



GUARANTEES

What is a Guarantee?

A guarantee is a promise by a person (the guarantor) to settle a debt or fulfil the promise of someone else.

The person to whom the promise is made is called the creditor or lender and the person on whose behalf of the promise is made is called the principal debtor or borrower.

Guarantees often state that the obligation of the guarantor is equivalent to the borrower's obligations. In such a case the lender may call on the guarantor to pay the debt in full without requiring payment from the borrower, without exhausting all of their remedies against the borrower, or without exercising any rights under any securities given by the borrower.

In these circumstances when the guarantor repays the guaranteed debt in full, the guarantor may be able to seek reimbursement from the borrower by taking over the lender's debt and receiving a transfer of any security given to the lender by the borrower. If the borrower is insolvent or the security transferred is inadequate, then the guarantor may be unsuccessful in recovering the debt from the borrower.

Because a guarantee exposes a guarantor to potential liability for another person's debt without any direct benefit, a potential guarantor should carefully consider whether or not to give a guarantee. In practice, the guarantor's decision to give a guarantee is often determined by factors other than an assessment of the likelihood of the guarantee being called up. For example, a creditor's loan offer may be conditional on a guarantee being given.

Important Aspects of Guarantees

- Most standard bank and finance company guarantees are "all obligations guarantees". This means that the guarantor is liable for **all the borrower's obligations** to the creditor and the guarantee is not limited to the particular transaction which gave rise to the guarantee. The guarantor's liability extends not only to all future lending but also to all debts that the principal debtor already owes to the creditor.
- Under a standard all obligations guarantee the guarantor is also liable for the borrower's obligations to the lender. If, for example, the borrower has given the lender a guarantee in respect of another person or company, the guarantor will be liable for all claims brought against the borrower by the lender in respect of the borrower's guarantee.

- Under a standard all obligations guarantee the guarantor will also be liable for any interest payable by a borrower, and any legal costs incurred by the lender in enforcing the principal obligation against either the borrower or the guarantor, or realising any security given to the lender.
- In some instances a guarantee will be **limited in amount**. In most standard all obligations guarantees there is a limitation clause, which if left blank, will mean that the guarantor's liability is unlimited.
- If the guarantor has given an all obligations mortgage or other charge as security for the guarantor's obligations to the lender, that security will extend to the debts for which the guarantor has given a guarantee.
- Where there are co-guarantors under the one all obligations guarantee, the liability of each co-guarantor is **joint and several** so that each co-guarantor will be individually liable to the lender for all of the guaranteed obligations.

Release of a Guarantee

The guarantor is not liable unless the borrower is liable. If the principal obligation has been performed the guarantee is discharged. For example, when the borrower pays the lender the full amount of the guaranteed debt. Such a payment will normally discharge the guarantor.

The guarantee may also be discharged by an express agreement between the lender and the guarantor.

In some circumstances a guarantee may be terminated if the guarantor gives written notice to the lender. In such a case the guarantor will remain liable for the debts or liabilities that have accrued up to the giving of such notice. However, generally the guarantor will not be released from his or her obligations until the lender gives written notice.