

State liability based on the conditional guarantee of loans granted to communities

1 Applicable legislation

Based on several statutes, the state is liable to the loan granter for final losses due to the insolvency of the debtor concerning the capital and interest of government-guaranteed loans. The amount of the liability is limited to unpaid instalments and interest of the loan, which cannot be covered by assets recovered from loan guarantees.

The State Treasury shall remit the guarantee compensation based on the conditional guarantee to the loan granter once the final losses have been determined after the insolvency of the debtor and any guarantor has been determined and the property used as security has been sold.

These instructions are general in nature, and the state liability they concern applies to loans granted based on the following statutes:

- *Act on Interest Subsidy for Rental Housing Loans and Right of Occupancy Housing Loans (604/2001)*
- *Act on Interest Subsidy for Rental Housing Loans (867/1980)*
- *Act on Interest Subsidy for Right-of-Occupancy Housing Loans (1205/1993)*
- *laki vuokra-asuntojen rakentamislainojen valtiontakauksesta (856/2008) (act on government guarantees on construction loans for rental properties)*
- *laki korkotuesta vuokra-asuntojen rakentamislainoille vuosina 2009 ja 2010 rakennusalan työllisyyden edistämiseksi (176/2009) (act on interest subsidy for construction loans for rental properties in 2009 and 2010 to promote employment in construction)*
- *laki vuokratalojen rakentamislainojen lyhytaikaisesta korkotuesta (574/2016) (act on short-term interest subsidy for construction loans for rental properties)*
- *laki valtiontakauksesta aravalainojen takaisinmaksamiseksi (868/2008) (act on government guarantees for the repayment of Arava loans)*
- *laki asunto-osakeyhtiöiden perusparannuslainojen valtiontakauksesta (941/2014) (act on government guarantees for renovation loans for housing companies)*

In addition to this, the Act on Guarantees and Third-Party Pledges (361/1999) is applied to situations involving government guarantees as a regulation complementing special legislation.

Government-guaranteed loans are subject to detailed regulations, which should always be verified against the statute that the loan is based upon.

2 Granting and servicing loans and managing securities

2.1 General loan granter responsibilities

A prerequisite for the validity of state liability is that the loan granter manages the government-guaranteed loan and its securities in accordance with applicable law and the related statutes and regulations as well as in accordance with good banking practice. The State Treasury shall not specify any additional instructions concerning good banking practice.

2.2 Granting a loan

When granting a loan, the granter must carefully determine the debtor's solvency and take it into account when making the loan decision. Loans must not be granted to debtors who already have documented difficulties with payments, such as payment default entries. When assessing the debtor's solvency, the back-end weighted nature of instalments and the debtor's ability to manage their instalments even towards the end of the loan period must be taken into account insofar as it is reasonably possible at the time of granting the loan and with the means available to the loan granter. The information provided by the debtor must be verified. The loan granter must keep the documents related to the reports required for the granting of the loan.

The promissory note or loan agreement must state that the State Treasury may collect the guarantee compensation paid to the loan granter from the borrower and charge annual interest on the guarantee compensation in accordance with the interest rate specified in subsection 1 of Section 4 of the Interest Act to the debtor.

2.3 Loan servicing

The loan granter must service the government-guaranteed loan in accordance with applicable legislation and the resulting statutes and regulations as well as good banking practice.

The loan granter must react to any payment default entries the debtor may have in a timely manner and always inform the State Treasury of any delayed payments. In practice, information on delayed payments is supplied regularly to the State Treasury as machine-readable files. Loan collection must be carried out responsibly and in a timely manner. The interest rate ceiling fee cannot be linked to the loan margin or added to the capital. So-called interest rate collars are also forbidden.

The granter of a government-guaranteed loan can be replaced and the repayment schedule, interest and other terms of the loan can be changed during the loan period, if the State Treasury approves the change. However, decisions concerning so-called short interest subsidy loans¹ are made by the Housing Finance and Development Centre of Finland (ARA). Consent for changes to

¹ Loans that have been granted based on the act on short-term interest subsidy for construction loans for rental properties or the act on government guarantees on construction loans for rental properties.

terms of the loan and securities is applied for from the State Treasury by submitting a written, free-form application.

2.4 Security

2.4.1 Loan granter's duty to manage securities

Loan granter must manage securities and ensure that their value does not decrease. The applicable loan or security terms must contain a regulation stating that the debtor or guarantor has the duty to take out sufficient insurance for the property used as security. Based on the information available, the loan granter has a duty to oversee that the property used as security is insured at all times with a contractors' all risks insurance during construction and a full value insurance later on, for example.

In the event of damage, the loan granter must do their part to manage the security so that the effects of the damage can be restricted as effectively as possible. The loan granter must oversee that the insurance payments resulting from the damage to the property are paid to the security holder.

2.4.2 Making changes to the security during the loan period

The securities for government-guaranteed loans can be changed during the loan period, if the State Treasury accepts the new securities. The solidity of the security cannot be reduced, and the change to the security cannot increase the state's credit loss risk.

2.4.3 Security realisation

It is in the interest of all parties that securities are realised quickly and in a timely manner.

The loan granter may take legal action against the debtor, any guarantors and/or the property used as security to claim the payment, seek distraint or sale of the property used as security in accordance with the Enforcement Code and impose bankruptcy on the debtor without consulting the State Treasury first. The State Treasury must, however, be notified immediately when the matter has entered enforcement or been initiated in a court of law. The loan granter must monitor the claim and its priority carefully.

According to applicable law, the loan granter must attend to the state's interest and abide by any orders issued by the State Treasury in capitalising the property used as security. This means that the loan granter may capitalise the property in accordance with these instructions.

If the sale price of the property sold as part of enforcement or by the bankruptcy estate cannot cover the liabilities of the remaining loan sum in full, the loan granter must notify the State Treasury of the matter and provide the appraisal documents in its possession to the State Treasury.

An arrangement, a similar measure or the voluntary capitalisation of the property used as security in a manner that puts the collection of the loan at risk may only be carried out with explicit permission from the State Treasury.

Any announcements and requests made regarding the capitalisation of the security must be submitted by e-mail to [takauskorvaukset\(at\)valtiokonttori.fi](mailto:takauskorvaukset(at)valtiokonttori.fi).

3 Paying guarantee compensation based on the conditional guarantee

3.1 Preconditions for paying guarantee compensation

3.1.1 State's ultimate liability

The state is responsible to the loan granter for any final losses of capital or interest of the government-guaranteed loan due to the insolvency of the debtor insofar as the assets made up of securities do not cover the unpaid instalments and interest on the loan.

3.1.2 Sale of security

Any property used as security must be sold before guarantee compensation can be paid.

The property that is used as security does not need to be sold if the debtor is entitled to keep their security according to the reorganisation proceedings specified in the Restructuring of Enterprises Act.

3.1.3 Insolvency

The insolvency of a debtor is determined based on a separate report after the security has been sold. A debtor may be declared insolvent based on bankruptcy or a lack of means found in enforcement proceedings or the dismissal of claims based on business restructuring, or the State Treasury and the loan granter may agree that the debtor is insolvent.

3.1.4 Final losses

The State's liability will be realised once the final losses have been determined after the insolvency of the debtor and any guarantor has been determined and the property used as security has been sold.

In bankruptcy, the guarantee compensation can be paid when the property used as security for the loan has been sold and the bankruptcy proceedings have ended. The guarantee compensation can be paid before the bankruptcy proceedings have ended upon case-specific discretion of the State Treasury.

When a debtor enters business restructuring, the security compensation may be paid based on a verified payment schedule. The payment schedule does not need to be legally valid. In this event, the amount dismissed from the debt in the restructuring programme is paid as compensation. The property used as security must be sold before the compensation can be paid, unless the debtor

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is allowed to keep their security according to the restructuring process. If the payment schedule is changed later on or dismissed completely by a legally valid decision acquired through appeals, or the debtor is later declared bankrupt, the loan granter must ensure that the undue payments made by the guarantor after these changes become valid are paid to the State Treasury.

Final losses due to the insolvency of the debtor can also be determined by the debtor being barred for lack of means by enforcement. In this event, the State Treasury must be provided with a certificate of the barring the debtor for lack of means issued by enforcement as well as the most recent enforcement inquiry.

It is also possible that the State Treasury and the loan granter agree that the losses have become final due to the insolvency of the debtor after case-specific deliberation.

3.1.5 Reduction or non-payment of the guarantee compensation

The guarantee compensation may be left unpaid or its amount may be reduced if applicable laws or the resulting statutes and regulations or good banking practice have not been abided by in granting or servicing the loan or security.

Please note that if any significant changes are made to the loan terms during the loan period without consent from the State Treasury or the Housing Finance and Development Centre of Finland, the guarantee compensation paid can be reduced or the compensation may be dismissed altogether. That is why you should be very careful when assessing the significance of any changes.

3.2 Payment of compensation and the loan granter's obligation to pay

The State Treasury shall pay the guarantee compensation to the loan granter without undue delay upon application once the final losses have been determined after the insolvency of the debtor and any guarantor has been determined and the property used as security has been sold.

If the loan granter is able to collect unpaid instalments and interest from the debtor after the guarantee compensation is paid, the loan granter must pay them back to the State Treasury. The loan granter must also pay any instalments they have received after the bankruptcy proceedings to the State Treasury.

4 Contact information

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