ARGUMENTUM

In a global world in which international trade of goods are accessible to everybody, knowing the risks to which participants to economic life are exposed is a crucial necessity, especially after the recent economic recession that proved once more the need of concrete information about the rules of international trade and the means of mitigating the risks related to international business.

International communication has been increasingly simplified by rapid electronic means of distance communication that ensure a real-time confirmation of receiving the correspondence between the future business partners - especially the electronic mail, since the fax is used less and less, and the telex has already disappeared. The time zone difference has remained the only obstacle against long-distance instant communication between partners, yet even so communication is facile, because the parties can communicate within short time intervals, less than 24 hours, no matter of the place where they are in the world.

The electronic communication means, especially the internet, have also crucially facilitate the development of international trade relations, namely by creating the possibility for international trade participants to present their offers, products, services to everyone accessing the global communications network. In my opinion, at present, but especially in the future, business people shall have obligatorily a public e-mail address, no matter whether it is attached to a website or not, in order to have the possibility to communicate with potential business partners, as well as with public institutions, since there is already a tendency that most part of administrative activities in relationship with the state is realised via internet only. Thus, business people are indirectly obliged to use

the new technology in their relations with the state, which stimulates them to also use it generally in their virtual communication among people.

The facts presented above imply major changes in the way of dealing with international trade business, taking into consideration the market globalisation and the rapid, unprecedented development of international trade with goods, products and services that can be acquired much easier, at the lowest possible costs, no matter of the country one is in at the moment of contracting. These changes imply an even greater responsibility, perspicacity, a comprehensive legal education, a better knowledge of the different legal systems existent in the world, corroborated with communication skills in foreign languages.

International trade participants have to answer to these challenges with knowledge and with actions for mitigating the risks implied therein.

In the ultrafast world nowadays people often forget an essential thing: the methods of preventing default in international trade, so that the results of the work of many people, some of them even specialists, are not in vain, i.e. without benefitting from concluding, performing and completing an international trade contract. Without great efforts, without taking into consideration the prevention means, the risk of default in international trade is huge. Any international trade contract implies risks; any profit-bringing business is itself risky. International trade businesses imply multiple risks, and some of them are extremely risky from the very beginning in their precontractual phase, yet to the same extent such businesses are also profitable, which means the necessity of assuming future major risks of default.

In our digital and virtual world nowadays, one should not marginalise or forget the traditional concepts of international trade, which should be combined with new models; the scientific progress in communications can be neither ignored not exaggerated: excessive communication brings sometimes also disadvantages, the loss of some fundamental elements of international trade contracts because of the multiple details, which leads to the fact that exactly the essence is lost in the ultrafast communication. .

Preventing default in international trade ABSTRACT

In the essence, international trade has known a major progress, the world has become global regardless of administrative measures taken by states and despite the protests of the employees who are more and more affected by the strong competition with the employees from developing countries where there are multinational enterprises, where the price is the decisive factor function of which the profit margin is determined - the only criterion considered by the international trade participants.

These international trade participants become every day much stronger, much more integrated: regardless of financial storms, such enterprises cannot be closed or bankrupted anymore, because of the systemic risks they have established. There are states that had to financially support such enterprises, i.e. the bankruptcy or insolvency of such giants, which implies disastrous results for the economy of a dependent state.

In what follows, I shall present definitions, means and methods through which I analyse the risks the creditor may encounter in international trade relations, as well as the method of preventing default in international trade.

SECTION I

CHAPTER I - GENERAL CONSIDERATIONS ON PREVENTING DEFAULT IN INTERNATIONAL TRADE RELATIONS

From the perspective of sectorial competitiveness, which is relevant especially for the sectorial business community and the way in which the sector meets the international challenges, preventing default is essential. From the customers' perspective, which is the most relevant for the specific needs of the different types of exporting customers (current, prospective or potential customers), preventing default is a major goal to be achieved in order to avoid much more serious social consequences in monoindustrial areas, as for example the lack of other resources for reorientation of labour force.

Preventing default in international trade ABSTRACT

International trade and the financing of trade are recovering slowly after the financial crisis, yet the impact on exporters worldwide and the economic consequences are still not completely evident. New rules for a more prudent behaviour of banks and financial institutions shall have an impact on exports, as well as on the relations of banks with small and medium enterprises.

At present, changes are taking place in the structure of international trade: the raise of new trade powers and the increasing importance of non-EU markets, the development of new corridors in the fields of logistics, energy and transport, the increasing importance of clusters and networks in performing exports, the development of new marketing forms in the virtual space etc. All these changes are triggering the development of new business models, redirecting a part of exports towards non-EU target markets, creating and developing centres for logistics, assembly, processing and re-export activities, as well as promotion and communication platforms. The new international business environment stimulates network specialisation.

One should not neglect the unanimously recognised fact that a small or medium enterprise that becomes international has a better ability to resist the crisis situations, and in this context, export becomes a crucial element of its competitiveness.

The ability to fulfil the contractual obligations assumed and preventing default in international trade also implies obligations of states to allocate budget resources to public instruments and public sector for activities of promoting and supporting exports, as well as the existence in the EU practice of an integrating central organisation for promoting exports, and coordination in the activities of export promotion and support performed by the public sector, including those of branding and competitive identity.

The states have to provide modern supporting instruments, connection of the local and regional support of export, which is essential especially for small and medium enterprises, to the national support system, as well as coordination between the different production centres in a certain development area. .

Preventing default in international trade ABSTRACT

In order to prevent default in international trade, it is necessary to consolidate the institutional capacity of the state of origin as the organisation for promoting and supporting export, to implement the supporting instruments and a concerted approach of initiatives in programmes and projects that have to be the object of a multiannual plan of the project management.

The way of preventing default is to implement new skills, abilities and competitiveness based on less tangible assets, new skills at the level of persons, as well as of clusters, central and local authorities that stimulate the advance payment for products; the goods are required on the free market, they are highly attractive.

Default prevention has to be supported by regional export centres, which are essential institutional forms for intervention and support at the regional level.

In essence, the efficient support of enterprises by public authorities is a key factor in preventing default.

Preventing default in international trade is crucial for global trade relations that cannot appear, run and develop but only in a friendly environment that ensures voluntary fulfilment of financial obligations assumed by partners involved in international trade relations.

In the current context of technology development, preventing default by individual means can be performed by a great variety of forms of public information available in public registers, but especially via internet, which provides a lot of details about any participant to international trade, regardless time, season, continent or location.

Other possible causes of weakness of international trade participants or of default are: volatility of the exchange rate, the cash question, the availability of loan granting, including poor external financing, the voluntary reduction of private consumption, increased utilities prices..

CHAPTER II
RISKS OF CREDITORS IN CASE OF VOLUNTARY PERFORMANCE OF PAYMENT

The word "risk" is defined as potential, more or less predictable danger, threat, probable event that may generate loss, possible damage. In the Turkish language, the word "risk" (Turkish: *risk*) is defined as damage threat, according to the definition provided by the Institute of the Turkish Language. The current Dictionary of the French Language defines "risk" as potential danger, potential damage. Starting from this definition, there have been discussions in the specialist literature upon the complexity of the term "danger" or upon its quality of a future event. In my opinion, what is important here is the fact that each and every business has a certain degree of risk. Without risk, there shall be no profit and no development of international trade relations.

Risk can be predictable, namely in case the potential factors generating loss can be anticipated, or unpredictable, in case they are determined by a lot of causes and situations which the businessman cannot anticipate. Thus, risk is the harmful consequence that may be encountered by the parties of an international trade relation.

In case of international trade relations, there are some activities that imply traditional risks that international trade participants know about and try to find different "insurance" forms in order to ensure the performance of their obligations.

Trade risks may be enhanced by lack of information and lack of qualified staff; state administrative barriers may also be a major obstacle in extending international trade relations. Romania adopted the Government Emergency Ordinance OUG no. 116/2006 regarding social protection, which transposes at national level the EU regulations, i.e. the CE Regulation no. 659/1999 laying down detailed rules for the application of art. 93 of the Treaty on the Functioning of the European Union of the EC Treaty, published in the Official Journal of the European Union no. L 83 of 27th March 1999 with its subsequent amendments and supplements, hereinafter called the CE Regulation no. 659/1999, the Commission Regulation (EC) no. 794/2004 implementing Council Regulation (EC) no.

659/1999 laying down detailed rules for the application of art. 93 of the Treaty on the Functioning of the European Union of the EC Treaty, published in the Official Journal of the European Union no. L140 of 30th April 2004, with its subsequent amendments and supplements, as well as the other EU regulations in the field that aim to support the Romanian business man to promote his products for export.

The Romanian Trade Promotion Centre has been reorganised as a public institution with legal entity status, specialised body of the central public administration for applying the Government's strategy and policies in the field of trade promotion and development, as well as in the field of promotion and attraction of direct foreign investments.

In a global approach there are questions which each and every business man has to put to himself before selling his products within an international trade operation: who shall support the export costs and formalities for the products? Where shall the exported goods be handed over to the importer? Who shall conclude the transport agreement for the goods to be exported and who shall assume the related risks and support the related costs? Who shall support the costs until the goods are handed over from the exporter to the importer? Who shall support the costs for damage of the goods until they are handed over to the consignee, and assume any other risks implied by international trade operations? Who shall support the costs and the formalities for importing the goods?

For example, the International Chamber of Commerce in Paris published in 1985 the work Force Majeure and Hardship Clause (Document no. 421), revised in 2003 (Document no. 650), which contributes to the proper information of participants to international trade by providing definitions for force majeure, self-induced force majeure, force majeure and the freedom of contract, which are instruments for adapting global trade contracts to the realities in different areas of the world.

The hardship clause is analysed from the perspective of the business man's need to negotiate, as the risk is present everywhere in the field of international trade, due to the big quantity of traded goods, the huge amounts of money in short periods of time for mitigating hardship.

Good faith may be interpreted according to the agreement concluded between the parties. In case there are no misunderstandings and obscure parts, the judge has the obligation to take into account the will of the parties the way it was expressed in the contract. There are difficulties in case the contract provisions are doubtful, and in such cases the judge has to determine the real will according to the parties' intention at the contract conclusion.

Specialist literature appreciates that there has to be distinguished between deceptive manoeuvres that lead to relative nullity of the contract and to the obligation to pay damages for exaggerating the quality of the goods for advertising purposes, which cannot be deemed as ruse. Manoeuvres of presenting false information or documents distorting the real qualities of products or the lack of essential elements that constitute the contractor's consent are to be punished.

The complexity of international trade relations does not allow listing all types of unfair clauses that may be imposed by the dominant party in the contract, yet it is certain that the international energy or grain market is dominated by large traders with extensive experience, who often impose unfair clauses beyond the limit of good faith to those parties in need of in search of resources for emerging markets and force the beneficiary to difficult terms for the execution of the contract.

CHAPTER III
COMMERCIAL CREDITWORTHINESS

Commercial creditworthiness means the confidence a trader has to have in his partner. The confidence in the fact that the business partner shall perform the contract determines the evolution of the trade relation and the consolidation of the relation between future partners pursuing different international transactions or the access to a certain specified market. Commercial creditworthiness has three components: solvency, liquidity and profitability.

Preventing default in international trade ABSTRACT

Solvency means covering medium and long term credits from the share capital, while financial liquidity means the capacity of a company to cover short term contractual payment obligations from its assets and cash account. And finally, profitability of a company is a synthetic indicator that allows to determine the net profit margin for the analysed tax year in order to know the future financial capacity for long term financial obligations.

There are two ways for gathering information about the creditworthiness of a potential partner: indirect verification by consulting the commercial register, other international partners from the same country, obtaining information from chambers of commerce and industry or other specialist institutions such as foreign trade banks of the type EXIMBANK, specialist companies or even public institutions such as Foreign Trade Directorate in Turkey, and direct verification based on the critic analysis of some documents originating even from the company to be verified, such as the analysis of the annual balance sheet and of other accounting or financial documents.

The company's creditworthiness can be assessed according to two criteria: one external criteria that we shall analyse in the following and one internal that we shall analyse subsequently.

The main external criterion, the information technology, i.e. the internet, has changed the rules of obtaining essential information for verifying the creditworthiness of a business partner. The new technologies allow companies to establish new business rules and new verification criteria without which the global trade nowadays cannot be conceived any more. The result is the dynamic adaptation of information technology and of decision-making strategies. I shall provide arguments that these changes require a new logic for investing in IT and other strategic assets like online promotion means. The central point of the argumentation is incertitude. Plans of strategy, verification and decision-making that are fixed and difficult to transmit shall not survive in case of higher level business and in front of technology risks.

The second criterion for identifying commercial creditworthiness is the internal criterion, known by the trader via his own senses. This criterion refers especially to the company's management structure, management quality, professional training, management turnover, prestige within society, shareholders' structure etc. The internal criterion also implies the assessment of the market share, of the HR policy, the company's evolution in recent years, pricing policies, relations with the other suppliers of goods and services etc.

In case of direct verification, the following are especially important: the analysis of the commercial balance and of the profit and loss account, which are relatively easy to obtain and present important information about the commercial activity of the foreign partner without raising suspicions regarding lack of confidence or a too cautious attitude of the interested partner. The balance sheet presents a synthetic analysis of the social assets and especially of the way business activity took place during the previous tax year by showing the assets and liabilities.

Last but not least, it is important to analyse the actions pending in law courts or arbitration courts, which in case of failure can determine rapidly changes in the economic situation of the verified company or even its bankruptcy.

In case of companies involved in contracts with governmental bodies, the changes in the legislation or in the internal politics of the state where the company performs its activity. .

CHAPTER IV
MEANS OF RISK MITIGATION AND DEFAULT PREVENTION

The speculative character of international commercial activity implies the existence of an indefinite number of causes of risk that are predictable and assumed by the trader; there are also other factors of risk that are unpredictable.

In order to stimulate international trade activities, at the state level there have been organised and are running specialised institutions for supporting those interested in global trade. According to the provisions of the Law no. 96/2000 on the organization and functioning of the Export - Import Bank of Romania EXIMBANK - S.A., this bank performs its activity in the name and on the account of the state, and also in its own name and on its own account. EXIMBANK S.A. offers financing, co-financing, refinancing, guaranteeing, other banking operations, insurance and reinsurance of Romanian foreign trade operations for resident or non-resident legal entities duly founded. The bank can open bank branches and agencies both on the territory of Romania and abroad, according to the governmental policy of supporting exports. By using a banking institution supported by the government, business operators are provided support in obtaining data and useful information about how they can promote their products on other markets abroad.

Romanian traders are encouraged to use the expertise of this institution that has the following general goals:

a) financing the production of goods and services for export, as well as foreign trade operations by providing loans in Lei and in foreign currency from domestic or foreign sources;

b) guaranteeing loans in lei and in foreign currency for export production, for exports and imports of goods and services and / or for investment in objectives for the production of goods and services for export;

c) performing refinancing operations of banks for their financing operations granted to Romanian exporters;

d) managing and running foreign loans for supporting production of goods and services for export and for supporting exports, as well as operations approved by the Interministerial Committee for Foreign Trade Guarantees and Credits in order to support investments, to stimulate small and medium enterprises, restructuring and

modernizing trading companies, the development of infrastructure and of other public utilities;

e) managing and running the specific activities of financing, co-financing, refinancing, insurance, reinsurance, guaranteeing in the name and on the account of the state, as approved by the Interministerial Committee for Foreign Trade Guarantees and Credits, in order to ensure the development of infrastructure, of public utilities, regional development, supporting research and development, environmental protection, personnel employment and training, supporting and developing small and medium enterprises, as well as supporting international transactions;

f) managing and running specific activities of financing, co-financing, refinancing, guaranteeing in its own name and on its own account in order to ensure the development of infrastructure and of public utilities, regional development, supporting research and development, environmental protection personnel employment and training, supporting and developing small and medium enterprises, as well as supporting international transactions;

g) insurance and reinsurance of short term export credits against commercial and country risks that cannot be insured on the private market, by at least two insurance companies that are foreign legal entities and one company that is a Romanian legal entity;

h) insurance and reinsurance of medium and long term export credits against commercial and country risks;

i) guaranteeing and/or insurance and reinsurance of Romanian investments abroad;

j) insurance and reinsurance of credits for production of goods and services for export;

k) performing other specific operations of credit insurance and reinsurance, guaranteeing and investments for supporting exports, according to the legal provisions in force;

l) assessing commercial and country risks in its quality as a financial and banking advisor;

m) performing other operations stipulated by the law in order to support the production of goods and services for export, and foreign trade.

The activity of the bank runs in close cooperation with the Interministerial Committee for Guarantees and Credits for Export.

In comparison, in Turkey there is running an institution called the Foreign Trade Directorate, subordinated to the apparatus of the Prime Minister, headed by a counsellor and having a complex structure for information and support of interested persons that operates on all continents and is attached to almost all Turkish embassies in the world. The current format has been reached by applying the provisions of the Law no. 4059/1994 regarding the reorganisation of support and information offered to Turkish traders who run foreign trade activities.

In Turkey there has been established and is running the Turkish Foreign Trade Bank. Turk Exim Bank, created according to the Law no. 3332/1987 and organised according to the Decision of the Council of Ministers no. 11914/1987. These legal provisions are similar to the Romanian ones with regard to the purpose, the tasks fulfilled and the financing methods, in order to reduce risks and to prevent the foreign contractor's default.

In Romania there is the Romanian Trade and Foreign Investment Promotion Centre, which was created by fusion of the Romanian Trade Promotion Centre with the Romanian Foreign Investment Agency, which was dissolved. The Romanian Trade and Foreign Investment Promotion Centre is a public institution with the status of a legal entity that is subordinated to the Ministry of Small and Medium Enterprises, Commerce and Business Environment. It is a specialised body of central public administration that applies the Government's strategies and policies of promoting and developing international trade, as well as of promoting and attracting direct foreign investments.

Cancellation clauses that may be inserted in contracts and allow cancellation of the agreement between the parties are also met in foreign trade contracts, so the parties are going to protect their interests the best possible way.

Political risks also include legislative actions for protecting the competition from its decrease due to protectionism granted to local traders or to traders favoured by the government. Actions for protecting the single European market have also been taken according to the Council Regulation (EC) no. 1225/2009 on protection against dumped imports from countries not members of the European Community, followed by a lot of actions aiming to contribute to the support of EU companies by applying these norms.

At the level of the EU, a product is to be considered as being dumped if its export price to the Community is less than a comparable price for the like product, in the ordinary course of trade, as established for the exporting country.

If prices which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time. The control and verification mechanism at EU level is strictly regulated, yet without assuming the arbitrary, because too much protection granted to the internal market makes it internationally uncompetitive, especially outside the EU.

In order to determine whether it is in the interest of the Community to take action, it is necessary that all existent interests be considered, including those of the EU industry, those of its users and consumers, and such an assessment can only be performed only if all parties had the possibility to make their point of view known by means of consulting, which takes place within an Advisory Committee that consists of representatives of Member States with a representative of the Commission as chairman. Consultations shall be held immediately at the request of a Member State or on the initiative of the Commission.

Consultation shall cover, in particular: a) the existence of dumping and the methods of establishing the dumping margin; b) the existence and extent of injury; c) the causal link between the dumped imports and injury; d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by dumping.

Community industry protected by the law has been defined as the Community producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion, except that:

a) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term 'Community industry' may be interpreted as referring to the rest of the producers;

b) in exceptional circumstances the territory of the Community may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:

i) the producers within such a market sell all or almost all of their production of the product in question in that market;

ii) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Community.

Producers shall be considered to be related to exporters or importers only if:

a) one of them directly or indirectly controls the other; or

b) both of them are directly or indirectly controlled by a third person or

c) together they directly or indirectly control a third person provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

As any other administrative proceedings this one shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry. The complaint may be submitted to the Commission, or to a Member State, which shall forward it to the Commission, and this shall initiate an investigation. In the absence of any complaint, the Member States have the possibility to request the initiation of an investigation if they are in possession of sufficient evidence of dumping. In order to initiate proceedings, the trade volume of one single country has to represent a market share of at least 1 %, and in case of more than one country, those countries must collectively account for 3 % or more of Community consumption.

In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

a) a significant rate of increase of dumped imports into the Community market indicating the likelihood of substantially increased imports;

b) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Community, account being taken of the availability of other export markets to absorb any additional exports;

c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and

d) inventories of the product being investigated.

An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

A special issue is that of circumvention, that shall be defined as a change in the pattern of trade between third countries and the Community or between companies in the country subject to measures and the Community, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product.

The practice, process or work regarding circumvention includes the slight modification of the product concerned to make it fall under customs codes which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures via third countries, the reorganisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to the Community through producers benefiting from an individual duty rate

lower than that applicable to the products of the manufacturers, and the assembly of parts by an assembly operation in the Community or a third country.

An assembly operation in the Community or a third country shall be considered to circumvent the measures in force where: the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures, and the parts constitute 60 % or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25 % of the manufacturing cost, and(c)the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

It should be noted that decisions are made especially from the perspective of the Community interest, where the need to eliminate the trade distorting effects of injurious dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the Community interest to apply such measures.

Among political risks, in case of international trade relations the country risk should also be always analysed. Such a risk is to be considered a political risk even because it does not affect directly one single trader from a certain country, but it may determine a failure to fulfil the contract obligations because of political, legislative and social instability that affects international trade performed by the companies in that state.

At the EU level there have been implemented rules according to which rating agencies can be made responsible for performing evaluations in bad faith or gross negligence, and the interested persons can obtain pecuniary compensation for injuries suffered.

In the European Union there was adopted a general legislative act that creates the frame for management of financial responsibility regarding the courts of settlement of disputes between investors and the state, which establishes the principle that EU agreements have to grant to foreign investors the same high level of protection, i.e. not a higher level of protection than that granted to EU investors by EU legislation and by the general common principles contained in the legislation of each Member State. EU protection agreements have to ensure compliance with and safeguarding the Union's legislative competence and its regulatory rights.

The financial crisis during the last years has proven that country risks are serious, real risks that have to be analysed before concluding any international trade contracts, because the state's inability to pay its own financial obligations may lead to a state of serious crisis having effects like strikes, protests, demonstrations, the sudden dissolution of companies or traders' foreign currency nationalisation, the collapse of the local financial system and implicitly the impossibility of any viable company honestly participating to international business relations to voluntarily fulfil its obligations assumed by agreements.

CHAPTER V
GUARANTEES REGARDING FULFILMENT OF OBLIGATIONS IN INTERNATIONAL TRADE RELATIONS

The creditors' common guarantee granted to any party may become insufficient in case of insolvency or in case of occurrence of any event leading to the objective impossibility to voluntarily fulfil an obligation assumed by an international trade contract.

In Romania, most of the works older that the current Civil Code deal with the concept of guarantee starting from the concept of general pledge of the creditors as defined in art. 1718 of the previous Civil Code, now repealed; the current Civil Code establishes a new concept, namely that of "common guarantee", which has a broader scope and defines better the creditors' rights upon the debtor's assets.

Like in other EU states, in the Romanian law the priority right of the state, of the territorial-administrative units upon their debts is regulated by special laws, without affecting the rights previously acquired by third parties.

In case of perishing or damage of the asset encumbered, the current regulations have established the right of transferring the guarantee upon compensation, of whatever nature, as a result of expropriation for a public utility cause, property rights restrictions established by law or upon insurance payments, if any.

At international level, in Turkey the old regulation of the obligations has been replaced by a new, modern law, adapted to the EU requirements. The legal approach of guarantees in Turkey is similar to that of the Romanian Civil Code, with the mention that according to the Turkish law, commercial obligations are regulated by the Commercial Code.

In Romania, the state generally guarantees foreign investments by constitutional provisions prohibiting nationalisation or any other measures of transferring goods into public property according to any discriminatory criteria, without a previous correct compensation according to the provisions of art. 44 para. 4 and 5 of the Constitution of Romania.

The global importance of guarantees in international trade for promoting foreign investments lead to the creation of a non-governmental organisation regulated by the Swiss law: the World Association of Investment Promotion Agencies (WAIPA) in 1995, which has its headquarters in Geneva and has as members over 244 agencies from 162 countries, among which also the Romanian Trade and Foreign Investment Promotion Centre.

According to the Law no. 2006/5523, there was created the Investment Support and Promotion Agency of Turkey (ISPAT), with a purpose similar to that of the Romanian public authority, namely for attracting foreign investments.

In both states, Romania and Turkey, the national regulations guarantee the safety of investments by express and unequivocal legal provisions prohibiting nationalisation

and granting investors the right of ownership upon the means of production through which the investment is performed.

The most important guarantee investors are granted by the state is the right of ownership upon the goods they are exploiting, with the difference between the legal regime applicable to foreign legal entities and that one applicable to Romanian legal entities with foreign capital participation. Also between foreign legal persons we have to differentiate between Community legal entities and those from third countries.

According to the Constitution of Romania, "foreign citizens and stateless persons may acquire the right of private property upon land only under the terms resulting from Romania's accession to the European Union and from other international treaties to which Romania is a party, on a reciprocal basis, under the terms provided by the organic law, as well as by lawful inheritance.“ Traders from third-party states normally cannot be granted the right of ownership upon land in Romania, since no agreement has been concluded in this respect.

A special situation is the possibility of traders from third countries to acquire the right of ownership upon land by lawful inheritance, which is a rare case in practice. Of course, concession rights can be granted and recognised to foreigners from third-party countries, as the constitutional provisions do not prohibit such a procedure, which is currently regulated by the Government Emergency Ordinance OUG no.34/2006 concerning the awarding of public contracts, public works concession contracts, and services concession contracts, with its subsequent amendments and supplements.

In the Turkish Legislation, an interesting issue is that of the guarantee initially granted to foreign investors regarding their right to acquire property rights upon land, which was afterwards declared unconstitutional.

Like in Romania, in Turkey investors also have the access to national law court granted, under the same conditions like local traders, or they have the access to international arbitration or other means of dispute settlement granted.

In practice there was raised the question of implementing public-private partnerships in international trade relations, especially in case the state resources are

severely affected by high public debts that are included in the budget. In Romania, the legislator regulated public-private partnerships by transposing in the national legislation the provisions of the Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, the Directive 2004/18/CE of the European parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts published in the Official Journal of the European Union L 134 of 30 April 2004, the Directive 89/665/EEC of the Council of 21 December 1989 on the coordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts, published in the Official Journal of the European Community L 395 of 30 December 1989, the Directive 92/13/EEC of the Council of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, published in the Official Journal of the European Community L 76 of 20 March 1992, and the Directive 2007/66/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public contracts, published in the Official Journal of the European Union L 335 of 20 December 2007, in order to create the institutional frame for attracting private investors for performing public works projects in different activity sectors in public-private partnership, with private financing.

The public partner has the right to apply non-discriminatory criteria for qualification and selection. What is characteristic to public-private partnership contracts is the fact that the public asset is transferred free of charge to the public partner, in good condition and unencumbered at the completion of the contract; throughout the contract performance, the public institution transfers obligations to the project company.

In Turkey there is no framework law on public-private partnerships, yet there are similar regulations, one of them being from 1910, before the foundation of the Republic, which is still in force, yet obsolete. There are also newer regulations from the 80's containing provisions that establish such sectorial programmes, especially for granting to investors the safety of the big amounts of money involved by such projects.

In practice there is to be encountered the situation of expropriation for public utility cause, a legal procedure in which the court appoints a commission of experts for determining the amount of compensations, taking into consideration the price for which similar real estate property is usually sold in that administrative-territorial unit on the date of the expert report, as well as the damages suffered by the owner or, as the case might be, by other persons entitled, also taking into consideration the evidence presented by these persons.

The accelerated development of international trade in the era of globalization has led to the creation of the Multilateral Investment Guarantee Agency (MIGA) under the auspices of the World Bank, which aimed from the very beginning to provide the necessary capital and technology for developing countries on a stable, secure base, in order to grant the investors the guarantee against non-commercial risks they might encounter. The agency started to operate on 12 April 1988 as an independent entity with a capital of 1 billion US-Dollars. Both Romania and Turkey are member states if the conventions and aim to attract capital and technology by offering investors guarantees against non-commercial risks according to the agency's operating rules. The agency performs good offices for prevention and settlement of disputes and it is also involved in arbitration for resolving any disagreement between the investor and the government of the country hosting the investment.

Operational leasing agreements are guaranteed in case they have as subject fixed assets for a period of at least three years, and payment of the leasing rates depends substantially on the production and the income obtained by operating the goods. Commercial bonds that meet the foregoing criteria and approved by the agency are also guaranteed.

The war and civil unrest clause in general includes coups, insurrections, revolutions or any other military or civilian major events that are not under the predictable control of the host country, including civil war, misunderstandings among government forces, rebellions, military conflicts whether declared or not.

In case of these other non-commercial risks, special attention is given to non-sovereign guarantees of the country hosting the project.

There are also taken into consideration bilateral or multilateral treaties for mutual promotion and protection of investments, which give the global trade participants a reason for confidence, an encouragement to open new business in a given territory or in a new market in addition to that regarded to be the national market.

According to the Convention under the auspices of which it operates, the Multilateral Investment Guarantee Agency takes into account specific risk factors for currency transfer risk: history of currency transfers, of previous late payments, if any, possibility to work in local currency, local currency position in the international market etc.

Typically, for the recovery of money amounts paid to guarantee holders, there are initiated negotiations with the government of the host country. Arbitration decisions or refusal to pay amounts of money paid by the agency lead to an increase of the country risk, a decrease of investments in that country, the reluctance of international trade participants to performing international business with the government or with traders in that country.

CHAPTER VI
PERSONAL GUARANTEES IN INTERNATIONAL TRADE

The guarantee agreement is a contract whereby one party, the guarantor, commits himself to the other party, who is the creditor in another business relation, to fulfil free of charge or for a remuneration, the debtor's obligation in case the latter fails to fulfil it..

A guarantee agreement can be concluded without the knowledge or against the will of the principal debtor, but it is never presumed, so it must be expressly assumed in writing, at least by a private instrument or by an authenticated instrument, on pain of absolute nullity.

A guarantee agreement is a kind of contract, yet the Romanian law stipulates that it may be imposed by law or disposed by a law court. The debtor who has the obligation to create a guarantee according to the legal provisions or according to a court decision may instead provide any other security that is deemed to sufficient. In case of dispute on the sufficiency of the guarantee, it is the court that decides upon, by injunction.

The Turkish legislation establishes the contractual nature of the guarantee creation and in general the regulation is similar to the Romanian one; it is only valid provided that a valid obligation exists. In contrast to the Romanian law, the Turkish law requires the express mention of acceptance of the guarantor quality in writing, including the mention of the amount of money for which the guarantee was created and the date on which the guarantee agreement was signed. In case the primary obligation is increased, the personal guarantee agreement remains legally valid for the same amount of money, regardless of the amount by which the principal debtor increased his obligation. Also, the Turkish law expressly provides multiple guarantors and the circumstances under which their payment can be requested. The possibility of creating a guarantee that obliges another guarantor is also regulated, namely under the same circumstances as for a normal guarantee.

The benefit of discussion consists in the right of the conventional or lawful guarantor to request his creditor to track down his principal debtor's assets first, while the judicial guarantor cannot request the tracking down of the principal debtor's or other guarantor's assets. The benefit of division grants each guarantor the right to request the creditor to divide his share first and reduce it to each participant's share. In case of insolvency of any of the guarantors, if one of them obtained division, he still has a proportional obligation for this insolvency.

In all cases, the guarantor has the right of action against the creditor for claiming the refund of the payment made, in full or in part.

It is noted that the Turkish settlement of the effects of the guarantee between the debtor and the guarantor is similar to the Romanian one, so we retain only that there are certain peculiarities, such as the fact that the action of the guarantor against the creditor paid twice is established as unjust enrichment. Also, the lawful subrogation in favour of the guarantor allows the execution of any guarantee granted to the creditor only on the exigibility date of the debt paid.

A different regulation is that according to which the grantor may request additional securities in case of debt exigibility , or exoneration from the guaranteed obligation by setting a deadline in the event his behaviour proves his intention not to pay the debt by violating the guarantee agreement, if he is going to settle into a foreign country, or in case the financial situation of the principal debtor worsened, the guarantees granted to the creditor suffered a significant loss in value, or the principal debtor's behaviour substantially increases the risk initially assumed by the guarantor according to the contract.

The guarantee created by taking into consideration the position held by the principal debtor expires on the date he ceases to have that position, yet the guarantor is liable for all the debts existent on the date of guarantee termination, even if these debts are subject to a term or condition.

The Turkish law provides a form of guarantee for employees, without a term, in which case the guarantor can be exonerated from the guarantee after the expiry of the term of 3 years, by notifying the creditor until the end of the next year.

The letter of guarantee is an instrument widely and very frequently used in international trade; it is the irrevocable and unconditional commitment of a person called the issuer commits himself to pay an amount of money to a third person called the recipient, according to the terms of the commitment assumed, on the request of a person called the authorising officer, with regard to a pre-existing obligation relation, yet irrespective of it..

The binding letter of guarantee is classical in international trade, and it requires immediate and unconditional payment to the recipient within the period for which it has been issued. This instrument implies a cost of 5% - 20% of the value of the obligations assumed by the issuer.

A special case is the letter of credit guarantee created in the commercial practice in the United States, where banks do not provide letters of guarantee as they are known in Europe; they were initially intended to be payment methods in international trade. Similarly, there is in the practice the commercial letter of credit guarantee for payment of trade receivables not performed by the authorising officer, either for goods or for services purchased; and also the binding commercial letter of credit guarantee for securing the obligations assumed by the authorising officer, including damages, not only for performing certain payments; the letter of credit guarantee for cash payment to the recipient; the financial letter of credit guarantee for repayment of loans assumed by the authorising officer.

There are differences between the letter of guarantee and the letter of credit guarantee, namely the first is irrevocable and unconditional, while the letter of credit may be subject to submission of certain documents to the issuer, although the payment commitment to the recipient is irrevocable.

The letter of comfort is the irrevocable and autonomous commitment of the issuer by which he assumes the obligation to act or not to act, for supporting another person called the debtor, in order to perform his obligations to a creditor of his. In the legal relation resulting from the letter of comfort there are three parties involved: the issuer, who undertakes to act or not to act, the debtor in another obligation relation, and the debtor's creditor in the legal relation between them. The issuer cannot put forward any defence or exception deriving from the obligation relation between the creditor and the debtor. However, the issuer of the letter of comfort who was unsuccessful which has been unsuccessful in his claims against the creditor has the right of recourse against the debtor.

It should be noted that although it is similar to the letter of guarantee, the letter of comfort should not be mistaken for it, because in the case of the letter of guarantee the issuer commits himself to pay an amount of money to a third party called the recipient, whereas in case of the letter of comfort the issuer assumes an obligation to act or not to act.

The letter of comfort is issued only for supporting another person called debtor, whereas the letter of guarantee is a binding commitment that shall be fulfilled upon the recipient's first and simple request, unless the letter content does not contain other provisions.

CHAPTER VII
LIENS AND COLLATERALS IN INTERNATIONAL TRADE RELATIONS

A lien is the indivisible priority granted by the law to a creditor in consideration of his claim. Romania has a new regulation regarding liens as a priority cause for a creditor, together with mortgages and pledges. According to the Civil Code, there are general liens, which are established by the law, and special liens, regulated by the Civil Code. General liens are usually preserved without any formality, whereas in establishing the priority between special liens and mortgages it is necessary to fulfil the formalities of real estate registration.

According to the new concept established by the Romanian law, if there are creditors having priority rights preserved under the terms established by the law, their claims shall be paid with priority after those related to enforcement costs, legal costs, any preservation costs paid or immediately after the debtor's funeral expenses, function of his status and condition. With the introduction of the new regulations, it was intended that general liens be regulated exclusively by the Civil Code provisions, in order to preserve the stability over time of the Civil Code.

In Romania, there has been a fundamental change in regulation of mortgages, which is completely new, compliant with the EU requirements in the field. Thus, any movable or immovable, tangible or intangible, determined or determinable assets or any totality of assets may be encumbered by mortgage. Inalienable or unseizable goods cannot be mortgaged.

An absolute novelty in the Romanian law is the legal regulation of the mortgage guarantee created in advance in order to secure payment of an amount of money, although at the moment the mortgage guarantee is created the debtor has not yet received or has received only in part the benefit in consideration of which he agreed to that mortgage. In case the creditor refuses to pay the amounts of money which he committed himself to provide and in consideration of which the mortgage was created, the debtor may obtain a reduction or abolition of the mortgage at the expense of the creditor, paying him his just the amounts due at that time, with the possibility of obtaining damages from the creditor.

The assignment of the mortgage or of its priority rank is possible independently from the claim guaranteed only in case the amount of money in consideration of which the mortgage has been created is established in the deed of mortgage creation; any obligation not established by the mortgage creator cannot be assigned.

Within the Civil Code, the Romanian legislator has not regulated collaterals over all movable assets; those of high value shall be regulated by a special law for vessels and aircrafts.

With regard to aircrafts, the only currently applicable regulations are that contained in the Rules of the Air, according to which any Romanian or foreign natural person or legal entity has the right to mortgage a civil aircraft or parts of it, or to encumber it by any other similar right in rem created as a guarantee for payment of a debt, provided that such a right shall be created according to the law of the country of registration and also entered into the encumbrance book in the country of registration..

With regard to vessels, creation, assignment or extinction of any right in rem upon vessels under Romanian flag shall be registered with the Romanian Naval Authority, upon

the request of the legal entities or natural persons having such rights, and the corresponding mentions shall be entered also into the vessel's certificate of nationality.

Creation and/ or assignment of any rights in rem upon vessels, as well as the extinction of such rights are not enforceable to third parties unless they are entered into the register of maritime ships, the register of inland navigation ships or the register of bare-boat or leasing ships. Registers of ships are kept by the harbour master's offices, yet there is also a central register of ships kept by the Romanian Naval Authority. Records about vessels under construction are kept by the territorially competent harbour master's offices in the Register of ships under construction. Due to the fact that ship construction and operation imply high asset values, it is mandatory to also enter the ship construction contract into the register of ships under construction .

In order to prevent usury or other practices against the legal provisions, the Civil Code stipulates the antichresis, i.e. the clause by which the mortgagee is authorized to occupy the mortgaged property or to receive the fructus or the incomes until the start of the enforcement shall be deemed unwritten.

The practice shall prove that the Romanian regulation on mortgages corresponds to the evolution of the Romanian society in particular, but also of the EU society in general, by precise provisions on lawful mortgage cases subject to general regulation; the only mortgage subject to special regulation is that regarding tax debts.

A controversial issue in the Romanian legislation is the seizure protocol and the mortgage inscription decided by the prosecuting authorities in criminal proceedings that have to request the competent authority to remove the mortgage inscription, enclosing copies of the decision and a copy of the seizure protocol, as the text of the law is ambiguous.

An absolute novelty in the Romanian legislation is the mortgage on movable property; this is a new regulation expected by traders for a long time, although - as usual - the practice pre-existed the lawful regulation. A mortgage on movable property is created by concluding a mortgage contract, yet it is effective from the moment of the existence of the obligation guaranteed, and the mortgage creator acquires rights upon the movable

property mortgaged. The mortgage contract on movable property has to be concluded in writing, either as a private deed or as an authenticated deed, on pain of absolute nullity.

A mortgage on financial instruments is created in compliance with the rules of the market in which these are traded. In Romania, the competent authority that applies the provisions of the special law that regulates the capital market is the Financial Supervisory Authority (Autoritatea de Supraveghere Financiară, abbr. ASF).

In case of money market instruments, unitary regulations are provided by the National Bank of Romania in the exercise of its tasks according to the legal provisions.

The registers kept by the Financial Supervisory Authority are public, any interested person has access to them, and the regulatory authority is entitled to establish prudential rules in order to protect the investors' property rights on financial instruments. The organisation and management of regulated financial instruments markets is performed by a legal entity created in the form of a joint stock company that issues nominal shares, called market operator, which is authorised and controlled by the Financial Supervisory Authority.

A mortgage on shares of a joint stock company or a limited liability company is created according to the regulations established by the special law. Unfortunately the Romanian legislation is inconsistent and contradictory, as according to the companies law, along the duration period of a company, the shareholder's creditors are entitled to exercise their rights only on that part of the benefits that is due to that shareholder according to the balance sheet, and after dissolution of the company, only on the part due to that shareholder after the company's liquidation. Along the duration period of the company, the creditors still may garnish the shares due to the shareholder's partners by liquidation and sell their debtor's shares.

Mortgages on receivables were also encountered only in the common practice in the financial and banking field; their regulation came into existence only after the current Civil Code came into force. A mortgage on a totality of receivables includes neither receivables created by disposal of the debtor's assets as a consequence of the exercise of a

third party's rights, nor receivables resulting from insurance contracts concluded by the debtor with regard to his assets.

A particular case is the mortgage on accounts opened with a credit institution which is created either by registering the mortgage with the Electronic Archives for Security Interests in Movable Property, or through controlling the account in one of the following forms: the mortgagee is the credit institution itself where the account has been opened; the mortgage creator, the credit institution and the creditor agree in writing that the credit institution, without need to request for the mortgage creator's consent, shall follow the instructions according to which the creditor disposes on the amounts of money held in that account; or the mortgagee becomes the account holder.

The priority relation between the pledgee and the creditor whose mortgage has been registered with the Electronic Archive for Security Interests in Movable Property shall be resolved in favour of the latter, also in case the pledgee has already come into the possession of the mortgaged asset prior to the registration of the mortgage.

Mortgages on crops or on products obtained by processing them created for obtaining the amounts of money necessary for producing the crops, as well as mortgages created during the period of plant growth, have the highest priority rank over any other mortgage starting from their very registration with the Electronic Archive.

Mortgages on livestock or on products obtained from them, created in order to obtain the amounts of money necessary for the mortgage creator to purchase feed, medicines or hormones necessary for feeding or treating the animals have the highest priority rank over any other mortgage on the same livestock or the products obtained from them, except for the mortgage of the feed, medicines or hormone seller.

In case the mortgaged asset has been sold at an auction, the creditor who obtained the ranking of receivables on condition can waive the benefit of the ranking change, so the mortgage claim shall have its initial rank again.

CHAPTER VIII
THE PLEDGE AND THE RIGHT OF RETENTION IN INTERNATIONAL TRADE

The pledge is a real contract created by remission of an asset or title to the creditor or, as the case might by, by keeping the pledged asset or title by the creditor, with the debtor's consent, for guaranteeing a claim. The subject of a pledge can be movable tangible assets or negotiable securities issued in certificated form. A pledge on negotiable securities in registered for or bearer form is created by their remission, whereas a pledge on promissory titles is created by their endorsement for guarantee purposes. For creating a pledge, possession of the asset by the pledgee must be public and unequivocal. In case any appearance is created to third parties that the debtor possesses the asset, the pledge not enforceable to them.

The right of retention is not contractual, it is a form of silent guarantee deemed to be effective only as long as the retentor is in the possession of the asset. Involuntary dispossession does not extinguish the right of retention.

The right of retention is an imperfect real right, because there is no right of tracking down the asset and no priority ranking recognised to the retentor. The right of retention cannot be exercised if the asset resulted from an unlawful act, is abusive or if the property is the object of a legal seizure. The person exercising a right of retention has the same rights and obligations like an administrator of other person's property who is authorised with the power of simple administration, i.e. to perform all acts necessary for the assets preservation, as well as any useful act in order that they can be used for their usual purpose.

The retention right is absolute and is enforceable to everybody without the need to fulfil the formalities of real estate registration. The holder of a right of retention cannot preclude the lawful seizure initiated by another creditor, yet he is entitled to participate to the distribution of its price, function of his quality.

The right of retention is also indivisible, i.e. the whole asset being in the retentor's possession until the full consignation of the debt or the provision of a sufficient guarantee full flow or providing sufficient guarantees, in which case it ceases.

CHAPTER IX
MEANS OF PREVENTING DEFAULT IN INTERNATIONAL TRADE RELATIONS

At present, as a reaction to the consequences of the global financial crisis, the Romanian legislator has adopted the Law no. 85/2014 regarding the prevention of insolvency and insolvency procedures, trying to safeguard companies in difficulty, so that they can keep operating, preserving workplaces and cover their claims on debtor by amicable procedures of renegotiating their debts or the terms and conditions thereof. The Romanian regulation is faulty with regard to the existent text wording, i.e. with inaccuracies, and also has a relatively restricted area of application because of its non-unitary and non-uniform implementation at the level of the whole country. However, the law has been expected for a long by those who were in financial difficulty, without being insolvent, in order to be able to redress their company severely affected by market conditions, excessive price increase and especially the sudden increase of credits necessary for a future relaunching of a company that operates in the field of international trade relations, on solid bases.

The Romanian legislation is incomplete, lacking the definition of the ad hoc mandate, although it regulates this proceeding, and in other fields the legislator tends to overregulate some sectors; thus, clumsiness is evident. A possible definition would be that the ad-hoc is a confidential proceeding initiated upon the debtor´s request, by means of which an insolvency practitioner appointed by the law court negotiates with the creditors in order to reach an agreement between one or several of them and the debtor in order that the debtor's company overcomes the state of difficulty.

Since the ad-hoc mandate proceeding is confidential, it was decided to adopt the solution according to which the company's petition shall be resolved by the president of the county court. Since there is no mention in the special law, the general rules of civil procedure shall apply, as the law does not contain any provision regarding to which county court is competent to solve such a petition. Considering the Law no. 134/2010 on the Code of Civil Procedure, I believe that the president of the county court in the area where the company has its registered office has the competence to resolve the company's petition. I have to mention that in the ad-hoc mandate procedure, the company does not have the quality of a debtor in the sense of the insolvency law, but it only is in a state of financial difficulty.

An interesting opinion is that according to which the ad-hoc attorney-in-fact is the attorney of the county court president and is independent both in relation with the debtor and with the community of creditors, yet this opinion clearly is in contradiction with the law: the ad-hoc attorney-in-fact is appointed on petitioner's proposal, who files a petition for this purpose, then the county court appoints the requested attorney by final decision; this would mean that the company that filed the petition becomes itself the attorney of the county court president, which is absurd. It should be noted that in principle no legal relations are created between the attorney and the third parties; the ad-hoc attorney acts with the diligence of a good proprietor, since he exercises a professional activity for a consideration.

In order to clarify the concept of ad-hoc mandate in the new Romanian legislation recently adopted in the context of the European and global crisis, we have to distinguish the possible similarities with other contracts. Mainly the ad-hoc mandate is similar to the agency agreement, by which the principal authorises the agent to negotiate only, or to negotiate and also conclude contracts in the name and on behalf of the principal in one or several regions as established, for a remuneration. The agent is an independent middleman acting professionally. He cannot be the principal’s servant at the same time. The agency agreement is commutative; the existence and the extent of the obligations assumed by the party care certain and known from the very beginning, at the contract conclusion, whereas

in case of the ad-hoc mandate the obligations assumed by the attorney are only those regarding diligence, not the result of that diligence, even in case of the diligence of a good proprietor.

While the agent is authorised to negotiate or conclude contracts on behalf of the principal for goods and services in a particular geographic area as established, with the possibility to insert non-competition clauses, by restricting the professional activity, the ad-hoc mandate implies negotiating with creditors in order to reach an agreement between one or several of them and the debtor so that the debtor's company overcomes the difficulty condition; this is a fundamental distinction between the two activities.

The ad-hoc mandate also may be deemed similar to the institution of arbitration, so I have to analyse the two institutions. Arbitration has been defined by the legislator as being an alternative jurisdiction with private character. Arbitration is a method of dispute settlement by permanent institutions specialist in such matters, whereas in the case of the ad-hoc mandate, the attorney is a person designated ad-hoc exercising this activity occasionally or in certain situation only. Yet such a solution excludes the participation of law courts, and this is a major difference between the ad-hoc mandate and the arbitration, regardless whether it is occasional or institutionalised, because the alternative settlement of disputes by arbitration usually consists in the final settlement of disputes between the parties involved in international trade.

De lege ferenda, I think that such issues have to be clarified in future supplements to the current legislation regulating the ad-hoc mandate.

The moratorium, like the ad-hoc mandate, may be regarded as being like a medicine that can facilitate the easy rehabilitation of a company after the first symptoms of negative economic growth by avoiding a collapse or something even serious, i.e. jeopardising the entire economic circuit, which would have more serious economic and social consequences. The preoccupation with finding pre-insolvency solutions is not new; an example in this sense would be the Indonesian moratorium and insolvency law of 1906, which is an adaptation of the Dutch law of 1893. In the Romanian law, the

moratorium is not regulated, although the lack of specific regulation may trigger default especially in case of administrative-territorial units, at least with regard to tax debts.

State actors participating independently to international trade relations who sometimes, out of different causes, are not able to repay their loans in due time, are not able to pay their instalments to the companies that provided them goods and services or have purchased for unreasonable prices in the free international market some projects that are unreliable or unsustainable in those countries, are particularly important in the research of the moratorium.

The Japanese insolvency and bankruptcy law initially was an adaptation of the American similar law, yet subsequently they adopted the UNCITRAL model in the insolvency international private law.

The crisis that affected the Republic of Korea (South Korea) convinced the authorities to take measures, such as: extending the competition environment by removing administrative barriers for foreign investors, amending the insolvency law by creating the possibility of companies' recovery in the market, deadlines for restructuring have been imposed, introducing the concept of the creditors' committee in the insolvency law in order to facilitate the activities of companies in difficulty and the possibility of their redressing by simplifying the judicial procedures governing their activity.

After the crisis in Thailand in July 1997, it was Indonesia that was seriously financially affected; the local companies became unable to pay their commercial obligations in due time and, as a consequence, the country debt increased sharply. An institution specialised in debt restructuring was created, yet the companies did not participate to its activity, so it proved necessary to amend the old legislation regulating the moratorium and insolvency that dated from the beginning of the 20th century and did not contain institutions adopted from other countries' legislation and did not allow restructuring large enterprises.

Being economically adrift, Turkey held the Monetary Council in order to safeguard the macroeconomic situation.

Preventing default in international trade ABSTRACT

The main effects of concluding an ad-hoc mandate is preserving the company, preserving the workplaces, covering the debts by concluding an agreement between the debtor and one or several creditors, without the need for all the creditors to be mentioned therein.

The arrangement with creditors has been defined as a contract between the debtor on the one hand and the creditors holding at least two thirds of the value of the claims accepted and uncontested, on the other hand, by which the debtor proposes a recovery plan for his company and a plan of covering the creditors' claims against him, and the creditors agree to support the debtor's efforts to overcome the difficulty condition of his company. There is a controversy with regard to the commutative nature of the agreement with creditors, because at its conclusion the existence of the parties' rights and obligations is certain ant their scope is determined.

At present, the Romanian legislator has regulated hardship, this basic institution that intervenes in a legal relation regarding international trade that was missing in the Romanian legislation; accordingly, the parties, even obliged to fulfil their obligation assumed by a contract concluded between them that has the force of a law, even if the fulfilment has become more onerous either due to an increase of the costs of performing their own obligations, or due to the decrease of the value of the consideration, can amend the contract by fairly redistributing their loss and benefits resulting from the change of the circumstances, in case of exceptional situations in which forcing the debtor to perform his obligations would appear to be visibly unfair. In principle, this new regulation does not change the commutative nature of the international trade agreement, yet in extreme situations, it can determine, with a minimal judicial involvement, the adaptation of the contract to the new possibilities of the debtor, who proposes a different manner of fulfilling his obligations by reducing the specific benefit to which he initially committed himself.

Any deed in electronic form which has been incorporated, attached or it was logically associated with an electronic signature, recognized by the party concerned, has the same

effect as an authenticated document concluded between those who signed it and those representing their rights. In cases in which the written form is requested as a condition for accepting that document as evidence or for the recognition of its validity, a deed in electronic form which has been incorporated, attached to or it was logically associated with an extended electronic signature based on a qualified certificate and generated by a secured-signature-creation device. For the participants to the procedure, the rapidity of the procedure of concluding and sanctioning the arrangement is essential for saving the company from imminent insolvency, for overcoming the company's difficulty condition. The electronic signature plays a fundamental role in the parties' agreements, in their freedom of initiating, performing and terminating their negotiations or in their accepting without reservation the offer to contract.

In Romania, in case the creditor in the state, it participated through the Ministry of Public Finances, except for the cases in which the special law stipulates another body for this purpose. In case the creditor in an administrative-territorial unit, the participation to voting shall be on its own behalf, through the bodies stipulated by the law.

The importance of the capacity of representation is given by the fact that the contractor can anytime request the attorney to prove that he was authorised by the represented person and to transmit him a copy of the deed certified by his signature. A special situation is the case in which the person concluding the contract as an attorney, does not have a power of attorney or exceeds the limits of the powers granted to him; in this case, the attorney is liable for the injuries produced to the contracting third party, who trusted in good faith in the valid conclusion of the contract. The subsequent ratification of the contract has retroactive effect, yet without affecting the rights acquired meanwhile by the third parties.

In case of the contract of arrangement with creditors it is not possible to invoke injury as vice of consent, since in this contract regulated by the law the participants are usually professionals, so it cannot be ascertained any lack of experience or of specialist knowledge of the creditors for determining a service supply for a price considerably higher. At the conclusion of an arrangement with creditors, the bankruptcy judge as a

judicial body. The appointment of the provisional conciliator is a non-contentious measure; in this case, the procedural provisions in case of such petitions shall fully apply. Such petitions that are to be resolved before the law court by the bankruptcy judge yet that do not request the establishment of a right detrimental to any other person are generically called non-contentious petitions.

In case of an arrangement that is null and void, a special issue is the legal status of the acts subsequently concluded on its basis. As any contract that is null and void, it is deemed as having never been concluded, so theoretically each party has the obligation to restitute to the other party all the services received either in kind or in equivalence, even in the case of successive or continuous services..

There are also exceptions regarding the eligibility of the trader in financial difficulty who can file a petition for the procedure of arrangement with creditors.

a) in case the debtor was granted another procedure of arrangement that failed before within the previous 3 years;
b) in case the debtor and/ or the stockholders/ shareholders/ limited partners who have the control over the debtor or his administrators/ directors have received final sentences for any intentional crime against property, for corruption, for abuse of office, for forgery, as well as for the crimes stipulated in the Law no. 22/1969 on employment of managers, creation of guarantees and liability regarding the assets of business operators, of authorities or of public institutions, with its subsequent amendments, the Law no. 31/1990 republished, with its subsequent amendments and supplements, the Competition Law no. 21/1996, republished, with its subsequent amendments and supplements, the Law no. 78/2000 on preventing, identifying and sanctioning corruption offences, with its subsequent amendments and supplements, the Law no. 656/2002 on preventing and sanctioning money laundering and instituting measures for preventing and fighting against financing terrorism, republished, the Law no. 571/2003 regarding the Tax Code, with its subsequent amendments and supplements, the Law no. 241/2005 on preventing and combating tax evasion, with its subsequent amendments and supplements, as

well as for offences stipulated in the Law on preventing and combating insolvency and on insolvency, within the last 5 years before the initiation of the procedure according to the legal provisions.

c) in case it was decided that a part of the debtor's liabilities to be covered by the members of the debtor's managing and/ or supervisory boards or the application of the provisions of some special laws, for the debtor to reach the status of insolvency.

Another participant to the procedure of arrangement with creditors is the arrangement administrator (Romanian: administrator concordatar), who fulfils the following tasks:

a) prepares the list of creditors, that also include contested creditors or creditors whose claims are subject of a litigation, as well as the list of creditors participating to the arrangement; a claim of a creditor against several joint debtors participating to the procedure of arrangement with creditors shall be written down in all lists of creditors with the nominal value of the claim until it is fully covered;
b) prepares the arrangement offer together with the debtor, and also the documents that are deemed to be part of it, namely the arrangement project and the recovery plan;
c) takes steps for the amicable settlement of any dispute between the debtor and the creditors or among the creditors;
d) requests the sanction of the arrangement by the bankruptcy judge;
e) supervises the debtor's performance of his obligation assumed by the arrangement with creditors;
f) informs immediately the meeting of the creditors participating to the arrangement on the debtor's non-performance or improper performance of his obligations;
g) prepares and sends to the meeting of the creditors participating to the arrangement monthly or quarterly reports regarding his activity, as well as the debtor's activity; the report of the arrangement administrator also contains his opinion on the existence or non-existence of any reasons for terminating the agreement with creditors;

h) convenes the meeting of the creditors participating the arrangement;
i) request the court to close the procedure of arrangement with creditors;
j) performs any other tasks established by the arrangement with creditors or by the bankruptcy judge.

Within the procedure of arrangement with creditors, the creditors are represented by the creditors meeting.

The arrangement project has to include a recovery plan containing measures.

In case the arrangement project proposes a reduction of the tax claims, it is obligatory to present the results of the private creditor's test. A special situation in case of arrangement projects in the European Union was the satisfaction of tax claims; and reduction of them was deemed to be a state aid and was regulated by specific derogatory procedures; some of them needed laborious administrative approvals, others were forbidden by the state legislation, some of them were subsequently investigated by the competition authority as having been illegally granted, thus distorting the business environment against the legal provisions in force.

In case of companies in difficulty, the celerity performance of such procedures for preventing insolvency is essential for safeguarding the company, preserving the workplaces, the business activity, especially because, due to the currently existing rapid means of communications, any breach of the international trade contract may have negative consequences in chain, i.e. also upon other companies involved in business with the company in difficulty, which would make necessary other legal procedures of preventing insolvency in several countries at the same time.

During the procedure, the debtor performs his activity within the limitations of his usual business, under the terms and conditions of the arrangement with creditors and under the supervision of the arrangement administrator. The supervision performed by the arrangement administrator is effective, real and serious and consists in the permanent analysis of the company's activity, the approval in advance of the measures concerning the debtor's assets, as well as of the measures to be taken with the purpose of the company's restructuring/ reorganisation.

A controversial issue is the so-called hardship theory. In general, the parties are obliged to fulfil their obligation, even if the fulfilment has become more onerous either due to an increase of the costs of performing their own obligations, or due to the decrease of the value of the consideration.

However, if the performance of the contract has become excessively onerous due to any exceptional change of the situation, so that forcing the debtor to perform his obligations would appear to be visibly unfair, the law court may decide the following:

a) amendment of the contract by fairly redistributing among the parties the loss and benefits resulting from the change of the circumstances;

b) termination if the contract, at the moment and under the terms and conditions decided by the court.

Another situation encountered in the practice is the contract assignment in case the services making the subject of the contract have not been yet integrally provided by one party, and the other party agrees to this.

In case of the arrangement with creditors, I think that no contract assignment can take place, even because of the procedure of conclusion and sanction of the contract. However, it is possible to conclude agreements that would guarantee the performance of the contract, yet in such cases the rules on personal guarantee shall apply.

CHAPTER X
MEANS OF AVOIDING DEFAULT IN INTERNATIONAL TRADE CONTRACTS BY ALTERNATIVE METHODS

The complex reality of international economic life determines participants to provide specific measures to fulfil their obligations assumed even if the other party is in delay or refuses to fulfil its obligations assumed.

The main regulation in the field is the United Nations Convention on Contracts for the International Sale of Goods (hereinafter called CISG; the Vienna Convention),

adopted in Vienna on 11 April 1980. Yet the Convention regulations have a facultative character, so the parties are free to exclude the application of its provisions, to derogate from any of its provisions or to alter its effects.

The creditor may always request that the debtor is obliged to fulfil his obligation in kind, except for the case when such obligation is impossible.

With regard to amounts of money, if any amount of money is not paid on the due date, the creditor is entitled to default interests starting from the due date until the payment date, in the amount agreed by the parties or, if there is no agreement between the parties in this respect, in the amount stipulated by the law, without the need to prove any injury. According to the Directive 2001/7/EU of the European Parliament and of the Council on combating late payment in commercial transactions, published in the Official Journal of the European Union L 48 of 23 February 2011, in the relations among professionals in the European Union the payment deadline cannot be longer than 30 calendar days, and any contrary provision is null and void. Also, according to the same Directive, the parties cannot agree upon the date of issuing/ receiving the invoice. Any provision that stipulates a deadline of issuing/ receiving the invoice is null and void.

For stimulating the business environment, avoiding the financial deadlock, fulfilling the obligations assumed by equivalence, in Romania there has been instituted the obligation for legal entities, regardless of their legal form and their type of ownership, to organise and track the recording of payment obligations and claims from any debtor to any creditor, as the case might be, according to the due date, with daily update. Legal entities shall prepare the statement of the outstanding amounts older than 30 days from any debtor to any creditor, as the case might be, that is a Romanian legal entity with its registered office in Romania.

These statements shall be submitted to the Institute of Management and Computer Science at the Ministry of Industry and Trade, in order to be included in the procedure of compensation for debts not paid on the due date, according to the legal provisions in force regarding the Regulation on compensation for debts of industry business operators not

repaid on the due date and the Methodology on monitoring debts of business operators whose major shareholder is the state, not repaid on the due date.

There are numerous cases in which the parties stipulate in the contract the enforcement right, either in kind or by equivalence, even by their own means, and such cases are a constant practice in the international trade law nowadays.

Any enforcement according to the contract provisions that is initiated by the creditor usually starts with a notice of default; this can be ipso jure or upon the creditor's request, depending on the contractual provisions.

A special situation encountered in the practice is that when the debtor is actually not in default if he provided the benefit payable in due time, even without complying with the formalities of the contract, yet the creditor refused to receive it without any legitimate reason. Moreover, the creditor may Moreover, the debtor may consign the assets on the creditor's account and risks, thus being exonerated from his obligation.

At the EU level there has been adopted the Regulation no. 655/2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters, which establishes common rules in all Member States in order to ensure appropriate protection to creditors requesting its application.

A difficult issue in international trade relations is to choose between legal provisions that often are in conflict. That is why at the EU level there have been established provisions regarding the conflict among laws, which stipulate that the law applicable for the creditor's liability is the law applicable in the executing Member State in which the debtor has his usual residence. In case there are more than one executing Member State, the applicable law should be the law of that executing Member State in which the debtor has his usual residence. In case the debtor does not have his residence in any of the executing Member States, the applicable law should be the law of that Member State which the case has the closest connection to. For determining the closest connection, one of the factors the court may consider is the value of the amount preserved in different executing Member State.

Preventing default in international trade ABSTRACT

In the European Union, the creditor has the right to a remedy against a refusal to issue a preservation order. Yet this right should not be a prejudice to the creditor's possibility to file a new petition in which he requests the issue of a preservation order, if there are any new facts or evidence.

In order to ensure a fast execution beyond the debtor's control, the transmission of the order from the Member State of origin to the competent authority in the executing Member State is performed by any appropriate means that ensure the content of the document transmitted to be conform, faithful and easy to read.

Depending on the method available under the law of the executing Member State for equivalent national ordinances, the application of the preservation order shall be either by blocking the amount preserved in the debtor's account or, if there is such a provision in the internal legislation, by transferring this amount into an account dedicated for preservation; this may be an account held by the competent executing authority, by the law court, by the bank where the debtor has his account or by the bank appointed as the coordinating entity for preservation of accounts in a certain case.

Correspondingly, there is also the debtor's right to a fair trial and to an effective remedy; therefore, taking into consideration the ex-parte nature of the procedure of issuing a preservation order, the debtor is allowed to contest the order or its enforcement for good reasons immediately after enforcing the order against him.

Mediation is a way of settling disputes amicably, with the help of a specialist third party as a mediator under conditions ensuring neutrality, impartiality, confidentiality and with the free consent of the parties. In recent years, mediation has spread considerably both in Europe and in the world. Participants in international trade relations understood that mediation has multiple advantages in global economic relations, implies lower costs and avoids public disclosure of large transnational businesses.

Mediation in international trade relations has already existed even prior to the legislative regulation of the mediator profession, as a means to avoid a legal conflict that

could reach the court or even worse, it could have result in the impossibility of one of the international business partners to execute his contractual obligations.

Mediation should not be mistaken for the procedure of arbitration; the two institutions are totally and completely different, because even though apparently there are similarities, there also are fundamental differences. Thus, arbitration requires a contract clause, whereas mediation is voluntary, may be decided upon any time, at any stage of contract performance. Arbitration is a solution imposed on the parties by an enforceable decision by a panel of arbitrators through a formal court proceeding. In case of mediation, there is a flexible procedure, the solution is chosen by the parties by mutual agreement according to their needs and interests, and its essential feature is confidentiality.

Mediation as a means of avoiding default is a voluntary procedure, confidential throughout its duration, the parties do not use any state authority, which would imply costs, relationships and explanations to be given to state officials, as well as longer written proceedings etc. The solution identified and agreed upon by the parties is not imposed by the mediator, who just plays an active role of facilitating dialogue between the parties in the period prior to a decline in performing their obligations assumed by the contract, yet this does not affect their capacity of performing their contractual obligations.

In case of a transnational dispute, the mediator never decides in the name of the parties, he does not have any judicial tasks, he does not force the parties to reach a settlement of their dispute, he never threatens and intimidates. In international trade relations, a difficult issue in direct verbal communication is represented by communication barriers, such as the differences of perception of one or several aspects of the contracts, difficulties to express oneself in a foreign language ur the insufficient command of the foreign language, especially of the technical terms, as well as irrelevant information or information in excess..

In the European Union, mediation is a voluntary procedure, as the parties are themselves responsible for the procedure, and may organise it as they wish and terminate

it anytime. However, the courts have the right to set deadlines for the mediation procedure according to national legislative provisions.

The same techniques and tactics used in negotiations for preparing an international trade contract are also used in case of mediation procedures, such as that of limited mandate that of false concessions, that of diverting attention, that of sterile negotiations or that of boosting competition. Negotiation tactics aim to convince the partner to change a position held in the negotiation procedure, with regard to: deadlines; delay, negotiation process, simulation of naivety, domination of discussions, false offers, and silence tactics.

CONCLUSIONS

As I have shown, the risk in international transactions is correlated with the inevitable time pressure that affects global trade with goods and products and usually determines the profit share, especially when price fluctuations are daily and the celerity of reselling assets may generate profit or loss.

On the other hand, transnational global large corporations are slow, cumbersome and bureaucratic, and the decision-making process within them is slow and needs a lot of time, yet their capital for investments or transactions is always protected by a lot of forms of guarantees, insurance or many other types of commercial securing for protecting the capital or the safety of acquiring an asset on a particular market.

I think that risk is present in any international transaction, regardless of the degree securing the debt, yet for any company there should be established de minimis criteria, function of the trade sector, in order to reduce the degree of uncertainty of international trade transactions.

These minimal criteria must have a reasonable cost by using a diversity of information sources, both from local, national and international public institutions, and

also from private institutions, even if obtaining such information sometimes involves certain costs.

Using online information also imply risks; one should be cautious when using such information, yet it also must be considered in the final decision-making regarding a transaction.

Very important is the standardisation of internal administrative procedures for the optimal operation of each department within the company, especially to avoid errors or subjective risk.

A selective choice of contract partners is also a condition for a successful international business transaction.

I previously analysed commercial creditworthiness as an important factor in deciding to conclude an international trade transaction, and any decrease of creditworthiness is basically a sign that precedes of insolvency cases or an increased risk of contract non-performance. Without being decisive, international trade relations take into account the analysis of financial statements of any participant, but the final decision involves a complex process of analysis of multiple factors implying various forms of risk the trader might be exposed to, from political and commercial ones to certain details that a non-specialist might regarded as insignificant.

The degree of technical development also involves risks, especially for developing countries, different approaches from state to state, but it can also determine a higher degree of success of international transactions.

In a world in crisis and in search of safety of payments to be made by the contractor, the guarantee means available to the creditor have become more relevant than ever. Normally international commercial relations imply mutual confidence, and contractual guarantees are regarded as a means of reducing the development of cross-border trade, yet lack of certainty regarding the payment of contractual obligations in due time determines creditors to increasingly obtain guarantees to ensure or diminish the risk of default in the legal relations in which they participate.

Preventing default in international trade ABSTRACT

Selling on credit is common in international trade since ancient times, just as a money loan granted for a certain period of time implies that the loan shall be repaid on the due date agreed. In the second hypothesis, the money loan was frequently guaranteed and insured against the risk of default. In international trade contracts, the debtor's liability is boosted by providing guarantees in order to attract the foreign partner's confidence in his creditworthiness, and seriousness; these guarantees may be the subject of bilateral contracts and may be deemed as long-term obligations.

Moreover, providing guarantees is a feature characteristic for long-term international contracts or grant agreements frequently to encounter nowadays in our globalized world.

In 1925 the risk insurance for export credits was created in the Netherlands and then it was spread in France, England, Italy and Belgium and soon after it became a constant in the international trade; initially the insurance covered only commercial risks of default due to importing company's inability. In 1934, insurance companies offering such policies united in what was called the Berne Union that established the risks insured, the price of insurance policies, the amounts that should be paid as compensation etc. After the Second World War the global trade with assets, products and capital led to the emergence of new types of products in the insurance market, and also of new specialised companies that interested companies could call. The main drawbacks in the case of default insurance are the expensive premiums that have to be paid in advance, the fact that the insurance is limited to a certain percentage of the amount to be insured and the absence of particular forms of protection; especially in case of long-term contracts, insurance companies usually do not conclude policies for complex exports or for operations running over several years. The creditor is always obliged to try the debtor´s enforcement only in case of uncollectability or other cases, usually commercial events, such as insolvency, giving the right of receiving the compensation due.

Commercial guarantees can provide to global trade participants a certain degree of safety with regard to the performance of the obligations assumed in the contracts concluded. .

Guarantees regulation at international level is not uniform, yet it is also not insignificant in international trade relations. Most businesses are concluded on mutual trust, on partnership relations carefully built in the course of time, in an effort to strengthen ongoing projects. In order to gain the partner's trust, i.e. to give the business partner the proof that the ongoing business is serious, profitable for both parties, the debtor usually provides one or more personal or real guarantees or a combination thereof. In international trade relations, guarantees usually do not cover any default of the debtor, and in bankruptcy cases, the chance of claim recovery is minimal or insignificant.

The risk - guarantee correlation in international trade is unbalanced in favour of the risk; there are never sufficient guarantees to ensure full payment, in due time, of the amounts of money representing the equivalent value of the benefits due.

Romania has made a significant progress through the new regulation, in monistic conception, of the Civil Code, of real personal guarantees, by adopting new legal provisions that have never existed before in the legislation, even though they have been used frequently in practice by traders, but only as customs and usances.

The regulation on guarantees aims to provide to interested persons the means of knowledge for securing certain infrequent transactions in case of traders who only occasionally conclude international trade contracts, since in such cases creditor requires a high guarantee level in order to be sure that he shall receive the consideration. It should be stressed that guarantees in international trade contracts are always accessory, they only serve to encourage traders to fulfil their obligations assumed, because no trader aims an enforcement the guarantee, since this covers only in part the benefits due.

In the current context of globalization, the creation of local and international institutions for guaranteeing the enforcement of international trade obligations by insurance contributed especially to the global integration and the access of the poorest countries to international trade, but it also created the possibility for such countries to attract foreign investments that can ensure the development of local resources,

employment of the labour force, yet also increased competition in order to be able to access new markets in the developing countries.

Although they are not uniform, guarantees in international trade are similar in the EU Member States, and in the global practice they are known to all participants; moreover, some of the guarantees are regulated at the state level by arrangements and agreements that promote and arrangements promoting and facilitating foreign investments, where the Multilateral Investment Guarantee Agency plays the role of a catalyst, which convinced most countries in the world to become that meant that most countries in the world to become members of the Agency, so the legal regulation applicable on guarantees implicitly became global.

It should not be forgotten that getting access to information is more and more facile, there are possibilities to previously verify the partner's commercial creditworthiness before performing any international trade transaction, in order to save time and especially money for securing transactions having as object valueless or low-value assets; and it is also easy for anyone to verify any assets involved in any international trade relation.

In essence, international trade has not become easier nowadays, although bureaucratic formalities are reduced every day, multinational corporations are omnipresent and powerful; on the contrary, international trade requires more and more complex, more and more advanced knowledge; the involvement of specialists is always needed, specialist consultancy is a must, analysis costs are increasingly higher. The existence of these impediments does not mean that the global people around us shall retreat in their own countries, but on the contrary, competition between enterprises participating in international trade shall increase and large and very large enterprises shall be the ones that that will take advantage.

In conclusion, avoiding default in international trade contracts requires the dynamic, active and permanent involvement of the participants for an optimal and efficient performance of the international businesses contracted.