

Law on Bank Guarantees

<http://www.spi-romania.eu/program-2007/law-on-bank-guarantees/>

SPI Committee Meeting November 13, 2007

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

Public stakeholders

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

PWG Meetings: 1 (strategy meeting)

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

May 07: RBA approved the proposal of contracting a legal consulting company as a local independent expert for preparing the draft law

June 07: RBA identified and agreed with the legal consulting company the preparation of the law

Oct. 1: The legal consulting company sent to RBA a memorandum on Bank LGs

Oct. 11: RBA sent to banks the proposal for amending the Civil Code prepared by the Legal Commission

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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Project Team

Project Management Group

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

Project Manager (PM): Ianfred Silberstein, Director, Legal Department, NBR

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

Project Working Group:

Margareta Puschiaza, Director, Raiffeisen Bank Romania

Madalina Cristea, Unicredit Tiriac

Simona Butoi, Advisor, MEF

A. Zaharescu, Director, BCR

Raluca Cristofor, Legal Advisor, NBR

Summary of the SPI Secretariat Contribution

Expansion of the original RBA working group to include NBR and MEF senior experts;
Proposal to outsource the preparation of the draft law to a local independent expert;
Request for NBR and MEF review of the draft law.



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SPI Project on Law on Bank Guarantees

Project Status Report

I. Summary of actions undertaken so far

Legal opinion of an independent expert

Nestor Nestor Diculescu Kingston Petersen sent on October 1st a memorandum on "independent guarantees". The memorandum addresses the following issues:

- The conclusion is that Romanian legislation doesn't recognize expressly the concept of independent guarantees;
- Romanian jurisprudence treats independent guarantees as fidejussion;
- However, Romanian doctrine makes reference to the independent guarantees as different from fidejussion;
- International experience – France introduced in 2006, in their Civil Code, an express chapter on independent guarantees. German legislation has some references on the independent guarantees and their doctrine and jurisprudence recognize them. Although Spanish and Italian law have no provisions on independent guarantees, their doctrines and jurisprudences also recognize them.

The law firm provided also pros and cons regarding the issuance of special regulations on independent guarantees, concluding with their opinion on the necessity of having special legal provision on the matter.

Banking community proposal

The independent expert sustained its opinion in a meeting with the banking community. As a result of the discussions held on that occasion, a working group of the RBA Legal Commission prepared a proposal for amending the Civil Code in order to introduce special references for the bank letters of guarantee and for bank letters of comfort. RBA is collecting now banks' opinions on the law amendment proposals. The proposals were forwarded to the Project Manager – the Director of NBR Legal Department – and to MEF representative in the PWG for opinion.

II. Proposed next steps

Based on NBR Legal Department confirmation and on MEF representative opinion, RBA will send to MoJ and to Parliament the amendment proposals. SPI Committee will have the option to second this recommendation (see attached letter).