen

**Abstract:** When documents are presented to the issuer under an effective independent guarantee, the issuer must either pay the beneficiary or give a notice of refusal. Otherwise the issuer shall be liable for its wrongful dishonor, unless there is an independent guarantee fraud. URDG758 is not considered as an international commercial customs in China. When there is a non-documentary inoperative condition in the independent guarantee, such guarantee cannot be considered as taking into effect once it is issued. Because the disregard rule in URDG758 may not be applied since the application clause of URDG is not operative yet. Fraud is not a discrepancy, therefore the preclusion rule will not be triggered due to the issuer's failure to give a notice of such "discrepancy" in 5 business days. Also the issuer may not refuse to pay based on the wrong guarantee number. If the beneficiary's fraud is not material, it is questionable whether the issuer of the independent guarantee may still stop its payment. If the issuer commits a wrongful refusal, it must not only compensate the face amount refused but also its interest, even the attorney's fees the beneficiary may have suffered arising out of the issuer's wrongful refusal. But the compensation for wrongful refusal shall be limited by the principle of independence. "*Bank of China v. UBAF*" held by the Supreme People's Court has illustrated the disputes over the damages for independent guarantee wrongful refusal, although the court's reasoning is improvable.

**Keywords:** Non-documentary Inoperative Condition; Notice of Refusal; Independent Guarantee Fraud; Damages for Wrongful Refusal