



中华人民共和国担保法

Guaranty Law of the People's
Republic of China

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责任编辑:汪艳

责任校对:丁新丽

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Guaranty Law of the People's Republic of China

(Adopted at the 14th Meeting of the Standing Committee of the Eighth National People's Congress, promulgated by Order No. 50 of the President of the People's Republic of China on June 30, 1995, and effective as of October 1, 1995)

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第一章 总 则

第一条 为促进资金融通和商品流通，保障债权的实现，发展社会主义市场经济，制定本法。

第二条 在借贷、买卖、货物运输、加工承揽等经济活动中，债权人需要以担保方式保障其债权实现的，可以依照本法规定设定担保。

本法规定的担保方式为保证、抵押、质押、留置和定金。

第三条 担保活动应当遵循平等、自愿、公平、诚实信用的原则。

第四条 第三人为债务人向债权人提供担保时，可以要求债务人提供反担保。

反担保适用本法担保的规定。

第五条 担保合同是主合同的从合同，主合同无效，担保合同无效。担保合同另有约定的，按照约定。

担保合同被确认无效后，债务人、担保人、债权人有过错的，应当根据其过错各自承担相应的民事责任。

Section 2	Pledge of Rights
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Chapter I General Provisions

Article 1 This Law is enacted with a view to promoting the accommodation of funds and the circulation of commodities, ensuring the enforcement of creditor's rights and developing the socialist market economy.

Article 2 If creditors need to have their claims honoured by means of guaranty in such economic activities as loans, purchase and sale of commodities, transportation of goods, and contract for processing materials, they may establish guaranty according to the provisions of this Law.

The modes of guaranty as provided by this Law are suretyship, mortgage, pledge, lien and deposit.

Article 3 In guaranty activities, the principles of equality, voluntariness, fairness, honesty and credibility shall be observed.

Article 4 Where a third party provides a guaranty to creditor for a debtor, the third party may require the debtor to provide him with a counter - guaranty.

The provisions on guaranty in this Law shall apply to the counter - guaranty.

Article 5 A guaranty contract is an ancillary contract of the principal contract. If the principal contract is null and void, the guaranty contract shall be null and void, accordingly. Where it is otherwise agreed in the guaranty contract, such agreement shall prevail.

If a guaranty contract is determined to be null and void, the debtor, the guarantor or the creditor who is in default shall bear civil liability according to their respective fault.

第二章 保 证

第一节 保证和保证人

第六条 本法所称保证，是指保证人和债权人约定，当债务人不履行债务时，保证人按照约定履行债务或者承担责任的行為。

第七条 具有代为清偿债务能力的法人、其他组织或者公民，可以作保证人。

第八条 国家机关不得为保证人，但经国务院批准为使用外国政府或者国际经济组织贷款进行转贷的除外。

第九条 学校、幼儿园、医院等以公益为目的的事业单位、社会团体不得为保证人。

第十条 企业法人的分支机构、职能部门不得为保证人。

企业法人的分支机构有法人书面授权的，可以在授权范围内提供保证。

第十一条 任何单位和个人不能强令银行等金融机构或者企业为他人提供保证；银行等金融机构或者企业对强令其为他人提供保证的行为，有权拒绝。

第十二条 同一债务有两个以上保证人的，保证人应当按照保证合同约定的保证份额，承担保证责任。没有约定保证份额的，保证人承担连带责任，债权人可以要求任

Chapter II Suretyship

Section 1 Suretyship and Surety

Article 6 Suretyship as used in this Law means an agreement pursuant to which a surety and a creditor agree that the surety shall perform the obligation or bear the liability according to the agreement, when the debtor fails to perform his obligation.

Article 7 A legal person, other organization or a citizen capable of assuming debts may act as a surety.

Article 8 No State organ may act as a surety, except in the case of securing loans, for onlending, from a foreign government or an international economic organization as is approved by the State Council.

Article 9 Institutions such as schools, kindergartens and hospitals established for purposes of public welfare, and public organizations may not act as a surety.

Article 10 Branches and functioning departments of an enterprise as a legal-person may not act as a surety.

If a branch of an enterprise as a legal person has a power of attorney from the legal person, it may provide a suretyship within the scope of authority.

Article 11 No organization or individual may compel a bank or another financial institution or an enterprise to provide a suretyship for another; a bank or another financial institution or an enterprise shall have the right to refuse to provide suretyship for another.

Article 12 Where there are two or more sureties for one obligation, the sureties shall undertake suretyship liability according to their proportion of suretyship agreed in the suretyship contract. In the absence of an agreement on the proportion of suretyship, the sureties shall be jointly and severally liable. The creditor may demand any one of the

何一个保证人承担全部保证责任，保证人都负有担保全部债权实现的义务。已经承担保证责任的保证人，有权向债务人追偿，或者要求承担连带责任的其他保证人清偿其应当承担的份额。

第二节 保证合同和保证方式

第十三条 保证人与债权人应当以书面形式订立保证合同。

第十四条 保证人与债权人可以就单个主合同分别订立保证合同，也可以协议在最高债权额限度内就一定期间连续发生的借款合同或者某项商品交易合同订立一个保证合同。

第十五条 保证合同应当包括以下内容：

- (一) 被保证的主债权种类、数额；
- (二) 债务人履行债务的期限；
- (三) 保证的方式；
- (四) 保证担保的范围；
- (五) 保证的期间；
- (六) 双方认为需要约定的其他事项。

保证合同不完全具备前款规定内容的，可以补正。

第十六条 保证的方式有：

- (一) 一般保证；
- (二) 连带责任保证。

第十七条 当事人在保证合同中约定，债务人不能履

sureties to undertake all suretyship liability, and every surety shall have the obligation to ensure all of the creditor's rights. The surety who has undertaken the suretyship liability shall have the right of recourse against the debtor, or have the right to demand other sureties who are jointly and severally liable to discharge the proportion of obligations which they should respectively assume.

Section 2 Suretyship Contract and Modes of Suretyship

Article 13 A surety and a creditor shall conclude a suretyship contract in writing.

Article 14 A surety and a creditor may conclude separate suretyship contracts for a single principal contract, or may reach an agreement to conclude, to the extent of the maximum amount of claim, a single suretyship contract for loan contracts or for certain commodities transaction contracts which successively occur in a given period of time.

Article 15 A suretyship contract shall contain the following particulars:

- (1) the kind and amount of the principal claim guaranteed;
- (2) the time limit for the debtor to perform the obligation;
- (3) the modes of suretyship;
- (4) the scope of the suretyship guaranty;
- (5) the term of the suretyship; and
- (6) other matters the parties deem appropriate.

If a suretyship contract does not contain all the particulars specified in the preceding paragraph, the particulars omitted may be added by amendment.

Article 16 The modes of suretyship include:

- (1) general suretyship;
- (2) suretyship of joint and several liability.

Article 17 A general suretyship refers to a suretyship contract

行债务时，由保证人承担保证责任的，为一般保证。

一般保证的保证人在主合同纠纷未经审判或者仲裁，并就债务人财产依法强制执行仍不能履行债务前，对债权人可以拒绝承担保证责任。

有下列情形之一的，保证人不得行使前款规定的权利：

（一）债务人住所变更，致使债权人要求其履行债务发生重大困难的；

（二）人民法院受理债务人破产案件，中止执行程序的；

（三）保证人以书面形式放弃前款规定的权利的。

第十八条 当事人在保证合同中约定保证人与债务人对债务承担连带责任的，为连带责任保证。

连带责任保证的债务人在主合同规定的债务履行期届满没有履行债务的，债权人可以要求债务人履行债务，也可以要求保证人在其保证范围内承担保证责任。

第十九条 当事人对保证方式没有约定或者约定不明的，按照连带责任保证承担保证责任。

第二十条 一般保证和连带责任保证的保证人享有债务人的抗辩权。债务人放弃对债务的抗辩权的，保证人仍有权抗辩。

抗辩权是指债权人行使债权时，债务人根据法定事

wherein the parties agree that the surety shall undertake suretyship liability in case the debtor defaults.

A general suretyship allows the surety to refuse to undertake suretyship liability towards the creditor before a dispute over the principal contract is tried or arbitrated and the obligations are not enforceable even after the debtor's assets have been seized according to law.

A surety may not exercise the right provided in the preceding paragraph in any of the following circumstances:

(1) The change of the debtor's domicile makes it extremely difficult for the creditor to have the debtor's obligation enforced;

(2) A People's Court suspends the enforcement proceedings due to its acceptance of the debtor's bankruptcy case; or

(3) The surety waives in writing the right provided in the preceding paragraph.

Article 18 A suretyship of joint and several liability refers to a suretyship contract wherein the parties agree that the surety and the debtor shall be jointly and severally liable.

Where the debtor of a suretyship of joint and several liability defaults when the time limit for his performance of the obligation provided in the principal contract expires, the creditor may demand that the debtor perform his obligation, or demand that the surety undertake the suretyship liability within the scope of the suretyship agreement.

Article 19 In the absence of an agreed or explicitly agreed mode of suretyship, the parties shall bear the suretyship liability following the mode of a suretyship of joint and several liability.

Article 20 The surety of a general suretyship or a suretyship of joint and several liability shall enjoy the debtor's right of defense. Where a debtor waives his right of defense against the obligation, the surety shall still enjoy a right of defense.

The right of defense means a debtor's right to exercise his right of

由，对抗债权人行使请求权的权利。

第三节 保证责任

第二十一条 保证担保的范围包括主债权及利息、违约金、损害赔偿金和实现债权的费用。保证合同另有约定的，按照约定。

当事人对保证担保的范围没有约定或者约定不明确的，保证人应当对全部债务承担责任。

第二十二条 保证期间，债权人依法将主债权转让给第三人的，保证人在原保证担保的范围内继续承担保证责任。保证合同另有约定的，按照约定。

第二十三条 保证期间，债权人许可债务人转让债务的，应当取得保证人书面同意，保证人对未经其同意转让的债务，不再承担保证责任。

第二十四条 债权人与债务人协议变更主合同的，应当取得保证人书面同意，未经保证人书面同意的，保证人不再承担保证责任。保证合同另有约定的，按照约定。

第二十五条 一般保证的保证人与债权人未约定保证期间的，保证期间为主债务履行期届满之日起6个月。

在合同约定的保证期间和前款规定的保证期间，债权人未对债务人提起诉讼或者申请仲裁的，保证人免除保证

claim on legal basis against the creditor when the creditor seeks to enforce his rights.

Section 3 Suretyship Liability

Article 21 The scope of the suretyship guaranty includes the principal claim and the interest thereof, default fine, compensation for damage and expenses for enforcing the claim, unless the suretyship contract provides otherwise.

In the absence of an agreed or explicitly agreed scope of the suretyship guaranty, the surety shall be liable for payment of all the above costs.

Article 22 If a creditor transfers, in accordance with law, his principal claim to a third party during the period of the suretyship, the surety shall continue to be bound by the suretyship contract within the scope of the original suretyship guaranty, unless the suretyship contract provides otherwise.

Article 23 Where a creditor permits a debtor to transfer his debts to a third party during the period of the suretyship, a consent in writing shall need to be obtained from the surety; the surety shall no longer be liable if the debts are transferred without his prior consent in writing.

Article 24 When a creditor and a debtor agree to alter the principal contract, they shall have to obtain the surety's consent in writing; the surety shall no longer be liable if the contract is altered without his prior consent in writing, unless the suretyship contract provides otherwise.

Article 25 If the surety of a general suretyship and the creditor have no agreement on the term of suretyship, the term of suretyship shall be six months from the date of maturity of the principal debts.

Where the creditor neither files a lawsuit against the debtor nor applies for arbitration during the term of suretyship agreed in the contract or provided in the preceding paragraph, the surety shall be relieved of the

责任；债权人已提起诉讼或者申请仲裁的，保证期间适用诉讼时效中断的规定。

第二十六条 连带责任保证的保证人与债权人未约定保证期间的，债权人有权自主债务履行期届满之日起6个月内要求保证人承担保证责任。

在合同约定的保证期间和前款规定的保证期间，债权人未要求保证人承担保证责任的，保证人免除保证责任。

第二十七条 保证人依照本法第十四条规定就连续发生的债权作保证，未约定保证期间的，保证人可以随时书面通知债权人终止保证合同，但保证人对于通知到债权人前所发生的债权，承担保证责任。

第二十八条 同一债权既有保证又有物的担保的，保证人对物的担保以外的债权承担保证责任。

债权人放弃物的担保的，保证人在债权人放弃权利的范围内免除保证责任。

第二十九条 企业法人的分支机构未经法人书面授权或者超出授权范围与债权人订立保证合同的，该合同无效或者超出授权范围的部分无效，债权人和企业法人有过错的，应当根据其过错各自承担相应的民事责任；债权人无

suretyship liability; where the creditor has filed a lawsuit or applied for arbitration, the provisions on the interruption of prescription shall apply to the term of suretyship.

Article 26 Where the surety of a suretyship of joint and several liability and the creditor have no agreement on the term of suretyship, the creditor shall, within six months from the date of maturity of the principal debts, have the right to demand that the surety undertake suretyship liability:

If the creditor does not demand that the surety undertake suretyship liability during the term of suretyship agreed in the contract or provided by the preceding paragraph, the surety shall be relieved of the suretyship liability.

Article 27 Where in accordance with the provisions of Article 14 of this Law, a surety provides a suretyship to a creditor's claims which successively occur but there is no agreement on the term of the suretyship, the surety may at any time notify in writing the creditor of termination of the suretyship contract, nevertheless, the surety shall be liable for the creditor's claims which vested before the creditor receives the notice.

Article 28 Where there are both suretyship and property security for the same claim, the surety shall be liable for the creditor's claim unsecured by the property security.

If the creditor waives the property security, the surety shall be relieved of his suretyship liability to the extent of the creditor's waiver.

Article 29 If a branch of an enterprise as a legal person concludes a suretyship contract with a creditor without the written authorization of the enterprise or beyond the scope of the authorization, the suretyship contract shall be null and void or the part of the contract that is beyond the scope of the authorization shall be null and void. If the creditor and the enterprise as a legal person are both at fault, they shall bear their re-