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# Caught without signing? When guarantees speak louder than signatures

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In this new edition of **ASAP Agri's** collaborative series with **AGA Partners**, we delve into the rising practice — and legal complexities — of involving guarantors in international commodity trade. **Yurii Bedenko**, Senior Associate and Attorney-at-Law at AGA Partners, and **Maksym Fesenko**, Associate at AGA Partners, team up with **ASAP Agri's** Chief Analyst **Kateryna Mudriian** to examine a recent arbitration stemming from CIF deliveries to Egypt. The dispute — triggered by a guarantor's refusal to pay the demurrage despite being named in the contract — offers a compelling case study on enforcement risks, contractual privity, and how tribunals approach guarantor liability in practice.

**Kateryna: Are guarantors becoming a new norm in commodity contracts — or are they still more of a safety net for risky counterparties? What trends are you seeing in how and why they're being used to secure performance?**

**Yurii:** We are currently observing a notable increase in the use of guarantors, typically parent companies, within commercial contracts, especially on the buyers' side. This growing practice gives sellers greater confidence that contractual obligations will be fulfilled. At the same time, buyers often benefit by structuring transactions through legal entities registered in tax-efficient jurisdictions, helping them streamline operations and reduce overall business costs.

**Kateryna: Is there a typical delivery basis where guarantors tend to appear more often in contracts — or is this now across the board?**

**Maksym:** Most frequently under the CIF delivery basis. This is because CIF places the burden on sellers to arrange carriage and insurance up to the named port, while buyers provide additional assurances by a parent company guarantee their obligations under the contract.

**Kateryna: Sounds simple in theory — but what legal pitfalls do companies face when it comes to enforcing guarantees?**

**Yurii:** The central issue is the doctrine of privity of contract. In practice, we often see guarantors who did not sign the underlying agreement later claiming they are not bound by it and unaware of its existence. This raises complex questions about whether a party not formally joined to a contract can still be held liable. Additionally, guarantors frequently argue that their liability is merely subsidiary, meaning any claim should first be brought against the contracting party (buyer or seller), and the guarantor should only be pursued if that party fails to meet its obligations.

**Kateryna: What's the most striking or unusual dispute you've worked on involving a guarantor?**

**Maksym:** One case involved a Ukrainian agricultural producer that entered into two CIF contracts for deliveries to Egypt. The contracts were governed by English law. For tax efficiency, the Egyptian trading group proposed that its UAE-based subsidiary be named the 'buyer'. However, in both contracts, the Egyptian parent company was explicitly named as a guarantor for the buyer's obligations, including demurrage liability.

The complication arose because the Egyptian guarantor never signed the contracts, and all communications were conducted via brokers. As a result, our Client never received emails from a domain associated with the guarantor. While both the buyer and guarantor acknowledged liability during negotiations (again, through brokers), they ultimately refused to pay the demurrage, prompting arbitration. Interestingly, the guarantor's legal representatives attempted to bifurcate the dispute, arguing that the claim against the guarantor should fall under Egyptian law, while the dispute with the buyer was subject to English law.

**Kateryna: And how did the tribunal ultimately rule in that case? What tipped the scales?**

**Yurii:** The tribunal ruled in favor of the seller, holding both the buyer and the guarantor liable. The Arbitrators relied on the seller's submissions, which showed:

1. The contracts expressly stated that the guarantor was responsible for supporting the buyer's performance.
2. The tribunal found the buyer and guarantor jointly and severally liable, meaning the seller could recover the award from either party.
3. Evidence revealed that the guarantor received the goods in Egypt, and that the same individuals acted on behalf of both the buyer and the guarantor throughout the transaction. At arbitration, it became clear that all correspondence related to the contracts came from both the buyer's and the guarantor's domains, confirming this evidenced the guarantor's involvement and knowledge of the contract terms. This was material factor in the tribunal's decision in favor of our client.

**Kateryna: What legal logic or precedents did the tribunal rely on to make that decision?**

**Maksym:** The tribunal referred to *Stellar Shipping Co LLC v Hudson Shipping Lines* [2010] EWHC 2985 (Comm), which confirmed that a guarantor may still be bound by an arbitration clause even without signing the contract, if the clause forms part of the main contract. Hamblen J, in that case, emphasised the "one-stop shop" principle from *Fiona Trust & Holding Corp v Privalov* [2007] UKHL 40 [17 October 2007]. That principle holds that, where a contract includes a guarantee and no alternative forum is expressly agreed, all related disputes - including those involving the guarantor - should be resolved in accordance with the dispute resolution mechanism set out in the main contract. It is based on the assumption that rational commercial parties would intend all related disputes to be resolved in a single forum to avoid fragmentation and conflicting outcomes.

**Yurii:** In addition to legal precedent, the tribunal also relied on the facts of the case, including:

1. The guarantee clause was incorporated directly into the main contracts, and no separate dispute resolution clause was agreed for the guarantee, meaning the arbitration clause from the main contracts to be applied.
2. The guarantor had actively participated at all stages — from negotiations through to performance — and received the goods.
3. The guarantor's overall conduct, including the acceptance of commercial benefits under the contracts, was sufficient to establish that it had agreed to be bound by the terms, even in the absence of a formal signature.

### Conclusion:

In international trade, including a guarantor in a contract is not a mere formality — it is a strategic tool to increase confidence in the reliability of performance. However, the effectiveness of a guarantee hinges on how it is structured and documented.

Best practices include:

- Clearly drafting the guarantee provisions;
- Formalising them in writing with the guarantor's signature;
- Conducting complex due diligence — verifying the guarantor's authority, using proper corporate communication channels, and ensuring explicit evidence of consent to be bound.

However, even when a formal signature is absent, a guarantor's active involvement in the contract's negotiations, execution, or benefit — particularly in CIF contracts, where risks, obligations, and financial exposure are intricately linked — may be sufficient to establish enforceable liability under English law.

In today's arbitration landscape, tribunals are increasingly guided by commercial reality over technical formality. When correctly structured, guarantees are not only protective — they offer a competitive advantage in navigating the legal risks of global commodity trade.

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