ALLEN & OVERY

Covid-19 coronavirus Belgian bank debt relief measures

Final regimes are in force

16 April 2020

Speed read

Companies are facing unprecedented liquidity issues due to the COVID-19 outbreak. On 22 March 2020, the Belgian government announced a 6-month payment holiday on bank loans and a EUR 50bn state guarantee scheme. The details of the payment holiday are available since 31 March 2020. The long-awaited State guarantee scheme was published on 15 April 2020. With both regimes now in force, this eAlert provides a summary overview of the details of both regimes in the form of the attached index cards.

A&O is following up closely on developments with the banks and our corporate clients. Do not hesitate to reach out to discuss the details of the regimes with your A&O contact or to discuss your specific concerns.

Background

COVID-19 and the resulting governmental measures restricting businesses and free movement have caused sudden liquidity issues for many Belgian companies.

Operations have been reduced and even halted, while fixed costs and financing expenses increasingly act as a drain on a company's cash flow.

Consequently, the Belgian government (through the Minister of Finance, Alexander De Croo), in co-operation with the National Bank of Belgium, reached out to the Belgian banking industry.

On 22 March 2020, a joint press release[1] was published announcing two liquidity supporting measures on which an agreement in principle was reached:

- the banks commit to granting viable, non-financial companies, self-employed professionals, non-profit organisations and private mortgage borrowers with payment problems as a result of the corona crisis an extension of the scheduled repayments of principal that fall due until 31 October 2020, with a maximum of 6 months (the so-called **Payment Holiday Regime**); and
- the federal government will activate a guarantee scheme for all new bank loans and credit facilities with a maximum duration of 12 months, granted by banks to viable non-financial companies, non-profit organisations and self-employed professionals before 30 September 2020 (the **State Guarantee Scheme**).

On 31 March 2020, a charter on the payment holiday for companies (the **B2B Payment Holiday Charter**) was published on the Febelfin website[2] together with a Q&A.

On 15 April 2020, the Royal Decree holding the State guarantee scheme was published in the Belgian Official Gazette (after it had received state-aid clearance from the European Commission).

The National Bank of Belgium also published a Q&A in respect of both regimes.[3]

[1] Press release available on the website of the National Bank of Belgium (in Dutch, also available in French): https://www.nbb.be/nl/artikels/garantieregeling-voor-particulieren-en-bedrijven-getroffen-door-coronacrisis.

[2] B2B Payment Holiday Charter: https://www.febelfin.be/nl/consumenten/artikel/charter-betalingsuitstel-ondernemingskredieten.
Q&A: https://www.febelfin.be/nl/consumenten/artikel/vragen-en-antwoorden-steunmaatregelen-voor-ondernemingen.

[3] NBB Q&A: https://www.nbb.be/en/financial-oversight/prudential-supervision/areas-responsibility/credit-institutions/qas-moratorium.

Index Card: Payment Holiday

Summary	Belgian banks commit to granting corporates, professionals and non-profit organisations with payment problems caused by the COVID-19 outbreak an extension of the scheduled repayments of principal that fall due until 31 October 2020, with a maximum of 6 months.
Legal basis	Charter made available on the Febelfin website on 31 March 2020: made available on the website of Febelfin on 31 March 2020 (the **B2B Payment Holiday Charter**): https://www.febelfin.be/nl/consumenten/artikel/charter-betalingsuitstel-ondernemingskredieten.
In-scope borrowers	Non-financial companies, small-and-medium-size enterprises, self-employed professionals and non-profit organisations that satisfy each of the 4 eligibility criteria. Public authorities cannot request a payment holiday under the B2B Payment Holiday Charter.
Eligibility criteria	*As to the borrower*: 1) The borrower must experience payment difficulties as a result of the COVID-19 outbreak due to: • a drop in turnover or business activity; • recourse to temporary or permanent unemployment; or • the obligation imposed by the authorities to close down the company/organisation as part of the measures taken to contain the spread of the virus. 2) The borrower must be permanently established in Belgium. 3) As of 1 February 2020, the borrower must have had no overdue payments for outstanding financings, taxes or social security contributions. As of 29 February 2020, such overdue payments must have been for less than 30 days. 4) The borrower must have complied with all of its contractual credit obligations with all banks during the last 12-month period prior to 31 January 2020 and must not be undergoing an active credit restructuring process. *As to the type of financing*: A payment holiday may be requested for: • loans with a fixed repayment plan; • overdrafts (*credits de caisse/kaskredieten*); and • fixed advances (*avances fixes/vaste voorschotten*).

	A payment holiday cannot be requested for leasing or factoring arrangements.
Procedure	The payment holiday will not be granted automatically, but must be requested. The relevant borrower should contact their bank. This will only be possible by appointment or via the bank's available digital channels (email, chat, mobile application, ...) and by telephone. It is recommended to contact the bank one week before the payment due date. Applications submitted before the publication of the B2B Payment Holiday Charter will be assessed on the basis of the criteria set out in the B2B Payment Holiday Charter. As the payment holiday only applies to future monthly instalments, it is unlikely that the B2B Payment Holiday applies to payment instalments due on or before 31 March 2020. Documentary evidence will need to be provided to the bank with respect to, and most particularly, each of the 4 eligibility criteria.

Duration	• The payment holiday applies only to:
	    o scheduled repayments of principal falling due up to 31 October 2020 at the latest (with a maximum of 6 months); and
	    o future monthly instalments (so overdue payments of principal do in principle not benefit from the payment holiday).
	
	• Upon expiration of the payment holiday, repayment instalments will apply as originally scheduled.
	
	• At the maturity of the financing, an additional period equal to the length of the payment holiday will be added for the repayment instalment(s) that were waived during the payment holiday.
	
	(Longer payment holidays fall outside the scope of this initiative.)

Payments	The payment holiday only applies to the payments of principal. Interest will remain due and payable and does not benefit from the payment holiday regime.
Costs	The payment holiday will be granted without charge.
Entry into force	31 March 2020.
Links	Febelfin charter: https://www.febelfin.be/nl/consumenten/artikel/charter-betalingsuitstel-ondernemingskredieten Febelfin Q&A: https://www.febelfin.be/nl/consumenten/artikel/vragen-en-antwoorden-steunmaatregelen-voor-ondernemingen NBB Q&A: https://www.nbb.be/en/financial-oversight/prudential-supervision/areas-responsibility/credit-institutions/qas-moratorium

Index Card: State Guarantee Scheme

Summary	The Belgian State grants a loan portfolio guarantee for the benefit of eligible banks in respect of newly granted "corona" liquidity facilities. Except for limited de-selection options, all in-scope facilities automatically benefit from the State Guarantee.
Legal basis	Law of 27 March 2020 giving special legislative powers to the government. Royal Decree of 14 April 2020 containing the State Guarantee Scheme.
Eligible banks	The direct beneficiaries of the State Guarantee are the credit providing banks. Only the following banks can benefit from the State Guarantee: • Belgian licensed banks; • authorised Belgian branches of foreign licensed banks, provided in each case that they have a Belgian business loan portfolio in excess of EUR 20,000 as of 31 December 2019. The Royal Decree lists a number of grounds under which the losses covered by the State Guarantee may be reduced, including if it transfers its participation in or pledges (subject to certain exceptions) its rights under the guaranteed facility.
In-scope borrowers	Non-financial companies, small-and-medium-size enterprises, non-profit organisations and self-employed professionals. Only borrowers with a registration with the Crossroads Bank for Enterprises are eligible. "Non-financial companies" are defined as undertakings other than: • government entities; • regulated financial institutions: credit institutions, investment firms, insurance and reinsurance undertakings, AIFs and UCITSs and their management firms, payment institutions and e-money institutions; • securitisation vehicles; • entities whose normal business is exclusively or mainly granting of credit for its own benefit; • parents whose subsidiaries are exclusively or mainly entities described in the three previous bullets.

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<td>Eligibility criteria</td>
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Borrowers must be "viable", i.e.:

no payment arrears on existing financial debt, taxes or social security contributions on 1 February 2020 or not more than 30 days of payment arrears on 29 February 2020;
not subject to an active credit restructuring with a bank as at 31 January 2020; and
not an undertaking in distress as of 31 December 2019, on the basis of the available information.

An "undertaking in distress" is an undertaking that:

has accumulated losses exceeding more than half of its subscribed share capital (naamloze vennootschap/société anonyme) or subscribed contributions (besloten vennootschap/société à responsabilité limitée);
is subject to collective insolvency proceedings or fulfils the criteria for being placed in collective insolvency proceedings at the request of its creditors;
has received rescue aid and has not yet reimbursed or terminated the guarantee or received restructuring aid and is still subject to a restructuring plan; or
in the past two years, (i) the book debt to equity ratio has been greater than 7.5 <u>and</u> (ii) the EBITDA interest coverage ratio has been below 1.00.

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<td>In-scope loans and credit facilities</td>
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<u>Principle</u>:
New loans and credit facilities with a maximum duration of 12 months (including loans and facilities granted for an indefinite period or a period longer than 12 months, provided that the bank has the discretionary right to terminate in the first 12 months), granted between 1 April 2020 and 30 September 2020.
All types of funding are covered (overdraft facilities, straight loans, credit facilities, guarantee facilities, etc.).
A separate tranche of a credit facility may be in-scope provided that the conditions are met for that tranche on a stand-alone basis. Such separate tranche can be documented in an existing club deal or syndicated financing and would benefit from the State Guarantee (in respect of the commitment of an eligible bank towards an eligible borrower) even if part of that tranche is committed by a non-eligible bank.
<u>Exclusions</u>:

leasing and factoring agreements;
refinancings;
extension of existing financings;
re-drawings under a facility provided prior to 1 April 2020;

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- loans or facilities whose purpose is restricted to funding of non-Belgian activities;
- consumer credit and consumer mortgage credit;
- loans or facilities that the bank has "de-selected" from the guaranteed loan portfolio (see below).

<u>Territoriality</u>:

The purpose of the financing must be for the funding of activities in Belgium, it being understood that up to 10% of the loan amount may be used for the funding of "qualifying foreign activities", provided this is not detrimental for the Belgian activities.

Qualifying foreign activities are defined as foreign activities fulfilling the following conditions:

- undertaken by the borrower or a controlled entity (exclusive control or joint control);
- where the continuation of the foreign activities is crucial for the continuation of the Belgian activities;
- where the foreign activities are in themselves viable; and
- where there is no other option to finance such foreign activities in a sustainable way against normal market conditions.

The Report attached to the Royal Decree clarifies that the facility agreement must provide for the necessary restrictions to the permitted use of the financing.

<u>Guarantee/security package</u>:

The bank must apply best practices in obtaining market conform guarantees and security in accordance with the bank's lending practices before the entry into effect of the Royal Decree (otherwise the guaranteed losses on the guaranteed loan portfolio may be reduced with the losses on this facility).

The bank must also encourage the borrower to apply for other guarantees that are available in respect of the facility (otherwise the guaranteed losses on the guaranteed loan portfolio may be reduced with the losses on this facility).

If a bank receives additional security after 1 April 2020 in respect of (i) facilities granted before 1 April 2020, other than on the basis of an existing contractual obligation or (ii) de-selected facilities, then a proportionate part must be granted as security in respect of the in-scope facilities of that borrower that are part of the guaranteed loan portfolio (otherwise the guaranteed losses on the guaranteed loan portfolio may be reduced with the losses on this facility).

<u>Opt-out</u>:

The bank may de-select an otherwise in-scope facility. This means that such facility does not need to comply with the conditions for in-scope facilities (for

	example payment of the State Guarantee fees). This would be an option for borrowers than can still borrow at a lower cost. Banks may only de-select up to appr. 15% of in-scope loans (de-selected and in-scope loans to be calculated as principal amount x duration of the facility in days). <u>Out-of-scope facilities</u>: The Royal Decree does not restrict banks to grant financing outside the scope of the State Guarantee Scheme, e.g. refinancings. The only restriction is that banks cannot construe a facility so as to avoid the application of the Royal Decree in breach of its purpose.
Principal amount	The maximum guaranteed amount is determined at group level and is the lower of: • EUR 50m; and • the company's liquidity needs for its activities in the next 18 months (SMEs) or 12 months (larger corporates) as self-certified by the borrower in connection with its credit application. Applicants will be able to request that a facility for a principal amount higher than EUR 50m is included in the guaranteed loan portfolio, but it can never exceed the limit of the second bullet point. Such decision to include a facility for an amount higher than EUR 50m is to be made by the Council of ministers.
Overall guaranteed amount	EUR 50bn State Guarantee. The minister of Finance (advised by the National Bank of Belgium) will determine the maximum size of each bank's guaranteed loan portfolio, based on that bank's pro rata market share as of 31 December 2019.
Interest rate cap	Banks cannot charge an interest rate exceeding 1.25% p.a. on in-scope facilities.
Guarantee fee	Borrowers must pay a State Guarantee fee to the bank (which the bank must pay to the State to benefit from the State Guarantee): • SMEs: 0.25% p.a. • Larger companies: 0.50% p.a. Banks may continue to charge "usual" fees, such as commitment fees and administrative charges, provided that these were part of the bank's general conditions as of 29 February 2020.
Procedure	All in-scope loans and credit facilities will automatically benefit from the State Guarantee Scheme, unless they are de-selected at the time when the facility is made available.

	To include facilities in the guaranteed portfolio for an amount in excess of EUR 50m, a prior request must be submitted (to be decided upon by the Council of ministers).
Loss allocation	The State Guarantee will apply in respect of all in-scope facilities granted by the bank within the limits of its maximum portfolio amount set by the minister of Finance. The maximum portfolio amount will be assessed on a rolling basis, meaning that the portfolio amount is floating on the basis of repayments on in-scope facilities and new loans and facilities can be granted up to the maximum portfolio amount until 30 September 2020. Per bank, losses on its guaranteed loan portfolio will be allocated between that bank and the State as follows: • 3% or less: 100% for the bank; • between 3% and 5%: 50% for the bank and 50% for the State; • 5% or more: 20% for the bank and 80% for the State, with the percentages calculated by reference to a reference portfolio (details for calculation are set out in the Royal Decree). Banks may call the State Guarantee until 31 March 2023 (with an option to request advances as of 1 July 2021).
Loss of State Guarantee	<u>Facility-specific losses</u>: The Royal Decree contains a number of grounds under which facility-specific losses can be partly or fully excluded from the guaranteed losses on the guaranteed loss portfolio, including: • the bank grants the borrower relief measures in relation to the in-scope facility without granting similar relief measures to the borrower's other financing arrangements; • the bank transferred its participation under the guaranteed facility or pledged its rights under the guaranteed facility (subject to exceptions); • the bank did not encourage the borrower to solicit or obtain other guarantees that are available for the guaranteed facility; • the bank made the granting of the guaranteed facility conditional upon the borrower taking other products or services from the bank; • the bank receives additional security after 1 April 2020 in respect of (i) facilities granted before 1 April 2020, other than on the basis of an existing contractual obligation or (ii) de-selected facilities, without sharing that additional security on a pro rata basis with the in-scope facility(ies) of that borrower; • the bank refuses "unlawfully" a drawdown or re-drawal requested prior to 1 October 2020 under a facility existing as at 1 April 2020.

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<tr><td></td><td><u>Overall loss of State Guarantee</u>:

The Royal Decree also contains a number of grounds under which a bank may lose the benefit of the State Guarantee in respect of its entire guaranteed portfolio, including if:

• the bank did not comply with the Febelfin payment holiday charter; or
• the bank refuses systemically or on a large scale in the period between 1 April 2020 and 30 September 2020, without objective grounds, to renew existing financing meeting certain conditions:
    o the financing had been granted before 1 April 2020 and matured before 30 September 2020; and
    o the borrower (a) had no payment arrears on its bank debt or taxes or social security contributions as of 1 February 2020 or not more than 30 days of payment arrears as of 30 February 2020, (b) was not subject to an active credit restructuring with a bank as of 31 January 2020, and (c) did not submit a request to benefit from the payment holiday under the Febelfin charter.</td></tr>
<tr><td>Characteristics of the State Guarantee</td><td><u>Guarantee of last resort</u>:

The State Guarantee is a guarantee of last resort, i.e.:

• the banks must first enforce against the borrower and each obligor or third party security provider; and
• the State Guarantee will only cover the "final" losses after enforcement against the borrower and each obligor or third party security provider.

The State will be substituted in the rights of the bank against the borrower, any obligor and any third party security provider following a payment by the State to the bank under the State Guarantee.

<u>"Final" losses</u>:

The State Guarantee only covers losses that are "final", because further proceeds cannot be obtained (e.g. because of the insolvency of the borrower or a reduction or waiver of indebtedness in the context of a judicial reorganisation).

If an existing guarantee (regardless of whether it is a public or private guarantee) is expressly stated to be pari passu with the State Guarantee, then the amount that cannot be recovered on that guarantee as a result of the pari passu clause will also be considered a final loss.</td></tr>
<tr><td>Entry into force</td><td>The Royal Decree entered into effect retroactively as of 1 April 2020. This means that the State Guarantee Scheme will apply to in-scope loans and facilities granted as of 1 April 2020.</td></tr>
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Links	NBB Q&A: https://www.nbb.be/en/financial-oversight/prudential-supervision/areas-responsibility/credit-institutions/qas-moratorium

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