

The purpose of this document is to give to a guarantor a general overview of a guarantee and a guarantor's rights and obligations in respect to the bank that has granted the debt or in the case of an assignment of the principal debt to another creditor. The terms and conditions of an individual guarantee are laid down in the guarantee undertaking.

1. What is a guarantee?

In a guarantee, the guarantor assumes the liability of another person's debt. If the borrower does not discharge the debt in the agreed manner, the debt may be collected from the guarantor. Giving a guarantee undertaking should be carefully considered.

The guarantor is liable for the principal debt with his or her entire personal property. In practice, guarantees given to a bank are always guarantees as for one's own debt, if the creditor may demand payment directly from the guarantor once the debt has become due and payable.

A special guarantee secures one or more debts specified in the guarantee undertaking.

When giving a general guarantee, it is not specified which debts the guarantor secures. The guarantee secures the borrower's all present and future debts. The borrower may take out new loans and the guarantor secures them as well.

2. Guarantor

A guarantor may be either a natural person or a legal person such as a company, an association or a foundation.

A natural person who has given a guarantee is called a 'private guarantor'. No exemption from the provisions protecting a private guarantor can be made with any terms of agreement.

However, the owner of a borrower company or its parent company or a member of the management team of such a company is not considered a private guarantor. Such persons are the managing director, a member of the board of directors, a responsible partner or a person who owns at least one third of the borrower company or its parent company.

3. What is a guarantor liable for?

Besides the debt principal, a guarantor secures its interest and charges and fees. If the value of the reference interest rate or the exchange rate of a debt in a foreign currency changes, the guarantee liability decreases or increases correspondingly. The terms and conditions of the debt are binding on the guarantor.

If it is intended that the creditor may collect from the guarantor only a certain amount or percentage of the debt, this must be agreed on in the guarantee undertaking.

4. Two or more guarantors

Even if there were two or more guarantors, the guarantor may have to discharge alone the entire debt. The creditor is not liable to collect the debt from the other guarantors even if they were solvent. Moreover, the guarantor should note that the financial position of the other guarantors may weaken after giving the guarantee.

5. General guarantee

A natural person who gives a general guarantee is protected by limiting the guarantee liability quantitatively and chronologically. The guarantor and the bank agree on the maximum amount that can be collected from the guarantor. The amount must be given as a fixed sum (for example, 100 000 euros). Interest and other ancillary costs are also included in this amount unless a separate maximum amount has been agreed for them.

The chronological limitation on the guarantee is in general made under the condition that the guarantor only secures debts arisen before the set date. In this case, overrunning the set date does not abolish the guarantor's liability but determines which debts

belong to the guarantee.

Unless the guarantee liability has not been limited as described above, the guarantor only secures debts that were given a guarantee when granted or that had arisen before giving the guarantee undertaking and that were known to the guarantor.

In addition to a quantitative and chronological limitation set out in the guarantee undertaking, the person who has given a general guarantee always has the right to determine a date after which the guarantor is not liable for any further debts. The limitation will come into force as soon as the creditor has received the guarantor's notification unless a later date has been indicated in the notification. The limitation notification should be made in writing. The limitation does not reduce the guarantor's liability for the debts arisen before the entry into force of the limitation, with interest and ancillary costs.

A limitation made by one guarantor does not reduce the liability of the other guarantors.

6. Guarantee for a debt where the amount can vary up to an agreed maximum amount

In the case of a debt of where the amount can vary up to an agreed maximum amount, such as an overdraft facility, a private guarantor may limit his or her guarantee liability by determining a date after which the guarantor is no longer liable for any further debts. The limitation does not reduce the guarantor's liability for any debt arisen before the entry into force of the limitation, with interest and ancillary costs. The limitation will come into force as soon as the creditor has received the guarantor's notification unless a later date has been indicated in the notification. The limitation notification should be made in writing.

A limitation made by one guarantor does not reduce the liability of the other guarantors.

7. Deficiency guarantee for a housing loan

A guarantee given by a private guarantor is always a deficiency guarantee if the debt has primarily been granted for the purchase or renovation of a residence or holiday residence and if the residence or holiday residence stands as security for the debt. In this case, the residence in question is the primary pledge. A deficiency guarantee secures only the part of the debt that the proceeds from the sale of the borrower's residence standing as security cannot cover.

A residence is considered to be property, mainly intended for living or spending free time, which may be real estate or, for example, shares entitling to the holding of the residence. The residence does not have to be in the borrower's own use.

If real estate stands as security, the mortgage bonds securing the debt related to the residence constitute the primary pledge. The real estate may also be encumbered by other mortgage bonds ranking higher in priority, in which case the holders of the right of lien indicated by these other mortgage bonds will have a higher priority to the real estate's sales price.

A primary pledge can also stand as security for other debts. If the borrower's residence first also secures other debts, the proceeds from the sale of the residence can be primarily used for discharging the debts.

If a state guarantee in accordance with the Act on State Guarantees for Owner-Occupied Housing Loans stands as security for a housing loan, the residence always acts as primary security for the loan guaranteed by the state.

8. Amendments to the terms and conditions of the debt

Amending the terms and conditions of the debt to the detriment of the guarantor requires the guarantor's consent.

The guarantor's consent is not, however, required for extensions of the repayment schedule considered ordinary or otherwise minor amendments to the terms and conditions of the credit relationship. Similarly, the consent is not required when the guarantee has been given as a general guarantee or when the amendment is specified in the credit or guarantee terms.

It is not possible to charge any higher amount from the guarantor on the basis of the debt relationship than from the borrower. If the creditor discharges the borrower or one of the borrowers from repaying the debt to some extent, the guarantor is also discharged to that extent. Reducing the debt amount or cancelling the repayment obligation in a debt restructuring validated by a court of justice does not, however, decrease the guarantor's liabilities.

9. Giving information to the guarantor

Before making its credit decision, the bank finds out what the borrower's solvency is. Solvency information is mainly obtained from the borrower, from the bank's registers and from the credit information register. The borrower's solvency is affected by his or her income, expenses, debts and other undertakings.

Before signing the guarantee undertaking, the bank gives to the guarantor this information affecting the borrower's solvency.

The creditor informs the guarantor of a payment default concerning the debt belonging within the scope of the guarantee. If the creditor has not informed the guarantor of a payment default within one (1) month, the creditor may not charge interest or default interest from the guarantor for the delayed amount until from the period subsequent to sending the notification.

As long as the guarantee is valid, the private guarantor can request from the creditor information on the debt and on how the borrower manages his or her debt. Furthermore, a private guarantor has the right, if he or she so wishes, to receive from the creditor information on the borrower's other debts and undertakings and other factors affecting the borrower's solvency. The right to receive information applies to the facts known to the creditor and the borrower's credit information. The information requested must have a meaning in assessing the guarantor's risk. The creditor charges a fee subject to its tariff for the costs arisen from disclosing the information.

In the case of a general guarantee, the creditor notifies a private guarantor of each new credit separately. Alternatively, it can be agreed that the creditor informs a private guarantor of the amount of the debts belonging to the scope of the guarantee at least every six (6) months.

The amount in use of a debt where the amount can vary up to an agreed maximum amount is given to a private guarantor every six (6) months.

10. Collecting a debt from the guarantor

A debt can be collected from the guarantor after the debt has matured. The expiration may result from the termination of a credit period agreed on or the cancellation of the debt, for example, due to a payment default.

The creditor is not liable to collect the debt first from the borrower. Similarly, the creditor is not liable to collect the debt first from other security unless the case involves a deficiency guarantee.

The creditor is entitled to demand payment from the deficiency guarantor only after the borrower's residence has been sold or it has been established in distraint proceedings that there is an obstacle to the sale of the residence. A deficiency guarantor may, if he or she so wishes, discharge the debt in order to prevent the sale of the residence owned by the borrower or the accrual of default interest.

11. Discharge of a called-in debt in accordance with the original terms and conditions

A private guarantor may repay the debt in accordance with the terms and conditions of the debt that were valid before the debt was called in even if the debt has been called in the middle of the credit period due to a payment default. The procedure requires, however, that the guarantor pays the due instalments to the creditor and places security for the outstanding principal.

12. Collecting the amount paid by the guarantor from the borrower

If the guarantor repays the debt to the creditor, he or she has a right of recourse, if the right to obtain from the borrower the amount paid to the creditor with interest and costs. The guarantor should keep the receipts for collection.

If the borrower has given a pledge for the debt, the guarantor has the right to obtain a payment from the pledge given by the borrower after the creditor's receivables. If the borrower and some other person own the pledge together, only the share owned by the borrower stands as a pledge for the guarantor's right of recourse, unless otherwise agreed.

13. Collecting the amount paid by the guarantor from the other guarantors

If several persons have guaranteed the entire debt, they are liable for the debt with equal amounts in their mutual relationship.

The limitations to the guarantee liabilities possibly agreed on in the guarantee undertakings affect the guarantors' mutual liabilities. The guarantor who has amortised the debt has the right to demand the amount paid from the other guarantors if the outstanding debt is less than the guarantee amounts in total and the guarantor's repayment has reduced the amount of the other guarantors' guarantee liabilities.

Example 1, guarantees for the entire principal debt

The debt amount is 30 000 euros and one of the three guarantors discharges the debt in full. The guarantor who discharged the debt may demand 10 000 euros from each of the other guarantors.

Example 2, limited guarantees with joint and several liability

The debt amount is 20 000 euros. Guarantor A has guaranteed the entire debt and guarantor B has given a guarantee of 6,000 euros. If A discharges the debt in full, he or she may demand B to pay 3 000 euros, i.e. half of the jointly guaranteed 6 000 euros.

Example 3, limited guarantees with no joint and several liability

If A and B have both given a guarantee of 6 000 with no joint and several liability for a debt of 20 000 euros, 6 000 euros may be collected from each of them, in other words, a total of 12 000 euros.

If the outstanding debt amount is 12 000 euros or more, there is no proportion with joint and several liability. If A discharges the entire amount he or she has guaranteed, A cannot demand payment from B.

If the outstanding debt amount is only 8 000 euros, the proportion guaranteed with joint and several liability is 4 000 euros; 2 000 euros on the liability of A alone and 2 000 euros on the liability of B alone. If A pays 6 000 euros to the creditor and B pays 2 000 euros to the creditor, A may demand 2 000 euros from B.

If the outstanding debt amount is 5 000 euros only, A and B have joint and several liability for the entire amount. If A pays 3 000 euros to the creditor and B pays 2 000 euros to the creditor, A may demand 500 euros from B.

If a new guarantee is later given for the debt, which had not been required when granting the debt, the guarantor who has later given a guarantee undertaking is entitled to collect the entire amount he or she has paid from the previous guarantors. Conversely, the guarantors who had given a guarantee undertaking earlier are not entitled to collect the amount they have repaid from the later guarantors.

The guarantors can also agree on their mutual right of recourse otherwise.

14. Expiration of a receivable

The creditor's receivable from the guarantor expires if the creditor does not demand the payment within three (3) years of the debt falling due. The expiration period is suspended also if the creditor reminds the guarantor of the guarantee or the guarantor pays the debt or a part thereof.

The guarantor's receivable from the borrower or another guarantor expires if the guarantor does not demand it within three (3) years of the date when the guarantor amortised the debt. The expiration is also suspended when a reminder is made of the receivable or when it is repaid.

The expiration must be separately suspended in the case of each borrower and each guarantor.

A new three-year expiration period begins from the suspension of the previous expiration period.

15. Effects of debt restructuring and corporate restructuring on the position of the guarantor

The creditor may collect the debt from the guarantor in accordance with the previous terms and conditions of the debt even if they were amended in respect of the borrower in a debt restructuring or corporate restructuring.

If the borrower retains the property that stands as security in a debt restructuring or corporate restructuring, the creditor may demand from the deficiency guarantee only that part of the debt for which no payments are made in accordance with the repayment schedule. If, however, the pledge given by the borrower must be sold, the creditor may demand payment from the deficiency guarantee in accordance with the previous terms and conditions. A deficiency guarantor does not, however, cover the default interest that would accrue on the debt to be paid by the borrower during the repayment schedule.

16. Death of the borrower or guarantor

The creditor's right to the guarantee continues even if the borrower or the guarantor dies. In such a case the creditor is entitled to call in the debt in accordance with the terms and conditions of the debt and demand the debt from the guarantor or agree with the death estate on the management of the debt.

17. Corporation as the borrower

If a company, an organisation or a foundation is liable for the debt, its owners, members or representatives are not, as a general rule, liable for the debt personally. Only the partners of a general partnership and the responsible partners of a limited partnership are liable for the company's debt personally. A business proprietor is personally liable for the debt he or she has taken out in the business name with all his or her property.