

When Expiry Becomes the Dispute

Fraud is exceptional. Expiry is a routine and recurring question in guarantee practice.

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Fraud attracts attention. Expiry dates create disputes of a quieter kind. Fraud shows up in court decisions, headlines, and emergency injunctions; expiry generates uncertainty that rarely makes the news but recurs across ordinary transactions.

In my experience, when practitioners are asked what generates the most day-to-day friction in guarantee work, many do not mention fraud at all. They mention expiry. I offer that as a practitioner's observation, not as a measured statistic — I am not aware of published data comparing the frequency of expiry disputes with fraud, and this article does not claim any. What can be said with confidence is more modest: questions of expiry arise routinely in guarantee practice, while fraud remains exceptional. And a recurring class of disputes turns not on whether a guarantee exists, but on whether it still does.

A guarantee approaching expiry creates a particular tension. The beneficiary sees remaining exposure and wants the protection to continue. The applicant sees a liability that should now end. The bank sees an undertaking that must be administered to the letter. For years these views coexist quietly; as the date nears, they pull apart — and a single date rarely satisfies all three.

The difficulty is that expiry is often treated as a drafting detail rather than the commercial event it is. Parties pour attention into the amount, the governing law, the milestones, the payment mechanics. The expiry clause is negotiated last — sometimes copied from an earlier deal, sometimes reflecting optimism rather than risk.

It rarely unfolds as planned. Projects are extended, deliveries slip, certificates are issued late, approvals stay outstanding, contracts are amended. The guarantee, meanwhile, remains tied to language drafted years earlier. What seemed adequate at issuance becomes a problem at maturity: a fixed date that expires before the risk does; an event-based expiry that waits on a certificate no one issues; an automatic reduction that becomes impossible to apply. None of these involves fraud. Each can produce a serious dispute.

One distinction matters here and is often blurred. Expiry fixes the end of the period within which a complying demand or presentation can be made. It does not, by itself, erase the consequences of a complying demand already made before that date. Under URDG 758, once a demand is presented, the guarantor has a defined period to examine it — a period

that may run on after the guarantee has expired (article 20) — so a demand made in time is dealt with on its merits even though the undertaking itself has since lapsed (see also UCP 600 article 6 on expiry and the place for presentation). The dispute usually concerns whether a timely, complying demand was in fact made — not whether expiry retroactively cancels one that was.

The irony is that expiry clauses exist to create certainty — to fix the exact point at which an obligation ends. Drafted carelessly, they do the opposite. They turn the final day of a guarantee into the first day of an argument.

The most effective expiry clauses, then, do not merely state a date. They allocate responsibility for uncertainty in advance. They anticipate delay, administrative failure, and events that may never occur exactly as expected. In practice, the strongest guarantee is rarely the one with the most elaborate payment provisions. It is the one with the clearest ending — because certainty is measured not only by knowing when an obligation begins, but by knowing precisely when, and how, it ends.

Fraud may challenge a guarantee's integrity. Uncertainty about expiry challenges its very existence — and, in the author's experience, questions of existence are a frequent and under-managed source of dispute.