

THE IMPACT OF CORONAVIRUS: DUTCH GOVERNMENT GUARANTEE REGULATION IN CONNECTION WITH THE CORONAVIRUS OUTBREAK

On 28 April 2020, the Dutch Ministry of Economic Affairs and Climate published the regulation implementing the guarantee scheme in connection with the coronavirus outbreak (*Garantie ondernemingsfinanciering uitbraak coronavirus*) (the "**GO-C Regulation**"). The GO-C Regulation is one of the (additional) economic measures taken by the Dutch government to help prevent liquidity shortages for companies in The Netherlands, such that companies with a healthy outlook can continue to be financed. Under the GO-C Regulation, the Dutch State provides guarantees for loans to companies. This briefing provides an overview of the main features of the GO-C Regulation as it stands on the date of this briefing, and subject to certain interpretation issues.

Main Features

Eligible financiers to obtain cover under the GO-C Regulation

Banks established within the European Union that are licensed to operate the activities of a bank¹ and which have successfully completed an admission procedure can apply for a state guarantee when providing financing to eligible companies.

Eligible companies

Small and mid-sized² or large³ companies that conduct a substantial part of their business in The Netherlands (i.e. activities that benefit the Dutch economy or other Dutch interests) with in principle satisfactory profitability and continuity prospects and which were not already in financial difficulties on 31 December 2019. Companies primarily operating in excluded sectors (e.g. certain real estate, certain financial services, healthcare and investment companies⁴) are not eligible. In addition, companies that have paid out funds for the benefit of third parties in excess of amounts that are required for the purposes of operating its business in a reasonable manner or have made commitments for such payouts are also not eligible.

Type and amount of the financing

Senior financing with a principal amount of at least EUR 1.5mln and up to a maximum amount of EUR 150mln. The amount is further limited to (a) two times

¹ Within the meaning of the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*). To the extent the financing is provided to companies in Bonaire, St. Eustatius or Saba, the financier should be a credit institutions (*kredietinstelling*) within the meaning of the Act on the supervision of banking and credit institutions 1994 BES (*Wet Toezicht Bank- en Kredietwezen 1994 BES*).

² Companies that employ less than 250 persons and with annual turnover of less than or equal to EUR 50mln and/or of which the balance sheet total does not exceed EUR 43mln.

³ Companies that employ more than 250 persons and with annual turnover of more than EUR 50mln and/or of which the balance sheet total exceeds EUR 43mln.

⁴ This limitation should not apply to portfolio companies of private equity firms (which may be eligible on their own merits).

the aggregate annual amount of gross wages payable by the beneficiary⁵ to its employees, (b) 25% of the total revenue of the beneficiary in 2019 or (c) subject to self-certification by the beneficiary, the liquidity needs of the beneficiary for the next 18 months, in the case of small and mid-sized companies, or the next 12 months, in the case of large companies.

Term of financing

The term of the financing provided may not exceed 6 years.

Repayment profile

The GO-C Regulation requires that linear amortisation payments are made during the term of the financing except that a grace period of 18 months, in the case of small and mid-sized companies, or 12 months, in the case of large companies, may be applied before the first instalment becomes due and payable. A single bullet repayment on the maturity date of the financing is not permitted. Deferrals of repayments are only permitted with the prior approval of the Dutch State except where relating to a deferral for a maximum period of 8 calendar quarters and such deferral is also granted in respect of financings not covered by a guarantee from the Dutch State.

Percentage and aggregate amount of the state guarantees

The Dutch State guarantees 90%, in the case of small and mid-sized companies, or 80%, in the case of large companies, of the amount of the financing. The aggregate amount available for state guarantees under the GO-C Regulation is EUR 10bln on a "first come first serve basis".

Purpose of financing

The purpose of the financing is restricted to financing liquidity needs for working capital and investment costs (*investeringskosten*) arising as a result of the outbreak of the coronavirus. Investment costs can only relate to those investments that are necessary for the conduct of business or investments that were already committed. The financing may not be used to replace existing financing or risk bearing capital (subject to certain exceptions), to pass on excessive risks to the Dutch State or for the purpose of financing an acquisition.

Pricing and interest

The pricing of the financing should be on market terms as if no guarantee would be provided by the Dutch State. Interest should either be a fixed rate or a rate which is partly fixed and partly based on EURIBOR⁶.

Income in respect of the financing received by a financier that is covered by the guarantee from the Dutch State minus (i) 50 bps management fees (*beheersvergoeding*), (ii) funding costs (increased by the applicable liquidity premium of the relevant financier) and (iii) arrangement or upfront fees payable in respect of the financing (which may not exceed 100 bps of the principal amount of the financing provided) will need to be on-paid to the Dutch State by the financier on a quarterly basis as a guarantee commission. Any such commission may not be less than the percentage set out in the GO-C

⁵ We assume this is intended to be a reference to the company.

⁶ The side effect of this could arguably be that no EURIBOR floor is permitted to be included in respect of the financing.

Regulation (ranging between 25 bps and 200 bps, depending on the size of the company and the number of years expired since the financing was provided⁷).

No make-whole payment or other penalties or prepayment fees apply in case of prepayment of the financing provided that is covered by the guarantee from the Dutch State.

Security

The GO-C Regulation applies to secured and unsecured financings. However, financiers are required to use their best efforts to obtain additional security with the highest possible ranking securing the financing that is covered by the guarantee from the Dutch State. The proceeds from any additional security obtained should first be used to repay the financing that is covered by the guarantee from the Dutch State and the proceeds from any existing security should first be used to repay any financing existing on the date on which financing is provided that is covered by the guarantee from the Dutch State. Any surplus will be used to repay the financing that is covered by the guarantee from the Dutch State. The provisions of the GO-C Regulation relating to security and the application of proceeds thereof are not fully clear and subject to interpretation issues. We may provide a further update to this briefing if there is further clarity on these issues.

Others

Financiers are required to defer any scheduled repayments for any existing financings provided by them for at least two consecutive calendar quarters (which may include the calendar quarter ended 31 March 2020) except to the extent in the case of club or syndicated finance transactions where such deferral is not agreed to by the requisite financiers that required to approve such deferral.

Certain information undertakings will apply to the company pursuant to which they will need to provide information at the request of, cooperate with and ensure that access is provided to their premises to representatives of or appointed by the Dutch State to verify compliance with, promote the implementation of and safeguard performance of the GO-C Regulation.

Any amendments, waivers or transfers in relation to the financing will only be allowed with prior approval from the Dutch State.

Process

The process for obtaining financing that is covered by a guarantee from the Dutch State is run by the financier providing the financing. This process will coincide with the process of obtaining cover under the guarantee granted by the Dutch State in respect of that particular financing, unless the amount of financing is less than EUR 25 mln, in which case the process of obtaining cover may be completed after the financing has been provided. The GO-C Regulation is in effect until 31 December 2020.

The financier providing the financing is subject to an obligation to properly administer the loan, notify the Dutch State of the occurrence of certain events and provide the Dutch State with certain information about, amongst others, the company and the financing provided.

⁷ For small and mid-sized companies, 25 bps for the 1st year, 50 bps for the 2nd and 3rd year and 100 bps for the 4th, 5th and 6th year. For large companies, 50 bps for the 1st year, 100 bps for the 2nd and 3rd year and 200 bps for the 4th, 5th and 6th year.

CONTACTS



Ilse van Gasteren
Partner

T +31 655798952
E ilse.vangasteren
@cliffordchance.com



Jelle Hofland
Partner

T +31 654615434
E jelle.hofland
@cliffordchance.com



Boudewijn Vermeer
Counsel

T +31 634490803
E boudewijn.vermeer
@cliffordchance.com



Titus de Vries
Co-Managing Partner

T +31 652327987
E titus.devries
@cliffordchance.com



**Nienke van
Stekelenburgh**
Counsel

T +31 614850551
E nienke.vanstekelenburgh
@cliffordchance.com



Folko de Vries
Partner

T +31 655740191
E folko.devries
@cliffordchance.com



Herman Steinvoot
Associate

T +31 650654082
E herman.steinvoot
@cliffordchance.com

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www.cliffordchance.com

Clifford Chance, 10 Upper Bank Street,
London, E14 5JJ

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