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Guidelines Amended Version 2004

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Only the German text is legally effective.

INVESTMENT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

► **Direct Investments Abroad**

► Guidelines

AMENDED VERSION

The guidelines for granting cover for capital investments abroad in the version of 7 October 1993 (Federal German Gazette page 9589) are amended as follows:

In consultation with the Federal Ministry of Finance, the Federal Foreign Office and the Federal Ministry for Economic Co-operation and Development as well as on the basis of § 3 para. 1 sentence 1 no. 2 lit. b) of the Law on the Approval of the Federal Budget for the Fiscal Year 2004 (Federal Budget Law 2004) of 18 February 2004 (Federal Law Gazette I page 230) the Federal Ministry for Economic Affairs and Climate Action enacts the following guidelines:

I. PURPOSE AND PRECONDITIONS OF GUARANTEES

1. To cover direct investments abroad entrepreneurs with a domicile or residence in the Federal Republic of Germany can obtain guarantees against political risks in the host country provided that it seems hardly reasonable for the entrepreneur to bear those risks by himself.
2. Direct investments abroad have to be eligible for promotion, and they preferably are to contribute to intensifying the relations between the Federal Republic of Germany (Federal Government) and the host countries.
3. The policyholder has to comply with the regulations issued by the Federal Government and the host country regarding capital investments abroad, he has to apply for the authorisations required for capital investments and he has to fulfil the conditions, requirements and obligations stipulated in the authorisations of the host country and in the agreements with the host country. As far as at the time when the guarantee becomes effective circumstances are opposed to the transfer of earnings or the re-transfer of the equivalent amount of the capital investments, the guarantee will be limited accordingly.
4. There is no legal entitlement to the issuance of a guarantee.

II. OBJECTS OF GUARANTEES

1. Objects of guarantees are capital investments abroad. Earnings from capital investments can be covered as well.
 2. Capital investments abroad are equity participations, capitalisations of branch offices, investment-like loans and other rights qualifying as assets.
 - a) In case of an equity participation capital, goods or other contributions are made to an enterprise abroad with the objective of being granted shares of the enterprise together with voting and control rights or the right to be consulted as well as a participation in the earnings and in the liquidation proceeds.
 - b) The provision of an endowment capital similar to a nominal capital to a branch office or plant location of an enterprise with its head office in the Federal Republic of Germany can be considered as the capitalisation of a branch office. For the branch office or plant location a separate financial statement has to be prepared, treating and showing the endowment capital in the same way as a nominal capital.
 - c) A loan can be regarded as investment-like in case its purpose and its conditions are similar to those of an equity participation.
 - d) Rights qualifying as assets are those legal positions that just as the capital investments under II. no. 2 lit. a) to c) are made long-term in cash or other in-kind contributions and with the objective of entrepreneurial activity (for example concessions, rights under production sharing agreements for crude oil or natural gas as well as bonds).
- Guarantees are to be granted predominantly for capital investments in the form of equity participations.
3. Earnings are those amounts that are paid to the entrepreneur according to no. 2 lit. a) to d); i. e. those amounts paid for a certain period of time as dividends or interest on the investor's capital investments.
 4. Objects of guarantees are exclusively new capital investments. Contributions that are made prior to filing an application for granting cover are principally excluded from cover.

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III. EVENTS OF LOSS, SCOPE OF COVER

1. The Federal Government is liable for losses in the capital investment or its earnings as far as the losses were caused by the following political events or measures in the host country:
 - a) nationalisation, expropriation or other sovereign acts that in their effects are equivalent to an expropriation (expropriation risk);
 - b) breach of legally binding commitments made by the government or state-directed or state-controlled authorities as far as the project company is entitled to these commitments and the commitments are mentioned in the guarantee policy (breach of contract risk);
 - c) war or other armed conflicts, revolution or civil commotion or acts of terrorism in connection with such events (war risk);
 - d) payment embargoes or moratoriums (moratorium risk);
 - e) impossibility of converting or transferring amounts deposited with a sound bank for transfer to the Federal Republic of Germany (convertibility and transfer risk).

2. The Federal Government is liable for these losses
 - a) if, due to the realisation of an expropriation risk in the host country, the investor is deprived of the equity participation itself, the equity participation converted into a claim, the claim arising from an investment-like loan, the right qualifying as asset itself or the claim resulting from the right qualifying as asset or the claim arising from distributed profits in total (total loss) or partly (partial loss); this applies mutatis mutandis to the liquidation proceeds from the liquidation of a branch office or a plant location;
 - b) if, due to the realisation of expropriation risks or war risks, the entire assets of the project company, the branch office or the plant location have been subject to deprivation or destruction, or the assets of the project company, the branch office or the plant location have been subject to deprivation or destruction to such an extent that the operation of the project company, the branch office or the plant location cannot be continued without losses in the long run, and consequently the equity participation, the endowment capital or the right qualifying as asset must be considered as lost (total loss), or the claim converted from the equity participation, the claim arising from the investment-like loan, the claim resulting from the right qualifying as asset or the claim arising from the earnings cannot be satisfied or collected in any form, in whole or in part;
 - c) if, due to the realisation of a breach of contract risk in the host country, the operation of the project company, the branch office or the plant location cannot be continued without losses in the long run, and consequently the equity participation, the endowment capital or the right qualifying as asset must be considered as lost (total loss), or the claim converted from the equity participation, the claim arising from the investment-like loan, the claim resulting from the right qualifying as asset or the claim arising from the earnings cannot be satisfied or collected in any form, in whole or in part;

- d) if, due to the realisation of a moratorium risk, a claim payable converted from the equity participation, a claim payable arising from the investment-like loan, a claim payable resulting from the right qualifying as asset or a claim payable arising from the earnings cannot be satisfied or collected in any form, in whole or in part; this applies mutatis mutandis to the liquidation proceeds from the liquidation of a branch office or a plant location;
 - e) if, due to the realisation of a convertibility and transfer risk in the host country, the amounts derived from claims or earnings payable have not been converted or transferred within two months after they were deposited with a sound bank to be transferred to the policyholder, provided that all prevailing regulations and agreements for the conversion and the transfer of these amounts have been complied with.
3. For calculating the indemnification the gross loss of the capital investment will be taken as a basis. This is
- a) with respect to an equity participation, an endowment capital or a right qualifying as asset in the case of a total loss the current market value of the capital investment at the time of the occurrence of the event of loss, but not exceeding the contribution value in Euros;
 - b) with regard to an equity participation and a right qualifying as asset in the case of a partial loss the decrease in value that on the one hand is calculated as the difference between the current market value of the capital investment at the time of the occurrence of the event of loss, but not exceeding the contribution value, and on the other hand the residual value of the capital investment;
 - c) with respect to a claim converted from an equity participation, an investment-like loan and a claim arising from a right qualifying as asset the non-payment of the claim valued at its current market value at the time of the occurrence of the event of loss, but not exceeding the contribution value of the capital investment; if only a part of the claim is affected by the event of loss, the gross loss is limited to that part of the contribution value that can be allocated to the affected part of the claim; this accordingly applies to the liquidation proceeds from the liquidation of a branch office or a plant location;
 - d) with regard to earnings the non-payment of claims for covered earnings.

IV. MAXIMUM AMOUNT OF THE GUARANTEE

1. The guarantee of the Federal Government is limited by a maximum amount in Euros for every capital investment and its earnings. The maximum amount of the guarantee consists of the maximum amount of the guarantee for the cover for capital and the maximum amount of the guarantee for the cover for earnings.
2. The maximum amount of the guarantee decreases due to the occurrence of events of loss, a repayment or repatriation as scheduled and on application by the policyholder at the end of the guarantee year.

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V. UNINSURED PERCENTAGE

1. The policyholder must participate in every loss that is ascertained on the basis of these regulations and does not exceed the maximum amount of the guarantee at a minimum rate of 5%. The uninsured percentage must not be covered otherwise.
2. The Federal Government can exclude relatively small losses from its obligation to pay an indemnification.

VI. PAYMENT OF INDEMNIFICATION

The indemnification will be paid one month after mailing the calculation of the loss or the calculation of the preliminary indemnification, but principally not earlier than six months after the occurrence of the event of loss. If the definite amount of indemnification cannot be ascertained in the first instance, it will be determined provisionally.

VII. GUARANTEE PERIOD

1. The guarantee period is up to 15 years, in exceptional cases up to 20 years. On application it can be prolonged up to five years.
2. The Federal Government is liable under a guarantee only after its written acceptance of the policyholder's application (formation of the guarantee agreement).

VIII. HANDLING FEE AND PREMIUM

1. The applicant has to pay a singular handling fee in advance for the handling of a guarantee application. The handling fee depends on the amount to be covered.
2. The policyholder has to pay a premium for the issuance of a guarantee.
3. In consultation with the Federal Ministry of Finance, the Federal Ministry for Economic Affairs and Climate Action determines the handling fee and the premium to be charged.

IX. PROCEDURE

1. Upon approval by the Federal Ministry of Finance and according to § 39 of the Federal Budgetary Regulations of 19 August 1969 (Federal Law Gazette I page 1284) as well as in consultation with the Federal Foreign Office and the Federal Ministry for Economic Co-operation and Development the Federal Ministry for Economic Affairs and Climate Action decides upon guarantee applications in the Interministerial Committee for granting guarantees for direct investments abroad.

2. a) In the meetings of the Interministerial Committee participate:
 - aa) representatives of the Federal Ministry for Economic Affairs and Climate Action, the Federal Ministry of Finance, the Federal Foreign Office and the Federal Ministry for Economic Co-operation and Development;
 - bb) representatives of the mandatary appointed to manage the investment guarantee scheme.
- b) The Federal Ministry for Economic Affairs and Climate Action can invite representatives of the industrial, trading and banking sector to participate in the meetings of the Interministerial Committee and to provide expert advice; for this advisory capacity these experts have to be appointed for a certain period of time by the Federal Ministry for Economic Affairs and Climate Action.
- c) A representative of the leading Federal Ministry for Economic Affairs and Climate Action presides the Interministerial Committee.
3. All participants have to maintain silence on the negotiations in the committee. All documents and information placed at the disposal of the committee members are intended for them only, and they are not permitted to circulate the documents and information to a third party.

X. MANAGEMENT

1. In consultation with the Federal Ministry of Finance the Ministry for Economic Affairs and Climate Action will appoint PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, Branch Office Hamburg (PwC), to manage the investment guarantee scheme as mandatary.
2. The management will be arranged in detail under a mandatary contract between the Federal Government and PwC. The management includes the acceptance of applications and further declarations of the policyholders concerning the granting of guarantees as well as their processing and final handling. PwC prepares the applications to be ready for decision, and informs the policyholders on the decisions made as well as on possible instructions.
3. The management of the mandatary is subject to the supervision by the Federal Ministry for Economic Affairs and Climate Action, the Federal Ministry of Finance as well as the Federal Audit Office.

XI. FINAL PROVISIONS

These regulations will become effective on 1 September 2004. The existing regulations of 13 January 1967 in the version of 7 October 1993 (Federal Gazette page 9589) will become ineffective at the same time.

Investment Guarantees: an instrument to promote foreign trade and investment provided by the



Federal Ministry
for Economic Affairs
and Climate Action

Commissioned to implement the federal funding instrument Investment Guarantees:



Investment Guarantees of the Federal Republic of Germany

Investment Guarantees have been an established and effective foreign trade promotion instrument of the Federal Government for decades. Investment Guarantees protect eligible German direct investments in developing countries and emerging economies against political risks. This promotion instrument plays an important role in fostering economic growth as well as in protecting and creating jobs both in the host country and in Germany. The Federal Government commissioned PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft to manage the federal funding instrument Investment Guarantees.

Information on other foreign trade promotion instruments of the Federal Government can be found at www.bmwk.de/en under the heading Promotion of foreign trade and investment.

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