

ATOZ ALERT

Luxembourg law on professional payment guarantees published

14 July 2020

Yesterday, the [law of 10 July 2020 regarding professional payment guarantees](#) was published (the “**Law**”).

This Law introduces a new personal guarantee regime for guarantees granted within a professional context and aims to provide a flexible alternative to the existing suretyship (*cautionnement*) and first demand guarantee (*garantie à première demande*) regimes.

This new guarantee regime aims at reinforcing the attractiveness of Luxembourg as place of choice for international financial transactions.

The professional payment guarantee will be for sure a useful tool in the scope of structuring (i) security packages for financial transactions and (ii) joint-venture deals as it offers contractual freedoms and legal certainty (no risk of requalification into suretyship).

An optional regime

The Law will only apply to the extent parties have expressly agreed to submit their professional payment guarantee to the professional guarantee regime in writing. Evidence of writing may be brought in electronic or any other durable form.

When a professional payment guarantee is governed by the Law, provisions of Articles 2011 and following of the Luxembourg Civil Code on suretyship shall not apply and interfere with the terms agreed upon by the parties.

A professional payment guarantee may be given by any Luxembourgish or foreign corporate entity or individual to the extent the guarantee is granted in the context of its/his professional activity.

A flexible regime based on contractual freedom

The terms of the guarantor's payment obligations are freely agreed upon by the parties.

The professional payment guarantee can be called upon all the agreed cases, including the absence of default related to the relevant claim.

The professional payment guarantee can be granted by order to a third party or a beneficiary.

The parties may expressly refer to the claims or the associated guaranteed risk for the determination of the amount and duration of the guarantee.

Unless otherwise agreed by the parties, the following rules provided by the Law will be applicable:

- after payment under the guarantee, the guarantor will be subrogated to the rights of the beneficiary and will be able to exercise direct legal action against the defaulting debtor;
- the guarantor will continue to be bound under the professional payment guarantee even if liquidation procedures or restructuring measures are initiated against the guaranteed debtor.

Do you have further questions?



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