

nonbinding translation  
– for information purpose only –

**Guideline for the underwriting of state guarantees by the federal State of  
Mecklenburg-Vorpommern  
(Guarantee guideline)**

**Administrative regulation by the ministry of finance  
of May 3<sup>rd</sup> 2012 – IV 130 –  
VV Meckl.-Vorp. Gl. Nr. 630 - 220**

**Reference:** AmtsBl. M-V 2012 p. 421

last amended by administrative regulation of November 25<sup>th</sup> 2014 (AmtsBl. M-V 2014 p. 1196)

**1. Legal bases**

- 1.1 For the promotion of its economy, the federal state of Mecklenburg-Vorpommern, which is represented by the Ministry of Finance and the respective state ministry responsible, may grant guarantees
- within the framework of the respective finance act (“Haushaltsgesetz”) and the provisions of the budget code (“Landeshaushaltsordnung”) of the state of Mecklenburg-Vorpommern and according to the respective administrative regulations
  - within the framework of European state aid legislation according to Art. 107 and 108 of the Treaty on the Functioning of the European Union of March 30<sup>th</sup> 2010 (ABl. C 83 of 30.3.2010, p. 47) and the respective regulations.

The above does not apply if a more specific guideline is relevant.

- 1.2 There is no legal right on a state guarantee. The federal state of Mecklenburg-Vorpommern decides in exercising professional judgment according to the statutory maximum exposure.

**2. Objective of guarantees**

Guarantees may be granted in order to stimulate the federal state’s economy. In the interest of the federal state such measures are generally judged worthy of promotion that generate and ensure sustainable competitive economic structures. Guarantees may not be granted for companies operating in industries with structural excess capacities.

**3. Guarantee beneficiaries**

- 3.1 Guarantees may be granted on behalf of commercial companies and other commercial institutions of the industry as well as for the financing of succession plans on behalf of commercial companies.
- 3.2 The benefiting company must have a permanent establishment in Mecklenburg-Vorpommern according to § 12 of the Fiscal Code of Germany (“Abgabenordnung”). The financing needs must refer to this permanent establishment.

3.3 Guarantees in favour of firms in difficulty according to the respective EU state aid law are excluded from this Guarantee guideline.

#### **4. Requirements for a guarantee**

- 4.1 Guarantees are basically granted only as another funding instrument for the collateralization of the loan is not available. (principle of subsidiarity; “Subsidiaritätsprinzip”)
- 4.2 The application for a guarantee must be made before the beginning of the financing. The guarantee must not lead to a subsequent relief of a third party. A risk takeover by the federal state does basically not apply for measures which have not been fully funded from the beginning. (“Vorbeginnsklausel”)
- 4.3 In principle, guarantees will only be granted for the part of the credit, which cannot be collateralized. Guarantees must be limited to the amount necessary for the financing. (“Sicherheitenersatzprinzip”)
- 4.4 The measure must be economically reasonable. Guarantees may only be granted for credits, whose repayment by the borrower can be assumed under normal economic development. (“Rückzahlungsprognose”)
- 4.5 The risk taken by the federal state must be adequate to the economic benefits. All parties involved in the measure must make appropriate contributions to the financing. (Chance-risk assessment, “Chancen-Risiko-Analyse”)
- 4.6 Guarantees are granted in accordance to the EU state aid regulations. A legal basis regarding state aid is among others the Commission regulation (EU) No 651/2014 of 17<sup>th</sup> June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (ABl. L 187 of 26.6.2014, p. 1).
- 4.7 Guarantees are not granted in favour of companies, which did not comply with a recovery order of an earlier decision by the EU commission regarding the assessment of an illegal aid and its incompatibility with the common market. Exempted from this rule are guarantees for the management of the consequences of specific natural disasters.

#### **5. Type and scope of guarantees**

- 5.1 Guarantees can be used for the collateralization of repayable claims. Those credits aim at the financing of investments or operating assets (loans, cash and guarantee facilities) or the financing of succession plans. Guarantees are granted as deficiency guarantees with a proportionate deductible, borne by the lender, of at least 20%.

- 5.2 Contractual interest and default interest after credit termination are additionally secured up to a maximum of 10% of the guaranteed amount of the underlying credit outstanding. (cap; “Kappungsgrenze”) After credit termination the contractual interest rate is relevant for the contractual relationship with the federal state regarding the guarantee. Other accessory claims are not guaranteed.
- 5.3 In principle the guarantee period equals the loan period. Investment loans basically have a maximum duration of 15 years. Regarding loans for the financing of immovable assets (land and buildings) or inland waterway vessels the duration of the guarantee can exceptionally be extended to a maximum of 20 years. Operating credits are guaranteed for a duration of up to 8 years.
- 5.4 Regarding operating credit facilities the guaranteed amount will be progressively reduced straight-line, beginning from the second half of the guarantee period. An exception can be made for guarantees in favour of the financing of large volume individual projects. Regarding individual sureties (“Einzelavale”) covered by the state guarantee, the coverage of the state guarantee remains unmodified until the settlement and return of the specific surety.

## **6. Applicants**

In principle the following institutions are entitled to submit an application:

- Credit institutions according to § 1 of the German Banking Act (“Kreditwesengesetz”)
- Other institutional intermediaries, as they can comply a supervision, administration and settlement of the credit according to standard banking practices

The respective institution has to be seated in the European Economic Area.

## **7. Application procedure**

The process starts with the application. Applications for a state guarantee can be made at the mandatory of the federal state of Mecklenburg-Vorpommern:

PricewaterhouseCoopers Aktiengesellschaft  
Wirtschaftsprüfungsgesellschaft  
Werderstrasse 74b  
19055 Schwerin

The application has to include all documents listed in appendix 1 to this guideline. The application should register in good time to provide enough time for review and processing by the mandatory.

## **8. Preliminary assessment (“Vorprüfverfahren”)**

- 8.1 As an application for a state guarantee is not yet possible, the federal state can assess to what extend the preconditions for a guarantee are given. Such a preliminary assessment is useful only, as an independent assessment is possible and appropriate. The performance of a preliminary assessment follows an application by the company and is regarded as an exemption of rule.

8.2 In a subsequent guarantee application process, the federal state is bound to its findings of a preceding preliminary assessment only within the scope of its professional judgment.

## 9. Guarantee fees

9.1 The federal state of Mecklenburg-Vorpommern charges a handling fee for the guarantee application and the preliminary assessment procedure. After approval of the guarantee, a recurring guarantee fee is charged. Appendix 2 to this guideline is relevant.

9.2 The applicant is liable for the handling fee. The processing of the application depends on the payment of the fee. Regardless the outcome of the decision, the handling fee is not refunded.

## 10. Guarantee underwriting

10.1 The decision on the underwriting of a guarantee is made by the guarantee committee. The committee consists of a delegation of the Ministry of Finance and the respective state ministry responsible.

10.2 The mandatary of the federal state informs the applicant about the federal state's decision.

10.3 The federal state is bound to a positive decision (guarantee assurance) according to § 38 of the state's administration procedure act ("Verwaltungsverfahrensgesetz").

10.4 The guarantee comes to effect as the deed of suretyship is handed over to the applicant by the mandatary of the federal state. The deed of suretyship is endorsed by the Ministry of Finance and the respective state ministry responsible.

## 11. Administration of the guarantee

11.1 The administration of the guarantee is made by the federal state's mandatary. The mandatary is entitled to assume the federal state's rights as a guarantor and to charge the guarantee fees.

11.2 After effectiveness of the guarantee both, this guarantee guideline and the appendix 3 continuously apply for the contractual relationship between the federal state and the lender.

## 12. Appendices

Appendices 1 to 3 are part of this administrative regulation.

## 13. Inception, termination

This administrative regulation comes into force after the date of its publication. At the same time the guarantee guideline of December 4<sup>th</sup> 2008 (AmtsBl. M-V p. 1097), last amended by administrative regulation of June 10<sup>th</sup> 2009 (AmtsBl. M-V, p. 554), no longer applies.

AmtsBl. M-V 2012, p. 421

**This translation is not legally binding. It follows information purposes only. Legally binding is the German guarantee guideline "Richtlinie zur Übernahme von Bürgschaften des Landes Mecklenburg-Vorpommern [Bürgschaftsrichtlinie], dated May 3<sup>rd</sup> 2012 - IV 130 - , VV Meckl. – Vorp. Gl Nr. 630-220 ) and all appendices in the German language.**