

Vive la France: COFACE to guarantee aircraft bond financings and extend guarantees to non-Airbus aircraft

European ECA support of capital markets funding of aircraft continues to develop; COFACE will be empowered to guarantee, instead of insure, non-Airbus aircraft

France has published a new law (*Law No. 2012-1510 dated 29 December 2012, amending Finance Law for 2012*) which includes an article (Article 84) dealing specifically with the ability of the French export credit agency, *Compagnie Française d'Assurance pour le Commerce Extérieur* ("COFACE"), to guarantee the export financing of qualifying aircraft and helicopters where the financing has been provided by way of a bond issuance. Article 84 also provides that COFACE may issue guarantees for any qualifying aircraft, thus marking a departure from COFACE's current practice of limiting its guarantees to Airbus aircraft exports and issuing only insurance in respect of other French content aircraft exports.

Guarantee of aircraft bond financings

Following the credit crunch, the lack of liquidity and increased regulatory pressures faced by many banks have led the aviation industry to look to the capital markets as an alternative source of funding; the capital markets, particularly in the US, offer a deeper and broader investor base willing to take long-term risk, including, significantly, in

respect of income-generating high value assets, such as aircraft. If the bonds benefit from a sovereign guarantee, this makes them particularly attractive to investors¹. Furthermore, banks investing in high quality bonds themselves can benefit from favourable treatment under Basel III rules.

In COFACE's own 2011 Activity Report, the agency recognised that "as Basel III rules encourage banks to streamline their balance sheet, arranging loans has become increasingly complex...COFACE supports banks in their search for new means of financing..." and anticipated that "an initial operation to guarantee a capital market bond issuance for Airbus exports" was planned.

¹ The ground breaking US EXIM guaranteed bond financing of aircraft on lease to Emirates in 2009 was the first transaction where the relevant export credit agency support was provided in relation to a bond, rather than a traditional bank loan. This was followed in 2010 by a re-financing of aircraft for Aercap by way of a bond issuance, where the bonds were guaranteed by UK Export Finance. Since then, numerous US EXIM and UK Export Finance guaranteed bond financings have been documented for airlines and operating lessors.

Accordingly, Article 84.I.1(e) of the new law provides that COFACE may guarantee the risks of non-payment on the financing of aircraft exports to (a) "any French or foreign company which has issued bonds to finance exports" and to (b) "any French or foreign legal entities acting on behalf of securities holders, such securities having been issued to finance exports", in either case for the purpose of guaranteeing the payment of any amount outstanding under the bonds, in the event of a default of the issuer. We interpret this to cover financings and re-financings by way of bond issuances.

The relevant article makes clear that such support is available on an exceptional basis, to take account of competitive practices. It therefore remains to be seen how frequently and readily COFACE will offer such support, as the aviation bond financing market develops.

Guarantee of any French content aircraft

Under the new law, COFACE's guarantee may apply to the financing of the export of "civil aircraft over ten tonnes at take-off" and "civil helicopters over a tonne at take-off". By way of background, COFACE currently

provides guarantees only in relation to the financing of the export of Airbus aircraft. Other French content aircraft are supported by way of an insurance policy issued by COFACE for the risks of non-payment of the financing. The terms of any COFACE support by way of insurance are subject to the principles of insurance. For example, in the context of English law, insurance contracts are subject to the principle of utmost good faith between the parties, which means that the insured has a duty

of disclosure and a duty to avoid material misrepresentation to the insurer.

The proposed extension means that financiers of ATR regional aircraft, certain Eurocopter models and other qualifying aircraft with French manufactured components should be able to benefit from the COFACE guarantee.

Finally

Article 84.I is also helpful in that it confirms that the French State

guarantee applies to COFACE's guarantee.

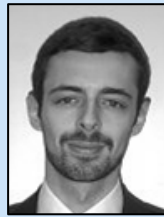
The new law will only take effect upon the passing of an implementation decree, at the latest by 1 January 2014. However, it is anticipated that this decree may be passed as early as March 2013.

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