



Number 26 of 2012

CREDIT GUARANTEE ACT 2012

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
 2. Participating lender.
 3. Qualifying enterprise.
 4. Power of Minister to give guarantees.
 5. Credit guarantee scheme.
 6. Laying of scheme before both Houses of Oireachtas.
 7. Agreement for performance of functions under credit guarantee scheme.
 8. Payment of charge to Minister by participating borrower.
 9. Withdrawal of guarantee by Minister.
 10. Review of credit guarantee scheme.
 11. Expenses.
 12. Short title and commencement.
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[No. 26.]

Credit Guarantee Act 2012.

[2012.]

ACTS REFERRED TO

Central Bank Act 1971

1971, No. 24

European Communities (Amendment) Act 1993

1993, No. 25



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CREDIT GUARANTEE ACT 2012

AN ACT TO ENABLE THE MINISTER FOR JOBS, ENTERPRISE AND INNOVATION TO GIVE GUARANTEES TO LENDERS OF A CERTAIN CLASS IN RESPECT OF LOANS MADE BY SUCH LENDERS TO ENTERPRISES OF A CERTAIN CLASS; FOR THAT PURPOSE TO PROVIDE FOR THE MAKING OF A SCHEME OR SCHEMES BY THAT MINISTER OF THE GOVERNMENT IN RELATION TO THE GIVING OF SUCH GUARANTEES; AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH.

[18th July, 2012]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—In this Act—

Interpretation.

“applicable conditions” has the meaning assigned to it by *subsection (3) of section 5*;

“contractor” has the meaning assigned to it by *section 7*;

“credit guarantee scheme” means a scheme under *section 5*;

“EEA Agreement” has the same meaning as it has in the *European Communities (Amendment) Act 1993*;

“EEA state” means—

- (a) a member state of the European Communities (other than the State), or
- (b) a state (other than a member state of the European Communities) that is a contracting party to the EEA Agreement;

“lender” means—

- (a) a person who is the holder of a licence under *section 9 of the Central Bank Act 1971*,
- (b) a person who, under the law of an EEA state, is entitled to carry on in that state the activities that a person referred to in *paragraph (a)* is entitled to carry on in the State by virtue of such a licence, or

- (c) a person who, under the law of the Swiss Confederation, is entitled to carry on in the Swiss Confederation the activities that a person referred to in *paragraph (a)* is entitled to carry on in the State by virtue of such a licence;

“loan agreement” means an agreement under which a participating lender agrees to give or advance to a qualifying enterprise a sum or sums of money upon—

- (a) such date or dates as may be specified in the agreement, or
- (b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to repay to the participating lender the principal of any sum or sums so given or advanced, and interest (if any) thereon, on such date or dates as may be so specified, but does not include an agreement to provide a facility (commonly known as an overdraft facility) to a qualifying enterprise; and “loan” shall be construed accordingly;

“Minister” means the Minister for Jobs, Enterprise and Innovation;

“participating borrower” means a qualifying enterprise—

- (a) belonging to a class to which a credit guarantee scheme applies, and
- (b) who has entered into a qualifying loan agreement with a participating lender;

“participating lender” shall be construed in accordance with *section 2*;

“qualifying enterprise” shall be construed in accordance with *section 3*;

“qualifying loan agreement” means a loan agreement—

- (a) in respect of which there has been compliance with the conditions specified in a credit guarantee scheme under *subsection (4) of section 5*,
- (b) belonging to a class of loan agreement to which a credit guarantee scheme applies,
- (c) that is made for a purpose that does not contravene a provision of a credit guarantee scheme to which *paragraph (d)* of that subsection applies,
- (d) that does not permit a lender to exercise his or her powers under the loan agreement in such manner as would result in—
 - (i) the amount being loaned under the agreement exceeding the maximum amount specified under that subsection, or
 - (ii) the aggregate of amounts being loaned under all such agreements with the qualifying enterprise concerned exceeding the maximum amount so specified.

2.—(1) For the purposes of this Act, a lender is a participating lender if— Participating lender.

- (a) the lender is a person in respect of whom a certificate under *subsection (2)* has effect, and
- (b) the lender stands approved for the time being by the Minister in accordance with this section.

(2) The Minister may, for the purposes of this section, certify in writing that he or she is satisfied that a lender provides loans in the ordinary course of business, or has expressed to the Minister an intention to provide loans in the ordinary course of business, to qualifying enterprises.

(3) The Minister may approve a lender under this section if—

- (a) the lender declares, in writing, that he or she agrees to comply with and be bound by the terms of a credit guarantee scheme, and
- (b) the Minister is satisfied that the lender has complied with the applicable conditions.

(4) The Minister may withdraw an approval under this section if a lender ceases to comply with the applicable conditions or contravenes any other provisions of a credit guarantee scheme.

3.—(1) For the purposes of this Act, a person is a qualifying enterprise if— Qualifying enterprise.

- (a) the person is established in the State and employs fewer than 250 persons (calculated in accordance with the Commission Recommendation) whether or not in the State, and
- (b) the person's—
 - (i) annual turnover does not exceed €50 million (calculated in accordance with the Commission Recommendation) whether or not earned in, or derived from activities carried on in, the State,
 - (ii) estimated annual turnover (in circumstances where the person has been carrying on business for less than 12 months) in the year concerned does not exceed €50 million (calculated in accordance with the Commission Recommendation) whether or not estimated to be earned, or derived from activities carried on, in the State, or
 - (iii) annual balance sheet total does not exceed €43 million (calculated in accordance with the Commission Recommendation).

(2) In this section “Commission Recommendation” means Commission Recommendation (2003/361/EC) of 6 May 2003¹ concerning the definition of micro, small and medium-sized enterprises.

¹O.J. No. L124 of 20.5.2003, p.36

Power of Minister to give guarantees.

4.—(1) Subject to this section, the Minister may, in accordance with a credit guarantee scheme, enter into an agreement with a participating lender guaranteeing the due repayment to that participating lender of such part of the principal of moneys borrowed from that lender by participating borrowers pursuant to qualifying loan agreements as is specified in the first-mentioned agreement.

(2) Subject to *subsection (3)*, the Minister shall not, pursuant to a guarantee under this section, be liable, in relation to any particular qualifying loan agreement, to pay an amount exceeding 75 per cent of the principal of moneys borrowed pursuant to that agreement for the time being standing unpaid.

(3) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in his or her being liable, in respect of moneys borrowed in any year from a participating lender pursuant to qualifying loan agreements, to pay to that participating lender amounts the aggregate of which would exceed 10 per cent of the aggregate of the principal of those moneys.

(4) (a) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in the aggregate of the principal of all loans made pursuant to qualifying loan agreements entered into in any year and to which guarantees under this section apply exceeding €150 million.

(b) For the purposes of this subsection, a loan is deemed to have been made on the date of the making of the qualifying loan agreement concerned whether or not, pursuant to that agreement, the loan is payable on a later date or the happening of a subsequent event.

(5) The Minister may notify a participating lender in writing that an agreement entered into by the Minister with the participating lender under this section shall not apply in relation to qualifying loan agreements (in this section referred to as “new loan agreements”) entered into by the participating lender after such date as may be specified in the notice.

(6) An agreement under this section shall not apply to new loan agreements.

Credit guarantee scheme.

5.—(1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, make a scheme or schemes for the purposes of this Act.

(2) Without prejudice to the generality of *subsection (1)*, a scheme under this section may make provision in relation to all or any of the following matters:

(a) the giving of information to the Minister for the purposes of the making of an agreement under *section 4*;

(b) the extent of the Minister’s liability to a participating lender in accordance with an agreement under *section 4* in circumstances where the participating lender fails or refuses to comply with this Act or a scheme under this section;

- (c) variation of the terms of an agreement under *section 4* in circumstances where a participating lender fails or refuses to comply with this Act or a scheme under this section;
- (d) the payment of the initial premium or annual premium under *section 8* by instalments;
- (e) the preparation and maintenance of records, books of account and such other documentation as may be specified in a scheme under this section by participating lenders;
- (f) provision with regard to the giving of documents, information and reports by lenders to the Minister;
- (g) the audit and examination of accounts of qualifying enterprises;
- (h) requirements in relation to the transfer of any rights and liabilities under a loan agreement;
- (i) such other matters as the Minister, after consultation with the Minister for Finance and the Minister for Public Expenditure and Reform considers necessary or expedient.

(3) A scheme under this section shall specify conditions (in this Act referred to as “applicable conditions”), with which a lender shall, for the purposes of the granting of approval under *section 2*, comply, relating to—

- (a) the policies and practices of the lender as respects—
 - (i) the lending of money generally,
 - (ii) the giving of loans to qualifying enterprises,
 - (iii) the recovery of moneys borrowed from the lender,
 - (iv) the provision by borrowers of security for moneys borrowed from the lender,
- (b) the administration and management of the lender,
- (c) the procedures in relation to the supervision of transactions entered into on the lender’s behalf by members of staff of the lender, and
- (d) the proportion that moneys standing borrowed for the time being from the lender bears to the capital reserves of the lender,

declared in a credit guarantee scheme to be conditions with which a lender shall comply before an approval in respect of that lender may be given under this section.

(4) A scheme under this section shall specify—

- (a) the class or classes of qualifying enterprise to which the scheme shall apply,

- (b) the conditions that shall be complied with in relation to the entering into of a loan agreement by a participating lender with a qualifying enterprise,
- (c) the class or classes of loan agreement to which the scheme shall apply,
- (d) the purposes for which moneys borrowed pursuant to any such agreement may be applied, and
- (e) the maximum amount or amounts that a participating lender may lend to a qualifying enterprise.

Laying of scheme before both Houses of Oireachtas.

6.—A credit guarantee scheme shall be laid by the Minister before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the scheme is passed by either such House within the next 21 days on which that House sits after the credit guarantee scheme is laid before it, the credit guarantee scheme shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Agreement for performance of functions under credit guarantee scheme.

7.—(1) The Minister may enter into an agreement with another person (in this Act referred to as the “contractor”) for the performance by that person of such functions under a credit guarantee scheme as may be specified in the agreement.

(2) An agreement under this section shall contain such terms and conditions as the Minister, after consultation with the Minister for Public Expenditure and Reform, determines.

(3) The Minister may terminate an agreement under this section where the contractor fails to comply with any of the terms or conditions contained in the agreement.

Payment of charge to Minister by participating borrower.

8.—(1) Subject to *subsection (3)*, a participating borrower shall, not later than 6 months after the entry by him or her into the qualifying loan agreement concerned, pay to the Minister an amount (in this section referred to as the “initial amount”) equal to 2 per cent of the principal of the money lent under that agreement.

(2) Subject to *subsection (3)*, a participating borrower shall, not later than 4 weeks after each anniversary after the entry by him or her into the qualifying loan agreement concerned, pay to the Minister an amount (in this section referred to as the “annual amount”) equal to 2 per cent of the principal of the money lent under that agreement.

(3) Where provision is made in a credit guarantee scheme for payment of the initial premium or the annual premium by instalment, a participating borrower may pay the initial premium or the annual premium by instalment at such intervals as are specified in the scheme.

Withdrawal of guarantee by Minister.

9.—(1) Where a participating lender fails or refuses to comply with the terms of a credit guarantee scheme, the Minister may withdraw any guarantee given by him or her in respect of any qualifying loan agreement to which that participating lender is a party.

(2) Any term of a loan agreement that permits a participating lender to—

- (a) alter a term or condition of such agreement upon the withdrawal of a guarantee in accordance with *subsection (1)*, or
- (b) impose less favourable terms and conditions on the participating borrower upon the withdrawal of a guarantee in accordance with *subsection (1)*,

shall be null and void.

10.—The Minister may, at any time, conduct a review of the operation of a credit guarantee scheme and, not later than 2 months after completing such review make a report in writing to each House of the Oireachtas of his or her findings and conclusions resulting from that review.

Review of credit guarantee scheme.

11.—The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, with the consent of the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Expenses.

12.—(1) This Act may be cited as the Credit Guarantee Act 2012.

Short title and commencement.

(2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.