

## FEATURES OF THE FIRST TRANCHE OF THE ICO GUARANTEE FACILITY FOR COMPANIES AND THE SELF-EMPLOYED TO ALLEVIATE THE ECONOMIC AND SOCIAL CONSEQUENCES OF THE WAR IN UKRAINE

On 11 May, the Resolution of the Council of Ministers of 10 May 2022, establishing the terms and conditions of the first tranche of the guarantee facility for financing granted to companies and the self-employed in the framework of the National Plan to respond to the economic and social consequences of the war in Ukraine (the “**Council of Ministers’ Resolution**” or the “**Resolution**”), was published in the Official State Gazette.

The Resolution implements Royal Decree-law 6/2022, of 29 March, adopting urgent measures within the framework of the National Plan in response to the economic and social consequences of the war in Ukraine (“**RDL 6/2022**”), establishing the applicable conditions and requirements to be met for the first tranche of the guarantee facility, which will amount to €5 billion provided by the Ministry of Economic Affairs and Digital Transformation, aimed at guaranteeing the financial indebtedness (existing or new) assumed by companies and self-employed individuals vis-à-vis financial institutions, in relation to certain working capital and liquidity needs of such companies and self-employed individuals, in order to alleviate the adverse effects arising due to a liquidity crisis caused by the war in Ukraine, such as the increase in energy, raw materials and electricity prices (the “**Guarantee Facility**”).

This first Guarantee Facility approved by the Council of Ministers is in line with the State Aid Temporary Framework for measures to support the economy in the context of the ongoing war in Ukraine, adopted by Communication of the European Commission on 23 March 2022 and on the basis of Article 107(3)(b) of the Treaty on the Functioning of the European Union, which refers to a serious disturbance in the economy of a Member State, such as the aggression against Ukraine by Russia (the “**Temporary Framework**”) and has been declared as compatible State aid by the Commission Decision of 23 March 2022 (the “**Commission Decision**”).

The Guarantee Facility is based on three premises:

- (i) It establishes an open subjective scope, so that all companies and self-employed individuals in all sectors (except the financial and insurance sectors) which have been affected by the economic effects of the war in Ukraine, such as the increase in the prices of energy, raw materials and electricity, can benefit from the easy access to liquidity it provides.
- (ii) Secondly, the compatibility of the State aid with the Temporary Framework is declared. To this end, the Resolution provides for the granting of guarantees under the Temporary Framework

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for dealing with the crisis in Ukraine adopted by the European Commission on 23 March 2022, with the aim of making the best possible use of the options contained therein.

- (iii) Finally, it seeks to utilise the knowledge and experience of the COVID-19 guarantee facilities implemented under Royal Decree-laws 8/2020 and 25/2020, seeking synergies between them.

This Legal Briefing analyses the Guarantee Facility, as set out in the Council of Ministers' Resolution.

## 1. Main features of the Guarantee Facility

The Council of Ministers' Resolution sets out the characteristics of the first tranche of the Guarantee Facility, for an amount of up to €5 billion, which will be managed by the Instituto de Crédito Oficial ("ICO"), and whose coverage will be between 70% and 80%, in accordance with the fulfilment of the subjective requirements established in the Temporary Framework.

The maximum coverage of 80% of the principal of financing transactions will be possible for SMEs, self-employed individuals, and other companies domiciled in Spain, belonging to all business sectors with the exception of the financial and insurance sectors.

70% coverage will be possible for all other companies that do not qualify as SMEs.

According to the provisions of the Council of Ministers' Resolution, SMEs are defined as companies that meet this condition in accordance with Article 2 of Annex I to Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (by reference to the block exemption Regulation), i.e. companies which employ fewer than 250 people and whose annual turnover does not exceed €50 million or whose annual balance sheet total does not exceed €43 million are considered to be SMEs.

The deadline for the granting of guarantees is 31 December 2022, so the transactions formalised may be communicated by the financial institutions to ICO until 1 December 2022.

The guarantees will be provided to financial intermediaries providing financing to companies and self-employed individuals (for the purposes of this Resolution, credit institutions, credit finance establishments, electronic money institutions and payment institutions) and the criterion for allocation to beneficiaries will be determined by the order of the request of the institutions concerned.

## 2. Target scope - eligible loans

Guarantees granted under the Guarantee Facility are expected to secure both new loans and renewals of existing financing transactions granted by financial institutions (irrespective of their source of funding) provided that the transactions are concluded after 11 May 2022.

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Transactions of up to €50 million that have been approved by the entity in accordance with its risk policies will be guaranteed, although the ICO reserves the right to verify that the transactions comply with the eligibility criteria. Transactions exceeding the amount of €50 million will only be guaranteed when the ICO has carried out a complementary analysis.

For the purposes of this calculation, the financing transactions of those who have been beneficiaries of aid from guarantee facilities managed by the ICO subject to Article 29 of Royal Decree-law 8/2020 of 17 March and Article 1 of Royal Decree-law 25/2020 of 3 July will be excluded.

Although the Council of Ministers' Resolution expressly mentions "eligible loans", the scope of the Guarantee Facility is not limited to lending transactions in a strict sense, but to financing transactions in a broader sense.

### 3. Subjective scope - eligible borrowers

The Guarantee Facility can be granted to companies and self-employed individuals domiciled in Spain, provided that they meet the following requirements, among others:

- (i) The formalisation of the transactions for which the Guarantee Facility is requested has taken place after 11 May 2022.
- (ii) The transactions do not have a duration of less than 3 months.
- (iii) Applicants are not subject to sanctions that the European Union may have imposed as a consequence of Russia's aggression against Ukraine<sup>1</sup>.
- (iv) Applicants are not in default or subject to insolvency proceedings (or in any of the situations envisaged in Article 2.4 of Law 22/2003 of 9 July 2003 on Insolvency) on the date of execution of the transaction.
- (v) At the time of submitting the application, the applicants are not undergoing enforcement of guarantees managed by ICO on behalf of the State, under this Resolution or otherwise.

Each financial institution will decide, after applying its internal procedures and risk policies, on the granting of the Guarantee Facility. However, for beneficiaries that are not SMEs or a self-employed individual, the financing entity undertakes to share the risk analysis used to approve

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<sup>1</sup> For clarification purposes, this limitation extends to (i) companies controlled by persons, entities or bodies affected by sanctions that the European Union may have imposed as a result of Russia's aggression against Ukraine and (ii) companies that are active in sectors affected by sanctions that the European Union may have imposed as a result of Russia's aggression against Ukraine, to the extent that the granting of the guarantee would undermine the objectives of the relevant sanctions.

the transaction, with the requirement that the company's debt ratio (debt/equity) be above 7.5 according to the latest accounts closed on the date the formalisation is signed.

#### 4. Scope of coverage of the guarantees

The guarantees will guarantee financing transactions with the following terms:

- (i) The financing transactions must have been executed or renewed after 11 May 2022. The maximum deadline for applying for guarantees is 31 December 2022, and financial institutions may notify the ICO of applications until 1 December 2022.
- (ii) The Council of Ministers' Resolution refers to the Temporary Framework for setting the maximum amounts per transaction.

For this purpose, the Temporary Framework differentiates between two types of guarantees:

##### (i) Guarantees granted under the provisions of section 2.1 of the Temporary Framework

*Amount:* This section enables the granting of aid for a nominal guaranteed amount of up to €400,000 per beneficiary, regardless of the sector, and aid of up to €35,000 for companies active in the primary agriculture, the fishery and aquaculture sectors.

Where the beneficiary of the guarantee operates in several sectors to which different maximum amounts apply, the limit of the sector of activity with the lowest maximum amount will apply to the beneficiary's transactions as a whole.

This limit will be a maximum and may not be exceeded by the sum of all the aid received under section 2.1 of the Temporary Framework by the same beneficiary. If these limits are exceeded, the transaction will be subject in its entirety to the provisions for guarantees set out in section 2.2 of the relevant Temporary Framework.

There is a limit on the principal of the guaranteed loan when accompanied by 80% coverage, which may not exceed, respectively, €500,000 per beneficiary or €43,750 for companies active in the primary agriculture, the fishery and aquaculture sectors.

*Percentage:* up to 80% of the principal amount of the transaction.

*Remuneration:* the remuneration of the guarantees will be 0.20% of the balance of the nominal amount guaranteed, with this commission accruing annually and in advance.

*Duration:* The duration of the guarantee will be equal to that of the financing transaction, up to a maximum of 10 years.

## (ii) Guarantees granted under the provisions of section 2.2 of the Temporary Framework

*Amount:* where the beneficiary has exceeded the aid thresholds allowed under section 2.1 of the Temporary Framework and/or decides to apply for the guarantee subject to section 2.2 of the Temporary Framework, the nominal amount to be guaranteed may not exceed the higher of:

- 15% of the average annual turnover<sup>2</sup> of the beneficiary over the last 3 financial years for which the accounts have been closed. If the beneficiary has closed accounts for two financial years, 15% of the average annual turnover of those two financial years will apply. Where the beneficiary has closed accounts for only one financial year, 15% of the turnover of that financial year will apply. If it has not been in operation for a full financial year, 15 % of the turnover<sup>3</sup> will be applied for the time it has been in operation, annualised on a linear basis.
- 50% of the energy costs in the 12 months preceding the month in which the application for aid is submitted to the bank, provided such costs are confirmed by an independent energy supplier or independent technical service provider.

*Percentage:* (i) up to 80% of the principal of the transaction for SMEs and self-employed individuals, or (ii) up to 70% of the principal of the transaction for companies that do not qualify as SMEs.

*Remuneration:* the remuneration of guarantees varies according to the term and the guarantee coverage contracted by the specific company. The following amounts apply per category:

- The remuneration for guarantees granted to self-employed individuals or companies that are considered SMEs will be:
  - 20 basis points per year for guarantees with a maturity date due in 1 year or less.
  - 30 basis points per year for guarantees with a maturity date due in 1 to 3 years.
  - 80 basis points per year for guarantees with a maturity date due in 3 to 5 years.
  - 80 basis points per year for guarantees with a maturity date due in 5 to 6 years.

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<sup>2</sup> For these purposes, annual turnover will be understood to be that reflected in the audited annual accounts or the annual turnover declared or verified by the government in the annual tax form corresponding to VAT or equivalent taxation.

<sup>3</sup> For these purposes, turnover will be taken as the quarterly turnover declared or verified by the government.

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- 169 basis points per year for guarantees with a maturity date due in 6 to 7 years.
- 188 basis points per year for guarantees with a maturity date due in 7 to 8 years.
- The remuneration for guarantees granted to companies that are not considered to be SMEs will be:
  - 30 basis points per year for guarantees with a maturity date due in 1 year or less.
  - 60 basis points per year for guarantees with a maturity date due in 1 to 3 years.
  - 120 basis points per year for guarantees with a maturity date due in 3 to 5 years.
  - 125 basis points per year for guarantees with a maturity date due in 5 to 6 years.
  - 260 basis points per year for guarantees with a maturity date due in 6 to 7 years.
  - 285 basis points per year for guarantees with a maturity date due in 7 to 8 years.

*Duration:* The duration of the guarantee will be equal to that of the financing transaction, up to a maximum of 8 years.

## 5. Relationship with financial institutions and ICO

### (i) Grace period

If requested by the beneficiary, the financial institution is obliged to establish, at least, an initial grace period of 12 months for the principal repayments of the guaranteed transaction.

### (ii) The priority of collections in the event of recoveries after the execution of the guarantees

The guarantees granted under the Guarantee Facility will have a “*pari passu*” rank, so that, in the event of the enforcement of a guarantee, the financial institution must pay the ICO the percentage of the sums recovered equivalent to the guaranteed risk, if any, of the unpaid amounts.

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## (iii) Cost of the guaranteed financing for borrowers and maintenance of working capital facility limits

The Council of Ministers' Resolution establishes that financial institutions that grant financing guarantees through the Guarantee Facility must comply with the following requirements:

- establish costs for the guarantees that do not exceed those borne by the institution itself;
- nor may they pass on any costs or charges on undrawn amounts until the institution has actually made them available to the client; and
- the limits of the working capital facilities granted to all its clients and, in particular, to those clients whose loans are guaranteed by the Guarantee Facility must be kept unchanged (until at least 31 December 2022).

## (iv) Monitoring and supervision procedures

The Commission Decision states that the financial institutions must pass on the advantages of the public guarantee to the final beneficiaries, and that, to this end, a supervisory system must be established.

In line with this, the ICO will report monthly to the Ministry of Economic Affairs and Digital Transformation on the use of the Guarantee Facility and the outstanding risk guaranteed.

For their part, the financial institutions will inform the ICO on a monthly basis of the outstanding amount guaranteed by these transactions.

This Legal Briefing was prepared by Ildfonso Arenas and Elisa Ribas de Reyna, Partner and Associate in the Banking and Finance practice.

The information contained in this Legal Briefing is of a general nature and does not constitute legal advice. This document was prepared on 19 May 2022 and Pérez-Llorca does not assume any commitment to update or revise its contents.

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