

## **DRAFT LAW**

### **on the operations of EximBank SA, the Romanian Development Bank**

**The Parliament of Romania has adopted the law herein below.**

#### **CHAPTER I General Provisions**

Art. 1 The Romanian Development Bank, EximBank SA, hereinafter EximBank, is a joint stock company in which the Romanian Government holds at any time minimum 51% of the capital.

Art. 2 The Romanian Development Bank is a specialized lending institution which is used to conduct activities intended to secure the support to the business environment, develop the infrastructure, develop utilities of general interest, support regional development and the research-development-innovation activities, protect the environment, employ and train the staff, sustain and develop the small and medium-sized companies, sustain international transactions, exports and output intended for export, as well as other sectors, through specific financial and banking instruments.

Art. 3 The Romanian Development Bank operates in its own name and on its behalf, as a lending institution, and it is authorized by the Romanian Government to conduct operations specific to development banks in the name and on behalf of the State, by carrying out for all the categories of beneficiaries which are eligible for the purpose of this law, established in various organization forms, operations such as financing, co-financing, refinancing, guarantees, reinsurance and other financial and banking operations.

#### **CHAPTER II**

##### **II The Romanian Development Bank activity conducted in the bank's own name**

Art. 4 - (1) The Romanian Development Bank activity conducted in its own name and on its own behalf shall be in line with the legislation which applies to lending institutions, namely the Government Emergency Ordinance no. 99/2006 referring to lending institutions and capital adequacy, approved with revisions and supplements in Law no. 277/2007, as amended and supplemented, with the banking law provisions, the provisions regarding the commercial companies and its own by-laws.

- (2) The Romanian Development Bank operations conducted in the bank's own name and on the bank's own behalf is aimed at supporting the priority and strategic sectors of the State, aiming at the complementarity between the activity conducted in its own name and on its own behalf in capacity as development bank in the name and on behalf of the Romanian State.
- (3) The Romanian Development Bank is run by a managing board appointed by the General Shareholder Meeting.
- (4) The Head of the Managing Board is selected by the General Shareholder Meeting.

**CHAPTER III**  
**The Romanian Development Bank activity in capacity as development bank**

**SECTION 1**

**Romanian Development Bank operations conducted in the name and on behalf of the Romanian State**

Art. 5 - (1) The Romanian Development Bank operations in the name and on behalf of the Romanian State are conducted according to the authority as a development bank and the provisions of this law and its own by-laws.

- (2) The activity conducted by Romanian Development Bank as development bank is aimed at supporting the sustainable and balanced economic development, as well as reducing social disparities, being oriented towards defending the public interests and not making a profit,
- (3) The Romanian State is assuming all the risks deriving from the loans, guarantees and insurance/reinsurance issued by Romanian Development Bank in capacity as agent of the State, as well as the benefits derived from the operations conducted in the name and on behalf of the State.
- (4) The payment for the services provided by Romanian Development Bank according to its powers as development bank is regulated by means of a convention concluded between the Ministry of Public Finance and EximBank.
- (5) For the assessment and management services provided according to its mandate, Romanian Development Bank may charge fees which are regulated in dedicated and specific norms and procedures, approved by the Interministerial Board for Economic Development, hereinafter CIDE, and published in the Official Journal.
- (6) Romanian Development Bank activity conducted according to its mandate is managed and coordinated by CIDE.
- (7) CIDE has the responsibility to fulfill the authority granted to Romanian Development Bank to conduct operations which are specific to a development bank.
- (8) In the execution of its powers as development bank, Romanian Development Bank may support the categories of eligible beneficiaries according to article 16 par. (1) both directly and indirectly, through the agency of other lending institutions.

Art. 6 In order to meet the general objectives of the activity carried out by the Romanian Development Bank , the following are given consideration:

- a) Correct the market dysfunctions which are not served by the commercial banks or other private lending institutions
- b) support the export of Romanian products and services, the output intended for export and the Romanian investments abroad;
- c) manage the funds allocated by the European Union to the Romanian Government, which are given for management purposes to Romanian Development Bank, in its capacity as manager of the funds intended for specific financial instruments or as financial intermediary, according to the law;
- d) support, either directly or indirectly, the implementation of public projects of strategic, nationwide, regional or local interest, which are proposed by eligible beneficiaries,
- e) support the development of the small and medium-sized enterprises, as well as of entities which have less access to financing;

- f) Participate in the implementation of national development programs, as provided for in the Government's strategic documents;
- g) develop the real economy by sustaining the Romanian companies with specific financial and bank products;
- h) other objectives in conjunction with the activities set out for the Romanian Development Bank in special legislation.

Art. 7 The Romanian Development Bank conducts recovery operations, consisting of enforcement collection of the amounts paid from the funds allocated by the state budget and by other sources provided for in article 14 par. (1) following an event of default by the economic operators beneficiaries with respect to any form of support by the Romanian Government through CIDE; the recovery operations are carried out by the bank's own group of collection officers, which will carry out the enforcement activities according to the Government Ordinance no. 92/2003 on the Fiscal Procedure Code, as republished, as revised and supplemented.

## **SECTION 2**

### **Interministerial Board for Economic Development**

Art. 8 - (1) CIDE is a body which has no legal personality and provides the management and coordination of operations conducted by the Romanian Development Bank under its mandate.

- (2) To this end, CIDE assesses and approves or, as applicable, endorses the projects and transactions which are the subject matter of the development bank authority, on the basis of the reviews provided by the dedicated directorates of the Romanian Development Bank .
- (3) In exercising its attributions, CIDE examines, approves and secures the implementation of the specific norms, procedures and instruments implemented by the Romanian Development Bank in the name and on behalf of the State.
- (4) The preparation of works, the analysis and presentation of projects which are submitted to CIDE approval, are conducted by the specialized structures of The Romanian Development Bank , according to their powers.
- (5) CIDE secretarial duties will be an ongoing and separate activity provided by The Romanian Development Bank .

Art. 9 CIDE's approval powers go up to the equivalent of 50 million Euros per entity or group of related entities and the transactions above this ceiling will be approved by the Romanian Government by means of a decision, with CIDE's prior visa.

Art. 10 CIDE examines and endorses the issuance of government guarantees, by the Ministry of Public Finance, for the loans contracted by the companies and the local governments, as well as for those contracted by the Ministry of Public Finance for on-lending to local government or companies, in accordance with the provisions of Government Emergency Ordinance no. 64/2007 on the public debt, approved with revisions and supplements in the Law no. 109/2008, as revised.

Art. 11 - (1) CIDE Members are representatives of the specialized bodies of the public central administration and the Romanian Development Bank, and CIDE Chairman is the secretary of state of the Ministry of Public Finance who coordinates the public debt.

- (2) The discharge, in any way, of the public function or within The Romanian Development Bank of persons who are part of CIDE causes the CIDE member, vice-president or president capacity to cease.
- (3) The individual remuneration of CIDE members is established in amount of two gross average wages in The Romanian Development Bank as at the end of the year before the payment; the remuneration is payable on a monthly basis from the state funds made available to EximBank and the operations related to the calculation of the payments will be provided by EximBank.

Art. 12 - All the members on the CIDE Board shall make a statutory declaration in which they commit, in writing, that they will exercise their responsibilities in full honesty, integrity and objectivity, observing the confidentiality of the operations.

- (2) The persons appointed as members on the CIDE Board must have the expertise that is required to apply the financial principles or carry out the operations specific to a development bank.
- (3) CIDE members commit to effectively exercise the responsibilities assigned to them and allocate enough time to carry out their mandate.

Art. 13 - (1) The aspects related to the membership structure, the organization and activity of CIDE, including the duties of its members, shall be established in the methodological norms which will be issued for the implementation of this law.

- (2) The detailed norms and procedures relating to the activity that is carried out in the name and on behalf of the Romanian Government, as well as the specific operations conducted by The Romanian Development Bank in the name and on behalf of the Romanian Government shall be decided and approved by CIDE.
- (3) The norms which regulate the operations carried out by The Romanian Development Bank in the name and on behalf of the Romanian Government, as approved by CIDE shall be published in the Official Journal of Romania, Part I.
- (4) Legal representation and counselling of CIDE in front of the courts shall be provided by the legal directorate of The Romanian Development Bank SA, together with the Legal General Directorate of the Ministry of Public Finance. The legal assistance and representation provided to CIDE in the relationship with the other bodies and authorities of the Government shall be secured by The Romanian Development Bank .

### **SECTION 3**

#### **Funding sources**

Art. 14 - (1) The sources of funds needed for the operations conducted by The Romanian Development Bank under its mandate are:

- a) Funds made available to The Romanian Development Bank by the Ministry of Public Finance from the state budget, through MoPF Budget - General Actions, from privatization receipts or derived from the operations conducted as development bank;
- b) Funds provided under a mandate by other authorities of the public central administration;

- c) Refundable financing contracted on the domestic and foreign markets, including from international financing institutions, government development/international cooperation banks;
  - d) Other funding sources which will be set out by means of government Decision, accompanied by guidelines on how to use those sources;
  - f) Other sources, according to the law.
- (2) The funding sources referred to in paragraph (1) above may be committed by The Romanian Development Bank for the activity conducted in the name and on behalf of the State, within the limits of the approval authority of CIDE or the Romanian Government, as the case may be.
  - (3) The funding sources referred to in paragraph (1) above are used by The Romanian Development Bank to pay for the commitments taken under the development bank mandate and to cover the costs generated by the operations conducted by the bank.
  - (4) The amounts collected by means of the financing, guarantee, insurance, reinsurance operations, in the form of fees, interest, including interest related to refundable financing contracted by The Romanian Development Bank according to its mandate insurance premiums and duties, as well as the previously derecognized recovered debt, in accordance with the EC Regulation no. 1126/2008, are a source to feed the funding sources provided for in paragraph (1).
  - (5) The amounts paid in administrative costs generated by the operations conducted by the bank, fees, interest, insurance/reinsurance premiums, duties, as well as the enforcement of guarantees and the damages paid in conjunction with the insurance contracts shall diminish the funding sources referred to in paragraph (1). The administrative costs generated by the operations shall be established in the methodological norms for the implementation of this law.
  - (6) The Romanian Development Bank shall submit to CIDE, on an annual basis, a detailed report on its commitments and the business plan for the upcoming period, presenting proposals for supplementing the funds at their disposal, as applicable. Based on CIDE approval, following an in-house review, the Ministry of Public Finance submits to the Government the business plan of the Romanian Development Bank and the funding of the bank's future commitments.
  - (7) The amounts available from the funding sources provided for in par. (1) letter a) are placed with The Romanian Development Bank as streams attracted to support the banking activity for an undetermined period of time, except for those amounts which are earmarked and set as such in an agreement concluded by The Romanian Development Bank with the Ministry of Public Finance. The rights and obligations of EximBank on the use of those amounts shall be established by convention concluded with the Ministry of Public Finance.

Art. 15 - (1) With a view to supporting the operations carried out according to its mandate, by derogation from the Government Emergency Ordinance no. 64/2007 on the public debt, approved with revisions and supplements in Law no. 109/2008, as revised, The Romanian Development Bank may contract refundable funding in the name and on behalf of the government, on both domestic and foreign markets, including from international financing institutions, government development/international cooperation banks.

- (2) the financial obligations committed according to par. (1) above are obligations of the government public debt nature, and the debt servicing shall be implicitly guaranteed by the Romanian State.

(3) The refundable funding contracted on domestic and foreign markets, including from international financing institutions, government development/international cooperation banks, according to par. (1) above, shall be submitted for approval to the Government, in a Memorandum that is to be promoted by the Ministry of Public Finance.

(4) The loan contracting procedure referred to in par. (3) shall be established in the methodological norms for the implementation of this law;

(5) The loan contracting procedure according to par. (3) shall be conducted in compliance with the provisions of the Fiscal and Budgetary Accountability Law no. 69/2010, republished, and with the Debt Management Strategy.

## **SECTION 4**

### **Beneficiaries**

Art. 16 - (1) Acting according to its mandate, The Romanian Development Bank offers financial and bank products which are specific to the following categories of beneficiaries:

a) Start-up entities/commercial companies, social enterprises, national companies, small and medium-sized companies, other commercial companies;

b) local governments, institutions of the local public administration, inter-community development associations, local task forces, public utility providers, non-government organizations, public entities of social and cultural interest, universities, research and development institutes, other legal entities. The public entities of social and cultural interest, universities, research and development institutions included in the public central administration may contract loans with EximBank by derogation from the Government Emergency Ordinance no. 64/2007 on the public debt, approved with revisions and supplements in the Law no. 109/2008, as subsequently revised and supplemented, and are required to report these loans to the Ministry of Public Finance in accordance with the above-mentioned emergency ordinance;

c) other categories of beneficiaries, both directly and indirectly, through the agency of partner lenders.

(2) Acting according to its mandate, The Romanian Development Bank will support:

a) Projects funded from European Funds, including infrastructure projects;

b) Programs and projects of local, regional, national interest, including of a social significance;

c) Public-private partnerships, integrated territorial investments, cross-border cooperation projects;

d) Exports of Romanian goods and services and Romanian investments abroad;

e) Participation in strategic investment initiatives implemented by the European Union.

## **SECTION 5**

### **Accounting of operations conducted in capacity as the Romanian Development Bank**

Art. 17 The accounting of The Romanian Development Bank operations carried out under its mandate shall be conducted in observance of the specific financial reporting standards approved by CIDE, relying on the accounting principles applicable to lending institutions.



Art. 18 The Romanian Development Bank shall publish, on its own website, the annual financial statements showing the activity undertaken in capacity as development bank, in accordance with the financial reporting framework approved by CIDE.

Art. 19 CIDE shall prepare, for each financial year, a report in which it will present the activities implemented by The Romanian Development Bank according to its mandate; this report is to be submitted to the Romanian Government within 6 months from the close of the financial year, by the Ministry of Public Finance. The report shall also be published on The Romanian Development Bank own website.

#### **CHAPTER IV**

##### **Final and transitory provisions**

Art. 20 - (1) The Ministry of Public Finance shall transfer for management purposes to The Romanian Development Bank, in the framework of operations carried out in the name and on behalf of the state, the balance of the revolving Romanian-German fund created under the financial assistance facility extended to the Romanian Government by the Government of the Federal Republic of Germany, through the Reconstruction Credit Institution „Kreditanstalt fur Wiederaufbau” - KfW, for funding the project “Promotion of Small and Medium-sized Enterprises”, stages 1, 2 and 3, on the basis of cooperation agreements concluded between 1998 and 2008, a fund which is at the disposal of the Ministry of Public Finance.

(2) The Ministry of Public Finance shall conclude with The Romanian Development Bank, appointed as project manager, a convention establishing the rights and obligations of the parties with respect to the management of the revolving fund referred to in par. (1) above, including the use of the fund and the reimbursement of financial obligations to the Reconstruction Credit Institution (Kreditanstalt fur Wiederaufbau).

Art. 21 The Romanian Development Bank is subject to legal provisions on the professional secret in the banking sector.

Art. 22 The members and empowered members on the general shareholder meeting, the members of the management board, CIDE members and auditors, employees of The Romanian Development Bank as well as any other persons involved in the activity of the institution have the obligation to keep the professional secret in the bank sector on any facts, data and information to which they had access in the exercise of their functions and which are not meant to be public, which regard the person, property, activity, business, personal relationship or business relationship of the clients or information on the customer accounts – balances, cashflows, operations – the services supplied or the contracts concluded with the customers.

Art. 23 - (1) The financial instruments of the activity carried out in the name and on behalf of the Romanian State shall be used in observance of the legal provisions in force and of the community acquis.

(2) The support measures which may be considered as state aid after the implementation of the procedures provided for in the Government Emergency Ordinance no. 77/2014 regarding the national state aid procedures and revising and supplementing the Competition Law no. 21/1996, as subsequently revised and supplemented, and in accordance with the European legislation in this field.

Art. 24 On the effective date of this law, the name Interministerial Board for Financing, Guarantees and Insurance provided for in the Government Emergency Ordinance no. 64/2007 on the public debt, approved with supplements and revisions in Law no. 109/2008, as revised, shall be replaced with Interministerial Economic Development Board.

Art. 25 On the day that the Law 96/2000 on the rules of functioning of the EximBank - the Romanian Export-Import Bank - SA, is repealed, the funds referred to in article 10 on the Law 96/2000 regarding the financial resources needed to implement the operations in the name and on behalf of the state, established and made available to EximBank, shall be merged into one single fund and shall remain at The Romanian Development Bank disposal for the purpose of securing the financial resources of the bank to conduct its operations according to its mandate, **except for the revolving Romanian-German fund referred to in article 20 par. (1) for which there shall be a separate bookkeeping that will include the payment of financial obligations to KfW.**

Art. 26 On the effective date of this law, the Law no. 96 of June 2 2000 on the rules of functioning of the Romanian Import-Export Bank EximBank SA, republished, and the Government Decision no. 534/2007 on the setup, attributions, authority and the rules of functioning of the Interministerial Board for Financing, Guarantees and Insurance and the on the financing, guarantee and insurance operations conducted by the Romanian Import-Export Bank EximBank SA in the name and on behalf of the State, as subsequently revised and supplemented, shall be repealed.

Art. 27 The current EximBank by-laws shall remain effective until the new by-laws are approved by the General Shareholder Meeting, but not more than 45 days after the effective date of the current law.

Art. 28 The convention and the amendments concluded with the Ministry of Public Finance, which are ongoing on the effective date of this law, shall remain valid until the time limit set in the convention has run out.

Art. 29 Within 30 days from the effective date of this law, the methodological norms for the implementation thereof shall be issued, by means of a Government Decision.