LEGAL BASIS

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General Terms and Conditions

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Only the German text is legally effective.

INVESTMENT GUARANTEES OF THE
FEDERAL REPUBLIC OF GERMANY

Direct Investments Abroad

► General Terms and Conditions

§ 1 GRANTING COVER

(1) The Federal Republic of Germany (Federal Government) may on application grant guarantees against political risks for foreign direct investments in favour of enterprises with a domicile or residence in the Federal Republic of Germany. These ”General Terms and Conditions“ apply for the guarantees unless otherwise stipulated in the guarantee policy.

(2) The Federal Government has mandated and authorised PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft, Frankfurt am Main, branch office Hamburg, (PwC) to issue and receive all declarations concerning the guarantees and to undertake all legal acts on behalf of the Federal Government.

(3) There is no legal entitlement to the issuance of a guarantee.

§ 2 PRECONDITIONS FOR GRANTING COVER

Guarantees will only be granted if

a) an agreement exists between the Federal Government and the host country regarding the promotion and the mutual protection of direct investments or, unless this is not the case, adequate protection of the direct investment seems to be granted by the legal system of the host country or otherwise, and
b) the investment project is eligible for promotion.

§ 3 OBJECTS OF GUARANTEES

(1) The objects of guarantees can be the following capital investments mentioned in the guarantee policy that are made long-term in cash or in other in-kind contributions and up to a contribution value to be stipulated (§ 7) in a foreign project and with the objective of entrepreneurial activity (direct investments):

a) shares in a project company (equity participations); the guarantee also covers those equity participations that have transformed into funds (equity participations converted into claims);
b) endowment capital provided for a foreign branch office or plant location of an enterprise with its head office in the territory of the Federal Republic of Germany (capitalisation of branch offices or plant locations);
c) investment-like loans;
d) other rights qualifying as assets.

(2) The objects of guarantees may also be amounts that are being distributed for a certain period of time as shares in profits on guaranteed capital investments or are to be paid as interest (earnings). Earnings are only covered if a maximum amount for the cover for earnings is expressly stated in the guarantee policy. For the earnings to be covered within one guarantee year a percentage on the basis of the contribution value (§ 7) will be stipulated in the guarantee policy on application (annual cover for earnings). In each case the cover comprises the first part of the earnings payable in one guarantee year, i. e. the earnings payable are covered up to the maximum amount for the cover for earnings.

(3) Rights and claims that are not mentioned in the guarantee policy are not covered even if they have been provided for in the contracts for the capital investment.

§ 4 RISKS COVERED

(1) The guarantee of the Federal Government covers the loss of the capital investment or its earnings as far as such loss was caused by the following political events or measures in the host country:

a) nationalisation, expropriation or other sovereign acts that are equivalent to an expropriation in their effects (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, 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).

The assessment as to whether incidents or measures mentioned in sentence 1 have occurred or were undertaken is determined according to public international law; in particular investment protection regulations contracted with the host country at the level of public international law and international jurisprudence. In addition, general principles of German law shall apply.

(2) Losses resulting from the events or measures mentioned in paragraph 1 that are due to a direct or indirect foreign participation in the policyholder or to a foreign influence on the policyholder will not be covered by the guarantee if the policy holder's capital or voting rights are owned by foreigners to the extent of more than 50%, or if the policyholder is subject to foreign control at the point of occurrence of the event or measures resulting in the loss. "Foreign control" means in particular that the legally responsible or factually controlling managers of the enterprise are foreign nationals, receive instructions by foreign nationals or act under their control.

§ 5 EVENT OF LOSS

An event of loss occurs

1. if, due to the realisation of an expropriation risk [§ 4 para. 1 lit. a)] 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 plant location;

{2. if, due to the realisation of an expropriation risk or war risk [§ 4 para. 1 lit. a) or c)] in the host country

   a) the entire assets of the project company, the branch office or the plant location have been subject to deprivation or destruction, or
   b) 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;

3. if, due to the realisation of a breach of contract risk [§ 4 para. 1 lit. b)] 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;

4. if, due to the realisation of a moratorium risk [§ 4 para. 1 lit. d)] in the host country, 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

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whole or in part; this applies mutatis mutandis to the liquidation proceeds from the liquidation of a branch office or plant location;

5. if, due to the realisation of a convertibility and transfer risk [§ 4 para. 1 lit. e)] in the host country, the amounts derived from a claim payable 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 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; this applies mutatis mutandis to the liquidation proceeds from the liquidation of a branch office or a plant location.

§ 6 GROSS LOSS

(1) The gross loss of a capital investment 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 [§ 18 para. 1 lit. b)] at the time of the occurrence of the event of loss, but not exceeding the contribution value (§ 7);

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 [§ 18 para. 1 lit. c)];

c) with respect to a claim converted from an equity participation, an investment-like loan and a claim arising from the 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 plant location.

(2) The gross loss of earnings is the non-payment of claims for covered earnings.

§ 7 CONTRIBUTION VALUE

(1) The contribution value is the amount in Euros made in cash or other in-kind contributions by the policyholder to the capital investment. These contributions can be included in the contribution value to the extent to which the policyholder is allowed to state them in his balance sheet as acquisition cost or manufacturing cost in accordance with the accounting principles generally accepted in Germany. Contributions exceeding the maximum amount for the cover for capital stipulated in § 8 para. 2 sentence 1 of the guarantee policy are not accepted for the determination of the contribution value.

(2) On special application those amounts converted into Euros that have been distributed to the policyholder in the form of shares due to a conversion of profits or a conversion of open reserves formed from profits into corporate funds can be accepted as his contributions as well. The same applies for the allocation of shares due to measures of the project company that correspond to such an increase in capital from corporate funds. Such amounts can be accepted up to principally 300% of the contributions made to the guaranteed equity participation according to paragraph 1.

(3) The contribution value decreases after a repayment, other repatriations, a sale or in an event of loss concerning the capital investment by the ratio of the repaid, repatriated, sold or affected part of the capital investment to the whole capital investment.

(4) Contributions made before filing a guarantee application are principally excluded from cover.

§ 8 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 for the cover for capital is stipulated in the guarantee policy taking into account the value of the contributions that the policyholder is required to make regarding the capital investment.

The maximum amount of the guarantee for the cover for capital

a) decreases in the case of a capital investment that has to be repaid or repatriated as scheduled at the end of the guarantee year by that part of the capital investment that is to be repaid or repatriated in accordance with a repayment or repatriation schedule included in the guarantee policy;
b) decreases at the end of a guarantee year by that part of the capital investment by which the guarantee independent of or deviating from a repayment or repatriation schedule as a result of a repayment, other repatriations or a sale of the capital investment became irrelevant, as far as the policyholder reports on it one month after the end of the guarantee year at the latest;
c) can be reduced to a lower amount at the end of the guarantee year on application by the policyholder; for a subsequent increase of the maximum amount of the guarantee for the cover for capital, not exceeding the contribution value, the prior consent of the Federal Government is required;
d) decreases in the event of loss concerning the capital investment by the amount of the covered loss determined in the calculation of the indemnification (§ 18 para. 3).

(3) The maximum amount of the guarantee for the cover for earnings will be stipulated as a percentage of the maximum amount of the guarantee for the cover for capital on application. If the maximum amount of the guarantee for the cover for capital decreases, the maximum amount of the guarantee for the cover for earnings must be reduced by the same ratio. The maximum amount of the guarantee for the cover for earnings decreases in the event of loss regarding the earnings by the amount of the covered loss determined in the calculation of the indemnification (§ 18 para. 3); in the case of receipts after indemnification (§ 21) the policyholder can apply for a corresponding re-increase of the cover for earnings.

§ 9 UNINSURED PERCENTAGE

(1) The policyholder participates in every covered loss (§ 18 para. 3) at the rate fixed in the guarantee policy.

(2) The uninsured percentage must not be covered otherwise.

§ 10 MAXIMUM LIABILITY

(1) The maximum liability of the Federal Government is the maximum amount of the guarantee less the uninsured percentage; this amount will be included in the guarantee policy. In connection with the guarantee claims exceeding the maximum amount of liability of the Federal Government cannot be asserted against the Federal Government, no matter what the cause in law might be.

(2) The liability of the Federal Government to indemnify covered losses (§ 18 para. 3) of less than 2,000.-- euros (minor loss) is excluded. This does not apply if several minor losses occur within one year and the losses sum up to 2,000.-- euros or more.

§ 11 BEGINNING AND TERMINATION OF COVER

(1) The cover for losses in capital investments and their earnings begins on the date when the policyholder has made the contribution to the capital investment; however, not before the guarantee agreement becomes effective (§ 12). Therefore the contributions to the capital investments are to be made within the period of time stipulated in the guarantee policy; this time limit may be prolonged by an addendum to the guarantee policy. If a contribution is made to the project company, the contribution is only then considered as to have been made when its object has come under the authority to dispose of the project company, the branch office or the plant location.

(2) If the policy holder‘s contribution is made in partial contributions, the cover for each partial contribution begins when the conditions stated in paragraph 1 have been complied with.

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(3) If at the point of time when the conditions stipulated in paragraph 1 and 2 are being complied with the events or measures mentioned in § 4 para. 1 have already occurred or been taken, losses resulting from such events or measures cannot be covered. If such a measure is temporary (e. g. temporary moratorium) and if this time limit is subsequently prolonged or if following to a temporary measure a new measure of the same type is taken, losses resulting from the prolongation of the time limit or the new measure cannot be covered either. As far as at the point of time when the guarantee agreement becomes effective there are circumstances that rule out or limit the payment or the transfer of the earnings or the payment or the re-transfer of the equivalent amount of the capital investment, losses of the capital investment or its earnings resulting from these circumstances cannot be covered by the guarantee; this also applies as far as the afore mentioned circumstances occur after the guarantee agreement has become effective but prior to the beginning of the cover, unless a refusal to effect the remaining contributions to the capital investment is unreasonable for the policyholder.

(4) The cover ends with the expiry of the guarantee period stipulated in the guarantee policy unless it ends earlier due to termination, withdrawal or for other reasons.

(5) Deviating from paragraph 4 cover is provided for

a) losses of capital investments resulting from events of loss in accordance with § 5 No. 1, 2 and 3 that occur within six months after the expiry of the guarantee period and are due to events or measures according to § 4 para. 1 lit. a), b) and c) that occurred or were taken prior to the expiry of the guarantee period;
b) losses of claims resulting from an event of loss according to § 5 No. 5 that occurs within two months after the expiry of the guarantee period.

This does not apply if the cover ends prematurely by termination, withdrawal or other reasons.

(6) Cover expires for those claims (claims converted from equity participations, investment-like loans, claims arising from other rights qualifying as assets, earnings), for which the collection and transfer is not immediately initiated after the due date or which are deferred, unless the Federal Government has consented to the continuation of the cover. This applies mutatis mutandis to the liquidation proceeds form the liquidation of a branch office or a plant location.

§ 12 GUARANTEE AGREEMENT

The guarantee agreement becomes effective when the Federal Government accepts the policyholder's application for a guarantee for direct investments in written form and with reference to these General Terms and Conditions. The same applies to an increase of the maximum liability of the Federal Government or an extension of the guarantee period.

§ 13 GENERAL OBLIGATIONS OF THE POLICYHOLDER

(1) The policyholder has to observe the regulations issued by the Federal Government and the host country regarding foreign capital investments, he has to apply for the authorisations required for capital investments and has to fulfil the conditions, requirements and obligations stipulated in the authorisations of the host country and in the agreements with the host country.

(2) A written report on the development of the capital investment as well as on the project company, the branch office or the plant location has to be made annually within nine months after the end of the fiscal year of the enterprise. The balance sheet and the profit and loss account together with explanations, the annual report, possible reports of auditors or institutions with similar functions as well as – if applicable – explanations on the development of the environmental situation concerning the project have to be enclosed with the report. The policyholder has to provide information on details about the capital investment and the relating business transactions by request anytime.

(3) The policyholder has to furnish written information immediately

a) when the conditions for the beginning of the cover (§ 11) for a contribution or a partial contribution to the capital investment have been complied with; in this connection the policyholder has to specify the amount of the contributions made to the guaranteed capital investment (§ 7 para. 1 sentence 1);
b) when equity participations or other rights qualifying as assets are converted into claims or when branch offices or plant locations are liquidated;
c) when capital investments are sold, otherwise disposed of or repayments are being made;
d) when substantial changes occur with regard to the capital investment, especially when the articles of association of the project company or the contracts relating to the capital investment are amended or cancelled; this applies mutatis mutandis to branch offices or plant locations;
e) when conditions or requirements are imposed on the authorisations related to the capital investment;
f) when the government or other authorities of the host country make or change special commitments concerning the capital investment or the project company;
g) when he acquires another uncovered capital investment in the same enterprise in addition to the capital investment covered by the guarantee.

(4) The policyholder has to prove by request anytime, at the latest when an event of loss occurs, the value of the contributions made to the guaranteed capital investment.

(5) After the expiry of the time-limit for filing an application for indemnification (§ 16 para. 1) the policyholder has to return the guarantee policy and its addenda for the release from liability.

(6) Before and after claiming on the cover of the Federal Government, the Federal Audit Office as well as the mandataries authorised by these are entitled to see and inspect, to copy or to require copies of the policyholder's books and records, data and other documents as far as they could be related to the guarantee at the policyholder's expense. By request of the Federal Government the policyholder has to take all reasonable measures to make possible that the project company can be audited in the same way. All documents relating to the guaranteed capital investment have to be preserved carefully.

§ 14 SPECIAL OBLIGATIONS OF THE POLICYHOLDER

(1) If an event of loss is pending or has occurred, the policyholder has to proceed with the due care and diligence of a prudent businessman; he has to do everything to avert or to minimise the loss and he has to observe possible instructions from the Federal Government.

(2) The Federal Government may participate in appropriate expenditures for measures to avert or minimise losses according to paragraph 1, as far as they are implemented with the consent or in accordance with the instructions of the Federal Government, are exceeding the usual measures of loss prevention or loss minimisation and the costs relating to these measures considerably burden the policyholder with regard to the type and the size of his business operations. The participation of the Federal Government depends on the amount of indemnification that might have to be paid for the capital investment in a case of loss.

(3) The policyholder has to furnish written information immediately

a) when he learns about risk-increasing circumstances, especially when events or measures according to § 4 para. 1 are imminent;
b) when such events have occurred or measures have been taken.

(4) If the host country terminates an agreement with the Federal Republic of Germany on the promotion and the mutual protection of direct investments and the guaranteed capital investment thereby loses the protection provided by the agreement prior to the expiry of the guarantee period, then the policyholder, in consultation with the Federal Government and due to the now lacking protection under the respective agreement, has to take the necessary measures to protect the capital investment.

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§ 15 CONSEQUENCES OF A VIOLATION OF THE CONTRACT; AUTHORISATIONS; RIGHT TO WITHDRAW FROM AND TO TERMINATE A CONTRACT

(1) If the policyholder has culpably contributed to the occurrence of a loss, especially by violating one of his obligations under these "General Terms and Conditions" or under the regulations of the guarantee policy, the obligation of the Federal Government to pay an indemnification as well as the amount of indemnification to be paid will be determined by the circumstances and in particular by the extent to which the loss was caused by the policyholder's violation of obligations. This applies mutatis mutandis if the policyholder's violation of obligations has contributed to increasing the loss or has prevented loss minimisation.

(2) If the policyholder has culpably violated one of his obligations under these "General Terms and Conditions" or under the regulations of the guarantee policy and this violation of obligations did not influence the occurrence and the amount of loss, the Federal Government can refuse to pay an indemnification or can reduce the amount of indemnification if the violation of obligations influenced the loss assessment or the amount of indemnification to be paid by the Federal Government.

(3) If contracts, public commitments, authorisations, registrations or other advantages are being or have been obtained by a criminal offence, in particular bribery, in connection with the project, the Federal Government is entitled to withdraw from or to terminate the guarantee and is released from the obligation to pay an indemnification under this guarantee, unless the policyholder neither knew nor had to know about this fact.

(4) The guarantee does not cover losses due to disadvantages as far as they are based on conditions and requirements stipulated in the authorisations of the host country and in the agreements with the host country. Losses due to disadvantages that in particular cases result from the non-application for available authorisations to obtain general or special advantages are not covered by the guarantee as well. Authorisations in terms of these regulations are commitments, registrations, concessions and the like.

(5) If the policyholder has culpably given incomplete or incorrect particulars in connection with the application, the Federal Government can withdraw from the guarantee within two months since having taken note thereof. If the Federal Government withdraws from the guarantee after the event of loss occurred, its obligation to pay an indemnification persists anyhow as far as the circumstances in consideration of which the incomplete or incorrect particulars were made did not influence the occurrence of the loss and the amount of indemnification to be paid by the Federal Government – especially its granting of a guarantee. The right of the Federal Government to contest the validity of the guarantee because of wilful deceit remains unaffected.

(6) If risk-increasing circumstances have occurred, the Federal Government can terminate or limit the guarantee with immediate effect as far as cover has not yet begun according to § 11, unless a refusal to effect the remaining contributions to the capital investment is unreasonable for the policyholder.

(7) If the articles of association of the project company or the contracts that may be related to the capital investment are altered, amended or annulled and if thereby the risk is materially increased, the Federal Government can terminate the guarantee with effect from the alteration, amendment or annulment; the obligation of the Federal Government to pay indemnifications for those events of loss that occurred prior to the alteration, amendment or annulment persists. This applies mutatis mutandis for branch offices and plant locations.

(8) If commitments in accordance with § 13 para. 3 lit. f) are made or extended, the Federal Government can limit the guarantee with effect from the issuance or extension of the commitments insofar as an increase of the risk may result out of it.

(9) The Federal Government is entitled to terminate the guarantee with immediate effect

a) in the case of a gross violation of the contractual obligations by the policyholder;
b) for substantial reason related to the person of the policyholder.

(10) The policyholder has to accept responsibility for the behaviour of the project company, his trustees and other persons who are subject to his instructions.

(11) The policyholder is entitled to terminate the guarantee in writing at the end of a guarantee year with one month's notice.

§ 16 APPLICATION FOR INDEMNIFICATION

(1) The application for indemnification has to be filed with PwC immediately after the occurrence of an event of loss, but not later than six months after the expiry of the cover (§ 11 paras. 4, 5 and 6).

(2) The policyholder has to prove the existence of the respective requirements for the occurrence of an event of loss as well as the cause and the amount of loss.

§ 17 LOSS ASSESSMENT AND PAYMENT OF INDEMNIFICATION

(1) The loss assessment is effected within a reasonable time after the policyholder has furnished all necessary documents for proving the loss. If this is not possible due to the respective circumstances in the first instance, the Federal Government can pay a preliminary indemnification on the policyholder's application; the Federal Government decides on the amount of indemnification after having examined the documents on hand.

(2) 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. With regard to investment-like loans the Federal Government can pay the indemnification for the claim in instalments corresponding to the repayment instalments stipulated in the loan agreement or in appropriate instalments within the remaining guarantee period. Interest will be paid in the amount of the stipulated loan interest but not exceeding the interest rate for loans of the Federal Government for meeting the expenses for the respective amount of indemnification outstanding, calculated from the payment date of the first indemnification instalment.

(3) If it turns out after the payment of the indemnification that the requirements for such a payment or for a payment of such an amount were not complied with, the policyholder is obliged to repay immediately this amount to the Federal Government. As far as the Federal Government is entitled to a repayment the policyholder has to pay interest on the amount repayable from the date of payment of the indemnification and amounting to the interest rate corresponding to the borrowing costs of the Federal Government from that point of time. By settling the repayment claim of the Federal Government the rights subrogated to the Federal Government in accordance with § 19 para. 1 and the claims for indemnification mentioned therein fall back to the policyholder. Further claims according to legal regulations or common rules of law will not be affected through this.

§ 18 CALCULATION OF THE INDEMNIFICATION

(1) For calculating the indemnification the gross loss (§ 6) will be ascertained. In this process

a) the contribution value of the capital investment resulting from § 7 is taken as a basis;
b) – as far as necessary – the current market value of the capital investment is determined as the amount in Euros attributable to the capital investment at the time of the occurrence of the event of loss and according to business principles in consideration of the balance sheets continued up to the respective point in time as well as the profit and loss accounts of the enterprise;
c) – as far as necessary – the residual value of the capital investment is determined as the amount in Euros attributable to the capital investment immediately after the occurrence of the event of loss and according to business principles in consideration of the balance sheets continued up to the respective point in time as well as the profit and loss accounts of the enterprise. In ascertaining this value highly probable consequences of the event of loss with a sustainable effect on the decrease in value of the capital investment will be taken into account appropriately. If the event of loss is followed by a liquidation of the enterprise or if the residual participation is sold, the proceeds of the liquidation or the sale have to be considered as the residual value of the capital investment, provided that the liquidation or the sale are in a causal relationship with the event of loss;

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d) the shortfalls relating to claims are ascertained as the difference to the amount that the policyholder would have received by converting and transferring this amount at the time of the occurrence of the event of loss. Amounts in foreign currencies have to be converted into Euros on the basis of the Euro reference exchange rate of the European Central bank. In the case that no quotation has been made for the Euro reference exchange rate on the relevant days the subsequent quotation takes its place. For currencies for which the European Central Bank does not quote Euro reference exchange rates these rates are replaced by the last conversion rate published as a selling rate by the Deutsche Bundesbank. If such a conversion rate has not been published, the Federal Government establishes the applicable conversion rate in consideration of the quotations of the relevant foreign stock markets.

(2) For determining the net loss the ascertained amounts according to paragraph 1 (gross loss) will be reduced by the following amounts considered as benefits, provided that they are related to the event of loss, net of the policyholder's expenses necessary for their realisation:

a) all payments or the value of all other benefits that the policyholder derived from the project company, the foreign state, insurances or other third parties after the occurrence of the event of loss;
b) all proceeds that the policyholder obtained by the realisation of rights, goods, pledges, mortgages and other securities;
c) the value of the policyholder's commitments and liabilities of which he was relieved by the event of loss or of which he can relieve himself by setting-off or by other means against the project company or a third party liable for losses resulting from the event of loss;
d) the value of any other benefits that the policyholder obtained.

If benefits are related to both guaranteed and non-guaranteed capital investments, they have to be reduced in the amount relating to the guaranteed capital investment.

(3) The guarantee will cover the net loss ascertained in accordance with the paragraphs 1 and 2 only insofar as it does not exceed the limits of the maximum amount of the guarantee for the cover for capital and earnings (covered loss).

(4) The amount of indemnification that has to be paid by the Federal Government results from the covered loss less the policyholder's uninsured percentage.

§ 19 ASSIGNMENT OF RIGHTS

(1) The receipt of an indemnification of the Federal Government obligates the policyholder to assign and transfer to the Federal Government those rights that were subject of the indemnification, the claims for indemnification and any insurance claims and suchlike as well as the claim to the amounts paid in and deposited abroad, each together with pledges, mortgages and profits and benefits related to these rights and claims. If such an assignment is not possible or if it is waived by the Federal Government, the policyholder insofar has to hold these rights in trust for the Federal Government and he has to administer them in accordance with the instructions of the Federal Government.

(2) The Federal Government can make the payment of an indemnification contingent upon the prior assignment of the rights.

§ 20 PROSECUTION OF RIGHTS AND CLAIMS

(1) Irrespective of the transfer of rights and claims to the Federal Government according to § 19 the policyholder, by request of the Federal Government also in his own name, has to undertake all adequate measures to collect or to realise the rights, including the securities, in accordance with the instructions of the Federal Government. The same applies to the rights held by the policyholder in trust of the Federal Government in accordance with § 19.

(2) Appropriate expenses of the policyholder for special measures to prosecute rights and claims that he undertakes after the receipt of an indemnification with the consent or on instructions by the Federal Government will be divided between the Federal Government and the policyholder in proportion to their respective participation.

§ 21 RECEIPTS AFTER INDEMNIFICATON

The receipts after indemnification will be divided between the Federal Government and the policyholder in proportion to the ratio between the amount of indemnification and the uninsured percentage. The share of the Federal Government in the receipts after indemnification is, however, limited in total to the sum of the amount of indemnification paid by the Federal Government plus interest at the rate corresponding to the interest rate ascertained by the European Central Bank for the most recent main refinancing operations. The setting-off of the receipts to which the Federal Government is entitled to is effected in the following order:

- the interest paid by the Federal Government according to § 17 para. 2 sentence 3
- the amounts of indemnification paid by the Federal Government under the cover for earnings
- the amounts of indemnification paid by the Federal Government under the cover for capital
- interest in accordance with sentence 2.

§ 22 ASSIGNMENT OF CLAIMS ARISING FROM THE GUARANTEE

(1) The assignment of claims arising from the guarantee is subject to prior written consent of the Federal Government. An assignment without the consent of the Federal Government is nevertheless effective according to § 354 a HGB; however, in this case the Federal Government remains entitled to perform to the policyholder with discharging effect.

(2) In the case of an assignment of claims arising from the guarantee – with or without the consent of the Federal Government – all obligations of the policyholder arising from the guarantee to the Federal Government persist unchanged, unless otherwise stipulated. The settlement of the loss is effected solely between the Federal Government and the policyholder. The Federal Government can make off-sets to the assignee, raise objections, assert rights of retention or other rights in the same way as to the policyholder.

§ 23 SALE OF THE CAPITAL INVESTMENT

If the policyholder sells the guaranteed capital investment or if he assigns of it otherwise or if the project company is extinguished by merger or similar procedures, the guarantee expires unless the Federal Government consents to the continuation of the guarantee.

§ 24 PREMIUM

(1) A premium is charged for the guarantee in accordance with the valid regulations for fees and premiums. The premium for each guarantee year is payable in advance and becomes due on receipt of the premium invoice.

(2) If the first premium for the guarantee has not been received within three weeks after the due date, the Federal Government can withdraw from the guarantee after a written warning; if the premium for one of the following years has not been received within three weeks after the due date, the Federal Government can terminate the guarantee with immediate effect after a written warning.

(3) If the Federal Government withdraws from or terminates the guarantee or if the guarantee expires, the premium has to be paid for the period until the withdrawal, termination or expiry becomes effective.

§ 25 WRITTEN FORM

All agreements and declarations must be in written form to be valid.

§ 26 COURT OF JURISDICTION AND PRECLUSION PERIOD

(1) Claims under the guarantee against the Federal Government have to be asserted in court within a term of preclusion of six months after the Federal Government has rejected in writing the claim filed by the policyholder and made reference to these legal consequences.

(2) Jurisdiction in disputes between the Federal Government and the policyholder rests with the ordinary courts in Hamburg.

www.investitionsgarantien.de/en

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 investment guarantee scheme is managed on behalf of the Federal Republic of Germany by PricewaterhouseCoopers GmbH Wirtschaftsprüfungsgesellschaft as mandatary of the Federal Government.

Information on other foreign trade promotion instruments of the Federal Government can be found at www.bmwi.de under the search term “Promotion of foreign trade and investment”.

Federal Ministry
for Economic Affairs
and Energy

OUR PARTNER

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