



Number 1 of 2016

CREDIT GUARANTEE (AMENDMENT) ACT 2016

REVISED

Updated to 8 December 2022

This Revised Act is an administrative consolidation of the *Credit Guarantee (Amendment) Act 2016*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including the *Air Navigation and Transport Act 2022* (40/2022), enacted 7 December 2022, and all statutory instruments up to and including the *Credit Guarantee (Amendment) Act 2022 (Commencement) Order 2022* (S.I. No. 642 of 2022), made 8 December 2022, were considered in the preparation of this Revised Act.

Disclaimer: While every care has been taken in the preparation of this Revised Act, the Law Reform Commission can assume no responsibility for and give no guarantees, undertakings or warranties concerning the accuracy, completeness or up to date nature of the information provided and does not accept any liability whatsoever arising from any errors or omissions. Please notify any errors, omissions and comments by email to revisedacts@lawreform.ie.



Number 1 of 2016

CREDIT GUARANTEE (AMENDMENT) ACT 2016

REVISED

Updated to 8 December 2022

CONTENTS

PART 1

PRELIMINARY AND GENERAL

Section

1. Short title, commencement and collective citation

2. Definitions

PART 2

AMENDMENT OF PRINCIPAL ACT

3. Amendment of section 1 of Principal Act

4. Participating finance provider

5. Power of Minister to give guarantees

6. Amendment of section 5 of Principal Act

7. Payment of premium to Minister by participating enterprise

8. Withdrawal of guarantee by Minister

9. Application of Part

PART 3

COUNTER GUARANTEES

10. Definitions

11. Power of Minister to give counter guarantees

12. Monetary limit on Minister's liability

13. Counter guarantee schemes

14. Payment of premium to Minister by participating PFI

15. Review of counter guarantee scheme

16. Expenses

PART 4

UNRELATED MISCELLANEOUS AMENDMENTS TO OTHER ENACTMENTS

17. Amendment of section 101 of Employment Equality Act 1998
 18. Amendment of section 34 of National Minimum Wage Act 2000
 19. Amendment of Workplace Relations Act 2015
 20. Amendment of section 916 of Companies Act 2014
-

ACTS REFERRED TO

Companies Act 2014 (No. 38)
Credit Guarantee Act 2012 (No. 26)
Employment Equality Act 1998 (No. 21)
Employment Permits Act 2006 (No. 16)
National Minimum Wage Act 2000 (No. 5)
Taxes Consolidation Act 1997 (No. 39)
Unfair Dismissals Act 1977 (No. 10)
Workplace Relations Act 2015 (No. 16)



Number 1 of 2016

CREDIT GUARANTEE (AMENDMENT) ACT 2016

REVISED

Updated to 8 December 2022

An Act to amend and extend the Credit Guarantee Act 2012; to enable the Minister for Jobs, Enterprise and Innovation, pursuant to a counter guarantee scheme made by that Minister of the Government, to give counter guarantees to promotional financial institutions for guarantees given by the institutions to finance providers in respect of finance agreements entered into by the finance providers with qualifying enterprises; to place a yearly monetary limit on the potential liability of that Minister of the Government in respect of all credit guarantee schemes and counter guarantee schemes taken together; to amend the Employment Equality Act 1998, the National Minimum Wage Act 2000, the Workplace Relations Act 2015 and the Companies Act 2014; and to provide for matters connected therewith.

[8 *th* February, 2016]

Be it enacted by the Oireachtas as follows:

PART 1

PRELIMINARY AND GENERAL

Short title, commencement and collective citation

1. (1) This Act may be cited as the Credit Guarantee (Amendment) Act 2016.
- (2) This Act (other than *Part 4*) shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.
- (3) *Parts 1* to *3* and the Credit Guarantee Act 2012 may be cited together as the Credit Guarantee Acts 2012 and 2016.

Annotations

Editorial Notes:

- E1** Power pursuant to subs. (2) exercised (1.10.2016) by *Credit Guarantee (Amendment) Act 2016 (Commencement) Order 2016* (S.I. No. 504 of 2016).

2. The 1st day of October 2016 is appointed as the day on which the Credit Guarantee (Amendment) Act 2016 (No. 1 of 2016), insofar as it is not already in operation, shall come into operation.

Definitions

2. In this Act—

“Minister” means the Minister for Jobs, Enterprise and Innovation;

“Principal Act” means the Credit Guarantee Act 2012.

PART 2

AMENDMENT OF PRINCIPAL ACT

Amendment of section 1 of Principal Act

3. Section 1 of the Principal Act is amended—

(a) by the insertion of the following definitions:

“ ‘asset credit facility agreement’ means an agreement (other than a loan agreement or a credit facility agreement) under which a participating finance provider agrees to provide to a qualifying enterprise credit in the form of tangible movable property upon—

(a) such date or dates as may be specified in the agreement, or

(b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to make payments to the participating finance provider on such date or dates, or the happening of such event as may be so specified, and ‘asset credit facility’ shall be construed accordingly;

‘cash price’ means, in relation to property provided pursuant to a qualifying finance agreement that is an asset credit facility agreement, the price that the participating enterprise would have been required to pay for the property if, at the time of the making of the agreement, that enterprise had elected to—

(a) purchase the property, and

(b) pay for the property in cash;

‘credit amount’ means—

(a) in the case of a qualifying finance agreement that is a loan agreement, the principal of moneys borrowed from the participating finance provider by a participating enterprise pursuant to the agreement,

(b) in the case of a qualifying finance agreement that is a credit facility agreement, the maximum amount (whether or not drawn down) of moneys agreed to be given or advanced by the participating finance provider to a participating enterprise, or to a third party nominated in that behalf by a participating enterprise, pursuant to the agreement,

(c) in the case of a qualifying finance agreement that is an asset credit facility agreement, the cash price (specified in the agreement) of the property provided by the participating finance provider to a participating enterprise pursuant to the agreement, and

(d) in the case of a qualifying finance agreement that is an invoice finance facility agreement, the maximum amount of moneys agreed to be given or advanced by the participating finance provider to a participating enterprise pursuant to the agreement, irrespective of whether that amount is given or advanced;

‘credit facility agreement’ means an agreement (other than a loan agreement) under which a participating finance provider agrees to give or advance to a qualifying enterprise, or to a third party nominated in that behalf by a qualifying enterprise, a sum or sums of money upon—

(a) such date or dates as may be specified in the agreement, or

(b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to repay to the participating finance provider the said sum or sums of money so given or advanced, and interest or charges (if any) thereon, on such date or dates as may be so specified, and ‘credit facility’ shall be construed accordingly;

‘finance agreement’ means—

(a) a loan agreement,

(b) a credit facility agreement,

(c) an asset credit facility agreement, or

(d) an invoice finance facility agreement;

‘finance provider’ means a person who, in the ordinary course of business—

(a) provides financial products to qualifying enterprises,

(b) arranges for the provision by other persons of financial products to qualifying enterprises, or

(c) provides facilities for the provision on credit of goods or services by the person to qualifying enterprises,

but does not include a person who is prohibited under the law of the State or any other state from engaging in any of the activities specified in the foregoing paragraphs, and references to the provision of a financial product shall be construed accordingly;

‘financial product’ means—

(a) a loan,

(b) a credit facility,

(c) an asset credit facility, or

(d) an invoice finance facility,

provided to a qualifying enterprise under a finance agreement;

‘invoice finance facility agreement’ means an agreement under which a participating finance provider agrees to give or advance to a qualifying enterprise a sum or sums of money in consideration of that qualifying enterprise assigning to the participating finance provider the right to recover debts owed to that qualifying enterprise, and ‘invoice finance facility’ shall be construed accordingly;

‘participating enterprise’ means a qualifying enterprise—

- (a) belonging to a class to which a credit guarantee scheme applies, and
- (b) who has entered into a qualifying finance agreement with a participating finance provider;

‘participating finance provider’ shall be construed in accordance with section 2;

‘qualifying finance agreement’ means a finance agreement—

- (a) in respect of which there has been compliance with the conditions specified in a credit guarantee scheme under subsection (4) of section 5,
- (b) belonging to a class of finance agreement to which a credit guarantee scheme applies,
- (c) that is made for a purpose that does not contravene a provision of a credit guarantee scheme to which paragraph (c) of that subsection applies, and
- (d) that does not permit a finance provider to exercise his or her powers under the finance agreement in such manner as would result in—
 - (i) the value of the financial product provided under the agreement exceeding the maximum value specified under that subsection,
 - (ii) the aggregate of the value of the financial products provided under a particular class of finance agreements with the qualifying enterprise concerned exceeding the maximum value so specified, or
 - (iii) the aggregate of the value of the financial products provided under all qualifying finance agreements with the qualifying enterprise concerned exceeding the maximum value specified under that subsection;”,

(b) in the definition of “loan agreement” —

- (i) by the substitution of “participating finance provider” for “participating lender” in each place where it occurs, and
- (ii) by the insertion of “, credit card facility or credit line facility” after “overdraft facility”,

and

(c) by the deletion of the definitions of—

- (i) “lender”,
- (ii) “EEA Agreement”,
- (iii) “EEA state”,
- (iv) “participating borrower”,

- (v) “participating lender”, and
- (vi) “qualifying loan agreement”.

Participating finance provider

4. The Principal Act is amended by the substitution of the following section for section 2:

“2. (1) For the purposes of this Act, a finance provider is a participating finance provider if—

- (a) the finance provider is a person in respect of whom a certificate under subsection (2) has effect, and
- (b) the finance provider stands approved for the time being by the Minister in accordance with this section.

(2) For the purposes of this section, the Minister may, on the provision by the person referred to in paragraph (a) or (b), as may be appropriate, of such information or documentation as the Minister considers necessary, certify in writing that he or she is satisfied—

- (a) that a person is a finance provider, or
- (b) that a person intends to carry on the business of—
 - (i) providing financial products to qualifying enterprises,
 - (ii) arranging for the provision by other persons of financial products to qualifying enterprises, or
 - (iii) providing facilities for the provision on credit of goods or services by the person first-mentioned in this paragraph to qualifying enterprises.

(3) The Minister may approve a finance provider under this section if—

- (a) the finance provider declares, in writing, that he or she agrees to comply with and be bound by the terms of a credit guarantee scheme, and
- (b) the Minister is satisfied that the finance provider has complied with the applicable conditions.

(4) The Minister may withdraw an approval under this section if a finance provider ceases to comply with the applicable conditions or contravenes any other provisions of a credit guarantee scheme.”.

Power of Minister to give guarantees

5. The Principal Act is amended by the substitution of the following section for section 4:

“4. (1) Subject to this section and *section 12* of the *Credit Guarantee (Amendment) Act 2016*, the Minister may, in accordance with a credit guarantee scheme, enter into an agreement with a participating finance provider guaranteeing the due repayment or payment, as the case may be, to that participating finance provider of such part of the credit amount under a qualifying finance agreement as is specified in the first-mentioned agreement.

- (2) Subject to subsection (3) and *section 12* of the *Credit Guarantee (Amendment) Act 2016*, the Minister shall not, pursuant to a guarantee under this section, be liable, in relation to any particular qualifying finance agreement, to pay an amount exceeding 80 per cent of the credit amount that—
- (a) the participating enterprise concerned stands liable, for the time being, to pay to the participating finance provider concerned, and
- (b) stands unpaid.
- (3) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in his or her being liable, in respect of qualifying finance agreements entered into by the same participating finance provider, to pay to that participating finance provider amounts the aggregate of which would exceed 13 per cent of the aggregate of the credit amounts under those qualifying finance agreements.
- (4) The Minister shall not exercise the powers conferred on him or her by this section in such manner as would result in the yearly credit amount to which guarantees under this section apply exceeding €150 million.
- (5) The Minister shall, in relation to a credit guarantee scheme, after consultation with the participating finance provider concerned, and by notice in writing given to the provider, specify the maximum value of financial products that may be provided by that provider pursuant to qualifying finance agreements—
- (a) entered into in any year, and
- (b) to which guarantees under this section apply.
- (6) The Minister may notify a participating finance provider in writing that an agreement entered into by the Minister with the participating finance provider under this section shall not apply in relation to one or more classes of qualifying finance agreements (in this section referred to as “new finance agreements”) entered into by the participating finance provider after such date as may be specified in the notice.
- (7) An agreement under this section shall not apply to new finance agreements.
- (8) In this section ‘yearly credit amount’ means, in relation to any particular year, the aggregate of all credit amounts in respect of all qualifying finance agreements made in that year.”.

Amendment of section 5 of Principal Act

6. Section 5 of the Principal Act is amended—

(a) in subsection (2) —

(i) by the substitution of the following paragraph for paragraph (a):

“(a) the giving of such information to the Minister, as he or she may reasonably require for the purposes of the granting of approval under section 2 or the making of an agreement under section 4;”,

(ii) by the substitution, in paragraph (b), of “participating finance provider” for “participating lender” in each place where it occurs,

- (iii) by the substitution, in paragraph (c), of “participating finance provider” for “participating lender”,
 - (iv) by the substitution of the following paragraph for paragraph (d):
 - “(d) without prejudice to the generality of section 8(4), the method of payment of the premium under section 8 and the time or times at which the premium shall be paid;”,
 - (v) by the substitution, in paragraph (e), of “participating finance providers” for “participating lenders”,
 - (vi) by the substitution, in paragraph (f), of “finance providers” for “lenders”, and
 - (vii) by the substitution, in paragraph (h), of “finance agreement” for “loan agreement”,
- (b) by the substitution of the following subsection for subsection (3):
- “(3) A scheme under this section shall specify conditions (in this Act referred to as ‘applicable conditions’), with which a finance provider shall, for the purposes of the granting of approval under section 2, comply, relating to—
 - (a) the policies and practices of the finance provider as respects—
 - (i) the provision of financial products generally,
 - (ii) the provision of financial products to qualifying enterprises,
 - (iii) the assessment of the credit risk or financial stability of qualifying enterprises,
 - (iv) the recovery of sums owing to the finance provider by a qualifying enterprise or property provided to a qualifying enterprise by the finance provider under a qualifying finance agreement, and
 - (v) the provision by qualifying enterprises of security for financial products provided to qualifying enterprises under qualifying finance agreements,
 - (b) the sources from which the finance provider obtains his or her finance or funding,
 - (c) the credit history of the finance provider and, in the case of certain classes of finance provider as may be specified in the scheme, a person who has, subject to subsection (6), a controlling interest in the finance provider,
 - (d) the accounts and financial performance of the finance provider,
 - (e) in the case of a finance provider referred to in paragraph (b) of the definition of ‘finance provider’, the payment by the finance provider of any moneys that may be received by that provider from the Minister pursuant to a guarantee under section 4 in respect of a qualifying finance agreement, to the person who provided the financial product to which that agreement relates,
 - (f) the administration and management of the finance provider,
 - (g) the financial product or financial products to which the scheme applies, including—

- (i) the information and documentation to be provided by the finance provider to the Minister in relation to the provision of such financial products,
- (ii) the information and documentation to be provided by the finance provider to qualifying enterprises in relation to the provision of such financial products, and
- (iii) the interest, charges and other costs (if any) that may be applied in relation to the provision of such financial products to qualifying enterprises,
- (h) the procedures in relation to the supervision of finance agreements entered into on the finance provider's behalf by members of staff of the finance provider, and
- (i) where applicable, the capital reserves of the finance provider, declared in a credit guarantee scheme to be conditions with which a finance provider shall comply before an approval in respect of that finance provider may be given under section 2.”,

(c) by the substitution of the following subsection for subsection (4):

“(4) A scheme under this section shall specify—

(a) the class or classes of—

- (i) qualifying enterprise,
- (ii) finance provider,
- (iii) financial product, and
- (iv) finance agreement,

to which the scheme shall apply,

- (b) the conditions that shall be complied with in relation to the entering into of a finance agreement by a participating finance provider with a qualifying enterprise,
- (c) the purposes for which moneys or other property received by qualifying enterprises pursuant to a finance agreement may be applied,
- (d) the maximum value or values of one or more financial products that may be provided to a qualifying enterprise under one or more finance agreements to which the scheme applies, and
- (e) the methodology referred to in section 8(1).”,

and

(d) by the insertion of the following subsections after subsection (4):

“(5) (a) The Minister may require that any information referred to in subsection (2)(a) given to him or her by a person in compliance with a scheme under this section be attested as to the truth of the information by a statutory declaration made by that person.

(b) The Minister may require that any document, information or report referred to in subsection (2)(f) given to him or her by a finance provider in compliance with a scheme under this section

be attested as to the truth of the contents of the document or report or, as the case may be, as to the truth of the information, by a statutory declaration made by that finance provider.

- (6) For the purposes of this section, controlling interest shall be construed in accordance with subsection (14) of section 494 of the Taxes Consolidation Act 1997 and, accordingly, that subsection shall apply in relation to a finance provider subject to any necessary modifications.”.

Payment of premium to Minister by participating enterprise

7. The Principal Act is amended by the substitution of the following section for section 8:

“8. (1) Subject to this section, a participating enterprise shall, in accordance with a credit guarantee scheme that applies to the enterprise and a qualifying finance agreement entered into by the enterprise with a participating finance provider, pay to the Minister an amount (in this section referred to as the ‘premium’) determined by the Minister in accordance with the methodology specified in the scheme for the purposes of making that determination.

- (2) The Minister shall, in specifying, in a credit guarantee scheme, the methodology referred to in subsection (1), have regard to—

- (a) the expenses referred to in section 11 incurred or likely to be incurred, or both, in relation to the scheme, and
- (b) the objectives of the scheme.

- (3) The Minister shall, in specifying, in a credit guarantee scheme, the methodology referred to in subsection (1) in so far as the expenses referred to in section 11 are concerned, have regard to—

- (a) the size and quality of the participating enterprises to which the scheme applies,
- (b) the risks associated with those participating enterprises,
- (c) the typical risks associated with the business sector or sectors to which those participating enterprises belong,
- (d) the duration of guarantees given under the scheme,
- (e) the Minister’s liability under section 4(2) in relation to a qualifying finance agreement to which the scheme applies, and
- (f) the nature of qualifying finance agreements to which the scheme applies.

- (4) The premium may be charged annually, may be paid by one payment or by instalments, and may be paid at such time or times, as may be specified in the credit guarantee scheme.

- (5) The Minister shall apply the premium received by him or her from a participating enterprise for the purpose only of defraying the costs of the credit guarantee scheme which applies to the enterprise.”.

Withdrawal of guarantee by Minister

8. The Principal Act is amended by the substitution of the following section for section 9:

“9. (1) Where a participating finance provider fails or refuses to comply with the terms of a credit guarantee scheme, the Minister may withdraw any guarantee given by him or her in respect of any qualifying finance agreement to which that participating finance provider is a party.

(2) Any term of a finance agreement that permits a participating finance provider to—

(a) alter a term or condition of such agreement upon the withdrawal of a guarantee in accordance with subsection (1), or

(b) impose less favourable terms and conditions on the participating enterprise upon the withdrawal of a guarantee in accordance with subsection (1),

shall be null and void.”.

Application of Part

9. The amendments to the Principal Act effected by this Part shall not apply in respect of—

(a) the Credit Guarantee Scheme 2012 (S.I. No. 360 of 2012),

(b) the Credit Guarantee Scheme 2015 (S.I. No. 48 of 2015),

(c) any guarantees provided under either of those Schemes, or

(d) any loan agreements to which either of those Schemes apply.

PART 3**COUNTER GUARANTEES****Definitions**

10. In this Part—

“asset credit facility agreement” means an agreement (other than a loan agreement or a credit facility agreement) under which a finance provider agrees to provide to a qualifying enterprise credit in the form of tangible movable property upon—

(a) such date or dates as may be specified in the agreement, or

(b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to make payments to the finance provider on such date or dates, or the happening of such event as may be so specified, and “asset credit facility” shall be construed accordingly;

“counter guarantee agreement” has the meaning assigned to it in [section 11\(1\)](#);

“counter guarantee scheme” means a scheme under *section 13* ;

“credit facility agreement” means an agreement (other than a loan agreement) under which a finance provider agrees to give or advance to a qualifying enterprise, or to a third party nominated in that behalf by a qualifying enterprise, a sum or sums of money upon—

(a) such date or dates as may be specified in the agreement, or

(b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to repay to the finance provider the said sum or sums of money so given or advanced, and interest or charges (if any) thereon, on such date or dates as may be so specified, and “credit facility” shall be construed accordingly;

“credit guarantee scheme” means a scheme under section 5 of the Principal Act;

“finance agreement” means—

(a) a loan agreement,

(b) a credit facility agreement,

(c) an asset credit facility agreement, or

(d) an invoice finance facility agreement;

“finance provider” means a person who, in the ordinary course of business—

(a) provides financial products to qualifying enterprises,

(b) arranges for the provision by other persons of financial products to qualifying enterprises, or

(c) provides facilities for the provision on credit of goods or services by the person to qualifying enterprises,

but does not include a person who is prohibited under the law of the State or any other state from engaging in any of the activities specified in the foregoing paragraphs, and references to the provision of a financial product shall be construed accordingly;

“financial product” means—

(a) a loan,

(b) a credit facility,

(c) an asset credit facility, or

(d) an invoice finance facility,

provided to a qualifying enterprise under a finance agreement;

“invoice finance facility agreement” means an agreement under which a finance provider agrees to give or advance to a qualifying enterprise a sum or sums of money in consideration of that qualifying enterprise assigning to the finance provider the right to recover debts owed to that qualifying enterprise, and “invoice finance facility” shall be construed accordingly;

“loan agreement” means an agreement under which a finance provider agrees to give or advance to a qualifying enterprise a sum or sums of money upon—

(a) such date or dates as may be specified in the agreement, or

(b) the happening of such event as may be so specified,

in consideration of that qualifying enterprise agreeing to repay to the finance provider the principal of any sum or sums so given or advanced, and interest (if any) thereon, on such date or dates as may be so specified, but does not include an agreement to provide a facility (commonly known as an overdraft facility, credit card facility or credit line facility) to a qualifying enterprise, and “loan” shall be construed accordingly;

“participating PFI” means a promotional financial institution that has entered into a counter guarantee agreement and—

(a) in relation to a counter guarantee agreement, means the promotional financial institution that has entered into that agreement, and

(b) in relation to a counter guarantee scheme, means the promotional financial institution that has entered into the counter guarantee agreement to which that scheme is scheduled;

“PFI guarantee scheme” means a scheme—

(a) that is made and operated by a promotional financial institution,

(b) that applies only to finance agreements entered into between finance providers and qualifying enterprises, and

(c) in accordance with which the institution referred to in *paragraph (a)* may give guarantees in respect of agreements referred to in *paragraph (b)*;

“promotional financial institution” means—

(a) the Strategic Banking Corporation of Ireland, or

(b) a national promotional bank or institution within the meaning of Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 - the European Fund for Strategic Investments¹;

“qualifying enterprise” shall be construed in accordance with section 3 of the Principal Act (and, accordingly, the reference in that section to “Act” includes this Part);

“qualifying finance agreement” has the meaning assigned to it by section 1 of the Principal Act;

“qualifying PFI guarantee agreement”, in relation to a qualifying PFI guarantee scheme, means a guarantee agreement entered into by a participating PFI in accordance with that scheme;

“qualifying PFI guarantee scheme” means a PFI guarantee scheme—

¹OJ No. L169, 1.7.2015, p.1

- (a) in respect of which there has been compliance with the conditions specified in a counter guarantee scheme under *subsection (4)(c)* of *section 13* ,
- (b) belonging to a class of PFI guarantee scheme to which a counter guarantee scheme applies,
- (c) that is made for the purpose of promoting the provision of credit or additional credit to qualifying enterprises, and
- (d) that does not permit the promotional financial institution operating the PFI guarantee scheme to provide guarantees as would result in the maximum value referred to in *subsection (4)(d)* of *section 13* , specified in the counter guarantee scheme referred to in *paragraph (b)*, being exceeded.

Power of Minister to give counter guarantees

11. (1) Subject to this section and *section 12* , the Minister may, in accordance with a counter guarantee scheme, enter into an agreement (in this Part referred to as a “counter guarantee agreement”) with a promotional financial institution guaranteeing the due repayment to that institution of such part, as is specified in the counter guarantee agreement, of moneys (excluding any interest and other charges) paid by that institution to finance providers pursuant to qualifying PFI guarantee agreements.
- (2) A counter guarantee agreement shall—
- (a) have scheduled to it the counter guarantee scheme to which it relates, and
 - (b) include a declaration, by the promotional financial institution entering into the agreement, that it agrees to be bound by the terms of the scheme referred to in *paragraph (a)* and the other terms (if any) of that agreement.
- (3) The Minister shall not, pursuant to a counter guarantee agreement, be liable, in relation to any particular qualifying PFI guarantee agreement, to pay to the participating PFI an amount exceeding the Minister’s maximum liability, referred to in *subsection (4)(e)* of *section 13* and as specified in the counter guarantee scheme scheduled to that counter guarantee agreement, in respect of moneys—
- (a) for the time being standing unpaid to the finance provider under any finance agreement, and
 - (b) that the participating PFI has paid to the finance provider, pursuant to that qualifying PFI guarantee agreement, in respect of those moneys standing so unpaid.
- (4) For the purposes of this Part, the Strategic Banking Corporation of Ireland, in its capacity as a promotional financial institution, has the power to give guarantees to finance providers in respect of finance agreements.
- (5) (a) The Minister may, in respect of a counter guarantee agreement, notify the participating PFI in writing that that agreement shall not apply in relation to qualifying PFI guarantee agreements (in this section referred to as “new qualifying guarantee agreements”) entered into by the participating PFI after such date as may be specified in the notice.
- (b) A counter guarantee agreement the subject of a notice under *paragraph (a)* shall not apply to new qualifying PFI guarantee agreements.

Monetary limit on Minister's liability

12. F1[(1)] F2[Subject to *subsection (2)*, the Minister shall not] exercise the powers conferred on him or her by section 4 of the Principal Act or *section 11* in such manner as would result in the aggregate of the Minister's liability in respect of—

- (a) all qualifying finance agreements, to which guarantees under a credit guarantee scheme apply, entered into in any year, and
- (b) all qualifying PFI guarantee agreements, to which counter guarantees under a counter guarantee scheme apply, entered into in that same year,

exceeding €15.6 million.

F3[(2) *Subsection (1)* shall not apply to—

- (a) guarantees given under section 4 of the Principal Act in accordance with a Covid-19 credit guarantee scheme F4[or a Ukraine credit guarantee scheme], or
- (b) qualifying finance agreements to which those guarantees apply.

F5[(3) In this section—

"Covid-19 credit guarantee scheme" has the same meaning as it has in the Principal Act;

"Ukraine credit guarantee scheme" has the same meaning as it has in the Principal Act.]]

Annotations**Amendments:**

F1	Inserted (11.08.2020) by <i>Credit Guarantee (Amendment) Act 2020 (5/2020)</i> , s. 6(a), S.I. No. 303 of 2020.
F2	Substituted (11.08.2020) by <i>Credit Guarantee (Amendment) Act 2020 (5/2020)</i> , s. 6(b), S.I. No. 303 of 2020.
F3	Inserted (11.08.2020) by <i>Credit Guarantee (Amendment) Act 2020 (5/2020)</i> , s. 6(c), S.I. No. 303 of 2020.
F4	Inserted (8.12.2022) by <i>Credit Guarantee (Amendment) Act 2022 (38/2022)</i> , s. 6(a), S.I. No. 642 of 2022.
F5	Substituted (8.12.2022) by <i>Credit Guarantee (Amendment) Act 2022 (38/2022)</i> , s. 6(b), S.I. No. 642 of 2022.

Counter guarantee schemes

13. (1) The Minister may, with the consent of the Minister for Finance and the Minister for Public Expenditure and Reform, make a scheme or schemes for the purposes of this Part.

(2) Without prejudice to the generality of *subsection (1)*, a scheme under this section may make provision in relation to all or any of the following matters:

- (a) the giving of information to the Minister, as he or she may reasonably require, for the purpose of the making of a counter guarantee agreement;

- (b) the extent of the Minister's liability, in accordance with a counter guarantee agreement, to the participating PFI in circumstances where the participating PFI fails or refuses to comply with this Part or the scheme under this section;
 - (c) the variation of the terms of a counter guarantee agreement in circumstances where the participating PFI fails or refuses to comply with this Part or the scheme under this section;
 - (d) without prejudice to the generality of *section 14(4)*, the method of payment of the premium under *section 14* and the time or times at which the premium shall be paid;
 - (e) the preparation and maintenance by the participating PFI of records, books of account and such other documentation as may be specified in the scheme under this section;
 - (f) provision with regard to the giving of documents, information and reports by the participating PFI to the Minister;
 - (g) such other matters as the Minister, after consultation with the Minister for Finance and the Minister for Public Expenditure and Reform, considers necessary or expedient for the purposes of this Part.
- (3) A scheme under this section shall specify conditions, with which the participating PFI shall comply, relating to—
- (a) the policies and practices of the participating PFI as respects—
 - (i) the giving of guarantees generally,
 - (ii) the giving of guarantees in respect of moneys provided to qualifying enterprises, and
 - (iii) the recovery of sums paid by the participating PFI under a guarantee given by the participating PFI,
 - (b) the administration and management of the participating PFI in relation to the giving of guarantees, and
 - (c) the procedures in relation to the supervision of guarantee agreements entered into on behalf of the participating PFI by members of staff of the participating PFI.
- (4) A scheme under this section shall specify—
- (a) the class or classes of qualifying PFI guarantee schemes to which the scheme shall apply,
 - (b) the purposes for which a counter guarantee under the scheme is given,
 - (c) subject to *subsection (5)*, the conditions that shall be complied with in relation to the entering into of a guarantee agreement by the participating PFI in accordance with a qualifying PFI guarantee scheme,
 - (d) the maximum value of financial products that may be provided pursuant to finance agreements—
 - (i) entered into between finance providers and qualifying enterprises, and
 - (ii) that are subject to qualifying PFI guarantee agreements to which the counter guarantee under the scheme applies,

- (e) the Minister's maximum liability under the scheme to pay to the participating PFI an amount in respect of moneys—
 - (i) for the time being standing unpaid to the finance provider under any finance agreement, and
 - (ii) that the participating PFI has paid to the finance provider, pursuant to the qualifying PFI guarantee agreement concerned, in respect of those moneys standing so unpaid,
 - (f) the methodology which ensures that the scheme cannot operate in such manner as may result in a contravention of *section 12*, and
 - (g) the methodology referred to in *section 14(1)*.
- (5) The conditions referred to in *paragraph (c) of subsection (4)* may, in relation to the qualifying PFI guarantee scheme concerned, include conditions specifying the class or classes of—
- (a) finance agreements,
 - (b) finance providers, and
 - (c) financial products,
- to which that scheme shall apply.
- (6) A scheme under this section shall specify the ground or grounds on which the Minister may terminate a counter guarantee agreement by notice in writing given to the participating PFI specifying the ground or grounds concerned and the date from which such termination shall take effect.
- (7) (a) The Minister may require that any information referred to in *subsection (2)(a)* given to him or her by a person in compliance with a scheme under this section be attested as to the truth of the information by a statutory declaration made by that person.
- (b) The Minister may require that any document, information or report referred to in *subsection (2)(f)* given to him or her by a participating PFI in compliance with a scheme under this section be attested as to the truth of the contents of the document or report or, as the case may be, as to the truth of the information, by a statutory declaration made by that participating PFI.

Annotations**Editorial Notes:**

- E2** Power pursuant to section exercised (28.11.2017) by *Counter Guarantee Scheme 2017* (S.I. No. 551 of 2017), in effect as per art. 2.

Payment of premium to Minister by participating PFI

- 14.** (1) Subject to this section, the participating PFI shall, in accordance with the counter guarantee scheme, pay to the Minister an amount (in this section referred to as the "premium") determined by the Minister in accordance with the methodology specified in the scheme for the purposes of making that determination.
- (2) The Minister shall, in specifying, in the counter guarantee scheme, the methodology referred to in *subsection (1)*, have regard to—

- (a) the expenses referred to in *section 16* incurred or likely to be incurred, or both, in relation to the scheme, and
 - (b) the objectives of the scheme.
- (3) The Minister shall, in specifying, in the counter guarantee scheme, the methodology referred to in *subsection (1)* in so far as the expenses referred to in *section 16* are concerned, have regard to—
- (a) the size and quality of the qualifying enterprises which may enter into finance agreements with finance providers to which guarantees given by the participating PFI apply and to which counter guarantees given under the scheme may apply,
 - (b) the risks associated with those qualifying enterprises,
 - (c) the typical risks associated with the business sector or sectors to which those qualifying enterprises belong, and
 - (d) the duration of counter guarantees given under the scheme.
- (4) The scheme charge may be charged annually, may be paid by one payment or by instalments, and may be paid at such time or times, as may be specified in the counter guarantee scheme.
- (5) The Minister shall apply the premium received by him or her from a participating PFI for the purpose only of defraying the costs of the counter guarantee scheme which applies to the participating PFI.

Review of counter guarantee scheme

15. The Minister may, at any time, conduct a review of the operation of a counter guarantee scheme and, not later than 2 months after completing such review, make a report in writing to each House of the Oireachtas of his or her findings and conclusions resulting from that review.

Expenses

16. The expenses incurred by the Minister in the administration of this Part shall, to such extent as may be sanctioned by the Minister for Finance, with the consent of the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

PART 4

UNRELATED MISCELLANEOUS AMENDMENTS TO OTHER ENACTMENTS

Amendment of section 101 of Employment Equality Act 1998

17. Section 101 of the Employment Equality Act 1998 is amended by the insertion of the following subsection:

“(4A) (a) Where an employee refers—

(i) a case or claim under section 77, and

(ii) a claim for redress under the Act of 1977,

to the Director General of the Workplace Relations Commission in respect of a dismissal, then, from the relevant date, the case or claim referred to in subparagraph (i) shall, in so far only as

it relates to such dismissal, be deemed to have been withdrawn unless, before the relevant date, the employee withdraws the claim under the Act of 1977.

(b) In this subsection—

‘Act of 1977’ means the Unfair Dismissals Act 1977;

‘dismissal’ has the same meaning as it has in the Act of 1977;

‘relevant date’ means such date as may be prescribed by, or determined in accordance with, regulations made by the Minister for Jobs, Enterprise and Innovation.”.

Amendment of section 34 of National Minimum Wage Act 2000

18. Section 34 of the National Minimum Wage Act 2000 is amended, in subsection (6) (inserted by section 52(1) of, and Part 1 of Schedule 7 to, the Workplace Relations Act 2015), by renumbering that subsection as subsection (7).

Amendment of Workplace Relations Act 2015

19. The Workplace Relations Act 2015 is amended—

(a) in section 37, by the insertion of the following subsection:

“(3) This section shall not apply in relation to an offence committed, or alleged to have been committed, before the commencement of this section.”,

and

(b) in Part 2 of Schedule 1, by the substitution of the following paragraph for paragraph 5:

“5. Section 26(3) of the Employment Permits Act 2006”.

Amendment of section 916 of Companies Act 2014

20. Section 916 of the Companies Act 2014 is amended, in subsection (1), by the substitution of “section 915(1) ” for “section 915(2) ”.



Number 1 of 2016

CREDIT GUARANTEE (AMENDMENT) ACT 2016

REVISED

Updated to 8 December 2022

About this Revised Act

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Credit Guarantee Acts 2012 to 2022: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Credit Guarantee (Amendment) Act 2022* (38/2022), s. 8(2)). The Acts in this group are:

- *Credit Guarantee Act 2012* (26/2012)
- *Credit Guarantee (Amendment) Act 2016* (1/2016), Parts 1-3 (ss. 1-16)
- *Credit Guarantee (Amendment) Act 2020* (5/2020)
- *Credit Guarantee (Amendment) Act 2022* (38/2022), other than s. 7

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available.

Where legislation or a fragment of legislation is referred to in annotations, changes to this legislation or fragment may not be reflected in this revision but will be reflected in a revision of the legislation referred to if one is available.

A list of legislative changes to any Act, and to statutory instruments from 1972, may be found linked from the page of the Act or statutory instrument at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Credit Guarantee (Amendment) Act 2022* (38/2022)
- *Credit Guarantee (Amendment) Act 2020* (5/2020)

All Acts up to and including *Air Navigation and Transport Act 2022* (40/2022), enacted 7 December 2022, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Counter Guarantee Scheme 2017* (S.I. No. 551 of 2017)
- *Credit Guarantee (Amendment) Act 2016 (Commencement) Order 2016* (S.I. No. 504 of 2016)

All statutory instruments up to and including *Credit Guarantee (Amendment) Act 2022 (Commencement) Order 2022* (S.I. No. 642 of 2022), made 8 December 2022, were considered in the preparation of this revision.