

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



SPI Project on Bank Letters of Guarantee

Project Strategy Meeting
January 16th, 2007
starting with 12:30
Romanian Banking Association

Project Objective

To prepare a bank guarantee law proposal that would meet the interest of the banking industry to improve the enforceability of banking contracts, supported by a legal comparison of similar laws in other EU countries and a RIA on the costs met by banks under the current practice and the possible benefits if a law is enacted.

Project Management Group

Project Owner (PO): Constantin Barbu, Director, RBA

Project Manager (PM): Janfred Silberstein, Director, NBR

Deputy Project Manager (DPM): Tudor Taslaoanu, Director, Alphabank Romania

Attendees: Constantin Barbu (PO)
Janfred Silberstein (PM)
Tudor Taslaoanu (DPM)
Raluca Cristofor (member, NBR)
Mihaela Socol (President of RBA Legal Commission)
SPI Secretariat (Ramona Bratu, Director for Bank Products and Services)

Agenda:

1. Acknowledgement of the mandate received from SPI Committee (PO)
2. Discussion and endorsement of TORs (PMG)
3. Informing on the status of drafting the law on bank letters of guarantee in RBA (PO)
4. Discussions on the steps forward (PMG)
5. Discussions on the needed technical assistance (PMG).

1. PMG acknowledged the mandate received from the SPI Committee to prepare a proposal for a law on bank letters of guarantee. The participants outlined the need for a specific law for bank letters of guarantee, referring to:
 - international bank letters of guarantee have to be issued by the Romanian banks under a national law that can be known and accepted by the international partners (banks and companies);
 - the Romanian Commercial Code doesn't have provisions on demand bank letters of guarantee, independent from the commercial contract (as provided by the ICC Uniform Rules and Practices - Publication no.458), but only for sureties;
 - some of the decisions taken by the Romanian courts on legal disputes related to bank letters of guarantee didn't take into account the provisions of the ICC Publication no. 458 under which these were issued and, therefore, disadvantaged the banks. These decisions are building up a dangerous jurisprudence;
 - based on the existing legislations, different institutions (the customs, local administrations, ministries etc) are imposing some wordings and conditions for the required letters of guarantees (for bids, contracts etc) that could put banks in a high risk position;
 - some of the banks, for commercial reason, are accepting to issue the letters of guarantee as required by the different institutions and thus are creating a dangerous practice (clients are using as argument in asking their banks to issue the guarantees the precedents with other banks).
2. The PMG's comments and suggestions on the proposed ToRs will be sent by mail to the SPI Secretariat.
3. The RBA Settlements Technical Commission has decided to have the provisions of ICC Publication no. 458 as benchmark for the proposed law. Therefore, some of its members outlined the terms, definitions and principles foreseen by the ICC Publication that should be reflected by the Romanian law. A working group gathering members from the Settlements and Legal Technical Commissions is currently working in designing the outline of the law and the "definitions" chapter (next meeting is planned for Friday, January 19th). Once the working group will agree on the outline of the law, each member will have to contribute and propose the provisions for some chapters. The working group estimates to have the law proposal, together with a document outlining the need for a national law, by the end of February.
4. The law proposal and the document prepared by the RBA will be discussed by the SPI PWG. PWG will run a RIA in order to provide quantitative arguments for the law enactment (on a sample of banks and extrapolating the findings at the banking system level).
5. As for the technical assistance, the PMG appreciated that a specific request could be only formulated when the law will be drafted, in order to keep the law provisions in line with EU requirements. The participants outlined that there is no EU directive on bank letters of guarantee, but the ICC Uniform Rules and Practices, chosen as benchmark by the experts in documentary business from the banking community, generally enjoy the EU members' acceptance. PM mentioned that the law of an European country could also serve as a sample, although it is to be seen within the legal national context.