Personal Guarantees:
Legal Considerations & Examples

IMPORTANT: This article is provided for general information only and does not constitute legal advice. It is intended to offer practical suggestions on how credit processes might be tightened or improved, but it is not a substitute for legal review or for business-specific judgment. Each credit team should decide for itself what is appropriate for its own context, risk profile, customer base, and operational needs, and should obtain legal advice where required.

Personal guarantees are one of the most effective tools a credit professional has for reducing exposure when lending to companies or trusts. This guide covers what they are, when to use them, how to execute them correctly under New Zealand law, and what to do when you need to call one in.

What Is a Personal Guarantee?

A **personal guarantee** is a legally binding promise by an individual to pay a debt or fulfil an obligation if the primary borrower (usually a company or trust) fails to do so. The guarantor becomes personally liable, meaning their personal assets, not just the business's, are on the line.

In New Zealand, the threshold writing requirement for guarantees is now set by the **Property Law Act 2007**. Section 27 requires a contract of guarantee to be in writing and signed by the guarantor. An oral guarantee is not enforceable. This is a threshold requirement, not a technicality, so get the signature before you extend credit.

When to Require a Personal Guarantee

Not every customer needs a guarantee, and requiring one from a listed company with audited financials will do more harm to the relationship than good. The decision should be driven by risk, not habit.

Consider requiring a guarantee when:

- The applicant is a company with limited trading history (under two years)
- Financial statements show thin equity or recent losses
- The applicant is a trustee company or family trust with no assets in its own name
- The credit limit is material relative to the customer's apparent financial strength
- Your trade reference checks reveal slow payment or prior defaults

The goal is to make the guarantee meaningful. A guarantee from a director whose only personal asset is a heavily mortgaged home may not add much security in practice, but it does align incentives and concentrates the mind of the guarantor.

Who Should Be the Guarantor?

Selecting the right guarantor matters. In most cases you want the person with the greatest ability to pay and the strongest control over the business's decisions.

For a company, directors are the standard choice. Where there are multiple directors, consider requiring all of them, particularly if any one director could wind the company or strip assets without the others' consent. Shareholders with a controlling interest (typically over 25%) are also appropriate targets, even if they are not on the board.

For a trust structure, the guarantor should be the **trustee** (which is often a company) and, ideally, the **settlor** or a named beneficiary with personal assets. Trusts are specifically designed to separate assets from personal liability, so a guarantee from the trust entity alone may have limited practical value.

Where a company is both the trustee and the applicant, you may need layered guarantees: from the trustee company, and from the directors of the trustee company personally.

Executing a Guarantee Correctly

A poorly executed guarantee can be unenforceable. Follow these steps every time.

First, ensure the guarantee is in writing and sets out clearly the obligations it covers: which debts, whether the guarantee is capped or has a limit, and whether it is continuing (covers future advances) or limited to a specific transaction.

Second, the guarantor must sign the document. Where possible, have the signature witnessed by an independent adult, not another party to the transaction. For a guarantee where the guarantor could claim it was signed under duress or without understanding, an independent lawyer's certificate confirming the guarantor received legal advice is strong protection.

Third, consider whether the **Personal Property Securities Act 1999 (PPSA)** is relevant. If the guarantee is backed by a security interest in personal property (for example, the guarantor charges a vehicle or plant to support the guarantee), register that interest on the **Personal Property Securities Register (PPSR)** before you rely on it. An unregistered security interest loses priority to subsequent registered creditors and may be void on the guarantor's insolvency.

Fourth, keep the executed guarantee on file in a retrievable format. A guarantee you cannot locate when you need it is no guarantee at all.

Limitations and Risks

Guarantees are not a silver bullet. Their enforceability and scope can be affected by the terms of the guarantee itself, the general law of suretyship, and ordinary contractual and equitable defences.

A guarantor is discharged if the creditor materially alters the terms of the underlying credit agreement without the guarantor's consent. Extending a credit limit, changing repayment terms, or granting time to the principal debtor can all trigger this. If you change the credit terms after the guarantee is signed, get the guarantor's written consent to the variation.

Guarantors may also raise defences such as misrepresentation (they were not told of a material fact), undue influence (they were pressured into signing), or that the guarantee is ambiguous. Clear, plain-language drafting reduces these risks considerably.

Be cautious of unlimited continuing guarantees over a long period. The broader and more open-ended the instrument is, the greater the scope for dispute about interpretation, variations, and what the guarantor objectively agreed to stand behind.

Finally, pursuing a guarantor is a last resort in most credit relationships. Before you issue a formal demand, consider whether the relationship has any remaining value and whether a payment plan negotiated directly will recover the debt faster than litigation.

Enforcement

When a customer defaults and the guarantee needs to be called, the process is straightforward if the documentation is in order.

Issue a written demand to the guarantor specifying the amount owing, the basis of the demand, and a payment deadline (typically 7 to 14 days). The demand should reference the guarantee document by date and parties.

If payment is not made, your options include filing a claim in the Disputes Tribunal (subject to its monetary jurisdiction), issuing proceedings in the District or High Court, or, where the guarantor is a company and the debt meets the statutory threshold, serving a statutory demand under the Companies Act 1993. For an individual guarantor, bankruptcy proceedings may be available if the statutory requirements under the Insolvency Act 2006 are met.

The practical reality is that a Court judgment against an individual is only as valuable as their ability to pay. Before committing to litigation costs, assess what the guarantor actually owns, using PPSR searches, Land Information New Zealand title searches, and Companies Office records where the guarantor is a director of other entities.

Quick Checklist

- Get the guarantee in writing and signed before extending credit, not after.
- Require guarantees from all directors (and controlling shareholders) where the structure allows asset stripping.
- For trust customers, get personal guarantees from the humans behind the trustee, not just the trustee entity.
- Register any security interest backing the guarantee on the PPSR immediately.
- Obtain written consent from guarantors before changing credit terms, or risk losing the guarantee.
- On default, issue a clear written demand with a specific payment deadline before escalating to legal action.