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New Dutch export credit guarantee scheme – initial observations

On 27 April 2012 the Dutch Ministry of Finance issued a press release in which it announced that the existing Export Credit Guarantee Scheme of the Netherlands originally promulgated on 10 November 2009 (as amended) (the "Existing Scheme") will be made more attractive for Dutch exporters and will be replaced by a new Export Credit Guarantee Scheme (the "New Scheme"). The New Scheme will be carried out on behalf of the Dutch State by Atradius Dutch State Business and will come into force on 1 June 2012 until (initially) 31 December 2014.

It is recognised that it has become more difficult for Dutch exporters to obtain long term funding at an attractive price from banks as compared to their foreign competitors. Exporters in other European countries are benefiting from state instruments that are available to support export financing. The Dutch Cabinet hopes that with the New Scheme, Dutch exporters will be more successful in securing orders abroad.

The below observations are based on draft documentation made available for consultation purposes.

Independent on-demand export credit guarantee with 100% coverage

Under the New Scheme, an investor in export credit financing will benefit from an independent on-demand guarantee from the Dutch State. This guarantee will cover 100% of the originally agreed principal and interest payments required to be made by the debtor of the relevant export credit claim acquired by the investor. It is expected that the terms of the guarantee issued under the New Scheme will be set out in a separate and short form instrument. It will not contain references to the underlying export credit insurance or recourse arrangements as agreed between the applicant bank and the Dutch State. This is an improvement to the Existing Scheme which, by some market participants, was felt too complicated and less transparent from a documentation perspective.

One of the few conditions for making payment under the guarantee is that the beneficiary must have transferred its export credit claim and (unless otherwise agreed with the Dutch State) any related security interest to the Dutch State.

Eligibility criteria

It is expected that banks and their subsidiaries can apply for the New Scheme in respect of their newly originated export financings. Also existing export financings can, subject to certain conditions, benefit from the New Scheme. Eligible beneficiaries of a guarantee issued under the New Scheme are likely to include regulated banks, insurance companies, pension funds and asset investment managers which are supervised by a governmental authority in the EEA, United States of America, Canada, Australia, New Zealand or Japan, as well as certain SPVs, including securitisation and covered bonds SPVs, owned, controlled, incorporated or established by or at the initiative of any such regulated and supervised person. It is also expected that, in line with existing practice, the New Scheme will be open for syndicated export financings.

Export credit insurance and recourse arrangements

It is expected that pursuant to the New Scheme the applicant bank will be required to enter into a recourse agreement with the Dutch State which will provide that the applicant bank must, as an independent obligation, directly make all payments required to be made under the terms of the loan agreement, that are guaranteed pursuant to the New Scheme, to the investor to avoid such investor making a claim against the Dutch State under the guarantee. In case the Dutch State would make any payment under the guarantee, the applicant bank must on demand pay to the Dutch State an amount equal to the amount so paid together with any costs and expenses incurred by the Dutch State. Upon the applicant bank having made a payment pursuant to the recourse agreement with the Dutch State, the applicant bank can demand payment under the related export credit insurance. The terms of the export credit insurance are expected to be similar to the existing terms with certain amendments to fit them into the New Scheme.

We also expect that the applicant bank will need to make appropriate arrangements with the borrower and, where applicable, the investor to ensure that the applicant bank will maintain coverage under the export credit insurance and be able to comply with the terms of the export credit insurance and related recourse agreement with the Dutch State (including, without limitation, any requirement as to the transfer of the export credit claim and any related security interest to the Dutch State).

Conclusions

We expect that the documentation for the New Scheme will be more user friendly than the Existing Scheme. From a transparency perspective it is beneficial that the guarantee to be issued pursuant to the New Scheme by the Dutch State will be separately documented and will not require the beneficiary to familiarise themselves with the related export credit insurance and recourse arrangements between the applicant bank and the Dutch State. Subject to acceptable pricing, the New Scheme seems to contain the necessary ingredients to make it more attractive for Dutch exporters. Whether the New Scheme will result in cheaper funding for exporters is difficult to predict and will likely depend on the treatment of the relevant export credit and/or related recourse exposure under the new regulatory capital and liquidity regime applicable to banks and other regulated institutions.

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