

# Relatives' guarantees contra bonos mores?

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A recent development in Austrian jurisprudence as well as legislation brought new watch outs for creditors if guarantees, sureties or collateral promises of relatives of the debtor are demanded.

An amendment to the Austrian Consumer Protection Act (KSchG), which entered into force in January 1997, contains a number of provisions concerning the liability of marital partners and consumers in general acting as guarantors. These provisions oblige commercial creditors to inform the guarantor about the performance of the obligation of the third party especially the fact that the third party came in default, to inform the guarantor about the financial situation of the debtor in advance if default is likely or to hand out to marital partners a special document containing certain information. Moreover the Austrian Consumer Protection Act provides the right to judicial moderation if after consideration of all circumstances the [debt](#) of the guarantee is out of reasonable proportion to the guarantor's financial capacity.

In addition the Austrian Supreme Court recently held that a relative's guarantee is contra bonos mores on the understanding that, among others, the [debt](#) is out of reasonable proportion to the guarantor's financial capacity, the guarantor was taken unawares, was hard pressed, the third party was heavily encumbered and the contents of the liability was unreasonable. To summarize this decision, a relative's guarantee would be contra bonos mores if the contract of guarantee as well as the conditions of it's conclusion are unreasonable and the creditor knows or does negligently not know this.

All that had also a non [legal](#) reason and was a reaction to the situation that more and more commercial creditors granted [loans](#) to debtors without [credit](#) standing by [moving](#) his relatives to act as guarantors. Now after the amendment to the Austrian Consumer Protection Act and the jurisdiction of the Austrian Supreme Court every creditor has to be very careful if a [loan](#) should be secured legally binding by relatives' guarantees.