

# **The Guarantee Law (for Israel)**

## **Chapter A: General Provisions**

### **1. Nature of the Guarantee**

- (a) A guarantee is the undertaking of a person to perform the obligation of another person toward a third person.
- (b) The guarantee may relate to the obligation, whether in whole or in part, existing or future, renewable or conditional, fixed or non-fixed..

### **2. Limitation on Guarantees**

There shall be no guarantee except for a valid obligation.

### **3. Creation of the Guarantee**

- (a) A guarantee is created by an agreement between the guarantor and the creditor, or by an undertaking of the guarantor of which notice has been given to the creditor. however, this applies only to a guarantee provided prior to the creation of the debt, whereas a guarantee provided for an existing debt requires an act of acquisition.
- (b) Where the guarantee is imposed by Court order, the guarantee shall not be valid.

### **4. Scope of the Guarantee**

- (a) The guarantor shall not be liable for more than the debtor's obligation and not for a more severe obligation.
- (b) The guarantor shall also be liable for expenses incurred by the debtor due to the guaranteed obligation, and such expenses shall have the same legal status as the guaranteed obligation; unless a different intention is implied from the guarantee.
- (c) Where the scope of the guarantee is limited, the guarantor shall be liable only within that scope of his guarantee.

### **5. Modification of the Obligation**

- (a) If the guaranteed obligation is reduced pursuant to agreement between the debtor and the creditor or by a waiver of the creditor, the guarantor shall be released to the extent that the debtor is released.
- (b) If the guaranteed obligation is increased pursuant to an agreement between the debtor and the creditor, , such increase shall not affect the guarantor's liability.
- (c) If another change applies to the guarantor, according to an agreement between the debtor and the creditor, and the change is a fundamental change that affects the rights of the guarantor, the guarantee is void.

## **6. Discharge of the Guarantor**

(a) If the creditor causes the non-performance of the guaranteed obligation, the guarantor shall be discharged.

(b) If the creditor causes the lapse of a security given to secure the guaranteed obligation, the guarantor shall be discharged.

## **7. Defenses**

(a) Every defense available to the debtor against the creditor in connection with the obligation shall also be available to the guarantor.

(b) Just as a statute of limitations defense cannot be heard against the debtor, so too a defense of statute of limitations against the guarantor not be heard.

## **8. Guarantor's Liability**

The guarantor and the obligor are liable to the creditor; however, the creditor may only demand performance of the guarantee from the guarantor in one of the following circumstances:

(1) The creditor first demanded performance of the obligation from the debtor and failed to recover the debt from him.

(2) The guarantor is a “contractual guarantor” (arev kabbalan).

(3) The debtor is deceased and all his heirs are minors; or is outside Israel; or where making the demand involves special difficulties.

## **9. Guarantor's Right of Recourse against the Debtor**

The guarantor is entitled to recourse against the debtor and to recover from him what he has given in fulfillment of his guarantee plus reasonable expenses incurred by him in connection with the guarantee, unless the guarantee was given without the debtor's consent.

## **10. Limitation of Guarantor's Right of Recourse**

(a) The guarantor shall not be entitled to recourse against the debtor to the extent that he could have been discharged by a defense that was available to the debtor against the creditor in connection with the obligation, even if the defense was unknown to the guarantor and he did not raise it.

(b) The provisions of subsection (a) shall not apply if the guarantor performed his guarantee after notifying the debtor of his intention to do so.

## **11. Status of the Guarantor Before Performing his guarantee**

Before performing his guarantee, the guarantor shall be entitled to the same remedies for securing his right of recourse against the debtor as those available to the creditor for securing a debt not yet due.

## **12. Lien on the debtor's property**

If the guaranteed obligation was also secured by a lien on the debtor's property, such lien shall pass to the benefit of the guarantor after he has performed his guarantee, to secure his right of recourse against the debtor, and specifically if the creditor has transferred the promissory note to the guarantor. The grantor of the lien and the creditor shall, at the guarantor's request, perform the necessary acts to ensure that the transfer is valid in all respects; provided that this shall not prejudice the rights of the creditor.

## **13. Multiple Guarantors**

Where two or more persons jointly guarantee a single obligation, they shall be equally liable. If the scope of the guarantees differs, they shall be liable as stated within the common scope of the guarantee; this shall apply unless a contrary intention is implied by the guarantees.

## **14. Guarantor for a Guarantor**

If a person gives a creditor a commitment to perform the guarantee of a guarantor, the guarantor's guarantee to the creditor shall be deemed a guaranteed obligation, both in terms of the relationship between that person and the creditor and in terms of the relationship between him and the guarantor.

## **15. Revocation of Guarantee for a Future Obligation**

(a) Where a guarantee is given for a future obligation, the guarantor may, as long as the guaranteed obligation has not yet been created, revoke his guarantee by giving notice to the creditor.

(b) The same shall apply if the guarantee as aforesaid was provided with the debtor's consent; the guarantor may revoke his guarantee without notifying the debtor.

## **16. Undertaking for Indemnity**

An undertaking by a person to indemnify a creditor for the non-performance of a debtor's obligation toward the creditor, where the undertaking does not constitute a guarantee, shall be subject to sections 3, 9, 11, and 12, with the necessary adaptations.

## **17. Guarantee or Undertaking for Indemnity for a Defective Obligation**

A guarantee for an obligation whose validity is impaired only due to the debtor's legal capacity or representation shall be deemed a valid guarantee; however, sections 9, 11, and 12 shall not apply to such a guarantee.

## **Chapter B: Guarantee of a Individual Guarantor**

### **18. Applicability**

Repealed

### **19. Definitions**

In this Law

**"Creditor"** - someone who has provided a loan.

**"Guarantor"** includes a corporation, spouse of the debtor, partner of the debtor; if the debtor is a corporation, anyone who has received a guarantee on behalf of the corporation shall be considered a guarantor.

### **20. Updating of Amounts**

Repealed

### **21. Fixed amount guarantee**

Repealed

### **21. Guarantee for a Liquidated Amount**

Repealed

### **22. Duty of Disclosure**

A creditor shall disclose to the guarantor, before the conclusion of the contract of guarantee, the following details, as stipulated in the contract between the creditor and the debtor:

- (1) The amount specified in the contract between the creditor and the debtor (hereinafter— the Principal);
- (2) The term of the obligation, the repayment amounts, and the repayment dates;
- (3) The number of guarantors, and the guarantor's relative share of the obligation;

### **23. Consequences of Non-Disclosure**

(a) If the creditor fails to disclose to the guarantor the details specified in—

- (1) Section 22(1) - the guarantor shall not be discharged from his guarantee;
- (2) Section 22(2) - the guarantor shall be granted thirty days for the performance of the guarantee.
- (3) Section 22(3) - the guarantor shall perform his guarantee;

## **24. Delivery of a Copy of the Contract**

Repealed

## **25. Additions to the Guaranteed Amount**

Repealed

## **26. Notice of Non-Performance**

(a) If the debtor **fails to perform** his obligation, the creditor shall **notify** the guarantor thereof;

(b) Where the guarantor notifies the creditor of his intention to repay the loan, he shall be entitled to request a thirty-day extension.

(c) If the guarantor notifies his desire to repay the loan in installments, he may do so in accordance with the terms of the loan and the terms of the payment schedule as stipulated in the contract between the creditor and the debtor.

(d) If the guarantor does not notify the creditor of his intention to repay the loan, , the creditor shall be entitled to seize his assets as any other debtor, in accordance with the terms of the loan and the terms of the payment schedule as stipulated in the contract.

## **27. Action Against the Debtor First**

Repealed

## **28. Recourse Against the Debtor**

Repealed

## **29. Multiple Guarantors**

Repealed

## **30. Scope of a single guarantor's guarantee**

Repealed

## **31. Priority**

The provisions of this Chapter shall apply notwithstanding the provisions of Section 57 of the Bills Ordinance.

## **32. Non-Derogation**

Notwithstanding any law, in a guarantee under this Chapter, any condition derogating from the provisions of this Chapter or from Sections 5, 6, 7, 11, and 12, which is not in favor of the guarantor, shall be valid.

## **Chapter C: Various instructions**

### **33. Preservation of Laws**

This Guarantee Law is intended to add to, and not derogate from any other law.

### **34. Implementation and Regulations**

Repealed