

Legal Alert Covid-19: Law that increases the capital of the Small Business Guarantee Fund (FOGAPE) and temporarily softens its requirements



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On April 24, 2020, Law No. 21,229 (the "**Law**") was published in the Official Gazette. Its main purpose is to provide an emergency capitalization to the FOGAPE and to temporarily relax the requirements to qualify for financing, until April 30, 2021.

The FOGAPE (an acronym for the initials in Spanish, "*Fondo de Garantías para Pequeños Empresarios*") is a fund managed by Banco Estado, the most important public banking institution of the country, which administers resources to provide state guarantees to loans granted by banking entities.

The main measures established by the Law are as follows:

Contribute state-owned resources to the FOGAPE's patrimony for an amount of up to **US\$3,000 million** , which may

be delivered in one or more transfers within a **maximum period of 36 months** from the date the Law comes into force.

To extend the benefits of the FOGAPE to companies whose annual net sales do not exceed UF 1,000,000 (approximately USD 34,224 million), and to exporters, under certain conditions. It should be noted that, prior to the publication of the Law, only companies whose annual net sales did not exceed 600,000 UF (approximately USD 20,534 million) could apply to the FOGAPE.

It establishes **maximum percentages to be secured** according to the size of the company (amounts in the chart are the approximated value in USD, originally in *Unidades de Fomento*, 1 UF =US\$ 34,22 as of May 5, 2020):

Company Size	% Guarantees		Maximum Secured Amount	
	<i>Prior the Law</i>	<i>Law 21,229</i>	<i>Prior the Law</i>	<i>Law 21,229</i>
Annual Sales				
Up to USD 856,000	80%	85%	US 171,200	US 214,000
US 856,000 to US 3,424 million	50%	80%	US 513,600	US 856,000
US 3,424 million to US 20,534 million	30%	70%	US 1,712 million	US 5,136 million
US 20,534 million to US 34,224 million	-	60%	-	US 8,650 million

The financings guaranteed by the FOGAPE, when granted by institutions that have access to financing from the Central Bank of Chile, must have **an annual and nominal interest rate that does not exceed the equivalent of the Policy Interest Rate plus 3%**. Although there is no exact information regarding the historical interest rate charged on loans granted with FOGAPE guarantees, this rate would be significantly lower.

In order for a bank or financial institution to grant financing with the state guarantee FOGAPE, the respective institution must have guarantee rights awarded in force. The Central Bank, in its capacity as administrator of the Fund, periodically carries out public bids for institutions to join or continue operating with said guarantee and thus, allow access to financing for small and medium enterprises. In this regard, the Law establishes that **the rights awarded in bids prior to the entry into force of the Law**, as well as those funds available from bids prior to the entry into force of the Law, will remain in force for those who have been awarded them in said bidding, unless they expressly opt to waive the rights awarded, and choose the conditions established in the Law.

After 30 days from the publication of the Law and until April 2021, the Ministry of Treasury and the FOGAPE administrator will present, on a monthly basis, **a report on the operation of the Fund** to the Finance Committees of each Chamber, containing, at least, data on the destination of the resources and the criteria for allocation to companies classified by size and differentiated by annual sales in *Unidades de Fomento*, as well as the amounts, terms and average rates of the guaranteed loans in accordance with the contribution of US\$ 3,000 million provided for by the Law.

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