

Brief notes on: Guarantees

Business activities, in particular when a greater use of credit or substantial investment is needed to support development of the business, often requires the provision of guarantees.

Often the management of guarantees is delegated to a person who is a qualified guarantor.

In accordance with article 1936 of the Civil Code, a guarantor is one who, working personally for the creditor, expressly guarantees the fulfillment of a third party's obligations. In Italy, it is the priority of the creditor to manage their own credit, therefore, the law does not provide the principle debtor with the necessary knowledge of this guarantee.

The validity of the guarantee is subject to the validity of the principle obligation, due to this, when contracted for an amount in excess of the principle obligation and its accessories, it is necessary to attribute, within the limits of the obligation, a guarantee under article 1941 of the civil code.

The guarantor is jointly and severally liable with the principle debtor. The creditor may, therefore, at their discretion act to recover the amount due from the debtor against the original debtor or guarantor, asking one and/or the other for the full amount due. No prejudice is given in favour of the guarantor or the debtor in accordance with article 1944 section 2 of the civil code.

The accessory to the principle obligation which specifies the guarantee allows the guarantor to discharge the creditor of all exceptions belonging to the principle debtor.

The guarantor who has paid the debt of the principle debtor, shall take on, in the interest of the latter, all rights of the creditor and the right of recourse against the debtor.

The guarantee shall cease when, on behalf of the creditor, rights, debts and privileges cannot be satisfied by the guarantor. The guarantee shall also cease when the creditor, upon the expiry of the principle obligation, has not submitted a request to the debtor within six months after the conclusion of the contract.

The professionals at Studio Legale Associato have followed, both in and out of court, numerous disputes relating to guarantees