

Qatar: Understanding Guarantees

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May 2016

Like most jurisdictions in the Middle East and North Africa, Qatar has adopted a civil law system. This has its roots in the French Napoleonic Code and is distinct from a common law system.

A key difference between the two legal systems is that there is no system of binding precedent under a civil law system.

The primary legislation that governs guarantees in Qatar is the Civil Code. While other contracts may be concluded verbally, guarantees must be concluded in writing. For a guarantee to be valid under the laws of Qatar, reference should be made to the underlying debt being guaranteed. In other words, the guarantor must guarantee a specific debt. Notwithstanding this, a guarantor may guarantee future and unspecified obligations of a debtor, provided that the maximum amount being guaranteed and the maximum duration of the guarantee are specified in the guarantee document.

Where a future obligation is being guaranteed and there is no specification of either the upper limit of the guarantor's exposure or the time limit on the length of the guarantee, the guarantor may withdraw the guarantee. Under article 824 of the Civil Code the creditor must first exhaust its remedies against the primary obligor before taking enforcement measures against the guarantor. However, article 824 would not apply if the primary obligor and the debtor are said to be jointly liable for the debt.

Restrictions

Pursuant to the Civil Code, a guarantee must state a maximum time-frame for the obligations of the guarantor. However, there is no reference in either the Civil Code or the Commercial Code as to a limit on the guaranteed amount. Therefore, the concept of a so-called all monies guarantee is not prohibited under Qatari law, provided that a maximum duration and an amount for the guarantee are stated in the guarantee.

Demands

Demands under a guarantee must be made in writing. Where the primary obligor has defaulted on its obligations and the guarantor notifies (or warns) the lender that such a default has occurred, the lender has six months from the date of notification to commence enforcement proceedings.

Enforceability

The Civil Code provides, inter alia, in relation to contracts of guarantee that:

- the obligation of the guarantor is incidental to the obligation of the principal obligor. Any discharge of the principal obligor's obligations may, therefore, result in the guarantee no longer being valid; and
- if the principal obligor becomes bankrupt, the creditor must prove its debt (which it is owed) in the bankruptcy. Failing this, the creditor will lose its right to claim against the guarantor to the extent of any sums the creditor might have received had it proved the debt in the bankruptcy.

Corporate benefit

There is no general concept of corporate benefit under Qatari Law. However, under the Commercial Code, the board of directors must act in the company's best interests when determining if a guarantee should be provided. The board of directors must also act lawfully and may not misuse its power. This article was first published in the April 2016 issue of IFLR Magazine.