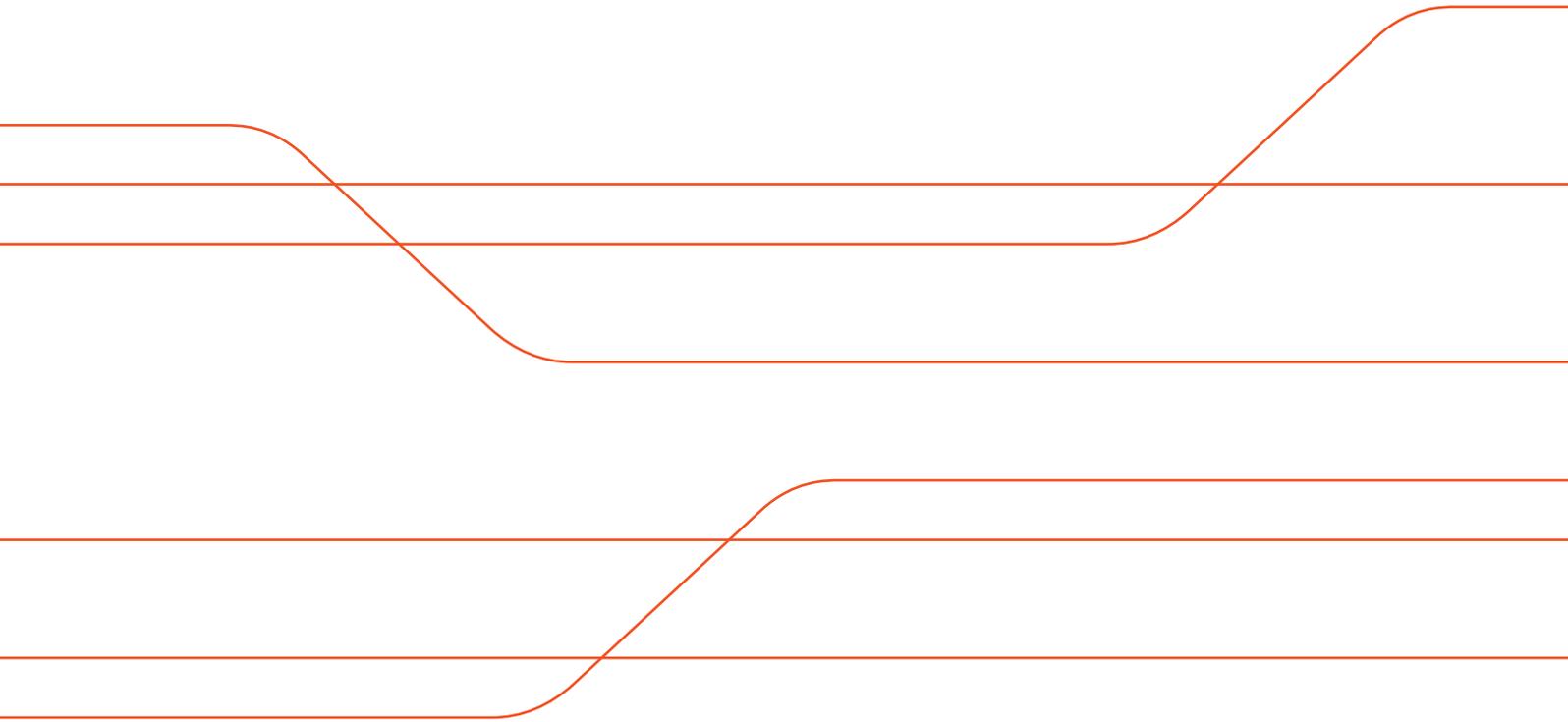


# Directive on Guarantee Commitments

(Directive Guarantee Commitments, DGC)

Dated 12 March 2015  
Entry into force: 1 August 2015



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*Basis Art. 9 Additional Rules Bonds, Art. 10 Additional Rules Derivatives and Art. 4 Additional Rules Exchange Traded Products*

## I General provision

### Art. 1 Object

<sup>1</sup> This Directive governs the requirements that must be fulfilled by the undertaking given by a guarantor in accordance with Art. 9 Additional Rules Bonds, Art. 10 Additional Rules Derivatives or Art. 4 Additional Rules Exchange Traded Products, in order for an exemption from the requirements for issuers set out in Art. 11 LR, Art. 5 Additional Rules Bonds, Art. 5 Additional Rules Derivatives or Art. 4 Additional Rules Exchange Traded Products, to be granted.

<sup>2</sup> This Directive also applies to guarantee commitments that are not required for fulfilment of the listing conditions but have nevertheless been provided out of economic considerations.

## II Listing requirements

### Art. 2 Definition

<sup>1</sup> Deemed to be guarantee commitments within the context of Art. 9 Additional Rules Bonds, Art. 10 Additional Rules Derivatives and Art. 4 Additional Rules Exchange Traded Products are guarantees pursuant to Art. 111 CO, or joint and several guarantees pursuant to Art. 496 CO. Under certain circumstances, guarantee commitments construed in accordance with foreign law are also permissible. These requirements are set forth in Art. 5, 6 and 9.

<sup>2</sup> Sufficient to satisfy the requirements of Art. 9 Additional Rules Bonds, Art. 10 Additional Rules Derivatives and Art. 4 Additional Rules Exchange Traded Products is also a "keep-well agreement" (KWA), in which a company (guarantor) commits itself legally towards the issuer consolidated in the same group to provide financial assistance in order to meet the claims of a creditor at any time on the occasion of raising or borrowing external funds. This demands, however, that the guarantor itself fulfils the requirements for listing. Further requirements for KWAs are set forth in Art. 10.

*See also*

- [Federal Act of 30 March 1911 Concerning Additions to the Swiss Civil Code \(Fifth Part: Code of Obligations, CO\)](#)

### Art. 3 Scope of the guarantee commitment

In principle, the guarantor must guarantee all of the issuer's commitments towards the investors.

### Art. 4 Guarantee commitment with floating-rate bonds

<sup>1</sup> In the case of floating-rate bonds, calculation of the maximum amount of the guarantee commitment must be based on an interest rate according to market practice so that the issuer's liabilities towards the investors, which are in all likelihood to be expected, are covered.

<sup>2</sup> If the variable portion of the interest rate is determined by other criteria (e.g. the issuer's earnings), then the maximum amount of any guarantee commitment must also be set to reflect what in all likelihood are the issuer's anticipated liabilities towards the investors. The calculation may, for example, be based on a pro-forma calculation of both the historical development of the issuer and its future prospects.

<sup>3</sup> If a maximum amount is stipulated in the guarantee commitment, such amount must cover no less than the entire capital amount of the given bond plus two full years of interest. If this minimum amount does not cover all the payment obligations associated with the bond, this amount must remain in force until all such obligations are fulfilled.

## Art. 5 Applicable law

<sup>1</sup> In principle, guarantee commitments must be subject to Swiss law.

<sup>2</sup> Guarantee commitments subject to foreign law are permissible on the condition that the Regulatory Board recognises the applicable foreign legal system, among which are the laws of OECD member states.

<sup>3</sup> Upon formal request, the Regulatory Board may recognise other foreign legal systems, provided the applicant can demonstrate that the specific legal system corresponds to international standards in terms of investor protection and transparency requirements.

## Art. 6 Place of jurisdiction

<sup>1</sup> Investors must be able to take their case before a state court to assert their rights against the guarantor.

<sup>2</sup> In choosing the place of jurisdiction, the guarantor must ensure that, as at least one alternative, the courts in the country whose legal system is applicable to the guarantee in question are competent to hear such cases.

<sup>3</sup> Derogation from the foregoing requirement is permissible in the case of a guarantee commitment issued by a public-sector guarantor (government guarantees, etc.) provided that both of the following conditions are fulfilled:

1. the national law of the guarantor permits only a domestic place of jurisdiction; this law does not necessarily have to be in a statute in the formal sense;
2. the guarantor waives its immunity to due process and the enforcement of law to the extent permitted by applicable law.

## III Disclosure obligations

### Art. 7 Wording of the guarantee commitment

<sup>1</sup> The complete wording of the guarantee commitment must be included in the listing prospectus (Clause 2.3.13 Scheme E; Clause 3.2.13 Scheme F; Clause 3.2.13 Scheme G).

<sup>2</sup> If it does not provide a clear explanation of the legal nature, scope and enforceability of the guarantee, a description thereof must be added to the listing prospectus.

<sup>3</sup> The Regulatory Board may, upon appropriate application, grant an exemption from the obligation to include the complete wording pursuant to Art. 7 para. 1, if the wording is comprehensive and in lieu thereof a summary is included in the listing prospectus. In addition, investors must be able to obtain the full wording free of charge from a Swiss payment agent.

### Art. 8 Government guarantees

<sup>1</sup> In the case of debt securities with a government guarantee, the listing prospectus may refer to the corresponding applicable legal provisions.

<sup>2</sup> Clear information about the content of the government guarantee must be included in the listing prospectus. Information must in particular be provided to investors as to whether or not the government guarantee also secures the specific debt securities.

<sup>3</sup> If specific articles of a public law that contains the exact scope of the government guarantee cannot be referenced, the text of the government guarantee must be printed in its entirety in the listing prospectus.

<sup>4</sup> Information must also be provided in the listing prospectus on how any claims against the government that may arise from the guarantee commitment can be raised and enforced.

### Art. 9 Applicable law and place of jurisdiction in the listing prospectus

<sup>1</sup> The listing prospectus must indicate the law and place of jurisdiction that apply to the guarantee commitment.

<sup>2</sup> If the guarantee commitment is subject to foreign law, that fact must be stated in a prominent place in the listing prospectus.

#### **Art. 10 “Keep-well agreement”**

<sup>1</sup> It must be clearly stated in the listing prospectus that any such agreement constitutes neither a guarantee nor a joint and several surety, and the listing prospectus must contain information about the nature and binding character of the KWA if such is not clearly evident in the wording of the KWA.

<sup>2</sup> Specifically, a statement of position with regard to the following points must be provided in the listing prospectus:

1. the issuer’s legal right to enforce the KWA;
2. possibilities for individual investors to enforce the KWA, namely whether claims on the KWA can be asserted directly against the guarantor;
3. whether the terms of the KWA may be changed by the contractual parties, in particular the question of approval by third parties (creditors and/or investor representatives such as the lead manager, fiscal agent, trustee, etc.);
4. whether a change to the KWA constitutes an event of default;
5. inclusion of the issuer in the scope of consolidation of the company that concluded the KWA.

## **IV Concluding provisions**

#### **Art. 11 Entry into force**

This Directive shall enter into force on 1 July 2009 and replaces the Directive on Guarantee Commitments of 1 November 2006.

#### **Art. 12 Revisions**

<sup>1</sup> The revision of Art. 1 para. 1, Art. 2 paras. 1 and 2 and Art. 7 para. 1 that was decreed in the resolution of 1 October 2010 enters into force on 15 October 2010.

<sup>2</sup> The revision of Art. 1, decreed by the resolution dated 12 March 2015 enters into force on 1 August 2015.