



Federal Export Credit Guarantees

Introduction & Agenda

Speakers



Dr. Simon G. Grieser
Partner Deloitte Legal |
Banking & Finance

Phone.: +49 69 719188477
Email: sgrieser@deloitte.de



Dr. Anselm Reinertshofer
Counsel Deloitte Legal |
Banking & Finance

Phone.: +49 89 290366738
Email:
areinertshofer@deloitte.de



Maren Collmann
Associate Deloitte Legal |
Banking & Finance

Phone.: +4969719188418
Email: mcollmann@deloitte.de



Anita Wendt
Senior Advisor Market & Development
Euler Hermes Aktiengesellschaft

Phone.: +49 170 9658273
Email: anita.wendt@eulerhermes.com

Agenda

- I. Federal Export Credit Guarantees
- II. Financing Agreements and the Validity of Asymmetric Jurisdiction Clauses



Federal Export Credit Guarantees

Risk Management in International Trade



Federal Export Credit Guarantees

If you would like to learn more about the services and solutions offered by Euler Hermes AG, or receive further information tailored to your specific interests, please feel free to contact us directly at:



Anita Wendt

Senior Advisor, Market & Development
Euler Hermes Aktiengesellschaft

Phone: +49 170 9658273

Email: anita.wendt@eulerhermes.com

Asymmetric Jurisdiction Clauses

Asymmetric Jurisdiction Clauses

Fundamentals



What is it?

- A contractual conferral of a procedural advantage on one party by means of a jurisdiction clause
- General rule: the jurisdiction of a specific court is designated for both parties
- Exception: one party is additionally granted the right to bring its claims before other competent courts in other jurisdictions



Where is it used?

- Primarily in banking and finance in the context of transactions
- Rationale: for the financial institution, in particular at the enforcement stage, it may be easier if proceedings can also be brought before a court in a country in which the debtor's assets are located or in which jointly liable group companies have their registered seat



Current relevance?

- The French Court of Cassation (*Cour de cassation*) has held such clauses to be null and void
- Reasoning: infringement of national requirements as to the balance and precision of the clause in question
- Reference to the CJEU by the *Cour de cassation* concerning questions relating to the admissibility and validity of such asymmetric jurisdiction clauses

Asymmetric Jurisdiction Clauses – Admissibility under CJEU Case Law

CJEU judgment of 27 February 2025, C-537/231 (Società Italiana Lastre SpA (SIL)/Agora SARL)

Balance and precision are...

- to be assessed exclusively under Article 25(1) of Regulation (EU) No 1215/2012 (Brussels Ia Regulation);
- national rules are irrelevant in this regard.

Validity requires that...

- the courts of one or more States are designated, provided that those States are Member States of the European Union or Contracting States to the Lugano II Convention;
- the clause is drafted with sufficient precision to enable the court seized to determine whether it has jurisdiction; and
- the matter does not concern insurance or consumer matters, or disputes relating to individual employment contracts within the meaning of Articles 15(2), 19(2) and 23(2) of the Brussels Ia Regulation.

Third-country scenarios

- Article 25(1) of the Brussels Ia Regulation does not apply;
- The jurisdiction clause is to be assessed under national law.

Asymmetric Jurisdiction Clause

Example



Asymmetric Jurisdiction Clause

The courts of [•], Germany, have – subject to any applicable provisions regarding exclusive jurisdiction (*ausschließlicher Gerichtsstand*) – exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a "**Dispute**").

The place of jurisdiction for any and all Disputes arising under or in connection with this Agreement shall be the courts in [•]. The [Lender], however, shall also be entitled to take action against any [Debtor] in any other court of competent jurisdiction of a member state of the European Union or a state that is party to the 2007 Lugano Convention. Further, the taking of proceedings against any [Debtor] in any one or more respective jurisdictions shall not preclude the taking of proceedings against any [Debtor] in any other respective jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.



Deloitte Legal means the legal practices of Deloitte Touche Tohmatsu Limited member firms, their affiliates or partner firms that provide legal services.

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (DTTL), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see www.deloitte.com/de/UeberUns to learn more.

Deloitte provides leading professional services to nearly 90% of the Fortune Global 500® and thousands of private companies. Legal advisory services in Germany are provided by Deloitte Legal. Our people deliver measurable and lasting results that help reinforce public trust in capital markets and enable clients to transform and thrive. Building on its 180+ -year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte's over 470,000 people worldwide work together every day to make an impact that matters at www.deloitte.com/de.

This communication contains general information only, and none of Deloitte Legal Rechtsanwaltsgesellschaft mbH or Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

