Cassels

Virtually Guaranteed: Amendments to Alberta's Guarantees Acknowledgment Act

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Most forms of franchise agreements require the provision of a personal guarantee by the franchisee shareholders to guarantee the franchisee corporation's obligations under the agreement. In all provinces and territories in Canada, aside from Alberta, this guarantee is effected by having the guarantors bind themselves by executing a personal guarantee agreement.

In Alberta, however, there is an added step to obtaining a binding personal guarantee in addition to executing the guarantee agreement itself, due to the application of the *Guarantees Acknowledgment Act* (GAA). Originally enacted as a form of consumer protection legislation with the policy objective of ensuring guarantors were fully informed of the obligations they were committing to, the GAA applies to every guarantee entered into under Alberta law in connection with the sale of an interest in land or an interest in goods or chattels.

Prior to COVID-19, the GAA required that guarantors to Alberta contracts physically appear in person before a lawyer to execute a Guarantees Acknowledgement Act Certificate (GAA Certificate) that would accompany the guarantee agreement. This requirement has been amended by *Bill 24 – COVID-19 Pandemic Response Statutes Amendment Act, 2020* (Bill 24), which received royal assent and came into force on June 26, 2020.

Bill 24 amends the GAA and a number of other statutes in response to the strain faced by Alberta's economy while navigating the uncertainties of the Covid-19 pandemic. Among other things, Bill 24 amends the procedural requirement that a GAA Certificate be executed in the physical presence of a lawyer. Prior to Bill 24, the GAA Certificate did not have any effect unless the person entering into the obligation appeared before a lawyer and signed the certificate in the presence of the lawyer. Considering the COVID-19 pandemic and the need to comply with physical distancing measures to ensure public safety, the amendments waived the requirement for physical presence before a lawyer. The amendment introduced Section 3(1) "Acknowledgment by Video Conference," which gives effect to a guarantee if the person entering into an obligation:

(a) appears before a lawyer by two-way video conferencing,

(b) acknowledges to the lawyer that the person executed the guarantee, and

(c) can be seen by the lawyer during the two-way video conference to sign the certificate.

Furthermore, the amendments gave effect to this change starting on August 15, 2020, and continuing up to and including August 15, 2022. If the lawyer elects to use video conference acknowledgement, they can do so using Form 2 as prescribed in the regulations of the GAA.

These practical amendments are seen as a welcome change as they accommodate physical distancing requirements during the COVID-19 pandemic while facilitating a safe and successful return to business for many Albertans.

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This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.