

# France: The Role of COFACE

*This private firm insures against losses, and plays an important role in technology transfer*

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Why should we speak of guarantee before speaking about financing? Because guarantee should come before financing and constitutes the basis thereof: the role the Compagnie Francaise d'Assurance pour le Commerce Exterieur (COFACE) is to reassure the banker by giving him his pledge of execution of contracts made with foreign enterprises.

COFACE is a private company which manages a nationalized service. Created in 1947, it began functioning in 1948. Its main stockholders are "Caisse des Dépôts et Consignations", "Credit National", nationalized banks and insurance companies.

COFACE works in two ways:

1. As a private company, inasmuch as concerns short-term commercial insolvency risks (that is, up to three years' credit) pertaining to sales of consumer goods and small equipment. This is the function of the COFACE Short-Term Management, which acts in those circumstances as an ordinary commercial company — that is, on its own behalf.

2. As a nationalized organization inasmuch as concerns political and monetary risks (nontransfer and change), as well as the covering of insolvency risks by private buyers, for medium-term credits and nonpayment by government agencies.

Political risks and nontransfer risks can be covered accessorially to short-term commercial insolvency risks covered by the Short-Term Management of COFACE.

Operations comprising a medium-term credit or a credit exceeding the limit of current commerce such as defined above (consumer goods and small equipment) come under the responsibility of the Medium and Long-Term Management: your activity is dealt with by the latter Management.

How are decisions made relating to this part of its activities? They are made by the "Directeur des Relations Economiques Exterieures" of "Ministere de l'Economie et des Finances", under instruction of "Commission des Garanties" in which are represented the "Ministere de l'Economie et des Finances (namely "Direction du Tresor" and "Direction des Relations Economiques Exterieures") and "Ministere de l'Industrie et de la Recherche", "Ministere de l'Equipement", etc. . . as well as "Banque de France" and "Banque Française du Commerce Exterieur".

\**Compagnie Francaise d'Assurance pour le Commerce Exterieur.*

They can also be made by COFACE itself, within the limits of the powers granted to it by the "Directeur des Relations Economiques Exterieures".

Credit insurance guarantees cover two types of risks:

1. Risks before delivery, i.e. on production and cancellation of orders.

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*From LES France Annual Meeting*

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2. Risks after delivery — risks connected with credit when credit is incurred.

These guarantees protect exporters against circumstances causing loss, such as insolvency of the private buyer, inability of the public buyer or political risks (revolution, war, etc.). They are risks arising from facts in the foreign countries and, more particularly, the risk of nontransfer of payments due to shortage of currency in the foreign country.

The Medium-Term Management of COFACE mainly insures sales contracts of equipment (taken either individually or within the scope of turnkey plant supply agreements), supply of services contracts, and civil engineering agreements.

Formerly the guarantee as applied to license and transfer of know-how was taken into consideration by COFACE only as a part of these sales contracts. Then COFACE was requested to grant its guarantee to certain know-how or license agreements independently. For COFACE a license agreement is:

- An item of a turnkey plant supply agreement.
- Or the sale of technical documents for a lump sum of money paid either in one or in several installments.
- Or the granting of a license for a royalty which will be calculated proportionally to the use of the license by the buyer.

The license is considered as one part of a selling agreement and you find in the total price of the contract one item which is the consideration for the right to use the process, but COFACE does not make the difference between the main contract and the auxiliary (the license). The duration of the credit will be the same for the main contract and for the auxiliary.

### **Lump-Sum Payment**

If the sale of the process is made for a lump sum of money, that sale can be regarded as the assigning of a piece of property which may be likened to a piece of equipment. That sale is subject, according to its amount, to the same rules concerning the duration of credit and the installments. For example, for the sales of very elaborate and expensive processes, COFACE has granted credit up to a maximum of five years, subject to a payment of a cash

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at all. We have some interesting things going on with other companies, and we have new products which we believe will help us additionally in the agricultural field. We believe in the broad-form approach.

Ours is not a large company, but we do like to think in large terms. We're not well known in the foreign markets, but we expect to be tomorrow. And we do believe that there are many, many avenues for licensing and developing a product or series of products. We've tried to use them all, and it has worked so far. We believe it will work even better.

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installment of at least 20% before delivery.

Lastly, in the case of a royalty to be paid on the products manufactured, it is considered that the payment of the credit is due and hence subject to guarantee only from the time when it has a due date and when the amount thereof is known. Originally, only agreements stipulating a minimum could be guaranteed. Since then the policy has evolved and the guarantee can be granted on the royalties as a whole, within the limits of an original estimate. In that case, the guarantee takes effect in a revolving manner. The guarantee of the risks of nonpayment can take effect only from the time when the credits are effectively incurred. It is quite evident that if products giving rise to the payment of a license right are stopped, the guarantee cannot have effect.

In this regard, it is important to remember the consideration which should be given to the wording of the license agreement. It is essential to correctly safeguard the rights of the licensor. It should provide that, in case of an event terminating the agreement, the accounts can be made and certified by an independent third party in a manner that these accounts can be presented to the licensee. It is also important to pay the greatest attention to the appointing of the arbitrator of the agreement. In fact, the rule is as follows: you are not allowed to exercise a right toward COFACE which you are not in a position to claim toward your licensee. In other words, the best guarantee is not the insurance policy but your own license agreement. The COFACE policy couples your contract and enforces proper compliance by your customer. But if the contract is bad and if one of its provisions proves to be detrimental to the licensor, the credit insurance guarantee cannot be of any help.

## France: Role of Banks in Licensing

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your banker as to the best means for avoiding any delay of such payment.

However, of more importance for the bank is the provision of the contract whereby you grant the buyer (under coverage of a COFACE insurance policy) terms of payment of two, six, 12, 18 months (short term); two, five or more years (middle and long term). In such instances, it is essential that you actually have in your hands irrevocable and unquestionable titles of credit corresponding to the price of your supplies. These could be in the form of bills well established, accepted and, if necessary, warranted by foreign banks. These bills are transferred to your bank for

discount by the procedure of short-, middle- or long-term credit "mobilization". In case of long-term credit (over 18 months), the bank transfers the bills to Banque Francaise du Commerce Extérieur for rediscount, which in turn has to find the money in applying, either to a common pool of bankers or to Banque de France or directly to the Treasury. This procedure is called "credit-supplier". Another more recently developed procedure, called "credit-buyer", may be used. French banks for middle-term credits and Banque Francaise du Commerce Extérieur for long-term credits (i.e. for seven years and over) can grant credits to the buyer under similar conditions to those obtained under credit-supplier. The banks will put at the disposal of the buyer the necessary financial means to enable him to pay the supplier.

In particular instances for rather short-term credits you may apply for advance payments in foreign currency. It happens in circumstances when French financing is not possible.

In short, your problem is not to try and find money, but to know whether you can find money at a low price under stable conditions and in sufficient amounts. Remember also that if you want to obtain credit under privileged conditions and at competitive rates, your firm's contracts and credits should meet certain conditions.

## Cooperation in Licensing

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possible only on the basis of a detailed analysis of the project, but must rely on a mutual confidence of the companies involved, which would fully accept the unwritten ethical norms of international trade.

This is all the more impossible otherwise, as one of the parties concerned would have to transfer his entire knowledge on the given invention, disclosing sincerely all of its advantages and drawbacks, while the other party would undertake investing money to promote the development of the invention with the hope of a subsequent return.

Until the partner engaged in development — let us assume for the time being that a foreign partner of NOVEX — is working on the industrialization of the invention, it is most equitable that NOVEX should restrict herself on the market of the other partner or, in the case of a relevant agreement, on any market from any supplier activity whatsoever, until the developing partner is in the position to express a final intention of acquisition. A very "convenient" contracted legal form of such a cooperation is the option agreement for a predetermined period of time, for which the partner entitled to optional decision is granted a market protection. Depending on the actual stage of the invention's realization, the length of the period of option, the participation of the partner granting such an option in the further development of the invention, etc., the agreement on such an option may or may not involve certain financial considerations.

If the option period is successfully completed, that is, the foreign partner decides to purchase the license (after he has been convinced during the period of the option on the technical and economic advantages of the invention), — a final contract of commercialization will be concluded.

This solution will minimize the buyer's risk, if he wants to purchase an invention that has not been industrially realized, as yet, but seems to be promising.