



## UNILATERAL TERMINATION OF A COMMITMENT TO GUARANTEE GRANTED ON A BLANK PROMISSORY NOTE STANDARDISATION OF CASE LAW

**O**n 8 January 2025, the Supreme Court of Justice (STJ) published Ruling no. 1/2025, which standardised case law in the following terms:

*'1 - A guarantee given on a blank promissory note may be terminated by the person bound by the guarantee who is no longer a partner or managing partner of the guarantor, provided that the guarantee is given without a term or for a renewable term after the initial term has elapsed. 2 - The termination will only have effect for the future, i.e. the disengagement will only be effective in*

*relation to amounts that may be requested after the termination has taken effect.'*

The use of blank promissory notes by partners or managing partners as collateral in contracts, particularly credit agreements, between banks and commercial companies facilitates the conclusion of such contracts, since in the event of default, banks can collect debts more quickly by resorting to enforcement.

However, in many cases the partner or managing partner ceases to be a partner or managing partner after signing the blank promissory note, and remains bound by it until the bank collects the debt in full.

In Uniform Case Law Ruling no. 1/2025, the question was raised as to whether it is possible for the partner or managing partner to unilaterally withdraw from the guarantee provided by means of a blank promissory note after leaving the company.

The STJ held that such withdrawal is possible in cases where the amount guaranteed has not yet been determined and where there is no defined term or, if the term is renewable, withdrawal is possible at each time of renewal and always up to the time of completion of the promissory note, and must be effected through opposition to its renewal by the guarantor in blank.

In cases where the fundamental relationship, i.e. the contract guaranteed by the promissory note, or the fulfilment agreement has a fixed and non-renewable term, termination will not be possible.

The STJ also held that, in the cases in which it is admissible, the denunciation only produces effects for the future, in other words, in relation to the amounts

requested by the company after the denunciation has produced its effects (with its communication to the bank), so the promissory note can be filled with all the credits resulting from operations that took place until the denunciation produced its effects.

It should be noted that the basis for the cancellation must be the absence of a term in the relationship and not the loss of membership (although this issue was questioned in some of the losing votes).

However, as stated by the STJ, the denunciation must always be exercised in good faith, and the loss of membership by the guarantor is a situation of ‘validation’ of the denunciation in respect of the principle of good faith.

This Uniform Case Law Ruling is particularly important because, although it defends a solution that is not new and which had already been proposed by various doctrines, it establishes a solution diametrically opposed to the one adopted by Uniform Case Law Ruling no. 4/2013, according to which ‘it is not in good faith’.  
° 4/2013, according to which *‘Since the guarantee was provided in an unrestricted and unlimited manner, its termination by the guarantor, a partner in a company in whose favour it was provided, is not admissible in a contract in which the company is an interested party, even if, in*

*the meantime, it transfers its shareholding in the guaranteed company’.*

## FINAL NOTE

This recent Uniform Ruling gives the guarantor partner, who transfers his shareholding to a third party, the freedom to withdraw, in the cases mentioned above, from the obligations inherent in that condition of guarantor.

This possibility, even if it does not lead to an intolerable result for the bank's interests, as mentioned in the judgement, will certainly cause banks to adopt other measures so that their position is not weakened in this type of contractual relationship.

*José Carlos Silva*  
*jose.cs@caldeirapires.pt*