

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Finance / Loan Schemes

Guarantee scheme

- ▶ Guarantee scheme: for new, additional loans and credit lines with max. term of 12 months granted by Belgian banks (or Belgian branches of banks) between 1 April 2020 and 31 December 2020 instead of 30 September 2020 (incl. revolving and term loans – excl. refinancing). Process is that eligible lenders receive an “envelope”, which is a share in the total amount of the state guarantee (€50 billion), and, within the limits of that envelope, put together a portfolio of “guaranteed credits”

- ▶ Viable Belgian entities (i.e., non-financial companies, SMEs, the self-employed and non-profit organisations) experiencing decrease in turn-over and/or technical unemployment and/or ordered to shut down operations (COVID-19 related issues, of which proof must be delivered)
- ▶ Availability of the State guarantee for onward intragroup lending or intragroup reimbursements to prevent call on guarantees is uncertain
- ▶ Maximum amount available per borrower: on a consolidated basis, the lowest of either €50 million or an amount equal to liquidity requirements during a period of 12 months (18 months for SMEs). The limit can only be increased by Royal Decree, upon borrower’s request/motivation

From 1 April 2020 until 31 March 2023 (deadline for banks to submit request to call upon state guarantee)

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GOVERNMENT MEASURES FOR BUSINESSES

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WHEN?

Finance / Loan Schemes

Bank loan payment extension

- ▶ Belgian banks offer a payment extension for existing facilities granted by banks
 - This deferral only applies to principal amount and not to interest
 - It concerns all usual types of facilities (excl. leasing/factoring)
 - There are no costs attached (except ordinary interests)

- ▶ Payments issues caused by COVID-19 crisis (decrease in turn-over and/or technical unemployment scheme and/or compulsory closure of business);
- ▶ There must be a permanent establishment in Belgium;
- ▶ Entities (i.e., non-financial companies, SMEs, the self-employed and non-profit organisations) are not in default on 1 February 2020 with regard to other debts (e.g., credits/taxes/social security contributions) or less than 30 days arrears on aforesaid debts on 29 February 2020;
- ▶ Entities fulfilled their contractual obligations with banks during last 12 months prior to 31 January 2020;
- ▶ Entities are not subject to active credit restructuring; and
- ▶ Requests submitted before or on 30 April 2020: maximum of 6 months payment extension may be obtained, meaning: until 31 December 2020 at the latest. Requests submitted after 30 April 2020: the final date remains 31 December 2020

If conditions are fulfilled, banks must grant payment deferral. In case of unfounded refusal, banks are unable to call upon state guarantee

Deferral during six months (until 31 October 2020 at the latest)

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GOVERNMENT MEASURES FOR BUSINESSES

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Finance / Loan Schemes

SME loan guarantee scheme

- ▶ For credit agreements with a term between 12 and 36 months
- ▶ Key take-aways are:
 - Guaranteed are new credits with a maturity between 12 months and 36 months and may be granted from 24 July 2020 until 31 December 2020. By royal decree, this period could be extended if necessary, as a result of the COVID-19 crisis
 - Excluded from the guarantee are refinancing credits, drawdowns of credits, leasing agreements, factoring agreements, consumer credits and mortgage credits
 - The new state guarantee scheme is optional
 - The state guarantee covers 80% of the loss incurred on each credit. The state guarantee applies at the level of the individual credit. It is a guarantee under the legal privilege of execution
 - The premium shall be 50 bps on an annual basis of the maximum principal amount for each credit covered. Credits placed under the guarantee by the lender may have an interest rate of up to 2% on an annual basis (excl. the imputation to the borrower of the aforementioned fee)

- ▶ “Eligible Lenders”, i.e., lenders that are capable of granting these guaranteed credits, are those mentioned in the Law of 27 March 2020 (see above)
- ▶ “Eligible Borrowers” are (non-financial) SMEs, as defined in the Belgian Code on Companies and Associations Code, registered with the Crossroads Bank for Enterprises, incl. self-employed persons and the non-profit sector
- ▶ The guaranteed principal amount per borrower is limited to the higher of the following amounts (on a group basis in each case):
 - the borrower's liquidity needs for 18 months as attested by the borrower;
 - twice the borrower's total annual wage bill;
 - 25% of the borrower's turnover
- ▶ Please note that enterprises ineligible for this additional guarantee, can receive financial support through the state guarantee scheme

Live

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

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WHEN?

Finance / Loan Schemes

Non-bank loan guarantee scheme

- ▶ Enlarged guarantee scheme (current limit: €300 million + additional amount: €100 million): guarantee for 75 % for bridging loans in relation to existing non-bank debts (e.g., VAT, tax, wages, rent) no older than 12 months in exchange for a one-off premium of 0.25 % / guarantee for 50 % for existing bank debts for which bank agrees grant min. 3 months payment deferral or that have a remaining term of 3 months

- ▶ Eligible entities are Flemish companies, SMEs and self-employed persons that suffered financial difficulties due to the COVID-19 outbreak. Commitments can only be covered under this guarantee in case they do not benefit from the state guarantee or do not fall within the scope of the payment deferral granted by the Belgian banking sector. In addition entities should not have been in default on 1 February 2020 regarding other debts (e.g., credits/taxes/social security contributions) / less than 30 days arrears on aforesaid debts on 29 February 2020

Live until end of 2020

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

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WHEN?

Finance / Loan Schemes

Gigarrant scheme

- ▶ *Participatiemaatschappij Vlaanderen* (PMV - a financial organisation owned by the Flemish government) offers financial support ("Gigarrant scheme", total limit: €3 billion) by: (i) covering up to 80 % of commitments of Flemish businesses in need of guarantees greater than €1.5 million; through capital and (ii) evaluating with borrowers and businesses which measures should/could be taken to ease financial burdens, (iii) with a term of up to eight years. PMV is also able to invest in companies by means of a capital contribution or providing a loan. In exchange, a periodic guarantee premium has to be paid (at market value) and the guaranteed amount cannot be used to make (in)direct payments to company shareholders/management (unless based on existing agreements in line with the market). PMV has also announced that it can grant subordinated loans for a term of three years to SMEs
 - Subordinated loans between €25,000 and €2,800,000 (different rules apply for loans up to €800,000, and loans between €800,000 and €2,800,000). The loan granted must fully cover an undertaking's financial needs during at least 12 months
 - ▶ Applicable interest rates: for start-ups & scale-ups: 5% (up to €800,000) or 6 % (between €800,000 and €2,800,000); for SMEs and self-employed: 4,5 %

- ▶ SMEs and large companies in need of guarantee for amounts exceeding €1.5 million for loans made to businesses. Certain conditions must be met, e.g., not being in financial difficulties until 31 December 2019; present a substantiated business plan; allocating the underlying financing to economic activities in Flanders;... + companies making use of Start-up Financing (*Startlening/Prêt de démarrage*) and Co-Financing arrangements (*Cofinanciering/Cofinancement*) schemes and businesses that have been granted loans by PMV or businesses in which PMV has an equity interest
- ▶ The Gigarrant guarantee appears to be available only for entities that do not yet receive support through the federal guarantee arrangements (see the first row on the preceding slide). The amount of guaranteed funding per company will be limited temporarily in accordance with European regulations (= twice the total annual gross wage bill 2019 or 25% of total turnover 2019 or, subject to appropriate justification, the liquidity requirements for the next 18 months for an SME and for the next 12 months for a large company)
- ▶ Subordinated loans: primarily intended for start-ups and scale-ups but can also be granted to mature companies (SMEs and self-employed). Several conditions are to be fulfilled (August 2020: some conditions have been softened), e.g., no arrears on current loans, taxes, VAT or social security at the beginning of the COVID-19 crisis; and not being considered a business in difficulty (non-exhaustive list). In addition, banks must commit to retain existing credits and/or allow payment deferral of the principal amount. A subordinated loan cannot be combined with the nuisance premium and the corona compensation premium

Live until end of 2020

Subordinated loans: requests can be submitted until 15 November 2020

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GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Finance / Loan Schemes

Proxi loans

- ▶ Mobilization of private savings through 'proxy-loans' (€1 million), for the benefit of SMEs. Citizens that are prepared to commit their savings, may be rewarded by means of a 'tax credit' (i.e., a tax discount in the personal income tax)
 - ▶ The Proxi Loan is subordinated, both in respect of the borrower's existing and future debts;
 - ▶ The interest rate of the Proxi Loan is a minimum of 0.875% and a maximum of 1.75% (legal interest rate for 2020);
 - ▶ The Proxi loan has a term of 5 or 8 years
- ▶ All self-employed persons, SMEs and associations of the Brussels-Capital Region with an economic activity can benefit from the Proxi loan
 - ▶ The borrower may use the amount borrowed only for the pursuit of his business activities
 - ▶ The Proxi Loan may indicate that the borrower can repay the loan early, by a one-off payment of the outstanding balance in principal and interest
 - ▶ The borrower may not borrow more than €300,000 (instead of €250,000) in 2020 and 2021
 - ▶ The lender can invest a maximum of €75,000 (instead of €50,000) per company per fiscal year in 2020 and 2021, with an absolute maximum of €200,000
 - ▶ The lender benefits from an annual tax credit:
 - ▶ of 4% of the amount borrowed during the first three years;
 - ▶ then of 2.5% for the following years;
 - ▶ If the borrower is unable to repay (e.g., due to bankruptcy), the lender can recover 30% of the outstanding amount via a one-off tax credit

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Tax

Income tax payment extension

- ▶ With respect to the payment of corporate income tax (resident and non-resident), personal income tax (resident and non-resident) and legal entities tax, the usual payment terms have been automatically extended by two months (in addition to the normal payment term and without late payment interest becoming due)

- ▶ All taxpayers subject to the relevant tax

For assessments as of 12 March

Customs payment extension

- ▶ Customs & Excises also amended the electronic customs portal PLDA and extended payment terms from one week to four weeks for (a) excise duties and packaging levy on alcohol and alcoholic and non-alcoholic beverages; and (b) import VAT. This extension of payment terms applies until 30 June 2020 and only to the abovementioned taxes in PLDA

- ▶ All taxpayers subject to the relevant tax

Extension applies until 31 December 2020

Late payment flexibility

- ▶ Companies facing financial difficulties as a result of the COVID-19 pandemic, regardless of their activity or sector, can additionally request (i) a further deferral of payment, (ii) a waiver of late payment interest and (iii) a waiver of late payment fines. These measures can be requested for VAT, wage withholding tax, corporate income tax, personal income tax and legal entities tax. A company can request to apply (one or more of) these measures using a form specifically issued for this purpose and should submit a separate request for each individual debt

- ▶ All Belgian registered businesses (both companies and self-employed individuals) are entitled to these measures if it can be shown that they have incurred nuisance from the spreading of the COVID-19 and the correlating measures

Application to be filed by 31 December 2020 at the latest

No December 2020 advance payment

- ▶ All VAT taxable persons filing periodical VAT returns (i.e., monthly or quarterly VAT returns) are not obliged to pay the December advance payment in December 2020. As a result, the VAT due on the transactions carried out in December respectively Q4 of 2020 shall only have to be paid to the Belgian State on 20 January 2021 at the latest

- ▶ All VAT taxable persons filing periodical VAT returns (i.e., monthly or quarterly VAT returns)

VAT return December 2020

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Tax

Tax credit increase

- ▶ If self-employed persons and companies are in a tax paying position and do not make timely prepayments of income taxes, a tax increase will be imposed. Each quarter a prepayment can be made, and each prepayment leads to a tax credit which reduces the tax increase suffered if no prepayments would have been made. A prepayment made in the first quarter results in a higher tax credit than a prepayment made in a later quarter. Many self-employed persons and companies are currently facing liquidity problems due to the COVID-19 crisis and can therefore not make prepayments. In order to avoid that they are being penalized if they only prepay the taxes later this year, the tax credits for the last two quarters are increased. The measure shall apply to prepayments relating to a taxable period ending between 30 September 2020 and 31 January 2021 included

- ▶ For companies and self-employed persons facing liquidity problems as a result of the COVID-19 crisis. This measure therefore does not apply to companies that repurchase own share, make a capital reduction or that attribute or pay a dividend between 12 March 2020 and 31 December 2020. Taxpayers having certain ties with tax havens are also excluded from this rule

2020

Loss carry back

- ▶ In principle, tax losses can only be carried forward and no carry-back to previous tax years exist in Belgium. However, in order to improve the cash position of businesses and companies, a one-time possibility is introduced to carry-back the losses incurred during the COVID-19 crisis to compensate the taxable profits of the previous financial year. Limitations may apply to the amount that can be carried back

- ▶ Self-employed persons and companies who were not yet in difficulties when corona started. This measure does not apply to companies that repurchase own share, make a capital reduction or that attribute or pay a dividend between 12 March 2020 up to and including the filing of the CIT return in relation to assessment year 2021. Taxpayers subject to a special tax regime or having certain ties with tax havens are also excluded from this rule

Self-employed persons: the loss expected in income year 2020 due to the COVID-19 crisis can be carried back to income year 2019

Companies: the estimated loss incurred in the COVID-19 year can be carried back to the taxable profit realized during a financial year closing between 13 March 2019 and 31 July 2020

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES	ELIGIBILITY	WHEN?
Tax		
<p>Reduced 6% VAT rate (instead of 21%) on the supply, intra-Community acquisition and import of certain PPE's</p> <ul style="list-style-type: none">▶ In order to stimulate the supply of goods which are required to comply with the preventive measures in the fight against the COVID-19 pandemic, the Federal Government has decided to temporarily apply the reduced VAT rate of 6% (instead of the standard rate of 21%) on the supply, intra-Community acquisition and import of:<ul style="list-style-type: none">– face masks, classified under the CN codes 4818 90 10 00, 4818 90 90 00, 6307 90 98 10, 6307 90 98 91, 6307 90 98 99 and 9020 00 00 10, and– hydro alcoholic gels	<ul style="list-style-type: none">▶ All VAT taxable persons	From 4 May 2020 to 31 December 2020

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Employment

Temporary unemployment due to *force majeure* (COVID-19 procedure)

- ▶ Companies temporarily unable to employ their staff due to government measures or the socio-economic or operational effects of the COVID-19 crisis can apply for temporary unemployment relief (furlough) by means of a simplified procedure. Temporary unemployment relief suspends all employment agreements and relieves the employer from its payment obligations. This simplified procedure is only applicable to companies complying with the certain 'eligibility' conditions. Other companies will have to rely the normal procedures for temporary unemployment or the transitional measures
- ▶ Employees are entitled to unemployment relief equal to 70% of the employee's average remuneration capped at €2,754.60 per month which will be borne by the government. After 31 December 2020, the percentage of capped average remuneration will decrease to 65%

- ▶ Companies that can demonstrate that they belong to a sector that is still particularly affected by the restrictive measures adopted by the Government; or
- ▶ Companies that can demonstrate at least 20% temporary unemployment for force majeure corona or temporary unemployment for economic reasons in the second quarter of 2020 compared to the total number of days declared in this quarter to the National Social Security Office

From 1 September 2020 to 31 December 2020

Temporary unemployment for white-collar workers

- ▶ Separate transitional measures are provided for white-collar and blue-collar workers. White-collar workers can choose between the classic system and a transitional system. The transitional system is for companies that cannot use the simplified procedure for temporary unemployment but are still facing difficulties because of COVID-19. It provides for more flexible conditions in case of temporary unemployment for economic reasons. It provides for more flexible conditions in case of temporary unemployment for economic reasons

- ▶ Companies with a decrease of at least 10% in turnover / production during the quarter preceding the request of the temporary unemployment scheme compared to the same quarter of 2019

From 1 September 2020 to 31 December 2020

Temporary unemployment for blue-collar workers

- ▶ Only one system applies to blue-collar workers, namely the classic system as it existed before COVID-19, but with extension of the maximum duration of temporary unemployment as a transitional measure

- ▶ Substantial economic and operational hardship such as lack of supply, lack of orders, substantial decrease of orders, 10% loss of turnover, negative impact of the governmental measures to prevent further spreading of the virus (lock down)

From 1 September 2020 to 31 December 2020

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Employment

Temporary unemployment for parents in the event of closure of schools or childcare institutions

- ▶ Companies with employees who face problems caring for their children because of the closure of schools or childcare can opt for a specific regime of temporary unemployment

- ▶ Employees whose underage children are confronted with the closure of childcare or school because of measures regarding COVID-19
- ▶ It is required that the parent concerned lives under the same roof as his/her child
- ▶ The same applies to the care of a disabled child, regardless of his/her age

From 1 October 2020 to 31 December 2020

Amicable payment plan for social security contributions

- ▶ Companies recognized as being in restructuring or facing difficulties can temporarily reduce the working time of employees by 1/4 or 1/5th, possibly in combination with the introduction of a 4-day working week. Companies will then receive a reduction in social security contributions provided that they pay their employees a minimum compensation for their loss of salary. This reduction can be implemented for a maximum period of 1 year and by means of a CBA/adjustment of the work regulations
- ▶ Measures were also taken to protect companies and employees belonging to Joint Committee 302 (hospitality sector). These companies are exempt from social security contributions for Q3 and the end-of-year premium of the employees is paid by the government

- ▶ Companies recognized as being in restructuring or facing difficulties

From 1 March 2020 to 31 December 2020

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

Grants

- ▶ **Corona-subsidy:** for all undertakings in the Flemish Region, the revenue of which was 60 % lower during August and September 2020 compared to the same period in 2019. The subsidy is 7,5 % of the revenue realized in August and September 2019 (max. €5,000)

- ▶ Brussels hotels and aparthotels can count on additional financial support: a premium of €1,100 per accommodation unit, up to a maximum of €200,000 per establishment and €800,000 per beneficiary
- ▶ Hotels or aparthotels with a basic capacity of 18 accommodation units or less receive a flat-rate premium of €20,000

- ▶ Brussels businesses and self-employed persons active in the event, entertainment, tourism and cultural sector, who have not yet been able to resume their activities as a result of the COVID-19 measures adopted by the National Security Council or that are still severely affected by these measures, may receive a new premium ranging between €3,000 and €9,000

ELIGIBILITY

- ▶ There is a separate regime for undertakings which did not realize a full-fledged revenue in 2019
- ▶ Catering sector: only eligible if using a registered cash system ("*witte kassa/caisse blanche*")
- ▶ Undertakings that must still close their businesses in August / September, can request an advance payment of max. €2,000

- ▶ Conditions to be fulfilled, such as having both an active registration number and valid town planning and fire safety certificates for the hotels and aparthotels for which they wish to receive support; not having any tax and social security debts at the time of application and being compliant when the annual accounts are published with the National Bank

In order to qualify for the premium, the enterprise or self-employed person must :

- ▶ employ less than 50 employees in full-time equivalents
- ▶ have at least 1 establishment in the Brussels-Capital Region which, on 18 March 2020, was registered with the Crossroads Bank for Enterprises, exercise an economic activity there and have resources specifically intended for it;
- ▶ carry out an activity included in the list of VAT activities eligible for aid; that list is annexed to the decision of the Government of the Brussels-Capital Region of 15 October 2020 and contains all the sectors eligible for aid, classified according to their NACE BEL 2008 code; and
- ▶ comply with its obligations regarding VAT returns and payments on 20 October 2020

WHEN?

Requests to be submitted between 1 October 2020 and 15 November 2020 – via Vlaio

Submit request by 13 November 2020 at the latest. The decision is notified to the beneficiary by 31 December 2020 at the latest

Submit request no later than 4 December 2020

The beneficiary will be notified by 24 December 2020 at the latest whether or not he/she will receive the premium

COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Grants

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| <ul style="list-style-type: none">▶ Flemish government has decided to grant a corona subsidy to enterprises amounting to 10% of the turnover, excluding VAT▶ Companies have the option to submit an application for the period from 1 October 2020 - 15 November 2020 or from 19 October 2020 - 18 November 2020<ul style="list-style-type: none">– If the company opts for the period from 1 October to 15 November 2020, the maximum amount of the subsidy is:<ul style="list-style-type: none">▶ €11,250 for enterprises with max. 9 employees;▶ €22,500 for enterprises employing 10 employees or more– If the company opts for the period from 19 October to 18 November 2020 or in the case below, the maximum subsidy is as follows:<ul style="list-style-type: none">▶ €7,500 with max. 9 employees,▶ €15,000 for companies employing 10 employees or more,▶ And the company must have a fall in turnover of at least 60% as a result of the COVID-19 measures– Derogation from the above: no reduction in turnover must be demonstrated if the main activity of the company on 19 October 2020 belongs to the catering sector and the company had to close as a result of the COVID-19 measures<ul style="list-style-type: none">▶ The subsidy amounts to 10% of turnover excl. VAT for the period 19 October 2019 - 18 November 2019▶ Not applicable if turnover in the aforementioned period is 50% or more in take away activities | <ul style="list-style-type: none">▶ Only enterprises that were eligible to call upon the other corona premiums of the Flemish government (see above) are eligible to receive this new corona subsidy▶ The following enterprises are not eligible for the grant:<ul style="list-style-type: none">– enterprises that find themselves in a situation of:<ul style="list-style-type: none">▶ dissolution;▶ discontinuation;▶ bankruptcy;▶ liquidation;– holding companies, management or patrimonial companies;– companies of which the managing director is affiliated as a director or partner with another company that received the subsidy and to which they provide business services;– companies that have outstanding debts vis-à-vis VLAIO following the recovery of a corona nuisance premium, corona compensation premium, corona support premium– enterprises that had not yet started their activities on 1 October 2020 | <p>Application period from 1 October 2020 to 15 November 2020</p> <p>or from</p> <p>19 October 2020 to 18 November 2020</p> |
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COVID-19 Response: Belgium

GOVERNMENT MEASURES FOR BUSINESSES

ELIGIBILITY

WHEN?

Other

- ▶ **Reinsurance Programme** on basis of protocol agreement concluded between the Federal government/Assuralia/private trade credit insurers:
 - Max. budget is €903.2 million, representing the maximum losses for the Belgian State under the Reinsurance Programme
 - The Programme applies to products of trade credit insurance and surety between companies (B2B); it also applies to trade receivables from both Belgian buyers (debtors) and buyers abroad and to suretyships in favour of both customers in Belgium and abroad
 - The Programme covers risks attaching to the period from 1 January 2020 until 31 December 2020, incl. losses occurring before 27 March 2020 it applies to risks located worldwide, with the exception of countries under sanctions
 - The maximum risk per debtor for an insurer is €50 million. This amount can be exceeded by means of a special acceptance by Credendo
 - By the end of September 2020, the European Commission will decide whether the temporary State aid will be extended beyond 31 December 2020 in accordance with the 2012 Communication as amended

- ▶ The Programme would cover short-term commercial credit insurance (< 2 years) taken out by policyholders domiciled in Belgium with Belgian (branches of foreign) credit insurers
- ▶ Credit insurers undertake to keep intact until the end of year 2020 the credit limits actually used in the 12 months preceding 1 March 2020. In return, Credendo – Export Credit Agency (acting on behalf of the State) undertakes to reinsure the risks underwritten by the credit insurers
- ▶ Shared contribution: credit insurers cede part of their premiums to the State / continue to take on part of losses (sharing evolves according to loss ratios)
 - Concrete figures:
 - ▶ In the first stage of the loss ratio from 0 to 100%, there is an equal distribution of losses between the participating insurers and Credendo ECA: each have a share in the losses of 50%
 - ▶ In the second stage of the loss ratio of 100 to 300%, the participating insurers participate with 20% and Credendo ECA with 80% in the losses for the tranche above 100%
 - ▶ In the third stage of the loss ratio of 300 to 1000%, the participating insurers participate with 10% and Credendo ECA with 90% in the losses

Agreement has been approved by EU

COVID-19 Response: Belgium (Continued)

Other Considerations

Directors' duties and liabilities

As a general principle, directors must exercise their mandate with due care and diligence, the yardstick being what would be expected from a careful and diligent director in the same circumstances. Business decisions must always be taken in the best interest of the company, taking into account the interests of all shareholders and other stakeholders - like employees, customers, creditors and suppliers. Within that context, it will therefore be the primary responsibility of the directors to take the necessary measures to mitigate the business, financial and human risks caused by COVID-19.

Both financial and non-financial risks (such as reputational loss) must be scrutinized, it being understood that all companies must also address challenges specific to their industry and regulatory environment (e.g., health and safety, liquidity situation, financing and commercial agreements, corporate transactions, etc.).

COVID-19 Response: Belgium (Continued)

Remote Board meetings

The Belgian Companies and Associations Code (**BCAC**) now allows for decision making by the board via written resolutions in both the NV/SA and the BV/SRL, without the need for an explicit provision in the articles of association. However, some limitations apply: (i) the resolutions need to be unanimous and (ii) the articles of association can exclude certain topics from the application of the written resolutions' procedure. It will therefore be important to verify the articles of association before applying the written resolution procedure. If the articles of association are not yet updated in light of the BCAC, it could be that the old legal regime has been included in the text and that the articles of association still require the exceptional circumstances and urgency or exclude the adoption of the annual accounts. For board meetings to be held or convened or which should have been held or convened between 1 March 2020 and 30 June 2020 (it being specified that the meetings can be held after this latter date if they were convened during the period concerned), a Royal Decree of 9 April 2020 provided that the board of directors may adopt unanimous resolutions by any means of written communication, regardless of any legal provision or provision in the articles of association to the contrary.

There are of course many circumstances in which (unanimous) written resolutions are not an option: one or more directors might oppose or be unavailable to sign, the need to thoroughly discuss difficult decisions, etc. In such case remote board meetings by conference or video calls can offer a good alternative for a physical meeting, provided that the technology used allows the directors to properly deliberate, meaning they should be able to interact and discuss live and simultaneously. The BCAC remains silent on the possibility of conference and video calls, but the practice is widely spread and generally accepted by a majority of legal scholars, although a minority argue that the articles of association should provide for it. We are of the opinion that this practice is valid and will become more and more market practice, particularly given the current macro-economic environment. The abovementioned Royal Decree of 9 April 2020 expressly confirmed our position for board meetings to be held or convened during the period set out above.

COVID-19 Response: Belgium (Continued)

Shareholders' meetings

- ▶ The shareholders of both the NV/SA and the BV/SRL can in principle only meet by electronic means if the articles of association of the company expressly allow it. The same applies to the possibility for the shareholders to vote in writing before a meeting. Moreover, a resolution must obtain the unanimous consent of all shareholders in order to be adopted in writing.
- ▶ By way of exception, the abovementioned Royal Decree of 9 April 2020 provided that the directors can impose on the shareholders (and other participants in the shareholders' meeting) to (i) cast their votes by correspondence prior to the meeting or (ii) grant a power of attorney before the meeting (as the case may be, to a person designated by the directors) with specific voting instructions, in accordance with the procedure set out in the Royal Decree. The company can also organise the remote participation of the shareholders and other participants. In addition, the directors can decide to postpone the approval of the annual accounts by the shareholders beyond the statutory date. The Royal Decree overrides any legal provision or provision of the articles of association to the contrary. These temporary measures applied to shareholders' meetings to be held or convened or which should have been held or convened between 1 March 2020 and 30 June 2020 (meetings convened during this period can be held thereafter).
- ▶ Specific provisions apply to board meetings and shareholders' meetings to be held in front a notary public (e.g., to amend the articles of association of the company). Such meetings still require the physical presence of the notary public and a representative or proxy holder of the company.
- ▶ In an FAQ relating to the abovementioned Royal Decree, the Ministry of Justice specified that general meetings can be held by conference call or video conference outside the scope of the Royal Decree provided the participants are validly convened, can deliberate, debate and vote and can sufficiently identify themselves (which is only possible with a limited number of participants). Such general meetings should be considered as 'actual' meetings.
- ▶ A draft bill dated 27 October 2020 proposes to abolish the obligation to provide the possibility to participate in the shareholders' meetings by electronic means in the articles of association. Should this bill be adopted, the remote participation will be legally permitted without any specific authorisation in the articles of association being required. The electronic means will have to (i) grant a direct, simultaneous and continuous access to the discussions, (ii) as far as the shareholders are concerned, allow them to exercise their voting right and (iii) enable the company to control the capacity and identity of the shareholders.

COVID-19 Response: Belgium (Continued)

Note:

- ▶ This document only summarizes key measures implemented to benefit businesses operating in Belgium
- ▶ The measures described above were in place as of **30 October 2020**. Updates and additional government measures are expected