

Guarantee process in Business Development projects

VALIDATION PROCESS

Version	Corporate Area	Approved by:	Approval Date
1	Finance	SVP Corporate Treasury	16/01/2020
	Legal	SVP Corporate Legal	
	Business Development	SVP Business Development	

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OBJECTIVE AND SCOPE

The aim of this document is to define the process for the configuration, request and issuance or receipt of guarantees linked to Business Development projects of NH Group.

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1 GUARANTEE CONFIGURATION

It is common that the issuance of certain guarantees by NH is required in the framework of the Business Development projects of NH Group.

These guarantees can secure different obligations of NH depending on the context:

- ✓ The compliance with the conditions and obligations established in a binding pre-agreement (MOUs, LOIs, etc.).
- ✓ Any payment obligation established in a contract or agreement, for example the payment of the rent in the case of a hotel lease, or the MGR in the case of a hotel management agreement.
- ✓ The timely and due completion of any material obligation to do, for example the quality of refurbishment works performed in a building, or the level of service delivered in a hotel management agreement.

Guarantees can take different forms:

- ✓ Corporate Guarantees
- ✓ Bank Guarantees or similar instruments like Stand-by Letters of Credit (which in fact are equivalent) or Surety Bonds (issued by non-banking financial institutions).
- ✓ Cash Deposits.

When configuring the scheme of guarantees for any given project, the following general principles should apply:

1.- Guarantees should be treated under a **restrictive approach**. In general terms NH position shall be not to provide any guarantee, on the basis that our main operating subsidiaries have strong financial autonomy to honor their operating commitments.

2.- If in the course of a negotiation the granting of a guarantee becomes a deal-breaker, then a restrictive approach shall be taken, and negotiators shall make their best efforts so that the guarantee complies with the following guidelines in terms of commitment, enforceability, tenor, amount and seniority:

- ✓ **Commitment:** In terms of level of commitment, guarantees follow the ranking below (from lower to higher level of commitment):
 - Corporate Guarantee
 - Bank Guarantee
 - Cash Deposit

Negotiators must aim to provide always the type of guarantee that implies the lowest level of commitment that is acceptable to the counterparty.

- ✓ **Enforceability:**
 - Negotiators shall try that the guarantee includes a mechanism whereby:

- Enforcement is subject to the Main Obligor having failed to fulfill the secured obligations after a formal request to do so.
- Enforcement is only possible upon the relevant amount having been declared due and payable (i) by an independent third party as contemplated in the underlying agreement; or (ii) by a final or provisionally enforceable court or arbitration resolution.
- In the case of Corporate Guarantees negotiators must also aim to avoid that they are structured as First demand guarantees.
- ✓ **Tenor:** The expiry date of the guarantee must always be expressly determined, and in any case, the tenor must be kept as short as possible considering the nature of the obligation to be secured.
In the case of Bank Guarantees, long term obligations must be secured through one-year Revolving Guarantees (i.e. provided for a one-year period, under the obligation to be extended/renewed prior to its expiry date). Failure to provide this extension or renewal would be considered as a breach of the obligations of the Main Obligor and hence would give the Beneficiary the right to enforce the existing guarantee.
- ✓ **Amount:** The maximum liability of the guarantor under the guarantee must always be limited to an expressly determined figure, which must be as low as possible linked to the amount of the rent.
- ✓ **Seniority:** In the case of Corporate Guarantees, the guarantor shall be a direct or indirect shareholder of the Main Obligor, provided that, to the extent possible, it shall be placed as close as possible to the guarantor within NH Corporate Chart.

3.- Having two guarantees covering the same risk must be avoided.

4.- For indicative purposes, templates of Corporate Guarantees and Bank Guarantees are attached as Annex 1 and 2. Nevertheless, these templates must not be considered as definitive documents for its use, being necessary that the Legal, Treasury and Development Departments are involved in its drafting and negotiation from day one.

2 GUARANTEE REQUESTS

As soon as the Business Development team conducting the negotiation of any project has notice that the granting of a guarantee will be required, prior to the signing of any binding document and always before the project is presented to the Asset & Expansion Committee, they must prepare a small briefing on the guarantee scheme under discussion, that shall be circulated to Legal, and Treasury at HQ level, indicating:

- ✓ Type of guarantee/s
- ✓ Amount
- ✓ Tenor

- ✓ Beneficiary
- ✓ Secured obligations
- ✓ Jurisdiction and applicable law
- ✓ Deviations from the guidelines described above
- ✓ Any peculiarities

The briefing must be accompanied by any documentation supporting the need of granting the guarantee.

3 CORPORATE GUARANTEE ISSUANCES

Corporate Guarantees shall be granted as part of the process of signing of the underlying transaction documents once (i) its terms and format have been agreed by the Business Development, Legal, and Treasury HQ Departments, and (ii) the prescriptive approval of the Asset & Expansion Committee has been obtained.

4 BANK GUARANTEE ISSUANCES

Treasury Department shall oversee liaising with NH relationship banks or financial institutions to manage the issuance of Bank Guarantees.

For this purpose, the Treasury Department shall liaise with the issuing bank for the purpose of the approval of the following aspects:

- ✓ **Format** (to be provided by Legal Department in coordination with the Business Development Department; the format included in Annex II is already approved by the main relationship banks).
- ✓ **Tenor**
- ✓ **Amount**
- ✓ **Beneficiary**: The guarantor bank needs to check that the proposed beneficiary is not subject to any sanction or regulation that prevents the bank to work with them.
- ✓ **Jurisdiction and applicable law**

If the selected bank does not have a representation office in the country where the guarantee should be issued, it might do it through a Correspondent Bank. In these cases, the Correspondent Bank might also need to approve the aspects listed above.

Once the issuing bank has approved all the relevant aspects and accepted to issue the guarantee, and the prescriptive approval of the Asset & Expansion Committee has been obtained, the Treasury Department shall prepare the Issuance Request, which shall be signed by the relevant duly empowered signatories and sent to the bank.

Standard issuance period once the request has been launched would be 5 working days.

Upon request of the Business Development Department the Treasury Department shall arrange the issuance and delivery of the guarantee in coordination with the Business Development Department and the Legal Department.

5 GUARANTEE CANCELLATION

Once the circumstances triggering the termination of a guarantee are verified (e.g. the lapse of time or the concurrence of any specific given circumstances established in the underlying agreement or in the guarantee itself), the area originally requesting the guarantee must arrange its withdrawal and cancellation.

For this purpose, unless otherwise advised by the Legal Department:

- ✓ In the case of **Parent Company Guarantees**, the original text of the guarantee shall be delivered to the Legal Department.
- ✓ In the case of **Bank Guarantees**, the original text of the guarantee shall be delivered to the Treasury Department, for them to initiate the cancellation process with the issuing bank. Treasury would also be recording the termination of the bank guarantee once it takes place.

In addition, the counterparty must deliver a letter confirming that they deem the guarantee to be expired, and expressly renouncing to file any additional claim thereunder.

6 GUARANTEES TO BE RECEIVED

There might be some cases in which some counterparties agree to provide guarantees in favor of NH as beneficiary.

The configuration, nature and format of these guarantees should be internally discussed and agreed with the Legal Department and the Treasury Department.

Once received, guarantees shall be delivered to Treasury Department for recording and monitoring. The Treasury Department shall then deliver the original to the Legal Department for safekeeping.

CORPORATE GUARANTEE

The undersigned,

[***], a [***] company having its registered office at [***], VAT n. [***], duly represented by [***]
(hereinafter: “**Guarantor**”),

whereas

a [DESCRIPTION OF THE AGREEMENT] (hereinafter: the “**Agreement**”) is in effect on [DATE OF ENTRY INTO FORCE] between:

- I. [INCLUDE BENEFICIARY COMPANY INFO] (hereinafter: “**Beneficiary**”); and
- II. [INCLUDE MAIN OBLIGOR COMPANY INFO] (hereinafter: “**Main Obligor**”);

hereby constitutes

1. Itself as Guarantor for the Main Obligor in favor of the Beneficiary and/or or its successor(s) in title (such successors in title of Lessor hereinafter deemed to be concluded in the definition of “**Lessor**”), up to an amount equal to [DESCRIPTION OF THE RATIONALE OF THE GUARANTEED AMOUNT, IF ANY], being EUR [***] as per the entry into force of the Agreement (the “**Guaranteed Amount**”), in relation to [DESCRIPTION OF GUARANTEED PAYMENT OBLIGATIONS] (the “**Guaranteed Obligations**”).
2. The Guarantor shall pay to the Beneficiary any amount due and payable by the Main Obligor in respect of the Guaranteed Obligations, up to the Guaranteed Amount, provided that:
 - The relevant amount has been declared due and payable in respect of the Guaranteed Obligations by [INDEPENDENT THIRD PARTY / COURT RESOLUTION]; and
 - the Main Obligor has failed to make the relevant payment within [***] business days after a written payment request of the Beneficiary.
3. This guarantee shall take effect as from the entry into force of the Agreement and shall remain in force until the date of termination of the Agreement.
4. On the date of termination of the Agreement (i) this guarantee shall automatically expire (except for any payment request received prior to such date); (ii) the Beneficiary shall return the original of this guarantee to the Guarantor; and (iii) the Beneficiary shall confirm

in writing that this guarantee is terminated and it expressly renounces to make any additional claims thereunder.

5. This guarantee shall be governed by and construed in accordance with the laws of [***]. All disputes arising out of or in connection with this guarantee shall be finally settled before the competent court in [***].

[GUARANTOR]

Name:

Date:

ANNEX II – FORM OF BANK GUARANTEE

[**] (hereinafter: the “**Bank**”), and on its behalf [**] and [**], holding sufficient authorization for such purpose,

whereas

a [DESCRIPTION OF THE AGREEMENT] (hereinafter: the “**Agreement**”) is in effect on [DATE OF ENTRY INTO FORCE] between:

- I. [INCLUDE BENEFICIARY COMPANY INFO] (hereinafter: “**Beneficiary**”); and
- II. [INCLUDE MAIN OBLIGOR COMPANY INFO] (hereinafter: “**Main Obligor**”);

The Bank hereby declares:

1. The Bank hereby irrevocably and unconditionally undertakes to pay to the Beneficiary, from time to time, on first demand and without raising any defense, exception, objection, plea, claim and/or legal proceedings of whatsoever nature, any amount that, in accordance with the terms and conditions of this guarantee, the Beneficiary claims to be due to it by the Beneficiary under [DESCRIPTION OF GUARANTEED PAYMENT OBLIGATIONS] (the “**Guaranteed Obligations**”), up to the maximum amount of EUR [**] (hereinafter the “**Maximum Amount**”).
2. This guarantee constitutes, and shall be interpreted as, a first demand guarantee and, therefore, gives rise to an independent, autonomous, irrevocable and unconditional obligation of the Bank to pay on first demand to the Beneficiary any and all amounts required by the Beneficiary in accordance with the terms and conditions set forth herein, up to the Maximum Amount.
3. Any payments obligations of the Bank under this guarantee are subject to the Beneficiary sending a written payment request to the Bank:
 - Indicating the amount to be paid, which, in aggregate with any payments previously made by the Bank under this guarantee, shall not exceed the Maximum Amount;
 - Confirming that the relevant amount has been declared due and payable in respect of the Guaranteed Obligations by [INDEPENDENT THIRD PARTY / COURT RESOLUTION]; and
 - Confirming that the Main Obligor has failed to make the relevant payment within [**] business days after a written payment request of the Beneficiary.
4. This guarantee shall be valid for ONE (1) YEAR as from its issuance. However, this term (and following terms) shall be automatically extended for consecutive terms of one year, unless at least thirty (30) days prior to the then current expiry date the Bank notifies to the Beneficiary its intention of not extending the guarantee.

In this case the Beneficiary shall be entitled to enforce the guarantee and hold the relevant amount in escrow as security for the Guaranteed Obligations unless the Main Obligor delivers a replacing equivalent Bank Guarantee to the Beneficiary prior to the relevant expiry date.

5. On the earlier of the expiry date of the guarantee or the date of termination of the Agreement (i) this guarantee shall automatically expire (except for any payment request received prior to such date); (ii) the Beneficiary shall return the original of this guarantee to the Main Obligor; and (iii) the Beneficiary shall confirm in writing that this guarantee is terminated and it expressly renounces to make any additional claims thereunder.
6. This guarantee shall be governed by and construed in accordance with the laws of [***]. All disputes arising out of or in connection with this guarantee shall be finally settled before the competent court in [***].

On the date hereof this guarantee has been registered in the Special Register of Guarantees under number [***].

And for the record this guarantee is issued in [PLACE OF ISSUANCE] on [DATE OF ISSUANCE]

[BANK]
P.P.