

ICC Austria Trade Finance Week 2018

ICC Global Survey on URDG 758

Dr. Andrea Hauptmann

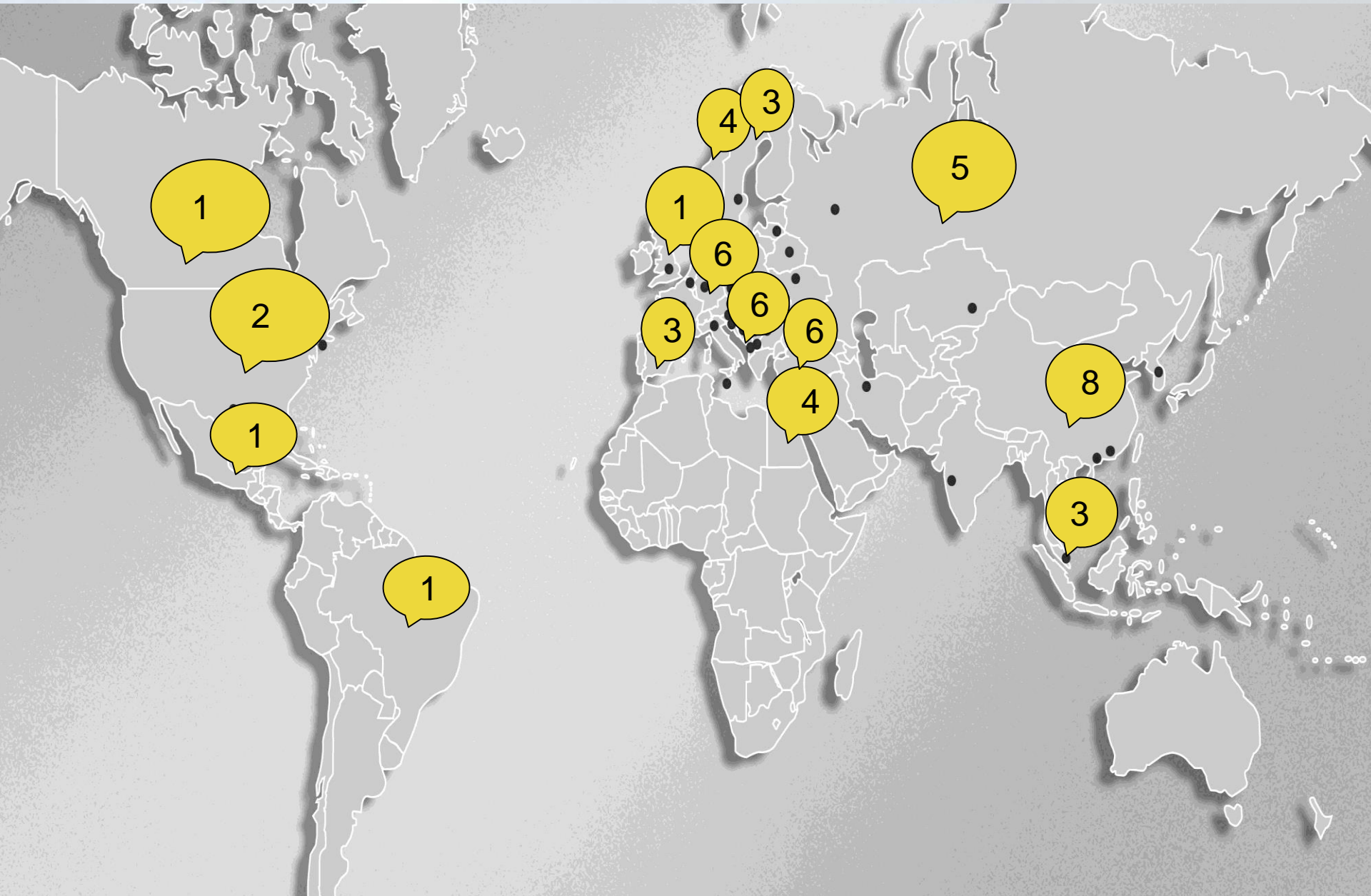


**Raiffeisen Bank
International**

Responses by Regions



Responses by Countries



Top Scorer

P.R. China 8

Germany 6

Serbia

Turkey

Russia 5

Egypt 4

Norway

Spain 3

Sweden

Malaysia

2000 - 2018

Both surveys launched 8 years after introducing URDG 458 resp 758

	2000	2018
No of respondents	13	96 (39 countries)
Translation	6	21 (same language used in various countries 1)
Court ruling	0	14 countries
Books or other publication	5	22
Studies (legal or University)	2	14

A lighthouse stands on a rocky island, with waves crashing against its base. The lighthouse is white with a dark top section. The sky is blue with some clouds. The text is overlaid on the image, enclosed in a thin blue oval border.

**Does any
government
organisation (in your
jurisdiction)
recommend the use
of URDG?**

Recommendation

YES 15

NO 65

Among others:

- **Sweden: Swedish Tax Agency and Radiation Safety Authority**
- **Kyrgyzstan: Governmental Organisation conducting public tender**
- **Central Bank of Iran**
- **Supreme People's Court of China explicitly refers to URDG 758**
- **Czech Export Bank**
- **Several Chambers of Commerce**
- **Egyptian law states, that international rules and practices shall apply when no text or usage is prescribed**



**Have the URDG 758
been translated into
your language ?**

Translation

According to the feedback, we counted 21 languages (covering 31 countries, 8 responding countries do not have a translation in their local language.

Nevertheless, we know about 2 more countries having translated the rules into their local language, who did not reply to this survey.

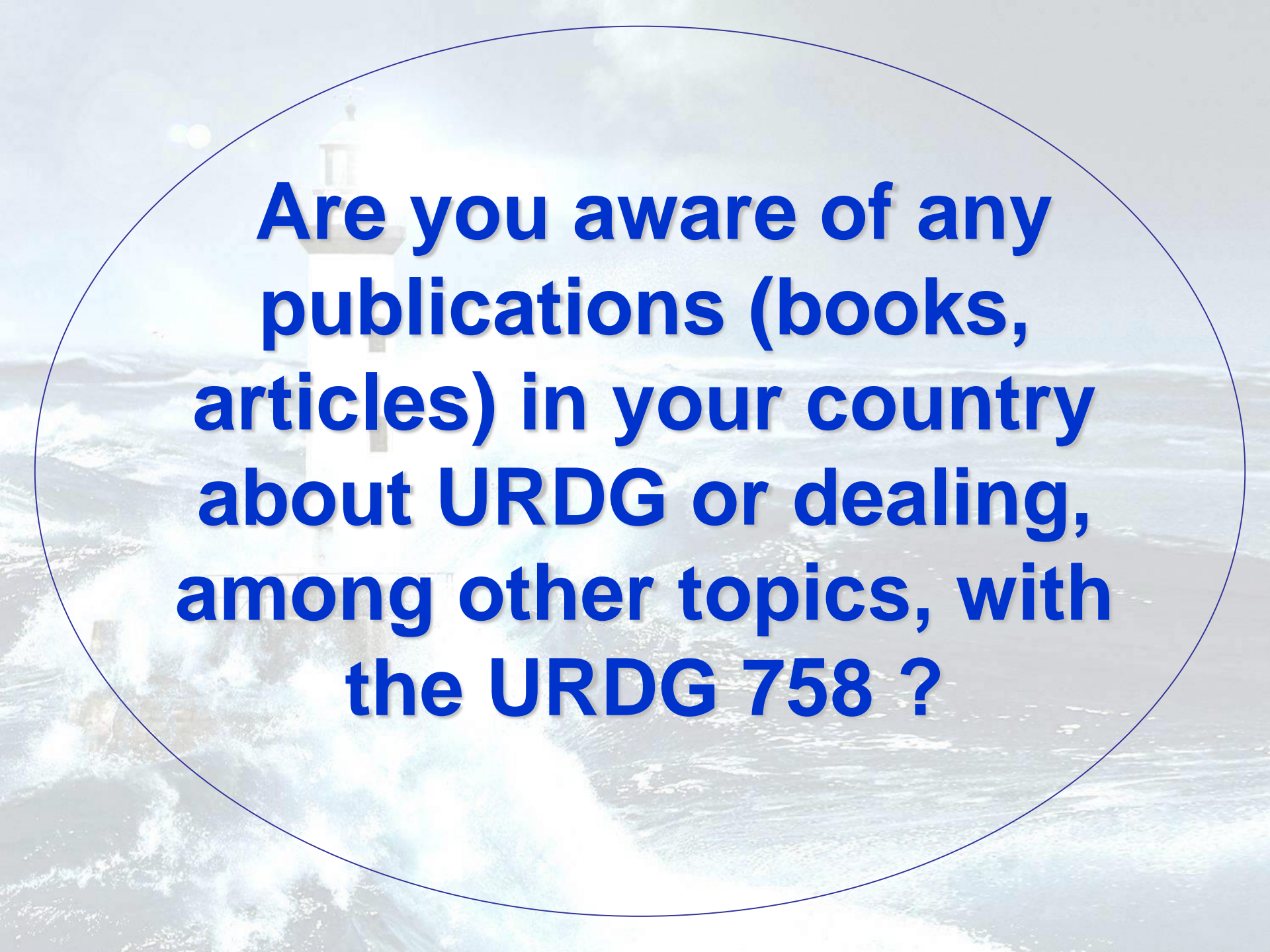


**Are you aware of any
decision involving the
URDG that has been
rendered by courts of law
or arbitral tribunals
whether in your country
or abroad?**

Court Rulings

We have received a number of court rulings from different countries, most of them to be translated (f.ex: 100 pages in Bulgarian language)

- **No court case dealing with a problem with URDG 758**
- **We see even more countries, where judges use the rules as a guide for their decision, though the guarantee was not issued subject to URDG 758 (Russia, UK)**
- **English courts will usually treat the express application of URDG 758 as indicating a demand guarantee, even if the text of the guarantee includes elements of suretyship.**



**Are you aware of any
publications (books,
articles) in your country
about URDG or dealing,
among other topics, with
the URDG 758 ?**

Publications

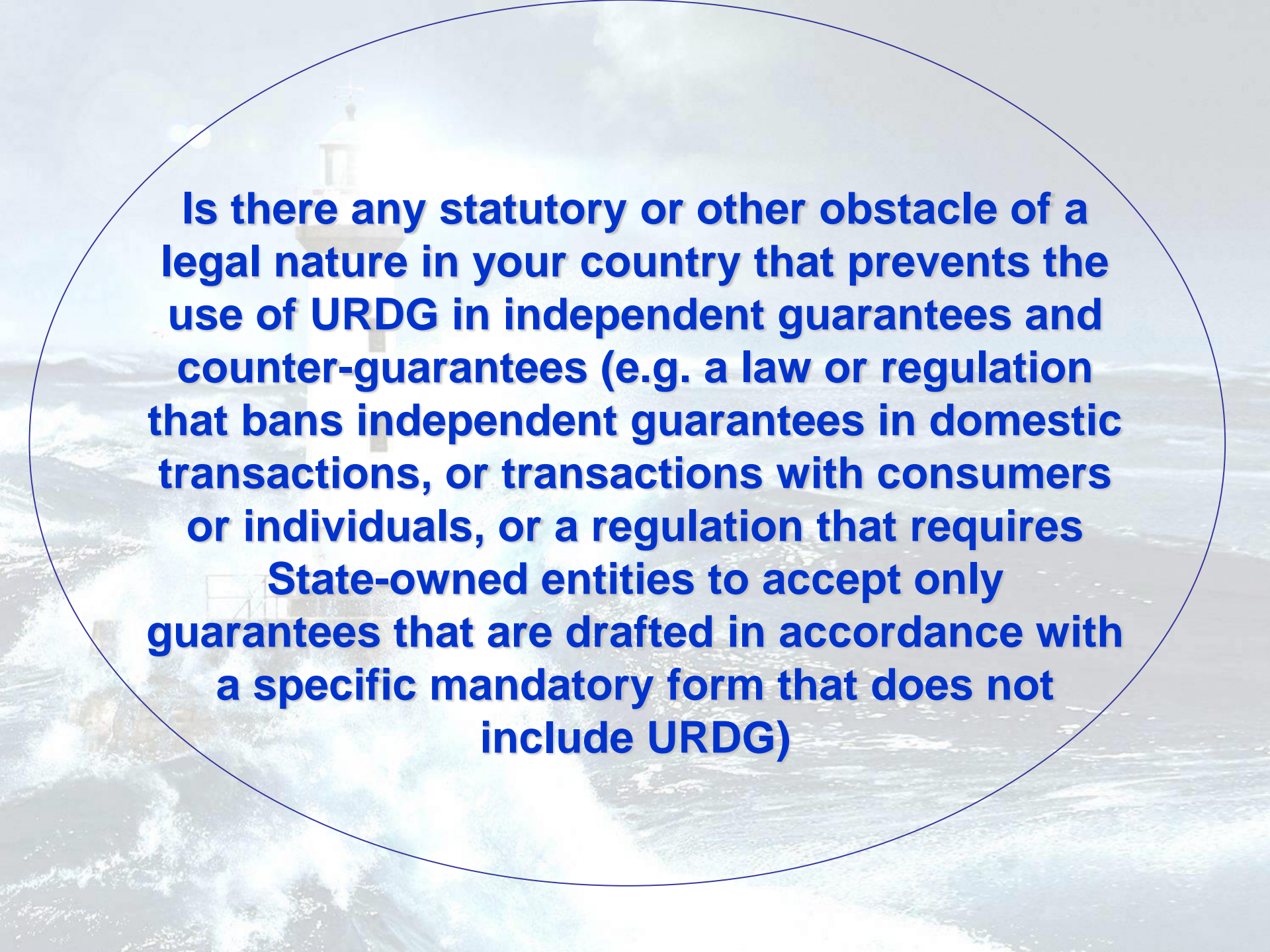
YES 44 (20 countries)

NO 44 (19)

Countries replying yes (among others)

Spain, Croatia, P.R.China, Iran, Germany, USA, UK, Bulgaria, Russia, Malaysia, Turkey, Sweden, Italy, Egypt, Japan, Mexico

Publications range from books dedicated to the rules to articles in trade finance related magazines



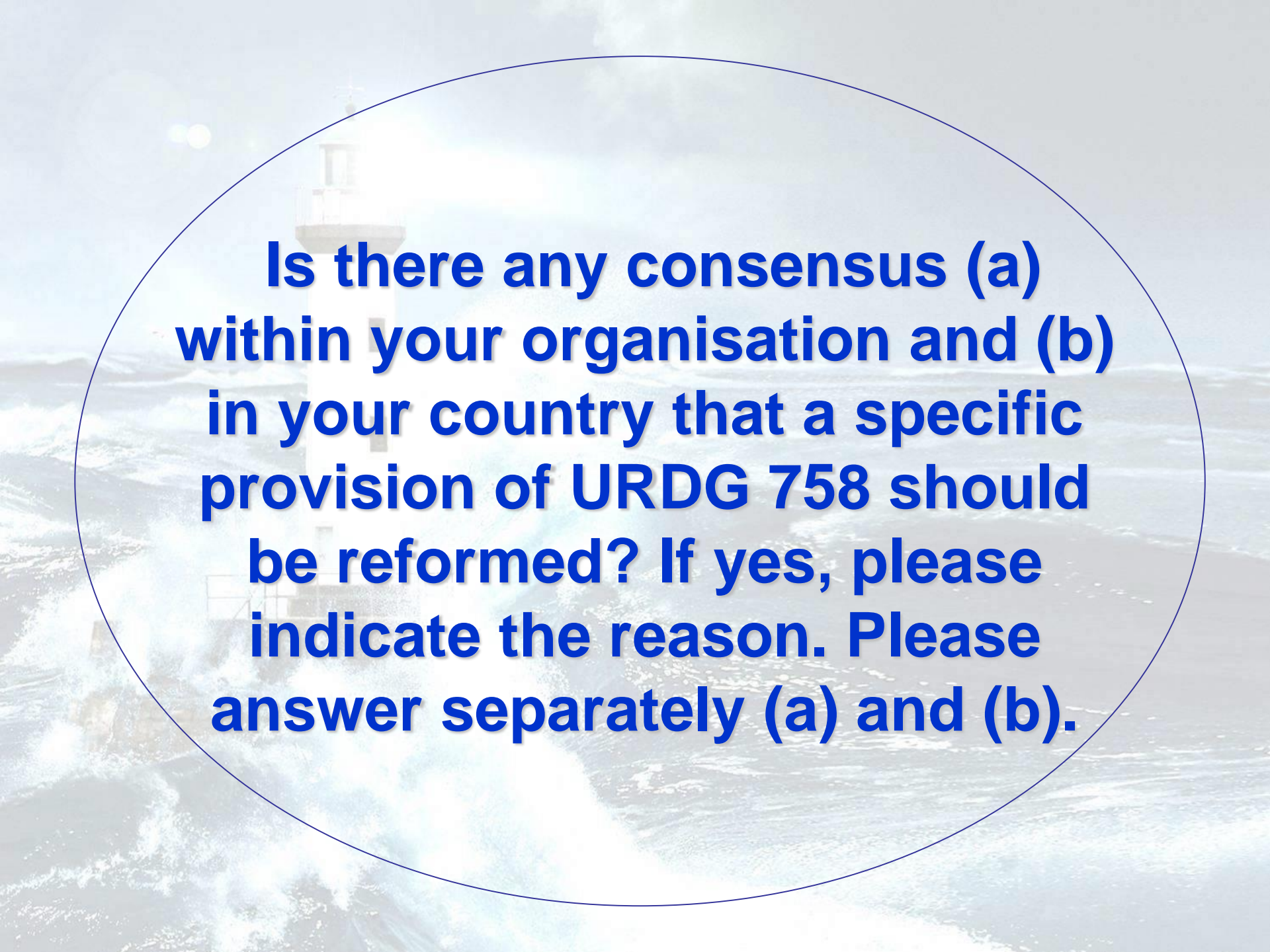
Is there any statutory or other obstacle of a legal nature in your country that prevents the use of URDG in independent guarantees and counter-guarantees (e.g. a law or regulation that bans independent guarantees in domestic transactions, or transactions with consumers or individuals, or a regulation that requires State-owned entities to accept only guarantees that are drafted in accordance with a specific mandatory form that does not include URDG)

Legal Obstacles

General Consensus, that there are no legal obstacles, but many report problems with Public Authorities / State Owned Companies in accepting URDG 758.

Either they have their own templates not matching URDG or they insist on such guarantees to be subject to their local law.

In some countries guarantees in favour of Public Authorities or State owned Companies are sureties and not independent guarantees and for that reason URDG cannot be applied



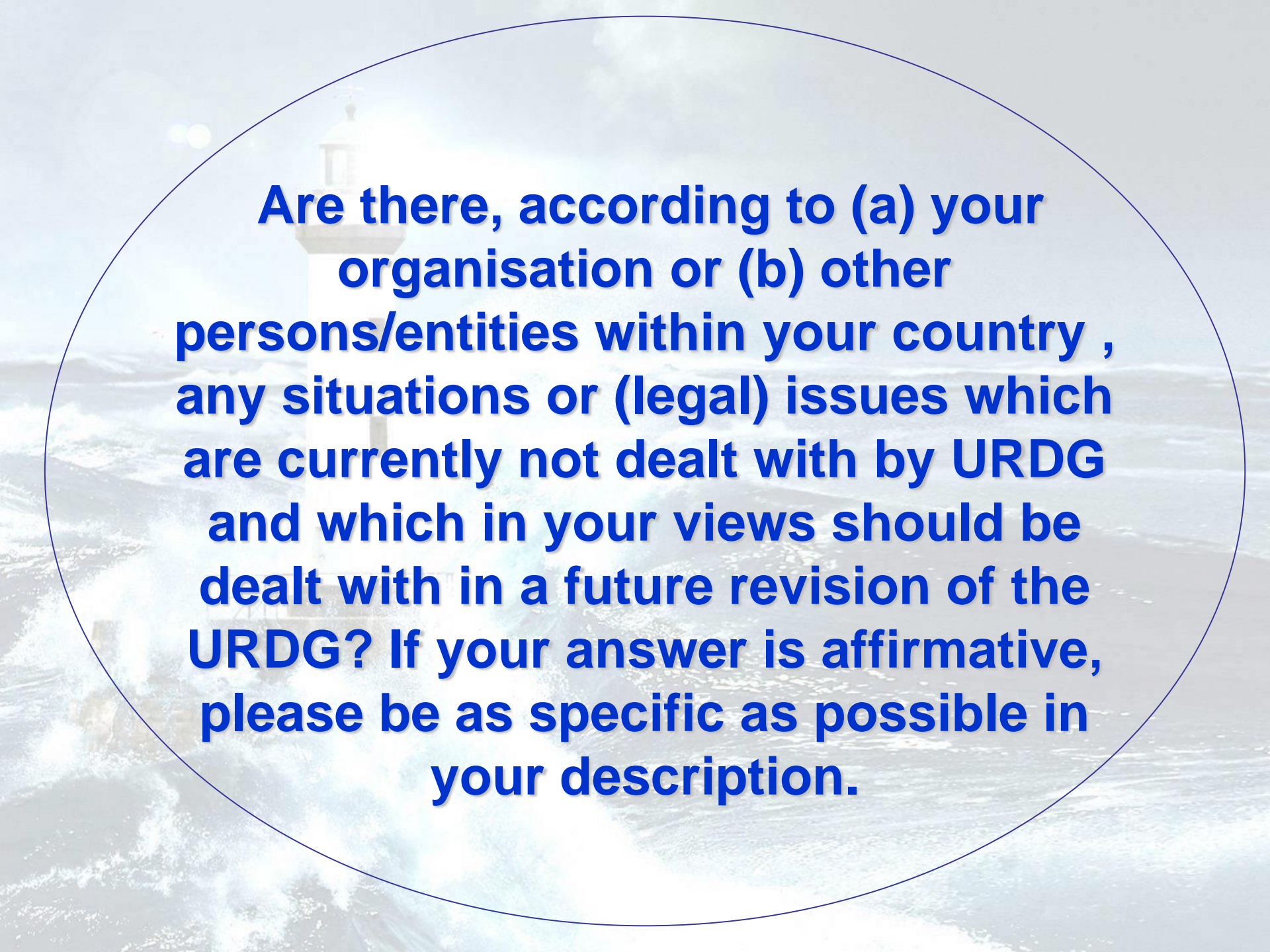
Is there any consensus (a) within your organisation and (b) in your country that a specific provision of URDG 758 should be reformed? If yes, please indicate the reason. Please answer separately (a) and (b).

Articles to be reformed

YES 12

NO 77

- **Article 22 to be deleted**
- **Article 23 Extend or Pay**
- **Article 25 automatic expiry**
- **Article 15 „in which respect the applicant is in breach“**
- **Article 17 rejecting the whole demand and not only the demand exceeding the available amount**



Are there, according to (a) your organisation or (b) other persons/entities within your country , any situations or (legal) issues which are currently not dealt with by URDG and which in your views should be dealt with in a future revision of the URDG? If your answer is affirmative, please be as specific as possible in your description.

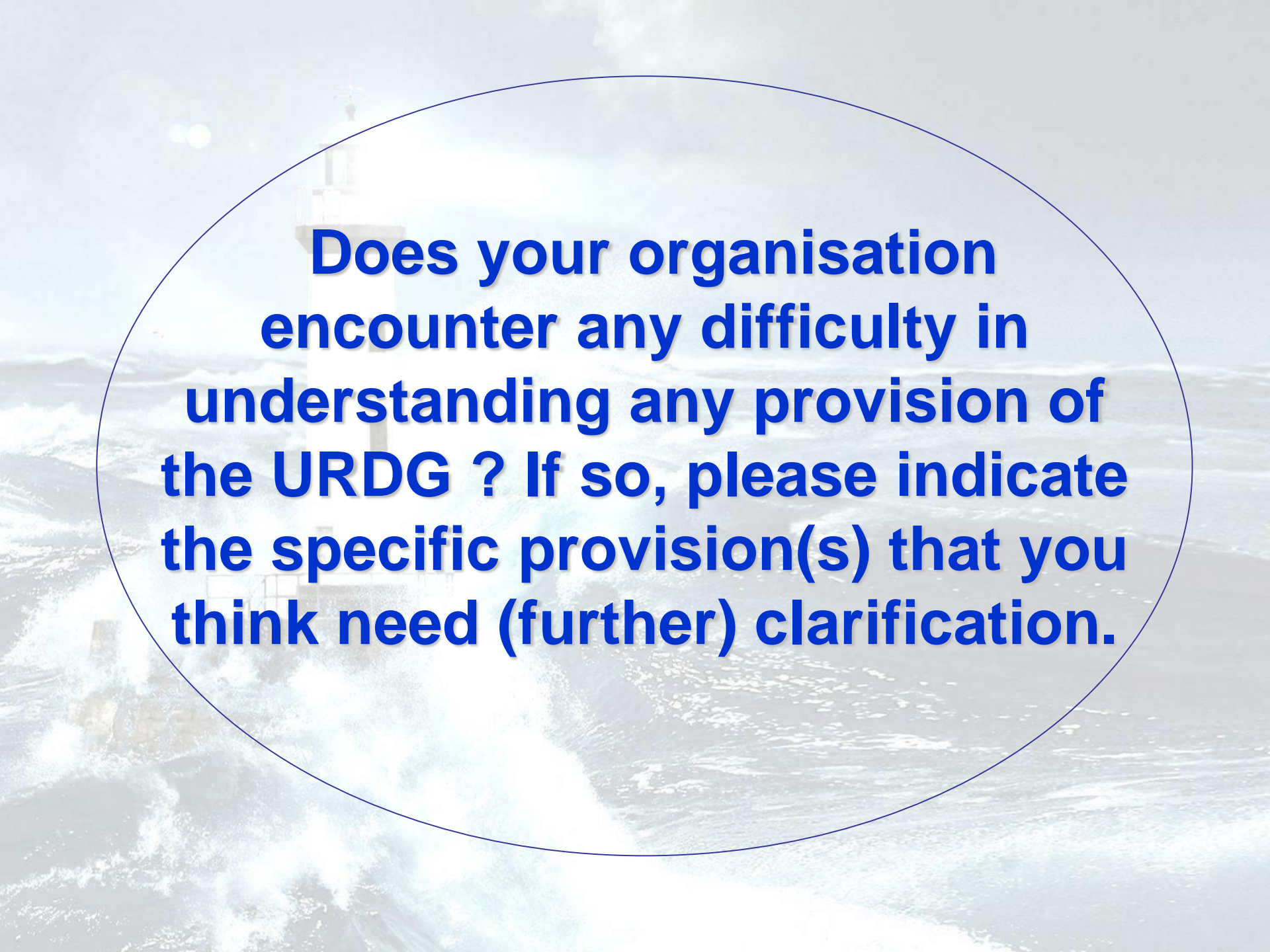
Missing items

YES 17

NO 63

Mentioned, among others:

- Examination of documents
- Art 33, transfer of counterguarantee required
- Art 21: change of currency rule might conflict with local exchange control formalities
- Art 20: 5 business days examination period vs. period for payment
- Art 23: period of suspense
- How to deal with sanctions



Does your organisation encounter any difficulty in understanding any provision of the URDG ? If so, please indicate the specific provision(s) that you think need (further) clarification.

Problems in Understanding

YES 5

NO 91

Article 11

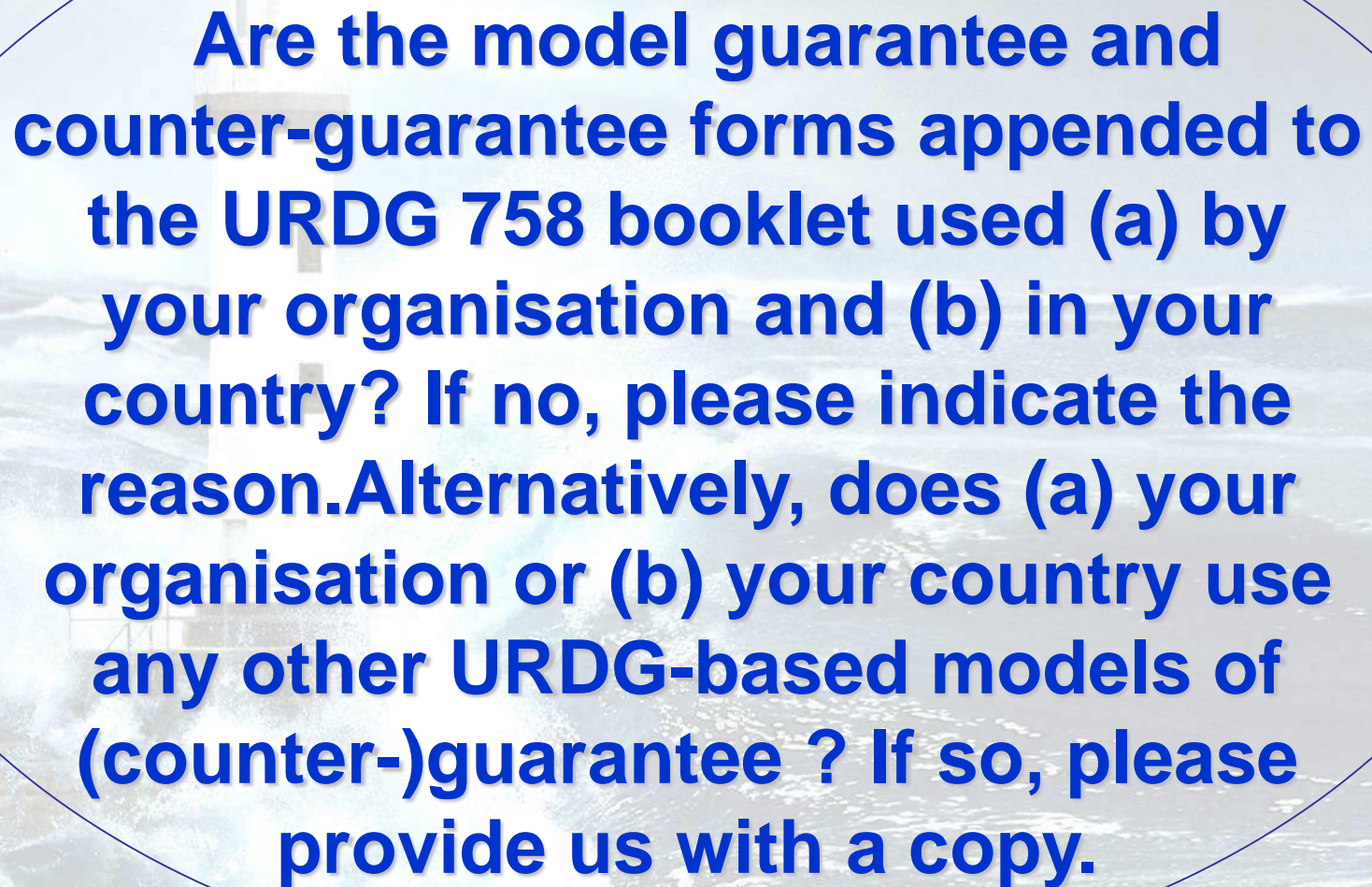
Article 22

Article 23

Article 25 b

Article 33

We will analyse these replies and shall address them in the ISDGP



Are the model guarantee and counter-guarantee forms appended to the URDG 758 booklet used (a) by your organisation and (b) in your country? If no, please indicate the reason. Alternatively, does (a) your organisation or (b) your country use any other URDG-based models of (counter-)guarantee ? If so, please provide us with a copy.

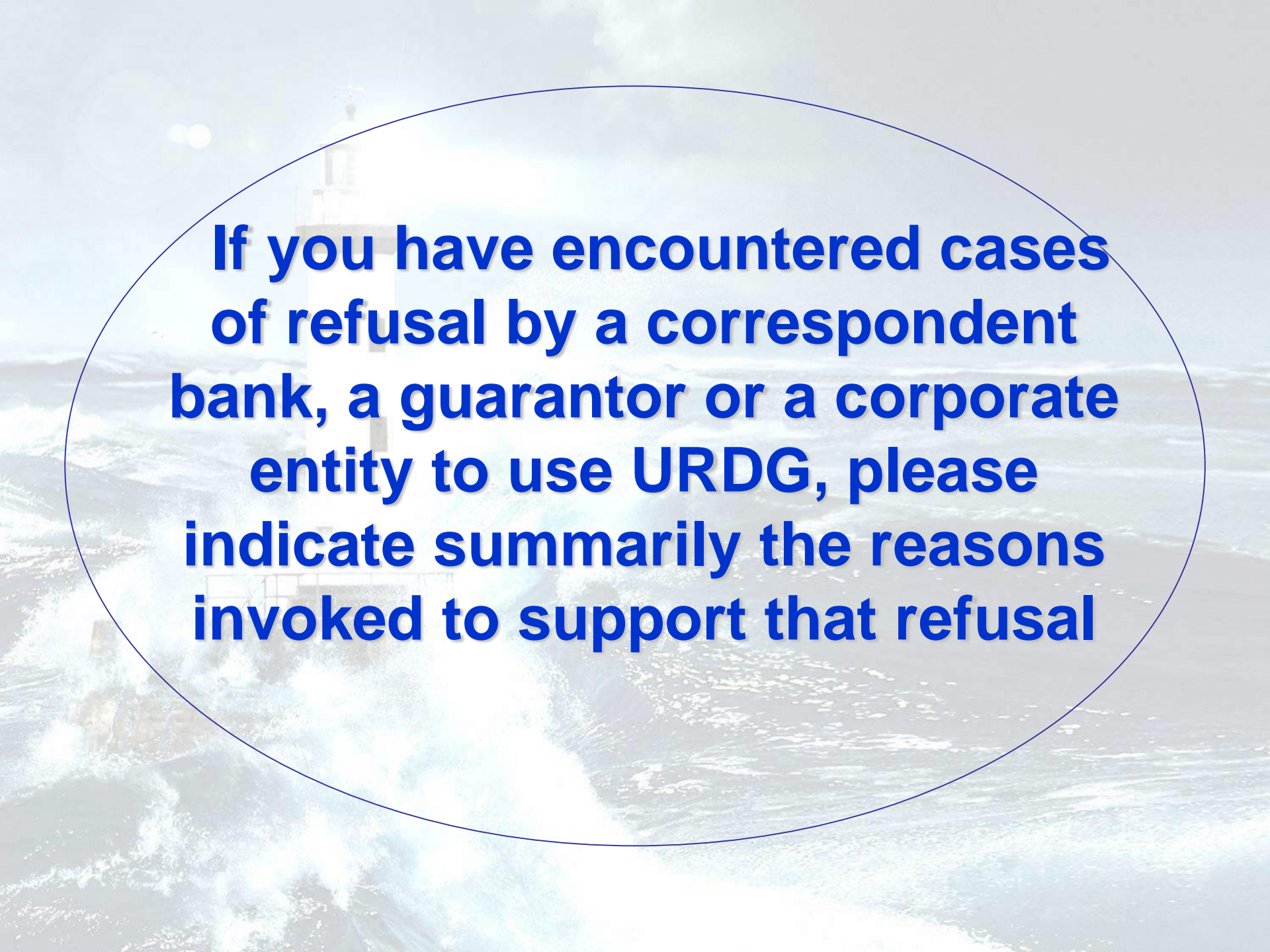
Model forms

YES 29

limited YES 20

NO 43

For the NO various reasons were stated, mostly that the banks use their own templates, but also that they were refused by beneficiaries as well as customers as they „ do not look like normal guarantees“



If you have encountered cases of refusal by a correspondent bank, a guarantor or a corporate entity to use URDG, please indicate summarily the reasons invoked to support that refusal


Rejection

Yes 49

No 29

Reasons for rejection among others:

- **Countries but also banks generally rejecting URDG guarantees, both were mentioned by name and we will contact them to clarify the reasons for general rejection**
- **Rejected by beneficiary because he does not know URDG**
- **Public authorities using their own templates**
- **Customs insisting on guarantees subject to their local law**
- **Text of guarantee as annex to the contract, subject to local law**

A lighthouse stands on a rocky island, with waves crashing against its base. The lighthouse is white with a dark top section. The sky is blue with some clouds. The water is dark blue with white foam from the waves.

**Do you (bank) use
URDG as a standard or
only if expressly
instructed by the
applicant ?**

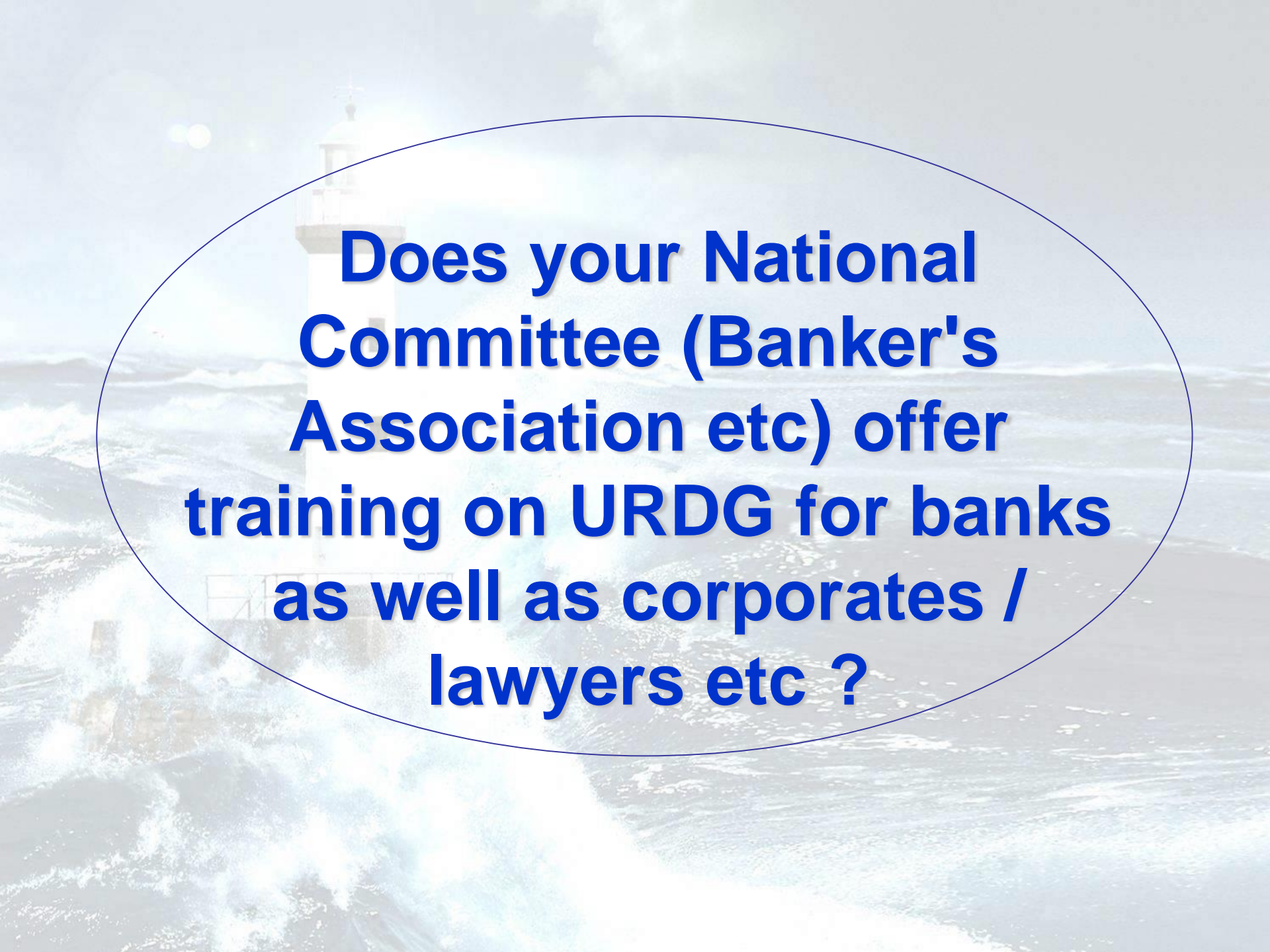
Standard

YES 64

NO 23

Some banks are using URDG as a standard only for cross border transactions

N.B. Naturally only banks replied, NCs could not answer this question

A lighthouse stands on a rocky island, with waves crashing against its base. The scene is set against a backdrop of a cloudy sky and a bright sun. The lighthouse is white with a dark top section. The waves are white and frothy, creating a dynamic contrast with the dark rocks and the blue of the sea.

**Does your National
Committee (Banker's
Association etc) offer
training on URDG for banks
as well as corporates /
lawyers etc ?**

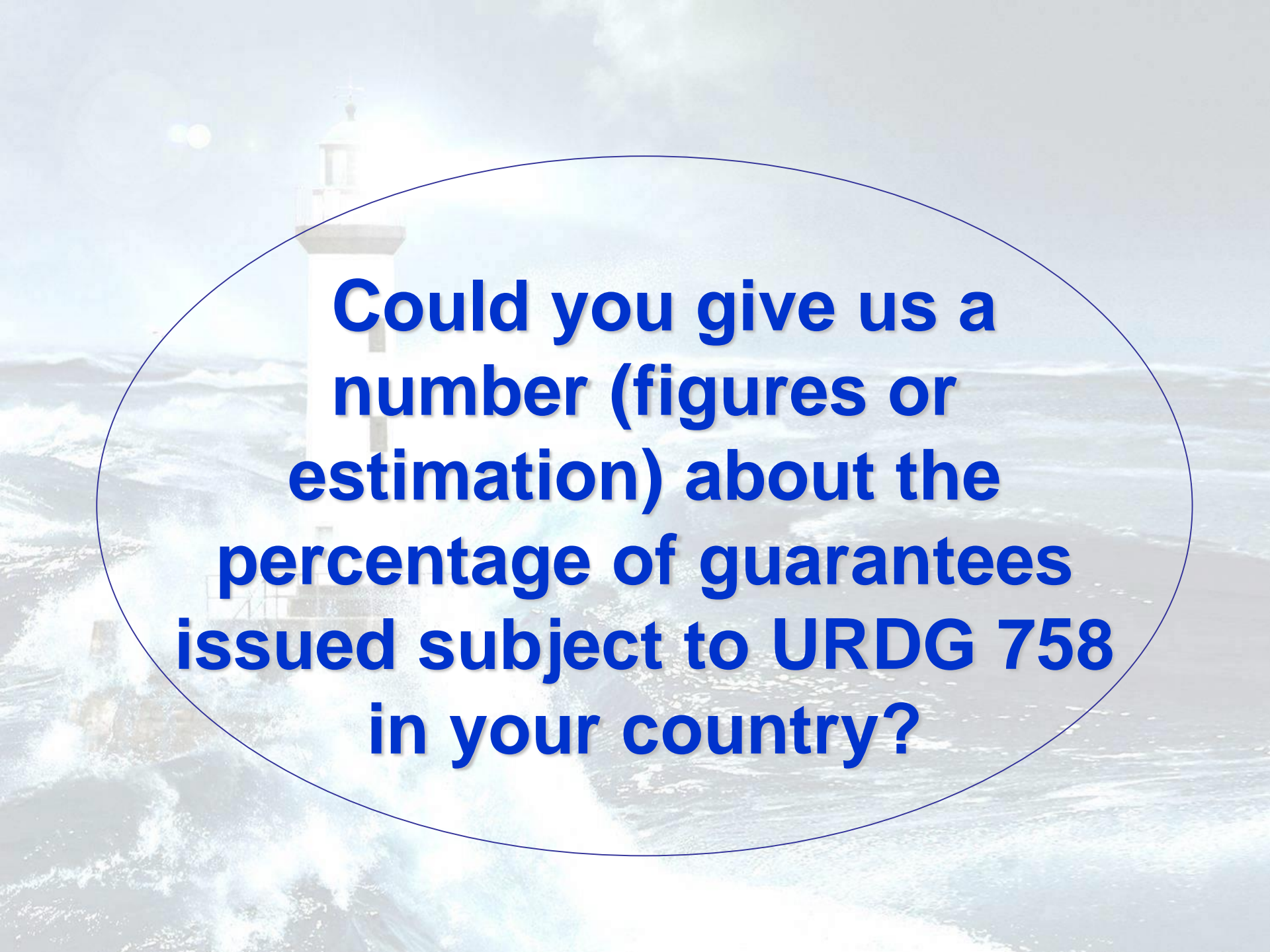
Trainings

YES 22

NO 17

17 countries reported that neither their NCs nor any other organisation offer training on URDG 758

We will get in touch with these countries trying to find out, what are the reasons and the Guarantee Task Force will offer it's assistance in establishing training on URDG 758

A lighthouse stands on a rocky island, with waves crashing against the shore. The lighthouse is white with a dark top section. The sky is blue with some clouds. The water is a mix of blue and white from the waves.

**Could you give us a
number (figures or
estimation) about the
percentage of guarantees
issued subject to URDG 758
in your country?**

Percentage of URDG 758

Not surprisingly large deviation in answers, depending on the business model of the bank.

2 banks in the same country reported a) less than 1% as majority of trade finance with USA while b) 90% of their guarantees are issued subject to URDG 758

Many banks reported a significant difference between domestic guarantees (0 – 20%) and cross-border transactions (70-90%)

One country outstanding, Sri Lanka reported 100% of their international guarantees to be subject to URDG 758



**Raiffeisen Bank
International**

**A reliable partner in
every situation**

**Dr. Andrea Hauptmann
Senior Consultant on Trade Finance**

Raiffeisen Bank International AG, Vienna/Austria

Tel: +43 1 71707 1285

Email: andrea.hauptmann@rbinternational.com