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JUDGEMENT OF THE S.T.J. 1/2025 - 8-JAN-2025 - UNIFORM JURISPRUDENCE ON THE POSSIBILITY OF THE WITHDRAWAL OF THE GUARANTOR IN BLANK, FOR AN INDEFINITE PERIOD OR FOR A RENEWABLE PERIOD, WHO HAS CEASED TO BE A PARTNER OR MANAGING PARTNER OF THE GUARANTEED COMPANY, UNTIL THE COMPLETION OF THE TITLE, AS WELL AS THE EFFECTS OF THE TERMINATION.

The provision of a guarantor by a partner or managing partner of a company, to guarantee financing granted to the company, is likely to generate particular concern if the partner or managing partner withdraws from the company in the future, at which point they will no longer be linked to or have any control over the company's situation, running the risk of being surprised by a debt that is already owed, but for which they remain co-responsible as a result of the guarantor.

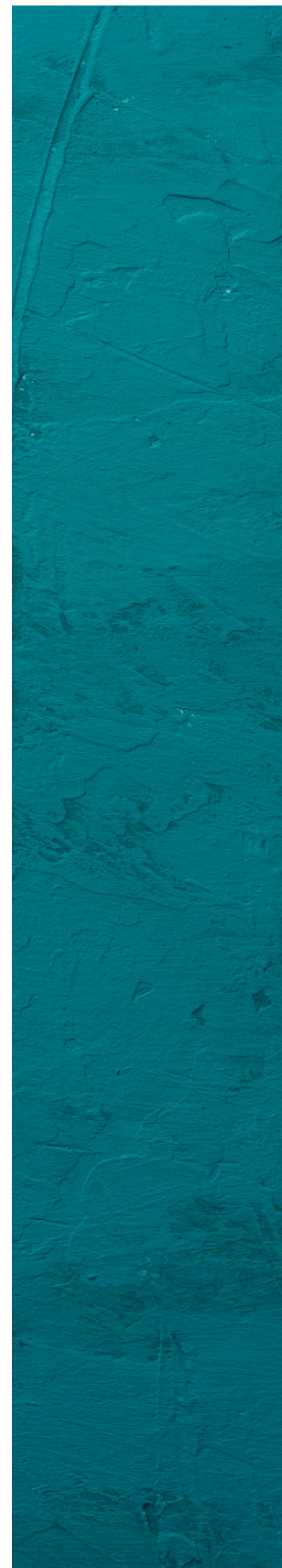
The Supreme Court of Justice's (STJ) Uniformity of Jurisprudence Ruling no. 1/2025, of January 8, decided to mitigate this risk partially, establishing the following uniformity, as set out in its summary:

1 - A guarantee given on a blank promissory note shall, if it is given without a term or for a renewable term after the initial term has elapsed, be subject to termination by the person bound by the guarantee who has ceased to be a partner or managing partner of the guarantor until the title has been completed.

2 - The denunciation will only take effect for the future, i.e. the disconnection will only be effective concerning amounts that may be requested after the denunciation has taken effect.

The importance of a uniform judgment stems from the fact that it is handed down in the context of an appeal filed for that purpose, in cases where the STJ has handed down a judgment that contradicts another previously handed down by the same court, in the field of the same legislation and on the same fundamental question of law.

This type of judgment is not binding on future decisions, since uniform judgments are only effective between the parties to the case in which they are handed down and have no extra-procedural effectiveness or force of law, although they are aimed at the principles of equality and legal certainty, to prevent decisions involving the same law and the same point of law from obtaining different answers from the Supreme Court of Justice.



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However, it will have future jurisprudential relevance and importance as a guiding and interpretative principle. Even more so since in this case, it represents a reversal of the orientation that came from the STJ's Uniform Case Law Ruling no. 4/2013, of January 21, according to which:

Since the guarantee was given in an unrestricted and unlimited manner, it is not permissible for the guarantor, who is a partner in a company in whose favor the guarantee was given, to withdraw from the contract in which he is an interested party, even if, in the meantime, he transfers his shareholding in the guaranteed company.

In other words, the jurisprudence previously in force determined that, once the partner had provided the guarantee, namely on a blank promissory note, he had no possibility of unilaterally withdrawing from that guarantee/ eventual liability, even if he ceased to be a partner.

According to the new ruling, it is possible to withdraw from the guarantee by unilateral act up to the time of filling in the blank promissory note, when the partner or managing partner of the company being guaranteed has ceased to be, in two situations: when the guarantee has been given without a term or when, having been given as a guarantee for a successive and automatically renewable obligation, the initial term has already elapsed.

The Supreme Court of Justice has thus ruled that a partner who withdraws from a company should not be forever bound by the guarantee in cases where it was given for an indefinite period. The aim is therefore to ensure legal certainty in circumstances where the former partner has already lost control over the company's business and decisions and where the time limit of the guarantee is neither defined nor circumscribed, thus seeking to avoid the perennial uncertainty of indefinite or even perpetual liability.

In the context of company financing, this jurisprudential guidance is particularly important in the case of open credit facilities, in which it is possible to use the credit over time to meet the business's specific needs and in which it is common to contract automatic renewals. In other words, in the case of a financing model in which the company can use/request part of the credit after a partner has left the company and in which it is common for the term to be automatically renewed over time, even after the end of that partner's connection to the company, the safeguard now recognized by the STJ seems justified.

Hence also the other condition determined in this judgment:

The denunciation will only take effect in the future, i.e. the disconnection will only be effective concerning amounts that may be requested after the denunciation has taken effect.

In short, the jurisprudence is now moving in the direction of aligning the guarantee given on a blank credit instrument - namely blank promissory notes - with the term that is determined in the credit agreement covered by that guarantee. If the contract does not have a fixed term or if the term is due to be renewed, the partner will have the option of withdrawing from the guarantee, extinguishing it if he terminates it as a result of his withdrawal from the company, concerning the amounts that may be requested after this termination.

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It is therefore the specific vulnerability of the guarantor of a blank credit instrument that the STJ has sought to protect in this standardization:

(...) in practice, the issue and delivery of blank bills of exchange and promissory notes as collateral is widely used and it is recognized that such use corresponds to legitimate interests, namely in cases where, due to the underlying business, all the elements that must be included in the security are not yet determined on the date of subscription and delivery.

But, of course, from the point of view of interests, the position occupied by the guarantor of a full title and the position occupied by the "guarantor" of a blank title are different: the former knows in advance how much he may have to pay (and no more) and from what day he will have to do so (and from here he knows, within the time limit set by the rules of the foreign exchange limitation period, how much payment he may be required to make); the latter does not know how much he will be liable for (although he may have an approximate idea), nor how long he will be required to pay (he may, at the very least, be bothered many years after signing the instrument).

Therefore, this ruling recognizes the possibility of limiting the liability of the guarantor of a blank credit instrument, but this will always remain to credits with a certain repayment period and amounts that the company has requested before the partner's resignation. On the other hand, in the case of credits with no term or susceptible to successive automatic renewal - and always concerning amounts that have not yet been requested - it will be up to the partner to exercise the option of terminating their guarantee by duly notifying the creditor.

Lastly, it should be noted that the ruling was not approved unanimously, and there were some dissenting votes, namely due to differences of opinion as to the legal form of the guarantee in this type of case: the present standardization opted for the form of denunciation, but there were explanations of the vote in favor of other forms, such as termination due to unenforceability, termination with just cause, revocation of the completion pact or termination due to a change in circumstances. On the other hand, it also seems to have been left open whether the main reason for the power to terminate the guarantee is to terminate the corporate bond or whether, more broadly, it is to prevent any perpetual bond through a guarantee for an obligation without a term or successively renewable.

The problem and the debate have existed for a long time, the issue is real, and the courts are frequently confronted with it, and the room for disagreement will remain open as long as the legislator does not choose to establish a clarifying rule in the law. For now, the most recent guiding principle is that of this judgment, condensed in the above-mentioned summary.

Pedro Sena Marcos
Lawyer



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