KROMANN REUMERT

THE USE OF ASIAN EXPORT CREDIT FINANCING IS AN OFTEN OVER-LOOKED OPPORTUNITY

May 2017

Jens Blomgren-Hansen
Partner

Mobile: +45 24 86 00 76
Direct: +45 38 77 43 09
jbh@kromannreumert.com

Thomas Kaas
Partner

Direct: +45 38 77 43 53
Mobile: +45 24 86 00 77
tk@kromannreumert.com

Chen Chen Hu
Legal Consultant

Direct: +45 38 77 41 40
Mobile: +45 61 55 21 56
chu@kromannreumert.com

THE USE OF ASIAN EXPORT CREDIT FINANCING IS AN OFTEN OVER-LOOKED OPPORTUNITY

If you are considering to acquire heavy equipment, machinery, vessels, wind turbines, containers, hi-tech products or the like in Asia, you may consider using the financial offerings of the local export credit agencies that have been established to support the export of such goods.

Chinese and South Korean export credit agencies in particular are currently keen to provide attractive project / export financing in addition to their buyer's credit insurance in favor of exporters. The reason is that their heavy industry has suffered for some time due to the global downturn. They may further be able to help the exporter tap into other local support programs and to ensure a smoother process if the transaction needs administrative approval.

Historically, export credit agencies only provided credit guarantees to banks which would then handle the funding and loan administration. However, more and more export credit agencies, including the Danish (EKF - Danmarks Eksportkredit), can now also grant direct loans and thus be a direct lender in the transaction.

Is export credit financing really an attractive alternative?

Yes. Export credit agencies are often able to offer cheaper financing as they are often subsidised by the state. Thus, their credit costs reflect the funding costs of their home country added a risk margin and potential hedge costs (if hedging is required)

Also, credit export agencies are non-profit organisations and may in their evaluation of a specific transaction also take national interests / policy goals into consideration. This could mean that an export credit agency may be willing to take additional risks or price the risks lower than commercial banks.

Further, while European export credit agencies are restricted in their pricing to avoid getting into conflict with state aid regulations, some Asian export credit agencies are subject to less restrictive state aid regulations and therefore have more flexibility if the transaction is deemed to have sufficient national interest.

Sinosure - the primary Chinese export credit agency

China has several export credit agencies which have all been established to promote Chinese exports. The most well-known is Sinosure, which was established in 2001 following a merger between the export credit departments of the Chinese Export-Import Bank and the People's Insurance Company of China.

Since its establishment, Sinosure has played a substantial role in supporting Chinese foreign trade and international economic cooperation. According to Sinosure statistics, it has supported exports, domestic trade and investments with a total value of USD 2,800 billion.
Its export credit insurance covers a large number of buyer credit policies and medium and long-term projects within hi-tech, large electro-machinery and heavy equipment, overseas engineering contracts, etc. (see more details on Sinosure's website: http://www.sinosure.com.cn/sinosure/english/Company%20Profile.html).

More recently, Sinosure has offered (i) credit support to Chinese companies investing outside China in an attempt to support the Chinese "Going Abroad" policy and (ii) leasing insurance policies.
The leasing product is a type of financial lease where Sinosure provides credit enhancement to the lessor against the lessee's default while also providing a buy-back option at a certain time at a pre-defined price. As the lease structure is also a guarantee against default, it is basically just a slightly modified version of the standard non-payment guarantee provided to banks.

How does Sinosure typically work?

Sinosure typically provides its services through commercial banks. According to Sinosure's own statistics, USD 2,700 billion out of the total credit and guarantee exposure of USD 2,800 billion have been provided through 233 different banks.

A Sinosure credit is typically established through a bank which will grant a loan on the basis of a guarantee from Sinosure. The Sinosure guarantee works as a credit enhancement and if the borrower defaults, the bank can instead claim payment under the Sinosure guarantee.

If a claim is made under a Sinosure guarantee, Sinosure will pay the lender and subsequently become a party to the loan agreement with respect to the part of the loan paid under the guarantee.

If Sinosure has entered into the transaction as a direct lender, Sinosure will act as the lender of record for its own loan. However, if the Sinosure loan is part of a larger loan syndicate, an agency, institution or one of the other lenders which has undertaken the agency role will typically handle the loan governance.

Where have we seen Sinosure financing used?

We have seen Sinosure financing used in a number of transactions. Sinosure buyer's credits are often used in connection with Chinese sales to non-Chinese customers. However, as buyer's credit insurance has little interest for Danish companies, we have only addressed these credits in the section "Risks related to Asian export credit financing" below.

On the Nordic market, we have seen Sinosure guarantees being used for ship financing, acquisition of large volumes of solar panels and containers, financing of cranes and the like.

In a number of Danish transactions, the financing has been arranged by KfW IPEX, but nothing prevents the funding from being provided through a Danish bank which cooperates with Sinosure.

When obtaining Sinosure financing through a bank that has already an established relation with Sinosure, the bank will typically take the arranging role and obtain the specific offer from Sinosure. However, nothing prevents the Danish borrower from contacting Sinosure directly – or from doing so in cooperation with the Chinese supplier.

Risks related to Asian export credit financing?

Some Danish borrowers are reluctant to enter into transactions with Asian export credit agencies because they are concerned that communication may be more difficult and fear how the export credit agency will respond to financial distress.

Communication may indeed be a bit more cumbersome – and yes, there are cultural differences. However, most of the concerns can be addressed in the loan documentation, many of the export credit agencies have vast experience with international transactions, and there will often be a European arranging bank acting as agent for the lenders involved in the transaction. This can help solve possible language barriers and cultural misunderstandings. In our view, these issues should not be seen as high risks in connection with project or asset related export credit financing obtained through Asian export credit agencies. In fact, there seems to be more problems related to buyer's credits, i.e. credit insurance policies obtained by the local exporter on payment by the buyer (the Danish company). The risks associated with buyer's credits are as follows: (i) the export credit agency is typically the only financial counterpart, (ii) the claim is typically relatively small with the result that the claim process is often handled as a standard procedure, and (iii) the local exporter often has little interest in assisting as he has already received payment and the issue is likely to relate to a dispute between the exporter and the buyer.

A buyer's credit may be compared to a factoring arrangement which is not disclosed to the buyer until the purchase has been concluded. If the buyer refuses to pay the purchase price, e.g. due to breach of contract by the seller, the credit agency may, based on its standard procedures, initiate a collection process through a local lawyer based on a commission arrangement. As the seller has already been paid, the export credit agency may not have any information about the seller's breach and since the agency's lawyer receives commission on the amounts collected, the buyer may have difficulties stopping the collection process – and may sometimes be intimidated to pay the full amount despite the seller's breach.

When should you consider export credit financing?

Export credit financing can be used where funding cannot be obtained in the commercial market – or cannot be obtained on sufficiently attractive terms. However, even if the commercial market is willing to provide the financing needed, it could be considered to supplement the finance structure with an export credit guarantee in order to optimise your financing terms.

Q&A IN SHORT:

Who: A Danish buyer of goods in the home country of the export credit agency can use export credit financing.

When: Export credit financing is relevant if you consider placing a large order with an Asian supplier.

How: Export credit agencies can either be contacted directly, through a bank or through your local supplier.

Upsides: Export credit agencies have been established to promote exports from their home country. Therefore, they can often offer more attractive financing – or offer financing if it cannot be obtained from the commercial banks.

Challenges: There may be both language barriers and cultural misunderstandings. However, most of the export credit agencies have vast experience in dealing with international parties and transactions. Make sure to read and negotiate the contract carefully.

Timing: As is the case with all transactions, the higher degree of complexity, the longer it takes. However, the export credit agency generally has an interest in facilitating export trade.

KROMANN REUMERT

Kromann Reumert's vision is "We set the standard". Good is not enough - we want to be the best. We provide value-adding solutions and advice with full involvement and commitment. We get there by focusing on quality, business know-how, spirited teamwork, and credibility.
We are Denmark's leading law firm, and our offices are located in Copenhagen, Aarhus and London.

COPENHAGEN
SUNDKROGSGADE 5
DK-2100 COPENHAGEN

AARHUS
RÅDHUSPLADSEN 3
DK-8000 AARHUS C

LONDON
65 ST. PAUL'S CHURCHYARD
LONDON EC4M 8AB

LAWFIRM
WWW.KROMANNREUMERT.COM
TEL +45 70 12 12 11