FROM THE IUSTORIA BLOG

“A Guarantor Only Pays When the Debtor Can't.” So When Do They Really Pay?

> *The creditor need not sue the debtor or enforce the debt first: a written demand and a reasonable time are enough. How guarantors, co-debtors and aval guarantors differ, and what to do next.*

IUSTORIA TEAM

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For a brother, for a daughter, for your own company. People sign as guarantor quickly, feeling it is a mere formality. Surely the bank will go after the debtor first, freeze his account, sell what he owns, and only when nothing is left will it turn to the guarantor. That is what we hear at the firm from people who have just received a letter demanding payment of the entire outstanding balance of the loan.

The law works differently. All the creditor needs is to have sent the debtor a written demand that went unpaid within a reasonable time. It does not have to sue the debtor or pursue enforcement against him first, and in some cases it can do without even that demand.

We explain when a creditor can really come after a guarantor, how a guarantor differs from a co-debtor and from someone who signed a bill of exchange, and what to do when the demand arrives. And also why the guarantor is not saved even by the debtor going through debt relief (*oddlužení*, the Czech form of personal bankruptcy).

What a guarantor promises

A guarantor (*ručitel*) is someone who declares to the creditor that they will satisfy the creditor if the debtor fails to pay the debt (Section 2018(1) of the Czech Civil Code). The declaration must be in writing (Section 2018(2)). Saying "if anything happens, I'll pay it for him" across a table or over the phone does not create a guarantee.

The scope of the guarantee is determined by what you signed. You can guarantee a single specific debt, but also future or conditional debts, a set of debts of a certain kind that the debtor incurs within a certain period, or various debts arising from the same legal ground (Section 2019(1)). In practice we see guarantor's declarations by managing directors covering all debts under a framework loan agreement, or all debts the company incurs with the bank over several years. A managing director who signed one to secure a single working-capital loan may then find themselves guaranteeing loans the company drew five years later.

A guarantee stands or falls with the debtor's debt. It presupposes a valid debt (Section 2019(1)) and ends when the debt it secures ends (Section 2026(1)). One exception, however, hits business owners in particular: the guarantee does not end if the debt was extinguished because the legal entity that was the debtor ceased to exist (Section 2026(2)). The company may have been struck off the register long ago, and the guarantor still pays. Nor does the guarantee end when you leave the company; how to get released from it when business partners part ways is covered in our guide on managing directors and guarantees (in Czech).

When the creditor can come to the guarantor

The conditions are laid down in Section 2021(1) of the Civil Code. The creditor is entitled to demand performance from the guarantor if the debtor has not paid the debt within a reasonable time even though the creditor called on him in writing to do so. That is all. The law does not require the creditor to sue the debtor, pursue enforcement against him or wait until it turns out there is nothing to be had from him.

In its judgment of 28 April 2021, file no. 25 Cdo 1198/2019, the Supreme Court broke this down into three steps: the debtor failed to pay a debt that was due, the creditor called on him to pay, and the debtor did not pay even within a reasonable time afterwards. According to the court, the demand must be in writing (paragraph 9).

Nor is the demand to the debtor a mere formality that can be skipped. The law dispenses with it in two situations: when the creditor cannot make it, or when it is beyond doubt that the debtor will not pay (Section 2021(1), second sentence). In the same judgment the Supreme Court gave examples: the creditor does not know the debtor's address, the debtor cannot receive the demand for health reasons, or delivering it would have no effect at all because the debtor is insolvent. A mere assumption on the creditor's part that the debtor does not want to pay is not enough (paragraph 9).

This gives the guarantor the first piece of practical advice. If you receive a demand for payment, ask for a copy of the demand the creditor sent to the debtor and proof of when it was delivered to him. If the creditor does not have it and none of the statutory exceptions applies, it cannot yet assert its right against you. The debt does not go away, but you gain time and a clear picture of exactly what the creditor is after. This only holds, though, if the guarantor's declaration does not say otherwise. The law does not prohibit a different arrangement (Section 1(2)), and if the declaration states that you will pay on the creditor's first demand regardless of any demand to the debtor, you cannot rely on the missing demand. So first read what you signed.

If the guarantee was agreed only for a certain period, the creditor keeps its right if it called on the guarantor to pay within that period (Section 2021(2)). The end of the guarantee period will not help you, then, if the demand arrived before it.

Guarantor, co-debtor, aval guarantor: who is liable for what

People come to us saying they “only guaranteed” the loan. Then the contract shows they signed in a completely different capacity.

Co-debtor. Loan agreements, typically those of spouses and partners, often make the second person not a guarantor but a co-debtor. Co-debtors bound jointly and severally perform one for all and all for one, and the creditor can demand the whole performance or any part of it from any one of them (Section 1872(1)). A co-debtor is a debtor to the full extent, even if they never saw a single crown of the loan. No demand to the other co-debtor is required. A co-debtor who has paid more than their share is entitled to reimbursement from the others (Section 1876(2)), and unless agreed otherwise, the shares are deemed equal (Section 1875).

Aval guarantor (*směnečný rukojmí*). A signature on a bill of exchange with the words “jako rukojmí” (as guarantor), or even a bare signature on the face of the bill, unless it is that of the drawer or the drawee, creates an aval (Article I, Section 31 of Act No. 191/1950 Coll., the Bills of Exchange and Cheques Act). The aval guarantor is liable in the same way as the person for whom they gave the aval, and their obligation is valid even if the guaranteed obligation is invalid for any reason other than a defect of form (Article I, Section 32(1) and (2)). All signatories are jointly and severally liable to the holder of the bill, and the holder is not bound by the order in which they became liable (Article I, Section 47). A bill of exchange is therefore harsher than a guarantee. Against a bill-of-ex-

change payment order (*směnečný platební rozkaz*) you have only 15 days to file objections, and you must set out in them everything you have against it; the court will disregard objections raised later (Section 175(1) and (4) of the Czech Code of Civil Procedure). A bill of exchange may not be used to repay or secure a consumer loan, save for a narrow exception for housing loans (Section 112 of Act No. 257/2016 Coll., on Consumer Credit). Defending against a bill of exchange is covered in more detail in our guide on pledges, bills of exchange and arbitration clauses (in Czech).

The guarantor's spouse. Only one spouse signs the guarantee, but it can affect both. When enforcing a decision, the creditor can also satisfy its claim from the spouses' community property (*společné jmění manželů*) if the debt was incurred by only one of the spouses while the community property existed (Section 731). The other spouse can defend themselves by notifying the creditor of their disagreement without undue delay after learning of the debt. The community property can then be reached only up to the value that the debtor's share would represent once the community property was dissolved and settled (Section 732).

What to do when the demand arrives

A demand for payment is not a judgment. Before you pay, do a few things in this order.

Find out what you signed. A guarantor's declaration, a loan agreement bearing your signature as co-debtor, or a bill of exchange? For which debt, up to what amount and for how long? Without the document, there is no sensible way to decide what to do next.

Ask for documents. A copy of the written demand to the debtor and proof that it was delivered, and an up-to-date statement of the debt broken down into principal, interest, fees and contractual penalties.

Let the debtor know and ask about their defences. A guarantor can raise against the creditor all the defences the debtor has against the creditor (Section 2023(1)): that the debt has been partly paid, that the contract is invalid, that the debt is time-barred or that the penalty is excessive. If you pay the creditor without the debtor's knowledge, the debtor can later raise against you everything they could have raised against the creditor. But once you notify them that the creditor has claimed under the guarantee, they must point out their defences to you without undue delay, otherwise they cannot raise them against you (Section 2024). If you raise defences the debtor told you about and they fail, the debtor will reimburse the costs this caused you (Section 2023(2)).

Watch the limitation period. The creditor's right against the guarantor does not become time-barred before its right against the debtor (Section 2025(1)). An acknowledgment of the debt by the debtor, however, is effective against the guarantor only if the guarantor consents to it (Section 2025(2)). Do not sign any acknowledgment of debt yourself until you know what you are acknowledging.

Ask whose fault it is. The guarantor can refuse to pay if it is the creditor's fault that the claim cannot be satisfied by the debtor (Section 2022). This is an exception, and the guarantor must allege and prove the creditor's fault.

Negotiate. The creditor, typically a bank, wants to get its money, not to litigate. An instalment agreement usually costs the guarantor less than court proceedings, with their costs and default interest on top.

Before you sign a guarantee, insist on a fixed amount and a specific loan. A declaration covering “all debts under the framework agreement” or “debts incurred until …” can bind you even for loans you know nothing about (Section 2019(1) of the Civil Code).
If your spouse signed a guarantee against your will, write to the creditor without undue delay after you learn of it to say that you disagree. This limits how far the debt can reach into your community property (Section 732).
After a demand from the creditor, first ask for a statement of the debt and, unless the guarantor's declaration rules out the demand to the debtor, proof of that demand too. Only then decide whether to pay and how much (Section 2021(1) and Section 2023 of the Civil Code).

After paying: what you can claim back

If you pay on the debtor's behalf, you step into the creditor's shoes, and the debtor must reimburse you for what you paid for him. The claim passes to you together with its ancillary claims and security, for example a mortgage over the debtor's property, and the creditor must hand over the necessary documents to you (Section 1937(2)). Ask for them as soon as you pay; a year later they are harder to come by.

If you pay only part, for example in instalments, the claim passes to you only to that extent. For the rest, the creditor has priority, including as regards the security (Section 1938(1)). So you will get anything from the collateral only after the creditor has been paid.

If several people guarantee the same debt, each is liable to the creditor for the whole debt, but among themselves they have the same rights as co-debtors (Section 2027). A guarantor who has paid the whole debt can therefore ask the other guarantors for their share.

If the debtor is in insolvency proceedings, the creditor can demand payment from you even while they are under way; filing its claim in those proceedings does not limit its right against the guarantor (Section 183(2) of the Czech Insolvency Act). You can file the claim you will acquire against the debtor by satisfying the creditor as a conditional claim (Section 183(3)).

The debtor's debt relief does not free the guarantor; on the contrary, it hits the guarantor twice. The debtor's discharge from paying their debts does not release the guarantor from the obligation to pay the creditor (Supreme Court judgment of 24 November 2010, file no. 29 Cdo 3509/2010). And because the discharge also extends to guarantors who have a right of recourse against the debtor (Section 414(6) of the Insolvency Act), whatever the debt relief does not pay you can no longer be recovered from the debtor. You will get something only from the debt relief itself, and only if you file your claim in time as a conditional one or step into the proceedings in the creditor's place (Section 183(3)). If you are guaranteeing someone who is heading for debt relief, expect the debt to stay with you.
The Supreme Court was still ruling under the earlier wording of the Insolvency Act, in which the same rule was found in Section 414(3). In its view, debt relief settles the debtor's relationship with their creditors, not the debts of those who guarantee for them; the discharge does not extinguish the claim, it only makes it unenforceable against the debtor, and the guarantee therefore continues (Section 2026(1) of the Civil Code).

At a glance

Question	Answer	Provision
Must the creditor first enforce the debt against the debtor?	No. A written demand to the debtor and the lapse of a reasonable time without payment are enough.	Section 2021(1) of the Civil Code
When is no demand to the debtor needed?	When the creditor cannot make it or it is beyond doubt that the debtor will not pay; the creditor's assumption is not enough.	Section 2021(1); 25 Cdo 1198/2019
Is an oral promise to act as guarantor valid?	No, the guarantor's declaration must be in writing.	Section 2018(2) of the Civil Code
What defences does the guarantor have?	All those the debtor has against the creditor.	Section 2023(1) of the Civil Code
How is a co-debtor different?	The creditor can demand the whole debt from them at once, without a demand to anyone else.	Section 1872(1) of the Civil Code
How is an aval guarantor on a bill of exchange different?	They are liable like the person they guaranteed; objections against a bill-of-exchange payment order within 15 days.	Article I, Sections 32 and 47 of Act No. 191/1950 Coll.; Section 175 of the Code of Civil Procedure
Does the debtor's debt relief free the guarantor?	No. Whatever the debt relief does not pay the guarantor can no longer be recovered from the debtor.	Section 414(6) of the Insolvency Act; 29 Cdo 3509/2010
What can the guarantor do after paying?	They step into the creditor's rights, including the security, and can claim reimbursement from the debtor.	Section 1937(2) of the Civil Code

Have you received a demand for payment as a guarantor or co-debtor? We will go through what you signed, whether the creditor has met the conditions for claiming under the guarantee and what defences you have, and on that basis negotiate an instalment plan with the creditor or represent you in the dispute. We handle guarantees and loans as part of our civil law practice. Get in touch.

Conclusion

A guarantor does not pay only once the debtor has nothing left. They pay as soon as the debtor has failed to pay even after a written demand, and sometimes even without one. A guarantee also survives the dissolution of the company, your departure from it and the debtor's debt relief. Anyone who signs a guarantee should be prepared

to end up paying the whole debt alone.

Once the demand has arrived, the order of steps is what counts: find out what you signed, ask for documents, let the debtor know, and only then pay or negotiate instalments.

Sources

- Act No. 89/2012 Coll., the Civil Code, Sections 1, 731, 732, 1872, 1875, 1876, 1937, 1938 and 2018 to 2027 (as in force on 1 January 2026).
- Act No. 182/2006 Coll., on Insolvency and the Methods of Its Resolution (the Insolvency Act), Sections 183 and 414 (as in force on 1 January 2026).
- Act No. 191/1950 Coll., the Bills of Exchange and Cheques Act, Article I, Sections 30 to 32 and 47.
- Act No. 99/1963 Coll., the Code of Civil Procedure, Section 175 (as in force on 1 November 2026).
- Act No. 257/2016 Coll., on Consumer Credit, Section 112.
- Supreme Court judgment of 24 November 2010, file no. 29 Cdo 3509/2010.
- Supreme Court judgment of 28 April 2021, file no. 25 Cdo 1198/2019.

This article is for information only and does not constitute legal advice. It reflects the law as at the date of publication; exactly what a guarantor, co-debtor or aval guarantor owes always depends on the wording of the document they signed and on the state of the debtor's debt.

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