



An Bille um Ráthaíocht Chreidmheasa (Leasú), 2015
Credit Guarantee (Amendment) Bill 2015

Mar a tionscnaíodh

As initiated



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ACTS REFERRED TO

Credit Guarantee Act 2012 (No. 26)

Taxes Consolidation Act 1997 (No. 39)



AN BILLE UM RÁTHAÍOCHT CHREIDMHEASA (LEASÚ), 2015
CREDIT GUARANTEE (AMENDMENT) BILL 2015

Bill

entitled

An Act to amend and extend the Credit Guarantee Act 2012; and to provide for matters 5
connected therewith.

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act “Principal Act” means the Credit Guarantee Act 2012.

Amendment of section 1 of Principal Act

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2. Section 1 of the Principal Act is amended—

(a) by the insertion of the following definitions:

“ ‘asset credit facility agreement’ means an agreement (other than a loan 15
agreement or a credit facility agreement) under which a participating
finance provider agrees to provide to a qualifying enterprise credit in the
form of tangible movable property 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 make payments 20
to the participating finance provider on such date or dates, or the
happening of such event as may be so specified, and ‘asset credit facility’
shall be construed accordingly;

‘cash price’ means, in relation to property provided pursuant to a 25
qualifying finance agreement that is an asset credit facility agreement, the
price that the participating enterprise would have been required to pay for
the property if, at the time of the making of the agreement, that enterprise
had elected to—

(a) purchase the property, and

(b) pay for the property in cash;

‘credit amount’ means— 30

- (a) in the case of a qualifying finance agreement that is a loan agreement, the principal of moneys borrowed from the participating finance provider by a participating enterprise pursuant to the agreement,
- (b) in the case of a qualifying finance agreement that is a credit facility agreement, the maximum amount (whether or not drawn down) of moneys agreed to be given or advanced by the participating finance provider to a participating enterprise, or to a third party nominated in that behalf by a participating enterprise, pursuant to the agreement, 5
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- (c) in the case of a qualifying finance agreement that is an asset credit facility agreement, the cash price (specified in the agreement) of the property provided by the participating finance provider to a participating enterprise pursuant to the agreement, and
- (d) in the case of a qualifying finance agreement that is an invoice finance facility agreement, the maximum amount of moneys agreed to be given or advanced by the participating finance provider to a participating enterprise pursuant to the agreement, irrespective of whether that amount is given or advanced; 15

‘credit facility agreement’ means an agreement (other than a loan agreement) under which a participating finance provider agrees to give or advance to a qualifying enterprise, or to a third party nominated in that behalf by a qualifying enterprise, a sum or sums of money upon— 20

- (a) such date or dates as may be specified in the agreement, or
- (b) the happening of such event as may be so specified, 25

in consideration of that qualifying enterprise agreeing to repay to the participating finance provider the said sum or sums of money so given or advanced, and interest or charges (if any) thereon, on such date or dates as may be so specified, and ‘credit facility’ shall be construed accordingly; 30

‘finance agreement’ means—

- (a) a loan agreement,
- (b) a credit facility agreement,
- (c) an asset credit facility agreement, or
- (d) an invoice finance facility agreement; 35

‘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 40

- (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; 5

‘financial product’ means—

- (a) a loan,
- (b) a credit facility,
- (c) an asset credit facility, or 10
- (d) an invoice finance facility,

provided to a qualifying enterprise under a finance agreement;

‘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; 15

‘participating enterprise’ means a qualifying enterprise—

- (a) belonging to a class to which a credit guarantee scheme applies, and 20
- (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; 25

‘qualifying finance agreement’ means a finance 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 finance agreement to which a credit guarantee scheme applies, 30
- (c) that is made for a purpose that does not contravene a provision of a credit guarantee scheme to which paragraph (c) of that subsection applies, 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— 35
 - (i) the value of the financial product provided under the agreement exceeding the maximum value specified under that subsection,

- (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 so specified, 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 under that subsection;”
- (b) in the definition of “loan agreement”—
 - (i) by the substitution of “participating finance provider” for “participating lender” in each place where it occurs, and
 - (ii) by the insertion of “, credit card facility or credit line facility” after “overdraft facility”,
 and
- (c) by the deletion of the definitions of—
 - (i) “lender”,
 - (ii) “EEA Agreement”,
 - (iii) “EEA state”,
 - (iv) “participating borrower”,
 - (v) “participating lender”, and
 - (vi) “qualifying loan agreement”.

Participating finance provider

3. The Principal Act is amended by the substitution of the following section for section 2:

- “2. (1) For the purposes of this Act, a finance provider is a participating finance provider if—
- (a) the finance provider is a person in respect of whom a certificate under subsection (2) has effect, and
 - (b) the finance provider stands approved for the time being by the Minister in accordance with this section.
- (2) For the purposes of this section, the Minister may, on the provision by the person referred to in paragraph (a) or (b), as may be appropriate, of such information or documentation as the Minister considers necessary, certify in writing that he or she is satisfied—
- (a) that a person is a finance provider, or
 - (b) that a person intends to carry on the business of—
 - (i) providing financial products to qualifying enterprises,

- (ii) arranging for the provision by other persons of financial products to qualifying enterprises, or
 - (iii) providing facilities for the provision on credit of goods or services by the person first-mentioned in this paragraph to qualifying enterprises. 5
- (3) The Minister may approve a finance provider under this section if—
- (a) the finance provider 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 finance provider has complied with the applicable conditions. 10
- (4) The Minister may withdraw an approval under this section if a finance provider ceases to comply with the applicable conditions or contravenes any other provisions of a credit guarantee scheme.”.

Power of Minister to give guarantees 15

4. The Principal Act is amended by the substitution of the following section for section 4:

- “4. (1) Subject to this section, the Minister may, in accordance with a credit guarantee scheme, enter into an agreement with a participating finance provider guaranteeing the due repayment or payment, as the case may be, to that participating finance provider of such part of the credit amount under a qualifying finance agreement as is specified in the first-mentioned agreement. 20
- (2) Subject to subsection (3), the Minister shall not, pursuant to a guarantee under this section, be liable, in relation to any particular qualifying finance agreement, to pay an amount exceeding 80 per cent of the credit amount that— 25
- (a) the participating enterprise concerned stands liable, for the time being, to pay to the participating finance provider concerned, and
 - (b) stands 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 qualifying finance agreements entered into by the same participating finance provider, to pay to that participating finance provider amounts the aggregate of which would exceed 13 per cent of the aggregate of the credit amounts under those qualifying finance agreements. 30 35
- (4) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in the yearly credit amount to which guarantees under this section apply exceeding €150 million.
- (5) The Minister may notify a participating finance provider in writing that an agreement entered into by the Minister with the participating 40

finance provider under this section shall not apply in relation to one or more classes of qualifying finance agreements (in this section referred to as “new finance agreements”) entered into by the participating finance provider after such date as may be specified in the notice.

(6) An agreement under this section shall not apply to new finance agreements. 5

(7) In this section ‘yearly credit amount’ means, in relation to any particular year, the aggregate of all credit amounts in respect of all qualifying finance agreements made in that year.”

Amendment of section 5 of Principal Act

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5. Section 5 of the Principal Act is amended—

(a) in subsection (2)—

(i) by the substitution of the following paragraph for paragraph (a):

“(a) the giving of such information to the Minister, as he or she may reasonably require for the purposes of the granting of approval under section 2 or the making of an agreement under section 4;”, 15

(ii) by the substitution, in paragraph (b), of “participating finance provider” for “participating lender” in each place where it occurs,

(iii) by the substitution, in paragraph (c), of “participating finance provider” for “participating lender”, 20

(iv) by the substitution, in paragraph (e), of “participating finance providers” for “participating lenders”,

(v) by the substitution, in paragraph (f), of “finance providers” for “lenders”, and

(vi) by the substitution, in paragraph (h), of “finance agreement” for “loan agreement”, 25

(b) by the substitution of the following subsection for subsection (3):

“(3) A scheme under this section shall specify conditions (in this Act referred to as ‘applicable conditions’), with which a finance provider shall, for the purposes of the granting of approval under section 2, comply, relating to— 30

(a) the policies and practices of the finance provider as respects—

(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, 35

(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, 5
- (b) the sources from which the finance provider obtains his or her finance or funding,
- (c) the credit history of the finance provider and, in the case of certain classes of finance provider as may be specified in the scheme, a person who has a controlling interest (within the meaning of section 494(14) of the Taxes Consolidation Act 1997) in the finance provider, 10
- (d) the accounts and financial performance of the finance provider,
- (e) in the case of a finance provider referred to in paragraph (b) of the definition of ‘finance provider’, the payment by the finance provider of any moneys that may be received by that provider from the Minister pursuant to a guarantee under section 4 in respect of a qualifying finance agreement, to the person who provided the financial product to which that agreement relates, 15
- (f) the administration and management of the finance provider, 20
- (g) the financial product or financial products to which the 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, 25
 - (ii) the information and documentation to be provided by the finance provider to qualifying enterprises in relation to the provision of such financial products, and
 - (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, 30
- (h) 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
- (i) where applicable, the capital reserves of the finance provider, 35
declared in a credit guarantee scheme to be conditions with which a finance provider shall comply before an approval in respect of that finance provider may be given under section 2.”,

and

- (c) by the substitution of the following subsection for subsection (4): 40

“(4) A scheme under this section shall specify—

- (a) the class or classes of—
 - (i) qualifying enterprise,
 - (ii) finance provider,
 - (iii) financial product, and
 - (iv) finance agreement, 5
 to which the scheme shall apply,
- (b) the conditions that shall be complied with in relation to the entering into of a finance agreement by a participating finance provider with a qualifying enterprise,
- (c) the purposes for which moneys or other property received by qualifying enterprises pursuant to a finance agreement may be applied, and 10
- (d) the maximum value or values of one or more financial products that may be provided to a qualifying enterprise under one or more finance agreements to which the scheme applies.”. 15

Amendment of section 8 of Principal Act

6. Section 8 of the Principal Act is amended—

- (a) by the substitution of the following subsection for subsection (1):

“(1) Subject to subsection (3), a participating enterprise shall, not later than 6 months after the entry by him or her into the qualifying finance agreement concerned, pay to the Minister an amount (in this section referred to as the ‘initial premium’) equal to 2 per cent of the credit amount under that agreement.”. 20

- (b) by the substitution of the following subsection for subsection (2):

“(2) Subject to subsection (3), a participating enterprise shall, not later than 4 weeks after each anniversary after the entry by him or her into the qualifying finance agreement concerned, pay to the Minister an amount (in this section referred to as the ‘annual premium’) equal to 2 per cent of— 25

- (a) in the case of a qualifying finance agreement that is a loan agreement, the principal of the money lent under that agreement for the time being standing unpaid, and 30

- (b) in the case of a qualifying finance agreement that is a credit facility agreement, an asset credit facility agreement or an invoice finance facility agreement, the credit amount under that agreement.”. 35

and

- (c) in subsection (3), by the substitution of “participating enterprise” for “participating borrower”.

Withdrawal of guarantee by Minister

7. The Principal Act is amended by the substitution of the following section for section 9:

“9. (1) Where a participating finance provider 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 finance agreement to which that participating finance provider is a party. 5

(2) Any term of a finance agreement that permits a participating finance provider to—

(a) alter a term or condition of such agreement upon the withdrawal of a guarantee in accordance with subsection (1), or 10

(b) impose less favourable terms and conditions on the participating enterprise upon the withdrawal of a guarantee in accordance with subsection (1),

shall be null and void.”.

Application of Act

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8. The amendments to the Principal Act effected by this Act shall not apply in respect of—

(a) the Credit Guarantee Scheme 2012 (S.I. No. 360 of 2012),

(b) the Credit Guarantee Scheme 2015 (S.I. No. 48 of 2015),

(c) any guarantees provided under either of those Schemes, or

(d) any loan agreements to which either of those Schemes apply. 20

Short title, commencement and collective citation

9. (1) This Act may be cited as the *Credit Guarantee (Amendment) Act 2015*.

(2) This Act shall come into operation on such day or days as the Minister for Jobs, Enterprise and Innovation 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. 25

(3) This Act and the Credit Guarantee Act 2012 may be cited together as the Credit Guarantee Acts 2012 and 2015.

An Bille um Ráthaíocht Chreidmheasa
(Leasú), 2015

BILLE

(mar a tionscnaíodh)

dá ngairtear

Acht do leasú agus do leathnú an Achta um Ráthaíocht Chreidmheasa, 2012; agus do dhéanamh socrú i dtaobh nithe a bhaineann leis an méid sin.

An tAire Post, Fiontar agus Nuálaíochta a thíolaic,

16 Meán Fómhair, 2015

Credit Guarantee (Amendment) Bill 2015

BILL

(as initiated)

entitled

An Act to amend and extend the Credit Guarantee Act 2012; and to provide for matters connected therewith.

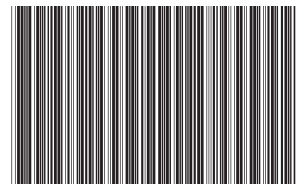
Presented by the Minister for Jobs, Enterprise and Innovation,

16th September, 2015

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(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€2.54



978-1-4468-3170-0