# Personal Guarantee

## What is a Personal Guarantee?

A personal guarantee is a **security** given by an individual who acts as **Guarantor** for a Borrower.

Under a Personal Guarantee:

- The Guarantor assumes personal responsibility ***jointly and severally*** with the Borrower towards the Bank to repay the ***debt*** of the Borrower under a credit facility, if the Borrower is in **Default of payment.**
- The Guarantor will be ***jointly and severally*** responsible with the Borrower for the repayment of the debt as if the Guarantor was the Borrower himself. The Guarantor will have the same exact responsibilities and obligations as the Borrower towards the Bank.

## What does "jointly and severally" mean?

***Jointly*** means that the Guarantor does NOT have any "***bénéfice de discussion***" in case the Borrower does not pay the debt.

When there is no "bénéfice de discussion":

- The Guarantor cannot discuss with the Bank or ask the Bank to sue the Borrower and seize the assets of the Borrower as a first recourse before asking the Guarantor to repay the debt of the Borrower.
- When the Borrower is in default of payment, the Bank has the choice to turn to the Guarantor directly and ask him/her to repay the debt of the Borrower rather than sue the Borrower.
- The Bank can sue the Guarantor directly in court to seize the assets of the Guarantor instead of suing the Borrower.

### Definition Directory

*A security is a guarantee given to the Bank for the repayment of a debt owed by a Borrower.*

*A Guarantor guarantees to the Bank that the Guarantor will repay the debt of the Borrower. He has the obligation to repay the debt of the Borrower, if the Borrower is in Default of payment.*

*Default of payment mean that the Borrower has not repaid the credit facility as per the terms of the credit facility agreement.*

*"Bénéfice de discussion" gives the right to the Guarantor to ask the Bank to firstly, sue the Borrower in court and seize the Borrower's assets*

*"Bénéfice de division" gives the right to the Guarantors to ask the Bank to divide the debt equally between the Guarantors.*

***Severally*** means if there is more than one Guarantor, that the Guarantors do not have any ***"bénéfice de division"***.

When there is no "bénéfice de division":

- All and each of the Guarantors will have the personal responsibility to repay the **whole** debt individually. Each of the Guarantors, alone by himself/herself, will have **full personal responsibility** for the **full amount of the debt**.
- The Guarantors cannot ask the Bank to divide the debt equally between the Guarantors so that each Guarantor is responsible for only part of the debt.
- The Bank has the choice to sue directly only one or, only some specific Guarantors for the full amount of the debt instead of suing all the Guarantors. The Bank may also choose to sue all of the Guarantors.

## What is the extent of the Guarantor's liability? How much does the Guarantor need to repay to the Bank under a Personal Guarantee?

The Guarantor is personally responsible for the **debt** of the Borrower under the credit facility. The **debt** of the Borrower is normally the **amount due** under the credit facility **in capital, plus any interest accrued on the capital and any costs, commissions, fees and accessories** as well.

### Example:

The Borrower borrowed Rs 600,000 in capital.

After six months, the Borrower is in default of payment; there is a capital amount of Rs595,000 which is due. Additionally, there is an interest amount of Rs10,000 and penalty fees of Rs1,000 that have been applied because of late payment.

Hence, the Guarantor will be responsible for the repayment of the **TOTAL amount due by the Borrower**, as follows:

Rs595,000 (capital) **+** 10,000 (interest) **+** 1,000 (penalty fees) = Rs606,000

**Sometimes, the Bank and the Guarantor may agree that the Guarantor will not guarantee the full amount of the debt. Then, the Guarantor will be liable for a specific amount that may be less than the amount of the debt.**

**Example:**

The Borrower borrowed Rs 600,000 in capital. The Bank and the Guarantor agreed that the Guarantor will only guarantee Rs400,000 in capital, plus any interest, costs, commissions, fees and accessories.

After six months, the Borrower is in default of payment; there is a capital amount of Rs595,000 which is due. There is also, an interest amount of Rs10,000 and penalty fees of Rs1,000 that have been applied because of late payment.

Hence, the Guarantor will be responsible for the repayment of only **part** of the amount due by the Borrower as follows:

1) Capital amount of Rs400,000 **+**
2) Interest calculated proportionally to the amount of capital (10,000 X [400,000/595,000]) **+**
3) Penalty Fees calculated proportionally to the amount of capital (1,000 X [400,000/595,000]) = Rs407,395

## Actions taken by the Bank when the borrower is in default of payment

1) The Bank will send reminders to the Borrower to ask the Borrower to repay the debt or arrange to repay the debt.
2) If the Borrower still does not repay the debt, the Bank will ask the Guarantor to repay the debt of the Borrower. The Bank can also use its "***privilège spécial du banquier***" over the accounts of the Guarantor.
3) If the Guarantor does not have enough money to immediately repay the full amount, the Guarantor can arrange with the Bank to repay the debt in instalments over a limited period. These arrangements are made when the Bank is satisfied that the Guarantor has the capacity to make such arrangements and shows proof of financial means.

*What does **"privilège spécial du banquier"** mean?*

*The law, as per Articles 2150-1 et suivants du Code Civil Mauricien, gives to the Bank special rights over the bank accounts of the borrower and the guarantor(s) in virtue of the "privilège spécial du banquier". It allows the Bank to debit the account(s) of the Borrower and the Guarantor to repay the debt if the Borrower is in default of payment.*

## When is a Guarantor sued in Court?

If a Guarantor cannot repay the debt or arrange for the repayment of the debt, the Bank will have no choice but to sue the Guarantor in Court and ask to seize the properties of the Guarantor. The seizure procedures apply to all of the properties owned by the Guarantor, movable and immovable i.e. house, land, car, furniture, shares, 'parts sociales' etc.

When the Bank sues the Guarantor in Court, the Bank will avail itself of the services of legal counsel (***for example an attorney***). The legal fees and any other related fees, costs and commissions will be added to the debt which is guaranteed by the Guarantor. Since the Guarantor has guaranteed the repayment of the **capital, plus any interest, costs, commissions, fees and accessories**, the Guarantor will be responsible for the repayment of the legal fees and other related fees, costs and commissions.

After the seizure, the court may then issue a judgment to have the properties of the Guarantor sold and the money obtained will be used to repay the debt in **capital, plus any interest, costs, commissions, fees and accessories.** The remaining amount, if any, after the money obtained from the properties of the Guarantor is used to repay the debt of the Borrower, will be returned to the Guarantor.

# Extract of the Code Civil Mauricien

Articles 2150-1 to 2150-6 of the Mauritian Civil Code extract:

## III – DU PRIVILÈGE SPÉCIAL AU PROFIT DES BANQUES

**2150-1.** Toute banque établie conformément aux dispositions du Banking Act dispose, à la suite d'un prêt, d'une avance, ou autre facilité bancaire, d'un privilège spécial sur la ou les sommes qui figurent au crédit de tous comptes qu'elle tient au nom du client à, qui ce prêt, cette avance ou autre facilité bancaire a été consenti ou de sa caution, sans qu'il soit nécessaire de procéder à l'inscription de ce privilège.

[Art. 2150-1 amended by s. 103 (2) (a) of Act 35 of 2004.]

**2150-2.** Le privilège spécial de la banque ne garantit que la ou les créances résultant d'un prêt, d'une avance ou autre facilité bancaire consenti par écrit ou en vertu d'un écrit.

[Art. 2150-2 amended by s. 103 (2) (b) of Act 35 of 2004.]

**2150-3.** Nonobstant toutes dispositions contraires, le privilège spécial de la banque s'exerce par préférence à tous autres créanciers du client ou de sa caution.

[Art. 2150-3 amended by s. 103 (2) (c) of Act 35 of 2004.]

**2150-4.** Sous réserve d'une renonciation écrite de la banque bénéficiaire, le privilège spécial conserve ses effets jusqu'au complet paiement de la somme due par le client ou sa caution, ainsi que des intérêts, commissions ou frais en découlant.

[Art. 2150-4 amended by s. 103 (2) (c) of Act 35 of 2004.]

**2150-5.** La banque aura le droit de procéder à la compensation entre la créance garantie par son privilège spécial, lorsqu'elle est exigible, et la ou les sommes figurant au crédit du ou des comptes qu'elle tient au nom du client ou de sa caution. Une telle compensation aura les mêmes effets que la compensation légale instituée par l'article 1290 du présent Code.

[Art. 2150-5 amended by s. 103 (2) (c) of Act 35 of 2004.]

**2150-6.** Le privilège spécial de la banque prend effet à dater de l'exécution du titre attestant le prêt, l'avance ou autre facilité bancaire consenti. Il est opposable aux tiers à partir de cette date.

[Art. 2150-6 amended by s. 103 (2) (d) of Act 35 of 2004.]

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