

NEWSLETTER



Manuela António - 安文娜 大律師及公證員 | *Lawyers and Notaries*

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Banking & Finance

All-monies guarantees: monetary limits on banking guarantees

Guarantees are arguably the most essential part of a financial transaction, especially when lenders are institutions such as multinational financial services companies who rely on such collateral to carry out their business, e.g., credit facilities, bilateral agreements or, more commonly among us, mortgage deals.

Being the essential tool that they are, guarantees come in many shapes and forms, but one of the key distinctions from a lender's perspective is often whether it is "specific" (in that it guarantees only obligations arising under a specific agreement) or "all monies" (in that it guarantees any and all obligations from the principal debtor to the lender, whether existing at the time of the guarantee or arising in future). Of course, a lender's preferred solution is clearly to obtain an all monies guarantee.

These are, however, legal instruments which have originated and are used within the common law jurisdictions, and bear no real conceptual equivalent in civil law systems such as that of the Macau SAR.

" (...) guarantees come in many shapes and forms, but one of the key distinctions from a lender's perspective is often whether it is "specific" (...) or "all monies" (...). Of course, a lender's preferred solution is clearly to obtain an all monies guarantee.

In truth, the so-called “all moneys” guarantees are not a legally viable and enforceable option within the Macanese system, because there are specific rules within the Civil Code which clearly state that in any agreement, the object of negotiation and the level of liability must be determined in advance.

This is perfectly understandable when the goal is to avoid unethical practices such as predatory lending from large creditors over smaller debtors.

In terms of banking guarantees, it is therefore important to keep in mind that the enforceability in the Macau SAR of an all-moneys clause is likely to be barred by the local courts, since such type of provision does not cap the liability amount secured by the guarantor.

We conclude that whilst an all monies guarantee is considered null and void within the Macau SAR and should be avoided when dealing with financial backstops offered by a lending institution such as banking guarantees, the best course of action would be to define a limited and capped amount that may otherwise be enforceable in court – if need be.

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