

The right of excussion - a new mechanism under Federal Decree-Law No. 25/2025 on Civil Transactions Law not provided for under the repealed law

What is the right of excussion?

It is a right invoked by the guarantor whereby they are not obligated to fulfill the guaranteed debt unless the original debtor fails to meet their obligation. The guarantor may suspend enforcement proceedings against their own assets until enforcement has first been carried out against the assets of the original debtor. If those assets are insufficient to satisfy the debt, then, and only then, may enforcement be carried out against the guarantor's assets.

This is stipulated in Article 1009 and subsequent articles of the Civil Transactions Law No. 25/2025, which provides:

"2. The creditor may not enforce against the guarantor's assets until the debtor's assets have been exhausted, unless the guarantor is jointly liable with the debtor, and unless the law or an agreement provides otherwise.

3. The guarantor must invoke before the court what is provided for in this Article."

Key conditions for application:

1. The guarantor must not be jointly liable with the original debtor. If, however, the guarantee provisions state that the guarantor is jointly liable with the original debtor for paying the debt, then this defense is not available to the guarantor.
2. The guarantor must explicitly invoke this right as judges will not rule on it at their own initiative, given that this defense is not a matter of public policy.
3. The guarantor must, at their own expense, direct the creditor to assets of the debtor (movable or immovable) sufficient to cover the entire debt. These assets must be located within the state and must not be subject to dispute, meaning they are readily enforceable.

When is this right invoked?

The right of excussion is not invoked at the stage of filing a lawsuit against the guarantor, but rather when the creditor begins enforcement against the guarantor's assets based on an enforceable instrument.

In other words, if the creditor files a lawsuit against the guarantor, the guarantor can argue that the case is filed prematurely due to the lack of prior enforcement against the debtor's assets. Such lawsuit against the guarantor is admissible; however, after a judgment is issued against the guarantor and at the enforcement stage, the guarantor may request suspension of enforcement until the creditor proves that enforcement has been carried out against the debtor's assets.

The right of excussion in comparative Arab laws:

The provision in Article 1009 (2 and 3) of Civil Transactions Law No. 25/2025 corresponds to Article 788(2) of the Egyptian Civil Code, Article 754(2) of the Syrian Civil Code, Article 1021 of the Iraqi Civil Code, Article 797(2) of the Libyan Civil Code, and Articles 1072 and 1074 of the Lebanese Code of Obligations and Contracts.