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Support of Enterprise and State Loan Guarantees Act

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RT I 2003, 18, 96
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Amended by the following acts

Passed	Published	Entry into force
17.12.2003	RT I 2003, 88, 591	01.01.2004
14.04.2004	RT I 2004, 36, 251	01.05.2004
26.01.2005	RT I 2005, 11, 43	27.02.2005
12.11.2008	RT I 2008, 51, 281	19.12.2008
07.05.2009	RT I 2009, 25, 152	29.05.2009
22.04.2010	RT I 2010, 22, 108	01.01.2011, entry into force on the date determined in the Decision of the Council of the European Union regarding the abrogation of the derogation established in respect of the Republic of Estonia on the basis provided for in Article 140 (2) of the Treaty on the Functioning of the European Union, Council Decision 2010/416/EU of 13 July 2010 (OJ L 196, 28.07.2010, pp. 24-26).
11.11.2010	RT I, 29.11.2010, 3	30.11.2010, partially
19.06.2014	RT I, 29.06.2014, 109	01.01.2011 01.07.2014, the titles of ministers replaced on the basis of subsection 107 ³ (4) of the Government of the Republic Act in the wording in force as of 1 July 2014.
11.02.2015	RT I, 04.03.2015, 2	14.03.2015
18.02.2015	RT I, 23.03.2015, 1	02.04.2015

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of Act

(1) This Act sets out the bases, principles and organisation of the state support of enterprise and the grant of state guarantees for business loans and housing loans.

(2) The Law of Obligations Act applies to the grant of state guarantees for loans, taking account of the specifications provided for in this Act.

(3) The Insurance Activities Act does not apply to the grant of state guarantees for loans.
[RT I 2005, 11, 43 - entry into force 27.02.2005]

Chapter 2

STATE SUPPORT OF ENTERPRISE

§ 2. Resources of finance for state support of enterprise

(1) The following are the sources of enterprise support:

- 1) allocations from the state budget;
- 2) the own revenue of foundations belonging to the enterprise support system;
- 3) other resources.

(2) Funds for the grant of state support of enterprise prescribed by this Act shall be allocated in the state budget to the Ministry of Economic Affairs and Communications.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(3) The minister responsible for the area shall decide which types of support are to be granted during the financial year, taking account of the amounts allocated in the state budget for the grant of state support of enterprise and the basic principles of the policies, development plans and programmes of the area.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

§ 3. Types of state support of enterprise

For the purposes of this Act, the following are the types of state support of enterprise:

- 1) support;
- 2) guarantees;
- 3) loans;
- 4) investments through the equity investment fund of the company (hereinafter equity investments).

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

§ 4. Organisation of state support of enterprise

(1) The state supports enterprise through foundations established for the development of enterprise or for the development of enterprise and housing, and the rights of the founder of such foundations which are exercised by the minister responsible for the area.

(2) The conditions for the grant of business loans shall be established by the minister responsible for the area.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(3) [Repealed - RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(4) Supervision over the use of support for its intended purpose shall be exercised by the foundations.

(5) The state support of enterprise needs to contribute to the achievement of the objectives of the basic principles of policy, development plans and programmes of enterprise and comply with the rules on the grant of state aid.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(6) State support financed by the European Union aid programmes and funds shall be in compliance with the principles of the support of aid programmes and funds.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(7) With the purpose to ensure the protection of business loans and fulfilment of the liabilities arising from the loan agreement by the recipient of the loan as required the foundation granting business loans may acquire and transfer a holding in the company that received business loan. Acquisition and transfer of a holding in a company with the purpose specified in this section shall not be applied the State Assets Act.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(8) The conditions of acquisition and transfer of a holding in a company that received business loan from a foundation shall be established by a resolution of a minister responsible for the area.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

§ 4¹. Procedure for refund of support used for other than intended purpose

(1) The recipient of support is required to refund the amount of support used for other than intended purpose.

(2) The contract of the grant of support entered into with the recipient of support shall set out the intended purpose of the use of support and the accurate bases and conditions of the refund of the support used for other than its intended purpose.

(3) If the economic situation of the recipient of support has deteriorated in such a way that the intended use of support may be endangered, the agreement on the grant of loan may be cancelled before the transfer of the loan.

(4) The refund of the support used for other than its intended purpose shall be decided at the latest within 30 days as of the getting to know of the use of support for other than its intended purpose.

(5) The support used for other than its intended purpose shall be refunded to the provider of support during the period, prescribed in the decision on the recovery of support, as of the receipt of the decision on the recovery of support.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

§ 5. Target groups

(1) For each type of state support of enterprise the target groups which are entitled to receive that support shall be determined by the financing contract or a directive or regulation of the minister responsible for the area.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(2) [Repealed - RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(3) If other conditions are equal, preference may be given to the following undertakings, in order of priority, upon selection of the recipients of enterprise support:

- 1) start-up companies or micro undertakings, or
- 2) undertakings whose activities contribute towards balanced regional development and create jobs in regions where the standard of living is low or where there is serious unemployment, or
- 3) undertakings which are oriented at contemporary and technology-intensive manufacturing or at offering services or goods with export potential.

(4) (3) Enterprise support may be refused to a person who or whose legal representative has been punished on the basis of §§ 133-133³, 175 or 260¹ of the Penal Code and whose information concerning the punishment has not been deleted from the criminal records database pursuant to the Criminal Records Database Act.

[RT I, 23.03.2015, 1 - entry into force 02.04.2015]

§ 5¹. Equity capital investments

(1) Equity capital investments can be made through a foundation established by the state for ensuring the business and housing loans (hereinafter foundation) through a company established by the foundation or a company established with the participation of the foundation. In order to make equity investments investment capital shall be invested in the investment fund to be established or existing investment fund which invests by itself or through other investment funds into equity capital of the company serving as the object of equity capital investment.

(2) The Ministry of Economic Affairs and Communications and the foundation shall enter into the financing agreement for the transfer to the foundation of the resources allocated from the state budget for equity investments (hereinafter investment capital).

(3) The financing agreement specified in subsection (2) of this section shall include at least;

- 1) the amount of investment capital to be transferred to the foundation and the conditions of the transfer and investment;
- 2) the consent for the transfer of investment capital to the company established by the foundation if the equity investment is made through the company established by the foundation or the company established with the participation of the foundation;
- 3) the principles of supervision exercised over the investment strategy and investments;
- 4) the limits on management fee and other fees paid on account of the investment fund;
- 5) the conditions of profit distribution of the investment fund and divestment;
- 6) the conditions and procedure of the use of investment capital to be refunded by the investment fund and the revenue on investment;
- 7) in the case of the state aid the bases and procedure for recovery thereof if it becomes evident that the aid was granted unlawfully or the aid was incompatible with the common market.

(4) Supervision over the compliance with the financing agreement specified in subsection (2) of this section shall be exercised by the Ministry of Economic Affairs and Communications.

(5) A management company may be selected for arrangement of equity investments. The transparency of the selection process and controllability of the selection procedure shall be ensured upon selecting the management company.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

§ 5². Establishment of and participation in investment fund

(1) On the basis of the authorization of the Government of the Republic the minister responsible for the area may, within his or her competence, decide on the establishment of the investment fund and participation therein.

(2) On the basis of the authorization of the Government of the Republic the minister responsible for the area may decide within his or her competence, for making equity investments, on the establishment of a company by the foundation whose task is to establish an investment fund for making equity investments or to participate therein and to invest investment capital allocated from the state budget for a specific purpose into the investment fund to be established or existing, or participate in the establishment of such company.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

Chapter 3 GRANT OF STATE LOAN GUARANTEES

§ 6. Definitions

[RT I 2005, 11, 43 - entry into force 27.02.2005]

In this Act, the following definitions are used:

[RT I 2005, 11, 43 - entry into force 27.02.2005]

1) “loan” means the assets or off-balance sheet items of a credit institution arising from contracts under which the lender grants or undertakes to grant money or other assets to the recipient of the loan or another entitled person pursuant to the contract and the recipient of the loan undertakes to return the money or other assets to the lender under the prescribed conditions;

[RT I 2005, 11, 43 - entry into force 27.02.2005]

2) “business loan” means a loan which is granted to undertakings in order to finance their enterprise-related expenses;

[RT I 2005, 11, 43 - entry into force 27.02.2005]

3) “housing loan” means a loan granted in order to acquire housing or improve living conditions, including a loan granted in order to improve the economy, safety and maintenance of a residential building;

[RT I 2005, 11, 43 - entry into force 27.02.2005]

4) “state-guarantee” means the state-guaranteed obligation of a grantor of state guarantees, which arises from the written guarantee contract entered into between the grantor of state guarantees and the guarantee holder and complies with the conditions of subsection 8 (4) of this Act, to pay the debt of the debtor arising from a financing transaction to the guarantee holder, taking account of the provisions of subsection 8 (4¹).

[RT I 2008, 51, 281 - entry into force 19.12.2008]

§ 7. Subjects of state guarantees for business loans and housing loans

[RT I 2005, 11, 43 - entry into force 27.02.2005]

(1) State guarantees provided for in this Act may be granted through a foundation.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(2) A credit institution holding an activity licence issued by a financial supervision authority of a state which is a contracting party to the European Economic Area, who itself or whose branch is entered in the commercial register in Estonia, may be the recipient of state guarantee. If a guarantee is granted for an obligation arising from a leasing contract, a financial institution which belongs to the consolidation group of a credit institution holding an activity licence issued by a financial supervision authority of a state which is a contracting party to the European Economic Area, who itself or whose branch is entered in the commercial register in Estonia may be a guarantee holder. In such case, all the provisions concerning a credit institution in this Act also apply to a financial institution.

[RT I, 29.11.2010, 3 - entry into force 30.11.2010]

(2¹) In case of the bankruptcy or a reorganisation procedure of the state guarantee holder specified in subsection (2) of this section, as well as in the case of the establishment of a moratorium with regard to a credit institution being the guarantee holder or a branch thereof if in the course of the specified procedures or moratorium the claim secured by collateral is transferred to the third party, such third party or the branch thereof need not be entered in the Estonian commercial register but it is required to be in compliance with other conditions provided for in subsection (2) of this section.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(3) A foundation may grant a guarantee for a housing loan pursuant to the procedure prescribed in this Act if at least one of the recipients of the loan is a person belonging to the target group of state-guaranteed housing loans, or an apartment association or building association or a community of apartment owners. The target groups of state-guaranteed housing loans and the upper limits of loan guarantees shall be established by the Government of the Republic.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

(4) [Repealed - RT I 2009, 25, 152 - entry into force 29.05.2009]

§ 8. State guarantee and guarantee contracts

(1) The liability of a foundation arising from a guarantee contract only extends to the principal obligations of the debtor and the foundation performs the obligations arising from the guarantee contract only if the guarantee holder cannot satisfy a claim against the debtor and third parties securing the obligations of the debtor to the extent of the principal obligations of the debtor. Upon performance of the obligations of the debtor, third parties securing the obligations of the debtor do not acquire the right of claim against the foundation.

[RT I 2008, 51, 281 - entry into force 19.12.2008]

(2) Upon performance of an obligation of a debtor, a claim of the creditor shall be transferred to the foundation to the extent the obligation is performed.

(3) The provisions of the Law of Obligations Act concerning contracts of suretyship apply to guarantee contracts, taking account of the specifications provided for in this Act.

(4) A guarantee contract shall set out at least the following:

- 1) the extent of the liability of the foundation as a percentage of the balance of the principal obligation being guaranteed;
- 2) the maximum amount of the state guarantee;
- 3) the essential conditions of the guaranteed obligation;
- 4) the size of the premium and the conditions for payment thereof;
- 5) the obligation of a credit institution to pay the premium;
- 6) the date on which the guarantee enters into force;
- 7) a reference to the fact that it is a state guarantee within the meaning of this Act.

(4¹) The obligation of a foundation arising from a guarantee contract is not a state guarantee if the guarantee contract contains a condition compliance with which cannot be directly controlled by the guarantee holder and which grants the foundation the right to:

- 1) shorten the term of the guarantee contract;
- 2) amend or cancel the guarantee contract or the conditions of the contract;
- 3) increase the premium if the economic situation of the debtor deteriorates;
- 4) refuse to satisfy the claim if the debtor experiences solvency problems.

[RT I 2008, 51, 281 - entry into force 19.12.2008]

(5) The amount of state guarantee shall be expressed in euros regardless of whether the obligation of the debtor arises in euros or in another currency convertible in Estonia which is quoted by the European Central Bank.

[RT I 2010, 22, 108 - entry into force 01.01.2011]

(6) The holder of a state guarantee shall file a claim arising from a guarantee contract against the foundation. The obligations of the foundation arising from state guarantees shall be transferred to the state if the technical reserves of the trust fund of the foundation and the own funds of the foundation are insufficient to satisfy the claim of the state guarantee holder in full.

[RT I 2008, 51, 281 - entry into force 19.12.2008]

§ 9. General principles for grant of state guarantees

(1) Damage caused to a state guarantee holder shall be compensated for to the extent of 80 per cent of the balance of loan commitment as at the moment of cancellation of the business loan or housing loan contract.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(2) A foundation always has the right to refuse to enter into a guarantee contract.

(3) A foundation is required to refuse to enter into a guarantee contract if:

- 1) the credit institution has not submitted a valid application, the required documents or relevant information;
- 2) it becomes evident that the loan applicant has submitted false information when applying for a loan from the credit institution;
- 3) the loan applicant specified in the application by the credit institution does not meet the requirements of this Act.

(4) If a credit institution knowingly submits false information in an application or in other documents submitted to a foundation, the foundation has the right to cancel the guarantee contract and without refunding the paid premium to the credit institution. If a guarantee is paid on the basis of such a guarantee contract, the credit institution is required to refund the amount to the foundation together with interest.

§ 10. Own funds of foundation

(1) The own funds of a foundation are divided and allocated into trust funds according to the areas of activity of the foundation. This Act provides for the accounting and use of own funds which belong to the trust fund

for the grant of guarantees for business loans and the trust fund for the grant of guarantees for housing loans (hereinafter trust fund).

(2) A foundation shall organise its accounting such that it is ensured that the assets and obligations related to guaranteeing business loans and housing loans are separated from each other and from the foundation's other assets and obligations.

(3) The own funds of a foundation for the grant of loan guarantees cannot be used for the performance of obligations arising from the other activities of the foundation. The own funds belonging to one trust fund cannot be used for the performance of obligations arising from the activities of other trust funds.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

(4) The principles for and general restrictions on the management of foreign-exchange, credit and liquidity risks and other financial risks related to the management of the funds of a grantor of state guarantees shall be established by the Government of the Republic.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

§ 11. Own funds of foundation for grant of loan guarantees

(1) The following belong to the own funds of a foundation for the grant of loan guarantees (hereinafter own funds):

1) capital allocated for the grant of loan guarantees;

[RT I 2005, 11, 43 - entry into force 27.02.2005]

2) profits or losses brought forward and related to the grant of loan guarantees, pursuant to the audited annual reports;

3) donations intended for specific purposes;

4) allocations from the state budget for a specific purpose.

[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(2) Intangible assets and losses in the current accounting period shall be deducted from the own funds.

(3) Subordinated debts and other similar obligations (hereinafter subordinated debt) may also be included in the own funds with the permission of the exerciser of the rights of the founder if the following conditions are met:

1) the term or period of repayment of the subordinated debt taken under a debt agreement is at least five years and, if the term of repayment of the debt is not fixed, the debt agreement shall provide that the subordinated debt is repayable only subject to at least five years' notice;

2) the debt agreement does not prescribe a condition that the subordinated debt will become repayable before the agreed due date, except in the case of the dissolution of the foundation;

3) the foundation may repay the subordinated debt before the agreed due dates only with the permission of the exerciser of the rights of the founder;

4) in the event of the bankruptcy of the foundation, the debt is repaid after accepted claims not filed by the due date are satisfied.

(4) Only amounts of debt actually received shall be taken into account as own funds specified in subsection (3) of this section, but in an amount of not more than 50 per cent of the amount of own funds calculated pursuant to subsections (1) and (2).

(5) During the five years before the date of expiry or termination of a subordinated debt agreement, the amount of debt included in additional own funds shall be reduced each year by 20 per cent of the original amount of debt.

(6) Subordinated debts which are to be repaid in less than one year shall not be included in the own funds.

(7) A foundation may include preferred shares and other financial instruments not specified in this section in its own funds only with the specific prior permission of the exerciser of the rights of the founder.

§ 12.–§ 14.[Repealed - RT I 2005, 11, 43 - entry into force 27.02.2005]

§ 15. Self-balancing requirement for grant of loan guarantees

(1) When organising the grant of loan guarantees, a foundation shall ensure:

1) that revenue and expenditure relating to the grant of the loan guarantees are balanced throughout a longer period;

2) that obligations arising from guarantee contracts are covered with assets at all times.

(2) For the purposes of this Act, a premium is a sum of money which is paid by the guarantee holder to the foundation in the amount and within the term specified in the guarantee contract. Premiums shall cover the costs relating to the grant of loan guarantees by the foundation and any possible damage for a longer period and correspond to the risks covered, the chargeable amount arising from the guarantee contract and the extent of the excess of the guarantee holder.

(3) The minister responsible for the area shall establish the general rules for the grant of and the principles of calculation of premiums.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

§ 16. Spreading risk of foundation

In order to reduce the exposures taken pursuant to this Act, the foundation may insure the risks arising from the grant of loan guarantees or transfer them in any other manner pursuant to the procedure which the minister responsible for the area has the right to establish.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

§ 17. Technical reserves

(1) A foundation shall at all times have enough funds to cover payments made on the basis of valid guarantee contracts. The sufficiency of the funds of the foundation is indicated by own funds and the technical reserves.

(2) Technical reserves are the amount of obligations arising from valid guarantee contracts and calculated to cover the claims potentially payable by the foundation in the future.

(3) The principles for the formation and the procedure for the calculation of technical reserves for the grant of state loan guarantees shall be established by the Government of the Republic.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

§ 18. Minimum limit of own funds of foundation for grant of loan guarantees

(1) In order to cover possible damage incurred upon the grant of guarantees, the minimum size of the own funds of the foundation (hereinafter minimum limit of own funds) in the trust fund for the grant of guarantees for business loans and in the trust fund for the grant of guarantees for housing loans shall comply with the provisions of this Act.

(2) Upon the grant of guarantees for business loans, the minimum limit of own funds shall be 10 per cent of the net asset value of the valid guarantees, but not less than 2 million euros. In order to calculate the net asset value of the guarantees, the amount of claims filed against the foundation shall be added to the amount of all valid state guarantees for business loans and the calculated amount of technical reserves shall be deducted therefrom. Guarantees on the basis of which a claim has been filed against the foundation shall not be included in the valid guarantees.

[RT I, 29.11.2010, 3 - entry into force 01.01.2011]

(3) Upon the grant of guarantees for housing loans, the minimum limit of own funds shall be 8 per cent of the net asset value of the valid guarantees, but not less than 2 million euros. In order to calculate the net asset value of guarantees, the amount of claims filed against the foundation shall be added to the amount of all simultaneously valid state guarantees for housing loans and the calculated amount of technical reserves shall be deducted therefrom. Guarantees in respect of which a claim has been filed shall not be included in the valid guarantees.

[RT I, 29.11.2010, 3 - entry into force 01.01.2011]

(4) If there are less own funds in one trust fund than the prescribed minimum limit of own funds, the foundation shall not grant any new guarantees from the trust fund.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

(5) If there are less own funds than the minimum limit of own funds provided for in subsection (2) or (3) of this section, the Government of the Republic shall decide on the restoration of the own funds of the corresponding trust fund.

[RT I 2005, 11, 43 - entry into force 27.02.2005]

(6) In order to increase own funds pursuant to subsection (5) of this section, the exerciser of the rights of the founder shall submit an application to the Ministry of Finance.

(7) If own funds are increased in the form of subordinated debt, the foundation shall repay the subordinated debt pursuant to the conditions thereof but not before the own funds have exceeded the larger of the following indicators:

- 1) 15 per cent of the net asset value of simultaneously valid guarantees;
- 2) 2,300,000 euros.

[RT I, 29.11.2010, 3 - entry into force 01.01.2011]

§ 19. Guarantee limit

[RT I 2005, 11, 43 - entry into force 27.02.2005]

(1) The total amount of valid guarantee contracts entered into by the foundation pursuant to this Act shall not at any time exceed 160 million euros in the case of business loans and 96 million euros in the case of housing loans. Where necessary, the Government of the Republic has the right to make a decision regarding reduction of the upper limit of the total amount of guarantee contracts for housing loans.
[RT I, 04.03.2015, 2 - entry into force 14.03.2015]

(2) A foundation may use own funds within the extent exceeding the minimum limit of own funds for grant of loan guarantees for the provision of financial services related to the performance of the main functions of the foundation and achieving other objectives specified in its articles of association pursuant to the procedure which the minister responsible for the area has the right to establish.
[RT I 2005, 11, 43 - entry into force 27.02.2005]

§ 20. Accounting and auditing of guarantees

(1) A foundation shall submit an audited report on the guarantees granted pursuant to this Act, on the amounts paid on the basis of guarantee contracts and on the technical reserves to the Ministry of Finance each year within the term determined by the minister responsible for the area. The minister responsible for the area has the right to obtain additional information on the calculated technical reserves and on the assets used for covering amounts likely to be payable from the foundation.

(2) The exerciser of the rights of the founder shall audit the activities of the foundation.

§ 21. Preclusion of effects on market

Enterprise support shall be provided and guarantees shall be granted for loans on the basis of this Act provided that the undertaking supported is not an undertaking in a dominant position within the meaning of the Competition Act and that the state support granted does not enable the recipient of the support to have a significant competitive advantage compared to other undertakings operating in the market.

Chapter 4 IMPLEMENTATION OF ACT

§ 22. Implementing provisions

(1) Other possible methods of state support of enterprise shall be provided by separate Acts or by the State Budget Act of the corresponding year.

(2) Guarantees granted for business loans by a foundation, which are based on guarantee contracts entered into on or after 1 January 2001 and which meet the conditions provided for in this Act, are deemed to be state guarantees within the meaning of this Act.

(3) Guarantees granted for housing loans by a foundation, which are based on guarantee contracts entered into on or after 1 January 2000 and which meet the conditions provided for in this Act, are deemed to be state guarantees within the meaning of this Act.

§ 23. [Omitted from this text]

§ 24. Entry into force of Act

This Act enters into force on 1 May 2003.