

ARTICLE

FRENCH STATE SUPPORT TO THE BANKING SECTOR

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BANKING - FINANCE

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On March 16th, 2020, the French President announced, during a public conference, that a "State guarantee of 300 billion euros" program to secure loans granted by banks to companies will be set up to cope with the economic and financial crisis resulting from the Coronavirus. However, the scope and effects of this measure had yet to be defined by the French government and the French Parliament.

On March 23rd, 2020, the French Parliament adopted the amendment to the French budget law for 2020 (*loi n° 2020-289 du 23 mars 2020*) (the "**Law**") implementing a State guarantee program (the "**Guarantee**") to secure loans granted by banks to companies during the crisis period created by the expansion of Covid-19. The scope of the Law is broad and it entitles duly licensed credit institutions (*établissements de crédits*) and financing companies (*sociétés de financement*) (the "**Financial Institutions**") to benefit from a guarantee issued by the State to secure loans granted by them to French companies from March 16, 2020 (inclusive) to December 31, 2020 (inclusive). A decree (*arrêté du 23 mars 2020, JORF n° 0072 du 24 mars 2020*) (the "**Decree**") supplements the specifications of the Guarantee, in particular the terms and conditions of exercise of the Guarantee.

In order for the Guarantee to be eligible to a Financial Institution, such Financial Institution will have to ensure that the borrower is a legal entity or natural person registered in France, including artisans, merchants (*commerçants*), farming businesses, independent professions (*professions libérales*) and micro-entrepreneurs, as well as associations and foundations with an economic activity relating to social economy, with the exception of non-trading real estate companies (*sociétés civiles immobilières*), credit institutions or financing companies and that such company is not subject to any insolvency proceedings as defined in Sections II, III and IV of Book VI of the French Commercial Code (i.e. a safeguard proceedings, a rehabilitation proceedings or a liquidation proceedings) (a "**Qualified Company**").

The provisions of the Law set out that the purpose of the Guarantee is to secure due payment of amounts owed to Financial Institutions under a loan (principal, interests and ancillary fees, costs and expenses) extended to a Qualified Company, provided that the following requirements are met :

- i. A maximum aggregate outstanding principal amount of loans of 300 billion euros for loans extended by all Financial Institutions having submitted for the Guarantee;
- ii. call of the Guarantee will not be possible in the event where the borrower is in default within two months after the loan has been available;
- iii. the Guarantee will be subject to a fee payable to the State. Such fee will be determined pursuant to a price grid depending upon the size of the business and the maturity of the covered loan. Such fees price grid is further detailed in the Decree;
- iv. with respect to loans granted to Qualified Companies which have employed, during the last financial year, less than 5000 employees or had a turnover below 1.5 billion euros, the Guarantee to be issued will need to be notified to BPI France Financement SA ("**BPI**") in order to be effective. Such notification shall be made through a single dedicated and secured system based on a standardised file format, which BPI has to make available to lenders pursuant to an agreement entered into between BPI and such lender;
- v. with respect to loans granted to Qualified Companies which have employed at least 5000 employees or had a turnover exceeding 1.5 billion euros, the Guarantee will be issued in favor of lenders in accordance with the terms and conditions specified by a decree to be taken by the French Minister of Economy.

In addition, the benefit of the Guarantee is dependent upon certain requirements and characteristics of the relevant loan agreement being met. Such requirements of the eligible loans are set out as follows:

- i. the loan shall have a minimum maturity of 12 months;
- ii. the loan agreement shall include a clause providing the borrower with a right, at the end of the first anniversary date of the loan, to request a repayment of the loan over an additional period corresponding to a number of years within the limit of 5 years;
- iii. the loan shall not be secured by any guarantee or security interests granted in favour of the relevant Financial Institution; and
- iv. the total principal amount of loans granted by any Financial Institution to the same company shall not, at the time the Guarantee is issued to such Financial Institution's benefit, have been reduced below its total principal amount





as at March 16, 2020.

The Guarantee will guarantee only a part of the outstanding amounts due and payable under the relevant (in principal, interest and ancillary fees, costs and expenses. Such part of guarantee amount, expressed as a percentage, is determined as follows:

- 90% of the due amount for companies which, during the last financial year, had less than 5,000 employees in France and had on such period a turnover of less than 1.5 billion euros;
- 80% of the due amount of the relevant indebtedness for companies with a turnover ranging from 1.5 billion to 5 billion euros within the last financial year; and
- 70% of the due amount of the relevant indebtedness for other companies.

Furthermore, the Guarantee will be granted up to a maximum amount taking into consideration the date of incorporation of the relevant borrower and the aggregate amount of payrolls such borrower has to pay. The terms and conditions for the application of such maximum amount are further defined in the Decree.

Finally, please note that (i) a committee, reporting to the Prime Minister, has been set up to ensure that the measures provided for under the Law and the Decree are monitored, in particular it will issue a publicly available reporting within a year from now, and (ii) BPI has been endorsed with the role of being the entity responsible for monitoring of the Guarantee. Therefore, BPI, acting in the name and on behalf of the State, will be entitled (i) to collect fees due to the State under the Guarantee, (ii) to verify the eligibility requirements to the Guarantee are met, and (iii) to make amounts available to the Financial Institutions after a call of the Guarantee. In addition, please also note that BPI has itself publicly announced the implementation of an emergency support plan for French companies and intends to provide liquidity in the form of (i) loans without guarantee, (ii) debt repurchase programs, and (iii) deferral of maturity with respect to loans granted by BPI. A specific online application form to be filled in by borrowers is now available on BPI's website.

At the European level, the European Banking Authority (the "EBA") and the European Central Bank (the "ECB") adopted, on March 12, 2020, several measures allowing greater flexibility in the banking sector until the Covid-19 crisis is over. In particular, the EBA decided to postpone the Europe-wide stress test until 2021 to allow European banks to focus on operational continuity, while at the same time the ECB decided to allow banks to soften certain prudential requirements by the European authorities and released a package of 120 billion euros for the repurchase of company's debts on the markets. Such measure aims at assisting banks to fulfil their role in funding the real economy for companies and consumers despite the economic effects of Covid-19. In addition, the ECB announced on March 18, 2020 that it will prepare an additional 750 billion euros emergency repurchase program on the markets regarding sovereign and private debts held by European banks in the eurozone.

Therefore, the relaxation of the European regulatory framework allows the implementation of emergency measures at a domestic level. In a press release dated March 15, 2020, the French Banking Federation (*Fédération Bancaire Française*) proposed (i) to discuss the postponement of loan installments owed by French companies for a period up to six months, (ii) to implement both the appraisal of loan application requests in a shorter timeframe not exceeding five days for companies in a precarious financial situation and assistance for companies facing an emergency situation, and (iii) to waive any right to penalties or payment of additional costs for deferral of loan maturity and standstill granted to companies.

No need to mention that the purpose of such European, national and sectoral measures is indeed to relieve the banks from the prudential and financing pressure in order for the banks to maintain existing credit facilities and, also, to sustain the extending of new loans to support the economical process and a stable employment trend.
