# รายการอ้างอิง

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# ภาคผนวก

ภาคผนวก ก.

กฎหมายว่าด้วยการให้ความช่วยเหลือแก่การลงทุนในต่างประเทศ ค.ศ. 1969

ประเทศสหรัฐอเมริกา

# ANNEX V (1)

## Foreign Assistance Act of 1969 (Public Law 91-175) as amended by Public Law 93-390 (concerning the Overseas Private Investment Corporation)

### "TITLE IV—OVERSEAS PRIVATE INVESTMENT CORPORATION

"Sec. 231. Creation, Purpose, and Policy.—To mobilize and facilitate the participation of United States private capital and skills in the economic and social progress of less developed friendly countries and areas, thereby complementing the development assistance objectives of the United States, there is hereby created the Overseas Private Investment Corporation (hereinafter called the 'Corporation'), which shall be an agency of the United States under the policy guidance of the Secretary of State.

"In carrying out its purpose, the Corporation, utilizing broad criteria, shall undertake—

"(a) to conduct its financing operations on a self-sustaining basis, taking into account the economic and financial soundness of projects and the availability of financing from other sources on appropriate terms;

"(b) to utilize private credit and investment institutions and the Corporation's guaranty authority as the principal means of mobilizing capital investment funds;

"(c) to broaden private participation and revolve its funds through selling its direct investments to private investors whenever it can appropriately do so on satisfactory terms;

"(d) to conduct its insurance operations with due regard to principles of risk management including, when appropriate, efforts to share its insurance risks;

"(e) to utilize, to the maximum practicable extent consistent with the accomplishment of its purpose, the resources and skills of small business and to provide facilities to encourage its full participation in the programs of the Corporation;

"(f) to encourage and support only those private investments in less developed friendly countries and areas which are sensitive and responsive to the special needs and requirements of their economies, and which contribute to the social and economic development of their people;

"(g) to consider in the conduct of its operations the extent to which less developed country governments are receptive to private enterprise, domestic and foreign, and their willingness and ability to maintain conditions which enable private enterprise to make its full contribution to the development process;

"(h) to foster private initiative and competition and discourage monopolistic practices;

"(i) to further to the greatest degree possible, in a manner consistent with its goals, the balance-of-payments objectives of the United States;

"(j) to conduct its activities in consonance with the activities of the agency primarily responsible for administering part I and the international trade, investment, and financial policies of the United States Government; and

"(k) to advise and assist, within its field of competence, interested agencies of the United States and other organizations, both public and private, national and international, with respect to projects and programs relating to the development of private enterprise in less developed countries and areas.

"Sec. 232. Capital of the Corporation.—The President is authorized to pay in as capital of the Corporation, out of dollar receipts made available through the appropriation process from loans made pursuant to this part and from loans made under the Mutual Security Act of 1954, as amended, for the fiscal year 1970 not to exceed $20,000,000 and for the fiscal year 1971 not to exceed $20,000,000. Upon the payment of such capital by the President, the Corporation shall issue an equivalent amount of capital stock to the Secretary of the Treasury.

"Sec. 233. Organization and Management.—(a) Structure of the Corporation.—The Corporation shall have a Board of Directors, a President, an Executive Vice President, and such other officers and staff as the Board of Directors may determine.

"(b) Board of Directors.—All powers of the Corporation shall vest in and be exercised by or under the authority of its Board of Directors ('the Board') which shall consist of eleven Directors, including the Chairman, with six Directors constituting a quorum for the transaction of business. The Administrator of the Agency for International Development shall be the Chairman of the Board, ex officio. Six Directors (other than the President of the Corporation, appointed pursuant to subsection (c) who shall also serve as a Director) shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall not be officials or employees of the Government of the United States. At least one of the six Directors appointed under the preceding sentence shall be experienced in small business, one in organized labor, and one in cooperatives. Each such Director shall be appointed for a term of no more than three years. The terms of no more than two such Directors shall expire in any one year. Such Directors shall serve until their successors are appointed and qualified and may be reappointed.

"The other Directors shall be officials of the Government of the United States, designated by and serving at the pleasure of the President of the United States.

"All Directors who are not officers of the Corporation or officials of the Government of the United States shall be compensated at a rate equivalent to that of level IV of the Executive Schedule (5 U.S.C. 5315) when actually engaged in the business of the Corporation and

may be paid per diem in lieu of subsistence at the applicable rate prescribed in the standardized Government travel regulations, as amended from time to time, while away from their homes or usual places of business.

"(c) President of the Corporation.—The President of the Corporation shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. In making such appointment, the President shall take into account private business experience of the appointee. The President of the Corporation shall be its Chief Executive Officer and responsible for the operations and management of the Corporation, subject to bylaws and policies established by the Board.

"(d) Officers and Staff.—The Executive Vice President of the Corporation shall be appointed by the President of the United States, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. Other officers, attorneys, employees, and agents shall be selected and appointed by the Corporation, and shall be vested with such powers and duties as the Corporation may determine. Of such persons employed by the Corporation, not to exceed twenty may be appointed, compensated, or removed without regard to the civil service laws and regulations: *Provided*, That under such regulations as the President of the United States may prescribe, officers and employees of the United States Government who are appointed to any of the above positions may be entitled, upon removal from such position, except for cause, to reinstatement to the position occupied at the time of appointment or to a position of comparable grade and salary. Such positions shall be in addition to those otherwise authorized by law, including those authorized by section 5108 of title 5 of the United States Code.

"Sec. 234. Investment Incentive Programs.—The Corporation is hereby authorized to do the following:

"(a) Investment Insurance.—(1) To issue insurance, upon such terms and conditions as the Corporation may determine, to eligible investors assuring protection in whole or in part against any or all of the following risks with respect to projects which the Corporation has approved—

"(A) inability to convert into United States dollars other currencies, or credits in such currencies, received as earnings or profits from the approved project, as repayment or return of the investment therein, in whole or in part, or as compensation for the sale or disposition of all or any part thereof;

"(B) loss of investment, in whole or in part, in the approved project due to expropriation or confiscation by action of a foreign government; and

"(C) loss due to war, revolution, or insurrection.

"(2) Recognizing that major private investments in less developed friendly countries or areas are often made by enterprises in which there is multinational participation, including significant United

States private participation, the Corporation may make such arrangements with foreign governments (including agencies, instrumentalities, or political subdivisions thereof) or with multilateral organizations for sharing liabilities assumed under investment insurance for such investments and may in connection therewith issue insurance to investors not otherwise eligible hereunder: *Provided, however*, That liabilities assumed by the Corporation under the authority of this subsection shall be consistent with the purposes of this title and that the maximum share of liabilities so assumed shall not exceed the proportionate participation by eligible investors in the total project financing.

"(3) Not more than 10 per centum of the total face amount of investment insurance which the Corporation is authorized to issue under this subsection shall be issued to a single investor.

"(b) Investment Guaranties.—To issue to eligible investors guaranties of loans and other investments made by such investors assuring against loss due to such risks and upon such terms and conditions as the Corporation may determine: *Provided, however*, That such guaranties on other than loan investments shall not exceed 75 per centum of such investment: *Provided further*, That except for loan investments for credit unions made by eligible credit unions or credit union associations, the aggregate amount of investment (exclusive of interest and earnings) so guaranteed with respect to any project shall not exceed, at the time of issuance of any such guaranty, 75 per centum of the total investment committed to any such project as determined by the Corporation, which determination shall be conclusive for purposes of the Corporation's authority to issue any such guaranty: *Provided further*, That not more than 10 per centum of the total face amount of investment guaranties which the Corporation is authorized to issue under this subsection shall be issued to a single investor.

"(c) Direct Investment.—To make loans in United States dollars repayable in dollars or loans in foreign currencies (including, without regard to section 1415 of the Supplemental Appropriation Act, 1953, such foreign currencies which the Secretary of the Treasury may determine to be excess to the normal requirements of the United States and the Director of the Bureau of the Budget may allocate) to firms privately owned or of mixed private and public ownership upon such terms and conditions as the Corporation may determine. The Corporation may not purchase or invest in any stock in any other corporation, except that it may (1) accept as evidence of indebtedness debt securities convertible to stock, but such debt securities shall not be converted to stock while held by the Corporation, and (2) acquire stock through the enforcement of any lien or pledge or otherwise to satisfy a previously contracted indebtedness which would otherwise be in default, or as the result of any payment under any contract of insurance or guaranty. The Corporation shall dispose of any stock it may so acquire as soon as reasonably feasible under the circumstances then pertaining.

"No loans shall be made under this section to finance operations for mining or other extraction of any deposit of ore, oil, gas, or other mineral.

"(d) Investment Encouragement.—To initiate and support through financial participation, incentive grant, or otherwise, and on such terms and conditions as the Corporation may determine, the identification, assessment, surveying and promotion of private investment opportunities, utilizing wherever feasible and effective the facilities of private organizations or private investors: *Provided, however,* That the Corporation shall not finance surveys to ascertain the existence, location, extent or quality, or to determine the feasibility of undertaking operations for mining or other extraction, of any deposit of ore, oil, gas, or other mineral. In carrying out this authority, the Corporation shall coordinate with such investment promotion activities as are carried out by the Department of Commerce.

"(e) Special Activities.—To administer and manage special projects and programs, including programs of financial and advisory support which provide private technical, professional, or managerial assistance in the development of human resources, skills, technology, capital savings and intermediate financial and investment institutions and cooperatives. The funds for these projects and programs may, with the Corporation's concurrence, be transferred to it for such purposes under the authority of section 632(a) or from other sources, public or private.

"Sec. 235. Issuing Authority, Direct Investment Fund and Reserves.—(a) (1) The maximum contingent liability outstanding at any one time pursuant to insurance issued under section 234(a) shall not exceed $7,500,000,000.

"(2) The maximum contingent liability outstanding at any one time pursuant to guaranties issued under section 234(b) shall not exceed in the aggregate $750,000,000, of which guaranties of credit union investment shall not exceed $1,250,000: *Provided,* That the Corporation shall not make any commitment to issue any guaranty which would result in a fractional reserve less than 25 per centum of the maximum contingent liability then outstanding against guaranties issued or commitments made pursuant to section 234(b) or similar predecessor guaranty authority.

"(3) The Congress, in considering the budget programs transmitted by the President for the Corporation, pursuant to section 104 of the Government Corporation Control Act, as amended, may limit the obligations and contingent liabilities to be undertaken under section 234(a) and (b) as well as the use of funds for operating and administrative expenses.

"(4) The authority of section 234(a) and (b) shall continue until June 30, 1974.

"(b) There shall be established a revolving fund, known as the Direct Investment Fund, to be held by the Corporation. Such fund shall consist initially of amounts made available under section 232, shall be available for the purposes authorized under section 234(c),

shall be charged with realized losses and credited with realized gains and shall be credited with such additional sums as may be transferred to it under the provisions of section 236.

"(c) There shall be established in the Treasury of the United States an insurance and guaranty fund, which shall have separate accounts to be known as the Insurance Reserve and the Guaranty Reserve, which reserves shall be available for discharge of liabilities, as provided in section 235(d), until such time as all such liabilities have been discharged or have expired or until all such reserves have been expended in accordance with the provisions of this section. Such fund shall be funded by: (1) the funds heretofore available to discharge liabilities under predecessor guaranty authority (including housing guaranty authorities), less both the amount made available for housing guaranty programs pursuant to section 223(b) and the amount made available to the Corporation pursuant to section 234 (e); and (2) such sums as shall be appropriated pursuant to section 235(f) for such purpose. The allocation of such funds to each such reserve shall be determined by the Board after consultation with the Secretary of the Treasury. Additional amounts may thereafter be transferred to such reserves pursuant to section 236.

"(d) Any payments made to discharge liabilities under investment insurance issued under section 234(a) or under similar predecessor guaranty authority shall be paid first out of the Insurance Reserve, as long as such reserve remains available, and thereafter out of funds made available pursuant to section 235(f). Any payments made to discharge liabilities under guaranties issued under section 234(b) or under similar predecessor guaranty authority shall be paid first out of the Guaranty Reserve as long as such reserve remains available, and thereafter out of funds made available pursuant to section 235(f).

"(e) There is hereby authorized to be transferred to the Corporation at its call, for the purposes specified in section 236, all fees and other revenues collected under predecessor guaranty authority from December 31, 1968, available as of the date of such transfer.

"(f) There is hereby authorized to be appropriated to the Corporation, to remain available until expended, such amounts as may be necessary from time to time to replenish or increase the insurance and guaranty fund or to discharge the liabilities under insurance and guaranties issued by the Corporation or issued under predecessor guaranty authority.

"Sec. 236. Income and Revenues.—In order to carry out the purposes of the Corporation, all revenues and income transferred to or earned by the Corporation, from whatever source derived, shall be held by the Corporation and shall be available to carry out its purposes, including without limitation—

"(a) payment of all expenses of the Corporation, including investment promotion expenses;

"(b) transfers and additions to the insurance or guaranty reserves, the Direct Investment Fund established pursuant to section 235, and such other funds or reserves as the Corporation

may establish, at such time and in such amounts as the Board may determine; and

"(c) payment of dividends, on capital stock, which shall consist of and be paid from net earnings of the Corporation after payments, transfers, and additions under subsections (a) and (b) hereof.

"Sec. 237. General Provisions Relating to Insurance and Guaranty Programs.—(a) Insurance and guaranties issued under this title shall cover investment made in connection with projects in any less developed friendly country or area with the government of which the President of the United States has agreed to institute a program for insurance or guaranties.

"(b) The Corporation shall determine that suitable arrangements exist for protecting the interest of the Corporation in connection with any insurance or guaranty issued under this title, including arrangements concerning ownership, use, and disposition of the currency, credits, assets, or investments on account of which payment under such insurance or guaranty is to be made, and any right, title, claim, or cause of action existing in connection therewith.

"(c) All guaranties issued prior to July 1, 1956, all guaranties issued under sections 202(b) and 413(b) of the Mutual Security Act of 1954, as amended, all guaranties heretofore issued pursuant to prior guaranty authorities repealed by the Foreign Assistance Act of 1969, and all insurance and guaranties issued pursuant to this title shall constitute obligations, in accordance with the terms of such insurance or guaranties, of the United States of America and the full faith and credit of the United States of America is hereby pledged for the full payment and performance of such obligations.

"(d) Fees shall be charged for insurance and guaranty coverage in amounts to be determined by the Corporation. In the event fees to be charged for investment insurance or guaranties are reduced, fees to be paid under existing contracts for the same type of guaranties or insurance and for similar guaranties issued under predecessor guaranty authority may be reduced.

"(e) No insurance or guaranty of any equity investment shall extend beyond twenty years from the date of issuance.

"(f) No insurance or guaranty issued under this title shall exceed the dollar value, as of the date of the investment, of the investment made in the project with the approval of the Corporation plus interest, earnings or profits actually accrued on said investment to the extent provided by such insurance or guaranty.

"(g) No payment may be made under any guaranty issued pursuant to this title for any loss arising out of fraud or misrepresentation for which the party seeking payment is responsible.

"(h) Insurance or guaranties of a loan or equity investment of an eligible investor in a foreign bank, finance company, or other credit institution shall extend only to such loan or equity investment and not to any individual loan or equity investment made by such foreign bank, finance company, or other credit institution.

"(i) Claims arising as a result of insurance or guaranty operations under this title or under predecessor guaranty authority may be settled, and disputes arising as a result thereof may be arbitrated with the consent of the parties, on such terms and conditions as the Corporation may determine. Payment made pursuant to any such settlement, or as a result of an arbitration award, shall be final and conclusive notwithstanding any other provision of law.

"(j) Each guaranty contract executed by such officer or officers as may be designated by the Board shall be conclusively presumed to be issued in compliance with the requirements of this Act.

"(k) In making a determination to issue insurance or a guaranty under this title, the Corporation shall consider the possible adverse effect of the dollar investment under such insurance or guaranty upon the balance of payments of the United States.

"Sec. 238. Definitions.—As used in this title—

"(a) the term 'investment' includes any contribution of funds, commodities, services, patents, processes, or techniques, in the form of (1) a loan or loans to an approved project, (2) the purchase of a share of ownership in any such project, (3) participation in royalties, earnings, or profits of any such project, and (4) the furnishing of commodities or services pursuant to a lease or other contract;

"(b) the term 'expropriation' includes, but is not limited to, any abrogation, repudiation, or impairment by a foreign government of its own contract with an investor with respect to a project, where such abrogation, repudiation, or impairment is not caused by the investor's own fault or misconduct, and materially adversely affects the continued operation of the project;

"(c) the term 'eligible investor' means: (1) United States citizens; (2) corporations, partnerships, or other associations including nonprofit associations, created under the laws of the United States or any State or territory thereof and substantially beneficially owned by United States citizens; and (3) foreign corporations, partnerships, of other associations wholly owned by one or more such United States citizens, corporations, partnerships, or other associations: *Provided, however,* That the eligibility of such foreign corporation shall be determined without regard to any shares, in aggregate less than 5 per centum of the total of issued and subscribed share capital, required by law to be held by other than the United States owners: *Provided further,* That in the case of any loan investment a final determination of eligibility may be made at the time the insurance or guaranty is issued; in all other cases, the investor must be eligible at the time a claim arises as well as at the time the insurance or guaranty is issued; and

"(d) the term 'predecessor guaranty authority' means prior guaranty authorities (other than housing guaranty authorities) repealed by the Foreign Assistance Act of 1969, sections 202(b) and 413(b) of the Mutual Security Act of 1954, as amended, and

section 111(b) (3) of the Economic Cooperation Act of 1948, as amended (exclusive of authority relating to informational media guaranties).

"Sec. 239. General Provisions and Powers.—(a) The Corporation shall have its principal office in the District of Columbia and shall be deemed, for purposes of venue in civil actions, to be a resident thereof.

"(b) The President shall transfer to the Corporation, at such time as he may determine, all obligations, assets and related rights and responsibilities arising out of, or related to, predecessor programs and authorities similar to those provided for in section 234(a), (b), and (d). Until such transfer, the agency heretofore responsible for such predecessor programs shall continue to administer such assets and obligations, and such programs and activities authorized under this title as may be determined by the President.

"(c) The Corporation shall be subject to the applicable provisions of the Government Corporation Control Act, except as otherwise provided in this title.

"(d) To carry out the purposes of this title, the Corporation is authorized to adopt and use a corporate seal, which shall be judicially noticed; to sue and be sued in its corporate name; to adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law; to acquire, hold or dispose of, upon such terms and conditions as the Corporation may determine, any property, real, personal, or mixed, tangible or intangible, or any interest therein; to invest funds derived from fees and other revenues in obligations of the United States and to use the proceeds therefrom, including earnings and profits, as it shall deem appropriate; to indemnify directors, officers, employees and agents of the Corporation for liabilities and expenses incurred in connection with their Corporation activities; to require bonds of officers, employees, and agents and pay the premiums therefor; notwithstanding any other provision of law, to represent itself or to contract for representation in all legal and arbitral proceedings; to purchase, discount, rediscount, sell, and negotiate, with or without its endorsement or guaranty, and guarantee notes, participation certificates, and other evidence of indebtedness (provided that the Corporation shall not issue its own securities, except participation certificates for the purpose of carrying out section 231(c)); to make and carry out such contracts and agreements as are necessary and advisable in the conduct of its business; to exercise the priority of the Government of the United States in collecting debts from bankrupt, insolvent, or decedents' estates; to determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to Government corporations; and to take such actions as may be necessary or appropriate to carry out the powers herein or hereafter specifically conferred upon it.

"(e) The Auditor-General of the Agency for International Development (1) shall have the responsibility for planning and directing the execution of audits, reviews, investigations, and inspections of all phases of the Corporation's operations and activities and (2) shall conduct all security activities of the Corporation relating to personnel and the control of classified material. With respect to his responsibilities under this subsection, the Auditor-General shall report to the Board. The agency primarily responsible for administering part I shall be reimbursed by the Corporation for all expenses incurred by the Auditor-General in connection with his responsibilities under this subsection.

"(f) In order to further the purposes of the Corporation there shall be established an Advisory Council to be composed of such representatives of the American business community as may be selected by the Chairman of the Board. The President and the Board shall, from time to time, consult with such Council concerning the objectives of the Corporation. Members of the Council shall receive no compensation for their services but shall be entitled to reimbursement in accordance with section 5703 of title 5 of the United States Code for travel and other expenses incurred by them in the performance of their functions under this section.

"Sec. 240. Agricultural Credit and Self-Help Community Development Projects.—(a) It is the sense of the Congress that in order to stimulate the participation of the private sector in the economic development of less developed countries in Latin America, the authority conferred by this section should be used to establish pilot programs in not more than five Latin American countries to encourage private banks, credit institutions, similar private lending organizations, cooperatives, and private nonprofit development organizations to make loans on reasonable terms to organized groups and individuals residing in a community for the purpose of enabling such groups and individuals to carry out agricultural credit and self-help community development projects for which they are unable to obtain financial assistance on reasonable terms. Agricultural credit and assistance for self-help community development projects should include, but not be limited to, material and such projects as wells, pumps, farm machinery, improved seed, fertilizer, pesticides, vocational training, food industry development, nutrition projects, improved breeding stock for farm animals, sanitation facilities, and looms and other handicraft aids.

"(b) To carry out the purposes of subsection (a), the Corporation is authorized to issue guaranties, on such terms and conditions as it shall determine, to private lending institutions, cooperatives, and private nonprofit development organizations in not more than five Latin American countries assuring against loss of not to exceed 25 per centum of the portfolio of such loans made by any lender to organized groups or individuals residing in a community to enable such groups or individuals to carry out agricultural credit and self-help community development projects for which they are un-

able to obtain financial assistance on reasonable terms. In no event shall the liability of the United States exceed 75 per centum of any one loan.

"(c) The total face amount of guaranties issued under this section outstanding at any one time shall not exceed $15,000,000. Not more than 10 per centum of such sum shall be provided for any one institution, cooperative, or organization.

"(d) The Inter-American Social Development Institute shall be consulted in developing criteria for making loans eligible for guaranty coverage under this section.

"(e) The guaranty reserve established under section 235(c) shall be available to make such payments as may be necessary to discharge liabilities under guaranties issued under this section.

"(f) Notwithstanding the limitation contained in subsection (c) of this section, foreign currencies owned by the United States and determined by the Secretary of the Treasury to be excess to the needs of the United States may be utilized to carry out the purposes of this section, including the discharge of liabilities incurred under this subsection. The authority conferred by this subsection shall be in addition to authority conferred by any other provision of law to implement guaranty programs utilizing excess local currency.

"(g) The Corporation shall, on or before January 15, 1972, make a detailed report to the Congress on the results of the pilot programs established under this section, together with such recommendations as it may deem appropriate.

"(h) The authority of this section shall continue until June 30, 1972.

"Sec. 240A. Reports to the Congress.—(a) After the end of each fiscal year, the Corporation shall submit to the Congress a complete and detailed report of its operations during such fiscal year.

"(b) Not later than March 1, 1974, the Corporation shall submit to the Congress an analysis of the possibilities of transferring all or part of its activities to private United States citizens, corporations, or other associations."

# OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS ACT OF 1974

*For Legislative History of Act, see p. 4517*

PUBLIC LAW 93-390; 88 STAT. 763

[S. 2957]

An Act to amend the title of the Foreign Assistance Act of 1961 concerning the Overseas Private Investment Corporation to extend the authority for the Corporation, to authorize the Corporation to issue reinsurance, to terminate certain activities of the Corporation, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled That:*

This Act may be cited as the "Overseas Private Investment Corporation Amendments Act of 1974".

Sec. 2. Title IV of chapter 2 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2191–2200a) [99] is amended as follows:

(1) In section 231—

(A) in the first sentence, strike out "progress" and insert in lieu thereof "development";

(B) strike out clause (a) and insert in lieu thereof the following:

"(a) to conduct financing, insurance, and reinsurance operations on a self-sustaining basis, taking into account in its financing operations the economic and financial soundness of projects;";

99. 22 U.S.C.A. §§ 2191 to 2200a.

(C) in clause (d) strike out ", when appropriate,", and insert after "efforts to share its insurance" the following: "and reinsurance";

(D) strike out clause (e) and insert in lieu thereof the following:

"(e) to give preferential consideration in its investment insurance, financing, and reinsurance activities (to the maximum extent practicable consistent with the Corporation's purposes) to investment projects involving businesses of not more than $2,500,000 net worth or with not more than $7,500,000 in total assets;";

(E) in clause (i), after "balance-of-payments" insert "and employment";

(F) in clause (j), strike out "and" after the semicolon;

(G) at the end of clause (k), strike out the period and insert in lieu thereof a semicolon; and

(H) add at the end thereof the following new clauses:

"(l) to the maximum extent practicable, to give preferential consideration in the Corporation's investment insurance, financing, and reinsurance activities to investment projects in the less developed friendly countries which have per capita incomes of $450 or less in 1973 United States dollars; and

"(m)(1) to decline to issue any contract of insurance or reinsurance, or any guaranty, or to enter into any agreement to provide financing for an eligible investor's proposed investment if the Corporation determines that such investment is likely to cause such investor (or the sponsor of an investment project in which such investor is involved) significantly to reduce the number of his employees in the United States because he is replacing his United States production with production from such investment which involves substantially the same product for substantially the same market as his United States production; and (2) to monitor conformance with the representations of the investor on which the Corporation relied in making the determination required by clause (1)."

(2) Section 234 is amended—

(A) by striking out the section caption and inserting in lieu thereof the following: "Investment Insurance and Other Programs";

(B) by striking out subsection (a)(2) and inserting in lieu thereof the following:

"(2) Recognizing that major private investments in less developed friendly countries or areas are often made by enterprises in which there is multinational participation, including significant United States private participation, the Corporation may make arrangements with foreign governments (including agencies, instrumentalities, or political subdivisions thereof) or with multilateral organizations and institutions for sharing liabilities assumed under investment insurance for such investments and may in connection therewith issue insurance to investors not otherwise eligible hereunder, except that lia-

bilities assumed by the Corporation under the authority of this subsection shall be consistent with the purposes of this title and that the maximum share of liabilities so assumed shall not exceed the proportionate participation by eligible investors in the total project financing, and that the maximum share of liabilities so assumed under paragraph (1)(A) and (B) or paragraph (1)(C) shall not exceed the Corporation's proportional share for such liabilities as specified in paragraph (4) or (5) of this subsection."

(C) by adding at the end of subsection (a) thereof the following new paragraphs:

"(4)(A) It is the intention of Congress that the Corporation achieve participation by private insurance companies, multilateral organizations, or others in liabilities incurred in respect of the risks referred to in paragraph (1)(A) and (B) of this subsection under contracts issued on and after January 1, 1975, of at least 25 per centum, and, under contracts issued on and after January 1, 1978, of at least 50 per centum. If for good reason it is not possible for the Corporation to achieve either such percentage of participation, the Corporation shall report in detail to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives the reasons for its inability to achieve either such percentage of participation, and the date by which such percentage is to be achieved.

"(B) The Corporation shall not participate as insurer under contracts of insurance issued after December 31, 1979, in respect of the risks referred to in paragraph (1)(A) and (B) of this subsection unless Congress by law modifies this paragraph.

"(5)(A) It is the intention of Congress that the Corporation achieve participation by private insurance companies, multilateral organizations, or others in liabilities incurred in respect of the risks referred to in paragraph (1)(C) of this subsection under contracts issued on and after January 1, 1976, of at least 12½ per centum, and, under contracts issued on and after January 1, 1979, of at least 40 per centum. If for good reason it is not possible for the Corporation to achieve either such percentage of participation, the Corporation shall report in detail to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives the reasons for its inability to achieve either such percentage of participation and the date by which such percentage is to be achieved.

"(B) The Corporation shall not participate as insurer under contracts of insurance issued after December 31, 1980, in respect of the risks referred to in paragraph (1)(C) of this subsection unless Congress by law modifies this paragraph.

"(6) Notwithstanding any of the percentages of participation under paragraphs (4)(A) and (5)(A) of this subsection, the Corporation may agree to assume liability as insurer for any contract of insurance, or share thereof, that a private insurance company, multilateral organization, or any other person has issued in respect of the risks referred to in paragraph (1) of this subsection, and neither

the execution of any such agreement to assume liability nor its performance by the Corporation shall be considered as participation by the Corporation in any such contract for purposes of such percentages of participation. On and after January 1, 1981, the Corporation shall not enter into any such agreement to assume liability.

"(7) On and after December 31, 1979, the Corporation shall not manage direct insurance issued after such date in respect of risks referred to in paragraph (1)(A) or (B) of this subsection unless Congress by law modifies this sentence. On and after December 31, 1980, the Corporation shall not manage direct insurance issued after such date in respect of risks referred to in paragraph (1)(C) of this subsection unless Congress by law modifies this sentence. It shall thereafter act solely as a reinsurer except to the extent necessary to manage its outstanding insurance and reinsurance contracts and any contracts of insurance the Corporation assumes pursuant to paragraph (6)."; and

(D) by adding at the end thereof the following new subsection:

"(f) Other Insurance Functions.—(1) To make and carry out contracts of insurance or reinsurance, or agreements to associate or share risks, with insurance companies, financial institutions, any other persons, or groups thereof, and employing the same, where appropriate, as its agent, or acting as their agent, in the issuance and servicing of insurance, the adjustment of claims, the exercise of subrogation rights, the ceding and accepting of reinsurance, and in any other matter incident to an insurance business.

"(2) To enter into pooling or other risk-sharing arrangements with other national or multinational insurance or financing agencies or groups of such agencies.

"(3) To hold an ownership interest in any association or other entity established for the purposes of sharing risks under investment insurance.

"(4) To issue, upon such terms and conditions as it may determine, reinsurance of liabilities assumed by other insurers or groups thereof in respect of risks referred to in subsection (a)(1).

The authority granted by paragraph (3) may be exercised notwithstanding the prohibition under subsection (c) against the Corporation purchasing or investing in any stock in any other corporation. The amount of reinsurance of liabilities under this title which the Corporation may issue shall not exceed $600,000,000 in any one year, and the amount of such reinsurance shall not in the aggregate exceed at any one time an amount equal to the amount authorized for the maximum contingent liability outstanding at any one time under section 235(a)(1). All reinsurance issued by the Corporation under this subsection shall require that the reinsured party retain for his own account specified portions of liability, whether first loss or otherwise, and the Corporation shall endeavor to increase such specified portions to the maximum extent possible."

(3) In section 235—

(A) strike out "1974" in subsection (a)(4) and insert in lieu thereof "1977";

(B) in subsection (d), strike out "insurance issued under section 234(a)" and insert in lieu thereof the following: "insurance or reinsurance issued under section 234"; and

(C) strike out subsection (f) and insert in lieu thereof the following:

"(f) There are authorized to be appropriated to the Corporation, to remain available until expended, such amounts as may be necessary from time to time to replenish or increase the insurance and guaranty fund to discharge the liabilities under insurance, reinsurance, or guaranties issued by the Corporation or issued under predecessor guaranty authority, or to discharge obligations of the Corporation purchased by the Secretary of the Treasury pursuant to this subsection. However, no appropriations shall be made to augment the Insurance Reserve until the amount of funds in the Insurance Reserve is less than $25,000,000. Any appropriations to augment the Insurance Reserve shall then only be made either pursuant to specific authorization enacted after the date of enactment of the Overseas Private Investment Corporation Amendments Act of 1974, or to satisfy the full faith and credit provision of section 237(c). In order to discharge liabilities under investment insurance or reinsurance, the Corporation is authorized to issue from time to time for purchase by the Secretary of the Treasury its notes, debentures, bonds, or other obligations; but the aggregate amount of such obligations outstanding at any one time shall not exceed $100,000,000. Any such obligation shall be repaid to the Treasury within one year after the date of issue of such obligation. Any such obligation shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of any obligation authorized by this subsection. The Secretary of the Treasury shall purchase any obligation of the Corporation issued under this subsection, and for such purchase he may use as a public debt transaction the proceeds of the sale of any securities issued under the Second Liberty Bond Act after the date of enactment of the Overseas Private Investment Corporation Amendments Act of 1974. The purpose for which securities may be issued under such Bond Act shall include any such purchase."

(4) In section 237—

(A) in subsection (a), strike out "and guaranties" and insert in lieu thereof a comma and "guaranties, and reinsurance"; and strike out "or guaranties" and insert in lieu thereof a comma and "guaranties, or reinsurance";

(B) in subsection (b), strike out "or guaranty" in both places and insert in lieu thereof in both places the following: ", guaranty or reinsurance";

(C) in subsection (c), insert ", reinsurance," after "insurance" in both places it occurs;

(D) strike out subsection (d) and insert in lieu thereof the following:

"(d) Fees shall be charged for insurance, guaranty, and reinsurance coverage in amounts to be determined by the Corporation. In the event fees charged for investment insurance, guaranties, or reinsurance are reduced, fees to be paid under existing contracts for the same type of insurance, guaranties, or reinsurance and for similar guaranties issued under predecessor guaranty authority may be reduced.";

(E) in subsection (e), strike out "or guaranty" and insert in lieu thereof a comma and "guaranty, or reinsurance";

(F) in subsection (f), insert ", reinsurance," after "insurance" in both places it occurs;

(G) add at the end of subsection (f) the following: "Notwithstanding the preceding sentence, the Corporation shall limit the amount of direct insurance and reinsurance issued by it under section 234 so that risk of loss as to at least 10 per centum of the total investment of the insured and its affiliates in the project is borne by the insured and such affiliates. The preceding sentence shall not apply to the extent not permitted by State law.";

(H) in subsection (g), after "guaranty", insert a comma and "insurance, or reinsurance";

(I) in subsection (h), strike out "or guaranties" and insert in lieu thereof a comma and "guaranties, or reinsurance";

(J) in subsection (i), after "insurance," insert ", reinsurance,"; and

(K) strike out subsection (k) and insert in lieu thereof the following:

"(k) In making a determination to issue insurance, guaranties, or reinsurance under this title, the Corporation shall consider the possible adverse effect of the dollar investment under such insurance, guaranty, or reinsurance upon the balance of payments of the United States."

(5) In section 239—

(A) in subsection (b), add the following new sentences at the end thereof: "On December 31, 1979, the Corporation shall cease operating the programs authorized by section 234(b) through (e) and section 240. Thereafter, the President is authorized to transfer such programs, and all obligations, assets, and related rights and responsibilities arising out of, or related to, such programs to other agencies of the United States. Upon any such transfer, these programs shall be limited to countries with per capita income of $450 or less in 1973 dollars."; and

(B) add at the end thereof the following:

"(h) Within six months after the date of enactment of this subsection the Corporation shall develop and implement specific criteria

intended to minimize the potential environmental implications of projects undertaken by investors abroad in accordance with any of the programs authorized by this title."

(6) In section 240(h), strike out "1974" and insert in lieu thereof "1977".

(7) In section 240A, strike out subsection (b) and insert in lieu thereof the following:

"(b) Not later than January 1, 1976, the Corporation shall submit to the Congress an analysis of the possibilities of transferring all of its activities to private insurance companies, multilateral organizations and institutions, or other entities."

Approved Aug. 27, 1974.

# ภาคผนวก ข.

## กฎหมายประกันภัยการส่งออก ค.ศ. 1972

## ประเทศญี่ปุ่น

NO. 5600 輸 出 保 険 法

# □EXPORT INSURANCE LAW

(Law No. 67, March 31, 1950)

1972

(Revised Edition)

EHS Vol. V

NA

AMENDMENTS:

(1) Law No. 176, June 1, 1951
(2) Law No. 281, Nov. 30, 1951
(3) Law No. 33, Mar. 31, 1952
(4) Law No. 276, July 31, 1952
(5) Law No. 79, July 24, 1953
Title amended: Old Title,
"EXPORT CREDIT INDURANCE LAW
(6) Law No. 13, Mar. 29, 1954
(7) Law No. 67, Apr. 10, 1954
(8) Law No. 73, Apr. 16, 1956
(9) Law No. 96, May 2, 1957
(10) Law No. 59, Apr. 15, 1958
(11) Law No. 103, May 2, 1962
(12) Law No. 161, Sep. 15, 1962
(13) Law No. 90, Jun. 1, 1964
(14) Law No. 17, Mar. 31, 1965
(15) Law No. 57, May 15, 1970
(16) Law No. 2, Jan. 20, 1972

Note: Circled numbers after title of each Article indicate the amendments thereto, the amending laws being referred to above as well as in Supplementary Provisions with the same circled numbers.

# □ EXPORT INSURANCE LAW (5)

(Law No. 67, March 31, 1950)

## CONTENTS (3) (5) (8)



## CHAPTER I

### General Provisions

(Purpose) (2) (8)

Article 1. The purpose of this Law is to promote the sound development of export trade and other foreign transactions, through establishing a system to insure restrictions on exchange transactions and other risks inherent in export trade and other foreign transactions which cannot be relieved by an ordinary insurance.

(Definitions) (3) (5) (6) (8) (15) (16)

Article 1-2. "Export contract" in this Law shall mean a contract for exporting goods produced, processed or gathered within this country, which contains the statements on matters prescribed by Cabinet Order

2. "Exporter" in this Law shall mean a person exporting goods who is a party to the export contract.

3. "Supply contract" in this Law shall mean a contract for producing, processing or gathering within this country the goods to be exported by exporters in accordance with export contract, and delivering the same to the exporter.

4. "Producer" in this Law shall mean a person who produces, processes or gathers goods within this country with the intention to export.

5. "Contract for supplying technical services" in this Law shall mean a contract for supplying technique or supplying services therealong in a foreign country and receiving the whole or a part of the countervalue by the payment to Japan, which contains the statements on matters prescribed by Cabinet Order.

6. "Supplier of technical services" in this Law shall mean a person supplying technique or supplying services therealong, who is a party to the contract for supplying technical services.

7. "Export proceeds loan contract" in this Law shall mean the contract of loaning the funds for appropriating to payment of the proceeds of export goods (only limited to the goods as prescribed in the Cabinet Order under Article 5-2 paragraph 2) based on export contract, or of the rent, or of the countervalue for rendering techniques or services based on technique rendering contracts, to foreign governments, foreign local public bodies or similar ones (hereinafter referred to as the "foreign government, etc."), foreign corporations or foreigners, in which the matters prescribed by Cabinet Order are stipulated.

8. "Export proceeds loaner" in this Law shall mean the concerned party to the export proceeds loan contract, who loans the funds.

9. "Consignment sale export contract" in this Law shall mean an export contract for consigning the sale in a foreign country of the goods produced, processed or gathered within this country. (6) (8)

10. "Oversea investment" in this Law shall mean those mentioned in the following:

(1) Acquisition of stocks or other proprietary interests (hereinafter referred to as "stocks, etc.") of foreign companies;

(2) Acquisition of claimable assets pertaining to long-term loan (hereinafter referred to as "loan claimable assets"), appropriated to the fund necessary for acquiring the stocks, etc., to a foreign government, etc., another



foreign corporation or a foreigner which intends to acquire the stocks, etc. of the foreign corporation (limited to those whose stocks, etc. are intended to be acquired or are possessed by Japanese corporations or Japanese nationals);

(3) Acquisition of debentures, similar bonds or claimable assets pertaining to long-term loan to a foreign corporation (hereinafter referred to as "debentures, etc.") of the foreign corporation (limited to those which are practically controlled the management by a Japanese corporation or Japanese nationals by means of possession of stocks, etc. or other methods);

(4) Acquisition of the rights on immovable property or installation, industrial property rights or other rights or similar interests (hereinafter referred to as "rights concerning immovable property") used for a business performed overseas;

(5) Acquisition of public bonds, debentures or similar bonds of foreign government, etc. or foreign corporations (excluding the foreign corporations under the provision of item (3); hereinafter the same in this item), issued for procuring the funds needed to develop the mineral products as prescribed by Cabinet Order which are imported to Japan based on long-term contracts, or of claimable assets pertaining to long-term loans appropriated to said funds to foreign government, etc., foreign corporations or foreigners (hereinafter referred to as the "public bonds, etc.").

(Classes of export insurance) ③⑤⑥⑧⑨⑮

Article 1-3. The classes of export insurance shall be the general export insurance, the export proceeds insurance, the export bill insurance, the export finance insurance, the consignment sale export insurance, the oversea advertisement insurance and the oversea investment insurance.

(Rates of insurance permium) ⑩

Article 1-4. The rates of insurance premium for insurance contract of export insurance shall be determined by a Cabinet Order so as the income from the governmental insurance enterprise under this Law will cover the expenditures thereof. (3) (5)

(Rescission, etc. of contract) ③

Article 1-5. The government may, in cases the party to export insurance contract, the insured or the beneficiary has violated the provisions of this Law (including orders and ordinances issued thereunder) or the articles of export insurance contract, refuse the payment of the whole or a part of the insurance money under the insurance contract, have the whole or a part of the insurance money returned, or rescind the insurance contract for the future.

(Limit to effectuate insuring relation) ③⑤⑩

Article 1-6. The government may for the future, in cases a transaction is feared to be accompanied by a great risk or in cases it is necessary in managing the governmental insurance enterprise under this Law, refuse to effectuate the insuring relation under contracts of the export bill insurance or the export finance insurance.

(Limit to contracts) ⑤⑥⑧⑮

Article 1-7. The government shall conclude export insurance contracts within the limit that the amount stated in the following each item is not in excess of the respective amount of money appropriable in each fiscal year by the decision of the National Diet:

(1) The total of insured amount for the general export insurance undertaken in one fiscal year;

(2) The total of insured amount for the export proceeds insurance undertaken in one fiscal years;

(3) The total of insured amount for the insuring relation effectuated due to insurance contracts of the export bill insurance concluded in one fiscal year;

(4) The total of insured amount for the insuring relation effectuated due to insurance contracts of the export finance insurance concluded in one fiscal year;

(5) The total of insured amount for the consignment sale export insurance undertaken in one fiscal year;

(6) The total of insured amount for the oversea advertisement insurance undertaken in one fiscal year;

(7) The total of insured amount for the oversea investment insurance undertaken in one fiscal year;



## CHAPTER II

### General Export Insurance

(Insurance contract) ②③⑤⑩

Article 2. The government may undertake the general export insurance.

(Insurance contract) ⑤⑩⑪⑬⑯

Article 3. The general export insurance shall be an export insurance to indemnify the loss (excluding the loss incurred on export goods) suffered by the exporter who has turned out unable, due to a circumstance falling under any of the following items which occurred after the conclusion of the insurance contract, to export goods in accordance with the export contract (including the fact that the concerned goods have turned out unable to be exported until the day of elapsing two months from the shipping date stipulated in the export contract, in case where the export of concerned goods is considered remarkably difficult due to a circumstance falling under any of the items (1) to (5) inclusive), the loss (excluding the loss incurred on export goods) to be suffered due to the fact that the exporter has been unable to collect the proceeds of the export goods in accordance with the export contract by such circumstances as falling under any of the items (1) to (7) inclusive after the conclusion of the insurance contract, the loss suffered by the producer of the goods prescribed in Cabinet Order who is the party to the supply contract and has turned out unable, owing to the loss as suffered by the exporter, to deliver the goods or collect the proceeds thereof in accordance with the supply contract, or the loss suffered by the exporter who has turned out to bear, due to a circumstance falling under any of the items (1) to (7) inclusive which occurred after the conclusion of the insurance contract, additional freight or premium owing to the change of voyage or course:

(1) Restriction or prohibition of exchange transactions newly enforced in a foreign country;

(2) Restriction or prohibition of import enforced in the destination;

the oversea advertisement insurance, kinds of goods, exportable area of goods, expense amount disbursable for advertisement of the goods, term in which the expenses are to be collected (hereinafter referred to as "collection term") as well as the percentage of the amount of the expenses against the amount of money obtainable by disbursing the said expenses out of the amount to be obtained by the producer as the proceeds of the goods exportable to the said area during the collection term (hereinafter referred to as "collection rate").

(Insurable value) ③ ⑤

Article 13. In the oversea advertisement insurance, the amount of expenses provided for in the preceding Article shall be the insurable value.

2. In cases where the insured amount of the oversea advertisement insurance is in excess of the amount of money obtained when the insurable value is multiplied by the ratio prescribed by Cabinet Order within fifty percent (50%), the insurance contract shall be null and void in respect of the part in excess.

(Claims payable) ③⑤⑥

Article 14. The amount of money to be indemnified by the government under the oversea advertisement insurance shall be the amount of money obtained, out of the insurable value, when the sum of expenses disbursed by the producer for advertisement of the goods, minus therefrom the presumed sum acquirable by disbursing the said expenses, out of the sum acquirable by the producer as the proceeds of the goods exported to the area during the collection term, being multiplied by the collection rate, is again multiplied by the ratio of the insured amount against the insurable value.

## CHAPTER V-II
## Oversea Investment Insurance

(Insurance contract) ⑧⑨⑮⑯

Article 14-2. The government may undertake the oversea investment insurance.

2. The oversea investment insurance shall be an export



insurance to indemnify the loss suffered by a person having effected oversea investment due to a cause falling under any of the following items:

(1) That the principals of stocks, etc., loan claimable assets, debentures, etc., or public bonds, etc. (hereinafter referred to as the "principals"), the right to claim payment of dividends on stocks, etc. or the right to claim payment of interests on debentures, etc. (hereinafter referred to as "rights to claim dividends, etc."), or the right relating to immovables have been deprived of by a foreign government, etc.;

(2) That the other party to the oversea investments (excluding those mentioned in Article 1-2 paragraph 10 item (4))has suffered damages due to war, revolution, civil war, riot or disturbance, or has suffered damages due to violence by a foreign government, etc. of the right concerning immovable property, installation, materials or others, mining right, industrial property rights or other rights or interests specially important for performing the business, and thus continuation of the business by the other party to said oversea investment (excluding the other party to acquisition of stocks, etc. in the case mentioned in item (2) of said paragraph) has become impossible or a cause as prescribed in Cabinet Order has occurred thereto;

(3) That the rights concerning immovable property, etc. has become impossible to be used for the business by suffering damages to said rights concerning immovable property due to war, revolution, civil war, riot or disturbance;

(4) That the amount having been acquired due to loss of the principals (excluding those due to the causes under item (1) or item (2)), or the amounts having been acquired due to loss of the dividends on stocks, etc., loan claimable assets, interests on debentures, etc. or public bonds, etc. (hereinafter reffered to as "dividends, etc.") or the rights concerning immovable property (excluding those due to the cause under item (1) or the preceding item) (hereinafter referred to as "acquired money, etc.") have become unable to be remitted to Japan for the period as prescribed by Cabinet Order because of a cause falling under any of the following:

(a) Restriction or prohibition of exchange transactions newly enforced in a foreign country;

(b) Suspension of exchange transactions due to war, revolution or civil war in a foreign country;

(c) Custody of said acquired money, etc. by a foreign government, etc.;

(d) Cancellation of remittance license of said acquired money, etc. or non-license in case a foreign government, etc. has previously promised to give the license;

(e) Confiscation of acquired money, etc. by a foreign government, etc. after the causes mentioned in (a) through (d) have occurred.

(5) That a cause coming under any of the following has occurred, with respect to the oversea investment under Article 1-2 paragraph 10 item (5) (excluding those mentioned in item (2):

(a) Bankruptcy of the other party to oversea investment;

(b) Delay of performance for six months or more of the obligation pertaining to public bonds, etc. of the other party to oversea investment (only limited to those unable to make responsible to the person who effected the oversea investment)

3. The insurance term of the oversea investment insurance shall not exceed the term of not less than ten years, as prescribed by Cabinet Order.

(Claims payable) (15) (16)

Article 14-3. The amount of money to be indemnified by the Government in the oversea investment insurance pertaining to the loss suffered due to a cause falling under any of paragraph 2 item (1) through item (3) or item (5) of the preceding Article shall be the amount obtained in multiplying, by the ratio as prescribed by Cabinet Order within 90/100, the balance deducting the amount mentioned in the following respective items, from the smaller amount of whichever the amount appraised directly before occurrence of the cause under item (1) of said paragraph or of the loss under item (2) of said paragraph or of the cause under item (5) of said paragraph, with respect to the principal pertaining to said cause (hereinafter



referred to as the "accident principal") or the amount of countervalue for acquiring said accident principal in the case of the loss pertaining to the principal, and from the amount appraised directly before occurrence of the cause under item (1) of said paragraph or of the loss under item (2) of said paragraph with respect to the rights to claim dividends, etc. pertaining to said cause (hereinafter referred to as the "accident rights to claim dividends, etc.") in the case of the loss pertaining to the rights to claim dividends, etc., and from the smaller amount of whichever the amount appraised directly before occurrence of the cause under item (1) of said paragraph or the loss under item (3) of said paragraph with respect to the rights concerning immovable property, etc. pertaining to said cause (hereinafter referred to as the "accident rights, etc.") or the amount of countervalue for acquiring said accident rights, etc. in the case of the loss pertaining to the rights concerning immovable property, etc.:

(1) The amount appraised directly after occurrence of said cause respectively in regard to the accident principal, accident rights to claim dividends, etc. or the accident rights, etc.;

(2) The amount having been acquired or to be acquirable due to occurrence of said cause;

(3) The amount collected by taking measures necessary for diminishing the loss.

2. The amount of money to be indemnified by the Government in the oversea investment insurance pertaining to the loss suffered due to the cause falling under paragraph 2 item (4) of the preceding Article shall be the amount obtained in multiplying, by the ratio as prescribed by Cabinet Order within 90/100, the balance deducting the amount mentioned in the following respective items, from the smaller amount of whichever the amount having been unable to remit to Japan during the period not shorter than the period as prescribed by Cabinet Order due to a cause falling under any of the causes from (a) to (e) of said item (excluding the amount which could have been remitted to Japan before occurrence of the cause; hereinafter referred to as the "unremittable amount") or the amount of countervalue for acquiring said principal, etc. in the

case of the loss pertaining to the amount having been acquired due to forfeiture of the rights concerning principal or immovable property, etc. (hereinafter referred to as the "principal, etc."), and//from the unremittable amount in the case of the loss pertaining to dividends, etc.:

(1) The amount proved unnecessary to be paid due to occurrence of said cause;

(2) The amount paid by said unremittable amount;

(3) The amount collected by taking measures necessary for diminishing the loss.

3. If the amount to be indemnified by the Government as computed in accordance with the provisions in respect of the principals, etc. or the accumulated amount thereof exceeds the balance obtained in deducting the amounts mentioned in the following respective items from the amount of countervalue for acquiring said principal, etc., the amount to be indemnified by the Government shall, in spite of those provisions, be the balance:

(1) The amount of whichever the larger either of the amount having been acquired due to forfeiture of said principal, etc. before occurrence of said cause (excluding those due to a cause falling under any of item (1) through item (3) or item (5) of the preceding Article) or the amount to be acquirable (in the event of including the unremittable amount, it shall be the amount obtained in deducting said unremittable amount from those amounts), or the amount for acquiring the principal, etc. having been forfeited;

(2) The amount having been acquired or the amount to be acquirable due to a cause falling under any of paragraph 2 item (1) through item (3) or item (5) of the preceding Article before occurrence of said cause;

(3) The amount provided for in respective items of paragraph 1 or respective items of the preceding paragraph.

4. In spite of the provisions of paragraph 1 and the preceding paragraph, the Government shall, if there accrued the amounts which proved unable to remit to Japan due to a cause falling under any of the following respective items (excluding the amount to be remittable to Japan before occurrence of the cause; hereinafter referred to as the "unremittable acquired amount")



acquired or the amounts to be acquirable due to occurrence of a cause falling under any of paragraph 2 item (1) through item (3) or item (5) of the preceding, Article, indemmify, in addition to the amount to be indemnified by the Government computed in accordance with the provision of paragraph 1 and the preceding paragraph, the margin between said amount and the amount to be indemnified by the Government computed in applying the provisions of paragraph 1 and the preceding paragraph by deeming the balance obtained in deducting the unremittable acquired amount from the amount provided for in item (2) of paragraph 1 or item (2) of the preceding paragraph to be respectively the amount provided for in item (2) of paragraph 1 or item (2) of the preceding paragraph:

(1) Confiscation by a foreign government, etc;

(2) Custody by a foreign government, etc. (only those executed for a period longer than the period prescribed by Cabinet Order;

(3) Similar causes to the preceding two items, as prescribed by Cabinet Order.

(Collection) ⑧⑮

Article 14-4. The person who has received payment of the claims payable shall make efforts for collecting the countervalue or the unremittable amount pertaining to acquired money, etc. or for executing the rights concerning the accident rights to claim dividends, etc.

(Payment of collected money) ⑧⑮

Article 14-5. The person who has received payment of the claims shall pay to the government the amount of money obtained when the sum collected after making request for payment thereof is multiplied by the ratio of the claims paid against the balance sum prescribed under Article 14-3 paragraph 1 or 2 (if it exceeds the claims paid, that amount).

## CHAPTER VI

## Motion for Complaint

(Motion for complaint) ③⑤⑫

Article 15. Any person who has been aggrieved by the decision made with regard to the amount of insurance money

in the amounts having been acquired or the amounts to be acquirable due to occurrence of a cause falling under any of to be paid by the government or by the disposition under the provisions of Article 1-5 or Article 1-6 may move for complaint to the Minister of International Trade and Industry.

2. The Minister of International Trade and Industry shall, upon receipt of the motion under the provisions of the preceding paragraph, hold a hearing which is open to the public in accordance with the procedures set forth by Ministerial Ordinance, make a decision within fifty days from the date on which he received the motion, and notify the decision to the movant.



## CHAPTER VII

### Export Insurance Council

(Establishment and powers) (3)(5)

Article 16. The Export Insurance Council (hereinafter referred to as the "Council") shall be established in the Ministry of International Trade and Industry.

2. The Council shall, at the request of the Minister of International Trade and Industry, study and deliberate on important matters concerning the export insurance.

3. The Council may state its opinion at any time concerning the effectual operation of this Law to the Minister of International Trade and Industry or the Minister of Finance.

(Organization) (3)

Article 17. The Council shall be composed of the Minister of International Trade and Industry and members not exceeding eleven persons.

2. The Minister of International Trade and Industry shall be the chairman and be responsible for the affairs of the Council.

3. The members of the Council shall be appointed by the Minister of International Trade and Industry from among the personnel of the government agencies concerned and persons of learning and experience in the field of foreign trade, finance or insurance.

(Ditto) (3)(5)

Article 18. The tenure of office of the members appointed from among persons of learning and experience shall be one year; provided that they may be reappointed.

2. The members shall be in part-time service.

(Miscellaneous affairs) (3)(4)(14)

Article 19. The miscellaneous affairs of the Council shall be attended to by the Foreign Trade Promotion Bureau of the Ministry of International Trade and Industry.

SUPPLEMENTARY PROVISIONS:

1. This Law shall come into force as from the day of its promulgation.

SUPPLEMENTARY PROVISIONS (Law No. 176, June 1, 1951): (1)

# ภาคผนวก ค.

## สัญญาประกันภัยทางการเมืองของประเทศแคนาดา

# ANNEX VI (6)

Export Development Corporation: Foreign Investment Insurance Contract

CONTRACT NO. _____

This Foreign Investment Insurance Contract (hereinafter referred to as "The Contract") made pursuant to the Export Development Act, Canada

BETWEEN EXPORT DEVELOPMENT CORPORATION, a body corporate, established by special Act of Parliament of Canada, hereinafter called "EDC"

OF THE FIRST PART

AND

_____ a body corporate, incorporated under the laws of

_____ having its head office or principal place of business at

. in the

_____ Province of , hereinafter called the "Investor"

OF THE SECOND PART

WITNESSETH THAT:

WHEREAS the Investor has applied to EDC for Foreign Investment Insurance of an Investment the Investor intends to make in a Foreign Enterprise in and EDC has agreed to provide such insurance in accordance with and subject to the provisions of The Contract;

NOW THEREFORE in consideration of the premises and of the covenants and agreements herein contained, the parties covenant and agree as follows:

1. The Effective Date of The Contract shall be the date upon which it is executed by EDC.

2. EDC shall, as and from the Effective Date of The Contract and subject to the payment of the insurance fees referred to in section 3, provide Foreign Investment Insurance to the Investor in respect of the Risks described, and in the amounts set forth, in Schedule "I" hereto all in accordance with and subject to the provisions of The Contract.

3. For and in consideration of EDC providing the Investor with Foreign Investment Insurance pursuant to section 2, the Investor shall pay to EDC the following insurance fees, namely

(a) three-tenths (3/10) of one per cent (1%) per annum of the Current Amount of Foreign Investment Insurance in respect to each of Risk "A" and Risk "C", and four-tenths (4/10) of one per cent (1%) of the said amount in respect to Risk "B"; and

(b) one-eighth (1/8) of one per cent (1%) per annum of the Standby Amounts, if any, for each of Risk "A", Risk "B", and Risk "C".

4. Unless sooner terminated as herein elsewhere provided the term of The Contract shall not exceed fifteen (15) years from the Effective Date (herein called the "Contract Period").

5. Any notices to be given EDC or the Investor under The Contract shall be effectively given if sent by registered letter, postage, or other charges prepaid, addressed to EDC at P.O. Box 655, Ottawa, Ontario, K1P 5T9 or the Investor at

Any notice so given shall be deemed to have been received by EDC or the Investor, as the case may be, at the time when in the ordinary course such letter should have reached its destination. A party giving notice as aforesaid shall promptly notify the other party by telephone, telex or other fast means of communication that such notice is forthcoming. Failure to notify the other party by such fast means of communication shall not invalidate the notice.

6. Schedule "I" being the Foreign Investment Insurance Coverages for Risks "A", "B", and "C" inclusively, Schedule "II" being the Specific Representations by Investor, Schedule "III" being the Extent of Insurance Coverage under Risks "A", "B", and "C" inclusively, Schedule "IV" being the General Conditions, and any Special Endorsement hereto attached form an integral part of The Contract as fully and effectively as if the same were set forth at length herein.

IN WITNESS WHEREOF the parties hereto have executed The Contract by causing to be affixed hereto their respective corporate seals attested by the hands of their respective proper officers duly authorized in that behalf on the respective dates herein below appearing.

Export Development Corporation

Per: _____ Per: _____

Per _____ Per: _____

Date _____ Date _____

SCHEDULE "I"

FOREIGN INVESTMENT INSURANCE COVERAGES

FOR RISKS "A", "B", AND "C"

1. Subject to the provisions of section 14 of Schedule "IV" of The Contract the Maximum Amount of Foreign Investment Insurance under The Contract for each of Risks "A", "B", and "C" shall not exceed the amounts set forth in the following table:

| | RISK "A" (Inconvertibility) | RISK "B" (Expropriation) | RISK "C" (War, Revolution and Insurrection) |
|---|---|---|---|
| (a) For debt | $ | $ | $ |
| (b) For equity | $ | $ | $ |
| (c) For retained earnings | $ | $ | $ |
| Total | $ | $ | $ |

2. Subject to the provisions of section 14 of Schedule "IV" of The Contract the Current Amount of Foreign Investment Insurance under The Contract for each of Risks "A", "B", and "C" which is to be effective during the First Period shall not exceed the amounts set forth in the following table:

| | RISK "A" (Inconvertibility) | RISK "B" (Expropriation) | RISK "C" (War, Revolution and Insurrection) |
|---|---|---|---|
| (a) For debt | $ | $ | $ |
| (b) For equity | $ | $ | $ |
| (c) For retained earnings | $ | $ | $ |
| Total | $ | $ | $ |

3. The Standby Amount of Foreign Investment Insurance under The Contract for each of Risks "A", "B", and "C" during the First Period shall not exceed the amounts set forth in the following table:

| | RISK "A" (Inconvertibility) | RISK "B" (Expropriation) | RISK "C" (War, Revolution and Insurrection) |
|---|---|---|---|
| Maximum Amount (Total from 1. above) | $ | $ | $ |
| Less Current Amount (Total from 2. above) | $ | $ | $ |
| Standby Amount | $ | $ | $ |

SCHEDULE "II"

SPECIFIC REPRESENTATIONS BY INVESTOR

The Investor represents that:

1. the Investor is an "investor" as defined in the Act.

2. the amounts eligible for insurance under The Contract expressed in Canadian dollars are as follows:

| | Equity | Debt | Other | Total |
|---|---|---|---|---|
| (a) cash | | | | |
| (b) machinery, equipment, materials | | | | |
| (c) management or technical services | | | | |
| (d) patents, processes, techniques | | | | |
| (e) other (specify) | | | | |
| | | | total amount eligible for insurance under The Contract (herein called the "Investment") | |

3. the project to which the Investment will be applied is

(herein called "the Project")

4. the probable benefits to the economy of Canada are

The value of goods and services produced in Canada related to the Project is

5. the Investment will be made in the following foreign enterprise

(herein called "the Foreign Enterprise")

6. as a result of the Investment, the Investor will initially acquire the following Securities:

(a) Equity

(b) Debt:

(c) Other:

7. the dates when the Investment will be made are as follows:

| Date | Value of Investment in Canadian Dollars |
|---|---|

8. the Project is additional to the following existing facilities in the Foreign Enterprise, if any:

9. the Foreign Enterprise is able to effect a Return of Capital or remit Investment Earnings in the following manner:

10. the Investor is not aware of any circumstances relating to the Investment, the Project or the Foreign Enterprise which might adversely affect any one or more of the Risks being insured against.

11. the Investor has insured the Investment against Risks "A", "B", and "C" with other insurers as follows:

12. the Government of has signified its approval of the Investment

13. the following is a true description of the Project:

13. (cont'd) true description of the Project:

SCHEDULE "III"

EXTENT OF INSURANCE COVERAGE UNDER RISKS "A", "B", and "C"

RISK "A"

(INCONVERTIBILITY)

1. Subject to section 4 of this Schedule and section 16 of Schedule "IV", EDC insures the Investor the transfer into Canadian dollars up to the Current Amount of Foreign Investment Insurance provided for under Risk "A" in Schedule "I", as of the applicable Reference Date, of Local Currency which is received by the Investor from time to time during the Contract Period on Securities owned at the time of such receipt as Return of Capital or Investment Earnings and which is eligible for transfer pursuant to section 2 of this Schedule.

2. Local Currency received by the Investor as Investment Earnings or as Return of Capital during the Contract Period and not held by the Investor for more than twelve (12) months before the Reference Date shall be eligible for transfer under The Contract if the Investor:

(a) is prevented for a period of thirty (30) consecutive days after the Reference Date from effecting the transfer of such Local Currency to Canada by the operation of any exchange control law, order, decree or regulation having the force of law in the Project Country; or

(b) is prevented from effecting the transfer of such Local Currency to Canada by the failure of the exchange control authority of the Project Country to approve within one hundred and twenty (120) consecutive days after the Reference Date an application made to such authority by or for the Investor for the transfer of such Local Currency to Canada; or

(c) is able to effect the transfer of such Local Currency to Canada through a market or channel in the Project Country through which foreign exchange transactions are legally and normally effected only at a rate of exchange which would yield less than the amount of Canadian currency which would be yielded by applying the Reference Rate of Exchange on the Reference Date, and EDC has permitted the Investor to effect the transfer in those circumstances;

and the Investor shows, to the satisfaction of EDC that

(i) it has taken all steps required to effect such transfer under such exchange control law, order, decree or regulation and has notified EDC prior to effecting any such transfer; and

(ii) the inability of the Investor to effect such transfer does not result from the operation of any exchange control law, order, decree, regulation, administrative or business practice or voluntary agreement which is recognized as being in effect by the Government of the Project Country on the Effective Date of The Contract.

3. For the purposes of the coverage under Risk "A", Amount of Loss means the amount of Canadian currency which would have been yielded by applying to the Local Currency received pursuant to section 2 the Reference Rate of Exchange on the Reference Date less that amount, if any, transferred in accordance with paragraph (c) of section 2.

4. The amount payable under The Contract with respect to Risk "A" shall be eighty-five per cent (85%) of the Amount of Loss but shall in no event exceed eighty-five per cent (85%) of the Current Amount of Foreign Investment Insurance for Risk "A" on the Reference Date. The total amount payable in respect to the First Period or any Subsequent Period shall not exceed eighty-five per cent (85%) of the Current Amount of Foreign Investment Insurance in effect for Risk "A" as at the first day of that period and the total amount payable in respect of the Contract Period shall not exceed eighty-five per cent (85%) of the Maximum Amount of Foreign Investment Insurance for Risk "A".

5. (1) Subject to sections 7 and 8, EDC shall pay to the Investor the amount, if any, payable under The Contract within a reasonable time after the Amount of Loss is ascertained in accordance with section 3.

(2) The Investor shall, if and as required by EDC,

(a) before payment on demand by EDC, deliver to EDC, in such manner as EDC may reasonably require, physical possession of the Local Currency which the Investor is prevented from transferring to Canada by reason of the occurrence of the risk covered by Risk "A"; and

(b) execute such documents and instruments, perform such acts and do such things as, in the opinion of EDC, may be necessary in order to fully and effectively transfer the ownership of such Local Currency to EDC, subject of course, to the provisions of section 5(2)(a).

6. (1) Any claim submitted to EDC with respect to Risk "A" shall be in a form satisfactory to EDC and shall contain such information as EDC may reasonably require. In considering any claim, EDC may, from time to time, require additional information which the Investor shall furnish within three (3) months after the requirement has been made known to it. If the Investor fails to furnish any information so required, EDC may, in its discretion, consider the claim as abandoned.

(2) A claim will be deemed to be complete as to the manner and form in which it has been submitted if at the expiration of three (3) months after the delivery to EDC of any information supporting the claim, EDC does not have any outstanding requirements for additional information.

(3) Every action or proceeding against EDC for the recovery of a claim under Risk "A" of The Contract is absolutely barred unless commenced within six (6) months next after the Reference Date.

7. EDC shall, within six (6) months after a claim is deemed to be complete, notify the Investor whether any payment is due to the Investor under The Contract with respect to Risk "A" and the amount, if any, thereof.

8. Nothing in The Contract shall prevent the Investor from withdrawing a claim at any time prior to the assignment referred to in subsection (2) of section 5.

9. Any sums received in Canada after the date of the notification referred to in section 7 from any source by the Investor or EDC in respect to a prevention of transfer of Local Currency into Canadian dollars shall be divided between EDC and the Investor in the proportion in which the Amount of Loss is borne by them respectively. The Investor shall pay or cause to be paid to EDC all sums so received upon such sums being received by it or by any person on its behalf. Until such payment is made to EDC, all such sums shall be held in trust for EDC.

RISK "B"

(EXPROPRIATION)

10. (1) Subject to subsection (2) with respect to Risk "B", "Expropriatory Action" means any action, which is taken, authorized, ratified or condoned by the Government of the Project Country, with or without compensation, which occurs or commences during the Contract Period and which for a period of one year directly results in preventing

(a) through the arbitrary or discriminatory exercise of the powers of the Government of the Project Country (including regulatory or revenue-producing powers), the Investor from receiving payment when due in the currency specified of the principal amounts of or the interest on Securities, or other amounts, if any, which the Foreign Enterprise owes the Investor in connection with such Securities;

(b) the Investor from effectively exercising its rights with respect to the Foreign Enterprise either as shareholder or as creditor, as the case may be, acquired as a result of the investment;

(c) the Investor from disposing of the Securities or any rights accruing therefrom;

(d) through the arbitrary or the discriminatory exercise of the powers of the Government of the Project Country (including regulatory or revenue-producing powers), the Foreign Enterprise from exercising effective control over the use or disposition of a substantial portion of the Project or from constructing or operating the Project; or

(e) the Investor from returning or remitting, as the case may be, amounts received in respect of the Securities as Return of Capital or Investment Earnings if the action commences within nine (9) months after the Investor receives them;

but does not include any action which occurs or commences during the Contract Period and which continues for a period of one year as a result of

(i) any action which is essentially regulatory or revenue-producing in nature unless it is arbitrary or discriminatory;

(ii) enforcement by the Government of the Project Country of any law, decree, regulation or administrative action violated by the Investor or the Foreign Enterprise which law, decree, regulation or administrative action is not arbitrary or discriminatory but is reasonably related to constitutionally sanctioned governmental objectives (other than expropriation, confiscation or nationalization) which do not violate generally accepted international laws;

(iii) failure on the part of the Investor or the Foreign Enterprise to take all reasonable measures including those available under administrative and judicial procedures in the Project Country to prevent or postpone such action;

(iv) provocation by the Investor or the Foreign Enterprise of such action;

(v) insolvency of, or creditors' proceedings against the Foreign Enterprise, except where they directly result from acts of the Foreign Enterprise which the Investor could have lawfully restrained if it had not been prevented from so doing for a period of one year by action taken, authorized, ratified or condoned by the Government of the Project Country during the Contract Period.

(vi) bona fide exchange control actions by the Government of the Project Country; or

(vii) any abrogation, impairment, repudiation or breach by the Government of the Project Country or any agency thereof, of any undertaking, agreement or contract to which the Investor is a party and which does not amount to an Expropriatory Action.

(2) Any action which would be considered to be an Expropriatory Action if it were to continue to have any of the effects set forth in subsection (1), for one year may be declared by EDC to be an Expropriatory Action at an earlier time if EDC determines that such action has caused or permitted a dissipation or destruction of assets of the Foreign Enterprise, substantially impairing the value of the Foreign Enterprise as a going concern.

11. Subject to section 13 of this Schedule and section 16 of Schedule "IV", EDC insures the Investor compensation in Canadian dollars up to the Current Amount of Foreign Investment Insurance provided for in Risk "B" in Schedule "I" for the Amount of Loss determined in accordance with section 12 of this Schedule resulting from Expropriatory Action.

12. For the purposes of the risks covered by Risk "B", "Amount of Loss" means:

(a) loss by reason of an Expropriatory Action of one or more of the kinds described in paragraphs (a) to (d) inclusive of section 10 ascertained by deducting from the Net Investment at the Date of Expropriation the aggregate of

(i) the Canadian currency value of any currency, assets or other property not required to be assigned to EDC pursuant to section 14 which after the Date of Expropriation and in respect of that Net Investment are received by the Investor outside the Project Country, directly or indirectly, either as compensation for loss as a result of the Expropriatory Action or as an assignment from the Foreign Enterprise, such value to be determined as of the date or dates such currency, assets or other property are so received, and

(ii) in respect of the Net Investment on the Date of Expropriation, the Canadian currency value of any currency, assets or other property not expropriated; and

(b) loss by reason of an Expropriatory Action of the kind described in paragraph (e) of section 10 ascertained, where the Investment Earnings or Return of Capital are in a currency other than Canadian currency, by deducting from the Canadian currency equivalent of that currency in accordance with the Reference Rate of Exchange in effect on the Date of Expropriation, the Canadian currency value of any currency, assets or other property not required to be assigned to EDC pursuant to section 14 which are received by the Investor outside the Project Country directly or indirectly either as compensation for loss as a result of the Expropriatory Action or as an assignment from the Foreign Enterprise in respect to the Net Investment on the Date of Expropriation, such value to be determined as of the date or dates such currency, assets or other property are so received.

13. (1) Subject to subsections (2) and (3) the amount payable under The Contract with respect to Risk "B" shall be eighty-five per cent (85%) of the Amount of Loss, but such amount payable shall not exceed eighty-five per cent (85%) of the lesser of

(a) the Current Amount of Foreign Investment Insurance relating to Risk "B" on the Date of Expropriation; or

(b) the value of the portion of the assets of the Project which on the Date of Expropriation was owned by the Investor either Free and Clear or subject to any pledge thereof created by the Investor with the prior written consent of EDC given pursuant to section 20 of the General Conditions, Schedule "IV", such value to be the amount which would have been payable had the assets of the Foreign Enterprise been then liquidated and distributed as in insolvency proceedings.

(2) Notwithstanding subsection (1), the total amount payable in respect to the First Period or any Subsequent Period shall not exceed eighty-five per cent (85%) of the Current Amount of Foreign Investment Insurance for Risk "B" in effect as of the first day of that period; and the total amount payable with respect to the Contract Period shall not exceed eighty-five per cent (85%) of the Maximum Amount of Foreign Investment Insurance for Risk "B".

(3) EDC shall not be obligated to make any payment provided for under Risk "B" unless the Investor shall have

first notified EDC before accepting any compensation from any source whatsoever and EDC shall have permitted the Investor to accept such compensation.

14. (1) Subject to sections 16 and 17, EDC shall pay to the Investor the amount, if any, payable under The Contract as soon as possible after the Amount of Loss is ascertained in accordance with section 12, provided however that as to any part of the Amount of Loss under which the rights of the Investor are primarily those of a creditor entitled to debt repayments under a repayment schedule then, as to such part, EDC shall have the right in its discretion to elect to pay the Investor's claim in installments at the times established under the said repayment schedule.

(2) The Investor shall, if and as required by EDC,

(a) before payment, assign to EDC in such manner as EDC may require, all its right, title, estate and interest in and to the Investment, including

(i) its right, title, estate and interest with respect to the Foreign Enterprise attributable to the Net Investment on the Date of Expropriation including the Securities evidencing such right, title, estate and interest;

(ii) currency, assets or other property received directly or indirectly by it from the Foreign Enterprise with respect to Securities after the Date of Expropriation which the Investor is unable to withdraw from the Project Country;

(iii) currency, assets or other property received directly or indirectly by it as compensation for loss with respect to the Securities as a result of the Expropriatory Action which the Investor is unable to withdraw from the Project Country; and

(iv) its claims, causes of action or other rights in connection therewith; and

(b) execute such documents and instruments, perform such acts and do such things as, in the opinion of EDC, may be necessary in order to more fully and effectively consummate such assignment.

15. (1) Any claim submitted to EDC with respect to Risk "B" shall be in a form satisfactory to EDC and shall contain such information as EDC may reasonably require. In considering any claim, EDC may, from time to time, require additional information which the Investor shall furnish within three (3) months after such requirement has been made known to it. If the Investor fails to furnish any information so required, EDC may, in its discretion, consider the claim as abandoned.

(2) A claim will be deemed to be complete as to the manner and form in which it has been submitted if at the expiration of three (3) months after the delivery to EDC of any information supporting the claim, EDC does not have any outstanding requirements for additional information.

(3) Every action or proceeding against EDC for the recovery of a claim under Risk "B" of The Contract is absolutely barred unless commenced within one (1) year next after the Date of Expropriation.

16. EDC shall within six (6) months after a claim is deemed to be complete notify the Investor whether any payment is due to the Investor under The Contract with respect to Risk "B" and the amount, if any, thereof.

17. Nothing in The Contract shall prevent the Investor from withdrawing a claim at any time prior to the time of the assignment referred to in subsection (2) of section 14.

18. Any sums recovered after the date of the notification referred to in section 16 from any source by the Investor or EDC in respect of Expropriatory Action shall be divided between EDC and the Investor in the proportion in which the Amount of Loss is borne by them respectively. The Investor shall pay or cause to be paid to EDC all sums so recovered by it forthwith upon such sums being received by it or by any person on its behalf. Until such payment is made to EDC all such sums shall be held in trust for EDC.

RISK "C"

(WAR, REVOLUTION AND INSURRECTION)

19. With respect to Risk "C", "Damage" means Injury to the physical condition, destruction, or disappearance of Covered Property, Directly Caused by war (whether or not under formal declaration, and thus encompassing any hostile act by any nation or internationally organized force), or by revolution or insurrection, and includes injury to the physical condition, destruction, or disappearance of Coverec Property as a direct result of actions taken in hindering, combatting or defending against a pending or expected hostile act whether in a war, revolution or insurrection. The term does not include injury to the physical condition, destruction or disappearance of Covered Property directly caused by civil strife of a lesser degree than revolution or insurrection but does include such destruction or injury directly caused by hostile acts, including acts of sabotage, by organized revolutionary or insurgent forces. The term "Covered Property" does not include bullion, documents, or the tangible evidence of other property

(tangible, intangible or real), e.g., accounts, bills, currency, debentures, deeds, manuscripts, money or securities.

20. Subject to section 23 of this Schedule and section 16 of Schedule "IV", EDC insures the Investor compensation in Canadian dollars up to the Current Amount of Foreign Investment Insurance provided for under Risk "C" in Schedule "I" for loss determined in accordance with section 21 of this Schedule which the Investor may sustain in connection with the Investment by reason of Damage on or after the Date of Investment.

21. (1) For the purposes of the risks covered by Risk "C", "Amount of Loss" means the least of the following amounts, namely:

(a) the Net Investment as of the Date or Dates of Damage;

(b) the Current Amount of Foreign Investment Insurance provided for under Risk "C" in Schedule "I" in effect on the Date or Dates of Damage; or

(c) the Investor's Share of the amount of Damage determined in accordance with section 22 less the aggregate of

(i) the Canadian dollar value of any Other Compensation received by the Investor for the same Damage, and

(ii) the Investor's portion of the Canadian dollar value of any such Other Compensation received by the Foreign Enterprise but not by the Investor.

(2) If Other Compensation is received by the Investor or the Foreign Enterprise in currency other than Canadian dollars, the Canadian dollar value of such Other Compensation shall be established at the Reference Rate of Exchange on the date of receipt of such Other Compensation. If such Other Compensation is received in kind, the value of such Other Compensation shall be the fair market value thereof determined in accordance with generally accepted valuation principles in Canada.

22. (1) The amount of Damage shall be the Actual Cash Value of the damaged Covered Property immediately prior to the Date or Dates of Damage but not exceeding the amount of the reasonable cost of repairing or replacing such Covered Property with property of like kind and quality within a reasonable time after such Damage. In case the Investor and EDC shall fail to agree as to the Actual Cash Value of the damaged Covered Property, then, on the written demand of either one of them, a competent and disinterested appraiser shall be appointed by them to assess the Actual Cash Value of such damaged Covered Property. In assessing the Actual Cash Value, the appraiser shall state separately the Actual Cash Value of each item of property asserted to be damaged Covered Property immediately prior to the Date or Dates of Damage and the reasonable costs of repairing or replacing each such item. An appraisal in writing so itemized when filed with EDC shall be prima facie evidence of the Actual Cash Value on the said Date or Dates of Damage and the reasonable repair or replacement cost thereof. The appraiser's fees and expenses shall be paid equally by EDC and the Investor. In the event that the parties cannot agree on the appointment of an appraiser, such appraiser shall be appointed by a Judge of the Supreme Court of Ontario on the Application of either party.

(2) If EDC is unable after making a reasonable attempt to determine the amount of Damage because conditions prevailing in the Project Country create a personal hazard for personnel or authorized agents of EDC attempting to assess the amount of Damage or because the Government of the Project Country forbids personnel or authorized agents of EDC from entering the Project Country or travelling therein as necessary to assess the amount of Damage, then the amount of Damage shall be presumed to be equal to sixty per cent (60%) of the Actual Cash Value of the damaged Covered Property on the latest date for which information is available as computed in accordance with accounting principles generally accepted in Canada unless the Investor has furnished evidence acceptable to EDC of a different amount of Damage.

23. (1) Subject to subsections (2) and (3) the amount payable under The Contract with respect to Risk "C" shall be eighty-five per cent (85%) of the Amount of Loss, but such amount payable shall in no event exceed eighty-five per cent (85%) of the Current Amount of Foreign Investment Insurance for Risk "C" on the Date of Damage. The total amount payable in respect to the First Period or any Subsequent Period shall not exceed eighty-five per cent (85%) of the Current Amount of Foreign Investment Insurance in effect for Risk "C" as at the first day of that period and the total amount payable in respect to the Contract Period shall not exceed eighty-five per cent (85%) of the Maximum Amount of the Foreign Investment Insurance for Risk "C".

(2) EDC shall have no liability under The Contract with respect to Risk "C" if the Amount of Loss arising out of the relevant Damage does not exceed ten per cent (10%) of the Current Amount of Foreign Investment Insurance with respect to Risk "C" or $10,000.00, whichever is the lesser on the Date of Damage.

(3) EDC shall not be obligated to make any payment provided for in this section unless the Investor shall have first notified EDC before accepting any compensation from any source whatsoever and EDC shall have permitted the Investor to accept such compensation.

24. (1) Subject to sections 25 and 26, EDC shall pay to the Investor the amount, if any, payable under The Contract with

respect to Risk "C", as soon as possible after the Amount of Loss is ascertained in accordance with section 21, provided however that as to any part of the Amount of Loss under which the rights of the Investor are primarily those of a creditor entitled to debt repayments under a repayment schedule then, as to such part, EDC shall have the right in its discretion to elect to pay the Investor's claim in instalments at the times established under the said repayment schedule.

(2) The Investor shall, if and as required by EDC

(a) before payment, assign to EDC in such manner as EDC may require, any claims, causes of action, or other rights which the Investor may have for compensation from any source in respect of the relevant Damage, and

(b) execute such documents and instruments, perform such acts and do such things as, in the opinion of EDC, may be necessary in order to more fully and effectively consummate such assignment.

25. (1) Any claim submitted to EDC with respect to Risk "C" shall be in a form satisfactory to EDC and shall contain such information as EDC may reasonably require. All claims submitted to EDC shall be supported by a statutory declaration made under the Canada Evidence Act by the Investor or his authorized agent declaring

(a) the time and cause of the relevant Damage;

(b) the respective interest of the Investor and all others in the destroyed or damaged Covered Property;

(c) the Actual Cash Value and reasonable cost of repair or replacement of each item of destroyed or damaged Covered Property;

(d) all other contracts of insurance and other sources of Other Compensation relating to any of the Covered Property;

(e) the amount of any Other Compensation already received by the Investor or by the Foreign Enterprise for the relevant Damage, and

(f) that the Investment as represented herein was, in fact, made.

(2) In considering any claim, EDC may, from time to time, require additional information which the Investor shall furnish within three (3) months after such requirement has been made known to it. If the Investor fails to furnish any information so required EDC may, in its discretion, consider the claim as abandoned.

(3) A claim will be deemed to be complete as to the manner and form in which it has been submitted if on the expiration of three (3) months after the delivery to EDC of any information supporting the claim, EDC does not have any outstanding requirements for additional information.

(4) Every action or proceeding against EDC for the recovery of a claim under Risk "C" of The Contract is absolutely barred unless commenced within six (6) months next after the Date of Damage.

25. EDC shall, within six (6) months after a claim is deemed to be complete, notify the Investor whether any payment is due to the Investor under The Contract with respect to Risk "C" and the amount, if any, thereof.

27. Nothing in The Contract shall prevent the Investor from withdrawing a claim at any time prior to the assignment referred to in subsection (2) of section 24.

28. Any sums recovered after the date of the notification referred to in section 26 from any source by the Investor or EDC in respect of Damage shall be divided between EDC and the Investor in the proportion in which the Amount of Loss is borne by them respectively. The Investor shall pay or cause to be paid to EDC all sums so recovered by it forthwith upon such sums being received by it or by any person on its behalf. Until such payment is made to EDC all such sums shall be held in trust for EDC.

## SCHEDULE "IV"

## GENERAL CONDITIONS

1. In The Contract the following words and expressions shall have the following meanings, namely:

(a) "Act" means the Export Development Act, Canada, and any amendments thereto.

(b) "Actual Cash Value" means, for any item of Covered Property on any date, the cost thereof in Canadian currency to the Foreign Enterprise, including the cost of delivery to the Project site (not however exceeding the fair market value thereof in Canada at the time of acquisition of the item by the Foreign Enterprise together with the cost of delivery of such item), less

(i) depreciation calculated in accordance with principles of accounting generally accepted in Canada, and

(ii) where appropriate, depreciation calculated to reflect abnormal deterioration in the physical condition of the item which deterioration has not previously been taken into account.

(c) "Contract Period" means the period of fifteen (15) years commencing on the Effective Date of The Contract unless The Contract is sooner terminated in accordance with the provision thereof, in which event, the Contract Period shall expire on the date of such termination.

(d) "Covered Property" means freehold land, freehold buildings, plant, machinery, vehicles, raw materials, work in progress, finished goods and such other property as EDC may agree in writing which, at the Date of Damage, are owned by the Foreign Enterprise, used in or in connection with the Project and are situated in the Project Country, and covered by The Contract. The term "Covered Property" does not include bullion, documents, or the tangible evidence of other property (tangible, intangible or real), e.g., accounts, bills, currency, debentures, deeds, manuscripts, money or securities.

(e) "Current Amount of Foreign Investment Insurance" means for each of Risks "A", "B", and "C" respectively,

(i) during the First Period, the amounts specified in Schedule "I"; and

(ii) during each Subsequent Period, the amounts referred to in paragraph (i) or elected by the Investor as provided in section 15. Such amounts shall be reduced by any amounts paid to the Investor by EDC under The Contract and each such reduction shall take effect as at the relevant Reference Date, Date of Expropriation or Date of Damage, as the case may be. Such reduction shall not entitle the Investor to a refund of any portion of the insurance fee paid in respect to The Contract. Any reduction in the Current Amount of Foreign Investment Insurance for any risk shall effect a corresponding reduction in like amount in the Current Amount of Foreign Investment Insurance in all risks.

(f) "Date of Damage" or "Dates of Damage" means the relevant day of the inception of the damage in question.

(g) "Date of Expropriation" means the first day of the period of one year referred to in subsection (1) of section 10 of Schedule "III" in which an Expropriatory Action as defined in section 10 of Schedule "III" occurred.

(h) "Date of Investment" means each date on which the constituent elements of the Investment, if services, are rendered or, if other than services, first come into the control or possession of the Foreign Enterprise.

(i) "Directly Caused Injury" or "Injury Directly Caused" means an unbroken chain of causes and effects starting with the event and ending with the injury, destruction, or disappearance of the Covered Property, and if the injury, destruction or disappearance would not have been sustained had the event not happened, even though another event actively contributed to the injury, destruction or disappearance (except by the negligence of the Investor or the Foreign Enterprise or by the failure of the Investor or the Foreign Enterprise to maintain and preserve the Covered Property) and was of itself sufficient to produce the injury, destruction or disappearance.

(j) "First Period" means the period commencing on the Effective Date of The Contract and expiring on the anniversary of that date.

(k) "Free and Clear" means that the Investor has not assigned, transferred, charged, pledged or otherwise disposed of all or any part of the Securities otherwise than or by way of a general assignment for the benefit of creditors or an assignment, transfer, charge or pledge of the Securities expressly approved in writing by EDC as security for repayment of a debt owing by the Investor.

(l) "Government of the Project Country" means the present or any succeeding government authority (without regard to the method of its succession or to whether it is recognized by Canada or to whether it is formally described as governmental) or authorized agents thereof, in effective control of all or any part of the Project Country (but only where the Project is located), or of any political territorial sub-division thereof, excluding the Government of Canada or any civil or military government or command in which it participates.

(m) "Investment" means, on any date, the amount shown as the "total amount eligible for insurance under

The Contract" under the Total column of section 2 of Schedule "II" of The Contract as the Investor's contribution to the Foreign Enterprise at the Canadian currency value thereof on the Date of Investment. The constituent elements of the Investment are specified in Schedule "II" of The Contract. Where the constituent elements are other than cash, the value thereof

(i) in the case of machinery, equipment and materials, is the depreciated original cost to the Investor but not exceeding the fair market value in Canada, in accordance with principles of valuation generally accepted in Canada, together with the costs borne by the Investor in delivering such machinery, equipment and materials to the Project site; and

(ii) in the case of patents, processes, techniques and services, is the value agreed between the Investor and EDC.

(n) "Investment Earnings" means on any date, the amounts received by the Investor as a result of the Investment as payments of interest, fees, redemption premiums, cash dividends or other distributions of profits (exclusive of dividends or other distributions paid in complete or partial liquidation of equity Securities) upon Securities which the Investor owned Free and Clear on that date.

(o) "Investor's Share" means the interest of the Investor in the Covered Property acquired by reason of the Investment. Such interest, on any date, is determined by applying to the amount of Damage the fraction the numerator of which shall be the Net Investment on such date and the denominator of which shall be that part of the sum of

(i) all the liabilities excluding current liabilities (other than current liabilities owing on long term liabilities)

(ii) the equity capital, and

(iii) the surplus of the Foreign Enterprise that can be attributed to the Project on such date all determined in accordance with accounting principles generally accepted in Canada.

(p) "Local Currency" means currency recognized when received by or for the Investor as legal tender in the Project Country by governing authorities thereof.

(q) "Maximum Amount of Foreign Investment Insurance" means the amount specified in Schedule "I", or, if the Investor has elected a reduced amount in accordance with section 15 of this Schedule "IV", then such reduced amount, and may include a sum in respect to retained earnings equal to fifty per cent (50%) of the Investment, but where such sum is included as aforesaid, that sum, or a portion thereof satisfactory to EDC shall, unless otherwise authorized by EDC in writing, be returned or remitted to Canada as Return of Capital or Investment Earnings in accordance with the provisions of The Contract. The Maximum Amount of Foreign Investment Insurance shall not, at any time, be increased. It shall be reduced by any amounts paid to the Investor by EDC under The Contract, such reduction to take effect as at the first day of the Subsequent Period next succeeding the period in which the relevant Date of Damage, Date of Expropriation or appropriate Reference Date, as the case may be, occurred. Any reduction in the Maximum Amount of Foreign Investment Insurance for any risk shall effect a corresponding reduction of like amount in the Maximum Amount of Foreign Investment Insurance for all other risks.

(r) "Net Investment" means, on any date, the sum of

(i) the principal then outstanding and the interest then accrued and unpaid in connection with the Investment contributed by the Investor for debt Securities owned Free and Clear by the Investor on such date, and

(ii) the amount of the Investment contributed by the Investor for equity Securities owned Free and Clear by the Investor on such date, less the Return of Capital on such equity Securities, adjusted by the share of net retained earnings of the Foreign Enterprise applicable to such equity Securities.

(s) "Other Compensation" means any compensation of any kind for Damage to Covered Property received by the Investor or the Foreign Enterprise from any source other than under The Contract, no matter whether such other source characterized the cause of the said Damage as other than war, revolution or insurrection, and includes all sums received by the Foreign Enterprise or the Investor for the sale of damaged Covered Property less the cost of making such sale.

(t) "Project Country" means the country or dependent territory in which the Project is located.

(u) "Reference Date" means, in respect to section 2 of Schedule "III" of The Contract

(i) in paragraph (a) thereof, the date on which all steps required on the part of the Investor towards effecting such transfer are completed,

(ii) in paragraph (b) thereof, the date on which such application is made, and

(iii) in paragraph (c) thereof, the date on which such transfer is effected.

(v) "Reference Rate of Exchange" means, on any date, with respect to conversion of another currency into Canadian currency,

(i) the effective free market rate of exchange recognized or used by the Central Bank of the Project Country or, if no single such rate can be determined, then the average of such rates on such date recognized or used by such Central Bank, but if no such rate exists on such date, then

(ii) the effective rate of exchange applicable to the purchase in the Project Country of Canadian currency with that other currency on such date by a private investor remitting earnings or capital or a private borrower servicing Canadian currency debt, or if no single such rate can be determined, then the average of such rates on such date as obtained from a representative group of banks in the Project Country, but if no such rate exists on such date, then

(iii) the most depreciated (that is, requiring the greatest amount of that other currency per Canadian dollar) effective rate of exchange recognized or used by the Central Bank of the Project Country on such date for sale of Canadian currency to private residents of such country for imports into such country, but if no such rate exists, then

(iv) the rate of exchange agreed by the Investor and EDC as being fair and equitable, but in the event of no agreement, the rate settled by arbitration. In this paragraph, "effective" rate of exchange means the rate of exchange which includes all taxes, charges and expenses applicable under prevailing governmental regulations. Where rates of exchange for Canadian currency are not quoted in the Project Country, the provisions of this paragraph shall apply to a rate or rates of exchange for a convertible currency quoted in the Project Country converted to Canadian currency at the appropriate telegraphic transfer buying rate of exchange for that convertible currency in Canada.

(w) "Return of Capital" means on any date, the amounts received by the Investor as a result of the Investment in respect to Securities owned by the Investor Free and Clear on such date as

(i) payments of principal of debt Securities

(ii) dividends or other distribution paid in complete or partial liquidation of equity Securities, or

(iii) proceeds of sale in the Project Country of Securities.

(x) "Securities" means the documentary evidence of the Investor's interest in the Foreign Enterprise acquired by the Investor as a result of the Investment.

(y) "Standby Amount" means the excess of the Maximum Amount of Foreign Investment Insurance over the Current Amount of Foreign Investment Insurance for the Contract Period, the First Period or any Subsequent Period, as the case may be.

(z) "Subsequent Period" means a period of one year within the Contract Period commencing on any anniversary of the Effective Date of The Contract.

DISCLOSURE OF FACTS

2. The Contract is made on the condition that the Investor has at the Effective Date thereof disclosed and will at all times during the Contract Period promptly disclose to EDC all facts affecting the risks insured, including all facts relating to any arrangements and agreements of whatever nature with the Government of the Project Country in respect of the Investment, Investment Earnings or Return of Capital, and all facts relating to any other insurance placed by the Investor covering any of Risks "A", "B", and "C".

EFFECT OF COMPENSATION ARRANGEMENT

3. EDC shall not be liable under The Contract if the Investor in respect of the Investment enters into any compensation arrangement with the Government of the Project Country for any loss relating to the Investment unless the prior written approval of EDC has been obtained.

PAYMENTS IN CANADIAN CURRENCY

4. All payments to be made by the Investor or by EDC under The Contract shall be made in Canadian currency and for the purpose of payment of losses, amounts expressed in any other currency shall be converted into Canadian currency on the basis of the Reference Rate of Exchange in effect on the appropriate Reference Date, Date of Expropriation or Date of Damage, as the case may be.

BANKING (FOREIGN EXCHANGE) REGULATIONS

5. Nothing contained in The Contract shall remove or affect the obligation of the Investor to comply with any exchange control legislation in force in Canada during the Contract Period.

PROGRESS REPORTS

6. The Investor shall submit to EDC, as soon as possible after the preparation thereof, critical path charts and construction schedules relating to the Project and shall report to EDC the progress made during each fiscal year of the Foreign Enterprise and any material variations in the timing of carrying out the Project. The first report shall cover the period from the Effective Date of The Contract through to the end of the fiscal year of the Foreign Enterprise in which the Effective Date occurs. Each subsequent report shall be due within ninety (90) days after the end of the respective fiscal year of the Foreign Enterprise until after the fiscal year in which the Investment has been completed or the Project established, whichever is the later.

RECORDS AND BOOKS

7. (1) The Investor shall maintain, in a place readily accessible to EDC or its duly authorizied representatives, books of account and other records, in accordance with accounting principles generally accepted in Canada, covering the amount of the Investment, the amount of Net Investment, Investment Earnings, Return of Capital, and all other receipts, expenditures, transactions and credits in the Project Country or elsewhere in connection with the Investment.

(2) The Investor will during

(a) the Contract Period and the next succeeding eighteen (18) months;

(b) any period after the Contract Period in which the Investor has a claim pending pursuant to The Contract; and

(c) for five (5) years after payment of any claim under The Contract;

permit EDC or its duly authorized representatives, to inspect, examine and audit the above referred to books of account and other records whether they are located in the Project Country or elsewhere and will take all reasonable measures to enable EDC or its duly authorized representatives to examine, audit, and copy for the purpose of The Contract any books of account and records of the Foreign Enterprise, and to inspect its properties whether in the Project Country or elsewhere, and the Investor will render every reasonable access in connection therewith

INVESTMENT AND PROJECT EXECUTION

8. Unless otherwise agreed to by EDC in writing, the Investor will cause the Investment to be made, and the Securities to be acquired and, to the extent that it is within the control of the Investor, the Project to be carried out, all in accordance with the representations of the Investor relating thereto and set forth in Schedule "II". In any case where the Investment is made otherwise than directly by the Investor, the Investor agrees that any failure by the party making the Investment to comply with The Contract may at the option of EDC be treated as a default by the Investor.

PRESERVATION OF ASSETS

9. Prior to the completion of the applicable assignments referred to in sections 5, 14 and 24 of Schedule "III", the Investor will take all reasonable measures to pursue and preserve any and all administrative or judicial remedies which may be available in connection with any Expropriatory Action and Damage and to cause the Foreign Enterprise to maintain its assets.

CONTINUING CO-OPERATION

10. The Investor will co-operate in full and will take all reasonable measures to cause the Foreign Enterprise to co-operate in full with the responsible agents and employees of EDC or EDC's nominee in the administration of any property acquired by EDC at any time under any of paragraphs 5(2), 14(2), or 24(2) of Schedule "III" of The Contract, and also in the preservation and prosecution of any claims transferred to EDC under those or any other portions of The Contract. If requested by EDC, the Investor will, for such time and subject to such terms and conditions as may be satisfactory to EDC, hold as the nominee of EDC any Securities, claims or other property required to be transferred or assigned to EDC under The Contract. Without limiting the generality of the foregoing the acts required of the Investor by this paragraph shall include the making available (to the extent in the possession or under the control of the Investor) of

(a) technical and other information and qualified managerial and technical personnel (to the extent such personnel are reasonably available) for the maintenance and operation of property thus acquired, and

(b) evidence including documents and testimony of witnesses, necessary to the prosecution of claims thus acquired.

The Investor shall not by this paragraph be obliged to incur out-of-pocket expenses in taking any action for the benefit of or as the nominee of EDC unless reasonable reimbursement for such expenses is made available by EDC.

FINANCIAL STATEMENTS

11. The Investor shall, within sixty (60) days after the Effective Date and within six (6) months after the end of each fiscal period of the Foreign Enterprise, during the Contract Period, furnish EDC with two (2) copies of the balance sheet, profit and loss statement, source and application of funds, a statement respecting the depreciation of assets comprised in the Investment and such other financial statements as may be required by EDC, prepared in accordance with accounting principles generally accepted in Canada and certified by an independent public accountant approved by EDC, containing such information as EDC may reasonably require pertaining to the operations and financial conditions of the Foreign Enterprise during its preceding fiscal period and within the first thirty (30) days of each subsequent fiscal period the Investor shall provide a certificate by the Investor that, to the best of its knowledge and belief, no event occurred during the preceding fiscal period that could be construed as giving rise to Expropriatory Action, inconvertibility or Damage.

TERMINATION BY INVESTOR

12. The Investor shall have the right to terminate The Contract as to any one or more of the coverages effective on the first day of any Subsequent Period by giving written notice to EDC on or prior to such day. Such termination shall, from its effective date, relieve the Investor of all further obligations to pay the respective fee under The Contract, but it shall not discharge or affect any other right, liability or obligation of either party which has accrued prior to such effective date of termination or which, by the terms or conditions of The Contract, is to survive the Contract Period.

TERMINATION BY EDC

13. (1) EDC may terminate The Contract,

(a) if any statement material to the risk made by or on behalf of the Investor to EDC relating to the Project is untrue or incorrect or, if at any time during the Contract Period any such statement ceases to be true or correct, or

(b) if the Investor fails to comply with any of the terms and conditions of The Contract or/makes any misrepresentation in claiming against EDC thereunder or/makes any misrepresentation in section 12 of Schedule "II" of The Contract in respect of the approval of the Government of the Project Country or in respect of the law of the Project Country (as the case may be) whether such misrepresentation be made knowingly or otherwise, or

(c) if at any time EDC determines that a deficiency exists in that the Current Amount of Foreign Investment Insurance covering the aggregate of Risks "A", "B", and "C" is less than the Canadian currency value of that part of the Investment which at that time is subject to loss by reason of any of the risks defined in Schedule "III" of The Contract.

(2) In the event of termination by EDC pursuant to paragraph (a) of subsection (1), EDC may retain any fee for insurance pursuant to The Contract that has been paid by the Investor and in the case of termination by EDC pursuant to paragraph (b) of subsection (1), EDC may refuse payment of any claim arising out of The Contract and may require the Investor to repay to EDC on demand any sums paid to it by EDC under The Contract.

(3) In the event of any termination by EDC, all rights, liabilities and obligations of the Investor under The Contract shall cease from the date of such termination, but such termination shall not discharge or affect the rights, liabilities and obligations of the Investor or EDC which have accrued prior to the date of such termination or which, pursuant to The Contract, are to survive the Contract Period.

LIMIT OF LIABILITY AND ELECTION OF REMEDIES

14. (1) EDC's liability to make transfers or to pay compensation hereunder is limited to the amounts herein expressly provided for such transfer or compensation. Election or waiver by EDC of any remedy shall not foreclose it from pursuing any other remedy available to it hereunder or under any statute or otherwise. For greater certainty it is declared that it is a condition of The Contract that if the Investor should suffer a loss or losses under all or more than one of Risks "A", "B", and "C" the total liability of EDC in respect of such losses shall not exceed eighty-five per cent (85%) of the Current Amount of Foreign Investment

Insurance under The Contract effective in respect of whichever of Risks "A", "B", or "C" is covered for the highest amount.

(2) It is also declared and agreed that the intent and purpose of establishing the Standby Amount is to enable the Investor to elect to increase the Current Amount of Foreign Investment Insurance from time to time in accordance with terms of The Contract, it being clearly understood and agreed that the Standby Amount does not represent or describe any insurance coverage whatsoever and confers no rights upon the Investor.

(3) Failure by EDC to exercise, or any delay by EDC in exercising a right, power or privilege under The Contract shall not operate as a waiver of such right, power or privilege; nor shall any single or partial exercise by EDC of any right, power or privilege preclude any other or further exercise thereof. The rights of EDC under The Contract are cumulative and do not exclude any other rights or remedies provided by the law of any jurisdiction or by the terms of The Contract, whether the same be original or derivative.

ELECTION OF AMOUNTS OF COVERAGE

15. The Investor, prior to the first day of any Subsequent Period, by giving notice in writing to EDC

(a) shall elect the Current Amount of Foreign Investment Insurance for any of Risks "A", "B", and "C" for that Subsequent Period being an amount not exceeding the Maximum Amount of Foreign Investment Insurance for Risks "A", "B", and "C" under The Contract as at the first day of that Subsequent Period, and

(b) may reduce but not increase, the Maximum Amount of Foreign Investment Insurance of Risks "A", "B", and "C" for that and later Subsequent Periods provided that a reduction so made shall not affect the insurance fee paid or payable in respect to any period during the Contract Period which occurred prior to the date on which such reduction becomes effective.

EXCLUSIONS

16. EDC shall not be liable to make any payment in respect to any risk covered by The Contract for any loss arising from

(a) any risk against which at the date of loss the Investor is insured by any other insurer or insurers;

(b) any risk relating to the Investment covered by any other contract of insurance issued by EDC;

(c) the operation of any law or any order, decree or regulation in force in the Project Country on the Effective Date hereof;

(d) any act or omission constituting fraud, default or negligence on the part of the Investor or its agents, or its representatives, or its banks, or of the Foreign Enterprise. If the Investor is in a minority position in the Foreign Enterprise, this circumstance shall be taken into consideration in assessing any such act or omission;

(e) any failure by the Investor to comply with all requirements of export, import and exchange control legislation in force on the Date of Investment;

(f) devaluation or inflation;

(g) failure to make a profit on the Investment;

(h) the failure or inability of the Investor to obtain from the Foreign Enterprise any monies or materials due to it unless such inability is due to Expropriatory Action;

(i) any failure by the Investor or the Foreign Enterprise to use all reasonable measures to save and preserve the Covered Property from Damage;

(j) any one or more of the risks defined in Schedule "III" of the Contract if the claim for payment arises or is asserted at a point in time when EDC would have been entitled to terminate The Contract for any of the reasons set forth in section 13 of this Schedule "IV"; or

(k) any of the risks defined in Schedule "III" of The Contract to the extent that any part of the Standby Amount is included in the claim for payment.

AUTHORITY OF REPRESENTATIVES

17. Prior to and as a condition of receiving any payment under The Contract, the Investor shall furnish EDC with evidence of the authority of the persons who will act as representatives of the Investor in all matters connected with or arising out

of The Contract. EDC shall be entitled to rely on such evidence of authority until EDC has received written notice from the Investor that such persons are no longer authorized so to act, and in the event of such notice, the Investor shall promptly furnish EDC with evidence of the authority of persons authorized to act in their place.

LIMITATION OF ACTIONS

18. No action or proceeding against EDC for the recovery of any claim under or by virtue of The Contract shall be commenced except within the times limited therefor in sections 6, 15 and 25 of Schedule "III" of The Contract.

ADDITIONAL UNDERTAKINGS BY INVESTOR

19. The Investor shall and where the Investment is made otherwise than directly by the Investor, shall cause the party making the Investment to:

(a) give its best attention, in all respects, to the Investment and to take all steps necessary at any time to minimize any loss to the assets comprising the Investment;

(b) promptly give notice to EDC of any event likely to cause a loss;

(c) promptly give EDC notice of any changes in arrangements or agreements of whatever nature, and whether or not approved by EDC, in respect to the Investment Earnings or Return of Capital;

(d) promptly give EDC notice of any changes in the assets comprising the Investment, whether by substitution, obsolescence or otherwise;

(e) comply fully with all requirements of the Project Country in relation to foreign investments during the Contract Period; and

(f) comply fully with the obligations and duties imposed by The Contract.

ARBITRATION

20. All questions or differences whatsoever which shall at any time arise between EDC and the Investor or their respective representatives or any of them touching or concerning The Contract or the construction, meaning, operation or effect thereof or of any clause herein contained or as to the rights, duties or liabilities of the parties hereto respectively or their respective representatives or any of them under or by virtue of The Contract or touching the subject matter thereof or arising out of or in relation thereto shall be referred to a single arbitrator in case the parties can agree upon one or in case they cannot agree or in the event of his death, inability or failure to act and take upon himself the burden of the arbitration then a competent arbitrator shall be named in accordance with the provisions of the Arbitrations Act of Ontario, Revised Statutes of Ontario 1970, Chapter 25 and amendments thereto. After the appointment of the arbitrator he shall have all the powers conferred on arbitrators by the Arbitrations Act of Ontario or any statutory modification thereof. The award of the arbitrator shall be final and binding on all parties.

EXCESS INSURANCE

21. In any case where the Investor claims payment from EDC under The Contract in respect of any loss for all or part of which the Investor is entitled to claim under any contract of insurance issued by another insurer then and in each such case EDC shall be entitled to deduct from any amount payable by EDC to the Investor under The Contract an amount in Canadian dollars equal to the amount which the Investor would be entitled to claim under such other contract of insurance if The Contract had not been entered into, it being the intent of EDC and the Investor that the EDC coverage called for in The Contract shall be excess coverage only.

ASSIGNMENT OF THE CONTRACT

22. (1) The Investor shall not voluntarily assign, transfer, pledge or otherwise dispose of The Contract or any of the rights of the Investor hereunder or with respect to any or all of the Securities without the prior written consent of EDC.

(2) EDC will in no event consent to any assignment, transfer, pledge or other disposition made to any person, firm or corporation who is not an Investor as defined in the Act.

AMENDMENTS

23. The provisions of The Contract may be modified, supplemented or otherwise altered only by agreement in writing between the Investor and EDC.

INTERPRETATION

24. In The Contract, where the context so permits or requires, the single shall include the plural, the masculine shall include the feminine or neuter, and reference to a person shall include a body corporate and vice versa in all cases.

LAW OF THE CONTRACT

25. The Contract shall be deemed to be a contract made under, and shall for all purposes be governed by and construed in accordance with the law of the Province of Ontario.

# ภาคผนวก ง.

# สัญญาประกันภัยทางการเมืองของประเทศอังกฤษ

# ANNEX VII (3)

Export Credits Guarantee Department: Overseas Investment Insurance Agreement

AGREEMENT made the day of between the SECRETARY OF STATE FOR TRADE & INDUSTRY, acting by the EXPORT CREDITS GUARANTEE DEPARTMENT (hereinafter called "the Insurer") of the one part and
whose registered office is situate at
and who carries on business at
(hereinafter called "the Investor") of the other part:

WHEREAS -

(1) the Investor /has made/ /is about to make/ an investment of resources (hereinafter called "the Investment") details of which are set out in Schedule I hereto in
of
(hereinafter called "the Overseas Enterprise") for the purpose of

(hereinafter called "the Project") in
(hereinafter called "the Project Country");

(2) the Investor has made in a form prescribed by the Insurer an application to the Insurer (hereinafter called "the Application") for insurance in connection with the Investment.

NOW THEREFORE, in consideration of the premiums paid (receipt of which the Insurer hereby acknowledges) and to be paid by the Investor, the Insurer agrees to insure the Investment on the terms and conditions hereinafter appearing and to pay to the Investor per cent. of the amount of any loss calculated in accordance with the provisions of Schedule II to this Agreement which the Investor may sustain in connection with the Investment by reason of Expropriation, War Damage or Restrictions on Remittances (as defined in Article 2 of the said Schedule) which occurs on or after the first Date of Investment or the date of this Agreement, whichever is the later.

1. The Maximum Insured Amounts under this Agreement shall be -

| | | |
|---|---|---|
| a. | for Equity Investment | £ |
| b. | for Loan Investment | £ |
| c. | for Investment by Guarantee | £ |
| | Total | £ |

/PROVIDED THAT, notwithstanding the foregoing, the Maximum Insured Amounts shall not exceed per cent. of the amount of the Equity Investment, Loan Investment or Investment by Guarantee (as defined in Schedule I) as the case may be/ or such lesser amounts as result from the operation of the provisions of Articles 3.01 and 3.02 of Part A of Schedule II.

2. The Current Insured Amounts which are to be in force during the First Period shall be -

| | | |
|---|---|---|
| a. | for Equity Investment | £ |
| b. | for Loan Investment | £ |
| c. | for Investment by Guarantee | £ |
| | Total | £ |

3. In respect of the First Period or any Subsequent Period the Investor agrees to pay premium -

(a) at the rate of £1 per £100 of the Current Insured Amounts; and

(b) at the rate of 50p per £100 of the Reserve Amount, such premium to be paid on or before the first day of the relevant period.

4. The minimum premium payable by the Investor under this Agreement is -

(a) the premium paid in respect of the First Period, that is to say -

| | | |
|---|---|---|
| Current Insured Amounts | £ | at £1 per £100: |
| Reserve Amount | £ | at 50p per £100: |

PLUS

(b) £1 per £100 of the Maximum Insured Amounts specified in paragraph 1 above

minimum premium

The amount specified in (b) shall be paid in two equal instalments, the first on or before the first day of the first Subsequent Period and the second on or before the first day of the second Subsequent Period. The amount of each such instalment paid by the Investor shall stand to his credit for the purpose of payment of premium under the terms of paragraph 3 above.

In the event of the termination of this Agreement prior to the first day of the second Subsequent Period any amount of the minimum premium outstanding shall be paid by the Investor to the Insurer forthwith upon such termination.

5. For the purpose of Article 3.01(b) and Article 12 of Part A of Schedule II the Earnings Quota shall be

6. This Agreement shall have a Maximum Period of validity of years commencing on the date hereof.

7. (a) This Agreement is entered into by the Insurer in reliance on the information furnished in the Application, as explicitly supplemented or modified by any further information furnished by the Investor in writing and if any information so furnished be untrue or incorrect in any respect this Agreement shall be voidable at the option of the Insurer or may be terminated by the Insurer, but the Insurer may retain all premium paid.

(b) The accuracy of the information contained in the Application as explicitly supplemented or modified by any further information furnished by the Investor in writing, certain items of which are incorporated in Schedule I hereto, shall be a condition precedent to any liability of the Insurer hereunder.

8. Without prejudice to any rule of law, this Agreement is made on condition that the Investor has disclosed and will at all times during its operation promptly disclose all facts in any way affecting the risks hereby insured.

9. Due performance and observance of the terms hereof by the Investor shall be a condition precedent to any liability of the Insurer hereunder.

10. This Agreement shall be governed by and construed in accordance with English law.

| | |
|---|---|
| SIGNED on behalf of the INSURER | SIGNED for the INVESTOR |
| ..... | ..... |
| WITNESS to the signature of | WITNESS to the signature of |
| ..... | ..... |
| ..... | ..... |

SCHEDULE I
DETAILS OF THE INVESTMENT

/The headings listed below are illustrative. The actual schedule in each case will set out the relevant particulars of the investment of resources that is being insured. For example, special provision may be needed for investment in the form of convertible loan stock, preference shares etc whose terms govern the investor's rights. The schedule may include ancillary arrangements if they constitute an investment of resources but otherwise they would be the subject of an export credit guarantee./

SECTION 1 - THE EQUITY INVESTMENT

(a) The /proposed/ equity investment is /estimated at/ £ /to be/ made in the form of:

| | | |
|---|---|---|
| (i) | cash | £ |
| (ii) | machinery<br>equipment<br>materials | £ |
| (iii) | patents<br>processes<br>techniques | £ |
| (iv) | /others/ | £ |

/which to the extent actually contributed by the Investor to the Overseas Enterprise shall constitute the "Equity Investment"./

(b) The number and class of the shares acquired as a result of the Equity Investment, and the proportion they represent of the total of each class of shares issued by the Overseas Enterprise, are as follows:-

(c) The Equity Investment is being made in the following stages:

SECTION 2 - THE LOAN INVESTMENT

(a) The /proposed/ principal amount of the loan, expressed in the currency in which it is to be repaid is /estimated at/ /which to the extent actually loaned by the Investor to the Overseas Enterprise shall constitute the "Loan Investment"./

(b) The estimated programme for disbursement of the loan is:

(c) The rate of interest payable on the loan is:

(d) The terms of repayment of principal and payment of interest are:

(e) Repayment of the loan may be accelerated in the event of:

(f) The place of repayment of principal and payment of interest is:

SECTION 3 - THE INVESTMENT BY GUARANTEE

(a) The name and address of the lender is:

(b) The /proposed/ principal amount of the loan to be guaranteed by the Investor, expressed in the currency in which it is to be repaid is /estimated at/ /which to the extent actually loaned by the Guaranteed Lender to the Overseas Enterprise and guaranteed the Investor shall constitute the "Investment by Guarantee"./

(c) The estimated programme for disbursement of the Guaranteed Loan is:

(d) The rate of interest payable on the Guaranteed Loan is:

(e) The terms of repayment of the principal amount of the Guaranteed Loan, and the terms of payment of interest thereon, are:

(f) The repayment of the Guaranteed Loan may be accelerated in the event of:

(g) The place of repayment of the principal amount of the Guaranteed Loan and payment of interest thereon is:

(h) The Investor's maximum liability in respect of the Guaranteed Loan is:

GTC 1/72

(Revised March 1973)

OVERSEAS INVESTMENT INSURANCE AGREEMENT

SCHEDULE II

SCHEDULE II

PART A - GENERAL TERMS AND CONDITIONS

ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement -

1.01 "Associated Company" means any company controlling the Investor or under the control of any such company or of the Investor, whether any such control is direct or indirect.

1.02 "Date of Damage" means the date of the inception of the relevant War Damage.

1.03 "Date of Expropriatory Action" means the first day of the period in which a deprivation or prevention will, through duration of time, become Expropriation as defined in Article 2.01.

1.04 "Date of Investment" means each date on which the constituent elements of the Investment first come into the control or possession of the Overseas Enterprise.

1.05 "Earnings Quota" means the amount specified in paragraph 5 of this Agreement or such lesser amount as results from the operation of the provisions of Article 12 of this Schedule.

1.06 "Expropriation" has the meaning assigned to it in Article 2.01 of this Schedule.

1.07 "Financial Benefit" means -

i. any amount received by the Investor (whether by way of compensation, indemnity or otherwise) as a result of the Expropriation or War Damage;

ii. the amount of any moneys or the current market value of any assets belonging to the Overseas Enterprise, which can be used by the Investor by way of set-off pending a settlement relating to the Investment.

1.08 "Guaranteed Lender" means a person or entity (other than the Investor) which makes a loan to the Overseas Enterprise, which loan is guaranteed by the Investor.

1.09 "Government of the Project Country" includes the present or any succeeding governing authority (without regard to the method of its succession or as to whether it is recognised by the United Kingdom) in effective control of all or any part of the Project Country or of any political or territorial subdivision thereof, or the authorised agents of such governing authority or any court or similar tribunal of law or any subordinate legislative body recognised by such governing authority.

1.10 INVESTMENT

a. "Equity Investment" means that part of the Investment specified in Section 1 of Schedule I hereto;

b. "Loan Investment" means that part of the Investment specified in Section 2 of Schedule I;

c. "Investment by Guarantee" means that part of the Investment specified in Section 3 of Schedule I;

d. "Current Equity Investment" means, on any date, the Equity Investment less any Return of Capital and the sterling value of any commercial losses (including capitalised losses) sustained by the Overseas Enterprise attributable to the Investor's Share calculated at the Reference Rate of Exchange on that date plus the sterling value of the net retained profits of the Overseas Enterprise (including realised capital gains and retained profits capitalised through the issue of bonus shares) attributable to the Investor's Share calculated at the Reference Rate of Exchange on that date.

1.11 "Investment Earnings" means the amounts received by or for the Investor in respect of the Equity Investment as cash dividends or other distributions of profits (exclusive of any distributions made in connection with the reduction in the capital or the liquidation of the Overseas Enterprise).

1.12 "Investor's Share" means, on any date, the proportion of the Overseas Enterprise owned by the Investor attributable to the Equity Investment.

1.13 "Local Currency" means the currency recognised by the Government of the Project Country as the official currency of that country.

1.14 Periods of the Agreement

a. "First Period" means the period of one year commencing on the date of this Agreement;

b. "Subsequent Period" means a period of one year within the Maximum Period commencing on an anniversary of the date of this Agreement;

c. "Maximum Period" means the period specified in paragraph 6 of this Agreement;

d. "Period" means the First Period or any Subsequent Period.

1.15 "Reference Rate of Exchange" means, on any date, the effectivo rate of exchange applicable on that date to the purchase in the Project Country of sterling. If multiple rates existed on that date the Reference Rate of Exchange shall be the effective rate applicable to the purchase in the Project Country of sterling for the remittance by a private investor of earnings or capital or by a borrower servicing sterling debt. If the rate fluctuated on that date then the Reference Rate

of Exchange shall be the average for the rates on that date as obtained from a representative group of banks in the Project Country. If no rate existed on that date the Reference Rate of Exchange shall be the effective rate applicable on the nearest preceding day on which there was a rate. The effective rate shall be determined by taking into consideration all charges and expenses applicable under prevailing governmental regulations and commercial practice including but not limited to exchange taxes and transfer taxes or margins, howsoever designated.

1.16 "Reserve Amount" means, for any Period, the difference between the sum of the Maximum Insured Amounts and the sum of the Current Insured Amounts.

1.17 "Restrictions on Remittances" has the meaning assigned to it in Article 2.03 of this Schedule.

1.18 "Return of Capital" means amounts received by or for the Investor in respect of the Equity Investment by way of -

a. distributions made in connection with the reduction in the capital or the liquidation of the Overseas Enterprise; and

b. proceeds in the Project Country of the sale of the Investor's rights and titles acquired as a result of the Equity Investment.

1.19 "Tangible Property" means the physical assets owned by the Overseas Enterprise or of which the Overseas Enterprise bears the risk of loss and which are used in connection with the Project and are located in the Project Country on the Date of Damage, excluding Local Currency and foreign currency, documents, or the tangible evidence of other property (tangible or intangible) including but not limited to accounts, bills, debentures, deeds, manuscripts and securities.

1.20 "The United Kingdom" shall be deemed to include the Channel Islands and the Isle of Man.

1.21 "War Damage" has the meaning assigned to it in Article 2.02 of this Schedule.

ARTICLE 2 - INSURED RISKS

2.01 EXPROPRIATION for the purposes of this Agreement means any action or omission by the Government of the Project Country or any action or omission authorised, ratified or condoned by that Government which -

A. commences within the Maximum Period; and

B. has the effect of -

i. depriving the Investor of his rights in respect of or of his title to all or part of his ownership of the Overseas Enterprise acquired by reason of the Investment or of the proceeds thereof or preventing the effective exercise of such rights;

ii. depriving the Overseas Enterprise of the ownership of a substantial part of its property (whether tangible or intangible); or

iii. preventing the Overseas Enterprise from exercising effective control over the use or disposition of a substantial part of its property (whether tangible or intangible) or from setting up or operating the Project;

and which deprivation or prevention additionally in the case of -

(a) Loan Investment, directly results in the failure of the Overseas Enterprise to pay to the Investor within six months of the due date of payment any instalment of principal or interest or any other payments due in respect of the Loan Investment; or

(b) Investment by Guarantee, directly causes the Investor in pursuance of his guarantee to make payment to the Guaranteed Lender in respect of the Investment by Guarantee;

and -

C. i. directly or indirectly has the effect of nationalisation; or

ii. directly or indirectly has the effect of confiscation other than after due process of law; or

iii. is the direct consequence of any decision of the Government of the Project Country made with the intention of discriminating against the Investor or the Overseas Enterprise

PROVIDED THAT -

a. no such deprivation or prevention which continues in effect for a period of less than one year shall be deemed to be Expropriation unless the Insurer in his absolute discretion so determines in writing;

b. for the purpose of determining whether there has been Expropriation, no account shall be taken of whether compensation has been offered or made;

c. the following shall be deemed not to be Expropriation -

   i. any action by the Government of the Project Country through the exercise of its rights or powers as shareholder, director or manager of the Overseas Enterprise which is taken in its capacity as such; or

   ii. any abrogation, impairment, repudiation or breach by the Government of the Project Country of any agreement by it to invest in the Overseas Enterprise;

d. the Insurer shall have no liability -

   i. if the Investor, his agents or representatives or the Overseas Enterprise provokes or instigates Expropriation;

   ii. if the Investor, his agents or representatives or the Overseas Enterprise (to the extent within the Investor's control) fails to take all reasonable measures, including those available under administrative and judicial procedures in the Project Country to prevent or minimise the effect of Expropriation;

   iii. for any action or omission to which the Investor, his agents or representatives or the Overseas Enterprise agreed voluntarily;

   iv. for any loss attributable to the insolvency of the Investor or of any of his agents or representatives; or

   v. for any loss attributable to the fact that control of the Investor is exercised directly or indirectly by a person or persons resident outside the United Kingdom.

2.02 "WAR DAMAGE" for the purpose of this Agreement means -

a. damage to, disappearance, destruction or seizure and retention of the Tangible Property as a direct result of war (as hereinafter defined in this Article) or as a direct result of actions taken in hindering, combatting or defending against war whether actual, pending or expected;

b. the inability of the Overseas Enterprise as a direct result of war to operate the Project for a period of twelve consecutive months from the first date on which such operation becomes impossible;

c. if it is possible to operate the Project, the inability of the Overseas Enterprise as a direct result of war to operate it at a profit over a period of three consecutive years or such shorter period as the Insurer in his absolute discretion may in writing determine;

d. the failure of the Overseas Enterprise to pay to the Investor within six months from the due date any instalment of principal or interest or any other payments due in respect of the Loan Investment;

or

the payment by the Investor in pursuance of his guarantee to the Guaranteed Lender in respect of the Investment by Guarantee;

being a failure to pay or a payment made in pursuance of the Investor's guarantee, as the case may be, caused by reason of -

i. any of the events referred to in a. above, including such actions as are therein mentioned; or

ii. the inability of operation of the Overseas Enterprise as referred to in b. above for the period therein mentioned; or

iii. the inability of the Overseas Enterprise to operate at a profit as referred to in c. above for the period therein mentioned;

e. the loss for a period of twelve consecutive months as a direct result of war of the Investor's effective control of the Overseas Enterprise

PROVIDED THAT the Insurer shall not be liable for any loss arising from any failure by the Investor or the Overseas Enterprise to take all reasonable steps to protect and preserve the Tangible Property from War Damage or to take all reasonable steps to repair and replace any such property which may be damaged and to operate the Project.

"War", for the purposes of this Article, means any war in which the Government of the Project Country is a participant and any revolution or insurrection occurring in the Project Country, but does not include any civil strife of a lesser degree than revolution or insurrection.

2.03 RESTRICTIONS ON REMITTANCES for the purposes of this Agreement means

a. the frustration for a period of six consecutive months of the conversion of Local Currency received by or for or held to the order of the Investor or the Guaranteed Lender, as the case may be, in respect of his interest in the Overseas Enterprise or the proceeds thereof into sterling freely available in the United Kingdom to the Investor or the Guaranteed Lender, as the case may be; or

/Subject to amendment where currencies other than sterling are involved/

b. the inability of the Investor or the Guaranteed Lender, as the case may be, for a period of six consecutive months to convert such Local Currency into sterling freely available to him in the United Kingdom except on the basis of a rate of exchange less favourable to the Investor or the Guaranteed Lender, as the case may be, than that currently available to other investors in respect of like transactions;

being a frustration or inability arising in circumstances outside the control of the Investor or the Guaranteed Lender, as the case may be, from the operation of any law, or of any order, decree or regulation having the force of law in the Project Country or from any other cause not occasioned by an act or omission on the part of the Investor, the Guranteed Lender or the Overseas Enterprise, as the case may be

PROVIDED THAT the Insurer shall have no liability -

i. in respect of Loan Investment or Investment by Guarantee unless the Overseas Enterprise has made an irrevocable deposit in Local Currency for transfer to the Investor or to the Guaranteed Lender, as the case may be, in a bank in the Project Country;

ii. unless and until all steps necessary to effect the conversion of such Local Currency into sterling have been taken or attempted by the Investor, the Guaranteed Lender or the Overseas Enterprise, as the case may be;

iii. in respect of such Local Currency held by or for the Investor or the Guaranteed Lender, as the case may be, for more than six months prior to the commencement of action necessary by the Investor, the Guaranteed Lender or the Overseas Enterprise, as the case may be, to effect its conversion into sterling;

iv. in respect of any attempted conversion into sterling of the proceeds of the voluntary sale or voluntary liquidation, initiated by the Investor within three years from the date of this Agreement of all or part of the rights and titles acquired by the Investor as a result of the Investment; or

v. for any loss arising from the insolvency of any agent of the Investor, or the Guaranteed Lender, as the case may be, or of a collecting bank or from any act or default on the part of such agent or collecting bank.

2.04 EXCLUSIONS FROM LIABILITY

In relation to Articles 2.01, 2.02 and 2.03 above the Insurer shall have no liability in respect of -

a. any loss arising from any requirement, restriction or constraint in force at the date of this Agreement or the first Date of Investment, whichever is the later, by virtue of any law, or of any order, decree or regulation having the force of law in the Project Country:

PROVIDED THAT this paragraph shall not apply where the Investor incurs any loss as a result of a change since such date in the manner of the operation of, or in the administrative procedure under, any such law, order, decree or regulation in effect in the Project Country at such date;

b. any risk which at the Date of Investment is normally insured with commercial insurers;

c. the Investment, if it is not made in compliance with the exchange control or export regulations of the United Kingdom in force at the date of this Agreement or the first Date of Investment, whichever is the later; or

d. any loss arising from any failure or inability of the Investor or the Guaranteed Lender or their agents or representatives to obtain any authority in respect of the Investment where the authority is required at the date of this Agreement or the first Date of Investment, whichever is the later, or to satisfy any requirements of the Project Country in respect of the Investment where the requirement is in force at such date.

ARTICLE 3 - DETERMINATION OF THE MAXIMUM INSURED AMOUNTS AND CURRENT INSURED AMOUNTS

3.01 The Maximum Insured Amount for Equity Investment shall be reduced

a. if any claim is paid by the Insurer during any Period in respect of such Investment, by the amount of loss in respect of which that claim is paid with effect from the Date of Expropriatory Action, the Date of Damage or the date on which conversion of the Local Currency was first attempted, as the case may be;

b. when the amount of Investment Earnings received in sterling in the United Kingdom together with the amount of any claims payment made by the Insurer in respect of Investment Earnings become equal to the Earnings Quota specified in paragraph 5 of this Agreement, by the amount of any

subsequent Investment Earnings received in sterling in the United Kingdom by the Investor and by the amount of any claims payment made by the Insurer in respect of Investment Earnings after the Earnings Quota has been equalled as aforesaid, all such amounts to be calculated before the deduction of any taxes payable to the United Kingdom revenue authorities;

c. in the event of and with effect from the date of a Return of Capital to an amount equal to the proportion which the remaining share in the Overseas Enterprise held by the Investor bears to his total share therein immediately prior to such date multiplied by the Maximum Insured Amount at that date; and

d. if the Investor so elects in writing prior to the commencement of the third or any later Subsequent Period PROVIDED THAT the Investor may not at any time elect to increase the Maximum Insured Amount after it has been reduced by his prior election or by the provisions of paragraphs a. b. and c. above.

3.02 The Maximum Insured Amount for Loan Investment or Investment by Guarantee, as the case may be, shall be reduced if any claim is paid by the Insurer during any Period in respect of such Investment, by the amount of loss in respect of which that claim is paid with effect from the Date of Expropriatory Action, the Date of Damage or the date on which the Local Currency was irrevocably deposited for transfer to the Investor or the Guaranteed Lender, as the case may be, in a bank in the Project Country.

3.03 The Current Insured Amount for Equity Investment or Loan Investment or Investment by Guarantee, as the case may be, shall be -

a. for the First Period, the amounts specified in paragraph 2 of this Agreement;

b. for each Subsequent Period, the amount that results from the following provisions:

i. prior to the first day of any Subsequent Period the Investor shall elect in writing for that Period the Current Insured Amount for Equity Investment, which amount shall be the Current Equity Investment plus any additional amounts the Investor expects to have at risk at any time during that Period as a result of having made the Equity Investment, and

ii. prior to the first day of any Subsequent Period, the Investor shall elect in writing for that Period the Current Insured Amounts for Loan Investment and Investment by Guarantee, which amounts shall not be less than the maximum amounts due or which may become due and payable in that Period in respect of such Loan Investment or in respect of a loan made by the Guaranteed Lender;

c. reduced if any claim is paid by the Insurer during any Period, by the amount of loss in respect of which that claim is paid with effect from, as the case may be, the Date of Expropriatory Action, the Date of Damage, the date on which conversion of Local Currency was first attempted or the date the Local Currency was irrevocably deposited for transfer to the Investor or the Guaranteed Lender, as the case may be, in a bank in the Project Country; and

d. at no time greater than the Maximum Insured Amounts for Equity Investment, Loan Investment or Investment by Guarantee, as the case may be.

3.04 Where a Maximum Insured Amount has been reduced in accordance with the provisions of Articles 3.01.a or 3.02 or a Current Insured Amount has been reduced in accordance with the provisions of Article 3.03.c above as a result of any payment made by the Insurer to the Investor in respect of Restrictions on Remittances and a partial or total recovery is subsequently received by the Insurer, the Insurer, may in his absolute discretion, at the Investor's request and upon payment of the appropriate premium increase the Maximum Insured Amount and where applicable the Current Insured Amount by the amount of such recovery.

3.05 If, after the Investor has made election for any Subsequent Period of Maximum Insured Amounts in accordance with Article 3.01.d or of Current Insured Amounts in accordance with Articles 3.03.b.i and 3.03.b.ii above, a payment is made by the Insurer which reduces the Maximum Insured Amounts and Current Insured Amounts available to the Investor for that Subsequent Period to lesser amounts than those originally elected by the Investor for that Subsequent Period, the Insurer shall refund to the Investor such part of the premium paid in respect of the relative Subsequent Period as relates to such reductions.

ARTICLE 4 - CALCULATION OF LOSS (EQUITY INVESTMENT)

4.01 Subject to Article 4.05 where the cause of loss is that specified in Article 2.01 of this Schedule (EXPROPRIATION) the amount of loss shall be the Current Equity Investment calculated as at the Date of Expropriatory Action.

4.02 a. If where the cause of loss is that specified in Article 2.01 of this Schedule (EXPROPRIATION) the Investor is deprived of part and not all of his shareholding or equivalent rights in respect of or of his titles to ownership of the Overseas Enterprise the Investor may elect that the amount of loss shall be the amount obtained by multiplying the Current Equity Investment calculated as at the Date of Expropriatory Action by the fraction obtained by dividing the value similarly calculated at the said date of the said rights and titles of which the Investor has been deprived by the value similarly calculated at that date of all of the said rights and titles of the Investor PROVIDED THAT without prejudice to Article 4.05 the

maximum liability of the Insurer hereunder shall not exceed the amount obtained by multiplying the Current Insured Amount at that date by the said fraction.

b. Unless otherwise agreed by the Insurer in writing, the Insurer shall have no further liability in respect of the Equity Investment after payment of a claim pursuant to a. above PROVIDED THAT such cessation of liability in respect of the Equity Investment shall not discharge or affect any right, liability or obligation of either party under this Agreement which has accrued prior to the date of payment of such claim.

4.03 a. Subject to Article 4.05, where the cause of loss is that specified in Article 2.02.a of this Schedule (WAR DAMAGE) the amount of loss shall be the lesser amount of

i. the Investor's Share of the original cost to the Overseas Enterprise less fair and reasonable depreciation of the Tangible Property affected by such War Damage, or

ii. the Investor's Share of the reasonable cost of repairing or replacing such Tangible Property with property of like kind and quality

PROVIDED THAT

a. the Investor shall bear the first £1,000 of the amount of any loss so calculated, and

b. the Insurer shall have no liability for the amount of any loss so calculated in excess of the Current Equity Investment calculated as at the Date of Damage.

b. Subject to Article 4.05, where the cause of loss is that specified in Article 2.02.b, 2.02.c or 2.02.e of this Schedule (WAR DAMAGE) the amount of loss shall be the Current Equity Investment calculated as at the Date of Damage.

4.04 Subject to Article 4.05 where the cause of loss is that specified in Articles 2.03.a. or 2.03.b. of this Schedule (RESTRICTIONS ON REMITTANCES) the amount of loss shall be the sterling sum which would have been available to the Investor in respect of the Equity Investment had it been possible to convert the Local Currency received by or for him at the Reference Rate of Exchange on the date on which conversion was first attempted.

4.05 In relation to Articles 4.01, 4.02, 4.03 and 4.04 above the total amount of loss in respect of which the Insurer shall have liability in any Period shall not exceed the Current Insured Amount for Equity Investment in effect on the first day of such Period in which fell, as the case may be, the Date of Expropriatory Action, the Date of Damage or the date on which conversion of Local Currency was first attempted.

ARTICLE 5 - CALCULATION OF LOSS (LOAN INVESTMENT)

5.01 Subject to Article 5.03, where the cause of loss is that specified in Article 2.01 (EXPROPRIATION) or 2.02.d. (WAR DAMAGE) of this Schedule the amount of loss shall be

a. where the Loan Investment is made in sterling, any amounts that have become due for payment subsequent to the Date of Expropriatory Action or Date of Damage, as the case may be, have remained unpaid for more than six months and remain unpaid at the date of payment of the claim by the Insurer; or

b. where the Loan Investment is made in Local Currency, the sterling value calculated at the Reference Rate of Exchange on the due date of payment of any amounts that have become due for payment subsequent to the Date of Expropriatory Action or Date of Damage, as the case may be, have remained unpaid for more than six months and remain unpaid at the date of payment of the claim by the Insurer; or

c. where the Loan Investment is made in a currency other than sterling or Local Currency, the sterling value calculated at the rate of exchange between that currency and sterling on the due date of payment of any amounts that have become due for payment subsequent to the Date of Expropriatory Action or Date of Damage, as the case may be, have remained unpaid for more than six months and remain unpaid at the date of payment of the claim by the Insurer.

5.02 Subject to Article 5.03, where the cause of loss is that specified in Articles 2.03.a. or 2.03.b. (RESTRICTIONS ON REMITTANCES) of this Schedule the amount of loss shall be the sterling value of the Local Currency received by or for the Investor in respect of the Loan Investment calculated at the Reference Rate of Exchange on the date such Local Currency was irrevocably deposited for transfer to the Investor in a bank in the Project Country.

5.03 For the purpose of this Article the amount of loss in respect of which the Insurer shall have liability shall be

a. where the amount of loss ascertained in accordance with Articles 5.01 and 5.02 does not exceed the Current Insured Amount for Loan Investment in effect on the first day of the Period in which the failure to pay occurred or the Local Currency was irrevocably deposited for transfer to the Investor in a bank in the Project Country, the amount of such loss reduced by the amount of any Financial Benefit which is attributable to the Loan Investment and in the possession of the Investor or any Associated Company at the date of payment of the claim by the Insurer;

b. where the amount of loss so ascertained exceeds the Current Insured Amount for Loan Investment in effect on the first day of the Period in which the failure to pay occurred or the Local Currency was irrevocably deposited for transfer

to the Investor in a bank in the Project Country, the Current Insured Amount less such amount as results from reducing any such Financial Benefit in the proportion which the Current Insured Amount bears to the amount of loss ascertained in accordance with Articles 5.01 and 5.02.

ARTICLE 6 - CALCULATION OF LOSS (INVESTMENT BY GUARANTEE)

6.01 Subject to Article 6.03, where the cause of loss is that specified in Article 2.01 (EXPROPRIATION) or 2.02.d. (WAR DAMAGE) of this Schedule, the amount of loss shall be

a. where the Investment by Guarantee is in respect of a loan made in sterling, any amounts that have been paid by the Investor to the Guaranteed Lender in respect of amounts that have become due for payment by the Overseas Enterprise to the Guaranteed Lender subsequent to the Date of Expropriatory Action or Date of Damage, as the case may be, have remained unpaid for more than six months and remain unpaid at the date of payment of the claim by the Insurer; or

b. where the Investment by Guarantee is in respect of a loan made in Local Currency, the sterling value calculated at the Reference Rate of Exchange on the due date of payment of any amounts that have been paid by the Investor to the Guaranteed Lender in respect of amounts that have become due for payment by the Overseas Enterprise to the Guaranteed Lender subsequent to the Date of Expropriatory Action or Date of Damage, as the case may be, have remained unpaid for more than six months and remain unpaid at the date of payment of the claim by the Insurer; or

c. where the Investment by Guarantee is in respect of a loan made in a currency other than sterling or Local Currency, the sterling value calculated at the rate of exchange between that currency and sterling on the due date of payment of any amounts that have been paid by the Investor to the Guaranteed Lender in respect of amounts that have become due for payment by the Overseas Enterprise to the Guaranteed Lender subsequent to the Date of Expropriatory Action or Date of Damage, as the case may be, have remained unpaid for more than six months and remain unpaid at the date of payment of the claim by the Insurer.

6.02 Subject to Article 6.03, where the cause of loss is that specified in Articles 2.03.a. or 2.03.b. (RESTRICTIONS ON REMITTANCES) of this Schedule, the amount of loss shall be the sterling value of the Local Currency received by or for the Guaranteed Lender in respect of the Investment by Guarantee calculated at the Reference Rate of Exchange on the date such Local Currency was irrevocably deposited for transfer to the Guaranteed Lender in a bank in the Project Country.

6.03 For the purpose of this Article the amount of loss in respect of which the Insurer shall have liability shall be

a. where the amount of loss ascertained in accordance with Articles 6.01 and 6.02 does not exceed the Current Insured Amount for Investment by Guarantee in effect on the first day of the Period in which the failure to pay occurred or the Local Currency was irrevocably deposited for transfer to the Guaranteed Lender in a bank in the Project Country, the amount of such loss reduced by the amount of any Financial Benefit which is attributable to the Investment by Guarantee and in the possession of the Investor or any Associated Company at the date of payment of the claim by the Insurer;

b. where the amount of loss so ascertained exceeds the Current Insured Amount for Investment by Guarantee in effect on the first day of the Period in which the failure to pay occurred or the Local Currency was irrevocably deposited for transfer to the Guaranteed Lender in a bank in the Project Country, the Current Insured Amount less such amount as results from reducing any such Financial Benefit in the proportion which the Current Insured Amount bears to the amount of loss ascertained in accordance with Articles 6.01 and 6.02.

ARTICLE 7 TREATMENT OF AMOUNTS RECEIVED BY THE INVESTOR OR THE INSURER AFTER THE DATE OF EXPROPRIATORY ACTION OR DATE OF DAMAGE (EQUITY INVESTMENT)

7.01 The amount of any Financial Benefit attributable to the Equity Investment and in the possession of the Investor or any Associated Company prior to the date of payment of a claim by the Insurer and any amounts (other than payments made but not received in sterling prior to the Date of Expropriatory Action or Date of Damage as Investment Earnings or Return of Capital) received in respect of the Equity Investment in sterling in the United Kingdom by the Investor or the Insurer after the Date of Expropriatory Action or Date of Damage shall be divided between the Investor and the Insurer in the proportions in which loss is borne by them respectively, the Investor and the Insurer hereby acknowledging and declaring that until such amounts have been so divided and paid each receives and holds in trust for the other such amounts as are due to the other. If any such amount received by the Investor and due to the Insurer has not been paid over to the Insurer at the time a claims payment is made the Insurer shall be entitled to set-off such amount against the amount of the claims payment.

ARTICLE 8 - TREATMENT OF AMOUNTS RECEIVED BY THE INVESTOR OR THE INSURER AFTER PAYMENT OF A CLAIM (LOAN INVESTMENT AND INVESTMENT BY GUARANTEE)

8.01 Any amounts received by the Investor or the Insurer in respect of Loan Investment or Investment by Guarantee after payment by the Insurer to the Investor of a claim shall be divided between the Investor and the Insurer in the proportions in which loss is borne by them respectively, the Investor and the Insurer hereby acknowledging and declaring that until such amounts have been so divided and paid each receives and holds in trust for the other such amounts as are due to the other.

ARTICLE 9 - PREVENTION AND NOTICE OF LOSS

9.01 The Investor shall use all reasonable and usual care, skill and forethought and take all practicable measures to prevent or minimise loss, including the preservation and pursuit of all available administrative and judicial remedies and other measures which may be required by the Insurer.

9.02 On becoming aware of the occurrence of any event liable to load to a claim under this Agreement the Investor shall immediately notify the Insurer in writing of such occurrence and thereafter take such action as the Insurer may after consultation with the Investor require for the purpose of avoiding, or effecting a settlement of, any dispute between the Investor and the Government of the Project Country arising out of such occurrence.

ARTICLE 10 - CLAIMS PROCEDURE

10.01 The Investor shall notify the Insurer of his intention to make a claim under this Agreement within three months of the occurrence of a cause of loss insured under this Agreement. Any formal claim made by the Investor thereafter shall be in a form specified by the Insurer, shall contain such information and shall be submitted within such period as the Insurer may reasonably require.

ARTICLE 11 - POST-CLAIMS PROCEDURES

11.01 Upon payment by the Insurer of claims where the cause of loss is that specified in Article 2.01 (EXPROPRIATION) or 2.02 (WAR DAMAGE) the Investor shall as required by the Insurer -

a. take all steps to safeguard the value of his interest in the Overseas Enterprise;

b. assign and transfer to the Insurer:

   i. all his assignable rights, titles and interest (including any claims and causes of action);

   ii. all currency, negotiable instruments and other assets tangible or intangible; and

   iii. all compensation received or the right to receive compensation;

   which relate to that part of his interest in the Overseas Enterprise or proceeds thereof in respect of which loss was incurred; provided that any such assignment or transfer shall be without prejudice to any beneficial interest of the Investor in any amounts received by the Insurer under the provisions of Article 7 or Article 8, as the case may be;

c. after completion of any assignment or transfer referred to in b. above, co-operate to the fullest extent possible and cause the Overseas Enterprise to co-operate to the fullest extent possible with the Insurer in the administration of any property acquired by the Insurer under such assignment

or transfer and in the institution of proceedings and preservation of remedies in respect of any claims thereby assigned to the Insurer, and make available to the extent that they are within the power of the Investor -

i. technical and other information and qualified managerial and technical personnel necessary to the maintenance and operation of property so acquired; and

ii. any evidence necessary to the institution and conduct of proceedings in respect of claims so assigned;

d. continue to administer his interest in the Overseas Enterprise arising out of the Investment or, where such interest has been assigned to the Insurer under the provisions of Article 11.01.b. above, continue to administer on the Insurer's behalf such interest so assigned;

e. either as principal or as agent of the Insurer take all steps to effect recoveries.

11.02 Upon payment by the Insurer of claims where the cause of loss is that specified in Article 2.03 (RESTRICTIONS ON REMITTANCES) the Investor shall as required by the Insurer -

a. transfer to or hold for the account of the Insurer in such manner as the Insurer may require, the Local Currency or any rights relating thereto in respect of which the claim payment was made, and

b. thereafter take all steps which the Insurer may require to effect a transfer of such Local Currency.

11.03 Any costs incurred by the Investor in pursuance of the requirements of Articles 11.01 and 11.02 above shall be borne by the Investor and the Insurer in the proportions in which loss is borne by them respectively.

11.04 If at any time during a period of five years from the date of payment by the Insurer of a claim in respect of which Financial Benefits have been applied in accordance with the provisions of Articles 5.03, 6.03, 7.01 or 8 the Investor is required to reimburse to the Overseas Enterprise all or part of any such Financial Benefits the amount of loss in respect of which the relevant claims payment was made shall be recalculated without taking into account such Financial Benefits, any recoveries received after payment of the claim being taken into account for the purposes of determining the revised amount of claim payable. .

ARTICLE 12 - REDUCTION OF THE EARNINGS QUOTA

12.01 In the event of a Return of Capital, the Earnings Quota specified in paragraph 5 of this Agreement shall be reduced with effect from the date on which the Return of Capital was made to an amount equal to the sum of -

a. the proportion which the remaining share in the Overseas Enterprise held by the Investor bears to his total share therein prior to such Return of Capital multiplied by the amount obtained by subtracting from the Earnings Quota

the amount of Investment Earnings received by the Investor in sterling in the United Kingdom plus the amount of any claims payment made by the Insurer in respect of Investment Earnings, and

b. the amount of Investment Earnings in respect of the Equity Investment received by the Investor in sterling in the United Kingdom plus the amount of any claims payment made by the Insurer in respect of Investment Earnings;

all such amounts to be calculated before the deduction of any taxes payable to the United Kingdom revenue authorities.

ARTICLE 13 - CONDITIONS

13.01 The liability of the Insurer under this Agreement shall cease if, without the Insurer's prior written consent,

a. the Investor varies or agrees to any variation in the terms of the Investment as set out in this Agreement;

b. the assets acquired by the Overseas Enterprise as a result of the Investment are employed for a purpose other than that described in this Agreement as the Project;

c. the Investor voluntarily enters into a compensation arrangement in respect of any of the causes of loss insured under this Agreement with the Government of the Project Country or with any body authorised by that Government to enter into such an arrangement;

d. the Overseas Enterprise voluntarily disposes of the Project but without prejudice to any liability of the Insurer in respect of any Return of Capital ensuing directly from such disposal;

e. the Investor assigns, mortgages, charges, pledges or in any other way disposes of the benefit of this Agreement or any part thereof; or

f. the Investor assigns, mortgages, charges, pledges or in any other way disposes of his interest in the Overseas Enterprise acquired as a result of the Investment, but without prejudice to -

i. any liability of the Insurer in respect of the Local Currency proceeds of such disposal in the Project Country; and

ii. any right, liability or obligation of the Insurer or the Investor which has accrued prior to the date of disposal.

13.02 Where the Investment or parts thereof are made subsequent to the date of this Agreement the Investor shall immediately notify the Insurer in a form prescribed by the Insurer of the details of the Investment or parts thereof as they are made and shall provide such other information with regard thereto as the Insurer may reasonably require.

13.03 The Investor shall during the currency of this Agreement and -

a. the next succeeding eighteen months, or

b. during any period after the expiry of this Agreement in which the Investor has a claim pending under this Agreement and for five years after payment of any claim under this Agreement

whichever is the longer,

i. maintain in the United Kingdom in a place readily accessible to the Insurer or his duly authorised representatives, proper accounting records, statements and reports and such other information as the Insurer may require covering the amount of the Equity Investment, the Loan Investment and the Investment by Guarantee, Return of Capital, Investment Earnings and all other receipts, expenditures, transactions and credits in connection with the Investment;

ii. within six months after the end of each financial year of the Overseas Enterprise falling wholly or partly within the Maximum Period the Investor shall to the extent of his ability obtain from the Overseas Enterprise and maintain in the United Kingdom in a place readily accessible to the Insurer or his duly authorised representatives copies of its annual balance sheet, profit and loss account and such other information that the Insurer may require, audited by an independent accountant acceptable to the Insurer for the purpose of ascertaining whether the accounts show a true and fair view of the affairs of the Overseas Enterprise;

iii. so far as he is able, produce, or if not in his possession, cause to be produced to the Insurer or his duly authorised representatives at a place specified by the Insurer, the accounting records and documents referred to in sub-paragraphs i. and ii. above wherever they may be and shall provide an explanation of any of them and shall permit the Insurer or his duly authorised representatives to inspect, examine and audit them and take copies of them or extracts from them and inspect the books, accounts and properties of the Overseas Enterprise wherever located, the Investor giving every reasonable access thereto.

13.04 Within six months after the end of each Financial Year of the Investor falling wholly or partly within the Maximum Period, the Investor shall furnish to the Insurer -

a. a report by an independent accountant acceptable to the Insurer to the effect that he has examined the accounting records and documents referred to in Article 13.03.i.

above, whether in his opinion they form a complete and accurate record of the Investor's transactions with the Overseas Enterprise and, if not, in what respects they are deficient, and

b. a certificate by the Investor stating either that he has obtained from the Overseas Enterprise the documents referred to in Article 13.03.ii. above and the place where they are being maintained, or that he has not obtained the said documents and what measures he took to obtain them.

13.05 a. If at any time the information furnished by the Investor in the Application as explicitly supplemented or modified by any further information furnished by the Investor in writing in reliance on which this Agreement was entered into shall become incorrect, the Investor shall forthwith notify the Insurer in writing and the Insurer may at his option terminate or amend this Agreement without prejudice to any rights or obligations of the Investor or the Insurer which may have accrued prior to such termination or amendment.

b. If the Investor shall fail to comply with the terms and conditions of this Agreement or shall knowingly make any misrepresentation in making a claim on the Insurer under this Agreement, the Insurer may terminate this Agreement at any time and, with or without exercising such right of termination, may refuse payment of any claim hereunder and may retain any premium that has been paid and the Investor shall repay to the Insurer on demand any sums paid to him by the Insurer under this Agreement.

c. In the event of any circumstances giving rise to the right of the Insurer to terminate this Agreement as herein provided, the acceptance of any premium by the Insurer after the occurrence of such circumstance shall not operate as a waiver of the right of the Insurer to terminate this Agreement or to refuse payment of any claim hereunder or to seek refund of the amount of any claim paid to the Investor.

13.06 The terms provisions and conditions of this Agreement may be modified, supplemented or otherwise altered only by mutual agreement in writing between the Investor and the Insurer.

# ประวัติผู้เขียน

นายจักรพรรดิ์ ไชยพรรค เกิดเมื่อวันที่ 9 กุมภาพันธ์ พ.ศ. 2513 ที่โรงพยาบาลราชวิถี จังหวัดกรุงเทพมหานคร สำเร็จการศึกษาปริญญาตรีนิติศาสตรบัณฑิต (เกียรตินิยมอันดับสอง) คณะนิติศาสตร์ จุฬาลงกรณ์มหาวิทยาลัย ในปีการศึกษา 2534 เนติบัณฑิตไทย สมัยที่ 46 ปีการศึกษา 2536 และเข้าศึกษาต่อในหลักสูตรนิติศาสตรมหาบัณฑิต ที่จุฬาลงกรณ์มหาวิทยาลัย เมื่อ พ.ศ. 2536