

## **The new Civil Code puts guarantors in a more favourable position**

**The new Civil Code imposes serious sanctions on the creditor in the event that the creditor fails to provide the required information to the guarantor – an expert at Kovács Réti Szegheő Law Firm introduced the important changes in legislation. Dr Enikő Vida highlighted that the level of the guarantor’s obligation is reduced to the level set out in the composition agreement reached in the bankruptcy or liquidation proceedings, if the creditor failed to inform the guarantor about the conditions for reaching a composition before it was concluded.**

According to the general rule of the new Civil Code, the composition agreement reached in bankruptcy or liquidation proceedings instituted against the debtor does not affect the obligations of the guarantor. However, this rule only applies if the creditor informs the guarantor in a verifiable manner about the conditions of the composition agreement even before it was concluded.

After being informed, the guarantor is entitled to satisfy the debtor’s liability; following satisfaction, the guarantor replaces the creditor in the bankruptcy or liquidation proceedings.

However, failing to inform the guarantor results in the reduction of the guarantor’s obligation to the level set out in the composition agreement - the expert at Kovács Réti Szegheő Law Firm warns.

## **Consequences of the bankruptcy proceedings and liquidation**

The most important legal implication for the guarantor resulting from the bankruptcy or liquidation proceedings initiated against the debtor is that the guarantor is no longer entitled to lodge interpleader complaint, and automatically becomes a first loss guarantor - Dr. Enikő Vida underlined.

The option of interpleader complaint means that the guarantor would be entitled to refuse performance as long as the creditor is able to verify that she had attempted to recover the debt from the principal but it did not lead to a result within a reasonable timeframe.

The creditor can take action against a guarantor who has become a first loss guarantor without having to wait for the end of the bankruptcy or liquidation proceedings instituted against the debtor.

## **Two important limits in claim enforcement**

However, this claim enforcement has two very important limits. The creditor shall either take action against the guarantor before the expiration of the deadline prescribed for registering the creditor’s claims, or if he misses it, the creditor can only enforce his claim against the guarantor if he has



registered his claim in the bankruptcy or liquidation proceedings against the debtor within the deadline.

The new Civil Code states that no claim can be enforced in court against the guarantor of a claim that cannot be enforced through judicial proceedings. In case the creditor fails to meet the limitation period prescribed for registering the creditor's claims, and takes no action against the first loss guarantor within the limitation period, he also loses his right to assert any claim against the guarantor.

For the creditor to be entitled to enforce his full claim against the guarantor, in addition to registering in the bankruptcy or liquidation proceedings against the debtor, the creditor also needs to properly inform the guarantor about the conditions for a composition agreement, if any, in bankruptcy or liquidation proceedings before it is concluded - the expert at Kovács Réti Szegheő Law Firm emphasized.

### **The unilateral termination of a surety agreement**

Unless the parties agree otherwise, the guarantor is entitled to terminate the surety agreement with a three-month notice at least, if he undertook to provide a guarantee for indefinite duration, and the guarantee covers all existing or future liabilities of the debtor *vis-à-vis* the creditor.

### **Consumer guarantee**

It is an important consumer protection regulation that the guarantor is entitled to withdraw from the contract without a time limit if the creditor had failed to inform him before the surety agreement was concluded regarding the rights and obligations of the guarantor and the special risks arising from the debtor's circumstances or the nature of the liability of which the creditor is aware - Dr. Enikő Vida finally pointed out.