

# Export Financing Guarantees Act 1981

as amended with effect of 24 December 2008 (binding is the wording published in the Federal Law Gazette)

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## **Federal Statute dated 8 April 1981, relating to the financing of contracts and rights (Export Financing Guarantees Act 1981-EFGA),**

Federal Law Gazette No. 216/1981, as amended by Federal Law Gazettes no. 221/1982, 250/1984, 561/1986, 343/1991, 962/1993, 212/1995, 704/1995, I 81/1998, I 64/2000, I 71/2003, I 94/2005, I 59/2007 and I 144/2008.

It has been enacted by Parliament:

Section 1. (1) The Federal Minister of Finance, acting on behalf of the Republic of Austria (the "Federation"), is authorised until 31 December 2013, to assume liabilities in the form of guarantees for credits (bond issues, loans, credits or other liabilities) raised by the agent of the Federation pursuant to section 5 paragraph 1 Export Guarantees Act 1981, Federal Law Gazette no. 215/1981, as amended, in case the proceeds of such credits are used for

- a) the full or partial financing of contracts or rights for which the Federation has issued a guarantee under the Export Guarantees Act 1981, Federal Law Gazette no. 215, or under the Export Guarantees Act 1964, Federal Law Gazette no. 200, as applicable from time to time, or
- b) the full or partial financing of contracts or rights which satisfy the statutory requirements of the Export Guarantees Act 1981, Federal Law Gazette no. 215, as amended, and for which a credit insurer examined by the agent of the Federation has assumed liability, or
- c) the full or partial financing of contracts or rights which satisfy the statutory requirements of the Export Guarantees Act 1981, Federal Law Gazette no. 215, as amended and for which Austria Wirtschaftsservice G.m.b.H. has granted a guarantee, or
- d) the full or partial financing of contracts or rights which satisfy the statutory requirements of the Export Guarantees Act 1981, Federal Law Gazette no. 215, as amended and for which an international organization whose creditworthiness is beyond doubt has assumed liability, or
- e) a temporary investment by the agent of the Federation in the context of the export financing scheme, or
- f) the payment of obligations of the agent of the Federation, for which guarantees have been granted under this Federal Law.

(2) Guarantees are granted

- a) in favour of creditors of the agent of the Federation for the fulfillment of its liabilities arising from the credits it raised pursuant to paragraph 1;

- b) in favour of the agent of the Federation for a certain exchange rate between the euro and another currency (exchange rate risk) when fulfilling the obligations arising under credits pursuant to paragraph 1 for the respective period during which the proceeds of the credits are applied for the financing pursuant to paragraph 1 in euro; guarantees under this alinea may be issued for the entire term of the credit or from time to time for parts of the term of the credit.

(3) In case of a change of the agent of the Federation, guarantees pursuant to paragraph 2 may also be issued in favour of the former agent of the Federation in order to use the proceeds of new credits to maintain outstanding financings at the time of the change of the agent of the Federation. After the change of the agent of the Federation the former agent of the Federation is obliged to use repayments from financings, including any proceeds from interim investments, for the redemption of credits, proceeds of which were used in the export financing.

(4) The Federal Minister of Finance is authorised to reduce by appropriations the financing costs of credits mentioned in paragraph 1 (net proceeds of the credits without interest and costs) in an amount of up to 20 billion euro.

(5) In order to allow financing of contracts or rights for which a liability pursuant to section 1 paragraph 1 alinea b or d is available the liability for economic or political risks connected with the respective contract or right must be comparable to the liability pursuant to the Export Guarantees Act 1981, Federal Law Gazette 1981 No 215.

Section 2. (1) The Federal Minister of Finance may only grant guarantees pursuant to section 1 if

1. the outstanding aggregate amount of guarantees does not exceed 45 billion euro at any one time; this ceiling relates to the principal amounts guaranteed without interest and costs; a supplemental amount is to be added for the exchange rate risk in the size of 10 per cent of the euro equivalent of the credit;
2. the individual credit does not exceed the amount (equivalent) of 3.3 billion euro; this ceiling relates to the principal amount guaranteed without interest and costs; a supplemental amount is to be added for the exchange rate risk in the size of 10 per cent of the euro equivalent of the credit;
3. the maturity of the credit pursuant to section 1 does not exceed 40 years;
4. with respect to the raising of a credit, the total costs for the Federation expressed as a percentage, defined as the annualised internal rate of return in arrears in accordance with section 2 paragraph 3, do not amount to more than 15 percentage points above the rate of return on the respective government bond in the secondary market on the day preceding the date of pricing; in this regard such government bond issued in national currency shall be used for comparison, the residual time to maturity of which is closest to the maturity of the credit at the time of issuance; if no government bonds of comparable residual time to maturity exist, government guaranteed bonds or bonds issued by provinces and municipalities, bonds of international issuers or interest rates in the credit and loan markets are used for comparison by analogy and in the sequence as listed above, in each case the “applicable reference rate prevailing in the markets”);
5. with respect to a credit for which payments of interest or of principal are determined in a floating manner depending on an applicable reference rate or price prevailing in the markets, the cost components, expressed as an annualised percentage in arrears, defined as commissions, margins and premiums, and computed on the day preceding the date of pricing do not exceed by more than 15 percentage points the reference rate or the reference price prevailing in the markets on the day preceding the date of pricing;

6. with respect to a credit for which payments of principal and of interest are or could be denominated in different currencies, the currency of the interest payments shall be used to evaluate conformity with this Act;

7. in case early termination of the credit is agreed, the total costs expressed as a percentage of such a termination are not exceeded;

8. the currency of the credit is euro or a foreign currency.

(2) Amounts in foreign currency shall be counted towards the aforementioned guarantee amounts on the basis of the reference exchange rates published by the European Central Bank on the day of the granting of the guarantee; if no reference exchange rate for the contract currency is published by the European Central Bank, the amount is to be calculated at the exchange rate ascertained in the markets.

(3) The internal rate of return is defined as such annual interest rate in arrears which is derived through financial calculus from such discount factor at which all payments stipulated by contract for the term of the credit are discounted to present value at the time of pricing to equal the net proceeds of the credit.

Section 3. Claims will arise under guarantees in case,

- a) the borrower does not fulfill his contractual obligations under a credit;
- b) the euro equivalent of a credit denominated in a currency other than euro is, by alteration of the exchange rate between such other currency and the euro, at the end of the relevant period, during which the euro equivalent of the credit was applied to financing pursuant to section 1 paragraph 1, higher than the euro equivalent of the credit in such other currency at the commencement of the said period.

Section 4. In case the euro equivalent of the currency of the credit guaranteed pursuant to section 1 paragraph 2 alinea b is, at the end of the period therein referred to, higher than at the commencement of the said period, the Federation shall refund the difference to the agent of the Federation; in case the euro equivalent of the currency of the credit transaction at the end of the period referred to therein is lower than at the commencement of the said period, the agent of the Federation shall refund the difference to the Federation.

Section 5. (1) Amounts, which are to be refunded by the agent of the Federation pursuant to section 4, shall be credited to a non interest bearing current account of the Federation with the agent of the Federation.

(2) In case a claim is made against the Federation under guarantees pursuant to section 1 paragraph 2 alinea b, any credit balance on the account of the Federation pursuant to paragraph 1 shall be used for its payment. In case there is no credit balance, the Federation shall allocate other budget means for these payments.

(3) As a rule, the credit balance of the Federation pursuant to paragraph 1 shall be used in the export financing scheme of the agent of the Federation.

(4) In case the credit balance of the Federation pursuant to paragraph 1 exceeds at 31 December of a calendar year 1 per cent of the ceiling of guarantees pursuant to section 2 paragraph 1 no. 1, the respective exceeding amount shall be remitted to the Federal Treasury until 20 January of the succeeding calendar year.

(5) In case a guarantee by the Federation pursuant to section 1 paragraph 2 alinea a has been called, the Federation is entitled to claim from the agent of the Federation not only the debt paid (section 1358 of the General Code of Civil Law (ABGB)) but also all costs which accrued in connection with the payment under the guarantee.

Section 6. The Federal Minister of Finance may appoint a Commissioner and a Deputy Commissioner at the agent of the Federation to protect his rights in connection with the granting of guarantees. As far as this Federal Law is concerned, these persons have the right to inspect all books, documents and other records of this company and to take part in all meetings. For the activities of the Commissioner and the Deputy Commissioner the company has to pay an annual fee to be determined by the Federal Minister of Finance, payable to the Federal Treasury. The fee has to be in suitable proportion to the expenditures resulting from such activities.

Section 7. A fee is payable for the issue of guarantees.

Section 8. The Federal Minister of Finance is entrusted with the implementation of this Federal Law.