

BANK GUARANTEES IN THE DEVELOPMENT OF COMMERCIAL RELATIONSHIP BETWEEN ROMANIA AND EUROPEAN UNION

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Summary: In the context of European integration, the development of economical and commercial changes between Romania and European states must be sustained especially by bank system. The apparition of Romanian companies on European markets, the developments of imports and the common realization of some productivity objectives are impossible without the guarantees offered by the bank system. Because of emission guarantee letters in the name and the count of the clients, the banks assure practically the unrolling of transactions without an effective finance, assuming an entire risk which results from the encroaching upon the obligation of the contract between partners. The guarantee interferes just in the moment of participating to auction about the contracting of different works or about the realization of some imports and it is ending with the final act of using the goods by the beneficiaries.

Key words: guarantee bank letters, extra-balance sheets engagements, downstream, executing guarantees, provisions

1. The Extra-Balance Sheets Engagements in the Process of Capitalization

The extra-balance sheets play a very important role in the banking process of capitalization. Bank practice demonstrates that sometimes they are made with superficiality and from this reason we have negative consequences upon the stability of the bank system. So, we must insist on the implications of these in bank activity because the fundamental extra-balance sheets about we will talk about are structured like in table no 1.

The extra-balance sheets with function of assets are those engagements that banks must afford at any time from their own treasury. The most used extra-balance sheets with function of assets are:

- the limit of bank credits approved by the banks. After the approvement of the bank its value is recorded in the accounting of the bank in an extra-sheet count until the clients use effectively his money according to the objective of the contract. When the client use it the sum is recorded in balance sheet being simultaneously deleted from the extra-sheet evidence;
- guarantee bank letters and downstream. This are engagements assumed by banks in the name of clients, so that the banks will sums of money in the future to the purveyor and to creditors of the clients in the conditions in which the last of them will carry out their contractual obligations (downstream) or the conditions in which the client of the bank don't carry out their contractual obligations (guarantee bank letters).

Elements of Assets	Elements of Passive
901 Engagements favorable to other banks	902 Engagements received from other banks
903 Engagements favorable to clients	904 Engagements received from financial clients

9031 Opening the conforming credits	912 Bails, downstream and other guarantees received from other banks
9032 Acceptance and engagements for pay	914 Guarantees bring by clients
9039 Other engagements favorable to other banks	9141 Guarantees received from public administrative institutions
911 Bails, downstream and other guarantees gave from other banks	9142 Guarantees received from assurance companies
9111 Confirms of opening documentary credits	9143 Guarantees received from financial clients
9112 Paying acceptance	9144 Immovable mortgage
9119 Other guarantees gave to other banks	9145 Pledges with dispossessing
913 Guarantees gave for clients	9146 Pledges without dispossessing
9131 Bails, downstream and other guarantees	9149 Other guarantees received from clients
9139 Other guarantees gave for clients	

Table no.1 Extra-Balance Sheets Engagements

As much as these extra-balance sheets engagements remain recorded in extra-balance sheets evidence as a results of the fact that the people that solicit finance do not use it or they do not carry out the contractual obligations, in practice they do not give the proper attention and the legislation does not include the obligatory classification of those as in the case of balance-sheet credits, it does not include the obligation of making provisions.

For the banking activity, these extra-balance sheets with the accounting asset function represent “late effect bombs” of which explosion may lead to fast decapitalization. An example in this sense is given by Bancorex, of which downfall because obtaining losses was attenuated as implications over the banking system in some measures like: passing under special administration on a limited period of time, taking unprofessional by the The Authority of Turning Accounts of Banking Assets, the deposits transfer of natural persons towards BCR. The Government Ordinance nr. 39/1999 approved closing Bancorex by letting it be overtaken by BCR with all the assets and passives remained, including the extra-balance sheets elements and concrete obligations.

In 10th of December 1999 The Minister of Public Finance has emitted a guarantee in the favor of BCR by which it was covered any obligation that appeared before concerning the extra-balance sheets engagements taken from Bancorex. The debt limit was of 58 billion lei for the sums expressed in lei and 324 million dollars for the sums expressed in foreign currency. The overtaking of Bancorex by BCR would not be possible without the existence of this kind of guarantee, because the obligations BCR would have to face in the future as a following of the extra-balance sheets engagements could have destabilized even the biggest bank, with disaster effects over the Romanian banking system.

The classification of extra-balance sheets engagements of asset presented in the period 2000-2004 in conformation to table nr. 2.

Billions of lei

Anul	Total	Standard	In observation	Substandard	Doubtful	Loss
2000	34936,7	34321,5	36,5	126,4	216,4	236,0
2001	48571,4	48358,8	44,7	5,9	5,4	156,6
2002	75063,5	74758,0	12,5	182,2	1,7	109,0
2003	99882,2	68733,0	23596,2	4203,4	373,4	2976,2
2004	135316,1	91390,8	36454,3	3701,8	489,5	3279,7

Source: Annual report of BNR 2004, p.293

Table no. 2 Exposure of elements outside the balance-sheet on which are constituted supplies 2000-2004

As rate of total extra-balance sheets the situation is presented as in figure nr. 1

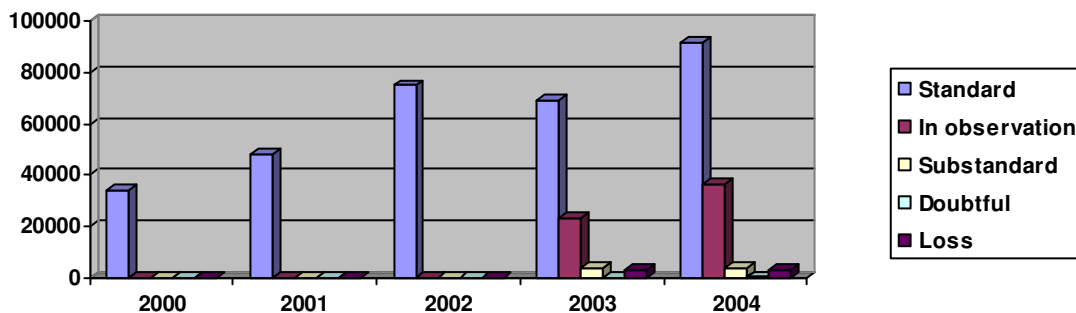


Fig. nr. 1 The structure of the extra-balance sheets quality 2000-2004

(Source: Annual report of BNR 2004, p.293)

Classifying the extra-balance sheets of asset are presented in the 2005-2007 period in conformation to table nr. 3

Millions of lei (RON)

Year	Total	Standard	In observation	Substandard	Doubtful	Loss
2005	19577,8	14339,0	4309,0	499,0	52,7	378,1
2006	29968,6	20048,4	7747,7	1001,4	81,2	1089,9
2007	43140,6	29094,6	10978,4	1783,6	274,6	1009,4

Source: Monthly bulletin of BNR at the date of 31.12.2006 and 31.01.2008

Table nr.3 Exposure of elements outside the extra-balance sheets for which there aren't constituted supplies 2005-2007

As total rate of extra-balance sheets in the situation presented in figure nr. 2

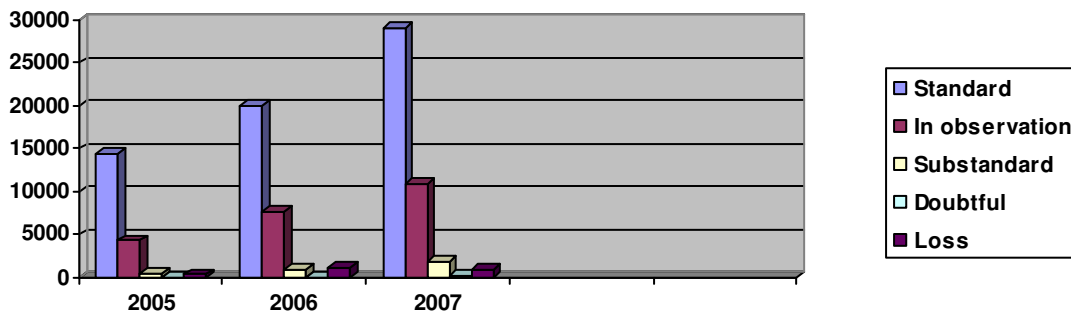


Fig. nr. 2 The extra-balance sheets quality structure 2005-2007

(Source: Monthly bulletin of BNR at the date of 31.12.2006 and 31.01.2008)

Although the standard category occupies the biggest rate, we consider that it is benefic the constitution of reserves for the engagements that are classified in the loss category. In this way we can avoid a decapitalization provoked by the balance-sheet of these sums.

2. Developing the commercial transactions using the bank guarantee letters

About negatively influencing in a smaller measure the banks treasury it is imposed to use on a wider scale extra-balance sheets. For this, a financing model of a transaction of import export²⁵⁹ based only on bank guarantee letters would have the following steps:

- Transmitting the offer along with the guarantee letter of participation to the auction emitted by the importer or by the exporter bank, depending on who organizes the auction,
- Signing the commercial contract with the special clauses concerning emitting letters of guarantee of advance restitution, of payment, of good execution and of good functionality;
- The exporter commands its bank to emit guarantee letters of advance restitution,
- The guarantee letter of advance restitution emission and transmission over the banking channel to the importer,
- Paying the advance in the exporter's account stipulated by the advance restitution guarantee,
- The exporter commands its bank to emit the guarantee letter of good execution,
- The emission and transmission on bank channel of the guarantee letter of good execution,
- The importer orders the emission of the payment guarantee letter,
- The emission and transmission on banking channel of the payment guarantee letter,
- Delivering the merchandise or performing the service,
- The exporter orders the emission of the guarantee letter of good functionality,
- Emitting and transmitting on bank channel the good functionality guarantee letter.

Transmitting the guarantee letters on banking channel is done for verifying the authentic signatures of the emitting bank. In these conditions, every letter of guarantee must have a clause of identification conforming to which the guarantee letter execution request must come from the emitting bank by a bank of first rank.

We will forward present some advantages and characteristics of using these types of extra-balance sheets engagements.

The guarantee letter of participating to the auction guarantees the good intentions of the tendered and it is deposited to the beneficiary along with the offer. The emitting bank will pay the sums foreseen when the tendered is on one of the following situations: revokes the offer after opening it and before adjudication; revokes the offer after adjudication; being the winner of the auction, does not sign the acquisition contract in the term of availability of the offer; being the winner of the auction, does not constitute the guarantee of good execution²⁶⁰.

The guarantee value is settled usually as a percent of the merchandise value (up to 10%) and the availability may reach even 6 months. Once passing over the terms of evaluation of the offers there can appear also the first risks for the tendered (the price risk and the market product risk).

The guarantee letter of advance restitution guarantees returning the advance received by the exporter, transforming it in a real financing instrument. This affirmation is as realist as can be as long as the advance received is used depending on the transaction object for prepare payments for the export or launching some new lots of products in fabrication. The clause of entering in availability must be conditioned by the effective receiving of advance in the exporter's account opened at the emitting bank. The reducing clause will mention that the guarantee value is diminished with a percent cote from the value of every delivery, cote equal with the one from the advantages. In this case the guarantee availability automatically contains automatically the whole delivering period.

In practice there have been met some cases in which taking profit from the lack of experience of the importer concerning guarantees, it was mentioned in the guarantee that the guarantee value is reduced with the value of the delivered merchandise. The guaranteed value will be equal with the advance guarantee but it will be also introduced the mentioning of interest payment calculated from the advance delivering date and until the payment date in execution of the guarantee.

²⁵⁹ Ilie Dragoș, *Durable Creditation*, Publishing-House Sitech, Craiova, 2005, p.167

²⁶⁰ Negruș Mariana, *International payments and guarantees*, Publishing-House ALL, Bucharest, 1996, p. 305-306

The payment guarantee letter is requested in the commercial transactions of our country with the foreign countries as long as the Romanian companies are not known on the European markets and still find suspicious their goodness and seriousness. The purpose of the payment guarantee letter was understood wrongly by the patronages of the Romanian companies, who by their attitude they had at executing them they have considered that it is more like a payment instrument. And so, there have been registered arrears in paying the contractual sums and the banks have paid from their own treasury.

Executing a guarantee creates a negative image to the emitting bank in the corresponding banks round. The entering in availability clause must be conditioned in the merchandise delivering moment or when fulfilling the services, in which situation the presentation of the execution request of the guarantee must be presented and the documents to attest the merchandise delivery or fulfilling services.

In practice, there are met more and more cases when the guarantee is unconditioned by the presentation of export documents, situation in which exists the risk of executing the guarantee letter without the guarantee beneficiary to have delivered the merchandise or fulfill the service. This situation appears in the international practice concerning protecting the guarantee beneficiaries for the eventual stoppers put by the banks from countries with a higher risk in the process of their execution.

The guarantee letter for the good execution is solicited by the importer as long as at its turn has ordered its own bank to emit the payment guarantee letter in the exporter's favor. This way the importing company is sure that the export will fulfill its contractual obligations in the quantum and terms stipulated in the commercial export contract. Usually the guarantee value is in 10% of the commercial contract and its availability covers the time of the contract's execution.

The guarantee letter of good functionality covers the risks with which the importer may confront after delivering the merchandise, that being: products that may not correspond qualitatively or a defect service from the exporter at the products for which it is accorded a period of guarantee. The importers will negotiate as much as possible the emission of a technical guarantee as much as the intern market that will absorb the respective products refuses the weak quality products and with the guarantee periods unsatisfying. The guarantee availability will cover integrally the technical guarantee which the importer accords to the products offered before towards selling on the intern market.

3. Conclusions

Emitting the letters of guarantee by the banks is done after a rigorous analysis the same as in the case of the credits. For avoiding the elaboration of some multiple documents of constitution of guarantees of materials for every letter of guarantee, it is imposed that the banks finish accords of guarantee with their customers for emitting more guarantee letters in the frame of an approved plan. In this case the operation of the emission grows more and the costs of emission go lower, the clients having a real advantage for developing their relations with the exterior.

In the crediting activity, in the future the banks must orient over the guarantees on the business plans, the phase-ability or the company guarantee. Only this way the capitalization process can be developed and the activity of crediting will not be strictly conditioned by the existence of a cover of material goods at the level of national economy.

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