



STATUTORY INSTRUMENTS.

S.I. No. 70 of 2017



CREDIT GUARANTEE SCHEME 2017

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Arrangement of Scheme

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CREDIT GUARANTEE SCHEME 2017

I, Pat Breen, Minister of State at the Department of Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 5 of the Credit Guarantee Acts 2012 and 2016 (No. 26 of 2012 and No. 1 of 2016), with the consent of the Minister for Public Expenditure and Reform and the Minister for Finance, hereby make the following Scheme.

1. Citation:

This Scheme may be cited as the Credit Guarantee Scheme 2017.

2. Commencement:

This Scheme shall come into operation on the day of its making.

3. Interpretation and Definitions

In this Scheme:

any word or expression used in this Scheme and also used in the Acts has, unless the contrary intention appears, the same meaning in this Scheme as it has in the Acts;

references in this Scheme to a “Section” are references to Sections of this Scheme, unless otherwise specifically provided;

“the Acts” as used in this Scheme means the Credit Guarantee Acts 2012 and 2016;

“Co-Operation Agreement” the agreement dated in or around 13 October 2016 between (1) the Minister for Jobs, Enterprise and Innovation and (2) the Strategic Banking Corporation of Ireland, made pursuant to Section 7 of the Acts, and which said agreement is in force as at the Commencement Date;

“DPA” means the Data Protection Act 1988 and the Data Protection (Amendment) Act 2003, as re-enacted, amended or replaced from time to time including, but not limited to, the GDPR;

“finance agreement” means—

- a) a loan agreement,
- b) a credit facility agreement,
- c) an asset credit facility agreement, or

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 10th March, 2017.

d) an invoice finance facility agreement;

“finance provider” means a person who, in the ordinary course of business—

a) provides financial products to qualifying enterprises,

b) arranges for the provision by other persons of financial products to qualifying enterprises, or

c) provides facilities for the provision on credit of goods or services by the person to qualifying enterprises,

but does not include a person who is prohibited under the law of the State or any other state from engaging in any of the activities specified in the foregoing paragraphs, and references to the provision of a financial product shall be construed accordingly;

“financial product” means—

a) a loan,

b) a credit facility,

c) an asset credit facility, or

d) an invoice finance facility,

provided to a qualifying enterprise under a finance agreement;

“GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

“invoice finance facility agreement” means an agreement under which a participating finance provider agrees to give or advance to a qualifying enterprise a sum or sums of money in consideration of that qualifying enterprise assigning to the participating finance provider the right to recover debts owed to that qualifying enterprise, and ‘invoice finance facility’ shall be construed accordingly;

“Operator” means the Strategic Banking Corporation of Ireland, a private company limited by shares established pursuant to the Strategic Banking Corporation of Ireland Act 2014 and incorporated with registered number 549539, being the entity appointed for the time being by the Minister pursuant to the Co-Operation Agreement to, inter alia, perform the functions of the Operator as set out in all Schemes made under the Acts, or such other entity as may be appointed by the Minister pursuant to Section 7 of the Acts from time to time;

“Operating Manual” means the operating manual which sets out the procedures upon which this Scheme will operate as between the Operator and a participating finance provider;

“participating enterprise” means a qualifying enterprise—

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

“participating finance provider” shall be construed in accordance with Section 2 of the Acts, provided that references to “a credit guarantee scheme” in Sections 2(3)(a) and 2(4) of the Acts shall instead be deemed to be references to “this Scheme”;

“Participating Finance Provider’s Legal Agreement” has the meaning ascribed to that term in Section 5.1;

“Personal Data” has the meaning given to that term in the DPA;

“Premium” has the meaning ascribed to that term in Section 4.7.1;

“Premium Payment Schedule” has the meaning ascribed to that term in Section 4.7.2;

“qualifying finance agreement” means a finance agreement—

- a) in respect of which there has been compliance with the conditions specified in this Scheme,
- b) belonging to a class of finance agreement to which this Scheme applies,
- c) that is made for a purpose that does not contravene a provision of this Scheme, and
- d) that does not permit a finance provider to exercise his or her powers under the finance agreement in such manner as would result in—
 - (i) the value of the financial product provided under the agreement exceeding the maximum value specified in this Scheme,
 - (ii) the aggregate of the value of the financial products provided under a particular class of finance agreements with the qualifying enterprise concerned exceeding the maximum value specified in this Scheme, or
 - (iii) the aggregate of the value of the financial products provided under all qualifying finance agreements with the qualifying enterprise concerned exceeding the maximum value specified in this Scheme;

“SMEs” has the same meaning as the meaning given to the term “qualifying enterprise” set out in Section 3 of the Acts.

4. Overview of the Credit Guarantee Scheme

4.1 Objectives of the Credit Guarantee Scheme

4.1.1 The principal objective of this Scheme is to encourage additional credit provision to qualifying enterprises.

4.1.2 This Scheme is intended to address specific market failures that prevent credit being made available to some commercially viable businesses due to either or both of the following two market inefficiencies:

- a) Market Failure 1: the business seeking credit has insufficient collateral for additional credit facilities under the participating finance provider's credit policy; or
- b) Market Failure 2: the business, being a growing and expanding SME, operates in a sector, market or has a business model which, under the terms of the participating finance provider's credit policy constitutes an unacceptably high level of credit risk.

4.2 Powers of Minister

4.2.1 Under this Scheme the Minister shall, subject to the conditions specified in Section 4.2.2 and any additional conditions referred to in the Acts, guarantee a participating enterprise's obligations under a qualifying finance agreement in favour of the corresponding participating finance provider.

4.2.2 The Minister:

- a) will not, in relation to any particular qualifying finance agreement, be liable to pay under a guarantee given pursuant to Section 4.2.1 an amount exceeding 80% of the credit amount in respect of which:
 - (i) the participating enterprise stands liable, for the time being, to pay to the corresponding participating finance provider; or
 - (ii) stands unpaid,

whichever is the lesser amount;

- b) will not, in respect of qualifying finance agreements entered into by the same participating finance provider, be liable to pay to that participating finance provider under guarantees given pursuant to Section 4.2.1, amounts the aggregate of which would exceed 13% of the aggregate of the facility amounts made available under those qualifying finance agreements; and
- c) will not grant any further guarantees pursuant to Section 4.2.1 if the aggregate of the facility amounts made available under qualifying finance agreements granted by all participating finance providers in any one calendar year were to exceed €150,000,000.

4.3 Facility and Guarantee Term

Qualifying finance agreements will run for whatever term is deemed appropriate by the relevant participating finance provider. Irrespective of the term of the qualifying finance agreement, the maximum period for which a guarantee given pursuant to Section 4.2.1 shall be available will be seven years from the date on which the liability under the corresponding qualifying finance agreement is created.

4.4 Financial Product Values

The credit amount advanced under a qualifying finance agreement may range between €10,000 and €1,000,000. The qualifying finance provider is free to apply the guarantee to some or all of the credit amount under a qualifying finance agreement, subject to the provisions of Sections 4.1, 4.2 and 4.5 of this Scheme.

Qualifying enterprises may apply for more than one qualifying finance agreement during the life of this Scheme so long as the aggregate amount guaranteed in respect of the qualifying finance agreements do not exceed €1,000,000 in respect of which such qualifying enterprise has benefited.

The provisions of Section 4.1.2 of this Scheme sets out the market failures pursuant to which a participating finance provider may offer a qualifying finance agreement to a qualifying enterprise, and Section 4.5 of this Scheme specifies the purposes for which the credit provided pursuant to a qualifying finance agreement may be used.

4.5 Eligible Credit

This Scheme is designed to be used with a range of debt instruments, or financial products which support the financial needs of qualifying enterprises affected by a market failure of the types specified in Section 4.1.2. Qualifying enterprises seeking credit facilities or working capital for investment purposes, refinancing or investment credits may be eligible for this Scheme. Qualifying finance agreements may be unsecured or partially secured, but any guarantee given pursuant to Section 4.2.1 shall be granted only in respect of (i) facilities which are unsecured and/or (ii) that portion of a facility which is unsecured.

4.6 Portfolio Approach

The entirety of a participating finance provider's qualifying finance agreements in respect of which guarantees have been given pursuant to Section 4.2.1 will be treated as a single portfolio under this Scheme. Subject to the conditions set out in Section 4.2.2 and any additional conditions referred to in the Acts, the Minister shall guarantee the entirety of a participating finance provider's liability under all of the qualifying finance agreements granted by that participating finance provider rather than each qualifying finance agreement individually.

4.7 Premium Charge

4.7.1. In accordance with Section 8(1) of the Acts, a participating enterprise shall pay to the Minister an amount (in this Section referred to as the “Premium”) in respect of a guarantee given pursuant to Section 4.2.1, determined by the Minister having regard to:-

- a) the expenses incurred, or likely to be incurred, or both, in relation to this Scheme, and
- b) achieving the objectives of this Scheme, as set out in Section 4.1.

In addition the expenses incurred, or likely to be incurred, or both, in relation to this Scheme, as referred to in Section 4.7.1(a), shall be determined by the Minister in consultation with the Operator, having regard to:-

- (i) the size of the participating enterprises to which this Scheme applies;
- (ii) the quality of the participating enterprises to which this Scheme applies by reference to their credit risk;
- (iii) the risks associated with those participating enterprises;
- (iv) the typical risks associated with the business sector or sectors to which those participating enterprises belong;
- (v) the duration of the qualifying finance agreements;
- (vi) the duration of the guarantees given under this Scheme;
- (vii) the overall liability of the Minister under Section 4(2) of the Acts in relation to those qualifying finance agreements to which this Scheme applies; and
- (viii) the nature of those qualifying finance agreements to which this Scheme applies.

4.7.2. The Premium payable by a participating enterprise shall not, at any time during the continuance of this Scheme, exceed 2% per annum of the outstanding credit amount of a participating enterprise’s corresponding qualifying finance agreement, (the “Cap”), calculated at drawdown of the qualifying finance agreement. The total amount of the Premium to be paid by a participating enterprise will be set out in a schedule to the qualifying finance agreement (the “Premium Payment Schedule”) which will be delivered by the relevant participating finance provider to the relevant participating enterprise in conjunction with the corresponding qualifying finance agreement. The Premium Payment Schedule will explain the instalments due and the frequency of payments to be made by a participating enterprise in respect of the Premium.

The Operator shall set out further detail on the Premium payable by a participating enterprise in the Operating Manual, which will be available to the participating enterprises on request.

The Premium shall be assessed and collected by the Operator over the term of each guarantee given pursuant to Section 4.2.1, and the Operator shall hold the Premium in an account held in the name of the Operator, but on trust for the Minister.

The Premium shall be used by the Operator only to defray the costs of the Scheme.

4.7.3 Subject to the maintenance of the Cap, the Minister reserves the right to instruct the Operator at any time during the continuance of this Scheme to increase and/or decrease the Premium imposed from the then current level to such other level as the Minister shall determine, at his or her sole discretion, as being necessary to address the then prevailing economic conditions. Any such change to the level of the Premium as aforesaid will only be instructed by the Minister following consultation with the Operator, and shall be subject to the considerations set out in Section 4.7.1.

4.8 De Minimis State Aid

The assistance provided through this Scheme is regarded in part as State Aid and this Scheme is governed by the European Commission's *de minimis* State Aid regulations¹. The State Aid attributable to the provision of a guarantee pursuant to Section 4.2.1, contributes towards the rolling three-fiscal-year *de minimis* limit to which SMEs are subject. Therefore the State Aid arising from any guarantee given pursuant to Section 4.2.1, in conjunction with all other *de minimis* State Aid received by the qualifying enterprise in the current and the previous two fiscal years, must not cause the qualifying enterprise's particular limit to be exceeded.

4.9 DPA

The Minister, the Operator and each participating finance provider must take all requisite steps to ensure that Personal Data will be treated in accordance with the requirements of the DPA at all times during the continuance of this Scheme. In addition, the Minister, the Operator and each participating finance provider must take all requisite steps to ensure that only information about participating enterprises relevant to the operation of this Scheme is collected and retained, and that this information is held securely, and in any case in accordance with the obligations in that regard set out in the DPA.

5. Approval of Finance Providers to this Scheme

5.1 Participating Finance Provider's Legal Agreement

Participating finance providers will be subject to certain additional obligations under this Scheme, such additional obligations to be set out in a legal agreement with the Minister, (the "Participating Finance Provider's Legal Agreement").

¹Commission Regulation (EU) No 1407/2013 of 18 December 2013.

The obligation on a participating finance provider to enter into a Participating Finance Provider's Legal Agreement will arise immediately in circumstances where a finance provider meets the criteria set out in Section 2 of the Acts for approval of finance providers as participating finance providers.

The terms of the Participating Finance Provider's Legal Agreement will conform to the requirements of:

1. the Acts;
2. this Scheme; and
3. the Operating Manual.

Participating finance providers will be required to provide to the Operator all information deemed necessary by the Operator so as to allow the Operator to administer the Scheme, and shall further be subject to the reporting requirements set out in the Participating Finance Provider's Legal Agreement. Finance providers will be subject to the review process detailed in Section 5.2, and for the purposes of Section 5.2 will be deemed to be those finance providers who provide (or seek to provide) a financial product to a participating enterprise pursuant to a qualifying finance agreement.

5.2 Review Process

Before being approved by the Minister pursuant to Section 2(3)(b) of the Acts, finance providers must provide all information requested by the Operator so as to allow the Operator to undertake a review of the said finance provider, which review shall focus on the appropriateness of the prospective qualifying finance provider and its systems in the following areas:-

- a) In order to determine the finance provider's strategic positioning in the relevant market, its related ancillary business support services, and how it will use this Scheme to support the availability of credit over and above that currently being achieved by it, details as to its policies and practices as regards:-
 - (i) the provision of financial products generally;
 - (ii) the provision of financial products to qualifying enterprises;
 - (iii) the assessment of the credit risk or financial stability of qualifying enterprises;
 - (iv) the recovery of sums owing to the finance provider by a qualifying enterprise or property provided to a qualifying enterprise by the finance provider under a qualifying finance agreement; and
 - (v) the provision by qualifying enterprises of security for financial products provided to qualifying enterprises under qualifying finance agreements;
- b) the sources from which the finance provider obtains its finance or funding;

- c) the credit history of the finance provider;
- d) where relevant, confirmation of adherence to the Central Bank of Ireland’s Code of Conduct for Business Lending to Small and Medium Enterprises (as revised from time to time) and/or the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) Regulations 2015, as amended by the Central Bank (Supervision and Enforcement) Act 2013 (Section 48) (Lending to Small and Medium-Sized Enterprises) (Amendment) Regulations 2016;
- e) the accounts and financial performance of the finance provider;
- f) the legal structure, ownership, regulation and governance procedures of the finance provider;
- g) the administration and management of the finance provider;
- h) the financial product or financial products to which this Scheme applies including:-
 - (i) the information and documentation to be provided by the finance provider to the Minister in relation to the provision of such financial products;
 - (ii) the information and documentation to be provided by the finance provider to qualifying enterprises in relation to the provision of such financial products;
 - (iii) the interest, charges and other costs (if any) that may be applied in relation to the provision of such financial products to qualifying enterprises;
- i) the procedures in relation to the supervision of finance agreements entered into on the finance provider’s behalf by members of staff of the finance provider; and
- j) where applicable, the capital reserves of the finance provider.

5.3 Recommendation by Operator

5.3.1 Following completion of the review process by the Operator detailed in Section 5.2, the Operator shall advise the Minister in writing as to whether:

- a) it considers the finance provider to have met the criteria set out in Section 2(3)(b) of the Acts (a “Positive Recommendation”); or
- b) it considers the finance provider to not have met the criteria set out in Section 2(3)(b) of the Acts (a “Negative Recommendation”).

5.3.2 Notwithstanding whether the Operator issues either a Positive Recommendation or a Negative Recommendation pursuant to Section 5.3.1, the Minister in his sole discretion shall decide as to whether or not he is satisfied that a

finance provider has met the criteria set out in Section 2(3)(b) of the Acts, and the Minister shall advise the finance provider in writing of his decision accordingly, and shall further simultaneously copy the Operator on such decision in writing.

The Minister for Public Expenditure and Reform consents to the making of the foregoing Scheme.



GIVEN under my Official Seal
7 February 2017.

PASCHAL DONOHOE,
Minister for Public Expenditure and Reform.

The Minister for Finance consents to the making of the foregoing Scheme.



GIVEN under my Official Seal
24 February 2017.

MICHAEL NOONAN,
Minister for Finance.

GIVEN under my hand
3 March 2017.

PAT BREEN,
Minister of State at the Department of Jobs, Enterprise and
Innovation.

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