

Technical Note [TN/01/2018]

Comments to the Draft Amendments to the Export Credit Agency Law

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About the German Advisory Group

The German Advisory Group on Economic Reforms, which has been active in Ukraine since 1994, advises the Ukrainian Government and other state authorities such as the National Bank of Ukraine on a wide range of economic policy issues and on financial sector development. Our analytical work is presented and discussed during regular meetings with high-level decision makers. The group is financed by the German Federal Ministry for Economic Affairs and Energy.

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Executive summary

The draft law shows a lot of amendments. Many of those can be characterized as necessary and positive compared to the law currently in force. The German Advisory Group highly appreciates that numerous recommendations made in the Policy Paper dated August 2017¹ and in the Technical Note dated September 2017² have now been taken into account and reflected in the draft law. However there are also several aspects in the draft law which need to be checked again and should better be changed as well. All in all the draft law has become significantly shorter but a further consolidation is possible.

Positive amendments

- Export support through the ECA is now open for all branches of the industry.
- Regulations for establishment of ECA's Supervisory Board and eligibility of candidates streamlined and harmonized with general rules for state-owned property objects.
- Investment Insurance Cover reduced to non-commercial risks only.
- Securitization guarantee no longer foreseen as product offer.
- Mistakes in the current legislation corrected.

Aspects of the draft law which need to be reconsidered

- Capital basis of the ECA remains on very low level.
- Effective functioning of separate (bank) account for subordinated capital highly questionable.
- Interest make-up scheme remains opaque and dubious.
- The six month period for setting up the ECA is too short.
- Linking the start of operations to obtaining a sovereign rating by an international rating agency is highly risky and unrealistic.
- Representation of the State as shareholder of the ECA and regulatory supervision of the ECA is lacking clarity and accuracy.

¹ German Advisory Group Ukraine, Policy Paper [PP/03/2017]: An Export Credit Insurance Agency for Ukraine: Analysis of the current legislation and the Statute.

² German Advisory Group Ukraine, Technical Note [TN/03/2017]: Comments and recommendations on how to establish the Export Credit Insurance Agency.

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1 Introduction

The German Advisory Group on Economic Reforms has checked and analyzed the Draft Law on Amendments to the Law of Ukraine “On Providing for Large-Scale Export Expansion of Goods (Works, Services) originating in Ukraine through Insurance, Guarantees and Cheapening of Export Credits”.³ This analysis is based on the draft law in the version received on 18. December 2017 and takes into consideration our Policy Paper dated August 2017.⁴ All comments in this paper are made exclusively on the basis of the draft law on amendments. Other legal acts and in particular a revised draft of the ECA’s Statute have not been available.

2 Capitalization of the ECA

The charter capital of 200 mln. UAH is unchanged and continuous to be very low. No increase has been foreseen, not even to the level of 345 mln. UAH which was requested by MERT for the period until 2020 in late August of this year.⁵ If no additional financial means should be made available for the setting-up of the ECA very soon a situation can arise in which the ECA either must request additional financial means or cease its operations. We repeat our recommendation that in addition to a sustainable amount of capital satisfactory financial means for operational expenses in the starting phase of the ECA need to be allocated in the state budget and made available for the ECA.

The “separate bank account” mentioned in Art. 2 par. 4 sub-par. 3 and in Art. 7 par. 1 for other “sources of income” probably will not be able and sufficient to fill the gap in the capital base. The idea behind these regulations is not clear. Apparently public or private investors, international organizations and/or the state budget can invest additional (subordinate) capital amounts on contractual basis. To attract such subordinate (mezzanine) capital or subordinated loans seems to be very difficult or even impossible, in particular in the starting phase of the ECA. Most likely such subordinate (mezzanine) capital or subordinated loans will also be, if available at all, very expensive.⁶

The wording of Art. 2 par. 4 sub-par. 3 needs to be corrected, since such subordinate capital or loan amounts form a regular part of the ECA’s capital base and will most probably not be allocated in a “separate *bank* account”.

3 Partial compensation of the interest rate

The partial compensation of the interest rate has not been removed from the draft law. We have criticized such an interest subsidy because of the high costs and the risk of fraud or corruption.

³ Law dated 20. December 2016 No. 1792-VIII, Vidomosti Verkhovnoi Rady Ukrainy, VVR 2017, No. 4, p. 43.

⁴ German Advisory Group Ukraine, Policy Paper Series [PP/03/2017]: An Export Credit Insurance Agency for Ukraine: Analysis of the current legislation and the Statute.

⁵ Interfax-Ukraine 23.08.2017.

⁶ It also needs to be taken into consideration that according to Art. 9 par. 3 the rules for payment of dividends for state-owned property objects do not apply for the ECA.

The OECD Arrangement on officially supported Export Credits⁷ (Consensus), which Ukraine is willing to obey to although not (yet) being an official participant (Art. 11 par. 9), does not prohibit interest rate support in general.⁸ However, this is not an open invitation to offer interest rate subsidies. The opposite is the case. The Consensus Arrangement seeks to establish a level playing field between exporters of different countries by excluding unfair competition through offering most favourable officially supported financial terms and conditions.

In particular when combining an Export Credit Guarantee and a partial interest rate compensation there is a high probability that such a level of subsidization might be considered as non-compliant with WTO rules, mainly Art. 14 lit. c) WTO Agreement on Subsidies and Countervailing Measures (ASCM) and Annex 1, Illustrative List of Export Subsidies, lit. k).

We therefore repeat our recommendation not to include an interest rate compensation program into the amended ECA Law.

4 Products

a) Pre-shipment risk cover

Pre shipment cover seems not to be mentioned in the draft law. There is no definition contained in Art. 1 of the draft law and Art. 6 of the draft law does not explicitly mention pre-shipment risk. It is very important to be able to offer pre-shipment risk cover.

b) Insurance of direct investments

In the draft law investment insurance has now been limited to cover of non-commercial risks. This is correct and goes in line with international best practice.

c) Securitization Guarantee

Securitization guarantee has been removed from the draft law. This is correct since this product will not be needed in Ukraine for many years.

5 Time limit for ECA establishment

There are two time limits relevant for the ECA establishment foreseen in the draft law: a) establishing the ECA within six months after allocation of funds in the state budget (Art. 13 par. 4) and b) starting operations after an international corporate rating not lower than the sovereign rating of Ukraine (Art. 13 par. 1) has been obtained.

We continue to regard six months as an extremely short, if not much too short period of time for setting up an ECA.

Linking the start of operations of the ECA to the decision of an international rating agency to grant the ECA a rating on the same level as the sovereign rating of Ukraine is highly risky or even hazardous. Regarding the legal form of the ECA being a joint stock company and the clear statement

⁷ OECD Arrangement on officially supported Export Credits TAD/PG(2017)8 dated 19.09.2017.

⁸ Consensus Chapter I No. 5 a).

in Art. 20 of the draft “Statutes”⁹ of the ECA that the ECA bears no responsibility for obligations of its shareholders and vice versa the shareholders bear no responsibility for ECA’s obligations and considering the low capitalization of the ECA (see above) there is hardly any chance for the ECA within a reasonable time to reach a rating on sovereign level.

This Regulation has the potential to become the show stopper for the whole operation!

6 Regulations to be approved by the Cabinet of Ministers

It is not clear which other documents need to be elaborated and require the approval of the Cabinet of Ministers. The wording of the draft law in various articles is similar but not identical and therefore somewhat misleading. For example:

Art. 6 par. 1: “...principles of issue of guarantees, as approved by the Cabinet of Ministers”

Art. 6 par. 1: “...procedure for implementation of the tasks and lines of business of ECA approved by the Cabinet of Ministers...”

Art. 9 par. 5: “...rules approved by the Cabinet of Ministers...”

Art. 13 par. 1: “...approval of the relevant terms by Cabinet of Ministers...”

7 Missing clarity concerning state supervision of ECA’s activity

There are two areas of state control over the ECA’s activities which are mentioned in the draft law but without the necessary legislative clarity and accuracy.

According to Art. 2 par. 3 sub-par. 2 and Art. 10 par. 2 of the draft law the Cabinet of Ministers will be designating the “authority” which is managing the corporate rights. It should be clear from the outset which state body is entitled to perform as the shareholder’s representative in the General Shareholders Meeting.

According to Art. 9 par. 1 sub-par. 3 of the draft law the Cabinet of Ministers is entitled to determine “the body responsible for supervision over the financial activity of the ECA”. It should not remain unclear which body is responsible for supervising the financial activity of the ECA. As long as this decision is not made it is also not clear which standards and rules for regulatory supervision apply.

8 Concluding remarks

The current version of the draft law is a much better text than the law currently in force. Simply the fact that the law becomes shorter and more focused on products and procedures makes the law better readable. Nevertheless a number of shortcomings in the law still do exist. We therefore recommend to make another attempt to eliminate the weaknesses of the draft law so that a modern ECA for Ukraine can be established on the basis of a reliable, stable and sustainable legal act.

⁹ Устав публичного акционерного общества «Экспортно-кредитного Агенства» (Charter of the joint-stock Company „Export Credit Agency”).

9 Annex

9.1 Draft amendments to the Export Credit Agency Law (as of December 2017)

LAW OF UKRAINE

On Providing for Large-Scale Export Expansion of Goods (Works, Services) Originating in Ukraine through Insurance, Guarantees and Cheapening of Export Credits

(Vidomosti Verkhovnoi Rady Ukrainy)¹⁰,

This Law establishes the principles of government support of export activities through insurance, re-insurance, guarantees, partial compensation of the interest rate on export credits with a view to creating conditions for a large-scale export expansion of goods (works, services) originating in Ukraine to foreign markets, protecting Ukrainian exporters against risks of non-payment and financial losses, and improving competitiveness of Ukrainian producers on global markets.

Article 1. Terms and Definitions

1. In this Law terms are used in the following meaning:

1) **export credit** – a transaction involving supplier’s or buyer’s credit:

supplier’s credit - a credit agreement, applicable to a trade contract, which provides for the supply of goods and / or services for export, concluded between one or several Ukrainian exporters and one or several buyers for the export of goods (works, services) of Ukrainian origin, according to which the buyer (buyers) is (are) obliged to pay Ukrainian exporter (Ukrainian exporters) for goods (works, services) of Ukrainian origin in cash or on terms of postponement of payment (credit);

buyer’s credit - a credit agreement, concluded between one or several financial institutions and one or several debtors, according to which the payment under a trade agreement (contract) is being made concerning the export of goods (works, services) of Ukrainian origin, according to which a credit institution (credit institutions) is (are) obliged to pay to the Ukrainian exporter (Ukrainian exporters) for goods (works, services) of a Ukrainian origin under such trade contract (agreement) in monetary form on behalf of the buyer (buyers)/ debtor (debtors), and the buyer (buyers)/ debtor (debtors) undertake(s) to repay the loan to the credit institution (credit institutions).

2) **foreign buyer** – a non-resident economic entity that buys goods (works, services) originating in Ukraine under a foreign economic agreement (contract) concluded with a Ukrainian exporter;

3) **commercial (trade) risk** – a risk of complete or partial failure by a foreign buyer to perform obligations towards a Ukrainian exporter under a foreign trade agreement (contract) or towards a bank under an export credit, or by a Ukrainian exporter towards a bank under an export credit as a result of either of the following:

¹⁰ Translator's note: Vidomosti Verkhovnoi Rady Ukrainy (VVR) is the official weekly bulletin of the Verkhovna Rada of Ukraine.

insolvency of the foreign buyer, or the Ukrainian exporter;

bankruptcy of the foreign buyer, or the Ukrainian exporter;

decision of the buyer on interruption or termination of a foreign trade agreement (contract) or refusal to accept goods and/or services under the supplier's credit without proper rights to do so;

4) **non-commercial risks** – a risk of complete or partial failure by a foreign buyer to perform obligations towards a Ukrainian exporter under a foreign trade agreement (contract) or a bank, or by a Ukrainian exporter towards a bank under a credit agreement, connected with unforeseen circumstances, occurring independently of the will and desire of the foreign buyer or the Ukrainian exporter, in particular:

adoption of a decision by the country of a foreign buyer or the bank of the foreign buyer, which participates in the execution of the foreign economic agreement (contract), which makes fulfilment of the contract impossible;

introduction of the moratorium on payments in the country of the foreign buyer, the bank of the foreign buyer or in the country, which participates in making the payments;

political or economic events, legal or administrative measures, taking part outside the country of the insurant, which impede or delay payments under a foreign economic agreement (contract);

amendments to the law of the country of a foreign buyer, bank of a foreign buyer, which participate in execution of a foreign economic agreement (contract), obliging to make payments under foreign economic agreement (contract) in local currency, resulting in currency fluctuation, and respective payments after converting in the currency of foreign economic agreement (contract) do not cover the amount of obligations at the time of payment;

a court decision on prohibition or restriction of operations, which makes fulfilment of the foreign economic agreement (contract) impossible;

a civil war, a revolution, an insurgency, a civil disorder, a cyclone, a flood, an earthquake, an eruption of a volcano, a tidal wave, or a nuclear accident.

5) **work or services originating in Ukraine** – the works performed or the services provided by resident economic entities according to the criteria stipulated by international treaties of Ukraine.

7) **insurance of contractual bank guarantees** – insurance of proprietary interests of a Ukrainian exporter's bank in connection with a failure by the Ukrainian exporter to comply in full or in part with terms and conditions of a foreign economic agreement (contract);

8) **insurance of foreign economic agreements (contracts)** – insurance of a Ukrainian exporter's proprietary interests in connection with a failure to perform in full or in part obligations by a Ukrainian exporter or a foreign buyer as a party to a foreign economic agreement (contract);

9) **insurance of export credits** - a type of insurance, which provides insurance of property interests, not contradicting the law, that are connected with losses from entrepreneurial activity, that the insurant may carry due to default (improper performance) by a buyer (buyers)/debtor(debtors) of obligations under an export credit;

10) **insurance of confirmed letters of credit** – insurance of proprietary interests of a Ukrainian exporter's bank in connection with a failure by a foreign buyer's bank to perform in full or in part obligations under an issued letter of credit;

11) **insurance of investments** – a type of insurance, which provides for insurance of property interests, provided for in the current legislation, and, provides for insurance of property interests,

non contradicting the law, connected with the losses, carried by a resident business entity when investing abroad as a result of the realization of non-commercial risks;

12) **goods originating in Ukraine** – goods that have been wholly obtained or undergone sufficient production in Ukraine according to the criteria established by the Customs Code of Ukraine considering the provisions of international treaties of Ukraine;

13) **Ukrainian exporter** – a resident economic entity that exports goods (works, services) originating in Ukraine.

2. When used in this Law, the terms *insurer, insured risk, insured event, insurance coverage, insurance benefit, insurance rate, insurance premium, insurance reserves* have the meaning assigned to them in the Law of Ukraine "On insurance".

3. Other terms used in this Law have the meaning specified by laws and international agreements of Ukraine.

Article 2. Export Credit Agency

1. To encourage export of goods (works, services) originating in Ukraine the Cabinet of Ministers of Ukraine shall establish the Export Credit Agency (the "ECA") that will voluntarily insure, re-insure, guarantee the agreements/contracts promoting export development, and shall participate in implementing the program of partial compensation of the interest rate on export credits.

2. The ECA shall be created and operate in accordance with the Law of Ukraine "On joint stock companies", this Law, other laws and regulations, and international agreements of Ukraine approved by the Verkhovna Rada of Ukraine as binding.

Where provisions of an international agreement approved by the Verkhovna Rada of Ukraine as binding differ from provisions specified herein, provisions of the international agreement will prevail.

3. The ECA is an independent financial institution with a special status, which shall be created as a joint stock company. The founder and shareholder holding at least 50 per cent plus one share in the ECA charter capital shall be the state represented by the Cabinet of Ministers of Ukraine.

The Cabinet of Ministers of Ukraine acting through its designated authority shall manage corporate rights of the state in the ECA charter capital.

Corporate rights of the state constituting 50 per cent plus one share in the ECA charter capital shall be owned by the state and are not subject to privatization. Corporate rights of the state constituting up to 50 per cent minus one share in the ECA charter capital may be alienated in accordance with the privatization legislation.

4. The ECA charter shall be approved by the Cabinet of Ministers of Ukraine. Where in addition to the state more shareholder join the ECA, the ECA charter shall be amended accordingly by the ECA general shareholders meeting in accordance with the procedure set out by the laws of Ukraine.

Initially the ECA charter capital shall be at least UAH 200,000,000 and shall be created from the state budget funds.

The ECA may open a separate bank account for crediting of costs, obtained from public and private investors, as well as international organizations, mentioned in sub-paragraphs 3-6 of paragraph 1 Article 7 of this Law. The funds placed on a separate account must be used by ECA for carrying out the tasks, mentioned in the Charter of the ECA in accordance with the agreements, concluded with public and private investors, as well as international organizations, mentioned in sub-paragraphs 3-6 of paragraph 1 Article 7 of this Law.

5. The net profit generated by the ECA from its financial and economic activities shall be distributed by the general shareholders meeting.

The net profit of the state pro rata to its share in the ECA charter capital shall be allocated to replenishing thereof.

Losses from operating activities of the ECA shall be covered in accordance with the procedure set out by the ECA charter.

6. Governmental authorities and local authorities shall be prohibited from influencing in any manner the ECA management or employees in the course of performance of their official duties, or interfering with ECA operations, save for the instances set out by law. Any damage caused to the ECA as a result of such unauthorized interference shall be covered in accordance with the procedure set out by law.

7. The ECA may, in accordance with the established procedure, create its affiliates, representative offices or other separate subdivisions, be a founder and/or participant of legal entities both in and outside Ukraine.

Article 3. Objectives, Areas and Principles of Government Support of Export Activities

1. The following are key objectives of the government support of export activities:

- 1) to create a system of insurance and guarantees against both commercial and non-commercial risks related to conduct of export operations;
- 2) to expand long-term export crediting;
- 3) to create a mechanism for partial compensation of the interest rate on export credits.

2. The following shall be the areas of focus for the government support of export activities:

- 1) implementation of credit support programs for Ukrainian exporters from the state budget funds through authorized banks;
- 2) insurance by the ECA of export credits, and foreign economic agreements (contracts) against commercial and non-commercial risks, insurance of direct investments from Ukraine against non-commercial risks, re-insurance, and issue of guarantees;
- 3) partial compensation of the interest rate on export credits, subject to the difference between interest rates in the exporter's country and the buyer's country;
- 5) issue of state guarantees under a separate decision of the Cabinet of Ministers of Ukraine to secure the performance by the ECA of its debt obligations according to the procedure determined by the Cabinet of Ministers of Ukraine and within the limits of the funds of the State Budget of Ukraine for the relevant year.

The state support of the export activity shall be provided for specific purposes within the limits, stipulated by the law of Ukraine on State Budget for the respective year.

3. The following shall be the principles of government support of export through insurance, re-insurance, guarantees, crediting, and partial compensation of the interest rate on export credits:

voluntariness – insurance, re-insurance or obtaining of guarantees from the ECA shall be voluntary and shall not be a condition for any other legal relationship, except for partial compensation of the interest rate;

transparency – the state shall provide for transparent information of the ECA activities, priorities and areas of its operations;

competitiveness – all economic entities shall have equal access to the services offered by the ECA in accordance with this Law;

legitimacy – compliance with the national legislation and obligations of Ukraine arising from its affiliation with and accession to international organizations and agreements, in particular the WTO and the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, on the one part, and Ukraine, on the other part, etc.

Article 4. Goal and Key Objectives of the Export Credit Agency

1. The goal of ECA activity is to encourage a wide-scale export expansion of goods (works, services) originating in Ukraine.

2. The following are key objectives of the ECA:

to protect exporters against a risk of non-payments and financial losses related to a failure to perform under foreign economic agreements (contracts) through insurance, re-insurance and guarantees;

to implement state-of-the-art financial technologies into foreign trade and the export support mechanism through insurance, re-insurance and guarantees;

to develop export of goods (works, services) originating in Ukraine, to raise competitiveness of goods (works, services) originating in Ukraine on global markets;

to participate in implementing the programs of partial compensation of the interest rate on export credits;

to cooperate with international and foreign financial organizations, including for accumulation of international financial support to provide for growth of Ukrainian exports and economy.

3. The procedure for implementation of the tasks and lines of business of ECA considering existing strategic and program documents, that form state policy in the field of export development, is determined by the Cabinet of Ministers of Ukraine.

Article 5. Management and Supervisory Bodies of the Export Credit Agency

1. The following are the ECA management bodies:

- 1) the general shareholders meeting;
- 2) the supervisory board;
- 3) the management board.

2. The general shareholders meeting is the ECA highest management body that conducts its activity in accordance with the procedure set out by the laws of Ukraine and the ECA charter.

3. The ECA supervisory board is the body that is responsible for protection of rights of the ECA shareholders, and within its competence monitors and regulates activities of the ECA management board. The number and requirements to the members of supervisory board, as well as the procedure for their appointment is determined according to the Law of Ukraine “On the management of state-owned objects”

4. The management board is a permanent operating collegial body of the ECA, which manages its day-to-day activity and is responsible for its efficient operations in accordance with law and the ECA charter.

7. Other ECA bodies shall be created and operate in accordance with the procedure set out by the ECA charter.

Article 6. Types and Conditions for Operations of the Export Credit Agency

1. The ECA shall operate pursuant to the charter, rules of the ECA operations related to insurance against commercial and non-commercial risks, re-insurance, principles of issue of guarantees, as approved by the Cabinet of Ministers of Ukraine, the ECA bylaws, including but not limited to the following:

1) insurance and re-insurance of export credits;

2) insurance and re-insurance of foreign economic agreements (contracts);

4) insurance of investments;

5) insurance and re-insurance of letters of credit confirmed by the Ukrainian exporter's bank;

6) insurance and re-insurance of contractual bank guarantees;

8) issue of counter-guarantees to banks of Ukrainian exporters to compensate funds in case of use of contractual guarantees issued by them, as insured by the ECA;

9) issue of tender guarantees (guarantees of performance by Ukrainian exporters of their obligations during international tenders);

10) participation in implementing the programs of partial compensation of the interest rate on export credits;

11) advisory activity;

12) other activities provided for by the legislation and not contrary to the ECA objective

The exhaustive list of ECA's lines of business is determined by the procedure for implementation of the tasks and lines of business of ECA, approved by the Cabinet of Ministers of Ukraine.

2. For the purposes of its activities the ECA may extend the list of insurance products and insurance risks according to market requirements and the ECA capabilities.

3. Delegation of execution of certain functions or business-processes to specialized companies on contractual basis is carried out by the ECA management subject to the approval of the supervisory board.

4. The ECA shall conclude contracts of insurance against commercial and non-commercial risks in the currency of a foreign economic agreement (contract) or the export credit.

5. The ECA shall establish basic insurance rates of insurance against commercial and non-commercial risks subject to political risks in the jurisdiction of the insurer's counterparty. Countries shall be classified by the exposure to political risks subject to information provided by Organisation for Economic Co-operation and Development and the International Union of Credit and Investment Insurers (the Berne Union).

6. Indemnification shall not exceed 90 per cent of the value of the foreign economic agreement (contract) or the export credit upon occurrence of a non-commercial risk and 85 per cent upon occurrence of a commercial risk.

7. A waiver by the insurer (re-insurer, beneficiary under the guarantee) of monetary claims and rights of subrogation under agreements related to contracts of insurance (re-insurance, guarantee) without the ECA consent shall release the ECA from obligation to indemnify.

8. Upon indemnification, all subrogation and other rights of the insurer with respect to the foreign partner or his guarantors, which may accrue as a result of non-performance of the foreign economic agreement (contract) and non-receipt of the financial result from the contract or the export credit granted for its performance, shall transfer to the ECA.

9. A guarantee of performance by exporters of their obligations during international tenders shall be granted solely where the ECA and the exporter have an agreement providing for the exporter's obligation to cover potential losses.

10. Direct investments from Ukraine shall be insured solely on condition of allocation of invested funds into creation of the infrastructure required to develop export of goods (works, services) originating from Ukraine.

Article 7. Source of Financing of the Export Credit Agency

1. The following are source of financing of the ECA:

its own funds;

funds raised from state and private investors on a repayable or non-repayable basis;

funds provided by international organizations on a repayable or non-repayable basis;

state budget funds where so provided for by the state budget law of Ukraine for the respective year;

other sources not prohibited by law.

The funds, mentioned in sub-paragraphs 3-6 of paragraph 1 of this Article, may be credited to the separate account, which may be opened by ECA.

The costs must be used for the purposes, determined by the agreements between the ECA and organizations, mentioned in sub-paragraphs 3-4,6 of paragraph 1 of this Article.

Article 8. Areas for Support

1. The state support of export activity by means of insurance, re-insurance, provision of guarantees, partial compensation of the interest rate under export credits is provided exclusively for goods, works and services of Ukrainian origin as determined in sub-paragraphs 5 and 12 of paragraph 1 of Article 1 of this Law, and is aimed at supporting production and export of such goods, works and services.

2. The criteria for a foreign economic agreement (contract), export credits, commercial entities, and other conditions of provision of state support for export activity shall be stipulated in regulations, approved by the Cabinet of Ministers of Ukraine in accordance with the current legislation and international treaties.

Article 9. Regulation of Activities of the Export Credit Agency

1. The ECA shall have a special status; its activities on insurance, re-insurance and granting of guarantees shall not be subject to licensing.

To conduct other activities the ECA shall obtain the required permits and licenses in the instances and in accordance with the procedure set out by the laws of Ukraine.

The Cabinet of Ministers of Ukraine is entitled to determine the body, responsible for supervision over the financial activity of the ECA.

2. The ECA's activities are not subject to the Laws of Ukraine "On insurance" and "On financial services and state regulation of financial service markets".

3. Requirements of the Law of Ukraine "On management of state-owned property objects" regarding payment of dividends do not apply to the ECA.

5. The ECA's activities on insurance against commercial and non-commercial risks, re-insurance and granting of guarantees shall be carried out in accordance with the rules approved by the Cabinet of Ministers of Ukraine, which specify the following:

1) requirements to insurance regulations, including requirements to the parties of insurance contracts, insurance objects, insurance coverage, insurance premiums, insurance rates, insurance risks, insured events, procedure for execution and performance of insurance contracts;

2) requirements to regulations on granting of guarantees;

3) requirements to the ECA financial sustainability, including the risk management system, creation and use of insurance reserves, other provisions and reserves;

4) procedure and forms of control over the ECA activities.

6. The ECA shall maintain its accounting records and make financial statements in accordance with the laws of Ukraine.

Article 10. Public Disclosure of Activities of the Export Credit Agency

1. The ECA shall conduct its activities and disclose them to public in the manner enabling the public to monitor the ECA operations, and Ukrainian exporters to get information of the functions carried out by the ECA.

2. The ECA and the authority designated by the Cabinet of Ministers to manage corporate rights shall on a quarterly basis make available via its official web-sites information about all contracts made by the ECA for insurance, re-insurance, guarantees, partial compensation of the interest rate on export credits and specify the counterparties and value of respective contracts.

3. The ECA shall, on an annual basis, draw and make publicly available via its official web-site the performance report.

Article 11. Procedure and Conditions for Granting of Government Financial Support to Promote Export Activities

1. While preparing a draft law on the state budget of Ukraine for a particular year, the Cabinet of Ministers of Ukraine shall provide for the amount of expenses on government support of export.

2. Government support shall not be granted to the economic entity which:

1) has filed the documents for insurance or guarantees of performance of foreign economic agreements (contracts) with the non-residents:

a) which are located in the offshore areas, save for the non-residents located in offshore areas, which furnished extracts from constituent documents to certify their standard (non offshore) status; such extract shall be legalized by the respective consular office of Ukraine;

b) are registered in the territory of the countries that are on the Financial Action Task Force (FATF) list of Non-Cooperative Countries or Territories;

c) pursuant to the laws of Ukraine are under sanctions that provide for limitation of prohibition of trade and/or financial operations;

d) have been sanctioned in accordance with resolutions of the United National Security Council, other international organizations, resolutions of the Council of the European Union, other supranational associations and foreign states, which provide for limitation of prohibition of trade and/or financial operations;

e) are entities with 50 per cent or more ownership or control, directly or indirectly, by persons specified in (c), (d) of paragraph 1 of part 2 of this Article above;

f) are incorporated in the jurisdiction qualified as an *occupant country* under the laws of Ukraine and/or an *aggressor country* in respect to Ukraine in accordance with law;

2) has been recognized a bankrupt, or in respect of which bankruptcy proceedings have been initiated, or which is in the process of liquidation as a legal entity or termination of operations of an individual entrepreneur;

3) has filed deliberately misleading information and unreliable documents;

4) has resorted to government support of export in violation of law or conditions and terms for granting of such support;

5) has been found to conclude a foreign economic agreement (contract), for which insurance or guarantee should be sought, with a buyer from the jurisdiction other than a final destination country to consume goods (works, services) with a view to getting additional benefits;

6) in other instances set out by law.

3. A government-backed insurance contract covering commercial and non-commercial risks under export credits, investments and foreign economic agreements (contracts) shall be concluded by the parties upon approval by the supervisory board where the liability under such insurance contract exceeds 10 per cent of the ECA equity capital.

4. Indemnification under an insurance contract covering commercial and non-commercial risks within 10 per cent of the ECA equity capital shall be paid from insurance reserves and the equity capital.

6. Export credits with partial compensation of the export credit interest rate shall be granted in accordance with provisions on the interest rates that are established subject to international commitments regarding officially supported export credits taking into account the currency of such credits.

7. A partial compensation of the export credit interest rate shall be effected solely on condition of insurance of the ECA export credits.

8. The procedure and terms for provision of partial compensation of interest rate under provided export credits; the procedure and terms for issuance of state guarantees for ECA to pay insurance indemnities under insurance contracts, not ceded to re-insurance; the criteria to the scope of foreign economic agreement (contract), export credits, commercial entities or to the goods, works and

services of Ukrainian origin, for the export of which according to this Law government support is provided by means of guarantees or partial compensation of the interest rate under export credits, shall be determined by the Cabinet of Ministers of Ukraine.

9. The government financial support of export activities shall be effected subject to provisions of the Arrangement on Officially Supported Export Credits between members of the Organisation for Economic Co-operation and Development and obligations of Ukraine as a member of the World Trade Organization, in particular requirements of the Agreement on Subsidies and Countervailing Measures.

Article 12. Procedure for Reorganization and Liquidation of Export Credit Agency

1. The ECA may be reorganized and liquidated in accordance with law.

2. A decision on reorganization, liquidation or termination of the ECA activities shall be made by the ECA general shareholders meeting.

3. In case of liquidation of the ECA the balance of funds after settlement of creditors' claim shall be distributed among shareholders that own common shares in the ECA pro rata to the number of shares held by each of them. The funds due to the state shall be allocated to the state budget of Ukraine.

Article 13. Final Provisions

1. This Law shall take effect from the date following the date of its publication.

The provisions of the Law regarding provisions of guarantees by ECA, shall take effect after the ECA is rated by an international rating agency at the level, not lower than the sovereign, and not earlier than before the approval of the relevant terms by Cabinet of Ministers of Ukraine.

2. Until harmonization with this Law, laws and other regulatory legal acts shall apply to the extent in which they do not conflict this Law.

3. The below Laws of Ukraine shall be amended as follows:

1) part four of Article 15 of the Law of Ukraine "On foreign economic activity" (Vidomosti Verkhovnoi Rady of URSR, 1991, No 29, page 377) shall read as follows:

"Export credits, foreign economic agreements (contracts) and investments shall be insured by the Export Credit Agency in accordance with the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits";

2) in the Law of Ukraine "On procedure for settlements in foreign currency" (Vidomosti Verkhovnoi Rady Ukrainy, 1994, No 40, page 364, as amended):

part one of Article 1 shall be supplemented to include sentence three to read as follows: "Proceeds generated by the resident under the foreign economic export agreement (contract) shall be treated as transferred to the resident's bank account at the resident's request if the amount due is regulated by the Export-Credit Agency";

Article 4 shall be supplemented to include after part one a new part to read as follows:

"Where a resident files to the Export Credit Agency a claim regarding default or improper performance by the non-resident of his financial obligations under a foreign economic agreement (contract), due to which the resident failed to comply with the time limits prescribed by Article 1 of this Law or specified by National Bank of Ukraine in accordance with Article 1 of this Law, the said period shall be suspended and default interest shall not be charged during such suspension.

If the ECA makes a decision to settle monetary obligation, the penalty for violation of the deadlines, mentioned in Article 1 of this Law, shall not be paid from the date of appeal by resident to ECA.

If the ECA makes a decision that the obligations of the non-resident are not-subject to settlement by ECA, the deadlines mentioned in Article 1 of this Law or specified by National Bank of Ukraine in accordance with Article 1 of this Law, shall be renewed and the penalty for their violation should be paid for every day of delay, including period of their suspension.

As a result, parts two to five shall be treated as parts three to six;

3) paragraph two of preamble to the Law of Ukraine "On insurance" (Vidimosti Verkhovnoi Rady Ukrainy, 2002, No 7, p 50) shall be supplemented to include words "and activities of the Export Credit Agency. Activities of the Export Credit Agency shall be regulated by the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits";

4) part two of Article 3 of the Law of Ukraine "On management of state-owned property objects" (Vidomosti Verkhovnoi Rady Ukrainy, 2006, No 46, page 456; 2012, No 4, page 23; 2016, No 3, page 25) shall be supplemented with paragraph three to read as follows:

"Specific aspects of management of the Export Credit Agency shall be determined by the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits";

5) part three of Article 2 of the Law of Ukraine "On financial services and state regulation of the financial services markets" (Vidomosti Verkhovnoi Rady Ukrainy, 2002, No 1, page 1) shall be supplemented with paragraph four to read as follows:

"activities of the Export Credit Agency created by the Cabinet of Minister of Ukraine pursuant to the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits".

4. The Cabinet of Ministers of Ukraine shall:

To take actions for Ukraine to accede the framework Arrangement on Guidelines for Officially Supported Export Credits 1978 and five annexes thereto, and join the working group on export credits and credit guarantees;

within six months from the date of allocation of funds in the State budget for establishment and functioning of ECA:

establish the ECA, provide for creation and payment of its charter capital;

harmonize its regulatory legal acts with this Law and provide for approval of regulatory legal acts arising from this Law.

9.2 Export Credit Agency Law (adopted 20 December 2016)

LAW OF UKRAINE

On Providing for Large-Scale Export Expansion of Goods (Works, Services) Originating in Ukraine through Insurance, Guarantees and Cheapening of Export Credits (Vidomosti Verkhovnoi Rady Ukrainy)¹¹, (VVR 2017, No. 4, p. 43)

This Law establishes the principles of government support of export activities through insurance, re-insurance, guarantees, partial compensation of the interest rate on export credits with a view to creating conditions for a large-scale export expansion of goods (works, services) originating in Ukraine to foreign markets, protecting Ukrainian exporters against risks of non-payment and financial losses, and improving competitiveness of Ukrainian producers on global markets.

Article 1. Terms and Definitions

1. In this Law terms are used in the following meaning:

1) **export credit** – a credit facility extended by a lending bank:

to a foreign buyer to purchase goods (works, services) originating in Ukraine under a foreign economic agreement (contract) concluded with a Ukrainian exporter;

to a foreign buyer's bank to finance a Ukrainian exporter's supplies as a part of performance of a foreign economic agreement (contract);

to a Ukrainian exporter to provide for supply of goods (works, services) originating in Ukraine under a foreign economic agreement (contract) or to provide for production of such goods (works, services) under a foreign economic agreement (contract);

2) **foreign buyer** – a non-resident economic entity that buys goods (works, services) originating in Ukraine under a foreign economic agreement (contract) concluded with a Ukrainian exporter;

3) **commercial risk** – a risk of complete or partial failure by a foreign buyer or a foreign buyer's bank to perform obligations towards a Ukrainian exporter under a foreign economic agreement (contract) or a bank that finances an export credit (the "lending bank"), or by a Ukrainian exporter towards a lending bank as a result of either of the following:

arbitrary termination of a foreign economic agreement (contract) without proper rights to do so;

insolvency of a foreign buyer, a foreign buyer's bank or a Ukrainian exporter;

bankruptcy of a foreign buyer, a foreign buyer's bank or a Ukrainian exporter;

4) **non-commercial risks** – a risk of complete or partial failure by a foreign buyer or a foreign buyer's bank to perform obligations towards a Ukrainian exporter under a foreign economic

¹¹ Translator's note: Vidomosti Verkhovnoi Rady Ukrainy (VVR) is the official weekly bulletin of the Verkhovna Rada of Ukraine.

agreement (contract) or a lending bank, or by a Ukrainian exporter towards a lending bank in connection with either of the following:

an earthquake, flood, tornado or other acts of God;

industrial accidents caused by fire, explosion, failures of thermal, water, heating systems or other facilities, which resulted in emergency situation;

a moratorium imposed on payments in the jurisdiction of a foreign buyer, a foreign buyer's bank, or in the country participating in making of payments;

amendments to the legislation regulating foreign economic activity in the jurisdiction of a foreign buyer, a foreign buyer's bank participating in the performance of a foreign economic agreement (contract), which preclude further performance of such agreement (contract);

trade embargo;

a failure by a foreign buyer to perform obligations under a foreign economic agreement (contract), or a delay in performance thereof for more than 180 days where such buyer is a government or a public body, other economic entity whose obligations have been guaranteed by the government;

an armed conflict, military actions, rebellion, revolution, riot, strikes in the country of a foreign buyer or a foreign buyer's bank, which preclude the performance of such foreign economic agreement (contract);

actions by competent authorities of the jurisdiction of a foreign buyer, a foreign buyer's bank or a third party participating in the performance of a foreign economic agreement (contract), which are aimed at dispossession of property (nationalization, confiscation, expropriation, expropriation, etc.);

court decision that prohibits or limits the transactions precluding the performance of a foreign economic agreement (contract);

other circumstances determined by the Cabinet of Ministers of Ukraine;

5) **work or services originating in Ukraine** – the works performed or the services provided by resident economic entities;

6) **securitization guarantee** – an instrument securing the performance by the lending bank of its obligations under credits received as refinancing of insured export credit;

7) **insurance of contractual bank guarantees** – insurance of proprietary interests of a Ukrainian exporter's bank in connection with a failure by the Ukrainian exporter to comply in full or in part with terms and conditions of a foreign economic agreement (contract);

8) **insurance of foreign economic agreements (contracts)** – insurance of a Ukrainian exporter's proprietary interests in connection with a failure to perform in full or in part obligations under a foreign economic agreement (contract);

9) **insurance of export credits** – insurance of liability of a borrower (a Ukrainian exporter, a foreign buyer or a foreign buyer's bank) towards a lending bank in connection with a failure to comply with conditions and terms of the credit agreement;

10) **insurance of confirmed letters of credit** – insurance of proprietary interests of a Ukrainian exporter's bank in connection with a failure by a foreign buyer's bank to perform in full or in part obligations under an issued letter of credit;

11) **insurance of direct investments from Ukraine** – insurance of the investor's proprietary interests in connection with a loss of investments or a part thereof;

12) **goods originating in Ukraine** – goods that have been wholly obtained or undergone sufficient production in Ukraine according to the criteria established by the Customs Code of Ukraine;

13) **Ukrainian exporter** – a resident economic entity that exports goods (works, services) originating in Ukraine.

2. When used in this Law, the terms *insurer, insured risk, insured event, insurance coverage, insurance benefit, insurance rate, insurance premium, insurance reserves* have the meaning assigned to them in the Law of Ukraine "On insurance".

3. Other terms used in this Law have the meaning specified by laws and international agreements of Ukraine.

Article 2. Export Credit Agency

1. To encourage export of goods (works, services) originating in Ukraine the Cabinet of Ministers of Ukraine shall establish the Export Credit Agency (the "ECA") that will voluntarily insure, re-insure, guarantee the agreements/contracts promoting export development, and shall participate in implementing the program of partial compensation of the interest rate on export credits.

2. The ECA shall be created and operate in accordance with the Law of Ukraine "On joint stock companies", this Law, other laws and regulations, and international agreements of Ukraine approved by the Verkhovna Rada of Ukraine as binding.

Where provisions of an international agreement approved by the Verkhovna Rada of Ukraine as binding differ from provisions specified herein, provisions of the international agreement will prevail.

3. The ECA shall be created as a public joint stock company. The founder and shareholder holding at least 50 per cent plus one share in the ECA charter capital shall be the state represented by the Cabinet of Ministers of Ukraine.

The Cabinet of Ministers of Ukraine acting through its designated authority shall manage corporate rights of the state in the ECA charter capital.

Corporate rights of the state constituting 50 per cent plus one share in the ECA charter capital shall not be subject to any actions that may result in alienation of such corporate rights from the state. Corporate rights of the state constituting up to 50 per cent plus one share in the ECA charter capital shall be alienated in accordance with the privatization legislation.

4. The ECA charter shall be approved by the Cabinet of Ministers of Ukraine. Where in addition to the state more shareholder join the ECA, the ECA charter shall be amended accordingly by the ECA general shareholders meeting in accordance with the procedure set out by the laws of Ukraine.

Initially the ECA charter capital shall be at least UAH 200,000,000 and shall be created from the state budget funds.

5. The net profit generated by the ECA from its financial and economic activities shall be distributed by the general shareholders meeting.

The net profit of the state pro rata to its share in the ECA charter capital shall be allocated to replenishing thereof.

Losses from operating activities of the ECA shall be covered in accordance with the procedure set out by the ECA charter.

6. Governmental authorities and local authorities shall be prohibited from influencing in any manner the ECA management or employees in the course of performance of their official duties, or interfering with ECA operations, save for the instances set out by law. Any damage caused to the ECA as a result of such unauthorized interference shall be covered in accordance with the procedure set out by law.

7. The ECA may, in accordance with the established procedure, create its affiliates, representative offices or other separate subdivisions, be a founder and/or participant of legal entities both in and outside Ukraine.

Article 3. Objectives, Areas and Principles of Government Support of Export Activities

1. The following are key objectives of the government support of export activities:

- 1) to create a system of insurance and guarantees against both commercial and non-commercial risks related to conduct of export operations;
- 2) to expand long-term export crediting;
- 3) to create a mechanism for partial compensation of the interest rate on export credits.

2. The following shall be the areas of focus for the government support of export activities:

- 1) implementation of credit support programs for Ukrainian exporters from the state budget funds through authorized banks;
- 2) insurance by the ECA of export credits, direct investments from Ukraine and foreign economic agreements (contracts) against commercial and non-commercial risks, re-insurance, and issue of guarantees;
- 3) partial compensation of the interest rate on export credits, subject to the difference between interest rates in the exporter's country and the buyer's country;
- 4) crediting by the ECA from the state budget of indemnifications under insurance contracts covering commercial and non-commercial risks related to export credits, investments and foreign economic agreements (contracts);
- 5) issue of state guarantees to secure the performance by the ECA of its debt obligations.

3. The following shall be the principles of government support of export through insurance, re-insurance, guarantees, crediting, and partial compensation of the interest rate on export credits:

voluntariness – insurance, re-insurance or obtaining of guarantees from the ECA shall be voluntary and shall not be a condition for any other legal relationship;

transparency – the state shall provide for transparent information of the ECA activities, priorities and areas of its operations;

competitiveness – all economic entities shall have equal access to the services offered by the ECA in accordance with this Law;

legitimacy – compliance with the national legislation and obligations of Ukraine arising from its affiliation with and accession to international organizations and agreements, in particular the WTO and

the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, etc.

Article 4. Goal and Key Objectives of the Export Credit Agency

1. The goal of ECA activity is to encourage a wide-scale export expansion of goods (works, services) originating in Ukraine.

2. The following are key objectives of the ECA:

to protect exporters against a risk of non-payments and financial losses related to a failure to perform under foreign economic agreements (contracts) through insurance, re-insurance and guarantees;

to implement state-of-the-art financial technologies into foreign trade and the export support mechanism through insurance, re-insurance and guarantees;

to develop export of goods (works, services) originating in Ukraine, to raise competitiveness of goods (works, services) originating in Ukraine on global markets;

to participate in implementing the programs of partial compensation of the interest rate on export credits;

to cooperate with international and foreign financial organizations, including for accumulation of international financial support to provide for growth of Ukrainian exports and economy.

Article 5. Management and Supervisory Bodies of the Export Credit Agency

1. The following are the ECA management bodies:

- 1) the general shareholders meeting;
- 2) the supervisory board;
- 3) the management board.

2. The general shareholders meeting is the ECA highest management body that conducts its activity in accordance with the procedure set out by the laws of Ukraine and the ECA charter.

The number and identity of persons representing the state at the ECA general shareholders meeting, and eligibility criteria for them shall be set out by the ECA management body authorized by the Cabinet of Ministers of Ukraine.

3. The ECA supervisory board is the body that is responsible for protection of rights of the ECA shareholders, and within its competence monitors and regulates activities of the ECA management board.

The ECA supervisory board shall act pursuant to the ECA management board regulations to be approved by Cabinet of Ministers of Ukraine. Where in addition to the state more shareholders join the ECA, the ECA supervisory board regulations shall be amended accordingly by the ECA general shareholders meeting in accordance with the procedure set out by the laws of Ukraine.

Any member of the ECA supervisory board shall act for the benefit of the ECA rather than a person or body by which he/she has been nominated, approved or elected.

No member of the ECA supervisory board shall concurrently be a member of the ECA management board and/or other ECA bodies.

The number of members of the supervisory board shall be established by the ECA general shareholders meeting, and in any case shall be at least five persons. Members of the supervisory board shall meet the *independence* criteria set out by the supervisory board regulations.

The persons to constitute the supervisory board shall be determined through competition in accordance with the procedure set out by the Cabinet of Ministers of Ukraine, and where in addition to the state other shareholders join the ECA – by the general shareholders meeting.

The selection board to select members of the supervisory board representing the state shall consist of 11 persons. In particular:

- one person designated by the central executive authority shaping and implementing the state economic development policy;
- one person designated by the central executive authority shaping and implementing the international relations policy of Ukraine;
- one person designated by the central executive authority shaping and implementing the state fiscal and budgetary policy;
- three persons designated by the Verkhovna Rada of Ukraine:
- one person nominated by the committee competent to decide on the regulatory framework of foreign economic activity of Ukraine;
- one person nominated by the committee competent to decide on the industrial policy and development of certain industries;
- one person nominated by the committee competent to decide on the monetary-and-credit policy;
- three persons designated by international organizations, one from each of the World Bank, United Nations Industrial Development Organization, and Organisation for Economic Co-operation and Development (upon consent);
- two persons designated by public associations – unions/associations of industrialists, entrepreneurs, employers, insurers, etc.

Members of the ECA supervisory board shall be elected for five years.

The supervisory board shall not interfere with the ECA operations.

A meeting of the supervisory board shall be competent where at least two thirds of its members are in attendance.

Decisions of the supervisory board shall be approved by a simple majority of votes of all members in attendance. In case of a tie vote, the person presiding at the meeting shall have a decisive vote.

The meeting of the supervisory board shall be presided by the chair of the supervisory board, and in case of his/her absence – by a member of the supervisory board authorized by the chair of the supervisory board.

The chair of the ECA supervisory board shall be elected among members of the supervisory board by a simple majority of votes of all members of the supervisory board.

The supervisory board shall, in accordance with its competence:

approve key areas of the ECA focus, as submitted by the ECA management board, subject to effective strategic and policy documents shaping the state policy in the sphere of export development;

consider and approve reports on the ECA performance;

approve rules for the ECA activity related to insurance against commercial and non-commercial risks, re-insurance and granting of guarantees, which shall be subject to approval by the Cabinet of Ministers of Ukraine;

approve regulations on the rules of insurance, re-insurance and granting of guarantees;

approve regulations on insurance rates, structure of insurance reserves, rules for their creation and use;

approve the risk management strategy and policy, risk management procedures, a list of risks and exposure limits;

approve the structure and forms of the ECA operating reports;

elect and discharge the chair and members of the ECA management board;

perform other functions according to this Law, the laws of Ukraine, and the ECA charter.

Members of the supervisory board shall get compensation for their services.

The supervisory board shall hold its meetings at least once a quarter.

4. The management board is a permanent operating collegial body of the ECA, which manages its day-to-day activity and is responsible for its efficient operations in accordance with law and the ECA charter.

The ECA management board shall act pursuant to the ECA management board regulations to be approved by the Cabinet of Ministers of Ukraine. Where in addition to the state other shareholders join the ECA, the ECA management board regulations shall be amended accordingly by the ECA general shareholders meeting in accordance with the procedure set out by the laws of Ukraine.

The ECA management board shall be accountable to the ECA general shareholders meeting and the ECA supervisory board, and shall arrange for implementation of their decisions.

The competence of the ECA management board shall include all issues related to the management of the ECA day-to-day activity other than issues that are within the exclusive competence of the ECA general shareholders meeting, the ECA supervisory board and competence of other bodies in accordance with law and the ECA charter.

The management board shall consist of the chair, deputy chair and members of the management board.

The ECA management board, including its chair, shall be elected by the ECA supervisory board in accordance with the procedure set out by the ECA charter.

5. To audit the ECA financial and economic activities the ECA general shareholders meeting shall elect the ECA audit committee.

The ECA audit committee shall act pursuant to the audit committee regulations approved by the Cabinet of Ministers of Ukraine. Where in addition to the state other shareholders join the ECA, the ECA audit committee regulations shall be amended accordingly by the ECA general shareholders meeting in accordance with the procedure set out by the laws of Ukraine.

The ECA annual accounts shall be subject to audit by an independent auditor determined in accordance with the laws of Ukraine and the ECA charter.

6. To provide for financial sustainability, the ECA shall establish a risk management subdivision accountable to the ECA supervisory board.

7. Other ECA bodies shall be created and operate in accordance with the procedure set out by the ECA charter.

8. The corporate structure of the ECA shall be approved by the chair of the ECA management board upon endorsement by the supervisory board.

Article 6. Types and Conditions for Operations of the Export Credit Agency

1. The ECA shall operate pursuant to the charter, rules of the ECA operations related to insurance against commercial and non-commercial risks, re-insurance, issue of guarantees, as approved by the Cabinet of Ministers of Ukraine, the ECA bylaws, including but not limited to the following:

1) insurance and re-insurance of export credits granted by lending banks to Ukrainian exporters to provide for compliance with conditions and terms of the foreign economic agreements (contracts), including at the stage of production of goods (works, services), against commercial and non-commercial risks to secure compensation of funds upon a failure by the Ukrainian exporter to perform obligations under the credits granted;

2) insurance and re-insurance of foreign economic agreements (contracts) of Ukrainian exporters against commercial and non-commercial risks to ensure compensation of funds upon a failure by a foreign buyer to perform its obligations under a foreign economic agreement (contract);

3) insurance and re-insurance of export credits granted to a foreign buyer or a foreign buyer's bank by lending banks against commercial and non-commercial risks to ensure compensation of funds upon a failure by the foreign buyer (the foreign buyer's bank) to perform his obligations under the credits granted to him against obligations to buy goods (works, services) originating in Ukraine;

4) insurance and re-insurance of direct investments from Ukraine into objects of entrepreneurial activity against commercial and non-commercial risks to ensure compensation of funds in case of a loss of investments or any parts thereof;

5) insurance and re-insurance of letters of credit confirmed by the Ukrainian exporter's bank against commercial and non-commercial risks to ensure compensation of losses upon the foreign buyer's bank default in payment for supplied goods (works, services) originating in Ukraine;

6) insurance and re-insurance of contractual bank guarantees;

7) issue of securitization guarantees to lending banks to ensure compensation of funds received by them as refinancing of export credits insured by the ECA;

8) issue of counter-guarantees to banks of Ukrainian exporters to compensate funds in case of use of contractual guarantees issued by them, as insured by the ECA;

9) issue of tender guarantees (guarantees of performance by Ukrainian exporters of their obligations during international tenders);

10) participation in implementing the programs of partial compensation of the interest rate on export credits;

11) advisory activity;

12) other activities provided for by the legislation and not contrary to the ECA objective.

2. For the purposes of its activities the ECA may extend the list of insurance products subject to market requirements and the ECA capabilities.

3. The ECA may, by the decision of the supervisory board, delegate some functions or business-process to specialized companies on the contractual basis.

4. The ECA shall conclude contracts of insurance against commercial and non-commercial risks in the currency of a foreign economic agreement (contract) or the export credit.

5. The ECA shall establish basic insurance rates of insurance against commercial and non-commercial risks subject to political risks in the jurisdiction of the insurer's counterparty. Countries shall be classified by the exposure to political risks subject to information provided by Organisation for

Economic Co-operation and Development and the International Union of Credit and Investment Insurers (the Berne Union).

6. Indemnification shall not exceed 90 per cent of the value of the foreign economic agreement (contract) or the export credit upon occurrence of a non-commercial risk and 85 per cent upon occurrence of a commercial risk.

7. A waiver by the insurer (re-insurer, beneficiary under the guarantee) of monetary claims and rights of subrogation under agreements related to contracts of insurance (re-insurance, guarantee) without the ECA consent shall release the ECA from obligation to indemnify.

8. Upon indemnification, all subrogation and other rights of the insurer with respect to the foreign partner or his guarantors, which may accrue as a result of non-performance of the foreign economic agreement (contract) and non-receipt of the financial result from the contract or the export credit granted for its performance, shall transfer to the ECA.

9. A guarantee of performance by exporters of their obligations during international tenders shall be granted solely where the ECA and the exporter have an agreement providing for the exporter's obligation to cover potential losses.

10. Direct investments from Ukraine shall be insured solely on condition of allocation of invested funds into creation of the infrastructure required to develop export of goods (works, services) originating from Ukraine.

11. The ECA is authorized by the Cabinet of Ministers of Ukraine to perform such functions, to secure such obligations and to exercise such rights as arise from bilateral agreements on support and mutual protection of investments, and bilateral international legal acts of Ukraine.

Acts issued by the ECA to secure the performance of contracts specified in paragraph one above shall not be subject to temporary restrictions or special mandatory provisions introduced by central executive authorities of Ukraine during times of crisis.

Article 7. Source of Financing of the Export Credit Agency

1. The following are source of financing of the ECA:

its own funds;

funds raised from state and private investors on a repayable or non-repayable basis;

funds provided by international organizations on a repayable or non-repayable basis;

state budget funds where so provided for by the state budget law of Ukraine for the respective year;

other sources not prohibited by law.

Article 8. Areas for Support

1. For the purpose of its main activity the ECA shall support exports of works or services originating in Ukraine, and goods of processing sector specified in the following chapters of Ukrainian Classification of Commodities for Foreign Economic Activity:

Chapter 16. Meat, fish or crustaceans, molluscs or other aquatic invertebrates; preparations thereof.

Chapter 19. Preparations of cereals, flour, starch or milk; pastrycooks' products.

Chapter 20. Preparations of vegetables, fruit, nuts or other parts of plants.

Chapter 21. Miscellaneous edible preparations.

Chapter 30. Pharmaceutical products.

Chapter 61. Apparel and clothing accessories; knitted or crocheted.

Chapter 62. Apparel and clothing accessories; not knitted or crocheted.

Chapter 64. Footwear; gaiters and the like; parts of such articles.

Chapter 84. Nuclear reactors, boilers, machinery and mechanical appliances; parts thereof.

Chapter 85. Electrical machinery and equipment and parts thereof; sound recorders and reproducers; television image and sound recorders and reproducers, parts and accessories of such articles.

Chapter 86. Railway, tramway locomotives, rolling-stock and parts thereof; railway or tramway track fixtures and fittings and parts thereof; mechanical (including electro-mechanical) traffic signalling equipment of all kinds.

Chapter 87. Vehicles; other than railway or tramway rolling stock, and parts and accessories thereof.

Chapter 88. Aircraft, spacecraft and parts thereof.

Chapter 89. Ships, boats and floating structures.

Chapter 90. Optical, photographic, cinematographic, measuring, checking, medical or surgical instruments and apparatus; parts and accessories.

Chapter 94. Furniture; bedding, mattresses, mattress supports, cushions and similar stuffed furnishings; lamps and lighting fittings, n.e.c.; illuminated signs, illuminated name-plates and the like; prefabricated buildings.

Article 9. Regulation of Activities of the Export Credit Agency

1. The ECA shall have a special status; its activities on insurance, re-insurance and granting of guarantees shall not be subject to licensing.

To conduct other activities the ECA shall obtain the required permits and licenses in the instances and in accordance with the procedure set out by the laws of Ukraine.

2. The ECA's activities are not subject to the Laws of Ukraine "On insurance" and "On financial services and state regulation of financial service markets".

3. Requirements of the Law of Ukraine "On management of state-owned property objects" regarding payment of dividends do not apply to the ECA.

4. Control over activities of the ECA is not within the competence of the designated executive authority responsible for regulation of financial service markets.

5. The ECA's activities on insurance against commercial and non-commercial risks, re-insurance and granting of guarantees shall be carried out in accordance with the rules approved by the Cabinet of Ministers of Ukraine, which specify the following:

1) requirements to insurance regulations, including requirements to the parties of insurance contracts, insurance objects, insurance coverage, insurance premiums, insurance rates, insurance risks, insured events, procedure for execution and performance of insurance contracts;

2) requirements to regulations on granting of guarantees;

3) requirements to the ECA financial sustainability, including the risk management system, creation and use of insurance reserves, other provisions and reserves;

4) requirements to the ECA's activities related to granting of government support in accordance with the budget legislation, including in the form of credits from the state budget and state guarantees;

5) procedure and forms of control over the ECA activities.

6. The ECA shall maintain its accounting records and make financial statements in accordance with the laws of Ukraine.

Article 10. Public Disclosure of Activities of the Export Credit Agency

1. The ECA shall conduct its activities and disclose them to public in the manner enabling the public to monitor the ECA operations, and Ukrainian exporters to get information of the functions carried out by the ECA.

2. The ECA and the authority designated by the Cabinet of Ministers to manage corporate rights shall on a quarterly basis make available via its official web-sites information about all contracts made by the ECA for insurance, re-insurance, guarantees, partial compensation of the interest rate on export credits and specify the counterparties and value of respective contracts.

3. The ECA shall, on an annual basis, draw and make publicly available via its official web-site the performance report.

Article 11. Procedure and Conditions for Granting of Government Financial Support to Promote Export Activities

1. While preparing a draft law on the state budget of Ukraine for a particular year, the Cabinet of Ministers of Ukraine shall provide for the amount of state guarantees required for granting of government financial support for export activities, and costs of government support of insurance, re-insurance, guarantees, granting of credits from the state budget and partial compensation of the interest rate on export credits.

2. Government support shall not be granted to the economic entity which:

1) has filed the documents for insurance or guarantees of performance of foreign economic agreements (contracts) with the non-residents:

a) which are located in the offshore areas, save for the non-residents located in offshore areas, which furnished extracts from constituent documents to certify their standard (non offshore) status; such extract shall be legalized by the respective consular office of Ukraine;

b) are registered in the territory of the countries that are on the Financial Action Task Force (FATF) list of Non-Cooperative Countries or Territories;

c) pursuant to the laws of Ukraine are under sanctions that provide for limitation of prohibition of trade and/or financial operations;

d) have been sanctioned in accordance with resolutions of the United National Security Council, other international organizations, resolutions of the Council of the European Union, other supranational associations and foreign states, which provide for limitation of prohibition of trade and/or financial operations;

e) are entities with 50 per cent or more ownership or control, directly or indirectly, by persons specified in (c), (d) of paragraph 1 of part 2 of this Article above;

f) are incorporated in the jurisdiction qualified as an *occupant country* under the laws of Ukraine and/or an *aggressor country* in respect to Ukraine in accordance with law;

2) has been recognized a bankrupt, or in respect of which bankruptcy proceedings have been initiated, or which is in the process of liquidation as a legal entity or termination of operations of an individual entrepreneur;

3) has filed deliberately misleading information and unreliable documents;

4) has resorted to government support of export in violation of law or conditions and terms for granting of such support;

5) has been found to conclude a foreign economic agreement (contract), for which insurance or guarantee should be sought, with a buyer from the jurisdiction other than a final destination country to consume goods (works, services) with a view to getting additional benefits;

6) in other instances set out by law.

3. A government-backed insurance contract covering commercial and non-commercial risks under export credits, investments and foreign economic agreements (contracts) shall be concluded by the parties upon approval by the supervisory board where the liability under such insurance contract exceeds 10 per cent of the ECA equity capital.

4. Indemnification under an insurance contract covering commercial and non-commercial risks within 10 per cent of the ECA equity capital shall be paid from insurance reserves and the equity capital.

5. Government-backed indemnification under an insurance contract covering commercial and non-commercial risks, which exceeds 10 per cent of the ECA equity capital, may be credited from the state budget funds.

The procedure and terms of such crediting shall be established by the Cabinet of Ministers of Ukraine.

6. Export credits with partial compensation of the export credit interest rate shall be granted in accordance with provisions on the interest rates that are established subject to international commitments regarding officially supported export credits taking into account the currency of such credits.

7. A partial compensation of the export credit interest rate shall be effected solely on condition of insurance of the ECA export credits.

8. The procedure and terms for issue of government guarantees to secure the ECA debt obligations, granting of credits to Ukrainian exporters from the state budget, and partial compensation of the interest rate on export credits shall be established by the Cabinet of Ministers of Ukraine.

9. The government financial support of export activities shall be effected subject to provisions of the Arrangement on Officially Supported Export Credits between members of the Organisation for Economic Co-operation and Development and obligations of Ukraine as a member of the World Trade Organization, in particular requirements of the Agreement on Subsidies and Countervailing Measures.

Article 12. Procedure for Reorganization and Liquidation of Export Credit Agency

1. The ECA may be reorganized and liquidated in accordance with law.
2. A decision on reorganization, liquidation or termination of the ECA activities shall be made by the ECA general shareholders meeting.
3. In case of liquidation of the ECA the balance of funds after settlement of creditors' claim shall be distributed among shareholders that own common shares in the ECA pro rata to the number of shares held by each of them. The funds due to the state shall be allocated to the state budget of Ukraine.

Article 13. Final Provisions

1. This Law shall take effect from the date following the date of its publication.
2. Until harmonization with this Law, laws and other regulatory legal acts shall apply to the extent in which they do not conflict this Law.
3. The below Laws of Ukraine shall be amended as follows:

1) part four of Article 15 of the Law of Ukraine "On foreign economic activity" (Vidomosti Verkhovnoi Rady of URSR, 1991, No 29, page 377) shall read as follows:

"Export credits, foreign economic agreements (contracts) and investments shall be insured by the Export Credit Agency in accordance with the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits";

2) in the Law of Ukraine "On procedure for settlements in foreign currency" (Vidomosti Verkhovnoi Rady Ukrainy, 1994, No 40, page 364, as amended):

part one of Article 1 shall be supplemented to include sentence three to read as follows: "Proceeds generated by the resident under the foreign economic export agreement (contract) shall be treated as transferred to the resident's bank account at the resident's request if the amount due is regulated by the Export-Credit Agency";

Article 4 shall be supplemented to include after part one a new part to read as follows:

"Where a resident files to the Export Credit Agency a claim regarding default or improper performance by the non-resident of his financial obligations under a foreign economic agreement (contract), due to which the resident failed to comply with the time limits prescribed by Articles 1 and 2 of this Law, the said period shall be suspended and default interest shall not be charged during such suspension. Where the default by non-resident may not be cured by the Export Credit Agency in accordance with law, calculation of the said period shall resume and default interest shall be charged in accordance with the standard procedure (including default interests due for the suspended period)".

As a result, parts two to five shall be treated as parts three to six;

3) paragraph two of preamble to the Law of Ukraine "On insurance" (Vidimosty Verkhovnoi Rady Ukrainy, 2002, No 7, p 50) shall be supplemented to include words "and activities of the Export Credit Agency. Activities of the Export Credit Agency shall be regulated by the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits";

4) part two of Article 3 of the Law of Ukraine "On management of state-owned property objects" (Vidomosti Verkhovnoi Rady Ukrainy, 2006, No 46, page 456; 2012, No 4, page 23; 2016, No 3, page 25) shall be supplemented with paragraph three to read as follows:

"Specific aspects of management of the Export Credit Agency shall be determined by the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits";

5) part three of Article 2 of the Law of Ukraine "On financial services and state regulation of the financial services markets" (Vidomosti Verkhovnoi Rady Ukrainy, 2002, No 1, page 1) shall be supplemented with paragraph four to read as follows:

"activities of the Export Credit Agency created by the Cabinet of Minister of Ukraine pursuant to the Law of Ukraine "On providing for large-scale export expansion of goods (works, services) originating in Ukraine through insurance, guarantees and cheapening of export credits".

4. The Cabinet of Ministers of Ukraine shall:

within two months from the effective date of this Law take actions for Ukraine to accede the framework Arrangement on Guidelines for Officially Supported Export Credits 1978 and five annexes thereto, and join the working group on export credits and credit guarantees;

within six months from the effective date of this Law:

establish the ECA, provide for creation and payment of its charter capital;

harmonize its regulatory legal acts with this Law and provide for approval of regulatory legal acts arising from this Law.

President of Ukraine

P. POROSHENKO

Kyiv

20 December 2016

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