



STATUTORY INSTRUMENTS.

**S.I. No. 551 of 2017**



COUNTER GUARANTEE SCHEME 2017

## COUNTER GUARANTEE SCHEME 2017

I, PAT BREEN, Minister of State at the Department of Business, Enterprise and Innovation, in exercise of the powers conferred on me by Section 13 of the Credit Guarantee (Amendment) Act 2016 (No. 1 of 2016) and the Jobs, Enterprise and Innovation (Delegation of Ministerial Functions) Order 2017 (S.I. No. 362 of 2017) (as adapted by the Jobs, Enterprise and Innovation (Alteration of Name of Department and Title of Minister) Order 2017 (S.I. No. 364 of 2017)), with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, hereby make the following Scheme:

**1. Citation**

This Scheme may be cited as the Counter Guarantee Scheme 2017 (the “Scheme”).

**2. Commencement**

This Scheme comes into operation on the day of its making.

**3. Interpretation and Definitions**

In this Scheme:

“Acts” as used in this Scheme mean the Credit Guarantee Acts 2012 and 2016:

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 provided:

“counter-guarantee” means to give a counter guarantee in accordance with Section 11 of the Credit Guarantee (Amendment) Act 2016:

“PFI” means promotional financial institution as defined in Section 10 of the Credit Guarantee (Amendment) Act 2016.

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 8th December, 2017.*

#### **4. Objectives**

The objective of the Scheme is to encourage additional credit provision to viable enterprises at a reasonable cost and without unduly onerous terms and conditions from the finance provider. Such support is designed to complement rather than substitute existing means of financing.

#### **5. Powers of the Minister**

The Minister may, subject to the provisions of the Acts, this Scheme and any counter guarantee agreements concluded pursuant to the Scheme, counter-guarantee the repayment to any PFI of such part, as is specified in the counter guarantee agreement, of moneys (excluding interest and any other charges) paid by that institution to finance providers pursuant to qualifying PFI finance agreements.

#### **6. Minister's Liability**

6.1 The Minister will not, in any particular year, counter-guarantee any PFI in such a manner as would result in the aggregate of his or her liabilities in respect of:

- (a) all qualifying finance agreements entered into in that year under Section 4 of the Credit Guarantee Act 2012 as amended, and
- (b) all qualifying finance agreements entered into in that year under Section 11 of the Credit Guarantee (Amendment) Act 2016

exceeding €15.6 million.

6.2 The Minister's liability in respect of credit amounts under qualifying finance agreements due to a finance provider shall not exceed 80% of the credit amounts outstanding to that finance provider.

6.3 All Scheme operators and participating PFIs must report on their liabilities as set out in Section 6.1 to the Minister either on a monthly basis or at more frequent intervals as the Minister requests. This information will be used to maintain a register to ensure the Minister's liability does not exceed the limit in Section 6.1.

#### **7. Other Scheme Requirements**

7.1 Management of Guarantees (policies, procedures, supervision.)

The PFI must satisfy the Minister as to its competence in managing the business of giving and administering guarantees both (1) generally and (2) specifically in respect of moneys provided to qualifying enterprises.

The PFI must undertake a credit and risk analysis on a qualifying finance provider prior to concluding a qualifying PFI guarantee agreement and must review any such agreement on an annual basis.

The PFI must ensure at all times that the entry into, supervision, management and administration of a qualifying PFI finance agreement is lawful and conforms to the requirements of its constitution and internal governance arrangements as well as its risk, credit, compliance and other applicable policies.

The PFI must provide that, in relation to pursuing recoveries, a finance provider's policies and practices do not distinguish between:

- (a) credit agreements with that finance provider's customers that do not benefit from a guarantee under a qualifying PFI guarantee scheme; and
- (b) qualifying finance agreements with that finance provider's customers who are qualifying enterprises benefiting from a guarantee under qualifying PFI guarantee scheme.

#### 7.2 Class/classes of qualifying PFI guarantee scheme

The Scheme shall apply to qualifying PFI guarantee schemes which support the provision of credit to qualifying enterprises that are based in Ireland and who have their principle activities based in Ireland.

#### 7.3 Purpose of Scheme

The purpose of the Scheme is to enhance the ability of qualifying PFIs to achieve one or more of the following objectives:

- (a) to increase the amount of credit available to qualifying enterprises;
- (b) to reduce the cost of credit to qualifying enterprises; and
- (c) to reduce the level of conditionality attaching to credit available to qualifying enterprises.

This will be accomplished by providing a Ministerial counter guarantee with respect to qualifying schemes by PFIs

#### 7.4 Conditions of Scheme

7.4.1 Each qualifying PFI guarantee scheme must state clearly what conditions apply to it, including conditions relating to how the finance provider will achieve the purpose of the Scheme and assist the intended beneficiary qualifying enterprises.

7.4.2 A qualifying PFI guarantee scheme will also specify the type of finance agreements, finance providers and financial products to apply to that scheme.

7.4.3 Each qualifying PFI guarantee agreement must require the finance provider to (i) adhere to the Central Bank (Supervision and Enforcement) Act 2013 (Lending to Small and Medium-Sized Enterprises) Regulations

2015 (S.I. No 585 of 2015) (the “Regulations”) if the finance provider is a regulated entity as defined in the Regulations, (ii) adhere to the spirit of the Regulations, if it is not and (iii) act reasonably and fairly in all circumstances.

7.4.4 The maximum value of financial products that may be provided pursuant to finance agreements entered into between finance providers and qualifying enterprises that are subject to qualifying guarantee agreements to which the counter guarantee under the Scheme applies may not exceed €500,000,000.

7.4.5 The Minister’s liability under the Scheme may not exceed the limit referred to in Section 6.1.

7.4.6 The PFI must not conclude a qualifying PFI guarantee agreement unless the Minister has confirmed that the Minister’s liability under such agreement does not exceed the limit referred to in Section 6.1

## **8. Termination**

The Minister may terminate a counter guarantee agreement by notice in writing if the relevant PFI guarantee scheme no longer meets the conditions of a qualifying PFI guarantee scheme or if the participating PFI breaches the terms of the relevant counter guarantee agreement or fails to comply with any reasonable request of the Minister.

## **9. Term**

The Minister’s counter guarantee expires upon such date or dates as may be specified in the PFI guarantee scheme, which may in any event not exceed a period of fifteen years or such longer period as the Minister may approve.

## **10. Premium**

10.1 The participating PFI must pay the Minister a premium in respect of his counter guarantee determined by the Minister on the basis of:

- (i) the expenses to be incurred in relation to the Scheme; and
- (ii) the objectives of the Scheme.

In determining the expenses as referred to in paragraph (i), the Minister shall have regard to the following:-

- (a) the size and quality of the qualifying enterprises benefiting from the Scheme,
- (b) the risks associated with those qualifying enterprises,
- (c) the typical risks associated with the business sector or sectors to which those qualifying enterprises belong,

(d) the duration of guarantees given under the Scheme,

(e) the duration of the counter guarantees given under the Scheme.

10.2 The Premium payable by the PFI as determined by the Minister under Section 10.1 shall not exceed 2% per annum of the outstanding credit amount of the relevant PFI finance agreement (the “Cap”).

This Premium will be set out in the qualifying PFI finance agreement detailing the amount and the frequency of the payments.

The Premium shall be assessed and collected by the Minister over the term of each guarantee given pursuant to Section 6.1.

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

## **11. Data Protection**

The Minister and all participating PFIs must take all requisite steps to ensure that Personal Data will be treated in accordance with the requirements of the Data Protection Acts 1998 and 2003 and any other laws governing data protection as may be enacted during the operation of the Scheme. In addition, the Minister and all participating PFIs 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 Data Protection Acts.

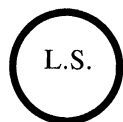
The Minister for Public Expenditure and Reform consents to the making of the foregoing Scheme



GIVEN under my Official Seal,  
23 November 2017.

PASCAL DONOHOE,  
Minister for Public Expenditure and Reform.

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



GIVEN under my Official Seal,  
27 November 2017.

PASCAL DONOHOE,  
Minister for Finance.



GIVEN under my hand,  
28 November 2017.

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

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