

Transfer of French export credit activities from Coface to Bpifrance Assurance Export S.A.S.

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France's export credit agency Coface transferred its export credit activities to Bpifrance Assurance Export S.A.S. on 31 December 2016. The transfer is a "fundamental change" in the French export credit support system.

Compagnie Française d'Assurance pour le Commerce Extérieur ("**Coface**"), which has acted as France's export credit agency since 1946, no longer issues or manages State export credit guarantees as of 31 December 2016. Such management is now carried out by Bpifrance Assurance Export S.A.S. ("**Bpifrance A-E**"), a subsidiary of the French public investment bank Bpifrance S.A., which was created solely for this purpose.

This reform, which was triggered by the Amending Finance Law No. 2015-1786 dated 29 December 2015¹ (the "**Amending Finance Law**"), aims to boost France's international commercial competitiveness and strengthen efficiency, by allowing small and medium-sized companies to have easier access to export credit support and by offering a 'one-stop-shop' which is able to respond to their growth challenges, particularly in international markets.

It also introduces a significant change in the regime of French export credit support by allowing Bpifrance A-E to issue direct guarantees and export credit insurance in the name of and on behalf of the French State.

Coface previously provided export credit support in the form of insurance policies under the framework of the OECD guidelines, commercial and political risk guarantees (including specific 100% unconditional on-demand guarantees for aircraft with French content²), and direct lending. All of these export credit activities will now be handled by Bpifrance A-E.

The new entity managing public guarantees: Bpifrance Assurance Export S.A.S.

Bpifrance A-E is a simplified limited liability company (*Société par Actions Simplifiée* (S.A.S.)) and a wholly owned subsidiary of Bpifrance S.A., a French public investment bank providing financial and legal assistance for the development of French companies, especially those that specialise in export and innovation. Bpifrance S.A. was founded in December 2012 as a joint venture between *Caisse de dépôts et consignations* and the French State to support French companies.

The new entity will be controlled by the French State through a mechanism whereby the French Minister of Economy shall appoint and have the power to replace (i) the *directeur général* (CEO) of Bpifrance A-E and (ii) a permanent representative, who will oversee the execution of the management agreement entered into between the French State and Bpifrance A-E.

¹ *Loi n° 2015-1786 du 29 décembre 2015 de finances rectificative pour 2015*

² See our Client Alert released on 24 January 2013 entitled "The French Parliament extends the Guarantee of the French State via COFACE to All French Civil Aircraft" by Victoria Westcott

From indirect to direct guarantees

Coface export guarantees and insurance policies were previously granted on behalf of the French State but in Coface's name with the French State acting as Coface's reinsurer under a service agreement between Coface and the French Ministry of Finance and regulated under the French Insurance Code (*Code des assurances*). Under the new legislation export credit guarantees and insurance will now be issued directly by the French State through Bpifrance A-E acting both in the name of and on behalf of the French State. Therefore, such guarantees and insurance policies are, or benefit from, true State guarantees and Bpifrance A-E's role is confined to the administration of such guarantees. Bpifrance A-E does not issue any guarantees in its own name as Coface once did.

Such change means export contracts are likely to be viewed more positively by lenders and financial institutions, some of which did not consider Coface guarantees to be sovereign guarantees and therefore were unable to finance French export loans. This was notably the case for the Pfandbrief lenders. By offering direct guarantees from the French State, such considerations of sovereignty are resolved. This should allow financiers which were reluctant to provide export credit loans supported by Coface, or which were prevented from doing so by their credit committees, to now participate in new financings with the support of Bpifrance A-E. Increased competition between a greater number of financiers on the French market will presumably lead to better pricing of any new financings taking place within the new scheme.

Export credit guarantees for ships and civil space equipment

The reform also increases the range of assets which can benefit from French State support. Article L.432-1 of the French Insurance Code (*Code des assurances*)³ now offers the possibility for any purchase or financing transactions relating to ships, civil space equipment or related goods and services which are manufactured or provided (in the case of services) by a French manufacturer and bought by a French entity to be covered by a specific French State export credit guarantee if the relevant French manufacturer is in competition with a foreign manufacturer which benefits from export credit support. This effectively abolishes the so-called "home country rule" for ships and civil space equipment where export credit support was prohibited for buyers in the same country as the export credit agency providing support.

Introduction of a ceiling for new commitments

Article 104 of the Amending Finance Law further provides that France has now agreed to EUR 35 billion for new export credit commitments starting from 1 January 2016 decreased by those commitments terminated since 31 December 2015.

Coface will remain active for its own business purposes

Coface was not liquidated after the transfer. Even if it will no longer undertake any management role whatsoever on behalf of the French State, Coface remains active as a private company for its own purposes, offering other insurance products, credit rating and business information services, debt collection, recovery solutions and receivables management services.

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³ As further modified pursuant to the Decree No. 2016-1245 dated 22 September 2016 relating to the grant of the State guarantee for transactions relating to the acquisition by French companies of ships or civil space equipment manufactured in France (*Décret n° 2016-1245 du 22 septembre 2016 relatif à l'octroi de la garantie de l'État pour des opérations d'acquisition par des entreprises françaises de navires ou d'engins spatiaux civils produits en France*)