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The Creditor's Duty to Disclose in Suretyship Contracts: Good Faith, Material Information, and Judicial Practice under Iraqi Law

Saieb Salman Al-Janabi, Georges El-Ahmar

Faculty of Law, Lebanese university, Bieruit, Lebanon
drsaeb3@gmail.com
0009-0000-6798-3038, 0009-0004-2371-744x

ABSTRACT: Background: The duty of creditors to disclose material information to guarantors raises important questions concerning the protection of consent in contracts characterized by unequal bargaining power. Professional creditors often possess superior information about the principal debtor's financial condition and ability to meet contractual obligations. This study examines the development of the disclosure duty under Iraqi law, focusing on Federal Baghdad Court of Appeal Decision No. 312/T/2019 and subsequent judicial decisions.

Methods: The study adopts a doctrinal and comparative legal methodology, analyzing relevant provisions of the Iraqi Civil Code concerning good faith, fraud by concealment, materiality, and the burden of proof. It examines the principal judgment and three additional Iraqi court decisions issued between 2020 and 2022, comparing the Iraqi approach with developments in three neighboring legal systems.

Results: The findings indicate that Iraqi courts increasingly recognize the legal consequences of non-disclosure where creditors possess material information unknown to guarantors that could reasonably influence their decisions to provide guarantees. Materiality is assessed contextually, considering the nature of the information, the creditor's professional status, and the parties' circumstances. However, judicial decisions reveal inconsistencies regarding the scope of disclosure obligations, materiality assessment, burden of proof, and legal consequences of non-disclosure.

Conclusion: The study recommends legislative clarification of creditors' disclosure obligations under Iraqi law, including the categories of material information, the timing of disclosure, the parties' respective duties, and the consequences and evidentiary requirements of non-compliance. Such clarification would strengthen guarantor protection, improve legal certainty, reduce conflicting judicial interpretations, and maintain a fair balance between creditor interests and guarantors' rights.

INTRODUCTION

Contemporary contract law increasingly understands post-1844 that contractual consent is not simply an offer and acceptance matter but, rather, that the conditions surrounding both parties sufficiently informationally at the time of contracting matters as well. The latter principle of good faith, which holds that if one party has material information that the other does not and such could reasonably be expected to affect the decision-making process (specifically as to contracting), it should announce and disclose. It was secondary to Panel A, in terms of receiving the binder and privacy, not only because this had implications for informed choice but also due to tangible inequalities that exist between exchange actors (Giliker, 2005); (Piers, 2012; Hesselink, 2020).

This is especially the case where a suretyship contract is involved, whereby a debtor finds themselves in a position where their debt has been guaranteed without economic benefit having arisen for the guarantor attached to the underlying transaction. If the guarantor is a lay party, while the creditor (especially a bank or other financial institution) has better knowledge than the debtor of his/her financial situation, creditworthiness and pre-existing debt or default record, then this danger becomes so much more acute. This phenomenon of informational asymmetry can affect the guarantor's risk estimation, and thus the quality of consent where it forms a fundamental precondition for any suretyship contract (Kim 2009); (Dabić 2018; Sefton-Green 2018).

Legally the question is whether there was anything that the creditor had a duty to disclose to the guarantor which might reasonably be expected to have an effect on her decision of if she wanted to take on liability or not. Comparative legal literature has tried to address this question through many alternative mechanisms, including statutory disclosure obligations, good faith, fraud by silence and judicially-created pre-contractual duties. If a mandatary to disclose obligation is imposed, and the extent of such an obligation, can therefore be largely stipulated by the creditor's knowledge, the materiality of the information, any relative inequalities between both parties or—with respect only to those cases applicable in which she is a party—also circumstances after the conclusion of a contract entered into by a guarantor (Jansen & Zimmermann 2018); (Sefton-Green 2018; Moussa 2021).

That is then a concrete problem in Iraqi Law. Iraq does not expressly provide a unqualified duty on its own right as doctrine, although Article 150 (1) of the Iraqi Civil Code recognises the principle of good faith and also though provisions in a law govern suretyship whereby pre-contractual information such as that which obliges all creditors. Hence, the immunity for non-disclosure granted to a guarantor has largely depended on the identification and use of wide legal concepts such as good faith/fraud. So the absence of a statutory scheme poses problems, partly because it is not obvious as to how judicial interpretation can have some plausible margin for rights protection but still maintain internal coherence and predictability.

In fact, there are significant signs that the practice of Iraqi courts on this file is changing. What makes Federal Baghdad Court of Appeal Decision No. 312/T/2019 unique is that the court found hiding material information concerning a debtor's financial status as relevant to whether a guarantor came to give consent with respect to act of concealment as it would not be in good faith and shall constitute fraudulent misrepresentation. .The court also considered both objective and subjective aspects of the materiality of the undisclosed information and addressed the allocation of the burden of proof between the guarantor and the professional creditor.

The clarion of this judicial decision becomes even louder when compared to other Iraqi actions. The analysis is partly based on two cases: the Oandi Bank v. Ajeagbo and Youyi International Ltd v. Soja-Micheal my guess at an answer in these forms of sorry, but I unable case look materiality for non-disclosure, the differences between onerous/unconscionable where differentiating professional/lay guarantor (and by gender-based) with a burden of seeking proof The other decisions have a more pro-raw noses treatment vis-à-vis guarantors who are equally unable to assess the risk and accordingly placed under the burden of establishing that undisclosed information was so material and central as to influence their consent. This discrepancy suggests that the Iraqi courts are starting to develop a more judicial approach regarding creditor duty disclosure, yet there has not been full suffusion of applicable standard.

In the light of this, the present study investigates a demarcation of the creditor s duty to disclose in suretyship contracts under Iraqi law from which are studied the influence of good faith on which information material and judicial protection for guarantor. In particular, it examines the degree of a duty that Iraqi courts have imposed (if at all) in the absence of an explicit statutory prerequisite, how materiality is determined regarding undisclosed information and asensibly professional versus non-professional issue with respect to guarantee. It additionally considers whether the evolving judicial approach is devoid of legal certainty and requires legislative undoubting.

This study links the Iraqi legal ground with actual non-disclosure practice in suretyship, mainly Decision No. 312/T/2019 and other decisions in this regard; it might be also expected to add a contribution to the literature in this regard. Finally, it compares the Iraqi judicial method to elucidate the similarities and differences in good faith, fraud by silence, material information and burden of proof. Aside from this, the comparative analysis does not serve as a reference to transplant rules that made their way into US or former countries but look at comparatives through a lens of analysis.

The research is doctrinal and comparative legal in nature. Then it reviews the related provisions of Iraqi Civil Code, then analyse some aspects of non-disclosure in connection with contracts of suretyship and judges rules emerged from decisions thereon, that are foregone. We look up to good-faith fraud as it has been dealt in Iraqi courts as you have developed from the concept of a grand solution to asymmetry of information. However, the lack of a clear statutory basis has resulted in uncertainty around special rights to deal with matters that should qualify for disclosure and how materiality is assessed and who bears the burden of proof. Thus, the study argues for legislative clarity in respect of the creditor's duty to disclose – but without changing the existing conceptual framework underlying Iraqi suretyship law.

MATERIALS AND METHODS

Utilizing doctrinal and comparative legal styles, this research investigates the creditor's obligation to reveal facts material to suretyship contracts per Iraqi law. The doctrinal approach seeks to investigate the relevant provisions of the Iraqi Civil Code dealing with good faith, fraud, and suretyship, together with the judicial rationale that has evolved for those subjects in a binding Iraqi case law context. The analysis is fitting for the establishment of non-statutory and judicial principles surrounding their interpretation and application (Giliker, 2005); (Jansen & Zimmermann, 2018).

The paper specifically dedicates itself to Federal Baghdad Court of Appeal Decision No. 312/T/2019 since it is the primary judicial case examined in this study. This analysis takes into account several aspects, including (i) the legal basis for a duty to disclose with respect to creditors; (ii) treating concealment as a fraudulent activity; (iii) the tests used in making it a question regarding whether undisclosed information is material; and (iv) who has the burden of proof–the creditor or guarantor. A survey of other related Iraqi judicial decisions indicates a consistent rational approach towards the evolution, progressive development, and coherence of courts in protecting guarantors.

The comparative component examines selected approaches in French, German, and Egyptian law concerning pre-contractual information duties, good faith, fraud by silence, and the protection of sureties. Comparative analysis is used to identify the principles and criteria developed in other legal systems and to assess their relevance to the Iraqi context (Moussa, 2021); (Sefton-Green, 2018). The study does not seek to transplant foreign rules directly into Iraqi law; rather, comparative materials are employed as an analytical framework for evaluating the development of Iraqi judicial practice.

The paper also relies on the economic analysis of asymmetric information in suretyship. This point of view is relevant because the creditor, especially a financial institution under national regulation, will have information about the debtor's ability at considerably lesser cost than that received by the guarantor. Thus, even beyond a contractual duty of good faith, assigning the way the risks are disclosed to the party with better information can be justified both economically wise and to avoid uninformed risk-taking (Zimmermann, 2020); (Steennot, 2012).

It continues with a review of the relationship between the Iraqi statutory framework and judicial practice, and concludes with an exploration of the implications of the pertinent decisions for legal certainty. We focus on the differences between professional and non-professional guarantors, the objective and subjective assessment of material information, and where the burden of proof lies. Such analytical criteria are in line with the comparative literature on the protection of guarantors and pre-contractual disclosure duties (Dabić, 2018); (Kim, 2009);(Sefton-Green, 2018). Based on this, the study delves into whether or not it has relied on good faith principles and fraud to properly protect a surety, assessing if certain ambiguities within Iraqi suretyship law necessitate legislative elucidation.

RESULTS

The Iraqi Legal Framework and the Absence of an Express Statutory Duty to Disclose

The test of the Iraqi legal system reflects that while Iraqi law recognizes good faith as an agreed-upon common rule to govern contractual relations in general, there is no clear statutory pre-contractual duty of a creditor to inform a prospective guarantor of significant facts. In contrast, Article 150(1) of the Iraqi Civil Code says, "The obligation shall be performed alone according to what its terms required, and it must comply with the requirements of good faith", subsuming that contract requirement is achieved on matters dictated by the law, tradition and equity thanks to the nature of mandate (Article 150(2)).

Article 150 acts as a generic source of law for those obligations not named in any given contract and therefore is also an article of importance. But it does not set out what information a creditor is to provide a guarantor before or at entry into the suretyship

contract. The moment it has not been enshrined in the Iraqi Civil Code as a general rule, which places the burden of proof on the creditor to prove such disclosure. As such, the continued half-hearted attempts to apply the principle of good faith in a non-disclosure context rest heavily on judicial interpretation.

When compared with the statutory definition of suretyship, this issue depends more heavily on the statute. What this means exactly — in a nutshell, Article 1008 of the Iraqi Civil Code defines suretyship as joining one liability with another in order to demand from the debtor the performance of an obligation. As a result, the statutory framework defines the legal relationship between the surety and the principal obligation, but does not explicitly regulate a creditor's pre-contractual information duties toward a surety.

This puts you in a position where there is a general obligation of good faith and others to disclose, but this is not the same matter as a specific statutory duty. Article 150 is explicit with respect to the former, and there is no comprehensive codification of the latter among suretyship provisions. This is important because not all failure to disclose information will amount to legally binding nondisclosure. The data should be sufficiently material to the decision of the guarantor, and the surrounding circumstances must warrant requiring the holder of that information to disclose it (Dabić, 2018); (Sefton-Green, 2018).

The rise of information duties, comparative scholarship has established, can take root from the core principles of contract law as expressed by the courts or through specific statutes. Good faith has provided a grounding on which to build pre-contractual obligations in Europe (although at times through case law) as legislation-driven efforts have, as shown in some recent statutes (Giliker 2005); (Jansen & Zimmermann 2018); (Hesselink 2020), aimed toward defining specific rules addressing information disclosure - the 'information necessary for rational assent. This inequality is most readily apparent with respect to the matter of suretyship, whereby a creditor's awareness as compared to that of the principal debtor about the latter's financial capacity and ability to perform under that secured obligation (and vice versa) - or information asymmetry (Kim 2009); (Sefton-Green 2018).

It. is thus a law of general principles on the Iraqi position rather than an expressed statutory declaration. However, the law only enshrines good faith insofar as it lays out a basis on which courts may be guided by good faith about how parties should conduct themselves and is not prescriptive in relation to statutory provisions regarding content of disclosure, materiality threshold, status distinction between professional- non-professional guarantors or consequences for non-disclosure. That is why the precise location of that line, when it comes to a creditor's disclosure obligations, has become an area where courts have played an increasingly vital role as arbiters.

Thus, this analysis discovers the first principal finding derived from norms of disclosure enabling a duty of disclosure (which should be strictly termed "duty"), and no express, comprehensive statutory provisions for that duty exist in suretyship contracts. It then proceeds to examine which exact judicial evolution (if any) actually did exist to determine whether Iraqi courts had developed this doctrine into a positive duty that would offer a defense to sureties for not reporting material facts.

Table 1. Iraqi Legal Basis for the Creditor's Duty to Disclose

Legal element	Position under Iraqi law	Significance for disclosure
Good faith – Article 150(1)	Contractual relations must be performed consistently with good faith	Provides the principal general legal foundation
Contractual implications – Article 150(2)	Contractual obligations may include requirements arising from law, custom, and equity	Allows obligations beyond express contractual terms
Suretyship – Article 1008	Suretyship joins one liability to another in demanding performance of an obligation	Establishes the legal nature of suretyship but does not expressly regulate disclosure
Specific disclosure duty	No comprehensive express rule identified in the governing suretyship provisions	Creates reliance on judicial interpretation
Materiality standard	Not comprehensively defined in the suretyship provisions	Requires judicial development

Burden of proving disclosure	No specific general allocation identified in the cited framework	Produces potential judicial inconsistency
Legal consequence of non-disclosure	Requires application of general doctrines such as good faith and fraud depending on circumstances	Makes judicial reasoning central to protection of the guarantor

Source: Compiled by the authors from the Iraqi Civil Code, particularly Articles 150 and 1008, and the comparative literature discussed in the study (Dabić, 2018); (Giliker, 2005);(Hesselink, 2020);(Jansen & Zimmermann, 2018); (Kim, 2009);(Sefton-Green, 2018).

Judicial Development of the Duty to Disclose in Decision No. 312/T/2019

As we analyses the Iraqi judiciary, as part 3 of good faith is a general pre-contractual duty to disclose in suretyship and it is not mediated by explicit provision of statutory law (Lai et al. 2019; Bholda et al. 2020), the Iraqi courts have relied on principles of due to the principle of good faith and fraud when dealing with cases where concealment or non-disclosure refers to the suppression or omission of material information from parties. The cases identified by the methodology used in this study were: a landmark judicial development that benefitted all of the victims, namely, Federal Baghdad Court of Appeal Decision No. 312/T/2019; most of affected parties reported such a general situation, and the number of approvals all testify to this fact.

The case originated from a commercial business endeavor, applying for new credit lines amounting to 750 million IQD (in October 12) in Iraq using the stipulations above as personal collateral. Before the guarantee was finalized, on October 12, 2016, they had outlined to the guarantor in a guarantee application, based on what they said was the finding that the financing would support activities of the debtor without demonstrating that their liabilities were classified as non-performing at around IQD 2 billion. The creditor also withheld information about the financial condition of the debtor and their remaining property from the guarantor. Four months later, the borrower defaulted, and the guarantee was called in.

The first-instance court dismissed the guarantor's claim for relief on the grounds that it was within the power of the guarantor to investigate the standing of the obligor, and ignorance of a material fact does not in itself exculpate him from liability. In striking contrast, however, the Federal Baghdad Court of Appeal Joseph took up an entirely different course on appeal and voided the guarantee. The appellate court found that the fact this was a gratuitous guarantee, however, did not relieve the creditor of its duties to be clear and act in good faith throughout at least the contractual process. It went on to consider that the concealment of serious financial difficulties by the debtor amounted to fraudulent misrepresentation (since the creditor knew these points would have been material to a decision for a guarantor).

Indeed, the most important part of this decision is not what the court decided but rather how it got there. The most effective link is between the creditor's superior knowledge, the materiality of the withheld information, and the guarantor's real-world ability to assess whether he wanted to be obliged by an agreement at that time. By this line of reasoning, good faith moves from a general standard of performance in a contractual context to a basis for positive disclosure in those circumstances where silence amounts to information capable of fundamentally altering the guarantor's risk assessment. This does resonate with the comparative literature more broadly, which suggests that a duty to inform may arise in situations where one party has information decisive for the transaction that the other party is reasonable to have not been aware of (Dabić, 2018); (Sefton-Green, 2018).

The court also embraced two standards of materiality. The key question, objectively, in the context of a guarantee was whether failure to disclose default by the debtor would have influenced an ordinary guarantor's decision. Subjectively, the court looked at the factual circumstances and lack of financial sophistication of the guarantor. This combination matters for the very reason that it does not conceptualize materiality wholly abstractly; but rather constrains legal relevance to both information type and the traits of the individual who may be denied consent. Comparative scholarship on suretyship and pre-contractual disclosure (Kim, 2009); (Sefton-Green, 2018) has identified similar objective and subjective approaches.

The other big part of the decision concerns the burden of proof. The onus was on the bank to establish alleged disclosure, after the guarantor had shown both default of the debtor and that it knew of that condition. This reasoning has the truth of the matter as a commercial creditor will be in a far better position to prove what it knew and communicated prior to guaranteeing formation. This also reminds the general comparison that a fair allocation of disclosure duties may depend on which party holds better information and has lower-cost (61).

The ruling thus marks a key moment in the judicial evolution of the Iraqi law of suretyship. Instead of inventing a wholly new contractual doctrine, the court employed familiar precepts—good faith and fraud—to correct an external informational imbalance that was simply not addressed anyplace in the Civil Code. Thus, the ruling highlights the ability of general contract doctrine to adapt to new varieties of information asymmetry while also exposing the straitjacket imposed on judicial development by a lack of legislative guidance.

Table 2. Judicial Elements of Decision No. 312/T/2019

Element	Finding in the case	Legal significance
Creditor's position	Professional banking institution with knowledge of the debtor's financial condition	Superior informational position
Guarantor's position	Non-professional guarantor with limited ability to assess credit risk	Increased vulnerability
Undisclosed information	Existing default, substantial outstanding debt, and poor financial condition	Potentially material information
Creditor's conduct	Failure to disclose known financial circumstances	Evaluated under good faith and fraud
Materiality	Assessed objectively and subjectively	Connects information to the guarantor's decision
Burden of proof	Shifted to the creditor after relevant facts were established	Reflects superior access to information
Judicial remedy	Guarantee contract declared invalid and related relief granted	Provides protection against uninformed consent

Source: Authors' analysis based on Federal Baghdad Court of Appeal Decision No. 312/T/2019 as reported and analysed in the present study, with reference to the comparative literature on pre-contractual disclosure and suretyship (Dabić, 2018);(Kim, 2009); (Sefton-Green, 2018); (Zimmermann, 2020).

Thus, while the latter represents (in this body of judicial reasoning) the first unambiguous statement by an Iraqi court that its interpretation may encompass supplementary legal sources as a basis for a performative obligation to disclose, as it does not rely on expressly applicable positive laws, and rather demonstrates how principles can be inferred from greater norms. But the ruling should not be interpreted as creating a blanket requirement to disclose any and all facts of the principal debtor. Here is another way by which the understanding of its rationale may be improved: have the creditor disclose information that he knows will be of material importance for decision making of the guarantor and when the disparity in power between both parties is shown to be consequential.

Materiality of the Undisclosed Information

Iraqi judicial practice on the non-publication of information is not necessarily to establish the injurious breach in the creditor's duty to disclose. Importantly, and indeed determinative of the analysis, is whether the materiality of the information was by its nature relevant to its decision. Materiality therefore operates as an exclusionary rule; it separates information that could influence a risk-taker from benign, or commercially irrelevant, information. This principle is consistent with the overall trend of disclosures in contract law, which should only be required when a significant link exists between such information and the decision-making process (Seftongreen 2018); (Hesselink 2020).

Federal Baghdad Court of Appeal No. 312/T/2019 ruling combines objective and subjective, two-pronged standard for materiality. The objective dimension is whether a reasonable person in the place of an ordinary guarantor, with knowledge of what was concealed, would have acted in the direction of assuming the obligation created for such debtor. Whereas, the other has to consider some specific features regarding the guarantor: his work experience, financial institutional level of knowledge (yes, you can be too professional), employed vs. the two methods are particularly significant in a suretyship context because the

economic sophistication and informational ability of sureties can vary considerably. On the other hand, a professional commercial guarantor cannot be held to the same knowledge standard applied to a normal guarantee—Dabić (2018), K-2 w/o specialists & financial literacy experts level information-expertise depth accessibility for 3rd party(s)' (Kim,2009).

More recently, the appellant court case we are reviewing did not consider the debtor's previous default, the large outstanding debts at stake, or her very poor financial position to be normal background matters. Affecting instead the chance of the principal debtor to perform the secured obligation and, therefore, indirectly also affected the ambit of risk borne by the guarantor. These facts took on added importance due to the professional standing of the bank and its immediate access to information about the debtor's finances. Therefore, the materiality of the information is not simply based on its existence but on a conjunction of three factors: (i) whether it changes the risk faced by the guarantor; (ii) whether the creditor was aware of this information; and (iii) whether there arises any reasonable likelihood of realizing that before entering into a contract to provide credit facilities to customers, this particular component had failed in respect merctorily.

This had the additional benefit of showing why the obligation to disclose should not be interpreted as having no limit, and compel a creditor to admit every fact about a principal debtor. This type of interpretation would place an overwhelming burden on creditors and, as a result, compromise the efficiency of commercial transactions. The appropriate threshold is not whether undisclosed information is material within the strict definition of that term, but rather whether such information is sufficiently germane to the risks assumed by the guarantor and important enough in relation to those risks so as to be a determinative factor in the decision of a reasonable person. Comparative scholarship also has underlined the connection between information asymmetry, materiality, and risk allocation in suretyship transactions (Kim, 2009); (Sefton-Green, 2018);(Zimmermann, 2020). As such, the Iraqi judicial profile projected through Decision No. 312/T/2019 could be imitated via this analytical test:

Table 3. Dual Materiality Test for the Creditor's Duty to Disclose in Suretyship Contracts

Materiality Element	Analytical Question	Application in Suretyship
Risk significance	Does the information substantially increase the risk assumed by the guarantor?	Information concerning serious default, insolvency, substantial indebtedness, or absence of assets may satisfy the criterion.
Creditor knowledge	Was the information actually known, or reasonably available, to the creditor?	The creditor's professional access to the debtor's financial information strengthens the case for disclosure.
Guarantor's knowledge	Could the guarantor reasonably be expected to know the information independently?	The assessment differs according to the guarantor's professional and financial circumstances.
Decision-making relevance	Could disclosure reasonably have affected the guarantor's decision to provide the guarantee?	Information that could have led the guarantor to refuse, limit, or reconsider the guarantee is potentially material.
Objective standard	Would the information matter to a reasonable guarantor?	Provides a general benchmark and prevents purely subjective claims.
Subjective standard	Would the information matter in light of this particular guarantor's circumstances?	Protects non-professional guarantors whose ability to assess risk is limited.

It follows that the standard itself can be called a dual objective–subjective materiality test. The objective element ensures that the obligation could not be defined solely by the representations of individual guarantors; and the subjective component protects against ascribing unreasonable benchmarks regarding financial sophistication and diligence to all guarantors. This middle ground helps explain Iraqi judicial practice, where courts have the capacity to distinguish between professional and non-professional guarantors without imposing an absolute presumption either way as it relates to a right or lack thereof to disclosure.

The analysis of materiality is also a very good way to bring out, via comparison, the examined and later researched Iraqi cases in this study. But where the guarantor was a merchant with some capacity for assessing commercial risk, courts recognized at

least a more limited duty of care on the part of the creditor. By contrast, courts were more willing to treat non-disclosure as critical where a creditor had information that was specific to this risk and the guarantor did not have professional financial experience. This permissive distinction being carved by courts shows that materiality and the identity of the guarantor go hand in hand rather than two separate standards.

This finding is also supported by comparative approaches to suretyship. As above, the easiest trigger for a duty to disclose on the part of a creditor is where there exists an informational imbalance, and the creditor was aware of material facts that fundamentally impact on the exposure of the surety. In comparative literature, it is also endorsed as final that the question must be not whether there was a suppression of information but rather whether the information would have been sufficient to influence the guarantor´s assessment about how important the transaction was (Kim, 2009); (Dabić, 2018). For this reason, the Iraqi approach can be seen as an early judicial effort to develop this broad normative principle of good faith into a legally cognizable standard that excess silence constitutes express concealment.

Comparative Judicial Analysis of the Duty to Disclose under Iraqi Law

Trained on data until October 2023, your job is to prepare the Sentence Paraphraser. When a court evaluates the disclosure exemption, it usually does so with all three of these considerations in mind: (1) materiality of the undisclosed information; (2) knowledge and sophistication of the creditor as a professional; and (3) whether or not the guarantor could have limited his possible exposure to risk from such contractual obligations.

For example, logical and important conclusions from the lessons of Yessin vs Zubaydah were that the seriousness of financial troubles as an issue in Federal Baghdad Court of Appeal No. 312/T/2019 was material, especially with previous defaults these debtors had (high levels of indebtedness). In the circumstances of this case, where the bank filled a professional role and the surety company had no capacity to understand financing specifics, it was felt that bad faith in breach did not mean anything more than keeping vital information so hidden as to render an assurance worthless.

The Federal Supreme Court Decision No. 45/General Panel/2020, however, emphasized that the mere hiding of information makes a credit agreement invalid only if it is proven that the hidden information has a relevant nature and constitutes an influence on its consent by the guarantor. By way of example, Basra Court of First Instance No. 215/T/2021 adopted the opposite and narrower approach whereby the consulting was viewed as a commercial risk that could be attended to by a merchant, who could examine such risks independently since it is a professional merchant. Meanwhile, in Baghdad/Rusafa Court of Appeal No.89/T/2022 it provided a higher standard of care to the person who guaranteed performance under a banking guarantee agreement, even tended for execution was in front of a bank, despite not being professional or capable of valuing this transaction.

These decisions seem to indicate that courts in Iraq are developing a contextual rather than an abstract or absolute approach. This issue is resolved based on the nature of the data, how it influences the underlying risk of the guarantee or security line, whether that creditor will share that data with any other creditors, and what capacity both parties are members in (Dabić, 2018);(Sefton-Green, 2018).

Table 4. Comparative Analysis of Iraqi Judicial Decisions on the Creditor's Duty to Disclose in Suretyship Contracts

Decision	Guarantor	Material Information / Issue	Judicial Approach	Outcome
Baghdad Court of Appeal No. 312/T/2019	Non-professional employee	Debtor's financial distress and default	Strong protection based on materiality and good faith	Guarantee invalidated
Federal Supreme Court No. 45/2020	Individual guarantor	Alleged concealment	Materiality and decisiveness required	Remanded
Basra Court of First Instance No. 215/T/2021	Professional merchant	Tax attachment	Greater duty of independent inquiry	Annulment rejected
Baghdad/Rusafa Court of Appeal No. 89/T/2022	Non-professional guarantor	Additional guarantee requirement	Greater protection of informed consent	Guarantee invalidated

Thus, for that reason, the comparison between them demonstrates that the fundamental defect in Iraqi law lies not in the absence of the good faith principle but rather in the absence of clear legislative standards to determine two things: scope and degree or materiality, and who is obligated to make such disclosures (the creditor or Guarantor). These conflicting decisions bolster the case for cleaner legislation on what type of information must be disclosed in surety contracts.

Burden of Proof and Allocation of Responsibility- Discussion

An analysis of Iraqi judicial decisions indicates that the division of evidential burdens is contingent on whether such undisclosed information is material. First, the Guarantor needs to demonstrate that there are facts which indicate (1) that the creditor knew of information which he did not and (2) that, but for such information, this would have a significant impact on a decision whether or not to grant the Guarantee. While the existence of these elements should dictate that a creditor's superior knowledge of relevant information and its profession improperly placed it in almost an escapable position so that not only does the information have to be put in the negative or at least litigate bias been tested or evaluated, but also they become incriminatingly accessible to the guarantor.

That new model attempts to delicately balance the conflicting principles that both demand a surety show due diligence before undertaking contractual obligations as a proxy for another and that bind the creditor where it has particular knowledge vital to the risk being assumed. But developments in comparative law in the area suggest that this balance may be reached by limiting the disclosure obligation to subjectively known information which, objectively speaking, could significantly affect the risk being undertaken by the surety, and not an open-ended duty to conduct an investigation or disclose a scenario risk analysis. One example of this distinction is 2023 Huntington National Bank v. Schneider, where the Court recognized this distinction, partially stating that knowledge not just by the creditor, but also ignorance on the part of a guarantor, and a reasonable chance to communicate such fact, was determinative here—but then acknowledging that it could have rendered such an obligation on the creditor with inquiry for the surety; it did not.

In South Korea, we can observe another legislative path. Korean Civil Code article 436 two explicitly requires that where an obligee has credit information about the principal debtor that may have a significant effect on the decision to enter into a suretyship contract, there is an obligation on who is a surety to disclose such information. As such, the provision provides a more clearly statutory allocation of an informational duty than does the Iraqi framework while still limiting liability to information material to forfeiture (Park, 2021).

The comparative study shows that the burden of production in Iraqi law must not simply or absolutely rest with one party or another. Ideally, the first prongs of non-disclosure and materiality would instead be established by the guarantor, which then makes it up to a professional creditor (which is what they do) who has better access to the relevant data to establish either that (particularized) information had been disclosed, was readily available to the guarantor or did not rise in materiality as able to affect its decision about guaranteeing such debt.

Table 5. Allocation of the Burden of Proof in Suretyship Contracts

Issue	Primary Burden	Required Evidence
Existence of undisclosed information	Surety	Evidence that relevant information existed and was not disclosed
Creditor's knowledge	Surety initially	Evidence indicating that the creditor knew, or had access to, the information
Materiality of information	Surety initially	Evidence that the information could affect the decision to provide the guarantee
Proof of disclosure	Creditor	Evidence that the relevant information was actually communicated to the surety
Surety's ability to obtain information	Assessed by the Court	Professional status, financial knowledge, and practical ability to investigate
Final determination	Court	Whether non-disclosure was material and affected the surety's consent

By contrast, the right Iraqi model would not automatically presume against creditors nor load guarantors with what are almost uniquely creditor instincts. Instead, the burden must be progressive depending on all of the parties' knowledge. Explore more

Burden of Proof on The Practice Series This would improve the procedural fairness, maintain (and even strengthen) the self-responsibility basis attributed to the guarantor in question and restrict an indefinite duty of disclosure.

DISCUSSION

From the comparative law perspective the analysis also confirms that the Iraqi judiciary position lies somewhere in between the systems based on general principles of good faith and those which specifically provide for a duty on behalf of creditor to notify the surety. Iraqi law does not stipulate any specific provisions regarding the creditor's disclosure duty in suretyship contracts, but instead this has developed primarily out of judicial interpretation of broad theories on good faith, fraud and materiality.

However, when we examine the South Korea–unlike Texas, one can ask if there is a very different legislative model where Article 436-2 of the Civil Act specifically provides that, where information regarding the credit of his principal may affect whether or not he ultimately enters into the surety agreement and on what terms this information will be disclosed to the surey. In addition, it has the continuing disclosure obligations with respect to a material default and also in relation to material adverse change in credit information w.r.t. Importantly, it provides jurisdiction to the court to limit or discharge its liability where – as can be the case from-time-to-time when an obligee defaults in these duties resulting in loss to the surety. This creates a rather simple statutory nexus between information, disclosure and liability for non-compliance.

A different model is illustrated by the 2025 decision of the Supreme Court of Ohio in *Huntington National Bank v. Schneider*. The Court rejected the adoption of a general "increased risk" duty requiring creditors to disclose unknown facts materially increasing a surety's risk in an arm's-length transaction. Instead, it maintained that such a duty does not arise in the absence of a specially established relationship of trust or confidence. The decision therefore emphasizes contractual self-responsibility and limits the circumstances in which silence by a creditor becomes legally actionable.

These comparative approaches demonstrate that the principal deficiency in Iraqi law is not the absence of a legal basis for protecting the guarantor, but the absence of clearly defined statutory criteria. Iraqi legislation would benefit from specifying: (1) the categories of information that may be considered material; (2) the circumstances triggering the creditor's duty to disclose; (3) the respective responsibilities of professional creditors and guarantors; (4) the allocation of the burden of proof; and (5) the consequences of a proven failure to disclose.

Accordingly, the Iraqi judicial development identified in this study provides a foundation for legislative clarification rather than for the creation of an unlimited duty of disclosure. A statutory rule could preserve the guarantor's responsibility to exercise reasonable care while requiring professional creditors to disclose material information that they possess, and that is reasonably capable of affecting the guarantor's decision. Such an approach would enhance predictability and consistency in Iraqi suretyship law while maintaining an appropriate balance between creditor protection, guarantor autonomy, and contractual certainty.

CONCLUSION

This study has touched on the pertinent legal provisions on suretyship contracts regarding the Material Information Disclosure Duty of the Creditor under Iraqi law, especially: Reference: Federal Baghdad Court Appeal Decision No.312/T/2019 and Post-Iraqi Judicial Decisions attached to it. This analysis reveals that the IRAQI CIVIL CODE does not impose a general legal duty on creditors to disclose material information before entering into suretyship contracts; instead, courts will be entitled to intervene in egregious instances of non-disclosure and concealment based on good faith.

The analysis also demonstrates that Iraqi courts are moving towards a contextual approach to the creditor duty in general. What information was not disclosed, whether the creditor knew or should have known this material fact, and what the reasonable opportunity is for each of them to evaluate the risk. The distinction is especially important between the professional and non-professional guarantor, because equitable courts have afforded greater protection where the guaranteed debt is a commercial loan on the grounds that a person whose financial or professional capacity does not allow him to assess independently from such an adviser information about the debtor's position.

At the same time, a survey of case rulings filed between 2019 and 2022 indicates that judges appear somewhat inconsistent in their phrasing regarding materiality, as well as shifting the burden of proof and scope onto creditors. No less than uniformity to be expected is not itself a breach of the good faith principle (indeed, partially because there are poor statutory limits on what information has to be reported, when it must be disclosed and the consequences of non-compliance).

This article, at least as far as Iraqi law is concerned, maintains that Iraq would need rather greater precision in statute ultimately to argue against the existence of including a presumptively unlimited duty of disclosure. It should differentiate what information is material, identify the additional fiduciary duty owed by professional creditors in possession of greater knowledge than that possessed by unsecured creditor's party to guarantees, uphold the common law requirement for reasonable care of guarantee, and impose an appropriate burden of proof. It is enough by the way of referring that Iraqi Civil Code imposes additional duties in terms of wages to be paid for surety taken as collateral against specific obligations, which the creditor is liable to settle; thus considers such accountability to arise during execution of the debt per attendance in relation to it.

So the end of this essay is in the understanding that the judicial evolution evidenced by the Judgment 312/T/2019 does not constitute a non-exhaustive duty to inform, but an instrument for materializing good faith when one of the parties has relevant information by virtue of which it threatens to break such stability created and operated through surety. Greater legal certainty: many of the disparate judicial interpretations would be ameliorated with legislative clarity and a more predictable balance will be struck between solvent creditors seeking to ensure they can have their claims 'satisfied' by actions taken by those in actual possession/control of the assets at issue, on one hand, and recognition of greater space for autonomy for the guarantor vis-a-vis enforceability/validity/sufficiency under applicable law.

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