

QUICK LEGAL GUIDE ON HOW TO ENSURE YOUR DOWN PAYMENTS IN INTERNATIONAL PURCHASES (latest edition of the URDG 758 OF THE ICC).

If you want to buy a new car, house, photovoltaic solar energy project or any other product or service in Germany or Spain, the seller will require you to make at least a 10% down payment in order to ensure your contract compliance.

That is fair enough, but who ensures your down payment? The seller's good reputation is necessary, but not sufficient. One of the seller's key factors might have changed recently or may change in the future before delivery (this is especially important when delivery time takes several months): key staff may quit the company, new suppliers of the seller might not meet quality standards, the administration might interrupt normal business activity on environmental grounds, the seller might have lost a decisive legal battle, etc.

A Letter of Credit is expensive, very complicated, time consuming and highly risky for the seller. Another option is a bank guarantee. However, not all bank guarantees are equally ensuring. That is why you should make sure at least the following aspects (this checklist is not exhaustive, it serves only as an orientation):

- I) Do not make any down payment before receiving the bank guarantee.
- II) Ask your own bank with which you work normally to check the financial situation of the guaranteeing bank.
- III) Insist on a bank guarantee on first demand. This clause "on first demand" should be not negotiable; it is decisive to shorten down substantially all the proceedings; it enables you to recover your down payment fast in case anything goes wrong.
- IV) Agree on an expiry date of at least 30 days after the delivery time. This extra time should be sufficient to negotiate and present the documents to execute the guarantee. Of course, you can agree longer expiry dates.
- V) Include an explicit agreement stating that the bank guarantee is governed by the latest edition of the new Uniform Rules for Demand Guarantees (URDG) 758 of the International Chamber of Commerce.

Andres Diez Bronzini
Abogado & Rechtsanwalt