

Convergence Romania Financial Sector Modernization

Special Projects Initiative Public-Private Steering Committee



Law on Bank Guarantees

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 Working Group Activities

PWG Members: 8

PWG Meetings: 1 (strategy meeting)

Public stakeholders

- National Bank of Romania;
- Ministry of Public Finance.

Private stakeholders

- Banking sector (4 banks)

Project Main Steps

Jan. 07: PWG Strategy Meeting

March 07: Approval of the definitions to be provided by the law in the RBA Legal Commission

March 07: SPI Secretariat proposes to PMG further measures and actions, including the invitation of a local independent expert to draft the law

April 07: PO's discussion with BCR representatives on the opportunity of the law and on other regulatory changes

Summary of Impact Assessment

X: First full year, (mln Eur)

1. Government: tax revenues* (0.14);
2. Banks: net benefits (0.9)
3. Consumers: more efficient and cheaper LG issued.

*=Levied on Banks higher profits and costs reduction

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A. Project objective and deadline

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.

Initial deadline: end of March, 2007

B. Actions taken so far

B1. Project Strategy Meeting

In the strategy meeting held on January 16th, 2007, the Project Management Group (PMG) decided to entrust the law drafting activity to a working group gathering members of the RBA Legal Commission and the NBR Legal Department, under the leadership of the President of the RBA Legal Commission.

PMG agreed that the working group drafting the law uses as starting point the terms, principles and conditions prepared by the RBA Settlement Commission so that the Romanian law be aligned with the provisions of the ICC Publication no. 458. The law drafting working group had to agree on the outline of the law and each member to contribute and propose the provisions for some chapters.

The estimated delivery term of the law draft to the SPI PWG was established at the end of February.

B2. Law drafting working group activity

The working group succeeded until now to finish the first chapter of the law regarding the definitions to be used within the law. These were approved by the RBA Legal Commission in its meeting on March 27. The members of the RBA Legal Commission were asked to provide opinions on the law outline.

B3. SPI Secretariat actions

Based on an assessment done with the Convergence Program, the SPI Secretariat prepared and sent on March 30 a memo for PMG's attention where the following main measures were suggested:

- a) to hire *a local independent* expert (LIE), funded by the Convergence budget (as an exception to the RBA-Convergence June 2006 MoU) and reporting to the PM, to draft the law;
- b) to hire *a foreign peer reviewer (PR)* whose role would be not only to revise the draft law to ensure its alignment with international experience and practice, but also the methodology used to generate the legal draft.

SPI Secretariat proposed also an action plan that would have enabled the presentation of the law proposal in the April SPI Committee meeting.

C. Assessment of the project status

In the March meeting of the RBA Legal Commission when the definitions for the law were approved, questions were asked about the opportunity of such a special law on bank guarantees. One of the most powerful voices against the law was the BCR representative's, although one of the background documents justifying the need for a special law for bank LGs was signed by other BCR representatives..

Consequently, the PO had a meeting in April with the Director of BCR Legal Department and there were debates on the treatment of this issue under the current legal framework. The RBA Legal Commission will meet on April 25, having the PM from NBR as guest, to reach to a final conclusion on the opportunity of and on the necessary regulatory amendments (a special law for bank guarantees and an amendment to the Civil/Commercial Code).

Until the needed regulatory changes will be clarified, the law drafting activity of the working group gathering members of the RBA Legal Commission and the NBR Legal Department has been interrupted and the PMG postponed a decision on the proposed action plan.

D. Proposed project rescue strategy

Once the regulatory change need is confirmed and in order to have the project objective achieved by the following SPI Committee meeting, the PMG should adopt *a more structured approach* and to take *supportive measures*.

In order to have a more structured approach, the SPI Secretariat has developed in Appendix 1 an *action plan* with clear terms and responsibilities for the drafting activity, in which the SPI PWG should be involved on different stages of the law drafting.

The supportive measures to be considered refer to the appointment of the local independent expert and of the peer reviewer.

E. Next Steps

- E1.** PMG will discuss and approve the proposed new action plan;
- E2.** PMG will discuss and establish the professional profile for the LIE;
- E3.** PMG will identify a short list of eligible person(s) to act as LIE;
- E4.** PMG will agree on the next steps for the SPI Secretariat.

By the end of May, PO with SPI Secretariat support will send a progress report to the SPI Committee members.

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Appendix 1

Proposed action plan

No.	Action	Responsible	Deadline	Comments
1.	Prepare the invitation letter and the LIE's ToRs	SPI Secretariat /Convergence / PMG	May 2	According to the usual procedure
2.	Select/identify of the local independent expert (LIL)	PMG and President of the RBA Legal Commission	May 4	SPI Secretariat will facilitate the process
3.	Prepare and sign the STC contract	Convergence/WB Bucharest Office	May 11	
4.	Prepare a first issues paper with the main business and jurisprudence goals of the proposed law - and an appropriate background section on the Romanian and international experience.	LIE	May 15	SPI Secretariat and RBA will offer LIE the entire available documentation and support
5.	Prepare a methodology for drafting the law	LIE	May 15	If considered necessary by the PMG
6.	Get PR's opinion on the methodology	LIE/SPI Secretariat/ Convergence	May 18	
7.	Get NBR and MoPF representatives' opinion on the methodology	LIE	May 18	
8.	Prepare the law outline	LIE	May 18	
9.	Get PWG agreement on the law outline	LIE/SPI Secretariat	May 22	PMG will have to ensure that the PWG gives the necessary feedback in due time
10.	Prepare the draft law	LIE	June 20	

11.	Submit the draft law for PWG consultations	SPI Secretariat	June 22	
12.	Get the NBR approval on the draft law	PM	July 2	
13.	Get the RBA approval on the draft law	PO/DPM	July 2	
14.	Get the MoPF legal drafting unit approval	PWG members	July 2	
15.	Ask for PR's opinion on the draft law	LIE/SPI Secretariat/ Convergence	July 2	
16.	Discuss and include the suggestions and comments made in the draft law	PWG/LIE/SPI Secretariat	July 6	
17.	Submit the draft law for SPI Committee endorsement	PWG/SPI Secretariat	July 13	