

District court examines aspects relating to loan guarantees

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Facts

Scope of personal suretyship

First-demand guarantee does not correspond to suretyship

Comment

On 21 March 2019 the Luxembourg District Court ruled on the equivalence of suretyships and autonomous guarantees (2019/TALCH/06/00369).

Facts

A cooperative mutual guarantee company (the cooperative company) granted two loans to a public limited liability company (the beneficiary company). Two managers of the beneficiary company acted as guarantors of the loans. The first article of the loan agreement provided a limited list of cases in which a suretyship could be applied, expressly using the term 'suretyship'.

The cooperative company provided an autonomous first-demand guarantee to a creditor of the beneficiary company. This creditor used the autonomous guarantee and the cooperative company paid him the amount of the guarantee.

The cooperative company required the two managers of the beneficiary company to refund the amount paid under the first-demand guarantee. However, they refused as it did not fall within the scope of the suretyship article.

The court had to consider whether a suretyship could be considered an autonomous first-demand guarantee. To this end, the judge first delimited the suretyship to determine whether a first-demand guarantee can be considered a suretyship.

Scope of personal suretyship

Although the cooperative company claimed that the parties should not limit their interpretation to the literal meaning of the terms used, the court ruled that, in this case, the loan agreement did not cover granting first-demand guarantees. The judge referred to Article 2015 of the Civil Code, which provides that a suretyship cannot be presumed or extended beyond the limits within which it was contracted. Further, on the basis of Article 1162 of the code, the court held that the disputed clause should be interpreted in the two guarantors' favour, as the cooperative company was not only a loan granting business, but also the drafter of the loans in question.

First-demand guarantees do not correspond to suretyships

The court found that a first-demand guarantee does not correspond to a suretyship because autonomous guarantees – when the contract stipulates that the guarantee is payable on first demand – are more rigorous and therefore riskier for the guarantor than suretyships.

Comment

Although the court interpreted loan agreements using the traditional rules, this decision illustrates its pragmatic approach of analysing commitments to qualify guarantees. The decision shows that, on the one hand, if a contract and what stems from the parties' aims show that a guarantee is an accessory to the main transaction, the guarantee could qualify as a suretyship. On the other hand, if the guarantor undertakes to pay autonomously aside from the main transaction, the guarantee could qualify as an autonomous guarantee.

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