



# Bridging the COVID-19 Liquidity Gap Danish State Guarantee Schemes

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# BRIDGING THE COVID-19 LIQUIDITY GAP

## Danish State Guarantee Schemes

The outbreak of COVID-19 has had a dramatic impact on the operations of many Danish businesses across several industries. For businesses facing low or even no activity at all, the COVID-19 outbreak will naturally lead to a liquidity shortage and new debt financing may be required to bridge this COVID-19 liquidity gap.

The Danish Government has, via the Danish State's investment fund, Vækstfonden, established two new guarantee schemes for loans and credit facilities to Danish companies, whose revenue has severely deteriorated due to the COVID-19 outbreak.

This Insight provides an overview of the two guarantee schemes, including a review of (i) the conditions that must be satisfied to obtain a state guarantee, including company requirements, (ii) the coverage provided by a state guarantee, (iii) the guarantee fees payable to Vækstfonden and (iv) the application process to obtain a state guarantee. Further, this Insight highlights some of the issues that may potentially arise in connection with the practical application of the new guarantee schemes.

Updated on 29 April 2020 due to certain amendments to (i) the legal framework for state guarantees covering new loans and credit facilities to large companies and (ii) the guarantee fees payable to Vækstfonden.

Further updated on 11 May 2020 due to certain additional amendments to the guarantee fees payable to Vækstfonden.

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The outbreak of COVID-19 has had a dramatic impact on the operations of many Danish businesses across several industries. For businesses facing low or even no activity at all, the COVID-19 outbreak will naturally lead to a liquidity shortage and new debt financing may be required to bridge this COVID-19 liquidity gap.

In March 2020, the Danish Government announced two new state guarantee schemes for loans and credit facilities to companies, whose revenue has been, or will in the near term be, severely affected by the COVID-19 outbreak. The two guarantee schemes have now been established via the Danish State's investment fund, Vækstfonden, with one of these schemes being applicable to large companies and the other scheme being applicable to small and medium-sized enterprises ("SMEs"). The two guarantee schemes are hereinafter referred to as the "**Large Guarantee Scheme**" and the "**SME Guarantee Scheme**", respectively, and, together, as the "**Guarantee Schemes**".

The overall purpose of the Guarantee Schemes is to facilitate the provision of new financing to Danish companies to cover their loss of revenue due to the COVID-19 outbreak. Accordingly, state guarantees can only be issued in respect of new loans and credit facilities, not existing debt. Furthermore, it is a condition precedent to the grant of a state guarantee that the proceeds of the new loan or credit facility will not be applied towards repayment or prepayment of other debt owed to the lender (hereinafter referred to as the "**Repayment Prohibition**"). With respect to the Large Guarantee Scheme for large companies, the Repayment Prohibition is limited to being applicable for a period of five months following the commencement of the state guarantee, cf. the Large Executive Order (as defined below). Such time limitation on the application of the Repayment Prohibition does not currently follow from the SME Executive Order (as defined below).

The legal framework for the Large Guarantee Scheme applicable to large companies is set out in the Danish Executive Order No. 276 of 26 March 2020 on guarantee scheme for loans to large companies (in Danish: *Bekendtgørelse om garantiordning for udlån til store virksomheder*)

as amended by the Danish Executive Order No. 384 of 6 April 2020 on amendments to the Executive Order on guarantee scheme for loans to large companies (in Danish: *Bekendtgørelse om ændring af bekendtgørelse om garantiordning for udlån til store virksomheder*) and further amended by the Danish Executive Order No. 507 of 24 April 2020 on amendments to the Executive Order on guarantee scheme for loans to large companies (in Danish: *Bekendtgørelse om ændring af bekendtgørelse om garantiordning for udlån til store virksomheder*) and further amended by the Danish Executive Order No. 513 of 27 April 2020 on amendments to the Executive Order on guarantee scheme for loans to large companies (in Danish: *Bekendtgørelse om ændring af bekendtgørelse om garantiordning for udlån til store virksomheder*) (the "**Large Executive Order**").

The legal framework for the SME Guarantee Scheme applicable to SMEs is set out in the Danish Executive Order No. 299 of 27 March 2020 on guarantee scheme in Vækstfonden for loans to small and medium-sized enterprises (in Danish: *Bekendtgørelse om garantiordning i Vækstfonden for udlån til små og mellemstore virksomheder*) as amended by the Danish Executive Order No. 354 of 3 April 2020 on amendments to the Executive Order on guarantee scheme in Vækstfonden for loans to small and medium-sized enterprises (in Danish: *Bekendtgørelse om ændring af bekendtgørelse om garantiordning i Vækstfonden for udlån til små og mellemstore virksomheder*) (the "**SME Executive Order**" and, together with the Large Executive Order, the "**Executive Orders**").

## 1 COMPANY REQUIREMENTS

Pursuant to the Executive Orders, Vækstfonden can provide a state guarantee that covers new loans and credit facilities provided by a bank, leasing company, etc. (hereinafter referred to as a "**Lender**") to a Danish company provided that the borrowing company fulfills the requirements set out below:

- **Registered in Denmark or the Faroe Islands:** The company must be registered in (i) the central business register (in Danish: CVR) of the Danish Business Authority (in Danish: Erhvervsstyrelsen) or (ii) Skráseting Føroya.

- **SME or Large Company:** In order to be eligible for a state guarantee under the SME Guarantee Scheme, the company must fall *within* the definition of small and medium-sized enterprises pursuant to the European Commission's Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (2003/361/EC), whilst a company falling *outside* such definition may be eligible for a state guarantee under the Large Guarantee Scheme. The definition is based on a staff headcount and certain financial ceilings, including that an SME must (i) employ fewer than 250 persons and (ii) have an annual revenue not exceeding EUR 50 million and/or an annual balance sheet total not exceeding EUR 43 million.
- **Creditworthiness:** The company must be "creditworthy", meaning that the Lender must be willing to grant the company a new loan or credit facility to be covered by a state guarantee. Prior to submitting an application for a state guarantee to Vækstfonden (please see section 5 below), the Lender must have performed a credit assessment of the company in accordance with such Lender's usual rules applicable hereto. Such credit assessment must be submitted to Vækstfonden together with the application, and the relevant credit line must have been finally approved by the Lender. In case the new loan or credit facility is being granted by multiple Lenders, each Lender will need to submit its individually approved credit assessment to Vækstfonden.
- **Not Financially Distressed:** As of 31 December 2019, the company must not have been an "undertaking in difficulty" as defined in the European Commission's Regulation No. 651/2014. In broad terms, a company will be considered as an "undertaking in difficulty" if:
  - the company is a limited liability company (other than an SME that has been in existence for less than three years), and more than half of its subscribed share capital has disappeared as a result of accumulated losses. This is the case when deduction of accumulated losses from reserves (and all other elements generally considered as part of the own funds of the company) leads to a negative cumulative amount that exceeds half of the subscribed share capital (share capital includes, where relevant, any share premium);
  - the company is a company where at least some members have unlimited liability for the debt of the company (other than an SME that has been in existence for less than three years), and more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses;
  - the company is insolvent or subject to insolvency proceedings;
  - the company has received rescue aid and has not yet reimbursed the loan or terminated the guarantee, or has received restructuring aid and is still subject to a restructuring plan; or
  - for the past two years, and only in case of a large company (e.g., not an SME), the company's book debt to equity ratio has been greater than 7.5 and the company's EBITDA interest coverage ratio has been below 1.0.
- **Minimum 30% Realised and Expected Future Loss of Revenue:** The application for a state guarantee must be based on a time period (the "Reference Period") of at least 14 days during the time period from 1 March 2020 to 30 September 2020. It is a condition that, for such Reference Period, the company's realised or expected future loss of revenue due to the COVID-19 outbreak must be at least 30% when compared to the company's revenue for the corresponding period in 2019. As to the calculation of the company's revenue loss, please see section 3 below.
- **Minimum 30% Already Realised Loss of Revenue:** In addition to the above, the company must, at the time of application for a state guarantee, have already realised a loss of revenue for a period of at least 14 days during the time period from 1 March 2020 to 30 September 2020 of at least 30% when compared to the company's revenue for the corresponding period in 2019. As to the calculation of the company's revenue loss, please see section 3 below.

## 2 CONDITIONS OF THE GUARANTEE SCHEMES

The availability of each Guarantee Scheme is further subject to the following terms and conditions:

- **Cap Based on Revenue Loss:** As noted above, the application for a state guarantee must be based on a Reference Period, being a period of at least 14 days and, at most, a period ranging from 1 March 2020 to 30 September 2020. A state guarantee can only be provided for new loans and credit facilities calculated on the basis of the company's realised or expected future loss of revenue for such Reference Period. E.g., a state guarantee cannot be provided with respect to a loan or credit facility amount that *exceeds* the company's realised or estimated loss of revenue for the Reference Period. As to the calculation of the company's revenue loss, please see section 3 below.
- **Cap Based on Liquidity Needs:** Further, a state guarantee cannot be provided with respect to a loan or credit facility amount that *exceeds* the following:
  1. the company's liquidity needs, including investment needs, for a period of (i) 12 months for large companies and (ii) 18 months for SMEs, in each case to be calculated on the basis of a liquidity plan prepared for the company; or
  2. either (i) twice the company's annual expenditures on wages and salaries for 2019 (or the latest available year) or (ii) in the case of a new company, an estimate of the company's expenditures on wages and salaries for the first two years of operation; or
  3. 25% of the company's total revenue in 2019.
- **No Double Coverage:** It is possible for multiple state guarantees to be issued in relation to the same company. However, a state guarantee under each of the respective Guarantee Schemes cannot be provided:
  - to cover the relevant company's loss of revenue for a period of time that has already been covered by another state guarantee issued in accordance with the

terms of the relevant Guarantee Scheme. As each Reference Period must be of at least 14 days within the period from 1 March 2020 to 30 September 2020, this implies that the maximum number of state guarantees to be issued in respect of a single company can in theory be up to 15; or

- if the company has already been provided with a guarantee by EKF Denmark's Export Credit Agency (in Danish: *EKF Danmarks Eksportkredit*) ("**EKF**") pursuant to (i) the Danish Executive Order No. 351 of 2 April 2020 on guarantee scheme in EKF for loans to large companies (in Danish: *Bekendtgørelse om garantiordning i EKF for udlån til store virksomheder*) as amended by the Danish Executive Order No. 523 of 27 April 2020 on amendments to the Executive Order on guarantee scheme in EKF for loans to large companies (in Danish: *bekendtgørelse om ændring af bekendtgørelse om garantiordning i EKF for udlån til store virksomheder*) (the "**Large EKF Guarantee Scheme**") or (ii) the Danish Executive Order No. 324 of 31 March 2020 on guarantee scheme in EKF for loans to small and medium-sized enterprises (in Danish: *Bekendtgørelse om garantiordning i EKF for udlån til små og mellemstore virksomheder*).

## 3 GUARANTEE COVERAGE

**70% Guarantee Coverage:** As noted above, the amount of the loan or credit facility may not exceed the company's realised or expected future loss of revenue for the Reference Period. Further, the state guarantee will only cover 70% of the principal amount of the loan or credit facility. Accordingly, 30% of the principal amount will not benefit from the state guarantee, thus giving the Lender some "skin in the game".

**Calculation of Revenue Loss:** The loss of revenue for the Reference Period (e.g., the relevant period between 1 March 2020 and 30 September 2020 for which the Lender is applying for a state guarantee) is to be calculated as follows:

- in the case of *realised revenue loss*, as the difference between (i) the company's realised revenue for the relevant realised part of the

Reference Period and (ii) the company's revenue for the corresponding period in 2019, deducting any compensation for loss received from other governmental schemes, insurances or similar; and

- in the case of *expected revenue loss*, as the difference between (i) the company's expected revenue for the relevant future part of the Reference Period and (ii) the company's revenue for the corresponding period in 2019, deducting any compensation for loss received from other governmental schemes, insurances or similar.

If there are no financial figures available with respect to the company's revenue for the corresponding period in 2019, the Lender shall estimate the company's loss of revenue based on the company's budgeted revenue. The same applies in case the revenue for the corresponding period in 2019 is not true and fair as a comparison measure for the company's expected revenue for the relevant period in 2020, for example because the company is growing materially.

**Maximum Term and Reduction:** The term of the state guarantee can be no longer than 6 years for state guarantees covering new loans or credit facilities to large companies and 7 years for state guarantees covering new loans or credit facilities to SMEs. According to the Large Executive Order, a state guarantee covering new loans or credit facilities to large companies will further be written down over the term in accordance with the Lender's repayment profile. According to the current SME Executive Order, a state guarantee covering new loans or credit facilities to SMEs will be written down linearly over the term on an annual basis.

**Claims and Payout:** Any claim under the state guarantee must be submitted to Vækstfonden in accordance with the terms of the applicable state guarantee policy. Vækstfonden may decide to honour such claim on account even if the final loss covered by the state guarantee has not been determined. Vækstfonden may further demand that the Lender deliver an auditors' statement as to the company's loss no later than upon payout under the state guarantee.

## 4 GUARANTEE FEES

Vækstfonden charges certain fees for state guarantees covering new loans and credit facilities to SMEs and large companies, respectively.

With respect to the SME Guarantee Scheme applicable to SMEs, Vækstfonden charges (i) an upfront guarantee fee amounting to DKK 2,500 and (ii) an annual risk premium amounting to 1% of the remaining guarantee amount.

With respect to the Large Guarantee Scheme applicable to large companies, Vækstfonden charges (i) an upfront guarantee fee amounting to 0.25% of the guaranteed amount of the loan or credit facility (up to a maximum of DKK 250,000) and (ii) an ongoing guarantee premium payable in advance on a semi-annual basis. The semi-annual guarantee premium is to be calculated on arms' length terms in accordance with the European Commission's Notice on the application of Articles 87 and 88 of the EC Treaty to State Aid in the form of guarantees (2008/C 155/02), pursuant to which the guarantee premium is to be determined on the basis of an overall assessment of the size of the state guarantee, the duration of the state guarantee, the security provided by the company, the financial situation of the company and any other relevant financial conditions. With respect to the semi-annual guarantee premium, Vækstfonden has provided some guidance on the criteria for how such a premium is to be calculated, which can be found [here](#) (in Danish only) (the "**Pricing Overview**").

The Pricing Overview has been published by Vækstfonden and EKF on a joint basis. Accordingly, the Pricing Overview applies equally to state guarantees issued by Vækstfonden under the Large Guarantee Scheme and by EKF under the Large EKF Guarantee Scheme.

According to the Pricing Overview, the guarantee premium will be based on the Lender's all-in margin, which is split into the three following parts (as further described below):

1. a funding margin (in Danish: *fundingmargin-al*) to the Lender;
2. a guarantee premium rate (in Danish: *garanti-præmiesats*) to Vækstfonden (or EKF); and

3. an interest rate margin (in Danish: *rentemarginal*) to the Lender.

When applying for a state guarantee, the Lender must solemnly declare that its all-in margin reflects the Lender's assessment of the credit risk associated with the loan or credit facility in question.

**Funding Margin:** The funding margin is set on the first banking day of each month or upon the occurrence of significant market movements and will be payable to the Lender. The applicable funding margin will depend on the term and the currency of the new loan or credit facility as set out below (as currently applicable):

Currency	Funding Margin	
	Term of less than 4 years	Term of 4 - 6 years
DKK	0.20%	0.25%
EUR	0.35%	0.40%

If the loan or credit facility has been granted in a currency other than DKK or EUR, the funding margin will be set on a case-by-case basis. Once the state guarantee has been provided by Vækstfonden (or EKF), the funding margin will not be subject to any further amendments.

**Guarantee Premium Rate:** The guarantee premium rate to Vækstfonden (or EKF) amounts to the Lender's all-in margin *minus* the funding margin.

The guarantee premium rate must not be below the minimum premium rate applicable to the loan or credit facility in question as set out below. The applicable minimum premium rate will depend on the term of the new loan or credit facility and the Lender's credit rating of the company, which Vækstfonden (or EKF) will use to place the company in one of five risk categories with the following minimum premium rates (as currently applicable; these might be subject to further updates):

Risk Category	Minimum Premium Rate	
	Term of 0.5 - < 4 years	Term of 4 - 6 years
Vækstfonden/EFK Risk Category No. 1	1.00%	2.00%

Vækstfonden/EFK Risk Category No. 2	1.25%	2.25%
Vækstfonden/EFK Risk Category No. 3	1.75%	2.50%
Vækstfonden/EFK Risk Category No. 4	2.75%	3.25%
Vækstfonden/EFK Risk Category No. 5	4.25%	4.50%

In case of multiple Lenders, the applicable minimum premium rate will be based on the weighted average of all such Lenders' credit ratings of the borrowing company at the time of applying for the state guarantee.

If the guarantee premium rate is below the applicable minimum premium rate, the guarantee premium rate will be determined as equal to such minimum premium rate. In certain circumstances, Vækstfonden (or EKF) can increase the minimum premium rate with up to 0.75%.

**Interest Rate Margin:** The interest rate margin to the Lender will amount to the funding margin covering the entire new loan or credit facility *plus* the earnings from the part of the new loan or credit facility not covered by the state guarantee. Thus, the interest rate margin is to be calculated pursuant to the following formula:

$$\text{Interest rate margin} = \text{funding margin} + (30\% \times (\text{all-in margin} \text{ minus funding margin}))$$

The interest rate margin may only subsequently be amended if Vækstfonden (or EKF) has consented thereto.

**Calculation of Guarantee Premium:** The Pricing Overview provides an example of how the guarantee premium pursuant to the Large Guarantee Scheme is to be calculated as set out below (and based on the following assumptions):

- A Lender applies for a state guarantee from Vækstfonden (or EKF), which is set to cover a new loan of DKK 100,000,000 with a term of 6 years.
- Based on the Lender's rating, Vækstfonden (or EKF) places the borrowing company in Risk Category No. 4 with a minimum premium rate of 3.25%.

- The Lender's all-in margin amounts to 3.75%.

The scenario outlined above results in the following distribution:

- The funding margin amounts to 0.25%, given that the loan is denominated in DKK and has a term of 6 years.
- The guarantee premium rate to Vækstfonden (or EKF) amounts to 3.50% (calculated as  $3.75\% - 0.25\%$ ).
- The interest rate margin to the Lender amounts to 1.30% (calculated as  $0.25\% + (30\% \times (3.75\% - 0.25\%))$ ).

This results in the following distribution of the all-in-margin of 3.75%:

- Vækstfonden (or EKF) (calculated as  $3.50\% \times 70\%$ ): 2.45%
- Interest rate margin to the Lender: 1.30%

## 5 APPLICATION PROCESS

Vækstfonden has published different application forms on its website to be used depending on (i) whether the state guarantee is issued pursuant to the Large Guarantee Scheme or the SME Guarantee Scheme and (ii) whether the application is to be submitted on behalf of a single Lender or multiple Lenders (including the facility agent/representative of such multiple Lenders). The application forms (in Danish only) for large companies can be found [here](#) and for SMEs [here](#) together with other relevant information with respect to the Guarantee Schemes, including the form of the state guarantee policies setting out, in further detail, the relevant terms and conditions applicable to state guarantees issued pursuant to each Guarantee Scheme. Please note that the application forms and the state guarantee policies have been updated by Vækstfonden on a regular basis and may be subject to further updates.

The state guarantee application must be submitted to Vækstfonden by the Lender no later than 15 October 2020. Vækstfonden will decide whether a state guarantee can be provided under the relevant Guarantee Scheme based on the credit assessment of the company performed by the Lender, other information to be provided by the Lender for purposes of the application and any other relevant information

available to Vækstfonden. Given the purpose of the Guarantee Schemes, applications are generally expected to be processed quickly by Vækstfonden.

Vækstfonden may decide to void a state guarantee if a Lender provides untrue or misleading information or fails to comply with its obligations pursuant to the Executive Orders. It is further a criminal offence if anyone provides untrue or misleading information or conceals information relevant to an application for a state guarantee and Vækstfonden's decision about granting a state guarantee.

## 6 PRACTICAL CONSIDERATIONS

The practical application of the Guarantee Schemes may raise a number of questions, depending on the particular facts of the individual case. In this regard, Vækstfonden has published (in Danish only) certain frequently asked questions, which can be found [here](#) (for SMEs) and [here](#) (for large companies).

Below, we have highlighted a few examples of some of the issues that may potentially arise:

- **What is the practical scope of the prohibition against utilising the proceeds of a state guaranteed loan or credit facility towards repayment of existing debt owed to the Lender?** Among others, questions may arise as to whether the prohibition extends to (i) debt owed to affiliates of the Lender, (ii) debt owed by affiliates of the borrowing company, (iii) cancellation of unfunded commitments by the Lender, (iv) payments of interest and fees in respect of existing debt as opposed to principal, etc.
- **What happens to the state guarantee if the expected revenue loss does not (fully) materialise?** In their original form, the Guarantee Schemes provided for an extraordinary reduction of the guaranteed amount of the loan or credit facility in case the company did not realise the expected revenue loss for the Reference Period. However, the Guarantee Schemes have now been amended so that the guaranteed amount will not be written down even if the actual loss of revenue for the Ref-



erence Period turns out to be lower than that expected at the time of applying for the state guarantee. Furthermore, the state guarantee will not become invalid even if the actual loss of revenue for the Reference Period turns out to be below the 30% threshold.

- **How do the Guarantee Schemes apply to companies being part of a group?** Among others, questions may arise as to whether the company can fall within the SME definition and/or whether the realised and expected revenue loss should be calculated on a consolidated or non-consolidated basis.
- **How do the Guarantee Schemes apply to secured debt? How will a new loan or credit facility with state guarantee fit within the capital structure of companies that have multiple layers of secured and/or unsecured existing debt?** While the form of state guarantee policies provide some "rules" for sharing of security as between the Lender as beneficiary and Vækstfonden as guarantor, the Guarantee Schemes do not regulate the relationship vis-à-vis other creditors of the company nor can Vækstfonden be expected to sign up to any existing or new intercreditor arrangements. Careful analysis will be required on a case-by-case basis to ensure that a new loan or credit facility with state guarantee fits within the company's existing capital structure, including that any requisite waivers or consents are received from existing creditors to avoid a potential breach of the terms of the company's existing financing.
- **Once issued, can the term of the state guarantee be shortened or extended? How will prepayments and/or cancellations of the loan or credit facility affect the guarantee amount covered by the state guarantee?** Recent updates to the form of state guarantee policy have clarified that the state guarantee may be cancelled, in whole or in part, by the Lender at any time so as to avoid payment of future instalments of the guarantee premium. In case of a partial cancellation, it is, however, a condition that the cancellation is with respect to minimum 25% of the guaranteed amount after the time when the cancellation is to take effect. Any subsequent extension of the term of the

state guarantee will be subject to dialogue with - and express consent from - Vækstfonden. If granted, any such extension may have implications for the fees payable if the term of the state guarantee is extended from less than four years to four years or more (please see section 4 above).

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