

BANKING BRIEFING: Special Edition - Vol.4

Latest Developments in Banking Sector: Urgent Measures Relating to the Covid-19 Pandemic

This Briefing provides an overview of Covid-19 pandemic emergency measures relating to the Banking Sector

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A. State Aid Scheme of the Hellenic Republic in the Form of Guarantees for Loans

Following the approval by the European Commission of a Greek aid scheme in the form of partial guarantees granted by the Hellenic Development Bank (HDB) for eligible working capital loans (State Guarantee), on 11 May 2020, the HDB issued an invitation to credit institutions for the submission of expression of interest by 26 May 2020 in order for them to participate in the above scheme.

The newly established 'Covid-19 Guarantee Fund' of the HDB will be responsible for the implementation of the scheme which will also be co-financed by the EU structural funds (ESIF), thus increasing the total budget to €2.25bn instead of the initially approved amount of €2bn. Annex II of the HDB's invitation sets out further details of the State Guarantee scheme. In particular:

1. Beneficiary undertakings

All business undertakings lawfully operating in Greece, regardless of their legal form, as well as self-employed individuals, may benefit from the State Guarantee, provided that:

- a. they were not in difficulty, within the meaning of Regulation (EU) 651/2014, on 31 December 2019;
- b. they meet the credit requirements pursuant to the existing credit policy and the internal procedures of the eligible credit institutions;
- c. any loans owed by them were performing on 31 December 2019 or will be performing at the time of submission of the application for the granting of the State Guarantee (meaning not more than 90 days past due);
- d. there are no grounds for exclusion from programs or aid schemes funded by European or national resources due to labor law violations;
- e. there is no pending order against them concerning the recovery of a prior state aid declared illegal and incompatible by virtue of a judgment of the European Court of Justice or the European General Court; and
- f. in case they have entered into other financial schemes introduced by the HDB, whether such

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programs are currently effective or not, they have not at any time been in default.

Offshore companies, holding companies, undertakings of the financial sector as well as public or local authorities and their subsidiaries are not eligible to apply for the Subsidy.

2. Eligible loans

The State Guarantee covers term loans (including bond loans) which meet the following eligibility criteria:

- a. their purpose is the granting of working capital to the eligible undertakings;
- b. the loan agreements will be entered into and the loan will be drawn not earlier than the date of the agreement between the lending credit institution and the HDB and not later than 31 December 2020;
- c. the term of the loan (including any grace period) does not exceed 5 years; and
- d. they constitute a new financing.

The initial amount of the principal of each eligible loan must not exceed certain limits, set out in the Annex II of the invitation. Refinancing, repayment of existing loans and credit lines, financing of the distribution of dividends or the purchase of shares, as well as financing of mergers and acquisitions cannot be covered by the State Guarantee.

3. Eligible Costs

The State Guarantee covers:

- a. the outstanding principal, interest and the levy of Law 128/1975 under each eligible loan, corresponding to a period of up to 90 days past due (default interest, capitalised interest and any other costs are excluded); and
- b. the amount due which results from the reduction of principal and/or interest following a debt restructuring.

4. Amount of the State Guarantee for each eligible loan

The State Guarantee covers 80% of the eligible costs under each eligible loan.

5. Interest rate

The interest rate may be fixed or floating, is determined by the lending credit institution, is charged with the levy of Law 128/1975 and is paid by the debtor.

6. State Guarantee fee

An upfront State Guarantee fee must be paid by each eligible borrower, based on the amount of the State Guarantee corresponding thereto. Such fee is subsidised through the Covid-19 Guarantee Fund on the basis of the mechanism provided for in the Annex II of the invitation.

7. Security Interests

Additional security interests may be granted over the eligible loans in favour of the lending credit institutions.

8. Validity period and payment of the State Guarantee

The State Guarantee comes into effect on the date of the first disbursement of the loan amount, whereupon the State Guarantee fee is paid into an account held by the HDB, and continues to secure the eligible loans throughout the term and until full repayment, but not beyond 5 years.

The State Guarantee will cease to be in effect on the earlier of 30 December 2025, or utilisation of the most part of the guaranteed amount, provided that the HDB has no further obligations under the State Guarantee scheme.

Credit institutions may demand the payment of the State Guarantee only upon the occurrence of an event of default.

Any demand for payment of the State Guarantee may be submitted until 31 December 2026, provided that an event of default will have occurred until 31 December 2025.

9. Transfer of rights

Each eligible credit institution is not permitted to transfer any of its rights and obligations arising under the State Guarantee scheme, without the prior consent of the HDB. The above restriction does not apply in respect of a transfer made in the context of a securitisation of receivables under Law

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3156/2003, a sale and transfer of receivables under Law 4354/2015, the Hercules Asset Protection Scheme under Law 4649/2019 and any other similar legislation, the liquidity supply by the ECB or the Bank of Greece, or in the context of business transformations resulting in the transfer of rights within the group of companies to which the eligible credit institution belongs.

B. Aid Scheme of the Hellenic Republic in the Form of a Subsidy on the Interest of Loans of SMEs Affected by the Covid-19 Urgent Measures

Ministerial Decision 37674/10.4.2020 (Official Government Gazette 1291/B), as amended and in force, introduced a financial scheme providing for the granting of a state subsidy (the Subsidy) on the interest of loans owed by SMEs directly affected by the urgent measures taken by the Greek Government due to the Covid-19 pandemic. The scheme is funded by the co-financed part of the Public Investment Program of the Ministry of Development and Investments and the participation therein is obligatory for all credit institutions operating in Greece.

Details regarding the implementation of the scheme are set out in the 'Invitation for the Subsidy on the interest of loans owed by SMEs directly affected by the measures taken to affiliate the impact of the Covid-19 pandemic' (Invitation), which is set out in an annex to the Ministerial Decision. In particular:

1. Beneficiaries of the Subsidy

All SMEs lawfully operating in Greece may benefit from the Subsidy, regardless of their legal form, provided that:

- a. on 19 March 2020, they operated in the eligible business sectors set out in the Invitation;
- b. they are included in the definition of SMEs under Annex I of Regulation (EU) 651/2014;
- c. there are no grounds for exclusion from programs or aid schemes funded by European or national resources due to labor law violations;
- d. they were not in difficulty, within the meaning of the Annex IV of the Invitation, on 31 December 2019;

- e. in respect of SMEs active in the processing and marketing of agricultural products, the Subsidy must not partly or entirely be passed on to primary producers and must not be fixed on the basis of the price or quantity of products purchased from primary producers or put on the market by the undertakings concerned;
- f. there is no pending order against them concerning the recovery of a prior state aid declared illegal and incompatible by virtue of a decision of the European Commission or a judgment of the European Court of Justice;
- g. they commit to employ on 31 December 2020 at least the same number of employees as those employed on 19 March 2020. The suspension of employment contracts due to the Covid-19 urgent measures does not prevent SMEs from applying for the Subsidy; and
- h. the aggregate net amount of public funding granted to each SME does not exceed €800,000 (taking into account any other form of aid granted by virtue of the C(2020) 1863 Communication of the European Commission dated 19 March 2020, such as direct subsidies, tax benefits, payment benefits, repayable advances, guarantees, loans, equity capital).

Eligible SMEs may benefit from the Subsidy in addition to any suspension of the payment of principal of their loans granted for the same period. Financial institutions and offshore companies are not eligible to apply for the Subsidy.

2. Eligible sectors of business

The eligible sectors of business are set out in the Invitation. SMEs operating in the primary production of agricultural products and in the sectors of fishery and aquaculture are not eligible for the Subsidy.

3. Eligible costs

The Subsidy covers the contractual interest and the levy of Law 128/1975 under business term loans, bond loans and current account credit facilities owed by the eligible SMEs, including interest accruing on:

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- a. securitised receivables under loan and credit facilities (Law 3156/2003), serviced by a credit institution participating in the Business Plan 'Entrepreneurship, Competitiveness, Innovation' (the EPANEK);
- b. sold and transferred receivables under loan and credit facilities (Law 4354/2015), serviced by a servicing company, which has instructed in writing a credit institution participating in EPANEK to proceed with all required action for the granting of the Subsidy; and
- c. loans serviced by a special liquidator appointed by the Bank of Greece in respect of credit institutions placed into special liquidation pursuant to the provisions of Law 4261/2014, where the special liquidator has instructed in writing a credit institution participating in EPANEK to proceed with all required action for the granting of the Subsidy.

The above loan and credit facilities must be performing as of 31 December 2019 or 29 February 2020 (no more than 90 days past due).

The Subsidy does not cover default interest or other expenses and does not apply to syndicated loans.

The loan or credit facility agreements must have been concluded and the financing (in full or in part) thereunder must have been granted to the eligible SMEs by 1 April 2020.

Specifically for credit facilities under current account credit facility agreements, the Subsidy covers the interest accruing on the current account on each periodical closing of the account, as well as interest accruing in respect of a specific advance made under the current account credit facility agreement.

4. Procedure for the submission of an application for the Subsidy

Applications, along with required supporting documents, can be submitted electronically through the State Aid Information System (SAIS), a platform made available at www.ependyseis.gr until 30 June 2020 at 17.00. Each borrower must

submit a single application for all eligible loans granted by each credit institution.

Any payments made by the beneficiaries after 1 April 2020 for instalments payable within April 2020 and prior to the approval of the application are also covered by the Ministerial Decision. In such case, the payment of the Subsidy is considered to cover the above time period and the amounts already paid by the beneficiary are set off against its obligations to the financial institution, on the responsibility of the latter.

5. Procedure for the assessment and approval of the applications

The assessment of submitted applications is carried out by the credit institutions by order of their submission to SAIS.

Based on the data made available through SAIS, the financial institutions must:

- a. confirm that the requirements of Section 1 above are met and notify SAIS; and
- b. proceed with the payment of the Subsidy to the beneficiaries on a monthly basis based on the provisions of the respective loan or credit agreement, and notify SAIS on the amount of the Subsidy so paid. In case that the loan or credit agreement provides for payment periods exceeding one month, payments are made proportionately.

For those SMEs that do not meet the requirements of Section 1 above, a rejection decision is issued and notified to the applicants electronically. For those applicants that have not received a rejection decision, it is presumed that an approval decision has been issued.

With respect to positively assessed beneficiaries, SAIS is notified of the total amount of the corresponding Subsidy.

Upon completion of the assessment procedure for all applications submitted by the same beneficiary, a check is conducted by SAIS that the total amount of the Subsidy does not exceed €800,000 per beneficiary. If there is an excess, the amount of Subsidy corresponding to the latest approved loan or credit agreement is refunded, together with

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interest at the rate applicable under that loan or credit agreement.

6. Objections Procedure

Applicants whose application is rejected may apply through SAIS for re-examination, within five business days after notification of the rejection decision. The application is handled by the Objections Committee through SAIS and a decision must be issued within 15 business days and must be notified to the parties concerned.

7. Payment of the Subsidy

The Subsidy is paid to beneficiaries in three instalments. The amount of each instalment is transferred into a special deposit account opened by the credit institutions and maintained in favour of the Greek State. In particular:

- a. Payment of the first instalment: The first instalment of the Subsidy is paid upon request of each credit institution and corresponds to 40% of all eligible costs which will be covered by the Subsidy and relate to the loans granted by each credit institution to the eligible SMEs. For each eligible loan or credit agreement, each credit institution transfers from the special purpose deposit account to the accounts through which payments for such loan or credit agreement are made, the amounts corresponding to the contractual interest and the levy of Law 128/1975 for the relevant interest period.
- b. Payment of the second instalment: A request for payment of the second instalment is submitted by each credit institution, provided that the total amount of the paid first instalment of the Subsidy that remains in the special purpose deposit account is lower than 20% of the amount paid with that instalment. The procedure described in paragraph a above for the payment of the first instalment of the Subsidy to the beneficiaries is also followed for the second instalment.
- c. Full payment of the Subsidy: A request for payment of the third instalment is submitted by each credit institution, provided that the

available aggregate amount of Subsidy already transferred and remaining deposited in the special purpose deposit account is lower than 20% of the Subsidy paid with the second instalment. The procedure described in paragraph a above for the payment of the first instalment of the Subsidy to the beneficiaries is also followed for the third instalment.

Upon completion of the above procedure, the Subsidy program is closed. Any amount standing to the credit of the special purpose deposit account is treated as funds belonging to the public investments program of the Hellenic Republic and must be paid to the relevant accounts maintained with the Bank of Greece.

8. Obligations of the recipients of the Subsidy

The beneficiaries of the Subsidy have the following ongoing obligations:

- a. to employ on 31 December 2020 a number of employees at least equal to the employees they employed on 19 March 2020; in case of non-compliance, the Subsidy must be refunded in full, unless compliance is achieved by 31 January 2021;
- b. to submit to the relevant credit institution until 31 August 2020 a certificate of the Court of First Instance that no application for bankruptcy (or filing of cessation of payments) was pending on 31 December 2019; if the certificate is not submitted, the Subsidy must be refunded in full, together with interest;
- c. to comply with the terms and conditions of the Invitation;
- d. not to receive state aid from any other Greek or European Program for the implementation of the same scheme or any part thereof;
- e. to comply with the SAIS procedure and to ensure the accuracy, quality and completeness of the submitted supporting documents;
- f. to take all information measures provided for under Annex XII of Regulation 1303/2013 and to accept to be included in the list of actions published by the relevant competent authority in www.ependyseis.gr and www.espa.gr

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pursuant to the provisions of Article 115 and Annex XII of Regulation 1303/2013;

- g. to accept the publication of information concerning the state aid granted, pursuant to Annex VIII of the State Aid Decision;
- h. to submit to the competent authority, for the purposes of monitoring of the above (under items a and b above) long term obligations, all the relevant supporting documents requested; in case of non-submission the recipient must repay in full the received Subsidy;
- i. to publicly announce the received state aid;
- j. to provide any data and information requested by the competent authorities in order to facilitate the evaluation of the program;
- k. to keep all the relevant supporting documents and invoices for the relevant costs in a special physical and electronic file for at least ten years following the date of payment of the last instalment of the state aid, and to provide such documents to the competent State and EU authorities upon request; and
- l. to repay in full all the amounts of Subsidy wrongly paid, together with interest pursuant to the Joint Ministerial Decision 126829/EYΘY/1217(1) (Official Government Gazette 284/B), unless otherwise stipulated in the Invitation.

Monitoring of compliance by the beneficiaries of the Subsidy with their obligations is performed by the competent authorities. The beneficiary must submit all documentation required for such monitoring.

9. Refund

Any Subsidy paid in error or in breach of the law must be refunded by the recipient, in accordance with the Joint Ministerial Decision 126829/EYΘY/1217(1) (Official Government Gazette 284/B).

C. Greek Provisional State Aid Measure in the Form of Repayable Advances

Joint Ministerial Decision ΓΔΟΥ 94, dated 3 May 2020 (Official Government Gazette 1645/B), sets out the details with respect to the implementation

of the State Aid scheme in the form of repayable advances (State Aid).

1. Beneficiaries of the State Aid

The business undertakings which are eligible for the State Aid are:

- a. private entities of any legal form and regardless of their sector of business, including sole proprietors, which as of 31 March 2020 were employing from one to 500 employees; and
- b. private entities in the form of general partnerships, limited partnerships, limited liability companies and private capital companies, regardless of their sector of business, which as of 31 March 2020 were not employing any employees provided that:
 - i. they have their registered seat or permanent establishment in Greece, they have been financially affected by Covid-19 and they expressed their interest in receiving State Aid in the 'myBusinessSupport' platform established by Joint Ministerial Decision 1076/2.4.2020 (Official Government Gazette 1135/B) until 19 May;
 - ii. they meet certain tax obligations defined in the Joint Ministerial Decision;
 - iii. they have not been inactive from 1 April 2019 until 2 April 2020, as evidenced by the data kept in the tax registry of the Independent Authority for Public Revenues (IAPR) or by the submission of zero VAT returns throughout this period;
 - iv. they had a positive turnover from 1 January 2019 until 31 March 2020;
 - v. their operations have been suspended or temporarily prohibited due to the Covid-19 urgent measures taken by the Hellenic Republic;
 - vi. there are no grounds for exclusion from programs or aid schemes funded by European or national resources for the reasons provided due to labor law violations;

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- vii. for those entities seeking aid in accordance with the State Aid Temporary Framework adopted by the European Commission, they were not in difficulty, within the meaning of Regulation (EU) 651/2014, on 31 December 2019 and do not have prior aid at their disposal which has been declared incompatible by virtue of a decision by the European Commission; and
- viii. entities seeking aid in accordance with the de minimis aid Regulation (EU) 1407/2013, do not operate in the primary production of agricultural products or in the sectors of fishery and aquaculture.

2. Total amount of the State Aid for each beneficiary

The amount of the State Aid granted to each beneficiary is determined by data regarding the turnover of the entity, the difference between its outflows and inflows and the number of employees whose employment contracts were temporarily suspended.

3. Procedure for the granting of the State Aid

The applicant business is notified for the acceptance or the rejection of its application electronically by the IAPR. The applicant business may request a re-assessment of its application from the General Directorate of Financial Services of the Ministry of Finance at the platform 'myBusinessSupport' within 5 business days from the above notification.

The amount of the State Aid is payable as a lump sum to the IBAN account of the beneficiary business.

4. Procedure and prerequisites for the refund of the State Aid

The amount of State Aid is interest-bearing at the reference interest rate defined in the Joint Ministerial Decision.

A grace period until 31 December 2021 applies for payment of principal and interest. After such grace period, State Aid received must be repaid in 40

equal monthly instalments, together with interest, on the last day of each month.

In case that the due amounts are not repaid in time, the general provisions of the Code of Collection of Public Revenues shall apply.

Subject to certain criteria (reduced turnover or preservation of employment posts), the recipients may be permitted to repay only part of the State Aid (70% or 60% as applicable).

5. Obligations of the recipients – Sanctions

The recipient undertakings have the following obligations:

- a. they must maintain on 31 October 2020 the same number of employees as those employed on 31 March 2020;
- b. the undertakings subsidised under the State Aid Temporary Framework, must provide by 30 November 2020 the supporting documents required under the Joint Ministerial Decision, following the guidelines provided by the competent authority;
- c. the undertakings operating in the processing and marketing of agricultural products must not pass the State Aid (in full or in part) on to primary producers;
- d. in case of non-compliance with the prerequisites for the granting of the State Aid, any excess of the maximum aggregate amount of the State Aid or the submission of false data, the amount of the State Aid paid must be refunded by the recipient, together with interest from the date of payment of the State Aid;
- e. any supporting documents must be kept by the recipient at least for a period of 10 years following payment of the last instalment of the State Aid and must be provided to the competent Greek or European authorities upon request; and
- f. in case of co-financing, the recipients must publicly announce the received State Aid on their website and by placing the relevant information at a public spot of their premises.

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6. Transparency obligation

Upon receipt of the State Aid, recipient's consent for publication of information on the State Aid received at the EU application "Transparency Award Module" (TAM), is presumed.

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This Briefing is intended to provide general information and is not meant to constitute a comprehensive analysis of the matters set out herein or to be relied upon as legal advice. It is not meant to create a lawyer-client relationship. Legal and other professional advice should be sought before applying any of the information in this Briefing to a specific situation.

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