

# BUSINESS LOAN GUARANTEE SCHEME

(*Garantie ondernemingsfinanciering (GO)*)

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## Introduction

Under the Business Loan Guarantee Scheme (*Garantie Ondernemingsfinanciering, GO*) (the "**GO-scheme**") the Dutch State guarantees up to 50% of the principal amount of eligible facilities made available to large and medium-sized companies in the Netherlands by participating lenders. Bank guarantee facilities are also covered by the GO-scheme under terms and conditions similar to those that apply to guarantees for credit facilities. Unless otherwise indicated, the term "loan facilities" as used in this paper must be read to include bank guarantee facilities.

As part of the coronavirus measures taken in March, the maximum principal amount of a loan facility that can benefit from the GO-scheme has been raised to EUR 150 million. The total budget for the GO-scheme has been increased to EUR 1.5 billion.

On April 7th, the Dutch State announced that it intends (i) to increase the total budget for the GO-scheme to EUR 10 billion and (ii) to add a temporary Coronavirus-module for loan facilities (excluding bank guarantee facilities) (the "**GO-C-scheme**").

Upon the GO-C-scheme entering into force (pending approval from the European Commission), the Dutch state will guarantee up to (i) 80% of the principal amount of eligible facilities made available to companies with a turnover of more than EUR 50 million or (ii) 90% of the principal amount of eligible facilities made available to companies with a turnover of EUR 50 million or less.

It is intended that under certain conditions, the GO-C-scheme will also apply to loan facilities entered into between 24 March 2020 and the date on which the GO-C-scheme enters into force. Unless otherwise indicated, the term "Go-Scheme" as used in this paper must be read to include the Go-C-scheme once entered into force.

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## Conditions

### 2.1 Criteria

In order to qualify for a guarantee under the GO-scheme, the following criteria must be met:

### *No illegal state support*

The granting of a guarantee for a loan facility must comply with the requirements of the existing EU state support framework rules. These rules prohibit the granting of a guarantee if, *inter alia*:

- a state support recovery order is outstanding against the borrower;
- the borrower is in financial difficulty, unless the EU state support framework expressly allows that state support is provided to a borrower in financial difficulty;
- the borrower does not have any material activities or does not conduct activities in an industry that is supported under the applicable EU state support framework; or
- the granting of such guarantee would have an impact on the import or export that would conflict with the rules of the EU state support framework.

### *Key terms of the loan facility*

- The loan facility may be made available on a subordinated or an unsubordinated basis but may not provide for convertible loans.
- The loans to be provided under a facility are subject to a fixed interest rate or a floating interest rate linked to Euribor.
- The minimum principal amount of a loan facility to be guaranteed under the GO-scheme is EUR 1.5 million and the maximum principal aggregate amount of guaranteed loan facilities made available to a single borrower is EUR 150 million.
- No assets other than loans/guarantees are provided to the borrower as part of or in connection with the loan facility.
- The maximum tenure of a loan facility to be guaranteed under the GO-scheme is 8 years.
- The maximum tenure of a loan facility to be guaranteed under the GO-C-scheme is 3 years.

### *Fresh money*

The following types of loan facilities would not qualify for support under the GO-scheme:

- loan facilities provided by a lender that would replace an existing credit or risk capital provided by that same lender or group of lenders to which that lender belongs, unless (i) the guarantee would be primarily in the interest of the borrower and (ii) the exposure of the lender to the borrower would be significantly increased as a result of the new loan facility;
- loan facilities that would replace an existing loan that has been accelerated because of non-compliance with one or more applicable financial covenants, unless the existing loan is transferred to a third party lender that is not an affiliate of the existing lender;
- loan facilities that would replace an existing financing arrangement with the sole purpose of obtaining better terms and conditions than those that apply to the existing financing arrangement; and
- loan facilities that would be made available for the (sole) purpose of transferring certain risks to the Dutch State.

## *The borrower and its business*

- The borrower has its registered office in the Netherlands and conducts its commercial activities primarily in the Netherlands.
- The borrower is a healthy company and its business has reasonable profitability and continuity prospects.
- In the last 12 months, no excessive capital withdrawals from the borrower have taken place and no such withdrawals have been committed to.
- The borrower must provide certain information and access to its business premises to and otherwise cooperate with a person appointed as supervisor by the Minister of Economic Affairs.
- In order to benefit from the increased guarantee percentages of 80% respectively 90% under the GO-C-scheme, the (business of the) borrower must be affected by the coronavirus.

## **2.2 Exceptions**

The borrower cannot conduct its main activities in any of the following industries: agriculture, fishing, speculative real estate investment, banking, insurance, investment services, venture capital<sup>1</sup>, health care.

## **2.3 Ongoing obligations**

Once made available, the terms and conditions of the loan facility may not be amended without the prior consent of the Dutch State. A deferral of repayment instalments is allowed for a maximum of four consecutive calendar quarters, provided that no such deferral had been granted previously.

Certain information undertakings vis-à-vis the Dutch State are assumed by the lender under a standard guarantee agreement to be entered into between it and the Dutch State.

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## **Guarantee fee**

The lender must pay a fee to the Dutch State as consideration for the guarantee. The amount of the fee is equal to the total return on the guaranteed portion of the loan *minus* (a) 0.25 per cent. per annum for management costs, *minus* (b) Euribor (increased with a liquidity surcharge), *minus* (c) the applicable arrangement fee. The Minister of Economic Affairs may determine a higher amount if considered appropriate in relation to the exposure assumed by the Dutch State.

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Facilities to borrowers that operate a private equity business do not qualify for support under the GO-scheme. We believe that this rule as such does not prohibit the granting of a guarantee under the GO-scheme for facilities to borrowers that are owned by private equity funds.

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## Participating banks

A bank that wants to participate in the GO-scheme must comply with the following requirements:

- it must have entered into a standard guarantee agreement (*garantstellingsovereenkomst*) with the Dutch State;
- the loan facility to be guaranteed is expected to independently contribute to the realization of its active and profit-driven policy;
- the competence of individuals who are responsible for providing, managing and disposing of loans and security rights is sufficiently safeguarded;
- the reliability of individuals who are responsible for providing, managing and disposing of loans and security rights and for the making and exercising of supervision over its policy with respect thereto is sufficiently safeguarded;
- its integrity is sufficiently safeguarded; and
- its financial strength and stability are sufficiently safeguarded.

The following banks participate in the GO-scheme: ABN-Amro, Bank of Tokyo-Mitsubishi UFJ (Holland), Deutsche Bank AG, Amsterdam Branch, ING, NIBC Bank, Riverbank, Royal Bank of Scotland (RBS), Société Générale and Triodos Bank.

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## Application Process

The application for a guarantee under the GO-scheme must be made by the lender(s) with the Netherlands Enterprise Agency (*Rijksdienst voor Ondernemend Nederland (RVO)*). Applications can be submitted until 31 May 2020, 17.00 pm ultimately. The application process takes no more than three weeks.