

Export Guarantees Act

as amended with effect from 25 April 2017 (binding is the wording published in the Federal Law Gazette)

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Federal Law dated 8 April 1981 relating to the granting of guarantees for contracts and rights (Export Guarantees Act – ExpGA), Federal Law Gazette No. 215/1981, most recently amended by Federal Law Gazette No. I 43/2017.

Section 1

(1) The Federal Minister of Finance is authorised to guarantee on behalf of the Republic of Austria (the "Federation") the due performance of contracts listed below by foreign contracting parties as well as the integrity of the rights of exporters, which serve directly or indirectly to improve the balance of current transactions in goods and services; projects abroad enjoy the same status as these contracts and rights in case their realization by domestic or foreign enterprises is of Austrian interest; these projects are, in particular, for environmental protection, waste disposal and infrastructure; relating to

1. the delivery of goods and their production, as well as to the performance of other services;
2. the financing of contracts pursuant to no. 1 by advancing credits or loans, which may or may not be evidenced by negotiable instruments, or by acquiring receivables of contracts pursuant to no. 1;
3. the integrity of goods delivered in commission to stock abroad or of machines used abroad for the production of goods or the performance of services, as well as of cash deposits, bonds and other advances;
4. guarantee and insurance contracts which guarantee the performance of the obligations of the foreign party pursuant to no. 1 and 2;
5. participations or contracts similar to participations in foreign enterprises.

(2) The Federal Minister of Finance is also authorised to guarantee a certain rate of exchange between the euro and the contract currency (rate of exchange risk).

(3) The Federal Minister of Finance is also authorised to guarantee receivables arising from credits or from the acquisition of receivables, provided they have already been guaranteed pursuant to paragraph 1.

Section 2

The Federal Minister of Finance is also authorised to facilitate the financing of contracts pursuant to section 1 paragraph 1 by guaranteeing on behalf of the Federation bills of exchange by aval either for the issuer or for the acceptor.

Section 2a

The Federal Minister of Finance is authorised to enter into contracts on behalf of the Federation to improve the risk of the overall portfolio of guarantees pursuant to sections 1 and 2.

Section 2b

The Federal Minister is also authorised to grant guarantees for contracts which have been concluded among credit institutions for the purpose of refinancing loan and credit agreements, provided that guarantees have already been granted for the underlying loan and credit agreements pursuant to section 1 paragraph 1 no. 2 (securitisation).

Section 3

(1) The total of guarantees assumed pursuant to sections 1 and 2 must not at any time exceed 40 billion euro.

(2) Towards this aggregate guarantee limit shall be counted:

1. the covered basic amounts (maximum amounts to the extent of the percentage of cover) under guarantees pursuant to section 1 paragraphs 1 and 3;
2. the total of the notified request for financing and in case of non-notification, the maximum amounts under guarantees pursuant to section 2 assumed to be the required financing.

(3) Interest and costs which may be agreed in the contracts as well as guarantees under section 1 paragraph 2 and promises to grant guarantees shall not be counted towards the ceiling of guarantees.

(4) The guarantees may be assumed in euro, in a currency freely convertible at the date the contract is made or in a clearing currency. In case guarantees are granted in a foreign currency, the conversion into euro shall be effected at the reference rates of exchange, published by the European Central Bank.

Section 4

(1) The Federal Minister of Finance determines by decree with the consent of the Main Committee of Parliament the rules under which guarantees pursuant to sections 1 and 2 may be granted. (2) These rules shall duly reflect the development purpose of granting guarantees.

Section 5

(1) The Federal Minister of Finance is authorised to entrust the bank-related handling of applications for guarantees (banker's evaluation by rating and processing), the execution of guarantees, the entering into contracts pursuant to section 2a and the protection of the rights of the Federation arising under guarantees, except for litigation at court, to an agent of the Federation pursuant to sections 1002 et seq. of the General Code of Civil Law (ABGB). The agent of the Federation must have the authorisations for banking business in Austria pursuant to section 1 paragraph 1 no.s 1, 3, 4, 7, 8, 10 and 18 Banking Act or pursuant to section 9 Banking Act. Moreover, he must warrant a solid, reliable and cost-effective management of the export guarantee scheme. The position of the agent of the Federation shall be regulated in detail by an agreement between the principal and the agent of the Federation. In case of applications for guarantees for the agent of the Federation himself or for domestic export credit insurers, the bank-related handling is entrusted to Oesterreichische Nationalbank.

(2) The examination of applications for guarantees pursuant to sections 1 and 2 in the individual case exceeding five hundred thousand euro is entrusted to an advisory council to be established at the Federal Ministry of Finance. Members of the advisory council, which performs this examination under overall economic aspects, including environmental and employment related aspects, are:

1. one representative of the Federal Ministry of Finance as chairman and respectively one representative of the Federal Chancellor's Office, of the Federal Ministry for Economy, Family and Youth, of the Federal Ministry of Agriculture and Forestry, Environment and Water Management as well as of the Federal Ministry of European and International Affairs;
2. one representative respectively of the Austrian Federal Economic Chamber, of the Federal Chamber of Labour, of the Conference of the Presidents of the Austrian Chamber of Agriculture and of the Federation of Austrian Trade Unions;
3. one representative of the Oesterreichische Nationalbank;
4. one representative of the agent of the Federation without vote.

(4) The members of the advisory council and its deputy members exercise their functions in an honorary capacity.

(5) The Federal Ministry of Finance organises the examinations by the advisory council.

(6) All persons engaged in the handling and examination of applications for guarantees are obliged to treat confidentially any official, business or operational secrets which have come to their knowledge when so acting.

Section 6

The Federal Minister of Finance has to report to the Main Committee of Parliament quarterly and in writing on the extent of guarantees granted pursuant to this Federal Law, on the development of debts paid and recoveries received in connection with these guarantees and on guarantees granted for major projects with significant environmental effects. The Federal Minister of Finance has to report annually to the Main Committee of Parliament on the activities of the advisory council pursuant to section 5 paragraph 2 which report thereafter has to be published by the Federal Ministry of Finance. The Federal Minister of Finance has to submit to the Main Committee of Parliament yearly a report on guarantees granted for projects of the development bank pursuant to section 9.

Section 7

(1) The agent of the Federation (section 5 paragraph 1) shall collect the fees for guarantees and all recoveries of payments made by the Federation under guarantees and shall credit such amounts to a current account of the Federation with the agent of the Federation. The agent of the Federation is authorised to debit to such account the fee due to it.

(2) In case the Federation is called upon to honour guarantees pursuant to sections 1 and 2 or in case interest and costs must be spent to avert damages or to minimize losses, the credit balance from time to time available on the account of the Federation shall be used to meet such payments. In case no credit balance is available, the Federation shall allocate other budget means for such payments.

(3) So long as the credit balance is not used for payments, the credit balance must be applied in the export financing scheme of the agent of the Federation. For purposes of federal development financing pursuant to section 9, the credit balance may be allocated to the Austrian Development Bank up to a limit of 0.25 per cent. of the aggregate guarantee limit set forth in section 3 para 1.

(4) In case the credit balance on 31 December of any calendar year exceeds 1 per cent. of the guarantee limit set forth in section 3 para 1 or any potentially higher provision requirement pursuant to the Federal Budget Accounting Act, the respective exceeding amount shall be remitted to the federal cash office by 20 January of the following year.

Section 8

(1) No stamp duty shall be levied on bills of exchange guaranteed pursuant to section 2.

(2) Insurance contracts for which a reinsurance guarantee of the Federation is issued pursuant to section 1 paragraph 1 no. 4 are exempted from insurance tax.

Section 8a

(1) Oesterreichische Kontrollbank Aktiengesellschaft remains to be the agent of the Federation until an agency agreement pursuant to section 5 paragraph 1 is made.

(2) In case a new agent of the Federation is appointed pursuant to section 5 paragraph 1, the business being handled by Oesterreichische Kontrollbank Aktiengesellschaft but not yet completed shall continue to be administered by Oesterreichische Kontrollbank Aktiengesellschaft against an adequate fee.

(3) The Federal Government has to inform Oesterreichische Kontrollbank Aktiengesellschaft at least two years prior to initiating a procurement procedure pursuant to section 5 paragraph 1.

Section 9 Austrian Development Bank

(1) The Federal Minister of Finance is authorised to enter exclusively with a subsidiary of the agent of the Federation pursuant to section 5 paragraph 1 into an agreement on the establishment of and on the services to be provided by a development bank.

(2) The tasks of the development bank are in particular the long term financing of sustainable investments in developing countries and the handling of federal measures to support the preparation and the implementation of private-sector projects in developing countries. The Austrian development bank is committed to the goals and principles of the Austrian development policy pursuant to the Development Cooperation Act, Federal Law Gazette Nr. I 49/2002 as amended.

(3) In the interest of the objectives of paragraph 2, the Federal Minister of Finance is authorised within the framework of the agreement according to paragraph 1 to determine rules differing from those laid down according to section 4 paragraph 1 in respect of guarantees to be granted to the development bank, in particular in view of the extent of cover and the admission of claims.

(4) Applications for guarantees will be filed by the development bank, claims will be processed by the Federal Ministry of Finance.

(5) An economy and development board will be set up to advise on the development policy of the development bank and to evaluate applications for guarantees from the development perspective. Section 5 paragraphs 4 to 6 apply to the board. Members of the board are:

1. one representative of the Federal Ministry of Finance as chairman;
2. one representative of the Office of the Federal Chancellor;
3. one representative of the Federal Ministry of European and International Affairs;
4. one representative of the Federal Ministry of Economy and Labour;
5. one representative of the Austrian Development Agency;
6. one representative of the Austrian Federal Chamber of Economy;
7. one representative of the Federal Chamber of Labour;
8. one representative of the Austrian Development Bank without vote.

The board may call in experts without the right to vote. The by-laws of the board are issued by the Federal Minister of Finance in agreement with the Federal Chancellor, the Federal Minister of European and International Affairs and the Federal Minister of Economy and Labour.

(6) In addition to economic rating also principles of development policy have to apply which shall ensure compliance with accepted international standards (in particular the principles of the World Bank Group, the International Labour Organization (ILO – International Labour Standards) and the OECD Guidelines for Multinational Enterprises).

(7) As far as fees for guarantees and payments for claims under guarantees are concerned, the clearing between the Federation and the development bank will be made by way of the agent of the Federation on the account pursuant to section 7; the same is valid for the application of credit balances pursuant to section 7 paragraph 3.

(8) All receipts from fiduciary holdings of the development bank for the benefit of the Federation shall be collected by it and shall be currently credited to a separate account of the Federation with the agent of the Federation pursuant to section 5 paragraph 1. The development bank is authorised to debit to such separate account the fee agreed with the Federation as well as payments for reinvestments and alternative investments in connection with

fiduciary holdings. On the basis of respective forecasts provided by the development bank the Federation shall ensure that the account contains at any time sufficient coverage for assumed liabilities.

(9) The Federal Minister of Finance may appoint a commissary and a deputy commissary at the development bank to protect his interests in connection with the granting of guarantees and the handling of measures pursuant to para 2. These persons are entitled to inspect all books, documents and other papers of the company and to attend all shareholders' and supervisory board meetings. The company may be instructed to pay for the work of the commissary and his deputy to the federal cash office an annual lump sum fee which is determined by the Federal Minister of Finance. The fee shall be in reasonable relation to the work and expenses connected with their duties.

Section 10

(1) As far as terms used in this Federal Law relate to individuals, the chosen form applies to both genders. In case these terms are applied to specific individuals, the respective gender-related form must be used.

(2) This Federal Law will expire on 31 December 2022. All guarantees granted prior to this date will not be affected thereby.

Section 11

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