

NEW LAW INCREASES THE CAPITAL OF THE GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED ENTERPRISES AND TEMPORARILY MAKES ITS REQUIREMENTS MORE FLEXIBLE.

Background.

Law No. 21,229 (hereinafter, the “Law”) that increases the capital of the Guarantee Fund for Small and Medium-sized Enterprises (hereinafter “FOGAPE” or the “Fund”) was published in the Official Gazette on April 24, 2020.

As part of the Economic Emergency Plan implemented by the Government to face the health crisis caused by COVID-19, the Law introduces several modifications to DL No. 3,472 that created FOGAPE, making the requirements for the use of the Fund more flexible until April 30, 2021, and increasing its capital in the amount of up to USD 3,000,000,000.

Likewise, the Fund's Management Regulation (hereinafter, the “Regulation”) was published in the Official Gazette on April 25, 2020. The Regulation establishes the minimum requirements and conditions that the bidding basis for the granting of the Fund’s guarantees must contain, focused mainly on individuals and legal entities that have been commercially affected as a result of the pandemic (hereinafter, “COVID-19 Bases”); and regulates the operation of the Fund in the implementation of the financing lines granted in tenders under the COVID-19 Bases (hereinafter “COVID-19 Guarantee”). The Regulation regulates financing granted with COVID-19 Guarantee and, in everything not covered by it, the provisions of the previous regulation issued by the CMF apply.

What is FOGAPE and what are the main modifications introduced by the new Law?

FOGAPE is a state fund established by DL No. 3,472 of 1980, managed by Banco Estado (State Bank, hereinafter, the "Administrator"), to guarantee certain percentage of the principal of credits, leasing operations and other financing mechanisms authorized by the Commission for the Financial Market (“CMF”), granted by public and private financial institutions –previously authorized- to small and medium-sized enterprises who do not provide enough guarantees.

NEW LAW INCREASES THE CAPITAL OF THE GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED ENTERPRISES AND TEMPORARILY MAKES ITS REQUIREMENTS MORE FLEXIBLE.

The main modifications introduced by the Law are as follows:

1. Capital increase and withdrawals.

In order to increase FOGAPE's capital, the Law authorizes a State contribution of up to USD 3,000,000,000 or its equivalent in other foreign currencies or national currency.

Likewise, the State is allowed to withdraw capital from FOGAPE when the capital available in relation to the guaranteed financing exceeds the ratio indicated by the CMF during 6 consecutive months. Notwithstanding the foregoing, if such capital withdrawals have been made and the limit set forth by the CMF is exceeded, upon request of the Administrator, the State must return the withdrawn resources within a maximum term of 120 days from the date of the request.

2. Temporary flexibility of the requirements to use FOGAPE.

The Law temporarily extends access to FOGAPE and to the financing guarantees contemplated therein until April 30, 2021, in the following terms:

a) Access to FOGAPE and Beneficiaries.

Prior to Law only companies with annual net sales not exceeding UF* 100,000 and exporters whose exports in the two previous calendar years, on average, did not exceed an FOB value equal to or less than USD 16,700,000, duly readjusted, could access the financing guaranteed by FOGAPE. The Law now temporarily allows individuals or legal entities who are entrepreneurs or companies with annual net sales not exceeding UF 1,000,000, to apply for the financing. The annual sales correspond to the net sales before the value added tax (VAT) of the goods, products or services typical of the business of the company and they may be measured in any of the following periods: (i) in the 12 months immediately prior to the date when the financing is granted; (ii) between October 1, 2018 and September 30, 2019; or (iii) in calendar year 2019.

The estimation of sales and the qualification of the company will be made by the financial institution granting the financing. Notwithstanding the foregoing, in companies who have started their business less than 12 months prior to the date of the request, or in other special cases, sales may be estimated by the relevant financial institution at the time of the evaluation.

* UF (*Unidad de Fomento*) is an indexing unit. On April 28, 2020, 1 UF is equivalent to CLP 28,685.

NEW LAW INCREASES THE CAPITAL OF THE GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED ENTERPRISES AND TEMPORARILY MAKES ITS REQUIREMENTS MORE FLEXIBLE.

b) Classification of eligible Companies.

The size of the companies eligible for financing of the Fund is defined based on their annual sales and the following criteria and ranges:

(i) Micro and Small Companies.

These are companies whose annual net sales do not exceed UF 25,000 or its equivalent in foreign currency. For them, the maximum amount of financing to be guaranteed by FOGAPE is temporarily increased from UF 5,000 to UF 6,250 or its equivalent in foreign currency. Likewise, the maximum coverage of the balance of each financing to be guaranteed by FOGAPE is increased from 80% to 85%.

(ii) Medium-sized Companies.

These are companies whose annual net sales exceed UF 25,000 or its equivalent in foreign currency and do not exceed UF 100,000 or its equivalent in foreign currency. The maximum amount of financing to be guaranteed by FOGAPE is temporarily increased from UF 15,000 to UF 25,000. Likewise, the maximum coverage of the balance of each financing to be guaranteed by FOGAPE is increased from 50% to 80%.

(iii) Large Companies I.

These are companies with annual net sales of more than UF 100,000 or its equivalent in foreign currency and not exceeding UF 600,000 or its equivalent in foreign currency. The maximum amount of financing to be guaranteed by FOGAPE will be UF 150,000 or its equivalent in foreign currency. Likewise, the maximum coverage of the balance of each financing to be guaranteed by FOGAPE will be 70%.

NEW LAW INCREASES THE CAPITAL OF THE GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED ENTERPRISES AND TEMPORARILY MAKES ITS REQUIREMENTS MORE FLEXIBLE.

(iv) Large Companies II.

These are companies whose annual net sales exceed UF 600,000 or its equivalent in foreign currency and which do not exceed UF 1,000,000 or its equivalent in foreign currency. The maximum amount of financing to be guaranteed by FOGAPE will be UF 250,000 or its equivalent in foreign currency. In this case, the maximum coverage of the balance of each financing to be guaranteed by FOGAPE will be 60%.

c) Destination of the financing.

Resources from the financing with COVID-19 Guarantee may only be used by the companies affected by the health emergency to cover working capital needs. For these purposes, each company must declare in the title representing the financing granted by the financial institution, or in a simple affidavit, the destination or use that it will give to the funds, and its commercial impact as a result of the COVID-19 pandemic.

Failure to comply with this obligation will cause acceleration and early payment of the respective financing and the defaulting company will not be able to access financing guaranteed with COVID-19 Guarantee again.

d) Financing limits according to Company.

Companies with annual net VAT sales up to:	Maximum financing limit:
1.000 UF	250 UF
10.000 UF	2.500 UF
25.000 UF	6.250 UF
100.000 UF	25.000 UF
200.000 UF	50.000 UF
400.000 UF	100.000 UF
600.000 UF	150.000 UF
1.000.000 UF	250.000 UF

NEW LAW INCREASES THE CAPITAL OF THE GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED ENTERPRISES AND TEMPORARILY MAKES ITS REQUIREMENTS MORE FLEXIBLE.

e) Conditions for financing with COVID-19 Guarantee.

Financing with COVID-19 Guarantee must meet the following copulative conditions:

(i) They will have a term of between 24 and 48 months, including at least a 6 months grace period for the payment of the first installment, all of them which must be equal and successive; (ii) there will be no cost for the pre-payment of these obligations; (iii) the offers by the financial institutions must have standard and homogeneous conditions for each of the aforementioned companies segments; (iv) the financial institution offering the financing must reschedule in installments the commercial credits the applicant company has in place with it at the time of granting the new financing. Said deferrals will not apply to other current financing; (v) financing may not be granted to micro or small companies that have been in arrears in the banking system for more than 30 days, as of October 31, 2019. They may not be granted either to medium and large companies (I and II) that have been in default in the banking system for more than 30 days, as of March 31, 2020. Notwithstanding the foregoing, these restrictions will not be applicable when micro, small, medium and large companies (I and II) are no longer in arrears at the time of requesting the financing; (vi) financing may not be granted to companies under any judicial procedures seeking to reorganize and/or liquidate the liabilities and assets of the company pursuant to Law No. 20,720 or any of the procedures provided for this purpose in special laws, with the exception of those companies subject to reorganization procedures, once the reorganization agreement has been approved, the challenge period has expired and the rest of the termination conditions contemplated in article 89 of Law 20,720 have been met; and (vii) financing cannot be granted to companies that are individually classified as risk within the portfolios of their respective creditors, when they are classified as impaired portfolio.

f) Term of COVID-19 Guarantees and Annual interest rate.

The COVID-19 Guarantees cannot be extended beyond April 30, 2025. On the other hand, the Law establishes that all financing guaranteed by the Fund, when granted by institutions that have access to financing from the Central Bank of Chile, must have an annual and nominal interest rate not in excess to the equivalent of the monetary policy rate, plus 3%.

NEW LAW INCREASES THE CAPITAL OF THE GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED ENTERPRISES AND TEMPORARILY MAKES ITS REQUIREMENTS MORE FLEXIBLE.

It is noted that COVID-19 Guarantee will not cover interest on the credits.

g) Financing request.

The Regulation provides that the processing of financing requests before the respective financial institutions may be made through digital or remote communication means which allow the company to have prior information on the contracting conditions and to keep a backup, with adequate authentication and integrity safeguards.

h) Constitution of COVID-19 Guarantees.

COVID-19 Guarantees shall be understood as constituted when the title representative of the financing is granted, which, in addition, shall at least contain the conditions of the financing, the nominal and annual interest rate, the percentage subject to the COVID-19 Guarantee and the term of the guarantee when it is less than the term of the financing. Declarations regarding the destination of the funds and the commercial impact of the pandemic can be included in the same instrument.

For the COVID-19 Guarantee to be valid it must be registered in the FOGAPE systems.

3. Tender Procedure for the granting of COVID-19 Guarantees.

The Administrator will tender the COVID-19 Guarantees in whole or in part. For these purposes, in the COVID-19 Bases of each line it must specify the general conditions that financial institutions must meet to access the COVID-19 Guarantee and make use of the committed resources, as well as the selection mechanism for offers received.

According to the Regulation, the financial institutions that can participate in these tenders are: banks, including their subsidiaries, and the savings and credit cooperatives referred to in article 87 of the General Law of Cooperatives.

Once the COVID-19 Guarantees have been awarded, the financial institutions must notify the Administrator the financing that have been granted and must grant and make the financing available to the companies for the period established by the Administrator in the bases of the respective tender.

NEW LAW INCREASES THE CAPITAL OF THE GUARANTEE FUND FOR SMALL AND MEDIUM-SIZED ENTERPRISES AND TEMPORARILY MAKES ITS REQUIREMENTS MORE FLEXIBLE.

Once this period has elapsed, the guarantee rights awarded and not used shall be deemed to be released.

If the company pays the financing before the end of the term of the line, the financial institution may use it again to secure another financing that meets the conditions for it. COVID-19 Guarantee is released once the financing subject to the guarantee is paid, or 500 days after the due date to make the payment by the debtor, unless the financing has been renegotiated or extended.

The Administrator will enter into COVID-19 Guarantee contracts with the financial institutions participating in the tender, which shall establish, at least, the coverage rate of the awarded guarantee, the deductible amount and the procedure to make the guarantee effective.

What happens with the rights awarded prior to the entry into force of the Law?

The Law provides that the rights awarded in tenders prior to the entry into force of the modifications incorporated by the Law, as well as those funds available from previous tenders, will remain in force for those who have been awarded them in said tender, unless they expressly waive them, opting for the new conditions.

"The information contained in this newsletter was prepared for educational and informative purposes only and it does not constitute legal advice. If you have any doubts or comments, please contact us".

MORE INFORMATION

Felipe Rencoret Portales
frencoret@urod.cl
+56 2 2499 5522

María Isidora Zañartu Ramírez
izanartu@urod.cl
+56 2 2499 5552

