

LAW
ON GUARANTOR PROTECTION IN THE FEDERATION OF
BOSNIA AND HERZEGOVINA

1. GENERAL PROVISIONS

Article 1

This Law regulates the conditions and manner of exercising guarantors' rights in the Federation of Bosnia and Herzegovina.

Article 2

The aim of this Law is to ensure the protection of guarantors' rights on the financial market of the Federation of Bosnia and Herzegovina.

Reference to Other Regulations

Article 3

Applying the provisions of this Law shall not affect the rights a guarantor has on the basis of other regulations.

Unless this Law stipulates otherwise, the provisions of the Law on Obligations of the Federation of Bosnia and Herzegovina shall apply to the contractual and legal relations between the guarantor and the creditor.

Article 4

For the purposes of this Act the following terms shall have the following meanings:

- a guarantor is a legal entity or natural person that guarantees the credit business and that obligates themselves, exclusively in written form, to making a settlement to the creditor only when that is impossible to undertake using all credit insurance instruments in accordance with the provisions of this Law;
- a principal debtor is a legal entity or natural person that is a beneficiary of the approved loan funds and that uses the loan funds and repays them to the creditor in the manner defined in the provisions of the loan agreement;
- a co-debtor is a legal entity or natural person responsible for the payment of all claims of the creditor, just like the principal debtor;
- a creditor is a bank, microcredit organisation and leasing company as defined in the Law on Banks, the Law on Microcredit Organisations and the Law on Leasing Companies;
- the meaning of a loan/microloan agreement is specified in the Law regulating obligations and in the law on microcredit organisations;
- professional care is increased attention and a skill that can be reasonably expected from creditors in business operations with users of their services, in accordance with professional standards, good business practices and the principle of good faith;
- the nominal interest rate is an interest rate expressed as a fixed or variable percentage that is annually applied to the amount of withdrawn loan funds;
- the effective interest rate denotes the total cost of the loan being paid by the loan beneficiary, with those costs being expressed as a percentage of the total amount on an annual level;

- the repayment plan is a tabular overview of all chronologically presented cash flows aimed at providing information to principal debtors and guarantors in the interest of more accurately monitoring their obligations under the loan agreement;
- the creditworthiness of the loan applicant constitutes determining the creditworthiness of the debtor, i.e. their ability to obtain the loan and repay it within the period of time determined in the contract, together with the corresponding interest.

2. SPECIAL PROVISIONS

Contracting Rules and Stages

Article 5

The creditor shall comply with the provisions of this Law, the existing provisions contained in other laws, with the aforementioned being related to the procedure in the pre-contracting and negotiation stage, prior to the allocation of the loan funds and the conclusion of the contract. Prior to the conclusion of the loan agreement, the creditor shall assess the creditworthiness of the user, guarantor or any other person personally ensuring that the user's obligations will be met on the basis of appropriate documentation and data obtained from the user, examining the credit registries, along with the written consent of the person to whom the data from the registry refers, as well as public registries and databases.

Prior to the conclusion of the loan agreement, the creditor shall, with the prior written consent of the user, guarantor or any other person personally ensuring that the user's obligations will be met, mutually inform and familiarise them with the documentation and information obtained in the process of assessing creditworthiness.

If one person does not consent to the obtained information and documentation for assessing their creditworthiness being communicated to the other parties, the creditor is required to let the other parties know about this fact.

The provisions of this Article shall not apply in cases where such data communication is expressly prohibited by special compulsory regulations or is contrary to public policy objectives.

If the contracting parties agree that the credit debt of the user as debtor be increased, the creditor shall re-assess the creditworthiness of the user, guarantor or any other person personally ensuring that the user's obligations will be met prior to any increase in the total loan amount.

3. LOAN FILE

Article 6

Prior to concluding the contract, the loan officer has to prepare a loan file.

The loan file must contain all documents related to the approved loan, and at the very least the following:

- 1) a loan application signed by the applicant, which specifies the purpose for which the loan will be used;
- 2) an extract from the registry of legal entities applicants, if it is a legal entity;
- 3) an original copy of the loan agreement;
- 4) the last financial statement, including a balance sheet, income statement, cash flow statement, etc., signed by the responsible person if it is a legal entity;

- 5) certificate of employment and salary, or the amount of the applicant's annual income if it is a natural person;
- 6) documentation related to the control and evaluation of the debtor's financial situation and their ability to repay the loan in accordance with the contractual terms, along with an analysis carried out, i.e. verified by the creditor's responsible employee, which confirms that the debtor's cash flows are adequate for loan repayment;
- 7) a decision of the creditor's relevant authority on loan approval, containing the deadlines, interest and other conditions under which the loan is granted;
- 8) documentation confirming the purpose of the loan;
- 9) if the applicant is a representative of another person, a copy confirming that;
- 10) documentation related to a loan secured by collateral or a guarantee;
- 11) documentation citing the amount of money to which the loaned assets are insured at the appropriate institution, where possible;
- 12) for a loan granted for the construction, reconstruction or renovation of real estate – documentation on the costs of the work (cost estimate), reports on inspections carried out by the creditor or documentation on receiving the real estate, confirming the completion of the work;
- 13) in case of amendments to the loan agreement after loan approval, documentation confirming and defining that;
- 14) documentation accompanying and confirming the repayment of the loan in whole or in part and containing the source (mode) of loan repayment (payments from the debtor or realisation of the collateral);
- 15) documentation on the financial situation of the guarantor for the loan in question;
- 16) documentation containing measures the creditor took against the delinquent debtor;
- 17) all correspondence and records of contact between the creditor and the debtor after the concluded loan agreement.

4. LOAN AGREEMENT

Article 7

The loan agreement (hereinafter: the agreement) is unique and contains all mutual rights and obligations of the principal debtor, creditor and guarantor.

This agreement is to be drafted in written form.

Required elements of the loan and microloan agreement are:

- 1) the type of loan/microloan;
- 2) the period for which the loan/microloan is being granted;
- 3) the business name, the name and address of the contracting parties;
- 4) the amount of the loan/microloan to be approved and the conditions of the withdrawal of funds;
- 5) when it comes to loans indexed in a foreign currency – the currency in which the creditor indexes the loan/microloan, the type of exchange rate to be applied when granting and repaying the loan/microloan (the buying or selling rate of the Central Bank of Bosnia and Herzegovina or the official middle exchange rate, or the buying or selling rate of the creditor) and the date of calculation;
- 6) the level of the nominal interest rate, along with a determination of whether it is fixed or variable, and if it is variable – elements on the basis of which it is determined (reference interest rate, consumer price index, etc.), their level at the time of the conclusion of the agreement, the period in which they will change, as well as a fixed element if contracted;

- 7) the effective interest rate and the total amount that the user should pay, calculated on the date of the agreement being concluded;
- 8) the loan/microloan repayment plan and the user's right to obtain the plan free of charge for the duration of the agreement in the event of changes in the repayment plan, or once a year, if there have been no new changes; if the interest and costs are being repaid without the simultaneous repayment of the principal – the repayment plan should contain only deadlines and the conditions for interest and cost repayment;
- 9) the method applied to the calculated interest (compound, proportional, etc.);
- 10) the default interest rate at the time of the conclusion of the agreement, which is to be applied in the event of a late settlement of obligations and rules for its adjustment, as well as any other fees to be paid in the event of default;
- 11) a warning about the consequences in the event of default, conditions, procedures and consequences of the cancellation or termination of the loan/microloan agreement in accordance with the Law on Obligations, as well as a notice of the conditions and manner of the assignment of claims in the event of default;
- 12) a provision under which the creditor has ensured the collection of receivables from the principal debtor via collateral;
- 13) a provision according to which the creditor is authorised and obliged to carry out the collection of loan funds, in the case of delay, by using all the collateral of the principal debtor;
- 14) a provision under which the creditor, in relation to the provision referred to in the previous paragraph, should exhaust all legal remedies in the settlement of their claims against the principal debtor before suing the guarantor;
- 15) a provision under which the guarantor will not repay the loan before the creditor takes all actions referred to in the previous paragraph, and should it come to the loan being repaid by guarantors, the monthly payment should not exceed a third of the regular income of each respective guarantor and all guarantors jointly;
- 16) the type and amount of all fees paid by the loan/microloan beneficiary, specifying whether they are fixed or variable, and if they are variable – the periods of time in which the creditor will change them as well as the type and amount of other costs (taxes, fees to competent authorities, etc.);
- 17) the type of security instruments, the possibility of their exchange during the loan/microloan repayment period, as well as the conditions for activating these instruments in the event of default;
- 18) the conditions and manner of early loan/microloan repayment and the amount of fees related to that;
- 19) the right of users to withdraw from the agreement, the conditions and manner of withdrawal;
- 20) the right to complain and the possibility of initiating mediation proceedings for the purpose of out-of-court settlements of disputes.

The total cost of the loan/microloan for the principal debtor includes interest, fees and all other costs directly related to the approval and use of the loan/microloan and included in the calculation and disclosure of the effective interest rate.

The total amount the principal debtor has to pay is the sum of the loan/microloan amount and the total cost of the loan/microloan borne by the user.

When disbursing the loan/microloan, the creditor shall give the principal debtor, along with the agreement, a copy of the loan/microloan repayment plan, which is considered an integral part of the agreement, while the creditor keeps a second copy of this plan in their documentation.

5. GUARANTOR'S RIGHTS

Right of Withdrawal (Cooling-off Period)

Article 8

The guarantor has the right to withdraw from the concluded agreement within seven days from the date of the conclusion of the agreement, without giving any reasons for the withdrawal.

When withdrawing from the agreement referred to in Paragraph 1 of this Article and prior to the expiry of the deadline referred to in the same paragraph, the guarantor shall notify the creditor of his intention, with the date of receipt of said notice being considered the date of withdrawal from the agreement. This notice shall be submitted in written form.

Basic Principles of Guarantor Protection

Article 9

If the creditor ensures the fulfillment of obligations under the terms of the loan approval with a guarantee, they shall familiarise the guarantor in the negotiating stage with the object of the guarantee, the form of the guarantee required by the agreement, the volume of the guarantor's obligation to which they commit themselves by giving a statement on guaranteeing, as well as present all information to them, i.e. make available all essential elements of the agreement which clearly indicate the rights and obligations of the contracting parties and, at their request, free of charge, submit a draft agreement for consideration outside the creditor's business premises.

The creditor and the borrower cannot alter the mandatory elements of the agreement that increase the volume of the guarantor's obligation without the guarantor's prior consent in written form.

In its function and nature, the guarantee is an accessory (secondary) agreement with no separate legal existence, dependent on the existence and validity of the basic legal transaction, the insurance of which it benefits.

Article 10

For the purposes of this Law, the guarantor is entitled to:

- 1) full and accurate information;
- 2) an education on guarantees in accordance with the provisions of this Law;
- 3) the determination or determinability of contractual obligations;
- 4) protection against discrimination;
- 5) be heard and represented;
- 6) guarantor security in the event that the creditor has not taken all prescribed measures for verifying the principal debtor;
- 7) guarantor protection from deliberate or intended fraudulent activities of the principal debtor or creditor;
- 8) damages and compensation from the principal debtor or creditor.

Article 11

If the guarantor is a natural person, only a person with full legal capacity (Article 999 of the Law on Obligations) and a person no younger than 18 years of age and no older than 65 years of age can be bound as a guarantor.

If the guarantor is a legal entity, the creditor shall verify their creditworthiness and indebtedness using the same type and manner of verification that is applied to the principal debtor in accordance with this Law.

The Creditor's Obligations to the Guarantor

Article 12

Employees who are involved in the sale of financial services and advising guarantors are required to possess relevant qualifications, knowledge and experience, professional and personal qualities, to act in accordance with good business practices and business ethics, respecting the character and integrity of the guarantor, as well as to completely, accurately and unbiasedly inform them of all the details regarding the principal debtor's loan.

Article 13

Prior to concluding the loan agreement, the creditor shall assess the creditworthiness of the borrower on the basis of information received from them and verify it by checking the central database on the indebtedness of borrowers.

Data on the creditworthiness of the principal debtor and the guarantor must be an integral part of the loan file.

The Banking Agency of the Federation of Bosnia and Herzegovina (hereinafter: the Banking Agency of the FB&H) shall stipulate the conditions for assessing and documenting the creditworthiness of the principal debtor and the guarantor.

Article 14

Following the conclusion of the agreement, the creditor shall immediately give a copy of the agreement to the principal debtor and the guarantor.

Article 15

For the approval of loan amounts in excess of KM 20 000.00 and repayment periods of more than three years, the category of guarantor for natural persons is eliminated, and the creditor settles their claims from security instruments of the principal debtor in accordance with the provisions of the agreement and this Law.

Article 16

Security instruments for loans may include bonds, mortgages on real estate, term cash deposits, guarantees of other banks, shares, insurance policies, co-debtors and other legally provided instruments.

If one of the security instruments for loans is a co-borrower, the creditor shall, in accordance with Article 4 of this Law, use all instruments of forcible collection in relation to them, just like in relation to the principal debtor, including an administrative injunction.

Article 17

The guarantor may be required to fulfill the obligation only after the principal debtor fails to fulfill it within the period of time stipulated in the agreement and after the creditor has exhausted all means of forced execution against the principal debtor in accordance with the provisions of this Law.

The agreement specifies the provisions under which the principal debtor may not gift, sell or assign their property to a third party for the duration of the agreement.

The contract specifies the provision on the creditor's manner of handling the event of the principal debtor leaving Bosnia and Herzegovina, without having settled their obligations to the creditor prior to that.

In case of a violation of the provision referred to in Paragraph 2 of this Article, the creditor cannot request that the guarantor fulfill the due obligation until requesting from the court that the property of the principal debtor be returned to its original state, i.e. that it be settled from the estate under probate proceedings or that the debt obligations be taken on by heirs in accordance with the realised inheritance rights.

The exception to the provisions referred to in the previous Paragraph are those guarantors who commit themselves to the creditor of their own volition and decision with respect to taking over the obligation to settle the debt.

Article 18

The contract cannot include provisions under which the guarantor waives the rights guaranteed by this law.

The creditor shall, on their premises and no later than 15 days before the conclusion of the agreement, ensure that the guarantor be familiarised with all the facts and circumstances related to the agreement and provide them with appropriate explanations and instructions with respect to the application of these conditions as well as reply to their queries in written form at their request.

Article 19

In case of a change to the mandatory elements of the agreement which increase the volume of the guarantor's obligation, the creditor shall familiarise the guarantor with that change.

If the guarantor consents the previous paragraph, they shall confirm their consent by signing an annex to the agreement.

If the guarantor does not consent, their obligation in the amount and volume of the original signed agreement shall remain in force.

Article 20

The creditor shall submit a notice of the debt under the agreement to the guarantor at least twice a year, free of charge.

Article 21

If the principal debtor fails to meet their obligation on time, the creditor shall inform the guarantor of the aforementioned in accordance with the agreement.

Unfair Contractual Provisions and Dishonest Business Practices

Article 22

The provisions of the Law on Consumer Protection of Bosnia and Herzegovina apply to unfair contractual provisions and dishonest business practices, including the procedure for their prohibition.

Article 23

In addition to the principal debtor, the guarantors are also required to attend the signing of the agreement.

6. EXERCISING GUARANTOR'S RIGHTS

Article 24

Žirant ima pravo na prigovor u pisanoj formi povjeriocu ako smatra da se povjerilac ne pridržava odredaba ovog zakona, obaveza iz ugovora, općih uvjeta poslovanja i dobre poslovne prakse.

Povjerilac je dužan poduzeti mjere za rješavanje prigovora, donositi pisane postupke, dostaviti pisani odgovor podnosiocu prigovora najkasnije u roku 30 dana od datuma podnošenja prigovora, te o poduzetim mjerama obavijestiti Agenciju za bankarstvo FBiH.

Ako žirant nije zadovoljan odgovorom povjerioca iz stava 2. ovog člana ili ako povjerilac nije odgovorio u roku 30 dana, žirant može u pisanoj formi obavijestiti i uložiti prigovor ombudsmenu u Agenciji za bankarstvo FBiH.

Agencija za bankarstvo FBiH nakon dobijanja obavještenja iz stava 3. ovog člana zatražit će od predmetnog povjerioca da se izjasni o navodima žiranta iz tog obavještenja u roku osam dana od dana prijema ovog zahtjeva.

Ako se povjerilac izjasni ili ne izjasni u ostavljenom roku, a Agencija za bankarstvo FBiH ocijeni da su u pitanju povrede članova ovog zakona, ona će postupiti u skladu sa krivičnim odredbama ovog zakona i krivičnim odredbama drugih zakona koji uređuju rad banaka i mikrokreditnih organizacija.

Ukoliko Agencija za bankarstvo FBiH ne postupi u skladu sa svojim ovlaštenjima iz prethodnog stava, žirant može samoinicijativno otkazati jamstvo.

Ako se povjerilac ne izjasni u ostavljenom roku ili se izjasni, a Agencija za bankarstvo FBiH ocijeni da nisu u pitanju povrede članova ovog zakona, žirant može u pisanoj formi dostaviti prijedlog za posredovanje Agenciji za bankarstvo FBiH radi vansudskog rješavanja spornog pitanja.

Out-of-Court Settlement of Disputes

Article 25

A dispute arising from the agreement, as referred to in Article 7 of this Law, can be settled in out-of-court proceedings in accordance with the provisions of the law and other regulations governing mediation.

Legal Protection of the Guarantor

Article 26

Entities responsible for consumer protection in accordance with the provisions of the Law on Consumer Protection are authorised to:

- 1) issue instructions to stop the implementation of activities that are contrary to the provisions of this Law and to present these instructions before the court,
- 2) initiate proceedings before the competent court,
- 3) initiate proceedings before the competent court in cases of damages caused to the collective interests of the guarantor.

Article 27

By means of its document, the competent court shall order the cessation of any actions or practices that are contrary to the provisions of this Law or other regulations that harm the collective interests of the guarantor.

Right of Representation

Article 28

The Association for the Protection of Guarantors in Bosnia and Herzegovina is authorised to initiate proceedings before the competent court for the purpose of obtaining damages in cases of a creditor or principal debtor acting contrary to the provisions of this Law.

Declaring Null and Void

Article 29

Any form of guarantee that is not in accordance with the provisions of this Law is not allowed.

Agreements as two separate agreements: between the creditor and the principal debtor, on the one hand, and between the creditor and the guarantor, on the other hand, are not allowed.

The appointment of a guarantor is not allowed if the debtor's real estate is pledged as a security instrument for the loan.

The appointment of a guarantor is not allowed when a security instrument for the loan is pledged.

7. GUARANTOR RELEASE DUE TO NEGLIGENCE AND DELAY OF CREDITOR AND DECEITFUL PRACTICES OF MAIN DEBTOR AND CREDITOR

Article 30

The guarantor is relieved of the obligation if:

- 1) at their request following the maturing of claims, the creditor has not exhausted all means of security provided in the agreement for the purpose of settling claims against the principal debtor;
- 2) they have not been given the agreement by the creditor immediately upon its signing;
- 3) it is established that the loan was approved to an uncreditworthy client, which resulted in the guarantor being deceived;
- 4) they did not attend the signing of the agreement;
- 5) the loan was approved on the basis of forged documentation of the principal debtor or guarantor. In that case, the guarantor may file criminal charges for the criminal offense of fraud;

6) it is established that they are an illiterate person, and there is no clear fingerprint on the agreement, i.e. a fingerprint of the guarantor verified by two witnesses or the court, i.e. some other authority;

7) the loan was granted contrary to the applicable legal regulations in the Federation of Bosnia and Herzegovina;

8) they have been misled as a result of fraudulent activities and due to the defect of will;

9) forcible collection proceedings have not been initiated with respect to the principal debtor, even though the conditions for such proceedings have been met.

The guarantor's obligation is terminated for the reasons set out in Paragraph 1 of this Article by a decision of the Banking Agency of the FB&H or the judgment of a competent court.

Article 31

If the guarantor release referred to in the previous Article takes place, the creditor shall immediately and in written form inform the Central Bank of Bosnia and Herzegovina, which will void the guarantor's obligation in question in its central data registry.

8. SUPERVISION OF THIS LAW'S IMPLEMENTATION

Article 32

The Banking Agency of the FB&H shall supervise the creditor in accordance with this Law and other laws regulating the operations of the creditor/microcreditor.

9. PENAL PROVISIONS

Article 33

A fine in the amount of KM 10 000.00 to 15 000.00 KM will be imposed on a bank or microcredit organisation for a breach if:

- 1) it does not advertise financial services in a clear and understandable manner, i.e. if the advertising contains incorrect information or information that may mislead the guarantor,
- 2) the contract is in written form
- 3) every party does not receive a single copy of the contract,
- 4) the contract does not include all mandatory provisions prescribed by this Law.

Article 34

In the event of a breach of this Law for which sanctions have not been defined in the previous Article, the provisions of the Law on Consumer Protection, the Criminal Code and the Law on Obligations shall apply.

10. FUNDS

Article 35

The adoption and implementation of this Law does not require additional funds from the Budget of the Federation of Bosnia and Herzegovina.

11. TRANSITIONAL AND FINAL PROVISIONS

Article 36

The Banking Agency of the FB&H shall, within three months from the date of this Law's entry into force, adopt bylaws provided by this Law.

Article 37

Creditors shall harmonise their general acts with the provisions of this Law no later than three months after the entry into force of the acts referred to in Article 36 of the Law.

Article 38

This Law shall enter into force eight days following its publication in the „Official Gazette of the Federation of B&H“.

Speaker
of the House of Peoples
of the Parliament of the Federation of B&H

Radoje Vidović

Speaker
of the House of Representatives
of the Parliament of the Federation of B&H

Fehim Škaljić