

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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**RBA Board Meeting
May 10, 2007**

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. Until the needed regulatory changes were 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.

The RBA Legal Commission met on April 25 in order to reach to a final conclusion on the opportunity of and on the necessary regulatory amendments. The conclusions of the discussions were that:

- a special law for bank guarantees is necessary. The law should be written in simple and clear terms and should be flexible;
- a local branch of a multinational legal consulting company should be contracted by RBA as a local independent expert in order to prepare the draft law aligned both with the European legislation and with the Romanian general legal framework.

D. Proposed project rescue strategy

As the regulatory change need was confirmed by banks in the above mentioned meeting 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, based on 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. RBA Board will discuss and approve the proposal of contracting a legal consulting company as a local independent expert for preparing the draft law;

E2. RBA will identify a short list of eligible companies and will contract one of them – May 24, 2007;

E3. RBA will offer all the background documentation to the contracted company – May 24, 2007;

E4. The local independent expert will provide the outline of the law to be approved by the SPI PWG – May 30, 2007;

E5. The draft law will be discussed and endorsed by the SPI PWG – June 15, 2007;

E6. The proposed law will be approved by the RBA Board and the SPI Committee – end of June 2007.

RBA will present a progress report in the next RBA Board meeting.