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Legal Bulletin



Banking Law

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CIFGA's Norm on "Insuring medium- and long-term export credits and Romanian capital investments abroad, on the name and account of the State"

The Inter-ministerial Committee for Financing, Guarantees and Insurance (Comitetul Interministerial de Finanțări, Garanții și Asigurări - "CIFGA") issued Decision No. 20 of 12 February 2015 on the approval of the Norm on "Insuring medium- and long-term export credits and Romanian capital investments abroad, on the name and account of the State" (the "Norm")¹. The Norm was published in the Official Journal of Romania, Part I, No. 133/23 February 2015 and it became effective on 23 February 2015.

Pursuant to the Norm, the Romanian Export-Import Bank EXIMBANK S.A. ("EximBank") can insure, in the name and on the account of the State, deferred-payment Romanian exports of goods and/or services spanning over a period of at least two years and Romanian investments abroad, against losses caused by commercial, political or force majeure risks. These insurance policies insure supplier's credit, buyer's credit and Romanian capital investments abroad.

Export credit insurance (supplier's credit and buyer's credit) covers the losses of the insured party during the pre-delivery and/or post-delivery period due to commercial reasons (e.g., non-

¹ This Norm is to replace the previous norm on the same topic, which was adopted by CIFGA Decision No. 166/2012.

payment on the due date, debtor's insolvency), political reasons (e.g., moratorium, economic difficulties, legal measures) or force majeure reasons (e.g., floods, earthquakes, wars).

Insurance for Romanian capital investments abroad covers the losses of the insured party due to several reasons:

- Political events, economic difficulties or legislative measures occurring in the host country and delaying the transfer of funds;
- Expropriation;
- War and civil unrest;
- Breach of the investment treaty by the host country's government.

The insurance does not cover export of weaponry, of commodities which cannot be supported by EximBank², export or investments having a negative impact on the environment in the debtor's country or the host country, export to related parties, export to individuals.

The insured amount is no more than 85% of the export value, but not exceeding of the aggregate value of exported goods/services and can include local eligible costs (exporter's expenses in the debtor's country to enforce the export agreement or to complete the project of which the agreement is a part). To insure capital investments abroad, the insured amount is at most equal to the investment value, to which revenues anticipated to be derived from the investment can be added.

The validity period of export credits cannot exceed 15 years. If the export refers to aircraft, ships, nuclear power plants or other categories of goods falling under the scope of the sector understandings in the OECD Arrangement³, the maximum validity period of the insurance is provided in the applicable sector understanding.

The maximum indemnity that EximBank may pay is calculated by applying the insured percentage to the insured amount. The insured percentage shall not exceed 85% for supplier's credit, 90% for investments abroad and 95% for buyer's credit.

The Norm stipulates cumulative conditions for insurance to be granted (e.g., no debts to the State budget, compliance with EximBank's requirements on anticorruption and environment protection policies, etc.), and specific additional conditions to insure export credit (e.g., national exports of at least 50%, except for exports of ships, at least 15% upfront payment to the importer out of the import value, etc.) and for Romanian capital investments abroad to be insured (e.g., to implement a capital investment in the host country, etc.).

EximBank may also issue insurance promises valid for six month as of the date of issuance, for export transactions or early stage investments.

² The list is provided in Government Decision No. 2298/2004.

³ Arrangement on Officially Supported Export Credits of the Organization for Economic Co-operation and Development.

The Norm also provides for the procedures for the conclusion of insurance policies and for granting the indemnity. In both cases, CIFGA's approval is required and EximBank is entitled to subrogate the insured, pro rata with the indemnity, in its actions and guarantees against the external debtor or the investment host country.

Measures for the information of consumers by payment services providers offering ATM payment operations

The National Authority for Consumers' Protection (Autoritatea Națională pentru Protecția Consumatorilor - "ANPC") issued Order No. 505 of 31 October 2014 on measures for the information of consumers by providers offering ATM payment services (the "Order"). The Order was published in the Official Journal of Romania, Part I, No. 800/3 November 2014 and it became effective on 3 March 2015.

According to the Order, payment institutions providing services of payment acceptance by credit and debit cards issued in Romania at ATMs located on the Romanian territory must inform consumers on all the fees, charges, rates, costs and any other types of expenses that consumers must bear in relation to their ATM operations, in the order in which they are performed. Such information must be displayed in a visible, unequivocal and easy-to-read manner. The information on the cost of each operation will be displayed on the ATM screen before the operation is made.

Assignment of a receivable arising from a housing loan agreement

By Decision No. 1671/14 May 2014 passed in final appeal proceedings by the 2nd Civil Division, the High Court of Cassation and Justice ("ICCJ") ruled that guaranteeing a loan by setting up a right of immovable mortgage in favour of the bank does not change a housing loan agreement into a mortgage loan agreement as regulated by Law No. 190/1999.

In its grounds, ICCJ showed that Law No. 190/1999 provides for two cumulative conditions for the existence of a mortgage loan, i.e. (i) the loan repayment must be secured by a mortgage right and (ii) the purpose of the agreement must be to make real estate investments. Thus, the assignment by the bank of the receivable arising from a housing loan agreement (which does not meet both conditions above) is perfectly valid, as it falls under the scope of the Civil Code and not under the scope of Law No. 190/1999 (which provides that the assignee must be a finance-banking institution).

Editors

Our lawyers specializing in **Banking and Finance Law** provide professional counselling in the regulatory and advisory fields, ranging from bank acquisitions and privatisations to structuring of bilateral, syndicated and other loan facility agreements, including the accessory transaction documentation. The group represents high-profile international and domestic commercial banks, investment banks, multilateral development banks, leasing companies, insurance companies, arrangers and other financial institutions with a presence in Romania or interested to invest in Romania.

Since many financings may be part of a larger business transaction, our banking and finance lawyers work closely with lawyers from other practice groups of Țuca Zbârcea & Asociații and are well versed in completing most any kind of transaction with a financing component, including banks privatisation, bankruptcy and restructuring of banks, collateral enforcement and debt recovery, counselling of financial institutions in mergers & acquisitions projects, portfolio transfers and restructuring and disposal of non-performing loans.



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