

# Operational Regulations

*(As amended by the Board of Directors through October 1, 2007)*





# Operational Regulations

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## DEFINITIONS

In these Regulations, unless the context requires otherwise,

“**Agency**” means the Multilateral Investment Guarantee Agency;

“**Applicant**” means any person who applies for, or inquires into the availability of, a guarantee from the Agency for his own account, or any person on whose behalf such application or inquiry is made;

“**Board**” means the Board of Directors of the Agency;

“**Commentary**” means the Commentary on the Convention;

“**Convention**” means the Convention Establishing the Multilateral Investment Guarantee Agency;

“**Council**” means the Council of Governors of the Agency;

“**Forced Labor**” means all work or service, not voluntarily performed, that is exacted from an individual under threat of force or penalty;<sup>1</sup>

“**Guarantee Holder**” means the holder of a guarantee issued by the Agency;

“**Harmful Child Labor**” means the employment of children that is economically exploitative, or is likely to be hazardous to, or to interfere with, the child’s education or to be harmful to the child’s health, or physical, mental, spiritual, moral, or social development;<sup>2</sup>

“**Host Country**” or “**Host Government**” means a member, its government, or any public authority of a member in whose territories, as defined in Article 66 of the Convention, an investment which has been

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<sup>1</sup> The definition of Forced Labor was adopted on April 14, 1998.

<sup>2</sup> The definition of Harmful Child Labor was adopted on April 14, 1998.

guaranteed or reinsured, or is considered for guarantee or reinsurance, by the Agency is to be located;

“**IFC**” means the International Finance Corporation;

“**Investment Project**” means the project or set of projects in which the investment covered or under consideration for coverage is made or is to be made;

“**President**” means the President of the Agency;

“**Project Enterprise**” means a corporation, association, partnership or any other entity which holds title to, or the power to dispose of, the assets contributed to the Investment Project;

“**\$**” means dollars in the currency of the United States of America;

“**Underwriting Authority**” means the President or any official or officials of the Agency designated by the President to make the decision on the issuance of a guarantee and on related matters; and

“**World Bank**” means the International Bank for Reconstruction and Development.

## **PART I: GUARANTEE OPERATIONS**



# **CHAPTER ONE: ELIGIBILITY REQUIREMENTS**

## **SECTION I: ELIGIBLE INVESTMENTS**

### **GENERAL REQUIREMENTS**

1.01 To qualify for coverage under Article 12 of the Convention, investments must meet certain requirements with respect to:

- (a) the type of investment;
- (b) the resources to be invested; and
- (c) the time of the investment.

### **TYPE OF INVESTMENT**

#### **Eligible Investments under Article 12**

1.02 Article 12(a) of the Convention provides that eligible investments shall include:

- (i) equity interests; and
- (ii) non-equity direct investment.

In addition, Article 12(b) of the Convention authorizes the Board to decide on the eligibility of other forms of investment under the conditions referred to in Paragraph 1.08 below.

#### **Equity Interests**

1.03 Equity interests are eligible for cover irrespective of the legal form of the Project Enterprise and there is no minimum requirement with respect to the share of the Applicant in the Investment Project.

1.04 Cover extends to the following forms of equity interests:

(i) shares in a corporation or other entity with juridical personality which is established in the Host Country;

(ii) rights to participation in the profits and liquidation proceeds of any joint venture in the Host Country;

(iii) ownership rights in the assets of an unincorporated branch or other establishment of the investor in the Host Country;

(iv) portfolio as well as direct equity investments, including minority participation in joint ventures, preferred stock and shares resulting from the conversion of debt instruments, with preference among portfolio investments given to those associated with foreign direct investment; and

(v) loans made by holders of equity in the Project Enterprise to the Project Enterprise and guarantees (including collateral or security) made by a holder of equity in the Project Enterprise of loans made to the Project Enterprise, provided that, in both cases, the period between the entry into force of the loan agreement and the date on which the last repayment of the loan is due is at least three years. Without prejudice to Paragraph (a) of Article 12 of the Convention, loans and guarantees of loans of less than three years' duration may be eligible for cover if the Board so approves, provided that the Investor can demonstrate a long-term commitment to the Investment Project.<sup>3</sup>

#### **Non-Equity Direct Investment**

1.05 Subject to the criteria stated in Paragraphs 1.06 and 1.07 below, the Agency's guarantees may be issued for the following forms of non-equity direct investment:

(i) production-sharing contracts where the contractor makes contributions to the Investment Project and his remuneration substantially depends on a share of the production of the Investment

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<sup>3</sup> Paragraph 1.04(v) was amended on December 10, 1993.

Project, including his right to purchase such share at a predetermined price or a price to be determined under an agreed formula;

(ii) profit-sharing contracts where the contractor makes contributions to the Investment Project and his remuneration substantially depends on the revenues or profits of the Investment Project;

(iii) management contracts where the contractor assumes responsibility for the management of the Investment Project or a significant part of its operations and where his remuneration substantially depends on the production, revenues or profits of the Investment Project;

(iv) franchising agreements where the franchiser provides the franchisee with a package of resources, such as trademarks, know-how and management assistance and where his remuneration substantially depends on the production, revenues or profits of the Investment Project;

(v) licensing agreements where the licensor provides the licensee with technology and where the licensor's remuneration substantially depends on the production, revenues or profits of the Investment Project, or where the licensing agreement is associated with an otherwise eligible investment of the licensor in the Investment Project;

(vi) turnkey contracts where the contractor is responsible for setting up a complete production or service unit in the Host Country and where either the contractor's remuneration substantially depends on the production, revenues or profits of the Investment Project or where the contractor assumes responsibility for the operation of the Investment Project at specified standards of efficiency for a period of at least three years after its completion;

(vii) operating leasing agreements with terms of at least three years where the lessor leases capital goods to a lessee and where rental payments are substantially dependent on the production, revenues or profits of the Investment Project;

(viii) subordinated debentures with mean repayment periods of not less than three years, which are issued by the Project Enterprise to an

equity investor or a person making any other eligible form of non-equity direct investment in the Investment Project;

(ix) such other forms of non-equity direct investment the remuneration for which substantially depends on the performance of the Investment Project, as may be recommended by the President and approved by the Board; and

(x) guarantees or other securities provided for loans to the Project Enterprise which satisfy the requirements as to repayment periods set out in Paragraph 1.04(v) and which are made by a person making any of the foregoing forms of non-equity direct investment in the Investment Project.

### **Criteria for Non-Equity Direct Investment**

1.06 In determining the eligibility of non-equity direct investments, the Underwriting Authority shall issue coverage only for investments that:

(i) have terms of at least three years; and

(ii) depend substantially on the production, revenues or profits of the Investment Project for repayment.

In this respect, special attention shall be given to investment arrangements of long duration and high developmental potential. In no case shall the Agency provide coverage of this type, which, in its judgment and in the light of appropriate consultation, can be obtained from a government or an official export credit insurance agency of a member.

1.07 The Applicant may contribute resources to an Investment Project under various arrangements. For example, a joint venture partner might undertake to manage the venture under a management agreement, or a contractor might furnish a plant under a turnkey contract and provide the operator of the plant with technology under a licensing agreement. In such cases, the Underwriting Authority shall, subject to Paragraphs 1.05 and 1.06, take into account the extent of the Applicant's overall business interests in the Investment Project.

## **Other Investments**

1.08 Any other medium- or long-term form of investment which does not qualify for coverage under Article 12(a) of the Convention may, pursuant to Article 12(b) of the Convention, be covered if the Board so approves by special majority, except that loans other than those eligible for cover under Article 12(a) of the Convention may be eligible only if they are related to a specific investment covered or to be covered by the Agency. The Board's approval for the coverage of such other forms of investment may be issued either with respect to a particular case or as a general authorization for cover.

## **RESOURCES TO BE INVESTED**

### **Investment in Monetary Form**

1.09 Investments eligible for coverage may be made in any freely usable currency within the meaning of Article 3(e) of the Convention, or in any other currency that at the time of the decision on the issuance of the guarantee is freely convertible.

### **Investment in Kind**

1.10 Investments, to qualify for cover, need not be made in monetary form. They may take the form of contributions to the Investment Project of any tangible or intangible assets that have a monetary value, such as machinery, patents, processes, techniques, technical services, managerial know-how, trademarks and marketing channels. For the purpose of coverage, the monetary value of such investment in kind must be determined in terms of the currency in which the guarantee is issued. In this respect, the Underwriting Authority may accept a credible valuation furnished by the Applicant or make its own evaluation or require an independent appraisal.

## **TIME OF THE INVESTMENT**

### **Date of Implementation of the Investment**

1.11 In accordance with Article 12(c) of the Convention, an investment is eligible for cover only if it is a new investment. An investment is a new investment if its implementation begins subsequent to the Agency's registration of the preliminary application for a guarantee or, if the

Applicant decides not to file a preliminary application, after registration of the definitive application filed in accordance with Paragraph 3.20 below. The implementation of an investment shall be deemed to have begun either when resources have been transferred to the Project Enterprise or when the contribution of such resources to the Investment Project has been irrevocably committed. Appraisal, planning and exploration costs incurred prior to either of those dates do not disqualify the subsequent investment from cover.

### **Other Criteria for New Investment**

1.12 The Underwriting Authority may consider as new an investment in an existing Investment Project if, *inter alia*, the investment is used to modernize, expand, enhance the financial viability or otherwise develop an existing Investment Project. The Underwriting Authority may also consider as new an investment for the purpose of acquiring an existing Project Enterprise in whole or in part, provided that the acquisition:

(i) accompanies an expansion, modernization or other enhancement of the Project Enterprise;

(ii) serves the financial restructuring of the Project Enterprise, notably the improvement of its debt/equity ratio; or

(iii) assists the Host Country in restructuring its public sector.

1.13 The Underwriting Authority may consider as new investment earnings from an existing investment in the Host Country if such earnings could otherwise be transferred outside the Host Country at the time of the decision on the issuance of the guarantee for such earnings.

## **SECTION II: ELIGIBLE INVESTORS**

### **TYPE OF INVESTOR**

1.14 Investors eligible to receive a guarantee may be either natural or juridical persons. Partnerships, which are not treated in essential respects as juridical persons under the law governing them, unincorporated associations and branches are not eligible as such. In such cases,

eligibility is confined to the individual partners, members of the association and owners of the branch. Where in these cases some investors are eligible while others are not, a guarantee may be issued for such portion of the investment as corresponds to the eligible investors' share in the Investment Project.

### **NATIONALITY OF THE INVESTOR**

1.15 In accordance with Article 13(a) of the Convention and subject to Paragraph 1.16 below, a natural person, to qualify for a guarantee, must be a national of a member of the Agency other than the Host Country. A juridical person:

(i) must be incorporated and have its principal place of business in a member of the Agency other than the Host Country, or, if such person does not meet this test;

(ii) the majority of its capital must be owned by a member or members, or nationals of a member or members, other than the Host Country.

In either case, the Agency shall advise the Host Country of the Applicant's link with the Host Country, together with the request made in accordance with Paragraph 3.22 below for the Host Country's approval of the issuance of the guarantee.

1.16 In accordance with Article 13(c) of the Convention, the Board, by special majority, may, upon the joint application of the investor and the Host Country, extend eligibility to a natural person, who is a national of the Host Country, or to a juridical person, which is not eligible under Paragraph 1.15 above and is incorporated in the Host Country or the majority of whose capital is owned by its nationals, provided that the assets to be invested are transferred from outside the Host Country.

### **OWNERSHIP OF THE INVESTOR**

1.17 In determining ownership of an investor, the Underwriting Authority shall have regard to beneficial rather than record ownership. In the case of a share corporation, a person shall be deemed to be the beneficial owner if the benefits from the shares accrue to him and he has

the right of recapturing the shares. For example, in the case of shares held by brokers or banks for their customers, the customer, rather than the intermediary, shall be deemed to be the owner. If, however, the beneficial owners of the Applicant cannot be identified without undue cost or delay, the beneficial owners may be presumed to have the same nationality as the record owners. If neither beneficial nor record ownership can be determined without undue cost or delay, as in the case of bearer shares, the Applicant may be presumed to be chiefly owned by nationals of members other than the Host Country if such nationals have held the majority of the votes registered at the most recent shareholders' meeting of the Applicant.

1.18 In accordance with Article 13(a) of the Convention, juridical persons need not be privately owned to qualify for coverage. They may also be owned:

- (i) jointly by a member and private persons;
- (ii) wholly by a member;
- (iii) jointly by several members; or
- (iv) jointly by several members and private persons.

For the purpose of this Paragraph, the term "member" includes any agency or entity owned or controlled by a member.

#### **MODE OF OPERATIONS OF THE INVESTOR**

1.19 Article 13(a)(iii) of the Convention provides that in all cases the investor must operate on a commercial basis. Where the majority of the equity in the investor is privately owned, the investor may be assumed to operate on a commercial basis, provided that, in the case of a non-profit organization, a guarantee may only be issued if it is established that the specific investment for which coverage is sought will be carried out on a commercial basis. Where the majority of the equity in the investor is publicly owned, the Underwriting Authority must determine whether the Applicant operates on a commercial basis. Where the investor carries out some operations on a commercial basis and others on a non-commercial

basis, it shall be eligible only in respect of investments that form part of its commercial operations.

### **SECTION III: ELIGIBLE HOST COUNTRIES**

#### **DEVELOPING MEMBER COUNTRIES**

1.20 In accordance with Article 14 of the Convention, an investment, to qualify for coverage, must be made in the territory of a member which is listed as a developing member country in Schedule A to the Convention as this Schedule may be amended from time to time.

#### **DEPENDENT TERRITORIES**

1.21 A dependent territory for whose international relations a member is responsible may be designated by the Board as a developing member country for the purposes of Article 14 of the Convention if the member so requests, provided, however, that investments of that member in the dependent territory shall be excluded from cover.

### **SECTION IV: ELIGIBLE RISKS**

#### **ELIGIBLE RISKS UNDER ARTICLE 11(A)**

1.22 The Convention provides that guarantees may be issued against losses resulting from non-commercial risks. Four types of such risks are specified in Article 11(a) of the Convention as eligible for cover. These are:

- (a) the currency transfer risk;
- (b) the risk of expropriation and similar measures;
- (c) the breach of contract risk; and
- (d) the war and civil disturbance risk.

The Board is authorized to decide on the eligibility of other non-commercial risks under the conditions referred to in Paragraph 1.53 below.

## **CURRENCY TRANSFER RISK**

### **Covered Causes of Loss**

1.23 In accordance with Article 11(a)(i) of the Convention, the Underwriting Authority may provide coverage for losses arising from any introduction attributable to the Host Government of restrictions on the conversion of local currency into a freely usable currency, or into another currency acceptable to the Guarantee Holder and/or on the transfer outside the Host Country of either the local currency or the foreign currency into which the local currency was converted. In all cases, the restrictions must have been introduced after the date of the contract of guarantee and must apply to currency which represents returns on, or repatriated capital of, the guaranteed investment.

1.24 Coverage may be provided against active as well as passive restrictions on conversion and/or transfer. An active restriction is a decision by the Host Government denying conversion and/or transfer of local currency, or authorizing such conversion and transfer at an exchange rate less favorable than the lowest exchange rate determined under the contract of guarantee in accordance with Paragraph 1.28 below. A passive restriction is a failure by the Host Country's exchange authority to act on conversion and/or transfer within ninety days from the date on which the Guarantee Holder applies for conversion and/or transfer in accordance with Paragraph 1.26 below or such other period as the contract of guarantee may provide.

1.25 Currency transfer risk coverage shall not be available for the freezing of assets of the Guarantee Holder or of the Project Enterprise. This risk may be covered under coverage for expropriation or similar measures under Paragraphs 1.29 through 1.41 below.

### **Duties of Guarantee Holders**

1.26 Contracts of guarantee shall require the Guarantee Holder to apply for conversion and/or transfer in accordance with the laws of the Host Country and to seek appropriate administrative remedies to obtain

conversion and/or transfer. Contracts of guarantee shall also require the Guarantee Holder or the Project Enterprise to carry out instructions of the Agency, including instructions to transfer to the Agency, as a condition for or upon receipt of payment from it, rights to the local currency covered by the guarantee, or to deposit such currency in an account of the Agency or of any person designated by the Agency.

### **Currency and Exchange Rate for the Guaranteed Conversion**

1.27 Contracts of guarantee shall specify the currency into which conversion is guaranteed. Such currency may be a freely usable currency within the meaning of Article 3(e) of the Convention or any other currency of a member agreed upon between the Underwriting Authority and the Applicant.

1.28 Contracts of guarantee shall also specify the basis, and the date, for determining the exchange rate or rates to be applied in calculating a claim. Normally, the rate shall be the rate prevailing in the Host Country on the date on which the Host Government denies, or is deemed to have denied, conversion and/or transfer under Paragraph 1.24 above for the category of exchange rate that applied to the investment when the guarantee was issued. However, contracts of guarantee may provide, in the absence of such a category of exchange rates on the aforementioned date, an alternative basis for calculating a claim.

## **RISK OF EXPROPRIATION AND SIMILAR MEASURES**

### **Covered Causes of Loss**

1.29 In accordance with Article 11(a)(ii) of the Convention, the Underwriting Authority may provide coverage for losses arising from measures attributable to the Host Government which have the effect of depriving the Guarantee Holder of his ownership or control of, or a substantial benefit from, his investment. Coverage may encompass, but is not limited to, measures of expropriation, nationalization, confiscation, sequestration, seizure, attachment and freezing of assets.

1.30 Coverage may be provided against measures which prevent the Guarantee Holder from exercising his rights of ownership or control over his investment, as well as measures which deprive him of the rights themselves. Such measures may take the form of breach of contract. In

the case of equity interests, covered rights may take the form of rights to dividends and profits, rights of control and the right freely to dispose of the equity interest. In the case of non-equity direct investments, such rights may take the form of claims against the Project Enterprise for agreed payments, the right to transfer such claims to third parties and rights of participation in the management of the Investment Project. Coverage may be provided against measures which prevent the Guarantee Holder from using his funds or enforcing claims against debtors in the Host Country.

1.31 Coverage may also be provided against measures which deprive the Guarantee Holder of a substantial benefit from his investment to the extent specified in the contract of guarantee pursuant to Paragraph 1.39 below. Such measures may affect:

- (i) funds and tangible assets of the Project Enterprise;
- (ii) the operations or profitability of the Investment Project; or
- (iii) where the investment is a non-equity direct investment, the ability of the Project Enterprise to fulfill its obligations to the Guarantee Holder.

#### **Additional Criteria for Covered Causes of Loss**

1.32 In accordance with Article 11(a)(ii) of the Convention, covered measures may include legislative or administrative actions. Legislative actions by themselves may be covered only if the expropriatory or similar legislation requires no further legislation or regulation for its implementation. Covered measures may also include administrative omissions where the administrative authority is under a legal obligation to act and has been notified by the investor, but not legislative omissions or decisions of independent courts or arbitral tribunals.

1.33 In the case of an administrative omission, a covered measure shall be deemed to have taken place ninety days after the date by which the administrative authority had an obligation to act or such other period as may be specified in the contract of guarantee.

1.34 In all cases, the measure must be attributable to the Host Government. A measure may be attributed to the Host Government not only where the government itself takes or omits to take an action, but also where it approves, authorizes, ratifies or directs the action or omission.

1.35 For the purposes of Paragraph 1.34 above, the term “Host Government” may be defined in a contract of guarantee as extending to, for example, a de facto government over the territory in which the Investment Project is located.

### **Governmental Regulations**

1.36 In accordance with Article 11(a)(ii) of the Convention, coverage shall not be provided against non-discriminatory measures of general application which governments normally take in the public interest for the purpose of regulating economic activity in their territories, such as the *bona fide* imposition of general taxes, tariffs and price controls and other economic regulations as well as environmental and labor legislation and measures for the maintenance of public safety. Coverage may, however, be provided against a measure which, although an exercise of the Host Government’s regulatory powers, does not meet all of the above criteria, especially if it discriminates against the Guarantee Holder, or is designed to have a confiscatory effect, such as causing the investor to abandon his investment or to sell it at a distressed price.

1.37 Coverage may also be provided against a series of measures by the Host Government, which in their combined effect are expropriatory, even if each individual measure, taken alone, would appear to fall within the exception set forth in Paragraph 1.36.

1.38 In applying Paragraph 1.36 above, the Agency shall ensure that it does not prejudice the right of a member country or of investors under bilateral investment treaties, other treaties and international law.

### **Scope of Coverage**

1.39 Contracts of guarantee shall specify the scope of coverage against expropriation and similar measures. The Underwriting Authority may, depending on the circumstances, elect to provide for coverage in cases of partial or total loss of the investment.

1.40 A total loss of the investment may be deemed to have occurred if, as a result of a covered measure:

(i) the Guarantee Holder has been unable to exercise a fundamental covered right for a period of three hundred sixty-five consecutive days or such other period as the contract of guarantee may provide; or

(ii) the Investment Project has ceased operations for such period.

A total loss of the investment may also be deemed to have taken place if, after the occurrence of a covered event, the Agency agrees that the Guarantee Holder assign to it all his rights, claims or other interests related to the covered portion of the investment.

1.41 Coverage may be provided in cases of partial or total loss in the event of permanent deprivation of:

(i) covered rights of the Guarantee Holder; or

(ii) funds and other tangible assets of the Project Enterprise.

Coverage shall normally be limited to cases of total loss of the investment in the event of measures:

(i) preventing the Guarantee Holder from exercising covered rights; or

(ii) substantially diminishing the operations or profitability of the Investment Project.

In respect of non-equity direct investments, coverage may be provided in cases of partial or total loss resulting from measures of the Host Government against the Project Enterprise which make it impossible for the Guarantee Holder to receive his remuneration from the Project Enterprise for a period of three hundred sixty-five consecutive days or such other period as the contract of guarantee may provide.

## **BREACH OF CONTRACT RISK**

### **Covered Causes of Loss**

1.42 In accordance with Article 11(a)(iii) of the Convention, the Underwriting Authority may provide coverage against losses arising from a repudiation or breach by the Host Government of a contract with the Guarantee Holder in the cases set forth in Paragraph 1.43 below. In some cases, a breach by the Host Government of a covered obligation may also meet the criteria for currency transfer and expropriation risks. In such cases, a Guarantee Holder may base his claim on any of the applicable coverages.

### **Denial of Justice**

1.43 In accordance with Article 11(a)(iii) of the Convention, cover shall be limited to cases where:

(i) the Guarantee Holder does not have recourse to a judicial or arbitral forum to determine the claim of repudiation or breach; or

(ii) a decision by such forum is not rendered within such reasonable period as shall be specified in the contract of guarantee, which shall be not less than two years from the initiation of a proceeding by the Guarantee Holder and the final decision by the forum; or

(iii) a final decision cannot be enforced.

1.44 For the purpose of Paragraph 1.43 above:

(i) a judicial or arbitral tribunal forum shall be any competent court or arbitral tribunal which is independent from the executive branch of the Host Government, acts judicially and is authorized to make a final and binding decision;

(ii) a Guarantee Holder may be deemed to lack recourse to such a forum where access to it is denied because, for example, the Host Government has established unreasonable procedural impediments; and

(iii) a final decision may be deemed unenforceable where the measures taken by the Guarantee Holder in accordance with Paragraph

1.45 below have not resulted in enforcement after ninety days from the date of the initiation of such measures or such other period as may be specified in the contract of guarantee.

#### **Duties of Guarantee Holders**

1.45 Contracts of guarantee shall specify the measures which a Guarantee Holder shall take to enforce a judicial or arbitral decision rendered in his favor on a claim of repudiation or breach, as well as the periods within which such measures shall be taken. Where the measures would appear to be futile in the judgment of the Agency, the Agency need not insist that they be taken.

### **WAR AND CIVIL DISTURBANCE RISK**

#### **Covered Causes of Loss**

1.46 In accordance with Article 11(a)(iv) of the Convention, the Underwriting Authority may provide coverage against losses arising from any military action or civil disturbance in the territory of the Host Country. Contracts of guarantee shall in each case specify the covered events.

#### **Military Action**

1.47 Coverage against military action or war shall extend to hostilities between armed forces of governments of different countries or, in the case of civil war, between armed forces of rival governments in the same country, including both declared and undeclared wars.

#### **Civil Disturbance**

1.48 Coverage against civil disturbance shall normally extend to organized violence directed against the government, which has as its objective the overthrow of such government or its ouster from a specific region, including revolutions, rebellions, insurrections and *coups d'état*. Coverage may also be provided against civil disturbance, which takes the form of:

(i) riot: an assemblage of individuals who commit public acts of violence in defiance of lawful authority; or

(ii) civil commotion: events which have all the characteristics of a riot but which are more widespread and of longer duration without, however, attaining the status of civil war, revolution, rebellion or insurrection.

1.49 In all cases, the civil disturbance must have been caused or carried out by groups primarily pursuing broad political or ideological objectives. Acts undertaken to further labor, student or other specific interests and acts of terrorism, kidnapping or similar acts directed against the Guarantee Holder shall not qualify for coverage as civil disturbance, but, if politically motivated, may be covered if the Board so decides under Paragraph 1.53 below.

#### **Place of Covered Events**

1.50 A military action or civil disturbance occurring primarily outside the Host Country may be deemed to take place in the Host Country, and qualify for coverage, if it destroys, injures or damages tangible assets of the Investment Project which are located in the Host Country or interferes in the operation of the Investment Project. For example, coverage may be provided against military actions or civil disturbances which occur in a country contiguous to the Host Country and which affect an Investment Project located close to the border between the two countries, or against military actions or civil disturbances outside the Host Country, which, for the period specified in the contract of guarantee, make it impossible to use transportation links which are vital to the operation of the Investment Project.

#### **Scope of Coverage**

1.51 Contracts of guarantee may limit the scope of coverage against the risk of war and civil disturbance. They may confine covered loss to:

- (i) a specified amount or a percentage of the investment;
- (ii) goods essential to the operation of the Investment Project;

(iii) a total destruction of the Investment Project or such substantial damage as would render impossible the Investment Project's continued profitability; or

(iv) losses calculated on the basis of the historical cost of the damaged or destroyed assets of the Investment Project.

1.52 In all cases, coverage shall be restricted to cases where the assets of the Investment Project have been removed, destroyed or physically damaged, or where there have been other forms of substantial interference with the operation of the Investment Project. Although coverage may be extended to the costs of business interruption, a mere reduction in business opportunities or a deterioration of operating conditions as a result of military action or civil disturbance shall not be covered.

### **OTHER NON-COMMERCIAL RISKS**

1.53 Other specific non-commercial risks which do not qualify for coverage under the four types of non-commercial risk specified in Article 11(a) of the Convention may, pursuant to Article 11(b) of the Convention, be covered at the joint request of an investor and a Host Country if the Board so approves by special majority. Such other risks may, for example, include acts of terrorism or kidnapping specifically directed against the Guarantee Holder, but shall in no case include the risks excluded under Paragraphs 1.54 through 1.57 below. The Board's approval for the coverage of such other risks may be issued either with respect to a particular case or as a general authorization for cover.

### **AGREEMENT OR RESPONSIBILITY FOR ACTIONS OR OMISSIONS**

1.54 In accordance with Article 11(c)(i) of the Convention, contracts of guarantee shall exclude from coverage losses arising from any Host Government action or omission to which the Guarantee Holder has agreed or for which he has been responsible. The Guarantee Holder shall, in particular, be deemed to have been responsible for any such action or omission reasonably attributable to conduct, which is:

- (i) prohibited under the laws of the Host Country; and
- (ii) carried out by the Guarantee Holder, persons acting on his behalf, or the Project Enterprise to the extent that the Guarantee Holder

could have exercised his rights to prevent such conduct by the Project Enterprise.

**EXCLUSION OF THE RISK OF DEVALUATION AND  
DEPRECIATION OF CURRENCIES**

1.55 In accordance with Article 11(b) of the Convention, losses arising from the risk of devaluation or depreciation of currency shall not be covered.

**EXCLUSION OF EVENTS BEFORE THE  
CONCLUSION OF THE CONTRACT**

1.56 In accordance with Article 11(c)(ii) of the Convention, contracts of guarantee shall exclude from coverage losses arising from any Host Government action, omission or other specific event occurring before the conclusion of the contract of guarantee. In particular, no currency transfer coverage shall be issued under Paragraphs 1.23 through 1.28 above if the Applicant, on the date of the conclusion of the contract of guarantee, would only have been able to convert the currency of the Host Country accruing from his investment into the currency of guarantee at a rate below the lowest rate authorized by the exchange authority of the Host Country.

1.57 The exclusion referred to in Paragraph 1.56 need not affect the validity of contracts of guarantee in cases of events unknown to both the Agency and the Applicant at the time of the conclusion of the contract of guarantee or of circumstances at the time of the conclusion of the contract which lead only thereafter to a specific covered event giving rise to a loss.



## **CHAPTER TWO: CONTRACTS OF GUARANTEE**

### **SECTION I: SCOPE OF CONTRACTS OF GUARANTEE**

#### **CONTENT**

2.01 The mutual rights and obligations of the Agency and a Guarantee Holder shall be set forth in a contract of guarantee between them. Contracts of guarantee shall specify the scope of coverage and the type of loss to be compensated, including any restriction of coverage to cases of total loss of the investment or any extension to the costs of business interruption. Contracts of guarantee shall also include provisions on the period of guarantee, termination and adjustment of the contract, amount and currency of guarantee, any standby coverage, warranties and undertakings of the holder of a guarantee, disputes and applicable law, as well as provisions on premiums and claims. A standard form or forms for contracts of guarantee shall be approved by the Board before the initiation of guarantee operations.

#### **CONSISTENCY WITH CONVENTION AND REGULATIONS**

2.02 Contracts of guarantee shall be presumed to be consistent with the Convention and these Regulations. Contracts of guarantee shall provide that such presumption shall not be challenged by either party thereto.

## **SECTION II: PERIOD OF GUARANTEE; TERMINATION AND ADJUSTMENT**

### **PERIOD OF GUARANTEE**

2.03 The period of guarantee shall commence on the date of conclusion of the contract of guarantee unless the contract provides for a later date or the coverage is provided on a standby basis pursuant to Paragraph 2.12 below.

2.04 The period of guarantee shall not be less than three years nor more than fifteen years, provided that, in special circumstances, the Underwriting Authority and the Applicant may agree on:

(i) a longer period of up to twenty years; or

(ii) such period as corresponds to the shorter period authorized under Paragraphs 1.04(v) and 1.05(x) for the investment under consideration.

Where the period of guarantee specified in a contract of guarantee is below the maximum limit, it may subsequently be extended up to that limit.

### **TERMINATION AND ADJUSTMENT**

2.05 A Guarantee Holder may terminate the contract of guarantee three years after the conclusion of the contract and thereafter at each contract anniversary date. Unless the contract of guarantee provides otherwise, the Agency may adjust terms of the contract upon any extension of the period of guarantee.

2.06 Contracts of guarantee shall specify cases in which either party may terminate, adjust, or request a renegotiation of the contract. These shall include termination by the Agency in cases of default in the payment of premiums and untrue statements in the application for guarantee to the extent that the Agency has reasonably relied on them in making its decision on the issuance of the guarantee.

### **SECTION III: AMOUNT AND CURRENCY OF GUARANTEE; STANDBY COVERAGE**

#### **AMOUNT OF GUARANTEE**

##### **Calculation of the Amount of Guarantee**

2.07 The amount of guarantee shall be agreed upon between the Underwriting Authority and the Applicant but shall in no case exceed the percentage of cover (as defined in Paragraph 2.09 below) of the following:

(i) for equity interests other than loans and guarantees of loans: the amount contributed by the Guarantee Holder to the Investment Project plus earnings included in the coverage;

(ii) for non-equity direct investments other than loans and guarantees of loans: the value of the resources contributed by the Guarantee Holder to the Investment Project; and

(iii) for loans and guarantees of loans: the principal plus the interest to be accumulated over the lifetime of the loan.<sup>4</sup>

2.08 The value of the resources referred to in Paragraph 2.07(ii) above may be any fixed fees or royalties plus the value of the share of the production, revenues or profits of the Investment Project to which the Guarantee Holder is entitled, both amounts appropriately adjusted so as to make this valuation comparable to that used for equity interests.

2.09 The term “percentage of cover” means the portion of the loss to be paid by the Agency to the Guarantee Holder in the event of a claim. The percentage of cover shall be agreed upon by the Underwriting Authority and the Applicant and shall normally not be more than ninety percent, but shall in no case exceed:

(a) ninety-nine percent for loans; and

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<sup>4</sup> Paragraph 2.07 was amended on December 10, 1993.

- (b) ninety-five percent for all other investments.<sup>5</sup>

### **Changes in the Amount of Guarantee**

2.10 The amount of guarantee may be increased through the exercise by the Guarantee Holder of a standby option, which he may have obtained pursuant to Paragraph 2.12 below. The amount of guarantee shall be reduced by the amount of any payment of a claim by the Agency under the contract of guarantee and may be reduced in other circumstances if the contract so provides. For example, a contract of guarantee may entitle the Guarantee Holder to reduce the amount of guarantee on each contract anniversary date; or a contract of guarantee will, when practicable, provide for periodic reductions on a fixed schedule or in accordance with established accounting principles to reflect depreciation of assets, amortization of loans, disinvestments and the like.

### **CURRENCY OF GUARANTEE**

2.11 The amount of guarantee shall be expressed in terms of the currency of guarantee, which shall be the currency in which claims shall be paid. The currency of guarantee may be any of the currencies referred to in Paragraph 1.09 above.

### **STANDBY COVERAGE**

2.12 A contract of guarantee issued by MIGA may permit the Guarantee Holder to place on standby different amounts in respect of the insured investment that represent:

- (a) investments phased into the Project Enterprise over several years;
- (b) the difference between the Guarantee Holder's original and current net book value in the Project Enterprise; and

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<sup>5</sup> Paragraph 2.09 was amended on December 10, 1993, and on December 21, 1999.

(c) amounts for which there is no immediate need for coverage (e.g., transfer coverage may not be needed during startup when there are no dividends).

In addition, the contract of guarantee may provide the Guarantee Holder with standby coverage in excess of the insured investment for the following purposes:

(a) earnings to be retained in the Investment Project (up to a maximum of five hundred percent of the initial amount of guarantee); and

(b) accrued interest on a loan or loan guaranty (up to a maximum of one hundred fifty percent of the initial amount of guarantee).<sup>6</sup>

## **SECTION IV: WARRANTIES AND UNDERTAKINGS OF THE GUARANTEE HOLDER**

### **WARRANTIES IN CONNECTION WITH APPLICATIONS OR CLAIMS**

2.13 Contracts of guarantee shall contain warranties by the Guarantee Holder with respect to the accuracy and completeness of his statements in connection with the filing of a definitive application for a guarantee, or the filing of a claim. Such warranties may, for example, refer to eligibility criteria, such as the nationality of shareholders, or to the valuation of investment in kind.

### **OTHER UNDERTAKINGS**

2.14 Contracts of guarantee shall also provide for undertakings by the Guarantee Holder that he will exercise due diligence to avoid and minimize covered losses and that he will cooperate with the Agency in the event of a claim, or in efforts by the Agency to recover a payment

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<sup>6</sup> Paragraph 2.12 was amended on April 23, 1990, and on December 10, 1993.

from the Host Country. Contracts of guarantee shall in particular provide for undertakings by the Guarantee Holder:

- (i) to comply with the laws and regulations of the Host Country;
- (ii) to exercise his control over the Project Enterprise with a view to avoiding the likelihood of a covered loss and minimizing such loss;
- (iii) to maintain proper records for the documentation of a claim and make them available to the Agency upon request;
- (iv) to notify the Agency of any event that might give rise to a covered loss, or significantly increase the likelihood of such a loss promptly upon learning of such an event;
- (v) in case of an imminent event that might give rise to a covered loss, to seek such administrative, judicial, or other remedies as are readily available to him under the law of the host country to avoid or minimize the loss;
- (vi) in case of the occurrence of an event giving rise to a covered loss, to seek available remedies with a view to reducing the amount of the loss and/or preserving the rights or claims related to the guaranteed investment that the Guarantee Holder has against the Host Country and other obligors;
- (vii) not to assign the contract of guarantee or his interest in the Investment Project or to compromise rights subject to subrogation without the prior consent of the Agency; and
- (viii) to retain on his own account, throughout the period of guarantee, with no insurance coverage other than casualty insurance, a portion of the risk equivalent to at least five percent of the amount of the guaranteed investment of all investments except loans, for which the Guarantee Holder must retain for its account at least one percent.<sup>7</sup>

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<sup>7</sup> Paragraph 2.14(viii) was amended on December 21, 1999.

Recourse to the remedies referred to in Subparagraphs (v) and (vi) above shall not in itself alter the investor's rights against the Agency. Undertakings of the Guarantee Holder other than those specifically mentioned above may be included in contracts of guarantee, such as undertakings to submit periodic reports to the Agency and to facilitate the Agency's inspection and monitoring of the Investment Project.

### **BREACH**

2.15 Contracts of guarantee shall specify the consequences of a misrepresentation, or of a breach of an undertaking by the Guarantee Holder. For example, a breach of an undertaking to avoid or minimize a covered loss will normally result in a proportionate forfeiture of coverage to the extent that the loss could have been avoided or minimized through the exercise of due diligence.

## **SECTION V: DISPUTES AND APPLICABLE LAW**

### **DISPUTES**

2.16 In accordance with Article 58 of the Convention, contracts of guarantee shall provide for the submission of disputes arising between the parties thereunder to arbitration for final and binding determination. Disputes shall be submitted to an Arbitral Tribunal of one or more arbitrators. The Arbitral Tribunal shall be appointed, and the proceeding conducted, in accordance with such rules as shall be specified in the contract of guarantee. The standard contract of guarantee will refer to the Institution and Arbitration Rules of the International Centre for Settlement of Investment Disputes (ICSID), provided that the Secretary-General of the Permanent Court of Arbitration at The Hague shall be the appointing authority of the arbitrator or arbitrators not otherwise appointed pursuant to such Arbitration Rules and that such appointing authority shall not be limited in his choice of arbitrators to the names on ICSID's Panel of Arbitrators. The contract will also include such other modifications of the Institution and Arbitration Rules as may be required. The award of the Arbitral Tribunal shall be final and binding on the parties. Each member of the Agency shall recognize the finality and binding nature of such an award.

### **APPLICABLE LAW**

2.17 The Arbitral Tribunal shall apply the contract of guarantee, the Convention and, to the extent that issues in dispute are not covered by the contract, or the Convention, general principles of law, and the contract of guarantee shall so provide.

## **CHAPTER THREE: UNDERWRITING**

### **SECTION I: SCOPE**

3.01 This Chapter sets out guidelines to be followed in making underwriting decisions, including the determination of premiums to be charged for guarantees issued by the Agency. Such decisions are by their nature business decisions as distinguished from the legal determinations made under Chapter One.

#### **ASSESSMENTS**

3.02 In making an underwriting decision, the Underwriting Authority shall assess the Investment Project, the risks to be covered by the proposed guarantee, and the effect of the proposed guarantee on the Agency's guarantee capacity and risk portfolio.

#### **PROCEDURES**

3.03 In accordance with Article 15 of the Convention, a guarantee may only be issued if the Host Country has previously approved the issuance of the guarantee by the Agency against the risks designated for cover. Procedures for obtaining such approvals, as well as other procedures relating to underwriting decisions, are set forth in Paragraphs 3.20 through 3.35 below.

### **SECTION II: PROJECT ASSESSMENT**

#### **ASSESSMENTS REQUIRED BY ARTICLE 12(D)(I)–(III)**

3.04 In accordance with Article 12(d) of the Convention, the Underwriting Authority must satisfy itself as to the Investment Project's:

- (i) economic soundness;

- (ii) contribution to the development of the Host Country;
  - (iii) compliance with the Host Country's laws and regulations;
- and
- (iv) consistency with the declared development objectives and priorities of the Host Country.

### **ECONOMIC SOUNDNESS AND CONTRIBUTION TO DEVELOPMENT**

3.05 In determining whether an Investment Project is economically sound and contributes to the development of the Host Country, the Underwriting Authority shall assess the Investment Project's technical feasibility and its financial and economic viability over the proposed period of guarantee. Such assessment shall have regard to all relevant economic and financial factors, including the need for a reasonable economic rate of return regardless of external factors such as trade concessions or subsidies. In carrying out such assessments, the Agency shall have due regard to the need for prompt underwriting decisions.

3.06 In determining whether an Investment Project will contribute to the development of the Host Country, the Underwriting Authority shall have regard to such factors as the Investment Project's potential to generate revenues for the Host Country; the contribution of the Investment Project to maximizing the Host Country's productive potential, and in particular to producing exports or import substitutes and reducing vulnerability to external economic changes; the extent to which the Investment Project will diversify economic activities, expand employment opportunities and improve income distribution; the degree to which the Investment Project will transfer knowledge and skills to the Host Country; and the effects of the Investment Project on the social infrastructure and environment of the Host Country. Before issuing a Contract of Guarantee, the Underwriting Authority shall satisfy itself that the Investment Project is consistent with MIGA's environmental policies and takes into account MIGA's environmental guidelines; their specific application is addressed in MIGA's environmental and social review procedures. The Contract of Guarantee shall include provisions allowing the Agency to monitor the compliance of the project with these environmental guidelines and

policies while the contract is in force. The Contract of Guarantee shall also establish that non-compliance with Host Country regulations or MIGA environmental policies or guidelines entitles MIGA to cancel the contract if the non-compliance is not corrected within a period set forth in the Contract of Guarantee. Annex B sets forth the policy to be followed by the Agency for these purposes.<sup>8</sup>

3.07 The Underwriting Authority shall give particular attention to the need to encourage:

- (i) investments in lesser developed countries;
- (ii) investments among developing member countries; and
- (iii) joint ventures freely agreed between foreign and domestic investors.

3.08 Investments of a military or highly speculative nature or in legally prohibited activities such as narcotics production shall not be covered. MIGA shall not cover investments that do not comply with the national laws of the Host Country, including those that protect core labor standards and related treaties ratified by the Host Country; nor shall it cover investments that use Forced Labor or hire Harmful Child Labor.<sup>9</sup>

#### **COMPLIANCE WITH LEGAL REQUIREMENTS AND CONSISTENCY WITH DEVELOPMENT OBJECTIVES**

3.09 The Underwriting Authority shall, in accordance with the procedures set forth in Paragraphs 3.28 and 3.29 below, satisfy itself as to the Investment Project's compliance with the Host Country's laws and regulations and its consistency with the declared development objectives and priorities of the Host Country at the time of the underwriting decision.

3.10 The Underwriting Authority shall deny coverage if the government of the Applicant's home country notifies the Agency that the investment

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<sup>8</sup> Paragraph 3.06 was amended on May 11, 1999.

<sup>9</sup> Paragraph 3.08 was amended on April 14, 1998.

would be financed with funds transferred from the home country in violation of its laws.

### **SECTION III: RISK ASSESSMENT**

#### **NATURE OF RISK ASSESSMENT**

3.11 The Underwriting Authority shall assess the risks to be assumed under each proposed guarantee. In accordance with Article 25 of the Convention, the Underwriting Authority shall apply sound business and prudent financial management practices in making this assessment. The risk assessment shall be an independent business decision made only on the basis of the investment's vulnerability to covered risks.

3.12 The Underwriting Authority's risk assessment shall have regard to factors which relate to:

- (i) the Investment Project; and
- (ii) the Host Country.

The Underwriting Authority shall in particular guard against accumulating bad risks and providing coverage which would reduce the Applicant's self-interest in loss avoidance and loss minimization.

#### **FACTORS RELATING TO THE INVESTMENT PROJECT**

##### **Factors Relevant to All Risks**

3.13 In the assessment of all risks, the Underwriting Authority shall have regard to such factors relating to the Investment Project as the economic sector of the Investment Project and the Investment Project's size relative to such sector in the Host Country; the size of the Investment Project relative to the gross national product of the Host Country; the experience and reputation of the Applicant and the Project Enterprise; participation in the Investment Project of other investors, foreign or domestic; and the nature, including the mobility, of the assets contributed to the Investment Project.

### **Factors Relevant to Specific Risks**

3.14 The Underwriting Authority shall also have regard to factors relating to the Investment Project which are particularly relevant to the specific risks proposed for cover. Such additional factors may include:

(i) for the currency transfer risk: the Investment Project's potential to earn freely usable currency through exports; any arrangements for the accumulation of export proceeds in accounts outside the Host Country or in free accounts in the Host Country; and any agreements with the Host Government giving the Applicant or the Project Enterprise guaranteed or preferential access to foreign exchange;

(ii) for the expropriation and breach of contract risks: the degree to which the continuity and profitability of the Investment Project is dependent on actions or omissions of the Host Government or on the continued participation of the Applicant; the nature and terms of any agreement between the Applicant and the Host Government, and in particular the fairness and flexibility of such terms; any provisions in such agreement for the settlement of disputes by international arbitration, especially under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States; and the likelihood that the Host Country will be able to compensate for an expropriation out of the earnings, and in particular the foreign exchange earnings, of the Investment Project;

(iii) for the war and civil disturbance risk: the strategic importance of the Investment Project; the location of the Investment Project and its vulnerability to physical damage; and the security arrangements for the Investment Project.

### **FACTORS RELATING TO THE HOST COUNTRY**

#### **Factors Relevant to All Risks**

3.15 An eligible investment may be guaranteed under this Chapter when the legal protection of foreign investment in the Host Country is adequate. In the assessment of all risks, the Underwriting Authority shall, in accordance with Article 12(d)(iv) of the Convention, satisfy itself as to the investment conditions in the Host Country, including the availability of fair and equitable treatment and legal protection for the investment.

3.16 An investment will be regarded as having adequate legal protection if it is protected under the terms of a bilateral investment treaty between the Host Country and the home country of the investor. When there is no such treaty, adequate legal protection should be ascertained by the Agency in the light of the consistency of the law and practice of the Host Country with international law. Such assessment shall be conducted in strict confidentiality and its outcome shall be shared only with the government concerned with a view to enabling it to improve the investment conditions in its territory.

3.17 If the Underwriting Authority is not satisfied as to the availability of fair and equitable treatment and legal protection for the investment, it shall only issue coverage after the Agency has concluded an agreement with the Host Country under Article 23(b)(ii) of the Convention and Paragraph 3.33(i) below.

### **Factors Relevant to Specific Risks**

3.18 The Underwriting Authority shall also have regard to factors relating to the Host Country which are particularly relevant to the specific risks proposed for cover. Such additional factors may include:

(i) for the currency transfer risk: the foreign exchange position of the Host Country, including its likely development over the proposed period of guarantee; any relevant record of transfer delays for investment in general and in particular for the type of project and investment under consideration; and the potential for recovery, including the Agency's ability to use the local currency;

(ii) for the expropriation and breach of contract risks: any recent record of interventions in foreign investments and defaults on contracts of the type proposed to be guaranteed; the relevant record of the Host Country on the settlement of expropriation and breach of contract claims; and any relevant pending disputes, and in particular any pending disputes with the Agency, national investment guarantee agencies or private political risk insurers;

(iii) for the war and civil disturbance risk: the existence or likelihood of an armed conflict involving the Host Country, or an

insurgency; and any internal tensions which might lead to civil disturbance.

**RELATIONSHIP BETWEEN FACTORS RELATING TO THE  
INVESTMENT PROJECT AND FACTORS RELATING  
TO THE HOST COUNTRY**

3.19 The Underwriting Authority's risk assessment shall have regard to the relationship between factors relating to the Investment Project and factors relating to the Host Country. For example, a currency transfer risk might be acceptable despite the unfavorable foreign exchange position of the Host Country if the Investment Project can earn freely usable currency through exports; a risk of expropriation might be alleviated by the Host Country's interest in continuing cooperation with the Applicant; and an existing insurgency might not exclude a guarantee against the risk of war and civil disturbance if the Investment Project is located in a region sufficiently protected by the Host Government.

**SECTION IV: PROCEDURES RELATING TO  
UNDERWRITING DECISIONS**

**FILING AND CONSIDERATION OF APPLICATIONS**

3.20 Applicants shall, unless they proceed directly to filing a definitive application, file a preliminary application with the Agency providing basic information on the Applicant, the prospective investment, and the risks against which coverage is sought. The preliminary application, or if no such application is filed, the definitive application, shall be registered by the Agency if it appears to the Agency that the investment is eligible for underwriting. Where a preliminary application is filed, the Applicant's definitive application shall be filed within three months of the notice of registration unless this period is extended by the Agency.

3.21 Unless eligibility is dependent on a decision by the Board under Paragraph 3.35 below, an investment shall normally be considered for underwriting only after the Underwriting Authority has determined that the investment is eligible for coverage.

## **OBTAINING HOST COUNTRY APPROVAL**

3.22 To the extent that the Applicant does not provide evidence of the Host Country approval referred to in Paragraph 3.03 above, the Underwriting Authority shall request such approval from the Host Country. Such approval may be requested by any rapid means of official communication. The Underwriting Authority may seek from individual host countries advance approvals for the coverage of all or certain types of investments or risks. To the extent that such an advance approval has not been obtained, the request for approval shall:

(i) identify the Applicant, including any link of the type referred to in Paragraph 1.15 above that the Applicant may have with the Host Country, and identify the Investment Project and the Project Enterprise if different from the Applicant;

(ii) specify the amount of guarantee under consideration and any contemplated standby coverage;

(iii) specify the proposed period, or periods of guarantee; and

(iv) designate the risks proposed for coverage.

3.23 Unless the Host Country states otherwise, the Underwriting Authority may deem approval of a certain coverage to include approval of any lesser coverage of the same risk.

3.24 In the absence of an applicable advance approval by the Host Country, the Underwriting Authority shall also obtain, or require the Guarantee Holder to obtain, the Host Country's approval for any increase in the amount of guarantee other than an increase resulting from the exercise of a standby option, and for any extension of the period of guarantee or any issuance of coverage for additional types of risk.

3.25 In accordance with Article 38(b) of the Convention, the Underwriting Authority may deem the approval to be given if the Host Country presents no objection within a reasonable period to be specified by the Agency. Such period shall normally be agreed between the Agency and the authority designated by the Host Country pursuant to Article 38(a) of the Convention but shall in no case be less than thirty

days from the date of the request for approval and shall be extended at the request of the Host Country.

### **FACILITATING PROMPT UNDERWRITING DECISIONS**

3.26 The President shall institute procedures to expedite the processing of applications for guarantees and the taking of decisions thereon. Such procedures shall require the Underwriting Authority to endeavor to reach a prompt decision on the issuance of a guarantee. To the extent possible, the decision shall be made within one hundred twenty days of receipt by the Agency of a definitive application which meets all the requirements of the Agency. After receipt of an application, the President will arrange for the speedy dispatch of a non-binding indication as to the likelihood of cover being offered or not offered.

3.27 To facilitate a prompt underwriting decision, the Underwriting Authority may, in making its assessment of the Investment Project, rely to the extent appropriate on statements of the Applicant, the accuracy and completeness of which the Applicant shall be required to warrant in the contract of guarantee pursuant to Paragraph 2.13 above. Where the proposed amount of guarantee is less than \$10 million, the Agency may base its assessment of the Investment Project on appraisals or documents of other reliable institutions.

3.28 The Underwriting Authority may also rely on a statement by the Host Country as evidence that the Investment Project conforms to the laws, regulations, objectives and priorities referred to in Article 12(d) of the Convention and Paragraph 3.09 above.

3.29 In appropriate cases, the Underwriting Authority may deem the Investment Project to comply with the laws and regulations, including in particular any investment codes, of the Host Country in the light of other evidence, such as an investment contract between the Applicant and the Host Country or a formal admission of the investment by the Host Country. The Underwriting Authority may also rely on its own analysis of the Host Country's laws and regulations or on an independent legal opinion.

## **CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

3.30 The Agency shall safeguard information received on a confidential basis and shall in particular safeguard business information of a proprietary character received from Applicants or Guarantee Holders so as to avoid its disclosure to actual or potential competitors. Information shall be disclosed in accordance with Annex C to these Regulations.<sup>10</sup>

3.31 Requests to a prospective Host Country for its approval of a proposed investment, or arrangements for advance approval by a Host Country and arrangements for parallel or joint underwriting and reinsurance shall incorporate appropriate safeguards for the purposes of Paragraph 3.30.

## **ENHANCEMENT OF RISK PROFILE**

3.32 If the Underwriting Authority has concerns with respect to the risks related to an investment under consideration it shall, before denying coverage, and after consultation with the Applicant where applicable, seek where warranted to:

(i) advise the Host Government on measures, which would improve the risk profile of the investment; or

(ii) advise the Applicant, in consultation with the Host Country as appropriate, on the structuring of the investment or Investment Project in a manner which will diminish its vulnerability to the risk or risks to be covered, or after considering possibilities under (i) and (ii) above;

(iii) design coverage in a manner which diminishes risk, but still encourages the Applicant to proceed with the investment.

In cases where the size of the Agency's exposure in a single project or Host Country is an impediment to the issuance of the guarantee, the Agency shall examine the possibility of overcoming this impediment through coinsurance or reinsurance arrangements.

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<sup>10</sup> The heading of this subsection and paragraph 3.30 were amended on May 11, 1999.

3.33 With a view to enhancing its ability to issue guarantees, the Agency may agree with the Host Country on:

(i) the treatment of guaranteed investment in accordance with Article 23(b)(ii) of the Convention;

(ii) the use of local currency which the Agency may receive in future as subrogee of the Guarantee Holders, as provided in Article 18(c) of the Convention.

Before discussions on such agreements are initiated, the Board will be advised. Such agreements may apply to one or more guaranteed investments in the Host Country. Under agreements of the type referred to in Subparagraph (ii) above, the Agency may seek to obtain the Host Country's consent to the sale by the Agency of local currency to international lending or other institutions, or to foreign investors in, or importers of goods from, the Host Country. The Host Country may also undertake under such an agreement to redeem the local currency for a freely usable currency within a specified period and at a specified rate of exchange.

3.34 Methods of designing coverage to diminish risk may include:

(i) a reduction of the period or amount of guarantee;

(ii) provision for the termination or adjustment of the contract of guarantee by the Agency within specified limits;

(iii) the exclusion of certain risks or types of risk from coverage;

(iv) the restriction of coverage to specific types of loss;

(v) provision for additional or extended periods before payment of a claim;

(vi) the incorporation into the contract of guarantee of specific obligations of the Applicant or Project Enterprise on loss avoidance or loss minimization;

(vii) limitation of the compensation to be paid within stated time periods for currency transfer losses; and

(viii) provision for first-loss deductibles.

### **APPROVAL OF CONTRACTS OF GUARANTEE**

3.35 (a) In accordance with Article 16 of the Convention, approval of the contracts of guarantee shall be the responsibility of the President under the direction of the Board. The President shall therefore only approve contracts of guarantee which are consistent with the limitations and priorities approved by the Board in these Regulations and in future guidelines, which the Board may issue from time to time.

(b) Board approval shall be required according to these Regulations on the following matters:

- (i) coverage of non-commercial risks other than those referred to in Article 11(a) of the Convention and those which have been generally authorized by the Board for cover under Article 11(b) of the Convention;
- (ii) coverage of investments other than those referred to in Article 12(a) of the Convention and those which have been generally authorized by the Board for cover under Article 12(b) of the Convention;
- (iii) issuance of a guarantee to a national of the Host Country under Article 13(c) of the Convention;
- (iv) coverage of an investment in a dependent territory for whose international relations a member is responsible, to the extent that the Board has not already designated the territory as a developing member country under Paragraph 1.21 above;
- (v) exceptions from the limits established by or pursuant to Paragraphs 2.12, 3.55, 3.59 and 3.60;
- (vi) premium rates outside the ranges set out in Paragraph 3.43; and

(vii) coverage of loans and guarantees of loans where their duration is less than three years as provided in Paragraph 1.04(v).<sup>11</sup>

(c) The President shall circulate to the Directors a report on each guarantee he plans to approve including information on the Host Country, the investment, as well as the amount, terms and conditions of the guarantee. Each such report shall include a statement by the President to the effect that the proposed guarantee is consistent with the Convention, these Regulations and the policies approved by the Board, together with an indication of any new policy issues involved. Any guarantee covering an amount exceeding \$25 million shall, before it is approved by the President, be submitted to the Board for its concurrence that the guarantee is within the guidelines and policies approved by the Board. Guarantees in lesser amounts shall be submitted to the Board for consideration of the policy issues involved if a Director so requests within eight working days of dispatch of the report to them.<sup>12</sup> The Board shall discuss the issues raised by such requests and may give guidance to the President with regard to such issues, which may include a directive not to proceed with the issuance of the guarantee.

(d) Each quarter, the President shall prepare and submit to the Board for its review a report on the guarantees approved during the preceding quarter.

(e) For certain types of programs, covering guarantees in amounts not exceeding US \$25 million, the Board may waive the requirement contained in Paragraph 3.35 (c) that the President circulate a report to the Directors prior to the President's approval of a guarantee, provided that:

- (i) there is a justification and recognized need to expedite the approval process for such types of guarantees; and
- (ii) each such guarantee approved by the President in accordance with the waiver is reported to the Board

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<sup>11</sup> Paragraph 3.35(b)(vii) was amended on December 10, 1993.

<sup>12</sup> Paragraph 3.35(c) was amended on December 10, 1993, and on October 26, 2000.

each quarter pursuant to Paragraph 3.35 (d) of the Operational Regulations.

This waiver shall not apply to guarantees where approval of the Board is required under Paragraph 3.35 (b).<sup>13</sup>

## **SECTION V: GENERAL PRINCIPLES OF PREMIUMS AND FEES**

### **OBJECTIVES**

3.36 Pursuant to Article 26 of the Convention, premiums and application fees shall be charged for guarantees issued by the Agency. The Agency may charge additional fees for special services provided in connection with its guarantees, and shall normally also charge fees for services rendered under Part II of these Regulations. Premiums and fees shall, pursuant to Article 25 of the Convention, be established in accordance with sound business and prudent financial management practices and with due regard to the need to:

- (i) cover the Agency's administrative expenditures; and
- (ii) build up sufficient reserves to pay claims without recourse to the callable portion of the Agency's capital.

### **REVIEW OF PREMIUMS AND FEES**

3.37 The Board shall annually review the levels of premiums and fees to determine whether they are consistent with the Agency's purpose of encouraging investment and its obligation to maintain a sound financial position. The President shall, no later than five years after the issuance of the first contract of guarantee, submit to the Board a study of the impact of the periods of guarantee offered and premiums quoted by the Agency on the policies and volume of business of private and public political risk insurers in member countries.

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<sup>13</sup> Paragraph 3.35(e) was added on February 17, 2004.

## **SECTION VI: PREMIUMS**

### **CALCULATION AND PAYMENT OF PREMIUMS**

3.38 Premiums charged by the Agency for each guarantee shall be calculated on an annual basis as a percentage of the amount of guarantee. Unless provided otherwise in a contract of guarantee, premiums shall be payable in annual installments, with the first installment being due on or before the conclusion of the contract of guarantee and subsequent installments being due on or before each contract anniversary date.

### **TYPES OF PREMIUM RATES**

3.39 Premium rates shall be established for the coverage of each type of risk referred to in Article 11(a) of the Convention. The Agency may provide coverage for, and in appropriate cases restrict coverage to, a combination of types of risk as a package. In these cases, the premium rate for the package shall be established in accordance with Paragraph 3.43 below, less such discount within the limit set forth in Paragraph 3.43 as would reflect the advantages to the Agency of a package, particularly the alleviation of the hazard of adverse selection against the Agency and the more favorable ratios of premium to incremental liability and to use of guarantee capacity as compared with individual coverages.

### **STANDBY PREMIUMS**

3.40 An additional premium shall be charged for any standby coverage provided under Paragraph 2.12 above. Such standby premium shall be calculated as a percentage of the amount of standby coverage. Standby premiums may range from twenty-five to fifty percent of the rate or rates determined by the Underwriting Authority for the actual coverage of the same type of risk in the guaranteed investment or of the risk package, as the case may be.

### **ADJUSTMENT OF PREMIUM RATES**

3.41 Contracts of guarantee shall specify the applicable premium rate or rates and the schedule for the payment of premiums. Premium rates shall only be increased during the period of guarantee to the extent that

covered losses or the likelihood of such losses necessitate such increases to maintain the Agency's financial soundness, subject to the limitations specified below. For this purpose, contracts of guarantee may entitle the Agency, five years after the conclusion of the contract and thereafter at each contract anniversary date, to increase premiums as required; provided, however, that the increases shall:

(a) only be applied to broadly defined types of risk, forms of investment, economic sectors or groups of host countries; and

(b) in no case exceed in the aggregate one hundred percent of the applicable premium rate initially specified in the contract of guarantee.

Premiums may be adjusted downwards in accordance with sound business principles, within the ranges provided in Paragraph 3.43 below, provided that such adjustment:

(a) may only be made at each contract anniversary date following the fourth such date; and

(b) may in no case exceed in the aggregate fifty percent of the applicable premium rate initially specified in the contract of guarantee.

#### **ESTABLISHMENT OF PREMIUM RATES**

3.42 Premium rates shall be established by the Underwriting Authority within the ranges set forth in, or determined pursuant to, Paragraphs 3.43 through 3.45 below for each type of risk, on the basis of an evaluation, undertaken in accordance with the rating factors listed in the guidelines attached to these Regulations, of the actual risks assumed by the Agency under the contract of guarantee.

#### **Premium Ranges for Eligible Risks under Article 11(a)**

3.43 On the basis of the evaluation referred to in Paragraph 3.42 above, contracts of guarantee shall establish annual premium rates for each type of risk referred to in Article 11(a) of the Convention. Such rates shall not be less than 0.3 percent nor more than 1.5 percent of the amount of guarantee for each individually covered type of risk. A discount of up to

fifty percent of the sum of individual rates determined by the Agency to be appropriate for the investment may be given for packages including all, or several of such types of risk.

3.44 In exceptional circumstances, the President may recommend to the Board that it approve premium rates outside the foregoing ranges.

#### **Premium Ranges for Other Risks**

3.45 Rates for the coverage of types of risk referred to in Article 11(b) of the Convention shall be established by the Underwriting Authority within the range set by the Board in its decision to extend coverage to the type of risk concerned.

### **SECTION VII: FEES**

#### **APPLICATION FEES**

3.46 In addition to premiums, the Agency shall be permitted to charge a fee, in such amounts and in such circumstances as it shall determine, for every definitive application for a guarantee submitted to it under Paragraph 3.20 above. No fee shall be charged for registering preliminary applications under Paragraph 3.20.<sup>14</sup>

#### **FEES FOR SPECIAL SERVICES**

3.47 The Agency may charge fees for special services rendered to an investor in conjunction with a guarantee, and the Agency may agree with the investor on fees for other services.

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<sup>14</sup> Paragraph 3.46 was amended on June 10, 1996.

## **SECTION VIII: GUARANTEE CAPACITY AND ITS ALLOCATION**

### **LIMIT OF GUARANTEE CAPACITY**

3.48 In accordance with Article 22(a) of the Convention, the Underwriting Authority shall not issue any guarantee, including reinsurance, which would raise the outstanding aggregate amount of contingent liabilities above one hundred fifty percent of the sum of the Agency's unimpaired subscribed capital and reserves, plus such portion of reinsurance cover obtained by the Agency as shall be determined pursuant to Paragraph 3.50 below. This sum shall be the initial limit of the Agency's guarantee capacity, pending review and decision pursuant to Paragraph 3.52 below.

3.49 For the purpose of calculating the guarantee capacity, the amount of contingent liability assumed by the Agency under a contract of guarantee shall be deemed to be the largest of the limits of liability stated therein for compensation of a loss under any covered type of risk, plus one hundred percent of the amount of standby coverage issued against the same type of risk, subject to adjustment by the Board in the light of experience and to continuing review of the Agency's ability to provide coverage, within the limits of its guarantee capacity, in case the standby option is exercised.<sup>15</sup>

3.50 (i) The amount of reinsurance obtained by the Agency which may be deemed to constitute an addition to the guarantee capacity shall be ninety percent of the reinsurance, provided that the Agency is satisfied with the financial reliability of the reinsurer; however, this percentage may be increased up to one hundred percent when coverage is provided by a reinsurer acting on the account of, or guaranteed by, its government, or if the reinsurer is the only obligor towards the Guarantee Holder ("cut-through" reinsurance). In any case, the reinsurance that can be added to the guarantee capacity must satisfy the following conditions: consonance with the terms and conditions of a reinsured contract, or contracts of guarantee, including expiry according to its terms no sooner than the

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<sup>15</sup> Paragraph 3.49 was amended on April 23, 1990.

reinsured contracts of guarantee or applicable portions thereof, and either:<sup>16</sup>

- a) covers all of the risks covered by the reinsured contract of guarantee; or
- b) covers one or more types of risk covered by the reinsured contract or contracts of guarantee, in which case only the potential contribution of such reinsurance to the reduction of the excess of the Agency's contingent liability for the largest type of risk over the next largest type of risk may be credited to the Agency's capacity;

(ii) the President shall, from time to time, review the Agency's reinsurance coverage and recommend to the Board such revisions of this provision as he deems appropriate, including any addition to guarantee capacity that may properly be attributed to reinsurance, which may expire before a reinsured contract or contracts of guarantee, or which is otherwise not fully consonant with a reinsured contract or contracts.

### **Reinsurance Limits**

3.51 The aggregate amount of contingent liability assumed by the Agency through its issuance of reinsurance shall not exceed forty percent of its guarantee capacity.<sup>17</sup> The aggregate amount of contingent liability assumed by the Agency on account of reinsurance, which it may issue in respect of investments, which have been completed more than twelve months before the request for such reinsurance shall at no time exceed ten percent of the Agency's aggregate contingent liability calculated in accordance with Paragraphs 3.49 and 3.50.

### **Review**

3.52 The President shall maintain a status report of the current amount, utilization, and projected changes in the Agency's guarantee capacity and make recommendations to the Board regarding changes in the provisions of Paragraphs 3.48 through 3.51 above that he may believe to be

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<sup>16</sup> Paragraph 3.50(i) was amended on February 2, 1999.

<sup>17</sup> Paragraph 3.51 was amended on December 10, 1993.

indicated by experience. In order to assist the Board in its consideration of whether changes in the limit of guarantee capacity, within the overall limit provided for in Article 22(a) of the Convention, should be recommended to the Council, the President shall, at least semi-annually, inform the Board of the risk profile of the Agency's portfolio and of any significant constraints on the Agency's fulfillment of its mandate attributable to the limit of guarantee capacity.

3.53 In projecting the Agency's guarantee capacity, the President shall make prudent allowances for potential changes in the exchange relationships between the currencies of its guarantees and reinsurance and the currencies held in its reserves. The International Monetary Fund and the World Bank shall be consulted in making such allowances. The President shall consider possible measures designed to mitigate the effects on the Agency of large changes in exchange rates and shall recommend to the Board such measures as he may deem appropriate.

#### **ALLOCATION OF GUARANTEE CAPACITY AMONG MEMBERS**

3.54 The Agency shall endeavor to distribute the benefits of its guarantee capacity among members as broadly as may be permitted by the distribution of investment opportunities, the decisions of investors and host countries, and the Agency's other policies. The Agency shall give due regard to the needs of the lesser developed among its developing member countries.

#### **Investors' Countries**

3.55 The President shall, in light of the Agency's experience, submit to the Board not later than one year after the Agency's establishment, a paper on the total amount of guarantees that may be held by investors from a single member for discussion with a view to adopting appropriate guidelines pursuant to Article 22(b)(i) of the Convention.

3.56 For the purpose of attributing a guarantee to a member in cases where a corporate Applicant's place of incorporation and principal place of business differs from the country of which the owners of the majority of its capital are nationals or where the nationality of such owners cannot

be proved by the Applicant, the Agency shall deem the Applicant to be from:

(i) the member in which the Applicant is incorporated and has its principal place of business or, if the Applicant is incorporated and has its principal place of business in a non-member;

(ii) the member under whose official investment guarantee program the Applicant is eligible for coverage; or

(iii) the member or members on which the Applicant's eligibility otherwise depends.

### **Host Countries**

3.57 The Agency shall endeavor to encourage investment in as large a number of host countries as possible, consistent with its developmental objective and prudent risk management subject to the requirements of Paragraphs 3.58 through 3.60 below.

## **SECTION IX: PORTFOLIO DIVERSIFICATION**

### **GENERAL REQUIREMENTS**

3.58 The Underwriting Authority shall, in accordance with Article 22(b)(ii) of the Convention, endeavor to diversify the guarantee portfolio so as to restrict the concentration of exposure to loss in individual projects, host countries, sectors and types of guaranteed risk. For this purpose, the Agency shall seek to accelerate the growth of the portfolio, especially by promoting investments suitable for the Agency's support, by joining other agencies in providing support for investments, and by reinsuring eligible investments insured by others.

### **RISK DIVERSIFICATION MEASURES**

3.59 The President shall report to the Board semi-annually on the measures taken for the purpose of avoiding and mitigating excessive concentration of risks. He shall recommend, no later than the Board's first meeting one year after the Agency is established, operational

guidelines including appropriate quantitative limits on the concentration of exposure in respect of such factors specified in Paragraph 3.58 above as may be appropriate.

3.60 The maximum net exposure which may be assumed by the Underwriting Authority in respect of a country exposure limit and a single project exposure limit may be reviewed annually. This net exposure limit shall incorporate the credit risk associated with any reinsurance agreements. Subsequent to substantial changes in the international investment environment or MIGA's capital structure, the Underwriting Authority will propose appropriate changes in this limit.<sup>18</sup>

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<sup>18</sup> Paragraph 3.60 was amended on February 2, 1999, and on May 11, 2007.

## **CHAPTER FOUR: CLAIMS**

### **SECTION I: OBJECTIVES**

4.01 In administering claims and recovering payments from host countries, the Agency's objectives shall be to:

(i) maintain a sound financial position and endeavor to meet its financial obligations from its revenues, reserves and capital paid in cash;

(ii) inspire and maintain the confidence of investors in the Agency's guarantee protection; and

(iii) encourage the negotiated settlement of disputes relating to guaranteed investment and promote increased investment in the Host Country.

4.02 To further the foregoing objectives, the Agency shall:

(i) cooperate with Guarantee Holders and Host Governments with a view to avoiding covered losses;

(ii) be prepared to provide its good offices in the settlement of disputes between Guarantee Holders and Host Governments;

(iii) require Guarantee Holders to protect their assets and preserve and pursue their rights as diligently as if they had no guarantee protection;

(iv) assess claims on the basis of their legal merits and promptly pay valid claims;

(v) pursue, in accordance with sound business practices, recovery of payments from host countries; and

(vi) make reasonable efforts to reach amicable settlements in accordance with sound business practices with host countries on rights and claims acquired through subrogation.

## **SECTION II: CLAIMS ADMINISTRATION**

### **ACTIONS ON NOTICE OF IMMINENT LOSSES AND ON RECEIPT OF CLAIMS**

4.03 Upon receiving a notification of the type referred to in Paragraph 2.14(iv) above, or upon learning by other means of an event which might give rise to a covered loss, the Agency shall, where appropriate, consult with the Host Government and the Guarantee Holder on ways to avert or minimize a claim.

4.04 Upon receiving a claim, the Agency shall normally, after completing a preliminary examination of the claim:

(i) advise the Guarantee Holder of any evidence which may be needed to sustain the claim and, where appropriate;

(ii) consult with the Guarantee Holder on steps which may facilitate withdrawal, or minimization of a claim and the preservation of his rights against the Host Country or other obligors; and

(iii) consult with the Host Government on the accuracy and completeness of information provided by the Guarantee Holder regarding the claim and on measures which may be taken to facilitate withdrawal, or minimization of a claim, including mediation by the Agency of a negotiated settlement between the Host Government and the Guarantee Holder.

### **FILING OF CLAIMS**

4.05 Contracts of guarantee shall require the Guarantee Holder to document a claim, including evidence as to the occurrence of any event giving rise to a covered loss and the amount of such loss. The Agency shall promptly advise the Guarantee Holder of the information required

to establish a claim and to facilitate negotiation of a settlement with the Host Country.

4.06 Contracts of guarantee shall entitle the Agency to deny payment of any claim which is filed more than three years after the occurrence of the covered event or after such other period as the contract of guarantee may provide. Investors shall also notify the Agency of an event which may give rise to a covered loss as provided in Paragraph 2.14(iv).

#### **PROMPT DETERMINATION AND SETTLEMENT**

4.07 The Agency shall expeditiously make a determination as to its liability to pay a claim within the time limits provided below after all the evidence substantiating the claim which the Agency may require has been submitted by the Guarantee Holder or otherwise obtained. Contracts of guarantee shall specify periods for such determination which normally shall be, with respect to currency transfer risk and war and civil disturbance risk, not less than thirty nor more than ninety days, and for expropriation and breach of contract risks, not less than sixty nor more than three hundred sixty-five days.

#### **DECISIONS ON CLAIMS**

4.08 Decisions on claims shall be made by the President on the recommendation of a Claims Committee appointed by him and chaired by the Agency's chief legal officer. The President shall endeavor to reach a prompt decision on each claim. The President's decision may be to:

- (i) pay the claim as filed;
- (ii) deny the claim;
- (iii) authorize the negotiation of a settlement with the Guarantee Holder; or
- (iv) proceed otherwise.

The President shall keep the Board informed of claims and decisions thereon, and shall inform the Board of likely claims that come to the Agency's attention.

## **PURSUIT OF REMEDIES BY GUARANTEE HOLDERS**

4.09 Contracts of guarantee may require Guarantee Holders to follow instructions of the Agency in pursuing the remedies referred to in Paragraphs 2.14(v) and 2.14(vi) above. A claim may be paid while a proceeding to obtain such a remedy is pending, but the Agency may delay, or deny payment if the Guarantee Holder has not promptly initiated and diligently pursued such proceeding as instructed by the Agency.

4.10 Where rights or claims of a Guarantee Holder referred to in Paragraph 4.15 below are subject to an agreement providing for arbitration in a forum which may not be available to the Agency, the Agency may, upon notifying the Guarantee Holder of its decision to pay the claim, require the Guarantee Holder to pursue these rights, or claims in such forum and make such arrangements with the Guarantee Holder as may be necessary for this purpose. The Agency may make an advance payment to the Guarantee Holder while the arbitration proceeding is pending, subject to the right of the Agency to reimbursement under such conditions as may be agreed upon between the Guarantee Holder and the Agency. The Agency may reimburse a Guarantee Holder for all, or part of, the expenses he incurs in pursuing the remedies referred to in this Paragraph and in Paragraph 4.09 above.

## **AMOUNT OF COMPENSATION**

4.11 Contracts of guarantee shall provide, or refer to rules and principles, including appropriate accounting principles, for the calculation of the amount of compensation. Such amount shall in no case exceed the amount of guarantee referred to in Paragraph 2.07 above. Nor shall it exceed the percentage of cover, as defined in Paragraph 2.09 above, of the following:

(i) for equity interests other than loans and guarantees of loans: the value of the guaranteed investment immediately before the loss;

(ii) for non-equity direct investments other than loans and guarantees of loans: the fixed fees earned and not received at the time of settlement of the claim by the Agency and the adjusted value of the Guarantee Holder's remaining rights to a share of the production,

revenues or profits of the Investment Project as assessed immediately before the covered event less any future expenses averted as a result of the covered loss; and

(iii) for loans and guarantees of loans: the amount of principal and interest outstanding at the time of payment of the claim.

For the purposes of Subparagraph (i) above, the value of a guaranteed investment shall be the net book value or the fair market value of the guaranteed investment, or either value as adjusted, as the contract of guarantee shall provide in each case. The adjusted value of the Guarantee Holder's remaining rights referred to in Subparagraph (ii) above shall be determined in accordance with rules provided in the contract of guarantee. In all cases, the relevant value shall be determined as of the time immediately before the occurrence of the loss.<sup>19</sup>

4.12 In cases where the Guarantee Holder agrees to reinvest in the Investment Project any compensation by the Agency for damage to tangible assets, contracts of guarantee may provide for compensation on the basis of replacement value. Contracts of guarantee may also provide for compensation for losses arising from an interruption in the operation of the Investment Project, but in no case shall total compensation exceed any of the ceilings referred to in Paragraph 4.11 above.

#### **DOCUMENTING CLAIMS AND REVISING PAYMENTS**

4.13 The Agency may obtain evidence on a claim through consultations with the Host Government, or by other means. If the Agency and a Guarantee Holder disagree on the valuation of an asset, or assets, they may agree to rely on an impartial appraisal.

4.14 If the Agency determines that compensation is payable, but conditions in the Host Country prevent the Agency from ascertaining within a reasonable period all facts necessary to determine the precise amount due, it may calculate the amount of compensation on the basis of the information then available. In such a case, the Agency may, in the light of subsequently received information, revise its calculation and

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<sup>19</sup> Paragraph 4.11 was amended on December 10, 1993.

reclaim, or add to a payment accordingly. Contracts of guarantee may also entitle the Agency, in case new evidence is discovered which shows that there was an error in determining the payment, to reclaim such payment to the extent of the error within a specified period not exceeding five years from the date of payment.

### **SECTION III: SUBROGATION AND ASSIGNMENT**

#### **SCOPE AND TIME OF SUBROGATION AND ASSIGNMENT**

4.15 In accordance with Article 18(a) of the Convention, contracts of guarantee shall provide that, at the time specified in the contract of guarantee pursuant to Paragraph 4.17 below:

(i) the Agency shall be subrogated to such rights or claims related to the guaranteed investment as the Guarantee Holder may have had against the Host Country or other obligors; and

(ii) the Guarantee Holder shall forthwith assign to the Agency all such rights, or claims.

4.16 Contracts of guarantee shall also provide for the assignment by the Guarantee Holder to the Agency of:

(i) funds or other assets related to the guaranteed investment, which are received from, or deposited for the account of the Guarantee Holder by the Project Enterprise, the Host Country, or any other person after the occurrence of the event giving rise to the covered loss; and

(ii) securities, titles, contracts, or other documents, which evidence the interest of the Guarantee Holder in, or his rights against, the Project Enterprise and his ownership of assets contributed to the Investment Project, or which are otherwise relevant to rights, claims, or assets related to the guaranteed investment.

4.17 Subject to any arrangements entered into between the Agency and a Guarantee Holder under Paragraph 4.10 above, such subrogation and assignment shall take place upon payment of a claim, or within such

period following notice by the Agency of its decision to make a payment as the contract of guarantee may provide.

**EXTENT OF SUBROGATION AND ASSIGNMENT;  
RECOVERY IN EXCESS OF PAYMENT**

4.18 The rights, claims and other interests acquired in accordance with Paragraphs 4.15 and 4.16 above shall represent such portion of the relevant rights, claims and other interests as corresponds to the portion of the investment which is covered by the guarantee. For example, if the guarantee covers ninety percent of the investment, the Agency will be subrogated to and assigned ninety percent of the rights, claims and other interests. With the approval of the Host Country, the Agency:

(i) may agree with a Guarantee Holder and/or coinsurer on the assignment to the Agency of the remaining portion of such rights, claims or other interests; and

(ii) may pursue such rights, claims or interests for the account of the Guarantee Holder and/or coinsurer.

In determining whether to enter into such agreements and in pursuing rights under them, the Agency shall pay due regard to the need to maintain its ability to reach a negotiated settlement with the Host Country.

4.19 In some cases, rights acquired by the Agency through subrogation and/or assignment may entitle it to recovery in excess of the payment made by it to the Guarantee Holder. In such a case, the Agency should normally pursue its rights as acquired and pay the Guarantee Holder any such excess recovery (less expenses).

## **SECTION IV: RECOVERY FROM HOST COUNTRIES**

### **DECISIONS ON SEEKING RECOVERY**

4.20 Decisions on seeking recovery of payments from host countries shall be made by the President on the recommendation of the Claims Committee referred to in Paragraph 4.08 above. In seeking such recovery, the Agency shall make every effort to reach a negotiated settlement on a sound financial and business basis with the Host Country concerned. Settlements involving a write-off of more than \$1 million shall require the approval of the Board.

### **PROCEDURES**

4.21 Unless the Agency and the Host Country have concluded an agreement on the settlement of disputes in accordance with Article 57(b) of the Convention, the Agency shall follow the procedure set forth in Paragraphs 4.22 through 4.24 below in seeking recovery of payments from host countries.

4.22 The Agency shall first request the Host Country to enter into negotiations on a settlement in accordance with Article 2 of Annex II to the Convention. The Agency shall in no case institute conciliation, or arbitration proceedings before the expiry of a period of one hundred twenty days from the date of the request to enter into negotiations. The Agency may extend the negotiations over a reasonable period if it appears to the Agency that this would facilitate a settlement.

4.23 If negotiations fail, the Agency shall either:

(i) before submitting the dispute to arbitration, propose to the Host Government that the dispute be submitted to conciliation in accordance with Article 3 of Annex II to the Convention; or

(ii) submit the dispute directly to arbitration in accordance with Article 4 of Annex II to the Convention.

4.24 The Agency should normally respond positively to a request by the Host Government for conciliation before submitting the dispute to arbitration. The Agency shall propose conciliation whenever it appears that conciliation could lead to a settlement and shall throughout conciliation or arbitration proceedings be prepared to resume negotiations.



**CHAPTER FIVE:  
PARALLEL AND JOINT UNDERWRITING,  
REINSURANCE AND ADMINISTRATIVE  
COOPERATION**

**SECTION I: GENERAL PRINCIPLES**

5.01 The Agency shall cooperate with other institutions in encouraging increased and more productive foreign investment in developing countries so as to maximize the effectiveness of its resources and those of others. In accordance with Articles 2, 19, 21 and 23 of the Convention, the Agency shall, consistent with the purposes of the Convention, complement and supplement the activities of the World Bank, the IFC, other multilateral agencies, national agencies of members and private insurers and reinsurers.

5.02 The Agency shall endeavor to:

(i) strengthen, through its participation, the confidence of other parties to, and guarantors of, Investment Projects in their security;

(ii) supplement existing capacity to guarantee foreign investment against non-commercial risks in developing member countries, especially in new productive projects of high developmental impact;

(iii) extend the benefits of the Agency's guarantee capacity by sharing coverage of investments with other official and private insurers to the extent feasible and consistent with its developmental mandate;

(iv) complement the types of protection currently available from other insurers for both equity and non-equity forms of investment against non-commercial risks which pose significant deterrents to investment, thereby encouraging forms of investment appropriate to particular opportunities and compatible with the policies of particular host countries;

(v) through example, joint responses to individual investors, and broader consultation, stimulate improvements in the scope of investment guarantees and other support for foreign investment offered by both official and private agencies; and

(vi) effect administrative economies by sharing information and support functions with cooperating agencies, as may be feasible and appropriate.

## **SECTION II: COOPERATION WITH OTHER GUARANTORS/INSURERS**

### **MECHANISMS AND FORMS OF COOPERATION**

5.03 As provided by Articles 19 and 21 of the Convention, the Agency may enter into arrangements, both with respect to an individual Investment Project and of broader scope, to facilitate cooperation with national investment guarantee programs of members, regional investment guarantee agencies and private insurers. Such arrangements may deal with one or several aspects of cooperation, such as parallel underwriting, joint underwriting, reinsurance and similar risk-pooling, or brokerage and other intermediation functions.

5.04 The Agency's primary objectives in cooperative arrangements with other insurers shall be to enhance the capacities and effectiveness of participating agencies in encouraging productive foreign investment in developing countries, to harmonize or adapt to the divergent terms, conditions and administrative practices of the various insurers of an investment, to effect administrative economies, and to afford greater convenience to Applicants for insurance by two or more agencies.

5.05 The President is authorized to initiate, or accept on behalf of the Agency, proposals for ad hoc cooperative arrangements with other parties as may be required to further the objectives of the Agency. Approval of the Board shall be required for framework cooperative arrangements and for the Agency's membership in organizations providing continuing forums of consultation among agencies engaged in similar activities.

## **PARALLEL AND JOINT UNDERWRITING**

5.06 The Underwriting Authority shall endeavor to realize the objectives stated in Paragraphs 5.01 and 5.02 above and to diversify the guarantee portfolio in accordance with Paragraph 3.58 above by sharing risks through parallel and joint underwriting with official and private insurers.

5.07 The Agency shall seek to participate sufficiently to fulfill the purposes of Paragraph 5.02(i) above and, in particular, seek to provide amounts and types of risk coverage which are not adequately available from other reliable insurers on terms and conditions likely to encourage investment for development purposes.

5.08 The Agency shall endeavor to harmonize with co-guarantors of a single investment the principal conditions and procedures of guarantee, claims payment and recovery, without prejudice to the requirements of the Convention and these Regulations. When the Agency acts as guarantor of a part of an investment or part of the risks covered, it shall apply these Regulations only to the portion or portions of the investment that it guarantees, except that the assessments required by Sections II and III of Chapter Three shall be made with respect to the whole Investment Project.

## **REINSURANCE**

5.09 In accordance with Articles 20 and 21 of the Convention, the Agency may cooperate with investment guarantee agencies of members, regional agencies the majority of whose capital is owned by members, and private entities through reinsurance and similar risk-pooling arrangements. The Agency may obtain reinsurance in respect of its guarantees, or portions thereof, from any appropriate entity on either an individual or composite basis. The Agency also may issue reinsurance in respect of guarantees of specific investments issued by an official agency of a member, or by a regional agency, the majority of whose capital is owned by members, or by a private insurer whose principal place of business is in a member country, subject to the provisions of Article 20 of the Convention, the limit set by Paragraph 3.51 above, and Paragraphs 5.11 through 5.12 below.

5.10 In obtaining reinsurance, the President shall give primary consideration to achieving a reduction of exposure to losses proportionate to the cost of reinsurance and to expanding the Agency's guarantee capacity, as defined in Paragraph 3.48 above. The President shall negotiate reinsurance premiums that reflect the distinctive elements of security, as well as particular risks in the Agency's guarantees to be reinsured.

5.11 Reinsurance issued by the Agency shall be restricted to investments which are consistent with the purposes of the Convention and meet the eligibility requirements of Articles 11 through 14 of the Convention and Chapter One of these Regulations, except that the investment in respect of which reinsurance is issued need not be implemented subsequent to the application for reinsurance. The Board shall approve each issuance of a contract of reinsurance in respect of an investment made prior to the Agency's receipt of the application for such reinsurance.

5.12 In issuing reinsurance, the President shall give primary consideration to diversifying the risks in the Agency's portfolio and to expanding the capacity and readiness of cooperating public agencies and private insurers to cover non-commercial risks important to particular investment decisions on terms and conditions likely to encourage investment. With regard to the latter objective and in accordance with Article 21(a) of the Convention, preference shall be given to issuing reinsurance in respect of investments covered by long-term guarantees and guarantees containing significant improvements in the scope or quality of coverages therefore issued by the reinsured entity.

5.13 The President shall report to the Board the terms and conditions of each contract of reinsurance issued by the Agency and shall submit to the Board an annual evaluation of its reinsurance activities.<sup>20</sup>

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<sup>20</sup> The original Paragraph 5.13 was deleted in its entirety on October 25, 1993. As a result, Paragraph 5.14 became Paragraph 5.13.

## **ADMINISTRATIVE COOPERATION AND BROKERAGE**

5.14 In order to facilitate access by investors to the Agency, the President shall endeavor to establish arrangements with appropriate public or private entities in the home countries of investors for the distribution of information on the Agency's services and for the receipt and referral to the Agency of inquiries and preliminary applications for guarantees. Such administrative arrangements shall not prevent a prospective investor from communicating directly with the Agency.

5.15 The President also may conclude arrangements with appropriate public or private entities of member countries under which they undertake to provide services in regard to aspects of the Agency's guarantee operations, such as receipt and clarification of definitive applications, obtaining warranties and representations from Applicants, and negotiating with an Applicant at the direction of the Agency. Such arrangements shall not transfer to agents the Agency's responsibilities for decisions in underwriting, contracting or claims management.

5.16 Compensation for administrative services provided by other official entities may be made through reciprocal services, through division of application fees and premiums, or through fees related to the volume or other measures of service received.

5.17 Cost estimates for the Agency's use of agents and brokerage services shall be subject to the approval of the Board in its review of the annual budget, in accordance with Section 4 of the Agency's Financial Regulations.

5.18 The President shall submit to the Board annually an evaluation of the costs and benefits of types of brokerage and related services obtained by the Agency, including a comparison of the Agency's practices and experience and those of other investment insurers.

## **SECTION III: ADMINISTRATIVE COOPERATION WITH THE WORLD BANK AND THE IFC**

5.19 The Underwriting Authority shall seek to encourage investment supportive of programs assisted by the World Bank and the IFC.

Pursuant to Paragraph 5.01 above and Part II of these Regulations, the Agency shall make arrangements for systematic consultation and exchange of relevant information with the World Bank and the IFC, subject to safeguards regarding the confidentiality of information available to each institution.

5.20 The Agency's cooperation with the World Bank and the IFC shall not prejudice these agencies' relations with their members, or the Agency's relations with its members, nor shall it affect the Agency's independent responsibility for underwriting and claims management.

5.21 In order to effect economy and avoid duplication, the Agency shall seek to establish administrative arrangements under which, in agreement with the institution involved, it will make use of the facilities, personnel and services of the World Bank, the IFC and the International Centre for Settlement of Investment Disputes. Such arrangements also may provide for assistance by personnel of the Agency to these institutions.

5.22 Pending the employment of the Agency's permanent staff, special arrangements may be made for the use by the Agency of personnel of the World Bank and the IFC.

## **CHAPTER SIX: GUARANTEES OF SPONSORED INVESTMENTS**

6.01 To the extent that they do not conflict with any provision of the Convention regarding the Sponsorship Trust Fund provided for in Article 24 and Annex I of the Convention, these Regulations shall apply *mutatis mutandis* to operations under such Fund.

6.02 Within one year of the Agency's establishment, the President shall prepare and submit to the Board for its approval regulations for operations under the Sponsorship Trust Fund, with due regard to the need to protect the special interests of sponsoring members and host countries of sponsored investments in these operations.



**PART II: CONSULTATIVE AND  
ADVISORY ACTIVITIES**



## **CHAPTER SEVEN: INVESTMENT PROMOTION, ADVISORY AND CONSULTATIVE PROGRAMS**

### **SECTION I: MANDATE**

7.01 Pursuant to Articles 2 and 23 of the Convention, the Agency shall carry out advisory and technical programs for the purpose of helping developing member countries to obtain increased flows of foreign investment for productive purposes. These programs are principally intended to complement the programs of the World Bank, the IFC and other development agencies in improving conditions and institutions in developing countries for the encouragement of foreign investment, including the reduction of impediments to investment. The Agency's technical programs shall support its guarantee operations by strengthening assurance of fair and stable treatment of guaranteed investments in individual host countries and by extending knowledge among potential investors of opportunities for investment in developing member countries.

### **SECTION II: PROGRAMS**

7.02 In addition to guarantee operations, the Agency is authorized to conduct programs pursuant to Paragraph 7.01 in the following fields:

- (a) research;
- (b) dissemination of information;
- (c) technical advice and assistance;
- (d) consultation with and among interested members on investment policies and programs; and
- (e) negotiation of agreements between the Agency and individual members on the Agency's rights as subrogee to the claims of a

compensated investor or on the treatment of guaranteed investments, which issue shall be addressed by the Board at an early date with a view to establishing the minimum requirements of such agreements.

Subject to Paragraphs 7.08 and 7.09 below, these activities shall be carried out under the general control of the Board and shall be initiated as rapidly and comprehensively as may be feasible in the light of the Agency's initial financial and administrative limitations, in accordance with the following guidelines.<sup>21</sup>

### **SECTION III: GENERAL PRINCIPLES AND PRIORITIES**

7.03 The Agency's technical programs shall be conducted so as to be mutually reinforcing. For example, research will both serve the operational needs of the guarantee program and draw evidence from experience in guarantee operations applicable to the Agency's technical advisory and assistance services. The information program will promote interest in investment and in the Agency's guarantee service. The Agency will, in appropriate cases, disseminate the conclusions of the Agency's research and consultative activities. Research and technical assistance will illuminate common problems of members' programs of investment promotion and regulation and thus help to orient the Agency's intergovernmental consultative processes on practical means of encouraging investment.

7.04 The Agency's technical assistance, advisory, information and research services shall concentrate on aspects of investment issues in which it has comparative advantage and which are not adequately served by other institutions, such as the identification of policies which discourage foreign investment. In further delineating its fields of specialization in technical assistance and advisory services, the Agency will be guided by the requests of members, the availability of expertise and financial support, and the insights on investment promotion questions gained from the operation of its guarantee and research

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<sup>21</sup> Paragraph 7.02 was amended on November 17, 1998.

programs, from the multilateral consultations undertaken within the Council and the Board, and from consultations with investors.

## **PRIORITIES**

### **Policy Consultation**

7.05 Consultations on investment policy and program issues shall examine members' experiences as to the costs and benefits of particular incentives or disincentives and their impact on the efficiency of resource allocation. Priority shall be given to the examination of national measures that have proven to be effective in enhancing the flows of international investment to developing countries and have resulted in social and economic benefits to such countries. The Agency's consultations shall, in particular, address the policies of both developed and developing countries which have had significant positive or negative effects on the volume and developmental quality of such flows. The Agency shall draw on these consultations in devising a framework for providing policy advice to interested members.

### **Technical and Advisory Services**

7.06 Priority in the advisory and technical assistance program shall be given to activities offering the promise of large multiplier effects on the environment for foreign investment, such as helping a requesting member to identify and correct deficiencies in institutions or policies broadly affecting its attractiveness to foreign investment. If the Agency assists a member to attract potential investors to an individual project or sector, it shall take care not to impair its credibility or its objectivity and prudence in conducting the guarantee program.

### **Support of Guarantee Program**

7.07 Priority in research activities and consultation with or among members on national environments for investment shall initially be given to the operational needs of the guarantee program. The Agency's internal requirements will direct its initial research toward acquiring the knowledge essential to conducting an effective and viable guarantee program, such as assessments of a Host Country's investment policies, including nationalizations and any disputes it has had with other investment insurers; tax and regulatory regimes; judicial and other

mechanisms for the settlement of disputes; human and natural resource endowments; and other economic factors relevant to prospective guaranteed investments. Research on particular countries also will facilitate the Agency's development of a program of collaborative research with members on comparative assessments of particular national measures for investment promotion or regulation. Consultations undertaken by the Agency's management with a member, or organized by it among members, shall initially address the conditions in member countries requisite or conducive to effective operation of the guarantee program and generally to attracting foreign investment.

### **ADMINISTRATION**

7.08 The Agency shall cooperate with, rather than duplicate, the work of other agencies of established competence in the economic and financial aspects of national environments for foreign investment. Projects primarily intended to provide technical or advisory services to members and research essential to such services shall be designed and carried out by the Foreign Investment Advisory Service, a facility to be jointly administered and supported by the Agency and the IFC. Other technical, advisory and consultative activities primarily designed to serve the membership of the Agency as a whole or to support the guarantee program may be carried out solely by the Agency or in association with other international or national agencies, as it judges in each case to be most effective and appropriate. The Agency shall consult closely with the World Bank and the IFC with a view to maintaining consistency in the advice given to members on investment matters. The Agency also shall consult as appropriate with the relevant agencies of the United Nations and relevant national agencies in regard to requirements for assistance on institutional development.<sup>22</sup>

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<sup>22</sup> Paragraph 7.08 was amended on November 17, 1988.

## **SECTION IV: ORGANIZATION**

### **PROGRAMMING AND BUDGETING**

7.09 Technical and advisory services performed by the joint facility shall be funded by a special account composed of fees paid by recipients, contributions by members and other donors, and budgetary allocations by the Agency and the IFC. The Agency's budgetary allocations to the special account shall not exceed the costs of planned programs and projects of the Foreign Investment Advisory Service in, or attributable to, the benefit of the Agency's members. Plans and financial estimates related to all technical, advisory and consultative activities shall be prepared by the President and included in the annual budget submitted to the Board for approval in accordance with Section 4 of the Financial Regulations; provided, however, that the President may increase the approved program insofar as expenditure of the Agency's own funds is not thereby increased.<sup>23</sup>

### **CONFLICT OF INTEREST**

7.10 Staff members directly engaged in promoting interest on the part of potential investors or Project Enterprises in particular investment opportunities shall not have decision-making responsibility in respect of the Agency's issuance of guarantees of the particular investments so promoted.

### **REPORTING**

7.11 The President shall report periodically to the Board and annually to the Council on current and completed operational and external service programs, drawing from the Agency's experience suggestions for future activity.

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<sup>23</sup> Paragraph 7.09 was amended on November 17, 1988.



**ANNEX A**  
**GUIDELINES FOR DETERMINATION**  
**OF PREMIUM RATES**

**PROCEDURES**

1. Premium rates shall primarily be determined with a view to reflecting the Agency's actual exposure to loss under the guarantee to be issued, i.e., the probability times the magnitude of an underwriting loss. Premium rates so determined may be adjusted with a view to balancing the Agency's portfolio of guarantees and satisfying the Agency's financial requirements. To a limited extent, premium rates may also be adjusted to the terms of coinsurers and reinsurers.

2. The President shall institute administrative procedures to:

(i) ensure the objectivity, thoroughness and consistency of premium rating;

(ii) facilitate the efficiency of the rating process;

(iii) protect the confidentiality of information entrusted to the Agency for underwriting and rating purposes; and

(iv) avoid explicit judgments about host countries.

These procedures shall provide for:

(i) the development of risk appraisals and recommendations by the Agency's underwriting staff;

(ii) where appropriate, the verification of the original staff recommendations;

(iii) the review of the staff recommendations; and

(iv) final decision by the President or, in the case of larger investments, a rating committee to be appointed and chaired by the President.

3. The exposure to loss under each guarantee to be issued shall first be assessed by at least one underwriting officer whose assessment shall be reviewed by the chief underwriting officer. The assessment shall take into account:

(i) the impact on the exposure to loss of the form, structure, size and other features of the investment;

(ii) the features, sector and size of the Investment Project;

(iii) the experience, reputation and other characteristics of the Applicant;

(iv) the conditions in the Host Country, to the extent of their relevance to the specific guarantee;

(v) the terms and conditions of the guarantee; and

(vi) the potential for recoupment.

These aspects shall be addressed on the basis of the rating factors listed below. Additional factors may be taken into account. The list of rating factors may, from time to time, be amended by the President. The factors shall be applied flexibly with the objective of arriving at a sound overall assessment of the probability and likely magnitude of an underwriting loss. Due regard shall be given to offsetting and reinforcing interactions of factors.

4. Credit shall be given to the following factors which normally reduce risk:

(i) periods of guarantee which fall short of the maximum period of 15 years provided in Paragraph 2.04 of the Regulations as well as provisions in contracts of guarantee on periodic reductions of the amount of guarantee;

(ii) provisions in contracts of guarantee which entitle the Agency, in case of change of circumstances resulting in a material increase of the likelihood of a covered loss, to terminate or renegotiate the contract of guarantee or to adjust its terms and conditions;

(iii) provisions in contracts of guarantee for additional or extended periods before payment of a claim;

(iv) provisions in contracts of guarantee which exclude certain risks from coverage, restrict coverage to certain types of loss, or limit compensation to losses above stated minimum amounts or up to stated maximum amounts;

(v) with respect to standby coverage, provisions in contracts of guarantee which entitle the Agency to issue coverage upon exercise of the standby option on terms different from those applicable to the initial investment or to cancel the standby option if a covered event becomes imminent before exercise of the option;

(vi) agreements between Guarantee Holders and host countries on international arbitration and provisions in contracts of guarantee requiring the Guarantee Holder to institute arbitral proceedings against the Host Country in accordance with Paragraph 4.10 of the Regulations before final payment of a claim by the Agency; and

(vii) any agreement between the Agency and the host countries under Article 23(b)(ii) or Article 18(c) of the Convention that is applicable to the investment to be guaranteed.

5. Before the end of the Agency's first fiscal year, the President shall review the experience gained with the premium rating system outlined in these Guidelines. He shall report the results of this review to the Board and may recommend any improvements of the system which he deems appropriate in the light of experience.

## **RATING FACTORS**

### **I. CURRENCY TRANSFER RISK**

#### **A. Investment**

1. Type of investor's claim to return on investment, e.g., dividends, share in profits, revenues or production volume of Investment Project, fixed royalties or fees, prepayment of loan.
2. Amounts of expected transfers and time schedule, e.g., earnings forecasts, repayment schedules.
3. Amounts of expected transfers relative to Host Country's foreign exchange position.

#### **B. Investment Project**

1. Potential for earning export proceeds in freely usable currency.
2. Ratio of such export proceeds to projected remittances.
3. Agreement with Host Country on accumulation of export proceeds in offshore accounts.
4. Agreement with Host Country on preferential access to freely usable currency.
5. Contribution of Investment Project to balance of payments of Host Country, especially import substitution effects.
6. Importance of Investment Project to Host Country, especially preferred investment status.
7. Financial structure, especially relative amounts of claims to freely usable currency of various creditors and shareholders.
8. Shareholders and long-term creditors, especially participation of local partners, public domestic institutions, e.g., export credit agencies, national investment guarantee agencies, international institutions (such as the World Bank and the IFC).

9. Prospective amount of Guarantee Holder's claim to freely usable currency relative to such claims of other shareholders and/or creditors of the Investment Project.
10. Sectoral priority in Host Country policies.

### **C. Guarantee Holder**

1. Degree of control over Investment Project, especially parent-subsidiary relationship.
2. Long-term interests in Investment Project, especially likelihood of remittances vs. reinvestments, likelihood of disinvestments.
3. Potential for using local currency.
4. Overall interests in Host Country, especially export-related interests.
5. Guarantee Holder's ongoing contribution to Investment Project, especially his control of key technologies or command over marketing channels important to Investment Project.
6. Overall interest of Host Country in cooperation with Guarantee Holder.
7. Experience, reputation and record.

### **D. Host Country**

1. Basic exchange control system.
2. Transfer delay experience for type of investment and type of project.
3. General payment record on foreign debt, especially debt rescheduling.
4. Liquidity position and its likely development over period of guarantee, especially balance of payments, foreign exchange reserves, debt service ratio, vulnerability to commodity price swings, change in

trade patterns and world-wide economic trends, and economic management.

5. General policies toward foreign investment and their likely stability.

6. Special transfer guarantees covering the guaranteed investment, especially in an investment protection treaty with Guarantee Holder's home country or the Agency in accordance with Article 23(b)(ii) of the Convention.

#### **E. Terms and Conditions of Guarantee**

1. Periods between Guarantee Holder's application for transfer with Host Country's exchange authority and payment by the Agency.

2. Limitation of amount of compensation per stated period of time.

3. Reference rate of exchange.

4. Date for determining exchange rate.

5. Period of guarantee.

6. Level of coinsurance by Guarantee Holder.

7. Undertakings of Guarantee Holder to avert and minimize loss.

#### **F. Potential for Recoupment**

1. Arrangement with Agency on the use of local currency under Article 18(c) of the Convention.

2. Actual potential of Agency to use local currency, including likely exchange rate losses.

3. Prospects for ultimate repayment by Host Country, including time horizon.

## **II. RISK OF EXPROPRIATION AND SIMILAR MEASURES**

### **A. Investment**

1. Form of investment, especially equity/non-equity.
2. Size of investment, including its size relative to the (i) Investment Project, and (ii) Host Country's gross national product.
3. Investment agreement with Host Government, especially dispute resolution mechanism (international arbitration), fairness to Host Country, clarity, flexibility (renegotiation clauses).

### **B. Investment Project**

1. Sector, especially hydrocarbons, mining, public utilities, natural resources, manufacturing, services.
2. Importance of sector for host economy.
3. Size, including size relative to:
  - (i) Host Country's gross national product; and
  - (ii) pertinent sector in host economy.
4. Position in host economy, e.g., monopoly or part of an oligopoly.
5. Relationship to locally or state-owned enterprises.
6. Contribution to host economy, especially generation of export revenues, import substitution.
7. Economic viability.
8. Dependence on incentives or trade restrictions.
9. Dependence on Host Government, e.g., as monopoly supplier or monopoly purchaser.

10. Exposure to Host Governmental regulation, such as price controls, export and import quotas, performance requirements, tax regime, environmental protection, labor legislation, capital market regulation.
11. Vulnerability to adverse economic developments.
12. Importance to labor market in Host Country.
13. Potential for disinvestments, especially mobility of assets.
14. Profitability, including lead times and volatility of profits.
15. Ownership and control, especially joint venture, wholly-owned subsidiary or sole proprietorship of Guarantee Holder, majority/minority participation, management contract.
16. Joint venture partners, e.g., Host Government, domestic investors, investors of different nationalities, third country institutions, international institutions.
17. Providers of long-term financing, including the duration of their exposure in relation to the period of guarantee.
18. Visibility as foreign-owned enterprise.

### **C. Guarantee Holder**

1. On-going contributions to Investment Project, especially ongoing control over key technologies, technical processes employed in Investment Project, or channels for marketing of goods and services produced, or provided, by Investment Project.
2. Interest in Investment Project, e.g., profit maximization, export promotion, raw material procurement.
3. Overall interest in Host Country, especially other investments, export interests.
4. Overseas experience, reputation, record.
5. Reasons for seeking coverage.

#### **D. Host Country**

1. Legal protection of guaranteed investment under domestic law, especially specific legal assurances covering particular vulnerability of Investment Project, likely stability of protective law (constitution, statutes, decrees, etc.), enforceability of protective laws (judicial and administrative procedures).
2. Judicial system, especially independence, predictability, efficiency.
3. Investment protection agreement with home country of Guarantee Holder including its extension to coverage of investment under consideration against the risks to be covered.
4. Agreement with the Agency on the treatment of the guaranteed investment under Article 23(b)(ii) of the Convention.
5. Record of interventions in foreign investments, including settlement record.
6. Pending investment disputes, especially those involving the Agency itself or national or regional investment guarantee agency.
7. General attitude of Host Government toward foreign investment.
8. Relationship with Guarantee Holder's home country, including Host Country's interest in cooperation with home country.
9. Dissident elements inclined toward expropriatory action, including their strength at present and over the period of guarantee, as well as degree of hostility to foreign investment.

#### **E. Terms and Conditions of Guarantee**

1. Amount of compensation, especially its computation on basis of net book value or fair market value and applicable accounting principles.
2. Covered loss, especially limitation to total loss or extension to business interruption cost.
3. Period(s) between first expropriatory action and payment of claim.

4. Delimitation of “indirect” and “creeping” expropriation, especially any exclusions of potential events from coverage.
5. Point in time for determining loss in case of “creeping” expropriation.
6. Required nexus between expropriatory measure and loss, especially delimitation of measure from deterioration of business environment.
7. Undertakings of Guarantee Holder to avert or minimize loss.
8. Remedies required to be pursued by Guarantee Holder, especially requirement to pursue arbitral proceedings.
9. Responsibility for documenting claims and burden-of-proof rules.
10. Level of coinsurance by Guarantee Holder.
11. Period of guarantee.
12. Reductions of amount of guarantee over time.
13. Rights of Agency to premium increase or adjustment of other terms in case of change of circumstances.
14. Reference rate of exchange for compensation and date for its determination.

#### **F. Potential for Recoupment**

1. Agreement between Agency and Host Country under Article 23(b)(ii) of the Convention.
2. Concurrence between the Agency’s rights as subrogee of Guarantee Holder and its obligations toward Guarantee Holder under contracts of guarantee.
3. Liquidity position of Host Country and its likely development over period of guarantee.

4. Capacity of Host Country to compensate from earnings of Investment Project.
5. Record of Host Country in honoring arbitral awards.
6. Interest of Host Country in relations with Agency.
7. Co-exposure of third country agency or international institution in Investment Project, especially as joint or parallel underwriter with Agency.
8. Level of Guarantee Holder's coinsurance and home country's investment protection policies.

### **III. BREACH OF CONTRACT RISK**

*Note: The factors listed in Section II in respect of the expropriation risk are normally also relevant to the breach of contract risk, although there may be differences in relative weight. The following is limited to such factors which: (i) are frequently of particular importance to the breach of contract risk; or (ii) should be taken into account in addition to the factors listed in Section II.*

#### **A. Investment**

1. Type of the guaranteed contract, including its relationship to other investment (e.g., concession agreement in conjunction with equity investment).
2. Nature of Host Government's obligations under the guaranteed contract, e.g., payments, omissions, specific measures of private or public character.
3. Terms and conditions of guaranteed contract, especially comprehensiveness, clarity of mutual rights and obligations, consistency of terms with common practice, fairness, flexibility (well-defined renegotiation clauses), covenants which may cause particular problems (e.g., provisions on import restriction, *force majeure*, penalties).

4. Fairness and openness of contract negotiations.
5. Enforceability of guaranteed contract, especially dispute resolution mechanism (international arbitration).
6. Complexity of potential disputes under guaranteed contract, including potential defenses of Host Government as a result of, e.g., default of Guarantee Holder.

#### **B. Investment Project**

1. Status of contracting party, e.g., state, subdivisions of state, parastatal.
2. Creditworthiness of contracting party other than state, i.e., whether it could meet its obligations without state support.
3. Stability of contracting party other than state and its support by state.
4. Third party guarantees (including state guarantee) or other collateral securing performance of obligations to Guarantee Holder.
5. Duration of guaranteed contract.

#### **C. Guarantee Holder**

1. Reliability regarding performance of his part of guaranteed contract.
2. Credit and collection procedures, policies and record.

#### **D. Host Country**

1. Availability of judicial or arbitral forum with respect to all possible disputes under guaranteed contract throughout the period of guarantee, including the possibility of sovereign immunity defense and the possibility of changes in judicial system.
2. Independence of such forum.

3. Record of Host Country in meeting its obligations toward foreign contracting parties.
4. Record of applicable forum in rendering decisions within the period prescribed as reasonable in guaranteed contract.
5. Enforceability of possible decisions in favor of guarantee holder, including:
  - (i) legal possibility of enforcement of potential awards (debtor protection, sovereign immunity defense); and
  - (ii) actual enforceability (liquidity of Host Country, Host Country assets in third countries).

#### **E. Terms and Conditions of Guarantee**

1. Exclusions or limitations of coverage with respect to specific obligations of Host Government under guaranteed contract.
2. Time period prescribed as “reasonable” for arbitral or judicial decision.
3. Precise measures that Guarantee Holder is required to take to:
  - (i) seek and expedite judicial or arbitral decision; and
  - (ii) enforce such decision.

#### **F. Potential for Recoupment**

In addition to factors listed in Section II: Potential for recoupment from contracting party other than state, from third parties (guarantors) or out of collateral.

### **IV. WAR AND CIVIL DISTURBANCE RISK**

#### **A. Investment**

1. Type of investment, especially equity/non-equity.

2. Impact of war/civil disturbance on covered rights of guarantee holder in case of contractual investment (e.g., *force majeure* clauses).

### **B. Investment Project**

1. Geographic location (especially its proximity to possible acts of violence).
2. Dependence on vulnerable transportation links, raw material or energy sources.
3. Strategic importance to both Host Government and its potential adversaries (military and political importance).
4. Vulnerability to damage, especially fire and explosion potential.
5. Security arrangements, both by project management and Host Government.
6. Mobility of assets.
7. Insurance coverage of assets, especially fire and casualty insurance.
8. Visibility as foreign-owned project.

### **C. Guarantee Holder**

1. Overseas experience.
2. Relationship to Host Government.
3. Relationship to internal dissidents and external adversaries of Host Government.
4. Overall interest in Investment Project and Host Country.

### **D. Host Country**

1. Likelihood of armed conflict with another country.
2. Existing insurgency, revolution or other violent opposition.

3. Extent of tensions which might erupt in violent action as indicated, e.g., by terrorist activities, student or labor unrest.
4. Existence or likelihood of armed conflict outside Host Country which may affect Investment Project.

#### **E. Terms and Conditions of Guarantee**

1. Scope of covered risk, especially extension to riot and civil commotion and delimitation of covered event from acts of terrorism and the like.
2. Extension of coverage to action outside Host Country.
3. Limitations of coverage to certain types of loss or restrictive provisions as to computation of loss.
4. Extension of coverage to business interruption costs and other consequential losses.
5. Limitations with respect to types of loss and required nexus between covered event and loss, especially delimitation of covered event from deterioration of the business environment.
6. Responsibility for documenting claims and burden-of-proof rules, especially admissibility of *prima facie* evidence.
7. Undertakings of Guarantee Holder to avert or minimize loss.
8. See also factors E 8, 9, 10, 11 and 12 under Section II.

#### **F. Potential for Recoupment**

1. Possible claims and rights which Agency may acquire through subrogation against:
  - (i) Host Country;
  - (ii) organizations or individuals responsible for damage to Investment Project;

(iii) third parties (such as invading neighboring country).

2. Enforceability of such claims and rights.

**ANNEX B**  
**MIGA’S POLICY ON SOCIAL AND**  
**ENVIRONMENTAL SUSTAINABILITY**

**SECTION 1: PURPOSE OF THIS POLICY**

1. The Multilateral Investment Guarantee Agency (MIGA) strives for positive development outcomes in the private sector projects for which it provides guarantee support. An important component of positive development outcomes is the social and environmental sustainability of projects, which MIGA expects to achieve by applying a comprehensive set of social and environmental performance standards.

2. Through its *Policy on Social and Environmental Sustainability* (the Sustainability Policy)<sup>1</sup>, MIGA puts into practice its commitment to social and environmental sustainability. This commitment is based on MIGA’s mission and mandate, as explained in Section 2 of this Policy. Translating this commitment into successful outcomes depends on the efforts of MIGA and its clients<sup>2</sup>. Consistent with this commitment,

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<sup>1</sup> An electronic version of this Policy is posted on MIGA’s Web site and includes links to relevant sites referred to herein.

<sup>2</sup> The term “client” is used throughout this Policy to refer to the Project Enterprise or the Guarantee Holder (as these terms are formally defined in MIGA’s Contract of Guarantee), as is appropriate in the context. The Project Enterprise takes the actions necessary to implement the Performance Standards. Where the Guarantee Holder is the sole or majority shareholder of the Project Enterprise, the Guarantee Holder is fully responsible for the compliance by the Project Enterprise with the environmental and social standards, and MIGA can terminate the contract of guarantee for non-compliance. In the case of guarantees in favor of project lenders who do not control the Project Enterprise, MIGA requires such unaffiliated lenders: (i) to include covenants in their loan documents with the Project Enterprise that require compliance with MIGA’s environmental and social standards; and (ii) to diligently enforce these covenants against the Project Enterprise. Equity investors with a minority interest are treated on a case-by-case basis in a manner similar to either majority shareholders or unaffiliated lenders, depending on the level of control they exercise over the Project Enterprise.

MIGA carries out the actions described in Section 3 of this Policy, including its responsibility to review projects under consideration for political risk insurance from MIGA against the Performance Standards.

3. The Performance Standards consist of the following:

Performance Standard 1: Social and Environmental Assessment and Management System

Performance Standard 2: Labor and Working Conditions

Performance Standard 3: Pollution Prevention and Abatement

Performance Standard 4: Community Health, Safety and Security

Performance Standard 5: Land Acquisition and Involuntary Resettlement

Performance Standard 6: Biodiversity Conservation and Sustainable Natural Resource Management

Performance Standard 7: Indigenous Peoples

Performance Standard 8: Cultural Heritage

4. These Performance Standards are essential documents to help MIGA and its clients manage and improve their social and environment performance through an outcomes-based approach. The desired outcomes are described in the objectives of each Performance Standard, followed by specific requirements to help clients achieve these outcomes through means that are appropriate to the nature and scale of the project and commensurate with the level of social and environmental risks (likelihood of harm) and impacts. Central to these requirements is a consistent approach to avoid adverse impacts on workers, communities, and the environment, or if avoidance is not possible, to reduce, mitigate, or compensate for the impacts, as appropriate. The Performance Standards also provide a solid base from which clients may increase the sustainability of their business operations.

5. While managing social and environmental risks and impacts in a manner consistent with the Performance Standards is the responsibility of the client, MIGA seeks to ensure that the projects it supports through a

guarantee are operated in a manner consistent with the requirements of the Performance Standards. As a result, MIGA's social and environmental review of a proposed project is an important factor in its decision to provide a guarantee for an investment in the project or not, and will determine the scope of the social and environmental conditions of the MIGA guarantee. By adhering to this Policy, MIGA enhances the predictability, transparency, and accountability of its actions and decision-making, helps clients manage social and environmental risks and improve performance, and enhances positive development outcomes on the ground.

6. This Policy is effective for all new projects to be underwritten after July 1, 2007, and supersedes in its entirety MIGA's Environmental Assessment Policy of July, 1999, and MIGA's issue-specific Safeguard Policies adopted on an interim basis in May, 2002. This Policy is not an express or implied waiver of MIGA's privileges and immunities under its Articles of Agreement, international conventions, or any applicable law, nor does it provide any contractual or other rights to any party.

## **SECTION 2: MIGA'S COMMITMENT**

7. MIGA's mission is to promote sustainable private sector foreign direct investment in developing countries, helping to reduce poverty and improve people's lives. MIGA believes that sound economic growth, grounded in sustainable private investment, is crucial to poverty reduction.

8. In order to accomplish its mission, MIGA seeks to base partnerships with clients on the understanding that the pursuit of social and environmental opportunities is an integral part of good business. Socially and environmentally responsible businesses can enhance clients'

competitive advantage and create value for all parties involved. MIGA believes that this approach also helps to promote the long-term profitability of investments in emerging markets and to enable MIGA to fulfill its development mandate and strengthen the public's trust in MIGA.

9. Central to MIGA's development mission are its efforts to carry out its support to projects and advisory services in a manner that "do no harm" to people or the environment. Negative impacts should be avoided where possible, and if these impacts are unavoidable, they should be reduced, mitigated or compensated for appropriately. In particular, MIGA is committed to ensuring that the costs of economic development do not fall disproportionately on those who are poor or vulnerable, that the environment is not degraded in the process, and that natural resources are managed efficiently and sustainably. MIGA believes the client's regular engagement with local communities about matters that directly affect them plays an important role in avoiding or reducing harm to people and the environment. MIGA also recognizes that the roles and responsibilities of the private sector in respecting human rights are emerging as an important aspect of corporate social responsibility. The Performance Standards help private sector clients address environmental and social risks and opportunities, consistent with these emerging roles and responsibilities.

10. Accordingly, MIGA endeavors to support sustainable projects that identify and address economic, social and environmental risks with a view to continually improving their sustainability performance within their resources and consistent with their strategies. MIGA seeks business partners who share its vision and commitment to sustainable development, who wish to raise their capacity to manage their social and environmental risks, and who seek to improve their performance in this area.

### **SECTION 3: MIGA ROLES AND RESPONSIBILITIES**

11. In its operations, MIGA expects clients to manage the social and environmental risks and impacts of their projects. This entails the client's assessment of these risks and impacts, and implementation of measures to meet the requirements of the Performance Standards. An important component of the client's management of its social and environmental performance is the client's engagement with the affected communities through disclosure of relevant project information, consultation, and informed participation, as stated in Performance Standard 1.

12. MIGA's role is to review the client's assessment; to assist the client in developing measures to avoid, minimize, mitigate or compensate for social and environmental impacts consistent with the Performance Standards; to categorize the project in order to specify MIGA's institutional requirements to disclose to the public project-specific information; to help identify opportunities to improve social and environmental outcomes; and to monitor the project's social and environmental performance throughout the life of MIGA's guarantee. MIGA also discloses information relating to its own institutional and investment activities in accordance with its Policy on Disclosure of Information. MIGA implements these process requirements through its Environmental and Social Review Procedure.

13. The foregoing general approach applies to MIGA's direct support to projects. Guarantees in support of financial intermediaries and advisory work have separate procedures for applying the Performance Standards (see paragraphs 28 through 30 below). MIGA's internal procedures for the application of these Performance Standards are set out in the Environmental and Social Review Procedure.

## SOCIAL AND ENVIRONMENTAL REVIEW

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### Overall Approach

14. When an investment is proposed for a guarantee, MIGA conducts a social and environmental review of the project as part of its overall due diligence. This review is appropriate to the nature and scale of the project, and commensurate with the level of social and environmental risks and impacts. MIGA reviews any new business activity that is being considered for MIGA guarantee support, whether in the pre-construction, construction, or operational stage. Where there are significant historical social or environmental impacts associated with the project, including those caused by others, MIGA works with its client to determine possible remediation measures.

15. The effectiveness and efficiency of the social and environmental review depend partly on the timing of MIGA's involvement. When this involvement occurs in the early stages of project design, MIGA is able to support the client more effectively in anticipating and addressing specific risks, impacts and opportunities, and help build its capacity to manage these throughout the life of the project.

16. The social and environmental review includes three key components: (i) the social and environmental risks and impacts of the project as assessed by the client; (ii) the commitment and capacity of the client to manage these expected impacts, including the client's social and environmental management system; and (iii) the role of third parties in the project's compliance with the Performance Standards. Each of these components helps MIGA to ascertain whether the project can be expected to meet the Performance Standards. In the case of projects with significant adverse impacts on affected communities, MIGA also assures itself that there is broad community support for the project within the

affected communities (see paragraphs 20 and 21 below). MIGA bases its review on the client's Social and Environmental Assessment. In cases where such Assessment does not meet the requirements of Performance Standard 1, MIGA requires the client to undertake additional Assessment or, where appropriate, to commission Assessment by external experts.

17. MIGA's social and environmental review is integrated into MIGA's overall assessment of the project, including the assessment of political and reputational risks. MIGA also considers whether the investment can be expected to contribute to the development of the host country and to broadly benefit its relevant constituencies in economic, social, or environmental terms. Through weighing these costs and benefits, MIGA articulates its rationale and project-specific conditions for the proposed guarantee. These are provided to MIGA's Board of Directors when the proposed guarantee is presented for their review and concurrence.

18. MIGA does not provide guarantee support for projects that cannot be expected to meet the Performance Standards over a reasonable period of time. In addition, there are several types of activities that MIGA does not provide guarantee support. A list of these activities can be found in the Exclusion List in the Environmental and Social Review Procedure.

### **Categorization of Projects**

19. As part of its review of a project's expected social and environmental impacts, MIGA uses a system of social and environmental categorization to: (i) reflect the magnitude of impacts understood as a result of the client's Social and Environmental Assessment; and (ii) specify MIGA's institutional requirements to disclose to the public project specific information prior to presenting projects to its Board of Directors for approval in accordance with Section 12 of the Disclosure Policy. These categories are:

- **Category A Projects:** Projects with potential significant adverse social or environmental impacts that are diverse, irreversible or unprecedented
- **Category B Projects:** Projects with potential limited adverse social or environmental impacts that are few in number, generally site-specific, largely reversible and readily addressed through mitigation measures
- **Category C Projects:** Projects with minimal or no adverse social or environmental impacts, including certain financial intermediary (FI) projects with minimal or no adverse risks
- **Category FI Projects:** All FI projects excluding those that are Category C projects (see paragraphs 28 through 30 below)

### **Community Engagement and Broad Community Support**

20. Effective community engagement is central to the successful management of risks and impacts to the affected communities. Through the Performance Standards, MIGA requires project companies to engage with affected communities through disclosure of information, consultation, and informed participation, in a manner commensurate with the risks to and impacts on the affected communities.

21. MIGA is committed to working with the private sector to put into practice processes of community engagement that ensure the free, prior, and informed consultation of the affected communities. Building on this commitment, when clients are required to engage in a process of free, prior, and informed consultation, MIGA reviews the client's documentation of the engagement process. In addition, through its own investigation, MIGA assures itself that the client's community engagement is one that involves free, prior, and informed consultation and enables the informed participation of the affected communities, leading to broad community support for the project within the affected communities, before presenting the project for the concurrence of

MIGA's Board of Directors. Broad community support is a collection of expressions by the affected communities, through individuals or their recognized representatives, in support of the project. There may be broad community support even if some individuals or groups object to the project. After the Board concurrence with MIGA's proposal to provide a guarantee in support of the project, MIGA continues to monitor the client's community engagement process as part of its portfolio supervision.

### **Sector-Specific Initiatives on Governance and Disclosure**

22. In the extractive industries and infrastructure sectors in particular, where a project can have potentially broader implications for the public at large, MIGA recognizes the importance of assessment of governance risks and disclosure of information as a means to manage governance risks. Accordingly, subject to applicable legal restrictions, MIGA has the following sector-specific initiatives on disclosure of project-related information, in addition to the disclosure requirements specified in Performance Standard 1.

#### *Extractive Industry Projects*

23. When MIGA insures investments in extractive industry projects (oil, gas and mining projects), MIGA assesses the governance risks to expected benefits from these projects. In the case of significant projects (those expected to account for ten percent or more of government revenues), risks are appropriately mitigated, and for smaller projects, the expected net benefits of projects and the risks to these from weak governance are reviewed. Where the balance of benefits and risks is not acceptable, MIGA does not support such projects. MIGA also promotes transparency of revenue payments from extractive industry projects to host governments. Accordingly, MIGA requires that: (i) for significant new extractive industries projects, clients publicly disclose the relevant terms of key agreements that are of public concern, such as host government agreements (HGAs) and intergovernmental agreements (IGAs); and (ii) in addition, clients of all MIGA-supported extractive

industry projects publicly disclose their material payments (such as royalties, taxes, and profit sharing) from those projects to the host government(s).

#### *Infrastructure Projects*

24. When MIGA insures investments in projects involving the final delivery of essential services, such as the retail distribution of water, electricity, piped gas, and telecommunications, to the general public under monopoly conditions, MIGA encourages the public disclosure of information relating to household tariffs and tariff adjustment mechanisms, service standards, investment obligations, and the form and extent of any ongoing government support. If MIGA is providing guarantee support to the privatization of such distribution services, MIGA also encourages the public disclosure of concession fees or privatization proceeds. Such disclosures may be made by the responsible government entity (such as the relevant regulatory authority) or by the client.

#### **Managing Third Party Performance**

25. At times, the ability of the project company to achieve social or environmental outcomes consistent with the Performance Standards will be dependent upon third party activities. A third party may be a government agency as a regulator or contract party, a principal contractor or supplier with whom the project has a substantial involvement, or an operator of an associated facility (as defined in Performance Standard 1).

26. MIGA seeks to ensure that the projects it supports through guarantees achieve outcomes consistent with the Performance Standards, even if the outcomes are dependent upon the performance of third parties. When the third party risk is high, and when the client has control or influence over the actions and behavior of the third party, MIGA requires the client to collaborate with the third party to achieve the

outcomes consistent with the Performance Standards. Specific requirements and options will vary from case to case.

## **PROJECT MONITORING**

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27. After MIGA issues a Contract of Guarantee, MIGA carries out the following actions to monitor the performance of the projects being supported:

- Require the project to submit periodic Monitoring Reports on its social and environmental performance as agreed with MIGA
- Conduct site visits of certain projects with social and environmental risks and impacts
- Review project performance on the basis of the client's commitments in the Action Plan, as reported by the client's Monitoring Reports, and, where relevant, review with the client any performance improvement opportunities
- If changed project circumstances would result in adverse social or environmental impacts, work with the client to address them
- If the client fails to comply with its social and environmental commitments, as expressed in the Action Plan or legal agreement with MIGA, work with the client to bring it back into compliance to the extent feasible, and if the client fails to reestablish compliance, exercise remedies when appropriate
- Encourage the client to report publicly on its social, environmental and other non-financial aspects of performance, in addition to reporting on the Action Plan as required by Performance Standard 1

- Encourage the client to continue to meet the Performance Standards after the client has decided the MIGA guarantee is no longer necessary and has cancelled.

## **GUARANTEES IN SUPPORT OF FINANCIAL INTERMEDIARIES**

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28. MIGA is committed to supporting sustainable capital market development and has a significant program of support to investments in financial intermediaries (FIs). Through this program, MIGA helps strengthen domestic capital markets that support economic development at a scale of enterprise that is smaller than would be possible through direct MIGA guarantees. MIGA's FI clients are engaged in a diverse range of activities, including project finance, lending to large, medium and small businesses, microfinance, trade finance, housing finance, and private equity, each with its own social and environmental risk profile.

29. Through its Environmental and Social Review Procedure, MIGA reviews the business of its FI clients to identify activities where the FI could be exposed to social and environmental risk as a result of its investments. MIGA's requirements for the FI client will be proportional to the level of potential risk:

- FIs with business activities that have minimal or no adverse social or environmental risks will be considered Category C projects and need not apply any specific requirements
- FIs providing long-term corporate finance or project finance will require the recipient of such finance to:
  - (i) follow national laws where the activity financed presents limited social or environmental risks; and

- (ii) apply the Performance Standards where the activity financed presents significant social or environmental risks

30. The FI will be required to establish and maintain a Social and Environmental Management System to ensure that its investments meet MIGA's requirements, and MIGA will monitor the FI's performance on the basis of the Management System.

## **ADVISORY SERVICES**

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31. MIGA provides a limited amount of advisory services to clients, but this may grow over time. MIGA funds some of these services directly, and in other cases leverages funds from donor-funded facilities. These donor-funded facilities have their own operating procedures, including how they manage social and environmental issues. When MIGA is providing advice for large-scale investment projects, the Performance Standards are used as a reference in addition to national laws. MIGA does not provide advice to support activities that are described in MIGA's Exclusion List, and encourages recipients of MIGA's advisory services to enhance opportunities to promote good social and environmental practices.

## **SECTION 4: COMPLIANCE ADVISOR/OMBUDSMAN**

32. MIGA supports its clients in addressing social and environmental issues arising from their projects by requiring clients to set up and

administer appropriate mechanisms or procedures to address project-related grievances or complaints from people in the affected communities. In addition to these project-level mechanisms and procedures, the role of administrative or legal procedures available in the host country should be considered. Nonetheless, there may be cases where grievances and complaints from those affected by a MIGA-supported project are not fully resolved at the project level or through other established mechanisms.

33. Recognizing the importance of accountability and that the concerns and complaints of project-affected people should be addressed in a manner that is fair, objective, and constructive, a mechanism has been established through the Compliance Advisor/Ombudsman (CAO), a joint office of MIGA and IFC, to enable individuals and communities affected by MIGA-supported projects to raise their concerns to an independent oversight authority.

34. The CAO is independent of MIGA management and reports directly to the President of the World Bank Group. The CAO responds to complaints from those affected by MIGA-supported projects and attempts to resolve them through a flexible problem-solving approach, and to enhance the social and environmental outcomes of projects. In addition, the CAO oversees audits of MIGA's social and environmental performance, particularly in relation to sensitive projects, to ascertain compliance with policies, guidelines, procedures, and systems.

35. Complaints may relate to any aspect of a MIGA-supported project that is within the mandate of the CAO. They can be made by any individual, group, community, entity, or other party affected or likely to be affected by the social or environmental impacts of a MIGA-supported project. Complaints should be submitted to the CAO in writing to the address below:

Compliance Advisor/Ombudsman  
International Finance Corporation  
2121 Pennsylvania Avenue NW  
Room F11K-232  
Washington, DC 20433 USA

Tel: 1 202 458 1973  
Fax: 1 202 522 7400  
E-mail: [cao-compliance@ifc.org](mailto:cao-compliance@ifc.org)

36. The CAO receives and addresses complaints in line with the criteria set out in the Operational Guidelines for the CAO. The CAO's Operational Guidelines are available at the CAO's Web site:

[www.cao-ombudsman.org](http://www.cao-ombudsman.org)

## **SECTION 5: RESOURCES FOR POLICY IMPLEMENTATION**

### **MIGA CLIENT SUPPORT FOR SOCIAL AND ENVIRONMENTAL SUSTAINABILITY**

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37. MIGA can mobilize in-house capacity to provide hands-on support to clients that seek to improve their social and environmental performance, particularly those with limited capacity and resources, including small and medium enterprises. Where needed, MIGA is also prepared to work closely with international financial institutions and the private sector on project and policy issues related to sustainability.

### **Client Support Services**

38. MIGA provides a limited amount of client support, capacity building, and value-adding services in the social and environmental area, subject to its assessment of the client's capacity and available resources. These services include assistance with Social and Environmental Assessment for small and medium-size clients; assistance with identifying opportunities to enhance social and environmental outcomes; discussion with national environmental protection agencies or other relevant regional, national or local agencies on project-specific issues at the request of the client; mobilization of MIGA's network of external consultants and experts; and advice on good practice to improve project performance.

### **Liaison with Public and Private Sector Institutions**

39. MIGA's position as an arm of the World Bank Group focusing on foreign private investment, together with its extensive network among private sector and international financial institutions, enables MIGA to liaise with public and private sector stakeholders to promote a broader dialogue on sustainable private sector financing in emerging markets. The following are examples of MIGA's liaison role:

- Identification and dissemination of private sector best practices in the social and environmental area
- Promotion of sustainable financial markets in developing countries through support to the Equator Principles, and through engaging private equity managers and financial analysts, and using other financial market mechanisms
- Playing the role of the lead insurer on social and environmental matters in syndicated guarantees and joint projects with other international financial institutions, promoting close coordination and harmonization among the participating institutions

- Liaison and coordination with the World Bank on country systems, or the social or environmental aspects of national policy or enforcement or monitoring issues
- Liaison with relevant international financial institutions or national agencies on strategic, regional, or sectoral environmental assessment where appropriate for private sector projects with significant social or environmental issues
- Liaison and coordination with external partners and initiatives, such as the UN Global Compact, to enhance the social and environmental sustainability of private sector projects
- Formal notification to countries potentially affected by the transboundary effects of proposed project activities, to help those countries determine whether the proposed project has the potential for causing adverse effects through air pollution or deprivation of water from or pollution of international waterways

#### **ADDITIONAL SUPPORTING DOCUMENTS FOR POLICY IMPLEMENTATION**

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40. In addition to the Performance Standards, MIGA uses other policy, procedure, guidelines, and guidance materials to assist its staff and clients in achieving social and environmental sustainability in projects in emerging markets. For example:

- MIGA's institutional disclosure of information will be carried out pursuant to MIGA's Policy on Disclosure of Information

- MIGA's internal procedure to address social and environmental issues through different types of guarantee and advisory services can be found in the Environmental and Social Review Procedure
- IFC's Guidance Notes, corresponding to the Performance Standards, offer helpful guidance on the requirements contained in the Performance Standards, including reference materials, and on good sustainability practices to improve project performance
- The guidelines on sector and industry practices and performance levels consistent with Performance Standard 3 can be found in MIGA's Environmental, Health and Safety Guidelines
- Good practice notes and handbooks disseminate examples of good practice and reference information about these practices

The MIGA documents are available at: [www.miga.org](http://www.miga.org);

The IFC Guidance Notes and related materials are available at:

[www.ifc.org/ifcext/enviro.nsf/Content/envsocstandards](http://www.ifc.org/ifcext/enviro.nsf/Content/envsocstandards)

# ANNEX C

## MIGA'S POLICY ON DISCLOSURE OF INFORMATION

### SECTION I. PURPOSE

1. This document sets out the policy (the Policy)<sup>1</sup> of the Multilateral Investment Guarantee Agency (MIGA) regarding the scope of information that it makes available to the public either as a routine matter or upon request. MIGA believes that transparency and accountability are fundamental to fulfilling its development mandate and to strengthening public trust in MIGA and its clients<sup>2</sup>. This Policy reaffirms and reflects MIGA's commitment to enhance transparency about its activities and promote good governance.

2. This Policy is effective as of July 1, 2007 and supersedes MIGA's Disclosure Policy of July, 1999, in its entirety<sup>3</sup>. This Policy is not an express or implied waiver of MIGA's privileges and immunities under its Articles of Agreement, international conventions, or any applicable law, nor does it provide any contractual or other rights to any party.

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<sup>1</sup> An electronic version of this Policy is posted on MIGA's Web site and includes links to relevant sites referred to herein.

<sup>2</sup> The term "client" is used throughout this Policy to refer to the Project Enterprise or the Guarantee Holder (as these terms are formally defined in MIGA's Contract of Guarantee), as is appropriate in the context. The Project Enterprise takes the actions necessary to implement the Performance Standards. Where the Guarantee Holder is the sole or majority shareholder of the Project Enterprise, the Guarantee Holder is fully responsible for the compliance by the Project Enterprise with the environmental and social standards, and MIGA can terminate the contract of guarantee for non-compliance. In the case of guarantees in favor of project lenders who do not control the Project Enterprise, MIGA requires such unaffiliated lenders: (i) to include covenants in their loan documents with the Project Enterprise that require compliance with MIGA's environmental and social standards; and (ii) to diligently enforce these covenants against the Project Enterprise. Equity investors with a minority interest are treated on a case-by-case basis in a manner similar to either majority shareholders or unaffiliated lenders, depending on the level of control they exercise over the Project Enterprise.

<sup>3</sup> Documents prepared by MIGA before July 1, 2007 or delivered to MIGA pursuant to agreements entered into before July 1, 2007 will continue to be subject to MIGA's Disclosure of Information Policy in effect at the time of such preparation or agreement.

## SECTION II. BACKGROUND

3. MIGA is a multilateral organization established in 1988 by its member countries. Its mission is to promote foreign direct investment into developing countries to support economic growth and reduce poverty, with a view to improving people's lives. MIGA is a member of the World Bank Group<sup>4</sup> and is headquartered in Washington, D.C., United States of America.

4. MIGA seeks to provide accurate and timely information regarding its activities to its clients, partners and stakeholders (including affected communities), and to other interested parties.

5. The Policy reflects the various capacities in which MIGA operates, the nature of the information that it receives and prepares in connection with those diverse activities, and the level of disclosure applicable to different types of information. In particular:

(a) As an organization owned by its member countries, MIGA is accountable for the use and management of its resources in a manner consistent with its mandate and has an obligation to be responsive to the questions and concerns of its shareholders. In addition, as a development organization, MIGA reports regularly and systematically to the public on its activities.

(b) In carrying out its mandate to promote foreign direct investment into developing member countries, MIGA receives from its clients and other parties information that is not publicly available for the purpose of enabling the Agency to assess business opportunities, or to monitor and evaluate potential and existing projects supported by its insurance (guarantees) or technical assistance and advisory, including mediation, services. MIGA respects the confidentiality of any such information.

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<sup>4</sup> The World Bank Group consists of MIGA, the International Finance Corporation (IFC), the International Bank for Reconstruction and Development (IBRD), the International Development Association (IDA), and the International Centre for Settlement of Investment Disputes (ICSID).

6. MIGA encourages its clients to be more transparent about their businesses to help broaden understanding of their specific projects and of foreign direct investment and private sector development in general. In addition, MIGA believes that when clients are committed to transparency and accountability they help promote the long-term profitability of their investments. Accordingly, as part of the process of managing the risks and impacts of their projects, MIGA requires its clients to engage with communities affected by their projects, including through the disclosure of information, in a manner that is consistent with MIGA's Policy on Social and Environmental Sustainability (the Sustainability Policy) and MIGA's Performance Standards on Social and Environmental Sustainability (the Performance Standards).

7. Information referred to in this Policy as being "publicly available" or "routinely" disclosed by MIGA is posted on MIGA's Web site ([www.miga.org](http://www.miga.org)) and may also be available in hard copy. Such information and other information covered by this Policy is also available upon request. Please refer to Section IV of this Policy (Access to Information) for details on how to obtain publicly available information or how to request information from MIGA. Section IV also describes a mechanism for addressing complaints from members of the public who believe that their requests for information have been unreasonably denied.

### **SECTION III. INFORMATION MADE AVAILABLE BY MIGA**

#### **A. GENERAL PRINCIPLES**

8. Taking into account its roles and responsibilities, MIGA makes available information concerning its activities that would enable its clients, partners and stakeholders (including affected communities), and other interested members of the public, to understand better, and to engage in informed discussion about, MIGA's business activities, the overall development and other impacts of its activities, and its contribution to development. The information MIGA makes available in accordance with these principles can be categorized as:

(a) institutional information about MIGA, which includes information described in Section III. F (Institutional Information); and

(b) information regarding activities supported by MIGA. While most of the responsibility for disclosing information about MIGA-supported activities rests with the relevant MIGA client (in the case of guarantees, pursuant to the Sustainability Policy and Performance Standards), MIGA makes available certain specific information, including as described in Section III. C (Guarantee Project-Related Information) and Section III. D (Technical Assistance and Advisory Services).

9. There is a presumption in favor of disclosure with respect to the information described in paragraph 8 above, absent a compelling reason not to disclose such information. In determining whether any particular information is to be made available by MIGA as a routine matter or upon request, MIGA first considers whether such information falls within the scope of paragraph 8 and, if so, then determines whether there is any compelling reason not to disclose all or any part of such information. In making its determination, MIGA takes into account the general considerations described below (which are not exhaustive):

(a) Consistent with the practice of public and private insurers, commercial banks and most public sector financial institutions (for their private sector investments), MIGA does not disclose to the public financial, business, proprietary or other non-public information provided to MIGA by its clients or other third parties. To do so would be contrary to the legitimate expectations of its clients, who need to be able to disclose to MIGA detailed information without fear of compromising the confidentiality of their projects or other proprietary information in a highly competitive marketplace. Similarly, MIGA does not disclose legal documentation or correspondence pertaining to MIGA-guaranteed projects, including documents or information relating to negotiations between MIGA and its client relating to a project.

(b) There is a need to preserve the integrity of the deliberative process and to facilitate and safeguard the free and candid exchange of ideas between MIGA and its member countries, as well as other entities with whom MIGA cooperates (such as other international organizations or bilateral agencies). Accordingly, MIGA does not disclose any

documents, memoranda, or other communications that are exchanged with member countries, with other organizations and agencies, or with or between members of MIGA's Board of Directors (or the advisers and staff of MIGA's Board members), where these relate to the exchange of ideas between these groups, or to the deliberative or decision-making process of MIGA, its member countries, its Board of Directors or other organizations, agencies or entities with whom MIGA cooperates.

(c) The principles set forth in paragraph 9(b) relating to the preservation of the integrity of the deliberative process and the free and candid exchange of ideas also apply to MIGA's own decision-making processes and related internal documents, memoranda and other communications that are prepared for, exchanged in connection with, or derived from MIGA's deliberative or decision-making processes. Accordingly, MIGA does not disclose any internal documents, memoranda, or other communications that are issued by or between members of MIGA's Board of Directors, the advisers and staff of MIGA's Board members, members of MIGA management, MIGA staff, or MIGA's consultants, attorneys, or agents.

(d) In limited circumstances, MIGA may delay the disclosure of certain information that it would otherwise make publicly available because of market conditions or timing requirements, such as conditions relating to commercially sensitive transactions.

(e) MIGA may decline to disclose any documents or records that are subject to attorney-client privilege or other applicable legal privileges.

(f) MIGA does not disclose information if such disclosure would violate applicable law (such as restrictions imposed by securities or banking laws) or would contravene its Articles of Agreement.

(g) MIGA may decline to disclose information if such disclosure might prejudice an investigation or any legal or regulatory proceedings, or subject MIGA to an undue risk of litigation.

(h) The World Bank Group Principles of Staff Employment require MIGA to maintain appropriate safeguards to respect the personal privacy of staff members and to protect the confidentiality of personal

information about them. Thus, individual staff records and personal medical information, as well as proceedings of internal appeal mechanisms, are not disclosed outside the World Bank Group, except to the extent permitted by the Staff Rules.

(i) MIGA does not disclose information relating to arrangements for preserving the safety and security of individuals working with, or for, MIGA or to arrangements related to its corporate records and information systems.

## **B. EXCEPTIONAL CIRCUMSTANCES**

10. In exceptional circumstances, MIGA reserves the right to disclose information that it would ordinarily not release to third parties. MIGA may exercise this right if, in connection with a project it has insured, MIGA's senior management determines that the disclosure of certain non-public information would be likely to avert imminent and serious harm to public health or safety, and/or imminent and significant adverse impacts on the environment. Any such disclosure by MIGA would be on the most restricted basis necessary to achieve the purpose of the disclosure, such as notice to the appropriate regulatory authorities. If the non-public information has been provided by or relates to a MIGA client, MIGA would make such disclosure only after informing the client of MIGA's concerns and considering the client's plans to address and mitigate the potential harm involved.

## **C. GUARANTEE PROJECT-RELATED INFORMATION**

11. MIGA's Project Cycle. General information describing how MIGA processes an application for a guarantee may be found on MIGA's Web site.

12. In accordance with the Sustainability Policy and the Performance Standards, MIGA requires its clients to engage with affected communities, including through the disclosure of information, in a manner commensurate with the risks and impacts their projects pose to such communities. Prior to presenting a project to MIGA's Board of

Directors (or other relevant internal authority)<sup>5</sup> for its consideration, MIGA makes publicly available the information described in paragraphs 13 (Social and Environmental Information) and 14 (Summary of Proposed Guarantee) below. MIGA publicly releases this information once it has assured itself that the client can be expected to undertake the project in a manner consistent with the Performance Standards and that the client has undertaken its disclosure obligations and, where applicable, conducted an effective consultation process consistent with the Performance Standards.

13. Social and Environmental Information. MIGA makes publicly available the following social and environmental information:

(a) For each proposed guarantee (other than projects expected to have minimal or no social and environmental adverse impacts, for Small Investment Program (SIP) projects, or for investments in support of financial intermediaries<sup>6</sup>), MIGA issues a brief summary of its review findings and recommendations: the Environmental and Social Review Summary (ESRS). The ESRS includes the rationale for MIGA's categorization<sup>7</sup> of a project, a description of the main social and environmental risks and impacts of the project, and the key measures identified to mitigate those risks and impacts, specifying any actions that will need to be implemented to undertake the project in a manner consistent with the Performance Standards and are accordingly included in the client's Action Plan.<sup>8</sup> Along with the ESRS, MIGA will make

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<sup>5</sup> Different MIGA authorities have responsibility for approving certain types of projects, including MIGA's Board of Directors, Management, Department Directors, etc.

<sup>6</sup> FI projects. For FI projects, the summary of any recommendation in relation to the social and environmental management system of the FI is found in the SPG. FI projects are projects where MIGA guarantees are provided for loans to or equity investments in financial institutions (where the term "financial intermediaries" is used synonymously).

<sup>7</sup> As part of MIGA's review of a project's expected social and environmental impacts, MIGA assigns a social and environmental category (A, B, C, or FI) that is intended to reflect (i) the magnitude of impacts posed by the project and (ii) MIGA's social and environmental disclosure requirements as specified in this Policy. Details of MIGA's review and categorization process can be found in MIGA's Sustainability Policy and the Environment and Social Review Procedure (ESRP), which is posted on MIGA's Web site.

<sup>8</sup> The Action Plan is a plan prepared by the client, which may range from a brief description of routine mitigation measures to a series of specific plans and (i) describes the actions necessary to implement the various sets of mitigation measures or corrective actions to be undertaken, (ii) prioritizes these actions, (iii) includes the time-line for their implementation, (iv) is disclosed to the affected communities, and (v) describes the schedule and mechanism for external reporting on the

available electronic copies of, and where available, Web links to, any relevant social and environmental impact assessment documents prepared by or on behalf of the client, including the Action Plan. The ESRS is released no later than sixty days, in the case of Category A projects, and thirty days, in the case of non-SIP Category B projects, prior to consideration of the proposed guarantee for concurrence by MIGA's Board of Directors (or other relevant internal authority).

(b) Before MIGA releases the ESRS, the MIGA client reviews its content to verify the factual accuracy of information relating to the client and the project.

(c) After its initial disclosure to the public, social and environmental review information may be updated prior to consideration by MIGA's Board of Directors (or other relevant internal authority) in order to reflect revised or additional information. Any such revised or additional information will be made publicly available. Such updating shall not restart the time periods referred to in paragraph 13(a) above, unless MIGA determines that the previously disclosed ESRS would be materially deficient without the additional information.

#### 14. Summary of Proposed Guarantee.

(a) Prior to Board consideration of each proposed MIGA guarantee project, MIGA makes publicly available a Summary of Proposed Guarantee (SPG). The SPG is intended to make available information about the guarantee project to interested parties while it is still under consideration by MIGA. An SPG is made publicly available once MIGA has determined that there is reasonable certainty that the project will be forwarded to MIGA's Board of Directors (or other relevant internal authority) for consideration.

(b) This summary includes a brief description of the project, its location, purpose and anticipated development impact, as well as information about the investors and lenders seeking guarantee coverage and the project enterprise. MIGA's role and involvement, and the

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client's implementation of the Action Plan. More details about the Action Plan may be found in the Performance Standards.

projected date for a decision on the project by MIGA's Board, are also noted. In addition, the summary presents MIGA's categorization of the project for social and environmental purposes (and for Category C projects a brief statement of the rationale for such categorization), and provides reference to the project's available social and environmental information. The summary also provides contact details for further information.

(c) Before MIGA releases the SPG, the MIGA client reviews its content to verify the factual accuracy of information relating to the client and the project.

(d) MIGA makes the SPG publicly available no later than 60 days, in the case of Category A projects; 30 days, in the case of non-SIP Category B projects; and 15 days, in the case of Category C, FI, and SIP (Small Investment Program) projects prior to consideration of the guarantee by MIGA's Board of Directors (or other relevant internal authority). For projects being undertaken jointly with the support of the IFC and/or the IBRD or IDA, MIGA will post the SPG and related documents, but may count the period of disclosure from the start of the IFC or IBRD/IDA disclosures. There may be some limited circumstances in which market conditions or timing requirements prevent the observance of these time periods and the time periods set forth in paragraph 13(a)(Social and Environmental Information) above. In such cases, the Board would be informed of any delay in the release of the SPG and the relevant social and environmental information.

(e) Before the date upon which MIGA's Board of Directors is to consider the guarantee, MIGA, in consultation with the client, updates the SPG as necessary to reflect any significant changes to the project or to MIGA's guarantee since the SPG's initial posting on MIGA's Web site. Any such revised or additional information will be made publicly available. Such updates shall not restart the time periods referred to in paragraph 14(d) above, unless MIGA determines that the changes could have a material adverse effect on the project's anticipated development impact, or could materially reduce MIGA's expected development contribution, or the previously disclosed information would be materially deficient without the additional information.

(f) MIGA will add to the SPG the respective dates of approval of the guarantee, as well as the signing of the legal documentation relating to the guarantee.

#### **D. TECHNICAL ASSISTANCE AND ADVISORY SERVICES**

15. General information regarding MIGA's technical assistance and advisory services activities is available on MIGA's Web site. Information on MIGA's technical assistance that is managed by the Foreign Investment Advisory Service (FIAS) is disclosed by FIAS.

16. MIGA encourages the disclosure of the results of, or reports prepared in connection with, studies or research funded either directly by MIGA or through donor-supported facilities, subject to the consent of any relevant donors and, where relevant, of the client for which the report was undertaken.

17. No later than thirty days after MIGA's Board of Directors (or other relevant internal authority) approves the establishment and funding of a new technical assistance program or facility or the renewal of such a program or facility, MIGA will issue a brief summary of the new elements of the program or facility, including a brief description of the program or facility and its purpose, including any regional focus; the anticipated size of the program or facility; the amount and nature of MIGA's contribution to and role in the program or facility; and the project's likely development impact. The summary will also provide MIGA contact details for further information.

#### **E. HISTORICAL INFORMATION**

18. The same general principles that apply to proposed and existing guarantee projects (see Section III. A (General Principles)) will apply to information held by MIGA about projects for which MIGA's guarantee has been cancelled, expired or otherwise terminated.

19. MIGA does not disclose information about projects once it is determined that MIGA will not be involved.

## **F. INSTITUTIONAL INFORMATION**

### **20. Corporate Governance Information.**

(a) MIGA's Convention is publicly available and is disclosed on MIGA's Web site.

(b) MIGA's Annual Report, which is publicly available, lists its member countries and the Governors representing them. It also includes MIGA's Board of Directors, the countries appointing or electing them, and their respective voting power.

(c) Minutes of formal meetings of MIGA's Board of Directors (other than Executive Sessions) are publicly available after the Board has approved them. Material in such minutes that is deemed by MIGA's Board of Directors to be confidential or sensitive will be redacted before disclosure. The minutes typically contain the following information: (1) names of the persons present at the meeting, (2) record of the approval of the minutes of previous formal Board meetings, (3) titles of agenda items, (4) agreements and decisions reached, and (5) names of Directors wishing to be recorded as abstaining or objecting. The Corporate Secretariat of the World Bank Group prepares these minutes.

(d) Proceedings of MIGA's Board of Directors (including its committees) are otherwise confidential under the Board's Rules of Procedure. Accordingly, transcripts and summaries of discussions of meetings of MIGA's Board of Directors (including its committees) are not disclosed.

(e) Documents prepared for the consideration of, or review and approval by, MIGA's Board of Directors are not disclosed unless expressly specified in this Policy or otherwise authorized for disclosure by the Board. Furthermore, Board papers relating to specific guarantee projects are not disclosed because they contain confidential client information.

### **21. MIGA Strategies, Budget and Business Plans, and Policies.**

(a) MIGA makes publicly available its Strategic Directions Paper, which describes MIGA's strategic priorities and/or provides an

update on their implementation, after discussion by MIGA's Board of Directors. This disclosure is subject to redaction of any budgetary or other information that at the time of disclosure has yet to be considered or approved by the Board.

(b) MIGA's Budget and Business Plan includes MIGA's administrative budget and is based on the Strategic Directions Paper. It is publicly available after MIGA's Board of Directors has approved the budget, subject to the redaction of any confidential or sensitive information.

(c) Country Assistance Strategies prepared jointly with the World Bank<sup>9</sup> are disclosed in accordance with the World Bank's Policy on Disclosure of Information. See the World Bank's Web site for more information.

(d) This Disclosure Policy and the Policy and Performance Standards on Social and Environmental Sustainability are publicly available. Other policies that are approved by MIGA's Board of Directors will be publicly available after their approval unless the Board decides that disclosure may have an adverse impact on the financial condition or business interests of MIGA.

(e) If a policy to be approved by MIGA's Board of Directors is likely to have a broad impact on MIGA's operations or a direct impact on communities affected by MIGA-guaranteed projects, the Board may approve a process for external consultation on such policy. The external consultation process would take place before the policy is approved by the Board, and may include the disclosure to the public of one or more drafts of such policy.

22. Financial Information. As an organization conducting business in the world's insurance and reinsurance markets, MIGA maintains sound financial management practices, including prudent policies for the disclosure of financial information about the Agency. Set forth below is a description of the financial information that MIGA discloses publicly on a routine basis:

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<sup>9</sup> The "World Bank" refers to IBRD and IDA, collectively.

(a) MIGA's Annual Report.

(b) Annual audited financial statements as of MIGA's fiscal year-end appear in MIGA's Annual Report. The annual audited financial statements include balance sheets as of the end of the current and previous fiscal years, statements of income, cash flows, changes in shareholders' equity, and capital stock and voting power (as of the end of the current fiscal year). Notes to the financial statements include information on all significant accounting policies and other disclosures that are required for financial statements prepared in conformity with the accounting principles specified in the Annual Report.

(c) A Management's Discussion and Analysis (MD&A) is included in MIGA's Annual Report.

(d) Quarterly financial statements. In interim quarters during a fiscal year (September, December, and March), MIGA produces interim unaudited financial statements, which are reviewed by MIGA's external auditors.

23. Reporting Impact on Local Communities of Sensitive Projects. In addition to its financial reporting, MIGA will make available reports on the development impact on the local community of sensitive projects for which it is providing guarantee support. This information will be made publicly available on MIGA's Web site for the individual projects.

24. Where MIGA prepares annual reports for its donors, MIGA makes such annual reports publicly available, subject to the consent of the relevant donors.

25. IEG-MIGA Products. The Independent Evaluation Group-MIGA (IEG-MIGA) is responsible for the independent evaluation of MIGA's operations. IEG-MIGA's functions and staff are organizationally independent from MIGA's operational and policy departments, as well as its decision-making. IEG-MIGA's work encompasses:

(a) evaluating operational program and activities, including guarantee and technical assistance activities, and the strategies, policies and procedures that relate to them, with particular attention to the achievement of agreed development objectives;

(b) assessing the quality and usefulness of MIGA's evaluation processes and products, and participating in the formulation and continuous improvement of appropriate evaluation policies, practices and instruments; and

(c) identifying and disseminating lessons and making recommendations drawn from evaluation findings to contribute to improved operational performance, accountability for results, and corporate transparency.

IEG-MIGA discloses information and reports about the evaluations it undertakes in accordance with this Policy. IEG-MIGA evaluation reports that are publicly available may be found on MIGA's Web site.

26. CAO Reports. The Office of the Compliance Adviser/Ombudsman (CAO) has three roles with respect to MIGA:

(a) to respond to complaints by people affected by MIGA-guaranteed projects, in a manner that is fair, objective and constructive;

(b) to oversee audits of MIGA's overall social and environmental performance, particularly in relation to sensitive projects, to ensure compliance with MIGA's social and environmental policies, guidelines, procedures and systems; and

(c) to provide a source of independent advice to the President of the World Bank Group and MIGA management on social and environmental policies, guidelines, procedures and resources.

The CAO is organizationally independent from MIGA's operational and policy departments. Information held by the CAO that relates to MIGA or its activities is subject to MIGA's Policy on Disclosure of Information and the World Bank Group Staff Rules, which require that information be treated with discretion and not disclosed improperly. Within these parameters, the CAO is committed to transparency with respect to its processes and the outcomes of its interventions and, accordingly, makes details of its activities available to the public through its Web site.

Additional information about the CAO's roles can be found in the CAO Operational Guidelines, which are available on the CAO's Web site.

27. Fraud and Corruption Reports. The World Bank's Department of Institutional Integrity (INT) is responsible for investigating allegations of fraud and corruption in World Bank Group operations and allegations of misconduct against World Bank Group staff. To ensure the independence of INT's activities, the Director of INT reports directly to the President of the World Bank Group. The World Bank publishes an annual report describing its overall integrity activities, including statistics reflecting investigations and sanctions as well as staff misconduct. The report is available on the World Bank's Web site.

28. General Staff Information. The Staff Manual for MIGA and the World Bank includes the Principles of Staff Employment and the Staff Rules for these organizations. The Principles and Staff Rules describe the terms and conditions of World Bank and MIGA employment, including policies on, among other things, compensation and conflict resolution. Information about these and certain other World Bank Group staff matters, including the annual staff compensation paper, are available from the World Bank, subject to the World Bank Policy on Disclosure of Information. Information about MIGA's management is included in MIGA's Annual Report.

#### **SECTION IV. ACCESS TO INFORMATION**

29. General information about MIGA and its activities may be obtained online at MIGA's Web site, [www.miga.org](http://www.miga.org) and through the World Bank InfoShop. The InfoShop is located at 701 18th Street, N.W., Washington D.C., 20433 USA, and may be accessed online at <http://worldbank.org/infoshop>. This information is also available through public area computers available at the Public Information Centers (PICs), which are situated around the world in World Bank member countries. A list of the PICs is available on the InfoShop Web site.

30. Information that MIGA routinely discloses pursuant to this Policy, such as the SPG for a particular proposed guarantee project or MIGA's Annual Report (including MIGA's annual audited financial statements),

is publicly available on MIGA's Web site. MIGA also discloses information by other appropriate means, depending on the nature of the information and the intended recipients.

31. Information that is not readily available from MIGA's Web site, the InfoShop, or the PICs may also be requested in writing (by e-mail, mail, or fax) from MIGA.<sup>10</sup> Information may be requested by contacting the External Outreach and Partnerships Group of MIGA at [migainquiry@worldbank.org](mailto:migainquiry@worldbank.org) or through the Web site at [www.miga.org](http://www.miga.org) and the other e-mail addresses provided therein, by telephone at +1 (202) 458-4798, by fax at +1 (202) 522-0316, or by mail at 1818 H Street, NW, Washington D.C., 20433, USA. MIGA's External Outreach and Partnerships Group serves as a contact point for persons seeking to obtain documents that are not routinely disclosed by MIGA on its Web site.

32. Requests for information must identify the specific information requested; blanket requests for information will not be accepted. Requests for information may use blank forms which are available on MIGA's Web site. There may be a standard charge for hard-copy documents or for documents on CD-ROM, other than an SPG or an ESRS.

33. In responding to requests for information, MIGA's External Outreach and Partnerships Group determines whether information requested may be made available in accordance with this Policy and responds to such request (or if appropriate may refer the requester to MIGA's client).

34. English is the working language of MIGA, and MIGA will respond to requests for information in English. However, to the extent that MIGA receives requests in other languages, MIGA will endeavor to be responsive in the relevant language.

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<sup>10</sup> Information held by MIGA that was provided or prepared by another member institution of the World Bank Group is subject to that institution's policy on the disclosure of information. MIGA will direct requesters to such other institution, if relevant.

35. MIGA endeavors to respond to requests within thirty calendar days of receipt of a written request for information, unless additional time is required because of the scope or complexity of the information requested. If additional time is necessary, MIGA will contact the requester and explain the reasons for the delay and, if possible, will provide an estimated time frame for its response. In its response to a request, MIGA will either provide all or part of the requested information or give reasons why the request has been delayed or denied, in whole or in part. If MIGA receives numerous requests for the same information, MIGA may post a response on its Web site rather than responding to each individual request.

36. If a requester believes that a request for information from MIGA has been unreasonably denied, or that this Policy has been interpreted incorrectly, a complaint may be submitted to MIGA's Disclosure Policy Advisor, who reports directly to MIGA's Executive Vice President. The Disclosure Policy Advisor will review the complaint and endeavor to respond to the requester within thirty calendar days of receipt of the complaint, unless additional time is required because of the scope or complexity of the complaint. The Disclosure Policy Advisor will advise the requester and MIGA of his/her conclusions in writing and will explain the reasons for such conclusions. The Disclosure Policy Advisor's review will focus on whether the requested information falls within the scope of paragraph 8 of this Policy and, if so, whether MIGA has a reasonable basis for determining that there is a compelling reason not to disclose such information pursuant to paragraph 9. The Disclosure Policy Advisor's authority does not extend to paragraph 10, the application of which is solely within MIGA senior management's discretion, nor to complaints from people affected by MIGA-guaranteed projects and who receive consideration by the CAO as described in paragraph 26. In conducting his/her review, the Disclosure Policy Advisor may, if he/she deems it necessary or appropriate, consult with third parties, including MIGA's client.

## **SECTION V. MONITORING AND REVIEW**

37. MIGA's External Outreach and Partnerships Group will, on an ongoing basis, monitor and report to MIGA senior management on the

implementation of this Policy, including the types of information being requested or accessed by the public and the general responsiveness of MIGA staff to requests for information. In addition, two years after the effective date of this Policy, MIGA will conduct an overall review of the implementation of this Policy and its ongoing effectiveness in meeting MIGA's commitment to transparency and accountability.

